



## Special Commission of Inquiry into LGBTIQ hate crimes

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### **SUBMISSIONS OF COUNSEL ASSISTING**

4 April 2023

#### **IN THE MATTER OF PETER JOHN SHEIL**

##### **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. Peter Sheil died between 8:00pm on 27 April 1983 and 10:00am on 29 April 1983 at Gordons Bay (referred to in some of the relevant documents as Thompsons Bay) near Clovelly. He was 29 years old at the time of his death.

###### *Circumstances of death*

3. Mr Sheil's body was found on the rocks below the coastal track at the northern side of Gordons Bay.<sup>1</sup>
4. At around 8:00pm on 27 April 1983, Mr Sheil telephoned his mother from the Coogee Bay Hotel to inform her that he was about to walk home via the coastal track between Coogee and Clovelly.<sup>2</sup> His body was found some 36 hours later, at around 10:00am on 29 April 1983, by Donald Ross, a Clovelly resident who was walking around the rocks at Gordons Bay.<sup>3</sup>

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<sup>1</sup> P79A Report of Death to the Coroner dated 2 May 1983 (SCOI.11037.00003).

<sup>2</sup> Exhibit 6, Tab 210, Rick Feneley, 'Up to 80 men murdered, 30 cases unsolved', *Sydney Morning Herald*, 27 July 2013, 29 (SCOI.10445.00019); Rick Feneley, 'He wasn't gay, but could Peter have been a gay hate victim?', *SBS* (online), 27 September 2016, 3 (SCOI.02439).

<sup>3</sup> Statement of Donald McDonald Ross dated 31 May 1983, [1] (SCOI.11037.00008).

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5. Investigating police formed the opinion that Mr Sheil “had fallen from the rock outcrop above”, landing about three to six metres from where found,<sup>4</sup> before dragging himself into a “comfortable position in the rocks”.<sup>5</sup>

### *Findings of post-mortem examination*

6. Dr Colin Goldschmidt conducted an autopsy at 8:00am on 3 May 1983.<sup>6</sup> In a post-mortem report dated 3 June 1983, Dr Goldschmidt documented a 1.5cm laceration to Mr Sheil’s scalp, abrasions on both shoulders, the left buttock and the left hand, and bruising on both knees. An internal examination revealed a fracture dislocation of the cervical spine, as well as fractures to two ribs and the pelvis in two places. Dr Goldschmidt estimated that death had occurred around three to four days pre-autopsy, i.e., between 8:00am on 29 April and 8:00am on 30 April 1983. The direct cause of death was recorded as being “multiple injuries”.
7. There was evidence of a small amount of alcohol in Mr Sheil’s blood at the time of death (0.018g per 100ml). His urine sample tested positive to cannabinoids, although in the toxicology report of Dr Michael Leow it is noted that this result should be interpreted with caution “due to the possibility of cross-reactivity with similar compounds”.<sup>7</sup>

### *Persons of interest*

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

### *Indicators of LGBTIQ status or bias*

9. There is evidence before the Inquiry that the coastal path between Coogee and Clovelly beaches around where Mr Sheil was found operated as a beat in the 1960s-1980s. Giles Baths, at the northern end of Coogee Beach near the beginning of that path, was also a beat.<sup>8</sup>
10. There is no evidence to suggest that Mr Sheil was a member of the LGBTIQ community. His brother Christopher has stated, through the media, that Mr Sheil did not identify as gay, although he could be “gregarious and reckless” and may have been mistaken as being gay.<sup>9</sup> As Mr Sheil’s last known movements

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<sup>4</sup> An estimate of three metres is given in the P79A Report of Death to the Coroner (n 1). An estimate of six metres is given in the statement of Constable Strange dated 30 April/23 August 1983, [2] and [9] (SCOI.11037.00011).

<sup>5</sup> P79A Report of Death to the Coroner (n 1).

<sup>6</sup> Autopsy Report of Dr Colin Goldschmidt dated 3 June 1983 (SCOI.11037.00004).

<sup>7</sup> Toxicology report dated 25 May 1983 (SCOI.11037.00005).

<sup>8</sup> Statement of Caitlin Healey-Nash dated 3 April 2023, [4] (SCOI.45175). See also Exhibit 2, Tab 1, Statement of Garry Wotherspoon dated 14 November 2022, [38]-[39] (SCOI.77300); Exhibit 3, Garry Wotherspoon, *Gay Sydney: A History* (New South Printing, 1st edition, 2016) 50 (SCOI.03677); Transcript of the Inquiry, 21 November 2022, T233.7-10. Cf. Exhibit 2, Tab 5, Statement of Barry Charles dated 14 November 2022, [159] (SCOI.77304), where Mr Charles states that he does not remember there being a beat on the north side of Coogee, towards Gordon Bay.

<sup>9</sup> Feneley, ‘He wasn’t gay, but could Peter have been a gay hate victim?’ (n 2), 5. See also Feneley, ‘Up to 80 men murdered, 30 cases unsolved’ (n 2), 29.

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involved walking home via a coastal track that included and/or passed by a beat, it is possible that he was presumed to be gay and attacked for that reason.

11. When Mr Sheil's body was found, he was wearing a short-sleeved shirt that was open at the front, and his pants and underwear were around his hips with the belt and fly undone, and below the line of his pubic hair.<sup>10</sup> On a rock outcrop about 15-20 metres above where Mr Sheil's body was found, police located a "magazine of a sexual nature".<sup>11</sup> There is nothing in the documents provided to the Inquiry by the NSW Police Force (**NSWPF**) which provides any more information about what the actual content of this magazine was.

