

**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**

Tuesday, 10 October 2023 at 10.03am

(Day 99)

Ms Kathleen Heath	(Counsel Assisting)
Mr Enzo Camporeale	(Director Legal)
Ms Kate Lockery	(Principal Solicitor)
Ms Francesca Lilly	(Senior Solicitor)

Also Present:

Mr Mathew Short for NSW Police

1 THE COMMISSIONER: Yes, Ms Heath.

2

3 MS HEATH: Commissioner, I appear as Counsel Assisting.

4

5 THE COMMISSIONER: Thank you.

6

7 MR SHORT: Commissioner, Short, for the Commissioner of
8 Police.

9

10 THE COMMISSIONER: Thank you.

11

12 Now, Mr Short, I'm going to say something on the
13 record about some submissions and some other matters.
14 Again, I note your position and I just want you to pass on
15 what I am about to say to others, but you will take a note
16 of it now or you will get the transcript.

17

18 MR SHORT: Of course, Commissioner.

19

20 THE COMMISSIONER: Now, what I am about to say concerns
21 the investigative practices hearing. On 10 August 2023,
22 the Inquiry wrote to NSW Police regarding those submissions
23 and a timetable was fixed: Counsel Assisting to serve by
24 15 September; NSW Police by 29 September.

25

26 On 17 August, the police wrote to the Inquiry to
27 complain that the timetable gave Counsel Assisting 4.5
28 weeks to draft and serve submissions and that they - that
29 is, the police - would only have two weeks. Your client
30 suggested that they be provided until 16 October to serve
31 submissions.

32

33 On 5 September, the Inquiry wrote to the police and
34 informed them of a further timetable variation: Counsel
35 Assisting to serve by 15 September; NSW Police by
36 6 October.

37

38 On 29 September, police again wrote to the Inquiry
39 seeking an extension to 13 October. They sought that on
40 the basis that Public Hearing 2 overlapped with the time
41 that the police had to prepare their submissions.

42

43 On 2 October, the Inquiry wrote to police and informed
44 them that the timetable for submissions was again varied
45 and that they had until 10am today to file those
46 submissions, and the following was also included in the
47 letter - and this is the message that is of some

1 significance, and the letter stated:

2
3 *Given the finite period in which the*
4 *Inquiry must complete its work, no further*
5 *extension would be granted to the provision*
6 *of written submissions on behalf of the*
7 *police.*

8
9 However, at 8.26pm on 9 October, the police again
10 wrote to the Inquiry and stated that it would not be
11 possible to file materials by 10am today, and, as
12 I understand it, there is some suggestion that the Inquiry
13 may receive material this evening.

14
15 Now, everyone has been labouring under difficulties in
16 this Inquiry, and we accept unequivocally that some
17 variations have been needed from time to time to
18 accommodate various parties. Unlike a civil case, there is
19 no capacity for any award of costs and there are few
20 sanctions, but the sanctions may well bite hard.

21
22 Now, this is not the first time we have had
23 difficulties with the police, but, leaving that to one
24 side, there is a further problem that has arisen, Mr Short,
25 and it is this - and correspondence has taken place between
26 the relevant parties: in various submissions filed on
27 behalf of the police, there appear to be references in
28 footnotes to documents which have not been tendered in
29 evidence. We think we are right about that. There are
30 references to some academic articles and other matter.

31
32 This is unacceptable for any number of obvious
33 reasons. If Mr Tedeschi was here, no doubt he would remind
34 me about issues like procedural fairness, and it goes to
35 the very heart of transparency, but, more to the point, it
36 creates inefficiencies and it means that the Inquiry's
37 staff both have to look for documents which have not been
38 tendered in evidence and have not been put upfront so that
39 the Inquiry can consider both their relevance and the
40 weight of those materials. For example, in the case of
41 some academic articles, are they being tendered just
42 because they are interesting? Are they being tendered
43 because they are meant to be taken as some sort of expert
44 report or expert opinion? It is simply unacceptable.

45
46 The practice notes make it plain and obvious: if
47 anybody wants material tendered, you notify the Inquiry,

1 the Inquiry then has a capacity to consider it. In most
2 cases, it would not be a problem, given some reasonable
3 opportunity on the part of everyone to consider it, but all
4 I can indicate at the moment is that the police have to
5 take on board these various footnotes.

6
7 Now, I think, as I have said, correspondence either
8 has gone, or will go, drawing attention to at least 15 or
9 more footnotes where this is relevant.

