

**2022 Special Commission of Inquiry
into LGBTIQ hate crimes**

**Before: The Commissioner,
The Honourable Justice John Sackar**

**At Level 2, 121 Macquarie Street,
Sydney, New South Wales**

On Wednesday, 29 March 2023 at 10.30am

(Day 41)

Ms Kathleen Heath	(Counsel Assisting)
Ms Kate Lockery	(Principal Solicitor)
Ms Caitlin Healey-Nash	(Senior Solicitor)
Ms Francesca Lilly	(Solicitor)

Also Present:

**Mr Anders Mykkeltvedt and Mr Patrick Hodgetts, for
NSW Police**

1 THE COMMISSIONER: Yes, Ms Heath?
2
3 MS HEATH: Commissioner, I appear to assist the Inquiry.
4
5 THE COMMISSIONER: Thank you.
6
7 MR MYKKELTVEDT: Commissioner, thank you, I appear for the
8 Commissioner of Police.
9
10 THE COMMISSIONER: Thank you, Mr Mykkeltvedt.
11
12 MS HEATH: Commissioner, this is a hearing into the death
13 of Mr Gerald Cuthbert. Before you there should be one
14 volume of material titled "Tender Bundle Gerald Cuthbert".
15 A copy is now being handed to Madam Associate.
16
17 THE COMMISSIONER: Thank you very much.
18
19 MS HEATH: Commissioner, I tender that bundle of
20 documents.
21
22 THE COMMISSIONER: Thank you.
23
24 **EXHIBIT #16 BUNDLE OF DOCUMENTS TITLED "TENDER BUNDLE**
25 **GERALD CUTHBERT"**
26
27 THE COMMISSIONER: Mr Mykkeltvedt, I presume you have
28 these materials?
29
30 MR MYKKELTVEDT: Yes, we have received them.
31
32 THE COMMISSIONER: Thank you. Yes, please go on.
33
34 MS HEATH: Commissioner, I secondly hand up short minutes
35 of order. These relate to orders that the parties seek to
36 be made pursuant to section 8 of the Special Commissions of
37 Inquiry Act.
38
39 THE COMMISSIONER: Very well.
40
41 MS HEATH: Commissioner, these are orders that relate to
42 various redactions to the documents that are sought and
43 pseudonym orders for particular witnesses that are
44 principally made to protect the privacy of those witnesses.
45
46 THE COMMISSIONER: Again, Mr Mykkeltvedt, you have had
47 a chance to look at these?

1
2 MR MYKKELTVEDT: Yes, those are agreed to.

3
4 THE COMMISSIONER: All right. Thank you.

5
6 Yes, Ms Heath, I have made those orders, thank you.

7
8 MS HEATH: Thank you, Commissioner. Finally,
9 Commissioner, I hand up and adopt and rely upon my written
10 submissions. They are dated 28 March, 2023.

11
12 THE COMMISSIONER: Thank you very much.

13
14 MS HEATH: Commissioner, I seek to briefly touch upon the
15 contents and preparation of the tender bundle, and it is
16 convenient to do so by reference to the index to the tender
17 bundle.

18
19 In the course of inquiring into the death of
20 Mr Cuthbert, the Inquiry summonsed and received the
21 investigation file from the NSW Police Force and the
22 coronial file from the NSW Coroners Court. This placed the
23 Inquiry in a position where it had an extensive collection
24 of documents relating to Mr Cuthbert's death and the police
25 investigation of it. Tabs 1 to 24 of the tender bundle are
26 a selection of those summonsed materials.

27
28 The Inquiry also summonsed and received documents from
29 the NSW Police Force in relation to Strike Force Parrabell
30 and its consideration of Mr Cuthbert's case. Those
31 documents are at tabs 25 and 26.

32
33 Tabs 27 to 28A contain contemporaneous media articles
34 in relation to Mr Cuthbert's death, and tabs 29 onwards
35 evidence the investigative steps taken by the Inquiry
36 itself. Tabs 29 and 30 relate to an expert opinion that
37 was sought by Dr Danny Sullivan, who was asked to opine on
38 whether there were any aspects of the death or crime scene
39 that may indicate that the homicide occurred in the context
40 of LGBTIQ hate. Dr Sullivan is a forensic psychiatrist.

41
42 The remaining tabs relate to the efforts by this
43 Inquiry in relation to, first, the locating of the physical
44 exhibits relating to the death of Mr Cuthbert in order to
45 have them forensically re-tested; and, secondly, in
46 relation to the re-examination of fingerprints. I will
47 have more to say about those two topics in due course.

1
2 The final preliminary comment I make, Commissioner, is
3 that, in this case, there have been attempts to locate and
4 contact Mr Cuthbert's family, however, those have been
5 unsuccessful. We already had - and this is referred to in
6 my written submissions - confirmation that one of
7 Mr Cuthbert's brothers was deceased, and I have been
8 instructed that only this morning we received further
9 information that Mr Cuthbert's uncle is deceased.

10
11 If any relatives or family members, however, do become
12 aware of these proceedings, the Inquiry would, of course,
13 still welcome contact from Mr Cuthbert's family.

14
15 THE COMMISSIONER: Thank you.

16
17 MS HEATH: Commissioner, I will start with a brief summary
18 in relation to this case. Mr Cuthbert was found stabbed to
19 death on Sunday, 18 October 1981, in an apartment in the
20 suburb of Paddington. A post-mortem examination conducted
21 on him by Dr Brighton identified a total of 62 stab wounds
22 to his back, chest, neck and shoulder. His throat had also
23 been cut.

24
25 Mr Cuthbert's body was naked and there was evidence
26 that Mr Cuthbert had engaged in receptive anal sexual
27 intercourse with a male partner shortly before his death.

28
29 Commissioner, this is a case where there are no
30 current persons of interest or suspects in relation to the
31 murder of Mr Cuthbert. It is also a case where critical
32 exhibits taken from the crime scene and from Mr Cuthbert's
33 body at autopsy have been lost. Forensic examination using
34 contemporary DNA testing methods may well have revealed the
35 identity of Mr Cuthbert's killer, but such testing can no
36 longer be undertaken due to the loss of those exhibits.
37 This is a regrettable and avoidable loss of an opportunity
38 to solve Mr Cuthbert's case.

39
40 What I now propose to do is step through some of the
41 details in relation to Mr Cuthbert's case, commencing with
42 his personal circumstances.

43
44 Mr Cuthbert was 27 years old at the time of his death.
45 He was a member of an extended Fijian family and had family
46 members in both New Zealand and Australia.