### *Exhibits: availability and testing*

12. No exhibits are available in relation to this case. There is also no record of any exhibits even being retained in the immediate aftermath of Mr Sheil's death for the purposes of the police investigation. The clothing Mr Sheil was wearing at the time of his death was destroyed with the authorisation of Mr Sheil's father, and his personal property was returned to his father.<sup>12</sup>

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

13. The Coroner dispensed with an inquest on 1 September 1983. The Coroners Court summary sheet recorded the cause of death as "multiple injuries" and the manner of death as "fall". The time of death was recorded as being between 8:00pm on 27 April 1983 and 10:00am on 29 April 1983.<sup>13</sup>
14. However, Strike Force Parrabell's summary of the case lists the "Coroner/Court Findings" as: "There was no evidence of other persons [sic] involvement in Mr Sheil's death. From the limited information reviewed the circumstances surrounding Mr Sheil's death could not be established."<sup>14</sup>

### *Criminal proceedings*

15. No person was ever charged with any offence in relation to Mr Sheil's death.

### **Features of the original police investigation, and opportunities missed**

16. *First*, the original police investigation into Mr Sheil's death seems to have concluded within a week.
17. The statement of the officer in charge of the investigation (**OIC**), Constable William Strange of Randwick Police Station, bears two dates: 30 April 1983 and 23 August 1983.<sup>15</sup> Its contents indicate that the work of Constable Strange did not extend beyond about a week after Mr Sheil's body was found on 29 April 1983.

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<sup>10</sup> Statement of Constable Strange (n 4), [3].

<sup>11</sup> Ibid, [4].

<sup>12</sup> Statement of Peter Barry Sheil dated 30 April 1983 (SCOI.11037.00010).

<sup>13</sup> Coroners Court summary sheet dated 1 September 1983 (SCOI.11037.00002).

<sup>14</sup> Exhibit 6, Tab 49, Strike Force Parrabell Case Summaries – Peter Sheil (undated), 5 (SCOI.76961.00014).

<sup>15</sup> Statement of Constable Strange (n 4), [4].

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Constable Strange stated that he made “enquiries in the imediate [sic] area of the death” for potential witnesses and “further investigation of the surrounding area”.<sup>16</sup> However, precisely what this investigation entailed cannot be established by the Inquiry in any detail because the NSWPF is unable to locate any records of its own investigation.

18. From information provided to the Inquiry by the Coroners Court, it seems clear that the police quickly formed the view that the manner of Mr Sheil’s death was accidental. Constable Strange expressed the opinion that Mr Sheil had accidentally fallen off the rock outcrop and had been masturbating before his fall. This conclusion appears to have been based on the state of Mr Sheil’s clothing and the “magazine of a sexual nature” found at the scene.<sup>17</sup>
19. Mr Sheil’s brother Christopher, who was 27 years old at the time of Mr Sheil’s death, recalls having witnessed an “inquiry” conducted by his father and a police officer at the station on the day Mr Sheil’s body was found, which lasted “all of about a minute” and resulted in their agreeing that the cause of death was “misadventure”.<sup>18</sup> There was no attempt to make inquiries of or take statements from friends or family members; including, in particular, Mr Sheil’s mother who had received a call from Mr Sheil on the evening of 27 April and may well have been the last person to speak to him.
20. *Secondly*, the police do not appear to have given any weight, or perhaps any consideration, to other pieces of information which pointed *away* from misadventure as being the manner of death: see [65]-[67] below.
21. Furthermore, as to the importance apparently ascribed to the presence, some distance from Mr Sheil’s body, of the “magazine of a sexual nature”, there does not appear to have been any evidence actually linking the magazine with Mr Sheil.
22. *Thirdly*, there was an unexplained delay in obtaining statements from key witnesses, including a delay of just over one month in respect of Mr Ross (who found Mr Sheil’s body) and Ms Patricia Campbell (who was the supervisor in charge of the property where Mr Sheil was residing).
23. *Fourthly*, no investigative files or other documents can be located by the NSWPF in relation to Mr Sheil’s death. Accordingly, among other things, there is no clear evidence as to the exact location of Mr Sheil’s body. The failure of the police to preserve and locate such files and documents is particularly unfortunate in circumstances where, according to the OIC’s statement given during the coronial investigation, Scientific Squad Police attended the scene of Mr Sheil’s death and took photographs of his body and the surrounding area.<sup>19</sup> Such photographs are not available to the Inquiry.

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<sup>16</sup> Ibid, [8].

<sup>17</sup> Ibid, [9].

<sup>18</sup> Feneley, ‘He wasn’t gay, but could Peter have been a gay hate victim?’ (n 2), 6.

<sup>19</sup> Statement of Constable Strange (n 4), [3].

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24. *Fifthly*, no exhibits appear to have been retained. Investigating police appear to have disposed of Mr Sheil's clothing at a very early stage of the investigation – notably, prior to the autopsy taking place.<sup>20</sup> There is no record of precisely where the “magazine of a sexual nature” was located, its condition or contents. What else, if anything, was observed or examined from the scene cannot now be known. These failures to retain exhibits and documents prevents the Inquiry from conducting an examination of any such exhibits using technology currently available.

