



## Special Commission of Inquiry into LGBTIQ hate crimes

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### **SUBMISSIONS OF COUNSEL ASSISTING**

16 May 2023

#### **IN THE MATTER OF WILLIAM (BILL) ANTONY ROONEY**

##### **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. Mr Rooney died at approximately 2:30pm on 20 February 1986 at Wollongong Hospital.

###### *Circumstances of death*

3. At around 8:40am on Friday 14 February 1986, Mr Rooney, a gay man, was found on the ground between a toilet block and a concrete retaining wall at the rear of retail premises named "L&B Discounts" in Crown Lane, Wollongong, near a nightclub then known as "Annabel's" (later known as "Pip's"). At the top of the wall, which was about three metres high, was a small car parking area. The gap between the wall and the toilet block was about 0.5 metres. An aerial view of the area, as at 1986-87, is **Annexure A** to these submissions.
4. Mr Rooney was alive but suffering from serious head injuries and in a semi-conscious condition. He was transported by ambulance to Wollongong Hospital, but he died from his injuries six days later on 20 February 1986. He was 35 years old.
5. Whether Mr Rooney's head injuries were caused by a fall or by an assault remains uncertain.

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### *Findings of post-mortem examination*

6. A post-mortem examination was carried out by Dr Vincent Verzosa, forensic pathologist, at 10:15am on 21 February 1986 at Wollongong Hospital Mortuary, and a report was completed the same day.<sup>1</sup> The handwritten autopsy report included the following:
  - a. death had taken place about 21 hours previously;
  - b. the direct cause of death was “massive (subdural) cerebral haemorrhage and intracardiac thrombus”; and
  - c. antecedent causes of death were “torn meningeal vessels” and “basal skull fractures, most probably due to a fall with back of head hitting a hard surface”.<sup>2</sup>
7. The report also included the following:
  - a. Mr Rooney’s body had features consistent with his stated age, was fairly nourished, of medium build, about 5ft 11 inches tall, and showing some bruises on the limbs and chest;
  - b. Mr Rooney had an oval abrasion / contusion about 3.5 inches long and 3 inches wide on his left upper limb, on the medial half of the elbow region. Mr Rooney’s right knee showed a contusion / abrasion;
  - c. In relation to Mr Rooney’s head region:
    - i. his scalp showed a diffuse haematoma across the lower half of the occipital area, horizontally extending from one side to the other side of the back of the head;
    - ii. his skull showed basal linear fractures on the posterior and middle cranial fossa. The posterior fossa showed a horizontal fracture running around the whole length of the lower portion of the occipital bone extending upwards to the floor of the temporal fossa on both sides. Another fracture on the posterior fossa was seen on the right half, running forwards near the middle of this area, reaching the lower margin of the foramen magnum. The horizontal fracture caused a tear of the branches of the middle meningeal arteries on both sides;

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<sup>1</sup> Autopsy Report, 21 February 1986 (SCOI.11269.00006).

<sup>2</sup> Dr Verzosa confirmed this opinion in his evidence at the inquest: Inquest Transcript of 15 May 1987, 1 - 4 (SCOI.03683.00013).

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- iii. his brain showed massive blood clot accumulation covering almost the entire surfaces of both cerebral hemispheres and cerebellar lobes. The bleeding was mainly subdural in character, coming from the meningeal vessels; and
- iv. his neck showed no fracture / dislocation or any apparent abnormality of other structures.

### *Persons of interest*

8. Between 15 and 17 February 1986, Leslie John Harrison (date of birth [REDACTED]),<sup>3</sup> who was also known as “Radar”, appears to have been a person of interest.
9. However, by 17 February 1986, so far as can be ascertained on the material available to the Inquiry, police had ceased pursuing any enquiries in relation to the possible involvement of Mr Harrison in the death of Mr Rooney: see below at [140] - [145].
10. Mr Harrison died in 2004.
11. By about late 1989, Mark Anthony Scerri (date of birth [REDACTED]) had emerged as a key person of interest in relation to the death of Mr Rooney. Mr Scerri has a lengthy criminal history,<sup>4</sup> and has been publicly identified as a suspect in connection with the death of Mr Rooney.<sup>5</sup>
12. On 26 September 1989, Mr Scerri was arrested and charged with a range of offences relating to a series of vicious assaults and sexual assaults inflicted on 12 men, between March 1986 and September 1989, most of which occurred in and around the Wollongong area. Nine of the victims identified Mr Scerri as the offender.
13. Charges in respect of nine of the twelve victims were the subject of four separate trials in 1991 and 1992.
14. In one of those four trials, in the Supreme Court in November 1992, Mr Scerri was convicted of charges relating to three of the men, all of whom had been attacked in 1989. Those charges, in respect of those three victims, were heard together in one trial.
15. The attack on one of those men, [194], in September 1989, occurred on the other side of the same laneway (Crown Lane) where Mr Rooney had been found several years earlier on 14 February 1986.<sup>6</sup>

<sup>3</sup> Particulars of Local Criminal – Leslie Harrison (SCOI.10338.00008).

<sup>4</sup> see *State of New South Wales v Scerri* [2012] NSWSC 271 at [6] – [11] <<https://www.caselaw.nsw.gov.au/decision/54a636e53004de94513d9660>>.

<sup>5</sup> See, for example, Patrick Abboud and Rick Feneley, ‘Police admit blunders in gay-hate murder hunt’, *SBS News* (online, 26 September 2016) <<https://www.sbs.com.au/news/the-feed/article/police-admit-blunders-in-gay-hate-murder-hunt/zm8i0hq7o>> (SCOI.82587); and Duncan McNab, *Getting Away With Murder*, Penguin 2017, pp 189-200.

<sup>6</sup> *State of New South Wales v Scerri* [2011] NSWSC 683 at [29].

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16. In February 1993, Mr Scerri was sentenced to 16 years' imprisonment in respect of those offences against those three men.<sup>7</sup> He had already been in custody since September 1989. He was to be eligible for parole no earlier than September 2001.
17. On 24 March 1993, following Mr Scerri's conviction in 1992 and sentencing in 1993, police sent a brief to the then Deputy Senior Crown Prosecutor (Mr Tedeschi QC) for advice on whether Mr Scerri could be charged with the murder of Mr Rooney.<sup>8</sup> However, on 28 June 1993, the NSW Director of Public Prosecutions (DPP) advised that in the opinion of Mr Tedeschi QC there was insufficient evidence to do so.<sup>9</sup>
18. Of the charges relating to the other nine victims, either Mr Scerri was acquitted (six victims) or they did not proceed to trial (three victims).
19. One of the six victims (referred to as [1186], in respect of whom there was an acquittal, was attacked in December 1986, only ten months after Mr Rooney's death in February 1986. [1186] alleged that Mr Scerri said to him, during the attack: "I'll kill you like I killed the poofter in the laneway".<sup>10</sup>
20. In November 2001, Mr Scerri was released on parole.<sup>11</sup>
21. In May 2002 Mr Scerri reoffended. In 2003, he was convicted (having pleaded guilty) and again imprisoned.<sup>12</sup> He was released again in February 2011.<sup>13</sup>
22. Until 2023, Mr Scerri had never been questioned in relation to the death of Mr Rooney. An attempt to interview him in 1993, following the receipt of Mr Tedeschi QC's advice, was fruitless because Mr Scerri, then in custody, refused to speak to the police.<sup>14</sup>
23. In May 2023, Mr Scerri was questioned in a private hearing of the Inquiry. That evidence will be the subject of a confidential part of the Report of the Inquiry in due course.

### *Indicators of LGBTIQ status or bias*

24. Mr Rooney was an openly gay man. He was living with his partner, Mr Davis, at the time of his death.

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<sup>7</sup> *State of New South Wales v Scerri* [2011] NSWSC 683 at [24].

<sup>8</sup> Letter from Chief Superintendent Cassidy to Mark Tedeschi QC, 24 March 1993 (SCOI.11269.00003); Letter from D Ainsworth to C Hyland, 17 March 1993 (SCOI.11076.00007).

<sup>9</sup> Letter from the ODPP, 3 April 2023, 3 (SCOI.82610).

<sup>10</sup> Statement of [1186], 14 October 1989, (SCOI.11293.00035).

<sup>11</sup> *State of New South Wales v Scerri* [2011] NSWSC 683 at [34].

<sup>12</sup> *State of New South Wales v Scerri* [2011] NSWSC 683 at [19].

<sup>13</sup> *State of New South Wales v Scerri* [2011] NSWSC 683 at [36].

<sup>14</sup> Statement of Detective Senior Constable Paul Anthony Davidson, 23 May 1993, [4] (SCOI.11076.00025).

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25. As to whether his death involved LGBTIQ bias, relevant factors include those summarised in the following paragraphs.
26. **First**, as noted above, in the three and a half years immediately after Mr Rooney's death there was a series of attacks on twelve men in and near Wollongong. Most of those men were gay. The first of these attacks was on 9 March 1986,<sup>15</sup> only a little more than three weeks after Mr Rooney suffered the injuries which caused his death. Many of these attacks (including the three of which Mr Scerri was convicted) involved a similar *modus operandi*, in which victims suffered a blow or blows to the head (or the threat of such a physical assault) prior to being sexually assaulted.
27. **Secondly**, Mr Davis (Mr Rooney's partner) was of the view that Mr Rooney was the victim of a gay hate attack.
28. **Thirdly**, according to Mr Davis, he and Mr Rooney had previously been "attacked" in Wollongong "for being homosexual".<sup>16</sup>
29. **Fourthly**, the possibility that Mr Rooney was attacked on this occasion because of his sexuality, or the perception of his sexuality, arises from what was suspected and/or known, either in 1986 or subsequently, about the activities of Mr Harrison ("Radar") and Mr Scerri.

### *Exhibits: availability and testing*

30. There is no record of any exhibits having been collected or retained in this case.
31. On 9 March 2023, the Inquiry requested that the NSWPF undertake enquiries to identify and locate any exhibits in this matter. The NSWPF undertook the following searches, none of which identified any exhibits, or records of exhibits, associated with this matter:
- a. The NSWPF Exhibits Forensic Information & Miscellaneous property System (EFIMS);
  - b. The NSWPF Metropolitan Exhibit & Property Centre;
  - c. Wollongong Police District;
  - d. FASS (specifically with Dr Bruce in light of a notation within the police material indicating Dr Bruce considered the question of examining exhibits for semen);
  - e. NSWPF Corporate Records; and
  - f. Wollongong 'Crime Scene Unit' and lake Illawarra 'Crime Scene Unit'.

<sup>15</sup> Letter from D Ainsworth to C Hyland, 17 March 1993, 2 (SCOI.11076.00007).

<sup>16</sup> Inquest Transcript of 15 May 1989, 6 (SCOI.03683.00013).

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32. There is accordingly no present-day capacity to carry out DNA or other testing of any relevant items or materials such as clothing.

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

33. The inquest was held on 24 October 1986 and 15 May 1987, before Coroner Warwick Soden.
34. At the inquest:
- (a) Dr Ramsay (Director of Intensive Care at the Illawarra Health Service) first said that Mr Rooney's head injuries and markings on the arms and chest were "probably due to a fall". However, when asked whether the injuries to Mr Rooney's skull were consistent with a fall from three metres on to a concrete floor, Dr Ramsay responded, "I find it hard to believe so". Dr Ramsay also said that the bruising to the front right of Rooney's chest did not seem to "line up with" a fall from three metres;<sup>17</sup>
  - (b) However, Dr Verzosa (who performed the post-mortem) considered that the injuries to Mr Rooney's head had been caused by the head hitting a hard flat surface rather than being struck with an object to the back of the head, since in his experience that would usually result in the skin being split open, which was not the case with Mr Rooney.<sup>18</sup>
35. On 15 May 1987, Coroner Soden found:

*...that the deceased on 20th February, 1986 at Wollongong Hospital died of the effects of head injuries sustained on 14th February, 1986, but whether such injuries were received accidentally or otherwise the evidence does not enable me to say.<sup>19</sup>*

### *Criminal proceedings*

36. No criminal proceedings have ever been instituted against any person in relation to Mr Rooney's death.

### **Features of /concerns with original police investigation**

37. Several aspects of the original investigation are noteworthy and/or of concern.
38. **First**, at some stage between 14 February 1986 and 5 January 1987, according to the contemporaneous documents produced to the Inquiry by the NSWPF, the police view as to the cause of Mr Rooney's death appears to have undergone considerable change, for reasons which are unclear.

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<sup>17</sup> Inquest Transcript of 24 October 1986, 6 (SCOI.03683.00011).

<sup>18</sup> Inquest Transcript of 15 May 1987, 4 (SCOI.03683.00013).

<sup>19</sup> Inquest Findings of 15 May 1987 (SCOI.11269.00008).

