



Special Commission of Inquiry into LGBTIQ hate crimes

SUBMISSIONS OF COUNSEL ASSISTING

9 October 2023

IN THE MATTER OF ERNEST HEAD

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. On 22 June 1976, Ernest Allan Head was found deceased in his apartment on Grosvenor Crescent, Summer Hill. He had last been seen at about 6pm on Thursday, 17 June 1976, and likely died that evening or early the following morning.¹

Circumstances of death

3. Mr Head was 44 years old at the time of his death. He was born in Penang, now Malaysia, and had emigrated to Australia in 1960.² He was a gay man, and had previously been in a three-year, live-in relationship with [REDACTED] 1454, who remained one of his close friends.³
4. Mr Head's body was found at around 11:55pm on Tuesday, 22 June 1976 by [REDACTED] 1454 and another friend, Sydney Moore, when they attended Mr Head's home to enquire after his welfare.⁴ His body was naked and lying face down in the kitchen covered in blood. He had been stabbed 35 times to the face, chest, abdomen, back, buttocks and limbs. The nature of Mr Head's injuries leaves no doubt that he was the victim of a homicide.

¹ Findings of Coroner Nash, Inquest into the death of Ernest Head, 16 December 1977 (SCOI.11039.00008); Autopsy Report, 17 August 1976 (SCOI.11039.00031); Statement of [REDACTED] 1454, 23 June 1976, [4] (SCOI.11039.00117).

² Bundle of P109 Report of Occurrence records, 4 July 1976, 37-38 (SCOI.85764).

³ Statement of Arthur Head, 24 June 1976, 1 (SCOI.11039.00115).

⁴ Statement of Sydney Moore, 23 June 1976, [8] (SCOI.11039.00101); Statement of [REDACTED] 1454, 23 June 1976, [7] (SCOI.11039.00117).

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5. There were blood splashes, smears and drops in the kitchen, lounge room, dining room, hallway, and master bedroom.⁵ All blood that was sampled was consistent with having originated from Mr Head.⁶
6. There was no sign of forced entry into the flat.⁷ Various items of property were identified as having been stolen.⁸
7. Occupants of a neighbouring unit had heard an argument or disturbance involving Mr Head and at least one other man on the evening of 17 June 1976, but when they had sought to check on Mr Head's welfare he assured them that he was "alright".⁹
8. On the western wall of the kitchen, above the body, were marks in blood resembling handprints, from which three palm prints suitable for comparison were able to be determined. In 2023, after a fingerprint analysis was conducted by this Inquiry, one of those palm prints was identified as belonging to a man by the name of Engin Simsek.
9. The evidence indicates the involvement of Mr Simsek in the death of Mr Head. Mr Simsek had not previously been connected to Mr Head's death.
10. Mr Simsek departed from Australia on 13 August 1994.¹⁰ Mr Simsek died by suicide on 6 May 1999 in Turkey.¹¹

Previous investigations

Post-mortem examination

11. A post-mortem examination was conducted by Dr Thomas Oettle at 9:30am on 23 June 1976.¹² Dr Oettle estimated that death took place "about five days" prior to autopsy (approximately 18 June 1976), and the cause of death was stab wounds to the chest and abdomen.¹³

⁵ Statement of Senior Constable Munday, 26 September 1976 (SCOI.11039.00099).

⁶ Certificate of Paul Connellan, 17 September 1976 (SCOI.11039.00036).

⁷ Statement of Detective Sergeant Albert McDonald, 14 November 1977 (SCOI.11039.00021).

⁸ Special Circular No 76/22, "Alleged Murder and Theft of Property", 1 July 1976 (SCOI.11039.00023); Statement of Detective Sergeant Albert McDonald, 14 November 1977 (SCOI.11039.00021).

⁹ Statement of Donald Humphreys, 23 June 1976 (SCOI.11039.00105).

¹⁰ Extract of Movement Records of Engin Simsek, undated (SCOI.85766).

¹¹ Letter to Inquiry from NSWPF re information from Interpol and Turkish authorities, 6 October 2023 (SCOI.86038); Newspaper article re death of Engin Simsek and certified translation, 8 May 1999-28 August 2023 (SCOI.85752).

¹² Autopsy Report, 17 August 1976 (SCOI.85765); Crime scene and autopsy photographs, undated (SCOI.10948.00020); Autopsy photographs, undated (SCOI.11039.00087); Further crime scene and autopsy photographs, undated (SCOI.10948.00023).

¹³ Autopsy Report, 17 August 1976 (SCOI.85765).

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12. Dr Oettle documented numerous stab wounds and lacerations, both superficial and substantive. He recorded that Mr Head's left lung had been punctured, and was partially collapsed and filled with blood. The pericardial sac was also filled with blood. The liver showed two stab wounds.
13. A blood sample was taken from Mr Head, which was found to have a blood alcohol content of 0.040 g per 100mL.¹⁴ It is unclear if that figure was adjusted to account for the decomposition of Mr Head's body.
14. Penile and anal swabs were taken for biological examination.
15. Dr Oettle advised police that the murder weapon could be a very sharp knife, possibly a butcher's boning knife, approximately 18cm in length and 2 cm wide at the base of the blade. This opinion was based on the length and width of one of Mr Head's wounds.¹⁵ This Inquiry has received evidence in another matter that the measurement of wounds cannot be used to reliably determine the size of a blade, as the human body is elastic and deformable, and the blade may not have entered the body cleanly or fully.¹⁶ It may be that the number or nature of the stab wounds in this case enabled Dr Oettle to estimate the approximate length and breadth, although the evidence does not shed further light on this.

Original police investigation

16. The original police investigation was conducted by officers from the Ashfield Police Station, with the assistance of the Special Crime Squad. The investigation was thorough. Police pursued multiple lines of enquiry and interviewed over a hundred people in relation to Mr Head's death.¹⁷ Their investigations included, among other things:¹⁸
 - a. canvassing the residents of Mr Head's building and neighbouring buildings;
 - b. canvassing locations where Mr Head was seen or known to frequent, including bars, hotels, and local shops;
 - c. canvassing known "homosexual" locations (e.g. the Petersham beat);¹⁹
 - d. obtaining names of any person treated for lacerations at local hospitals in the relevant period;

¹⁴ DAL certificate, 13 July 1976 (SCOI.11039.00034).

¹⁵ Bundle of P109 Report of Occurrence records, 25 June 1976, 12 (SCOI.85764).

¹⁶ This was the subject of expert evidence at the inquest of Mr Anthony Cawsey, another case examined by this Inquiry: see Exhibit 39, Tab 5, Pathology Report of Dr Johan Duflo, 1 November 2017 (SCOI.10488.00020).

¹⁷ Statement of Detective Sergeant Albert McDonald, 14 November 1977 (SCOI.11039.00021).

¹⁸ Statement of Francesca Lilly, 9 October 2023, [10] (SCOI.85769).

¹⁹ Bundle of P109 Report of Occurrence records, 9 July 1976, 24-25 (SCOI.85764).

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- e. making enquires with pawn shops for Mr Head's property;
 - f. making enquiries with dry cleaners in relation to any bloodstained clothes that may have been received;
 - g. interviewing almost all persons whose names or contact details were found in Mr Head's diary, wallet or calendar;
 - h. interviewing a large number of Mr Head's known associates, including friends and work colleagues;
 - i. requesting through Interpol for the police in Penang to interview the family of Mr Head;
 - j. publishing a pamphlet with Mr Head's photograph, and canvassing and distributing flyers in the local area;
 - k. inquiring as to other patrons using the TAB at around the same time as Mr Head;
 - l. inquiring with taxi operators to ascertain if there were any phone booking at the relevant time;
 - m. ascertaining if there were any links between Mr Head's death and the murders of other gay men in similar circumstances;
 - n. canvassing local distributors of the types of cigarette's found in the ashtray at Mr Head's home;
 - o. proclaiming a \$10,000 reward for information.²⁰
17. Throughout this investigation, a large number of fingerprints and palmprints were obtained, by which suspects were eliminated from the crime scene.
18. Over 60 physical exhibits were seized by police in the course of the original investigation, of which 53 exhibits were submitted for forensic testing. The results of that forensic analysis is set out below at [119]-[126].
19. Despite the scope of the original police investigation, no suspects or persons of interest emerged that were not excluded from the investigation.

²⁰ Statement of Detective Sergeant Albert McDonald, 14 November 1977 (SCOI.11039.00021); Proclamation of \$10,000 reward, 6 August 1977 (SCOI.11039.00027).

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Findings at inquest

20. An inquest was held into the death of Mr Head at Glebe Coroners Court. On 16 December 1977, Coroner Leonard Nash found that Mr Head had “died from stab wounds of the chest and abdomen wilfully inflicted by a person or persons unknown” at his home in Summer Hill on 17 June 1976.²¹

Criminal proceedings

21. No criminal proceedings were ever instituted against any person in relation to Mr Head’s death.
22. In light of Mr Simsek’s death in Turkey, no future criminal proceedings are anticipated in this matter.

Unsolved Homicide Team (UHT)

23. The Inquiry has been provided with documents which indicate various actions or reviews taken in relation to Mr Head’s case by the UHT.
24. On 15 March 2002, a request was made for further examination of the prints found in Mr Head’s apartment, pursuant to Strike Force Palace that was engaged in reviewing unsolved homicides from 1970 to 1999.²² Unidentified fingerprints, including the palm print eventually matched to Mr Simsek, were searched on the National Automated Fingerprint Identification System (**NAFIS**) and not identified.²³
25. On 9 August 2004, the fingerprint file was reviewed at the request of DI Jarrett of the UHT. A case summary indicated that the fingerprints located on the kitchen, bathroom and bedroom door jambs were eliminated to Mr Head, which fact had been known from the time of the original investigation.²⁴ It is unclear from the documents available to the Inquiry if the prints were searched on NAFIS at this time.
26. An “Investigators Note” dated 29 July 2005 records that, on 20 July 2005, Detective Inspector (**DI**) Michael Ashwood, during a review of Mr Head’s case, came across a yellow envelope within an expanding file in one of the boxes related to Mr Head’s murder. The writing on the enveloped indicated that it contained four items; however, only three white envelopes were inside. Each white envelope stated that they contained a cigarette butt. The exhibits were conveyed to Ashfield Police Station and logged as exhibits.²⁵

²¹ Findings of Coroner Nash, Inquest into the death of Ernest Head, 16 December 1977 (SCOI.11039.00008).

²² Request by Strike Force Palace for further examination of latent fingerprints, 15 March 2002 (SCOI.60864).

²³ Second Expert Certificate of Kate Reid, 20 June 2023 (SCOI.85263).

²⁴ Statement of Sergeant Robert William Stone, 16 November 1977 (SCOI.11039.00111).

²⁵ Investigators Note re Cigarette Butt Testing, 13 June 2007 (SCOI.60860).