10
11 Now, the problem is that the Practice Guideline needs
12 to be adhered to, and so it is not only going to bite with
13 the current material; anything further that is being put
14 forward by the police, if there are to be any materials
15 that it wants to reference by way of footnote or says the
16 Inquiry should take into account, then both commonsense
17 and courtesy and the Practice Guidelines really suggest
18 that it needs to be brought expressly to the Inquiry's
19 attention so that we can give it the proper consideration.

20
21 Secondly, there might be other people who want to be
22 heard on the issue. As you now know, there are individual
23 police officers who, by reason of conflict, are not
24 represented by your client or by your side. There may be
25 other persons who may wish to be heard on those documents,
26 so I go back to the point that has been made over and again
27 about procedural fairness.

28
29 Now, therefore, it is obvious that because of the
30 tight time frame that the Inquiry is under, and we are
31 expending public resources - leave your resources to one
32 side; we are responsible for the proper expenditure of
33 public resources - so would you please inform your client
34 that if the investigative practices material is not filed
35 this evening or some time today, as it is suggested will
36 happen, the failure to comply with that and other
37 submissions may result in those submissions not being
38 considered in full or, in some cases, at all, and it will
39 be too late, after the event, for you to say, "Well, I'm
40 sorry, we raised it in footnote 22" or "We raised it in
41 some submission". This has to be, necessarily,
42 a collaborative effort at this stage of this Inquiry.

43
44 Having said that, Mr Short, as I said, I don't expect
45 you to respond, but would you please convey both those
46 sentiments and, when you get the transcript, the detail.

47

1 MR SHORT: Yes, Commissioner, I have heard everything you
2 have said and I will pass that along.

3
4 THE COMMISSIONER: All right. Thank you very much. Yes,
5 Ms Heath.

6
7 MS HEATH: Thank you, Commissioner.

8
9 Commissioner, this is a hearing into the death of
10 Mr Ernest Allan Head.

11
12 Can I commence by tendering a single volume of
13 material that comprises the tender bundle in this matter.

14
15 THE COMMISSIONER: Thank you.

16
17 MS HEATH: I understand that we're up to exhibit 64.

18
19 **EXHIBIT #64 TENDER BUNDLE IN RELATION TO THE DEATH OF**
20 **ERNEST ALLAN HEAD**

21
22 MS HEATH: Secondly, Commissioner, can I hand up some
23 short minutes in relation to orders that the parties seek
24 be made pursuant to section 8 of the Special Commissions of
25 Inquiry Act. These orders relate to various redactions
26 sought to documents in the tender bundle and also to
27 pseudonym orders for particular witnesses.

28
29 THE COMMISSIONER: All right. Pardon me one second.

30
31 MS HEATH: Commissioner, I understand they are by consent.

32
33 MR SHORT: That is so, Commissioner.

34
35 THE COMMISSIONER: Thank you, Mr Short.

36
37 MS HEATH: And finally, Commissioner, I adopt the written
38 submissions dated 9 October 2023, that I understand you
39 have a copy of.

40
41 THE COMMISSIONER: Yes.

42
43 MS HEATH: They have been prepared by Senior Counsel
44 Assisting this Inquiry, Mr Emmett, as well as myself.

45
46 Commissioner, the death of Mr Head has been determined
47 to fall within Category B of this Inquiry's Terms of

1 Reference - that is, his death is an unsolved suspected
2 hate crime death in New South Wales that occurred between
3 1970 and 2010, where the victim was a member of the LGBTIQ
4 community and the death was the subject of a previous
5 investigation by the NSW Police Force.
6

7 It is a case that was not identified or reviewed by
8 Strike Force Parrabell.
9

10 Mr Head was killed in his apartment in Summer Hill on
11 or about Thursday, 17 June 1976. He was the victim of
12 a frenzied knife attack, suffering 35 stab wounds to the
13 body and face.
14

15 Commissioner, Mr Head's case is one in which the
16 investigations of this Inquiry have resulted in a
17 substantial development. As I will come to submit, the
18 available evidence now indicates the involvement of a known
19 person, Mr Engin Simsek, in the death of Mr Head.
20 Mr Simsek has never previously been connected to Mr Head's
21 death, and I will come to address that evidence in due
22 course.
23

24 Commissioner, at this point, I would like to ask for
25 a photograph of Mr Head to be placed on the screen.
26

27 Mr Head was born in Penang, now Malaysia, in 1932. He
28 was described by his brother as a quiet, private and
29 good-natured man, who lived alone and was employed as
30 a clerk with the Corporate Affairs Commission. One friend
31 said that he was "soft hearted, kind" and "shy", and that
32 he "took everything that was said to him seriously".
33 Another friend described him as "always immaculate, shirts
34 pressed, not a hair out of place, always spick and span".
35

36 Mr Head was a gay man. He had previously been in a
37 three-year live-in relationship, and a diary was found in
38 his flat containing contact details of a number of men with
39 whom Mr Head had had previous sexual contact. Mr Head had
40 disclosed his sexuality to his brother, albeit that the
41 evidence suggests that Mr Head was not out in all contexts.
42

43 Commissioner, despite the efforts of this Inquiry, no
44 living family members of Mr Head have been able to be
45 located, and we would encourage any friends or family of
46 Mr Head's that become aware of this hearing to contact the
47 Inquiry.

