



## Special Commission of Inquiry into LGBTIQ hate crimes

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### **SUBMISSIONS OF COUNSEL ASSISTING**

6 February 2023

#### **IN THE MATTER OF WILLIAM DUTFIELD**

##### **Introduction**

1. These submissions are filed on behalf of Counsel Assisting the Special Commission of Inquiry into LGBTIQ hate crimes (**Inquiry**).

##### **Summary of matter**

###### *Date and location of death*

2. William Dutfield died on the evening of 19 November 1991 in the apartment where he lived in the Sydney suburb of Mosman.

###### *Circumstances of death*

3. Mr Dutfield suffered multiple blunt force injuries to his head,<sup>1</sup> as a result of being struck by an assailant with a heavy metal tape dispenser that was located in his apartment.<sup>2</sup> Earlier in the evening he had been out at dinner with a close friend, with whom he returned to his apartment.<sup>3</sup> It is highly likely that his friend was the assailant and that he assaulted Mr Dutfield after a disagreement developed between the two men.

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<sup>1</sup> Autopsy Report dated 1 April 1992 (SCOI.00027.0031); Coronial Findings of Deputy State Coroner Abernethy dated 12 December 1994 (SCOI.00027.00001).

<sup>2</sup> Transcript of Inquest Hearing dated 12 December 1994 at p. 7, line 11 (SCOI.00027.00025).

<sup>3</sup> Statement of Arthur William Ashworth (friend) dated 20 November 1991 at [7] – [9] (SCOI.00027.00044).

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### *Findings of post-mortem examination*

4. In a post-mortem report dated 1 April 1992, Dr Johann Duflou documented 16 lacerations to Mr Dutfield's head, as well as a number of abrasions and some minor bruising. He also documented abrasions, contusions and minor lacerations to his arms, and some contusions to his right leg.<sup>4</sup>
5. Internal examination found extensive fracturing of the skull, causing subdural and subarachnoid haemorrhages, and extensive laceration of brain tissue.
6. In his report Dr Duflou found the direct cause of death to be head injuries.
7. At an inquest held on 12 December 1994, Dr Duflou indicated that the U-shape of the head wounds was consistent with them having been caused by the sticky tape dispenser located at the scene. He stated that the injuries were severe and had involved at least 12 blows to the head. The skull fracturing was extensive and Mr Dutfield would have died from half as many blows. He described Mr Dutfield as having defensive wounds on his arms, hands and wrists and that he was likely facing his attacker at some stage. A bruise was identified on one of his knees.<sup>5</sup>

### *Persons of interest*

8. The key person of interest in relation to the death is now Arthur Ashworth (date of birth 16 June 1914), who died on 29 July 2006. Mr Ashworth was aged 77 at the time of Mr Dutfield's death. At the time of the original investigation, the possibility of his involvement appears to have been dismissed on the basis of his age.<sup>6</sup> However, reconsideration of the evidence by the NSWPF, upon reinvestigation of the matter by Strike Force Hamish (SF Hamish) commencing in late 2008, and the Inquiry's own consideration of the evidence, both strongly suggest that Mr Ashworth killed Mr Dutfield.<sup>7</sup>
9. Earlier, police had considered a number of other potential suspects, the most likely of whom appeared to have been **NP63** whose fingerprint was identified on a cigarette packet left behind at Mr Dutfield's unit five weeks prior to his death, when he had been the victim of a robbery.<sup>8</sup> However, **NP63** was positively excluded as a suspect when it was subsequently established that he had been in custody at the time of Mr Dutfield's death.<sup>9</sup>

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<sup>4</sup> Autopsy Report (n 1).

<sup>5</sup> Transcript of Inquest Hearing (n 2); Autopsy Report (n 1).

<sup>6</sup> Investigator's Note – Dennis O'Toole (OIC from 1991) dated 22 September 2010 (SCOI.10068.00036).

<sup>7</sup> Strike Force Hamish Post-Operational Assessment dated 2 October 2013 (SCOI.02712).

<sup>8</sup> Robbery with Striking (16-10-91) and Murder (19-11-91) of William Dutfield at [REDACTED] Spit Road, Mosman. Fingerprint Case N-166513 dated 19 August 1998 (SCOI.10283.00073).

<sup>9</sup> Strike Force Hamish Post-Operational Assessment (n 7), p. 5 (SCOI.02712).

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### *Indicators of LGBTIQ status or bias*

10. Mr Dutfield was known to be either gay or bisexual.<sup>10</sup> The likely assailant was an older male who was a close friend of Mr Dutfield, knew of his sexuality, and was also thought to have been gay.<sup>11</sup> The existence or extent of any sexual relationship between the two men, either in the past or around the time of the death, is not known.
11. The evidence indicates that the assault on Mr Dutfield is likely to have occurred in the context of a disagreement between the two men that arose when Mr Dutfield was intoxicated. There is some evidence that Mr Dutfield would become argumentative in such circumstances and that his friend would become frustrated with his conduct.<sup>12</sup> Given the nature of the relationship between the two men, it is unlikely that the death was motivated by LGBTIQ bias.

### *Exhibits: availability and testing*

12. As is discussed further below, the terms of reference for SF Hamish, commencing in September 2008, included a forensic review of the matter. That review was initiated in June 2010.<sup>13</sup> All relevant existing crime scene exhibits were then located and considered for relevant re-testing, or initial testing where none had yet occurred.
13. In late 2010, this review resulted in critical evidence being recognised (in the case of a fingerprint on the murder weapon)<sup>14</sup> and DNA evidence being obtained that linked Mr Ashworth to blood found at the crime scene.<sup>15</sup>
14. The Inquiry has reviewed the relevant documentation relating to the reinvestigation by SF Hamish, and the relevant FASS file, and can be satisfied that relevant exhibits were located and tested. Consequently, it is not suggested that any further such review or testing is now necessary.

### *Findings at inquest, including as to manner and cause of death*

15. An inquest was held at Glebe Coroners Court on 12 December 1994. The formal finding made by then Deputy State Coroner Abernathy was that:

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<sup>10</sup> Transcript of Inquest Hearing dated 12 December 1994 (n 2), p.25, line 40 (SCOI.00027.00025).

<sup>11</sup> Investigator's Note - [redacted] (NOK of Arthur Ashworth) dated 20 September 2010 (SCOI.10068.00052).

<sup>12</sup> Investigator's Note - [redacted] (friend) dated 4 November 2010 (SCOI.10068.00016).

<sup>13</sup> CCJP Major Crime Forensic Review notes dated 9 June 2010 (SCOI.10068.00111); Exhibit Management Spreadsheet (SCOI.10283.00023).

<sup>14</sup> Emails between Stephen Hungerford and Craig Borton re Exhibits in Dutfield Murder dated 14 May 2010 (SCOI.10283.00006).

<sup>15</sup> Section 177 Certificate of Analysis by David Bruce dated 18 December 2013, p. 3 (SCOI.82162).

