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**STATE CORONER'S COURT  
OF NEW SOUTH WALES**

<b>Inquest:</b>	Inquest into the death of Scott Russell Johnson
<b>Hearing dates:</b>	13-16 December 2016, 13-16 and 19-23 June 2017
<b>Date of findings:</b>	30 November 2017
<b>Place of findings:</b>	State Coroner's Court, Glebe
<b>Findings of:</b>	Magistrate Michael Barnes, State Coroner
<b>Catchwords:</b>	CORONIAL LAW – manner of death; whether foul play, suicide or misadventure; gay hate crimes; fall from height
<b>File number:</b>	2011/389543
<b>Representation:</b>	<p><b>Counsel Assisting the Coroner</b>, Ms Kristina Stern SC and Robert Ranken, instructed by Ms Naomi Malhotra on behalf of the Crown Solicitor</p> <p><b>Counsel for Mr Stephen Johnson and family</b>, Mr John Agius SC, instructed by Ms Vivian Evans, Uther Webster &amp; Evans</p> <p><b>Counsel for Commissioner of Police</b>, Ms Sarah Pritchard SC and Ms Surya Palaniappan, instructed by Ms Ellena Petinos, Ashurst</p>

<p><b>Findings:</b></p>	<p><b>The identity of the deceased</b>                  The deceased person was Scott Russell Johnson.</p> <p><b>Date of death</b>                  Mr Johnson died on 8 December 1988.</p> <p><b>Place of death</b>                  He died at the base of a cliff near Blue Fish Point on the northern side of North Head, New South Wales.</p> <p><b>Cause of death</b>                  The death was caused by the combined effect of multiple injuries sustained in a fall from height.</p> <p><b>Manner of death</b>                  Mr Johnson fell from the cliff top as a result of actual or threatened violence by unidentified persons who attacked him because they perceived him to be homosexual.</p>
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*The Coroners Act 2009 (NSW), s. 81(1) requires that when an inquest is held, the coroner must record in writing his or her findings as to various aspects of the death. These are the findings of an inquest into the death of Scott Russell Johnson.*

## **Introduction**

1. Scott Johnson's body was found at the base of a cliff on the northern side of North Head on the morning of 10 December 1988. He was naked and had clearly suffered unsurvivable traumatic injuries. An inquest held a few months after the death ruled it to be a suicide.
2. In 2005, an inquest into the deaths of three young men from injuries sustained from falling from sea cliffs in the 1980s found their deaths to have been caused by youths involved in systematically assaulting gay men. The findings of that inquest caused Scott's family to successfully petition to have his case to be reopened.
3. The second inquest in 2012 confirmed the identity of the deceased, the date, place and medical cause of his death but resulted in an open finding as to how Scott came to fall and a recommendation that the New South Wales Police Force (NSWPF) Unsolved Homicide Team reinvestigate the matter. That occurred and the fresh evidence it uncovered was put before this inquest.

## **History of the investigation**

### ***First inquest***

4. The first inquest was conducted by Deputy State Coroner Derek Hand on 16 March 1989, three months after Scott's body was found. It was conducted in accordance with the *Coroners Act 1980* and was completed within a day.
5. Formal documents and a brief of evidence were tendered. The brief comprised statements from a number of police officers involved in the recovery of the body and initial investigations<sup>1</sup> as well as statements from one of the fishermen who first found Scott's body, Brian Butson;<sup>2</sup> Scott's partner Michael Noone;<sup>3</sup> Mr Noone's sister Marguerite;<sup>4</sup> one of Scott's PhD

<sup>1</sup> Exhibit 5 at the first inquest. These included the statements of Detective Sergeant Doreen Cruikshank (Exhibit 4.1/18), Constable Troy Hardie (Exhibit 4.1/10), Constable Robert Ludlow (Exhibit 4.1/15), Constable Sylvia Roux (Exhibit 4.1/14) and Detective Constable Philip Flogel (Exhibit 4.1/17).

<sup>2</sup> Exhibit 4.1/20 – Incident Report of Bryan Butson 10.12.1988.

<sup>3</sup> Exhibit 4.3/46-47B – Statements of Michael Noone 11.12.1988 and 12.02.1989 (and attachments).



supervisors Ross Street;<sup>5</sup> an acquaintance of Scott's by the name of Paul Bailey,<sup>6</sup> and an employee of the Public Trustees Office<sup>7</sup> who studied the contents of Scott's computer. Two statements in the form of letters from Scott's brother, Stephen Johnson, were also tendered.<sup>8</sup>

6. Oral evidence was given by the forensic pathologist who undertook the autopsy on Scott's body, Dr Johan Duflou, Mr Noone, Mr Noone's sister, Constable Troy Hardie who attended the scene of Scott's body, Constable Robert Ludlow who also attended the scene of Scott's body as well as the headland directly above, and the officer in charge of the investigation (OiC), Detective Sergeant Doreen Cruickshank.
7. Dr Duflou gave evidence that the results of tests to determine whether Scott had HIV or hepatitis were negative.<sup>9</sup> He also said that he did not find any injuries that were inconsistent with having been sustained in a fall from the cliff.<sup>10</sup>
8. There was also evidence given by the OiC that the area where Scott's clothes were found was not then known to police as being a meeting place for homosexual men.<sup>11</sup> That evidence appears to have been based solely on the fact that police had not received any reports of any crimes of violence towards homosexual persons having occurred in that area.<sup>12</sup>
9. The Coroner delivered a finding that between 8 and 10 December 1988, at North Head, Manly, north of Blue Fish Point, Scott *"died of the effects of multiple injury sustained then and there when he jumped from the top to the rocks below with the intention of taking his own life"*.<sup>13</sup>
10. His Honour accepted that there was no evidence as to why Scott might want to take his own life and that there was no suicide note. However, he expressed the view that suicides often occur without any reason that is apparent to friends and families and it is common for people who commit suicide to not leave a note. His Honour also said that the description of Scott as an extremely brilliant mathematician who was reserved and introverted and did not join in conversation unless asked direct questions was consistent with the type of person who might commit suicide. His Honour further noted that

<sup>4</sup> Exhibit 4.3/55-56 – Statements of Marguerite O'Connell 14.12.1988 and 29.01.1989.

<sup>5</sup> Exhibit 4.3/63 – Statement of Ross Street 20.12.1988.

<sup>6</sup> Exhibit 4.3/66 – Statement of Paul Bailey 28.01.1989.

<sup>7</sup> Exhibit 4.1/27 – Statement of Brett Carruthers 10.02.1989.

<sup>8</sup> See Exhibit 4.1/28.3 (Exhibit 7 at the first inquest).

<sup>9</sup> Exhibit 4.1/28.8 (Duflou XXN (King)).

<sup>10</sup> *Ibid.*

<sup>11</sup> Exhibit 4.1/28.4 (Cruikshank XN (Redfern)).

<sup>12</sup> Exhibit 4.1/28.4-5 (Cruikshank XXN (King)).

<sup>13</sup> Exhibit 4.1/28.43 and see also Exhibit 4.1/29 (Formal Finding).

Mr Noone had given evidence that Scott had mentioned an attempted suicide at some earlier time when Scott thought he might have had AIDS, but the tests were subsequently negative.

### ***Operation Taradale***

11. The phenomenon of crimes of violence committed against gay males at gay beats was the subject of considerable examination by Magistrate Jacqueline Milledge, then Deputy State Coroner, at an inquest held after a NSWPF investigation referred to as Operation Taradale.
12. On 9 March 2005, her Honour delivered findings into the death or suspected death of three homosexual males who had died or disappeared in the Bondi area in the late 1980s and which were investigated as part of Operation Taradale (Taradale Inquest).
13. The deaths in question occurred near Marks Park, Bondi, which is situated at the top of the sea cliffs between Bondi and Bronte beaches. Marks Park was in the 1980s a known gay beat and each of the deceased had attended the park for that reason.
14. During the course of the Taradale Inquest, evidence was given about "gay hate" offences that had been committed in the eastern suburbs in the late 1980s and early 1990s. They included the attempted murder of a gay man who narrowly escaped death as a result of a beating at Marks Park in December 1989 and the murder of Kritchikorn Rattanajurathaporn, who staggered off a cliff at nearby Tamarama after being attacked in July 1990.

### ***Second Inquest***

15. Following the Taradale Inquest, Scott's family made representations to then State Coroner, Magistrate Mary Jerram that resulted in a review of the original investigation by police and a fresh inquest into Scott's death.
16. On 27 June 2012, Magistrate Carmel Forbes, then Deputy State Coroner, conducted a second inquest in accordance with the provisions of the *Coroners Act 2009* (the Act).
17. Detective Senior Constable Wilson gave evidence of a review conducted by the NSWPF which identified a number of similarities between the circumstances of Scott's death and those that were the subject of the Taradale Inquest. In particular:
  - The deceased were gay men;

- The deaths occurred at or in the vicinity of gay beats situated at the top of coastal cliffs; and
  - There was evidence of anti-gay violence at both areas at the relevant time.
18. The review also identified avenues for further investigation, including potential persons of interest.
19. At the conclusion of the hearing, her Honour found that Scott *“died between 8 and 10 December 1988 at North Head, Manly, north of Blue Fish Point, from the effects of multiple injuries he sustained as a result of falling from a cliff”* but she held that the evidence did not allow her to make a finding as to how he came to fall.<sup>14</sup>
20. Her Honour recommended that Scott’s death be referred to “Cold Cases” for further investigation in accordance with police procedures and protocols.

### ***Events in the lead up to this inquest***

21. On 11 February 2013 the ABC television program Australian Story broadcast a report on Scott’s death.
22. On 12 February 2013, then Minister for Police and Emergency Services, Michael Gallacher, spoke with the then Commander of the Homicide Squad and met with Stephen Johnson and approved an application made by the NSWPF on 20 November 2012 for a \$100,000 reward for information that determined how Scott died.
23. It was decided that the Unsolved Homicide Team would re-investigate Scott’s death. Strike Force Macnamir was established for this purpose.<sup>15</sup>
24. Officers from the strike force re-interviewed police and members of the community spoken to during the course of the original investigation as well as interviewing other persons who knew Scott or were identified as possibly being able to provide further information or insights as to his personality, relationships, work and life plans, as well as his possible final movements during the week and days leading up to his death. Strike Force Macnamir also investigated the possible involvement of a number of persons of interest.
25. Also established in 2013 was NSWPF Strike Force Parrabell, which was formed to review 88 cases of solved and unsolved homicides between 1976 and 1999 identified as potentially involving an anti-gay bias. In October 2013

<sup>14</sup> Transcript of Second Inquest at V1/31.23(44)-24(4); V1/32 – Findings of Second Inquest.

<sup>15</sup> Exhibit 12.1/1/8.



Strike Force Parrabell undertook a bias crime assessment in respect of North Head beat which took into account, among other things, the investigations that had been conducted by Strike Force Macnamir up to that date.<sup>16</sup>

26. On 18 March 2014, the Commander of the Homicide Squad wrote and requested I conduct a further examination of the circumstances surrounding Scott's death. On 13 April 2015, after hearing from the interested parties, I determined that the material obtained as a result of the further investigations conducted as part of Strike Force Macnamir amounted to new evidence that made it desirable in the interests of justice to hold this third inquest.<sup>17</sup>
27. Steps were taken to encourage any members of the public with relevant information to come forward, anonymously if necessary. A dedicated telephone line was established and advertised. Notices were placed by police in the *Army News* and on the website of the Australian Artillery Association seeking information from any members of the Australian Defence Force who were based at the army barracks at North Head at the time. In addition, a letter was forwarded to existing and former army personnel identified as having been stationed at the North Head barracks around the time of Scott's death.
28. The work of Strike Force Macnamir has continued throughout the course of the preparation and hearing of this third inquest and is ongoing. Information continues to be received and is still being processed. Nothing currently to hand warrants delaying the delivery of these findings further.

### ***This (third) Inquest***

29. The hearing of this third inquest was conducted in two stages: an initial hearing occupying four days from 13 to 16 December 2016; and a further nine days of hearing between 13 to 23 June 2017.
30. The initial week of hearings in December 2016 focused upon the reinvestigation of Scott's background, his relationships, his movements over the weeks and days leading up to his death and some of the forensic evidence concerning the location where his clothes were found neatly folded and the injuries found on his body.
31. The second tranche of the hearing in June 2017 included evidence from persons familiar with the workings of gay beats, both generally and specifically in relation to the beat at North Head where Scott's clothes were found. Among other witnesses, Mr Noone and Scott's brother, Stephen, gave

<sup>16</sup> Exhibit 12.2/15.

<sup>17</sup> 13.04.2015 at T3.10-13, 12.24-35.



evidence and Dr Rozalinda Robertson and Professor Matthew Large gave concurrent expert evidence in relation to the issue of suicide. The Court also received a large amount of evidence concerning gay-hate crimes in and around the Manly area in the late 1980s and surrounding period.

## The evidence

### *Social history*

#### Childhood

32. Scott was born on 27 November 1961 in Los Angeles. He was the third child of Grant and Barbara Johnson. His older sister, Terry, was born in 1957 and his older brother, Stephen, was born in 1959.<sup>18</sup> The family moved from Los Angeles to Boulder, Colorado briefly in 1970. However, very soon after arriving in Colorado, Scott's parents separated and Scott and his siblings returned with their mother to California.<sup>19</sup> Thereafter, apart from some visits to California early on, Scott's father stayed out of their lives until Stephen initiated some contact after he had gone to college.<sup>20</sup>
33. On Stephen's account, after their parents split and they returned to California, they were poor for a number of years, living in a two bedroom house in a ghetto area until about 1974 when their mother secured an office job in a chemical company by which time she also had a steady boyfriend who was at that time working.<sup>21</sup>
34. Stephen has described their parents' separation and divorce as confusing rather than traumatic or distressing for the children.<sup>22</sup> Although it was a hard time, the three children were very close, banded together and made the best of the situation.<sup>23</sup>
35. After Stephen went to college, their mother's boyfriend Dennis (who she later married) moved in.<sup>24</sup> According to Stephen, he and Scott didn't much like Dennis. He was a very macho guy who did not treat Scott well because Scott was not particularly sporty.<sup>25</sup>
36. During the period when Scott was at home after Stephen went to college, Stephen started taking him on trips and they started hiking together. They

<sup>18</sup> Exhibit 4.3/45 – S Johnson at Q&A 9.

