# 2022 Special Commission of Inquiry into LGBTIQ hate crimes 

Before: The Commissioner, The Honourable Justice John Sackar

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

On Monday, 20 February 2023 at 10.23am
(Day 23)

| Mr Peter Gray SC | (Senior Counsel Assisting) |
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| Ms Claire Palmer | (Counsel Assisting) |
| Mr Enzo Camporeale | (Director Legal) |
| Ms Caitlin Healey-Nash | (Senior Solicitor) |
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| A1so Present: |  |
| Mr Mark Tedeschi KC with Mr Anders Mykkeltvedt for NSW |  |
| Police |  |

THE COMMISSIONER: Yes, Mr Gray. I thought I would deal with some housekeeping matters first.

Mr Tedeschi, I gather you are aware of the fact that I'm about to hand a judgment down dealing with some outstanding matters $I$ think in relation to proposed witness Mr Morgan, so if I publish those reasons, and then, as I would apprehend it, I wil1 make some orders which wil1 give effect to certain redactions that have taken or will take place.

MR TEDESCHI: Thank you.
THE COMMISSIONER: Let me deal with that first. I publish my reasons in the matter of Morgan.

I have a set of short minutes. I take it, Mr Tedeschi, you will have seen the short minutes?

MR TEDESCHI: No, I haven't.
THE COMMISSIONER: Has Mr Mykkeltvedt seen the short minutes?

MR TEDESCHI: My learned junior has seen them but there's 20 pages of annexures. We haven't had a chance to check them against the various other documents.

THE COMMISSIONER: A11 right. What I wil1 do is I wil1 publish my reasons and then $I$ wil1 come back to the short minutes when you have had an opportunity to check the proposed minutes of order, and at some point convenient to al1 concerned, I wil1 make those orders.

MR TEDESCHI: Thank you.
THE COMMISSIONER: Al1 right. That's fine, thank you.

> Yes, Mr Gray.

MR GRAY: Commissioner, in December, in the first part of this second public hearing, there was a tender bundle which was received into evidence as exhibit 6 . I think at that stage it had 10 volumes. Within those 10 were some documents which, at that point, were not themselves tendered. However, the position has now been reached, after various redactions and other matters have been
attended to, that almost all of those documents in volumes 1 to 10 which were not previous 1 y tendered in December are now tendered, and I understand that you, Commissioner, have a list of those and that my learned friends have that list as well.

THE COMMISSIONER: Right.
MR GRAY: So they should become part of exhibit 6 .
Secondly, there are 24 of those documents, $I$ believe in al 1 .

Then there are also four additional volumes to be added to exhibit 6, namely, volumes 11 to 14 . So I would ask that they be added to exhibit 6, and that our learned friends have those volumes.

There are two exceptions to what $I$ have just said. At tab 230 of, I think, volume 9, there is a statement of Detective Sergeant Steven Page from 25 July 2002. That is the statement of Sergeant Page which was tendered and received into evidence in the Taradale inquests before Deputy State Coroner Milledge in 2003. That statement will be tendered in these proceedings, but not today, or at least not this morning, as certain details of appropriate non-publication orders or redactions are still yet to be finalised, but I understand that that is likely to be achieved probably during the course of the day.

Secondly, in the new volumes 11 to 14 , there is a document at tab 253 which is a statement of Steven Page of this year, of 16 February 2023, and I don't tender it as yet either because the same applies - namely, any necessary non-publication orders or redaction arrangements are stil1 being finalised. But again, I understand that that will not take long to arrive at finality.

THE COMMISSIONER: Very wel1.
MR GRAY: As I understand it, that means that we are ready to move to the next witness, who is Mr Michael Willing.

THE COMMISSIONER: Yes, thank you.
MR GRAY: I call Mr Willing.
THE COMMISSIONER: Mr Wiliing, if you would come forward,
thank you.
<MICHAEL JOHN WILLING, sworn:
[10.28am]
THE COMMISSIONER: Mr Tedeschi, I think I'm right in saying that we will probably adopt a similar procedure to last time, in other words, a member of the staff wil1, I believe, assist Mr Willing in terms of availability of hard copy documents so that he won't have to rely entirely upon his own administrative skills or watching it on the screen. So as documents are referred to, we will make sure that a hard copy is placed in front of him.

MR TEDESCHI: Thank you.
THE COMMISSIONER: A11 right, yes. Thank you, Mr Gray.
<EXAMINATION BY MR GRAY:
MR GRAY: $\quad$. Mr Willing, you have made a statement for the purposes of the Special Commission dated 30 January 2023?
A. I have.
Q. And I take it the contents are true and correct?
A. Yes.
Q. And there are no changes that you wish to make or additions?
A. No.
Q. You were Commissioner Homicide, from November 2011 to November 2017, I believe?
A. Commander Homicide, yes.
Q. I'm sorry, Commander Homicide. Indeed, I believe I have seen somewhere that you were the longest serving person in that role?
A. I believe so. The current incumbent might be getting close, but yes.
Q. Now, your six-year period as Commander Homicide, included many events which are relevant to the issues surrounding gay hate crime, you recall?
A. Yes.
Q. Without being exhaustive, can $I$ just iist a few of
them now just to set the scene?
A. Sure.
Q. First of al1, in June 2012, there was the second inquest into the death of Scott Johnson?
A. Yes.
Q. Before Deputy State Coroner Carme1 Forbes?
A. Yes.
Q. And she returned an open finding, in contrast to the finding of suicide that had been made in an initial inquest back in, I think, 1989?
A. Yes.
Q. Then secondly, in February 2013, there was a program on ABC television called Australian Story, about Scott Johnson?
A. Yes.
Q. And that led, in ways that $I$ wil1 come to, to the initiation of a strike force called Strike Force Macnamir? A. Yes.
Q. Then also in 2013, a third event that $I$ will be dealing with, there was a wave of articles in the Sydney Morning Herald, some by Paul Sheehan and some by Rick Feneley, about what was said to be a wave of gay hate deaths?
A. Yes.
Q. In the period rough1y from the mid 1970s to the 1990s?
A. Yes.
Q. You'd recal1 that. And those articles - and I'm paraphrasing for the sake of summary at the beginning were suggesting that there were as many as 80 such deaths in that period?
A. Slightly more, but yes, that's right.
Q. In fact, a 1 ittle more than 80 , and they were suggesting that as many as 30 of those might be regarded as unsolved?
A. Correct.
Q. And then fourth1y, in about 2013/2014, there was
a lengthy statement by Detective Chief Inspector Pamela

Young relating to the death of Scott Johnson that was prepared?
A. Yes.
Q. And you were aware of that at the time, I take it?
A. Yes, I was.
Q. And again, very much summarising, you would agree that her statement suggested that the most likely explanation for Scott Johnson's death was suicide?
A. I think she outlined her reasons or the evidence as she saw it for the hypotheses of suicide, homicide and misadventure.
Q. She did, but she seemed to put forward the view, didn't she - and I will come to this - that, in her opinion, the most likely of those was suicide?
A. I think she left the decision to the Coroner and outlined, you know, what it was that she saw as the evidence for each of those three.
Q. Yes, but to answer my question, her opinion, as emerging from that statement, was that suicide was the most likely?
A. I think that she has put each of those hypotheses to the Coroner and let the Coroner make the decision. So you can read what you can into that statement, but that's my view of what she did.

THE COMMISSIONER: Q. Mr Willing, you took the view that she, what, equally treated various scenarios as equally open?
A. As the evidence that she saw and presented to the Coroner, yes.
Q. I see. And she didn't prefer or express any view, one way or the other, as to which of those scenarios might be more likely?
A. Not in my opinion.
Q. And you've read the statement, have you?
A. Yes.

MR GRAY: $Q$. Have you read it in relatively recent times?
A. I've read the redacted version last night, which has part thereof of what she put.
Q. I will come back to that in due course.
A. Sure.
Q. Anyway, the fifth event that I would suggest in your time, among others, was that on 13 April 2015, then State Coroner Barnes decided to hold a third Scott Johnson inquest?
A. Yes, he opened the inquest, yes.
Q. Sixthly, on the same night, 13 April 2015, Detective Chief Inspector Pamela Young was interviewed on the ABC Lateline program?
A. Yes.
Q. And among other things - you would recall this, I take it - she defended the original 1988 Manly police investigation into the death of Scott Johnson as not flawed; remember that?
A. I'm not - I can't recall her using those words but I assume she did, yes.
Q. And in the interview on Lateline, she expressed a clear view, would you agree, that suicide was the most likely explanation?
A. I can't recall the exact words that she used, but I take it that yes, she did.
Q. And, among other things, she accused the Police Minister of having kowtowed to Steve Johnson - that is, the brother of Scott Johnson - in agreeing to reinvestigate the death?
A. I recall that, yes.
Q. The seventh event, and I acknowledge that this is not exhaustive, I'm simply putting these to you --
A. Sure.
Q. -- within a short time after that - that is, within a short time after the Lateline broadcast - State Coroner Barnes directed that Detective Chief Inspector Young be removed from the Scott Johnson investigation?
A. Yes.
Q. And, eighthly, a few months later, in August 2015

Strike Force Parrabell was initiated?
A. Yes.
Q. And you would recall that that strike force was to review the 80 -odd or a bit more than 80 cases so as to express a view as to whether they were gay hate related or not?
A. Yes.
Q. Ninthly, a couple of months after that again, in October 2015, a strike force called Neiwand was set up? A. Correct.
Q. And that one - and we will come to all of these - was to reinvestigate three deaths from Bondi in the 1980s?
A. Correct.
Q. One of them in 1985, which was about three years before Scott Johnson, and two of them in 1989, which was the year after Scott Johnson?
A. Yes.
Q. They being three deaths which had been the subject of the Taradale inquest before Deputy State Coroner Milledge in 2003?
A. Yes.
Q. Then, tenth1y - this is right, isn't it, given what we have just briefly touched on - from the second half of 2015 through to the end of 2017 , those three strike forces were simultaneously under way - that is, Parrabell, from about August 2015; correct?
A. Yes.
Q. And it substantially finished by the end of 2017 and the report was ultimately published in 2018?
A. Yes.
Q. Secondly, Macnamir, which was looking at the death of Scott Johnson?
A. Yes, under the control of the Coroner by that point.
Q. Yes. So it was still going at the same time - that is, from - it started earlier than this but, as at mid 2015, it was going along at the same time that Parrabel 1 was going along?
A. Yes.
Q. And thirdly, Neiwand, from October, was also going
along from October ' 15 , and it also came to an end at the end of 2017?
A. Yes.
Q. Now, you point out in your statement, paragraphs 41 to 46, that you had a wide range of responsibilities as Commander Homicide?
A. Yes, that's correct.
Q. No doubt that is true?
A. Yes.
Q. Nevertheless, however, al1 of those developments that I have just briefly taken you to did happen between 2012 and 1 ate 2017 - that is, on your watch - didn't they? A. The - I just - that's technically right. However, I left the Homicide Squad physically in around April 2017 and didn't return to it.
Q. Who replaced you, if that's the word, in that period?
A. There was a relieving commander at the time, Detective Acting Superintendent Jason Dickinson, and then he was subsequently replaced by a substantive commander, it was then Detective Superintendent Scott Cook.
Q. Thank you. If you remember, what were the dates? You 1eft in April?
A. I left, I think from my research in preparing for this, 11 April in 2017, so $I$ was taken offline by the new Commissioner, Michael Fuller, and asked to prepare for and then ultimately implement the recommendations arising from the Lindt Cafe inquest.

I then was promoted to Assistant Commissioner and Commander of the Counter Terrorism and Special Tactics Command on 1 November 2017 and I was completely tied up with that prior to --
Q. But in that period from Apri1 to November, first of al1, I think you said Superintendent - I may have the rank wrong - Dickinson stepped in as Commander Homicide?
A. Yes, that's right.
Q. When did the next person succeed him as Commander Homicide. I think you said that was Mr Cook, was it? A. I don't know. Yeah, it was Detective Superintendent Scott Cook, now Assistant Commissioner. It was 1ate 2017.

I don't know the exact date.
Q. And was he then appointed permanently to the position?
A. Correct. He was.
Q. And is he still in the position?
A. No, he was later promoted to Assistant Commissioner in another command, the Prosecutions Command. He is now substantively the Commander of the State Intelligence Command.
Q. I see. And somebody then succeeded him as Commander Homicide?
A. Yes, that's right.
Q. Who was that?
A. Detective Superintendent Danny Doherty.
Q. Is he still in the position?
A. He is.
Q. That happened, when, 2018 or some other time?
A. Some time after. I don't know the exact time.
Q. Al1 right. At any rate, accepting what you say about you going, as you say, offline in April 2017 --
A. Yes.
Q. -- allowing for that, you were well aware of all of those events that I've just taken you through briefly during the course of those five or six years?
A. I was aware that they were ongoing, yes.
Q. And indeed, you had responsibility as Commander, at least up to April, for every step taken by Homicide police including the Unsolved Homicide Team?
A. Yes.
Q. Just before I come to this period of six years or so in some detail, I want to go back to the events of the early 2000s, which is before you became Commander Homicide, of course --
A. Yes.
Q. Namely, the events that led up to and then the hearing of the Taradale inquests. You obviously are well aware of what the Taradale operation was?
A. Yes.
Q. And what the inquests were about?
A. Yes.
Q. Now, again, in a slightly abbreviated form, you'd accept that in 2001/2002 Detective Sergeant Steven Page was in charge of Operation Taradale?
A. Yes.
Q. And Taradale was originally to look at the deaths of Ross Warren and John Russel1 in 1989, as well as an assault on another man, David McMahon, also in 1989. Are you aware of that?
A. Yes.
Q. And pausing there, were you aware of these things at the time? I appreciate you weren't Commander Homicide. A. No, I wasn't, not at the time. Later on I learnt; you know, when the issues that are at question, at hand, came up, I learnt about the Strike Force Taradale and what it did later on, some years later.
Q. "Later on" being when?
A. Years later when $I$ had command of the Homicide Squad.
Q. Not until 2011 or 1 ater?
A. Yes, that would be right.
Q. So prior to then, about 2011, you were - I don't mean this discourteously at all--
A. No, not at all.
Q. -- ignorant of the Taradale events?
A. Correct. I was aware that there had been an inquest, but only in general terms amongst, you know, any other inquests as a police officer that you hear about from time to time, but not in detail at all.
Q. A11 right. Are you aware at least now that at a late stage in Operation Taradale, when the brief of evidence was otherwise completed and the matter had been for some time under the direction of the Coroner's office, a third death was added, namely, that of a man called Gilles Mattaini?
A. Yes. Yes.
Q. He had disappeared in September 1985?
A. Yes.
Q. And we will come to this, but you may recal1 - tell us if you do - that at the heel of the hunt, as it were, in the course of the Taradale operation, as a result of the publicity, someone came forward from the public to say, "We11, Mr Mattaini might be someone that should be looked at in this context as well". Did you become aware of that?
A. I - not specifically, no.
Q. A11 right. At any rate, Operation Taradale culminated in a lengthy inquest before Deputy State Coroner Milledge?
A. Mmm -hmm.
Q. The hearings occupied many days during the course of 2003?
A. Yes.
Q. The Commissioner of Police was represented throughout?
A. Mmm-hmm, yes.
Q. By counsel and solicitors?
A. Yes.
Q. And the final addresses of Counsel Assisting and of counsel for the Commissioner of Police were in December 2004?
A. I - yes, I - assume that's right.
Q. You can assume that's right.
A. Yes.
Q. Thank you. And the findings of Deputy State Coroner Milledge were handed down in March 2005 ?
A. Yes.
Q. Does that accord with your memory?
A. Yes.
Q. Could we go to findings of Deputy State Coroner

Milledge, please. It's in volume 6. If we turn to tab 161 [SCOI.02751.00021_0001], you wil1 see Coroner Milledge's findings and recommendations?
A. Yes.
Q. I take it you have seen these before today?
A. I can't recall ever seeing them before.
Q. You have never seen them before?
A. I don't think I have.
Q. Right. What I want to take you to in particular at the moment - and I accept what you say - is the concluding parts of her findings.
A. Yes.
Q. Perhaps go to page 14.
A. Yes.
Q. You will see that at the top of the page, the first sentence begins:

Many of the Marks Park victims ...
A. Yes.
Q. Just pausing there, I take it you are aware that the focus of the Taradale inquiry and the location of the three deaths of Mr Mattaini, Mr Warren and Mr Russell was at or near Marks Park?
A. Yes.
Q. Near Bondi?
A. Yes.
Q. You are aware of that?
A. Yes.
Q. So what Coroner Milledge says there at the top of page 14 is:

Many of the Marks Park victims that reported to police told of hearing their assailants threatening to throw them off the cliff face.

Do you see that?
A. Yes, I do.
Q. And you can assume, and no doubt you would infer anyway from reading that, that before the Coroner had been evidence from some victims of assault who hadn't been killed and who were thus able to give some evidence? A. Yes.
Q. And then the Coroner goes on in the next sentence:

There is no doubt that at the time of Mr Warren's and Mr Mattaini's disappearance and Mr Russell's death that this was a Modus Operandi of some gay hate assailants. This strongly supports the probability that Mr Warren, Mr Mattaini and Mr Russell met their deaths this way.

Do you see that?
A. Yes, I do.
Q. Appreciating that, as you say, you haven't actually seen this before, nonetheless, were you aware, or did you become aware at some point, that Deputy State Coroner Milledge had expressed views to that effect?
A. Yes, I was - I was made aware.
Q. And two paragraphs down, her Honour says:

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

Do you see that?
A. I see it, yes.
Q. Now, are you learning that for the first time today or were you generally aware of that?
A. Those words, yes.
Q. Apart from the precise words, were you aware that she had made remarks to that effect?
A. I wasn't aware that she had made remarks to the effect that the person - persons of interest may have been far too young at the time of Mattaini's disappearance.
Q. You were not aware of that?
A. No. I accept that. Obviously she made it.
Q. The persons of interest --
A. Yep.
Q. -- that were, for the most part, the subject of a lot of the evidence in Taradale, had been aged at the time that is, in 1989 - perhaps with some exceptions, mainly between about 16 and 18 years of age, if you could just accept that from me?
A. Yes, I accept that.
Q. Or maybe you know that. Do you know that?
A. I'm aware that there were a number of persons of interest that were investigated, of around about that age, at the time, yes.
Q. And so four years before that, in 1985, those people, speaking a little generally, would have been only about 12 to 14 ?
A. Much younger, yes.
Q. And in that context, it's understandable, perhaps you may agree - that Coroner Milledge would say what she has said there?
A. Yes, I understand that.
Q. And her Honour goes on in the next paragraph:

I can however bring in a finding of "death"
for Mr Mattaini, but where and how he died
remains unknown although there is a strong
possibility that he died in similar
circumstances to the other men.
A. Yes.
Q. Again, putting aside the precise words, were you aware that she had made a finding and had made remarks along those lines?
A. Yes, I was aware.
Q. Then the actual findings are then set out under the heading "Findings"; do you see that?
A. Yes, I do.
Q. And in the case of $M r$ Warren - I won't read it all
out - she says:
I am satisfied that the deceased was a victim of homicide, perpetrated by person or persons unknown.
A. Yes.
Q. In the case of Mr Russell, she says:

The cause of death is multiple injuries sustained when he was thrown from the cliff on to rocks by a person or persons unknown.
A. Yes.
Q. And as to Mr Mattaini, the formal finding is:

The cause and manner of his death remain undetermined as the evidence before me does not enable me to say.
A. Yes.
Q. Now again, putting aside if need be the precise words, were you aware, and if so from about when, that those were the findings of --
A. Yes, I was aware, yes.
Q. From about when, though?
A. From around the time that Strike Force Macnamir commenced. So during my time as the Commander of Homicide.
Q. That's, in round figures, around about February 2013?
A. Round about, yes.
Q. Her Honour then sets out some recommendations, you will see, towards the bottom of that page?
A. Yes.
Q. Going over to the next page, page 15, the fourth bullet point from the end is - that is, the fourth-bottom recommendation is:

Audit outstanding homicides and suspected deaths to ensure investigations are active and ongoing. Where investigations have

> stalled these matters are to be referred to the State Coroner for his consideration.

Do you see that?
A. Sorry, what point was that again?
Q. Fourth from the bottom, on page 15.
A. Fourth from the bottom.

THE COMMISSIONER: It's actually fifth on mine.
THE WITNESS: Yes, but $I$ do know the point.
MR GRAY: That's very interesting, I must say. It is fourth on mine.

