



## **INQUEST INTO THE DEATH OF SCOTT RUSSELL JOHNSON**

**(DoB 27.11.1961)**

### **SUBMISSIONS OF COUNSEL ASSISTING**

#### **INTRODUCTION**

1. The hearing of this third inquest into the death of Scott Russell Johnson commenced on 13 December 2016. Mr Johnson – who is referred to in these submissions by his first name – died sometime between 8 December 1988 and the morning of 10 December 1988, when his naked body was discovered by a teenage boy on the rocks at the base of a cliff north of Blue Fish Point on the northern side of North Head.
2. Scott's clothes and some personal effects were found approximately 10 metres from the edge at the top of the cliff almost immediately above the location of his body (although the precise location is not capable now of being ascertained). The clothes were apparently neatly folded. They were wet.
3. At the time of his death, Scott was 27 years of age.

#### **THE CONTEXT OF THIS INQUEST**

4. This inquest was conducted in accordance with the provisions of the *Coroners Act 2009 (Act)*. There were two previous inquests – in 1989 and 2012.

##### First Inquest – 16 March 1989

5. The first inquest was conducted by Coroner Derek Hand on 16 March 1989 – a mere 3 months after Scott's body was found. It was conducted in accordance with the *Coroners Act 1980 (1980 Act)* and was completed within a single day of hearing.

6. In addition to the certificate of death, identification statement,<sup>1</sup> post mortem report<sup>2</sup> and certificate of blood alcohol analysis,<sup>3</sup> a brief of evidence was tendered comprised of statements from a number of police officers who were involved in the recovery of the body and initial investigations<sup>4</sup> as well as statements from one of the fishermen who first found Scott's body Mr Brian Butson,<sup>5</sup> Scott's partner Michael Noone,<sup>6</sup> Mr Noone's sister,<sup>7</sup> one of Scott's PhD supervisors Ross Street,<sup>8</sup> an acquaintance of Scott's by the name of Paul Bailey<sup>9</sup> and a statement from an employee of the Public Trustees Office<sup>10</sup> who studied the contents of Scott's computer and found no information that gave any indication as to what was Scott's state of mind and certainly no suicide note or evidence of an intention to commit suicide.<sup>11</sup>
7. Two statements in the form of letters from Scott's brother Stephen Johnson were also tendered at the hearing of the first inquest.<sup>12</sup>
8. Dr Duflou gave some additional evidence at the first inquest about the fact that a test was carried out to determine whether Scott had HIV or hepatitis, the results of which were negative for both.<sup>13</sup>

---

<sup>1</sup> Exhibit 4.1/2 – Identification Statement 11.12.1988 (Exhibit 2 at the first inquest).

<sup>2</sup> Exhibit 4.1/3 – Post Mortem Report of Dr Johan DUFLOU 14.12.1988 (Exhibit 3 at the first inquest).

<sup>3</sup> Exhibit 4.1/7 – DAL Certificate of blood analysis 06.01.1989 (Exhibit 4 at the first inquest).

<sup>4</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>5</sup> Exhibit 4.1/20 – Incident Report of Bryan BUTSON 10.12.1988.

<sup>6</sup> Exhibit 4.3/46-47B – Statements of Michael NOONE 11.12.1988 and 12.02.1989 (and attachments).

<sup>7</sup> Exhibit 4.3/55-56 – Statements of Marguerite O'CONNELL 14.12.1988 and 29.01.1989.

<sup>8</sup> Exhibit 4.3/63 – Statement of Ross STREET 20.12.1988.

<sup>9</sup> Exhibit 4.3/66 – Statement of Paul BAILEY 28.01.1989.

<sup>10</sup> Exhibit 4.1/27 – Statement of Brett CARRUTHERS 10.02.1989.

<sup>11</sup> *Ibid* at page 2.

<sup>12</sup> See Exhibit 4.1/28.3 (Exhibit 7 at the first inquest).

<sup>13</sup> Exhibit 4.1/28.8 (Duflou XXN (KING)).

9. Dr Duflou also told the first inquest that he did not find any injuries that were inconsistent with having been sustained in a fall from the cliff.<sup>14</sup> He was not asked and did not express any view as to whether any of the injuries could also be consistent with some other aetiology or whether such injuries might be masked by injuries sustained in the fall.
10. There was also evidence given at the first inquest to the effect that the area of the cliff where Scott's clothes were found was not then known to police as being a meeting place for homosexuals.<sup>15</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 as opposed to two other areas in the Manly Police Patrol, where assaults against homosexuals had been reported.<sup>16</sup>
11. At the conclusion of the first inquest, 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>17</sup>
12. His Honour's findings appear to have been based principally on the exclusion of the possibility of some other person or person(s) having some involvement in the death. In that regard his Honour referred to the following matters:
  - (1) The absence of any evidence to suggest a struggle at the top of the North Head;
  - (2) The absence of any damage to Scott's clothing;
  - (3) The absence of any evidence of anybody else being there at the time.
13. His Honour accepted that there was no real evidence as to why Scott might want to take his own life and that there was no suicide note. However, his

---

<sup>14</sup> *Ibid.*

<sup>15</sup> Exhibit 4.1/28.4 (Cruikshank XN (REDFERN)).

<sup>16</sup> Exhibit 4.1/28.4-5 (Cruikshank XXN (KING)).

<sup>17</sup> Exhibit 4.1/28.43 and see also Exhibit 4.1/29 (Formal Finding).

Honour expressed a view that suicides often occur without any apparent reason or any reason that is apparent to friends and families and it is also common for people who commit suicide to not leave a note. His Honour also expressed a view 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. Finally, his Honour noted that Mr Noone had given evidence that Scott had mentioned an attempted suicide at some earlier time when he thought he might have had AIDS, but the tests were subsequently negative and the post mortem tests were also negative.

14. There is a logical difficulty with the finding of the first inquest. On the one hand, it was based on the exclusion of other possibilities because of the absence of evidence. On the other hand, it involved a positive finding of suicide despite the absence of positive evidence other than the description of his personality and the fact of a previous occasion of suicidal ideation involving circumstances which could not be found to have been present on the evidence before him.
15. Another difficulty with his Honour's finding is that in so far as it rested on the contention that the location where Scott's clothes were found disclosed no evidence of a struggle or the presence of anybody else at the top of the cliff, it failed to take into account the fact that the area was not actually subjected to any forensic examinations at the time. There was also evidence that the area had been the subject of some significant electrical storm activity on the evening of 9 December 1988, which itself may have impacted upon the likelihood of evidence of a struggle (such as blood) or the presence of another person or persons at the top of the cliff (such as foot prints etc).

#### Operation Taradale

16. The phenomenon of crimes of violence committed against gay males at gay beats was the subject of considerable examination by then Deputy State Coroner Milledge at the inquests that were the subject of Operation Taradale. On 9 March 2005, her Honour delivered findings in an inquest into the death or

suspected death of three homosexual males who had died or disappeared in the Bondi area in the late 1980s, which were investigated as part of Operation Taradale.

17. The deaths that were the subject of Operation Taradale occurred near Marks Park, Bondi, which is situated at the top of the cliffs along what is now the very popular Bondi to Bronte coastal walk. There was evidence at the Taradale Inquest that in the late 1980s, Marks Park was a known gay beat and that each of the deceased who were the subject of the inquest had attended Marks Park at various times for that reason.
18. During the course of the "Taradale Inquest", evidence was given about numerous violent "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 gay beating at Marks Park in December 1989 and the murder of Kritchikorn Rattanajurathaporn, who staggered off a cliff at nearby Tamarama after being attacked with a claw hammer in July 1990.

#### Second Inquest – 27 June 2012

19. Following the Taradale Inquest, Scott's family made numerous representations to then State Coroner Jerram. This resulted in a review of the original investigation by police and a fresh inquest.
20. The review conducted by police identified a number of similarities between the circumstances of Scott's death and those that were the subject of the Taradale Inquest. In particular:
  - (1) the deaths occurred at or in the vicinity of gay beats situated at the top of coastal cliffs;
  - (2) the deceased were gay men;
  - (3) there was evidence of anti-gay violence in the northern beaches area around the time.

21. The review also identified further avenues for further investigation, including potential persons of interest.
22. On 27 June 2012, then Deputy State Coroner Forbes conducted a second inquest in accordance with the provisions of the Act. At the conclusion of the hearing, which was not lengthy, her Honour replaced the early finding from the first inquest with a finding 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 further held that the evidence did not allow her to make a finding as to how he fell.<sup>18</sup>
23. Her Honour also recommended that Scott's death be referred to "Cold Cases" for further investigation in accordance with police procedures and protocols.

#### Strikeforce Macnamir and this Third Inquest

24. Following the Second Inquest, Strike Force Macnamir was established in early 2013 to reinvestigate Scott's death as a whole. On 12 February 2013, Police also announced a \$100,000 reward for information that determines how Scott died.
25. Since its establishment, Strike Force Macnamir has carried out a substantial amount of investigations. These have included re-interviewing police and members of the community spoken to during the course of the original investigation as well as interviewing other persons not interviewed at the time who nevertheless 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.
26. Strike Force Macnamir has also carried out investigations concerning the possible involvement of one or more persons in the death of Mr Johnson.

---

<sup>18</sup> Transcript of Second Inquest at V1/31.23(44)-24(4); V1/32 – Findings of Second Inquest.

27. On 13 May 2015, the State Coroner determined that, as required by s 83(4) of the Act, the material obtained as a result of the further investigations conducted under the auspices of Strike Force Macnamir amounted to new evidence that made it desirable in the interests of justice to hold this third inquest.
28. The Court also established a dedicated telephone line (02 8584 7705), the details of which are available on the Court's website encouraging any person who may have information relating to Scott's death to come forward. Information received from members of the community via that telephone line has been further investigated.
29. In addition, advertisements were placed in recent editions of 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. More recently, 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.
30. An expert psychologist, Dr Rozalinda Robertson, was engaged to undertake what is known as a psychiatric 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.
31. The work of Strike Force Macnamir has continued throughout the course of the preparation and hearing of this third inquest and is ongoing.
32. The hearing of this third inquest was conducted in two stages: an initial hearing occupying 4 days from 13 December 2016 to 16 December 2016; and a further 9 days of hearing between 13 June 2017 and 23 June 2017.
33. 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.

34. The second tranche of 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. Mr Noone and Scott's brother Stephen also gave evidence and Dr Robertson and Professor Large gave concurrent evidence.
35. In addition, a number of witnesses were called who grew up on the Northern Beaches and had been involved in, or suspected of involvement in or knowledge of, violent assaults including of gay men in the Northern Beaches, North Sydney and Sydney areas in the late-1980s, or who were reported to have been associates of persons known to have carried out such attacks. 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.

**SECTION 81 REQUIREMENTS – IDENTITY, DATE AND PLACE OF DEATH, MANNER AND CAUSE OF DEATH**

36. Section 81 of the Act provides that at the conclusion or suspension of an inquest a coroner is required to record in writing the coroner's findings as to the whether the person died and, if so, the identity of the deceased, together with the date and place of death; and, if concluded, findings as to manner and cause of death.
37. As anticipated from the outset, the issues as to identity,<sup>19</sup> date, place and even the cause of death are not controversial. It is not necessary to interfere with the findings of each of the previous inquests (in 1989 and 2012) to the extent they both determined that Scott Johnson died sometime between 8 and

---

<sup>19</sup> Scott was identified by Michael Noone on 11.12.1988: Exhibit 4.1/2 – Identification Statement.



