



Special Commission of Inquiry into LGBTIQ hate crimes

SUBMISSIONS OF COUNSEL ASSISTING

24 March 2023

IN THE MATTER OF MARK STEWART

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. Mark Stewart (formerly Mark Spanswick) died on 10 or 11 May 1976 at a headland near Manly. Because that headland was sometimes referred to, including by the Coroner in this case, as “the Fairy Bower headland” (although in fact it is much closer to Shelly Beach than to Fairy Bower beach, which is some distance away and further north), the expression “Fairy Bower headland” is also used in these submissions. Mr Stewart was 18 years old at the time of his death.

Circumstances of death

3. At around 10:00 am on 11 May 1976, Mr Stewart’s body was discovered lying on the rocks at the base of a cliff about 250 metres south of the Fairy Bower headland. He had last been seen at 9:30pm on 9 May 1976 at the Hilton Hotel on George Street in the Sydney Central Business District (**CBD**), where he had booked a hotel room for two nights.

Findings of post-mortem examination

4. Forensic pathologist Dr Thomas Oettle conducted a post-mortem examination at 11:00am on 14 May 1976. In a post-mortem report dated 3 June 1976, Dr Oettle recorded the direct cause of death as “multiple injuries” and estimated that death had taken place three to four days previously (i.e. 10 or 11 May 1976).¹

¹ Post-mortem report of Dr Thomas Howard Godfrey Oettle, dated 3 June 1976, 1 (SCOI.02724.00009).

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5. Dr Oettle recorded numerous injuries, including splitting on the left side of the scalp in the parietal region; extensive shattering to the skull; gross laceration of the brain and a thin extradural and subdural haemorrhage; several parchment scrape abrasions on the back left side of the body; fracturing of the left humerus, pelvis, left femur, left tibia and fibula; fracturing of the C3 spine with a small amount of surrounding haemorrhage; mediastinal haemorrhage (in the thoracic cavity); and tearing of the trachea.²
6. In relation to Mr Stewart's organs, Dr Oettle found extensive tearing in both lung hilar regions, with small amounts of blood inhaled and in air passages; tearing and a small blood clot in the pericardial sac of the heart, and occasional flecks of fibrous change in the myocardium; gross tearing through the centre of the liver, extending into the left and right sides; extensive tearing of the spleen; and 100ml of free blood present in the abdomen, 450ml present in the left chest cavity and 100ml in the right chest cavity.³
7. Toxicology testing was limited to testing for the presence of alcohol. No alcohol was found in Mr Stewart's blood.⁴

Persons of interest

8. No persons of interest in relation to the death were identified at the time of Mr Stewart's death, nor subsequently.

Indicators of LGBTIQ status or bias

9. The evidence does not disclose whether Mr Stewart identified as gay, bisexual and/or queer. However, the area where Mr Stewart's body was found, the headland area rising to the south of Shelly Beach, was adjacent to, or part of, a known beat.
10. The only property found on Mr Stewart's body was a small piece of notepaper with the name and telephone number of a hotel on one corner. According to the statement of the officer in charge of the investigation (**OIC**), the hotel whose name was on the notepaper was the "Chevron Hotel, Sydney". The notation "7.20 11.5.76" was written in biro on the paper.⁵ The notepaper itself is no longer able to be located by the NSW Police Force (**NSWPF**): see [17] below.
11. There is reason to question whether the OIC accurately recorded the name of the hotel which was on the notepaper. The Chevron Hotel was in Macleay Street, Potts Point, and had been at one time

² Ibid.

³ Ibid, 1-2.

⁴ Toxicology report, dated 20 May 1976 (SCOI.02724.00010).

⁵ Statement of Senior Constable Keith Douglas Thoms, undated, 1 (SCOI.02724.00019).

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referred to as the “Chevron Hilton”: see [94] below. However, as noted above, Mr Stewart had booked in to stay at the Hilton Hotel in the Sydney CBD.

12. If the notepaper was indeed from the Chevron Hotel (in Macleay Street in Potts Point), it may be of relevance that in the 1970s the Chevron Hotel had a popular bar called the Quarterdeck Bar that was frequented by gay men. If Mr Stewart visited the Chevron Hotel at some time proximate to his death, that may provide some support for the possibility that he identified as gay, bisexual and/or queer.
13. Although involving some speculation, Mr Stewart’s desertion from the New Zealand Navy at an early age and his apparent self-imposed estrangement from his family may also be consistent with him being a young man who was coming to terms with a non-heteronormative sexuality in a challenging environment in the 1970s.
14. These matters are further referred to later in the submission. In summary, however, while some circumstantial matters suggest the possibility that Mr Stewart may have been gay, bisexual and/or queer, no firm conclusion can be reached concerning his sexuality.

Exhibits: availability and testing

15. Apart from the notepaper referred to above, other physical evidence found near Mr Stewart’s body included a piece of Banksia tree, which was similar to the trees growing at the top of the cliff about 150 feet above.⁶ A men’s Seiko wristwatch was also recovered about 21 feet further east of the body. The watch had stopped at “8.02 TUE 11”.⁷
16. Although not mentioned in any police statement, the P79A Report of Death to Coroner refers to the clothing worn by Mr Stewart as pale green slacks, a bone-coloured belt, bright green sneakers, a cream body shirt, blue denim jacket, white cotton singlet and blue floral under briefs. His shoes were off but still laced and were in close proximity to the body.⁸ The P79A also mentions a cigarette lighter, stainless-steel comb and \$15.27 as property that was found with Mr Stewart’s body. A description of the clothing in similar terms appears in a local newspaper article published on 14 May 1976, adding the detail that the bright green sneakers had yellow stripes and describing the shirt as fawn coloured.⁹

⁶ Statement of Senior Constable Keith Thoms (n 5), 1; statement of Constable Ronald James Fyson, undated (SCOI.02724.00017).

⁷ Ibid.

⁸ P79A Report of death to Coroner, dated 13 May 1976, 1 (SCOI.82449).

⁹ ‘No clue to dead youth’, *The Manly Daily*, 14 May 1976, 1 (SCOI.82452).

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17. There is no evidence that there has ever been any forensic testing of these items. The present location of the items, including the notepaper, is not known by the NSWPF and therefore no testing of them is possible.¹⁰ There is no evidence that any photographs were taken of any of the items.

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

18. An inquest was conducted by City Coroner John Goldrick on 16 July 1976. The Coroner's finding was that Mr Stewart died on 11 May 1976 at Manly "of multiple injuries sustained then and there as the result of falling from the clifftop of Fairy Bower Headland but whether such fall was accidental or otherwise the evidence adduced does not enable me to say".¹¹
19. The Coroner also found:

I am satisfied there are no circumstances giving rise to suspicion of foul play but whether or not the fall which caused the death was accidental or was intended by the [deceased] I am not able to determine on the evidence, I will make an open finding as to that.¹²

Features of / concerns with original police investigation

Context – Gay hate crime on the Northern Beaches in the 1970s

20. An evaluation of the nature of the police investigation of this matter requires some broader consideration of the policing and social context of the era, now over 45 years ago.
21. Evidence in other matters being considered by the Inquiry suggests that some NSWPF officers investigating deaths in the late 1980s and early 1990s at times gave little or no attention to the possibility that they may have been homicides motivated by gay hate, notwithstanding that, based on the objective circumstances, there was reason to suspect that they were, or may have been, homicides of that nature. It is suggested that this has particularly been the case for deaths that have involved a fall from a cliff, where the death may have been too readily assumed to have been an accident or suicide.
22. If this was the position in the late 1980s, it is submitted that there is even more reason to expect that it was also often a feature of the approach of police to such deaths in the 1970s. The Inquiry has heard ample evidence of the historically low levels of awareness and acceptance of the LGBTIQ community in the general community in that era as well as evidence of low levels of awareness and acknowledgement at that time of crimes committed against members of the LGBTIQ community. The

¹⁰ Statement of Detective Sergeant Neil Sheldon, dated 16 March 2023, [10] (SCOI.82812).