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27. On 30 August 2005, a Case Screening Form was prepared by the Unsolved Homicide Team in relation to Mr Head's death. The signature block for the reviewer is unsigned, but the typed name of DI Jarrett appears. The co-ordinator's certification is blank. In that Case Screening Form:
- a. Consistent with the Investigators Note dated 29 July 2005, DI Jarrett recorded that three labelled and sealed white envelopes were located in the hard copy brief, which indicated that they contained unfiltered cigarette butts.²⁶ The Case Screening Form further states that these cigarette butts were submitted to the Department of Analytical Laboratories (**DAL**) on 29 July 2005.²⁷ This is consistent with a "Specimen/Exhibit Examination Form" signed by DI Jarrett on 29 July 2005 and delivered to DAL on the same day.²⁸
 - b. DI Jarrett recorded that the remainder of the exhibits were "not located".²⁹
 - c. DI Jarrett recorded that a fingerprint review was conducted in 2005. DI Jarrett states that "the offender has left behind a good quality palm print, in blood", but that it was not matched to anyone on the NAFIS database.
 - d. DI Jarrett concluded that "no further investigative inquiries can reasonably be made without the fingerprint or possible DNA evidence being linked to a particular person."³⁰
28. On 29 September 2005, following the completion of the Case Screening Form, DI Jarrett submitted a report recommending that the unidentified palm print be sent to overseas jurisdictions for comparison. His report noted that it was "highly likely" that the palm print in blood was left by the person responsible for Mr Head's death. The jurisdictions identified for the fingerprints to be forwarded to were the United Kingdom, New Zealand, Malaysia, Singapore, Hong Kong and Taiwan.³¹ The Inquiry has been provided with documents indicating negative results of fingerprint comparisons conducted in Kuala Lumpur, New Zealand, Hong Kong and the United States.³² It is not apparent from the available documents whether the fingerprints were sent to the United Kingdom, Singapore or Taiwan in line with DI Jarrett's recommendations.

²⁶ Unsolved Homicide Team Review Form, 30 August 2005, 10 (SCOI.02836).

²⁷ Unsolved Homicide Team Review Form, 30 August 2005, 5 (SCOI.02836). See also Investigators Note re Cigarette Butt Testing, 13 June 2007 (SCOI.60860).

²⁸ Specimen/ Exhibit Examination Form, 27 July 2005 (NPL.0131.0001.1909).

²⁹ Unsolved Homicide Team Review Form, 30 August 2005, 5 (SCOI.02836).

³⁰ Unsolved Homicide Team Review Form, 30 August 2005, 10 (SCOI.02836); see also Investigators Note, "Fingerprint review – Ernest Alan Head", 30 August 2005 (SCOI.60861).

³¹ Memorandum from Detective Inspector Robert Jarrett, 29 September 2005 (SCOI.60863).

³² Investigators Note, "O/S Fingerprint Results re Murder of Ernest Allan HEAD", 14 March 2006 (SCOI.60862); FBI Laboratory Report, 18 July 2007 (SCOI.60866).

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29. The results of the forensic testing requested by DI Jarrett in 2005 were recorded in a Database Report from DAL dated 20 January 2008. All testing was unsuccessful.³³ The reason for the delay between the submission of the cigarette butts to DAL and the reporting of the results is unknown.
30. The Database Report also indicates that testing was conducted on a match, which it is inferred was located in one of the envelopes that contained a cigarette butt.³⁴ There was no match listed amongst the list of items originally seized and submitted for forensic testing.³⁵ The uncertain provenance of the match is discussed further below at [173].

Strike Force Parrabell

31. Mr Head's death was not reviewed by Strike Force Parrabell.

Review by the Inquiry

32. In the course of investigating Mr Head's case, the Inquiry took a number of investigative and other steps. These included:
- a. Attempting to locate and contact Mr Head's family members
 - b. Requesting the coronial file;
 - c. Summoning the police investigative file;
 - d. Obtaining an expert report by Dr Danny Sullivan, forensic psychiatrist, regarding the possible motives of Mr Head's killer;
 - e. Summoning the NSW Supreme Court for information about Mr Head's estate;
 - f. Requesting and summoning the exhibits from NSWPF, and obtaining a statement as to what searches had been undertaken with regard to the missing exhibits;
 - g. Causing the further testing of available exhibits by the NSW Forensic and Analytical Science Service (**FASS**), as well as inquiring into what testing would have been available if the missing exhibits had been able to be located;
 - h. Causing the examination of the unidentified fingerprints and palmprints; and
 - i. Making inquiries about Mr Simsek.

³³ DAL Database Report, 20 January 2008 (NPL.0145.0001.0006).

³⁴ DAL Database Report, 20 January 2008 (NPL.0145.0001.0006).

³⁵ Certificate of Paul Connellan, 17 September 1976 (SCOI.11039.00036).

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33. The Inquiry reviewed and analysed several thousand documents provided by NSWPF and the Coroners Court, and the material obtained by summons, and considered whether any further investigative steps or other avenues were warranted.

Family members

34. The Inquiry issued summonses and utilised interagency cooperation in order to try to locate Mr Head's family. Arthur Head, the brother of Mr Head, was confirmed to be deceased. A number of other relatives were identified as residing overseas, and in the absence of dates of birth were unable to be traced by the Department of Foreign Affairs and Trading (DFAT).
35. Through summonses and interagency cooperation, a more distant relative of Mr Head was located in Western Australia. The Inquiry wrote to this person on 14 June 2023. No response has been received to date.
36. Unfortunately, attempts to locate or contact other family members of Mr Head were unsuccessful.

Request for coronial file

37. On 22 July 2022, the Inquiry issued a written request to the Registrar of the Coroners Court of NSW at Lidcombe to obtain the coronial file in relation to the death of Mr Head. The Coroners Court answered the request and provided the coronial file on 26 August 2022.³⁶

Request for the original investigative file

38. A summons to NSWPF (NSWPF3) was issued on 21 July 2022 for, *inter alia*, all documents in relation to the investigations by NSWPF into the death of Mr Head, and any other material held by the Unsolved Homicide Team in relation to Mr Head's death. A file in relation to Mr Head was provided to the Inquiry on 9 August 2022.³⁷ Subsequent summonses were also issued seeking information in relation to key witnesses identified after a review of the original investigative file.³⁸

Professional opinions

39. On 24 April 2023, the Inquiry sought the expert opinion of forensic psychiatrist Dr Danny Sullivan as to the possible motive of Mr Head's killer.³⁹ Dr Sullivan provided his report on 15 May 2023.⁴⁰

³⁶ Statement of Francesca Lilly, 9 October 2023, [4]-[5] (SCOI.85769).

³⁷ Statement of Francesca Lilly, 9 October 2023, [6]-[9] (SCOI.85769).

³⁸ Statement of Francesca Lilly, 9 October 2023, [20], [39], [42] (SCOI.85769).

³⁹ Letter of Instruction to Dr Danny Sullivan, 24 April 2023 (SCOI.86037).

⁴⁰ Expert Report of Dr Danny Sullivan, 15 May 2023 (SCOI.85123).

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Request to NSW Supreme Court

40. On 16 May 2023, the Inquiry issued summons SC05 to the Supreme Court of NSW seeking the Letters of Administration and Grant of Probate to identify the beneficiaries of Mr Head's will.⁴¹ On 22 May 2023, the Supreme Court produced the documents, which revealed that 1454 was the beneficiary of Mr Head's estate.⁴²

Search for exhibits

41. On 14 March 2023, a summons (NSWPF69) was issued to the NSWPF in relation to the identification and locating of forensic exhibits obtained in the investigation into Mr Head's death. The Inquiry requested that, should the exhibits not be able to be located, a statement be provided from an appropriate officer detailing the searches conducted for the lost exhibits. On 29 March 2023, a statement was provided by Detective Sergeant Neil Sheldon detailing the searches undertaken by the NSWPF.⁴³ This included: searches on the NSWPF exhibit management system called Exhibits Forensic Information and Miscellaneous Property System (**EFIMS**); a review of all NSWPF investigative holdings; a search for and review of relevant exhibit books; searches of the long-term exhibit repository, the Metropolitan Exhibit and Property Centre (**MEPC**); and enquiries with FASS, the Forensic Evidence and Technical Services (**FETS**) and the Department of Forensic Medicine (**DOFM**).
42. The NSWPF advised that the only exhibits that were located were three cigarette butts. Accordingly, it would appear that the majority of the physical exhibits in Mr Head's case have been lost. As noted above, this was the situation that prevailed in 2005 at the time of the review undertaken by DI Jarrett of the UHT: see above at [28]. Despite the Inquiry causing further searches to be conducted by the NSWPF of their exhibit holdings, no further exhibits could be located.
43. On 12 May 2023, the Inquiry wrote to NSWPF by letter requesting that the cigarette butts be transported to FASS for forensic analysis. The Inquiry also requested details of the location of the match which was apparently located along with the three cigarette butts: see above at [31].⁴⁴ On 17 May 2023, NSWPF advised the Inquiry by email that it was not aware of the location of the match, and

⁴¹ Summons SC05, 16 May 2023 (SCOI.85119).

⁴² Statement of Francesca Lilly, 9 October 2023, [21] (SCOI.85769); see also Bundle of P109 Report of Occurrence records, various dates, 34 (SCOI.85764).

⁴³ Statement of Detective Inspector Nigel Warren, 29 March 2023 (NPL.0145.0001.0014).

⁴⁴ Letter to NSWPF from Inquiry re match and cigarette butts, 12 May 2023 (SCOI.85857).

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believed the match may be in an exhibit folder with the three cigarette butts.⁴⁵ When further testing on the cigarette butts was carried out by FASS, the match was located.⁴⁶

Request to FASS

44. On 30 March 2023, the Inquiry requested that FASS retrieve its case file in relation to Mr Head.⁴⁷ On 3 May 2023, the Inquiry conferenced with FASS to discuss the possibility of further testing of the exhibits available, and what testing may have been conducted had the original exhibits all been properly retained.
45. In relation to the available testing, Michele Franco and David Bruce of FASS advised at this meeting that examinations to search for DNA could be carried out on the cigarette butts, however noted that the cigarette paper, which has contact with the mouth of the smoker and therefore is the best repository of saliva DNA, had disintegrated, reducing the prospects of obtaining a useful result.⁴⁸
46. On 12 May 2023, the Inquiry wrote to FASS to request that further testing be carried out on the cigarette butts. The results of that testing is discussed below at [132]-[134].
47. In the letter of 12 May 2023, the Inquiry also requested that all P377 forms and other similar documentation be provided to the Inquiry by 29 May 2023. Further, the Inquiry requested that an appropriate staff member of FASS provide a statement detailing what testing could have been performed had the exhibits not been lost, to be provided by 29 May 2023.⁴⁹ Dr Bruce provided an expert certificate to this effect, dated 30 May 2023, and the requested documentation was provided to the Inquiry.⁵⁰ The contents of Mr Bruce's expert certificate is discussed below at [175]-[176].

