

The Special Commission of Inquiry  
into LGBTIQ Hate Crimes

## TENDER BUNDLE HEARING OF 16 JUNE 2023

### Concerning the death of Scott Stuart Miller

*Submissions on behalf of the Commissioner of Police*

#### Introductory

1. These submissions are prepared on behalf of the Commissioner of Police in response to the submissions made by Counsel Assisting on 16 June 2023 in relation to the death of Scott Stuart Miller.
2. The Commissioner separately filed submissions on 28 June 2023 in respect of Public Hearing 2 issues (**Parrabell Submissions**). These submissions necessarily touch upon some of the general matters to which those hearings relate, but they do not represent a comprehensive statement of the Commissioner's position on the issues considered during those hearings. These submissions should be read with those made on behalf of the Commissioner of Police in connection with the submissions filed in respect of Public Hearing 2 and the other "tender bundle" cases.

#### Scott Stuart Miller

##### *Circumstances of death*

3. On the morning of Monday, 3 March 1997, Mr Miller was found dead near Wharf 4, Hickson Road in Darling Harbour in Patrick the Australian Stevedores' compound (**Patricks**). His body was found in an unused part of the compound known as the 'graveyard' (which was used to store old heavy mechanical machinery).<sup>1</sup> It is likely that Mr Miller died in the early hours of Sunday, 2 March 1997 (CA, [3]).
4. Mr Miller was a heterosexual male.<sup>2</sup> He had recently moved from Orange to Sydney to attend university.<sup>3</sup> Mr Miller had attended the Sydney Gay and Lesbian Mardi Gras to observe the

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<sup>1</sup> Statement of PCSC Lane dated 1 May 1997 at [5] and [6] (SCOI.02737.00051).

<sup>2</sup> Statement of Bridget Lott dated 6 June 2023 (SCOI.83636).

<sup>3</sup> Statement of PCSC Lane dated 1 May 1997 at [49] (SCOI.02737.00051).

parade on the evening leading up to his death.<sup>4</sup>

5. After the parade, Mr Miller attended the Rocks with friends. At about 12.30am on Sunday, 2 March 1997, Mr Miller and his friend, Shawn Kelly, were asked to leave the Observer Hotel.<sup>5</sup> He was very intoxicated by that time.<sup>6</sup>
6. Mr Miller was last seen by Mr Kelly about an hour later at about 1.30am in the vicinity of the Orient Hotel. A local resident Ms Jade Carter believes she saw Mr Miller at about 2.10am close to the Sydney Observatory.<sup>7</sup> This appears to be the last known sighting of Mr Miller.
7. When Mr Miller was found on the Monday morning, he was lying at the foot of the cliff below Munn Reserve in Millers Point. His left elbow was lying on top of a small concrete drainage gutter about a foot from the base of the cliff. There was a small amount of green vegetation in the gutter near his left side.<sup>8</sup>
8. The cliff itself had a sheer sandstone face leading up about seven metres to a ledge about a metre wide with an amount of green vegetable matter including small shrubs and trees. The top of the cliff was about two to three metres above this ledge. A wire cyclone fence with barbed wire strands strung on top of the fence was at the top of the cliff.<sup>9</sup>
9. Dr Johan Dufrou conducted a post-mortem examination on Mr Miller on the day he was found. In his report, Dr Dufrou 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.<sup>10</sup> Mr Miller had the following injuries<sup>11</sup>:
  - 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.

<sup>4</sup> Statement of PCSC Lane dated 1 May 1997 at [58] (SCOI.02737.00051).

<sup>5</sup> Statement of PCSC Lane dated 1 May 1997 at [37], [38] and [59] (SCOI.02737.00051).

<sup>6</sup> Statement of PCSC Lane dated 1 May 1997 at [53] (SCOI.02737.00051).

<sup>7</sup> Statement of Jade Carter dated 6 March 1997 (SCOI.02737.00067).

<sup>8</sup> Statement of PCSC Lane dated 1 May 1997 at [11] (SCOI.02737.00051).

<sup>9</sup> Statement of PCSC Lane dated 1 May 1997 at [12] (SCOI.02737.00051).

<sup>10</sup> Final Autopsy Report of Dr Johan Dufrou dated 5 June 1997 at page 10 (SCOI.02737.00048).

