

Sensitive: Legal



21 September 2023

Mr Enzo Camporeale
 Director, Legal
 Special Commission of Inquiry into LGBTIQ hate crimes
 GPO Box 5341
 SYDNEY NSW 2001

By email: [REDACTED]

Dear Mr Camporeale

Special Commission of Inquiry into LGBTIQ hate crimes (Inquiry)

We refer to your letter of 15 September 2023, and respond as follows.

NSWPF resourcing and previous correspondence

With respect to your references to the letters from this office sent to the Inquiry on 18 July 2022, 18 October 2022 and 2 December 2022 respectively, we respectfully submit that the content of those letters represented an accurate assessment of the resourcing constraints confronting the NSWPF (in particular the Homicide Squad and Unsolved Homicide Team (UHT)) at the time those letters were sent.

Your letter also refers to the assurance provided at the public hearing on 13 December 2022 by Mr Tedeschi KC (on behalf of the Commissioner of the NSWPF and myself) regarding the ongoing willingness of the NSWPF to assist the Inquiry and to cooperate with the Inquiry in every way we are able to.

This assurance to the Inquiry was, and continues to be, reflective of the attitude of the Commissioner of the NSWPF and myself. We re-iterate that it continues to be the intention of the NSWPF to assist the Inquiry and cooperate with it in every appropriate way. The allocation of very significant internal and external resources to meet the needs and requirements of the Inquiry (as detailed in my affidavit of 26 June 2023 (**Affidavit**)) demonstrates the NSWPF's support for the Inquiry. That cooperation and support has continued since this assurance was provided by Mr Tedeschi KC. It continues to this day.

As to the observations contained in your letter concerning my Affidavit and the evidence given during the course of the public hearing on 13 July 2023, it is true that the NSWPF has made extensive arrangements to ensure that adequate and devoted resources are in place (including police officers, internal legal officers and external lawyers) to respond to requests from the Inquiry for documents, exhibits, statements and information.

Resourcing of the UHT and relevance to the Inquiry's Terms of Reference

While the NSWPF recognises the Inquiry's legitimate interest in the resourcing that the NSWPF has in place to assist and respond to the requirements of the Inquiry, we respectfully submit that the specific resourcing decisions made by the NSWPF in relation to the UHT's investigation and review teams is outside the Inquiry's Terms of Reference.

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OFFICE OF THE GENERAL COUNSEL

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So much was recognised in the submissions of Counsel Assisting in relation to the Investigative Practices Hearing, which included the following observation which we respectfully adopt:

911. The first of these matters is that the UHT is necessarily constrained by its resources. It is indisputable that there are many demands on the resources of the NSWPF. The question of the appropriate allocation of resources to the UHT is not one that falls within the purview of the Inquiry, and is necessarily a question that raises complex social and policy considerations.

In your letter you refer to communications by members of the UHT team made in the context of investigations unrelated to the Inquiry and stated that:

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.

They are also inconsistent with the NSWPF's professed support for the work of the Inquiry.

With respect to your suggestion that statements made by members of the UHT 'tend to suggest that the Inquiry is not operating in accordance with its Terms of Reference' (in particular Paragraph E, which requires the Inquiry to 'operate in a way that avoids prejudice to criminal investigations', we respectfully submit that this misstates the import of Paragraph E. That paragraph is not directed to ensuring that the Inquiry does not impact upon the resourcing of criminal investigations generally. Rather, it is a requirement that any steps taken by the Inquiry do not result in prejudice that would impede a successful future investigation of the same matter by the NSWPF.

We further do not accept the imputations that the statements made by members of the UHT are inconsistent with the NSWPF's professed support for the work of the Inquiry. Nor do we accept that the statements touch on whether or not the Inquiry is operating within its Terms of Reference. If anything, statements of the kind you refer to would convey the impression to an objective bystander that the NSWPF is fully supportive of the Inquiry, to the extent that it has redirected its resources so as to ensure that the requirements of the Inquiry are met as efficiently as possible.

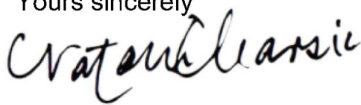
Whether the statement made by members of the UHT were authorised by their supervisors or the Commissioner of the NSWPF is, in our respectful submission, not a matter for the Inquiry; the internal resourcing considerations of the NSWPF and the communications members of the NSWPF have with interested parties in respect of investigations that are not the subject of the Inquiry's work are not within the Inquiry's Terms of Reference.

Acknowledgement

To address the Inquiry's concern, we acknowledge that the progression of UHT matters since the commencement of the Inquiry, including at the present time, are a consequence of the allocation of resources by the NSWPF. We confirm that UHT officers will be advised within the next 48 hours that they are not to mention the work they are performing for the Inquiry in the context of any communication they have with families or next of kin related to other UHT investigations.

In making this acknowledgement and confirmation, we believe this acknowledgment should suffice for the purposes of addressing the Inquiry's concerns and respectfully submit that a hearing involving the four witnesses who have received summonses or a directions hearing on this issue is not necessary in the circumstances.

Yours sincerely



Natalie Marsic
General Counsel
NSW Police Force