



Special Commission of Inquiry into LGBTIQ hate crimes

SUBMISSIONS OF COUNSEL ASSISTING

2 June 2023

IN THE MATTER OF SAMANTHA ROSE

Introduction

1. These submissions are filed on behalf of Counsel Assisting the Special Commission of Inquiry into LGBTIQ hate crimes (**Inquiry**).
2. Samantha Rose, who was given the name “David” at birth, was a transgender woman. So far as the Inquiry has been able to ascertain, she identified as female. She often wore female clothing to work, and had confided in several friends regarding her gender identity. She sometimes used the name “Samantha”, including in correspondence with friends and when she volunteered at radio stations 2RPH and 2SER. At the time of her death, she was undergoing hormone replacement therapy as part of her affirmation of her gender. The Inquiry will refer to Ms Rose consistently with her own preference.

Summary of matter

Date and location of death

3. Samantha Rose was found deceased on 22 December 1997 at her home in the suburb of Kensington in Sydney. She died sometime after 10:00am on 20 December 1997.¹ She was 41 years old at the time of her death.

Circumstances of death

4. Ms Rose was found deceased, lying on her back in the kitchen area of her apartment. Her arms were outstretched from her body and an unopened can of plums, one side of which was dented, was located

¹ Findings of Deputy State Coroner John Abernethy dated 18 November 1999 (SCOI.83311). The Autopsy Report of Dr Christopher Lawrence, 23 December 1997 (SCOI.00041.00016) found that she died some time between 10:00am on 20 December 1997 and 11:15am on 22 December 1997.

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between her legs. The injuries sustained by Ms Rose were severe and consistent with numerous heavy blows to the head with a blunt object. Maggots were observed around her nose and mouth.

5. Ms Rose's apartment was in a state of disarray. Her furniture and personal items including jewellery were scattered throughout the unit. Two plastic breast implants were located, one in the lounge room, and the other in the hallway. The television was lying face down in the lounge room.
6. Officers of the NSWPF gained entry to the unit through the kitchen window using a ladder. The front door was locked from the inside by way of two security locks and could not be opened without keys. The front screen door was unlocked. There was no evidence of forced entry.

Findings of post-mortem examination

7. A post-mortem examination was conducted on 22 December 1997 by Dr Christopher Lawrence.² Dr Lawrence identified significant injuries to the head including a subdural haematoma, an extradural haematoma, fractures on the left temple region, fractures in the occipital region and bruising on the back of the head. There were further impact sites on the cheeks and at least two to the back of Ms Rose's head. Dr Lawrence also reported bruising on various parts of Ms Rose's body including her arms, shoulder and sacrum. There was no indication of sexual trauma.
8. Dr Lawrence concluded that "the pattern of injuries is strongly suggestive of an assault."³ The direct cause of death was recorded as "head injury".⁴
9. Ms Rose's blood was tested. No poisons or alcohol were detected.

Indicators of LGBTIQ status or bias

10. Ms Rose was a transgender woman. She dressed in female attire from 18 years of age including at work. At the time of her death, she was undergoing hormone therapy as part of her gender affirmation.
11. There are obvious difficulties in assessing the motives or biases of Ms Rose's killer in the absence of knowing that person's identity. There are factors which indicate the possibility that Ms Rose was killed in the context of LGBTIQ bias, including:
 - 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 assaulted her;

² Autopsy Report of Dr Christopher Lawrence, 23 December 1997 (SCOI.00041.00016).

³ Autopsy Report of Dr Christopher Lawrence, 23 December 1997, p. 3 (SCOI.00041.00016).

⁴ Autopsy Report of Dr Christopher Lawrence, 23 December 1997, p. 2 (SCOI.00041.00016).

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- 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.
12. The original police investigation could not discount that this may have been a hate crime against Ms Rose. Ms Rose was open with friends and colleagues regarding her transition. She openly wore women's clothing. She had no enemies. There was no evidence that Ms Rose frequented gay or transgender establishments. There was no evidence that Ms Rose had been sexually active and it is unlikely that she would invite a sexual partner to her unit. Police posited the scenario that she may have been followed into her unit after returning from outside where she was assaulted inside her unit by someone unknown.

Persons of interest

13. One key person of interest in relation to Ms Rose's death is Sandra Durward (date of birth, 6 April 1955). Ms Durward died on 12 March 2006.⁵ She and Ms Rose met at some stage between 1986-1987, whilst volunteering at Radio Station 2RPH.⁶ They subsequently became friends and Ms Rose allowed Ms Durward to stay with her in her unit in Kensington from time to time. Ms Durward was aged 42 at the time of Ms Rose's death and worked as a sex worker at Final Touch Relaxation Centre and Bare Bunnies (massage parlours and/or brothels).⁷
14. Ms Durward had extant substance abuse issues and no stable accommodation. There is evidence of her drinking almost every day and some documented instances of aggression and violent outbursts in the lead up to Ms Rose's death. Her sister, Fiona Feary said that Ms Durward had an alcohol and heroin addiction.⁸
15. At a coronial inquest into the death of Ms Rose, Ms Durward and David Thwaites, a friend of hers who provided an alibi for her movements on 20 December 1997, were called to give evidence. Further detail in this regard is included below at [144]. The Coroner all but excluded Ms Durward as the person responsible for Ms Rose's death stating, "[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."

⁵ Death Certificate of Sandra Durward, 24 August 2022 (SCOI.73985); Transcript of recorded interview with Sandra Durward, 6 February 1997, 2 (SCOI.00041.00102).

⁶ Transcript of recorded interview with Sandra Durward dated 26 December 1997, 3 (SCOI.00041.00101).

⁷ Statement of Paul Michael Thornton dated 23 October 1998, [110] (SCOI.00041.00005).

⁸ Statement of Paul Michael Thornton dated 23 October 1998, [180] (SCOI.00041.00005).

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16. The initial police investigation also considered other potential suspects, including Stephen Becker, a friend of Ms Rose, and Ian Rose, the brother of Ms Rose.
17. As these submissions will show, there is a circumstantial case against Ms Durward. However, 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.

Exhibits: availability and testing

18. Upon the discovery of Ms Rose, police collected a number of exhibits from the crime scene. Those comprised the following items:
 - a. Can of plums;
 - b. Artificial breast implant;
 - c. Broken plate;
 - d. Clothing worn by Ms Rose, consisting of a white bra, orange mini-skirt, white t-shirt and white underpants; and
 - e. Fingernails.
19. Of the exhibits identified above, it appears that testing for the presence of blood was only conducted in respect of the can of plums and a broken plate found proximate to Ms Rose's body. Those tests returned a negative result for the presence of blood.⁹ It does not appear that any of the exhibits identified above were submitted for DNA testing. Rather, it appears that the label from the can of plums and swabs from the broken plate were retained for DNA analysis, "if required".¹⁰
20. In addition to those exhibits, a post-mortem blood sample was obtained from Ms Rose together with an oral swab/smear. A test of those items returned a positive result for blood on the oral and rectal swabs. Semen was also not detected on the oral and rectal swabs and smears.¹¹

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

21. An inquest was held at Glebe Coroners Court on 19 August 1999 before Deputy State Coroner John Abernathy. The inquest was adjourned so that Mr Thwaites could be called in relation to Ms Durward's alibi and movements on 20 December 1997.

⁹ Expert Statement of Vivien Beilby, 3 February 1998, 1 (SCOI.10119.00025).

¹⁰ Expert statement of Vivien Beilby, 7 January 1998, 1 (SCOI.10119.00025); Further Statement of Vivien Beilby, 3 February 1998, 1 (SCOI.10117.00003).

¹¹ Expert statement of Vivien Beilby, 7 January 1998, 1 (SCOI.10119.00025).

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22. On 18 November 1999, Deputy State Coroner Abernethy resumed the inquest and made the following finding in relation to Ms Rose:¹²

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

Criminal proceedings

23. No criminal proceedings were ever instituted against any person in relation to Ms Rose's death.

Features of/concerns with original police investigation

24. Whilst the overall police investigation was adequate, the following matters of concern are noted:
- a. There is no evidence to suggest the iron that was found at the crime scene was ever fingerprinted, swabbed or seized.¹³ The iron may have been used as a weapon in the course of the assault on Ms Rose. The failure to at least seize it from the scene means it cannot now be subjected to forensic testing.
 - b. There is no evidence that the television, that had been sitting on crates in the loungeroom and that had fallen off those crates, was ever fingerprinted, swabbed or seized. The failure to at least seize the television from the scene means it cannot now be subjected to forensic testing.¹⁴ This assumes greater significance given the report of Dr Linda Iles, forensic pathologist, canvassed below, that some of the head injuries appear consistent with Ms Rose's head being crushed by the television.
 - c. The omissions above suggest that there was limited attention given by police to the area of the loungeroom where the ironing board had fallen and dislodged the television that had been sitting on the crates. Indeed, the television, ironing board, iron and all the furniture within the lounge room were omitted from the sketch plan prepared by the crime scene officer (extracted further below).¹⁵
 - d. There was no DNA examination of any of the exhibits during the original police investigation.

¹² Findings of Deputy State Coroner Abernethy dated 18 November 1999, 1 (SCOI.83311); 'Woman "must have killed", cross-dresser's inquest hears', *Daily Telegraph*, 20 August 1999 (SCOI.10122.00002).

¹³ UHT review in relation to Samantha Rose, 30 September 2021, p. 54 (SCOI.02713).

¹⁴ UHT review in relation to Samantha Rose, 30 September 2021, p. 54 (SCOI.02713).

¹⁵ UHT review in relation to Samantha Rose, 30 September 2021, p. 54 (SCOI.02713).

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25. In his statement prepared for the coronial investigation, Officer in Charge, Detective Senior Constable Thornton (**DSC Thornton**) outlined the steps taken by police to explore potential persons of interest and produced several statements which were obtained from friends and associates of Ms Rose. Police extensively canvassed houses in the area around Kensington and COPS inquiries were made of relevant incidents in Addison Street and its surrounds.¹⁶
26. Police also interviewed Ms Rose's co-workers at Radio 2PHR and Westpac. They generally described Ms Rose as a kind and well-liked person. None of Ms Rose's co-workers could identify anyone who would have wished to harm her.
27. Inquiries were also made with various LGBTIQ establishments to ascertain whether Ms Rose attended any of them and to get a better understanding of her lifestyle (described as "homosexual, trans-sexual and gender-based organisations" in the OIC's statement). These inquiries did not suggest Ms Rose had a connection with any of them.
28. Information was obtained from the Camera Detection Unit that a relevant CCTV camera was not operating on the weekend of Ms Rose's death. Speed cameras from the vicinity returned nothing of interest.
29. Ms Rose's death was raised in the media.

Later UHT reviews

30. Ms Rose's death has not been re-investigated by police since the coronial inquest into her death concluded in 1999.
31. Ms Rose's death was the subject of a review by the Unsolved Homicide Team in 2004 and 2021 respectively.
32. In 2004, an initial review of the investigation into the death of Ms Rose was conducted by the Unsolved Homicide Team and, on 6 May 2004, the following recommendations were made (**the First Review**):¹⁷
 - Obtaining the Call Charge Records (**CCR**) and Reverse Call Charge Records (**RCCR**) for Ms Durward's mobile phone from 20-22 December 1997, being the weekend of Ms Rose's death;
 - Submitting exhibits held by the NSWPF to the Division of Analytical Laboratory, NSW Health (**DAL**) for trace DNA examination to take place;

¹⁶ Statement of Detective Senior Constable Paul Thornton dated 23 October 1998, [296]-[297] (SCOI.00041.00005).

¹⁷ Review of Unsolved Homicide Case Screening Form dated 6 May 2004 (SCOI.03416).