### Unsolved Homicide Team reviews

25. Mr Sheil's death has not been the subject of any review by the Unsolved Homicide Team.

### Strike Force Parrabell

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

26. In completing the Bias Crimes Indicators Review Form (BCIF) in relation to Mr Sheil, the Strike Force Parrabell officers appear to have relied entirely on two media articles written in 2013 and 2016 about his death.<sup>21</sup> Indeed, extracts from these articles are simply repeated in the BCIF verbatim. It seems that the Strike Force Parrabell officers could not or did not obtain access to the coronial file; and as noted above, no records of the original police investigation can now be found by the NSWPF.
27. As a consequence, the BCIF repeatedly resorts to the same handful of observations about Mr Sheil's death, drawn from the statements made by his brother Christopher to the media. It does not provide original or even particularly specific responses in relation to each indicator, and it does not address or analyse any of the matters that are readily apparent from the coronial file including the results of the original police investigation and the fact that Mr Sheil's trousers and underwear were around his hips and below the line of his pubic hair (in the latter regard, it notes only that the “fly of his trousers was undone”).
28. Inevitably, in the circumstances, the Strike Force Parrabell officers answered all ten BCIF indicators “Insufficient Information.”
29. Given the paucity of material available to Strike Force Parrabell in relation to Mr Sheil's case, for the Strike Force even to purport to conduct a review of this case in order to ascertain – from documentary “holdings” – whether the death involved anti-LGBTIQ bias was verging on pointless; it should have been patently obvious that such a review was not going to yield reliable results.

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<sup>20</sup> P79A Report of Death to the Coroner (n 1).

<sup>21</sup> Feneley, ‘Up to 80 men murdered, 30 cases unsolved’ (n 2); Feneley, ‘He wasn't gay, but could Peter have been a gay hate victim?’ (n 2).

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### *Results of Strike Force Parrabell*

(a) The “Summary of Findings”

30. The Summary of Findings again repeats various sentences found in several of the earlier parts of the form, including the final sentence: “It has not been established if [Mr] Sheil fell, jumped or was pushed to his death.”

(b) Case Summary

31. The Strike Force Parrabell case summary (no. 11) for this matter reads as follows:

**Identity:** Peter Sheil was 29 years old at the time of his death.

**Personal History:** In a recent media interview Mr Sheil’s brother indicated that Mr Sheil was suffering from mental illness, stating: ‘He (Peter) wrote extraordinary poetry. It was a way to attract the girls. Peter wasn’t gay, but he was mentally ill and he could be very gregarious and reckless. It’s plausible that he was mistaken for being gay while walking through a gay beat – that he was attacked for that reason.’ Mr Sheil’s mother insisted that he was not depressed prior to his death.

**Location of Body/Circumstances of Death:** Mr Sheil’s body was located with multiple injuries and without trousers at the base of a cliff known as Thompson’s Bay, north of Coogee. Strike Force Parrabell did not locate any NSWPF holdings relating to the death of Mr Sheil. Information reviewed was from open media sources only. According to the limited information reviewed, on the night of his death Mr Sheil telephoned his mother saying he would walk home from the Coogee Bay Hotel via the sea-cliffs path. At the time, the ocean path passed through a known gay beat area.

**Sexual Orientation/Psychological Health:** Mr Sheil was described by his family as heterosexual, suffering mental illness.

**Coroner/Court Findings:** There was no evidence of other persons involvement in Mr Sheil’s death. From the limited information reviewed the circumstances surrounding Mr Sheil’s death could not be established.

**SF Parrabell concluded there was insufficient information to establish a bias crime<sup>22</sup>**

32. The case summary erroneously states that Mr Sheil was found “without trousers”. In fact, as noted above, Mr Sheil’s trousers were still on, but the fly was open and the trousers were lowered to the level of his hips. The fact that the fly was open appeared in the second (2016) media article on which the Strike Force Parrabell officers evidently relied, and indeed was noted in some of the responses to the ten indicators. But the Summary of Findings sets out an inaccurate account, derived it would seem from the earlier (2013) media article (which does contain the phrase “without trousers”).

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<sup>22</sup> Strike Force Parrabell Case Summaries (n 14).

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### (c) Academic review

33. The review by the Flinders academic team also, again inevitably, categorised this case as “Insufficient information.”<sup>23</sup> As to their own use of the term ‘Insufficient Information’ generally, the academic team stated:

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>24</sup>

### **Investigative and other steps undertaken by the Inquiry, and their outcomes**

#### *Attempts to locate and contact family members*

34. The Inquiry contacted Mr Sheil’s four siblings: Margaret, Christopher, Hugh and Robert. They provided their recollections of the aftermath of Mr Sheil’s death, including the nature and extent of the police investigation. Christopher and Robert confirmed that their recollections of their family’s interactions with police in the days following Mr Sheil’s death, as referred to in newspaper articles published in 2013 and 2016 and referred to above, were accurate.<sup>25</sup>

#### *Request and receipt of Coroners Court file*

35. The Inquiry requested and received the Coroners Court file for Mr Sheil, which consisted of 18 pages of material relating to the Coroners Court’s consideration of the matter in 1983.

#### *Summonses issued to NSWPF and follow up action taken*

36. 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 Sheil (summons NSWPF1). No material was produced in relation to Mr Sheil’s matter.
37. On 12 September 2022, the Inquiry wrote to the Office of the General Counsel, NSWPF, noting that in the NSWPF documents contained in the Coroners Court file, Mr Sheil’s last name is at times spelled with different variations, including, for example, “Shiel”, “Sheils”, “Shiels” and “Shell”, and requesting that NSWPF conduct further searches for any investigation file under those names. On 16 September 2022, the legal representative for NSWPF advised that no records are held in respect of any of the four spelling variations identified.<sup>26</sup>

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<sup>23</sup> Ibid.

