2022 Special Commission of Inquiry

into LGBTIQ hate crimes

Before: The Commissioner, the Honorable Justice John Sackar

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

On Wednesday, 2 November 2022 at 10.02am

(Day 3)

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THE COMMISSIONER: In a moment I will invite Mr Gray of Senior Counsel to deliver an opening statement, but as this is the first public hearing of this Special Commission of Inquiry it's therefore appropriate that we acknowledge the traditional custodians of the land on which we gather today and we pay our respects to their elders past, present and emerging and I extend that respect to any Aboriginal or Torres Strait Islander peoples here today or watching online.

Yes, Mr Gray.

MR GRAY: Commissioner, I have been appointed as Senior Counsel assisting the Special Commission of Inquiry. Six other barristers have been appointed as junior counsel assisting. Ms Christine Melis on my right, Mr Bill de Mars, Ms Claire Palmer, then Ms Meg O'Brien on my left, Ms Kathleen Heath on the right, and Ms Grainne Marsden who is not able to be here today. Mr Enzo Camporeale is the instructing solicitor to the Special Commission leading a team of solicitors, with Ms Kate Lockery, from the Crown Solicitor's Office. They are behind me to my right.

As with any Special Commission of Inquiry, the Terms of Reference provide the context and the essential parameters within which this Special Commission will undertake its work. I will come back to those Terms of Reference in more detail shortly, but first I will say this.

All of the deaths with which this Inquiry is concerned, many of them lonely and terrifying, were of people whose lives were tragically cut short. Many had also suffered discrimination, or worse, while alive; some of the deaths were obviously murders, others may well have been. The response of the community, of society, of its institutions to these deaths was, sadly, lacking. All of these lives, of every one of these people, mattered. They mattered to them, to their loved ones and, ultimately to all of us. And their deaths matter. This Special Commission, by shining a light on everything that is known and can be found out about what happened, will aim to provide some recognition of the truth.

The establishment of this Special Commission followed a recommendation last year in the Final Report of the New South Wales Legislative Council Standing Committee on

Social Issues, which I will call the Parliamentary Committee. The Parliamentary Committee had carried out an inquiry itself, over the course of some two-and-a-half years between 2018 and 2021, into Gay and Transgender hate crimes between 1970 and 2010.

In February 2019 the Parliamentary Committee published an Interim Report and in May 2021 it published its final report. One of the recommendations of that final report was in these terms, and I quote:

> *That the New South Wales Government establish a judicial inquiry or other form of expert review to enquire into unsolved cases of suspected gay and transgender hate crime deaths.*

The words "unsolved", "suspected" and deaths" are of some significance as I will outline shortly.

In due course, on the 13th of April this year this Special Commission was established by Letters Patent issued in the name of the Governor of New South Wales pursuant to the Special Commissions of Inquiry Act 1983. The Letters Patent contained within them the Inquiry's Terms of Reference.

So far as has been ascertained, this Special Commission is the first of its kind anywhere in the world.

The inquiry carried out by the Parliamentary Committee had followed on from the publication of two important reports in 2018. Firstly, a report by ACON, formerly the AIDS Council of New South Wales, entitled, "In Pursuit of Truth and Justice" published in May 2018. I will refer to that as "the ACON Report". And secondly, a report concerning a New South Wales Police Strike Force called Strike Force Parrabell published a month later in June 2018. I will refer to that as the "Parrabell Report".

Both of those reports in different ways had looked at some 88 deaths in New South Wales between 1976 and 2000 where "gay hate" or "anti-gay bias" or "sexuality or gender bias" had been relevant factors or might have been relevant factors. Both reports were the result of years of work by ACON and the Police respectively. Most of those 88 deaths were regarded as "solved", for example, where the actual or

probable perpetrator or perpetrators had been identified and/or had been charged and/or prosecuted and/or convicted. Less than half of those 88 deaths were regarded as "unsolved". However, the ACON Report on the one hand and the Parrabell Report on the other, expressed different views as to what that proportion of unsolved cases actually was. ACON considered that about 30 of the 88 were unsolved, while Parrabell regarded 23 as unsolved.

The two reports also arrived at very different conclusions as to how many of the 88 cases were "gay hate" related. The ACON Report treated all or most of the 88 cases as having had, or as being likely to have had, that feature, whereas in the Parrabell Report less than one-third of them were characterised in one or other of those ways.

The Parliamentary Committee looked closely at both of those two reports and also received written submissions and oral evidence from those who had been responsible for, and involved in, the work which had led to their compilation and to their conclusions. The Committee also received submissions and evidence from numerous other organisations and individuals.

The work of ACON and Police, in embarking on these tasks as they did, was in some ways the culmination of a long-term building up of concern in many parts of the community about the levels of violence, including homicides, committed against LGBTIQ people especially in the 1970s, 80s, and 90s.

The second half of the 20th Century was a period of rapid social change on many fronts. In the particular context with which this inquiry is concerned some of the well-documented signposts were the following.

As late as 1958 the then NSW Police Commissioner, Colin Delaney, described homosexuality as "the greatest social menace" in Australia. A year earlier, in 1957, the Wolfenden Report in the UK had recommended decriminalisation of homosexual conduct between consenting adult males in private. In 1967, 10 years after the Wolfenden Report, such decriminalisation was implemented by legislation, initially in England and Wales, and later in all of the UK.

In 1969 the Stonewall riots in New York attracted worldwide publicity and attention. In 1970 CAMP (Campaign Against Moral Persecution) was formed in Australia. In 1975 homosexual conduct was decriminalised in South Australia, the first Australian state to take that step. In 1978 the first Mardi Gras was held in Sydney. In 1984 homosexual conduct was decriminalised in New South Wales. And later still in Western Australia, 1989, Queensland 1991, and Tasmania 1997.

By 1984, the year of decriminalisation in this state, HIV/AIDS had begun to have its devastating effects in Australia and around the world. In 1987 the Grim Reaper media campaign was given saturation coverage, and it was not until 2014, eight years ago, that amendments to the Crimes Act in this state effectively abolished a defence known colloquially as the "gay panic defence" or "homosexual advance defence" - whereby an accused might assert that, although he had killed or injured a victim, he had only done so because the victim had made a so-called homosexual advance.

The Parliamentary Committee received submissions and evidence from a number of participants in its inquiry to the effect that, whereas the decriminalisation of homosexual conduct in 1984 might have been expected to lead to greater levels of acceptance for LGBTIQ people, the combined effect of the AIDS epidemic and the Grim Reaper campaign was to increase hostility and fear, directed towards gay men, in particular, among many in the community.

The ACON Report pointed to the particular frequency of violent physical assaults on LGBTIQ people between the mid-1980s and the early 1990s. Many of the 88 deaths referred to in the ACON Report and the Parrabell Report, indeed about half of that 88, occurred in that period of less than 10 years.

During 2001 and 2002 a New South Wales Police Strike Force called Strike Force Taradale conducted a substantial investigation into the deaths of three men near Bondi which had occurred in that concentrated period: one in 1985 and two in 1989. That investigation led in turn to a lengthy inquest in 2003 and 2004 before the then Deputy State Coroner, Jacqueline Milledge. The Coroner's findings were delivered in early 2005. They included findings that two

of those men, Ross Warren and John Russell, had been victims of homicide perpetrated by a person or persons unknown.

The Coroner also said that the evidence strongly supported the probability that both men met their deaths at the hands of what the Coroner called "gay hate assailants". The Coroner concluded that it was not possible to make such a finding in relation to the third man, Gilles Mattaini, but said that there was a strong possibility that he died in similar circumstances to the other two men. I will say more about Strike Force Taradale and Coroner Milledge's findings a little later.

Both Taradale and the Milledge inquest were the subject of considerable publicity in the early 2000s, and in the years that followed there was a succession of newspaper articles, books and television programmes about violence directed towards LGBTIQ people, including violence causing deaths. Some of the most prominent of those publications were in the years between 2013 and 2016.

One of the deaths which had increasing publicity was that of Scott Johnson, whose body was found at the base of a cliff at North Head near Manly in December 1988. The original inquest in the Scott Johnson case in 1989 had resulted in a finding of suicide. A second inquest in 2012, more than 20 years later, overturned that finding and instead brought in an open finding as to how he had fallen. The second Coroner drew attention in her findings to comparisons which might be made to what was known about North Head and the evidence of gay hate violence in the Taradale-Bondi inquest.

During 2016 and is 2017 there was a third Johnson inquest before the then State Coroner, Michael Barnes. In late 2017 Coroner Barnes delivered his findings. He found that Mr Johnson had fallen from the cliff top:

> *As a result of actual or threatened violence by unidentified persons who attacked him because they perceived him to be homosexual.*

In other words, in the view of Coroner Barnes, Scott Johnson's death was caused by anti-gay violence, actual or threatened.

The case of Scott Johnson is still before the criminal courts. Indeed the Court of Criminal Appeal is presently reserved on one aspect of the case, and so, it will not be separately re-investigated in this Inquiry for reasons I will mention. However, some of the background to the Coroners' findings in the Scott Johnson case may be the subject of evidence before this Special Commission.

Turning to the ACON Report of May 2018, it set out a number of clear views and conclusions on the part of ACON in connection with the 88 deaths, including the following, and I will list these one to nine.

1. Killings occurred in three main spaces: the majority in private homes, typically the home of the victim, followed by deaths at beats and, thirdly, deaths at other social locations such as near bars and clubs frequented by gay men, for example, in Oxford Street and Kings Cross.

2. "Beat" is a term used in Australia to describe a place where men go to have consensual, non-commercial, casual sex with other men.

3. Known beats included North Head, Marks Park near Bondi, Rushcutters Bay and Alexandria Park.

4. Where a killing occurred in the victim's home the victim was more likely to be known to the assailant, there was likely to have been a single assailant, and the attacks were often frenzied and vicious.

5. Where the killing took place at a beat, the assailant or assailants typically had no relationship to or knowledge of the victim.

6. Several cases involved men being found at the base of cliffs located at known beats such as North Head and Marks Park. These victims either slipped while trying to escape or were pushed.

7. There was evidence of serial killings by gangs of young men, as well as by lone assailants.

8. The 88 deaths investigated as part of the ACON review were only a small sample of the violence experienced

by the LGBTIQ community between 1970 and 2000.

9. Approximately 30 of the 88 cases remained unsolved.

Although the ACON Report itself did not contain the names of most of the victims, various media articles and books had by that time, May 2018, listed the names of some or all of the 30 unsolved cases.

The Parrabell Report was released publicly by the New South Wales Police one month later, in June 2018. Among its features were the following: first, Strike Force Parrabell reviewed 86 of the 88 deaths the subject of the ACON Report. Of the other two, one was a case from Tasmania while the second case was then under active investigation.

Second, the names of all 88 victims were included in the Parrabell Report as published.

