

**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 Thursday, 22 June 2023 at 11.15am

(Day 64)

| | |
|---------------------------|-----------------------------------|
| Mr Peter Gray SC | (Senior Counsel Assisting) |
| Ms Christine Melis | (Counsel Assisting) |
| Mr Enzo Camporeale | (Director Legal) |
| Ms Kate Lockery | (Principal Solicitor) |

Also Present:

Mr Mathew Short with Mr Patrick Hodgetts for NSW Police

1 THE COMMISSIONER: First, may I say I apologise to
2 everyone concerned for the delay in starting. Some
3 important matters have arisen.

4
5 Mr Short, I observe you appear today for the
6 NSW Police.

7
8 MR SHORT: That is so, Commissioner.

9
10 THE COMMISSIONER: Thank you.

11
12 Yes, Mr Gray.

13
14 MR GRAY: Commissioner, at 10 o'clock today there
15 was scheduled the documentary tender in the case of Robert
16 Malcolm. Tomorrow, there was scheduled the documentary
17 tender in the case of William Allen. Unfortunately, for
18 reasons that I will come to in a moment, neither of those
19 documentary tenders will be able to proceed this week, and
20 both will have to be postponed.

21
22 Commissioner, you will no doubt recall that only two
23 days ago, on Tuesday, I was obliged to inform you that
24 another documentary tender, in relation to the case of
25 Crispin Dye, would have to be postponed.

26
27 In all three of these cases, and numerous others, the
28 crux of the problem is that large numbers of documents held
29 by the police which should have been produced to the
30 Inquiry in answer to summonses many months ago, for the
31 most part by mid last year, have been produced only very
32 belatedly, and only after repeated efforts by the Inquiry
33 to pursue full and proper production of documents relating
34 to the many cases we are investigating.

35
36 In several case in recent weeks, including the three
37 that I have just mentioned, enormous quantities of
38 material, all the subject of summonses issued as long ago
39 as May last year, have suddenly been produced only the day
40 before, or shortly before, the day scheduled for public
41 submissions.

42
43 The seriousness of what is happening is such that
44 I need to say something publicly today about the scale of
45 the problem, about a number of the particular cases
46 affected, and about what seems to have become increasingly
47 apparent in relation to inadequate record-keeping

1 arrangements and inadequate searches for records by the
2 NSW Police.

3
4 This is a public Inquiry and the public needs to know
5 what is happening, as well as, so far as we can piece it
6 together, what has not been happening.

7
8 On Tuesday of this week, as you will recall, Counsel
9 Assisting was to have presented public submissions in the
10 case of Crispin Dye, accompanied by the tender of all the
11 documents then available to the Inquiry which were relevant
12 to those submissions.

13
14 However, as you know, that tender had to be postponed
15 because of two late developments caused by the police:
16 first, on Monday afternoon this week, the day before the
17 matter was to proceed, the police produced a further 261
18 pages of material, which should have been produced in
19 answer to summonses long before now; and, secondly, the
20 Inquiry was informed for the first time, also only on
21 Monday afternoon, that a DNA profile recovered in the
22 course of testing undertaken this year at the instigation
23 of the Inquiry was a match with a DNA profile from another
24 crime scene.

25
26 Yesterday, after the documentary tender had had to be
27 postponed the day before, still on the case of Crispin Dye,
28 the police have now produced yet more material not
29 previously provided.

30
31 In the letter which the Inquiry received yesterday, it
32 was suggested that this material, which is in hard copy,
33 "appeared to be the coronial brief". However, as Inquiry
34 staff have been going through this material since
35 yesterday, they have ascertained that it actually comprises
36 some 245 documents, some of which has been previously
37 provided to the Inquiry, but much of which has not,
38 including, for example, previously unseen police notebooks
39 recording inquiries made into the death of Mr Dye.

40
41 Today, as I mentioned, Counsel Assisting was to have
42 presented public submissions, accompanied by the tender of
43 relevant material, in the case of Robert Malcolm.

