2022 Special Commission of Inquiry

into LGBTIQ hate crimes

Before: The Commissioner,
The Honourable Justice John Sackar

At Level 2, 121 Macquarie Street,
Sydney, New South Wales

On Friday, 16 June 2023 at 10.00am

(Day 61)

Re: death of Scott Miller

Ms Kathleen Heath	**(Counsel Assisting)**
Ms Kate Lockery	**(Principal Solicitor)**
Ms Penelope Smith	**(Solicitor)**

Also Present:

Mr Daniel Tynan for the Miller family

Mr Mathew Short with Mr Aurhett Barrie for NSW Police

THE COMMISSIONER: Yes?

MS HEATH: Commissioner, I appear as Counsel Assisting.

THE COMMISSIONER: Thank you.

MR SHORT: Commissioner, Short, S-H-O-R-T, for the Commissioner of Police.

THE COMMISSIONER: Thank you, Mr Short.

MR TYNAN: Commissioner, Tynan, T-Y-N-A-N. I seek leave to appear on behalf of the Miller family.

THE COMMISSIONER: Certainly. Leave is granted, Mr Tynan, thank you.

MR TYNAN: Thank you.

THE COMMISSIONER: Yes?

MS HEATH: Commissioner, this is a hearing in relation to the death of Scott Stuart Miller.

Before you, there should be two volumes of material and copies of those materials are being handed to Madam Associate.

Commissioner, I tender those materials. I understand we are up to exhibit 32.

EXHIBIT #32 TENDER BUNDLE IN RELATION TO DEATH OF SCOTT MILLER

MS HEATH: Commissioner, what has also been provided to Madam Associate are short minutes in relation to orders that the parties seek be made pursuant to section 8 of the Special Commissions of Inquiry Act. These orders relate to various redactions sought to documents in the tender bundle and pseudonym orders for particular witnesses.

THE COMMISSIONER: They are by consent, are they, Mr Short?

MR SHORT: They are, Commissioner, yes.

THE COMMISSIONER: Thank you. I have made those orders.

Thank you.

MS HEATH: Finally, Commissioner, you should have before you a copy of my written submissions. These are dated 15 June and I adopt and rely upon those.

THE COMMISSIONER: Thank you.

MS HEATH: Commissioner, the family have provided a photograph of Scott Miller and I ask that that now be put on the screen.

THE COMMISSIONER: Certainly.

MS HEATH: Mr Miller was a young man, only 21 years of age as at the date of his death. He was the son of Stuart and Christine Miller and he had two brothers, Mark and Shane. He grew up in Orange and was a popular young man and keen footballer. He had close relationships with his family and with his friends, and a serious girlfriend of some five years, Bridget.

I would like to start today by acknowledging both Shane, his brother, and Bridget, who are here in person, as well as Mr Miller's family, including his parents, his brother Mark, and his friends, who are watching on the live stream.

Commissioner, the Miller family has prepared a family statement that honours the life of Scott Miller. I first seek to tender a written copy of that statement.

THE COMMISSIONER: Thank you.

MS HEATH: That will be exhibit 33.

EXHIBIT #33 FAMILY STATEMENT

MS HEATH: And, Commissioner, I invite Mr Shane Miller to read that statement on behalf of the family.

THE COMMISSIONER: Mr Miller, please just come forward, if you wish.

Make yourself comfortable and when you're ready, you just do it as you wish.

MR MILLER: In 1997, Scott Miller had just completed an electrical apprenticeship and had moved to Sydney to begin further studies by studying a degree in sports science. He was excited about his future, had a large circle of lifelong friends and was in a serious, happy relationship with his girlfriend, Bridget. Scott was a devoted son to Christine and Stuart and a loving brother to Mark and Shane. He was a joker, kind, generous and the life of the party.

On 2/3/97 a tragedy occurred when his body was found on the same day he was due to attend his first lecture at university. The potential lost and the happiness and experiences he would never get to share with his loved ones is impossible to describe and always in our thoughts.

He is greatly missed by his family and friends who have continued to grieve and remember him over the last 26 years. We have come to accept that we will never know exactly what happened to Scott on the night of his death and remember him for the fine, loving young man that he was.

THE COMMISSIONER: Thank you very much.

Yes, Ms Heath?

MS HEATH: Commissioner, on behalf of the Inquiry, I extend my sincere condolences to all of Mr Miller's family and friends and thank Shane for sharing those words about Scott.

Commissioner, I will now turn to outline the circumstances, as they are known, of Mr Miller's death.

On the evening of Saturday, 1 March 1997, Mr Miller attended the Sydney Gay and Lesbian Mardi Gras Parade on Oxford Street with three friends.

Now, I pause here to note that although Mr Miller attended the Mardi Gras, there is no evidence that Mr Miller was a member of the LGBTIQ community.

After the parade, the friends travelled to The Rocks and continued drinking.

Mr Miller was last seen by his friends at some time

between 1.30 and 2 o'clock on the morning of Sunday, 2 March 1997, outside the Orient Hotel.

Shortly after that time, at about 2.10, a local resident saw a man who is believed to be Mr Miller walking alone down Watson Road from Observatory Hill.

On Monday, 3 March 1997, at 7.50am - so that is over 24 hours later - Mr Miller was found deceased within the compound of Patricks the Australian Stevedores on Hickson Road in Darling Harbour.

