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, 6 March 2023 at 10.00am

(Day 33)

Mr Peter Gray SC   (Senior Counsel Assisting)
Ms Claire Palmer   (Counsel Assisting)
Mr Enzo Camporeale   (Director Legal)
Ms Caitlin Healey-Nash   (Senior Solicitor)
Mr Tom Allchurch   (Senior Solicitor)

Also Present:

Mr Mark Tedeschi KC with Mr Anders Mykkeltvedt and
Ms Amber Richards for NSW Police

1   THE COMMISSIONER: Yes, Mr Gray.

2

3   MR GRAY: Commissioner, the parties are agreed on the
4   terms of some short minutes of order, which I think may
5   have been provided to you, or, if not, I can hand them up.

6

7   THE COMMISSIONER: Thank you.

8

9   MR GRAY: They are in relation to certain non-publication
10   and redaction orders.

11

12   MR TEDESCHI: That is agreed.

13

14   THE COMMISSIONER: Thanks very much, Mr Tedeschi. Yes,
15   very well, I make those orders, thank you.

16

17   MR GRAY: Commissioner, the next and the last witness in
18   this phase of this public hearing is Professor Austin
19   Lovegrove, and I would call Professor Lovegrove.

20

21   THE COMMISSIONER: Thank you.

22

23   MR TEDESCHI: Commissioner, Mr Mykkeltvedt will take this
24   witness.

25

26   THE COMMISSIONER: Thank you. Would you come forward,
27   Professor.

28

29   **<AUSTIN LOVEGROVE, sworn:**   **[10am]**

30

31   **<EXAMINATION BY MR GRAY:**

32

33   MR GRAY: Q. Professor, you are Professor Austin
34   Lovegrove?
35   A. Yes.

36

37   Q. You have provided an expert report to this Special
38   Commission dated 27 January 2023; is that right?
39   A. Correct.

40

41   Q. You are an Associate Professor and Principal Fellow in
42   the Law School of the University of Melbourne?
43   A. I am.

44

45   Q. Having been, among other things, over the years, Head
46   of Criminology of that university for several years in the
47   1980s and again from 2002 to 2005.

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 1      A.    That's correct.
 2
 3      MR GRAY:   Mr Mykkeltvedt will ask you some questions.
 4
 5      THE COMMISSIONER:   Q.   Just before you do, Professor, do
 6      you have your report handy?
 7      A.    No, I was told not to bring it.  It will be provided
 8      for me.
 9
10      MR MYKKELTVEDT:   It is tab 256 [SCOI.82366.00001_0001]
11
12      THE COMMISSIONER:   Q.   Make sure you have it, because it
13      may be that you will asked to refer to portions of it or
14      something. Someone will assist you have it in front of you.
15      A.    Yes.
16
17      THE COMMISSIONER:   Yes, Mr Mykkeltvedt, whenever you're
18      ready, or whenever the Professor is ready perhaps.
19
20      MR MYKKELTVEDT:   Thank you, Commissioner.
21
22      <EXAMINATION BY MR MYKKELTVEDT:
23
24      MR MYKKELTVEDT:   Perhaps at the outset if the Strike Force
25      Parrabell report, which I think is tab 2 [SCOI.02632_0001]
26      of exhibit 1, could be readily available as well.
27
28      THE COMMISSIONER:   All right.
29
30      MR MYKKELTVEDT:   Q.   Professor, I'm going to start by
31      asking you a few questions about the process of the
32      development of a research tool that you have outlined at
33      paragraphs 38 to 50 of your report.  You have in those
34      paragraphs essentially sketched out a rough outline of the
35      process by which a process of research might lead to the
36      development of an implement and, in turn, test the
37      reliability and validity of that instrument in the context
38      of the assessment of hate crime.
39      A.    Yes, I'm just finding it.  Thank you.  Yes.  I have
40      it, thank you.
41
42      Q.    At paragraph 39 you indicate that the first stage in
43      the process is essentially identifying a series of cases
44      that would fall into an LGBTIQ bias criterion group, and in
45      turn a comparator group.
46      A.    Well, two sets of cases - one comprising, one not
47      comprising.
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1
2    Q.   Yes.  And you indicate at paragraph 40 that that
3    exercise would rest on the assistance of a person or
4    persons who, as a consequence of their training or
5    expertise, have the capacity to make such assessments?
6    A.   Yes.
7
8    Q.   And you have referred to such a person as a "Rumpolian
9    nose"?
10   A.   Well, okay, I said they will develop a Rumpolian nose
11   as a result of their experience, but that, of course, is
12   a turn of phrase.  It's just to suggest that, from vast
13   experience, you get a feel for the circumstances of a case
14   and the circumstances of one case will be different from
15   another, even though superficially, there may be
16   similarities.
17
18   Q.   And a person with such experience might be, for
19   example, a judicial officer or an experienced investigator?
20   A.   With the due experience.  Not all judges have
21   experience in crime, of course.
22
23   Q.   Yes.  Now, anti-LGBTIQ bias might manifest in a wide
24   variety of ways?
25   A.   I presume so.
26
27   Q.   You say "I presume so" - is that because you don't
28   have any particular expertise in the identification, for
29   example, of anti-LGBTIQ bias?
30   A.   I have made that clear, that I am not an investigator.
31
32   Q.   Yes.  To be clear --
33   A.   I wasn't brought here to - you know, I wasn't asked to
34   do it because of my experience in investigation.
35
36   Q.   Quite.  I should say that I am not saying that by way
37   of any criticism.
38   A.   Oh, no, no, I didn't take it that way.  I just wanted
39   to make it clear that that's not my expertise.  But
40   I presume it would be, and indeed if you look at
41   illustrations, that's the case.
42
43   Q.   And so having regard to the variety of ways in which
44   anti-LGBTIQ bias might manifest, when it came to formulate
45   the criterion group, you would need a significant number of
46   such cases in order to ensure that the universe of
47   potentially relevant factors might be captured?
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1    A.   Oh, yes.  Again, it depends what we mean by
2    "significant" but broadly speaking you would not take half
3    a dozen, just to give you an example.
4
5    Q.   Yes, you might take a very significantly larger number
6    than half a dozen?
7    A.   Oh, one would start to look at the variation.  I would
8    have thought - oh, I don't know, look, 50 - you don't need
9    a huge number, you don't need thousands, for example, but
10   you'd start to look at the sort of circumstances of a case.
11
12        What needs to be understood is that these are partly
13   experimental, there's no systematic way about it.  If
14   there's no previous research on it, these things
15   inevitably, to do it properly, require preliminary looking
16   at it, and so one can't definitely fix a number because it
17   would not make sense.  No experienced researcher would
18   just, in advance, say, "I want so many cases".  They would
19   start to get the feel of it and say, "Well, I think that's
20   probably enough."
21
22   Q.   So it might be after looking at, say, 50 cases, they
23   say to themselves, "I think I've got a handle"?
24   A.   It might be; it might not.
25
26   Q.   So it might be necessary to continue, for example,
27   beyond 50?
28   A.   It's very hard to answer that without seeing it.
29
30   Q.   Yes, we're talking in abstractions, aren't we?
31   A.   Of course.  That's the problem.  These are specific
32   circumstances.
33
34   Q.   Yes.  And one of the problems is, perhaps, that there
35   isn't a ready-made criterion group of LGBTIQ hate homicides
36   that have been identified or definitively determined as
37   such?
38   A.   No; that's correct.  That's why you are doing it,
39   yeah, yes.
40
41   Q.   And so, in short, in the absence of a ready made
42   sample, you might need a Rumpolian nose or a number of
43   Rumpolian noses to trawl through a group of cases,
44   potentially very large group of cases, to identify which
45   cases might appropriately fall within the criterion group?
46   A.   Well, it would be done in a systematic way.
47   I wouldn't talk about "trawling" through, that's not a word
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1   I would use. It may well be the 88 cases we've got, that
2   sort of thing, that's brought up where there are potential
3   allegations. There may be other cases as well where
4   there'll be doubt but you would start with something like
5   that. That's an example of what you might do; it's not
6   the --
7
8   Q.   Yes. But as part of that first step, take, for
9   example, this 88-case sample, you would need to identify,
10   in forming the criterion group, which of those cases
11   actually fall within the bias group?
12   A.   It is the point of view of the initial group who are
13   going to do it, whether it be judge, senior investigators,
14   to put them into two groups, one where they believe there
15   is bias, one where they think there is not bias.
16
17   Q.   And the judge or senior investigators would, in the
18   process of that sorting exercise, either explicitly or
19   implicitly, make reference to particular factors that he or
20   she perceives to be indicative of a hate crime?
21   A.   They almost certainly would give their reasons, yes.
22   But it's an informal process, not a formal process.
23
24   Q.   Yes. And as part of that informal --
25   A.   Sorry, if I may --
26
27   Q.   Yes.
28   A.   -- it's part of the research effort because it hasn't
29   been established so it's informal; it's not - but how the
30   investigators or - went through the cases, well, that's for
31   them to do because they've got the experience, I haven't.
32
33   Q.   Yes, quite. That process, "informal", as you have
34   described it, would require a series of judgments to be
35   made by the investigators or the judicial officer?
36   A.   Well, they would - judgment with respect to bias or
37   non-bias.
38
39   Q.   Yes, and that judgment, whether it be informed by
40   particular factors or not at that stage, would necessarily
41   be subjective, wouldn't it?
42   A.   Absolutely.
43
44   Q.   And so --
45   A.   But by an objective group - by an experienced group.
46
47   Q.   An experienced group as opposed to an objective group?

A.   Well, there's no - there's no such thing as an
objective group in those circumstances, there can't be.

Q.   Yes, that was what I was seeking to explore with you.
A.   Yes. But if what you are looking for is - there is
presumed objectivity, as there is with a judge or a jury in
a courtroom, in that sense there's objectivity. They're
not biased with respect to their attitude to bias hate
crime, that's objective. But inevitably they will bring
what they think, and it's subjective in that sense. So one
has to be very careful about throwing those terms
"objective" and "subjective" about in these situations
because it can lead to misunderstanding and
misinterpretation.

Q.   Yes, I understand that. But at the outset, then, the
process of research design at stage one would rest
essentially on the subjective opinion of what you've
described as a "non-biased expert"?
A.   Well, the experienced opinion, of someone who didn't
bring something to bear, as you would expect in any
criminal case. But people are people. We can't push these
things. They are not machines. So, of course, they will
bring their own experiences, but - so again, we have to be
very careful about this "subjective" - otherwise it can be
easily interpreted that I'm saying something I'm not.

     So I don't like those particular categories. I like
experienced people who are regarded as fair, or whatever
you - however you like to, you know, define it. I'm doing
this now on the seat of my pants but you'd think more about
it. But that's - I think the idea is pretty clear. We
regard judges as unbiased. Now, they may bring certain -
but they try to develop experience to put that aside if
there are such biases. In many situations, they will
have - they'll be totally disinterested with respect to the
finding, as opposed to uninterested.

Q.   And you're aware that a key tenet of the training that
is applied to investigators is the need to investigate in
an unbiased way?
A.   Well, I would hope so. I was not aware of it but one
would hope so. But in light of your question I felt the
need to make the point.