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- Enquiring with the Coroners Court of New South Wales (**the Coroners Court**), in particular Deputy State Coroner Abernathy, in relation to the evidence Ms Durward gave at the inquest into the death of Ms Rose, noting that the court file was unable to be located;
 - Approaching Ms Durward to obtain a DNA sample and conducting electronic surveillance on Ms Durward; and
 - Pursuing further lines of inquiry regarding Mr Thwaites, including re-interviewing him in relation to the alibi he provided for Ms Durward.
33. In 2021 the investigation into the death of Ms Rose was subject to a further review by the Unsolved Homicide Team. Recommendations made on 30 September 2021 included (**the Second Review**):¹⁸
- Submitting exhibits held by NSWPF, in particular, the dented can of plums and the artificial breast implants located at the scene, and the t-shirt Ms Rose was wearing at the time of her death, for forensic analysis;
 - Pursuing further lines of inquiry regarding Mr Thwaites;
 - Consulting a pathologist regarding the injuries sustained by Ms Rose in order to ascertain the manner and cause of Ms Rose's death;
 - Giving consideration to an offer of a reward for information, with a view to identifying a possible source or new lines of enquiry.
34. It is unclear whether, and to what extent, any of the steps identified in the First Review and Second Review were pursued. In particular, the exhibits held by NSWPF were not submitted for DNA trace examination to take place. There is no explanation in the material obtained by the Inquiry for the apparent failure to implement these recommendations.
35. The Inquiry has taken steps consistent with some of the recommendations made in both the First Review and Second Review, including submitting exhibits held by the NSWPF to the Forensic and Analytical Science Service (**FASS**) for forensic analysis and requesting FASS examine exhibits stored by them in this case (see [51]-[53] below), obtaining expert reports from Dr Iles and Dr Danny Sullivan, psychiatrist (see [56]-[57] below), and obtaining the Coroners Court file in relation to the inquest into the death of Ms Rose (see [43]-[45] below).

¹⁸ UHT review in relation to Samantha Rose, 30 September 2021 (SCOI.02713).

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Strike Force Parrabell

Use of the Bias Crimes Indicators Form

36. Of the ten indicators used in the Bias Crime Indicators Form (**BCIF**), eight are answered as 'Insufficient Information' ("Comments, Written Statements, Gestures", "Drawings, Markings, Symbols, Tattoos, Graffiti", "Organised Hate Groups", "Previous existence of Bias Crime Incidents", "Victim/Witness Perception", "Motive of Offender/s", "Location of Incident" and "Level of Violence"), and two ("Differences", "Lack of Motive") as 'Suspected Bias Crime'.¹⁹
37. Under the first indicator, "Differences", in response to the prompt 'Historical animosity exists between the victim's group and the POI's group', the response set out in the BCIF begins as follows: "As no person/s was charged with the murder of Rose it is unknown if any animosity existed between Rose and the offender/s. It was suggested that Rose's brother, Ian Rose, could be a suspect with the understanding that he did not approve of his brothers [sic] cross dressing behaviour with historical animosity existing between the two because of this."²⁰ The meaning of the terms "historical animosity" and "victim's group" is unclear. If it is intended to refer to a notion of historical friction between transgender persons, there is no evidence to suggest that Ian Rose displayed any prior animosity towards Ms Rose on the basis that she was transgender. Rather, the evidence suggests that among Ms Rose's family members, Ian Rose was generally accepting of Ms Rose's transgender status. Both this prompt, and the content of what has been written in response to it, lack clarity.

Results of Strike Force Parrabell

(a) The "Summary of Findings" box at the end of the BCIF

38. As noted above, two of the ten indicators were answered as 'Suspected Bias Crime', namely 'Differences' and 'Level of Violence'. The "General Comment" section in respect of those two indicators summarises the applicable material in respect of each respectively, namely that Ms Rose lived as a transgender person; there were no efforts to conceal her desire to dress as a female; it was unknown if animosity existed between Ms Rose and the offender/s; there was an absence of a firm motive; there was a substantial degree of violence which did not appear premeditated. However, the summaries do not offer any reasoning as to why that material indicates a "suspected bias crime".
39. The 'Summary of Findings' section is derived from extracts from earlier parts of the document. It nominates 'Insufficient Information' as the overall outcome and is in the following terms:²¹

¹⁹ Bias Crimes Indicator Review Form, undated (SCOI.45271).

²⁰ Bias Crimes Indicator Review Form, undated, 3 (SCOI.45271).

²¹ Bias Crimes Indicator Review Form, undated, 15 (SCOI.45271).

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The murder of ROSE remains unsolved. A number of suspects were identified but no charges were laid. As such, the offender's sexual orientation or identity is unknown. ROSE was described as 'asexual' having no sexual attraction to either females or males. ROSE lived [her] life as transgender, dressing in women's clothing from the age of 18. ROSE had never had a sexual relationship with a male or female and from the early age of five or six had wanted to be female. No bias related drawings, markings, symbols or graffiti were depicted in photographs reviewed of Rose of the scene. There was an apparent lack of evidence of any forced entry into ROSE's unit suggesting [she] knew the assailant. As there were no signs of break and enter, fraud or any other clear motivators, it cannot be ruled that sexuality or other bias may have been involved in the death of ROSE. ROSE suffered two fractures to his skull, accompanied by severe bruising. The head fractures were consistent with numerous heavy blows to the head with a blunt object proving fatal. There was no indication of sexual trauma. The level of violence displayed towards ROSE is substantial however there is no indication that the fatal assault of ROSE was [premeditated].

(b) Case Summary

40. The case summary for Ms Rose's death reads as follows:²²

Identity: David Rose was 41 years old at the time of his death.

Personal History: Mr Rose was living his life as a transgender man. He dressed in female attire from 18 years of age. At the time of his death, Mr Rose was undergoing hormone therapy (Estrogens) to progress his transition to female and was suffering side effects from the treatment including nausea and headaches. Mr Rose worked as a computer analyst for Westpac Bank and often wore female clothing to work. Mr Rose also volunteered as a community radio presenter on radio stations 2RPH (Radio for the Print Handicapped) and 2SER. Mr Rose occasionally used an alias of 'Samantha' and disguised his voice to sound more feminine.

Location of Body/Circumstances of Death: Mr Rose's body was located inside his residential unit at Addison Street, Kensington. His body suffered severe injuries including fractures of his skull and severe bruising. Mr Rose's injuries were consistent with numerous heavy blows to the head with a blunt object. There was no indication of sexual trauma.

Sexual Orientation: Mr Rose identified as asexual (without sexual feelings or association)

²² Exhibit 6, Tab 49, Strike Force Parrabell: Case Summaries, undated, 39 (SCOI.76961.00014).

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Coroner/Court Findings: Police identified a number of suspects, however no charges were laid, leaving the sexual identity of Mr Rose' attacker unknown. It was believed that Mr Rose had never had a sexual relationship. Mr Rose was very security conscious, however there was no evidence of forced entry to his unit suggesting he may have known his killer. Mr Rose was considered wealthy, owning several properties with a large amount of money in the bank. Police could not establish any clear motivation for Mr Rose's murder, whether linked to sexuality or other bias. The level of violence used to kill Mr Rose was substantial, however there was no evidence to suggest premeditation. Mr Rose's murder remains unsolved.

SF Parrabell concluded there was insufficient information to establish a bias crime.

41. The content of this case summary is consistent with the comments made in the BCIF.

(c) Academic review

42. The review by Flinders University academics placed the case in the category of "Insufficient information".²³ The reasoning of the academic reviewers in this particular case is unknown. Generally, as to their category of "Insufficient information", the academic team said that "it was ultimately impossible for the detectives to make definitive determinations about many of the deaths under review, and based on available information, the academic reviewers concur".²⁴

Investigative and other steps undertaken by the Inquiry, and their outcomes

Request for coronial file

43. On 23 August 2022, the Inquiry requested the coronial file in relation to Ms Rose's death. The Coroners Court advised that no records were held in relation to the inquest.

44. On 26 April 2023, the Inquiry requested that a further search be conducted by the Coroners Court with a view to locating the coronial file. On 11 May 2023, the Coroners Court advised that upon conducting further searches the coronial file was located.

45. On 12 May 2023, the coronial file was produced to the Inquiry.

Summonses issued

46. On 18 May 2022, the Inquiry issued a summons to the NSWPF for, among other things, all NSWPF investigative material, including any material held or created by the Unsolved Homicide Team, in

²³ Exhibit 6, Tab 49, Strike Force Parrabell: Case Summaries, undated, 39 (SCOI.76961.00014).

²⁴ Exhibit 1, Tab 2, Final Report of Strike Force Parrabell, June 2018, 54 (SCOI.02632).

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relation to Ms Rose's death (summons NSWPF1).²⁵ The NSWPF subsequently produced their holdings in relation to Ms Rose to the Inquiry.

47. On 23 August 2022, the Inquiry issued a summons to the Registry of Births, Deaths and Marriages (**BDM**) for records of Ian Rose, Bertha Rose, Max Rose, David Thwaites, Clive Starling, Peter Thornton, and Sandra Durward (summons BDM2).²⁶ On 25 August 2022, BDM produced the records to the Inquiry.
48. On 2 September 2022, the Inquiry issued a summons to NSWPF for, among other things, criminal antecedents relating to Mr Thwaites (summons NSWPF14).²⁷ On 12 September 2022 the NSWPF produced Mr Thwaites' criminal antecedents to the Inquiry.
49. On 28 April 2023, the Inquiry issued a summons to NSWPF for, among other things, criminal antecedents relating to Stephen Becker (summons NSWPF94).²⁸ On 5 May 2023 the NSWPF produced Mr Becker's criminal antecedents to the Inquiry.
50. On 19 May 2023, the Inquiry issued a summons to North Sydney Local Health District (**NSLHD**) for medical recordings relating to Stephen Becker (summons NSLHD1). On 23 May 2023, NSLHD produced Mr Becker's records to the Inquiry.

Further forensic examinations conducted

51. On 22 December 2022, a letter was sent to the NSWPF, Forensic Evidence and Technical Services Command to conduct fingerprint and palprint examinations in relation to the death of Ms Rose.²⁹ On 9 March 2023, the NSWPF produced a certificate regarding the fingerprint and palprint examinations.³⁰
52. On 17 February 2023, a letter was sent to FASS requesting testing of specified exhibits held by NSWPF from the initial homicide investigation conducted in relation to Ms Rose's death. On 22 March 2023, a letter was sent to NSWPF requesting that further exhibits held in relation to Ms Rose's death be transported to FASS for forensic testing.

²⁵ Summons to produce to NSW Police Force dated 18 May 2022 (summons NSWPF1) (SCOI.82904).

²⁶ Summons to produce to the NSW Registry of Births, Deaths and Marriages dated 23 August 2022 (summons BDM2) (SCOI.74079).

²⁷ Summons to produce to the NSW Police Force dated 2 September 2022 (summons NSWPF14) (SCOI.82496).

²⁸ Summons to produce to the NSW Police Force dated 28 April 2023 (summons NSWPF94) (SCOI.47501).

²⁹ Letter from the inquiry to the NSW Police Force requesting fingerprint testing dated 22 December 2022 (NPL.0100.0001.0006).

³⁰ Expert Certificate of Karen Halbert dated 8 March 2023 (NPL.0100.0001.0008).

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53. On 26 May 2023, an expert certificate setting out the analysis undertaken by FASS and the results obtained in relation to the testing was received by the Inquiry. Further detail as to the results of that analysis appears at [54] below.

