



Special Commission of Inquiry into LGBTIQ hate crimes

SUBMISSIONS OF COUNSEL ASSISTING

18 May 2023

In the matter of Richard Slater

Introduction

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

Summary of the matter

Date and location of death

2. Mr Richard Slater died (aged 69) on 22 December 1980 at Royal Newcastle Hospital. This followed an assault that had occurred on 19 December 1980 at the men's toilet block in Birdwood Park in central Newcastle.

Circumstances of death

3. Sometime after 12.30pm on Friday 19 December 1980, while visiting the central business district of Newcastle to run some errands, Mr Slater entered the toilet block in Birdwood Park. He was found at around 1pm by a man who had entered to use the men's toilets. Mr Slater was lying on the ground with his left leg lying in the urinal trough. He was observed to have blood on his face, and was moaning and making gurgling sounds. His trousers and underpants were down just below his buttocks. An ambulance was called at 1.04pm. Mr Slater was able to provide his name to ambulance officers and, on being asked what happened, denied being bashed or falling, although he appeared to at least one of the ambulance officers to be confused in his responses.¹

¹ Statement of Bruce James Varley dated 31 December 1980, [7] (SCOI.10343.00018); Statement of Neville Alfred Barrett dated 1 January 1981, [6]-[7] (SCOI.10343.00019); Statement of Detective Sergeant Robert Ross Clark dated 24 May 1981, [3] (SCOI.10343.00022).

Special Commission of Inquiry into LGBTIQ hate crimes

4. Although his car keys and some lottery tickets that he had purchased that day remained on him, his money purse containing about \$30 was missing.
5. Mr Slater was admitted to Royal Newcastle Hospital at about 1.35pm in a stable condition. His injuries (including multiple lumps on his skull, swelling under his eyes and to his left ear and multiple contusions to his face) were consistent with being punched and/or kicked.² Police attempted to interview Mr Slater but were unable to obtain any coherent information regarding what had occurred.³
6. Mr Slater's granddaughter recalls her mother (Mr Slater's daughter) describing that her father was beaten so badly that he was entirely non-verbal.⁴ Professor Michael Besser, neurosurgeon, who has reviewed relevant material for the Inquiry, describes the traumatic brain injury suffered by Mr Slater as very significant.⁵
7. At 12:30pm on 20 December 1980, Mr Slater developed acute pulmonary oedema, consistent with myocardial infarct and his past history of cardiac disease. Treating doctors were able to stabilise him. However, on 22 December 1980, his condition rapidly deteriorated, and he died after a cardiac arrest at 5:07pm.⁶

Findings of post-mortem examination

8. An autopsy was performed on 22 December 1980 by Dr LJ Banathy. The cause of death was identified as a traumatic brain injury, with an antecedent cause of myocardial infarction.⁷
9. A histopathology report dated 28 January 1981⁸ identified brain injury including a subarachnoid haemorrhage and cerebral oedema. In a revised autopsy report dated 28 January 1981, Dr Banathy expressed the view that traumatic brain injury was the main cause of death, but noted pre-existing myocardial infarctive changes and stated that “[i]t is assumed that the shock caused by the trauma precipitated another infarctive change which contributed to the death.”⁹ In effect, he was indicating that Mr Slater had a heart condition that pre-existed the head injuries that he had received. Against that

² Statement of Dr Alfred Paul Bennett dated 13 January 1981 (SCOI.10343.00025).

³ Statement of Detective Sergeant Robert Ross Clark dated 24 May 1981, [6]-[7] (SCOI.10343.00022).

⁴ Email to Inquiry from Yvonne ██████, 18 July 2022 (SCOI.45199).

⁵ Report of Professor Michael Besser AM, neurosurgeon, 16 March 2023 SCOI.82914, 5.

⁶ Letter from Dr John Vincent Newton dated 2 February 1981 (SCOI.10343.00026); Report prepared by A. J. Bookallil dated 3 December 1982 (SCOI.10343.00009); Summary of Richard Slater Murder, undated (SCOI.10343.00010).

⁷ Autopsy report prepared by Dr Laszlo Julius Joseph Banathy dated 22 December 1980 (SCOI.82781).

⁸ Histopathology report prepared by Dr Laszlo Julius Joseph Banathy (SCOI.82759)

⁹ Revised autopsy report prepared by Dr Laszlo Julius Joseph Banathy dated 28 January 1981 (SCOI.82771).

Special Commission of Inquiry into LGBTIQ hate crimes

background, the shock caused to Mr Slater by the head injuries had led to a further heart attack, which contributed to his death, with the head injuries being the main cause of death.

10. Although it is not reflected in either report, Dr Banathy apparently expressed the view to investigating police that Mr Slater's injuries were consistent with having been punched in the head, possibly four times, resulting in extensive bruising and fractures to the face bones, and a laceration of the left ear which also caused brain damage. He also expressed the view that Mr Slater's chest had been stomped on causing bruising to the chest and a ruptured spleen.¹⁰

Indicators of LGBTIQ status or bias

11. The toilet block in question, in Birdwood Park, was evidently well known as a beat. A police summary of the matter compiled in 1983 refers to it as a “*renowned meeting place for the homosexual element of this area at all hours during the day and night*”.¹¹
12. At the time the matter was investigated, police did not suspect that Mr Slater may have been gay or visiting the toilet block as a beat. Mr Slater's family assume him to have been heterosexual and have no information suggesting that he may have been gay. Further, there is evidence that Mr Slater was known to have a prostate condition that necessitated he frequently urinate.¹² In particular, his then 17 year old grandson advised police that Mr Slater had stopped in the same toilets on occasions when he was travelling with him due to his prostate condition.¹³
13. Although there is no clear evidence suggesting that the assumption he was heterosexual is incorrect, the following aspects of the evidence are noted:
- Mr Slater's belt was undone and his trousers and underpants were down to a degree exposing his buttocks and genitals;
 - Upon attendance of police and ambulance officers, he appears to have denied that he had been assaulted;¹⁴ and
 - Semen was detected on Mr Slater's shirt and trousers.¹⁵

¹⁰ Summary of events leading up to the assault and subsequent death of Richard Slater, 22 December 1980, 2 (SCOI.10343.00055).

¹¹ Resume of investigations re the murder of Richard Slater dated 21 June 1983, [11] (SCOI.10343.00004).

¹² Statement of Detective Sergeant Robert Ross Clark dated 24 May 1981, [12] (SCOI.10343.00022).

¹³ Summary of events leading up to the assault and subsequent death of Richard Slater, 22 December 1980, 4-5 (SCOI.10343.00055).

¹⁴ Statement of Bruce James Varley dated 31 December 1980 (SCOI.10343.00018); Statement of Neville Alfred Barnett dated 1 January 1980 (SCOI.10343.00019).

¹⁵ See [27] below.

Special Commission of Inquiry into LGBTIQ hate crimes

14. On one view Mr Slater's denial of having been attacked could be seen as indicative of a reluctance to disclose that he had attended the toilet as a beat. On the other hand, a disclosure of having been attacked would not necessarily have led those assisting him to assume that he was attending the location for sexual purposes. Further, at least one attending officer thought that Mr Slater appeared to be confused.¹⁶
15. The Inquiry sought and obtained the opinion of Professor Michael Besser AM, consultant neurosurgeon, concerning the effect of Mr Slater's head injuries. Among other things Professor Besser observed of Mr Slater that:

*I have no doubt that his comprehension was compromised and the coherency of his answers to the first attendees, including ambulance, police and emergency department personnel, would have been significantly affected.*¹⁷

16. His denial of having been assaulted may therefore have simply been the product of his confused state given his serious head injury. Further, if he was in the process of urinating when attacked, the position of his trousers may be explained either by that fact or by their displacement during the assault.
17. In any event, resolving any question concerning Mr Slater's sexuality or his purpose in attending the toilet block is not critical to considering whether his death should be regarded as a gay hate homicide. The more significant question is whether or not the perpetrator was acting on the assumption that Mr Slater was gay and was using the toilet as a beat, and assaulted him for this reason or because, for this reason, he was seen as a potential vulnerable target for robbery. That question is addressed further below.

