

SPECIAL COMMISSION OF INQUIRY INTO LGBTIQ HATE CRIMES
FURTHER SUBMISSIONS ON BEHALF OF THE SHEIL FAMILY

Introduction

1. These submissions respond to those of the Commissioner of Police dated 18 April 2023 (PS) and are filed pursuant to leave granted on 21 April 2023.¹

Submissions

Proposed findings

2. The Sheil family welcomes the expression of the Commissioner’s conclusions recorded in PS paragraphs 29 and 30. In this regard, the Sheil family submits that the Commissioner’s submissions as to the time of death in PS paragraph 29 broadly correspond with the family’s in SFS para 4.² It is significant that the Commissioner does not dispute the appropriateness of Counsel Assisting’s formulation of a proposed finding as to the manner and cause of death, i.e., that Peter died “*as a result of cervical spine injuries sustained in a fall*” with “*insufficient evidence to enable a finding to be made as to whether the fall was accidental or otherwise*”.

Police investigation

3. The position ultimately reached by the Commissioner necessarily involves acceptance that the theory advanced by Constable Strange is without sensible or real foundation. Notwithstanding the somewhat couched language (“*relatively speculative*”), the Commissioner effectively accepts so much in PS paragraph 16.³

4. Despite this, the Commissioner remains reluctant in accepting the existence of faults or recognising shortcomings in the initial investigation and subsequent events. This is not only regrettable but disappointing. Tellingly, no submissions are made by the Commissioner concerning the apparent loss of evidence, although this may perhaps be addressed as part of a general response at a different time.⁴ Instead, the Commissioner mounts several defensive positions that warrant a response.

5. *First*, the fact of dispensation of an inquest on the material then available is a reflection of the exercise of the power set out in s 14(2) and s 22 of the *Coroners Act 1980* (NSW) but it is no

¹ Reference is also made to the Sheil family’s submissions filed 18 April 2023 (SFS).

² See also CAS paragraph 69.

³ See also CAS paragraphs 64-67; SFS paragraph 11.

⁴ SFS paragraph 9.

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substantive answer given Dr Iles' opinion as to the adequacy of the post-mortem investigations and the whole of the evidence.⁵

6. *Secondly*, the current review of what in fact happened does not, without more, involve the retrospective application of “*modern investigative standards*” (*cf.* PS paragraphs 5(b), 9). The assessment of the adequacy of the initial police investigation is to be made on all of the available evidence. Contrary to PS paragraph 7, the criticisms of the investigation do not reside solely in timing⁶ but in the combined effect of what was done and not done, then and subsequently. Here, Constable Strange's *own* statement limits the period of inquiry to the “*following week*”,⁷ and other evidence indicates it was even more brief.⁸ Even assuming favourably that paragraph 8 of Constable Strange's statement does not “*provide[] a comprehensive accounting of all of the investigative steps he took*”,⁹ this does not change the facts that: there is *no* detail in the statement as to what he actually did (e.g., the names and contact details of the people to whom he did speak, when and what about) so that that kind of information could remain available; there are *no* police records¹⁰; and statements were not obtained from the family.¹¹

7. *Thirdly*, while the absence of direct evidence from Constable Strange is a relevant factor,¹² this does not prevent, as a matter of fairness or logic, this Inquiry reaching a conclusion as to the adequacy or otherwise of the initial investigation: *cf.* PS paragraph 5(c). No doubt the evidence of other police contemporaries, if available, could have been of assistance yet the documentary material would seem not to permit of the identification of such persons and the Commissioner does not suggest in his submissions who they might be, let alone their availability. As submitted, the Inquiry can draw its own conclusions based on all of the evidence, taking into account the lack of documents from the police.

8. *Fourthly*, the submission in PS paragraph 10 is most unattractive, especially where the evidence includes direct quotations and their correctness¹³ confirmed in interviews with the

⁵ Exhibit 20, tab 22 (SCOI.45162) at pages 5-6, 8-10.

⁶ There is not, in any event, any incongruity in identifying the short period in which inquiries were made and then the delay in finalising statements (for which there may be sound explanations, such as witness availability) where this gives rise to inconsistencies, such as those identified in SFS paragraph 8(b), (c).

⁷ Exhibit 20, tab 10 (SCOI.11037.00011 at paragraph 8).

⁸ See CAS paragraph 70.

⁹ PS paragraph 8.

¹⁰ CAS paragraph 23.

¹¹ See Exhibit 20, tab 21 in which Christopher is quoted saying “*Police have never contacted us to verify anything*”; see also CAS paragraph 25 noting that Mr Sheil's death has not been the subject of any review by the Unsolved Homicide Team; *cf.* PS paragraph 8.

¹² To which Counsel Assisting and the Sheil family referred: see CAS paragraph 62 and SFS paragraph 6.

¹³ With a qualification as to date, recorded in SFS paragraph 8, fn 10.

Inquiry.¹⁴ The practical effect of the Commissioner's submission would be to dismiss, or at least to give little (if any) weight to, the recorded statements of the family (especially Christopher) now in the same way that they were set aside in 1983. That course should not be condoned. Further, the faint complaint by the Commissioner of a lack of testing is hollow: no issue of substance or topic of any materiality beyond a bald generality is identified. Formal statements can be provided if considered desirable but, in all the circumstances, should not be necessary to reject this submission by the Commissioner.