<sup>11</sup> Final Autopsy Report of Dr Johan Dufrou dated 5 June 1997 (SCOI.02737.00048).

- g Bilateral wrist fractures.
  - h Pulmonary contusion.
10. There was no evidence of blood staining or droplets around the Patricks yard, other than the blood pooled under Mr Miller.<sup>12</sup>
11. The expert engaged by the Inquiry, Dr Linda Iles, is of the view that Mr Miller's injuries:
- a Are best explained by Mr Miller falling from the cliff above where he was found.
  - b Were not consistent with an assault.
  - c Precluded Mr Miller himself being able to move any significant distance from the site where his craniofacial injuries were sustained.<sup>13</sup>
12. 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>14</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.
13. The Inquiry also engaged an expert, Ms Gerhard, who 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>15</sup> Furthermore, there is no evidence of significant movement of Mr Miller once his bleeding facial injuries occurred.
14. The officer in charge, Plain Clothes Senior Constable Michael Lane (**PCSC Lane**), propounded the following theory as to how Mr Miller died<sup>16</sup>:
- a Mr Miller walked from the Orient Hotel (where he was last seen by his friend Mr Kelly) shortly after 1.30am on Sunday, 2 March 1997 up Argyle Street, probably alone possibly on his way to the Sydney Harbour Casino in Darling Harbour where he liked to go after having been on a night out.
  - b On his way to the Casino he may have become lost or disorientated and walked up Observatory Hill which is a good vantage point. If Mr Miller was at Observatory Hill he

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<sup>12</sup> Statement of Detective Senior Constable Lyle Van Leeuwen dated 14 June 1997 (SCOI.83347).

<sup>13</sup> Expert report of Dr Linda Iles dated, 14 December 2022 at page 8 (SCOI.82891).

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

<sup>15</sup> Expert report of Jae Gerhard dated 29 May 2023 at [15.2] (SCOI.83326).

<sup>16</sup> Statement of PCSC Lane dated 1 May 1997 at [65] to [70] (SCOI.02737.00051).

could walk the relatively short distance which is downhill and arrive at the cliff. At the top of the cliff in Munn Reserve you can see Darling Harbour and the Casino.

- c Mr Miller may have attempted to take a shortcut down the cliff. There was a reasonable degree of light at the docks that night and scaling the fence was made easier due to the barbed wire being down at one point of the fence. Mr Miller, who was intoxicated, may have thought climbing down the cliff was a good option.
  - d After scaling the fence, Mr Miller may have slipped and fell or he may have realised there was no way down and fallen asleep and rolled off the cliff.
15. An inquest into Mr Miller's death was conducted on 7 October 1997. On that date, Coroner Abernethy found that Mr Miller died "of multiple injuries inflicted by a person or persons unknown."<sup>17</sup> The Coroner relied upon the following factors in forming this view:
- a At the top of the cliff is a high wire fence.
  - b Mr Miller was very drunk with a blood alcohol level of 0.22.
  - c Crime scene investigators carefully examined the ledge above the cliff which was covered in ivy. They found no signs of disturbance of that ivy.
  - d Mr Miller's body was laid out straight and was not cramped up as often occurs in falls.
  - e Mr Miller's injuries, in the main were more consistent with his being assaulted.
16. As Counsel Assisting observe, 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 (CA, [118]).
17. Coroner Abernethy referred the case back to the NSWPF for further investigation by specialist homicide officers in light of his conclusion as to the death not being accidental. A strike force was established under the command of Detective Sergeant (**DS**) Desmond. The following steps appear to have then been taken<sup>18</sup>:
- 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 logbooks on the vessel the Ranginui (to determine if any crew returned from Mardi Gras with an indication of having been in a fight).

<sup>17</sup> Transcript of Coronial Inquest dated 7 October 1997 at page 24 (SCOI.02737.00041).

<sup>18</sup> Letter from Detective Sergeant Desmond to Mr and Mrs Miller, 28 March 1998 (SCOI.10047.00016).