1
2 Commissioner, I turn now to outline the circumstances
3 of Mr Head's death to the extent that they are known by
4 this Inquiry.
5

6 Mr Head was last seen alive on 17 June 1976, when he
7 attended the Bank Hotel in Newtown for a drink with
8 a friend at approximately 5pm. After finishing drinks, the
9 evidence suggests that he attended the Summer Hill TAB to
10 place a bet, before returning to his flat in a block of
11 apartments on Grosvenor Street in Summer Hill.
12

13 At about 7pm, two of his neighbours, Ms Walsh and
14 Mr Humphries, overheard Mr Head calling out from his flat.
15 They heard words to the effect of, "Help me", and "Don't
16 hurt me".
17

18 Ms Walsh described that there was fear in his voice,
19 and that he called for help about five times. Ms Walsh
20 said that she heard something being thrown around prior to
21 the calling out.
22

23 Mr Humphries heard another male voice, and while he
24 couldn't make out the conversation, it appeared that there
25 was an argument going on in the flat.
26

27 Mr Humphries went out onto his balcony and called out
28 to Mr Head. He tapped on Mr Head's kitchen window and
29 received no response. Mr Humphries then went to Mr Head's
30 front door. He overheard a conversation between two men.
31 He believed that one of those voices belonged to Mr Head.
32 The conversation was said to be in "quiet tones" that did
33 not indicate that an argument was taking place any longer.
34

35 Mr Humphries knocked on the front door of Mr Head's
36 apartment and asked if he was all right. A voice that he
37 believed belonged to Mr Head replied through the door, "No,
38 everything's all right. Would you go away." Mr Humphries
39 returned to his own flat and heard nothing further.
40

41 Upon returning to his flat, Mr Humphries twice rang
42 Mr Head's phone. He could hear the ringing from the
43 neighbouring apartment but the phone wasn't answered.
44 However, because Mr Head had sounded "calm" in his
45 conversation through the door, Mr Humphries did not think
46 that anything was wrong but, rather, assumed that Mr Head
47 was embarrassed.

1
2 Two women who were in the apartment directly below
3 Mr Head's unit also heard this incident. Ms Dreves heard
4 "footsteps similar to a person running", followed by
5 "a heavy scream". Ms Levendis described a "yell" that
6 "sounded like 'help '", followed by "a thump like a heavy
7 object hitting something".
8

9 Both Ms Dreves and Ms Levendis reported hearing
10 Mr Humphries knocking on the door shortly after the
11 yelling, so we know, Commissioner, that they are describing
12 hearing the same incident.
13

14 About one hour after this incident was heard, so at
15 approximately 8pm, Mr Humphries and Ms Walsh were sitting
16 in their living room watching television and heard the
17 front door of Mr Head's apartment open. They heard
18 a conversation which sounded like two men. Mr Humphries
19 thought that one of the voices belonged to Mr Head and that
20 the conversation was in a manner that "appeared to be
21 normal". Mr Humphries assumed that the other person then
22 left the flat.
23

24 Later that night, at about 10.30pm, Ms Levendis, one
25 of the women who was downstairs, heard noises coming from
26 the bedroom of Mr Head's unit. The noise was soft and
27 unidentifiable, but gave her the impression that somebody
28 was moving around the bedroom. She did not hear any other
29 sounds before falling to sleep.
30

31 Commissioner, it is submitted that it is likely that
32 the altercation overheard by Mr Head's neighbours was
33 between Mr Head and a person or persons responsible for, or
34 at least involved in, his death. Mr Head was never seen
35 alive again, and the estimate of the time of death at
36 autopsy was consistent with him having been killed that
37 night or early the following morning. It seems entirely
38 improbable that his death was unrelated to the interaction.
39

40 Mr Humphries reported hearing only two male voices,
41 both at the time that he first heard the argument and at
42 a later time when he heard the door open. He believed one
43 of the voices belonged to Mr Head, and this would suggest a
44 lone assailant. However, on that hypothesis, Mr Humphries
45 must have been mistaken about hearing a person leaving the
46 apartment.
47

1 Alternatively, if Mr Humphries was correct, that
2 a person left the apartment at that point, this, combined
3 with the knowledge that there was at least one living
4 person who remained in the flat that night, would suggest
5 the possibility of two people, in addition to Mr Head,
6 being in the apartment at the time of the altercation.

