



## Special Commission of Inquiry into LGBTIQ hate crimes

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### SUBMISSIONS OF COUNSEL ASSISTING

15 June 2023

#### IN THE MATTER OF SCOTT STUART MILLER

##### Introduction

1. These submissions are filed on behalf of Counsel Assisting the Special Commission of Inquiry into LGBTIQ hate crimes (**Inquiry**).

##### Summary of matter

###### *Date and location of death*

2. Scott Stuart Miller was found deceased within the compound of Patrick the Australian Stevedores (**Patricks**) near Wharf 4, Hickson Road in Darling Harbour, Sydney, on Monday, 3 March 1997. His body was lying on asphalt at the bottom of a cliff, in a fenced off area within the compound that was used by Patricks to store machinery. At the top of the cliff was a small park, Munn Reserve. A chain wire fence ran along the cliff edge. A more detailed description of the area surrounding Mr Miller's body is below at [91]-[96].
3. It is likely that Mr Miller met his death in the early hours of Sunday, 2 March 1997. Dr Johan Dufrou, forensic pathologist, estimated the likely time of death to be between 2:00am and 8:00am.<sup>1</sup>

###### *Circumstances of death*

4. On the evening of Saturday, 1 March 1997, Mr Miller attended the Sydney Gay and Lesbian Mardi Gras Parade (**Mardi Gras Parade**) on Oxford Street, Sydney, with three friends. After the parade, the friends travelled to The Rocks and continued drinking. Mr Miller was last seen by his friends at sometime between 1:30am and 2:00am on the morning of Sunday, 2 March 1997, outside the Orient

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<sup>1</sup> Autopsy report of Dr Dufrou, 5 June 1997 (SCOI.02737.00048).

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Hotel. Shortly after that time, at about 2:10am, a local resident saw a man believed to be Mr Miller walking alone down Watson Road from Observatory Hill.<sup>2</sup>

5. Various conflicting opinions were expressed during the initial police investigation as to whether Mr Miller's fatal injuries were incurred by falling from the cliff above where he was found, or by an assault, or by some combination of the two scenarios.
6. The forensic evidence obtained by the Inquiry, including reports by Dr Linda Iles, forensic pathologist, and Jae Gerhard, scientist and bloodstain pattern analyst, supports a finding that Mr Miller's injuries were caused by a fall rather than an assault. Mr Miller's injuries, and the blood staining on his clothing, do not indicate that an assault occurred prior to his death.<sup>3</sup>
7. While the possibility of Mr Miller being lifted over the fence and pushed off the cliff cannot be excluded, the circumstantial evidence supports the conclusion that his fall was accidental.

### *Findings of post-mortem examination*

8. An autopsy was performed by Dr Duflou on 3 March 1997. His report to the coroner, dated 5 June 1997, detailed multiple injuries to Mr Miller's body, including:
  - a. Abrasion injuries to the face and neck, predominantly in a vertical plane;
  - b. Scattered abrasions and superficial lacerations to the hands;
  - c. Massive skull fracturing and contusion (bruising) of the brain;
  - d. Laceration of the liver, with a near complete tear of the right lobe;
  - e. Avulsion (tearing) of the right kidney from the right renal artery and vein;
  - f. Intra-abdominal haemorrhage;
  - g. Bilateral wrist fractures; and
  - h. Pulmonary contusion.<sup>4</sup>
9. Dr Duflou considered the direct cause of Mr Miller's death to be "multiple injuries."

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<sup>2</sup> See below at [76]-[84].

<sup>3</sup> Expert Report of Dr Linda Iles dated 14 December 2022, 10 (SCOI.82891); Expert report of Jae Gerhard, 29 May 2023 (SCOI.83328). See below at [130]-[154].

<sup>4</sup> Autopsy report of Dr Duflou, 5 June 1997 (SCOI.02737.00048).



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10. Anal and oral swabs and smears were negative for the presence of semen.<sup>5</sup> A toxicology report found that Mr Miller had a high blood alcohol level of 0.220g/100mL, consistent with evidence of his state of intoxication on the night prior to his death.<sup>6</sup>
11. In his report, Dr Duflou stated that the manner in which the injuries were sustained was “unclear”, and expressed no firm opinion as to the circumstances surrounding Mr Miller’s death. He outlined that the injuries may have been inflicted by way of an assault, sustained during a fall from a height, or some combination of these two possibilities. Dr Duflou’s opinion as to manner of death is discussed further below at [104]-[108].
12. By contrast, Dr Iles is of the view that Mr Miller’s injuries are best explained by Mr Miller falling from the cliff above where he was found, and that his injuries were, as a whole, not consistent with an assault.<sup>7</sup>

### *Persons of interest*

13. The probability is that Mr Miller died as a result of an accidental fall. There are no persons of interest in relation to Mr Miller’s death.

### *Indicators of LGBTIQ status or bias*

14. Mr Miller was heterosexual and had a steady girlfriend at the time of his death.<sup>8</sup> There is no suggestion in the evidence that Mr Miller was a member of the LGBTIQ community.
15. Mr Miller had been at the Mardi Gras Parade on the evening prior to his death. However, there is no indication in the evidence either that he was, or that he was perceived to be, a member of the LGBTIQ community, or that LGBTIQ bias played a role in his death.

### *Exhibits: availability and testing*

16. The NSW Police Force (**NSWPF**) retained the clothing worn by Mr Miller at the time of his death - namely a brown belt, blue jeans, two white t-shirts, multicoloured socks and brown shoes - as exhibits. The Inquiry confirmed that these exhibits were in the custody of the NSWPF at the Metropolitan Exhibit and Property Centre.

<sup>5</sup> Second Statement of Virginia Friedman, DAL, 1 April 1997 (SCOI.02737.00070).

<sup>6</sup> Toxicology Report, 27 March 1997 (SCOI.02737.00010).

<sup>7</sup> See below at [130]-[138].

<sup>8</sup> Statement of Bridget Lott, 6 June 2023 (SCOI.83636).

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17. The Inquiry engaged scientists from Independent Forensic Services, Ms Gerhard and Helen Roebuck, to conduct an examination of Mr Miller's clothing for the purposes of bloodstain pattern analysis. The examination took place on 8 May 2023 at the NSWPF Pemulwuy Laboratory.<sup>9</sup>
18. The report of Ms Gerhard dated 29 May 2023 found that the bloodstain patterns on Mr Miller's clothing were consistent with the position Mr Miller was found at the bottom of a cliff following a fall, with no evidence of significant movement of Mr Miller once his bleeding facial injuries occurred. There were no bloodstains to indicate that Mr Miller was assaulted, at either the top or the bottom of the cliff.<sup>10</sup>
19. During the post-mortem examination, Dr Duflou retained debris taken from the right hand of Mr Miller. This debris was noted to have been retained by the Crime Scene Unit and held within the Sydney Police Centre Crime Scene Unit Archive Room, but never entered as an exhibit or specimen.<sup>11</sup> The Inquiry is seeking to have the debris forensically examined, as discussed below at [70].

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

20. On 7 October 1997, an inquest was held at the Coroners Court at Glebe. On that day, Senior Deputy State Coroner Abernethy returned the following finding:

That [Mr Miller] died on 2 March, 1997 at Sydney, of multiple injuries inflicted by a person or persons unknown. As to the person or persons who inflicted the injuries and the precise manner in which such injuries were inflicted, the evidence adduced does not enable me to say.<sup>12</sup>

21. His Honour considered that "a number of factors mitigate against" a scenario in which Mr Miller fell from the cliff, and considered there were "cogent reasons" for Dr Duflou's opinion that it was "more likely that he was either assaulted near where he was found, or taken there and dumped."<sup>13</sup>

### *Criminal proceedings*

22. No person has been charged in connection with Mr Miller's death.

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<sup>9</sup> Expert report of Jae Gerhard, 29 May 2023 (SCOI.83326).

<sup>10</sup> Expert report of Jae Gerhard, 29 May 2023 (SCOI.83326). See below at [139]-[154].

<sup>11</sup> Unsolved Homicide Team Case Screening Form, 21 April 2004 (NPL.0100.0015.0001).

<sup>12</sup> Findings in the inquest into the death of Scott Stuart Miller, 7 October 1997 (SCOI.02737.00004).

<sup>13</sup> Findings in the inquest into the death of Scott Stuart Miller, 7 October 1997 (SCOI.02737.00004).

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### Features of the original police investigation, and opportunities missed

23. The original officer in charge of the investigation (**OIC**) was Plain Clothes Senior Constable (**PCSC**) Michael Lane. He appears to have arrived quickly at the view that Mr Miller's death was accidental. In an undated letter from Mr Miller's parents to the Coroner, they wrote:

From my first contact with S/C Lane he has been adamant Scott's death was caused by a fall. S/C Lane also appears now unable to reconcile himself to the findings of the Senior Deputy Coroner.<sup>14</sup>

24. This is confirmed by Ms Lott's recollections of attending Rocks Police Station only one or two days after Mr Miller's death, and being told that he may have fallen over the cliff in search of the casino.<sup>15</sup>
25. Different views were expressed, however, by the two attending Crime Scene Examiners, and by the forensic pathologist who carried out the post-mortem, as discussed below. Their views, arrived at in varying ways, were that homicide was a possibility.
26. In those circumstances, that possibility having been squarely raised, some aspects of the investigation into Mr Miller's death were not pursued as thoroughly or completely as they could have been. Among the avenues of enquiry which it seems were not exhausted are those referred to in the following paragraphs.
27. Many relevant statements were not taken until the inquest and at the prompting of Mr Miller's parents – for example, NSWPF had failed to take statements from all of the security guards across the relevant time window in which Mr Miller's death may have occurred.<sup>16</sup>
28. In addition, the canvassing of witnesses was not conducted thoroughly or carefully. This is particularly evident in relation to the canvassing of crew members onboard the vessel "Ranginui", a ship that was docked at wharf 4 on the night of Mr Miller's death, close to the machinery yard where Mr Miller's body was found.
29. On 19 March 1997, when the Ranginui returned to Sydney,<sup>17</sup> the NSWPF interviewed ten members of the crew. A running sheet, summarising those ten interviews, records that six crew members went to see the Sydney Gay and Lesbian Mardi Gras – three returned together at 11:30pm, while the other three became separated while drinking during the night and arrived back separately between 12:00am

<sup>14</sup> Letter from Stuart and Christine Miller to Coroner Abernethy, undated (SCOI.02737.00036).