44
45 Mr Malcolm was attacked by a person or persons unknown
46 during the night of 10 or 11 January 1992 in Redfern, and
47 he died some weeks later at the Royal Prince Alfred

1 Hospital as a result of the head injuries and other
2 injuries he received in that attack.

3
4 Initially the Inquiry had proposed to present the case
5 of Mr Malcolm a week ago, on 15 June, on the basis that it
6 had, so far as it knew, completed its analysis and
7 investigation of the available material in Mr Malcolm's
8 case. However, late in May this year it became apparent
9 that the Inquiry had, in fact, not been provided with the
10 complete police file. As a result, a further summons was
11 issued on 30 May.

12
13 On 5 June, 10 days before the case was to have
14 proceeded to public documentary tender, the police produced
15 in response to that summons another 1,500 pages of
16 material. All of those documents were documents which had
17 been sought in May last year - May 2022 - pursuant to
18 summons 1 issued to the police. As a result of that very
19 late production of such a large quantity of new material
20 and the need for it to be reviewed and any further
21 inquiries pursued, the documentary tender had to be
22 deferred to today.

23
24 However, at 4.30pm yesterday, the police advised by
25 letter that "further documents" had been located after
26 "further searches" at two separate records repositories
27 using "refined search terms". The letter yesterday
28 afternoon from the police indicated that the police were
29 not yet able to say whether those documents included any
30 new material.

31
32 The material in question, now having been received by
33 the Inquiry yesterday, amounts to an additional 1,827
34 documents. In such circumstances, the Inquiry cannot
35 proceed with that documentary tender in Mr Malcolm's case
36 today, and a review of that additional material will now
37 have to occur.

38
39 Unfortunately, that is not all. Tomorrow, the Inquiry
40 was to have heard - you, Commissioner, were to have heard -
41 in public, the documentary tender and submissions in the
42 case of William Allen. Mr Allen died in late December 1988
43 after being attacked and beaten in Alexandria Park.

44
45 On Tuesday evening, about 36 hours ago, a further
46 290 documents were produced by the police. These documents
47 were said to be produced in response to summons 5 to the

1 police, which was issued in July last year, July 2022.
2 This belated further production followed a letter from the
3 Inquiry on 15 June this year - that is, a week ago -
4 requesting that the police conduct additional searches to
5 ensure all material had been produced.
6

7 A preliminary review of this late material has
8 identified important information that will need to be
9 followed up. In those circumstances, the Inquiry cannot
10 proceed with the documentary tender in the case of
11 Mr William Allen on Friday either.
12

13 These three cases, of Crispin Dye, Robert Malcolm and
14 William Allen, as well as one other case, have had to be
15 rescheduled in this way at the eleventh hour due to late
16 production of records, despite the records being documents
17 which ought to have been produced pursuant to summonses
18 issued between May and July last year.
19

20 However, I need to make clear at this point that these
21 four are not the only examples of this eleventh-hour
22 production happening. In a number of other cases the
23 Inquiry has also received large quantities of material only
24 shortly before a public hearing and the Inquiry's lawyers
25 and other staff have worked through the night in order to
26 avoid the need to reschedule.
27

28 One such case is that of Scott Miller, in which
29 Counsel Assisting presented public submissions and tendered
30 the relevant available material last Friday, 16 June.
31

32 In Mr Miller's case, a further compilation of
33 documents was produced to the Inquiry on 1 June this year.
34 In its covering letter, the police stated:
35

36 *This document was located in a Homicide*
37 *office storage room with hard copy files.*
38 *The storage room contains both Homicide and*
39 *UHT documents and administrative files and*
40 *is generally used to temporarily store*
41 *files and other material. I am*
42 *instructed --*
43

44 said the author of the letter --
45

46 *that a review of this storage room*
47 *was undertaken out of an abundance of*

1 *caution.*

2

3 It is not clear why a review "out of an abundance of
4 caution" was not undertaken in the first place when the
5 summonses were issued in May, June and July last year.

6

7 Also, in the case of Scott Miller, there is another
8 example of the kind of problem that the Inquiry is
9 encountering. The Inquiry requested a particular
10 exhibit for examination.

