# 2022 Special Commission of Inquiry into LGBTIQ hate crimes 

Before: The Commissioner, The Honourable Justice John Sackar

At Leve1 2, 121 Macquarie Street, Sydney, New South Wales

On Friday, 23 June 2023 at 10.00am
(Day 65)
Re: Death of James Meek

| Ms Rebecca McEwen | (Counsel Assisting) |
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| Mr Tom Allchurch | (Solicitor) |

Re: Death of Kenneth Brennan
Ms Claire Palmer (Counsel Assisting)
Ms Caitlin Healey-Nash (A/Principal Solicitor)
Ms Hermione Nicholls (Solicitor)

Also Present:
Mr Mathew Short with Mr Aurhett Barrie for NSW Police

THE COMMISSIONER: Yes.
MS McEWEN: Commissioner, McEwen, I appear as Counsel Assisting this morning.

THE COMMISSIONER: Thank you.
MR SHORT: Commissioner, Short for the Commissioner of Police.

THE COMMISSIONER: Thank you, Mr Short.
MS McEWEN: Commissioner, this is a hearing in relation to the death of Mr James Meek.

THE COMMISSIONER: Before we start, should I make the orders in relation to redactions?

MS McEWEN: Yes, certainly, Commissioner. I was going to come to that.

THE COMMISSIONER: I have them in front of me.
Mr Short, I take it they are by consent?
MR SHORT: That is so.
THE COMMISSIONER: All right. Thank you.
Thanks, Ms McEwen, yes.
MS MCEWEN: I will commence with the tender of materials. The tender will take place in two tranches.

There are three volumes which form the public tender bundle. Do you have those, Commissioner?

THE COMMISSIONER: Yes.
MS McEWEN: I would tender those, and they should become public hearing exhibit 35.

## EXHIBIT \#35 PUBLIC TENDER BUNDLE

MS McEWEN: In addition, there is one volume that forms the confidential tender bundle. Is that with you, Commissioner?

THE COMMISSIONER: Yes, thank you.
MS McEWEN: That should become exhibit 36.
EXHIBIT \#36 CONFIDENTIAL TENDER BUNDLE
MS McEWEN: In addition, Commissioner, you should have two sets of written submissions of Counsel Assisting.

THE COMMISSIONER: I do, thank you.
MS McEWEN: The open submissions have been prepared for publication and relate to the material in the public tender bundle, and those are the matters I will address orally this morning.

The confidential submissions deal with the material in the confidential tender bundle. I adopt and rely upon those submissions.

THE COMMISSIONER: Thank you.
MS McEWEN: For the benefit of those present today and on the live stream, I can explain that certain material is being tendered on a confidential basis to ensure the proper discharge of the Inquiry's functions and obligations under its Terms of Reference.

My oral address this morning will address five matters. The first is the contents and preparation of the tender bundle. The second is the death of Mr Meek and the subsequent acquittal of Michael Heatley for Mr Meek's murder. The third is the police investigation into Mr Meek's death. The fourth is the approach and holdings of Strike Force Parrabell in relation to Mr Meek. The final matter is the question of the manner and cause of Mr Meek's death and the issue of LGBTIQ bias.

There are two additional matters that I should note at the outset of these submissions. The first is that, consistently with the Terms of Reference, I will use the initialism "LGBTIQ" to refer collectively to LGBTIQA+ communities or queer communities.

The second is that in the course of my submissions this morning, it will be necessary for me at times to quote
language that is anachronistic and in some cases offensive. I will endeavour to avoid doing so unless it is necessary to explain a matter material to the work of the Inquiry.

Finally, Commissioner, Mr Meek has some surviving family members, who may be listening to the live stream this morning, and I would take this opportunity to extend the Inquiry's condolences to them.

I will turn, then, to address the process of obtaining the material that forms the public tender bundle. The relevant steps are summarised in the statement of Mr Tom Allchurch dated 19 June 2023, which is at tab 74 of the public tender bundle, and I don't need to take you there, Commissioner. There is a second statement of Mr Allchurch of the same date that addresses the process of obtaining the material that forms the confidential tender bundle.

In May 2022, the Inquiry issued a written request to the Registrar of the Coroners Court to obtain the coronial file in relation to Mr Meek's death. It appears from the coronial file that an inquest into Mr Meek's death was not held, as it was the subject of a murder investigation and ultimately a prosecution. I'll make some submissions about that prosecution in due course.

Summonses were directed to the NSW Police Force in May, August and September 2022 and in January and Apri1 2023, and a large volume of material was received in response. The material at tabs 1 to 57 and 60 to 64 in the tender bundle is drawn from that material.

Commissioner, a small amount of additional material was produced yesterday and on Wednesday in this matter. That material has now been reviewed by Inquiry staff and there was no need to add any of that material to the tender bundle.

The Inquiry also obtained the transcript of Mr Heatley's trial and the judgment on sentence from the Supreme Court of New South Wales. They appear at tabs 58 and 59 of the tender bundle.

In addition, the tender bundle includes at tab 65 the judgment on sentence concerning Mr Heatley's subsequent conviction for the manslaughter of another person, Mr Craig Behr, and that's the judgment on sentence that I just
referred to, to be clear, because, of course, Mr Heatley was acquitted in the trial relating to Mr Meek.

The Inquiry also obtained a statement from Dr David Bruce of FASS, which appears at tab 71. I will return to that statement in the course of my submissions this morning when I discuss the police investigation.

At tab 72 is the statement of Detective Sergeant Andrew Hamill which sets out steps taken by the NSW Police Force to locate exhibits requested by the Inquiry.
A number of exhibits in this matter have been lost, and again I will return to that topic later in the context of my submissions about the police investigation.

Finally, at tab 73 of the tender bundle is a statement from one of Mr Meek's surviving daughters, Ms McMahon.

I will turn, then, Commissioner, to the death of Mr Meek.

Mr Meek was a resident of the Northcott Flats on Belvoir Street in Surry Hills. His body was discovered on 8 March 1995 after concerned neighbours contacted the NSW Police Force after they had made attempts to discover his whereabouts by knocking on the door and ringing the telephone over a period of some hours. Mr Meek was an out gay man and he spoke to his friends and acquaintances about his relationships with men.

It's useful to explain at the beginning of these submissions that Michael Heatley was charged with Mr Meek's murder. There was a directed acquittal at trial after two witnesses made some concessions about the fallibility of their evidence concerning times at which they thought they had seen Mr Meek on the morning of his death.

The trial of Mr Heatley occurred in open court and the fact that he was charged and that he was acquitted is therefore a matter of public record. It is for this reason that the Inquiry has not applied a pseudonym in respect of Mr Heatley, although it has applied pseudonyms to two other persons of interest who I will address in a moment.

When police initially attended the scene, they made observations concerning the location of Mr Meek's body and took photographs of Mr Meek's body in situ and of his
apartment.
At this point in time, and this is a matter that I will return to later, police appear to have formed the view that Mr Meek had died of natural causes, probably a heart attack. The documents note that there were no signs of forced entry to Mr Meek's flat and police formed an initial view that there were no suspicious circumstances.

As a consequence, the crime scene was released once the Crime Scene Unit left. Mr Meek's two daughters and their husbands attended his apartment the following day and cleaned it up, and I should say, Commissioner, that I'm going to return to these events in the context of my submissions about the police investigation.

A post-mortem examination was conducted on 11 March 1995. The post-mortem report of Dr Christopher Lawrence is at tab 4 of the tender bundle, although I don't need to take you to that, Commissioner.

The cause of death was found to be blunt force head injuries consistent with an assault. Mr Meek's injuries included a substantial blow to the left forehead and impact to the left and right mandible in addition to bruising on the back of the head.

In addition to these head injuries, there had been impacts to the right and left flank and there was bruising on Mr Meek's left hand, including bruising on the left ring finger. The forensic pathologist who conducted the post-mortem suggested that the bruising on the left ring finger could have been caused by a ring that had been removed.

Following the findings of the post-mortem, a criminal investigation into Mr Meek's death was commenced. This culminated in charges against Mr Heatley and a criminal trial which ran over eight days prior to an acquittal being directed following the close of the prosecution case. That trial transcript is at tab 58 of the tender bundle.

This morning I will not attempt to be comprehensive in dealing with the evidence from the trial, which is set out in a great deal of detail in the written submissions.

There were a number of factual issues which were the subject of conflicting evidence and about which witnesses were extensively cross-examined. What I will do this morning is identify some key aspects of the evidence from the trial, which will inform the submissions I make about the police investigation, Strike Force Parrabell, and about issues of manner and cause and LGBTIQ bias.

There is one additional matter, Commissioner, that I should address before I turn to the events of 7 March 1995. There are allegations within the material in the public tender bundle that Mr Meek was a paedophile and/or that he sought sexual relationships with underage boys.

This Inquiry has heard in the context of Public Hearing 2 evidence and submissions concerning the harmful stereotyping of gay men in relation to paedophilia, including submissions directed to the fact that the attribution of anti-paedophile animus may at times lead cases to be wrongly excluded as possible hate crimes, and that appears at paragraphs 1230 to 1256 of the Public Hearing 2 submissions. It is, of course, important not to countenance that type of stereotyping.

The evidence concerning Mr Meek's alleged sexual interest in underage boys has not been tested and is primarily hearsay. The proposition of relevance for the Inquiry's purposes is that there is evidence that Mr Meek was believed by some people to be a paedophile. This, in turn, is relevant to the question of possible motives for Mr Meek's murder.

It is not necessary, in my submission, for this Inquiry to make any findings concerning Mr Meek's alleged sexual activity or interest in underage boys and nor would it be safe for the Inquiry to do so on the basis of the evidence presently before it.

Having made those preliminary observations, I will turn now to the events surrounding Mr Meek's death. The first of those topics is the question of when Mr Meek was last seen alive.

Mr Meek's movements in the days prior to his death are dealt with at paragraphs 116 to 144 in the open submissions.