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39. Initially, on 14 February 1986 (the day Mr Rooney was found and taken to hospital), Detective Senior Constable (**DSC**) John Tate made an occurrence entry that: “At this stage there is no clear indication as to how this male person received the injuries as mentioned above”:<sup>20</sup> see [132] below.
40. On 20 February 1986 (the date of Mr Rooney’s death), as noted above, Constable Tranby (the OIC) noted in the “Report of Death to Coroner” that “SUSPICIOUS CIRCUMSTANCES ARE RELATED TO THIS DECEASED”:<sup>21</sup> see also [159] below.
41. On 26 February 1986, in his “Report of the Death of a Patient to the Coroner” of that date, the Casualty Registrar at Wollongong Hospital wrote (emphasis added): “Circumstances of accident or assault unknown.”<sup>22</sup>
42. However, on 5 January 1987, nearly a year later, DSC Tate expressed the opinion, in his statement for the Coroner, that Mr Rooney fell whilst being intoxicated.<sup>23</sup> According to his statement, this opinion was influenced by “lengthy discussions” with DS Passmore of the Scientific Investigation Section.
43. DS Passmore for his part, in an unsigned statement dated 22 October 1986, was said to have noted, on observing Mr Rooney in hospital eight months earlier on 14 February, that he “appeared to have only very slight superficial external injuries on his face and body which were not consistent with an assault victim” (emphasis added):<sup>24</sup> see the discussion below at [122] – [127].
44. These views of DS Passmore and DSC Tate, as expressed in October 1986 and January 1987 respectively, appear to give little if any attention or weight to evidence, available in February 1986, that tended to point to an explanation other than an accidental fall. Such evidence included (for example): that Mr Rooney was not carrying ID;<sup>25</sup> that his pants and underwear were lowered;<sup>26</sup> that he was missing a shoe and a sock;<sup>27</sup> that he appeared to have fingernail marks on his neck;<sup>28</sup> and that he was known to “hold his liquor” well.<sup>29</sup> See the discussion of these matters below at [162] – [167].
45. Mr Davis expressed the opinion, in an interview with Duncan McNab for his book *Getting Away with Murder*, that “the police weren’t that interested – it was just another “poofa””.<sup>30</sup>

<sup>20</sup> Occurrence pad entry, 14 February 1986, 1 (SCOI.10338.00005).

<sup>21</sup> P79A Report of death to Coroner (SCOI.11269.00002).

<sup>22</sup> Report of the Death of a Patient to the Coroner (SCOI.03683.00007).

<sup>23</sup> Statement of Detective Senior Constable John Robert Tate, 5 January 1987, [9] (SCOI.11269.00018);

<sup>24</sup> Statement of Detective Sergeant Stephen George Passmore, 22 October 1986, [5] (SCOI.11269.00016).

<sup>25</sup> Mr Rooney was only found with a Medicare card and \$5 in cash, see P79A Report of death to Coroner (SCOI.11269.00002); Statement of John Robert Tate, 12 May 2023, [8] (SCOI.83107).

<sup>26</sup> Video of Mr Rooney in laneway, 14 February 1986 (SCOI.822576); see below at [118].

<sup>27</sup> Statement of Constable Michael Troy Tranby, 19 March 1986 (SCOI.03683.00004).

<sup>28</sup> Statement of Harvey Thomas Finch, 24 October 1986, [5] (SCOI.11269.00016).

<sup>29</sup> Bias Crimes Indicators Review Form, undated (SCOI.03077).

<sup>30</sup> Duncan McNab, *Getting Away With Murder*, Penguin 2017, 199.

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46. **Secondly**, NSWPF failed to secure the area where Mr Rooney's body was found.
47. Police (Constables Tranby and Revitt) first attended the scene at about 9.00am on 14 February, and shortly thereafter Mr Rooney was taken to hospital.<sup>31</sup> But at least by 11.05am,<sup>32</sup> before the Scientific Investigation Section had arrived, the lessee of the retail premises adjoining the scene had already taken it upon himself to clean the area by hosing it down. In the words of DS Passmore's (unsigned) statement, when he arrived at 11.05am "the staff from L and B Discounts had closed the area where ROONEY was found to wash away the blood".<sup>33</sup> Naturally, this limited the ability of investigators to properly assess the area and recover evidence of forensic value.
48. **Thirdly**, notwithstanding the factors noted at [44] above, no sexual assault examination was conducted. Furthermore, after Mr Rooney died, there appears to have been no examination of the anus or genitals during the post-mortem. It may be that the original investigators did not provide Dr Verzosa with any reason to conduct an anogenital exam, such as specifying the circumstances in which Mr Rooney's body was found (including that his jeans and underwear were lowered: see [114] below).<sup>34</sup>
49. **Fourthly**, the shortcomings of the original investigation became particularly apparent when, in 1991 and again in 1993, the case was referred to the DPP by Detective Inspector (DI) Ainsworth (who had been responsible for charging Mr Scerri with multiple offences in 1989), for advice on whether there was sufficient evidence to charge Mr Scerri in connection with the death of Mr Rooney. DI Ainsworth had no doubt in his mind that Mr Scerri was also responsible for assaulting and murdering Mr Rooney.<sup>35</sup>
50. However, the advice of Mr Tedeschi QC in 1993 was that there was insufficient evidence to charge Mr Scerri (see [17] above and [188] below). That advice was based in significant part on the absence of evidence as to whether or not Mr Rooney had been sexually assaulted, with the result (*inter alia*) that similar fact evidence as to the sexual assaults of other victims could not be relied upon by the prosecution.<sup>36</sup>
51. The failure to examine Mr Rooney for signs of possible sexual assault, including the failure to use a Sexual Assault Investigation Kit, has severely impeded the possibility of investigating and/or prosecuting Mr Scerri (or anyone else) in relation to Mr Rooney's death.

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<sup>31</sup> Statement of Constable Michael Troy Tranby, 19 March 1986 (SCOI.03683.00004).

<sup>32</sup> Statement of Detective Sergeant Stephen George Passmore, 22 October 1986, [3] (SCOI.11269.00016).

<sup>33</sup> Statement of Detective Sergeant Stephen George Passmore, 22 October 1986, [3] (SCOI.11269.00016).

<sup>34</sup> See statement of John Robert Tate, 12 May 2023, [21] (SCOI.83107).

<sup>35</sup> Report of DI Ainsworth to DPP, 17 March 1993, 2 (SCOI.11076.00007).

<sup>36</sup> Letter from the ODP, 3 April 2023, 3 (SCOI.82610).



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52. **Fifthly**, while Mr Harrison claimed to have an alibi for the night of 13/14 February, 1986, namely that he had been with Ms Garbutt for the entire night of 13/14 February 1986 and that Ms Garbutt was his girlfriend, there is no indication in the material produced to the Inquiry by the NSWPF that police ever interviewed, or sought to interview, Ms Garbutt about those matters.
53. **Sixthly**, in October 2002, after Mr Scerri was charged in connection with a further attack committed in May 2002 (following his release from prison in November 2001), of a similar nature to those the subject of the 1989 charges, the NSWPF considered exhuming Mr Rooney's remains, with a view to the possibility of extracting DNA evidence from those remains. However, Dr Duflou of the Department of Forensic Medicine advised NSWPF that there was an extremely low chance of retrieving DNA from an assailant given the passage of time.<sup>37</sup> In any event, the Inquiry understands that Mr Rooney was cremated.<sup>38</sup>

### Unsolved Homicide Team reviews

54. Mr Rooney'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*

55. In the Bias Crime Indicators Review Form (**BCIF**), all ten indicators were answered "No Evidence of Bias Crime". Notwithstanding that, the overall categorisation of the case, in the "Summary of Findings", was "Insufficient Information".<sup>39</sup>
56. That in itself would appear to suggest some inconsistencies or confusion in the methodology of the Strike Force Parrabell officers.
57. But in addition, the possible involvement of Mr Harrison and/or Mr Scerri in Mr Rooney's death, as possible bias crime attackers, is mentioned in seven of the ten "General Comment" sections, and also in the "Summary of Findings".<sup>40</sup> The uniform answer of "No Evidence of Bias Crime", to all ten indicators, seems at odds with those comments.

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<sup>37</sup> Letter from Detective Senior Constable S Bridge to Dr Duflou dated 17 October 2002 (SCOI.11269.00024); letter from Dr Duflou to Detective Senior Constable S Bridge dated 23 October 2002 (SCOI.11269.00025).

<sup>38</sup> Application for Permission for Cremation with Statutory Declaration, 24 February 1986 (SCOI.03683.00002); Death Certificate of William Rooney (SCOI.82611).

<sup>39</sup> Bias Crimes Indicators Review Form, undated (SCOI.03077).

<sup>40</sup> Bias Crimes Indicators Review Form, undated (SCOI.03077).

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### *Results of Strike Force Parrabell*

(a) The “General Comment” and “Summary of Findings” boxes

58. As noted above, the “General Comment” sections of the BCIF repeatedly indicate that the police did suspect (at various times) that Mr Rooney was the victim of bias crime and/or a sexual assault.
59. The “General Comment” sections also repeatedly note that Mr Scerri was known to have been involved in other assaults against, and rapes of, men in locations not far from the area where Mr Rooney was found, and was known to hit his victims over the head with bricks or large rocks. The alleged involvement of Mr Harrison in similar conduct was also repeatedly noted.
60. Yet the “General Comment” section in relation to indicator 3, “Drawings, Markings, Symbols, Tattoos, Graffiti”, states (emphasis added):<sup>41</sup>

*In Photographs taken of the crime scene by Detective Sergeant PASSMORE there is photographic evidence showing what appears to be a concrete rock near where ROONEY was located however this bears no weight on a bias motivation.*

The view that the presence of a concrete rock at the scene “bears no weight” on a bias motivation, in light of what was by then known or alleged (and acknowledged in the BCIF) about the *modus operandi* of both Mr Harrison and Mr Scerri (see for example [63.c], [139] and [203] below), is difficult to fathom.

61. The presence of the rock would also appear to cast some doubt upon the (unsigned) statement of DS Passmore, referred to elsewhere in the BCIF. DS Passmore took the photographs on 14 February 1986 which showed the rock, and yet according to his unsigned statement eight months later he “made a thorough search of the entire area and found nothing which [he] could associate with ROONEY’S injuries.”<sup>42</sup> The Strike Force Parrabell officers made no comment on, or reference to, this apparent inconsistency.
62. In the “General Comment” section in relation to indicator 5, “Previous existence of Bias Crime Incidents”, the Strike Force Parrabell officers state that “[t]here is no evidence to suggest ROONEY was visiting a location where previous bias crime had been committed”.<sup>43</sup> However, as the officers recognised later in the same section, there was “evidence presented in regards to the suspect SCERRI being involved in assaulting, kidnapping and robbing both homosexual and heterosexual males within the area of where ROONEY was located”<sup>44</sup> – albeit shortly after, rather than before, Mr Rooney’s death.

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<sup>41</sup> Bias Crimes Indicators Review Form, undated, 7 (SCOI.03077).

<sup>42</sup> Statement of Detective Sergeant Stephen George Passmore, 22 October 1986, [3] (SCOI.11269.00016).

<sup>43</sup> Bias Crimes Indicators Review Form, undated, 9 - 11 (SCOI.03077).

<sup>44</sup> Bias Crimes Indicators Review Form, undated, 9 - 11 (SCOI.03077).

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63. The “Summary of Findings” in the BCIF highlights the following matters:<sup>45</sup>
- a. that Mr Harrison was arrested and interviewed during the investigation into Mr Rooney’s death;
  - b. that Mr Scerri was later suspected of the murder of Mr Rooney and that advice was sought in relation to charging him;
  - c. that Mr Scerri was known, and Mr Harrison was alleged, to have been responsible for rapes and bashings of men in the area, and to hit their victims over the head with bricks;
  - d. that Mr Scerri was charged with assaulting, sexually assaulting and robbing both homosexual and heterosexual males in or near Wollongong between March 1986 and September 1989, including one such instance close to the area where Mr Rooney had been found in February 1986;
  - e. in photographs of the crime scene taken by DS Passmore, what appears to be a concrete rock is shown near where Mr Rooney was located;
  - f. in the original investigation, it was thought Mr Rooney fell to his death, the paramedic was of the opinion Rooney had fallen, there was no evidence of any “weapons of opportunity”, and the coroner delivered an open finding; and
  - g. former DI Ainsworth was of the view that the death of Mr Rooney was never properly investigated by the NSWPF and it was his firm belief that Mr Scerri was responsible for it.
64. There is a notable focus in the BCIF on Mr Scerri and Mr Harrison as persons of interest in the death of Mr Rooney, on their known or alleged methods, and on the presence of the rock. Yet in relation to every single indicator, the Strike Force Parrabell officers answer “No Evidence of Bias Crime”. The BCIF refers to Mr Scerri’s other offences (both alleged and proven), and to the allegations against Mr Harrison, but then seemingly discounts this evidence as having any bearing on the question of bias. The basis for such apparent discounting is unclear.
65. Conversely, as noted above, it is also puzzling that, despite answering ‘Yes’ to “No Evidence of Bias Crime” in relation to all ten indicators, Mr Rooney’s case is nonetheless given the overall designation “Insufficient Information”. At the very least, questions arise about the coherence and rigour of the methodology of Strike Force Parrabell when the overall categorisation of a case review bears no correlation to the components of that review.