Fingerprint testing

48. On 24 April 2023, the Inquiry wrote to NSWPF requesting further analysis be conducted on the palmprint and fingerprints located at the scene of Mr Head's death.⁵¹ On 30 May 2023, NSWPF provided to the Inquiry the First Expert Certificate of Kate Reid, Senior Crime Scene Officer and

⁴⁵ Email from P Hodgetts to Inquiry re match, 17 May 2023 (SCOI.85858).

⁴⁶ Statement of Dr David Bruce re cigarette butt testing, 25 September 2023 (SCOI.85768).

⁴⁷ Statement of Francesca Lilly, 9 October 2023, [29] (SCOI.85769).

⁴⁸ Statement of Francesca Lilly, 9 October 2023, [30] (SCOI.85769).

⁴⁹ Letter to FASS re exhibits testing, P377s and statement, 12 May 2023 (SCOI.85122).

⁵⁰ Expert Certificate of Dr David Bruce, FASS, 30 May 2023 (SCOI.85120); Statement of Dr David Bruce re cigarette butt testing, 25 September 2023 (SCOI.85768).

⁵¹ Letter to NSWPF from Inquiry re palmprint examinations, 24 April 2023 (SCOI.85259).

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Fingerprint Expert.⁵² This certificate identified Mr Simsek as a match for a palmprint in blood located above Mr Head's body on the kitchen wall.⁵³

49. On 14 June 2023, the Inquiry wrote to NSWPF seeking clarifications regarding the past analysis that had been conducted on the finger and palmprints located at the crime scene, noting Mr Simsek's prints had been on file since 1986 (see below).⁵⁴ On 20 June 2023, the Second Expert Certificate of Kate Reid was provided to the Inquiry, outlining the advances in fingerprint analysis technology which had enabled the match to be made.⁵⁵ On 13 September 2023, the Inquiry wrote again to NSWPF seeking further information regarding the processes of fingerprint analysis, and capabilities for automatic testing once prints were uploaded to the NAFIS.⁵⁶ On 19 September 2023, the Inquiry received from NSWPF the Third Expert Certificate of Kate Reid.⁵⁷ Ms Reid explained why the limits on earlier fingerprint matching technology meant that Mr Simsek was not identified during earlier reviews of the fingerprint file. Ms Reid's evidence is discussed below at [181]-[186] and [190]-[192].

Enquiries in relation to Mr Simsek and his family

50. On 1 June 2023, following the match of the palmprint to Mr Simsek, the Inquiry issues summons NSWPF116 seeking intelligence material in relation to Mr Simsek. Material was produced by NSWPF in two tranches, the first on 5 June 2023 and the second on 6 June 2023. This material included, *inter alia*, a Criminal History and a CNI Profile for Mr Simsek.
51. The Inquiry issued summons CSNSW19 to Corrective Services on 1 June 2023 seeking various documents in relation to Mr Simsek.⁵⁸ On 6 June 2023, Corrective Services NSW produced to the Inquiry an Inmate Profile Document and a Convictions, Appeals and Sentences Report in relation to Mr Simsek. On 8 June a further bundle of documents was provided containing, *inter alia*, parole documentation. These documents identified Mr Simsek's sibling as residing at an address on Grosvenor Crescent, the same street on which Mr Head resided and died in 1976.⁵⁹

⁵² First Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 30 May 2023 (SCOI.85121).

⁵³ First Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 30 May 2023 (SCOI.85121).

⁵⁴ Letter to NSWPF from Inquiry re previous palmprint examinations, 14 June 2023 (SCOI.85260).

⁵⁵ Second Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 20 June 2023 (SCOI.85263).

⁵⁶ Letter to NSWPF from Inquiry seeking clarification re fingerprint analysis, 13 September 2023 (SCOI.85750).

⁵⁷ Third Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 19 September 2023 (NPL.9000.0034.0001).

⁵⁸ Summons CSNSW19, 1 June 2023 (SCOI.85751).

⁵⁹ Pre-Release Report, 29 May 1986 (SCOI.12138.00053); Case History Data Sheet, 9 July 1986 (SCOI.12138.00004).

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52. The Inquiry obtained a copy of Mr Simsek's arrival card dated 20 May 1972, on which he had recorded his intended address in Australia as at Grosvenor Crescent.⁶⁰ The street address was different to that of his [REDACTED] as at 1986.⁶¹
53. On 27 July 2023, the Inquiry issued summons RBB01 to the Rental Bonds Board of NSW seeking information as to the address recorded on Mr Simsek's arrival card. On 1 August 2023, the Rental Bonds Board advised the Inquiry that no records were held.
54. On 9 August 2023, through interagency cooperation, the Inquiry requested a Land Title Search be conducted in relation to this address. On 16 August 2023, the Inquiry was advised of the persons who owned the property, however these individuals were not found to have a connection to Mr Simsek.⁶²
55. The Inquiry, through summonses and interagency cooperation, attempted to locate any living relatives of Mr Simsek. Ultimately, one relative was located. That person was summonsed to a private hearing at the Inquiry on 5 July 2023, and on 3 October 2023 provided a voluntary statement as to his knowledge of Mr Simsek.⁶³
56. Among other things, that relative informed the Inquiry that Mr Simsek had returned to Türkiye in the 1990s and had subsequently died in Türkiye. He also told the Inquiry that other family members of Mr Simsek's generation, who were likely to have more information about Mr Simsek, were now deceased.

Death certificate of Engin Simsek

57. On 30 June 2023, the Inquiry wrote to the Australian Embassy in Ankara seeking assistance in locating Mr Simsek. On 4 July 2023, the Embassy advised that it was not able to assist unless a formal request for mutual legal assistance was made via the Attorney-General's Department.⁶⁴
58. After being informed by Mr Simsek's relative that he had died in Türkiye on 5 July 2023, the Inquiry took steps to confirm the accuracy of this information. Through interagency cooperation it was confirmed that Mr Simsek had departed Australia on 3 August 1994.⁶⁵

⁶⁰ Arrival card of Engin Simsek, 20 May 1972 (SCOI.85976).

⁶¹ Notes from Interviews with Engin Simsek, 19 March 1986-22 April 1986 (SCOI.12138.00059).

⁶² Statement of Francesca Lilly, 9 October 2023, [45] (SCOI.85769).

⁶³ Statement of [REDACTED] 1450 3 October 2023 (SCOI.85771).

⁶⁴ Statement of Francesca Lilly, 9 October 2023, [48] (SCOI.85769).

⁶⁵ Extract of Movement Records of Engin Simsek, undated (SCOI.85766).

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59. On 21 July 2023, the Inquiry requested the assistance of the media officer at the Australian Embassy in Ankara in obtaining a copy of a newspaper article regarding Mr Simsek's death. The Embassy advised on 21 July 2023 that searches had been conducted but no information was able to be located.⁶⁶
60. On 15 August 2023, the Inquiry wrote to NSWPF requesting that it assist the Inquiry by making a request for assistance from the Turkish government, via Interpol, in obtaining a death certificate for Mr Simsek.⁶⁷ The NSWPF confirmed that it was willing to assist, and that it had made the request via Interpol on 22 August 2023.⁶⁸
61. On 28 August 2023, the Inquiry obtained a copy of a Turkish language newspaper article regarding the death of Mr Simsek by suicide in 1999. A copy of the certified translation of this article is included in the tender bundle.⁶⁹ Mr Simsek's relative confirmed that the person whose photograph was featured in the newspaper article was Mr Simsek.⁷⁰
62. The article was provided to NSWPF to assist with the searches being conducted via Interpol.⁷¹ On 6 October 2023, the NSWPF advised the Inquiry that Turkish authorities had confirmed, via Interpol, that Mr Simsek passed away on 6 May 2023.⁷²

Submissions as to the available evidence

63. This part of the submission sets out key matters arising from the Inquiry's consideration of the evidence and the conclusions that it is suggested can be drawn from the evidence.

Mr Head's personal circumstances

64. Mr Head was born in Penang, now Malaysia, in 1932.⁷³ Mr Head was described by his brother as a quiet, private and good-natured man, who lived alone and was employed as a clerk with the Corporate Affairs Commission.⁷⁴ A colleague and friend said he was "soft hearted, kind, shy", and "took everything that was said to him seriously."⁷⁵ He was a neat and tidy person, both in his personal

⁶⁶ Statement of Francesca Lilly, 9 October 2023, [49] (SCOI.85769).

⁶⁷ Letter to NSWPF from Inquiry requesting Interpol assistance, 15 August 2023 (SCOI.85261).

⁶⁸ Letter to Inquiry from NSWPF confirming request to Interpol made, 22 August 2023 (SCOI.85262).

⁶⁹ Newspaper article re death of Engin Simsek and certified translation, 8 May 1999-28 August 2023 (SCOI.85752).

⁷⁰ Statement of [REDACTED], 3 October 2023, [15] (SCOI.85771).

⁷¹ Statement of Francesca Lilly, 9 October 2023, [54] (SCOI.85769).

⁷² Letter to Inquiry from NSWPF re information from Interpol and Turkish authorities, 6 October 2023 (SCOI.86038).

⁷³ Statement of Arthur Head, 24 June 1976, 1 (SCOI.11039.00115).

⁷⁴ Statement of Arthur Head, 24 June 1976, 2 (SCOI.11039.00115); Bundle of P109 Report of Occurrence records, various dates, 2-4 (SCOI.85764).

⁷⁵ Statement of Margaret McEvoy, 23 June 1976, 1 (SCOI.11039.00038).

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appearance and in his home.⁷⁶ He was well-dressed and groomed, with a friend describing him as “always immaculate, shirts pressed, not a hair out of place, always spick and span.”⁷⁷

65. Mr Head was a gay man. He had previously been in a three-year, live-in relationship with [1454].⁷⁸ A diary was found in his flat containing contact details of a number of men with whom it appears Mr Head had had previous sexual contact.⁷⁹ Mr Head had disclosed his sexuality to his brother, Arthur Head.⁸⁰
66. However, it appears that Mr Head was not out in all contexts, as may be unsurprising noting the prejudices against LGBTIQ people during Mr Head’s lifetime. For example, Margaret McEvoy, a friend and colleague of Mr Head’s, said that she was unaware of his sexuality.⁸¹
67. Mr Head’s criminal history includes two charges of “offensive behaviour”, said to be for masturbating in a toilet. This may indicate that Mr Head was a user of beats.⁸²
68. Mr Head had engaged in physical altercations with his brother and with a friend some years before his death. His brother said that he would become “a lot more sensitive and aggressive” after drinking, but nonetheless said that he never knew him to pick a fight.⁸³ A colleague of Mr Head’s similarly described that Mr Head could become aggressive while drinking.⁸⁴
69. Mr Head often gambled and was experiencing financial difficulties at the time of his death.⁸⁵ However, there is no evidence to suggest Mr Head’s death was connected to his financial situation.