Q.   I'm grateful. At paragraphs 41 to 46 of your report,
you then outline the stage two of the research design

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 1    process.
 2    A.    Sorry?  Oh, paragraph 41.
 3
 4    Q.    41 to 46, yes.
 5    A.    Yes.
 6
 7    Q.    You indicate there that, by reference to the
 8    essentially the cases identified, the process would involve
 9    an attempt to identify and develop an instrument which you
10    say might be a decision framework, a psychometric scale or,
11    at the lowest level of complexity, a simple checklist?
12    A.    Yes, but that shouldn't be seen as definitive.  It
13    should be seen as illustrative.  I mean, it's just
14    impossible to go through all the possibilities of what you
15    might do but that gives some idea of - from a high level
16    complexity of a decision right up to a very simplistic one,
17    which is nothing more than half a dozen factors.
18
19    Q.    And the identification or the complexity inherent in
20    the identification of those factors is a function of the
21    complexity of the identification of bias crime, which is,
22    of course, a complex phenomenon?
23    A.    It's a complex phenomenon but a lot of instruments are
24    not complex that are designed to do it and therein lies
25    their problem.  For example, we take sentencing guidelines,
26    guidelines in a sentencing decision - and I presume you're
27    aware of what the High Court said about that in regard to
28    intuitive synthesis.
29
30        So they may - what's developed may or may not be
31    complex, and it may be able to be too complex.  It
32    depends - complexity in what respect?  Again, you've got to
33    be very careful with some of these words.
34
35    Q.    Yes.  The factors, whether the factors that are
36    ultimately identified are part of a complex structure or
37    a more straightforward one, they would again be based on
38    the factors that have been identified as potentially
39    relevant by the experienced person that you spoke of in
40    stage one?
41    A.    Sorry, could you ask that question again?  You've lost
42    me a little bit.
43
44    Q.    Yes.  Perhaps I've formulated that slightly clumsily.
45    The formulation of the tool would be done by reference to,
46    for example, factors identified by the experienced person
47    in the development of the criterion group?
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1    A.   Well, they would become the criterion groups by which
2    one develops the instrument to see whether it could
3    differentiate between two - to develop something that you
4    think could differentiate between those two groups.
5
6    Q.   So the factors --
7    A.   But --
8
9    Q.   Go on, sorry.
10   A.   Well, it depends what it is.  It could be factors at
11   the simplest level; it may be some - everything will
12   involve factors.  Crime cases basically have the essence of
13   factors.  It's to what extent what you've got - and this is
14   essentially a guideline that is being developed to guide
15   people at the scene - the guideline will take, it
16   inevitably has to, because that's what these things are
17   based on, it's what you do with the factors that's the big
18   problem.  Do you try and deal with the problem of
19   combination of those factors?  So what sets of factors -
20   and it may not be only just one - would identify hate
21   crime.  That's broadly where you are going to be heading.
22   And it could be done --
23
24   Q.   So do I --
25   A.   Sorry to interrupt.  It could be done by something
26   that is quite complex or something that's very simplistic.
27
28   Q.   Do I understand that one way or the other, what you
29   would be doing is arriving at a framework of one kind or
30   another by which ultimately investigators could assess the
31   various cases using the identified characteristics or
32   factors?
33   A.   They wouldn't look - well, a simple framework,
34   I suppose you could - one might be a framework, one may be
35   just a few factors.  "Framework" does suggest there'd be
36   some sort of perhaps combination of how to regard them but
37   I take your point.  I'm not going to - I'm quibbling a
38   little bit.
39
40   Q.   Depending on the nature of the ultimate tool
41   developed, there may be some trade-offs involved - for
42   example, more complex instruments, I think you say at
43   paragraph 45, might be more valid, but they might be
44   perhaps less reliable as between raters?
45   A.   There will be those sorts of trade-offs but one must
46   also remember that there can't be validity without a degree
47   of reliability.  That will always set the limit.  So you
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Transcript produced by Epiq

1   can't have a very valid - by definition, you can't have
2   a very valid instrument but one of low reliability. You
3   can have one of very high reliability but not validity.
4   They're two different things and there inevitably comes -
5   and, of course, we're starting to get at the heart of the
6   matter, but I won't - I'm talking too much.
7
8   Q.   We'll get there in due course.
9   A.   Yes, sorry.
10
11   Q.   What you're saying there is if there is no concordance
12   at all between raters in the course of applying the tool,
13   the tool is not going to be effectively measuring what it
14   purports to be measuring?
15   A.   That's a fair comment, I think, yes. I would probably
16   not use "concordance", but, yes, I think so.
17
18   Q.   And stage three you set out at paragraph 47, which is
19   essentially the selection of a sample group of persons to
20   conduct or use the tool, for example, junior detectives -
21   it's reasonably straightforward?
22   A.   Yes. Well, it talks when - I mean, the Parrabell,
23   right at the end, I think if memory serves, page 39, calls
24   for what they - well, not their words, but a better -
25   a better instrument to be developed.
26
27   Q.   Yes, quite.
28   A.   And the problems they faced there with it, of course,
29   all - while they don't use the terms, all are ones which
30   undermine reliability and which undermine validity.
31
32   Q.   So there's a recognition there by the Parrabell police
33   report that, in fact, there is a need for a better test?
34   A.   Yes, that their instrument was inadequate, I presume
35   that's what - all I could infer.
36
37   Q.   Yes. At paragraph 48 you outline stage four of the
38   process, which is effectively the presentation of the
39   criterion cases to the sample group of junior detectives,
40   for example, to identify which of those cases involved gay
41   hate?
42   A.   Yes.
43
44   Q.   In order for that process to be as realistic as
45   possible, ideally you would be presenting those junior
46   detectives with actual homicide files?
47   A.   Yes. Well, again, in practice it's something that

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 1    isn't always done but, yes, that would be better.  That
 2    would be the ideal way to do it, yeah.
 3
 4    Q.   In practice you might not be able to do that readily
 5    because of the time and resources that might be involved?
 6    A.   Well, you've got to be very careful.  We're dealing
 7    with very serious stuff here, and so I think the leeway
 8    would be very small.  I think you would almost certainly
 9    want files, and the real thing, I think, for this
10    particular - yes, I've seen where the shortened process is
11    used in other situations, and it always leaves itself very,
12    very open.
13
14    Q.   Yes.  So very, very open, what, to criticism because
15    it is unrealistic?
16    A.   Yeah, that's right, and that will reduce validity.  So
17    you ideally want it applied to what it's going to be
18    applied to in real life, and that is a set of decision
19    frameworks, a set of items, is going to be applied to the -
20    that situation so that's the ideal.
21
22    Q.   And so, for example, if, for resourcing or privacy
23    related considerations, it was only possible to present the
24    tester group, the junior detectives, with a dot point set
25    of factors relating to a hypothetical case, that process
26    would be less realistic and in turn less likely to yield
27    a valid tool?
28    A.   Yes, if it wasn't done properly, yes.
29
30    Q.   And again, the junior detectives then examining those
31    tools would necessarily be involved in a series of
32    judgments as to the application of the criteria to the
33    cases?
34    A.   Well, the criteria, or they may have followed
35    a decision framework, but they would - they would do that,
36    yes.  You would do it - have them do it individually in
37    this circumstance.
38
39    Q.   Necessarily that would involve a degree of -
40    potentially a significant degree of - subjectivity insofar
41    as it would involve the bringing to bear of the mind of the
42    junior detective to the relevant categories and an
43    assessment of whether they apply in the case?
44    A.   It would.
45
46    Q.   Stage five, you refer to an assessment of the
47    "inter-rater reliability" and I think we have explored that
```

1 subject. It's reasonably straightforward. By that you
2 mean essentially the degree of agreement between two
3 investigators who look at the same case?
4 A.   Yes. This is where the reliability and the validity
5 cuts in. We talked about it in terms of the initial
6 development of the criterion groups. It is not really
7 relevant at that point. This is where it becomes relevant
8 because this is the test of the instrument. The other is
9 just the development of your criterion groups. But this is
10 to see how good your instrument is. Would two detectives
11 independently using it get the same result?
12
13   But you could also do it - it doesn't matter for the
14 purposes of this - you could have two groups of detectives.
15 If they use the instrument, do they come up with the same
16 result? It's a matter of separating, whether it be an
17 individual from another individual, or a group, because you
18 may well say, "Well, detectives don't work as individuals,
19 there'll be two or three of them, or whatever", so you
20 could do it that way. But it's, again, whatever your
21 designated investigation unit is, whether it be one or -
22 that across a set of cases, they will come up with the
23 reliability, ideally the same decision.
24
25 Q.   Yes.
26 A.   No instrument is as good as that, incidentally, but
27 some are - some are very, very good, depending on what
28 they're - depending on what they're measuring.
29
30 Q.   And in that sense, if you're assessing the reliability
31 of the tool, it might be a particularly useful exercise to
32 have two different groups of people with different
33 expertise conducting the exercise, for example, a group of
34 investigators, on the one hand, and a group of academics,
35 on the other?
36 A.   No. Certainly not.
37
38 Q.   Why do you say that?
39 A.   Well, the academics have no experience in applying
40 these sort of measures, and they won't do it in practice.
41 This is a practical exercise. So you certainly wouldn't
42 have a group of academics doing it. I could not - I mean,
43 I've got no investigative skills, and I make that clear in
44 the report, in fact. I say that at some point, that
45 I would not take the job of trying to establish criterion
46 groups. I don't have the expertise.
47

1   This is a very practical exercise, so it has to be the
2   people who would use it in real life. It doesn't matter
3   whether the academics agree with them or not, or concerned
4   citizens or - it doesn't matter a hoot.
5
6   Q.   And then, in the final stage, we get to what is the
7   second nub of it, that is, validity, paragraph 50 you
8   outline that process. And that is essentially an
9   assessment of the degree of agreement, as it were, between
10   the detectives or junior detectives conducting the analysis
11   of the cases, and the judgments of the original expert or
12   experts?
13   A.   Correct. Because that's your criterion group.
14
15   Q.   And that is the measured validity of the tool?
16   A.   The way we've set it up in that case, yes.
17
18   Q.   And that measured validity will depend first on the
19   extent to which the characteristics identified as the
20   framework aligned with the original judgments of the
21   experts?
22   A.   As used - as used by the junior detectives. I mean,
23   it's - because that's what being tested. It's an
24   instrument to help. So in using that instrument, it must -
25   does it distinguish as a dispassionate expert group or
26   expert individual? I - it doesn't matter, we're quibbling
27   now.
28
29   Q.   And then, in turn, the test will rely upon the
30   dependence or the extent to which the scores, aligned by
31   the tool, align with the judgment of the original expert?
32   A.   Well, they are not scores, they are categorical
33   assessments of bias and not bias, as opposed to scores.
34
35   Q.   And so, in short, the whole exercise, really, is
36   predicated on the accuracy of the analysis, the subjective
37   analysis, of the experts at the outset of the process?
38   A.   No, "accuracy" is not a word I measure, because
39   "accuracy" refers to something - a measuring instrument.
40   It could relate to, typically, validity, so the accuracy of
41   those against that criterion. But you have to have
42   a criterion. That's what it is about. You can't
43   develop an - you can't develop an instrument without having
44   a standard of what that's measuring.
45
46   See, we have to - a ruler is a standard of
47   a centimetre or a metre, a standard of a metre. That's

1   going to become the standard. There's no other way of
2   doing it. No other way of doing it.
3
4   Q.   Quite.
5   A.   I mean, you can't just think up a set of instruments
6   or a framework that's not assessed against a standard. Now,
7   the standard, from some people's point of view, may not be
8   adequate, but there has to be a standard. It cannot be
9   done without it.
10
11   Q.   The point is, though, that if the original judgments
12   of the expert or experts as to whether the crime should be
13   categorised as a hate crime was not, for one reason or
14   another accurate, and I use that in the lay sense of the
15   term, then the validity of the tool would be significantly
16   undermined?
17   A.   Well, there's no way of assessing the accuracy - it's,
18   if I may say, an irrelevant question. You are setting up
19   an instrument to measure something to help junior
20   detectives or onsite investigators at the coalface. They
21   have to be doing it in respect of something.
22
23   So, with respect, I don't think it's a relevant
24   question. You've got to set up your standard and, for
25   example, gay groups may not like the decision, others may
26   not like it, members of the community may think
27   differently, but you still - just as, in a court,
28   the judge's sentence has to be taken as the standard.
29   That's the way our system operates. We've got no better
30   way of doing it. However it might be flawed and however
31   anything like - that's the way to do it.
32
33   Q.   And that's because we're essentially operating in the
34   world of social sciences where there needs to be
35   a standard, but people may, for one reason or another,
36   disagree as to the validity of that standard?
37   A.   Well, I'm not - I sort of wouldn't put it that way,
38   but I'll try and deal with it, if I may. So I didn't quite
39   get what you're dealing with it, with the social science
40   and --
41
42   Q.   If I can put it this way: we're not, for example,
43   dealing with some kind of scientific test using
44   a microscope to determine the presence of a disease in the
45   bloodstream, and so that's not the standard being applied?
46   A.   Well, be very, very careful with that, because if
47   we've got a simple measuring instrument, we will set up

1   something that's called a "metre", and it will be to
2   various degrees of accuracy. It might be to a thousandth
3   of a metre, it may not be. Your ruler is good only up to
4   about plus or minus a centimetre, if you can read well. So
5   all these things are - there's still the standard and this
6   would be regarded as the scientific way, the behavioural
7   science way, of doing this. But I come back, you've got to
8   agree on a standard, which not everyone may agree on, but
9   you can't develop an instrument without it.
10
11   Q.   Yes.
12   A.   It's as simple as that. I mean, you don't get away
13   with it by saying - if you don't have the instrument, you
14   have to live with what you've got, those - someone of that
15   sort making those decisions. You're seeing, can we do as
16   well as that group? Well, that has to be tested against
17   that group, otherwise, the whole logic, as I see it, that
18   you're following, it doesn't make sense to me.
19
20   Q.   Yes, quite.
21   A.   Because it's just --
22
23   Q.   Having regard to the nature of the instrument, you
24   need to have a standard?
25   A.   Absolutely.
26
27   Q.   And the process that you've outlined --
28   A.   But the setting - sorry, the setting up of an
29   instrument --
30
31   Q.   If I could finish the question?
32   A.   Yes, sorry.
33
34   Q.   And the process that you've outlined is the best way
35   that you consider it could be gone about in a circumstance
36   like this?
37   A.   Yes.
38
39   Q.   That process is a complex one?
40   A.   I wouldn't have thought so - well, a complex - sorry,
41   with what - in respect of what?
42
43   Q.   Well, we've gone through, over the last 20 minutes or
44   so, the process and the detailed steps that would need to
45   be undertaken. It's a process that might take
46   a significant period of time, mightn't it?
47   A.   Oh, it is - I wouldn't have - in some sense, the

