

**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 Friday, 30 June 2023 at 10.35am

(Day 71)

Mr Peter Gray SC	(Senior Counsel Assisting)
Ms Meg O'Brien	(Counsel Assisting)
Mr William de Mars	(Counsel Assisting)
Ms Caitlin Healey-Nash	(A/Principal Solicitor)
Mr Tom Allchurch	(Senior Solicitor)
Mr Rhys Carvosso	(Solicitor)

Also Present:

**Mr Mark Tedeschi KC with Mr Anders Mykkeltvedt and
Ms Amber Richards and Mr Patrick Hodgetts for the NSW
Police**

1 THE COMMISSIONER: Yes, Mr Gray?

2

3 MR GRAY: Commissioner, today was set down to be the day
4 on which Senior Counsel for the Commissioner of Police
5 would make oral submissions related to the written
6 submissions received by the Inquiry on Wednesday concerning
7 Public Hearing 2. However, in the written submissions an
8 issue is raised which, it seems to Counsel Assisting, needs
9 to be dealt with first, before anything else happens.

10

11 The issue is that in the submissions on behalf of the
12 Commissioner of Police and, indeed, in the submissions on
13 behalf of Mr Willing, submissions are made to the effect
14 that various topics are outside the Terms of Reference and
15 that, therefore, it would be ultra vires for you, as
16 Commissioner, to make findings or report on those matters.

17

18 The Inquiry, through its solicitor, has advised the
19 two represented parties, the police and Mr Willing, that
20 this morning you would hear any oral submissions that
21 either of those parties want to make on that question
22 concerning the Terms of Reference, what might be
23 considered, in one sense, a jurisdictional question.

24

25 For the part of Mr Willing, it has been conveyed to
26 the Inquiry that he, through his counsel and solicitor, is
27 content to rest on what has been put in writing, but Senior
28 Counsel for the police is here and no doubt has some oral
29 submissions to make.

30

31 THE COMMISSIONER: Mr Tedeschi, leaving aside for one
32 minute the belated nature of some of the issues that have
33 arisen, I am of the view that I should deal with this issue
34 by way of a considered judgment on the matter before the
35 matter proceeds, because public expenditure is involved and
36 it is incumbent upon me, clearly, to operate within the
37 Terms of Reference.

38

39 Now, having said that, as you know, Mr Willing, or his
40 representatives, don't wish to make any further
41 submissions, but I didn't want to prevent you in any way,
42 if you wished to make any further submissions this morning
43 on the jurisdictional question. It is a matter entirely
44 for you and your client: if you wish to rely upon the
45 written submissions, that's perfectly acceptable from my
46 point of view, but I did want to give both you and
47 Mr Willing's representatives that opportunity.

1
2 Now, if you need a moment to consider that or not, as
3 the case may be, then it is over to you.
4

5 What I would then do is, clearly, hear what Mr Gray
6 has to say, if anything at the moment, in response to what
7 you say, but I do think the matter should be dealt with
8 discretely because of its significance.
9

10 MR TEDESCHI: We understand your concerns, Commissioner,
11 as to the significance of the issue. In fact, in the
12 letter that we received from the Solicitor to the Inquiry,
13 there are, in fact, two significant issues.
14

15 THE COMMISSIONER: Oh, yes, there are. No, please don't
16 think what I'm saying is in any sense disregarding the
17 second important issue that you raise, and that is a number
18 of persons - if I may say so without counting them, a very
19 large number of persons - that you say, as a matter of
20 fairness, both you and Mr Willing say, ought to be giving
21 evidence or ought to have given evidence.
22

23 I understand that and I do understand that's an
24 important issue. But I think the jurisdictional question,
25 I have determined, in any event, I think should be dealt
26 with discretely.
27

28 I would then, in fairness to everyone concerned,
29 grapple with this question of who should or should not give
30 evidence and when and why and so on.
31

32 MR TEDESCHI: Yes.
33

34 THE COMMISSIONER: So I don't for a moment wish you to
35 understand that I would not hear you separately at an
36 appropriate point on that question and on the, if I may say
37 so, vast number of people that you say ought to be called.
38 But I will deal with that separately.
39

40 MR TEDESCHI: That's the way that we understood today's
41 proceedings, that it is only on the first issue --
42

43 THE COMMISSIONER: Absolutely.
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45 MR TEDESCHI: -- that you wish to receive submissions.
46

47 THE COMMISSIONER: Yes.

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MR TEDESCHI: Commissioner, you would have seen at paragraphs 85 to 89 of our written submissions we advance the reasons why we suggest that, in effect, Strike Force Macnamir is not within the Terms of Reference.

THE COMMISSIONER: Yes.

MR TEDESCHI: The only thing that we would wish to add orally to what is in our written submissions is this: it was only when we saw the breadth of the submissions of Counsel Assisting, who, for the first time, has really suggested what, in effect, amounts to three individual areas in which it is suggested that the Inquiry could come to the conclusion that there was an attempt by a team of police officers to understate the incidence of gay hate crimes, but also that those three areas could be accumulated together to come to the conclusion that, in effect, there was what I would loosely categorise as a grand conspiracy on the part of a very large number of police officers to do the same, as evidenced by those three separate inquiries. So it's only when we became aware of the extent of Counsel Assisting's submissions that we realised the full extent of what he was suggesting the Inquiry could conclude.