Third, the Strike Force was a purely paper review of matters that all had already been investigated by the New South Wales Police in the past. There was no re-investigation of any of those cases. Rather, the objective of the Strike Force was different: it was simply to look at whatever material was available from previous investigations, and in that way to form an opinion, at the time of the Parrabell exercise, as to whether a "sexuality or gender bias" or "anti-gay bias" or "gay hate" had been involved in any of the deaths at the times they had occurred many years earlier. All three of those expressions that I just described in quotes were used in various parts of the Report.

Fourth, the police officers who participated in Strike Force Parrabell between 2016 and 2018 were of varying ranks and experience. The task for those officers was to review the historical material available in a particular case, and then to fill out a form called a "Bias Crime Indicators Form" by responding to 10 prompts or indicators set out in the Form. The Form had been largely adapted from a document originating in the United States.

Fifth, having filled out the 10 sections of the Form in relation to a particular case, the Parrabell police officers were then to complete the Form by assigning each

case to one out of four possible descriptions. The four options to choose from were: (i) "Evidence of bias crime", or (ii) "Suspected bias crime"; or (iii) "No evidence of bias crime", or (iv) "Insufficient information to establish a bias crime".

Sixthly, as part of the Parrabell Report, a team of academics from Flinders University in Adelaide reviewed the results of the Parrabell police officers. The academics were provided with all the completed Bias Crime Indicators Forms but none of the historical files or material on which those completed Forms were based.

Seventh, the approach of the Flinders team is set out in the longer second section of the Parrabell Report. The Flinders academics adopted a completely different methodology from that of the Police.

Eighth, they did not use or rely upon the 10 Bias Crime Indicators as all, as set out on the Form used by the police. They expressed some reservations about the appropriateness of that Form. Instead, they devised a set of concepts and definitions of their own.

Ninth, of the 86 cases, the Parrabell police officers assigned eight to their first category, that is, as being cases where there was "evidence of bias crime" and 19 to their second category as being "suspected bias crimes". They assigned the other 59 cases to either the third category "no evidence of bias crime" - 34 cases; or the fourth category "insufficient information to establish a bias crime" - 25 cases.

Tenth, Strike Force Parrabell regarded only 23 of the 88 cases as unsolved.

Eleventh, of those 23 the Parrabell officers considered that none of them came under the first option, that is, "evidence of bias crime". Five were assigned to the second category as "suspected bias crimes". The other 18 were either "no evidence of bias crime", four cases, or "insufficient information to establish a bias crime" - 14 cases.

And twelfth, the Flinders academics, notwithstanding their entirely different methodology, arrived at almost identical numerical conclusions.

One of the subjects discussed in all of the four reports that I have mentioned, that is, the ACON Report, the Parrabell Report and the two Parliamentary reports which followed, was the concerns that had been often expressed about whether in the decades under review the Police had investigated crimes against LGBTIQ people, including possible homicides, adequately or fully.

The New South Wales Police have frankly and repeatedly acknowledged in their own Parrabell Report itself and in later submissions and evidence to the Parliamentary Committee, and also in public statements going back much earlier in time, both that such concerns existed and that, at least to some extent, those concerns were justified.

Throughout the many days of the Taradale inquest in 2003 and 2004, relating to the three Bondi deaths from 1985 and 1989, the Commissioner of Police was represented by counsel and solicitors. The closing submissions by counsel for the Police Commissioner in December 2004 included the following statements, and I quote:

> *The climate which then existed [referring to the 1980s] ... was a climate I think that no-one in society could really be proud of and that is the culture of gay hate, a gay hate crime. The Police Service, whatever defects it may have suffered from during that period, was no more than a reflection of it was exhibiting the broader values and principles of the then society.*

And a little later in his submissions counsel for the Commissioner said:

> *Prior to 1990 there was much hostility between the gay and lesbian community and the police, particularly taking into account that homosexuality was only decriminalised in 1984. This led to a situation for a number of years when police were viewed as the enemy of gay people.*

The findings of then Deputy State Coroner Milledge were delivered a few months later, in March 2005. In the

course of those findings Coroner Milledge said, among other things, the following:

> *During the 1980s and 1990s police were aware of a number of gangs of youths that were systematically engaged in the assault and robbery of gay men in Marks Park and other areas.*

The Coroner said:

> *The initial police investigation into the death of Ross Warren in 1989 was "a grossly inadequate and shameful investigation".*

A little later the Coroner said:

> *A better investigation was undertaken for Mr Russell but it too was far from adequate.*

And the Coroner added:

> *Marks Park was a known area for brutal attacks on homosexual males.*

The Parrabell Report, 13 years later in June 2018, also contained some very candid statements by the New South Wales Police including the following: At page 14:

> *The NSW Police Force is acutely aware of and acknowledges without qualification both its and society's acceptance of gay bashings and shocking violence directed at gay men and the LGBTIQ community between 1976 and 2000. It is clear beyond question that levels of violence inflicted upon gay men in particular were elevated, extreme and often brutal.*

At page 15 of the Parrabell Report the Police made this statement:

> *The Gay and Lesbian Rights Lobby and later the AIDS Council of NSW, now ACON, kept records usually comprising self-reported incidents of gay hate violence that on*

several occasions amounted to more than 20 entries per day. Unfortunately, fear associated with anti-gay attitudes of officers within the NSW Police Force at the time prevented these reports from being formally recorded which in turn meant that crimes were not investigated. This inherent lack of consequences or accountability meant that perpetrators were given a kind of 'social licence' to continue inflicting violence upon members of the gay community.

Then, at page 16 of the Report:

The NSW Police Force must acknowledge, and has to some extent acknowledged, its part in marginalisation of the LGBTIQ community during the 70s, 80s and 90s especially.

In his oral evidence before the Parliamentary Committee later that year on 9 November 2018, Assistant Commissioner Tony Crandell, the Commander of Strike Force Parrabell, reiterated each of those acknowledgments that I have just read out.

Two years later, on 13 November 2020, Assistant Commissioner Gelina Talbot, in the course of her evidence before the Committee said this:

We are, and should be, held to a higher account given our role to protect and serve. Everyone should be confident when they report a matter to the police that it will be recorded and investigated where appropriate. I accept that we have not met that standard at times in the past. I sit here today acknowledging the victims of the past and their families. I acknowledge the past inadequacies of the New South Wales Police Force in responding, recording and investigating hate crimes against the LGBTIQ community.

In its Final Report published in May 2021 one of the express public findings made by the Parliamentary Committee was this:

That historically the NSW Police Force failed in its responsibilities to properly investigate cases of historical gay and transgender hate crime and this has undermined the confidence of lesbian, gay, bisexual, transgender, intersex and queer communities in the NSW Police Force and the criminal justice system more broadly.

Before I turn to the specific language of the Terms of Reference, I'll mention one other aspect of the historical sequence of events which may be relevant to the work of this Special Commission.

In early 2013, a Strike Force called Strike Force Macnamir was established by the New South Wales Police to re-investigate the death of Scott Johnson near Manly in 1988. That led in due course to the third Johnson inquest in 2016 and 2017.

At about the same time, also in early 2013, Operation Parrabell, which was the precursor to Strike Force Parrabell, was established. In that year, 2013, the work of Operation Parrabell was to assist Strike Force Macnamir by carrying out a bias crime assessment in respect of the North Head beat.

Two years later, in 2015, Operation Parrabell became Strike Force Parrabell. The objective of Strike Force Parrabell, as I have mentioned, was to consider whether "sexuality or gender bias" or "anti-gay bias" or "gay hate" was a factor in any of the 88 deaths in question.

Later in 2015 or early in 2016, while Strike Force Parrabell and Strike Force Macnamir and the third Scott Johnson coronial inquiry were all underway, another Strike Force was established called Strike Force Neiwand. Strike Force Neiwand was a re-investigation of the deaths of Mr Warren, Mr Russell and Mr Mattaini, the three men whose deaths near Bondi in the 1980s had been the subject of Strike Force Taradale over the course of 2001 and 2002, of the subsequent lengthy inquest during 2003 and 2004, and of Coroner Milledge's findings in 2005. Coroner Milledge, it will be recalled, had found that the deaths of Mr Warren and Mr Russell were gay hate-related homicides and that there was also a strong possibility that the death of

Mr Mattaini had occurred in similar circumstances.

In November 2017, as will also be recalled, Coroner Barnes delivered his findings in the third Johnson Inquest. The substance of his finding was that Mr Johnson's death in 1988 was also the result of anti-gay violence, actual or threatened. About a month later, Strike Force Neiwand concluded that the 2005 findings by Coroner Milledge about the three Bondi deaths in the 1980s should, in effect, be disregarded and that, while homicide could not be ruled out, other causes of deaths were as likely or more likely in all three of those cases.

A few months after that, in the Parrabell Report of June 2018, Strike Force Parrabell assigned the cases of Mr Warren and Mr Russell and also that of Mr Johnson to its second category, that is, "suspected bias crime", and not the first category being cases where there was "evidence of bias crime". The case of Mr Mattaini was assigned to the fourth category, "insufficient information".

Neither the existence nor the conclusions of Strike Force Neiwand appear to have been referred to publicly by the New South Wales Police, including in evidence or submissions to the Parliamentary Committee.

I turn now to the Inquiry's Terms of Reference. The Terms of Reference will be shown on the screen in a moment. They authorise the Commissioner, as can be seen - and I'm looking now at the paragraph below the word "Greeting" at about the third-last line of that paragraph:

> *The Commissioner is authorised to inquire into and report and make recommendations to Our Governor of the said State on:*
>
> Two categories of death, Category A and B.
>
> Category A is:
>
> *The manner and cause of death in all cases that remain unsolved from the 88 deaths or suspected deaths of men potentially motivated by gay hate bias that were considered by Strike Force Parrabell.*
>
> Category B is:

The manner and cause of death in all unsolved suspected hate crime deaths in New South Wales that occurred between 1970 and 2010 where:

(i) the victim was a member of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community; and (ii) the death was the subject of a previous investigation by the NSW Police Force.

Section C, if we scroll down just slightly further, requires the Commissioner in conducting the Inquiry to have regard to each of the four reports that I have talked about, namely, the ACON Report of May 2018, the Parrabell Report of June 2018, and the two reports of the Parliamentary Committee itself, the Interim Report of February 2019 and the Final Report of May 2021.

Scrolling down again slightly further, Sections D, E and F of the Terms of Reference set out other directions binding on the Commissioner, some of which I will mention briefly in a moment.

Importantly, the last paragraph of the Terms of Reference, if we scroll down slightly further again, stipulates a set date by which the report of the Inquiry must be completed and delivered. That date is 30 June 2023.

It's clear from the Terms of Reference that this Inquiry is not merely an exercise of reviewing past investigations. Its task is to carry out its own inquiries into, and to deliver its own report and recommendations on, these two categories of unsolved deaths: Category A and Category B. It is important therefore to emphasise that the work of the Special Commission has been and will be entirely independent. That requirement of independence is inherent in both the Terms of Reference and the *Special Commissions Act*. You as Commissioner are directed by the Terms of Reference to inquire, yourself, into the nominated subject matter. The words of that direction reflect the words of section s.4(1) of the *Special Commissions Act*. Accordingly, the Special Commission is conducting and will conduct its own investigations.