10 December 1988 at North Head, Manly from the effects of multiple injuries he sustained as a result of falling from a cliff.

38. This third inquest explored the forensic and other evidence and pursued relevant lines of inquiry relating to the manner of Scott's death, that is the true circumstances that led to Scott's body leaving the cliff top on North Head near Blue Fish Point and falling to the rocks below, where it was found on the morning of 10 December 1988.

### **THREE (3) BROAD POSSIBILITIES AND THE STANDARD OF PROOF**

39. The three broad possibilities as to the manner of Scott's death are (in no particular order):

- (1) Scott accidentally fell from the top of the cliff, that is, unintentionally and independently of any conduct by a third party (Accident); or
- (2) Scott intentionally jumped from the top of the cliff with the intention of ending his life (Suicide); or
- (3) Scott fell wholly or partly as the result, whether directly or indirectly, of the conduct of a third party (Homicide or Foul Play).

40. As outlined during the opening address, each of these possibilities itself invites consideration of a number of case theories.

41. The standard of proof to be applied is the civil standard of the balance of probabilities. In the context of this inquest, the Count is required to be satisfied on the balance of probabilities as to the manner of Scott's death before any such finding can be made.

42. In *Briginshaw v Briginshaw*,<sup>20</sup> the High Court lay down principles regarding the decision-making process and the degree and quality of the satisfaction required to find a fact proved. In particular, Latham CJ formulated the task as follows:<sup>21</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."

43. For his part, Dixon J formulated the task as follows:<sup>22</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."

44. 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>23</sup> where the High Court found that a trial before a civil jury involving an allegation that one of the parties had unlawfully killed (by poisoning) a testatrix had miscarried as a result of the trial judge's summing up, which read as a whole produced "an 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

<sup>20</sup> (1938) 60 CLR 336.

<sup>21</sup> *Ibid* at 343-344.

<sup>22</sup> *Ibid* at 361-362.

<sup>23</sup> (1940) 63 CLR 691.

outweighed in any degree, however slight, the probabilities against that opinion, they should find against him."<sup>24</sup>

45. 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. The Court "must feel an actual persuasion" that Scott died in the relevant circumstances before such a finding can be made.
46. Furthermore, the strength of the evidence necessary to establish a matter in issue on the balance of probabilities will vary according to the nature of what is sought to be proved.<sup>25</sup> Thus, it has been held that where grave allegations are made in a coroner's inquest, such as criminal conduct that is said to have caused or contributed to the death, proof of the act in question must be clear, cogent and exact, and when considering such proof, weight must be given to the presumption of innocence.<sup>26</sup>
47. A finding that a death was the result of homicide is a serious finding with grave consequences for any person(s) of interest. That is so notwithstanding the prohibition in s 81(3) against indicating or in any way suggesting in any record of the coroner's findings that an offence has been committed by any person. A positive finding of homicide may subject those persons against whom an involvement in the death has been suggested to a degree of continuing suspicion and a deleterious impact upon their reputation in the community. Thus, the seriousness of the finding is not diminished by the fact that the finding may not identify any individual as being involved.
48. Equally, it is generally accepted that a similar approach is applicable to any suggestion that the death was a suicide. Until relatively recently there was a

---

<sup>24</sup> *Ibid* per Dixon, Evatt and McTiernan JJ at 712.

<sup>25</sup> *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 per Mason CJ, Brennan, Deane and Gaudron JJ.

<sup>26</sup> *Anderson v Blashki* [1993] 2 VR 89 at 95-96 (Gobbo J) subsequently followed in *Secretary, Department of Health and Community Services v Gurvich* [1995] 2 VR 69 at 73 (Southwell J).

presumption against suicide.<sup>27</sup> That presumption existed principally because suicide was a crime.<sup>28</sup> That is no longer the case (at least) in New South Wales,<sup>29</sup> although it remains an offence to aid or abet, or counsel or incite a person to commit suicide or attempt to commit suicide.<sup>30</sup> In *American Home Assurance Company v King* [2001] NSWCA 201, Stein JA (with whom Handley and Beazley JJA agreed) approved of Thomas J's application of the principles in *Briginshaw* to an allegation of suicide in *Clark v NZI Life Limited* as follows:<sup>31</sup>

"Applying Dixon J's words above in the context of the present civil litigation I can say that the particular finding is not one to be made lightly, but neither is it one of such inherent unlikelihood or gravity as to bring it toward the top of the range of what is sometimes called the *Briginshaw* test. I do not think it profitable to try to be more precise about the necessary level of satisfaction."

49. It remains to be reiterated that in the case of either homicide or suicide, it is necessary for the Court to "feel an actual persuasion of [the] occurrence or existence" of the matter based on the evidence. As Viscount Caldecote CJ observed in *The King v Huntbach, ex parte Lockley* (at 608):

"It is not probability, however, which determines verdicts, but proved facts, and, if facts which justify a specific verdict are not proved at an inquest, there is no alternative but to return an open verdict."

50. Similarly, in *R v HM Coroner for the City of London, ex parte Barber* [1975] 3 All ER 538, the English High Court quashed a coroner's finding of suicide that was based on a conclusion that, having ruled out accident, there was no other explanation of what happened. In so doing, Lord Widgery CJ (with whom Milmo and Wien JJ agreed) observed (at 540):

"If that is a fair statement of the coroner's approach, and I sincerely hope it is because I have no desire to be unfair to him, it seems to me to fail to recognise what is perhaps one of the most important rules that coroners should bear in mind in cases of this

<sup>27</sup> See, for example, *The King v Huntbach: Ex parte Lockley* (1944) KB 606 per Croom-Johnson J at 610 and per Cassels J at 610; *Spiratos v Australasian United Steam Navigation Co Ltd* (1955) 93 CLR 317 at 320.

<sup>28</sup> *The King v Huntbach: Ex parte Lockley* (1944) KB 606 per Cassels J at 610.

<sup>29</sup> Section 31A of the *Crimes Act 1900* (NSW). A similar observation was made by Thomas J in *Clark v NZI Life Limited* [1991] 2 Qd R 11 at 16.

<sup>30</sup> Section 31C of the *Crimes Act 1900* (NSW), which came into force on 13 August 1984.

<sup>31</sup> *Clark v NZI Life Limited* [1991] 2 Qd R 11 at 16.

class, namely that suicide must never be presumed.<sup>32</sup> If a person dies a violent death, the possibility of suicide may be there for all to see, but it must not be presumed merely because it seems on the face of it to be a likely explanation. Suicide must be proved by evidence, and if it is not proved by evidence, it is the duty of the coroner not to find suicide, but to find an open verdict.”

51. Before turning to a consideration of the evidence as it relates to the three broad possibilities identified above, it is necessary to recount some of the factual material established by the documentary evidence and the oral testimony of witnesses at the hearing.

### **SOME FACTUAL BACKGROUND**

52. As previously mentioned, Scott Johnson was 27 years of age when he died. He was born on 27 November 1961 in Los Angeles, 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>33</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>34</sup> Thereafter, apart from some visits to California early on Scott's father stayed out of their lives at least until Stephen reinitiated some contact after he had gone to college.<sup>35</sup>
53. On Stephen's account, after their parents split and they returned to California, they were financially 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 also at that time working.<sup>36</sup> During those lean years, Stephen delivered

---

<sup>32</sup> It should be noted that this statement is not an iteration of a presumption against suicide.

<sup>33</sup> Exhibit 4.3/45 – S Johnson at Q&A 9.

<sup>34</sup> Exhibit 4.3/45 – S Johnson at Q&A 15.

<sup>35</sup> Exhibit 4.3/45 – S Johnson at Q&A 18.

<sup>36</sup> Exhibit 4.3/45 – S Johnson at Q&A 15, 29.

papers over three different paper routes to help support the family.<sup>37</sup> Once in a while Scott would help Stephen with his paper runs.<sup>38</sup>

54. Although their childhood was financially poor, Stephen has described their parents' separation and divorce as confusing rather than traumatic or distressing.<sup>39</sup> Although it was a hard time, the three children were very close and just banded together and made the best of the situation, which for them was reality.<sup>40</sup>
55. After Stephen went to college, their mother's boyfriend Dennis (who she later married in Las Vegas) moved in.<sup>41</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>42</sup>
56. By all accounts, Scott was a highly gifted mathematician. According to Stephen, in High School it was clear Scott had a gift 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>43</sup>
57. After school, Scott was accepted into Caltech, which according to Stephen was considered to be one of, if not *the*, best technical college in the world, where he studied mathematics.<sup>44</sup> Caltech was just down the road from the college Stephen attended. The two of them became very close. The two of them taught themselves computer programming at Caltech and spent a lot of time

---

<sup>37</sup> Exhibit 4.3/45 – S Johnson at Q&A 16.

<sup>38</sup> Exhibit 4.3/45 – S Johnson at Q&A 30.

<sup>39</sup> Exhibit 4.3/45 – S Johnson at Q&A 15.

<sup>40</sup> V3/45 – S Johnson at Q&A 16.

<sup>41</sup> V3/45 – S Johnson at Q&A 42.

<sup>42</sup> V3/45 – S Johnson at Q&A 43, 52-56, 110.

<sup>43</sup> V3/45 – S Johnson at Q&A 95.

<sup>44</sup> V3/45 – S Johnson at Q&A 16, 95.

together.<sup>45</sup> They would go to Mexico together and hike and read philosophy and do mathematics together.<sup>46</sup>

58. In about 1983, Scott went to Cambridge University for a year as part of a trip where he met an Australian music PhD student Michael Noone in January 1984 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 homosexuality.

### **Scott introduces Mr Noone to Stephen Johnson**

59. 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 at which time Scott introduced him to his brother Stephen. Mr Noone has said that his impression was that Stephen did not approve of his relationship with Scott at that time. This appears to have been principally based on information Mr Noone claims Scott relayed to him to the effect that either one of them could stay with Stephen and his then girlfriend (now wife) Rose but not the two together because Rose had said, "I'm not having any of that in my house".<sup>47</sup> Mr Noone gave evidence that Scott was clearly upset about this.<sup>48</sup>
60. Mr Noone also said that the subject of Stephen's attitude towards Scott's relationship with him (Noone) was a matter of fraught discussions and fraught behaviour over the months before they went to the States with Scott exhibiting nervousness about telling Stephen about the relationship, becoming tongue-tied and flustered.<sup>49</sup> He said that unlike the position with Scott's sister Terry – which he described as "a simple open and shut case of immediate acceptance, immediate understanding" – with Stephen it was a constant bone of contention and a constant irritation, although he was unable to provide any specific

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

<sup>46</sup> V3/45 – S Johnson at Q&A 117.

<sup>47</sup> Day 6 – 14.06.2017 at T61.7-35 (Noone XN).

<sup>48</sup> Day 6 – 14.06.2017 at T61.45-46 (Noone XN).