7
8 Mr Head's body was discovered by friends approximately
9 five days after this incident when concerns were raised for
10 his welfare. As I have already said, he was stabbed
11 35 times to the face and body.

12
13 Commissioner, I propose to briefly set out the
14 observations of the crime scene as well as the exhibits
15 that were seized and the results of forensic testing at the
16 time of the original investigation, and I note that the
17 crime predated the era of DNA evidence, and police relied
18 upon blood type analysis.

19
20 Mr Head's body was lying naked in the kitchen. There
21 were a large number of blood smears and splashes throughout
22 the apartment. A trail of blood spots led from the
23 bedroom, down the hallway, and into the kitchen where his
24 body was located. All the blood that was tested was found
25 to be consistent with having originated from Mr Head, whose
26 blood type occurred in only 1 per cent of the population.

27
28 On the kitchen wall above Mr Head's body were
29 handprints in blood. The original fingerprint examiner was
30 able to determine two palmprints of sufficient quality to
31 be suitable for comparison purposes, and, Commissioner,
32 I will have more to say about those handprints in due
33 course.

34
35 In the bedroom, police located a handkerchief that was
36 soaked with semen. Grouping analysis revealed that the
37 semen was consistent with having originated both from
38 Mr Head and from another individual with blood group O.
39 There was also semen on the penile and anal swabs that were
40 taken from Mr Head post-mortem. All of this evidence, as
41 well as Mr Head's state of undress, was consistent with
42 Mr Head having had sexual intercourse only shortly prior to
43 his death.

44
45 A number of cigarette butts were found in the
46 apartment, including one on the floor of the bedroom and
47 a number in an ashtray in the lounge room. These were

1 found to have saliva that originated from a group O
2 individual. Commissioner, this may suggest that the
3 cigarette butts were smoked by the same person whose semen
4 was found on the handkerchief, although I note that the
5 O blood type occurs frequently in the population, so care
6 must be taken in drawing that inference.

7
8 Police identified that property had been stolen from
9 the unit including a watch, a television, a cassette
10 recorder, a transistor radio and some jewellery. Despite
11 circulating flyers to various pawn shops in the local area,
12 that property was never recovered.

13
14 There was no sign of forced entry into the unit, which
15 suggests that Mr Head's assailant or assailants had been
16 allowed into his unit.

17
18 The original police investigation was conducted by
19 officers from the Ashfield Police Station, with the
20 assistance of the Special Crime Squad. The investigation
21 was a thorough one. Police pursued multiple lines of
22 inquiry and interviewed over 100 people in relation to
23 Mr Head's death, and I have set out at paragraph 16 of the
24 written submissions a number of the lines of inquiry that
25 police pursued.

26
27 Police seized and tested over 50 exhibits, including
28 those that I have already mentioned, such as the
29 semen-soaked handkerchief and the cigarette butts.

30
31 Police were, unsurprisingly, alive to the significance
32 of the bloody handprints found above Mr Head's body.
33 Throughout the investigation, a large number of
34 fingerprints and palmprints were obtained from the
35 witnesses that police spoke to. However, there were no
36 matches to the bloody palmprints that were found.

37
38 Despite the scope of the original police
39 investigation, no suspects or persons of interest emerged
40 that were not subsequently excluded from the investigation.

41
42 A year and a half after Mr Head's death, on
43 16 December 1977, Coroner Nash found that Mr Head had "died
44 from stab wounds of the chest and abdomen wilfully
45 inflicted by a person or persons unknown".

46
47 Commissioner, I turn now to look at the more recent

1 examinations of Mr Head's case, commencing with reviews by
2 the Unsolved Homicide Team. In March of 2002 and August of
3 2004, the fingerprint file in Mr Head's case was reviewed
4 by the Unsolved Homicide Team. On both of those occasions,
5 there was no match to any known person.
6

7 In 2005, Detective Inspector Jarrett from the Unsolved
8 Homicide Team reviewed Mr Head's case. There are three
9 points that should be noted from his review.
10

11 First, Detective Inspector Jarrett organised another
12 review of the fingerprint file. The bloody palmprint was
13 searched on the National Automated Fingerprint
14 Identification System database. I will hereafter refer to
15 that as the "NAFIS" database. Again, there was no match on
16 that database.
17

18 Secondly, Detective Inspector Jarrett submitted
19 a report recommending that the unidentified palmprint be
20 sent to overseas jurisdictions for comparison. The
21 evidence suggests that the palmprint was sent to at least
22 Kuala Lumpur, New Zealand, Hong Kong and the United States,
23 without success.
24