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“the deceased on or about 19/11/1991 at [REDACTED] Spit Road, Mosman ... died of head injuries inflicted on him by a person or persons unknown”.<sup>16</sup>

### *Criminal proceedings*

16. No criminal proceedings were ever instituted against any person in relation to Mr Dutfield’s death.

### **Features of / concerns with original police investigation**

17. At the time of the original police investigation, Mr Ashworth was erroneously dismissed as a potential suspect at a very early stage. The reasons for this appear to have been twofold. Firstly, police were understandably interested in a line of inquiry connecting the attack on Mr Dutfield that had been reported five weeks earlier with his death. Secondly, Mr Ashworth was apparently considered by the original officer in charge (**OIC**) to have been “too old” to have committed such an attack.

18. As will be further discussed in the portion of the submission analysing pertinent aspects of the evidence, there were a number of pieces of evidence, along with inconsistencies in the account given by Mr Ashworth immediately after the death, that should have been cause for a high level of suspicion concerning his likely involvement in the death at the time it was originally investigated.

19. While these are not the only matters of concern, in particular the following matters are noted:

- a) greater care should have been taken in relation to fingerprint evidence potentially implicating him, and available at an early stage;
- b) the clear inconsistency between his account of the timing of his movements on the evening, and that of objective civilian witnesses should have been cause for a high level of scrutiny;
- c) he should have been treated as a key person of interest at the 1994 inquest.

### **Strike Force Parrabell**

#### *Use of the Bias Crimes Indicators Form*

20. The content of the Bias Crimes Indicators Form (**BCIF**) that was completed in the course of the work of Strikeforce Parrabell in 2016-17 is highly surprising because, despite having been completed a number of years after Strike Force Hamish, it appears to take no account of the key conclusion reached by police in the reinvestigation of the matter by SF Hamish, namely that the likely assailant was Arthur Ashworth and not someone connected with the robbery that had taken place five weeks prior to

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<sup>16</sup> Coronial Findings of Deputy State Coroner Abernethy dated 12 December 1994 (SCOI.00027.00001).

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Mr Dutfield's death. Instead, the information in the BCIF repeats and appears to adopt the conclusions reached by the original OIC and by the Coroner in the early 1990's, namely that Mr Dutfield was most likely to have been the victim of the same perpetrator of that robbery, or of someone acting on a similar basis, who had become aware of the earlier robbery and Mr Dutfield's potential vulnerability.<sup>17</sup>

21. Further, although adopting this by then outdated case theory, the conclusions expressed in the BCIF nevertheless discount the likelihood of Mr Dutfield's death having been motivated by gay hate bias. For example at page 14 of the form the following is said:

Detective Sergeant O'Toole, the Officer in Charge of the investigation believed that an unidentified male that Dutfield had met at the Rex Hotel on the night of the robbery a month earlier or an associate of this unidentified male was the person who killed Dutfield. Detective Sergeant O'Toole stated in the coronial Enquiry (sic), *"There are a number of theories which I'd like to expound to you your Worship in regard to this. We believe that it's possible that there is a person, or a number of persons, who are most probably male prostitutes, who are also most probably drug addicts from the Kings Cross area that prey upon these people."* Significant investigation was conducted focussing on male prostitutes from the Kings Cross area but failed to identify any of the offenders .... The Rex Hotel rather than Dutfield's home address is relevant to the investigation but it is not bias related, as it is most likely that the offender/s in this murder were also homosexual. (emphasis added)<sup>18</sup>

22. It is submitted that, if Mr Dutfield had been killed in such circumstances (noting that in fact it appears he was not), the assertion that such a death could not be considered to be gay hate bias related is not justified. The fact that the perpetrator of a violent crime against a member of the LGBTIQ community may themselves engage in homosexual sex, for example in the course of work as a male sex worker, ought not be taken to automatically exclude the possibility that a crime committed by such a person involves gay hate bias.

### *Results of Strike Force Parrabell*

- (a) The "General Comment" and "Summary of Findings" boxes at the end of the BCIF

23. The Indicators in relation to individual criteria considered in the BCIF all lead to one of two conclusions being expressed in the form: that the matter was either "Not Bias Crime", or that there was "Insufficient Information" to make a determination as to whether or not it was. The Summary of Findings notes the relevant "Indicator" as "Insufficient Information". The "Comment" in the summary

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<sup>17</sup> Strike Force Parrabell Bias Crimes Indicators Review Form – William Dutfield (undated), p. 19 (NPL.0115.0002.2149).

<sup>18</sup> Ibid, p. 14.

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of findings again fails to mention the findings of SF Hamish, but instead repeats the views expressed by the original OIC and the Coroner in the early 1990's. It concludes as follows:

“It appears unlikely that sexuality or other bias was involved in the death of William Dutfield and it is most likely that the motive for assaulting Dutfield was robbery related however this cannot be confirmed.”<sup>19</sup>

24. As noted above, and as discussed further below, the motive of robbery asserted in the conclusion does not appear to be correct.

(b) Case Summaries

25. The Strikeforce Parrabell Case Summary for this matter (case summary number 50) reads as follows:

**Identity:** *William James Dutfield was 41 years old at the time of his death.*

**Personal History:** *Mr Dutfield was close friends with Arthur Ashworth, 76 (sic) years old.*

**Location of Body/Circumstances of Death:** *On the night of his death Mr Dutfield and Ashworth had been to dinner at a nearby Mosman restaurant, before returning to Mr Dutfield's unit together. Ashworth indicated his absence about 9pm. Later that evening, a neighbour heard an argument from Mr Dutfield's unit followed by a loud noise. Mr Dutfield's body was located the next day by Ashworth who had returned to the residence. Ashworth was initially excluded as a suspect in relation to the murder given his age and frailty. Mr Dutfield suffered numerous head injuries having been violently assaulted with a cast iron sticky tape dispenser and a lamp having been attacked from behind whilst sitting in his lounge chair. An almost empty bottle of whiskey and two glasses were located on a coffee table. The offender broke out of the rear of the residence after stealing a small sum of cash. About one month prior to his murder, Mr Dutfield was the victim of a violent assault and robbery at his residence where he was punched and kicked about the head before \$900 was stolen. No suspects were identified for this robbery.*

**Sexual Orientation:** *Mr Dutfield identified as bisexual.*

**Coroner/Court Findings:** *No suspects were identified for Mr Dutfield's murder until 1998 and then 2008 when police reinvestigated and re-affirmed Ashworth as a suspect. Ashworth's DNA was matched to the murder weapon and blood located within the unit. His original timeline of events was found to be incorrect and untruthful. Ashworth died in 2006. The Coroner stated that Dutfield, “.....was bashed.....that he invited someone home and there was in effect some sort of rip-off, probably for money.”<sup>20</sup>*

**SF Parrabell concluded there was insufficient information to establish a bias crime**

26. By contrast with the BCIF, the Case Summary does contain an acknowledgment of the strong evidence against Arthur Ashworth that was highlighted upon reinvestigation of the matter after 2008. It is nevertheless expressed in confusing terms in that the circumstances of death, as they are described,

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<sup>19</sup> Ibid, p. 19.

<sup>20</sup> Exhibit 6, Tab 49, Strike Force Parrabell Case Summaries – William Dutfield, p. 25 (SCOI.76961.00014).

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suggest that that matter was in effect a “robbery gone wrong”, which is not consistent with a conclusion that Mr Ashworth was the perpetrator.

