



## Special Commission of Inquiry into LGBTIQ hate crimes

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### SUBMISSIONS OF COUNSEL ASSISTING

27 June 2023

**GILLES MATTAINI  
ROSS WARREN  
JOHN RUSSELL**

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### A. INTRODUCTION

1. These submissions are filed on behalf of Counsel Assisting the Special Commission of Inquiry into LGBTIQ hate crimes (**Inquiry**).
2. They relate to the deaths of three gay men, all of whose deaths were the subject of findings in 2005 by Deputy State Coroner Milledge (**Coroner Milledge**), namely
  - **Gilles Mattaini**, whom the Coroner found died on or about 15 September 1985
  - **Ross Warren**, whom the Coroner found was a victim of homicide on or about 22 July 1989
  - **John Russell**, who died late on 22 November or early on 23 November 1989, and whom the Coroner found to have been a victim of homicide.
3. These three deaths may or may not be related to each other, in terms of the involvement of one or more assailants. However, they have many features in common, deriving in particular from the geographical area where many of the relevant events took place.
4. Mr Russell's body was found at the base of the cliffs at Marks Park, between Bondi and Tamarama. Mr Warren's body has never been found, but his car and keys were found near those same cliffs a few months earlier. Mr Mattaini was last seen walking at Bondi four years before that, and was known to walk around the coastal path between Bondi and Tamarama.
5. Marks Park, and the rocky areas below it, were well-known as a gay beat. They were also well-known, since at least the mid-late 1980s, as a place where gay men were targeted and assaulted – “poofter-bashing”, in the language of the time. There is an abundance of evidence of assaults on gay men at or near the Marks Park beat in the 1980s and 1990s.<sup>1</sup>
6. Partly because of some of those common features, these three deaths have been jointly the subject of three major police and coronial procedures, namely:
  - **Operation Taradale**, a significant police investigation under the leadership of Detective Sergeant (**DS**) Stephen Page, between 2000 and 2003;

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<sup>1</sup> Exhibit 6, Tab 155, Statement of Sergeant Ingleby, 26 February 1990, [11]-[17] (SCOI.02744.00075); Exhibit 6, Tab 233, Statement of Stephen McCann, 10 November 2022 (SCOI.77310); Exhibit 6, Tab 233A, Letter from Steve McCann to the Commander, Modus Operandi Section, 10 August 1991 (SCOI.10342.00010); Exhibit 6, Tab 233B, Letter from Steve McCann to Chief Superintendent Norm Maroney, 15 April 1991 (SCOI.10445.00128); Exhibit 6, Tab 230, Statement of Detective Sergeant Stephen Page, 25 July 2002 (SCOI.02744.00023); Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 9 March 2005 (SCOI.02751.00021); Exhibit 6, Tab 173, Strike Force Neiwand, 'Summary of Investigation - John Russell', 9 January 2018, [46]-[65] (SCOI.74882), [77]ff; Exhibit 6, Tab 174, Strike Force Neiwand, 'Summary of Investigation – Ross Warren', 8 January 2018, [62]-[112], [152]-[164] (SCOI.74883).

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- The coronial inquiry between 2003 and 2005 by Coroner Milledge, who considered, and made findings based on, the work of Operation Taradale (the **Milledge Inquest**); and
  - **Strike Force Neiwand**, a review of all three cases by the Unsolved Homicide Team (**UHT**), between October 2015 and January 2018.
7. A substantial part of the work involved in those three exercises, and much of the evidence gathered and considered in the course of all three, was to greater or lesser extent common to, or relevant to, the deaths of all three of these men. For that reason, these combined submissions will seek to consider that material in a way which, while avoiding repetition as far as possible, identifies aspects of the presently-available evidence that are applicable to, or shed light upon, all three of these deaths.
8. However, as the Inquiry has been careful to do throughout the course of its own work over the past fourteen months, these submissions will nevertheless seek to maintain a clear focus on each of these three men separately, as the distinct and distinctive individuals that each of them was, and on the particular features of what is now known about how each of them met his death.

## B. SUMMARY OF EACH CASE

### Date, location and circumstances of death

#### **GILLES MATTAINI**

9. Gilles Mattaini was a gay man last seen walking near Bondi Beach on 15 September 1985. His body has never been recovered. He was 26 years old when he disappeared.
10. Mr Mattaini was born in France on 25 October 1958. In about 1978 he met his partner, Jacques Musy, in France, and their relationship began. In 1983 they moved to Australia.
11. As at September 1985 they lived together in an apartment in Ramsgate Avenue, Bondi Beach, near the intersection with Campbell Parade. However, for some weeks in August-September 1985, Mr Musy was in France on holiday.
12. Mr Mattaini worked at the Menzies Hotel in the city as a barman. As at September 1985 he had some concern about his residency because he had overstayed his visa. However, he was enjoying his time alone while Mr Musy was away on holidays, and he was also looking forward to a visit from a friend from France, Antony Wyszynski, who would be staying with him. He was purchasing things for the apartment in anticipation of that visit.<sup>2</sup>
13. One of the leisure activities that Mr Mattaini enjoyed was walking around the beachside areas and paths near Bondi, including the scenic coastal path from Bondi to Bronte, that went around Marks Park.<sup>3</sup> He would take earphones on his walks and listen to music. Mr Mattaini, according to Mr Musy and his friends, was a shy and private person and was not a user of the beat at Marks Park.<sup>4</sup>
14. On 16 September 1985, Mr Mattaini failed to show up for his shift at the Menzies Hotel. There was naturally concern amongst his friends, who did what they could to try to find out what had happened to him. They had no success.<sup>5</sup>
15. Mr Musy, who was in France, was informed of Mr Mattaini's disappearance by one of those friends, Vincent Ottaviani. Mr Ottaviani worked with Mr Mattaini at the Menzies Hotel, and had helped search for Mr Mattaini.

<sup>2</sup> Exhibit 6, Tab 160, Statement of Detective Sergeant Stephen Page, 9 March 2005, 2 (SCOI.02744.00024).

<sup>3</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 1 (SCOI.02751.00021).

<sup>4</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 1-3 (SCOI.02751.00021).

<sup>5</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 2-3 (SCOI.02751.00021).

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16. Mr Musy was very distressed. He had the impression, which it seems was not correct, that Mr Ottaviani had reported the matter to the police. No record of any such report has ever been found, and there was no police investigation in 1985.<sup>6</sup> Mr Ottaviani died in 1991.
17. When Mr Musy returned from France, in September 1985, he observed among other things that Mr Mattaini's keys and earphones, and a yellow spray jacket, were missing from the apartment.<sup>7</sup>
18. In his teens, in France before 1978, Mr Mattaini had made at least one and perhaps two suicide attempts, as outlined below. When he disappeared in Sydney in September 1985, his mother in France believed it was possible that her son had suicided.<sup>8</sup> However, according to Mr Musy, since meeting him in 1978 Mr Mattaini had been very happy and had never subsequently expressed or shown any suicidal thoughts.<sup>9</sup>

### **ROSS WARREN**

19. Ross Warren was a gay man, who in July 1989 was 25 years old. He was a television presenter with WIN 4 Television in Wollongong.
20. On Friday evening 21 July 1989, after presenting the weather report at the end of the 6pm news, Mr Warren drove from Wollongong to Sydney. He was to stay with friends, Craig Ellis and Paul Saucis, at their place in Redfern for the weekend, as he often did on weekends.
21. Later in the evening, he drove to Oxford Street, where he met a co-worker, Phillip Rossini, at about 11pm. They drank at various bars on Oxford Street, parting ways at about 2am on Saturday morning 22 July 1989. Mr Rossini last saw Mr Warren driving east in Oxford Street, towards Paddington.<sup>10</sup>
22. On Sunday afternoon 23 July 1989, Mr Warren did not turn up for work at WIN Television. His friends Mr Ellis and Mr Saucis went to Paddington Police Station (**Paddington Police**) on the Sunday evening and reported him missing.
23. Mr Ellis and Mr Saucis then searched for Mr Warren. They located his car in Kenneth Street, Bondi, very close to Marks Park. They reported this to Paddington Police as well, the same night.<sup>11</sup>

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<sup>6</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 2 (SCOI.02751.00021).

<sup>7</sup> Exhibit 6, Tab 159, Statement of Jacques Musy, 3 August 2002, [21] (SCOI. SCOI.02744.00381).

<sup>8</sup> Statement of Antony Wyszynski, 3 August 2002, [15] (SCOI.23971).

<sup>9</sup> Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003, 48.53-49.21 (SCOI.82371).

<sup>10</sup> NSWPF Report of Occurrence, 'Enquiries in relation to missing person Ross Bradley Warren', 28 July 1989, 1 (SCOI.02744.00031).

<sup>11</sup> NSWPF Report of Occurrence, 'Enquiries in relation to missing person Ross Bradley Warren', 28 July 1989, 1 (SCOI.02744.00031).

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24. The next morning, Monday, 24 July 1989, they went back to Marks Park again, and they found Mr Warren's keys in a rock 'pocket' below the cliff-top, near the water's edge. Again, Mr Ellis and Mr Saucis reported this discovery to Paddington Police.
25. On Wednesday 26 July 1989, the *Daily Telegraph* reported that there were fears that Mr Warren had been murdered.<sup>12</sup> However, on 28 July 1989 the OIC at Paddington Police, DS Kenneth Bowditch, wrote in the Occurrence Pad that "investigating police" had no such view, and were of the opinion that Mr Warren had "*fallen into the ocean in some manner and it is anticipated that in the near future his body will surface and be recovered*". The "investigation" seems to have effectively finished after four days.<sup>13</sup>
26. Mr Warren's body has never been found.<sup>14</sup> His disappearance and suspected death were never reported to the Coroner.<sup>15</sup>
27. Years later, between 1998 and 2000, Mr Warren's mother wrote to police numerous times seeking some finality in relation to her son's disappearance and presumed death. In 2000, her letters eventually came to the attention of DS Page, whose enquiries in relation to Mr Warren's case led to the formation of Operation Taradale and to the Milledge Inquest, as outlined more fully below.

### **JOHN RUSSELL**

28. At about 10.00am on Thursday 23 November 1989, Mr Russell was found dead on the rocks at the bottom of the cliffs at Marks Park.<sup>16</sup> He had multiple injuries including fractures to his skull.<sup>17</sup> He was 31 years old.
29. Mr Russell was a gay man. He was a barman at the Bronte Bowling Club, and he lived with his brother, Peter Russell, in Bondi. At the time of his death, he had recently received an inheritance from his grandfather, and he was planning to leave Sydney and build a 'kit home' on his father's property at

<sup>12</sup> Exhibit 2, Tab 61, Rod Mori, 'Murder Fears for TV Weatherman', *The Daily Telegraph* (Sydney, 26 July 1989) (SCOI.76851).

<sup>13</sup> NSWPF Report of Occurrence, 'Enquiries in relation to missing person Ross Bradley Warren', 28 July 1989, 5 (SCOI.02744.00031); Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 2 (SCOI.02751.00021).

<sup>14</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 1-2 (SCOI.02751.00021).

<sup>15</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 2 (SCOI.02751.00021).

<sup>16</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 1 (SCOI.02751.00021).

<sup>17</sup> Exhibit 6, Tab 173, Strike Force Neiwand, 'Summary of Investigation – John Russell', 8 January 2018, [139] (SCOI.74882).

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Wollombi. He also intended to use some of the funds to travel around Australia.<sup>18</sup> He “was looking forward to the best time of his life”, and “everything was looking up for him”.<sup>19</sup>

30. On the evening of Wednesday, 22 November 1989, Mr Russell had farewell drinks with a friend at the Bondi Hotel. He had a similar evening planned for the following night, and then, on the Friday, his father, Ted Russell, was going to drive down from Wollombi to collect him. He left the Bondi Hotel at about 11:00pm.<sup>20</sup>
31. The position of Mr Russell’s body when he was found on Thursday morning 23 November 1989 was such that his head and upper body were facing towards the cliff face, while his feet were towards the ocean. Human hairs which may have been from another person were observed on his left hand. Those hairs were “bagged” for analysis, but they were lost prior to the initial inquest into Mr Russell’s death which was conducted on 2 July 1990. No forensic analysis was ever performed on those hairs.<sup>21</sup>
32. Police from Bondi Police Station investigated the scene. The OIC was a junior plain clothes constable.<sup>22</sup> The OIC considered that Mr Russell’s death was “accidental”, and it was not pursued as a homicide, although some police involved in the investigation suspected Mr Russell had been the victim of an assault.<sup>23</sup>
33. That suspicion arose from a number of factors including: the location where Mr Russell’s body was found, known at the time to be a gay beat; police awareness of assaults on gay men in the area of the beat; and the strands of hair found on Mr Russell’s left hand.

### **Findings of post-mortem examination (Mr Russell only)**

34. There was no post-mortem examination for either Mr Mattaini or Mr Warren, as their bodies were never found.
35. In the case of Mr Russell, an autopsy was conducted on 29 November 1989, by Dr Sylvia Hollinger.
36. Dr Hollinger noted bruising to both sides of Mr Russell’s body, a number of lacerations on the left side of Mr Russell’s body and fractures in both his arms.<sup>24</sup> Internal examination found extensive

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<sup>18</sup> Statement of [REDACTED] 1403, 24 November 1989, [5] (SCOI.10566.00050); First Statement of Constable Barrett, 1 December 1989, [16] (SCOI.02744.00073).

<sup>19</sup> First Statement of Constable Barrett, 1 December 1989, [16] (SCOI.02744.00073).

<sup>20</sup> Statement of [REDACTED] 1403, 24 November 1989, [6] (SCOI.10566.00050); Exhibit 6, Tab 173, Strike Force Neiwand, ‘Summary of Investigation – John Russell’, 8 January 2018, 1 (SCOI.74882).

<sup>21</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 1 (SCOI.02751.00021).

<sup>22</sup> Transcript of the Inquiry, 28 February 2023, T2347.32-40 (TRA.00029.00001).

<sup>23</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 1 (SCOI.02751.00021).

<sup>24</sup> Post-mortem report, 29 January 1990, 1 (SCOI.02752.00098).



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fracturing of the skull to both the left and right sides, and marked displacements of the fractures at the base of the skull.<sup>25</sup>

37. Dr Hollinger expressed the direct cause of death as “multiple injuries”.<sup>26</sup>
38. In a toxicology report dated 5 January 1990, Keith Lewis of Division of Analytical Laboratories (**DAL**) found Mr Russell to have a blood alcohol level of 0.255/100mL. Mr Russell was screened for cannabinoids, amphetamines, ‘tricyclic antidepress’, methadone, trichlorethanol, opiates, benzodiazepines, barbiturates and cocaine; none were detected.<sup>27</sup>

### Indicators of LGBTIQ status or bias

39. As noted above, there is an abundance of evidence of assaults on gay men at or near the Marks Park beat in the 1980s and 1990s.<sup>28</sup>

### **GILLES MATTAINI**

40. Mr Mattaini was gay. He had been in a long-term relationship with Mr Musy since 1978. His sexuality appears to have been open, and well-known to his friends and among his social circle.

### **ROSS WARREN**

41. Mr Warren was known to his family and friends as a gay man. His employer, WIN Television, was also well aware that he was gay. He was also known to have attended ‘beats’ on occasion, including the beat at Marks Park.
42. Mr Warren’s car was found parked close to Marks Park, and his keys were found at the base of the Marks Park cliffs. It is likely Mr Warren went to that location in order to use the beat.

### **JOHN RUSSELL**

43. Mr Russell was well-known by his family and friends to be gay.<sup>29</sup> His brother Peter said that Mr Russell was well known in the gay community and was one of the instigators of the gay Mardi Gras.<sup>30</sup>
44. Mr Russell’s body was found at the bottom of a cliff, below a known beat location.<sup>31</sup>

<sup>25</sup> Post-mortem report, 29 January 1990, 2 (SCOI.02752.00098).

<sup>26</sup> Post-mortem report, 29 January 1990, 3 (SCOI.02752.00098).

<sup>27</sup> Toxicology report, 5 January 1990 (SCOI.02752.00102).

<sup>28</sup> See [5] above.

<sup>29</sup> First statement of Constable Barrett, 1 December 1989, [15]-[16] (SCOI.02752.00104); Statement of [REDACTED] 1403, 24 November 1989, [4] (SCOI.10566.00050).

<sup>30</sup> Statement of Peter Russell, 15 June 2001, [16] (SCOI.10386.00024).

<sup>31</sup> First Statement of Constable Barrett, 1 December 1989, [17] (SCOI.10386.00030); Exhibit 6, Tab 155, Statement of Sergeant Ingleby, 26 February 1990, [11] (SCOI.02744.00075).

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45. Mr Russell was found with coins scattered around his body. A possibility is that he had been holding them and possibly rattling them as an indication of his availability for personal contact.<sup>32</sup>
46. Mr Russell was last seen at the Bondi Hotel. Where he was found, relative to the Bondi Hotel, was in the opposite direction to his home, suggesting that he may have been intending to use the beat.

### **Persons of interest at time of initial investigation**

#### ***GILLES MATTAINI***

47. In the case of Mr Mattaini, there was no “initial investigation”, ie at the time of his disappearance. There is no record of a report to police of his disappearance at that time.
48. There was no investigation of his death until August 2002, when Mr Mattaini’s case was added to Operation Taradale.

#### ***ROSS WARREN***

49. As noted above, within days of Mr Warren’s disappearance the initial OIC, DS Bowditch of Paddington Police, had recorded his view that he had fallen into the water at Marks Park by accident.
50. No investigation as to the possibility of homicide took place. No persons of interest were identified.

#### ***JOHN RUSSELL***

51. The original OIC considered that Mr Russell died as a result of misadventure, possibly due to his level of intoxication.
52. No persons of interest were identified.

### **Exhibits: availability and testing**

#### ***GILLES MATTAINI***

53. There were and are no exhibits available for testing.

#### ***ROSS WARREN***

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<sup>32</sup> Statement of Sergeant Adrian Ingleby, 26 February 1990, [6]-[7] (SCOI.02744.00075); Statement of Detective Carlton Cameron, 29 May 2002, [6] (SCOI.10388.00175); First Statement of Constable Barrett, 1 December 1989, [6]-[7], [10] (SCOI.10386.00030).

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54. Fingerprints were obtained from Mr Warren’s vehicle in the initial investigation. They were tested in 1989. There were unidentified fingerprints on a cassette case and driver’s licence found in the car.<sup>33</sup>
55. Fingerprint testing was not conducted on Mr Warren’s keys. DS Bowditch stated that although he did not consult a fingerprint expert, in his experience, fingerprints did not hold onto metal when wet.<sup>34</sup>
56. In 1991, the fingerprints obtained from Mr Warren’s vehicle were tested at the request of DSC Bignell of the Homicide Squad against a list of ‘youth gang members’, with no match.<sup>35</sup>
57. In 2001 and 2002 (during Operation Taradale), and in 2016 (during Strike Force Neiwand), various other fingerprinting tests were conducted. None yielded any information of investigative relevance.
58. In 2016, several of the exhibits were tested for DNA by Strike Force Neiwand. All were unsuccessful, apart from a mixed DNA profile found on Mr Warren’s drivers’ licence, that produced a weak and/or complex result.<sup>36</sup> The profile remains unidentified.
59. On 1 November 2022, the Inquiry was advised by the Forensic and Analytical Science Service (“FASS”) that further testing was unlikely to be successful.

### **JOHN RUSSELL**

60. Mr Russell was found wearing a red sloppy joe, faded jeans,<sup>37</sup> a pair of boxer shorts, a pair of white socks, a pair of black gym boots and with \$4.60 in loose coins and a red credit card holder.<sup>38</sup> Each of these items was photographed and collected.<sup>39</sup>
61. Human hairs, which may have been from another person (such as a possible assailant), were observed on Mr Russell’s left hand. Peter Russell saw the hairs next to his brother’s thumb when he viewed his body at the morgue on 24 November 1989. He said the hairs were not his brother’s; they were too long and the wrong colour.<sup>40</sup>
62. Those hairs were “bagged” for analysis, but by 2 July 1990 (the date of the initial inquest into Mr Russell’s death) they had been lost. No forensic analysis was ever performed on those hairs.<sup>41</sup>

<sup>33</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [171] (SCOI.74883).

<sup>34</sup> Extract of transcript of evidence of Kenneth Bowditch and Dr Alan Cala, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 2 April 2003, 43-44 (SCOI.84103).

<sup>35</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [78] (SCOI.74883).

<sup>36</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [229] (SCOI.74883).

<sup>37</sup> The jeans are described as both blue and bone coloured in the material.

<sup>38</sup> P79A - Report of Death to the Coroner, 24 November 1989 (SCOI.02744.00083).

<sup>39</sup> Statement of Detective Carlton Cameron, 29 May 2002, [6] (SCOI.10388.00175).

<sup>40</sup> Statement of Peter Russell, 6 March 2023, [4] (SCOI.83423).

<sup>41</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 1 (SCOI.02751.00021).

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63. None of Mr Russell’s clothing, including the jeans, sloppy joe and shoes, were the subject of any forensic testing at the time of the initial investigation in 1989-90. Nor were a cigarette packet, cigarette lighter or Coca-Cola bottle, all of which were found near Mr Russell’s body. The whereabouts of these items appears now to be unknown.<sup>42</sup>
64. Mr Russell’s jeans, sloppy joe and shoes were returned to the family, as outlined below. They were still “covered in blood and salt water”, as they had been when Peter Russell saw them in the morgue. In December 1989, they were provided to police for the purpose of being placed on a mannequin as part of an appeal to the public for information. When Peter Russell saw that mannequin, on display in Bondi, he noticed that that the clothes were spotless and the shoes were clean. He said it was obvious that the clothes had been through the wash.<sup>43</sup>
65. The jeans, sloppy joe and shoes have subsequently been tested by FASS (formerly DAL) on three separate occasions, namely: in about 2002 (Operation Taradale); in 2016 (Strike Force Neiwand); and in 2023 (at the request of the Inquiry). These various tests are referred to below.

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

#### ***GILLES MATTAINI***

66. There was no inquest following Mr Mattaini’s disappearance in September 1985.

#### ***ROSS WARREN***

67. There was no inquest following Mr Warren’s disappearance in July 1989. The OIC, DS Bowditch, did not report the matter to the Coroner.<sup>44</sup>

#### ***JOHN RUSSELL***

68. On 2 July 1990, an inquest was held at Glebe Coroners Court. No transcript of the proceeding is available but the Master Tape History Sheet shows that Constables Barrett and Dunbar, Sylvia Hollinger, Neville Smith, 1403 and Rodney Stinson were called as witnesses.
69. Whether any evidence was offered at the inquest in relation to the hairs adhering to John Russell’s hand is unknown.<sup>45</sup>

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<sup>42</sup> Letter from NSWPF to SCOI re outstanding exhibits, 27 June 2023, 2 (SCOI.84159).

<sup>43</sup> Statement of Peter Russell, 6 March 2023, [12] (SCOI.83423).

<sup>44</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 5 (SCOI.02751.00021).

<sup>45</sup> Exhibit 6, Tab 230, Statement of Detective Sergeant Stephen Page, 25 July 2002, [322]–[323] (SCOI.02744.00023).

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70. The formal finding made by then Deputy State Coroner Hand was that:

*“the deceased on or about 22/11/1989 at Bondi Beach South in the State of New South Wales died of the effects of multiple injuries sustained then and there where he fell from a cliff to the rocks below, but whether he fell accidentally or otherwise the evidence does not enable me to say.”<sup>46</sup>*

### **Criminal proceedings**

71. No criminal proceedings have ever been brought against any person in respect of any of these three deaths.

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<sup>46</sup> Coronial findings, Inquest into the death of John Russell, 2 July 1990 (SCOI.02752.00123).

## C. THE ORIGINAL INVESTIGATIONS

### **GILLES MATTAINI**

72. There was no police investigation at the time of Mr Mattaini's disappearance.

### **ROSS WARREN**

73. In her findings in 2005, Coroner Milledge described the initial police investigation into the death of Mr Warren in 1989 as "a grossly inadequate and shameful investigation. Indeed, to characterise it as an 'investigation' is to give it a label it does not deserve."<sup>47</sup>

74. Her Honour described the fact that DS Bowditch had effectively closed any further investigation within a week, and the failure of the NSWPF to produce either the brief of evidence said to have been submitted to the coroner in 1990, or indeed any documents said to have been produced during the course of that investigation, as "appalling", and a state of affairs that "defies belief".<sup>48</sup>

75. Although DS Bowditch claimed to have carried out various steps as part of his "investigation", the evidence before Coroner Milledge strongly suggested that no such steps had actually been taken. Among other things:

- (a) DS Bowditch claimed that he submitted a brief of evidence to the Coroner in 1990. However, no such brief was received by the Coroners Court;<sup>49</sup>
- (b) He claimed that copies of all documents in relation to Mr Warren's disappearance would also have been sent to the Missing Persons Unit.<sup>50</sup> However, no documents were received by the Missing Persons Unit;<sup>51</sup>

<sup>47</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 6 (SCOI.02751.00021).

<sup>48</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 5-6 (SCOI.02751.00021).

<sup>49</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Milledge, Inquest into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 9 March 2005, 4 (SCOI.02751.00021); see also handwriting at bottom of report of Detective Senior Constable Sharrock, 14 June 2000 (SCOI.02744.00039).

<sup>50</sup> Statement of Kenneth Bowditch, 19 February 2001, [11] (SCOI.02744.00150).

<sup>51</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Milledge, Inquest into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 9 March 2005, 4-5 (SCOI.02751.00021).