```
1      general principles are quite simple, but in the real world,
2      it would be very involved as a practical exercise --
3
4      Q.   Yes, so --
5      A.   -- to do it properly.
6
7      Q.    -- particularly, for example, if the process actually
8      requires the individual junior detectives, or those
9      formulating the factors, to go through potentially very
10     voluminous homicide files, for instance?
11     A.   It could, yes.
12
13     Q.   That process might be very expensive?
14     A.   It might be.  But you've got to say, then, "Do we want
15     an instrument?"  Simple as.
16
17     Q.   Ultimately, it would yield - that process, that
18     complex process, would yield a tool that is predicated on
19     the kind of judgments that we've discussed being made at
20     each level of the process?
21     A.   Well, it's predicated - ultimately it's the two
22     criterion groups or - choose the simple category, and you
23     may have others like "suspected" but we'll stick with two
24     because it makes --
25
26     Q.   Ultimately you end up with an individual end user who
27     is making judgments as to the presence or absence of
28     particular characteristics by which bias might be imputed
29     to that case?
30     A.   Yes.  Well, as I understand it, that was - that's the
31     point of it, yes.
32
33     Q.   Now, you have indicated at paragraph 57 that the
34     characteristics are, in essence, a manifestation of a - or,
35     sorry, I should say facts are interpreted as
36     a manifestation of a causal link, and that hard evidence of
37     the actual causal link between motive and behaviour is
38     unavailable in the case?
39     A.   Well, patently.
40
41     Q.   And so there is a real danger, in the context of the
42     development of a type of tool such as this, of conflating
43     correlation and causation - is essentially what you're
44     saying in those paragraphs or paragraph 57?
45     A.   Yes, well, I'm giving the nature of the cause.  It's
46     not a physical "hit and move", and there will be - if
47     you're imputing the motivation, the motivation of hate, it
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1 will inevitably be an associative cause, absolutely.
2
3 Q. So ultimately, there would be at least a very real
4 prospect that the process that we've outlined in respect of
5 the identification of hate crimes might fail to produce
6 a reliable and valid tool?
7 A. Yes, bearing in mind I didn't say that I think it's
8 a good idea to do it, I was setting out how you do it.
9 They are two very different things.
10
11 Q. Yes, and when you say it might not be a good idea to
12 do it, why do you say that?
13 A. Well, for all the practical reasons, and the problem,
14 from experience, I know in looking at these things, that
15 getting a reliable instrument is not easy. It can be done
16 with - it can be done. Getting a valid one for the
17 purposes of - there are various exercises. I think I say,
18 right in that last paragraph, that not every piece of
19 research that has some sort of tool needs to be reliable or
20 valid; but in this case, it does need, because you're
21 identifying individuals.
22
23 It's a bit like an intelligence test or - I don't know
24 if they still have them now, the old intelligence test.
25 The way it was used was to distinguish - or it could be
26 used - who should go to an academic course and who didn't
27 quite have the brains to do that, so they'd do it. It's
28 very important to be highly reliable and highly valid,
29 because you are making a decision about an individual case,
30 as here.
31
32 In certain research circumstances, that is not
33 a factor, that is not relevant, but it is relevant here.
34 So you might say, is a particular factor associated, is
35 a particular attitude associated with falling into criminal
36 behaviour as opposed to not? All you're saying is that
37 there is some sort of correlation, it may be high, it may
38 be low, but you're not categorising on the basis of it.
39 It's once you come to categorise that we come into all
40 these problems and decide to use an instrument as opposed
41 to not using an instrument.
42
43 Q. One of the reasons the ultimate instrument might fail,
44 as it were, would be because, ultimately, much would be
45 left open, in the context of the examination of bias
46 crimes, to an investigator's personal interpretation as to
47 whether gay hate is involved in a case?