THE COMMISSIONER: There are two different prints of the judgment by the looks of it.

MR GRAY: Q. At any rate, the one beginning "Audit outstanding"?
A. Yes.
Q. Were you aware of that recommendation, and, if so, when?
A. No, I wasn't but I understand it.
Q. Have you ever been aware that some such recommendation was made?
A. Not to my knowledge. Not to my recollection, I should say.
Q. We will come to this in a bit more detail later --
A. Sure.
Q. $\quad-$ but in about late 2015 , as we have already established, Strike Force Neiwand was set up?
A. Yes.
Q. And it was to look again at these three Bondi deaths?
A. Yes.
Q. And its investigations - that is, Neiwand's investigations - in fact stalled, did they not, at the end?
A. That's my understanding. I wasn't aware of the outcome of Neiwand until $I$ was preparing for this Inquiry.
Q. But you are now, though?
A. I am aware, yes.
Q. And you are aware - and I wil1 come to this in detai1, but just speaking generally for the moment --
A. Yes.
Q. -- you are aware, then, that the Neiwand conclusions and I'm paraphrasing - were that each of these three cases should be treated as inactive and not to be revived, as it were, unless and until some new information came in?
A. That's the effect of it, yes. That's what I've read.
Q. That's another way of saying that the investigations have stalled, isn't it?
A. Yes.
Q. We11, would this recommendation of Deputy State Coroner Milledge indicate that that should have then been referred to the State Coroner for his consideration?
A. If that recommendation was adopted by NSW Police, the Commissioner at the time, yes.
Q. Do you know whether those recommendations were adopted?
A. I don't.
Q. Does the Commissioner of Police have the prerogative to simply not accept recommendations?
A. Yes.
Q. How would we now establish - we, the Commission, today - whether that recommendation was accepted?
A. You would have to make inquiries with the Commissioner of Police and/or the Attorney General's office, because recommendations were the subject of reporting back within six months after being made to the Attorney General's office.
Q. Thank you. Now, the Taradale investigation and the Taradale inquest and the whole topic of gay hate murders were the subject of a great deal of publicity around that time, weren't they?
A. Yes, that's correct, yeah. As in, sorry, Mr Gray, the time of the inquest or the time --
Q. Yes, in the early 2000s?
A. Yes, and I believe that's how I had a general knowledge that they had taken place, yes.
Q. And when you became Commander Homicide, in November 2011, presumably one of the things you did among your many other responsibilities was to familiarise yourself with the Unsolved Homicide Team and get a briefing from them as to what they were up to?
A. Yeah, that's right.
Q. Now, among other things, did you make any inquiries as to whether any of these three deaths were then, as at November 2011, the subject of any sort of further investigation?
A. No, I didn't.
Q. Did anyone tell you whether they were or weren't or tel1 you anything about them?
A. Not to my recollection.
Q. When you did take over as Commander Homicide, who was the head of the Unsolved Homicide Team, assuming there is such a person?
A. There were two investigation coordinators that were assigned to the Unsolved Homicide Team. I can go through the structure of the entire squad if you like, but there were two, Detective Chief Inspector John Lehmann, and around the same time, Detective Chief Inspector Pamela Young was moved into that position.
Q. And what was the title you gave them? You said they - -
A. They were investigation coordinators.
Q. Coordinators. And then beneath them there were other positions and the whole team?
A. Yes, so there were supervisors and investigators. So if it assists the Commission, there were six homicide teams that were active on-call teams, each led by an investigation coordinator at the rank of detective inspector or chief inspector. Below that, each of those, were supervisors at the rank of detective sergeant, and then constables.

The same applied to the Unsolved Homicide Team. However, at the time that I took over homicide, there were also three regional teams of four detectives, each led by
a detective sergeant. Over the course of time I caused those teams to be centralised into the Unsolved Homicide Team, about - I can't recall the exact time but it was a couple of years after $I$ took over.
Q. Thank you. Now, speaking from whatever knowledge you have subsequently accumulated, and for the moment regardless of when that occurred --
A. Yes.
Q. -- you are aware, I take it, that in the case of Mr Mattaini, who disappeared in 1985 --
A. Yes.
Q. -- his disappearance was brought to the attention of Operation Taradale almost at the end of its activities?
A. As you have outlined a short time ago.
Q. As I have outlined?
A. Yes.
Q. But you are aware of that now, apart from me teling you?
A. Yes, I am.
Q. Detective Page's very long statement for Taradale, which is several hundred pages $10 n g$ and several hundred annexures, is dated 25 Ju7y 2002.
A. I have never seen it but I'm assuming that's correct.
Q. Right. It deals entirely with matters pertaining to the death of Mr Warren and the death of Mr Russel1?
A. I'm assuming that's correct.
Q. You can accept that from me.
A. Yes.
Q. I think you did agree, though, that you were aware that a member of the public, towards the end of Taradale's activities, came forward and raised the matter of Mr Mattaini?
A. As you have suggested a short time ago, yes.
Q. I did. But is that something you only know because I have put it to you?
A. From recollection, yes.
Q. We11, assuming that is right, and I think you wil1 accept in due course that it is right --
A. Yes.
Q. -- there was little opportunity for Taradale to take any investigation very far between August 2002 and the beginning of the hearings in early '03; you would agree?
A. Assuming that's correct, yes, that's right.
Q. Assuming that's correct. So any investigation by the Unsolved Homicide Team years later, under Neiwand, would have had to almost start from scratch, wouldn't it?
A. Accepting what you have said, yes.
Q. Now, in the briefings that you received from Detective Lehmann and/or Detective Young when you took over as Commander Homicide, did they go through with you anything about the cases that they were or weren't investigating? A. No. So what occurred was when I took over, I reviewed al1 the existing progress reports relating to the ongoing investigations that were happening at the time, and there were dozens of them, and in terms of follow-up briefings, I can't recall whether or not I spoke to each of the investigation coordinators separately or together or - and got a verbal briefing on particular matters or not.
Q. Okay. Now, appreciating that this may be a tough question, if you received briefings on all the investigations that were then on foot, $I$ take it you didn't receive a briefing on these three because no such investigation was on foot?
A. That's correct.
Q. A11 right. Now, moving to another topic for the moment.
A. Do I require this?
Q. You can give that back. Now, in June 2012, there was the second Scott Johnson inquest?
A. Yes.
Q. Before Deputy State Coroner Forbes.
A. Yes.
Q. And you were aware of that at the time?
A. Not specifically but subsequently learnt of it, and I subsequently spoke to her about it.
Q. To Coroner Forbes?
A. Yes.
Q. Now, as we have established earlier, the original 1989 suicide finding was overturned?
A. Yes.
Q. And instead there was an open finding.
A. Yes.
Q. You recall that. And do you recall that one reason for that, in the Coroner's findings, related to the matters that had come to be known about the Bondi deaths by reason of the Taradale exercise?
A. I recall that information had been given to the Coroner on behalf of the Johnson family, which included those details. I don't know the specifics of it because at the time, the Johnson matter wasn't under the purview of the Homicide Squad or the Unsolved Homicide Squad at the time. So hence when you asked me whether I was aware of the inquest going on, I wasn't. There were inquests occurring all the time.
Q. All right. Can I show you the findings of Deputy State Coroner Forbes. I will just have them put in front of you, and I have a copy for the Commissioner and copies for my learned friends. They are redacted in the form that I'm handing up in ways that I believe conform with other arrangements that have been made with other documents.

MR TEDESCHI: Commissioner, would you pardon me for a moment whilst I consult with Counsel Assisting?

THE COMMISSIONER: Certainly.
MR GRAY: Commissioner, my friend is concerned about the sentence immediately before the first redaction referring to the finding that was made in 1989. The reason for the concern, as I understand it, is that the fact that such a finding was made in 1989 might affect a potential juror in the future.

THE COMMISSIONER: But there is no trial fixed at the moment, is there?

MR TEDESCHI: Yes, there is.

THE COMMISSIONER: Sorry? There is no trial fixed in relation to anything.

MR TEDESCHI: There is no date fixed for trial.
THE COMMISSIONER: There is no date fixed for trial, Mr Tedeschi - you correct me if I'm wrong. As a result of the Court of Criminal Appeal's decision, an application as I understand it, and please this is only from my understanding, I may be wrong - an application for special leave has been filed by the Director of Public Prosecutions to the High Court of Australia.

That question will involve a pure question of law as to whether the Court of Criminal Appeal's ruling in relation to Justice Wilson's dealing with the application for the accused to withdraw his plea was the appropriate test to be applied or not.

There is no question at the moment, as I understand it, of any trial being fixed, at least in the very near future (a) until the High Court resolves the question of whether it will or will not grant leave; and then subject to whether or not it grants leave, assuming it refuses leave, then it goes back, as I understand it, for the application of the test articulated by the Court of Criminal Appeal. That would leave open another application for leave to withdraw the plea.

Alternatively, if the High Court were to grant leave, we all know that the High Court first hasn't fixed even the application for leave and, secondly, if leave is granted, generally speaking, many months follow before an appeal is then listed for hearing, and then, sometimes, many months before a decision is given. So at the moment there are legal issues that need to be resolved, many of which are substantial and many of which themselves may be the subject of further appellate process, so it is nowhere near a trial. And a jury would be --

MR TEDESCHI: Commissioner, I agree it is nowhere near a trial.

THE COMMISSIONER: And a jury - excuse me, a jury, in any event, any person who would serve on the jury, may well remember events of recent times when a plea was entered.

The problem is, it's going to be a difficult trial, but I cannot see how an historic finding of the Coroner in 1989 wil1 ever intrude into the jury's decision one way or the other. My own view is that it's not a matter of practical reality.

MR TEDESCHI: It is entirely a matter for you,
Commissioner. We bring to your attention the fact that placing on record a finding of a judicial officer of that nature could potentially, if it was available on the internet in the future --

THE COMMISSIONER: Sure, along with the whole history, Mr Tedeschi, of the accused's activity of much more recent time. This is a matter of history. I accept that. But you and $I$ both know that the trial judge, if a trial ever takes place in the near future, will be in total control of the jury and, like it or lump it, the amount of publicity surrounding this particular death is huge.

MR TEDESCHI: It is.
THE COMMISSIONER: That's the problem. So I'm against you. Thank you.

MR GRAY: Q. Mr Willing, Coroner Forbes recounted what the finding had been at the 1989 inquest. Do you see that in that sentence?
A. Yes.
Q. And then after the redacted passage, her Honour goes on:

Since that inquest --
that is, the 1989 one --
further information has come to light about a culture of violence against the gay community in Sydney in the late 1980s. In 2005 a police operation named Taradale uncovered that the deaths of three homosexual men in Bondi in 1989 were as a result of them being forced to their deaths from cliffs at a gay beat.

You see that's what the sentence says?
A. That's what she says, yes.
Q. She goes on:

Mr Johnson was homosexual. It's now known that the North Head of Man7y near B7ue Fish Point where Mr Johnson's body was found was a gay beat.

Do you see that?
A. Yes, I do see that.
Q. Then she says:

As a result of the further information, it was considered appropriate to re-open the Coroner's file and further investigate Mr Johnson's death.
A. Yes.
Q.

That investigation has not taken the case any further. The information about the deaths at Bondi has, however sown a seed of doubt as to the positive finding of suicide.

Do you see that?
A. Yes.
Q. She says:

Suicide cannot be presumed.
and so on. And then after the next redacted passage her Honour says:

In this case, the possibilities that
Mr Johnson was the victim of a gay hate crime similar to those that occurred in Bondi or that he fell are also available explanations to the circumstances that surrounded his death.
A. Yes.
Q. And then she says:

According7y --
she makes her finding and the finding is:
I find that the evidence adduced of
Mr Johnson's death does not enable me to
make a finding as to how he fell off the
cliff and I make an open finding and refer
his file to "Cold Cases" for further investigation in accordance with police procedures and protocols.
A. Yes.
Q. At some point did you become aware of these findings of Coroner Forbes?
A. In general terms. I have never seen the exact findings but in general terms, yes, I was aware that this had occurred.
Q. Were you aware, then, at least in general terms when you learnt what you did learn, that a reason for her Honour taking a view different from the 1989 Coroner's view was the information that had come to light through Taradale about the Bondi deaths?
A. Yes. Yes.

MR GRAY: First of all, I would tender that document, your Honour.

THE COMMISSIONER: Yes, what exhibit will it be?
MR GRAY: Now, I'm informed that the next exhibit would be 16; or alternatively, if it were to be added to exhibit 6 , it's the next tab within exhibit 6 , which would be 317.

THE COMMISSIONER: What about I make it tab 317 ?
MR GRAY: Yes.
THE COMMISSIONER: That's more convenient than having a separate piece of paper. So I will add that to volume 6 in due course, thank you.

MR GRAY: Thank you, Commissioner.
Q. So the upshot then, it seems, from the last sentence on that page, is that the file was referred to what her Honour called "Cold Cases" --
A. Which is the Unsolved Homicide Team.
Q. That was going to be my question. I assumed that's the case?
A. I thought so.
Q. What was then to happen was further investigation in accordance with police procedures and protocols, namely, whatever the protocols of the Unsolved Homicide Team were; is that right?
A. Yes.
Q. And so the case was going to go, then, to the Unsolved Homicide Team, the two people at the head of which were Mr Lehmann and Ms Young?
A. Yes.
Q. Now, correct me if I'm wrong, the Unsolved Homicide Team had then some hundreds of cases on its books?
A. About 700.
Q. So Mr Johnson's case was going to be added to the queue, as it were?
A. To the list; that's correct, yes.
Q. Now, in your statement - do you stil1 have your statement there?
A. I do. I've got a copy.
Q. If you could keep that with you all the time just as a resource --
A. Sure.
Q. -- because we' 11 go back to it now and again?
A. Yes.
Q. At paragraph 31, you, having referred to Coroner Forbes's findings that we've just looked at, say that in late 2012 the UHT conducted what you call a prioritised case screening review of the matter, in which it rated the case solvability as zero.
A. Yes.
Q. When did you become aware of that?
A. I was made aware of that, from recollection, during a telephone call from Detective Acting Superintendent Chris Olen to me when I was on annual leave, that coincided with an approach that the Johnson family had made to the Police Minister at the time, and was seeking to generate publicity around the case.
Q. Is that the phone call that you're referring to in paragraph 34 ?
A. That's correct, yes.
Q. Okay. So back to 31 , who was it, if you can tell us, who conducted the prioritised case screening review?
A. Detective Senior Constable Alicia Taylor, from the records that I have been shown in preparation for this.
Q. Would you agree - and we will come to this in a bit more detail as well - that in the light of everything that has transpired since late 2012 --
A. Yes.
Q. -- the assessment of zero solvability seems to have been incorrect?
A. On the face of it, yes, however, you need to understand the way - what they're assessing at the time, and that was, you know, the availability in general terms and I think I refer to it at some point in my statement, but fresh forensic evidence, whether anything was available; whether or not there were, you know, new technologies that could be applied to advance the investigation; whether or not new investigative techniques since that, the time of the original investigation, could shed light; it also included things like the identification of persons of interest or relationship breakdown,
et cetera, that could be used to advance the case.
Q. Apart from future developments in technology, unknown in 2012, most if not all of those factors could have been investigated in 2012, couldn't they?
A. Yes, except, you know, the availability of fresh forensic evidence would be something that would weigh heavily on an assessment, so whether exhibits --
Q. But how would it become available unless you went out and tried to get it?
A. If it wasn't available, therefore, it would impact on the assessment rating.
Q. You mean if they didn't then immediately have it, they would assess it as unsolvable without trying to get it? A. Well, what is it that you are trying to get $I$ guess is my point, Mr Gray? The assessment is conducted in that aspect on the availability of exhibits and what was there and whether or not fresh forensic testing would adduce more evidence. So the assessment is made on what was available at the time.
Q. Anyway, that apparently was the assessment in late 2012, that the case solvability was zero. You tell us in paragraph 31 that you were not involved in that review yourself?
A. That's right.
Q. And so you have told us now that you think you learnt of it during this phone call from Chris Olen a couple of months 1ater?
A. Yes, that's my recollection of it.
Q. Okay. Now, the assessment having been that the case solvability was zero, presumably that meant that the decision of the UHT was not to investigate the matter further; is that right?
A. That's right.
Q. I wonder if you could be shown volume 14. Do you see that's an email chain --
A. At what tab, sir?
Q. I beg your pardon. Tab 312 [NPL.3000.0014_0001]?
A. Yes.
Q. Now, the email chain starts on the bottom of the second page with one from Christopher 01 en to a Mr Cotter, which is cc-ed to you and to Pamela Young; do you see that?
A. That's right, yes.
Q. On 7 February 2013?
A. Yes.
Q. What Mr 01 en is recording and talking about - and I won't read it all out but you take what time you need to read this again - is the open finding of Coroner Forbes?
A. Yes.
Q. The recommendation that that case go back to "Cold Cases"?
A. Yes.
Q. The family's dismay that John's unit had rated the solvability as zero and declined to investigate - do you see that?
A. Mmm-hmm, yes.
Q. John is John Lehmann, I take it?
A. John Lehmann, yes.
Q. Then he goes on - that is, Mr Olen goes on - about various matters to do with what the family were doing.
A. Yes.
Q. At the bottom of the page he says:

John Lehmann has participated in an $A B C$
Australian Story to air this Monday night, 11 February ...
A. Yes.
Q. He anticipates - next page - that --
... the story will be critical of the
original investigation ... and also
potentially be critical of John Lehmann and [the] UHT ...
A. Yes.
Q. And without reading the rest of it in full, he says in the second-last paragraph that you had rung him the previous night about a possible meeting that might be arranged the next week with Mr Glick, who was a person assisting the Johnson family, you would recall?
A. Yes.
Q. And then the response to that email from Pamela Young starts at the foot of the first page of this chain - do you see that?
A. Yes, I do, "Morning al1"? Yes.
Q. Sorry?
A. It begins "Morning all"?
Q. It begins "Morning all", yes. And she says:

As I am the one who will actually be dealing with the investigation and family from here in I want to put on the record that the decision not to proceed with further active investigation was based on two reviews conducted by the likes of ...
various people - I assume they are all from the UHT, are they, those three?
A. They were people that had worked at the Homicide Squad over the years previously.
Q. And she says: ... in addition to John Lehmann.

So John Lehmann was involved --
A. Yeah.
Q. In the review apparently leading to a decision not to have any further investigation; correct?
A. Yes, in light of - I'm assuming in light of that case screening report, yes.
Q. Now, the response from Chris 01 en is what I wanted to ask you about. You are cc-ed on all these emails.
A. That's correct. I was on annual leave at the time, yep, but I do recall.
Q. Well, what Chris Olen says, after telling Pamela Young that he sensed her frustration and anger, is, in particular, in the third paragraph:

What are you going to say to the Minister and the family next week after John Lehmann in his soon to be broadcast National and (International USA) interview, in which he has indicated 'the case is open and a team is working on it'?

Do you see that?
A. Yes, I do.
Q. What are we to take from that? Does that mean that although a decision had actually been made to investigate no further, John Lehmann had said publicly that the case was open and a team was working on it?
A. I take it that that's what he said in that interview. I don't recall it at all.
Q. So if he did say that in his interview, he wasn't telling the truth, was he?
A. We11, it was up to John - John Lehmann had the authority to open an investigation and do it and conduct inquiries, as the investigation coordinator. I can't recall that occurring, but - and I can't recall him saying that in the interview. I can't recall the interview, to be honest. I never saw it.
Q. The question is really a simple one. You have agreed, before I put this email to you, that indeed the decision had been made not to investigate further because the solvability was zero?
A. That's right, yes.
Q. And Pamela Young says, "We11, indeed, there was such a decision not to proceed further, and that was based on, among others, John Lehmann"?
A. That's what she says, but I don't know whether that's right or not.
Q. I thought you agreed a minute ago that John Lehmann was involved in the review that arrived at the "solvability zero"?
A. He was the investigation coordinator so he would be we11 aware of it.
Q. No, involved in the review, I think you agreed?
A. No, the review was conducted by Detective Senior Constable Alicia Taylor, and as --
Q. Quite. And what I put to you was the correctness or otherwise of what Pamela Young said, and you said it was correct --
A. Yes.
Q. -- namely, that the decision not to proceed with further active investigation was based on two reviews
conducted by the likes of - and I will read the names out now - Mick Ashwood, Gary Jubelin and Glen Richardson, in addition to John Lehmann?
A. Yes.
Q. And I asked you if that was right and you said "Yes".
A. As - you asked me whether or not that's what was in the email.
Q. No, I didn't ask you that.
A. Well, I've misinterpreted your question, Mr Gray, but that's what's in the email.
Q. So are you saying you don't know whether that is right or not?
A. That those - that there was a review conducted by those people.
Q. Yes.
A. I don't know.

