



Special Commission of Inquiry into LGBTIQ hate crimes

1 August 2023

Professor Claude Roux
Director
Centre for Forensic Science
University of Technology Sydney
BROADWAY NSW 2007

By email: [REDACTED]

Dear Professor Roux

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

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 the Commissioner in his consideration of the death of Scott Stuart Miller.

Mr Miller was found deceased near Wharf 5, Hickson Road in Darling Harbour, Sydney on Monday, 3 March 1997.

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 the Commissioner to inquire into and report to the Governor and Premier on the following matters by 30 August 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.

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

Request for expert opinion

By this letter, you are briefed to conduct an examination on a small piece of debris which was located in Mr Miller's hand and prepare a written report in relation to the same from the perspective of a forensic scientist.

Your report is requested by **Friday, 18 August 2023**. In the event that you anticipate requiring further time for the preparation of your report, please advise Ms Lockery as soon as possible.

You have previously advised the Inquiry that the proposed testing preferred would involve optical microscopy and inductively coupled plasma mass spectrometry ("ICP-MS") via solubilisation, which would effectively consume the debris given the small size of the sample (6mm x 4mm). This is noted and the NSW Police Force ("NSWPF") have been informed of this.

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 1997.¹
2. Mr Miller's body was found on the morning of Monday, 3 March 1997, by employees of Patrick the Australian Stevedore in an area of Wharf 5 referred to as the "graveyard". 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.²
3. Mr Miller's body was at the bottom of a relatively small cliff, approximately 7 metres in height. Mr Miller's body was found about 1.1 metres from the base of the cliff, nearly parallel to the cliff face and adjacent to a gutter at the base of the cliff. 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.³
4. Police examined Munns Reserve, the park directly above where Mr Miller was located. The western side of the reserve was fenced with galvanised chain wire fencing, which was 1.9 metres off the ground and topped with barbed wire, which made the overall height of the fence 2.3 metres. 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.⁴

¹ P79A Report of Death to Coroner, 3 March 1997 (SCOI.02737.00009) (Tab 1).

² Statement of Plain Clothes Senior Constable Michael Lane, 1 May 1997, [5]-[6] (SCOI.02737.00051) (Tab 3).

³ Statement of Detective Senior Constable Lyle William Van Leeuwen, 14 June 1997, [3] (SCOI.83347) (Tab 4).

⁴ Statement of Detective Senior Constable Lyle William Van Leeuwen, 14 June 1997, [6] (SCOI.83347) (Tab 4).

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5. Various conflicting opinions have been provided as to whether Mr Miller's death was a homicide or an accidental fall.
6. A piece of debris was located in Mr Miller's right hand in the course of the post-mortem examination.⁵ This specimen was handed to the crime scene officer who described it as a "piece of gravel".⁶
7. On 24 May 2023, the Inquiry requested that an appropriate officer of the NSWPF provide a statement regarding the nature of the debris.⁷ Inspector Andrew Brady of the Forensic Evidence and Technical Services ("FETS") Command provided a statement dated 7 June 2023 addressing, *inter alia*, the nature of the debris and recommending further analysis.⁸

Materials with which you are briefed

For the purpose of preparing your report, you are briefed with the materials in the **enclosed** index. This material has primarily been extracted from the NSWPF investigative file.

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).

The Inquiry has confirmed that the piece of debris is in the custody of the NSW Police Force. Arrangements have been made for the debris to be transferred to the UTS Centre for Forensic Science on 1 August 2023 for the purpose of testing and preparing your expert report.

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 training and expertise:

1. Please outline the examinations you conducted in relation to the debris, and detail the examination protocol and techniques used;
2. Please provide your opinion as to the nature of the debris, and specifically whether metals are present in the content of the sample. If metals are present, please identify the type of metal;
3. Please provide your opinion on the likely provenance of the debris. In providing your opinion, please make reference to any maps, crime scene photographs or information about the surrounding area, including whether it is likely to have come from a fence or other object located at the crime scene.

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 the Commissioner, please do so.

⁵ Unsolved Homicide Team Case Screening Form, 21 April 2004, 10 (NPL.0100.0015.0001) (Tab 9); Statement of Inspector Andrew Brady, 7 June 2023, [21] (NPL.9000.0017.0072) (Tab 11); Handwritten post mortem notes, 3 March 1997 (NPL.9000.0017.0023) (Tab 11C).

⁶ Statement of Detective Senior Constable Lyle William Van Leeuwen, 14 June 1997, [10] (SCOI.83347) (Tab 4).

⁷ Letter from the Inquiry to NSWPF requesting statement re debris, 24 May 2023 (SCOI.83527) (Tab 10).