The last occasions on which there is evidence of Mr Meek being alive were 10.30 in the morning on Tuesday, 7 March, when he made a call to a radio show, and then between 11.30 and midday on the same day, when he was seen by a neighbour walking his dogs. His body was discovered on 8 March 1995.

It is easier, Commissioner, to understand the progress of the police investigation and the narrative of the events with an appreciation of the three people who emerged as persons of interest.

The first of those is Michael Heatley. Mr Heatley was charged and committed to trial but acquitted. The acquittal was directed, as I have said, at the close of the prosecution case, and the case put against Mr Heatley was circumstantial.

Throughout these submissions, and particularly in the context of the police investigation and Strike Force Parrabell, I will refer to evidence that, on one view, implicates Mr Heatley in Mr Meek's death. It is important that I acknowledge before turning to that evidence that Mr Heatley was acquitted.

By the time of the trial, it was uncontroversial that Mr Heatley had stayed with Mr Meek on the night of Monday, 6 March. There was, however, significant factual controversy about what time Mr Heatley left on the Tuesday morning and at what time Mr Meek had been seen on the Tuesday morning by a number of other people. It's not necessary for me to deal with that in detail this morning, though it is set out in the submissions in writing from paragraphs 117 to 187.

It was also uncontroversial at the trial that Mr Heatley had stolen a ring from Mr Meek. This ring is described as a "tiger's eye ring". Mr Heatley said he had stolen it from a cabinet drawer and the prosecution advanced the motive of robbery as an explanation for Mr Meek's death.

I will return to the trial in due course this morning, but in addition to Mr Heatley, I should identify two other persons of interest.

First, in the weeks before his death, Mr Meek had been
seen arguing with a person who we are referring to as "NP220", who was a 19-year-old resident of the Northcott Flats building. In his interview with police, NP220 described himself as having been "pretty good friends" with Mr Meek. He said that Mr Meek had once made a sexual advance to him, but that he had rebuffed Mr Meek and that he had never had a sexual relationship with Mr Meek.

Three witnesses gave evidence that they had observed NP220 and Mr Meek arguing in the days prior to Mr Meek's death. One of those witnesses heard NP220 say to Mr Meek, "You fucked me and you owe me money." That witness and one additional witness had formed the view that NP220 and Mr Meek were in a sexual relationship. On one view, the evidence given concerning the argument supports the contention that Mr Meek and NP220 were in a sexual relationship and that NP220 may have been demanding money for sex.

The significance of this is twofold. It's suggested that NP220 may have been untruthful when interviewed by police. Second, it formed a basis for thinking that there may have been animosity between NP220 and Mr Meek and that that animosity may have been connected to an LGBTIQ bias motivation.

However, Commissioner, I must acknowledge that there is a level of ambiguity in the phrase "You fucked me". It might have been intended literally, or it may have been intended as an accusation that Mr Meek had cheated NP220 in some way. There is evidence that Mr Meek had sold NP220 a car, which had suffered significant damage, for $\$ 100$ in the previous November. It may well have been that this was what NP220 was referring to.

The Inquiry conducted a private hearing with NP220 and you will see at paragraph 189 of the open submissions the submission is made that it would not be open, on the evidence, for a finding to be made that it was more probable than not that NP220 was responsible for Mr Meek's death.

The third person of interest I will come to now is someone who was known to have expressed some animosity towards Mr Meek, again, this was another resident of the Northcott Flats and this witness is being referred to as "NP219".

On her evidence, NP219 was the last person to see Mr Meek alive when she observed him walking his dogs. NP219 had formed a dislike of Mr Meek after she went away and asked Mr Meek to care for her dog. He didn't do so, and on her return, NP219 was so angry that she held Mr Meek off a balcony. Later, NP219 formed the view that Mr Meek had killed her dog by running it over.

NP220 told police that NP219 did not like gay men and that NP219 had told him that she knew what had happened to Mr Meek but didn't want to say anything because she didn't want to get involved.

It is necessary, Commissioner, to treat the evidence that NP219 did not like gay men with some caution. NP219 was also a member of an LGBTIQ community and NP220's statement that she did not like gay men appears to have been based on his view that two different LGBTIQ communities just do not get along. Consequently, and this appears at paragraph 71 of the open submissions, in my submission, it would not be safe to conclude that NP219, in fact, held such views. NP219 is now deceased.

I'll turn now to the police investigation into Mr Meek's death. As is acknowledged in the written submissions, the police investigation of Mr Meek's death was thorough in several respects. My submissions this morning, however, will focus on a number of areas of concern in the investigation.

The first area of concern $I$ will address is the failure by police to take some items into evidence, and this is a topic that is dealt with at paragraphs 51 to 60 of the written submissions.

The first and the most significant of those items is a used condom that was observed in Mr Meek's bedroom by one of the constables who attended Mr Meek's apartment on 8 March. It was not collected by police on the 8th and the reason for that appears to be the police formed the view that Mr Meek had died of natural causes, most probably a heart attack.

By the time the criminal investigation into Mr Meek's death was formally commenced, some days later, Mr Meek's daughters had tidied his apartment. They did so on

Thursday, 9 March, two days before the post-mortem revealed that Mr Meek had died of blunt force trauma injuries consistent with an assault.

Ms McMahon, who provided a statement to the Inquiry, recalls that she threw out the condom.

I should make it clear, Commissioner, that I am not in any way being critical of Ms McMahon or her sister. They had been told by police that Mr Meek had died of a heart attack and it was entirely understandable that they wished to tidy their father's apartment.

What is not clear is why police released the crime scene on 8 March. Mr Meek was not an elderly man and police did not have any information to suggest that Mr Meek had a history of heart failure or of any other disease which would have explained his sudden collapse and death.

Mr Meek's body was found lying on the floor directly in front of the door in the entrance hall, as can be seen in the crime scene photos, although I don't propose to take you to those this morning, Commissioner.

There is no object like a piece of furniture or similar near the body to suggest that Mr Meek might, for example, have slipped and struck his head. There was also residual blood on the back of Mr Meek's head.

In my submission, the fact that police apparently dismissed the possibility of homicide at this point in time is a deficiency in the investigation. The crime scene should not have been released when the cause of death was unknown and where there was a possibility of homicide.

The premature release of the crime scene and the failure to take the used condom into evidence earlier meant that the condom was disposed of. The loss of the opportunity to take the condom into evidence is significant.

The condom suggested that sexual activity had recently taken place and there is evidence that Mr Meek was thought by some people to have had a sexual relationship with two persons of interest, including the person who was eventually charged. As is explained in the statement from FASS, it may have been possible to recover DNA from both
the exterior and interior of the condom - that is, it may have been possible to recover DNA from both the wearer of the condom and that person's sexual partner.

Both Mr Heatley and NP220 denied that they had a sexual relationship with Mr Meek when interviewed by police. Mr Heatley admitted that he had stayed overnight at Mr Meek's apartment. The ability to conduct forensic testing on the condom could have been extremely significant in implicating or, alternatively, in exonerating either of them in relation to Mr Meek's death, or in identifying a further person of interest. The same submissions can be made in relation to a handkerchief which is visible in the crime scene photos on the bedside table in Mr Meek's bedroom next to two open packets of lubricant.

Finally, the crime scene photos show a large shifting spanner on top of the dresser. In circumstances where Mr Meek died of injuries inflicted by a blunt force trauma, in my submission, the spanner should also have been taken into evidence.

I will move now to a second aspect of the police investigation, and that is the failure to further investigate NP219.

On her evidence, NP219 was the last person to see Mr Meek alive. A number of witnesses made reference to NP219's animosity towards Mr Meek, including the previous violent incident with Mr Meek. In addition, NP220 told police that NP219 had said to him that she knew who killed Mr Meek. There is no evidence before the Inquiry to suggest that police made inquiries concerning the alibi that NP219 gave to police. In my submission, this apparent failure to make inquiries was an insufficiency in the police investigation.

Before I move to Strike Force Parrabell, I will turn to the matter of exhibits. This matter is addressed in the written submissions at paragraphs 37 to 42.

In May 2023, the Inquiry issued a summons to the NSW Police Force requiring production of a number of exhibits taken into evidence as part of the original police investigation. These included a sample of Mr Meek's blood, clothing, fingernail scrapings, a swab collected from the floor of the kitchen, the broken ceramic bowl observed by
police near Mr Meek's body, newspapers and a plastic water ampoule.

The location of these exhibits is addressed in the statement of Detective Sergeant Andrew Hamill dated 26 March 2023, which is at tab 27 of the tender bundle. The sample of blood and the swab of the kitchen floor had been retained by FASS. The other exhibits requested could not be located.

In addition, Detective Sergeant Hamill identified some additional exhibits which were not referred to in the summons, including a sample of the hallway carpet, two yellow thongs, and some cigarettes butts. These exhibits were also unable to be located.

The FASS statement identifies the further testing that could have been carried out if these exhibits had been available. The inability of the NSW Police Force to locate these exhibits means that those avenues have not been able to be explored.

I note, Commissioner, that I understand exhibit management to be one of the matters to be explored in further hearings to be conducted in early July and consequently I don't propose to say anything further about that matter today.

I will move then to two final matters concerning the police investigation. The first is the question of phone records. At the trial, the question of the time at which Mr Meek had made a phone call to a radio station on the morning of 7 March 1995 assumed a great deal of significance.

The Inquiry took steps to ascertain whether police had obtained Mr Meek's call records, and this is dealt with at some detail in the written submissions at paragraphs 61 to 69.

In summary, Commissioner, the failure to obtain the call records is unexplained on the material available to the Inquiry and appears to have been an oversight in the investigation.

The final matter which I will address before I move to Strike Force Parrabell is a complaint made by Mr Meek's
daughters in relation to the investigation. Mr Meek's daughters engaged solicitors, Blessington Judd, to write to the Commissioner of Police raising concerns about the investigation. One of those concerns was the immediate attribution of Mr Meek's death to heart attack.

In addition, the letter indicated that Mr Meek's daughters were extremely distressed by comments made to them by a constable of the NSW Police Force when they were told their father had died. The letter states that the constable made a disparaging remark to them about Mr Meek.