1 The evidence reveals that Mr Cuthbert was a man who
2 experienced conflict between his sexuality and his
3 religion. He had been in a committed, live-in relationship
4 with a male partner for some five years, and I note,
5 Commissioner, that the name of his partner has been
6 redacted in the material and the submissions to protect
7 their privacy, but he is referred to as "Witness I212".
8

9 About a year prior to his death, in June of 1980,
10 Mr Cuthbert decided to make "a complete break from
11 homosexuality", considering it to be incompatible with his
12 Christianity. He moved out of the Paddington apartment
13 that he shared with his then partner, Witness I212, and
14 into a share house of Christian males in Pennant Hills.
15

16 That was in June of 1980, but by about January
17 or February of 1981, Mr Cuthbert told Witness I212 that he
18 was "having problems with his homosexuality again". He
19 left the Pennant Hills share house and moved into the YMCA.
20

21 Now, by this time, his former partner, I212, had
22 himself converted to Christianity, and also denounced his
23 homosexuality, and as such, the two men, who had formerly
24 been partners, now restored a friendship relationship.
25

26 Mr Cuthbert continued to reside at the YMCA, but had
27 a key to the Paddington apartment and was there regularly.
28 The evidence indicates that in the three to four months
29 prior to his death, he was at the apartment regularly, and
30 at some points almost every night.
31

32 Witness I212 also had a new housemate move into the
33 Paddington apartment. This person I will refer to as I213.
34 There is no suggesting that those two men, the two men now
35 living in the Paddington flat, had anything other than
36 a platonic flatmate relationship.
37

38 Commissioner, there is evidence from 1981 of
39 Mr Cuthbert having at least two but possibly more sexual
40 relationships with men, seemingly on a casual basis.
41 I have set that out in my written submissions commencing at
42 paragraph 64. It is not necessary to put that on the
43 record orally.
44

45 The only evidence that I draw particular attention to
46 is that of a witness who told police that Mr Cuthbert had
47 recently met two American sailors, with whom he had "an

1 excellent relationship", and whom he had taken around
2 Sydney. I have referred to that in my written submissions
3 at paragraph 66.
4

5 Turning to the weekend of Mr Cuthbert's death, so
6 starting on 17 October. On the weekend of Mr Cuthbert's
7 death, his former partner and his former partner's new
8 flatmate had travelled with a group called the Bondi
9 Fellowship to see a Christian concert in Nowra. They left
10 on the Saturday morning and stayed overnight in a caravan
11 park in Bomaderry. So this meant that the Paddington flat
12 was unoccupied for the weekend.
13

14 Police made inquiries as to Mr Cuthbert's movements on
15 Saturday, 17 October 1981, and the details of those
16 inquiries are set out in my written submissions from
17 paragraphs 68 to 72. The critical point, Commissioner, is
18 that the last confirmed sighting of Mr Cuthbert alive was
19 by a receptionist at the YMCA where he was residing, and
20 that was at about 7.45 or 8pm on the Saturday evening.
21

22 There are two important features of this sighting.
23 First, as Mr Cuthbert left the YMCA, he told the
24 receptionist that if anyone was looking for him that he was
25 going to "his flat". It's submitted that this could only
26 mean the flat in Paddington. There is no evidence that
27 Mr Cuthbert had any other residence.
28

29 Secondly, the receptionist described Mr Cuthbert as
30 wearing "denim jeans and jacket". It's unclear from this
31 statement whether he remembered that both the jeans and the
32 jacket were denim or, alternatively, if just the jeans were
33 denim. He didn't specify the colour of the clothing.
34

35 I'll jump ahead at this point, Commissioner, to refer
36 to some evidence in relation to the clothing that was found
37 next to Mr Cuthbert's body, that it is presumed was worn by
38 Mr Cuthbert on the night of his death. Police found next
39 to the bed one pair of khaki-coloured jeans, one blue denim
40 jacket that was noted to be damp, and one long-sleeved
41 white shirt with faint stripes. So as you will appreciate,
42 that is clothing that is at least consistent with the
43 clothing described by the YMCA supervisor.
44

45 What I ask, Commissioner, is that the description of
46 that clothing be held in mind, because it becomes relevant
47 to assessing alleged sightings of Mr Cuthbert on the night

1 of his death.

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So there were a number of witnesses who claimed to have seen Mr Cuthbert on the evening prior to his death, and I have set these out in some more detail in my written submissions at paragraph 74.

The first two claimed sightings of Mr Cuthbert were at, first, the Exchange Hotel on Oxford Street and, secondly, at Juliana's piano bar at the Hilton Hotel. What you will see, however, is that the description of Mr Cuthbert given by the witnesses who claim to see him does not match either Mr Cuthbert himself or the clothing that it is assumed he was wearing and that he's believed to have been wearing. So in relation to the first sighting, the man was described as being Lebanese and as wearing a wide-collared red shirt. In relation to the second sighting, the man is described as wearing a light suit with gold chains and an overcoat.

Ultimately, Commissioner, it is submitted that not a great deal of weight can be put on these sightings and they may well be cases of mistaken identity.

The third sighting by a man named Mr Tynan is a more promising sighting but also not conclusive. Mr Tynan claimed to have seen Mr Cuthbert walking on Oxford Street towards Paddington at about 10pm in the direction of the apartment, and he was observed to be in the company of an unknown man.

Now, at this time, when seen by Mr Tynan, it was spitting with rain, and that may explain the dampness of the jacket found next to the body. Interestingly, Mr Tynan describes the unknown man with Mr Cuthbert as wearing a white shirt and jeans, and that is consistent with the clothing found by the bed, but Mr Tynan said he could not remember what Mr Cuthbert was wearing.

So, Commissioner, this is a possible sighting of Mr Cuthbert but it is difficult to confirm whether it was indeed Mr Cuthbert.

The final sighting is both, we submit, the most likely to be correct and also the most significant. That was by a man named Mr Bennett, who was a doorman of the Midnight Shift Hotel on Oxford Street. He said that at about

1 1.30am - so this is now the early hours of Sunday morning -
2 he was approached by a man at the front door. The man had
3 short dark hair and a distinct accent that made Mr Bennett
4 believe that he might be Islander. He was wearing
5 a dark-coloured jacket that could have been denim and the
6 jacket was thoroughly saturated.

7
8 So far, this matches both the physical description of
9 Mr Cuthbert and also the clothing that he was believed to
10 be wearing.

11
12 Mr Bennett also recognised Mr Cuthbert from pictures
13 that he had seen in the newspaper.

14
15 Interestingly, Mr Bennett says that this man
16 approached the door and asked whether there were any
17 American sailors at the bar that night. This is consistent
18 with the earlier evidence that I took the Commission to
19 that Mr Cuthbert had recently befriended some American
20 sailors.

21
22 As Mr Bennett told this man, believed to be
23 Mr Cuthbert, that there were no sailors, Mr Cuthbert then
24 left, at Mr Bennett's suggestion that he go to Kings Cross.

25
26 So if we accept Mr Bennett's sighting as correct, then
27 it would appear that Mr Cuthbert was last seen at about
28 1.30am in the early hours of Sunday morning, on 18 October
29 1981, on Oxford Street and in search of American sailors.

30
31 On Sunday evening, so this is at about 6.15pm, the
32 occupants of the Paddington flat returned home along with
33 three other members of the Bondi Fellowship. Upon
34 returning home, they found Mr Cuthbert's body and
35 immediately called police. Police came and made the
36 following observations of the scene, and there are three in
37 particular, three salient observations that I'll draw the
38 Inquiry's attention to.