THE COMMISSIONER: Q. Is that because you were on leave again or what --
A. No, because that was before I joined the Homicide Squad, if that occurred, if that review was done. I'm certainly aware of the --

MR GRAY: Q. Mr Willing, it was not before you joined the Homicide Squad at all.
A. What, that Mick Ashwood, Gary Jubelin and Glen Richardson had conducted a review? Mick Ashwood was out of the Police Force I think at the time of this email, so --
Q. Mr Willing, the case came to Unsolved Homicide after June 2012.
A. That's right.
Q. That's the only time when any investigation - sorry, any review occurred by the UHT?
A. That's my understanding.
Q. You were Commander Homicide?
A. That's right.
Q. John Lehmann was one of the two heads - I know that's not quite the term --
A. Correct, yes.
Q. - - of UHT?
A. Yes, yes.
Q. I will put it to you now: do you accept that the decision, which you agree was made, not to investigate Scott Johnson's case further because the solvability was zero, was a decision participated in by John Lehmann? A. It was a decision that he would have taken as the investigation coordinator of the Unsolved Homicide Team after reviewing the case screening record which was completed by Detective Senior Constable Alicia Taylor.
Q. Okay, and the decision was no investigation because zero solvability?
A. Correct.
Q. But it seems, according to Chris 01 en , that what Mr Lehmann said in an interview was that the case was open and his team was working on it; correct?
A. That's - yes, that's what he says in the email.
Q. And my question is, if he did say that, that was false, wasn't it?
A. That's correct.

MR GRAY: Thank you.
THE COMMISSIONER: Is that a convenient point?
MR GRAY: It is, your Honour.
THE COMMISSIONER: I will take a short break now, thank you.

## SHORT ADJOURNMENT

THE COMMISSIONER: Thank you, Mr Gray.
MR GRAY: Mr Willing, the folder I think, volume 14, can come back for the moment.

THE WITNESS: No problem, thank you.
MR GRAY: Q. Could I just take you now to the phone call with Detective 01en that you talk about in paragraph 34 and following in your statement.
A. Yes.
Q. So he tells you, among other things, that there is going to be an episode of Australian Story shortly about the Johnson case?
A. Yes.
Q. And in 35 he expresses concern about how the Homicide Squad might be depicted?
A. Yes.
Q. And so he suggests - this is at the top of your page 8 - that perhaps two investigators from the UHT should be allocated to the matter to review the issues raised by the Johnson family?
A. Yes.
Q. So this is in the light of the upcoming Australian Story program?
A. Yes.
Q. Then in paragraph 36 , there is reference to a media event with the Johnson family on 11 February, and later that night, 11 February, the Australian Story episode goes to air?
A. Yes.
Q. Now, in 37 you tel 1 us that either that evening, I suppose, or the next day, the 12 th , someone tells you that the Police Minister had contacted Steve Johnson and, among other things, that the Police Minister wanted to hold a meeting with the Johnson family?
A. Yes. That - I'm not sure of the exact dates of that, but it was around that time. It might have been a couple of days earlier but $I$ think it was around that time.
Q. It was in the knowledge, though, that the Australian Story either had just happened or was about to happen?
A. Yeah, it was - that's right, yes.
Q. You said that you were away on leave and so Detective Olen would be there in your place?
A. Yes.
Q. And then that meeting, you tell us in paragraph 38 , did occur?
A. Yes.
Q. And among those present, apart from the Police Minister and the Johnson family and Detective 01en, was Detective Pamela Young?
A. Yes.
Q. And then in 39, you say "around that time", but I take it it's immediately following these events?
A. Yes, I think it was the next day, I think, thereabouts.
Q. Within a day or two of the Australian Story program and the meeting, Strike Force Macnamir is then initiated? A. That's right, correct.
Q. Now, in paragraph 40 you say, and I want to make sure I understand this, that you were aware and supportive of the proposal to allocate a small number of staff to review the issues. You are there referring to Mr Olen's suggestion up in paragraph 35 that two investigators be allocated to review?
A. Yes.
Q. Then in paragraph 40 you go on to say that while you were aware of that, you say that as to the formal establishment of the strike force, being a different thing, you only learnt of that when you returned from leave?
A. Yes, that's right, the mechanics around the establishment of it, yes.
Q. So you say you did not have any direct involvement in its establishment. So who did? Who did establish it?
A. It would be established by the Unsolved Homicide Investigation Coordinator, which in this occasion is Pamela Young, and endorsed by my - the officer relieving me, which was Chris 01en, and then established formally by the Director of the Serious Crime Directorate at the time.
That was the structure at the time. It doesn't exist anymore. Which would be - I can't recall, my notes from my notes suggest it was John Kerlatec, who was relieving in that position at the time.
Q. I'm not making a criticism here, but do you have some notes?
A. I've got notes as a result of preparing and reading different material and those sort of things. I'm quite happy if you want to have a look at them.
Q. I might speak to Mr Tedeschi about that.
A. Sure.
Q. We might make some arrangements. Anyway, in paragraph 40 you say:

I did not have any direct involvement in [the establishment of Macnamir].
A. Yes.
Q. When you put in the word "direct" there, does that mean you had some involvement in it?
A. No. I wasn't present at the time.

THE COMMISSIONER: $Q$. So does that mean that a strike force could be established, as it was seemingly here, without your knowledge or consent?
A. That's correct. That's --
Q. So your imprimatur was entirely unnecessary in terms of the establishment of the strike force?
A. That's right, in relation to this --
Q. And/or the allocation of resources to it?
A. On this occasion because $I$ was away on leave, that's right.
Q. When you say "on this occasion" you were away on leave, do these people in your absence or did these people in your absence have the authority to establish the strike force and allocate such resources as they thought was necessary?
A. Yes.
Q. Okay.
A. Yes.

MR GRAY: Q. I wonder if Mr Wiliing could have volume 1, please. And if you could turn to tab 8 ?
A. Yes.
Q. According to the heading, these are the Terms of Reference for Strike Force Macnamir?
A. Yes.
Q. If we look at the signature page, the third page, the people that have signed it have signed it in the first few days of April 2013?
A. That's correct, yes.
Q. Pamela Young is designated as Investigation

Supervisor?
A. Yes.
Q. And Detective Sergeant Penelope Brown is designated Officer in Charge?
A. Yes.
Q. Now, at a later stage which we will come to, but I'm sure you would be aware, Pamela Young, for various reasons, left Macnamir?
A. Yes.
Q. And Penelope Brown stayed in Macnamir throughout?
A. Yes.
Q. And, in effect - tell me if this is right - stepped up to the role that Pamela Young had been in?
A. No. She was the officer in charge of it the entire time. When Pamela Young left, the position of investigation supervisor was taken out and there was advice - that was with concurrence with the Coroner at the time, and assistance and support was provided by another investigation supervisor - sorry, investigation coordinator, I should say, Detective Chief Inspector Jason Dickinson.
Q. A11 right. Thank you. Then if you turn to tab 9, [SCOI.82018] this is an email from the Office of the General Counsel of the NSW Police?
A. Yes.
Q. And it's informing this Special Commission of the personne1 who made up Strike Force Macnamir. Do you see that towards the bottom of the page on the front page?
A. Yes, they are resources that are allocated to the e@gle.i database for the inquiry.
Q. All right. Wel1, according to this document at tab 9, Detective Superintendent Jason Dickinson was the investigation supervisor, Pamela Young is said to be the original OIC and Penelope Brown OIC, but for the reasons
that you have just explained, it sounds like that's not exactly correct?
A. No, that's not right. That's - it's a structure, a database structure, where titles are given to particular roles, et cetera. So hence you've got a lot of resources on there that may not have actively played a part, but they are available, should they be required, as well.
Q. Accepting what you say, but just going on what is stated in this email, among those in Strike Force Macnamir, apart from Pamela Young and Penelope Brown, one of them was Detective Chief Inspector Stewart Leggat?
A. Yes.
Q. Another one was Detective Sergeant Steven Morgan?
A. Yes.
Q. Then Detective Senior Constable Paul Rullo?
A. Yes.
Q. And then towards the bottom, Detective Senior Constable Michae1 Chebl?
A. Yes.
Q. In your statement at paragraph 57 --
A. Yes.
Q. -- you set out individuals whom you describe as being heavily involved in Macnamir and you list them; do you see that?
A. Yes.
Q. Paragraph 58?
A. Yes, that's right.
Q. You don't mention Detective Sergeant Morgan in that; is that because you overlooked him or because --
A. No, I think - so those resources can be allocated to an investigation at any time. That could have happened afterwards. From - I'm not sure whether or not Morgan, who had come from the Southern Region Unsolved Homicide Team I'm not sure at the time when that was - that that team was amalgamated into the Homicide Squad Unsolved Homicide Team. I don't know whether he was even present at the Unsolved Homicide Team then. He may have been but he may not have been.

Those resources are a list covering virtually everyone in the Unsolved Homicide Team from my recollection, that are allocated, should they be required to conduct inquiries. It's not a time - it's not a point in time allocation. Those - you know, people can be added and taken off inquiries, you know, throughout the course of the conduct of those inquiries and decisions.
Q. I see. So without being nitpicking about it --
A. Yes.
Q. -- in the email at tab 9 --
A. Yep.
Q. -- which says unambiguously, at the bottom of the first page, the strike force comprised the following officers - and they're all listed --
A. Yes.
Q. -- we should understand that as being not entirely accurate and that the real position is as you have just described?
A. Yes. So that's correct. So there's a - again, just to try and assist the Commission, the resourcing list can include anyone who may have reason to be involved in the strike force. They may not necessarily be, but if I, for argument's sake, require somebody - I'm an investigator and I require somebody to assist me who may not be formally allocated, I might be able to - I might have them allocated to the system so they've got access to the records. It's a database. But from my recollection, those listed in paragraph 58 of my statement were those most heavily involved.
Q. All right. And then when you mention Jason Dickinson as one of those most heavily involved or heavily involved --
A. Yes.
Q. -- was that from the outset or from some later stage?
A. No, that was from when Pamela Young left Strike Force Macnamir.
Q. And then in paragraph 60 you list people that you would regard as not "heavily involved", but as available in the way you have been describing it?
A. Yes, that's probably the best way of putting it, sir.
Q. Meanwhile if I can contextualise this chronologically --
A. Sure.
Q. -- we're talking here about February 2013, that this Strike Force Macnamir --
A. Was commenced?
Q. Yes, commencing.
A. Yes.
Q. Meanwhile in October 2012, some four months or so earlier, not long after the second Scott Johnson inquest, the UHT had conducted a review, to some extent, of the three Taradale cases; correct?
A. Correct, yes, Alicia Taylor, yes.
Q. And that's the document prepared by Detective Senior Constable Alicia Taylor --
A. Correct, yes.
Q. $\quad-$ on 25 October 2012?
A. Yes.
Q. Were you aware of that exercise having been done by Alicia Taylor at that time?
A. No.
Q. Were you involved in it at all?
A. No.
Q. Did you see her review - the document which I will come to in a minute - did you see her review at the time?
A. No.
Q. When did you first see it?
A. Oh, I can't recall when that was.
Q. You refer to it in your statement at paragraph 66.
A. Yes.
Q. You say:

I am aware...
that Alicia Taylor did this?
A. Yes.
Q. So can you help us with when you became aware of that? A. I honestly don't know when. It would be part of subsequent to the formation of Macnamir, from recollection. These reviews were being conducted regularly, and I wouldn't necessarily be informed of their outcome, unless there was a reason for it.
Q. All right. Could Mr Willing have volume 6, please, and turn to tab 162, [NPL.0013.0001.0001].
A. Yes.
Q. I don't want to go on through the considerable detail of this document but we see from the front page that - or, rather, we see from $I$ think almost the back page, the last page, that Alicia Taylor seems to have completed this on 25 October 2012?
A. Yes.
Q. And there is a section below that that says, "Coordinator's certification", which is blank?
A. Yes.
Q. Who was the coordinator, do you know?
A. That would have been either Detective Chief Inspector John Lehmann or Pamela Young - probably John Lehmann.
Q. And the words that are there for that person to sign up to include:

I am satisfied that the reviewer has accessed available documentation and agree with their recommendations.
A. Yes.
Q. Now, do you know whether John Lehmann ever in fact signed this or --
A. I don't know.

MR GRAY: I might at least informally at this stage invite my learned friend to get some instructions on that and if there is a version of this document which is signed, then it would be appreciated if it could be produced.

THE COMMISSIONER: Yes. Mr Tedeschi, can I just 1eave
that to you to get instructions when you can?
MR TEDESCHI: Certain1y.
THE COMMISSIONER: Thank you.
MR GRAY: Q. As I say, I don't, at least for the moment, want to take you through all the detail of this.
A. Sure.
Q. But it obviously is a review of the three cases, Mr Warren, Mr Russell and Mr Mattaini. On page 8 and following it deals with various people under the heading of "Suspect/s"?
A. Yes.
Q. On page 13 and following there are summaries of previous investigations in the cases of Warren and Russell? A. Yes.
Q. At page 18 there is a section dealing with similar incidents around Marks Park between June 1989 and July 1990?
A. Yes.
Q. Then on page 19, there is a short section on the Mattaini investigation?
A. Yes.
Q. And you'll see that on the top of page 20 , the second paragraph:

No initial missing persons report or investigation was made ...

At the time, that is, 1985, because of some sort of miscommunication among those involved?
A. That's what it infers, yes.
Q. And then on 3 August 2002, somebody did report it by way of a missing persons report?
A. Yes.
Q. And so the summary of the Mattaini investigation reflecting that does not have much to say about any previous investigation, because there had not been really much of an investigation done in those circumstances?
A. Yes, as we discussed earlier, yes.
Q. Quite so. Then from page 20 onwards, there's more material about suspects?
A. Yes.
Q. You see that?
A. Yes.
Q. And then on page 23 and following there is a long list of people under the heading "Witnesses"?
A. Yes.
Q. And that takes us all the way over to page 33, where we get recommendations?
A. Yes.
Q. And the reviewing officer, being Detective Senior Constable Taylor, expresses the view that:

The investigation into the death of Ross Warren, John Russell and Gilles Mattaini, was meticulously undertaken by an experienced investigator, Detective Sergeant [Steven] Page.

Do you see that?
A. Yes.
Q. She goes on:

It is apparent in the statement from the officer in charge the investigation team was highly motivated and every effort was made to identify the person(s) responsible for the homicides.
A. Yes, she says that.
Q. She says that. In relation to Mattaini she says:

In the absence of intelligence, witnesses
or forensic evidence there has been no
further investigative avenues established for Gilles Mattaini.
A. Yes.
Q. In the case of two paragraphs down, she says:

At the time of the reinvestigation of the homicides of Russell and Warren in 2001 --
that being the Taradale work --
A. Yes.
Q. --
there were significant links between the suspects and their associates who had been involved in numerous assault and robbery offences in Marks Park, Tamarama and in the Bondi area.

Do you see that?
A. Yes.
Q. She goes on to refer to people she calls the "main suspects"?
A. Yes.
Q. And then she says in bold at the bottom of that page:

It is my recommendation, due to the passage of time, separation of alliances and social isolation of the suspects from each other there exists an opportunity to engage the persons of interest via an undercover operation in relation to the murder of Russell and Warren.
A. Yes.
Q. That was her recommendation?
A. Yes.
Q. And she goes on to say:

In the absence of any other forensic evidence or direct admissions from suspects, there can be no advancement towards conviction in the matters of Russell, Warren or Mattaini.

Do you see that?
A. Yes.
Q. And then after mentioning the fact that there has been no reward yet offered, she says:

Consideration of a reward may provide
further avenues to generate information in
conjunction with an undercover operation.
A. Yes.
Q. Now, it seems that somebody, probably Detective Lehmann, you think, would have reviewed that document?
A. Yes.

THE COMMISSIONER: Mr Gray, your microphone has become detached and I can't really hear you. I think you are going to have it reattached.

MR GRAY: I'm going to have to seek assistance.
THE COMMISSIONER: Yes, I know.
MR GRAY: My apologies.
Q. So is this the case, that you simply don't know whether John Lehmann in fact expressed agreement with these recommendations or not?
A. I don't. I don't know.
Q. Now, the front page of this document, the cover page, if I can call it that --
A. Yes.
Q. -- on about three or four lines down, says, "Date created: 15 August 2013"; do you see that?
A. Sorry, on page 1; is that right, Mr Gray?

MR GRAY: Would your Honour just pardon me a second?
THE COMMISSIONER: Yes.
MR GRAY: Q. I will come back to that, Mr Willing.
A. Sure.
Q. Because it seems that a document that $I$ have as part of this annexure to your statement doesn't seem to have made the tender bundle, but we will locate it and I will come back to it.
A. Yep, no problem.
Q. While that's coming, I will just go back to 2013, where we were with Macnamir having just got under way? A. Yes.
Q. In March 2013, there were the articles by Paul Sheehan in the Sydney Morning Herald about the gay hate murders, especially in the Eastern Suburbs - you remember those?
A. I recall the other ones more prominently but yes, I yes, that's correct.
Q. And in July 2013 there was a series of articles by Rick Feneley --
A. Yes, I recall those.
Q. $\quad-\quad$ along broadly similar 1 ines?
A. Yes.
Q. Both of those sets of articles, the Sheehan ones and the Feneley ones, focused on concerns in the gay community about 80 or more gay hate murders in the ' 80 s and '90s in particular?
A. Yes.
Q. And on the further concern that up to 30 of these were or might be thought to be unsolved; correct?
A. Yes.
Q. And it is fair to say that these articles caused some considerable consternation within the police?
A. Certainly, yes. Certainly around, you know, State Crime Command, which includes Homicide.
Q. Would you agree that there was a widely held view in the police that the police needed to do something to respond to this negative publicity, from the police perspective, flowing from all these articles?
A. Look, on face value, yes, but in terms of what that was, you know, can take a variety of forms.
Q. Sure. Well, it was at just this time, seeming1y I want to put to you when this document is produced -
namely, in August 2013, that Mr Lehmann had before him Alicia Taylor's October 2012 review of the Taradale cases. I will just see if we're any closer to getting that.
A. Sure. Do I need this volume, Mr Gray?
Q. You've got there volume 6, is it?
A. I think so. Yes.
Q. You will need it, because in a minute -
A. Sorry, I'm just trying to create some space for myself.
Q. Certainly. In a second we will be adding a document to it.
A. Okay.

MR GRAY: I know this is slightly inconvenient, your Honour, and suboptimal, but would your Honour mind waiting for a minute or two until this document comes?

THE COMMISSIONER: Certain1y. Do you want me to go off
the Bench?
MR GRAY: We11, if your Honour pleases --
THE COMMISSIONER: Find out whether it is forthcoming - is there anything else you can ask the witness in the meantime?

MR GRAY: Well, it's just another topic then looms, and I'd like to clear this up before $I$ move on.

THE COMMISSIONER: No, that's all right. If it's only going to be a minute or two.

MR GRAY: I hope it's only going to be a minute or two.
THE COMMISSIONER: Mr Tedeschi, no particular pressure, but I'd like to get the orders made at some point. If they could be looked at perhaps during the afternoon so that either late today or perhaps in the morning $I$ can organise the orders in relation to those.

MR TEDESCHI: Yes.
THE COMMISSIONER: Then if any outstanding matters need to be dealt with, they can be dealt with then.

MR TEDESCHI: Certainly by tomorrow.
THE COMMISSIONER: All right, thank you. I will just go off the Bench for a few minutes until that is organised, thank you.

## SHORT ADJOURNMENT

MR GRAY: Thank you, Commissioner. The document has been found. Could I ask Mr Willing to have a look at it and could I hand it up to your Honour.

THE COMMISSIONER: Certainly.
MR GRAY: If it is convenient, Commissioner, could it be added as the first page of tab 162 of volume 6 .

