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 Thursday, 18 May 2023 at 10.07am

(Day 54)

Re Rooney:
Ms Meg O'Brien (Counsel Assisting)
Ms Elizabeth Blomfield (Senior Solicitor)

Re Wark:
Mr William De Mars (Counsel Assisting)
Mr Enzo Camporeale (Director Legal)
Ms Caitlin Healey-Nash (Senior Solicitor)

Also Present:

Mr Anders Mykkeltdvedt with Mr Patrick Hodgetts for NSW Police

Ms Angela Pearman for Ms Rebecca Wark

THE COMMISSIONER: Yes.

MS O'BRIEN: Commissioner, I appear to assist you, instructed by Ms Blomfield.

THE COMMISSIONER: Thank you.

MS O'BRIEN: Commissioner, these submissions concern the death of William Antony Rooney, known as Bill Rooney.

I have a number of documents to hand up: a tender bundle; a copy of written submissions by Counsel Assisting; and some short minutes of order with respect to non-publication orders, which I understand are by consent.

THE COMMISSIONER: Thank you.

MR MYKKELTVEDT: Yes, Commissioner, Mykkeltvedt for the Commissioner of Police. Those orders are by consent.

THE COMMISSIONER: Thank you, Mr Mykkeltvedt.

Thank you. I will make those orders. Yes.

MS O'BRIEN: Commissioner, Mr Rooney was a Scottish man originally from Glasgow who, at the time of his death at 35 years of age, had been living in Australia for 18 years. He was an openly gay man who was living with his partner, Mr Wayne Davis, in Wollongong. The two men had met each other in 1982 at the Mardi Gras in Sydney.

According to Mr Davis, Mr Rooney was an easygoing, affable and highly intelligent man, who was also a party animal who liked to drink alcohol.

At around 8.40am on Friday, 14 February 1986, Mr Rooney was found on the ground between a toilet block and a concrete retaining wall at the rear of retail premises in Crown Lane, Wollongong. The gap between the wall and the toilet block was about half a metre.

Commissioner, in annexure A to Counsel Assisting's written submissions is an aerial view of part of the Central Wollongong area as at 1986 to 1987. That aerial view is on the screen now.

The area where Mr Rooney was found is marked by a red

arrow on that aerial view.

We can see that in annexure A the area where Mr Rooney was found is near a nightclub that was then known as Annabel's, and later known as Pip's.

At the top of the retaining wall, which is about three metres high, was a small car parking area, which you can see, which is the light grey area just under the red arrow on that annexure.

When he was found, Mr Rooney was alive but suffering from serious head injuries and was in a semiconscious condition. He was transported by ambulance to Wollongong Hospital, but he died from his injuries six days later, on 20 February 1986.

The following is what the Inquiry is able to establish about the events leading up to Mr Rooney's death. At around 5.45 on Thursday, 13 February 1986, Mr Rooney telephoned his partner, Mr Davis, and asked him whether he wanted to go for a few beers. Mr Davis agreed and collected Mr Rooney from their home.

They then went to the Tattersalls Hotel in Wollongong, arriving at around 6.15pm and drinking beers there until between around 9pm to 10pm. Mr Davis then left and went to a friend's place.

Before Mr Davis left the Tattersalls Hotel, Mr Rooney told Mr Davis that he planned to go to Annabel's Disco, which, as I have stated earlier, soon became Pip's International.

When the two parted, Mr Davis observed Mr Rooney to be in extremely good spirits and not overly affected by alcohol.

Mr Rooney's movements between around 10pm on 13 February, when he parted from Mr Davis, and 8.40am on 14 February, when he was found in Crown Lane, are not entirely clear. It appears that Mr Rooney did attend Annabel's Disco at some point in the early hours of 14 February, but he was also seen at the Grand Hotel not far away in Keira Street, Wollongong.

The subsequent police investigation into Mr Rooney's

death also identified and took statements from various men who had seen a man staggering down Crown Lane in a westerly direction before that man went to lie down on the grass area on the footpath on the northern side of Crown Lane where he was sleeping for at least one and a half hours. According to these men, the man that they saw did not appear to be injured.

At around 8.53am on 14 February, paramedics were called to attend to a person who was said to have fallen off a roof at the rear of the retail store in Crown Lane.

On arrival at the scene shortly afterwards, the paramedics observed Mr Rooney lying at the base of some steps. Mr Rooney was suffering significant injuries, was disoriented and difficult to treat. The paramedics could not locate any identification on him.

One of the paramedics gave a statement to the police in which he stated that, from his observation, he had formed the opinion that Mr Rooney had fallen from the wall above and landed on his head.

At around 9am on 14 February 1986, Constable Michael Tranby and Constable Revitt, from the NSW Police Force, attended the scene. When they arrived, Mr Rooney was already being treated by the paramedics. Constable Tranby observed that Mr Rooney was wearing only one shoe and one sock.

Video footage taken at the scene by a cameraman from WIN Television shows that when he was found, Mr Rooney's pants and underwear were lowered to his pubic hair line and his fly was unzipped. The footage shows that while paramedics attempt to treat Mr Rooney, Mr Rooney resists these attempts to help him and tries to pull up his pants by lifting his hips.

In the book "Getting Away With Murder", author Duncan McNab wrote that:

> *To one detective this was either an instinctive reaction or the act of a man trying to prevent the recurrence of an attack.*

At 9.30am, DSC John Tate, from the NSW Police Force,

arrived at the scene. By this time, Mr Rooney had been conveyed to Wollongong Hospital. DSC Tate attended the scene with Detectives Stanley and Fitzgerald.

At around 11.05am, Detective Sergeant Stephen Passmore attended the scene in his capacity as a member of the Scientific Investigation Section. DS Passmore tested certain areas of the scene for blood. However, he observed that the staff from the retail premises had taken it upon themselves to hose down the scene, which meant that most of the blood and physical evidence had gone.

DS Passmore took photographs of the scene but ultimately said he did not find anything that could assist in determining the cause of Mr Rooney's injuries.

That afternoon, DS Passmore and DSC Tate both attended the intensive care unit at Wollongong Hospital where they observed Mr Rooney. DS Passmore also took some photographs of Mr Rooney's injuries.

At 2.50pm after attending both the scene on Crown Lane and the hospital, DSC Tate noted:

> *... there is no clear indication as to how this male person received these injuries.*

At about 7.40pm, Mr Davis, Mr Rooney's partner, attended the Wollongong Police Station and informed the police that he was Mr Rooney's partner. A statement was obtained from him and his alibi was checked the following day.

Some years later, in September 1993, in a public appeal to help solve the case, Mr Davis told journalist Brett Martin from the Illawarra Mercury about the experience of going to police. He told Mr Martin that the police were "initially very keen to pin it on" him and that, I quote again:

> *The police weren't interested, it was just another poofter.*

The following day, Saturday, 15 February 1986, Mr Davis informed police that Mr Rooney had, and I quote:

> *... previously spoken to a person by the name of "Radar", who he alleges is*

a well-known Poofter basher.

"Radar" was an alias then used by a person named Leslie Harrison.

On 17 February 1986, police spoke to Mr Harrison, who denied any involvement in the incident. Mr Harrison said that, at the time, he was with his girlfriend, Joanne Garbutt, for the entire night.

Over this time, Mr Rooney remained in hospital unconscious and on a ventilator. On 19 February 1986, Mr Rooney's condition began to deteriorate and the following day, 20 February 1986, he was formally evaluated as brain dead. His ventilator support was then terminated and he died at 2.35pm.

A post-mortem examination was conducted on Mr Rooney on 21 February 1986 by Dr Vincent Versoza. In his report completed that same day Dr Versoza concluded that the direct cause of Mr Rooney's death was, and I quote, a "massive (subdural) cerebral haemorrhage and intracardiac thrombus" as a result of torn meningeal vessels and skull fractures.

In his report, Dr Versoza concludes that these injuries were most probably due to a fall, with the back of the head hitting a hard surface.

Dr Versoza also reported that Mr Rooney had bruises on his limbs and chest and there was an abrasion to his right knee. Other observations of Dr Versoza are summarised in paragraphs 6 and 7 of the written submissions of Counsel Assisting.

An inquest into Mr Rooney's death was held on 24 October 1986 and 15 May 1987, before Coroner Warwick Soden.

At the inquest, Dr Versoza gave evidence consistent with his post-mortem report - namely, that he considered that the injuries to Mr Rooney's head had been caused by his head hitting a hard, flat surface, rather than being struck with an object to the back of the head since, in his experience, being struck with an object would usually result in the skin being split open, which was not the case with Mr Rooney.