Last known movements

70. Mr Head was last seen alive on 17 June 1976, when he attended the Bank Hotel, Newtown for a drink with [1454] from 5:00pm. [1454] departed at around 6:05pm, and Mr Head remained at the Hotel.⁸⁶

⁷⁶ Statement of Arthur Head, 24 June 1976, 2 (SCOI.11039.00115); Statement of William Strachan, 24 June 1976, [9] (SCOI.10942.00069).

⁷⁷ Statement of Sydney Moore, 23 June 1976, [13] (SCOI.11039.00101).

⁷⁸ Statement of Arthur Head, 24 June 1976, 1 (SCOI.11039.00115).

⁷⁹ Statement of Detective Sergeant Albert McDonald, 14 November 1977, [7] (SCOI.11039.00021).

⁸⁰ Statement of Arthur Head, 24 June 1976, 1 (SCOI.11039.00115).

⁸¹ Statement of Margaret McEvoy, 23 June 1976, 1 (SCOI.11039.00038).

⁸² Table of Offences of Ernest Head, 17 April 1961 – 26 October 1964 (SCOI.10949.00025).

⁸³ Statement of Arthur Head, 24 June 1976, 2 (SCOI.11039.00115).

⁸⁴ Bundle of P109 Report of Occurrence records, various dates, 22-23 (SCOI.85764).

⁸⁵ Statement of Arthur Head, 24 June 1976 (SCOI.11039.00115); Statement of Sydney Moore, 23 June 1976 (SCOI.11039.00101).

⁸⁶ Statement of [1454], 23 June 1976, 2 [4] (SCOI.11039.00117).

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71. Mr Head is believed to have attended the Summer Hill TAB shortly after, as two TAB tickets dated 17 June 1976 were discovered at his flat, purchased at 1:57pm and 6:24pm.⁸⁷ The TAB manager recognised Mr Head from a photograph as a person who had placed bets at that TAB on previous occasions. However, he had no recollection of Mr Head placing those bets on 17 June 1976. No other person present at the TAB at that time was able to recall seeing Mr Head at the relevant times. Despite this, there is no reason to believe any person other than Mr Head placed the bets.⁸⁸

Observations of neighbours

72. At around 7:00pm, two people in a neighbouring unit, Ms Walsh and Mr Humphreys, overheard Mr Head calling out from his flat, saying words to the effect of “Help me” or “Somebody help me”, as well as “Don’t hurt me”, or “Please don’t hurt me.” Ms Walsh described that there was “fear in his voice”, and that he called for help about five times. Mr Humphreys heard another male voice, and while he couldn’t make out the conversation it appeared that there was an argument going on in the flat. Ms Walsh also heard “something being thrown around” prior to the calling out.⁸⁹

73. Mr Humphreys went onto the balcony and called out to Mr Head. He tapped on the kitchen window and received no response. Mr Humphreys then went to the front door, and overheard some conversation between two men, one of the voices being that of Mr Head. The conversation was said to be in “quiet tones” that didn’t indicate that any argument was taking place.⁹⁰

74. Mr Humphreys knocked on the front door and said, “Are you alright Allan.” (Allan was Mr Head’s middle name.) Mr Head replied, “Who is it?” Mr Humphreys said, “It’s Don from next door.” Mr Head then said, “No everything’s alright would you go away.”⁹¹ Mr Humphreys returned to his own flat and heard nothing further.

75. As soon as he returned to his flat, Mr Humphreys twice rang the number of Mr Head’s flat, and could hear ringing but the phone wasn’t answered. Given that Mr Head had sounded “calm” in his conversation through the door, Mr Humphreys did not think that anything was wrong, but rather assumed that Mr Head was embarrassed.⁹²

⁸⁷ Statement of Detective Sergeant Albert McDonald, 14 November 1977, [4]-[5] (SCOI.11039.00021).

⁸⁸ Statement of Detective Sergeant Albert McDonald, 14 November 1977, [4]-[5] (SCOI.11039.00021).

⁸⁹ Statement of Donald Humphreys, 23 June 1976 (SCOI.11039.00105); Statement of Elaine Walsh, 23 June 1976 (SCOI.11039.00107).

⁹⁰ Statement of Donald Humphreys, 23 June 1976 (SCOI.11039.00105).

⁹¹ Statement of Donald Humphreys, 23 June 1976 (SCOI.11039.00105).

⁹² Statement of Donald Humphreys, 23 June 1976 (SCOI.11039.00105).

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76. Two women who were in the apartment directly below Mr Head's unit also heard this incident. Lillian Dreves heard "foot steps similar to a person running" followed by "a heavy scream" that "did not go on for very long at all."⁹³ Galina Levendis, who was visiting Ms Dreves, described a "yell" that "sounded like help", followed by "a thump like a heavy object of some description hitting something" which seemed to be coming through the ceiling from the kitchen of the flat above. Ms Levendis described that the voice calling out for help and the thumping noises continued for about a minute, with the cries following the thumping sounds, and a few seconds of silence between each of the yells.⁹⁴
77. Both Ms Dreves and Ms Levendis reported hearing Mr Humphries knocking on the door shortly after the yelling, making it likely that Mr Humphrey, Ms Dreves and Ms Levendis were all describing the same incident.
78. About one hour later, Mr Humphreys and Ms Walsh were sitting in their living room watching TV and heard the front door of Mr Head's flat open. They heard a conversation which sounded like two men.⁹⁵ Mr Humphreys thought that one of the voices belonged to Mr Head, and that the conversation was in a manner that "appeared to be normal." Mr Humphreys assumed that the other person had left the flat.⁹⁶
79. At around the same time, Ms Dreves heard a "thump like somebody taking their boots off and dropping them" but was unable to be sure if this came from the unit above her or not.⁹⁷
80. Mr Humphreys told Jack McMahon, the secretary of the body corporate, about the argument that he heard, but the two men decided no action needed to be taken as Mr Head had said he was alright.⁹⁸
81. Later that night, at about 10:30pm, Ms Levendis heard noises coming from the bedroom in the unit directly above her. The noise was soft and unidentifiable, but gave her the impression that somebody was moving around in the bedroom. She did not hear any other sounds before falling asleep.⁹⁹
82. It appears likely that the altercation overhead by Mr Head's neighbours, during which Mr Head was heard to call for help and plead for an unknown person to not hurt him, was between Mr Head and a person or persons responsible for, or at least involved in, his death. Mr Head was never seen alive

⁹³ Statement of Lillian Dreves, undated (SCOI.11039.00113).

⁹⁴ Statement of Galina Levendis, 3 July 1976 (SCOI.10942.00053).

⁹⁵ Statement of Donald Humphreys, 23 June 1976 (SCOI.11039.00105); Statement of Elaine Walsh, 23 June 1976 (SCOI.11039.00107).

⁹⁶ Statement of Donald Humphreys, 23 June 1976 (SCOI.11039.00105).

⁹⁷ Statement of Lillian Dreves, undated (SCOI.11039.00113).

⁹⁸ Statement of Donald Humphreys, 23 June 1976 (SCOI.11039.00105); Bundle of P109 Report of Occurrence records, various dates, 19 (SCOI.85764).

⁹⁹ Statement of Galina Levendis, 3 July 1976 (SCOI.10942.00053).

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again, and the estimate of time of death made by Dr Oettle was consistent with him being killed on the night of 17 June 1976 (being five and a half days before the time of autopsy). It seems improbable that he was killed by a person unrelated to this interaction.

83. Mr Humphreys reported only hearing two male voices, both at the time that he first heard the argument and the time that he thought he heard the door open, and believed one of the voices to belong to Mr Head. This may suggest a lone assailant – although, on that hypothesis, Mr Humphreys must have been mistaken about hearing a person leaving.
84. If Mr Humphreys was correct in thinking that a person left when the door opened, this combined with the knowledge that there was at least one living person heard in the flat that night would suggest the possibility of there being two people in Mr Head’s unit at the time of the altercation (in addition to Mr Head).

Concerns for welfare

85. On 19 June 1976, Mr Head was due to attend a party with Ms McEvoy. She called him through the day and knocked on his front door in the afternoon, to no avail. Ms McEvoy left a note in the door jamb.¹⁰⁰
86. On 22 June 1976, Ms McEvoy heard that Mr Head had failed to turn up to his class at the Sydney Technical College. Ms McEvoy and her friend, Cheryn McCann, again went and knocked on Mr Head’s unit, but no one answered. The note left in the doorjamb was in the same position.¹⁰¹
87. Ms McEvoy made contact with [REDACTED] 1454, who in turn contacted Mr Moore, who said he would check up on Mr Head.¹⁰²
88. At about 11:55pm that evening, [REDACTED] 1454 and Mr Moore called on Mr Head’s flat. When no one answered the door, Mr Moore used keys to enter the flat.¹⁰³

¹⁰⁰ Statement of Margaret McEvoy, 23 June 1976 (SCOI.11039.00038); Statement of Cheryn McCann, 23 June 1976 (SCOI.10942.00064).

¹⁰¹ Statement of Margaret McEvoy, 23 June 1976 (SCOI.11039.00038); Statement of Cheryn McCann, 23 June 1976 (SCOI.10942.00064).

¹⁰² Statement of Margaret McEvoy, 23 June 1976 (SCOI.11039.00038); Statement of [REDACTED] 1454, 23 June 1976 (SCOI.11039.00117).

¹⁰³ Bundle of P109 Report of Occurrence records, various dates, 2 (SCOI.85764); Statement of [REDACTED] 1454, 23 June 1976, [2] (SCOI.11039.00117); Statement of Sydney Moore, 23 June 1976, [8] (SCOI.11039.00101).

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89. Mr Moore discovered Mr Head's body lying naked and face down in the kitchen covered in blood. After telling [redacted] 1454 not to touch anything, the two men exited the flat. They immediately went to the flat of Mr Head's neighbour, Ms Walsh. Mr Humphreys called the Ashfield Police Station.¹⁰⁴

The crime scene

90. Mr Head's flat was situated on the third floor of an apartment building in Summer Hill. It was a large block of units within walking distance of Summer Hill Railway Station.¹⁰⁵
91. There was only one access door, which, when fully secured, required two keys to open. There was no sign of forced entry to the flat.¹⁰⁶
92. A crime scene investigation was undertaken by Senior Constable Munday of the Scientific Investigation Section on 23 June 1976 at 2:45am.¹⁰⁷ A scale plan of the apartment was prepared,¹⁰⁸ and crime scene photographs were taken.¹⁰⁹ Other police were involved in seizing exhibits from the scene. Details of the police's observations of the scenes, and the exhibits seized, are set out below.

Kitchen

93. Mr Head's body was found in the kitchen, naked, lying on his front with his head turned to the right and his left cheek resting on the floor. The top of his head was up against the bottom of the refrigerator where a kick plate would normally fit. Mr Head's fingers were resting on the kick plate which was on the floor near the kitchen door.¹¹⁰
94. A pair of men's underpants were on the floor near the deceased's head, and were retained for further examination.¹¹¹
95. There were a large number of blood smears and splashes covering the kitchen floor around Mr Head's body, on Mr Head himself, and on the walls, refrigerator, stove, cupboards and the back of the kitchen door.¹¹²

¹⁰⁴ Statement of [redacted] 1454, 23 June 1976, [7] (SCOI.11039.00117); Bundle of P109 Report of Occurrence records, various dates, 2 (SCOI.85764)

¹⁰⁵ Statement of Detective Sergeant Albert McDonald, 14 November 1977 (SCOI.11039.00021).