The letter does not provide details concerning the nature of the disparaging remark made about Mr Meek, but Mr Meek's daughters were sufficiently distressed by the conduct of police that they engaged lawyers to raise their concerns with the Commissioner of Police. This is a disappointing aspect of the original investigation.

It is also disappointing, Commissioner, that one of the police officers involved in the investigation referred, while interviewing NP220, to the "gay or paedophile movement". He may have been positing these two possibilities as discrete alternatives, but the readier inference is that he was treating the two as coterminous or overlapping to a significant degree. The Inquiry has not heard from that police officer, but if that was what was meant, it was offensive then and it is offensive now.

I will now turn to Strike Force Parrabell.
Commissioner. The Bias Crime Indicators Form is at tab 60 [NPL.0115.0002.1368] of the bundle. It would be useful if you could turn to that document, and I understand we're also going to put it up on the screen. If you would give me a moment, Commissioner, I'm just turning that up myself.

Commissioner, you will see the pagination is at the top right-hand corner in your copy, I hope, and I will use the last four digits of the number in the top right-hand corner.

I will commence on the first page, however. You will see that under "Investigation Status", the matter is recorded as "Solved". And the offender is recorded there as "Michael Heatley".

Curiously, in the Strike Force Parrabell case
summaries, which are at tab 49 in exhibit 6 - and I don't need to take you to that document, Commissioner - Mr Meek's case is described as "unsolved". The Inquiry has not been able to identify an explanation for this contradiction between the two documents.

Further, as you will see as I take you through the Bias Crime Indicators Review Form, the matters recorded throughout largely focus on evidence that suggests that Mr Heatley was not, in fact, responsible for inflicting the injuries that killed Mr Meek and consequently the matter was not solved.

Commissioner, I would ask you first to go to page 1371 in the top corner. It's the fourth page of the document. You'll see that on the third-to-last line of the "General Comment" box, there is the statement:

There is no evidence to suggest Heatley was homosexual.

And then the following sentence notes that Mr Heatley, during his interview with police, denied a sexual relationship with Mr Meek.

However, there was evidence that Mr Heatley and Mr Meek had been in a sexual relationship. One witness, Mr Kane, said that Mr Meek had spoken to him about a sexual relationship with Mr Heatley. Although there is some reason to doubt the accuracy of aspects of Mr Kane's evidence, for reasons which are explained in the written submissions at paragraph 167, this evidence should at least have been considered by Strike Force Parrabell.

The fact that Mr Heatley had denied any sexual relationship between himself and Mr Meek is repeated a number of times throughout the form. This repetition and the absence of any consideration of contradictory evidence, or even the possibility that Mr Heatley may have had reasons to be otherwise than truthful in his interview if he had been in a sexual relationship with Mr Meek, are not adverted to throughout the form.

Commissioner, I should be clear that I'm not submitting that any positive conclusion on this matter should have been reached by Strike Force Parrabell. However, the uncritical acceptance and repetition of

Mr Heatley's evidence without reference to other evidence suggests that Strike Force Parrabell was not open to alternative possibilities and, notably, possibilities that may have suggested that this was a bias crime.

I'11 move now to the next matter in this form that I wish to address, and that is, if you go to about point 6 on the same page, in the "Comment" column, you'll see the statement:

There is no information to suggest Heatley had an issue with Meek's sexuality.

That is not correct. Mr Woodward, whose statement is at tab 49 of the tender bundle, stated that Mr Heatley held negative attitudes towards gay men and Mr Heatley had used a derogatory term to describe Mr Meek in his police interview.

In addition, Mr Heatley told police that he used to "spin out" on Mr Meek being HIV positive.

There is a distinction between prejudice on the basis of HIV status and prejudice on the basis of sexuality. However, these two forms of prejudice may overlap. This is particularly so having regard to the fact that Mr Meek was killed in the 1990s.

The Inquiry has received evidence in Public Hearing 1 about the effect of the HIV/AIDS crisis on the LGBTIQ community and on attitudes towards gay men in particular. While this is not a conclusive indicator of bias on Mr Heatley's behalf, it is another matter that should have been taken into account and considered.

Commissioner, if you could then turn over another four pages to the page number 1375, you will see at around point 2 of that page in the second column and the second row, there is a statement:

Heatley is not known to have been involved
in other bias related crimes or incidents
that may have caused him to murder Meek.
Commissioner, that may well have been true as a reference to the state of knowledge of Strike Force Parrabell, but it can only be correct if Strike Force Parrabell chose not to
conduct basic searches concerning Mr Heatley. In fact, Mr Heatley subsequently committed another homicide which may have been a bias crime and which had marked similarities to the death of Mr Meek. That crime was the manslaughter of Craig Behr.

That matter is dealt with at paragraphs 107 to 109 of the written submissions, but importantly, the sentencing judgment, which is a matter of public record, records that on 27 October, while Mr Behr's mother read her victim impact statement to the court, Mr Heatley interrupted in a violent and aggressive manner and asserted that Mr Behr had made a sexual advance to him.

Justice Whealy did not ultimately accept that Mr Heatley was the subject of a sexual advance by Mr Behr. However, irrespective of the view taken in the sentencing judgment, the proposition that Mr Heatley may have killed a man who had made a sexual advance to him was of obvious relevance to the exercise being undertaken by Strike Force Parrabell. It is a matter that should have been at least referred to and considered.

Then, Commissioner, I'd ask you to go to the middle of the page and the "General Comment" box. You'll see there that it's said that:

There is no evidence that suggests any previous existence or incidents of bias related crime having occurred towards Meek.

Once again, that is not correct. One of Mr Meek's daughters provided a statement to police in which she recounted another crime of which Mr Meek had been a victim. In early 1994, Mr Meek was walking his dogs in the park when a young man from the flats called him a "gay bastard" and a "poofter". Mr Meek told Ms Franks that he was pushed to the ground, his glasses were broken and he had been bashed up. Mr Meek also described this incident to his doctor.

It may well be the case, Commissioner, that this incident was in no way connected to Mr Meek's murder. The failure to advert to it, however, is troubling, as is the conclusion that there was no evidence of any previous incidence of bias related crime targeting Mr Meek. An assault where a perpetrator uses homophobic language is
a quintessential example of a bias crime.
Final1y, Commissioner, if you turn to page 1381 you wil1 see the "Summary of Findings" box. Around halfway through that box it is recorded that:

> A number of Meek's friends and
> acquaintances provided statements during
> the investigation however there was no
> mention by any persons that they believed
> this incident to have been motivated by bias.

While Mr Meek's friends may not have suggested a bias motivation, this form does not refer to the fact that the NSW Police Force themselves told both the Sydney Star Observer and Capital $Q$ weekly that the matter was being investigated as a possible hate crime, and those media articles are in the tender bundle.

These errors and omissions are, in my submission, material and significant. It is regrettable that Strike Force Parrabe11 appears to have been less open to the possibility that Mr Meek's death was a bias crime than the officers who conducted the original investigation.

Before I move away from Strike Force Parrabe11, I wil1 briefly address the case summary and the academic review, although I have less to say about those than about this form.

The case summary, as $I$ have said, is at tab 49 in exhibit 6, and I don't need to go to it, but as I have already mentioned, the conclusion expressed that this case is unsolved is inconsistent with what is recorded on the BCIF. In addition, the case summary contains two significant factual inaccuracies. The first is that it records that Mr Heatley stayed with Mr Meek for two days prior to his death, which is not correct. Secondiy, the case summary says that Mr Meek was struck on the head with a ceramic bowl. The findings of the post-mortem were that Mr Meek's death had been caused by blunt force injuries and that they may have been caused by kicking or stomping. While it may not have been possible to definitively exclude the ceramic bow 1 as the murder weapon, the evidence made it more probable that the blunt force injuries had been caused by Mr Meek being struck to the ground and then kicked in
the head or stomped on, and there was certainly no evidence to permit a definitive conclusion that Mr Meek had been struck on the head with the ceramic bowl.

To conclude my submissions concerning Strike Force Parrabell, the evidence available to Strike Force Parrabell was as follows. Mr Meek was an out gay man. Mr Heatley had stayed at Mr Meek's flat the night before his death. Mr Heatley had expressed homophobic views and had said that he used to "spin out" on Mr Meek having HIV. There was a suggestion that Mr Meek and Mr Heatley had had a sexual relationship. There was a used condom in Mr Meek's bedroom, in addition to open sachets of lubricant next to the bed, and these were suggestive that Mr Meek may have been killed by a sexual partner. And, finally, Mr Heatley had been convicted of a manslaughter which may have been a bias crime. That being the case, the conclusion that there was no evidence of bias crime is insupportable. There was undoubtedly evidence of bias crime.

Commissioner, I observe that in the context of Public Hearing 2, you have received submissions concerning the possibility that Strike Forces Macnamir, Parrabell and Neiwand, sought to or had the effect of discrediting claims that deaths were bias crimes or downplaying the number of potential bias crimes, and I refer particularly to the Public Hearing 2 submissions at paragraphs 639 and 1256.

There is no evidence before the Inquiry concerning the reasoning process in relation to the matters included on the BCIF in respect of Mr Meek, but, irrespective of whether the errors or omissions were inadvertent or intentional, they had the effect of dismissing the possibility that Mr Meek's death was a bias crime in the face of clear evidence to the contrary.

I will turn finally and briefly to the academic review. The academic review concluded that there was insufficient information to make a determination. I observe that the academic team did not have access to the underlying case files and so would have been unaware of some of the material I have referred to this morning. The academic team's conclusion is less open to criticism than the conclusion of Strike Force Parrabell, although it does speak to some of the limitations facing the academic team.

Commissioner, I will turn now to address the questions
of manner and cause and LGBTIQ bias. I will address manner and cause first.

In my submission, the Inquiry should find that Mr Meek died in his home on Tuesday, 7 March, between 11.30 and midday as a result of blunt force injuries to his head consistent with being bashed or kicked. The question of manner and cause is also addressed in the confidential submissions.