25 Commissioner, the third point that emerged from
26 Detective Inspector Jarrett's review concerns the other
27 exhibits that had been collected by police. Detective
28 Inspector Jarrett recorded that police had located three
29 labelled and sealed white envelopes, each of which
30 indicated that they contained unfiltered cigarette butts.
31 These white envelopes were sitting in a larger yellow
32 envelope, and that was found on the hard copy of the brief.
33 These cigarette butts had not been logged or stored as
34 exhibits.
35

36 Detective Inspector Jarrett arranged for them to be
37 properly logged and also conveyed to a laboratory for
38 forensic testing. When the envelopes were opened,
39 a matchstick was also located. Commissioner, I note that
40 it was some, but not all, of the cigarette butts that had
41 been initially seized by police that were located in those
42 envelopes.
43

44 The forensic testing on the cigarette butts in 2005
45 was ultimately unsuccessful.
46

47 Of note, Detective Inspector Jarrett was unable to

1 locate any of the other exhibits that the original
2 investigating police had seized, so, Commissioner, it would
3 appear that at some point between 1976 and 2005, those
4 exhibits had been either lost or destroyed. I will return
5 to this point in due course.
6

7 Detective Inspector Jarrett ultimately concluded,
8 fairly, that "no further investigative inquiries can
9 reasonably be made without the fingerprint or possible DNA
10 evidence being linked to a particular person".
11

12 Commissioner, this review was in 2005, and it was the
13 final review of Mr Head's death before this Inquiry.
14 Mr Head's death was not reviewed by Strike Force Parrabell.
15

16 Commissioner, I now turn to the recent developments
17 that have occurred in the course of this Inquiry's review
18 of Mr Head's case.
19

20 In April of this year, the Inquiry requested that
21 a further examination be conducted on the palmprints
22 located above Mr Head's body.
23

24 Ms Reid, a Senior Crime Scene Officer and Fingerprint
25 Expert, examined the photographs. Ms Reid identified three
26 palmprints among the bloody marks, which she labelled B(1),
27 B(2) and (B3) for ease of reference, and at this point,
28 I will ask that the photograph of those palmprints be
29 placed on the screen.
30

31 Commissioner, you may recall that I earlier said that
32 the original investigating police only identified two
33 palmprints that were suitable for comparison. Ms Reid has
34 explained that at the time of the original investigation,
35 analysis of fingerprints was conducted by the use of
36 a magnifying glass. Modern fingerprint analysis, by
37 contrast, involves the digitisation and digital enhancement
38 of fingerprints. This meant that print (B3), which was of
39 poorer quality than prints B(1) and B(2), was able to be
40 enhanced to the point that it was suitable for comparison.
41

42 Ms Reid searched the three palmprints against the
43 NAFIS database. As a result of that search, print B(1)
44 was matched, for the first time, to a known person,
45 Mr Engin Simsek. Ms Reid confirmed the match by a manual
46 comparison.
47

1 Mr Simsek's record prints had been taken by police in
2 1980, and I will return to that timeline in due course.

3
4 I note that prints B(2) and (B3) remain unidentified.
5 However, Commissioner, it is important to note that those
6 prints were unable to be compared to the record prints of
7 Mr Simsek. In 1980, when Mr Simsek's prints were taken,
8 police practice was only to capture the upper portion of
9 the palm. Prints B(2) and (B3) capture the lower portion
10 of a palm. So, accordingly, the fact that B(2) and (B3)
11 remain unidentified does not indicate that the prints
12 belonged to a person other than Mr Simsek; it simply
13 indicates the comparison cannot be undertaken.

14
15 Commissioner, the Inquiry also caused the retesting of
16 the cigarette butts that had been located in 2005. On one
17 of those cigarette butts, a weak partial DNA profile was
18 obtained from an unknown individual. That profile was of
19 such poor quality that it was not suitable to be uploaded
20 onto the DNA database.

21
22 As no reference DNA profile is held for Mr Simsek, it
23 could not be determined whether the profile on the
24 cigarette butt belonged to him or to another person. The
25 Inquiry was also unable to locate a sufficiently close
26 living relative of Mr Simsek to provide a DNA profile for
27 familial comparison, so that DNA profile remains
28 unidentified.

29
30 Upon learning of the palmpoint match, the Inquiry took
31 steps to learn more about Mr Simsek. This included
32 summoning records about Mr Simsek and also holding
33 a private hearing with a living relative of Mr Simsek, who
34 ultimately provided a voluntary statement to this Inquiry
35 that you will find at tab 76.

36
37 Commissioner, I take this moment to publicly express
38 the Inquiry's gratitude to that person for their
39 cooperation with this Inquiry.