¹⁰⁶ Statement of Detective Sergeant Albert McDonald, 14 November 1977 (SCOI.11039.00021).

¹⁰⁷ Statement of Senior Constable Munday, 26 September 1976 (SCOI.11039.00099).

¹⁰⁸ Scale plan of apartment, undated (SCOI.11039.00096).

¹⁰⁹ Crime scene photographs, undated (SCOI.11039.00042-00085).

¹¹⁰ Statement of Senior Constable Munday, 26 September 1976 (SCOI.11039.00099).

¹¹¹ Statement of Senior Constable Munday, 26 September 1976 (SCOI.11039.00099).

¹¹² Crime scene photographs, undated (SCOI.11039.00042-00085).

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96. On the western wall of the kitchen above where the body was lying were blood marks, which bore the appearance of hand prints: see below at [134].¹¹³
97. In the cutlery tray on the kitchen sink was a “Gerber Shorty” bread knife. On a shelf above the sink was a “Gerber French” brand knife in a wooden sheaf. Both these knives appeared to be clean. They were retained for further examination purposes.¹¹⁴

Loungeroom

98. Further blood splashes were located on the carpet, closet door and room divider in the lounge room.¹¹⁵
99. A number of cigarette butts and partly used cigarettes were located on the floor and in an ashtray in the loungeroom.¹¹⁶ The cigarette butts were Benson and Hedges Super Virginia brand unfiltered cigarettes.¹¹⁷ Five cigarette butts or part-used cigarettes were seized as exhibits from the lounge room – one said to be on the floor, the remaining found in the ashtray.¹¹⁸ Spent matches were found within the ashtray.¹¹⁹
100. Mr Moore, who discovered Mr Head’s body, noticed the cigarettes in the ashtray, and remarked that he didn’t believe that Mr Head smoked other than on occasions at a party.¹²⁰
101. A box of matches labelled “Mandarin Club” was seen lying on the room divider in the lounge area of the unit. The matches were observed to be longer than standard matches, including the spent matches found in the ashtray. The number of matches missing from the box, about five or six, was approximately the same as the number of cigarettes smoked at the scene. Later police enquiries ascertained that Benson and Hedges Super Virginia unfiltered cigarettes were available at the Mandarin Club, leading police to theorise that the offender had purchased cigarettes and matches at that location.¹²¹ However, enquiries made of patrons at the Mandarin Club did not yield any suspects.

¹¹³ Statement of Senior Constable Munday, 26 September 1976 (SCOI.11039.00099).

¹¹⁴ Statement of Senior Constable Munday, 26 September 1976 (SCOI.11039.00099).

¹¹⁵ Statement of Senior Constable Munday, 26 September 1976 (SCOI.11039.00099).

¹¹⁶ Statement of Senior Constable Munday, 26 September 1976 (SCOI.11039.00099).

¹¹⁷ Bundle of P109 Report of Occurrence records, various dates, 36, 39 (SCOI.85764); Specimen/Exhibit Examination Form, 27 July 2005 (NPL.0131.0001.1909); Examination of Partly-Smoked Cigarettes by Detective Sergeant McDonald, 17 August 1978 (SCOI.10960.00050).

¹¹⁸ Analysis Certificate of Paul Connellan, 17 September 1976 (NPL.0145.0001.0001); Bundle of P109 Report of Occurrence records, various dates, 39 (SCOI.85764).

¹¹⁹ Bundle of P109 Report of Occurrence records, various dates, 26-28 (SCOI.85764).

¹²⁰ Statement of Sydney Moore, 23 June 1976 (SCOI.10942.00058).

¹²¹ Bundle of P109 Report of Occurrence records, various dates, 27-28 (SCOI.85764).

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Dining room

102. In the dining room was an HMV gramophone which had a 'Decca' long playing record on the turntable. The record was still rotating when police attended the flat, and the stylus had worn a deep groove into the middle track of the record. Blood smears were located on the knobs of the radiogram.¹²²

Hallway

103. There was a trail of blood spots from the bedroom, down the hallway into the lounge room and kitchen where a large amount of blood was in the near vicinity of the body.¹²³
104. Blood splashes were located on the hallway carpet and wall, bathroom door, the door jam and door of the main bedroom.¹²⁴

Master bedroom

105. Blood splashes were located on the bed sheets and pillows of the double bed situated in the master bedroom. A number of hair fibres were removed from the bed for further comparisons. Blood smearing and blood splashes were also found on the eastern wall and blankets on the floor beside the bed in the main bedroom, and on the carpet underneath the blankets.¹²⁵
106. A partly used cigarette butt was located on the floor.¹²⁶
107. Two pairs of socks were found in the bedroom, one on the foot near the head of the bed, one in front of a chest of drawers and dressing table. In a bedside drawer, police found a handkerchief marked with a sticky white substance, believed to be semen.¹²⁷

Bathroom

108. Examination of the bathroom revealed diluted blood smearing on the vanity unit, the power point above the vanity unit, and the light switch near the door. Several small blood splashes were also located on the walls inside the shower recess.¹²⁸

¹²² Statement of Senior Constable Munday, 26 September 1976 (SCOI.11039.00099).

¹²³ Statement of Senior Constable Munday, 26 September 1976 (SCOI.11039.00099).

¹²⁴ Statement of Senior Constable Munday, 26 September 1976 (SCOI.11039.00099).

¹²⁵ Statement of Senior Constable Munday, 26 September 1976 (SCOI.11039.00099).

¹²⁶ Statement of Senior Constable Munday, 26 September 1976 (SCOI.11039.00099).

¹²⁷ Bundle of P109 Report of Occurrence records, various dates, 9 (SCOI.85764); Statement of Senior Constable Munday, 26 September 1976, [15] (SCOI.11039.00099).

¹²⁸ Statement of Senior Constable Munday, 26 September 1976 (SCOI.11039.00099).

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109. There was a pair of men's trousers hanging on the bathroom door on which blood smears were located.¹²⁹
110. Human vomit was in the toilet pan in the bathroom, no sample of which was retained.¹³⁰
111. In the bath was a wet navy-blue long-sleeved men's shirt and a green two-gallon plastic bucket containing water and items of men's clothing. A pair of damp, white men's buckle type shoes were resting against the hob of the shower recess.¹³¹ Mr Head's brother Arthur noted that it was Mr Head's custom to soak his clothes that were to be washed in a bucket in the bathroom, and police inquiries indicated that it was likely that the clothing in the bucket belonged to Mr Head.¹³²
112. A number of hair fibres were located and retained for further comparison, from the bath, shower, recess and vanity unit. Police also collected various washers and towels as exhibits.¹³³

Second bedroom

113. On 27 June 1976, Senior Constable Munday returned to the unit and collected a plastic bag with some blood splashes on it found in the second bedroom.¹³⁴ A cigarette butt found on the floor of the second bedroom was taken into evidence.¹³⁵

Garage

114. On 27 June 1976, Senior Constable Munday returned to the lockup garage on the ground floor of the block of units and photographed tyre tracks on the floor of the garage.¹³⁶ Ms Walsh told police that Mr Head did not have a car.¹³⁷

¹²⁹ Statement of Senior Constable Munday, 26 September 1976 (SCOI.11039.00099).

¹³⁰ Statement of Senior Constable Munday, 26 September 1976 (SCOI.11039.00099).

¹³¹ Statement of Senior Constable Munday, 26 September 1976 (SCOI.11039.00099).

¹³² Statement of Arthur Head, 24 June 1976 (SCOI.11039.00115); Bundle of P109 Report of Occurrence records, various dates, 6, 10-11 (SCOI.85764)

¹³³ Statement of Senior Constable Munday, 26 September 1976 (SCOI.11039.00099); Bundle of P109 Report of Occurrence records, various dates, 16 (SCOI.85764).

¹³⁴ Statement of Senior Constable Munday, 26 September 1976, 16 (SCOI.11039.00099).

¹³⁵ Statement of Senior Constable Munday, 26 September 1976, 9 (SCOI.11039.00099).

¹³⁶ Photograph of garage, undated (SCOI.11039.00089); Photograph of tire tracks in garage, undated (SCOI.11039.00091); Photograph of tire tracks in garage, undated (SCOI.11039.00093); Bundle of P109 Report of Occurrence records, various dates, 8 (SCOI.85764).

¹³⁷ Statement of Elaine Walsh, 23 June 1976 (SCOI.11039.00107).

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Stolen property

115. Police identified that property had been stolen from the unit, including a watch, television, cassette recorder, transistor, gold dress ring, two pieces of jade, and a suitcase. A facsimile of the stolen property was circulated Australia wide but none of the property was located.¹³⁸

Exhibits

116. As described above, exhibits were seized by police from the crime scene, including:

- a. Blood scrapings;
- b. Cigarette butts and matches (see above at [100], [107] and [114]);
- c. Two knives (see above at [98]);
- d. A transistor stereo gramophone (see above at [103]);
- e. A handkerchief stained with a substance believe to be semen (see above at [108]);
- f. Clothing and bedding (see above at [106], [108], [112]);
- g. Hair samples found in the main bedroom and bathroom of the crime scene (see above at [106], [113]).¹³⁹

117. In addition to the crime scene exhibits, samples were taken from Mr Head's body at autopsy, including penile and anal swabs and smears: see above at [15]. Further, blood samples were taken from witnesses and persons of interest for comparison to the blood found at the crime scene.

Forensic testing: original investigation

118. A total of 53 items were submitted for forensic testing by DAL by the original police investigators.¹⁴⁰

119. Human blood was detected on the transistor stereo gramophone, the bedding from the master bedroom, a pair of men's trousers and a plastic bag from the second bedroom. The blood scrapings from the crime scene and Mr Head's body were also determined to comprise human blood.

¹³⁸ Statement of Detective Sergeant Albert McDonald, 14 November 1977 (SCOI.11039.00021); Special Circular No 76/22, "Alleged Murder and Theft of Property", 1 July 1976 (SCOI.11039.00023).

¹³⁹ Statement of Detective Inspector Nigel Warren, 29 March 2023, Schedule 1 (NPL.0145.0001.0014).

¹⁴⁰ Certificate of Paul Connellan, 17 September 1976 (SCOI.11039.00036).

