



## Special Commission of Inquiry into LGBTIQ hate crimes

15 September 2023

Ms Katherine Garaty  
Director – Crime Disruption and Special Inquiries Law  
Office of the General Counsel, NSW Police Force  
Locked Bag 5102  
PARRAMATTA NSW 2124

By email: [REDACTED]

Dear Ms Garaty,

### Special Commission of Inquiry into LGBTIQ hate crimes

I refer to the above Inquiry, and to our earlier correspondence in relation to certain statements made by officers of the NSW Police Force ("NSWPF") Unsolved Homicide Team ("UHT") to members of the public. As noted in my letter of 5 September 2023 and explained below, these statements are of grave concern to the Commissioner.

#### NSWPF Resourcing

The issue of NSWPF resourcing in relation to responding to the Inquiry, has been the subject of correspondence and evidence in both public and private hearings since the establishment of the Inquiry.

On 18 July 2022, the NSWPF responded to earlier correspondence sent from the Inquiry on 10 June 2022. That reply included the following:

"The Commissioner of Police has not received any funding or additional resources in relation to the Inquiry. Many of the case files for the "undetected" deaths are voluminous. While it is acknowledged that your letter of 7 July 2022 substantially reduces the scope of the work requested, the preparation of summaries in respect of the remaining deaths would likely be a substantial undertaking. In order to complete this task, it may be necessary for the Commissioner to re-allocate significant resources away from ongoing active investigations by the UHT. The precise scope of the task will depend on the amount of material in each of the relevant files. Even accounting for the recent reduction in its scope, the task is likely to be a demanding one."

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On 18 October 2022, the NSWPF again wrote to the Inquiry in relation to its resourcing. That reply included the following:

“The effect on the day-to-day operations of the UHT, and in turn the Homicide Squad, has been significant as those staff are drawn away from their usual day to day tasks. This has on three specific occasions resulted in the stalling of live investigations and “reviews” being conducted by the UHT. If the trend of the number and scope of Summonses being issued is expected to continue or increase without resourcing being properly addressed, it is anticipated that this may result in further delay or suspension of reviews and investigations.”

On 2 December 2022, the NSWPF wrote to the Inquiry and noted as follows in relation to its resourcing:

“The Unsolved Homicide Team and the Office of the General Counsel of the NSW Police Force have devoted considerable resources to assisting the Commission’s Inquiries as expeditiously as possible. The material provided by the NSWPF to date includes:

- a. over 220 boxes of archived materials; and
- b. approximately 77,000 electronic files.

This has necessarily had a substantial impact on police resources; 11 operational police officers, including 7 members of the unsolved homicide team have been called upon to assist in the provision of materials to the Commission. That has necessarily impacted upon their capacity to engage in other investigative tasks. Indeed, we are instructed that approximately 12 UHT investigations and reviews have had to be placed on hold while the relevant officers assist in the context of this Inquiry.”

On 5 December 2022, in a public hearing, the Commissioner observed to Mr Tedeschi KC that to accuse the Inquiry of interrupting proper police work in relation to unsolved homicides is frankly unacceptable.

On 13 December 2022, Mr Tedeschi KC communicated at a public hearing, on behalf of the Commissioner of the NSWPF and Ms Marsic, the ongoing willingness of the NSWPF to assist the Inquiry and to cooperate with the Inquiry in every way they could.

In her affidavit of 26 June 2023, Ms Marsic stated that the NSWPF had put in place certain arrangements in order to ensure that adequate personnel and other resources are devoted to responding to requests from the Inquiry for records, exhibits and information. This was explored again with Ms Marsic during the course of her oral evidence on 13 July 2023. At that time, Ms Marsic gave evidence that in October or November 2022, three additional officers were allocated as dedicated officers to the UHT with a view to addressing resourcing concerns.

During the course of the Investigative Practices Hearing, Detective Chief Inspector David Laidlaw (“DCI Laidlaw”) told the Inquiry on 6 July 2023 that “there’s been no triages completed since the start of the Commission assistance from the Unsolved team, because my review team has been assisting Detective Inspector Warren’s team in relation to collating data for the Commission.” DCI Laidlaw also indicated that he had not drawn this to the attention of the Commissioner of the NSWPF but conceded that this required urgent attention.

DCI Laidlaw later gave evidence that there were 19 triage forms awaiting his review, but that he had not had a chance to review those triage forms because of commitments unrelated to the Inquiry.

Material produced to the Inquiry now indicates that members of the UHT have recently informed members of the public that delays in progressing UHT matters have been caused by the need to respond to summonses issued by the Inquiry. This involves a repetition of the type of statements made in late 2022, except in this case these statements were made to the next of kin or relatives of deceased persons, without the knowledge of the Inquiry.

Of the statements made to the next of kin or relatives of deceased persons, the Inquiry is particularly troubled by the correspondence sent from Detective Senior Constable Meredith (“DSC Meredith”) in May 2023. In

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that correspondence, DSC Meredith stated to a family member that the UHT's investigative capacity had been significantly reduced as a result of the summonses issued by the Inquiry and that the UHT "weren't able to get additional staffing to help us with these requests". This statement sits at odds with the evidence received by the Inquiry to date and canvassed above. Namely, that additional resources have in fact been allocated to the UHT for the purpose of responding to the Inquiry's requests for information.

