

The Special Commission of Inquiry
into LGBTIQ Hate Crimes

TENDER BUNDLE HEARING OF 2 JUNE 2023

Concerning the death of Samantha Rose

Submissions on behalf of the Commissioner of Police

Introductory

1. These submissions are prepared on behalf of the Commissioner of Police in response to the submissions made by Counsel Assisting on 2 June 2023 in relation to the death of Samantha Rose.
2. These submissions are provided in advance of the Commissioner's submissions in respect of the Parrabell hearings. While they necessarily touch upon some of the general matters to which those hearings relate, they do not represent a comprehensive statement of the Commissioner's position on the general Parrabell issues. In due course, these submissions should be read with those made on behalf of the Commissioner of Police in connection with the Parrabell hearings and the other "tender bundle" cases.

Samantha Rose

Circumstances of death

3. On Monday, 22 December 1997, Ms Rose was found dead in the kitchen area of her apartment in Kensington. Her head injuries were consistent with an assault having occurred.¹
4. Ms Rose was lying on her back with an unopened can of plums located on the ground between her legs. One side of the can was flattened or dented. Pieces of a broken dinner plate were located on the kitchen floor and in the fridge. Ms Rose was wearing an orange-coloured knee length skirt, a white t-shirt and no shoes. She had silver and plastic bangles on both wrists. She had painted red fingernails and makeup around the eyebrow area.²
5. A search of the unit located a number of silver bangles similar to the ones worn by Ms Rose

¹ Autopsy Report of Dr Christopher Lawrence dated 23 December 1997, (SCOI.00041.00016).

² Statement of DSC Van Leeuwen dated 18 October 1998 at [7] (SCOI.00041.00024).

on the lounge room floor. An imitation breast implant and an upturned photo frame were located near the bangles. Upturned furniture items were also observed in the lounge room. There was also a pair of glasses, an upturned answering machine and another imitation breast implant on the floor. A telephone on the kitchen bench had the handpiece off and hanging freely over the side of the bench. The unit was in a dishevelled state.³

6. Dr Christopher Lawrence conducted a post-mortem examination on Ms Rose on the day she was found. Dr Lawrence's report dated 23 December 1997 (confirmed in his final autopsy report dated 17 April 1998) indicated that:⁴

Autopsy reveals significant injuries to the head with subdural haematoma and an extradural haematoma, fractures on the left temple region, fractures in the occipital region and bruising on the back of the head. There appears to be at least one impact site on the right cheek, the left cheek and probably at least two impact sites on the back of the head. The pattern of the injuries is strongly suggestive of an assault. Toxicology is negative.

7. A thorough search and examination was carried out of the scene. The can of plums revealed no physical evidence from examination to indicate that it was used to assault Ms Rose.⁵ All fingerprints developed from within the unit which could be identified were identified as belonging to Ms Rose.⁶
8. Based on the available evidence, investigating police officers formed the view that the assault likely commenced in the hallway near the bathroom door and continued into the loungeroom, where the ironing board had been knocked over. The assault continued into the kitchen where Ms Rose was found. The assailant then left the premises via the front door, closing and locking the door with a key upon leaving.
9. An inquest into Ms Rose's death was conducted on 19 August 1999 and 18 November 1999. Deputy State Coroner Abernethy found that:⁷

Ms Rose died on 20 December 1997, at Kensington, due to head injuries inflicted by a person or persons unknown.

³ Statement of DSC Van Leeuwen dated 18 October 1998 at [10] to [12] (SCOI.00041.00024).

⁴ Autopsy Report of Dr Christopher Lawrence dated 23 December 1997, (SCOI.00041.00016).

⁵ Statement of DSC Thornton dated 23 October 1998 at [50] (SCOI.00041.00005).

⁶ Expert statement of Detective Senior Constable Graem Allen Bush dated 14 October 1998 (SCOI.00041.00027).

⁷ Findings of Deputy State Coroner Abernethy dated 18 November 1999 at page 1 (SCOI.83311).

Persons of interest

10. Ms Rose was very security conscious. She always deadlocked the front door and screen security door.⁸ She would not allow strangers into the unit.⁹ The front door had two deadlocks. The door could not be secured by simply closing the door but only by operating the deadlocks with keys in a locking motion.
11. Ms Rose's unit was deadbolted when investigating police arrived and discovered her body. There was no sign of forced entry. This suggests that Ms Rose knew her assailant.
12. The initial police investigation identified three persons of interest. The primary person of interest was, and continues to be, Sandra Durward. Her possible involvement was the subject of a comprehensive investigation by police.
13. Ms Durward died on 12 March 2006.¹⁰
14. In general terms, the Commissioner agrees with Counsel Assisting's summary of the evidence regarding Ms Durward's potential involvement in Ms Rose's death set out at CA, [72] to [162].
15. The Coroner made the following observation in respect of Ms Durward's suspected involvement in Ms Rose's death:

"[T]here is thus some suspicion about Ms Durward, largely because of some of the peculiar things she said to those around her after the death, but there is absolutely nothing to link her to the homicide of [Samantha] Rose, other than a vague suspicion."

