



Special Commission of Inquiry into LGBTIQ hate crimes  
 Statement of Emily Burston  
 18 May 2023

This statement made by me accurately sets out the evidence that I would be prepared, if necessary to give to the Special Commission of Inquiry into LGBTIQ hate crimes (the **Inquiry**) as a witness. This statement has been prepared from my own knowledge and also from perusing the records of the Inquiry. The statement is true to the best of my knowledge and belief.

1. My name is Emily Burston. My address is known to the Inquiry.
2. I am employed as a Senior Solicitor by the Inquiry.
3. In the course of my duties, I have reviewed and conducted inquiries in relation to the death of Richard Slater (**Mr Slater**), who died on 22 December 1980 at Royal Newcastle Hospital, following an assault in the men's toilet block in Birdwood Park, Newcastle.

Request for coronial file

4. On 11 May 2022, the Inquiry issued a written request to the Registrar of the Coroners Court of NSW at Lidcombe to obtain the coronial file in relation to the death of Mr Slater. On 23 May 2022, the Coroners Court advised the Inquiry that the relevant files were held by the Local Court Registry in Newcastle. On 12 August 2022, the Inquiry issued a written request for that file to the Registrar of the Local Court in Newcastle. On 2 September 2022, the Local Court in Newcastle produced material pursuant to that request.

Summonses and requests for police files and documents

5. On 18 May 2022, the Inquiry issued a summons to the NSW Police Force (the **NSWPF**) for, *inter alia*, the investigative file in relation to the death of Mr Slater (Summons NSWPF1). A hard copy file in relation to Mr Slater was produced on 8 June 2022.
6. On 11 October 2022, the Inquiry issued a further summons to the NSWPF seeking crime scene photos that were referred to in material relating to the review of Strike Force Parrabell (Summons NSWPF28, SCOI.82776). The letter enclosing that summons requested that the NSWPF also undertake more comprehensive searches for documents relating to Mr Slater generally, noting that the material produced to date under Summons NSWPF1 appeared to the Inquiry to be an incomplete record of the initial investigation (SCOI.82774).
7. On 1 November 2022, the NSWPF indicated that further searches had failed to identify any documents responsive to Summons NSWPF28. However, on 23 December 2022, the NSWPF

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informed the Inquiry that it had identified a further archive box of material, and provided the Inquiry with three documents, including the crime scene photographs. By email dated 16 February 2023, the NSWPF confirmed those documents represented the totality of the further documents relating to Mr Slater identified by the NSWPF in that further archive box.

8. On 6 December 2022, the Inquiry issued a further summons to the NSWPF seeking certain crime scene exhibits to conduct further forensic testing (Summons NSWPF39, SCOI.82774). On 15 December 2022, the NSWPF wrote to the Inquiry confirming that it had been unable to locate the exhibits and expressing the view that they no longer existed.
9. On 23 January 2023, I wrote to the NSWPF seeking that a statement be provided with respect to the searches undertaken pursuant to Summons NSWPF39. On 19 January 2023, the NSWPF confirmed that the forensic exhibits could not be located, and produced a Statement of Detective Sergeant Neil Sheldon dated 19 January 2023 setting out the searches undertaken by the NSWPF (SCOI.82916).
10. On 9 December 2022, the Inquiry issued a further summons to the NSWPF seeking criminal antecedents for certain persons of interest (Summons NSWPF44). On 14 January 2023, the NSWPF produced documents to the Inquiry pursuant to that summons.

#### Summonses to Registry of Births, Deaths and Marriages

11. On 30 April 2022, the Inquiry issued a summons to the NSW Registry of Births, Deaths and Marriages (the **Registry**) seeking, *inter alia*, the death certificate of Jeffrey Miller (**Mr Miller**).
12. On 3 April 2023, the Inquiry issued a summons the Registry seeking, *inter alia*, death certificates for [I219], who gave evidence in 1982 implicating Mr Miller in Mr Slater's death (Summons BDM21). On 5 April 2023, the Registry produced records to the Inquiry indicating that [I219] is deceased as of December 1983.
13. On 20 April 2023, the Inquiry issued a summons to the Registry seeking, *inter alia*, a death certificate for [I218] (Summons BDM26). On 27 April 2023, the Registry advised the Inquiry that no relevant record could be identified. Separately, the Inquiry has received information indicating that [I218] is deceased as of January 2021.