THE COMMISSIONER: You say, in effect, that this never ever occurred to you before, as I understand it, and I don't know that the term "grand conspiracy" is used, but I do understand what you're putting and you say that it didn't dawn on you, or anyone else from your side, that there was any coalescence, at the very least, between Macnamir, Parrabell and Neiwand until you actually saw it in black and white?

MR TEDESCHI: It goes a little further than that in that on, I think, 6 December last year you, Commissioner, gave a judgment in relation to our application --

THE COMMISSIONER: Yes.

MR TEDESCHI: -- on the Terms of Reference, and it was an application specifically in relation to Strike Force Parrabell and the academic team associated with that strike force.

THE COMMISSIONER: Yes.

1
2 MR TEDESCHI: Commissioner, you gave a judgment in which
3 we would suggest you very broadly interpreted the Terms of
4 Reference. So we felt bound by that and, of course, the
5 name of Mr Scott Johnson was included originally in the
6 list of 88 matters that was to be considered by Strike
7 Force Parrabell.
8
9 THE COMMISSIONER: Yes.
10
11 MR TEDESCHI: So we understood the ruling that you gave on
12 6 December last year to incorporate, in a loose sense, the
13 Johnson matter.
14
15 THE COMMISSIONER: I'm not quite following that, but
16 anyway, I do understand - I think I understand what you are
17 saying. But as you recall, though, Mr Tedeschi, it was
18 a matter that, for various reasons, was put to one side
19 because things were occurring in the public arena, and
20 perhaps in the private arena, concerning that matter, and
21 there is a fair bit of history in all of these things, as
22 often there is. But let me not interrupt you. You
23 complete what you want to say.
24
25 MR TEDESCHI: I suppose what I am attempting to explain to
26 you, Commissioner, is why it is only now that we have
27 brought this up.
28
29 THE COMMISSIONER: No, I understand why you say "now", and
30 I do follow what you say.
31
32 MR TEDESCHI: That's the only reason for that explanation
33 to you.
34
35 THE COMMISSIONER: I understand. I understand. And apart
36 from what you've just said in paragraphs 85 to 89, you're
37 otherwise content for me - Mr Gray will say something in a
38 minute as to when this issue will be dealt with, but I do
39 think, in fairness to everyone concerned, importantly your
40 client and Mr Willing's, I should say something about it so
41 that you all know, one way or the other, having heard from
42 Counsel Assisting, what my position is, and then that puts
43 you in the position of then making forensic decisions
44 before we spend any more time or, in my case, the public
45 purse on investigating matters.
46
47 MR TEDESCHI: Yes, thank you. And we would also ask you,

1 Commissioner, to maybe set a date for the hearing of
2 submissions on the second point before we give our oral
3 submissions about --

4
5 THE COMMISSIONER: Oh, no, I will certainly do that.
6 Rest assured, I'm not going to expect you to - at the
7 moment, tentatively it's my view, but I can't see it being
8 fair that you should be forced to make your submissions
9 before we determine that issue of whether and, if so to
10 what extent, any of those persons nominated by you should
11 be the subject of evidence.

12
13 Now, your side will appreciate, with any inquiry,
14 there are finite periods in which the Commission has to do
15 things. I'm cognisant of that, as no doubt was your side
16 when you suggested the relevance of the absence, as it
17 were, of all of these other people, and that's a matter
18 that I've got to take into account, clearly, in both the
19 public interest but in the interests of the administration
20 of justice in that broader sense.

21
22 So, no, I won't fix it today, but rest assured, to
23 obviously work around people's availability, I will set -
24 because Mr Willing's representatives may wish to be heard
25 on that point or they may be content, although, without in
26 any sense wishing to be provocative, there is a slight
27 tension between you and Mr Thangaraj on at least one
28 witness, arguably; there might be a matter of concern which
29 needs to be addressed. But that's not my concern in one
30 sense.

31
32 So I will, or the staff will, be in touch with your
33 juniors and/or Mr Hodgetts and we will get a date for
34 a debate about that issue, because it's very important and
35 I accept the importance of it.

36
37 MR TEDESCHI: Thank you.

38
39 THE COMMISSIONER: Certainly. All right --

40
41 MR TEDESCHI: Could I say that we also join with
42 Mr Thangaraj in his approach to this issue for argument
43 today.

44
45 THE COMMISSIONER: Yes, absolutely. All right..
46 thank you.

47

1 Mr Gray, is there anything you want to say for the
2 moment before I adjourn?

3
4 MR GRAY: No, Commissioner. I will give consideration to
5 what has been put in the submissions on this jurisdictional
6 point. I haven't myself had a chance to read the
7 submissions fully yet because of other commitments this
8 week, and so no, I don't wish to say anything today.

9
10 THE COMMISSIONER: All right.

11
12 Well, thank you all very much. Mr Tedeschi, and for
13 those perhaps watching on line, Mr Willing's
14 representatives, we will be in touch in the very near
15 future as to the further progress of this question and the
16 additional question that you have identified.

17
18 All right. Thank you. I will now adjourn

19
20 **AT 10.48AM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED**
21 **ACCORDINGLY**

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