- 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.
  - g DNA testing of Mr Miller's t-shirt.
18. There does not appear to be anything in respect of the thoroughness of the initial police investigation itself that prompted this course. Rather, the Coroner appears to have placed a high degree of weight on the certain matters noted above which had been identified by NSWPF crime scene investigators who propounded a conflicting view to PCSC Lane.
19. DS Desmond subsequently formed the view that the evidence tended to support the theory that Mr Miller fell from the cliff above where his body was located.<sup>19</sup>

#### ***Adequacy of police investigations***

20. The officer in charge, PCSC Lane, provided a statement which details the investigation undertaken by investigating police officers.<sup>20</sup>
21. Counsel Assisting make some criticisms of the original police investigation. These are addressed in turn below. As a global comment, the Commissioner notes that the police officers involved in the initial investigation have not been approached by the Inquiry regarding the bases for investigative steps taken / not taken. They have therefore not been afforded the opportunity to respond to the criticisms advanced in relation to their work.

#### **OIC's view of accidental death**

22. Counsel Assisting assert that PCSC Lane "appears to have arrived quickly at the view that Mr Miller's death was accidental" (CA, [23]). In support of this assertion, Counsel Assisting rely upon an undated letter in which Mr Miller's parents wrote as follows to the Coroner<sup>21</sup>:

*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.*

23. There is no indication of what PCSC Lane said to Mr Miller's family to cause them to form

<sup>19</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 dated 27 March 1998 (SCOI.10048.00002).

<sup>20</sup> Statement of PCSC Lane dated 1 May 1997 (SCOI.02737.00051).

<sup>21</sup> Letter from Stuart and Christine Miller to Coroner Abernethy, undated (SCOI.02737.00036).

this belief. Notably, Mr Miller's then girlfriend Bridget Lott provided the following recollection of attending Rocks Police Station one or two days after Mr Miller's death<sup>22</sup>:

*The Police said Scott might have climbed a fence, wanting to go to the casino, and fell. They showed me or they told me where the fence was.*

24. Counsel Assisting assert that this confirms Mr Miller's family's view that PCSC Lane arrived quickly at the view that Mr Miller's death was accidental. However, that is not what Ms Lott's evidence suggests. Ms Lott states that police (it is not clear whether this was PCSC Lane or another police officer) suggested the accidental death theory as what *might* have occurred. Her recollection is not to the effect that police had formed a solid conclusion in this respect.
25. Further, the Coroner stated the following as part of his findings<sup>23</sup>:

*Detective Lane the investigator first felt that he'd fallen from the cliff. I think he concedes, he certainly conceded to me when I spoke to him that there are a number of factors that mitigate against that.*

26. This suggests that, while PCSC Lane held a belief that Mr Miller's death was accidental, the belief was not steadfast or narrowminded in the manner Counsel Assisting suggest. Again, this criticism has not been explored with him.
27. The Commissioner of Police also notes that Counsel Assisting's conclusion as to the manner and cause of Mr Miller's death aligns with PCSC Lane's view.
28. Further, the theory that Mr Miler may have been attempting to travel to the casino when he fell from the cliff was consistent with the suspicions of a number of his friends who were with Mr Miller in the hours leading up to his death.<sup>24</sup>

#### Lines of inquiry

29. Counsel Assisting assert at CA, [26] that some aspects of the investigation were not pursued as thoroughly or completely as they could have been. The suggestion appears to be because of Counsel Assisting's assertion that PCSC Lane prematurely formed the view that the death was accidental.
30. Counsel Assisting acknowledge that various conflicting opinions were expressed during the initial police investigation as to whether Mr Miller's fatal injuries were incurred by falling from

<sup>22</sup> Statement of Bridget Lott dated 6 June 2023 at [10] (SCOI.83636).

<sup>23</sup> Transcript of Coronial Inquest dated 7 October 1997 at page 24 (SCOI.02737.00041).

<sup>24</sup> Statement of Nathan Todd White dated 4 March 1997 at [21] (SCOI.10048.00019); Statement of Shawn William White dated 4 March 1997 at [4] and [20] (SCOI.10049.00031).

the cliff above where he was found, or by an assault, or by some combination of the two scenarios (CA, [5]).