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- (c) He claimed that Detective Sergeants Ryan, Glascock and Sharrock had assisted in the investigation into Mr Warren's disappearance.<sup>52</sup> However, statements obtained by Operation Taradale from each of those officers indicated that in fact they had had no involvement,<sup>53</sup>
  - (d) He claimed that the Air Wing and Water Police were involved.<sup>54</sup> However, no record from either of those entities supported that claim;<sup>55</sup>
  - (e) He claimed that he had met with, and taken formal statements, from Mr Saucis and Mr Ellis.<sup>56</sup> No such statements were located, and Mr Saucis and Mr Ellis told DS Page that this did not occur;<sup>57</sup>
  - (f) He claimed that he obtained Mr Warren's health and dental records, and recent photographs.<sup>58</sup> However, no such documents were found by Operation Taradale.<sup>59</sup>
76. It was Mr Warren's friends, Mr Ellis and Mr Saucis, who took immediate action once they realised that Mr Warren was missing. Following their initial report to police on the evening of Sunday 23 July 1989, they decided to conduct a search of Marks Park.<sup>60</sup> They decided on Marks Park as a possible place that Mr Warren could have gone, in light of past conversations with Mr Warren when he told them he had gone to Marks Park on about three other occasions to meet gay men for casual sex. Mr Ellis himself had met Mr Warren there in 1988.<sup>61</sup>
77. That Sunday evening, they found Mr Warren's car parked beside Marks Park on the corner of Kenneth Street and Marks Lane.<sup>62</sup> Again, they reported this to Paddington Police that night.
78. Again, it was Mr Ellis and Mr Saucis who returned to Marks Park on the morning of Monday 24 July 1989. They, not the police, did a door knock of houses in the area and spoke with residents, but obtained no information.<sup>63</sup> Mr Ellis then walked down an access route to the rock shelf below Marks

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<sup>52</sup> Extract of transcript of evidence of Kenneth Bowditch and Dr Alan Cala, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 2 April 2003, 29 (SCOI.84103).

<sup>53</sup> Statement of Detective Sergeant Glascock, 1 August 2001, [5] (SCOI.02744.00148); Statement of Detective Sergeant Ryan, 26 July 2001, [5] (SCOI.02744.00147); Statement of Detective Senior Constable Sharrock, 3 August 2001, [3] (SCOI.02744.00149).

<sup>54</sup> Statement of Kenneth Bowditch, 19 February 2001, [7] (SCOI.02744.00150).

<sup>55</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 5 (SCOI.02751.00021).

<sup>56</sup> Statement of Kenneth Bowditch, 19 February 2001, [4] (SCOI.02744.00150).

<sup>57</sup> Exhibit 6, Tab 230, Statement of Detective Sergeant Stephen Page, 25 July 2002 [192] (SCOI.02744.00023).

<sup>58</sup> Statement of Kenneth Bowditch, 19 February 2001, [9] (SCOI.02744.00150).

<sup>59</sup> Exhibit 6, Tab 230, Statement of Detective Sergeant Stephen Page, 25 July 2002 [193] (SCOI.02744.00023).

<sup>60</sup> Statement of Craig Ellis, 25 September 2000, [16] – [17] (SCOI.02744.00139).

<sup>61</sup> Statement of Craig Ellis, 25 September 2000, [16] – [17] (SCOI.02744.00139).

<sup>62</sup> Statement of Craig Ellis, 25 September 2000, [18] (SCOI.02744.00139).

<sup>63</sup> Statement of Craig Ellis, 25 September 2000, [23] (SCOI.02744.00139).

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Park and on a rock ledge, saw a set of keys he recognised as Mr Warren's. He said the keys appeared to have been placed on the ledge, and were in a pocket which had been formed in the rock.<sup>64</sup>

79. There is no contemporaneous record of any steps whatsoever being taken by police after the occurrence and entry of DS Bowditch on 28 July 1989. At the Taradale inquest in 2003, DS Bowditch gave evidence that Mr Warren's case actively continued and was not closed until 19 August 1989. However, he was unable to nominate any steps actually taken beyond 28 July 1989.<sup>65</sup>
80. Mr Warren was reported missing to Paddington Police. Had the matter been investigated by Bondi detectives, it is possible that when Mr Russell, another gay man, was found at the base of a cliff at Marks Park some four months later, a connection between the two events may have been made.<sup>66</sup>
81. Instead, the matter remained at Paddington Police with DS Bowditch, who within less than a week evidently ceased doing whatever little he did, and recorded that *"Investigating police are of the opinion that the missing person has fallen into the ocean in some manner and it is anticipated that in the near future his body will surface and be recovered"*.<sup>67</sup>
82. The link between the two matters was not made until 1990-91, when DS McCann, the OIC of the investigations into the murders of Richard Johnson (at Alexandria in January 1990) and Krichikorn Rattanaajaturathaporn (near Marks Park in July 1990), documented a series of connections between and among other assaults on gay men, both in the Marks Park area and in other parts of Sydney. Among the incidents the subject of DS McCann's two reports (one in April 1991 and one in August 1991) were the disappearance of Mr Warren and the death of Mr Russell.<sup>68</sup>

### **JOHN RUSSELL**

83. Coroner Milledge's assessment was that, although a *"better investigation was undertaken for Mr Russell"*, *"it too was far from adequate"*.<sup>69</sup> Her Honour observed that *"[w]hilst it was known that Marks Park was an area where homosexual men were bashed and robbed, little investigation regarding this type of activity was undertaken into Mr Russell's death"*.<sup>70</sup>

<sup>64</sup> NSWPF Report of Occurrence, 'Enquiries in relation to missing person Ross Bradley Warren', 28 July 1989, 1 (SCOI.02744.00031).

<sup>65</sup> Extract of transcript of evidence of Kenneth Bowditch and Dr Alan Cala, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 2 April 2003, 29 (SCOI.84103).

<sup>66</sup> Exhibit 6, Tab 322, Evidence of Stephen Page, 31 March 2023, 62-63 (SCOI.00173.00002).

<sup>67</sup> NSWPF Report of Occurrence, 'Enquiries in relation to missing person Ross Bradley Warren', 28 July 1989, 1 (SCOI.02744.00031).

<sup>68</sup> Exhibit 6, Tab 233, Statement of Stephen McCann, 10 November 2022 (SCOI.77310); Exhibit 6, Tab 233A, Letter from Steve McCann to the Commander, Modus Operandi Section, 10 August 1991 (SCOI.10342.00010); Exhibit 6, Tab 233B, Letter from Steve McCann to Chief Superintendent Norm Maroney, 15 April 1991 (SCOI.10445.00128).

<sup>69</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 6 (SCOI.02751.00021).

<sup>70</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 6 (SCOI.02751.00021).



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84. Her Honour described the loss of the hairs that had been found on Mr Russell's hand, and the absence of forensic testing, as "*disgraceful*", and considered that no satisfactory explanation was given as to the loss of the exhibit.<sup>71</sup> Her Honour went on to say:

*In both Mr Warren's disappearance and Mr Russell's death there were similarities that should have linked them in the early stages of the investigation and suggested to the police the possibility of foul play in both deaths.*

*Both men were homosexual. The last place either man was prior to death was Marks Park. Mr Russell had coins scattered near his body, Mr Warren's keys were found on the rocks. These items were used by some men to attract attention in that area and may have been used for that purpose by the victims. Marks Park was a known area for brutal attacks on homosexual males. Yet investigating police believed Mr Warren and Mr Russell met their death by 'misadventure'.*

*The earlier investigations into these men were inadequate and naïve.*<sup>72</sup>

### Exhibits

85. Exhibits noted at the scene on 23 November 1989 included:
- (a) The clothing worn by Mr Russell, including jeans, sloppy joe and shoes;
  - (b) Some hairs adhering to his left hand;
  - (c) Some coins, a cigarette packet, a cigarette lighter and a Coca-Cola bottle.
86. None of these exhibits was subjected to any fingerprinting or forensic testing during the course of the initial investigation.<sup>73</sup> As to the cigarette packet and Coca-Cola bottle, PCC Dunbar's evidence at the Milledge Inquest was that "quite possibly" that was something that "simply did not occur to her".<sup>74</sup>

### The hairs on Mr Russell's hand

87. Officers who attended the scene, including Sergeant Ingleby, noted there was some hair adhering to the left hand of the body behind the left index finger.<sup>75</sup>

<sup>71</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 6 (SCOI.02751.00021).

<sup>72</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 8 (SCOI.02751.00021).

<sup>73</sup> Statement of Constable Dunbar, 16 February 1990 (SCOI.10551.00031); Extract of transcript of evidence of Dr Cala, Sally Johnston, [1403] Adrian Ingleby, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 2 April 2003, 56-57, 62-63 (SCOI.84026).

<sup>74</sup> Extract of transcript of evidence of Dr Cala, Sally Johnston, [1403] Adrian Ingleby, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 2 April 2003, 56-57 (SCOI.84026).

<sup>75</sup> Statement of Adrian Macdonald Ingleby, 7 June 2023, [104] (SCOI.83543); Statement of Sergeant Ingleby, 26 February 1990, [8] (SCOI.02744.00075).

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88. Sergeant Ingleby considered that the hairs alone raised the possibility that Mr Russell may have been thrown or pushed off the cliff top by a person or persons, and could have struggled for his life. He considered the hairs may well have come from someone else.<sup>76</sup>
89. At about 11.25am on 23 November 1989, DS Carl Cameron and DSC Manny Rivera from the NSW Police Crime Scene Unit arrived at the scene to conduct a forensic examination.<sup>77</sup> They both also observed the hairs on Mr Russell's hand. Detective Cameron took photos of the scene, including of the hairs on the hand.<sup>78</sup>
90. DS Cameron and/or DSC Rivera collected the hairs. What was then done with them is less than clear on the available evidence. However, what is clear is that:
- (a) no forensic testing was carried out on the hairs;
  - (b) by the time of the inquest, some seven months later on 2 July 1990, the hairs had been lost.<sup>79</sup>
91. On 24 November 1989, Peter Russell went to the Glebe morgue to identify his brother's body. He saw the blood on John's clothes, and he saw "brownish, blonde hairs next to John's thumb." He said the hairs "were not John's; they were too long and the wrong colour."<sup>80</sup>
92. Sergeant Ingleby has no knowledge of how the hair/s were lost or destroyed.<sup>81</sup>
93. The February 1990 statement of the OIC, PCC Dunbar, makes no mention of the hairs on Mr Russell's hand.<sup>82</sup>
94. At the Milledge inquest in 2003, PCC Dunbar (by then Ms Johnston) gave evidence that she remembered the hair being there but that she did not know what happened to it. She said she thought she would have been interested in the hair, but that she would have let the onus be on the scientific section to do "whatever they do with it". She said she did nothing with the hairs "except to hand them over to scientific". She said she "took it for granted" that "they would be looking after that". When asked why she did not chase up, or follow up, the hairs, she said "I can't answer that".<sup>83</sup>

<sup>76</sup> Statement of Sergeant Ingleby, 26 February 1990, [26] (SCOI.02744.00075).

<sup>77</sup> Statement of Detective Senior Constable Rivera, 5 March 2002, [4] (SCOI.02744.00196).

<sup>78</sup> Statement of Detective Carlton Cameron, 29 May 2002 (SCOI.10388.00175); Extract of transcript of evidence of Sue Thompson and Carlton Cameron, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 3 April 2003 (SCOI.02751.00003).

<sup>79</sup> Extract of transcript of evidence of Sue Thompson and Carlton Cameron, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 3 April 2003, 2 (SCOI.02751.00003).

<sup>80</sup> Statement of Peter Russell, 6 March 2023, [4] (SCOI.83423).

<sup>81</sup> Statement of Adrian Macdonald Ingleby, 7 June 2023, [76] (SCOI.83543).

<sup>82</sup> Statement of Constable Dunbar, 16 February 1990 (SCOI.10551.00031).

<sup>83</sup> Extract of transcript of evidence of Dr Cala, Sally Johnston, [1403], Adrian Ingleby, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 2 April 2003, 55-56, 62-63 (SCOI.84026).

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95. At the Milledge Inquest in 2003, a forensic pathologist, Dr Cala, gave evidence that whilst possible, he did not believe the hair on Mr Russell's hand belonged to Mr Russell, and that it appeared to have been pulled, or "tugged out" from another person.<sup>84</sup>
96. There are no recorded observations by any attending police officer as to a comparison between the hairs on Mr Russell's hand and Mr Russell's own hair.
97. The loss of this critical exhibit meant it was not tested at the time. Nor can it now be subjected to modern forensic testing. It may well have held the key to identifying the perpetrator of an attack on Mr Russell.
98. Coroner Milledge described the loss of these 'vital' hairs as 'disgraceful'. It is a fair characterisation.

### Mr Russell's clothing

99. After Mr Russell's funeral, his father Ted Russell received a call from the Glebe Coroners Court asking him to pick up a box of John's possessions. Peter Russell picked up the box but did not look in it. He gave the box to his father. When his father opened the box, he picked up John's clothes and said; "I can smell the boy". John's shoes, socks, jeans and sloppy joe were in the box, all "as it had been taken off John", ie still with blood and salt water on it.<sup>85</sup>
100. In December 1989, a mannequin wearing Mr Russell's clothing was displayed in Bondi as part of an appeal to the public for information.<sup>86</sup>
101. Peter Russell's recollection is that someone, presumably a police officer, contacted his father and asked for clothes similar to what Mr Russell had been wearing on the night that he died. His father gave police the whole box of John's clothes, just as Peter had collected them from the morgue.
102. Police set up the mannequin in Bondi. Peter went to have a look at it, and he saw that the clothes were spotless and the shoes were clean. It was obvious to him that the clothes "had been through the wash", because when he had seen them on John's body at the morgue, they were covered in blood and salt water.<sup>87</sup>
103. When the clothes were later returned to his father, Ted Russell said, "this has been washed".<sup>88</sup>

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<sup>84</sup> Extract of transcript of evidence of Kenneth Bowditch and Dr Alan Cala, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 2 April 2003, 12-13 (SCOI.84103); Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Milledge, Inquest into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 9 March 2005, 6 (SCOI.02751.00021).

<sup>85</sup> Statement of Peter Russell, 6 March 2023, [10]-[11] (SCOI.83423).

<sup>86</sup> Statement of Detective Inspector Nigel Warren, 30 March 2023, [12]-[40] (NPL.9000.0001.0001).

<sup>87</sup> Statement of Peter Russell, 6 March 2023, [12] (SCOI.83423).

<sup>88</sup> Statement of Peter Russell, 6 March 2023, [13] (SCOI.83423).

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104. On 30 March 2023, NSW Police provided the Inquiry with a statement by Detective Inspector Nigel Warren, which set out a detailed account, based on records available to him in 2023, of the sequence of events in relation to the handling of Mr Russell's clothing:<sup>89</sup> Among other things, DI Warren's statement refers to the following:
- a. On 1 December 1989, handwritten notes appear to state that Sergeant Ingleby attended 'CSU' at 3.15 – 3.30pm, to '*browse clothing of deceased*, also stating '*cleaned*' and '*for fitting to display model*'.<sup>90</sup> A further note appears to state, '*clothing for (dummy dressed)*'.<sup>91</sup>
  - b. On 9 December 1989, handwritten notes appear to state '*Rang Adrian I re above - dummy to be dressed I photo by Thurs 14112*'.<sup>92</sup>
  - c. On 10 December 1989, DSC Rivera took photographs of a mannequin wearing Mr Russell's clothing.<sup>93</sup> (PCC Dunbar said that photographs of that mannequin were published in the newspaper in order to try to generate further lines of enquiry.<sup>94</sup>)
  - d. Mr Russell's clothes are likely to have been returned to his family after they had been removed from the mannequin.<sup>95</sup>
105. DI Warren is unable to assist as to the precise means by which Mr Russell's clothing was 'cleaned' prior to being placed on the mannequin.
106. The 'cleaning' of the clothing is likely to have had at least some impact on the forensic testing subsequently undertaken in 2002, 2016 and 2023. The Inquiry's understanding is that cleaning agents will typically dilute and/or remove staining and therefore make the DNA less concentrated. If the DNA is not totally removed by such cleaning, degradation of DNA is likely which means that some of the larger fragments of DNA will be lost. These matters are referred to further below.

### Premature closing of the case

107. On 21 December 1989, David McMahon was confronted and assaulted near Marks Park by a group of 10 to 12 young persons, at a point on the cliff-top close to the point below which Mr Russell was found.<sup>96</sup> Sergeant Ingleby took a statement from Mr McMahon on 3 January 1990, and put the

<sup>89</sup> Statement of Detective Inspector Nigel Warren, 30 March 2023, [12]-[40] (NPL.9000.0001.0001).

<sup>90</sup> NSWPF, 'Compilation of Crime scene notes', 26 (NPL.0100.0002.0017).

<sup>91</sup> NSWPF, 'Compilation of Crime scene notes', 33 (NPL.0100.0002.0017).

<sup>92</sup> NSWPF, 'Compilation of Crime scene notes', 22 (NPL.0100.0002.0017).

<sup>93</sup> NSWPF Photo of mannequin (front facing), 5 May 2016 (NPL.0100.0002.0053).

<sup>94</sup> Transcript of evidence of Dr Cala, Sally Johnston, [1403], Adrian Ingleby, 2 April 2003, 54 (SCOI.84026).

<sup>95</sup> Statement of Detective Inspector Nigel Warren, 30 March 2023, [18]-[19] (NPL.9000.0001.0001).

<sup>96</sup> Statement of [DM] 3 January 1990, [5] (SCOI.10386.00085).

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statement, once completed, in the “in tray” for the Bondi detectives with a note, as he considered it relevant to the investigation of John Russell.<sup>97</sup>

108. On 12 January 1990, an article headed ‘*Mystery death of gay man near Bondi beat*’ was published in the Sydney Star Observer. The article stated that the investigating detectives believed the death “may have been a murder” but that there was no proof of foul play. PCC Dunbar, the OIC, was reported as having said that the possibility of murder had not yet been eliminated. The article said that “the possibility that gay bashers had thrown [John Russell] over the cliff to his death remained, as did the possibility of an accident.”<sup>98</sup>
109. On 16 February 1990, just a month after the article in the Star Observer, PCC Dunbar signed her statement. Her opinion, in that statement, was that there was no evidence to suggest there were suspicious circumstances surrounding Mr Russell’s death. PCC Dunbar continued:
- “It is my opinion that the deceased fell from the cliff top to where he was located. Whether this can be attributed to the deceased’s level of intoxication will be clear with the results of the forensic tests.”<sup>99</sup>
110. On the same day, PCC Dunbar produced a document titled ‘Information re death of John Alan Russell’, indicating that she had “made a thorough perusal of all records held at Bondi Police Station” and that she had found only two reports (one relating to Mr McMahon) that may relate to a pattern involving assaults and the homosexual community. However, PCC Dunbar acknowledged that victims of these types of assaults were “reluctant to report the attacks due to their belief they may be ridiculed in the proceedings following the report”, and that the low number of reported incidents “does not give a true indication”.<sup>100</sup>
111. On 26 February 1990, Sergeant Ingleby signed his statement for the inquest into the death of Mr Russell. In his statement, he said that he was aware that crimes of violence on the ‘homosexual element’ in the area were prevalent. He said he believed that “the level of unreported assaults and associated offences on the homosexual element in this area (and other areas) would be extremely high.”<sup>101</sup>
112. Nevertheless, it would appear that after about February 1990 there were no further steps taken by police to investigate Mr Russell’s death. The available evidence indicates that no canvassing of the

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<sup>97</sup> Statement of Adrian Macdonald Ingleby, 7 June 2023, [58] (SCOI.83543).

<sup>98</sup> ‘Mystery death of gay man near Bondi beat’, *Sydney Star Observer* (Sydney, 12 January 1990) (SCOI.02752.00109).

<sup>99</sup> Statement of Constable Dunbar, 16 February 1990, [14]-[15] (SCOI.10551.00031).

<sup>100</sup> NSWPF, ‘Assault incidences in the Bondi area with attackers believing their victims to be homosexuals’, 21 December 1989 (SCOI.02752.00107).

<sup>101</sup> Statement of Sergeant Ingleby, 26 February 1990, [16]-[17] (SCOI.02744.00075).

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local area was undertaken, other than the attempts by Sergeant Ingleby to locate a person called “Red”, whom a local person (Rodney Stinson) had suggested may have known something about an altercation in the relevant area, possibly on the night of Mr Russell’s death.<sup>102</sup> Nor were any witness statements apparently taken after that of Mr McMahon on 3 January 1990.<sup>103</sup>

113. Mr Ingleby’s view is that the Bondi detectives “were investigating Mr Russell’s death as ‘not suspicious’ from day one”. He said: “The focus of the investigation seems to have proceeded on the basis of ‘accident’ or ‘misadventure’, ignoring the potential new line of enquiry regarding the offenders who assaulted and robbed Mr McMahon.”<sup>104</sup>
114. It is submitted that the observations of Coroner Milledge, cited at [83] above, were amply justified. The original investigation in 1989-90 was essentially not an investigation of a possible homicide at all.

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<sup>102</sup> Statement of Sergeant Ingleby, 26 February 1990, [10]-[11] (SCOI.02744.00075); Statement of Adrian Ingleby, 7 June 2023, [36]-[44] (SCOI.83543).

<sup>103</sup> Statement of Constable Dunbar, 16 February 1990 (SCOI.10551.00031); First Statement of Constable Barrett, 1 December 1989 (SCOI.02744.00073); Extract of transcript of evidence of Dr Cala, Sally Johnston, [1403], Adrian Ingleby, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 2 April 2003 (SCOI.84026).

<sup>104</sup> Statement of Adrian Ingleby, 7 June 2023, [73]-[75] (SCOI.83543).

## D. 2000-2005: OPERATION TARADALE and THE MILLEDGE INQUEST

### 1990-1991: Investigation by Detective Sergeant McCann

115. As noted above, DS McCann was the lead investigator into the murders of Richard Johnson in January 1990 (in Alexandria) and Kritchikorn Rattanjurathaporn in July 1990 (at Marks Park).
116. In April 1991, DS McCann compiled a summary of connections and links he had uncovered, both in relation to the deaths of Mr Johnson and Mr Rattanjurathaporn and also in relation to other attacks on gay men, some of them also resulting in deaths, in various parts of Sydney up to that time.<sup>105</sup> These incidents included the deaths of William Allen (Alexandria), Wayne Tonks (Artarmon) and [REDACTED]<sup>106</sup> Relevantly for present purposes, they also included the disappearance of Mr Warren and the death of Mr Russell (both at Marks Park).
117. On 15 April 1991, DS McCann sent his summary, in the form of a letter, to Chief Superintendent Norm Maroney, who was then the Director of Operations at State Command.<sup>107</sup> DS McCann had in mind that State Command would sanction and resource a task force to investigate the incidents. However, he received no answer to the letter.<sup>108</sup>
118. On 10 August 1991, DS McCann sent a more detailed version of this summary, again in the form of a letter, to the Commander, Modus Operandi Section.<sup>109</sup>
119. DS McCann said that his understanding and expectation at the time was that the Modus Operandi Section would be able to locate and/or generate intelligence concerning the individuals and groups he had identified in his report and provide him with that intelligence. He considered that this may have enabled him to pursue further inquiries in relation to some of the unsolved deaths referred to in the report. Again, however, he received no response.<sup>110</sup>

### 2000-2002: Operation Taradale

120. In May 2000, DS Page, then the Investigations Manager at Rose Bay Local Area Command, received a file in relation to the disappearance of Mr Warren. Mr Warren's file contained a series of letters

<sup>105</sup> Exhibit 6, Tab 233, Statement of Stephen McCann, 10 November 2022 [11] (SCOI.77310).

<sup>106</sup> Exhibit 6, Tab 233A, Letter from Steven McCann to the Commander, Modus Operandi Section, 10 August 1991 (SCOI.10342.00010).

<sup>107</sup> Exhibit 6, Tab 233B, Letter from Steven McCann to Chief Superintendent Norm Maroney, 15 April 1991 (SCOI.10445.00128).

<sup>108</sup> Exhibit 6, Tab 233, Statement of Stephen McCann, 10 November 2022, [13]-[14] (SCOI.77310).

<sup>109</sup> Exhibit 6, Tab 233A, Letter from Steven McCann to the Commander, Modus Operandi Section, 10 August 1991 (SCOI.10342.00010).

<sup>110</sup> Exhibit 6, Tab 233, Statement of Stephen McCann, 10 November 2022, [17]-[18] (SCOI.77310).

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from his mother, Kay Warren, requesting that inquiries be made so that a death certificate could be issued in relation to her missing son.<sup>111</sup>

121. On becoming aware of Mrs Warren's requests, and of the belated and limited response she had received, DS Page began to examine documents associated with the 1989 investigation and requested resources to investigate the matter.<sup>112</sup>
122. Operation Taradale was subsequently established to investigate the disappearance and suspected death of Mr Warren in July 1989, the death of Mr Russell in November 1989, and the assault on David McMahon in December 1989 (which had also occurred at Marks Park).
123. In the course of his work in connection with this investigation, DS Page became aware of the two reports by DS McCann, dating from 1991, and of the possible links between and among various gangs operating in the relevant period both in the Bondi-Tamarama area and elsewhere in Sydney.
124. Apart from DS Page there were, at various stages of Operation Taradale, up to 12 police officers working on Operation Taradale.<sup>113</sup> The scope of Operation Taradale, as Mr Page said, was "very substantial".<sup>114</sup>
125. Mr Page gave evidence that Operation Taradale adopted "a 'bottom-up' approach", meaning that "the team went in with an open mind in an attempt to gather and understand the information that was 'out there'".<sup>115</sup> Operation Taradale "had no preconceptions" in relation to the likely manner and cause of death in relation to each case and "sought to explore all possible lines of inquiry in each case, including suicide, misadventure or foul play".<sup>116</sup>
126. Mr Page summarised some of the work of Operation Taradale as follows:<sup>117</sup>

[14] *[A]s part of Taradale we did a search of all known or reported assaults perpetrated in the relevant local area, being all around Bondi and Tamarama (not just assaults that occurred in Marks Park) and interviewed many victims of possible gay hate violence. This strategy led to useful intelligence being provided by a number of victims of assaults. Taradale also sought to obtain intelligence in other ways including by issuing media releases, canvassing members of*

<sup>111</sup> Exhibit 6, Tab 314, NSWPF Investigator's Note, 'Annexure 2 to statement of Detective Sergeant Stephen Page', 19 August 2002 (SCOI.82476); Exhibit 6, Tab 314A, Letter from Mrs Kay Warren to NSW Police, 15 July 1998 (SCOI.82478); Exhibit 6, Tab 314B, Letter from Mrs Kay Warren to Missing Persons Branch, NSW Police Headquarters, 5 September 1998 (SCOI.82475); Exhibit 6, Tab 314C, Letter from Mrs Kay Warren to NSW Missing Persons Unit, 1 December 1998 (SCOI.82473); Exhibit 6, Tab 314D, Letter from Mrs Kay Warren to NSW Missing Persons Unit, 26 May 1999 (SCOI.82479); Exhibit 6, Tab 314E, Letter from Mrs Kay Warren to the Crime Manager, Rose Bay Police, 7 December 1999 (SCOI.82477); Exhibit 6, Tab 314F, Letter from Mrs Kay Warren to the NSW Commissioner of Police, 26 April 2000 (SCOI.82474).