<sup>15</sup> Statement of Bridget Lott, 6 June 2023, [10] (SCOI.83636).

<sup>16</sup> Statement of Warren White, 9 October 1997 (SCOI.02737.00038); Statement of Lance Neilson, 28 October 1997 (SCOI.02737.00039).

<sup>17</sup> Situation Report of Senior Constable Lane, 7 March 1997 (SCOI.02737.00099).

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and 3:00am. The running sheet also indicates that two crew members were on the “night watch shift”. All crew members spoken to were recorded as not having seen anything suspicious.<sup>18</sup>

30. The running sheet does not indicate whether each crew member was spoken to separately or in the presence of others. There is a general lack of detail, particularly in relation to the three crew members who returned between 12:00am and 3:00am.
31. As some of the only authorised entrants to the Patricks compound at the approximate time of Mr Miller’s death, who would have been passing in close proximity to where his body was ultimately found, the crew members may have provided crucial evidence in relation to a homicide investigation. Greater care should have been taken to capture their evidence as to their movements and observations on the night.

### Unsolved Homicide Team

32. Detective Sergeant (DS) Adam Barwick completed a Case Screening Form in relation to Mr Miller’s death. In that form, certified by DS Barwick on 21 April 2004, he favoured the view that Mr Miller “must have come over the cliff” to his final resting spot. He also noted that no examination had been made of the victim’s clothing.
33. DS Barwick recommended a “forensic review” of the case, commenting that:
 

A re-examination of the crime scene and the victim’s injuries should be conducted to establish if the death was accidental. The Coroner may then issue a finding of ‘death by misadventure.’<sup>19</sup>
34. No such review appears ever to have been undertaken by the UHT.
35. On 1 June 2023, the NSWPF advised the Inquiry that Mr Miller’s case had not been considered by the Unsolved Homicide Review Committee for final determination as to whether there would be a re-investigation.<sup>20</sup> According to Ms Garaty, the certified case screening form was located in a homicide office storage room. It appears that no steps were taken in relation to DS Barwick’s recommendation in the 19 years between 2004 and 2023.

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<sup>18</sup> Bundle of running sheets, 9 (SCOI.83327).

<sup>19</sup> UHT Case Screening Form, 21 April 2004 (NPL.0100.0015.0001).

<sup>20</sup> Letter from Katherine Garaty to Enzo Camporeale, 1 June 2023 (SCOI.83403).

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### Strike Force Parrabell

#### *Use of the Bias Crimes Indicators Form*

36. In the Bias Crime Indicators Review Form (**BCIF**), the Strike Force Parrabell (**SFP**) officers answered “No Evidence of Bias Crime” to each of the ten indicators. Overall, in the “Summary of Findings”, the BCIF also categorised Mr Miller’s death as “No Evidence of Bias Crime”.<sup>21</sup>

#### *Results of Strike Force Parrabell*

(a) The “General Comment” and “Summary of Findings” boxes at the end of the BCIF

37. The contents of the BCIF indicate that the SFP officers completed the form on the basis that it was not possible to know who, if anybody, was responsible for Mr Miller’s death. Accordingly, the “General Comment” sections are replete with references to various factors relevant to the determination of whether Mr Miller’s death was the result of a hate crime being “unknown”. For example:

- a. In relation to indicator 1, “Differences”, SFP officers record: “No persons have been charged as a result of the death of Scott MILLER as such the sexual orientation of the offender/s is unknown. It is unclear if any persons did in fact play a role in the death of Mr Miller.”
- b. In relation to indicator 2, “Comments, Written Statements, Gestures”, SFP officers record that, as no persons have been identified as responsible for Mr Miller’s death, it is “unknown if any bias related comments or gestures were made by anyone before, during or after the death.”
- c. In relation to indicator 3, “Drawings, Markings, Symbols, Tattoos, Graffiti”, it is stated that it is “unknown if any persons was *[sic]* responsible for the death of MILLER and if so, if they had any bias related drawings, markings, symbols or graffiti on their bodies.”
- d. In relation to indicator 4, “Organised Hate Groups (OHG)”, it is recorded that it is “unknown” if an organised hate group was responsible.
- e. In relation to indicator 7, “Motive of Offender/s”, it is noted that no motive was established during the investigation.
- f. In relation to indicator 8, “Location of Incident”, SFP officers record that it is “unknown” if the location held any significance to any persons involved in the death of Mr Miller.

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<sup>21</sup> Strike Force Parrabell Bias Crimes Indicators Review Form, undated, 15 (NPL.0129.0001.0169).



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- g. In relation to indicator 9, “Lack of Motive”, it is recorded again that the investigation did not establish a motive for Mr Miller’s death.
38. The “Summary of Findings” repeats much of the content of earlier parts of the form, again emphasising that no persons were identified as responsible for the death of Mr Miller and that no motive could be established for his death.<sup>22</sup>
39. Given this uncertainty, it is surprising that the indicators were answered positively as “No Evidence of Bias Crime”, when (according to the BCIF) that option is appropriate only if “the incident has been *determined* as... *not* being motivated by bias towards a protected group”, as opposed to “Insufficient Information”, which is appropriate where “insufficient information has been recorded to make [such] a determination”.
40. It may be that confusion arose in relation to the answering of each indicator due to one or more of:
- (a) the several successive changes to the language of the BCIF, over the course of SFP Parrabell; and/or
  - (b) the differences and inconsistencies as between the various constituent documents for SF Parrabell, including the Coordinating Instructions, the Investigation Plan and the Induction Package.
41. Those matters have been the subject of submissions in relation to Public Hearing 2.
42. As one example here, in the case of Mr Miller, the Coordinating Instructions required an officer to select one of four “findings”, with the third “finding” being designated as “**Not** a Bias Crime”.<sup>23</sup> That “finding” was defined as mean that the “incident has been *determined* as either *not* being motivated by bias towards a protected group or although bias motivation is in evidence it does not related to a protected group (emphasis added).”
43. However, in the BCIF, the third “finding” was re-titled to “**No Evidence of** Bias Crime”, but the definition in respect of that “finding” remained unchanged.
44. The reasoning process adopted by the SFP officers, in choosing among the four “finding” options for each indicator, is opaque. Submissions on behalf of the Commissioner of Police in other cases have suggested that such SFP “findings” were ultimately the outcome of “consensus” reached by the three

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<sup>22</sup> Strike Force Parrabell Bias Crimes Indicators Review Form, undated, 15 (NPL.0129.0001.0169).

<sup>23</sup> Exhibit 6, Tab 15, Coordinating Instructions, undated (SCOI.75071).



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senior officers in SFP. If so, again, the way in which such “consensus” was arrived at (either generally or in a specific case such as this one) is also opaque.

45. The “General Comment” section in respect of indicator 10, “Level of Violence”, asserts that if Mr Miller was murdered, “the level of violence displayed demonstrates an extreme level for violence for unknown reasons.”<sup>24</sup> Despite this, the indicator was answered as “No Evidence of Bias Crime.” Given that the BCIF does not exclude the possibility that Mr Miller was murdered, it is not apparent how this “extreme” level of violence is consistent with a positive “determination” that the incident was not motivated by bias.

(b) Case Summary

46. The Strike Force Parrabell case summary (no. 71) for this matter reads as follows:

**Identity:** Scott Miller was 21 years old at the time of his death.

**Personal History:** Mr Miller was about to start studying at university at the time of his death.

**Location of Body/Circumstances of Death:** Mr Miller's body was located at the base of a 7-metre cliff at Wharf 5, Hickson Road, Darling Harbour. Mr Miller earlier attended the Sydney Gay and Lesbian Mardi Gras Parade with a group of friends earlier that evening. Mr Miller was last seen in the vicinity of the Orient Hotel, The Rocks. He was earlier asked to leave the Observer Hotel due to his level of intoxication. Police were unable to establish a motive for Mr Miller's death but did rule out misadventure due to factors including the positioning of his body; a high wire fence on the cliff above which would have inhibited Mr Miller falling; and injuries to his body which were consistent with being assaulted. Two years later police identified two male suspects in light of comments they made to others about being involved in incidents of violence at The Rocks. Notwithstanding further investigation there was insufficient evidence to implicate either in Mr Miller's death.

**Sexual Orientation:** Mr Miller identified as heterosexual.

**Coroner/Court Findings:** The Coroner returned an open finding stating that Mr Miller died, 'at Sydney of multiple injuries inflicted by a person or persons unknown. As to the persons or persons who inflicted the injuries and the precise manner in which such injuries were inflicted, the evidence adduced does not enable me to say.'

**SF Parrabell concluded there was no evidence of a bias crime.**<sup>25</sup>

47. The case summary is inconsistent with the BCIF in a significant respect. The case summary states, in an unqualified manner, that although Police could not establish motive, they “did rule out misadventure” as the cause of Mr Miller’s death. However, in fact (as noted at [5] above and outlined

<sup>24</sup> Strike Force Parrabell Bias Crimes Indicators Review Form, undated, 14 (NPL.0129.0001.0169).

<sup>25</sup> Exhibit 6, Tab 49, Strike Force Parrabell Case Summaries – Scott Miller, undated, 35 (SCOI.76961.00014).

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in more detail below), there were conflicting opinions within the NSWPF as to whether his death was the result of a homicide or an accidental fall. Misadventure was **not** “ruled out”. Unlike the case summary, the BCIF correctly noted that there were thought to be “three probable scenarios” namely (in essence) homicide, a fall, or some “combination” of the two.<sup>26</sup>

### (c) Academic Review

48. The review by the Flinders academics categorised this case as “insufficient information”.<sup>27</sup> The academic team only had access to the completed BCIFs, and not to the historical material from a review of which those BCIFs had been filled in by the SFP officers.