27. Inaccuracies in the summary narrative also suggest that the evidence was not closely examined. Reference is made to DNA matches with the murder weapon and blood found in the unit, when the relevant forensic match with the murder weapon involved a fingerprint, not DNA. The statement that the offender broke out of the rear of the residence after stealing a small sum of cash rests on an acceptance of the clearly now impugned account of Arthur Ashworth and is not consistent with the findings of SF Hamish.
28. This matter was dip sampled by Sgt Steer of the Bias Crimes Unit of the NSWPF, who also concluded there was insufficient information to establish a bias crime.<sup>21</sup>

### (c) Academic review

29. The review by Flinders University for this matter concluded there was insufficient information to make a determination.<sup>22</sup> In explaining what ‘insufficient information’ means, the Flinders University academic review team state as follows:

*That is, despite an exhaustive exploration of the archived material, it was ultimately impossible for the detectives to make definitive determinations about many of the deaths under review, and based on available information, the academic reviewers concur. Part of the reason this was the case can be attributed to a relative paucity of information.*<sup>23</sup>

### **Investigative and other steps undertaken by the Inquiry**

30. The Inquiry’s consideration of the matter has involved:
- a) compelling the production of police investigative material, including that covering both the initial investigation of the matter from 1991 to 1994, and its subsequent reinvestigation from around 2008 until 2012;
  - b) obtaining Coroners Court files in relation to the Inquest that was held in 1994;
  - c) reviewing and analysing all of this material, and considering whether any further investigative or other avenues are warranted.

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<sup>21</sup> Exhibit 6, Tab 84, Revised SF Parrabell Review Table (undated) (SCOI.74430).

<sup>22</sup> Exhibit 6, Tab 115A, Excel Spreadsheet titled ‘Copy of Parrabell 17’ (undated) (SCOI.74573).

<sup>23</sup> Strike Force Parrabell Report, p. 54.

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### *Summonses Issued*

31. The matter was one of those the subject of the Inquiry's first summons to police dated 22 May 2022, for all police investigative material relating to it (NSWPF1).
32. A follow up summons was issued on 14 October 2022 (NSWPF31), as it was apparent that there was investigative material dating from late 2010 onwards that had not been produced in response to NSWPF1. NSWPF31 also sought the complete police fingerprint file to help clarify the basis for the assertion that Arthur Ashworth's fingerprint was found on the likely weapon used to kill Mr Dutfield.<sup>24</sup>
33. In response to NSWPF31, additional material was produced to the Inquiry, and clarification was provided regarding the location of relevant material within police archive boxes previously provided to the Inquiry.
34. A summons was issued on 5 December 2022 to the Forensic and Analytical Science Service of NSW Health Pathology (FASS) for their file so that all the DNA and other forensic evidence relating to the death could be fully considered.<sup>25</sup>
35. Efforts were also made to contact surviving family members of Mr Dutfield, however these have not resulted in any contact with a family member.

### **Steps which could / should have been taken, but which were not**

36. Such steps are discussed further below. In essence, there was a clear basis for Arthur Ashworth to have been considered the key suspect at a very early stage, and particularly once the inconsistencies between his account of his movements and the accounts of objective civilian witnesses was apparent in the days following the death.
37. Attempts should have been made to interview him as a suspect and with a view to testing relevant inconsistencies with him. The partial fingerprint match to the tape dispenser should have been accurately made and communicated to investigators, and he should have been treated as a person of interest at the inquest if he had not already been charged at that point.
38. Further, priority should have been given to obtaining a DNA sample from him for analysis and comparison with relevant forensic exhibits as soon as technical capacity allowed this to occur. This could and should have occurred by the late 1990s, several years before Mr Ashworth's death, and not left until after his death.

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<sup>24</sup> Letter from the Inquiry to NSW Police Force enclosing Summons NSWPF31 dated 14 October 2022 (SCOI.82157).

<sup>25</sup> Letter from the Inquiry to Forensic and Analytical Science Service enclosing Summons FASS2 dated 6 December 2022 (SCOI.82159).



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39. In short, Mr Ashworth should have been charged with Mr Dutfield's murder a number of years prior to Mr Ashworth's death.

### Results of investigative and other steps undertaken by the Inquiry

40. This part of the submission sets out key matters arising from the Inquiry's consideration of the evidence and the conclusions that it is suggested can be drawn from the evidence. These are largely consistent with the consideration of the evidence and the conclusions reached by SF Hamish.

#### *William Dutfield's Background*

41. Mr Dutfield was born on 21 May 1950 and was 41 years old when he died.<sup>26</sup> His father died of cancer in 1973.<sup>27</sup> He had four older brothers (one of whom died in 1989). He also had a twin brother, John. He grew up in the suburb of Dee Why on the northern beaches of Sydney and attended Manly Boys High, leaving school at 15 to become an apprentice jockey. He worked for two different horse trainers until he was 27.<sup>28</sup>
42. According to information provided to police by his brother Robert, he suffered injuries through a number of falls when riding, which had affected his personality. He often became depressed and he started to drink too much, and his relationship with other family members became strained.<sup>29</sup>
43. He became friends with two older males, [REDACTED] 154, and Arthur Ashworth. After sharing a house with [REDACTED] 154 for a period, Mr Dutfield met Mr Ashworth. He moved in with Mr Ashworth about 10 years prior to his death.<sup>30</sup> At the time of his death, Mr Dutfield lived alone in a one bedroom unit in Mosman owned by Mr Ashworth.
44. His brother Robert told police that Mr Dutfield was lonely in the period leading up to his death. His only friends were [REDACTED] 154 and Mr Ashworth and he had mentioned that he wanted to meet other people. The day before his death Mr Dutfield had met his twin brother at a café at Warringah Mall and appeared to be in good spirits.<sup>31</sup>

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<sup>26</sup> Statement of Detective Senior Sergeant Dennis Peter O'Toole dated 27 January 1994 (SCOI.00027.00036).

<sup>27</sup> Running Sheet 2/3/1 (undated) (SCOI.10067.00134).

<sup>28</sup> Statement of Detective Senior Sergeant Dennis Peter O'Toole (n 26).

<sup>29</sup> Running Sheet 2/3/1 (n 27).

<sup>30</sup> Statement of [REDACTED] 154 friend dated 20 November 1991 (SCOI.00027.00045).

<sup>31</sup> Running Sheet 2/3/1 (n 27).