11

12 The exhibit in question was located within an archive
13 box, so described, which contained other material not
14 previously provided to the Inquiry. Had the Inquiry not
15 come to the realisation that it needed to look at this
16 particular exhibit itself, it would appear that this
17 further material would never have been located or provided.

18

19 The haphazard production of the material called for in
20 these various summonses, which has become a recurring
21 feature in the last 13 months, does not permit the Inquiry
22 to have confidence that all available material in relation
23 to the cases under consideration by the Inquiry has been
24 produced, even now.

25

26 I add that as late as last night, further
27 correspondence was received from the police in relation to
28 other cases.

29

30 In the case of James Meek, which is listed for
31 documentary tender tomorrow, the police have informed the
32 Inquiry last night that one further document has been
33 produced, and they have also indicated that there is "one
34 additional bundle of documents which is in hard copy and is
35 being digitised". Whether that additional bundle will be
36 such, or its contents will be such, as to require the
37 postponement of the documentary tender in the case of
38 Mr Meek is not yet known.

39

40 In one other case, Kenneth Brennan, which is listed
41 for documentary tender tomorrow, one further document was
42 produced last night. It may or may not have an impact on
43 tomorrow's hearing.

44

45 Now, in that context, may I say the following things
46 about the nature of the problem generally. The Inquiry has
47 been writing to the police about delays and problems

1 relating to production of documents since at
2 least September last year.

3
4 In October last year, a letter was received from
5 General Counsel, Ms Marsic, for the NSW Police Force. It
6 is a letter of 18 October 2022 and it was addressed to you,
7 Commissioner, directly. The letter, which can be put on
8 the screen, if that's possible, [SC0I.84111_0011] began by
9 saying that the author was writing to respectfully convey
10 the level of resourcing allocated by State Crime Command to
11 service the response to this Special Commission.

12
13 The author asked for an indication of the level of
14 assistance that would be required. The letter noted the
15 number of summonses that by then had been issued to the
16 police. At that stage it was 31 summonses. Reference was
17 made to the staffing requirements that were needed to
18 address the matter of the production of documents called by
19 the summonses.

20
21 In paragraph 6 of the letter, the assertion was made
22 that staff were being drawn away from their usual
23 day-to-day tasks as a result of complying with summonses
24 from this Commission. The author asserted that on three
25 occasions, that had resulted in the stalling of live
26 investigations and reviews being conducted by the UHT,
27 and went on to suggest that more summonses might result
28 in further delay or suspension of reviews and
29 investigations.

30
31 In paragraph 7, reference was made to significant
32 resources having been invested by the Office of the General
33 Counsel to assist the Inquiry and to the fact that
34 a private law firm had been engaged.

35
36 In paragraph 9, General Counsel for the police
37 requested, on behalf of the police, a petition to
38 government to be made for funding to be allocated to the
39 police to increase staffing levels available to the UHT in
40 order to assist in properly resourcing assistance to the
41 Inquiry.

42
43 Paragraph 10 went on to say that notwithstanding the
44 foregoing, the police offered its full support to the
45 Inquiry.

46
47 Three days later the Solicitor to the Inquiry,

1 Mr Camporeale, responded to that letter, a letter of
2 21 October 2022, which perhaps could also be put on the
3 screen [SC0I.84110_0001].
4

5 In that letter, at the top of page 2, Mr Camporeale
6 pointed out, as was the case at that time, that you, as
7 Commissioner, were required to conduct all the work of the
8 Inquiry and to report by 30 June this year. As we know,
9 there has since been a two-month extension in that regard
10 and the report is now required to be presented to the
11 Governor by 30 August 2023.
12

13 However, the letter then made these points, which
14 remain to be made again today. The letter says:
15

16 *Obviously the primary source of*
17 *information, in relation to every one of*
18 *the historical deaths falling within both*
19 *Category A and category B [of the Inquiry's*
20 *Terms of Reference] is material held by the*
21 *NSW Police Force ... It is the [NSW Police*
22 *Force] that investigated the deaths*
23 *(sometimes once, sometimes more than once),*
24 *created and/or gathered all the records*
25 *relating to the deaths and the*
26 *investigations, and retains control of that*
27 *material.*
28