<sup>112</sup> Exhibit 6, Tab 160, Statement of Detective Sergeant Stephen Page, 28 August 2002, [3] (SCOI.02744.00024).

<sup>113</sup> Transcript of the Inquiry, 2 March 2023, T2347.15-T2347.17 (TRA.00031.00001).

<sup>114</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Steven Page, 16 February 2023, [17] (SCOI.82472).

<sup>115</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Steven Page, 16 February 2023, [12] (SCOI.82472).

<sup>116</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Steven Page, 16 February 2023, [12] (SCOI.82472).

<sup>117</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Steven Page, 16 February 2023, [13]-[15] (SCOI.82472).



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*the community and through covert surveillance. This intelligence was turned into evidence where possible.*

[15] *As part of its investigation, Taradale sought to learn about and understand the personal background of each of Mr Russell, Mr Warren and Mr Mattaini, through locating and speaking to their relatives and associates, reviewing their financial and medical background and any criminal history, and generally seeking to gain an understanding of their lifestyle and relationships.*

127. Among the many investigative techniques and steps pursued by Operation Taradale were:<sup>118</sup>
- Electronic surveillance by means of telephone interceptions: over 17,000 telephone calls were intercepted and monitored
  - Electronic surveillance by means of listening devices
  - Interviewing and taking statements from numerous POIs
  - Arranging a re-enactment of Mr Russell’s fall, by the use of a dummy, on 9 December 2001
  - Sending Mr Russell’s clothes to DAL for forensic testing including for DNA
  - Obtaining expert evidence from, among others Dr Cala (forensic pathologist), Dr Moynham (forensic pathologist) and Dr Brander (coastal geomorphologist)
128. By late July 2002, DS Page had completed the brief of evidence for submission to the Coroner.
129. That brief of evidence included a 287-page statement by him dated 25 July 2002, in relation to the disappearance and suspected death of Mr Warren and the death of Mr Russell (**Russell/Warren Statement**).<sup>119</sup>
130. However, in August 2002, in the wake of publicity concerning Operation Taradale, Anthony Wyszynski and Jacques Musy reported the disappearance of Mr Mattaini to DS Page.<sup>120</sup> Thereafter, Operation Taradale was expanded to include the disappearance of Mr Mattaini.
131. DS Page promptly took various steps to obtain information about Mr Mattaini, including obtaining statements from both Mr Wyszynski and Mr Musy.<sup>121</sup>
132. In his oral evidence, DS Page explained how he created the Musy statement, in particular paragraphs 5 and 6 thereof on page 2 (which refer to previous suicide attempts by Mr Mattaini). That is, he sat at his computer and typed what Mr Musy said on to the screen, with Mr Musy watching the screen as he did so. He asked Mr Musy “open-ended” questions about his recollections, and he typed what Mr Musy told him. Mr Musy did not say to him anything about suicide, or suicidal thoughts, in relation

<sup>118</sup> Exhibit 6, Tab 160, Statement of Detective Sergeant Stephen Page, 28 August 2002 (SCOI.02744.00024).

<sup>119</sup> Exhibit 6, Tab 160, Statement of Detective Sergeant Stephen Page, 28 August 2002 (SCOI.02744.00024).

<sup>120</sup> Transcript of the Inquiry, 28 February 2023, T2341-3 (TRA.00029.00001).

<sup>121</sup> Exhibit 6, Tab 159, Statement of Jacques Musy, 3 August 2002 (SCOI.02744.00381); Statement of Antony Jean Wyszynski, 3 August 2002 (SCOI.02744.00382).

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to Mr Mattaini, besides what appears in the statement. If Mr Musy had said anything else in relation to such topics, he would have included that in the statement.<sup>122</sup>

133. Mr Page was not challenged on this evidence, which should be accepted.
134. On 28 August 2002, DS Page completed his own second statement, of seven pages, summarising the information he had received, and the steps he had been able to take (in a matter of weeks), in relation to the disappearance and suspected death of Mr Mattaini (**Mattaini Statement**).<sup>123</sup>
135. These two statements by DS Page annexed a total of 276 documents. The documentary material before her Honour consisted of six lever arch folders.<sup>124</sup>

### Conclusions put forward by Operation Taradale

#### **GILLES MATTAINI**

136. In the Mattaini statement, at [825], DS Page summed up his views, as at 28 August 2002, as follows (emphasis added):

825. In so far as early opinions in relation to the factors surrounding the suspected death of MATTAINI, **I do not believe that homicide can be excluded** taking into account the fact MATTAINI has gone missing with items he usually takes when going for a walk, and his walks take him past Marks Park at Tamarama which is known to be a violent area for gay victims. **I am aware that MATTAINI has previously tried to take his own life, however**, there is a significant passage of time since that era and whatever factors that did exist causing him to be suicidal there is no evidence to suggest that those factors still existed. Considering these suicide attempts occurred in his early teens, the causes may well have been confusion over sexuality and loss of liberty whilst performing national service.

#### **ROSS WARREN**

137. In the Russell/Warren statement, DS Page summarised his views as follows:<sup>125</sup>
  - a. He noted that Mr Warren had not “let his financial affairs lapse”, which people contemplating suicide sometimes do, and that he appeared to be in good spirits.
  - b. He believed that Mr Warren was deceased and that it was likely that his body entered the water surrounding Marks Park.
  - c. He believed it was likely that Mr Warren’s keys had been placed where they were found, either by Mr Warren or by a finder.

<sup>122</sup> Transcript of the Inquiry, 28 February 2023, T2343-5 (TRA.00029.00001).

<sup>123</sup> Exhibit 6, Tab 160, Statement of Detective Sergeant Stephen Page, 9 March 2005, (SCOI.02744.00024).

<sup>124</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 9 (SCOI.02751.00021).

<sup>125</sup> Exhibit 6, Tab 230, Statement of Detective Sergeant Stephen Page, 25 July 2002, [791]-[795] (SCOI.02744.00023).

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- d. He did not believe Mr Warren attended Marks Park to commit suicide as he was a gay man attending a known beat at Marks Park and was likely there for a clandestine sexual encounter.
  - e. Taking into account violence against gay men at Marks Park, he believed it was likely that Mr Warren met his death at Marks Park as a result of violence.
  - f. Although available evidence showed the groups known as the Bondi Boys, the Tamarama Three and the Alexandria Eight were involved in violent offences towards the gay community in the vicinity of Marks Park, he was not able to offer an opinion as to who was responsible for Mr Warren's death.<sup>126</sup>
138. With respect to the adequacy of the initial police investigation, DS Page considered that it was flawed in the following respects:<sup>127</sup>
- a. The investigation was retained by a command not responsible for the incident scene;
  - b. The positioning of the subject vehicle and keys were not recorded by way of photograph;
  - c. There appeared to be no organised canvass conducted;
  - d. There was no brief of evidence submitted to the Missing Persons Unit or Coroner's Court (as required by legislation) to assist any subsequent investigations;
  - e. The diving unit was not utilised to conduct an underwater search in an effort to locate the body of Mr Warren;
  - f. Crime trends in relation to violence against members of the gay community were not monitored to establish whether it was likely that Mr Warren was the victim of foul play. It was illogical that the scenario of accidental death was considered likely in the very early stages of the investigation with foul play almost eliminated;
  - g. Other than the primary response controlled by Constable Robinson, the investigative follow up was negligible.

### **JOHN RUSSELL**

139. In the Russell/Warren statement, DS Page summarised his views as follows:<sup>128</sup>
- a. He did not believe Mr Russell attended Marks Park to commit suicide, as he was a gay man attending a known beat at Marks Park and was likely there for a clandestine sexual encounter.
  - b. Taking into account violence against gay men at Marks Park, he believed it was likely that Mr Russell met his death at Marks Park as a result of violence.

<sup>126</sup> Exhibit 6, Tab 230, Statement of Detective Sergeant Stephen Page, 25 July 2002, [791]-[793] (SCOI.02744.00023).

<sup>127</sup> Exhibit 6, Tab 230, Statement of Detective Sergeant Stephen Page, 25 July 2002, [796] (SCOI.02744.00023).

<sup>128</sup> Exhibit 6, Tab 230, Statement of Detective Sergeant Stephen Page, 25 July 2002, [793]-[795] (SCOI.02744.00023).

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- c. Although available evidence showed the groups known as the Bondi Boys, the Tamarama Three and the Alexandria Eight were involved in violent offences towards the gay community in the vicinity of Marks Park, he was not able to offer an opinion as to who was responsible for Mr Russell's death.<sup>129</sup>

These views, as is apparent, mirrored his views in relation to Mr Warren, set out above at [137d – f].

140. With respect to the adequacy of the initial police investigation, DS Page considered that it was flawed in the following respects:<sup>130</sup>

- a. There was no evidence of a canvas being conducted locally;
- b. The likelihood of death by violent means discounted at an early stage;
- c. The investigation failed to take into account the unusual positioning of Mr Russell's body, which was not consistent with a forwards motion fall, the presence of hair on Mr Russell's left hand, and the disturbance of vegetation on the cliff top above where Mr Russell's body was found; and
- d. The hair on Mr Russell's hand which may have belonged to an offender appeared to be misplaced and was not submitted for forensic examination.

### 2002 – 2005: the Milledge Inquest

141. The hearings in the Milledge Inquest commenced on 31 March 2003. On that day, Counsel Assisting made an opening address, as did counsel for the Commissioner of Police (who was represented by counsel and solicitors throughout the inquest).

142. Thereafter, there were a further eight hearing days in 2003 (in April and September). Closing addresses by both counsel were delivered on 23 December 2004.

143. As noted above, the brief of evidence, including the two statements by DS Page, comprised hundreds of documents as well as audio and video recordings, photographs and other exhibits.

144. Among the many witnesses who gave oral evidence were:

- DS Page himself
- Several survivors of violent attacks, including DM
- Numerous POIs and associates of POIs

<sup>129</sup> Exhibit 6, Tab 230, Statement of Detective Sergeant Stephen Page, 25 July 2002, [791]-[793] (SCOI.02744.00023).

<sup>130</sup> Exhibit 6, Tab 230, Statement of Detective Sergeant Stephen Page, 25 July 2002, [797] (SCOI.02744.00023).

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- Experts, including Dr Cala and Dr Brander
- As to Mr Mattaini: Mr Musy, Mr Wyszynski, Mr Hubert
- As to Mr Warren: Mr Ellis, former DS Bowditch
- As to Mr Russell: Mr Peter Russell, former PCC Dunbar, Sergeant Ingleby, former Detective Cameron

### Findings

145. On 9 March 2005, Coroner Milledge delivered her findings as to manner and cause of death:<sup>131</sup>

- **As to Gilles Mattaini**

“I find that Giles [sic] Jacques Mattaini died on or about the 15 September 1985 in Sydney. The cause and manner of his death remain undetermined as the evidence before me does not enable me to say”.

- **As to Ross Warren**

“I find that Ross Bradley Warren died in Sydney on or about 22 July 1989. Whilst the cause and manner of death are unknown, I am satisfied that the deceased was a victim of homicide perpetrated by person or persons unknown.”

- **As to John Russell**

“I find that John Alan Russell died at Marks Park, North Bondi between the 22 or 23 November 1989. The cause of death is multiple injuries sustained when he was thrown from the cliff onto rocks, by a person or persons unknown.”

146. Coroner Milledge also expressed clear views about certain other aspects of the evidence, including (emphasis added):

At page 3:

Mr Mattaini’s father was not close to his son and his mother believed it was possible that her son had ‘suicided’. There is no evidence before me to support the finding of ‘suicide’.

At page 14:

Many of the Marks Park victims that reported to police told of hearing their assailants threatening to throw them off the cliff face. There is no doubt that at the time of Mr Warren’s and Mr Mattaini’s disappearance and Mr Russell’s death that this was a Modus Operandi of some gay hate assailants. This strongly supports the probability that Mr Warren, Mr Mattaini and Mr Russell met their deaths this way.

To make a finding that each of these men were victims of homicide I must be satisfied to the ‘Briginshaw’ standard of proof that one or more persons were responsible for their deaths. That standard of proof is slightly higher than the usual ‘balance of probabilities’.

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<sup>131</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 14 (SCOI.02751.00021).

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I am comfortably satisfied that I can make the finding of 'foul play' in relation to Mr Warren and Mr Russell, but I cannot make a finding that Mr Mattaini met his death at the hands of another person or persons. The persons of interest that may have been responsible for the deaths of Mr Warren and Mr Russell would have been far too young at the time of Mr Mattaini's disappearance in August 1985.

I can however bring in a finding of 'death' for Mr Mattaini, but where and how he died remains unknown although there is a strong possibility that he died in similar circumstances to the other men.

## E. THE YEARS FROM 2005 TO 2015

147. Despite the findings made by Coroner Milledge in March 2005, and despite the Coroner's view that the information gathered by Operation Taradale would provide an excellent source of evidence for future re-investigation,<sup>132</sup> police did not review or otherwise make any use of the findings of the Milledge Inquest for many years.

148. In October 2012, the deaths of Mr Warren, Mr Russell and Mr Mattaini were examined by DSC Alicia Taylor of the UHT. In a document entitled 'Review of an Unsolved Homicide Case Screening Form' prepared by DSC Taylor and dated 25 October 2012,<sup>133</sup> DSC Taylor

- stated that, "*The investigation into the death of Ross Warren, John Russell and Gilles Mattaini was meticulously undertaken by an experienced investigator, Detective Sergeant Page.*"
- recommended that an opportunity existed, given the passage of time, to engage persons of interest via an undercover operation in relation to the murders of Mr Russell and Mr Warren.

149. On 15 August 2013, that recommendation was reviewed and endorsed by DCI John Lehmann.<sup>134</sup>

150. However, that recommendation was never adopted or implemented. No reinvestigation of the POIs was ever embarked upon.

151. Between July 2013 and September 2013, DCI Lehmann and DCI Young "*conducted an assessment of the 30 'unsolved' cases listed by Ms Thompson ...*".<sup>135</sup> They presented their conclusions in an Issue Paper as follows:

*Only 8 cases from 30 were probable or possible 'gay hate' motivated murders and these are on file at the Unsolved Homicide Team with consideration for future investigation.*

*There is no doubt that anti gay hostility, particularly in the 1980's and 1990's resulted in a number of murders and serious crime of violence in NSW. In my opinion, the suggestion of 30 'gay hate' related unsolved murders is a gross exaggeration. Certainly there was no consultation with this command prior to the Sydney Morning / Sunday Herald articles which I suggest is poor, irresponsible journalism bordering on sensationalism.*<sup>136</sup>

152. The Lehmann/Young Issue Paper included the following conclusions as to the three Bondi deaths:

<sup>132</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, Inquests into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 28 August 2002, 9 (SCOI.02751.00021).

<sup>133</sup> Exhibit 6, Tab 162, Strike Force Neiwand Review of an Unsolved Homicide Case Screening Form, 'John Russell, Ross Warren and Gilles Mattaini', 25 October 2012, 33 (NPL.0113.0001.0001).

<sup>134</sup> Exhibit 6, Tab 162A, NSWPF Investigators Note, 'Case review – Deaths of Russell, Warren and Mattaini', 15 August 2013 (SCOI.76962.00013).

<sup>135</sup> Exhibit 6, Tab 47, NSWPF Issue Paper, 'Assessment of 30 potential 'gay hate' unsolved homicides by the Unsolved Homicide Team (UHT) to determine if any bias motivation existed', 25 September 2013, 1 (SCOI.74906).

<sup>136</sup> Exhibit 6, Tab 47, NSWPF Issue Paper, 'Assessment of 30 potential 'gay hate' unsolved homicides by the Unsolved Homicide Team (UHT) to determine if any bias motivation existed', 25 September 2013, 9 (SCOI.74906).

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- a. Mr Warren: *"This case is probably a 'gay hate' motivated crime";*
  - b. Mr Russell: *"There are a number of suspects in a case that is probably 'gay hate' motivated";*  
and
  - c. Mr Mattaini: *"It is believed that Mattaini is a possible victim of 'gay hate' motivated crime."<sup>137</sup>*
153. In other words, notwithstanding their general view that the number of cases referred to in the media was a gross exaggeration, and that only eight of the 30 said to be "unsolved" were probable or possible hate crimes, DCI Lehmann and DCI Young considered that three of those eight were these three cases.
154. Again, however, no reinvestigation of these three deaths was embarked upon.
155. On 23 June 2015, the NSWPF announced rewards of \$100,000 for information leading to the conviction of person/s who may be responsible for the disappearance and suspected deaths of Mr Warren, Mr Russell and Mr Mattaini. Mr Willing was quoted as saying that *"the matters are the subject of review based upon coronial findings that they were suspicious in nature and possibly the result of gay-hate related crimes."<sup>138</sup>*
156. However, on the evidence available to the Inquiry, no such "review" of the three Bondi deaths was actually underway at that time. Indeed Mr Willing gave clear oral evidence that up to October 2015 there had never been any reinvestigation of these deaths.<sup>139</sup>
157. On 30 August 2015, Strike Force Parrabell (**SF Parrabell**) was established.
158. In October 2015, Strike Force Neiwand (**SF Neiwand**) was established.<sup>140</sup>

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<sup>137</sup> Exhibit 6, Tab 47, NSWPF Issue Paper, 'Assessment of 30 potential 'gay hate' unsolved homicides by the Unsolved Homicide Team (UHT) to determine if any bias motivation existed', 25 September 2013, 3, 5-6 (SCOI.74906).

<sup>138</sup> Exhibit 6, Tab 163, NSW Police Force Media Release, 'Deaths of Gilles Mattaini, Ross Warren and John Russell', 23 June 2015 (SCOI.76962.00014).

<sup>139</sup> Transcript of the Inquiry, 21 February 2023, T1757.16-30 (TRA.00024.00001).

<sup>140</sup> Exhibit 6, Tab 291, NSWPF Issue Paper, 'Request for creation of Terms of Reference and allocation of WBS number in relation to Strike Force Neiwand', 4 May 2016 (NPL.0115.0001.0009\_E).



## F. STRIKE FORCE NEIWAND – GENERALLY

### Reasons/purpose – stated and actual

159. The reasons why SF Neiwand was established at all, and why it was established at the time that it was, have been addressed in Part D of the submissions of Counsel Assisting in relation to Public Hearing 2: see in particular at [572] – [603].
160. Those Part D submissions, in their entirety, are adopted and reiterated here.
161. It is again submitted that one conclusion which, on the evidence, is available, is that significant reasons for the establishment of SF Neiwand were: the extensive and sustained media interest in matters involving suspected hate crime deaths; criticism of the police investigation of those deaths; and the significance which had been attributed to the Operation Taradale investigation, and the Milledge findings, in connection with the second and third inquests into the death of Scott Johnson.
162. Mr Willing denied that the purpose of SF Neiwand was to undermine and contradict the findings of Coroner Milledge.<sup>141</sup> However, he agreed that “*the course of action that ultimately seems to have evolved*” was that SF Neiwand was focused on analysing Operation Taradale and criticising it where possible.<sup>142</sup> Mr Willing said he could not comment on whether this was deliberate and if so, whose motivations these reflected.<sup>143</sup>
163. It is again submitted that in its implementation and outcomes, SF Neiwand was clearly aimed at discrediting both the work of Operation Taradale and Mr Page personally, and discrediting the findings of the Milledge Inquest as well. It is difficult to resist the conclusion that the eventual implementation and outcomes were consistent with the original objectives, even if those original objectives were not written down.

### The SF Neiwand documentation

164. As outlined in more detail in Part D of the submissions in relation to Public Hearing 2, the principal documents produced by SF Neiwand were:
- a. nine **Progress Reports**, between July 2016 and November 2017;<sup>144</sup>

<sup>141</sup> Transcript of the Inquiry, 20 February 2023, T1710.4-1711.8 (TRA.00023.00001).

<sup>142</sup> Transcript of the Inquiry, 21 February 2023, T1803.24-31 (TRA.00024.00001).

<sup>143</sup> Transcript of the Inquiry, 21 February 2023, T1803.23-45 (TRA.00024.00001).

<sup>144</sup> Exhibit 6, Tab 164A, Strike Force Neiwand, Progress Report, 1 July 2016 (SCOI.82054); Exhibit 6, Tab 164B, Strike Force Neiwand, Progress Report, 6 September 2016 (SCOI.82049); Exhibit 6, Tab 164C, Strike Force Neiwand, Progress Report, 26 October 2016 (SCOI.82053); Exhibit 6, Tab 164D, Strike Force Neiwand, Progress Report, 23 January 2017 (SCOI.82050); Exhibit

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- b. three **Summaries**, one for each of the three cases – the **SFN Mattaini Summary**,<sup>145</sup> the **SFN Warren Summary**<sup>146</sup> and the **SFN Russell Summary**;<sup>147</sup> and
- c. a post Operative Assessment (**POA**) which referred to all three cases.<sup>148</sup>
165. Each of the Neiwand Summaries (as well as most of the POA) was written by the OIC, DSC Chebl, and reviewed and accepted by the Investigation Supervisor, DS Morgan. Both are responsible for their contents. DSC Chebl left the NSWPF some years ago, but DS Morgan gave both written and oral evidence about his role (and that of DSC Chebl) in SF Neiwand.<sup>149</sup>
166. The Progress Reports, the Neiwand Summaries, and the POA all make clear that SF Neiwand made a deliberate choice not to pursue POIs such as gang members, even though Operation Taradale had identified many such persons. DS Morgan agreed that SF Neiwand “*made a deliberate decision*”, relatively early in the course of the Strike Force, not to pursue further those POIs, and instead to focus on other approaches, such as victimology.<sup>150</sup>
167. In the ‘Key Findings’ section of the POA, DI Leggat states that “Strike Force Neiwand investigators focused on victimology, associates and the last known movements of the three males”.<sup>151</sup> Both Mr Willing and DS Morgan agreed that this was an accurate summary of what (little) SF Neiwand actually did,<sup>152</sup> and that this was different both from what had been proposed in the Investigation Plan and from what Mr Willing thought SF Neiwand was going to do.<sup>153</sup>

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6, Tab 164E, Strike Force Neiwand, Progress Report, 20 March 2017 (SCOI.82048); Exhibit 6, Tab 164F, Strike Force Neiwand, Progress Report, 16 May 2017 (SCOI.82051); Exhibit 6, Tab 164G, Strike Force Neiwand, Progress Report, 17 July 2017 (SCOI.82055); Exhibit 6, Tab 164H, Strike Force Neiwand, Progress Report, 18 September 2017 (SCOI.82052); Exhibit 6, Tab 164I, Strike Force Neiwand, Progress Report, 20 November 2017 (SCOI.82047).

<sup>145</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [5] (SCOI.74881); Exhibit 6, Tab 172A, NSWPF Product Details Form, ‘Summary of Investigation – Gilles Mattaini’, 27 December 2017 (SCOI.76962.00004\_0001).

<sup>146</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [78] (SCOI.74883); Exhibit 6, Tab 174A, NSWPF Product Details Form, ‘Summary of Investigation – Ross Warren’, 8 January 2018 (SCOI.76962.00006\_0001).

<sup>147</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [139] (SCOI.74882); Exhibit 6, Tab 173A, NSWPF Product Details Form, ‘Summary of Investigation, John Russell’ (SCOI.76962.00005\_0001).

<sup>148</sup> Exhibit 6, Tab 176, Strike Force Neiwand, Post Operational Assessment, 22 February 2018 (SCOI.76962.00007).

<sup>149</sup> Exhibit 6, Tab 320, Statement of Detective Sergeant Steven Morgan, 8 April 2015 (NPL.3000.0003.2171); Transcript of the Inquiry, 22 February 2023, T1886-1925 (TRA.00025.00001); Transcript of the Inquiry, 23 February 2023, T1926-2056 (TRA.00026.00001); Transcript of the Inquiry, 24 February 2023, T2057-2187 (TRA.00027.00001); Transcript of the Inquiry, 27 February 2023, T2188-2303 (TRA.00028.00001); Transcript of the Inquiry, 28 February 2023, T2304-2337 (TRA.00029.00001). Transcript of the Inquiry, 23 February 2023, T1955.9-16 (TRA.00026.00001).

<sup>151</sup> Exhibit 6, Tab 176, Strike Force Neiwand, Post Operational Assessment, 22 February 2018, 13 (SCOI.76962.00007).

<sup>152</sup> Transcript of the Inquiry, 21 February 2023, T1808.40 (TRA.00024.00001); Transcript of the Inquiry, 23 February 2023, T2016.13 (TRA.00026.00001).

<sup>153</sup> Transcript of the Inquiry, 21 February 2023, T1808.44-1809.1 (TRA.00024.00001); Transcript of the Inquiry, 23 February 2023, T2016.17 (TRA.00026.00001).

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### The general attacks on Operation Taradale

168. As both Mr Willing and DS Morgan acknowledged, the Neiwand Summaries and the POA were replete with very serious criticisms of Operation Taradale and of then-DS Page.
169. Some of those criticisms, dealt with in the next section of these submissions, related to particular aspects of each case.
170. However, there were also several recurring attacks on Operation Taradale and Mr Page that were common to all three Summaries.
171. First, each Summary contained the following paragraph verbatim (emphasis added):
- On the 09/03/2005 Magistrate Jacqueline Milledge [Senior Deputy State Coroner] delivered her findings following an Inquest into [death], which was premised on the ‘gay hate’ line of inquiry. Operation Taradale focused on ‘gay hate’ and relied on **investigation confirmation bias** which was a major factor that ultimately **limited the validity of the Coroner’s findings**. Confirmation bias ‘is the tendency to bolster a hypothesis by **seeking consistent evidence while disregarding inconsistent evidence**. In criminal investigations, preference for hypothesis-consistent information could contribute to false convictions by leading investigators to disregard evidence that challenges their theory of a case.’<sup>154</sup>*
172. Secondly, both the Warren Summary and Russell Summary contained accusations to the effect that Operation Taradale had approached the investigation into these deaths with “tunnel vision”, by focusing on members of youth gangs, and that no other hypotheses were “considered” or “explained”.<sup>155</sup>
173. Thirdly, both the Warren Summary and Russell Summary also accused Operation Taradale of failing to conduct a thorough “victimology”.<sup>156</sup>
174. Mr Page gave unchallenged evidence emphatically rejecting all of these attacks and criticisms.<sup>157</sup> It is submitted that his evidence should be accepted.
175. Indeed, by the time both Mr Willing and DS Morgan had completed their oral evidence, all three of these criticisms had been abandoned.