Results of further DNA analysis

54. The Inquiry sought DNA analysis over some of the exhibits collected from the crime scene and exhibits stored by FASS. On 26 May 2023, the Inquiry received a statement from Michele Franco, of FASS, setting out the results of the forensic analysis.³¹ Where a result is reported as 'unsuccessful', it can indicate one of several outcomes, such as there was no DNA detected; or the amount of DNA recovered from the sample was below the laboratory threshold for routine further DNA testing. Ms Franco reported as follows:
- a. DNA testing on each of the five fingernails on the left and right hands was unsuccessful.
 - b. DNA testing of the can of plums identified a female profile that matched an elimination sample of a person on FASS' Quality Assurance Register, meaning it matched a person from FASS who has come in contact with the exhibit. Otherwise, testing was unsuccessful or returned a low DNA profile that is not suitable for comparison.
 - c. The DNA recovered from a stored swab of a broken plate recovered a mixture that originated from at least four individuals. Ms Rose could not be excluded as one of the major contributors. The DNA profiles of the individual contributors could not be determined due to the complexity of the mixture. DNA interpretation software was used to screen for possible contributors on the NSW DNA database. A person was identified as being a possible contributor, however it is believed that this is a result of a contamination event which occurred in the laboratory in 1998 before suitable contamination prevention measures were introduced to align with the increasing sensitivity of DNA testing. Otherwise, DNA recovered from the other swabs taken from the broken plate had the same profile as Ms Rose.
 - d. DNA testing of the artificial breast implants identified a female profile that matched an elimination sample of a person on FASS' Quality Assurance Register. Otherwise, testing was unsuccessful on both artificial breast implants.
 - e. A positive screening test for blood was returned and two hair samples were retrieved from the white bra. Testing of the blood stain returned a partial DNA profile for Ms Rose. One

³¹ Expert Certificate of Michele Anne Franco dated 26 May 2023 (SCOI.83340).

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hair sample has been identified as suitable for nuclear DNA testing and has been stored for testing, as required. Testing on the second hair sample was unsuccessful. The Inquiry will be requesting that further DNA testing be performed on the suitable hairs.

- f. A positive screening test for blood was returned and a number of hair samples were retrieved from the orange mini-skirt. One hair sample returned a DNA profile for Ms Rose. Testing on the remaining hair samples was either unsuccessful or returned a low DNA profile that is not suitable for comparison.
- g. A positive screening test for blood was returned and several hair samples were retrieved from the white t-shirt. Testing of two hair samples returned a DNA profile for Ms Rose. Three of the hair samples were identified as originating from an animal. Mitochondrial DNA testing may be able to determine the type of animal. The Inquiry will be requesting that the mitochondrial testing be performed on the animal hairs. Testing of the remaining hair samples was otherwise unsuccessful or returned a low DNA profile that is not suitable for comparison.
- h. A clump of white tissues was located in the same exhibit bag as the white t-shirt. Yellow stains were observed on the tissues. Spermatozoa were not detected on the tissues.
- i. A positive screening test for blood was returned and several hair samples were retrieved from the white underpants. The hair samples are unsuitable for DNA testing.

Attempts to locate and contact family members

- 55. The Inquiry attempted to contact Ms Rose's brother, Ian Rose, and Ms Rose's mother, Bertha Rose, but these attempts have been unsuccessful.

Professional opinions obtained

- 56. As to the likely manner and cause of Ms Rose's death, the Inquiry sought the expert opinion of Dr Iles. That report is discussed further below.
- 57. As to the possible motive of Ms Rose's killer, the Inquiry sought the expert opinion of Dr Sullivan. That report is discussed below.

Report of Dr Danny Sullivan

- 58. Dr Sullivan, whose report is dated 15 May 2023, considered whether any aspects of the manner of death and/or crime scene may indicate that the homicide occurred in the context of LGBTIQ hate or bias. He considered that there were "no aspects of the offence that suggest that the death was

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associated with Ms Rose’s transgender identity” and that “no elements of the crime scene appear clearly associated with a hate crime”.³² As to the presence of an unexplained or unidentified palm print on Ms Rose’s breast implant, he opines that this does not clearly establish a sexual motive or interaction.³³

59. As to the possible motivations of the perpetrator, Dr Sullivan notes that the can of plums between Ms Rose’s legs may have had a symbolic sexual meaning to the killer but this cannot be confirmed and there was no indication of sexual interference.³⁴ He does not consider that on the available evidence, sexuality or gender is a motive for the assault on Ms Rose.³⁵
60. Dr Sullivan's opinion highlights the inherent limitations of attempting to ascertain motive in circumstances where the offender is unknown.

Fingerprint analysis

61. Fingerprints were found in various parts of the crime scene, including on the telephone handset, broom cupboard, archway leading to the dining room, bottle, appointment card, Christmas card, vehicle, and breast implant.
62. On 8 March 2023, at the request of the Inquiry, a comparative examination of the unidentified fingerprints was taken, both manually and against the National Automated Fingerprint Identification System (**NAFIS**) database. The following results were obtained:³⁶
 - a. The fingerprints located on the telephone handset, broom cupboard, appointment card and archway were those of Ms Rose;
 - b. The fingerprints on the breast implant could not be identified, however Ms Durward’s fingerprints were excluded;
 - c. The fingerprint located on the envelope of the Christmas card was Mr Becker’s;
 - d. The fingerprints located on the surface of the bottle could not be identified, however Mr Becker was excluded; and
 - e. The fingerprints located on the internal rear vision mirror of Ms Rose’s vehicle could not be identified.

³² Expert Report of Dr Danny Sullivan dated 15 May 2023, [31] (SCOI.83317).

³³ Expert Report of Dr Danny Sullivan dated 15 May 2023, [31] (SCOI.83317).

³⁴ Expert Report of Dr Danny Sullivan dated 15 May 2023, [32] (SCOI.83317).

³⁵ Expert Report of Dr Danny Sullivan dated 15 May 2023, [32] (SCOI.83317).

³⁶ Expert Certificate of Karen Halbert dated 8 March 2023, 3-8 (NPL.0100.0001.0008).

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63. The identification of Ms Rose's fingerprints on locations within her own unit is unsurprising. The balance of the findings are not of any significant forensic utility to the investigation of Ms Rose's death. Although there may be some relevance in Ms Durward's fingerprints being excluded from the breast implant, this does not render the possibility that the implant was displaced during the course of the assault on Ms Rose futile.

Report of Dr Iles

64. The Inquiry received the report of Dr Iles on 28 May 2023.³⁷
65. Dr Iles says that Ms Rose's cause of death is best described as blunt head injuries. She observes blunt impacts to both sides of Ms Rose's head and face. On first principles, sustaining injuries to multiple different planes of the head is not indicative of a simple fall. Dr Iles considers that there is limited potential for a complex fall inside Ms Rose's home. She also precludes a complex fall related to stairs outside of Ms Rose's home.
66. Dr Iles cannot exclude that Ms Rose's head injuries are due to blows to the left and right side of the head with an object/weapon. However, it is possible that this spectrum of injuries may represent a significant crush type injury from a heavy object. The only object that Dr Iles can see in the photographs that may cause such an injury is the toppled over television.
67. Dr Iles observes from the crime scene photos that the vents of the upturned television have a linearity similar, to an extent, to the linear patterning of intradermal bruising to the left side of Ms Rose's face. However, Dr Iles cannot determine from the photographs the profile of this part of the television, nor can she accurately compare this to the injury on the left side of her face. She also cannot exclude that this injury was caused by stomping on the face, but considers it is less likely. The Inquiry has reviewed all the material available to it and has been unable to find information relating to the make and model of the television. Unfortunately, the television was never treated as an exhibit by police and was never subjected to any forensic examination.
68. Dr Iles considers that the traumatic brainstem haemorrhage sustained by Ms Rose signifies significant primary traumatic brain injury and is highly suggestive of rapid unconsciousness following injury. Such an injury could occur via crush injury to the head from a heavy object. Fatal crushing head injuries from falling televisions are well recognised in children but are less common in adults. Dr Iles considers that the scattered objects and disturbed furniture raise the possibility of an altercation in Ms Rose's home. The television may have fallen on Ms Rose's head during the altercation. Whilst speculative, this

³⁷ Report of Dr Linda Iles, 28 May 2023 (SCOI.8339).

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scenario can account for the spectrum of pathological findings in the case. Significantly, Dr Iles cannot readily construct a scenario that does not involve another individual in Ms Rose's death.

69. Dr Iles notes that her review has been limited in some respects. Some descriptive details are lacking, and the extent of photography has limited her capacity for a thorough review. In particular, no scales of measurement have been used in post-mortem photography. This is particularly pertinent to the injury to the left side of Ms Rose's face. There is injury to her left cheek and earlobe that has distinct rectangular linear components. Without a scale applied, it is difficult to compare this injury to potential objects that may have caused it. Dr Iles also notes that there are no photos of Ms Rose's hands nor any comment in the report regarding the presence or absence of offensive or defensive injuries.

Other sources of information

70. On 14 September 2022, the Inquiry conducted a review of the Victorian Queer Archives (via NSW State Library). No relevant information in relation to Ms Rose's death was identified.

Persons of interest as at 2022-23

71. The primary person of interest in this case continues to be Ms Durward. Ms Durward died in 2006.

Submission as to evidence now available

72. 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.

Ms Rose's Background

73. Ms Rose was born on 29 April 1956 and was 41 years old when she died. She was given the name David Rose at birth. She had one younger brother and was in regular contact with her parents. She worked at Westpac Bank in Sydney as a systems programmer and volunteered at radio stations 2RPH and 2SER as a presenter reading newspaper articles.³⁸ In the context of her volunteer work at the radio stations, Ms Rose came to know Ms Durward and Mr Becker.³⁹
74. At the age of around 12 years old, Ms Rose was prescribed a human growth hormone with a view to spurring her growth.⁴⁰ This occurred in response to bullying at school due to her height. Ms Rose took human growth hormones for a period of two years, but she only grew to approximately 5ft 1inches.⁴¹

³⁸ Statement of Bertha Ruth Rose dated 9 January 1998, [7] (SCOI.00041.00030).

³⁹ Transcript of recorded interview with Stephen Becker dated 22 December 1997, 3 (SCOI.0041.00103); Transcript of recorded interview with Sandra Durward dated 26 December 1997, 3 (SCOI.00041.00101).

⁴⁰ Statement of Bertha Ruth Rose dated 9 January 1998, [8] (SCOI.00041.00030).

⁴¹ Statement of Bertha Ruth Rose dated 9 January 1998, [8] (SCOI.00041.00030); Statement of Max Rose dated 9 January 1998, [8] (SCOI.00041.00032).

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75. On 7 October 1997, Ms Rose commenced hormonal treatment of Androcur and Progynova, prescribed by Dr Alfred Steinbeck, a medical practitioner and endocrinologist.⁴² Ms Rose had told Dr Steinbeck that she had never had a sexual relationship with a male or female, and further that she was not attracted to men and was only attracted to women as friends.⁴³
76. There is some evidence as to the attitude of Ms Rose's parents and brother to her transition.
77. Bertha Rose, the mother of Ms Rose, stated that at 21 years old, Ms Rose approached her and said that "[she] should have been a girl and that [she] would feel more comfortable as a girl."⁴⁴ Max Rose, Ms Rose's father was also present, and they were both upset at Ms Rose's decision to transition. Bertha Rose states that she was "very upset", and they did not "discuss the subject very much".⁴⁵ On one occasion, Bertha Rose became very upset when she saw Ms Rose wearing blue mascara and did not like Ms Rose wearing female clothing. She also told Ms Rose not to come back into her home wearing nail polish. Ms Rose returned the following week with nail polish on.
78. Bertha Rose and Max Rose decided that they were "not going to be able to change" Ms Rose's mind and "did not pressure her anymore".⁴⁶ It appears that Ian Rose was more accepting of Ms Rose's transition.⁴⁷

Events leading up to Ms Rose's death

79. On 18 December 1997, Ms Rose was prescribed anti-nausea medication to treat a side effect of her hormonal treatment.⁴⁸ That day, she contacted her friend Nicola Svenson and left a voice message on Ms Svenson's answering machine saying she had been "sick as a dog for the last few days".⁴⁹
80. On 19 December 1997, Ms Rose was prescribed further anti-nausea medication.⁵⁰ She did however attend Basil Real Estate in Kensington to wish her agent, Basil Michalopoulos a Merry Christmas and handed him a box of chocolates.⁵¹ She told Mr Michalopoulos that she was going away, would be back in January and to post her statement to her. Ms Rose had planned to take a trip to the Jenolan caves with her friend Marcia Vagg.⁵²

⁴² Statement of Dr Alfred Steinbeck dated 21 January 1998, [10] (SCOI.00041.00083)

⁴³ Statement of Dr Alfred Steinbeck dated 21 January 1998 (SCOI.00041.00083).