The New South Wales Police have so far produced, to the Special Commission, voluminous records relating to the deaths the subject of the Inquiry. I will say more about the extent of that documentation in a moment. And it is to be expected that the Police will seek authorisation to appear at some public hearings of the Inquiry. However, the Inquiry itself is entirely independent of the Police.

If we could go back to the Terms of Reference briefly on the screen, if that's possible. I will mention Section E and Section F. Section E provides that the Special Commission is required:

> *To operate in a way that avoids prejudice to criminal investigations, any current or future criminal prosecutions, and any other contemporaneous inquiries.*

Section F further provides:

> *That the Commissioner is not required to inquire into particular matters where satisfied that the matter has been or will be sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.*

With those matters in mind, the Special Commission has taken considerable care to obtain from the New South Wales Police, including the Unsolved Homicide Team, information and details as to exactly how many cases, and which ones, are the subject of any relevant inquiry or investigation or prosecution or proceeding.

As one part of that checking process the Special Commission held a private hearing in June 2022, during the course of which a senior officer from the Unsolved Homicide Team provided some information in relation to such matters. The Police have subsequently provided the Special Commission with the necessary information as to cases which do come within the ambit of Section E and/or Section F of the Terms of Reference. In most or all of those cases it is likely that the Special Commission will, for that reason, not inquire into those matters. I will say something more about the work of the Unsolved Homicide Team in a moment.

But I turn to Categories A and B, the specific words chosen in the Letters Patent to describe the two categories of deaths in the Terms of Reference, Category A and Category B, pinpoint several significant features of this Special Commission, including a number in particular to which I now draw attention. I wonder if I could ask for those terms, Category A and Category B, to be on the screen again, if we just scroll up. Thank you.

First, the Special Commission is only to inquire into and report on "deaths", not on crimes such as assaults and bashings which did not result in death. That is consistent with and follows the recommendation which was made by the Parliamentary Committee. However, that does not by any means have the effect that non-fatal attacks will necessarily be excluded from the Inquiry's consideration. Such attacks may well be relevant to investigations by the Special Commission in relation to attacks which did result in death.

Secondly, both Category A and Category B restrict the ambit of the Special Commission to cases that are "unsolved". It is for the Special Commission to make its own determination in any given case as to whether that case is "unsolved" or not. Whether a given case will be regarded as "solved" or "unsolved" will depend on the circumstances of that case. For example, the circumstances in which the Special Commission will regard as case as "solved" would be likely to include cases where one or more persons have been charged and convicted in connection with the death and all appeals have been finalised, or such a person has been acquitted despite having been identified as the perpetrator, on grounds such as self-defence.

Conversely, a case might be likely to be regarded as "unsolved" where, for example, no person of interest could be identified, or one or more persons of interest were identified but no arrest has been made, or an arrest was made but the prosecution was no-billed, or the charges were dismissed at committal hearing, or the accused person or persons were acquitted at trial for reasons other than self-defence, or a conviction was overturned by a higher court.

Thirdly, the name of this Special Commission includes the expression "LGBTIQ hate crimes". That acronym, LGBTIQ, comes directly from the Terms of Reference which use that

specific acronym to refer to certain specific words, which we can see on the screen as part of Category B, namely:

Lesbian, gay, bisexual, transgender, intersex and queer.

The Special Commission is aware that other words and other acronyms are sometimes used in various contexts. However, because those specific words and that specific acronym are used in the Terms of Reference the Special Commission for its purposes will adopt them.

Fourthly, as we see in both Category A and Category B, it is the manner and cause of the deaths to which this Inquiry is directed. That language, referring to the "manner and cause" of deaths, is also found in s.81 of the *Coroners Act* in this state in referring to one of the tasks typically embarked upon by a Coroner. However, this is not a coronial inquiry. There are several fundamental differences between the functions carried out by a Coroner and those of this Special Commission.

The first fundamental difference is that for this Inquiry the concept of "manner and cause" is specifically shaped by the Terms of Reference in particular ways which are not present in the Coroners Act. The Terms of Reference tie this Inquiry to the concepts of "gay hate bias", the words used in Category A; and "hate crime deaths" of LGBTIQ people, which are the words used in Category B. I will come to that terminology and those concepts in more detail in a moment.

Analysis of whether such a connection as "gay hate bias" or "hate crime" was involved in relation to each of these deaths is thus central to the particular "manner and cause" task given to the Special Commission by the language of the Terms of Reference.

A second fundamental difference is that, whereas a Coroner is not bound by any strict time limit in undertaking whatever investigations and inquiries may be considered necessary in relation to a particular death, this Special Commission is bound by such a time limit. That time limit, bearing in mind that the Special Commission must inquire into many deaths rather than one single death, is a tight one, namely, the 30th of June next year.

A third fundamental difference is that, conversely, the Special Commission has coercive powers which are more extensive than those of a Coroner.

Fifthly, coming back to the features of the language of the Terms of Reference, as to the word "suspected" in Category B, the provisional view of the Special Commission is that what is required is that such a suspicion be objectively able to be held today having regard to all the material now available. It is not necessary that the suspicion, that is, that a death was a LGBTIQ hate crime death, was in fact entertained - whether by the police or otherwise - at the time of the death or at the time of its investigation.

Sixthly, Category A refers to 88 deaths of "men" that were "considered by Strike Force Parrabell". In fact, some of the deaths considered by Strike Force Parrabell were of persons who were transgender, intersex and/or identified as women. In Category B the reference is to the deaths of people described as "victims". The Special Commission regards Category A as having a similar intent. It does not propose to interpret the word "men" in Category A in any exclusionary way.

Seventhly, Category B uses the expression "member of the LGBTIQ community". There may or may not be an accepted or consensus view as to whether a single or discrete community described in those words can or should be delineated. There also may or may not be consensus as to how such a delineation should be arrived at, or as to what factors might need to be present to establish, as a matter of objective fact, that a particular person was or was not a member of that community. It may be that there are many distinct groups or communities within such a general overall expression. Even if there were such a consensus view in some cases it may be difficult, whether for lack of sufficient evidence or otherwise, to reach such an objective determination.

These kinds of questions, among others, relate to areas of cultural and sociological discourse which are beyond the scope of this Special Commission. For example, a person's sexual identity may not necessarily correlate with the actual sexual practices of that person. Transgender and gender diverse people might have any

sexuality. Some people may be unsure of their own sexuality. Others may be in no doubt but may choose to conceal it from some or all other people.

These and many other aspects of the discourse surrounding matters of sexuality and gender are multi-faceted, sensitive and nuanced. Analysis of and conclusions about such matters do not form part of the present Inquiry. For the purposes of this Special Commission it is anticipated that a victim, to use the language of Category B, may be considered to come within the meaning of the expression "member of the LGBTIQ community" where: (a) the victim self-identified as being lesbian, gay, bisexual, transgender, intersex and/or queer; or (b) there is reason to believe or suspect that the victim was lesbian, gay, bisexual, transgender, intersex and/or queer; or (c) there is reason to suspect that a person or persons involved in the death of the victim believed or assumed that the victim was or may be lesbian, gay, bisexual, transgender, intersex and/or queer.

Eighthly, Category A refers to deaths that were "potentially motivated by gay hate bias", while Category B refers to "suspected hate crime deaths ... where ... the victim was ... a member of the [LGBTIQ] community". Those two different verbal formulations will be treated by the Special Commission as referring to what is substantially the same concept or criterion. Counsel assisting will generally adopt the language of "LGBTIQ hate crime death" as reflecting this one criterion.

For the purposes of the Special Commission, therefore, a death is likely to be regarded as a suspected LGBTIQ hate crime death and thus, if it is unsolved, prima facie within one or both of Categories A or B in circumstances where there is, objectively, reason to suspect both that the death was a homicide and that the sexuality or gender identity, actual or assumed, of the deceased person as lesbian or gay or bisexual or transgender or queer or a person's intersex status was a factor in the commission of the crime.

Accordingly, for example, deaths associated with attacks on people who may not themselves be or identify as LGBTIQ but who are wrongly perceived by their assailants in such a way would come within the meaning of "LGBTIQ hate crime deaths".

This approach, it may be noted, is consistent with the provisions of s.21A of the Crimes (Sentencing Procedure) Act 1999 (NSW) in this state. That section sets out matters which are to be treated as aggravating factors for the purpose of determining the appropriate sentence for an offence. One of those aggravating factors at subsection (h) of s.21A is that:

> *The offence was motivated by hatred for or prejudice against a group of people [and I stress]* ***to which the offender believed the victim belonged*** *such as people of a particular ... sexual orientation.*

I turn now, if it's convenient, to the nature and scale of the task confronting this Special Commission. The scale of the task emerges from an understanding of what is included within the Terms of Reference that I have been going through.

Category A cases, as I have said, are cases which were considered by Strike Force Parrabell and which remain "unsolved". As I have mentioned, the ACON Report regarded about 30 of those cases as unsolved, whereas the Parrabell Report treated 23 of them as unsolved. The general approach of the Special Commission to the interpretation of the word "unsolved" has been referred to earlier.

In addition, it is likely that a small number of cases will not be inquired into by the Special Commission having regard to the provisions of the Sections E and F of the Terms of Reference that I looked at a few minutes ago because of the need to ensure that other ongoing investigations or proceedings are not prejudiced, or because such other investigations are regarded as "sufficient and appropriate".

At this stage of its work the Special Commission has the provisional view that, for the purposes of this Inquiry, some 20 to 25 of the Parrabell cases are likely to be considered as both "unsolved", thus coming within Category A of the Terms of Reference, and also as not affected by the constraints of Sections E and F as to other investigations.

I will say something about some of the particular

Category A cases by name a little later.

Category B of the Terms of Reference, however, is cast in very wide language. It requires the Special Commission to inquire into all unsolved deaths in New South Wales in the 40 years between 1970 and 2010 where: (a) the victim was a member of the LGBTIQ community; and (b) the death was a "suspected hate crime death"; and (c) the death was the subject of a previous investigation by the New South Wales Police.

That language obviously includes, firstly, many of the cases in Category A. But it also has required the Special Commission to endeavour to identify any and all other deaths in the 40-year period starting from 1970 which might fall within those three parameters. That has proved to be, perhaps not surprisingly, a very substantial task. The Inquiry has set about that task in numerous ways, many of which are still ongoing.

The most significant of the avenues which the Special Commission has explored and continues to explore are the following: first, a close examination of the cases from that 40-year period which are part of the remit of the Unsolved Homicide Team within the New South Wales Police.

Secondly, a similar close examination of the many other cases which are on the files of the Missing Persons Unit within the New South Wales Police.

Thirdly, by seeking and obtaining information from the National Coronial Information System and the Australian Institute of Criminology.