49. In explaining their use of the term “Insufficient Information” in a general sense, the academic team stated as follows:

That is, despite an exhaustive exploration of the archived material, 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. Part of the reason this was the case can be attributed to a relative paucity of information.<sup>28</sup>

50. The Flinders academics did not utilise a category such as “Suspected Bias Crime”, nor indeed a category of “Evidence of Bias Crime”. Rather, the four categories they devised and used were: “Anti-gay bias”, “Anti-paedophile animus”, “Insufficient Information” and “No Evidence of Bias Crime”.<sup>29</sup>

51. Further, the academic team made it clear that for them, for a case to be categorised as a “bias crime” (whether anti-gay or anti-paedophile), some form of *expression* of that bias, by a *communication*, was essential.<sup>30</sup> Hence in any case where there was no such communication, the academic team was left with only two choices: “Insufficient Information”, or “No Evidence of Bias Crime”.

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

52. In the course of assessing Mr Miller’s case, the Inquiry has taken various investigative and other steps, including:

- a. Requesting the coronial file;
- b. Summoning the police investigation file;

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<sup>26</sup> Strike Force Parrabell Bias Crimes Indicators Review Form, undated, 15 (NPL.0129.0001.0169).

<sup>27</sup> Exhibit 6, Tab 49, Strike Force Parrabell Case Summaries – Scott Miller undated, 27 (SCOI.76961.00014).

<sup>28</sup> Exhibit 1, Tab 2, Final Report of Strike Force Parrabell, undated, 54 (SCOI.02632).

<sup>29</sup> Exhibit 1, Tab 2, Final Report of Strike Force Parrabell, undated, 92 (SCOI.02632).

<sup>30</sup> Exhibit 1, Tab 2, Final Report of Strike Force Parrabell, undated, 82-83 (SCOI.02632); see also transcript of the Special Commission of Inquiry, 1 March 2023, 2504 [13]-[30]; Transcript of the Special Commission of Inquiry, 2 March 2023, 2695 [40]-2696 [15].

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- c. Locating and contacting family and friends of Mr Miller;
- d. Seeking the expert opinion of a forensic pathologist, Dr Iles;
- e. Seeking the expert opinion of blood pattern analysis experts Ms Gerhard and Ms Roebuck at Independent Forensic Services;
- f. Enquiring as to the investigative file of a private investigator retained by the Miller family.

### *Request for coronial file*

53. On 11 May 2022, the Inquiry issued a written request to the Registrar of the Coroners Court of NSW at Lidcombe to obtain the coronial file in relation to the death of Mr Miller. The coronial file was produced on 2 June 2022.

### *Summons issued*

54. A summons to the NSWPF was issued on 18 May 2022 for, *inter alia*, all documents relating to the investigation of the death of Mr Miller (summons NSWPF1). A bundle of documents said to answer the summons was produced on 8 June 2023.
55. A further summons was issued to NSWPF on 13 April 2023 for the exhibits associated with the investigation into Mr Miller's death, specifically his clothing and items taken at post-mortem (NSWPF84), in order to facilitate the examination of those items by Ms Gerhard and Ms Roebuck.
56. Very belatedly, on 7 June 2023, in the letter referred to below at [66], NSWPF advised that a further archive box of material in respect of Mr Miller's death had been located and was being reviewed for responsiveness to the previous summons issued. A bundle of additional materials was produced to the Inquiry on 9 June 2023. A further document was provided on 15 June 2023.

### *Contact with family members and friends*

57. The Inquiry located and wrote to Mr Miller's family members, including Mr Miller's parents Stuart and Christine Miller and Mr Miller's two brothers Shane and Mark Miller.
58. On 18 October 2022, the Miller family, by letter to the Inquiry, outlined their concerns regarding the initial police investigation, noting that a review by a forensic pathologist may assist the Inquiry's investigations. The Inquiry has subsequently corresponded with Shane Miller to provide the Miller family with updates as to the work of the Inquiry and the professional opinions obtained.

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59. On 23 January 2023, the Inquiry also wrote to Mr Miller's girlfriend at the time of his death, Bridget Lott (previously Bridget McCleery). The Inquiry then conferred with Ms Lott who subsequently provided a statement dated 6 June 2023.<sup>31</sup>

### *Professional opinions obtained*

60. The Inquiry sought the opinion of an expert forensic pathologist Dr Iles of the Victorian Institute of Forensic Medicine. Dr Iles was asked to provide an opinion on, *inter alia*:
- a. The adequacy of the post-mortem investigations conducted with respect to Mr Miller;
  - b. The medical cause of Mr Miller's death;
  - c. Whether Mr Miller likely died at the location he was found;
  - d. Whether there were 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; and
  - e. Whether Mr Miller's injury were consistent with misadventure or foul play.
61. The findings of her report dated 14 December 2022 are addressed below at [130]-[138].
62. The Inquiry engaged Ms Gerhard and Ms Roebuck of Independent Forensic Services to conduct an examination in relation to Mr Miller's clothing, and to provide an expert opinion about conclusions that could be drawn from the bloodstain patterns on Mr Miller's clothing or observable in crime scene photographs. The questions and/or topics on which an opinion was sought included:
- a. The cause/s (or possible cause/s) of blood patterns observed on Mr Miller's face and clothing;
  - b. Whether Mr Miller's body fell to the location where it was found, or whether it was moved to that location;
  - c. Whether there were any marks or damage to Mr Miller's clothing or shoes that could suggest he climbed over a fence while wearing them; and
  - d. Any conclusions that can be drawn as to the manner and cause of Mr Miller's death.
63. Ms Gerhard and Ms Roebuck are forensic scientists. Amongst other disciplines, Ms Gerhard is an expert in blood pattern analysis, a field that utilises the underpinning sciences of physics, mathematics and biology to provide opinions on the events or mechanism responsible for blood stains.<sup>32</sup>

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<sup>31</sup> Statement of Bridget Lott, 6 June 2023 (SCOI.83636).

<sup>32</sup> Expert report of Jae Gerhard, 29 May 2023, [8.3.1] (SCOI.83328).

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64. Ms Gerhard and Ms Roebuck examined Mr Miller’s clothing at the NSWPF Pemulwuy Laboratory on 8 May 2023. Ms Gerhard furnished a report to the Inquiry dated 29 May 2023.<sup>33</sup> Her opinions are addressed below at [139]-[154].

### *Examination of debris*

65. By letter dated 24 May 2023, the Inquiry requested a statement from a police officer as to the nature of the debris found in Mr Miller’s hand (see above at [19]) and any forensic testing that had been conducted on the debris.
66. On 7 June 2023, the Inquiry received a letter from the NSWPF enclosing a statement of Inspector Andrew Brady of the Forensic Evidence and Technical Service (**FETS**) dated 7 June 2023.<sup>34</sup>
67. According to that statement: the debris was located in the State Archives, but had not been booked into the NSWPF Exhibits Forensics Information and Miscellaneous Property System (**EFIMS**) until 31 May 2023; there is no record of the debris being entered as an exhibit into the Physical Evidence Case Management System (**PECAMS**);<sup>35</sup> and no previous forensic testing had been completed on the debris.<sup>36</sup>
68. Inspector Brady visually examined the debris and noted that it is a single piece of brown/orange (rust) debris, trapezoidal in shape (6 millimetres by 4 millimetres), with red staining on both sides which appeared to be blood. The debris also demonstrates magnetic properties.<sup>37</sup>
69. Inspector Brady provided the opinion that the debris appears to be neither gravel nor organic/plant material, but that it has some metallurgical properties.<sup>38</sup>
70. The origin of the debris in Mr Miller’s hand is, at this time, unknown. The Inquiry proposes to brief an appropriate expert to ascertain the nature of the material, and whether it was consistent with originating from the fence or the cliff. Supplementary submissions may be provided as to the impact of the report on any findings as to the manner and cause of Mr Miller’s death.

### *Other sources of information*

71. In 1998, after the inquest into Mr Miller’s death, his parents Stuart and Christine Miller retained a private investigator from Bentley Hunt and Associates to investigate their son’s death. The Inquiry

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<sup>33</sup> Expert report of Jae Gerhard, 24 April 2023 (SCOI.83326).

<sup>34</sup> Statement of Inspector Andrew Brady, 7 June 2022 (NPL.9000.0017.0072).

<sup>35</sup> Statement of Inspector Andrew Brady, 7 June 2022, [17]-[18], [24] (NPL.9000.0017.0072).

<sup>36</sup> Statement of Inspector Andrew Brady, 7 June 2022, [35] (NPL.9000.0017.0072).

<sup>37</sup> Statement of Inspector Andrew Brady, 7 June 2022, [29]-[32] (NPL.9000.0017.0072).

<sup>38</sup> Statement of Inspector Andrew Brady, 7 June 2022, [34] (NPL.9000.0017.0072).



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made attempts to obtain any documents obtained or created by the private investigator. Investigations by the Inquiry revealed that Bentley Hunt and Associates is permanently closed, and the Inquiry has been advised by the Miller family that they do not have a copy of the private investigation file. Shane Miller advised that that no investigations appeared to have been conducted.<sup>39</sup>

### Submission as to the available evidence

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.

#### *Mr Miller's personal background*

73. Miller was born on 27 July 1975 to parents Stuart Miller and Christine Miller. He was the second of three sons, with brothers Mark Miller and Shane Miller. Mr Miller grew up in Orange and had close relationships with his family and friends. He was a keen footballer. Following his schooling, he completed an electrical apprenticeship and had been accepted by the University of Western Sydney to study Sport Science. It was for that reason that he moved from Orange to Sydney, on only the Monday prior to his death.<sup>40</sup>
74. Although he grew up in Orange, Mr Miller had travelled to Sydney on a number of occasions, either travelling with his football team or to visit friends. He would usually stay with either Shawn Kelly or Nathan White, both of whom he knew from Orange. The friends would often go to the pubs in North Sydney, the Rocks or Kings Cross, and Mr White considered that Mr Miller had a reasonably good knowledge of the Sydney area and how to get around. Mr Miller also enjoyed gambling, and it would not have been unusual for him to end a night by going to the Casino in Darling Harbour.<sup>41</sup>
75. Mr Miller had a steady girlfriend at the time of his death, Ms Bridget Lott. They had been together on and off for about five years.<sup>42</sup> There is no evidence that Mr Miller was gay or bisexual.

<sup>39</sup> Statement of Kathryn Lockery, 14 June 2023 (SCOI.83681).

<sup>40</sup> Statement of Senior Constable Michael Lane, 1 May 1997 (SCOI.02737.00051).

<sup>41</sup> Statement of Nathan White, 4 March 1997 (SCOI.02737.00056); Statement of Shawn Kelly, 4 March 1997 (SCOI.02737.00054); Transcript of coronial inquest, 7 October 1997, 13 (SCOI.02737.00041).