<sup>49</sup> Day 6 – 14.06.2017 at T62.39-46 (Noone XN).

evidence of Stephen expressing any disapproval of the relationship or of any discussion with Scott about Stephen's reaction to the news of their relationship.<sup>50</sup>

61. In his evidence at the hearing, Stephen Johnson denied any suggestion that he was resistant to Scott and Mr Noone's homosexuality or to their staying with him and Rose when they visited Cambridge, Massachusetts in 1985.<sup>51</sup> He said that "the situation was very unremarkable, we were all graduate students, we were living in a graduate student apartment and we had dinner with Michael, that's the main thing I remember about the encounter, it was, it was the only time I ever met Michael before Scott died".<sup>52</sup> Stephen Johnson did, however, accept that he could have been the person that suggested Scott and Mr Noone stay at a hotel, but believed that would have been because of a lack of space in the apartment he shared with Rose.<sup>53</sup>

### **The Golden Gate Bridge Incident**

62. On 5 September 1985, Scott travelled to the UK to live with Michael Noone in Cambridge. According to Mr Noone, sometime shortly prior to Scott's travel to the UK, he had a telephone conversation with Scott during the course of which Scott apparently 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 convinced that he had contracted HIV and was distressed by the consequences for himself and their relationship.
63. It must be acknowledged that Mr Noone's account of the circumstances in which he came to have the telephone conversation with Scott has been inconsistent at times. 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>54</sup> but remembered Scott

<sup>50</sup> Day 6 – 14.06.2017 at T63.8-35 (Noone XN).

<sup>51</sup> Day 7 – 15.06.2017 at T77.37-40, and 43-46 (Johnson XN).

<sup>52</sup> Day 7 – 15.06.2017 at T77.28-32 (Johnson XN).

<sup>53</sup> Day 7 – 15.06.2017 at T77.24 – T78.4 (Johnson XN).

<sup>54</sup> Exhibit 4.3/46 – M Noone 11.12.1988 at [3].



mentioning a suicide attempt about 5 years previously.<sup>55</sup> In a further document authored by Mr Noone on 12 February 1989, Mr Noone claimed that Scott had telephoned him from San Francisco to tell him about the incident.<sup>56</sup> His evidence at the first inquest was consistent with that position.<sup>57</sup> In his record of interview conducted on 29 March 2013, Mr Noone claimed 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 that prompted him to telephone Scott.<sup>58</sup> Mr Noone has never provided a copy of the letter and does not know what became of it.<sup>59</sup>

64. In his evidence at this hearing, Mr Noone described the substance of the conversation as follows:<sup>60</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.

65. 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>61</sup>
66. Mr Noone also accepted that although he was shocked by what Scott had told him and that he had offered Scott a great deal of support during the telephone conversation he did not telephone Scott in the days afterwards to see how he was travelling.<sup>62</sup> Mr Noone said it was unnecessary for him to contact Scott

---

<sup>55</sup> *Ibid* at [5].

<sup>56</sup> Exhibit 4.3/47A

<sup>57</sup> Exhibit 4.3/48 at page 2.

<sup>58</sup> Exhibit 4.3/49 at Q&A 88.

<sup>59</sup> Day 7 – 15.06.2017 at T16.8-24 (Noone XXN).

<sup>60</sup> Day 6 – 14.06.2017 at T49.38-45 (Noone XN).

<sup>61</sup> Day 6 – 14.06.2017 at T50.8-19 (Noone XN).

<sup>62</sup> Day 7 – 15.06.2017 at T13.46 – T14.5, T14.32-37 (Noone XXN).

again to check up on his welfare because they had already established in a very long telephone conversation that Scott had all the support he needed, he had a bright future and that the episode was behind him; he was a perfectly mature adult who'd had a traumatic experience, had spoken about it and it was behind him.<sup>63</sup> Mr Noone accepted that after the telephone conversation in which Scott divulged the information to him, they never spoke about the episode again.<sup>64</sup>

67. Mr Noone rejected the suggestion that Scott had never spoken to him about attempting to end his life.<sup>65</sup> In this regard, there is evidence from Dr Roger Bancroft that he had a conversation with Michael Noone about 3 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>66</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 Mr Noone.<sup>67</sup> However, Dr Bancroft has also said that the only reason he remembers the conversation is that ever since, he has never seen a picture of the Golden Gate Bridge without thinking about Scott.<sup>68</sup>
68. There was some evidence that Mr Noone referred to the Golden Gate Bridge Incident in a letter he purportedly sent to Dr Bancroft in May 1989.<sup>69</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 some scrutiny at the hearing and is attenuated by some doubt.<sup>70</sup> A copy of the letter in the possession of its sender (Mr Noone) first came to light in 2013. Dr Bancroft did not have a copy of the

<sup>63</sup> Day 7 – 15.06.2017 at T14.7-15, 25-26 (Noone XXN). See also at T15.29-42 (Noone XXN).

<sup>64</sup> Day 7 – 15.06.2017 at T15.48 – T16.1 (Noone XXN).

<sup>65</sup> Day 7 – 15.06.2017 at T15.11-27 (Noone XXN).

<sup>66</sup> Exhibit 12.5/180 – Bancroft 06.06.2017 at [6].

<sup>67</sup> Day 5 – 13.06.2017 at T64.5-21, 39-46 (Bancroft XN).

<sup>68</sup> Exhibit 12.5/180 – Bancroft 06.06.2017 at [6] and Day 5 – 13.06.2017 at T64.23-27 (Bancroft XN).

<sup>69</sup> Exhibit 12.5/181.

<sup>70</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).

letter and had no independent recollection of receiving the letter, although of course it was many years ago and he may have received it but not remembered this.

69. On balance, it is submitted that 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 third inquest, particularly during the concurrent evidence of Dr Robertson and Associate Professor Large.

#### **Scott moves to Australia to live with Michael Noone and undertake a PhD**

70. At the end of December 1985, Michael 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 Richard Zeckhauser at the John F Kennedy School of Government.
71. In 1985, Scott obtained a scholarship to undertake a PhD in Mathematics at the Australian National University. He arrived in Australia on a student visa on 4 May 1986.
72. From the time of his arrival, Scott lived with Michael Noone in the ACT, first at an address in Waramanga and then later at an address in Downer.
73. Even though he lived with Michael Noone in Canberra, Scott travelled to Sydney every Tuesday to attend and participate in seminars in Category Theory conducted by Associate Professor Ross Street at Macquarie University each Wednesday and Thursday.

74. Associate Professor Street became one of Scott's PhD supervisors. According to him, Scott was an excellent student who was making outstanding progress. Scott had 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 he saw as being a major contribution in the field of mathematics. According to Associate Professor Street, Scott had solved enough of the third problem to suffice for a PhD. Associate Professor Street had informed Scott that he had done enough to suffice for a PhD on several occasions, including during his last telephone conversation with Scott on Thursday, 8 December 1988. This is dealt with further below.
75. In the ordinary course, when in Sydney Scott stayed with Michael Noone's parents at their home in Lane Cove and would return to Canberra on the Thursday evening. Sometimes, however, he would stay the whole week in Sydney with Michael Noone's parents.

#### **Scott's personality and his relationship with Michael Noone**

76. Invariably, those who knew or were acquainted with Scott have described him as being 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 and generous and trustworthy. By all accounts, Scott was a very private person who was reluctant to discuss matters which affected his personal life.
77. According to Michael Noone, 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 at 10 March 1989.

78. While Scott and Michael Noone were in a committed relationship, there were occasions when Scott engaged in sexual activity outside of their relationship. This inquest heard evidence from a person with whom Scott engaged in such activity, Mr Michael Allen. Mr Allen gave evidence of a brief affair he had with Scott over a 2 to 3-week period within about 6 months prior to Scott's death. Throughout the affair, he and Scott practised "safe sex".<sup>71</sup> Mr Allen gave evidence to the effect that although Scott never told him that he was in a relationship, it became abundantly clear that their relationship wasn't going to go any further and so he ended it.<sup>72</sup> Mr Allen described Scott's reaction to the break up as "almost flippant, dismissive".<sup>73</sup>
79. 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>74</sup>
80. According to Mr Noone, those occasions when Scott engaged in sexual activity outside the relationship were followed by depression and remorse in Scott. That said, there is no evidence that Scott displayed any depression or remorse over the affair that Mr Allen claims he had with Scott.

**Scott's birthday parties – 27 November 1988 and 3 December 1988 and the conversation with Walter Grealy**

81. Two birthday parties were held to mark Scott's birthday. The first of those took place on Scott's actual birthday and was held in Canberra at the residence of a friend of Mr Noone and Scott, Ms Deborah Crisp.
82. A second birthday party was held on 3 December 1988 at the Lane Cove home of Mr Noone's parents, who were away in Port Stephens at the time. A number of persons attended this party, including a Mr Paul Bailey and Mr Walter (Wally) Grealy, both of whom gave evidence during this hearing.

---

<sup>71</sup> Day 3 – 15.12.2016 at T62.10-19 (Allen XN).

<sup>72</sup> Day 3 – 15.12.2016 at T60.15-24 (Allen XN).

<sup>73</sup> Day 3 – 15.12.2016 at T60.32-34 (Allen XN).

<sup>74</sup> Day 3 – 15.12.2016 at T65.45-47 (Allen XN).

83. Mr Grealy (who was at the time working as a junior psychiatric nurse) spent some time in the swimming pool talking with Scott. He gave evidence of the conversation he had with Scott while they were in the swimming pool. 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 in the pool.<sup>75</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 told him that one occasion was at the Iron Cove Bridge (or the Lane Cove Bridge) and the other occasion was in San Francisco.<sup>76</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>77</sup> This evidence was not challenged at the hearing.
84. 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 Sunday, 4 December 1988.
85. 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 Harkness Scholarship. Scott did not provide any indication of dissatisfaction with the relationship, his PhD studies, his health or any other serious matter.

---

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

<sup>76</sup> Exhibit 9 – Grealy 07.12.2016 at [7]-[9].

<sup>77</sup> Day 2 – 14.12.2016 at T8.37-47 (Grealy XN).

**Scott's movements during the week commencing 5 December 1988**

86. Sometime during 1988, it became apparent to Mr Noone that his position at the Canberra School of Music would come to an end and he would need to find alternative employment. To that end, Mr Noone applied for a Harkness Fellowship, which would have given Mr Noone a period of 21 months in the United States. He secured an interview for a Harkness Fellowship to be held on Friday, 9 December 1988 in Melbourne.
87. On Monday, 5 December 1988, Michael Noone set out from Lane Cove at about 9:30 am to drive to Canberra, but 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 scheduled for that Friday in Melbourne. He discovered that he had Scott's wallet in his car and so returned it to Scott at the Lane Cove house at about 4:00 pm. 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.
88. After returning the wallet to Scott and briefly speaking with both Scott and Marguerite, Michael Noone drove to Canberra. That was the last time Mr Noone saw Scott alive.
89. At about 2:00 pm on Tuesday, 6 December 1988, Mr Noone's sister Marguerite spoke with Scott at the Lane Cove house. According to Marguerite, Scott appeared to be in happy spirits and had in fact initiated the conversation. That was the last occasion she spoke with Scott.
90. On Wednesday, 7 December 1988, at 2:00 pm Scott saw Associate Professor Street in the hallway at Macquarie University, just outside Associate Professor Street's office. Associate Professor Street 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. According to Associate Professor Street, Scott told him that the message had

been communicated but said that he wanted to see him anyway to discuss his mathematics.