31. This shows that investigating police were exploring various avenues of inquiry. The police conducted a range of inquiries regarding the circumstances of Mr Miller's death which were not solely focused on establishing that his death was from an accidental fall. Some of the initial avenues of inquiry conducted by investigating police are detailed in the following paragraphs.
32. A thorough search of the reserve at the cliff above where Mr Miller was found did not locate any evidence to support the theory that Mr Miller had come over the cliff in some way or another. The Commissioner of Police agrees with Counsel Assisting's submission at CA, [163] that the absence of such evidence does not overcome the force of the forensic evidence as to Mr Miller's injuries and the bloodstain patterns.
33. This conclusion is consistent with PCSC Lane's case theory. PCSC Lane did not arrive at that theory on a whim; it was expressed at the conclusion of a 17-page statement and was supported by his analysis of the available evidence at [55] – [70] of his statement, in which he clearly set out his thought processes.
34. The fact that other members of the NSWPF (and the Coroner) held a different view does not of itself mean that PCSC Lane's opinion was reached prematurely. The Coronial findings themselves extend for only two pages and do not provide a clear explanation of the factors that led the Coroner to conclude that another person had been involved in Mr Miller's death.
35. Police canvassed the neighbouring businesses, including the businesses in the heritage building in the immediate vicinity of where Mr Miller was found,<sup>25</sup> the Palisade Hotel (which was a pub in the vicinity of Munn Reserve at the top of the cliff)<sup>26</sup> and the residents in the vicinity.<sup>27</sup> This included canvassing residents of the surrounding streets.<sup>28</sup>
36. Police also took statements from various friends of Mr Miller who were with him during the afternoon and evening leading up to his death.<sup>29</sup> In addition, an initial statement was taken

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<sup>25</sup> Bundle of running sheets dated 4 March 1997 to 16 April 1997 at page 1 titled 'Canvass of immediate area - persons spoken to' (SCOI.83327).

<sup>26</sup> Bundle of running sheets dated 4 March 1997 to 16 April 1997 at pages 1 to 2 titled 'Canvass of immediate area - persons spoken to' (SCOI.83327).

<sup>27</sup> Statement of PCSC Lane dated 1 May 1997 at [26] and [27] (SCOI.02737.00051); Bundle of running sheets dated 4 March 1997 to 16 April 1997 at page 2 titled 'Canvass of immediate area - persons spoken to' (SCOI.83327).

<sup>28</sup> Bundle of running sheets dated 4 March 1997 to 16 April 1997 at page 13 (SCOI.83327).

<sup>29</sup> Statement of Shawn William Keelty dated 4 March 1997 (SCOI.10049.00031); Statement of Jason Trenton Elvy dated 4 March 1997 (SCOI.02737.00055); Statement of Nathan Todd White dated 4 March 1997 (SCOI.10048.00019);

from Ms Carter (who is believed to be the last person to see Mr Miller alive).<sup>30</sup>

37. They also canvassed the following cargo ships which had been in the vicinity of where Mr Miller was located:
- a 'Western Falcon'. The Captain stated his ship came into Sydney on the morning of Sunday, 2 March 1997 and that none of his men left the ship the entire time they had been docked.<sup>31</sup>
  - b 'Ranginui'. The Captain and his crew were interviewed. Although the captain and some of the crew had been out on the night of Saturday, 1 March 1997, no one reporting seeing or hearing anything suspicious around the docks.<sup>32</sup>
38. Similarly, several dock workers who were at Patricks during the weekend of Mr Miller's death were interviewed.<sup>33</sup> Statements were taken from nine Patricks representatives who were working at the Patricks compound at the relevant times during that weekend.<sup>34</sup> No one reported seeing or hearing anything suspicious over the weekend. These Patricks personnel indicated that they did not generally go near the 'graveyard' area where Mr Miller was located and it would not be unusual for him to lay there undetected for a period of time.<sup>35</sup>

#### Taking of statements

39. Counsel Assisting assert (at CA, [27]) that "many relevant statements were not taken until the inquest and at the prompting of Mr Miller's parents".
40. Counsel Assisting do not identify the persons from whom formal statements should have been obtained beyond the reference to 'all of the security guards across the relevant time window in which Mr Miller's death may have occurred.' It is not clear which witnesses Counsel Assisting have in mind.

<sup>30</sup> Statement of Jade Carter dated 6 March 1997 (SCOI.02737.00067).

<sup>31</sup> Statement of PCSC Lane dated 1 May 1997 at [28] (SCOI.02737.00051).