<sup>24</sup> Exhibit 1, Tab 2, NSW Police Force, *Strike Force Parrabell: Final Report* (Report, June 2018), 54 (SCOI.02632).

<sup>25</sup> Feneley, ‘He wasn’t gay, but could Peter have been a gay hate victim?’ (n 2); Feneley, ‘Up to 80 men murdered, 30 cases unsolved’ (n 2).

<sup>26</sup> Email correspondence between Solicitor Assisting the Inquiry and the Office of the General Counsel, NSW Police Force, re: Request for further searches re Peter Sheil, dated 12-13 September 2022 (SCOI.82802).

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### *Summonses issued to other agencies*

38. A summons to the NSW Registry of Births, Deaths and Marriages was issued on 16 September 2022 for the birth and death certificates for Mr Sheil (summons BDM3). Both certificates were produced on 20 September 2022.
39. A summons to NSW Health Pathology – Forensic Medicine was issued on 14 November 2022 for all material held in relation to Mr Sheil, including photographs, CT images and/or notes relevant to his autopsy on 3 May 1983 (summons DOFM3). One file was produced on 23 November 2022 containing the P79A Report of Death to Coroner, and the post-mortem and toxicology reports.<sup>27</sup>

### *Professional opinions obtained*

40. By letter dated 13 March 2023, the Inquiry sought a report from Dr Linda Iles, forensic pathologist and Head of Forensic Pathology Services at the Victorian Institute of Forensic Medicine. Dr Iles was asked to address the following questions:
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 Sheil’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 Sheil, including:
    - a. Your view as to the estimated time of Mr Sheil’s death. Without limiting the matters which you may consider relevant to this question, please outline:
      - i. Whether you agree with the estimated time of death expressed in the original autopsy report. Why/why not?
      - ii. What factors relevant to Mr Sheil’s death impact upon the precision with which time of death can be estimated?
    - b. If the nature of Mr Sheil’s injuries were such that would have enabled him to survive the initial impact and, if so, the estimated period of survivability of those injuries.
  3. Your view as to the medical cause of Mr Sheil’s death (including, if relevant, any reasons for taking a different view to that formed by Dr Goldschmidt). Without limiting the matters which you may consider relevant to this question, please address:
    - a. The fracture to the cervical spine between C1 and C2;
    - b. Whether any of the lacerations, abrasions, fractures, and other injuries suffered by Mr Sheil would have contributed to his cause of death; and

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<sup>27</sup> Statement of Caitlin Healey-Nash (n 8) [6]-[7].



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- c. Whether it is possible that Mr Sheil survived the initial fall for a period of time and was capable of moving his body to its final position?
  4. Your view as to any conclusions that can be drawn from the toxicological analysis.
  5. Your view as to whether Mr Sheil'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 that Mr Sheil was found in, including his prone position, blood staining and coins located about six metres from Mr Sheil's body;
    - b. The evidence as to the estimated time of Mr Sheil's fall, including the time of sunset and Mr Sheil's 9:00pm curfew;
    - c. The position of Mr Sheil's trousers and shirt when his body was found;
    - d. The evidence of investigating police that a pornographic magazine was found "nearby" to Mr Sheil's body;
    - e. The evidence that Mr Sheil's route home passed a number of known gay beats; and
    - f. Mr Sheil's mental health at the time of his death, taking into consideration the medication regime he was prescribed.
  6. In your opinion, what information is missing in the documentation available to the Inquiry, or the quality or adequacy of the information that has been provided to you, that would be useful for you in order to provide your opinion on the manner and/or cause of Mr Sheil's death?
  7. Please provide any other comment, within your expertise, which you consider to be relevant to the manner and cause of Mr Sheil.
41. Dr Iles' report is considered below.

### *Other sources of information*

42. On 19 September 2022, the Inquiry requested information about the weather conditions in the Clovelly area between 22 and 29 April 1983 from the Bureau of Meteorology (**BOM**). On 20 October 2022, an officer of the BOM provided the weather, synoptic and rainfall observations for the Clovelly area. On 28 October 2022, the Inquiry also accessed sunrise, sunset and twilight times for 27 April 1983 from Geoscience Australia.
43. The Inquiry also had regard to two articles written by Rick Feneley: in the *Sydney Morning Herald* on 27 July 2013, and on *SBS News* on 27 September 2016. The 2013 article explored what Mr Feneley described as an "epidemic of gay-hate violence" in Sydney by reference to several deaths in the 1980s and 1990s. It provided an account of Mr Sheil's death and included statements from Mr Sheil's brothers Christopher and Hugh about Mr Sheil's character, last movements, and the initial police investigation.<sup>28</sup> The 2016 article

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<sup>28</sup> Feneley, 'Up to 80 men murdered, 30 cases unsolved' (n 2), 29.

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focussed specifically on Mr Sheil, and again included statements made by Christopher about the circumstances of Mr Sheil's death and the nature of the police investigation.<sup>29</sup>

44. The Inquiry made endeavours to contact the witness who discovered Mr Sheil's body, Donald Ross, but was unable to locate Mr Ross.