29 The letter went on to point out that, yes, 32 summonses had
30 been issued, but that production - and this is in October
31 last year - by the Police Force had, in respect of many
32 summonses, been late and/or incomplete. Often no extension
33 of time had been sought.
34

35 On some occasions we were advised - the Inquiry was
36 advised - on the very day that production was due that
37 police would not be able to comply. That prompted a letter
38 from the Inquiry to the police on 8 September last year.
39

40 The letter then set out, in terms that I don't need to
41 go to, a lengthy table identifying all the summonses which
42 had been issued by then by the Inquiry to the police and
43 the state of play with regard to production in relation to
44 those. I don't need to rehearse that again today.
45

46 On page 11, however, of the letter, Mr Camporeale
47 informed the police:

1
2 *The Commissioner is very concerned about*
3 *the delays by the [police] in producing*
4 *material, and about the manner in which*
5 *material has been and is still being*
6 *produced, ... given the limited timeframe*
7 *he has to deliver his final report.*
8

9 Some examples were then given about some of the problems
10 comprising components of the overall problem.

11
12 On page 13 of the letter, there was a direct response
13 to paragraph 6 of Ms Marsic's letter which had raised the
14 suggestion that responding to summonses from the Inquiry
15 was the cause of live investigations and reviews by the UHT
16 being stalled. The Inquiry's letter stated, and I quote:

17
18 *Any such allegation is completely*
19 *inappropriate, is flatly rejected, and*
20 *should be withdrawn. If any such impact*
21 *on the work of the UHT has occurred, that*
22 *is entirely attributable to resourcing*
23 *decisions taken, or not taken, by the [NSW*
24 *Police Force].*
25

26 The letter went on to point out, as is well known,
27 that this Inquiry has been instituted by the government of
28 New South Wales following recommendations of
29 a Parliamentary Standing Committee.
30

31 It points out again the unique position of the police,
32 the NSW Police, in relation to the holding of records
33 relating to those deaths and the fact that it was always
34 inevitable that a large amount of material would be called
35 for from the police.
36

37 Mr Camporeale noted that the Police Force, NSW Police,
38 had at no stage objected to the production of any material
39 or advanced any suggestion that the material sought was not
40 properly called for and that, Commissioner, remains the
41 case.
42

43 Now, one would have thought that the position of the
44 Inquiry was made very clear in that letter. The need for
45 the NSW Police to ensure that appropriate arrangements were
46 made to meet the legitimate expectations of the Inquiry in
47 relation to the production of documents was spelt out and

1 it has never subsequently been disputed.

2
3 I add that the moment the Terms of Reference were
4 published, which was in late April last year, and the
5 "Category A" and "Category B" parts of those Terms of
6 Reference were publicly known, it was immediately apparent
7 to anyone reading those Terms of Reference, including the
8 police, that unsolved cases, among those considered by
9 Strike Force Parrabell, would be the subject of this
10 Inquiry. That meant, at the very least, that the cases
11 from Strike Force Parrabell which were unsolved, which
12 according to the police numbered some 23, would be cases
13 where the Inquiry inevitably would be seeking records.

14
15 There were also, of course, the cases that turned out
16 to be caught by Category B, which were, as at that point,
17 yet to be identified. But as to those 23, the need for the
18 production of documents must have been known immediately
19 in April last year.

20
21 In those circumstances, having regard to that
22 correspondence and having regard to those realities, the
23 ongoing and serious nature of the inadequacies of
24 production would appear to indicate that there is something
25 seriously wrong with the way that cases and exhibits are
26 managed by the NSW Police Force and by the Unsolved
27 Homicide Team within the NSW Police Force.

28
29 Some indication of the reasons which may lie behind
30 this unsatisfactory state of affairs is perhaps to be found
31 in the very recent correspondence from the NSW Police Force
32 yesterday about the particular cases that I mentioned
33 earlier.