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<sup>45</sup> Bias Crimes Indicators Review Form, undated, 19 - 20 (SCOI.03077).

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66. More generally, the BCIF is replete with repetition and reflects a treatment of the case that appears to be devoid of any analytical sophistication or nuance. Whether this is a consequence of having limited time to complete the review (it appears Strike Force Parrabell had originally recorded Mr Rooney's last name as "Rudney" and hence for some time could locate no material about the case),<sup>46</sup> or whether this indicates a more systemic problem with the work of Strike Force Parrabell, or both, is unclear.
67. Furthermore, the BCIF fails to address or even engage with the failures of the original investigation, including how those failures continue to impede the ability of any reviewer to establish the manner and cause of Mr Rooney's death.

(b) Case Summaries

68. The Strikeforce Parrabell Case Summary for this matter (case summary number 20) reads as follows:<sup>47</sup>

**Identity:** *William Antony Rooney was 35 years old at the time of his death.*

**Personal History:** *Mr Rooney's partner was the last person to see him alive.*

**Location of Body/Circumstances of Death:** *Mr Rooney was discovered in a semi-conscious state on the morning of 14 February 1986 behind the L&S [sic] Discount store in Crown Lane, Wollongong. Mr Rooney was hospitalised suffering head injuries however died 6 days later due to a large skull fracture. The original police investigation concluded that Mr Rooney may have fallen. In 2002 a further police investigation was conducted with a suspect identified for assaulting and possibly sexually assaulting Mr Rooney. After Mr Rooney's death, 12 other men became victims of the same suspect in similar circumstances with all violently assaulted with a rock and then raped. The suspect identified as gay and was described as an extremely violent individual. The second investigation into Mr Rooney's death suggested that he should be considered the suspect's first victim in what was proven to be a lengthy period of violence and rapes of gay men.*

**Sexual Orientation:** *Mr Rooney identified as gay.*

**Coroner/Court Findings:** *In 1990 Police charged the suspect with 29 serious and violent offences against 12 other male victims including attempted murder, sexual assault, kidnapping, and assault occasioning grievous bodily harm. The later police investigation created a brief of evidence for the suspect's prosecution over Mr Rooney's death which was forwarded to the DPP for prosecution. Upon review, the DPP determined there was insufficient evidence for charges to be laid relating to Mr Rooney's death. It is likely the original Coronial finding regarding Mr Rooney's death being caused by a fall is incorrect.*

69. A number of aspects of this Summary should be noted.
70. **First**, on the evidence available to the Inquiry, there does not appear to have been a "further police investigation" in 2002. In 1991 and 1993, as noted elsewhere in these submissions, the case of Mr Rooney was referred by DI Ainsworth to the DPP (in the light of the 1989 charges against Mr Scerri);

<sup>46</sup> Rick Feneley and Patrick Abboud, 'Police admit blunders in gay-hate murder hunt', SBS News, 4 October 2016 (SCOI.82587).

<sup>47</sup> Exhibit 6, Tab 49, Strike Force Parrabell Case Summaries, 10 (SCOI.76961.00014).

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while in 2002 there was an approach by DSC Bridge to Dr Duflou about the possibility of exhuming Mr Rooney's remains (in the light of Mr Scerri's reoffending and further prosecution in 2002).

71. **Secondly**, Mr Scerri was charged with the offences against the twelve other men in September 1989, not in 1990.
72. **Thirdly**, and more significantly, the last sentence of the Case Summary reads: *"It is likely the original Coronial finding regarding Mr Rooney's death being caused by a fall is incorrect."*
73. That sentence follows a series of sentences referring to the similarities between Mr Scerri's case and those of the other twelve men assaulted or allegedly assaulted by him, and to the view of the "second investigation" that Mr Rooney was the first victim of Mr Scerri. This reference to the "second investigation" may be a reference to the report of DI Ainsworth to the DPP in 1993 (as to which see [188] below).
74. That last sentence in the Case Summary presumably indicates that the Strike Force Parrabell officers considered that what was "likely" was that Mr Rooney's death had been caused by an assault rather than by a fall. In context, it seems also to indicate that the view of the Strike Force Parrabell officers was that it was Mr Scerri who had assaulted him.
75. Yet the same officers had given the case the overall categorisation of "Insufficient Information", and had answered all ten indicators as "No Evidence of Bias Crime".
76. How three such very different assessments could all be made simultaneously is not explained. Again, it would appear to indicate some considerable confusion and imprecision in the methodology of Strike Force Parrabell.
- (c) Academic review
77. The review by the Flinders academic team categorised the case as "Insufficient Information".<sup>48</sup> Neither the Report itself (with some partial exceptions, not including the Rooney case) nor the Case Summaries reveal how the academic team arrived at their categorisations in any particular case. By way of general overview, the academic team stated as follows:

*Many of the cases examined by Strike Force Parrabell and the academic review team were ultimately classified as Insufficient Information. 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.*

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<sup>48</sup> Exhibit 6, Tab 115A, Excel Spreadsheet titled 'Copy of Parrabell 17', undated (SCOI.74573).

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and

*...we have coded as Insufficient Information [II] cases where the evidence that may support a court case is ambiguous and requires further probing (to provide further information that the file or file summary is unable to provide).<sup>49</sup>*

78. The academic team, like the Strike Force Parrabell officers, do not address the reality that in some cases, of which this is one, the absence of information is attributable to a significant extent to the failures of the police to investigate an incident adequately at the time it occurred.

### **Investigative and other steps undertaken by the Inquiry**

79. The Inquiry's consideration of this matter has included:
- a. compelling the production of police material, including material relating both to the original investigation in 1986 and any later reviews or re-investigations, and to various of the other offences with which Mr Scerri was charged on 26 September 1989;
  - b. obtaining Coroners Court files in relation to the inquest held in 1987;
  - c. compelling the production of material held by the DPP, Corrective Services and the Supreme Court;
  - d. obtaining a report from Dr Iles, a forensic pathologist;
  - e. interviewing other persons with relevant knowledge; and
  - f. reviewing and analysing this material and considering whether any further investigative or other avenues are warranted.

### *Attempts to obtain complete NSWPF holdings*

80. Mr Rooney's case was one of those that were the subject of the Inquiry's first summons to NSWPF dated 22 May 2022, for all police investigative material relating to the case (NSWPF1). On 2 June 2022, NSWPF produced only nine documents in relation to Mr Rooney's case, comprising some occurrence reports and two witness statements.
81. On 21 July 2022, the Inquiry issued a summons to NSWPF (NSWPF3) which requested various documents relating to investigations into the deaths of persons listed in that summons, and any other

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<sup>49</sup> Strike Force Parrabell Report, 54.

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material held of created by the Unsolved Homicide Team in relation to those deaths. Mr Rooney's death was not identified in that summons.

82. On 25 July 2022, the Inquiry requested that the NSWPF conduct further searches for material in relation to Mr Rooney.<sup>50</sup>
83. On 2 August 2022, the NSWPF produced their complete eagle-i holdings in relation to Strike Force Parrabell, ostensibly in response to summons NSWPF3. However, given that this material was not called for by summons NSWPF3, the NSWPF may have intended to produce this material in response to summons NSWPF1. The material produced included a document that referred to a "hard copy video" of Mr Rooney "being removed by ambulance officers from the sight [sic] of the incident" in Crown Lane.<sup>51</sup> However, a copy of that video was not provided.
84. On 9 August 2022, the NSWPF provided the Inquiry with, *inter alia*, a spreadsheet setting out further searches undertaken by NSWPF Corporate Records in relation to Mr Rooney. The spreadsheet indicated that the NSWPF files in relation to Mr Rooney were, at that point in time, on loan to the Unsolved Homicide Team. On 17 August 2022, the Inquiry accordingly requested those files.<sup>52</sup>
85. On 6 September 2022, the NSWPF then indicated that all the NSWPF files in relation to Mr Rooney had already been provided to the Inquiry on 2 June 2022 (when only nine documents had been produced).<sup>53</sup>
86. On 13 September 2022, following production of material by the ODPP on 8 and 9 September (see below), the Inquiry wrote to the NSWPF outlining the reasons why the Inquiry considered that further material likely existed (or should have existed) in relation to the case of Mr Rooney. In that letter, the Inquiry sought, *inter alia*, the video footage of Mr Rooney in Crown Lane.<sup>54</sup>
87. On 15 September 2022, the NSWPF replied by saying they had no record of the existence of further material but were able to provide, and did provide, the video footage of Mr Rooney in Crown Lane.<sup>55</sup>
88. On 12 October 2022, the Inquiry issued a letter to the NSWPF requesting that further enquiries be made, and in particular, with DI Ainsworth and Detective Sergeant (**DS**) Bridge.<sup>56</sup>

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<sup>50</sup> Emails to P Hodgetts re request for complete investigative file (SCOI.82564).

<sup>51</sup> Extract from Strike Force Parrabell e@gle-i holdings, 'Case 20 - Video of ROONEY in Crown Lane' (SCOI.45252).

<sup>52</sup> Emails to P Hodgetts re request for complete investigative file (SCOI.82564).

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> Emails to P Hodgetts re request for further enquiries to be made (SCOI.82569).

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89. On 1 November 2022, the NSWPF indicated that a hard copy file had been found at Wollongong Police Station. That file was then provided to the Inquiry. The file contained autopsy photos, two additional statements and some correspondence not previously received by the Inquiry.<sup>57</sup>
90. On 21 March 2023, the Inquiry issued summons NSWPF73 to obtain material in relation to the 1986 offences with which Mr Scerri was charged. On 11 April 2023 police produced this material to the Inquiry.

### *Other Summonses issued*

91. On 23 August 2022, the Inquiry issued summons ODPP2 to the Office of the DPP (**ODPP**) to obtain, *inter alia*, material in relation to the potential prosecution of Mr Scerri in relation to the matter of Mr Rooney. The ODPP produced this material on 8 and 9 September 2022. The material produced included the 1993 correspondence (referred to above) between police, the ODPP and Mr Tedeschi QC, which contained reference to the video footage.
92. The Inquiry issued summonses to Corrective Services NSW and to the Supreme Court in relation to Mr Scerri. Corrective Services produced material on 23 February 2023. The Supreme Court produced material on 15 February 2023 and 29 March 2023.
93. On 14 March 2023, the Inquiry issued summons ODPP4 to the ODPP, to obtain material in relation to two of the matters in respect of which Mr Scerri was charged on 29 September 1989. The ODPP produced this material on 30 March 2023 and 3 April 2023.

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

94. Mr Rooney's de facto partner, Mr Davis, is now deceased.
95. The Inquiry attempted to contact Mr Rooney's aunt, Irene Eipeldauer, but these attempts have been unsuccessful.

### *Professional opinions obtained*

96. The Inquiry sought and obtained a report from Dr Linda Iles, forensic pathologist and Head of Forensic Pathology Services at the Victorian Institute of Forensic Medicine, addressing the following issues:
- a. the adequacy of the post-mortem investigations conducted with respect to Mr Rooney;
  - b. the nature of Mr Rooney's injuries, including:

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<sup>57</sup> Ibid.



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- i. whether Mr Rooney’s injuries were consistent with an accidental fall from three metres;
  - ii. whether Mr Rooney’s injuries were consistent with having been pushed off a three-metre platform (i.e. was there a degree of force involved in a fall);
  - iii. whether Mr Rooney’s injuries were consistent with having been hit by an object;
  - iv. whether she agreed with the opinion of Dr Verzosa that “battering of the head with hard instruments, whether wood or metal” usually splits open the skin with the fracturing of the skull;
- c. to the extent to which there were inconsistencies in the conclusions drawn by Drs Verzosa and Ramsay, whose conclusions should be preferred and why;
  - d. whether she has any recommendations for further investigations with respect to determining the manner and cause of Mr Rooney’s death; and
  - e. any other matters she considered relevant to the manner and cause of Mr Rooney’s death.