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120. All items where human blood was detected were subjected to blood grouping tests. All the blood samples were consistent with the blood having come from Mr Head. Mr Head's blood type (B, Hp 2-2, PGM 2-1) was only found in approximately 1% of the population.¹⁴¹
121. The two knives from the scene were forensically examined, but blood was not detected.¹⁴²
122. Semen was found to be present on the penile and anal swabs taken from Mr Head post-mortem, although in quantities too low for grouping analysis.¹⁴³
123. The handkerchief found at the scene was found to be extensively stained with semen. It was found to have originated from a group O, PGM 2-1 individual (i.e. not Mr Head) and a B group individual (i.e. consistent with Mr Head).¹⁴⁴
124. Saliva was detected on 4 cigarette butts or part used cigarettes, and grouping tests revealed saliva originated from a group O individual.¹⁴⁵ This is consistent with the cigarette butts having been smoked by the same person whose semen was found on the handkerchief, although not strongly probative of that fact given that the group O blood type occurs frequently in the population.
125. The hair samples found in the bedroom and bathroom were not forensically examined.¹⁴⁶

Manufacturer of the cigarette butts

126. In addition to the testing by DAL, police arranged for three non-filtered cigarette butts and one part used cigarette butt that were found in the ash tray in the lounge room to be sent to W.D. & H.O. Wills (Australia) Ltd, the manufacturers of Benson and Hedges Super Virginia cigarettes in Australia, for examination.¹⁴⁷ A report received from a Mr Bartholomew, on behalf of the "Manager, R&D Department, Amatil", identified the cigarettes as being consistent with having been manufactured in Australia, and reported that no Benson and Hedges Super Virginia cigarettes manufactured overseas had been imported into Australia for many years.¹⁴⁸ Police made enquiries with shops where local Benson and Hedges Super Virginia cigarettes were sold, although these enquiries ultimately proved fruitless.

¹⁴¹ Certificate of Paul Connellan, 17 September 1976 (SCOI.11039.00036).

¹⁴² Certificate of Paul Connellan, 17 September 1976 (SCOI.11039.00036).

¹⁴³ Certificate of Paul Connellan, 17 September 1976 (SCOI.11039.00036).

¹⁴⁴ Certificate of Paul Connellan, 17 September 1976 (SCOI.11039.00036).

¹⁴⁵ Certificate of Paul Connellan, 17 September 1976 (SCOI.11039.00036).

¹⁴⁶ Certificate of Paul Connellan, 17 September 1976 (SCOI.11039.00036).

¹⁴⁷ Bundle of P109 Report of Occurrence records, various dates, 14-15 (SCOI.85764).

¹⁴⁸ Examination of Partly-Smoked Cigarettes by Detective Sergeant McDonald, 17 August 1978 (SCOI.10960.00050); Bundle of P109 Report of Occurrence records, various dates, 36 (SCOI.85764).

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Discovery of a possible murder weapon in 1977

127. Nearly a year after Mr Head's death, on 27 May 1977, Mr Humphreys and Mr McMahon located a knife amongst cardboard rubbish that had accumulated in the area behind the units where Mr Head had resided. That knife was handed to police.¹⁴⁹ There are no records as to whether that knife was retained as an exhibit or forensically tested, although statements were taken to document the provenance of the knife suggesting that the possible significance of the knife was recognised. The lack of records as to the whereabouts of that knife raises a concern about proper exhibit management: see below at [171] and following.

Forensic testing: subsequent reviews by the UHT

128. As noted above at [28], a 2005 review by the NSWPF Unsolved Homicide Team located three cigarette butts and a match in sealed envelopes within the hard-copy brief. In 2008, DNA testing was conducted on the three cigarette butts, however they were found to be "unsuitable for DNA analysis".¹⁵⁰ Testing on the match was recorded to be unsuccessful.¹⁵¹

Forensic testing: review by the Inquiry

129. As noted above at [43]-[44], only four physical exhibits collected by original investigators remain:
- a. one non-filtered cigarette butt said to be found on the floor near the front door in the lounge room;
 - b. one part used non-filtered cigarette said to be found on the floor of the main bedroom;
 - c. one non-filtered cigarette butt said to be found on the floor of the second bedroom;¹⁵²
 - d. one match.
130. It appears that all other exhibits have been lost.¹⁵³
131. At the request of the Inquiry, Mr Bruce of FASS conducted further testing on the cigarette butt remains. While the original testing attempted to identify the blood group of the person who deposited saliva on the cigarette butts, this testing attempted to recover DNA.¹⁵⁴ On one of the cigarette butts, a

¹⁴⁹ Statement of John McMahon, 28 May 1977 (SCOI.10942.00060); Second Statement of Donald Humphreys, 27 May 1977 (SCOI.10942.00047).

¹⁵⁰ DAL Database Report, 20 January 2008 (NPL.0145.0001.0006).

¹⁵¹ DAL Database Report, 20 January 2008 (NPL.0145.0001.0006).

¹⁵² Statement of Detective Inspector Nigel Warren, 29 March 2023, [9] (NPL.0145.0001.0014).

¹⁵³ Statement of Detective Inspector Nigel Warren, 29 March 2023, [12] (NPL.0145.0001.0014).

¹⁵⁴ Expert Certificate of David Bruce, 27 September 2023 (SCOI.85859).

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weak partial DNA profile was obtained from an unknown individual (Individual 'A'). The profile was not suitable for upload onto the DNA database, but may be suitable for comparison with a nominated individual.¹⁵⁵

132. As no reference DNA profile is held for Mr Head or Mr Simsek, it could not to be determined whether individual 'A' may be either of those individuals.¹⁵⁶
133. As the profile was a weak partial DNA profile, it would only possibly be of use for familial comparison with a parent or child, and, even then, could only be used to *exclude* a person as being Individual 'A'. A sibling relationship or more distant relatives (nephews, cousins, etc) would not be informative.¹⁵⁷ The Inquiry was unable to locate any sufficiently close living relative or Mr Head or Mr Simsek who may have been able to provide a DNA sample for comparison to the DNA profile recovered on the cigarette butt.

Fingerprint analysis: previous investigations

134. As noted above, handprints in blood were observed by Senior Constable Munday on his inspection of the unit on 23 June 1976. Sergeant Stone conducted the fingerprint examination of the unit, and identified that two of these were palm prints suitable for identification.¹⁵⁸ Those palm prints were checked against approximately 200 elimination prints, but no matches were identified.¹⁵⁹
135. Fingerprints that were developed in the main bedroom doorway, the bathroom doorway and the kitchen doorway were all eliminated as belonging to the deceased.
136. The unidentified palm prints were reviewed on the following occasions:
- a. On 16 April 2002, the case was reviewed at the request of Strike Force Palace. Unidentified prints were searched on NAFIS and not identified.
 - b. On 9 August 2004, the case was reviewed at the request of DI Jarrett of the UHT. It is unclear if the prints were searched on NAFIS at this time.

¹⁵⁵ Expert Certificate of David Bruce, 25 September 2023 (SCOI.85768).

¹⁵⁶ Expert Certificate of David Bruce, 27 September 2023 (SCOI.85859).

¹⁵⁷ Expert Certificate of David Bruce, 27 September 2023 (SCOI.85859).

¹⁵⁸ Statement of Sergeant Robert William Stone, 16 November 1977 (SCOI.11039.00111).

¹⁵⁹ Statement of Sergeant Robert William Stone, 16 November 1977 (SCOI.11039.00111).

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- c. On 17 August 2005, the case was again reviewed at the request of DI Jarrett of the UHT. Unidentified prints were searched on NAFIS, with no matches identified.¹⁶⁰
- d. In January 2006, police confirmed that both Kuala Lumpur and New Zealand had searched their databases with a negative result, while Hong Kong was unable to search palm prints on their system.¹⁶¹
- e. In July 2007, the United States' FBI confirmed that an automated search was conducted with no identification made.¹⁶²

Fingerprint analysis: review by the Inquiry

137. On 24 April 2023, the Inquiry requested that bloody marks located above Mr Head's body in the kitchen be subjected to further analysis.¹⁶³
138. Ms Reid, a Senior Crime Scene Officer and Fingerprint Expert, examined the photographs. Ms Reid identified three palm prints amongst the bloody marks, which she labelled graph B(1), B(2) and B(3) for ease of reference.
139. Ms Reid has explained that at the time of Sergeant Stone's examination, the process of fingerprint analysis involved using a magnifying eyeglass to view the fingerprints. The digitisation of fingerprint images and the ability to import the image into Forensic Comparison Software has resulted in a greater discriminating power for low quality prints, and has provided the ability to zoom, rotate, and change the brightness, contrast and saturation for an image. Graph B(3) was a fingerprint noted to contain limited detail, but after digital enhancement Ms Reid determined the fingerprint to be suitable for comparison. This likely explains why she determined three palm prints to be suitable for comparison, in contrast to Sergeant Stone who only determined two as suitable.¹⁶⁴
140. Ms Reid conducted searches of the palm prints against the NAFIS database. As a result of that search, Ms Reid retrieved a set of record prints bearing the name Engin Simsek. Ms Reid carefully compared

¹⁶⁰ This review also identified latent fingerprints on a motor vehicle HTQ515. That was a stolen motor vehicle that the original investigating police had suspected may have been connected to Mr Head's death; however, it was eliminated from the enquiry when it was determined that the vehicle was not stolen until some 48 hours after the death of Mr Head: Bundle of P109 Report of Occurrence records, various dates, 28-29 (SCOI.85764). The fingerprint results from this examination are irrelevant to the death of Mr Head. (See Bundle of P109 Report of Occurrence records, various dates, 28-29 (SCOI.85764)).

¹⁶¹ Investigators Note, "O/S Fingerprint Results re Murder of Ernest Allan HEAD", 14 March 2006, (SCOI.60862).

¹⁶² FBI Laboratory Report, 18 July 2007 (SCOI.60866).

¹⁶³ Letter to NSWPF from Inquiry re palmprint examinations, 24 April 2023 (SCOI.85259).

¹⁶⁴ Third Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 19 September 2023 (NPL.9000.0034.0001).

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the fingerprints of Mr Simsek with the bloody palm prints at the scene, and reached a conclusion that print B(1) matched the right upper palm of Mr Simsek.¹⁶⁵

141. Palm prints B(2) and B(3) remained unidentified. However, Ms Reid noted that they were unable to be compared to the record prints of Mr Simsek due to the lack of comparable area in the record palm prints – Mr Simsek’s record prints only capture the upper portion of the palm, whereas palm prints B(2) and B(3) capture the lower portion of the palms. Accordingly, the fact that the palm prints remain unidentified does not indicate that the prints belonged to a person other than Mr Simsek.