1   A.   No, that wouldn't be correct, to say that.
2
3   Q.   Why not?
4   A.   Well, it wouldn't be correct because it - the whole
5   point of the instrument, if it's going to be worthwhile, is
6   to take what might be the individual officer's bias or
7   inexperience and package it, that he or she is able to
8   follow that test, that instrument, and it leads them to -
9   it leads them to give a valid answer with respect to the
10   way you have set up the criterion group.
11
12   Now, the problem is that in practice, it is going to
13   leave discretion, because almost certainly it's going to
14   have a - I don't know, I can't - validity, you measure
15   correlation from zero to 1, if you take a product moment it
16   doesn't matter, but it's going to be probably not all that
17   high. Yes. And so what that means is, discretion is
18   getting - and reliability, lack of reliability, is -
19   discretion is getting into that, and the instrument is
20   useless.
21
22   Q.   Yes. So this is the type of exercise that even if the
23   tool was at least relatively successful, it might still
24   result in a relatively weak correlation between the results
25   and the ultimate measurable?
26   A.   Yes, and therefore you'd say it's not worth having.
27   Because there would be no point to it because it hasn't
28   taken you anywhere.
29
30   Q.   So you have outlined in detail your experience over
31   a long period of time in the development of, for example,
32   research methods and the assessment of research methods in
33   the context of criminology, and the teaching undertakings
34   that you have engaged in?
35   A.   Yes, in behavioural science, with the graduate -
36   undergraduate and graduate in psychology, now called
37   behavioural science, and was a - it took research methods
38   very seriously. I did the academic, not the clinical side,
39   I should hasten to add. It was common in the first couple
40   of years, but by Honours was a very different course. So
41   it emphasised both the teaching of research methods but
42   also, in all subjects, as well as special research
43   subjects, the application of those.
44
45   The idea of reliability and validity comes in, you
46   know, right at the beginning, and the basic structures of
47   research design. What comes on with later experience is

```
 1      more detailed statistical designs, because - so you've got
 2      to be able to analyse your research design.  But the basic
 3      principles are taught quite early and then the course,
 4      going through inevitably in particular subjects, whether it
 5      be human development or whatever, you're presented with
 6      research studies, which in seminars you have to analyse,
 7      and then - well, it's mainly in seminars, that side of it.
 8
 9           And then, of course, in third year - I shouldn't say
10      "of course", I'm sorry.  In third year you started off with
11      a minor thesis and in your fourth year had a major thesis,
12      and then you go on in Masters by research.  Mine was by a
13      hundred per cent research, although there was a method
14      seminar which was not assessed, and a doctorate is pure
15      research, under guidance, of course, and you learn these
16      various things as you go.
17
18      Q.   I think you outline in your report that you hadn't
19      been involved in the assessment of bias crimes by
20      individuals?
21      A.   No.
22
23      Q.   You haven't conducted research into hate crimes
24      generally?
25      A.   No, not at all.  But I didn't find that a hindrance
26      here simply because we're dealing with basic research
27      principles of a test.
28
29      Q.   Yes.  And in any event, it's not surprising that you
30      haven't had involvement in developing, for example, a tool
31      seeking to address or assess bias crime in circumstances
32      where that's a very nascent field in Australia?
33      A.   I think it probably is a nascent field, yes.
34      Certainly the police could not seem to turn to anything.
35      But again, if I might say, there are basic principles of
36      test development, and my Masters was about developing
37      measures of personality and offending and non-offending.
38      But again, you're taught all these things and go through
39      them.
40
41      Q.   Yes.  But you're aware, are you, from your involvement
42      in this case, that there was no such reliable and valid
43      independently verified - "verified" is perhaps not the
44      right word - tool as at the time of Strike Force Parrabell?
45      A.   Well, there didn't appear to be and I could only go
46      off what was in the report and that was that nothing was
47      mentioned.
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1
2   Q.   And you are aware that, to this day, no such tool
3   exists?
4   A.   Not to my knowledge but I've only based it on the
5   report and - oh, sorry, no such tool exists?
6
7   Q.   Yes. Well, in the context of bias crimes?
8   A.   Well, there's the BCIF. That exists.
9
10   Q.   That's quite right.
11   A.   Yes.
12
13   Q.   But no tool that has been subject to the kind of
14   process that we've discussed this morning --
15   A.   Not to my knowledge.
16
17   Q.   -- and you discuss between paragraphs 38 to 50?
18   A.   Not to my knowledge but I just would have expected in
19   the report that it be - such a report be mentioned.
20   Perhaps it was - there is and the police didn't know of it,
21   but again, I don't think - de Lint and Dalton don't make
22   any mention and they had a rather long list of references,
23   as I recall.
24
25   Q.   The Inquiry has received some evidence as to the
26   development recently of some indicators or prompts for the
27   assessment of heterosexist or cissexist violence that have
28   been generated - this is the research of Vergani et al -
29   that have been researched or generated from discussions
30   with community members over the last 18 months or so. But
31   those indicators have not yet been developed into a tool
32   for use in the way that we've been discussing this morning.
33   I will ask you to assume that.
34   A.   Sorry, what's the question?
35
36   Q.   I'd just ask you to assume that.
37   A.   Yes. Sorry.
38
39   Q.   Would you agree that one of the difficulties that
40   might be faced in the context of assessing those kinds of
41   indicators is that there may be very few hate crimes that
42   in fact come to the attention of the courts or police in
43   the ultimate outcome?
44   A.   Could be. I don't know.
45
46   Q.   Could I take you now to a different topic, and that is
47   you've made some observations at paragraph 87 and following

1   of your report in relation to the differing standards of
2   proof.
3   A.   Oh, yes. I've found it, thank you.
4
5   Q.   At paragraph 88 you make some observations in relation
6   to the "beyond reasonable doubt" standard, and you say in
7   the second sentence of that paragraph - do you have that:
8
9   *This standard is not easy to interpret amid*
10   *a messy evidentiary scene. It is a fine*
11   *judgment, one learned by long experience in*
12   *putting criminal circumstances before*
13   *courts.*
14
15 A.   Yes.
16
17 Q.   You are aware that juries are required on a daily
18 basis to undertake precisely that exercise, essentially,
19 the examination of whether a particular offence is proved
20 beyond reasonable doubt?
21 A.   With directions from the judge as to what are the
22 relevant matters for them to consider, yes.
23
24 Q.   Well, you are aware that in almost all circumstances,
25 judges are directed quite specifically that no attempt
26 should be made --
27 A.   Oh, of course.
28
29 Q.   -- to explain or embellish the "beyond reasonable
30 doubt" standard?
31 A.   I wasn't implying it - yeah, I wasn't implying it when
32 I said before, but they - they are taught what are the
33 critical - they do say what are the critical matters that
34 are up for the jury to decide, without giving them any
35 direction on how they decide them, of course.
36
37 Q.   Yes, but those critical matters might be, for example,
38 directions in relation to the elements of the offence --
39 A.   Well, yes. Yes.
40
41 Q.   -- as opposed to the application of the standard?
42 A.   Yes.
43
44 Q.   And you're aware that a central feature of the role of
45 a detective is assessing whether there exists sufficient
46 evidence to proceed to charge a person?
47 A.   Yes, I am.

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1
2   Q.   And again, the "beyond reasonable doubt" standard
3   would be a --
4   A.   Sorry, no, I - I'm terribly sorry, I'm interrupting,
5   but I think you have to break that question down into
6   several components. So the prosecutor plays a role in
7   deciding whether there's enough there; there'll be senior
8   detectives and there'll be junior detectives, yes.
9
10   Q.   Yes. But at each stage of that process the relevant
11   person might be involved in the assessment of the "beyond
12   reasonable doubt" standard, to their own mind? It might be
13   subject to review?
14   A.   Yes - well, presumably, whether field officers think
15   quite in those terms I don't know. So I can't say yes to
16   that. But I certainly know the higher level would.
17
18   Q.   Certainly at the level of a detective, analysing their
19   case for the purposes of determining whether a charge ought
20   be laid?
21   A.   I'm not sure about that. I don't know enough about
22   the investigative process. All I can say, once it gets to
23   the prosecution, putting it before a jury, it will be.
24
25   Q.   And you're aware also that the "beyond reasonable
26   doubt" standard is a central feature of the sentencing
27   regime?
28   A.   Yes.
29
30   Q.   By that I mean that in order to determine that
31   a particular feature of a case is an aggravating feature,
32   a judge needs to be satisfied beyond reasonable doubt of
33   the presence of that aggravating factor?
34   A.   Yes. Well, that's my understanding at this stage.
35   I'm perhaps a bit behind in my readings. There's been such
36   legislative development, so - it was a different standard
37   for mitigation, I think, it used to be balance of
38   probabilities, as I recall.
39
40   Q.   Yes. But by way of aggravation --
41   A.   Yes.
42
43   Q.   -- the standard is "beyond reasonable doubt"? That
44   being so it's, I suggest to you, not inappropriate for
45   "beyond reasonable doubt" to be employed as a touchstone in
46   respect of some of the categories applied in this case?
47   A.   Well, my judgment - I'm not being dogmatic about it

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1   but my judgment would be you would make that the case with
2   the final decision, but not with the various factors,
3   because they're just considered individually, and the whole
4   thing has to be considered in the circumstances of the
5   case, and I certainly would have thought that you risk -
6   making it "beyond reasonable doubt" with respect to each of
7   the factors, that you will miss what might be true
8   positives.

10   But again, it's not easy to answer that question,
11   because we don't know how that information was combined,
12   and without knowing how the various elements were combined,
13   it's very hard to answer that. But in principle, you would
14   say you would have obviously some evidence for it, but you
15   would bring the "beyond reasonable doubt" in at the end.
16   And then, of course, the "Suspected" category is something,
17   which I think was a very good category in this case,
18   incidentally, and I think - and the academics don't use it,
19   but it's all tied up with --

21   Q.   So the "Suspected" category essentially required the
22   investigators to consider or to find that there was
23   evidence or - I might show it to you.
24   A.   Yes, please.

26   Q.   If you look at - I think you've got the Strike Force
27   Parrabell report there, in the second folder. It's tab 2
28   [SCOI.02632_0001] of exhibit 1.
29   A.   Oh.

31   Q.   If you could turn to the bottom of page 68.
32   A.   Bear with me, please. Oh, 68. I've got 68, sorry..

34   Q.   You'll see at the bottom some bold text that reads
35   "Suspected Bias Crime"?
36   A.   Yes.

38   Q.   That reads:

40   *evidence/information exists that the*
41   *incident may have been motivated by bias*
42   *but the incident cannot be proved beyond*
43   *reasonable a doubt that it was either*
44   *wholly or partially motivated by bias and*
45   *constitutes a criminal offence.*

47   So it's plain that that second category would capture

1   a potentially much broader range of cases?
2   A.   Indeed.
3
4   Q.   And you say that that, you thought, was a good
5   standard?
6   A.   I think it was commendable to have it in the
7   circumstances, yes. But I'm not sure how that relates to
8   the - your former question, but - not sure what I'm saying
9   yes to in that sense. Sorry.
10
11   Q.   I simply wanted to take you to that standard and get
12   your thoughts on it, ultimately.
13   A.   Yes.
14
15   Q.   So I think we've perhaps skipped the stage of the
16   intermediate question.
17   A.   Sorry, the point was that I thought it was not wise to
18   have "beyond reasonable doubt" for each of the bias
19   indicators.
20
21   Q.   Yes.
22   A.   That's all. But it's very hard to answer without
23   knowing how they were combining that information.
24
25   Q.   Yes. So you had access in preparing this report to
26   a copy of the Parrabell report?
27   A.   Indeed.
28
29   Q.   But you didn't have access to, for example,
30   discussions with the relevant investigators?
31   A.   No.
32
33   Q.   To explore with them how, in practice, they employed
34   this tool?
35   A.   I didn't have that access.
36
37   Q.   And you didn't yourself review the BCIF forms that
38   they had completed?
39   A.   No. That wasn't given to me as part of the brief.
40
41   Q.   And you didn't have any detailed information as to
42   a review process that might have been undertaken between
43   more junior and more senior officers within Strike Force
44   Parrabell?
45   A.   Well, it sets it out I think, if memory serves, the
46   Coordinating Instructions. I think, as I recall, it's a
47   little bit contradictory. It's certainly not clear. But

 1   there was patently a review process, I think the case
 2   officers actually filled in the forms. Then I think
 3   fortnightly they reviewed what was there and then they had
 4   a final review. Whether the review teams, the intermediate
 5   review teams, were the same, I don't know. It's not clear
 6   because they talk about "the review team" in one instance
 7   and "a review team" in another instance. How do you work
 8   that out? You can't. But I knew that their reviews went
 9   on.
10
11   Q.   And if it was the case that as a consequence of those
12   reviews there would be a holistic judgment reached in
13   relation to each case by reference to those criteria or
14   categories set out, for example, on the screen in front of
15   you, it would be the case that suspected bias in particular
16   would be an appropriate standard?
17   A.   I would have thought so. I think it certainly is good
18   there's the option. Whether they used it correctly, I'm
19   not - it's not for me to say. I wasn't there to assess it.
20   But we just don't know what went on in that review process.
21   And in any case, we just don't know how they combined that
22   information and those 10 indicators.
23
24   Q.   You are saying, when you say "we don't know", you say
25   that because you're basing that determination on the
26   contents of the report itself?
27   A.   Of course. Of course. There's nothing else I've got
28   to go on.
29
30   Q.   And what is expressed in the report?
31   A.   Absolutely.
32
33   Q.   Could I take you to another topic now. If you look at
34   paragraph 130 to 132 of your report?
35   A.   Are we going back to the --
36
37   Q.   Sorry, of your report, yes. The other document. So
38   tab 256. [SCOI.82366.00001_0001]?
39   A.   Please bear with me. It's a confined space.
40
41   Q.   Yes, it's not exactly a salubrious surrounds.
42   A.   Oh, we'll get there. I'm sorry at what - 130?
43
44   Q.   Paragraph 130, which is on page 35.
45   A.   I'm almost there, sorry, one more page to go.
46
47   Q.   At paragraphs 130 to 132 you set out some

1   consideration of the observations of the academics by
2   reference to the concept of anti-paedophile bias. Now, if
3   we set aside for a moment the prudence or otherwise of
4   having this category at all, as concerns the potential for
5   an abhorrent conflation between paedophilia and
6   homosexuality generally, I just want to ask you about the
7   category itself in practical terms.
8   A.   Sorry, the paedophilia?
9

10   Q.   Yes. And so at paragraphs 130 to 132 you, in short,
11   make some criticisms that suggest, among other things, that
12   the inclusion of the category might result in
13   under-reporting, or I think you used the term
14   "under-inclusion" of anti-gay bias?
15   A.   Yes, it would have been under-inclusion.
16

17   Q.   In doing so, you proceeded on the assumption that
18   anti-paedophile bias was regarded by the academics as being
19   separate and distinct from anti-gay bias; is that right?
20   A.   Well, it has to be - sorry, just would you mind asking
21   that question again, please? I'm sorry, I didn't --
22

23   Q.   Yes. Well, if you look at --
24   A.   I must --
25

26   Q.   -- perhaps I'll do it by reference to your report. If
27   you look at the second sentence in paragraph 130?
28   A.   130?
29

30   Q.   You indicate at the start of that sentence:
31

32   *This leads one to infer that where both*
33   *anti-gay and anti-paedophile hatred were at*
34   *play, there was a prevailing team*
35   *disposition to preference the*
36   *classification of paedophile over gay.*
37

38   A.   Yes, I see that.
39

40   Q.   Can I ask that you be given the Strike Force Parrabell
41   report [SCOI.02632_0001] and perhaps leave your report open
42   at that page?
43   A.   Yes.
44

45   Q.   Can I ask you to open that to page 50?
46   A.   Page 50?
47

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1     Q.   Yes.  Then in the third paragraph down --
2     A.   From memory, we're in the academic report, aren't
3     we --
4
5     Q.   Yes.
6     A.   -- because I think it starts at about page 48 or
7     something like that.
8
9     Q.   Yes, we're in the academic report.  So if you look at
10    the third paragraph in the middle of that page, and then in
11    the second sentence where it says:
12
13         In 12 of the 29 cases in which we found
14         a motivation of a categorical bias, the
15         offenders expressed an animus towards gay
16         paedophiles, leaving 17 cases where we had
17         confidence that a generic anti-gay bias
18         attended the crime.
19
20    So there's a distinction there between an animus towards
21    paedophiles that are explicitly described as "gay
22    paedophiles" and a generic anti-gay bias.  Do you see that?
23    A.   Yes.
24
25    Q.   That suggests, does it not, that the academics were
26    regarding both groups of bias as being anti-gay bias?
27    A.   No, I don't think that's correct.  I might say,
28    I thought - this is part of the summary, I think, isn't it?
29
30    Q.   Yes.
31    A.   Yes.  Well, I must say I found the summary rather
32    confusing and not necessarily matching up with what was in
33    the report.  But I don't - I don't see your point there.
34
35    Q.   Well, if we look at the report itself, if you go to
36    page 84, the second paragraph of that page under the
37    heading "Anti-gay versus anti-paedophile bias", then if you
38    look at the last two sentences in that paragraph:
39
40         In some cases it also appeared as though
41         a strong animus against homosexual
42         paedophiles may have developed from
43         historical sexual abuse.  It is not clear
44         to us that the bias expressed in these
45         cases was motivated against homosexuality
46         per se as against homosexual men that were
47         assumed, rightly or wrongly, to be
```

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1   *paedophiles.*

2

3   A.   Yes.

4

5   Q.   Again, there is, I suggest, apparent on a reading of
6   those sentences, a clear indication that anti-paedophile
7   bias was regarded as a form of anti-gay bias?
8   A.   Well, I think as I read it in - I will have to re-read
9   those again, but just giving the answer, there's - they're
10   trying to distinguish between those two things, are they
11   not? I must admit, they're not at all clear. They have
12   various terms, and then "anti-gay paedophile" - they move
13   that hyphen around and it can get a bit confusing. But
14   I think the whole point of the category, is it not, is to
15   pick out those where there's anti-paedophile but not
16   anti-gay. That's my understanding of what they were trying
17   to get at. But we may be at odds.

18

19   Q.   The final line of that paragraph makes it clear, does
20   it not, that what we're talking about is bias against
21   homosexual men that are assumed, rightly or wrongly, to be
22   paedophiles?
23   A.   It could be interpreted that way. I'd say only it
24   could be interpreted. Obviously - well, you'll take it
25   further if you want to.

26

27   Q.   Yes. And then if you look at the first line of the
28   next page, page 85?
29   A.   85, sorry?

30

31   Q.   Yes.
32   A.   I'm on 84. I'm sorry.

33

34   Q.   So the first line of the next page, there's
35   a reference to "anti-paedophile animus toward homosexually
36   attracted paedophiles", and then it says:

37

38   *It helps if one thinks of anti-paedophile*
39   *animus as sitting on a continuum of gay*
40   *hate bias.*

41

42   You would accept, having regard to that, that the
43   "Anti-paedophile" category is clearly being regarded as
44   a form of anti-gay bias?
45   A.   Well, I think they're trying to distinguish between
46   the two. They're certainly saying it can be conflated, and
47   my understanding is if it is conflated, then the fact