Perhaps here I should pause to say, Commissioner, that the reason that this case is being treated as unsolved and thus within the Inquiry's Terms of Reference is that, of course, while Mr Heatley was charged, he was ultimately acquitted at trial.

I turn, then, to the question of LGBTIQ bias. In relation to bias, $I$ will address the four possibilities that arise on the material before the Inquiry - that is, firstly, the possibilities that one of the three persons of interest that I identified earlier was responsible for Mr Meek's death, and then the possibility that a fourth, unknown, person was responsible. I will turn first to the question of an unknown person.

If Mr Meek was killed by a person presently unknown, there is no evidence concerning a likely motive for the perpetrator. It is possible, of course, that such a perpetrator may have been motivated by LGBTIQ bias, for example, if it was someone whom Mr Meek had invited to his apartment for the purposes of casual sex. However, this is presently a matter of speculation.

I wil1 then turn to witness NP219. If Mr Meek was killed by NP219, there is some evidence, as I said earlier, to suggest that she may have been motivated by an LGBTIQ bias, being her disiike of gay men. However, as I mentioned at the commencement of these submissions, in my submission, it would not be safe to make a finding on the basis of the evidence available to the Inquiry that NP219 was homophobic. The weight of the evidence suggests that the more likely cause of any violence by NP219 towards Mr Meek was her animosity towards Mr Meek because of her belief that Mr Meek was responsible for the death of her dog.

I wil1 turn, then, to NP220. If Mr Meek was killed by

NP220, there is some evidence indicative of LGBTIQ bias, however, as I observed earlier, in my submission, it would not be open on the evidence before the Inquiry to form the view that NP220 was responsible for Mr Meek's death.

I will finally turn to Mr Heatley. If Mr Meek was in fact killed by Mr Heatley, there is some evidence of LGBTIQ bias, as I explained earlier in the context of my submissions about Strike Force Parrabell. This question of LGBTIQ bias is addressed in more detail in the confidential submissions.

Commissioner, unless I can be of further assistance this morning, those are my submissions.

THE COMMISSIONER: Thank you.
Mr Short?
MR SHORT: Commissioner, the Commissioner of Police wishes to reserve her position, but also wishes to express condolences to the friends and family of Mr Meek who are following this Inquiry.

THE COMMISSIONER: Thank you very much. All right, thank you, counsel, I will now adjourn, thank you.

## LUNCHEON ADJOURNMENT

THE COMMISSIONER: Yes, Ms Palmer.
MS PALMER: Commissioner, I appear today as your Counse1 Assisting, instructed by Ms Hermione Nicholls.

Today's hearing concerns the death of Kenneth Richard Brennan. Mr Brennan died in between approximately 9pm and midnight on Sunday, 11 June 1995 in his residence in Onslow Avenue in Elizabeth Bay. Mr Brennan was 53 years old at the time of his death.

Commissioner, if it is convenient, I have several documents which will be handed up to you in court now. The first of these is the tender bundle, which should be tendered and made exhibit 37.

THE COMMISSIONER: Thank you.

Mr Short, I note your appearance. Thank you.
MR SHORT: Thank you, Commissioner.
THE COMMISSIONER: Yes, thank you. Yes, I have that. Thank you.

EXHIBIT \#37 TENDER BUNDLE
MS PALMER: Commissioner, the second document is some short minutes of order, which $I$ understand are agreed. They relate to some non-publication orders over certain material in this matter.

THE COMMISSIONER: They are agreed, are they?
MR SHORT: That is so, Commissioner.
THE COMMISSIONER: Thank you. Thank you, I have made those orders.

MS PALMER: Commissioner, I also hand up a copy of my written submissions, which $I$ adopt and rely on.

THE COMMISSIONER: Thank you. Yes.
MS PALMER: Finally, Commissioner, I tender a copy of a family statement, which has been prepared by Ms Jan Ferguson, and that wil1 be exhibit 38.

EXHIBIT \#38 FAMILY STATEMENT PREPARED BY MS JAN FERGUSON
THE COMMISSIONER: Yes, thank you.
MS PALMER: Commissioner, if there is nothing further from the Bench or the other parties, I intend to read the family statement and then move on to the oral submissions.

THE COMMISSIONER: A11 right, thank you.
MS PALMER: Commissioner:
This statement has been written by Jan Ferguson OAM, Ken's-sister-in-1aw. Ken's wife Rosemary is now 82, has contributed to this statement, as have his brother-in-7aw Chris, nephew Dy7an and
niece Jemma. Ken was a gentle man who was passionate about his career and maintained a caring relationship with Rosemary until his tragic death. Our family remembers him as a quiet yet spirited Uncle who loved to celebrate life and walked with a smile. Due to reasons out of our control he left our family to pursue his life in Sydney and subsequently following his death it felt like we lost him for a second time.

Ken was born in Snowtown in South
Australia. His mother, Josie Hancock, was a young single mother who lived with her parents. When Ken's mother married, Ken's stepfather let him adopt his surname Brennan. Ken was close to his mother and a stepsister Marion, both of whom are now deceased. He did not have particularly close relationships with his stepfather and other siblings. Ken was the first member of his family to go to university and had a successful teaching career as a primary school principal. He was heavily involved in the Teachers Registration Board and the South Australian Teachers Union.

Ken met his wife Rosemary in the early '60s whilst teaching in a one-teacher school in the south-east of South Australia while she was teaching in Mount Gambier. They married and lived in various locations in the Northern Territory and regional South Australia before returning to Adelaide. Ken and Rosemary had an appreciation for the arts in all its forms, amassing a significant art collection together. They travelled extensively overseas, especially in South East Asia before it was trendy and enjoyed many fun times together.

Prior to coming out to Rosemary, Ken visited Chris and I to make sure she would have the support she needed when Ken told her about his sexuality. It was very important to him that she would be supported at the time and then ongoing
after their separation. At the time, Rosemary was in shock, she was devastated and very sad when they separated. In her words, they parted out of sorrow, not anger. Ken chose not to divorce Rosemary so that in the event he predeceased her she would be the sole beneficiary of his estate which was wealth he regarded they had accrued together. Rosemary fondly described Ken as an intelligent, fun and a nice companion. Rosemary came to live next door to us as a family after their marital home was sold. Initially, when Ken was in Adelaide, they regularly caught up for dinner. Once he moved to Sydney, they maintained regular contact on the phone. Ken wasn't overtly "out" in Adelaide and moved to Sydney where he could be himself within a larger LGBTIQ community. This is when he officially changed his surname from Hancock to Brennan.

Ken's murder had a huge impact on our family. To lose someone we loved and respected for who he was, in such a violent way has been significant and it stays with us today. As Ken Brennan's family we feel justice has never been achieved for Ken. We have at various times over the years contacted the police seeking an update on the investigation. We are very grateful to ACON for providing support and listening. We respect and appreciate the work and accessibility of the Commission having watched all the live stream material and read some of the tender bundles, as we try to understand and come to terms with this sad period of our history.

THE COMMISSIONER: Thank you, yes.
MS PALMER: Commissioner, I will now move on to Counsel Assisting's written submissions.

As we know, Commissioner, some members of Mr Brennan's family are listening in today by live stream and I would like to start by acknowledging them and expressing my
condolences to them.
As you've just heard in the family statement, Mr Brennan was known as Ken to his family and he was born on 6 October in 1941 in Snowtown, South Australia. He grew up with four step-siblings at their family home in Adelaide. He was also, as Ms Ferguson has said, the first member of his family to go to university and had a successful teaching career.

In 1991, after he separated from Rosemary, Mr Brennan commenced a relationship with a man known as "PB". Around two years later, the couple relocated from Adelaide to Sydney. When they arrived in Sydney, Mr Brennan and PB lived for about six months with their friend GO.

Mr Brennan and PB then moved to an apartment on Onslow Avenue, Elizabeth Bay. They lived there together for approximately two years before Mr Brennan's death. At the time of his death, Mr Brennan was employed as a history teacher at the Open High School in Redfern, Sydney.

Commissioner, in this matter, the Inquiry has taken the following steps. It has attempted to locate and contact family members; it has obtained the Coroners Court files in relation to the inquest which was held in 1996, and, Commissioner, you will see the transcript of the inquest at tab 160 and the findings of Deputy State Coroner Abernethy at tab 161 of the tender bundle.

The Inquiry has also obtained police investigative material, including material from the original investigation in 1995, and the reinvestigation by Strike Force Skarratt which commenced in 2016, and the material in relation to that can be found from tabs 125 to 154 in the tender bundle.

The Inquiry has also engaged interagency cooperation to locate specific persons. It has obtained a report from Dr Danny Sullivan, a forensic psychiatrist, and Dr Iles, a forensic pathologist, and those reports can be found at tab 170 and tab 171 respectively.

It has conducted further testing of specific exhibits located at the scene and the Inquiry has sought information regarding the fingerprints located by police at the scene and it has sought clarification as to whether those
fingerprints have been uploaded on to the National
Automated Fingerprint Identification System, or NAFIS, and finally, the Inquiry has issued various summonses to Births, Deaths and Marriages, to NSW Police, to South Australia Police and to Queensland Police in an attempt to both identify particular documents and also to locate members of Mr Brennan's family.

Commissioner, as I noted earlier, Mr Brennan died between 9pm and midnight on Sunday, 11 June 1995, at his apartment. His body was discovered around 5.20 pm on Monday, 12 June 1995 by his de facto partner, PB, in the apartment.

When he was found, Mr Brennan was lying naked on his left side in the lounge room with a pillow which had been placed under his head. His legs were slightly bent and his head was positioned towards the kitchen. His left toes were touching the left side of the bedroom door jamb.

Mr Brennan suffered multiple stab wounds to his torso, several defensive wounds to his left forearm and right hand, and what appeared to be a blunt force injury to his face and head. The double bed in the main bedroom was heavily bloodstained and there was blood throughout the unit, including on a circular mirror, an orange towet, a 1 inen cupboard door, a full length mirror, the security intercom, telephone in the bedroom, a chair in the lounge room, on the kitchen bench and over various walls and floors.

