



Special Commission of Inquiry into LGBTIQ hate crimes

SUBMISSIONS OF COUNSEL ASSISTING

6 July 2023

IN THE MATTER OF ROBERT HART MALCOLM

Introduction

1. These submissions are filed on behalf of Counsel Assisting the Special Commission of Inquiry into LGBTIQ hate crimes (**Inquiry**).

Summary of matter

Date and location of death

2. Robert Hart Malcolm died at Royal Prince Alfred Hospital on 29 January 1992 as a result of sequelae of head injuries.
3. The injuries were sustained when Mr Malcolm was attacked by a person or persons unknown during the night of 10 or early hours of 11 January 1992 in Redfern.

Circumstances of death

4. Mr Malcolm was 41 years old at the time of his death, and lived in Jannali with his parents, Robert McPherson Malcolm and Edith Malcolm.¹ He worked in a clerical position in the staff pay section of the General Post Office in Martin Place, Sydney.²
5. On the afternoon and evening of 10 January 1992, Mr Malcolm was drinking at the Menzies Hotel with colleagues, and was last seen by friends at around 8:15pm.
6. In the early hours of 11 January 1992, he was found unconscious in an abandoned and derelict house at 6 Holden Street, Redfern. He had suffered serious head injuries, which were likely the result of being assaulted with objects including a piece of timber and a broken brick.

¹ Statement of Robert McPherson Malcolm, 13 January 1992, [4] (SCOI.10290.00018).

² Statement of Gerald Stuart Birch, 31 January 1992, [2] (SCOI.10290.00036); Statement of Francis Thomas Loughland, 30 January 1992 (SCOI.47913); Statement of Robert McPherson Malcolm, 13 January 1992, [7] (SCOI.10290.00018).

Special Commission of Inquiry into LGBTIQ hate crimes

7. Almost three weeks later, on 29 January 1992, Mr Malcolm died from those injuries.³

Findings of post-mortem examination

8. On 31 January 1992, a post-mortem examination was performed by Dr Johan Duflou.⁴
9. The direct cause of death was “sequelae of a head injury”. In addition to Mr Malcolm’s external injuries, including a subconjunctival haemorrhage in his right eye and a number of scars and contusions, it was noted that there was also extensive bruising of the scalp, fractures to the skull and numerous injuries to the eyes, nose, mouth and teeth.⁵ In his report, Dr Duflou considered that Mr Malcolm’s injuries were consistent with having been sustained in the second week of January 1992.⁶
10. Dr Duflou noted that the “rectum and anus were normal”. The post-mortem report does not explicitly consider any indicators of sexual assault or evidence of sexual activity.⁷

Persons of interest

11. The persons of interest identified and charged in relation to Mr Malcolm’s death were:
- a. Anthony Stanley Hookey, born [REDACTED] 1971 and currently living in NSW;
 - b. Kirk Anthony Phillips, born [REDACTED] 1960 and died 14 February 2014;
 - c. Richard John Green, born [REDACTED] 1963 and died 23 July 2021.
12. On 11 January 1992, information was received by police, through the Aboriginal Liaison Officer to Redfern Police Station, David Bell, that:
- ... ‘BEAVER’ HOOKEY was seen chasing a male Caucasian north in Eveleigh Street, about 2am on 11/1/92.*⁸
13. At around 12:30pm on 11 January 1992, Mr Hookey was located in Redfern and attended the police station. He later provided a statement on 13 January 1992 and participated in an ERISP on 30 April 1992 (prior to being charged with murder that day).

³ P79A Report of Death to Coroner, 29 January 1991 (SCOI.10494.00006).

⁴ Post mortem report of Dr Johan Duflou, 28 May 1992, 1 (SCOI.10494.00017).

⁵ Post mortem report of Dr Johan Duflou, 28 May 1992, 1–3 (SCOI.10494.00017).

⁶ Post mortem report of Dr Johan Duflou, 28 May 1992, 2 (SCOI.10494.00017).

⁷ Post mortem report of Dr Johan Duflou, 28 May 1992, 4 (SCOI.10494.00017).

⁸ Bundle of Selected Running Sheets, 3 (SCOI.83976).

Special Commission of Inquiry into LGBTIQ hate crimes

14. On 22 January 1992, it appears that an unidentified person provided further information to the Aboriginal Liaison Officer to Redfern Police Station, Mr Bell, that “Kirk PHILLIPS and Richard GREEN could be involved in the incident”.⁹
15. Mr Phillips and Mr Green were part of the group that had found Mr Malcolm and provided statements on 11 January 1992. Following the above ‘tip’, Mr Phillips participated in an ERISP on 6 May 1992 (prior to being charged with murder that day) and Mr Green provided a further statement on 4 March 1992 (being later charged on 12 June 1992 with accessory after the fact to murder).¹⁰
16. Each person of interest was discharged at the committal hearing on 3-4 August 1992 (discussed below at [44]-[45]).

Indicators of LGBTIQ status or bias

17. There is no direct information received by the Inquiry to suggest that Mr Malcolm was gay or otherwise a member of the queer community. At the time of his death, Mr Malcolm was single, and there is no information in relation to any previous intimate relationships.
18. Mr Malcolm’s siblings, Graham Malcolm and Lynette Elias, were not spoken to during the original police investigation. The Inquiry spoke with both.¹¹ Ms Elias subsequently provided a statement in which she said that whilst Mr Malcolm had a lot of interest from girls, she never knew him to have a girlfriend. However, there were no indications to her that Mr Malcolm was gay.¹²
19. Mr Malcolm’s colleagues provided statements around their knowledge of Mr Malcolm’s relationships. The statements indicate that investigating police must have been alive to the possibility that LGBTIQ bias may have been a factor in Mr Malcolm’s death:
 - a. Richard Teaken stated “[d]uring the whole time that I knew Bob I never suspected him of being a homosexual. I never knew of any regular girlfriends although he had female acquaintances”.¹³
 - b. Peter Pickett stated “I did not know [Mr Malcolm] as a person who was inclined to pursue women”, and that he instead gained pleasure from having a drink with friends.¹⁴

⁹ Bundle of Selected Running Sheets, 25 (SCOI.83976).

¹⁰ Record of Interview with Kirk Anthony Phillips, 6 May 1992 (SCOI.10920.00014); Second Statement of Richard John Green, 4 March 1992 (SCOI.10290.00023).


¹¹ Statement of Kathryn Lockery, 6 July 2023, [39] (SCOI.84074).

¹² Statement of Lynette Elias, 21 June 2023 (SCOI.84073).

¹³ Statement of Richard William Teaken, 31 January 1992, [11] (SCOI.47912).

¹⁴ Statement of Peter John Pickett, 31 January 1992, [7] (SCOI.83032).

Special Commission of Inquiry into LGBTIQ hate crimes

- c. Francis Loughland provided the opinion that if Mr Malcolm had been enticed anywhere it would have been for a drink, and that it would not have been for women, “as he was getting drunk and I wouldn’t think women would have been on his mind”.¹⁵
- d. Gerald Birch stated that Mr Malcolm didn’t seem concerned about “trying to pick up women” and would mainly sit with other men and drink. Mr Birch described one night about 18 months prior to Mr Malcolm’s death where Mr Birch and Mr Malcolm went to the Mansions Hotel and then caught a taxi back to Central with two Aboriginal women. They had a few beers with the women at the Subway Hotel and then left.¹⁶
20. Mr Malcolm was found with his underpants down around his knees and his trousers around his ankles. However, the post-mortem examination did not identify any factors or injuries indicative of sexual activity or assault. The Sexual Assault Referral Unit Protocol indicates that an examination was carried out from 8:35pm on 11 January 1992 (after Mr Malcolm had already been washed and bathed by nursing staff, and had a rectal probe for temperature monitoring inserted).¹⁷ The results of this examination included ‘normal’ results for Mr Malcom’s genitals and noted that perianal and rectal swabs and smears had been collected.¹⁸ No records provided to the Inquiry include the results of these swabs, and the SAIK was then destroyed on 1 May 1996.¹⁹
21. 
22. On 30 January 1992, police executed a search warrant at ■■■ Eveleigh Street (which appears to back on to the “Factory” at ■■■ Holden Street, where a number of the young persons who found Mr Malcolm on 11 January 1992 were staying on the night). The police running sheet for the search warrant indicates that a number of people were occupying the premises at this time, and then goes on to note that a young person named NP244 was residing at ■■■ Eveleigh Street with “Jennie ■■■” (residing at this residence was Patricia Jean ■■■ and a person named “Darren” ■■■, according to

¹⁵ Statement of Francis Thomas Loughland, 30 January 1992, [10] (SCOI.47913).

¹⁶ Statement of Gerald Stuart Birch, 31 January 1992, [2] (SCOI.10290.00036).

¹⁷ Statement of Michele Franco, FASS, 13 June 2023, [30] (SCOI.83957); Sexual Assault Referral Unit Protocol, 11 January 1992, 1 (SCOI.83022).

¹⁸ Sexual Assault Referral Unit Protocol, 11 January 1992, 4, 9 (SCOI.83022).

¹⁹ Letter from NSWPF to Inquiry re status and location of exhibits, 18 May 2023 (SCOI.83309).

²⁰ First Statement of Detective Constable Michael Starr, 9 June 1992, [6], [9] (SCOI.10939.00092); Statement of Plain Clothes Constable Michael William Kane, 10 June 1992, 4 (SCOI.10939.00094).

Special Commission of Inquiry into LGBTIQ hate crimes

police canvass forms²¹). [NP244] was at that time on bail for robbery charges, some involving wounding. Relevantly, police note the following in relation to [NP244]'s previous robbery offences:

[NP244] usually socialises with his victim's before attacking them. [NP244] usually meets his victims who are usually drinking. [NP244] is 19 years old but looks much younger, approximately 14 years old, and when drunk becomes aggressive if his victims mention how young he looks or makes comments such as calling him a 'boy' or 'child' and 'you should be drinking you're only a boy'. [NP244] when drunk becomes extremely violent and will attack a group of four and still have the upper hand in the fight [sic].²²

23. From the records available, it is not clear what connection the above search warrant and information has with Mr Malcolm's death. It may be possible that police were pursuing a line of inquiry that [NP244] may have socialised with Mr Malcolm and had something to do with the assault on him. [REDACTED]
- [REDACTED]
- [REDACTED]. The records do not reveal any further steps taken on this line of inquiry, despite [NP244] appearing to be a potential suspect.
24. There are no other indicators of LGBTIQ status or bias, from the available documentation.
25. Dr Sullivan further considers the potential for LGBTIQ bias to have played a role in Mr Malcolm's death, below at [91]-[94].

Exhibits: availability and testing

26. On 11 January 1992 from around 5:15am, Constable Lyle Van Leeuwen attended 6 Holden Street. Constable Van Leeuwen took 21 crime scene photographs, and collected a number of exhibits, including:
- a. "Victorian Bitter" 375ml beer bottle, uncapped;²³
 - b. Pair of black male shoes;
 - c. Two bloodstained buttons;
 - d. Swab of blood from the veranda;
 - e. Broken brick with bloodstaining;
 - f. Multiple pieces of blood-stained timber, from the courtyard;

²¹ Bundle of Selected Canvass Forms, 11 January 1992, 7 (SCOI.84138).

²² Bundle of Selected Running Sheets, 29-30 (SCOI.83976).

²³ Detective Senior Constable Paul Thomas, who attended the crime scene at about 4:00am on 11 January 1992, observed that the open bottle of Victoria Bitter beer was 'still bubbling and did not appear to have gone flat' – See Statement of Detective Senior Constable Paul Andrew Thomas, 7 May 1992, [4] (SCOI.10939.00025).

Special Commission of Inquiry into LGBTIQ hate crimes

- g. “Telegraph Mirror” Newspaper dated 10 January 1992;
 - h. “Toohey’s Draught” 750ml beer bottle.²⁴
27. Constable Van Leeuwen observed a number of items which were not collected as exhibits. On the verandah of 6 Holden Street, he photographed but did not collect a sock, empty bandage packets, a “Plastic bottle (Property of the Ambulance)” and strands of hair in a blood stain.²⁵ In the courtyard, a white bloodstained shirt, black plastic comb and further button were photographed but appear to have not been collected or entered as exhibits.²⁶
28. Constable Van Leeuwen also prepared a sketch plan of the premises at 6 Holden Street.²⁷
29. The police collected further exhibits from Mr Malcolm while at hospital, including
- a. Pair of grey trousers;
 - b. Belt;
 - c. Pair of underwear;
 - d. Torn, blood-stained singlet;²⁸
 - e. Sexual Assault Investigation Kit (**SAIK** #5956).²⁹
30. On 4 February 1992, Probationary Constable Belinda Hardy handed a red jumper in at the Crime Scene Unit. It appears that the red jumper at the Crime Scene Unit had been worn by Mr Hookey on the night of 10-11 January 1992,³⁰ handed to Barbara Stacy (in a dirty condition) at around 8:00am on 11 January 1992,³¹ washed by Ms Stacy (intending to keep it for herself), and then handed into police on 5 February 1992.³² It is also possible, from the records available, that the jumper could have been the maroon jumper that Mr Malcolm was seen to be wearing on the night.³³ However, Constable Van Leeuwen noted that the Crime Scene Unit labelled the jumper “A Hookey”, and that it was clean.³⁴

²⁴ Statement of Constable Lyle William Van Leeuwen, 19 April 1992, [4]-[6], [8]-[9] (SCOI.10939.00063).

²⁵ Statement of Constable Lyle William Van Leeuwen, 19 April 1992, [5] (SCOI.10939.00063).

²⁶ Statement of Constable Lyle William Van Leeuwen, 19 April 1992, [6] (SCOI.10939.00063).

²⁷ Statement of Constable Lyle William Van Leeuwen, 19 April 1992, [8] (SCOI.10939.00063).

²⁸ Statement of Detective Senior Constable Paul Andrew Thomas, 7 May 1992, [6] (SCOI.10939.00025).

²⁹ Statement of Detective Constable Richard Yannakis, 6 May 1992, [6] (SCOI.10290.00012); Sexual Assault Referral Unit Protocol, 11 January 1992, 3 (SCOI.83022).

³⁰ Bundle of Selected Running Sheets, 31 (SCOI.83976); Statement of Joan Avril Honeysett, 14 January 1992, [10] (SCOI.10939.00034).

³¹ Statement of Barbara Dawn Stacy, 13 January 1992, [6]-[7] (SCOI.10939.00039).

³² Bundle of Selected Running Sheets, 33 (SCOI.83976).