### Submission as to the available evidence

45. This part of the submissions 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.

#### *Mr Sheil's background*

46. Mr Sheil was born on 7 February 1954 and was 29 years old when he died. Both of Mr Sheil's parents have passed away, and he is survived by his four siblings, Margaret, Christopher, Hugh and Robert.
47. Mr Sheil was living in Clovelly at the time of his death.<sup>30</sup> Mr Sheil worked intermittently<sup>31</sup> and was a gifted poet, who at the age of 16 won first prize in a district competition at the Festival of Australian Poetry.<sup>32</sup>

#### *Mental health*

48. According to a statement taken as part of the coronial investigation from Dr Rikard-Bell, Psychiatric Registrar at Prince of Wales (**POW**) Hospital, Mr Sheil was a "well known" patient to both the POW and Prince Henry Hospitals, having been admitted to hospital more than 12 times over the three years prior to his death with depression and hypermania.<sup>33</sup> Mr Sheil was "thought to have manic depressive illness or possibly schizoaffective psychosis".<sup>34</sup> He occasionally expressed suicidal ideation but denied suicidal intent.<sup>35</sup> He was being treated with tricyclic antidepressant Amitriptyline, antipsychotic medication Modecate, and lithium.<sup>36</sup>
49. Mr Sheil had been living at a rehabilitation unit named "Clovelly Flats" at ■■■ Park Street, Clovelly since 22 March 1983. He had been referred to that unit by a social worker at the POW Psychiatric Unit.<sup>37</sup> Patricia Campbell, the supervisor in charge of the Clovelly Flats, considered that Mr Sheil's condition had been improving since he began his stay.<sup>38</sup>

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<sup>29</sup> Feneley, 'He wasn't gay, but could Peter have been a gay hate victim?' (n 2).

<sup>30</sup> Ibid, 3.

<sup>31</sup> The P79A Report of Death to the Coroner (n 1) records Mr Sheil as a pensioner. However, the occupation recorded on his death certificate is "taxi driver": Death Certificate dated 11 May 1983 and updated 14 September 1983 (SCOI.74043).

<sup>32</sup> Feneley, 'He wasn't gay, but could Peter have been a gay hate victim?' (n 2), 1-2.

<sup>33</sup> Letter from Dr C Rikard-Bell dated 2 June 1983 (SCOI.11037.00007).

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Statement of Patricia Campbell dated 31 May 1983, [2] (SCOI.11037.00009).

<sup>38</sup> Ibid.

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50. The other available contemporaneous evidence is broadly consistent with the diagnosis proffered by Dr Rikard-Bell. The Report of Death to Coroner records that Mr Sheil was a “manic depressant” and an outpatient at “P.O.W. Hospital”.<sup>39</sup> Ms Campbell also describes Mr Sheil as suffering from schizoaffective disorder.<sup>40</sup>
51. When Mr Sheil spoke to his mother on the evening of 27 April 1983, likely to have been the evening he met his death, he seemed to be “in good spirits”: see [53] below.

### *Circumstances of Mr Sheil’s death*

52. At 8:30am on Wednesday, 27 April 1983, Mr Sheil left his residence at the Clovelly Flats to go shopping in the Randwick and Bondi Junction areas.<sup>41</sup> Ms Campbell drove him by car to the corner of Clovelly Road and Keith Street, where she saw Mr Sheil board a bus to go to Randwick. Ms Campbell’s recollection was that Mr Sheil was going to “enquire about his pension cheque, and also to attend the Prince of Wales Hospital to see his doctor”.<sup>42</sup>
53. At around 8:00pm on 27 April 1983, Mr Sheil telephoned his mother from the Coogee Bay Hotel to inform her that he was about to return home to the Clovelly Flats, where he had a 9:00pm curfew.<sup>43</sup> This was the last communication between Mr Sheil and another person. According to his family, Mr Sheil was in “good spirits” on the night of his death.<sup>44</sup> Mr Sheil gave no indication on the telephone call to his mother that he was suicidal at that time.<sup>45</sup>
54. Mr Sheil appears to have chosen to walk home via the coastal track between Coogee and Clovelly.<sup>46</sup> Based on Google Map estimates, it would have taken Mr Sheil around 20 minutes from the Coogee Bay Hotel to reach the location where his body was found. Maps depicting Mr Sheil’s likely walking route between the Coogee Bay Hotel and his residence, and the approximate location of his body, are at **Attachment A**.
55. At 10:00am on 29 April 1983, Mr Ross found Mr Sheil’s body. According to Mr Ross, Mr Sheil was lying on his back between some rocks about 150 metres from the Clovelly Beach car park.<sup>47</sup> He was clothed in a blue short-sleeved shirt which was open at the front, and blue corduroy trousers with his belt and fly undone.<sup>48</sup> He was wearing turquoise underpants,<sup>49</sup> which the P79A Report of Death to Coroner describes as a

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<sup>39</sup> P79A Report of Death to the Coroner (n 1).

<sup>40</sup> Statement of Patricia Campbell (n 37), [3].

<sup>41</sup> P79A Report of Death to the Coroner (n 1).

<sup>42</sup> Statement of Patricia Campbell (n 37), [4].

<sup>43</sup> Feneley, ‘He wasn’t gay, but could Peter have been a gay hate victim?’ (n 2), 3.

<sup>44</sup> Feneley, ‘Up to 80 men murdered, 30 cases unsolved’ (n 2), 29.