However, Dr Mason Ramsay, who was the director of intensive care at the Illawarra Health Service, and who treated Mr Rooney at Wollongong Hospital, gave evidence that he did not consider that Mr Rooney's injuries were consistent with a fall from three metres on to a concrete floor.

On 15 May 1987, Coroner Soden found that Mr Rooney died of head injuries, but delivered an open finding in relation to whether those injuries were sustained as a result of an accident or otherwise.

Commissioner, I have just outlined to the Inquiry the key facts relevant to the initial investigation into Mr Rooney's death. However, events subsequent to this investigation are also highly relevant to this Inquiry's consideration of this particular case

Between March 1986 and September 1989, 12 male victims were physically and/or sexually assaulted. The attacks occurred in circumstances that bear many similarities. All but two of these attacks occurred in Wollongong. Many of them involved a similar pattern in that the victims usually experienced an assault to the head, in several cases using a rock, before the victim was sexually assaulted. Many of the victims suffered serious head injuries. Most of the victims were intoxicated and most were gay.

On 26 September 1989, Mark Anthony Scerri was charged with 29 offences in relation to these 12 victims. Charges in respect of nine victims were the subject of four separate trials in 1991 and 1992. Charges in respect of three victims did not proceed to trial.

In Counsel Assisting's written submissions, there is annexed an annexure B which contains a table summarising the circumstances relating to these assaults and/or sexual assaults on the 12 victims, one of whom was the victim of three separate attacks, and the outcomes of the charges and/or trial in each case. In summary, however, Mr Scerri was acquitted in relation to the attacks on six victims and convicted of offences in relation to three victims. He was sentenced to a total effective sentence of 16 years imprisonment.

Two further matters about these cases are particularly

notable. One of the victims, with the pseudonym "I194", was attacked in September 1989 on the other side of the same laneway, Crown Lane, where Mr Rooney had been found on 14 February 1986. Mr Scerri was convicted in relation to this attack.

Another one of the victims, with the pseudonym "I186", said that in the course of the attack on him, which occurred on 18 December 1986, his attacker said to him, "I'll kill you like I killed the poofter in the laneway." Mr Scerri was acquitted in relation to that attack.

Further detail about these 12 offences is contained in annexure B, as I have noted, and in Counsel Assisting's written submissions at paragraphs 172 to 183. However, Commissioner, it was in the course of investigating the attacks against those 12 victims that police officer, Detective Inspector David Ainsworth, formed the view that Mr Rooney was likely to have been the victim of the same attacker.

DI Ainsworth had previously attended the scene at Crown Lane on the day after Mr Rooney was found and formed the view that it was unlikely that Mr Rooney had fallen. However, and by around the end of 1989, Mr Scerri had emerged as a key person of interest in the death of Mr Rooney.

In 1991, and again in 1993, DI Ainsworth referred Mr Rooney's case to the ODPP to consider laying charges against Mr Scerri for the death of Mr Rooney. DI Ainsworth expressed his view that there was no doubt in his mind that Mr Scerri was responsible for assaulting and murdering Mr Rooney.

On 24 March 1993, following Mr Scerri's conviction in 1992 and sentencing in 1993, police sent a brief to the then Deputy Senior Crown Prosecutor, Mr Tedeschi QC, for advice on whether Mr Scerri could be charged with the murder of Mr Rooney. However, on 28 June 1993, the New South Wales DPP advised that, in the opinion of Mr Tedeschi QC, there was insufficient evidence to do so. One reason for that opinion was the absence of evidence that Mr Rooney had been sexually assaulted.

In November 2001, Mr Scerri was released on parole. In May 2002, Mr Scerri reoffended by attacking another

victim, a 26-year-old male, in Wollongong. Upon being sentenced, Judge Phelan stated that the attack was, and I quote, "remarkably similar" to the three offences of which Mr Scerri had been convicted in 1992.

In 2003 he was convicted, having pled guilty, and again imprisoned. Further detail about that offence is contained at paragraphs 190 to 194 of Counsel Assisting's written submissions.

By 2002, Mr Scerri was still a key suspect in the death of Mr Rooney. On 17 October 2002, the day after Mr Scerri's arrest, DS Bridge made inquiries about whether Mr Rooney's body could be exhumed and examined for semen. DS Bridge was subsequently informed that the likelihood of retrieving DNA from an assailant was extremely low, given the passage of time. In any event, Commissioner, the Inquiry has ascertained that Mr Rooney's remains have been cremated.

On 10 February 2011, Mr Scerri was again released on parole, and on 9 September 2011 was placed on an extended supervision order for a period of three years.

Commissioner, Mr Scerri continues to be the primary person of interest in this case.

Commissioner, I would now like to take the opportunity to address you on the police investigation of this case and specifically on some key opportunities that were missed by the NSW Police Force.

First, and based on the contemporaneous documents produced to this Inquiry by the police, Mr Rooney's death was initially considered to be either suspicious or having occurred in circumstances that were unknown. However, at the inquest into Mr Rooney's death, the police favoured the conclusion that Mr Rooney sustained his injuries as the result of an accidental fall. This evolution in thinking is discussed in detail at paragraphs 38 [sic] to 35 of Counsel Assisting's written submissions.

However, in reaching the conclusion that Mr Rooney died as a result of an accidental fall, little, if any, attention or weight appears to have been given to evidence that tended to point to an explanation other than misadventure, including that Mr Rooney was not carrying ID;

that his pants and underwear were lowered; that he was missing a shoe and a sock; and that he appeared to have fingernail marks on his neck that were likely not his; and that he was known to regularly drink a lot and hold his liquor well.

Secondly, NSW Police failed to secure the area where Mr Rooney's body was found. After having first attended the scene at 9am, by at least 11.05am, before the police Scientific Investigation Section had arrived, the lessee of the retail premises adjoining the scene had already taken it upon himself to clean the area by hosing it down. Naturally, this limited the ability of investigators to properly assess the area and recover any exhibits of any forensic value.

Thirdly, no sexual assault examination was conducted, and after Mr Rooney died, there appears to have been no examination of the anus or genitals during the post-mortem.

It may be that the original investigators did not provide Dr Versoza with any reason to conduct an anogenital exam, such as specifying the circumstances in which Mr Rooney's body was found, including that his jeans and underwear were lowered.

In this respect, it is notable that the day after Mr Rooney was found, Mr Davis had informed the police that Mr Rooney had spoken to Mr Harrison, or Radar, a well-known poofter basher in the area, and the police had interviewed him. They were effectively on notice that Mr Rooney may have been targeted because he was gay, yet still no sexual assault examination took place.

Fourthly, the shortcomings of the original investigation became apparent when, in 1991 and again in 1993, the case was referred to the DPP in relation to whether there was enough evidence to charge Mr Scerri in connection with the death of Mr Rooney.

The advice of Mr Tedeschi QC in 1993 demonstrates that the failure to examine Mr Rooney for signs of possible sexual assault has severely impeded the possibility of investigating and/or prosecuting Mr Scerri or, indeed, anyone else, in relation to Mr Rooney's death.

Fifthly, and while Mr Harrison or Radar claimed to

have an alibi for the night of 13 and 14 February, namely, that he had been with his girlfriend Ms Garbutt the entire night, there is no indication in the material produced to the Inquiry by the police that they ever interviewed or sought to interview Ms Garbutt about those matters. However, by 17 February 1986, so far as can be ascertained on the material available to the Inquiry, police had ceased pursuing any inquiries in relation to the possible involvement of Mr Harrison in the death of Mr Rooney.

Sixthly, and based on the records made available to the Inquiry by police, there were various other deficiencies with the investigation, including the failure to obtain statements from some of the officers who attended the scene; the failure to mention the fact that Mr Rooney's pants and underwear were lowered and his fly was unzipped in the statements made by the paramedics and police officers; the failure to obtain and finalise statements in a timely manner; and the failure to obtain signatures on particular statements.

Commissioner, the next topic I wanted to address is the Strike Force Parrabell review of Mr Rooney's case. The Bias Crime Indicators Review Form or BCIF in relation to Mr Rooney is contained at tab 30 of the tender bundle. All 10 Bias Crime Indicators in relation to Mr Rooney were answered, "No evidence of bias crime." However, the overall categorisation of the case in the summary of findings was "Insufficient information". The academic team also categorised the case as one where there was insufficient information.

The possible involvement of Mr Harrison and/or Mr Scerri in Mr Rooney's death is mentioned in seven of the 10 "General Comments" sections of the BCIF and also in the summary of findings.