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<sup>154</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [59] (SCOI.74881); Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [152] (SCOI.74882); Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [268] (SCOI.74883).

<sup>155</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [107], [148] (SCOI.74882); Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [79A] (SCOI.74883).

<sup>156</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [144] (SCOI.74882); Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [79C] (SCOI.74883).

<sup>157</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Steven Page, 16 February 2023 (SCOI.82472).

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176. Among the many places in the transcript where such abandonment was made clear were the following:

- (1) After he had been questioned at some length by Senior Counsel Assisting, DS Morgan was invited by senior counsel for the Commissioner of Police to agree, and he did agree, with a number of general propositions, including that:
  - (a) the vast majority of the criticisms, in the Neiwand Summaries, of Operation Taradale and DS Page, are unjustified;<sup>158</sup>
  - (b) all three investigations by DS Page were in fact very thorough and appropriate;<sup>159</sup>
  - (c) the allegations by SF Neiwand of “tunnel vision” and “confirmation bias” are unwarranted and unjustified;<sup>160</sup>
- (2) DS Morgan had previously made innumerable other concessions in answer to Senior Counsel Assisting, including that (among other things):
  - (a) It was “not correct”, and “factually wrong” for SF Neiwand to assert that Operation Taradale had focused on one line of inquiry and not considered victimology in relation to Mr Warren;<sup>161</sup>
  - (b) As to the accusations against Operation Taradale in the SFN Russell Summary:
    - “virtually every sentence, and every part of every sentence”, at [140], as to “crucial errors and oversights”, and “tunnel vision”, was “wrong”;<sup>162</sup>
    - the criticism at [143], in relation to the evidence of Mr McMahon, was “silly”;<sup>163</sup>
    - the criticisms at [144], relating to a “pre-conceived agenda”, use of victimology, and previous investigations, “did not make sense” and were “unmaintainable” (and, in the case of Mr Mattaini, also factually wrong);<sup>164</sup>
    - the accusation at [145], that evidence of misadventure was “discounted, with no corroborating evidence being submitted”, was “completely wrong” in the cases of both Mr Russell and Mr Warren.<sup>165</sup>

<sup>158</sup> Transcript of the Inquiry, 27 February 2023, T2272.18 (TRA.00028.00001).

<sup>159</sup> Transcript of the Inquiry, 27 February 2023, T2272.22, T2275 (TRA.00028.00001).

<sup>160</sup> Transcript of the Inquiry, 27 February 2023, T2290ff, T2295ff (TRA.00028.00001).

<sup>161</sup> Transcript of the Inquiry, 27 February 2023, T2208 (TRA.00028.00001).

<sup>162</sup> Transcript of the Inquiry, 27 February 2023, T2266 (TRA.00028.00001).

<sup>163</sup> Transcript of the Inquiry, 27 February 2023, T2267 (TRA.00028.00001).

<sup>164</sup> Transcript of the Inquiry, 27 February 2023, T2267-8 (TRA.00028.00001).

<sup>165</sup> Transcript of the Inquiry, 27 February 2023, T2268 (TRA.00028.00001).

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177. Mr Willing, for his part, also made numerous concessions about the inadequacies and inaccuracies of the Neiwand Summaries, including:
- (a) The SFN Mattaini Summary, at [55], was “completely wrong”;<sup>166</sup>
  - (b) The SFN Warren Summary, at [107], was “just not true”;<sup>167</sup>
  - (c) The accusations of “errors” and “oversights”, in the SFN Russell Summary at [140], were not correct and in at least one respect “ridiculous”;<sup>168</sup>
  - (d) The accusation at [143] of the SFN Russell Summary, relating to Mr McMahon, was also “ridiculous”;<sup>169</sup>
  - (e) The various criticisms in the SFN Russell Summary at [141] and [152] were also “ridiculous”.<sup>170</sup>

### **The focus of SF Neiwand was not on homicide**

178. Coroner Milledge found, in March 2005, that both Mr Warren and Mr Russell had been victims of homicide. Her Honour also clearly stated her view that it was probable that both they, and Mr Mattaini, had met their deaths at the hands of “gay hate assailants”.
179. AC Crandell gave evidence, in relation to the purpose of SF Neiwand, that “questioning a coroner’s finding I don’t think would be appropriate”. Where police undertook a new investigation “off our own instigation”, AC Crandell said he “would expect that to be to find the perpetrator rather than question the coroner’s finding”.<sup>171</sup>
180. AC Crandell also gave evidence, in relation to coronial findings generally and SF Parrabell, that his view was that “if a coroner made a finding, that we should be bound by that finding on that basis”.<sup>172</sup>
181. To similar effect, Mr Willing gave evidence that when a coroner makes a finding that a death is a homicide, the police are not “at liberty to just proceed as though that finding hadn’t been made and treat it as not a homicide”.<sup>173</sup>
182. However, it is submitted that the evidence overall establishes that that is just what SF Neiwand did. Indeed, Mr Willing conceded that this was so.<sup>174</sup>

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<sup>166</sup> Transcript of the Inquiry, 21 February 2023, T1833 (TRA.00024.00001).

<sup>167</sup> Transcript of the Inquiry, 21 February 2023, T1838 (TRA.00024.00001).

<sup>168</sup> Transcript of the Inquiry, 21 February 2023, T1840 (TRA.00024.00001).

<sup>169</sup> Transcript of the Inquiry, 21 February 2023, T1841 (TRA.00024.00001).

<sup>170</sup> Transcript of the Inquiry, 21 February 2023, T1848-9 (TRA.00024.00001).

<sup>171</sup> Transcript of the Inquiry, 6 December 2022, T679.13-41 (TRA.00011.00001).

<sup>172</sup> Transcript of the Inquiry, 6 December 2022, T686 (TRA.00011.00001).

<sup>173</sup> Transcript of the Inquiry, 20 February 2023, T1709.35-42 (TRA.00023.00001).

<sup>174</sup> Transcript of the Inquiry, 20 February 2023, T1710.5-9 (TRA.00023.00001).

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183. The focus of SF Neiwand was overwhelmingly, in all three cases, on factors pointing towards the possibility of suicide or misadventure, and not on factors pointing towards the possibility of homicide (especially not gay hate homicide).
184. The abundance of evidence which supports that proposition, in addition to the frank concession by Mr Willing, includes the following:
- (a) The deliberate decision by SF Neiwand to make no effort whatsoever to pursue the many dozens of POIs identified by Operation Taradale in relation to the 1989 deaths of Mr Warren and Mr Russell;<sup>175</sup>
  - (b) The failure by SF Neiwand to make any attempt to seek to identify possible POIs in the case of the 1985 death of Mr Mattaini;
  - (c) The concessions by DS Morgan, including that
    - SF Neiwand put far more effort into finding evidence that might indicate suicide or misadventure than it did into finding evidence that might indicate homicide;<sup>176</sup>
    - in the case of Mr Mattaini, SF Neiwand pursued no line of inquiry other than suicide;<sup>177</sup>
    - in the case of Mr Russell, SF Neiwand devoted its attention overwhelmingly to misadventure, and really made no inquiries at all directed to exploring the possibility of homicide;<sup>178</sup>
    - in the case of Mr Warren, SF Neiwand did nothing, itself, to pursue the possibility of gay hate homicide (as distinct from “domestic” homicide) other than to review what Operation Taradale had done;<sup>179</sup>
    - SF Neiwand itself, not Operation Taradale, could be seen to have engaged in “tunnel vision” and reliance on “confirmation bias”, at least in relation to the cases of Mr Mattaini<sup>180</sup> and Mr Russell.<sup>181</sup>

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<sup>175</sup> Transcript of the Inquiry, 23 February 2023, 1955.9-20; 2016.5-47 (TRA.00026.00001).

<sup>176</sup> Transcript of the Inquiry, 23 February 2023, 1955.22-40 (TRA.00026.00001).

<sup>177</sup> Transcript of the Inquiry, 23 February 2023, T2019-20 (TRA.00026.00001).

<sup>178</sup> Transcript of the Inquiry, 23 February 2023, T2020-21 (TRA.00026.00001); Transcript of the Inquiry, 27 February 2023, T2236 (TRA.00028.00001).

<sup>179</sup> Transcript of the Inquiry, 23 February 2023, T2019-2021 (TRA.00026.00001).

<sup>180</sup> Transcript of the Inquiry, 24 February 2023, T2163-5 (TRA.00027.00001).

<sup>181</sup> Transcript of the Inquiry, 27 February 2023, T2243 (TRA.00028.00001).

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185. It is submitted that the evidence establishes that SF Neiwand made virtually no attempt actually to investigate, as homicides, the deaths of any of these three men, notwithstanding that Coroner Milledge had expressly found the deaths of Mr Warren and Mr Russell to be homicides and had expressed the view that the death of Mr Mattaini was probably also a homicide.
186. Instead it directed its considerable efforts and resources, over some two years, to attempting to build a case for contradicting and overturning those findings. It did so without informing either the Coroner's office, or Mr Page, or the families of the three deceased men about whom those public findings had been made, or the public generally.

### **A review only, not a reinvestigation at all**

187. The Terms of Reference for SF Neiwand, and the Investigation Plan, describe it as a "reinvestigation" of the three deaths.
188. In fact, with minor exceptions, it was not a "reinvestigation" at all. Rather, it was essentially a review, on the papers, of the work of Operation Taradale.
189. Among the many aspects of the evidence which demonstrate this reality were the following:
- (a) Mr Willing, former Deputy Commissioner, made various concessions to that effect;<sup>182</sup>
  - (b) In the eighth Progress Report, as at September 2017, the Acting Commander Homicide, Detective Acting Superintendent Jason Dickinson, described SF Neiwand as "Cold Case. Evidentiary review";<sup>183</sup>
  - (c) DS Morgan acknowledged that that description was accurate;<sup>184</sup>
  - (d) In his oral evidence, AC Crandell indicated that his understanding had always been, prior to this Inquiry, that SF Neiwand was a review rather than a reinvestigation.<sup>185</sup>
  - (e) At the conclusion of his oral evidence (following his questioning over several days by Senior Counsel Assisting), DS Morgan was invited by senior counsel for the Commissioner of Police to make such a direct concession, and he then readily did so.<sup>186</sup>

### **The unfairness to DS Page**

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<sup>182</sup> Transcript of the Inquiry, 21 February 2023, T1784, T1801, T1803-4, T1808 (TRA.00024.00001).

<sup>183</sup> Exhibit 6, Tab 164H, Strike Force Neiwand, Progress Report, 18 September 2017, 6 (SCOI.82052).

<sup>184</sup> Transcript of the Inquiry, 23 February 2023, 2012 (TRA.00026.00001).

<sup>185</sup> Transcript of the Inquiry, 6 December 2022, T674.3-36 (TRA.00011.00001).

<sup>186</sup> Transcript of the Inquiry, 27 February 2023, T22275, T2290, T2297 (TRA.00028.00001).

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190. Mr Page was unaware of the existence of SF Neiwand until apprised of it by this Inquiry in late 2022.<sup>187</sup> At no stage did SF Neiwand inform Mr Page that it was making the accusations against him and Operation Taradale that it did. He was given no opportunity to respond to such accusations.
191. Yet the Neiwand Summaries, and the POA, including those damning accusations, were widely distributed within the NSWPF, including to very senior officers.<sup>188</sup> Reference is again made to Part D of the submissions of Counsel Assisting in relation to Public Hearing 2.
192. It is submitted that the failure to afford Mr Page any opportunity to answer the allegations against him was utterly unfair.
193. Mr Willing acknowledged that it was unfair.<sup>189</sup>
194. DS Morgan was only prepared to go so far as to say: “On face value, it appears to have been unfair not to have told him”,<sup>190</sup> and again later: “I can see that it appears to have been unfair to him, yes.”<sup>191</sup> The rather grudging nature of those responses did him little credit.

### Overturning the Milledge findings

195. The Neiwand Summaries purported to overturn the 2005 findings of the Milledge Inquest.
196. Coroner Milledge had returned findings of homicide for Mr Warren and Mr Russell, and an open finding for Mr Mattaini. Those findings are set out in full in section D above.
197. By contrast, SF Neiwand made the following findings (emphasis in original):

In relation to Mr Warren:

*“WARREN’S disappearance – cause and manner of death remain **‘undetermined’** despite the 2005 ‘homicide’ findings of the Coroner, which list it as a homicide. It is recommended that this investigation be listed as inactive and only reactivated if new and compelling evidence becomes available...”<sup>192</sup>*

In relation to Mr Russell:

*“The manner of RUSSELL’s death should be reclassified as **‘undetermined’** despite the 2005 ‘homicide’ findings of the Coroner. It is recommended that this investigation be listed as inactive and only reactivated if new and compelling evidence becomes available.”<sup>193</sup>*

In relation to Mr Mattaini:

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<sup>187</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Steven Page, 16 February 2023, [47] (SCOI.82472).

<sup>188</sup> Transcript of the Inquiry, 21 February 2023, T1819.40-T1829.10 (TRA.00024.00001).

<sup>189</sup> Transcript of the Inquiry, 21 February 2023, T1819.11-38 (TRA.00024.00001).

<sup>190</sup> Transcript of the Inquiry, 23 February 2023, T2035.29 (TRA.00026.00001).

<sup>191</sup> Transcript of the Inquiry, 24 February 2023, T2145.3 (TRA.00027.00001).

<sup>192</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [270] (SCOI.74883).

<sup>193</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation – John Russell, 8 January 2018, [154] (SCOI.74882).



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*“... it can be suggested that MATTAINI may well have taken his own life rather than met with foul play. ... MATTAINI's disappearance – cause and manner of death remain **‘undetermined’**. It is recommended that this investigation be listed as inactive and only reactivated if new and compelling evidence becomes available.”<sup>194</sup>*

198. The word “despite”, in the findings in relation to Mr Warren and Mr Russell, is remarkably audacious and insouciant, as well as unjustified.
199. DS Morgan agreed that each of the three Neiwand Summaries arrived at conclusions which essentially contradicted, first, the findings of homicide as to Mr Russell’s and Mr Warren’s deaths, and, secondly, the “*expression of probability*” in relation to the involvement of “gay hate assailants” in all three deaths.<sup>195</sup>
200. He also agreed that this contradiction of the coronial findings was made even though SF Neiwand had, in fact, uncovered nothing of any consequence beyond what was before Coroner Milledge.<sup>196</sup>
201. Mr Willing agreed that SF Neiwand had directly contradicted the findings of Coroner Milledge, without having made any attempt to explore the question of POIs.<sup>197</sup>
202. Mr Willing further agreed that for SF Neiwand to purport to say, as it did in all three Neiwand Summaries (see [197] above), that the cause and manner of death remain undetermined “despite” the homicide findings of the Coroner, was “*completely without foundation*”.<sup>198</sup>
203. Mr Willing agreed that it was “*breathtaking*”, and “*extraordinary*”, for SF Neiwand to reverse the decision of the Coroner. He said that he had never seen the like of it before.<sup>199</sup>
204. It is submitted that SF Neiwand had no proper or reasonable basis for contradicting the coronial findings in any way. It is further submitted that those findings should be confirmed: see section L below.

### Overall

205. The foregoing brief summary is sufficient, it is submitted, to establish that:
  - (a) SF Neiwand was mainly a review of, and an attack on, the work of Operation Taradale and DS Page;

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<sup>194</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [61] (SCOI.74881).

<sup>195</sup> Transcript of the Inquiry, 23 February 2023, T2031.32 (TRA.00026.00001).

<sup>196</sup> Transcript of the Inquiry, 27 February 2023, T2269.31 (TRA.00028.00001).

<sup>197</sup> Transcript of the Inquiry, 21 February 2023, T1811.10-16 (TRA.00024.00001).

<sup>198</sup> Transcript of the Inquiry, 21 February 2023, T1811.43 (TRA.00024.00001).

<sup>199</sup> Transcript of the Inquiry, 21 February 2023, T1815.2-31 (TRA.00024.00001).

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- (b) The various attacks by SF Neiwand on the methodology of Operation Taradale were unfounded, unjustified, and unsubstantiated;
- (c) In particular the accusations of investigation confirmation bias, of tunnel vision and of failing to use the techniques of victimology, were unfounded and wrong;
- (d) The investigations of the three deaths by Operation Taradale were appropriate and thorough (as eventually conceded by the Investigation Supervisor, DS Morgan);
- (e) Nothing in the evidence available to the Inquiry suggests other than that the work of Operation Taradale was (in the words of Coroner Milledge) “impeccable. Everything that could be done was done”;
- (f) SF Neiwand had absolutely no basis for its purported conclusions that the 2005 findings of Coroner Milledge should be overturned; its activities had uncovered no new evidence which casts any doubt on those findings;
- (g) The failure by SF Neiwand to afford any opportunity to Mr Page to answer the attacks made by it against him was unfair;
- (h) The failure to inform the Coroner’s Office of the purported (albeit baseless) findings of SF Neiwand, contradicting the express findings of a Coroner after a lengthy investigation and inquest, was not only “breathtaking” but indefensible.

## G. STRIKE FORCE NEIWAND – AS TO EACH OF THE THREE CASES

206. In this section, some submissions are made about particular aspects of each of the three Neiwand Summaries. Part D of the submissions of Counsel Assisting in relation to Public Hearing 2 are again adopted and reiterated, in particular paragraphs [648] – [661], and [700] – 755].

### THE SFN MATTAINI SUMMARY

207. SF Neiwand pursued no lines of enquiry other than suicide in relation to the death of Mr Mattaini. It made no attempt to investigate the possibility of homicide, at all.

208. As summarised in section D of these submissions above, DS Page took statements from Mr Musy and Mr Wyszynski in August 2002 (after they had been prompted by media reports in July 2002 about Operation Taradale to consider that Mr Mattaini’s disappearance might also have been associated with homicide), and he made a statement himself on 28 August 2002.

209. DS Morgan and DSC Chebl, as author and reviewer of the SFM Mattaini Summary, accused DS Page of deliberately not informing Coroner Milledge of information provided to him by Mr Musy in relation to previous suicide attempts and suicidal ideation on the part of Mr Mattaini, despite Mr Musy having told DS Page about those matters. They further alleged that such supposed withholding of information “was a key factor in the Coroner not considering suicide as a possibility in Mattaini’s disappearance”.<sup>200</sup>

210. The allegations in essence were these:

- (a) that Mr Mattaini had made “multiple” attempts at suicide;
- (b) that “throughout his relationship” with Mr Musy, Mr Mattaini spoke openly about dying, saying that he was comfortable with dying and that he preferred death to life, and said that if he did commit suicide he would do so in a way that no-one would find his body;
- (c) that Mr Musy told DS Page all these things in 2002 but DS Page failed to include them in Mr Musy’s statement;
- (d) that it was DS Page who had persuaded Mr Musy that Mr Mattaini’s disappearance was a homicide;

<sup>200</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [60] (SCOI.74881), see also [44]-[49] and [52].

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(e) that as a consequence, Coroner Milledge did not consider the possibility of suicide in relation to Mr Mattaini.

211. The evidence has established that all five of those allegations were completely wrong.
212. In the first place, Mr Mattaini had not made “multiple” suicide attempts, but a total of two such attempts. Both of those were explicitly set out in Mr Musy’s 2002 statement prepared by DS Page. Moreover, in Mr Musy’s opinion, the second incident such was probably not a “suicide attempt” at all, but more likely a device by which to bring his conscription in the French Army to an end.<sup>201</sup>
213. Secondly, Mr Musy made crystal-clear, both in his 2003 sworn oral evidence at the Milledge Inquest,<sup>202</sup> and in a communication to French Police in May 2017,<sup>203</sup> that the ideas about death summarised at [210(b)] above were ideas that Mr Mattaini had once had in his youth, many years earlier, before meeting Mr Musy, but that he had never had, or expressed, any such views ever since meeting Mr Musy (in about 1978).
214. Indeed Mr Musy’s 2003 sworn evidence was that being with him “had made [Mr Mattaini] forget about these thoughts or his problems he had in the past”, and that Mr Mattaini had remarked in more recent times “how stupid he had been before” to have had such ideas in the past.<sup>204</sup>
215. Thirdly, DS Page gave unchallenged evidence that Mr Musy did not say to him anything along the lines of what is summarised at [210(b)] above.<sup>205</sup>
216. Fourthly, Mr Musy and Mr Wyszynski did not get the idea that Mr Mattaini might have been the victim of a homicide from DS Page. On the contrary, the reason they went to the police, and spoke to DS Page, was that publicity about Operation Taradale and about gay hate deaths had come to their attention and had caused them to think that perhaps that was what had happened to their friend.<sup>206</sup>
217. Fifthly, the possibility of suicide most certainly was considered by Coroner Milledge in the case of Mr Mattaini. It was raised in the opening address of Counsel Assisting;<sup>207</sup> the two suicide attempts were expressly referred to in the statements of both Mr Musy and DS Page; it was referred to at length in

<sup>201</sup> Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003, 48.35, 49.19 (SCOI.82371).

<sup>202</sup> Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003, 48.53 - 49.21 (SCOI.82371).

<sup>203</sup> Exhibit 6, Tab 170, Cover sheet- record of interview with Jacques Musy (English Translation), 10 May 2017 (SCOI.10397.00006).

<sup>204</sup> Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003, 48.53 - 49.21 (SCOI.82371).

<sup>205</sup> Transcript of the Inquiry, 28 February 2023, T2344-5 (TRA.00029.00001)

<sup>206</sup> Transcript of the Inquiry, 28 February 2023, T2341.25-2342.30 (TRA.00029.00001); Statement of Antony Jean Wyszynski, 3 August 2002, [18] (SCOI.02744.00382); Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003, 56.31-33 (SCOI.82371).

<sup>207</sup> Exhibit 6, Tab 321, Transcript of Inquests into deaths of Ross Bradley Warren, Jacques Mattaini and John Allan Russell; *Opening address of Counsel Assisting the Coroner*, 31 March 2003 (SCOI.00173.00001).

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the oral evidence of Mr Musy on 1 April 2003; it was referred to in the closing address of Counsel Assisting;<sup>208</sup> and it was dealt with by Coroner Milledge in her findings.<sup>209</sup>

218. The allegations by SF Neiwand were apparently based mainly on four things:
- (1) An email from Ms Eyraud of the French Police dated 19 November 2016;<sup>210</sup>
  - (2) A conversation between DSC Chebl and Mr Musy on 8 December 2016, which was not recorded or transcribed but of which DSC Chebl made a typed note (IN-148) on 13 December 2016;<sup>211</sup>
  - (3) An email from Mr Musy to DSC Chebl on 10 December 2016,<sup>212</sup> the contents of which are also included, in full, in the Investigator's Note IN-148;<sup>213</sup> and
  - (4) A typed document dated 10 May 2017, translated from the French by using Google Translate, received by SF Neiwand on 19 December 2017, apparently being a note made by French Police of a communication by them with Mr Musy in May 2017.<sup>214</sup>
219. The May 2017 French document, albeit the subject of a clumsy and inadequate translation, also indicates with reasonable clarity Mr Musy's recollection that the suicidal ideation summarised at [210(b)] above, on the part of Mr Mattaini, had been in the past, and not at any time since meeting Mr Musy.<sup>215</sup>
220. As noted earlier, Mr Page was not given any opportunity by SF Neiwand to respond to the allegations. In his written and oral evidence to the Inquiry, he emphatically rejected them. He said he included in Mr Musy's statement everything that Mr Musy told him about suicide in relation to Mr Mattaini. That evidence was not challenged by senior counsel for the Commissioner of Police. The evidence of Mr Page should be accepted.

<sup>208</sup> Exhibit 6, Tab 323, Closing Addresses, Transcript of the Inquests into the suspected deaths of Ross Warren and Gilles Mattaini and death of John Russell, 23 December 2004 (SCOI.02751.00159).

<sup>209</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Jacqueline Milledge, 9 March 2005, 3 (SCOI.02751.00021).

<sup>210</sup> Exhibit 6, Tab 326, Email correspondence between Detective Senior Constable Michael Chebl and Magali Eyraud re: Assistance sought in relation to possible MAR, November 2016 (SCOI.82589).

<sup>211</sup> Exhibit 6, Tab 167, NSWPF Investigator's Note, 'Telephone call with Jacques Musy', 13 December 2016 (SCOI.10389.00041); Exhibit 6, Tab 167A, NSWPF Investigator's Note, 'Telephone call with Jacques Musy', 13 December 2016 (SCOI.10389.00042).

<sup>212</sup> Exhibit 6, Tab 167B, Select emails between Jacques Musy and Michael Chebl, 28 November 2016 - 10 December 2016 (SCOI.82480).

<sup>213</sup> Exhibit 6, Tab 167, Cover sheet – NSWPF Investigator's Note, 'Telephone call with Jacques Musy', 13 December 2016 (SCOI.10389.00041); Exhibit 6, Tab 167A, NSWPF Investigator's Note – Telephone call with Jacques Musy, 13 December 2016 (SCOI.10389.00042).

<sup>214</sup> Exhibit 6, Tab 170, Cover sheet- record of interview with Jacques Musy (English Translation), 10 May 2017 (SCOI.10397.00006).

<sup>215</sup> See, especially Exhibit 6, Tab 170, Cover sheet- record of interview with Jacques Musy (English Translation), 10 May 2017, 3 (SCOI.10397.00006).