Persons of interest

18. Despite interviewing a large number of people over the months following the death, police were initially unable to clearly identify any person of interest, although it appears that some suspicion was held in relation to a man by the name of Jeffrey Miller and some individuals associated with him.
19. On 23 December 1980 Mr Miller and some of his associates provided statements to police. The effect of the statements was to suggest that at some time between 11:00am and 12.30pm on 19 December 1980, their group, including Mr Miller, 1216 (a male) and 1217 (■

¹⁶ Statement of Neville Alfred Barnett dated 1 January 1980 (SCOI.10343.00019).

¹⁷ Report of Professor Michael Besser AM dated 16 March 2023, 6 (SCOI.82914).

Special Commission of Inquiry into LGBTIQ hate crimes

[REDACTED] walked past the toilet block. Mr [I216] entered the toilet and noticed a man, possibly matching the description of Mr Slater, standing next to him at a urinal. Meanwhile the other members of his group were calling out words suggesting that he (Mr [I216]) was intending to use the toilet as a “beat”.¹⁸

20. On 27 August 1982, more than a year after the inquest was held, another associate of Mr Miller, [I219], provided information to the police implicating Mr Miller. Police then reinterviewed Mr Miller’s associates Ms [I217] and Mr [I216] who had been with Mr Miller on the day of Mr Slater’s death. The information they provided on this later occasion also implicated Mr Miller.
21. On 1 September 1982 Mr Miller, who by this stage was in custody on another matter, was taken by police to the toilet block and he there made an implied admission to entering the toilet and assaulting Mr Slater. However, he later sought to retract his admission by stating that he had entered the toilet with the intention of approaching someone to have sex, but had exited without approaching anyone.
22. On the assumption that Mr Miller was Mr Slater’s attacker, assessment of his motivation and the possibility of LGBTIQ bias is not straightforward. Mr Miller himself appears to have been gay. Whether he identified as such may be unclear; however, the evidence suggests that he engaged in sexual activity with men at times. His friends and associates on the day in question appear to have been members of the LGBTIQ community. Mr [I216] is described as “homosexual” in various police documents, [REDACTED]
[REDACTED]
23. Statements given by both Ms [I217] and Mr [I219] suggest that Mr Miller had committed assaults on gay men at beats. In particular Ms [I217] stated that she was aware that Mr Miller regularly “rolled” men for their wallets in public toilets, and that on the occasion Mr Slater was assaulted she understood that Mr Miller was entering the toilet with the intention of either having sex with him or “rolling” him.¹⁹ Ms [I217] also asserted that Mr Miller threatened Mr [I219] because Mr [I219] “knew too much about Jeff rolling and bashing homosexuals”.²⁰

¹⁸ Statement of Jeffrey Miller dated 23 December 1980, [2] (SCOI.10343.00048); Statement of [I217] dated 23 December 1980, [3], [6] (SCOI.10343.00042); Statement of [I216] dated 23 December 1980, [4] (SCOI.10343.00045).

¹⁹ Record of interview with [I217] on 31 August 1982, Q20-Q22 (SCOI.10343.00043).

²⁰ Ibid, Q36.

Special Commission of Inquiry into LGBTIQ hate crimes

24. Although Mr [1219] was not explicit that Mr Miller would target gay men in particular, he stated that he knew that Mr Miller was “rolling and bashing people up in the toilets around Hamilton, Burwood (sic) and Centennial Parks”. He stated that he had heard him brag about doing so and that he had once witnessed Mr Miller assaulting and robbing an “old drunk guy” in a toilet at Hamilton.²¹
25. Both Mr [1219] and Ms [1217] also refer to an incident when Mr Miller bashed a man at Piper’s Nightclub. Ms [1217] refers to the victim being homosexual and says that he was bashed because he had “dobbed Jeff in to the police”. This assault described corresponds with a police report²² of an assault committed by Mr Miller upon a man at Piper’s Nightclub on 16 November 1980, one month before the assault on Mr Slater. In the police report Mr Miller is described as a “well known homosexual”, the complainant is described as “effeminate”, and the nightclub is described as “a well-known hangout for homosexuals”.

Exhibits: availability and testing

26. Shortly after the assault on Mr Slater, the following exhibits were collected for testing:
- a. A sample of blood taken from Mr Slater;
 - b. Clothing (shirt, underpants, trousers) taken from Mr Slater;
 - c. Two blood swabs taken from the toilet block; and
 - d. Two anal smears from Mr Slater.²³
27. Testing undertaken in 1981 using then available technology identified Mr Slater as having the blood type Hp 2-2, PGM 2 (subtype 2+). The blood on Mr Slater’s trousers and underpants was consistent with his blood type (blood testing on his shirt was unsuccessful). Semen was detected on Mr Slater’s shirt and trousers but in insufficient quantities for grouping testing. Consequently, whether the semen was that of Mr Slater or someone else could not be established at the time of the original investigation. No semen was detected on his underpants.²⁴
28. On 5 December 2022 the Inquiry issued a summons to the NSWPF (NSWPF39) seeking details of the location of the exhibits. By letter dated 15 December 2022 the NSWPF advised that despite

²¹ Record of interview with [1219] on 27 August 1982, Q36-Q37 (SCOI.10343.00044).

²² Crime Information Report, 28 November 1980 (NPL.0121.0001.0416).

²³ Statement of Constable Gary John Clausen dated 1 June 1981, [6]-[7] (SCOI.10343.00024); Report of forensic examination by Sandra Anne Gorringer dated 16 February 1981 (SCOI.10343.00031).

²⁴ Report of forensic examination by Sandra Anne Gorringer dated 16 February 1981 (SCOI.10343.00031).

Special Commission of Inquiry into LGBTIQ hate crimes

undertaking various searches, they had been unable to locate the exhibits. They concluded that all avenues to locate the exhibits had been exhausted and that as they were not logged on the Exhibits Forensic Information and Miscellaneous Property System (EFIMS), it would appear that they no longer exist.

29. Had the exhibits been retained, DNA testing of them would presumably now have been possible, with the possibility that such testing may have provided significant evidence concerning the identity of the attacker and whether any sexual activity had taken place involving Mr Slater and/or his attacker. It is highly regrettable that the exhibits are not now available.
30. The presence of semen suggests that some recent sexual activity is likely to have occurred. It is noted, however, that the insufficiency of the sample to enable grouping type to be determined suggests that the quantity of semen was minimal. The fact that only a minimal amount of semen was detected may weigh against the likelihood that any such sexual activity had occurred at the time Mr Slater was assaulted, as opposed to some earlier occasion. However, had Mr Slater's clothing been retained as an exhibit, the significant advances in the sensitivity of forensic testing capabilities that have been made since 1980 may have enabled identification of the person whose semen was on the clothing, and in particular whether it belonged to a potential suspect.
31. As it stands, in the absence of retention of the clothes and the capacity to conduct further testing, it is not possible to reach any clear conclusion in relation to the significance of the presence of the semen.