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, and at the top of the cliff was a small park called Munn Reserve.

Commissioner, I will ask that a photograph be put up on the screen. This is an aerial photograph of the location that Mr Miller's body was found, taken by police in 1997. You will see that there is a yellow arrow. That points to Munn Reserve, and Munn Reserve abuts a sandstone cliff.

The orange arrow points to the approximate location at the bottom of the cliff where Mr Miller's body was found. You will see that the body was in a trapezoidal area surrounded by a fence. That fence marks the bounds of the machinery yard to which I referred.

Now, at the time that this photograph was taken, there were no machines in the yard, but you will see at tab 12 of the tender bundle a survey that was prepared by police showing the layout of the machinery as at the time that Mr Miller was found.

The areas below, so at the bottom of the photograph and to the right of the photograph, that are adjacent to the machinery yard, they're all part of the Patricks compound. The two buildings that are indicated by the green arrow were occupied by two companies unrelated to Patricks.

Commissioner, as you will see from this photograph, there was vegetation that ran along the cliff edge at Munn Reserve. The cliff edge itself was fenced off by a chain-wire fence, and, Commissioner, I will ask that

a photograph of that fence now be put on the screen so that is the fence at Munn Reserve.

It is not particularly visible in this photo due to overexposure, but at the top of the fence there was barbed wire, although the evidence from crime scene examiners was that a portion of the barbed wire had come away from the support poles near where a Melaleuca tree was leaning against it.

Commissioner, Mr Miller's body was lying face down and his body was laid straight out. There was a portion of ivy that was adjacent to his left leg. He was fully clothed, dressed in a pair of blue denim jeans, a white T-shirt over the top of another white T-shirt and a pair of brown shoes. His wallet, credit cards and cash were all found in his jeans pocket.

The front of his white T-shirt was heavily stained with blood and there was also bloodstaining on the back and right sleeve, and testing would later confirm that this was Mr Miller's blood.

There was a large pool of blood in the region of his face and upper torso and a stream of blood that had flown from his face.

The remainder of the machinery yard was examined but no other blood particles were located.

Commissioner, I will briefly touch upon access to the Patricks compound. I might ask that the very first photograph that I referred to be shown. On the very right edge of that photograph you will see - it's cut off, but there's a hut, which was a security checkpoint.

The evidence established that the only way into or out of the Patricks compound was to go past that security checkpoint. There were always two security guards on each shift. At least one would always remain at the checkpoint while the other security guard would conduct mobile patrols of the compound.

The evidence which I've set out more fulsomely in my written submissions, paragraph 97 to 100, suggested that it would be very difficult for anyone to come through the gate without security officers knowing. However, people that

were known to staff, including staff at the wharf or people with passes, such as crews of vessels docked at the wharf, were able to pass through.

None of the security guards that were on shift at the relevant time, the period across which Mr Miller likely met his death, reported seeing anything suspicious.

That photograph can now be taken off the screen.

Commissioner, Mr Miller's case has been a particularly complex one, in part because there have been numerous conflicting opinions expressed as to the manner and cause of Mr Miller's death. Specifically, whether the injuries that he suffered were the result of a fall from a cliff or whether the result of an assault or whether there was some combination of these two scenarios.

Commissioner, my intention in these oral submissions is to work through each of these opinions chronologically and in what is hopefully a logical fashion.

In view of these conflicting opinions, the Inquiry considered that it was essential to engage fresh and independent experts to undertake a full review of both the medical and crime scene evidence.

As I will come to, the Inquiry briefed Dr Linda Iles, a forensic pathologist, to provide an opinion as to Mr Miller's injuries, and the Inquiry also briefed Ms Jae Gerhard, a forensic scientist and blood pattern analyst from Independent Forensic Services, who reviewed the blood pattern evidence from the crime scene and crucially, for the first time, conducted an examination of Mr Miller's clothing.

What I will be submitting to you at the conclusion of these submissions is that, now, having regard to all the evidence and particularly the expert opinions of Dr Iles and Ms Gerhard, it is more probable than not that Mr Miller met his death as a result of an accidental fall from the fence at Munn Reserve, rather than as a result of a homicide.

So, Commissioner, I will commence by taking you to the first autopsy report that was prepared, and I ask that tab 2 be placed on the screen [SCOI.02737.00048_0001].

Commissioner, you will see that this is the final autopsy report of Dr Duflou, dated 5 June 1997. Now, this autopsy report spends quite some time describing in detail the injuries that were observed to Mr Miller's body.

When Dr Iles was later to review this autopsy report, she noted that it comprehensively documented Mr Miller's injuries and also considered the photo documentation to be of a high standard.

I ask that we scroll now to page 9 of this report, where there is a pathology summary. It notes the following injuries: massive skull fracturing; contusions, which is bruising, to the brain; a laceration of the liver with a near complete tear of the right lobe; tearing of the right kidney; intra-abdominal haemorrhage, or bleeding; bilateral wrist fractures; and bruising to the heart. He also earlier in his report recorded abrasion injuries to the face and neck, predominantly in a vertical plane.

Mr Miller was noted to have a high blood alcohol concentration, so 0.22, and I pause to note that that was consistent with observations by witnesses of his level of intoxication on the night.

Commissioner, I ask that we now scroll to page 10 of that document. You will see that Dr Duflou here expresses that the manner by which Mr Miller's injuries were sustained "remain unclear".

