



## Special Commission of Inquiry into LGBTIQ hate crimes

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### **SUBMISSIONS OF COUNSEL ASSISTING**

22 May 2023

#### **IN THE MATTER OF SIMON BLAIR WARK**

##### **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. Simon “Blair” Wark (known as ‘Blair’) died between 2:00pm on 9 January 1990 and 9:30am on 10 January 1990. His body was found in the northern area of Sydney Harbour, 200 to 300 metres from Dobroyd Point. Personal items belonging to him were found near a cliff top at Gap Bluff in Watson’s Bay.

###### *Circumstances of death*

3. Mr Wark was 28 years old when he died. He was by all accounts an intelligent, creative and kind young man with a likeable personality. In the days leading up to his death he had been acting in an unusual manner, characterised by some paranoia and what appear to have been unjustified fears that he was in some type of danger. He had not previously been diagnosed with any form of psychotic illness but had experienced depression at times and had been prescribed anti-depressant medication. He was living in hotel accommodation in Pymont, though was endeavouring to move into rental accommodation with some friends.
4. Mr Wark’s unusual behaviour had been exhibited over a period of days leading up to his death, including on two visits to his family home in Frenchs Forest. On one visit his behaviour was of such concern that his parents called a local general practitioner (**GP**) who attended on a home visit. Mr Wark left the family home early on the morning of Tuesday 9 January, and appears to have returned to his hotel

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accommodation in Pyrmont for a period of time. At around 11:00am on 9 January, a person matching Mr Wark's description left a bag with some items of clothing in it at the "lost property" counter at the David Jones store in the city. Mr Wark appears to have been under the apprehension that he had an appointment with a psychologist that afternoon. At around 2:00pm he attended the psychologist's home address in Double Bay but was advised that the psychologist was not present. This was the last known sighting of Mr Wark, prior to his body being found in the harbour at 9:30am the following morning.

5. Clothing and personal property belonging to Mr Wark was later found by a member of the public at Gap Bluff in Watson's Bay. It appears probable that Mr Wark's body had entered the water from this location, or somewhere in its vicinity.
6. The Inquiry's consideration of the matter has focused on determining whether or not Mr Wark's body did indeed enter the water from the location at the Gap, and if so, the circumstances in which that occurred. The Inquiry has also remained open to considering whether there is any other possible location from which the body may have entered the Harbour. The detail of the evidence is considered later in the submission.

### *Findings of post-mortem examination*

7. Mr Wark's body was first examined by forensic pathologist Dr Peter Bradhurst on the morning of 14 January 1990. However, the autopsy was stopped after what might have been deep seated bruising was observed on Mr Wark's neck. The potential suspicion this aroused appears to have been cause for Dr Bradhurst to arrange for the Homicide Squad to be contacted.<sup>1</sup>
8. Dr Bradhurst resumed his examination at 5:30pm that day. Dr Bradhurst noted a small number of relatively minor external injuries, including bruising to the left side of the face and upper neck, and along the right side of the body. Dr Bradhurst found multiple severe internal injuries, including cracks, fractures and/or lacerations to the neck, spine, ribs, pelvis, liver and spleen, and haemorrhage to the heart, lungs, spine, thyroid, adrenals and one kidney.<sup>2</sup>
9. Dr Bradhurst considered the direct cause of death to be "multiple injuries" and the date of death to have been "about 4½ to 4¾ days previously".<sup>3</sup> Since the autopsy commenced in the morning but appears not to have been completed until late in the afternoon on 14 January, that estimate appears to be consistent with the period of time during which the evidence otherwise suggests the death must have occurred

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<sup>1</sup> Second statement of Constable Lisa Ford dated 24 January 1990, 3 (SCOI.00052.00024); statement of Detective Senior Constable Michael Plotecki dated 30 January 1990, [3] (SCOI.00052.00026)

<sup>2</sup> Autopsy Report of Dr Peter Graham Bradhurst dated 24 May 1990, 1-5 (SCOI.00052.00007).

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

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(namely, between around 2pm on 9 January and 9:30am on 10 January). Given the period over which the autopsy occurred and that the suggested time period given by Dr Bradhurst is qualified, it does not really assist to narrow down the time of death any further.

10. Toxicology testing found tricyclic antidepressants in Mr Wark's blood, liver, stomach and bile, consistent with the low level of his prescribed anti-depressant medication. No blood alcohol was detected.<sup>4</sup>
11. Dr Bradhurst conducted a re-examination of the body on 17 January 1990. He considered the bruising to the neck and facial areas to be superficial, with no underlying subcutaneous tissue damage.<sup>5</sup>
12. According to the police officers who attended the autopsy, Dr Bradhurst concluded that the injuries were consistent with having fallen from a great height and that there were no suspicious circumstances surrounding his death. He did not consider the bruising to the neck to be suspicious.<sup>6</sup>

### *Persons of interest and significant witnesses*

13. There is no cogent evidence pointing to the involvement of any known individual in Mr Wark's death. However, two men did have significant contact with Mr Wark in the days leading up to his death.
14. One of these men was [REDACTED] **I182** (KN) who was a Catholic priest and is now deceased.<sup>7</sup> He was significantly older than Mr Wark. In January 1990 he would have been 57 years old and Mr Wark was 28. The two had met when Mr Wark was studying at the City Art Institute, where KN was a lecturer. They lived together over an eight-year period up until a few months prior to Mr Wark's death.<sup>8</sup> Mr Wark was gay and it appears likely if not probable that he and KN were in a romantic/sexual relationship. A statement that KN provided to NSW Police is ambiguous about the nature of their relationship, but appears to suggest that it was not sexual. He describes it as "paternal/fraternal" and "homophiliac". He distinguished the latter term from homosexuality, and said that it involved there being a "strong attraction for a person of the same sex".<sup>9</sup>
15. The other man was [REDACTED] **I179** (MS), then a 30-year-old man who Mr Wark had known for 11 years through a connection as students at the City Art Institute. In an unsigned statement, he provided police with a different account of the relationship between Mr Wark and KN. According to that unsigned statement, Mr Wark had a "long term affair" with KN, which had ended about six months before Mr Wark's death. According to MS, they broke up primarily because KN would continually get drunk and

<sup>4</sup> Toxicology report dated 1 May 1990 (SCOI.00052.00009).

<sup>5</sup> Autopsy report (n 2), 5.

<sup>6</sup> Second statement of Constable Ford (n 1), 3; statement of Detective Senior Constable Plotecki (n 1), [5].

<sup>7</sup> Death certificate of [REDACTED] **I182** (KN) dated 5 July 2006 (SCOI.73940).

<sup>8</sup> Statement of KN dated 27 January 1990, [4]-[5] (SCOI.00052.00028).

<sup>9</sup> Ibid, [7].

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“bash” Mr Wark. MS claimed that Mr Wark would often come to his place with bruising to the face and would tell him of these bashings. MS described Mr Wark as “heartbroken” over the breakup.<sup>10</sup>

16. According to his unsigned statement, MS himself had had close involvement with Mr Wark in the lead up to his death. MS and his girlfriend, along with Mr Wark, had agreed to move into a shared flat together in Potts Point. Mr Wark was in the process of trying to obtain money for his share of the upfront rental costs and the issue of moving into the flat featured prominently in his thoughts and the fears he expressed in the days before his death.
17. On 17 January 1990 (a week after Mr Wark’s death but apparently before MS became aware of it), MS sent a letter intended for Mr Wark to his address at the Pyrmont Arms Hotel.<sup>11</sup> The letter is somewhat rambling and incoherent, consistent with references made in it by MS to his drug use at the time. MS was evidently asked about the letter at the time his unsigned statement was prepared. The contents of the letter are consistent with MS having heard Mr Wark discuss the topic of suicide on occasions, with specific reference to “jumping” as a means of suicide, as referred to in his unsigned statement. The letter also indicates that MS was preoccupied with disappointment that Mr Wark had not turned up to the planned arrangement with the real estate agent and that consequently their plan to move had not gone ahead. Overall it tends to support the reliability of MS’s unsigned statement, the contents of which provide context to, and are consistent with, those aspects of the letter.

### *Indicators of LGBTIQ status or bias*

18. Mr Wark was gay, a fact which his family and friends knew.
19. Features of Mr Wark’s death that appear to have brought it to the attention of Sue Thompson and, later, Strike Force Parrabell are the fact that he was gay, and the proximity of where his body was found to Dobroyd Head and Reef Beach near Balgowlah Heights.<sup>12</sup> This was an area then known to have functioned as a beat at times, and where there were known instances of assaults targeting gay men in the late 1980s.<sup>13</sup>

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<sup>10</sup> Unsigned statement of [REDACTED] (MS) dated 29 January 1990, [13] (SCOI.00052.00030); statement of Detective Senior Constable Plotecki (n 1), [19].

<sup>11</sup> Letter from MS to Mr Wark dated 17 January 1990 SCOI.82834

<sup>12</sup> See Exhibit 6, Tab 47, Issue Paper from Detective Chief Inspector John Lehmann re: Assessment of 30 potential ‘gay hate’ unsolved homicides, dated 25 September 2013, 6 (SCOI.74906); Exhibit 6, Tab 56B, Excel spreadsheet titled ‘Possible Gay Hate Murders List’ provided to Michael Willing by Sue Thompson (undated) (SCOI.77315); Exhibit 6, Tab 223, Rick Feneley, ‘The Gay-Hate Decades: 30 Unsolved Deaths’, SBS (online), 3 October 2016, 34, <<https://www.sbs.com.au/gayhatedecades/>> (SCOI.82033).

<sup>13</sup> See Exhibit 6, Tab 232, Inquest into the death Scott Johnson – Findings of State Coroner Michael Barnes, dated 30 November 2017, [160], [164], [170], [188]-[189] (SCOI.11064.00018).