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

32. At an inquest lasting fifty minutes held on 18 June 1981 at Newcastle, Coroner R Meehan found that on 22 December at Royal Newcastle Hospital, Mr Slater:

“died from the effects of traumatic brain damage and myocardial infarction; following his admission to that hospital on [19 December 1980] after having been found in Birdwood Park, King St, Newcastle on that date suffering from certain injuries, but as to his circumstances of his having received those injuries, the evidence adduced does not enable me to say.”²⁵

Criminal proceedings

33. On 1 September 1982, as a result of the statements made by his associates and his own admission, Mr Miller was charged with the murder of Mr Slater. He pleaded not guilty and a committal hearing

²⁵ Coronial findings dated 18 June 1981 (SCOI.82765).

Special Commission of Inquiry into LGBTIQ hate crimes

was held on (at least) 24 November and 10 December 1982 at Newcastle Court of Petty Sessions, as a result of which he was committed to stand trial in the Supreme Court.

34. However, on 18 March 1983, prior to the commencement of any trial, following an application for a “No Bill” made by his legal representative, the prosecution filed a “No Bill” and the matter proceeded no further.
35. Despite extensive attempts by the Inquiry to locate records of the committal proceedings and correspondence and documentation relating to the “No Bill”, this material appears to have been lost. The rationale for the filing of the “No Bill” is therefore not clear. It may be that some of the civilian evidence given at the committal proceedings did not come up to proof. Alternatively, or in addition, it appears that the defence may have raised an issue concerning causation of the death (in view of Mr Slater’s underlying heart condition), and that this may have played a role in the reasoning behind discontinuing the proceedings.

Features of/concerns with original police investigation

36. The adequacy of the initial police investigation is difficult to assess, not least because it seems that at least some of the records relating to that investigation are missing from the material produced to the Inquiry. In particular, it appears that the material produced to the Inquiry relates primarily to additional investigative steps taken in 1982 following the identification of Mr Miller as a person of interest by Mr **I219**; it contains only a selection of the evidence gathered by the original 1980-1981 investigation, including only a few of the running sheets.
37. Media reporting from that period suggested that police had conducted far more extensive interviews than is reflected in the material before the Inquiry, as does the short statement provided by the original officer in charge.²⁶ It is evident that police spoke to family members of Mr Slater, although only summaries of their evidence are available to the Inquiry.²⁷ A \$50,000 reward was offered.²⁸ While it is clear that Mr Miller and his companions that day were interviewed, it is unclear to what extent he was considered a suspect prior to police receiving the information later provided by Mr **I219** in 1982.

²⁶ “Bashing mystery: 60 interviewed by police”, *The Sun*, 5 January 1981 (SCOI.82779); Statement of Detective Sergeant Robert Ross Clark dated 24 May 1981, [15] (SCOI.10343.00022).

²⁷ Summary of events leading to death of Richard Slater, 22 December 1980 (SCOI.10343.00055).

²⁸ Statement of Detective Sergeant Robert Ross Clark dated 24 May 1981, [15] (SCOI.10343.00022); Greg Wendt, “\$50,000 reward to flush out park killer”, *Daily Mirror*, 28 April 1981 (SCOI.10343.00056); Resume of investigations, [13] (SCOI.10343.00004).

Special Commission of Inquiry into LGBTIQ hate crimes

38. Notably, there is some indication in the material that a large part of the initial investigative efforts were directed to interviewing “numerous homosexuals, transvestites and other persons”, seemingly because the toilet block was well known as a “renowned meeting place for the homosexual element of this area at all hours during the day or night”.²⁹ Unfortunately, other material suggests that this approach may also have been informed, or at least affected, by negative stereotyping, with an early police summary at pains to note that, despite the assault taking place in a public toilet “frequented by homosexuals”, Mr Slater enjoyed a good reputation and there was no suggestion he was an associate of a “criminal element”.³⁰
39. The same is true of the further investigative steps undertaken in 1982. As will be seen, that investigation was able to obtain convincing evidence incriminating Mr Miller, but ultimately fell short. Without knowing the complete case advanced at the committal, and the reasons why the prosecution was withdrawn, it is not possible to accurately assess to what extent that outcome was avoidable or whether it arose as a result of a shortcoming in the investigation.

Later UHT Reviews

40. Mr Slater’s death has never been the subject of a review by the Unsolved Homicide Team (**UHT**).
41. However, in 2013 Detective Chief Inspector Lehmann of the UHT conducted an “assessment” of 30 unsolved deaths on a list prepared by Sue Thompson, including that of Mr Slater, for the limited purpose of “determining” whether a “bias motivation” was involved in those deaths. With respect to Mr Slater, the assessment was that “this case remains as an unsolved homicide involving probable ‘gay hate’ motivation.”³¹

Strike Force Parrabell

a) Use of the Bias Crimes Indicators Form

42. It is positively asserted in response to all ten of the individual indicators in the Bias Crimes Indicators Form (BCIF)³² that there is “no evidence of bias crime”. This is in stark contrast to

²⁹ Resume of investigations, [11]-[12] (SCOI.10343.00004).

³⁰ Summary of events leading to death of Richard Slater, 22 December 1980, 10 (SCOI.10343.00055).

³¹ Exhibit 6, Tab 47, Issue Paper from Detective Chief Inspector John Lehmann re *Assessment of 30 potential ‘gay hate’ unsolved homicides by the Unsolved Homicide Team (UHT) to determine if any bias motivation existed*, 25 September 2013 (SCOI.74906)

³² Strike Force Parrabell Bias Crimes Indicators Review Form, 28 February 2017 (SCOI.32129).

Special Commission of Inquiry into LGBTIQ hate crimes

the 2013 assessment by DCI Lehman, which the SF Parrabell officers had, and to which the BCIF makes reference.

43. As noted above, the 2013 assessment had concluded that the case involved “probable ‘gay hate’ motivation”. In doing so it had pointed to a number of factors relevant to that “probability”, namely those referred to earlier in this submission (that the location was a known beat, Mr Slater’s denial that he had been bashed, and the presence of traces of semen on some of his clothing).
44. The SF Parrabell officers, in the BCIF, chose emphatic answers, with respect to all ten indicators, that contradict the view of DCI Lehmann in 2013. The form contains no indication of their reasons for doing so.
45. The observations made in relation to several of the individual indicators do not seem to justify the definitive assertion that there is no evidence of the death being a bias crime. For example, in relation to Indicator 6, “Victim/Witness perception” it is stated that “*The actual witnesses don’t express a direct opinion that this particular incident was motivated by bias but they indicate that MILLER was previously actively targeting homosexual males as robbery victims and was known to attend public toilets to commit these crimes*”. This observation, although not inaccurate, does not appear to justify the definite conclusion that there is no evidence of bias crime.

b) Case Summaries

46. The SF Parrabell Case Summary³³ reads as follows:

Richard SLATER
Date of Death 22/12/1980
Unsolved (charged not convicted)
SF PARRABELL
No Evidence of Bias Crime
ACADEMIC REVIEW
Gay Bias Related (Anti-Paedophile)

Identity: *Richard Slater was 69 years old at the time of his death.*

Personal History: *Mr Slater had no close associates apart from immediate family and neighbours. Mr Slater suffered from a medical condition that caused him to urinate frequently and is believed to be the reason for his use of public toilets.*

Location of Body/Circumstances of Death: *Mr Slater was found semi-conscious on the floor of a men’s public toilet in Birdwood Park, Newcastle on 19 December 1980 suffering severe head*

³³ Exhibit 6, Tab 49, Strike Force Parrabell: Case Summaries (undated), 2 (SCOI.76961.00014)

Special Commission of Inquiry into LGBTIQ hate crimes

and bodily injuries. There was no evidence to suggest that Mr Slater attended the toilet block other than to urinate, when it is likely that he was struck from behind with a blunt object. The location was known as a gay beat. Mr Slater died of his injuries in hospital 3 days later. His money clip containing \$30 cash was missing. No suspects were identified until 18 months later with the nomination of Jeffrey Miller, 22 years old, as a suspect. Witnesses alleged that Miller was actively targeting gay men in public toilets as robbery victims. Miller was gay and alleged to have attended toilet blocks to engage in sex with other men before robbing them.