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221. However, even putting aside that emphatic evidence from Mr Page, it is submitted that if the authors of the SFN Mattaini Summary had checked the transcript of the Milledge Inquest, in particular the evidence of Mr Musy and also the opening and closing addressees, they would have known that their allegations were unsustainable.
222. DS Morgan chopped and changed several times, during his oral evidence, as to whether he or DSC Chebl had, or had not, read the transcript of Mr Musy's evidence before Coroner Milledge.
223. Either DS Morgan and DSC Chebl did not read the transcript of Mr Musy's evidence to the Milledge Inquest, or they did read it but chose to omit any reference to it from the SFN Mattaini Summary. Either alternative is indefensible.
224. When shown the transcript of the opening address of Counsel Assisting at the Milledge Inquest, DS Morgan said he was "somewhat shocked" to see that the possibility of suicide by Mr Mattaini was considered by the Coroner and that therefore that accusation in the SFN Mattaini Summary was "quite wrong".<sup>216</sup>
225. In due course he conceded that to assert (as he and DSC Chebl had done) that the Coroner had not considered the possibility of suicide was "inaccurate" and "wrong", and that therefore the blame for her (supposedly) not doing so could not be laid at the feet of DS Page.<sup>217</sup>
226. Notwithstanding that concession, he nevertheless at first claimed to stand by his allegation that DS Page had deliberately withheld information from the Coroner, thereby causing her not to consider something that she should have.<sup>218</sup> He gave three reasons for doing so, namely:
- (1) that the Coroner was not told about Mr Mattaini feeling more comfortable with death than being alive;
  - (2) that the Coroner was not told about Mr Mattaini saying that if he did kill himself he wanted to make sure the remains were not found; and
  - (3) "most importantly, the fact that he claims that Mr Page convinced him that it was a homicide rather than a suicide or anything else".

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<sup>216</sup> Transcript of the Inquiry, 23 February 2023, T1973.45-1974.43 (TRA.00026.00001).

<sup>217</sup> Transcript of the Inquiry, 23 February 2023, T2053.27-38 (TRA.00026.00001).

<sup>218</sup> Transcript of the Inquiry, 23 February 2023, T2056. 5-21 (TRA.00026.00001).

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227. However, he eventually resiled from all three of those reasons.<sup>219</sup> He said he “withdrew” the first reason;<sup>220</sup> and he conceded that the second reason could not be “sustained”,<sup>221</sup> and that the third was “untenable”.<sup>222</sup>
228. As is apparent from the evidence summarised above, the first and third reasons were simply not true. As to the second, not only was Mr Page not told any such thing by Mr Musy, but (as DS Morgan conceded) Mr Musy was free to provide any recollections that he chose, when he was asked about suicidal ideation when he was in the witness box at the Milledge Inquest, and he did not mention this point. That choice on his part had nothing to do with Mr Page.
229. It is submitted that the accusations made by DS Morgan and DSC Chebl in the SFN Mattaini Summary, that DS Page deliberately withheld information from the Coroner thereby causing her not to consider suicide as a possibility, were and are completely without foundation. They should be rejected out of hand. For DS Morgan and DSC Chebl to have made them – which they did either in the teeth of Mr Musy’s sworn 2003 evidence, or alternatively without even checking that evidence – was disgraceful.
230. In addition, it may be noted that the SFN Mattaini Summary was also slanted in other ways – deliberately, it is submitted – towards suggesting the likelihood of suicide. For example:
- (a) It included Mr Wyszynski’s hearsay understanding (in his statement) that Mr Mattaini’s keys were still in the apartment,<sup>223</sup> but made no reference to Mr Wyszynski’s more equivocal evidence at the Milledge Inquest where he said that he had no specific recollection of Mr Ottaviani saying anything about the keys;<sup>224</sup>
  - (b) Similarly, it referred to Mr Musy having noticed that the yellow spray jacket was missing,<sup>225</sup> but conspicuously omitted the first hand evidence of Mr Musy that Mr Mattaini’s keys in fact were also missing;<sup>226</sup>

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<sup>219</sup> Transcript of the Inquiry, 24 February 2023, T2143.46-2144.4 (TRA.00027.00001).

<sup>220</sup> Transcript of the Inquiry, 24 February 2023, T2135.1-26 (TRA.00027.00001).

<sup>221</sup> Transcript of the Inquiry, 24 February 2023, T2137.14-2139.38; 2142.16-2143.44 (TRA.00027.00001).

<sup>222</sup> Transcript of the Inquiry, 24 February 2023, 2141.11-2142.14 (TRA.00027.00001).

<sup>223</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation - John Russell, 9 January 2018, [22] (SCOI.74882).

<sup>224</sup> Extract of oral evidence of Antony Wyszynski, Inquest into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003 (SCOI.84052).

<sup>225</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation - John Russell, 9 January 2018, [24] (SCOI.74882).

<sup>226</sup> Exhibit 6, Tab 159, Statement of Jacques Musy, 3 August 2002, [20] (SCOI.02744.00381).

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- (c) It asserted that the issue relating to his visa expiring “appeared to weigh heavily on Mattaini’s mind”,<sup>227</sup> whereas the express evidence of Mr Musy was that “it was not something which was really sort of weighing on him constantly not at all”.<sup>228</sup>

231. Overall it is submitted that the SFN Mattaini Summary, aimed as it plainly was at advancing only a suicide hypothesis, and at discrediting DS Page, was at least incompetent, if not dishonest. It should be comprehensively rejected.

### THE SFN WARREN SUMMARY

232. Operation Taradale had identified large numbers of POIs in respect of the deaths of Mr Warren and Mr Russell. Many of those persons were members or associates of various gangs which operated not only in the Bondi-Tamarama area but also in other parts of Sydney including Alexandria, Oxford Street and Kings Cross.

233. In February 2016, DS Penny Brown (then OIC of both SF Neiwand and SF Macnamir) sent an email to officers on the Neiwand team attaching a spreadsheet of 116 POIs.<sup>229</sup> However, as outlined above, SF Neiwand made a deliberate decision not to pursue any of those POIs by any fresh investigative means. On the evidence available to the Inquiry, only one of them was spoken to by SF Neiwand, but even then the subject of that conversation was not anything related to the deaths of Mr Warren or Mr Russell, but rather was about what that person might say, or have said, to the makers of the SBS/Blackfella Films programme ‘Deep Water’.<sup>230</sup>

234. Instead, SF Neiwand

- (a) reviewed the work of Operation Taradale and made criticisms of it; and
- (b) interviewed certain persons (most of whom had already previously been interviewed by Operation Taradale) in relation to the possibilities of either suicide or a “domestic” (non-gay hate-related) homicide.

235. The SFN Warren Summary devoted many pages to summarising some of what had been uncovered by the work of DS McCann in the early 1990s and DS Page in the early 2000s, as to the “spate” of violent attacks on gay men in the Bondi-Tamarama area, and the activities of various gangs in

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<sup>227</sup> Exhibit 6, Tab 173, Strike Force Neiwand, Summary of Investigation - John Russell, 9 January 2018, [28] (SCOI.74882).

<sup>228</sup> Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003, 49.44-58 (SCOI.82371).

<sup>229</sup> Exhibit 6, Tab 306, Email from Penelope Brown to Strike Force Neiwand team re: SF – Neiwand/Taradale spreadsheet of suspects and victims and general business, 1 February 2016 (NPL.3000.00001.0026).

<sup>230</sup> Transcript of the Inquiry, 27 February 2023, T2220.14-17 (TRA.00028.00001); Exhibit 6, Tab 168, NSWPF Investigator’s Note, ‘Contact with NP34’, 30 March 2017 (SCOI.10389.00081).



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connection with many of those attacks: see the SFN Warren Summary at [62] – [84], [104] – [112], and [152] – [164].

236. Those same paragraphs, with minor editorial variations, were also included in the SFN Russell Summary: see in that Summary [43] – [65], [66] – [70], [77] – [91].
237. As DS Morgan conceded, none of the lines of enquiry favoured by SF Neiwand, as to suicide or “domestic” homicide, actually “led anywhere in the end”, and “the basic upshot” in relation to Mr Warren was that the work of SF Neiwand “did not shed any further light on what had happened to Mr Warren, in the end”.<sup>231</sup>
238. Yet notwithstanding those concessions, DS Morgan was not prepared also to concede that SF Neiwand accordingly had no reasonable or proper basis for contradicting the findings of Coroner Milledge.<sup>232</sup>
239. However, it is submitted that such a conclusion is inescapable.
240. Mr Page responded to the SFN Warren Summary at [88]-[107] of his statement.<sup>233</sup> That evidence, from [92] onwards, is reproduced in Part D of the submissions of Counsel Assisting in relation to Public Hearing 2.
241. It is submitted that Mr Page is correct in his view that the possibility that Mr Warren’s case was a “domestic” homicide involving a former partner, a possibility evidently favoured by Neiwand, is unlikely. Neiwand provided no indication of any plausible motive, or opportunity, to substantiate such a theory. Mr Page said he knew of no other “domestic” homicides that happened to have occurred at beats. Moreover, Taradale had looked at the close associates of Mr Warren including his friends and partners, and there was no indication of any conflict in his former relationships which might have impacted on his disappearance.
242. In its “Key Findings” section (the last four paragraphs of the SFN Warren Summary), Neiwand nominated, at [269], three matters which it regarded as having been “established”, evidently as bearing upon the possibility of suicide, namely:
- (1) the possibility that Mr Warren had been exposed to HIV through his relationship with NP93  
NP93
  - (2) Mr Warren’s supposed unrequited romantic interest in NP93 and Kingi Marsh; and
  - (3) Mr Warren’s failure to gain employment with a major television network.

<sup>231</sup> Transcript of the Inquiry, 27 February 2023, T2220.19-45 (TRA.00028.00001).

<sup>232</sup> Transcript of the Inquiry, 27 February 2023, T2221.18-21 (TRA.00028.00001).

<sup>233</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Steven Page, 16 February 2023 (SCOI.82472).

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243. First of all, as pointed out by Mr Page, these appear to be little more than speculative theories.
244. Secondly, even SF Neiwand acknowledged that suicide was an “unlikely scenario” in Mr Warren’s case. These speculative theories were nevertheless advanced, as factors that “may have led to him to taking his own life” – “despite his family and friends saying that he wasn’t suicidal or depressed” at the time,<sup>234</sup> and despite other evidence that also tends against suicide as a possible manner of death, including that Mr Warren locked his car, took his keys with him, and was a gay man attending a location that he knew was a beat.

### THE SFN RUSSELL SUMMARY

245. In the case of Mr Russell, again SF Neiwand made no attempt to investigate the possibility of homicide.
246. Instead its efforts were directed almost exclusively to advancing and bolstering a theory of misadventure – ie that Mr Russell had accidentally fallen to his death, possibly as a result of his level of intoxication.<sup>235</sup>
247. The three main components of SF Neiwand’s focus on the misadventure theory were:
- (1) Mr Russell’s blood alcohol concentration, and the evidence of Dr Moynham;
  - (2) suggested differences of opinion between two forensic pathologists, Dr Cala and Dr Duflo; and
  - (3) the views of Sergeant Cameron, a crime scene officer, as to the disturbance of the bushes at the top of the cliff.
248. Each of these topics is the subject of submissions in Part D of the submissions of Counsel Assisting in relation to Public Hearing 2: see in particular at [719] – [734]. Those submissions, as previously noted, are adopted and reiterated.
249. In addition, the following further submissions are made.
250. As to the blood alcohol concentration, the evidence of Dr Moynham is outlined at section J below. That evidence, along with Mr Page’s unchallenged evidence at [120] – [134] of his statement,<sup>236</sup> and the factors to which he there refers, are sufficient to show that Mr Russell’s blood alcohol concentration is capable of supporting both the possibility of homicide and that of misadventure.

<sup>234</sup> Exhibit 6, Tab 174, Strike Force Neiwand, Summary of Investigation – Ross Warren, 8 January 2018, [263] (SCOI.74883).

<sup>235</sup> Transcript of the Inquiry, 27 February 2023, T2236.33-43 (TRA.00028.00001).

<sup>236</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Steven Page, 16 February 2023 (SCOI.82472).

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251. As to Drs Cala<sup>237</sup> and Duflou,<sup>238</sup> both experts:
- (a) considered the position of Mr Russell's body to be unusual for a fall, such that foul play (being thrown or pushed) was possible;
  - (b) thought that the hairs on Mr Russell's hand were more likely to be from a second person than to be Mr Russell's own hair;
  - (c) considered that some of the bruising on Mr Russell's head could have come from an assault prior to death;
  - (d) acknowledged that misadventure could not be ruled out.
252. It is submitted that overall the two experts were largely in agreement, that the few differences between their respective views were relatively slight, and that Dr Duflou's findings did not "differ significantly" from those of Dr Cala (as asserted by DS Morgan at [67] in his statement).<sup>239</sup>
253. DS Morgan made numerous concessions to that effect in the course of his examination by Senior Counsel Assisting.<sup>240</sup>
254. At the conclusion of his oral evidence, DS Morgan was then asked a number of leading questions by senior counsel for the Commissioner of Police, which questions contained within them the proposition that at the Milledge Inquest Dr Cala was positively advancing, and favouring, the theory that assault was most likely.<sup>241</sup> DS Morgan promptly adopted that proposition, and thereafter changed his position so as to say that in his view Dr Cala definitely favoured assault whereas Dr Duflou merely considered it a possibility.<sup>242</sup> It is submitted that such a characterisation does not accurately reflect the views actually expressed by the two experts (particularly having regard to the way in which questions – themselves also leading questions – had been put to Dr Cala at the Milledge Inquest by counsel for the Commissioner of Police).<sup>243</sup>
255. As to Sergeant Cameron, the suggestion sought to be derived from his evidence is set out at [150] of the SFN Russell Summary. That suggestion is that:

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<sup>237</sup> Exhibit 6, Tab 157, Expert Certificate of Dr Allan Cala (forensic pathologist), 14 August 2001 (SCOI.10386.00142); Exhibit 6, Tab 327, Extract of evidence of Dr Allan Cala, transcript of Inquests into the suspected deaths of Ross Warren and Gilles Mattaini and death of John Russell, 2 March 2003, T17.26-50, 19.6-37 (SCOI.82588).

<sup>238</sup> Exhibit 6, Tab 171, Expert Certificate of Professor Johan Duflou (forensic pathologist), 16 August 2017 (SCOI.10385.00060).

<sup>239</sup> Exhibit 6, Tab 5, Statement of Detective Sergeant Steven Morgan, 31 October 2022, [65] (SCOI.76962).

<sup>240</sup> See e.g., Transcript of the Inquiry, 27 February 2023, T2248.32-40, 2249.5-13, 2249.22-46, 2253.16-43, 2254.32-34, 2255.20-24, 2256.7-26, 2257.47-2258.6, 2258.34-2260.3, 2261.42-2262.23, 2263.18-43 (TRA.00028.00001).

<sup>241</sup> For example, see Transcript of the Inquiry, 28 February 2023, T2316.6-11, T2320.8-15 (TRA.00029.00001).

<sup>242</sup> Transcript of the Inquiry, 28 February 2023, T2322.33-2323.4 (TRA.00029.00001).

<sup>243</sup> Exhibit 6, Tab 327, Extract of evidence of Dr Allan Cala, transcript of Inquests into the suspected deaths of Ross Warren and Gilles Mattaini and death of John Russell, 2 March 2003, T17.26-50, 19.6-37 (SCOI.82588).

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“If we accept that evidence of the shrubbery on the cliff top being disturbed, then consideration needs to be given to the fact that Russell had strands of grass near and underneath his body on the rock shelf. This would refute the theory of him being thrown over the edge of the cliff.”

256. It is submitted that, as Mr Page contended,<sup>244</sup> this theory does not withstand scrutiny. It is at least equally possible, for example, that shrubbery could be disturbed during a struggle.
257. As with each of the other two Neiwand Summaries, it is submitted that SF Neiwand had no proper or reasonable basis for its purported conclusions that the 2005 findings of Coroner Milledge should be overturned.

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<sup>244</sup> Exhibit 6, Tab 253, Statement of former Detective Sergeant Steven Page, 16 February 2023, [126] (SCOI.82472).

## H. STRIKE FORCE PARRABELL

### *GILLES MATTAINI*

#### *Use of the Bias Crimes Indicators Form*

258. Of the ten indicators in the Bias Crime Indicators Form (BCIF):<sup>245</sup>
- a. None was answered “Evidence of Bias Crime”;
  - b. Five were answered “Suspected Bias Crime”, namely: “Organised Hate Groups”, “Previous existence of Bias Crime Incidents”, “Victim/Witness Perception”, “Motive of Offender/s” and “Location of Incident”;
  - c. Four were answered “Insufficient Information”, namely: “Differences”, “Comments, Written Statements and Gestures”, “Lack of Motive” and “Level of Violence”;
  - d. One was answered “No Evidence of Bias Crime”, namely: “Drawings, Markings, Symbols, Tattoos, Graffiti”.
259. In answering “No Evidence of Bias Crime” to the “Drawings, Markings, Symbols, Tattoos, Graffiti” indicator, the BCIF refers generally to some of the suspects identified by Operation Taradale as “likely responsible for the assaults and murders in the Bondi area”. Yet similar references to such groups and individuals, provided in respect of the “Organised hate Groups” indicator, led to the answer “Suspected Bias Crime”.
260. Most responses, although not all, proceed as though the work of Operation Taradale, in identifying POIs relevant to the two 1989 deaths, was also relevant to the 1985 death of Mr Mattaini. In most responses, although not all, there appears to be no appreciation or recognition on the part of the SF Parrabell officers that that work, and those POIs, were not put forward by Operation Taradale as relating to Mr Mattaini’s death.

#### *Results of Strike Force Parrabell*

- (a) The “Summary of Findings” box
261. The “Summary of Findings” section gives an overall categorisation of “Insufficient Information”. Again, no indication is present of any awareness on the part of the SF Parrabell officers that Operation Taradale had not had any opportunity in late 2002 to investigate the 1985 death of Mr Mattaini in the same comprehensive way that it had investigated the two 1989 deaths.

<sup>245</sup> Strike Force Parrabell, Bias Crimes Indicators Review Form – Gilles Mattaini, undated (SCOI.74972).

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(b) Case Summary

262. The Case Summary for this matter (case summary number 19) reads as follows:<sup>246</sup>

**Identity:** Giles Mattaini was 27 years old at the time of his death.

**Personal History:** In 1983 Mr Mattaini moved to Australia with his partner. At the time of his death Mr Mattaini had overstayed his visa which was causing him distress. Mr Mattaini was known to take long walks along the Marks Park walking track. Whilst the location was well known as a 'gay beat', Mr Mattaini did not frequent the area for this reason. A friend engaged in the original search for Mr Mattaini believed he had been reported missing to Police, however no such report could be found and no police investigation was undertaken at the time. It was not until 2002 that the death of Mr Mattaini was formally recorded as reported to Police following media attention surrounding Strike Force Taradale.

**Location of Body/Circumstances of Death:** Mr Mattaini was last seen walking along the Marks Park walking track at Bondi on or about 15 September 1985. Strike Force Taradale identified a number of youth gangs involved in assault and robbery offences targeting gay men around Marks Park and Tamarama during 1989/1990. There was no direct evidence available to link the same group to the earlier death of Mr Mattaini. No suspects have been identified as involved in the death of Mr Mattaini. Mr Mattaini's body was never recovered.

**Sexual Orientation:** Mr Mattaini identified as gay.

**Coroner/Court Findings:** In 2005, the Deputy State Coroner declared Mr Mattaini formally deceased, but where and how he died remains unknown. The Deputy State Coroner stated, "*... there is a strong possibility that he died in similar circumstances to the other men (Warren and Russell).*" The Deputy State Coroner determined, '*Giles Jacques Mattaini died on or about 15 September 1985 in Sydney, the cause and manner of death are undetermined as the evidence before me does not enable me to say.*' The Deputy State Coroner also found that, '*the persons of interest that may have been responsible for the deaths of Mr Warren and Mr Russell would have been far too young at the time of Mr Mattaini's disappearance in August 1985.*'

**SF Parrabell concluded there was insufficient information to establish a bias crime**

263. The assertion that Mr Mattaini was last seen "walking along the Marks Park walking track at Bondi" is a strange amalgam of the inaccurate (Marks Park) and the accurate (Bondi).

(c) Academic review

264. The academic review also categorised this matter as "Insufficient Information".<sup>247</sup> In explaining their use of the term "Insufficient Information", the academic team said:

That is, despite an exhaustive exploration of the archived material, it was ultimately impossible for the detectives to make definitive determinations about many of the deaths under review, and based on available information, the academic reviewers concur. Part of the reason this was the case can be attributed to a relative paucity of information.<sup>248</sup>

<sup>246</sup> Exhibit 6, Tab 49, Strike Force Parrabell, Case Summaries – Gilles Mattaini, undated, 9 (SCOI.76961.00014).

<sup>247</sup> Exhibit 6, Tab 49, Strike Force Parrabell, Case Summaries – Gilles Mattaini, undated, 9 (SCOI.76961.00014).

<sup>248</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 54 (SCOI.02632).

**ROSS WARREN*****Use of the Bias Crimes Indicators Form***

265. Of the ten indicators in the Bias Crimes Indicators Form (BCIF):
- a. one was answered "Evidence of Bias Crime", namely: "Location of Incident";
  - b. seven were answered "Suspected Bias Crime", namely: "Differences", "Comments, Written Statements, Gestures", "Organised Hate Groups (OHG)", "Previous existence of Bias Crime Incidents", "Victim/Witness perception", "Motive of Offender/s" and "Level of "Violence";
  - c. one was answered "No Evidence of Bias Crime", namely: "Drawings, Markings, Symbols, Tattoos, Graffiti"; and
  - d. one was answered "Insufficient Information", namely: "Lack of Motive".
266. As to "No Evidence of Bias Crime", a similar observation is made as in the case of Mr Mattaini: see [259] above.
267. Whereas for Mr Warren, the location of the incident (Marks Park) resulted in the positive finding "Evidence of Bias Crime", for Mr Mattaini the same location resulted (anomalously) in a different finding, namely "Suspected Bias Crime".
268. Remarkably, for Mr Warren (1989), "Previous Existence of Bias Crime Incidents" is given the response "Suspected Bias Crime", rather than "Evidence of Bias Crime". Yet the abundance of evidence accumulated by Operation Taradale and accepted by Coroner Milledge (as to the many violent attacks on gay men in the area) was well known to SF Parrabell (and indeed some of it is referred to at some length elsewhere in the BCIF).

***Results of Strike Force Parrabell***

- (a) The "Summary of Findings" box
269. The Summary of Findings categorises this case overall as "Suspected Bias Crime".
270. How such a categorisation can be made notwithstanding the express findings of Coroner Milledge, and notwithstanding the stated position of AC Crandell, in his evidence to this Inquiry, referred to at [177] and [178] above, is not apparent.
- (b) Case Summaries
271. The Case Summary for this matter (case summary number 34) reads as follows:

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**Identity:** Ross WARREN was 25 years old at the time of his death.

**Personal History:** Mr Warren was a popular newsreader working for NBN (*sic*).

**Location of Body/Circumstances of Death:** Mr Warren was last seen driving along Oxford Street, Darlinghurst on 22 July 1989. He had been socialising with friends. The keys to his car were found 2 days later on a rock ledge below a cliff at Marks Park, Tamarama. His car was located nearby. His body has never been found. Mr Warren frequented gay beats, specifically Marks Park. In 2002, the disappearance of Mr Warren was reinvestigated by Strike Force Taradale which identified a number of youth gangs involved in assault and robbery offences targeting men perceived to be gay around Marks Park and Tamarama. Strike Force Taradale identified sexuality based animosity between suspects and gay men including homophobia, group initiation, proving masculinity, robbery, and a belief that gay men were soft targets who will not fight back or complain to authorities. Strike Force Taradale indicated possible links between other murders and violent assaults against gay men in this area and other gay beats. One identified link involved groups of youths targeting gay men at Bondi and Alexandria including the murder of William Allen (Parrabell Case 30); the murder of Wayne Tonks (Parrabell Case 41); the murder of ██████████ (Parrabell Case 22); and the murder of John Russell (Parrabell Case 36) among other incidents of violence against gay men.

**Sexual Orientation:** Mr Warren did not openly identify as gay however he was believed to be gay.

**Coroner/Court Findings:** In 2005, the Deputy State Coroner found that Mr Warren died in Sydney on or about 22 July 1989. The Deputy State Coroner stated, 'whilst the cause and manner of death are unknown, I am satisfied that the deceased was a victim of homicide perpetrated by person or persons unknown.' The death of Mr Warren remains unsolved.

**SF Parrabell concluded there was evidence to suspect a bias crime.**<sup>249</sup>

272. The content of this case summary is for the most part consistent with the BCIF. However, the assertion that Mr Warren “did not openly identify as gay” is both factually wrong, and contrary to multiple passages in the BCIF (apart from the ViCLAS reference in the second prompt under “Differences”).

(c) Academic review

273. By contrast with SF Parrabell, the review by the Flinders academics categorised this case as “insufficient information”.<sup>250</sup>

274. The Flinders academics did not utilise a category such as “Suspected Bias Crime”, nor indeed a category of “Evidence of Bias Crime”. Rather, the four categories they devised and used were: “Anti-gay bias”, “Anti-paedophile animus”, “Insufficient Information” and “No Evidence of Bias Crime”.<sup>251</sup>

<sup>249</sup> Exhibit 6, Tab 49, Strike Force Parrabell, Case Summaries – Ross Warren, undated, 17 (SCOI.76961.00014).

<sup>250</sup> Exhibit 6, Tab 49, Strike Force Parrabell, Case Summaries – Ross Warren, undated, 27 (SCOI.76961.00014).

<sup>251</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 92 (SCOI.02632).



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275. The academic team made it clear<sup>252</sup> that for them, for a case to be categorised as a “bias crime” (whether anti-gay or anti-paedophile), some form of *expression* of that bias, by a *communication*, was essential. Hence in any case where there was no such communication, the academic team was left with only two choices: “Insufficient Information”, or “No Evidence of Bias Crime”.

### **JOHN RUSSELL**

#### ***Use of the Bias Crimes Indicators Form***

276. Of the ten indicators in the Bias Crime Indicators Form (BCIF):<sup>253</sup>
- a. one was answered “Evidence of Bias Crime”, namely: “Location of Incident”;
  - b. six were answered “Suspected Bias Crime”, namely: “Differences”, “Comments, Written Statements, Gestures”, “Organised Hate Groups (OHG)”, “Previous existence of Bias Crime Incidents”, and “Motive of Offender/s” and “Level of “Violence”;
  - c. one was answered “No Evidence of Bias Crime”, namely: “Drawings, Markings, Symbols, Tattoos, Graffiti”;
  - d. one was answered “Insufficient Information”, namely: “Lack of Motive”; and
  - e. one was answered both “Suspected Bias Crime” and “Insufficient Information”, namely, “Victim/Witness Perception”. It is not clear which answer was counted towards the overall Indicator.
277. The indicator that was answered as “No Evidence of Bias Crime” was indicator 3, “Drawings, Markings, Symbols, Tattoos, Graffiti”. The response noted that Mr Russell was found with several coins around his body, and referred to evidence which suggests that men who attended beat locations with the intention of engaging in sexual activity with other men would rattle keys or loose change in their pockets to indicate interest, and yet the indicator was marked “No Evidence of Bias Crime”.
278. Other anomalies include those referred to at [267] and [268] above with respect to Mr Warren.