40
41 What follows is a summary of the information that was
42 able to be ascertained about Mr Simsek.

43
44 Mr Simsek was born in Turkey on [REDACTED] 1943.

45
46 On 31 May 1972, Mr Simsek emigrated to Australia,
47 where some of his relatives were already residing.

1 Mr Simsek's arrival card into Australia listed a unit on
2 Grosvenor Crescent, Summer Hill as his intended address,
3 and you may recognise that as being the same street as
4 Mr Head.
5

6 We know that Mr Simsek's relatives lived at two
7 addresses on Grosvenor Crescent, Summer Hill at various
8 points between 1970 and 1972, although it cannot be
9 pinpointed precisely where they were living in 1976. Both
10 addresses on Grosvenor Crescent were less than a two-minute
11 walk from Mr Head's apartment.
12

13 While Mr Simsek resided at other addresses, mostly in
14 the Inner West areas of Sydney, he was reported to have
15 resided with his relatives on Grosvenor Crescent for at
16 least some periods of time. Whilst it is unknown precisely
17 where he was living at the time of Mr Head's death, his
18 connection with Grosvenor Crescent suggests an opportunity
19 for Mr Simsek and Mr Head to have come into contact.
20

21 There are only scant records of Mr Simsek's life at
22 around the time of Mr Head's death in 1976.
23

24 In 1975, Mr Simsek had commenced a de facto
25 relationship with a woman, and in approximately 1979 he had
26 a daughter. The Inquiry has been unable to locate these
27 people due to a lack of details. Between 1976 and 1980, we
28 know that Mr Simsek was working at a factory in Enfield,
29 a suburb approximately 10 minutes from Summer Hill.
30

31 In August of 1980, Mr Simsek was convicted of an
32 offence of "malicious injury", relating to an incident
33 in July of that year in which Mr Simsek used a chair to
34 smash a glass window and door and juke box at a shop in
35 Enmore.
36

37 This was Mr Simsek's first offence in Australia, and
38 it was the occasion on which police obtained Mr Simsek's
39 fingerprints.
40

41 In September 1984, Mr Simsek was arrested in
42 possession of a large quantity of heroin. A search of his
43 residential premises revealed further quantities of heroin
44 and cannabis. Mr Simsek was charged with offences of
45 possessing and supplying a prohibited drug, and in December
46 of 1985 he was convicted in respect of two counts of
47 supplying a prohibited drug and sentenced to six years'

1 imprisonment.

2
3 He was released to parole on 9 July 1986. A report
4 prepared immediately prior to his release described him as
5 a "quiet and seemingly placid individual", noting it was
6 "very difficult to assess [his] level of involvement in the
7 distribution of heroin". Notes from an interview conducted
8 with a relative prior to his release recorded that they
9 characterised him as "a gentle and non-violent man whose
10 involvement in the offences she found hard to explain".
11 This relative further described that he had "great
12 difficulty in talking about his feelings" and "[n]ever
13 talks about his girlfriend or his daughter".
14

15 Commissioner, Mr Simsek's New South Wales criminal
16 history contains no offences of violence against a person.
17

18 Mr Simsek was reported to be an alcoholic. His
19 alcoholism ultimately caused him to become estranged from
20 his family. It's unknown whether Mr Simsek was gay,
21 bisexual or had sex with men. The Inquiry has not found
22 any evidence of a prior relationship between Mr Simsek and
23 Mr Head.
24

25 Mr Simsek departed from Australia on 13 August 1994.
26

27 Commissioner, it has been confirmed that Mr Simsek
28 died by suicide on 6 May 1999 in Turkey. At tab 75 of the
29 tender bundle is a newspaper article reporting on his
30 death. The NSW Police Force also assisted the Inquiry with
31 a request through Interpol and received confirmation from
32 Turkish authorities of Mr Simsek's death.
33

34 Commissioner, as you would appreciate, the
35 significance of Mr Simsek's death is that there can be no
36 criminal proceedings brought against him in relation to
37 Mr Head's death.
38

39 Commissioner, I seek to make submissions to you in
40 relation to what the evidence indicates in relation to
41 Mr Simsek's involvement in Mr Head's death.
42

43 It is submitted that the presence of Mr Simsek's
44 palmprint in blood on the kitchen wall above Mr Head's body
45 powerfully indicates that Mr Simsek was at least involved
46 in the events surrounding Mr Head's death.
47

1 There can be no doubt that Mr Head was the victim of
2 a violent and frenzied stabbing. Having regard to the
3 position of the palmprint in close vicinity to Mr Head's
4 naked body and surrounded by blood marks originating from
5 Mr Head, it is submitted that the only reasonable inference
6 is that the palmprint was deposited at, or shortly after,
7 the time of Mr Head's killing.

