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 Tuesday, 4 April 2023 at 10.05am

(Day 43)

Ms Meg O'Brien	**(Counsel Assisting)**
Ms Caitlin Healey-Nash	**(Senior Solicitor)**
Mr Rhys Carvosso	**(Solicitor)**

Also Present:

Mr Anders Mykkeltvedt and Mr Patrick Hodgetts for NSW Police

Mr Hamish Bevan SC and Ms Laura Thomas for the Sheil family

THE COMMISSIONER: Yes.

MS O'BRIEN: Commissioner, I appear to assist you instructed by Ms Healey-Nash and Mr Carvosso.

THE COMMISSIONER: Thank you.

MR MYKKELTVEDT: Commissioner, I appear for the Commissioner of Police.

THE COMMISSIONER: Thank you very much, Mr Mykkeltvedt

MR BEVAN: Commissioner, with your leave, I appear with my learned friend Ms Thomas for the Sheil family.

THE COMMISSIONER: Thank you. Leave is granted, Mr Bevan. Yes?

MS O'BRIEN: Commissioner, these submissions concern the death of Peter John Sheil. I have a bundle of documents to hand up, and unless there are any objections, I will seek to tender that bundle.

EXHIBIT #20 BUNDLE OF DOCUMENTS TITLED "TENDER BUNDLE PETER SHEIL"

THE COMMISSIONER: All right. Thank you.

MS O'BRIEN: I also seek to tender, to separately tender, a family statement that is prepared by the Sheil family. I also hand up short minutes of order with respect to non-publication orders in this matter, which I understand are by consent.

EXHIBIT #21 STATEMENT BY FAMILY OF PETER SHEIL

THE COMMISSIONER: All right, thank you.

MR MYKKELTVEDT: Yes, that's so.

THE COMMISSIONER: Thank you, Mr Mykkeltvedt.

MS O'BRIEN: And I also hand up a copy of my written submissions prepared in this matter.

THE COMMISSIONER: Thank you. I have made those orders. Thank you very much. Yes.

MS O'BRIEN: Commissioner, at the outset of my submissions, I wanted to note that although this Inquiry summonsed all investigative material held by the New South Wales Police Force in relation to Mr Sheil, no material was produced, with the Inquiry being informed by the police that they have been unable to locate any investigative files relating to Mr Sheil's death.

I intend to make further submissions about that fact in due course. However, at this stage I wanted to note that this Inquiry's investigation into Mr Sheil's death is based on the Coroner's court file only, which was requested and received by this Inquiry. However, that file consisted only of 18 pages of material. As will become apparent, the absence of contemporaneous material has had a significant impact on the ability of this Inquiry to investigate Mr Sheil's death.

Unfortunately, Mr Sheil's parents are now deceased. However, he is survived by his four siblings: Christopher, Hugh, Robert and Margaret. I understand that they are watching today's hearing and are represented by senior and junior counsel.

The Sheil family has also provided the Inquiry with a photograph of Peter that I'm hoping will be displayed on the screen in court shortly. Mr Sheil was born in Sydney on 7 February 1954. He died between 8.00 pm on 27 April 1983 and 10.00 am on 29 April 1983, at Gordons Bay, which is referred to in some of the documentation as Thompsons Bay, near Clovelly. He was 29 years old at the time of his death.

Details about Mr Sheil's life have been provided to this Inquiry by Mr Sheil's siblings by way of the family statement that I tendered at the beginning of these submissions. It is apparent from that statement that Mr Sheil was known to enjoy music, reading, photography and current affairs. He had a gregarious personality, was a talented poet and was a much loved son, brother and friend, and the impact of his death on his family was devastating.

Mr Sheil's adult life was afflicted by various episodes of mental illness. In the three years prior to his death, Mr Sheil was admitted over 12 times to the Prince of Wales Hospital and the Prince Henry Hospital, as

it was then known, with depression and hypermania. Mr Sheil was thought by one of his treating doctors to have manic depressive illness or possibly schizo-affective psychosis. He occasionally expressed suicidal ideation but denied any suicidal intent. His conditions were being treated by way of medication.