THE COMMISSIONER: Certainly.
MR GRAY: Q. Now, you've got that in front of you now, Mr Willing?
A. Yes.
Q. What I wanted to ask you briefly is this: about three or four lines down, it says, "Date created: 15 August 2013"?
A. Yes.
Q. It says, "Created by Detective Chief Inspector John Lehmann"?
A. Yes.
Q. And "Reviewed by Detective Sergeant Connie Tse"?
A. Yep.
Q. What does that tell us as you understand it?
A. This is an e@gle.i product record. That tells me that this note or this product record, which is a part of the e@gle.i database system, investigation database system, was created by John Lehmann on that date, 15 August 2013, and reviewed, which means accepted on the system, by Connie Tse, who was part of the review team of Unsolved Homicide.
Q. Now, can we deduce from that that John Lehmann then has, as coordinator --
A. Yes.
Q. -- on the last page, agreed with the recommendations of --
A. No. What you can deduce from that is that John has created the administrative record, which - the review is attached to it. So whether he's signed it or not I don't know. I'm assuming he did, to assist the Commission, but I don't know, until you actually see who signed that record, but - yeah.
Q. At any rate, he, John Lehmann, seems to have done something, possibly to read the review and agree with it or possibly not, on 15 August?
A. Well, he's entered the - he has administratively entered that document on to the database, which you'11 see there the investigation says "Palace."
Q. Yes.
A. Palace was the overarching record system that we used for Unsolved Homicide reviews, the database, basically.
Q. All right. Second question about this cover page, just below halfway there is - see item 102, on the left-hand side, just below halfway?
A. Yes.
Q. And it says the titles is:

Review murders of Ross Warren and John Russell (1989).
A. Yes.
Q. It doesn't mention Mattaini but it does mention Warren and Russell?
A. Yes.
Q. It says that the date created was 29 June 2011;
allocated to Detective Sergeant Peter Costello; due date 31 August 2011; status "Completed". Does that tell us that in 2011, Detective Sergeant Peter Costello had conducted some sort of review?
A. No. So what that suggests, you will see the line above it, "Tasks using this item as Background Information"?
Q. Yes.
A. So that suggests to me that a task had been created, a job, given to Peter Costello, who was part of the review team of Unsolved Homicide, from recollection, to conduct the case screening review at some point in time, the task being created for him to do that in 2011, on 29 June, with a date that it was expected to be done by 31 August of that year. That didn't happen, obviously, it was done by Alicia Taylor later on.
Q. Oh, I see.
A. Yes.
Q. So it's the precursor to the thing that Alicia Taylor did?
A. Correct. And the number 102 would be, from my recollection, a sequence of reviews that had to occur or had occurred, and they were up to 102 at that point in time.
Q. I see.
A. Yep. So you would infer that probably Detective Sergeant Costello, sooner or later, asked Alicia Taylor to do this?
A. I would assume so, yes.
Q. That has been added to tab 162. I'11 move on. That folder - that has been done. So, where I was getting to, before that little hiatus, was that whatever John Lehmann did on 15 August 2013 was a month or so after all these articles by Rick Feneley?
A. Yes. Yes.
Q. And something else that happened in about the same time, around August/October 2013, which you may or may not know about and you can tell us, is that Sergeant Steer, of the Bias Crimes Unit, initiated something called Operation Parrabe11?
A. Yes, yes.
Q. Not to be confused with the later Strike Force Parrabe11, and Mr Steer's or Sergeant Steer's idea in August/October 2013 was that he would review the 80 -odd cases. Are you aware of that?
A. I am from reading the material provided to me to prepare for this.
Q. But otherwise you hadn't known that?
A. No. No.
Q. Al1 right. Now, the Special Commission has heard evidence that Sergeant Steer and the Bias Crimes Unit turned out to be not in a position to proceed with that project due to lack of resources for that unit?
A. Yes.
Q. But a couple of years later, in 2015, renamed Strike Force Parrabel1, such a review process did unfold, as you know?
A. Yes.
Q. I'11 come to that. But back in 2013, and on1y a month or so after 15 August when Mr Lehmann at least administratively did something with Alicia Taylor's report --
A. Yes.
Q. -- Mr Lehmann, Detective Chief Inspector Lehmann, produced a document called an "Issues Paper", in which he summarised the 30 cases which were being suggested to be gay hate and unsolved. Do you remember that?
A. So what date was that, Mr Gray, that he produced it?
Q. 25 September 2013.
A. Oh, September, it's not August. Sorry, I thought you said August. September, yes, that's right.
Q. If I did say August, let me correct myself. August was the date when he did something administratively with this Alicia Taylor review.
A. Correct, yes.
Q. And about a month after that, name1y, on 25 September, he produced his issues paper?
A. Yes.
Q. Which I take it you are familiar with?
A. I am.
Q. And could Mr Willing have tab 2, please. Sorry, volume 2.

THE COMMISSIONER: Did you say volume 2 ?
MR GRAY: Volume 2.
Q. If we turn to tab 47 [SCOI. 74096], that's the issue paper that Mr Lehmann produced?
A. Yes.
Q. You have given some evidence about this in your statement?
A. Yes.
Q. Which basically speaks for itself, which I will come to in part, from about paragraph 18 through to paragraph 29 or so.
A. Yes.
Q. Now, can we just have a look at some of what you say there in those paragraphs. In 19 - no, I don't need to ask you about 19. In 21 you say you became aware of the Rick Feneley articles?
A. Oh, yes, sorry, in paragraph 21, yes.
Q. Paragraph 21, yes. In 23 you say that the decision to conduct an assessment of the 30 unsolved matters in Sue Thompson's list was made by Mr Lehmann and Ms Young unilaterally --
A. Yes.
Q. -- ie, without reference to you, I take it?
A. Yeah, that's right.
Q. You say you weren't involved in that decision, but once you became aware that they had taken it, you were supportive of that assessment being conducted?
A. Yes.
Q. How soon afterwards did you become aware that they were doing that?
A. I can't recall how --
Q. Soon, though, or long afterwards?
A. Yeah, soon after - soon after they decided to --
Q. Then at paragraph 26 - I just wanted to make sure I'm understanding what you're saying there - you say, among other things, that you were concerned that there might be as many as 30 , but that possibility troubled you?
A. Yes. Yes, it did.
Q. Then you say - and I'm looking about six lines down paragraph 26:

> If, for example, the review revealed a previous $7 y$ unknown pattern of gay-hate homicides, potentially involving overlapping perpetrators who remained at large, it may well have been appropriate for particular matters to be afforded a higher level of priority or resources...
A. Yes.
Q. But such a pattern was not unknown at all at that point, was it? Such a pattern was all too well known?
A. By which you're referring to what, Mr Gray?
Q. The pattern of gay hate homicides, using your words, potentially involving overlapping perpetrators who remained at large. Isn't that the very thing that Coroner Milledge had dealt with in the Taradale inquest?
A. That was specific to three deaths?
Q. Yes.
A. One of which she couldn't determine whether it was a homicide, Mattaini, but this is in the context of 30 alleged unsolved gay hate homicides.
Q. Sure.
A. Outside of that context.
Q. True.
A. Obviously it included it, but that was what $I$ was that's what I'm referring to.
Q. Were you aware at the time of the statements that had been made way back in 1990 and 1991 by Sergeant Ingleby and Sergeant McCann about these patterns of overlapping perpetrators?
A. No, not - not from recollection.
Q. Are you aware of those now? Have you seen either Sergeant Ingleby's statement from 1990 or the two McCann statements of 1991?
A. No, not from recollection. I've been given thousands of documents. I'm not sure whether or not I looked at them or not. I don't think so.
Q. Would it come as a surprise to you to learn today, then, would it, that as early as 1991, Sergeant McCann, and to a lesser extent Sergeant Ingleby, were laying out in some considerable detail, the existence of a pattern of gay hate homicides, potentially involving overlapping perpetrators, way beyond just the three Bondi ones?
A. I take that as given - as granted, if that's what you are asserting.
Q. No, my question is would that come as a surprise to you that that had been spelt out as 1 ong ago as 1990 and 1991?
A. That's a difficult question to answer Mr Gray, because I don't know the context behind it, I don't know the evidence behind it, I don't know those analysis.
Q. No, just those statements: would it come as a surprise to you that in statements by those two men, that's what they had done?
A. Gee, that's difficult. I could say no, it's not a surprise, but I don't understand what - you know, what was behind the reasoning. So if they've come to that conclusion, they've come to that conclusion.

THE COMMISSIONER: Q. Can $I$ just ask a question?
A. Yes, Commissioner.
Q. What did you mean, or what do you mean in paragraph 26, about an "unknown pattern of gay hate homicides"? What precisely were you thinking of, that, what, a11 30 cases need to be connected, or that there needed to be perpetrators who might be responsible for five, ten, two, three?
A. All of them.
Q. Twenty-nine.
A. A11 of the above, Commissioner.
Q. So - we11, you've been asked questions about the possibility of the Bondi murders being part of a pattern. That didn't occur to you at the time?
A. No.
Q. So unless there was a pattern detected, which previously was unknown, these cases, in your view, should not have been given any particular priority over the other

700 in the Unsolved Homicide 1 ist; is that right?
A. I think that's - I don't particularly exactly agree with that, Commissioner.
Q. We11, I'm asking you what you mean when you say:

Considered it important that cases be investigated properly (alongside the other unsolved 700 at the time).

So am I interpreting what you are saying there, that unless some unique feature were to emerge in relation to the alleged gay hate homicides, they simply would be put back in with the other 700?
A. That's correct unless there was something which caused a need immediately to prevent something which was, you know, another homicide occurring, if there was an active group doing it and committing murders that we knew of at the time. So it's a difficult question to answer given the other cases that were currently on the database at the time as wel1.
Q. But most of the other cases, correct me if I'm wrong, or many of the other cases, would not have been subjected to the coronial inquiries that we've been dealing with here, though, surely?
A. Many, many were - sorry, subjected to coronial inquiries.

THE COMMISSIONER: A11 right.
MR GRAY: Q. Now, in paragraph 29 you say that - and you've explained this this morning - Detective Young was the investigation supervisor for Macnamir by this time, yes.
Q. And she was also conducting this assessment of the 30 cases with Detective Lehmann --
A. Yes.
Q. $\quad-\quad$ at the same time?
A. Yes.
Q. You say:

I cannot recall being directly involved in
the communications and/or cooperation
between others in ... Macnamir and those conducting the assessment ...
ie, Lehmann and Young; is that right?
A. Yes.
Q. You say:
however $I$ would expect that there would have been general communication among those involved in ... Macnamir, other members of the UHT and those conducting the assessment --
ie, Young and Lehmann?
A. Yes.
Q. about these matters. So do you mean by that, among other things, that you expect that the UHT generally, or many people or some people in it, would have been talking to Young and Lehmann about this review of the 30 ?
A. I expected that it would be a topic of conversation amongst a small team, and that those who were inside the Unsolved Homicide Team would have knowledge of it going on.
Q. We11, I've asked you this previous1y, and I wil1 just ask you again in this context: in the Macnamir framework --
A. Yes.
Q. -- Pamela Young's preferred hypothesis was suicide, wasn't it?
A. I think I've answered that. I think she lays out the evidence for the Coroner for all three hypotheses.

THE COMMISSIONER: Q. So is it your understanding she had no preferred case theory?
A. She thought - no, that's correct. She thought it was undetermined, was - she could not determine.
Q. Okay, right.
A. Yes.
Q. And as far as you perceived her position, she was entirely open minded about any one or more of the two or three case theories? Totally open minded?
A. From my observations of her, yes.

MR GRAY: Q. Just looking at the assessment of the 30 , tab 47 [SCOI.74906.0001] - do you have that?
A. Sorry?
Q. Tab 47 of volume 2?
A. Yes.
Q. Mr Lehmann has - it is under his name but you have explained that it's actually the two of them that have done this?
A. Yes.
Q. So they start off identifying the background as being the Feneley articles --
A. Yes.
Q. -- which in turn had been based in part upon information from Sue Thompson?
A. Yes.
Q. And they say that they obtained from Sue Thompson her 1ist of 80 -odd cases?
A. Yes, I think John contacted her.
Q. And then they go on to set our their views about the 30 that are said to be unsolved?
A. Yes.
Q. And with several of them - if you see number 3, David Williams; number 7, Peter Sheil, number 10, William Rudney, so called, and number 14, Russell Payne - they weren't able to locate any records?
A. That's correct. In the case of Scott Johnson, number 12, they say:

There is no indication --
Last few lines. I will go back a step, last few lines:
Strike Force Macnamir is nearing finality and a comprehensive report will be submitted by [DCI] Young when it is completed however, at this late stage of the investigation there is no indication that the deceased was subjected to "gay hate" motivated violence causing his death
or in any case, that he was murdered.
A. Yes.
Q. Do you still say that Detective Chief Inspector Young had a purely neutral approach to which of the three possibilities there were?
A. I do say that. I do say that. And she articulates that in her statement, as far as I can see.
Q. We'11 have a little bit of a look at that later.

THE COMMISSIONER: Q. So notwithstanding this document, your view was that, at the date of it, Ms Young was stil1 entertaining murder as a possible scenario?
A. Yes.

MR GRAY: Q. Now, when we get to the summary, on the second-last page of this document, they say - the two authors, as we know them to be - that 27 cases were reviewed. It's actually 26, I think, because four cases they said they could find no records; is that right?
A. Yes, that's right.
Q. And indeed the fourth bullet point tells us that four cases could not be found.
A. Yes, that's right.
Q. And the authors say:

This would suggest --
the fact that they couldn't find the records --
that those cases were probably not
homicides or suspicious deaths.
A. Yes, they say that, yes.
Q. Do you think that stands up as a matter of logic?
A. Probably not, given that they --
Q. Not remotely, does it?
A. Well - no.
Q. No. But would it suggest to you that the authors were keen to play down the 1 ikelihood of homicide in relation to
these $30 ?$
A. We11, I - "play down" is a strong term. I would suggest they have made that assumption on the fact that there were no records that they could find - I believe that there were records subsequently found.
Q. Yes, records have been found subsequently but my question is - mainly by this Commission --
A. I think you're inferring - the term "play down" is something I don't agree with.
Q. They've put forward a frankly ludicrous theory that their failure to find records meant that they probably weren't homicides, haven't they?
A. Yes, they have.
Q. And what would be the point of doing that unless they were trying to play down the number of homicides?
A. Well, the fact that there were no records available, a possible explanation would be that they weren't homicides, because generally, homicides have got, you know, large briefs of evidence that are attached to them, you know, they go to the Coroner or the Supreme Court.
Q. The more --
A. It would be easily found, I guess.
Q. The more straightforward and obvious possibility is that they just hadn't managed to find the records, wasn't it?
A. They hadn't - that's right, they hadn't found the records.
Q. At any rate, on page 9 , the last of the bullet points at the top of the page, the authors say:

On7y 8 cases from the 30 were probable or possible "gay hate" motivated murders...
A. Yes.
Q. And one of those is not Scott Johnson; correct?
A. That's - that's correct, I think, from recollection.
Q. They are saying Scott Johnson is not probable or even possible as a gay hate motivated murder, aren't they?
A. They are saying that there is no evidence at that
point in time --
Q. No, they are saying 8 cases were probable or possible gay hate motivated murders, and one of those eight is not Scott Johnson?
A. That's correct.
Q. And they say that the eight "are on file at the Unsolved Homicide Team with consideration for future investigation"?
A. Yes.
Q. Now, as at September 2013, was that true in respect of those eight?
A. If you are - I need to have a look at what eight they were, but I'm taking what you're saying on face value as true.
Q. Well, I can take you to the eight if need be. Three of them are the three Bondi ones but I can show you the other five.
A. Yes.
Q. But what does the expression "with consideration for further investigation" mean?
A. That they would be - they're sitting there on the database, which was the Unsolved Homicide database, so which lists, you know, those 700 -odd cases, and then those cases are subject to review and then decisions are made whether to investigate them or reinvestigate, I should say, those matters, based on reviews and those circumstances.
Q. So it means really that they are simply sitting in the files or the database of the Unsolved Homicides along with the other 700?
A. That's right.
Q. And sooner or later, when the ball ticks around, the number will come up and that case will come up on to someone's desk?
A. It would be reviewed, yes.
Q. So that's what's meant by "consideration for future investigation"?
A. That's what I take it to mean, yes.
Q. Now, if we turn to the next tab, 48,
[NPL.0113.0001.0156], there is an issues paper by yourself. A. Yes.
Q. Of 10 January 2014?
A. Yes.
Q. And it attaches the one we've just been looking at from Mr Lehmann and in fact Pamela Young, as you have explained?
A. Yes.
Q. And so it seems from your handwritten note on the very back of the attached copy of Mr Lehmann's document that you had received his document by 28 September 2013.
A. Yes, that's correct, yes.
Q. And you say, as best I can read it:

Further discussions with the journalist --
that's Rick Feneley, I presume?
A. That's right, yes.
Q. --
should be considered at an appropriate time
(in light of the [Strike Force] Macnamir investigation) --
A. Yes.
Q. --

As previously discussed between the --
A. Myself.
Q. --

Commander Homicide and --
What's the next bit?
A. "DCoP", so Deputy Commissioner.
Q. Now, looking at your issues paper, 10 January 2014 --
A. Yes.
Q. -- you are producing that because the Department of Premier and Cabinet has asked for --
A. Advice.
Q. -- an update or some advice?
A. Yes.
Q. Having received a letter from Alex Greenwich MP?
A. Correct, yes.
Q. Who wants to know what's going on with the status of investigations into these gay hate killings?
A. Yes.
Q. And you set those out in the three bullet points in bold?
A. Yes.
Q. Now, in your answer to the question, "What is the current status" and "Is it the view of the police that they can be characterised as gay hate crimes", your answer begins by referring to Mr Lehmann's issue paper?
A. Yes.
Q. And notes that that itself followed the articles in the Herald, which are the Feneley articles, and then refers to the family of Scott Johnson and --
A. Yes.
Q. -- what they were doing by way of media activity?
A. Yes.
Q. Then, after referring to the fact that this assessment was done by both Lehmann and Young, you put the position this way, and this is for an issues paper for the Department of Premier and Cabinet:

The assessment revealed that the suggestion of 30 unsolved "gay hate" related murders was and is gross exaggeration.
A. Yes.
Q. That's the expression that Mr Lehmann and Ms Young used, isn't it?
A. Correct.
Q. And you say in your paper:

$$
\begin{aligned}
& \text { A total of on7y } 8 \text { cases of the } 30 \text { were } \\
& \text { assessed as "probable" or "possib7e" } \\
& \text { "gay-hate" motivated homicides ... }
\end{aligned}
$$

A. Yes.
Q. So it's clear, isn't it, that you are endorsing the view of Mr Lehmann and Ms Young?
A. Yes.
Q. Namely, that to say 30 was a gross exaggeration?
A. Yes.
Q. And that in fact, of the 30 , only 8 were even possible or probable gay hate?
A. Yes, at the time, yes.
Q. In the last couple of paragraphs of your issues paper, on the third page, under the heading "Death of Scott Johnson", you say that the Unsolved Homicide Team had established Strike Force Macnamir in February 2013 following intense lobbying by members of the Johnson family?
A. Yes.
Q. And was that intended to indicate that otherwise it wouldn't have been established?
A. That's correct, yes.
Q. Indeed, the decision had been made not to investigate it any further at a11?
A. That's right, based on the case screening report.
Q. Then you say:

Following extensive investigation for almost a year where Strike Force Macnamir investigators, who had been diverted from other unsolved matters, have finalised inquiries --
with one exception --
A. Yes.
Q. We11, pausing there, why did you make the point to the

Department of Premier and Cabinet that Macnamir investigators had been diverted from other unsolved matters?
A. Because they were.
Q. And so what, though? What is that relevant to, in this context?
A. Well, in the context of limited resources that are available to the Unsolved Homicide Team, it was a small team, there were 700 cases, odd cases, I can't recall the exact number, but it was 700 -odd cases that, you know, we had to make decisions as to what to investigate and what not to investigate. I thought it was a relevant issue at the time, given the pressure on that team and the limited resources they had.
Q. And does that mean - did you mean by that, then, that if they hadn't been putting these resources into Johnson, they'd have been investigating, for example, Russe11 and Warren and Mattaini?
A. Oh, not specifically those matters but other homicides, when --

THE COMMISSIONER: Q. Can you name any others that you say were not investigated as a result of the diversion of resources?
A. I would have to, Commissioner, see the database at the time, but there were 700 cases.
Q. Yes, but, look, the 700 cases were not then, nor are they now, are they, day-to-day, subject to active investigation?
A. No, of course not.
Q. Of course not. And the fact of the matter is, most often, unless there's a break through, they simply collect dust, don't they?
A. No. They're subject to a review process, or, as Mr Gray says, the wheel turns around until the point where they are reviewed and if there is - again, if there are opportunities to test forensic exhibits, if there are opportunities for relationship breakdowns, advances in technology, they may be subject to reinvestigation.
Q. That's assuming exhibits can be retrieved, isn't it?
A. That's right, yes.