³³ Bundle of Selected Running Sheets, 14, 16 (SCOI.83976)

³⁴ Statement of Constable Lyle William Van Leeuwen, 19 April 1992 [13] (SCOI.10939.00063).

Special Commission of Inquiry into LGBTIQ hate crimes

31. On 28 January 1992, Rudolf Weigner was briefed with the following items for the purpose of forensic testing:
- a. The SAIK;
 - b. Broken brick with bloodstaining;
 - c. Broken pieces of timber with bloodstaining;
 - d. Swab of blood from the veranda.

Mr Weigner was provided with the red jumper on 5 February 1992, and the grey trousers and a portion of the white singlet on 6 April 1992.³⁵

32. Mr Weigner identified human blood on each exhibit except for the SAIK and the red jumper. It appears that blood grouping analysis was conducted which indicates the blood detected comes from the same blood group.³⁶
33. Forensic biologist, Michele Franco of the Forensic and Analytical Science Service (**FASS**), explained the results of Mr Weigner's report as follows:
- a. Mr Malcolm's blood, which was taken post-transfusion, resulted in a mixture of blood types;
 - b. The human blood recovered from a piece of timber, swab of blood from the verandah, the stain on the grey trousers and the white singlet (items 4, 5, 7 and 8) was consistent with Mr Malcolm's blood types, which would occur in around one in ten people;
 - c. The human blood recovered from the broken pieces of timber (item 3) was also consistent with Mr Malcolm's blood type within one blood typing system, which would occur in around one in four people.³⁷
34. It does not appear that DNA testing was carried out during the initial police investigation on the human blood as detected on the above exhibits. The possibilities for DNA testing at the time, and now, are discussed further at [86]-[87].
35. In relation to the SAIK, Ms Franco states that spermatozoa were not detected on the rectal, perianal or perineum smears submitted in the SAIK, and as a result of that finding, the swabs were returned to police. Ms Franco notes that at that time, it was necessary to have semen or blood present on items

³⁵ Forensic biology report of Rudolf Weigner, 1 (SCOI.10939.00091).

³⁶ Forensic biology report of Rudolf Weigner, 2 (SCOI.10939.00091).

³⁷ Statement of Michele Franco, FASS, 13 June 2023, [13]-[15] (SCOI.83957).

Special Commission of Inquiry into LGBTIQ hate crimes

to consider DNA testing and that it was routine practice to return swabs to police that were not suitable for testing.³⁸ Ms Franco stated that, had the swabs been retained, DNA testing could now be conducted on the swabs using PCR technology. However, Ms Franco notes a number of challenges to recovering foreign DNA from the swabs, including the fact that Mr Malcolm's own DNA would have been present in large amounts, and the presence of any faecal matter on the swabs which would enhance the degradation of other DNA present.³⁹

36. Fingerprints were recovered from the "Toohey's Draught" 750ml beer bottle, the "Victoria Bitter" 375ml beer bottle and the "Telegraph Mirror" newspaper. These fingerprints were submitted for analysis and cross-referenced against the fingerprints for Mr Hookey, Mr Phillips, Mr Green and a number of the witnesses who were present at 6 Holden Street, but no matches were identified at the time of the initial police investigation.⁴⁰
37. Mr Green also stated that after the police left 6 Holden Street, at around 1:00pm or 2:00pm, he saw a 3 feet long piece of wood as round as a baseball bat at 6 Holden Street with blood and hair all over it.⁴¹ If this is true, it does not appear this piece of wood, which may have been a weapon used in the assault on Mr Malcolm, was collected or tested.

Criminal proceedings

38. On 30 April 1992, Mr Hookey was interviewed by police and subsequently charged with murder.⁴² When arrested, Mr Hookey asked Detective Sergeant Gary Phillips "can't you make it manslaughter?",⁴³ and further told Sergeant John Martlew the following:

I could get this down to Manslaughter, I saw it happen but I can't say... I was there, I walked away, when I came back they was bashing him with a bat or a brick or something, he was crying out and screaming I saw the blood then they ran away [sic].⁴⁴

39. On 6 May 1992, Mr Phillips was interviewed by police and charged with murder.⁴⁵

³⁸ Statement of Michele Franco, FASS, 13 June 2023, [16] (SCOI.83957).

³⁹ Statement of Michele Franco, FASS, 13 June 2023, [31]-[32] (SCOI.83957).

⁴⁰ Latent and Crime Scene Fingerprint Examination Form, 11 January 1992 (SCOI.10282.00002); Fingerprint Chart for Case 167888 (SCOI.10282.00018).

⁴¹ Second Statement of Richard Green, 4 March 1992, [7] (SCOI.10290.00023).

⁴² Bench Sheets for charges against Anthony Hookey, 1 May 1992 – 4 August 1992 (SCOI.11290.00016).

⁴³ Statement of Detective Sergeant Gary Thomas Phillips, 5 May 1992, [11] (SCOI. 83431).

⁴⁴ Statement of Sergeant John Martlew, 1 May 1992, [8]-[9] (SCOI.10939.00021).

⁴⁵ Bench Sheets for charges against Kirk Phillips, 6 May 1992 – 4 August 1992 (SCOI.11290.00028); Statement of Constable Joshua Trevillion, 6 May 1992 (SCOI.83028).

Special Commission of Inquiry into LGBTIQ hate crimes

40. On 12 June 1992, Mr Green was charged with accessory after the fact to murder.⁴⁶ When he was charged, Mr Green responded “Bloody murder, it was an assault” and later remarked “If Kirk has done this to me, he’s a fucking dog”.⁴⁷
41. On 3 August 1992, the matter was listed at Glebe Coroners Court for committal hearing. Mark Kelly appeared on behalf of the Office of the Director of Public Prosecutions (**ODPP**) as the committal solicitor.⁴⁸
42. On 3 August 1992, a brief of evidence was tendered, and a number of witnesses were called to give evidence, including: Detective Constable Michael Starr; Detective Sergeant Gary Phillips; James Smith; Jenine Honeysett; Patricia [REDACTED]; Barbara Stacy; Joan Honeysett; Margaret Vincent; Detective Richard Yannakis; Detective Sergeant Brian Saunders; Sergeant Martlow, and Detective Michael Kane.⁴⁹
43. The committal was adjourned to 4 August 1992 due to the non-appearance of Sharon Murphy, a key witness linking the defendants to Mr Malcolm’s death.⁵⁰ Ms Murphy was located by police on the evening of 3 August 1992.⁵¹
44. On 4 August 1992, Sharon Murphy gave evidence, after which the defendants were discharged.⁵²

Findings at inquest, including as to manner and cause of death

45. On 29 January 1992, Mr Malcolm’s death was reported to the Coroner.⁵³
46. On 1 June 1992, as a result of persons being charged with indictable offences, the inquest was terminated pursuant to s. 19(1) of the *Coroners Act 1980* (NSW).⁵⁴
47. According to the file as produced by the Coroners Court of NSW to the Inquiry, it appears that no formal findings in relation to the identity and time and place of death were recorded.

⁴⁶ Crime Information Report, 12 June 1992 (SCOI.76957).

⁴⁷ Second Statement of Detective Constable Michael Charles Starr, 12 June 1992, [5]-[6] (SCOI.10939.00093); Statement of Constable Scott Ronald Lejeune, 18 June 1992, [4]-[6] (SCOI.83033).

⁴⁸ Statement of Mark Kelly, 5 June 2023 (SCOI.83437); Notice that the DPP has taken over prosecution, 3 August 1992 (SCOI.11290.00040).

⁴⁹ Master Tape History Sheet, 3 August 1992 (SCOI.11290.00072).

⁵⁰ Statement of Mark Kelly, 5 June 2023 (SCOI.83437).

⁵¹ Statement of Mark Kelly, 5 June 2023 (SCOI.83437); Third Statement of Sharon Murphy, 3 August 1992, [5]-[8] (SCOI.10939.00083).

⁵² Master Tape History Sheet, 4 August 1992 (SCOI.11290.00077); Coroners Court Record, 4 August 1992 (SCOI.11290.00002).

⁵³ P79A Report of Death to Coroner, 29 January 1991 (SCOI.101494.00006).

⁵⁴ Coroners Court Brief Running Sheet, 5 February 1992 – 1 June 1992 (SCOI.10494.00005); Letter from the Coroners Court to Robert Malcolm re termination of inquest, 22 June 1992 (SCOI.10494.00016).

Special Commission of Inquiry into LGBTIQ hate crimes

Features of /concerns with original police investigation

48. After Mr Malcolm was discovered on 11 January 1992, the officers in charge of the investigation were Detective Senior Constable Paul Thomas and Probationary Constable William Morland.⁵⁵ The crime scene was attended by the following officers:
- a. Detective Senior Constable Paul Thomas – Officer in Charge;
 - b. Plainclothes Constable William Morland – Officer in Charge;
 - c. Constable C Atkinson (first name unknown);
 - d. Constable Pearsal (first name unknown);
 - e. Constable Jensen (first name unknown);
 - f. Probationary Constable Michelle Bills;
 - g. Senior Sergeant Edmond Beaver;
 - h. Constable Lyle Van Leeuwen.⁵⁶
49. By around 28 January 1992, the officers attached to the investigation were:
- a. Detective Constable I/C Richard Yannakis – Officer in Charge;
 - b. Plainclothes Constable Shane Bullock;
 - c. Detective Sergeant Graham Lyle of the Homicide Squad (South);
 - d. Detective Senior Constable Susan Emmett of the Homicide Squad (South);
 - e. Plainclothes Constable Belinda Hardy.⁵⁷
50. At the time of the committal hearing on 3-4 August 1992, the officer in charge appears to have been Detective Sergeant Gary Thomas Phillips.⁵⁸

⁵⁵ Occurrence Report, 11 January 1992 (NPL.0174.0001.0001.0059); see also Occurrence Report, 11 January 1992 (NPL.0174.0001.0715.0006).

⁵⁶ Bundle of Selected Running Sheets, 26 (SCOI.83976).

⁵⁷ Bundle of Selected Running Sheets, 27 (SCOI.83976); see also Investigation Summary prepared by Detective Constable Yannakis, undated (NPL.0174.0001.0001.0006); Situation Report – Homicide Unit, Undated (NPL.0174.0001.0001.0005); Homicide Squad Activity Sheet, 16 February 1992 (SCOI.10290.00073).

⁵⁸ Statement of Mark Kelly, 5 June 2023, [7] (SCOI.83437); Master Tape History Sheet, 3 August 1992 (SCOI.11290.00072).

Special Commission of Inquiry into LGBTIQ hate crimes

51. During the original police investigation, police formed the view that Mr Malcolm had been the victim of a robbery,⁵⁹ and that Mr Malcolm had been struck about the face with a heavy weapon (such as a bat, brick or piece of wood) whilst lying on the ground.⁶⁰
52. Police canvassed and took statements from a number of people in the Redfern community.⁶¹ One feature of the original police investigation is the poor relationship between the officers at Redfern Police Station and the Redfern community. Police worked with Aboriginal Liaison Officers David Bell and George Bracken throughout the initial investigation, who made inquiries and directed police to a number of the witnesses who later provided statements. On 28 January 1992, the police note that the community “expressed concern over the incident and a desire to catch the person responsible”,⁶² however, an undated report by the Homicide Unit states that “investigating Police have met with a wall of silence and have received little or no assistance from the aboriginal community [*sic*]”, and that a number of persons interviewed had given fictitious addresses, thereby posing issues for follow up or the taking of statements.⁶³
53. Another feature of the police investigation was the involvement of media following Mr Malcolm’s death, with a request made to Crime Stoppers on 7 February 1992, following which a Crime Stoppers release was made.⁶⁴ The media were also invited to a conference on 10 February 1992, in which Mr Malcolm’s father appealed to the public and a \$1000 reward was offered.⁶⁵
54. There are a number of concerns about the steps which should have been taken in the original investigation and in order to retain and archive information and exhibits to assist subsequent investigations. These are discussed below at [101]-[109].

Strike Force Parrabell

Use of the Bias Crimes Indicators Form

55. Of the ten indicators in the Bias Crime Indicators Review Form (**BCIF**), seven were answered “No evidence of Bias Crime” and three were answered “Unlikely that sexuality or other bias was involved in the death”.

⁵⁹ P79A Report of Death to Coroner, 29 January 1991 (SCOI.10494.00006).

⁶⁰ Homicide Squad Activity Sheet, 16 February 1992 (SCOI.10290.00073).

⁶¹ Bundle of Selected Canvass Forms, 11 January 1992 (SCOI.84138).

⁶² Bundle of Selected Running Sheets, 24-25 (SCOI.83976).

⁶³ Situation Report – Homicide Unit, Undated (NPL.0174.0001.0001.0005).

⁶⁴ Request to Crime Stoppers, 7 February 1992 (NPL.0174.0001.0001.0155); Crime Stoppers Release, undated (NPL.0174.0001.0001.0157).

⁶⁵ Invitation to media conference, 10 February 1992 (NPL.0174.0001.0001.0156); see also Police Media Unit Release, undated (NPL.0174.0001.0001.0158).

Special Commission of Inquiry into LGBTIQ hate crimes

56. The overall categorisation, in the “Summary of Findings”, was “Unlikely that sexuality or other bias was involved in the death”.⁶⁶

Results of Strike Force Parrabell

(a) The “General Comment” and “Summary of Findings” boxes

57. In the “General Comment” section for Indicator 2 (Comments, written statements, gestures) and Indicator 6 (victim/witness perception), the BCIF notes [REDACTED], and that Mr Malcolm’s friends appeared uncertain about Mr Malcolm’s sexuality with little evidence of past relationships.
58. In the “General Comment” section for Indicators 5 and 8 (Previous existence of Bias Crime Incidents, and Location), it is noted that Mr Malcolm was not visiting a location where previous bias crimes are known to have been committed, and it is an area known for a high volume of street related crime, including robbery offences.
59. In the “General Comment” section under Indicator 7 (Motive of Offender/s), it is noted that both Mr Hookey and Mr Phillips have criminal histories involving violent crimes and particularly robbery offences.
60. The “Summary of Findings” repeats various components of the earlier sections of the BCIF, namely that Mr Malcolm was a heavy drinker, and was last seen heavily intoxicated and in the company of Mr Hookey, following which he was discovered in a battered and unconscious state in a derelict house at 6 Holden Street. Overall, the view expressed in the BCIF is that Mr Malcolm’s death was part of a robbery in which Mr Hookey accompanied Mr Malcolm to an ATM, then lured him away where he bashed and robbed him in the company of Kirk Phillips, without consideration of his sexuality.⁶⁷

(b) Case Summaries

61. The Strike Force Parrabell Case Summary for Mr Malcolm’s case read as follows:

Identity: Robert Hart Malcolm was 41 years old at the time of his death.