39
40 First, Mr Cuthbert was found lying naked and prone in
41 a pool of blood on the bed. The bedcovers were pulled back
42 but covering his feet, and this suggested that Mr Cuthbert
43 had been in bed at the time of the attack.

44
45 Secondly, the room did not appear to be ransacked and
46 Mr Cuthbert's watch was on the bedside table. This makes
47 it less likely that robbery was a motive for the murder.

1
2 I do note that a few days after the death,
3 Witness I212, who lived at the flat, noted that a small
4 amount of money, \$48, appeared to be missing from
5 a briefcase that had been on the bed. Even if it's
6 accepted that that was stolen by the offender, it hardly
7 seems to have been a primary motive in the reason that
8 Mr Cuthbert was killed.
9

10 Thirdly, there were no signs of forced entry to the
11 flat. It would appear that Mr Cuthbert, who you will
12 recall had a key to the flat, willingly let the offender
13 into the apartment.
14

15 Finally, Commissioner, no murder weapon was found at
16 the flat or when the police searched the apartment block or
17 the surrounding area. Further, no knives were noted to be
18 missing from the apartment. What this may indicate is that
19 the killer brought the knife to the scene with him or her.
20 So either the killer carried the knife as a matter of
21 course, or perhaps there was some element of premeditation
22 in the killing of Mr Cuthbert.
23

24 Mr Cuthbert's body was examined post-mortem, and the
25 report of the post-mortem examination is at tab 2. As
26 described above, there were 62 stab wounds that were
27 documented in the post-mortem report. There are three
28 other observations to be made in relation to the
29 post-mortem report: first there were no defensive cuts on
30 Mr Cuthbert's hands or arms. This would suggest that many,
31 if not all, of the stabs were inflicted after Mr Cuthbert
32 was incapacitated. That, combined with the sheer number of
33 stabs, implies overkill and is suggestive of a frenzied
34 attack.
35

36 Secondly, the stab wounds were a maximum of 2cm in
37 width and were consistent with being inflicted by a knife
38 with one sharp edge. This provides some indication of the
39 likely murder weapon.
40

41 Thirdly, semen was detected on anal swabs taken from
42 Mr Cuthbert's body. This is indicative of receptive sexual
43 activity by Mr Cuthbert not long before his death, and is
44 consistent also with him being found naked on the bed.
45

46 The original investigating police considered multiple
47 lines of inquiry and I've outlined some of the

1 investigative steps that they took at paragraph 88 of my
2 written submissions.

3
4 There are two lines of inquiry in particular that
5 I wish to refer to orally. The first relates to the
6 possibility of involvement by American sailors. I have
7 already outlined the evidence that suggests that
8 Mr Cuthbert may have had some relationship with American
9 sailors prior to his death and may have been searching for
10 them on the night of his death.

11
12 According to one media article, American sailors were
13 shown a movie called "Cruising" on board a naval vessel
14 docked in Sydney on the very night of Mr Cuthbert's murder.
15 This was a film that depicted the murders of gay men by
16 a psychotic killer, and I note, it was a film that provoked
17 some great outrage in the gay community at the time of its
18 release.

19
20 Now, whether it is true that this movie was shown on
21 board a naval ship could not be ascertained from the police
22 file. What we can see, however, is that police did make
23 inquiries as to the naval ships that were docked, but were
24 advised that they had already departed from Sydney at the
25 time of those inquiries. They were further advised that no
26 records were kept of the sailors taking shore leave.
27 I note that there was no investigation as to the type of
28 combat knife that was ordinarily carried by American
29 sailors, and further, whether they were permitted to carry
30 those knives with them on shore leave.

31
32 The second line of inquiry by original investigating
33 police relates to a possible connection between
34 Mr Cuthbert's death and the murders of two other gay men.
35 I may ask that tab 27 [SCOI.10031.00013] be put on to the
36 screen, which is a media article. That is a media article,
37 Commissioner, dated 12 November 1981, and was published in
38 the Sun.

39
40 So two other gay men were killed by stabbing around
41 the same time as Mr Cuthbert. Mr Peter Parkes, the photo
42 on the right-hand side of the newspaper article, was
43 stabbed in his home in the Eastern Suburbs on 20 October
44 1981, only three days after the death of Mr Cuthbert.
45 Another man, not pictured, Mr Constantinos Giannaris, was
46 killed some three weeks later.

47

1 For obvious reasons, the media widely reported on
2 these cases together and the killings were dubbed "The Gay
3 Blade Killings". I note that the photograph on the left is
4 a photograph of Mr Cuthbert.

5
6 Two young male sex workers were ultimately convicted
7 in relation to the murder of both Mr Parkes and of
8 Mr Giannaris. If I can ask that tab 27 [SCOI.10031.00013]
9 now be taken down.

10
11 Commissioner, in addition to reviewing the file in
12 relation to the investigation of Mr Cuthbert's death, the
13 Inquiry summonsed and reviewed police files in relation to
14 the deaths of Mr Parkes and Mr Giannaris. That step is
15 referred to in the statement of Francesca Lilly, which is
16 found at tab 36 of the tender bundle.

17
18 Consistent with what was found in the original police
19 investigation, the Inquiry was unable to identify on the
20 documents any links between those murders and the death of
21 Mr Cuthbert, and we also note that there are considerable
22 differences in the circumstances of the death.

23
24 Firstly, both Mr Parkes and Mr Giannaris were bound
25 before they were killed. Mr Cuthbert was not. But,
26 secondly - and perhaps more significantly - it appears that
27 a primary motive in the murders of both Mr Parkes and
28 Mr Giannaris was robbery. Money, jewellery and cars were
29 stolen and then used or pawned by the offenders. In
30 contrast, Mr Cuthbert's murder does not appear to have that
31 motive at play.

32
33 So, Commissioner, I conclude at this point that while
34 the police investigation did consider a number of persons
35 of interest and took appropriate steps to generate
36 information, ultimately, no person could be linked to the
37 murder and there was an absence of promising leads in
38 relation to Mr Cuthbert's case.

39
40 I wish now to turn to the question of exhibits, which
41 it is submitted is a significant one in Mr Cuthbert's case.
42 Police collected a number of exhibits, which were submitted
43 to what was then called the Division of Forensic Medicine
44 for testing. This included, first, anal swabs and smears
45 that were taken from Mr Cuthbert's body during autopsy;
46 secondly, two cigarette butts that were found in an ashtray
47 on the coffee table in the lounge room; thirdly, a men's

1 handkerchief that was found alongside the bed where
2 Mr Cuthbert's body was found; and, fourthly, a bloodstained
3 sock found in the hallway of the apartment. These exhibits
4 were first forensically examined in 1981.

5
6 The testing conducted in 1981 is what is called "blood
7 type testing". That is, what could be determined was the
8 blood type of a person who had excreted a bodily fluid on
9 to an exhibit. That could then be compared to the blood
10 type of, for example, Mr Cuthbert, any persons of interest
11 or any person who had provided an elimination sample.