<sup>19</sup> Exhibit 4.3/45 – S Johnson at Q&A 15.

<sup>20</sup> Exhibit 4.3/45 – S Johnson at Q&A 18.

<sup>21</sup> Exhibit 4.3/45 – S Johnson at Q&A 15, 29.

<sup>22</sup> Exhibit 4.3/45 – S Johnson at Q&A 15.

<sup>23</sup> V3/45 – S Johnson at Q&A 16.

<sup>24</sup> V3/45 – S Johnson at Q&A 42.

<sup>25</sup> V3/45 – S Johnson at Q&A 43, 52-56, 110.

went hiking all over southern California. This was when Scott was 14 to 17 or 18 years of age.<sup>26</sup> Stephen recalled that he, his college roommate and Scott hiked *"from rim to rim in the Grand Canyon and back... that's about 50 miles"*.<sup>27</sup> Scott and Stephen did long-distance hiking and they also did some rope climbing. Scott and Stephen maintained a close relationship throughout this period. Later in his life, Scott climbed the Matterhorn with Stephen.<sup>28</sup>

## Education

37. According to Stephen, in high school it was clear Scott excelled in mathematics and his teachers kept advancing him to the point that soon he was taking college mathematics when he was a freshman in high school and even that was too easy for him.<sup>29</sup>
38. After school, Scott was accepted into the California Institute of Technology, a world renowned science and engineering tertiary education and research facility. The two brothers taught themselves computer programming and spent a lot of time together.<sup>30</sup>
39. In about 1983 Scott went to Cambridge University in England for a year as part of a Tripos. He then studied at the University in California in Berkeley.
40. In 1985, Scott obtained a scholarship to undertake a PhD in Mathematics at the Australian National University. Scott worked on his PhD, specifically in the area of Category Theory, under the supervision of Associate Professor Ross Street of Macquarie University. By the time of his death, Scott had solved two major mathematical problems and had completed enough of a third problem to suffice for a PhD (which is referred to further below).<sup>31</sup> Scott was awarded a posthumous PhD in 1995.<sup>32</sup>

## Employment

41. Scott was employed at various stages in roles relating to his field of studies, including as a mathematics tutor, research assistant and systems analyst.<sup>33</sup>
42. Scott worked as a technical aid at Jet Propulsion Laboratory between 1980 and 1983 and as a systems analyst at Broderick Co. for three months in 1983.

<sup>26</sup> Day 7 – 15.06.2017 at T38.30-41 (Johnson XN).

<sup>27</sup> Exhibit 4.3/45 – S Johnson at Q&A 215-216.

<sup>28</sup> Exhibit 4.3/45 – S Johnson at Q&A 736.

<sup>29</sup> V3/45 – S Johnson at Q&A 95.

<sup>30</sup> V3/45 – S Johnson at Q&A 16.

<sup>31</sup> Exhibit 4.3/63 – R Street at [2].

<sup>32</sup> Exhibit 4.3/64 – R Street at Q&A 208, 219.

<sup>33</sup> Exhibit 12.5/191A.

43. For three months in 1984 Scott was employed as a teacher's assistant at the University of California. At the end of 1985 until April 1986, Scott worked as a research assistant to Professor Richard Zeckhauser at the John F Kennedy School of Government at Harvard University. For most of 1987, he worked as a mathematics tutor at the Australian National University.

### **Relationship with Mr Noone**

44. In January 1984 Scott met Michael Noone, an Australian music PhD student, at Cambridge University and they commenced a relationship. In the summer of 1984 Scott returned to the United States at which time he first informed his brother Stephen of his relationship with Mr Noone.
45. In December 1984, Scott travelled to the United Kingdom to visit Mr Noone and returned to the United States in late January 1985. In March of that year, Mr Noone travelled to Cambridge, Massachusetts where Scott introduced him to his brother Stephen. Mr Noone says Scott told him that either one of them could stay with Stephen and his then girlfriend (now wife) Rose, but not both of them because Rose had said "*I'm not having any of that in my house*".<sup>34</sup> Mr Noone interpreted this as homophobic and gave evidence that Scott was clearly upset about it.<sup>35</sup>
46. In his evidence at the hearing, Stephen Johnson denied any suggestion that he was disapproving of Scott's relationship with Mr Noone or that it had anything to do with their not staying with him and Rose when they visited.<sup>36</sup> He said that the only reason Scott would not have been invited to stay with Mr Noone at their flat would have been because of a lack of space in the apartment.<sup>37</sup>
47. On 5 September 1985, Scott travelled to the UK to live with Michael Noone in Cambridge. At the end of December 1985, Mr Noone returned to Australia to take up a position as Lecturer and Head of the Department of Musicology at the Canberra School of Music. Scott returned to Cambridge, Massachusetts where he stayed with his brother Stephen and worked as a research assistant to Professor Zeckhauser.

### **Scott's life in Australia**

48. Scott arrived in Australia on a student visa on 4 May 1986. He was to undertake his PhD in mathematics at the Australian National University.

<sup>34</sup> Day 6 – 14.06.2017 at T61.7-35 (Noone XN).

<sup>35</sup> Day 6 – 14.06.2017 at T61.45-46 (Noone XN).

<sup>36</sup> Day 7 – 15.06.2017 at T77.37-40, and 43-46 (Johnson XN).

<sup>37</sup> Day 7 – 15.06.2017 at T77.24 – T78.4 (Johnson XN).



49. From the time of his arrival, Scott lived with Michael Noone in the ACT. He travelled to Sydney every Tuesday to participate in seminars in Category Theory conducted by Associate Professor Ross Street (as he then was) at Macquarie University.
50. Associate Professor Street became one of Scott's PhD supervisors. According to him, Scott was an excellent student who was making outstanding progress. Scott solved two major problems and had prepared papers on them. The first of those papers had been accepted for publication. Scott had also begun work on a third problem, which Associate Professor Street saw as being a major contribution in the relevant field.
51. According to Associate Professor Street, Scott had solved enough of the third problem to satisfy the requirements of his PhD. Associate Professor Street had informed Scott of this on several occasions, including during his last telephone conversation with Scott on Thursday, 8 December 1988.
52. Usually, when he came to Sydney on a Tuesday for the seminars, Scott stayed with Michael Noone's parents at their home in Lane Cove and would return to Canberra on Thursday evening.
53. According to Mr Noone, there were many occasions when Scott would go off and go on long-distance hiking around Sydney.<sup>38</sup> Mr Noone recalled that Scott loved hiking and described him as "*somebody who was very used to hiking*". According to Mr Noone's mother, Patricia Noone, Scott used to run a lot, and would run in the mornings.<sup>39</sup>
54. Scott applied for permanent residency in 1987 based on his relationship with Mr Noone. On 14 June 1988, Scott received advice from the Department of Immigration that he would be considered eligible for permanent residency if a genuine and continuous relationship between Scott and Mr Noone persisted as at 10 March 1989.
55. While Scott and Mr Noone were in a committed relationship, there were occasions when Scott engaged in sexual activity outside of that relationship. Mr Michael Allen gave evidence of an affair he had with Scott over a two to three-week period about six months prior to Scott's death. Mr Noone was unaware of this affair.

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<sup>38</sup> Day 6 – 14.06.2017 at T73.5-9 (Noone XN), Exhibit 4.3/49 at Q&A 771.

<sup>39</sup> Exhibit 4.3/59 at Q&A 451.



56. He and Scott practised "safe sex".<sup>40</sup> They met irregularly for short periods of a few hours only. Mr Allen gave evidence that although Scott never told him that he was in a relationship with another person, it became abundantly clear that their relationship wasn't going to go any further and so he ended it.<sup>41</sup> Mr Allen described Scott's reaction to the break up as "*almost flippant, dismissive*".<sup>42</sup>
57. In his evidence, Mr Allen said that Scott struck him as "*a very optimistic fellow. He had a very, very bright future ahead of him. I can't for the life of me begin to see how or why he would commit suicide in such a strange manner.*"<sup>43</sup>
58. According to Mr Noone, those occasions when Scott engaged in sexual activity outside the relationship were followed by depression and remorse in Scott. However, there is no evidence that Scott displayed any depression or remorse over his affair with Mr Allen.

### **Mental health history**

59. According to Mr Noone, shortly prior to Scott's travel to the UK in September 1985, in a telephone conversation Scott divulged that he had unsuccessfully attempted suicide by trying to jump from an area at or close to the Golden Gate Bridge in San Francisco because he was concerned that he had contracted HIV and was distressed by the consequences for himself and their relationship.
60. Mr Noone's account of the circumstances in which he came to have the telephone conversation with Scott has been inconsistent. In his first statement to police on the day after Scott's body was found, Mr Noone said that he knew of no psychological or behavioural difficulties experienced by Scott<sup>44</sup> but remembered Scott mentioning a suicide attempt about five years previously.<sup>45</sup>
61. In a document written by Mr Noone on 12 February 1989, Mr Noone wrote that Scott had telephoned him from San Francisco to tell him about the incident.<sup>46</sup> His evidence at the first inquest was consistent with that position.<sup>47</sup>
62. In a record of interview conducted on 29 March 2013, Mr Noone stated that he initially found out about the incident in a letter he received from Scott when he was living in a house in Hampstead and that it was the receipt of that letter

<sup>40</sup> Day 3 – 15.12.2016 at T62.10-19 (Allen XN).

<sup>41</sup> Day 3 – 15.12.2016 at T60.15-24 (Allen XN).

<sup>42</sup> Day 3 – 15.12.2016 at T60.32-34 (Allen XN).

<sup>43</sup> Day 3 – 15.12.2016 at T65.45-47 (Allen XN).

<sup>44</sup> Exhibit 4.3/46 – M Noone 11.12.1988 at [3].

<sup>45</sup> *Ibid* at [5].

<sup>46</sup> Exhibit 4.3/47A

<sup>47</sup> Exhibit 4.3/48 at page 2.

that prompted him to telephone Scott.<sup>48</sup> Mr Noone said at this inquest that he will never forget the words used by Scott in that letter, "*I tried to do away with myself*".<sup>49</sup>

63. In his evidence at this hearing, Mr Noone described the substance of the subsequent telephone conversation with Scott as follows.<sup>50</sup>

*It would be impossible for me to give you the exact words, it was a long conversation and he related to me that he had had some kind of sexual adventure with somebody. He was convinced that he had either contracted AIDS or, or exposed himself to the virus and that he was deeply remorseful and he decided to do away with himself, by jumping from the Golden Gate Bridge, but when he got there, he found that his muscles froze over, that he was simply not capable of carrying out, physically incapable of carrying out this intent.*

64. Mr Noone accepted that he did not know how close Scott got to taking his own life. He acknowledged that he did not know whether Scott got to the area of the Golden Gate Bridge or actually went onto the bridge and he did not seek any further information in that regard.<sup>51</sup>

65. Mr Noone also said that he was shocked by what Scott had told him and that he had offered Scott support during the telephone conversation, but he did not telephone Scott in the days afterwards to see how he was because he considered it was unnecessary as they had a very long telephone conversation and established that he had all the support he needed and the suicide attempt was behind him.<sup>52</sup> Mr Noone said that after the telephone conversation in which Scott divulged the information to him, they never spoke about the episode again.<sup>53</sup>

66. Dr Roger Bancroft, a mutual friend of Scott and Mr Noone, said that he had a conversation with Mr Noone about three years before Scott died to the effect that "*Scott had revealed to Michael that he had thought about throwing himself off the Golden Gate Bridge in San Francisco*".<sup>54</sup> In his evidence at this hearing, Dr Bancroft said that he could not remember the context in which his conversation with Mr Noone occurred or the words used by him.<sup>55</sup>

<sup>48</sup> Exhibit 4.3/49 at Q&A 88.

<sup>49</sup> Day 6 – 14.06.2017 at T48.28 (Noone XN).

<sup>50</sup> Day 6 – 14.06.2017 at T49.38-45 (Noone XN).

<sup>51</sup> Day 6 – 14.06.2017 at T50.8-19 (Noone XN).

<sup>52</sup> Day 7 – 15.06.2017 at T13.46 – T14.15, T14.32-37 (Noone XXN).

<sup>53</sup> Day 7 – 15.06.2017 at T15.48 – T16.1 (Noone XXN).

<sup>54</sup> Exhibit 12.5/180 – Bancroft 06.06.2017 at [6].

<sup>55</sup> Day 5 – 13.06.2017 at T64.5-21, 39-46 (Bancroft XN).