The uniform answer of "No evidence of bias crime" to all 10 indicators seems at odds with the comments.

The "General Comments" section also repeatedly notes that Mr Scerri was known to have been involved in other assaults against and rapes of men in locations not far from the area where Mr Rooney was found and that he was known to hit his victims over the head with bricks or large rocks. The alleged involvement of Mr Harrison in similar conduct was also repeatedly noted.

Yet the "General Comments" section in relation to indicator number 3, which, Commissioner, you will recall is "Drawings, markings, symbols, tattoos, graffiti", states, and I quote:

> *In photographs taken of the crime scene by Detective Sergeant Passmore there is photographic evidence showing what appears to be a concrete rock near where Rooney was located however this bears no weight on bias motivation.*

The view that the presence of a concrete rock at the scene bears no weight on a bias motivation in light of what was then known or alleged and acknowledged by the BCIF to have been known about the modus operandi of both Mr Harrison and Mr Scerri is difficult to fathom. The presence of the rock would also appear to cast some doubt upon the unsigned statement of DS Passmore which is referred to elsewhere in the BCIF.

DS Passmore took those photographs referred to in the BCIF on 14 February 1986. These photos show a concrete rock, and yet, according to his unsigned statement eight months later, he made a thorough search of the entire area and found nothing which he could associate with Rooney's injuries. The Strike Force Parrabell officers made no comment on or reference to this inconsistency.

In the "General Comments" section in relation to indicator 5, which you may recall is "Previous existence of bias crime incidents", the Strike Force Parrabell officers state that there is no evidence to suggest Rooney was visiting a location where previous bias crime had been committed. However, as officers recognised later in the same section, there was evidence presented in regards to the suspect, Mr Scerri, being involved in assaulting, kidnapping and robbing both homosexual and heterosexual males in the area where Mr Rooney was found, albeit shortly after, rather than before Mr Rooney's death.

In the summary of findings in the BCIF, it similarly highlights the possible involvement of Mr Harrison and/or Mr Scerri in the death of Mr Rooney. There is a notable focus in the BCIF on Mr Scerri and Mr Harrison as persons of interest in the death of Mr Rooney or on their known or

alleged methods and the presence of the rock. Yet, in relation to every single indicator, as I have previously stated, the Strike Force Parrabell officers answered, "No evidence of bias crime".

The BCIF refers to Mr Scerri's other offences, both alleged and proven, and to the allegations made against Mr Harrison, but then seemingly discounts this evidence as having any bearing on the question of bias. The basis for such apparent discounting is unclear.

Conversely, and as I have stated, it is also puzzling that despite answering "Yes" to "No evidence of bias crime" in relation to all 10 indicators, Mr Rooney's case is, nonetheless, given the overall designation of "Insufficient information".

At the very least, Commissioner, we submit that questions arise in relation to the coherence and rigour of the methodology of Strike Force Parrabell where the overall categorisation of a case review bears absolutely no correlation to the components of that review.

Finally, the case summary produced by Strike Force Parrabell in relation to Mr Rooney's case, which is found at tab 49 of exhibit 6, is notable because, in particular, the last sentence of the case summary reads:

> *It is likely the original Coronial finding regarding Mr Rooney's death being caused by a fall is incorrect.*

That sentence follows a series of sentences referring to the similarities between Mr Rooney's case and those of the 12 men assaulted or allegedly assaulted by Mr Scerri, and to the possibility that Mr Rooney was the first victim of Mr Scerri.

Even though Strike Force Parrabell's summary of the coronial finding itself is incorrect, this sentence presumably indicates that Strike Force Parrabell officers considered that what was likely was that Mr Rooney's death had been caused by an assault rather than a fall.

Overall, the treatment of this case by Strike Force Parrabell as evidenced by the BCIF and case summary appears to have been devoid of any analytical sophistication or

nuance. Whether this is a consequence of having limited time to complete the review because Strike Force Parrabell had originally recorded Mr Rooney's last name as "Rudney" and hence, for some time, could locate no material about the case, or whether this indicates a more systemic problem with the work of Strike Force Parrabell, or both, is unclear.

Furthermore, the BCIF fails to address or even engage with the failures of the original investigation including how those failures continue to impede the ability of any reviewer, including this Inquiry, to establish the manner and cause of Mr Rooney's death.

Commissioner, the next matter I wish to address is the steps taken by the Inquiry in relation to Mr Rooney's case and the outcomes of those steps.

The steps that this Inquiry has taken to investigate this matter include: compelling the production of NSW Police Force holdings in relation to the investigation into Mr Rooney's death and in relation to other offences with which Mr Scerri was charged; next, obtaining Coroners Court files in relation to the inquest held in 1987; compelling production of material held by the ODPP, Corrective Services and the Supreme Court of New South Wales; attempting to contact family members; obtaining a report from Dr Linda Iles, a forensic pathologist; interviewing people with relevant knowledge of the case, which has ranged from speaking to police officers involved in the initial investigation through to speaking with employees of Wollongong City Council about the lighting in Crown Lane in 1986; and of course, the Inquiry's staff have reviewed and analysed this material and considered whether any further investigative or other avenues are warranted.

These steps are explained in more detail at paragraphs 80 to 101 of Counsel Assisting's written submissions.

However, there are a number of these steps that I would like to specifically touch on this morning. First, and in relation to the Inquiry's attempts to obtain all NSW Police Force holdings in relation to this case via the first summons it ever issued on 2 June 2022, NSW Police produced only nine documents comprising some occurrence reports and two witness statements.

After the Inquiry requested that more searches be undertaken, the NSW Police informed the Inquiry in September 2022 that all the documents in its possession, being the nine documents in total, had been produced already.

It was not until November 2022 that the NSW Police informed the Inquiry that it had located a hard copy file at Wollongong Police Station and provided these documents to the Inquiry. That file contained autopsy photos, additional statements and some correspondence not previously received by this Inquiry.

Second, this Inquiry's attempts to contact Mr Rooney's family members has been unsuccessful. Unfortunately, Mr Davis, Mr Rooney's partner, is now deceased. The Inquiry has also attempted to contact Mr Rooney's aunt, but these attempts have been unsuccessful.

Third, as I have stated, the Inquiry sought and obtained a report from Dr Linda Iles, the forensic pathologist and Head of Forensic Pathology Services at the Victorian Institute of Forensic Medicine. Dr Iles addressed a number of issues in her report, including the adequacy of the post-mortem investigations conducted with respect to Mr Rooney; the likely cause of Mr Rooney's injuries; the inconsistencies in the evidence given by Drs Versoza and Ramsay at the inquest; and whether she had any recommendations for further investigations and with respect to determining the manner and cause of Mr Rooney's death.

The report of Dr Iles in relation to Mr Rooney's case was received by the Inquiry on 31 January 2023, and that report is found at tab 39 of the tender bundle. In her report, Dr Iles noted that autopsy practice has evolved considerably since Mr Rooney's death. However, she outlined some key deficiencies in the autopsy and medical examinations in relation to Mr Rooney. In particular, she noted the inadequate documentation of his injuries in the autopsy report, including in relation to any anogenital injuries, and the lack of any comprehensive forensic medical examination after he was admitted to hospital. This means, according to Dr Iles, that addressing the mechanism by which Mr Rooney sustained his injuries in 2023 is difficult.

As to the different views expressed by Dr Versoza and Dr Ramsay, Dr Iles noted that Dr Versoza appeared to consider injury sustained in a fall seemed to be the most likely mechanism of injury, whereas by contrast, Dr Ramsay appeared to suggest that it was highly unlikely that such injuries could be sustained in a fall as described.

Dr Iles considered that Dr Versoza or Dr Ramsay had both expressed a level of certainty about the mechanism of injury beyond that which was supported by the contemporary evidence base. However, in Dr Iles's view, there were several factors that favoured Dr Versoza's interpretation of Mr Rooney's injuries, including the type of skull fracture sustained, the absence of extensive cutaneous injuries and the possibility that the linear abrasions were caused by contact with a protruding roof structure or nails.

However, Dr Iles said that on the evidence available, she was unable to exclude either mechanism, either a fall or a blow to the head by a blunt instrument, as the manner of death.

Dr Iles stated, and I quote:

... I am not convinced that the post-mortem examination conducted has been sufficient ... to allow any type of accurate event reconstruction. If Mr Rooney's injuries had been sustained in a fall, I cannot say how that fall may have come about (ie, an accidental fall, or whether Mr Rooney was pushed between the retaining wall and the toilet block roof).

...