#### ***Results of Strike Force Parrabell***

##### (a) The “Summary of Findings” box

279. The Summary of Findings categorises this case as a “Suspected Bias Crime”.<sup>254</sup>

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<sup>252</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell Final Report* (Report, June 2018) 82-83 (SCOI.02632).; see also transcript of the Special Commission of Inquiry, 1 March 2023, T2504.13-30 (TRA.00030.00001); also transcript of the Special Commission of Inquiry, 2 March 2023, T2695.40-2696.15 (TRA.00031.00001).

<sup>253</sup> Strike Force Parrabell, Bias Crimes Indicators Review Form – John Russell, undated (SCOI.32191).

<sup>254</sup> Strike Force Parrabell, Bias Crimes Indicators Review Form – John Russell, undated, 25 (SCOI.32191).

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280. Again, this is difficult to reconcile with the findings of Coroner Milledge and the evidence of AC Crandell, as noted at [268] above.

(b) Case Summaries

281. The Case Summary for this matter (case summary number 36) reads as follows:<sup>255</sup>

**Identity:** John Alan Russell was 31 years old at the time of his death.

**Personal History:** Mr Russell lived with his brother at Bondi. He was employed in two jobs and had the support of his family. At the time of his death he was excited about plans to build a kit home on his father's farm at Wollombi, funded by an inheritance. He also intended to travel around Australia.

**Location of Body/Circumstances of Death:** Mr Russell's body was discovered lying on rocks at the base of a cliff below a popular Bondi to Tamarama walking path, known as Marks Park. The position of Mr Russell's body was unusual with his head facing the rocks and his feet towards the water. Marks Park was a well-known gay beat.

**Sexual Orientation:** Mr Russell identified as gay.

**Coroner/Court Findings:** The original Coroners finding stated that Mr Russell died from, 'Effects of multiple injuries sustained then and there when he fell from a cliff to the rocks below, but whether he fell accidentally or otherwise the evidence does not enable me to say'. In 2002 the circumstances of Mr Russell's death were reinvestigated by Strike Force Taradale which indicated possible links between other murders and violent assaults against gay men in this area and other gay beats. One identified link involved groups of youths targeting gay men at Bondi and Alexandria including the murder of William Allen (Parrabell Case 30); the murder of Wayne Tonks (Parrabell Case 41); the murder of ██████████ (Parrabell Case 22); and the disappearance (suspected murder) of Ross Warren (Parrabell Case 34) among other incidents of violence against gay men. In 2005 a second Coronial Inquest was held with the Deputy State Coroner finding that Mr Russell died at Marks Park, North Bondi between the 22 and 23 November 1989. The Deputy State Coroner stated, 'the cause of death is multiple injuries sustained when he was thrown from the cliff onto rocks, by a person or persons unknown.' The death of Mr Russell remains unsolved.

**SF Parrabell concluded there was evidence to suspect a bias crime**

(c) Academic review

282. Again, by contrast with SF Parrabell, the review by the Flinders academics categorised this case as "Insufficient Information".<sup>256</sup>

283. The same observations are made as have been made above at [264], in relation to Mr Mattaini, and at [273] – [274], in relation to Mr Warren.

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<sup>255</sup> Exhibit 6, Tab 49, Strike Force Parrabell, Case Summaries – John Russell, undated, 18 (SCOI.76961.00014).

<sup>256</sup> Exhibit 6, Tab 49, Strike Force Parrabell, Case Summaries – John Russell, undated, 18 (SCOI.76961.00014).

## I. STEPS UNDERTAKEN BY THE INQUIRY, AND THEIR OUTCOMES

### **GILLES MATTAINI**

#### *Contact with family members*

284. On 31 October 2022, the Inquiry spoke with Mr Musy. He was unable to provide any information as to the full name or possible present whereabouts of the neighbour (“Terry”) who last saw Mr Mattaini walking in Bondi.<sup>257</sup>

#### *Request for coronial file*

285. On 11 May 2022, the Inquiry issued a written request to the Registrar of the Coroners Court of NSW for the coronial file in relation to the disappearance of Mr Mattaini. The Coroners Court answered the request on 3 June 2022.

#### *Summons for police file and documents*

286. On 18 May 2022, a summons was issued (Summons NSWPF1) to the NSWPF for, *inter alia*, all documents relating to investigations by the NSWPF of the death of Mr Mattaini, and material held by the Unsolved Homicide Team (**UHT**) in relation to the death. Some documents were produced on 8 June 2022.

#### *Enquiries with French consulate*

287. On 1 November 2022, the Inquiry made contact with the French Consulate General seeking any information it may hold regarding the disappearance of Mr Mattaini.

288. On 21 and 22 November 2022, the French Consulate General provided information to the effect that a French resident in Australia recalled a French national in the gay community going missing at around the same period other gay men were vanishing in Bondi.

289. On 6 December 2022, the Inquiry made contact with that witness. However, their information did not relate to Mr Mattaini.<sup>258</sup>

<sup>257</sup> Statement of Emily Burston, Solicitor Assisting the Inquiry, re Inquiries made in relation to death of Gilles Mattaini, 27 June 2023, [7] (SCOI.84055).

<sup>258</sup> Statement of Emily Burston, Solicitor Assisting the Inquiry, re Inquiries made in relation to death of Gilles Mattaini, 27 June 2023, [4]-[6] (SCOI.84055).

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### *Contact with witnesses*

290. On 30 November 2022 and 5 April 2023, the Inquiry interviewed Mr Glen Lehman, the partner of Mr Ottaviani and a person within Mr Mattaini's social circle at the time of his disappearance. Mr Lehman provided a statement to the Inquiry dated 17 May 2023.<sup>259</sup>
291. On 20 April 2023, the Inquiry wrote to Marc Hubert at an Australian address provided to it via interagency co-operation, requesting that he make contact with the Inquiry to discuss his recollections of this matter. On 26 May 2023, the Inquiry was advised by a friend of Mr Hubert that he had been residing in France for ten years, but that she would pass on the relevant details of the Inquiry's request. As at the time of these submissions, the Inquiry has not been able to speak with Mr Hubert.<sup>260</sup>

### *Professional opinion obtained from forensic pathologist*

292. By letter dated 13 April 2023, an opinion was sought from forensic pathologist Dr Linda Iles regarding the decomposition and behaviour of bodies in water. On 18 May 2023 Dr Iles produced her report to the Inquiry, which is considered below.

### *Professional opinion obtained from coastal geomorphologist*

293. On 25 January 2023, the Inquiry provided material relating to Mr Mattaini's disappearance to coastal geomorphologist Professor Robert Brander. By letter dated 3 April 2023, an opinion was formally sought from Professor Brander in relation to the probable movements of Mr Mattaini's body assuming he entered the water from the cliffs anywhere along the coast walk around Marks Park or between Bondi and Ben Buckler headland.
294. On 9 May 2023, on the recommendation of Professor Brander, the Inquiry contacted Bruce Hopkins of Waverley Council Lifeguards. On 17 May 2023, Mr Hopkins advised the Inquiry that they did not hold any records of surf conditions from September 1985. He made some general comments regarding his experience of currents in the Bondi Bay area, which were provided to Professor Brander to consider.
295. On 18 May 2023, the Inquiry forwarded the report of Dr Iles (referred to above) to Professor Brander.
296. On 1 June 2023, Professor Brander provided the Inquiry with his report, considered below.

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<sup>259</sup> Statement of Emily Burston, Solicitor Assisting the Inquiry, re Inquiries made in relation to death of Gilles Mattaini, 27 June 2023, [11] (SCOI.84055).

<sup>260</sup> Statement of Emily Burston, Solicitor Assisting the Inquiry, re Inquiries made in relation to death of Gilles Mattaini, 27 June 2023, [12] (SCOI.84055).

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### *Private hearings*

297. The Inquiry used its coercive powers to undertake private hearings with a number of people, including persons of interest.

### **ROSS WARREN**

#### *Attempts to locate and contact family members*

298. On 30 September 2022, the Inquiry wrote to the siblings of Mr Warren. Ms Kay Warren, Mr Warren's mother, responded on behalf of the family indicating that they had no further information to provide.

#### *Request for coronial file*

299. On 11 May 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 Russell.
300. The Inquiry received the coronial file on 2 June 2022.

#### *Summonses issued*

301. On 18 May 2022, a summons was issued (Summons NSWPF1) to the NSWPF for, *inter alia*, all documents relating to investigations by the NSWPF of the death of Mr Warren, and material held by the Unsolved Homicide Team (**UHT**) in relation to the death.
302. On 8 June 2022, the Inquiry received a box from the NSWPF in relation to Strike Force Taradale and twelve boxes from the NSWPF in relation to Strike Force Neiwand.
303. On 2 August 2022, the NSWPF produced their complete eagle-i holdings in relation to Strike Force Parrabell, ostensibly in response to summons NSWPF3. However, given that this material was not called for by summons NSWPF3, the NSWPF may have intended to produce this material in response to summons NSWPF1. These eagle-i holdings reproduced various NSWPF documents in relation to Ross Warren.
304. On 28 September 2022, the Inquiry issued summons NSWPF21 for any ISRAPS created as part of Strike Force Neiwand in respect of the crime scene. On 6 October 2022, NSW Police indicated no ISRAPS were ever created given the crime scene had changed significantly since 1989.
305. On 8 November 2022, the Inquiry issued summons NSWPF34 for all NSWPF eagle-i holdings in relation to Strike Forces Taradale and Neiwand. The NSWPF produced documents in three tranches and completed production on 18 April 2023. The eagle-i briefs for both Strike Forces were received on 25 November 2022.

#### *Inter-agency cooperation*

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306. On 1 November 2022, the Inquiry held a conference with the Forensic and Analytical Science Service (“FASS”) regarding the possibility of further testing of exhibits, including Mr Warren’s driver’s licence and library card.
307. FASS recommended against further DNA testing, as there have not been significant improvements in testing since 2016. Furthermore, FASS advised that attempting to match suspect DNA with the weak result obtained in 2016 was unlikely to be successful, due to the small and very degraded nature of the results.
308. On 17 April 2023, the Inquiry requested assistance from NSWPF in conducting further fingerprint examinations.<sup>261</sup> A statement dated 3 May 2023 was provided to the Inquiry by Detective (Tech) Acting Sergeant Joshua Thompson, a fingerprint expert.<sup>262</sup>
309. Fingerprint records were obtained from exhibits in Mr Warren’s file from the Forensic Evidence and Technical Services Command, NSWPF.<sup>263</sup> These were compared to Mr Warren’s recorded fingerprints, obtained from the NAFIS.<sup>264</sup>
310. Detective Acting Sergeant Thompson employed the *Analysis, Comparison, Evaluation and Verification (ACE-V)* methodology in analysing the fingerprint impressions,<sup>265</sup> and reached the following conclusions:<sup>266</sup>
- a. The fingerprint located on the audio cassette case is inconclusive;
  - b. The fingerprints located on the plastic bag have been identified as belonging to Mr Warren;
  - c. The fingerprint located on the rear of Mr Warren’s drivers licence is identified as belonging to Mr Warren; and
  - d. The fingerprint located on the rear of the Radio Rentals receipt is inconclusive.
311. Detective Acting Sergeant Thompson noted that a conclusion of ‘inconclusive’ indicates that there is insufficient information to identify or exclude the person as being the source of the fingerprint.<sup>267</sup> As such, NSWPF advised there is no need for further examination of the inconclusive fingerprints against other persons, as Mr Warren could not be eliminated as the source of the fingerprint.<sup>268</sup>

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<sup>261</sup> Letter to NSWPF from SCOI, 17 April 2023 (SCOI.83666).

<sup>262</sup> Statement of Detective (Tech) Acting Sergeant Joshua Thompson, 3 May 2023 (SCOI.83663).

<sup>263</sup> Statement of Detective (Tech) Acting Sergeant Joshua Thompson, 3 May 2023, [5], [7] (SCOI.83663).

<sup>264</sup> Statement of Detective (Tech) Acting Sergeant Joshua Thompson, 3 May 2023, [6] (SCOI.83663).

<sup>265</sup> Statement of Detective (Tech) Acting Sergeant Joshua Thompson, 3 May 2023, [8] (SCOI.83663).

<sup>266</sup> Statement of Detective (Tech) Acting Sergeant Joshua Thompson, 3 May 2023, [10]-[11] (SCOI.83663).

<sup>267</sup> Statement of Detective (Tech) Acting Sergeant Joshua Thompson, 3 May 2023, 8 (SCOI.83663).

<sup>268</sup> Letter from NSW Police Force, 10 May 2023 (SCOI.83667).

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### *Professional opinions obtained*

312. The Inquiry requested professional opinions from two experts.

#### Dr Linda Iles

313. The Inquiry briefed forensic pathologist Dr Linda Iles on 13 April 2023 to provide a report on the decomposition of bodies in water. On 18 May 2023 Dr Iles provided her expert report, which is considered below.<sup>269</sup>

#### Professor Robert Brander

314. The Inquiry briefed coastal geomorphologist Professor Robert Brander on 14 April 2023.<sup>270</sup> Professor Brander's report, dated 24 May 2023, is considered below.<sup>271</sup>

### *Persons of interest*

315. The Inquiry used its coercive powers to undertake private hearings with a number of people, including persons of interest.

### *Other sources of information*

316. The Inquiry reviewed historical LGBTIQ media publications through the State Library of New South Wales and the Australian Queer Archives based in Victoria. In September 2022, one of the Counsel Assisting the Inquiry attended the Australian Queer Archives in Victoria and, with the assistance of an archivist, reviewed relevant issues of the *Sydney Star Observer* between 1979 and 1997, which has not been digitised.

317. Historical publications in other newspapers were also identified through review of microfilm at the State Library of New South Wales from the Illawarra Mercury and other major newspapers.

318. A number of those media articles are included in the tender bundle:

## **JOHN RUSSELL**

### *Attempts to locate and contact family members*

319. On 30 September 2022, the Inquiry contacted Mr Russell's brother, Peter Russell and his partner, Donna Hannah. Both have been in ongoing contact with the Inquiry since then. Both have expressed a keen interest in the work of the Inquiry and attended almost every public hearing of the Inquiry.

320. Mr Russell's father, Ted Russell, passed away in September 2022.

<sup>269</sup> Expert report of Dr Linda Iles, 18 May 2023 (SCOI.83668).

<sup>270</sup> Letter of instruction to Professor Robert Brander, 14 April 2023 (SCOI.83671).

<sup>271</sup> Expert Report of Professor Robert Brander, 24 May 2023 (SCOI.83670).

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321. Both Peter Russell and Donna Hannah, along with Yvonne Hopkins (Mr Russell's cousin), have provided statements as to their memories of John Russell and the impact of his death on them and others.

### *Request for coronial file*

322. On 11 May 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 Russell.

323. The Inquiry received the coronial file on 2 June 2022.

### *Summonses issued*

324. On 18 May 2022, a summons was issued (Summons NSWPF1) to the NSWPF for, *inter alia*, all documents relating to investigations by the NSWPF of the death of Mr Russell, and material held by the Unsolved Homicide Team (**UHT**) in relation to the death.
325. On 8 June 2022, the Inquiry received a box from the NSWPF in relation to Strike Force Taradale and twelve boxes from the NSWPF in relation to Strike Force Neiwand.
326. On 2 August 2022, the NSWPF produced their complete eagle-i holdings in relation to Strike Force Parrabell, ostensibly in response to summons NSWPF3. However, given that this material was not called for by summons NSWPF3, the NSWPF may have intended to produce this material in response to summons NSWPF1. These eagle-i holdings reproduced various NSWPF documents in relation to John Russell.
327. On 28 September 2022, the Inquiry issued summons NSWPF21 for any ISRAPS created as part of Strike Force Neiwand in respect of the crime scene. On 6 October 2022, NSW Police indicated no ISRAPS were ever created given the crime scene had changed significantly since 1989.
328. On 8 November 2022, the Inquiry issued summons NSWPF34 for all NSWPF eagle-i holdings in relation to Strike Forces Taradale and Neiwand. The NSWPF produced documents in three tranches and completed production on 18 April 2023. The eagle-i briefs for both Strike Forces were received on 25 November 2022.
329. On 15 December 2022, the Inquiry wrote to the NSWPF requesting that Mr Russell's clothing be transported to FASS for forensic testing.
330. Over a number of months, the Inquiry utilised the services of FASS to have Mr Russell's clothing forensically tested in various ways. The results of that testing will be encompassed in a statement by a FASS officer which is under preparation. It will be served when available, together with any supplementary submissions.



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### *Statements taken*

331. On 6 March 2023, the Inquiry obtained a statement from Peter Russell.
332. On 1 May 2023, members of the Inquiry met with former Sergeant Adrian Ingleby in relation to this matter.
333. On 7 June 2023, Mr Ingleby provided a statement the Inquiry.
334. On 13 March 2023, the Inquiry requested that the NSW Police provide a statement in relation to, amongst other things, the cleaning of Mr Russell's clothing. On 3 April 2023, the NSW Police produced a statement of DI Nigel Warren dated 30 March 2023. The statement confirmed that notes in relation to this matter indicate that John Russell's clothing was 'cleaned' prior to placement on a mannequin in December 1989.
335. On 24 April 2023, the Inquiry requested a further statement from the NSWPF in relation to what was meant by the word 'cleaned'. On 5 May 2023, the NSWPF produced a supplementary statement indicating that there is no further information in the documentary records about what is meant by the word 'cleaned', or by whom the clothing was cleaned, or what if any chemicals or other laundry products were utilised.
336. On 5 May 2023, a member of the Inquiry spoke with former PCC Dunbar, who was the original OIC in 1989-90. Ms Dunbar stated that she did not know anything about Mr Russell's clothing having been 'cleaned'.<sup>272</sup>
337. The Inquiry has requested a statement from FASS addressing various matters including:
- a. The availability of DNA testing in 1989 and what, if any, tests could have been conducted on Mr Russell's clothing at that time;
  - b. What tests (if any) were conducted by FASS (or its predecessor DAL) in relation to Mr Russell's clothing
    - in 1989-90 (at the time of the original investigation)
    - in about 2002 (at the time of Operation Taradale)
    - in about 2016 (at the time of SF Neiwand)
    - in 2023 (at the request of the Inquiry);
  - c. The results of those various tests;
  - d. The efficacy of DNA testing if the clothing had been cleaned prior to such testing;

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<sup>272</sup> Statement of Elizabeth Blomfield, Solicitor Assisting the Inquiry, re Inquiries made in relation to death of John Russell, 27 June 2023 (SCOI.83544).

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e. The scope for future testing on the clothing.

338. That statement will be served when available, as noted above, together with any supplementary submissions.

### *Persons of interest as at 2022-23*

339. The Inquiry used its coercive powers to undertake private hearings with a number of people, including persons of interest.

### *Other sources of information*

340. The Inquiry reviewed historical LGBTIQ media publications through the State Library of New South Wales and the Australian Queer Archives based in Victoria. In September 2022, one of the Counsel Assisting the Inquiry attended the Australian Queer Archives in Victoria and, with the assistance of an archivist, reviewed relevant issues of the *Sydney Star Observer* between 1979 and 1997, which has not been digitised.

341. Historical publications in other newspapers were also identified through review of microfilm at the State Library of New South Wales from the Illawarra Mercury and other major newspapers.

342. A number of those media articles are included in the tender bundle.

## J. SUBMISSIONS AS TO THE EVIDENCE NOW AVAILABLE

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

### **GILLES MATTAINI**

#### *Mr Mattaini's background*

344. Mr Mattaini was 26 years old at the time of his disappearance on 15 September 1985, having been born on 25 October 1958. He was a French national, living in an apartment in Ramsgate Avenue Bondi, near the intersection with Campbell Parade, with his long-term partner Jacques Musy.<sup>273</sup>

345. Mr Mattaini and Mr Musy met in Paris in about 1978. In 1983 they both moved to Sydney, Mr Musy doing so first, followed by Mr Mattaini.

346. Mr Mattaini worked on a casual basis as a barman at the Menzies Hotel near Wynyard. He often took long walks from home wearing his headphones and listening to music, including the walk from Bondi to Mackenzie's Point.

347. On 16 August 1985, Mr Musy travelled to France for a short holiday.<sup>274</sup> While in France, he had weekly telephone contact with Mr Mattaini.<sup>275</sup> Mr Musy thought that although Mr Mattaini was missing him, he was happy, buying things for the apartment and looking forward both to Mr Musy's return and to a forthcoming visit to Sydney by a friend, Anthony Wyszynski.

#### *Mr Mattaini's state of mind*

348. Mr Mattaini's visa had expired, which was causing him some concern. However, according to Mr Musy, it was not weighing on him in any significant way.<sup>276</sup>

349. In his teens, Mr Mattaini had attempted suicide at home by taking a number of tablets and cutting his wrists. This appears to have been prompted by his father's attitude towards his homosexuality.

350. In the late 1970s, he was conscripted into the French army. He was unhappy in the army. He made what was regarded as a second suicide attempt, by taking pills. This resulted in his being hospitalised,

<sup>273</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [5] (SCOI.74881).

<sup>274</sup> Statement of Heather Maria Thompson, 8 August 2002 (SCOI.02744.00386).

<sup>275</sup> Exhibit 6, Tab 159, Statement of Jacques Musy, 3 August 2002 (SCOI.02744.00381).

<sup>276</sup> Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003, 49.44-58 (SCOI.82371).

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and discharged from the military. Mr Musy thought that this second incident may have been actually a device to get out of the army.<sup>277</sup>

351. Mr Lehman recalled meeting Mr Mattaini and Mr Musy sometime after 1980, when they lived in a house next door to him on [REDACTED]. Mr Mattaini and Mr Musy, together with Mr Lehman's partner, Mr Ottaviani, were part of a group of French nationals living in Sydney who met socially. Many of them worked in hospitality, and several at the Menzies Hotel. Other members of the group included Marc Hubert and "Tony", who Mr Lehman believes was Antony Wyszynski. Mr Lehman recalled that several members of the group were living in Bondi by the time of Mr Mattaini's disappearance, including himself and Mr Ottaviani. They would socialise over coffee or go swimming once or twice a month.<sup>278</sup>

### *Movements prior to disappearance*

352. On a day before Mr Mattaini's disappearance (possibly on 14 September 1985), Mr Mattaini asked Mr Hubert, his friend and supervisor at the Menzies Hotel, if he could finish his shift early. Mr Hubert said that, despite being a non-smoker, he uncharacteristically asked for a cigarette, and explained that he felt like one because he was feeling "very stressed".<sup>279</sup>
353. A copy of a September 1985 calendar provided to police by Mr Musy is marked with the word 'OFF' on 15 September 1985. This is believed to be indicating that Mr Mattaini was not working on that day. The same calendar also had several future days, after 15 September, marked as days on which various anticipated events would occur.<sup>280</sup>
354. On or about 15 September 1985, Mr Mattaini had a telephone call with his friend Mr Wyszynski, who was planning a visit to Sydney from France. Mr Mattaini said he had purchased furnishings for the apartment, and Mr Wyszynski noted that Mr Mattaini appeared to be in good spirits.<sup>281</sup> On the evidence, this was the last known contact by Mr Mattaini with anybody prior to his disappearance.
355. Mr Wyszynski later told Mr Mattaini's mother that Mr Mattaini had told him (presumably in this phone call) that he was going swimming in the sea on the day of his disappearance.<sup>282</sup>

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<sup>277</sup> Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003, 48.33-40, 49.19-21 (SCOI.82371).

<sup>278</sup> Statement of Glen Lehman, 17 May 2023, [6]-[12], [19] (SCOI.83531).

<sup>279</sup> Statement of Marc Pierre Hubert, 14 August 2002 (SCOI.02752.00191).

<sup>280</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [14] (SCOI.74881).

<sup>281</sup> Statement of Antony Wyszynski, 3 August 2002 (SCOI.02744.00382).

<sup>282</sup> Interpol response to request for assistance (English version), 18 October 2002 (SCOI.02752.00189).

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356. Mr Mattaini was last seen walking in Bondi on 15 September 1985 by a neighbour, who described Mr Mattaini as looking “aloof”.<sup>283</sup> On the evidence, this was the last sighting of Mr Mattaini. Mr Musy later referred to this neighbour as “Terry”. The full name, and possible whereabouts, of “Terry”, are unknown.

### *After 15 September 1985*

357. After Mr Mattaini did not turn up to his 3pm rostered shift at the Menzies Hotel on 16 September 1985, Mr Hubert became concerned and contacted Mr Ottaviani.<sup>284</sup>

358. Mr Musy received a call from Mr Ottaviani, likely on 16 September 1985, that Mr Mattaini had worryingly failed to turn up for his 3pm shift.<sup>285</sup>

359. On 16 or 17 September 1985, Mr Ottaviani visited Mr Mattaini’s flat but there was no answer.<sup>286</sup>

360. On or around 19 September 1985, Mr Ottaviani telephoned Mr Wyszynski and told him Mr Mattaini had not shown up for work for the last two or three days. Mr Wyszynski asked Mr Ottaviani to go to Mr Mattaini’s place and check for him. According to Mr Wyszynski’s statement, he received a further call from Mr Ottaviani informing him that he had checked Mr Mattaini’s apartment and that it was intact with his passport and house keys present.<sup>287</sup> How Mr Ottaviani could have gained entry to the apartment is unclear.

361. When Mr Wyszynski gave oral evidence at the Milledge Inquest, he said that in fact he had no specific recollection of Mr Ottaviani saying anything about the keys.<sup>288</sup> When Mr Musy in due course returned, he saw that Mr Mattaini’s keys were in fact missing.<sup>289</sup>

362. Mr Ottaviani commenced making enquiries with “the police and hospitals” as to Mr Mattaini’ whereabouts.<sup>290</sup> Mr Musy later had the impression that Mr Lehman had also searched for Mr Mattaini. However, Mr Lehman told the Inquiry that he did not do so. He said he would have been working during the day, whilst Mr Ottaviani and the other friends would have been working nights.<sup>291</sup>

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<sup>283</sup> Exhibit 6, Tab 159, Statement of Jacques Musy, 3 August 2002, [23] (SCOI.02744.00381).