<sup>42</sup> Statement of Bridget Lott, 6 June 2023, [3] (SCOI.83636).



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### *Mr Miller's movements before death*

76. The weekend of Mr Miller's death was his first since moving to Sydney. According to Ms Lott, he was "a country boy excited to be out in Sydney and explore 'the Big Smoke.'"<sup>43</sup> In a letter he wrote to her on the Friday before his death, he said:

Tomorrow Shawny and me are meeting up, getting some lunch and a swim and joining up with Whitey to go out. We might even have a look at the Mardi Gras.

77. Consistent with this plan, at about midday on Saturday 1 March 1997 Mr Miller drove to the home of Mr Kelly in Maroubra. At about 5:00pm, Mr Miller and Mr Kelly drove together in Mr Kelly's car to the house of Mr White in Willoughby.<sup>44</sup> Another friend, Jason Elvy, joined them there, as well as two other young men.<sup>45</sup> The friends shared a case of beer and a bottle of tequila among themselves.<sup>46</sup> A few of them also smoked some marijuana. Mr Elvy thought that Mr Miller "possibly" had a cone of marijuana, but Mr White stated that Mr Miller didn't normally smoke it and didn't have any that night.<sup>47</sup>

78. At around 9:30pm, Mr Miller, Mr Kelly, Mr White and Mr Elvy travelled by taxi to Oxford Street, Darlinghurst, and watched the last hour of the Mardi Gras parade. When the parade concluded at about 11:30pm, they walked down Oxford Street, and eventually travelled by taxi to George Street in the Rocks. Mr Elvy and Mr Kelly went into the Orient Hotel, while Mr Miller and Mr White went to the Observer Hotel.<sup>48</sup>

79. The bartender at the Observer Hotel observed that Mr Miller and Mr White were "obviously intoxicated." She refused to serve them drinks.<sup>49</sup> The bar manager believed Mr Miller was "extremely intoxicated" and described that "his eyes were red and watery and [he] had a vague look about him."<sup>50</sup> The pair were asked to leave.<sup>51</sup>

80. Mr Miller and Mr White walked back to the Orient Hotel. On the way, Mr Miller started talking to two women. Mr White yelled out to Mr Miller that he would meet him in the Orient Hotel, and went ahead to meet Mr Kelly and Mr Elvy.<sup>52</sup>

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<sup>43</sup> Statement of Bridget Lott, 6 June 2023, [5]-[6] (SCOI.83636).

<sup>44</sup> Statement of Colin Plant, 13 March 1997 (SCOI.02737.00064).

<sup>45</sup> Statement of Nathan White, 4 March 1997 (SCOI.02737.00056).

<sup>46</sup> Statement of Nathan White, 4 March 1997 (SCOI.02737.00056).

<sup>47</sup> Statement of Jason Elvy, 4 March 1997 (SCOI.02737.00055); Statement of Nathan White, 4 March 1997 (SCOI.02737.00056).

<sup>48</sup> Statement of Nathan White, 4 March 1997 (SCOI.02737.00056); Statement of Shawn Kelly, 4 March 1997 (SCOI.02737.00054); Statement of Jason Elvy, 4 March 1997 (SCOI.02737.00055).

<sup>49</sup> Statement of Chloe Green, 20 March 1997 (SCOI.02737.00057).

<sup>50</sup> Statement of Stephen Swart, 6 March 1997 (SCOI.02737.00058).

<sup>51</sup> Statement of Manni Solomona, 27 March 1997 (SCOI.02737.00059).

<sup>52</sup> Statement of Nathan White, 4 March 1997 (SCOI.02737.00056).

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81. At about 1:30am, Mr Kelly left the Orient Hotel in order to meet his brother, who finished work at 2:00am. On his way, he saw Mr Miller walking outside the Orient Hotel. He said to Mr Miller, "The boys are in the Orient, go in there." Mr Miller replied, "Right Oh," and then Mr Kelly left to meet his brother.<sup>53</sup>
82. When Mr Kelly returned to the Orient Hotel about 10 minutes later, Mr Miller was not there and no one had seen him.<sup>54</sup>
83. At about 2:10am (on the Sunday morning), a local resident named Jade Carter sighted a person, who seems likely to have been Mr Miller, walking down Watson Road from Observatory Hill about twenty paces behind her. She described this person as:
- ...a young man in his early 20s... He had a white TShirt [sic] which was tucked into his jeans, faded pale blue jeans that were a good fit, dark belt and dark shoes. He appeared to be well dressed... He didn't appear to have any injuries, his clothes were neat and tidy and he didn't look out of the ordinary.<sup>55</sup>
84. The location where Ms Carter describes seeing this person is only about 600 metres from Munn Reserve.<sup>56</sup>

### *The discovery of Mr Miller's body*

85. At 7:50am on the morning of Monday 3 March 1997, Mr Miller's body was found by two employees of Patricks, lying face down in the machinery yard near wharf 4. His pulse was checked, but his body was otherwise not moved.<sup>57</sup>
86. 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.<sup>58</sup> He was lying face down with his body laid out straight. His head was pointed towards the eastern side of the machinery yard and turned slightly to the right. His left arm was alongside his body and slightly bent at the elbow, while his right arm was under his body. A portion of ivy was adjacent to his left leg.<sup>59</sup>
87. Mr Miller was fully clothed, dressed in a pair of blue denim jeans, a white t-shirt over the top of another white t-shirt, a pair of brown shoes, a brown belt and a pair of multicoloured socks. The back and right

<sup>53</sup> Statement of Shawn Kelly, 4 March 1997 (SCOI.02737.00054).

<sup>54</sup> Statement of Nathan White, 4 March 1997 (SCOI.02737.00056); Statement of Shawn Kelly, 4 March 1997 (SCOI.02737.00054).

<sup>55</sup> Statement of Jade Carter, 6 March 1997 (SCOI.02737.00067).

<sup>56</sup> Statement of Senior Constable Michael Lane, 1 May 1997, [62] (SCOI.02737.00051).

<sup>57</sup> Statement of Peter Cowan, 6 March 1997 (SCOI.02737.00060); Statement of Jim Gould, 6 March 1997 (SCOI.02737.00061); Statement of Vince Micallef, 6 March 1997 (SCOI.02737.00062).

<sup>58</sup> Transcript of coronial inquest, 7 October 1997 (SCOI.02737.00041).

<sup>59</sup> Statement of Detective Senior Constable Van Leeuwen, 14 June 1997 (SCOI.83347); Crime Scene Photographs, 3 March 1997 (SCOI.83350).

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sleeve of his white t-shirt was stained with blood; testing confirmed that this was Mr Miller's blood.<sup>60</sup> There was a large pool of blood in the region of his face and upper torso, and a stream of diluted blood had flown from his face.

88. Mr Miller's wallet was in his back pocket; no fingerprints were observed on examination.<sup>61</sup> On a later date, Police found two Commonwealth credit cards, a university card, a Medicare card and twenty-five dollars in cash deep in his pockets.<sup>62</sup> The presence of this property suggests that it is unlikely that Mr Miller was the victim of a robbery.
89. One of the dock workers who found him, Peter Cowan, had also been working on the Sunday. He told police that most of the work on Sunday was on wharf 8, and that no work was going on near wharf 4. The machinery yard was only used periodically, about once a week.<sup>63</sup> These circumstances may explain why Mr Miller's body was not discovered until the Monday morning, despite Dr Duflou estimating his time of death as between 2:00am and 8:00am on the Sunday morning.<sup>64</sup>
90. Police were called and arrived by 8:10am on Monday 3 March 1997.

### *Crime scene examination*

91. The total Patricks compound consisted of ten wharfs, covering approximately twelve to fifteen hundred metres along the waterfront, used for loading and unloading international shipping containers. The compound was bordered by a sandstone cliff, at the top of which was the suburb of Miller's Point.<sup>65</sup>
92. The machinery yard was an infrequently used part of the wharf where old heavy mechanical machinery was stored. One side of the area abutted a sheer cliff face; the remaining three sides were fenced off with cyclone wire fencing. Entrance was via a gate on the southern end, which was typically left open.<sup>66</sup> The eastern border of the machinery yard abutted buildings occupied by South Corp Wines and Polygram Music. The area was only accessible from within the Patricks Compound; public access was blocked by the fence. An aerial photograph of the location of Mr Miller's body, taken in 1997 shortly after Mr Miller's death, is **Annexure A** to these submissions.

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<sup>60</sup> Second Statement of Virginia Friedman, DAL, 19 May 1998 (SCOI.10048.00006).

<sup>61</sup> Bundle of running sheets, 12 (SCOI.83327).

<sup>62</sup> Bundle of running sheets, 14 (SCOI.83327). Police only discovered this property after the clothing had been removed from the body at post-mortem and sent to the Crime Scene Office. The property was missed on an initial check of his pockets, likely due to Mr Miller's jeans having deep pockets.

<sup>63</sup> Statement of Peter Cowan, 6 March 1997 (SCOI.02737.00060).

<sup>64</sup> Autopsy report of Dr Duflou, 5 June 1997 (SCOI.02737.00048).

<sup>65</sup> Statement of Senior Constable Michael Lane, 1 May 1997 (SCOI.02737.00051)

<sup>66</sup> Statement of John Straube, 14 March 1997 (SCOI.02737.00066).

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93. Police inspected the machinery yard and mapped it using terrestrial photogrammetry technology.<sup>67</sup> Other than the blood pooled under Mr Miller, there was no evidence of blood staining or droplets around the yard.<sup>68</sup>
94. At the top of the cliff bordering the machinery yard was a park called Munn Reserve. Munn Reserve was on the southern side of Bettington Street in Millers Point, near the Palisade Hotel. The western edge of the reserve, which abutted the cliff, was fenced with galvanised chain wire fencing. The chain wire fencing was 1.9 metres off the ground and topped with barbed wire, such that the overall height of the fence was 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 Melaleuca tree was leaning against it.<sup>69</sup>
95. Police looked for, but did not observe, any recent scuff or indentation marks on the chain wire fencing or on the galvanised tubular steel top rails, or any holes in the chain wire fence. There were no threads of clothing or material caught on the barbed wire. The leaf litter on the reserve side of the fence showed no obvious signs of being recently disturbed.<sup>70</sup>
96. Beyond the chain wire fence was a sandstone ledge, approximately 1.8 metres below the ground level of the reserve. The ledge was approximately 1 metre wide and covered with ivy vines and small vegetation. From the ledge down to the machinery yard was a drop of 7 metres.<sup>71</sup> The vegetation on the ledge did not appear to be disturbed, as police found no evidence of slippage, indentation marks or broken stems.<sup>72</sup> However, as noted above, a small amount of ivy was found at Mr Miller's feet.