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20. Moreover, his death occurred around a time when there were other known or suspected gay hate deaths involving falls from cliffs in other Sydney coastal locations, and evidence generally before the Special Commission demonstrates that the late 1980s and early 1990s was a period when there were documented high levels of assaults of members of the LGBTIQ community in Sydney.<sup>14</sup>
21. The Inquiry obtained an expert report from a coastal geomorphologist that considers the feasibility of Mr Wark's body having travelled from the vicinity of Gap Bluff, outside Sydney Harbour, around South Head and across to the location where it was found: see [59] and [104]–[114] below. Although there is no evidence that Reef Beach or Dobroyd Head were locations that Mr Wark was known to frequent at the time, in view of the proximity of his body to those locations, the expert report also addresses the possibility of Mr Wark's body having entered the water from that area.
22. Apart from that latter possibility, there is no cogent evidence that would suggest that Mr Wark's death was one motivated by gay hate bias.

### *Exhibits: availability and testing*

23. During the post mortem examination, samples of scalp and pubic hair, nail clippings, and anal and perianal swabs and smears were taken. No record has been produced to the Inquiry indicating that these samples were retained. When producing their file, NSW Health Pathology – Forensic Medicine (**Forensic Medicine**) advised the Inquiry that any biological samples would have been handed over to the NSW Police Force (**NSWPF**) at the time of autopsy and, thus, that any records relating to the testing of these samples would be held by NSWPF. These samples do not appear in the police file produced to the Inquiry and NSWPF has informed the Inquiry that, following extensive searches and enquiries within NSWPF and with other agencies, they cannot locate the samples or any documents relating to the samples.<sup>15</sup> It should be noted that the possibility that these samples would have retained any third party DNA may have been diminished by the extended period during which Mr Wark's body was immersed in water.
24. There is no record indicating what happened to the clothing which was on Mr Wark's body when it was found (jeans, socks and shoes). The clothing and other items located at the Gap (shirt, belt and glasses) were returned to the family without being tested.<sup>16</sup> In any event, the utility of any forensic testing now, were it possible, is speculative given that there is otherwise no evidence indicating that Mr Wark was the subject of an assault at the time of, or prior to, his death.

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<sup>14</sup> See generally Exhibit 2, Tab 2, Statement of Brent Mackie dated 16 November 2022, [19] (SCOI.77301); Exhibit 2, Tab 4, Statement of Gregory Callaghan dated 17 November 2022, [10]–[30] (SCOI.77303).

<sup>15</sup> Statement of Detective Sergeant Neil Sheldon dated 19 January 2023, [10] (SCOI.82332).

<sup>16</sup> See statement of Rebecca Sharon Wark dated 18 March 1990, [13]–[14] (SCOI.00052.00035).

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

25. Deputy State Coroner DW Hand dispensed with a formal inquest on 30 July 1990.<sup>17</sup> An entry on the coronial file dated 12 February 1990 reads as follows:

*Brief and investigation complete seems certain suicide. Father fears suspicious circumstances. When [Post Mortem] arrives get [Constable] to check with father if attitude changed if not arrange for him to attend and read brief. ... [Evidence] homosexual, drug / alcohol user, depression, broken relationship, talk of suicide, talk of 'triad' explained. I would recommend [Dispense].<sup>18</sup>*

26. A note made next to this recommendation states "Accepted" and is signed, evidently by the Coroner, and dated 30 July 1990. The relevant notations appear to speak for themselves in relation to the view taken by the Coroner; namely, that the death was a suicide and that an inquest was unnecessary.

27. A death certificate issued on 15 February 1990 and updated on 18 August 1990 records the date of death as 9 January 1990, the place of death as "Waters off Dobroyd Head, Sydney Harbour", and the cause of death as "Multiple Injuries."<sup>19</sup>

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

28. Although the ultimate submission which will be made in this matter is that Mr Wark's death was not one that involved foul play, it had certain features that called for more thorough analysis than appears to have occurred at the time of the initial investigation. This Inquiry's task would undoubtedly have been more straightforward had there been a more considered police investigation of the matter.

29. On its face, Mr Wark's death had some features that understandably raised significant questions for family members in relation to what had happened. Some of these issues are the subject of correspondence to the Coroners Court in May and June 1990 by both Mr Wark's family and the investigating officers.<sup>20</sup>

30. Matters of concern include the following:

- a. if police attended the location where Mr Wark's property was found at Gap Bluff, this did not occur until several days after it was located;

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<sup>17</sup> Coroners Court summary sheet (undated) (SCOI.00052.00001).

<sup>18</sup> Inquest running sheet (undated) (SCOI.00052.00002).

<sup>19</sup> Death certificate for Simon Blair Wark, updated 13 August 1990 (SCOI.74040).

<sup>20</sup> See letter from Enid Wark and Rebecca Wark to Coroner dated 4 May 1990 (SCOI.00052.00011); letter from Constable Lisa Ford and Detective Michael Plotecki to the Coroner dated 19 June 1990 (SCOI.00052.00044).

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- b. there is also no record indicating that police examined that location to determine whether there was any other physical evidence potentially relating to what may have happened to Mr Wark there, or to record the precise location;
- c. there is no material in the police brief to the Coroner that seeks to consider or explain how the body of a person who jumps or falls from the vicinity of the Gap might end up near Dobroyd Head. By contrast, the Inquiry has located a handwritten note by the forensic pathologist, Dr Bradhurst, in the Forensic Medicine file indicating that he sought to satisfy himself that this was feasible through contact with someone presumed to be a Sergeant with the Water Police Unit;<sup>21</sup>
- d. one of the investigating officers prematurely reached a firm conclusion as early as 12 or 13 January 1990 that Mr Wark's death was a deliberate act<sup>22</sup> that was explained by the views of his psychologist [181] (NM). In her first statement dated 13 January 1990, Constable Lisa Ford, the officer in charge (OIC) from the Sydney Water Police, states that "there are no suspicious circumstances".<sup>23</sup> Constable Ford appears to rely heavily on the handwritten letter provided to the Coroner by NM which sought to explain Mr Wark's actions as stemming from a diagnosis of depression and the "termination of an 8 year homosexual relationship";<sup>24</sup>
- e. the psychologist NM herself featured in events that occurred immediately prior to Mr Wark's death, and, at least as a matter of perception, reliance upon her opinion in relation to the cause of Mr Wark's death and his mental state was inadvisable;
- f. the final conclusion reached by Constable Ford in her second statement nevertheless appears to have been entirely reliant on NM's statement, concluding as she does that Mr Wark "took his own life by jumping from the Gap Bluff due to the completion of an eight year homosexual relationship and loneliness";<sup>25</sup>
- g. police appear to have returned Mr Wark's possessions to his family without having photographed them or considered their investigative utility. As a result, it was Mr Wark's sister who investigated the significance of some dockets and receipts that were amongst the items left at the Gap, leading to the discovery of Mr Wark's property at the David Jones lost property counter;<sup>26</sup>

<sup>21</sup> Handwritten memo referring to "Gap" bodies ending up near Dobroyd Head dated 16 January 1990 (SCOI.74823.00019).

<sup>22</sup> P79A Report of death to Coroner (post-identification) dated 11 January 1990 (SCOI.00052.0004).

<sup>23</sup> First statement of Constable Lisa Ford dated 13 January 1990, 3 (SCOI.10022.00040).

<sup>24</sup> Letter from [181] (NM) to Coroner dated 12 January 1990, 1 (SCOI.00052.00022).

<sup>25</sup> Second statement of Constable Ford (n 1), 3.

<sup>26</sup> Statement of Rebecca Wark (n 16), [13]-[14].

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- h. police did not take statements from a number of witnesses from whom it would have been advisable to do so. This included anyone at Mr Wark's workplace and the last person known to have seen him alive, NM's landlady, who observed him to be "highly distressed and agitated",<sup>27</sup> and some of the doctors involved in his care. In correspondence to the Coroner sent in answer to queries raised by the family, the OICs indicate that they made phone contact with some of these people.<sup>28</sup> However, the absence of such statements affected the quality and detail of evidence available both for the Coroner's consideration and to help address the concerns of family members; and
- i. it does not appear that the police pressed for the holding of an inquest, notwithstanding the family's concerns and that the witness MS had not signed his statement.

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

31. As outlined at [30h] above, it would have been beneficial for statements to have been taken from a number of witnesses, rather than merely contacting them by phone. This includes, for instance, work colleagues of Mr Wark and NM's landlady.
32. Police should have promptly attended and examined the location at the Gap where Mr Wark's property was found, and ensured that relevant photographs were taken.
33. Mr Wark's clothing and other property should have been photographed and retained for potential forensic examination. It should also have been the subject of investigative follow up by police in relation to the receipts and paperwork from David Jones.
34. Questioning of significant witnesses and their resultant statements should have more thoroughly addressed certain matters. In the case of KN, for example, he does not appear to have been asked about suggestions of past violence in his relationship with Mr Wark. More detail should have been sought concerning any money he provided to Mr Wark, in view of family concerns as to where his money came from for the purchases he made on 9 January. Rather than relying on the receipt of a letter from her, police should have gone back to the psychologist NM and sought clarification from her in relation to contact from Mr Wark on 8 and 9 January and her understanding concerning his attendance at her home address on 9 January.

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<sup>27</sup> Letter from Constable Ford and Detective Plotecki to the Coroner (n 20), [11].

<sup>28</sup> Ibid, [11]-[13].