<sup>45</sup> Feneley, ‘He wasn’t gay, but could Peter have been a gay hate victim?’ (n 2), 3.

<sup>46</sup> *Ibid.*, 4.

<sup>47</sup> Statement of Donald Ross (n 3), [1].

<sup>48</sup> *Ibid.*, [2].

<sup>49</sup> *Ibid.*

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swimming costume.<sup>50</sup> Both his trousers and underwear were around his hips and below the line of his pubic hair.<sup>51</sup> He was wearing brown slip on shoes and white socks.<sup>52</sup>

### *Summary of police investigation*

56. Mr Ross called the police and awaited their arrival.<sup>53</sup> The OIC, Constable Strange, attended the scene, apparently alone. Constable Strange described Mr Sheil as lying in a prone position between two large rocks, about five metres from the water's edge and 150 metres from the car park at Clovelly Beach.<sup>54</sup> He observed that around six metres from where Mr Sheil's body was found, there were blood stains on the rocks and some loose change.<sup>55</sup> There was a trail of blood from that position to Mr Sheil's body.<sup>56</sup> Mr Sheil had \$10 in notes on his person.<sup>57</sup> In Mr Sheil's shirt pocket, Constable Strange found a NSW Permanent Pass Book in Mr Sheil's name with the address of Clovelly Flats.<sup>58</sup>
57. According to the OIC, Scientific Squad Police attended some time later and took photographs of Mr Sheil's body and the scene.<sup>59</sup> As noted above, it is regrettable that these photographs have not been retained or preserved.
58. According to Constable Strange, there was a rock outcrop about 20 metres above Mr Sheil's body, which bore a "very mossy surface of a highly slippery nature".<sup>60</sup> A "magazine of a sexual nature" was found just below this rock outcrop.<sup>61</sup> What the OIC meant by "of a sexual nature" is not known.
59. The Inquiry has established that Constable Strange is deceased.
60. On 29 April 1983 at around 2:00pm, Constable Strange visited Clovelly Flats and informed Ms Campbell of Mr Sheil's death. She accompanied him to Mr Sheil's room and found phone numbers for members of his family.<sup>62</sup>
61. At around 1:50pm on 30 April, Mr Sheil's father attended the City Morgue and identified Mr Sheil's body.<sup>63</sup>
62. In the week following the discovery of Mr Sheil's body, according to his statement, Constable Strange "made enquiries in the immediate area of the death" as to anyone who might have witnessed anything, "to no

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<sup>50</sup> P79A Report of Death to the Coroner (n 1).

<sup>51</sup> Statement of Donald Ross (n 3), [2].

<sup>52</sup> Ibid.

<sup>53</sup> Ibid, [3].

<sup>54</sup> Statement of Constable Strange (n 4), [2].

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> P79A Report of Death to the Coroner (n 1).

<sup>58</sup> Statement of Constable Strange (n 4), [4].

<sup>59</sup> Ibid, [3].

<sup>60</sup> Ibid, [4].

<sup>61</sup> Ibid.

<sup>62</sup> Statement of Patricia Campbell (n 37), [5]; Statement of Constable Strange (n 4), [5].

<sup>63</sup> Statement of Peter Barry Sheil (n 12).

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avail”, as well as a “further investigation of the surrounding area”.<sup>64</sup> The nature of those inquiries is not further elaborated on in Constable Strange’s statement and cannot now be explored further.

63. Constable Strange concluded his statement as follows:

From the investigation carried out and the prevailing area in which the Deceased met his demise I have formed the opinion that the Deceased had ventured onto a rock ledge about 20 meters above the shoreline rock base of Thompsons Bay and then lost his footing on the slippery undergrowth, causing him to fall to the rocks below and apparently striking his head. It then appears that he dragged himself a distance of about 6 meters and lay in a more comfortable position between rocks. I am also of the opinion that the reason that the Deceased’s clothing was in a state of disarray was caused by the fact that he had presumably been masterbating [sic] before his fall.<sup>65</sup>

64. The OIC’s conclusion that Mr Sheil stepped off the coastal track to masturbate and then accidentally fell to his death is open to considerable doubt, for at least the following reasons.

65. *First*, sunset on 27 April occurred at 5:20pm,<sup>66</sup> meaning that it would have been dark when Mr Sheil set out from the Coogee Bay Hotel. In those conditions, it is difficult to imagine that Mr Sheil would have been able to see a magazine (pornographic or otherwise) without a light source. There was no evidence of a light source (such as a torch or matchbox) found on Mr Sheil’s person or nearby. Nor was there any evidence of lighting on the path at that time.

66. *Secondly*, it is improbable that a man who was close to home and subject to a curfew would deviate from the coastal track in the dark at all, let alone to masturbate.

67. *Thirdly*, there were other possible reasons for the state of Mr Sheil’s trousers, including that he had stopped to urinate, and/or that his clothing had been moved in the course of his fall, and/or that an assailant had been involved.

### *Location and weather conditions*

68. No mapping was conducted by NSWPF of Mr Sheil’s body or the area in which he was found; and although photographs are said to have been taken, they have not been produced. Accordingly, the precise location and position of Mr Sheil’s body cannot be ascertained.

69. Data from the BOM indicates that it rained two to three days prior to 27 April 1983 and earlier that day. At the time that Mr Sheil is estimated to have fallen (some time at or after 8:30pm on 27 April 1983), the temperature was 17 degrees Celsius. There was low wind and good visibility, but high cloud cover. Humidity was high and there may have been a very slight shower at around 9:00pm on 27 April 1983.<sup>67</sup>

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<sup>64</sup> Statement of Constable Strange (n 4), [8].