16. The Commissioner agrees with Counsel Assisting's submission that the available evidence does not reach the required threshold for a positive finding that, on the balance of probabilities, Ms Durward was involved in Ms Rose's death (CA, [17]).

Adequacy of police investigations

17. The officer in charge, DSC Thornton, provided a statement which details the comprehensive investigation undertaken by investigating police officers.¹¹ More than 70 statements were taken as part of that investigation. Consistent with this, Deputy State Coroner Abernethy described the police investigation as "extensive".¹² His Honour did not express any concerns

⁸ See for example statement of Bertha Ruth Rose dated 9 January 1998 at [32] (SCOI.00041.00030).

⁹ See for example Transcript of coronial inquest on 18 November 1998 at page 20 (SCOI.83316).

¹⁰ Death Certificate of Sandra Durward dated 24 August 2022 (SCOI.73985);

¹¹ Statement of DSC Thornton dated 23 October 1998 (SCOI.00041.00005).

¹² See Transcript of coronial inquest on 18 November 1998 (SCOI.83316), p. 21.

with the police investigation, or require any further investigations to be conducted.¹³

18. Counsel Assisting acknowledge at CA, [24] that the “overall police investigation was adequate”. However, Counsel Assisting make some limited criticism of the original police investigation in the matter.
19. It does not appear that the Inquiry has sought to explore these criticisms with any of the officers involved in the investigation. They are addressed further below.

Iron

20. Counsel Assisting state (CA, [24.a.]) that there is no evidence to suggest the iron that was found at the crime scene was ever fingerprinted, swabbed or seized. Counsel Assisting suggest that the iron may have been used as a weapon in the course of the assault on Ms Rose. The fact that it was not removed from the scene as an exhibit means it cannot now be subjected to forensic testing.
21. The Commissioner notes that the iron was plugged in at the time it was found. It appears that Ms Rose had been ironing shortly before her death and that the iron had remained turned on. Indeed, Detective Senior Constable Van Leeuwen opined that the iron had melted the electrical insulation on a power cord on the floor and, in turn, short circuited the fuse for the unit.¹⁴
22. The Commissioner acknowledges that in the absence of evidence of the murder weapon, the use of the iron in connection with Ms Rose’s death cannot be ruled out. Notably, however, there is no evidence to suggest that the injuries to Ms Rose included injuries consistent with burns which might be expected if she was attacked with an iron hot enough to iron a shirt and to melt the insulated power cord. Dr Iles has provided a careful and thorough analysis of the available pathological evidence. She would have presumably identified any such injuries if they were consistent with the theory identified by Counsel Assisting.
23. On balance, having regard to the surrounding evidence, the Commissioner submits that the iron was unlikely to have had any involvement in the death of Ms Rose. It is recognised that, in an abundance of caution, it may have been appropriate for it to be seized.

Television

24. Counsel Assisting state at CA, [24.b.] that there is no evidence that the television, that had

¹³ See Findings of Deputy State Coroner Abernethy dated 18 November 1999 (SCOI.83311) and Transcript of coronial inquest on 18 November 1998 (SCOI.83316).

¹⁴ Statement of DSC Van Leeuwen dated 18 October 1998 at [11] (SCOI.00041.00024).

been sitting on crates in the lounge room and that had fallen off those crates, was ever fingerprinted, swabbed or seized. The fact that the television was not taken from the scene means it cannot now be subjected to forensic testing.

25. Counsel Assisting state this assumes greater significance given Dr Iles' opinion that some of Ms Rose's head injuries appear consistent with her head being crushed by the television.
26. Counsel Assisting's criticism of police needs to be considered in light of the evidence available to the investigating police at the time.
27. Ms Rose's body was not found in the vicinity of the television.¹⁵ Further, Dr Lawrence provided an opinion to investigating police that Ms Rose's injuries were consistent with an assault. The post-mortem did not identify any injuries which were consistent with a crushing injury as identified now by Dr Iles.
28. Dr Iles opines that there is nothing in the immediate vicinity of Ms Rose's body to account for the pattern of injury of primary traumatic brainstem haemorrhages identified by Dr Rodriguez, which Dr Iles states may suggest that Ms Rose's body had been moved.¹⁶ Dr Iles further opines that "primary traumatic brainstem haemorrhages are unusual in traumatic brain injury sustained in a physical assault without the use of a discrete weapon/ heavy object. Such an injury could occur via crush injury to head from a heavy object."¹⁷
29. The Commissioner observes that this analysis does not take into consideration the fact that (a) a can of plums (with a dent on one side) was found in the direct vicinity of Ms Rose's body (though noting the apparent lack of physical evidence the can was involved); and (b) the assailant could have taken the weapon with them when they left the unit.
30. Dr Iles also states that:¹⁸

Fatal crushing head injuries from falling televisions are well recognised in children, with older style cathode ray tube televisions (such as that depicted in scene photos) being significantly heavier than contemporary flat screen TVs. However, this mechanism of injury is much less common in adults, for obvious reasons (i.e., the victim's head has to be between the level of the television and the floor at the time the TV topples).

