



Special Commission of Inquiry into LGBTIQ hate crimes

23 November 2022

Dr Linda Iles
 Head of Forensic Pathology
 Victorian Institute of Forensic Medicine
 65 Kavanagh St
 SOUTHBANK VIC 3006

By email: [REDACTED]

Dear Dr Iles,

Special Commission of Inquiry into LGBTIQ hate crimes: Expert report on death of Scott Miller

As you are aware, I assist the Honourable Justice John Sackar in the Special Commission of Inquiry into LGBTIQ hate crimes (“the Inquiry”). Kathleen Heath, of counsel, and Kate Lockery, solicitor, are assisting his Honour in his consideration of the death of Scott Stuart Miller.

The Inquiry

By way of background, on 13 April 2022 the Governor of NSW, by Letters Patent, issued a commission to his Honour to inquire into and report on historical LGBTIQ hate crimes. Specifically, the Letters Patent require his Honour to inquire into and report to the Governor and Premier on the following matters by 30 June 2023:

- A. The manner and cause of death in all cases that remain unsolved from the 88 deaths or suspected deaths of men potentially motivated by gay hate bias that were considered by Strike Force Parrabell; and
- B. The manner and cause of death in all unsolved suspected hate crime deaths in New South Wales that occurred between 1970 and 2010 where:
 - i. The victim was a member of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community; and
 - ii. The death was the subject of a previous investigation by the NSW Police Force.

Mr Miller’s death is one of the unsolved deaths which his Honour is inquiring into pursuant to item A of the Letters Patent.

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Request for expert opinion

By this letter, you are briefed to prepare a written report in relation to Mr Miller's death to assist the Inquiry. It is requested that you provide your report by no later than **6 December 2022**.

In the event that you require further time to prepare your report, please advise Ms Lockery as soon as possible.

Background

To assist you in the preparation of your report, you are provided with the following background information in relation to Mr Miller. This information is provided by way of summary only, and should not be treated as a comprehensive record or a substitute for your own review of the materials.

1. Mr Miller (born 27 July 1975) was found deceased near Wharf 5, Hickson Road in Darling Harbour, Sydney on Monday, 3 March 1997. On the evening of Saturday, 1 March 1997, Mr Miller attended the Mardi Gras Parade on Oxford Street, Sydney, with three friends Shawn Kelly, Nathan White and Jason Elvy. It is noted that Mr Miller identified as heterosexual and had a long-term girlfriend.¹
2. After the parade, the friends travelled to the Rocks. Mr Miller was expelled from one establishment due to his intoxication. At some time between 1.30am and 2.00am on the morning of Sunday, 2 March 1997, Mr Kelly saw Mr Miller walking across the road near the Orient Hotel. According to Mr Kelly, apart from being intoxicated, Mr Miller seemed himself. Mr Kelly told Mr Miller to meet the others in the Orient Hotel; however, when Mr Kelly returned, Mr Miller wasn't there, and no one had seen him.²
3. At around 2.10am, Mr Miller was possibly seen by local resident Jade Carter walking down Watson Road from Observatory Hill. If accurate, this is the last known sighting of Mr Miller alive (and 600m from where his body is ultimately found). Ms Carter described Mr Miller as being in no rush, looking neat and tidy, and not out of the ordinary.³
4. Mr Miller's body was found on the morning of Monday, 3 March 1997, by employees of Patrick the Australian Stevedore ("Patricks") in an area of Wharf 5 referred to as the "graveyard".⁴ Mr Miller's body was at the bottom of a relatively small cliff, approximately 7 metres in height.⁵ Photographs of the location of Mr Miller's body can be found at **Tabs 10-14** of your briefing material.
5. The "graveyard" was an infrequently used part of the wharf which stored old, heavy machinery. It was fenced off with wire fencing with a gate that was accessible from within the wharf. However, public access to the wharf itself was blocked by a fence and required entry past a security checkpoint which was staffed at all times. Staff thought it was unlikely that somebody could get past the checkpoint without them knowing.⁶

¹ Statement of Plain Clothes Senior Constable Michael Lane dated 1 May 1997 (Tab 16).

² Statement of Shawn Kelly dated 4 March 1997 (Tab 20).

³ Statement of Jane Carter dated 6 March 1997 (Tab 21).

⁴ Statements of Peter Cowan, Jim Gould and Vince Micallef dated 6 March 1997. These statements have not been provided but are available on request.