On the evidence available, I am unable to exclude either mechanism. Examination of the literature demonstrates that Mr Rooney's injuries, as much as they have been documented, could have been sustained as a result of a fall from around 3 metres in height with, primary impact to the head, or could have been sustained via homicidal means (ie, blunt trauma to the head by an implement). I agree with the original coroner's determination that the mechanism of Mr Rooney's injuries is undetermined.

Dr Iles concluded that Mr Rooney's cause of death could be reasonably described as blunt head injuries, however, on the evidence available, she was unable to determine the manner of his death.

Fourth, Commissioner, the Inquiry has spoken to Mr McNab, DI Ainsworth, DSC Tate and Ms Garbutt. Both DSC Tate and Ms Garbutt have provided statements to the Inquiry, and these are contained in the tender bundle.

The information and evidence provided by these individuals are discussed in greater detail in the written submissions of Counsel Assisting. However, it is notable that Ms Garbutt has no recollection of ever being spoken to by Wollongong police in connection with where Mr Harrison was on a particular night in February 1986, or that she ever stayed overnight with Mr Harrison in Coniston around this time; rather, her recollection was that in February 1986 she was living in Coffs Harbour.

Fifth, my instructing solicitor, Ms Blomfield, has made inquiries with Wollongong City Council and Endeavour Energy about the street lighting that would have been in place in Crown Lane in February 1986. Although these inquiries have not been conclusive, it seems likely that the lighting currently in place in Crown Lane was not installed until December 1986.

Sixth, inquiries have been made in relation to persons of interest. The Inquiry has established that Mr Harrison is now deceased. Mr Scerri, however, remains alive and his whereabouts is known to the Inquiry.

Until 2023, Mr Scerri had never been questioned in relation to the death of Mr Rooney. An attempt to interview him by the police in 1993 was fruitless because Mr Scerri, who was then in custody, refused to speak to the police. However, earlier this month, Mr Scerri was questioned in a private hearing of this Inquiry. That evidence will be the subject of a confidential part of the report of the Inquiry in due course.

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

As stated earlier in these submissions, Mr Rooney was an openly gay man. He was living with his partner, Mr Davis, at the time of his death. As to whether his death involved LGBTIQ bias, the relevant factors are as follows: first, in the three and a half years immediately after Mr Rooney's death, there were a series of attacks on 12 men in and near Wollongong, as I have detailed to you Commissioner this morning. Most of those men were gay.

The first of those attacks was on 9 March 1986, only a little more than three weeks after Mr Rooney suffered the injuries which caused his death. Many of these attacks involved a similar modus operandi in which victims suffered a blow or blows to the head or the threat of such a physical assault prior to being sexually assaulted.

In the letter from DS Bridge to Dr Duflou concerning the possibility of exhuming Mr Rooney's remains, DS Bridge stated that Mr Scerri initially committed offences against homosexuals in 1986 as they were easier targets, but apparently reverted to targeting heterosexual males in fear of catching AIDS.

Psychiatric evidence before the court upon sentencing Mr Scerri for the offences he committed in 2002 also reveals that Mr Scerri sought to humiliate his victims and that he wanted to make them suffer.

Secondly, Mr Davis was of the view that Mr Rooney was the victim of a gay hate attack.

Thirdly, according to Mr Davis, he and Mr Rooney had previously been attacked in Wollongong for being gay.

Fourthly, the possibility that Mr Rooney was attacked on this occasion because of his sexuality arises from what is suspected or known either in 1986 or subsequently about the activities of Mr Harrison and Mr Scerri.

Mr Rooney's case, so far as now can be ascertained on the available evidence, had some of the same features as those attacks that Mr Scerri was charged and/or convicted of, and which are set out in annexure B to Counsel Assisting's written submissions. However, whereas all of the other victims survived and were able to tell police that they had been assaulted, that is obviously not so in

relation to Mr Rooney.

Whether, in his case, it was an assault or a fall which caused his injuries can only now be assessed by reference to objective evidence such as the nature and extent of his injuries. In addition, whereas the other victims were also sexually assaulted, there is no evidence as to whether or not that was so in the case of Mr Rooney, because no tests were carried out either on his admission to hospital or in the post-mortem examination in relation to that possibility.

If it were to be assumed that Mr Rooney's death was a homicide and that homicide was committed by Mr Scerri, there would be ample grounds for a conclusion that Mr Rooney's death was a crime involving LGBTIQ bias. However, in this case, the available evidence does not allow either of those assumptions to be made.

There exists a reasonable alternative hypothesis other than homicide, namely, that Mr Rooney sustained his injuries as a result of an accidental fall.

No evidence was sought or obtained at the time as to whether Mr Rooney was sexually assaulted and it is now not possible to carry out any tests which would shed light on that issue.

Commissioner, in my submission, the evidence before this Inquiry does not provide a sufficient basis to find that Mr Rooney's death was a homicide.

In relation to the manner and cause of Mr Rooney's death, my submission is that the Inquiry should find as follows: Mr Rooney died on 20 February 1986 as a result of blunt head injuries sustained on 14 February 1986. However, the evidence available to the Inquiry is insufficient to establish whether these injuries were the result of an assault or an accidental fall.

Commissioner, there are no recommendations specifically arising out of this matter, and that concludes my oral submissions.

THE COMMISSIONER: Thank you.

Mr Mykkeltvedt, you reserve your position, I presume?

MR MYKKELTVEDT: Yes, that's so, Commissioner.

THE COMMISSIONER: All right. Thank you.

Before we proceed to the next matter, I will take a short break, thank you.

SHORT ADJOURNMENT

THE COMMISSIONER: Yes, Mr de Mars.

MR de MARS: Commissioner, I appear as Counsel Assisting in this hearing by way of documentary tender in relation to the death of Simon Blair Wark.

THE COMMISSIONER: All right.

Yes, Ms Pearman, you seek leave to appear?

MS PEARMAN: Yes, I do, thank you.

THE COMMISSIONER: I grant you leave, thank you.

Can I just say at the outset that, Ms Pearman, this morning and for the first time I think we have received a submission from your client. Understandably, we've only just seen it, but you can rest assured that whatever process you wish to undertake or your client wishes to undertake is fine by me. It will clearly be taken into account and be given careful consideration along with other materials that we will receive.

MS PEARMAN: Thank you, Commissioner.

THE COMMISSIONER: Thank you.

Yes, Mr de Mars.

MR de MARS: Thank you, Commissioner, can I firstly hand up a tender bundle of material prepared for this matter, comprising two volumes of material and 67 tabbed documents.

THE COMMISSIONER: Thank you.

MR de MARS: I'm not sure I have the current exhibit number in terms of what we are up to.

THE COMMISSIONER: I'll just check for you.

MR de MARS: Twenty-two

THE COMMISSIONER: I have "exhibit 23" written on a post-it note, but I'm not quite sure.

MR de MARS: I've been corrected. You are right, Commissioner, 23.

EXHIBIT #23 TENDER BUNDLE OF MATERIAL, COMPRISING TWO VOLUMES OF MATERIAL AND 67 TABBED DOCUMENTS

MR de MARS: Next, could I hand up some proposed short minutes of order, which I understand you already have.

THE COMMISSIONER: Yes, I've got those.

MR de MARS: Commissioner, I ask that those orders be made under section 8 of the Special Commissions of Inquiry Act. As you'll see, they deal with certain discrete matters where non-publication orders, including pseudonym orders, are sought in relation to distinct material. I ask that those orders be made.

THE COMMISSIONER: All right.

Mr Mykkeltvedt, do you have any objection to them?

MR MYKKELTVEDT: I have no objection.

THE COMMISSIONER: Ms Pearman?

MS PEARMAN: We neither consent nor oppose, Commissioner.

THE COMMISSIONER: Thank you.

Consistently with the practice we have adopted and because I do think that the details which are recorded in the table of redactions are appropriately to be made, I will make those orders, thank you.

MR de MARS: Commissioner, I also - I think they've already been handed up - adopt the written submissions that I understand you have.

THE COMMISSIONER: I have them, thank you.

MR de MARS: They have been prepared in this matter jointly by Senior Counsel Assisting this Commission and myself.

THE COMMISSIONER: Thank you.

MR de MARS: I now seek to supplement those submissions with an oral submission.

I note what is said in relation to the document that has come from the family this morning, Commissioner, and as presently advised, as I understand it, the intention is that Ms Rebecca Wark will speak to that document after I make my submissions.

THE COMMISSIONER: Certainly.

MR de MARS: Commissioner, Mr Wark was known to family and friends by his middle name, Blair. He died between 2pm on 9 January 1990 and 9.30am on 10 January 1990. Mr Wark's body was found at 9.30am on 10 January in the northern area of Sydney Harbour, 200 to 300 metres off Dobroyd Point.