¹¹ Findings of City Coroner John Brian Goldrick, dated 16 July 1976 (SCOI.02724.00001).

¹² Transcript extract of inquest before Coroner Goldrick, undated (SCOI.02724.00007).

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environment in which policing occurred in the 1970s, it is submitted, was not conducive to the detection of such crimes.

23. Undoubtedly, assaults of gay men occurred in areas of the northern beaches of Sydney during the 1970s. For example, there is a documented instance of a gay hate homicide in a suburb near Manly in late October 1975, less than seven months prior to Mr Stewart's death. That matter involved a number of young navy recruits who were convicted of the murder of a man at Curl Curl Beach, having met the victim (Phillip Jones) and his friend at a hotel in Manly Vale earlier in the evening. Perceiving the men to be gay, the sailors lured them to the beach and assaulted both of them, resulting in the death of Mr Jones.¹³

Extent of awareness among police of the possible relevance of proximity to the North Head beat

24. The extent of understanding among local police of the existence of a beat at North Head at the time is the subject of inconsistent accounts. The OIC in relation to Mr Stewart's death has told the Inquiry that he had not been aware of the existence of the beat in 1976, and it is not mentioned in the documentary record of the investigation.
25. However, the OIC had not been stationed at Manly for a lengthy period at the time of Mr Stewart's death. The Strike Force Parrabell review of the matter acknowledged the beat's existence, which has been well documented elsewhere, both in evidence before the Inquiry and in other proceedings.
26. Moreover, contemporaneous material suggests that at least some Manly police must have been aware of it by the mid-1970s. For example, a *Manly Daily* newspaper article published on 27 April 1977, less than 12 months after Mr Stewart's death, refers to a "*Starsky and Hutch' beach patrol*" policing crime in the beach areas of Manly and that the patrol featured plain clothes officers who had, among other things, "busted homosexual activities at North Head".¹⁴

The possibility of homicide was never seriously countenanced

27. The police investigation of the matter never appears to have seriously countenanced the possibility that the death may have been a homicide. Rather, its focus was on identifying the body and identifying someone who knew Mr Stewart. This included making enquires at the local Water Board depot

¹³ See Exhibit 2, Tab 98, Lex Watson, 'Australian Gays Murdered in 1975', *Campaign* (Sydney), February 1976, 3 (SCOI.76852); Exhibit 2, Tab 30, Thomas Poberezny-Lynch, *'We All Thought They Were Poofers': Anti-Homosexual Murder and Violence in Australia, 1970-1980* (Honours Thesis, University of Sydney, 2014), 6-8 (SCOI.76829).

¹⁴ Exhibit 12, Tab 27, '90 arrested by new police beach unit', *The Manly Daily*, 27 April 1977, 1 (SCOI.82350).

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(situated at North Head) in case someone fitting Mr Stewart's description was an employee and checking at a "local employment office".¹⁵

28. Police made observations of items in the vicinity of the body and conducted a search of at least a part of the Fairy Bower headland. They made observations of the terrain at the top of the cliff and the lack of any obvious disturbance in the clifftop area. Beyond this, there appears to have been little investigation by police into the circumstances of Mr Stewart's death. There are no photographs or other documents relating to the location and position of the body, or of Mr Stewart's possessions. As a result, it is difficult to now accurately identify the location where the body was found.
29. Although the timing of Mr Stewart's death cannot be pinpointed with certainty, there was good reason for police to suspect that Mr Stewart had met his fate earlier that morning, potentially only two hours prior to discovery of his body at 10:00am. This is based on the state of the body, the time at which the Seiko watch appeared to have stopped (8:02am on 11 May) and the time written on the notepaper (7.20 on the 11th).
30. Had there been an openness to the possibility that Mr Stewart's death may have involved another party, there may have been opportunities for police to immediately canvas for information, based on Mr Stewart's young age, distinctive clothing and physical appearance. Once hotel receptionist Patricia Cupitt's statement had been taken, on 7 July 1976, such canvassing could have taken account of the distinctive accent that she had noticed Mr Stewart to have. Such canvassing could have involved residents of houses on the walk between Manly Beach and Shelly Beach, and those houses closest to the Fairy Bower headland at the end of Bower Street, as well as Manly ferry staff and ticket sellers who were on duty early on 11 May. Obvious questions may have included whether, if noticed, Mr Stewart had been accompanied by anyone, and whether anyone was observed in his vicinity or otherwise noticed to have been acting in a manner that aroused suspicion.
31. There appears to have been no attempt made to speak with hotel staff (other than the receptionist, Ms Cupitt) to obtain information about anything that may have been known of Mr Stewart's movements at any time after he checked in, including all day on 10 May and the morning of 11 May.
32. The OIC has provided the Inquiry with his limited recollection of his involvement in this matter. It is not suggested that criticism should be made of him or other individual NSWPF officers who were involved in the investigation. The point is to observe that the social environment and policing practices of the

¹⁵ P109 Occurrence Pad entry, dated 12 May 1976 (NPL.0134.0001.0001).

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era do not appear to have been conducive to considering and detecting whether a death in these circumstances may have been a gay hate homicide.

Strike Force Parrabell

Use of the Bias Crimes Indicators Form

33. All ten indicators in the Bias Crimes Indicators Review Form (BCIF) were answered “Insufficient information”.
34. The form was completed, it seems, under the misapprehension that the Hilton Hotel (in the CBD) and the Chevron Hotel (in Potts Point) were one and the same. It appears to conflate the two hotels on four separate occasions.¹⁶ In one instance it states, “The Chevron Hotel is in fact the Hilton Hotel, the place that STEWART had stayed at for two nights before his death.”¹⁷ In another instance it states, “STEWART stayed at the Chevron Hotel (also known as the Hilton Hotel), for two nights prior to his death.”¹⁸
35. The two hotels are not the same. While it is clear that Mr Stewart checked into the Hilton Hotel (in the CBD) on 9 May 1976, and that his personal belongings were located there, the possibility exists that he may have separately visited the Chevron Hotel (in Potts Point) while in Sydney. The likelihood of this turns on whether or not police investigating the matter correctly recorded the Chevron Hotel (as opposed to the Hilton Hotel) as the hotel name on the notepaper found on Mr Stewart. The conflicting evidence on this matter is discussed later in the submission.
36. The BCIF also states as fact that Mr Stewart stayed at the Hilton Hotel on the night of 10 May 1976. Although he was booked to do so, there is no clear evidence that he was seen at the Hilton Hotel after checking in at 9:30pm on 9 May 1976.
37. One consequence of the assumption in the BCIF that the two hotels were one and the same is that Strike Force Parrabell officers did not turn their minds to the possibility that Mr Stewart may have attended the Chevron Hotel, the bar of which was known as a popular venue for gay men,¹⁹ at some time proximate to his death.

¹⁶ Strike Force Parrabell Bias Crimes Indicators Review Form – Mark Stewart, undated, 5, 6, 16 (NPL.0115.0002.3655).

¹⁷ Ibid, 6.

¹⁸ Ibid, 16.

¹⁹ See below at [95]-[96].

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Results of Strike Force Parrabell

(a) The “General Comment” and “Summary of Findings” boxes at the end of the BCIF

38. As noted above, the ten Indicators in the BCIF are all answered as “Insufficient Information” (to make a determination as to bias). The ten “General Comment” boxes are broadly consistent with that view. The Summary of Findings also categorises the case overall as “Insufficient Information”, and concludes that “[b]ecause of the lack of evidence in being able to determine how STEWART died, there is also insufficient information available to determine whether bias motivation was involved in his death.”²⁰

(b) Case Summaries

39. The Strike Force Parrabell case summary (no. 1) for this matter reads as follows:

Identity: Mark Stewart (Spanswick) was 19 years old at the time of his death.