1   that - there's that gay element, which they're against.
2   But that's what I would --
3
4   Q.   Well, if they're making it very clear that the form of
5   anti-paedophile bias is an anti-homosexual paedophile bias,
6   does that not suggest that they are regarding
7   anti-paedophile bias as a form of anti-gay bias?
8   A.   Well, my understanding was - and it's not clear,
9   I don't think - that that was the whole point of
10   distinguishing those categories. I'm not sure why you
11   would distinguish those categories if that were the case,
12   except - and it seems if you go at another point in the
13   report, it really goes back to a policy matter, that they
14   wanted to distinguish those that are against paedophiles
15   but not against gays, on policy grounds, because they
16   wanted to avoid any misapprehension that all gays are
17   paedophiles, and that's why they went about that.
18
19   And it's in that context that I would interpret these
20   statements. It's like the "associative" - "proactive"/
21   "associative" - again, we go back to it on policy grounds,
22   they're going to make that distinction. It has nothing to
23   do with whether it's gay bias or not. These are, you know,
24   flummery, in my opinion. Flummery.
25
26   Q.   Well, I would ask you to assume for present purposes,
27   then, that Professor de Lint has given evidence before the
28   Commissioner that the anti-paedophile category was a subset
29   of anti-gay bias more broadly, or was intended as such.
30   A.   Well, that's not in his report.
31
32   Q.   Perhaps not in those terms --
33   A.   He may have said that but I can only go on what's in
34   his report.
35
36   Q.   In those terms, yes, it's not in the report, but
37   I have taken you through a number of indicators that are
38   consistent with such a construction of his report; would
39   you agree?
40   A.   No, I think - I can't agree with that.
41
42   Q.   For present purposes, then, I'd ask you simply to
43   assume that the view of the academics was that the anti-gay
44   bias was a subset - or anti-paedophile bias was a subset of
45   anti-gay bias, just for the purposes of the next question.
46   If you take that as read, you have an overall finding that
47   some 29 of the 85 cases considered by the academics

```
 1    involved some kind of anti-gay bias?
 2    A.   I think you would have to look at the way they have
 3    interpreted that in respect of their - the academic article
 4    they wrote on moral panic.  And I would have to --
 5
 6    Q.   I'm simply asking you to assume for the purposes of
 7    this question --
 8    A.   Sorry.
 9
10    Q.   -- that the academics considered - for the purposes of
11    this question that the academics considered anti-paedophile
12    bias to be a form of anti-gay bias, a subset of that
13    category.  If you make that assumption, it's the case,
14    isn't it, that they have arrived at a figure of 29 cases --
15    A.   I would have to look at --
16
17    Q.   -- involving --
18    A.   I don't have --
19
20    Q.   If you could be shown - you have got the report there
21    in front of you, do you?  Page 91?
22    A.   Page 91?
23
24    Q.   Sorry, 92, I should say, the top of 92.
25    A.   Now, sorry, would you repeat the question now I've got
26    the table?  I'm sorry.
27
28    Q.   Yes.  So if you make the assumption that I've put to
29    you, and that is, that the academics considered
30    anti-paedophile bias to be a subset of anti-gay bias,
31    having made that assumption, it follows, does it not, that
32    there are some 27 - 29 cases, I should say, in the broader
33    umbrella of anti-gay bias?
34    A.   If you make that assumption.
35
36    Q.   Yes.  And then there are a further 33 cases in the
37    "Insufficient Information" category - that's the third
38    column?
39    A.   Yes.
40
41    Q.   I'll just perhaps ask you to turn back a little bit to
42    page 80 of the report.
43    A.   Sorry, page 80?
44
45    Q.   Yes.  Sorry to jump around a little bit.
46    A.   No, no, no.  Perhaps just bear with me while I muddle
47    through the pages.
```

```
1
2      Q.    The second paragraph of that page?
3      A.    "Both teams"?
4
5      Q.    Yes.  So that sentence reads:
6
7            Both teams coded a large number of cases as
8            Insufficient Information.
9
10     Then the second sentence reads:
11
12            This coding does not discount that gay bias
13            may have been a factor in a particular
14            death.
15
16     That sentence is seeking to make it clear, is it not, that
17     "Insufficient Information" category cases may in fact be
18     bias cases?
19     A.    Absolutely.
20
21     Q.    The fact that there's a significant number of cases in
22     both the police and the academic review that are
23     categorised as "Insufficient Information" is suggestive
24     that there's a reluctance on the part of the reviewers to
25     represent some kind of certainty where, in fact, none
26     exists; would you agree with that?
27     A.    Well, clearly.  I take that to be an obvious meaning
28     of "Insufficient" - "Suspected", certainly to the police,
29     and I think the academics - well, the academics do say at
30     some point "Suspected" is tied up with - they have included
31     their "Suspected" in "Insufficient Information", which
32     I think is unfortunate but it's not a major issue.
33
34     Q.    Just to deal with that, I would suggest that the
35     Inquiry has received some evidence from Professor de Lint
36     to indicate that the two categories of anti-gay bias
37     involved any cases where there was some evidence of bias,
38     and so the "Insufficient Information" categories were, in
39     truth, "Insufficient Information" categories?
40     A.    Well, I think somewhere in his report he does - I'd
41     have to have time to find it - he does say that they put
42     "Insufficient" - but I can't go on the evidence before this
43     Commission; I can only go on the report, obviously.
44
45     Q.    Yes.
46     A.    And I'm sure at some point he says, "We put the
47     'Insufficient'" - or they say, "We put the 'Insufficient
```

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1   Information" into the" - sorry, the "Suspected" into the
2   "Insufficient Information", which you can see how - why
3   they might have done it.
4
5   Q.   The report will speak for itself in that respect, as
6   will the evidence. But either way, you have in the
7   academics' report some 29 cases of "Anti-gay Bias" with 33
8   "Insufficient Information" cases. So you have a total of
9   62 cases where bias has not been ruled out.
10   A.   Clearly.
11
12   Q.   Do you have your report there? Can I ask you to take
13   up paragraph 126. That's on page 33.
14   A.   Sorry, I'm getting paragraphs and page numbers mixed.
15   On page 33.
16
17   Q.   Yes. Leave the Parrabell report there for the moment.
18   A.   Page 33?
19
20   Q.   Yes, in paragraph 126 --
21   A.   Yep.
22
23   Q.   -- in the middle of that paragraph, there is
24   a sentence reading:
25
26   *Problematic reliability among members of*
27   *the research team was inevitable; so it*
28   *proved to be.*
29
30   A.   Sorry, I was just trying to get that out of the way.
31   I apologise, if you would take me back to it.
32
33   Q.   Yes, the middle of that paragraph, paragraph 126?
34   A.   Yes.
35
36   Q.   You'll see a sentence that reads:
37
38   *Problematic reliability among members of*
39   *the research team was inevitable; so it*
40   *proved to be.*
41
42   And it says:
43
44   *Though no numerical measure was made, we*
45   *can discern this from their accounting of*
46   *the coding process.*
47

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```
 1      Now, I'd ask you to take up, having reviewed that sentence
 2      again, and that paragraph - have you seen that now?
 3      A.   Yes.
 4
 5      Q.   I'd ask you to take up page 90 of the Strike Force
 6      Parrabell report.
 7      A.   In the second folder?
 8
 9      Q.   Yes, yes.
10      A.   Page 90.
11
12      Q.   Under the heading "Concordance coding", there's
13      a paragraph there?
14      A.   Yes.
15
16      Q.   The last two sentences of that paragraph, I'd ask you
17      to review those.
18      A.   Is that starting "The subsequent"?
19
20      Q.   Yes.  So it reads:
21
22           The subsequent independent coding on the
23           revised instrument also required
24           a concordance consultation that resulted in
25           the final scores.
26
27   It says:
28
29           We had some initial disagreements regarding
30           three or four of the cases, however,
31           further discussion of these cases resulted
32           in a consensus.
33
34   If the initial disagreements related to only three or four
35   of the cases, that suggests quite a high degree of
36   inter-rater reliability, doesn't it?
37      A.   Not at all.
38
39      Q.   But 81 out of 85 cases --
40      A.   Not at all.
41
42      Q.    -- if there's an agreement in relation to 81 out of
43      85 cases, you would agree that that is --
44      A.   No, no, not at all.
45
46      Q.    -- a high degree of inter-rater reliability?
47      A.   Not at all.
```

1
2   Q.   Why not?
3   A.   Because they've had so much discussion about it. Your
4   initial measure of likely - likely - inter-rater
5   reliability - and don't forget, they're a team, they've
6   already talked to the police, they've already discussed
7   this, and then they use their categories, scales and
8   definitions and - and come up with that, still a lot of
9   disagreement, they no doubt discussed it, they then come
10   back and then they've got, I think, in the end, four cases,
11   they may have skipped a level there, but the point of it
12   is that tells me that it's very unreliable.
13
14   It may mean that they had internal consistency in the
15   end, but we do not know whether senior members trumped
16   junior members, and there was clearly a junior member and
17   possibly - at least one would have been a junior. Now, I'm
18   not saying - I'm not saying they did trump them, but in a
19   meeting like that there's definitely a different level of
20   status.
21
22   But it mustn't be confused - concordance and
23   inter-rater reliability. The inter-rater reliability would
24   be if another team, quite independently, without discussing
25   with the police, without discussing with each other,
26   without having a go at revising the instrument - if they
27   agreed. That's your test of inter-rater reliability. This
28   is a test of internal consistency, and --
29
30   Q.   If all you have --
31   A.   -- a fairly weak test, I might say, because you've got
32   differences of seniority.
33
34   Q.   Well, the indication we have, as you say, there's not
35   much by way of numerical consideration of the possible
36   differences, but what we do have here is a sentence saying
37   that there were some initial disagreements. That suggests
38   that there were disagreements at the outset, at at least,
39   that stage of the process.
40
41   (Mr Gray and Mr Mykkeltvedt confer)
42
43   THE WITNESS: Well, they say there --
44
45   THE COMMISSIONER: Professor, sorry --
46
47   THE WITNESS: Sorry.

1
2   MR MYKKELTVEDT: I think my learned friend has made a fair
3   point, and that is that the whole paragraph should be read
4   together.
5
6   Q.   Of course, as you have indicated, there was a process
7   whereby they looked at the cases and a conclusion was
8   reached that they needed to develop another framework by
9   which to assess them --
10   A.   Yes.
11
12   Q.   -- and then it appears that there was an initial
13   scoring that led to the - so that's the - sorry, the middle
14   sentence is:
15
16   *Our initial scoring led to the discussion*
17   *of the nature of the bias we were coding*
18   *and to a decision to clearly*
19   *distinguish ...*
20
21   The two categories in relation to anti-gay and
22   anti-paedophile. And then there is a subsequent process
23   which says that - that suggests, does it not, that the
24   academics then, subsequent to developing those categories,
25   conducted their own coding?
26   A.   Yes. I'm not sure where you're leading.
27
28   Q.   And then it says, subsequent to the independent
29   coding, they had some initial disagreements regarding three
30   or four cases?
31   A.   But that's not independent - that's not what I call
32   "independent coding".
33
34   Q.   And why does --
35   A.   It's coding as a part of a team, in that they discuss
36   it, then they go away and they independently code it and
37   then they come back to see whatever they've got. That's
38   not inter-rater reliability; it's concordance. It's an
39   attempt to develop consistency within the group and they
40   may have done that very well or they may not have, but it
41   is not inter-rater reliability of that instrument.
42
43   Q.   But if the only indication in numerical terms as to
44   the degree of disagreement is three or four, albeit at that
45   potentially third stage of the process, you can't conclude
46   from that that there was a substantial degree of
47   disagreement at any stage?

```
1    A.    Well, there might have been.  I don't have to.  All
2    I have to know is that it required all that discussion and
3    several levels, and that says it's not - that's not
4    inter-rater reliability.  It has to be an independent
5    group, totally independent - or individual or group, it
6    doesn't matter - and do they agree or don't they agree?
7
8    Q.    Yes.
9    A.    We're talking - if reliability can be inferred from
10   internal consistency - and they certainly sought, as the
11   police sought, to develop internal consistency, because
12   clearly, when used in isolation, it wasn't reliable - now,
13   I'm not criticising them for doing that, in fact, it's
14   commendable, but we're talking about internal consistency -
15   the reliability is internal consistency, not inter-rater
16   reliability.
17
18   Q.    So you would agree that --
19   A.    It has to be totally independent.
20
21   Q.    You would agree that it was, nevertheless, appropriate
22   for them to come together and undertake a concordance
23   exercise?
24   A.    Oh, it wasn't inappropriate.  What it means to the
25   result is another matter.
26
27   Q.    Ultimately, they did reach an agreement and they
28   presented it as such?
29   A.    Well, clearly.  But what that level of agreement means
30   is another matter.  What interpretation you're able to put
31   on it, that's what was patently - I accept what they said.
32
33   Q.    Do you have the Strike Force Parrabell report there?
34
35   THE COMMISSIONER:  Mr Mykkeltvedt, no pressure, but how
36   much time do you think you need?
37
38   MR MYKKELTVEDT:  I think about 20 minutes, perhaps.
39
40   THE COMMISSIONER:  Another 20 minutes?
41
42   MR MYKKELTVEDT:  Perhaps 15 minutes.
43
44   THE COMMISSIONER:  Yes, all right.
45
46   MR MYKKELTVEDT:  I don't want to underestimate at this
47   late stage.
```

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 1
 2     THE COMMISSIONER:    No, no, I wouldn't expect you to either
 3     way.  I just wanted to get a rough idea.  That's all.
 4
 5          You tell me if you would like a break.  Professor, if
 6     you would like a break at some point.
 7
 8     THE WITNESS:    I might just have a drink, I think, if you
 9     don't mind.  My voice is starting to struggle.  Pardon me,
10     I'm sorry.
11
12     MR MYKKELTVEDT:    Q.    No, take your time, Professor.  So
13     you've got the Strike Force Parrabell report there?
14     A.    Have I got it in this bundle - I'm sorry - yes,
15     I think I have.  Sorry, what page?
16
17     Q.    Page 24, please.
18     A.    Oh, the tables, yes.
19
20     Q.    Yes, of course.  So you see there that some 27 of the
21     86 cases under review are categorised as either suspected
22     bias crimes or bias crimes, in the top paragraph?
23     A.    "(22%) were suspected" - I can't read the table.  My
24     glasses are --
25
26     Q.    Yes, sorry, you don't need to read the table, just the
27     paragraph above it.
28     A.    Yes, "19 cases (22%) were suspected [of] bias crimes",
29     yes.
30
31     Q.    And then there's a further 25 cases that are
32     categorised as "Insufficient Information"?
33     A.    Indeed.
34
35     Q.    And again, as was the case with the academics, there's
36     no suggestion in the reports that those 25 cases are not in
37     fact bias crimes?
38     A.    Certainly not.  As I recall.  I think that's correct.
39
40     Q.    So in total, you are left with the position where some
41     52 out of the 86 cases are cases in which bias has not been
42     ruled out?
43     A.    Indeed.
44
45     Q.    And then the remaining 34 cases are cases where no
46     evidence of bias crime is found?
47     A.    Correct.
```