12
13 The difficulty with this type of testing is that the
14 discriminating power of the testing is low. So that is,
15 some blood types are extremely common across the
16 population, and accordingly, blood type testing is more
17 useful to exclude a suspect or person of interest rather
18 than to positively identify an offender.

19
20 To briefly set out the results of the testing in 1981,
21 firstly, semen was detected on the anal swabs and smears.
22 As I have already noted, this supports the proposition that
23 Mr Cuthbert had sex shortly prior to his death. However,
24 the concentration of semen on the swabs was insufficient
25 for grouping results. Semen was also detected on the
26 handkerchief found by the bed. The semen on the
27 handkerchief was sufficient for grouping results. It was
28 found to have not originated from Mr Cuthbert. So that is,
29 Commissioner, the semen on the handkerchief belongs to an
30 unknown male person.

31
32 Human blood was also detected on the handkerchief but
33 there was insufficient blood present for grouping results.

34
35 Human blood was detected on the sock and grouping
36 tests revealed that the blood on the sock was consistent
37 with having originated from Mr Cuthbert, although, as
38 I have already noted, the discriminating power of that
39 testing is low, so that is not to say it is determinative
40 that that blood is Mr Cuthbert's.

41
42 Saliva was present on two cigarette butts, but no
43 blood group substances were detected. This suggests that
44 the cigarette butts were smoked by a person who was
45 a non-secreter, so that is a person who doesn't secrete
46 blood-type antigens in bodily fluids such as saliva.
47 Mr Cuthbert, by contrast, was known to be a secreter.

1 Again, this suggests that the cigarette butts were smoked
2 by a person who was not Mr Cuthbert.

3
4 It is trite to say that forensic testing methods have
5 advanced significantly since 1981. The most dramatic
6 advance is, of course, the ability to extract and analyse
7 DNA profiles from organic material. A DNA profile, if
8 obtained, could be matched against a known reference sample
9 or, if there is no suspect or person of interest, it can be
10 uploaded on to a searchable DNA database to see if there
11 are any hits.

12
13 The Inquiry sought advice as to what testing was
14 likely to be available in relation to each exhibit, and the
15 Inquiry received an expert certificate from Michele Franco,
16 from the Forensic and Analytical Science Service, often
17 referred to as FASS. Her certificate is found at tab 35 of
18 the tender bundle.

19
20 Now, Ms Franco acknowledges and recognises the
21 challenges that can exist in DNA testing in historic cases.
22 By way of example, DNA can degrade over time, and
23 sometimes, the original testing may have consumed the
24 original exhibit. This was, in fact, the case in relation
25 to the cigarette butts in Mr Cuthbert's case. So it is
26 likely that the cigarette butts were entirely consumed or
27 destroyed when they were initially tested.

28
29 However, from Ms Franco's statement, it appears that
30 there would have been good opportunities for re-testing of
31 these exhibits had they been located. So, first, semen and
32 blood samples are high-yield DNA sources. As Ms Franco
33 explains, the more DNA originally deposited, the more
34 likely that some suitable quality DNA remains for modern
35 testing procedures.

36
37 Secondly, sperm, in particular, has relatively strong
38 cellular walls, which increases the likelihood of long-term
39 preservation of that organic material.

40
41 In this case, the sperm found on the anal swabs and on
42 the handkerchief were likely to be of particularly high
43 forensic value, as it would potentially reveal the identity
44 of the unknown male who had sex with Mr Cuthbert shortly
45 before his death. In all the circumstances, there exists
46 a real probability that that person is also the killer.

47

1 Now, given the significance of these exhibits, the
2 Inquiry made particular efforts to try to have these
3 exhibits re-tested with the assistance of FASS, but
4 ultimately, Commissioner, these efforts were fruitless.

5
6 You will see at tabs 32 and 33 of the tender bundle
7 the requests that were made of the NSW Police Force in an
8 effort to obtain those exhibits, and at tab 31 you will see
9 a statement by Detective Sergeant Neil Sheldon of the
10 Homicide Squad who undertook searches to try to locate
11 those exhibits.

12
13 No criticism is made of Detective Sergeant Sheldon,
14 who clearly undertook an extensive search in an attempt to
15 find the exhibits. However, the whereabouts of the
16 exhibits in Mr Cuthbert's case were not recorded on the
17 Exhibits Forensic Information and Miscellaneous Property
18 System, often called EFIMS. They were not recorded in any
19 exhibit book entries, and exhibit books across multiple
20 police stations and across multiple exhibit centres were
21 checked, and they were not retained by FASS.

22
23 It appears that the last known location of the
24 exhibits was that in 1982 FASS, after completing their
25 testing, sent the exhibits to the NSW Coroners Court, who
26 were ultimately to return them to the respective police
27 station, and that is set out in Detective Sergeant
28 Sheldon's statement at paragraphs 14 and 16. However, at
29 that point, the trail as to the whereabouts of those
30 exhibits runs cold.

31
32 Management and storage of exhibits, we submit, is
33 ultimately the responsibility of the investigating police.
34 If a DNA profile had been recovered from any of the
35 exhibits in this case, it would have provided crucial
36 investigative leads in relation to Mr Cuthbert's death and
37 may well have held the key to identifying Mr Cuthbert's
38 killer.

39
40 Commissioner, it is submitted that the systems for
41 retaining, preserving and storing exhibits failed in
42 Mr Cuthbert's case, and that that failure could be the
43 cause of Mr Cuthbert's murder remaining unsolved. This is
44 considered unacceptable by both contemporary and historic
45 policing standards.

46
47 Commissioner, you'll see in my written submissions as

1 to recommendations that the Inquiry may, in due course,
2 wish to consider recommendations in relation to these
3 issues.
4

5 The other physical evidence in Mr Cuthbert's case were
6 fingerprints. There were fingerprints found at various
7 parts of the crime scene, including the coffee table, the
8 bathroom vanity mirror, the hand cream tube, a coffee jar
9 in the apartment and the exit door. These fingerprints
10 were manually examined in 1981. The print on the hand
11 cream was matched to Mr Cuthbert - that's recorded in a
12 police note - but the remaining prints were unidentified.
13

14 In subsequent years, and seemingly at the initiative
15 of the police, the fingerprints were again examined and
16 compared to fingerprint records that were contained on
17 a national database of fingerprints. You'll see,
18 Commissioner, a summary of the various re-examinations that
19 were conducted at tab 33B of the tender bundle.
20

21 Again, there were no hits in relation to these
22 fingerprints.
23

24 I also note that in 2007, the NSW Police, with the
25 assistance of INTERPOL, sought that the fingerprints be
26 sent to the Federal Bureau of Investigation, the FBI, in
27 the United States for examination against their database.
28 However, the fingerprints were returned by the FBI, who
29 considered them to be of too poor quality to examine.
30

31 In 2023 at the request of the Inquiry, the police
32 again have conducted an examination of those fingerprints,
33 and on 21 March of this year, the Inquiry received a new
34 expert certificate from Ms Kate Reid, a senior crime scene
35 officer with the NSW Police Force, and that is located at
36 tab 33F of the tender bundle.
37