Personal History: Mr Malcolm lived with his elderly parents in the Sutherland Shire. Mr Malcolm was described by his friends as a heavy drinker to the point of alcoholism.

Location of Body/Circumstances of Death: Mr Malcolm was last seen eleven days prior to his death heavily intoxicated at a hotel in Redfern with Anthony Hookey, 20 years old; and Kirk

⁶⁶ Strike Force Parrabell Bias Crimes Indicators Review Form, 16 May 2016, 13 (SCOI.75127).

⁶⁷ Strike Force Parrabell Bias Crimes Indicators Review Form, 16 May 2016 (SCOI.75127).

Special Commission of Inquiry into LGBTIQ hate crimes

Phillips, 31 years old. A short time later Mr Malcolm was located in a derelict house at Holden Street, Redfern. He was unconscious, suffering severe injuries consistent with being assaulted. His pants and underwear were around his ankles. A large amount of money had been stolen from him. Mr Malcolm died 10 days later in hospital. Mr Malcolm was found in an area well known for high volume crime including robbery offences. Police identified and interviewed both Hookey and Phillips, both of whom denied any knowledge of Mr Malcolm or his murder.

Sexual Orientation: Mr Malcolm’s sexuality could not be confirmed.

Coroner/Court Findings: Police arrested and charged both Phillips and Hookey with Mr Malcolm’s murder based upon circumstantial evidence, however both were found not guilty and discharged.

SF Parrabell concluded there was no evidence of a bias crime.

62. The content of this case summary is generally consistent with the comments made in the BCIF.

(c) Academic review

63. The review by Flinders University academics placed the case in the category of “No Bias”.

64. The academic reviewers noted that classification under “No Bias” in any given case is where there is “no bias worth reflecting on”.⁶⁸

Investigative and other steps undertaken by the Inquiry

Attempts to locate and contact family members

65. The Inquiry obtained information that Mr Malcolm’s parents, Robert McPherson Malcolm and Edith Malcolm, were both deceased.⁶⁹ The Inquiry has had ongoing contact with Mr Malcolm’s siblings, Graham Malcolm and Lynette Elias.⁷⁰

66. A statement was obtained from Ms Elias and is dated 21 June 2023. Ms Elias gives an account of Mr Malcolm’s personal background and what she knew as to Mr Malcolm’s sexuality (discussed at [18] above). Ms Elias also recalls attending the committal hearing with her parents. Ms Elias notes they were not given much warning about the court dates and describes the process as being upsetting and confusing for her parents. The family were not given a copy of the brief of evidence until after the hearing and only after Ms Elias asked police for further information.⁷¹

⁶⁸ Exhibit 1, Tab 2, Strike Force Parrabell Report, 99 (SCOI.02632).

⁶⁹ Statement of Lynette Elias, 21 June 2023 (SCOI.84073).

⁷⁰ Statement of Kathryn Lockery, 6 July 2023, [39] (SCOI.84074).

⁷¹ Statement of Lynette Elias, 21 June 2023 (SCOI.84073).

Special Commission of Inquiry into LGBTIQ hate crimes

Request for coronial file and summons for committal file

67. On 15 June 2022, the Inquiry issued a written request to the Registrar of the Coroners Court of NSW at Lidcombe (**the Coroners Court**) to obtain the coronial file in relation to the death of Mr Malcolm. The coronial file was produced on 4 July 2022.⁷²
68. A summons to the ODPP was issued on 21 June 2022 for, *inter alia*, the materials held in relation to the prosecution of Mr Hookey and Mr Phillips for the death of Mr Malcolm (summons ODPP1). A file was produced on 12 July 2022.⁷³
69. On 9 March 2023, the Inquiry issued a further request to the Registrar of the Coroners Court for any records of the committal proceedings held at Glebe Coroners Court on 3-4 August 1992. The committal file was produced on 16 March 2023.⁷⁴
70. On 15 June 2023, the Inquiry was advised by the Coroners Court that the transcript and sound recording for the committal hearing on 3-4 August 1992 were unable to be located.⁷⁵

Summonses issued

71. On 18 May 2022, the Inquiry issued a summons to the NSW Police Force (**NSWPF**) for all documents relating to investigations of the death of Mr Malcolm, and other listed persons (summons NSWPF1). The summons noted that such documents would include, *inter alia*, all running sheets, all intelligence and crime information reports, all police notebook and duty book entries, all photographs and all sketch plans.
72. A hardcopy file was produced on 8 June 2022.⁷⁶ It appears the material produced did not include all the material set out in the summons, as further material responsive to summons NSWPF1 has been subsequently produced in response to later summonses.
73. On 11 October 2022, the Inquiry issued a summons to NSWPF, seeking further documents in relation to Mr Malcolm (summons NSWPF29). The documents specified in summons NSWPF29 repeated a subset of the documents specified in NSWPF1, namely, crime scene photographs, sketch plans and police notebook and duty book entries. The notebook and duty book entries specifically requested

⁷² Statement of Kathryn Lockery, 6 July 2023, [4]-[5] (SCOI.84074).

⁷³ Statement of Kathryn Lockery, 6 July 2023, [20]-[21] (SCOI.84074).

⁷⁴ Statement of Kathryn Lockery, 6 July 2023, [6] (SCOI.84074).

⁷⁵ Letter from Coroners Court of NSW re Committal Transcripts, 15 June 2023 (SCOI.83994).

⁷⁶ Statement of Kathryn Lockery, 6 July 2023, [8]-[9] (SCOI.84074).

Special Commission of Inquiry into LGBTIQ hate crimes

were those of Detective Constable First Class R A Yannakis and Detective Sergeant Gary Thomas Phillips.⁷⁷

74. On 24 October 2022, NSWPF produced a number of documents responsive to summons NSWPF29, including criminal history and intelligence reports, crime scene photographs and the duty book of Detective Constable Yannakis. However, NSWPF was unable to locate sketch plans drawn by police for 6 Holden Street (Job No. 92-0081) and the duty book of Detective Sergeant Phillips.⁷⁸
75. It is possible that Detective Sergeant Phillips' duty book, if provided, may have provided further information on whether certain witnesses were located or contacted. As that information is not available to the Inquiry, the witnesses spoken to and investigations undertaken by Detective Sergeant Phillips are not clear.
76. On 9 May 2023, the Inquiry issued a further summons to the NSWPF, seeking 14 exhibits collected in the original police investigation (summons NSWPF102). On 18 May 2023, NSWPF advised that 11 of the exhibits had been destroyed, and the three remaining exhibits had samples in cold storage with FASS.⁷⁹ It is not clear why the exhibits were destroyed, especially as no DNA testing had been carried out, nor were the results of the SAIK recorded on the material provided to the Inquiry.
77. On 30 May 2023, the Inquiry issued a further summons to the NSWPF (summons NSWPF113). The documents specified in summons NSWPF113 again repeated a subset of the material requested in summons NSWPF1, in this instance, the running sheets for the investigation into Mr Malcolm's death, and the duty book entries of Plain Clothes Constable Shane Louise Bullock.⁸⁰
78. On 5 June 2023, in response to summons NSWPF113, the NSWPF produced over 1,500 pages of material, including a large volume of running sheets not previously provided to the Inquiry, which related to the initial police investigation into Mr Malcolm's assault and death.⁸¹ If this material, containing much of the core investigative police work in this matter, had been produced in response to summons NSWPF1 in a timely manner, further lines of investigation may have been open to the Inquiry, such as following up with witnesses like NP244 (see [22]), NP243 (see [132.a]) or Wayne Hookey (see [107.j]).
79. On 14 June 2023, the Inquiry issued a further summons to the NSWPF for photographs produced with the statement of Constable Van Leeuwen (summons NSWPF125). This summons again repeated the

⁷⁷ Summons NSWPF29, 11 October 2023 (SCOI.83432).

⁷⁸ Email from NSWPF to Inquiry re NSWPF29, 24 October 2022 (SCOI.83961).

⁷⁹ Letter from NSWPF to Inquiry re exhibits, 18 May 2023 (SCOI.83309).

⁸⁰ Summons NSWPF113, 30 May 2023 (SCOI.83436).

⁸¹ Letter from NSWPF to Inquiry re NSWPF113, 5 June 2023 (SCOI.83977).

Special Commission of Inquiry into LGBTIQ hate crimes

request made in NSWPF1 for all photographs relating to the investigation of the death of Mr Malcolm.⁸² On 20 June 2023, the Inquiry received a number of photographs in response to summons NSWPF125.⁸³

80. On 21 June 2023, the Inquiry received a further 1,827 documents, which the NSWPF indicated were produced pursuant to summons NSWPF1.⁸⁴
81. Further summonses were issued in response to the fingerprint match discussed below at [88].
- a. On 6 June 2023, the Inquiry issued a summons to the Commissioner of Corrective Services (**CSNSW**) for copies of records held in relation to Percy Strong. On 9 June 2023, CSNSW advised that it was not possible to find Mr Strong on the CSNSW database, but that a hard copy file contained an index card for Mr Strong with his right thumbprint.⁸⁵
 - b. On 9 June the Inquiry issued a further summons to NSWPF for the fingerprint file and records relating to the match (summons NSWPF121). Material was produced in response to that summons on 15 June 2023.⁸⁶
82. In addition to the above, the Inquiry has issued various summonses to the NSWPF seeking criminal histories and intelligence records in relation to certain persons. These were produced to the Inquiry.⁸⁷

Further forensic testing

83. On 29 May 2023, Michele Franco of FASS confirmed that the three remaining crime scene samples in relation to this case (the others being destroyed, as discussed at [76]) were held in cold storage at FASS, namely:
- a. Swab of blood from the veranda;
 - b. Sample from the pair of grey trousers;
 - c. Sample from the torn blood-stained singlet.⁸⁸
84. By letter dated 31 May 2023, the Inquiry requested that FASS conduct DNA testing of the remaining exhibit samples.⁸⁹

⁸² Summons NSWPF125, 14 June 2023 (SCOI.83996).

⁸³ Statement of Kathryn Lockery, 6 July 2023, [17] (SCOI.84074).

⁸⁴ Letter from NSWPF to Inquiry re further material produced pursuant to NSWPF1, 21 June 2023 (SCOI.84214).

⁸⁵ Summons CSNSW20, 6 June 2023 (SCOI.83959); Index card for Percy Strong, undated (SCOI.83960).

⁸⁶ Summons NSWPF121, 9 June 2023 (SCOI.83997); Statement of Kathryn Lockery, 6 July 2023, [16] (SCOI.84074).

⁸⁷ Statement of Kathryn Lockery, 6 July 2023, [20] (SCOI.84074).

⁸⁸ Letter of instruction to FASS requesting testing and statement on exhibits, 31 May 2023 (SCOI.83433).

⁸⁹ Letter of instruction to FASS requesting testing and statement on exhibits, 31 May 2023 (SCOI.83433).

Special Commission of Inquiry into LGBTIQ hate crimes

85. On 13 June 2023, Ms Franco provided a statement regarding the exhibits and the outcome of the DNA analysis. Ms Franco stated that the DNA profile recovered from the three exhibit samples matched the profile for Mr Malcolm, and that Mr Malcolm’s DNA profile did not appear to be affected by a blood transfusion. She explained that:

*“it is greater than 100 billion times more likely to obtain this profile if it originates from Robert Malcolm, rather than if it originates from an unknown, unrelated individual in the Australian population”.*⁹⁰

86. Ms Franco was also asked to provide a statement regarding the nature of the forensic analysis which could now be conducted in relation to the destroyed exhibits, had they been retained, that was either not available in 1992 or which was available but not carried out. Ms Franco noted that there have been enormous advances in DNA testing since 1992, and that for some exhibits with insufficient DNA for testing in 1992 (including the blood-stained brick), DNA testing in 2023 would be possible. Ms Franco also raised possibilities of testing the exhibits for skin cells (blood-stained brick and timber) and for saliva (the beer bottles). While Mr Malcolm’s underwear was not tested by Mr Weigner, Ms Franco states that in 2023, such exhibits could be tested for blood semen, saliva or hair.⁹¹ In relation to the red jumper, Ms Franco noted that as it had been washed and there was no indication of blood, there are no superior tests that could have been conducted in 2023 had the exhibit been retained.⁹²
87. Ms Franco notes throughout her report that any testing in 2023 would be dependent on any degradation which occurred in the intervening years, and that the exhibits were collected from a crime scene which was partly exposed to the elements and various building materials, which may have compromised the recovery of any DNA.⁹³
88. On 26 May 2023, the Inquiry requested the NSWPF Forensic Evidence and Technical Services Command (**FETS**) conduct a comparative examination of fingerprints found at the crime scene and to conduct further fingerprint examinations regarding the unidentified fingerprints found on the “Toohey’s Draught” beer bottle at the crime scene, as compared to the National Automated Fingerprint Identification System (**NAFIS**). A match was made with a person named Percy Alexander Strong.⁹⁴

⁹⁰ Statement of Michele Franco, FASS, 13 June 2023, [7]-[9] (SCOI.83957).

⁹¹ Statement of Michele Franco, FASS, 13 June 2023, [17]-[33] (SCOI.83957).

⁹² Statement of Michele Franco, FASS, 13 June 2023, [27] (SCOI.83957).

⁹³ Statement of Michele Franco, FASS, 13 June 2023, [34] (SCOI.83957).

⁹⁴ Statement of Paul Hubrechtsen-Yung, 5 June 2023 (SCOI.83526); NAFIS Fingerprint Job Card, 2 June 2023 (NPL.2031.0001.0024).