1
2   Q.   And that descriptor related to cases where police
3   determined, on the available material, that bias was not
4   detected?
5   A.   Indeed.   Indeed, if you - obviously you would have,
6   and the final paragraph says so much, saying the incidence
7   of bias in this sample could be anywhere between, I've
8   forgotten the figures I use, but we'll call that
9   10 per cent up to very high, and it was - they're what
10   I ran through, exactly what's being said now.
11
12   Q.   In part.   That's because the descriptor, "No Evidence
13   of Bias Crime" doesn't categorically rule --
14   A.   Of course.
15
16   Q.   -- out the possibility --
17   A.   Of course.
18
19   Q.   -- that something might just not have been present?
20   A.   Of course.   So it could have been from very low to
21   very high.
22
23   Q.   Now, if I get you to take up your report again, and
24   turn to paragraph 111?
25   A.   Sorry, I get mixed up with pages and paragraphs.
26   Paragraph 111.   Oh, yes.
27
28   Q.   Yes.   There you say?
29
30   *The Strike Force's reporting of their*
31   *analysis opens the way for the "headline"*
32   *conclusion to be: "Only 8 of [the] 88*
33   *cases positively found to involve 'gay'*
34   *hate bias"?*
35
36   A.   Yes.
37
38   Q.   You then say that would be a seriously misleading
39   conclusion.
40   A.   Yes.
41
42   Q.   You actually say at footnote 46:
43
44   *The Strike Force report does not present*
45   *their conclusion [in that] way.*
46
47   A.   Correct.

1
2   Q.   Again, nowhere in the report is it said that only 8 of
3   the cases represent gay hate bias crimes?
4   A.   But I didn't say it did. What I'm saying is it opens
5   the way. You have to be very careful indeed, just to
6   anticipate, I think - I think the "Moral Panic" article by
7   de Lint and Dalton goes very close, because, you know, the
8   thrust of it is it's a moral panic and there are not many
9   cases of gay hate. All I said, it lends itself - and I did
10   this report, and when I came to the Dalton article on moral
11   panic, so it proved to be; they let it lend itself to that
12   conclusion. That's the only point I was making. And with
13   respect to this, I'm simply saying not that the police said
14   it, but there's this enormous range and you must be very
15   careful the way you present results to not be aware of the
16   implications of how those results might be used. They
17   don't use it expressly, absolutely.
18
19   Q.   And the police, of course, are not able to wholly
20   control the way that, for example, journalists might
21   interpret the information that they provide?
22   A.   Well, they have a media unit. It's not a bad idea to
23   start thinking about how it might be used.
24
25   Q.   Notwithstanding the presence of a media unit in many
26   organisations, reporting is routinely --
27   A.   I'm not criticising them for not, I'm just making the
28   point that it lent itself to that and so it proved to be in
29   this article where both de Lint and Dalton say, "both the
30   police and the academic reports" - I'm not criticising the
31   police at all. I'm just simply saying it lent itself to
32   that, and it did lend itself to it, and it did get used -
33   it's not a criticism of the report, it's not saying what
34   the findings are. But --
35
36   Q.   I suggest that the report made it very clear that at
37   least 27 of the cases might have involved a bias crime?
38   A.   Indeed.
39
40   Q.   And so to the extent that there was a conclusion
41   reached --
42
43   THE COMMISSIONER: Q. Can I just interrupt you, I'm
44   sorry, can you push that microphone that's - no, straight
45   ahead of you, bring it down a little.
46   A.   I'm sorry, I think I knocked it with --
47

```
1    Q:   No, no, it's not your fault at all.
2    A.   -- one of these reports.
3
4    THE COMMISSIONER:   That's fine, thank you.
5
6         Sorry, Mr Mykkeltvedt.
7
8    MR MYKKELTVEDT:   Q.   To the extent that a conclusion
9    might be reached that there were fewer than 27 cases that
10   might have involved bias crime, that would be an inaccurate
11   reading of the report, wouldn't it?
12   A.   Sorry, would you mind - I was focusing - I'm sorry.
13
14   Q.   Yes.  To the extent that someone might interpret the
15   report as indicating anything less than 27 of the cases
16   involved some form of bias, that would be an inaccurate
17   reading of the report, wouldn't it?
18   A.   Well, it's still open.
19
20   Q.   Well, it's inaccurate, though?
21   A.   Not necessarily.  It's inaccurate with respect to what
22   they're implying, but you could - it may be that none of
23   the "Suspected" proved to be; it may be none of the
24   "Insufficient Information" proved to be.  There's the ones
25   where they say there's no bias, which I say could include
26   bias, of course.  That may have been - so we're starting to
27   get quite low on the police report.
28
29   Q.   Different things can be interpreted in different ways,
30   but the report very clearly says that at least 27 of the
31   cases involved suspected bias?
32   A.   Sorry, which presented - I've forgotten the exact
33   percentage, but the ones - but suspected bias is not bias.
34   The bias category, yes, that's clear, whether it's accurate
35   is another matter, but it's clear that that's the figure.
36   I'm not quibbling with that, although you'd have to in
37   reviewing it, looking at reliability and validity of that
38   measure.  The whole point will be to undermine those
39   figures - I mean, we can't consider those independently of
40   that assessment of lack of reliability and validity, and
41   therefore, all categories are open to be in error either
42   way.  So certainly you can come below that category.
43   You're not dealing with a purely valid instrument.  And so
44   of course, it could be where they say there's bias, there
45   isn't bias.
46
47   Q.   It could be inaccurate either way, ultimately as
```

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1   a consequence of the conclusions you've reached --
2   A.   Which I make clear. Which I make --
3
4   Q.   -- in relation to the scientific instrument?
5   A.   -- quite clear. Yeah. I make it quite clear.
6
7   Q.   Unscientific instrument, as the case may be?
8   A.   Oh, well, it purports to be scientific.
9
10 Q.   Well, on that perhaps related subject, if you look at
11 page 18 of the Strike Force Parrabell report, you get an
12 indication of the overriding objective --
13 A.   Sorry, if you just bear with me, please. I'm a bit
14 slow with this, I'm sorry.
15
16 Q.   Not at all.
17 A.   So on page 18?
18
19 Q.   Yes. There's a lot of paper.
20 A.   Yes, there is.
21
22 Q.   So you get an indication there that the purpose of
23 Strike Force Parrabell is said to be bringing the
24 NSW Police Force and the LGBTIQ community closer together?
25 A.   Yes.
26
27 Q.   And with that objective in mind, the NSW Police Force
28 sought to review the 88 cases?
29 A.   Yes.
30
31 Q.   And the publication of this report occurred on the
32 NSW Police Force website?
33 A.   Yes - oh, I don't - I didn't know that, but --
34
35 Q.   There was no attempt made to publish these findings
36 themselves per se in this report in some form of academic
37 journal?
38 A.   No, well, not to my knowledge, no.
39
40 Q.   So in truth, it's a policing exercise with a community
41 outreach component?
42 A.   Yes.
43
44 Q.   It was not an exercise in the conduct of social
45 science, was it?
46 A.   Well, it certainly was, it was a social science
47 exercise by importing the BCIF, absolutely a social science

1   exercise. Whether they realised it or not is another
2   matter, but it absolutely was.
3
4   Q.   You wouldn't expect police, for example, to conduct
5   a report that was made for broader publication to the world
6   at large, to anticipate that that report would be
7   perceived, for example, by academics such as yourself, as
8   an exercise in social science?
9   A.   Well, that's not - that has nothing to do, in my view,
10   with - they attempted to do a piece of research. I think
11   they call it research. They have to know that it will be
12   evaluated as research and, indeed, I think they understood
13   that by - surely they understood that by getting the
14   academics in to try and overcome some of the flaws they
15   perceived in that. I'm not criticising; I'm just saying,
16   they did it.
17
18   Q.   Yes.
19   A.   They couldn't be expected to do it well, perhaps, you
20   might say. I'm not criticising for trying to do the
21   report. But - and they - as I said, they tried to get
22   academic feedback.
23
24   Q.   Of course, one of the reasons they might not have done
25   the report to the standards that you would expected in
26   academia are that they are not social scientists?
27   A.   Well, they shouldn't have done it.
28
29   Q.   Didn't I hear you right a moment ago indicating that
30   you weren't criticising the police for conducting the
31   report?
32   A.   Well, there's two aspects to this you've got to
33   unpack. The first is, it was a genuine attempt to show
34   proactivity, and if it was perceived in that way, that's
35   a good thing. If the police, in doing this, understood
36   some of the complexities, given that they've called for it
37   to be done properly at the end, commendable - very
38   commendable - then if there's corporate memory about that,
39   I think it will be well worth doing.
40
41   But were the findings worth the paper they came on?
42   No. So in two aspects I can praise them. I compliment
43   them. In fact, there were two aspects, it was to show
44   proactivity and to engage the community. I think you've
45   got to bring them together, they may not be said at the
46   same point, as I said, the same point in my report, but
47   they're not here, I don't think. So I praised the

1 proactivity, I praised attempting to engage the community,
2 the LGB - gay community, and I think it would - I would
3 praise them for realising the limitations and seeking
4 academics to do what they thought would be a better way of
5 doing it. I praise that. And I think it's potentially
6 worthwhile if there's corporate memory of the difficulties
7 of this both they experienced and what happened with their
8 experience with the academics. Yeah, so we've got to --
9
10 Q.   Yes.
11 A.   Two very different things.
12
13 Q.   Mmm.
14 A.   But very worthy with one respect. Results --
15
16 Q.   And as you have alluded to in that response, one of
17 the things that they did do was engage three social
18 scientists to review their work?
19 A.   Yes.
20
21 Q.   And that resulted in academic components to the report
22 that was ultimately published, and police themselves
23 published that academic report as part of their own review?
24 A.   Yes, very commendable.
25
26 Q.   And that academic report outlined in no uncertain
27 terms that the police methodology was flawed in the sense
28 that it --
29 A.   Indeed, it did.
30
31 Q.   And the academics noted explicitly that more precision
32 was required in the discovery, assessment and recording of
33 bias crime, even following the conduct of the exercise?
34 A.   Well, I've just forgotten where they say it, but I'm
35 happy to agree to it. I mean --
36
37 Q.   I want to be fair so I will show you the relevant
38 section of the report.
39 A.   I'm not going to quibble, you know, if they did.
40 I certainly remember the police going about that; I didn't
41 remember the academics, but it doesn't matter.
42
43 Q.   If you take up page 107 of the Parrabell report?
44 A.   That's going to be right at the end of the academic
45 report, isn't it? This is the - okay.
46
47 Q.   The academics there, in the second half of the page,

```
1     set out a series of recommendations --
2     A.    Indeed.
3
4     Q.    -- that they say "strike us as flowing out of the
5     evaluation"?
6     A.    Yes.
7
8     Q.    In the second bullet point they say:
9
10          Better precision is needed regarding the
11          discovery, assessment and recording of the
12          bias crime.
13
14    A.    Correct.
15
16    Q.    The next bullet point, they'll need to go through --
17    A.    Sorry, I should - if I may, sorry to interrupt.
18
19    Q.    Yes?
20    A.    I say it's correct.  I was saying - correct reading is
21    that's as I read it.  They say it there.  I, of course,
22    didn't see the original stuff so I can't - it's not my view
23    that it should be.  It may well be and it probably almost
24    certainly is, but - sorry, I was just --
25
26    Q.    Then you will see the next bullet point, that:
27
28          [The NSW Police Force] will need to develop
29          a protocol for bias discovery that is
30          prudent and grounded on evidence-based
31          research?
32
33    A.    They say that, yes.
34
35    Q.    You would accept that that's a prudent observation and
36    indeed, an indication that they had identified particular
37    flaws and were communicating those?
38    A.    They had identified flaws in the police report.
39
40    Q.    Yes.
41    A.    As opposed to their own report; is that what you are
42    saying?
43
44    Q.    Yes, the BCIF for example?
45    A.    Let me just read that again.  Yes, I think that's
46    a fair reading of that, I think.  Again it's not exactly
47    well expressed, but - I think it's a fair reading of it.
```

```
1
2      Q.    And the final bullet point, perhaps, a similar point
3      is made - well, the point that I was making is perhaps
4      expressed more clearly, that being that the instrument
5      itself is not supported by evidence-based adoption but,
6      rather, it's supported by practice-based adoption.  What do
7      you understand "practice-based adoption" to mean?
8      A.    Well, in a context of saying whether it's worthwhile
9      or not, it tells you absolutely nothing.  The fact that
10     someone's used something a lot doesn't tell you whether
11     it's useless or not.
12
13          Medicine, or anything we go into, practices are
14     adopted and later discovered that they weren't efficacious,
15     or even dangerous, so that it's widely practised in my view
16     tells you nothing as to whether it's been worth doing, or
17     that it has any reliability or validity, and therefore, it
18     is worthy of being included in any serious assessment of
19     gay hate bias.
20
21     Q.    And then in the very next paragraph, they seek to make
22     the point, which I take to be one of the central points
23     that you're identifying, that a rigorous evaluation is
24     needed to assess the reliability and validity of any such
25     instrument, and that such a process would benefit from
26     community engagement?
27     A.    Well, "To arrive at a good measure of reliability and
28     validity for this, or any such instrument, requires
29     a methodologically rigorous evaluation."  It also requires,
30     more importantly - well, as importantly, but as a first
31     step - a rigorous methodology of development.  We know it's
32     no good.  So it's rigorous development, then evaluation,
33     and part of that evaluation, of course, is knowing whether
34     it's reliable or valid.  They don't mean what - they don't
35     quite say what they mean there by "evaluation".  I find,
36     again, rather a curious statement and a bit vague, but -
37     because it's the rigorous development methodologically that
38     is in the initial step.
39
40     Q.    Don't they say, and I think I read this out to you on
41     the paragraph before, page 107, the third bullet point:
42
43          [The NSW Police Force] will need to develop
44          a protocol for bias discovery that is
45          prudent and grounded on evidence-based
46          research.
47
```