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### *Arthur Ashworth's account to police of the circumstances leading up to Dutfield's death*

45. Arthur Ashworth was called to give evidence at the inquest held in 1994. Given the nature of the questions he was asked, he was clearly not considered to be a person of interest at the time. He adopted the statement he had made to police, qualifying it only by stating that Mr Dutfield had told him that he was bisexual rather than homosexual.<sup>32</sup>
46. Mr Ashworth made his four page statement the day after Mr Dutfield's death. He described drinking at the Rex Hotel in the 1970's, after his retirement, and meeting Mr Dutfield there, when Mr Dutfield was working as a 'general hand' at the hotel. He stated that he got to know Mr Dutfield well. Mr Dutfield would clean his unit for him once a week and confided in him that he was homosexual. Mr Ashworth described himself as becoming a "father figure" to Mr Dutfield, whose father, according to Mr Ashworth, had died when Mr Dutfield was 14 years old.<sup>33</sup>
47. Mr Dutfield subsequently boarded with Mr Ashworth for 10 years, first at Randwick and then at Cremorne. In June 1991, five months prior to Mr Dutfield's death, Mr Ashworth moved into a retirement village and so stopped living with Mr Dutfield in Cremorne. Mr Ashworth then bought a unit in Mosman that Mr Dutfield moved into (where he died), and Mr Ashworth thus became his landlord.<sup>34</sup>
48. Mr Ashworth described his involvement with Mr Dutfield on the day of his death as follows:
  - In the morning he went to Mr Dutfield's unit and did some washing with him;<sup>35</sup>
  - At around 4.30pm Mr Dutfield showed up at Ashworth's retirement village apartment with two beers, most of which Mr Dutfield drank. Mr Dutfield appeared to have been significantly affected by alcohol and Mr Ashworth thought he was depressed, and that generally Mr Dutfield showed signs of manic depression;<sup>36</sup>
  - At 5.30pm they both went to the Mosman Unit. Both of them drank two scotches. At 7pm they went to the Mosquito Bar Restaurant together for dinner (a 350m walk from the unit). They drank a bottle of wine with dinner and left at about 7.45pm. It took them 10 minutes

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<sup>32</sup> Transcript of Inquest Hearing (n 2), p.25.

<sup>33</sup> Statement of Arthur William Ashworth (n 3). Evidence later obtained from Dutfield's brother suggests that Dutfield was 23 when his father died.

<sup>34</sup> Statement of Arthur William Ashworth (n 3).

<sup>35</sup> *Ibid* at [6].

<sup>36</sup> *Ibid*.

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to walk back to Mr Dutfield's unit. They had a further scotch together and Mr Dutfield had two glasses of wine.<sup>37</sup>

- According to Mr Ashworth, after these drinks Mr Dutfield was slightly high and drunk and wanted to go out and drink at a bar. Mr Ashworth cautioned against it and left on his own, arriving back at his retirement village at around 8.15pm.<sup>38</sup>
- According to Mr Ashworth, he observed Mr Dutfield to have about \$150 to \$180 in his wallet when they were at the restaurant.<sup>39</sup> This was potentially significant as, if this was the case, it appears to have been taken from his wallet by the perpetrator.

### *Evidence of Neighbours*

49. Neighbours who lived directly below Mr Dutfield in the apartment complex heard a number of "thud" sounds while watching the first half of the program "LA Law" on TV, which had aired between 9.30 and 10.30pm, thus placing the likely time of the attack at between 9.30 and 10pm. They also heard loud arguing occurring between two male voices, one louder than the other, just prior to hearing the initial "thud".<sup>40</sup>

### *Crime Scene Evidence and Autopsy*

50. The crime scene officer, Detective Christopher Kolder, gave evidence at the inquest.<sup>41</sup> He attended the unit the following day (20 November 1991) at 12 noon after Mr Ashworth had contacted police, purporting to have found the body when checking on Mr Dutfield. Detective Kolder gave evidence to the following effect:

- A number of swabs of blood were taken from the scene including of tissues in the kitchen waste bin. The latter indicated the presence of a small amount of blood of a different blood type to Mr Dutfield. This was being kept in a frozen state in the hope that in future it could be DNA tested against other samples;
- The whole unit had been "fingerprinted" with a negative result;

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<sup>37</sup> Ibid.

<sup>38</sup> Ibid at [10].

<sup>39</sup> Ibid at [8].

<sup>40</sup> Statement of [158] dated 20 November 1991 (SCOI.00027.00042); Statement of [159] dated 20 November 1991 (SCOI.00027.00043).

<sup>41</sup> Statement of Constable Christopher Peter Kolder dated 14 June 1993 (SCOI.00027.00034); Transcript of inquest hearing (n 2), p.35.

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- The offender appeared to have washed their hands in both the kitchen and bathroom sinks. There were no signs of struggle other than one rug having been disturbed;
- The blood stain patterns at the scene suggested that Mr Dutfield may have initially been attacked by being struck by a heavy metal sticky tape dispenser while still seated. The tape dispenser was in the kitchen sink and an attempt had been made to wash it, though blood remained on it;
- The injury pattern to Mr Dutfield's head was consistent with the tape dispenser having been used to inflict all the blows.
- There were two drinking glasses on a table in the lounge room near the body that contained scotch, and a bottle of scotch in the kitchen with a "nip pourer" nearby;
- There were no signs of a forced entry. The lack of fingerprints on the glasses, ashtray, table and elsewhere suggested that the perpetrator had gone to some trouble to wipe things.

51. Dr Duflou conducted an autopsy at 5pm on 20 November 1991. His findings are outlined earlier in the submission.

### *Assault on Dutfield one month earlier in October 1991*

52. Mr Dutfield had previously been assaulted in his unit on 16 October 1991, less than five weeks earlier. On 17 October 1991 he provided a statement<sup>42</sup> to police concerning the assault. In it he described having 6 middies of beer at the Rex Hotel "Bottoms Up" bar with a male who he had met there. He invited the male back to his flat in Mosman. They had a scotch together and watched TV. The male called Mr Dutfield a bastard and punched him to the face. The male then kicked Mr Dutfield to the face and body a number of times before searching his pockets and taking \$900 from him. Mr Dutfield described the male as being about 23 years old, 175-178cm, medium build with olive complexion and shoulder length brown hair. He had not previously seen the male.

### *The police theory at the time of the original investigation*

53. The original OIC, Det Snr Sergeant Peter O'Toole gave evidence at the inquest that he considered there to be similarities between Mr Dutfield's death and that of Wayne Tonks in Five Dock (who had been robbed, bashed, and killed in his residence, the weapon being a heavy ashtray). He expounded a theory that a male prostitute and/or drug addict was preying on people such as Mr Tonks and Mr Dutfield,

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<sup>42</sup> Statement of William Dutfield dated 17 October 1991 (SCOI.00027.00038).

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gaining entry to their residential premises under false pretences then bashing and robbing them. This was partly based on the break-in five weeks earlier, when Mr Dutfield had been bashed and robbed. The OIC considered that word would have gone around the Kings Cross area of Mr Dutfield's vulnerability as a target of robbery. The OIC suggested that either a phone call was made by Mr Dutfield to someone, or that he was visited without appointment by the assailant, and that he either knew the person or Mr Dutfield was made known to them through associates from the Kings Cross area. Police therefore concentrated their inquiries "on the male homosexual heroin addict type offenders in the prostitution area of Kings Cross" (to use the OIC's terminology).<sup>43</sup>

54. By the time of the inquest the police had been unable to identify a clear suspect, leading to the coronial finding that the injuries causing Mr Dutfield's death had been inflicted by a person or persons unknown.