There was evidence to suggest that Mr Brennan had engaged in sexual intercourse before his death and that his body had been sponged down. A dry, bloodstained cleaning sponge was located on Mr Brennan's right shoulder.

The following is what the Inquiry is able to establish about the events leading up to Mr Brennan's death.
Throughout his relationship with PB, Mr Brennan frequently sought out other sexual partners. He was known to meet men at the Pleasure Chest and the Kingsteam Sauna in inner Sydney. He also met men through advertisements he placed in the Capital Q weekly, and this was a Sydney-based gay publication.

Mr Brennan was also a member of the Country Network, which was a program that provided accommodation, both
interstate and intrastate, and also provided opportunities for sexual encounters with other men.

During the days preceding Mr Brennan's death, Mr Brennan had sexual encounters with the following people: KL on 6 June 1995; TC on 8 June 1995; AS on 3 and 10 June 1995; and PB on 3 and 10 June 1995. Mr Brennan also appeared to have received 12 voice mailbox responses to an advertisement that he had placed in Capital $Q$ weekly on 12 May 1995.

On 10 June 1995, which was the day before his death, Mr Brennan paid for his and PB's rent at the LJ Hooker office which was situated on Victoria Street in Potts Point. Later that evening, he travelled by taxi with PB to the apartment of AS who lived in Woollahra. Mr Brennan and PB had met AS around two weeks earlier when they had been introduced to one another by mutual friends. At about 10pm on that night, Mr Brennan left AS's apartment, having said he was tired and that he intended to go home. PB reportedly remained at AS's apartment until the afternoon of 12 June 1995.

The following day, at 2.46pm on Sunday, 11 June 1995, Mr Brennan was photographed at the National Australia Bank ATM on Darlinghurst Road where he can be seen withdrawing $\$ 150$.

At 4.30 pm , Mr Brennan may have been seen by Ms Pamela Boyer-Gooche, who was a neighbour who resided in Mr Brennan and PB's apartment building. On 18 June 1995, she provided a statement to police in which she stated that a man had greeted her in the foyer of the building at the relevant time and she believed this man to be Mr Brennan.

At 5.15 pm and again at 5.30 pm on the evening of the 11th, Mr Brennan's sister, Ms Saler, spoke briefly to Mr Brennan on the telephone.

By 6.15pm, Mr Brennan had gone to Kingsteam Sauna. A client of the sauna, a man called "FK", reportedly attempted to approach Mr Brennan around this time and Mr Brennan ignored him.

At 6.30 pm , another client of the sauna, SH , spoke with Mr Brennan. SH and Mr Brennan began to engage in foreplay, but they did not proceed any further. SH indicated in his
evidence that he had first met Mr Brennan in a bookshop on Pitt Street approximately one year prior to Mr Brennan's death. Mr Brennan had given his telephone number to SH at this time.

Over the next year, SH and Mr Brennan met for sexual encounters at both of their residences and on one occasion, $P B$ joined them for one of these encounters.

Sometime between 9 pm and 10 pm , shop attendant Mr Guijar observed Mr Brennan entering Oxford Street Cellars on Oxford Street in Darlinghurst. At the time Mr Brennan appeared to be in the company of a younger man, who was described by Mr Guijar as being approximately 16 to 18 years old and had messy blond hair. Mr Guijar subsequently provided his observation of the younger man to police and police arranged for a facial image portrait to be drawn based on Mr Guijar's description.

Commissioner, you will see this is important because later some of the POIs end up being people who were identified by reference to this facial image portrait.

Mr Brennan's movements after 10pm on Sunday, 11 June 1995, are not known.

Commissioner, there is also some evidence of Mr Brennan's neighbours that the Inquiry sought. Police records indicate that Joan Henderson, who resided in a nearby apartment block, heard screaming between 1 am and $2 a m$ on 11 June 1995. I note, however, that Mr Brennan most likely died much later, as we heard earlier, between 5pm and midnight on 11 June 1995.

However, it's also possible that when Ms Henderson reported the incident, there was confusion regarding the dates, and this may have occurred because it was a long weekend that weekend. It's possible that Ms Henderson ought to have been recorded as having heard screaming between 1 am and 2am in the early morning hours of 12 June 1995, and that would place the screaming much closer to Mr Brennan's estimated time of death.

The police witness canvassing notes also indicate that a neighbour by the name of "C D Crook", heard a male scream between 8am and 9am on 12 June 1995. The Inquiry wrote to Christopher Crook on 3 May 2023 and also telephoned him on

10 May 2023, to see if he was willing to provide a statement. In that conversation, Mr Crook said that he had not known Mr Brennan and that it was difficult to remember the circumstances that surrounded Mr Brennan's death. He recalled that the police had come to his apartment and asked him if he had heard anything, and he told police that he had heard an argument. Mr Crook said that he would consider providing a statement to the Inquiry and would contact the Inquiry if he decided to do so. The Inquiry has followed up with additional phone calls to Mr Crook on 16 and 19 May 2023 but these calls were unanswered.

Commissioner, I move on now to the findings of the post-mortem examination that occurred in 1995 at the time of Mr Brennan's death.

Dr Peter Bradhurst, a forensic pathologist, conducted this examination on 13 June 1995. Commissioner, you wil1 find his report at tab 5 of the tender bundle.

The principal findings of that examination were as follows: first, as previously mentioned, death had taken place any time between 5 pm and midnight on Sunday, 11 June 1995, possibly a little earlier or a little later, and this finding was based on the rectal temperature at 12.30pm taken on 13 June 1995; second, death had taken place at the apartment; and, third, the direct cause of death was stab wounds to the chest.

The post-mortem report also documented that Mr Brennan had suffered 15 stab wounds, mainly to the chest region. One lethal stab wound injured Mr Brennan's liver, diaphragm, lung and heart. Mr Brennan's body exhibited defensive injuries on the left forearm and the right hand. There was no evidence of any injury to the genital region. Bruising had developed on the right side of Mr Brennan's face and, together with the abrasions on his face, this gave rise to a patterned injury which resembled a shoe print.

Investigating police believed that several factors may have indicated that the offender or offenders were homosexual or homophobic. These factors included the nature of the frenzied attack which included a possible stomping on the face and the head, the positioning of Mr Brennan's body with a pillow underneath his torso, the
sponging down of his body and also the evidence of sexual intercourse.

And, Commissioner, in this vein it's important to note that in the years preceding and following Mr Brennan's death there were other attacks on gay men in the general vicinity of Elizabeth Bay. Some of these attacks involved a similar modus operandi, namely, a victim would be assaulted, or threatened with assault, prior to and/or after sexual intercourse or being sexually assaulted. This fact, in combination with the fact that no obvious items of value were taken from the apartment, may suggest, although not decisively, that Mr Brennan's death was motivated by LGBTIQ bias.

The case involved a significant number of persons of interest who could not be excluded by police or the Inquiry from suspicion, or where the basis for the exclusion leaves open the possibility of their involvement. In relation to almost all of these individuals, there is little or no concrete evidence actually implicating them, and no criminal proceedings have ever been instituted against any person in relation to Mr Brennan's death.

As previously mentioned, Commissioner, an inquest into Mr Brennan's death was held in 1996, a year after the murder. On 17 September 1996 then Senior Deputy State Coroner Abernethy made the following finding: that Kenneth Richard Brennan had died on or about 11 June 1995 at his apartment in Onslow Avenue, Elizabeth Bay, of stab wounds to the chest inflicted then and there by persons unknown.

His Honour indicated at the time that the matter warranted the posting of a reward and asked the officer in charge to make the appropriate application.

Mr Brennan's death was initially investigated by Kings Cross Local Area Command with the assistance of the Homicide Squad. Between 20 and 24 July 1995, Operation Monardia was conducted and involved a mobile police station being set up outside the Darlinghurst District Court in Oxford Street at Darlinghurst. A suspect press release was issued on 20 July 1995 by police. Several media outlets were also notified at this time of the operation, and subsequently on 15 October 1995, Strike Force Monardia was established as an ongoing investigative body to continue investigations into the death of Mr Brennan.

During the initial investigation, crime scene officers and investigating police seized a significant number of exhibits. From these exhibits, the following were forensically tested and yielded the following results in 1995 and 1996.

First, a condom on the rim of the toilet bowl was found to contain a small quantity of sperm. A pair of Yves Saint Laurent green gold and black underpants in size small were also found, and these contained traces of DNA that originated from more than one person, and that person was a person other than Mr Brennan, PB , AS or TC .

There was a distorted frypan located in the bedroom, which was subject to DNA blood-grouping tests. There was a champagne flute with an unidentified fingerprint, and that fingerprint was not considered by police to belong to either PB or Mr Brennan.

Two fingerprints were also located on the inside of the wardrobe door in the bedroom. In 1995, one of those fingerprints was identified as belonging to PB. The other was unidentified. The fingerprints were compared to BH, KR, MVK, in 1995, and to CR in 1999, without success.

In a response to a request for information by the Inquiry, police have confirmed that $B H, K R, M V K$ and $C R$ were considered persons of interest from 1995 to 1999. However, Counsel Assisting notes that no other records produced by the police can confirm this.

One fingerprint was located on the mirror in the hall and another was located on the glass on the bedside table. In 1995 these fingerprints were compared to Mr Brennan with success.

Three fingerprints were located on the inside of the front door. In 1995 these fingerprints were compared to PB with success.

One fingerprint was located on the inside of the wardrobe. In 1995 this fingerprint was compared to PB with success.

Two fingerprints and one palm print were identified on the inside of the entrance door. In 1995 these prints were
compared to PB with success.
Two "Mates" condom wrappers - evidence of the testing of these exhibits is a bit unclear, Commissioner. Police records appear to indicate that the condom wrappers were subject to magna powder examination and that the exhibit was fingerprinted. However, recent records confirm no fingerprints were developed at the time.