97. The report of Dr Iles was received on 31 January 2023, and is discussed below.

### *Other sources of information*

98. On 13 December 2022, the Inquiry spoke with Mr McNab in light of his discussion of Mr Rooney’s death in chapter 19 of his book, *Getting Away with Murder*, published in 2017. Mr McNab informed the Inquiry that this chapter was based in part upon a contemporaneous note he made whilst interviewing Mr Davis, who is now deceased.

99. The Inquiry also spoke with former DI Ainsworth about his work in connection with the investigation of this case. DI Ainsworth’s recollection, as conveyed to the Inquiry, is discussed at [135] – [138] below.<sup>58</sup>

### *Persons of interest as at 2022-23*

100. The primary person of interest in this case continues to be Mr Scerri. Mr Scerri is alive and his whereabouts are known to the Inquiry.

101. Mr Harrison died in 2004, as noted above.

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<sup>58</sup> Statement of Elizabeth Blomfield, 16 May 2023, [7] – [17] (SCOI.82575).

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

102. Concerns about the original police investigation have been identified above at [37] – [51]. In summary, the police should have followed all lines of inquiry, which would have included thoroughly investigating the possibility both of assault and of sexual assault. The site where Mr Rooney was found should have been immediately secured. A sexual assault examination should have been conducted. Any exhibits of possible forensic value should have been appropriately catalogued and retained.
103. It also appears, based on the opinion of Dr Iles, that the post-mortem conducted on Mr Rooney was deficient in a number of respects: see [207] below.

### Submission as to the available evidence

104. This part of these submissions sets out key matters arising from the Inquiry's consideration of the evidence available to it, and the conclusions that it is suggested can be drawn from that evidence.

### *Thursday evening 13 February 1986*

105. At around 5:45pm on Thursday 13 February 1986, Mr Rooney telephoned Mr Davis and asked him whether he wanted to go for a few beers. Mr Davis agreed and collected Mr Rooney from their home at ██████ Foley's Road, Gwynneville. They then went to the Tattersalls Hotel in Wollongong, arriving at around 6:15pm and drinking schooners there until between around 9:00pm to 10:00pm. Mr Davis then left and went to a friend's place in Keiraville. Mr Davis estimated that they would have had about six to eight schooners during this time.<sup>59</sup>
106. Before Mr Davis left the Tattersalls Hotel, Mr Rooney told Mr Davis that he planned to go to Annabel's Disco.<sup>60</sup> (Annabel's Disco, in Crown Lane, became known as Pips International shortly afterwards). When the two parted, Mr Davis observed Mr Rooney to be in extremely good spirits and not overly effected by liquor. Mr Davis noted that Mr Rooney could drink "quite a bit" and could "hold his liquor well".<sup>61</sup>
107. Mr Rooney's movements between around 10:00pm on Thursday 13 February 1986 (when he parted from Mr Davis) and 8:40am on Friday 14 February 1986 (when he was found in Crown Lane) are not

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<sup>59</sup> Duncan McNab, *Getting away with Murder* (Ebury Australia, 2017), 190.

<sup>60</sup> Occurrence pad entries, 14 February 1986, 3 (SCOI.10338.00005).

<sup>61</sup> Bias Crimes Indicators Review Form, undated, 2 (SCOI.03077).

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entirely clear. It appears that Mr Rooney did attend Annabel's Disco at some point (likely after 12:00am),<sup>62</sup> but he was also seen at the Grand Hotel, not far away in Keira Street, at some stage too.<sup>63</sup>

### **Friday morning 14 February 1986**

108. At around 8:53am on 14 February 1986, paramedics Terence Morrow and Annette Lavender were called to attend to a person who had reportedly "fallen off a roof" at the rear of the L&B Discounts store in Crown Lane. On arrival at the scene shortly afterwards, they observed Mr Rooney lying at the base of steps.<sup>64</sup>
109. Mr Morrow observed Mr Rooney to be "restless and disorientated, and responding only to stimuli". He observed a large pool of blood around Mr Rooney's head, that his left ear canal was obstructed with congealed blood, and that blood was also oozing from Mr Rooney's nose. Mr Morrow observed an abrasion to Mr Rooney's left inner arm and bruising to the chest. He added that Mr Rooney was very irritable, which made treatment difficult. In addition, Ms Lavender observed an abrasion to the right lateral back area of the arm, that he had "no identity", and that Mr Rooney's right leg was wedged under the down pipe of the toilet.<sup>65</sup>
110. From their observations, Mr Morrow and Ms Lavender both considered that Mr Rooney was suffering from a fractured skull.
111. Mr Morrow's (unsigned) statement dated 25 February 1986 concluded: "From my observations and opinion I feel the patient had fallen from the wall above, landing on his head on the concrete".<sup>66</sup>
112. At around 9:00am on 14 February 1986, Constable Michael Tranby and Constable Revitt attended the scene in Crown Lane. The paramedics were there, attending to Mr Rooney. Upon arriving at the scene, Constable Tranby observed Mr Rooney "lying on the ground between a brick wall and a toilet block at the base of a set of steps", being treated by paramedics.<sup>67</sup>
113. According to Constable Tranby, Mr Rooney was wearing blue jeans and a blue T-shirt, and one shoe and sock. He appeared to be unconscious. His clothes were covered in blood, and there was also a large amount of dried blood on the ground near and around the upper part of Mr Rooney's body, and dried blood around and inside his left ear. His right leg was wedged under the down pipe of the toilet.<sup>68</sup>

<sup>62</sup> Statement of John Robert Tate, 5 January 1987, [7] (SCOI.11269.00018).

<sup>63</sup> Statement of Steven Brett Snedden, 22 February 1986, [2] (SCOI.11269.00011).

<sup>64</sup> Statement (unsigned) of Terrence William Morrow, 25 February 1986 (SCOI.11269.00017); Statement of Annette Robyn Lavender, 28 February 1986 (SCOI.03683.00006).

<sup>65</sup> Statement of Annette Robyn Lavender, 28 February 1986 (SCOI.03683.00006).

<sup>66</sup> Statement (unsigned) of Terrence William Morrow, 25 February 1986 (SCOI.11269.00017)

<sup>67</sup> Statement of Constable Michael Troy Tranby, 19 March 1986 (SCOI.03683.00004).

<sup>68</sup> Ibid.

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114. Mr Rooney's pants and underwear were lowered to the start of his pubic hair, and his fly was unzipped, when he was found.<sup>69</sup> Those facts, obviously noteworthy, are not mentioned in any of the statements of Mr Morrow (25 February 1986, unsigned), or Ms Lavender (28 February 1986), or Constable Tranby (19 March 1986), or in any police occurrence pad entries in February 1986, or in the much later statements of DSC Tate and DS Passmore.
115. However, the state of Mr Rooney's pants and underwear is apparent from video footage showing Mr Rooney on the ground where he was found, while being attended to by the paramedics in the presence of police. The footage also shows Mr Rooney attempting to pull up his pants by lifting his hips.
116. This footage, apparently taken by a "cameraman from WIN Television",<sup>70</sup> was referred to in the complete eagle-i holdings of Strike Force Parrabell, produced to the Inquiry (said to be pursuant to summons NSWPF3) on 2 August 2022. It is also referred to and included in the brief assembled by DI Ainsworth in March 1993, which formed part of the material produced to the Inquiry by the ODPP in September 2022. The footage had not been provided to the Inquiry by the NSWPF in response to summons NSWPF1.
117. In Mr McNab's account of this case,<sup>71</sup> "one of the ambulance officers who'd been at the scene recalled that [Mr Rooney's] fly had been open and when he tried to zip him up to afford him some dignity, the severely injured man resisted. To one detective this was either an instinctive reaction or the act of a man trying to prevent the recurrence of an attack." Such a reaction on the part of Mr Rooney appears to be visible in the footage.
118. By 9.30am, when DSC Tate arrived at the scene,<sup>72</sup> Mr Rooney was no longer there, having been conveyed to Wollongong Hospital. According to his statement, DSC Tate went to the scene with Detectives Stanley and Fitzgerald. No statement by either of those officers has been produced to the Inquiry.
119. At around 11:05am on 14 February 1986, Detective Sergeant (**DS**) Stephen Passmore attended the crime scene in his capacity as a member of the Scientific Investigation Section.
120. An unsigned statement by DS Passmore, about his involvement in the investigation between 14 and 21 February, is dated 22 October 1986, some eight months after Mr Rooney's death. No occurrence

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<sup>69</sup> Video of Mr Rooney in laneway, 14 February 1986 (SCOI.822576).

<sup>70</sup> Letter from D Ainsworth to C Hyland, 17 March 1993, 11 (SCOI.11076.00007).

<sup>71</sup> Duncan McNab, *Getting Away With Murder*, Penguin 2017, p 193.

<sup>72</sup> Statement of Detective Senior Constable John Robert Tate, 5 January 1987, [3] (SCOI.11269.00018);

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entries have been produced to the Inquiry which record or refer to the activities of DS Passmore in February 1986 in relation to Mr Rooney.

121. The statement of DSC Tate was not made until later still, on 5 January 1987.<sup>73</sup>
122. According to his unsigned October 1986 statement, upon arriving at the scene at 11.05am on 14 February, DS Passmore observed that “the staff from L and B Discounts had closed the area where ROONEY was found to wash away the blood”.<sup>74</sup>
123. DS Passmore tested the galvanized ridge capping on the toilet block for blood, and got a faint reaction, which he thought could have been indicative of Mr Rooney striking it as he fell. He also examined the edge of the concrete block retaining wall but was unable to find anything relevant. He observed a number of nails protruding from the front of the toilet block, and found traces of blood on one of the nails, 1.35 metres from the ground. He also noted that the entire area was very poorly lit.<sup>75</sup>
124. According to his unsigned statement of October 1986, on 14 February DS Passmore took 10 photographs of the scene (numbered 1 to 10).
125. The NSWPF produced to the Inquiry, pursuant to summons NSWPF3, a total of twenty photographs of the crime scene, described as having been “taken by DS Passmore on 14 February 1986”. Those twenty photographs are not numbered or otherwise identified. Presumably they include the ten photographs of the scene, numbered 1 to 10, as referred to in the unsigned statement, although that is perhaps not entirely clear. However, among the twenty photographs produced to the Inquiry are three which do show a concrete rock near where Mr Rooney was found,<sup>76</sup> as stated by the Strike Force Parrabell officers in the BCIF, noted at [63.e] above.
126. According to his unsigned statement, although he “closely examined” the area, and “made a thorough search of the entire area”, DS Passmore was “unable to find anything which could assist with determining the cause of ROONEY’s injuries” or “which he could associate with” those injuries.<sup>77</sup>
127. That seems at odds with the fact that photographs taken by DS Passmore on 14 February show a concrete rock near where Mr Rooney was found: see above at [125]. The unsigned statement includes a short description of each of those ten photographs, but makes no mention of the rock.<sup>78</sup>

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<sup>73</sup> Statement of John Robert Tate, 5 January 1987 (SCOI.11269.00018).

<sup>74</sup> Statement (unsigned) of Stephen Passmore, 22 October 1986, [3] (SCOI.11269.00016)

<sup>75</sup> Ibid.

<sup>76</sup> Photographs of crime scene, 6 – 7, 12 (SCOI.11271.00003).

<sup>77</sup> Statement (unsigned) of Stephen Passmore, 22 October 1986, [3] (SCOI.11269.00016).

<sup>78</sup> Statement (unsigned) of Stephen Passmore, 22 October 1986, [4] (SCOI.11269.00016).

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### **Friday afternoon 14 February 1986**

128. Later on the same day, 14 February 1986, DS Passmore and DSC Tate both attended the Intensive Care Unit of Wollongong Hospital. Whether they did so together or separately is not clear from their respective statements.
129. While he was at the hospital on 14 February, according to his unsigned statement, DS Passmore took 11 photographs of Mr Rooney's injuries, numbered 11 to 21. Then on 21 February, the day after Mr Rooney's death, he took a further four photographs (numbered 22 to 25) of the "remaining injuries", noting that some had "almost healed".<sup>79</sup>
130. The NSWPF produced to the Inquiry 22 photographs of Mr Rooney's injuries, none of them numbered.<sup>80</sup> Whether those 22 photographs include the fifteen taken by DS Passmore, said to have been numbered 11-25, is not clear.
131. DSC Tate also made some observations of Mr Rooney at the hospital on 14 February, which are somewhat less detailed than those of DS Passmore set out above.<sup>81</sup>
132. On 14 February 1986, at 2:50pm, after attending both the Crown Lane scene and the hospital, DSC Tate made a note in his occurrence pad: "At this stage there is no clear indication as to how this male person received the injuries as mentioned above".<sup>82</sup>
133. At about 7.40pm on 14 February 1986, Mr Davis attended the Wollongong Police Station, and informed the police that he was Mr Rooney's partner. The note in the occurrence pad records that Mr Rooney and Mr Davis were "practising Homosexuals."<sup>83</sup> A statement was obtained that same day.<sup>84</sup> On 15 February 1986, the NSWPF checked the alibi of Mr Davis.<sup>85</sup>
134. In his book *Getting Away with Murder*, Mr McNab wrote that when Mr Davis attended the Wollongong Police Station, Mr Davis:

*...was seated in a small room with detectives crowded around him. Their initial questions tried to identify Bill's wife or girlfriend, but when Wayne explained that Bill was gay and he was his partner, the crowd thinned quickly, and he gave a signed statement to detectives. At that early point it was likely he was a suspect – a reasonable assumption based on statistics and experience.*

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<sup>79</sup> Statement (unsigned) of Stephen Passmore, 22 October 1986, [5] – [8] (SCOI.11269.00016).