Special Commission of Inquiry into LGBTIQ hate crimes

89. As at 11 January 1992, Mr Strong lived at [REDACTED] Eveleigh Street in Redfern and spoke to police during the initial canvass of the streets surrounding the crime scene. Police record in the Canvass Form that Mr Strong “didn’t see or hear anything”.⁹⁵ Mr Strong does not appear to be interviewed further, nor is he mentioned by other witnesses as a person connected to the investigation. Mr Strong’s home was approximately 50 metres from the abandoned house at 6 Holden Street. Mr Strong died on 11 July 2021.⁹⁶

Professional opinions obtained

90. On 30 May 2023, the Inquiry briefed forensic psychiatrist Dr Danny Sullivan to provide an expert report regarding the psychology of Mr Malcolm’s killer, and whether Mr Malcolm’s death may be the consequence of an LGBTIQ hate crime.⁹⁷

91. On 7 June 2023, Dr Sullivan provided a report to the Inquiry. [REDACTED]

[REDACTED]. However, Dr Sullivan stated that other factors rendered Mr Malcolm vulnerable to attack, including his intoxication, possible display of money and being in an area of town in which he may have been at risk of being robbed.⁹⁸

92. If Mr Hookey, Mr Phillips and Mr Green perpetrated the attack on Mr Malcolm, Dr Sullivan is of the view that robbery was the “driver of the assault”, rather than a bias motivation, [REDACTED]

93. Dr Sullivan further stated that Mr Malcolm being found with his pants and underwear down may be due to a number of possibilities: that he was urinating when attacked; that his clothes were removed after the attack; or that he was engaged in sexual activity at the time. It is possible that the removal of his clothes was intended to humiliate, but Dr Sullivan did not think this was obvious or clear.¹⁰⁰

94. Lastly, Dr Sullivan opines that the result of the sexual assault samples may have been relevant. However, as noted at [76], these samples have now been destroyed.

⁹⁵ Bundle of Selected Canvass Forms, 11 January 1992, 5-6 (SCOI.84138).

⁹⁶ Death certificate of Percival Alexander Strong, 11 July 2021 (SCOI.84205).

⁹⁷ Letter of Instruction to Dr Danny Sullivan, 30 May 2023 (SCOI.83435).

⁹⁸ Expert report of Dr Danny Sullivan, 7 June 2023, [37]-[46] (SCOI.83635).

⁹⁹ Expert report of Dr Danny Sullivan, 7 June 2023, [44] (SCOI.83635).

¹⁰⁰ Expert report of Dr Danny Sullivan, 7 June 2023, [38]-[41] (SCOI.83635).

Special Commission of Inquiry into LGBTIQ hate crimes

Inter-agency cooperation

95. The Inquiry coordinated with the Registry of Births, Deaths and Marriages and other agencies to confirm the status and location of various witnesses.

Other sources of information

96. The Inquiry contacted Mr Kelly, the solicitor employed at the ODPP who appeared at the committal hearing on 3-4 August 1992 (discussed above at [46]-[47]). On 5 May 2023, members of the Inquiry conferenced with Mr Kelly in relation to his recollection of the committal hearing and Mr Kelly subsequently provided a statement dated 5 June 2023 regarding the committal proceedings.
97. On 26 May 2023, the Inquiry held a conference with Richard Yannakis in relation to his recollection of the original police investigation, including in relation to any inquiries the police undertook to locate Dianne McGuinness. Mr Yannakis was unable to provide any information beyond what was contained in the NSWPF investigative file and did not recall whether contact was made with Ms McGuinness.¹⁰¹
98. Inquiries were also made in relation to Detective Sergeant Phillips, who was determined to be deceased.¹⁰²
99. The Inquiry took steps, including through inter-agency cooperation, to attempt to find Dianne McGuinness, who Mr Hookey said he was with during the early morning of 11 January 1992. However, no person matching the details of Ms McGuinness was able to be located.¹⁰³
100. The Inquiry also made a number of attempts to contact [NP243] after running sheets recording his statements to investigating police were provided to the Inquiry on 5 June 2023. The person believed to be [NP243] declined to assist the Inquiry.¹⁰⁴

Steps which could / should have been taken, but which were not

101. After Mr Weigner identified human blood on a number of exhibits (discussed at [32]) during the original police investigation, no steps were taken to arrange DNA testing to see if any blood from Mr Hookey, Mr Phillips or Mr Green was identified, even though there were some limited forms of DNA testing available at that time. Additionally, Ms Franco stated that, with respect to the pieces of

¹⁰¹ Statement of Kathryn Lockery, 6 July 2023, [37] (SCOI.84074).

¹⁰² Death certificate for Gary Thomas Phillips, 10 December 2019 (SCOI.83551).

¹⁰³ Statement of Kathryn Lockery, 6 July 2023, [28]-[29] (SCOI.84074).

¹⁰⁴ Statement of Kathryn Lockery, 6 July 2023, [38] (SCOI.84074).

Special Commission of Inquiry into LGBTIQ hate crimes

blood-stained timber, testing using blood grouping tests were possible, even if the tests would not have been very discriminating between people in the population.¹⁰⁵

102. DNA testing may have also revealed other suspects, such as Mr Strong, or [NP242]. The running sheets show that [NP242] was arrested by police at around 6:10am on 11 January 1992 with blood on his shirt which he said was ketchup.¹⁰⁶ Further inquiries in relation to [NP242], such as testing the blood on his shirt, were not taken. The inclusion of this information in relation to [NP242] in the running sheets in the investigative file indicates that police thought there may have been a connection to Mr Malcolm's death. Again, what further enquiries police made, or how [NP242] was excluded in the police investigation, is unknown.
103. While fingerprint testing was conducted on the exhibits during the initial police investigation, no match was identified until the further testing requested by the Inquiry in 2023. If a match had been identified earlier and prior to the death of Mr Strong, a line of inquiry may have been open to NSWPF to interview Mr Strong about his knowledge of the abandoned house at 6 Holden Street and whether he had witnessed any assaults or robberies at that location.
104. Further, police did not take the step of carefully retaining and archiving the exhibits for later testing. Rather, 11 of the 14 exhibits were destroyed after examination or on 1 May 1992, including the SAIK.¹⁰⁷ If police had taken the steps for the careful retention of these critical exhibits, further lines of investigation may have been open to the Inquiry.
105. In addition to the exhibits which have been recorded as destroyed, it also appears that material from the original police investigation has been lost, such as the sketch plan prepared by Constable Van Leeuwen, and the duty book of Detective Sergeant Phillips.¹⁰⁸
106. Further, some important exhibits appear to not have been collected in the first place, such as:
 - a. The blood-stained shirt in the courtyard. It appears that only a singlet was collected from Mr Malcolm, while two witnesses gave evidence that he was wearing a light-coloured shirt, possibly with blue stripes.¹⁰⁹ It does not appear that Mr Malcolm's shirt was ever collected as an exhibit, nor tested.

¹⁰⁵ Statement of Michele Franco, FASS, 13 June 2023, [22] (SCOI.83957).

¹⁰⁶ Bundle of Selected Running Sheets, 1 (SCOI.83976).

¹⁰⁷ Letter from NSWPF re exhibits, 18 May 2023 (SCOI.83309).

¹⁰⁸ Email from NSWPF to Inquiry re NSWPF29, 24 October 2022 (SCOI.83961).

¹⁰⁹ Bundle of Selected Running Sheets, 14-15, 17 (SCOI.83976); Statement of Robert McPherson Malcolm, 13 January 1992, [12] (SCOI.10290.00018); Statement of George O'Donnall, 31 January 1992, [7] (SCOI.10939.00049).

Special Commission of Inquiry into LGBTIQ hate crimes

- b. The hair in the blood stain on the verandah at 6 Holden Street, photographed by Constable Van Leeuwen.¹¹⁰
 - c. Further hair also appeared to be evident on pieces of wood, according to Mr Green (see [37]), but no hairs were collected and tested.
107. Police also did not take the steps of contacting or obtaining statements from the following witnesses, whose evidence may have been important:
- a. Sharon Stephens, bar attendant at the Terrace Bar at Menzies Hotel, who saw Mr Malcolm at around 8:00pm, and one of the last people to see him in the city;
 - b. Dianne McGuinness, who was supposedly with Mr Hookey during the early hours of the morning on 11 January 1992;
 - c. Tracy McGuinness, who was with Mr Hookey in the evening of 10-11 January 1992;
 - d. The employees of Mansions Hotel, one of whom Mr Hookey said he told he was going for a walk around Kings Cross in the early hours of 11 January 1992;
 - e. Dot Hookey, Mr Hookey's aunt, who was with him at the Subway Hotel;
 - f. 'Greg', employee of the Subway Hotel, who was with Mr Hookey in the early hours of 11 January 1992;
 - g. David William Whitlock, who was with Mr Hookey at the time he was first questioned by police in the morning of 11 January 1992;
 - h. NP244, who appears to have been considered by police as a potential suspect given his history of socialising and drinking with victims before robbing them and the evidence that Mr Malcolm was a heavy drinker (as discussed at [22], NP244 appeared to look young and reacted violently to being told so, [REDACTED]
[REDACTED]
 - i. NP243, who said to police that he had found the body and said he had also seen Mr Malcolm the previous night at 11:30pm;

¹¹⁰ Photograph 16 of crime scene photographs (photographs 10-21), 11 January 1992 (SCOI.83958).

Special Commission of Inquiry into LGBTIQ hate crimes

- j. Wayne Hookey, Mr Hookey's uncle, who attended Redfern Police Station on 13 January 1992 to tell police that Matt Perry saw Mr Hookey with a white man on 10 January 1992;¹¹¹
 - k. Michelle Hookey, Mr Hookey's aunt, and her friend Victor, who Mr Hookey said bought him a drink at the Mansions Hotel;
 - l. Donna Morgan, who James Smith said was part of the group who Mr Hookey bought drinks for at the Mansions Hotel;
 - m. Craig Goldie and his wife Thelma, who Kirk Phillips said he was with at the Clifton Hotel from 4:00pm-5:00pm up until midnight and then for a further two hours in a park;
 - n. Peter Carroll, and the people he nominated as having information regarding Kirk Phillips, namely John Carroll and Ruth Williams, and the meeting of the Aboriginal community where the matter appears to have been discussed;
 - o. Anne Hickey ('Shorty'), who Sharon Murphy said was present for one of the conversations with Kirk Phillips and Richard Green in which they admitted to being involved in the attack on Mr Malcolm.
108. Efforts should have been made by police to contact all relevant witnesses, especially those mentioned in Mr Hookey's statement as people who could vouch for his whereabouts. Accepting that some witnesses may have given fictitious addresses, one would expect that the investigative file would contain records of attempts to contact them. These attempts are not evidenced in the material provided to the Inquiry.
109. Lastly, the theory of investigating police was that Mr Malcolm was robbed by Mr Hookey as a result of displaying cash, being intoxicated and easily led. A key element of that theory was that Mr Malcolm had money with him. The evidence of Mr Malcolm's family and friends was that he did not carry a wallet as a precaution against robbery and carried only his licence and keycard with him. There is also the evidence that he asked to borrow \$50 at around 7:30pm-8:30pm on 10 January 1992 (see [121]). If this is true, Mr Malcolm would have needed to make an ATM withdrawal at some time in the evening of 10-11 January 1992 in order to be the cash-laden victim that Sharon Murphy describes at [129]. It does not appear that police took any steps to verify if there was a cash withdrawal from Mr Malcolm's

¹¹¹ Bundle of Selected Running Sheets, 19 (SCOI.83976); Wayne Hookey was not further interviewed nor did he provide a statement, and Matthew Perry in his statement does not provide any information about seeing a white man when he saw Beaver at the Clifton Hotel at around 11:15pm.

Special Commission of Inquiry into LGBTIQ hate crimes

account, despite having the details and ordering a freeze on the accounts on 13 January 1992, after speaking with Mr Malcom's father and identifying his missing valuables.¹¹²

Results of investigative and other steps undertaken by the Inquiry

110. This section of the submissions sets out the key matters that arose in the course of the Inquiry's consideration of the evidence, and the conclusions that may be drawn in the light of that consideration.

Events preceding death

Mr Malcolm's drinking habits

111. Mr Malcolm was a regular and heavy drinker.¹¹³ Martin Daly, bar attendant at the Menzies Hotel, knew Mr Malcolm to "drink to excess every time he entered either bar".¹¹⁴
112. His friends and colleagues described him as quiet, likeable and a happy-go-lucky guy, but that he appeared to have a problem with drinking. Richard Teaken said that his nickname at work was "Alcy Malcy" and that "his attitude changed for the worse when he did drink".¹¹⁵ Gerald Birch stated he would get "abusive but never aggressive".¹¹⁶ Francis Loughland stated that he would get "merry" and "a bit of an orator" when he drank.¹¹⁷
113. George O'Donnall stated that Mr Malcolm usually had a "big night" on Fridays and would still be at the Menzies Hotel in the city when Mr O'Donnall left at about 8:00pm.¹¹⁸
114. Two people who knew him said that, as a result of being robbed of his watch and wallet two to three years prior to his death, Mr Malcolm did not carry a wallet, usually just some cash and an ATM card.¹¹⁹ Mr Malcolm's father confirmed that missing from his son's property at home was his Licence and Mastercard keycard.¹²⁰
115. Mr Teaken also stated to police that Mr Malcolm was "sympathetic and naïve with Aboriginal [people]", and added that Mr Malcolm was "likely to go any where 'if offered a drink'".¹²¹ Mr Loughland

¹¹² Bundle of Selected Running Sheets, 28 (SCOI.83976).

¹¹³ Statement of Robert McPherson Malcolm, 13 January 1992, [10] (SCOI.10290.00018).

¹¹⁴ Statement of Martin Francis Daly, 31 January 1992, [4], [8] (SCOI.83037).

¹¹⁵ Bundle of Selected Running Sheets, 20 (SCOI.83976); Statement of Richard William Teaken, 31 January 1992, [6]-[8] (SCOI.47912).

¹¹⁶ Statement of Gerald Stuart Birch, 31 January 1992, 2 (SCOI.10290.00036).

¹¹⁷ Statement of Francis Thomas Loughland, 30 January 1992, [9] (SCOI.47913).

¹¹⁸ Statement of George O'Donnall, 31 January 1992, [6] (SCOI.10939.00049).

¹¹⁹ Statement of Gerald Stuart Birch, 31 January 1992, 2 (SCOI.10290.00036); Statement of Robert McPherson Malcolm, 13 January 1992, [11] (SCOI.10290.00018); Statement of Peter John Pickett, 31 January 1992, [6] (SCOI.83032).

¹²⁰ Bundle of Selected Running Sheets, 28 (SCOI.83976).

¹²¹ Bundle of Selected Running Sheets, 20 (SCOI.83976).