MR GRAY: Q. In the rest of that last paragraph you say, as your view, that Macnamir investigators have not discovered any evidence at all to confirm that Scott Johnson was the victim of a homicide, let alone a gay-hate murder?
A. That's right.
Q. And that was your view as well?
A. Yes, at the time, yes.

THE COMMISSIONER: Q. And you say, do you, that even as at the date 10 January 2014, you stil1 thought Ms Young's view was that murder was a viable option?
A. Yes. I do.
Q. Really?
A. Yes, I do.

MR GRAY: Q. In the absence of any evidence?
A. That's right. Because there were other inquiries that were ongoing at the time. I was waiting for the Crime Commission to come back to me with a review of whether or not they felt that all avenues of inquiry --

THE COMMISSIONER: Q. I'm not interested in the Crime Commission --
A. Well--
Q. $\quad-\quad$ I'm interested in your understanding of Ms Young's view, notwithstanding your view, seemingly quite directly expressed, you nonetheless thought that, notwithstanding your view and your appreciation of the lack of evidence, she was still harbouring open as a viable case theory murder?
A. Yes.

THE COMMISSIONER: Thank you.
MR GRAY: Q. Now, at just about this time - that is, 1ate 2013, ear1y 2014, Pame1a Young had completed her very lengthy statement for the Macnamir investigation; correct?
A. Yes.
Q. You have annexed it to your statement?
A. Yes.
Q. I want to ask you some questions about it.
A. Yes.

MR GRAY: Commissioner, the statement as it was attached to Mr Willing's statement was entirely unredacted. However, it seems that there were orders made in the coronial proceedings, the effect of which was that a great deal of it was redacted and should remain so. And so a copy of the document with all those redactions is now available.
Q. Do you now already have that, Mr Willing?
A. I was shown it - I read it last night but I don't have a physical copy of it.
Q. We can give you a copy now.
A. Sure.

MR GRAY: And does the Commissioner have one?
THE COMMISSIONER: Does this catch you unawares,
Mr Tedeschi?
MR TEDESCHI: We had a version provided to us yesterday.
MR GRAY: Q. Obviously with the hundreds of pages that are totally redacted, I'm not going to be asking you any questions.
A. Sure.
Q. But on the front page we see that it has a date 20 November 2013?
A. Yes.
Q. On the very front page. And on the very back page, the only thing that is not redacted are the signatures and the date of signature, which is 13 July 2014.
A. Yes.
Q. Now without going through with you laboriously which bits are redacted and which bits aren't, rough1y 390 pages out of 445 are totally redacted?
A. Yes.
Q. So one can see nothing at al1?
A. I can see that, yes.
Q. But $I$ want to ask you a couple of questions about two
or three of the sections that are only partially redacted? A. Sure.
Q. And the first section, if you can turn to page 240 , which is about halfway through the 445 pages --
A. Yes.
Q. -- in fact, up to, I think, 1606, the entire thing has been redacted with maybe one or two exceptions?
A. Yes.
Q. At any rate, starting at 1607 , for the next 25 pages or so, what Pamela Young is doing largely is referring to Operation Taradale and how it might relate to Macnamir?
A. Mmm-hmm.
Q. You would recall that - you have looked at this in the last few days, I think?
A. I looked at it last night.
Q. Last night, yes. So, for example, at 1610 she says "Deputy State Coroner Milledge held an inquest in 2005", and she describes the context?
A. Yes.
Q. And then 1615 and 1616, she devotes two paragraphs to Mr Mattaini?
A. Yes.
Q. Or his case, really, I should say?
A. Yes.
Q. And if you read through 1615, you will see that she gives some emphasis to Mr Mattaini's mother having thought it was possible that her son had suicided?
A. Yes.
Q. And she does not mention the possibility of homicide at all, does she?
A. That's right. Yes.
Q. When we get to 1619 , Mr Warren, you can see the summary there in that paragraph and the next couple of paragraphs?
A. Yes .

MR GRAY: My friend wants this point to be made. I'm
happy to make it.
Q. What I asked you, and you agreed, about 1615 was that she, Ms Young, didn't mention anything about the possibility of homicide?
A. No, not in that paragraph, no.
Q. And as my friend perfectly accurately points out, in

1616, she does, however, note what Coroner Milledge found?
A. Yes.
Q. Which was that there was a strong possibility of homicide?
A. Yes.
Q. So I accept that. In 1619 and following, she, Pamela Young, is dealing with Mr Warren?
A. Yes.
Q. And although at 1621 again she quotes from Coroner Milledge, she, Pamela Young, notes the suicide possibility but makes no mention of the homicide possibility?
A. Which paragraph is that, sorry, Mr Gray?
Q. 1619 .
A. 1619, yes.
Q. She talks about him having felt a bit depressed and could have slashed his wrists - so that's a reference to a suicide possibility?
A. Yes, of course.
Q. But there's no reference to a homicide possibility; correct?
A. That's correct.
Q. And then when we get to Russell at 1622 to 1625 --
A. Sorry, can I just --
Q. Yes.
A. But she does say in 1621, she again quotes the Coroner's findings which relate directly to homicide.
Q. Yes, I took you to that at the beginning. I've already taken you to that.
A. For Warren?
Q. That's for Warren, yes. And in the case of Russell she does the same thing again, at 1625, she quotes the Coroner's finding?
A. Yes, that's right.
Q. But in her own narrative, 1622 to 1624 , she emphasises the possibility of misadventure, doesn't she?
A. Yes.
Q. As being more likely than homicide?

MR TEDESCHI: I object. Reading the document, she is referring to previous investigations, not stating her own view.

THE COMMISSIONER: Well, it speaks for itself, I think, in one way or the other.

MR GRAY: $Q$. Can you answer the question?
THE COMMISSIONER: But I will allow the question.
THE WITNESS: Sorry, can you repeat the question?
MR GRAY: Q. Yes. In her three paragraphs, 1622 to 1624, she refers to factors, whoever first expressed them, that may have --
A. Related to misadventure.
Q. -- related to misadventure?
A. Yes.
Q. But doesn't herself give any attention to the possibility of homicide?
A. No.
Q. Apart from quoting Coroner Milledge?
A. Correct.
Q. Okay. Then she goes on in the next many paragraphs, which I won't take you to generally speaking, to reported assaults on gay men in the area, many of them?
A. Yes. Yes.
Q. And then at 1671 she refers to Taradale having, as she puts it, reaffirmed known intelligence that in the late '80s and early '90s groups were involved in multiple
unidentified assault and robbery offences in and around Bondi and the city on a broad range of victims?
A. Yes.
Q. That sounds like the sort of pattern that you refer to in your statement as being previously not known, doesn't it?
A. No, I - that relates to assaults. There is a difference between an assault and a homicide, somebody dying.
Q. I see.
A. As referenced in the Lehmann/Young report.
Q. Very good. Al1 right. 1678, she quotes or refers to some of the 2005 coronial findings?
A. Yes.
Q. About Marks Park being a known area for brutal attacks on homosexual males?
A. Yes.
Q. I just wanted to ask you about two things in this paragraph, 1678.
A. Yes.
Q. In the third --

THE COMMISSIONER: You are fading again, Mr Gray, and it is 1 o'clock, so why don't we tog you up at 2 ?

MR GRAY: You can tog me up at 2.
THE COMMISSIONER: All right. I will adjourn until 2 o'clock. Thank you.

## LUNCHEON ADJOURNMENT

MR GRAY: Q. Mr Willing, do you still have Ms Young's statement there?
A. I do.
Q. If you have paragraph 1679, which is on page 256 ,

Ms Young is there referring to the Mattaini case?
A. Yes.
Q. I just want to ask you a couple of things about this
paragraph. Firstly, she says the 1989 knowledge of police regarding Mattaini's 1985 disappearance was various things? A. Yes.
Q. Do you see that?
A. Yes.
Q. But in fact in 1989, police had no knowledge of Mattaini's disappearance at al1, did they?
A. I'm not sure. That's probably correct.
Q. Wel1, there's an abundance of evidence in Taradale and here that Mattaini's disappearance did not come to the attention of the police until 2002.
A. Okay. I accept that.
Q. And so that's a mistake on the part of Pamela Young, it would appear?
A. It would appear that way, yes.
Q. Having made that mistake, she says that the knowledge - and let's assume she's actually referring to when they did have the knowledge, which is 2002 --
A. Yes.
Q. -- was that he was a reported missing person with positive evidence of suicidal ideation on two occasions. Do you see that?
A. Yes.
Q. So she's high1ighting the suicide possibility --
A. Yes, she is.
Q. -- with Mr Mattaini? And then two sentences down she says:

The 2005 coronial inquest was not able to specify the place of his
disappearance/presumed death and did not find that it resulted from gay-hate violence in Marks Park.

Do you see that?
A. Yes, I do.
Q. Now, if we go down to 1682 - and I took you to this this morning in the Milledge findings, what Coroner

Milledge did in the case of Mattaini, you will recall, was to bring in an open finding?
A. Yes.
Q. But to say what appears at 1682 , not as a finding but as a statement that the Coroner made --
A. Yes.
Q. -- namely, that there was evidence which strongly supported the probability that Mr Mattaini, who we are talking about for the moment --
A. Yes.
Q. -- met his death at the hands of gay hate assailants. Do you agree?
A. Yes. That's what she says, yes, there's a probability, yes.
Q. Now, when Ms Young says in the last sentence in 1679 that the Coroner did not find that Mr Mattaini's death resulted from gay hate violence, that perhaps is technically true, in that the finding is one of an open finding?
A. That's right.
Q. But it's not exactly fulsome in giving the reader an account of what the Coroner did, is it?
A. Well, I would suggest it is, given that she includes the statement by the Coroner at 1682.
Q. Al1 right. That's your view. Al1 right.
A. Sure.
Q. You wouldn't suggest that she was highiighting in 1679 the suicide theory rather than the gay hate violence theory?
A. She certainly highlights suicide ideation in that paragraph, yes. If you turn over to page 364 of this statement, after a lot more redactions, and starting at paragraph 2447 --
A. Yes.
Q. -- and I know you have told us you looked at this last night?
A. That's correct.
Q. So hopefully I don't need to be very long on this, but
you will see that she introduces the subject of the July 2013 Rick Feneley articles.
A. Yes.
Q. And then at 2452 and 2453 , she refers to the suggestion of the 30 unsolved cases?
A. Sorry, 2453?
Q. Yes, and in fact starts a bit before that, but yes.
A. And she - yes.
Q. And then 2453 she says:

The following is a summary of the assessment done on [the 30] ...
A. Yes.
Q. And then from 2454, and the names are redacted, she starts with number 1 and it runs through the 30 --
A. It goes through the same as the report.
Q. It is the same 30 , isn't it?
A. Yes.
Q. As in the Lehmann issue paper and your issue paper, or the Lehmann issue paper which is attached to your issue paper?
A. Yes, correct, yes.
Q. And then accordingly, unsurprisingly no doubt, at 2512, she also repeats - this is on page 373 - the view expressed in that issues paper --
A. Yes, she does.
Q. -- by herself and Lehmann, namely, that of the 30 , only eight were homicide with evidence or indication of gay hate?
A. That's correct, yes.
Q. Then if we turn over to page 431, you wi11 see - and I interrupt myself, Commissioner, to make this next part clear. The paragraph numbered 2878 is a heading, which is "The Suicide Hypothesis".

THE COMMISSIONER: Yes.

MR GRAY: There is another heading at 2899, headed "The Homicide Hypothesis", and Mr Willing has before him, I hope, an unredacted set of pages.

THE WITNESS: No, I don't. I've got the redacted set.
MR GRAY: Q. No, but there are a few redactions of --
A. Oh, yes, of course.
Q. -- little bits, but largely the text is readable?
A. That's right, yes.

MR GRAY: But counsel for the Police has requested that these pages, paragraphs 2878 to 2921 , so about six pages, or six or seven pages, at least for the moment not be shown on the screen for the live streaming audience and not for the moment be placed on the Inquiry's website, and at least for the moment, that position is accepted. But I want to ask Mr Willing some questions about the content of those paragraphs nonetheless, and I will do so in a way that accommodates --

THE WITNESS: Sure.
MR GRAY: -- the concern that has been raised.
MR TEDESCHI: Commissioner, I might just indicate for your benefit that we take the same position about broadcasting of these questions as well. You have ruled that there is a potential for trial but it is so far away that it wouldn't potentially prejudice but we have concerns.

THE COMMISSIONER: I know you have concerns, Mr Tedeschi, but for the reasons $I$ have stated earlier this morning I think at the moment what is extant is a complex legal landscape without a jury trial imminent, and not likely to be fixed in the near future, as $I$ apprehend the position.

MR TEDESCHI: I would like to voice some other concerns.
THE COMMISSIONER: I'm sorry?
MR TEDESCHI: I would like to voice some other concerns, Commissioner, but my concern is that by voicing these other concerns I cause the problem that I wish to bring to your attention by voicing those concerns.

THE COMMISSIONER: Yes.
MR TEDESCHI: Perhaps I can tel 1 my learned friend first what those concerns are.

THE COMMISSIONER: By all means. By all means.
MR GRAY: Commissioner, $I$ am sorry to make this suggestion, but it may be appropriate for you to rise for a couple of minutes so that the concern that Mr Tedeschi has just explained to me can be explained to you privately, and then it may be that $I$ can accommodate things in a certain way. But it would be best if you understood what was happening, really, rather than be guessing at what is being said to me.

THE COMMISSIONER: All right. I will go off the Bench and that can be raised. Thank you. I will adjourn shortly.

SHORT ADJOURNMENT.
THE COMMISSIONER: Please sit down.
I should just record that as a result of a discussion which I have just had with Mr Gray SC and Mr Tedeschi KC, I will invite you, Mr Gray, to move to another topic for the short term and then we will revisit, as and when is necessary, other matters in due course. Thank you.

MR GRAY: Q. Mr Willing, two months after your issues paper of 10 January 2014, namely, in March 2014, you wrote to the State Coroner, Mr Barnes?
A. That's right.
Q. You deal with that in paragraph 50 of your statement and you annex the letter?
A. Yes.
Q. Which is I think in the tender bundle at --
A. I'm assuming I don't need this Mr Gray for the time being, anyway?
Q. Do you have it there?
A. No, no. This particular bundle.
Q. Yes, that can go. It is I think volume 11, tab 252C [SCOI.82369.0004_0001].
A. 252C? Oh, yes. Yes.

THE COMMISSIONER: I am sorry, did you say volume $11 ?$
MR GRAY: Yes.
THE COMMISSIONER: And the tab?
MR GRAY: 252C.
THE COMMISSIONER: 252C, thank you. Thank you.
MR GRAY: Q. In that letter after recounting various matters of history --
A. Yes.
Q. -- what you say on the second page, the third-1ast paragraph, is that:

I am of the view that given particular circumstances surrounding this case coupled with the interests and beliefs of the Johnson family, that a further examination of the circumstances surrounding the death of Scott Johnson, in light of the comprehensive investigations conducted by the Homicide Squad Unsolved Homicide Team via Strike Force Macnamir, would be in the public interest.
A. Yes.
Q. You conclude by saying:

According7y.... I write to formally request that your office conduct a further examination of the circumstances ...

Et cetera?
A. Yes.
Q. Now, in your statement at paragraph 50, you say that the State Coroner granted your request. Do you see that? A. Yes.
Q. Do you mean by that that he granted your request to conduct a further examination?
A. That's right, yes. Not necessarily an inquest. He could have reviewed the matter and decided one way or the other what to do, but --
Q. Yes. So you're not putting forward that letter as a request by you for an inquest?
A. No. It was for him to conduct an examination of it; should he choose to conduct a further inquest, that was a matter for him.
Q. Right. Because in fact, as I'm sure you recal1, between your letter of March 2014 and his ultimate decision - his, Mr Barnes's ultimate decision - to hold a third inquest, there were quite a number of intermediate steps, weren't there?
A. Yes, but - could you clarify what they were?
Q. Yes. Wel1, among other things, there were written submissions to Mr Barnes?
A. Yes, of course, yes.
Q. Both from Counsel Assisting and from counsel for the Police?
A. Yes.
Q. And from counsel for the family, as to various issues, including whether or not a third inquest should actually be he1d?
A. Yes.
Q. You agree?
A. Yes.
Q. And on 13 Apri1 2015, there was an oral argument in court before Mr Barnes on those issues?
A. I assume that would be the case. I wasn't present.
Q. And in the submissions that were then put forward on behalf of the Commissioner of Police, the position taken on behalf of the Commissioner was, firstly, that the
Commissioner was definitely not making an application for a third inquest; do you agree?
A. Yes, I haven't seen the submissions or - but I'm taking what you're saying on face value.
Q. Well, pausing there, were you not involved in the conduct of these proceedings, including this question about
whether or not there would be a third inquest?
A. I had some knowledge of it. I had some discussions with counsel in general terms, but that was left to Pam Young and Penelope Brown.
Q. Sorry, Pam Young?
A. And Penelope Brown. Penny Brown.
Q. All right. But the submission was made, I'm suggesting to you, in quite unambiguous terms, that the Commissioner of Police was definitely not making an application for a third inquest, and I assume you know that to be so?
A. I can't recall that, to be perfectly honest, but I accept that that's the case.
Q. And the submissions for the Commissioner included that it was the Johnson family who were actually making the application for the third inquest. Does that sound right to you?
A. That may have occurred down the track, yes.
Q. And that the Commissioner's position was that the Commissioner would not oppose that application, but wished to draw to the Coroner's attention a number of factors that might indicate that a third inquest should not be held. Do you remember that?
A. No, I don't.
Q. And one of those factors, I suggest, that was put forward on behalf of the Commissioner, was that having a third Johnson inquest would involve a diversion of UHT resources away from other cases. Do you recall?
A. I don't recall any of those submissions. I wasn't present.
Q. Do you recall that a second factor that was put forward on behalf of the Commissioner was that all the work that Macnamir had done to date indicated that it was unlikely that a third inquest would reach any different finding from the second one, ie, an open finding?
A. Right. I accept that.
Q. Thank you for accepting it, but are you saying --
A. I wasn't present.

THE COMMISSIONER: Q. When you say you were not present,
does that mean that you weren't privy to what Ms Young was instructing counsel on behalf of the police to do?
A. Not in relation to that.
Q. We11, when you say "not in relation to that", did you involve yourself at all in the position to be adopted publicly by the police in relation to the application for a third inquest or did you just take no interest in it at a11?
A. I didn't take no interest in it at all.
Q. Well, then, if you didn't take any interest in it, did you take an interest in it?
A. Of course I did. I wrote to the Coroner in relation to it.
Q. Of course you did. And as a result of your position at the time, are you suggesting to me that you were not, at the time, intimately aware of what Ms Young was going to put to the court or instruct counsel to put to the court? A. Yes.
Q. Does that mean you were, at the time, you think, likely intimately aware of what Ms Young was going to instruct counsel publicly to put?
A. No, I wasn't intimately aware of that.
Q. And was it something that you had no concern about, something that you had no interest in, something that, in respect of which your authority was not needed?
A. No, I had an interest in it. It would - it was something that would involve a range of factors and a range of views. The Commissioner of Police, General Counsel, et cetera, were all having input into that position taken by the Commissioner, so --
Q. What about your position, though? Was your position irrelevant in the sense that could Ms Young put to counsel to take a particular course without consultation with you?
A. She could.
Q. And did she?
A. Not from my understanding. I don't - I can't recal1. My position was that $I$ thought that the Coroner should conduct a further examination of the matter.
Q. And did you think a third inquest was important?
A. Yes, I did.