91. Associate Professor Street was unable to speak with Scott at that time as he had a meeting he was required to attend. Scott then indicated that he would contact Associate Professor Street to arrange an appointment soon. According to Associate Professor Street, Scott and he met regularly, usually each Wednesday to discuss Scott's progress.
92. There is information provided by Stephen Johnson that following Scott's death, he found a copy of a receipt from an ATM located at 121 King Street, Sydney, which apparently recorded a withdrawal of \$50 at about 3:55 pm on 7 December 1988. Unfortunately, the receipt is no longer in existence.
93. Marguerite O'Connell heard Scott return to the Lane Cove house at about 11:00 pm on 7 December 1988. At present, it is not known where Scott went between withdrawing the \$50 from the ATM at 3:55 pm and 11:00 pm.
94. At 6:30 am on Thursday, 8 December 1988, Marguerite O'Connell saw Scott's feet in his bed at the Lane Cove house. That is the last known sighting of Scott alive. When she returned home at about 3:15 pm, Marguerite saw that Scott's bedroom was neat and tidy, as it always was when he would return to Canberra.
95. At about 10:30 am that day, 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 the second 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 1988. During that call, Scott also told Associate Professor Street that he intended to spend Christmas with the Noone family at Lane Cove.



96. Associate Professor Street gave evidence at this hearing.<sup>78</sup> His evidence was that it was apparent to him prior to Scott's death that Scott was making outstanding progress in his PhD and that he did not find the process of preparing and working on his PhD as something that was stressful or a cause of anxiety, but rather it was something Scott enjoyed.<sup>79</sup>
97. In his evidence at the hearing, Associate Professor Street said that when Scott spoke to him on 8 December 1988, he 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 his being an uncle.<sup>80</sup>
98. Associate Professor Street gave evidence to the effect that there was never anything Scott had said or communicated to him prior to his death that suggested to him that Scott was suffering from depression. It was a big surprise and shock.<sup>81</sup>
99. Another person who gave evidence at this hearing is Mr Paul Bailey. Mr Bailey was one of the attendees at the Lane Cove party on Saturday, 3 December 1988. He also had a brief telephone conversation with Scott sometime between midday and 2:00 pm on 8 December 1988, when he telephoned the Lane Cove house in the hope of speaking with Michael Noone.
100. 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 denied there was any conversation about Scott's plans for that day and did not have a recollection of Scott telling him that he was going to the beach.<sup>82</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

---

<sup>78</sup> See Day 1 – 13.12.2016 at T9 – T51.

<sup>79</sup> Day 1 – 13.12.2016 at T41.1-35 (Street XN).

<sup>80</sup> Day 1 – 13.12.2016 at T45.37-50 (Street XN).

<sup>81</sup> Day 1 – 13.12.2016 at T49.9-14, T50.26 (Street XN).

<sup>82</sup> Day 3 – 15.12.2016 at T42.19-32 (Bailey XN).

that.<sup>83</sup> He accepted that it was possible that he did tell his flatmate something to that effect<sup>84</sup> and accepted that it was possible that he discussed with his flatmate the fact of his telephone conversation with Scott on the way to give his original statement to police in 1989.<sup>85</sup>

101. Mr Bailey gave evidence that there was no general conversation amongst their group of friends regarding Scott's movements over the week leading up to his death apart from wondering where he had gone on the afternoon of 8 December 1988.<sup>86</sup> He said that Manly seemed a long way from Lane Cove and he never had any knowledge of Scott going to the Manly area at all.<sup>87</sup> There was wonderment at what Scott was doing there and why he would allegedly commit suicide at that particular location.<sup>88</sup>
102. That is the last known contact that anyone had with Scott.

### **Blue Fish Point**

103. The evidence before the Court includes records from the Bureau of Meteorology concerning weather details for 8 and 9 December 1988, particularly in respect of Watsons Bay, Manly Vale, Mosman and Seaforth, which are the closest weather stations to North Head. That material indicates that there was a significant amount of storm activity and rain, particularly on the evening of 9 December 1988.
104. Mr Brian Butson gave evidence at this hearing by telephone. As at 8 December 1988, Mr Butson was employed by the Australian Defence Forces and was working at the army barracks at North Head.

---

<sup>83</sup> Day 3 – 15.12.2016 at T42.34-38 (Bailey XN).

<sup>84</sup> Day 3 – 15.12.2016 at T42.40-41 (Bailey XN).

<sup>85</sup> Day 3 – 15.12.2016 at T42.50 – T44.4 (Bailey XN).

<sup>86</sup> Day 3 – 15.12.2016 at T46.36-49 (Bailey XXN).

<sup>87</sup> Day 3 – 15.12.2016 at T47.2-4 (Bailey XXN).

<sup>88</sup> Day 3 – 15.12.2016 at T47.30-35 (Bailey XXN).

105. On Friday, 9 December 1988, Mr Butson got caught in the evening storm as he was walking his dog with his wife near the Manly Hospital, which is also in the vicinity of North Head.
106. The next morning, Mr Butson 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, young Stephen saw Scott's body and pointed it out to his father and Mr Butson.
107. 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.
108. Mr Butson, in the company of two police officers, Constables Robert Ludlow and Troy Hardie made their way to the top of the cliff and ultimately the location where Scott's clothes were located, neatly folded.
109. A view of the area of North Head above Blue Fish Point was conducted by the State Coroner with 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 having been at this location over the years. It is clear that it has been in place for many years, going well before the date when Scott died.
110. 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 points of access from the track here and there into the scrub, some of which lead to small clearings that are not necessarily visible from the walking track.
111. One of the points of access in that vicinity leads to a clearing at the edge of the cliff top almost immediately above the location where Scott's body was

found on the rocks. It was in the vicinity of this location that Scott's clothes were found neatly folded.

112. In his evidence at this hearing, Mr Butson said that whilst he was at that location, he looked at the ground and saw that there were sharp prickly rocks there everywhere that would be very uncomfortable in bare feet but 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>89</sup> Mr Butson also said that he walked right out onto the edge and looked down at the body and he could have dropped a plumb bolt down, it was a straight drop with nothing between the precipice and the body.<sup>90</sup>
113. As mentioned previously, at the time of the first inquest, one of the principal bases for Detective Cruickshank's view that the death was the result of suicide was the fact that police had not received any reports of any crimes of violence towards homosexual persons having occurred in that area as opposed to two other areas in the Manly Police Patrol, where assaults against homosexuals had been reported.<sup>91</sup>
114. A great deal more is now known about the area. There is now a substantial body of evidence that the area beyond the hole in the wall was an active gay beat where men regularly attended to meet other men to engage in anonymous homosexual activity from the 1970s and continuing throughout the 1980s. Evidence to that effect was given by Ulo Klemmer,<sup>92</sup> Michael Antares,<sup>93</sup> Gordon Sharp<sup>94</sup> and Stephen Tomsen.<sup>95</sup>
115. 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

---

<sup>89</sup> Day 2 – 14.12.2016 at T28.28-31 (Butson XN).

<sup>90</sup> Day 2 – 14.12.2016 at T28.36-44 (Butson XN).

<sup>91</sup> Exhibit 4.1/28.4-5 (Cruikshank XXN (KING)).

<sup>92</sup> Day 5 – 13.06.2017 at T7 – T25.

<sup>93</sup> Day 5 – 13.06.2017 at T42 – T56.

<sup>94</sup> Day 6 – 14.06.2017 at T11 – T26.

<sup>95</sup> Day 6 – 14.06.2017 at T28 – T39.

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>96</sup> and he first attended the beat as an outreach worker in about 1992 after it was suggested to him by a police officer at Manly.<sup>97</sup>

116. In so far as the area of the beat was concerned, 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>98</sup>
117. One of the matters raised by Mr Klemmer in his evidence was that the areas near the cliffside were quieter and that it was not unlikely that people would go to the area near the cliff face for the purpose of having sexual intercourse.<sup>99</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 Road, which was much easier than the track from the Shelly Beach car park area.<sup>100</sup>
118. 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, although he said it was an individual thing and not specific to that beat.<sup>101</sup>
119. 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>102</sup> He also had not heard of army personnel accessing the area.<sup>103</sup> He said that even so, it is in the nature of a beat that people there feel threatened given it is an

---

<sup>96</sup> Day 5 – 13.06.2017 at T12.48 – T13.2 (Klemmer XN).

<sup>97</sup> Day 5 – 13.06.2017 at T10.16-44 (Klemmer XN).

<sup>98</sup> Day 5 – 13.06.2017 at T17.3 – T18.21 (Klemmer XN).

<sup>99</sup> Day 5 – 13.06.2017 at T8.3-12 (Klemmer XN).

<sup>100</sup> Day 5 – 13.06.2017 at T8.28-46 (Klemmer XN).

<sup>101</sup> Day 5 – 13.06.2017 at T10.22-37 (Klemmer XN).

<sup>102</sup> Day 5 – 13.06.2017 at T20.39-48 (Klemmer XN).

<sup>103</sup> Day 5 – 13.06.2017 at T22.2-12 (Klemmer XN).

isolated spot as well. The fact that the beat was isolated is an attraction and a detraction.<sup>104</sup>

120. Mr Antares gave evidence that he attended the beat from the early 1980s to about 1992. He said that people were mostly naked or in Speedos.<sup>105</sup> On occasion he saw people he believed were plain clothes policemen because they were wearing long pants and a collared shirt and there was conversation about watching out for plain clothes policemen who might entrap you.<sup>106</sup> He did not hear of any specific incidents of entrapment.<sup>107</sup> Mr Antares did not witness any violence at the beat but on possibly half a dozen occasions he met somebody who he felt was either very anxious or rude or aggressive.<sup>108</sup> He also recalled hearing that someone had been bashed at the beat in the early 1980s.<sup>109</sup>
121. Mr Sharp was a personal friend of Bryan (Sadie) Thompson, who showed him the area of the beat, which he called Tunbridge Towers. He said he first attended the beat with Mr Thompson in 1965 or 1966.<sup>110</sup> Mr Sharp gave evidence that he had heard reports from people who had been bashed by a small group at the beat and occasionally the word would go up "bashers" to indicate that people were coming from the top end of the beat working their way down.<sup>111</sup> He was aware of the incident where Mr Thompson was stabbed in the vicinity of the beat in 1986 and gave evidence that after he (Sharp) left the area, he maintained contact with Mr Thompson who continued to use the beat right through to about 2009/2010.<sup>112</sup>
122. Professor Tomsen, a criminologist with a specific interest in anti-gay violence, attended the Blue Fish Point beat with a friend in the late 1970s. The friend

<sup>104</sup> Day 5 – 13.06.2017 at T20.50 – T21.13 (Klemmer XN).

<sup>105</sup> Day 5 – 13.06.2017 at T44.5-21 (Antares XN).

<sup>106</sup> Day 5 – 13.06.2017 at T44.23 – T45.16 (Antares XN).

<sup>107</sup> Day 5 – 13.06.2017 at T45.18-37 (Antares XN).

<sup>108</sup> Day 5 – 13.06.2017 at T45.39-49 (Antares XN).

<sup>109</sup> Day 5 – 13.06.2017 at T50.18 – T51.17 (Antares XN).

<sup>110</sup> Day 6 – 14.06.2017 at T13.24 – T14.6 (Sharp XN).

<sup>111</sup> Day 6 – 14.06.2017 at T17.30 – T18.12 (Sharp XN).

<sup>112</sup> Day 6 – 14.06.2017 at T20.1 – T21.12 (Sharp XN).

had told him it was an area that was known as an area for gay cruising.<sup>113</sup> From his knowledge of anti-gay violence and the area, Professor Tomsen opined that there was nothing about the location of the Blue Fish Point beat that would necessarily deter perpetrators of anti-gay violence.<sup>114</sup> In his view, the isolation and a reduced chance that some responsible third party could see what was happening and report it was likely to give the perpetrators of anti-gay violence greater confidence.<sup>115</sup>

123. 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 of anti-gay violence in the area (apart from the stabbing of Bryan (Sadie) Thompson in 1986 and some vague recollection as set out above), 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.