Sexual Orientation: *Mr Slater's sexual orientation could not be confirmed however he was described as a 'family man'.*

Coroner/Court Findings: *Police charged Miller with the murder of Mr Slater which proceeded through committal hearing but was 'No Billed' before trial in 1983. There was no documentation outlining specific reasons for the matter being 'No Billed', however but it is believed that a lack of direct evidence, coupled with unreliable witness accounts contributed to the matter not proceeding. Miller remains the only suspect for this murder.*

SF Parrabell concluded there was no evidence of a bias crime

47. As with the BCIF, and regardless of any conclusion that may be drawn in relation to Mr Slater's reason for being present at the toilet block, it does not appear that the definitive conclusion stated in the last line of the case summary was necessarily justified, particularly where the case summary itself refers to evidence that Mr Miller was "actively targeting gay men in public toilets as robbery victims".

c) Academic review

48. The academic reviewers, according to the case summary, categorised the case as: "*Gay Bias Related (Anti-Paedophile)*".³⁴ The "anti-paedophile" reference is baffling. There is absolutely no basis, in any evidence relating to the matter, for any suggestion that this was a rationale for the attack, or that Mr Slater was or may possibly have been a paedophile. On the material available to the inquiry, any such suggestion is entirely baseless and would be rightly regarded as insulting and false by surviving family of Mr Slater, who by all accounts was a much loved father and grandfather.
49. It is particularly disturbing therefore that, when one of the academics was specifically asked about the basis for the conclusion in evidence before the Inquiry, he was unable to offer any reason for it.³⁵

³⁴ Ibid.

³⁵ Transcript of Inquiry, 2 March 2023, 2713-2715 (TRA.00031.00001).

Special Commission of Inquiry into LGBTIQ hate crimes

Investigative and other steps undertaken by the Inquiry

Contact with family members

50. Mr Slater's wife (Gwen) and only child (Julie) have passed away. The Inquiry has however been in contact with one of Mr Slater's four grandchildren, Ms Yvonne [REDACTED]. Ms [REDACTED] was 11 years old when Mr Slater passed away. She has provided the Inquiry with helpful information concerning her grandfather, her family's recollections in relation to the circumstances of his death, as well as copies of some of newspaper articles from the early 1980s relating to the death.

Receipt of Coroners Court File

51. The Inquiry requested and received a copy of the Coroner's Court file from the Newcastle Local Court. This comprised fourteen pages of documents including a record of the formal findings, the initial report of the death to the coroner, and a short record of the opinion of the forensic pathologist and an exhibit list. It did not include copies of exhibits tendered at the inquest, or of statements taken by police and included in the coronial brief of evidence.

Summonses issued to the NSWPF

52. The matter was one of those the subject of the Inquiry's first summons to police dated 18 May 2022, for all police investigative material relating to the death (NSWPF1). In response the NSWPF produced an investigative file principally comprised of police and civilian witness statements, as well as typed records of interview with Mr Miller and his associates that were conducted in August and September 1982.

53. A further summons was issued on 11 October 2022 (NSWPF28) for crime scene photos that were referred to in material relating to the review of Mr Slater's death undertaken by Strike Force Parrabell, which had earlier been produced by the NSWPF.

54. At the same time, in correspondence relating to the summons, the Inquiry asked the NSWPF to conduct further searches to ensure that all investigative material related to Mr Slater's death had been produced. This request arose as a result of a concern that the investigative material produced pursuant to NSWPF1 had referred to various investigative steps and running sheets that did not form part of the material produced in response to that summons, as discussed above.

Special Commission of Inquiry into LGBTIQ hate crimes

55. NSWPF subsequently advised the Inquiry that some further archived material had been located.³⁶ This included a number of photographs including the requested crime scene photographs. However, there was little additional material of substance. It remains the case that a significant amount of material from the original investigation including running sheets and investigative notes have not been produced by the NSWPF. It would therefore appear that they have been lost.
56. As noted previously, by summons dated 5 December 2022 (NSWPF39) the Inquiry sought production of the exhibits associated with the original investigation including blood swabs from the crime scene, and Mr Slater’s clothing and blood sample. The NSWPF was unable to locate them and concluded that they no longer exist.³⁷ On 19 January 2023, the NSWPF produced a statement of Detective Sergeant Neil Sheldon setting out the searches it had undertaken for those exhibits.³⁸
57. On 9 December 2022, by summons NSWPF44, The Inquiry also sought copies of any criminal records and other background material held in relation to Mr Miller and some of his associates. In response the NSWPF provided a considerable amount of material largely concerning details of offending involving Mr Miller.

Summonses issued to other agencies

58. On 7 December 2022 the Inquiry issued a summons to the Hunter New England Local Health District (HNELHD) for records relating to Mr Slater. The Inquiry was advised that HNELHD was unable to locate any records relating to Mr Slater.³⁹
59. On 21 June 2022, in an effort to obtain records of the criminal proceedings that had been brought against Mr Miller, the Inquiry issued a summons (ODPP1) to the Office of the Director of Public Prosecutions for NSW (ODPP). The ODPP advised that any relevant record would have predated the ODPP and at that time would have been held by the “Clerk of the Peace”. As a result, on 10 August 2022 the Inquiry issued a summons (DCJ1) to the Department of Communities and Justice (DCJ), seeking the relevant prosecution file maintained by the then Office of the Clerk of the Peace. By email response dated 6 September 2022 DCJ advised that relevant records could not be located. DCJ subsequently undertook further searches based on additional information provided by the Inquiry. On 11 November 2022, DCJ advised that none

³⁶ Statement of Emily Burston dated 18 May 2023, [7] (SCOI.45198).

³⁷ *Ibid*, [8].

³⁸ Statement of Detective Sergeant Neil Sheldon dated 18 January 2023 (SCOI.82916).

³⁹ Statement of Emily Burston dated 18 May 2023, [18] (SCOI.45198).

Special Commission of Inquiry into LGBTIQ hate crimes

of Courts and Tribunal Services, the Supreme Court or any other relevant sections within DCJ were able to locate any relevant material.⁴⁰

Attempts to contact former legal representatives of Jeffrey Miller

60. In a further attempt to gain information concerning the circumstances in which the charges against Mr Miller were not billed, the Inquiry attempted to make email contact with a barrister who it seems may have appeared for Mr Miller. To date, no response to this enquiry has been received.⁴¹
61. Mr Miller's solicitor at the time is understood to be deceased, and the relevant firm has now gone through various changes and no longer exists under its original name. The Inquiry made contact with a firm of solicitors in Newcastle which may have inherited and retained some of the files of the firm which had acted for Mr Miller. The Inquiry was advised that that firm does not hold any relevant records. Details of these steps are outlined in the statement of Ms Emily Burston, the solicitor assisting the Inquiry in relation to Mr Slater's death.⁴²

Opinion obtained from Cardiologist

62. By letter dated 21 December 2022, an opinion was sought from Associate Professor Mark Adams, Head of the Department of Cardiology at the Royal Prince Alfred Hospital.⁴³ He was asked to address matters including the extent to which Mr Slater's death was attributable to a myocardial infarction and/or the injuries occasioned by the assault on 19 December 1980, or any other cause. His report, dated 13 January 2023, is considered below.