31. This analysis does not address whether the greater prevalence of this form of injury in

¹⁵ Statement of DSC Thornton dated 23 October 1998 at [275] (SCOI.00041.00005).

¹⁶ Report of Dr Linda Iles, Forensic Pathologist dated 28 May 2023 at page 11 (SCOI.83339).

¹⁷ Report of Dr Linda Iles, Forensic Pathologist dated 28 May 2023 at page 11 (SCOI.83339).

¹⁸ Report of Dr Linda Iles, Forensic Pathologist dated 28 May 2023 at page 11 (SCOI.83339).

children is also due to the physiological differences between adults and children (as distinct from an asserted relatively greater propensity for children to be in a location where a television is likely to fall). It is noted that no consideration appears to have been given to whether an item of the likely weight of the TV was able to inflict injuries of the nature envisaged by Dr Iles to a person of Ms Rose's age and physical build.

32. There is also no evidence of damage to the TV (for example to its screen) that would be consistent with it having been used in some way to assault a person. Moreover, it appears that the distance between the TV's ordinary location and where it was found was relatively short; it does not seem to have fallen from a significant height. Additionally, there does not appear to be any blood on the floor near the television in the photograph shown by Counsel Assisting (similarly no blood is obviously visible on the television itself, even when the image is zoomed in on, though it must be said that the television is dark and any such blood might be obscured given that fact and the relatively poor quality of the image).
33. On balance, the Commissioner submits that it is relatively unlikely that the television had any involvement in the injuries sustained by Ms Rose. Rather, the most compelling aspect of the case insofar as the television is concerned was Ms Durward's apparent esoteric knowledge of the television having been found tipped over.¹⁹ The Commissioner agrees with Counsel Assisting's submissions to the effect that this is suggestive of the fact that Ms Durward had been at Ms Rose's unit when (or, potentially, after) Ms Rose was assaulted (CA, [158]).

DNA examinations

34. Counsel Assisting state at CA, [24.d.] states that there was no DNA examination of any of the exhibits during the original police investigation. The items specifically referred to by Counsel Assisting in this respect are the following:
 - a Can of plums;
 - b Artificial breast implant;
 - c Broken plate;
 - d Clothing worn by Ms Rose, being a white bra, orange mini-skirt, white t-shirt and white underpants; and
 - e Fingernails.

¹⁹ Statement of DSC Thornton dated 23 October 1998, [275] (SCOI.00041.00005).

35. The reasons for this have not been explored with investigating police. DNA testing, of course, was a relatively novel phenomenon as at December 1997. Indeed, the *Crimes (Forensic Procedures Act) 2000*, which introduced a regime for conducting forensic procedures on suspects in order to gather DNA for testing, did not commence until 1 January 2001. As a consequence, as at the time of Ms Rose's death, there was no mechanism by which Ms Durward's DNA (or that of another suspect) could be obtained via compulsion.

Strike Force Parrabell review

36. Following its consideration of this matter, SF Parrabell concluded that there was "insufficient information" to determine whether Ms Rose's death had been motivated by anti-LGBTIQ bias. Counsel Assisting reached the same conclusion (CA, [170]), as did the academic review team.
37. Counsel Assisting observe that of the 10 indicators used in the Bias Crime Indicators Form (**BCIF**), two are answered as 'Suspected Bias Crime' ("Differences" and "Lack of Motive") with the balance answered as 'Insufficient Information'.²⁰ Counsel Assisting indicates that the relevant indicators were "Differences" and "Level of Violence". This is incorrect; the two indicators marked 'Suspected Bias Crime' were "Differences" and "Lack of Motive" (which was raised because of the reviewing officers view that, in the absence of any other clear motivating factors, the possibility that bias may have been involved cannot be ruled out).²¹
38. It appears that the sole criticism raised by Counsel Assisting in relation to the SF Parrabell treatment of Ms Rose's death relates to the indicator "Historical animosity exists between the victim's group and the POI's group" (CA, [37]).
39. The Commissioner acknowledges that the BCIF read in isolation does not itself set out sufficient particulars to allow a comprehensive understanding of the comment made regarding Ian Rose.
40. The comment in respect of that indicator was evidently regarded as of no moment in the final conclusion. There is no real evidence that Mr Rose was, in fact, involved in Ms Rose's death. It is clear that the only current suspect is Ms Durward.
41. It is further said that the "prompt itself" lacks clarity (CA, [37]). The basis for this submission is unclear. The language in the prompt plainly refers to the possible existence of historical

²⁰ BCIF undated (SCOI.45271).