67. There was some evidence that Mr Noone referred to the Golden Gate Bridge incident in a letter he said he sent to Dr Bancroft in May 1989.<sup>56</sup> In that letter, Mr Noone described the incident as a “previous suicide attempt”. The provenance of that letter and whether it was actually sent to or received by Dr Bancroft was the subject of examination at the hearing and is attenuated by some doubt.<sup>57</sup> A copy of the letter was produced to police by Mr Noone in 2013. Dr Bancroft did not have a copy of the letter and had no independent recollection of receiving the letter.
68. Counsel Assisting submitted that, on balance, the Court may find that this event occurred, but that the precise details of Scott’s actions in this regard remain unclear. While Mr Noone has described it as an “attempted suicide”, Dr Bancroft’s evidence was that it was conveyed to him by Mr Noone as Scott having thought about throwing himself off the Golden Gate Bridge. The significance of this difference and of the incident itself was the subject of some scrutiny during this inquest, particularly during the concurrent evidence of Dr Robertson and Professor Large.<sup>58</sup>
69. Counsel for Scott’s family submit that the highest Mr Noone’s evidence in relation to the Golden Gate Bridge incident rose was that on one occasion in about 1985 Scott contemplated suicide when he was concerned he may have contracted AIDS.
70. I am of the view that although there may be some doubt around Mr Noone’s evidence about the letter, the fact of an incident having occurred is supported by the evidence of Dr Bancroft and Mr Grealy (referred to further below). I don’t accept that the evidence establishes that Scott attempted suicide. Rather, I conclude that for the reasons outlined he became distressed and contemplated taking his life. He made a plan for how that might be carried out and took some steps to implement it but desisted, at what point exactly I cannot be sure.

### ***Events preceding Scott’s death***

#### **Weeks leading up to death**

71. On 3 December 1988 a party was held at the Lane Cove home of Mr Noone’s parents to mark Scott’s 27<sup>th</sup> birthday which had occurred the previous week.

<sup>56</sup> Exhibit 12.5/181.

<sup>57</sup> See, for example, Day 5 – 13.06.2017 at T65.30 – T67.34 (Bancroft XN), T67.46 – T68.16, T69.11 – T70.3 (Bancroft XXN); Day 6 – 14.06.2017 at T68.43 – T69.47 (Noone XN); Day 7 – 15.06.2017 at T20.16 – T21.35 (Noone XXN).

<sup>58</sup> Submissions of Counsel Assisting dated 3 October 2017 at p. 19, [69].

72. One of the guests, Mr Walter Grealy, a psychiatric nurse, spent some time in the swimming pool talking with Scott. In his first statement to police in May 2013, Mr Grealy said that he did not remember with any clarity what he and Scott spoke about.<sup>59</sup> However, in a proof of evidence tendered at the first tranche of this hearing, Mr Grealy stated that he recalled that at some point, the conversation turned to depression and Scott told him that he had thought about jumping from a bridge on two occasions in the past. Mr Grealy thinks Scott referred to the Iron Cove Bridge or the Lane Cove Bridge and a bridge in San Francisco.<sup>60</sup> In his evidence at the hearing, Mr Grealy said that it was just a brief comment and Scott did not say anything as to whether or not he had actually come close to jumping or had merely thought about it.<sup>61</sup>
73. On the day following the party at Lane Cove, Michael Noone and Scott went to Obelisk Beach, which is a nudist beach on the northern side of Sydney Harbour. There is an area attached to Obelisk Beach which is from time to time used by men seeking anonymous homosexual activity. However, that does not appear to have been the purpose of Mr Noone and Scott's attendance on the day in question.
74. According to Mr Noone, it was a relaxing and happy afternoon at the beach and they returned to the Lane Cove house for the night. They discussed the various employment options that were open to both of them in the wake of the termination of Mr Noone's position at the Canberra School of Music, particularly the prospects of Mr Noone winning a scholarship. Mr Noone had secured an interview for a Harkness Fellowship to be held on Friday, 9 December 1988, in Melbourne. That fellowship would have given Mr Noone a period of 21 months in the United States.
75. On Monday, 5 December, Mr Noone set out from Lane Cove at about 9:30am to drive to Canberra, but he had to pick up a copy of his birth certificate from the Registry of Births, Deaths and Marriages along the way, which he needed for his interview for the Harkness Fellowship. He discovered that he had Scott's wallet in his car and so returned it to Scott at the Lane Cove house at about 4:00pm. At that time, Mr Noone's sister, Marguerite O'Connell (as she was then known) was at the house with Scott as she was also staying there.
76. After returning the wallet to Scott and briefly speaking with both Scott and Marguerite, Mr Noone drove to Canberra. That was the last time Mr Noone saw Scott alive.

<sup>59</sup> Exhibit 4.4/75 – Grealy 09.05.2013 at [9].

<sup>60</sup> Exhibit 9 – Grealy 07.12.2016 at [7]-[9].

<sup>61</sup> Day 2 – 14.12.2016 at T8.37-47 (Grealy XN).



77. At about 2:00pm on Tuesday, 6 December, Marguerite spoke with Scott at the Lane Cove house. She said Scott appeared to be in happy spirits and had in fact initiated the conversation. That was the last occasion on which she spoke with Scott.
78. On Wednesday, 7 December at 2:00pm Scott saw Associate Professor Street in a hallway at Macquarie University. He was somewhat surprised to see Scott as he had left a message on the answering service at Scott's home in Canberra, to the effect that the seminar was not going ahead that week. Scott told him that the message had been communicated but that he wanted to see him anyway to discuss his work.
79. Associate Professor Street was unable to speak with Scott at that time and so Scott indicated that he would contact Associate Professor Street to arrange an appointment soon.
80. Stephen Johnson says that following Scott's death, he found in Scott's desk at the Lane Cove house a copy of a receipt from an ATM located at 121 King Street, Sydney, which recorded a withdrawal of \$50 from Scott's bank account which had been processed at about 3:55pm on 7 December.<sup>62</sup> Unfortunately, the receipt is no longer in existence.
81. Marguerite O'Connell heard Scott return to the Lane Cove house at about 11:00pm on 7 December but they did not speak. It is not known where Scott went between withdrawing the \$50 from the ATM at 3:55pm and returning to Lane Cove at about 11:00pm.
82. At 6:30am on Thursday, 8 December, Marguerite O'Connell saw Scott's feet in his bed through the bedroom door but she assumed he was asleep and did not go in. That is the last known sighting of Scott alive. When she returned home at about 3:15pm, Marguerite saw that Scott's bedroom was neat and tidy, as it always was when he would return to Canberra.
83. At about 10:30am on Thursday, 8 December, Associate Professor Street received a telephone call from Scott seeking to make an appointment to see him. According to Associate Professor Street, Scott told him that he had found a way of simplifying his further major mathematics problem and he appeared to be very happy about it. They discussed the possibility of meeting either that afternoon or the next day, but Associate Professor Street was not available. They agreed it could wait until the following Wednesday, 14 December. During that call, Scott also told Associate Professor Street that he intended to spend Christmas with the Noone family at Lane Cove.

<sup>62</sup> Exhibit 3 at pp. 511, 526.

84. At the inquest Associate Professor Street gave evidence that Scott was making outstanding progress in his PhD and that he did not find the process of preparing and working on his PhD stressful or a cause of anxiety, but rather it was something Scott enjoyed.<sup>63</sup>
85. Associate Professor Street said that Scott sounded happy about the development he had made in his research and that, in addition to speaking of his plans to spend Christmas with the Noone family, Scott spoke of looking forward to becoming an uncle.<sup>64</sup>

### **Last contact**

86. Mr Paul Baily, who also attended the Lane Cove party on Saturday, 3 December, had a brief telephone conversation with Scott sometime between midday and 2:00pm on 8 December 1988, when he telephoned the Lane Cove house in the hope of speaking with Michael Noone. Mr Bailey gave evidence at this inquest.
87. According to Mr Bailey, Scott appeared to be his normal self during the telephone conversation and he did not detect anything untoward. In his evidence at the hearing, Mr Bailey said he did not recall any conversation about Scott's plans for that day.<sup>65</sup> Although he was aware that his flatmate at the time had a recollection of him saying that Scott had mentioned that he was planning to go to the beach, he said he himself did not have a recollection of that.<sup>66</sup> He accepted that it was possible that he did tell his flatmate something to that effect<sup>67</sup> and accepted that it was possible that he discussed with his flatmate the fact of his telephone conversation with Scott.<sup>68</sup>
88. That is the last known contact that anyone had with Scott.

### ***Discovery of Scott's body***

89. On the morning of Saturday, 10 December 1988, Brian Butson, who was employed by the Australian Defence Force and was working at the army barracks at North Head at the time, set out with Paul Patterson and Mr Patterson's then 13-year-old son, Stephen to go spear fishing at Blue Fish Point. As they approached the vicinity of Blue Fish Point, Stephen saw Scott's body and pointed it out to his father and Mr Butson.

<sup>63</sup> Day 1 – 13.12.2016 at T41.1-35 (Street XN).  
<sup>64</sup> Day 1 – 13.12.2016 at T45.37-50 (Street XN).  
<sup>65</sup> Day 3 – 15.12.2016 at T42.19-32 (Bailey XN).  
<sup>66</sup> Day 3 – 15.12.2016 at T42.34-38 (Bailey XN).  
<sup>67</sup> Day 3 – 15.12.2016 at T42.40-41 (Bailey XN).  
<sup>68</sup> Day 3 – 15.12.2016 at T42.50 – T44.4 (Bailey XN).

90. Mr Butson remained at the location while Paul and Stephen Patterson returned to Manly to contact police, who later attended the location and recovered the body.
91. Further detail relating to the scene where Scott's body was located and the surrounding area, as well as expert evidence in that regard, is outlined later in these findings.

### ***North Head beat***

92. I participated in a view of the area of North Head above where Scott's body was found with Counsel Assisting and the interested parties on 21 October 2016. There is a dirt walking track leading from a car park near Shelly Beach up towards the top of North Head. After some distance, there is a large stone wall that would ordinarily prevent access beyond, but for a hole in the wall through which the track continues. This hole in the wall provides a distinctive marker noted by many who gave evidence of it having been at this location for years preceding Scott's death.
93. After the hole in the wall, the track continues to rise and then levels out a little. On either side of the track is low to medium scrub. There are some more minor tracks branching off the main track here and there, some of which lead to small clearings that are not necessarily visible from the main walking track. One of these secondary tracks leads to a clearing at the edge of the cliff top almost immediately above the location where Scott's body was found.
94. A great deal more is now known about the area beyond the hole in the wall. There is now a substantial body of evidence that this area was from the 1970s and continuing throughout the 1980s and 1990s a gay beat where men regularly attended to meet other men to engage in sexual activity. Evidence to that effect was given by Ulo Klemmer,<sup>69</sup> Michael Antares,<sup>70</sup> Gordon Sharp<sup>71</sup> and Stephen Tomsen.<sup>72</sup>
95. Mr Klemmer was a regular beat user at around the time of Scott's death and had attended many beats including that at Blue Fish Point (as he referred to the area through the hole in the wall at North Head), in his capacity as a gay outreach worker with the AIDS Council of New South Wales. He first became aware of the Blue Fish Point beat through friends in the early 1970s<sup>73</sup> and he

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<sup>69</sup> Day 5 – 13.06.2017 at T7 – T25.  
<sup>70</sup> Day 5 – 13.06.2017 at T42 – T56.  
<sup>71</sup> Day 6 – 14.06.2017 at T11 – T26.  
<sup>72</sup> Day 6 – 14.06.2017 at T28 – T39.  
<sup>73</sup> Day 5 – 13.06.2017 at T12.48 – T13.2 (Klemmer XN).



first attended the beat as an outreach worker in about 1992 after it was suggested to him by a police officer at Manly.<sup>74</sup>

96. Mr Klemmer gave evidence that there was no line delineating where the beat ended or stopped. It extended over the whole bushland area beyond the hole in the wall.<sup>75</sup>
97. He also said that the areas near the cliff top were quieter than the area around the main track and it was likely that people would go to the area near the cliff top for the purpose of having sexual intercourse.<sup>76</sup> Mr Klemmer also noted that sometime after he had attended the area and conducted a walkthrough with police from Strike Force Macnamir, he attended the beat with a friend who had previously used it in the 1970s and the friend directed him to a point of access to the area off Bluefish Drive which was much easier to negotiate than the track from the Shelly Beach car park.<sup>77</sup>
98. Mr Klemmer also gave evidence that the *modus operandi* of people using the beat included men taking off their clothes and folding or leaving them on the ground.<sup>78</sup>
99. Mr Klemmer gave evidence that he did not hear any report of police attending the Blue Fish Point beat or any talk of it being a dangerous place.<sup>79</sup> He also had not heard of army personnel accessing the area.<sup>80</sup> He said that even so, it is in the nature of a beat that people there feel threatened given it is an isolated spot. The fact that the beat was isolated is an attraction and a detraction.<sup>81</sup>
100. Mr Michael Antares gave evidence that he attended the beat, which he called the "Fairy Bower beat", from the early 1980s to about 1992. He said that people were mostly naked or in Speedos.<sup>82</sup> On occasion he saw people he believed were plain-clothes policemen because they were wearing long pants and collared shirts and there was conversation about watching out for plain-clothes policemen who might entrap you.<sup>83</sup>

<sup>74</sup> Day 5 – 13.06.2017 at T10.16-44 (Klemmer XN).

<sup>75</sup> Day 5 – 13.06.2017 at T17.3 – T18.21 (Klemmer XN).

<sup>76</sup> Day 5 – 13.06.2017 at T8.3-12 (Klemmer XN).

<sup>77</sup> Day 5 – 13.06.2017 at T8.28-46 (Klemmer XN).

<sup>78</sup> Day 5 – 13.06.2017 at T10.22-37 (Klemmer XN).

<sup>79</sup> Day 5 – 13.06.2017 at T20.39-48 (Klemmer XN).

<sup>80</sup> Day 5 – 13.06.2017 at T22.2-12 (Klemmer XN).

<sup>81</sup> Day 5 – 13.06.2017 at T20.50 – T21.13 (Klemmer XN).