Special Commission of Inquiry into LGBTIQ hate crimes

stated that Mr Malcolm was “always on the side of the downtrodden” and was a “sociable sort of fellow if anyone offered him a drink or enticed him anywhere it would have been for this I think”.¹²²

Mr Malcolm’s movements during the day of 10 January 1992

116. On 10 January 1992, Mr Malcolm left his home for work at around 6:50am. Between 1:00pm and 3:00pm, Mr Malcolm attended the King George Tavern with colleagues to celebrate a fellow colleague Bob Wright’s retirement.¹²³
117. From 4:30pm to around 8:00pm, Mr Malcolm was drinking with friends at the Menzies Hotel.
118. First, he went to the Terrace Bar with a group of colleagues at around 4:30pm and was “moderately intoxicated” by the time Mr Loughland left at around 6:30pm. Mr Loughland asked Mr Malcolm if he was going home and he replied, “No I am going to hang around for a while”.¹²⁴
119. There is indirect evidence that Mr Malcolm continued drinking at the Terrace Bar with another colleague, Ed Brown, until around 7:15pm.¹²⁵ Sharon Stephens, bar attendant at the Terrace Bar, stated to police that Mr Malcolm left the Terrace Bar “really drunk” at around 8:00pm.¹²⁶
120. Mr Malcolm then drank in the Punt and Pint Bar of the Menzies Hotel with John Baxter and George O’Donnall. Bar attendant Martin Daly stated that it would have been around 8:00pm to 8:30pm that he served Mr Malcolm a drink at the Punt and Pint Bar.¹²⁷ Mr Baxter stated that they started drinking at around 8:00pm and then he left at around 8:30pm (Mr O’Donnall adjusting both times to be approximately 30 minutes earlier). At the time Mr O’Donnall left (8:15pm according to his statement, but possibly later if Mr Baxter’s timings were accurate), Mr Malcolm was “pretty intoxicated”, he was unsteady, his speech was slurred, and his eyes were glazy and blood shot.¹²⁸
121. At one point Mr Malcolm asked Mr O’Donnall “Have you got \$50 on you I can borrow?” and Mr O’Donnall responded “I could give you a hundred, Bob”. However, Mr O’Donnall did not end up giving Mr Malcolm any money.¹²⁹

¹²² Statement of Francis Thomas Loughland, 30 January 1992, [10] (SCOI.47913).

¹²³ Statement of Francis Thomas Loughland, 30 January 1992, [5]-[6] (SCOI.47913); Statement of Richard William Teaken, 31 January 1992, [9] (SCOI.47912).

¹²⁴ Statement of Francis Thomas Loughland, 30 January 1992, [7] (SCOI.47913).

¹²⁵ Statement of Francis Thomas Loughland, 30 January 1992, [7] (SCOI.47913).

¹²⁶ Bundle of Selected Running Sheets, 21 (SCOI.83976).

¹²⁷ Bundle of Selected Running Sheets, 18 (SCOI.83976).

¹²⁸ Statement of George O’Donnall, 31 January 1992, [5] (SCOI.10939.00049); Statement of John Mitchell Baxter, 30 January 1992, [5] (SCOI.83021).

¹²⁹ Statement of George O’Donnall, 31 January 1992, [5] (SCOI.10939.00049); Statement of John Mitchell Baxter, 30 January 1992, [5] (SCOI.83021).

Special Commission of Inquiry into LGBTIQ hate crimes

Possible Sightings of Mr Malcolm during the night of 10 January 1992

122. Between 8:30pm and 9:00pm, four witnesses say they saw Anthony Hookey walking down Eveleigh Street with a white man. Mr Hookey was known to all four witnesses, each of whom lived in or around the Redfern area. Mr Malcolm was unknown to each witness.
123. Margaret Vincent saw Mr Hookey and a white man walking side by side on Eveleigh Street at around 8:45pm. The white man appeared to be drunk and was having trouble lighting his cigarette.¹³⁰
124. On 14 January 1992, Ms Vincent was interviewed by police and shown a group photo containing Mr Malcolm, in which she identified that one of the men “looked very much like the white fella I saw with Beaver”.¹³¹ She described the man as white, 35-40 years old, chubby, brown hair and wearing light coloured clothes, maybe fawn pants.¹³² The pants don’t quite match, but otherwise, this appears to be Mr Malcolm. When interviewed by police who were canvassing the streets surrounding 6 Holden Street on 11 January 1992, Ms Vincent noted that when she saw “the victim” at around 8:45pm, he may have had a jumper under his arms.¹³³ This may have been Mr Malcolm’s maroon jumper, or Mr Hookey’s red jumper, later collected as an exhibit, as discussed in [30].
125. Joan Honeysett saw Mr Hookey and a man walking down Eveleigh Street at about 9:00pm. She heard Mr Hookey say to the man, “come down here, Auntie Kay’s down here”. The man was “helpless drunk”, unsteady on his feet and had his head down on his chest.¹³⁴
126. On 14 January 1992, Ms Honeysett was interviewed by police and shown the same group photo and stated that one of the men in it “had the same hair and same sort of build as the white fella I saw Beaver with”.¹³⁵ She describes the man as wearing a white or cream dress shirt and light-coloured suit trousers,¹³⁶ which generally accords with what Mr Malcolm was wearing on 10 January 1992 but may also match with any number of working men on that night.
127. Merle Roberts saw Mr Hookey and a man walking down Eveleigh Street at around 9:00pm. The man appeared drunk and was staggering and walking behind Mr Hookey.¹³⁷

¹³⁰ Statement of Margaret Rose Vincent, 14 January 1992, [7] (SCOI.10939.00035).

¹³¹ Statement of Margaret Rose Vincent, 14 January 1992, [10] (SCOI.10939.00035).

¹³² Statement of Margaret Rose Vincent, 14 January 1992, [7] (SCOI.10939.00035).

¹³³ Bundle of Selected Canvass Forms, 11 January 1992, 2 (SCOI.84138).

¹³⁴ Statement of Joan Avril Honeysett, 14 January 1992, [5] (SCOI.10939.00034).

¹³⁵ Statement of Joan Avril Honeysett, 14 January 1992, [8] (SCOI.10939.00034).

¹³⁶ Statement of Joan Avril Honeysett, 14 January 1992, [10] (SCOI.10939.00034).

¹³⁷ Statement of Merle Joyce Roberts, 12 January 1992, [4]-[6] (SCOI.10939.00036).

Special Commission of Inquiry into LGBTIQ hate crimes

128. On 12 January 1992, Ms Roberts was interviewed by police and was not shown any photo, but described the man she saw as being in his thirties, having a moustache and wearing a light-coloured shirt and dress trousers,¹³⁸ which generally matches with a description of Mr Malcolm on the night.
129. Sharon Murphy saw Mr Hookey and a man walking down Eveleigh Street between 8:30pm and 9:30pm. She said they were both drunk and staggering, and carrying a carton of beer. Ms Murphy then called out to Mr Hookey for a dollar, and he told the other man to give her a dollar. Ms Murphy stated that the man then opened a black wallet and gave her a gold coin, and she saw that he had a lot of money in \$100 and \$20 notes and thought to herself “he’s going to get bashed and they’ll take the money off him”.¹³⁹ Mr Hookey and the man then turned left into Lawson Street.¹⁴⁰
130. On 25 February 1992, Ms Murphy was interviewed by police and stated she saw Mr Malcolm lying in the abandoned house and spoke to [REDACTED] 1310 about it.¹⁴¹ She stated that she had seen the same man on the previous night as described above. It is noted that Ms Murphy’s identification may not be reliable, for the following reasons:
- a. Mr Malcolm, by all accounts, did not carry a wallet (see [114];
 - b. Ms Murphy stated that he had blood on the left shoulder of his shirt when walking down the street on Friday night, which does not match with the accounts of the other three witnesses;¹⁴²
 - c. Ms Murphy’s account of events differs between her first and second statement. In her first statement she states that she was walking back down the street between 9:30pm and 10:00pm, and saw Kirk Phillips and Richard Green standing outside the abandoned house but did not see Mr Hookey or Mr Malcolm.¹⁴³ However, in her second statement, she states that her first statement was incorrect and that at 9:30pm-10:00pm she saw Mr Phillips and Mr Green walking up Eveleigh Street, and saw Mr Hookey and Mr Malcolm sitting and drinking with other people;¹⁴⁴

¹³⁸ Statement of Merle Joyce Roberts, 12 January 1992, [4]-[6] (SCOI.10939.00036).

¹³⁹ First Statement of Sharon Lee Murphy, 25 February 1992, [5] (SCOI.83025); see also Second Statement of Sharon Lee Murphy, 5 March 1992, [6] (SCOI.83038).

¹⁴⁰ Second Statement of Sharon Lee Murphy, 5 March 1992, [6] (SCOI.83038).

¹⁴¹ First Statement of Sharon Lee Murphy, 25 February 1992, [3] (SCOI.83025).

¹⁴² Second Statement of Sharon Lee Murphy, 5 March 1992 (SCOI.83038).

¹⁴³ First Statement of Sharon Lee Murphy, 25 February 1992, [6] (SCOI.83025).

¹⁴⁴ Second Statement of Sharon Lee Murphy, 5 March 1992, [7] (SCOI.83038).

Special Commission of Inquiry into LGBTIQ hate crimes

- d. Ms Murphy identified Mr Malcolm as the man she later saw lying in 6 Holden Street.¹⁴⁵ However, none of the other witnesses (including [1310]) who found Mr Malcolm refer to her presence that morning;
- e. If Ms Murphy did see Mr Malcolm on the morning of 11 January 1992, his face would have been injured and covered in blood;
- f. The timing given by Ms Murphy would mean that Mr Malcolm was asking Mr O'Donnall to borrow money at 8:00pm-8:30pm (see [121]) but was then flush with cash at 8:30pm-9:00pm.
131. It is possible that some of the issues set out above provided a basis for impeaching Ms Murphy's recollection at the committal hearing. According to Mr Kelly, Ms Murphy was the key witness who failed to give the coroner the evidence to link the accused with Mr Malcom's death.¹⁴⁶
132. There are limited sightings of Mr Malcolm from this point, with the exception of:
- a. [1310] who spoke to police on 11 January 1992, stating that he was part of the group who found Mr Malcolm. [1310] said to police that he had seen Mr Malcolm in the Redfern area at approximately 11:30pm on 10 January 1992.¹⁴⁷ [1310] did not provide a statement, and when followed up by police, did not reside at the address given.¹⁴⁸ Investigations by the Inquiry indicate that the name "[1310]" is an alias.¹⁴⁹
- b. The anonymous source on 11 January 1992 (discussed above at [12]) stated that at around 2:00am, Mr Hookey was seen chasing a white male north in Eveleigh Street.
133. Information was also received from Jan Flannigan, residing at a neighbouring house (approximately 250 metres from where Mr Malcolm was found), that at around 2:45am-3:00am on 11 January 1992, Mrs Flannigan's husband was awakened by a cab sound and a male voice saying "come on Bruce".¹⁵⁰ However, no statement was taken from Mrs Flannigan or her husband, and this may be unrelated to Mr Malcolm.

¹⁴⁵ First Statement of Sharon Lee Murphy, 25 February 1992, [3] (SCOI.83025).

¹⁴⁶ Statement of Mark Kelly, 5 June 2023, [8]-[9], [11] (SCOI.83437).

¹⁴⁷ Bundle of Selected Running Sheets, 37 (SCOI.83976)

¹⁴⁸ Bundle of Selected Running Sheets 13 (SCOI.83976).

¹⁴⁹ Statement of Kathryn Lockery, 6 July 2023, [38] (SCOI.84074).

¹⁵⁰ Bundle of Selected Running Sheets, 12 (SCOI.83976).

Special Commission of Inquiry into LGBTIQ hate crimes

Discovery of Mr Malcolm and medical attention

Discovery of Mr Malcolm on 11 January 1992

134. At about 2:00am on 11 January 1992, Mr Malcolm was found in a derelict house at 6 Holden Street, Redfern. He was found by young adults and children working or staying at the “Factory” at ██████ Holden Street, also known as the Aboriginal Christian Youth Organisation, which was a place where young people slept, ate and hung out and where the Phillips family appeared to work.
135. A group of 14 to 15-year-old children including ██████ I308 ██████ I309 and ██████ I310 stated that they heard sounds from inside the abandoned house at 6 Holden Street at around 2:00am (1:00am according to ██████ I310), and then went to investigate. They saw Mr Malcolm through a hole in the wall, who was lying on his back and bleeding heavily from his face.¹⁵¹ ██████ NP243 also said that he was with this group.¹⁵² The younger children then fetched an older group which included Richard Green, Kirk Phillips and Max Bright.¹⁵³
136. Kirk Phillips then went to Redfern Railway Station to call an ambulance,¹⁵⁴ and Garry Phillips (caretaker, and possible relation to Kirk Phillips) went back to the Factory to use the phone there to call an ambulance.¹⁵⁵ At this time, Richard Green asked Jenine Honeysett, walking down Eveleigh Street, if he could use her grandmother’s house phone to call an ambulance, but she told him to go to the train station.¹⁵⁶
137. Sandra Matthew, living in one of nearby houses, recalled hearing “arguing” and “chattering” in Caroline Lane at around 1:30am to 2:00am on 11 January 1992. Ms Matthew said there were also music and this went on for a bit longer.¹⁵⁷ It may be that the witnesses who discovered Mr Malcolm moved from 6 Holden Street to the nearby Caroline Lane.
138. It appears that at some point between when the younger boys discovered Mr Malcolm, and the arrival of the ambulance, that Jason Phillips (younger brother of Kirk Phillips) went into the house. Jason stated that Mr Malcolm was choking on the blood coming out of his mouth and down his face, and so

¹⁵¹ Statement of ██████ I308 11 January 1992, [4] (SCOI.10939.00029); Statement of ██████ I309 11 January 1992, [4]-[5] (SCOI.83040); Statement of ██████ I310 11 January 1992, [4]-[6] (SCOI.10939.00030).

¹⁵² Bundle of Selected Running Sheets, 10 (SCOI.83976).

¹⁵³ First Statement of Richard Green, 11 January 1992, [4]-[6] (SCOI.10939.00032); Second Statement of Richard Green, 4 March 1992, [5] (SCOI.10290.00023); ERISP Transcript of Kirk Anthony Phillips, 6 May 1992, [A67] (SCOI.10290.00014).

¹⁵⁴ Statement of Kirk Anthony Phillips, 11 January 1992, [6] (SCOI.10939.00023); ERISP Transcript of Kirk Anthony Phillips, 6 May 1992, [A47] (SCOI.10290.00014).

¹⁵⁵ Statement of Garry Robert Phillips, 14 January 1992, [7] (SCOI.10290.00031).

¹⁵⁶ Statement of Jenine Cecilia Honeysett, 6 March 1992, [7] (SCOI.83030); see also First Statement of Richard Green, 11 January 1992, [6] (SCOI.10939.00032).

¹⁵⁷ Bundle of Selected Canvass Forms, 11 January 1992, 4 (SCOI.84138).