1   So aren't they there, in that paragraph, essentially saying
2   that there's a need to develop a research protocol in a
3   prudent and research-grounded way, and then to test that in
4   a prudent and research-grounded way?
5   A.   Well, you have to - I can't say yes or no to that, I'm
6   sorry, without elaborating. You've got - it's not clear
7   what they mean by "evidence-based". You'll recall, when
8   they set out to do their report and differentiate it from
9   the police report, one of the things they said, "It has to
10   be evidence-based factors", and what did they come up with?
11   They came up with the paedophile, the reactive, the
12   associative, and there's something else. That's what they
13   meant by "evidence-based", they did a review of the
14   literature and picked out these and that's where I think
15   they got the idea of policy - whether something is policy
16   important.
17
18   So you've got to be very careful interpreting what
19   they mean by "evidence-based", because they've used that
20   term, the academics, and it hasn't meant about reliability
21   and validity; it's about factors that the sociological
22   literature, primarily, into this sort of field and the
23   field of hate has said ought to be part of the factors, and
24   I think it's led them wildly astray, in my opinion with
25   that --
26
27   Q.   Are they not saying here, having set out the process
28   that they have undertaken and the tool that they have come
29   up with, that there is, nevertheless, a need for the
30   development of a tool, and so --
31   A.   Yes, but they --
32
33   Q.   -- in that respect, they're not suggesting that the
34   tool that they've come up with is a perfect tool or
35   that further research is not required?
36   A.   I don't think so. I don't think they're implying it's
37   a perfect tool, no. I think that's right.
38
39   Q.   To the contrary, they're saying further work should be
40   done to develop a tool that is evidence-based?
41   A.   Yes. But again, one must qualify the - one must
42   qualify it a little bit. It didn't stop them publishing an
43   article in a learned journal which took their findings and
44   the findings related to specifically the incidence of gay
45   hate. So you've got to read it having that in mind as
46   well.
47

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1    MR MYKKELTVEDT:    Thank you very much for your time,
2    Professor.
3
4    THE WITNESS:    My pleasure, thank you.
5
6    MR MYKKELTVEDT:    Those are my questions.
7
8    THE COMMISSIONER:    Just wait there for the moment.
9
10        Do you have anything arising, Mr Gray?
11
12    MR GRAY:    Yes, there are a few matters arising,
13    Commissioner.  I imagine it will probably take me about
14    10 minutes.  I'm happy to do --
15
16    THE COMMISSIONER:    Do you want to have a break now or
17    continue?  I don't mind.
18
19    MR GRAY:    I'm happy to go straight ahead and continue.
20
21    THE COMMISSIONER:    All right, certainly.
22
23    <EXAMINATION BY MR GRAY:
24
25    MR GRAY:    Q.    Just a couple of things, Professor, arising
26    from those questions.  If you have your own report there,
27    at the beginning of the questions this morning you were
28    taken to, around about paragraph 31 of your report --
29    A.    Now, where's my report?  Which folder?  I'm sorry.
30    I am totally lost.  I'm sorry, Commissioner.  Sorry, I'm
31    having trouble finding it.
32
33    THE COMMISSIONER:    Q.    Paragraph 31, page 12.
34    A.    I haven't got my - is this my report here?
35
36    MR GRAY:    Q.    It should be tab 256 of volume 12.
37    A.    Thank you.  Sorry.  Sorry, I have found it.  I was
38    totally lost.
39
40    Q.    That's all right.  Just find paragraph 31.
41    A.    Paragraph 31.  So it's under the heading
42    "Understanding reliability, validity and their assessment"?
43
44    Q.    Yes.  At the beginning of the questions this morning,
45    you were taken to 31 and then you were taken through the
46    next 20 or 30 paragraphs, through to 52, where you talked
47    about what would be involved in testing the reliability and
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 1      validity of an instrument --
 2      A.   Yes.
 3
 4      Q.    -- in general, and you were taken through first you
 5      would do one thing, second you would do another thing, and
 6      so on.  Do you remember those questions?
 7      A.   Yes.
 8
 9      Q.   Just turn back to before paragraph 31, to
10      paragraph 27.  I just wanted to orient you and get some
11      clarification.  Paragraph 27 is the first paragraph after
12      you set out the question that you were directing yourself
13      to in bold.  Do you see that?
14      A.   Yes.
15
16      Q.   And the question was:
17
18           What is your view as to the appropriateness
19           of the methodology used by the Strike Force
20           Parrabell officers, including the use of
21           the BCIF ...
22
23      Et cetera?
24      A.   Yes.
25
26      Q.   That was the question?
27      A.   Yes.
28
29      Q.   And what you then do at paragraphs 27 to 29 --
30      A.   Yes.
31
32      Q.    -- is this right, is that you make it clear that you
33      were about to give some background, in the context of
34      considering the Parrabell methodology and the BCIF;
35      correct?
36      A.   Yes.
37
38      Q.   In other words -
39      A.   And that's under "Research Design."
40
41      Q.   Pardon?
42      A.   That's under "Research Design."
43
44      Q.   Yes.  And you weren't addressing these paragraphs to
45      a general or hypothetical question, but to the application
46      of these principles to a consideration of the Parrabell
47      methodology and the BCIF; is that right?
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 1      A.   Well, they were written as something general but I had
 2      in mind that it had to be relevant to what the - it had to
 3      be relevant to the Parrabell report and problems that had
 4      been raised, yes.  But it was of itself quite general and
 5      particular points were just illustrative, of course - well,
 6      as opposed to the range of what the scale might look like.
 7
 8      Q.   And so when one gets to paragraph 34, which is in the
 9      "Background" section, where you are talking about
10      reliability and validity generally?
11      A.   Sorry, paragraph 34.  Yes, I've got that.
12
13      Q.   Yes.  You are again focusing in on what the Parrabell
14      study did and the instrument that the Parrabell study used;
15      correct?
16      A.   Sorry, can I re-read it?  Yes.  I've read it.
17
18      Q.   So you are talking there about the instrument that the
19      Parrabell police officers used and the instrument that the
20      academics used?
21      A.   Yes.
22
23      Q.   And what you then go on to say in the following
24      paragraphs, as to what an instrument would need --
25      A.   Yes.
26
27      Q.   -- is a discussion in that context; is that right?
28      A.   Well, it was meant to be applied to that, yes.
29
30      Q.   Thank you.  That's all I wanted to clarify.
31      Thank you.
32      A.   Whether I did that well is another matter, but I -
33      what obviously led to me giving that is something that
34      could be understood in respect of the problem before us.
35
36      Q.   Then the second matter I wanted to just clarify
37      concerns paragraph 88 of your report.  You were taken to
38      this paragraph where you refer to the standard of "beyond
39      reasonable doubt"?
40      A.   Yep, yes.
41
42      Q.   And you were taken in particular to the second
43      sentence, where you say:
44
45          This standard is not easy to interpret amid
46          a messy evidentiary scene.
47
```

1   A.   Yes.

2

3   Q.   And then you were asked some questions where you were
4   invited to agree that juries in criminal trials are
5   expected to apply the standard of "beyond reasonable doubt"
6   all the time, and you acknowledge that, of course, that's
7   true?
8   A.   Yes.

9

10   Q.   So when you say here in this paragraph:

11

12   *[The] standard is not easy to interpret --*

13

14   that is, "beyond reasonable doubt" --

15

16   *amid a messy evidentiary scene --*

17

18   A.   Yes.

19

20   Q.   -- are you there referring to the use of that
21   standard in this Parrabell context, where the evidentiary
22   scene was whether or not, on the papers being reviewed by
23   the Parrabell officers, the existence of bias could be
24   identified beyond reasonable doubt? Is that what you meant
25   by the "messy evidentiary scene"?
26   A.   Yes.

27

28   Q.   Thank you. Now, the third point that I wanted to
29   check with you is this: you were asked some questions
30   about the anti-gay and anti-paedophile topic, and you were
31   taken - and I do need now for you to have a look at the
32   report, the Parrabell report --
33   A.   Right.

34

35   Q.   -- which will be put in front of you. You will be
36   given that.
37   A.   Thank you.

38

39   Q.   You were asked about this approximately along the
40   following lines, it was put to you that you seemed to think
41   that the academics had drawn a distinction between anti-gay
42   and anti-paedophile, and Mr Mykkeltvedt was suggesting to
43   you that, actually, they hadn't; that they were using
44   anti-paedophile as a subset of anti-gay; do you remember
45   those questions this morning?
46   A.   I do indeed, yes.

47