### *Further investigations after 1994 – Unsolved Homicide Team and SF Hamish*

55. In 1998 the investigation was reopened as it was thought that the death may have a link to the high-profile murder of Frank Arkell. However, investigators found the death to be unrelated to that matter.<sup>44</sup>
56. In 2005 the death was reviewed by the Unsolved Homicide Team. Recommendations made on 2 May 2005 upon an initial review included:<sup>45</sup>
- Further examination of the tissue with blood from the kitchen waste bin and cigarette butts using contemporary techniques. These items were already located with the Division of Analytical Laboratories (DAL, the predecessor of FASS). At the time of the original investigation it had been ascertained that the tissue had blood on it that was not the same blood group as Mr Dutfield)
  - Re-examination of the sticky tape dispenser (then being further re-examined at Westmead Laboratories). It was noted that at the time of the original investigation "partial" prints had been located;
  - Obtaining an elimination DNA sample from Ashworth, noting that he had provided elimination prints but not DNA at the time of the initial investigation.

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<sup>43</sup> Transcript of Inquest Hearing (n 2), from p. 12.

<sup>44</sup> Recommendation for Further Investigation Historical Unsolved Homicide Case dated 14 August 2007 (SCOI.10286.0004).

<sup>45</sup> Review of an Unsolved Homicide Case Screening Form dated 2 May 2005 (SCOI.10286.00008).

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57. Regrettably, despite the recommendation made in May 2005 for obtaining a DNA sample from Mr Ashworth and DAL testing of the tissue, it appears that neither had been done by the time Mr Ashworth passed away in July 2006. It was not until 8 February 2007 that a report was received from DAL. It noted that a full DNA profile had been obtained from the stained tissue that was recovered from the waste bin. In view of this (and notwithstanding that by this stage Mr Ashworth had died), it was noted that<sup>46</sup> *“(o)btaining a profile from Ashworth should be seen as a priority... for elimination purposes or otherwise. Due to his age time may be limited and once he has passes away the opportunity may well be lost.”*

58. Subsequently SF Hamish was formed in September 2008 with the following terms of reference:

*“To further investigate the circumstances surrounding the murder of William James Dutfield at Mosman on 19/11/91”. DSC Hungerford was allocated as the officer in charge. After reviewing the brief, three main issues were detected as follows:<sup>47</sup>*

- *Outstanding follow up with possible suspect* NP63
- *Outstanding exhibit inquiries; and*
- *Outstanding inquiries with Arthur Ashworth who appeared never to have been considered a suspect.*

59. Suspicion concerning NP63 arose because his fingerprint had been identified on cigarette packet wrapping found in Mr Dutfield’s unit at the time of the October 1991 robbery. Subsequent enquiries revealed that by the time of Mr Dutfield’s death, NP63 was in custody on other matters. He was thus eliminated as a suspect. In any event further testing by DAL had determined that blood on the tissue was not from the deceased or from NP63.<sup>48</sup>

60. Much of the work of SF Hamish therefore focussed on re-examining evidence and reinterviewing witnesses in connection with the possible involvement of Mr Ashworth in the death, and locating exhibits for further analysis.

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<sup>46</sup> Additional Information Case Screening Form dated 1 March 2007 (SCOI.10066.00036).

<sup>47</sup> Strike Force Hamish Post-Operational Assessment (n 7), pp. 4-5.

<sup>48</sup> Strike Force Hamish Post-Operational Assessment (n 7), p. 4.

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### *Evidence implicating Arthur Ashworth*

61. While retesting of exhibits arising out of SF Hamish gave rise to evidence strongly implicating Arthur Ashworth, the evidence obtained during the course of the original investigation clearly should have given rise to a strong suspicion that Mr Ashworth was the culprit. That evidence is considered below.

#### *a) The timing of the visit by Dutfield and Ashworth to the Mosquito Bar Restaurant*

62. There is a significant discrepancy between the evidence of Mr Ashworth on the one hand, and other objective evidence, concerning when Mr Ashworth and Mr Dutfield left the Mosquito Bar where they had dinner. The difference in the evidence and its significance suggests that Mr Dutfield's account is likely to have been a self-serving fabrication.

63. In his statement Mr Ashworth says he and Mr Dutfield left the Mosquito Bar at 7.45pm, arriving back at Mr Dutfield's flat 10 minutes later. By contrast, the owner of the restaurant said that they left the restaurant somewhere between 8.25 and 8.45pm, and the customer [169] saw that Mr Dutfield and Mr Ashworth were still there when she arrived at 8.40pm. That evidence indicates that their departure is likely to have been at around 8.45pm, and their return to Mr Dutfield's unit shortly before 9pm.<sup>49</sup>

64. The discrepancy of an hour between Mr Ashworth's account and objective civilian evidence in relation to the time they left the restaurant is damning. In his statement Mr Ashworth describes sitting with Mr Dutfield and talking upon their return to the flat. He had a scotch and Mr Dutfield had two glasses of wine. According to Mr Ashworth, Mr Dutfield was drunk and wanted to go out and drink in a bar. Mr Ashworth then left and said that he got home to the Garrison Retirement village at 8.15pm. Allowing for his walk home, on this account, even if Mr Ashworth's account were true as to the time of leaving the restaurant, he would only have been at Mr Dutfield's flat for 10 to 15 minutes. This in itself seems to be at odds with his description of what occurred – namely, that they sat and talked, during which time Mr Dutfield had at least two drinks.

65. Given that in fact, based on the objective evidence of those at the restaurant, they would have arrived at Mr Dutfield's flat shortly before 9pm, Mr Ashworth is squarely in the frame as being present at the time neighbours heard the thud come from the flat (between 9.30pm and 10pm). The timing is such that it is exceedingly unlikely that, after Mr Ashworth's departure, Mr Dutfield could have either gone out and returned with an assailant, or could have arranged a liaison with an assailant.

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<sup>49</sup> Running Sheet 5/8/1 – [169] (Mosquito Bar) dated 26 November 1991 (SCOI.10067.00093).

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66. According to the running sheets, the day after he gave his statement, and after police had confronted him about the clothing he had been wearing, Mr Ashworth told police that he had seen a man in his 20s to 30s enter the lift as he departed the unit block.<sup>50</sup> In all the circumstances, it seems likely that this was a self-serving fiction, made up after he had reason to think police suspected him. The proposition that this was a fiction is supported by the fact that Mr Ashworth made no mention of it in his statement made the day before, when clearly, if true, it would have been a highly pertinent matter to have mentioned.

*b) Ashworth's visit to his friend [164] and evidence concerning dry cleaning*

67. In his statement to police made on 20 November 1991, Mr Ashworth stated that he visited friends at Bondi Junction that morning, before returning to check on Mr Dutfield late in the morning.<sup>51</sup> On 25 November 1991 police took a statement from the friend he had visited, a man called [164]

68. [164] described the relationship between Mr Ashworth and Mr Dutfield as being like a “teacher pupil” type of relationship. He said that he understood Mr Dutfield to have a very low IQ. He described himself as a good friend of Mr Ashworth for 25 years. He stated that he had an arrangement for Mr Ashworth to visit him at his house in Woollahra at 10am on the morning of 20 November and that they were going to go to lunch together. Mr Ashworth arrived early at 9.45am. They went into town together but did not go to lunch as planned as Mr Ashworth apparently had a teachers’ reunion to go to. They remained at [164] house for half an hour, then got the train together from Edgecliff to Martin Place, before going their separate ways at about 11am. Mr Ashworth was wearing brown pants and jacket and was carrying a briefcase that had a raincoat in it.<sup>52</sup>

69. [164] then phoned Mr Ashworth at 6.30pm to ask how the reunion had gone. Mr Ashworth told him that Mr Dutfield had been murdered. From what Mr Ashworth had told him, [164] said he believed that [154] had gone to Mr Dutfield’s flat after [154] couldn’t get hold of him on the phone, and that [154] had then discovered the body.<sup>53</sup>

70. A police running sheet (6/2/3)<sup>54</sup> refers to contact with Mr Ashworth at his home address on 21 November 1991 during which Mr Ashworth told police:

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<sup>50</sup> Running Sheet 6/2/3 dated 26 November 1991 (SCOI.10067.00076).