Special Commission of Inquiry into LGBTIQ hate crimes

Jason turned Mr Malcolm on his side and propped him up with a stick to help him breathe.¹⁵⁸ Garry Phillips, after using the telephone at the Factory to call the ambulance, returned to the house and saw that Mr Malcolm's back was shifted to be leaning against a stick up against the wall, and left it there.¹⁵⁹ Richard Gilmore also gave a statement that he saw that Mr Malcolm was unconscious and propped up with a stick, so he then removed the stick and put Mr Malcolm on his side.¹⁶⁰

139. In his second statement to police, Mr Green stated that he was at the Factory when a young man came in and told them, "some blokes just been brought from Kings Cross, bashed and rolled".¹⁶¹ It is unclear how the young man had obtained that information, or, if this was invented by Mr Green, how he obtained that information, without some involvement in the assault.
140. [NP243], in his discussions with police stated he had gone into the building to "meet some friends",¹⁶² and that "everyone knew he was in there but didn't know he's been extremely beaten".¹⁶³
141. The statements of Mr Green and [NP243] indicate that the abandoned house was possibly being used as a meeting place, which accords with the rubbish found including the beer bottles, and that there was some awareness that Mr Malcolm had been 'rolled' (robbed), although those who found him appeared shocked at the extent of his injuries.

Medical Treatment and Death

142. At approximately 2:17am on 11 January 1992, paramedics arrived at 6 Holden Street.¹⁶⁴ One of the paramedics, Mr Cribb, observed that Mr Malcolm's underpants were around his knees and his grey pants were folded in half and placed across his buttocks.¹⁶⁵ It is unclear who folded Mr Malcolm's pants, as the young people who discovered him only mention that his pants were down, not that they were folded.
143. At this time, Mr Malcolm did not have any identification or valuables on him.¹⁶⁶
144. Mr Malcolm was then conveyed by ambulance to Royal Prince Alfred Hospital and arrived at 2:37am.¹⁶⁷

¹⁵⁸ Statement of Jason Bradley Phillips, 16 January 1992, [9] (SCOI.83036).

¹⁵⁹ Statement of Garry Robert Phillips, 14 January 1992, [8] (SCOI.10290.00031).

¹⁶⁰ Statement of Richard Ian Gilmore, 11 January 1992, [7] (SCOI.10939.00031).

¹⁶¹ Second statement of Richard John Green, 4 March 1992, [5] (SCOI.10290.00023).

¹⁶² Bundle of Selected Running Sheets, 9 (SCOI.83976).

¹⁶³ Bundle of Selected Running Sheets, 10 (SCOI.83976).

¹⁶⁴ Ambulance Treatment Report, 11 January 1992 (SCOI.83026).

¹⁶⁵ Statement of Leon Joseph Cribb, 28 January 1992, [5]-[6] (SCOI.83031).

¹⁶⁶ Summary by Detective Constable Yannakis, undated (NPL.0174.0001.0001.0006).

¹⁶⁷ Statement of Leon Joseph Cribb, 28 January 1992, [7] (SCOI.83031); Ambulance Treatment Report, 11 January 1992 (SCOI.83026).

Special Commission of Inquiry into LGBTIQ hate crimes

145. At approximately 2:45am, Mr Malcolm was examined by Dr Les Schmalzbach. At this point, Mr Malcolm had been intubated and was unconscious and hypotensive.¹⁶⁸ The following injuries were clinically evident on examination:
- a. Boggy swelling of the right side of the scalp, with possible underlying fracture;
 - b. Damage to the right eye which contained blood and had been partly pushed forward;
 - c. Fractures of the bones in the middle of the face, especially on the right;
 - d. A 5cm deep laceration of the right cheek;
 - e. Broken and/or missing front upper teeth;
 - f. Bleeding from the nose and right ear, and possibly the left ear.¹⁶⁹
146. Following extensive radiological investigations, the following injuries were also documented:
- a. A small amount of diffuse blood throughout the brain (“subarachnoid haemorrhage”);
 - b. Complex fractures of the base of the skull, right facial bones and right orbit;
 - c. Probable division of the right optic nerve;
 - d. Bilateral lung opacities consistent with aspiration of vomitus.¹⁷⁰
147. On 13 January 1992, Mr Malcolm was identified.¹⁷¹
148. On 15 January 1992, Mr Malcolm had a tracheostomy placed in surgery by Dr Michael Morgan.¹⁷²
149. Mr Malcolm likely died between 6:30pm and 7:10pm on 29 January 1992.¹⁷³ At 7:30pm on 29 January 1992, Mr Malcolm was pronounced deceased by Dr Anne Brady.¹⁷⁴

¹⁶⁸ Statement of Dr Les Schmalzbach, 11 May 1992, 1 (SCOI.10290.00059).

¹⁶⁹ Statement of Dr Les Schmalzbach, 11 May 1992, 1 (SCOI.10290.00059); see also Statement of Dr Stephen John Halcrow, 4 May 1992 (SCOI.10290.00058).

¹⁷⁰ Statement of Dr Les Schmalzbach, 11 May 1992, 2 (SCOI.10290.00059).

¹⁷¹ Statement of Robert McPherson Malcolm, 13 January 1992, [7]-[9] (SCOI.10290.00018).

¹⁷² Statement of Dr Michael Morgan, 17 February 1992 (SCOI.10290.00056); Statement of Dr Les Schmalzbach, 11 May 1992, 2 (SCOI.10290.00059); Post mortem report of Dr Johan Duflou, 28 May 1992, 1 (SCOI.10494.00017).

¹⁷³ Statement of Claire Bronwen Aldis RN, 10 February 1992 (SCOI.83042), who observed him apparently alive at 6:30pm, but apparently deceased at 7:10pm.

¹⁷⁴ Statement of Dr Anne Bradley, 29 January 1992 (SCOI.83039).

Special Commission of Inquiry into LGBTIQ hate crimes

Persons of Interest

Movements of Anthony Hookey on 10-11 January 1992

150. In his statement to police on 13 January 1992, Mr Hookey provided an overview of his movements on 10-11 January 1992.¹⁷⁵ Where Mr Hookey's account as to his movements are corroborated or contradicted by other witnesses, it is noted in a footnote.

151. Redfern:

- a. At around 6:30pm, he left his Aunt Linda's house at [REDACTED] Waterloo, and walked to the Black Theatre in Redfern, where he spoke to his aunt Michelle Hookey. There was a group of ten people present.¹⁷⁶
- b. At around 6:50pm, he left the Black Theatre to go to Eveleigh Street. He went through the street behind the TNT buildings, past Redfern Railway Station onto Lawson Street, and then turned right into Eveleigh Street, arriving at around 6:55pm.¹⁷⁷ He then stopped and spoke to Tracy and Mary [REDACTED] for about half an hour.¹⁷⁸

In his later interview with police on 30 April 1992, Mr Hookey amends this element of the events. He states that it was around 7:30pm-8:00pm when he walked up Lawson Street and turned onto Eveleigh Street. He also adds that he asked a white man standing on the corner for a cigarette, and never saw the white man before or again.¹⁷⁹ This may have been Mr Malcolm, but unlikely, as Mr Malcolm would have been at the Menzies Hotel at this time.

152. Clifton Hotel, Redfern:

- a. After speaking with Tracy and Mary [REDACTED], he walked to the Clifton Hotel on Regent Street and arrived at around 7:45pm. He ordered a beer and played pool with Barbara Stacy.¹⁸⁰

¹⁷⁵ Statement of Anthony Stanley Hookey, 13 January 1992, [1]-[9] (SCOI.10290.00008).

¹⁷⁶ Statement of Anthony Stanley Hookey, 13 January 1992, [4] (SCOI.10290.00008).

¹⁷⁷ Statement of Anthony Stanley Hookey, 13 January 1992, [4] (SCOI.10290.00008).

¹⁷⁸ Statement of Anthony Stanley Hookey, 13 January 1992, [5] (SCOI.10290.00008).

¹⁷⁹ ERISP Transcript of Anthony Hookey, 30 April 1992, [A46]-[A47] (SCOI.10939.00019).

¹⁸⁰ Statement of Anthony Stanley Hookey, 13 January 1992, [5] (SCOI.10290.00008).

Consistent with Mr Hookey's evidence, Barbara Stacy and Matthew Perry recalled Mr Hookey playing pool, but they place the time as around 10:30pm-10:45pm, see Statement of Barbara Dawn Stacy, 13 January 1992, [5] (SCOI.10939.00039); Statement of Matthew Perry, 4 March 1992 [6] (SCOI.83035).

Special Commission of Inquiry into LGBTIQ hate crimes

- b. During the night, he also spoke to Michelle Hookey, Maria Hookey, Matt Perry, Debbie Murphy, Karen Lowe, [§ 87(2)(b)] and Beccy Smith. He also continued to drink beer.¹⁸¹
- c. At closing time (unspecified), he left the Clifton Hotel with his ex-girlfriend Dianne McGuinness and her cousin Tracy McGuinness, and they walked up Regent Street towards the Westpac Bank.¹⁸²

In his later interview with police on 30 April 1992, Mr Hookey mentions only Dianne and not Tracy, as being present.¹⁸³ When spoken to by police on 11 January 1992, Mr Hookey does not mention Dianne McGuinness at all.¹⁸⁴

- d. Then he saw Karen Lowe, [§ 87(2)(b)] and Beccy Smith outside the Westpac Bank and they took a taxi together to Kings Cross.¹⁸⁵

When spoken to by police on 11 January 1992, Mr Hookey states that in addition to the above women being in the taxi, Barbara Stacy was also present.¹⁸⁶

153. Kings Cross:

- a. After arriving in Kings Cross, he separated from the women and went to the Mansions Hotel.¹⁸⁷

¹⁸¹ Inconsistent with Mr Hookey's evidence, Rene [§ 87(2)(b)], [§ 87(2)(b)] Jenine Honeysett, James Smith and Jason Phillips stated they were at the Clifton Hotel during the time period of 8:30pm to midnight but did not see Mr Hookey there, see Statement of Rene [§ 87(2)(b)], 13 January 1992, [5] (SCOI.10939.00037); Statement of [§ 87(2)(b)], 11 February 1992, [5] (SCOI.83041); Statement of Jenine Cecilia Honeysett, 6 March 1992, [6] (SCOI.83030); Statement of James Frederick Smith, 3 March 1992, [1] (SCOI.83029); Statement of Jason Bradley Phillips, 16 January 1992, [6] (SCOI.83036).

Consistent with Mr Hookey's evidence, Matthew Perry said he spoke to Mr Hookey in the Clifton Hotel at around 11:45pm, and Mr Hookey's uncle Wayne Hookey told police he saw his nephew at around 10:00pm in the Clifton Hotel, see Statement of Matthew Lawrence Perry, 4 March 1992, [6] (SCOI.83035); Bundle of Selected Running Sheets, 19 (SCOI.83976).

¹⁸² Statement of Anthony Stanley Hookey, 13 January 1992, [6] (SCOI.10290.00008).

¹⁸³ ERISP Transcript of Anthony Hookey, 30 April 1992 [A16] (SCOI.10939.00019).

¹⁸⁴ Bundle of Selected Running Sheets, 5-6 (SCOI.83976).

¹⁸⁵ Statement of Anthony Stanley Hookey, 13 January 1992, [6] (SCOI.10290.00008).

Consistent with Mr Hookey's evidence, Rebecca (Beccy) Smith told police on 11 January 1992 that she took a cab from the Clifton Hotel at closing time, to the Mansions Hotel with a group of people including [§ 87(2)(b)], Karen Holton/Lowe and 'Tony'. However, police noted that they felt her information was "suspect and not to be relied upon" (it is unclear for what reason). Police also noted that Karen Lowe/Holton was present but that she was drunk and "[§ 87(2)(b)]", see Bundle of Selected Running Sheets, 7 (SCOI.83976).

¹⁸⁶ Bundle of Selected Running Sheets, 5-6 (SCOI.83976).

Inconsistent with Mr Hookey's evidence, Ms Stacy stated that she only saw Mr Hookey when playing pool with him, and that he did not leave with him, see Statement of Barbara Dawn Stacy, 13 January 1992 [6] (SCOI.10939.00039).

Inconsistent with Mr Hookey's evidence, [§ 87(2)(b)] stated she was only with her girlfriends during the night and "none of the fellas" came with them at any time, see Statement of [§ 87(2)(b)], 11 January 1992, [7] (SCOI.83027).

¹⁸⁷ Statement of Anthony Stanley Hookey, 13 January 1992, [7] (SCOI.10290.00008).

Special Commission of Inquiry into LGBTIQ hate crimes

- b. He spoke to Michelle Hookey and her friend Victor for about 30 minutes but did not have a drink.¹⁸⁸
- c. He then left the Mansions Hotel and told a friend (unnamed) who works at the Mansions Hotel that he was going for a walk. He then walked down to the Crest Hotel and used the toilet there.¹⁸⁹
- d. He then sat outside the closed entrance to Kings Cross Railway Station for about ten minutes before walking up and down the main street of Kings Cross.¹⁹⁰
- e. In the early hours of 11 January 1992, he ran into Dianne McGuinness again and they walked around the streets until it started to become light.¹⁹¹

154. Subway Hotel, Central:

- a. At dawn, he and Ms McGuinness took the train from Kings Cross to Central Station and went to the Subway Hotel.¹⁹²

When spoken to by police on 11 January 1992, Mr Hookey provides a different timeline of his movement from Kings Cross to Central. He states that he stayed at the Mansions Hotel until around 3:30am and then went to the Subway Hotel, and there is no mention of wandering around Kings Cross with Ms McGuinness.¹⁹³

Inconsistent with Mr Hookey's evidence, Rene █████, Matthew Perry and Jenine Honeysett stated that they were at the Mansions Hotel at varying times between midnight to 5:00am but did not see Mr Hookey there, see Statement of Rene █████, 13 January 1992, [6] (SCOI.10939.00037); Statement of Matthew Lawrence Perry, 4 March 1992, [7] (SCOI.83035); Statement of Jenine Cecilia Honeysett, 6 March 1992, [8] (SCOI.83030).

Consistent with Mr Hookey's evidence, James Smith stated that he saw Mr Hookey arrive at the Mansions Hotel at around 2:00am, see Statement of James Frederick Smith, 3 March 1992, 1 (SCOI.83029). However, as noted in the Statement of Mark Kelly, 6 June 2023 [7] (SCOI.83437), Mr Smith appeared to waver in his memory of the date at committal.

¹⁸⁸ Statement of Anthony Stanley Hookey, 13 January 1992, [7] (SCOI.10290.00008).