The Inquiry is not in a position to understand whether similar statements have been made orally by NSWPF officers, or on how many occasions.

### The Concern of the Inquiry

#### The Unique Position of the NSWPF

The NSWPF is the primary repository of the material of relevance to the Inquiry. Consequently, the Inquiry issued summonses to obtain this material in order to discharge its functions under Paragraphs A and B of its Terms of Reference. In her affidavit of 26 June 2023, Ms Marsic states that it was recognised immediately on publication of the Inquiry's Terms of Reference that the Inquiry would require the "substantial involvement" of the NSWPF.

The Inquiry accepts that responding to summonses issued by the Inquiry required the allocation of NSWPF resources to this task. However, no application has been made to date to set any summons aside. Consequently, it appears uncontroversial that the material sought by the Inquiry (with the exception of the material the subject of this correspondence) is accepted by the NSWPF to be relevant to the Inquiry's discharge of its functions.

#### The Suggestion by the NSWPF that the Inquiry is not operating in accordance with its Terms of Reference

The Inquiry has now received a substantial body of evidence which demonstrates that the UHT was experiencing significant delays in progressing matters prior to the commencement of the Inquiry.

It is also clear from the evidence received by the Inquiry to date that the burdensome nature of locating responsive material is primarily attributable to the historical record keeping and exhibit management processes within the NSWPF.

The Terms of Reference at Paragraph E require the Inquiry to operate in a way that avoids prejudice to criminal investigations. Statements of the kind made by members of the UHT tend to suggest that the Inquiry is not operating in accordance with its Terms of Reference. This is a matter of grave concern to the Commissioner.

Statements of this kind have the capacity to bring the work of the Inquiry into disrepute. They are also inconsistent with the NSWPF's professed support for the work of the Inquiry. At least one of these statements appears to have been inaccurate, in indicating that no additional resources were allocated to the UHT to respond to the Inquiry.

### Next Steps

#### Public Hearing

At present, and subject to what is said below, the Inquiry proposes to hold a discrete public hearing in relation to these statements. Exploration of these topics falls within, at least, [5] of the Inquiry's Terms of Reference.

The hearing is scheduled for **Monday, 9 October 2023**. James Emmett SC will appear as Senior Counsel Assisting the Inquiry with Rebecca McEwen of counsel. As you are aware, summonses to attend the Inquiry were issued to relevant officers on Friday, 8 September 2023.

#### Alternative Course

Having regard to the public statements made on behalf of the NSWPF, the evidence given by Ms Marsic and the evidence given at the Investigative Practices Hearing, the Commissioner presently assumes that the

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statements made by these officers were not authorised by their supervisors or by the Commissioner of the NSWPF.

In the alternative to convening the public hearing referred to above, the Inquiry proposes to instead hold a directions hearing at which representatives of the NSWPF will be invited to:

- (1) publicly confirm that these statements do not reflect the views of the NSWPF, and that the cause of delays in the progression of UHT matters are primarily attributable to the resourcing decisions of the Commissioner of the NSWPF and the state of the NSWPF records, and not the Inquiry; and
- (2) provide an assurance to the Inquiry that steps will be taken to ensure that such statements will not be made again.

Subject to the position of the NSWPF, it is proposed that any directions hearing be held in the week commencing **Monday, 2 October 2023**. If there is another reason which you would like this Inquiry to consider in connection with item (1) above, please provide a statement to that effect by **10:00am on 21 September 2023**.

### Timeframe

Given the finite period in which the Inquiry has to conclude its work, I would be grateful if you could advise me of the position held by the NSWPF in respect of the public hearing or alternatively, the proposed directions hearing, by **10:00am on 21 September 2023**.

### **Summons NSWPF170**

#### Categories (1) and (2)

the Inquiry does not accept the correctness of the position taken by the Commissioner of the NSWPF in relation to Summons NSWPF170. However, in the event that the directions hearing referred to above proceeds, the Inquiry will not require the material presently sought under categories (1) and (2) of Summons NSWPF170 to be produced.

It is surprising to the Inquiry that the Commissioner of the NSWPF has unilaterally determined to fail to comply with a Summons issued by the Inquiry in circumstances where that Summons remains extant. It is likewise surprising that the issue now identified by the Commissioner of the NSWPF was not raised earlier.

#### Category (3)

The Inquiry will not provide the assurance sought in your letter dated 8 September 2023 in relation to material falling within Category (3) of the Summons. Counsel Assisting does not presently propose to tender the material at the directions hearing, but this may be reconsidered at the conclusion of any directions hearing.

Please do not hesitate to contact Enzo Camporeale on [REDACTED] if you have any queries in relation to this matter.

Yours faithfully,



Enzo Camporeale  
 Director, Legal  
**Solicitor Assisting the Inquiry**