<sup>65</sup> *Ibid*, [9].

<sup>66</sup> Sunrise, Sunset and Twilight Times for 27 April 1983 (Geoscience Australia), accessed 28 October 2022 (SCOI.82804).

<sup>67</sup> Bureau of Meteorology Data Document CAS-37787-S5G0Y9-11 dated 20 October 2022 (SCOI.74834).

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### *Media criticisms of the police investigation*

70. Mr Sheil's brother, Christopher, later criticised the thoroughness of the police investigation. According to Mr Feneley's *Sydney Morning Herald* article of 27 July 2013:

Sheil's mother was a devout Catholic. She could not countenance the possibility of suicide and the policeman who handled the case was helpful, perhaps too helpful. Christopher Sheil, then 27, witnessed the "inquiry" into his brother's death – a discussion between his father and the policeman. 'It took all of about a minute. They got to the part on the form where you fill out cause of death. I can't remember whether it was Dad or the cop who suggested misadventure. I said "We don't know whether he jumped, fell or was pushed". Dad said "Ah we're not gunna go into any of that".'<sup>68</sup>

### *Expert report of Dr Linda Iles*

71. The issues which Dr Iles was asked to address are set out at [40] above.
72. In her report received 24 March 2023, Dr Iles stated that it was her view that in "the absence of any further details or photographs relevant to the scene or the autopsy examination", there were "no other avenues of medical investigation that could shed further light on Mr Sheil's cause of death, or how his death occurred".<sup>69</sup>
73. Dr Iles noted that autopsy practice has evolved considerably since Mr Sheil's death. However, she also noted a number of features and deficiencies of the autopsy examination and report including the following:
- a. There are no documented observations of post-mortem change.
  - b. There is no documentation as to the presence or absence of scalp bruising.
  - c. There is no documentation as to the presence or absence of facial injuries or the state of the orbital and oral mucosae.
  - d. There is no documentation regarding the presence or absence of injury to the laryngeal skeleton.
  - e. The cervical spinal cord has not been examined i.e., there is no data regarding the presence or absence of cord transection.
  - f. The trachea and bronchi are described as normal; this presumably means there is no haemorrhage within large airways.
  - g. The post-mortem blood specimen has not been analysed for substances other than alcohol or morphine.

<sup>68</sup> Feneley, 'Up to 80 men murdered, 30 cases unsolved' (n 2), 29.

<sup>69</sup> Expert report of Dr Linda Iles received 24 March 2023, 5 (SCOI.45162).

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- h. There is no reference to the presence or absence of anogenital injury, or of the volume of the bladder contents.
  - i. There is no reference to the fact that Mr Sheil's heart is pathologically enlarged (if the weight recorded is correct).<sup>70</sup>
74. According to Dr Iles, the information provided by the autopsy report, although "sufficient to determine the cause of death" is "inadequate to help address the question of 'how death occurred'".<sup>71</sup>
75. In terms of the cause of death, Dr Iles' opinion is that the only documented injury capable of causing death is the upper cervical spinal cord injury. According to Dr Iles, the remainder of the injuries recorded in the autopsy report were of a "sublethal nature".<sup>72</sup> This conclusion differs from the cause of death recorded in the autopsy report (i.e., "multiple injuries").
76. Dr Iles considered that, given his documented injuries, it would have been possible for Mr Sheil to move voluntarily following his fall if the injuries he sustained to his spinal cord were non-fatal, but that any voluntary movement may have resulted in "completed cord injury/transection".<sup>73</sup> In her view, it was more likely that Mr Sheil "tumbled into" his final position than that he moved voluntarily: death would have been "rapid" following impact.<sup>74</sup>
77. In terms of the matters going to the manner of death, Dr Iles observed that:
- a. additional information to that which was contained in the autopsy report, about the specific elements of the C1 and C2 fractures sustained by Mr Sheil, would have helped to inform the mechanism of injury;<sup>75</sup>
  - b. the estimate of time of death provided by Dr Goldschmidt should be disregarded because there is insufficient post-mortem data recorded. (Dr Iles considered it unlikely that that Dr Goldschmidt intended his estimate to be "viewed with any type of precision");<sup>76</sup>
  - c. although the state of Mr Sheil's clothing when he was found "could partially be explained by his urinating prior to a fall, it would seem unnecessary to open one's shirt to do so";<sup>77</sup>
  - d. given the observations about Mr Sheil's state of undress, there should have been "a more thorough post-mortem examination and trace evidence sampling" and that this information "does not

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<sup>70</sup> Ibid, 5-6.

<sup>71</sup> Ibid, 6.

<sup>72</sup> Ibid, 7.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid, 6.

<sup>77</sup> Ibid, 9.

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appear to be included in the Report of Death to Coroner, i.e., does not appear to have been made available to the autopsy pathologist”;<sup>78</sup> and

- e. suicide was an unlikely manner of death because there was no reported change in Mr Sheil’s mood around the time of his death and his body was found in a location with a shorter fall than in immediate surrounding areas.<sup>79</sup>

78. Ultimately, Dr Iles’ conclusion was that there is no information in the autopsy report “to indicate whether Mr Sheil’s death was a result of misadventure, accident or foul play”.<sup>80</sup>

### Submission as to bias

79. On the evidence available to the Inquiry, it is submitted that it is not possible to be satisfied either that Mr Sheil’s death was a homicide, or whether (if so) it was a homicide motivated by LGBTIQ bias.