#### Summonses to other agencies

14. On 21 June 2022, the Inquiry issued a summons to the Office of the Director of Public Prosecutions (**ODPP**) seeking files relating to the prosecution of Mr Miller for the death of Mr Slater in 1982 and 1983. On 8 July 2022, the ODPP advised the Inquiry that it did not hold any relevant records as the prosecution occurred before the ODPP was established, and that those records would likely be held with the records of the Clerk of the Peace.
15. On 10 August 2022, the Inquiry issued a summons to the Department of Communities and Justice (**DCJ**) seeking the file of the Office of the Clerk of the Peace in relation to the prosecution of Mr Miller in 1983. On 6 September 2022, DCJ advised the Inquiry that it could locate no record responsive to Summons DCJ1, including by way of searches of the records of the Supreme Court of NSW.

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16. On 10 October 2022, I sent an email to DCJ providing further information in relation to the prosecution of Mr Miller identified in the records before the Inquiry to assist with further searches for any records held by DCJ. On 20 October 2022, DCJ confirmed by email that Courts and Tribunal Services and the Supreme Court of NSW remained unable to locate any relevant records.
17. On 21 October 2022, I emailed DCJ to confirm that searches had been undertaken of other records held by the DCJ in addition to those associated with the Supreme Court and Courts and Tribunal Services. On 11 November 2022, DCJ confirmed by email that further searches within other sections of DCJ had remained unable to identify any relevant records.
18. On 7 October 2022, the Inquiry issued a summons to the Hunter New England Local Health District seeking any medical records relating to Mr Slater held by the Royal Newcastle Hospital (Summons HNELHD2). On 14 October 2022, the Hunter New England Local Health District confirmed by letter that it held no relevant records.
19. On 11 May 2023, the Inquiry issued a summons to Calvary Mater Newcastle Hospital, seeking any medical records it held relating to Mr Slater (Summons CMN1). At the time of this statement, no records have been produced pursuant to that Summons.

Contact with family of Mr Slater

20. On 18 July 2022, the Inquiry received an email from Yvonne [REDACTED], Mr Slater's granddaughter, setting out details of her grandfather's death and offering to assist the Inquiry.
21. On 25 July 2022, the Inquiry contacted Yvonne by email, seeking any relevant material she held in relation to Mr Slater's death. On 26 July 2022, Yvonne replied by email attaching various media articles relating the assault on Mr Slater, the investigation of his death and the prosecution of Jeffrey Miller, as well as certain material relating to the inquest into Mr Slater's death.
22. On 22 February 2023, I sent an email to Yvonne enquiring whether she was aware of general practitioner or other medical practitioner who might still retain medical records in relation to Mr Slater. On 9 April 2023, Yvonne replied by email suggesting that enquiries be made with the John Hunter Hospital (as the successor to the Royal Newcastle Hospital) and the Calvary Mater Newcastle Hospital (formerly known as Newcastle Mater Misericordiae Hospital). As set out above, the Inquiry has issued summonses seeking any relevant records held by either hospital, without result.

Comments of Professor Stephen Tomsen

23. On 16 August 2022, Professor Stephen Tomsen, criminologist, provided his views on various unsolved cases considered by Strike Force Parrabell. In relation to Mr Slater's death, Professor Tomsen commented that, to his knowledge, the toilet block where Mr Slater was assaulted was a well-known and very busy beat in Newcastle. Professor Tomsen considered that, given that location, it was possible the assault was motivated by anti-gay bias regardless of whether Mr Slater was in fact attending the toilet block for the purpose of seeking sex.