<sup>82</sup> Day 5 – 13.06.2017 at T44.5-21 (Antares XN).

<sup>83</sup> Day 5 – 13.06.2017 at T44.23 – T45.16 (Antares XN).



101. Mr Antares recalled hearing that someone had been bashed at the beat, but could not initially recall when he heard that information. When asked whether it was in the 1980s or 1990s or later, Mr Antares said, *“it was, if anything, maybe even a bit earlier in the early 1980s”*.<sup>84</sup> Mr Antares also gave evidence that he often got a bad feeling when he went to the Fairy Bower beat and there were *“maybe even half a dozen occasions where I’d meet somebody who was either very anxious or rude or aggressive”* or who he felt could be aggressive.<sup>85</sup>
102. Mr Gordon Sharp lived in Manly from 1965 until about 1978.<sup>86</sup> Mr Sharp was a personal friend of Mr Bryan Thompson, who showed him the area of the beat, part of which he called Tunbridge Towers after a well-known user. He said he first attended the beat with Mr Thompson in 1965 or 1966.<sup>87</sup> Mr Sharp said he attended the beat on a regular basis while he lived in Manly. The most recent time he would have attended the beat was in about 1979 or 1980.<sup>88</sup>
103. Mr Sharp gave evidence that he had heard reports from people who had been bashed at the beat and occasionally the word “bashers” would be called out by beat users to indicate that people were coming from the top end of the beat working their way down and assaulting people.<sup>89</sup>
104. In Mr Sharp’s experience this happened at least once a year, but could have been more often as he was not at the beat every day.<sup>90</sup> Mr Sharp’s favourite spot at the beat was further down from where the “bashers” would enter the beat. The bashers would get the first one or two people they came upon and the others would get away.<sup>91</sup>
105. Mr Sharp was aware of the incident where Mr Thompson was stabbed in the vicinity of the beat in 1986 after having consensual sex with a person who was living in a bunker in the bush. The assailant was prosecuted and convicted.<sup>92</sup> Mr Thompson was treated at hospital and recovered.
106. After he stopped attending the North Head beat after 1980, Mr Sharp continued to maintain contact with Mr Thompson and another friend who also attended the North Head beat, Graham Boileau. Mr Thompson apparently continued to use the beat throughout the 1980s, 1990s and even in the

<sup>84</sup> Day 5 – 13.06.2017 at T50.23-33.

<sup>85</sup> Day 5 – 13.06.2017 at T45.39-49.

<sup>86</sup> Ex 12.2/12 – Transcript of recorded interview with Gordon Sharp dated 1 March 2017 at p. 2.

<sup>87</sup> Day 6 – 14.06.2017 at T13.24 – T14.6 (Sharp XN).

<sup>88</sup> Day 6 – 14.06.2017 at T19.47-49 (Sharp XN).

<sup>89</sup> Day 6 – 14.06.2017 at T17.30 – T18.12 (Sharp XN).

<sup>90</sup> Ex 12.2/12 – Transcript of recorded interview with Gordon Sharp dated 1 March 2017 at p. 34.

<sup>91</sup> Ex 12.2/12 – Transcript of recorded interview with Gordon Sharp dated 1 March 2017 at pp. 20-21.

<sup>92</sup> Day 6 – 14.06.2017 at T20.1 – T21.12 (Sharp XN).

2000s, although less frequently.<sup>93</sup> From time to time, Mr Thompson would tell Mr Sharp that bashers had gone through the beat<sup>94</sup> and Mr Boileau told Mr Sharp of seeing someone come down from the beat with a bleeding face or obvious bruising.<sup>95</sup>

107. Professor Stephen Tomsen, a criminologist with expertise in anti-gay violence, attended the Blue Fish Point beat with a friend in the late 1970s. The friend had told him it was an area that was known as an area for gay cruising.<sup>96</sup> Professor Tomsen said that the isolation of the Blue Fish Point beat meant that there was a reduced chance that some responsible third party could see what was happening and report it and that was likely to give the perpetrators of anti-gay violence greater confidence.<sup>97</sup>

108. Detective Senior Constable Cruickshank gave evidence at the first inquest that:

*(I) If a particular area is frequented by homosexuals we have those in the community who take a dislike to those persons and will frequent there either to assault them or rob them or cause them some harm in some way and eventually the police become notified of certain type of incidents happening in that area.<sup>98</sup>*

109. She stated that no such incidents had been reported to the police in respect of the Blue Fish Point area.<sup>99</sup> However, there is evidence that there was a reluctance on the part of the gay community to report instances of violence at gay beats to police.<sup>100</sup>

110. In her evidence, Sue Thompson, who served as the NSW Police Gay/Lesbian Consultant from 1990 to 2003, stated that “[a]ny area where gay people were known to frequent was a target location for prejudice related violence” and emphasised gay beats as a “major trouble spot” in this regard.<sup>101</sup> Ms Thompson also detailed the problem of unreported violence at gay beats.<sup>102</sup>

<sup>93</sup> Day 6 – 14.06.2017 at T20.1 – T21.12, T24.50 – T25.1.

<sup>94</sup> Day 6 – 14.06.2017 at T21.14-17.

<sup>95</sup> Day 6 – 14.06.2017 at T21.35-38.

<sup>96</sup> Day 6 – 14.06.2017 at T29.47 – T30.5, T30.23-34 (Sharp XN).

<sup>97</sup> Day 6 – 14.06.2017 at T33.14-21 (Tomsen XN).

<sup>98</sup> Exhibit 4.1/19 – Transcript of evidence given by Detective Doreen Cruickshank at 1989 inquest dated 16 March 1989 at p. 5.

<sup>99</sup> Exhibit 4.1/19 – Transcript of evidence given by Detective Doreen Cruickshank at 1989 inquest dated 16 March 1989 at pp. 3, 5.

<sup>100</sup> See, for example, Day 5 – 13.06.2017 at T12.24-46 (Klemmer XN).

<sup>101</sup> Exhibit 4.4/103 – Updated report by Sue Thompson regarding the death of Scott Johnson dated 1 June 2011 at p. 4, [1.7].

<sup>102</sup> Exhibit 4.4/103 – Updated report by Sue Thompson regarding the death of Scott Johnson dated 1 June 2011 at p. 6, [1.14], p. 8, [3.5].



111. A bias crime assessment conducted in 2013 by officers attached to Operation Parrabell concluded that the North Head beat was an unlikely location for anti-gay bias motivated crimes.<sup>103</sup> The principal bases for that conclusion was the remoteness of the location of the beat and its relatively rough terrain, its use primarily as a day-time beat, along with the absence of any reported anti-gay violence or other identified suspicious deaths involving suspected bias motivation.
112. Counsel Assisting submit that the bias crime assessment has to be balanced against what is now known about the geographical extent of the beat, which covered a much larger area than specified in the bias crime assessment, the evidence of Professor Tomsen that the remoteness of the beat was a matter that could have attracted anti-gay violence, and the evidence of Mr Sharp that “bashers” had come to this location on occasion. The assessment appears to have overlooked the fact that anti-gay motivated offences of violence committed at Reef Beach (see below) also involved a location that was relatively remote.
113. Counsel Assisting also submit that it may readily be accepted that the area where Scott’s clothes were located was within an area that was part of an active gay beat at the time and that, notwithstanding an absence of any specific reports to police of anti-gay violence in the area, there was a real prospect that persons intending to inflict harm upon beat users may have attended the area for that purpose from time to time.
114. The Commissioner of Police submits that there is no evidence of any actual occasions when groups of young men attended the beat at North Head to commit violence towards homosexuals in any period proximate to the time of Scott’s death. Mr Antares and Mr Sharp provided the only credible evidence of any bashings having occurred, and that was in the early 1980s.<sup>104</sup>
115. In reply, Counsel Assisting submit that Mr Klemmer’s evidence that “it is in the nature of a beat to feel threatened” and Detective Senior Constable Cruickshank’s evidence at the first inquest as recorded above, were not confined to a period prior to the death of Scott Johnson.<sup>105</sup>
116. I am of the view that an absence of recorded reports to police of incidents of anti-gay violence at the Blue Fish Point beat around the time of Scott’s death does not of itself support a conclusion that no such incidents occurred.<sup>106</sup> On

<sup>103</sup> Exhibit 12.2/15 – Bias Crime Assessment 08.10.2013.

<sup>104</sup> Submissions of the Commissioner of Police, p. 7, [36].

<sup>105</sup> Reply submissions of Counsel Assisting dated 8 November 2017 at p. 8, [27]-[28].

<sup>106</sup> Reply submissions of Counsel Assisting dated 8 November 2017 at p. 8, [29].



the contrary, the evidence of men who had frequented the beat before and after Scott's death leads me to conclude that such violence did occur there around the time of Scott's death.

### ***Gay hate crimes in the Manly area circa 1988***

117. Men who grew up on the Northern Beaches and who were suspected of involvement in or knowledge of, violent assaults of gay men in the Northern Beaches, North Sydney and Sydney areas in the late 1980s were called to give evidence. For the most part, these witnesses were identified in information provided to Strike Force Macnamir as associated with either the person referred to as NP3 or the person referred to as NP98. However, it should be noted that the two groups were not entirely separate. Many of these witnesses knew of each other through high school or, alternatively, through playing rugby league.
118. These witnesses are referred to by pseudonyms because they were minors at the time of the incidents in question or because they fear that if their identities were published the persons about whom they gave evidence might seek retribution against them.

### **NP3 and his associates**

119. NP3 was identified by a number of persons as a member of a gang known as the "Narrabeen Skinheads" who were involved in gay bashings in and around the Northern Beaches in the 1980s. In 1991 NP3's body was found buried in his front yard.<sup>107</sup> NP3's older brother, NP3.2 was charged with his murder. NP3.2 was found not guilty by a jury and NP3's death remains unsolved.<sup>108</sup>
120. In April 1987, NP3 was arrested and charged together with his younger brother, NP3.1, and an associate NP88 in relation to two offences involving violent robberies committed upon gay men in the Darlinghurst / Moore Park area, for which he was ultimately in 1991 ordered to enter into a recognizance to be of good behaviour for 3 years.
121. NP88 told investigators that he committed three "gay bashings" with NP3. All occurred after 10:00pm in the Darlinghurst or Moore Park area. He was arrested and charged after the second and third bashings. He pleaded guilty and ceased associating with NP3.<sup>109</sup>

<sup>107</sup> Exhibit 12.2/34 – Investigator's note of interview with NP3.1.

<sup>108</sup> Exhibit 12.2/22 – Investigator's note of interview with I150; Exhibit 12.2/23 – Investigator's note of interview with I151.

<sup>109</sup> Exhibit 12.2/35 – Investigators note of interview with NP88.

122. NP88 gave evidence that he knew NP3 and NP3.1 from school. He would "hang out" with NP3 at school and on occasions after school.<sup>110</sup> On occasions he went to NP3's house, where they would listen to music.<sup>111</sup> At this time both NP3 and NP88 would dress as skinheads.<sup>112</sup>
123. NP88 said that he and NP3 had a bad attitude towards homosexual people.<sup>113</sup> He recalled that there was a lot of talk about AIDS at school and the grim reaper advertisement on television, and that "*everyone believed it was basically homosexuals that were causing that*".
124. NP3 told NP88 that he had gone "gay bashing" at Moore Park, Rushcutters Bay and Narrabeen Bus Terminus. NP88 did not recall NP3 mentioning ever going to St Leonards Park, Reef Beach or Manly to commit these crimes.
125. NP88 confirmed that he went "gay bashing" three times over two different nights. The first time was on the night of a Mardi Gras or another event in early 1987 and the other two times were on 20 April 1987.<sup>114</sup>
126. NP88 recalled that on the first occasion, NP95 drove him and NP3 from the Northern Beaches to the Moore Park area. The assault was perpetrated on a man in a small tent who was attacked while he was still in the tent and while he was trying to escape.
127. On the second occasion they were going to the city and NP3 said that they would go "gay bashing." They assaulted a man in Moore Park and another in Darlinghurst.<sup>115</sup> NP88 was arrested and dealt with by the Children's Court. He pleaded guilty and was sentenced to 500 hours of community service.<sup>116</sup>
128. Following this NP88 was "grounded" for six months and ceased his association with NP3, and also with NP95 because of his involvement in gay bashings.
129. The most potentially salient evidence implicating NP3 in the death of Scott came from I3 and ■.
130. I3 provided information to the NSW Police Force that a skinhead group from the Narrabeen area would go gay bashing around the northern beaches in the late 1980s and early 1990s. He identified NP3, NP4, NP5 and NP6 as being

<sup>110</sup> Day 9 – 19.06.2017 at T6.6-20 (NP88 XN).

<sup>111</sup> Day 9 – 19.06.2017 at T6.27-38 (NP88 XN).

<sup>112</sup> Day 9 – 19.06.2017 at T6.49 – T7.2 (NP88 XN).

<sup>113</sup> Day 9 – 19.06.2017 at T12.27-30 (NP88 XN).

<sup>114</sup> Day 9 – 19.06.2017 at T15.50 – T16.22 (NP88 XN).

<sup>115</sup> Day 9 – 19.06.2017 at T25.13-31 (NP88 XN); Exhibit 18/32-38.