⁴⁴ Statement of Bertha Ruth Rose dated 9 January 1998, [15] (SCOI.00041.00030).

⁴⁵ Statement of Bertha Ruth Rose dated 9 January 1998, [15] (SCOI.00041.00030).

⁴⁶ Statement of Max Rose dated 9 January 1998, [14] (SCOI.00041.00032).

⁴⁷ Statement of Bertha Ruth Rose dated 9 January 1998, [27] (SCOI.00041.00030).

⁴⁸ Statement of Dr Phillip Georgouras dated 7 January 1998, [5] (SCOI.00041.00060).

⁴⁹ Statement of Nicola Svenson dated 23 December 1997, [10] (SCOI.00041.00046).

⁵⁰ Statement of Dr Phillip Georgouras dated 7 January 1998, [6] (SCOI.00041.00060).

⁵¹ Statement of Basil Michalopoulos dated 1 March 1998, [7] (SCOI.00041.00088).

⁵² Statement of Marcia Vagg dated 31 December 1997, [15] (SCOI.00041.00049).

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81. Ms Rose usually went to the chemist on Saturdays to receive her hormone treatment.⁵³ According to Pamela Noble, a pharmacist who dispensed medication to Ms Rose on 6 and 13 December 1997, records indicate that Ms Rose did not attend the pharmacy on Saturday 20 December 1997.⁵⁴
82. On 20 December 1997, at 10:00am, Ms Rose spoke to Bertha Rose.⁵⁵ Ms Rose indicated that she was feeling better but still tired.
83. At around 11:15am, Ms Rose spoke to Mr Becker.⁵⁶ She told him she was unwell and too tired to talk. He told her that he will call her the following day and asked her to “please leave your answering machine on”.⁵⁷
84. Ms Rose was last seen alive between 1-2pm by Ai Lun Gu, who lived in the same unit block.⁵⁸ Ms Rose last spoke to a friend, Louise Sadek, via telephone at 2:48pm on the same day for over 8 minutes.⁵⁹ Ms Rose stated that she was unwell and was watching TV. Ms Rose’s mother attempted to call Ms Rose multiple times, including at 3:00pm.⁶⁰ The phone was engaged and remained that way until her last attempt at about 9:00pm, and the following morning.⁶¹
85. At about 8:45pm, Mr Becker attended Ms Rose’s unit to deliver a Christmas gift.⁶² He knocked on the door and rang the doorbell for a period of around 5 or 10 minutes but could not raise Ms Rose. An attempt was also made to telephone Ms Rose with no success. Mr Becker observed that the lights were off and could not hear anything in Ms Rose’s unit. He placed a Christmas greeting card and gift between the screen door and the front door of Ms Rose’s unit, which was locked.⁶³
86. On the morning of 21 December 1997, between 7:15am and 8:00am, Mr Becker made multiple attempts to contact Ms Rose by telephone.⁶⁴ Her phone was off the hook. He made contact with the Prince of Wales Hospital to enquire as to whether Ms Rose had been admitted as a patient. He had fears that Ms Rose “may possibly have taken drastic action”.⁶⁵

⁵³ First statement of Pamela Noble dated 21 January 1998, [9] (SCOI.00041.00081).

⁵⁴ First statement of Pamela Noble dated 21 January 1998, [10] (SCOI.00041.00081).

⁵⁵ Statement of Bertha Ruth Rose dated 9 January 1998, [39] (SCOI.00041.00030).

⁵⁶ Transcript of recorded interview with Stephen Becker dated 22 December 1997, 6 (SCOI.00041.00103).

⁵⁷ Transcript of recorded interview with Stephen Becker dated 22 December 1997, 6 (SCOI.00041.00103).

⁵⁸ Statement of Ai Lun Gu dated 23 December 1987, [5] (SCOI.00041.00041).

⁵⁹ Statement of Louise Sadek dated 23 December 1997, [6] (SCOI.00041.00038); Phone calls surrounding the movements of Durward, 20 December 1997 (SCOI.10123.00077).

⁶⁰ Statement of Bertha Ruth Rose dated 9 January 1998, [40] (SCOI.00041.00030).

⁶¹ Statement of Bertha Ruth Rose dated 9 January 1998, [42] (SCOI.00041.00030).

⁶² Transcript of recorded interview with Stephen Becker dated 22 December 1997, 7 (SCOI.00041.00103).

⁶³ Transcript of recorded interview with Stephen Becker dated 22 December 1997, 7 (SCOI.00041.00103).

⁶⁴ Transcript of recorded interview with Stephen Becker dated 22 December 1997, 8 (SCOI.00041.00103).

⁶⁵ Transcript of recorded interview with Stephen Becker dated 22 December 1997, 8 (SCOI.00041.00103).

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87. Sometime between 11am and 1pm on 21 December 1997, a neighbour in the unit block, Takao Asano, heard a plate breaking and assumed it came from Ms Rose's unit. He made his statement on 22 December 1997. He had previously worked in a restaurant and was familiar with the sound of breaking plates.⁶⁶ A possibility remains that Mr Asano could have heard the plate break on 20 December 1997. On the totality of the evidence it is unlikely that anyone attended Ms Rose's unit on 21 December 1997, and that by this point in time Ms Rose was already deceased.
88. Somewhere between 2 – 2.30pm on 21 December 1997, Ms Rose's mother and father went to Ms Rose's home. Bertha Rose noticed the Christmas parcel left between the door and the security door. She rang the doorbell several times and it stopped working. She and her husband banged the door loudly but could not raise Ms Rose. Bertha left a post it note on the door asking Ms Rose to call her.⁶⁷
89. On the morning of 22 December 1997, Mr Becker made contact with Bertha Rose and expressed his concerns for Ms Rose's welfare. Bertha Rose indicated that she could not recall the exact conversation she had with Mr Becker, but she recalled Mr Becker saying several kind things about Ms Rose. In her statement, Bertha Rose says "when he spoke about [Samantha] he spoke of [her] in the past tense. This really worried me because I was already concerned about [Samantha]. He really just rambled on and in the end I told him I had to go".⁶⁸
90. Shortly after 9:20am, Ms Rose's mother and brother attended Randwick Police Station. They then went to the unit to meet police and Ms Rose's father to gain access.
91. As noted above, there was no evidence of forced entry to Ms Rose's unit, suggesting she may have known her killer.⁶⁹ A set of keys were located in the bedroom.⁷⁰ Ms Rose's telephone was on the bench with the hand piece hanging to the floor.⁷¹ A television was lying face down in the lounge room.⁷² The answering machine was upside down on the floor in the hallway.⁷³ There was a pink coloured breast insert and photograph frame lying face down in the hallway.⁷⁴ Another breast insert was on the lounge room floor.⁷⁵

⁶⁶ Statement of Takao Asano dated 22 December 1997, [6] (SCOI.00041.00011); Statement of Plain Clothes Senior Constable Andrew Bruce Pincham dated 4 January 1998, [15] (SCOI.00041.00020).

⁶⁷ Statement of Bertha Ruth Rose dated 9 January 1998, [42] (SCOI.00041.00030).

⁶⁸ Statement of Bertha Ruth Rose dated 9 January 1998, [47] (SCOI.00041.00030).

⁶⁹ Statement of Detective Senior Constable Lyle William Van Leeuwen dated 18 October 1998, [17] (SCOI.00041.00024).

⁷⁰ Statement of Detective Senior Constable Lyle William Van Leeuwen dated 18 October 1998, [13] (SCOI.00041.00024).

⁷¹ Statement of Detective Senior Constable Lyle William Van Leeuwen dated 18 October 1998, [10] (SCOI.00041.00024).

⁷² Statement of Detective Senior Constable Lyle William Van Leeuwen dated 18 October 1998, [11] (SCOI.00041.00024).

⁷³ Statement of Detective Senior Constable Lyle William Van Leeuwen dated 18 October 1998, [12] (SCOI.00041.00024).

⁷⁴ Statement of Detective Senior Constable Lyle William Van Leeuwen dated 18 October 1998, [12] (SCOI.00041.00024).

⁷⁵ Statement of Detective Senior Constable Lyle William Van Leeuwen dated 18 October 1998, [11] (SCOI.00041.00024).

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Crime Scene Investigators

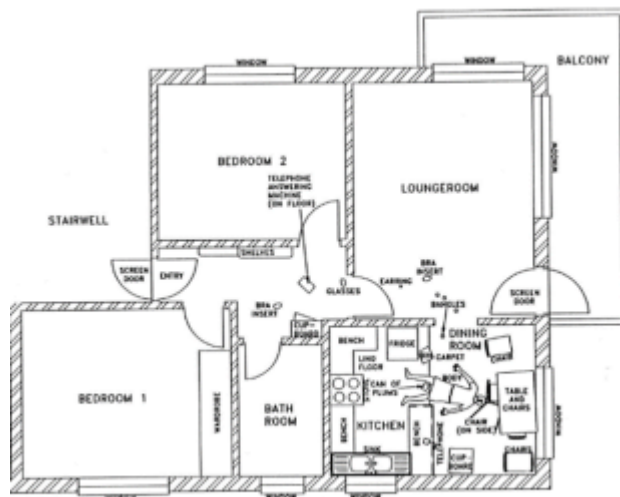
92. Crime Scene Officers, Detective Senior Constable Lyle William Van Leeuwen and Detective Senior Constable Donald Nicol, attended Ms Rose's residence upon the discovery of Ms Rose's body. Following their examination of the crime scene, Detective Senior Constable Leeuwen and Detective Senior Constable Nicol made a number of observations, including:⁷⁶
- a. There were no signs of forced entry to the balcony doors;
 - b. The front door could only be closed and locked using a key;
 - c. The assault appeared to have commenced in the hallway near the bathroom door and continued into the lounge room, where the ironing board has been knocked over and shorted out the electricity to the property;
 - d. The assault continued into the kitchen where Ms Rose was found;
 - e. The offender left the premises via the front door, closing and locking the door with a key upon leaving. The offender did not lock the security door as a post it note had been placed on the front door by Ms Rose's mother;
 - f. To the right of Ms Rose's foot, small pieces of a broken plate were observed on the floor. The pieces were mustard in colour. A search of Ms Rose's fridge revealed two further pieces of a broken plate which were also mustard in colour.
93. DSC Leeuwen concluded that the ironing board had fallen and dislodged the television that had been sitting on crates. The ironing board had a shirt hanging from the end. The iron was turned on and was face down on top of the extension lead. The iron had melted the insulation on the power cord and short circuited the power supply to the unit.⁷⁷ This might suggest Ms Rose was ironing just prior to the assault.

⁷⁶ Statement of Detective Senior Constable Lyle William Van Leeuwen dated 18 October 1998, [17] (SCOI.00041.00024).

⁷⁷ Statement of Detective Senior Constable Lyle William Van Leeuwen dated 18 October 1998, [11] (SCOI.00041.00024).

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94. Detective Senior Constable Mealing made a sketch plan of the crime scene. It is extracted below for ease of reference.⁷⁸



Occupants of Addison Street, Kensington residence

95. At some stage before Ms Rose's death, Ms Durward stayed with her at the Kensington unit.⁷⁹ At least at that time, Ms Durward had a set of keys to Ms Rose's unit.⁸⁰
96. Between around October and December 1997, Ms Feary spoke with Ms Rose regularly in relation to Ms Durward's problems.⁸¹
97. Ms Feary's understanding was that Ms Durward had left Ms Rose's unit on her own accord.⁸² However, Ms Rose provided Ms Vagg with a differing account.⁸³ Ms Vagg states that Ms Rose called her and told her that a friend of hers was having very serious personal problems, was addicted to heroin and was an alcoholic. Ms Rose also told Ms Vagg that she had a conversation with the friend's sister, who told her she had thrown out the friend when she caught her stealing to buy heroin and alcohol. The friend's sister did not want Ms Rose to take her in because she feared what she might do. Ms Rose said she had let the friend stay with her before but had thrown her out after catching her drinking turps or methylated spirits which had been mixed with cordial.