### *Access to the Patricks compound*

97. The Patricks compound was guarded by security officers employed by Patricks. At least two were rostered on each shift. To enter the wharf, it was necessary to go through a security checkpoint at the entrance gate. During each shift, one security guard would conduct mobile patrols by vehicle each hour while the other would stay at the security checkpoint.<sup>73</sup> As the gate was manned at all times, it would be "very difficult" for someone to come through the gate without security officers knowing.<sup>74</sup>

<sup>67</sup> Terrestrial Photogrammetry Survey of 29-33 Hickson Road, Millers Point, 3 March 1997 (SCOI.83348).

<sup>68</sup> Statement of Detective Senior Constable Van Leeuwen, 14 June 1997 (SCOI.83347).

<sup>69</sup> Statement of Detective Senior Constable Van Leeuwen, 14 June 1997 (SCOI.83347).

<sup>70</sup> Statement of Detective Senior Constable Van Leeuwen, 14 June 1997 (SCOI.83347); Statement of Detective Senior Sergeant Carlton Cameron, 3 October 1997 (SCOI.02737.00069).

<sup>71</sup> Statement of Detective Senior Constable Van Leeuwen, 14 June 1997 (SCOI.83347).

<sup>72</sup> Statement of Detective Senior Constable Van Leeuwen, 14 June 1997 (SCOI.83347); Statement of Detective Senior Sergeant Carlton Cameron, 3 October 1997 (SCOI.02737.00069).

<sup>73</sup> Statement of Lance Neilson, 28 October 1997 (SCOI.02737.00039); Statement of John Straube, 14 March 1997 (SCOI.02737.00066); Statement of Warren White, 6 October 1997 (SCOI.02737.00038); Statement of Stephen Williams, 6 October 1997 (SCOI.02737.00040); Statement of Colin Plant, 13 March 1997 (SCOI.02737.00064); Statement of Archibald Price, 14 March 1997 (SCOI.02737.00065).

<sup>74</sup> Statement of Lance Neilson, 28 October 1997 (SCOI.02737.00039); Statement of Warren White, 6 October 1997 (SCOI.02737.00038); Statement of Stephen Williams, 6 October 1997 (SCOI.02737.00040).



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98. The security officers conducting mobile patrols would drive past the machinery yard but would not enter it.<sup>75</sup> Until about 4:00am on Sunday 2 March 1997, the area would have been lit by floodlights. After that time, the floodlights were switched off but pilot lights remained on. The security checkpoint was only about 100 metres away from the machinery yard.<sup>76</sup>
99. Police obtained a statement from each security officer who worked at Patricks from the night that Mr Miller was last seen alive, to the morning that his body was found. No security officer reported seeing anything suspicious or unusual during their shifts, or in the machinery yard.<sup>77</sup> The statements do not record whether any persons or vehicle were authorised to pass through the security gate during the window of time in which Mr Miller’s death occurred. However, a police running sheet (undated) includes the following notation:
- Persons allowed through gates – Shipping agents, Maritime staff, Customs/quarantine staff, staff of vessels. Most of the people allowed through gate are known to staff or show passes stating what vessels they are on.<sup>78</sup>
100. The security officers told police that, on the night of Saturday 1 March 1997 until about 3:00am the following (Sunday) morning, a New Zealand ship called “the Ranginui” was unloading containers and timber on wharf 4.<sup>79</sup> The extent of canvassing of information from crew members of the Ranginui is referred to above at [28]-[31].

### *Police appeals for information*

101. The police conducted a canvass for witnesses in the two buildings next to the machinery yards, in the pubs and hotels in The Rocks and Millers Point, and in residences near Munn Reserve.<sup>80</sup> A flyer with information about Mr Miller’s death was handed out at all establishments in the area.<sup>81</sup> The information they obtained as to Mr Miller’s movements on the night before his death is reflected in the statements of witnesses summarised above.
102. Appeals were made to the media for information in relation to Mr Miller’s death, and on 11 March 1997 Mr Miller’s case was featured on *Australia’s Most Wanted*.<sup>82</sup>

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<sup>75</sup> Statement of Lance Neilson, 28 October 1997 (SCOI.02737.00039); Statement of Warren White, 6 October 1997 (SCOI.02737.00038)

<sup>76</sup> Statement of John Straube, 14 March 1997 (SCOI.02737.00066).

<sup>77</sup> Statement of Lance Neilson, 28 October 1997 (SCOI.02737.00039); Statement of John Straube, 14 March 1997 (SCOI.02737.00066); Statement of Warren White, 6 October 1997 (SCOI.02737.00038); Statement of Stephen Williams, 6 October 1997 (SCOI.02737.00040); Statement of Colin Plant, 13 March 1997 (SCOI.02737.00064); Statement of Archibald Price, 14 March 1997 (SCOI.02737.00065).

<sup>78</sup> Bundle of running sheets, 3 (SCOI.83327).

<sup>79</sup> Statement of Lance Neilson, 28 October 1997 (SCOI.02737.00039).

<sup>80</sup> Bundle of running sheets, 1-2, 4-6, 10-11 (SCOI.83327).

<sup>81</sup> Bundle of running sheets, 13 (SCOI.83327).

<sup>82</sup> Statement of Senior Constable Michael Lane, 1 May 1997 (SCOI.02737.00051); Media information, 4 March 1997 (SCOI.02737.00076).

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### *Conflicting opinions as to the manner and cause of Mr Miller's death*

103. As noted above, conflicting opinions have been expressed as to the manner and cause of Mr Miller's death. The divergence of views has principally turned on whether the evidence supports Mr Miller's injuries being sustained after a fall from the cliff next to where his body was found, or alternatively is consistent with them being inflicted by a person or persons who assaulted Mr Miller. These various opinions are summarised below.

### *June/October 1997: Opinion of Dr Duflou*

104. In his autopsy report dated 5 June 1997,<sup>83</sup> Dr Duflou considered 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 (e.g. a length of timber), and injuries 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 defensive injuries.
- b. Scenario 2: That the injuries were sustained during a fall from a height. Dr Duflou stated that the wrist injuries, and possibly the head and abdominal injuries, could have been sustained during a fall from a height. However, he qualified this opinion by noting that "both the head and abdominal injuries... are somewhat atypical for a fall from a height."
- c. Scenario 3: A combination of Scenarios 1 and 2. This combination was said by Dr Duflou to "explain all the injuries satisfactorily, and the sequence would most likely have been an assault followed by a fall from a height." He hypothesised that Mr Miller could have been moved to the place he was found.

105. Dr Duflou observed that each of the scenarios he posited had "inherent difficulties."

106. At the coronial hearing in October 1997, Dr Duflou 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.<sup>84</sup> He expanded upon the comment in his report that the injuries were "atypical" for a fall from a height, stating:

The head injury itself was more consistent with a blow more in the middle, a transverse blow as well as more a vertical blow to the neck itself. The abdominal injuries are unusual in that

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<sup>83</sup> Autopsy report of Dr Duflou, 5 June 1997 (SCOI.02737.00048).

<sup>84</sup> Transcript of coronial inquest, 7 October 1997, 6 (SCOI.02737.00041).



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there were no associated rib fractures or pelvic fractures, yet there were quite significant abdominal injuries. You'd expect if he fell onto a flat surface in any case that to have abdominal injuries you'd have to have injuries on either side and there was none.<sup>85</sup>

107. He agreed that this lent support to the theory that Mr Miller was killed in a homicidal attack.

108. 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 its 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.<sup>86</sup>

*June/October 1997: Opinion of Detective Senior Constable Van Leeuwen*

109. Detective Senior Constable (**DSC**) Van Leeuwen, crime scene examiner, expressed the view 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."
- 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."

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<sup>85</sup> Transcript of coronial inquest, 7 October 1997, 5 (SCOI.02737.00041).

<sup>86</sup> Transcript of coronial inquest, 7 October 1997, 5 (SCOI.02737.00041).

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- 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.”<sup>87</sup>
110. DSC Van Leeuwen gave evidence at the coronial hearing. In relation to the vegetation at the top of the cliff, he stated that the dead leaf matter on the reserve side of the fence would not be expected to “yield any evidence” as to whether there had been people through there; however, the ivy on the outside of the fence breaks easily and would tend to leave definite indentation marks if someone had walked, stumbled, fallen or rolled through it.<sup>88</sup>
111. DSC 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 1.1 metres. He stated that this opinion was based on his expertise and “physics calculations.”<sup>89</sup> DSC Van Leeuwen’s expertise for advancing such an opinion was not established.
112. DSC Van Leeuwen described the blood stains on the back of Mr Miller’s t-shirt as “the most crucial piece of forensic evidence” supporting his view that Mr Miller’s death was a homicide, not a fall. He considered that one scenario, as to how the blood could have been positioned on his back in that way, was that Mr Miller was assaulted in another place and then laid down in the back of a vehicle, and had been bleeding on his back.<sup>90</sup>

### *June/October 1997: Opinion of Detective Senior Sergeant Cameron*

113. Detective Senior Sergeant (DSS) Carlton Cameron, a more senior crime scene examiner than DSC Van Leeuwen, provided the following opinions as to the manner in which Mr Miller sustained his injuries based on his observations of the crime scene:
- a. In relation to the vegetation on the outside of the fence at Munn Reserve, “none of the vegetation had the appearance of having slipped southward towards the cliff edge as I would have expected had someone slipped, fallen or been pushed over the cliff edge.”
  - b. If someone had been carried to and lifted up to the top of the fence, and pushed over the fence, he would have expected “more damage to the fence, the vegetation and for there to be physical evidence adhering to the barbed wire.”<sup>91</sup>

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<sup>87</sup> Statement of Detective Senior Constable Van Leeuwen, 9-10 (SCOI.83347).