#### **Investigations by Crime Scene Section**

124. Scott's clothes were not photographed in situ and no forensic examination of that area where they were found was conducted, even though officers from the Crime Scene Section had been contacted. Instead, Constable Robert Ludlow picked up the clothes and subsequently handed them to Constable Troy Hardie, who took them to another location – possibly the car park – where they were ultimately laid out and photographed by an officer from the Crime Scene Section.
125. As such, the only photographs of the clothes in situ were taken from a helicopter and do not show any detail other than their position.
126. The clothing comprised 1 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. There was also a black felt pen, a Mercury brand

<sup>113</sup> Day 6 – 14.06.2017 at T29.47 – T30.5, T30.23-34 (Sharp XN).

<sup>114</sup> Day 6 – 14.06.2017 at T32.42 – T33.34 (Tomsen XN).

<sup>115</sup> Day 6 – 14.06.2017 at T33.14-21 (Tomsen XN).

digital watch, a black comb, a key and a plastic holder containing a Canberra Building Society cashcard, a student travel concession card in the name of Scott R Johnson and a single ten dollar note. The clothing was wet.

127. Scott's wallet was not located at the scene or at the Lane Cove house and has not been found.
128. Both Mr Hardie and Mr Ludlow gave evidence at the hearing of this inquest, but were unable to advance matters in any substantial way. Mr Hardie did not actually attend the location where the clothes were located and Mr Ludlow had no independent recollection of the matter and could not say what, if anything, he did by way of examining the headland.<sup>116</sup>

#### **Post-mortem examinations – Dr Duflou and Dr Cala**

129. Dr Johan Duflou performed an autopsy of Scott on the morning of 14 December 1988. He concluded that Scott died as a result of multiple injuries.<sup>117</sup>
130. In addition to noting the injuries that were observable both externally and internally:
- (1) A sample of Scott's blood was tested for HIV and Hepatitis B, in respect of both of which the result was negative.
  - (2) A sample of Scott's blood was tested for alcohol with the result of 0.005 g per 100 ml. 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>118</sup>
131. The significance or otherwise of the injuries Dr Duflou observed were explored with him in his evidence at this hearing. Dr Duflou conceded that based on the

<sup>116</sup> Day 2 – 14.12.2016 at T49.28-46 (Ludlow XN).

<sup>117</sup> Exhibit 4.1/3 – Duflou 14.12.1988.

<sup>118</sup> Day 4 – 16.12.2016 at T11.5-18 (Duflou XN).



autopsy alone, the observable injuries were equally consistent with Scott having been pushed, tripped and fallen or having intentionally jumped.<sup>119</sup> Dr Duflou accepted that the injuries sustained as a result of the fall may have (but need not 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>120</sup>

132. Dr Duflou also gave evidence that in over 30 years working as forensic pathologist, he has not experienced any other matter involving a person who had committed suicide by jumping from a cliff while naked.<sup>121</sup>
133. Dr Alan Cala 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 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>122</sup>
134. In his evidence at the hearing, Dr Cala agreed with Dr Duflou that based on the autopsy alone it was not possible to choose between the three possible explanations for how Scott came to go over the cliff (accident, foul play or deliberate jumping).<sup>123</sup> However, 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 isolation.<sup>124</sup>

<sup>119</sup> Day 4 – 16.12.2016 at T14.13-43 (Duflou XN).

<sup>120</sup> Day 4 – 16.12.2016 at T14.45 – T15.30 (Duflou XN).

<sup>121</sup> Day 4 – 16.12.2016 at T3.11-37 (Duflou XN).

<sup>122</sup> Exhibit 4.1/9 – Cala 15.04.2014.

<sup>123</sup> Day 4 – 16.12.2016 at T30.41 – T31.2 (Cala XN).

<sup>124</sup> Day 4 – 16.12.2016 at T31.15-22 (Cala XN).

135. Nevertheless, Dr Cala conceded that he could not absolutely exclude or include 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>125</sup>

## **ACCIDENT, HOMICIDE OR SUICIDE?**

### **Accident**

136. The possibility that Scott accidentally fell from the top of the cliff raises the possibilities that he may have tripped on uneven ground or some vegetation and stumbled over the edge or simply misjudged how close he was to the edge and lost his footing.
137. Determining the likelihood of either of these scenarios or case theories invites consideration of whether they are consistent with what is known about Scott as a person who was an experienced bushwalker and hiker – a fit young man who enjoyed and was confident in the outdoors.
138. It also invites consideration of whether such scenarios are consistent with the fact of his being naked: Is it probable that, in a naked state, Scott was walking near the edge of the cliff and happened to trip and fall or misjudge how close he was to the edge?
139. There is no positive evidence that Scott's death was the result of an accident other than the facts of his body being located at the bottom of the cliff, his clothes being located near the edge at the top of the cliff together with the absence of any barrier, natural or otherwise, that might have rendered the possibility of an unintentional fall as being less likely.<sup>126</sup> It is submitted that

<sup>125</sup> Day 4 – 16.12.2016 at T34.33-44, T35.35-44 (Cala XXN).

<sup>126</sup> Cf. *Spiratos v Australasian United Steam Navigation Co Ltd* (1955) 93 CLR 317, a case concerning a disappearance at sea where the High Court observed that "if nothing relevant were proved except that the deceased disappeared from a ship at sea, the only proper inference would be that he fell overboard accidentally". In that case, the Court held that evidence of the fact that the deceased was a competent and able seaman; the conditions at sea were calm and settled; the ship was deeply laden so as to be steady with no appreciable roll; the existence of a continuous high bulwark around the weather

there is insufficient evidence before the Court to support a positive finding on the balance of probabilities that Scott's death was the result of an accidental fall.

140. It remains to be observed that a finding that the Court is not satisfied on the balance of probabilities that Scott's death was the result of an accident is not a positive finding that accident is excluded as a possibility.

### **Suicide**

141. The alternative possibility that Scott intentionally jumped from the top of the cliff raises questions as to what could have led him to do so. The evidence of Dr Robertson and Professor Large is highly relevant in this context.
142. At the outset, it is noted that there was no evidence that Scott had a history of mental illness or that he was experiencing any particular stressors in his life at the time of his death.
143. As previously mentioned, 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 and generous and trustworthy. By all accounts, Scott was a very private person who was reluctant to discuss matters which affected his personal life.
144. 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>127</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

---

deck and no identifiable place from which it was at all likely that a person might fall together with evidence the deceased was worried about the result of a recent business transaction precluded a finding of accidental death on the balance of probabilities.

<sup>127</sup> Day 7 – 15.06.2017 at T66,19-27.

inferences about ordinary people who are introverted would not necessarily apply to Scott.<sup>128</sup>

145. 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>129</sup> They both considered Scott's relationship with Mr Noone to be a protective factor.<sup>130</sup>

146. 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 attempt and their association with suicide.<sup>131</sup> Both Dr Robertson and Professor Large agreed that there was a link between previous suicidal ideation and subsequent suicide, although Professor Large considered it to be a statistically weak link.<sup>132</sup> However, Professor Large considered the Golden Gate Bridge incident to be more in the nature of a suicide plan,<sup>133</sup> whereas Dr Robertson viewed it as an aborted attempt.<sup>134</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>135</sup>

147. Professor Large did not give any weight to the conversation between Mr Grealy and Scott in the pool on 3 December 1988. 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.

---

<sup>128</sup> Day 7 – 15.06.2017 at T66.38-45.

<sup>129</sup> Day 7 – 15.06.2017 at T66.38-45.

<sup>130</sup> Day 7 – 15.06.2017 at T66.9-17.

<sup>131</sup> Day 7 – 15.06.2017 at T56.12 – T58.16.

<sup>132</sup> Day 7 – 15.06.2017 at T58.19-33.

<sup>133</sup> Day 7 – 15.06.2017 at T61.30-38.

<sup>134</sup> Day 7 – 15.06.2017 at T62.10-15.

<sup>135</sup> Day 7 – 15.06.2017 at T62.15-19.

148. 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 he 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.
149. Ultimately, both Professor Large and Dr Robertson considered that suicide could not be eliminated as a realistic possibility but were not prepared to say it was a high possibility.
150. Determining the likelihood of suicide invites consideration of not just these matters, but also the location itself. In this regard, there was no evidence of any prior suicide at the particular location from where Scott fell as opposed to the more common location on the other side of North Head. The location was somewhat remote and access was not wholly easy.
151. The possibility of suicide also requires consideration of the forensic evidence. *First*, no suicide note or any indication that Scott was thinking about suicide has been identified.
152. *Secondly*, the evidence was that the fact he was naked was most unusual. As mentioned previously, in more than 30 years as a practicing forensic pathologist, Dr Duflou could not recall any other occasion when he had seen a person who had committed suicide by jumping while naked.
153. *Thirdly*, as noted above, it is not possible to rule out other possibilities from the nature of the injuries observed to have been suffered by Scott. Both Dr Duflou and Dr Cala accepted that it was possible that injuries sustained as a result of Scott's descent from the cliff top might have masked injuries that were suffered or inflicted prior to the fall.
154. *Fourthly*, Dr Cala accepted that the position of Scott's body was possibly consistent with the body having been pushed or rolled off the cliff top. In addition, Paul Patterson gave evidence that he had worked for a funeral

company that had a contract to pick up the bodies of deceased in the Newcastle area. He said that the position of Scott's body at the bottom of the cliff was different to what he subsequently experienced in his work life. That was because in his experience, the bodies he has seen in his work had either landed on their feet and broken their legs or landed on their face and damaged the front of them, but they had not damaged both sides of them.<sup>136</sup>

155. These matters (considered in the light of the legal principles set out above) tend to diminish the likelihood of suicide, although it remains a reasonable possibility, particularly in the light of the absence of any information as to Scott's movements or activities between speaking with Associate Professor Street and his death. Again, that does not make a conclusion of accident or homicide more or less likely.

#### **Homicide or Foul Play**

156. The possibility that Scott met with foul play itself gives rise to a number of case theories. These include a possible scenario in which Scott arranged to meet with someone at the location and became involved in some physical altercation with that person. Another possible scenario is that Scott may have met someone at the location "by chance" for the purposes of engaging in some sexual activity and that some physical altercation ensued either before, during or after that sexual activity, which resulted in Scott being pushed or otherwise falling from the cliff top. A third possible case theory is that Scott was the victim of some violent conduct by one or more persons motivated by robbery or a hatred or fear of homosexuality.
157. Each of these scenarios raises the possibilities that Scott may have had some physical violence visited upon him prior to the fall; that Scott may have been pushed or thrown from the cliff top; or that he fell from the cliff top while attempting to get away or flee from an attacker or attackers.

---

<sup>136</sup> Day 2 – 14.12.2016 at T59.45 – T60.22 (Paul Patterson XN).