Dr Duflou posits three scenarios. The first scenario is that the injuries were inflicted by one or more persons in a homicidal fashion. So in this scenario, according to Dr Duflou, the head injury may represent impact with a heavy object swung against the forehead, such as 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. Dr Duflou considered that the wrist injuries may be defensive injuries.

In scenario 2, Dr Duflou considered whether the injuries could have been 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.

I pause to note that he does not at this point explain precisely why they are atypical but that will come later in the coronial evidence.

Scenario 3 considered by Dr Duflou was 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, you will see, that Mr Miller could have been moved to the place he was found.

In the final paragraph on that page, he notes that all possibilities described have inherent difficulties and it is unlikely that the autopsy alone will be able to offer any firm opinion as to the circumstances surrounding the death.

So that was the first opinion given of Dr Duflou in his autopsy report.

Commissioner, I now ask that tab 8 be put on the screen [SCOI.83347_0001].

This is a statement by Detective Senior Constable Van Leeuwen dated 14 June 1997. You will see that Detective Senior Constable Van Leeuwen was attached to the East Sydney Zone Crime Scene Unit.

In this statement, Detective Van Leeuwen outlines the examinations that were made of the crime scene and ultimately concludes that the death of Mr Miller was suspicious. I'll ask that we scroll to the bottom of page 9 and starting at paragraph 14. This is where Detective Van Leeuwen expresses his opinion, and it is a list of factors that Detective Van Leeuwen says points to his opinion that the death is suspicious.

The first factor he points to is the presence of bloodstains on the back of the deceased's white T-shirt that cannot be explained and are of a suspicious nature.

Commissioner, this comment related to an observation made that although Mr Miller was lying face down, there was

blood observed to the back and right sleeve of his white T-shirt.

Detective Van Leeuwen would go on to say at the coronial inquest that this bloodstaining was "the most crucial piece of forensic evidence", supporting his view that Mr Miller's death was a homicide. 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.

Although Detective Van Leeuwen expressed this opinion, at no time was there a forensic examination of Mr Miller's clothing.

Now, as I will come to, but to foreshadow where these submissions are going, Mr Miller's clothing, and in particular these stains, were examined by a blood pattern analyst engaged by the Inquiry, who was able to provide an explanation for the bloodstains that are consistent with being caused as a result of a fall.

If we now scroll to factor 2, Detective Van Leeuwen notes the lack of separate individual blood spots throughout the machinery yard indicate that the deceased did not stagger around the machinery yard. I note that this observation is consistent with the medical evidence that the extent and severity of Mr Miller's injuries means that he would have been unable to move.

I observe at this point, though, that this factor is equally consistent with Mr Miller having fallen from the top of the cliff.

Factor number 3 was:

The deceased was located lying face down on the ground at the base of the cliff. If he had fallen or jumped from Munn Reserve I would have expected his position to have been more contorted than it was.

This observation, it will be submitted, was not supported by appropriate expertise. As I will come to, Dr Iles will make comment in her report as to what information can be gleaned from the positioning of the

body.

The next factor is:

The deceased had a lack of external injuries usually seen in a person who has died as a result of a fall.

Commissioner, what is submitted in relation to this factor is that it is most appropriately determined by a trained forensic pathologist, and so this opinion, as expressed in Detective Van Leeuwen's statement, will be again addressed in Dr Iles' report.

Commissioner, the remaining three factors are that there was no trace evidence on the fence at Munn Reserve that would indicate that Mr Miller had climbed it; there was no disturbance to the vegetation or ivy outside of the fence; and there were no holes in the chain-wire fence. So, in short, these were all observations of an absence of evidence to place Mr Miller in Munn Reserve at the top of the cliff.

I will return at the conclusion of my submissions to discuss what can be made of these observations.

So those were the factors that supported Detective Van Leeuwen's opinion. But while I'm on his statement, can I take you briefly to the bottom of page 8 of his statement, and I ask that that be scrolled down to item number 10.

So in paragraph 10, you'll see, what Detective Van Leeuwen is doing here is listing the exhibits that he received at the conclusion of the autopsy. Item number 10 is described as "A piece of gravel". Now, that piece of gravel is not further referred to in the material, it does not appear there was any forensic testing of it, and I will return in due course to that topic, but I just alert you to that in Detective Van Leeuwen's statement.

Commissioner, I next wish to take you to the opinion of Detective Senior Sergeant Cameron, who is also from the Crime Scene Unit, and I ask that tab 14 [SCOI.02737.00069_0001] be placed on the screen. So this is his statement dated 3 October 1997.

Consistent with the observations of Detective Senior Constable Van Leeuwen, Detective Cameron observes there was no evidence of damage to the vegetation, as might be expected if someone had slipped, fallen or been pushed over the cliff edge.

If we look at paragraph 5, notably, Detective Cameron considered that if someone had been lifted and pushed over the fence, as opposed to climbing the fence, he would have expected that there would be more damage to both the fence and the vegetation. That is an opinion that we submit accords with common sense, and I just note that at this time.

The next opinion that is relevant is that of Senior Constable Lane. I ask that tab 5 [SCOI.02737.00051_0001] be placed on the screen.

Senior Constable Lane was the initial investigating officer and this is his statement to the Coroner dated 1 May 1997. The majority of his statement deals with the police investigations that were undertaken, and I will return to the topic of the police investigation at the conclusion of my submissions. But at this time, I will ask that we go to paragraph 63, which is at the end of the statement.