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### Strike Force Parrabell

#### *Contact by family with Strike Force Parrabell officers*

35. Unusually, there was a degree of engagement by NSWPF officers working on Strike Force Parrabell with a family member of the deceased person, in this case Mr Wark's sister, Rebecca Wark. This came about because sometime prior to 17 June 2016 Ms Wark had seen a newspaper report in relation to the review that was to be conducted and made telephone contact with the NSWPF.<sup>29</sup>
36. Emails between Strike Force Parrabell officers indicate that Ms Wark made known to police concerns that she had about the extent of the original investigation, the fact that there had been no coronial inquest, and that Mr Wark's death may have been too readily determined to be a suicide. Her primary concern was to see that the matter was "properly investigated".<sup>30</sup>
37. Documentation concerning Strike Force Parrabell's contact with Ms Wark indicates that it primarily involved police obtaining documentation about the original investigation from Ms Wark, as Strike Force Parrabell was initially unable to locate any of the investigative or coronial files.<sup>31</sup> On 7 September 2016, an officer working on Strike Force Parrabell asked Ms Wark a number of questions which appear to have been aimed at eliciting information to help officers answer questions in the Bias Crimes Indicators Review Form (BCIF). This included questions such as whether or not Mr Wark had any particular bodily markings or tattoos, and whether the date of his death was of any particular significance.<sup>32</sup>

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

38. The BCIF appears to be particularly unsuitable for providing a useful framework in which to consider whether or not Mr Wark's death may have been a LGBTIQ hate homicide, given that it assumes the existence of a known person of interest.
39. The BCIF twice refers to "Wark's psychologist" (NM) being of the opinion that "Mr Wark suicided himself as a result of depression and loneliness",<sup>33</sup> in support of its categorisation of the case as "no evidence of a bias crime". The uncritical acceptance of NM's view demonstrates a limited level of analysis being applied to the evidence. NM was not a medical doctor, had very limited contact with Mr Wark and was potentially a witness to events that immediately preceded his death. The BCIF also overlooks the

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<sup>29</sup> Email from Craig Middleton to Cameron Bignell re: Contact with Rebecca Wark dated 17 June 2016 (NPL.0115.0002.1440).

<sup>30</sup> Ibid; email from Cameron Bignell to Kathleen Collins re 'Blue dots' dated 22 July 2016 (NPL.0115.0002.3353).

<sup>31</sup> Investigator's Note prepared by Detective Senior Constable Kathleen Collins re: Difficulties locating brief items, dated 12 July 2016, 3 (NPL.0115.0002.1541); email from Cameron Bignell to Kathleen Collins re 'Blue Dots' (n 30); email from Cameron Bignell to Craig Middleton re: SF Parrabell Progress Report, dated 16 August 2016 (NPL.0115.0002.3426); email from Kathleen Collins to Cameron Bignell re: Documentation provided by family, dated 6 September 2016, 1 (NPL.0115.0002.1647).

<sup>32</sup> Investigator's Note re: Information provided by Rebecca Wark, dated 9 September 2016 (SCOI.32019).

<sup>33</sup> Bias Crimes Indicators Review Form (undated), 15 (SCOI.74996).

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assessment of a GP who saw Mr Wark on 8 January 1990 and was of the view that Mr Wark was suffering from “pre-psychosis”.<sup>34</sup>

40. Reliance on NM’s opinion in the BCIF, in circumstances where Strike Force Parrabell’s methodology did not involve the obtaining of independent expert opinion, has also resulted in the BCIF adopting evidence that is inaccurate. For instance, NM refers to Mr Wark being on “strong doses of anti-depressants”.<sup>35</sup> This is contrary to expert forensic psychiatric opinion obtained by the Inquiry that characterises Mr Wark’s dose as “low but effective”.<sup>36</sup>
41. The BCIF repeatedly refers to comments Mr Wark is said to have made, including comments about suicide, such as: “Comments and behaviour made by Wark in the days leading up to his death show Wark was in a state of depression. Wark often spoke with witnesses about his thoughts on suicide.”<sup>37</sup> The implicit assumption regarding his “state of depression” is not based on any expert evidence, and fails to consider or appreciate that his mental condition at the time was more characterised by symptoms of psychosis rather than depression. The reference to Mr Wark “often” speaking to witnesses about his thoughts on suicide appears to be a reference to evidence that he had discussed such matters on occasions with KN and MS. However, to say that someone discusses their thoughts on suicide is a different matter to someone exhibiting suicidal ideation. There does not appear to be any evidence that Mr Wark was exhibiting suicidal ideation, as such, around the time of his death.
42. The BCIF also places heavy reliance on the witness MS.<sup>38</sup> Notwithstanding the observations made at [17] above, the appropriateness of this may be questionable given that MS was not prepared to sign his statement to police.
43. All ten indicators in the BCIF are answered “No evidence of bias crime”, which is also the overall categorisation of the case in the “Summary of Findings” box.

### *Results of Strike Force Parrabell*

44. The Strike Force Parrabell case summary (no. 39) for this matter reads as follows:

***Identity:*** *Simon Blair Wark was 28 years old at the time of his death.*

***Personal History:*** *Mr Wark was employed as a Technical Officer with the City Art Institute. He was residing at The Pymont Arms Hotel, Pymont.*

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<sup>34</sup> Statement of Detective Senior Constable Plotecki (n 1), [22].

<sup>35</sup> Bias Crimes Indicators Review Form (n 33), at 1, 2, 4, 17.

<sup>36</sup> Expert report of Dr Danny Sullivan dated 24 October 2022, [28] (SCOI.82114).

<sup>37</sup> Bias Crimes Indicators Review Form (n 33), 6 (“General Comment” section).

<sup>38</sup> Ibid, 2, 11, 12, 13, 16, 17.

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**Location of Body/Circumstances of Death:** Mr Wark's body was located floating in Sydney Harbour near Dobroyd Head. The Post Mortem examination revealed that Mr Wark sustained multiple fractures to his spinal column, left rib cage and pelvis. Mr Wark's injuries were consistent with a fall from height. Property belonging to Mr Wark was located on the top of cliffs at The Gap, Watsons Bay. Evidence suggested that Mr Wark committed suicide. No suspects or other persons were identified as being involved in Mr Wark's death.

**Sexual Orientation/Psychological Health:** Mr Wark identified as gay. A psychologist had diagnosed Mr Wark with depression for which he was prescribed strong antidepressant medication.

**Coroner/Court Findings:** The Deputy State Coroner found no suspicious circumstances surrounding the death of Mr Wark and dispensed with a formal inquest.

**SF Parrabell concluded there was no evidence of a bias crime**<sup>39</sup>

45. The content of the case summary is in keeping with the comments made in the BCIF in relation to Mr Wark's death.

### Academic review

46. The Flinders academic team, according to a notation in the case summary, categorised Mr Wark's case as "No Bias".<sup>40</sup>

### Investigative and other steps undertaken by the Inquiry

47. The Inquiry's consideration of the matter has included the following:
- a. compelling the production of any police investigative material in relation to the matter;
  - b. compelling the production of the file held by Forensic Medicine in relation to the matter;
  - c. obtaining the Coroners Court file in relation to the matter;
  - d. considering other material held by the Inquiry of potential relevance to the matter, for example information relating to violence at beats on the Northern Beaches during the relevant period;
  - e. reviewing and analysing this material, and considering whether any further investigative or other avenues are warranted;

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<sup>39</sup> Exhibit 6, Tab 49, Strike Force Parrabell Case Summaries – Simon Blair Wark, 19 (SCOI.76961.00014).

<sup>40</sup> Ibid.

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- f. making contact with Mr Wark's sister in relation to any additional relevant information she may have; and
- g. obtaining expert reports from a psychiatrist, a forensic pathologist and a coastal geomorphologist.

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

48. Inquiry staff were able to contact and meet with Mr Wark's sister, Rebecca. Ms Wark was close to her brother and was present at the family home when he was there 24 hours or less before his death. She provided valuable information to police at the time of the original investigation, and in the weeks following her brother's death she herself located significant evidence that had not been followed up by police. The Inquiry is grateful to Ms Wark for having shared her time and knowledge of the matter with Inquiry staff and notes the concern she has previously expressed about the quality of the police investigation into her brother's death.

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

49. The Inquiry requested and received the Coroners Court file for Mr Wark's death, which consisted of 108 pages of material relating to the Court's consideration of the matter in 1990.

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

50. A summons to the NSWPF was issued on 18 May 2022 for, *inter alia*, all NSWPF investigative material, including any material held or created by the Unsolved Homicide Team, in relation to Mr Wark's death (Summons NSWPF1).
51. In response to this summons, a police file was produced relating to the police investigation of the matter in 1990. In addition, a small number of documents in the nature of emails and notes relating to Strike Force Parrabell's consideration of Mr Wark's death in 2016 were also produced to the Inquiry in response to a summons relating to Strike Force Parrabell (Summons NSWPF12).
52. A second summons to the NSWPF was issued on 20 December 2022 requesting all records and results relating to the biological samples taken at autopsy on 14 January 1990, namely of scalp and pubic hair, nail clippings from both hands, and anal and perineal swabs and smears (Summons NSWPF47). On 20 January 2023 the NSWPF advised (by a statement of Detective Sergeant Neil Sheldon dated 19 January 2023) that it did not hold any material responsive to that summons.

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### *Summonses issued to other agencies*

53. A summons to Forensic Medicine was issued on 22 August 2022 for all records held in relation to Mr Wark, including photographs, CT images and/or notes relevant to his autopsy on 14 January 1990 and re-examination on 17 January 1990 (Summons DOFM1). On 11 October 2022, the Forensic Medicine file for Mr Wark was produced. This file included several new and relevant documents regarding Mr Wark's matter, including an interim post mortem report, AIDS and Hepatitis B screening results, a memorandum by Dr Bradhurst of a discussion with a police officer concerning bodies found in the vicinity of Dobroyd Head, and diagrams of Mr Wark's external injuries.
54. At the time of production, Forensic Medicine also advised that the test results for biological samples taken at autopsy were handed over to the NSWPF, and that Forensic Medicine did not subsequently receive those results back and has no record of them (see above at [23]).
55. A summons to the NSW Registry of Births, Deaths and Marriages (**BDM**) was issued on 23 August 2022 requesting any death certificate for Mr Wark. On 26 August 2022, a death certificate was produced.
56. A second summons to BDM was issued on 16 September 2022 requesting any death certificate of KN (Summons No. BDM3). That certificate was produced on 20 September 2022.