<sup>116</sup> Exhibit 12/2.35 – Investigators note of interview with NP88.

members of that group. I3 [redacted] and recalled him saying that he would go with his friends to go gay bashing at the Narrabeen Terminus and at a toilet block in Centennial Park.<sup>117</sup>

131. [redacted] provided information to the NSWPF that a gang known as the Narrabeen Skinheads were involved in gay bashings in Narrabeen and Surry Hills. [redacted] identified [redacted], as members of that gang. [redacted] recalled that they all shaved their heads, wore Doc Marten boots, wore denim jeans and braces [redacted]<sup>118</sup>

132. [redacted] told investigators that [redacted] told him [redacted] that they would go gay bashing in Surry Hills [redacted]

133. [redacted] claimed [redacted] told him that sometimes they would go to a gay beach in Manly looking for men to assault. [redacted] also recalled [redacted] and came across an "American faggot" in a clearing lying naked and masturbating. He said they bashed him and he got up and got away.

134. [redacted]

135. [redacted]

<sup>117</sup> Exhibit 12.2/16 – Intelligence Report I51010729; Exhibit 12.2/17 – Statement of I3 11.04.2013.

<sup>118</sup> Exhibit 12.2/18 - Intelligence Report I50589304; Exhibit 12.2/20 - [redacted]  
<sup>119</sup> Exhibit 12.2/18 - Intelligence Report I50589304; Exhibit 12.2/20 - [redacted]

<sup>120</sup> [redacted]  
<sup>121</sup> [redacted]  
<sup>122</sup> [redacted]



- [REDACTED]
136. [REDACTED] stated that [REDACTED] told him that they had been to Manly and they'd been to North Head and they'd bashed some American faggot [REDACTED] who said, "We bashed the American faggot".<sup>124</sup> [REDACTED]
137. NP4 told investigators that he got in trouble with the police when he was younger and stated he was young and stupid but he was never involved in assaulting gay men. NP4 knew NP8, NP6, NP7 and NP3, but did not hang out with them. NP4 had told investigators it was common knowledge NP3 was a "poofter basher" but not the other three (NP6, NP7 and NP8).<sup>125</sup>
138. NP4 agreed that he used to wear Doc Marten boots but he denied that he used steroids or that he was a "poofter basher".<sup>126</sup> NP4 said he would get into fights at parties, but this would not be every time he went out and this would not be a regular event.<sup>127</sup>
139. NP4 claimed that he was not aware that there were toilet blocks in Manly and in Surry Hills where gay men might meet up.<sup>128</sup> NP4 denied that he would go to a gay beach in Manly looking for people to bash and denied knowledge of a gay beach in Manly.<sup>129</sup>
140. NP4 denied the specific allegation that he was part of a group that "bashed an American faggot they had found lying naked and masturbating at Manly" in about mid-December 1988. NP4 said that he had never been to North Head or Shelly Beach and would not know how to get there.<sup>130</sup>
141. NP6 denied to investigators that he had any involvement in a skinhead group. He told investigators that he knew NP3 as he was in the same year at high school, but did not associate with him. He recalled that NP3 was a skinhead. NP6 also told investigators that he knew NP4, NP7 and NP8 but did not associate with them. NP6 stated that he had been to North Head in Manly, but had no knowledge of it being a gay beat.<sup>131</sup>

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[REDACTED]  
 Exhibit 12.2/37 - Investigator's note of interview with NP4 dated 04.12.2013.

Day 8 - 16.06.2017 at T52.10-13 (NP4 XN).

Day 8 - 16.06.2017 at T52.29-38 (NP4 XN).

Day 8 - 16.06.2017 at T56.33-39 (NP4 XN).

Day 8 - 16.06.2017 at T56.46 - T57.2 (NP4 XN).

Day 8 - 16.06.2017 at T57.35-39 (NP4 XN).

Exhibit 12.2/38 - Investigator's note of interview with NP6 dated 30.07.2013.

142. In his oral evidence, NP6 denied that he was ever a member of the Narrabeen Sharks Football Club and said that he had only played one game of football, which was in the 1990s.<sup>132</sup> NP6 acknowledged that he was charged with a number of malicious damage offences committed in 1990 and an offence of aggravated cruelty to animal in 1991.<sup>133</sup>
143. NP6 had heard rumours that NP3 had been involved in gay bashings.<sup>134</sup> NP6 claimed that he never spent any occasion in the company of NP3 or NP4. He claimed that the only time he ever saw NP3 was at the Narrabeen RSL.
144. NP6 knew of I169, I170, NP1, NP2 and NP89, and he thought they all went to the same school as him. He had not heard of NP1, NP89 and others being involved in gay bashing.<sup>135</sup>
145. NP6 denied that he would hang out with NP3, NP4 and NP5.<sup>136</sup> He disagreed with the assertion that he went gay bashing with NP3 and NP4 at Manly or North Head in late 1988.<sup>137</sup>
146. NP1 told investigators that he knew NP3 quite well. They both played football and attended the same high school. NP1 said that NP3 had "changed his ways" before his death. NP1's memory is that he mostly socialised with NP3 at football, but did attend NP3's house a few times. He described NP3 as a loner jumping from group to group and did not think NP3 held a driver's licence and thought that NP3 did not go to North Head.<sup>138</sup>
147. NP1 was charged on 26 April 1987 with an offence involving an assault and robbery of a person in the vicinity of a toilet block at Moore Park.<sup>139</sup> NP1 claimed that he was present when the man was assaulted. The other people who were present were I152, I169, I170, I171, NP89 and NP93. NP1 claimed that NP3, NP4, NP6 and NP7 were not present.<sup>140</sup> All of the people with NP1 were from the Northern Beaches and they had travelled to Moore Park to go into the city and "to roll a poof if [they] saw one".<sup>141</sup> NP1 was 14 years of age

132

Day 10 – 20.06.2017 at T7.50 (NP6 XN).

133

Day 10 – 20.06.2017 at T13.33-50 (NP6 XN).

134

Day 10 – 20.06.2017 at T9.31-33 (NP6 XN).

135

Day 10 – 20.06.2017 at T9.50 – T10.35 (NP6 XN).

136

Day 10 – 20.06.2017 at T9.20-24 (NP6 XN).

137

Day 10 – 20.06.2017 at T17.41-44 (NP6 XN).

138

Exhibit 12.2/42 - Investigator's note of interview with NP1 dated 31.05.2017.

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Day 9 – 19.06.2017 at T63.11-14 (NP1 XN).

140

Day 9 – 19.06.2017 at T64.14-49 (NP1 XN).

141

Day 9 – 19.06.2017 at T65.1-11 (NP1 XN).



at the time and stated that he did not have a great dislike of homosexual people but thought of them as an easy target.<sup>142</sup>

148. NP1 claimed that NP3 was not really part of his main group of friends; he was "a bit of a floater". He had heard NP3 would go "poofter bashing".<sup>143</sup> NP1 claimed that he never heard of NP4 doing that.<sup>144</sup> NP1 knew NP3 fairly well by the time of NP3's death.<sup>145</sup> NP1 attended NP3's house a couple of times over the period from about 1985 to 1991.<sup>146</sup> NP1 claimed that he did not wear the clothes of a skinhead when he was hanging out with NP3.<sup>147</sup>
149. NP1 claimed that he did not go to North Head in the late 1980s.<sup>148</sup>
150. NP7 told investigators that he was a friend of NP3 and they had played football together. NP7 stated that he was aware that NP3 "was a 'poofter basher' in 1985-1986 when he was in a gang". NP7 claimed he did not know the identity of the other members of the gang. He believed that they were much older than him and of Italian descent.<sup>149</sup> NP7 was aware that NP3 robbed gay men and he at one stage noticed NP3 wearing a gold watch that he believed was the proceeds of a robbery.<sup>150</sup>
151. NP7 told investigators that he recalled attending a football barbeque in Avalon at which members of NP3's gang played a practical joke on NP3. They told him that one of his gay bashing victims had died as a result of being assaulted by NP3. NP7 had attended the party and described NP3 as being "beside himself" with worry before he was informed this was a joke. NP7 did not recall when the barbeque took place.<sup>151</sup>
152. NP7 told investigators that he and NP4 were childhood friends. NP7 described NP4 as a "tearaway who regularly got into fights at parties. He wore doc marten boots but didn't have the distinctive skinhead style shaved head". NP7 said that NP4, NP6 and NP8 were not in the same group.<sup>152</sup> NP7 did not consider NP8 a friend and stated that NP8 was not a skinhead.<sup>153</sup>

<sup>142</sup> Day 9 – 19.06.2017 at T65.13-15, 36-37 (NP1 XN).

<sup>143</sup> Day 9 – 19.06.2017 at T53.7-8 (NP1 XN).

<sup>144</sup> Day 9 – 19.06.2017 at T53.21-28 (NP1 XN).

<sup>145</sup> Day 9 – 19.06.2017 at T56.49 – T57.1 (NP1 XN).

<sup>146</sup> Day 9 – 19.06.2017 at T57.11-27 (NP1 XN).

<sup>147</sup> Day 9 – 19.06.2017 at T59.11-13 (NP1 XN).

<sup>148</sup> Day 9 – 19.06.2017 at T71.30-34 (NP1 XN).

<sup>149</sup> Exhibit 12.2/39 – Investigator's note of interview with NP7 dated 16 July 2013.

<sup>150</sup> Exhibit 12.2/39 – Investigator's note of interview with NP7 dated 16 July 2013.

<sup>151</sup> Exhibit 12.2/39 – Investigator's note of interview with NP7 dated 16 July 2013.

<sup>152</sup> Exhibit 12.2/39 – Investigator's note of interview with NP7 dated 16 July 2013.

<sup>153</sup> Exhibit 12.2/39 – Investigator's note of interview with NP7 dated 16 July 2013.



153. In oral evidence, NP7 corrected a number of matters in the investigator's note of the interview conducted with him.<sup>154</sup> He stated that he did not recall telling investigators that NP3 was a "poofter basher" or that he was in a gang. NP7 stated that he told the police that NP3 *may* have participated in gay bashings.
154. NP7 knew NP4 from high school and football, having played with and against him.<sup>155</sup> He had spent time with NP4 outside of school, and from time to time after he left school.<sup>156</sup> NP7 never heard of NP4 going gay bashing.<sup>157</sup> NP7's group of friends also included I169, I170, NP1, NP89 and at times NP6. NP6 did not play football growing up.<sup>158</sup>
155. NP7 had heard of NP3 being violent. On one or two occasions NP3 had told NP7 that he had been gay bashing. NP7 thought that this may have been at football training, and agreed that NP3 may have bragged to him and his teammates that he had been gay bashing.<sup>159</sup> NP3 did not say where he went or with whom he had been when he went gay bashing.<sup>160</sup> NP7 said he never went gay bashing with NP3.<sup>161</sup>
156. NP7 was friends with NP3, and associated with him from time to time at school and at football.<sup>162</sup> NP7 recalled that the year of the football barbeque when NP3 was told that he had killed someone as a joke was on a Saturday or a Sunday in 1985 or 1986. This was because they were at the time in Avalon and the barbeque was associated with the Avalon football club. NP7's father was the coach and NP7 recalled that this particular barbeque took place at his home. NP7 claimed that neither NP1 nor NP4 were present as they did not play for Avalon.<sup>163</sup> NP7 recalled NP3 saying something along the lines of, "*I think I may have killed someone*". NP3 was crying and trembling.
157. NP7 claimed that he did not ask NP3 who told him that he had possibly killed a person or how he had possibly killed a person. NP7 assumed that it was a gay bashing.<sup>164</sup> He understood that NP3 had been involved in a very serious assault on someone.<sup>165</sup> NP7 thought it would have been at school during the week when NP3 found out that he had not killed anybody and that it was a practical joke or a lie.<sup>166</sup>

<sup>154</sup> Day 9 – 19.06.2017 at T88.1-3.  
<sup>155</sup> Day 9 – 19.06.2017 at T89.35-40.  
<sup>156</sup> Day 9 – 19.06.2017 at T93.22-27.  
<sup>157</sup> Day 9 – 19.06.2017 at T98.25-27.  
<sup>158</sup> Day 9 – 19.06.2017 at T93.29-42; T94.34-36.  
<sup>159</sup> Day 9 – 19.06.2017 at T97.2-40.  
<sup>160</sup> Day 9 – 19.06.2017 at T98.15-23.  
<sup>161</sup> Day 9 – 19.06.2017 at T98.29-30, T107.25-31.  
<sup>162</sup> Day 9 – 19.06.2017 at T95.17-30.  
<sup>163</sup> Day 9 – 19.06.2017 at T99.8-16.  
<sup>164</sup> Day 9 – 19.06.2017 at T99.21 – T100.12, T100.42-44.  
<sup>165</sup> Day 9 – 19.06.2017 at T102.38-44.  
<sup>166</sup> Day 9 – 19.06.2017 at T102.1-25.

## Conclusions

158. While appearing to genuinely seek to assist the investigation, having regard to the various accounts provided by [REDACTED] I could not accept his evidence unless it was corroborated. That leads me to conclude that I can and do accept his evidence that NP3 and his associates were involved in gay hate crimes in Manly and its surrounding beaches and bushland in the late 1980s because numerous other witnesses confirm various aspects of that behaviour.
159. However, the evidence that most closely connects NP3 to the death of Scott Johnson is the alleged admission NP3 and NP4 made about the assault of an "American faggot". NP4 denies this evidence and NP3 is dead. Absent any corroboration of [REDACTED]'s claims that the admissions were made they could not be proven to the requisite standard.