This is where Senior Constable Lane commences his opinion as to how Mr Miller may have met his death. Senior Constable Lane notes that there is no hard evidence to suggest that Mr Miller was either assaulted or robbed, and comments on the inability of Dr Duflou to distinguish between the injuries being caused by a blunt object or a fall. He also notes the absence of any physical evidence to determine whether Mr Miller was assaulted or whether he fell.

Commencing at paragraph 64, he sets out his theory as to how Mr Miller died. If I could just summarise and paraphrase, his theory was that Mr Miller was attempting to go from The Rocks to the casino in Darling Harbour. In his state of intoxication he became lost or disoriented. From Munn Reserve, you are able to see Darling Harbour and the casino. So Senior Constable Lane suggested that Mr Miller may have attempted to take a shortcut down, via Munn Reserve, and his intoxication contributing to his poor judgment, he decided to scale the fence and from there

slipped and fell.

Commissioner, you will note at this time that that theory is not necessarily an implausible one but at this stage it involved a fair degree of speculation on the part of Senior Constable Lane.

So, Commissioner, those were the statements that were prepared prior to the coronial inquest. The coronial inquest was then heard in October of 1997. Each of Dr Duflou, Detective Senior Constable Van Leeuwen, Detective Senior Sergeant Cameron and Senior Constable Lane gave evidence at the inquest, and a transcript of that inquest is at tab 42 [SCOI.02737.00041_0001]. I might ask that that now be put on the screen

I have already briefly referred to some of the comments made by Detective Van Leeuwen in his evidence to the coronial inquest. I wish to take you to evidence from Dr Duflou at the inquest. If we could start by going to page 6 and commencing at line 25, this is significant because Dr Duflou here expands upon the comment in his report that the injuries were considered atypical for a fall from a height.

What Dr Duflou says is that the head injury was more consistent with a blow more in the middle, a transverse blow, as well as more a vertical blow to the neck itself. He then notes that the abdominal injuries are unusual in that there were no associated rib fractures or pelvic fractures, yet there were quite significant abdominal injuries. Dr Duflou comments that you would expect, if he fell on to a flat surface in any case, that to have abdominal injuries you'd have to have injuries on either side, and there were none.

I highlight this point now because, as will become apparent, this is a point of distinction between the opinion of Dr Duflou and the opinion of Dr Iles.

If we now go back to page 5, commencing at line 15, Dr Duflou was asked by Counsel Assisting about the three manners in which he believed Mr Miller may have died - so that is a reference to what I earlier took you to, which is the three scenarios in his report. In his report you will recall that he expressed no preference for any one of the three scenarios, saying that they all have inherent

difficulties.

At line 28, Dr Duflou was asked whether there was any manner which is more likely that is consistent with the injuries. Dr Duflou commenced his answer by saying:

> *My understanding is that there is no evidence at all of the Deceased having been on top of the cliff face.*

And the Coroner says to him, "That is correct." Dr Duflou continues:

> *If that's the case the Deceased could not have fallen from the cliff face or from the top of the cliff face and it sounds unlikely to me that he in fact started climbing the cliff face as an alternative. In that case the Deceased would more likely than not have been killed in a homicidal fashion.*

So, Commissioner, it would appear that, in his oral evidence, in contrast to his report, Dr Duflou begins to lean more heavily in favour of a theory of an attack or an assault. But it should be noted that this opinion, it seems, took as a starting point that Mr Miller had not been at the top of the cliff - that is to say, that it was largely determined by non-medical evidence as opposed to medical evidence.

Commissioner, the coronial findings are at tab 43 [SCOI.02737.00032_0001]. Senior Deputy State Coroner Abernethy presided over the coronial inquest and delivered his findings on the same day. I will ask that tab 43 be put on the screen.

In paragraph 1, you will see that the Coroner identified the first issue to be determined was whether Mr Miller's death was a homicide. At paragraph 5, which we'll just scroll down to, the Coroner gives five reasons for rejecting the theory of Senior Constable Lane, which really just draws on factors that I've already taken the Commission to, that derive from the opinions of Dr Duflou and Detectives Van Leeuwen and Cameron. So, first, at the top of the cliff is a high wire fence; secondly, Mr Miller was very drunk with a blood alcohol level of 0.22; thirdly,

Crime Scene carefully examined the ledge above the cliff which was covered in ivy and they found no signs of disturbance to that ivy; fourthly, Mr Miller's body was laid out straight and was not cramped up, as often occurs in falls; and fifthly, Mr Miller's injuries in the main were more consistent with him being assaulted.

At paragraph 6, he comments that while Dr Duflou believes his injuries may be consistent with a fall or push, he feels it is more likely that he was either assaulted near where he was found or taken there and dumped.

The finding of the Coroner is at the bottom of page 2, and consistent with the evidence that the Coroner had before him at that time, his finding was that Mr Miller died of multiple injuries inflicted by a person or persons unknown, with the Coroner being unable to say who inflicted such injuries. So, in effect, the Coroner rejected the hypothesis that his injuries were the result of a fall, instead finding an assault.

That is the position as at 1997 at the conclusion of the coronial inquest. That can now be taken from the screen.

The next relevant investigation into Mr Miller's death came at the end of 1997 and continued into 1998. This was an investigation under the strike force name Strike Force Corone.