158. There is no evidence that Scott arranged to meet with someone at the location or met someone "by chance" for the purposes of engaging in some sexual activity and that some physical altercation ensued, which resulted in Scott being pushed or otherwise falling from the cliff top. This Inquest focused on exploring the third possibility, namely that Scott may have been the victim of some violent conduct by one or more persons motivated by robbery or a hatred or fear of homosexuality, at what was known to be a gay beat in an isolated location.
159. In that regard, the Court has before it a bias crime assessment that was conducted by officers attached to Operation Parrabell in 2013, which concluded that the Blue Fish Point beat was an unlikely location for anti-gay bias motivated crimes.<sup>137</sup> The principal bases for that conclusion was the view that the remoteness of the location of the beat and its relatively rough terrain, coupled with the absence of any reported anti-gay violence or other identified suspicious deaths involving suspected bias motivation.
160. That 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 also involved a location that was relatively remote.
161. The evidence from Mr Sharp is that bashers would on occasion descend upon the beat, usually accessing the area from Bluefish Road and working their way towards the hole in the wall. There is also evidence from [REDACTED] who told investigators that [REDACTED] a group [REDACTED] regularly committed acts of violence against men they perceived to be homosexuals in the area of the beat in the late 1980s, although he has subsequently sought to

---

<sup>137</sup> Exhibit 12.2/15 – Bias Crime Assessment 08.10.2013.

distance himself from that evidence and the Court may well have concerns about the credibility of the accounts that [REDACTED] gave.

162. An obvious question that arises in this context is who might have been the perpetrator or perpetrators of such acts of violence?
163. The 2013 bias crime assessment considered the possibility that groups associated with each of NP3 and NP98 were involved, and determined that there was no evidence linking either group to the Blue Fish Point beat. This inquest explored the evidence relating to those two groups of people as well as the possibility of the involvement of other persons who may have been involved in anti-gay violence in the area of North Head in the late 1980s.

The evidence relating to NP3 and his associates

164. 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.
165. NP3 died in 1991.
166. Police records establish that 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 area, for which he was ultimately ordered to enter into a recognizance to be of good behaviour for 3 years in 1991.
167. NP88 told investigators that he committed three "gay bashings" with NP3. All three bashings were after 10:00 pm and occurred 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>138</sup>

---

<sup>138</sup> Exhibit 12.2/35 – Investigators Note of interview with NP88.



168. 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>139</sup> He did not play football with NP3.<sup>140</sup> On occasions he went to NP3's house, where they would listen to music.<sup>141</sup> At this time both NP3 and NP88 would dress as skinheads.<sup>142</sup>
169. NP88 said that he and NP3 had a bad attitude towards homosexual people in those days.<sup>143</sup> He recalled that there was a lot about AIDS at school and the grim reaper advertisement on television, and that "everyone believed it was basically homosexuals that were causing that". This was a belief that NP88 held at the time.<sup>144</sup> NP3 had spoken to NP88 about him having gone gay bashing and mentioned having done so 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 for gay bashing. NP3 would boast about having gone gay bashing prior to NP88 associating with him.<sup>145</sup>
170. NP88 confirmed that he went gay bashing three times in total over two different nights. The first time was at a Mardi Gras or other event in early 1987 and the other two times were on the night of 20 April 1987.<sup>146</sup>
171. The first time was the first occasion that NP88 had gone gay bashing with NP3, and he stated that NP3 would have suggested it in some form or manner.<sup>147</sup> NP88 assumed that travelling from the Northern Beaches was for the purpose of going gay bashing in the Darlinghurst area.<sup>148</sup> NP88 recalled an occasion that NP95 drove him and NP3 from the Northern Beaches to the Moore Park area, and thought that it was likely that it was for the purposes of gay bashing

---

<sup>139</sup> Day 9 – 19.06.2017 at T6.6-20 (NP88 XN).

<sup>140</sup> Day 9 – 19.06.2017 at T7.33-34 (NP88 XN).

<sup>141</sup> Day 9 – 19.06.2017 at T6.27-38 (NP88 XN).

<sup>142</sup> Day 9 – 19.06.2017 at T6.49 – T7.2 (NP88 XN).

<sup>143</sup> Day 9 – 19.06.2017 at T12.27-30 (NP88 XN).

<sup>144</sup> Day 9 – 19.06.2017 at T12.47 – T13.15 (NP88 XN).

<sup>145</sup> Day 9 – 19.06.2017 at T17.15-39 (NP88 XN).

<sup>146</sup> Day 9 – 19.06.2017 at T15.50 – T16.22 (NP88 XN).

<sup>147</sup> Day 9 – 19.06.2017 at T16.41-49 (NP88 XN).

<sup>148</sup> Day 9 – 19.06.2017 at T17.1-3 (NP88 XN).

on this occasion.<sup>149</sup> The assault took place at a tent in the Moore Park area, with NP3 taking the lead.<sup>150</sup>

172. The other two times, which took place on the one night, were with NP3 and NP3.1. NP88 was not aware of NP3.1 previously going gay bashing with NP3. They were going to the city and NP3 said that they would go gay bashing. This took place in Moore Park.<sup>151</sup> NP88 was arrested after the second and third time he participated in gay bashing and he was dealt with by the Children's Court. 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. He did, however, attend parties where NP3 was present from time to time.<sup>152</sup> NP88 would walk away from NP3 when he saw him.<sup>153</sup>

173. The most potentially salient evidence implicating NP3 in the death of Scott came from I3 and ■■■

174. I3 provided information to NSW Police that a skinhead group from the Narrabeen area would go gay bashing around the northern beaches in the late 1980s and early 1990s. I3 identified NP3, NP4, NP5 and NP6 as being members of that group. ■■■ 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>154</sup>

175. ■■■

<sup>149</sup> Day 9 – 19.06.2017 at T18.44 – T20.1 (NP88 XN).

<sup>150</sup> Day 9 – 19.06.2017 at T23.11-45 (NP88 XN).

<sup>151</sup> Day 9 – 19.06.2017 at T25.13-31 (NP88 XN).

<sup>152</sup> Day 9 – 19.06.2017 at T25.48 – T26.17, T27.28-41 (NP88 XN).

<sup>153</sup> Day 9 – 19.06.2017 at T26.23-27 (NP88 XN).

<sup>154</sup> Exhibit 12.2/16 – Intelligence Report I51010729; Exhibit 12.2/17 – Statement of I3 11.04.2013.

[REDACTED]

176.

[REDACTED]

177.

[REDACTED]

178.

[REDACTED]

[REDACTED]

179.

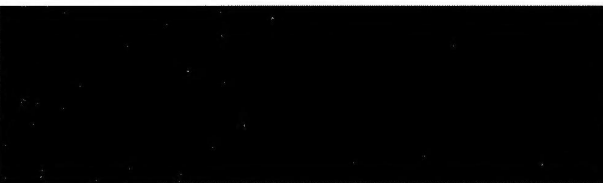


180.



181. NP4 previously 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>164</sup> NP4 stated that he knew NP7 was not involved in poofter bashing. NP4 was aware of the gay beats in the Northern Beaches as being wherever there were public toilets.<sup>165</sup>

182. NP4 confirmed that he knew NP3 in the 1980s. They played football together and they were in the same year at high school.<sup>166</sup> NP4 did not recall attending



<sup>164</sup> Exhibit 12.2/37 - Investigator's note of interview with NP4 dated 04.12.2013.

<sup>165</sup> Exhibit 12.2/37 - Investigator's note of interview with NP4 dated 04.12.2013.

<sup>166</sup> Day 8 – 16.06.2017 at T49.21-32 (NP4 XN).

any football functions with NP3.<sup>167</sup> NP4 was aware that NP3 was part of a skinhead gang. NP4 denied that he was part of that gang.<sup>168</sup> NP4 said that he would not go out with NP3 in an evening, "hang with him" at school, meet him at Narrabeen Bus Station, go to parties with him or go to NP3's house.<sup>169</sup> NP4 never saw NP3 assaulting anyone who was gay.<sup>170</sup> NP4 stated that he attended NP3's funeral and claimed that "everyone from football" from Narrabeen was told to go.<sup>171</sup>

183. In his oral evidence, NP4 said he was close friends with NP7. He claimed that he was not close friends with NP6, and was friends with NP5 for a while before they had a falling out. He said he did not "hang out" with NP88. NP4 confirmed that NP88 might have been at parties that NP4 went to.<sup>172</sup>

184. NP4 is friends with NP1. In his late teens, NP4 would sometimes go to Narrabeen Bus Station with NP1, and together they would sometimes drink.<sup>173</sup> The furthest he would go would have probably been Dee Why.<sup>174</sup> NP4 lived in Warriewood, and would spend most of his time around there.<sup>175</sup> He would go to Narrabeen, Warriewood, Mona Vale and Collaroy with his friends, but not into the city.<sup>176</sup> He never went to Manly for surfing, but had been to blue light discos in Manly.<sup>177</sup>

185. NP4 confirmed that he had been to about two or three parties at Narrabeen Surf Club, but could not recall the year.<sup>178</sup> He did not recall going to a party where there was a keg on.<sup>179</sup>

<sup>167</sup> Day 8 – 16.06.2017 at T55.24-28, T71.13-18 (NP4 XN).

<sup>168</sup> Day 8 – 16.06.2017 at T49.35-44 (NP4 XN).

<sup>169</sup> Day 8 – 16.06.2017 at T50.40 – T51.9 (NP4 XN).

<sup>170</sup> Day 8 – 16.06.2017 at T51.48-49 (NP4 XN).

<sup>171</sup> Day 8 – 16.06.2017 at T70.31-34 (NP4 XN).

<sup>172</sup> Day 8 – 16.06.2017 at T50.3-20 (NP4 XN).

<sup>173</sup> Day 8 – 16.06.2017 at T51.22-34 (NP4 XN).

<sup>174</sup> Day 8 – 16.06.2017 at T55.46-49 (NP4 XN).

<sup>175</sup> Day 8 – 16.06.2017 at T55.38 (NP4 XN).

<sup>176</sup> Day 8 – 16.06.2017 at T56.7-31 (NP4 XN).

<sup>177</sup> Day 8 – 16.06.2017 at T67.9-20 (NP4 XN).

<sup>178</sup> Day 8 – 16.06.2017 at T65.22-27 (NP4 XN).

<sup>179</sup> Day 8 – 16.06.2017 at T66.4-13 (NP4 XN).

186. NP4 agreed that he used to wear Doc Marten boots and thought that "just about everyone that was young back then had a pair". NP4 denied that he used steroids for a period.<sup>180</sup> NP4 denied that he was a "poofter basher".<sup>181</sup> NP4 would get into fights at parties, but this would not be every time he went out and this would not be regular.<sup>182</sup>
187. 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>183</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>184</sup>
188. 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>185</sup>
189. NP6 previously 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>186</sup>
190. 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>187</sup> NP6 acknowledged that he was charged with a

---

<sup>180</sup> Day 8 – 16.06.2017 at T49.46 – T50.1 (NP4 XN).

<sup>181</sup> Day 8 – 16.06.2017 at T52.10-13 (NP4 XN).

<sup>182</sup> Day 8 – 16.06.2017 at T52.29-38 (NP4 XN).

<sup>183</sup> Day 8 – 16.06.2017 at T56.33-39 (NP4 XN).

<sup>184</sup> Day 8 – 16.06.2017 at T56.46 – T57.2 (NP4 XN).

<sup>185</sup> Day 8 – 16.06.2017 at T57.35-39 (NP4 XN).

<sup>186</sup> Exhibit 12.2/38 – Investigator's note of interview with NP6 dated 30.07.2013.