Personal History: Mr Stewart was born in Port Moresby (Papua New Guinea) in 1957 before moving to Australia, England and then Fiji in 1962. Mark changed his name from Spanswick to Stewart by deed poll and was last seen alive at the Sydney Hilton Hotel on 9 May 1976 where he had booked a room for two nights.

Location of Body/Circumstances of Death: Mr Stewart’s body was discovered on rocks below a cliff about 250m south of the Fairy Bower Headland, Manly.

Sexual Orientation/Psychological Health: Mr Stewart’s sexual orientation or psychological health at the time of his death could not be confirmed. His family indicated that Mr Stewart knew the Fairy Bower area well as his family holidayed there regularly when he was young. No suspects or witnesses were identified who saw Mr Stewart or anyone else on the Fairy Bower Cliff prior to his death.

Coronial/Court Findings: The Coroner found, *‘The deceased died of multiple injuries sustained then and there as the result of falling from the cliff top of Fairy Bower headland but whether such fall was accidental or otherwise the evidence adduced does not enable me to say.’*

SF Parrabell concluded there was insufficient information to establish a bias crime²¹

40. Unsurprisingly, given that the BCIF did not consider the possibility that Mr Stewart had visited the Chevron Hotel, nor does the case summary mention this possibility. Although the BCIF does mention the existence of the beat at North Head, this is not mentioned in the case summary.

²⁰ Strike Force Parrabell Bias Crimes Indicators Review Form – Mark Stewart (n 16).

²¹ Exhibit 6, Tab 49, Strike Force Parrabell Case Summaries – Mark Stewart, 1 (SCOI.76961.00014).

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(c) Academic review

41. The review by the Flinders academics also categorised this case as “Insufficient information.”²² In explaining what ‘insufficient information’ means in the context of their approach generally, the academic team stated 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.²³

Investigative and other steps undertaken by the Inquiry

Attempts to locate and contact family members

42. Efforts were made to contact surviving family members of Mr Stewart. The Inquiry has made contact with Mr Stewart’s sister, who is one year younger than Mr Stewart. Although Mr Stewart’s sister could shed little light on the likely manner of his death, she was able to provide some information about the family’s visits to Sydney in the years prior to Mr Stewart’s death.²⁴

Summonses issued

43. A summons to the NSWPF was issued on 18 May 2022 for, *inter alia*, all NSWPF investigative material, including any material held or created by the Unsolved Homicide Team, in relation to the death of Mr Stewart (summons NSWPF1). No investigative file was produced for Mr Stewart’s matter. Nor were any occurrence pad entries produced. However, a number of Special Crime Squad synopsis books were provided to the Inquiry on 23 August 2022 in an archive box labelled “Investigations – Unsolved murders – 1977 – (Box 1)”.
44. A further summons was issued to NSWPF on 28 September 2022 requesting the exhibit book entries for Mr Stewart’s watch and the handwritten note, to ascertain whether the exhibits had been retained and their current location (summons NSWPF22).²⁵ On 11 October 2022, NSWPF advised that it had not located any documents responsive to the request and that the May 1976 Manly Police Station Exhibit Book was unable to be located.²⁶

²² Ibid.

²³ Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell: Final Report* (Report, June 2018), 54 (SCOI.02632).

²⁴ See statement of Caitlin Healey-Nash, Senior Solicitor Assisting the Inquiry, dated 21 March 2023, [4]-[7] (SCOI.82814).

²⁵ Summons to produce to NSW Police Force (NSWPF22), dated 28 September 2022 (SCOI.82448).

²⁶ Email from Office of the General Counsel, NSW Police Force, to Solicitor Assisting the Inquiry re Summons NSWPF22, dated 11 October 2022 (SCOI.82446).

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45. A third summons (dated 13 February 2023) was issued to NSWPF on 16 February 2023 requesting any Report of Occurrence at Manly Police Station dated between 10 and 31 May 1976 which relates to the discovery of a body at or around Fairy Bower or North Head, Manly, or any subsequent investigation of such a matter (summons NSWPF61).²⁷ On 22 February 2023, NSWPF produced four occurrence pad entries dated 11, 12, 13 and 25 May 1976 relating to Mr Stewart's death.²⁸
46. These occurrence pad entries are of some significance in relation to the question of whether or not the note in Mr Stewart's possession was accurately recorded by the OIC as bearing the name of the Chevron Hotel. A reference in one of these occurrence pad entries lends weight to the suggestion that the OIC is likely to have mistakenly recorded the name as the Chevron Hotel, instead of the Hilton Hotel. It is a matter of some frustration that these occurrence pad entries were not produced to the Inquiry in answer to its very first summons, issued nine months earlier, which explicitly sought such documents.
47. On 3 March 2023, the Inquiry requested a formal statement from NSWPF regarding the status of all exhibits identified in connection with Mr Stewart's matter, including the Seiko wristwatch and the notepaper, along with a gold cigarette lighter and steel comb listed in a *Manly Daily* article dated 14 July 1976.²⁹ On 16 March 2023, NSWPF provided a statement from Detective Sergeant Neil Sheldon, which outlined that, following extensive searches and enquiries within NSWPF, no exhibits or records of the exhibits could be located.³⁰ Detective Sergeant Sheldon also considered that no further avenues of enquiry are available to locate the exhibits.³¹
48. A summons was issued to the Queensland Police Service (**QPS**) on 20 December 2022 requesting a criminal history and any intelligence holdings (including last known address) for Mr Stewart (summons QLDPS3).³² By a return letter of 11 January 2023, the QPS advised that no such documents had been located.³³
49. A summons was also issued to the Hilton Sydney Hotel on 10 October 2022 for any records relating to Mr Stewart as a hotel guest in May 1976 (summons HSH1).³⁴ On 11 October 2022, Hilton Sydney Hotel

²⁷ Summons to produce to NSW Police Force (NSWPF61), dated 13 February 2023 (SCOI.82450).

²⁸ P109 Occurrence Pad entries, dated 11-13 and 25 May 1976 (n 15).

²⁹ Letter from Solicitor Assisting the Inquiry to Office of the General Counsel, NSW Police Force, re: Request for further information regarding Mark Stewart exhibits, dated 3 March 2023 (SCOI.82813).

³⁰ Statement of Detective Sergeant Sheldon (n 10), [9].

³¹ *Ibid*, [10].

³² Summons to produce to Queensland Police Service (QLDPS3), dated 20 December 2022 (SCOI.82463).

³³ Letter from Queensland Police Service to Solicitor Assisting the Inquiry re Summons QLDPS3, dated 11 January 2023 (SCOI.82456.00001).

³⁴ Summons to produce to Hilton Sydney Hotel (HSH1), dated 10 October 2022 (SCOI.82453).

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advised by email that no records were available, as guest records and records of security incidents are destroyed after 10 years.³⁵

50. A summons to NSW Health Pathology – Forensic Medicine was issued on 22 August 2022 for all records held in relation to Mr Stewart, including photographs, CT images and/or notes relevant to his autopsy on 14 May 1976 (summons DOFM1).³⁶ An 18-page electronic file relating to Mr Stewart was produced on 30 August 2022 containing the P79A Report of Death to Coroner, Dr Oettle’s post-mortem report, and the toxicology report of Mr Paul Donkin.
51. A summons to the NSW Registry of Births, Deaths and Marriages was issued on 23 August 2022 in respect of Mr Stewart (summons BDM2). A death certificate was produced on 25 August 2022, along with certificates recording that a change of name search and birth search yielded no result.