So after the inquest, Coroner Abernethy referred the case back to the NSW Police Force by further investigation by specialist Homicide officers. Now, this was in part motivated by certain deficiencies in the original investigation, particularly some that were highlighted by Mr Miller's family. Commissioner, as I have already flagged, I will come back to deal with the sufficiency of the original police investigation as a separate topic in due course.

The strike force was under the command of Detective Sergeant Desmond and it undertook a number of further investigations. I comment at this time that the Inquiry has only been provided with various documents that summarise the steps taken as a result of that reinvestigation and it appears that some of the

contemporaneous documents associated with this strike force are not available.

What I will ask be put on the screen is the report at tab 49 [SCOI.10048.00002]. It is a report from Detective Sergeant Desmond seeking that a reward be posted for any information about the death of Mr Miller.

Now, if I ask that we scroll firstly to page 6, under the heading "Present Status of Investigation", you'll see there that there is a list of the various investigations that were conducted at the time by Strike Force Corone. Amongst those investigations is the re-interviewing of security staff at Patricks.

Now, at the bottom of page 6, there is a paragraph that commences:

After reviewing the evidence the writer the of the following opinion: ...

This is what Detective Sergeant Desmond states:

After reinterviewing security staff, it would appear no vehicle or pedestrian could have entered the terminal without being challenged.

He then says:

Taking into consideration the position of the body --

so that is lying at the bottom of the cliff --

no evidence of blood particles around the machinery yard, clothing intact and the aforesaid opinion --

so that's referring back to the opinion that it would be difficult to pass the security checkpoint, and he says that this:

... would indicate the deceased fell from the area of the cliff face.

He notes the lack of evidence of a struggle and that no

property was stolen from Mr Miller.

At the top of page 7 he comments that the scenarios put forward by Dr Duflou give no clear indication of how the deceased died and he somewhat criticises here the opinion of Detective Van Leeuwen as to the injuries sustained by a fall as opinionated, stating that no two persons sustain identical injuries in a fall of this nature. I have already made some comment about this perhaps being straying beyond Detective Van Leeuwen's particular expertise.

So certainly by 1998 it's apparent that there was a divide of opinions, within the NSW Police Force, at least, as to how Mr Miller met his death.

A government reward was approved for any information relevant to Mr Miller's death but no information was forthcoming. Tab 49 can now be taken down.

Commissioner, the next strike force that considered Mr Miller's death was in 1999 and it was named Strike Force Lincoln. Strike Force Lincoln was established to investigate the death of another man, so an unrelated death, who also died in 1997.

The primary person of interest in relation to that person's death was a man who we have given a pseudonym, and I will refer to him as "NP130", and NP130 was ultimately charged and convicted in relation to an unrelated death.

The reason that Mr Miller's death was considered by Strike Force Lincoln was because NP130's former girlfriend had given evidence about an incident that occurred in The Rocks and likely in Munn Reserve, in which NP130 began to push a male and later told his girlfriend that he had "shanked", which she understood to mean stabbed, the male, and "chucked him off a cliff."

Now, Commissioner, this was investigated to see whether or not she could have, in fact, been describing an incident involving Mr Miller. For a number of reasons which I've set out more fulsomely at paragraph 128 of my submissions, the incident that she described did not match the objective circumstances known as to Mr Miller's death. I simply rely on my written submissions as to this point. Strike Force Lincoln did not otherwise consider the manner

of Mr Miller's death.

That was in 1999. Now, at this point, the next time that Mr Miller's case is considered was by the Unsolved Homicide Team in 2004. I ask that tab 69 [NPL.0100.0015.0001] be placed on the screen.

Commissioner, this is a case screening form. It has been prepared by Detective Sergeant Barwick of the Unsolved Homicide Team. I will ask that we now scroll to page 9 of this document. So this is the conclusions or recommendations of Detective Sergeant Barwick. You will see that the recommendation here is for a forensic review of Mr Miller's death. What is anticipated is the Coroner may then issue a finding of "death by misadventure".

Detective Sergeant Barwick, under the heading "Points of Issue" raises a number of factors which tend to support the view Mr Miller must have come over the cliff to his final resting spot. This includes various factors to which I've already taken this Commission and to which I'll later come.

The point I wish to make at this time is that it appears that despite a forensic review having been recommended in 2004 there is no action that seems to have been taken in relation to that recommendation.

The case screening form also noted that there had never been a forensic examination of Mr Miller's clothing and recommended such re-examination, or examination, and again, it does not appear that that step was taken.

Then the final consideration given by the police was in the course of Strike Force Parrabell but, Commissioner, as you would be well aware, that did not involve a reinvestigation of the case but, rather, a review.

Strike Force Parrabell concluded that there was no evidence of bias crime in Mr Miller's case, and I rely on my written submissions in relation to the analysis of the use of the Bias Crime Indicators Form by Strike Force Parrabell.

That somewhat lengthy exposition sets out the previous opinions that had been expressed in relation to Mr Miller's death, and what I will now turn to is the steps that have

been taken by this Inquiry to clarify the circumstances.

I start by talking and submitting in relation to the forensic report of Dr Linda Iles. After summonsing and reviewing all of the material provided by the NSW Police Force and the Coroners Court, the first significant step taken by the Inquiry was to brief Dr Iles to review Mr Miller's case.