38 Now, on this occasion, presumably due to improvements
39 in technology, there were two matches that were made -
40 namely, the fingerprints on the coffee table and on the
41 bathroom vanity mirror were identified as belonging to
42 Witness I212. Of course, it will be recalled that he is an
43 occupant of that unit. Ultimately, the finding of his
44 fingerprints in his own apartment is unsurprising and
45 doesn't advance the investigation.
46

47 There remain two unidentified fingerprints. The first

1 is a fingerprint on a coffee jar, but that is considered
2 not suitable for comparison because of its poor detail, so
3 it's a poor quality fingerprint.
4

5 However, the fingerprint on the exit door was suitable
6 for comparison. It was searched against the national
7 database but it remains unidentified. So this may
8 represent the possibility of a future lead emerging in
9 Mr Cuthbert's case. However, the state, as at today's
10 date, is that there is no person of interest in relation to
11 the death of Mr Cuthbert and no promising new investigative
12 leads.
13

14 Commissioner, I now turn to the question of whether
15 Mr Cuthbert's death occurred in the context of LGBTIQ bias.
16 Strike Force Parrabell categorised this case as one where
17 there was insufficient information to find a bias crime.
18 However, two indicators were treated as giving rise to
19 a suspicion of a bias crime. They are, first, the lack of
20 other motive, noting the evidence identified earlier that
21 a robbery did not appear to play a role in the killing;
22 and, secondly, the level of violence, noting that there
23 were over 60 separate stab wounds and a cut throat.
24

25 Five of the indicators were marked as "Insufficient
26 Information", which is perhaps inevitable in a case such as
27 this one where the identity of the perpetrator is unknown,
28 and is perhaps an example of these indicators having some
29 limited utility in the case of unsolved deaths.
30

31 The Inquiry sought to advance the position by
32 obtaining a report from Dr Sullivan, a forensic
33 psychiatrist, and his report is found at tab 29. In
34 relation to the crime scene, Dr Sullivan provided an expert
35 opinion that the nature and extent of the injuries
36 significantly exceed what is necessary to kill a person and
37 are consistent with an attack occurring in a frenzy, panic
38 or overkill.
39

40 He also refers to the evidence of apparent recent
41 sexual intercourse with an unknown male partner. This
42 evidence, he opines, may support an inference of anger
43 being a motive, or distress, if the unknown offender was
44 conflicted about their own sexuality. However, Dr Sullivan
45 qualifies this motivation to be speculative, which again
46 highlights the inherent limitations of ascertaining motive
47 where an offender is unknown.

1
2 Commissioner, ultimately, the factors referred to by
3 Dr Sullivan, as well as the absence of evidence suggesting
4 another motive for the crime do give rise to a possibility
5 that Mr Cuthbert was killed in the context of LGBTIQ bias,
6 however, there is insufficient evidence to ground
7 a positive finding as to this fact.
8

9 Commissioner, my submission as to the manner and cause
10 of death is set out at paragraph 105 of my written
11 submissions, and it is submitted that it is open to this
12 Inquiry to find, consistent with the original finding at
13 the coronial inquest, that Mr Cuthbert died from the effect
14 of a cut throat and multiple incised penetrating wounds to
15 the chest, but that the person or persons who inflicted
16 those wounds remains unknown.
17

18 Commissioner, those are my submissions.
19

20 THE COMMISSIONER: Thank you. Mr Mykkeltvedt, do you want
21 to say anything about that?
22

23 MR MYKKELTVEDT: Not at this stage, Commissioner.
24

25 THE COMMISSIONER: Thank you. Yes, Ms Heath?
26

27 MS HEATH: Commissioner, if it's convenient, if we could
28 take the morning tea recess --
29

30 THE COMMISSIONER: Absolutely.
31

32 MS HEATH: -- and then move to the next case.
33

34 THE COMMISSIONER: Yes, I will, thank you.
35

36 MS HEATH: Thank you.
37

38 **SHORT ADJOURNMENT**

39 THE COMMISSIONER: Yes, Ms Heath?
40

41 MS HEATH: Commissioner, I assist the Inquiry. This is
42 a hearing into the death of Samantha Raye.
43

44 THE COMMISSIONER: Thank you.
45

46 MS HEATH: Commissioner, I start by handing up one volume
47

1 of material, titled "Tender Bundle Samantha Raye". A copy
2 should be already before your Honour and a copy is being
3 handed to Madam Associate. I tender that bundle.

4
5 THE COMMISSIONER: Thank you.

6
7 MS HEATH: I believe we're at exhibit 17.

8
9 **EXHIBIT #17 BUNDLE OF DOCUMENTS TITLED, "TENDER BUNDLE**
10 **SAMANTHA RAYE"**

11
12 THE COMMISSIONER: Yes.

13
14 MS HEATH: Secondly, Commissioner, I hand up short minutes
15 of order in relation to orders that the parties seek be
16 made pursuant to section 8 of the Special Commissions of
17 Inquiry Act. As with the previous case, these are limited
18 to protect privacy.

19
20 THE COMMISSIONER: All right, and they are by consent?

21
22 MR MYKKELTVEDT: They are, yes, Commissioner.

23
24 THE COMMISSIONER: Thank you very much.

25
26 MS HEATH: Finally, Commissioner, I hand up and adopt my
27 written submissions in this case, dated 28 March 2023.

28
29 THE COMMISSIONER: Thank you.

30
31 MS HEATH: Commissioner, Ms Samantha Raye was a person
32 born with intersex characteristics - that is, she had
33 innate variations of sex characteristics that did not fit
34 medical or social norms for female or male bodies. Ms Raye
35 was assigned male at birth by her parents and was raised as
36 a boy in New Zealand.

37
38 At some point prior to or around 1980, she began to
39 publicly identify as female and lived as Samantha Raye.
40 Ms Raye commenced her transition process and in 1988 she
41 underwent gender affirming surgery.

42
43 At around 9.30am on 20 March 1989, Ms Raye was found
44 deceased, lying on her back in a cave below Hornby
45 Lighthouse on Sydney's South Head. Police observed no
46 significant signs of injury or violence to her body that
47 would suggest an assault or homicide. An empty bottle,

1 a needle and a syringe were found next to her body, as well
2 as a pack of Valium tablets on her person. Police
3 collected the syringe and the bottle located next to her
4 body. These were tested and both were found to contain
5 insulin.

6
7 When her unit was later searched, police would find an
8 identical syringe to the one found next to her body in that
9 apartment.

10
11 The precise date of Ms Raye's death is unclear. There
12 were almost eight days prior to her body being discovered
13 where her whereabouts is unaccounted for. Her close
14 friend, Mr Wayne Hurrell, last spoke to Ms Raye on 11 March
15 1989 - that is, some nine days or so prior to the discovery
16 of her body - when she telephoned him from the Wayside
17 Chapel. The following day, she did not attend an
18 appointment with her psychiatrist.

19
20 On Friday, 17 May, Mr Hurrell went to Ms Raye's flat
21 to check on her. He let himself in with his key and found
22 that she was not home. He thought that this was unusual.