<sup>88</sup> Transcript of coronial inquest, 7 October 1997, 8 (SCOI.02737.00041).

<sup>89</sup> Statement of Detective Senior Constable Van Leeuwen, 14 June 1997, 8 (SCOI.83347).

<sup>90</sup> Statement of Detective Senior Constable Van Leeuwen, 14 June 1997, 9 (SCOI.83347).

<sup>91</sup> Statement of Detective Senior Sergeant Carlton Cameron, 3 October 1997 (SCOI.02737.00069).

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114. In his evidence at the coronial hearing, DSS Cameron expressed the view that he did not believe that Mr Miller “came through or over the fence” in Munn Reserve, and that Mr Miller’s injuries were not sustained by a fall.<sup>92</sup>

### *Opinion of Plain Clothes Senior Constable Michael Lane*

115. Contrary to those opinions of officers from the Crime Scene Unit, PCSC Michael Lane, the original OIC of the investigation, formed the opinion that Mr Miller accidentally fell from the cliff.<sup>93</sup> 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 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 Munn 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 fallen, or he may have realised there was no way down and fallen asleep and rolled off the cliff.<sup>94</sup>
116. As part of PCSC 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,<sup>95</sup> in effect contradicting the opinion of DSS Van Leeuwen that the position of the body was less contorted than would be expected following a fall.

### *October 1997: Coronial findings*

117. On 7 October 1997, Coroner Abernethy returned a finding that Mr Miller died “of multiple injuries inflicted by a person or persons unknown.”<sup>96</sup> The coroner found that a number of factors militated against PCSC Lane’s opinion that Mr Miller fell from the cliff, as follows:

First, at the top of the cliff is a high wire fence. Secondly, Scott was very drunk with a blood alcohol level of .22. Thirdly, crime scene carefully examined the ledge above the cliff which was covered in ivy. They found no signs of disturbance of that ivy. Fourthly, Scott’s body was laid out straight and was not cramped up as often occurs in falls. Fifthly, Scott’s injuries, in the main were more consistent with his being assaulted.<sup>97</sup>

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<sup>92</sup> Transcript of coronial inquest, 7 October 1997, 10-11 (SCOI.02737.00041).

<sup>93</sup> Statement of Senior Constable Michael Lane, 1 May 1997 (SCOI.02737.00051).

<sup>94</sup> Statement of Senior Constable Michael Lane, 1 May 1997 (SCOI.02737.00051).

<sup>95</sup> Bundle of running sheets, 8 (SCOI.83327).

<sup>96</sup> Findings in the inquest into the death of Scott Stuart Miller, 7 October 1997 (SCOI.02737.00004).

<sup>97</sup> Findings in the inquest into the death of Scott Stuart Miller, 7 October 1997 (SCOI.02737.00004).

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118. 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. Coroner Abernethy’s reasons involved a rejection of any hypothesis that Mr Miller came over the fence at Munn Reserve and fell to his death, either accidentally or after being pushed.
119. Coroner Abernethy considered that his inquiry was hampered by the lack of evidence as to Mr Miller’s movements after Ms Carter saw him. He speculated that he could have walked down onto the wharf from the area of the Palisade Hotel, or been picked up by unknown persons.

### *1997-1998: Strike Force Corone*

120. After the inquest, Coroner Abernethy referred the case back to the NSWPF for further investigation by specialist homicide officers. A strike force was established under the command of Detective Sergeant (DS) Desmond.<sup>98</sup> The Inquiry was only provided with a number of letters and memoranda which summarise this re-investigation. Those documents do not appear to be a complete record of the investigation. It is accordingly difficult to comment on the thoroughness of the reinvestigation, or for the Inquiry to itself assess the significance of any new information that was obtained.
121. In a 1998 letter to the Miller family, DS Desmond summarised the following steps that were taken but revealed no “fresh or additional information”:
- a. Re-interviewing of security staff at Patricks;
  - b. Re-interviewing and making inquiries with licensees and security staff at local hotels;
  - c. Examination of medical records and log books on the vessel the Ranginui (to determine if any crew returned from Mardi Gras with an indication of having been in a fight);
  - d. Inquiries with Combined Taxi Services;
  - e. Examination of Police radio logs;
  - f. A media release in respect to information from a local resident about two men acting suspiciously;<sup>99</sup>
  - g. DNA testing of Mr Miller’s t-shirt.<sup>100</sup>
122. Police also investigated an intelligence report that a young person was overheard bragging about assaulting a male person in The Rocks with a bottle, and throwing him over a cliff. The young person

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<sup>98</sup> Letter from Clive Small to Coroner Abernethy, 21 April 1998 (SCOI.02737.00033).

<sup>99</sup> New Information on Darling Harbour Death, 3 January 1998 (SCOI.10047.00024).

<sup>100</sup> Letter from Detective Sergeant Desmond to Mr and Mrs Miller, 28 March 1998 (SCOI.10047.00016).



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was excluded as a suspect on the basis that he was detained in the Kariong Detention Centre at the time of the incident.<sup>101</sup>

123. By report dated 3 January 1998, DS Desmond offered the following observations/opinions, which tended to support the theory that Mr Miller fell from the cliff above where his body was located:
- a. After reinterviewing security staff, it would appear no vehicle or pedestrian could have entered the terminal without being challenged;
  - b. The position of Mr Miller's body, the lack of blood particles around the machinery yard, Mr Miller's clothing being intact indicate that Mr Miller fell from the area of the cliff face;
  - c. The lack of evidence of a struggle, and the lack of property stolen from Mr Miller, "raises more questions than it answers";
  - d. Enquiries revealed "no two person's [*sic*] sustain identical injuries in a fall of this nature."<sup>102</sup>
124. A government reward was approved for any information relevant to Mr Miller's death, but no information was forthcoming.<sup>103</sup>

### 1999: Strike Force Lincoln

125. Strike Force Lincoln was established in 1999 to investigate the death of a man named [I304], who had also died in 1997. The primary person of interest in [I304]'s death was a man named [NP130]. [NP130] was ultimately charged and convicted in relation to [I304]'s death.
126. Strike Force Lincoln considered Mr Miller's death, as a result of information provided to them by [NP130]'s former girlfriend, [I305], relating to an incident that occurred with [NP130] in The Rocks in March 1997. [I305] told police that she had left the Hero of Waterloo Hotel to go to a nearby park to vomit. The park identified by [I305] was Munn Reserve. Whilst at the park, she spoke with a male fitting the description of Mr Miller for about five minutes. He appeared drunk and she offered to call him a cab, but he said he didn't need one. [NP130] then appeared and began pushing the male, telling him to stay away from [I305]. [NP130] slapped [I305] in the face and told her go around the corner. [I305] walked away.<sup>104</sup>

<sup>101</sup> Memorandum prepared by DSS Desmond, Present status concerning the matter of Scott Stuart Miller, 8 January 1998 (SCOI.10047.00032).

<sup>102</sup> Report of Detective Sergeant Desmond, Question of Government Reward being posted concerning the murder of Scott Stuart Miller at Darling Harbour on 2 March 1997, 27 March 1998 (SCOI.10048.00002).

<sup>103</sup> Memorandum prepared by DSS Desmond, Present status concerning the matter of Scott Stuart Miller, 15 August 1998 (SCOI.10047.00010).

<sup>104</sup> First Statement of [I305], 11 April 1999 (SCOI.10047.00049); Transcript of interview with [I305] on 15 April 1999 (SCOI.10047.00050).

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127. About 10 or 15 minutes later, [NP130] returned and said that he had “shanked him and chucked him off a cliff” (referring to the male). [I305] understood “shanked” to mean “stabbed”. [I305] did not believe him and assumed he had gotten into another fight. [NP130] had a swollen fist.<sup>105</sup>
128. On the totality of the evidence, it is unlikely that [I305] was describing an incident involving Mr Miller.
- a. Firstly, [I305] did not recognise Mr Miller when shown photographs;<sup>106</sup>
  - b. Secondly, she made no mention of the night being Mardi Gras;
  - c. Thirdly, the Palisade Hotel closed between 11:00pm and 12:00am on the night of Mr Miller’s death,<sup>107</sup> accordingly, any incident involving [NP130] and a male must have occurred hours prior to the last sighting of the person who seems likely to have been Mr Miller;
  - d. Fourthly, there was no vomit found in the park by crime scene officers, despite a thorough search of the park being conducted;<sup>108</sup>
  - e. Fifthly, Mr Miller did not have any stab wounds;
  - f. Finally, bearing in mind Mr Miller’s solid build and the height of the fence at Munn Reserve, it is unlikely that he could have been lifted over the fence while resisting. [NP130] was only 158cm tall.<sup>109</sup>
129. Strike Force Lincoln did not otherwise re-examine the circumstances of Mr Miller’s death.

### *2022: Independent forensic review by Dr Iles, forensic pathologist*

130. Noting the divergences of opinion on the manner and cause of Mr Miller’s death, both at inquest and in subsequent investigations, the Inquiry briefed forensic pathologist Dr Linda Iles to conduct a review of the autopsy report.<sup>110</sup>
131. Dr Iles considered the autopsy report of Dr Duflou to be comprehensive, and the photo-documentation of the injuries to be of a relatively high standard. The post-mortem investigations were sufficient for her to form a view as to how Mr Miller’s injuries were sustained.<sup>111</sup>

<sup>105</sup> First Statement of [I305] 11 April 1999 (SCOI.10047.00049); Transcript of interview with [I305] on 15 April 1999 (SCOI.10047.00050).

<sup>106</sup> Second Statement of [I305] 11 April 1999 (SCOI.10047.00046).

<sup>107</sup> Bundle of running sheets, 1 (SCOI.83327).

<sup>108</sup> Unsolved Homicide Team Case Screening Form, 24 April 2004 (SCOI.NPL.0100.0015.0001); First Statement of [I305] 11 April 1999 (SCOI.10047.00049).

<sup>109</sup> Unsolved Homicide Team Case Screening Form, 24 April 2004 (SCOI.NPL.0100.0015.0001).

<sup>110</sup> Letter of Instruction to Dr Linda Iles, 23 November 2022 (SCOI.82890).

<sup>111</sup> Expert report of Dr Linda Iles, 14 December 2022, 7 (SCOI.82891).