At the time of his death, Mr Sheil had been living in rehabilitation accommodation known as the Clovelly Flats at Park Street in Clovelly and he had been living there since 22 March 1983, or for just over a month. He had been referred to that accommodation by a social worker at the Prince of Wales Hospital. The supervisor in charge of the Clovelly Flats, Ms Patricia Campbell, considered that Mr Sheil's condition had been improving since he began living there.

There is no evidence to suggest that Mr Sheil was a member of the LGBTIQ community, and during his lifetime he had a number of girlfriends. However, his brother Christopher has stated through the media that although Mr Sheil didn't identify as gay, he may have been mistaken as gay. Furthermore, there is evidence before this Inquiry that the coastal path between Coogee and Clovelly beaches around where Mr Sheil was found operated as a beat at the time of Mr Sheil's death, as did the nearby Giles Baths. The significance of those facts will be discussed in due course.

The next matters I wish to address are the circumstances of Mr Sheil's death and its immediate aftermath. At 8.30 am on Wednesday, 27 April 1983, Mr Sheil left his residence to go shopping in the Randwick and Bondi Junction areas. Ms Campbell, the supervisor of the Clovelly Flats, drove him to the corner of Clovelly Road and Keith Street, where she saw Mr Sheil board a bus to go to Randwick. Her recollection was that he was going to enquire about his pension cheque and to attend the Prince of Wales Hospital to see his doctor.

At around 8.00 pm that evening, Mr Sheil telephoned his mother from the Coogee Bay Hotel to inform her that he was about to walk home, where he had a 9.00 pm curfew. This was the last known communication between Mr Sheil and another person. According to family members, he was in good spirits at this time and he gave no indication on the telephone call that he was suicidal.

If I could bring up on the screen Attachment "A" to the written submissions prepared, Commissioner, this attachment is a map extracted from Google Maps. Mr Sheil appears to have chosen to walk home via the coastal track between Coogee and Clovelly. Based on Google Maps estimates, it would have taken him about 20 minutes from the Coogee Bay Hotel to reach the location where his body was found, which is circled in red on that map, and that map depicts the likely or most obvious walking route between his home and the Coogee Bay Hotel.

At around 10.00 am on 29 April, Mr Sheil's body was found on the rocks below the coastal track by Mr Donald Ross, a Clovelly resident who was walking around the rocks at the time. Mr Ross gave a statement to the police which was available to the Inquiry through the coronial file. That statement, Commissioner, is at tab 7 of the tender bundle and I am hoping it can be brought up on screen now.

It is a short statement of some three paragraphs long. According to Mr Ross, Mr Sheil was lying on his back between some rocks about 150 metres from the Clovelly Beach carpark. He was clothed in a blue short-sleeved shirt which was open at the front and blue corduroy trousers. Mr Ross also observed that Mr Sheil was wearing turquoise underwear, which is described in other documents before the Inquiry as a swimming costume, and that Mr Sheil's belt and fly were undone and his trousers and underwear were around his hips and below the line of his pubic hair. He was wearing brown slip-on shoes and white socks. Mr Ross went home and called the police and then returned to the scene.

Constable William Strange of Randwick Police Station attended the scene shortly thereafter, apparently alone. Constable Strange prepared a two-page or nine-paragraph statement that was also provided to this Inquiry has part of the Coroners Court file, and that is at tab 10 of the bundle that I handed up earlier. That statement contains Constable Strange's observations of the scene and contains the only details this inquiry has about any investigation conducted by the New South Wales Police Force into Mr Sheil's death.

At paragraph 2 of that statement, Constable Strange observed that when he arrived at the scene, he saw that

Mr Sheil was lying in a prone position, notably different to that which was observed by Mr Ross, between two large rocks. He also states that around 6 metres from where Mr Sheil's body was found, there were bloodstains on the rocks and some loose change and that there was a trail of blood from that location to Mr Sheil's body. According to paragraph 3 of Constable Strange's statement, scientific police attended sometime later and took photographs of Mr Sheil's body and the scene. These photographs, which apparently have not either been retained or located, have not been made available to the Inquiry. In that paragraph, Constable Strange also makes remarks about the state of Mr Sheil's clothing.

According to paragraph 4 of the statement, there was a rock outcrop about 20 metres above Mr Sheil's body which had, and I quote:

... a very mossy surface of a highly slippery nature ...