Fourthly, by researching and analysing information contained in historical LGBTIQ media publications, including among others, the Sydney Star Observer, Campaign Australia and other publications held by the State Library of New South Wales and the Australian Queer Archives based in Victoria.

Fifthly, by giving careful consideration to the various submissions made to the Parliamentary Committee.

Sixthly, by seeking and receiving information from community groups such as ACON and the Gender Centre.

Seventhly, by seeking information from the public and from the families and friends of people who have died. I will say something about each of these aspects of the Inquiry's work to date.

First of all, as to the Unsolved Homicide Team. As I mentioned earlier, the Special Commission held a private hearing in early June 2022 in which a senior officer from the Unsolved Homicide Team gave evidence and provided some documents. That was a private hearing in accordance with s.7(2) of the *Special Commissions of Inquiry Act*.

The present understanding of the Special Commission substantially derived from that evidence and those documents, is that the Unsolved Homicide Team was formed in 2004. It monitors, reviews, and in appropriate cases re-investigates historical unsolved homicides. Prior to 2004 files connected to unsolved homicides would ordinarily remain with the original investigator at the police station where that original investigator was based or be sent to the Coroners Court for inquest.

When it was first formed the Unsolved Homicide Team was a review unit only and was not provided with any re-investigation capacity. In the years since 2004 the scope of the Team's work has expanded and it now does include reinvestigations. Organisationally, the Unsolved Homicide Team is within the Homicide Squad in State Crime Command.

The Unsolved Homicide Team generally adopts a three-stage process in relation to the cases which come to it: first, a triage is undertaken to assess whether a full review is warranted. If it is, an investigator reviews the available material, including exhibits, and conducts other inquiries such as whether suspects and/or witnesses are still alive and available for questioning. Finally, a decision is made as to whether to re-open a full re-investigation of the death.

Later in June 2022 the Inquiry was provided by the New South Wales Police with a Excel spreadsheet comprising what is known as the Unsolved Homicide Team's "Tracking File". The information on this spreadsheet includes the current investigative status of all unsolved homicides in New South Wales. According to the Tracking File, the overall number of unsolved homicides in the 40-year period the subject of

Category B, that is, between 1970 and 2010, is in excess of 700. The Tracking File itself, with few exceptions, does not contain any indication as to whether a particular matter is or might be a hate-related homicide; nor is the sexuality or gender identity of the victim of a homicide apparent from the Tracking File.

Accordingly, it has been necessary for the Special Commission to seek, obtain and analyse the underlying material relating to each of those approximately 700 cases in order to form a view as to which, if any, of those cases might fall within Category B of the Terms of Reference.

As an initial step, the Inquiry team first conducted preliminary word searches of the Tracking File using broad search terms covering sexual and gender identities: words like gay, lesbian, transgender, queer; locations, words such as beat, Marks Park, Darlinghurst; and types of crime such as gay bashing, and even pejorative and discriminatory terms, which I will not repeat, but which unfortunately are used in some of the materials describing these homicides.

From these preliminary searches several cases were immediately identified for further consideration. The Inquiry team went on to conduct online searches for any publicly available information about those cases and also sought and obtained all available files from the Coroners Court of New South Wales and from the Police.

The Inquiry then sought and obtained from the Police all case summaries and review documents prepared by the Unsolved Homicide Team for each of the 700 or so homicides in question. That material when provided comprised more than 1,000 separate documents in total. The Inquiry team then undertook a review of that material. They made a provisional classification, whereby each of the 700 or so cases was tentatively placed in one of five possible categories.

The first category was cases which had already been identified by the Inquiry as a potential case, those mainly being cases which had been considered by Strike Force Parrabell. 27 cases were identified as falling within that category.

The second category was further cases which also seemed very likely to fall within Category B. 11 such

cases were identified at that stage. One of those was the subject of current criminal proceedings, and accordingly, it is not expected that the Special Commission will be inquiring into that case, so 10 cases remained in that category.

The third was cases which appeared to be clearly outside the scope of the Inquiry, for example, because the victim was a young child or the death appeared to be a misadventure, such as a boat crash or a plane crash. Some 535 cases were in that category.

A fourth category was cases which might potentially fall within the Terms of Reference but which required further consideration. There were 23 cases of that kind.

And the final category was for cases where there was insufficient information to make a proper assessment. There were 105 cases in that category.

In relation to the 23 cases which required further consideration, that further consideration then followed; the outcome of which was that only eight of those 23 cases were ultimately considered as potentially falling within Category B, again, subject to further review as and when more information became available.

For all the cases identified as possibly falling within Category B as a result of this process the Special Commission sought and obtained the available files from the NSW Police, the Coroners Court of New South Wales and the Office of the Director of Public Prosecutions.

For the 105 cases in respect of which insufficient information was initially available a number of separate steps had to be successively taken. First, the team conducted online searches for any publicly available information about these homicides. From that review they identified one case that was likely to fall within the Terms of Reference. The Inquiry then obtained all relevant documents from both the New South Wales Police and the Coroners Court in relation to that case. They were able to exclude 74 of those 105 cases as being clearly outside the Terms of Reference, and they identified 30 cases for which more information still was required.

Secondly, in relation to those remaining 30 cases two

further inquiries were made. Where the Tracking File indicated that a person or persons had been charged with a criminal offence arising from the homicide, copies of the police facts for the charge were obtained. Where there had not been charges laid, relevant material was requested from the Coroners Court, including any findings and/or any reasons for dispensing with an inquest and/or copies of any report to the Coroner of the death or suspected death. The Special Commission is continuing to pursue every available avenue in respect of these 30 cases.

I have spoken so far about the Unsolved Homicide Team and its Tracking File which produced a list of possible cases in excess of 700. The second avenue that I mentioned was the Missing Persons Unit. The Inquiry has also sought to identify any long-term missing persons whose suspected deaths may fall within Category B. Central to this part of the analysis has been the contents of an Excel spreadsheet provided to the Inquiry in July 2022 by the Missing Persons Unit within the New South Wales Police.

That spreadsheet, known as the "Long-term Missing Persons Spreadsheet" covers all long-term missing persons cases in New South Wales. For the 40-year period between 1970 and 2010 there are 559 such cases. However, the information in the spreadsheet comprises only the name of the missing person, the date of the disappearance, and the event or case reference. Once again, the spreadsheet contains no indication as to whether a particular matter is a hate-related homicide or as to the sexuality or gender identity of the victim.

The Inquiry team has accordingly reviewed each of the 559 cases. Of those 559, nine cases were already under consideration by the Inquiry, whether because they were among the 88 Parrabell cases or otherwise; six cases were identified as being likely to fall within Category B; 267 cases either were excluded as being very unlikely to fall within Category B, for example, where a person disappeared following a rock fishing accident or the abduction of a young child; or had already been considered in the review of the Unsolved Homicide Tracking File. As to the remaining 277 cases, there was insufficient information available to make a determination.

For the six missing persons cases considered likely to fall within the scope of the Inquiry, a summons was issued

to the Police for all relevant files. For the 277 cases with insufficient information, a summons was issued to the Police for the missing persons reports. The available documents in respect of 274 of those 277 cases were in due course produced. Those documents, for those 274 cases, amounted to almost 3,500 pages.

In respect of the 274 cases for which documents were available the Inquiry team reviewed those documents. Again, a number of cases were able to be excluded immediately, such as young children, people lost at sea and the like. The outcome of this review of these 274 cases was: five of the 274 were identified as possibly falling within Category B. A summons was issued to the NSW Police for its investigation files in respect of those five cases. 229 of the 274 cases were able to be excluded. 40 cases had insufficient information to make a determination. With respect to the 40 cases with insufficient information, as well as the three cases for which the Police were unable to provide records, copies of any missing person reports were requested from the Coroners Court.

The third avenue which has been explored, as I mentioned, is the resources of the National Coronial Information System and the Australian Institute of Criminology. The National Coronial Information System is a research database of information on deaths reported to a Coroner throughout Australia and New Zealand covering the period from 2000 to the present.

In July 2022 the Special Commission wrote to the NCIS requesting that searches be undertaken of their extensive digital records of New South Wales coronial findings. Ultimately, the NCIS was able to identify five additional deaths for further consideration. However, following further searches undertaken by the Special Commission, including of relevant media articles and court judgments, it became apparent that none of those cases came within Category B.

The Australian Institute of Criminology based in Canberra conducts the National Homicide Monitoring Program. The Special Commission has also written to the Institute requesting that searches be undertaken of its holdings to identify any other deaths which may fall within Category B and which may not otherwise have come to the attention of the Inquiry.

A fourth avenue was to review historical LGBTIQ media publications. From the outset of the Inquiry in May this year, the Inquiry team has undertaken a review of historical LGBTIQ-related material held in various libraries and other repositories. That review is ongoing. One of the most important of these resources is the archives of the State Library of New South Wales which includes manuscripts, personal papers, newspapers, magazines, photographs and graphics.

Another useful resource has been Campaign Australia magazine which was published between 1975 and 2000. Through text searches of the issues available online the Special Commission obtained contemporaneous news articles about a number of deaths within Category A of the Terms of Reference and also identified a number of potential cases for consideration under Category B.

The Australian Queer Archives, based in Victoria, includes collections of approximately 150 LGBTIQ periodicals which were current during the period 1970 to 2010, and which have been digitised and made available through various libraries, including the State Library of New South Wales. The Inquiry team has made extensive use of this resource for contemporaneous news articles about individual cases as well as historical beat locations and other relevant material otherwise difficult to locate.

One notable periodical which has not been digitised is the *Sydney Star Observer*. Issues are held in hard copy at both the State Library of New South Wales and the Australian Queer Archives. In September 2022 one of the counsel assisting the Inquiry attended the Australian Queer Archives in Victoria and, with the assistance of an archivist, reviewed relevant issues of the *Sydney Star Observer* between 1979 and 1997.

The fifth avenue was the submissions to the Parliamentary Committee. The Special Commission has carefully reviewed all of the submissions made to the Parliamentary Inquiry in 2018, 2019 and 2020 as well as the oral testimony of witnesses before the Committee. That review identified an additional two cases potentially falling within Category B of the Terms of Reference, over and above what had already been identified, and the relevant files were obtained from the NSW Police and the

Coroners Court.

The sixth avenue, a very important one, is information from community groups. The Special Commission recognises that many of the deaths and disappearances it is examining, and the climate within which they took place, have had a heavy impact, not only on the friends and families of those who are gone, but on the LGBTIQ world as a whole. It is important that as many LGBTIQ people and groups as possible are aware of the Inquiry and feel comfortable coming forward with information.

With that in mind, the Special Commission has so far engaged in various ways with a number of community groups including ACON, the Gender Centre, and the Sex Workers Outreach Project, or SWOP, with many more on our list. We have sought their cooperation not only so as to spread word of the Inquiry as widely as possible, but also to increase our own awareness of social and cultural factors prevailing both in the time period under review and at the present time.