²¹ *Ibid*, p. 14.

animosity between a group to which the victim belongs and a group of which the person of interest is a member.

Anti LGBTIQ bias

42. In order to be able to reach any firm conclusion as to whether the assault of Ms Rose was motivated by gay hate, it is necessary to determine the identity of Ms Rose's attacker; this is not a matter in which an LGBTIQ bias can be inferred by the surrounding circumstances (see CA, [169]).
43. In the absence of a positive conclusion as to the identity of the perpetrator, it is submitted that it is not possible to determine with certainty whether the assault on Ms Rose was motivated by anti-LGBTIQ bias.
44. The Inquiry obtained a forensic psychiatrist report of Dr Danny Sullivan dated 15 May 2023. Dr Sullivan opined that:²²

The presence of an unexplained or identified palm print on the artificial breast inserts does not clearly establish a sexual motive or interaction. There are no aspects of the offence that suggest that the death was associated with Ms Rose's transgender identity. No elements of the crime scene appear clearly associated with a hate crime.

45. As to the possible motivations of the assailant, Dr Sullivan notes that the can of plums between Ms Rose's legs *may* have had a symbolic sexual meaning to the killer. Dr Sullivan recognises that this cannot be confirmed and there was no indication of sexual interference²³. The Commissioner agrees and observes that any such line of thinking is entirely speculative.
46. Dr Sullivan ultimately concludes that there is no evidence to suggest that sexuality or gender is a motive for the assault on Ms Rose.²⁴
47. Counsel Assisting asserts that there are some factors that "might be regarded as consistent with a bias motive" (CA, [169]). Counsel Assisting acknowledges that these are "at best weak or inconclusive." This appears to be a reference to the following factors identified at CA, [11]:
- a the location of the plastic breast implants, in different areas of the apartment, raising the possibility that they were forcibly removed from Ms Rose by the person who

²² Report of Danny Sullivan dated 15 May 2023 at [31] (SCOI.83317).

²³ Report of Danny Sullivan dated 15 May 2023 at [32] (SCOI.83317).

²⁴ Report of Danny Sullivan dated 15 May 2023 at [32] (SCOI.83317).

assaulted her;

- b the potential significance of an unopened can of plums located between Ms Rose's legs and possible interference with her body; and
- c the scant evidence suggesting another motive for the crime.

48. The Commissioner agrees that this evidence is weak and inconclusive. These factors are entirely speculative and could not ground a positive conclusion that anti-LGBTIQ bias played any part in Ms Rose's death.
49. Accordingly, the Commissioner agrees with Counsel Assisting's assessment that there is insufficient evidence to ground a finding that Ms Rose's death involved LGBTIQ bias (CA, [170]). Again, this accords with the determination of Strike Force Parrabell (and with the assessment of the academic review team).
50. For completeness, the Commissioner embraces Counsel Assisting's submission that if Ms Durward was involved in Ms Rose's death, it is highly unlikely that Ms Rose's death was a crime involving LGBTIQ bias. If Ms Durward was involved, then Ms Rose's death likely occurred in the context of a friendship with Ms Durward and a possible dispute regarding accommodation (CA, [171]).

Manner and cause of death

56. Ultimately, Counsel Assisting submits that there is a circumstantial case against Ms Durward, but acknowledges that the evidence does not reach the required threshold for a positive finding that, on the balance of probabilities, she was involved in Ms Rose's death (CA, [11]). The Commissioner agrees with this submission.
57. The Commissioner of Police notes that a coronial inquest at which Ms Durward was the primary person of interest did not result in a referral for prosecution. Ms Durward is deceased and not represented in these proceedings.
58. In the circumstances, no positive finding should be made in respect of the responsibility or otherwise of Ms Durward for Ms Rose's death.
59. The Commissioner of Police supports the submissions made by Counsel Assisting as to the manner and cause of the death of Ms Rose, that is that Ms Rose died on 20 December 1997 at some time after 2:48pm, at Kensington, as a result of head injuries inflicted by a person or persons unknown (CA, [172]).

Overall conclusion

60. The conclusions of Counsel Assisting regarding the possible presence of anti-LGBTIQ bias align with those of SF Parrabell in relation to the death of Ms Rose.
61. Further submissions will be made as to the general issues pertaining to the activities of SF Parrabell in due course.



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