It should also be noted that in the days following Mr Brennan's death, PB located the following foreign items in the apartment and these were later seized by police: first of all, a pair of underpants in the bedroom, which were not forensically tested in 1995; a packet of Strepsils which police tested using magna powder and ninhydrin, however, it appears that no fingerprints were developed; and, thirdly, a cardboard and plastic knife packaging, which police tested using ninhydrin. However, again it appears that no fingerprints were developed.

Police also seized the following exhibits from the crime scene, and as at 1996 these exhibits do not appear to have been forensically tested, and these include: Some "Roller" brand walking boots; a pair of white blood-smeared sports socks; fingernail clippings from Mr Brennan; hair located in Mr Brennan's right hand; a pair of underpants; a black leather studded strap; a chrome and metal ring, which may have been also called a "butt ring"; lubricant and a bloodstained pillow; a water drinking glass; a pair of blue jeans; a piece of brown plastic; a bent bloodstained knife of approximately 20.5 to 25 cm in length; a white-handled knife; and a brown plastic knife handle which was located in the toilet bowl.

This is important because the knife I referred to before, Commissioner, actually was missing its handle. So this appears to be the missing plastic knife handle which ends up in the toilet bowl. And police records indicate that at the time of the initial investigation, the Forensic and Analytical Science Service, FASS, advised police that the possibility of obtaining a DNA trace from the knife handle would be non-existent because the handle had been immersed in the water in the toilet bowl.

There was also a bloodstained right shoe print on the linoleum floor of the kitchen. Police compared this shoe print to various persons without success, and that included

Mr Brennan, PB, AS, SH and TC.
Police initially considered that the "Roller" boots may have had a similar tread pattern to this shoe print but later they excluded them on the basis of wear characteristics, and police later confirmed that the shoe print originated from a Windsor Smith boot.

There were also several bloody footprints on the carpet inside the apartment. Two were located on the carpet near the bathroom door and the north-eastern wardrobe. One of these footprints appeared to be made by a foot with a high arch, whereas the other was a foot which was comparatively wide, and crime scene officers at the time were of the view these footprints originated from two different people.

Police attempted to repeat the method thought to have been used by the contributors to apply footprints on the carpet and from the results of these methods, police considered Mr Brennan to be the likely contributor of the high-arch footprint and police were unable to identify the contributor of the wider footprint.

I'm now moving on, Commissioner, to a new investigation which started in 2016, and this was called "Strike Force Skarratt", and also involved the Unsolved Homicide Team. This reinvestigation was started on 23 March 2016 and continued unti1 16 July 2019, and it was allocated to the Unsolved Homicide Team within NSW Police.

The reinvestigation involved the comprehensive review of the matter, a re-examination of exhibits, and considered several potential new lines of inquiry.

Results from further DNA testing conducted by FASS identified a mixed profile containing a partial unknown DNA profile, and this has been referred to as the "Unknown Male B profile". This was found on the following exhibits: condom 1, which we have previously mentioned; and also the inside front section of the Yves Saint Laurent underpants.

FASS informed investigating police that the mixed profile containing this Unknown Male B profile was unsuitable for familial searching, DNA phenotyping or Interpol searching, but it was suitable for comparison with individual samples.

So at that point, comparison analysis was used and it eliminated Mr Brennan, PB, AS, TC, SH, DM, JN and AT as being the contributor to this Unknown Male B profile.

FASS then uploaded a partial profile of the Unknown Male B profile on to the National Criminal Investigation DNA Database. However, to date, the partial profile of Male $B$ has not yielded a match.

FASS then forensically tested the following exhibits from the crime scene, and these generated the following results. There were various blood swabs collected from the scene and these yielded a partial DNA profile and these matched Mr Brennan. A swab from the interior of the black leather strap yielded a DNA profile which matched Mr Brennan. Similarly, a tapelift administered to one side of the sponge found on Mr Brennan's shoulder yielded a DNA profile which matched Mr Brennan. A trace swab from a broken piece of knife handle yielded a mixed DNA profile that was weak/complex. A tapelift administered to the tongue of the left "Roller" boot yielded a DNA profile which matched Mr Brennan. Other tapelifts administered to the "Roller" boots confirmed the presence of a mixed DNA profile that was weak/complex. The white underpants yielded DNA that matched Mr Brennan but also yielded evidence of mixtures of at least three persons and these were not suitable for interpretation. Trace swabs from the broken piece of a knife handle yielded a mixed DNA profile which was weak and complex. Tapelifts administered to the interior and exterior of one sock yielded again a weak/complex mixed DNA profile. Similarly, tapelifts administered to one side of the orange towel yielded a mixed DNA profile which was weak/complex. Finally, there was some blood located on the fingernail clippings, and these yielded a match also to Mr Brennan.

Further forensic testing confirmed the presence of a partial bloody fingerprint on the handle of the distorted frypan which was seized from the crime scene. In 2016 it was determined that this fingerprint was not sufficiently detailed to carry out a fingerprint comparison or searching on the NAFIS database.

The bloodstain on the base of the frypan was also too weak to produce a profile. In 2016, the unidentified wardrobe fingerprint was compared to SH, JN, TC, PB, AS and

AT, but without success.
In 2023, that fingerprint was once again compared to PB, SH, AS, TC, JN, AT, PL and WD. This fingerprint remains unidentified.

On 31 August 2022, Detective Senior Constable Adam Noy was informed by the Forensic Evidence \& Technical Services Command, FE\&TS, that FASS had extensively re-examined the relevant exhibits from 2018 to 2019. Consequently, it was advised that in the absence of further investigative information or a focus on a particular exhibit, that further testing was not likely to yield additional results, and on 29 September 2022, police informed the Inquiry that the Unsolved Homicide Team had confirmed that all the forensic and investigative opportunities had been explored and were unable to be advanced further at that time.

The Inquiry has reviewed the relevant documentation relating to the reinvestigation by Strike Force Skarratt and the correspondence from police and is satisfied that the relevant exhibits were located and retested, or tested for the first time, where no testing had yet occurred, from 2016 to 2019.

Commissioner, we now move on to the section which deals with the features of and concerns with the original police investigation.

In 1996, Senior Deputy State Coroner Abernethy praised the initial police investigation and he noted that the officer in charge had "followed all reasonable leads and generally investigated the matter in her usual competent way". The police investigation was extensive and considered the potential involvement of a significant number of persons of interest.

However, although the investigating police followed many lines of inquiry and obtained initial reports from many witnesses, Counsel Assisting notes the following. First, it may have been desirable for police to complete more canvassing of Mr Brennan's apartment building on Onslow Avenue and the surrounding apartment blocks to obtain additional observations from neighbours and possible witnesses. According to Constable Thurtell's statement, canvasses were completed at apartment buildings on Onslow Avenue on 12 June 1995, on Greenknowe Avenue on 13 and

22 June 1995 and in Woollahra on 20 June 1995.
A significant number of persons of interest were identified by Strike Force Monardia who were not excluded as suspects or excluded only on a slender basis. Additional steps ought to have been taken to exclude persons of interest including RT, FK, GR, CH, DS, GH, JD, WK, KL, TW, KH and SG.

Neither Strike Force Monardia nor Strike Force Skarratt obtained DNA samples or pursued alibi evidence from CH, TW, FK, RT, JH, GR, GB, WK, KL or SG. That said, in fairness to police, it is acknowledged that the wide-ranging nature of this investigation and the weak connection between the deceased and several of the suspects raises the question of what steps ought to have been taken by police in circumstances where there are a great many possible leads and legitimate resourcing constraints may prevent police from pursuing every lead.

Thirdly, police failed to obtain a statement from a potentially important witness, Natalie Leonoff, who reported to police on 26 June 1995 that she saw PB outside of AS's apartment building in the early hours of 11 June 1995, which was contrary to PB's alibi evidence. As explained below, the significance of this evidence is that if reliable, it contradicts the evidence of $P B$ and $A S$ that PB did not leave AS's apartment that day. In fairness, attempts were made by Probationary Constable Ross to speak with Ms Leonoff between 20 and 26 June 1995, which were unsuccessful.

In the unsigned "Recommendation for Further Investigation Historical Unsolved Homicide Case" file dated 2007, the UHT recommended that the police locate and invite Ms Leonoff to an interview and indicated that she was available for further questions. Strike Force Skarratt ought to have pursued this recommendation from 2016 to 2019 and the reason for not doing so is not clear on the basis of the records obtained by the Inquiry.

Fourthly, regardless of Ms Leonoff's level of cooperation in relation to the initial investigation, it may have been appropriate for Senior Deputy State Coroner Abernethy to have summonsed Ms Leonoff to appear as a witness at the inquest just to ensure all relevant information was considered.

Fifthly, investigative steps ought to have been taken to confirm that PB would not have been able to leave and return to AS's apartment, as opposed to taking AS's word for it.

Statements also ought to have been obtained from Ms Henderson and Mr Crook, who were neighbours of Mr Brennan and were documented in police notes as having heard screaming on 11 and 12 June 1995 respectively.

A statement also ought to have been obtained from Christopher Thomas, who was a barman present at the Newtown Hotel on 11 June 1995.

In relation to some of the persons of interest, it's important to note there may have been confusion regarding the specific time of Mr Brennan's death and the time in respect of which an alibi was relevant, particularly because it was a long weekend, and I refer particularly to POIs DR and TW.

Police involved in the initial investigation also ought to have ensured that the results obtained from the analysis of the fingerprints were reported consistently. The results of the fingerprints were reported differently on two occasions, and, Commissioner, the details of those occasions can be found at paragraph 28(i) of the written submissions.

Police also ought to have ensured that the exhibits referred to at paragraph $28(j)$ of the written submissions were forensically tested or fingerprinted, as appropriate. Some of those exhibits include the vial of amyl nitrate, the chrome metal ring and the two "Mates" condom wrappers, and so these are items which may have been present during Mr Brennan's sexual encounter before his death and, therefore, one would consider that they may be important exhibits to have forensically tested.