34
35 If we could perhaps have on the screen one of those
36 letters of 21 June 2023, perhaps the one in relation to
37 Crispin Dye [SC0I.84109_0001]. Thank you.

38
39 This is the letter that I referred to earlier. The
40 letter refers under the heading "Production of Documents"
41 to "an additional hardcopy of what appears to be the
42 coronial brief". As I mentioned earlier, that expression
43 turned out to cover some 245 documents, some of which the
44 Inquiry had never seen before, including police notebooks.

45
46 But under the heading "Scope and manner of searches
47 for records undertaken by the Commissioner", this is stated

1 as at 21 June 2023:

2
3 *We are otherwise instructed that the*
4 *Commissioner's response to Summons 1*
5 *concerning Crispin Dye is complete.*
6

7 I note that summons 1 was issued in May 2022.
8

9 Then an indication is given as to what is being done
10 at least now "as a matter of regularity", in terms of
11 searches. The first is a review of police computer
12 systems, of which there are several. There is the e@gle.i
13 system; there is what is known as EFIMS, which stands for
14 Exhibits Forensics Information and Miscellaneous Property
15 System; there are, thirdly, NSW Police Force secure and
16 shared drives; fourthly, State Crime Command databases;
17 fifthly, Computerised Operational Policing System,
18 otherwise known as COPS. So five separate computer
19 systems, as well as what is called the "Records Management
20 System". So, first of all, six different computer systems.
21

22 Secondly, police area commands - that is, speaking
23 slightly loosely, a reference to the actual police stations
24 around the State within local area commands - in other
25 words, searches are made, it seems at least now, at the
26 level of police stations.
27

28 Thirdly, searches are made of another command known as
29 FE&TS, which stands for Forensic Evidence & Technical
30 Services.
31

32 Fourthly, if a summons requests information about
33 exhibits, then a search is made of the Metropolitan
34 Exhibit and Property Centre, MEPC.
35

36 Sometimes, fifthly, contact is made with current or
37 former particular police officers who may have been
38 involved in a case.
39

40 Sixthly, requests are made to State Archives. State
41 Archives is a body not exclusively holding documents for
42 the police, it is a body which holds archival documents for
43 the State of New South Wales generally.
44

45 What the letter tells us in relation to the archives
46 is that the Commissioner is reliant on those engaged by
47 State Archives - ie, not police - or other government

1 storage facilities, in order to search for documents which
2 may be responsive to the summons. So it seems documents
3 might be found relative to unsolved homicides not only in
4 State Archives but in "other government storage
5 facilities".
6

7 The letter makes the point that the Commissioner's
8 staff - ie, police - are not permitted to search these
9 archived records; rather, the staff of State Archives, not
10 a police body, have to be requested to carry out the
11 searches and, of course, the searches thereby conducted,
12 one assumes, will depend upon the nature of the task and
13 the nature of the search as specified, which the staff of
14 that body are asked to conduct.
15

16 That is perhaps brought home by the last sentence of
17 this paragraph, where the police letter says, referring to
18 the archives:
19

20 *These searches have now been performed in*
21 *relation to some summonses on multiple*
22 *occasions, using different search term*
23 *combinations.*
24

25 Now, that would indicate that, depending on the nature
26 of the search term chosen by the non-police person
27 attempting to find something, documents will or won't be
28 found.
29

30 Seventhly, searches are made where requests relate to
31 Forensic and Analytical Science Service, known as FASS -
32 that is, requests relating to autopsy or forensic testing
33 and the like, then requests are made by the police to the
34 New South Wales Department of Health, which is the
35 government department under which FASS resides.
36

37 Finally, it is stated that, where necessary, the
38 Police Commissioner engages with the Coroners Court also to
39 locate documents that may be relevant.
40

41 Now, the letter suggests that these searches have been
42 performed by the police Corporate Records team in the way
43 that further and more refined searches by separate team
44 members have been conducted. That would seem to indicate
45 that archived records are not labelled or stored in a
46 consistent way and that whether relevant archived records
47 are located when searched for is actually dependent on the

1 individual staff member and the words they choose to
2 search.