Professional opinions obtained

52. The Inquiry sought and obtained a report dated 15 December 2022 from Dr Linda Iles, forensic pathologist and Head of Forensic Pathology Services at the Victorian Institute of Forensic Medicine, in which she addressed the following questions posed to her by a letter of instruction of 5 October 2022:
1. Following your review of your briefing material, please identify:
 - a. any additional areas of medical investigation or expert opinion you consider would assist his Honour on the issues of Mr Stewart’s injuries and cause of death; and
 - b. if relevant, appropriate experts from whom his Honour may wish to seek further expert opinion.
 2. Your view as to the adequacy of the post-mortem investigations conducted with respect to Mr Stewart.
 3. Your view as to the medical cause of Mr Stewart’s death (including, if relevant, any reasons for taking a different view to that formed by Dr Oettle). Without limiting the matters which you may consider relevant to this question, please address:
 - a. The likelihood of the pulmonary hilar tears (with no report of broken ribs) with this type of fall.
 - b. The small amount of blood inhaled and in air passages in the lungs.
 4. Your view as to the timing of Mr Stewart’s death. Without limiting the matters which you may consider relevant to this question, please address:
 - a. Whether you agree with the estimated time of death expressed in the original autopsy report. Why/why not? What factors relevant to

³⁵ Email from Director of Human Resources, Hilton Sydney, to Solicitor Assisting the Inquiry re Summons HSH1, dated 11 October 2022 (SCOI.82438).

³⁶ Summons to produce to Department of Forensic Medicine (DOFM1), dated 22 August 2022 (SCOI.82536).

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Mr Stewart's death impact upon the precision with which time of death can be estimated?

- b. If it is possible that Mr Stewart died prior to the stopped time on the wristwatch found near his body "8.02 TUE 11". Why/not?
5. Your view as to whether Mr Stewart's injuries were consistent with misadventure, suicide, or foul play. Without limiting the matters which you may consider relevant to this question, please address:
 - a. The position Mr Stewart was found in (i.e. face down, 20 feet from the cliff face).
 - b. The fractures and abrasions down the left side of Mr Stewart's body (including the parchment scrap abrasions on the left, back side of the body).
6. Please provide any other comment, within the area of your expertise, regarding the likely cause of Mr Stewart's death.³⁷

Dr Iles' report is discussed below at [89]–[93].

Further evidence from Senior Constable Thoms

53. The Inquiry made contact with Senior Constable (SC) Thoms, the OIC of the original investigation, as a result of which he provided a brief statement to the Inquiry. The statement is ultimately of limited assistance. Given the length of time that has elapsed since Mr Stewart's death, it appears that the contemporaneous records provide the most reliable account of events. SC Thoms had been stationed in Manly for no more than 12 months prior to Mr Stewart's death. He recalled that there was nothing on Mr Stewart's body except the piece of notepad paper, and that a Seiko wristwatch was found nearby. His recollection is that he was able to identify the body as Mr Stewart with the assistance of a jeweller, by means of a "jeweller's mark" in the Seiko wristwatch. He did not have an independent recollection of the name of the name of the hotel that appeared on the notepad. While he suggests that he made contact with the hotel where Mr Stewart had been staying from a phone number which appeared on the notepad, the reliability of this recollection is uncertain, as in other respects his recollection of contact with the hotel appears to be mistaken.³⁸

Media searches

54. The Inquiry undertook a manual search of the *Manly Daily*, *Sydney Morning Herald*, *Daily Telegraph*, *Daily Mirror* and *Sun* newspapers for the period 10 to 16 May 1976. The following articles were identified:

³⁷ Letter of instruction to Dr Linda Iles dated 5 October 2022, 4-5 (SCOI.82462).

³⁸ Further statement of Keith Thoms, dated 28 February 2023, [9]-[12] (SCOI.82809). Mr Thoms suggests that the Hotel contacted police after a period of two weeks, whereas this contact appears to have occurred after only two days.

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- a. On 12 May, the discovery of Mr Stewart’s body was referenced in the *Sydney Morning Herald*, which described the body of an unidentified boy “aged about 15” located on rocks “below a 15-metre cliff at Fairy Bower, near Manly”.³⁹ An article in the *Manly Daily* on the same day stated that police had to carry the body “several hundred metres to a steep track leading” to the Fairy Bower headland.⁴⁰
- b. On 13 May, the *Manly Daily* noted that Mr Stewart’s body has not been identified and that “photographs and fingerprints of the dead youth are expected to be circulated” that day.⁴¹
- c. On 14 May, the *Manly Daily* noted that Mr Stewart has still not been identified, but that it was thought that he had fallen from “a 50 metre cliff at 8am” on 11 May.⁴²
- d. On 18 May, the *Manly Daily* noted that police had identified Mr Stewart’s body and “established that the youth had been staying at a Kings Cross hotel”. The article also stated that Manly detectives have been in contact with “a Brisbane solicitor and officials at the British High Commission in Canberra”.⁴³

Weather data

55. The Inquiry sought and obtained requested weather data from the Bureau of Meteorology for 10 and 11 May 1976. That data indicates that it did not rain in the week prior to Mr Stewart’s fall. At 8:00am on 11 May 1976, the temperature was 14.1 degrees Celsius, with 87% humidity and a light wind (4km/h) blowing in a north-westerly direction.⁴⁴

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

56. Concerns relating to the limited focus of the investigation, and steps that ideally should have been taken have been discussed at [20]-[32] above.

Results of investigative and other steps undertaken by the Inquiry

57. 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.

³⁹ ‘Body found’, *Sydney Morning Herald*, 12 May 1976, 14 (SCOI.82455).

⁴⁰ ‘Mystery boy dies in cliff plunge’, *The Manly Daily*, 12 May 1976, 1 (SCOI.82459).

⁴¹ ‘Body not identified’, *The Manly Daily*, 13 May 1976, 1 (SCOI.82458).

⁴² ‘No clue to dead youth’ (n 9).

⁴³ ‘Cliff body identified’, *The Manly Daily*, 18 May 1976, 1 (SCOI.82454).

⁴⁴ Bureau of Meteorology Data Document CAS-37787-S5G0Y9-4, dated 20 October 2022 (SCOI.74836).

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Mark Stewart's background

58. Mr Stewart was born on 18 July 1957 in Port Moresby, Papua New Guinea. He was the second of three children.⁴⁵
59. In 1962, the Spanswick family moved to Fiji due to Mr Stewart's father John Spanswick's work with the company Burns Philp. While living in Fiji, the family visited Manly on holiday on at least three occasions for periods of six to seven weeks at a time. Mr Stewart's sister was confirmed to Inquiry officers that the family would visit Sydney for extended holidays from Fiji. She stated that they would stay in either Manly or Kings Cross. Mr Stewart's past familiarity with Kings Cross is of note in the context of conflicting evidence that he may have visited the Chevron Hotel, which was located in the Kings Cross area.
60. Mr Stewart attended school in Fiji until he was 13-14 years old. He was then sent to college in Masterton, New Zealand.⁴⁶ Following a recruitment visit to his school, Mr Stewart joined the Royal New Zealand Navy as a cadet when he was 16 years old. He was stationed at Training College in Devonport. During this time, Mr Stewart's parents received regular correspondence from him. However, after some time, Mr Stewart's letters indicated that he had become disenchanted with navy life, and he sought permission from his father to resign. In August 1974, the Navy advised Mr Stewart's parents that Mr Stewart had apparently deserted and was absent without leave.⁴⁷
61. Mr Stewart's parents emigrated to New Zealand in December 1974. They made extensive inquiries to locate Mr Stewart but to no avail. In mid-1975, John Spanswick received a telephone call from his old employer in Fiji. Mr Stewart was there and spoke with his father. Mr Stewart then flew to New Zealand and stayed with his parents for a few days.⁴⁸
62. Following the short stay with his parents in mid-1975 Mr Stewart's father drove him to Christchurch where he caught a flight to Brisbane for "an appointment". Mr Stewart's parents did not know what their son did while in Australia or where he may have lived. Mr Stewart wrote to his parents shortly after his arrival in Brisbane, saying that he had arrived safely, had a job and that everything was ok. Mr Stewart's parents did not hear from him thereafter.⁴⁹

⁴⁵ Statement of John Spanswick, dated 28 May 1976, 1 (SCOI.02724.00015).