Dr Iles, of course, relied upon the autopsy report of Dr Duflou as well as photographs of both the crime scene and photographs taken at autopsy. As noted earlier, Dr Iles considered this documentation to be of a high standard and so sufficient for her to form a view as to how Mr Miller's injuries were sustained.

Commissioner, it will be my submission that Dr Iles' report and her opinion is persuasive and cogent, and I will ultimately be submitting that her conclusions can be accepted by the Inquiry.

I wish to start by setting out Dr Iles' comments in respect of the three significant injuries sustained by Mr Miller. First is Mr Miller's skull and brain injuries. Dr Iles considered that the injuries were consistent with a high magnitude force impact, such as a fall from a height. In her opinion, the pattern of craniofacial injuries sustained by Mr Miller can be observed in other high-energy scenarios, such as to pedestrians or cyclists in motor vehicle accidents, however, the absence of injuries to Mr Miller's torso and limbs and the circumstances in which he was found discount such scenarios.

In addition, and importantly, Dr Iles observed that the injuries to Mr Miller's skull were all in a single plane and they had a vertically orientated abraded component to his neck and chin. So Dr Iles considered that to have such severe underlying craniofacial trauma but only a single plane of facial abrasion is not typical of an assault.

Secondly, Dr Iles looked at Mr Miller's liver and right kidney injuries, which were accompanied by associated bleeding in his abdomen. You may recall that Dr Duflou considered it "unusual" that there were severe internal injuries without associated fractures.

Dr Iles' opinion is that that pattern of injury is consistent with deceleration injuries consequent to a fall from a height. So that is, the primary point of impact was to Mr Miller's head and face, whereas the injuries to his internal abdominal organs were the result of deceleration. That explains the severe injuries without the associated fractures or other impact injuries. So Dr Iles considers that that is consistent with a fall rather than an assault.

Thirdly, Dr Iles looks at Mr Miller's bilateral distal forearm fractures, so in simple terms, the fact that Mr Miller had fractures to both of his wrists. Dr Iles considers that those injuries are consistent with Mr Miller's arms being outstretched at the time of impact.

Contrary to Dr Duflou's opinion, Dr Iles considered that these are not typical of defensive injuries, and the reason for that is that there is a lack of overlying bruising or haemorrhaging to the soft tissues that you would expect from defensive injuries.

Commissioner, I will take you to the conclusions that Dr Iles reaches, and I ask that tab 72 [SCOI.82891_0001] be placed on the screen. So this is the report of Dr Iles. If we go to page 10, that most conveniently summarises her opinions. Paragraph 1 on that page - if that could just be scrolled, thank you - is that:

Based on the medical findings, it is my view that Mr Miller's fatal injuries were sustained in a fall from a height with a primary impact point to the front of Mr Miller's face.

Now, she notes, appropriately, that she's unable to say how the fall occurred, and that she can't discriminate, from the medical evidence alone, between a fall and a push.

At paragraph 2 she states:

It is my view that Mr Miller's injuries in toto are not typical of an assault.

She goes on in that paragraph to explain what I have already said.

At paragraph 3, she notes:

A fall from a height of around 7 metres with a primary facial impact ... would be in keeping with the environment and the position in which Mr Miller was found.

She considered that the medical findings were inconsistent with Mr Miller moving significantly from the point of impact.

She also noted that the injuries to Mr Miller's face would result in significant bleeding after death, and that is consistent with the pool of blood that was found in the location that his body was found in.

She also referred to circumstantial evidence about the lack of access to the wharf and the absence of blood particles in the machinery yard as support for the assertion that Mr Miller fell from the cliff above where he was found, but I should note that earlier in her report, she appropriately noted that these factors turn on non-medical evidence.

Dr Iles was asked in the letter of instruction about the position of Mr Miller's body, noting that Detective Van Leeuwen gave evidence that the position of the body was "less contorted" than would be expected following a fall.

Dr Iles' opinion was that the position of the body corresponded with Mr Miller's injuries, which indicated an anterior plane of impact. So that is, Mr Miller was found lying face down and the injuries were to the front of his body, so it's consistent in that regard. But she considered that the position of the body was not otherwise informative, and that's at the top of page 11, if we just scroll down to that.

Commissioner, I note page 11, paragraph 3. So this is in relation to the bloodstaining. What Dr Iles notes here is that the bloodstaining could be caused by the expiration, so the breathing out, of air and blood from Mr Miller's damaged nasopharynx into a pool of blood on the ground, but what she suggested was that an opinion be sought from others with appropriate expertise.

At paragraph 4, Dr Iles states that she cannot exclude

Mr Miller being assaulted prior to falling from a height or being pushed over, however, she did comment that Mr Miller had no injuries to indicate that that had occurred.

In answer to question 7, and on page 11, you'll see that Dr Iles ultimately concluded that Mr Miller's cause of death may be expressed as:

Multiple injuries sustained in a fall from a height.

So you will see that Dr Iles' opinion is that the injuries are consistent with a fall and not consistent with an assault.

Now, following the recommendation of Dr Iles to seek an opinion from a blood pattern expert, the Inquiry briefed Ms Jae Gerhard of Independent Forensic Services to conduct a review of the crime scene evidence. And, in addition to reviewing the material, the documentary material, Ms Gerhard and her colleague at Independent Forensic Services, Ms Roebuck, attended the Pemulwuy laboratory, which is operated by the NSW Police Force, in order to examine Mr Miller's clothing. They conducted a white-light and low-powered magnification examination of the clothing.