⁷⁸ Statement of Detective Senior Constable Tim Mealing dated 21 September 1998 (SCOI.00041.00025).

⁷⁹ Transcript of recorded interview with Sandra Durward dated 26 December 1997, 9 (SCOI.00041.00101).

⁸⁰ Statement of Fiona Kathryn Feary dated 9 January 1998, [15] (SCOI.00041.00071).

⁸¹ Statement of Fiona Kathryn Feary dated 9 January 1998, [13] (SCOI.00041.00071).

⁸² Statement of Fiona Kathryn Feary dated 9 January 1998, [14] (SCOI.00041.00071).

⁸³ Statement of Marcia Vagg dated 31 December 1997, [19] (SCOI.00041.00049).

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98. Ms Vagg advised Ms Rose to not let the friend back in. Ms Rose was conflicted saying she was her friend, and it was a very hard thing to do. According to Ms Vagg, Ms Rose said that Mr Durward's sister described Ms Durward as an opportunist who was capable of anything.⁸⁴
99. After Ms Durward left the unit, Ms Rose contacted Ms Feary regarding Ms Durward returning her unit keys.⁸⁵ Ms Feary spoke with Ms Durward who told her she would organise to return them. She was of the belief that they had been returned but could not be 100% sure.⁸⁶
100. Ms Durward moved out and Ms Rose continued to live at the Kensington residence alone. Several witnesses stated that Ms Rose was very security conscious.⁸⁷

Police investigation into Ms Durward's potential involvement and movements on 20 December 1997

101. During the course of the police investigation into Ms Rose's death, several people provided information regarding Ms Durward. In a statement obtained on 24 December 1997, Megan Brownlow, a mutual friend of Ms Rose and Ms Durward, told police that Ms Rose had contacted her and warned her about Ms Durward's problems with alcohol and theft.⁸⁸ Ms Brownlow was under the impression that Ms Rose was afraid of Ms Durward and noted that Ms Rose was much smaller than Ms Durward.⁸⁹
102. Ms Durward's capacity for aggression was noted by various witnesses, including one instance where she admitted to kicking a friend's child.⁹⁰ She was also described as being someone who could change their personality very quickly.⁹¹

⁸⁴ Statement of Marcia Vagg dated 31 December 1997, [19] (SCOI.00041.00049).

⁸⁵ Statement of Fiona Kathryn Feary dated 9 January 1998, [15] (SCOI.00041.00071).

⁸⁶ Statement of Fiona Kathryn Feary dated 9 January 1998, [16] (SCOI.00041.00071).

⁸⁷ See, eg, Statement of Fiona Kathryn Feary dated 9 January 1998, [15] (SCOI.00041.00071) and Statement of Marcia Vagg dated 31 December 1997, [18] (SCOI.00041.00049).

⁸⁸ Statement of Megan Patricia Brownlow dated 24 December 1997, [6] (SCOI.00041.00040).

⁸⁹ Statement of Megan Patricia Brownlow dated 24 December 1997, [7] (SCOI.00041.00040).

⁹⁰ Statement of Elizabeth Ruth King dated 14 January 1998, [22] (SCOI.00041.00075).

⁹¹ Statement of Elizabeth Ruth King dated 14 January 1998, [24] (SCOI.00041.00075).

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103. At the time of Ms Rose’s death, there is evidence of Ms Durward drinking almost every day.⁹² She drank whatever was around. A flat mate said he had seen Ms Durward get up and have a drink to start off the day.⁹³ There is also evidence of her having what she termed “bad” depression.⁹⁴

(a) Inculpatory statements made by Ms Durward and related suspicious conduct following Ms Rose’s death

104. Following Ms Rose’s death, Ms Durward made a number of apparent inculpatory statements to various persons.

105. On 24 December 1997, Ms Durward told her colleague, Irene Patricia Burrows, that she thought she knew who killed Ms Rose and relevantly, that the door was locked and “there was no sign of forced entry” into Ms Rose’s unit. According to Ms Burrows, Ms Durward said that her stepson had keys to the unit.⁹⁵

106. On 26 December 1997, Ms Durward participated in an interview with Detective Sergeant Matthes (**DS Matthes**) and DSC Thornton. In that interview, Ms Durward told police that, while she had been staying in Ms Rose’s apartment while Ms Rose was travelling, an ex-partner Paul Hilton stayed with her with his then-girlfriend. Ms Durward said Mr Hilton’s son Joel Hilton, while visiting Paul Hilton in Ms Rose’s apartment, had stolen CDs, some tools and electrical appliances. Ms Durward also said that Joel Hilton might have had a set of keys to Ms Rose’s apartment made. When asked about her own movements on 20 December 1997, Ms Durward stated that she could not remember but would have been at work. Ms Durward then recalled that she had in fact worked that evening and made reference to a memorable client.

107. That same day, a search of Ms Durward’s room, at a house she was staying at in St Clair, was conducted with her permission. During the course of that search, an incomplete letter authored by Ms Durward was located. In that letter, Ms Durward wrote:

Geoff, I may as well come clean with you, I’m sick of dissimulating. You may prefer not to know any of this, but I’m way out there at the moment, Whinged by horror not only at the fact that Dave [presumably, Samantha] has gone forever, but by the distinct possibility that I was

⁹² Statement of Carl Ellwood dated 26 December 1997, [7] (SCOI.00041.00047).

⁹³ Statement of Carl Ellwood dated 26 December 1997, [7] (SCOI.00041.00047).

⁹⁴ Transcript of recorded interview with Sandra Durward dated 6 February 1997, 32 (SCOI.00041.00102).

⁹⁵ Statement of Irene Patricia Burrows dated 27 December 1997, [9] (SCOI.00041.00061).

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responsible, however indirectly. I'll get to that later. In the meantime, I need to tell you about me.

108. On 27 December 1997, Ms Durward contacted DS Matthes and provided further information as to her movements on 20 December 1997. In particular, she stated that she had attended an Alcoholics Anonymous meeting in Neutral Bay, and that Mr Thwaites, 'Peter' and 'Clive' were also in attendance and could provide an alibi for her.⁹⁶ The alibi evidence assumed significance and is dealt with separately in these submissions below. This evidence as to Ms Durward's alibi prompted further police inquiries and led to a second police interview of Ms Durward on 6 February 1998 (discussed further below).
109. That same day, Ms Durward told Louise Clifford words to the effect of "there was no sign of forced entry", "her fingerprints would be all over the place" and that she had "keys" to Ms Rose's unit.⁹⁷ Whilst police were speaking to Ms Burrows, Ms Durward spoke to Ms Clifford and said:⁹⁸

At least [I now know] what day it happened on and they're not telling me anything about how it happened.

110. Ms Clifford did not know how Ms Durward came upon that information. Ms Durward gave evidence in this regard at the coronial inquest into Ms Rose's death (see [145] below).⁹⁹
111. On 31 December 1997, whilst working at Bare Bunnies, Ms Durward spoke to a colleague, Nazmeen Nisha Hudson. At around 9:00 to 9:30pm, Ms Durward was asleep in the reception area and said, "I must have done it in my sleep."¹⁰⁰ When asked what she had done, Ms Durward told Ms Hudson, "I must have killed this guy, didn't you see it on telly. The cross dresser. I couldn't have done it. He was my best friend."¹⁰¹ Ms Hudson told Ms Durward not to say these things if she did not kill Ms Rose as she "could be locked up".¹⁰² Ms Durward repeated the phrases, "I might have killed him in my sleep" and "no, it couldn't have been me. I must have been drinking".¹⁰³
112. Ms Hudson recalls Ms Durward attempting to make a phone call a couple of times, stating that it was her "alibi".¹⁰⁴ She also recalls Ms Durward speaking on the phone at a later stage and asking that

⁹⁶ Statement of Detective Senior Constable Paul Michael Thornton dated 23 October 1998, [253] (SCOI.00041.00005).

⁹⁷ Statement of Louise Margaret Clifford dated 6 January 1998, [8] (SCOI.00041.00055).

⁹⁸ Statement of Louise Margaret Clifford dated 6 January 1998, [9] (SCOI.00041.00055).

⁹⁹ Statement of Louise Margaret Clifford dated 6 January 1998, [9]-[10] (SCOI.00041.00055).

¹⁰⁰ Statement of Nazmeen Nisha Hudson dated 10 January 1998, [3] (SCOI.00041.00068).

¹⁰¹ Statement of Nazmeen Nisha Hudson dated 10 January 1998, [3] (SCOI.00041.00068).

¹⁰² Statement of Nazmeen Nisha Hudson dated 10 January 1998, [3] (SCOI.00041.00068).

¹⁰³ Statement of Nazmeen Nisha Hudson dated 10 January 1998, [4] (SCOI.00041.00068).

¹⁰⁴ Statement of Nazmeen Nisha Hudson dated 10 January 1998, [5] (SCOI.00041.00068).

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person, “[have] any detectives come to check up?”¹⁰⁵ Ms Hudson observed that Ms Durward had a black eye.¹⁰⁶

113. On one occasion between 31 December 1997 and 1 January 1998, whilst working at Bare Bunnies, Ms Durward stated to her colleague Marisa Craker, “my life has been a real nightmare for the last few weeks” before falling asleep on a lounge located in the reception area.¹⁰⁷ When she awoke, Ms Durward was asked to get up from the lounge. She stood up, placed both hands on the sides of her head and said, “I don’t know what’s wrong with me. Maybe it’s not a nightmare. Maybe I did kill him.”¹⁰⁸ Ms Craker replied, “You’re fucking kidding. You better get your shit together because if you did kill someone, this’ll put you away for a long time.”¹⁰⁹
114. Ms Durward then indicated that she needed to make a phone call stating, “this is my alibi”.¹¹⁰ She tried to make a call using a payphone but hung up and did not speak to anyone. When she returned to Bare Bunnies, Ms Durward sat down on the steps in front of the reception desk and said, “Maybe it’s not a nightmare, maybe I did kill him in my sleep”.¹¹¹ She made reference to her stepson previously staying at Ms Rose’s unit when she was overseas. She also made reference to her fingerprints being in the unit because she had stayed there before. Ms Craker did not think that Ms Durward was drunk or under the influence of any drugs.¹¹² She observed that Ms Durward still had the black eye which she had seen two weeks prior.¹¹³
115. Ms Feary states that Ms Durward told her that Ms Rose may have died as a result of the television falling from its stand.¹¹⁴ She noted that the stand was unstable. No persons other than investigating police and members of Ms Rose’s family were aware that signs of a struggle were evident in the unit and that the television was lying screen down in the lounge room. That information was also not released to the media.¹¹⁵
116. On 28 January 1998, Ms Durward was living with Ms Burrows. Ms Burrows states that on that day, Ms Durward was in a “very angry state”, had urinated on the carpet, packed her bags and was leaving their home. She refused to return her set of keys to Ms Burrows, stating that she paid for them to be cut.

¹⁰⁵ Statement of Nazmeen Nisha Hudson dated 10 January 1998, [5] (SCOI.00041.00068).

¹⁰⁶ Statement of Nazmeen Nisha Hudson dated 10 January 1998, [6] (SCOI.00041.00068).

¹⁰⁷ Statement of Marisa Craker dated 10 January 1998, [11] (SCOI.00041.00065).

¹⁰⁸ Statement of Marisa Craker dated 10 January 1998, [13] (SCOI.00041.00065).

¹⁰⁹ Statement of Marisa Craker dated 10 January 1998, [13] (SCOI.00041.00065).

¹¹⁰ Statement of Marisa Craker dated 10 January 1998, [13] (SCOI.00041.00065).

¹¹¹ Statement of Marisa Craker dated 10 January 1998, [14] (SCOI.00041.00065).

¹¹² Second statement of Marisa Craker dated 26 January 1998, [6] (SCOI.00041.00066).

¹¹³ Statement of Marisa Craker dated 10 January 1998, [19] (SCOI.00041.00065).

¹¹⁴ Statement of Fiona Kathryn Feary dated 9 June 1999, [10] (SCOI.00041.00098).