<sup>80</sup> Photographs of Mr Rooney's injuries (SCOI.11270.00002).

<sup>81</sup> Statement of Detective Senior Constable John Robert Tate, 5 January 1987, [4] (SCOI.11269.00018).

<sup>82</sup> Occurrence pad entries, 14 February 1986, 1 (SCOI.10338.00005).

<sup>83</sup> Occurrence pad entries, 14 February 1986, 3 (SCOI.10338.00005). See also statement of Detective Senior Constable John Robert Tate, 5 January 1987, [6] (SCOI.11269.00018).

<sup>84</sup> *Ibid.*

<sup>85</sup> Occurrence pad entries, 15 February 1986, 6 (SCOI.10338.00009).

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*However, he was eliminated rapidly after explaining his movements of the night of the thirteenth, and they were quickly verified.<sup>86</sup>*

### **Early involvement of DI Ainsworth**

135. On the morning of 14 February 1986, DI Ainsworth had heard a callout on the police radio for police assistance in Crown Lane, Wollongong where an incident had occurred.
136. The following day, 15 February 1986, DI Ainsworth obtained approval to review the occurrence pad entries and to attend the crime scene to make his own observations. After doing so, DI Ainsworth formed the view that it was most unlikely that Mr Rooney had fallen, in light of the location and how intoxicated he was. DI Ainsworth suspected that Mr Rooney had been taken to the spot where he was found and dropped on his head.<sup>87</sup>
137. DI Ainsworth was not formally assigned to the Rooney case. However, he did participate in the interviewing of some of the witnesses noted below, and he also continued to work on the case thereafter in his own time.
138. On 9 March 1986, there occurred the first of the twelve attacks in respect of which Mr Scerri was eventually charged, in September 1989. The victim, [1183], had been assaulted both physically and sexually. DI Ainsworth was assigned to that case (and to most of the subsequent further eleven cases). He ensured that a sexual assault kit examination was carried out in respect of [1183]. At some stage during the course of his investigation of these 12 cases, he formed the view that Mr Rooney was likely to have been a victim of the same attacker.<sup>88</sup>

### **15 – 20 February 1986: other enquiries made by police**

139. On Saturday 15 February 1986, Mr Rooney’s partner, Wayne Davis, informed DSC Tate that Mr Rooney had “previously spoken to a person by the name of ‘RADAR’ who he alleges is a well-known Poofter basher”.<sup>89</sup>
140. On the evening of Monday 17 February 1986, Mr Harrison was detained and brought to the Wollongong Police Station, where he was asked about his movements on 13 and 14 February 1986, the night on which Mr Rooney sustained his injuries.<sup>90</sup>

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<sup>86</sup> Duncan McNab, *Getting Away With Murder*, Penguin 2017, 190.

<sup>87</sup> Statement of Elizabeth Blomfield, 16 May 2023, [12] (SCOI.82575).

<sup>88</sup> Statement of Elizabeth Blomfield, 16 May 2023, [17] (SCOI.82575).

<sup>89</sup> Occurrence pad entries, 15 February 1986, 6 (SCOI.10338.00009).

<sup>90</sup> Occurrence pad entries, 18 February 1986, 4 (SCOI.10338.00005).

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141. Mr Harrison claimed that he had been with his girlfriend, Joanne Garbutt, for the entire night of 13/14 February. He said they were at the Coniston Hotel until closing time, and that he then went home with her to his address at [REDACTED] where he said he lived with a Mr Tony Stagni. He said that he did not know Mr Rooney and had never hassled him.<sup>91</sup>
142. Mr Harrison claimed that scratches on his right hand, which were observed by the police during the interview on 17 February 1986, had been incurred during a fight he had had the day before, 16 February 1986, with a man named "Steve Farrowell".<sup>92</sup> There is no indication in the material produced to the Inquiry by the NSWPF that police followed up on that claim.
143. Later on 17 February 1986, at about 11:00pm, police spoke with Ms Garbutt's mother, who said that Ms Garbutt had been staying with a person called 'Radar' at [REDACTED].<sup>93</sup>
144. However, as noted above at [51], there is no indication in the material produced to the Inquiry by the NSWPF that police ever interviewed, or sought to interview, Ms Garbutt herself.
145. At about 11.30pm on that same night, 17 February, police spoke to Tony Stagni at [REDACTED]. He said that Joanne Garbutt had been "stating" (sic) at those premises with Mr Harrison but had left on Sunday 16 February after an argument with Mr Harrison.<sup>94</sup>
146. For her part, to the contrary, Ms Garbutt has told the Inquiry that in February 1986 she was living in Coffs Harbour. She said that she had first met Mr Harrison in about 1979, but had then moved up north. She said she came back to Wollongong in about early 1987 where she re-connected with Mr Harrison and became pregnant with his child, who was born in October 1987. She had no recollection of ever staying overnight with Mr Harrison at [REDACTED]. Nor did she recall anyone by the name of "Steve Farrowell". She did have a recollection of a man by the name of "Tony Stagni", known as "Pegleg", but she did not remember anything about him other than his nickname.<sup>95</sup>
147. Ms Garbutt also said that she has no recollection of ever being spoken to by Wollongong Police in connection with where Mr Harrison was on a particular night in February 1986, nor of an occasion in February 1986 when Mr Harrison was interviewed by police about where he had been on a particular night in that month. Rather, her recollection was that in February 1986, she was living in Coffs Harbour<sup>96</sup>

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<sup>91</sup> Occurrence pad entries, 18 February 1986, 4 (SCOI.10338.00005).

<sup>92</sup> Occurrence pad entries, 18 February 1986, 4 (SCOI.10338.00005).

<sup>93</sup> Occurrence pad entries, 18 February 1986, 1 (SCOI.10338.00009).

<sup>94</sup> Occurrence pad entries, 18 February 1986, 4 (SCOI.10338.00009).

<sup>95</sup> Statement of Joanne Garbutt, undated, [24] (SCOI.83108).

<sup>96</sup> Statement of Joanne Garbutt, undated, [6] (SCOI.83108).



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148. On the material produced to the Inquiry by the NSWPF, Mr Harrison was not the subject of any further inquiries or investigation, in relation to the possibility that he was involved in the death of Mr Rooney, at any time after 17 February 1986.
149. Mr Harrison died in 2004.
150. On 20 February, Andrew James Sherring told DI Ainsworth that he had seen a male person staggering down Crown Lane in a westerly direction at about 11:00pm on Thursday, 13 February. Mr Sherring said the man then went to lie down on the grass area of the footpath on the northern side of Crown Lane and slept there for about 1.5hours. The person was described as wearing blue jeans and blue denim jacket and did not appear to be injured.<sup>97</sup> Mr Rooney was wearing clothes matching that description when he was found.
151. Geoffrey Gilroy and Anthony Galvin told DI Ainsworth that they had also seen a man lying on the grass area just off the footpath, at about 12:30am on Friday 14 February.<sup>98</sup>
152. However, a friend of Mr Rooney, Steven Snedden, told police that he had seen him at the Grand Hotel from about 9:30pm to 12:30pm describing him as “pretty full ... still walking around but full” and saying that he knew Mr Rooney was a “heavy drinker”.<sup>99</sup>
153. In relation to his drinking habits, Mr Snedden said:

*I have seen him getting pissed, and I have seen him get to the stage that he is passed being pissed, but he doesn't fall over and things like that he normally stays on his feet.*<sup>100</sup>

### **14 – 20 February 1986: Mr Rooney's hospitalisation and death**

154. At around 10:00am on 14 February 1986, Mr Rooney was brought to Wollongong Hospital, where he was initially treated by Dr Furber before being treated by Dr Ramsay, who was the Director of Intensive Care for the Illawarra Area Health Service. Dr Ramsay was advised that Mr Rooney had been found by ambulance officers at the bottom of a series of steps. He observed Mr Rooney to be hypothermic and unconscious. Mr Rooney was also making some inappropriate noises and flexing to painful stimuli.<sup>101</sup>
155. Dr Ramsay was shown x-rays of Mr Rooney's skull, which showed fractures in the occipital bone extending into the base of the skull. He also observed blood coming from Mr Rooney's left ear. A CAT Scan was taken, which showed multiple fractures, including through the left petrous temporal bone,

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<sup>97</sup> Occurrence pad entries, 20 February 1986, 42 (SCOI.10338.00009).

<sup>98</sup> Statement of Geoffrey Gilroy dated 22 February 1986 at [2] (SCOI.11269.00013); Statement of Anthony Galvin dated 22 February 1986 at [2] (SCOI.03683.00009).

<sup>99</sup> Statement of Steven Snedden, 22 February 1986, [4] (SCOI.11269.00011).

<sup>100</sup> Ibid.

<sup>101</sup> Report of Dr Ramsay, Director of Intensive Care dated 26 February 1986 (SCOI.11269.00007).

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at the right occipital region, in the left parietal region and in the right posterior parietal region. There was also extensive subarachnoid haemorrhage, deviation of mid-line structure to the left, and cerebral contusion in both frontal lobes and multiple small area of haemorrhages.<sup>102</sup>

156. Mr Rooney was maintained on a ventilator and lightly sedated for the next four days, and his intracranial pressures were “basically stable”.<sup>103</sup>
157. However, between 7:00am and 8:00am on 19 February 1986, Mr Rooney’s responses decreased. Mr Rooney’s condition further deteriorated between 7:00am and 8:30am the following morning and he was formally evaluated as brain dead between 1:00pm and 2:30pm on 20 February 1986. His ventilator support was then terminated, and Mr Rooney died at 2:35pm.<sup>104</sup> Mr Davis formally identified Mr Rooney to police at 3:15pm.

### **1986 – 1987: Coronial inquest**

158. On 14 February 1986 (the day Mr Rooney was found), the view of DSC Tate, as recorded in his occurrence entry of that day, was that: “At this stage there is no clear indication as to how this male person received the injuries as mentioned above”.<sup>105</sup>
159. On 20 February 1986, in the “Report of Death to Coroner”, Constable Tranby (the OIC) noted that “SUSPICIOUS CIRCUMSTANCES ARE RELATED TO THIS DECEASED”.<sup>106</sup>
160. On 26 February 1986, in his “Report of the Death of a Patient to the Coroner” dated 26 February 1986, the Casualty Registrar at Wollongong Hospital wrote (emphasis added): “Circumstances of accident or assault unknown.”<sup>107</sup>
161. However, when DSC Tate signed his statement nearly a year later on 5 January 1987, he expressed a different view, namely (emphasis added):<sup>108</sup>

*After having completed a number of inquiries and after having viewed both the deceased and the area where he was found and also lengthy discussions with Detective Sergeant PASSMORE of the Wollongong Scientific Section I am of the opinion that the person Rooney was well under the influence of liquor and sustained his injuries as the result of falling.*

162. In his unsigned statement of 22 October 1986, DS Passmore stated that he made the following observations of Mr Rooney at the hospital on 14 February (emphasis added):

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<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

<sup>105</sup> Occurrence pad entry, 14 February 1986, 1 (SCOI.10338.00005).

<sup>106</sup> P79A Report of death to Coroner (SCOI.11269.00002).

<sup>107</sup> Report of the Death of a Patient to the Coroner (SCOI.03683.00007).

<sup>108</sup> Statement of John Robert Tate, 5 January 1987, [9] (SCOI.11269.00018).