Opinion obtained from Neurosurgeon

63. As noted earlier in the submission, by letter dated 7 March 2023 the Inquiry also sought the opinion of Professor Michael Besser AM, consultant Neurosurgeon, concerning the effect of Mr Slater's head injuries on his comprehension, relevant to comments he is said to have made to those assisting him at the scene shortly after the assault.⁴⁴ In his report dated 16 March 2023, Professor Besser also made some helpful observations more generally concerning Mr Slater's injuries: see below.

Inquiries made with the Registrar of Births Deaths and Marriages

⁴⁰ Ibid, [14]-[17].

⁴¹ Ibid, [24].

⁴² Ibid, [25].

⁴³ Letter of instruction to Associate Professor Mark Adams, 21 December 2022 (SCOI.82578); Expert report of Associate Professor Mark Adams, cardiologist, 13 January 2023 (SCOI.82770).

⁴⁴ Letter of instruction to Professor Michael Besser AM, 7 March 2023 (SCOI.82915); Expert report of Professor Michael Besser AM, neurosurgeon, 16 March 2023 (SCOI.82914).

Special Commission of Inquiry into LGBTIQ hate crimes

64. Enquiries were made with the Registry of Birth Deaths and Marriages (BDM) in relation to various witnesses. Unfortunately a number of those witnesses are now deceased.
65. Mr Miller died in 1986.
66. Mr [1219] died in 1983. As well as being the witness who first implicated Mr Miller, Mr [1219] potentially may have been a helpful source of information concerning Mr Miller's past involvement in robberies at toilet blocks on other occasions.
67. Ms [1218], one of Mr Miller's three companions at around the time Mr Slater was assaulted, is also now deceased.

Contact with civilian witnesses

68. The Inquiry did make contact with two key surviving witnesses, Ms [1217] (now aged 70) and Mr [1216] (now aged 62), who were present with Mr Miller for a time on the day of the assault. Ultimately, for reasons elaborated upon later in the submission, it would appear that the information in the records of interview of both of these witnesses, conducted in 1982, are the more reliable sources of information from these witnesses.

Submission as to the available evidence

69. 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.

Civilian witness accounts relevant to role of Jeffrey Miller

70. As referred to above at [19], In the days following Mr Slater's death, statements were taken from four people, including Jeffrey Miller, who indicated that they had been present together while shopping in the area, and that they had also passed by the toilet block in question.
71. However, it was not until 27 August 1982 that a young person, Mr [1219], who was then aged 17, supplied information to the police implicating Mr Miller. In particular Mr [1219] told police that on the afternoon of the day that Mr Slater was assaulted, Mr Miller had been at his house and had threatened Mr [1219], saying "you don't want to open your mouth or you will end up like the guy in the toilet".
72. Police then re-interviewed the three people who had previously indicated that they had been present with Mr Miller earlier in the day. While their accounts upon being re-interviewed did not

Special Commission of Inquiry into LGBTIQ hate crimes

suggest that they had witnessed Mr Miller assaulting Mr Slater, the accounts taken together provided strong circumstantial evidence that he had.

a) Evaluation of the accounts given by **I216**

73. Mr **I216** was aged 19 at the time of Mr Slater's death. The accounts he has given which are still available consist of a statement made on 23 December 1980, a typed and signed record of interview with police dated 1 September 1982, and more recently a statement he has provided to this Inquiry.⁴⁵ He also gave evidence at the committal proceedings in November 1982, but the record of those proceedings has been lost: there is a brief reference to his evidence in a Newcastle Herald newspaper report dated 25 November 1982 (see further below).
74. Without traversing the full detail of Mr **I216**'s accounts, it would appear that the most reliable account provided by him is the record of interview dated 1 September 1982 (**ROI**). In that account Mr **I216** indicates that he had known Jeffrey Miller for about two years.⁴⁶ He describes walking into the toilet in Birdwood Park to use the urinal, and that when he was at the urinal a man entered and stood at the urinal on his right. He states that the man "pulled out his penis and stood there as if urinating".⁴⁷
75. In his earlier statement of 23 December 1980 Mr **I216** had said that the man "pulled out his dick and pretended to have a piss".⁴⁸ In the recent account provided in a statement to this Inquiry, Mr **I216** states that he observed the man to be holding his penis, which was partially, though not fully erect, while "staring" at Mr **I216** and that for this reason, he took the man to be present in the toilets with a sexual purpose. In that account, Mr **I216** states that there is "no doubt" in his mind that the man he saw was there to trying to "hook up".
76. In his 1982 ROI, Mr **I216** said that, after he exited the toilet, Ms **I218** was making sexual references to the toilet being a "beat", in response to which he (Mr **I216**) made a reference to there being "only one old bloke in there". He said that Jeffrey Miller then said something that gave him the impression that he (Miller) was then going to enter the toilet for "sexual reasons".⁴⁹
77. In his recent statement to the Inquiry, Mr **I216** casts doubt on the likelihood that Miller had assaulted anyone upon entering the toilet block, because he did not consider there would have

⁴⁵ Statement of **I216** dated 15 May 2023 (SCOI.45197).

⁴⁶ Record of interview with **I216** 1 September 1982, A30 (SCOI.10343.00046).

⁴⁷ Record of interview with **I216** 1 September 1982, A13 (SCOI.10343.00046).

⁴⁸ Statement of **I216** dated 23 December 1980, [4] (SCOI.10343.00045).

⁴⁹ Record of interview with **I216** 1 September 1982, A14 (SCOI.10343.00046).

Special Commission of Inquiry into LGBTIQ hate crimes

been time, because he did not hear anything, and because of Miller’s unruffled demeanour. Against this, however, is the fact that in his 1982 ROI he had indicated that Mr Miller had been in the toilet block for “two to three minutes”. According to the *Newcastle Herald*, he gave similar evidence at the committal hearing.⁵⁰

78. In both his December 1980 statement and his 1982 ROI, Mr [1216] described the man in the toilet as about 5 foot 6, middle aged, of medium build and perhaps wearing grey trousers. He also thought him to be “a bit thin on top.” As noted above, in his ROI he said that he described the man to his associates as an “old bloke”.
79. The *Newcastle Herald* article of 25 November 1982⁵¹ reported on Mr [1216]’s committal evidence, saying that Mr [1216] was shown a photo of Mr Slater and replied that “the man he had seen in the lavatory could very easily be the man depicted in the photographs but he could not be sure.” The article indicated that the evidence Mr [1216] gave at the committal was consistent with his ROI as, in cross examination by Mr Miller’s legal representative he had “denied that he had invented things in his second statement to police”.
80. Given the detail provided in his much earlier accounts, it is suggested that little weight should be given to the opinion now expressed by Mr [1216] more than 40 years later, that he does not think Mr Miller assaulted Mr Slater as he does not think he would have had the time or opportunity. It may be that that view is the product of “wishful thinking” on Mr [1216]’s part, now many years after the event, rather than obfuscation. Whether or not that is the case, that suggestion does not sit comfortably with the detail provided by Mr [1216] in his 1982 ROI, less than two years after the attack on Mr Slater.

b) Evaluation of the accounts given by [1217]

81. Ms [1217] was 28 years of age at the time of Mr Slater’s death. The accounts she is known to have given consist of a statement made on 23 December 1980, and a typed and signed record of interview (ROI) with police dated 31 August 1982. Additionally, Inquiry officers made contact with Ms [1217] by phone in April 2023.⁵²
82. It appears likely that Ms [1217] would have given evidence at the committal proceedings in late 1982. The *Newcastle Herald* article refers to a question posed to Mr [1216] by Mr Miller’s counsel,

⁵⁰ “Murder hearing told of sex wish”, *Newcastle Herald*, 25 November 1982 (SCOI.82767).

⁵¹ “Murder hearing told of sex wish”, *Newcastle Herald*, 25 November 1982 (SCOI.82767).