And what is described as:

... a magazine of a sexual nature.

Was apparently found just below this rock outcrop. What Constable Strange meant by the words "of a sexual nature" is not known. At paragraph 5, Constable Strange states that on 29 April 1983 at around 2.00 pm, he visited Clovelly Flats and informed Ms Campbell of Mr Sheil's death. She accompanied him to Mr Sheil's room and found phone numbers for members of his family. It is apparent from other documents before the Inquiry that at around 1.50 pm on 30 April, Mr Sheil's father, Peter Barry Sheil, attended the city morgue and identified Mr Sheil's body.

At paragraph 8, Constable Strange details the nature of his investigation into Mr Sheil's death. He states that in the week following the discovery of Mr Sheil's body, he:

... made inquiries in the immediate area of the death as to any person who may have witnessed anything [but] to no avail ...

He also conducted what he calls a "further investigation of the surrounding area". The nature of those inquiries is not elaborated on in Constable Strange's statement, and

based on the limited information available to this Inquiry, there is no way of knowing what exactly those inquiries entailed. Constable Strange then concluded his statement at paragraph 9, and I'll quote directly from that paragraph:

> *From the investigation carried out and the prevailing area in which the Deceased met his demise I have formed the opinion that the Deceased had ventured onto a rock ledge about 20 metres above the shoreline rock base of Thompsons Bay and then lost his footing on the slippery undergrowth, causing him to fall to the rocks below and apparently striking his head. It then appears that he dragged himself a distance of about 6 metres and lay in a more comfortable position between rocks. I am also of the opinion that the reason that the Deceased's clothing was in a state of disarray was caused by the fact that he had presumably been masturbating before his fall.*

The conclusions reached by Constable Strange will be the subject of further submissions, but I will note, Commissioner, that to the extent that the contents of Constable Strange's statements raise matters that this Inquiry would have liked to consider further, I submit that, first, in the absence of any investigative file and, second, given that the Inquiry has established that Constable Strange is now deceased, there is very limited scope to explore those matters any further.

On 3 May 1983, Dr Colin Goldschmidt conducted an autopsy. In the post-mortem report dated 3 June 1983, Dr Goldschmidt documented various injuries, some of which are set out in my written submissions at paragraph 6, but those injuries included a fracture dislocation of the cervical spine. The direct cause of death was recorded by Dr Goldschmidt as being "multiple injuries". Dr Goldschmidt estimated that death had occurred around three to four days pre-autopsy or between 8.00 am on 29 April and 8.00 am on 30 April which was some time after Mr Sheil left the Coogee Bay Hotel on the evening of 27 April.

The Coroner ultimately dispensed with an inquest into Mr Sheil's death. In the summary sheet, dated 1 September 1983, the cause of death is recorded as "multiple injuries" and the manner of death is recorded as "a fall". The time of death was recorded as being between 8.00 pm on 27 April 1983 and 10.00 am on 29 April 1983.

Commissioner, before I speak to the work conducted by this Inquiry in relation to Mr Sheil's case, there are two particular matters I would like to make submissions on. The first of those matters is the quality of the police investigation into Mr Sheil's death and the second is the review of this case that was purported to be conducted by Strike Force Parrabell. In relation to the first of these matters, it is my submission that the conclusion of Constable Strange that Mr Sheil stepped off the coastal track to masturbate and then accidentally fell to his death is doubtful for at least the following reasons.

First, the statement of Constable Strange indicates that the investigation did not extend beyond about a week after Mr Sheil's body was found on 29 April. As I have submitted, precisely what the investigation entailed could not be established by the Inquiry in any detail because of the absence of any police record of what exactly they did to investigate Mr Sheil's death. However, what the documentation does establish is that the police were very quick to form the view that the manner of Mr Sheil's death was accidental.

Constable Strange, as I have noted earlier, expressed the opinion that Mr Sheil had accidentally fallen off the rock outcrop and had been masturbating before his fall. This conclusion appears to have been based on the state of Mr Sheil's clothing and what is called the "magazine of a sexual nature" found at the scene. However, there was no attempt to make inquiries of or to take statements from friends or family members, including, in particular, Mr Sheil's mother, who had received a call from Mr Sheil on the evening of 27 April and may well have been the last person to speak to him.