<sup>51</sup> Statement of Arthur William Ashworth (n 3) at [11].

<sup>52</sup> Statement of [164] dated 25 November 1991 (SCOI.00027.00048).

<sup>53</sup> Statement of [164] (n 52).

<sup>54</sup> Running Sheet 6/2/3 (n 50).



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- That on 20 November he had travelled to [164] house in Woollahra via Wynyard, where he dropped off a pair of blue trousers at the Dry Cleaners.
  - That the next day, the 21st (the day he was being spoken to) he collected the trousers. However, he said that he had not been wearing these on the 19th. He gave police what he described as his “*brown rig*” including brown pants, brown shoes, beige shirt and light coloured jacket that he said he had been wearing on the 19th.
  - He stated that he was certain of his movements on the 19th and added that he had seen a male person, between 20 and 30 years of age step into the lift as he left the block.
71. The police running sheet states that Mr Ashworth was to be further interviewed and a further statement was to be obtained from him, though it seems that this never occurred.
72. Running Sheet 8/3/1<sup>55</sup> refers to police attending a number of dry cleaning businesses on the morning of 21 November 1991 and making enquiries as to bloodstained clothing. One of the proprietors (Sheridan Gregory of Rosemont Dry Cleaners) stated that she had cleaned some bloodstained trousers on 20 November, which had stains to the pocket and cuff area. She couldn’t provide any further details, including the name of the customer. The business was located opposite where Mr Ashworth lived. Ms Gregory told police that it was not unusual to receive bloodstained clothing from residents of the retirement village.
73. On 22 November police contacted Keith Halliday from Lawrence Dry Cleaners at Wynyard (based on, it would appear, the information received from Mr Ashworth on the 21st). It appears that he confirmed that a pair of blue trousers had been taken to the business by Mr Ashworth for cleaning on 20 November 1991, and collected the next day. Mr Halliday could not assist in relation to whether or not the trousers were bloodstained.<sup>56</sup>
74. In contrast to the clothing that Mr Ashworth told police he had been wearing on 19 November (his ‘brown rig’), Police were told the following by civilian witnesses:
- On 26 November 1991, police spoke with [168]. She had been at the Mosquito Bar on 19 November, arriving at 8.20pm. She recalls seeing Mr Ashworth and Mr Dutfield at

<sup>55</sup> Running Sheet 8/3/1 dated 21 November 1991 (SCOI.10067.00032).

<sup>56</sup> Running Sheet 8/3/2 dated 24 November 1991 (SCOI.10067.00033).

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the restaurant, Mr Ashworth was wearing a grey checked shirt and they were having a very involved conversation.<sup>57</sup>

- On the same day police spoke with [REDACTED] **I69**. She also attended the Mosquito restaurant on 19 November, arriving at 8.40pm. She also recalls seeing Mr Ashworth and Mr Dutfield at the restaurant and that Mr Ashworth was wearing a grey checked shirt. She didn't see when they left.<sup>58</sup>
- On 20 November [REDACTED] **I58** made a statement in which he described seeing Mr Dutfield and Mr Ashworth entering the unit complex where Mr Dutfield lived at 5.30pm on 19 November (prior to going to dinner). He described Mr Ashworth as wearing a blue to grey coloured top with short sleeves and similar coloured pants.<sup>59</sup>

75. The evidence concerning Mr Ashworth's clothing and his movements the following day is cause for suspicion for a number of reasons:

- It seems odd that Mr Ashworth would have arranged to visit his friend in Woollahra in order to go to lunch, only to then tell him that he had a teachers' reunion to go to, and then not go to the reunion but to instead return to Mosman to check on Mr Dutfield;
- The likelihood that Mr Ashworth later lied and told [REDACTED] **I64** that [REDACTED] **I54**, and not himself, had found Mr Dutfield, suggests that he was at a loss to explain to [REDACTED] **I64** why he went and checked on Mr Dutfield rather than going to the purported teachers reunion;
- Mr Ashworth appears to have lied about the clothing he had worn when questioned by police. The description of the clothes as seen by witnesses does not match that given by Mr Ashworth. Further, the colour of the trousers he took to the drycleaners the morning after the death does potentially match the colour of the trousers he wore, as seen by the witness [REDACTED] **I58**

76. This evidence is consistent with Mr Ashworth, having killed Mr Dutfield, seeking to appear "normal" the following morning by keeping his commitment to visit his friend, while also returning to the crime scene, perhaps to deal with potentially incriminating aspects of it, while also arranging to have the

<sup>57</sup> Running Sheet 5/10/1 – [REDACTED] **I68** (Mosquito Bar) dated 17 November 1991 (SCOI.10067.00088).

<sup>58</sup> Running Sheet 5/8/1 – [REDACTED] **I69** (Mosquito Bar) (n 49).

<sup>59</sup> Statement of [REDACTED] **I58** (neighbour) (n 40).

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trousers he wore at the time of the death dry cleaned at Wynyard (notwithstanding that there were drycleaners much closer to where he lived).

### *Forensic Evidence implicating Mr Ashworth – Fingerprint*

77. According to SF Hamish investigators, the original investigation received fingerprint results identifying a fingerprint on the murder weapon (the tape dispenser) as belonging to Mr Ashworth.<sup>60</sup> This was not a matter that was in the material presented to the Coroner, and when interviewed by SF Hamish investigators in 2010, the original OIC said that he was not aware of this at the time.<sup>61</sup>
78. In his statement made on 20 November 1991 Mr Ashworth had stated that the tape dispenser was originally his, and that he had left it in the flat when he had moved to the retirement village (possibly providing an innocent explanation for the presence of a fingerprint).<sup>62</sup>
79. Analysis of the documentary evidence relating to the fingerprint in question indicates as follows:

- In an email from officer Craig Borton of “Major Crime Section Fingerprint Ops” dated 11 May 2010 to Detective Stephen Hungerford<sup>63</sup>, the OIC of SF Hamish, Office Borton states as follows:

*“I have again compared Case N167016 (prints on Tape dispenser) against fingerprints of Arthur Ashworth. Graph W1 is identified as the right ring finger of Ashworth. I am unable to identify the remaining graph W2 as Ashworth. Was possibly incorrectly written off as Fully Eliminated in 1991. Graph W2 has now been scanned onto NAFIS with No Hit”*

- The observations of officer Borton as to the relevant print having been potentially incorrectly eliminated in 1991 appears to be consistent with photos of the relevant fingerprints from the original investigative material. Notations made on the back of the photos indicate that the print or prints had been either fully or partly eliminated at the time.<sup>64</sup> Other notations and records are consistent with Arthur Ashworth having been incorrectly “fully eliminated” as a source of the prints at the time of the original investigation.<sup>65</sup>

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<sup>60</sup> Strike Force Hamish Post-Operational Assessment (n 7), p. 6.