<sup>187</sup> Day 10 – 20.06.2017 at T7.50 (NP6 XN).

number of malicious damage offences committed in 1990 and an offence of aggravated cruelty to animal in 1991.<sup>188</sup>

191. NP6 recalled that NP5 was a year or two above him in his apprenticeship, but he did not associate with NP5. He did not think NP5 was a skinhead, NP5 was "like a surfie". NP6 could not recall seeing NP5 in the company of NP3 or NP4.<sup>189</sup>
192. NP6 had heard rumours that NP3 had been involved in gay bashing.<sup>190</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 before NP3 died. NP6 did not attend NP3's funeral. If NP6 did go to the pub, normally NP4, NP1 and their group would be up there.<sup>191</sup>
193. 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>192</sup>
194. NP6 denied that he would hang out with NP3, NP4 and NP5 from time to time.<sup>193</sup> He disagreed with the contention that he went gay bashing with NP3 and NP4 at Manly or North Head in late 1988.<sup>194</sup>
195. NP1 previously 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 way" 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

---

<sup>188</sup> Day 10 – 20.06.2017 at T13.33-50 (NP6 XN).

<sup>189</sup> Day 10 – 20.06.2017 at T8.26 – T9.18 (NP6 XN).

<sup>190</sup> Day 10 – 20.06.2017 at T9.31-33 (NP6 XN).

<sup>191</sup> Day 10 – 20.06.2017 at T11.36-48, T13.2-3 (NP6 XN).

<sup>192</sup> Day 10 – 20.06.2017 at T9.50 – T10.35 (NP6 XN).

<sup>193</sup> Day 10 – 20.06.2017 at T9.20-24 (NP6 XN).

<sup>194</sup> Day 10 – 20.06.2017 at T17.41-44 (NP6 XN).

licence and thought that NP3 did not go to North Head.<sup>195</sup> NP1 thought that NP3 and NP3.2, NP3's older brother, hated one another.<sup>196</sup>

196. The gay beats which NP1 was aware of growing up were Narrabeen Bus Terminus, SCG and Oxford Street.<sup>197</sup>

197. In oral evidence, NP1 confirmed the accuracy of the investigator's note of interview with him.<sup>198</sup> NP1 stated that his main group of friends included NP4, I169 and I170, Shaun Wilkinson and Lee Humphries. NP1 has maintained his friendship with NP4 since that age of 16.<sup>199</sup> NP1 stated that NP4 had been going to the gym since he was 15, and to his knowledge, NP4 was not using steroids between 1985 and 1990.<sup>200</sup> NP1 did see NP4 getting into fights.<sup>201</sup>

198. 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>202</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>203</sup> All the people with NP1 were from the Northern Beaches and they had travelled to the Moore Park to go into the city and "to roll a poof if [they] saw one".<sup>204</sup> NP1 was 14 years of age 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>205</sup>

199. NP1 claimed that NP3 was not really part of his main group of friends; he was "a bit of a floater". NP1 recalled that NP3 was a "bit of a loner" and did not

<sup>195</sup> Exhibit 12.2/42 - Investigator's note of interview with NP1 dated 31.05.2017.

<sup>196</sup> Exhibit 12.2/42 - Investigator's note of interview with NP1 dated 31.05.2017.

<sup>197</sup> Exhibit 12.2/42 - Investigator's note of interview with NP1 dated 31.05.2017.

<sup>198</sup> Day 9 - 19.06.2017 at T47.45 - T48.8 (NP1 XN).

<sup>199</sup> Day 9 - 19.06.2017 at T49.13-18, T51.45-50 (NP1 XN).

<sup>200</sup> Day 9 - 19.06.2017 at T58.16-23 (NP1 XN).

<sup>201</sup> Day 9 - 19.06.2017 at T58.29-30 (NP1 XN).

<sup>202</sup> Day 9 - 19.06.2017 at T63.11-14 (NP1 XN).

<sup>203</sup> Day 9 - 19.06.2017 at T64.14-49 (NP1 XN).

<sup>204</sup> Day 9 - 19.06.2017 at T65.1-11 (NP1 XN).

<sup>205</sup> Day 9 - 19.06.2017 at T65.13-15, 36-37 (NP1 XN).



recall seeing him at parties.<sup>206</sup> He had heard NP3 would go "poofter bashing".<sup>207</sup> NP1 claimed that he never heard of NP4 going "poofter bashing".<sup>208</sup> NP1 knew NP3 fairly well by the time of NP3's death.<sup>209</sup> NP1 attended NP3's house a couple of times over the period from about 1985 to 1991.<sup>210</sup> NP1 claimed that he did not wear the clothes of a skinhead when he was hanging out with NP3.<sup>211</sup>

200. NP1 never went to any parties at NP3's house and doubted whether there were parties at NP3's house where people would put in money to buy a keg of beer. NP1 said he had been to lots of parties where there was a keg. NP1 could not recall whether NP3 had attended any of those parties.<sup>212</sup>
201. NP1 played for the Narrabeen Sharks. He said that NP4 also played football, but he is older than NP1 and was in a different football team.<sup>213</sup> NP3 also played for the Narrabeen Sharks. NP1 recalled NP3 being an excellent football player. NP3 did not play in NP1's team, he was NP4's age.<sup>214</sup> NP1 recalled that NP7 played for the Narrabeen Sharks, but NP6, NP8 and NP88 did not.<sup>215</sup>
202. NP1 agreed that between 1986 and 1990 the football club would put on barbeques from time to time and barbeques that may not have been run by the football club but were attended by other football players. NP1 thought that NP3 would have attended a few of the barbeques, but he could not clearly remember NP3's attendance.<sup>216</sup>

---

<sup>206</sup> Day 9 – 19.06.2017 at T58.40-43 (NP1 XN).

<sup>207</sup> Day 9 – 19.06.2017 at T53.7-8 (NP1 XN).

<sup>208</sup> Day 9 – 19.06.2017 at T53.21-28 (NP1 XN).

<sup>209</sup> Day 9 – 19.06.2017 at T56.49 – T57.1 (NP1 XN).

<sup>210</sup> Day 9 – 19.06.2017 at T57.11-27 (NP1 XN).

<sup>211</sup> Day 9 – 19.06.2017 at T59.11-13 (NP1 XN).

<sup>212</sup> Day 9 – 19.06.2017 at T57.33 – T58.2 (NP1 XN).

<sup>213</sup> Day 9 – 19.06.2017 at T49.35-36, T50.5-9 (NP1 XN).

<sup>214</sup> Day 9 – 19.06.2017 at T50.14-22 (NP1 XN).

<sup>215</sup> Day 9 – 19.06.2017 at T50.34-49 (NP1 XN).

<sup>216</sup> Day 9 – 19.06.2017 at T52.10-34 (NP1 XN).

203. NP1 claimed that NP3 and NP4 did not "get on too well".<sup>217</sup> He said that he was aware that NP4 and NP3 had a fight, but did not see it.<sup>218</sup>
204. NP1 claimed that he did not go to North Head in the late 1980s.<sup>219</sup>
205. NP7 previously 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>220</sup> NP7 was aware that NP3 robbed gay men and at one stage noticed NP3 wearing a gold watch that he believed was the proceeds of a robbery.<sup>221</sup>
206. NP7 told investigators the he recalled attending a football barbeque in Avalon at which members of NP3's gang played a practical joke on him. 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>222</sup>
207. 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 also said that NP4, NP6 and NP8 were not in the same group.<sup>223</sup> NP7 did not consider NP8 a friend and stated that NP8 was not a skinhead.<sup>224</sup>

---

<sup>217</sup> Day 9 – 19.06.2017 at T49.23-27 (NP1 XN).

<sup>218</sup> Day 9 – 19.06.2017 at T58.32-38 (NP1 XN).

<sup>219</sup> Day 9 – 19.06.2017 at T71.30-34 (NP1 XN).

<sup>220</sup> Exhibit 12.2/39 – Investigator's note of interview with NP7 dated 16 July 2013.

<sup>221</sup> Exhibit 12.2/39 – Investigator's note of interview with NP7 dated 16 July 2013.

<sup>222</sup> Exhibit 12.2/39 – Investigator's note of interview with NP7 dated 16 July 2013.

<sup>223</sup> Exhibit 12.2/39 – Investigator's note of interview with NP7 dated 16 July 2013.

<sup>224</sup> Exhibit 12.2/39 – Investigator's note of interview with NP7 dated 16 July 2013.

208. In oral evidence, NP7 corrected a number of matters in the investigator's note of the interview conducted with him.<sup>225</sup> NP7 disagreed that he referred to NP4 as a "tearaway" and said that although he saw NP4 get into some fights at parties, this was not a regular occurrence.
209. NP7 also 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. He claimed that he did not remember NP3 being in a gang and did not know who had told NP3 that he had killed someone.<sup>226</sup>
210. NP7 knew NP4 from high school and football, having played with and against each other.<sup>227</sup> He had spent time with NP4 outside of school, and from time to time after he left school.<sup>228</sup> NP7 never heard of NP4 going gay bashing.<sup>229</sup> NP7's group of friends also included I169, I170, NP1, NP89 and at times NP6. NP6 did not play football growing up.<sup>230</sup> NP8 was someone that grew up in the area, but not someone NP7 spent time with. NP7 thought that NP8 would have played football, but not any senior football.<sup>231</sup> NP7 played for the Avalon Bulldogs for a period of time, ending in 1987.<sup>232</sup>
211. NP7 had heard of NP3 being violent and had heard this from NP3. 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>233</sup> NP3 did not say where he went or with whom he had been when he went gay bashing.<sup>234</sup> NP7 never went gay bashing with NP3.<sup>235</sup>

---

<sup>225</sup> Day 9 – 19.06.2017 at T88.1-3.

<sup>226</sup> Day 9 – 19.06.2017 at T91.9-35, T92.5-15.

<sup>227</sup> Day 9 – 19.06.2017 at T89.35-40.

<sup>228</sup> Day 9 – 19.06.2017 at T93.22-27.

<sup>229</sup> Day 9 – 19.06.2017 at T98.25-27.

<sup>230</sup> Day 9 – 19.06.2017 at T93.29-42; T94.34-36.

<sup>231</sup> Day 9 – 19.06.2017 at T94.23-32.

<sup>232</sup> Day 9 – 19.06.2017 at T90.3-22.

<sup>233</sup> Day 9 – 19.06.2017 at T97.2-40.

<sup>234</sup> Day 9 – 19.06.2017 at T98.15-23.

<sup>235</sup> Day 9 – 19.06.2017 at T98.29-30, T107.25-31.

212. NP7 was friends with NP3, and associated with him from time to time at school and at football.<sup>236</sup> NP7 recalled that the year of the football barbeque when NP3 was told that he had killed someone 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. NP3 was present.<sup>237</sup> NP7 claimed that neither NP1 nor NP4 were present as they did not play for Avalon.<sup>238</sup> NP7 recalled NP3 saying something along the lines of, "I think I may have killed someone". NP3 was crying and trembling. NP7 said that he was surprised to hear this.<sup>239</sup>
213. NP7 claims 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>240</sup> He understood that NP3 had been involved in a very serious assault on someone.<sup>241</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>242</sup>
214. NP7 attended NP3's funeral. He thought NP1, NP4 and NP6 may have attended as they played football with NP3 and grew up in the same area.<sup>243</sup>
215. NP7 has an older brother who was a skinhead in the mid-1980s, but not in the late 1980s. NP7 did not recall his brother associating with NP3.<sup>244</sup>
216. NP7 was aware of gay beats at the toilets at the Narrabeen Bus Terminus, a park in North Sydney and Moore Park from media reports.<sup>245</sup>

---

<sup>236</sup> Day 9 – 19.06.2017 at T95.17-30.