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*[Rooney] appeared to have only very slight superficial external injuries on his face and body which were not consistent with an assault victim. His injuries consisted of two small lacerations, one in the centre of his forehead at the hairline and an 'L' shaped laceration to his left thumb. He had a number of small blood blisters on his ribs on his right side and slight bruising inside his right arm adjacent to the blood blisters. He also had a bruise on his right hip. There were slight abrasions around the right eye and on his nose. On the inside of his left arm, there was a series of abrasions running lengthwise down his arm and considerable bruising which would be consistent with injuries caused by the top edge of the retaining wall. There were also three [vertical] red marks on his back. Examination of his legs showed an abrasion on his right knee. Close examination of his neck showed three very faint marks which were slightly curved. These could possibly be consistent with marks caused by fingernails. All ROONEY's nails were bitten down.<sup>109</sup>*

163. Thus in the course of the year following Mr Rooney's death, the views of police, as recorded, appear to have changed from "suspicious" (Constable Tranby), and "no clear indication" (DSC Tate), to "not consistent with an assault victim" (DS Passmore), and misadventure (DSC Tate).
164. Why the statements of DS Passmore and DSC Tate did not come into existence until some eight months (DS Passmore) and eleven months (DSC Tate) after Mr Rooney's death is not apparent, nor why DS Passmore's statement was unsigned.
165. The conclusion drawn by DS Passmore in the above-quoted passage, namely that Mr Rooney's injuries were "not consistent" with that of an assault victim, would appear to overlook DS Passmore's own observation of the fingernail marks on Mr Rooney's neck, which DS Passmore evidently considered unlikely to have been made by Mr Rooney.
166. Neither DSC Tate nor DS Passmore, in their respective statements, makes any reference to such matters as: that Mr Rooney was not carrying ID;<sup>110</sup> that his pants and underwear were lowered;<sup>111</sup> that he was missing a shoe and a sock;<sup>112</sup> or that he was known to "hold his liquor" well.<sup>113</sup>
167. DS Passmore is deceased.
168. Former DSC Tate has told the Inquiry that he does not recall any discussions with DS Passmore, but that given his expertise, he would have deferred to DS Passmore's views. However, Mr Tate said that his best present recollection is that he thought from the outset of his investigation that it was likely that Mr Rooney had fallen while intoxicated.

<sup>109</sup> Ibid.

<sup>110</sup> Mr Rooney was only found with a Medicare card and \$5 in cash, see P79A Report of death to Coroner (SCOI.11269.00002).

<sup>111</sup> Video of Mr Rooney in laneway, 14 February 1986 (SCOI.822576); see [115] below.

<sup>112</sup> Statement of Constable Michael Troy Tranby, 19 March 1986 (SCOI.03683.00004).

<sup>113</sup> Bias Crimes Indicators Review Form, undated, (SCOI.03077).

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169. Mr Tate said that he had not been aware that Mr Rooney had been found with his pants down or with a shoe and sock off, or that there were fingernail marks on his neck, or that the OIC had referred to “suspicious circumstances” in his report to the Coroner.<sup>114</sup>
170. At the inquest, held in July 1986 and February 1987, Dr Ramsay and Dr Verzosa gave evidence, as noted above at [34].
171. The formal finding of Coroner Soden is set out at [35] above.

### ***After 1987: subsequent NSWPF consideration of the case***

#### 1986 – 1989: twelve victims

172. Between March 1986 and September 1989, 12 male victims were physically and/or sexually assaulted, most of them in Wollongong, in circumstances which included many similarities.
173. On 26 September 1989, Mr Scerri was charged with 29 offences in relation to these 12 victims. Nine of the victims identified Mr Scerri as their attacker, and similar fact evidence was sought to be used to support charges in relation to the other three victims.
174. Charges in respect of three of the victims [1183], [1188] and [1190] did not proceed to trial. The ODPP issued a ‘no further proceedings’ direction in each of these matters, for reasons which are not known to the Inquiry.
175. Charges in respect of nine victims were the subject of four separate trials in 1991 and 1992.
176. **Annexure B** to these submissions is a table summarising the circumstances relating to the assaults on the twelve victims (one of whom was the victim of three separate attacks), and the outcomes of the charges and/or trial in each case.
177. As shown in more detail in Annexure B:
- In July 1991, there was a trial in relation to [1193] alone, in the District Court. [1193] was attacked in 1989 in Jindabyne. Mr Scerri was acquitted.
  - In October 1992, there was a trial in relation to [1187], [1186], [1185] and [1183] in the Supreme Court. Three of those victims were attacked in 1986 in McCabe Park in Wollongong, and one in 1987 elsewhere in Wollongong. Mr Scerri was acquitted.

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<sup>114</sup> Statement of John Robert Tate, 12 May 2023, [21] (SCOI.83107).

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- In November 1992, there was a trial in relation to [1189] alone, in the Supreme Court. [1189] was attacked in 1987 in Nowra. Mr Scerri was acquitted.
  - In November 1992, there was a trial in relation to [1194], [1192] and [1191] in the Supreme Court. The attacks on all three of those men had taken place in 1989, all in Wollongong. On 18 November 1992, Mr Scerri was found guilty by a jury and convicted on all seven charges in relation to [1194], [1192] and [1191].<sup>115</sup>
178. The attack on [1194], in September 1989, being one of those in respect of which Mr Scerri was convicted, occurred on the other side of the same laneway (Crown Lane) where Mr Rooney had been found on 14 February 1986.
179. One of the victims in respect of whom there was an acquittal [1186], gave evidence that in the course of the attack on him (on 18 December 1986, only ten months after the death of Mr Rooney), the attacker held a rock in one hand above his head and threatened [1186] with the rock while sexually assaulting him. According to [1186] his assailant said: "I'll kill you like I killed the poofter in the laneway".<sup>116</sup>
180. On 19 February 1993, Justice James imposed an effective total sentence of 16 years' imprisonment, with a non-parole period of 12 years, in respect of the convictions relating to [1194], [1192] and [1191]
181. Mr Scerri was 25 years old in 1989, when he committed the offences of which he was convicted against [1191], [1192] and [1194]. A convenient summary of what Mr Scerri did in those attacks is found in the judgment of Hoeben J in *State of New South Wales v Scerri* [2011] NSWSC 683, as follows at [26] - [29]:
- 26 [1191], a 21 year old male, was one of the ... victims. On 11 June 1989 he was walking home in Wollongong. The defendant grabbed the victim from behind and committed two offences of sexual intercourse without consent. The sexual assaults comprised oral sexual intercourse and penile anal sexual intercourse. The sexual assaults were accompanied by threats by the defendant to kill the victim and members of his family.
- 27 The defendant grabbed [1191] from behind and knocked him over a low boundary wall about a metre high running along the side of the street. The defendant then pushed [1191] across part of a vacant property into a shed. Inside the shed, the defendant took [1191]'s pants down and made him lie on his stomach. The defendant rolled [1191] onto his side and sucked his penis. The defendant then told [1191] to turn towards the wall of the shed and having made threats to kill him and members of his family, had full anal sexual intercourse with him. The defendant told [1191] to remain lying in the shed. Some hours passed before [1191] reported the offence to the police, because he was terrified that the defendant might kill him or

<sup>115</sup> *State of New South Wales v Scerri* [2012] NSWSC 271 at [6]  
<https://www.caselaw.nsw.gov.au/decision/54a636e53004de94513d96660>.

<sup>116</sup> Statement of [1186], 14 October 1989, [4] (SCOl.11293.00035).

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members of his family. It was common ground that [1191] was physically very small and slender.

- 28 [1192] a 22 year old male, was another victim. On 25 June 1989 he was walking along the same street in Wollongong, having been out to a number of nightspots. The defendant tackled [1192] from behind and hit him three or four times on the back of his head with a rock. The defendant pushed [1192] in a westerly direction, past the shed in which he had assaulted [1191] and into a toilet block in a park. In a cubicle in the toilet block, the defendant told [1192] to take his pants down and he then took [1192]'s penis in his mouth. The defendant then told [1192] to get down on his knees and put his chest on the ground. The defendant then inserted his penis into [1192]'s anus and had anal sexual intercourse with him. [1192] bled profusely while he was in the cubicle. When the defendant left, [1192] was able to get a lift from a passing motorist who took him to hospital.
- 29 The third victim was a 29 year old male, [1194]. On the night of 21 September 1989 [1194] was one of a group of men celebrating the recent birth of a child. He had consumed a very large amount of alcohol and early in the morning of 22 September 1989 left a nightclub in Wollongong grossly intoxicated. The defendant and [1194] left the nightclub together, but when they were next to a site on which a building had been demolished, the defendant punched him on the nose several times, breaking it. The defendant then hit [1194] on the side and back of his head several times with a rock. The defendant removed [1194]'s pants and while he was on his hands and knees, he inserted his penis into [1194]'s anus and had anal sexual intercourse with him. He said to [1194] "Shutup or I will keep bashing you". When the defendant left the area, [1194] was disoriented and wandered about until he was able to get to the Wollongong Police Station a few hundred metres away. He was wearing a Tshirt which was covered in blood and he was naked from the waist down. He spent a week as a patient in the Wollongong Hospital and 40 stitches were inserted in wounds in his head.
182. The attacks on the other nine men, in relation to which Mr Scerri was not convicted, had many similarities, as appears from Annexure B, including the nature of the physical and sexual assaults, the injuries suffered by the victims, the manner in which those injuries were inflicted, the geographical location in which most of the attacks occurred, and the fact that the victims were usually intoxicated.<sup>117</sup>
183. Mr Rooney's case, so far as can now be ascertained on the available evidence, had some of these same features. However, whereas all the other victims survived and were able to tell police that they had been assaulted, that is obviously not so in the case of Mr Rooney. Whether, in his case, it was an assault or a fall which caused his injuries can only be assessed by reference to objective evidence such as the nature and extent of his injuries. In addition, whereas the other victims were also sexually assaulted, there is no evidence as to whether or not that was so in the case of Mr Rooney, because no tests were carried out, either on his admission to hospital or in the post-mortem examination, in relation to that possibility.

1990 – 1993: DI Ainsworth

<sup>117</sup> Letter from DI Ainsworth to Craig Hyland, 17 March 1993, 9 – 10 (SCOI.11076.00011).

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184. On 3 July 1990, DI Ainsworth (by then the officer in charge of the prosecution of Mr Scerri in respect of the multiple 1989 charges) viewed the video footage of Mr Rooney in Crown Lane, apparently taken by a cameraman from WIN Television.<sup>118</sup>
185. On 4 July 1990, DI Ainsworth compiled a letter to the ODPP which outlined the available evidence in support of his view, by then firmly held, that Mr Rooney had been sexually assaulted and murdered by Mr Scerri. DI Ainsworth's letter requested that a substantial reward be offered for information in relation to the death of Mr Rooney, and that the ODPP consider charging Mr Scerri for the murder of Mr Rooney.<sup>119</sup>
186. On 28 March 1991, DI Ainsworth referred the case of Mr Rooney to the ODPP, for consideration of an *ex officio* charge against Mr Scerri for the murder of Mr Rooney.<sup>120</sup> It seems that DI Ainsworth's 4 July 1990 letter was among the material considered by the ODPP at that time.
187. However, on 26 April 1991, the ODPP declined to lay an *ex officio* charge for the murder of Mr Rooney, stating:<sup>121</sup>
- “this being a murder charge, it is not in my view a matter where an ex officio indictment would be filed without the accused having the benefit of committal proceedings. I therefore recommend that the trial proceed in respect of the sexual assaults and depending upon the outcome thereof and the strength of the “similar fact” evidence, consideration should then be given by the police as to whether, taking into account the alleged admission, there is sufficient evidence to warrant charging the accused for the murder.”*
188. Two years later, DI Ainsworth made another attempt. On 24 March 1993, Chief Superintendent Cassidy, District Commander for Illawarra/Shoalhaven, wrote to Mr Tedeschi QC, requesting advice on whether Mr Scerri could be charged with the murder of Mr Rooney.<sup>122</sup> Annexed to this letter was a brief which had been prepared by DI Ainsworth, comprising a letter to the DPP dated 17 March 1993 as well as, *inter alia*, the coronial brief relating to Mr Rooney, the video footage of Mr Rooney in Crown Lane, and the brief he had prepared in relation to the 29 charges against Mr Scerri. DI Ainsworth's 17 March 1993 letter was substantially in the same terms as his 4 July 1990 letter.

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<sup>118</sup> Letter from DI Ainsworth to Craig Hyland, 17 March 1993, 11 (SCOI.11076.00011).

<sup>119</sup> Letter from DI Ainsworth to P Conlon, 4 July 1990 (SCOI.83191).

<sup>120</sup> Letter from the ODPP, 3 April 2023, 3 (SCOI.82610).

<sup>121</sup> Letter from the ODPP, 3 April 2023, 3 (SCOI.82610).

<sup>122</sup> Letter from Chief Superintendent Cassidy to Mark Tedeschi QC, 24 March 1993 (SCOI.11269.00003); Letter from DI Ainsworth to C Hyland, 17 March 1993 (SCOI.11076.00007).<sup>123</sup> Letter from the ODPP, 3 April 2023, 3 (SCOI.82610).