¹⁸⁹ Statement of Anthony Stanley Hookey, 13 January 1992, [7] (SCOI.10290.00008).

¹⁹⁰ Statement of Anthony Stanley Hookey, 13 January 1992, [7] (SCOI.10290.00008).

¹⁹¹ Statement of Anthony Stanley Hookey, 13 January 1992, [7] (SCOI.10290.00008); ERISP Transcript of Anthony Hookey, 30 April 1992, [A16] (SCOI.10939.00019).

¹⁹² Statement of Anthony Stanley Hookey, 13 January 1992, [7]-[8] (SCOI.10290.00008).

Consistent with Mr Hookey's evidence, Barbara Stacy, Rene █████ and James Smith reported seeing Mr Hookey at around 8:00am (5:00am for Mr Smith) at the Subway Hotel, see Statement of Barbara Dawn Stacy, 13 January 1992, [6] (SCOI.10939.00039); Statement of Rene █████, 13 January 1992, [7] (SCOI.10939.00037); Statement of James Frederick Smith, 3 March 1992, 2 (SCOI.83029).

¹⁹³ Bundle of Selected Running Sheets, 5-6 (SCOI.83976).

Special Commission of Inquiry into LGBTIQ hate crimes

- b. At the Subway Hotel, he spoke to an employee named Greg and his aunt, Dot Hookey. He spoke to a man who he later saw again at Redfern Railway Station. Then he left the Subway Hotel (Ms McGuinness stayed) and caught a train from Central to Redfern.¹⁹⁴

In his later interview with police on 30 April 1992, Mr Hookey adds that he also spoke with the publican,¹⁹⁵ and the unknown man bought him and his aunt a beer. He reported that he, his aunt and the unknown man then took a taxi from the Subway Hotel to Redfern, planning to go to the Boundary Pub, and that the unknown man paid for the taxi.¹⁹⁶

155. Redfern:

- a. When he arrived at Redfern Railway Station, the man who had spoken to him at the Subway Hotel also got off the train and spoke to him again in Lawson Street outside the station entrance. Mr Hookey then walked down Eveleigh Street and spoke to Karen Lowe's brother, Tommy. Tommy offered him a drink, but he didn't have one. After leaving Tommy, he again saw the unknown man standing there.¹⁹⁷
- b. He then walked up Redfern Street with the unknown man and Rene █████, who had been at Tommy's house or the house next door.

The unknown man was white and Mr Hookey didn't know his name.¹⁹⁸ In his later interview on 30 April 1992, he added that the man "seemed real friendly" and described the man as about 180cm tall, wearing glasses, sort of grey hair, 35-38 years old, skinny, and was wearing brown trousers and a black t-shirt with something like 'Harley Davidson' or a picture on the front.¹⁹⁹ It is noted that this does not match the description of Mr Malcolm and that Mr Malcolm had already been found in 6 Holden Street by this time.

- c. The unknown male stopped to use the Commonwealth Bank ATM on Redfern Street.²⁰⁰

¹⁹⁴ Statement of Anthony Stanley Hookey, 13 January 1992, [8] (SCOI.10290.00008).

¹⁹⁵ ERISP Transcript of Anthony Hookey, 30 April 1992, [A16] (SCOI.10939.00019); Statement of Bradford Keith Bloodworth, 8 February 1992, [6] (SCOI.83019), who recognises a photo shown to him (unclear who the photo is of).

¹⁹⁶ ERISP Transcript of Anthony Hookey, 30 April 1992, [A23], [A26] (SCOI.10939.00019).

Consistent with Mr Hookey's evidence, Rene █████ reported seeing, from out the front of Eveleigh Street, Mr Hookey get out of a taxi with "the lad" (having referred earlier to seeing Mr Hookey with a lad at the Subway Hotel), and then walk to the bank to get some money, see Statement of Rene █████, 13 January 1992, [8] (SCOI.10939.00037).

¹⁹⁷ Statement of Anthony Stanley Hookey, 13 January 1992, [8] (SCOI.10290.00008).

¹⁹⁸ Statement of Anthony Stanley Hookey, 13 January 1992, [9] (SCOI.10290.00008).

¹⁹⁹ ERISP Transcript of Anthony Hookey, 30 April 1992, [A18]-[A20] (SCOI.10939.00019).

²⁰⁰ Statement of Anthony Stanley Hookey, 13 January 1992, [9] (SCOI.10290.00008).

Special Commission of Inquiry into LGBTIQ hate crimes

In his later interview with police on 30 April 1992, he reports that after the unknown man paid for the taxi from Kings Cross to Redfern, the unknown man tried to withdraw money from an ATM but couldn't, and that the bank was not open. He noted that the unknown male had about \$20 or less on him at the time he paid the taxi fare.²⁰¹

- d. Around the time that the unknown male was using the ATM, the police arrived and took Mr Hookey to Redfern Police Station.²⁰²

In his later interview, he noted that the police took him, Rene [REDACTED] and the unknown man to the police station, for questioning in relation to Mr Malcolm, and estimated that this was at about 10:00am-12:00pm on 11 January 1992.²⁰³

A running sheet identifies that Mr Hookey was taken in for questioning at around 12:30pm, in the company of Rene [REDACTED] and David William Whitlock, born [REDACTED] 1955.²⁰⁴ It is likely that it is Mr Whitlock, and not Mr Malcolm who is the unknown white man referred to throughout Mr Hookey's description of events on 11 January 1992.

156. As to Mr Hookey's clothing, he stated that between Friday (10 January 1992) and being picked up by police on Saturday (11 January 1992), he was wearing a short-sleeved black and white 'Sweathog' t-shirt, grey tracksuit pants, Lotto brand joggers, and white socks with green and blue stripes.²⁰⁵ This outfit is corroborated by Rene [REDACTED] who reported seeing Mr Hookey at the Subway Hotel at around 8:00am on 11 January 1992, wearing a black shirt, tracksuit pants and joggers.²⁰⁶
157. However, in her statement, Barbara Stacy reported that she saw Mr Hookey at around 8:00am at the Subway Hotel, and that he gave her a nice red "dress jumper" that he had been wearing at the Clifton Hotel. She reported that it was dirty around the neck and had "fluff" on it, and that otherwise, Mr Hookey was wearing a black shirt and black shorts with Cronulla colours on the side.²⁰⁷ However, on 5 February 1992, after providing the jumper to police, Ms Stacy said that she did not know where

²⁰¹ ERISP Transcript of Anthony Hookey, 30 April 1992, [A24], [A29] (SCOI.10939.00019).

²⁰² Statement of Anthony Stanley Hookey, 13 January 1992, [9] (SCOI.10290.00008).

²⁰³ ERISP Transcript of Anthony Hookey, 30 April 1992, [A30], [A43] (SCOI.10939.00019).

²⁰⁴ Bundle of Selected Running Sheets, 4 (SCOI.83976).

²⁰⁵ Statement of Anthony Stanley Hookey, 13 January 1992, [10] (SCOI.10290.00008).

²⁰⁶ Statement of Rene [REDACTED], 13 January 1992, [8] (SCOI.10939.00037).

²⁰⁷ Statement of Barbara Dawn Stacy, 13 January 1992, [7] (SCOI.10939.00039).

Special Commission of Inquiry into LGBTIQ hate crimes

Mr Hookey got the red jumper from and she wasn't sure if he had been wearing the red jumper the night before.²⁰⁸ Mr Hookey did not mention a red jumper.

158. James Smith stated that Mr Hookey had come into some money as at 10-11 January 1992:

- a. Shortly after 2:00am on 11 January 1992, James Smith stated that he was sitting in the Mansions Hotel with Dot Hookey, Jenine Honeysett and Donna Morgan. Mr Smith reported that whilst they were sitting together, Mr Hookey "kept flashing all this money he had, mostly \$20 notes". During this time, Mr Hookey paid for two or three rounds of drinks, including beer and spirits, for the five or six people in the group. Mr Hookey told Mr Smith words to the effect of "I just rolled someone" or "I did a roll".²⁰⁹

Mr Smith's recollection of events is not consistent with the account of his partner, Ms Honeysett, who stated she was with Mr Smith and her friend Donna Morgan at the Mansions Hotel that morning but did not recall seeing Mr Hookey.²¹⁰

Mr Hookey denied making the above statement to Mr Smith and denied giving him any money.²¹¹ He also denied buying beers for other people at the Mansions Hotel and said his aunt Michelle Hookey and her friend Victor bought him a beer.²¹²

- b. Mr Smith stated that when he was at the Subway Hotel from around 5:00am, Mr Hookey again shouted drinks for the group there.²¹³
- c. Mr Smith further stated that at around 9:45am, Mr Smith, Mr Hookey, Dot Hookey and a "white fellow" left the Subway Hotel and caught a cab to Eveleigh Street. Then whilst standing outside 'Jean' ██████'s house at ██████ Eveleigh Street (Patricia Jean ██████), Mr Smith asked Mr Hookey for some money and Mr Hookey said, "I'll give you 80 bucks and I'll shout you all day" and then gave Mr Smith \$80 from out of his underwear. Mr Smith reported that he then gave \$40 back to Mr Hookey to buy beer and then walked to Darby Ward's house at ██████ Eveleigh Street and slept on the couch until around 3:00pm.²¹⁴

²⁰⁸ Bundle of Selected Running Sheets, 33 (SCOI.83976).

²⁰⁹ Statement of James Frederick Smith, 3 March 1992, 1-2 (SCOI.83029).

²¹⁰ Statement of Jenine Cecilia Honeysett, 6 March 1992, [8] (SCOI.83030).

²¹¹ ERISP Transcript of Anthony Hookey, 30 April 1992, [A15], [A17] (SCOI.10939.00019).

²¹² ERISP Transcript of Anthony Hookey, 30 April 1992, [A54] (SCOI.10939.00019).

²¹³ Statement of James Frederick Smith, 3 March 1992, 2 (SCOI.83029).

²¹⁴ Statement of James Frederick Smith, 3 March 1992, 2 (SCOI.83029).

Special Commission of Inquiry into LGBTIQ hate crimes

159. Consistent with Mr Smith's statement, Patricia ██████ reported seeing Mr Hookey and Mr Smith get out of a taxi on Eveleigh Street at around 10:30am, have an argument and go into Darby Ward's house.²¹⁵ Then at around 11:00am, Ms ██████ reported seeing Mr Hookey and Mr Smith leave and walk down Eveleigh Street and stop at the empty house on the corner of Eveleigh and Holden Streets. She saw that Mr Hookey had a bundle of \$20 notes in his left hand, possibly to the amount of a couple of hundred dollars. She then overheard the following conversation between Mr Hookey and Mr Smith:

AH: *I'll give you \$80 and I'll shout the grog for the rest of the day.*

JS: *What about the other money you've got in your underpants?*

AH: *I haven't got any money.*²¹⁶

160. Overall, it appears that Mr Hookey's accounts of his movements, first when speaking to police on 11 January 1992, then in his statement dated 13 January 1992 and later in his interview on 30 April 1992, are not entirely consistent with each other, with times being shifted and further people, including Dianne and Tracy McGuinness being added and removed from the narrative. Mr Hookey's account is largely corroborated by witness statements up to around midnight at the Clifton Hotel and then again from around 8:00am at the Subway Hotel. However, the hours between around midnight to around 8:00am, when Mr Hookey says he was in Kings Cross, are largely uncorroborated.

161. Mr Hookey states he caught a taxi to Kings Cross with Karen Lowe/Holton, ██████ I312 and Beccy Smith, however ██████ I312 stated that during the night she was only with her girlfriends and "none of the fellas" came with them at any time.²¹⁷ Mr Hookey further says he went to the Mansions Hotel in Kings Cross, but some of the people who were there (Rene ██████, Matthew Perry, Jenine Honeysett) say they did not see him.²¹⁸ The only person who puts him at the Mansions Hotel is James Smith, who says he saw Mr Hookey arrive at around 2:00am, and then spend up big and brag about a roll.²¹⁹ However, Mr Kelly, the committal solicitor, after reviewing his contemporaneous notes from the committal hearing on 3 August 1992, informed the Inquiry that his notes suggest that at the committal hearing Mr Smith was no longer sure about the day on which Mr Hookey said he had rolled someone.²²⁰

²¹⁵ Statement of Patricia Jean ██████, 25 February 1992, [4] (SCOI.83024).

²¹⁶ Statement of Patricia Jean ██████, 25 February 1992, [4] (SCOI.83024).

²¹⁷ Statement of ██████ I312, 11 January 1992, [7] (SCOI.83027).

²¹⁸ Statement of Rene ██████, 13 January 1992, [6] (SCOI.10939.00037); Statement of Matthew Lawrence Perry, 4 March 1992, [7] (SCOI.83035); Statement of Jenine Cecilia Honeysett, 6 March 1992, [8] (SCOI.83030).

²¹⁹ Statement of James Frederick Smith, 3 March 1992, 1-2 (SCOI.83029).

²²⁰ Statement of Mark Kelly, 5 June 2023 [7] (SCOI.83437).

Special Commission of Inquiry into LGBTIQ hate crimes

162. There are also a number of people mentioned by Mr Hookey (who may have been able to corroborate his movements during this period), who were not interviewed by police, nor did they give statements to police. Therefore, those elements of his story cannot be verified.
163. In addition to the anonymous source at [12], police also spoke to the occupants of [REDACTED] Lawson Street who were coming home from a night out at around 2:00am on 11 January 1992. They saw “a male of similar description” to the person of interest described to them by police (likely Mr Hookey), running west along Lawson Street from Regent Street, towards Redfern Railway Station. This person may have been Mr Hookey; however, it is noted that the location described would place the male as running towards the crime scene, rather than away from it, and the occupants stated to police that the male was wearing a light grey suit, which by all other accounts, is not what Mr Hookey was wearing.²²¹
164. On 6 May 1992, Mr Phillips said the following to police, implicating Mr Hookey in Mr Malcolm’s death:
- Q93: *Do you have any information whatsoever in relation to any person that made an assault on this gentleman on that night?*
- A: *No, to be honest you know, I’m being truthful, the only thing that I know, what I heard was – I heard something happened and Beaver had something to do with it. That’s what I heard.*
- Q94: *Where did you get that information from?*
- A: *Just on the street.*²²²
165. Handwritten notes in the police file, likely written by the investigating officers during the early stages of the investigation, also note “Beaver won’t go to gaol knows all about it [*sic*]” and that either [I309] [I309] or [I310] [I310] said to Mr Hookey’s mother “that he knows all about it”.²²³ This information does not appear in their written statements. It is not possible to tell from the handwritten notes how this information came to be obtained, nor its reliability. The handwritten notes were produced to the Inquiry as part of the 1,827 documents produced on 21 June 2023 (see [80] above) and appeared amongst a miscellany of documents such as police facts, detective calendars and copies of statements.²²⁴ Accordingly, the provenance or reliability of these handwritten notes is unknown.