<sup>61</sup> Investigator’s Note – Dennis O’Toole (OIC from 1991) (n 6).

<sup>62</sup> Statement of Arthur William Ashworth dated 20 November 1991 (n 3) at [15].

<sup>63</sup> Emails between Stephen Hungerford and Craig Borton re Exhibits in Dutfield Murder dated 11 – 14 May 2010 (n 14).

<sup>64</sup> Part Elim – Ashworth 167016 – Photographs (SCOI.10283.00029).

<sup>65</sup> Fingerprint full elimination jobs dated 27 November 1991 (SCOI.10283.00024); Fully Eliminated as Arthur William Ashworth dated 2 December 1991 (SCOI.10283.00030).

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80. At the time of the original investigation the print was either not identified as belonging to Arthur Ashworth, or if it was, this information appears not to have been passed on to or acted upon by the original investigators.

### *Forensic Evidence Implicating Ashworth - DNA*

81. As mentioned earlier, evidence collected at the scene in 1991 included a bloodied tissue located in the kitchen waste paper basket. Evidently the perpetrator had gone to the kitchen after killing Mr Dutfield, as the tape dispenser was found in the kitchen sink. The bloodied tissue had been tested at the time and found to be of a different blood type to that of Mr Dutfield. At the time of the inquest in 1994 it was noted that the tissue was retained as an exhibit so that future DNA testing could be performed on the tissue.
82. As also noted earlier, on 2 May 2005, review of the matter by the Unsolved Homicide Team resulted in recommendations for further examination of the tissue from the kitchen waste bin and cigarette butts using contemporary techniques, and the taking of an elimination DNA sample from Arthur Ashworth. Plainly these actions could have been taken somewhat earlier than 2005 given the timing of the introduction of DNA testing methodologies in New South Wales, however the initial dismissal of Mr Ashworth as a potential suspect was presumably a reason for an elimination sample not having been taken from Mr Ashworth at an earlier time.
83. The tissue was resubmitted to DAL for DNA testing in 2005, resulting in confirmation that the blood was not from Mr Dutfield. The relevant profile obtained (from a person then described as unknown source "A") was also found to match the DNA profile of blood found on a cardigan left on the arm of the lounge suite at the crime scene.<sup>66</sup>
84. It is regrettable that a DNA sample from Mr Ashworth had not already been obtained as of May 2005, nor was one taken from him in the 13 months following the recommendation that such a sample be taken, during which Mr Ashworth remained alive. If this had occurred, the DNA match between the blood on the tissue, the cardigan and Mr Ashworth could have resulted in the initiation of a prosecution against him while he remained alive, including attempts to confront him in interview as the key suspect.
85. In fact it was not until September 2008, more than two years after Mr Ashworth's death, that SF Hamish was formed with specific terms of reference for the reconsideration of exhibits and of

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<sup>66</sup> SF Hamish Investigation Plan dated 27 April 2009 (SCOI.10066.00002); s.177 Certificate of Analysis by Virginia Friedman dated 1 February 2007 (SCOI.10065.00046).

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Mr Ashworth as a suspect. It was four years after Mr Ashworth's death, in June 2010 that a forensic review of the matter was conducted. Relevant events which then occurred included the following:

- A DNA buccal swab was taken from a nephew of Mr Ashworth on 12 September 2010.<sup>67</sup> The Y DNA profile obtained was consistent with that obtained from the bloodied tissue and blood on the cardigan at the scene.
- On 18 November 2010 police took possession of a 2003 diary that had belonged to Mr Ashworth, from a family member;<sup>68</sup>
- On 15 December 2010, police received advice from DAL that DNA samples taken from the personal diary of Mr Ashworth had the same profile as those from the bloodied tissue (and therefore, also the cardigan).<sup>69</sup>

86. The totality of the available forensic evidence therefore strongly supports the view that Mr Ashworth was responsible for the attack. A fingerprint matching his has been identified on the murder weapon, and a DNA match to his blood was made with a bloodied tissue in the kitchen, where it appears the assailant had attempted to "clean things up" after Mr Dutfield was killed. Blood matching his DNA was also located on a cardigan on the lounge nearby Dutfield's body. It is noted that the tape dispenser is metal and has a serrated part for the cutting of tape. It could readily have caused a cut or abrasion to a person wielding it as a weapon.

### *Arthur Ashworth and Motive*

87. Mr Ashworth, Mr Dutfield and [154] appeared to have led a quite insular existence, spending much of their time in each other's company. While various accounts make it clear that Mr Dutfield was gay and/or bisexual, it does not appear that Mr Ashworth openly identified as gay.<sup>70</sup> Objectively, the nature of his relationship with Mr Dutfield suggests that he may well have been. Further, both family members and friends of Mr Ashworth told SF Hamish investigators that they thought that Mr Ashworth was gay.<sup>71</sup>

<sup>67</sup> Investigator's Note – [183] – DNA taken dated 15 September 2010 (SCOI.10068.00058).

<sup>68</sup> Statement of [180] dated 18 November 2010 (SCOI.10065.00006).

<sup>69</sup> Investigators Note: DNA result advised by David Bruce dated 15 November 2010 (SCOI.82158); Record of conversation between forensic biology to Det. Hungerford dated 14 June 2012 (SCOI.82160).

<sup>70</sup> Investigator's Note – [183] dated 20 September 2010 (SCOI.10068.00052); Investigators Note – [179] dated 22 September 2010 (SCOI.10068.00021); Investigators Note – [155] dated 3 November 2010 (SCOI.10068.00019).

<sup>71</sup> Ibid.

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88. It is also clear that Mr Dutfield had a significant drinking problem. On 14 November 1991 (five days prior to his death) he had been referred by his GP to his local community health centre for assistance with his alcohol use and management of anxiety. One month prior to this, in October 1991, someone (who it appears must have been Mr Ashworth) had contacted a counsellor at the same centre. The counsellor recalls the person telling her the following:<sup>72</sup>

- That he had a friend who she thinks the caller said was living with him at the time, and who was driving the caller “crazy” due to his drinking. He was drinking and causing problems in the flat;
- The caller said that the person was on an invalid pension, and that he was also causing problems with another friend;
- The caller thought that his friend would not attend alcohol counselling, and that he thought he needed psychiatric help. The counsellor tried to encourage the caller to arrange to bring the person in to see her.

89. Subsequently, the Centre completed a mental health service intake form, after a referral was made by Mr Dutfield’s GP, listing contact details of Arthur Ashworth, the referral being for alcohol and “psych” problems.

90. On the evening of his death, it seems clear that Mr Dutfield was heavily intoxicated. The Mosquito Bar proprietor stated that when entering the restaurant Mr Dutfield was quite drunk and was slurring his words.<sup>73</sup> He evidently had quite a bit more to drink after this both at the restaurant and back at his unit. His friend [154] noted<sup>74</sup> that Mr Dutfield:

*“would be very moody and when he was drinking you had to watch what you said, so that you would not offend him, because he would get upset and very angry. He was very sensitive when he had been drinking.”*

91. When spoken to by SF Hamish investigators on 4 November 2010, [154] made the following observations:<sup>75</sup>

<sup>72</sup> Statement of [166] dated 4 December 1991 (SCOI.00027.00050).