80. In circumstances where he was walking through or near a beat shortly before his death, it is possible that Mr Sheil was mistaken for a gay man and attacked by persons unknown for that reason. However, there is no direct evidence to substantiate that hypothesis.

81. Mr Sheil’s death occurred some years before the homicides and suspected homicides, motivated by LGBTIQ bias, at Marks Park and Bondi: it was over two years before the disappearance of Gilles Mattaini (in September 1985), more than six years before the disappearance of Ross Warren (in July 1989) and the death of John Russell (in November 1989), and over seven years before the murder of Kritchikorn Rattanjurathaporn (in July 1990). Gordons Bay is also several kilometres from the Bondi-Marks Park area.

82. Although the evidence that Mr Sheil was found with his shirt, belt and fly undone, and with his pants around his hips, is consistent with the possibility he was engaging in sexual activity before he died, there are also several other possible explanations for the state of his clothes, including that he was urinating, or that his pants came down during his fall or when he moved position on the rocks below.

83. The evidence available to the Inquiry does not allow any positive conclusion to be reached about the events leading up to Mr Sheil’s death, including whether it involved any other person and whether (if so) it was motivated by LGBTIQ bias.

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<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid, 9-10.



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### Submissions as to manner and cause of death

84. For the reasons outlined above, it is submitted that the Inquiry should find as follows:

*Mr Sheil died between 8:00pm on 27 April 1983 and 10:00am on 29 April 1983 as a result of cervical spine injuries sustained in a fall. There is insufficient evidence to enable a finding to be made as to whether the fall was accidental or otherwise.*

### Submissions as to recommendations

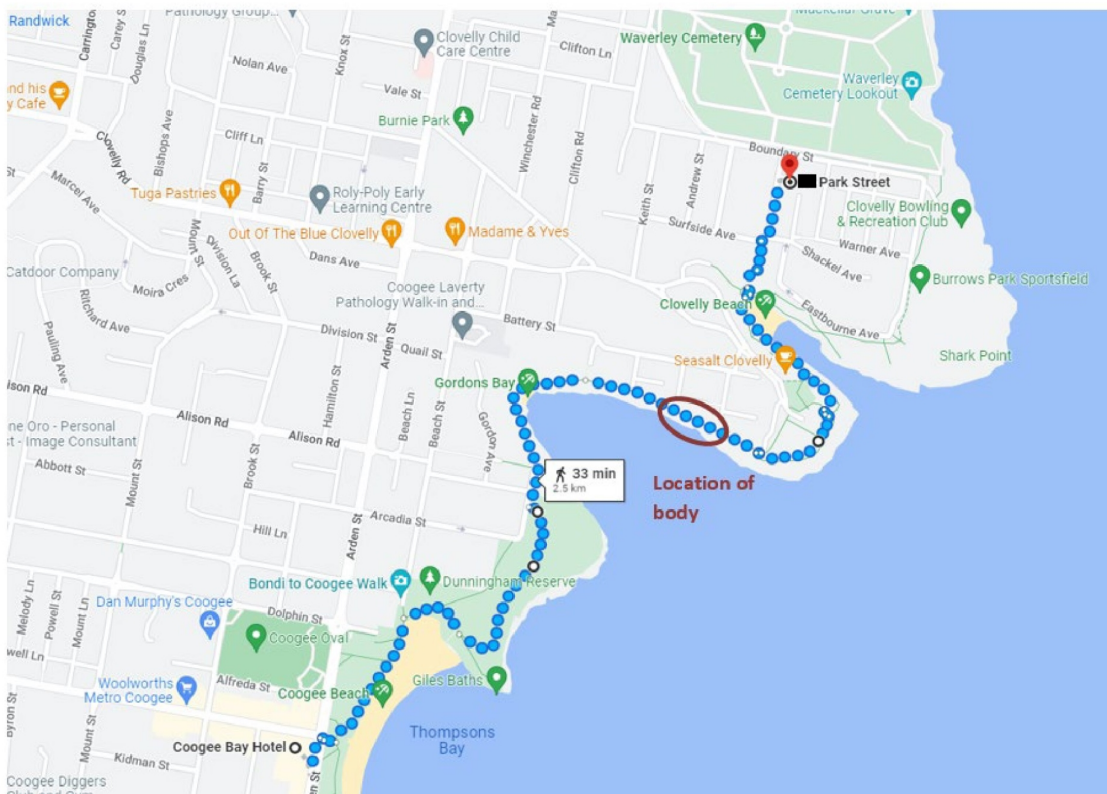
85. It is submitted that a recommendation should be made to the Registry of Births, Deaths and Marriages to correct the Register of Births, Deaths and Marriages pursuant to s 45(1)(b) of the *Births, Deaths and Marriages Registration Act 1995*, such that Mr Sheil's cause of death is recorded as: "cervical spine injuries sustained in a fall".

**Meg O'Brien**

Counsel Assisting

Special Commission of Inquiry into LGBTIQ hate crimes

Attachment A



Map showing the walking track between the Coogee Bay Hotel, the estimated location of Mr Sheil’s body and Mr Sheil’s address.

Source: Google Maps

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Map measuring 150 metres from Clovelly Beach car park.

Source: Google Earth



Map showing estimated location of Mr Sheil's body.

Source: Google Earth