In an article written by Mr Rick Feneley, dated 26 September 2016 and titled, "He wasn't gay, but could Peter have been a gay-hate victim?", and published by SBS News, contained at tab 21 of the tender bundle, Mr Sheil's brother, Christopher, who was 27 years old at the time of

Mr Sheil's death, recalls having witnessed an inquiry conducted by his father and a police officer at the station that day his body was found which lasted, and I quote from that article, "all of about a minute."

According to another earlier article written by Mr Rick Feneley in the Sydney Morning Herald on 27 July 2015 entitled, "Up to 80 men murdered, 30 cases unsolved," Mr Rick Feneley wrote to similar effect the following:

> *Sheil's mother was a devout Catholic. She could not countenance the possibility of suicide and the policeman who handled the case was helpful, perhaps too helpful. Christopher Sheil, then 27, witnessed the "inquiry" into his brother's death - a discussion between his father and the policeman. "It took all of about a minute. They got to the part on the form where you fill out cause of death. I can't remember whether it was Dad or the cop who suggested misadventure. I said, 'We don't know whether he jumped, fell or was pushed.' Dad said, 'Ah, we're not gunna go into any of that.' "*

Secondly, Commissioner, the logic behind the conclusions drawn by Constable Strange is not readily apparent. In my submission, it is improbable that a man who was close to home and subject to a curfew would deviate from the coastal track in the dark at all, let alone to masturbate. The improbability of this scenario is compounded by the fact that sunset on 27 April occurred at 5.20 pm, meaning that it would have been dark when Mr Sheil set out from the Coogee Bay Hotel. In those conditions, it is difficult to imagine that Mr Sheil would have been able to see a magazine without a light source. There is no evidence of a light source found on Mr Sheil's person or nearby, nor was there any evidence of lighting on the path at that time.

Furthermore, as to the importance apparently ascribed to the presence of the "magazine of a sexual nature" in the general area where Mr Sheil was found, there does not appear to have been any evidence actually linking the magazine with Mr Sheil.

Thirdly, other possible reasons for the state of Mr Sheil's clothing do not appear to have been considered, including that he might have stopped to urinate and/or that his clothing had been moved in the course of a fall, and/or that an assailant might have been involved. The police do not appear to have given any weight or perhaps any consideration to other pieces of information that pointed away from misadventure as being the manner of death.

As his last-known movements involved walking home via a coastal track that included or passed a beat, it is possible that he was presumed to be gay and attacked for that reason. There is no evidence to suggest that possibility was considered by the police.

Fourthly, there was an unexplained delay in obtaining statements from key witnesses, including a delay of just over one month in respect of Mr Ross and Ms Campbell.

Fifthly, as I have already stated, no investigative files or other documents can be located by the New South Wales Police Force in relation to Mr Sheil's death. Accordingly, among other things, there is no clear evidence as to the exact location of Mr Sheil's body. The failure of the police to preserve and locate such files and documents is particularly unfortunate in circumstances where, according to Constable Strange, scientific police attended the scene of Mr Sheil's death and took photographs of his body and the surrounding area.

Sixthly, no exhibits appear to have been retained. Investigating police appear to have disposed of Mr Sheil's clothing at a very early stage of the investigation, notably prior to the autopsy taking place. Mr Sheil's personal property was returned to his father. There is also no record of precisely where the magazine of a sexual nature was located, its condition or its contents. What else, if anything, was observed or examined from the scene cannot now be known. These failures to retain exhibits and documents prevents the Inquiry from conducting an examination of such exhibits using technology currently available.

The next topic I wanted to address is the Strike Force Parrabell review of Mr Sheil's case. The Bias Crimes Indicators Review Form completed in relation to Mr Sheil by Strike Force Parrabell is contained at tab 16 of the tender

bundle. In completing this form in relation to Mr Sheil, the Strike Force Parrabell investigators appear to have relied entirely on the two articles written by Mr Feneley in 2013 and 2016 about his death, which I have referred to earlier in these submissions.