3
4 This is of obvious concern, given that most Unsolved
5 Homicide investigations will, by their very nature, be
6 reliant on historical records from the archives.

7
8 The fact that the records held by or needed by
9 NSW Police in relation to unsolved deaths - and
10 I interpolate that this would presumably apply to all
11 unsolved deaths, not merely those related to LGBTIQ
12 persons - the fact that those records are dispersed to so
13 many different places and not stored together and
14 apparently not recorded in any coordinated or overall way,
15 as appears to be the case, is likely to be of real concern
16 to the community.

17
18 As but one example or component of this concern, the
19 whole rationale of Strike Force Parrabell was that the
20 officers conducting that paper review - and a paper review
21 is all that it was - would obtain and review all available
22 documentary material on the 88 or so cases in question.
23 The experience of the Inquiry over the last 12 months, as
24 exemplified by the matters I have just been raising,
25 suggests that it is at least very unlikely that all such
26 materials were, in fact, obtained by Strike Force
27 Parrabell.

28
29 I make this further observation. It does seem clear -
30 and if this is not the case, no doubt we will be told in
31 due course, but it does appear from the correspondence -
32 that all of these various searches, as now listed by the
33 police in their letters of yesterday, were not done from
34 the commencement of this Inquiry when the police were
35 served with summons 1 in May last year and with successive
36 summonses in June, July and subsequent months last year.
37 If those searches had been done then, as it would now seem
38 from yesterday's correspondence it was obviously necessary
39 to do, presumably, most, if not all of the documents now
40 being so belatedly and inefficiently produced would have
41 been found.

42
43 It would appear from the recent correspondence that
44 these more extensive searches have only been prompted by
45 the Inquiry's letter of 15 June 2023, in which the Inquiry
46 specifically requested the police to conduct further
47 searches in each and every case still to be presented.

1
2 Commissioner, as you are all too well aware, the
3 Inquiry has a very tight time limit in which to conduct the
4 work entrusted to it under the Terms of Reference. You are
5 required to report to the Governor by 30 August this year.
6

7 To have four public hearings postponed at the last
8 minute, as that deadline approaches, as a result of the
9 police failures to produce documents and to produce them in
10 a timely way, is unacceptable.
11

12 As I mentioned, and as was spelled out in the
13 Inquiry's letter to the police in October last year, it
14 must always have been obvious to the NSW Police that they
15 would be the primary source of information records for this
16 Inquiry.
17

18 By reason of the large number of deaths or suspected
19 deaths which this Inquiry is tasked with looking at and the
20 unique position of the police of this State in relation to
21 the holding and accessing of records relating to those
22 deaths, it is, and always was, inevitable that a large
23 amount of material would be called for from the NSW Police.
24 I reiterate that the police have at no stage objected to
25 the production of any material or advanced any suggestion
26 that the material sought was not properly called for.
27

28 The delay of these public hearings has also meant, of
29 course, that the friends and family of the deceased person,
30 who are otherwise preparing to attend the hearing, are told
31 at the last minute that the hearing is not going ahead.
32 The emotional impact of preparing for a long-awaited
33 hearing into your loved one's death and then being told
34 that a last-minute production of new material means that it
35 cannot go ahead cannot be measured.
36

37 Commissioner, what is to be done is, of course,
38 a matter for you as Commissioner. On one view, however,
39 a view which I would respectfully propose, what is
40 essential, now, is that the appropriate senior lawyer, on
41 instructions from the NSW Police Force, provide an
42 affidavit, I would suggest by no later than 12 noon on
43 Monday, deposing as to two particular matters.
44

45 Firstly, whether, in every case that the Inquiry has
46 considered and presented in a documentary tender to date,
47 and in every case that the Inquiry is scheduled to proceed

1 to a documentary tender in the coming weeks: one, all
2 searches of all possible holdings and repositories of
3 documents have been conducted and completed; and, two, all
4 documents, exhibits and material called for by every
5 summons issued to date by the Inquiry in these cases have
6 been produced to the Inquiry.