### *Professional opinions obtained*

57. By letter of instruction dated 20 January 2023 the Inquiry sought a report from Dr Linda Iles, forensic pathologist and Head of Forensic Pathology Services at the Victorian Institute of Forensic Medicine. On 8 February 2023, the Inquiry received Dr Iles' report in which she addressed the following questions posed to her:

1. Following your review of your briefing material, please identify:
  - a. any additional areas of medical investigation or expert opinion you consider would assist his Honour on the issues of Mr Wark's injuries and cause of death; and
  - b. if relevant, appropriate experts from whom his Honour may wish to seek further expert opinion.
2. Your view as to the adequacy of the post-mortem investigations conducted with respect to Mr Wark.
3. Your view as to the medical cause of Mr Wark's death (including, if relevant, any reasons for taking a different view to that formed by Dr Bradhurst).
4. Your view as to whether Mr Wark's injuries were consistent with misadventure, suicide, or foul play (including, if relevant, any reasons for taking a different

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view to that formed by Dr Bradhurst and/or Dr Sullivan). Without limiting the matters which you may consider relevant to this question, please address:

- a. The “deep seated bruising” found on Mr Wark’s neck.
  - b. The bruising to Mr Wark’s face.
5. Please provide any other comment, within the area of your expertise, regarding the likely cause of Mr Wark’s death.<sup>41</sup>

58. The Inquiry also sought and obtained a report dated 24 October 2022 from Dr Danny Sullivan, consultant forensic psychiatrist. By a letter of 30 September 2022, Dr Sullivan was asked to address the following questions:

1. Did Mr Wark meet the diagnostic criteria for any psychiatric condition/s at the time of his death in January 1990? If yes, please:
  - a. Identify the condition/s;
  - b. Describe its symptoms, duration and amenability to treatment; and
  - c. State whether you agree with the diagnoses of Mr Wark’s treating clinicians and the reasons why/why not.
2. Please set out your views as to Mr Wark’s mental state in the period from 6 January 1990 until his death. In particular, do you consider that Mr Wark was potentially suffering a psychotic episode at the time of his death?
3. From the material before you and your expertise as a forensic psychiatrist, do you consider that Mr Wark’s behaviour in the days prior to his death and the apparent circumstances of his death are consistent with his manner of death having been suicide? Why/why not?
4. Do you consider that an alternative manner of death is open on the evidence, for example that Mr Wark died by misadventure? If so, and if you are able to, please provide your opinion as to the relative likelihood of the death having occurred by reason of suicide as opposed to an alternative manner.
5. Please provide any other comment, within the area of your expertise, regarding Mr Wark’s mental state and the cause and manner of Mr Wark’s death.<sup>42</sup>

59. Finally, the Inquiry requested a report from coastal geomorphologist Professor Robert Brander of the School of Biological, Earth and Environmental Sciences at the University of New South Wales. By a letter of instruction dated 11 December 2022, Professor Brander was asked to address the following questions:

1. Following your review of your briefing material, please identify:
  - a. any additional areas of expert opinion you consider would assist his Honour on the issues of Mr Wark’s location, date and manner of death; and

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<sup>41</sup> Letter of Instruction to Dr Linda Iles dated 20 January 2023, 5 (SCOI.82507).

<sup>42</sup> Letter of instruction to Dr Danny Sullivan dated 30 September 2022, 6 (SCOI.82554).

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- b. if relevant, appropriate experts from whom his Honour may wish to seek further expert opinion.
2. Please provide a summary of the prevailing weather, tidal, current and rip conditions at and around Gap Bluff and Dobroyd Head on 9 and 10 January 1990.
3. Please identify the variables that must be taken into account in any opinion provided as to the likely direction of travel of a human body entering the water at a particular coastal location or being found at a particular location.
4. Is the location where and time when Mr Wark's body was found consistent with it potentially having entered the water from the area in the vicinity of Gap Bluff at some point between 2:30pm on 9 January 1990 and 9:00am on 10 January 1990?
5. If the answer to question 4 is yes, can you indicate:
  - a. the time that it would have taken for the body to float from Gap Bluff to Dobroyd Head; and
  - b. the likelihood of this having been the entry point and any matters that you consider are relevant to assessing the likelihood.
6. Is the location where and time when Mr Wark's body was found consistent with it potentially having entered the water from the area in the vicinity of Reef Beach at some point between 2:30pm on 9 January 1990 and 9:00am on 10 January 1990?
7. If the answer to question 6 is yes, can you estimate:
  - a. the time that it would have taken for the body to float from Reef Beach to Dobroyd Head; and
  - b. the likelihood of this having been the entry point and any matters that you consider are relevant to assessing the likelihood.
8. Any other matters arising from the circumstances of Mr Wark's death within your area of expertise on which you wish to express an opinion and which will be of assistance to his Honour.<sup>43</sup>

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<sup>43</sup> Letter of instruction to Professor Robert Brander dated 11 December 2022, 6-7 (SCOI.82551).

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### *Other actions and sources of information*

60. On 7 November 2022, the Inquiry requested information about the weather and tidal conditions in the Sydney area in January 1990 from the Bureau of Meteorology (**BOM**). On 24 November 2022, an officer of the BOM provided the weather, synoptic and rainfall observations for the Watsons Bay area, as well as the sea level observations at Fort Denison for 1990.<sup>44</sup>
61. The Inquiry also requested and received various data from the Manly Hydraulics Laboratory including Sydney offshore wave data for January 1990.<sup>45</sup> Other data in relation to the timing of sunrise, sunset and lunar phases was also obtained from relevant sources.<sup>46</sup> This data, as well as the BOM data, was supplied to Professor Brander in connection with the report requested from him.
62. The Inquiry made contact with NM, and with a former NSWPF officer who was one of the officers involved in the original investigation.<sup>47</sup> This did not lead to the Inquiry obtaining any additional relevant information.
63. Additionally, as a result of summonses issued on 29 and 31 March 2023, the Inquiry obtained a number of documents from the Catholic Archdiocese of Sydney and the Catholic Diocese of Armidale in relation to KN.<sup>48</sup>

### **Submission as to the evidence now available**

64. This part of the submission sets out key matters arising from the Inquiry's consideration of the evidence and the conclusions that it is suggested can be drawn from the evidence.

### *Blair Wark's background*

65. Mr Wark was born on 15 September 1961 and was 28 years old when he died in 1990. His parents have passed away and he is now survived by two of his four siblings, an older brother and his younger sister Rebecca. The family home was in Frenchs Forest in Sydney's northern suburbs. Mr Wark spent the final years of his high school education, from 1977, at a boarding school and had not lived on a permanent basis at the family home since then.<sup>49</sup> Mr Wark was intelligent and creative, and after school he did a

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<sup>44</sup> Sea Level Observations at Fort Denison for 1990 (Bureau of Meteorology Data Document CAS-40581-G1G8T9-1) dated 14 November 2022 (SCOI.82501); Weather, Synoptic and Rainfall Observations for Watsons Bay area for 1-24 January 1990 (Bureau of Meteorology Data Document CAS-42702-V4S0D9-4) dated 21 December 2022 (SCOI.82218).

<sup>45</sup> Excel Spreadsheet of Sydney Offshore Wave Data for 1990 generated 9 November 2022 (SCOI.82508).

<sup>46</sup> Sunrise, Sunset and Twilight Times for the Gap on 9 and 10 January 1990 (SCOI.82505; SCOI.82500); Dates of Primary Phases of the Moon in 1990 (SCOI.82535).

<sup>47</sup> Statement of Caitlin Healey-Nash dated 8 May 2023, [13]-[16] (SCOI.82558).

<sup>48</sup> Ibid, [9]-[12].

<sup>49</sup> Statement of Rebecca Wark (n 16), [4].



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course at the City Art Institute in Paddington. Since finishing the course he also worked at the Institute, where he was employed in the print-making section at the time of his death.<sup>50</sup>

66. Mr Wark was close to his younger sister Rebecca, who lived at the family home and whom he would see at least monthly. His family knew that he was gay. They also understood that he had a close friendship with KN,<sup>51</sup> with whom he had lived on-and-off for eight years, prior to moving into accommodation at the Pyrmont Arms Hotel in the months before his death.

### *Mr Wark's movements over the days leading up to his death*

67. Mr Wark's movements over the last few days of his life can be pieced together to a considerable extent through the various materials obtained by the Inquiry.
68. On Friday, 5 January 1990, Mr Wark inspected a flat in Potts Point that he was seeking to move into with MS and [1180] (MH), who was the girlfriend of MS. Mr Wark and MH completed a tenancy application. A deposit was paid, although Mr Wark was still to contribute a share of the upfront rental costs, which he indicated he would need to borrow from his father or from KN.<sup>52</sup> He was observed to be intoxicated during the day.<sup>53</sup> That afternoon Mr Wark spoke to his father about borrowing \$500 for the bond. His father expressed concern about Mr Wark moving in with MS, who his father considered would be a bad influence upon Mr Wark. Mr Wark subsequently told his father not to worry about lending him any money.<sup>54</sup> Later at around midnight, in a phone call to KN, Mr Wark was in a distressed state, and told KN that he was coughing blood.<sup>55</sup>
69. On Saturday, 6 January, Mr Wark went to MS's flat MS on Crown Street, Surry Hills. Mr Wark told MS that he had been unable to obtain the rental money and seemed very depressed. In his unsigned statement, MS says that they discussed the topic of suicide including the suicide of a mutual friend who had jumped off a 40-storey building in Melbourne. According to MS, Mr Wark was confused and very drunk. The behaviour described by MS includes an odd remark being made by Mr Wark that the word "death" contained the word "eat", and that "to eat is to die". As Mr Wark left the flat, they arranged to meet at MS's flat on Monday, 8 January. MS did not see Mr Wark again.<sup>56</sup> Early on the Saturday evening

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<sup>50</sup> Ibid; second statement of Ian Anderson Wark dated 27 January 1990, [5] (SCOI.00052.00027).

<sup>51</sup> Second statement of Ian Wark (n 50), [15].

<sup>52</sup> Unsigned statement of MS (n 10), [6]-[7].

<sup>53</sup> Ibid, [8].

<sup>54</sup> Second statement of Ian Wark (n 50), [6]-[7].

<sup>55</sup> Statement of KN (n 8) [8].

<sup>56</sup> Unsigned statement of MS (n 10), [9]-[12].