<sup>237</sup> Day 9 – 19.06.2017 at T95.32-34, T96.5-32, T102.6-8.

<sup>238</sup> Day 9 – 19.06.2017 at T99.8-16.

<sup>239</sup> Day 9 – 19.06.2017 at T96.42-50, T99.1-2.

<sup>240</sup> Day 9 – 19.06.2017 at T99.21 – T100.12, T100.42-44.

<sup>241</sup> Day 9 – 19.06.2017 at T102.38-44.

<sup>242</sup> Day 9 – 19.06.2017 at T102.1-25.

<sup>243</sup> Day 9 – 19.06.2017 at T104.42 – T105.25.

<sup>244</sup> Day 9 – 19.06.2017 at T95.1-11.

Conclusion with respect to NP3 and his associates

217. It is submitted that ultimately, there is insufficient evidence linking NP3 or his associates to the death of Scott Johnson to support any positive finding in this regard. While police records indicated that NP3 was involved in gay bashings at least in April 1987, there is no direct or independent evidence that he was involved in such activities around the time of Scott's death [REDACTED] [REDACTED] nor is there any evidence that he was involved in such activities in the area at North Head where Scott would have been prior to his death. [REDACTED]

[REDACTED]

The evidence relating to NP98 and his associates

218. In 2013, Police received information from a community source [REDACTED] to the effect that from 1986 to 1988, members of a group [REDACTED] [REDACTED] 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 who members of the group believed were at those locations to engage in homosexual activities.

219. The information received by police 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 somewhat beyond the hole in the wall. The group would sometimes approach potential

---

<sup>245</sup> Day 9 – 19.06.2017 at T105.31 – T106.33.

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.

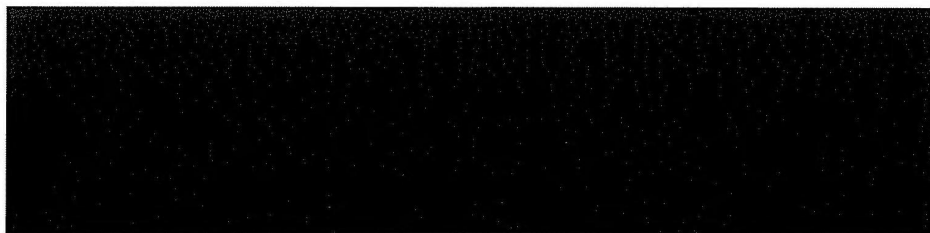
220. The information was that the group committed the assaults and robberies at North Head in the warmer months and in the evening [REDACTED]

221. 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.

222. [REDACTED] [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>246</sup>

223. [REDACTED] was questioned about his change in evidence. [REDACTED]

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



225.



226.



227. Each of NP98 and NP10 denied any involvement in gay bashings in the North Head area and denied having any involvement in the death of Scott Johnson.<sup>254</sup>

228. There is evidence that each of 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



<sup>254</sup> Day 13 – 23.06.2017 – T6.19-21, T36.49 – T37.23 (NP10 XN), T37.27-32 (NP10 XXN); T65.43 – T66.1, T78.38 – T79.2 (NP98 XN), T108.29-44, T114.34-49 (NP98 XXN).

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 more particularly in December 1986. There is no evidence of NP98 offending after this date.

229. NP10 was a juvenile at the time of the offences. He was ultimately dealt with in the Children's Court and subjected to a number of recognizances for a period of 2 years imposed in 1987.
230. The evidence indicates that NP98 initially sought to defend the matter on the basis that the statements he made to police admitting his involvement in the matters were coerced by detectives involved in the investigation, namely Detectives Peattie and Patison. However, NP98 eventually pleaded guilty and was dealt with in the District Court by way of periodic detention for a period of 18 months imposed on 15 December 1989. This was a marked disparity from the sentence imposed upon his co-offender Mr Janus, who received a sentence of full time imprisonment for 5 years with a non-parole period of 2 years.
231. There is some evidence that NP98 may have received a discount on sentence for assistance he provided to police. One of the "statements of facts" in the criminal proceedings involving NP98 referred to the fact that NP98 had "made contact with arresting police since these matters and has assisted wit [sic] information that has led to the successful arrest and prosecution of persons for serious criminal offences." It was also suggested that NP98 "would be in grave danger if sentenced to a term of imprisonment because of information he has supplied". It is not known what was the nature of the information provided by NP98 or its genuine significance. In particular, it is not known whether the information related to other offences of violence against homosexuals committed in the Northern Beaches area.
232. 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, there was evidence that NP98's relationship with Detective Peattie very quickly improved to the extent that NP98 invited both Detective Peattie to his wedding and Detective Patison to his



wedding only a few years later (1992). NP98's explanation for doing so was that he had forgiven Detective Peattie.<sup>255</sup> Curiously, he initially suggested that Detective Peattie had apologised to him when NP98 happened to come upon Detective Peattie involved in digging up NP3's body at Narrabeen, however, he later said he could not remember when the apology occurred.<sup>256</sup> That evidence lacked credibility.

233. NP98's unsatisfactory explanation of the nature of his relationship with Detective Peattie is a matter of continuing suspicion. [REDACTED]

[REDACTED]

In this regard, it is of note that each of Detective Peattie and Detective Patison resigned from the NSW Police in about 2001/2002 following their suspension and investigation by the Police Integrity Commission under the auspices of Operation Florida. However, it must be acknowledged that NP98 denied that either he or his family paid or arranged for the payment of money to either of Detective Peattie or Detective Patison<sup>257</sup> and to date, there is no evidence to support the claims [REDACTED]. Moreover, whilst there is some evidence that NP98 received a lesser sentence on account of assisting police, and some evidence that he had a sufficiently close relationship to have invited Detective Peattie to his wedding, there is no credible evidence that links NP98 to assaults at North Head, nor to assaults in late 1988 around the time of Scott's death. Nor is there any evidence linking NP98 to Scott's death.

Conclusion with respect to NP98 and his associates

234. Ultimately there is insufficient evidence for the Court to make a positive finding linking NP98 or his associates to the death of Scott Johnson. While police records indicated that NP98, NP10 and others were involved in gay bashings in the period leading up to Christmas 1986, there is no evidence that they continued to be involved in such activities after their arrest in January 1987

<sup>255</sup> Day 13 – 23.06.2017 at T101.18-44 (NP98 XXN).

<sup>256</sup> Day 13 – 23.06.2017 at T102.26 – T103.23 (NP98 XXN).

<sup>257</sup> Day 13 – 23.06.2017 at T112.15 – T113.1 (NP98 XXN).

apart from the information originally provided to Police by [REDACTED], who has given inconsistent accounts and ultimately retracted much of his original statement. Whilst NP98's oral evidence about the date when he ceased bashings was somewhat equivocal, there is no positive evidence of him being involved in such activities later than December 1986.

Other potential persons of interest

235. Strike Force Macnamir investigated the possible involvement of a number of other potential persons of interest. It was not possible to explore all of the evidence relating to those other persons of interest at the hearing.
236. However, one such person of interest who gave evidence at the hearing was NP13. He was a person who was convicted of the 1990 murder of a gay man at Marks Park, Bondi, which he committed with two other young men. He and his co-offenders had gone to that location for the specific purpose of bashing homosexuals. They beat up the victim and he stumbled backwards over a cliff.<sup>258</sup> NP13 gave evidence about his involvement in gay bashings in the Bondi and Moore Park areas between 1988 and 1990, all of which he committed in the company of his two co-offenders.
237. NP13 maintained that he has never been to North Head and was not involved in the death of Scott Johnson.<sup>259</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 Manly.<sup>260</sup>
238. There is no reliable evidence linking NP13 to the death of Scott Johnson.
239. A continuing line of inquiry concerns 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.

<sup>258</sup> Day 10 – 20.06.2017 at T54.5-44 (NP13 XN).

<sup>259</sup> Day 10 – 20.06.2017 at T57.6-13, T58.35-36 (NP13 XN).

<sup>260</sup> Day 10 – 20.06.2017 at T58.38 – T59.2 (NP13 XN).

240. 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 towards homosexuals.<sup>261</sup> There were occasions when he heard servicemen discussing plans to go poofter bashing on the weekend. He mostly assumed that they would go poofter bashing in the Kings Cross area although he accepted there was a possibility that they could have been talking about going poofter bashing in the Manly area.<sup>262</sup> He accepted that it was not likely that the servicemen would tell him if they had bashed gay people in the North Head area.<sup>263</sup>
241. Mr McIntyre said 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>264</sup>
242. The fact that army personnel barracked in relative close proximity to an active gay beat had openly discussed plans to go poofter bashing raises the possibility that such persons could have carried out such activities in the area of the Blue Fish Point beat. However, it must be acknowledged that there is no direct evidence of that occurring at that location. The Court also heard evidence of other army personnel boasting at bars in Manly of gay bashing activities in the Manly region including in scrubland in that area, but again, that evidence is not sufficient to link those individuals (or any army personnel) with Scott's death.

#### Conclusion in respect of homicide or foul play

243. The evidence relating to the possibility that Scott's death was the result of homicide or foul play is not sufficient to identify any particular person(s) of interest as possibly being responsible for the death. However, that does not

---

<sup>261</sup> Day 12 – 22.06.2017 at T75.34 – T76.15 (McIntyre XN).

<sup>262</sup> Day 12 – 22.06.2017 at T76.19, T78.17 – T79.18 (McIntyre XN).

<sup>263</sup> Day 12 – 22.06.2017 at T83.29-31 (McIntyre XXN).

<sup>264</sup> Day 12 – 22.06.2017 at T80.16-29 (McIntyre XN).

lead to a conclusion that Scott's death was not the result of homicide or foul play or that homicide or foul play does not remain a real possibility.

244. The evidence establishes that the area at the top of the cliff from where Scott fell was an active gay beat. Although the area was relatively remote, there is some evidence of occasions when groups of young men had attended the beat to commit violence towards homosexuals. There was also evidence that a group of young men including NP98 had committed gay bashings at Reef Beach in the late 1980s, which was relatively nearby and also had a degree of remoteness of access.
245. More generally, there is evidence that at least two identifiable groups of young males were actively involved in gay bashings in the Northern Beaches area in the late 1980s and that they were also prepared to travel to other areas of Sydney to commit such offences. They did not commit such offences exclusively in their local area.
246. Finally, there is some evidence that army personnel stationed at barracks within a close proximity of the Blue Fish Point beat had occasionally expressed their dislike of homosexuals and had spoken about plans to go poofter bashing on weekends or had boasted of such activities.
247. These circumstances suggest that the possibility that Scott's death was the result of a homicide or foul play remains a reasonable hypothesis. It is submitted that there is sufficient evidence to support a finding that some form of foul play was involved in Scott's death, and such a finding would be open, but it would be equally open for the Court to find that such evidence was insufficient (bearing in mind the legal principles set out above) to support a positive finding in this regard.

### **Conclusion**

248. Ultimately, it is a question as to whether the Court considers that the evidence relating to the prospect of foul play being involved in Scott's death, or of

suicide, moves the Court to feel an actual persuasion that Scott died in that manner. If not, then the manner of Scott's death remains open.

Kristina Stern SC  
Sixth Floor Chambers

Robert Ranken  
12 Wentworth Selborne Chambers

27 September 2017