The Special Commission has also engaged in similar ways with a number of individuals who have had close involvement with some of the issues with which this Inquiry is concerned including, among others, Sue Thompson, former Gay and Lesbian Client Consultant with the NSW Police; Rick Feneley, journalist; Duncan McNab, journalist, writer and former police officer; Greg Callaghan, journalist and author, and Magistrate Jacqueline Milledge.

Finally in this context the Special Commission has attempted, of course, to contact family members by letters, emails and text messages to the extent that we have current contact details. Some family members have also contacted us directly. Media releases and public notices have also been utilised. However, identifying and tracing family members for many of the cases being reviewed has been no simple task, and we are well aware that we have not yet been able to reach everyone who may wish to speak about the death or disappearance of a loved one.

If you are a family member or a friend of one of the people whose unsolved death or disappearance is or may be under review by the Special Commission and you have not yet been contacted but would like to speak to us, please do not hesitate to contact us.

If possible, this next material might be brought up on the screen, if that can be done.

There are three main ways in which you may contact the Special Commission. The first is by email, and the email address is contact@specialcommission.nsw.gov.au. Secondly by post, and you address a letter to: LGBTIQ Hate Crimes Inquiry, GPO Box 5341 Sydney, NSW 2000. And thirdly by phone, by calling 02 9228 4855, and leaving a voice message.

If you do contact the Inquiry by any of those means, please provide your telephone and/or email or other contact details to the Inquiry so that the appropriate person can respond to you.

Category A relates to cases, as I've said, considered by Strike Force Parrabell, namely, 86 deaths from a 24-year period between 1976 and 2000. That is a considerably shorter time period than the 40-year period in Category B which covers 1970 to 2010. As I have been outlining, identifying the cases which come within Category A is comparatively straightforward. That is because the total number of Parrabell cases is 86, and Category A requires the Special Commission to inquire into those of the 86 which are "unsolved". Subject to any complexity which may arise in a particular case in relation to that word "unsolved", the identification of which cases come within Category B can be, and is being, finalised without undue difficulty.

However, as will be apparent from what I have been saying about the scale of the task given to the Inquiry by Category B, arriving at a definitive number of cases which are captured by the words of Category B has been, and it continues to be, a much more complicated, painstaking and time-consuming undertaking. It is not yet clear which of the many possible cases that have been found will ultimately be considered by the Special Commission as falling within Category B; that is, to be a death which was previously investigated by the New South Wales Police, which is unsolved and where the death was or may have involved a hate crime. However, as at today, 2 November 2022, it seems likely that the number of cases which will ultimately be considered to fall within those parameters, and thus within Category B, will be in the range of 15 to

30.

I should add that in addition to lawyers, both solicitors and counsel, the Special Commission also has a range of other resources available to it. Without attempting to be exhaustive, those resources include the expertise and experience of its own team of criminal investigators and specialist analysts led by the Director of Investigations, as well as our Senior Media Adviser and Associate Director - Projects.

The Special Commission has also sought, and has obtained assistance and will continue to do so, from a wide variety of expert consultants from various specialist fields, including pathology, psychiatry, toxicology and criminology.

Now, Commissioner, I see the time and I wonder whether you have in mind taking a short adjournment?

THE COMMISSIONER: Yes, I did. I'll take the short break now for perhaps 15 minutes. Thank you.

SHORT ADJOURNMENT

THE COMMISSIONER: Yes, Mr Gray.

MR GRAY: Commissioner, I will turn now to outline briefly the processes which the Special Commission has adopted in order to deal with the volume of material it has obtained and is continuing to obtain.

As is apparent from what I was saying before the break, as a result of seeking and obtaining the information that we have, the Special Commission has received a very large volume of documents and records of various kinds. To date, the Inquiry has accumulated over 120,000 separate documents, many of them very lengthy, some of them running to hundreds of pages each. The vast majority of that volume of material has already been reviewed and analysed by the Inquiry's solicitor and counsel teams. Most of this material has been obtained in answer to compulsory summonses issued by the Special Commission, although large quantities have also been provided in response to letters and emails.

The two main sources of such documents have been the

New South Wales Police and the Coroners Court of New South Wales. The Special Commission has so far issued some 32 separate summonses to the New South Wales Police and has made 17 separate requests for material to the Coroners Court. Documents and other materials have also been sought from and provided by numerous bodies, both New South Wales and elsewhere, including the Office of the Director of Public Prosecutions, the Supreme Court, the District Court, numerous local courts and over government agencies. They have been sought and provided on a rolling basis as the Special Commission learns of new cases or develops its understanding of cases already under review. The nature of those documents varies widely as I should indicate.

First of all, there is hard copy material. The Inquiry has received over 370 boxes of hard copy records. In many cases those records have been pulled directly from the shelves of government archives and delivered to the Special Commission's door. They have arrived in archive boxes of various shapes and sizes, often with cryptic identifying codes or handwritten descriptions. They include statements, duty books, forensic and autopsy reports, photographs, index cards, hand-drawn notes, fingerprint records, correspondence, intelligence reports, CDs, DVDs, audio and VHS cassettes.

They may contain files relating to one death or many. Sometimes they relate to matters unrelated to the work of the Special Commission which have been misfiled or misplaced. Some deaths will have a dozen boxes of detailed records associated with them, while others will have only a single file or even just a sheaf of notes.

Depending on the age of a file, some records are so worn and delicate that they must be handled with extreme care. Others, including photographic negatives and audio cassettes, are inherently fragile and require special processing. Many records are obviously incomplete and sometimes they remain so even after further and more directed searches. Regrettably, it is not uncommon for files to be, or to appear to be, missing or lost in whole or in part. Where that is the case, the Special Commission pursues further follow-up requests as far as it is possible to do so. Sometimes that results in more documents being located, but sometimes the trail runs cold.

Then there is digital material, of which the Inquiry

has obtained a vast amount, as well as these many and varied physical records. The digital material includes police briefs, criminal histories, intelligence material, records from the Registry of Births, Deaths and Marriages, and Corrective Services records from this State.

Also received in digital form have been various reports, resources and other information provided by expert consultants and by various stakeholders, including community groups, academics and journalists.

In order for the Special Commission to track, preserve and review all this material, both hard copy and digital, it has engaged the services of iCourts, a legal services provider with expertise in electronic evidence management. The Inquiry has also established a digital database of all source material received to date using the legal document management platform, Relativity. All relevant material received by the Inquiry is digitised, both to facilitate its review and to preserve it for future reference. Detailed protocols have been developed and implemented in relation to the handling of both hard copy and digital material.

Once the source material in its various forms has reached the Relativity platform it undergoes a process of review and analysis by the Inquiry team. Each case is assigned to a particular solicitor and counsel. That solicitor-counsel team conducts a detailed review of the whole of the material received in relation to that death or disappearance and produces a "case summary" outlining their preliminary analysis of the case. That analysis includes, among other things: an account of the known facts surrounding the death or disappearance; details of the initial police investigation and of any subsequent investigation, for example by the Unsolved Homicide Team; consideration of whether witnesses and persons of interest are still alive and whether exhibits are still available; and initial observations as to possible avenues of fresh investigation.

Next, a separate and more focused document is also prepared identifying specific factors for decision. The Factors for Decision document includes recommendations as to what, if any, new investigative steps or other steps such as the obtaining of expert opinions, could or should then be taken. Both of those documents are then considered

by Senior Counsel and the Director of Investigations at a first case review meeting. At that meeting decisions are made, including as to which, if any, of those recommendations should be implemented.

Once any such steps have been implemented, a second case review meeting is convened at which the Special Commission decides how that particular case will be dealt with thereafter, including in some cases whether further investigation by way of public or private hearing should occur.

A fundamental aspect of these case reviews, at the first and/or second stage, is to consider and determine whether, on the basis of all available material, the death in question does or does not fall within Category A or Category B, as the case may be, of the Terms of Reference.

The Special Commission has the power, and is entitled, to acquire information and evidence by a wide variety of means and, as is clear from what I have said so far, it has been doing so since May this year. The holding of hearings, either in public or private, is only one of those means. When such hearings are held, they are part of the investigative work of the Inquiry. They are not the same as court proceedings, whether civil or criminal, where usually there are two sides, each of which puts forward evidence and arguments favourable to it.

Hearings as part of an inquiry such as this, by contrast, are inquisitorial and investigative. The Commissioner has a wide discretion, subject to the requirements of procedural fairness, as to how such hearings are conducted. In relation to some, although not all, of the individual cases, it is anticipated that part of the investigative work of the Special Commission will be carried out by means of hearings either in public or in private or both. Those hearings, for the most part, are likely to take place early next year, although there will be some public hearings this year which I will mention a little later.

Applications for authorisation to appear at a public hearing must be in writing in advance. All the details relating to such applications are set out in a Practice Guideline which is available on the website.

Against that background I now turn to say something about some of the individual cases which are and will be the subject of this Inquiry. I will not speak today about any of the Category B cases. For numerous reasons that is not appropriate. Some of those reasons I have outlined already. Another reason is that, whereas the names of all the cases in Category A have been in the public domain for years, that is not so with respect to many of the possible Category B cases. Nor will I speak today about every single one of the Category A cases. For various reasons, that is also not appropriate in every case. Similarly, I will say more about some cases than others because, for various reasons, that too is the appropriate course.

It should not be thought that such choices reflect any difference in the seriousness with which the Special Commission is approaching every single one of these cases, both Category A and Category B. To the contrary, the Special Commission has been established to inquire into all of the cases which fall within one or other of those two categories, it has specific powers with which it is able to pursue those inquiries, and it intends to use those powers to the fullest extent possible and necessary in each and every case.

I turn now to some of the people, some only of the people, whose deaths fall within Category A; that is, unsolved deaths occurring between 1976 and 2000 and considered by Strike Force Parrabell. I will speak about them today in the order in which their deaths occurred, starting with the earliest in time in 1976 and finishing with the latest in time in 1997.

Mark Stewart: Mark Stewart was 18 years old when he died. Mark's name was originally Mark Spanswick which he changed by Deed Poll to Mark Stewart a few months prior to his death. At 10am on 11 May 1976 Mark's body was found by a local fisherman at the base of the cliffs between Shelly Beach and North Head, near Manly.

There is a walking path which leads south from Shelly Beach uphill and around to an area known as Blue Fish Point. The path clings quite close to the cliff edge. After a couple of hundred metres it arrives at a stone wall which marks the boundary at one time of the North Head Quarantine Station. The path continues through a gap in

the wall, continuing south towards the tip of North Head. On both sides of the path there is bush and vegetation which would provide seclusion for anyone who might wish it.

At least by the 1970s the area was a well-known beat, and it is an area where several other deaths, which were or might have been "gate hate"-related deaths, including that of Scott Johnson, also occurred.

Mark Stewart was the second of three children. He spent most of his childhood growing up in Fiji where his father worked. At age 13 or 14 he left Fiji to attend boarding school in New Zealand. He joined the New Zealand Navy at the age of 16. However, he apparently went absent without leave from the Navy in August 1974, just after his 17th birthday.