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Mr Wark went to KN's home in Oatley, where he stayed overnight. According to KN he "looked tired and was a little bit distraught".<sup>57</sup>

70. On the morning of Sunday, 7 January, KN was of the view that Mr Wark was going through alcohol withdrawal, and he gave him some port to drink. Mr Wark went into the city during the day.<sup>58</sup> He also phoned his parents and expressed some reservations about moving into the flat with MS and MH.<sup>59</sup> He later returned to KN's house. That evening Mr Wark was very upset and saying, "the Triads are looking for me." He acted in a paranoid fashion by pulling the blinds down and described his potential new rental accommodation as a "shooting gallery".<sup>60</sup> KN recalls that at some time over the weekend Mr Wark had asked for a loan of money to pay the balance of the rental bond for the Potts Point flat. KN says that he declined, but that he did give Mr Wark some money in order to "pay his accounts" and as "pocket money".<sup>61</sup>
71. On Monday, 8 January, Mr Wark woke up at 8:00am and, according to KN, he no longer seemed preoccupied with his fears from the previous evening. Mr Wark left at 8:30am, stating that he had an appointment in town.<sup>62</sup> There is evidence suggesting that he attended his work at the City Art Institute in Paddington that morning,<sup>63</sup> and that he had a haircut at 11.30am.<sup>64</sup> The hairdresser considered that Mr Wark seemed quiet and slightly depressed.<sup>65</sup> According to KN, Mr Wark called him late in the morning and said "it's all been worked out". KN then asked if Mr Wark had obtained money for the rental bond, to which Mr Wark replied cryptically "that's not the point".<sup>66</sup>

### *Mr Wark's behaviour while at his parents' house on 8 January 1990*

72. At 12:30pm on Monday, 8 January, Mr Wark arrived at his parents' house in Frenchs Forest. In his initial statement to police made on 11 January 1990, Mr Wark's father Ian says that his son arrived "in a very disturbed state." Ian Wark says that he "had never seen him like this before" and that Mr Wark "appeared to be hallucinating".<sup>67</sup> In a later statement Ian Wark says that the description of his son hallucinating does not accurately sum up his condition and he provides greater detail concerning his son's behaviour.

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<sup>57</sup> Statement of KN (n 8) [9].

<sup>58</sup> Ibid.

<sup>59</sup> Handwritten chronology of Enid Wark (undated), 1 (SCOI.82552); second statement of Ian Wark (n 50), at [8].

<sup>60</sup> Statement of KN (n 8), [9].

<sup>61</sup> Ibid, [10].

<sup>62</sup> Ibid.

<sup>63</sup> Letter from Constable Ford and Detective Plotecki to the Coroner (n 20), [15].

<sup>64</sup> Ibid, [9].

<sup>65</sup> Statement of Detective Senior Constable Plotecki (n 1), [24].

<sup>66</sup> Statement of KN (n 8), [10].

<sup>67</sup> First statement of Ian Anderson Wark dated 11 January 1990, 1 (SCOI.00052.00025).

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He gives the following description which is set out in full due to its relevance to the assessment of Mr Wark's mental state:

*Blair was shaking and distraught, he appeared nervous and was constantly on the move. I formed the opinion that he was in fear of his life based on my observations of his physical condition at this time and from subsequent conversation. When Blair arrived he had his swim gear with him and told us that he was on his way to North Sydney Pool when something had taken place. I asked Blair why he appeared so frightened. He said to my wife and I "I really thought it was a Real Estate Agents. I've been stupid. It was a 'Shooting Gallery'. I've been set up." I then said, "Where are you talking about?" He said, "Better you don't know Dad." I then asked him who was trying to get him. He said, "The Triads." We then talked some more and Blair mentioned two [names]. My wife Enid then said, "Who, [MS] and Michael Hutchence?" Blair then said "Don't even mention their names, don't even say them aloud."<sup>68</sup>*

73. In her notes made about Mr Wark's death, Enid Wark said that on Mr Wark's arrival he insisted that his father move away from any window as he was "in danger". She also recounts that Mr Wark said something about there being subliminal transmissions being broadcast by a radio station.<sup>69</sup>
74. Mr Wark's parents were concerned enough about his condition that they called the family GP who attended the house at 1:30pm. The GP observed Mr Wark's "pressure of speech" and, as noted earlier, thought he showed signs of "pre-psychosis".<sup>70</sup> Mr Wark was not co-operative with the GP.<sup>71</sup> After the GP left, Mr Wark expressed concern that his continued presence at the family home was leaving his family in danger. At Mr Wark's request his father drove him to the Pymont Arms Hotel and gave him twenty dollars. At 11:45pm, Mr Wark phoned home and stated that he wanted to return to the family home.<sup>72</sup>

### *Evidence of relevant events on Tuesday, 9 January 1990*

75. Mr Wark arrived back at the family home by taxi at 12:20am on Tuesday, 9 January. At this stage, his sister Rebecca was at home and he mainly interacted with her. Rebecca gave Mr Wark money to pay for the taxi. She recalled his clothing as fly button jeans, a green coloured tropical shirt and thongs. Mr Wark appeared exhausted, nervous, and was sweating and shaking. He told his sister that "the last three days have been outrageous". Rebecca sat up talking with Mr Wark for a while and he repeated a concern that he had been "set up" by MS and Michael Hutchence. Rebecca did not get the impression that Mr Wark was affected by alcohol or drugs.<sup>73</sup>

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<sup>68</sup> Second statement of Ian Wark (n 50), [10].

<sup>69</sup> Handwritten chronology of Enid Wark (n 59), 2-3.

<sup>70</sup> Statement of Detective Senior Constable Plotecki (n 1), [22].

<sup>71</sup> Second statement of Ian Wark (n 50), [11].

<sup>72</sup> Ibid, [12].

<sup>73</sup> Statement of Rebecca Wark (n 16), [6]-[8].

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76. Mr Wark then woke his sister up at 4:00am stating, “I am serious, they are going to kill me”. He repeated the names MS and Michael Hutchence, this time also adding the names “Mrs Woo and Nick Woo”, and stating that the latter two were mixed up in “the Triads”. He went on to again refer to the real estate agent as a “shooting gallery” and stated that he “was innocent”. During their conversation, Mr Wark became concerned that there was somebody outside. He said he wanted to return to the Pymont Arms Hotel as he would be higher in the building and could see people coming. He was also concerned about getting to an appointment with his psychologist, NM, which he understood he had at 1:00pm. Rebecca noticed when talking with Mr Wark that he seemed to have lost his sense of time and was “a day ahead of the actual date”. At one point Rebecca suggested that she take Mr Wark to the police, however he left the family home on foot at around 6:00am.<sup>74</sup>
77. Mr Wark’s father Ian recalled his son saying that his psychologist’s appointment was at the MLC Centre at 1:00pm. Ian recalled following Mr Wark up the road when he left on foot, and asking that he stay. Mr Wark declined to do so, although it appears that he accepted a lift to a bus stop.<sup>75</sup> This was the last time that family members saw Mr Wark alive.
78. Little action seems initially to have been taken by police investigating the matter to ascertain Mr Wark’s movements after he left the family home in the early morning of 9 January. Mr Wark’s sister Rebecca appears to have established, via contact with the caretaker of the Pymont Arms Hotel, that he returned to the Hotel at some point during the morning.<sup>76</sup>
79. After Mr Wark’s death, police returned the items that had been found at the Gap to the family, rather than retaining them as exhibits or following up the potential significance of any of the papers which were among these items. It was Rebeca who was also responsible for discovering, via her own detective work, that one of the receipts amongst those papers related to items that had been left at the lost property section of the David Jones city store on the morning of Tuesday, 9 January.<sup>77</sup>
80. Police thereafter took a statement from the David Jones staff member involved. She recalled that at about 11:00am on Tuesday 9 January a man came to the lost property counter. He gave her a light blue carry bag containing some clothing. She took the property and gave the man a docket,<sup>78</sup> believing the property to have been something that the man had found. The man then explained to her that the bag was his and that he would pick it up later. As she had already filled out the docket, she did not quibble

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<sup>74</sup> Ibid, [9]-[11].

<sup>75</sup> Handwritten chronology of Enid Wark (n 59), 8; second statement of Ian Wark (n 50), [13].

<sup>76</sup> Statement of Rebecca Wark (n 16), [11].

<sup>77</sup> Ibid, [13].

<sup>78</sup> David Jones receipt No. 2368 (SCOI.10022.0008).

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with this. She then opened the bag to see that it contained dirty clothing. When she did this, the man said, “it all belongs in the laundry”. The man gave his name as “Wark B”. Police subsequently showed the witness photos of Mr Wark. Without positively identifying him, she indicated that the person in the photo was of very similar appearance to the man, though looked slightly heavier.<sup>79</sup>

81. Rebecca Wark describes the items in the bag at David Jones as consisting of some clean clothes, underwear, a shaving kit in a leather pouch, an alarm clock, a fob watch, a towel and a pair of wet jeans. She recognised most of the property as belonging to her brother.<sup>80</sup>
82. Also in the items found at the Gap were some other receipts, for purchases at David Jones that had been made on the morning of 9 January.<sup>81</sup> These appear to have been for a shirt, belt and handkerchief,<sup>82</sup> consistent with items found at the Gap.<sup>83</sup> The time of purchase can be made out on one of these receipts as 9:43am on 9 January and the three separate purchases cost around \$120 in total, which was paid for in cash.

### *Mr Wark’s attempts to contact his psychologist on 8 and 9 January 1990*

83. Mr Wark’s last known contact with anyone appears to have been at around 2:00pm on Tuesday 9 January with Daphne McLaughlin, who is described as the landlady at the residential address of Mr Wark’s psychologist NM in Double Bay.<sup>84</sup>
84. According to his family members, early on 9 January, Mr Wark had told them that he had an appointment with NM at the MLC Centre (near Martin Place in Sydney) at 1:00pm.<sup>85</sup>
85. NM provided police with a handwritten letter addressed to the Coroner dated 12 January 1990, on her letterhead (which carries an office address at the MLC Centre), on which she had also written her residential address in Double Bay. NM states in the letter that she had received a message on her “phone recorder” from Mr Wark on the afternoon of Monday, 8 January. She does not indicate what the content of that message was. NM states that she could not phone Mr Wark back as he did not have a phone. She states that Mr Wark also attended her home address on Tuesday, 9 January without an appointment. NM says that she was absent but that her landlady opened the door for Mr Wark and told him that NM was absent but would be back in the late afternoon. When NM arrived back home at 5:00pm, she had a

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<sup>79</sup> Statement of Xiaolin (Eileen) Dong dated 5 May 1990, [5]-[7] (SCOI.00052.00036).