8
9 However, much remains unknown about the precise
10 circumstances of Mr Head's death. Among other things, it
11 is impossible to know whether Mr Head was killed by a lone
12 assailant or by more than one person. It is also
13 impossible to know whether Mr Head was killed at the same
14 time as the altercation heard by the neighbours or at some
15 later time. For this reason, while the evidence is
16 consistent with Mr Simsek being responsible for Mr Head's
17 death, it cannot exclude other possibilities that arise on
18 the evidence.

19
20 One other relevant circumstance over which uncertainty
21 lingers is whether Mr Simsek had engaged in sexual
22 intercourse with Mr Head prior to his death.

23
24 I have already drawn your attention, Commissioner, to
25 the indicators of Mr Head and another person having engaged
26 in sexual activity, including receptive anal intercourse,
27 shortly prior to his death. The trail of blood spots from
28 the bedroom, down the hallway, and into the kitchen is
29 consistent with Mr Head being attacked first in the
30 bedroom, with the attack then continuing into the kitchen
31 where Mr Head's body was ultimately located.

32
33 One possibility, therefore, is that the perpetrator
34 had sexual intercourse with Mr Head in the bedroom before
35 embarking on a frenzied and panicked attack on him.
36 Forensic analysis of the exhibits, including the penile and
37 anal swabs, may have been able to shed some light on these
38 circumstances, however, those exhibits have been lost.

39
40 Ultimately, while the bloody palmprint is consistent
41 with Mr Simsek being responsible for Mr Head's death, the
42 role that Mr Simsek played in relation to Mr Head's death
43 remains unknown. In view of Mr Simsek's death, it is not
44 now possible for him to answer any allegation that he was
45 responsible for or otherwise involved in Mr Head's death.

46
47 Commissioner, having regard to what I have just

1 outlined, it is submitted that a finding is open that
2 Mr Head died on or about 17 June 1976 in Summer Hill from
3 wilfully inflicted stab wounds of the chest and abdomen.
4 You may also wish to observe that the evidence indicates
5 the involvement of Mr Simsek in the death of Mr Head.
6

7 Commissioner, I now turn to make submissions in
8 respect of the police's investigation of Mr Head's death.
9

10 I have already observed that the original police
11 investigation was thorough. There are two matters that
12 I wish to make submissions on today. The first relates to
13 the management of exhibits; the second relates to the need
14 for regular reviews of unidentified fingerprints.
15

16 The principal concern raised in Mr Head's case, as in
17 many other cases examined by this Inquiry, relates to the
18 retention, preservation, storage and tracking of exhibits.
19 As I have already explained, by 2005, the only exhibits
20 that could be located by the Unsolved Homicide Team were
21 some of the cigarette butts and a match.
22

23 The Inquiry issued a summons to the NSW Police Force
24 in relation to the exhibits. The NSW Police Force
25 confirmed that, despite extensive searches of multiple
26 possible locations, no further exhibits could be found. So
27 the position now, as in 2005, is that the majority of the
28 exhibits are missing.
29

30 Significant forensic testing opportunities have been
31 lost along with those exhibits. In particular, the semen
32 on the penial and anal swabs and on the handkerchief, and
33 the saliva on the remainder of the cigarette butts are
34 high-yield DNA sources from which it is possible that a DNA
35 profile could have been recovered.
36

37 DNA testing of exhibits may have assisted in
38 confirming the identity of Mr Simsek, or shed light on
39 other aspects of the circumstances of Mr Head's death, such
40 as whether it was Mr Simsek or a third person who had
41 sexual intercourse with Mr Head shortly prior to his death.
42

43 While DNA testing was not foreseeable in 1976,
44 physical evidence was nonetheless important for the other
45 kinds of testing that were available at that time. It
46 should have been obvious, by reference to technology of the
47 day, including blood typing technology, that at the very

1 least, the handkerchief should have been retained as
2 evidence, if not also the cigarette butts and the human
3 hair. It is submitted that the Inquiry can conclude that
4 the loss of exhibits was not consistent with proper police
5 practice, including judged by the standards of 1976.
6

7 Had Mr Simsek been alive, the loss of the exhibits
8 might have seriously impaired the prospects of a successful
9 prosecution against him.
10

11 Although the palmprint was sufficient to identify
12 a person of interest, this does not detract from the
13 observation that the loss of exhibits in Mr Head's case was
14 unsatisfactory and has hampered the full reinvestigation of
15 Mr Head's death.
16