<sup>32</sup> Statement of PCSC Lane dated 1 May 1997 at [41] (SCOI.02737.00051); Bundle of running sheets dated 4 March 1997 to 16 April 1997 at page 2 titled 'Canvass of immediate area - persons spoken to' (SCOI.83327).

<sup>33</sup> Bundle of running sheets dated 4 March 1997 to 16 April 1997 at pages 3, 4, and 7 (SCOI.83327).

<sup>34</sup> Statement of Peter Charles Cowan dated 6 March 1997 (SCOI.02737.00060); Statement of Jim Gould dated 6 March 1997 (SCOI.02737.00061); Statement of Vincent Walter Micallef dated 6 March 1997 (SCOI.10048.00026); Statement of Colin Michael Plant dated 13 March 1997 (SCOI.02737.00064); Statement of Archibald Price dated 14 March 1997 (SCOI.02737.00065); Statement of John Mitchell Straube dated 14 March 1997 (SCOI.02737.00066); Statement of Warren White dated 6 October 1997 (SCOI.02737.00038); Statement of Stephen John Williams dated 6 October 1997 (SCOI.02737.00040); Statement of Lance Neilson dated 28 October 1997 (SCOI.02737.00039).

<sup>35</sup> Statement of PCSC Lane dated 1 May 1997 at [43] (SCOI.02737.00051).



41. Police obtained statements from the bar manager,<sup>36</sup> barmaid<sup>37</sup> and doorman<sup>38</sup> of the Observer Hotel (being the last known pub to which Mr Miller was admitted entry). Police also interviewed the licensee<sup>39</sup> and duty manager<sup>40</sup> of the Observer Hotel but appear to have not obtained a statement from either of them. Neither the licensee nor the duty manager had any recollection of Mr Miller. It is not clear what would have been achieved by obtaining statements from either of them, having regard to the statements obtained from other representatives of the Observer Hotel who did recollect Mr Miller.
42. The Palisade was shut more than two hours before the last known sighting of Mr Miller.<sup>41</sup>
43. Police interviewed a barman<sup>42</sup> at the Fortune of War pub located in the Rocks. The barman, Robert Jenson, stated that he believes he saw Mr Miller at the Fortune of War that night but cannot recall the time that this occurred. He also stated that he cannot recall any details but believes he recalls Mr Miller's face. It is not clear what obtaining a statement from Mr Jenson would have added substantively to the initial investigation, having regard to the balance of the evidence which had been collected by police.
44. Therefore, the criticism made by Counsel Assisting in this respect is unfounded. The unparticularised manner in which the criticism is expressed is reflective of this.
45. The circumstances underpinning the absence of statements from certain witnesses are not known. One explanation is that the information provided by those witnesses did not assist the investigation in any meaningful way. For example, the running sheet records that the licensee and duty manager of the Observer Hotel had no recollection of Mr Miller<sup>43</sup> and indicated that the Palisade Hotel was shut hours before Mr Miller was last seen alive.<sup>44</sup>
46. The officer in charge, PCSC Lane, is not separately represented in these proceedings. He does not appear to have given evidence and does not appear to have been notified or approached by the Inquiry in respect of the criticisms levelled against his investigation.

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<sup>36</sup> Statement of Stephen Richard Swart dated 6 March 1997 (SCOI.02737.00058).

<sup>37</sup> Statement of Chloe Grace Iona Green dated 20 March 1997 (SCOI.02737.00057).

<sup>38</sup> Statement of Manni Solomona dated 27 March 1997 (SCOI.02737.00059).

<sup>39</sup> Bundle of running sheets dated 4 March 1997 to 16 April 1997 at page 6 (SCOI.83327).

<sup>40</sup> Bundle of running sheets dated 4 March 1997 to 16 April 1997 at page 11 (SCOI.83327).

<sup>41</sup> Bundle of running sheets dated 4 March 1997 to 16 April 1997 at page 1 titled 'Canvass of immediate area - persons spoken to' (SCOI.83327).

<sup>42</sup> Bundle of running sheets dated 4 March 1997 to 16 April 1997 at page 10 (SCOI.83327).

<sup>43</sup> Bundle of running sheets dated 4 March 1997 to 16 April 1997 at pages 6 and 11 (SCOI.83327).