7
8 Secondly, the affidavit should identify with precision
9 the totality of documents, exhibits and other material
10 considered by officers of Strike Force Parrabell when
11 reviewing each of the cases which will be listed in a
12 schedule which will be provided to the police, essentially
13 being the 23 or slightly more than 23 cases which were
14 unsolved from Strike Force Parrabell.

15
16 I would further put forward for your consideration,
17 Commissioner, that not only should such an affidavit be
18 provided by the appropriate senior lawyer on instructions
19 by 12 noon on Monday, but that that person should be
20 available for questioning, if necessary, at a suitable time
21 next week. If the Commission pleases.

22
23 I have, I should say, prepared, or those assisting me
24 have prepared, a short minute of order in which, should you
25 be disposed to make such an order, the Inquiry would
26 require an affidavit of the kind that I just mentioned.
27 I will show my friend a copy. It, among other things,
28 lists in a schedule the particular cases that are referred
29 to.

30
31 Now, I should, I am reminded, tender, perhaps as one
32 exhibit, the five letters that I have referred to in the
33 course of these submissions this morning. They are:
34 firstly, the letter from the Office of the General Counsel
35 to yourself, Commissioner, of 18 October 2022; secondly,
36 the letter from Mr Camporeale, for the Crown Solicitor,
37 responding to that letter, his letter being dated
38 21 October 2022; thirdly, the letter dated 20 June 2023
39 from the police, that is, a letter of two days ago, in
40 relation to the case of William Allen; fourthly, the letter
41 of yesterday, 21 June, from the Office of the General
42 Counsel to the Inquiry in relation to Robert Malcolm; and
43 fifthly, the letter of the same date, that is, 21 June
44 2023, from the Office of the General Counsel to the Inquiry
45 in the case of Crispin Dye.

46
47 I hand up a set of those letters.

1
2 THE COMMISSIONER: Thank you.

3
4 MR GRAY: I am told that that would be exhibit 34.

5
6 THE COMMISSIONER: Mr Short, I take it there is no
7 objection to me receiving these letters?

8
9 MR SHORT: No objection.

10
11 THE COMMISSIONER: Thank you.

12
13
14 **EXHIBIT #34 FIVE LETTERS REFERRED TO IN SUBMISSIONS BY**
15 **COUNSEL ASSISTING**

16
17 THE COMMISSIONER: Is there anything you want to say in
18 relation to what Mr Gray has said this morning?

19
20 MR SHORT: Firstly, Commissioner, the Commissioner of
21 Police acknowledges the significance of the issue that is
22 raised by Counsel Assisting.

23
24 The Inquiry has previously requested from the
25 Commissioner of Police a statement of a suitably qualified
26 or authorised officer going to a number of these matters.
27 That statement was requested to be provided by, I believe,
28 10am on this coming Tuesday.

29
30 My instructions in respect of the proposed direction
31 from Mr Gray - and I have only received it moments ago -
32 are that the appropriate deponent for an affidavit to be
33 put on would be the officers that are actually conducting
34 the searches rather than the legal officers who are
35 conducting the Inquiry --

36
37 THE COMMISSIONER: And the reasons for that are?

38
39 MR SHORT: Because the searches are within the knowledge
40 of the persons who are conducting the inquiries, not the
41 legal officer acting on behalf of the Commissioner of
42 Police.

43
44 Beyond that, Commissioner, I was only going to
45 indicate that given the significance of the issues raised,
46 the Commissioner of Police does wish to be heard further on
47 the issue at a time after the affidavit is provided.

1
2 THE COMMISSIONER: About what?

3
4 MR SHORT: About the issues that are raised and the
5 searches and inquiries that are being conducted.

6
7 THE COMMISSIONER: All right. That can certainly happen.

8
9 MR SHORT: Thank you, Commissioner.