23
24 While in her flat, he noticed a note on the side table
25 in the living room in Ms Raye's handwriting which read:

26
27 *At lighthouse. Will be back.*

28
29 Followed by four question marks. He also noticed that
30 a woman named Hanna Hedler, who is known to be Ms Raye's
31 social worker, had written something in reply under the
32 note. He left his own note in reply and then left the
33 unit.

34
35 Mr Hurrell returned to Ms Raye's flat again, on
36 19 March, this time with her social worker, Ms Hedler.
37 Upon finding that she was still not home, they reported
38 Ms Raye as a missing person at the Kings Cross Police
39 Station.

40
41 I pause here to note that that missing persons report
42 could not be located on the police file. You'll see at
43 tab 21 of the tender bundle that the Inquiry summonsed the
44 missing persons report, but the correspondence at tab 22
45 indicates that that report could not be found.

46
47 This is noted in my written submissions as a concern

1 with the original police investigation, as accurate and
2 reliable recording of any missing person report is
3 obviously essential to policing practice.
4

5 As it turns out, the day following the making of the
6 missing persons report, Ms Raye's body was discovered
7 deceased.
8

9 A post-mortem examination was conducted by
10 Dr Bradhurst. He also found no significant injuries or
11 signs of violence on her body.
12

13 This Inquiry briefed Dr Iles, a forensic pathologist,
14 to conduct a review of Dr Bradhurst's autopsy report. She
15 commented in relation to the injuries, firstly, that no
16 specific record was made to the absence or presence of
17 anogenital injuries, which would have been desirable in the
18 circumstances; secondly, the autopsy report also did not
19 make note of any haemorrhages around the eyes and mouth.
20 This is now considered standard in contemporary practice as
21 it may indicate neck compression. Nonetheless, Dr Iles was
22 of the view that the autopsy report was sufficient to
23 exclude any significant injuries as contributing to the
24 death of Ms Raye.
25

26 Dr Bradhurst further observed that both of Ms Raye's
27 lungs were affected by acute bronchopneumonia. Microscopic
28 examination of her brain cells revealed cell changes
29 consistent with a viral infection causing mild
30 meningoencephalitis. Dr Bradhurst recorded that Ms Raye's
31 cause of death was acute bilateral bronchopneumonia and
32 viral meningoencephalitis.
33

34 On Dr Iles's review of that autopsy report she
35 concurred in the finding that Ms Raye's death was as
36 a result of bilateral bronchopneumonia. She was unable to
37 comment upon the extent or likely contribution of a viral
38 infection, as there were delays in obtaining access to the
39 histology slides which were required to be pre-prepared.
40 I've been instructed only this morning that those histology
41 slides are now ready and are being sent to Dr Iles.
42 A short supplementary report and supplementary submissions
43 will be prepared if necessary.
44

45 Commissioner, based on those medical findings, there
46 is no evidence to suggest that Ms Raye's death was the
47 result of a homicide, nor that a second person was involved

1 in her death. Likely, as a result of that finding,
2 a Coroner's inquest into Ms Raye's death was dispensed
3 with.
4

5 There was, and remains, however, an unresolved
6 question as to the manner and cause of Ms Raye's death, and
7 that question concerns whether Ms Raye self-administered
8 insulin prior to her own death, and, if so, whether it was
9 done so with an intention to take her own life. That
10 unresolved issue was noted by the Coroner in dispensing
11 with the inquest, with a handwritten notation on the
12 Coroner's action sheet querying whether Ms Raye's death was
13 by an overdose by insulin or natural causes.
14

15 Dr Iles has opined that the development of
16 bronchopneumonia in an otherwise healthy individual
17 suggests a period of "central nervous system depression or
18 obtundation prior to death". Obtundation refers to
19 a reduced level of alertness or consciousness.
20 Circumstantial evidence, in particular the presence of the
21 syringe and the empty bottle next to her body, suggests
22 that this may be attribute to insulin-induced
23 hypoglycaemia.
24

25 What I intend to do in the remainder of these
26 submissions is, first, set out the evidence in relation to
27 Ms Raye's mental health, which is relevant to assessing the
28 likelihood that she self-administered insulin with the
29 intention of taking her own life; and, secondly, examining
30 the extent to which the medical evidence can support
31 a finding of self-administered insulin.
32

33 So, turning to Ms Raye's mental health, the documents
34 obtained by this Inquiry show that Ms Raye had a history of
35 anxiety neurosis, adjustment disorder, and severe
36 depression with suicidal thoughts.
37

38 At the time of her death, she was under the care of,
39 among other practitioners, a psychiatrist by the name of
40 Dr Borman.
41

42 The records also indicate that in the months prior to
43 her death, Ms Raye's mental health deteriorated
44 significantly, and she had expressed suicidal ideation to
45 Dr Borman in the weeks prior to her death.
46

47 Commissioner, at tabs 27 to 29 of the tender bundle

1 are the statements of multiple treating doctors, all of
2 whom were of the view that Ms Raye's death being a suicide
3 was at least a possibility.
4

5 A matter that emerges strongly from the available
6 evidence is that Ms Raye's poor mental health was at least
7 in part caused by the discrimination she faced in the
8 course of her lifetime. Sadly, Ms Raye's case is a vivid
9 example of the harassment and hostility that people may
10 experience on account of being intersex or transgender or
11 both, and the devastating harms that such abuse can inflict
12 upon people.
13

14 Ms Raye's life was clearly one of trauma, which
15 commenced when she was only of a young age and within the
16 family home.
17

18 If I could have at this point tab 38 [SC0I.48943] put
19 on to the screen, this is an article relating to Ms Raye's
20 death that appeared in the Daily Mirror on 9 May 1989.
21 This is an article that contains some details of her life,
22 and I, in particular, draw attention to this quote from her
23 social worker which is found in the third column, and
24 I might ask that it just be scrolled down slightly. The
25 quote is that:
26

27 *Her father wanted her to be a boy so much*
28 *that he beat it into her.*
29

30 This is indicative of trauma that started from such a young
31 age, and I pause to note that, even in her death, Ms Raye
32 was referred to in hurtful terms such as "half man, half
33 woman", as in the title of this article, reflecting some of
34 the social attitudes of this time.
35

36 Commissioner, I next ask that tab 26
37 [SC01.11038.00014] be put up on the screen. Tab 26 is
38 a letter from Dr Borman, the treating psychiatrist to whom
39 I have already referred, and it's a letter to the Housing
40 Commission dated 1 February 1989. So that is not long
41 prior to Ms Raye's death. This letter reveals something of
42 Ms Raye's mental state and life circumstances at the time
43 of her death.
44

45 Dr Borman writes that her depression is largely
46 reactive to her appalling living situation surrounded by
47 excessive hostility, alcoholism and drug addiction.

1
2 In the third paragraph, and it starts about halfway
3 down, I draw attention to the following:

4
5 *She ... has become the butt of aggressive*
6 *behaviour in the flats where she lives.*
7 *Such antisocial behaviour includes*
8 *urinating outside her front door, and*
9 *throwing acid through the window. Because*
10 *of her, until recently, ambivalent sexual*
11 *situation, she will not be accepted by any*
12 *refuge, male or female. Her case has been*
13 *on the priority list with the HC [Housing*
14 *Commission] for two years but her plight*
15 *has become desperate and if she is not*
16 *offered some accommodation in the very near*
17 *future she is in more danger of committing*
18 *suicide, or becoming the victim of*
19 *violence.*

20
21 The letter ends by urging that Ms Raye's case be given
22 urgent priority.