17 Commissioner, returning to the question of the latent
18 fingerprint, as I've noted, the police were in possession
19 of Mr Simsek's record fingerprints since July of 1980, when
20 he was arrested on the charge of malicious injury. Despite
21 this, his fingerprints were not matched to the bloody
22 palmprints until this year, 2023.
23

24 I have already noted that there were fingerprint
25 reviews undertaken at the request of the Unsolved Homicide
26 Team in 2002, 2004 and 2005, which failed to identify
27 Mr Simsek.
28

29 Ms Reid, the fingerprint expert who reviewed the case,
30 explained that the failure to match on these occasions was
31 because of upgrades to the fingerprint searching algorithm
32 used by the NSW Police Force between then and now. In
33 particular, there was an upgrade to the fingerprint system
34 in 2015 that would have resulted in a more accurate coding
35 of Mr Simsek's record fingerprints.
36

37 Ms Reid states that when the palmprint was searched
38 in March of 2023, the NAFIS system was "substantially more
39 technically capable" than at the time of the previous
40 reviews. So, accordingly, it would appear that the
41 NSW Police Force did not have the technological capability
42 at the time of the earlier reviews to identify Mr Simsek.
43

44 Commissioner, I note that inquiries are still ongoing
45 as to when that technology first became available in other
46 jurisdictions.
47

1 There is, of course, the eight-year time gap between
2 2015, when there was an upgrade of the fingerprint system,
3 and 2023. Ms Reid explains that, although the upgraded
4 algorithm was available from 2015, the NAFIS database did
5 not, and still does not, automatically re-search latent
6 unidentified prints already on the database. Any search
7 needs to be manually initiated by a fingerprint examiner.
8

9 As Mr Head's case reveals, forensic opportunities may
10 be lost if no search of a latent fingerprint is initiated
11 against existing record prints following upgrades in
12 technology. Unidentified fingerprints need to be retested
13 and re-examined at appropriate times.
14

15 It is submitted that the 2015 upgrade ought to have
16 served as a prompt to the Unsolved Homicide Team to
17 resubmit any unidentified latent fingerprints for
18 re-examination. That observation may apply to other cases,
19 both within and outside this Inquiry's Terms of Reference.
20 Further upgrades to fingerprint comparison technology
21 should similarly prompt a review by the Unsolved Homicide
22 Team.
23

24 Commissioner, the last topic I wish to address you in
25 relation to is whether there is any reason to suspect that
26 Mr Head's death was the result of LGBTIQ bias.
27

28 The Inquiry sought the opinion of Dr Sullivan,
29 a consultant forensic psychiatrist, to assess whether any
30 aspects of the manner of Mr Head's death or the crime scene
31 may indicate that the death was a consequence of an LGBTIQ
32 hate crime. Dr Sullivan observed that "the nature and
33 extent of injuries significantly exceed what is necessary
34 to kill a person, and are consistent with an attack
35 occurring in a frenzy, panic or overkill".
36

37 As I have already submitted, the available evidence
38 supports there being a temporal proximity between Mr Head
39 engaging in sexual activity and a subsequent frenzied
40 attack. This temporal proximity raises the possibility
41 that the attack was committed in response to, or as
42 a result of, the sexual activity which just took place.
43 This being the case, there is a distinct possibility that
44 Mr Head's death was motivated by LGBTIQ bias, including,
45 for example, being the product of disgust or anger at
46 having participated in sexual intercourse with a man.
47

1 The theft of property from Mr Head's unit does not
2 exclude the possibility of LGBTIQ bias. Dr Sullivan
3 observed that it was impossible to determine whether theft
4 was a primary or secondary motive. The nature and extent
5 of the injuries goes well beyond what would be required to
6 effect a robbery.

7
8 It is submitted that a binary distinction should not
9 be drawn between a robbery and a bias crime, as this would
10 fail to recognise the possibility that LGBTIQ bias may
11 still be a factor in a property offence.

12
13 Having regard to the whole of the available evidence,
14 it is submitted that there is objectively reason to suspect
15 that the attack was motivated by LGBTIQ bias, either in
16 whole or in part. However, without further information as
17 to Mr Simsek's motivations or biases or the precise
18 circumstances surrounding Mr Head's death, it is not
19 possible to arrive at a more positive conclusion.

20
21 Commissioner, those are the submissions.

22
23 THE COMMISSIONER: Thank you.

24
25 MR SHORT: The Commissioner of Police seeks to reserve her
26 position and rely on written submissions.

27
28 THE COMMISSIONER: All right. Thank you.

29
30 Thank you, Mr Short. Thank you, Ms Heath. I will now
31 adjourn, thank you.

32
33 **AT 11.48AM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED**
34 **ACCORDINGLY**

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