<sup>80</sup> Statement of Rebecca Wark (n 16), [13].

<sup>81</sup> Scanned copy of David Jones receipts (SCOI.10022.00079).

<sup>82</sup> Letter from Enid Wark and Rebecca Wark to Coroner (n 20), 2.

<sup>83</sup> The items found at the Gap included a shirt and belt, though do not appear to have included a handkerchief: statement of Neil Andrew Champion dated 14 January 1990, 1 (SCOI.00052.00021); statement of Constable Nichole Brown dated 14 January 1990, [5] (SCOI.00052.00020).

<sup>84</sup> Letter from Constable Ford and Detective Plotecki to the Coroner (n 20), [11].

<sup>85</sup> Second statement of Ian Wark (n 50), [13]; statement of Rebecca Wark (n 16), [11].

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message on her phone recorder from Mr Wark's mother, who in a subsequent phone call with NM expressed her concern about her son. NM says that she then phoned the Pymont Arms Hotel and left a message for Mr Wark, but never heard back from him.<sup>86</sup>

86. Contrary to NM's account, a letter to the Coroner from Enid and Rebecca Wark in May 1990 suggests that NM had told them that Mr Wark had turned up at her residential address for a 1:00pm appointment but that her landlady had inadvertently locked him out.<sup>87</sup>
87. In any event, what does appear clear is that Mr Wark did turn up at NM's address in Double Bay in the early afternoon of 9 January. Although no statement appears to have been taken from the landlady, Ms McLaughlin, a letter sent to the Coroner by the two OICs responding to some of the matters raised by Mr Wark's family indicates that she had been contacted and had told police that Mr Wark had shown up at around 2:00pm. Ms McLaughlin recalled asking how Mr Wark had NM's residential address as NM did not normally see patients at her home.<sup>88</sup> The information from police says nothing about what may have been said to Mr Wark about NM's presence or availability, but evidently Mr Wark left, which would imply either that NM was not told of the visit or that she was not there (as NM's account asserts).
88. Most significantly, Ms McLaughlin described Mr Wark at this point as being "highly distressed and agitated".<sup>89</sup>
89. Mr Wark's attendance at NM's home address rather than at the MLC Centre should not necessarily be regarded as strange. In her letter to the Coroner, NM says that the second and last occasion that she had seen Mr Wark was at her home address where she was conducting a group therapy session.<sup>90</sup>
90. What Mr Wark did after leaving NM's address in Double Bay in the early afternoon of Tuesday, 9 January is not known.

### *The finding of Mr Wark's body in Sydney Harbour on 10 January, and of his property at Gap Bluff on 11 January*

91. On Wednesday, 10 January 1990, at around 9:30am, Mr Wark's body was found floating face down in Sydney Harbour. He was spotted by a passenger on a ferry travelling from Circular Quay to Manly. The location in the water from which Mr Wark's body was retrieved was not plotted on a map at the time. The best it can be pinpointed, from the description of those involved in its retrieval, is that the location

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<sup>86</sup> Letter from NM to Coroner (n 24), 2.

<sup>87</sup> Letter from Enid Wark and Rebecca Wark to Coroner (n 20), 4.

<sup>88</sup> Letter from Constable Ford and Detective Plotecki to the Coroner (n 20), [11].

<sup>89</sup> Ibid.

<sup>90</sup> Letter from NM to Coroner (n 24), 1-2.

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was about 200 metres northeast of Dobroyd Head.<sup>91</sup> The ferry master describes seeing the body when his ferry was about 300 metres northeast of Dobroyd Head.<sup>92</sup>

92. At 2:30pm the next day, 11 January 1990, Neil Champion (who was working at the Gap) noticed a pile of clothes on a rock platform under a ledge at a point right at Gap Bluff. The property (as described by Mr Champion) consisted of a white shirt with a small black pattern, neatly rolled up and tied with a black leather belt. Behind the shirt was a pair of metal rimmed glasses, some receipts and a small tube of ointment. All the property was wet.<sup>93</sup>
93. Mr Champion left the property at Gap Bluff and drove to Vaucluse Police Station to inform them of what he had found. Police advised that they were unable to attend the scene right away. Mr Champion returned to the scene and collected the property and placed it in a plastic bag. He returned to Vaucluse Police Station and handed over the property to Constable Nichole Brown.<sup>94</sup>
94. There are some discrepancies in the items of property as listed by Mr Champion and by Constable Brown.<sup>95</sup> In particular, Constable Brown refers to a brown wallet, the contents of which included credit cards, Mr Wark's driver licence and \$5.00. She also refers to a letter in the shirt pocket (not further described) and \$15.00 loose in the plastic bag handed to her by Mr Champion. Constable Brown also noted that "all property was either wet or damp and contained sandstone sediment".<sup>96</sup>
95. The property was given over to Sydney Water Police, and subsequently returned to the family on or around 15 January 1990.<sup>97</sup>
96. According to Detective Senior Constable Michael Plotecki, the OIC from the Homicide Squad, on 15 January 1990 he made arrangements for the Police Crime Scene Unit and Constable Ford to photograph the scene at the Gap where the items of property had been found.<sup>98</sup> However, Constable Ford's statements do not refer to such an attendance and there is no other record relating to it. The precise location where the property was found is therefore not known. There are also no photographs of the items themselves, except the David Jones receipts and lost property receipt (which appear to have

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<sup>91</sup> First statement of Constable Ford (n 23), 1; statement of Constable John Cox dated 11 January 1990, 1 (SCOI.00052.00019).

<sup>92</sup> Statement of Stephen William Bird dated 24 January 1990, 1 (SCOI.10022.00100).

<sup>93</sup> Statement of Neil Champion (n 83).

<sup>94</sup> Ibid, 1-2; statement of Constable Brown (n 83), [5]. The property recorded by Constable Brown is a white plastic bag containing a black and white shirt, set of keys, personal papers and receipts, a brown wallet and a man's belt which was apparently tied around the property when found.

<sup>95</sup> The wire rimmed glasses and ointment are not noted by Constable Brown; whereas the wallet and keys are not noted by Mr Champion: see statement of Constable Brown (n 83), [5]; statement of Neil Champion (n 83), 1.

<sup>96</sup> Statement of Constable Brown (n 83), [5].

<sup>97</sup> Ibid, [6].

<sup>98</sup> Statement of Detective Senior Constable Plotecki (n 1), [7].

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been photocopied at some point by Rebecca Wark).<sup>99</sup> Whether there was ever such an attendance by police at the Gap therefore appears doubtful.

97. As previously noted, this property was not tested in any manner. Rebecca observed that the items, as returned to the family, included items consistent with those the subject of the David Jones receipts.<sup>100</sup> In particular, this appears to apply to the belt and the shirt that were found (see at [81] above).

### *Expert review of the forensic pathology by Dr Linda Iles*

98. Dr Iles was asked to review the autopsy report and conclusions reached by Dr Bradhurst. She was specifically asked for comment on the bruising to Mr Wark's neck and face.

99. Dr Iles considered the injury documentation and autopsy examination of Dr Bradhurst to have been quite comprehensive. She noted that upon re-examination by Dr Bradhurst, certain minor cutaneous injuries or marks were identified, but that they are unlikely to be significant as they were not associated with any underlying bruising.<sup>101</sup>

100. Dr Iles considered that the minor and superficial bruising that was documented was not typical of injuries from a sustained assault and could have been caused in other ways, including from impact and during the process of retrieval of the body. The deep-seated bruising to the neck that initially caught Dr Bradhurst's attention was consistent with trauma to the spinal cord, consistent with Dr Bradhurst's ultimate conclusion.<sup>102</sup>

101. Dr Iles could not rule out the possibility that there could have been a contribution of drowning to the death, but considered that the injuries to Mr Wark's body were sufficient to have caused death.<sup>103</sup>

102. Dr Iles agreed with Dr Bradhurst's conclusion as to the cause of death being "multiple injuries sustained in a fall from a height." She noted that Mr Wark's injuries were completely consistent with injuries sustained in such a fall, but observed that a medical examination could provide little insight into how such a fall came about.<sup>104</sup>

### *The question of movement of the body from the Gap to the Dobroyd Head area - opinion of Professor Robert Brander, coastal geomorphologist*

103. On its face, the location of Mr Wark's body near Dobroyd Head, within a period of no more than about 18 hours from the earliest time that Mr Wark feasibly might have fallen from somewhere in the vicinity

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<sup>99</sup> David Jones receipt No. 2368 (n 78); scanned copy of David Jones receipts (n 81).

<sup>100</sup> Statement of Rebecca Wark (n 16), [14].

<sup>101</sup> Expert report of Dr Linda Iles received 8 February 2023, 6 (SCOI.82509).

<sup>102</sup> Ibid, 6-7.

<sup>103</sup> Ibid, 6.

<sup>104</sup> Ibid, 6-7.



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of Gap Bluff (being, 2:30pm on 9 January), is notable given the distance involved and the geography of the area (see the map attached as **Attachment A**).

104. In order to consider this matter, the Inquiry obtained an expert report from Professor Brander, who is an expert in coastal geomorphology.
105. As set out at [59] above, Professor Brander was asked about the possibility of a body travelling either from Gap Bluff or Reef Beach, to the point in Sydney Harbour where Mr Wark's body was found, in the relevant time period.
106. Professor Brander's report highlights the great difficulties involved in accurately predicting the likely movement of a body in the water in the relevant circumstances. In particular, he observes:

*Complex and turbulent wave, tide and drift conditions combined with irregular topography makes it very difficult to determine the direction of travel of a human body entering the water at a coastal location such as the rocky coastline between Gap Bluff and South Head.<sup>105</sup>*

107. Professor Brander's opinion, subject to the various qualifications and assumptions that he identifies, is that, if Mr Wark's body entered the water in the vicinity of Gap Bluff, which he regards as "certainly possible", this would most likely have occurred between 9:00pm on 9 January (the time of high tide) and 4:00am on 10 January. He considered that it was also possible that Mr Wark's body entered the water in the vicinity of Reef Beach, and if so, that the most likely time for that to have occurred was also between 9:00pm on 9 January and 4:00am on 10 January.<sup>106</sup>
108. Professor Brander observes that, although the assumed wave direction at the time would not have generated a drift of water northwards from Gap Bluff towards the entrance to Sydney Harbour, it is possible that the complex interactions between wave breaking and the irregular coastline in the area could have generated a northward drift.<sup>107</sup>
109. Bearing in mind the qualification that Professor Brander had to make in view of the limitations of the data and the complexity of the interactions in such a rocky coastline environment, his ultimate opinion is that:

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<sup>105</sup> Expert Report of Professor Robert Brander dated 23 March 2023, [109] (SCOI.82556).

