

**Inquest into the death of Scott Russell Johnson  
(DOB 27-11-1961)**

**Written submissions of the Commissioner of Police in response to submissions of the  
Family of Scott Johnson**

**Introduction**

1. The Commissioner of Police (NSW) (**the Commissioner**) makes these submissions in response to the closing submissions of the Family of Scott Johnson dated 18 October 2017 (**FWS**).
2. The Commissioner reiterates the submissions dated 18 October 2017 made in response to Counsel Assisting's submissions (**the first submissions**) regarding the manner of Scott's death, namely, that on the evidence before the Court, none of the three possibilities, being accident, suicide, and homicide or foul play, can be excluded such that the manner of Scott's death remains open.

**Response to FWS**

3. Scott's family submits that the Court can properly find that Scott did not take his own life,<sup>1</sup> and that his death was not the result of an accident.<sup>2</sup> For reasons advanced in the first submissions, in agreement with the submissions of Counsel Assisting, the Commissioner submits that neither suicide nor accident can be excluded as likely possibilities.<sup>3</sup>
4. While the matters raised in FWS at [14] militate against a positive finding of suicide, the Commissioner submits that none of those matters, in isolation or combination, is such as to exclude suicide as a possibility. Likewise, in relation to the family's submissions concerning accident.<sup>4</sup>
5. Within FWS there are competing statements as to how the possibility of suicide is said to be available on the evidence: for example, "suicide was an unlikely manner of death in this case"<sup>5</sup>, as compared to "an affirmative finding can be made that suicide was not only unlikely but did not occur" (emphasis added).<sup>6</sup>

---

<sup>1</sup> FWS at [1(a)], [2],

<sup>2</sup> FWS at [1(b)], [3],

<sup>3</sup> First submissions at [9]; [10]-[23].

<sup>4</sup> FWS at [40]-[44].

<sup>5</sup> FWS at [39].

<sup>6</sup> FWS at [2].

6. The family submits that having “dispensed with” these two theories,<sup>7</sup> and having “dismis[s]e[d] them as being unlikely”, the only “remaining likely manner of death is homicide”.<sup>8</sup> And further that “[t]he exclusion of suicide and accident as likely causes of death must, in this case, and, on the whole of the evidence inevitably lead to a conclusion that death was the result of homicide.”<sup>9</sup>
7. The Commissioner takes issue with this submission on a number of bases.
8. First, as noted above, the Commissioner submits that the possibility of accident and suicide cannot be positively excluded on the evidence such that the premise of the family’s submission as to the availability of a positive finding of homicide cannot be sustained.
9. Secondly, while all parties agree that the evidence does not support a positive finding of either accident or suicide, it is another matter to contend that this positively establishes to the requisite standard that homicide or foul play is the manner of Scott’s death.<sup>10</sup>
10. [REDACTED] the Commissioner notes that s 81(3) of the Act states that in “[a]ny record” of the Coroner’s statutory findings, the Coroner “must not indicate or in any way suggest that an offence has been committed by any person.”

### Conclusion

11. There is no evidence before the Court as to why Scott went to North Head on 8 (or 9) December 1988. As Dr Robertson observed in response to a question concerning what might have occurred while Scott was at North Head: “it’s just such an unknown data fact”.<sup>12</sup>
12. Scott’s family urges the Court to avoid speculation in relation to the suicide and accident theories.<sup>13</sup> Speculation should likewise be avoided in relation to the homicide or foul play

<sup>7</sup> FWS at [4].

<sup>8</sup> FWS at [4], [11].

<sup>9</sup> FWS at [45]. See also FWS at [80].

<sup>10</sup> See eg FWS at [49]: “[Homicide or foul play] is the only inference available on the whole of the evidence. Any competing inference be it suicide or accident simply cannot be accepted given that the standard of proof is the civil standard.”

<sup>11</sup> FWS at [72], [79].

<sup>12</sup> Transcript Day 7, 15/06/17, at p 63, line 36 to p 64, line 29

<sup>13</sup> FWS at [30], [32], [33], [45], [83].

theory. The Commissioner submits that “there is insufficient evidence to enable the coroner...to reach [any] one of the [three] verdicts”.<sup>14</sup>

13. The Coroner should make an open finding as to the manner of Scott’s death.<sup>15</sup> While the Commissioner agrees that there have been significant investigations undertaken by both Scott’s family and the Police, this is no reason to make a finding that is otherwise not open on the evidence.<sup>16</sup>
14. Finally, the Commissioner reiterates submissions made in the first submissions that there be no recommendations pursuant to s 82 in relation to any further investigation, regardless of the finding made.<sup>17</sup>

Sarah Pritchard SC  
Forbes Chambers

Surya Palaniappan  
Sixth Floor Selborne Chambers

**1 November 2017**

---

<sup>14</sup> FWS at [82].

<sup>15</sup> To do otherwise, and to find homicide in the absence of positive evidence of homicide, and on the basis of excluding the other possibilities of accident or suicide because of the absence of evidence of those possibilities, would be reminiscent of the vice Counsel Assisting raised in relation to the suicide finding made at the first inquest into the death of Scott Johnson: see Counsel Assisting submissions at [14].

<sup>16</sup> Cf FWS at [81].

<sup>17</sup> First submissions at [7], [51]-[53].