On 11 January, the following day, some personal items belonging to him were found near a cliff top at Gap Bluff in Watsons Bay.

Mr Wark was 28 years old when he died. He was, by all accounts, an intelligent, creative and kind young man with a likeable personality.

I understand that he grew up in his family home in Frenchs Forest in Sydney's northern suburbs before leaving for boarding school in his high school years. After he finished school he did a course at the City Art Institute in Paddington and after finishing that course, he also worked at the Institute, where he was employed in the print-making section at the time of his death.

Mr Wark was evidently close to his younger sister, Rebecca, who I think as you're aware, Commissioner, is present here in court today. He would see Rebecca at least monthly when visiting the family home.

His family knew that he was gay. They also understood

that he had a close relationship with an older man, who I will refer to as "KN", with whom he had lived on and off for eight years prior to moving into accommodation at the Pyrmont Arms Hotel in the months before his death. KN was a Catholic priest who had also taught at the City Art Institute. He was 57 years of age at the time of Mr Wark's death.

KN is now deceased. Although in a statement he made at the time of Mr Wark's death he was ambiguous as to the nature of his relationship with Mr Wark, it seems likely that they had at times been in an intimate sexual relationship.

In the days leading up to his death, Mr Wark had been acting in an unusual manner, characterised by some paranoia and what appear to have been unjustified fears that he was in some type of danger. He had not previously been diagnosed with any form of psychotic illness, but had sometimes experienced depression and had been prescribed anti-depressant medication.

At the time, he was also endeavouring to move from his accommodation at the hotel in Pyrmont into rental accommodation at Potts Point with some friends, namely, a man who I will referred to as "MS" and the girlfriend of MS.

MS was a friend of his from art school who had struggled over the years with the use of illicit drugs.

Mr Wark's unusual behaviour had been exhibited over a period of days leading up to his death, including on two visits to his family home in Frenchs Forest. On one visit, his demeanour was of such concern that his parents called a local general practitioner who attended on a home visit.

Mr Wark left the family home early on the morning of Tuesday, 9 December, and appears to have returned to his hotel accommodation in Pyrmont for a period of time. At around 11am on 9 December, a person matching Mr Wark's description left a bag with some items of clothing in it at the lost property counter at the David Jones store in the city.

Mr Wark appears to have been under an apprehension that he had an appointment with a psychologist that

afternoon. At around 2pm, he attended the psychologist's home address in Double Bay but was advised that the psychologist was not present.

This was the last known sighting of Mr Wark prior to his body being found in the harbour at 9.30am the following morning.

Commissioner, at this point, I think we are able to have put up on screen an attachment to the submission, which is a map, which might be of relevance to bring up now.

Commissioner, the Inquiry's consideration of the matter has focused on determining whether or not Mr Wark's body entered the water from the location of The Gap where some of his personal property was found and, if so, the circumstances in which that occurred.

The Inquiry has also remained open to considering whether there's any other possible location from which Mr Wark may have entered the harbour.

Commissioner, marked on that map you will see with the letter "C" the approximate location, at Gap Bluff, where the items of personal property were found. The letter "B" represents the approximate location off Dobroyd Point where his body was located. "D" is a marker indicating the approximate location of Reef Beach, and down the bottom, location "A" is the location of the address of the psychologist where he was known to have been at approximately 2pm, just as a point of reference at the moment.

If one assumes entry from Gap Bluff, then Mr Wark's body evidently must have drifted northwards and through the Sydney Harbour heads before being retrieved from the water off Dobroyd Head. Hence one of the matters the Inquiry has sought to address is the likelihood of a body drifting in this manner.

That map could now come down.

It's notable, Commissioner, that no coronial inquest was held in relation to Mr Wark's death. This was the case notwithstanding that Mr Wark's family members had raised a number of concerns with the Coroner in the weeks and

months following the death.

Some of these concerns related to the extent of the police investigation that had occurred. It's evident from the Coroners Court records that an inquest was dispensed with because the view was taken at the time that the documentary record of the investigation was sufficient for a conclusion to be reached the death was clearly a suicide.

It does seem clear that there was scope for the police investigation at the time to have been considerably more thorough than it was. Although the conclusion that Mr Wark took his own life is one that it is submitted this Inquiry should ultimately agree with, there were some unusual features surrounding Mr Wark's death that have understandably been a source of ongoing uncertainty for family members. Had they been addressed more thoroughly at an early stage, that uncertainty might have been avoided, and I will return to those matters later.

One matter to note at this point concerning the police investigation is that an autopsy was commenced on the morning of 14 January 1990, over four days after Mr Wark's death. Initially the forensic pathologist, Dr Bradhurst, became concerned about what he thought may have been deep-seated bruising to Mr Wark's neck. As a result, the autopsy was paused and a detective from the Homicide Squad became involved in the investigation.

As it turned out, upon the autopsy being completed, the bruising initially thought to be suspect was considered to be non-suspicious and in keeping with an injury caused by a fall from a height. I mention this because it explains why an officer from the Homicide Squad came to be involved in the matter at that point.

Commissioner, I now turn to outline some of the investigative steps taken by the Inquiry. A range of steps have been taken to attempt to shed further light on the circumstances surrounding Mr Wark's death. The Inquiry compelled the production of the police file relating to the investigation of the matter back in 1990. In addition, a small number of documents were produced by NSW Police Force relating to consideration of the matter by Strike Force Parrabell in 2016.

The Coroners Court file was obtained consisting of

108 pages of material from that court's consideration of the matter in 1990. The Inquiry also received under summons the contents of the file held by NSW Health Department of Forensic Medicine. That file contained some additional material to that held by the police, including a note of information received by the forensic pathologist from an officer with the Water Police who made some observations about the movement of bodies within Sydney Harbour which I'll come to later.

The Inquiry was also able to confirm through the Registrar of Births, Deaths and Marriages, that KN, the priest with whom Mr Wark had had a long-term relationship, had died in 2006.

The Inquiry also made use of other material held by it, such as information relating to violence at beats on the Northern Beaches during the relevant period.

The Inquiry made contact with the psychologist whom Mr Wark had seen on two occasions in the months preceding his death and with one of the original investigating officers. The Inquiry also obtained by summons some documents from the Catholic Church relating to KN, although these steps did not lead to any further relevant substantive information being obtained.

Commissioner, three expert reports have also been sought and obtained: a report of forensic pathologist Dr Linda Iles, the Head of Forensic Pathology Services at the Victorian Institute of Forensic Medicine, who reviewed the autopsy findings; a report of Dr Danny Sullivan, a forensic psychiatrist who reviewed materials related to the death and provided opinion in relation to Mr Wark's mental state and likely cause of death; and a report of Professor Robert Brander, a coastal geomorphologist, who provided a report in relation to the potential for Mr Wark's body to have drifted from The Gap to the location where it was found.

The Inquiry also benefited from being able to meet with Rebecca Wark, Mr Wark's sister. Ms Wark, as I have already indicated, was close to her brother and was present at the family home when he was there 24 hours or less before his death. Ms Wark provided valuable information to police at the time of the original investigation, and in the weeks following her brother's death, she herself

located significant evidence that had not been followed up by the police.

The Inquiry is grateful to Ms Wark for having shared her time and knowledge of the matter with Inquiry staff and notes the concern she has previously expressed about the quality of the police investigation into her brother's death.

The Inquiry has remained mindful of those concerns in approaching its task of considering the evidence.

Commissioner, I now turn to consideration of the evidence that has been available to the Inquiry. The written submission at pages 17 to 22 sets out at some length what that material tells us about Mr Wark's movements and conduct over the five days leading up to his death. This has been done to try and draw out some patterns of commonalities in what was observed by the different individuals who were interacting with him over that period.

In considering this material, the Inquiry has been careful to consider the reliability of the accounts that were given by different individuals at the time. There is, of course, no reason to doubt the accuracy of accounts given by Mr Wark's family members. The signed statement made by KN at the time, in general terms, in relation to Mr Wark's movements and demeanour over his final days, also appears to be reliable, based its consistency with other material.

Although a statement that police took from MS at the time is unsigned, its contents generally appear to be consistent with other known information, such as a rental tenancy application signed by Mr Wark and a letter that MS sent to Mr Wark in the days following his death, in the absence of knowledge that he had died.

Without traversing all of the detail set out in the written submission, arising from those accounts, the following matters in particular are noted relevant to the days leading up to Mr Wark's death.