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid, 1-2.

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63. It appears that Mr Stewart lived at a boarding house at [REDACTED] Upper Edward Street, Brisbane from around Christmas 1975 until 6 May 1976, just a few days before he died.⁵⁰ This information came from the operator of the boarding house, who was interviewed by Brisbane detectives once Mr Stewart's identity had been established.⁵¹
64. Some time prior to his death, Mr Stewart changed his name by deed poll from Mark Spanswick to Mark Stewart. There is conflicting evidence as to whether this occurred in 1974 (based on a notation in a Special Crime Squad synopsis extract)⁵² or in the early part of 1976 (as suggested by the OIC, based on inquiries made with the British consulate)⁵³. His parents were not aware of the name change. They later assumed that Mr Stewart had taken this action because of his desertion from the Royal New Zealand Navy.⁵⁴

Movements prior to death

65. As noted at [63], the operator of the boarding house where Mr Stewart had been living in Brisbane indicated that Mr Stewart had last stayed there until 6 May 1976. At some point between 6 and 9 May 1976, evidently Mr Stewart travelled to Sydney.
66. At 9:30pm on Sunday, 9 May 1976, Mr Stewart checked into room 3117 at the Hilton Hotel. It is possible therefore that he may have stayed elsewhere in Sydney for one or two nights prior to this. He advised the Hilton Hotel receptionist, Ms Cupitt, that he intended to stay for two nights. Ms Cupitt did not see Mr Stewart after that time.⁵⁵
67. Mr Stewart showed Ms Cupitt a driver licence (later found in his belongings in the hotel room) as identification.⁵⁶ Registration details recorded by the hotel indicate Mr Stewart's address as [REDACTED] Upper Edward Street, Brisbane, consistent with the later enquiries that were made at that address.
68. Ms Cupitt described Mr Stewart as slightly built, with long curly unruly shoulder length fair hair. She said he had a commanding and very self-confident manner, speaking what she described as "well-educated Public School English". In her view his manner and speech were not in keeping with his appearance.⁵⁷

⁵⁰ Special Crime Squad synopsis extract, dated 21 May 1976 (SCOI.47558).

⁵¹ Ibid.

⁵² The extract suggested that this had occurred through the Supreme Court of Queensland, via a firm of solicitors: Ibid.

⁵³ Note from Senior Constable Thoms to Coroner, dated 29 May 1976 (SCOI.02724.00011).

⁵⁴ Statement of John Spanswick (n 45), 2.

⁵⁵ Statement of Patricia Cupitt, dated 7 July 1976 (SCOI.02724.00012).

⁵⁶ Described as "old" in a property inventory from a search of Mr Stewart's room on 13 May 1976: List of personal effects from room 3117, undated (SCOI.02724.00020).

⁵⁷ Statement of Patricia Cupitt (n 55).

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69. There is no evidence as to Mr Stewart's movements after 9:30pm on 9 May 1976 when he checked into the hotel.

Discovery of body and police attendance at the scene

70. At 10:00am on Tuesday, 11 May 1976 (some 36 hours after Mr Stewart checked in to the Hilton Hotel), local fisherman Colin McGuire was walking along the rocks about 250 metres south of the Fairy Bower headland to go fishing. He saw the body of a male person lying face down on the rocks about 20 feet from the cliff face. Mr McGuire returned to the cliff top and contacted police.⁵⁸
71. Three police officers made statements concerning their attendance at the scene. At 11:00am, the OIC and Constable Ronald Fyson of Manly police attended Fairy Bower headland and were taken to the location of the body by Mr McGuire.⁵⁹ A third officer, Constable Christopher Ure, appears to have arrived shortly after these two officers "in company with other police from the Manly detectives office".⁶⁰ The statements record that Mr Stewart's body was located on rocks about 250 metres south of either "Fairy Bower headland", or "Fairy Bower", and that Mr Stewart was lying face down on rocks about 20 feet from the cliff face. The OIC stated that a piece of Banksia tree was near the body, which was similar to trees growing at the cliff top about 150 feet above. He observed that a men's Seiko wristwatch was found about 21 feet further east of the body, and that the watch had stopped at "8.02 TUE 11".
72. In the OIC's view, "[i]t was apparent that the body had fallen from the cliff top".⁶¹
73. According to Constable Ure:

We then made an extensive search of the headland near where it would appear the deceased had fallen from. This area is dense bushland with very rocky sections jutting out of the bush, there are a number of small trails leading from the roadway to the edge of the cliff. A further search was made of the edge of the cliff and this area is also overgrown with dense bush and it was noticed that there is no safety fence or any other facility to prevent persons from losing their footing and falling to their deaths.

A thorough search of whole area by police for any signs which explain how the deceased came to fall to his death was made and no sign of the persons (sic) prior presence was found. I then returned to the bottom of the cliff where I viewed the body of the deceased...⁶²

⁵⁸ Statement of Colin Richard McGuire, undated (SCOI.02724.00018).

⁵⁹ Statement of Senior Constable Keith Thoms (n 5); statement of Constable Ronald Fyson (n 6).

⁶⁰ Statement of Constable Christopher John Ure, dated 4 July 1976 (SCOI.02724.00016).

⁶¹ Statement of Senior Constable Keith Thoms (n 5).

⁶² Statement of Constable Christopher Ure (n 60).

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74. As earlier noted, the P79A Report of Death to the Coroner provides a description of the clothes Mr Stewart was wearing when his body was found. His body was removed to the cliff top with the help of the cliff rescue squad and taken to Manly District Hospital. At 1:05pm, Dr Brett Adams pronounced life extinct.⁶³

Identification of Mr Stewart

75. According to the statement the OIC made in 1976, he contacted the 'Chevron Hotel' on 11 or 12 May 1976 and left information there concerning the (then still unidentified) deceased.
76. On 12 May 1976, Mr Stewart's body was fingerprinted and photographed.⁶⁴
77. At 8:10pm on the evening of 13 May 1976, police searched Mr Stewart's actual hotel room (room 3117 at the Hilton Hotel). As a result, Constable Fyson was able to identify the body as that of Mr Stewart, from the passport located in the room. How police came to attend the Hilton Hotel is not entirely clear: see [98]-[108] below.
78. Apart from Mr Stewart's British passport, other personal effects in room 3117 included an old driver licence, electric hairbrush, toiletry bag, various items of clothing, two packets of cigarettes, and a red canvas hand bag. Notably, no wallet or money was found in his room. Police took possession of the property from the hotel room and returned with it to Manly Police Station.
79. At 9:00am on 14 May 1976, Constable Fyson attended the City Morgue and identified the body of Mr Stewart.⁶⁵ The hotel receptionist, Ms Cupitt, also attended the City Morgue on 20 May and confirmed that Mr Stewart was the man who checked into the Hilton Hotel on the evening of 9 May.⁶⁶
80. A week later, on 28 May 1976, Mr Stewart's father John attended the City Morgue where he saw and identified Mr Stewart's body to Constable Ure.⁶⁷

Involvement of Special Crimes Squad

81. Based on two entries in the Special Crime Squad synopsis books produced to the Inquiry, it is apparent that two detectives from the Special Crimes Squad came to have some involvement in the investigation. A synopsis extract dated 24 May 1976 notes: "At this stage reason for being at Fairy Bower not known, but there is no evidence to suggest foul play."⁶⁸ Ms Cupitt also refers to the two

⁶³ Certificate of life extinct, dated 11 May 1976 (SCOI.02724.00021).