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Attempts to contact legal representatives of Jeffrey Miller

24. On 17 February 2023, I sent a letter by email to a barrister who it appeared may have acted for Mr Miller at the committal hearing in late 1982, by reference to media articles from that period. No response has been received to that letter to date.
25. On 23 February 2023, I contacted the Newcastle Law Society by telephone to query whether they held any records from which the Inquiry could identify the successor firm of Bruce O'Sullivan and Co Solicitors, being the firm whose name appears on a medical report apparently obtained by the Mr Miller's defence for use in criminal proceedings. I also sought current contact details for Mr Bannister, the solicitor who appears to have acted for Mr Miller at the committal hearing by reference to media articles from that period. The Newcastle Law Society held no record of a Mr Bannister and, while Bruce O'Sullivan and Co Solicitors appeared on a list of inactive firms, there was no record of where its files had been transferred.
26. On 8 March 2023, I sent an email to Braye Cragg Solicitors (research by the Inquiry having established that that firm was likely to be the ultimate successor to Bruce O'Sullivan and Co Solicitors) as to whether it held any relevant records regarding the prosecution of Mr Miller. On the same date, I received email confirmation that the firm had not been able to locate any relevant records.

Conference with: [REDACTED]

27. On 12 April 2023, Counsel Assisting (William de Mars) and I contacted [REDACTED] by telephone. Of particular relevance to the present matter, [REDACTED] made reference to the following matters.
28. [REDACTED] stated that her memory of the events surrounding Mr Slater's death and Mr Miller's prosecution were poor, noting that forty years had passed. She provided some details of her past association with members of Mr Miller's family but indicated that she never had much to do with Jeffrey Miller.
29. [REDACTED] stated that she had no knowledge of anything that occurred in the toilet as she had not been there at the time of the alleged assault. She advised that Mr Miller had afterwards stated to her that "no one would ever know what happened in that toilet", and that remained the extent of her knowledge about the incident. She denied ever seeing Mr Miller bash anyone.
30. Counsel Assisting took [REDACTED] to several of the statements attributed to her in her record of interview taken in 1982 (SCOI.10343.00042). [REDACTED] indicated that she had dyslexia and had difficulty reading and writing, and so was unable to read the evidence police had taken from her at the time. [REDACTED] indicated that police had never read to her the material contained within that record of interview. She generally disavowed the contents of her statement on this basis and denied the truth of its contents. [REDACTED] stated that she had never attended court to give evidence in relation to the matter.
31. [REDACTED] complained generally about the way she and other members of the LGBTIQ community in Newcastle were treated by police over this period.
32. [REDACTED] advised she was unable to further assist the Inquiry.

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Statement taken from: [I216]

33. On 3 April 2023, I sent a letter to [I216] inviting him to contact the Inquiry regarding his recollections of the events surrounding Mr Slater's death and Mr Miller's prosecution. On 12 April 2023, [I216] contacted the Inquiry and indicated his willingness to speak further on those matters.
34. On 14 April 2023, Counsel Assisting and I held a video conference with [I216]. On 15 May 2023, [I216] provided the Inquiry with a statement prepared as a result of the matters discussed in that conference (SCOI.45198).

Enquiries in relation to: [I220]

35. The Inquiry undertook searches to identify [I220], who was the victim of an alleged assault by Mr Miller approximately a month before the assault on Mr Slater (NPL.0121.0001.0416). On 14 April 2023, the Inquiry attempted to reach [I220] by telephone, but received an indication that the number was disconnected.

Professional opinions obtained

36. By letter dated 21 December 2022, the Inquiry briefed Associate Professor Mark Adams, a cardiologist, in relation to whether there existed a causal connection between the injuries obtained by Mr Slater in the assault and the myocardial infarct he suffered prior to his death on 22 December 1980. On 13 January 2023, Associate Professor Adams provided his report to the Inquiry by email.
37. By letter dated 7 March 2023, the Inquiry briefed Professor Michael Besser AM, consultant neurosurgeon, in relation to the effect of the injuries obtained by Mr Slater in the assault on his comprehension in responding to attending police and ambulance officers. On 16 March 2023, Professor Besser provided a copy of his report to the Inquiry by email, with a formal copy following shortly after by post.

Contact with family of person of interest

38. On 5 May 2023, the Inquiry sent a letter to a family member of Mr Miller identified by the Inquiry, notifying them of the forthcoming case hearing and the possibility that findings might be made in respect of Mr Miller. The Inquiry has not been contacted by that family member.

Signature:



Name: Emily Burston

Date: 18 May 2023