## NP98 and his associates

160. In 2013, police received information from a community source ([REDACTED]) to the effect that from 1986 to 1988, members of a group including NP98, NP10 and other associates committed in excess of 20 assaults and robberies at various locations in the North Sydney and Northern Beaches areas, including North Sydney Park, Balgowlah toilets, Narrabeen toilets, Manly toilets opposite the Steyne Hotel, Shelly Beach, Reef Beach and North Head. The assaults and robberies involved different members of the group on different occasions. The assaults and robberies included some which were committed upon persons whom members of the group believed were at those locations to engage in homosexual activity.
161. The information was to the effect that assaults and robberies were committed by the group at North Head on more than one but less than five occasions. On those occasions, the assaults and robberies occurred in an area of scrub with clearings which was located beyond the hole in the wall. The group would sometimes approach potential victims from different angles and directions to surround the victim. One of the members of the group sometimes acted as "bait" to make contact with the victim. The victim would lead the person who acted as "bait" to a nearby clearing just off the main track. Shortly after reaching the clearing, other members of the group would attack and assault the victim. The group members would also take property from the victim. The information did not suggest that any of the group had ever pushed anyone off a cliff.
162. The information was that the group committed the assaults and robberies at North Head in the warmer months and in the evening [REDACTED].

163. In 2014, [REDACTED] informed police that the number of occasions the group attended North Head to commit gay-hate assaults and robberies was fewer than previously indicated in 2013 and that the group did not always attend the area to commit assaults and robberies.

164. [REDACTED] said that the earlier information was not accurate and the assaults and robberies earlier described as having been committed by the group in the late 1980s at North Head had in fact been committed at Reef Beach and an area of North Head that was different to the area he had previously indicated to police.<sup>167</sup>

165. [REDACTED]

166. [REDACTED] explanation as to his change of evidence was unconvincing and casts considerable doubt upon his credibility overall.

[REDACTED]

167. [REDACTED]

168. [REDACTED]

167 [REDACTED]  
168 [REDACTED]  
169 [REDACTED]  
170 [REDACTED]  
171 [REDACTED]  
172 [REDACTED]  
173 [REDACTED]



- [REDACTED]
169. Both NP98 and NP10 denied any involvement in gay bashings in the North Head area and denied having any involvement in Scott's death.
170. There is evidence that both NP98 and NP10 together with a person by the name of Nick Janus (now deceased) were arrested and charged with a series of offences of violence committed upon homosexuals at the Narrabeen Bus Terminus, North Sydney Park at St Leonards and Reef Beach, which is a relatively short distance from North Head. The offences were committed in July and December 1986. There is no evidence of NP98 offending after this date.
171. NP10 was a juvenile at the time of the offences. He was ultimately dealt with in the Children's Court and required to enter into recognizances for a period of 2 years.
172. NP98 initially sought to defend the matter on the basis that the statements he made to police admitting his involvement in the offences were coerced by detectives involved in the investigation, namely Detectives Raymond Peattie and David Patison. However, NP98 eventually pleaded guilty and was sentenced in the District Court on 15 December 1989.
173. The nature of NP98's relationship with police – particularly Detective Peattie was the subject of some scrutiny at the hearing. Notwithstanding that he had claimed that his confessions were coerced, NP98's relationship with Detective Peattie very quickly improved to the extent that he invited both Detective Peattie and Detective Patison to his wedding only a few years later in 1992. NP98's explanation for doing so was that he had forgiven Detective Peattie.<sup>175</sup> He initially suggested that Detective Peattie had apologised to him when NP98 happened to come upon him while the detective was involved in digging up NP3's body at Narrabeen, however, he later said he could not remember when the apology occurred.<sup>176</sup>
174. NP98's unsatisfactory explanation of the nature of his relationship with Detective Peattie is a matter of continuing suspicion. There was some evidence that [REDACTED] and another witness<sup>177</sup> had acknowledged that NP98's brother had paid money to police for NP98 to receive a lesser sentence. It is

<sup>174</sup>

<sup>175</sup>

[REDACTED]  
Day 13 – 23.06.2017 at T101.18-44 (NP98 XXN).

<sup>176</sup>

Day 13 – 23.06.2017 at T102.26 – T103.23 (NP98 XXN).

<sup>177</sup>

Exhibit 12.4/102 – Email from Daniel Glick to NSW Police including email from I69 at p. 7.

of note that Detective Peattie and Detective Patison resigned from the NSWPF in about 2001/2002 following their suspension and investigation by the Police Integrity Commission under the auspices of Operation Florida.

### Conclusions

175. In his first version ██████ gave detailed descriptions of how the North Head beat was accessed, and of his and other people's movements in that area. His evidence as to how the beat worked was similar to the evidence of Mr Klemmer. His second version, in which he said he mistook the North Head beat for the area at Reef Beach, cannot be accepted as there are obvious differences between the two areas and his reasons for the mistake were transparent lies.
176. Much of what ██████ told the police ████████████████████ in his first version was consistent with other evidence concerning how the beat operated as well as site-specific information concerning access to the beat.<sup>178</sup>
177. Police records indicated that NP98, NP10 and others were involved in gay bashings in the period leading up to Christmas 1986, but there is no evidence that they continued to be involved in such activities after their arrest in January 1987 apart from the information originally provided to police by ██████, who has given inconsistent accounts and ultimately retracted much of his original statement.
178. NP98's oral evidence about when he ceased bashings was equivocal; there is however no reliable evidence of him being involved in such activities later than December 1986. His evidence as to how he came to be close personal friends with corrupt police officers he claimed had "verballed" him is completely unbelievable.
179. Left with the conflicting and inconsistent evidence of two criminals, I am unable to rely on any aspect of their evidence that cannot be corroborated. I conclude that in the late 1980s, it is likely that NP98 and others he associated with attacked men at the beat where Scott died. However, there is no reliable evidence to connect those people directly with Scott's death.

### Other potential persons of interest

180. Strike Force Macnamir investigated the possible involvement of a number of other potential persons of interest in connection with the death of Scott Johnson.

<sup>178</sup> Reply submissions of Counsel Assisting dated 8 November 2017 at p. 8-9, [30].



181. NP13 gave evidence at the inquest. [REDACTED]
- [REDACTED]
- <sup>179</sup> NP13 gave evidence about his involvement in gay bashings in the Bondi and Moore Park areas between 1988 and 1990.
182. NP13 maintained that he has never been to North Head and was not involved in Scott's death.<sup>180</sup> Furthermore, although his co-offenders had spoken to him about times when they were involved in other gay bashings to which he was not a party, they never spoke about doing that at Manly.<sup>181</sup> There is no evidence linking NP13 to the death of Scott Johnson.
183. Another line of inquiry concerned the possible involvement of army personnel. In particular, the Court heard evidence from Patrick McIntyre, a former member of the army who was stationed at the North Head School of Artillery from about the end of 1986 to 28 July 1989.
184. Mr McIntyre gave evidence that homosexuality was not accepted among army personnel and there was occasional discussion at the barracks in which servicemen expressed their dislike of homosexuals.<sup>182</sup> There were occasions when he heard servicemen discussing plans to go "poofier bashing" on the weekend. He assumed that they would do that in the Kings Cross area although he accepted there was a possibility that they could have been talking about committing such offences in the Manly area.<sup>183</sup>
185. Mr McIntyre said that at the time it did not concern him as it had nothing to do with him and he did not agree with homosexuality. Even though he appreciated that the servicemen were talking about committing a serious breach of army discipline, he did not report what he had heard to his superiors as he thought it was common knowledge among them.<sup>184</sup>
186. AH, who lived in the Manly area from 1985 to 1990, gave evidence that on a number of occasions around 1986 to 1987 he heard army personnel from the North Head School of Artillery boast at bars in Manly of gay bashing activities in the Manly area.<sup>185</sup> While at an hotel in Manly in around 1985/1986, AH also heard a group of people he understood to be rugby league players talking

<sup>179</sup> Day 10 – 20.06.2017 at T54.5-44 (NP13 XN).

<sup>180</sup> Day 10 – 20.06.2017 at T57.6-13, T58.35-36 (NP13 XN).

<sup>181</sup> Day 10 – 20.06.2017 at T58.38 – T59.2 (NP13 XN).

<sup>182</sup> Day 12 – 22.06.2017 at T75.34 – T76.15 (McIntyre XN).

<sup>183</sup> Day 12 – 22.06.2017 at T76.19, T78.17 – T79.18 (McIntyre XN).

<sup>184</sup> Day 12 – 22.06.2017 at T80.16-29 (McIntyre XN).

<sup>185</sup> Day 10 – 20.06.2017 at T33.4 – T38.32 (Mr AH XN).



about "*bashing poofers at North Head*". AH thought this conversation took place in 1985/1986.<sup>186</sup>

## Conclusions

187. The fact that army personnel barracked in relative close proximity to an active gay beat had openly discussed plans to assault homosexual men raises the possibility that such persons could have committed such offences in the area of the Blue Fish Point beat, although the evidence does not allow a positive finding to that effect.

## Evidence provided by Robert Reed

188. Mr Reed was an honorary life guard of Reef Beach from 1975 to 1993. He said he used to talk to everyone on the beach. One man, who would often sunbake at the back of the beach, told Mr Reed there was a group of approximately four males who would assault and rob people in the bushland behind the beach. Mr Reed recalled that "*one male would lure a gay man into the bushes for a possible sexual encounter before the others would assist and assault the unsuspecting victim*". This supposedly happened on 4-5 occasions. Mr Reed did not see this himself.<sup>187</sup>

189. An older couple who had a view of Reef Beach from their apartment told Mr Reed that they saw some males assaulting another male before pushing him off a low cliff. Mr Reed did not hear of any serious injuries occurring as a result of this incident.<sup>188</sup>

## Conclusions

190. There is no direct evidence before me connecting this evidence with the death of Scott Johnson although it is further confirmation of violent attacks being perpetrated against gay men in the Manly area.

## Expert evidence

### *The scene*

191. Mr Butson, in the company of two police officers, Constables Robert Ludlow and Troy Hardie made their way to the top of the cliff above where Scott's body had been found.

<sup>186</sup> Day 10 – 20.06.2017 at T38.34 – T40.1 (Mr AH XN).

<sup>187</sup> Ex 12.2/9 – Statement of Robert Reed dated 30 September 2011 at p. 2; Day 5 – 13/06/2017 at T31.2-4, T33.24-30, T43-49 (Reed XN).

<sup>188</sup> Ex 12.2/9 – Statement of Robert Reed dated 30 September 2011 at p. 2-3.

192. In his evidence at this inquest, Mr Butson said that while he was at the cliff face above the location where Scott's body had been discovered, he looked at the ground and saw that there were sharp rocks everywhere that would be very uncomfortable in bare feet. There was no blood or anything like that; it was washed clean with a lot of rain the night before and he could not see any scuffle marks or anything like that.<sup>189</sup> Mr Butson also said that he walked right to the edge and looked down at the body and he said he could have dropped a plumb bob down to it; it was a straight drop with nothing between the precipice and the body.<sup>190</sup>
193. Constable Ludlow stated that Scott's clothes were found neatly folded "*some ten metres back from the top of the cliff*".<sup>191</sup> They were not photographed *in situ* and no forensic examination of the area where they were found was conducted. Constable Ludlow picked up the clothes and subsequently handed them to Constable Hardie, who took them to another location – possibly the car park – where they were laid out and photographed by an officer from the Crime Scene Section. Accordingly, the only photographs of the clothes *in situ* were taken from a helicopter and do not show any detail other than their position.
194. The clothing comprised one bone coloured long sleeve shirt, a pair of light blue trousers, a pair of green underpants, a pair of white socks and a pair of white Adidas brand running shoes. Inside the shoes there was a black felt pen, a Mercury brand digital watch, a black comb and a key. In the top pocket of the bone shirt there was a plastic holder containing a Canberra Building Society cashcard, a student travel concession card in the name of Scott R Johnson, a bus ticket and a single ten dollar note.<sup>192</sup> The clothes were wet.<sup>193</sup>
195. Mr Butson recalled seeing a steel or metallic "*heavy metal pen*" lying diagonally on top of the pile of Scott's clothes.<sup>194</sup> He stated that "*I do know that the plastic [pen] was inside the wallet but the other one I think was on the top*". Mr Butson stated that he did not remember the presence of the plastic pen, but had seen photographs including the plastic pen.<sup>195</sup>

<sup>189</sup> Day 2 – 14.12.2016 at T28.28-31 (Butson XN).

<sup>190</sup> Day 2 – 14.12.2016 at T28.36-44 (Butson XN).

<sup>191</sup> Ex 4.1/15 – Statement of Constable Robert Ludlow dated 29 December 1988.

<sup>192</sup> Exhibit 4.1/12 – Transcript of evidence given by Constable Troy Hardie at 1989 inquest;

Exhibit 4.1/15 – Statement of Constable Robert Ludlow dated 29 December 1988 at [4].

<sup>193</sup> Exhibit 4.1/16 – Transcript of evidence given by Constable Robert Ludlow at 1989 inquest dated 16 March 1989.

<sup>194</sup> Day 2 – 14.12.2016 at T26.41 – T27.19, T34.26-31.

<sup>195</sup> Day 2 – 14.12.2016 at T27.4-19.

196. The presence of such a heavy metal pen is not supported by the two police officers who attended the scene. It is also noted that the items photographed by a third forensic officer did not include a "heavy metal pen".<sup>196</sup>
197. Records from the Bureau of Meteorology concerning weather details for 8 and 9 December 1988, in respect of Watsons Bay, Manly Vale, Mosman and Seaforth indicate that there was a significant amount of storm activity and rain, particularly on the evening of 9 December 1988.
198. Scott's wallet was not located at the scene or at the Lane Cove house and has not been found.