⁵² Statement of Emily Burston dated 18 May 2023, [27]-[32] (SCOI.45198).

Special Commission of Inquiry into LGBTIQ hate crimes

in which Mr [1216]'s account is contrasted with that of Ms [1217], thereby lending support to the likelihood that Ms [1217] gave evidence. However, as noted earlier there is no record of those proceedings.

83. Ms [1217] has suggested to the Inquiry that she cannot vouch for the accuracy of her 1982 ROI, and has indicated (consistent with her ROI) that she is dyslexic and would not have been able to read her ROI. However, for reasons touched on below, it would appear that her ROI is likely to represent the most reliable version of events from her perspective, even if she now disputes this.
84. Her 1982 ROI includes an assertion by Ms [1217] that she can't read. It then records that as a consequence, a detective read the typed record out loud to her, and contains her acknowledgment that the typed record of interview accurately records what she told the police, with the exception of one matter that she corrected. [REDACTED]

The ROI notes her agreement to signing each page of the ROI. Each page of the ROI bears her signature.

85. In the 1982 ROI, Ms [1217] states that at the time of making her initial statement in 1980 (in which she had not implicated Mr Miller), she had in fact suspected that Miller was involved in the assault, but that he had threatened her not to say anything to the police. She states that she also knows him to be a violent and dangerous person and that she was frightened to tell the truth.⁵³
86. In her 1982 ROI, Ms [1217] indicates that she was present when Mr [1216] went into the toilet block. When he came out, Mr [1216] was talking to Miller and told him that there was a bloke in the toilets, as a result of which Miller said "I am going to crack it with the bloke in the toilet", which she said was a "term used by homosexuals that means to have sex with another bloke".⁵⁴ Ms [1217] went on to say that she then knew that Miller was going to either "crack" it with the man, or that he was going to "roll him and take his wallet". She then left, indicating that she didn't "want any part of it". She states that her reference to "rolling" the man meant:

*that Jeff would have assaulted him and pushed him over and taken his wallet and money. Jeff is always doing that when he goes around to the toilets.*⁵⁵

⁵³ Record of interview with [1217], 31 August 1982, A9 (SCOI.10343.00043).

⁵⁴ Ibid, A18-A19.

⁵⁵ Ibid, A21.

Special Commission of Inquiry into LGBTIQ hate crimes

87. She states that soon thereafter Miller rejoined her, and that she later accompanied him to his mother's house in Carrington, where Miller changed his clothes, having told her that they were dirty. Later in the afternoon she describes accompanying Miller when he went and spoke with Mr [1219]. She states that Miller spoke to Mr [1219] because Mr [1219] "knew too much about Jeff rolling and bashing homosexuals and I have seen Jeff belt other blokes up for dobbing him in ..."

88. In the phone contact that Inquiry officers recently had with Ms [1217],⁵⁶ she denied knowledge that Miller had committed acts of violence. However, in her 1982 ROI she gives an account of witnessing Miller assaulting a gay man by the name of [1220] at Piper's Nightclub in Newcastle, and that "[1220]" worked at Newcastle courthouse and had dobbed Miller in to the police. She describes seeing Miller bash this person and kick him, as a result of which he was taken to hospital.

89. The veracity of this detail of [1217]'s ROI, and thereby of her ROI more generally, is supported by the fact that the Inquiry has obtained a record that is consistent with Miller having committed such an assault, on a man by that name, at that Nightclub, who is described as "effeminate"⁵⁷. The Inquiry has made unsuccessful attempts to locate and interview the victim of that assault.⁵⁸

c) Account given by [1218]

90. Ms [1218] was 20 years of age at the time of Mr Slater's death. It appears that she was spoken to by police shortly after Mr Slater's death, on 22 December 1980, although there was no statement taken from her at that time. A record of interview (ROI) was later conducted with her on 3 September 1982. Ms [1218] is now deceased.⁵⁹ [REDACTED]

91. In her 1982 ROI⁶⁰, Ms [1218] states that she was present with Miller, Mr [1216] and Ms [1217] on the day Mr Slater was assaulted. She describes seeing Mr [1216] enter the toilet block in Birdwood Park and says that she then yelled something out to him, though she could not recall what this was.⁶¹ After Mr [1216] exited the toilet, she thought he said something to Miller, and

⁵⁶ Statement of Emily Burston dated 18 May 2023, [29] (SCOI.45198).

⁵⁷ Crime Information Report, 28 November 1980 (NPL.0121.0001.0416).

⁵⁸ Statement of Emily Burston dated 18 May 2023, [35] (SCOI.45198).

⁵⁹ Ibid, [13].

⁶⁰ Record of interview with [1218], 3 September 1982 (SCOI.10343.00047).

⁶¹ Ibid, A11.

Special Commission of Inquiry into LGBTIQ hate crimes

at that point she and Ms [1217] walked off towards the markets. As they were walking, Mr [1216] and Miller came running up to Ms [1217] and her.

92. Ms [1218]'s account is relatively general and contains limited detail, though in general terms it is consistent with the ROIs of Mr [1216] and Ms [1217], as to the timing of the group being at or near the toilet block, and as to the actions of Mr [1216] and Miller at the toilet block (although she appears to have left before Miller entered). She also corroborates Ms [1217]'s account that Miller went to see Mr [1219] later that afternoon, and that there was some form of altercation between them.

d) Account given by [1219]

93. On 27 August 1982, Mr [1219] provided information to the police implicating Mr Miller. This was in the form of a record of interview (ROI). Mr [1219] was 17 years old at the time he was interviewed.
94. In the 1982 ROI, Mr [1219] describes Miller as an “ex acquaintance” whom he had known for two years and who at that time (August 1982) was in custody. He states that Miller was responsible for the assault on Mr Slater, and that he knew this because of what Miller had told him on the afternoon of the day that the assault had occurred, or possibly the next day.⁶² The relevant admission was that Mr Miller came to his house and said “you don’t want to open your mouth or you will end up like the guy in the toilet”.⁶³
95. When asked what he took Mr Miller to mean by this, his response in the ROI is:

I suppose because I knew a lot about him, that he was rolling and bashing up people in the toilets around Hamilton, Burwood and Centennial Parks. He was also taking their wallets. I didn't know at the time what he meant when he said 'like the guy in the toilet', I heard about it either the next day or a few days after that a man had died.

96. Mr [1219] was further asked how he knew that Mr Miller was responsible for “assaulting and rolling people in the toilets at Newcastle”. The typed ROI records his response as follows:⁶⁴

I have him (sic) brag about it and I have also seen him bash other people, once in the toilets at Hamilton where this old drunk guy, about 60 was in the toilet and Geoff walked in and knocked him to the ground, kicked him into the trough and then took his wallet. I saw this myself but I took no part in it. He took about \$16.00 or \$17.00 from his wallet. Then there was another time at Pipers Night Club he saw a person that had dobbed him in to the Police about something. He told him to go down the stairs and when he was about half way down he kicked him then kicked him all the way down the stairs and then layed

⁶² Record of interview with [1219] 27 August 1982, A5 (SCOI.10343.00044).

⁶³ Ibid, A6.

⁶⁴ Ibid, A9.

Special Commission of Inquiry into LGBTIQ hate crimes

(sic) into him when he got to the bottom. This guy was covered in blood and had serious injuries. I can't remember the name of the guy that he bashed but they took him to Hospital half dead and it was reported to the Newcastle Police Station. I know Miller to be very violent and that on a number of thime (sic) he has threatened to do away with me if I open my mouth and tell anybody what he has done.