After leaving the Navy, Mark lived for a time in Brisbane. On the evening of 9 May 1976, it seems that he checked into the Hilton Hotel in George Street in Sydney. The full extent of his movements between then and the morning of 11 May, more than a day later, when his body was found, is not yet known. A brief inquest was held two months later, on 16 July 1976, and the Coroner found that Mark had died of multiple injuries sustained as a result of falling from the cliff top. The Coroner was satisfied that there were no circumstances giving rise to suspicion of foul play but said that he could not determine whether the death was accidental or intentional.

In its paper-based review, Strike Force Parrabell classified the case as one where there was "insufficient information to establish a bias crime".

Paul Rath: Paul Rath was 27 years old when he died. His body was found at 7.20am on Thursday, 16 June 1977, near the base of a cliff not far from where Mark Stewart's body had been found a year earlier. He had suffered multiple injuries consistent with a fall from the cliff.

Paul was from a family of eight children and lived at home in Manly with his parents and siblings. He was a religious person who was involved with the local Catholic Church and he worked as a volunteer catechist at local public schools.

According to his father, Paul had suffered what his

father referred to as a "nervous breakdown" as a teenager. He had later worked for three years at the local "House with No Steps" but thereafter was on a pension and took regular medication. His treating psychiatrist described him as being well, in what turned out to be the final months of his life, and as not giving any indication of suicidal tendencies.

Paul seems to have been last seen alive, by one of his brothers, at the family home at about 4.30pm on Wednesday, 15 June 1977. His brother thought that Paul seemed happy. On Wednesday evenings, which this was, he often attended a regular church gathering.

According to his father, Paul would often walk in the Shelly Beach area and he would sit at the clifftop in order to relax. His body was found at the bottom of one of those cliffs.

The local Manly police quickly formed the view that there was no foul play involved. A brief coronial inquest was held in September 1977, three months after the death, and the Coroner found that Paul had accidentally fallen. However, it is anticipated that there will be evidence before the Special Commission which may indicate possible reasons to doubt the correctness of that finding. That evidence will include Paul's body having been found in a crouching position, neatly wedged in some rocks about 20 metres or so from the base of cliff, as well as evidence as to the nature of some of his injuries.

As I mentioned a moment ago in relation to Mark Stewart, the area near the top of these cliffs was a well-known beat. There was evidence during the third Scott Johnson inquest about groups or gangs of youths in the Manly area who targeted gay men for assault and robbery, at least in relation to a slightly later period in the 1980s. Strike Force Parrabell assigned this case to the category of "no evidence of bias crime".

Richard Slater: Richard Slater died on 22 December 1980 at Newcastle Hospital. He was 69 years old. He died from the effect of significant head injuries inflicted on him three days earlier, on 19 December 1980, at a toilet block in Birdwood Park in central Newcastle. It is possible that this is one of those cases where a person is assaulted on the assumption that the person is gay even

though in fact that may not be so. The factual matrix in relation to Mr Slater's case included the following:

Mr Slater was married and had a daughter and grandchildren. He had lived in Newcastle for 25 years. He had been employed throughout his adult life in a range of jobs until he had retired at age 65. On the day he was assaulted Mr Slater drove into town to do some shopping. He was carrying a small money purse containing $30. He stopped to use the public toilet in Birdwood Park. It was the middle of the day.

Among the evidence gathered by the police who investigated his death was that he had a prostate condition which meant that he needed to urinate relatively frequently. While he was in the toilet block he was assaulted. That toilet block, in fact, was known to be used as a beat. Initially police were unable to identify a perpetrator, but some two years later in 1982 an individual was charged with Mr Slater's murder. However, this charge was later the subject of a "no bill" and thus did not go to trial.

The accused was a man whom his associates regarded as someone known to engage in sex with men himself and also to have assaulted gay men on other occasions, including at toilet blocks, sometimes with the intention of robbing them. Mr Slater's money purse containing the $30 for his shopping was stolen during the course of the assault. Strike Force Parrabell assigned this case to the "no evidence of bias crime" category.

Gerald Cuthbert: Gerald Cuthbert was murdered on 17 or 18 October 1981. He was 27 years old. He was a young gay man whose sexuality caused him significant personal conflict because of his adherence to the Christian faith. He had been in a committed live-in relationship with a male partner for some five years up to the year before his death. However, he had ended that relationship in about July 1980, it seems because he had felt that it was incompatible with his Christian faith.

He and his ex-partner remained friends, and on the weekend of his death Mr Cuthbert was staying in his friend's apartment in Paddington, being the apartment they had previously shared together for five years, while the friend was away on this particular weekend.

Mr Cuthbert was found stabbed to death in that apartment on Sunday, 18 October 1981. The last confirmed sighting of him was on the previous evening, Saturday, 17 October. Mr Cuthbert's injuries were inflicted by what looks to have been extreme and frenzied violence. He was stabbed more than 60 times and his throat was slit. Strike Force Parrabell assigned this case to the "insufficient information to establish a bias crime" category.

Wendy Wain: Wendy Wain was a transgender woman who was a well-known entertainer in Kings Cross in the 1980s. At the time of her death she was working at a cabaret bar called Pete's Beat on Oxford Street, both performing herself and also managing the talent and producing the costumes for the casts of the shows. Wendy Wain was killed when she was shot at close range in her own apartment in Kings Cross. Her body was found on Tuesday, 30 April 1985 by a close friend who had not heard from her for a few days and came to check on her.

Wendy took great pride in being a member of the LGBTIQ community. She was a popular person whose death caused considerable fear and distress in that community. There was a police investigation and an inquest. The Coroner found that Wendy had died from bullet wounds inflicted by an unknown person. Strike Force Parrabell assigned the case to the "insufficient information to establish a bias crime" category.

Gilles Mattaini: Mr Mattaini was a young gay man born in France who lived with his partner, who was also French, in Bondi, near the northern end of Bondi Beach. Mr Mattaini worked at the Menzies Hotel in the city as a barman. One of the leisure time activities that he enjoyed was walking around the beachside areas and paths near Bondi. Between Bondi Beach and Bronte Beach there was, and is, a scenic coastal path very popular with walkers and joggers. Bondi Beach itself has a wide walking promenade along its whole length. The Bondi to Bronte path winds around the water's edge, sometimes down almost at sea level, and in other places quite high near the top of sheer cliffs.

Near Tamarama Beach, which is midway between Bondi and Bronte, the path has the ocean on one side and a park called Marks Park on the other side. This whole area, the

Bondi-Tamarama-Marks Park area, is central to the facts surrounding several of the cases the subject of Category A of the Terms of Reference, possibly including that of Mr Mattaini. Much of the area which includes the path, in particular around Marks Park, was a well-known beat. Mr Mattaini, according to his partner and friends, was a shy and private person and was not a user of the Marks Park beat.

In September 1985, Mr Mattaini's partner was holidaying in France. Mr Mattaini was looking forward to his return and also to the arrival of another friend from France who would be staying with them in Bondi.

On 16 September 1985, Mr Mattaini failed to show up for his shift at the Menzies Hotel. There was naturally concern amongst his friends who did what they could to try to find out what had happened to him but they had no success.

Mr Mattaini's partner was in France at the time. He was informed of Mr Mattaini's disappearance and was, of course, very distressed by it. He had the impression, which it seems was not correct, that one or other of Mr Mattaini's friends had reported the matter to the Police. No record of any such report has ever been found, and there was no police investigation in 1985.

In 2001 and 2002, some 16 or 17 years later, the disappearance of Mr Mattaini became part of the police investigation called Strike Force Taradale. That investigation led to the lengthy inquest, that I mentioned, during the course of 2003 and 2004 before then Deputy State Coroner Jacqueline Milledge.

I referred earlier to the Coroner's findings of March 2005. They were that Mr Mattaini was dead, that he had died on or about 15 September 1985, that there was no evidence to support a finding of suicide, and that while she was not able to make a positive finding as to the cause and manner of his death, there was "a strong possibility" that he had died in similar circumstances to Mr Ross Warren and Mr John Russell in 1989, to whose cases I will come shortly.

By contrast, Strike Force Neiwand, nearly 13 years later in December 2017, arrived at a very different view,

namely, that it was "highly probable" that Mr Mattaini committed suicide. At about the same time, Strike Force Parrabell, in the Parrabell Report published in June 2018, assigned this case to the "insufficient information to establish a bias crime" category.

William Rooney: William Antony Rooney, known as "Bill", died on 20 February 1986. He was 35 years old and originally from Scotland. He identified openly as a gay man and lived with his partner, Wayne Davis.

On the night of Thursday, 13 February 1986, Mr Rooney and Mr Davis went to Tattersalls Hotel in Wollongong where they each drank a number of schooners of beer. They parted company that night at about 10pm.

At around 8.40am the next morning, Friday, 14 February 1986, Mr Rooney was found in Crown Lane in Wollongong's CBD. He was lying on the ground between a toilet block and a wall with blood coming from his mouth and surrounding his face and head. His injuries included a fractured skull. Ambulance officers took Mr Rooney to Wollongong Hospital where he died some days later.

There was an investigation by police. The police considered that Mr Rooney's injuries may have been caused by a fall. No swabs were taken from Mr Rooney's body.

The next year, 1987, saw a Coroner's finding that the evidence did not enable him to say whether Mr Rooney's injuries were received accidentally or otherwise.

Years later there were police investigations into a series of assaults on other men in the Wollongong area. In 1989 there was an arrest of an individual who was then charged with multiple offences against multiple victims, including an attempted murder and sexual assault. Mr Rooney was not one of the victims to whom any of the charges related.

However, at least one of the assaults in question occurred very close to where Mr Rooney's body had been found. In 1993 the accused was convicted of various offences and imprisoned. In 2001 he was released. Within months he was charged with another violent assault. He pleaded guilty and was imprisoned again.

In the light of what had become known about this individual who had perpetrated these many assaults, Mr Rooney's death was re-investigated. A brief was forwarded to the DPP for consideration of charges against the known perpetrator in connection with Mr Rooney's death. However, the DPP determined that there was insufficient evidence for charges to be laid. Strike Force Parrabell assigned this case to the "insufficient evidence to establish a bias crime" category.

William Allen: William Allen was a retired school teacher who lived in Alexandria. He was 48 years old and he was gay. On the night of 28 December 1988 he was savagely beaten by persons unknown in Alexandria Park which was a well-known beat. With the help of a passerby he managed to make his way home but he was found dead there the next day. The passerby had been driving in his car when he saw Mr Allen near the toilet block in the park. He stopped his car and Mr Allen came to the passenger's side and shouted, "I've been bashed". Mr Allen's face and hands were covered in blood and he was bleeding from the nose. Mr Allen said that his assailants had bashed and kicked him while he was on the ground and had taken had his money and keys. The driver implored Mr Allen to call the police but Mr Allen's response was, "That's what you expect when you do the beat".

The finding by the Coroner, in July the following year 1989, was that Mr Allen had died of the effects of head injury sustained when he was beaten by persons unknown in Alexandria Park.