⁵ Statement of Detective Senior Constable Lyle William Van Leeuwen dated 14 June 1997 (Tab 17).

⁶ Statements of Lance Neilson dated 28 October 1997, John Straube dated 14 March 1997, Warren White dated 6 October 1997, Stephen Williams dated 6 October 1997, Colin Plant dated 13 March 1997, and Archibald Price dated 14 March 1997. Statements not provided and available on request.

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6. Mr Miller's body was found about 1.1m from the base of the cliff, nearly parallel to the cliff face and adjacent to a gutter at the base of the cliff.⁷ He was face down, with his body laid out straight. His right arm was tucked up underneath his chest and his left arm was extended down the left side of his body, with his palm facing up. Mr Miller was fully clothed, with his clothes intact and his wallet in his back pocket. Blood was pooling under Mr Miller and extending out to the right side. There was also blood staining on the back of his t-shirt. Testing confirmed that this was Mr Miller's blood.⁸
7. Police examined Munns Reserve, the park directly above where Mr Miller was located in the machinery yard. The western side of the reserve was fenced with galvanised chain wire fencing, which was 1.9m off the ground and topped with barbed wire, which made the overall height of the fence 2.3m. A portion of the barbed wire on the top of the fence had come away from the support poles, near where a tree was leaning against the fence. There were no recent scuff marks on the chain wire fencing or on the galvanised tubular steel top rails or any holes in the chain wire fence. The leaf litter on the reserve side of the fence showed no obvious signs of being recently disturbed.
8. On the outside of the chain wire fence was a sandstone ledge, which was 1m wide and covered in ivy. The ledge was below the level of the ground in Munns Reserve. There was a lack of disturbance of the vegetation or ivy on this ledge.⁹ There was also no evidence of vegetation having slipped towards the edge of the cliff, indentation marks, or broken stems, although a small amount of ivy was found at Mr Miller's feet.

Post-mortem investigations

9. Dr Johan Duflou, forensic pathologist, attended the scene and conducted the autopsy. A copy of his final autopsy report is at **Tab 3** of your briefing material. In summary, Dr Duflou found multiple injuries, including massive skull fracturing and contusions of the brain, laceration of the liver, avulsion of the right kidney, intra-abdominal haemorrhage, bilateral wrist fractures, pulmonary contusion and previous injury to sternum and left tibia. Based on body temperature and information that Mr Miller was last seen alive at 2.00am on 2 March 1997, Dr Duflou estimated the likely time of death to be between 2.00am and 8.00am on 2 March 1997.¹⁰
10. Anal and oral swabs and smears were negative for the presence of semen.¹¹ A toxicology report found that Mr Miller had a blood alcohol level of 0.220g/100mL, reflecting a night of heavy drinking (although the report does not make it clear whether the blood alcohol level had been adjusted to account for the length of time between obtaining the sample and Mr Miller's death).¹²

Manner and cause of death

11. Various contradictory opinions have been provided as to whether Mr Miller's death was a homicide or an accidental fall.

⁷ Transcript of coronial hearing dated 7 October 1997 (Tab 8).

⁸ DAL Certificate dated 19 May 1998 (Tab 6).

⁹ Statement of Detective Senior Constable Van Leeuwen (Tab 17).

¹⁰ Final Autopsy Report dated 5 June 1997 (Tab 3).

¹¹ DAL Certificate dated 1 April 1997 (Tab 6).

¹² Toxicology Report dated 27 March 1997 (Tab 4).

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Initial investigation and inquest (1997)