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132. Dr Iles opined that all of Mr Miller’s physical injuries can be accounted for by a fall from a cliff face, with a primary impact point to the front of his face (i.e. a headfirst fall). In particular:
- a. Mr Miller’s skull and brain injuries are consequent to severe blunt impact force to the front of his face and forehead. The injuries are located in a single plane, and have a vertically oriented abraded component most obvious on the neck and chin. Dr Iles considers these injuries to be “entirely in keeping” with a high magnitude force impact as may occur consequent to a fall from a height.<sup>112</sup> While Dr Iles notes that a similar pattern of cranio-facial injuries can be observed in other high-energy scenarios, such as to pedestrians or cyclists in motor vehicle accidents, the absence of injuries to the torso and lower limbs, and the circumstances in which he was found, discount such scenarios.<sup>113</sup>
  - b. Mr Miller’s liver and right kidney injuries, and associated bleeding in his abdomen, are in keeping with deceleration injuries that may be observed consequent to a fall from a height. The absence of associated fractures (which Dr Duflou considered “unusual”: see above at [106]) is accounted for by the primary impact being to Mr Miller’s head and face, with the injuries to the abdominal organs being as a result of deceleration.<sup>114</sup>
  - c. The bilateral distal forearm fractures are in keeping with Mr Miller’s arms being outstretched at the time of impact. Abrasions about the left wrist and the back of the right wrist may represent stretch-type abrasions related to the underlying fractures.<sup>115</sup>
  - d. The abrasions pictured to the back of Mr Miller’s right hand and fingers may have been sustained during a fall, or could have been caused by foliage or barbed wire.<sup>116</sup>
133. Dr Iles further expressed the view that Mr Miller’s injuries were, as a whole, *not* typical of an assault. In particular, she considered that:
- a. The presence of a single plane of facial abrasion in the setting of severe underlying craniofacial trauma is not typical of an assault; and
  - b. Bilateral distal forearm fractures, particularly in the absence of overlying bruising and lack of haemorrhage in the underlying soft tissues, are “not at all typical” of defensive injuries.<sup>117</sup>

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<sup>112</sup> Expert report of Dr Linda Iles, 14 December 2022, 7 (SCOI.82891).

<sup>113</sup> Expert report of Dr Linda Iles, 14 December 2022, 8 (SCOI.82891).

<sup>114</sup> Expert report of Dr Linda Iles, 14 December 2022, 7-8 (SCOI.82891).

<sup>115</sup> Expert report of Dr Linda Iles, 14 December 2022, 10 (SCOI.82891).

<sup>116</sup> Expert report of Dr Linda Iles, 14 December 2022, 9 (SCOI.82891).

<sup>117</sup> Expert report of Dr Linda Iles, 14 December 2022, 10 (SCOI.82891).

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134. In Dr Iles' view, the nature of Mr Miller's injuries precluded Mr Miller himself being able to move any significant distance from the site where his craniofacial injuries were sustained.<sup>118</sup> Dr Iles further considers that there is no scene or circumstantial evidence that would be compatible with Mr Miller's body being moved to the site it was located.<sup>119</sup> In particular, she notes that the injuries to Mr Miller's face would result in significant bleeding after death, which was in keeping with the pool of blood in which he was found.<sup>120</sup>
135. Dr Iles considered that the position of Mr Miller's body corresponded with his injuries, which indicated an anterior plane of impact (i.e. to the front of the body). However, contrary to the opinion of DSC Van Leeuwen that the body was less contorted than would be expected following a fall, she considered the position of Mr Miller's body to be not otherwise informative.<sup>121</sup>
136. While Dr Iles reached the conclusion that Mr Miller died after falling from the cliff above where he was found, she was unable to say, based on the medical evidence, how Mr Miller's fall occurred – that is, she could not discriminate between Mr Miller falling from the cliff edge or being pushed over the cliff.<sup>122</sup> Nonetheless, she considered that Mr Miller did not have injuries to indicate that any assault occurred.<sup>123</sup>
137. Dr Iles indicated that, in her view, the pattern of blood staining on the left shoulder and left upper arm region of Mr Miller's shirt may be accounted for by blood being absorbed into the shirt from the pooling below Mr Miller's body. Dr Iles also indicated that the blood staining on the top right back of Mr Miller's shirt and to the right side of his face and ear could possibly be accounted for by agonal expiration of air and blood.<sup>124</sup> However, Dr Iles qualified that blood pattern analysis is not her area of expertise, and recommended an opinion be sought from a forensic biologist/blood pattern analysis expert.
138. Dr Iles expressed the conclusion that the cause of Mr Miller's death may be expressed as "multiple injuries sustained in a fall from a height."

### *2023: Independent review by Ms Gerhard and Ms Roebuck, Independent Forensic Services*

139. Following the recommendation of Dr Iles to seek an opinion from a blood pattern expert, the Inquiry briefed Ms Gerhard and Ms Roebuck of Independent Forensic Services. Ms Gerhard's report sets out

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<sup>118</sup> Expert report of Dr Linda Iles, 14 December 2022, 8 (SCOI.82891).

<sup>119</sup> Expert report of Dr Linda Iles, 14 December 2022, 8 (SCOI.82891).

<sup>120</sup> Expert report of Dr Linda Iles, 14 December 2022, 10 (SCOI.82891).

<sup>121</sup> Expert report of Dr Linda Iles, 14 December 2022, 11 (SCOI.82891).

<sup>122</sup> Expert report of Dr Linda Iles, 14 December 2022, 10 (SCOI.82891).

<sup>123</sup> Expert report of Dr Linda Iles, 14 December 2022, 7 (SCOI.82891).

<sup>124</sup> Expert report of Dr Linda Iles, 14 December 2022, 11 (SCOI.82891).

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the examination and interpretation of each item of clothing.<sup>125</sup> The pertinent findings are described as follows.

140. Blue jeans with brown belt: There were no blood stains located on Mr Miller’s jeans, despite examination under magnification and the testing of apparent stains for the presence of blood. There was “wear and tear” on the jeans, but none that indicated an action such as climbing over a barbed wire fence.<sup>126</sup>
141. White t-shirt (top): The white t-shirt worn by Mr Miller as a top layer had extensive staining over the upper chest and neck region of the shirt, confirmed as blood, that appeared to be saturation staining from blood soaking into and wicking through the fabric.<sup>127</sup>
142. Within the saturation stain were smaller, darker “spatter” stains that were circular in shape, indicating that they had no direction. Stains of this nature are created when a force in addition to gravity is applied to liquid blood. In this case, they could have been the result of:
  - a. Blood being expelled from an airway (expired) shortly after a fall, or
  - b. Liquid blood being distributed as a result of an impact such as a fall.<sup>128</sup>
143. The heavy staining on the front of the shirt is consistent with Mr Miller having facial injuries and remaining prone, with little to no movement once the bleeding had started.<sup>129</sup>
144. The rear of the t-shirt had also had blood staining, predominantly on the right sleeve.<sup>130</sup> (DSC Van Leeuwen had considered this staining to be “suspicious” and the “most crucial piece of forensic evidence” supporting the theory that Mr Miller’s death was a homicide: see above at [112]).
145. Some of the stains had been removed from the shirt for testing in 1998, which confirmed that the blood originated from Mr Miller. The removal of a small portion of the stains did not affect Ms Gerhard’s ability to provide an opinion on the bloodstaining, as enough stains remained for the purpose of classification.<sup>131</sup>

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<sup>125</sup> Expert report of Jae Gerhard, 24 April 2023 (SCOI.83326).

<sup>126</sup> Expert report of Jae Gerhard, 24 April 2023, [10] (SCOI.83326).

<sup>127</sup> Expert report of Jae Gerhard, 24 April 2023, [11.1]-[11.3] (SCOI.83326).

<sup>128</sup> Expert report of Jae Gerhard, 24 April 2023, [11.5] (SCOI.83326).

<sup>129</sup> Expert report of Jae Gerhard, 24 April 2023, [11.6] (SCOI.83326).

<sup>130</sup> Expert report of Jae Gerhard, 24 April 2023, [11.7] (SCOI.83326).

<sup>131</sup> Expert report of Jae Gerhard, 24 April 2023, [11.7] (SCOI.83326).

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146. Ms Gerhard categorised the bloodstaining on the back of the t-shirt as “non-descript”, and opined that they could have resulted from blood being distributed as a result of the fall from the cliff and landing on the back of Mr Miller.<sup>132</sup>
147. Ms Gerhard concluded that the bloodstains on the back of the t-shirt were not indicative of an assault or of Mr Miller being upright with a bleeding injury. If there had been a single impact which created blood flow while an individual is upright, then drip type staining could have occurred. If there was an initial impact that opened a freely bleeding wound, then subsequent strikes could have distributed spatter-type stains. There was no evidence of either type of staining.<sup>133</sup>
148. There was an absence of drag or grab marks that would indicate that Mr Miller had been moved or dragged.<sup>134</sup>
149. There were no flow-type patterns that would indicate that Mr Miller was moved whilst freely bleeding.<sup>135</sup>
150. There was no damage observed on the shirt.<sup>136</sup>
151. White t-shirt (bottom): The staining on this white t-shirt was consistent with it being worn underneath the other white t-shirt. There were no drip or spatter type stains observed on this t-shirt.<sup>137</sup>
152. While there were some areas of damage to the shirt, these appeared to be from wear and tear.<sup>138</sup>
153. Shoes: The shoes were examined under magnification. No blood staining was observed. The shoes were well-worn, but no damage was observed beyond general wear.<sup>139</sup>
154. On the basis of the above examinations, Ms Gerhard expressed the following conclusion:

When considering the bloodstain patterns identified on all of the items of clothing examined, no bloodstains (such as spatter or drips) were observed to indicate that Mr Miller was assaulted (resulting in bleeding injuries) at the top or the bottom of the cliff.

In my opinion, the bloodstaining patterns observed on the clothing and in the photographs are consistent with the position Mr Miller was found at the bottom of the cliff following a fall. Furthermore, there is no evidence of significant movement of Mr Miller once his bleeding facial injuries occurred.<sup>140</sup>

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<sup>132</sup> Expert report of Jae Gerhard, 24 April 2023, [11.8] (SCOI.83326).

<sup>133</sup> Expert report of Jae Gerhard, 24 April 2023, [11.8]-[11.10] (SCOI.83326).