⁶⁴ Statement of Senior Constable Keith Thoms (n 5).

⁶⁵ Statement of Constable Ronald Fyson (n 6).

⁶⁶ Statement of Patricia Cupitt (n 55).

⁶⁷ Statement of John Spanswick (n 45), 2; statement of Constable Christopher Ure (n 60).

⁶⁸ Special Crime Squad synopsis extract, dated 24 May 1976 (SCOI.47557).

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detectives attending the Hilton Hotel on 20 May 1976 and escorting her to the City Morgue to identify the body of Mr Stewart.⁶⁹ A third detective is described as having spoken with John Spanswick after he approached police on 28 May 1976.⁷⁰

82. The limited reference to the involvement of the officers from the Special Crime Squad, and the fact that the OIC at the inquest was the local Manly officer, SC Thoms, suggests that the involvement of the Squad did not yield information that was regarded as being of particular significance at the time. However, as noted above, it appears that Special Crime Squad officers ascertained the relevant information from the boarding house operator in Brisbane concerning the dates Mr Stewart had lived there.⁷¹

Location

83. John Spanswick said that Mr Stewart knew the Fairy Bower area fairly well as the family holidayed in Manly on at least three occasions from Fiji when Mr Stewart was a child. He said that Mr Stewart loved the walk from Shelly Beach to Fairy Bower and that he loved “climbing the rocks and going for walks”.⁷² Whether by “Fairy Bower” Mr Spanswick meant to refer to the headland or not is unclear.
84. The precise location where Mr Stewart’s body was found has not been pinpointed beyond the description given by police that it was 250 metres south of the “Fairy Bower Headland” or of “Fairy Bower”. Given the shape of the relevant landmass, this leaves some imprecision as to the starting point for measuring the 250 metres. Nevertheless, the description places it either within or very close to an area now known to have been a beat from at least some point in the 1970s until the 1990s. The type of terrain described by police at the clifftop is similar to that known to have been used as part of the beat.
85. The map attached to the submission as **Attachment A** depicts the general area. The general description in the police statements suggests that the area from which Mr Stewart fell is likely to have been somewhere in the vicinity of “Shelley Headland Upper Lookout”, although it may have been somewhat to the north or south of that location. The location in question is very close to the spot from which it appears that Paul Rath fell, approximately 12 months later, this being another death being considered by the Inquiry pursuant to Part A of its Terms of Reference.

⁶⁹ Statement of Patricia Cupitt (n 55).

⁷⁰ Note from Senior Constable Thoms to Coroner (n 53), 1.

⁷¹ Special Crime Squad synopsis extract, dated 21 May 1976 (n 50).

⁷² Statement of John Spanswick (n 45), 2.

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Weather conditions

86. The weather conditions in Sydney on 10 and 11 May 1976 were overcast, with some rain overnight. There appeared to be little wind and good visibility. The temperatures were mild.⁷³

Time of death

87. Theoretically Mr Stewart's death may have occurred any time after around 10:00pm on 9 May 1976, shortly after he checked into the Hilton Hotel. If he had intended to take his life, it would seem that he was not intending to do so until at least late on 10 May or on 11 May, given that he had booked a room for two nights.
88. The notation displayed on the Seiko wristwatch (8.02 TUE 11), suggests that he may have fallen to his death at 8:02am on 11 May 1976, and that the watch stopped because of the force of Mr Stewart's impact on the rocks. However, it is also possible that his watch continued operating for some time after he had fallen.

Expert report of Dr Iles⁷⁴

89. While allowing for changes in autopsy practice that have occurred over time, Dr Iles noted the absence of a number of matters from the original autopsy report that made review of the matter challenging. These included:
- the lack of detailed description of external injuries;
 - no comment on the presence or absence of injury to the aorta, larynx, ribs, sternal and lumbar areas;
 - no description of the presence of ano-genital injuries or pathology;
 - toxicology analysis being limited to testing for alcohol only; and
 - no photo documentation of external features.⁷⁵
90. Unfortunately there were no recorded medical observations to allow Dr Iles to consider a likely time of death, or how it was that Dr Oettle was able to indicate that it had occurred three to four days prior to 14 May 1976. The only indicator available to her was the non-medical circumstantial evidence such as the time of last sighting, the time at which the body was found and the time on his watch. In relation

⁷³ Bureau of Meteorology Data Document CAS-37787-S5G0Y9-4 (n 44).

⁷⁴ Expert report of Dr Linda Iles dated 15 December 2022 (SCOI.82457).

⁷⁵ Ibid, 4.

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to the latter, she urged caution in relation to assuming that the watch was accurate and had necessarily stopped at the time of death.⁷⁶

91. Dr Iles agreed with the post-mortem report of Dr Oettle that Mr Stewart's cause of death was "multiple injuries", and considered that Mr Stewart's injuries were consistent with a fall from a height of around 50 metres. She noted that the cause of death might be more "fulsomely" described as "multiple injuries sustained in a fall from a height".⁷⁷
92. However, Dr Iles was unable to determine the manner of Mr Stewart's death. She found that the documentation of external injuries and marks in the autopsy report was insufficient to address the presence or absence of subtle injuries that might assist consideration of the possibility of trauma having been inflicted prior to the fall.⁷⁸
93. Dr Iles was of the view that there were no additional areas of medical investigation or expert opinion that would be of assistance.⁷⁹

Evaluation and significance of references in the evidence to the 'Chevron Hotel'

a) Two distinct hotels

94. Contrary to the assumption in the BCIF that the Hilton and Chevron Hotels were one and the same, they were distinct hotels in different locations, the former in George Street in the Sydney CBD (where it still is), and the latter in Macleay Street Potts Point / Kings Cross.⁸⁰ For a period of time after its opening in September 1960, the Chevron Hotel was known as the 'Chevron Hilton' Hotel under a failed management deal with Hilton International.⁸¹ However, from 1965 until its closure in 1985 it was simply the 'Chevron Hotel'.⁸²

b) Potential relevance of the notepaper being from the Chevron Hotel

95. The downstairs bar at the Chevron Hotel, known as the 'Quarter Deck', was a well-known gay venue. The historian Gary Wotherspoon, in his book *Gay Sydney: A History*, states:

⁷⁶ Ibid, 5.

⁷⁷ Ibid, 6.

⁷⁸ Ibid, 5.

⁷⁹ Ibid, 4.

⁸⁰ Noting that Kings Cross is not a "suburb", but a descriptor of the locality in the vicinity of the junction of William Street, Darlinghurst Road and Victoria Street. Most of the Kings Cross area falls within the suburb Potts Point.

⁸¹ See McNeill D and McNamara K, 'Hotels as Civil Landmarks, Hotels as Assets: the case of Sydney's Hilton' (2009) 40(3) *Australian Geographer*, 374 (SCOI.82609).

⁸² See Chevron Hotel advertisements in *The Bulletin* dated 20 February and 11 September 1965 demonstrating the change (SCOI.82607 and SCOI.82609).