Known information about Mr Simsek

142. Mr Simsek was born in Turkey on [REDACTED] 1943.
143. On 31 May 1972, Mr Simsek emigrated to Australia, where one of his siblings and their partner were residing. Mr Simsek’s arrival card into Australia listed a unit on Grosvenor Crescent, Summer Hill as his intended address.
144. At various points between 1970 and 1992, Mr Simsek’s relatives resided at two addresses on Grosvenor Crescent, Summer Hill, as well as other addresses in the Inner West.¹⁶⁶ It cannot be determined where there were residing in 1976. Both addresses on Grosvenor Crescent were less than a two-minute walk away from Mr Head’s apartment.
145. Mr Simsek was reported to have a close relationship with his sibling and their partner.¹⁶⁷ While Mr Simsek resided at other addresses (mostly around the Inner West areas of Sydney, including Enmore and Newtown), he was reported to have resided with his sibling for at least some periods of time. While it is unknown where he was living in 1976, his connection with Grosvenor Crescent, Summer Hill suggests opportunity for Mr Simsek and Mr Head to have come into contact.
146. There are only scant records about Mr Simsek’s life at around the time of Mr Head’s death in 1976. In 1975, Mr Simsek had commenced a de facto relationship with a woman, and in approximately 1979 he had a daughter. Between 1976 and 1980, he was working at a factory in Enfield, a suburb approximately 10 minutes from Summer Hill.¹⁶⁸

¹⁶⁵ First Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 30 May 2023 (SCOI.85121).

¹⁶⁶ Statement of [REDACTED] 1450, 3 October 2023, [4]-[6] (SCOI.85771).

¹⁶⁷ Pre-Release Report, 29 May 1986, 1 (SCOI.12138.00053).

¹⁶⁸ Pre-Release Interview Form, 22 April 1986, 2 (SCOI.12138.00060).

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147. In August 1980, Mr Simsek was convicted of an offence of “malicious injury”, relating to an incident in July of that year in which Mr Simsek used a chair to smash a glass window and door, and juke box, at a shop in Enmore. Mr Simsek provided no explanation to police for his behaviour.
148. This was Mr Simsek’s first offence in Australia, and he was fined \$100 or ordered to serve 4 days of hard labour.¹⁶⁹ Mr Simsek’s fingerprints were taken at the Newtown Police Station in relation to this offence.¹⁷⁰
149. In September 1984, Mr Simsek was arrested in possession of a large quantity (234g) of heroin. A search of his residential premises revealed further quantities of heroin and weed. Mr Simsek was charged with offences of possessing and supplying a prohibited drug. In December 1985, he was convicted in respect of two counts of supplying a prohibited drug and sentenced to six years “hard labour”, with a non-parole period of 3 years.¹⁷¹
150. Mr Simsek was released to parole on 9 July 1986, with a proposal that he reside with at his sibling’s address on Grosvenor Crescent. (This release date is earlier than the date indicated in Mr Simsek’s bail report as the expiration of his non-parole period on 26 September 1987. The records available to the Inquiry do not explain the reason for his early release.) A report prepared immediately prior to his release described him as a “quiet and seemingly placid individual”, noting it was “very difficult to assess [his] level of involvement in the distribution of heroin.”¹⁷² Notes from an interview conducted with his [REDACTED] prior to his release recorded that she “characterised [REDACTED] as a gentle and non-violent man whose involvement in the offences she still found hard to explain.” His [REDACTED] further described that he had “great difficulty in talking about his feelings” and “[n]ever talks about his girlfriend or his daughter.”¹⁷³
151. Mr Simsek’s NSW criminal history contains no offences of violence against a person.¹⁷⁴
152. Mr Simsek was reported to be an alcoholic. His alcoholism ultimately caused him to become estranged from his family.¹⁷⁵

¹⁶⁹ Criminal History – Bail Report of Engin Simsek, 2 June 2023, 1 (NPL.0175.0001.0001).

¹⁷⁰ Second Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 20 June 2023, [8] (SCOI.85263).

¹⁷¹ Criminal History – Bail Report of Engin Simsek, 2 June 2023, 2 (NPL.0175.0001.0001).

¹⁷² Transfer of Case History, 14 July 1986 (SCOI.12138.00045).

¹⁷³ Handwritten Note re Conversation with [REDACTED] 1451, 28 May 1986 (SCOI.12138.00055).

¹⁷⁴ Criminal History – Bail Report of Engin Simsek, 2 June 2023 (NPL.0175.0001.0001).

¹⁷⁵ Statement of [REDACTED] 1450, 3 October 2023, [9], [11] (SCOI.85771).

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153. It is unknown whether Mr Simsek was gay, bi-sexual, or had sex with men.¹⁷⁶ The Inquiry has not found evidence of any prior relationship between Mr Simsek and Mr Head.
154. Mr Simsek departed from Australia on 13 August 1994.¹⁷⁷ Mr Simsek's died by suicide on 6 May 1999 in Turkey.¹⁷⁸

Mr Simsek's involvement in Mr Head's death

155. The presence of Mr Simsek's palm print, in blood, on the kitchen wall above Mr Head's body, is significant evidence. It is submitted that the palm print powerfully indicates that Mr Simsek was at least involved in the events surrounding Mr Head's death.
156. There can be no doubt that Mr Head was the victim of a violent and frenzied stabbing. Having regard to the position of the palm print, in close vicinity to Mr Head's naked body and surrounded by blood marks originating from Mr Head, it is submitted the only reasonable inference is that the palm print was deposited at or shortly before or after the time of Mr Head's killing.
157. However, much remains unknown about the precise circumstances of Mr Head's death. Among other things, it is impossible to know whether Mr Head was killed by a lone assailant or by more than one person. It is also impossible to know whether Mr Head was killed at the time of the altercation heard by neighbours, or at some later time. For this reason, while the evidence is consistent with Mr Simsek being responsible in Mr Head's death, it cannot exclude other possibilities that arise on the evidence.
158. One other relevant circumstance over which uncertainty lingers is whether Mr Simsek or another person had engaged in sexual intercourse with Mr Head prior to his death.
159. The presence of semen on penile and anal swabs taken from Mr Head, the semen-stained handkerchief, and Mr Head's state of undress, are all indicators of Mr Head and another person having engaged in sexual activity, including receptive anal intercourse, shortly prior to his death.
160. The trail of blood spots from the bedroom, down the hallway, and into the kitchen where Mr Head's body was located, suggests an attack which commenced in the bedroom and proceeded through the unit and into the kitchen. This is consistent with Mr Head being attacked first in the bedroom, with attack continuing into the kitchen where Mr Head's body was ultimately located.

¹⁷⁶ Statement of [REDACTED] 1450, 3 October 2023, [10] (SCOI.85771).

¹⁷⁷ Extract of Movement Records of Engin Simsek, undated (SCOI.85766).

¹⁷⁸ Letter to Inquiry from NSWPF re information from Interpol and Turkish authorities, 6 October 2023 (SCOI.86038); Newspaper article re death of Engin Simsek and certified translation, 8 May 1999-28 August 2023 (SCOI.85752).

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161. One possibility, therefore, is that the perpetrator had sexual intercourse with Mr Head in the bedroom before embarking on a frenzied and panicked attack on him. Forensic analysis of the exhibits, including the penile and anal swabs, would have been able to confirm or exclude this theory; however, those exhibits have now been lost.
162. Ultimately, while the bloody palm print is *consistent* with Mr Simsek being responsible for Mr Head's death, the role Mr Simsek played in relation to Mr Head's death remains unknown. In view of Mr Simsek's death, it is not now possible for him to answer an allegation that he is responsible for, or was otherwise involved in, Mr Head's death.

Expert report of Dr Sullivan

163. Dr Sullivan is a consultant forensic psychiatrist, who provided a report to the Inquiry regarding Mr Head's death on 15 May 2023. Dr Sullivan's report was provided to the Inquiry prior to the identification of Mr Simsek as a person of interest and the likely assailant.
164. Dr Sullivan assessed whether any aspects of the manner of Mr Head's death and/or the crime scene may indicate that the death was a consequence of an LGBTIQ hate related attack. Dr Sullivan observed that the "nature and extent of injuries significantly exceed what is necessary to kill a person, and are consistent with an attack occurring in a frenzy, panic, or overkill".¹⁷⁹
165. Dr Sullivan noted that there was nothing sexualised or symbolic about the pattern of injuries. However, he considered there was evidence of recent, likely consensual, sexual activity with a male partner. He also considered that the conversation heard by witnesses in adjacent units, and the lack of signs of significant struggles, suggested that the offender was acquainted with Mr Head or had been invited into the property.¹⁸⁰
166. Dr Sullivan considered that robbery was one possible motive, although stated that it could not be determined whether this was a primary or secondary motivation. He considered there to be "insufficient information about the unidentified perpetrator, and no other features at the scene of Mr Head's death to make further inferences about hate crime motives".¹⁸¹
167. As has been the case in other deaths considered by this Inquiry, Dr Sullivan's report is demonstrative of the inherent limitations of attempting to assess the motivations of an unknown offender.

¹⁷⁹ Expert report of Dr Danny Sullivan, 15 May 2023, [15] (SCOI.85123).

¹⁸⁰ Expert report of Dr Danny Sullivan, 15 May 2023, [16] (SCOI.85123).

¹⁸¹ Expert report of Dr Danny Sullivan, 15 May 2023, [17]-[18] (SCOI.85123).

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168. Although Mr Simsek has now been identified as a person likely involved in Mr Head's killing, his death precludes the capacity to question him further as to the circumstances of the death or his motives. While some information has been obtained that provides allows a limited profile of Mr Simsek to be created, there is no reliable information as to his sexuality, his biases, or his psychological or psychiatric health. The identification of Mr Simsek does not, of itself, permit assessment of his motivations to be advanced significantly.

Submissions in relation to the police investigation

Indicators of police bias

169. There are some indicators of the police attitudes towards gay men in the original police investigation. In a letter to the Superintendent in Charge of the Criminal Investigation Branch, two Detectives refer to Mr Head's likely sexual activity prior to his death as being consistent with "what we have been told about the nefarious activities of the deceased."¹⁸² Mr Head's died prior to the decriminalisation of homosexual acts in NSW.

170. Despite that, it is submitted that the original police investigation was extensive and thorough, such that there is no evidence that any bias impacted upon the quality or extent of the investigation. These submissions do not point to any appropriate line of enquiry that was not pursued.

Management of exhibits

171. The principal concern arises in relation management of exhibits. The retention, preservation, storage and tracking of exhibits is a critical part of police work, and is essential in any re-investigation of a cold case, particularly in light of advances in technology.

172. In this case, of the exhibits that were seized by the investigating police, only three cigarette butts and a match remain. The location of the remaining exhibits is unknown, despite the searches as detailed above at [42] having been undertaken.¹⁸³ The cigarette butts were not, until 2005, properly logged or stored as exhibits: see above at [27].

173. The match which was located in 2005 appears to have been stored with the cigarette butts. As noted above, there was no match listed amongst the list of items originally seized and submitted for forensic testing.¹⁸⁴ There were matches located at the crime scene, including unused matches in a box and

¹⁸² Letter to Superintendent in Charge, Criminal Investigation Branch from Detective Sergeant Albert McDonald, 14 September 1977 (SCOI.60867).

¹⁸³ Statement of Detective Inspector Nigel Warren, 29 March 2023 (NPL.0145.0001.0014).

¹⁸⁴ Certificate of Paul Connellan, 17 September 1976 (SCOI.11039.00036).

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spent matches in an ashtray: see above at [99] and [101]. The provenance of the match which now remains as an exhibit cannot be determined with any certainty. This would have been of significant concern if the match had become relevant to the investigation.