On Friday, 5 January - that is, four days before he was last seen - Mr Wark inspected a flat in Potts Point that he was interested in moving into with MS and the

girlfriend of MS. Consistent with this, he completed a joint tenancy application on that date. A deposit was paid but the up-front rental costs were yet to be paid.

That afternoon, Mr Wark spoke to his father about borrowing $500 for the bond payment for the flat. His father expressed concern about Mr Wark moving in with MS, who his father considered would be a bad influence upon him. Mr Wark subsequently told his father not to worry about lending him any money.

According to KN, later, at around midnight in a phone call to him, Mr Wark was in a distressed state.

On Saturday, 6 January, Mr Wark went to MS's flat on Crown Street, Surry Hills. Mr Wark told MS that he'd been unable to obtain the rental money and seemed very depressed.

In his unsigned statement, MS says that they discussed the topic of suicide, including the suicide of a mutual friend who had jumped off a 40-storey building in Melbourne. According to that unsigned statement, Mr Wark was confused and gave the impression that he was drunk.

The behaviour described by MS includes an odd remark being made by Mr Wark that the word "death" contained the word "eat", and that to eat is to die.

As Mr Wark left the flat, they arranged to meet at MS's flat on Monday, 8 January. MS did not see Mr Wark again.

Early on the Saturday evening, Mr Wark went to KN's home where he stayed overnight. According to KN, Mr Wark looked tired and was a little bit distraught.

On Sunday, 7 January, Mr Wark phoned his parents and expressed some reservations about moving into the flat with MS. That evening, Mr Wark was again at KN's house. In his statement, KN said that Mr Wark was very upset and saying, "The triads are looking for me." He acted in a paranoid fashion by pulling the blinds down and described his potential new rental accommodation as "a shooting gallery".

On Monday, 8 January, at around 12.30 in the afternoon, Mr Wark arrived at his parents' house in Frenchs

Forest. In a statement he made to police, Blair's father described Blair as shaking and distraught and that he appeared nervous and constantly on the move. Mr Wark again made reference to his new accommodation being "a shooting gallery". He suggested that the triads were after him and that he had been set up by MS and Michael Hutchence.

His conduct appears to have been irrational. Notes made by his mother after the event record Blair as insisting that his father move away from a window as he was in danger, and that Mr Wark made a remark about there being subliminal transmissions being broadcast by a radio station.

His parents were concerned enough to phone a GP who attended the family home. The GP was of the view that Mr Wark was showing signs of pre-psychosis.

Later that day, Mr Wark's father dropped him back to the Pyrmont Arms Hotel where Mr Wark was staying, however, Mr Wark returned to the family home by taxi in the early hours of the morning. His sister Rebecca sat up talking to him and was later woken by him at 4am.

In a statement made in 1990, Ms Wark describes her brother again making references to a shooting gallery and the triads. He stated he thought he was going to be killed and that he wanted to return to the Pyrmont Arms Hotel where he would be higher up and could see people coming.

Mr Wark ended up leaving on foot at around 6am on Tuesday, 9 January, followed by his father, who gave him a lift to a bus stop. This was the last time that his family saw him.

Limited action seems to have been taken by police investigating the matter to determine Mr Wark's movements after he left the family home on 9 January.

Rebecca Wark appears to have established, by contact with the caretaker of the Pyrmont Arms Hotel, that he returned to the hotel at some point during the morning.

The last known sighting of Mr Wark was by a woman who was described as the landlady at the residential address of Mr Wark's psychologist, "NM", in New South Head Road in Double Bay.

It appears that whether correctly or not, Mr Wark was under the impression that he had an appointment to see NM at 1pm or 2pm that afternoon, and it was for this reason that he turned up at her address. There is evidence that he had left a phone message for NM the prior evening.

Although no statement was taken from the landlady, there is a record made by police indicating that they spoke with her and she told them that Mr Wark had shown up at the Double Bay address at around 2pm. The information from the police says nothing about what may have been said to Mr Wark about NM's presence or availability, but evidently Mr Wark left, which would imply either that NM was not told of the visit or that she was not there.

Most significantly, the landlady described Mr Wark at this point as being highly distressed and agitated.

On the assumption that Mr Wark did end up at Gap Bluff later in the afternoon or evening, precisely what Mr Wark did after leaving Double Bay and how he got to Gap Bluff is not known. It is a distance of around seven kilometres on the road between the two locations.

Commissioner, at around 9.20am the next morning, Wednesday, 10 January, a passenger on a Manly ferry spotted Mr Wark's body floating about 200 metres off Dobroyd Head.

At 2.30pm the next day, 11 January, some items were found by a member of the public on a rock platform under a ledge at Gap Bluff. The man who found them described them as consisting of a white shirt with a small black pattern, neatly rolled up and tied with a black leather belt. Behind the shirt was a pair of metal-rimmed glasses, some receipts and a small tube of ointment. The property was described as being wet.

Police were unable to attend the scene straightaway when the man reported the items to Vaucluse Police Station, and so he retrieved them and left them with an officer at that station. The items as recorded by police included a wallet, which contained Mr Wark's driver's licence and a small amount of cash.

The property was subsequently returned to Mr Wark's family, as a result of which Rebecca Wark, via a docket from the David Jones department store, was able to, in

effect, do her own detective work to discover that a bag containing some of her brother's clothing and property had been left at the David Jones city department store by a man who appeared to match her brother's description under the name "Wark B", at around 11am on 9 January.

It seems apparent from what Ms Wark was able to piece together at the time that her brother had purchased certain items of clothing that morning and at the same time had left a bag with some clothing that he had changed out of at the David Jones lost property counter.

Commissioner, that completes what I intend saying in summary fashion about the movements and matters that might reflect on the behaviour of Mr Wark in the days leading up to his death.

I now move to comment on what the expert opinion evidence gathered by the Inquiry tells us.

Dr Iles reviewed the autopsy report and conclusions reached by the original forensic pathologist, Dr Bradhurst. She considered the documentation of injuries by Dr Bradhurst to have been quite comprehensive. She did not think that minor and superficial bruising documented by Dr Bradhurst was typical of injuries caused in an assault but, rather, that these could have been caused either in the course of impact or in the process of body retrieval.

Dr Iles agreed with Dr Bradhurst's conclusion as to cause of death being multiple injuries sustained in a fall from a height, but she observed that a medical examination could provide little insight into how such a fall came about.

In her opinion, the deep-seated bruising to the neck that initially caught Dr Bradhurst's attention was consistent with trauma to the spinal cord which is in turn consistent with having been caused in such a fall.

Secondly, Commissioner, the Inquiry sought and obtained an opinion from Professor Brander as to the movement of Mr Wark's body in the water.

This report was obtained because, on its face, the location of Mr Wark's body near Dobroyd Head within a period of no more than 18 hours from the earliest time

that Mr Wark feasibly might have fallen from somewhere in the vicinity of Gap Bluff, being approximately 2.30pm on 9 January, is notable given the distance involved and the geography of the area.

Professor Brander's report highlights the great difficulties involved in accurately predicting the likely movement of a body in the water in the relevant circumstances. In particular, he observed that, and I quote:

> *Complex and turbulent wave, tide and drift conditions combined with irregular topography makes it very difficult to determine the direction of travel of a human body entering the water at a coastal location such as the rocky coastline between Gap Bluff and South Head.*

Professor Brander's ultimate opinion was that it was certainly possible that Mr Wark's body may have entered the water in the vicinity of Gap Bluff at any time during the period of interest but that this would have been more likely to have occurred between 9pm on 9 January and 4am on 10 January.

In reaching this view, Professor Brander was fortified by the terms of a handwritten memo that appears in the original forensic medicine file relating to Mr Wark.

At this point, Commissioner, it might be useful to bring that document up on screen. It's tab 47. I understand that might be available.

Commissioner, that handwritten memo appears to reflect a discussion that the forensic pathologist had with a police sergeant by the name of Sergeant Ashley, who would appear to have been from the Water Police, and it would appear to have been someone with experience in retrieving bodies from Sydney Harbour, in which the officer told Dr Bradhurst that the Dobroyd Head area was a common place for - you will see the quote in inverted commas, "Gap" bodies to be found, in circumstances where the tide was running in. Reference is made to that handwritten memo in Professor Brander's report.

That can come down.

Commissioner, a further observation made by Dr Brander appears to add to the difficulty in predicting a particular time that Mr Wark may have fallen from The Gap - namely, that, depending on the particular location and conditions, it's difficult to say for how long a body may have remained in the area of a rock platform before then being washed into the ocean. This fact appears to introduce a further level of uncertainty in relation to determining the precise time at which a body had fallen from that location and would have ended up off Dobroyd Point.