THE COMMISSIONER: Yes, Mr Gray.
MR GRAY: Q. Did you know that these submissions were being put by counsel for the Commissioner, including that the Commissioner was not making an application for a third inquest and that, although not opposing the Johnson family's application for one, the Commissioner was concerned about diversion of resources and felt that it was unlikely that any different result would be reached? Did you know that that was what was being put?
A. I can't specifically recall that.
Q. Well, when you say you can't specifically recall, what does that mean?
A. I can't remember. I can't remember.
Q. You don't have any recollection at all?
A. I don't recall. I don't recall.
Q. A11 right. At any rate, on 13 Apri1 2015 at the conclusion of the oral argument on that day, the decision of State Coroner Barnes was in fact not to accept submissions to that effect by the Commissioner as to diversion of resources or as to the unlikelihood of a different result and, instead, to grant the application for a third inquest; correct?
A. Correct.
Q. Now, I will just jump forward a couple of years to the conclusion of the whole inquest proceedings, the third inquest proceedings, which resulted in findings being handed down by Coroner Barnes on 30 November 2017. You follow me?
A. Yes.
Q. Now, I appreciate that by this time you had ceased to be Commander Homicide?
A. Correct, yes.
Q. I understand that. But stil1, I assume you maintained some interest at least professionally in what was happening --
A. Yes.
Q. -- in the third Johnson inquest?
A. Yes, but not intimately.
Q. We11, not intimately, but down the scale from intimately, what level of interest?
A. I had a general interest in it, but at the end of the day when you leave a squad like the Homicide Squad, things progress and investigations progress and the 1 ike and you don't get yourself involved in them. I had a - you know, a busy Counter Terrorism Command to run which took up the majority of my time and interest. Of course, you know, the outcome of the inquest was of interest to me given the history of the matter and the fact that $I$ had the squad for a long period of time.
Q. And you had what for --
A. The squad. I had command of the Homicide Squad.
Q. Ah, the squad, thank you. Now, the final written submissions for the parties were delivered, it seems, in about October 2017. The decision was 30 November. Were you aware of what was being submitted, or the thrust of it, on the part of - on behalf of the Commissioner?
A. No, no, not by that point, given that I was - I had gone, it would be a matter for the current Commander of Homicide.
Q. So can $I$ suggest to you that at the end of the third inquest - that is, after all the evidence had concluded so in about October 2017, counsel for the Commissioner was still making submissions to the Coroner to the effect that although none of the three possibilities - suicide, homicide, misadventure - could be positively ruled out -A. Yes.
Q. -- nevertheless, firstly, suicide was the most likely, and, secondly, a homicide finding was simply not open. Did you know that?
A. No.
Q. And counsel for the Commissioner further submitted in October 2017 not only that an open finding should be made, but that thereafter the Coroner should not make any further recommendations in relation to investigating the death of Scott Johnson. Did you know that?
A. I can't recall that at all.
Q. So you didn't give instructions to make such
submissions?
A. Not from my recollection. I wasn't part of the Homicide Squad, as I said.
Q. If those submissions were put - namely, the ones I've just said --
A. Yes.
Q. -- would you - is that something that would surprise you?

MR TEDESCHI: I object.
THE WITNESS: I'm sorry?
THE COMMISSIONER: No, I allow it, Mr Tedeschi. I allow it.

THE WITNESS: It's difficult to answer because I wasn't privy to the last few months of the investigation that was being conducted, you know, under the guise of the Coroner and on behalf of the Coroner. I would have thought, on what $I$ knew at the time, that an open finding would be appropriate. That's my view.

MR GRAY: Q. That an open finding?
A. An open finding, yes.
Q. ie, not a finding involving homicide?
A. Or suicide, or - it would be undetermined.
Q. A11 right. Now, as we know, Coroner Barnes did not make an open finding?
A. That's right, yes.
Q. You've seen his written findings, I presume?
A. Yes, I think it was in one of the tender bundles that I was given.
Q. Yes. I wonder if Mr Willing could have volume 10, p1ease, and turn to tab 232 [SCOI.11064.00018_0001]
A. Yes.
Q. I don't want to take you to all the detail of this either, but just to take you to some matters that his Honour deals with at the end. Do you see
paragraph 242, page $46 ?$
A. Yes, yes.
Q. He refers to three possibilities, which are set out in that paragraph, and you're familiar with what those three possibilities are?
A. Yes.
Q. Then at 243 through to 247 , he deals with the first of those, namely, misadventure?
A. $\mathrm{Mmm}-\mathrm{hmm}$.
Q. And at 247 he says he thinks that's very unlikely; do you see that?
A. Yes.
Q. Then at 248 through to 258 , he deals with the second possibility; do you see that?
A. Yes.
Q. And at 258 he expresses the view that that second possibility is also very unlikely.
A. Yes.
Q. And at 259 to 270 he talks about the third possibility, and at 270 he concludes that that one is very likely. I'm sorry, I withdraw that. He concludes that it's very likely that gay hate crimes were committed at that location.
A. Yes.
Q. And then at 275 , you can read what he said there - that is, one --
A. Is more 1 ikely than the other one.
Q. -- is more likely than the other, something that he can readily conclude?
A. Yes.
Q. At 276 he says he's persuaded to the requisite standard that Scott died as a result of a gay hate attack? A. Yes.
Q. And at 285, in the "Findings", the "Manner of death" states:

Mr Johnson fell 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.
A. Yes.
Q. Now, at 284 - I won't read it out but if you can just glance at that for yourself --
A. Yes.
Q. - his Honour refers to the fact that there are hundreds of other suspicious deaths awaiting investigation and that there are finite resources?
A. Yes.
Q. You can see that?
A. Yes.
Q. And he says in the last sentence that he declines to make any recommendation for the further investigation, in effect, leaving it up to the police?
A. Yes, that's right.
Q. Do you have any awareness, just before $I$ go on to something more substantial, as to what the reaction of Strike Force Macnamir members was to those findings?
A. Not specifically, but I would have thought they'd be surprised.
Q. Surprised?
A. Yes.
Q. Upset?
A. I can't say. I don't know. I was surprised and that's why I say that.
Q. If that volume could come back, and if Mr Wiliing could briefly have volume 14, please. Could you turn to tab 311 [NPL.0115.0002.8325_0001]. Do you see that's an email chain, starting from Scott Cook at the bottom of the page, asking Chris Olen:

How are the police who did the
investigation going?
A. Mmm-hmm, yes.
Q. I don't want to take you to all of the response, but do you see that Mr 01 en responds that he was there in the court when the findings were read out and along with Penny Brown and Detective Rowena Clancy?
A. Yes.
Q. And he says, Chris $01 e n$ says, among other things:
... understandab7y both gir7s became pretty upset thereafter.
A. Yes.
Q. Now, I appreciate you weren't there.
A. Yes.
Q. And indeed were no longer Commander Homicide I understand those things. But why would a finding, in your experience, of homicide upset police officers on a strike force aimed at reinvestigating an unsolved homicide?
A. That's a very difficult question for me to answer other than, you know, Chris 01en makes reference to the fact that both girls were stunned, so I take that to mean surprised, by the outcome. They might be upset, they could have been upset at that particular outcome. I don't know. It's a matter for, you know, for them to answer, but it may have been the fact that the whole lengthy investigation over many years was over. But your assertion that they are perhaps upset because of a homicide finding, you know, makes sense.
Q. Well, it looks as though they were upset that the homicide finding was reached as distinct from either an open finding or one of the other two possibilities, doesn't it?
A. That's right. That's the way it looks, yes.
Q. On could that be because they, and Macnamir generally, were so heavily invested in one of those other alternatives that the homicide alternative was unpalatable to them?
A. That could be one hypothesis, yes. However, taking into account that, you know, from Apri1 2015, the investigation had been under the guise and direction of the Coroner itself, I think he was responsible for, you know, the 1 ines of inquiry that were conducted from that time onwards. So they may have had their own personal views
about it, but at the end of the day that was - you know, he directed that investigation to that point.
Q. A11 right. I'11 move on. That volume can come back, volume 14. And if you still have the volume, or have it in volume 10 I think it was, the one that has Coroner Barnes' reasons, I'm just taking you back, it's in tab 232 [SCOI.11064.000.00018_0001]. Just brief1y back to paragraph 284 of the findings on page 51.
A. Yes.
Q. As I put to you and you agreed, the Coroner essentially left it to the police to decide what further investigation, if any, should happen?
A. Yes, that's correct.
Q. In fact, we know, don't we, even though you may or may not have been involved, that in 2018 a new strike force was set up --
A. That's right, yes.
Q. -- Strike Force Welsford --
A. Yes.
Q. -- to investigate the murder of Scott Johnson?
A. Yes.
Q. The lead investigator was Detective Chief Inspector Peter Yeomans?
A. Yes.
Q. That 1 ed in 2020 to the arrest of a suspect who was charged?
A. Yes.
Q. With murder?
A. Yes.
Q. The setting up of Welsford, of course, happened under your successor as Commander Homicide, not under you?
A. That's correct, yes.
Q. And was that under Mr Dickinson or under --
A. 2018, that would have been Mr Cook?
Q. Cook?
A. Yes.
Q. As it also happens, back in March 2017 there had also been a new Police Commissioner, Mr Fuller?
A. That's correct.
Q. He had replaced Mr Scipione in March 2017, Mr Scipione having been Commissioner since 2007?
A. Yes, that's right.
Q. In setting up Strike Force Welsford and investigating the death of Scott Johnson as a murder, the police were essentially following the path that flowed from the findings of Coroner Barnes, weren't they?
A. Yes, however, that also involved communication between the Johnson family and the new Commissioner as wel1.

THE COMMISSIONER: $Q$. What do you mean by that?
A. So the Johnson family spoke to the new Commissioner about the ongoing investigation and asking for, from my understanding, a further investigation to be conducted or to continue, I should say.
Q. I'm not quite sure of the point you're making, though? The Coroner left it to the police, and I'm - I can't understand the point you are making.
A. So - okay. So, Commissioner, that matter could have sat back in the wheel, as Mr Gray put it, as part of Unsolved Homicide matters, for a considerable period of time, but the family of Scott Johnson spoke to the Commissioner and it was given, I guess, an emphasis for reinvestigation, and so Mr Yeomans was allocated, separate to the Homicide Squad, to conduct that further investigation.
Q. You are just stating that as a fact, rather than an implied criticism?
A. That's a fact, yes.
Q. And that's all you are doing?
A. Yes.

THE COMMISSIONER: Thank you.
MR GRAY: Q. Are you saying that the only reason that Commander Cook and new Commissioner Fuller went down the path of setting up Strike Force Welsford was because the Johnson family put pressure on them?
A. I think Mr Fuller gave an undertaking to the family that they would continue the investigation. I think that's what --
Q. No, my question is --
A. No, I'm not saying what you have asserted just there.
Q. Well, what are you saying?
A. That they spoke to him. The Commissioner took a view that the investigation needed to continue, and that is it.

THE COMMISSIONER: Q. I still don't understand what it is you are either putting expressly or impliedly. If you are merely stating a narrative, if that's what you are saying, thank you. But are you doing any more than that? A. No.
Q. Are you intending to do any more than that?
A. No.

MR TEDESCHI: Commissioner, the question previously that was asked by Counsel Assisting was, was the decision to set up the strike force, did that follow the decision of Mr Barnes, the Coroner.

THE COMMISSIONER: Yes.
THE WITNESS: It was did it flow out of it?
THE COMMISSIONER: Just wait a minute. I'm sorry, Mr Tedeschi's --

THE WITNESS: Sorry.
THE COMMISSIONER: Give Mr Tedeschi a go and then you have a go.

MR TEDESCHI: My perception is that his answers are in relation to that question.

THE WITNESS: Yes.
THE COMMISSIONER: I see, thank you. Yes, Mr Gray.
MR GRAY: Q. Well, I think the question was that in setting up Strike Force Welsford and investigating the death of Scott Johnson as a murder, the police were
essentially following the path that flowed from the findings of the Coroner, namely, the ones that we just looked at, namely, that Scott Johnson had died as a result of gay hate violence?
A. Yes, yes.
Q. That's what Welsford was set up to do, to investigate that 1 ine of inquiry, wasn't it?
A. That's my understanding, yes.
Q. And that was done under a new Homicide Commander and a new Police Commissioner, wasn't it?
A. Yes.
Q. Now, would you agree, generally speaking - just generally speaking - that where a Coroner makes a finding, the police ordinarily are subsequently bound by that finding, unless somehow or other it's challenged?
A. "Bound"?
Q. Well, yes, bound. See if you can answer that first and then I'11 ask another question.

MR TEDESCHI: Is my friend asking whether they are bound in terms of future investigations or - it's a bit unclear.

THE WITNESS: That's what I don't understand.
THE COMMISSIONER: Perhaps make it a little clearer in terms of what you intend him to address.

MR GRAY: Certain1y, Commissioner.
Q. When a Coroner makes a finding, for example, that a death is a homicide --
A. Yes.
Q. -- are the police at liberty to just proceed as though that finding hasn't been made and treat it as not a homicide?
A. No.
Q. So in that sense, at least, they're bound? I don't mean any magic by the word "bound".
A. Yes, I know, I know. I just - I understand what you're saying.
Q. You're agreeing with me at least in general?
A. Yes, I do.
Q. Okay. Now, in Strike Force Neiwand, which we'11 come to a little later, going against a Coroner's finding is exactly what Neiwand did, isn't it?
A. From my reading of the documents $I$ was provided for this Inquiry, yes.
Q. We11, you knew that to be happening at the time Neiwand was under way, didn't you?
A. No, I didn't.
Q. Would it be fair to say that you indeed had in mind that that's what Neiwand would do?
A. No.
Q. So if Neiwand set about trying to undermine and contradict the findings of Coroner Milledge, that wasn't anything to do with you?
A. No, and I reject that. That was not the purpose of Neiwand.
Q. So you say two things: (a) no such thing happened that is, no such attempt to contradict or undermine happened?
A. Purposely, no.
Q. How do you know?
A. As in that wasn't the intent for why Neiwand was established in the first place and what happened after --
Q. On your part, do you mean?
A. Sorry, that's correct, yes.
Q. So I will come to this shortly when we get there, are you saying that, so far as your mindset was concerned -A. Yes.
Q. -- when Neiwand was set up, it was simply to conduct a genuine, open-ended investigation, let the cards fall where they may?
A. Yes, with - yeah, there were a number of persons of interest that had been identified, as we well know.
Q. Yes?
A. As a result of not just that inquest but the Macnamir
investigation. It was established to try and identify a person or persons who may be responsible for those deaths and bring them to justice, is what it was established for?
Q. Thank you. And when you're saying that, you're saying that that was the reason in your mind that it was established?
A. Yes, yes, that's right.
Q. We wil1 come back to that, thank you.
A. Okay.
Q. Now, meanwhile, back on 13 Apri1 2015 --
A. Yes.
Q. -- Coroner Barnes delivers the findings, the Macnamir people are upset, it seems. But be that as it may, that very night, 13 Apri1 2015, there was the ABC Late1ine broadcast?
A. Can I just clarify something there, you said, Mr Gray? The findings were on 30 November 2017. You're talking about the opening of the inquest?
Q. I certainly am, thank you very much. I accept that correction. Let me go back a step. You are quite right, thank you. 13 Apri1 2015, decision by Coroner Barnes to hold a third inquest?
A. Yes.
Q. My apologies. That very night, 13 Apri1, there is the Lateline broadcast?
A. Yes.
Q. And it includes an interview with DCI Pamela Young?
A. Yes, it did.
Q. Recorded that very day?
A. I don't know when it was recorded.
Q. Okay. Now, you knew that Pamela Young was going to be interviewed for Lateline, didn't you?
A. No. I knew that she would be - that she would have a conversation with a journalist from the $A B C$, and also another journalist, from The Australian, prior to that, on background only, and I was unaware that that would - that she would actually give a live interview or an interview, I should say, that would be televised.

THE COMMISSIONER: Q. So do I understand it to say that she didn't tell you that she was going on air that night?
A. No, no.
Q. And it came as a complete surprise to you --
A. I received a telephone call --
Q. Well, if you wouldn't mind me just finishing the question, I'm so sorry.
A. Sorry.
Q. It must have come as a complete shock and a surprise when you saw her face on the television, then, did it?
A. Yes, I received a telephone call saying that, "Pam is on Lateline". I turned it on and saw her there.
Q. Well, to answer my question, did it come as a shock and a surprise --
A. Yes, it did.
Q. -- to see her on the television?
A. Yes, it did.
Q. (a) she never asked your permission?
A. To go on television like that, no.
Q. Yes, correct. And (b) therefore you had no knowledge that she was going on television?
A. Not like that, no.
Q. When you say "not like that", I'm so sorry, not at a11?
A. No, not on - not on television at all.
Q. All right. Your belief was that she was to have a conversation or conversations with one or perhaps more journalists?
A. Yes, yes.
Q. But you knew that much?
A. Yes, I did, yes.

MR GRAY: Q. But when you say "as background" do you mean sort of off the record?
A. Yes, yes.
Q. So you say it would not be right to suggest that you approved her going on Lateline?
A. No.

THE COMMISSIONER: Q. Would it be false to suggest that? A. Yes.

MR GRAY: $Q$. And would it be true or false to suggest that you approved her going on Lateline as part of an overall police media strategy?
A. No, not on Lateline. There was a strategy agreed to for her to background two journalists who had interest in the Macnamir investigation, and that was it. And that was agreed to by a number of people.
Q. And did you have discussions with her before she spoke to any journalist in any setting at all, as to the sorts of things she would say, if asked?
A. In general terms, yes.
Q. We11, I'm just going to have you shown the transcript of the Lateline program.
A. Do I need this, sir?
Q. No, you don't, thank you. That can come back.
A. Yes, Mr Gray?
Q. I think you told us a minute ago that, however it came about, you in fact saw the Lateline broadcast?
A. Yes, I did, yes.

THE COMMISSIONER: Q. As a result of a phone call?
A. Yes, that's correct.
Q. So who rang you?
A. I can't recal1. It might have been - I can't recal1 who it was, Commissioner?

THE COMMISSIONER: A11 right.
MR GRAY: $Q$. Now, before we get to the part involving Pamela Young, do you see that the first part of the program was largely questions and answers between Emma Alberici and Steve Johnson?
A. Yes.
Q. And top of page 2 of this transcript, Steve Johnson is
quoted as saying:
We think that the police spend a lot more time looking for evidence of suicide than for evidence of violence.

Do you see that?
A. Yes.
Q. And you knew that to be their concern?
A. Yes.
Q. And you see in the passage attributed to him, a bit below halfway on the page, that Steve Johnson's position, as stated, was that the family thought that Pamela Young felt it was important to reaffirm the police's original verdict?
A. I see that, yes.
Q. And then Emma Alberici says:

26 years after Scott Johnson's death, police remain of the view ...
et cetera; do you see that?
A. Yes.
Q. Now, towards the bottom of page 3 we come to the part of the broadcast that involves Pamela Young?
A. Yes.
Q. And $I$ just want to run through a couple of the things that she says on this program. The first is at the bottom of that page, she's asked:

Do you accept now that the initial
investigation into the death of Scott
Johnson back in 1988 was flawed?
And her answer is:
Not at al7. It was to the standard of the day.
A. Yes.
Q. Did you agree with that?
A. I don't know whether or not it was. I don't know enough. That was certain1y a term that Pam - Pamela would use, "standard of the day", I recall her saying that in relation to the original investigation to me. I don't know the detail, ins and outs, of that forensic, you know, detail of what occurred in the first investigation to make an assessment of that.
Q. Let me just ask you a couple of things about that first investigation?
A. Yes.
Q. And if the answer is you don't know, then such is 1 ife?
A. Sure.
Q. But it has been suggested from material that the Special Commission has seen that the original investigation in 1989 was over within a couple of days. Is that consistent with your understanding?
A. No, I - my understanding was that the initial investigation by general duties police might have taken a couple of days and then Detective Doreen Cruickshank took control of the investigation.
Q. And it also appears from material that the Special Commission has that the conclusion of suicide that was reached in 1989 was reached without any contact being made with the family at all. Do you understand that to be right?
A. I don't know.
Q. I won't read it out, but do you see at the bottom of page 3, after the answer "Not at all, it was to the standard of the day" --
A. Mmm-hmm .
Q. -- Pamela Young goes on to say:

And there's stil7 evidence and information ...
A. Yes.
Q.

I haven't found anything that completely eliminates that as a possibility.
A. Yes.
Q.

In fact we've included some extra information ...