¹¹⁵ Statement of Detective Senior Constable Paul Thornton dated 23 October 1998, [275] (SCOI.00041.00005).

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Ms Burrows was “shocked” by Ms Durward’s behaviour and her refusal to give back the keys. Ms Burrows observed that Ms Durward’s eyes were “black and glazed” and that in that mood, she thought Ms Durward was “capable of murder”.¹¹⁶

117. In her second police interview on 6 February 1998, Ms Durward offered the following explanations for her several statements at [111]-[114], namely that she may have killed Ms Rose and needed to make a phone call as it was her alibi:¹¹⁷

Well this would have been about the time when I was feeling under so much pressure that I didn't know what I was saying, what I was doing. I certainly wouldn't have meant it. I don't know, I may have said it, but it, it, I mean that's along the lines of, I, I don't know, I don't, if I said it, it was, it was, it would have been in, out of fatigue and desperation and grief and I doubt whether I would have used those words because I'd become aware by that stage in the investigation that every single thing I say to every single person is being reported and, and, and, and, analysed...I've always had a sense of humour, it's not, it's gone, it's dead. I think you, you probably find I said to somebody at some stage some women have handbags referring to the sense that they might have a man with them on social occasions, a man with them with whom they have no relationship but who is referred to as a handbag and I said, Some women have handbags, I have an alibi, David. I would have referred to David.

118. As to whether she returned Ms Rose’s house keys, Ms Durward said, “look, as far as I am aware yes, but you know, I was drunk through that time”, “I would have got them back to [her] somehow, whether meeting [her] in town for lunch, which we did occasionally”, “all I know is I don’t have them in my possession” and “[she] was the security conscious one, [she] would have made sure [she] got them back”.¹¹⁸ She described Ms Rose’s spare set of house keys, which she utilised whilst living with her, as having “gremlins and at the bottom was a dolphin”.¹¹⁹

119. In that second interview, Ms Durward also stated as follows:¹²⁰

- a. Her last paid client at Final Touch was at 11:15pm on 20 December 1997;

¹¹⁶ Statement of Irene Patricia Burrows dated 29 January 1998, [23]-[25] (SCOI.00041.00063). At [22] there appears to be an erroneous reference to this occurring on 28 January 1997, however the balance of the statement suggests it occurred on 28 January 1998.

¹¹⁷ Transcript of recorded interview with Sandra Durward dated 6 February 1997, 41-45 (SCOI.00041.00102).

¹¹⁸ Transcript of recorded interview with Sandra Durward dated 6 February 1998, 26-28 (SCOI.00041.00102).

¹¹⁹ Transcript of recorded interview with Sandra Durward dated 6 February 1998, 25 (SCOI.00041.00102).

¹²⁰ Transcript of recorded interview with Sandra Durward dated 6 February 1998 (SCOI.00041.00102).

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- b. After her shift at Final Touch, Ms Durward commenced work at Bare Bunnies. Her last recorded client was at 2:00am on 21 December 1997 but she may have stayed longer;
- c. Ms Durward recalled completing her shift at Bare Bunnies at around 3:00am and contacting Premier Cabs. She then caught a taxi to Dobell Circuit, St Clair, where she was staying with Ms Miles;
- d. Her first client on 22 December 1997 was at around 12:10pm;
- e. Mr Becker informed her of Ms Rose's death on 23 December 1997;
- f. She experienced mood swings and suffers from "acute depression" but noted that is an "inwardly directed thing";
- g. She recalled making a written note on an envelope of what she did on 20 December 1997 and states "that was probably when I remembered, I connected the dots and realised that, that was the day, the Saturday that I had been to the AA meeting". Had she known she was going to be a suspect in the Rose case she would have "sat down with you at that point...I would have asked to sit down and work out with you at that point exactly what I'd been doing. I would have thought about it more deeply and I would have, but I just, I didn't know";
- h. She bruised easily and her black eye was "occasioned in the course of the work that I was doing by the client's clumsiness, it didn't hurt at the time. I wasn't aware of it until I think it must have been the next morning when I happened to look in the mirror when I was on the phone and saw that I had a black eye". Ms Durward denied being assaulted by anyone. As to her black cheekbone, she had it "for about a week and I think it happened to be the same eye which is unfortunate"; and
- i. She attributes her sore leg to a "slight hip problem" which was caused when she was a child.

(b) Evidence as to the relationship between Ms Durward and Mr Thwaites

120. Ms Durward and Mr Thwaites both referred to their relationship as being platonic; however, other evidence suggests that their relationship was of a more intimate or sexual nature. In particular, Ms

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Durward indicated to a work colleague that she was in love with Mr Thwaites and spent significant amounts of time with him (including spending half a day with him in his bedroom).¹²¹

121. In her police interview on 6 February 1998, Ms Durward said that she and Mr Thwaites were “friends”, having met in a detox unit at North Sydney Hospital.¹²² At first, she denied that they had a sexual relationship. When pressed, she noted that it was “a desire on my part to have a sexual relationship with David, but David was not interested. We had just been friends and nothing else”.¹²³ She then admitted that there “have been a couple of occasions where there has been oral sex” but did not consider this to mean they had a sexual relationship.¹²⁴
122. In that same police interview, Ms Durward acknowledged that she had previously stayed with Ms Rose but that Ms Rose did not want her to stay there any more.¹²⁵
123. On 3 January 1998, Mr Thwaites participated in an interview with police and stated that he had met Ms Durward six months prior, at the Phoenix Rehabilitation Centre at Royal North Shore Hospital.¹²⁶ They kept in regular contact after leaving the centre, and Ms Durward would often accompany him to Alcoholics Anonymous meetings.

(c) Evidence as to Ms Durward’s alibi for the afternoon of 20 December 1997

124. During the second police interview on 6 February 1998, Ms Durward said that, on 20 December 1997, she went to an Alcoholics Anonymous (“AA”) meeting at Neutral Bay, after which she had coffee with three other people at Maisey’s café, and then walked around with Mr Thwaites for an hour in Neutral Bay, before getting in a taxi at around 4pm to go to work.¹²⁷ Ms Durward identified the three people with whom she had coffee at Maisey’s café as Mr Thwaites, “Peter” (later identified as Peter Thornton) and “Clive” (later identified as Clive Starling).
125. Consistent with this, Mr Thwaites stated that on the morning of 20 December 1997, Ms Durward contacted him at the halfway house where he was residing. He told her about an AA meeting that he was attending in Neutral Bay later that day. Ms Durward said that she would meet him there.¹²⁸
126. Mr Thwaites did not see Ms Durward arrive at the meeting, but states that he saw her at the end of the meeting “talking to a couple of people”. He originally thought that she’d arrived just before the

¹²¹ Second Statement of Irene Patricia Burrows dated 29 January 1998, [17] (SCOI.00041.00061).

¹²² Transcript of recorded interview with Sandra Durward dated 6 February 1998, 36, 54 (SCOI.00041.00102).

¹²³ Transcript of recorded interview with Sandra Durward dated 6 February 1998, 54 (SCOI.00041.00102).

¹²⁴ Transcript of recorded interview with Sandra Durward dated 6 February 1998, 56 (SCOI.00041.00102).

¹²⁵ Transcript of recorded interview with Sandra Durward dated 6 February 1998, 49-50. (SCOI.00041.00102).

¹²⁶ Running sheet regarding interview with David John Thwaites dated 3 January 1998, 1 (SCOI.00041.00096).

¹²⁷ Transcript of recorded interview with Sandra Durward dated 6 February 1998 (SCOI.00041.00102).

¹²⁸ Statement of David John Thwaites dated 29 January 1998 (SCOI.00041.00087).

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end of the meeting, but she told him “she had been there a while”.¹²⁹ Subsequently, Mr Thwaites recalled Ms Durward arriving at around 1:15pm on 20 December 1997.¹³⁰ He stated that after the meeting he and other attendees went to Maisey’s café. At the inquest into Ms Rose’s death, Mr Thwaites was called to give evidence. During the course of his oral evidence at the inquest, Mr Thwaites made the following statements as regards the AA meeting:¹³¹

- a. He left Neutral Bay and arrived at his Narcotics Anonymous meeting slightly after 4:30pm on 20 December 1997; and
- b. He kept a daily journal as part of his recovery and made an entry in respect of 20 December 1997. Although that entry made no specific mention of the Alcoholics Anonymous meeting in Neutral Bay, he could “positively say” the meeting occurred on that day. He referred to a “great talk with older members at a coffee shop” which he says occurred after the Narcotics Anonymous meeting that he attended after the AA meeting. He was “actually certain” and had “absolutely no doubt” that coffee happened on the same day as the AA meeting at Neutral Bay. It must be stressed that this diary entry makes no mention at all of Ms Durward and no mention of the two of them talking for about an hour after the AA meeting.

127. Mr Starling stated that he also attended the AA meeting in Neutral Bay on 20 December 1997.¹³² He arrived at 1:15pm and observed Ms Durward in an “agitated” state, walking in and out of the meeting.¹³³ Mr Starling spoke to Ms Durward at the end of the meeting, and they proceeded to Maisey’s café.

128. Mr Thornton also attended the AA meeting in Neutral Bay. He stated that the meeting was definitely on 20 December 1997 as he was quite upset about leaving a job the evening before.¹³⁴ Mr Thornton recalled that the meeting concluded at around 1:30pm and he proceeded to Maisey’s café at some stage thereafter.

(d) Evidence as to meeting at Maisey’s Café

129. Ms Durward told police on 6 February 1998 that after speaking to a number of people at the AA meeting, she went to Maisey’s café in Neutral Bay. She arrived by herself at first and was then joined

¹²⁹ Statement of David John Thwaites dated 29 January 1998, [7] (SCOI.00041.00087).

¹³⁰ Running sheet regarding interview with David John Thwaites dated 3 January 1998, 1 (SCOI.00041.00096).

¹³¹ Transcript of the Coronial Inquest dated 18 November 1999, 3, 7-8, 12-13 (SCOI.83316).

¹³² Statement of Clive Ronald Starling dated 19 February 1998, [5] (SCOI.00041.00089).

¹³³ Statement of Clive Ronald Starling dated 19 February 1998, [5] (SCOI.00041.00089).

¹³⁴ Statement of Peter Leonard Thornton dated 10 February 1998, [5] (SCOI.00041.00097).

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“by Clive and then either Peter or David came in and then the other one came in”. Whilst at the café, Ms Durward said she contacted Final Touch to enquire as to whether she was rostered on the next day, with a view to making plans to attend another meeting. At that time, the receptionist advised that a person (who we now know to be Ms Miles) had called her in hysterics because her daughter was missing. Ms Durward then got in touch with Ms Miles who indicated that her child had been found. Ms Durward had been staying with Ms Miles in St Clair at the time.

130. Evidence of telephone calls to the Final Touch confirm that Ms Miles called the Final Touch four times between 1:05pm and 2:03pm, and that a call was made from Maisey’s café to the Final Touch at 2:35pm.¹³⁵
131. When interviewed by police on 3 January 1998, Mr Thwaites apparently stated that he and other meeting attendees went to Maisey’s café on Military Road where they stayed until 4:00pm, after which Ms Durward caught a taxi to go to work. A record of the interview with Mr Thwaites on 3 January 1998 also notes the following:¹³⁶

[T]he reason why Sandra had not told police about her going to the meeting was because she was embarrassed about it but he had attempted to tell her to be up front about it all. He admitted that Sandra had spoken to him about her alibi for being at the meeting but stated that the alibi was genuine. He could not account for her movements after 4.00pm that day.

132. In his signed statement dated 29 January 1998, Mr Thwaites said, contrastingly, that they left Maisey’s café around 10 minutes after Mr Starling left, which he estimated as being between 2:30pm and 3:00pm. Mr Thwaites said that he and Ms Durward walked a short distance before talking for about another hour.
133. Mr Starling’s evidence was that that Ms Durward “appeared very agitated and upset about something to the degree of being emotionally distressed. She tried to talk about her problems but just had difficulties about getting words out to tell me what was wrong.”¹³⁷ Mr Starling further stated:¹³⁸

She didn’t exactly say what she was concerned about but at the time I was trying to listen to Sandra and David at the same time. At the time I was aware she was under a lot of stress with regards to her personal life and what was going down with her friend. I think she was also looking for

¹³⁵ Phone calls surrounding the movements of Sandra Durward, 20 December 1997 (SCOI.10123.00077).