²²¹ Bundle of Selected Canvass Forms, 11 January 1992, 9-10 (SCOI.84138).

²²² ERISP Transcript of Kirk Anthony Phillips, 6 May 1992, [A93]-[A94] (SCOI.10290.00014).

²²³ Handwritten notes by police, undated, 1, 3 (SCOI.84150).

²²⁴ Letter from NSWPF to Inquiry re further material produced pursuant to NSWPF1, 21 June 2023 (SCOI.84214).

Special Commission of Inquiry into LGBTIQ hate crimes

Movements of Kirk Phillips on 10-11 January 1992, and statements implicating him in the murder

166. In his statement to police on 11 January 1992, Mr Phillips provided an account of the circumstances in which he and the other young people from the Factory found Mr Malcolm.²²⁵
167. On 6 May 1992, Mr Phillips gave a further interview providing the following account for his movements on the night of 10-11 January 1992:
- a. From around 4:00pm or 5:00pm to around midnight, he was at the Clifton Hotel, playing snooker with a few people including Craig Goldie and 'Barbara'.²²⁶
 - b. He left the Clifton Hotel at around midnight and stayed out the front for about 15 minutes.²²⁷
 - c. He then went to a little park up the top of Eveleigh Street where the Housing Company is located and continued drinking there for approximately two hours with Craig, Craig's wife Thelma, and a couple of their friends.²²⁸
 - d. At around 2:00am, he went down to the Factory on Holden Street and went inside to sleep, after which Mr Malcolm was discovered.
168. Mr Phillips denied seeing Mr Hookey or Mr Green on the night of 10-11 January 1992.²²⁹ However, if Mr Phillips was playing snooker with Barbara Phillips, as was Mr Hookey, at the Clifton Hotel, it seems unlikely that they could avoid seeing each other there. Mr Phillips also denied speaking to any white person on the night.²³⁰
169. From the running sheets produced by police, it appears that a witness, Peter Carroll, approached police and stated that his brother John Carroll had some information about Mr Phillips being raised as a suspect in the attack on Mr Malcolm, and that the matter had been raised in a meeting of the Redfern Aboriginal community at a date on or before 22 January 1992.²³¹ However, when police spoke to John Carroll on 23 January 1992, he stated he "didn't really know anything" apart from details told to him by his brother Peter, including that the name 'Phillips' had come up in conversation.²³² No statement

²²⁵ Statement of Kirk Anthony Phillips, 11 January 1992 [5] (SCOI.10939.00023).

²²⁶ ERISP Transcript of Kirk Anthony Phillips, 6 May 1992, [A20]-[A29] (SCOI.10290.00014). Barbara Stacy does not mention seeing Mr Phillips when she was playing snooker (but nor does she say he was not there).

²²⁷ ERISP Transcript of Kirk Anthony Phillips, 6 May 1992, [A87] (SCOI.10290.00014).

²²⁸ ERISP Transcript of Kirk Anthony Phillips, 6 May 1992, [A30]-[A35], [A80], [A121] (SCOI.10290.00014).

²²⁹ ERISP Transcript of Kirk Anthony Phillips, 6 May 1992, [A53], [A55], [A99] (SCOI.10290.00014).

²³⁰ ERISP Transcript of Kirk Anthony Phillips, 6 May 1992, [A53], [A55], [A99] (SCOI.10290.00014).

²³¹ Bundle of Selected Running Sheets, 22 (SCOI.83976).

²³² Bundle of Selected Running Sheets, 23 (SCOI.83976).

Special Commission of Inquiry into LGBTIQ hate crimes

was taken from Peter or John Carroll, nor the other person named by Peter Carroll as being involved in the community meeting (Ruth Williams).

Movements of Richard Green on 10-11 January 1992

170. Richard Green stated that he went to bed at 6:30pm on 10 January 1992 at the Factory and was asleep for seven and a half hours until he was woken up by some noise at about 1:50am, following which Mr Malcom's body was discovered.²³³
171. Mr Green said he had never seen Mr Malcolm before.²³⁴
172. When speaking with Detective Constable Starr on 9 June 1992, Mr Green gave two conflicting accounts regarding seeing Mr Phillips at the scene of Mr Malcolm's murder:

*"... I've had people put guns to my head 'cause I saw Kirk do it, ██████████
██████████ Hang on, I couldn't see Kirk do it 'cause I wasn't there."*²³⁵

Statements of Sharon Murphy linking Kirk Phillips and Richard Green to the murder

173. Sharon Murphy stated that she caught a train to her aunt's house at ██████ Eveleigh Street on 11 January 1992 and saw police standing on the corner of Eveleigh Street and Holden Street. She saw ██████████ 1310 and asked him what happened, and then walked down to the crime scene and saw "a man laying half in, and half out the door", who looked like he had "been bashed" with blood on his head, hair and clothes.²³⁶
174. Ms Murphy walked back to her aunt's house and saw Kirk Phillips and Richard Green standing there. She participated in the following conversation:

KP (to RG): He should have been dead. We didn't do the job properly.

SM: What are you talking about?

KP: That man, Robert.

*KP: Let's go before the coppers grab us.*²³⁷

²³³ Second Statement of Richard John Green, 4 March 1992, [5] (SCOI.10290.00023).

²³⁴ First Statement of Richard John Green, 11 January 1992 [8] (SCOI.10939.00032).

²³⁵ First Statement of Detective Constable Michael Starr, 9 June 1992, [6] (SCOI.10939.00092); Statement of Plain Clothes Constable Michael William Kane, 10 June 1992, 2 (SCOI.10939.00094).

²³⁶ First Statement of Sharon Murphy, 25 February 1992, [3] (SCOI.83025).

²³⁷ First Statement of Sharon Murphy, 25 February 1992, [4] (SCOI.83025).

Special Commission of Inquiry into LGBTIQ hate crimes

175. On 14 February 1992, when Ms Murphy was first interviewed, she said that Anne Hickey ('Shorty') was with her when hearing the above conversation, and the running sheet suggests she said it was a conversation she heard rather than one in which she participated.²³⁸
176. Mr Phillips denied seeing Mr Green in the street and having the above conversation.²³⁹
177. Later that night, on 11 January 1992, Ms Murphy went to Karen Roberts' house on Eveleigh Street. At around 8:30pm, Ms Murphy, Ms Roberts and Richard Green were sitting in the lounge room. After Ms Roberts left the room, Mr Green turned to Ms Murphy and the following conversation occurred:

RG: You're next.

SM: What do you mean?

RG: Like what happened to that man last night

Following some further argument, Mr Green told Ms Murphy that "there's a man down there, there's a man there who's going to kill you, come for a walk".²⁴⁰

178. On 12 January 1992, Ms Murphy was standing in Eveleigh Street, across from Holden Street, and reported that Kirk Phillips and Richard Green were outside the abandoned house. Ms Murphy heard Mr Phillips say to Mr Green "See we didn't do the job properly. He should have been dead".²⁴¹ Ms Murphy reported then telling Patricia [REDACTED] what she heard, but this conversation is not referenced in Ms [REDACTED]'s statement.
179. On 3 August 1992 at 6:00pm, after Ms Murphy failed to appear at the committal hearing, Ms Murphy saw Mr Green on Darlinghurst Road in King Cross. She stated that he spat at her and said "you fuckin' dog. You should have been at court. You give up."²⁴² It is possible that Ms Murphy perceived this as a threat and then when giving evidence on 4 August 1992, did not swear to the overheard statements set out above, out of fear of reprisals.

Other statements linking Kirk Phillips and Richard Green to the murder

180. At around 11:00am on 11 January 1992, [REDACTED] was at the Black Theatre in Cope Street, drinking beer. [REDACTED] indicated that Mr Phillips and Mr Green said, "We did it, we killed him". [REDACTED]

²³⁸ Bundle of Selected Running Sheets, 36 (SCOI.83976).

²³⁹ ERISP Transcript of Kirk Anthony Phillips, 6 May 1992, [A56], [A57] (SCOI.10290.00014).

²⁴⁰ First Statement of Sharon Murphy, 25 February 1992, [7] (SCOI.83025).

²⁴¹ First Statement of Sharon Murphy, 25 February 1992 [4] (SCOI.83025).

²⁴² Third Statement of Sharon Murphy, 3 August 1992, [4] (SCOI.10939.00083).

Special Commission of Inquiry into LGBTIQ hate crimes

thought it was possible they were “big noting” themselves.²⁴³ Mr Phillips denied saying the above as described by [1376].²⁴⁴

181. In addition to hearing Mr Hookey admit to ‘rolling’ someone, Mr Smith further stated that he had spoken to Richard Green on a number of occasions since 11 January 1992 and Mr Green had been “carrying on real strange” and saying things like “they’re going to get me” and “watch me back”.²⁴⁵

Conclusions that can be drawn on the evidence

182. It is clear that Mr Malcolm’s death was a homicide, and his injuries were the result of a violent assault on a person made vulnerable by intoxication.

183. Mr Malcolm was seen in the Menzies Bar up until around 8:30pm and then possibly recognised on Eveleigh Street between around 8:30pm and 9:00pm. He was then discovered in the abandoned house at around 2:00am on 11 January 1992. It is submitted therefore that Mr Malcolm is likely to have been assaulted between 9:00pm on 10 January 1992 and 2:00am on 11 January 1992.

184. The following evidence links the persons of interest to Mr Malcom’s death:

- a. Mr Malcolm may have been seen in the company of Anthony Hookey at around 8:30pm to 9:00pm on 10 January 1992 (see [122]-[129]);
- b. Mr Malcolm may have been chased by Mr Hookey down Eveleigh Street (see [12]);
- c. According to James Smith, Mr Hookey came into money on the night of 10-11 January 1992 and told Mr Smith that he had ‘rolled’ someone (see [158]);
- d. According to Sharon Murphy and [1376] Kirk Phillips and Richard Green made various admissions and statements indicating guilt (see [173]-[181]);
- e. When charged on 30 April 1992, Mr Hookey indicated that he had been present during the attack on Mr Malcolm (see [38]).

185. However, the evidence in its totality was insufficient to convince Magistrate Hand of a prima facie case at the committal hearing. It appears that James Smith wavered in his memory of the event during cross-examination on 3 August 1992,²⁴⁶ and that Ms Murphy’s oral evidence at the committal hearing occurred immediately prior to Magistrate Hand finding that there was no case to answer.

²⁴³ Statement of [1376], 5 March 1992, [5]-[7] (SCOI.83020); Bundle of Selected Running Sheets, 11 (SCOI.83976).

²⁴⁴ ERISP Transcript of Kirk Anthony Phillips, 6 May 1992, [A73] (SCOI.10290.00014).

²⁴⁵ Statement of James Frederick Smith, 3 March 1992, 2 (SCOI.83029).

²⁴⁶ Statement of Mark Kelly, 5 June 2023, [7] (SCOI.83437).

Special Commission of Inquiry into LGBTIQ hate crimes

186. There is an inference that Ms Murphy's evidence failed to convince Magistrate Hand of a link between the persons of interest and the crime, noting the inconsistencies discussed at [130]. The solicitor for the ODPP, Mr Kelly, remembers trying to elicit the evidence to connect the accused persons to the crime, without success. He recalls there being many objections during the evidence of this witness. He says, it is possible that he tried to put the police statements made by the witness to her, which caused the objections.²⁴⁷ Further, it is possible that Ms Murphy was drug-affected at the time, noting Mr Kelly's recollection in his statement to this Inquiry that Ms Murphy, having failed to appear in Court on 3 August 1992, was located that evening and appeared drug affected.²⁴⁸ It is also possible that she failed to come up to proof due to fear after what may have been a threat, or perceived to be a threat, made to her by Richard Green at 6:00pm on 3 August 1992 (see [179]).
187. No stronger evidence linking the persons of interest to the crime has been uncovered by police since the committal hearing in 1992, nor in the course of the Inquiry. While the Inquiry is making findings to a different standard of proof, even on the balance of probabilities it is submitted that the Inquiry would not make any positive findings as to the involvement of any of the persons of interest, on the available evidence.
188. Separately, in the course of the Inquiry's investigations, a further person of at least some interest has been identified through the positive fingerprint match for Mr Strong which places him at the scene.²⁴⁹ However, there may have been other reasons for Mr Strong to attend 6 Holden Street, and the evidence available does not indicate when Mr Strong may have attended the scene. As Mr Strong is now deceased, it is not possible to pursue this line of inquiry further.

Submissions as to bias

189. On the available information, it is not possible to say whether Mr Malcolm was gay or otherwise a member of the queer community.
190. If the Inquiry was to accept that Mr Hookey, Mr Phillips and Mr Green were the persons responsible for Mr Malcolm's death, then the likelihood is that the crime was motivated by financial gain through a robbery. [REDACTED]
[REDACTED]
[REDACTED]. There are several possible explanations for Mr Malcolm's pants being

²⁴⁷ Statement of Mark Kelly, 5 June 2023, [9] (SCOI.83437).

²⁴⁸ Statement of Mark Kelly, 5 June 2023, [8] (SCOI.83437).

²⁴⁹ Statement of Paul Hubrechtsen-Yung, 5 June 2023 (SCOI.83526); NAFIS Fingerprint Job Card, 2 June 2023 (NPL.2031.0001.0024).

Special Commission of Inquiry into LGBTIQ hate crimes

down, including that Mr Malcolm was urinating immediately before being assaulted, or engaging in sexual activity, or that the pants were pulled down in the course of the assault as an act intended to humiliate Mr Malcolm. These isolated pieces of evidence raise grounds for suspicion that the crime may have been in part motivated by bias, but they do not provide a sufficient basis on their own to make a finding to that effect on the balance of probabilities.

Submissions as to manner and cause of death

191. It is submitted that an appropriate finding as to manner and cause of death would be:

Mr Malcolm died on 29 January 1992 at Royal Prince Alfred Hospital, as a result of sequelae of head injuries inflicted during the night of 10 January or early hours of 11 January 1992 at 6 Holden Street, Redfern, by person or persons unknown.

Submissions as to recommendations

192. The Inquiry may, in due course, consider global recommendations in relation to the retention, preservation and storage of exhibits. However, there is no submission with respect to specific recommendations in Mr Malcolm's case.

James Emmett SC
Senior Counsel Assisting

Christine Melis
Counsel Assisting