<sup>44</sup> Bundle of running sheets dated 4 March 1997 to 16 April 1997 at page 1 titled 'Canvass of immediate area - persons spoken to' (SCOI.83327).

47. Additionally, but particularly in circumstances where PCSC Lane has not been approached in relation to the criticisms raised, the Inquiry should exercise caution not to unfairly evaluate the steps taken by the officer in charge by reference to modern social norms and investigative standards.
48. To the extent that statements of substantive witnesses were not obtained, it is acknowledged that it would have been prudent for investigating police to obtain formal witness statements. However, any criticism in this respect needs to be considered in the context that extensive contemporaneous running sheet notes were prepared.<sup>45</sup> These notes provide a picture of the investigations that police conducted. These notes also reflect the evidence of a considerable number of witnesses who were questioned by police in connection with Mr Miller's death.

#### Asserted failure to canvass witnesses

49. Counsel Assisting separately assert (at CA, [28]) that the canvassing of witnesses was not conducted thoroughly or carefully. Counsel Assisting suggest that 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.
50. Counsel Assisting acknowledge that when the Ranginui returned to Sydney on 17 March 1997, the NSWPF interviewed ten members of the crew as part of the original investigation conducted by PCSC Lane. Their versions are reflected in a running sheet which summarises those ten interviews. All crew members spoken to were recorded as not having seen anything suspicious.<sup>46</sup>
51. Counsel Assisting assert at CA, [30] that the running sheet does not indicate whether each crew member was spoken to separately or in the presence of others. It is suggested that there is a general lack of detail, particularly in relation to the three crew members who returned between 12:00am and 3:00am. Further, Counsel Assisting state at CA, [31] that "[g]reater care should have been taken to capture their evidence as to their movements and observations on the night." This is because they are some of the only authorised entrants to the Patricks compound at the approximate time of Mr Miller's death.
52. Counsel Assisting's submissions fail to account for the fact that each of these witnesses

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<sup>45</sup> Bundle of running sheets dated 4 March 1997 to 16 April 1997 (SCOI.83327).

<sup>46</sup> Bundle of running sheets dated 4 March 1997 to 16 April 1997 at page 9 (SCOI.83327).

recorded having seen nothing suspicious. The record of this evidence clearly summarises the versions which would have been provided to police. Having regard to the ultimate conclusion expressed by each of the witnesses, it is not clear what would have been gained from any further record of their evidence.

53. Presumably, investigating police knew the pitfalls of conducting a group interview of multiple witnesses, especially as a group of ten. There is nothing to indicate that the interviews of the ten witnesses was conducted collectively (if, indeed, that is positively asserted by Counsel Assisting, which is not clear: CA, [30]). Again, the manner in which this canvass was conducted has not been explored with PCSC Lane.
54. It goes without saying that if the witnesses were interviewed collectively, then that would not have been an appropriate course. That said, there is no suggestion that any of the versions recorded from these witnesses were untruthful in any way.
55. Counsel Assisting do not point to any avenues of inquiry beyond the interviewing of the Ranginui to ground their criticism of the asserted failure by police to canvas witnesses. Having regard to the investigative steps which were undertaken by police – many of which were conducted in a short period of time following the discovery of Mr Miller’s body – this criticism is unfounded.

#### Debris found in Mr Miller’s hand

56. Counsel Assisting note that during the post-mortem examination, Dr Duflou retained debris taken from the right hand of Mr Miller (CA, [19]). 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>47</sup>
57. It appears from the documentary records that no forensic testing or metallurgical examination had been completed on the debris.<sup>48</sup> This appears to be due to an oversight. It is acknowledged that this is regrettable.
58. The Inquiry is seeking to have the debris forensically examined. The Commissioner reserves her position regarding any further submissions arising from the results of such examination.

#### ***Strike Force Parrabell review***

59. SF Parrabell concluded that there was “no evidence of bias crime”. Counsel Assisting reach

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<sup>47</sup> Unsolved Homicide Team Case Screening Form dated 21 April 2004 (NPL.0100.0015.0001).

<sup>48</sup> Statement of Inspector Andrew Brady dated 7 June 2023 at [35] (NPL.9000.0017.0081).