¹³⁶ Running sheet regarding interview with David John Thwaites dated 3 January 1998, 1 (SCOI.00041.00096).

¹³⁷ Statement of Clive Ronald Starling dated 19 February 1998, [6] (SCOI.00041.00089).

¹³⁸ Statement of Clive Ronald Starling dated 19 February 1998, [7]-[9] (SCOI.00041.00089).

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somewhere to stay. I didn't know what she was trying to get at the time but now I believe she was trying to get issues off her mind about the death of her friend.

Sandra mentioned that she was looking for somewhere to live because she had to get out of the place where she was staying at. She didn't say why or where she intended to look. I got the impression that she needed to find somewhere to live fairly urgently. She had a bag and a diary with her that day. I saw her flicking through the diary. She said she had to make a couple of calls but I don't know who to. I didn't see her make any phone calls while I was there.

134. Mr Starling was of the view that Ms Durward's state of mind was such that she "may think she had some involvement in the death" of Ms Rose.¹³⁹ In fairness, this appears likely to be retrospective speculation, noting that the evidence indicates Ms Rose was alive until at least 2.30pm on 20 December 1997. He noted that it is "not uncommon for alcoholics to have blackouts and not remember certain things".¹⁴⁰ Ms Durward made no admission to Mr Starling and his view was based on her body language and emotional state.¹⁴¹
135. Mr Thornton states that Ms Durward appeared to be looking for accommodation and made a number of telephone calls. Mr Thornton said he thought he left the coffee shop at about 2:15pm or 2:30pm.

(e) Evidence as to movements of Ms Durward and Mr Thwaites after Maisey's

136. After being at Maisey's café, Ms Durward states that she and Mr Thwaites had "some time to kill" and so they "walked around the area". Mr Starling and Mr Thornton went their separate ways. Ms Durward could not recall how long she and Mr Thwaites walked around for but estimated that she and Mr Thwaites arrived at Military Road at around 4:00pm. She also estimated leaving Maisey's café at "probably about 2.15, 2.30pm", suggesting they walked together for over an hour and a half.

¹³⁹ Statement of Clive Ronald Starling dated 19 February 1998, [12] (SCOI.00041.00089).

¹⁴⁰ Statement of Clive Ronald Starling dated 19 February 1998, [12] (SCOI.00041.00089).

¹⁴¹ Statement of Clive Ronald Starling dated 19 February 1998, [6]-[12] (SCOI.00041.00089).

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137. When she reached Military Road, Ms Durward realised “it was going to be impossible” for her to get to work in an hour. She then caught a taxi and train to work at St Mary’s. She estimated that she would have arrived at Final Touch at around 6:20pm.
138. Mr Thwaites noted the following in his statement as to his and Ms Durward’s movements after leaving Maisey’s cafe:¹⁴²
- a. After leaving Maisey’s café, he and Ms Durward walked a short distance before talking “for about another hour” mainly “about her new job”;
 - b. Ms Durward caught a taxi to work at St Mary’s;
 - c. Mr Thwaites proceeded to a second meeting, at Manly Hospital; and
 - d. Shortly after the meeting at Neutral Bay, Ms Durward contacted Mr Thwaites in relation to the “death of this person” and said that he could “be an alibi for her as we were at the same meeting on the weekend of his death”.
139. Mr Thwaites did not believe that Ms Durward had been drinking and observed that “she did not appear to be distressed about anything and from memory she was quite happy”. She did not complain about any illness or injury.”
140. At the inquest, Mr Thwaites gave evidence that he walked with Ms Durward and saw her get into a cab.¹⁴³

(f) Analysis of timing and the possibility of Ms Durward going to Kensington

141. The combined evidence of the telephone call logs and the recollections of Mr Starling and Mr Thornton confirm that Ms Durward attended the AA meeting and Maisey’s café and was there until at least 2:35pm. However, the weight of evidence suggests that she left Maisey’s café at or shortly after this time. After that, Ms Durward’s alibi up to 4pm is supported only by her own evidence and Mr Thwaites’ evidence. There are grounds to regard Mr Thwaites’ evidence as unreliable. These include that:
- a. Mr Thwaites had a close (and at least occasionally sexual) relationship with Ms Durward;
 - b. Mr Thwaites appears at first to have told police that they were at Maisey’s café until around 4pm and then later made a statement that they left the café between 2.30pm and 3pm (the latter being more consistent with evidence from other witnesses, but calling for

¹⁴² Statement of David John Thwaites dated 29 January 1998, [9]-[13] (SCOI.00041.00087).

¹⁴³ Transcript of coronial inquest dated 18 November 1999, 13 (SCOI.83316).

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an explanation of what Mr Thwaites and Ms Durward did during the hour between 3pm and 4pm);

- c. Mr Thwaites' was willing to offer a somewhat implausible explanation to explain Ms Durward's failure to mention the Neutral Bay meeting in her first police interview. Mr Thwaites suggested she did not tell police about the AA meeting at first because she was embarrassed about it, which stands in contrast to Ms Durward's plain willingness to refer to herself as an alcoholic and ex-addict, and refer to having attended a different AA meeting in the past, in her first interview with the police on 26 December 1997¹⁴⁴;
- d. The fact that Mr Thwaites made no reference in his diary entry to having spent any time with Ms Durward on 20 December 1997. While that might not be surprising if he simply had a casual coffee with her and two other people at Maisey's, it might be regarded as somewhat more surprising if he then spent over an hour having a one-on-one conversation with her.

142. It is possible that Ms Durward left Maisey's café via taxi and proceeded to Ms Rose's unit in Kensington. Given the evidence of Mr Starling and Mr Thornton that Ms Durward appeared worried about accommodation, it would not be surprising if Ms Durward went there to ask Ms Rose for a place to stay. These submissions return to this possibility below.

143. The evidence also suggests that Ms Rose arrived at work late on the afternoon/evening of 20 December 1997, and that there were several train services running to St Mary's, which offers further support for the theory that Ms Durward went to Kensington and from there to the Final Touch. This scenario also fits with the hypothesis that Ms Rose was assaulted by a person known to her sometime between 2:48pm, when she last spoke with Ms Sadek and around 3:00pm, when her mother reports the phone being engaged after an attempt to call her.

Coronial proceedings before Deputy State Coroner Abernethy

144. As noted above, Deputy State Coroner Abernethy held an inquest into the death of Ms Rose. At the inquest, Ms Durward, Mr Becker and Mr Thwaites were called to give evidence. Deputy State Coroner Abernethy ultimately found that Ms Rose's death was the result of an "unpremeditated killing" by someone who Ms Rose knew and let into the unit or who otherwise had a set of keys to her unit.¹⁴⁵

¹⁴⁴ Transcript of recorded interview with Sandra Durward, 26 December 1997, 4, 38 (SCOI.00041.00101).

¹⁴⁵ Findings of Deputy State Coroner Abernethy dated 18 November 1999, 5 (SCOI.83311).

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This was consistent with the view expressed by DSC Thornton, namely that MsRose died as a result of head injuries caused by fatal blows by a person she knew and let into her unit.¹⁴⁶

145. During the course of her oral evidence at the inquest, Ms Durward made the following statements:¹⁴⁷
- a. She attributed the statements identified at [111], to the effect that she may have killed Ms Rose, to her “sometimes somewhat macabre sense of humour”;
 - b. As to the incomplete letter identified at [107], she approached police voluntarily and the term “indirectly involved” relates to the possibility that her former partner had once stayed at Ms Rose’s unit and may have been involved in her death. At the time of the inquest, she did not think her former partner was involved;
 - c. As to the interaction with Ms Burrows identified at [105], she attributed that to her macabre sense of humour, “one of those stupid melodramatic, you know ‘maybe I did do it’ kind of things” and stated “believe me, if I could erase those words I would”;
 - d. As to her comments to Ms Cracker between 31 December 1997 and 1 January 1998, identified at [114], she said that the use of the word alibi is “just inappropriate”;
 - e. Her eye injury was caused by a client, who hit her in the eye socket with his knee cap;
 - f. She could not recall having any issues with her accommodation until after 25 December 1997;
 - g. As to the incident above at [116] on 28 January 1998, regarding the episode of rage and retention of keys to Ms Burrows’ residence, she had no recollection but did recall disposing of the keys. She said she is not a violent person;
 - h. She apologised to her friend’s child immediately after kicking her and felt that she “over - reacted a bit”;
 - i. She attributed her comment to Ms Feary regarding the television, as outlined above at [115] to “one of the police or someone” saying something to her about the television falling on Ms Rose’s head and causing her death. She also said that the television stand was unstable and that she would not have said anything about the television falling “out of the blue.” She denied being present or involved in Ms Rose’s death;
 - j. Her understanding was that Ms Feary returned the keys to Ms Rose;

¹⁴⁶ Statement of Detective Senior Constable Paul Michael Thornton dated 23 October 1998, [320] (SCOI.00041.00005).

¹⁴⁷ Transcript of the Coronial Inquest dated 19 August 1999, 13-14, 16-19 (SCOI.83318).

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- k. She attributed her comment to Ms Clifford, as outlined at [109] regarding her fingerprints being all over the unit, to staying with Ms Rose previously;
 - l. She attributed her comment to Ms Clifford at [109], about knowing what day Ms Rose was killed, to the fact that police were “so interested in my movements” on that day; and
 - m. She could not recall but did not deny making certain comments to Ms Hudson, as outlined at [111]. She attributes those comments to being “under a fair amount of stress at the time”.
146. During the course of his oral evidence, at the inquest, Mr Thwaites made the following statements:¹⁴⁸
- a. He described Ms Durward as “fairly gentle” but did not know what she was like under the influence; and
 - b. As to Ms Durward’s comments that she may have killed Ms Rose, Mr Thwaites gave evidence of her “inappropriate sense of humour” and “black humour” but could not recall her saying anything to that effect. He noted that she was “quite stressed” by Ms Rose’s death and the police investigation.
147. Deputy State Coroner Abernethy concluded that “there 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.”¹⁴⁹
148. In forming that view, his Honour had regard to the lack of forensic evidence including fingerprints linking Ms Durward to the scene, the evidence of Ms Feary as to Ms Durward’s capacity for violence noting that he had “little evidence to the contrary”, and the lack of evidence that Ms Durward was near Ms Rose’s apartment on 20 December 1997.
149. Significantly, his Honour referred to Ms Durward’s comments as to the state of Ms Rose’s television, as outlined above at [115], as the “most damaging inference” connecting her to Ms Rose’s death. In particular, he found:¹⁵⁰

Perhaps the most damaging inference can be drawn from her remarks to her sister that perhaps the television was knocked over and hit him on the head. She has little recognition of this or any of these conversations but suggests that it was just an explanation which came into her head. On the one hand, the television had been knocked over when police found the deceased, but as Durward says it

¹⁴⁸ Findings of Deputy State Coroner Abernethy dated 18 November 1999, 5-6 (SCOI.83311).

¹⁴⁹ Findings of Deputy State Coroner Abernethy dated 18 November 1999, 6 (SCOI.83311).

¹⁵⁰ Findings of Deputy State Coroner Abernethy dated 18 November 1999, 5-6 (SCOI.83311).

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may have been on a rickety stand - that is not really clear. On the other hand even if Durward is blaming it on the television as she in fact did kill the deceased, there is no forensic evidence that he fell or was thrown against it, perhaps hitting his head and knocking it over.