Six months later, in January 1990, just over a year after Mr Allen's death, a gay man named Richard Johnson was punched and kicked to death near that same toilet block in Alexandria Park. Police charged eight teenagers, aged between 16 and 18 at the time, with Mr Johnson's murder. They became known as "The Alexandria Eight". Three were convicted of murder and five of manslaughter.

The murder of Richard Johnson and the prosecution and conviction of his killers led police to look again at the killing of Mr Allen. Various member of the Alexandria Eight admitted at various times to having been involved in numerous bashings of gay men in both the Alexandria and the Bondi areas. However, it was considered that there was insufficient evidence to bring charges against any person

in relation to the death of Mr Allen. Strike Force Parrabell assigned Mr Allen's death to its second category, "suspected bias crime".

John Hughes: John Hughes openly identified as gay and was known to his friends as "Skinny John". He lived in the Kings Cross-Potts Point area. At the time of his death in May 1989 he was aged about 45. Mr Hughes was murdered in his own apartment in a particularly graphic manner. He was found with his hands and feet bound with electrical cord and a pillow slip covering his head. There were bruises and lacerations to the back of the head consistent with blows by a blunt object and a belt had been tightened around his neck, ultimately leading to death by asphyxiation. Police identified a suspect who was an associate and sometime flatmate of Mr Hughes and charged him with Mr Hughes's murder. One witness at the trial of that accused claimed that the accused had referred to Mr Hughes as "a faggot" who "deserved to die" and "deserved everything he got". The accused was tried before a jury but he was acquitted and he is now deceased himself. Strike Force Parrabell formed the view that the case was solved rather than unsolved, seemingly on the basis that the accused, although acquitted, was probably the perpetrator. Strike Force Parrabell otherwise assigned this case to the "insufficient information to establish a bias crime" category.

Ross Warren: Ross Warren was a television news reader with Channel WIN4 in Wollongong. He was gay and his friends were aware that he sometimes went to beats. In July 1989, on a visit to Sydney, he went missing. He was 25 years old. His car was found at Tamarama and his keys were found not far away on rocks below the walking path at Marks Park, an area which, as I have said, was a beat. His body has never been found.

On the evening of Friday, 21 July 1989, after presenting the weather report at the end of the 6 o'clock news, Mr Warren drove from Wollongong to Sydney to a friend's place. At about 10.30 that night he drove to Oxford Street in Darlinghurst. He and a work colleague visited several bars and nightclubs along the Oxford Street strip before going their separate ways in the early hours of Saturday morning, 22 July 1989. He was in good spirits, but he was never seen again.

On Sunday, 23 July, Mr Warren did not turn up for work at WIN Television. This was uncharacteristic for him. His friends in Sydney went to Paddington Police Station on the Sunday evening and reported him missing. Then those same friends went looking for him themselves. They wondered if he might have gone to Marks Park. On that same Sunday evening they located his car in Kenneth Street, Tamarama, very close to Marks Park. They reported that to Paddington Police the same night.

The next morning, Monday, 24 July, Mr Warren's friends went back to Marks Park again. This time they found his keys on a rock ledge below the walking path. Again, they reported this to Paddington Police. Two days later, on Wednesday, 26 July, an article in the *Daily Telegraph* reported that there were fears that Mr Warren had been murdered. However, two days after that, on Friday, 28 July, the officer in charge of the investigation at Paddington Police wrote in the Occurrence Pad that investigating police had no such view and were of the opinion that Mr Warren had "fallen into the ocean in some manner and it is anticipated that in the near future his body will surface and be recovered." There was no inquest. The investigation seems to have effectively finished after four days.

This original police investigation into Mr Warren's disappearance was subsequently described by Coroner Milledge in 2005, as I mentioned earlier, as "grossly inadequate and shameful". The Coroner found, in 2005, that Mr Warren was a victim of homicide, probably by gay hate assailants. However, Strike Force Neiwand which re-investigated the case in 2016 and 2017, reached a very different conclusion. Neiwand's conclusion, as at January 2018, was that "despite the Coroner's finding of homicide" in 2005, Mr Warren's death "could be one of several possibilities" and should in fact be treated as "undetermined".

At about the same time, Strike Force Parrabell, in the Parrabell Report published in June 2018, assigned Mr Warren's death to the second of its four possible categories, namely, "suspected bias crime".

John Russell: John Russell was a barman at the Bronte Bowling Club. He lived with his brother, Peter, at Bondi. He identified openly as gay. As at November 1989, he was

excited about his plans to leave Sydney and build a 'kit home' on his father's property at Wollombi near Cessnock which would be funded by an inheritance from his grandfather. He also intended to use some of that money to travel around Australia.

On the evening of Wednesday, 22 November 1989, Mr Russell went for some farewell drinks with a friend at the Bondi Hotel. He had a similar evening planned for the next night, Thursday, and then on the Friday his father Ted was going to drive down from Wollombi to collect him. He was 31 years old. But after leaving the Bondi Hotel at about 11 o'clock on that Wednesday night he was never seen alive again.

The next morning, Thursday, 23 November 1989, his body was found lying on rocks below the Bondi to Bronte walking path at Marks Park, a well-known beat, as I have mentioned. He had multiple injuries including skull fractures. Police from Bondi Police Station investigated. The officer in charge was a junior plain clothes detective constable.

The position of Mr Russell's body was that his head and upper body were facing towards the cliff face, while his feet were towards the ocean. On one view that might perhaps be thought to indicate that jumping or falling were unlikely. On one of Mr Russell's hands were human hairs, possibly from another person. A crime scene photograph depicts these hairs and it seems that they were bagged for analysis, but even before the initial inquest in 1990 they had somehow been lost. They were never forensically examined, and it is now impossible for such testing to be carried out.

On 2 July 1990 a Coroner made an open finding as to Mr Russell's death. The Coroner's words were:

Whether he fell accidentally or otherwise, the evidence does not enable me to say.

Almost 15 years later, on 9 March 2005, following the re-investigation by Strike Force Taradale and the resultant second inquest, Coroner Milledge found as a fact that Mr Russell's death was in fact a homicide which occurred when he was thrown from the cliff onto rocks by a person or persons unknown. The Coroner also found that the evidence strongly supported the probability that those who had

caused him to meet his death in that way were, in her words, "gay hate assailants".

Once again, however, Strike Force Neiwand many years later reached a different conclusion from Coroner Milledge. According to Strike Force Neiwand in January 2018, while there was a "possibility" of Mr Russell's death being the result of a homicide, there was "a lack of corroborating evidence" for such a possibility, whereas there was corroborating evidence which supported a finding of misadventure, for example, that Mr Russell had simply fallen.

At about the same time, in the Parrabell Report published in June 2018, Strike Force Parrabell assigned Mr Russell's death to its second category, namely, "suspected bias crime".

Simon Blair Wark: On the morning of 10 January 1990, the body of Simon Blair Wark, known as Blair, was found floating about 200 metres off Dobroyd Point, not far from Manly, clad in jeans, shoes and socks but no shirt. Blair was known to be gay and an area near Reef Beach in the vicinity of Dobroyd Point, was a known beat where assaults had taken place prior to 1990. However, a shirt, belt, wallet and other property associated with him were then found the next day on a rock platform at the top of The Gap near Watsons Bay on the south side of the Harbour. The last known sighting of Blair had been at Double Bay on the afternoon of 9 January, the day before his body was found off Dobroyd Point.

Blair had a history of treatment for depression and, although he was not regarded by family members as deeply depressed or suicidal, he was exhibiting some concerning behaviour in the lead-up to his death. An autopsy found the cause of death to be multiple injuries consistent with having fallen from a great height.

The police report to the Coroner, which was dated 10 January 1990, that is, the day the body was found, indicated "no suspicious circumstances". Homicide detectives subsequently formed the view that the death appeared to be by suicide and the coronial file later included a note to that effect. In July 1990, the Coroner dispensed with an inquest on the basis that there were no suspicious circumstances. Strike Force Parrabell

designated the case as "solved", evidently adopting the view that it was suicide, and otherwise assigned it to the category of "no evidence of bias crime".

Robert Malcolm: Robert Malcolm, known to his workmates as "Bob", worked in a clerical position at the GPO in Martin Place. He was a single man who lived with his parents in suburban Sydney.

On Friday, 10 January 1992, Mr Malcolm went for a drink after work with colleagues at the Menzies Hotel near Wynyard. He was still there at about 8.15pm when all others in the group had left. Not long after that, between about 8.30 and 10pm, a person thought to be Mr Malcolm was seen in Eveleigh Street, Redfern, with another man.

In the early hours of the next morning, Saturday, 11 January 1992, Mr Malcolm was found in a derelict house in Eveleigh Street. He was lying on his back, bleeding from the head and with his pants and underpants down near his ankles. He was taken by ambulance to Royal Prince Alfred Hospital where he died later that month on 29 January 1992. He was 41 years old.

The cause of death was the sequelae of head injuries. Mr Malcolm's injuries were extremely severe, including complex fractures to the base of the skull and the right side of the face, damage to the right eye, deep lacerations to the face, broken and missing teeth, and a fractured rib.

Two men, one of them now deceased, were charged with Mr Malcolm's murder and a third, also now deceased, was charge as accessory after the fact. All those charges were dismissed following a committal hearing in 1992. Strike Force Parrabell classified this case as "solved" rather than "unsolved", and otherwise assigned it to the category of "no evidence of bias crime".

Cyril Olsen: Cyril Olsen was a man who identified openly as gay. He lived in Woollahra and was always immaculately dressed. He was described by one witness as being "like an English gentleman". He was reported to be a heavy drinker and as being a regular at the back bar of the Rex Hotel in Kings Cross, the "Bottoms Up Bar", which was known as a gay bar.

On the evening of Friday, 21 August 1992, Mr Olsen was

seen drinking at various places, including in Kings Cross and on Oxford Street in Darlinghurst. The next morning, Saturday, 22 August 1992, at around 7am, a number of witnesses saw Mr Olsen walking through Rushcutters Bay Park near the Cruising Yacht Club. Rushcutters Bay Park extends from the Harbour's edge on the north to New South Head Road on the south, and from New Beach Road on the east to the stormwater canal on the west. It is not far from Oxford Street and Taylor Square, which can be reached on foot in about 20 minutes. Rushcutters Bay Park was another well-known beat.

The witnesses who saw Mr Olsen walking in the park at about 7am described him as "obviously distressed" and "dazed". He was wearing neither trousers nor shoes and there was mud on his bare legs. There was a cut on his head and blood on his face. Despite one witness offering assistance, Mr Olsen insisted "I'm fine, I'm okay", but only minutes later his body was found floating face down in the water near the Cruising Yacht Club. His shoes and trousers were later located in or near the stormwater canal on the western side of the park. Mr Olsen was 63 years old.