And I'm paraphrasing, "on that theme" - do you see that? A. Yes.
Q. And then on the bottom of page 5, on that same theme, do you see that she goes into some degree of detail at the last five or six lines on that page about a certain incident?
A. Yes.
Q. And she compares that certain incident to what happened at North Head?
A. Yes.
Q. Going over to the first two lines on page 6--
A. Yes.
Q. -- that seems to be Pamela Young pressing on the Lateline audience the likelihood of a particular analysis, doesn't it?
A. It could be, but I think if you - you know, the question that's asked prior to that is around a witness and his assertion
Q. I know, but that's what she nevertheless says. That's what she nevertheless says, though, isn't it?
A. Yes.
Q. Just for completeness on this, you can see about halfway down page 6, a question from Emma Alberici beginning, "Steve Johnson has told us"?
A. $\mathrm{Mmm}-\mathrm{hmm}$.
Q. And you can see Pamela Young's answer?
A. Yes.
Q. So I am simply drawing your attention to the fact that she also says that, which is consistent with some of the things that you've been saying today?
A. Correct.
Q. Now, a third thing that Pamela Young said, on a different topic, was in the middle of page 5 , just above halfway on page 5 , in answer to a question from Emma Alberici about the claim by the Johnson family that there are at least 30 people whose deaths are unsolved, et cetera?
A. Yes.
Q. You see Pame1a Young, in the course of her answer to that says:

We - -
meaning the police --
have eight from that iist that are counted as unsolved homicides, which are probable or possible gay hate crimes - that's eight over a number of years.

Do you see that?
A. Yes, that's correct.
Q. She is there no doubt referencing the Lehmann/Young issue paper --
A. Yes, I think so.
Q. $\quad-$ and subsequent variations on that. And then on page 6 in the middle of the first long answer by her, beginning, "The fact that our relationship", do you see that, just a few lines from the top?
A. Mmm-hmm, yes.
Q. She asserts that Mr Johnson - that is, Steve Johnson:
... used influence, including I consider influence on the Government to make the death of Scott a priority in my office over other jobs that we had.
A. Yes, she says that.
Q. She says that. And Emma Alberici, on page 7 , about 10 lines down, picks her up on that, do you see that - that is, returns to that topic?
A. Yes, yes.
Q. And she asks - she, Emma Alberici, asks - Pamela Young where does she think this influence of Steve Johnson over the government comes from; do you see that?
A. Yes.
Q. And the answer involves Pamela Young referring to the meeting in the Minister's office, which is obviously a reference to the meeting of 11 February 2013, isn't it?
A. That's right, yes, that's right.
Q. And Pamela Young says she saw a lot of what she would describe as kowtowing by the Minister and his staff as to Steve Johnson?
A. Yes.
Q. She says she was amazed and incredulous?
A. Yes.
Q. And at the bottom of that page, having developed that theme somewhat more in the rest of that answer, Emma Alberici asks her:

How did Steve Johnson manage a meeting of that sort with the Police Minister?

Do you see that?
A. Yes, I do.
Q. Her answer was:
... well, to be frank, there was some panic over the Australian Story that came out the night before.
A. Yes.
Q. And she goes on. Then, towards the end of that answer on that page, she says:
.. others were very concerned that that --
meaning the Australian Story --
would be overly critical of the police.
So - one of those people apparently was the minister, who rang my commander of the homicide squad --
that's you, is it?
A. Yes, it is.
Q. --
and also rang the Johnson family and arranged the meeting and gave them their strike force, their priority over everyone else's death.
A. Yes.
Q. Now, a couple of things about that. Now, this is February 2013 when you've told us you were on leave; is that right?
A. That's correct.
Q. But the Minister rang you?
A. No, his Chief of Staff rang me.
Q. Oh, I see. Not the Minister?
A. No.
Q. And what did the Chief of Staff say to you?
A. He said that, from recollection, that the Minister had reached out to the Johnson family and wanted to conduct a meeting and asked whether or not I'd attend. I told him that $I$ was on leave and that Chris $01 e n$ was relieving at the time, and so he was going to speak to 01 en and get him to go along.
Q. Right. And Ms Young describes what the Minister did as giving the Johnson family "their strike force, their priority over everyone else's death".
A. Yes, she uses - yes, she describes it that way.
Q. Did you agree with that assessment?
A. We11, the Minister, you know, couldn't tell us to establish a strike force in that way. I think as we've already covered, Chris $01 e n$ was of the view that we needed to allocate a couple of resources to it anyway. So it was as a result of that meeting that the Strike Force Macnamir was established.
Q. Ms Young goes on, on the top of the next page, that she thought what the Minister did was absolutely improper?
A. Yes.
Q. And wrong on every level?
A. Yes.
Q. Did you agree with that?
A. She does say that, yes.
Q. No, did you agree with that?
A. I wasn't present at the meeting. I don't think that I don't think that - from what I - my understanding of what occurred in the meeting, I don't think it was improper.

MR GRAY: I would tender that transcript, your Honour. Perhaps it could become tab 318 of exhibit 6.

THE COMMISSIONER: Yes, a11 right.
MR GRAY: Q. I need to ask you this, Mr Willing, before I leave the Lateline topic. Had Pamela Young openly used the term "kowtowing" to describe the Police Minister to you in office on many occasions between February 2013 and Apri1 2015?
A. She might have used that term talking to me privately once or twice but $I$ can't recall it being discussed in those terms openly in the office.
Q. Do you agree that on her way to the $A B C$ studio on 13 Apri1 --
A. Yes.
Q. -- she telephoned you --
A. Yes.
Q. -- and - you agree with that?
A. Yes, she did.
Q. What did she say?
A. "I'm about to go and speak to Emma Alberici." I remember where I was. I think I was driving down the M7 at the time when she called me. So my understanding was that she was going to go and talk to her, as planned, the way that she had the other journalist.
Q. So do you have any knowledge of her having actually spoken to Emma Alberici in what you might call background terms a few days earlier on 10 April?
A. I - I don't. I don't.
Q. Because on 13 Apri1, she was in fact going to the studio to participate in the interview that went --
A. I know that now.
Q. -- to air, wasn't she?
A. I know that now, yes.
Q. And didn't she, in that conversation with her on the way to the $A B C$ studio on 13 April, tell you that she was likely to use the word "kowtowing" if she was asked about the Police Minister?
A. She might have. I can't recall it.
Q. And did you respond with a laugh?
A. We11, it was something that - an expression that

I hadn't heard before, but $I$ can't recall whether $I$ did or not. I might have.
Q. An expression you hadn't heard before?
A. Yes, that's right.
Q. I thought you told us that she had used it to you privately several times previously?
A. After that meeting.
Q. After the February 2013 meeting?
A. Yes.
Q. Yes, and before the --
A. Sorry, after the - I took that to mean after the interview that she gave on Lateline.
Q. Are you saying that she had never used the word "kowtowing" in your hearing about the Police Minister until after the $A B C$ Lateline interview?
A. That's correct. That's correct.
Q. Is that a serious proposition?
A. Yeah, it is, and I thought you meant after the interview that she gave on Lateline.

THE COMMISSIONER: Q. If she told you that afternoon as you were driving down the M7 --
A. Yes.
Q. -- that she was going to be interviewed on television, would you have stopped her --
A. Yes, absolutely.
Q. -- or told her not to do it?
A. She was not --
Q. Would you?
A. Yes, she was not allowed to do that.

THE COMMISSIONER: Okay.
MR GRAY: Q. All right. Now, in any event, Pamela Young's Lateline interview quickly gave rise to a lot of repercussions, didn't it?
A. Yes, it did, yes.
Q. One of them was another burst of publicity about the Johnson case and gay hate crimes generally?
A. Yes.
Q. Largely, perhaps not entirely but largely, unfavourable to the police?
A. Yes.
Q. And another, a second ramification, was a direction from the State Coroner, Mr Barnes, that Pamela Young be removed from the Scott Johnson investigation?
A. Yes.
Q. And that did in fact happen?
A. That did, yes.
Q. She was replaced by Detective Sergeant Penny Brown?
A. Yes, wel1, she - Penny Brown took primary carriage of it, yes.
Q. Now, would it be fair to say that Pamela Young has subsequently regarded you as having hung her out to dry --
A. Yes.
Q. -- following the Lateline interview?
A. Yes.
Q. And would you accept that such a view has some force?
A. In what context?
Q. We11, that she's got a point?
A. No, I --
Q. Would you accept that?
A. No. My understanding is that Pamela was not and probably isn't happy with me for not publicly defending her after she appeared on Lateline.
Q. Her view, as I understand it, seems to have been that you had approved her giving this interview and then, when it caused trouble, you ran a mile?
A. The approval was discussion that occurred or a strategy that occurred involving the Deputy Commissioner at the time, the head of police media, myself and others, the head of State Crime Command. It was pretty straightforward.

THE COMMISSIONER: Q. But you didn't say to her, I presume, when you seemed to have authorised her to speak to journalists plural --
A. Yes.
Q. -- I take it you didn't say to her, "For goodness sake, Pamela, don't let them quote you"?
A. No, I can't recall that.
Q. But if what $I$ understand to say is that the interview on the television was a shock and a surprise --
A. Mmm.
Q. -- you must have expected, if you gave her authority to speak to one or more journalists that it was likely she would be quoted?
A. Of course, it was on background, that's right.
Q. Not just on background; how could you stop any journalist writing a story if you authorised Ms Young to speak to the journalist, unless you told her in advance, "You're not permitted to say a word on behalf of
NSW Police. Just background them, but you're not going to be quoted and you're not authorised to speak"; did you say that to her?
A. I can't recall saying that to her.
Q. Would you have said that, do you think?
A. It would be something that I would say. These interviews, as well, these background discussions, often
occurred with police media liaison officers present as well. I believe I asked one to be present and Pam denied declined to have one present, as well.
Q. Sorry, are you suggesting now that you suggested she go with some liaison person --
A. Yes.
Q. -- to the interview?
A. Correct.
Q. And she rejected that proposition?
A. That's right, yes.
Q. Well, why didn't you say "No, you're not going anywhere. I'm just a bit concerned about this getting out of control"?
A. Pamela was a - was an extremely experienced investigator. She dealt with the media many, many, many times throughout her career. It's not unusual for detectives to talk to the media off the record. I had confidence in her ability to handle any media situation.
Q. All right. So she rejects the idea of someone going from the media liaison staff?
A. Yes.
Q. But you thought, and you thought you and she understood, that whatever she was going to say was going to be entirely off the record?
A. Correct.

THE COMMISSIONER: All right. Thank you.
MR GRAY: $Q$. Now, I don't need to pursue this topic any further, at least for the moment, but I just mention that in your statement you deal with this subject --
A. Yes.
Q. -- briefly, at least, at around about paragraph 53?
A. That's right, yes.
Q. And 54 ?
A. Yes.
Q. Now, I wanted to take you to 55 , though, where you say:

Once the State Coroner had carriage of the matter --
that's the Scott Johnson matter --
A. Yes.
Q. --
and following --
what you cal1 "the commencement of the inquest" --
A. Yes.
Q. -- which I understand, on 13 Apri1 2015, in particular, "Strike Force Macnamir inquiries continued under his direction"?
A. Yes.
Q. Now, are you saying to the Special Commission that not only is that the case with this particular one, the Scott Johnson one, but that that's the position generally, once a Coroner steps in?
A. Opens an inquest.
Q. Yes.
A. Generally, yes.
Q. So once the Coroner decides that a death will be the subject of an inquest, thereafter, the investigation is directed by the Coroner and not the police; is that right? A. Yes, you work for the Coroner. It's in the Act, yes.
Q. So that would apply, for example, to the Taradale inquest conducted by Deputy State Coroner Milledge, would it?
A. During the course of the conduct of the inquest, yes.
Q. Once the decision had been taken that there would be such an inquest, thereafter, the direction of the investigation is in the hands of the Coroner; is that right?
A. Yes.
Q. Now, moving a little bit past Apri1 2015 and moving on to August 2015 --
A. Yes.
Q. -- as you perhaps recall, you may not recall the date, but Strike Force Parrabell was instituted in or around August 2015?
A. Yes. That's my understanding, yes.
Q. And you were aware of that at the time, I take it?
A. I - I can't recall specifically. I think it started it started around then but gained momentum later on. I was briefed by Assistant Commissioner - well, Superintendent Crandell at the time, months later.
Q. Just let me unpack that.
A. Yes.
Q. You were briefed by Mr Crandell when?
A. Months later.
Q. Months later than August?
A. Yes, yes.
Q. But without pinning you down, do you mean some time towards the end of that year or --
A. I think it was 2016.
Q. You think it was early 2016 ?
A. Yes.
Q. And his briefing consisted of some summary or outline of what? What did he tell you?
A. I think I've got the date or something here, but that he wanted to conduct a review of the 88 cases or the you know, those cases that had been alluded to in the media as being possible gay hate murders.
Q. And did he tell you or, whether he personally told you or not, did you understand, that it was going to be a paper review?
A. Yes, I understood it was. I recall the meeting I had with him and Chris 01 en was present and I think someone else from his office but I'm not sure. He outlined that it would be a paper review and that he wanted to get an academic review conducted as well.
Q. Yes. And just to clarify - my clarification - when I used the word "paper review" --
A. Yes.
Q. -- I mean, and I assume you also understood it this way, that what Parrabell was going to do was not to reinvestigate any of these cases?
A. That's right, yes.
Q. But to literally review whatever the paper holdings were that the police either had or could gather from the Coroner or whoever?
A. That was my understanding, yes.
Q. And to look at what documents were on the file or could be gathered from whatever happened historically -A. Yes.
Q. -- is that right, back in whenever it was, the 1970s or the 1980s, whenever; correct?
A. Yes.
Q. And from a review of the paper, form a view as to whether the death in question was gay hate related?
A. Yes, that's my understanding.
Q. And you were aware of that format or methodology from an early stage of Parrabell?
A. Yes, yes.
Q. Now, your own view, as we've seen today - I'll go back a step. The Parrabell exercise was going to involve the whole 88 , or 86 as it turned out to be?
A. Yes, that's my understanding, yes.
Q. Which included within it the 30 said to be unsolved?
A. With the exception of the Taradale matters, yes.
Q. At that point?
A. At that point.
Q. Although that later changed.
A. Yes, that's right
Q. But with that small exception, the 88 included the 30 ?
A. Yes, yes.
Q. But with that exception, which I accept.
A. And the Scott Johnson matter, of course. Sorry, my apologies.
Q. And the Scott Johnson matter, which by then was under live investigation?
A. Yes.
Q. Well, I will withdraw that question. The Scott

Johnson matter by then, August 2015, was the subject of the coronial --
A. Correct.
Q. -- inquest proceedings?
A. Yes.
Q. At least at an early stage?
A. Yes, yes.
Q. Now, your own view, as we've seen today, was already formed as to the 30 , wasn't it? In other words, only eight of the 30 were even possibly or probably gay hate?
A. I accepted what was written in that report.
Q. Not on1y accepted but endorsed?
A. Yes.
Q. So your view was only eight of the 30 are gay hate?
A. That's what I thought, yes.
Q. And you knew that that was the view of Mr Lehmann and Ms Young?
A. That's right, yes.
Q. And you knew that their view, which you also endorsed, was that 30 was a gross exaggeration?
A. Yes.
Q. Delete? And you knew that, in their view, one of the 80 - sorry, start again. You knew that, in their view, which you also endorsed as at January 2014, one of the cases in the 30 that was not among the eight was Scott Johnson?
A. Only because it was before the Coroner, so --
Q. No, different. I may have expressed the question bad1y.
A. Right. Okay.
Q. Putting the Coroner aside for one moment, the view
expressed by Mr Lehmann and Ms Young in their issue paper was that there were only eight that could --
A. Yes.
Q. -- perhaps even possibly or probably be gay hate, of the unsolved?
A. Yes.
Q. And Scott Johnson wasn't one of those?
A. That's right. That's what they've --
Q. That was their view?
A. Yes.
Q. Which you endorsed?
A. At that point in time, there was --
Q. That's right?
A. Yes, that's correct.
Q. Now given that that was your view, that of the 30 said to be unsolved, in fact only eight were even possibly or probably gay hate --
A. Mmm-hmm.
Q. -- did you talk to Mr Crandell about that view that you held?
A. I can't recall talking to him about it at all.
Q. You were the Commander Homicide?
A. That's right.
Q. Wouldn't you have wanted Mr Crandell to know your views and the views of homicide?
A. Yes, but I just can't recall the conversation.
Q. It's pretty unlikely that you didn't tell him, isn't it?
A. Absolutely, but I can't recall the conversation, so --
Q. It's in fact highly likely that you did tell him, isn't it?
A. I may well have but I just can't recall it, Mr Gray.
Q. I understand. You don't need to say it again. You've said several times that you can't recall the conversation. A. Yes.
Q. But you're agreeing with me that it's high1y likely that you would have told him --
A. Yes.
Q. - your view and the view of Young and Lehmann?
A. I would have told him the outcome of that report, if he didn't know it already. I'm assuming, but again I don't recall it. I'm sorry for repeating it but $I$ don't recal 1 it.
Q. What is your understanding as to what use he would make or should have made of receiving that view from you?
A. My understanding was it would be irrelevant; he was going to apply or, you know, Parrabell was going to apply their own criteria to reviewing those matters.
Q. I see. I will come to the criteria in a second.
A. Sure.
Q. But just in your statement at paragraph 99 - -
A. Yes.
Q. -- do you see in the second sentence you say:

I otherwise recall that $I$ was fully supportive of the activities of Strike Force Parrabel 1 as I understood them --
A. Yes.
Q. - -
which were to construct a structured assessment of [the 88] ...
et cetera?
A. That's right.
Q. You were fully supportive of Strike Force Parrabe11 looking at the 88 ?
A. Yes.
Q. Including the 30 with that couple of exceptions that you mentioned?
A. Yes, sure.
Q. Would that be because you expected Parrabel 1 to arrive at the same conclusion that you and the Unsolved Homicide Team had already arrived at?
A. No, how could I expect that? They were conducting their own independent reviews. There was an academic component to it, which I had no control over or - or involvement in. I was supportive of it because $I$ thought it would provide answers to the community, on a topic that had had a lot of media attention and it was quite, you know - it was quite important to the community. So I thought it was a good thing to do.
Q. Al1 right. Why not simply release Mr Lehmann's issue paper?
A. Who - to Crande11, or Parrabe11?
Q. To the public, to the community?
A. That's an internal paper. That's not something that occurs at al1.
Q. Why not, though, if it was important that the community know what the police thought?
A. That's something which is not normally - would not normally occur. That was an internal document.
Q. So if the strike force counterfactually had arrived at a result significantly different from the Lehmann/Young/Wi11ing view about the 30 --
A. Yes.
Q. -- you would be happy for the Parrabell results to be made available to the public?
A. We11, that was the purpose of the review.
Q. But not the Lehmann/Young/Willing view?
A. That's right.
Q. Why?
A. Because that was an internal document that was prepared as part of the internal processes inside the Police Force, part of the Strike Force Macnamir investigation. Ultimately it appeared before the Coroner, or those outcomes, I should say.
Q. Well, it wasn't part of Strike Force Macnamir at all.