<sup>284</sup> Statement of Marc Pierre Hubert, 14 August 2002, [14]-[15] (SCOI.02752.00191).

<sup>285</sup> Record of interview with Jacques Musy (English translation), 10 May 2017 (SCOI.83533).

<sup>286</sup> Statement of Marc Pierre Hubert, 14 August 2002, [16] (SCOI.02752.00191).

<sup>287</sup> Statement of Antony Wyszynski, 3 August 2002, [7] (SCOI.23971).

<sup>288</sup> Extract of oral evidence of Antony Wyszynski, Inquest into the death of John Russell and the suspected deaths of Ross Warren and Giles Mattaini, 1 April 2003, 64.31-38 (SCOI.84052).

<sup>289</sup> Exhibit 6, Tab 159, Statement of Jacques Musy, 3 August 2002, [20] (SCOI.02744.00090); Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquest into the death of John Russell and the suspected deaths of Ross Warren and Giles Mattaini, 1 April 2003, 52.23-47 (SCOI.82371).

<sup>290</sup> Statement of Marc Pierre Hubert, 14 August 2002, [16] (SCOI.02752.00191).

<sup>291</sup> Statement of Glen Lehman, 17 May 2023, [17] (SCOI.83531).

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363. On 24 September 1985, Mr Musy arrived back in Australia.<sup>292</sup> He noticed that Mr Mattaini's Walkman, yellow spray jacket and keys were missing from the apartment. His wallet, passport, watch and credit cards were present.
364. Mr Musy was also under the impression (apparently erroneously) that Mr Ottaviani and Mr Hubert had reported the disappearance to police whilst Mr Musy was still in France. Mr Musy himself was being treated with Valium for stress at Mr Mattaini's disappearance.<sup>293</sup> Mr Mattaini's parents never officially reported their son missing to French police. They did however make contact with the Australian Ambassador in Paris who advised them to seek assistance from the International Red Cross.<sup>294</sup>
365. Mr Wyszynski arrived in Australia on 2 October 1985.<sup>295</sup> He was collected by Mr Ottaviani from the airport and assisted him in searching further for Mr Mattaini, albeit without success.<sup>296</sup>
366. There was no contemporaneous police investigation into Mr Mattaini's death. It was first investigated as part of Operation Taradale. However, that investigation was relatively confined, due to the fact that Messrs Musy and Wyszynski only reported Mr Mattaini's disappearance to DS page in August 2002, at a time when the brief of evidence including DS Page's lengthy statement, in relation to the 1989 deaths of Mr Warren and Mr Russel, had been completed.

### Location of last sighting, and "Terry"

367. Coroner Milledge described Mr Mattaini as being last seen "walking on the track at Bondi on or about 15 September 1985".<sup>297</sup> That is consistent with Mr Musy's evidence at the Milledge Inquest as to what "Terry" had told him. Mr Musy's recollection was that Terry saw Mr Mattaini walking near Terry's apartment, which was in Campbell Parade near Ramsgate Avenue, up the hill towards the Bondi Diggers.<sup>298</sup>
368. SF Neiwand asserted, incorrectly, that Mr Mattaini was last seen "walking along a track around McKenzie's Point, Bondi."<sup>299</sup> There is no basis in the evidence for that assertion.

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<sup>292</sup> Statement of Heather Maria Thompson, 8 August 2002 (SCOI.02744.00386).

<sup>293</sup> Exhibit 6, Tab 167B, NSWPF Investigator's Note, 'Telephone call with Jacques Musy', 13 December 2016 (SCOI.10389.00042); Statement of Marc Pierre Hubert, 14 August 2002, [18] (SCOI.02752.00191).

<sup>294</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [20] (SCOI.74881).

<sup>295</sup> Statement of Heather Maria Thompson, 8 August 2002 (SCOI.02744.00386).

<sup>296</sup> Statement of Antony Wyszynski, 3 August 2002, [8] (SCOI.02744.00382).

<sup>297</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Milledge, Inquest into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 9 March 2005, 3 (SCOI.02751.00021).

<sup>298</sup> Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquest into the death of John Russell and the suspected deaths of Ross Warren and Giles Mattaini, 1 April 2003, 55.1-15 (SCOI.82371).

<sup>299</sup> Exhibit 6, Tab 172, Strike Force Neiwand, Summary of Investigation – Gilles Mattaini, 27 December 2017, [1] (SCOI.74881).

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369. In his August 2002 statement, Mr Musy referred only to speaking to “a man who lived in a unit block nearby”. In 2016, he described that man as living 50m or so from their home in Bondi, being “Australian”, tall, lanky with dark hair and possibly gay, and said he might have worked at the Menzies Hotel.<sup>300</sup>
370. He consistently said the man told him that he had seen Mr Mattaini walking in Bondi on the morning of 15 September 1985 and that he looked ‘aloof’. Mr Musy said he always remembered that word ‘aloof’, and the date, because it was his birthday.<sup>301</sup>
371. In his oral evidence at the Milledge Inquest, Mr Musy recalled that the name of the man was “Terry”.<sup>302</sup>
372. Mr Lehman did not recall anyone by the name of ‘Terry’ who lived close by to Mr Musy and Mr Mattaini or who worked at the Menzies Hotel.
373. The Inquiry has not been able to locate “Terry”.

### The suicide theory

374. As outlined in section G above, SF Neiwand devoted considerable efforts to pursuing and propounding the theory that Mr Mattaini had committed suicide. As there submitted, the bases relied upon by SF Neiwand in that regard are unsustainable.

### Could Mr Mattaini have gone swimming?

375. Although not referred to in Mr Wyszynski’s statement, Interpol advised that Ms Mattaini recalled that Mr Wyszynski had told her, that Mr Mattaini had told him, that he was intending to go swimming in the sea “that day” (seemingly the day he disappeared, 15 September 1985).<sup>303</sup>
376. Ms Mattaini described Mr Mattaini as an amateur scuba diver, but Mr Musy advised SF Neiwand that Mr Mattaini did not go scuba diving in the time Mr Musy knew him, was not an athlete and was too scared to go into the ocean.<sup>304</sup>
377. By contrast, Mr Lehman recalled Mr Mattaini as being a good swimmer, that he frequented the beach and that swimming was one of the social activities he took part in with his friends in Bondi.<sup>305</sup>

<sup>300</sup> Exhibit 6, Tab 167B, NSWPF Investigator’s Note, ‘Telephone call with Jacques Musy’, 13 December 2016 (SCOI.10389.00042)

<sup>301</sup> Exhibit 6, Tab 159, Statement of Jacques Musy, 3 August 2002, [23] (SCOI.02744.00381).

<sup>302</sup> Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003, 54.13-58 (SCOI.82371).

<sup>303</sup> Interpol response to request for assistance (English version), 18 October 2002 (SCOI.02752.00189).

<sup>304</sup> Interpol response to request for assistance (English version), 18 October 2002 (SCOI.02752.00189); Exhibit 6, Tab 168, NSWPF Investigator’s Note – Telephone call with Jacques Musy, 13 December 2016 (SCOI.10389.00042).

<sup>305</sup> Statement of Glen Lehman, 17 May 2023, [15]-[19] (SCOI.83531).

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### Attempts to obtain DNA sample

378. Numerous attempts were made to obtain a DNA sample from Mr Mattaini's mother, Renee Mattaini, including in 2011 in relation to Operation Firenze<sup>306</sup> and in 2016 by SF Neiwand.<sup>307</sup>
379. Those attempts were not successful. Ms Mattaini passed away on 9 March 2017 and was cremated.<sup>308</sup>
380. It appears Ms Mattaini had a sister, Ms Liliane Michel, but SF Neiwand did not seek to obtain a DNA sample from her.<sup>309</sup>
381. The possible utility of any such DNA samples is in any event limited unless Mr Mattaini's body were found.

### Dr Iles' report

382. Forensic pathologist, Dr Linda Iles, was asked to provide a report on the following matters:
- a. The rate of decomposition of a human body in seawater;
  - b. The average period of time between the initial submergence of a human body in seawater and its resurfacing (absent attack by a predator); and
  - c. The length of time before gasses are released.

Her report was provided on 18 May 2023.

383. Given the complex interaction of numerous intrinsic and extrinsic variables, Dr Iles considers it is not possible to reliably estimate the rate of decomposition of human remains in seawater. After a deceased person is immersed in seawater, the general course of events is as follows:
- If sufficiently buoyant, the body will float for a period of time until buoyancy decreases to a point where the body sinks.
  - The body becomes vertically displaced downwards in the water, and may be moved about under the water, until such time that the production of gases of decomposition ("bloating") increases the buoyancy of the remains to the point where the body resurfaces again. This is largely a function of time and temperature.

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<sup>306</sup> Emails from Interpol to NSWPF, 18 February 2011-18 May 2016 (SCOI.10391.00174).

<sup>307</sup> Email from Interpol to NSWPF, 7 August 2016 (SCOI.10391.00208).

<sup>308</sup> NSWPF Investigator's Note: Renee Mattaini now deceased, 10 April 2017 (SCOI.10389.00106).

<sup>309</sup> Email exchange between French authorities and AFP, 19 December 2017 (SCOI.10463.00037).



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- As decomposition proceeds, putrefactive gases are released from the body, reducing its buoyancy, resulting in the remains sinking again.

384. However, this stereotypical course of events does not always occur. Whilst if not retrieved, many bodies will become submerged twice - once prior to bloating and once again after decomposition gases have been released - some bodies never float, and some may never sink prior to recovery. There are multiple intrinsic and extrinsic variables acting on the different stages of this cycle.

### Professor Brander's report

385. Professor Robert Brander is a coastal geomorphologist in the School of Biological, Earth and Environmental Sciences, University of New South Wales. He has expertise in coastal morphodynamics, the rip current hazard and beach safety. He has been studying, researching and teaching aspects of coastal landforms and processes since 1988.

386. Professor Brander gave oral evidence at the Milledge Inquest, in relation to the death of Mr Warren, in April 2003.

387. The Inquiry asked Professor Brander to provide a report in relation what may have happened to Mr Mattaini's body, on the assumption he entered the water:

- at any point along the coastal walk around Marks Park (south from Bondi Beach); or
- at any point along the walk from Bondi Beach to Ben Buckler Point (north from Bondi Beach).

388. Professor Brander's opinion is that if Mr Mattaini's body had been in the water anywhere along the coastline between Tamarama Beach and Ben Buckler Point (or even further in either direction), he would have travelled further distances offshore, possibly up to a kilometre, due to wave reflection and mega rip current activity during extremely large wave conditions that occurred from 19 – 21 September 1985. He thinks this "extreme event" is the primary reason why his body has never been found.

389. While, in his opinion, it is unlikely that Mr Mattaini chose to go for a swim between 15 – 17 September 1985 due to the prevailing air and sea temperatures at that time, conditions for swimming along the rocky coastline in the region of interest would have been challenging and hazardous due to the presence of larger and longer period waves than normal.

390. If Mr Mattaini had chosen to go for a swim at Tamarama or Bondi Beach during the period in question, rip currents were likely present outside of the patrolled flag locations, and conditions would have been challenging for swimming.

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391. It is Professor Brander's opinion that given wave conditions between 15 – 17 September, if Mr Mattaini's body had entered the water at any point along the coastal walk around Marks Park or between Bondi Beach and Ben Buckler Point, his body would have remained in the vicinity, but may have travelled a short distance (30-40 metres) offshore. That would be the case regardless of whether Mr Mattaini was alive or dead on entering the water and regardless of whether his body was floating or submerged.
392. If Mr Mattaini's body had been floating during daylight hours between 15-19 September 1985, it would likely have been visible from elevated vantage points in the area.
393. Professor Brander considers that, if Mr Mattaini had entered the water alive and uninjured during daylight hours in the period 15-19 September 1985, he would have remained close enough to have good prospects of attracting attention and aid from others in the area. However, if he entered the water during night hours, there was a strong possibility he would have drowned due to the combination of cooler temperatures, wave breaking and reflection, poor visibility (and concomitant difficulty signalling aid) and the possibility he was fully or partially clothed.
394. Dr Iles' report was provided to Professor Brander for his consideration. Professor Brander's view is that, if Mr Mattaini's body had become submerged quickly after entering the water, it may have remained submerged for longer due to traditionally colder water temperatures in September in Sydney, and therefore may not have resurfaced prior to the extreme weather conditions which began on 19 September 1985.

### **Submission as to manner and cause of death**

395. It is submitted that the open finding made by Coroner Milledge is still appropriate, namely that:

*Gilles Jacques Mattaini died on or about 15 September 1985 in Sydney. The cause and manner of his death remain undetermined.*

### **Submission as to bias**

396. Mr Mattaini was gay and living with his partner. He was known to walk around the Bondi-Tamarama-Marks Park area, which included the well-known Marks Park beat.

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397. However, the evidence was that he did not use the beat himself, as he was a shy person, not promiscuous, and devoted to Mr Musy. Moreover, the last known sighting of him, according to “Terry”, was in the morning.<sup>310</sup>
398. Having regard to the evidence outlined above, it is submitted that it is quite unlikely that Mr Mattaini committed suicide. While he was worried about his visa status, that was not weighing significantly upon him. In fact, in September 1985 he was, as he had been for years, “very, very happy”, in a “very fulfilling relationship”,<sup>311</sup> someone who was “really enjoying life fully”,<sup>312</sup> and “happy” that Mr Musy would soon be back from his holiday.<sup>313</sup>
399. There appear to have been no reported assaults or suspected gay hate deaths in Bondi in 1985 (although by 1989-90 that was no longer the case). However, as outlined below in connection with the 1989 deaths of Mr Warren and Mr Russell, there is a substantial weight of evidence which establishes that many such assaults were occurring but not being reported: see for example the statements of Sergeant Ingleby in 1990,<sup>314</sup> and DS McCann in 1991.<sup>315</sup>
400. As to the possibility of misadventure, whilst it cannot be discounted, it does not seem particularly likely. Mr Mattaini was, on the evidence, very familiar with the walking paths in the area. Professor Brander considers it is highly unlikely that Mr Mattaini chose to go for a swim given the prevailing air and sea temperatures. (As noted above, there is some conflicting evidence about Mr Mattaini’s interest in swimming, and swimming ability.) If he did, however, go swimming on the day he disappeared, conditions for swimming would have been challenging and hazardous
401. On balance, it is submitted that both suicide and misadventure are unlikely.
402. By later in the 1980s there was under way (as SF Neiwand recognised) a “spate” of attacks on gay men in the Bondi-Tamarama area. Whether such attacks were occurring as early as 1985 is perhaps unclear, but the evidence received by the Inquiry in Public Hearing 1 would suggest that that was highly likely.

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<sup>310</sup> Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003, 54.13-55.20 (SCOI.82371).

<sup>311</sup> Statement of Sergeant Adrian Ingleby, 26 February 1990 (SCOI.02744.00075).

<sup>312</sup> Exhibit 6, Tab 233, Statement of Stephen McCann, 10 November 2022 (SCOI.77310).

<sup>313</sup> Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003, 51.28-40 (SCOI.82371).

<sup>314</sup> Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003, 51.28-40 (SCOI.82371).

<sup>315</sup> Exhibit 6, Tab 280, Extract of oral evidence of Jacques Musy, Inquests into the suspected deaths of Ross Warren and Giles Mattaini and death of John Russell, 1 April 2003, 51.28-40 (SCOI.82371).

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403. It is submitted that there is a distinct possibility that Mr Mattaini was murdered, and that (if so) LGBTIQ bias was likely to have been a factor in his death. However, the available evidence does not permit a positive conclusion in either of those respects.

### **ROSS WARREN**

#### *Mr Warren's background*

404. Mr Warren was 25 years old at the time of his disappearance and suspected death. He was living in an apartment in Wollongong by himself.<sup>316</sup> He was known as an extremely friendly and good-natured person,<sup>317</sup> with a wicked sense of humour.<sup>318</sup> Mr Warren was described as career driven.<sup>319</sup> He worked as a television presenter with WIN 4 Television in Wollongong.<sup>320</sup>

#### *Mr Warren's sexuality*

405. Mr Warren was gay. His parents and siblings,<sup>321</sup> as well as his employer,<sup>322</sup> were well aware of his sexuality and accepting of it. He evidently had many friends who were gay. At least some of those gay friends, including Mr Ellis, were aware that he sometimes used the Marks Park beat.<sup>323</sup>

406. In 1985, Mr Warren had been arrested for gross indecency, for which he was placed on two years of probation. The conviction arose because of Mr Warren's attendance at a gay beat.<sup>324</sup>

#### *Mr Warren's movements on 21 July 1989*

407. On the evening of Friday 21 July 1989, Mr Warren left his workplace at WIN 4, Wollongong after reading the weather at the conclusion of the 6pm news. He drove to Sydney and arrived some time between 8pm and 9pm at the Redfern home of his friend Craig Ellis, with whom he intended to stay whilst in Sydney.<sup>325</sup> This was a regular practice for Mr Warren, who would stay with Mr Ellis approximately every second weekend.<sup>326</sup>

<sup>316</sup> Exhibit 6, Tab 325, First statement of Craig Ellis, 25 September 2000, [6] (SCOI.28744).

<sup>317</sup> Exhibit 6, Tab 325, First statement of Craig Ellis, 25 September 2000, [7] (SCOI.28744).

<sup>318</sup> Statement of Kay Warren, 28 June 2017, [23] (SCOI.10385.00050).

<sup>319</sup> See, for example, statement of [redacted NP250], 23 April 2002, [13] (SCOI.02744.00160); statement of Kerry Kingston, 24 January 2001, [5] (SCOI.02744.00161).

<sup>320</sup> See, for example, Exhibit 6, Tab 325, First statement of Craig Ellis, 25 September 2000, [8] (SCOI.28744); Statement of Kerry Kingston, 24 January 2001, [4] (SCOI.02744.00161).

<sup>321</sup> Statement of Kay Warren, 28 June 2017, (SCOI.10385.00050).

<sup>322</sup> Statement of Kerry Kingston, 24 January 2001, [5]-[6] (SCOI.02744.00161).

<sup>323</sup> Transcript of walkthrough interview with Craig Ellis and Detective Senior Constable Dagg at Tamarama, 2 August 2001, 11 (SCOI.02744.00142); Statement of [redacted NP250], 23 April 2002, [5], [8] (SCOI.02744.00160).

<sup>324</sup> Exhibit 6, Tab 230, Statement of Detective Sergeant Stephen Page, 25 July 2002, [273] (SCOI.02744.00023).

<sup>325</sup> Occurrence Pad Entry of Detective Sergeant Bowditch, 28 July 1989, 1 (SCOI.02744.00031).

<sup>326</sup> Occurrence Pad Entry of Detective Sergeant Bowditch, 28 July 1989, 2 (SCOI.02744.00031).

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408. Mr Warren left Mr Ellis' home at about 10:30pm and drove to Oxford Street in Darlinghurst where he met with a WIN 4 colleague, Phillip Rossini. Together they visited several bars and nightclubs along the Oxford Street strip up until around 2am on Saturday 22 July 1989. At that time Mr Rossini saw Mr Warren driving his vehicle on Oxford Street in an easterly direction towards Paddington. This was the last known sighting of Mr Warren. He was wearing black shoes, blue faded jeans, a white turtleneck shirt, and a black sports coat.<sup>327</sup>

### *Mr Warren discovered missing*

409. On the morning of Saturday 22 July 1989, Craig Ellis woke to discover that Mr Warren had not returned home. Mr Ellis and his then partner, Mr Paul Saucis, commenced a preliminary search for Mr Warren, with no success.

410. On the evening of Sunday 23 July 1989, at approximately 8:15pm, Mr Ellis and Mr Saucis attended Paddington Police to report Mr Warren missing. Their report was taken by Constable Robinson.<sup>328</sup>

411. The following morning, Monday 24 July 1989, Mr Ellis and Mr Saucis again attended Paddington Police and informed Constable Robinson that they had located Mr Warren's vehicle in a street near Marks Park "where Mr Warren was known to frequent". They said whilst this was not unusual, they both had concerns for his welfare.<sup>329</sup>

412. As a result of this information, Constable Robinson made some enquiries into the whereabouts of Mr Warren. He contacted his place of work and his home address, both with a negative result.<sup>330</sup> He also circulated Mr Warren as a missing person, with warnings that there were fears of his safety, and he "informed detectives of the situation."<sup>331</sup> Constable Robinson said that his recollection of what he actually did to circulate this information was unclear.<sup>332</sup>

413. Later on Monday 24 July 1989, Mr Ellis and Mr Saucis returned to Paddington Police. This time they reported that they had located the keys to Mr Warren's car, at the "waters edge near the headland".<sup>333</sup>

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<sup>327</sup> Statement of Phillip Rossini, 26 July 1989 (SCOI.02744.00065).

<sup>328</sup> Statement of Constable Robinson, 16 July 1991, [3] (SCOI.02744.00064); Second statement of Sergeant Daniel Robinson, 24 July 2000, [3] (SCOI.02744.00137); NSWPF Crime Information Report, 'Missing person report – Warren', 23 July 1989 (SCOI.02744.00030).

<sup>329</sup> Second statement of Sergeant Daniel Robinson, 24 July 2000, [5] (SCOI.02744.00137).

<sup>330</sup> Statement of Constable Robinson, 16 July 1991, [4] (SCOI.02744.00064).

<sup>331</sup> Second statement of Sergeant Daniel Robinson, 24 July 2000, [5] (SCOI.02744.00137).

<sup>332</sup> Third statement of Sergeant Daniel Robinson, 14 August 2001, [3] (SCOI.02744.00138); NSWPF AMSM circulation – Disappearance of Ross Warren, 24 July 1989 (SCOI.02744.00029).

<sup>333</sup> Second statement of Sergeant Daniel Robinson, 24 July 2000, [6] (SCOI.02744.00137).

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414. Constable Robinson informed the Paddington detectives who subsequently “took charge of the matter”.<sup>334</sup> In the occurrence pad entry by Constable Robinson on 27 July 1989, he records, “Sgt CARL water police informed search of area where vehicle and keys located, to be conducted by launch until darkness.”<sup>335</sup>
415. On 24 July 1989, Constable Robinson went to the location with Mr Ellis. He searched Mr Warren’s vehicle and found Mr Warren’s wallet in the glove box. He said clothes were strewn about the vehicle and running shoes were on the floor in the rear as well as a small bag containing clothing. Inside the boot was another bag with clothing. Constable Robinson returned to Paddington police station and handed the personal effects of Mr Warren to detectives.<sup>336</sup>
416. No photographs of the crime scene or of Mr Warren’s keys were taken.<sup>337</sup>
417. On 24 July 1989, DSC Evan Bouris from Bondi Police Station created a NSW Police Department Miscellaneous Property Receipt recording the items seized from the car of Mr Warren. How and why he came to do so, at Bondi, is not clear.
418. In July 2001, DS Page spoke to DSC Bouris and took a statement from him. DSC Bouris attempted to obtain his notebook from 24 July 1989, but was advised that it had been destroyed. He did recall attending Kenneth St, Bondi where he saw a Nissan Pulsar, and speaking to some people at that location and being shown an area of bushes and rocks on the southern side of Kenneth St. He also recalled being shown a set of eight keys on a rock platform at the base of the cliff, and taking possession of the keys.<sup>338</sup>

### *Investigation in 1989*

419. The OIC at Paddington Police was DS Bowditch of Paddington Detectives. His occurrence pad entry dated 28 July 1989 (Friday) has been referred to earlier in these submissions, together with the evidence assembled by DS Page, and the findings of Coroner Milledge, in relation to it.
420. None of the steps which DS Bowditch claims to have taken or organised, seems actually to have happened.
421. In his statement provided to Operation Taradale, DS Bowditch said that there was nothing to suggest that Mr Warren’s disappearance was the result of foul play. Although the area was a homosexual

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<sup>334</sup> Second statement of Sergeant Daniel Robinson, 24 July 2000, [7] (SCOI.02744.00137); NSWPF Occurrence Pad Entry, ‘Warren reported missing’, 24 July 1989 (SCOI.02744.00151).

<sup>335</sup> NSWPF Occurrence Pad Entry, ‘Warren reported missing’, 24 July 1989 (SCOI.02744.00151).

<sup>336</sup> Statement of Constable Robinson, 16 July 1991, [6]-[9] (SCOI.02744.00064).

<sup>337</sup> Third statement of Sergeant Daniel Robinson, 14 August 2001, [3] (SCOI.02744.00138).

<sup>338</sup> Statement of Detective Senior Constable Bouris, 10 July 2001 (SCOI.02744.00068).

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beat, he ‘stressed’ there was nothing to suggest his disappearance was “gay related”. He said the coastal walkway was frequently used by walkers and joggers of all ages at all hours of the day and night, and was slippery at the time.<sup>339</sup>

422. Given the apparent failure of DS Bowditch to conduct any enquiries whatsoever as to the possibility either of foul play or of a “gay related” factor, his views were and are of little weight.

### *1990 – 1996: Missing Persons*

423. Between 1990 and 1996, a number of reports from members of the public were received by the NSWPF. None yielded any useful information.

### *1991: DS McCann*

424. In 1990, as outlined above, DS McCann was investigating the murders of Richard Johnson (Alexandria, January 1990) and Krichikorn Rattanjurathaporn (Marks Park, July 1990). In the course of doing so, he observed numerous links between those two deaths and their perpetrators, and other gangs and deaths including those of Mr Warren and Mr Russell.

425. In April and August 1991, he produced his two reports documenting some of those links.<sup>340</sup>

### ***Marks Park, gangs and violence***

426. In her findings of 9 March 2005, Coroner Milledge said that Marks Park was “known as a night time ‘beat’ and was very busy and popular”.<sup>341</sup> The Coroner went on:

“The area is a popular walking track during the day and at night gay men will ‘cruise’ the coastal walkway rattling keys or coins as an indication of their availability for personal contact.... It was well known to everyone in the community that this was a gay beat, including the police.”<sup>342</sup>

427. The evidence before Coroner Milledge included evidence of the ‘gay hate’ climate at the time. Gay men were more likely to be victims of violence than other men. Importantly, they were less likely to report crimes of violence against them, believing that police would not respond appropriately to their victimisation. This belief was reflected by the perpetrators, who saw homosexual men as easy targets, seeing the victims’ lifestyles as a shield making them reluctant to report their attacks.<sup>343</sup>

<sup>339</sup> Statement of Kenneth Bowditch, 19 February 2001, [10] (SCOI.02744.00150).