It's noted that Professor Brander was also asked about the possibility that Mr Wark may have entered the water from Dobroyd Point or Reef Beach and concluded that this was also a possibility and potentially a more likely one were all things equal.

It is noted, however, that there's simply no evidence that would suggest that Mr Wark had been at Dobroyd Head and that the greater significance of Professor Brander's opinion lies in his view that, purely based on the relevant environmental factors, it was certainly possible that Mr Wark had entered the water from The Gap in circumstances where there's otherwise substantial evidence to suggest that this was the entry point.

The third expert report obtained was that of forensic psychiatrist, Dr Danny Sullivan. Dr Sullivan reviewed the material relating to Mr Wark's death and was of the opinion that, and I quote:

> *... Mr Wark's presentation in the days before his death was consistent with psychosis. He displayed psychomotor agitation. He reported persecutory ideation, which appeared to be delusional, related to triads and two acquaintances. He was thought disordered with loosening of associations. He was potentially hallucinating or alternatively experiencing auditory illusions while in a state of hypervigilance.*

While Dr Sullivan noted that there was a pre-existing history of depression, he did not think that there was an indication of a persisting mood disorder and he noted that Mr Wark's anti-depressant medication appeared to be at

a low but effective dose.

Dr Sullivan concluded that Mr Wark's mental state from 6 January 1990 until his death was consistent with a psychotic episode and that the concern of family members and acquaintances suggested that this represented a clear deterioration from his usual presentation and that he had not presented in such a way before.

It is submitted that Dr Sullivan's report is helpful in the context of considering the potential competing scenarios relating to the manner of Mr Wark's death.

Commissioner, given Dr Sullivan's view, it's worth reflecting on the view of Mr Wark's mental state as it was considered at the time of the original police investigation.

The police investigation of the matter relied on some very limited information from a medical practitioner and psychologist who had seen Mr Wark in the past, rather than seeking any opinion as to Mr Wark's mental state as evidenced by his conduct in the days leading up to his death. This appears to have formed the basis for the initial officer in charge, Constable Ford from the Water Police, to conclude in her statement to the Coroner that Mr Wark took his own life by jumping from the Gap Bluff, and I quote:

> *... due to the completion of an eight year homosexual relationship and loneliness.*

That conclusion appears to have been drawn directly from the views expressed by the psychologist NM in the brief letter that she provided to the police.

NM's letter was evidently prepared without her having any understanding of Mr Wark's mental state in the days leading up to his death. It relied on one single clinical session that she had had with Mr Wark two months earlier, in addition to which he had participated in a single group therapy session conducted by NM. It's submitted that it clearly did not provide an adequate explanation for Mr Wark's death.

Further, as expressed in the officer's statement, with no basis, it appears to suggest that Mr Wark's sexuality

was somehow relevant to him intentionally having taken his own life. There doesn't otherwise appear to be any basis for that suggestion.

Those observations lead me to make some brief comments about the treatment of this matter by Strike Force Parrabell. Those reviewing the matter for Strike Force Parrabell also appear to rely on the views expressed by NM in support of its characterisation of the case as one where there is no evidence of bias crime. The Bias Crimes Indicator Form twice refers to NM's opinion, to use the language employed in the form, that Mr Wark suicided himself as a result of depression and loneliness. It's submitted that the uncritical acceptance of NM's view demonstrates a limited level of analysis being applied to the evidence.

The form also uncritically repeats NM's assertion that Mr Wark was on strong doses of anti-depressants. This does not accord with expert forensic psychiatric opinion obtained by the Inquiry that characterises Mr Wark's dose as low but effective.

Commissioner, more generally in relation to the police investigation of the matter, although the ultimate submission which is being made in this matter is that Mr Wark's death was not one that involved foul play, it had certain features that it's submitted call for more thorough analysis than appears to have occurred at the time of the initial investigation. Had there been a more thorough approach, ongoing concerns of Mr Wark's family in relation to the death, it is submitted, are likely to have been allayed.

In particular, the following matters are noted: firstly, it remains unclear whether police ever attended the location where Mr Wark's property was found at Gap Bluff. If this did occur, it was not until several days after the property was located.

Secondly, there's also no record indicating that police examined that location to determine whether there was any other physical evidence potentially relating to what may have happened to Mr Wark there or to record the precise location.

Thirdly, there's no material in the police brief to

the Coroner that seeks to consider or explain how the body of a person who jumps or falls from the vicinity of The Gap might end up near Dobroyd Head.

Fourthly, the psychologist NM herself featured in events that occurred immediately prior to Mr Wark's death, and at least as a matter of perception, reliance upon her opinion in relation to the cause of Mr Wark's death and his mental state might be thought inadvisable.

Fifthly, police appear to have returned Mr Wark's possessions to his family without having photographed them or considered their investigative utility. As a result, as I've outlined, it was Mr Wark's sister who investigated the significance of some dockets and receipts that were amongst the items left at The Gap, leading to the discovery of Mr Wark's property at the David Jones lost property counter.

And lastly, there were certain potentially significant witnesses with whom police spoke but from whom it appears no statement was taken. This included anyone at Mr Wark's workplace and the last person to have seen him alive, NM's landlady, who observed him to be highly distressed and agitated. It is suggested that the inclusion of such material in the coronial brief of evidence would have been advisable and may have gone some way to addressing the family's concerns.

Commissioner, in considering whether there is any possibility that Mr Wark's death could have involved an act of foul play, the Inquiry has endeavoured to keep an open mind to any possibility that the fears Mr Wark was expressing to his family early in the morning of 8 and 9 January could have been based in reality.

In considering such a possibility, it's noted that Mr Wark's mental state had shown clear signs of deterioration over a number of days prior to his death. He had contacted KN in a distressed state on 5 January. He was making odd comments to MS on 6 January and again seemed distressed. On 7 January, in KN's presence, he was acting in a paranoid fashion and demanding that the blinds be drawn and he was also referring to the triads and a shooting gallery

Further, Mr Wark's actions in purchasing new clothes

and leaving a bag of clothes and other items at David Jones' store on the morning of 9 January are difficult to rationalise as a matter of logic. The same can be said for the manner in which his clothes and other items were left at The Gap.

It is suggested that those actions are best understood as explained by Dr Sullivan who says as follows in his report:

> *... Mr Wark was exhibiting an abrupt change in mental state associated with anxiety and fear that he would be killed relating to persecutory delusions. A person in a psychotic state is likely to exhibit significant disturbances of judgement, and their behaviour may not follow rational or predictable patterns when affected by delusions and distressed emotional state associated with this.*

Consideration of the possibility of foul play being involved in Mr Wark's death has also taken account of the proximity of his body, when found, to the Dobroyd Head and Reef Beach areas.

In circumstances where Mr Wark's personal items including his shirt, belt, wallet and glasses were found at The Gap, it is submitted that it defies logic to conjure a scenario whereby Mr Wark then took a trip to the Dobroyd Head area where he happened to be assaulted.

Likewise, it seems implausible that Mr Wark would have travelled to Dobroyd Head and been the victim of an assault there, with a hypothetical assailant choosing to retain some items of his clothing and then travelling to The Gap and depositing them there.

Dr Sullivan was asked for his opinion in relation to the manner of Mr Wark's death. He was of the view that Mr Wark's behaviour in the days preceding his death and the circumstances of his death were consistent with suicide.

Dr Sullivan observed that Mr Wark was in a state of significant anxiety and fear for delusional reasons, that he was markedly restless and he was distressed and seeking help including from his psychologist. He considered that

Mr Wark's actions in buying new clothes and leaving them neatly folded, with his possessions, to be consistent with an act of suicide rather than misadventure. He also considered the presence of the neatly folded items to be inconsistent with an act of violence or robbery involving a third party.

Commissioner, in conclusion, particularly in view of Mr Wark's mental state and his known and observed stress at 2pm while at NM's address in Double Bay, it is submitted that there is a compelling logic to the view reached by Dr Sullivan. It does appear highly probable that Mr Wark took his own life while experiencing fears precipitated by the psychosis he was experiencing.

Given this conclusion reached in relation to the cause and manner of Mr Wark's death, it is not suggested that the death involved gay hate bias.

In relation to the manner and cause of death, it's submitted that an appropriate description of the cause and manner of Mr Wark's death would be that it resulted from multiple injuries sustained in a fall from height after deliberately jumping from a cliff in the vicinity of The Gap at Watsons Bay, and that at the time of his death, Mr Wark was affected by a psychotic episode.

Commissioner, that concludes the submission.

THE COMMISSIONER: Thank you. Yes.