I don't intend to take you to it, Commissioner, but the similarities between the form and the articles are obvious. Indeed, extracts from these articles are either quoted, repeated verbatim, or summarised. It seems that the Strike Force Parrabell officers could not, or did not, obtain access to the coronial file, and given that the New South Wales Police Force had no documents of their own, these two media articles were the only documentary foundation for this review. As a consequence, the BCIRF repeatedly resorts to the same handful of observations about Mr Sheil's death, largely drawn from the statements made by his brother, Christopher, to the media.

It is therefore not surprising that the BCIRF does not provide original or even particularly specific or insightful responses in relation to each indicator and does not address or analyse any of the matters that are readily apparent from the coronial file, including the results of the original police investigation. Inevitably, in the circumstances, the Strike Force Parrabell officers answered all 10 BCIRF indicators on the case as a whole as having insufficient information, in that there was insufficient information to determine whether there was any bias motivation involved in Mr Sheil's death. Unsurprisingly in the circumstances, the academic review team concurred with that result.

In my submission, Commissioner, and given the absence of any materials other than the two articles written by Mr Feneley, Strike Force Parrabell could only ever purport to conduct a review in this case; it should have been obvious to investigators that, in those circumstances, trying to determine whether Mr Sheil's death involved anti-gay bias was, to put it simply, verging on pointless, and although the results of this review were ultimately presented as thorough and authoritative, it should have been patently obvious that such a review was not going to yield any reliable result. In this sense, this particular case is emblematic of some of the flaws of the Strike Force Parrabell process.

Having dealt with those two matters, the next matter I wish to address is the steps taken by the Inquiry in relation to Mr Sheil's case and the outcome of those steps.

First, and as previously stated, a summons to the New South Wales Police Force was issued on 18 May 2022 for all New South Wales Police Force investigative material, including any material held or created by the unsolved homicide team, in relation to the death of Mr Sheil. No material was produced. On 12 September 2022, the Inquiry wrote to the Office of the General Counsel of the New South Wales Police Force, noting that in the New South Wales Police Force documents contained in the Coroners Court file, Mr Sheil's last name is spelt at times with different variations, and requesting the New South Wales Police Force conduct further searches for any investigation file under those names. On 16 September 2022, the legal representative for New South Wales Police Force advised that no records are held in respect of any of the four spelling variations identified. The Inquiry has therefore received no documents in relation to this case from the New South Wales Police Force.

The Inquiry did, however, request and receive the Coroners Court file in relation to Mr Sheil, which consisted of 18 pages of material relating to the Coroners Court consideration of the matter in 1983. As I noted at the beginning of my submissions, these documents form the basis of the Inquiry's review. The Inquiry also contacted and spoke to Mr Sheil's four siblings and on 16 September 2022 a summons was issued to the New South Wales Registry of Births, Deaths and Marriages and we obtained the birth and death certificates for Mr Sheil.

On 19 September 2022, the Inquiry requested information about the weather conditions in the Clovelly area between 22 and 29 April. The purpose of this request was to determine the weather conditions from around the time of Mr Sheil's death. On 20 October 2022, an officer of the Bureau provided the weather, synoptic and rainfall observations for the Clovelly area. The data indicates that it rained two to three days prior to 27 April and earlier that day. There may also have been a very slight shower at around 9.00 pm on 27 April.

On 28 October 2022, the Inquiry accessed sunrise, sunset and twilight time for 27 April 1983 from Geoscience

Australia. The Inquiry also had regard to the two articles written by Rick Feneley and to which I referred earlier in these submissions.

The Inquiry made endeavours to contact the witness who discovered Mr Sheil's body, Mr Ross, but was unable to locate him.

On 14 November 2022, a summons was issued to New South Wales Health Pathology for all material held in relation to Mr Sheil, including any photographs, CT images or notes relevant to his autopsy. By issuing this summons, the Inquiry was hopeful we could obtain further additional information that was not contained in the Coroners Court file.

On 23 November 2022, one file was produced in relation to this case, but that file did not contain any information that was not already before the Inquiry.

Finally, by letter dated 13 March 2023, the Inquiry sought a report from Dr Linda Iles, forensic pathologist and head of forensic pathology services at The Victorian Institute of Forensic Medicine. Dr Iles was asked to address various questions which are set out in my written submissions at paragraph 40.