<sup>106</sup> Ibid, [14]-[15], [213]-[215].

<sup>107</sup> Ibid, [210].

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*while it is possible that Mr Wark's body may have entered the water in the vicinity of Gap Bluff at any time during the period of interest, this would have been more likely to have occurred between 9:00 pm on 9 January 1990 and 4:00 am on 10 January 1990.<sup>108</sup>*

...

*[b]ased on physical environmental conditions alone and the assumptions involved therein, it is easier to explain how Mr Wark's body entered the water near the vicinity of Reef Beach rather than Gap Bluff, although the latter is certainly possible, particularly given information provided in the memorandum I received on 3 March 2023 in relation to the movement of human bodies in the water near Gap Bluff to Dobroyd Head.<sup>109</sup>*

110. The “memorandum ... received on 3 March” referred to the anecdotal evidence discussed at [114] below, to the effect that bodies had been known to move from the Gap to the Dobroyd Head area.
111. Professor Brander’s qualified opinion that entry into the water, if it had occurred at the Gap, was likely to have occurred after 9:00pm on 9 January (the time of the high tide), needs to be read in conjunction with the Professor’s other observations, including that the relevant coastline conditions:

*... make it difficult to conclude whether a human body on a rock platform, or in the water adjacent to a rock platform, would remain in those locations. A human body on a rock platform may be washed into the ocean by wave action or wedged between rocks by wave action. A human body in the water adjacent to a rock platform may remain in the water or may be washed back onto the rock platform. These are all potential scenarios as it is very difficult to determine or predict what would happen in such an energetic environment without direct observations of wave conditions.<sup>110</sup>*

112. Hence, the qualified opinion that, if Mr Wark fell at the Gap, it would be more likely that he entered the water between 9:00pm on 9 January and 4:00am on 10 January, needs to be understood in light of the fact that it cannot be known whether Mr Wark would have fallen directly into deeper water, or whether his body may have remained on a rock platform for a period of time before entering the open water.<sup>111</sup> It is submitted that Professor Brander’s opinion does not assist in determining just when such a fall would have taken place, and that its value lies more in that fact that it allows for the distinct possibility that during the course of the relevant time range Mr Wark’s body could have travelled from Gap Bluff to where it was found.

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<sup>108</sup> Ibid, [213].

<sup>109</sup> Ibid, [215].

<sup>110</sup> Ibid, [110].

<sup>111</sup> Ibid, [155].

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113. It is submitted the strength of this possibility is fortified by the information in the memo to which Professor Brander refers. That handwritten memo was produced to the Inquiry from the file held by Forensic Medicine. It bears the initials of the forensic pathologist, Dr Bradhurst, and appears to be record of his contact with a “Sergeant Ashley” at Sydney Water Police on 16 January 1990. The memo reads as follows:

*16/1 (Discussed with) Sgt ? Ashley OIC at time of shift.*

*Dobroyd Head (Point) forms part of a triangle with Sth and Nth Heads forming entrance into Sydney Harbour.*

*If tide is running in it is a common place for “Gap” bodies to be found. If found up to 10-12 hours following fall, bodies may appear fairly fresh and show little in way of immersion.<sup>112</sup>*

114. It appears therefore that anecdotal evidence of police officers with relevant experience also supports the proposition that Mr Wark’s point of entry into the water could have been at the Gap.

### *Evaluation of evidence in relation to Mr Wark’s mental state on 9 January 1990*

115. Evidence of Mr Wark’s movements and behaviour over the four days leading up to his death have been set out at some length above, as it provides considerable insight into his mental state in the period leading up to his death and his recurring pre-occupations and fears. It is very difficult to find a rational basis for those fears, although to a degree they appear to have related to Mr Wark’s perception of events surrounding his planned move into the flat with MS and MH, as both MS and a real estate agent feature in them. Other aspects of his fears appear to be even less well grounded in reality. These include his perception of there being subliminal messages from a radio station, his references to the Triads and unknown individuals named Nick and Mrs Woo, his repeated reference to the real estate agent as a “shooting gallery” and his inclusion of Michael Hutchence as a person somehow involved in these events.<sup>113</sup>

### *Expert forensic psychiatrist’s evaluation of Mr Wark’s mental state*

116. Dr Sullivan reviewed key documents from the investigatory material. He concisely sets out parts of the evidence of potential relevance to his evaluation of Mr Wark’s mental state in his report. He expresses the following view:

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<sup>112</sup> Handwritten memo referring to “Gap” bodies ending up near Dobroyd Head (n 21).

<sup>113</sup> It is noted that information from the family indicates that Michael Hutchence had gone to school with Mr Wark’s older brother, however there is no evidence to suggest that he had an ongoing association with Mr Wark: statement of Rebecca Wark (n 16), [9]. MS refers to Mr Wark as being obsessed with Michael Hutchence: unsigned statement of MS (n 10), [14].

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*I consider that Mr Wark's presentation in the days before his death was consistent with psychosis. He displayed psychomotor agitation. He reported persecutory ideation, which appeared to be delusional, related to triads and two acquaintances. He was thought disordered, with loosening of associations. He was potentially hallucinating or alternatively experiencing auditory illusions while in a state of hypervigilance.*

*It is also possible that Mr Wark was experiencing alcohol withdrawal, and that his agitation and psychotic symptoms occurred in the context of withdrawal from alcohol.*

*There was a pre-existing history of depression, although the information conveyed in his final days does not confirm relevant signs or symptoms of persisting mood disorder, and he was taking a low but effective dose of a tricyclic antidepressant. Although there is mention of claustrophobia, this is not characterised.<sup>114</sup>*

117. Dr Sullivan further notes in relation to the assessment of the GP who saw Mr Wark on 8 January 1990:

*The description of Dr Marriott was based upon limited personal assessment, but in his observation, he noted pressure of speech, flight of ideas and concerns about psychosis ('pre-psychosis) or bipolar affective disorder ('manic depressant'). Based on a short, cross-sectional assessment, this would appear consistent with the information conveyed in the statements that Mr Wark displayed psychotic symptoms. A diagnosis of bipolar affective disorder (called 'manic-depression' in earlier days), requires the presence of mania or hypomania, and there is no evidence suggesting this.<sup>115</sup>*

118. As to a diagnosis, Dr Sullivan states:

*Mr Wark's mental state from 6 January 1990 until his death is consistent with a psychotic episode. The concern of family members and acquaintances suggests that this represented a clear deterioration from his usual presentation, and that he had not presented in such a way before. He would have met the criteria for a psychotic episode ('brief psychotic disorder' as set out in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)), with differential diagnoses, including alcohol-induced psychotic disorder, with onset during withdrawal, or cannabis-induced psychotic disorder, although the latter would be less likely in the absence of cannabis on toxicology.<sup>116</sup>*

### *Other evidence in relation to Mr Wark's mental state*

119. The police investigation of the matter relied on very limited information from a medical practitioner and psychologist who had seen Mr Wark in the past, rather than seeking any opinion as to Mr Wark's mental state as evidenced by his conduct in the days leading up to his death.
120. In correspondence to the Coroner, provided by the OICs after a letter from the family had raised the issue of there not being a statement from Mr Wark's more regular GP, police indicated that contact had been made by phone with this doctor, Dr John Goldbaum. Dr Goldbaum indicated that he had

<sup>114</sup> Expert report of Dr Danny Sullivan (n 36), [26]-[28].

<sup>115</sup> Ibid, [35].

<sup>116</sup> Ibid, [37].

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been treating Mr Wark on a regular basis for depression since April 1988 and had last seen him on 12 December 1989 when he had prescribed his anti-depressant medication.<sup>117</sup>

121. The police appear to have relied directly on the view expressed by psychologist NM in her handwritten letter to the Coroner. Mr Wark had been referred to NM by another GP, Dr Jeff Sleep, who had had only limited involvement with Mr Wark.<sup>118</sup> NM's letter was evidently prepared without her having any understanding of Mr Wark's mental state in the days leading up to his death. It relied on one single clinical session that she had with Mr Wark two months earlier, in addition to which he had participated in a single group therapy session conducted by NM.<sup>119</sup>
122. NM's view was expressed as follows:

*Mr Wark suffered from depression which was mainly due to the termination of 8 yr old homosexual relationship;*

...

*Dr Sleep informed me that Mr Blair Wark had a long history of depressive illness and was prescribed strong doses of antidepressants by other GP. Dr Sleep only saw Mr Wark twice;*

...

*In my opinion Mr Wark suicided himself as a result of depression and loneliness.<sup>120</sup>*

123. In fact the referral letter from Dr Sleep to NM, while referring to his anti-depressant prescription, makes no mention of it being "strong".<sup>121</sup> By contrast to NM's description of the strength of the "doses", the expert forensic psychiatrist Dr Sullivan describes it as a "low but effective dosage".<sup>122</sup>
124. While Mr Wark's treatment for depression through a GP over a period of time was clearly relevant information, it was not an adequate explanation for his mental state in the days leading up to his death, or an adequate basis for a conclusion that he had died by suicide because of "depression and loneliness" as asserted by NM.

### *Dr Sullivan's opinion in relation to manner of death*

125. Dr Sullivan expressed the following view in relation to whether or not Mr Wark's death may have been an act of suicide:

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<sup>117</sup> Letter from Constable Ford and Detective Plotecki to the Coroner (n 20), [12].