⁸ Statement of Inspector Andrew Brady, 7 June 2023, [28]-[34] (NPL.9000.0017.0072) (Tab 11).

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I also request that you please attach 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, **Professor Claude Roux**, 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 PROFESSOR CLAUDE ROUX**

(as at 1 August 2023)

Tab	Document	Date	Reference No
VOLUME 1			
Key Documents			
1.	P79A Report of Death to Coroner	3 March 1997	SCOI.02737.00009
2.	Final Autopsy Report of Dr Johan Duflou	5 June 1997	SCOI.02737.00048
3.	Statement of Plain Clothes Senior Constable Michael Lane (Officer in Charge)	1 May 1997	SCOI.02737.00051
Crime Scene Material			
4.	Statement of Detective Senior Constable Lyle William Van Leeuwen (Crime Scene Officer)	14 June 1997	SCOI.83347
5.	Crime Scene Photographs (Photographs 1, 13, 14 and 15 only) [<i>Sensitive material</i>]	3 March 1997	SCOI.83350
6.	Panorama photograph of Munn Reserve (Photograph 50)	6 March 1997	SCOI.83346
7.	Terrestrial Photogrammetry Survey of 29-33 Hickson Road, Millers Point	3 March 1997	SCOI.83348
8.	Statement of Detective Senior Sergeant Carlton Graeme Cameron	3 October 1997	SCOI.02737.00069
Debris			
9.	Unsolved Homicide Team Case Screening Form	21 April 2004	NPL.0100.0015.0001
10.	Letter from the Inquiry to NSWPF requesting statement re debris	24 May 2023	SCOI.83527
11.	Statement of Inspector Andrew Brady re debris found in Mr Miller's hand, annexing:	7 June 2023	NPL.9000.0017.0072
	A. EFIMS exhibit custody report	31 May 2023	NPL.9000.0017.0069
	B. Handwritten crime scene notes	3 March 1997	NPL.9000.0017.0018
	C. Handwritten post mortem notes	3 March 1997	NPL.9000.0017.0023

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Tab	Document	Date	Reference No
	D. List of Specimens/Exhibits Submitted	Undated	NPL.9000.0017.0016
	E. Screenshots of PECAMS entries	3 March 1997 – 4 March 1997	NPL.9000.0017.0037
	F. Miscellaneous Property Receipt C316466	15 April 1997	NPL.9000.0017.0015
	G. Exhibit Book 224/C539791	5 May 1999	NPL.9000.0017.0022
	H. Statement of Detective Senior Constable Lyle Van Leeuwen	14 June 1997	<i>See Tab 4 (not reproduced)</i>
	I. Photographs of the debris	5 June 2023	NPL.9000.0017.0001



Uniform Civil Procedure Rules 2005

Current version for 1 July 2023 to date (accessed 1 August 2023 at 8:53)

Schedule 7

Schedule 7 Expert witness code of conduct

(Rule 31.23)

1 Application of code

This code of conduct applies to any expert witness engaged or appointed—

- (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings, or
- (b) to give opinion evidence in proceedings or proposed proceedings.

2 General duties to the Court

An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the court impartially on matters relevant to the area of expertise of the witness.

3 Content of report

Every report prepared by an expert witness for use in court must clearly state the opinion or opinions of the expert and must state, specify or provide—

- (a) the name and address of the expert, and
- (b) an acknowledgement that the expert has read this code and agrees to be bound by it, and
- (c) the qualifications of the expert to prepare the report, and
- (d) the assumptions and material facts on which each opinion expressed in the report is based (a letter of instructions may be annexed), and
- (e) the reasons for and any literature or other materials utilised in support of each such opinion, and
- (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise, and
- (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications, and
- (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person, and
- (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the court, and
- (j) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate, and

- (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason, and
- (l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

4 Supplementary report following change of opinion

- (1) Where an expert witness has provided to a party (or that party's legal representative) a report for use in court, and the expert thereafter changes his or her opinion on a material matter, the expert must forthwith provide to the party (or that party's legal representative) a supplementary report which must state, specify or provide the information referred to in clause 3(a), (d), (e), (g), (h), (i), (j), (k) and (l), and if applicable, clause 3(f).
- (2) In any subsequent report (whether prepared in accordance with subclause (1) or not), the expert may refer to material contained in the earlier report without repeating it.

5 Duty to comply with the court's directions

If directed to do so by the court, an expert witness must—

- (a) confer with any other expert witness, and
- (b) provide the court with a joint report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing, and
- (c) abide in a timely way by any direction of the court.

6 Conferences of experts

Each expert witness must—

- (a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the court and in relation to each report thereafter provided, and must not act on any instruction or request to withhold or avoid agreement, and
- (b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.