Commissioner, I pause to clarify here that the report and the opinion is provided by Ms Gerhard but the examination of the clothing was jointly conducted by Ms Gerhard and Ms Roebuck, also of Independent Forensic Services, and that's consistent with best practice in forensic science.

This is the first time that Mr Miller's clothing has been examined. I will briefly set out the pertinent findings of Ms Gerhard's report. In relation to Mr Miller's jeans, she noted that there were no bloodstains on Mr Miller's jeans, and that was despite both examination under magnification, as I previously noted, but also the chemical testing of apparent stains that were negative for blood.

There was wear and tear on the jeans but none that indicated an action such as climbing over a barbed-wire fence.

In relation to Mr Miller's shoes, again there was no

bloodstaining observed to his shoes.

Coming to Mr Miller's T-shirts, as I mentioned earlier, Mr Miller was wearing two white T-shirts, one over the top of the other, and it is the top white T-shirt which has the most informative staining.

That white T-shirt had extensive staining on the upper chest and neck region of the shirt, and that was confirmed to be blood, and that appeared to be what was described as "saturation staining" from blood soaking into and wicking through the fabric. So that heavy staining is, in the opinion of Ms Gerhard, consistent with Mr Miller having facial injuries and remaining prone, with little to no movement after the bleeding had begun.

Now, within that larger saturation stain were smaller, darker spatter stains that were circular in shape. The significance of them being circular in shape is that it indicates they had no direction. Ms Gerhard considered that these spatters could have been the result of blood being expelled from Mr Miller's airways shortly after the fall, so that's consistent with what Dr Iles suggested, or liquid being distributed as a result of the impact of the fall.

Ms Gerhard then commented upon the staining on the rear of the T-shirt that was predominantly on Mr Miller's right sleeve, which you will recall Detective Van Leeuwen had considered a crucial piece of forensic evidence consistent with a homicide.

Ms Gerhard described these bloodstains as nondescript and, as with the other bloodstains that were seen on the front of Mr Miller's shirt, she considered that these could have resulted from blood being distributed as a result of the impact of the fall.

What is important in regards to the bloodstains to Mr Miller's T-shirt, particularly to the right and back, is that they were not indicative of an assault or of Mr Miller being upright with a bleeding injury. So what Ms Gerhard explains is that if there had been a single impact that created blood flow while Mr Miller was upright, then you would expect drip-type staining, so staining that has a clear direction. If there were multiple strikes, then the strikes could distribute spatter-type stains, that

would be stains again that indicated direction as opposed to being circular. Ms Gerhard notes that there was no evidence of either type of that staining.

She also notes that the blood patterns on Mr Miller's clothing did not indicate that he had been moved. There were no drag or grab marks on the shirt, and there were also no flow-type patterns that would indicate that Mr Miller was moved whilst freely bleeding.

Her opinion in relation to the top white T-shirt was that the bloodstaining was consistent with either expiration of air or the impact of the fall.

The bottom white T-shirt was consistent with it having been worn under the top white T-shirt, and it did not have any independent drip or spatter stains.

Commissioner, I will ask that Ms Gerhard's opinion be put on the screen, and this is at tab 74 of your brief [SCOI.83328_0001]. That's the expert report of Ms Gerhard, and if we go to page 13, paragraph 15.1, this is the conclusion that's reach by Ms Gerhard:

> *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 bottom of the cliff.*

And she continues that:

> *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.*

That can now be taken down.

So, Commissioner, notwithstanding the original coronial finding, the preponderance of the evidence,

including those expert opinions that were not available at the time of the inquest, supports a conclusion, it is submitted, that Mr Miller's injuries were sustained by a fall from the cliff directly above where his body was found.

It is submitted that 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 that of Dr Duflou, in particular 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 have been explained and, in particular, answers Dr Duflou's concerns about the absence of rib or pelvic fractures despite the significant abdominal injuries.

Dr Iles also provides cogent reasons, it is submitted, as to why Mr Miller's injuries were not typical of an assault.

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.

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. To the contrary, he was found in the pool of blood that would have been caused by his facial injuries. This tells against one of Dr Duflou's hypotheses, which was reflected ultimately in the reasons of the Coroner, that Mr Miller's body could have been dumped in the location that it was found.

That Mr Miller came to his final 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.

Now, Commissioner, it's acknowledged that there is little evidence that establishes Mr Miller's presence at

the top of the cliff. This includes that there is an absence of evidence of disturbance to the vegetation or the ivy at the top of the cliff; there's an absence of trace evidence on the barbed-wire fence, and there is a lack of tears or damages to Mr Miller's clothing.

However, it is submitted that the absence of this 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 upon how he came over the fence. In addition, the presence of the ivy that was found adjacent to his feet is at least consistent with him having disturbed that vegetation.

Now, the forensic evidence cannot, of itself, determine whether Mr Miller came over the cliff as a result of an accidental fall or a push. However, we submit that it would seem implausible that Mr Miller, who was 180cm tall and weighed 87 kilograms, could have been forced over any barbed-wire fence by an unknown person and pushed off the cliff without sustaining any injuries consistent with an assault and without there being blood patterns consistent with an assault.