12. In his autopsy report (Tab 3), Dr Duflou stated that the manner by which the injuries were sustained remains unclear, but posited three possible scenarios:
- a. Scenario 1: that the injuries were inflicted by one or more persons in a homicidal fashion. In this scenario, the head injury may represent impact with a heavy object swung against the forehead, and injury to the liver and kidney may similarly have been inflicted by one or more persons either kicking Mr Miller or hitting him with an object. The wrist injuries may be an indication of defensive injury;
 - b. Scenario 2: that the injuries were sustained during a fall from a height. Dr Duflou states that the wrist injuries, and possibly the head and abdominal injuries, could have been sustained during a fall from a height, but that “both the head and abdominal injuries... are somewhat atypical for a fall from a height”; or
 - c. Scenario 3: a combination of Scenarios 1 and 2. This combination is said to “explain all the injuries satisfactorily, and the sequence would most likely have been an assault followed by a fall from a height.” He hypothesises that Mr Miller could have been moved to the place he was found.
13. During his evidence at the coronial hearing, Dr Duflou was asked which of the three scenarios was more likely. He gave the following evidence:
- “My understanding is that there is no evidence at all of the Deceased having been on top of the cliff face... If that’s the case the Deceased could not have fallen from the cliff face or from the top of the cliff face and it sounds unlikely to me that he in fact started climbing the cliff face as an alternative. In that case the Deceased would more likely than not have been killed in a homicidal fashion... I suppose the only major reason why a fall from the cliff face was a possibility was the fact that he was found at the bottom of a cliff face. If he had been found anywhere else I would have been prepared to say that homicide was by far the most likely manner of death.”¹³
14. Dr Duflou further gave evidence that some of the injuries that Mr Miller received, particularly to the front of his neck and his wrists, could only be consistent with a fall if Mr Miller had moved at least a small amount following the fall.¹⁴
15. Detective Senior Constable Van Leeuwen, crime scene examiner, opined that the death of Mr Miller was “suspicious”. He provided the following opinions and/or observations from his examination of the crime scene:
- a. “The presence of blood stains on the back of the deceased’s white T shirt can not be explained and is of a suspicious nature.”
 - b. “The lack of separate individual blood spots throughout the machinery yard indicate that the deceased did not stagger around the machinery yard.”

¹³ Transcript of coronial inquest on 7 October 1997, p. 5 (Tab 9).

¹⁴ Transcript of coronial inquest on 7 October 1997, p. 6 (Tab 9).

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- c. “The deceased was located lying face down on the ground at the base of the cliff. If he had fallen or jumped from Munns Reserve I would have expected his position to have been more contorted than it was.”
 - d. “The deceased had a lack of external injuries usually seen in a person who has died as a result of a fall. If he had fallen or jumped from Munns Reserve, he could have fallen a distance of between 7 and 11.1 metres.”
 - e. “There was a lack of trace evidence on the fencing at the western end of Munns Reserve indicating that the deceased had climbed the fence. It is not uncommon for clothing fibres or shoe imprints to be found on chain or barbed wire fencing or framework.”
 - f. “There was no disturbance to the vegetation or ivy on the outside of the fence at the western end of Munns Reserve.”
 - g. “There were no holes in the chain wire fence at the western end of Munns Reserve.”¹⁵
16. Detective Senior Constable Van Leeuwen considered that it was possible for a person to fall from the fence without touching the ivy, but for that to happen the body would have ended up further from the cliff than 1.1m.¹⁶
17. Detective Senior Sergeant Carlton Cameron, crime scene examiner, opined that he didn’t believe that Mr Miller “came through or over the fence” in Munns Reserve, and that Mr Miller’s injuries were not sustained by a fall.¹⁷
18. Plain Clothes Senior Constable Michael Lane, the original officer in charge of the investigation, formed the opinion that Mr Miller accidentally fell from the cliff.¹⁸ His theory was that Mr Miller was attempting to go from The Rocks to the casino in Darling Harbour, where he liked to go after having been on a night out. On his way he may have become lost or disoriented and walked up Observatory Hill, where he was seen by the witness Jade Carter. He then walked the relatively short distance to Munns Reserve, from where you can see Darling Harbour and the casino. Once at the cliff, Mr Miller may have attempted to take a short cut down. He scaled the fence, which was made easier due to the barbed wire being down at one point of the fence. Once over the fence, Mr Miller may have either slipped and fell, or he may have realised there was no way down and fallen asleep and rolled off the cliff.¹⁹
19. As part of Plain Clothes Senior Constable Lane’s investigation, he noted that Mr Miller was found in an almost identical position to a deceased male who had fallen from scaffolding on the Opera House.²⁰
20. On 7 October 1997, Coroner Abernethy returned a finding that Mr Miller died “of multiple injuries inflicted by a person or persons unknown.” The coroner found that a number of factors militated against PCSC Lane’s opinion that Mr Miller fell from the cliff. He considered that Dr Duflou gave “cogent reasons” for his view that it is more likely that Mr Miller was either assaulted near where he was found, or taken there and dumped.

¹⁵ Statement of Detective Senior Constable Van Leeuwen, p. 9-10 (Tab 17).

¹⁶ Statement of Detective Senior Constable Van Leeuwen, p. 9-10 (Tab 17).

¹⁷ Transcript of coronial inquest on 7 October 1997, p. 10-11 (Tab 9).