<sup>134</sup> Expert report of Jae Gerhard, 24 April 2023, [11.11] (SCOI.83326).

<sup>135</sup> Expert report of Jae Gerhard, 24 April 2023, [11.12] (SCOI.83326).

<sup>136</sup> Expert report of Jae Gerhard, 24 April 2023, [11.12] (SCOI.83326).

<sup>137</sup> Expert report of Jae Gerhard, 24 April 2023, [12.2]-[12.4] (SCOI.83326).

<sup>138</sup> Expert report of Jae Gerhard, 24 April 2023, [12.4] (SCOI.83326).

<sup>139</sup> Expert report of Jae Gerhard, 24 April 2023, [13] (SCOI.83326).

<sup>140</sup> Expert report of Jae Gerhard, 24 April 2023, [15] (SCOI.83326).



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### *Conclusions*

155. Notwithstanding the original coronial finding that Mr Miller's injuries were inflicted by a person or persons unknown, the preponderance of the evidence, including expert opinions not available at the time of the inquest, supports a conclusion that Mr Miller's injuries were sustained by a fall from the cliff directly above where his body was found.
156. Dr Iles' opinion, that each of Mr Miller's physical injuries can be accounted for by a fall from a cliff face with a primary impact point to the front of his face, should be preferred to Dr Duflou's evidence that the injuries were "atypical" for a fall from a height. Dr Iles' evidence adequately explains the mechanism for how each injury would be sustained, and in particular answers Dr Duflou's concerns about the absence of rib or pelvic fractures despite the significant abdominal injuries.<sup>141</sup>
157. Dr Iles also provides cogent reasons as to why Mr Miller's injuries were not typical of an assault, including the presence of a single plane of facial abrasion in the setting of severe underlying craniofacial trauma.<sup>142</sup>
158. The bloodstain pattern analysis conducted by Ms Gerhard supports Dr Iles' opinion and the proposition that Mr Miller died as a result of a fall. There was an absence of any bloodstaining (such as drip stains or directional spatter stains) that would have been consistent with Mr Miller being assaulted. To the contrary, the saturation bloodstaining was consistent with Mr Miller not moving after suffering bleeding facial injuries, with non-descript or non-directional spatter staining capable of explanation by the distribution of blood caused by the impact of the fall, or expiration of blood from an airway.<sup>143</sup>
159. Mr Miller's injuries precluded him moving any significant distance of his own motion, and there was no evidence to support his body being moved or dragged.<sup>144</sup> This tells against one of Dr Duflou's hypotheses, which was reflected in the reasons of the Coroner, that Mr Miller's body could have been "dumped" in the location that it was found.<sup>145</sup>
160. That Mr Miller came to his resting place by falling from the cliff is also consistent with the evidence that access to the wharf by members of the public was significantly limited.<sup>146</sup>

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<sup>141</sup> See above at [106], [132.b].

<sup>142</sup> See above at [133].

<sup>143</sup> See above at [147].

<sup>144</sup> See above at [134], [148]-[149].

<sup>145</sup> See above at [21], [104.c].

<sup>146</sup> See above at [97]-[99].



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161. The lack of contortion to Mr Miller's body is, in the opinion of Dr Iles', not informative,<sup>147</sup> and a neutral consideration in establishing the manner of Mr Miller's death.
162. As set out above, there is little evidence that establishes Mr Miller's presence at the top of the cliff. Conversely, the absence of certain evidence may tend to suggest the contrary. There was an absence of evidence of disturbance to the vegetation or ivy at the top of the cliff,<sup>148</sup> an absence of trace evidence (such as clothing fibres or shoe imprints) on the barbed wire fence,<sup>149</sup> and no tears or damage to Mr Miller's clothing.<sup>150</sup>
163. However, the absence of such evidence does not overcome the force of the forensic evidence as to Mr Miller's injuries and the bloodstain patterns. It is not inconceivable that Mr Miller would leave little trace of his presence at the top of the cliff, depending on how he came over the barbed wire fence, and whether Mr Miller fell from the fence (if he did so at all) without landing (or landing heavily) on the ivy on the cliff side of the fence.
164. In addition, the presence of ivy found at his feet does tend to indicate his having been at the top of the cliff, and is at least consistent with him having disturbed that vegetation, whether as a result of a fall or otherwise.
165. The forensic evidence cannot, of itself, determine whether Mr Miller came over the cliff as a result of an accidental fall or a push.<sup>151</sup> However, it would seem implausible that Mr Miller, who was 180 cm tall and weighed 87 kilograms, could have been forced over the barbed wire fence by an unknown person and pushed off the cliff without sustaining any injuries consistent with an assault.<sup>152</sup>
166. In addition, the opinion of DSS Cameron was that if someone had been carried to and lifted or pushed over the fence, he would have expected greater damage to the fence and the vegetation, and for there to be more physical evidence adhering to the barbed wire fence.<sup>153</sup> This accords with common sense.
167. Accordingly, the limited evidence as to Mr Miller's having been at the top of the cliff may be seen as lending weight to the theory that Mr Miller climbed the fence himself, rather than being lifted over the fence and pushed.

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<sup>147</sup> See above at [135].

<sup>148</sup> See above at [95]-[96], [113].

<sup>149</sup> See above at [95], [109.e].

<sup>150</sup> See above at [140], [150]-[153].

<sup>151</sup> See above at [136].

<sup>152</sup> Autopsy report of Dr Dufflou, 5 June 1997 (SCOI.02737.00048).

<sup>153</sup> See above at [113].

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168. Having regard to all the evidence, and the expert opinions of Dr Iles and Ms Gerhard, it is submitted that it is more probable than not that Mr Miller met his death after climbing the fence at Munn Reserve and accidentally falling to the wharf below.
169. The reasons why Mr Miller climbed the fence at Munn Reserve, as it is submitted is probable, are unknown and inevitably will remain so. The theory of PCSC Lane, that he became lost on his way to the casino,<sup>154</sup> is plausible, but essentially speculative. Mr Miller's high blood alcohol level is likely to have contributed to some disorientation or poor judgment.

### Submission as to bias

170. On the basis of the conclusions reached above at [155]-[169], it is submitted that Mr Miller's death was not a homicide or the result of LGBTIQ bias.

### Submission as to manner and cause of death

171. On the basis of the opinions now provided by Dr Iles and Ms Gerhard, it is submitted that the evidence supports a finding that Mr Miller died as a result of multiple injuries sustained in a fall from a height. It is likely that the fall was accidental, following Mr Miller climbing over the fence at Munn Reserve.

### Submissions as to recommendations

172. It is submitted that a recommendation should be made to the Registrar of Births Deaths and Marriages to correct the Register of Births Deaths and Marriages pursuant to s 45(1)(b) of the *Births, Deaths and Marriages Registration Act 1995*, such that Mr Miller's cause of death is recorded as: "multiple injuries sustained in an accidental fall from a height."

**Peter Gray SC**  
Senior Counsel Assisting

**Kathleen Heath**  
Counsel Assisting

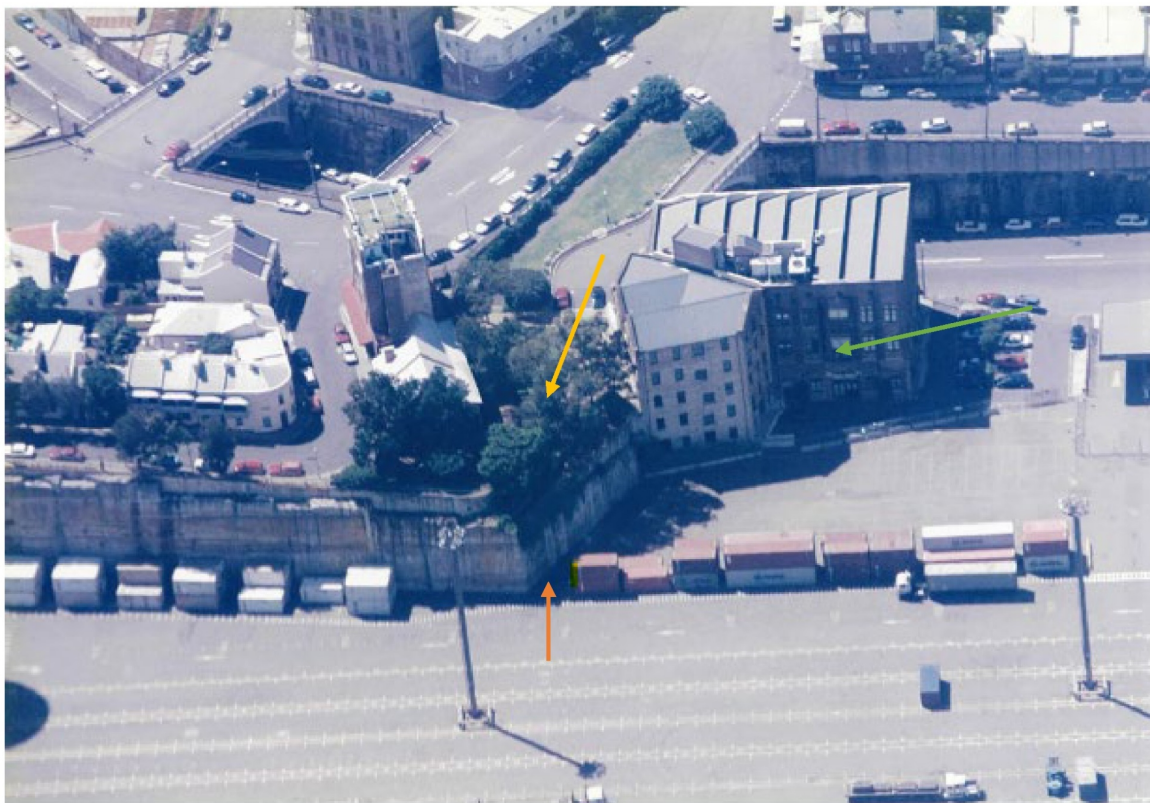
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<sup>154</sup> See above at [115].

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## Annexure A

Aerial photograph of the location of Mr Miller's body, 1997

**Key:**

Yellow arrow: Munn Reserve

Orange arrow: Approximate location of Mr Miller's body

Green arrow: Buildings occupied by South Corp Wines and Polygram Music