### ***Autopsy evidence***

199. Dr Johan Duflou, forensic pathologist, performed an autopsy of Scott on the morning of 14 December 1988. He concluded that Scott died as a result of multiple injuries.<sup>197</sup>
200. A sample of Scott's blood was tested for HIV and Hepatitis B. The result for both was negative. A blood alcohol level of 0.005g per 100ml (0.005%) was found. This is equally consistent with having been caused by post mortem changes or the consumption of a small amount of alcohol prior to death.<sup>198</sup>
201. Dr Duflou acknowledged that the observable injuries were equally consistent with Scott having been pushed, tripped or fallen or having intentionally jumped from the cliff.<sup>199</sup> Dr Duflou accepted that the injuries sustained as a result of the fall may have masked any pre-existing injuries sustained prior to the fall and also that some of the signs of bruising may potentially have been washed out by heavy rain.<sup>200</sup>
202. Dr Duflou also gave evidence that in over 30 years working as a forensic pathologist, he has not experienced any other matter involving a person who had committed suicide by jumping from a cliff while naked.<sup>201</sup>
203. Dr Alan Cala, forensic pathologist, provided a report to Strike Force Macnamir in April 2014 following a review by him of a number of photographs of the scene, Dr Duflou's original autopsy report and the transcript of Dr Duflou's evidence at the first inquest. Dr Cala's conclusion was that the position of Scott's body at the base of the cliff does not allow for any conclusions to be

<sup>196</sup> Submissions on behalf of the family of Scott Johnson dated 30 October 2017 at p. 9, [28].

<sup>197</sup> Exhibit 4.1/3 – Duflou 14.12.1988.

<sup>198</sup> Day 4 – 16.12.2016 at T11.5-18 (Duflou XN).

<sup>199</sup> Day 4 – 16.12.2016 at T14.13-43 (Duflou XN).

<sup>200</sup> Day 4 – 16.12.2016 at T14.45 – T15.30 (Duflou XN).

<sup>201</sup> Day 4 – 16.12.2016 at T3.11-37 (Duflou XN).



drawn as to the circumstances of his death other than the fact of his injuries being consistent with having been sustained in a fall from height.<sup>202</sup>

204. Dr Cala considered that all of the injuries could be explained by a heavy fall from a great height and while it is possible to cherry-pick some of the injuries and say that a particular injury might have been caused by an assault, forensic pathologists usually look at the entire case to gain an impression by looking at the overall pattern of injuries, rather than looking at one in isolation.<sup>203</sup>
205. Dr Cala conceded that he could not exclude the possibility that Scott may have been dazed by being struck on the back of his head and then pushed or rolled over the edge of the cliff, which would be consistent with the position of the body at the base of the cliff.<sup>204</sup>

### ***Psychopathology / suicidology***

206. Scott was variously described by those who knew him as shy and introverted; not someone who engaged in conversation easily; and very absorbed in his work. However, he has also been described as warm, friendly, generous and trustworthy. Scott was described as a very private person who was generally reluctant to discuss matters which affected his personal life.
207. A psychologist, Dr Rozalinda Robertson, was engaged to undertake what is known as a psychological autopsy in respect of Scott, to assist in determining the likelihood or otherwise that Scott jumped from the cliff with the intention of ending his life. Expert evidence of a similar nature was obtained by Scott's family from a psychiatrist, Professor Matthew Large.
208. In her report dated 15 May 2017, Dr Robertson did not consider that Scott displayed any indications of premeditation or intention to take his own life, but rather he had made future plans. In the absence of premeditation, Dr Robertson considered the issue of impulsive suicide.<sup>205</sup> In this respect, Dr Robertson stated:

*There is a general agreement that Scott went to [Blue Fish] Point of his own accord and took off his own clothes for the intention of casual sex. Assuming this is the case, then it is my opinion that whatever occurred whilst he was at this location was the triggering event that ultimately led to his demise. We know from the research that an impulsive suicide can be triggered should a traumatic event occur and the means be*

<sup>202</sup> Exhibit 4.1/9 – Cala 15.04.2014.

<sup>203</sup> Day 4 – 16.12.2016 at T31.15-22 (Cala XN).

<sup>204</sup> Day 4 – 16.12.2016 at T34.33-44, T35.35-44 (Cala XXN).

<sup>205</sup> Exhibit 12/5.177 – Report of Dr Rozalinda Robertson dated 15 May 2017 at p. 20.

*available. As such, should he have been sufficiently distressed due to whatever happened at that location, it remains a possibility that Scott may have taken his own life. However, as the triggering event remains unknown the possibility that it resulted in Scott's demise due to accident or homicide also remains an equally plausible possibility.*<sup>206</sup>

209. In his report dated 9 June 2017, Professor Large records his view that “no plausible account of why [Scott] might have suicided has emerged”.<sup>207</sup> In relation to the possibility of Scott's death arising from suicide, Professor Large concluded:

*As a consequence of my knowledge and research into jumping and knowledge and research into suicide ideation I have no confidence that Scott died by suicide. I put less weight on his naked state, but think that naked suicide in a public place by a non-mentally ill, non-drug affected person can only be considered to be an extraordinary rare event, even for suicide.*<sup>208</sup>

210. At the hearing of the inquest, Dr Robertson's evidence was that introversion can give rise to an increased risk of suicide, as well as diminishing the likelihood of warning signs.<sup>209</sup> Professor Large did not think “*the whole introversion and extroversion thing*” was either a risk factor or a communication issue. While he accepted that in Scott's case it might have meant that people did not know too much about him, his view was that Scott was an unusual personality and Professor Large considered that inferences about ordinary people who are introverted would not necessarily apply to Scott.<sup>210</sup>
211. Both Dr Robertson and Professor Large acknowledged that Scott's difficult family background was relevant but considered that it was mitigated by the strength of his relationship with his brother.<sup>211</sup> They both considered Scott's relationship with Mr Noone to be a protective factor.<sup>212</sup>
212. The issue of prior suicidal ideation was controversial as between the two experts. Both agreed that there was a distinction between prior suicidal ideation, plans and attempts and their association with suicide.<sup>213</sup> Both Dr Robertson and Professor Large agreed that there was a link between

<sup>206</sup> Exhibit 12/5.177 – Report of Dr Rozalinda Robertson dated 15 May 2017 at p. 21. See also Exhibit 12/5.177 – Supplementary report of Dr Rozalinda Robertson dated 29 May 2017 at p. 5.

<sup>207</sup> Exhibit 12/5.178A – Report of Professor Matthew Large dated 9 June 2017 at p. 12.

<sup>208</sup> Exhibit 12/5.178A – Report of Professor Matthew Large dated 9 June 2017 at p. 7.

<sup>209</sup> Day 7 – 15.06.2017 at T66.19-27.

<sup>210</sup> Day 7 – 15.06.2017 at T66.38-45.

<sup>211</sup> Day 7 – 15.06.2017 at T66.38-45.

<sup>212</sup> Day 7 – 15.06.2017 at T66.9-17.

<sup>213</sup> Day 7 – 15.06.2017 at T56.12 – T58.16.



previous suicidal ideation and subsequent suicide, although Professor Large considered it to be a statistically weak link.<sup>214</sup> However, Professor Large considered the Golden Gate Bridge incident to be more in the nature of a suicide plan,<sup>215</sup> whereas Dr Robertson viewed it as an aborted attempt.<sup>216</sup> Dr Robertson explained the difference as being that:

*(a) plan is an idea that you have about how you're going to do it whereas an aborted attempt is where you actually take yourself to the action of doing it so you've gone beyond a plan in your head or thinking about how you're going to do it and you've actually put action into it... [and] cease that action.*<sup>217</sup>

213. Professor Large did not give much weight to the conversation between Mr Grealy and Scott in the pool on 3 December 1988.<sup>218</sup> Dr Robertson said that she would not be surprised if Scott had second thoughts about jumping off a bridge, but also did not place great weight upon it.
214. Both Professor Large and Dr Robertson agreed that the evidence that when he spoke with Associate Professor Street on the morning of Thursday, 8 December 1988 and made plans to meet at a later date indicated that Scott was not suicidal at that time. However, the dearth of information as to what occurred thereafter gives rise to the possibility that something may have occurred afterwards to trigger suicide.
215. Ultimately, both Professor Large and Dr Robertson considered that suicide could not be eliminated as a possibility but were not prepared to say it was a high possibility.

### **Issue of “naked suicide”**

216. Professor Large had never personally assessed a naked jumper among the thousands of suicide attempters he had seen in his career.<sup>219</sup> Dr Duflou did not recall a case in which he was involved where someone went from the top to the bottom of a cliff naked, other than Scott. Dr Duflou stated that in discussions with colleagues in Christchurch where he was working, he learned of one case in 2016 where someone had gone from the top of a cliff to the bottom and the body was found naked. Dr Duflou was not involved in that case and accepted that such an occurrence is exceptionally rare.<sup>220</sup>

<sup>214</sup> Day 7 – 15.06.2017 at T58.19-33.

<sup>215</sup> Day 7 – 15.06.2017 at T61.30-38.

<sup>216</sup> Day 7 – 15.06.2017 at T62.10-15.

<sup>217</sup> Day 7 – 15.06.2017 at T62.15-19.

<sup>218</sup> Day 7 – 15.06.2017 at T64.4-22.

<sup>219</sup> Exhibit 12.5/178A – Report of Dr Large dated 9 June 2017 at p. 6.

<sup>220</sup> Day 4 – 14.12.2016 at T3.27-37.



217. NSWPF records of incidents of attempt / threaten suicide or self-harm identify 21 cases between 1994 and 2006 in which a person had jumped or threatened to jump while naked or almost naked out of a total of 232 cases found as a result of a search of the word “naked” in the accident category of “suicide / self-harm”.<sup>221</sup> Professor Large did not consider that these cases were similar to that of Scott’s case, as “*while Scott was naked, he had no mental illness and was not a substance user*”.<sup>222</sup>

### ***The standard of proof***

218. There are only two standards of proof applied in court proceedings in Australia: the civil and the criminal. All decisions made in inquests are made to the civil standard, which is on the balance of probabilities.<sup>223</sup>

219. There has been consideration of whether a finding of suicide in an inquest should be made to a higher standard. Historically, suicide findings had numerous adverse impacts – it was variously a crime and a basis for the forfeiture of estates and a bar to some insurance payments. Almost all of those outcomes have been removed from our law and there remains no basis to require that a higher standard of satisfaction be met in order to find a death was intentionally self-inflicted.<sup>224</sup> There is no longer a presumption against suicide findings that must be overcome.

220. When making inquest findings a coroner is prohibited from indicating or suggesting that an offence has been committed by any person. That does not prohibit a coroner from finding facts that would if proven in a criminal court render the accused liable to conviction.<sup>225</sup> When finding such facts a coroner is only required to be satisfied to the civil standard.<sup>226</sup> Dixon J, as he then was, said in *Briginshaw v Briginshaw*:<sup>227</sup>

*When, in a civil proceeding, a question arises whether a crime has been committed, the standard of persuasion is, according to the better opinion, the same as upon other civil issues. (citations omitted) But, consistently with this opinion, weight is given to the presumption of innocence and exactness of proof is expected.*

<sup>221</sup> Exhibit 12.1/8 – Bundle of NSW Police Force COPS event records with summary table,

<sup>222</sup> Exhibit 12.5/178A – Report of Dr Large dated 9 June 2017 at p. 11.

<sup>223</sup> *Anderson v Blashki* [1993] 2 VR 89 95; *Re the State Coroner ex parte the Minister for Health* [2009] WASCA 165

<sup>224</sup> *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* [1992] HCA 66 [2]

<sup>225</sup> *Perre v Chivell* (2000) 77 SASR 282

<sup>226</sup> *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* [1992] HCA 66 [2]

<sup>227</sup> (1938) 60 CLR 336 at 363 – 364.

221. In that case, the High Court laid down principles regarding the decision-making process and the degree and quality of the satisfaction required to find a fact proved to the civil standard. Latham CJ formulated the task as follows:<sup>228</sup>

*There is no mathematical scale according to which degrees of certainty of intellectual conviction can be computed or valued. But there are differences in degree of certainty, which are real, and which can be intelligently stated, although it is impossible to draw precise lines, as upon a diagram, and to assign each case to a particular subdivision of certainty. No court should act upon mere suspicion, surmise or guesswork in any case. In a civil case, fair inference may justify a finding upon the basis of preponderance of probability. The standard of proof required by a cautious and responsible tribunal will naturally vary in accordance with the seriousness or importance of the issue.*

222. Dixon J formulated the task as follows:<sup>229</sup>

*The truth is that, when the law requires the proof of any act, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality... Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.*

223. Dixon J's reference to the requirement that a tribunal of fact "feel an actual persuasion of [the] occurrence or existence" of the matter in issue was applied in *Helton v Allen*,<sup>230</sup> where the High Court found that a trial before a civil jury involving an allegation that one of the parties had unlawfully killed a Mrs Roche had miscarried as a result of the trial judge's summing up, which read as a whole produced:

*(a)n impression that to discharge their duty the jury should simply estimate the probabilities, and if they thought that the probabilities in favour of the opinion that Helton poisoned Mrs Roche outweighed in*

<sup>228</sup> *Ibid* at 343-344.

<sup>229</sup> *Ibid* at 361-362.

<sup>230</sup> (1940) 63 CLR 691.