¹⁸ Statement of Plain Clothes Senior Constable Michael Lane dated 1 May 1997 (Tab 16).

¹⁹ Statement of Plain Clothes Senior Constable Michael Lane dated 1 May 1997 (Tab 16).

²⁰ NSW Police running sheet dated 13 March 1997 (Tab 15).

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Reinvestigation – 1997-1998

21. Plain Clothes Senior Constable Lane's theory was given some support during the reinvestigation of Mr Miller's death by Detective Sergeant Desmond.²¹ He noted the following factors which tended to support the theory that Mr Miller fell from the cliff above where his body was located:
- a. The evidence of security staff that no vehicle or pedestrian could have entered the wharf without being challenged;
 - b. The lack of blood particles around the machinery yard.
 - c. Mr Miller's clothing being intact.

Review by the Unsolved Homicide Team 2004

22. A review of Mr Miller's death by the NSW Police Force Unsolved Homicide Team was conducted in 2004. For the purposes of your report, please assume the facts set out below in relation to that review.
23. The review concluded that Mr Miller "must have come over the cliff" to his final resting spot and supported a theory that Mr Miller died as a result of accident or misadventure. The review notes the following:
- a. Mr Miller's injuries which bled could only have occurred where he was found. No blood was located at the top of the cliff or the surrounding area. The blood was pooled and no splatter marks were located which would indicate the use of a weapon to inflict them.
 - b. The reinvestigation determined that no pedestrian or vehicular access could have been gained to the Terminal, meaning that Mr Miller could not have been assaulted somewhere else and carried in.
 - c. Crime scene photographs show green ivy and a tree branch next to Mr Miller.
 - d. The position of the body is not unusual.
 - e. The height of the fence makes it extremely unlikely that Mr Miller, who weighed 87 kg, was lifted over the fence by other persons.
 - f. The distance from the top of the fence to the ledge is almost 4m. In the poor light and in a state of intoxication, Mr Miller may not have realised that the ledge was lower than the ground level of the park. The injuries to Mr Miller's stomach and organs may have been caused from landing on the ledge, or the edge of it, on his stomach.
 - g. The injuries to Mr Miller's neck appear to be scratches/ grazes flowing in a vertical direction and would support the theory that the deceased slid over the ledge on his stomach before falling to the ground.

²¹ Report of Detective Sergeant Desmond, "New information on Darling Harbour death" dated 3 January 1998 (Tab 19).

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Materials with which you are briefed

For the purpose of preparing your report, you are briefed with the materials in the **enclosed** index. The material contained in the index has been extracted from the court file from the Coroners Court of NSW and investigative file from NSW Police Force.

Please note that the briefing materials contain sensitive images. The relevant tabs of your briefing material have been marked in **red**. If there is any additional material that you consider would be of use to you in forming your opinion, please contact Ms Lockery and this material will be provided to you (if available).

Matters to be addressed in your report

I would be grateful if you could address the following matters in your report, having regard to the material with which you are briefed and to the extent that they are matters which fall within your expertise:

1. Following your review of your briefing material, please identify:
 - a. any additional areas of medical investigation or expert opinion you consider would assist his Honour on the issues of Mr Miller's injuries and cause of death; and
 - b. if relevant, appropriate experts from whom his Honour may wish to seek further expert opinion.
2. Your view as to the adequacy of the post-mortem investigations conducted with respect to Mr Miller.
3. Your view as to the medical cause of Mr Miller's death (including, if relevant, any reasons for taking a different view to that formed by Dr Duflou). Without limiting the matters which you may consider relevant to this question, please address:
 - a. Mr Miller's skull and brain injuries, and the possible cause/s of these injuries;
 - b. The injuries to Mr Miller's liver and right kidney, and the possible cause/s of these injuries;
 - c. Mr Miller's abdominal injuries, without any associated rib or pelvic fractures; and
 - d. Mr Miller's blood alcohol level.
4. In your view, did Mr Miller likely die at the location he was found? Please explain your reasons why/why not.
5. Are you able to identify any abrasions, scratches or other injuries on Mr Miller's body which could be consistent with a person climbing a barbed wire fence or pushing through ivy?
6. Your view as to whether Mr Miller's injuries were consistent with misadventure (namely, an accidental fall from the cliff) or foul play (namely, an assault, or a push over the edge of the cliff, or both). Without limiting the matters which you may consider relevant to this question, please address:
 - a. The position Mr Miller was found in (i.e. face down with his body laid straight, around 1.1m from the cliff face). Please also consider the photograph of the fall from the Opera House scaffolding said to be similar to Mr Miller's position (Tab 15).