Circumstances of death

9. The thrust of PS paragraphs 12-22 is to downplay the likelihood of homicide (with or without LGBTIQ+ bias) and to elevate suicide owing to mental illness. Given both the balanced content of CAS paragraphs 48-53 (as to mental illness) and 79-83 (as to homicide) and his acceptance of the appropriateness of the proposed finding, the Commissioner's approach in this section is perplexing and a point of no small dismay. It calls for a response.

10. The characterisation of the path as a "*picturesque coastal locale*" and a "*popular coastal walking track*"¹⁵ tends to ignore the obvious fact that Peter was walking that path after 8.00pm, close to 3 hours after sunset.¹⁶ It is highly improbable that the path was significantly populated by casual walkers with a benign interest in the natural scenery at that time. To recognise so much and to acknowledge that the location was a known beat does not "*unduly elevate*" the possibility of homicide (*cf.* PS paragraph 14). In the Sheil family's submission, CAS paragraphs 79-83 do not fairly bear that characterisation.

11. PS paragraphs 17-22 then traverse the issue of Peter's mental health. In isolation, PS paragraph 21-22 might be read as noting suicide as one of the possibilities. (It is not disputed that suicide is at least a possibility.) In context, however, the tenor of the Commissioner's submissions goes further.

12. From the fact of the description of Peter's mental illness, treatment and medication in the letter from the Prince of Wales hospital to the coroner, the Commissioner moves to conjecture as to possible divergence from "*conventional expectations*" (whatever they may be), disparaging remarks about Peter's self-awareness ("*was not concerned with the dishevelled state of his clothing*") and speculation as to his state of mind ("*jumped deliberately ... in an attempt to die by suicide, or for some other reason associated*

¹⁴ CAS paragraph 34.

¹⁵ PS paragraphs 13-14.

¹⁶ Exhibit 20, tab 20 (SCOI.82804).

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with a psychotic episode”). With respect, the Commissioner’s submissions risk perpetuating regrettably popular misconceptions about mental illness generally, including that it is a continuous and permanent condition, makes people unpredictable and limits their ability to function normally in society. In Peter’s particular case, the letter does not bear the weight the Commissioner seeks to give it. The preponderance of the evidence does not support the remarks.

13. *First*, the fact Peter had several episodes of several mental illness with hospitalisation over a 3 year period (which the family acknowledges¹⁷) does not, of itself, make suicide more likely on the evening in question. Other evidence indicates that it was not. While Peter had had episodic treatment in hospital, he had been referred to Clovelly Flats and the evidence from Mrs Campbell was that “*he responded to care and counselling and appeared to improve in his condition*” for which he took medication.¹⁸ On the day in question, Mrs Campbell said he was going to see his doctor. Mrs Campbell’s evidence (improved condition, treatment, medication and doctor attendances) weighs strongly against the Commissioner’s submissions. Additionally, the evidence shows that, on the night, Peter was in “*good spirits*” when he spoke with his mother.¹⁹

14. As submitted,²⁰ there is no evidence to suggest the line of inquiry from Mrs Campbell was pursued. And no statements were obtained from members of the family, including as to: their familiarity with Peter’s illness over the course of 12 years; their experience of the onsets of any periods of hypermania or psychoses as gradual rather than sudden or rapid ; their assessment of his lucidity and mood in the days before his death; and their understanding of Peter’s general aversion (whether ill or not) to the risk of physical injury or discomfort. These apparent omissions in the original investigation, as revealed by such material as is now available, sit uneasily with the Commissioner’s current speculative submissions.

15. If considered preferable, that evidence from the family can be given to this inquiry by way of reply but it should not be necessary in order to reject the Commissioner’s submissions on this issue. Overall, the objective contemporaneous evidence does not suggest suicide as more likely, as the Commissioner at one point recognises by reference to the “*outward signs*”.²¹ See also Dr Iles’ opinion that “*[n]on-pathology related evidence appears to suggest suicide is unlikely to be the manner for Mr Shiel’s*

¹⁷ Exhibit 21 (SCOI.45181).

¹⁸ Exhibit 20, tab 8 (SCOI.11037.00009 at paragraph 3).

¹⁹ CAS paragraph 53.

²⁰ SFS paragraph 8(c).

²¹ PS paragraph 21.

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*death (no reported change in mood around the time of his death; body found in a location with a shorter fall than in immediate surrounding areas)”.*²²

16. *Secondly*, remarks about Peter being “*not concerned with the dishevelled state of his clothing*” are ill-made. The clothing was not “*dishevelled*” but rather in a state of partial undress.²³ In this context, the Sheil family’s evidence is that Peter was “*always fashionably dressed, and usually very fit*”,²⁴ indicative of a pride and fastidiousness in his appearance. In any event, the point is that this cannot logically be connected to Peter’s mental illness, let alone the relative likelihood of suicide. As submitted, the state of clothing is equally consistent with other scenarios: see SFS paragraph 11(b).

17. Accordingly, the Sheil family submits that the Commissioner’s submissions concerning the relative likelihood of suicide over homicide should not be accepted. As is clear, this would not affect the terms of the finding proposed by Counsel Assisting.

Dated: 28 April 2023

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²² Exhibit 20, tab 22 (SCOI.45162 at page 9).

²³ This may perhaps be what the Commissioner intends elsewhere by “*apparent disturbance*”.

²⁴ Exhibit 21 (SCOI.45181).