



Special Commission of Inquiry into LGBTIQ hate crimes
 Statement of Penelope Smith
 5 October 2023

This statement made by me accurately sets out the evidence that I would be prepared, if necessary to give to the Special Commission of Inquiry into LGBTIQ hate crimes (“the Inquiry”) as a witness. This statement has been prepared from my own knowledge and also from perusing the records of the Inquiry. The statement is true to the best of my knowledge and belief.

1. My name is Penelope Smith. My address is known to the Special Commission of Inquiry.
2. I am employed as a Senior Solicitor by the Special Commission of Inquiry into LGBTIQ hate crimes.
3. In the course of my duties, I have reviewed material and conducted inquiries in relation to the death of Scott Stuart Miller (**Mr Miller**), who was found deceased on 3 March 1997. The information contained in this statement is true based on my own knowledge, and from documents in the possession of the Inquiry relevant to Mr Miller.
4. This supplementary statement outlines investigative steps taken since the statement of Kathryn Lockery dated 14 June 2023.

Further summons

5. On 27 June 2023, the Inquiry issued a summons to the Forensic and Analytical Science Service (**FASS**) for all documents or other records held by FASS relating to Mr Miller’s death (summons FASS4).
6. On 30 June 2023, the Inquiry received numerous files from the FASS Forensic Biology/DNA Laboratory, Forensic Toxicology Laboratory and the Forensic Medicine service in response to the summons, a selection of which are included in the supplementary tender bundle (SCOI.85742; SCOI.85972; SCOI.84764; SCOI.85743; SCOI.85741).
7. As a result of reviewing the documents produced by FASS, the Inquiry became aware for the first time that there had been further forensic testing of Mr Miller’s clothing in 2010–2012, and that such testing was undertaken at the request of the Unsolved Homicide Team (**UHT**). The results of that testing appeared to be reported to the NSW Police Force (**NSWPF**) in a report dated 9 November 2023, which is included in the supplementary tender bundle (SCOI.85741).
8. On 17 July 2023, the Inquiry issued a summons to the NSW Police Force (**NSWPF**) for any material held by the UHT in connection with the forensic review and testing of exhibits relating to Mr Miller’s death arranged by the UHT (summons NSWPF152).

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9. On 24 July 2023, the Inquiry received two investigator's notes dated 9 and 10 March 2010 in response to the summons, which are included in the supplementary tender bundle (NPL.0201.0001.0001; NPL.0201.0001.0002).

Enquiries with forensic chemist

10. On 21 August 2023, the Inquiry received the supplementary expert report of Jae Gerhard which recommended the Inquiry seek the opinion of a forensic chemist regarding the possibilities for further testing on Mr Miller's jeans, including the types of analysis available and the probative value of such testing.
11. I subsequently corresponded via email with Professor Claude Roux, Director of the UTS Centre for Forensic Science, in relation to the opportunities available for testing Mr Miller's jeans.
12. On 21 August 2023, I provided Professor Roux with five photographs of the jeans, which are included in the supplementary tender bundle (SCOI.85972).
13. I asked Professor Roux to examine the photographs and advise what options would be available in the field of forensic chemistry for testing stains which are negative for blood.
14. On 25 August 2023, I spoke with Professor Roux via telephone and he advised me that testing the jeans would be both very complex and unlikely to yield evidence that would assist in determining how Mr Miller died.

Enquiries with FASS

15. On 22 September 2023, the Inquiry received the expert certificate of Virginia Friedman of FASS, which noted that the apparent fibres found on the debris from Mr Miller's hand were "not suitable for nuclear DNA testing".
16. On 5 October 2023, I spoke with Ms Friedman via telephone who advised me that the apparent fibres have no identifying features to identify them as either human or animal hair, and that they were not suitable for DNA testing.

Signature:



Name: Penelope Smith

Date: 5 October 2023