In her report received on 24 March 2023, Dr Iles noted a number of matters which I wish to bring to the Inquiry's attention. First, and significantly to this Inquiry and its Terms of Reference, Dr Iles's conclusion is that in the absence of any further details, including photographs, there is no other medical avenue that could shed any light on the manner and cause of Mr Sheil's death.

Secondly, Dr Iles states that although autopsy has progressed significantly since Mr Sheil's deaths, there were a number of features and deficiencies of the autopsy examination and report. According to Dr Iles, the information provided by the autopsy report is sufficient to determine the cause of death but is not sufficient to help address the manner of Mr Sheil's death or how his death occurred.

In terms of the cause of death, Dr Iles's opinion is that the only documented injury capable of causing Mr Sheil's death was the upper cervical spinal cord injury.

This conclusion differs from the cause of death recorded in the autopsy and on the death certificate, which is "multiple injuries." In relation to the question of whether Mr Sheil was likely to be able to move after he fell, Dr Iles considered that although this was possible, given the nature of his injuries, it was more likely that Mr Sheil tumbled into his final position rather than moving into that position voluntarily, and that death would have been rapid following impact.

Thirdly, in terms of the matters going to the manner of death, Dr Iles observed the following. She observed that additional information to that which was contained in the autopsy report about the specific elements of the C1 and C2 fractures sustained by Mr Sheil would have helped inform the analysis as to manner of death. She stated that the estimate of time of death provided by Dr Goldschmidt should be disregarded and was unlikely to have been intended to be a precise estimate. She stated that although the state of Mr Sheil's clothing when he was found could partially be explained by ordinary human behaviour such as urinating, it did not explain his open shirt, and given the observations about Mr Sheil's state of undress, there should have been a more thorough postmortem examination and trace evidence sampling.

Finally, she considered that suicide was an unlikely manner of death because there was no reported change in Mr Sheil's mood around the time of his death and his body was found in a location with a shorter fall than the immediate surrounding areas. However, ultimately Dr Iles's conclusion was that she was unable to indicate whether Mr Sheil's death was a result of misadventure, accident or foul play.

The final matter I wanted to address, Commissioner, is whether it is possible for this Inquiry to draw any conclusions about whether Mr Sheil's death was a homicide and, if so, whether that homicide was motivated by LGBTIQ bias.

In circumstances where Mr Sheil was walking through or near a beach shortly before his death, it is possible that Mr Sheil was mistaken for a gay man and attacked by persons unknown for that reason. However, there is no direct evidence to substantiate that hypothesis. Mr Sheil's death occurred some years before the homicides and suspected

homicides motivated by LGBTIQ bias or suspected to be motivated by LGBTIQ bias at Marks Park in Bondi, some of which are also the subject of this Inquiry, and in Gordons Bay, several kilometres from the Bondi and Marks Park areas.

Furthermore, and although the fact that Mr Sheil was found with his shirt, belt and fly undone and with his pants around his hips is consistent with the possibility he was engaging in sexual activity before he died, there are also several other possible explanations for the state of his clothes which I have flagged previously.

Ultimately, my submission, Commissioner, is that the evidence available to this Inquiry does not allow any positive conclusion to be reached about the events leading up to Mr Sheil's death, including whether it involved any other person and whether, if so, it was motivated by LGBTIQ bias.

In relation to this Inquiry's ultimate finding on the manner and cause of Mr Sheil's death, my submission is that the Inquiry should find as follows:

That Mr Sheil died between 8.00 pm on 27 April 1983 and 10.00 am on 29 April 1983 as a result of cervical spine injuries sustained in a fall. There is insufficient evidence to enable a finding to be made as whether that fall was accidental or otherwise.

Arising from my submission in relation to that finding, Commissioner, I would also submit that a recommendation be made to Births, Deaths and Marriages to amend the death certificate to more accurately reflect the cause of death. That concludes my oral submissions, Commissioner.

THE COMMISSIONER: Thank you. Mr Mykkeltvedt?

MR MYKKELTVEDT: I don't wish to be heard orally.

THE COMMISSIONER: Mr Bevan?

MR BEVAN: I don't wish to be heard orally.

THE COMMISSIONER: All right. Thank you very much. I will reserve my position on the findings that I will

ultimately make on this and I will now adjourn. Thank you, both.

AT 10.48AM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED ACCORDINGLY

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