23
24 I pause here to note that while Dr Borman uses the
25 word "hermaphrodite" in that letter, that appears to
26 reflect language that was commonly used at that time. The
27 term "intersex" is now more widely regarded as appropriate
28 and used by this Inquiry, particularly in the absence of a
29 firm view as to Ms Raye's preference as to terminology. I
30 can ask now that that letter be taken down.

31
32 The discrimination faced by Ms Raye was undoubtedly
33 the result of negative societal attitudes that existed and
34 still do exist against both intersex and transgender
35 people. It is increasingly well understood that the
36 stigmatisation of the bodily diversity of intersex people
37 can lead to discrimination and harm. This stigmatisation
38 is reflected, for example, in medical interventions to make
39 bodies appear or function in a manner more typically male
40 or female, often when a person is too young to consent and
41 even when harm is likely to be caused by the intervention.

42
43 Ms Raye was also likely discriminated against as
44 a transgender person. In November of last year, the
45 Inquiry received evidence from Dr Eloise Brook at the
46 Gender Centre about the mental health burden of
47 discriminatory attitudes towards transgender and diverse

1 people. Dr Brook stated:

2
3 *Physical violence is not the only form of*
4 *violence experienced by trans and gender*
5 *diverse people. There is the violence of*
6 *exclusion, the violence of having your*
7 *reality questioned, the violence of having*
8 *your identity disrespected, the violence of*
9 *the people and institutions who want to*
10 *"correct" you, the violence of systems that*
11 *don't see you or make space for you.*
12

13 Your Honour may also recall that Dr Brook referred to
14 the appalling statistics in relation to the high rate of
15 attempted suicides in the trans community, including one
16 2020 study that found nearly 46 per cent of trans women
17 will attempt to die by suicide across their lifetime.
18

19 Whether or not Ms Raye's death was the result of
20 suicide, the evidence indicates that the discrimination
21 that she faced in the course of her lifetime may well have
22 been a significant factor in her poor mental health and her
23 expression of suicidal ideation, and this fact should be
24 recognised when we consider both her life and her death.
25

26 Now, mention in this context should be made of the
27 note that was found at Ms Raye's flat which you may recall
28 read, "At the lighthouse, will be back", followed by four
29 question marks. The meaning of this note is ambiguous.
30 One possible interpretation of the note may be that it is
31 a suicide note. However, that does not seem to be how the
32 note was read by either Ms Hedler or Mr Hurrell, who left
33 comments responding to her comment.
34

35 Another possible interpretation is that she was unsure
36 how long she would stay at the lighthouse. Ultimately,
37 Commissioner, the note is curious, and there is no way of
38 resolving at this time what Ms Raye's subjective intention
39 was at the time that she wrote the note.
40

41 Commissioner, I turn now to the findings that can be
42 made on the medical evidence as to whether Ms Raye
43 administered insulin. There is conflicting evidence on the
44 question as to whether Ms Raye, in fact, used or was
45 required to use insulin prior to her death. Mr Hurrell, in
46 a statement that he gave to police, described that Ms Raye
47 suffered from diabetes, and used to take insulin with

1 a syringe. This fact is repeated in a form, the P97A form,
2 that reported the fact of Ms Raye's death to the Coroner.
3

4 However, when Ms Raye's treating doctors were
5 questioned by police, none of them had any knowledge of her
6 being diabetic and did not prescribe her insulin.
7 According to one doctor, he had conducted tests on Ms Raye
8 which did not indicate any problems with blood sugar.
9 According to another doctor, it was "inconceivable" that he
10 would have not known that Ms Raye was diabetic if she was.
11 This evidence may ground a suggestion that Ms Raye tended
12 to self-administer insulin even when not required or not
13 prescribed, for reasons unknown.
14

15 At post-mortem examination, testing of Ms Raye's
16 blood revealed an insulin level of 21 micro units per
17 millilitre. Testing of her urine revealed a glucose level
18 of 0.90 millimoles per litre.
19

20 The Inquiry sought the opinion of Professor Carter, an
21 endocrinologist, to determine whether those levels were
22 indicative of insulin use and whether he could offer an
23 opinion as to whether insulin use contributed to her death.
24 His report is summarised at paragraph 132 of my written
25 submissions.
26

27 In short, Professor Carter explained that because of
28 natural processes occurring in the body after death, both
29 the glucose and insulin readings were not reliable measures
30 of her insulin or blood sugar levels immediately prior to
31 her death.
32

33 The Inquiry further sought the opinion, as I've
34 already noted, of Dr Iles, to provide an opinion as to
35 cause of death and also to see if she could advance the
36 question as to the possible contribution of insulin use, if
37 any, to Ms Raye's death.
38

39 One comment made by Dr Iles is that there was no
40 comment in the autopsy report regarding the presence or
41 absence of injection sites on Ms Raye, which would have
42 been desirable to determine if she had self-administered
43 any substance. She further comments that it is unclear
44 from the report whether substances other than alcohol and
45 insulin were tested for in Ms Raye's blood, which also may
46 have been substances contributing to death.
47

1 Dr Iles concurs with the opinion of Professor Carter
2 in relation to the inability for the current insulin or
3 glucose levels to provide reliable information as to her
4 blood sugar levels immediately prior to death.

5
6 As mentioned earlier, Dr Iles considers that the
7 development of bronchopneumonia in an otherwise healthy
8 individual requires explanation, and usually requires
9 a period of central nervous system depression. But Dr Iles
10 ultimately concludes that the medical evidence is unable to
11 confirm the mechanism of that central nervous system
12 depression.

13
14 Commissioner, the submissions that are made as to the
15 findings of manner and cause of death are contained in my
16 written submissions at paragraph 140. Consistent with the
17 opinion of Dr Iles, it is submitted that the Inquiry should
18 find that Ms Raye died at an unknown time and date between
19 12 and 19 March as a result of bilateral bronchopneumonia,
20 which is likely to have followed a period of central
21 nervous system depression or obtundation.

22
23 Despite the evidence described in my submissions which
24 may suggest Ms Raye self-administered insulin prior to her
25 death, and included amongst that is the evidence as to her
26 mental health at the time of her death, it is submitted
27 that the evidence does not allow a positive finding that
28 Ms Raye self-administered insulin, that the presence of
29 insulin in her body contributed to her death, or that she
30 intended to die by suicide. That finding, if accepted,
31 also resolves the question of whether Ms Raye's death was
32 an LGBTIQ hate crime.

33
34 While there is ample evidence that LGBTIQ bias had
35 a devastating impact on Ms Raye's mental health, there is
36 no basis for finding that her death was the result of
37 a homicide, nor a hate crime, falling within the Terms of
38 Reference of this Inquiry.