Lost forensic opportunities

174. The expert certificate of David Bruce, forensic biologist at the FASS, dated 30 May 2023 sets out the contemporary testing that may have been able to be carried out on the items that were lost. Of particular relevance:
- a. The semen detected on penile and anal swabs taken from Mr Head post-mortem, and on a handkerchief located at the scene, may have been suitable for DNA testing, with semen being a high yield DNA source. Tests of the semen on the handkerchief in 1976 indicated a mixture of blood groups, one consistent with Mr Head and the other with an unknown contributor; the identity of the unknown contributor may have been significant.
 - b. The saliva detected on several of the cigarette butts may have been suitable for DNA testing, although it is noted that the potential target areas for DNA testing may have been consumed by the testing conducted in 1976.
 - c. Human blood was detected on multiple items (including a radio, knives, trousers, bedding and scraps from the crime scene). Blood typing conducted in 1976 was consistent with the blood having originated from Mr Head; however, in relation to some testing that was incomplete (due to an insufficient sample or unsuccessful testing), testing may have been able to yield a DNA profile.
 - d. Hair samples recovered from the crime scene could have been microscopically examined, and if the hair was human, subject to either nuclear or mitochondrial DNA testing.
175. Mr Bruce qualified that the potential recovery of DNA from items would depend upon the amount of sample available on the exhibit following the testing carried out in 1976 and the degradation of DNA over time, particularly if not stored optimally. Nonetheless, there may have been sufficient information for direct comparison to reference DNA profiles and for searching on DNA databases, and mitochondrial DNA sequencing could be used if the nuclear DNA component was too degraded for testing.
176. While the palm print was sufficient to identify a person of interest in relation to Mr Head's death, this does not detract from the observation that the loss of exhibits in Mr Head's case was unsatisfactory and has hampered the full re-investigation of Mr Head's death.

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177. DNA testing of exhibits may have assisted in confirming the identity of Mr Simsek. It also could have shed light on other aspects of the circumstances of Mr Head's death. For example, it would be highly probative to ascertain whether it was Mr Simsek or a third person who had sexual intercourse with Mr Head shortly prior to his death: see above at [158]-[161]. It also could have shed light on whether Mr Simsek was likely in the unit with Mr Head alone or with another person who also may have been involved in the death.
178. While DNA testing was not foreseeable in 1976, physical evidence was nonetheless important for other kinds of forensic testing at that time. It should have been obvious by reference to the technology of the day, including blood typing, that *at least* the handkerchief should have been retained as evidence, if not also the cigarettes and human hairs. If a person of interest had emerged, it may have been critically important to prove in later proceeding that the substance was indeed semen, and that the semen was group O, PGM 2-1, as the DAL testing had indicated. Accordingly, the Inquiry can conclude that the loss of exhibits was not consistent with proper police practice, including judged by the standards of the day.
179. Had Mr Simsek been alive or had another suspect been identified, the loss of the exhibits might have seriously impaired the prospects of a successful prosecution against him.

Delay in the identification of Mr Simsek

180. Mr Simsek's record fingerprints were taken at the Newtown Police Station on 27 July 1980.¹⁸⁵ Despite being in the possession of police, his fingerprints were not matched to the palm print from the crime scene despite examinations by the UHT in 2002, 2004 and 2005. The Inquiry sought to explore the reasons why there was a delay in that match.
181. Ms Reid has provided evidence on the process of comparing and matching latent fingerprints to record fingerprints. In short, it would appear that the failure to match the fingerprint records of Mr Simsek to the bloody palm print at the time of the reviews in 2002, 2004 and 2005 was a reflection of the limitations in fingerprint identification technology at the time.
182. Ms Reid stated that searching of palm prints (as opposed to fingerprints) was not possible until 2001. The early Automated Fingerprint System (**AFIS**), which permitted computerised search from 1985 onwards, had no capability for searching latent palm print impressions. In 1999, Australia began to move towards the National Automated Fingerprint Identification System (**NAFIS**). This process required the conversion of all hardcopy fingerprint records from binary to greyscale, which process

¹⁸⁵ Second Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 20 June 2023 (SCOI.85263).

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was undertaken for Mr Simsek's records. In May 2001, for the first time, a "rudimentary" palm print matching system was in operation for the first time.

183. Despite palm print searching being available from 2001, Ms Reid explains that the ability of an automated fingerprint system to match a fingerprint is "highly reliant on the accuracy of its matching fingerprint algorithm". The process of fingerprint comparison involves fingerprints being digitised and subjected to a "minutiae extraction process", where features within the fingerprint are identified that permit comparison between fingerprints. This process depends upon the quality of the fingerprint image, and factors such as "displacement and rotation, distortion and pressure, or skin condition differences at the time of capture." These factors can result in "minutiae extraction errors" and the presence of "spurious minutiae".
184. Various upgrades to the NAFIS system between 2010 and 2013 improved the algorithm to provide greater accuracy in minutiae extraction. In particular, in February 2015, there was an upgrade to the "V11 matcher" which "incorporated a new algorithm" that provided "greater accuracy and matcher capabilities for future searches."
185. Mr Simsek's record fingerprints were converted from hardcopy to digital format in a process that commenced in early 2000. At that time, Ms Reid suggests that there was likely "spurious minutiae or missing minutiae in the palm print impressions" of Mr Simsek. The reviews conducted in 2002, 2004 and 2005 were "subjected to the quality of the original minutiae extraction process in 2000", and no matches were identified.
186. Ms Reid says the V11 matcher upgrade in 2015 is likely to have provided a "more accurate coding" of Mr Simsek's record prints.¹⁸⁶ In short, Ms Reid states that when the palm print was re-searched in March 2023, the NAFIS system was "substantially more technically capable of identifying an accurate candidate for matching and less affected by the presence of spurious minutiae than previous iterations."¹⁸⁷
187. In light of this evidence, no criticism should be made of the NSWPF for failing to match the bloody palmprint to Mr Simsek at the time of each of the earlier UHT reviews.

¹⁸⁶ Second Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 20 June 2023 (SCOI.85263); Third Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 19 September 2023, [11] (NPL.9000.0034.0001).

¹⁸⁷ Second Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 20 June 2023 (SCOI.85263).

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Automatic searching and the need for regular reviews of latent prints

188. Although the V11 matcher technology was available from 2015, Ms Reid notes that the NAFIS did not have the capability to *automatically* re-search latent or record prints already on the database. That is, the search of the latent fingerprint would need to be manually initiated by a fingerprint examiner.¹⁸⁸ No such search was initiated in Mr Head's case between 2005 and 2023. The 2023 search was the first time the fingerprints had been searched using the V11 matcher technology.
189. This raises the importance of frequent and regular reviews of unidentified latent fingerprints held by the UHT, particularly following upgrades to fingerprint analysis technology.
190. The Inquiry sought further information about the process of automated searching on the NAFIS database. Ms Reid provided the following evidence:¹⁸⁹
- a. Any latent fingerprint obtained from a crime is encoded by the minutiae extraction process (automated or manual). If that latent fingerprint is not identified against the NAFIS database, it is registered on the **Unsolved Latent database**.
 - b. Record fingerprints are those captured by police employees. All record prints are subject to a quality assurance process. Most record prints are uploaded on the **NAFIS database**, but some are not (such as visa applicants or adoption applicants). However, all newly entered record prints are searched against the Unsolved Latent database, in a process called the Tenprint to Unsolved Latent (**TP/UL**) search. This is an automatic process when new record prints are entered onto the system.
 - c. By contrast, there is no capacity for automatic or periodic searching of an unsolved latent print against the NAFIS database. These searches need to be initiated manually.
 - d. If a latent print is identified by a NAFIS search and verified by a fingerprint expert, a notification of the result will be issued on the NSWPF EFIMS system.
191. Because Mr Simsek's prints were a conversion set of prints, rather than a new record print, a TP/UL search was never initiated in relation to Mr Simsek's prints.
192. In respect of other cases considered by the Inquiry in which there remain unidentified prints, the latent prints have been searched against the current NAFIS database using the existing technology. They have

¹⁸⁸ Third Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 19 September 2023, [16] (NPL.9000.0034.0001).

¹⁸⁹ Third Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 19 September 2023 (NPL.9000.0034.0001).

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also been registered indefinitely on the Unsolved Latent database, so that any new record prints captured by the NSWPF will be automatically compared to those prints and there should be an automatic notification of any future matches against new record prints.¹⁹⁰

193. However, as Mr Head's case reveals, a forensic opportunity may be lost if no search of a latent fingerprint is initiated against *existing* record prints following upgrades in technology. This case demonstrates the importance of ensuring the re-testing of exhibits at appropriate times. The 2015 V11 upgrade ought to have prompted the UHT to re-submit any unidentified latent print for re-examination. Future upgrades to fingerprint comparison technology should similarly prompt a UHT review.
194. By February 2015, being the time that the technology was available to match the palm print from the crime scene to Mr Simsek, Mr Simsek had been deceased for over 15 years. Accordingly, there is no basis to conclude that a further fingerprint review between 2015 and 2023 would have created the possibility of a criminal prosecution against Mr Simsek.

Submissions as to bias

195. As set out above at [162], the available evidence supports there being a temporal proximity between Mr Head engaging in sexual activity with his offender, and the excessive, frenzied and/or panicked attack on him. This temporal proximity raises the possibility that the attack was committed in response to, or as a result of, the sexual activity which just took place. This being the case, there is a distinct possibility that Mr Head's death was motivated by LGBTIQ bias (including, for example, disgust or anger at having participated in sexual intercourse with a man).
196. The theft of property from Mr Head's unit does not exclude the possibility of LGBTIQ bias. It is impossible, as Dr Sullivan observed, to determine whether this was a primary or secondary motive. It is unlikely that theft could provide the only motive for Mr Head's death – noting that the injuries that were inflicted went significantly beyond what would be required to affect a robbery, and the apparent connection between the injuries and the sexual intercourse. A binary distinction should not be drawn between a robbery and a bias crime, as this would fail to recognise the possibility that LGBTIQ bias may still be a factor in a property offence.
197. Having regard to the whole of the available evidence, it is submitted that there is objectively reason to suspect that the attack was motivated by LGBTIQ bias, either in whole or in part. However, without

¹⁹⁰ Third Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 19 September 2023 (NPL.9000.0034.0001).

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further information as to Mr Simsek's motivations or biases, or the precise circumstances surrounding Mr Head's death, it is not possible to arrive at any more positive conclusion.

Submissions as to manner and cause of death

198. It is submitted that a finding in the following terms is open:

Ernest Head died on or about 17 June 1976 in Summer Hill from wilfully inflicted stab wounds of the chest and abdomen.

Submissions as to recommendations

199. The Inquiry may, in due course, consider global recommendations in relation to the retention, preservation, storage and tracking of exhibits, as well as the frequency with which they are re-examined. However, there is no submission with respect to specific recommendations in Mr Head's case.

James Emmett SC

Kathleen Heath

Counsel Assisting