It also appears that in 1995, police did not locate or did not pursue inquiries in connection to a piece of paper that was located in Mr Brennan's wallet by members of Strike Force Skarratt in 2016 to 2019. That piece of paper had three phone numbers on it and these were subsequently traced to FL and DB, and ideally, police in 1995 would have searched Mr Brennan's wallet and traced those three phone
numbers before the reinvestigation which started in 2016.
Commissioner, it's also submitted that greater care ought to have been taken in relation to the fingerprint evidence located on the frypan. It's reported that biologists who initially examined the frypan in 1995 may have inadvertently swabbed away part of the fingerprint on this exhibit, leaving the remainder heavily degraded, and this is concerning because there is evidence to suggest that that frypan could have been used by the offender or offenders to hit Mr Brennan, and the removal of evidence on a critical exhibit such as the frypan may have limited the quality of the investigation.

Police from the investigation also did not retain, but ought to have retained, some exhibits, and these exhibits are listed at paragraph $28(m)$ of the written submissions. I don't intend to read all of those out here, Commissioner.

Finally, Commissioner, the questioning of PB by police on 12 June 1995 was arguably conducted in a manner that was insensitive. At the time, police were aware that PB had just lost his partner in a violent homicide and had also discovered Mr Brennan deceased in the apartment. Police ought to have conducted their questioning of PB in a manner that was more respectful and sensitive, particularly when issues related to sex and sexuality were discussed. This is particularly evident when one considers some of the gratuitous content that was unnecessarily included in PB's statement, which is at tab 40 of the tender bundle and is dated 15 June 1995.

Related to this concern, this statement contains significant detail about the sex lives and the particular sexual activities engaged in by PB and Mr Brennan, and/or by PB, Mr Brennan and others, such as AS, and even accepting that potential sexual partners were likely to be persons of interest in the investigation, and even accepting that it was appropriate to inquire into and record some aspects of sexual activities, this might reasonably be regarded as prurient or intrusive and many of the details recorded in that statement appear to have little or no potential relevance to the investigation.

Commissioner, I turn now to Mr Brennan's case and Strike Force Parrabell. Strike Force Parrabell did not actually consider Mr Brennan's death because, at the
relevant time, Mr Brennan's death was classified as being under active investigation with the Unsolved Homicide Team. The Inquiry is therefore unable to submit on Strike Force Parrabell in relation to this matter.

I move on now, Commissioner, to some of the further forensic examinations which were undertaken by the Inquiry more recently.

On 3 May 2023, the Inquiry conferenced with Dr Bruce and Ms Franco of FASS to discuss the possibility of advancing the Unknown Male B DNA profile. FASS considered that there were a couple more steps that could be taken and this included using updated STRmix software to attempt to identify further markers on the unknown profile which was recovered from the condom and the Yves Saint Laurent underpants, which we've been calling "Unknown Male B".

The other thing FASS suggested is that they could explore Yfiler PCR amplification, and this would allow for the uploading of the Unknown Male B profile on the national Y chromosome database with a view to identifying a relative on the paternal line of the profile contributor.

Additionally, FASS indicated that DNA testing may also be possible on the bloodstained handle of the frypan. The Inquiry also requested that FASS conduct further forensic analysis on the subsamples collected from the knife handle located at the crime scene.

The Inquiry received the following results from that analysis: DNA testing was unsuccessful on the partial bloody fingerprints located on the handle of the frypan, the curved exterior of the frypan and the swabs $A, B$ and $C$ of the knife handle; the DNA profile located on the frypan was too weak for meaningful comparison; the partial DNA profile located on the base of the frypan was consistent with Mr Brennan; a partial mixed DNA profile was located on the broken piece of the knife handle and the Unknown Male B profile cannot be excluded as a contributor to that mixture; no close relatives, eg parents, children or siblings, matched the Unknown Male B profile on FASS's familial database.

As noted above, Commissioner, the Inquiry has also obtained reports from Dr Danny Sullivan, a forensic psychiatrist, and Dr Iles, a forensic pathologist. As
previously mentioned, these reports can be found at tab 170 and tab 171 respectively.

Turning first to Dr Sullivan's opinion. He did not consider that there was any information from a psychiatric perspective that was relevant to the circumstances of death. He observed that the possible motivations for the perpetrator of Mr Brennan's injuries included robbery, anger or distress if the unknown person was conflicted about their sexual orientation. He also considered that the absence of a pre-arranged liaison and the use of weapon or weapons obtained from the residence were indicative of the offending being opportunistic to some degree. He noted that pathological interpretations of the injuries noted a "struggle" and a significant number of injuries suggesting a marked anger, hatred or overkill.

Turning now to the opinion of Dr Iles, Dr Iles considered that Mr Brennan's death was caused by both sharp and blunt force injuries quite possibly due to implements located at the scene, for example, the knife and the frypan which we have discussed previously. She also noted the presence of a possible stomping injury.

Dr Iles did not consider that a blood pattern analysis expert would be able to further illuminate the cause of Mr Brennan's injury for the Inquiry. She thought that Dr Bradhurst's post-mortem examination was thorough and comprehensive and she agreed with the cause of death statement. Dr Iles noted that the quality and the number of post-mortem photographs fall significantly short of contemporary standards, but she said that they likely reflect the standard of practice in 1995.

Dr Iles was also unable to comment on whether the apparent head stomping injury matched the bloody boot print in linoleum at the scene. This was said to be due to the lack of photographic evidence from the re-examination that took place of Mr Brennan's body on 16 June 1995.

Dr Iles opined that according to contemporary practice standards, and adopting conventional wound description practice, the total number of stab wounds is more accurately described as 13 stab injuries, not 15 as Dr Bradhurst referred to, and this is because Dr Iles considered that some of the individual stab wounds represented exit and re-entry wounds from the same knife
track and in today's terms would be better described as 13 stab wounds. She didn't consider it was possible to determine the order of the stab wounds inflicted on Mr Brennan. However, the characteristics of the wounds support the possible case theory that Mr Brennan was moving about the apartment whilst or after the injuries were being sustained. Based on the post-mortem findings, Dr Iles considers it possible that Mr Brennan's injuries could have been inflicted by a single person.

The Inquiry also took additional statements on 11 May and 30 May 2023 from Ms Henderson and Kieran Moran respectively. These persons were neighbours to Mr Brennan and PB, and both had provided investigating police with their observations on or about the time of Mr Brennan's death.

Commissioner, I turn now to the submissions of Counsel Assisting as to the evidence and the other investigative steps taken by the Inquiry.

This part of the submissions sets out the key matters arising from the Inquiry's consideration and the conclusions that Counsel Assisting suggests can be drawn from that evidence.

First I am just going to canvass the police theory that was in place at the time of the investigation.

The original officer in charge, Constable Thurtell, gave evidence at the inquest that investigating police believed that after leaving the Kingsteam Sauna on the evening of 11 June 1995, Mr Brennan had met a person or persons, either at an unknown location or, by arrangement, upon returning to his apartment.

Investigating police believe that Mr Brennan had had sexual intercourse with such person or persons, and that afterwards a struggle had ensued in the bedroom and hallway. Mr Brennan was stabbed during the struggle, possibly in the bathroom and also in other areas of the apartment, with the knife blade located at the crime scene.

Investigating police were also of the view that Mr Brennan was hit in the face with the metal frypan and that his body had been sponged down. Crime Scene Officer DSC Lyle Van Leeuwen considered that Mr Brennan may have
been stabbed in the bedroom and tried to escape by moving towards the bathroom, where he may have again been stabbed and rendered unconscious or deceased. DSC Van Leeuwen believed that the assailant had then dragged Mr Brennan to the location where Mr Brennan was eventually discovered by PB on Monday, 12 June 1995.

This theory reflects a significant body of evidence that there was at least one unknown male person in the apartment with Mr Brennan on 11 June 1995 and that this person was a sexual partner. The evidence that supports this theory includes the presence of condoms and condom wrappers, the vial of amyl nitrate, the Yves Saint Laurent underpants, which were too small to fit either Mr Brennan or PB ; and the presence of the Unknown Male B profile on those exhibits.

This theory is also consistent with there being no signs of forced entry. However, it is possible that the person or persons responsible for Mr Brennan's death may have been in possession of keys to the property. I note that the internal lock on the apartment door required a key to open it from the inside, and Mr Brennan's own keys, as well as the spare keys kept in the apartment, were accounted for in the apartment when Mr Brennan was discovered.

Commissioner, this means that if the perpetrator did not have their own keys, it would have been necessary to prop open the front door, return the keys used and to open the door from the inside, and then leave the apartment.

By the time of the inquest police had been unable to identify a clear suspect and this led to the coronial finding that the injuries causing Mr Brennan's death had been inflicted by a person or persons unknown. This finding remains a real possibility and is consistent with much of the currently available evidence.

Commissioner, I turn now to the persons of interest that were identified by Strike Force Monardia. Investigating police made various inquiries in relation to a significant number of other persons of interest, including the following: PB , who was considered a person of interest because of his recent relationship difficulties with Mr Brennan and at times peculiar evidence. Further information regarding PB's status as a person of interest
is discussed a little bit later in these submissions. PB was excluded from the investigation because his DNA did not match the Unknown Male B profile of the DNA located on the Yves Saint Laurent underpants.

AS was considered a person of interest because of his recent association with PB and Mr Brennan. AS stated that at the time of Mr Brennan's death he was asleep at his apartment in Woollahra. AS was excluded from the investigation because his DNA did not match the Unknown Male B profile.

JN was nominated by a confidential source in custody after reportedly boasting about killing a man named "Kenneth". JN was excluded from the investigation after police confirmed that JN was in Byron Bay with PL from 10 to 12 June 1995 and because his DNA did not match the Unknown Male B profile located on the Yves Saint Laurent underpants. Births, Deaths and Marriages confirmed for the Inquiry that JN died on 3 August - I will leave that date aside, Commissioner.

TC was considered a person of interest because he had recently had sexual encounters with Mr Brennan via the Country Network. TC was excluded from the investigation after GO confirmed that TC stayed with him on the evening of 11 June 1995 and after forensic results confirmed that his DNA did not match the Unknown Male B profile located on the Yves Saint Laurent underpants.