97. Mr [1219] evidently gave evidence at the committal hearing in November 1982. A *Newcastle Herald* report⁶⁵ refers to his evidence, while also stating that Mr [1219] was by then serving a seven year sentence for 132 offences committed while he was a juvenile, with a two year non-parole period. The Inquiry sought details in relation to Mr [1219] with a view to speaking with him. However, it was established that he passed away in late 1983, aged 19, while in custody at Berrima Training Centre.
98. Although (from the Inquiry's point of view, in the absence of the committal record) they are untested, Mr [1219]'s statements to police clearly provide support for the proposition that Mr Miller assaulted Mr Slater.

Apparent admission made by Mr Miller to Police

99. On 1 September 1982, police approached Mr Miller with the inculpatory accounts that had been provided to them by Ms [1217], Mr [1219] and Mr [1216]⁶⁶. At the time, Mr Miller was in custody on other matters.
100. In response, Mr Miller initially made statements that appeared to concede his involvement in the matter. He showed police to the toilet block where the incident occurred. According to the investigating officer, Detective Senior Constable Inkster, upon being told that Ms [1217] had signed a statement in writing, Miller said "I knew I couldn't trust that bitch" and complained that Ms [1217] "couldn't keep her mouth shut". He conceded that he had in fact entered the toilet block and asked as follows:

"what would happen if I say that old bloke had a go at me first".⁶⁷

101. However, when formally interviewed the same day, while admitting to entering the toilet block (when he said he was looking to offer sex for money) sometime after 11:00am on 19 December 2022, he claimed that he had done so to "big note" himself with his companions and that he "lost courage" after checking the first cubicle (for reasons he declined to explain), then leaving

⁶⁵ "Man for trial over park lavatory death", *Newcastle Herald*, 11 December 1982 (SCOI.82769).

⁶⁶ Statement of Detective Senior Constable Grahame Robert Inkster, 28 October 1982 (SCOI.10343.00032).

⁶⁷ *Ibid*, [11].

Special Commission of Inquiry into LGBTIQ hate crimes

without seeing anyone or taking any action. He denied involvement in any other bashings or robberies.⁶⁸

102. This questioning of Mr Miller in 1982 took place prior to the development of current practices and requirements mandating the electronic recording of such interviews of suspects. Nevertheless, assuming the typed record of the initial responses made by Mr Miller are reliable, they clearly provide significant evidence, by way of admission, implicating Mr Miller in the assault on Mr Slater.

Consideration of evidence relevant to the question of LGBTIQ hate bias motivation

103. As noted above, for the purpose of assessing whether the assault on Mr Slater was wholly or partially motivated by LGBTIQ hate or bias, it is not critical to arrive at a definitive conclusion about Mr Slater's sexuality. However, in that regard, it is submitted that there is not a sufficient basis on which the Inquiry would reach a different view from the understanding of his family at the time. There is no evidence before the Inquiry to suggest that Mr Slater was previously known to his assailant, or targeted on any basis other than his presence or conduct in the toilet block that day.

104. In Mr [1216]'s 1980 statement, and in his recent version given to the Inquiry, he suggests that the man he observed in the toilet block was conducting himself in such a way that it was clear in Mr [1216]'s mind he was seeking sex with another man. Mr [1216] did not definitively identify that man as Mr Slater, but the Inquiry would be satisfied that it was in fact Mr Slater, for the same reasons and to the same extent that it would regard Mr Miller as the probable perpetrator, given that it appears uncontroversial, on the evidence of both Mr [1216] and Mr Miller, that Mr Miller entered the toilet block shortly after Mr [1216] left it.

105. It is submitted that Mr [1216]'s opinion on the implications to be drawn from the man's conduct must be treated with caution. While those accounts by Mr [1216] would suggest the man was acting unusually, this interaction between the man and Mr [1216] occurred within a very limited timeframe. The implications to be drawn from that conduct, even if accurately described, might be considered highly subjective, especially given Mr [1216]'s prior knowledge (which may well not have been shared by Mr Slater) that the area was a beat. More importantly, Mr [1216]'s description would provide support for a conclusion that the man was acting in such a way that may have been – rightly or wrongly – interpreted by a person entering the toilet block as a sexual

⁶⁸ Record of interview with Jeffrey Miller, 1 September 1982, Q13-Q23, Q28 (SCOI.10343.00049).

Special Commission of Inquiry into LGBTIQ hate crimes

advance, and thus cause that person – rightly or wrongly – to identify him as member of the LGBTIQ community.

106.If the Inquiry were satisfied that Mr Miller was the perpetrator, there is evidence that he had a practice of targeting beat users as targets for robbery (see [23] – [25] above).

Consideration of cause of death

107.The question of causation seems to have been one of the factors in the decision not to proceed with the murder prosecution against Mr Miller.

108.That it may have been a significant factor is supported by the hearsay understanding of Mr Slater’s granddaughter, Ms ██████, from her mother, that there had been a “ruling” that her grandfather “essentially ... had died of a heart attack”.⁶⁹

109.The possibility that causation may have been a significant factor in the decision not to proceed is also lent some support by the report⁷⁰ that the defence obtained from Dr AJ Bookalil, the neurosurgeon involved in Mr Slater’s treatment after the assault. The report is dated 3 December 1982, but also bears a stamp dated 6 December 1982. Bearing in mind that the Magistrate’s decision to commit Mr Miller for trial was made on 10 December 1982,⁷¹ it may be that Dr Bookalil’s report was considered as part of the evidence before the Magistrate.

110.Dr Bookalil stated that Mr Slater had sustained a “fairly severe head injury”, but that his condition “did not cause any undue concern” and he “would have expected [Mr Slater] to have improved although he may have [had] persisting neurological deficit”. He believed “the cause of death was primarily that of a myocardial infarction and not a death directly attributable to his head injury”, although he observed that he was not competent to comment on whether a head injury could precipitate a myocardial infarction and advised that a cardiological opinion be sought in this respect.

111.On the other hand, it is notable that it does not appear that Mr Miller was charged with a lesser form of offence (some form of serious assault), in the alternative. This suggests that even if the issue of causation of death was a factor in the No Bill decision, it was not the only factor, and the strength of the evidence more generally in relation to Mr Miller’s involvement is likely to have played some role.

⁶⁹ Email to Inquiry from Yvonne ██████ 18 July 2022 (SCOI.45199).

⁷⁰ Report of Dr AJ Bookalil dated 3 December 1982 (SCOI.10343.00009).

⁷¹ “Man for trial over park lavatory death”, *Newcastle Herald*, 11 December 1982 (SCOI.82769).

Special Commission of Inquiry into LGBTIQ hate crimes

112. A newspaper report which appears to be from the *Newcastle Herald* from early 1983, titled “Murder charge dropped”, reports on information provided by Mr Miller’s lawyers that the Attorney General’s Department had advised them of the No Bill.⁷² In relation to any reasoning it states only that “the lawyers said the Crown’s decision followed submissions by them that the evidence was so tenuous that the case would be unsafe to go to a jury.” Earlier newspaper reports, at the time of the committal proceedings, had highlighted the extensive criminal history of the witness Mr **1219**, and had also observed that the Magistrate, while committing the matter for trial, had observed that he had “noticed discrepancies in some of the matters”.⁷³ These references would appear to suggest that views of the quality and/or reliability of the eyewitness and other civilian evidence may have played a role in the decision.

Opinion of Associate Professor Mark Adams in relation to causation

113. In his report dated 13 January 2023, Professor Adams outlines the advances in the understanding of pathophysiology of myocardial infarction, heart failure and other events since 1980. He outlines the clinical reasons why, in his view, the myocardial infarction was caused by plaque in his left main coronary artery becoming unstable on around 20 December 1980, and the likely role of the assault in precipitating this, given the temporal relationship to the assault, the extensive bleeding and clotting this had precipitated, and the role of the physical and emotional stress in activating the relevant process.⁷⁴

114. Professor Adams concludes that the myocardial infarction was precipitated by the assault and the extensive injuries Mr Slater had received.