*any degree, however slight, the probabilities against that opinion, they should find against him.*<sup>231</sup>

224. Thus, the fact-finding task for the Court is not a matter of weighing up the probabilities in favour of one possible explanation of the manner of Scott's death as against those in favour of another and accepting that the most probable should necessarily be found as the manner of death. The Court "*must feel an actual persuasion*" that Scott died in the relevant circumstances before such a finding can be made. That said, the more unlikely all other alternatives become, the easier it may be for a Court to conclude the only remaining possibility is proven to the requisite standard.
225. Conversely, the submission of the Commissioner of Police that when there are a number of alternative explanations for the death, an open finding must be made unless all but one can be excluded as possibilities is clearly wrong.
226. In *Hurley v Clements & Ors*<sup>232</sup> the Queensland Court of Appeal in a unanimous joint judgement held that the application of the sliding scale of satisfaction test explained in *Briginshaw v Briginshaw* does not require a tribunal of fact to treat hypotheses that are reasonably available on the evidence as precluding it from reaching the conclusion that a particular fact is more probable than not.
227. A finding that a death was the result of homicide is a serious finding with grave consequences for any person(s) of interest, notwithstanding the prohibition in s. 81(3) of the Act against indicating or in any way suggesting in any record of the coroner's findings that an offence has been committed by any person.
228. Equally, even though the legal adverse consequences of a suicide finding have been ameliorated and would have no legal effect in this case, there is no doubt still a degree of stigma attaching to self-inflicted deaths and the grief of bereaved family members can be exacerbated by understandable feelings of abandonment and guilt.
229. Both are serious findings that must not be presumed or arrived at without proper regard to all of the evidence and the alternatives. Unless the Court can "*feel an actual persuasion of [the] occurrence or existence*" of the matter based on the evidence an open finding should result.
230. The law requires that I have regard to all possible explanations as to how Scott came to leave the cliff top that are reasonably supported by the

<sup>231</sup> *Ibid* per Dixon, Evatt and McTiernan JJ at 712.

<sup>232</sup> [2009] QCA 167 at [27]



evidence and consider whether the proper inferences I can draw provide me with a comfortable level of satisfaction or actual persuasion that one of them accounts for Scott's death.

## Analysis

231. When Scott Johnson's body smashed into the rocks near the ocean just north of Blue Fish Point on North Head, a life full of promise and exciting potential was tragically cut short and his family lost a cherished member. I offer the Johnson family and Scott's partner Mr Noone my sincere condolences.
232. The circumstances in which Scott's body were found mandated that his death be referred to the coroner. Even though most of the matters the coroner was required to find were obvious from soon after the death was discovered – Scott's identity was soon confirmed, and the cause, place and date range of the death were quickly established – three inquests have been held because of uncertainty as to the manner of the death, that is, how did Scott come to leave the top of the cliff.
233. While the passage of 30 years has hopefully assuaged Scott's family's grief, that uncertainty understandably torments them still.
234. Regrettably, those responsible for the initial investigation quickly jumped to conclusions without thoroughly and impartially examining all of the facts. I am sure that was not due to any malice or other improper motives. Rather, it was just easier to accept what seemed to be the most obvious explanation.
235. Police should not be singled out for criticism in that regard. Some of Scott's loved ones also assumed the death was intentionally self-inflicted and the coroner accepted the police theory that the death was a suicide.
236. By the time the numerous mistakes that led to that conclusion were recognised, the chance to properly test the evidence to find the truth had greatly diminished.
237. The commitment of the Johnson family to ensuring that the circumstances of Scott's death were exhaustively examined is laudable. Their belief that not all relevant information had been put before the previous inquests has been vindicated.
238. It is now my role to examine all of the evidence to determine whether the manner of Scott's death can be established with sufficient certainty to enable a finding to be made, having regard to the legal principles set out above.

239. No witness has been located who admits to seeing Scott after his partner's sister, Marguerite, saw him early in the morning of 8 December 1988. No one has been located who admits speaking to Scott after Associate Professor Street had a telephone conversation with him at about 10.30 am on that day, other than a friend of Mr Noone's who called the house at about 2.00 pm. Scott had left the home by the time Marguerite returned shortly after 3.00 pm. He did not go back to Mr Noone's parent's house that night.
240. There is no evidence indicating that he stayed anywhere else. It is likely that all of the publicity that has surrounded this case would have prompted anyone with whom Scott had stayed on the night of 8 December to come forward. The most likely conclusion is that he died that day and his body lay on the rocks for a day and half until discovered on the Saturday morning, 10 December.
241. The evidence establishes that the area where Scott's clothes were found was at the time a gay beat. It is almost certain that Scott went there with a view to engaging in sexual activity and his removal of his clothes was in furtherance of that purpose.
242. There are three possibilities as to the general circumstances in which Scott fell to his death. He may have accidentally fallen from the cliff top - that is he did not intend to go over the edge and no other person engaged in conduct that caused him to fall to his death. Rather, he stepped over the edge without realising there was a life threatening drop or he stumbled, slipped or in some other way unintentionally propelled himself over the cliff edge. The second possibility is that he deliberately jumped from the cliff top with the intention of ending his life. The third option is that Scott was confronted by a person or persons who either used force to propel him over the cliff edge or who so assaulted or threatened him that in an effort to escape he ran from them and accidentally fell over the cliff.
243. I will first consider the evidence that could support a finding of death by accident or misadventure.
244. The cliff top was not obscured by bushes or anything that would have concealed the shear drop. From where Scott must have been standing when he placed his folded clothes on the ground some 10 metres back from the edge he could not have failed to have been alerted to the danger it posed.
245. As detailed in the summary of the evidence, Scott was physically fit and an experienced hiker and mountain climber. Clearly he was not scared of heights but nor was he a person who took unnecessary risks with his personal safety.
246. On the ground between Scott's clothes and the cliff edge were scattered sharp stones that would have made walking in bare feet very uncomfortable. If



Scott had approached the edge of the cliff after he had removed his shoes it is likely he would have done so very slowly.

247. Having regard to all of the evidence I think it very unlikely that Scott would have accidentally tripped or stumbled over the cliff or stepped over it not being aware of the drop.
248. So far as can be established, Scott had none of the characteristics usually associated with suicide. He was not suffering from mental illness. He was not affected by alcohol or drugs when he died. He had not experienced any traumatic or triggering events: the loss of a loved one; diagnosis of a terminal illness; being charged with a criminal offence etc.
249. The last people who spoke to him that have come forward, was his PhD supervisor, Associate Professor Street, and a friend of Mr Noone's, Mr Bailey. His academic supervisor described Scott as being in a positive frame of mind and future focussed. Mr Bailey described him as sounding completely normal. Both spoke to Scott on the day that I have concluded he died.
250. From an objective perspective his life was on track: he was in a committed supportive relationship and he was achieving great success in his chosen field of mathematics. In their last conversation his supervisor told him he had done enough to be awarded his doctorate and indeed that occurred posthumously.
251. His partner gave evidence of a suicide related incident some three years before when Scott feared he may have contracted AIDS at a time when that was a fatal condition for which there was no cure. It is clear that he at least engaged in what is referred to as suicidal ideation and it is likely that it went further: he formulated a plan and may have taken some steps towards implementing it by going to the location where he could carry it out. He did not attempt suicide.
252. I conclude this incident slightly increased his risk of completing suicide at another time were he again under existential stress.
253. Scott's partner suggested that when he had sex outside of their relationship Scott suffered remorse that made him depressed. It could be argued that he may have been affected in this way as a result of engaging in casual sexual activity at the beat where his clothes were found. Conversely, as detailed in the summary of the evidence, it is likely that Scott had an affair with another man that lasted some weeks, about six months before his death and there is no evidence that this precipitated a decline in his mood that put him at risk of self-destruction.



254. Although Scott was described by some people as shy and introverted, I do not consider his personality increased his risk of suicide. The evidence shows that among people with whom he was comfortable, Scott was affable and communicative. He gave seminars to other post graduate students and socialised with his and Mr Noone's friends. His last birthday was celebrated twice: by his Canberra friends on or near the anniversary of his birth, and a week later by Sydney friends. He was not socially isolated.
255. He had a difficult up bringing but he had a very close and loving relationship with his brother and his partner.
256. It is very unusual for people to remove their clothes before taking their own lives. All the more so when the event is in a public place and the deceased is not mentally ill. Scott's very private nature strongly militates against him choosing to take action that would lead to him being found naked by strangers.
257. No suicide note was found. The submission that I should conclude that one was written but blew away is most unpersuasive considering Scott put his other valuables inside his shoe. But little turns on that as notes are left in a minority of cases in any event.
258. Having regard to all of the evidence, I am of the view that it is very unlikely that Scott intentionally took his own life.
259. I turn now to consider whether the evidence supports a finding of homicide.
260. The evidence establishes that at the relevant time there were gangs of men who habitually went to various locations around Sydney where they expected to find homosexual men with a view to assaulting them.
261. It has been proven in other proceedings that some of these assaults resulted in the death of the victims and in some of the assaults the victims were robbed.
262. It has been proven in other proceedings that these gay hate assaults occurred in the Manly area.
263. It was well known among gay men and among some men who would engage in gay hate crimes that the area where Scott's clothes were found was a gay beat.
264. Some of the soldiers housed at an army barracks a short walk from the beat where Scott died engaged in gay hate assaults.

265. Users of the Blue Fish Point beat report gay hate assaults being committed there.
266. There is evidence that men who have been convicted of assaulting and robbing gay men at other places also engaged in such despicable acts at the Blue Fish Point beat.
267. Scott's wallet was not found with his clothes or at Mr Noone's parent's house where he had been staying.
268. His clothes were found neatly folded and undamaged but it may well be that he was already naked when set upon, if that's what happened.
269. What search was made of the immediate vicinity revealed no sign of a struggle, but that search was cursory and there had been two nights of rain by the time police came to the scene.
270. As a result of considering all of the evidence I conclude that it is very likely that gay hate crimes were committed at the relevant location at around the time Scott died.

### **Conclusions**

271. For the reasons set out in the section of this report headed *Standard of proof*, I reject the submission that if more than one manner of death is a possibility, I must return an open finding. That simply does not accord with the law or logic.
272. All inquest findings are made to the civil standard, even those that conclude a death was intentionally self-inflicted or deliberately or maliciously caused by a third party or parties.
273. The cases also show that it is not sufficient for a coroner to simply identify the most likely explanation for the death or to conclude that because other possibilities are unlikely the only remaining possibility should be adopted. Rather, a coroner must be persuaded by cogent evidence, proven facts to a comfortable level of satisfaction having regard to the seriousness of the conclusion under consideration that the death occurred in that manner.
274. Fair inference and a preponderance of probability may lead to an actual persuasion necessary for a finding on the civil standard.
275. In this case, I readily conclude that homicide is more likely than either of the other two scenarios – accident or suicide. It is likely that more than one person was involved – Scott was young and strong and fit. I have given careful consideration as to how confident I can be that two or more persons

came upon Scott naked and engaged in such violent conduct towards him that he was either pushed over the cliff or fell while trying to escape.

276. The inadequacy of the original investigation, the passage of time since the incident and the unreliability of many of the witnesses has made establishing the precise facts more difficult. Nonetheless, I am persuaded to the requisite standard that Scott died as a result of a gay hate attack. There is however, insufficient reliable evidence to identify the perpetrators.

### **Recommendations**

277. Pursuant to s. 82 of the *Coroners Act 2009*, coroners are authorised to make recommendations in relation to any matter connected with a death. Generally, they are of two types: preventative recommendations designed to reduce the likelihood of deaths occurring in similar circumstances, or recommendations directed to investigative or regulatory agencies suggesting further review or examination of aspects of the death.
278. A prevention focus would require consideration of why numerous apparently otherwise normal young men would violently assault strangers solely on the basis of the victims' sexual orientation. It might be expected that any reasonable person would find such inhumane viciousness abhorrent. Yet surprisingly, it seems from the evidence in this case, a significant number of persons who were not engaged in these violent assaults were aware of the identity of the perpetrators of such crimes and yet did nothing to prevent them continuing to occur by alerting the authorities.
279. It is beyond the capacity of this court to ascertain whether such deeply antisocial attitudes remain prevalent or how they can be ameliorated if they do.
280. Concerns were voiced about aspects of the initial investigation. While some of those may be justifiable, I am satisfied that so many improvements have been made to police procedures in the intervening decades that recommendations focussed on that issue would be otiose.
281. Scott's family has submitted recommendations of the second type should be made: that the case should be referred to the NSW Crime Commission for further investigation with a view to identifying the perpetrators of the homicide. They base that recommendation on their view that there are further inquiries that could be made and that there would be reason to doubt the impartiality of any further investigation undertaken by members of the NSWPF based on the submissions made on behalf of the Police Commissioner in this inquest.



282. Justice might be a nebulous concept but it certainly includes holding the perpetrators of violent crimes to account. The family's call for a continuing investigation is therefore entirely understandable.
283. It is likely that further inquiries could be made into this matter but there is no basis for a high level of confidence that it would produce the outcome the family understandably seeks.
284. There are over 500 suspicious deaths that are awaiting further investigation, none of which has received the same level of scrutiny that this case has. In many of those cases families are also desperate for answers. There are finite resources that can be applied to those jobs. It is beyond the role of this court to direct how those resources should be applied. I am confident that if promising leads come to the attention of the NSWPF they will be pursued. Similarly, if officers within the NSWPF conclude the matter warrants the attention of the Crime Commission they can refer it for the consideration of that body's Management Committee. The case will not be closed. However, I decline to make any recommendation for its further investigation.

### **Findings required by s. 81(1)**

285. As a result of considering all of the documentary evidence and the oral evidence heard at the inquest, I am able to confirm that the death occurred and make the following findings in relation to it.

#### ***The identity of the deceased***

The deceased person was Scott Russell Johnson.

#### ***Date of death***

Mr Johnson died on 8 December 1988.

#### ***Place of death***

He died at the base of a cliff near Blue Fish Point on the northern side of North Head, New South Wales.

#### ***Cause of death***

The death was caused by the combined effect of multiple injuries sustained in a fall from height.

#### ***Manner of death***

Mr Johnson fell from the cliff top as a result of actual or threatened violence by unidentified persons who attacked him because they perceived him to be homosexual.

x 27 p

286. I close this inquest.

Magistrate Michael Barnes  
State Coroner

