



Special Commission of Inquiry into LGBTIQ hate crimes

SUPPLEMENTARY SUBMISSIONS OF COUNSEL ASSISTING

31 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**). They supplement the written submissions of Counsel Assisting dated 9 October 2023 (**primary submissions**) and the oral submissions made by Counsel Assisting at the public hearing held into the death of Ernest Head held on 10 October 2023.
2. As noted in the primary submissions, after a fingerprint analysis was arranged by the Inquiry in 2023, one of the palmprints located at the crime scene was identified as belonging to Engin Simsek, who is now deceased. The evidence indicates the involvement of Mr Simsek in the death of Mr Head.¹
3. Mr Simsek's record fingerprints were taken on 27 July 1980, but not matched to the palm print at the crime scene in this matter until 2023, despite examinations by the Unsolved Homicide Team (**UHT**) in 2002, 2004 and 2005. The primary submissions outline the steps taken by the Inquiry in exploring why there was a delay in that match, and particularly the relevance of the V11 matcher technology used by the National Automatic Fingerprint Identification System (**NAFIS**).²

Further investigative steps taken by the Inquiry

4. After the hearing of Mr Head's case on 10 October 2023, the Inquiry undertook the following additional investigative steps:
 - a. Writing to the NSW Police Force (**NSWPF**) requesting further information regarding the V11 matcher technology,³ and subsequently receiving the Fourth Expert Certificate of Kate Reid;⁴

¹ Submissions of Counsel Assisting, 9 October 2023, [8]-[10] (SCOI.86054).

² Submissions of Counsel Assisting, 9 October 2023, [180]-[194] (SCOI.86054).

³ Letter from Enzo Camporeale to Patrick Hodgetts, 11 October 2023 (SCOI.86390); Letter from Patrick Hodgetts to Enzo Camporeale, 16 October 2023 (SCOI.86392).

⁴ Fourth Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 18 October 2023 (NPL.9000.0039.0001).

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- b. Conferencing with the Australian Criminal Intelligence Commissions (**ACIC**) regarding the V11 matcher technology.⁵
5. The information received indicated that a number of factors may have influenced the match made with Mr Simsek in 2023. In addition to the upgrade in technology, the likelihood of finding a palmprint match is also dependent on the work of the fingerprint expert in reviewing the candidates returned by the matching technology, as well as on the quality of coding of the latent palmprint.⁶
6. This case highlights the forensic value in fingerprint and palmprint cases being reconsidered from time to time, including after there has been a significant improvement in technology. The continuing growth of the fingerprint and palmprint database is another reason why cases should be reconsidered periodically. The recent information from ACIC is also consistent with the proposition that there may be a balance to be struck having regard to resource management.⁷ Reconsidering prints requires the allocation of time by the reviewer, with the amount to time depending in part on how many possible match candidates the reviewer determines to analyse in the list produced by the print-matching program.
7. The recent information also indicates that the failure to identify the match to Mr Simsek in 2002, 2004 or 2005 may have been attributable to the matching technology available at the time, but it may also have been attributable to one or more other factors.⁸ It is not possible to conclude that it was the improvement of the matching technology in 2015, rather than one or more of the other factors, which led to the match being made in this case, especially noting that it is not known how “far down” the list of candidates the previous reviewers went in 2002, 2004 and 2005.
8. The further investigative steps do not affect the submissions made by Counsel Assisting in the primary submissions as to manner and cause of death, or as to bias.

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⁵ Statement of Penelope Smith, 31 October 2023, [8]-[13], (SCOI.86391).

⁶ Statement of Penelope Smith, 31 October 2023, [12] (SCOI.86391); Fourth Expert Certificate of Kate Reid, Senior Crime Scene Officer – Fingerprint Expert, 18 October 2023, [7]-[8] (NPL.9000.0039.0001).

⁷ Statement of Penelope Smith, 31 October 2023, [12] (SCOI.86391).

⁸ Statement of Penelope Smith, 31 October 2023, [12](a)-(c), (SCOI.86391).