It was - your issues paper was a response to --
A. Oh, my issues paper, is that the one to Premier and

Cabinet; is that what you are talking to?
Q. Yes.
A. If that, that wasn't a matter for me to release to the public.
Q. No, but the contents of it could have been released at any time you chose in another format not being an issues paper, couldn't it?
A. In relation - like a media interview, for argument's sake?
Q. For argument's sake -- -
A. I could have.
Q. -- any number of means you could have done that?
A. I could have, yes.
Q. Because, as I say, if counterfactually Parrabel1 had arrived at quite a different result about the 30 from your result --
A. Yes.
Q. When I say "yours", I mean Lehmann/Young/you, the pub1ic would have had the Parrabel1 view of the world but not the very different view of the world in your issue paper. How would that assist the public?
A. You are talking about the Premier and Cabinet paper; is that right?
Q. The contents of it?
A. The contents of it.
Q. The assessment of the 30 cases?
A. I don't know how to answer that question, Mr Gray.
Q. Al1 right. I might come back to that in a bit.
A. Sure.
Q. At any rate, surely you said to Mr Crande11, in the course of being fully supportive of Parrabel1--
A. Yep.
Q. -- that you fully expected him to come up with
a number something like eight in respect of the 30 ?
A. Not at al1. I had no idea what the review would come up with.
Q. Now, what did you know, either at a relatively early stage, namely, the first few months of 2016 or, indeed, later, about the methodology of Strike Force Parrabel1? A. Not much, other than that they were using a set of indicators that $I$ believe derived from the United States.
Q. Yes. Now, I wanted to ask you about that. Did you know that they were particularly using the indicators as embedded in a particular form called a Bias Crimes Indicators Form?
A. No.
Q. Did you know that they were using a form at all?
A. No, I didn't know the way that they were conducting the reviews at all.
Q. We11, as you say, the indicators or at least nine out of the 10 of them had been derived from a United States source. That was your understanding?
A. That was my understanding, yes.
Q. Which, on the evidence this Commission has, is correct. But are you saying that you didn't know about the form or the content of the form itself that the Parrabel 1 officers were using?
A. No, no.
Q. Well, so you weren't aware, then, that the form, which they were using in assessing all these 80-plus cases, contained embedded within it as relevant to whether gay-hate bias or the like was involved --
A. Yes.
Q. -- the requirement of beyond reasonable doubt?
A. No, I didn't know.
Q. We11, have you ever seen the form, to this day?
A. I - I might have seen the forms as part of, you know, a11 the various documents I've been given, but no, I have no recollection of it.
Q. We11, let me - I won't take time on this --
A. Sure, show me.
Q. But if Mr Willing could just be briefly shown volume 13. This is just by way of example. Just by way of
example, Mr Willing.
A. Sure.
Q. I'm not suggesting the contents of this particular form - that is, the answers - have any particular significance at least for today.
A. Sure.
Q. But if you could turn to 265C - sorry, 266C
[NPL.0129.0001.0001_0001].
A. Yes.
Q. Now, this is a Bias Crimes Indicators Review Form for a particular deceased person.
A. Yes, yes.
Q. If you could just - I will take you through it, not because I want you to look at the answers but because I want you to look at the questions. Do you follow? First of al1, there is - do you see on the top of the second page there's a heading "1. Differences"?
A. Yes.
Q. And there's various content filled in. And then if you turn over to the fourth page, at the end of that material dealing with differences --
A. Yes.
Q. -- do you see there are then four what are called indicators set out?
A. Yes.
Q. And I will give you a moment to read this. Is it still your best recollection that you have never seen one of these forms before?
A. I think I've seen - these might have been or at least some of them might have been provided in the tender bundle that $I$ was given in preparation for this, but yes, prior to that, no.
Q. A11 right. We11, see there are four indicators?
A. Yes.
Q. One being "Bias Crime"?
A. Mmm -hmm.
Q. The second one "Suspected Bias Crime"; the third one
"Not Bias Crime" --
A. Yes.
Q. -- and the fourth one, "Insufficient Information"?
A. $\quad \mathrm{Mmm}-\mathrm{hmm}$.
Q. You will see that in the "Bias Crime" one, the criterion, which $I$ won't read out --
A. Yes.
Q. -- includes within it - that is, on the question of whether the incident was wholly or partially motivated by bias - the standard of proof, namely, beyond a reasonable doubt. Do you see that?
A. Yes.
Q. Now that, of course, as you know, is the criminal standard?
A. Yes, it is, yes.
Q. Which, as you also know, is a high standard?
A. Yes, it is.
Q. De1iberately. And you will see that the second one, "Suspected Bias Crime", has the same feature?
A. Yes.
Q. The third one doesn't, the "Not Bias Crime".
A. Yes.
Q. And the fourth one, "Insufficient Information", unsurprisingly, also doesn't have it?
A. Yes.
Q. Now, you can see that in that particular one - as

I say, I'm not stressing this one specifically --
A. Yes.
Q. -- the answer has been given "No" each time?
A. Yes - wel1, yes.
Q. For those four on that page?
A. Yes, of course.
Q. You can assume that - see the next page begins "2. Comments, Written Statements, Gestures"?
A. Sorry, where was that?
Q. It's the fifth page, it has a heading right at the top, "2. Comments, Written Statements, Gestures"?
A. Yes, yes.
Q. And then the same four indicators set out in the same text?
A. Yes.
Q. And you can assume that those so-called indicators are set out in that identical text for the whole 10 ?
A. Yes.
Q. Now, what I'm asking you is this: if the Parrabel 1 criteria for evidence of bias crime --
A. Mmm -hmm.
Q. -- required that the presence of bias crime be established beyond reasonable doubt, as the form indicates --
A. Mmm.
Q. -- that would inevitably mean, especially given that this was only a paper review, that very few cases on a paper review would meet that criteria; do you agree?

MR TEDESCHI: I object.
THE COMMISSIONER: What's the objection?
MR TEDESCHI: Two bases, Commissioner. The first is he has said quite clearly that he was not part of this, he wasn't aware of it until it was provided to him as part of the tender bundle.

THE COMMISSIONER: Yes.
MR TEDESCHI: So he is being asked his opinion as an expert witness, in effect, and with respect, it's not a matter for a witness like him to give expert evidence about.

Secondly, the question that my friend has asked is misleading because the first two categories refer to bias crime. The first one, of course, requires beyond reasonable doubt; the second one requires that it cannot be proved beyond a reasonable doubt. So my learned friend's
question isn't properly based on the material that's in the form.

THE COMMISSIONER: I'm going to allow it, Mr Tedeschi, because if he's going to answer one way or the other, whatever he's going to say, I may or may not find it helpful. But I'm not going to stop him asking or, rather, answering the question, so $I$ will allow it.

MR TEDESCHI: If you please.
THE COMMISSIONER: Thank you, yes.
MR GRAY: Commissioner, I will withdraw that question and ask a question applicable simply to the first criterion, "Bias Crime"?

THE WITNESS: Sure, yes.
MR GRAY: Q. That requires, on its face, as we've just read, the Parrabell officer only to say "Yes" if the existence of bias crime - sorry, if the existence of a motivation of bias is established beyond reasonable doubt, doesn't it?
A. Yes.
Q. Now if that was the criterion for evidence of bias crime beyond reasonable doubt that bias was --
A. Yes.
Q. -- visible on the paper record, that would inevitably mean that very few cases on a paper review would meet that criterion, wouldn't it?
A. Yes.
Q. That folder can be returned. The report of Strike Force Parrabell, the actual final report, was eventually released in June 2018. You may or may not know that date? A. Yes, I recall that it was released.
Q. Of course, as we know, you were no longer Commander Homicide, but presumably you were aware of its release and no doubt had at least some interest in it in?
A. Yes, yes.
Q. And in the Parrabell report, do you recall - and I can obviously put it in front of you - the strike force came to
the view that of the 88 , or 86 as it turns out, cases on the list, only 23 were unsolved not 30 ? Do you remember that was their view?
A. Was - I don't recall that, but yes, I accept that, yes.
Q. Just accept that for the moment.
A. Yes.
Q. So in their view the number that were unsolved as far as they assessed things was 23 rather than 30 ?
A. Yes.
Q. Again, if you need me to show you the report, of course, that will be done immediately --
A. Sure.
Q. -- but the Parrabell report said that of the 86 , eight were categorised as evidence of bias crime. Eight.

MR TEDESCHI: I object.
THE COMMISSIONER: What's the objection?
MR TEDESCHI: My friend is referring to the first category. He should put it fairly and say "beyond a reasonable doubt identified as bias crime"?

THE COMMISSIONER: If that's the complete context then I don't think Mr Gray will have any difficulty with that.

MR GRAY: What I'm putting to the witness, perhaps my friend didn't pick this up, was what the report said. The report made no mention of "beyond reasonable doubt" at all, as Mr Tedeschi knows.
Q. So I will ask the question - in fact, I will put the report in front of you, if I may.

THE COMMISSIONER: Which volume is it?
THE WITNESS: Tab 2, Mr Gray?
MR GRAY: Q. I think so, yes. Thank you. Exhibit 1, tab 2 [SCOI.02632_0001]. Have you ever actually seen the report or had it in your hands before?
A. No.
Q. We11, I'11 just orientate you siightly. The first 46 pages, up to and including page 46 , are, in effect, the report of the strike force - that is, of the police? A. Yep.
Q. And then from 47 to the end, the balance is the academic review?
A. Right.
Q. You follow? So I'm, for the moment, asking you about the police section.
A. Yes, okay.
Q. Pages 1 to 46 ?
A. Yep.
Q. Now, after some introductory narrative and explanations of one sort or another, we get to page 23, heading "Findings". Do you see that?
A. Yes.
Q. So they say:

Of the 88 cases - 63 cases ... were solved; 23 cases ... remain unsolved; 2 cases ... were not reviewed.

I don't need to trouble you today with why two were not reviewed.
A. Mmm-hmm.
Q. But at any rate, 23 of the in fact 86 , they say, are unsolved. Then on the next page, 24 , the report says:

Of the 86 cases that were reviewed --
and I'm quoting --
8 cases ... found evidence of bias
crime ...
A. Yes.
Q. Nineteen were suspected bias crime?
A. Yes.
Q. And the remainder, which add up to 59 between them, are either no evidence of bias crime or insufficient information?
A. Yes.
Q. Now, that number, eight, is the same as the number arrived at by Mr Lehmann and Ms Young and yourself back in 2013, isn't it?
A. What's that - just - that was the same number that Lehmann and Young arrived at, endorsed by me.
Q. And endorsed by you, yes.
A. Yes.
Q. Is that just coincidence, do you think?
A. I think so.
Q. Or does it reflect, do you think, some communications or coordination between Parrabe11 and the Unsolved Homicide Team?
A. I don't think so at all.
Q. So if any such coordination occurred, it wasn't anything that you were involved in?
A. No. That's correct.
Q. Did you, by the way, during this period, by which I mean from late 2015 to let's say Apri1 2017 when you left Homicide --
A. Yes.
Q. -- have discussions with Mr Crandel1 about what Parrabel1 was doing, the progress of its work?
A. That was - it was done independently of me. I think I recall a couple of meetings that $I$ had with him. One was the first one where he gave me a briefing about what he wanted to do and the academic review. I believe I attended a meeting with Alex Greenwich at Parliament. I don't think that Mr Crandell was with me. He might have met me there at Parliament but I'm fairly confident I did that by myself with Mr Greenwich. And then there was a meeting at the Homicide Squad with Professor Dalton, I think from South Australia, who was involved in the review.
Q. I won't tarry on that.
A. Sure.
Q. But since you've mentioned it --
A. Yes.
Q. -- what was the gist of the meeting you were involved
with where Dr Dalton was present?
A. It was an introduction to him.
Q. Was there anything of substance discussed?
A. Not that I can recal1.
Q. In your presence?
A. There was a number of people present, yeah.
Q. Sorry?
A. There was a number of people present at the meeting and it was an introduction. I think Mr Crandel 1 had emailed me saying that Dr Dalton or Professor Dalton was in town, did I want to meet him, and I said yes.
Q. Now, during whatever discussions you had with Mr Crande11 in that period, 2015-2017, did you tel 1 him about anything about what Macnamir was doing?
A. I might have in general terms, that, you know, the matter was before the Coroner or something like that, but not in relation to detail. That's not something that occurred with any of the homicide matters. They were kept very much in-house.
Q. And did you tell him anything about what Neiwand was doing?
A. Not that I can recal1.
Q. Now, back to the Parrabel 1 report.
A. Sure.
Q. It goes on to say on page 26 that of the 23 cases that it regarded as remaining unsolved, none of them - zero were categorised as cases where there was evidence found of bias crime. Do you see that?
A. Yes, I do see it.
Q. Five were categorised as suspected bias crimes, and the other 18 were either no evidence of bias crime or insufficient information.
A. Yes.
Q. Now, what I want to suggest to you is that those
obviously very low numbers --
A. Yes.
Q. -- of cases where there was evidence of bias crime found - that is, eight out of 86 in total, and zero out of 23 for the unsolved ones - were almost inevitable given the --
A. The criteria.
Q. -- requirement of beyond reasonable doubt in the form, do you agree?
A. Yes, that makes perfect sense.
Q. Were you surprised at the very low numbers that Parrabell came up with in terms of the number of cases where they said there was evidence of bias crime - that is, eight out of 86 and zero out of 23 ?
A. I can't recall those exact numbers but I knew that they came up with a relatively low number of cases that were suspected of being bias related.

Surprised? It's difficult to answer at the time. I mean, $I$ just don't know the way $I$ felt at the time. I might have - I might have been surprised or I might have sort of - because I didn't know the criteria they were using. I didn't know what was occurring. I didn't know the impact of the academic review as well.
Q. All fair points, I hear those. But let me ask you this, though: did it - that is, "it" being these low numbers --
A. Yes.
Q. -- actually confirm your own view, long held, which was that the claim of 30 unsolved bias crime cases was a gross exaggeration?
A. It's - laid support for it, yes, certainly.
Q. It laid support then, as I think you're saying?
A. Yes.
Q. But you accept now --

MR TEDESCHI: I object.
THE COMMISSIONER: I don't think Mr Gray has finished the question, but what's the objection?

MR TEDESCHI: It was the previous question I'm objecting to, or the line, rather.

THE COMMISSIONER: Yes.
MR TEDESCHI: My learned friend is suggesting to the witness or he is asking the witness was he surprised at the low numbers --

THE COMMISSIONER: Yes.
MR TEDESCHI: -- in view of what he had previously expressed to be possible exaggeration of 30 out of the 88 being gay hate crimes or suspected to be gay hate crimes. But an analysis of the report shows that the finding was that 27 out of the 88 were either beyond a reasonable doubt gay hate crimes or suspected of being gay hate crimes. So to put to him that the numbers confirmed his exaggerated view is inaccurate.

THE COMMISSIONER: A11 right. So you say, do you, as I understand you, that 27 were either definitely gay hate related or suspected gay hate related?

MR TEDESCHI: Yes.
THE COMMISSIONER: All right. Mr Gray can take that on board. He may or may not agree with that, I don't know.

MR GRAY: I'm happy to deal with it now so that we can move on.

THE WITNESS: Sure.
MR GRAY: Q. If we go back to page 24 , I did put the component numbers to you but my friend wants to add a couple of them together. Page 24?
A. Yes.
Q. So of the 86 , says the report, eight found evidence of bias crime, and 19 were categorised as suspected bias crime?
A. Yes.
Q. And my friend is saying, as I understand it, well, if you add 8 and 19 together, you get 27 ?
A. Yes.
Q. So 27 on that calculus are either actually bias crime or suspected bias crime?
A. Yes.
Q. And there is no doubting that that's what you get when you add 8 to 19. I would accept that.
A. I accept that.
Q. But in the light of that recognition, is there any answer that you have given in the last 10 minutes that you feel needs revision or correction?
A. No. I would say that those numbers are consistent broadly consistent with the findings of the Lehmann report, in terms of less than - roughly a third, I guess.
Q. I don't want to go around this mulberry bush too often but the Lehmann/Young document wasn't looking at the 86; it was only looking at the 30 ?
A. No, I'm talking about roughly a third of those cases they looked at.
Q. I will come back to that. But the Lehmann/Young was looking at 30 , they said of the 30 , no more than eight, possibly or probably gay hate?
A. Yes, that's right.
Q. That's right. And you agreed. This one, looking at I'11 go back a step and I'11 do it this way, actually.
A. Sure.
Q. On page 26. Looking at the 23 , which is their substitute for the 30 , do you see - Parrabe11's --
A. Yes, yes.
Q. $\quad-\quad$ revision of 30 down to 23 is unsolved?
A. Yes.
Q. Parrabel1 says zero bias crime, five suspected?
A. Yes.
Q. Now, that's even lower than eight out of 30 , I think.
A. Yes.
Q. And did that come as a surprise to you?
A. Again I can't recall what I - I don't know whether

I've ever been told this detail, to be brutally honest, but I - it doesn't surprise me. It's generally what I - what I thought in terms of a rationale, like a comparison in terms of a broad comparison.
Q. Again, as I say, I don't want to labour this indefinitely, but when you say "generally" it accorded with what you thought, what do you mean by that?
A. We11, rough1y a third of the matters that Lehmann and Young looked at, they came up with a conclusion that it was possible or probable gay hate crime, including Mattaini. This accords with roughly that. I mean, bear in mind that four of the - of the 30 that they couldn't find records for at the time - yeah, that's - that's - that's the way I rationalise it in my mind.
Q. We can all do our arithmetic later and analyse that.
A. Sure.
Q. But that's your evidence?
A. Yes.
Q. Did you become aware, after the Parrabe11 report was published, that many in the LGBTIQ community were dismayed by these conclusions that I've just been taking you to?
A. In general terms over time, yes.
Q. And again, in general terms --
A. Yes.
Q. -- that dismay was one of the factors that led to the Parliamentary Inquiry in 2018 to 2021, you'd agree?
A. Yes.
Q. The Parliamentary Inquiry as no doubt you know recommended a judicial inquiry of some form?
A. Yes.
Q. And again, summarising somewhat, that has led in the long run to the establishment of this Special Commission. You understand that?
A. Yes, of course, yes.
Q. Now, of course, this Special Commission has particular Terms of Reference by which it is bound - I don't know if you know that?
A. Yes.
Q. And you're aware, then, that the Special Commission has been specifically directed by the Terms of Reference to consider, among other things, the report and findings of Strike Force Parrabel1?
A. Yes.
Q. And one aspect of the report is the methodology used by the strike force officers?
A. Yes.
Q. Obviously enough. And another aspect is the methodology used by the academic reviewers?
A. Yes.
Q. Now, I'm just coming to Neiwand and I will use the remaining five minutes, if that's convenient, Commissioner.

THE COMMISSIONER: Yes, certain1y.
MR GRAY: And then we wil1 need to rise for the day.
Q. Now, Neiwand was created in about October 2015?
A. Yes.
Q. We have in the bundle, and $I$ can show it to you, of course, if you need reminding, in volume 1, tab 16, an e@gle.i document, actually - perhaps $I$ had better show it to you. It is volume 1, which the witness needs. Volume 1, tab 16 [SCOI.76962.00001_0001]?
A. Yes.
Q. So it's this document. Perhaps you could help us. What do we call a document like this? What's the name for this sort of document?
A. It's a - similar to the last document of this nature, it's an administrative record on the e@gle.i system. This is a record of what appears to be Terms of Reference that have been accepted on to the system by Lehmann and Penny Brown.
Q. Al1 right. So $I$ don't understand this to be
controversial, but so on 26 October 2015, or at least by then --
A. Yes.
Q. -- Detective Lehmann had been appointed as

Investigation Supervisor for Neiwand?
A. He's accepted that administratively, that's the title that's given to the person that accepts those records on the system as of that date, and then you'11 see, I think, they've been modified by Brown on 7 December ' 15.
Q. We11, accepted by her on 7 December '15. Last -A. Sorry, last modified on 26 October. Sorry, yeah, you're correct.
Q. Yes. So are you saying, notwithstanding how that document reads on its face, it doesn't mean that Lehmann was the investigation supervisor or --
A. I think by virtue of his position as the Investigation Coordinator, he would have had a supervisory role over the top of it, yes. I think he was.
Q. Just keep that there for the moment.
A. Sure.
Q. But just look at your statement at paragraph 74.
A. Yep. That's right.
Q. You there say that you yourself were not directly involved in the establishment of Neiwand but you endorsed it occurring?
A. Yeah; that's correct.
Q. And you then give a little explanation in 75 as to how strike forces are typically set up?
A. Yes, correct.

MR GRAY: Could, just in the last couple of minutes, Mr Willing be shown volume 14, please.
Q. And turn to tab 291 [NPL.0015.0001.0009].
A. Yep.
Q. This is an issue paper, by the look of it, from

Detective Chief Inspector O1en dated 4 May 2016 ?
A. Yes.
Q. And under the heading "Background" he says:

In October 2015, Detective Superintendent
Willing requested the Unsolved Homicide
Team to re-investigate the ...

And I'm summarising, Mattaini, Warren and Russell? A. Yep, that's right.
Q. Well, is that correct?
A. Yes, I did. I've asked them to establish a strike force and do it, but the mechanics of actually administratively doing it wasn't - I didn't do that.
Q. So when you say in paragraph 74, "I was not directly involved in the establishment of Strike Force Neiwand" --
A. Yes.
Q. -- is that really correct?
A. It's - it is.
Q. It seems you were the one who made the request that it be set up?
A. I asked that it be set up and that - but there's an administrative process to establish the strike force. That's what I'm referring to.
Q. So you'd say that you asked for it to be set up?
A. Yes.
Q. But that did not amount to you being involved in the directly involved in its establishment?
A. The actual resourcing of it and Terms of Reference and all those sorts of things, that's right.

MR GRAY: Is that a convenient time?
THE COMMISSIONER: Yes, I will adjourn until 10am in the morning. Thank you.

AT 3.57PM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED
TO TUESDAY, 21 FEBRUARY 2023 AT 10 AM


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