<sup>73</sup> Statement of [160] dated 21 November 1991 (SCOI.00027.00046).

<sup>74</sup> Statement of [154] dated 20 November 1991 (SCOI.00027.00045).

<sup>75</sup> Investigators Note – [154] dated 3 November 2010 (SCOI.10068.00016).

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- That Mr Dutfield did not see himself as an equal intellectually to either himself or Mr Ashworth as he was dyslexic, and as a result of this when intoxicated he would put Mr Ashworth and [ 154 ] down verbally and was quite abusive;
- He never saw Mr Dutfield use violence. He was very short and physically weak and would be incapable of fighting;
- Mr Ashworth was physically stronger than Mr Dutfield, though he had never seen him fight with anyone.

92. While evidence concerning the nature of the interaction between Mr Dutfield and Mr Ashworth on the evening of Mr Dutfield's death is necessarily limited, the fact that Mr Ashworth had previously expressed great frustration with Mr Dutfield's conduct when intoxicated, the close and possibly intimate nature of the relationship between them, the fact they had both been drinking and Mr Dutfield's high level of intoxication at the time suggests a context in which emotions may have run high between the two of them at the time the offending occurred.

### *Concluding Observations*

93. For reasons similar to those above, SF Hamish investigators reached the conclusion that Ashworth was the offender responsible for the murder of Mr Dutfield, and that had he been alive, there would have been sufficient evidence to arrest him. They were of the view that there were no outstanding investigative opportunities.<sup>76</sup>
94. In 2010 SF Hamish investigators visited the former OIC at his home address to discuss the original investigation. Mr O'Toole is recorded in an Investigation Note as stating that he did not seriously consider Mr Ashworth to be a suspect due to his age. He considered him to be physically incapable of the murder. Rather, he was of the belief that the offender was a male prostitute, or someone posing as one. He was unaware that Mr Ashworth's fingerprint was found on the murder weapon and could not say why no follow up statement was taken from him.
95. By contrast to Mr O'Toole's assessment of Mr Ashworth's physical capabilities, the assessment of mutual friend [ 154 ] clearly suggests that, despite the age difference, Mr Ashworth was physically stronger than Mr Dutfield.
96. It is therefore surprising that Mr Ashworth was not more seriously considered as a suspect at the outset, and that obvious problems with his account and conduct the day after the murder were not

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<sup>76</sup> Strike Force Hamish Post-Operational Assessment dated 2 October 2013 (n 7).

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observed and interrogated at the time. It appears highly likely that he was the offender, to the extent that further investigation does not appear warranted.

### Conclusions as to bias

97. If the original police view of the killing had been accurate, namely that it had been perpetrated by someone who was aware of Mr Dutfield's sexuality and potential vulnerability to robbery, the clear potential for it to be considered a crime involving LGBTIQ bias would be apparent.
98. However, in view of the very high likelihood that Mr Ashworth was the perpetrator, it would appear unlikely that Mr Dutfield's death was a crime involving LGBTIQ bias. While the immediate circumstances leading to it will remain unknown, it appears to have occurred in the context of a close and long-established relationship between the two men, which had been known at times to involve episodes when frustration and anger would be expressed, often associated with Mr Dutfield's heavy use of alcohol.

### Submissions as to manner and cause of death

99. Were Arthur Ashworth still alive today, there would clearly be a basis to proceed to prosecute him for the unlawful killing of Mr Dutfield. The submission now being made would be for this Inquiry to refer the matter to the ODPP with a view to that office initiating such a prosecution under its Guidelines.
100. In view of Mr Ashworth's death, it is not now possible for him to answer such an allegation. The question remains for this Inquiry as to whether, notwithstanding Mr Ashworth's death and the impossibility of him answering such an allegation, the Inquiry can proceed to make a positive finding that he was responsible for Mr Dutfield's death.
101. The fact that an individual has been acquitted of criminal charges does not preclude a subsequent finding by a court applying the civil standard of proof that the defendant did in fact kill the deceased.<sup>77</sup>
102. In *Briginshaw v Briginshaw*<sup>78</sup> Dixon J observed:

*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. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or*

<sup>77</sup> *Hytch v O'Connell* [2018] QSC 75 at [91], referring to *Helton v Allen* (1940) 63 CLR 691.

<sup>78</sup> (1938) 60 CLR 226 at 361-362.



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*indirect inferences. Everyone must feel that, when, for instance, the issue is on which of two dates an admitted occurrence took place, a satisfactory conclusion may be reached on materials of a kind that would not satisfy any sound and prudent judgment if the question was whether some act had been done involving grave moral delinquency”.*

103. In the context of coronial findings, it is generally accepted that they are to be made on the balance of probabilities. However, the greater the potential gravity of the finding, the stronger the evidence may need to be in order to satisfy the evidential burden. In *Helton v Allen*<sup>79</sup>, Dixon J endorsed a direction by a trial judge that:

*“When a crime is charged in a civil trial it must be proved strictly because the degree of proof required in a civil trial depends upon the magnitude of the thing that is in issue, and when a crime is in issue you will not lightly find that a crime has been committed, and according as the crime is grave you shall require a greater strictness of proof”.*

104. Sub-section 10(1) of the *Special Commission of Inquiry Act 1983* (NSW) (**SCOI Act**) states as follows:

*It is the duty of a Commissioner, within such period or periods as may be specified in the relevant commission, to make a report or reports to the Governor in connection with the subject-matter of the commission, and in particular as to whether there is or was any evidence or sufficient evidence warranting the prosecution of a specified person for a specified offence.*

105. This is not a matter to which sub-section 10(1) of the SCOI Act applies, given that the relevant potential “specified person” is now deceased. Were Mr Ashworth still alive, a report to the Governor under section 10(1) would have been appropriate. The evidence that could have been adduced in a trial against Mr Ashworth is strong and compelling and is of such a nature that it would be admissible in criminal proceedings.<sup>80</sup>

106. While it is not possible to conclude with certainty what the outcome of a criminal trial would have been, it is submitted that a finding by the Inquiry in the following terms is open, and should be made:

*On 19 November 1991 at his apartment in Mosman NSW, William Dutfield died as a result of head injuries received after he was struck repeatedly in the head with a metal tape dispenser by Mr Arthur Ashworth.*

107. Accordingly, it is further submitted that the death of Mr Dutfield is not “unsolved”, and therefore does not fall within category A of the Inquiry’s terms of reference.

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<sup>79</sup> (1940) 63 CLR 691 at 711.

<sup>80</sup> Under sub-section 9(4) of the SCOI Act, in the context of dealing under section 10 with offences that may have been committed, the Commissioner is required to disregard evidence that would not be likely to be admissible in relevant criminal proceedings.

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**Submissions as to recommendations**

108. Given that the matter can be considered to have been solved in circumstances where the likely perpetrator is deceased, there are no recommendations arising.

William de Mars  
Counsel Assisting