Opinion of Professor Michael Besser AM as relevant to causation

115. Professor Besser, in his report dated 16 March 2023, states that he agrees with Professor Adams that the assault and subsequent severe traumatic brain injury precipitated Mr Slater’s cardiac events. He states that the evidence for this opinion is “well set out in the literature review by Dr Adams in his comprehensive report”.⁷⁵

116. In addition Professor Besser observes that Mr Slater was assaulted with considerable force, as demonstrated by the extensive skull base and facial fractures as well as the numerous soft tissue injuries to his head and body, and that the extent of his injuries indicates that several blunt force

⁷² “Murder charge dropped”, publication unknown, undated (SCOI.82760).

⁷³ In particular, “Man for trial over park lavatory death”, *Newcastle Herald*, 11 December 1982 (SCOI.82769).

⁷⁴ Expert report of Associate Professor Mark Adams, cardiologist, 13 January 2023, 3 (SCOI.82770).

⁷⁵ Expert report of Professor Michael Besser AM, neurosurgeon, 16 March 2023, 7 (SCOI.82914).

Special Commission of Inquiry into LGBTIQ hate crimes

blows were used. He states that haemorrhagic contusion brain injuries are known to progress and enlarge particularly in patients with hypertensive vascular disease and that this inevitably results in increasing cerebral oedema and raised intracranial pressure.⁷⁶

117. In his experience older patients over 65 years of age have a significant mortality with a traumatic brain injury of this extent. This is supported by the extensive local and international literature. He states that the prognosis for a full recovery would be very poor and that he disagrees with Dr Bookallil's comments in this regard.

Conclusion in relation to the question of causation of death

118. Unfortunately, in the absence of relevant documentation, it is impossible to know precisely what role any question concerning the issue of causation of death may have played in relation to the decision to discontinue the murder prosecution. The fact that it does not appear that Mr Miller was charged with a lesser offence suggests, at least, that it was not the only issue contributing to that decision.

119. In any event, given the opinions expressed by both Professor Adams and Professor Besser, it is submitted that the expert evidence strongly supports the view that the assault on Mr Slater was a "substantial or significant cause of death" or a "sufficiently substantial cause", this being the relevant consideration under the criminal law in relation to the element of proof that the act of an accused caused the relevant death.⁷⁷

Submission as to manner and cause of death

120. The evidence that the Inquiry has assembled, considered in its entirety, is strongly supportive of the view that Mr Miller was responsible for the assault upon Mr Slater. However, notwithstanding the considerable force of that evidence, there are a number of reasons why the Inquiry would hesitate to reach a positive conclusion naming Mr Miller as the individual responsible.

121. As Mr Miller is deceased, it will never be possible to test the evidence implicating him in criminal proceedings. In the context of such proceedings, the relevant standard to be applied is proof beyond reasonable doubt. A particular concern, therefore, is that the record of the committal proceedings does not appear to exist. A record of the evidence of key witnesses, as tested at the time in those proceedings, would be critical to a full and fair assessment of the reliability of the accounts given by them.

⁷⁶ Ibid, 5.

⁷⁷ *Swan v the Queen* (2020) 269 CLR 663 at [24].

Special Commission of Inquiry into LGBTIQ hate crimes

122. While Mr Miller's apparent admissions are very significant, it must be noted that they are in typed form and were made prior to the later standard practice of making electronic recordings of such admissions, and that he appears to have disavowed them in subsequent statements made to the police.

123. In summary then, while it appears highly likely that Mr Miller was responsible for the assault upon Mr Miller, in view of the grave nature of the allegation, the inability of Mr Miller, now deceased, to put a contrary view, and the fact that the prosecuting authority as of 1983 took the view that there were deficiencies in the case such as to warrant the discontinuance of the prosecution, it is submitted that the Inquiry would hesitate to make a formal finding declaring this to have been the case.

124. On the question of causation, the evidence assembled by the Inquiry suggests that there is no bar to finding that the person responsible for assaulting Mr Slater was also responsible for causing his death. The report of Dr Bookalil, as at the time of the "No Bill", may have left a question mark hanging over this question. However, it is submitted that the expert opinions of Professor Adams and Professor Besser are such as to establish that the person responsible for the assault should also be considered, at law, to have caused Mr Slater's death.

125. It would be appropriate therefore for a finding of cause and manner of death to differ slightly from that reached by the Coroner, to adequately reflect the causal nexus with the assault as established by the evidence of those two experts. It is submitted that an appropriate finding would be in the following terms:

Richard Slater died on 22 December 1980 at Royal Newcastle Hospital as a result of myocardial infarction which was precipitated by severe traumatic brain injury received as a result of being assaulted on 19 December 1980 at Birdwood Park in Newcastle.

Submission as to bias

126. The following analysis proceeds on the assumption (while bearing in mind the qualification expressed above) that it was Mr Miller who assaulted Mr Slater.

127. On the evidence available to the Inquiry, Mr Miller was himself gay. Notwithstanding this, if the accounts of Ms [1217] and Mr [1219] are accepted as accurate, Mr Miller had a practice of assaulting and robbing men, often in toilet blocks, and in particular gay men. Although records of Mr Miller's offending history do not appear to suggest he had been prosecuted for assaults occurring in toilet blocks, the assertions of both Ms [1217] and Mr [1219] concerning an assault by Mr Miller on a gay man at a nightclub are borne out by police documentation.

Special Commission of Inquiry into LGBTIQ hate crimes

128.If Mr Miller did make a practice of targeting men who were beat users, or who were presumed to be beat users, this is likely to have been for the reason that they were seen as “easy targets” of robbery who might be unlikely to report being attacked, or whose reports might not be the subject of vigorous police investigation.

129.The accounts given by both Mr [1219] and Ms [1217] are consistent with this being the practice and rationale of Mr Miller. Applied to the circumstances of the attack upon Mr Slater, the ROI accounts of both Mr [1216] and Ms [1217] tend to suggest that Mr Miller entered the toilet block on the understanding (whether correct or not) that the occupant was present in the toilet as a beat user.

130.In those circumstances, it is well and truly open to infer that Mr Miller entered the toilet with the intention of robbery, including the potential use of violence upon the vulnerable occupant, who, as a beat user, was considered to be an “easy target” of robbery.

131.It is submitted that LGBTIQ bias may exist in such a case, when an offender “discriminatorily selects” a victim due to that victim’s LGBTIQ status, actual or presumed, even if animus towards the victim did not motivate the crime.⁷⁸

132.In Mr Slater’s case, his death (if at the hands of Mr Miller) is likely to have involved the targeting, or “discriminatory selection” of someone presumed to be gay and/or a beat user (whether or not this was a correct assumption) on the basis that he was therefore seen as a vulnerable target of robbery. It is submitted that such a case (regardless of whether the perpetrator, additionally, had or exhibited an anti-LGBTIQ animus) is one in which LGBTIQ bias is present.

Submissions as to recommendations

133.There are no recommendations arising.

Peter Gray SC
Senior Counsel Assisting

William de Mars
Counsel Assisting

⁷⁸ Exhibit 2, Tab 29, Jeff Gruenewald and Kristin Kelley, ‘Exploring Anti-LGBT Homicide by Mode of Victim Selection’ (2014) 41(9) *Criminal Justice and Behavior* 1130, 1132, 1146 (SCOI.76824); and literature cited therein; see also Exhibit 6, Tab 255, Report of Professor Asquith, 25 January 2023, at [82], [94]–[97].