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When the new Chevron Hotel in Macleay Street opened in the early 1960s, its downstairs bar, 'The Quarter Deck', soon became another favoured drinking place for camps, not least because of the large number of young sailors among its patrons.⁸³

96. In evidence to the Inquiry given in November 2022, Mr Wotherspoon stated, when referring to Kings Cross venues:

I think in the early 1960s, the Chevron Hotel opened there and it had a Quarter Deck Bar, another place you could go. A lot of young sailors would go there for a free drink, a bit of sex later and then a bashing.⁸⁴

97. Evidence that Mr Stewart had stayed at or visited the Chevron Hotel, and/or used its notepaper to record a future time and date would not of course conclusively prove either his sexuality or the circumstances of his death. However, combined with other evidence, it would potentially lend support to a hypothesis that Mr Stewart was visiting the Fairy Bower headland area in connection with it being a beat and/or as part of a pre-arranged meeting with another person.

c) Conflicting references in the police statements

98. The earliest reference in the evidence to 'the Chevron Hotel' is in the undated statement of the OIC. The statement appears to have been made prior to the contact that police received from the Hilton Hotel on 13 May, as no reference is made to this. The concluding portion of the OIC's statement reads as follows:

... The body was then removed to the City Mortuary. On searching the body the only property found was a small piece of note paper with the telephone number of the Chevron Hotel, Sydney on it one corner and written in biro was 7.20 11.5.76. The Chevron Hotel Sydney was contacted and information left there regarding the deceased, On the 12th May, 1976, I caused the deceased to be fingerprinted and photographed.⁸⁵

99. It seems distinctly possible that the OIC, SC Thoms, erroneously recorded the name of the hotel on the notepaper as 'the Chevron Hotel', instead of 'the Hilton Hotel', possibly because there was an association in his mind between the two hotels due to the fact that the Chevron Hotel had been known as the 'Chevron Hilton' in the 1960s, but then nevertheless he or another office telephoned the actual number on the notepaper, being the number for the Hilton Hotel. This might explain how it was that police were in contact with the Hilton Hotel on 11 May 1976: see [103] below.

⁸³ Exhibit 3, Garry Wotherspoon, *Gay Sydney: A History* (New South Printing, 1st edition, 2016) 158 (SCOI.03677).

⁸⁴ Transcript of the Inquiry, 21 November 2022, T191.42.

⁸⁵ Statement of Senior Constable Keith Thoms (n 5).

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100. The evidence relating to contact between the police and the Hilton Hotel is as follows:

- a) Constable Fyson says that at 6:30pm on 13 May 1976 he had a conversation with William Muirhead, a Hilton Hotel security officer, as a result of which he went to the Hilton Hotel (in the CBD) and was shown into room 3117, in which Mr Stewart's property, including passport, were located.⁸⁶
- b) David Ford, another security officer at the Hilton (whose statement was not made until two months later), indicates that after 6:45pm on 13 May 1976, he searched room 3117 "as a result of information received". After locating Mr Stewart's personal effects and passport, "sometime later that evening" he made a phone call to Manly Police Station and had a conversation with Constable Fyson, and he later issued "certain instructions" to the other security officer, Mr Muirhead.⁸⁷
- c) In his statement (also made two months later), the security officer Mr Muirhead makes no mention of a conversation with Constable Fyson at around 6:30pm on 13 May 1976. He says that he received instructions from Mr Ford at about 7:30pm on that day regarding the occupant of room 3117. He says that at about 8:10pm he was then approached by Constable Fyson and his partner from Manly Police Station and gave them access to room 3117, after which an inventory was made of the property in the room and the officers departed with a suitcase packed with the personal effects that had been located in the room.⁸⁸

101. This evidence, with its contradictory accounts of the timing of conversations on the evening of 13 May 1976, has recently been supplemented by the police occurrence pad entry for 13 May 1976 made by Constable Fyson. It commences as follows:

From inquiries made on 11.5.76 at the Sydney Hilton Hotel re unidentified male person found at Fairy Bower on 11.5.76, I received a telephone call from Mr David Ford Security Control Officer at the Hilton Hotel, stating that a young male person answering the description of the above had booked into the Hotel on 9.5.76, but had not been seen since the 10.5.76. ...⁸⁹

102. If this entry is correct, the basis for the apparent suggestion that Mr Stewart had been seen at the hotel on 10 May is not known.

⁸⁶ Statement of Constable Ronald James Fyson (n 6).

⁸⁷ Statement of David John Ford dated 7 July 1976.

⁸⁸ Statement of William Eugene Muirhead dated 7 July 1976.

⁸⁹ P109 Occurrence Pad entry dated 13 May 1976 (n 15).

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103. In any event, however, the occurrence pad entry does indicate that on some basis, the 'Sydney Hilton Hotel' had been contacted by police on 11 May 1976. This appears to strengthen the inference that the OIC erroneously recorded the name of the hotel that appeared on the notepaper, and that in fact the notepaper bore the name of the Hilton Hotel.
104. Clearly there was some conflation in the minds of officers between the two hotels, given the number of references that are made to the Chevron Hotel. Constable Fyson refers to Mr Muirhead as the security officer of the "Chevron Hotel",⁹⁰ when in fact he was the security officer of the Hilton Hotel. Similarly, in the P79A Report of Death to the Coroner, the OIC describes the notepaper as bearing the name of the "Chevron Hilton Hotel", and says that it had been ascertained that Mr Stewart had booked into this hotel, when in fact he had not.
105. On the other hand, it is possible that the notepaper did in fact refer to the name and number of the Chevron that the officer who contacted the Hilton Hotel on 11 May did so after looking up the number for the Hilton Hotel. However, on that hypothesis, how such an officer would have arrived at a belief or understanding that the Hilton should be contacted is unclear.
106. Potentially telling in favour of the possibility that the notepaper did refer to the Chevron Hotel is the fact that the *Manly Daily* records that Mr Stewart had been staying at Kings Cross,⁹¹ suggesting that information provided to the newspaper (presumably by police) linked Mr Stewart to the Chevron Hotel at Potts Point/Kings Cross.
107. Adding to the uncertainty is that where Mr Stewart stayed on 7 and 8 May is not known, and that Kings Cross and Manly were the two locations in Sydney that he had visited on family holidays in the past. Those factors may lend some weight to the possibility that the OIC had accurately recorded the name of the hotel written on the notepaper as the Chevron.
108. It is suggested that on balance it is more likely that the OIC wrongly recorded the name that appeared on the notepaper, and that the name on the notepaper was in fact that of the Hilton Hotel. However, there remains some uncertainty about this, and the possibility undoubtedly remains that it was notepaper from the Chevron Hotel. The uncertainty around the issue serves to highlight that it is regrettable that that notepaper was not retained or photographed, and that there are no records available that enable it to now be located.

⁹⁰ Statement of Constable Ronald James Fyson (n 6).

⁹¹ 'Cliff body identified' (n 43).

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Consideration of alternative hypotheses

a) The possibility of suicide

109. The absence of relevant evidence in the police material makes it difficult to evaluate the likelihood of suicide.
110. Mr Stewart's father told police that he could not offer any reason or explanation as to why Mr Stewart would be at Fairy Bower at that time of day (it is unclear what "time of day" he is referring to), and that he did not know of anything that would cause Mr Stewart to take his own life.⁹² That opinion needs to be understood in the context of the very limited contact between Mr Stewart and his father in the 18 months prior to his death. Mr Stewart's sister was of the view that her brother's past associations with the area were happy ones, in the context of their childhood holidays.⁹³
111. Other evidence that would assist in evaluating the likelihood of suicide would include any further information regarding Mr Stewart's life in Brisbane or elsewhere in the months preceding his death. So too would any evidence concerning the motivations for his decision to desert the New Zealand Navy and to change his name by deed poll. However, other than the fact that he resided at a boarding house for around five months leading up to his death, there is no evidence of about Mr Stewart's personal relationships, health, employment, or any personal difficulties in that period which might assist in revealing his state of mind.
112. Mr Stewart's two-day booking at the Hilton Hotel could perhaps be consistent with his having intended to end his life on 10 or 11 May 1976. Similarly, the notepaper and notation could be viewed as a record intentionally left by Mr Stewart to indicate where he had been staying and the time at which he was about to take his life. (However, this seems unlikely given the bare nature of the notation and there being no indication that a pen was located at the scene.) Conversely, the existence of the note indicating a potential arrangement or plan for the time of 7:20 (whether am or pm) on 11 May might be thought inconsistent with any suicidal intention.
113. It is submitted that the possibility that Mr Stewart may have intentionally taken his own life has little support in the evidence, but cannot be ruled out entirely.