150. His Honour concluded that whilst there may be some suspicion surrounding Ms Durward, there was insufficient evidence, even viewing the Crown case in its most positive light, to satisfy a reasonable jury properly instructed of an indictable offence in connection with Ms Rose's death¹⁵¹
151. Despite the position expressed by Deputy State Coroner Abernethy, in its totality, there is cogent circumstantial evidence that Ms Durward may have been involved in the death of Ms Rose. These submissions endeavour to draw this evidence together below. It is supported by the oral evidence of Ms Durward at the inquest, particularly her unpersuasive explanation for the apparent inculpatory statements identified above at [104]-[119]. Relevantly, his Honour noted that it was difficult to determine whether Ms Durward is "a witness of truth or a very clever liar".¹⁵²

Conclusions on the evidence

152. The lack of evidence of any forced entry suggests that Ms Rose knew her assailant.
153. At the time of the murder, Ms Durward was seeking accommodation. Her evidence at the inquest that she was not looking for accommodation on 20 December 1997 but was looking for accommodation a few days later is open to doubt – the evidence indicates existing tension between Ms Durward and her then-host Ms Miles as early as 20 December 1997. It is possible Ms Durward went to Ms Rose's unit with the intention of seeking accommodation. Once there, Ms Rose may have told her she could not stay and/or told her that she had warned others not to take her in. At hearing this, Ms Durward may have flown into a rage, violently assaulting Ms Rose. This might explain the upheaval of the unit. Such behaviour is not inconsistent with descriptions of her volatile personality given by various witnesses. The evidence of Mr Starling, who spoke to Ms Durward at the end of the AA meeting is also compelling in this regard. He indicated that Ms Durward "appeared very agitated and upset about something to the degree of being emotionally distressed." It is possible, although speculative, that in the course of this assault Ms Rose fell to the ground and the television was pushed or knocked onto her head, leading to the injuries observed by Dr Iles.
154. Ms Durward's initial approach to the police saying she thought her "stepson" Joel Hilton may have had something to do with the Ms Rose's death might be regarded as somewhat suspicious. Police records

¹⁵¹ Findings of Deputy State Coroner Abernethy dated 18 November 1999, 6 (SCOI.83311).

¹⁵² Findings of Deputy State Coroner Abernethy dated 18 November 1999, 4 (SCOI.83311).

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indicate they interviewed Paul Hilton, Joel Hilton and Paul Hilton's then-girlfriend Susan North. The police investigation did not identify anything to connect Joel Hilton with the crime scene, nor has this Inquiry. This raises the possibility, albeit speculative, that Ms Durward may have thought she had to explain how someone might have keys to Ms Rose's apartment. A similar speculative possibility arises in relation to Ms Durward apparently volunteering reasons why her fingerprints could be expected to be at the apartment (although there is no evidence of Ms Durward's fingerprints actually being found there).¹⁵³

155. It is possible that Ms Rose's assailant may not have appreciated that they had killed her. If the assailant was Ms Durward, this could be an explanation for Ms Durward's later comments that "maybe she had killed him". These comments are equally consistent with Ms Durward having "blacked out" following alcohol consumption, so that she came to think she may have been the assailant, conscious that she did not recall what she did that afternoon after coffee at Maisey's café. In other words, Ms Durward's inculpatory statements and her considerable efforts to ensure she had alibi evidence might indicate a consciousness of guilt but they might equally indicate someone who was afraid they *might* be guilty but did not remember one way or the other.
156. It was never established whether the second set of apartment keys belonging to Ms Rose had been returned by Ms Durward; she may in fact have retained them in her possession.
157. Assuming that the assault on Ms Rose occurred when her telephone became engaged at about 3:00pm on 20 December 1997, Ms Durward had an opportunity to attend Ms Rose's unit from the time she left the AA meeting at Neutral Bay to the time she attended work at St Mary's. The only alibi to say she left Mosman at 4:00pm is David Thwaites. The reasons to doubt this alibi evidence are set out above.
158. Critically, Ms Durward appeared to have special knowledge of the crime scene. According to Ms Burrows, Ms Durward appeared to believe as early as 24 December 1997 that there was no forced entry although in her first interview with the police on 26 December 1997 she justified coming to the police on the basis that "the paper doesn't say anything about forced entry".¹⁵⁴ More significantly, she volunteered information suggesting she knew of Ms Rose's television having fallen over, and referenced this being the cause of Ms Rose's death. This assumes even greater significance given the

¹⁵³ Statement of Louise Margaret Clifford dated 6 January 1998, [8] (SCOI.00041.00055).

¹⁵⁴ First statement of Irene Patricia Burrows, 27 December 1997, [9] (SCOI.00041.00061); Transcript of recorded interview with Sandra Durward, 26 December 1997, 25 (SCOI.00041.00101).

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findings of Dr Iles regarding a potential crush injury and the possibility that this was caused by Ms Rose's television.

159. The friendship between Ms Rose and Ms Durward had been known at times to involve conduct which led to Ms Rose holding concerns or fears regarding Ms Durward. These concerns were often associated with Ms Durward's heavy use of alcohol. Indeed, Ms Durward's heavy use of alcohol may have been a factor in her not remembering whether she had something to do with Ms Rose's death, yet simultaneously thinking she may have. As Mr Starling told police, it is "not uncommon for alcoholics to have blackouts and not remember certain things".¹⁵⁵ This scenario would be consistent with the sequence of events posited by Dr Iles and leading to Ms Rose's death as outlined above at [68].
160. Further, the evidence as to Ms Durward's dark or "macabre" sense of humour sits at odds with the way Ms Burrows, Ms Hudson and Ms Craker describe the apparent inculpatory comments made by Ms Durward and referred to above at [105]-[114]. It is possible that this evidence about a macabre sense of humour are an attempt to provide a false explanation for what are otherwise obviously inculpatory statements. However, if Ms Durward truly "blacked out" and did not remember her movements on the afternoon of 20 December 1997, then her subsequent explanations for these inculpatory statements, even if false, might not reflect a consciousness of guilt, but might rather reflect a person who has no memory of the relevant afternoon and therefore does not know whether she was guilty or not.
161. There are some features of this scenario which are nevertheless surprising. In particular, the absence of forensic evidence connecting Ms Durward to the crime scene is significant, even taking into account the gaps in fingerprinting and DNA tests described above. There is no reason to expect Ms Durward to have been a particularly sophisticated criminal. If Ms Durward was involved in Ms Rose's death it could not have been premeditated, and Ms Durward would presumably have been heavily under the influence of alcohol at the time. It would be surprising that no trace of her was found at Ms Rose's apartment.
162. Without more to link Ms Durward to Ms Rose's death, the above scenario involves an unavoidable element of speculation. While the involvement of Ms Durward might be regarded as more likely than any other particular hypothesis, the Inquiry should be conscious of the strictness of proof called for, including in civil proceedings, when considering a finding as to the commission of a serious crime: *Briginshaw v Briginshaw* (1938) 60 CLR 226 at 361-362; *Helton v Allen* (1940) 63 CLR 691 at 711. As Dixon J stressed in the former case at 361, the tribunal of fact must "feel an actual persuasion" of the

¹⁵⁵ Statement of Clive Ronald Starling dated 19 February 1998, [12] (SCOI.00041.00089).

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occurrence or existence of fact proposed; it should not be the result of “mere mechanical comparison of probabilities independently of any belief in its reality”. The various threads of evidence point indirectly towards Ms Durward’s guilt but are insufficient to conclude, on the balance of probabilities, that Ms Durward was involved in Ms Rose’s death.

Police investigation into Ms Becker’s potential involvement and movements on 20 December 1997

163. On 22 December 1997, Mr Becker participated in a recorded interview with police. He described his relationship with Ms Rose as “purely semi-professional”, through their contact at the radio station, a “professional association” and with “very limited social contact outside the radio”.¹⁵⁶ As to his attendance at Ms Rose’s unit, Mr Becker told police.¹⁵⁷

[Samantha] actually came to my home for a barbecue, for the first and only time on, I think, the Sunday, the first Sunday in November. I’m certain as to the, this, this year, but I’m uncertain as to the exact date, but it was definitely on a Sunday, I know that, this year, 1997. So there was no, there was no social contact. I’d popped [by her] house, [by her] home unit once or twice, in fact [she’d] extended the invitation that I could pop by or give [her] a ring if I was in the area, because up until, up until six months ago I worked as a cab driver.

164. As to his movements on 20 December 1997, Mr Becker told police that he left Pennant Hills at around 5:00pm and proceeded to his friend Helene Topp’s residence to deliver Christmas presents. He stayed at Ms Topp’s between 6:15pm and 8:00pm before travelling to Ms Rose’s unit to drop of her Christmas gift.
165. Although Mr Becker stated that his relationship with Ms Rose was of a professional nature with limited social contact, his response to questions from police suggest that they may have had a closer relationship. During the course of his police interview, Mr Becker made reference to knowing that Ms Rose’s parents had recently moved, indicated that Ms Rose was one of few people he had purchased a Christmas gift for, had attended Ms Rose’s residence on several occasions and was aware that Ms Rose had ceased hormone treatment on medical advice.
166. At the time of his interview with police, Mr Becker also suffered from an injury to his eye which he indicated was occasioned by his dog. This was corroborated by medical records produced to the Inquiry by North Sydney Local Health District from 17 October 1997 as well as earlier inquiries made by DSC

¹⁵⁶ Transcript of recorded interview with Stephen Becker dated 22 December 1997, 6 (SCOI.00041.00103).

¹⁵⁷ Transcript of recorded interview with Stephen Becker dated 22 December 1997, 6 (SCOI.00041.00103).

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Thornton with Mr Becker's partner and Ms Topp.¹⁵⁸ There was evidence given from the Bar table at the Inquest that DSC Thornton had made inquiries of Hornsby Hospital and this confirmed Mr Becker's attendance there two months prior to Ms Rose's death with a complaint of a dog attack.¹⁵⁹

167. At the inquest into Ms Rose's death, Mr Becker was called to give evidence. During the course of his oral evidence, Mr Becker made the following statements:¹⁶⁰

- a. He was never a "close friend" of Ms Rose because they were not "friendly". Rather, "we met at the radio station and seldom outside there. If we did, it was for the purposes related to radio work";
- b. He had attended Ms Rose's unit on a "few occasions", "once or twice" but it was a radio-based visit;
- c. Ms Rose told Mr Becker that Ms Durward wasn't the "warm-hearted person that he first met when she started at the radio station";
- d. On 20 December 1997, he stayed at Ms Rose's unit for around 20 minutes trying to raise her by knocking on the door, ringing the doorbell, calling out her name and attempting to telephone her;
- e. He was a "close associate" of Ms Rose and the "association really didn't go any further than the radio", he'd like to call Ms Rose a "friend, but it didn't extend to social occasions"; and
- f. He bought Ms Rose "many presents in the context of the radio station".

168. Although the Inquiry has considered the potential involvement of Mr Becker in Ms Rose's death, there is no evidence which would rise beyond mere suspicion. There is no motive evident on the materials before the Inquiry for Mr Becker wanting to harm Ms Rose.

Submission as to bias

169. There are obvious difficulties in assessing possible motives or biases of Ms Rose's killer in the absence of knowing that person's identity. As indicated above, while there are some factors that might be regarded as consistent with a bias motive, they are at best weak or inconclusive.

¹⁵⁸ Extract of medical records produced by North Sydney Local Health District, 17 October 1997 (SCOI.83338); Statement of Detective Senior Constable Paul Michael Thornton dated 23 October 1998, [118] (SCOI.00041.00005).

¹⁵⁹ Transcript of the Coronial Inquest, 19 August 1999, 77 (SCOI.83318).

¹⁶⁰ Transcript of the Coronial Inquest dated 19 August 1999, 68, 70, 72 (SCOI.83318).

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170. There is not sufficient evidence to ground a finding that Ms Rose's death was one in which LGBTIQ bias was a factor.
171. 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. While the immediate circumstances leading to it will remain unknown, it appears much more probable that, if Ms Durward was involved, then Ms Rose's death occurred in the context of a friendship with Ms Durward and a possible dispute regarding accommodation.

Submissions as to manner and cause of death

172. It is submitted that an appropriate finding as to manner and cause of death would be:

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.

Submission as to recommendations

173. There is no submission with respect to specific recommendations in Ms Rose's case.

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