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- b. The environment Mr Miller was found in, including the height of the cliff, the ivy ledge, the lack of vegetation disturbance or of blood particles around the machinery yard, the ivy found at Mr Miller's feet, and the lack of access to the wharf area.
- c. The fact that Mr Miller's clothing was intact.
- d. The blood tracks down the right side of Mr Miller's face.
- e. The position and pattern of the blood on Mr Miller's t-shirt.
- f. The fracture to Mr Miller's frontal bone.
- g. Mr Miller's two broken wrists.
- h. The presence or absence of any abrasions, scratches or other injuries as noted in question 5 above.

In answering the above, please comment where appropriate upon opinion of Dr Duflou, the findings of Coroner Abernethy, and any views expressed by investigating police officers, in relation to the manner of Mr Miller's death.

- 7. Please provide any other comment, within the area of your expertise, regarding the likely cause of Mr Miller's death.

The above questions are not intended to be exhaustive. Accordingly, if there is any matter arising from the circumstances of Mr Miller's death within your area of expertise on which you wish to express an opinion and which will be of assistance to his Honour, please do so.

I also request that you please attach a detailed curriculum vitae to your report.

Expert Code of Conduct

I **enclose** a copy of the Expert Code of Conduct and ask that you read it carefully. In the report you should acknowledge that you have read the Code and agree to be bound by it. I suggest the following form of words be included in the body of your report:

"I, Dr Linda Iles, acknowledge for the purpose of Rule 31.23 of the Uniform Civil Procedure Rules 2005 that I have read the Expert Witness Code of Conduct in Schedule 7 to the said rules and agree to be bound by it."

Please do not hesitate to contact Kate Lockery on [REDACTED] or [REDACTED] if you have any queries in relation to this matter.

Thank you for your consideration and assistance.

Yours faithfully,



Kate Lockery
Principal Solicitor
Solicitor Assisting the Inquiry

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DEATH OF SCOTT STUART MILLER INDEX TO EXPERT BRIEF TO DR ILES

(as at 23 November 2022)

Tab	Document	Date	Reference No
VOLUME 1			
Formal Documents			
1.	Interim Post Mortem Report	3 March 1997	SCOI.02737.00012
2.	Provisional Autopsy Report	4 March 1997	SCOI.02737.00014
3.	Final Autopsy Report of Dr Duflou	5 June 1997	SCOI.02737.00048
4.	Toxicology Report	23 March 1997	SCOI.02737.00019
5.	Neuropathology Report	1 April 1997	SCOI.02737.00049
6.	DAL Certificate	1 April 1997	SCOI.02737.00070
7.	Additional DAL Certificate	19 May 1998	SCOI.10048.00006
8.	Transcript of Coronial Inquest	7 October 1997	SCOI.02737.00041
9.	Coronial Findings	7 October 1997	SCOI.02737.00004
Photographs			
10.	Crime Scene Photographs <i>[Sensitive material]</i>	Undated	SCOI.10047.00004
11.	Crime Scene Photographs <i>[Sensitive material]</i>	Undated	SCOI.10047.00008
12.	Crime Scene Photographs <i>[Sensitive material]</i>	Undated	SCOI.10047.00045
13.	Crime Scene Photographs <i>[Sensitive material]</i>	Undated	SCOI.10047.00065
14.	Crime Scene and Autopsy Photographs <i>[Sensitive material]</i>	Undated	SCOI.10133.00001
NSW Police Force statements and material			
15.	Police Running Sheet	13 March 1997	SCOI.02737.00106
16.	Statement of Plain Clothes Senior Constable Michael Lane	1 May 1997	SCOI.02737.00051
17.	Statement of Detective Senior Constable Lyle William Van Leeuwen <i>[Sensitive material]</i>	14 June 1997	SCOI.02737.00068
18.	Statement of Detective Senior Sergeant Carlton Graeme Cameron	3 October 1997	SCOI.02737.00069

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Tab	Document	Date	Reference No
19.	Report of Detective Sergeant Desmond, "New information on Darling Harbour death"	3 January 1998	SCOI.10047.00024
Statements of witnesses			
20.	Statement of Shawn Kelly	4 March 1997	SCOI.10049.00031
21.	Statement of Jane Carter	6 March 1997	SCOI.10049.00039