<sup>118</sup> Referral letter from Dr Jeff Sleep to NM dated 14 November 1989 (SCOI.00052.00023).

<sup>119</sup> Letter from NM to Coroner (n 24), 1-2.

<sup>120</sup> Ibid.

<sup>121</sup> Referral letter from Dr Jeff Sleep to NM (n 118).

<sup>122</sup> Expert report of Dr Danny Sullivan (n 36), [28].

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*I consider Mr Wark's behaviour in the preceding days, and the circumstances of his death, are consistent with suicide. Suicide is strongly associated with alcohol dependence and withdrawal. He was in a state of significant anxiety and fear for delusional reasons. He was markedly restless. He was distressed and seeking help, including from his psychologist.*

*His actions in buying new clothes, and leaving his clothes neatly folded with his possessions, are consistent with planning to kill himself. Finally, I note that Mr Wark's injuries were consistent with a fall or a leap from a significant height.<sup>123</sup>*

126. Dr Sullivan was asked to comment on the likelihood of alternative causes of death, in relation to which he observed as follows:

*I do not consider misadventure to have been likely given that he had changed his clothes and left them at the department store, folded up his other clothes, and left his wallet in place. Secondly, Mr Wark was exhibiting an abrupt change in mental state associated with anxiety and fear that he would be killed related to persecutory delusions. A person in a psychotic state is likely to exhibit significant disturbances of judgement, and their behaviour may not follow rational or predictable patterns when affected by delusions and distressed emotional state associated with this.*

*It seems highly unlikely that another person was involved in throwing or pushing him from the cliff, noting that Mr Wark left his clothes neatly folded.*

*The presence of cash and identity documents in the possessions found near Gap Bluff is not consistent with robbery. If he had have intended to go swimming, he would likely have purchased or brought bathers.*

*There is no indication of the agency of another person involved in Mr Wark's death, on the available evidence.<sup>124</sup>*

### *Evaluation of the likelihood of foul play*

127. Mr Wark's conduct at the family home on 8 and 9 January naturally would have come as a great shock to his family members. A question understandably arose in their minds as to whether something may have happened earlier on that day that precipitated a genuine fear in Mr Wark that may have been based in reality.
128. In considering such a possibility it is noted that Mr Wark's mental state had in fact shown clear signs of deterioration over a number of days prior to this. He had contacted KN while in a distressed state on 5 January 1990.<sup>125</sup> He was making odd comments to MS on 6 January 1990 in relation to the words "eat" and "death" and again seemed distressed.<sup>126</sup> On 7 January 1990, in KN's presence, he was acting

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<sup>123</sup> Ibid, [38]-[39].

<sup>124</sup> Ibid, [41]-[44].

<sup>125</sup> Statement of KN (n 8), [8].

<sup>126</sup> Unsigned statement of MS (n 10), [9]-[12].

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in a paranoid fashion and demanding that the blinds be drawn. He was also referring to the “Triads” and a “shooting gallery”.<sup>127</sup>

129. Mr Wark’s actions in purchasing new clothes and leaving a bag of clothes and other items at the David Jones store on the morning of 9 January are difficult to rationalise as a matter of logic. The same can be said for the manner in which he left his clothes and other items at the Gap. Equally, however, those actions do not indicate the likelihood of an act of foul play involving someone else in those actions.

130. It is suggested that those actions are best understood as explained by Dr Sullivan:

*Mr Wark was exhibiting an abrupt change in mental state associated with anxiety and fear that he would be killed related to persecutory delusions. A person in a psychotic state is likely to exhibit significant disturbances of judgement, and their behaviour may not follow rational or predictable patterns when affected by delusions and distressed emotional state associated with this.*<sup>128</sup>

131. In assessing the material available to the Inquiry relating to Mr Wark’s death, Counsel Assisting have given careful consideration to whether there is a possibility that any identifiable individual who had some interaction with Mr Wark in the days leading up to his death could have somehow been involved in it. That consideration has included some of the untested features of the evidence that might raise concerns if they are true. One such feature is the assertion, made by MS, that on past occasions KN had been violent towards Mr Wark. This assertion cannot be tested given that KN is deceased. However, even if true, there is no cogent evidence suggesting the involvement of KN or anyone else in Mr Wark’s death.

132. Consideration of the possibility of foul play being involved in Mr Wark’s death has also taken account of the proximity of his body, when found, to the Dobroyd Head and Reef Beach areas. However, in circumstances where Mr Wark’s personal items including his shirt, belt, wallet and glasses were found at the Gap, it seems highly unlikely that Mr Wark went to the Gap, took off some of his clothes and left them there, and then took a trip to the Dobroyd Head area where he happened to be assaulted. Likewise, it seems implausible that Mr Wark would have travelled to Dobroyd Head and been the victim of an assault there, with a hypothetical assailant retaining some items of his clothing and then travelling to the Gap and depositing them there.

133. Particularly in view of Mr Wark’s mental state and his known and observed distress at 2:00pm while at NM’s address in Double Bay, there is a compelling logic to the conclusion reached by Dr Sullivan. It

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<sup>127</sup> Statement of KN (n 8), [9].

<sup>128</sup> Expert report of Dr Danny Sullivan (n 36), [41].

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does appear highly probable that Mr Wark took his own life while experiencing fears precipitated by the psychosis he was experiencing.

### **Submission as to bias**

134. Given the conclusion reached in relation to the cause and manner of Mr Wark's death, it is not suggested that the death involved gay hate bias.

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

135. It is submitted that an appropriate description of the cause and manner of Mr Wark's death would be that it resulted from:

*Multiple injuries sustained in a fall from height after deliberately jumping from a cliff in the vicinity of the Gap at Watson's Bay. At the time of his death, Mr Wark was affected by a psychotic episode.*

136. Accordingly, it is further submitted that the death of Mr Wark was not "unsolved", and therefore does not fall within category A of the Inquiry's terms of reference.

### **Submission as to recommendations**

137. There are no suggested recommendations relating to Mr Wark's death.

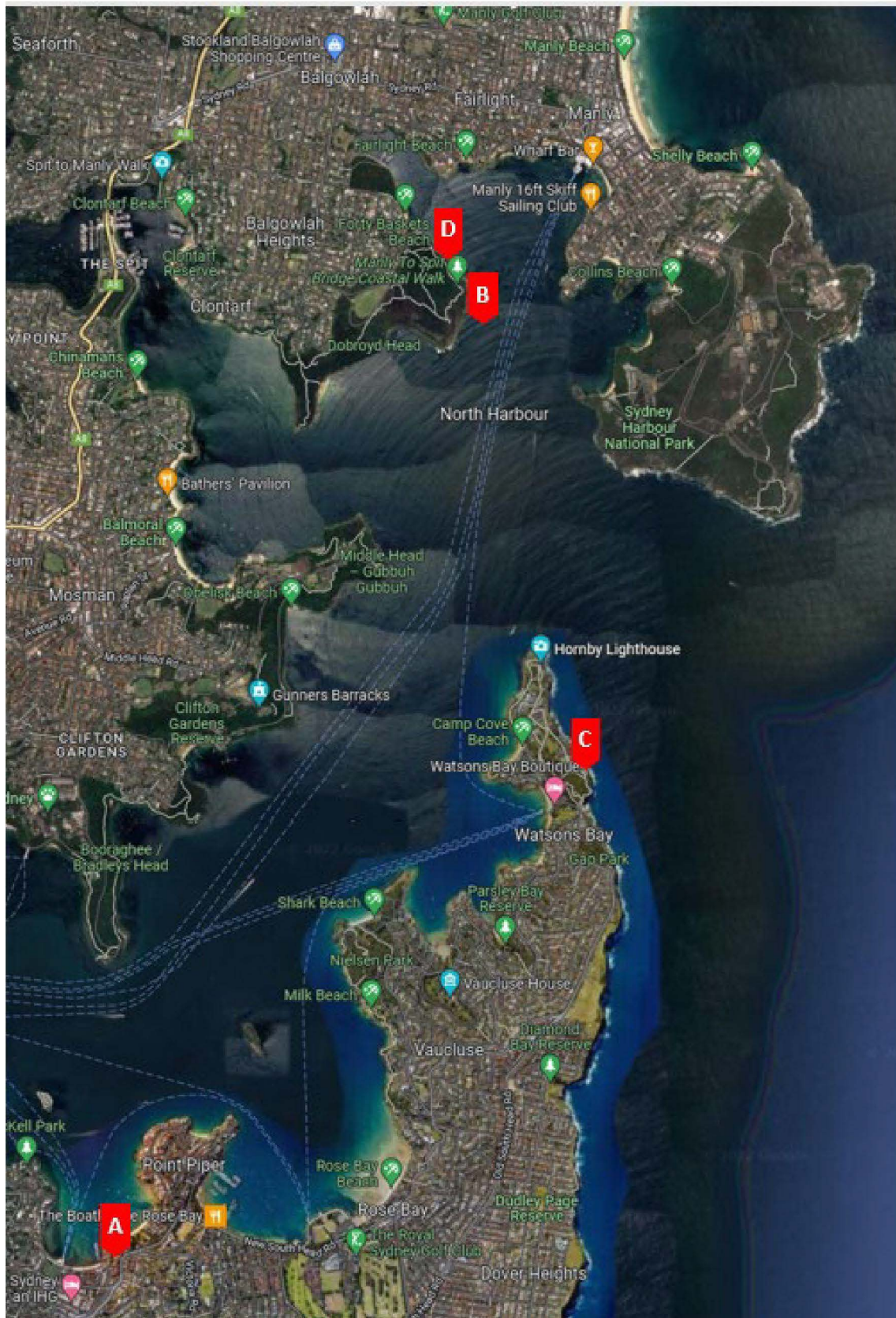
**Peter Gray SC**

**William de Mars**

Counsel Assisting



ANNEXURE A



Key:

- A** Residence of Mr Wark’s psychologist in Double Bay.
- B** Estimated location of Mr Wark’s body.
- C** Estimated location of Mr Wark’s clothes and other property.
- D** Reef Beach.