- the same conclusion (CA, [170]). The academic review team categorised the case as "insufficient information".<sup>49</sup>
60. Counsel Assisting observe that all ten indicators used in the Bias Crime Indicators Form (**BCIF**) were answered as 'No Evidence of Bias Crime'<sup>50</sup> (CA, [36]).
  61. Counsel Assisting note that the BCIF includes a number of references to the fact that a number of factors are said to be "unknown". These references are attributed to the fact that, for example, it is said to be "unclear if any persons did in fact play a role in the death of Mr Miller".<sup>51</sup>
  62. Counsel Assisting then submit that it is 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".
  63. Counsel Assisting assert that this might be the result of "confusion" as a result of changes in the language of the BCIF or differences as between the Coordinating Instructions, the Investigation Plan and Induction Package. Counsel Assisting has not called any evidence from either the officer/s who conducted the original review, or the more senior officers who made the ultimate determination. In the absence of such evidence, Counsel Assisting's assertion at [40] entirely speculative and of no probative value.
  64. The general issues in relation to the possibility of confusion in connection with the "constituent documents" of SF Parrabell, and the impact of any such confusion is otherwise addressed in the Parrabell Submissions.
  65. Similarly, Counsel Assisting assert that the mode by which the ultimate determination of the supervising officers is opaque. This issue, which again has not been explored in circumstances where Counsel Assisting has not called the relevant witnesses, is also addressed in the Parrabell Submissions.
  66. The summary of findings contained in the BCIF records that the "available evidence" fails to draw any "link" between Mr Miller's sexuality and his death. Mr Miller was, as noted in the BCIF, heterosexual. His death did not occur anywhere near the route of the Mardi Gras

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

<sup>50</sup> Strike Force Parrabell Bias Crimes Indicators Review Form, undated (NPL.0129.0001.0169).

<sup>51</sup> Strike Force Parrabell Bias Crimes Indicators Review Form, undated, 15 (NPL.0129.0001.0169), indicators 1 and 3.

parade. The conclusion ultimately expressed by SF Parrabell officers (which again, has not been explored with them) that there is no evidence that bias played a role in Mr Miller's death is the same as the conclusion reached by Counsel Assisting.

67. Moreover, the analysis of Counsel Assisting regarding the factors potentially relevant to the question of bias also aligns with the features of the case referred to in the BCIF. Specifically, Counsel assisting note the following matters:
- a Mr Miller was heterosexual and had a girlfriend;
  - b Mr Miller had been at the Mardi Gras Parade; and
  - c there is, however, "no indication in the evidence that he was, or that he was perceived to be, a member of the LGBTIQ community, or that bias played a role in his death" (CA, [14] – [15]).
68. Each of these factors was identified in the BCIF completed by SF Parrabell officers (which, among other things, prompted a consideration of the victim's sexuality and the question of whether the incident coincided with a date of significance (i.e. Mardi Gras)).<sup>52</sup>
69. It is accepted that some of the "indicators" in the BCIF might appropriately have been answered "Insufficient Information" rather than "No Evidence of Bias". As has been explored at length in the Parrabell Submissions, however, the BCIF was not used as the foundation of some kind of mathematical exercise, and this "failing", to the extent it can be called that, is of absolutely no moment.
70. In circumstances where Counsel Assisting has considered precisely the same features of the case (albeit in a more limited way), and come to the same conclusion, there is no basis for real criticism of SF Parrabell in connection with its analysis of Mr Miller's case.

#### ***Anti-LGBTIQ bias***

71. The Commissioner agrees with Counsel Assisting's assessment that Mr Miller's death was not homicide or as a result of anti-LGBTIQ bias (CA, [170]).

#### ***Manner and cause of death***

72. The Commissioner of Police agrees that 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

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<sup>52</sup> Strike Force Parrabell Bias Crimes Indicators Review Form, undated (NPL.0129.0001.0169).

an assault (CA, [165]).

73. The Commissioner agrees that it is more probable than not that Mr Miller died after climbing the fence at Munn Reserve and accidentally falling to the wharf below (CA, [168]).

### **Conclusion**

74. Counsel Assisting's conclusions that Mr Miller's death was not homicide or as a result of anti-LGBTIQ bias (CA, [170]) align with those of SF Parrabell.
75. The Commissioner concurs with Counsel Assisting's submission that a recommendation be made that the Registrar of Births Deaths and Marriages 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." (CA, [172]).



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30 June 2023

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