MS WARK: To this day, I have never seen anyone more scared than Blair was the day before he died.

My name is Rebecca Wark and I am the sister of Simon Blair Wark. I am the youngest of five children. I am the Chief Executive of Health Infrastructure for NSW Health, the mother of three children and the director of our broader family's business affairs.

Thank you for allowing me to address you today, Commissioner.

As you will appreciate, 33 years have passed since Blair's premature death as a 28-year-old. I've had much time to think about what happened over those days in January 1990 in and around Sydney Harbour.

In this submission, I would like to make two points: the behaviours that Blair displayed in the immediate days before his death were dramatically out of character; the investigations undertaken by NSW Police in 1990 and again during Strike Force Parrabell appeared to our family to be cursory and their outcome a foregone conclusion - that is, Blair was a young gay man and therefore killed himself.

There appears to us to have been a complete failure of the police to consider Blair's behaviour, behaviour attested to by my parents and me, and his character in the broader context, that made it easy for them to conclude that he was just another depressed gay jumper. At any level, this could only be considered a tragedy.

Much of the evidence before the Commission emphasises Blair's behaviour two days before he died. His alleged psychotic paranoid outburst and his use of anti-depressant medication arise repeatedly in the tender bundle. Never mind that neither my parents nor I had seen such behaviour from him before. Never mind that he clearly feared for his life. Never mind that he expressed nothing to suggest he was contemplating suicide. Never mind that his medication had successfully managed his depression.

There is an underlying implication in all of the expert testimony that Blair's depression was his predominant, if not his singular, character trait. It was not.

Blair was in no way a perpetual slave to whatever bleak thoughts he might have occasionally shared with friends and medical professionals. Indeed, it's informative that no statements in the tender bundle raise any concerns about the efficacy of Blair's prescription. It worked well for him.

When I last saw Blair at our family home on the morning of 9 January 1990, he believed that it was unsafe for him to remain in our home as he considered that this also placed us at risk of physical harm from those he thought were trying to harm him. He was scared for his own life and he was scared for our safety. He was dead less than 24 hours later.

My memories of Blair do not in any way align with the

description in the tender bundle that you have before you, Commissioner. Blair took care of himself and respected his body. He swam regularly, he ate healthily, he walked a lot. He was handsome and strong.

Blair was enviably artistic. He created beautiful paintings and leather work. He studied art, he created art, he taught art. He worked in an art school. He made regular forays to the Art Gallery of New South Wales with our mother, with whom he had a close relationship and whose companionship he sought for those excursions. His paintings hung in my parents' home and hang in my home - a daily reminder of an observant, curious, expressive, imaginative son and brother.

Blair had an infectious chuckle that I still conjure in my head more than 30 years after I last heard it. When he laughed, his eyes crinkled, his cheeks inflated and no-one within earshot could resist being swept up in his joy.

Blair had a love of finding words within five-letter words. His artistic signature was "earth" with a dotted line around the "art" within it, art being the centre of the earth. He had a rubber ink stamp made of it and it was on all of his prints and work. Another example of his love of words within words was "ear" within "heart" - listen to your heart.

Like many creative souls, Blair could be provocative, often witty, and sometimes surly too. He could be withdrawn. But Blair was a young gay man navigating life at a time when Australian society ridiculed and at times was openly hostile to homosexuality, as this Commission has so unflinchingly shown, and I thank you for your work in that regard.

As a consequence, there was much we didn't know about his life and his lifestyle. The police could ascertain even less about his life and lifestyle, since they only knew him in death.

Various investigations, inquiries and civil cases associated with gay hate crimes have been reported in the national and international press since Blair died. Each one added to my family's doubts about the adequacy of the initial investigation into Blair's death. Whether Blair's

death was a gay hate crime or not, it is plain to even a new reader of material in his matter that there are some very curious circumstances which surely warranted proper investigation.

Each has reminded us that we lack any explanation as to what caused Blair's so-called fall from height. No answers.

My family has lived with many unanswered questions, in part because the police left many obvious questions unasked, but learning to live with unanswered questions does not mean I am inclined to stop asking them.

I remain curious about a number of things. Why did the investigating police officers not explore the reasons for someone, possibly but not necessarily Blair himself, depositing his own belongings at a lost and found desk at David Jones? Query, is this a clue to a body in Davy Jones's locker, a metaphor for a body in the ocean? Would a disregulated and psychotic person carefully plan and mastermind such a story?

Why did the investigating police dismiss my family's comments about the clothing found at The Gap being nothing like anything Blair would ever wear - the belt not handmade, the style at odds with his signature? Why was he in lace-up shoes when he always wore well-polished boots. There was an assumption Blair was at The Gap. Is it possible that Blair was never at The Gap?

Why did the investigating police not query the potential role of MS in Blair's death, given his reluctance to give a statement and his obvious anger with Blair as expressed in the letter he wrote. He referred to Blair as a "confused closet alchy poof", "a selfish prick", and insisted that "Blair pay me back now".

Why did the investigating police put so much weight on MS's unsigned statement about Blair's character, particularly his suicidal tendencies, when they had evidence that MS was an unreliable character, a heroin addict with form.

Why did the investigating police not query the circumstance around my brother being in a long-term sexual relationship with Father KN, whom he met at Sydney

University, not at art school, during his second degree studying a BA and Dip Ed - a now deceased alcoholic abusive practising Catholic priest. Indeed, they cohabited in the manse.

Why did KN give Blair pocket money and money to pay his accounts when Blair's only known debt was the bond payment which KN had already refused to pay? Were the police not curious as to what account he was covering? Why, given Blair's mention of Michael Hutchence and the Chinese triads, did they not, as a matter of due diligence, pursue that as a line of inquiry? After all, according to a contemporary Google search, Hutchence was recording an album at Rhinoceros Studios in Darlinghurst at that time. It's entirely possible that, as old school friends, they may have been in contact.

Why were the police unable to find Blair's files during Strike Force Parrabell until I provided them with copies of relevant documents?

I will always wonder what the police might have learned had they applied Blair's curious, imaginative approach to their investigations. What if they had asked, "Might we be missing something here?" But they didn't. Instead the finding that Blair's death resulted from multiple injuries sustained from a fall from height became a fitting metaphor for our family's emotional journey since 10 January 1990. The Coroner did not say that Blair died from suicide or misadventure, his multiple injuries are unexplained.

A less lazy, more open-minded investigation could have added much to Blair's narrative. I remain convinced, as did my parents until their aged deaths, that no matter how Blair died, the investigation by NSW Police Force had been narrow minded, with outcome bias. He was a gay and on anti-depressants, therefore, he jumped.

Vivian Gornick, journalist, essayist and teacher, distinguishes between two elements of personal narrative. The first is a description of what happened, the situation. The second is the need to describe some of the subjective truths that underpin and surround the situation. It's this second part, the story, that tries to make sense of the situation and to offer a constructive contribution to society's collective learning.

I thank the Commission for giving me the opportunity to highlight the importance of investigating not only Blair's situation but also his broader story.

I hope that one day, investigating police officers, Coroners and supporting medical officers, will be more open to stories as scaffolding for so-called facts. I dare them to be as observant, curious and imaginative as Blair was and to accept that stories can help make them make sense of a situation and offer a constructive contribution to our collective knowledge.

In making this statement, I am highlighting that my brother's situation, as it is laid out in more than 300 pages of dry, allegedly objective facts and expert statements, is only one part of his and my family's personal narrative. I make this statement to ensure that when my three children, my nieces and nephews or my future grandchildren, or anyone else who is curious about Simon Blair Wark, investigate him online, that they will find not just a situation but a relevant and telling story from which we can all learn.

I make this statement to remind you that the situation is never the same as the story.

Standing here today, I am encouraged by this Commission's willingness to re-evaluate tragic events that were taken for granted. I am grateful that families have had the opportunity to ask you to reconsider so many senseless deaths. I am grateful for my family, my deceased father and my recently deceased mother.

I wish you success and courage as you continue to recalibrate, reevaluate and reconsider my brother's early death.

THE COMMISSIONER: Thank you, Ms Wark.

Mr Mykkeltvedt?

MR MYKKELTVEDT: We will provide some submissions in writing, your Honour.

THE COMMISSIONER: All right.

Ms Wark, may I, on behalf of myself and the Inquiry, extend to you and your family my deepest condolences. What you have put to us this morning is insightful and will be taken carefully into account when we go back and reevaluate the materials again, and so I thank you very much for your contribution this morning.

I will now adjourn, thank you.

AT 12.46PM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED ACCORDINGLY

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