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189. However, on 28 June 1993, the DPP advised that it was the opinion of Mr Tedeschi QC that there was insufficient evidence to charge Mr Scerri for Mr Rooney's death.<sup>123</sup> One reason for that opinion was the absence of evidence that Mr Rooney had been sexually assaulted.

### 2001 – 2003: Mr Scerri is released, but re-offends

190. On 24 November 2001, Mr Scerri was released on parole.

191. Less than six months later, on 12 May 2002, he attacked another victim, (JS), a 26-year-old male. Again the relevant facts included several features similar to those applicable to the three 1989 offences of which he had been convicted in 1992: see [194] below.

192. On 16 October 2002, Mr Scerri was arrested in connection with the attack on JS, and charged with, *inter alia*, one count of sexual intercourse without consent. In February 2003, Mr Scerri pleaded guilty.<sup>124</sup>

193. On 12 September 2003 Judge Phelan sentenced Mr Scerri to an effective term of eight years to commence on 12 September 2003, with a non-parole period of six years.<sup>125</sup>

194. In his remarks on sentence, Judge Phelan described Mr Scerri's 2002 offence in the following terms:

*At pp. 1-2: At about 5am on Sunday, 12 May 2002 the twenty-six year old male victim left licensed premises in the Wollongong CBD and walked alone along Crown Street with the intention of either catching a taxi or train to his home. While walking ... on Crown Street the victim was grabbed from behind by the offender who placed a strangle hold on [him] ... He was forced to the ground in an isolated grassed area.<sup>126</sup>*

*With the weight of the offender sitting on his torso the offender undid the victim's jeans and pushed them down to his knees. Whilst continuing to struggle and yell for help the offender punched the victim to the face before sucking on his penis. Whilst performing this act the offender became angry saying "get it up, get it up" before punching him to the face again.<sup>127</sup>*

*At pp. 2-3: As a result of the assault the victim was emotionally traumatised and suffered a broken nose, two black eyes, abrasions and tenderness about his body, was coughing up blood and had trouble swallowing as a result of the offender holding him by the throat. The victim's wallet, phone and one shoe were missing.<sup>128</sup>*

*At p. 5: [The offences against 1191, 1192 and 1194 were] carried out in circumstances remarkably similar to the one before the Court. The victims were relatively young males. Each incident*

<sup>123</sup> Letter from the ODPP, 3 April 2023, 3 (SCOI.82610).

<sup>124</sup> *State of New South Wales v Scerri* [2012] NSWSC 271 at [6]  
<<https://www.caselaw.nsw.gov.au/decision/54a636e53004de94513d9660>>.

<sup>125</sup> *State of New South Wales v Scerri* [2012] NSWSC 271 at [6]  
<<https://www.caselaw.nsw.gov.au/decision/54a636e53004de94513d9660>>.

<sup>126</sup> *Regina v Mark Anthony Scerri*, 12 September 2003, 1 – 2 (SCOI.11288.00091).

<sup>127</sup> *Regina v Mark Anthony Scerri*, 12 September 2003, 2 (SCOI.11288.00091).

<sup>128</sup> *Regina v Mark Anthony Scerri*, 12 September 2003, 2 – 3 (SCOI.11288.00091).



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*took place either on a Friday or Saturday night in the early hours of the following morning. Each of them involved threats and assault, the victim being punched around the head.*<sup>129</sup>

At p. 7: *[The Report of Professor Greenburg stated that Scerri] recalled that his father forced him to fight older children and had a great hatred of homosexual people.*<sup>130</sup>

At p.11: *Professor Greenburg provided an analysis or diagnosis of [Mr Scerri] in terms of psycho sexual disorder, paraphilia, sexual sadism, alcohol abuse dependence. He also diagnosed him as suffering from chronic depression and post traumatic stress disorder.*<sup>131</sup>

### 2002: suggestion of exhumation

195. Meanwhile, on 17 October 2002, the day after Mr Scerri's arrest, DS Bridge had written to Dr Duflou of the Institute of Forensic Medicine, requesting:

*an opinion from a Pathologist whether the body of William ROONEY would be suitable after exhumation to be examined for possible collection of semen samples from the rectum and throat areas of ROONEY's remains.*<sup>132</sup>

196. In that same letter, DS Bridge also told Dr Duflou that Mr Scerri "initially committed offences against homosexuals in 1986 as they were easier targets but apparently reverted to targeting heterosexual males in fear of catching AIDS".<sup>133</sup>

197. On 23 October 2002 Dr Duflou replied that "decomposition does dramatically affect the ability to retrieve such trace evidence" and that it is "highly unlikely that any usable DNA will be available at this very late stage" and that "there is an extremely low chance of retrieving DNA from an assailant in this case".<sup>134</sup>

198. In fact, the Special Commission has ascertained that in any event Mr Rooney's remains were cremated.<sup>135</sup>

### 2010 – 2011: Parole, and Extended Supervision Order

199. Despite being eligible for parole on 11 September 2009, Mr Scerri was not granted parole by the Parole Board until 10 February 2011. He was taken to reside at Nunyara Community Offender Support Program Centre where he was case managed and supervised by the Community Compliance and Monitoring Group.

<sup>129</sup> Regina v Mark Anthony Scerri, 12 September 2003, 5 (SCOI.11288.00091).

<sup>130</sup> Regina v Mark Anthony Scerri, 12 September 2003, 7 (SCOI.11288.00091).

<sup>131</sup> Regina v Mark Anthony Scerri, 12 September 2003, 11 (SCOI.11288.00091).

<sup>132</sup> Letter from Detective Senior Constable S Bridge to Dr Duflou dated 17 October 2002 (SCOI.11269.00024).

<sup>133</sup> Letter to Dr Duflou from Stephen Bridge, 17 October 2002 (SCOI.11269.00024).

<sup>134</sup> Letter from Dr Duflou to Detective Senior Constable S Bridge dated 23 October 2002 (SCOI.11269.00025).

<sup>135</sup> Death certificate of William Rooney (SCOI.82611).

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200. On 6 June 2011, whilst Mr Scerri was on parole, the State of NSW brought proceedings in the Supreme Court against Mr Scerri for an Extended Supervision Order (ESO). On 7 July 2011, Hoeben J was satisfied that the matters alleged in the supporting documentation would, if proved, justify the making of an ESO. Accordingly, he directed Mr Scerri to attend appointments with two psychiatrists and for both to furnish psychiatric reports to the Court, and fixed the application for hearing on 8 and 9 September 2011. The State of NSW did not seek an interim supervision order given Mr Scerri was already subject to conditional liberty whilst on bail.<sup>136</sup>
201. On 9 September 2011 Adams J made an ESO, for a period of three years commencing on 9 September 2011.<sup>137</sup>

### 2003: Psychiatric report

202. The remarks on sentence by Judge Phelan on 12 September 2003 included reference to psychiatric evidence which was before the Court, in the form of a report from Professor David Greenburg dated 3 September 2003.
203. Justice Hoeben, in a judgment delivered on 7 July 2011 in the ESO proceedings, quoted from the same report as follows, at [31], [47] and [48]:

31 *As can be seen from the circumstances relating to all of the offences, a common scenario emerged. In that regard, Professor Greenburg in 2003 made the following observations in relation to the 1989 sexual offending:*

*He (the defendant) states that the modus operandi with all three victims was the same. They were all between the ages of 20 and 40. He would follow the victim from the hotel and subdue the victim with threats of intimidation and physical assault. He would then pull down their pants and perform fellatio on them. If they hadn't obtained an erection, he would humiliate them further and physically abuse them. He states that his abuse would sexually arouse him and he would rape the victim by anal penetration with his erect penis. He admits to inducing suffering and humiliating the victim and subjecting them to physical assault which sexually aroused him. He states he would then remove their wallets and pretend that he had noted their address. He would threaten the victims that if they reported the incident he would "come and get them". He denies he stole any wallets from the victims.*

47 *In a report dated 3 September 2003 Professor Greenberg diagnosed the defendant as having a sexually sadistic (paraphilic) disorder defined in DSM-IV, of a chronic and severe nature.*

48 *Professor Greenberg described the defendant's paraphilic disorder in the following terms:*

*This is a paraphilic (sexually deviant) disorder where the individual derives sexual excitement from the psychological or physical suffering of the victim. This usually includes the humiliation of the non-consenting victim. Sexually sadistic fantasies*

<sup>136</sup> *State of New South Wales v Scerri* [2011] NSWSC 683.

<sup>137</sup> *State of New South Wales v Scerri* [2012] NSWSC 271, [1] and [35].

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*usually involve complete control over the victim who is terrified of the impending sadistic act. Although sexual masochism is commonly associated with this disorder, Mr Scerri denies any masochistic fantasies, sexual urges or sexual acts. His erotic sexual fantasies involve dominance of the victims. Mr Scerri denies any previous sexual fantasies, sexual urges or sexual acts involving sexual sadistic themes prior to the age of 24. However, most people with this diagnosis usually have sexually sadistic fantasies which begin during the teenage period. The onset of sexually sadistic acts is more variable but commonly in early adulthood as in the case of Mr Scerri. ... These sexual disorders are chronic and should be regarded as a severe disorder in view of his criminal sexual activity.*

### **Report of Dr Iles**

204. The Inquiry sought and obtained an opinion from Dr Iles, a forensic pathologist, on the likely manner and cause of Mr Rooney's death.

205. The issues which Dr Iles was asked to address are set out at [96] above.

206. In her report, received on 31 January 2023, Dr Iles noted that autopsy practice has evolved considerably since Mr Rooney's death. However, she outlined some key deficiencies in the autopsy and medical examinations, and stated that:

*[d]ue to inadequate documentation of injuries in the autopsy report, and the lack of a comprehensive forensic medical examination after Mr Rooney was admitted to hospital, addressing the mechanism by which Mr Rooney's sustained his injuries is difficult.*

207. Some of the deficiencies in the autopsy examination identified by Dr Iles were:

- a. the incomplete documentation of cutaneous injuries;
- b. the inadequate examination of the scalp;
- c. no indication that an examination to detect the presence or absence of facial injuries, including about the oral mucosa, had been performed;
- d. the lack of comment about the presence or absence of anogenital injuries;
- e. the absence of any validity to the assessment of the age of the bruises on Mr Rooney's chest;
- f. the erroneous attribution and description of injuries, including injuries said to contribute to the cause of death; and
- g. various issues with the autopsy photographs including discrepancies between the photographs and the descriptions of the injuries in the autopsy report.

208. As to the different views expressed by Dr Versoza and Dr Ramsay, Dr Iles noted that Dr Versoza appeared to consider injuries sustained in a fall to be the "most likely" mechanism of injury, whereas

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by contrast Dr Ramsay appeared to suggest that it was “highly unlikely” that such injuries could be sustained in a fall as described. Dr Iles considered that Dr Versoza or Dr Ramsay had both expressed “a level of certainty about the mechanism of Mr Rooney’s injuries beyond that which [was] supported by the contemporary evidence base”.

209. Dr Iles considered that the following factors favoured Dr Versoza’s interpretation:<sup>138</sup>

- a. *The type of base of skull fractures observed and described are well recognised to occur from an inverted fall of less than three metres with primary impact around the top of the head.*
- b. *Mr Rooney does not demonstrate extensive cutaneous injuries to either the front or back of his body that may be seen as a result of an assault where multiples impacts are sustained.*
- c. *The linear abrasions in the front of the left elbow demonstrates directionality; it is possible that they may have occurred via contact with a protruding roof structure or wall nails in the scenario described.*

210. However, Dr Iles said that on the evidence available, she was unable to exclude either mechanism (i.e. a fall, or a blow to the head by a blunt instrument). Her report went on:<sup>139</sup>

*However, I am not convinced that the postmortem examination conducted has been sufficient to exclude multiple scalp impacts, or subtle cutaneous or bony injuries, to allow any type of accurate event reconstruction. If Mr Rooney’s injuries had been sustained in a fall, I cannot say how that fall may have come about (i.e., an accidental fall, or whether Mr Rooney was pushed between the retaining wall and toilet block roof). It is also noted that Mr Rooney has a relative paucity of documented post cranial injuries given the relatively small space for him to fall into (gap approximately 50cm) given his height (5 foot 11 inches/180cm) in a headfirst fashion. The small abrasion in his neck is non-specific, but this could represent a fingernail abrasion. There is no indication as to when this may have been sustained.*

*On the evidence available, I am unable to exclude either mechanism. Examination of the literature demonstrates that Mr Rooney’s injuries, as much as they have been documented, could have been sustained as a result of a fall from around 3 meters in height, with primary impact to the head, or could have been sustained via homicidal means (i.e. blunt trauma to the head by an implement). I agree with the original coroner’s determination that the mechanism of Mr Rooney’s injuries is undetermined.*

211. Dr Iles concluded that Mr Rooney’s cause of death could reasonably be described as “blunt head injuries”. However, on the evidence available, she was unable to determine the manner of his death.<sup>140</sup>

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<sup>138</sup> Report of Dr Iles, received 31 January 2023, 3 (SCOI.82574).