39
40 Commissioner, there are two further matters on which
41 I seek to address. The first are the results of Strike
42 Force Parrabell in relation to Ms Raye's death.
43 Unsurprisingly in the circumstances, Strike Force Parrabell
44 concluded that there was no evidence of bias crime. The
45 academic review concurred in this finding, and it is
46 consistent with what I am submitting today.

1 So while the Inquiry does not dispute this result, it
2 is notable that the Bias Crime Indicator Form was completed
3 on the basis that Ms Raye died by suicide. This was
4 somewhat surprising, given that there was no consensus as
5 to the manner of Ms Raye's death. As noted above, the
6 Coroner dispensed with the inquest but queried whether
7 Ms Raye's death was suicide or natural causes, and also
8 included a notation that there was no chance of finally
9 establishing manner of death.

10
11 The opinion of the original investigating officer was
12 that whilst suicide was most likely, he felt unable to draw
13 a conclusion as to how Ms Raye met her death.

14
15 The final comment in the summary of findings prepared
16 by officers of Strike Force Parrabell was as follows:

17
18 *As per the initial investigation, it has*
19 *been shown that this case is clearly*
20 *a suicide and is not a gay bias related*
21 *homicide.*

22
23 It is submitted that this overstates the position on the
24 evidence supporting suicide as a cause of Ms Raye's death.

25
26 Commissioner, the final topic that I wish to deal with
27 is recommendations as to Ms Raye's death certificate.
28 I ask at this time that tab 8 [SCOI.73943] be put on the
29 screen. Commissioner, you will observe from tab 8 that
30 there is a printed death certificate, and I ask that this
31 be scrolled down. The printed death certificate seems to
32 bear the date 19 April 1989. However, the death
33 certificate was updated by hand on 6 July 1989 by a person
34 whose initials are unsigned but cannot be presently
35 identified.

36
37 There are three points to be made in respect of the
38 death certificate. The first is that you will see that the
39 date of death was changed from 20 March 1989, being the
40 date of the discovery of the body, to "on or about 12 March
41 1989". As I noted earlier, the precise date of Ms Raye's
42 death is unclear. At autopsy, time of death was estimated
43 to be two or three days prior to the post-mortem
44 examination on 22 March 1989. That would put date of death
45 at either 19 or 20 March.

46
47 Dr Iles, in her review, considered that estimate to be

1 "not unreasonable", but noted that the post-mortem
2 observations could not preclude Ms Raye's death being
3 closer to the time she was last known to be alive. So it
4 is submitted that the date of death is more properly
5 recorded as "unknown date between 12 and 20 March 1989",
6 and that a recommendation should be made to the Registrar
7 of Births, Deaths and Marriages, to amend this certificate
8 accordingly.

9
10 Secondly, and I'll ask now that it be scrolled down
11 again, you'll note, Commissioner, that in the box labelled
12 "Cause of death", the words "transsexual depression" appear
13 as a cause of death. The origin of that notation is
14 unclear. The autopsy report of Dr Bradhurst entered two
15 words "transsexual" comma "depression", into the section of
16 his report titled, "Other significant conditions
17 contributing to the death but not relating to the disease
18 or condition causing it". It may be that the notation on
19 the death certificate flowed from a misreading of
20 Dr Bradhurst's notation so that the one phrase, "transsexual
21 depression", appeared.

22
23 The second recommendation that I make, Commissioner,
24 is that the phrase "transsexual depression" should be
25 removed altogether from the death certificate. Firstly,
26 while the word used on the death certificate of
27 "transsexual" may reflect language that was commonly used at
28 that time, and although I acknowledge that many trans
29 people still use that terminology, I will here use the word
30 "transgender."

31
32 The language in the death certificate seems to involve
33 an assumption that being transgender is a clinical issue,
34 or that, and I quote, "transsexual depression" is
35 a particular type of depression. Neither of those
36 assumptions is tenable.

37
38 While Ms Raye clearly did suffer from depression, her
39 poor mental health should not be treated as a result of her
40 being transgender but, rather, as a result of societal
41 attitudes against transgender people that generated the
42 hostility and abuse that she faced during her lifetime.

43
44 Moreover, there is no physiological connection between
45 her being transgender and her death, so it does not appear
46 appropriate to list depression as a cause of death on her
47 death certificate.

1
2 Commissioner, the third and final comment I make in
3 relation to the death certificate is this, and, sorry, if
4 it could remain on the screen and if we scroll up to the
5 top, Commissioner, what you will observe is that, on
6 Ms Raye's death certificate, there was an amendment to
7 change her sex from female to male.
8

9 Ms Raye died prior to changes in legislation that
10 allow individuals to change the sex on their birth
11 certificates. Accordingly, and regrettably, there is no
12 legal basis to now change Ms Raye's death certificate to
13 reflect that she was in fact a woman, not a man. Nor is
14 there any recourse to recording her as a trans person.
15

16 Commissioner, I again refer this Inquiry to the
17 evidence of Dr Brook in November of last year. Dr Brook
18 expressed her fear about the harm caused by the
19 misgendering of trans people after death and of trans
20 invisibility after death. Ms Raye's case reflects those
21 fears realised. It is hoped that her identity is more
22 properly acknowledged in these submissions and before this
23 Inquiry.
24

25 Commissioner, those are my submissions.
26

27 THE COMMISSIONER: Thank you very much.
28

29 Mr Mykkeltvedt?
30

31 MR MYKKELTVEDT: No, your Honour, we will in due course
32 put on some short written submissions.
33

34 THE COMMISSIONER: Yes, that's fine.
35

36 Now, one thing I did want to note, Mr Mykkeltvedt, for
37 my own purposes and for clarification, I think there has
38 been a communication from time to time, has there not, as
39 to whether you required the likes of either Dr Sullivan or
40 Dr Iles for cross-examination? I think that will continue
41 to be put to you, if it hasn't, but I think to date you
42 have not taken that option up?
43

44 MR MYKKELTVEDT: Yes, that's so. Subsequent to the last
45 round of hearings, a question was put to us as to whether
46 we would require those experts, and we have communicated
47 that in respect of this round, there is no requirement.

1
2 THE COMMISSIONER: No, that's perfectly fine.
3 I understand, and it would be fair for it to be dealt with
4 on a case-by-case basis, but I just I wanted to make it
5 clear that you were aware of that option.
6
7 MR MYKKELTVEDT: Yes.
8
9 THE COMMISSIONER: So far, you don't seek to take
10 advantage of it, but if you wish to have your position
11 reserved, I think that's perfectly appropriate, we can just
12 deal with it if and when it arises.
13
14 MR MYKKELTVEDT: Thank you, Commissioner.
15
16 THE COMMISSIONER: All right. Yes, I'll adjourn.
17
18 Is that the conclusion for today?
19
20 MS HEATH: That is the conclusion for today. We seek that
21 this hearing be adjourned until tomorrow.
22
23 THE COMMISSIONER: All right. I will do that. Thank you.
24
25 **AT 12.01PM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED**
26 **TO THURSDAY, 30 MARCH 2023 AT 10AM**
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