⁹² Statement of John Spanswick (n 45), 2.

⁹³ Statement of Caitlin Healey-Nash (n 24), [7].

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b) The possibility of accident

114. The terrain in the vicinity of the cliff edge as described by Constable Ure suggests the possibility that Mr Stewart could have fallen accidentally, bearing in mind his father's account that he used to love climbing around the rocks in the area on past family holidays. The presence of the broken off Banksia branch at the base of the cliff may be more consistent with either an accident or foul play rather than suicide, as its presence may indicate an attempt to grasp at a branch in circumstances where the fall was not an intentional act.

c) The possibility of foul play

115. Both the Coroner and the Special Crime Squad found no evidence to suggest foul play.⁹⁴ Certainly no evidence appears to have been located at the clifftop indicative of a struggle or assault having taken place there. It is suggested, however, that limited weight can be given to the absence of such evidence in circumstances where such a death can be effected by a push and where the autopsy report may not have adequately documented any external injury.

116. Although a sum of money (\$15.27) is noted as having been found on Mr Stewart, the absence of any wallet having been found on his person or in the vicinity at the time of death, or in his hotel room, is potentially consistent with Mr Stewart having been the victim of robbery, bearing in mind, however, that it is not known whether it was his practice to carry a wallet.

117. In summary, features of this matter that suggest the possibility that Mr Stewart may have been the victim of foul play are as follows:

- the absence of particularly compelling evidence in support of alternative hypotheses;
- the fact that the death occurred in the vicinity of a beat;
- the possibility that Mr Stewart may have attended the Chevron Hotel, the bar of which was a well-known gay venue, and the potential consistency of this with his visit to a known beat location;
- the hypothesis that Mr Stewart was gay being potentially consistent with his self-imposed estrangement from family and his departure from the New Zealand Navy, as action taken by him in coming to terms with his sexuality in a challenging environment;

⁹⁴ Transcript extract of inquest before Coroner Goldrick (n 12); Special Crime Squad synopsis extracts (n 50 and n 68).

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- the absence of a wallet in his hotel room, or at the scene at Fairy Bower; and
- the possibility that the notation on the notepaper was a reference to an arrangement to meet another person. If this were the case, bearing in mind the time that was noted, it suggests that Mr Stewart may have been with someone in the lead up to his death.

Conclusions as to bias

118. In light of the uncertain state of the evidence as to the circumstances of Mr Stewart's death, it is submitted that it is not possible to determine whether Mr Stewart's death was a homicide, and therefore it is not possible to determine whether it was the result of an LGBTIQ hate crime, although it is possible that it may have been.

Submissions as to manner and cause of death

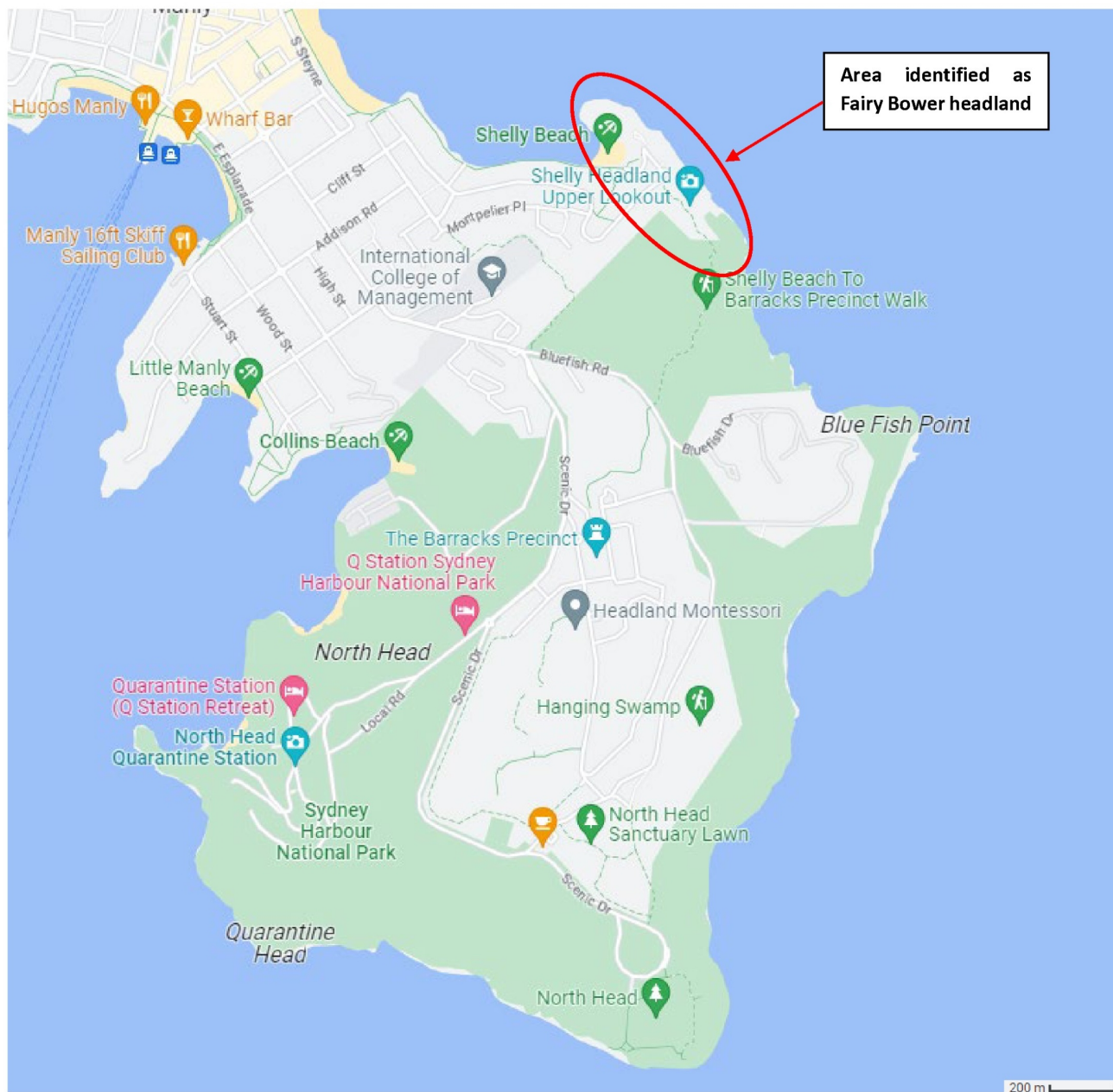
119. The evidence before the Inquiry does not enable any formal finding to be made that would distinguish between the possibilities of suicide, accident or foul play. While the Coroner's principal finding that it is not possible to determine the manner of death is supported, it is submitted that his secondary finding that foul play could be ruled out, should not be adopted by the Inquiry.
120. Further, it is submitted that the Coroner's finding that Mr Stewart died on 11 May 1976 too narrowly confines the potential time of death, in the absence of evidence as to Mr Stewart's movements between 9:30pm on 9 May 1976 and the discovery of his body at 10:00am on 11 May 1976.
121. As to cause of death, while the Coroner's finding of "multiple injuries" is consistent both with Dr Oettle's original post-mortem report and Dr Iles' review of the forensic materials, Dr Iles' recommendation is that the cause of death be more specifically described as "multiple injuries sustained in a fall from a height".
122. Accordingly, it is suggested that the Inquiry should find that Mr Stewart died on 10 or 11 May 1976 as a result of multiple injuries sustained in a fall from a height, the cause of which cannot be determined.

Submissions as to recommendations

123. There are no proposed recommendations arising from the matter.

William de Mars
Counsel Assisting

ATTACHMENT A



Map of North Head, Manly, showing area known as "Fairy Bower headland".

Source: Google Maps



Map of North Head, Manly, showing various locations.

Source: Google Earth