<sup>139</sup> Report of Dr Iles, received 31 January 2023, 11 (SCOI.82574).

<sup>140</sup> Report of Dr Iles, received 31 January 2023, 11 - 12 (SCOI.82574).

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### **Submission as to bias**

212. If it were to be assumed that Mr Rooney's death was a homicide, and that that homicide was committed by Mr Scerri, there would be ample grounds for a conclusion that Mr Rooney's death was a crime involving LGBTIQ bias.
213. However, in this case, the available evidence does not allow either of those assumptions to be made. There exists a reasonable alternative hypothesis other than homicide, namely that Mr Rooney sustained his injuries as a result of an accidental fall. No evidence was sought or obtained at the time as to whether Mr Rooney was sexually assaulted, and it is now not possible to carry out any tests which would shed light on that issue.

### **Submission as to manner and cause of death**

214. For the reasons outlined above, it is submitted that the evidence available to the Inquiry does not provide a sufficient basis for a finding that Mr Rooney's death was a homicide. It is submitted that an appropriate finding would be:

*Mr Rooney died on 20 February 1986 as a result of blunt head injuries sustained on 14 February 1986. However, the evidence available to the Inquiry is insufficient to establish whether these injuries were the result of an assault or an accidental fall.*

### **Submission as to recommendations**

215. There are no suggested recommendations specifically arising from this matter.

**Peter Gray SC**

**Meg O'Brien**

Counsel Assisting

# Annexure 'A'





## ANNEXURE 'B'

No.	Date	Victim	Description	Outcome
1	9/03/1986	[1183]	At about 4:00am on 9 March 1986, [1183] was assaulted in MacCabe Park in Wollongong. At about 1:20pm, [1183] was found in Keira St, Wollongong and taken to Wollongong Hospital where he was admitted in an extremely serious condition. [1183] had sustained heavy blows to his head with an unknown object and his injuries were consistent with having had sexual intercourse.	<b>No billed</b> (November 1992)
2A	March – May 1986	[1185]	<u>[1185] – First Attack</u> Sometime between March and May 1986, [1185] was assaulted and sexually assaulted in MacCabe Park in Wollongong. [1185] and his attacker were engaged in a consensual sexual encounter when his attacker demanded anal sex. When [1185] did not consent to anal sex, his attacker administered several blows to [1185]'s head, and he was knocked to the ground. [1185] then rolled onto his knees attempting to protect his head with his hands. The attacker then had anal sex with him, before kicking him and leaving the area.	<b>Not convicted.</b> Went to trial together with charges arising from assaults against [1187], [1186] and [1184] in October 1992 (Supreme Court NSW, James J).
3	7/08/1986	[1184]	At about 1:30am on 7 August 1986, [1184] was seated in his vehicle in MacCabe Park, Wollongong. [1184] was later woken up by a man tapping on his window. [1184] got out of his vehicle and was attacked by the man. The attacker took hold of [1184] and forced him deeper into MacCabe Park where he sexually assaulted him. The attacker then took [1184] back to his vehicle and forced him into the back seat. The attacker then drove the car to Masters Road, Coniston. When the vehicle stopped, [1184] got out of the car and flagged down a passing motorist. [1184] then went to Wollongong Hospital. [1184]'s vehicle was later found in Mount Kembla where it had been set alight and completely destroyed.	<b>Not convicted.</b> Went to trial together with charges arising from assaults against [1185], [1187] and [1186] in October 1992 (Supreme Court NSW, James J).
2B	16/11/1986	[1185]	<u>[1185] – Second Attack</u> At about 3:15am on 16 November 1986, [1185] went to the toilets in MacCabe Park. On leaving the toilet block, [1185] was confronted by a man who forced him deeper into MacCabe Park where he was sexually assaulted. [1185] was then blindfolded and placed into the rear of a vehicle. [1185] escaped when his attacker stopped to get petrol at Guests Garage, West Wollongong.	<b>Not convicted.</b> Went to trial together with charges arising from assaults against [1187], [1186] and [1184] in October 1992 (Supreme Court NSW, James J).



4	18/12/1986	[1186]	<p>On the night of 18 December 1986, [1186] was sitting in his car in the carpark at MacCabe Park. At some time after midnight, a man who was standing near the toilet block walk over towards [1186]s car and started talking to him through the window. The man then asked if [1186] wanted to go for a drive. The man got into the passenger seat and the two men then drove to Stuart Park. The men got out of the car and proceeded to cuddle and fondle each other. They both took their clothes off and the man asked [1186] to give him oral sex. The man then attacked [1186] by striking him on the head and face and knocking him to the ground. The attacker then forced [1186] onto his hands and knees and had anal sex with him. The attacker then forced [1186] to continue to have oral sex with him whilst punching him in the head. The attacker held a rock in one hand and continued to threaten [1186] with the rock while having anal and oral sex with him again. Whilst holding the rock above his head the attacker said, "I'll kill you like I killed the poofter in the laneway". The attacker then forced [1186] back into his car and drove away. A short time later he stopped and told [1186] to wait 20 minutes before getting out of the car.</p>	<p><b>Not convicted.</b></p> <p>Went to trial together with charges arising from assaults against [1187] [1185] and [1184] in October 1992 (Supreme Court NSW, James J).</p>
5	22/01/1987	[1189]	<p>Shortly after midnight on 22 January 1987, [1189] was walking near the intersection of the Princes Highway and Illaroo Road in Nowra when a man pulled up in a car and offered [1189] a lift. [1189] got into the car and the man drove off to an isolated position in the bush in Nowra off McMahons Road. Upon stopping the car, the man attacked [1189] by punching him in the head until he passed out. While [1189] was unconscious the attacker had anal sex with him. When he woke up, [1189] was wearing only a shirt and a pair of socks. [1189] contacted emergency services and was taken to Nowra Hospital and treated.</p>	<p><b>Not convicted.</b></p> <p>Went to trial by itself in November 1992 (Supreme Court NSW, James J).</p>
6	14/02/1987	[1187]	<p>In the early hours of 14 February 1987, [1187] was driving his car on Church St, Wollongong when he saw a man hitch-hiking. [1187] stopped his vehicle and offered the man a ride. The man got into the car, but when [1187] stopped to go to the toilet in Corrimal St, Wollongong, he heard a car door shut and then felt a heavy blow to the head. He was then placed in a headlock and taken to some bush close by. After a struggle, [1187]s hands were tied behind his back and his jeans and underpants were removed. He was then forced onto the ground before the attacker had anal sex with him. [1187] was then forced to perform oral</p>	<p><b>Not convicted.</b></p> <p>Went to trial together with charges arising from assaults against [1185] [1186] and [1184] (Supreme Court NSW, James J).</p>

			sex on the man. The attacker then went through [1187]'s wallet, took \$20 and left.	
7	30/04/1987	[1188]	In the afternoon of 30 April 1987, [1188] was hitch-hiking on Five Islands Road, Cringila. A man picked him up in a car and took him to bush in Mount Kembla where he told [1188] to get out and start walking. [1188] was then hit over the head and arms with a steel bar. The attacker then performed anal and oral sex on [1188] before masturbating himself. [1188] was found the following morning by council workers at the scene. [1188] was admitted to Wollongong Hospital and treated for serious head injuries.	<b>No billed</b> (April 1991)
2C	31/10/1987	[1185]  (3)	<u>[1185] – Third Attack</u>  At about 3:00am on 31 October 1987, [1185] was asleep in his car when he was awoken by a man who [1185] recognised as the same man that attacked him on two prior occasions. The attacker then drove [1185] to a Caltex Service Station where he got petrol. [1185] escaped and asked the attendant to phone the police as the attacker was attempting to steal his vehicle.	<b>Not convicted.</b>  Went to trial together with charges arising from assaults against [1187], [1186] and [1184] in October 1992  (Supreme Court NSW, James J).
8	30/07/1988	[1190]	On Saturday 30 July 1988, [1190] was at the Harp Hotel in Corrimal St, Wollongong. [1190] did not recall leaving the hotel but when he woke up, he was in an alleyway near the Down Town Motel in Crown St, Wollongong and he had no pants on. [1190] looked around for about an hour and found his boots and jeans but could not find his underwear or wallet. [1190] eventually found his wallet. [1190] then walked out onto Crown St and took a taxi home. The taxi driver wanted to take him to hospital, but he did not want to go. When he got home, [1190] realised he had blood all over his face, a cut under his neck and a puffy left eye. [1190] woke up on Monday morning feeling poorly and asked his father to take him to hospital. Upon examination in hospital, it was found [1190] suffered a fractured skull after receiving a near fatal blow to the head with a blunt instrument.	<b>No billed</b> (November 1992)
9	11/06/1989	[1191]	At about 3am on 10 June 1989, [1191] left Pips International Nightclub in Crown Lane, Wollongong. [1191] started walking along Keira St, Wollongong towards his home. He was approached by Mr Scerri who asked him for directions to Bellambi. They started walking together and when they were near a construction site on Flinders St, Mr Scerri	<b>Scerri convicted.</b>  Went to trial together with charges arising from assaults

			<p>pulled [191] over a small brick fence to a grass area and told [191] to do everything he said, or he would hit him with a rock that he was holding. Mr Scerri dragged [191] to a nearby shed and removed [191]'s pants and made him lie on his stomach. Mr Scerri then rolled [191] onto his side and sucked his penis. Mr Scerri then told [191] to turn towards the wall of the shed and, having made threats to kill him and members of his family, had anal sex with him. Mr Scerri told [191] to remain lying in the shed. Some hours passed before [191] reported the offence to the police, because he was terrified that Mr Scerri might kill him or members of his family.</p>	<p>against [192] and [194] in November 1992</p> <p>(Supreme Court NSW, James J).</p>
10	25/06/1989	[192]	<p>At about 2:30am on 25 June 1989, [192] was walking along Flinders St in Wollongong, having been out to a number of nightspots. Mr Scerri tackled [192] from behind and hit him three or four times on the back of his head with a rock. He then pushed [192] in a westerly direction, past the shed in which he had assaulted [191], and into a toilet block in a park. In a cubicle in the toilet block, Mr Scerri told [192] to take his pants down and he then took [192]'s penis in his mouth. Then Mr Scerri told [192] to get down on his knees and put his chest on the ground. Mr Scerri then inserted his penis into [192]'s anus and had anal sexual intercourse with him. When Mr Scerri left, [192] was able to get a lift from a passing motorist who took him to hospital.</p>	<p><b>Scerri convicted.</b></p> <p>Went to trial together with charges arising from assaults against [191] and [194] in November 1992</p> <p>(Supreme Court NSW, James J).</p>
11	10/09/1989	[193]	<p>At about 1:00am on 10 September 1989, [193] was walking towards the Vikas Lodge, Jindabyne when he was approached by a man who asked him to go for a drink. When he declined, the man then took [193] in a headlock and dragged him to a toilet block. [193] broke free and started screaming but the man attacked him by punching him in the head and trying to choke him. The attacker then dragged [193] to a storeroom at the Motel Central Park and pushed him onto a mattress on the floor. The attacker then threatened to hit [193] with a bottle, then removed his shoes, socks, trousers and underpants. The attacker then rolled [193] onto his stomach and had anal intercourse with him, followed by oral sex. This continued over the next six hours. He then removed money from his wallet and told him to wait two minutes while he left.</p>	<p><b>Not convicted.</b></p> <p>Went to trial by itself in July 1991</p> <p>(District Court, Graham J).</p>
12	22/09/1989	[194]	<p>On the night of 21 September 1989, [194] was one of a group of men celebrating the recent birth of a child. He had consumed a very large amount of alcohol and in the</p>	<p><b>Scerri convicted.</b></p> <p>Went to trial together with</p>

		<p>early morning of 22 September 1989, he left Pip's International nightclub very intoxicated. Mr Scerri was outside the nightclub and walked with [194] along Crown Lane. When they reached a vacant site on which a building had been demolished, Mr Scerri punched [194] on the nose several times, breaking it. He then hit [194] on the side and back of his head several times with a rock. Mr Scerri removed [194]'s pants and while he was on his hands and knees, he inserted his penis into [194]'s anus and had anal sexual intercourse with him. He said to [194] "Shut up or I will keep bashing you". When Mr Scerri left, [194] was disoriented and wandered about until he was able to get to the Wollongong Police Station a few hundred metres away. He was treated at Wollongong Hospital where he received 40 stitches in relation to his head injuries.</p>	<p>charges arising from assaults against [191] and [192] in November 1992  (Supreme Court NSW, James J).</p>
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