SH was considered a person of interest because he was one of the last people to see Mr Brennan alive and also because he had engaged in several sexual encounters with him. Additionally, when police spoke to SH on 20 June 1995, he noticed that SH had injuries to his hands and police took photographs of these injuries. However, from the evidence available to the Inquiry, it does not appear that SH was questioned about the injuries, and photographs have not been provided to the Inquiry. SH was excluded from the investigation after the investigators compared his underwear and shoes to evidence located at the scene and because his DNA did not match the Unknown Male B profile located on the Yves Saint Laurent underpants.

Commissioner, the remaining persons of interest are discussed in detail at paragraph 99 of the written submissions. Some of these persons knew Mr Brennan
personally, some had been identified as a result of the facial image portrait exercise which was referred to earlier in my oral submissions, some had been admitted to St Vincent's that evening for injuries on or around the date of Mr Brennan's murder, and others were considered persons of interest because they responded to Mr Brennan's advertisement dated 12 May 1995 in the Capital Q weekly publication.

Several were excluded because their DNA did not match the Unknown Male B profile and in relation to some others, it is not clear there was a proper basis for police to exclude them from the investigation. For additional information in relation to each of the persons of interest I would direct the Commissioner and the court to paragraph 99 of the written submissions.

As is evident from the list, there was a significant number of persons of interest who could not be excluded or where the basis for exclusion leaves open the possibility of their involvement. However, in relation to almost all of the individuals, there was little or no concrete evidence actually implicating those persons.

In addition to the forensic testing that was conducted by Strike Force Skarratt - we talked about this earlier which commenced in 2016, investigating police examined paper in Mr Brennan's wallet and found three phone numbers on a piece of paper. Police identified the users of the numbers in 1995, Commissioner, as being FL, who was the user of one number, and DB, who was the user of two numbers. Police inquiries confirmed that FL was gay and that he had died in 2011. Police subsequently requested a DNA sample from FL's nephew, THL, to attempt to conduct familial testing against the Unknown Male B profile. THL, however, declined to provide a DNA sample.

Investigating police located DB and obtained a DNA sample from him. He was later excluded from being a contributor of the Unknown Male B profile.

Counsel Assisting is unable to confirm why police obtained a DNA sample from DB at this time, but did not pursue the same course of action for any of the other persons of interest who had not or could not have been excluded from the investigation.

In 2018, investigating police also contacted AS, who reiterated that he was at home in Woollahra with PB on the weekend of Mr Brennan's death. AS again confirmed that PB could not have left his home without his knowledge and AS said he was confident that PB was with him the entire weekend.

Commissioner, I am moving towards the end of the submissions now, and I just return to PB, who was identified as a person of interest earlier.

Over the last six months of his life, Mr Brennan had told friends that his relationship with PB was tumultuous, he desired more independence from PB. According to a mutual friend, Mr Brennan had attempted to end the relationship with PB on multiple occasions but PB had refused.

In his statement dated 15 June 1995 , $P B$ said that he was angry that Mr Brennan had engaged in sexual relationships with other men and PB said that he was aware that Mr Brennan would frequent Kingsteam Sauna for sexual encounters and, on occasion, they would go together.

Throughout the investigations into Mr Brennan's death, PB's evidence has been that on 10 June 1995, he and Mr Brennan attended AS's apartment in Woollahra where they had dinner and then had sex. At about 10 pm that evening, Mr Brennan stated that he was tired and that he wanted to go home, while PB remained at AS's apartment. PB reported that he telephoned Mr Brennan on 11 June 1995 and left a voicemail on the answering machine.

AS gave evidence that he observed PB on the telephone again on two occasions on the morning of 12 June 1995, and that PB told him that Mr Brennan was not answering the phone. AS reported that PB informed him that Mr Brennan may have gone to the Blue Mountains to visit friends.

PB and AS maintained that PB did not leave AS's apartment for the entire day on 11 June 1995 and at least the morning on 12 June 1995. This alibi evidence is at odds with the observations of one of AS's neighbours, Ms Leonoff. Ms Leonoff reported to police that she observed PB outside AS's apartment complex on 11 June 1995 on the following two occasions.

First, at about 3am, Ms Leonoff said she observed PB standing outside the apartment block. Ms Leonoff said that she had forgotten her security keys to access the building and that she began to make noise outside the building to wake up her son so that he could let her inside. Ms Leonoff reported that, at that point, PB became agitated and angry towards her.

It should be noted, however, that Ms Leonoff's evidence is untested and it is not known whether she had been drinking alcohol prior to 3 am when she believes she observed PB. The reliability of her identification evidence is therefore unclear, particularly given the evidence that PB had stayed with AS for at least a few days after Mr Brennan's body was discovered and the fact that Ms Leonoff was not interviewed by police until the following Monday on 19 June 1995.

The second time that Ms Leonoff said she saw PB was at around 8 pm on 11 June 1995 when she said that she saw PB in the company of a girl and an older man with grey hair. Ms Leonoff said that the group was walking from the car park towards the apartment building. Counsel Assisting notes that it might be regarded as odd that PB was seen in the company of anyone other than AS. Moreover, if Mr Guijar's evidence is accurate - and, Commissioner, I will just remind everyone watching that Mr Guijar was the person in Oxford Street Cellars who reportedly last saw Mr Brennan - if his evidence is regarded as accurate, Mr Brennan was seen alive later in the evening between 9pm and 10 pm on 11 June 1995.

The Inquiry investigated the status and whereabouts of Ms Leonoff and obtained evidence that she died in December 2022. So unfortunately, the Inquiry was not in a position to further test that evidence, Commissioner.

Throughout the investigation into Mr Brennan's death, police also observed some other features of PB's evidence that raised potential inconsistencies. These include, firstly, whether it was plausible or likely that PB had failed to notice Mr Brennan's body immediately upon entering the apartment on the evening of 12 June 1995; secondly, whether it was plausible or likely that PB had been able to observe the answering machine off its podium in the main bedroom, even in the dim light, as he said that he had; thirdly, the fact that there appeared to be no
messages recorded on the answering machine, although this would be consistent with Mr Brennan having deleted those messages; fourth1y, that Mr Brennan's body appeared to have been partially sponged down after death, and I hypothesise, Commissioner, that this may have been indicative of a level of remorse or compassion after the event causing death, but, that said, it may equally be explicable as a stranger attempting to remove DNA; that the apartment was secure with external and internal locks. Police recorded that all keys to the apartment were accounted for and that there were no signs of forced entry or use of the windows. As noted above, it would have been necessary for a stranger to open the apartment door from the inside, prop the door open, put the keys back in their place in the apartment and leave or, alternatively, have a key cut for themselves.. Finally, sixthly, that GJ and his mother located a knife, with the blade wrapped in toilet paper, and this was hidden in a black leather suit bag, months after PB resided with GJ after Mr Brennan's death.

PB's evidence was tested in relation to many of the matters described above, but not in relation to Ms Leonoff's recollection or the knife found at GJ's premises, at the inquest on 17 September 1996. As noted above, Senior Deputy State Coroner Abernethy's finding was that Mr Brennan died on or about 11 June 1995 as a result of stab wounds to the chest inflicted then and there by persons unknown.

There is at least one possible scenario which would explain the evidence of Mr Brennan having at least one unknown male sexual partner in the apartment on 11 June 1995. Mr Brennan may have had sex with the unknown male partner in the apartment, after which PB may have returned home, become jealous and killed Mr Brennan in anger. While this possible scenario is consistent with some of the evidence, it is inconsistent with AS's alibi evidence.

Furthermore, it might be regarded as inherently surprising that AS would lie for someone whom he had known only for two weeks, especially in the context where that person might be responsible for a violent murder. It would be even more surprising if AS were to maintain the lie in 2018.

Given the significant number of other persons of interest who were not excluded, the Inquiry could not draw
a conclusion, based on the balance of probabilities, that PB was involved in Mr Brennan's death.

Turning now to the conclusions as to bias that Counsel Assisting submits that the Inquiry should make.

The evidence that Mr Brennan's death was motivated by LGBTIQ bias is inconclusive. If PB was the perpetrator, and on the evidence before the Inquiry this possibility cannot be excluded, the motive was likely jealousy. It follows that on the evidence before the Inquiry, it is not possible to find, on the balance of probabilities, that Mr Brennan's death was an LGBTIQ hate crime.

Nor is the Inquiry able to find that Mr Brennan was killed by an unknown male whom he brought into his apartment for sex. However, if this was how Mr Brennan was killed, there is a distinct possibility, arguably rising to the level of probability, that the crime was, in fact, a hate crime. On this hypothesis, the attack on Mr Brennan by a recent sexual partner with no other apparent motive, such as theft, would be a very violent one conducted in the absence of any other obvious motive.

Given the competing hypotheses and the insufficiency of evidence to make a finding on the balance of probabilities between them, the Inquiry should not make an affirmative finding that Mr Brennan's death was a hate crime.

In terms of submissions as to manner and cause of death, the Inquiry should make the following finding: Mr Brennan died between approximately 9 pm and midnight on 11 June 1995, or possibly a little earlier or later, as a result of 13 stab wounds to his chest, inflicted by persons unknown.

Counsel Assisting also proposes the following further recommendations. First, it is recommended that FASS take steps to further enhance the Unknown Male B profile as technological developments allow; and, second, run the Unknown Male B profile against State and national DNA databases on a regular basis and as appropriate, so that police will be notified in the event that there is an individual or familial match with the Unknown Male B profile.

The second recommendation is that police take steps, including by DNA analysis, to eliminate suspects who may have been prematurely excluded from the investigation.

Commissioner, that concludes my submissions. Once again, I would like to extend my condolences on behalf of the assisting team to Mr Brennan's family.

THE COMMISSIONER: Yes, thank you.
MR SHORT: Commissioner, the Commissioner of Police seeks to reserve her position and to file written submissions, but also wishes to extend her condolences and the condolences of the broader Force to Mr Brennan's friends and family.

THE COMMISSIONER: Thank you very much, both of you, for your assistance. I will now adjourn, thank you.

AT 3.12PM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED ACCORDINGLY

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