```
 1    Q.    If we go to page 84 of the report, which is where you
 2    were taken, there is that long paragraph --
 3    A.    I'm sorry, I'm just a bit slow with all these papers.
 4    Yes, 84, with the heading Roman (v).
 5
 6    Q.    Yes.  The first long paragraph under that heading, you
 7    were taken to that, and at the end of that paragraph after
 8    the discussion, you were taken to the sentences that read:
 9
10          In some cases it also appeared as though
11          a strong animus against homosexual
12          paedophiles ...
13
14    Et cetera - you were taken to those two paragraphs?
15    A.    Yes.
16
17    Q.    Now, you made a number of answers to the effect that
18    what the academics have written on this point was not
19    altogether clear, and I just wanted to take you --
20    A.    My feeling, yes.
21
22    Q.    -- to some other passages to see if - and you said,
23    I'm sorry, a couple of times, that you thought that they
24    appeared to be making a distinction between the two,
25    between anti-gay and anti-paedophile?
26    A.    Yes.
27
28    Q.    Now, on page 85, you will see the second full
29    paragraph beginning "Nevertheless"?
30    A.    Yes.
31
32    Q.    They say:
33
34          ... it is helpful to distinguish anti-gay
35          and anti-paedophile --
36
37    for various reasons that they talk about?
38    A.    Right.
39
40    Q.    And then two paragraphs below that, beginning "We
41    reasoned", they say:
42
43          ... it is not sound policy to conflate an
44          animus towards homosexual paedophilia and
45          an animus towards homosexuals.
46
47    A.    Yes.
```

1
2   Q.   So it seems that they -- if they're not keen to
3   conflate, it seems they want to keep them separate; is that
4   how you were reading that?
5   A.   Yes, I think that's right. As I said, I say it with
6   some hesitation, because the whole thing is so confusing.
7   But --
8
9   Q.   Yes, and --
10   A.   And I also added, as I recall, in answer to the
11   question, that the main reason seems to be - is given, is
12   a social policy reason.
13
14   Q.   Yes, I'll come to that.
15   A.   Sorry.
16
17   Q.   In the next sentence in the middle, four lines down,
18   they say:
19
20   *Failing to distinguish ...*
21
22   these two matters --
23
24   *... would be to lend inadvertent support*
25   *to this historical slander.*
26
27   Do you see that?
28   A.   Yes.
29
30   Q.   Then on the next page, 86, there's a long
31   paragraph beginning "Whatever the normative argument", and
32   this is where they make three or four references to public
33   policy?
34   A.   Yes.
35
36   Q.   They say in the second sentence:
37
38   *In short, we opted to distinguish these*
39   *cases ...*
40
41   Are these some of the passages that you had in mind when
42   you were answering the questions this morning?
43   A.   Well, I can't specifically say that, that - it's the
44   sort of considerations. I mean, I couldn't remember all
45   the detail, but I've read it thoroughly and reread it and
46   reread it. So I can't say that paragraph came clearly to
47   mind but it was a general discussion I was getting at, in

1   the way it was rather confusing, and certainly the public
2   policy stuck out in my mind, because it's mentioned
3   a number of times, so yes, this is in part what I was
4   getting at.
5
6   Q.   The last sentence of that paragraph says:
7
8   *... we have used the term "bias" to denote*
9   *a hate crime against perceived homosexuals*
10   *and the more neutral term "animus" to*
11   *denote a crime against paedophiles.*
12
13   Again, does that suggest that a distinction of some
14   description is being drawn?
15   A.   In their minds.
16
17   Q.   In their minds, yes.
18   A.   Yes, but what it means in practice, given they're
19   talking about conflation and they're trying avoid an error
20   relating to that - so it was as such a - conceptually, in
21   my mind, confused --
22
23   Q.   On page 90, there is a heading "Concordance coding".
24   A.   Oh, yes, yes.
25
26   Q.   And you were taken to this paragraph, and this was on
27   the topic of the academics reaching consensus amongst
28   themselves, but in the course of that paragraph, they say
29   in the third line:
30
31   *Our initial scoring led to the discussion*
32   *of the nature of the bias we were coding*
33   *and to a decision to clearly distinguish*
34   *those that were anti-gay bias only from*
35   *those that were anti-gay paedophile animus.*
36
37   Is that another instance of their seeming to have the view
38   that a distinction needed to be drawn and was being drawn
39   by them?
40   A.   Oh, I think so, yes. I don't think you could read it
41   any other way.
42
43   Q.   No. And on page 101, in about just below halfway on
44   page 101, they say:
45
46   *In some cases, drawing a distinction*
47   *between anti-paedophile and anti-gay was*

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 1            profoundly difficult.
 2
 3      A.    Yes.
 4
 5      Q.    Again indicating that that's the distinction that they
 6      saw as one they wanted and needed to make?
 7      A.    Yes.
 8
 9      Q.    And at page 104, having discussed a particular case,
10      the case of a man called Gillies, there's
11      a paragraph beginning "One could argue", and they say:
12
13            One could argue --
14
15      A.    Sorry, which paragraph?  I'm sorry.
16
17      Q.    The paragraph beginning "One could argue"?
18      A.    Oh, I'm sorry.  Right, thank you, yes, I've got it.
19
20      Q.    They've been talking about a case called Gillies?
21      A.    Yes.
22
23      Q.    And they say:
24
25            One could argue that the academic team
26            should have classified Gillies as that of
27            double bias [anti-paedophile and anti-gay],
28            but this would have produced a statistical
29            discordance, so ultimately the academic
30            team preferred to make the difficult
31            decision of agreeing that there was a bias
32            at play, but only one bias.
33
34      Again, is that seemingly an indication that a distinction
35      of this kind was being drawn by the academics?
36      A.    I think that's the only way you could read it, yes.
37
38      Q.    Now, when you were being asked about this topic,
39      anti-gay and anti-paedophile this morning, in one of your
40      answers as to whether the academics were making such
41      a distinction, you gave an answer to the effect - and I'm
42      paraphrasing you slightly - that, "I think you would have
43      to assess that in the context of the "Moral Panic" article
44      that came later".  What did you mean by the relevance of
45      what was written in the "Moral Panic" article to the topic
46      of anti-gay and anti-paedophile, if you recall?
47      A.    I don't remember - I remember clearly I - I thought,
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 1        but I - this may be incorrect, that I was using in the
 2        sense that there's an anti-gay or - yes, I recall it now,
 3        I'm sorry, that they have this "Anti-gay" category and then
 4        they were focusing on that, with the clear implication that
 5        really this is a beat-up.  That was the idea of "Moral
 6        Panic", and that only took the - as I recall, I'd have to
 7        look at it - I think they only took the figure for the
 8        anti-gay, whereas, from my reading of some of this stuff,
 9        clearly what they're calling "Anti-paedophile" has
10        a significant gay element to it, which would need to be
11        included.  I think that's - but I stand to be corrected,
12        without going back and reading it all in detail.  But that
13        was the point I was making, because --
14
15    Q.    Okay, thank you.
16    A.    Yes.
17
18    Q.    And just two more things briefly.
19    A.    Yes.
20
21    Q.    At one point this morning there was a brief few
22        questions and answers about whether or not - well, about
23        the fact that the police had a category for "Suspected Bias
24        Crimes", whereas the academics did not have a "Suspected"
25        category.  You remember that this morning?
26    A.    Indeed.
27
28    Q.    And you offered the recollection that you thought the
29        academics put cases that might be called "Suspected" or
30        some such into the "Insufficient Information"?
31    A.    Yes, that was my recollection, yes.
32
33    Q.    Yes  and it was put to you that, no, they didn't, that
34        they - if anything was suspected, it would not go into
35        "Insufficient Information".  Do you remember that being put
36        to?
37    A.    Yes.  I don't recall the latter part, but yes.  I
38        remember the discussion, yes.
39
40    Q.    At any rate, let's have a look at page 90, at the
41        bottom of page 90, the last two lines on page 90.  Do you
42        see the paragraph beginning "There is a distinction"?
43    A.    Yes.
44
45    Q.    So the academics say there:
46
47        Police team members of Parrabell have
```

```
 1            categorised as Suspected Bias Crime ...
 2            cases where there is evidence that may
 3            support a court case that the crime was
 4            a bias crime.
 5
 6      A.    Yes.
 7
 8      Q.    Then they say:
 9
10            In contrast, we --
11
12      that is the academics --
13
14            have coded as Insufficient Information ...
15            cases where the evidence that may support
16            a court case is ambiguous and requires
17            further probing ...
18
19      A.    Yes.
20
21      Q.    Is that what you had in mind?
22      A.    That would have - clearly, that was what I took to be
23      that, yes.  We can read it - sorry, when you read it again,
24      I suppose it could be argued round, but I think it is the
25      only reasonable interpretation of it.
26
27      Q.    And then finally, could we go to 107.  You were taken
28      to these recommendations at the bottom of page 107 that the
29      academics included?
30      A.    Oh, sorry, page 107, I'm sorry.  Yes.
31
32      Q.    I just need to clarify something that was put to you.
33      Do you see at the bottom of the page, as a sub-bullet
34      point --
35      A.    Yes, the second bullet point?
36
37      Q.    Well, there are the first three bullet points, the
38      third of which is --
39      A.    Oh, sorry, yes, the sub-bullet point.  Yes, I was
40      looking at that, I'm sorry, yes, the third bullet point,
41      yes.
42
43      Q.    The third bullet point is:
44
45            [NSW Police] will need to develop
46            a protocol for bias discovery that is
47            prudent and grounded on evidence-based
```

Transcript produced by Epiq

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 1          research.
 2
 3     A.   Mmm.
 4
 5     Q.   Fine.  You were taken to that.  And then there were
 6     a couple of sub-bullet points to that, the second of which
 7     reads:
 8
 9          The BCIRF instrument used by
10          [NSW Police] --
11
12     A.   Sorry, I just - I'm not - oh, yes, sorry, I'm with
13     you, yes  I'm sorry.
14
15     Q.   You have got it?
16     A.   Yes, I'm sorry.
17
18     Q.   The second sub-bullet point reads:
19
20          The BCIRF instrument used by [NSW Police]
21          is supported by practice-based rather than
22          evidence-based adoption in a number of
23          jurisdictions.
24
25     A.   Yes.
26
27     Q.   And there was some discussion between my learned
28     friend and you about "practice-based" and "evidence-based"?
29     A.   Yes.
30
31     Q.   But what I wanted to direct your attention to is
32     something anterior to that, namely, that bullet point is
33     talking about the form, isn't it - the BCIRF instrument?
34     A.   Yes.
35
36     Q.   Now, I would suggest to you that the form, the actual
37     instrument, which has, for example, "beyond reasonable
38     doubt" embedded into it and so on, is not, on the evidence,
39     so far as you know, used or adopted anywhere,
40     evidence-based or practice-based; it's a one-off
41     instrument, as far as you know?
42     A.    I think that's correct, yes, when you look at the US
43     manual - it was the year 2000, wasn't it - from which this
44     was taken.  I don't think that has any - I think that has
45     no reference to "beyond reasonable doubt."
46
47     Q.   That's right, so --
```

```
1     A.   It hadn't struck me, but now you say it, yes, there is
2     no reference, because I read it thoroughly.
3
4     Q.   So what actually is, perhaps arguably, supported by
5     practice-based adoption is not the form, but the list of
6     indicators; correct?
7     A.   Yes.  That's the BCIF, I think, strictly.
8
9     Q.   Well, no.  The BCIF is the form --
10    A.   Oh, well, they are integrated, in a sense, aren't
11    they, because of - yes.
12
13    Q.   The BCIF is the form which includes the 10 indicators,
14    but also a good deal more than the 10 indicators; correct?
15    A.   Yes.
16
17    Q.   And the indicators, on the evidence that you have
18    seen, have been used in various jurisdictions, including
19    the United States - the indicators themselves?
20    A.   Yes.
21
22    Q.   But the form, the BCIRF form, has not; is that right?
23    A.   I'm not sure of that.  I took - I didn't make a great
24    distinction between the two because it was a collection -
25    I mean, I took them to be a collection of indicators
26    because there is no sense of how you combine the
27    information.  So --
28
29    Q.   No, but what I'm directing you to, you will recall one
30    of the points you make in your report --
31    A.   Yes.
32
33    Q.   -- is the fact that in the form, there are, for
34    example, two different standards of proof?
35    A.   Yes.
36
37    Q.   One being "beyond reasonable doubt" --
38    A.   Yes.
39
40    Q.   -- for one thing?
41    A.   Yes.
42
43    Q.   And "balance of probabilities" for something else?
44    A.   Yes.
45
46    Q.   That's in the form.
47    A.   Yes.
```

1
2   Q.   But that form, containing, among other things, those
3   features, so far as you are aware, is not the subject of --
4   A.   No, that's right, yes.
5
6   Q.   -- any use anywhere else on the planet; is that right?
7   A.   That's my understanding.
8
9   MR GRAY: Those are my questions, Commissioner.
10
11   THE COMMISSIONER: All right.   Thank you.
12
13   Professor, I can excuse you now, so you may step down
14   out of the witness box.
15
16   THE WITNESS: Thank you, Commissioner.
17
18   **<THE WITNESS WITHDREW**
19
20   MR GRAY: Commissioner, that is the conclusion of the
21   evidence in this stage of this second public hearing.
22
23   This public hearing I expect, Commissioner, will now
24   need to be adjourned to a date to be fixed, probably
25   in April. When that resumption occurs, former Deputy
26   Commissioner Mick Willing will give further evidence to the
27   Inquiry, as will some other witnesses. Notification of
28   that resumption of these proceedings will be provided on
29   the Inquiry's website in due course.
30
31   The submissions of Counsel Assisting in relation to
32   this public hearing will be served on persons granted
33   authorisation to appear three weeks after the conclusion of
34   this hearing. Those persons must then make any submissions
35   in reply within three weeks of being served with the
36   submissions of Counsel Assisting.
37
38   During the week commencing 27 March 2023, three weeks
39   from today, Counsel Assisting will present, in public
40   proceedings of the Inquiry, further documentary tenders in
41   respect of individual cases. Notification of those
42   proceedings will also be provided on the Inquiry's website
43   in due course. Those are the matters I wished to raise.
44
45   THE COMMISSIONER: Thank you. Mr Tedeschi, anything
46   arising?
47

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 1      MR TEDESCHI:    Just this, your Honour.   I would obviously
 2      like to be present during the further questioning of former
 3      Deputy Commissioner Willing and if there are any other
 4      witnesses, any other police witnesses.
 5
 6      THE COMMISSIONER:    Certainly.
 7
 8      MR TEDESCHI:    Might I make my available dates available to
 9      Counsel Assisting?
10
11      THE COMMISSIONER:    Absolutely.   I mean, we will, as
12      always, make such arrangements as reasonably can be made to
13      accommodate everyone's availability.
14
15      MR TEDESCHI:    Thank you.
16
17      THE COMMISSIONER:    Certainly that will be taken into
18      account.   All right.   In that event, I will adjourn until
19      a date to be fixed some time in April.   Thank you.
20
21      AT 12.05PM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED
22      TO A DATE TO BE FIXED
23
24
25
26
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