The post-mortem examination identified the cause of death as drowning, but also noted significant lacerations, abrasions and bruising, including a deep laceration, to the depth of the bone, on the top of his head. The officer in charge of the police investigation expressed the opinion in his statement for the Coroner that Mr Olsen had been the victim of a gay bashing or robbery in Rushcutters Bay Park.

At an inquest in 1994 the formal finding by the Coroner was death by drowning. Strike Force Parrabell assigned this case to the category of "insufficient information to establish a bias crime".

Crispin Dye: Crispin Dye died on Christmas Day 1993. He was 41 years old. Mr Dye lived in Cairns but was in Sydney visiting his mother for Christmas. He was the former manager of the rock bands AC/DC and Rose Tattoo and he was also a musician in his own right.

On the night of 22 December, and well into the early hours of 23 December, Mr Dye was out drinking with friends in and around Oxford Street, Darlinghurst. At about 4am on the morning of 23 December, Mr Dye was

observed lying on his stomach on the road in the laneway at the back of Kinselas nightclub. Police attended the scene a short time later and arranged for Mr Dye, who was unconscious, to be transferred to hospital. He died there two days later. The post-mortem identified multiple significant injuries, including fractures to the skull caused by a blunt instrument.

An initial police investigation identified one principal suspect and led to an inquest in 1994 and 1995. There was insufficient evidence to tie that suspect to the murder. The Coroner's finding in August 1995 was that Mr Dye died of the effects of a head injury inflicted by a person or persons unknown.

There was a second investigation, some years later in 1999, which also did not result in any charges being laid. Some of Mr Dye's friends thought he was gay or bisexual but whether that was in fact so seems to be unclear. The scene of the attack was close to Oxford Street's LGBTIQ bars and nightclubs, and one suggestion in the evidence gathered by Police was that he may have been attacked by three men, and thus that a gang may have been involved. However, the area around Oxford Street was at the time also considered by police to be a hotspot for street robberies generally. Strike Force Parrabell assigned the case to the category of "insufficient information to establish a bias crime".

Kenneth Brennan: Kenneth Brennan was a history teacher with the Open High School in Sydney. Mr Brennan was a gay man who shared an apartment in Elizabeth Bay with his partner of five years. However, on the weekend of 10 June 1995 his partner had been staying at the home of a mutual friend. Mr Brennan was sighted on the Sunday night attending Kingsteam Sauna, a popular cruising venue for gay men.

When Mr Brennan's partner returned home on Monday, 12 June 19995, he found Mr Brennan's naked body at the entrance to the living room. He had been stabbed multiple times with a knife which police located broken at the scene. He was 53 years old. There was a police investigation and an inquest, but the killer's identity remained hidden. The Coroner found that Mr Brennan had died of stab wounds to the chest inflicted by persons unknown.

A subsequent second police investigation, some 20 years later in 2016-2017, also did not lead to any charges. Strike Force Parrabell assigned this case to the category of "insufficient information to establish a bias crime".

Carl Stockton: Carl Stockton lived alone in Surry Hills and he was a train driver, having previously worked in the Taxation Department. He was a gay man, although it seems he kept his sexuality mostly private. Mr Stockton was a regular patron of the Bar Cleveland, a hotel on the corner of Cleveland Street and Bourke Street in Redfern. He usually attended alone and played a card machine in the back bar. He was there drinking alone on Melbourne Cup Day in 1996. In that year, that was 5 November.

Early the next morning, at about 1am on 6 November, Mr Stockton was found, apparently intoxicated, sitting in the backyard of a house that backed onto the laneway behind the Bar Cleveland. The owners of the house helped him through the back gate and into the laneway. But shortly afterwards, at about 1.15am, Mr Stockton was seen lying on his back on the inside traffic lane of Cleveland Street, at the corner of Bourke Street outside the Bar Cleveland. A passerby, with the help of a member of staff of the Bar Cleveland, lifted Mr Stockton up and helped him walk to the steps of the Hotel. He had a black eye and a cut to his face. A call was made to the Sydney City Mission and at about 1.30am welfare officers arrived and took Mr Stockton to Campbell House, a proclaimed place where he would receive care. However, by 11.30am that day there were concerns about his wellbeing, he had been vomiting and was disoriented. He was taken to hospital and he died there five days later. He was 52.

An autopsy revealed massive head injuries, with three separate areas of impact, as well as bruising on the legs, chest and arms. There was an inquest. A pathologist considered that it was unlikely Mr Stockton had been struck by a motor vehicle given the pattern of multiple injuries. A consultant neurosurgeon also considered a motor vehicle accident unlikely and concluded that Mr Stockton's injuries clearly pointed to an assault with repeated head injuries. The Coroner returned an open finding. Strike Force Parrabell assigned the case to the category of "insufficient information to establish a bias crime".

Scott Miller: Scott Miller grew up in Orange. In early 1997, aged 21, after completing an electrical apprenticeship, he moved from Orange to Sydney to study Sports Science at the University of Western Sydney. He was a keen footballer with many friends. There appears to be no suggestion that Mr Miller was gay.

On the Saturday evening, 1 March 1997, Mr Miller was at the annual Sydney Mardi Gras parade with friends and he later went on to drink with some of them at various pubs in The Rocks.

On the Monday morning, 3 March, Mr Miller's body was found in a wharf area adjacent to Darling Harbour, at the bottom of a steep drop below a park near The Palisades Hotel in Millers Point. How that happened has been the subject of several police investigations. The possibilities included that he fell, or was pushed, or was killed elsewhere and his body placed where it was found.

In 1997 the finding of the Coroner was one of homicide, namely, that Mr Miller died of multiple injuries inflicted by a person or persons unknown. Strike Force Parrabell assigned the case to the category of "no evidence of bias crime".

Samantha Rose: Samantha Rose, who was given the name "David" at birth, was a transgender woman who worked as a computer analyst for Westpac Bank. So as far as the Inquiry has been able to ascertain, she identified as female. She often wore female clothing to work and had confided in several friends regarding her gender identity. She sometimes used the name "Samantha", including in correspondence with friends and when she volunteered at radio stations 2RPH and 2SER. On the radio she used a more feminine voice. At the time of her death she was undergoing hormone replacement therapy as part of her affirmation of her gender. The Inquiry will refer to Ms Rose consistently with her own preference.

On the morning of 22 December 1997 police found Ms Rose deceased in her home at Kensington. She had been last seen in the early afternoon of 20 December. The time of her death seems likely to have been some time on 20 or 21 December. She was found lying on her back near the kitchen table. She was wearing female clothing. A kitchen chair was fallen over near her head and her unit was in a

state of disarray. She had suffered major injuries, including fractures to her skull and severe bruising. Her injuries were consistent with numerous heavy blows to the head with a blunt object. There was no evidence of forced entry to Ms Rose's unit, suggesting she may have known her assailant.

At the inquest in 1999 the Coroner found that Ms Rose had died due to head injuries inflicted by a person or persons unknown. No charges were ever laid against any person. One person of interest to investigating police has subsequently died. Strike Force Parrabell assigned this case, as it did 15 of the 23 cases it treated as unsolved, to the category of "insufficient information to establish a bias crime".

Now, Commissioner, I see the time

THE COMMISSIONER: I'll adjourn until 2 o'clock. Thank you.

LUNCHEON ADJOURNMENT

MR GRAY: Commissioner, for the reasons I indicated earlier today, it is not appropriate at this stage to outline any of the possible Category B cases today in opening in the way that I did this morning with some of the Category A cases. However, the processes of review and analysis of each of these cases are well under way, by the same comprehensive methods that the Special Commission has deployed with respect to the Category A cases.

All of the cases which are determined to fall within Category B of the Terms of Reference will be the subject of evidence and submissions in due course, just as will those in Category A.

The Special Commission's website contains further information about the work of the Commission. It is updated regularly. Among the material to be found on the website is the Practice Guideline which outlines, among other things, the way in which interested parties should contact the Special Commission if they wish to seek authorisation to appear at any of the public hearings which will be held. Applications for such authorisation should be made in writing to the solicitor assisting the Special Commission at the email address given on the website.

At this stage, it is anticipated that there will be two sets of public hearings this year: one later this month and one in December. The hearings this month will be directed to the experience of LGBTIQ people who lived through the period with which this Inquiry is particularly concerned, namely, the 40 years between 1970 and 2010, including their experience of the changing approaches of the New South Wales Police.

The hearings in December will be directed mainly to various aspects of Strike Force Parrabell, including the methodologies used by the Parrabell police officers on the one hand and, if time permits this year, the Flinders University academic team on the other hand, and also to the ways in which the New South Wales Police have approached the recording, analysing and policing of "bias crime" or "hate crime" over the years from 1970 to the present. It will also involve some aspects, I expect, of Strike Force Neiwand.

Next year, in 2023, it is anticipated that there will be both public and private hearings directed to obtaining further evidence in relation to many of the individual cases the subject of Categories A and B of the Terms of Reference. Information about upcoming public hearings will be published on the website at the appropriate time.

Finally, I repeat, the Special Commission welcomes and particularly positively requests any information which anyone may have which might assist in the task of unravelling what really happened in all these cases. That applies to family members and friends of the people who have died, and it applies to members of the public generally, who might have seen or heard something in years gone by that might be relevant. Any recollections or pieces of information that you might have, however major or minor, could provide a vital link in understanding what happened. In some cases, it may ultimately lead to arrests and prosecutions. And this applies with particular emphasis to anyone who was actually involved in or saw events that resulted in the death or suspected death of a LGBTIQ person a long time ago.

If you have had something weighing on your mind for years about these things, now is your chance to do something to make amends. Now is the time to break your

silence. Justice in these cases has been long-delayed and long-awaited. This may be the last chance for the truth about some of these historical deaths to be exposed. We need to hear from anyone who can help us do that.

I will repeat the various ways of contacting the Inquiry that I mentioned earlier and those details are on the screen.

By email, to contact@specialcommission.nsw.gov.au; by post, addressed to LGBTIQ Hate Crimes Inquiry GPO Box 5341, Sydney, NSW 2000, or by phone, by calling (02) 9228 4855 and leaving a voice message. If you do contact the Inquiry by any of those means, please provide your telephone and/or email or other contact details so that the appropriate person can respond to you. Thank you.

THE COMMISSIONER: Thank you. What I'd like to do though is adjourn for the moment to a particular date. I think, given what you've outlined, the most appropriate date for the moment would be Monday, 21 November.

MR GRAY: Yes, Commissioner, that is an appropriate date.

THE COMMISSIONER: All right. We'll work on that basis for the moment and, as you've indicated, if there is any change in that date, that will be notified in due course on the website.

MR GRAY: Indeed.

THE COMMISSIONER: All right. Well, thank you. What I'll do then for the moment is adjourn the hearing of the Special Commission until Monday, 21 November this year. Thank you.

AT 2.09PM THE COMMISSION WAS ADJOURNED TO MONDAY, 21 NOVEMBER 2022

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'kit [1] - 163:1
'social [1] - 130:10

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02 [2] - 148:10, 172:12

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