You will recall the evidence of Detective Sergeant Cameron that if anyone 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. Accordingly, if it is accepted that Mr Miller fell to his death, then the limited evidence as to Mr Miller having been at the top of the cliff, in fact, lends weight to the theory that he climbed the fence himself, rather than being lifted over the fence and pushed.

Accordingly, having regard to the totality of the evidence now available, 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. Commissioner, you will see this conclusion reflected in my written submissions at paragraph 171.

The reasons why Mr Miller climbed the fence at Munn Reserve are unknown and inevitably will remain so.

As I noted earlier, the theory of Senior Constable Lane that he became lost on his way to the casino is one plausible theory but essentially speculative. Mr Miller's high blood alcohol level is likely to have contributed to some poor judgment.

Having reached this conclusion, it follows that I submit that Mr Miller's death was not a homicide or the result of LGBTIQ bias.

Commissioner, there remain two topics that I wish to address. The first relates to the evidence that I took you to earlier in Detective Van Leeuwen's statement about a piece of what he described as "gravel" being collected from Mr Miller's hand at autopsy and provided to police. The Unsolved Homicide Team's case screening form also refers to this debris and said that it was located in a box in the archive room.

The Inquiry made some efforts to find the location of this debris to find out what the nature of the debris was and to determine whether it had ever been tested. Now, a statement was obtained by Inspector Brady of the Forensic Evidence and Technical Service, and according to that statement, the debris was located in the State Archives, but it had never been booked or recorded as an exhibit and it had never been tested. It's submitted that collecting an exhibit but failing to record it, failing to test it or even consider its nature is a significant oversight in the original investigation.

Commissioner, I might ask that tab 79I [NPL.9000.0017.0001] at page 5 be placed on the screen. This is a photograph of the debris that is in a jar. The jar is shown to have a sense of scale, and a closer image of the debris is at page 6.

This debris was visually inspected by Inspector Brady. He described it as brown or orange in colour, having the appearance of rust. In his opinion, the debris appeared to be neither gravel nor organic or plant material. He also noted that the debris was magnetic, which suggests that it has metallurgic properties.

Commissioner, the origin of the debris in Mr Miller's hand is at this time unknown and the Inquiry is in the process of briefing an appropriate expert to ascertain the

nature of the material, which could reveal whether it was consistent with it originating from the fence or the cliff above where Mr Miller was found.

Supplementary submissions on this issue, as well as on any other investigations carried out by the Inquiry, may be provided in due course, and both parties will be provided and given the opportunity to respond.

That image can now be taken down.

Commissioner, I finally wish to make some comments about the original police investigation. Senior Constable Lane 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 that:

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

As I noted, this was part of the motivation for a separate strike force being established.

Now, this observation is also confirmed by Ms Lott's recollections, that's Ms Bridget Lott, who was the partner of Mr Miller at the time, who recalls attending The 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.

Now with the benefit of new evidence, Senior Constable Lane's view appears to have been somewhat validated. However, it should be noted that at the time of his investigation, the evidence of crime scene examiners and a forensic pathologist was that homicide was at least a possibility and the investigation, it is submitted, accordingly needed to be conducted as a homicide investigation.

In those circumstances, some aspects of the investigation into Mr Miller's death were not pursued as thoroughly or completely as they could have been. A number of relevant statements were not taken until the inquest and

at the prompting of Mr Miller's parents. For example, police had failed to take statements from all of the security guards across the window of time in which Mr Miller's death may have occurred.

As I have noted, Strike Force Corone would ultimately go on to take many other investigative steps some of which, it is submitted, should have been carried out at first instance.

In addition, the canvassing of witnesses was not conducted thoroughly or carefully. Now, this is particularly evident in relation to the canvassing of crew members on board the vessel Ranginui, which was a ship that was docked at Wharf 4 on the night of Mr Miller's death. Now, Wharf 4 was the closest wharf to the machinery yard where Mr Miller's body was found.

So on 19 March 1997, when crew members of the Ranginui had departed from Sydney but then returned, police did interview 10 members of the crew. A running sheet summarises those 10 interviews and it records that six crew members went to see the Mardi Gras, three returned together at 11.30pm, while the other three became separated while drinking during the night and arrived back separately between 12am and 3am.

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. However, the running sheet does not indicate whether each crew member was spoken to separately or in the presence of others, and there is, it is submitted, a general lack of detail, particularly in relation to the three crew members who returned between 12 and 3am.

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 the place where his body was ultimately found, the crew members may have provided crucial evidence in relation to a homicide investigation. So it is submitted that greater care should have been taken to capture their evidence as to their movements and observations on the night.

So, Commissioner, I otherwise rely on my written submissions in relation to the police investigation.

THE COMMISSIONER: Thank you.

Is there anything you wish to say at the moment, Mr Short?

MR SHORT: No, your Honour. The Commissioner of Police seeks to reserve her position.

THE COMMISSIONER: All right.

Do you wish to say anything at the moment?

MR TYNAN: No, Commissioner. The family is giving consideration as to whether to submit written submissions in due course.

THE COMMISSIONER: Thank you. Can I just direct my remarks to Bridget and Shane and to other members of the family who are watching. I, too, on behalf of my staff and myself, convey my sincere condolences to you all. This has been a very tough time for each and every one of you and I appreciate your attendance here today.

I will continue to give consideration to the matters that are put before me and, of course, in due course, I will hear from the police, and then I will give my report in due course, but thank you very much. I will now adjourn.

AT 11.11AM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED ACCORDINGLY

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