10
11 THE COMMISSIONER: Mr Short, this is not the first time
12 that documentary issues have been raised. This Inquiry is
13 being conducted, as you know, and well know, pursuant to
14 Letters Patent, which is a directive from Executive
15 Government. Your client has been fully aware of the Terms
16 of Reference by no later than 13 or 19 April last year.

17
18 For me to have to have a hearing today, so many months
19 after this Inquiry has commenced, to yet again raise issues
20 is extraordinary. It is intolerable and it is
21 unprofessional. Why somebody within the Police Force
22 and/or alternatively within the legal department of the
23 Police Force did not find it convenient, appropriate or
24 necessary to sit down, shortly after the Letters Patent
25 were issued, and to try to work out precisely how it could
26 best respond to what were clearly going to be a number of
27 summonses, even on the cases that they must have known
28 about at that time, 22 or 23 unsolved cases. Your clients,
29 as it were, are at the coalface of the investigation of
30 each of those homicides. Everyone in the Police Department
31 invents the file. You create all the documents in relation
32 to these unsolved deaths, and I'm only talking about
33 a fraction of the unsolved deaths in New South Wales.

34
35 For me to be told by letter, as belatedly as the last
36 day or two, about the number of possible repositories where
37 documents might exist is chilling. If that's the case in
38 relation to other unsolved homicides, and it's outside my
39 Terms of Reference, the public interest is very much
40 engaged in what is going on.

41
42 But why couldn't all of those repositories have been
43 determined in April, May, June or July of last year? Is it
44 a lack of imagination, was it a lack of curiosity or is it
45 just plain ineptitude?

46
47 What is going on now with the untimely production of

1 these documents, belatedly, as it turns out, it has had the
2 effect of not only undermining the nature and the work of
3 this Inquiry, it sheds, unfortunately from the police point
4 of view, a spotlight on the internal record-keepings of the
5 Police Force. How can any member of the public in
6 New South Wales be confident that unsolved homicides can be
7 looked at, if needs be, if you have no idea where the
8 documents might be in relation to each and every case?
9

10 So, no, I am going to insist that a lawyer take
11 responsibility, somebody who has professional obligations.
12 That lawyer can, of course, as would be expected, provide
13 information to the Inquiry on information and belief. I'm
14 not expecting for a moment that whoever it might be - and
15 it has to be someone senior; I'm not going to nominate that
16 person but it has to be someone with senior professional
17 responsibilities - I want to know when it was that somebody
18 took notice of how many repositories there might be, how
19 much difficulty there might be and, quite frankly, how much
20 time. It would beggar belief that someone in the legal
21 department of the Police Force has only just recently sat
22 down to work out what might be involved in procuring these
23 records.
24

25 So, no, I am going to make the orders and I want
26 somebody, whoever it might be, to be available, and I will
27 make the orders that not only do we get material concerning
28 all the outstanding cases - I am not going to finish this
29 Inquiry belatedly simply because the police are not
30 cooperating and doing the best they can. I want to be
31 assured that they are doing that, have done it and will
32 continue to do it.
33

34 So can I please have the form of order, Mr Gray, and
35 I will make that order.
36

37 Would you please ensure whoever it is is available for
38 further questions, if needs be, and I also would like some
39 information about Parrabell, because pretty obviously we
40 need to know what on earth Mr Crandell and his team of
41 people looked at for the purposes of their results, which,
42 as you well know, were publicly published in order to
43 assure everyone in the community that those cases had been
44 fully and comprehensively reviewed. I need to be assured
45 that that's what happened - or not, as the case may be.
46

47 MR SHORT: Yes, Commissioner.

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THE COMMISSIONER: All right. I have made those orders.

What I will do, Mr Short, is I am going to adjourn now, but I will make sure that you and your clients get a copy, signed by me, of that order.

Now, if there are any problems about this, can I say, not for the first time, would you get your client in a timely fashion to respond at least to this order, and this time, it is an order. All right?

MR SHORT: Yes, Commissioner.

THE COMMISSIONER: Thank you. I'll now adjourn.

AT 12.04PM THE COMMISSION WAS ADJOURNED ACCORDINGLY

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