<sup>340</sup> Exhibit 6, Tab 233, Statement of Stephen McCann, 10 November 2022 (SCOI.77310).

<sup>341</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Milledge, Inquest into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 9 March 2005, 3 (SCOI.02751.00021).

<sup>342</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Milledge, Inquest into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 9 March 2005, 3 (SCOI.02751.00021).

<sup>343</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Milledge, Inquest into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 9 March 2005, 3-5 (SCOI.02751.00021).

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428. The findings of the *Streetwatch Report*, published in 1990, are consistent with this evidence. Of those who were assaulted, in the six-month period from the start of November 1988 to the end of April 1989, 52% of survivors did not report the incident to police. Of this 52%, 17% believed that the report would not be taken seriously.<sup>344</sup>
429. The Coroner heard that in 1989 and 1990 in NSW, 22% of gay hate homicides occurred at beats. Police were well aware of a number of gangs of youths that frequently engaged in the assault and robbery of gay men in Marks Park and other areas. The offenders were predominately white, Caucasian, single and unemployed. They often had a long history of violent attacks against gay men. Common motives for the attacks included prejudice and homophobia, group initiation, proving masculinity, proving that they were not gay, entertainment, robbery, and a belief that gay men were 'soft' targets and less 'legitimate'.<sup>345</sup>
430. In this time period, a number of gay men were attacked and killed in the inner city and eastern suburbs. They were all victims of 'gay hate' violence. All assaults and killings were unprovoked and vicious.<sup>346</sup> They occurred not only at beats, but also in the street and parks.<sup>347</sup> Assaults at beats occurred most often between 3pm and 6pm, and 9pm and 3am.<sup>348</sup>
431. As Coroner Milledge observed in her findings in 2005, 'it is fair to say that only a percentage of the brutality would have been reported to police at that time.'<sup>349</sup>
432. However, some attacks on gay men were reported to police. For the period between 1987 and 1990, they included at least the following:
- I130 – Marks Park, 26 October 1987;<sup>350</sup>
  - I91 – Bondi, 12 November 1989;<sup>351</sup>
  - Alan Boxsell – Marks Park, 18 December 1989;<sup>352</sup>
  - David McMahon – Marks Park, 21 December 1989;<sup>353</sup>

<sup>344</sup> Exhibit 2, Tab 22, Streetwatch report, 1.27, 1.30 (SCOI.76806).

<sup>345</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Milledge, Inquest into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 9 March 2005, 4-5 (SCOI.02751.00021).

<sup>346</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Milledge, Inquest into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 9 March 2005, 4 (SCOI.02751.00021).

<sup>347</sup> Exhibit 2, Tab 22, Streetwatch report, 4.2 (SCOI.76806).

<sup>348</sup> Exhibit 2, Tab 22, Streetwatch report, 22 (SCOI.76806).

<sup>349</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Milledge, Inquest into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 9 March 2005, 4 (SCOI.02751.00021). See also Statement of Sergeant Adrian Ingleby, 26 February 1990 (SCOI.02744.00075); Exhibit 6, Tab 233A, Letter from Steve McCann to the Commander, Modus Operandi Section, 10 August 1991, [39] (SCOI.10342.00010).

<sup>350</sup> Exhibit 6, Tab 230, Statement of Detective Sergeant Stephen Page, 25 July 2002, [446] (SCOI.02744.00023).

<sup>351</sup> Exhibit 6, Tab 230, Statement of Detective Sergeant Stephen Page, 25 July 2002, [416] (SCOI.02744.00023).

<sup>352</sup> Exhibit 6, Tab 230, Statement of Detective Sergeant Stephen Page, 25 July 2002, [400]-[401] (SCOI.02744.00023).

<sup>353</sup> Statement of DM, 3 January 1990, [15] (SCOI.10386.00085).



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- **134** – Marks Park, February 1990;<sup>354</sup>
- Krichikorn Rattanajurathaporn – Marks Park, July 1990.<sup>355</sup>

433. Some of the gangs, that were systemically engaged in the assault and robbery of gay men in Marks Park and other areas, had adopted names, such as ‘PSK’ which stood for ‘Park Side Killers’. The Coroner said: ‘[T]hese gangs of misfits saw homosexual men as easy targets. The victims’ lifestyles often providing a shield for the perpetrators as they believed that their prey would be reluctant to come forward and report their attacks.’<sup>356</sup>
434. Numerous persons of interest, several of them members of one or more of these gangs, gave evidence at the Milledge Inquest, including the killers of Mr Rattanajurathaporn, known as the “Tamarama Three”. Most denied any involvement in violence against gay men.
435. As noted above, Operation Taradale deployed both telephone intercepts and listening devices to record conversations between and among POIs and their associates. Some 17,000 telephone conversations were intercepted and monitored. All of that evidence, assembled by Operation Taradale, was before the Coroner. (DS McCann had also utilised listening devices as early as July 1991 in the course of his investigations into the deaths of Mr Johnson and Mr Rattanajurathaporn.)
436. Some of the recorded conversations appeared to relate to the disappearance of Mr Warren, but were investigated and ultimately excluded by DS Page.
437. As noted above, notwithstanding the volume of evidentiary material obtained and considered by Operation Taradale, DS Page was not able to offer an opinion as to who was responsible for the deaths of either Mr Warren or Mr Russell.
438. The Inquiry has had regard to all this material, which has been of assistance in the conduct of various private hearings. Those matters will be considered in the confidential part of the Inquiry’s report.
439. In her findings, Deputy State Coroner Milledge recounted some of the things captured on listening devices by persons of interest for gay hate related crime. Some are set out here, ugly as they are, as

<sup>354</sup> Statement of **134** 10 April 2001, (SCOI.02744.00273).

<sup>355</sup> Sentencing remarks in the matter of *R v MTD; R v* **NP22 and NP23** 7 August 1992, 3 (SCOI.02462). See also Exhibit 6, Tab 233B, Letter from Steve McCann to The Commander, Modus Operandi Section, 10 August 1991, [39]-[40] (SCOI.10342.00010).

<sup>356</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Milledge, Inquest into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 9 March 2005, 14 (SCOI.02751.00021).

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examples of the attitudes that were held by some in society toward gay men in the late 1980s and early 1990s:<sup>357</sup>

- a. "I threw a fag off the cliff at Bondi ... I've jumped on blokes head you wouldn't believe were always going out bashing fags"
- b. "I had my new Boks from America on that day too, I had blood all over 'em ... went up and I go Oooo ... come up and grabbed a handful of hair and went, Dirty fuckin' maggot ... He should have gone went off the cliff that night but he didn't .... We went down and put a cigarette butt out on his head."

When asked why he 'bashed fags', one assailant said:

- c. "something to do mate. Mate I made fuckin one, one guy I bashed I got fuckin 1300 ... he was doing a bank run, bank run, taking money to the bank. Stopped him, smashed him, fuckin jumped on his head, went out to his car, looked at his briefcase ... do it for the fucking money mate. It's not fun ... it's a sport in Redfern ... oh it's a fuckin hobby mate. What are you doin tonight boys? Oh, just going fag bashin".

### *Report of Dr Iles*

440. Dr Iles was asked by the Inquiry to provide a report in relation to the decomposition of bodies in water. Her report is dated 18 May 2023.
441. Dr Iles indicated that there is a generalised course of events that may occur after a deceased person is submerged in seawater, beginning from a stage of buoyancy that will decrease until the body sinks. The body may be moved about under the water, until such bloating occurs that the body once again becomes buoyant. As decomposition continues, the putrefactive gases that cause bloating are released from the body, and the body sinks again.<sup>358</sup>
442. Dr Iles stated that it is not possible to reliably estimate the rate of decomposition of human remains in seawater, given the complex interactions between significant amounts of variables. Although there is a 'standard' process as above, there are a number of different events that may occur.<sup>359</sup>
443. For example, the initial buoyancy of a body depends on factors, including the individual's body composition, any trauma the person received prior to their death and subsequent immersion in sea water, any clothing worn, and the characteristics of the seawater they are in. In some situations, the body may never be buoyant at all, and in others, the body may not have sunk at any stage prior to discovery.<sup>360</sup>

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<sup>357</sup> Exhibit 6, Tab 161, Findings of Senior Deputy State Coroner Milledge, Inquest into the death of John Russell and the suspected deaths of Ross Warren and Gilles Mattaini, 9 March 2005, 13 (SCOI.02751.00021).

<sup>358</sup> Expert Report of Dr Linda Iles, 18 May 2023, 2-3 (SCOI.83668).

<sup>359</sup> Expert Report of Dr Linda Iles, 18 May 2023, 2 (SCOI.83668).

<sup>360</sup> Expert Report of Dr Linda Iles, 18 May 2023, 3 (SCOI.83668).

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444. Minimal formal studies of decomposition of bodies in seawater have been completed, due to the number of uncontrollable variables in both the individual and the environment. These variables make it extremely difficult to isolate each step of the decomposition cycle.<sup>361</sup> Furthermore, where studies have been completed, the variables are specific to the local geographic area where the body was immersed, limiting the ability to apply results to other regions.<sup>362</sup>
445. The report of Dr Iles is generally consistent with the letter from Dr Cala provided to Operation Taradale on 19 September 2001 on the same topic. He considered a body immersed in a large body of water would initially sink and that it may, but not always, rise to the surface after a period of time. He also alluded to the many variables at play and indicated that there are instances of persons entering the ocean whose bodies are never recovered.<sup>363</sup>

### *Report of Professor Brander*

446. The Inquiry briefed coastal geomorphologist Professor Robert Brander on 14 April 2023.<sup>364</sup> Professor Brander provided his report on 24 May 2023.<sup>365</sup>
447. Professor Brander had previously provided expert evidence in relation to the disappearance of Mr Warren in the course of earlier investigations, including during the Milledge Inquest.<sup>366</sup>
448. Professor Brander was briefed with his previous reports and evidence, as well as the following materials:
- a. Weather, synoptic and rainfall observations for Tamarama for 1989;
  - b. Sea level observations (tidal information) at Fort Denison for 1989;
  - c. Sydney offshore wave data for 1989;
  - d. A topographic map of Marks Park; and
  - e. A video walkthrough of Tamarama conducted on 2 August 2001.

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<sup>361</sup> Expert Report of Dr Linda Iles, 18 May 2023, 3 (SCOI.83668).

<sup>362</sup> Expert Report of Dr Linda Iles, 18 May 2023, 4 (SCOI.83668).

<sup>363</sup> Letter from Dr Allan Cala (forensic pathologist) to Detective Sergeant Stephen Page re: bodies immersed in water, 19 September 2001 (SCOI.02744.00185).

<sup>364</sup> Letter of instruction to Professor Robert Brander, 14 April 2023 (SCOI.83671).

<sup>365</sup> Expert Report of Professor Robert Brander, 24 May 2023 (SCOI.83670).

<sup>366</sup> Statement of Professor Robert Brander, 1 August 2001 (SCOI.02744.00184); Report of Professor Robert Brander, 5 April 2002, (SCOI.02744.00184); Second statement of Professor Robert Brander, 11 April 2002 (SCOI.02744.00183); Oral evidence of Professor Robert Brander during coronial inquest, 3 April 2003 (NPL.0115.0003.2346); Third statement of Professor Robert Brander, 31 January 2017 (SCOI.10390.00076).

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449. Professor Brander reviewed data on conditions between 22 and 29 July 1989, with a particular focus on the period between 2:00 am and 9:00 am on 22 July 1989.<sup>367</sup>
450. There was no significant wave activity between 22 and 24 July 1989, with low-energy wave energy conditions, and minimal rip current activity. Professor Brander observed that the dominant direction of water movement during this time was likely offshore into Mackenzies Bay.<sup>368</sup>
451. The period between 25 and 28 July 1989, however, was characterised by a significantly large wave event, which Professor Brander indicates would have been associated with extreme turbulence, wave reflection, wave topping and inundation of the area. There were likely mega rip currents in Mackenzies Bay and Tamarama Beach, with the dominant direction of water movement also offshore.<sup>369</sup>
452. Professor Brander considered that if Mr Warren’s body had entered the water during the period of 22 – 24 July 1989, it would have either slowly drifted offshore if it was floating on the surface; or remained offshore of the rock platforms if it was submerged.<sup>370</sup> Professor Brander indicated that if Mr Warren’s body was submerged, it is possible that it may have become caught or snagged by the irregular subaqueous rock topography in the region.<sup>371</sup>
453. Professor Brander further expressed the view that regardless of whether Mr Warren’s body was floating, submerged, or otherwise lodged in the rock topography, the large wave event in the following days, during the period between 25 – 28 July 1989,<sup>372</sup> would have transported his body hundreds of metres offshore. It would have then been subject to deeper ocean currents, and it would be unlikely that his body would have then been transported back towards the shoreline.<sup>373</sup>
454. Professor Brander considered that the large wave event is likely the primary reason as to why Mr Warren’s body was never recovered.<sup>374</sup>

### Submission as to manner and cause of death

455. It is submitted that the finding made by Coroner Milledge in 2005 is still appropriate, namely that:

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<sup>367</sup> Expert Report of Professor Robert Brander, 24 May 2023, [34] (SCOI.83670).

<sup>368</sup> Expert Report of Professor Robert Brander, 24 May 2023, [15] (SCOI.83670).

<sup>369</sup> Expert Report of Professor Robert Brander, 24 May 2023, [16] (SCOI.83670).

<sup>370</sup> Expert Report of Professor Robert Brander, 24 May 2023, [119] (SCOI.83670).

<sup>371</sup> Expert Report of Professor Robert Brander, 24 May 2023, [120] (SCOI.83670).

<sup>372</sup> Expert Report of Professor Robert Brander, 24 May 2023, [123] (SCOI.83670).

<sup>373</sup> Expert Report of Professor Robert Brander, 24 May 2023, [122] (SCOI.83670).

<sup>374</sup> Expert Report of Professor Robert Brander, 24 May 2023, [124] (SCOI.83670).

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*“Ross Bradley Warren died in Sydney on or about 22 July 1989. Whilst the cause and manner of death are unknown, I am satisfied that the deceased was a victim of homicide perpetrated by person or persons unknown.”*

### Submission as to bias

456. It is submitted that the evidence is sufficient to establish that Mr Warren’s death was a gay hate crime, that is, a death in which LGBTIQ bias was a factor.
457. Matters that inform this conclusion include:
- a. The location where Mr Warren’s keys and car were found, being a well-known gay beat;
  - b. The probability that Mr Warren attended Marks Park to use the beat on the night that he was last seen;
  - c. The abundance of evidence of gay hate assaults in the Bondi-Tamarama area (and other parts of Sydney) in the late 1980s and early 1990s, including the death of John Russell in November 1989, the assaults on [191], Mr Boxsell and Mr McMahon in November and December 1989, and the murder of Mr Rattanajaturathaporn in July 1990, all in or near Marks Park.
458. It is submitted that it is highly probable that Mr Warren met his death at the hands of one or more gay hate assailants.

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### JOHN RUSSELL

#### *Mr Russell's background*

459. At the time of his death, Mr Russell was employed as a barman at Bronte Bowling Club and worked one day a week at a school in Double Bay. He lived with his brother, Peter Russell, in Bondi. They had lived together all their lives.<sup>375</sup>
460. [REDACTED] 1403 who had known Mr Russell for 13 years and described Mr Russell as his best friend, said that initially they were in a homosexual relationship together. That part of the relationship ceased soon after it started but the two remained close friends.<sup>376</sup> [REDACTED] 1403 described Mr Russell as a happy go lucky person.<sup>377</sup>
461. Peter Russell knew his brother was a homosexual but described him as not being “extremely active in this area.”<sup>378</sup> At the time of his death, Peter wasn’t aware of John being in a relationship.<sup>379</sup> In a statement to Operation Taradale in 2001, Peter Russell said John was well known in the gay community and one of the instigators of the gay Mardi Gras.<sup>380</sup>
462. [REDACTED] 1403 described Mr Russell as a “social drinker”. He said he didn’t touch drugs.<sup>381</sup> Peter Russell described Mr Russell as being in the habit of going out and staying out and not letting him know where he was but that he would always return the next day.<sup>382</sup>
463. [REDACTED] 1403 didn’t think Mr Russell was into using beats.<sup>383</sup> However, Peter Russell told Operation Taradale in 2001 that John had mentioned Marks Park on occasion and referred to it as ‘The Beat’. Peter got the sense from those conversations that Mr Russell had been to Marks Park on a couple of occasions to meet other gay men, but that it wasn’t a regular thing. He said John used to work in Darlinghurst and spent a lot of his working time and social time there.<sup>384</sup>

#### *Mr Russell's movements on 22 November 1989*

464. On the evening of 22 November 1989, Mr Russell was at home with his brother Peter in Bondi. Peter Russell described him as being in good spirits.<sup>385</sup>

<sup>375</sup> Statement of Peter Russell, 24 November 1989, [3] (SCOI.02744.00077).

<sup>376</sup> Statement of [REDACTED] 1403, 24 November 1989, [4] (SCOI.10566.00050).

<sup>377</sup> First Statement of Constable Barrett, 1 December 1989, [15] (SCOI.10386.00030).

<sup>378</sup> Statement of Peter Russell, 24 November 1989, [7] (SCOI.02744.00077).

<sup>379</sup> Statement of Peter Russell, 24 November 1989, [7] (SCOI.02744.00077).

<sup>380</sup> Statement of Peter Russell, 15 June 2001, [16] (SCOI.02744.00191).

<sup>381</sup> Statement of [REDACTED] 1403, 24 November 1989, [12] (SCOI.10566.00050).

<sup>382</sup> Statement of Peter Russell, 24 November, [4] (SCOI.02744.00077).

<sup>383</sup> Statement of [REDACTED] 1403, 24 November 1989, [9] (SCOI.10566.00050).

<sup>384</sup> Statement of Peter Russell, 15 June 2001, [18] (SCOI.02744.00191).

<sup>385</sup> First Statement of Constable Barrett, 1 December 1989, [15] (SCOI.10386.00030).

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465. [1403] met Mr Russell at Peter Russell's place at about 6:00pm<sup>386</sup> and together they went to the Bondi Hotel at about 7 or 7:15pm. They sat in the bar and spoke of Mr Russell's plans to build a house on Mr Russell's father's farm at Wollombi. Mr Russell's grandfather had just died and he and Peter were to inherit \$100,000 each. They spoke of what Mr Russell was going to do with the money and about how there were "happy times ahead."<sup>387</sup>
466. Mr Russell drank with [1403] at the Bondi Hotel until about 11pm when [1403] left. [1403] guessed that he would have had twelve to fifteen drinks during his time at the Hotel. When [1403] left, Mr Russell moved up to the bar and started talking to the barmaid.<sup>388</sup>
467. Mr Russell had been shouting [1403] drinks because it was the day before [1403]'s pay day. [1403] guessed that by the time he left the Hotel, Mr Russell would have had about ten or fifteen dollars left.<sup>389</sup>
468. [1403] was supposed to meet John again on Thursday, 23 November 1989 for dinner with friends at the Legion Club in Charing Cross.<sup>390</sup>

### *Position of John Russell's body*

469. In his report of 14 August 2001, Dr Cala said he considered the position of John Russell's body to be unusual for a case of jumping or falling from a height. He said, "the body is facing towards the base of the cliff, which is unusual given the small height of the cliff, implying if the deceased acted alone, he has been able to twist his body 180 degrees to rest in the position depicted." Dr Cala considered he would not have been able to move at all following his fall.<sup>391</sup>
470. Dr Dufrou also considered that the position of the body was "somewhat unusual for an accidental or suicidal fall, and agreed that it was unlikely that Mr Russell would have moved after the fall."<sup>392</sup>

### *Marks Park, gangs and violence*

471. The submissions at [426] – [439] above, in relation to the death of Mr Warren, are also equally relevant to the death of Mr Russell.
472. As outlined above, Marks Park in 1989 was a well-known beat.
473. During the original investigation, each of the investigating police noted that the southern end of Notts Avenue, Bondi was frequented by homosexuals. Constable Barrett said that he was aware of this

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<sup>386</sup> Statement of Peter Russell, 24 November, [6] (SCOI.02744.00077).

<sup>387</sup> Statement of [1403], 24 November 1989, [5] (SCOI.10566.00050).

<sup>388</sup> Statement of [1403], 24 November 1989, [6] (SCOI.10566.00050).

<sup>389</sup> Statement of [1403], 24 November 1989, [7] (SCOI.10566.00050).

<sup>390</sup> Statement of [1403], 24 November 1989, [10] (SCOI.10566.00050).

<sup>391</sup> Exhibit 6, Tab 157, Expert certificate of Dr Allan Cala (forensic pathologist), 14 August 2001 (SCOI.10386.00142).

<sup>392</sup> Exhibit 6, Tab 171, Expert Certificate of Professor Johan Dufrou, 16 August 2017, 6 (SCOI.10385.00060).

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from working as a constable at the Bondi Police Patrol for the previous two and half years and described the beat as being from south of the Bondi baths through to Mackenzie's Bay.<sup>393</sup>

474. John's best friend, [REDACTED] 1403 said that he knew this area to be dangerous because of "possible bashings and health factors."<sup>394</sup>

### *Pathology evidence*

475. The evidence of Dr Cala and Dr Duflou has been considered earlier in these submissions.
476. On 20 July 2001, as part of Operation Taradale, Associate Professor Anthony Moynham, the Director of Clinical Forensic Medicine Unit of the NSW Police, furnished a report in which he observed the following, in relation to Mr Russell's blood alcohol concentration of 0.255:<sup>395</sup>
- a. "If there was no putrefaction of the body then the blood alcohol concentration in the blood sample would be the blood alcohol concentration of the victim at the time of death. At a blood alcohol concentration of 0.255 grams of alcohol in 100 millilitres of blood, it would be expected that the victim would have been displaying signs of marked intoxication at the time of his death."
  - b. "He would have had impaired balance, impaired coordination and impaired spatial orientation. He would have had diminished vision and hearing as well as poor judgment of things such as speed and distance. He would probably have personality and mood changes as well. He would have a diminished capacity to protect himself from danger."
  - c. "If there had been putrefaction of the body at the time when the blood sample was taken it is not possible to comment on the blood alcohol concentration."
477. On 26 May 2016, A/Prof Moynham provided a further report to SF Neiwand. In this report he said that his opinion had not altered since the statement prepared on 20 July 2001. However, he said that based on additional information available to him, putrefaction is less likely to have occurred.
478. He made additional observations including the following:<sup>396</sup>
- a. "The post mortem blood alcohol concentration of 0.255 grams of alcohol in 100 millilitres of blood was most likely his blood alcohol concentration at the time of death."
  - b. "This level of intoxication would make a person more prone to trauma as a consequence of physical impairment. It would also make a person more vulnerable to predatory behaviour by other persons. His capacity to protect or defend himself would be impaired. It must be noted that he also had a relatively small body weight of 55 kilograms."
  - c. "It is not possible to determine if he was the victim of an accident or if he was the victim of foul play. Both are possible."

<sup>393</sup> First Statement of Constable Barrett, 1 December 1989, [17] (SCOI.10386.00030); Statement of Constable Dunbar, 16 February 1990, [13] (SCOI.10551.00031); Statement of Sergeant Ingleby, 26 February 1990, [11] (SCOI.02744.00075).

<sup>394</sup> Statement of [REDACTED] 1403, 24 November 1989, [9] (SCOI.10566.00050).

<sup>395</sup> Statement of Anthony Moynham, 20 July 2001, 4 (SCOI.02744.00195).

<sup>396</sup> Report of Associate Professor Moynham, 26 May 2016, 7 (SCOI.10446.00199).



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### *DNA testing*

479. In late 1989, it is the Inquiry's understanding that DNA testing was not readily available to police in NSW, that DNA testing was then in its infancy in NSW, and that while it was more advanced in other countries like the U.K. and USA, it was still in the early stages of use even there.
480. However, by 2001 (Operation Taradale) and 2016 (SF Neiwand), such testing was possible, and both Operation Taradale and SF Neiwand did make arrangements for some DNA testing of Mr Russell's clothing. The Inquiry has also itself arranged for further such testing, in 2023.
481. Those matters will be the subject of a statement by an appropriate officer of FASS, as will the impact upon such testing of Mr Russell's clothes being "cleaned" by police in December 1989.

### **Submission as to manner and cause of death**

482. It is submitted that the finding made by Coroner Milledge in 2005 is still appropriate, namely that:

*'John Alan Russell died at Marks Park near Bondi [not North Bondi] between 22 and 23 November 1989. The cause of death is multiple injuries sustained when he was thrown from the cliff onto rocks by a person or persons unknown.'*

### **Submission as to bias**

483. It is submitted that the evidence is sufficient to establish that Mr Russell's death was a gay hate crime, that is, a death in which LGBTIQ bias was a factor.
484. Matters that inform this conclusion include:
- a. The location where Mr Russell's body was found, being a well known gay beat for its time;
  - b. The probability that Mr Russell attended Marks Park to use the beat on the night that he was last seen;
  - c. The position in which Mr Russell's body was found, being unusual for an accidental fall;
  - d. The coins scattered around Mr Russell's body, being suggestive of having been used by him to indicate a desire for contact at the beat;
  - e. The strands of hair found on Mr Russell's left index finger, likely to have been from another person;
  - f. The position of his sloppy joe, as remarked upon by both Dr Cala and Dr Duflou;

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- g. The assault on Mr McMahon only a month later, at the same location as where Mr Russell's body was found;
  - h. The abundance of evidence of gay hate assaults in the Bondi-Tamarama area (and other parts of Sydney) in the late 1980s and early 1990s, including the disappearance of Ross Warren in July 1989, the assaults on [191], Mr Boxsell and Mr McMahon in November and December 1989, and the murder of Mr Rattanjaturathaporn in July 1990, all in or near Marks Park.
485. It is submitted that it is highly probable that Mr Russell met his death at the hands of one or more gay hate assailants.

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