



STATE CORONER'S COURT OF NEW SOUTH WALES

Inquest: Inquest into the death of Mark Anthony Haines

Hearing dates: 8 to 19 April 2024, 28 October 2024 to 1 November 2024
(sitting at Tamworth Court House)

31 March 2025 to 4 April 2025, 13 to 16 October 2025, 30 April 2026
(sitting at NSW Coroners Court, Lidcombe)

Date of findings: 18 June 2026

Place of findings: Tamworth Court House, Tamworth NSW

Findings of: **Judge Harriet Grahame, Deputy State Coroner**

Catchwords: CORONIAL LAW – 1988 death of First Nations teenager – suspicious circumstances – subdural haemorrhage – inadequate early investigation – racism and unconscious bias – Tamworth – referral to NSW Police Force Unsolved Homicide Unit

File number: 2022/00343305

Representation: **Counsel Assisting:** Chris McGorey, Counsel Assisting, instructed by Ms Aleksandra Jez and Ms Jessica Best (Crown Solicitor's Office)

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Counsel for Mr Gordon Guyer: Mr Gary Doherty, instructed by Mr Ken Madden (Walter Madden Jenkins)

Counsel for Mr Glenn Mannion: Mr Jim Viewers

Non-publication orders:

Non-disclosure orders and non-publication orders have been made in this inquest. A copy of these orders can be found on the Registry file.

s 61 Certificates issued:

Section 61 certificates have been issued in this inquest. A copy of these orders can be found on the Registry file.

Findings:

Identity

The person who died was Mark Anthony Haines.

Date of death

Mark died on 16 January 1988.

Place of death

Mark died on the railway tracks just north of the Birthingmere Crossing, a short distance outside Tamworth, NSW.

Cause of death

Mark died of traumatic head injuries.

Manner of death

Mark's death occurred in suspicious circumstances. The exact circumstances remain unknown. I am satisfied Mark's death was not intentionally self-inflicted.

Recommendations:

That the death of Mark Haines be referred to the Unsolved Homicide Unit of the NSW Police Force Homicide Squad for further investigation in accordance with the protocols and procedures of that Team. Further, that a copy of the brief of evidence and transcript of the Inquest into the death of Mark Haines be provided to the Unsolved Homicide Team for this purpose. That review is to include consideration at a future date of further DNA examination of the swab from the pink lighter located at the scene in January 1988 (be conducted assuming technological advances)

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Introduction

1. This inquest concerns the death of Mark Anthony Haines (**Mark**), a proud Gomeroid man born on 12 September 1970. Mark was affectionately known to his friends as “Stoney”. He was 17 years of age at the time of his death.
2. Shortly after 6:00am on 16 January 1988, Mark was located by train personnel between the railway tracks a short distance outside of Tamworth. He was found after a train passed over him, around 330 metres north of Warral Siding/the Bithramere Crossing (**Bithramere Crossing**). At around 7:35am, Mark was pronounced deceased at Tamworth Base Hospital. He died of traumatic head injuries. To this day, several theories have emerged in relation to how Mark came to be on the tracks.
3. Mark is survived by his sister Lorna, brother Ron and his uncles, Donald (Duck), Jack, and Craig. Mark’s parents, Josephine and Ronald have sadly passed away. Mark has been described by his family as selfless and charismatic. He was very popular and cared deeply for those around him. It is clear from all the evidence I have received during the course of this inquest that Mark was a much-loved member of his family and the wider Tamworth community.
4. In a moving family statement, his younger siblings described the pain they felt on hearing of Mark’s sudden and unexpected death. They continue to light a candle for his birthday every year and keep him in their hearts and minds. Mark’s uncle Donald was very close to Mark. Mark lived at times in the family home with his grandmother, uncle and other family members. Mark’s uncle described him as unassuming. Mark wouldn’t go looking for friends, they would come and find him. He had a “sort of real charming drawl” in the way he spoke.
5. In the decades that followed Mark’s death, his family have continued their search for answers. Mark’s family were in attendance at each day of the inquest and their ongoing grief at the loss of Mark is very clear. So too is the anger felt by family members in relation to what they identify as significant failures in the investigative process.
6. I had hoped that in conducting this fresh inquest, we would have arrived at a point of greater clarity in relation to the circumstances of Mark’s death. It is a matter of considerable personal regret that this has not been achieved. While I am confident that all the evidence currently available to this court has now been very carefully examined, I remain of the view that it is highly likely there are people in the community who have first-hand knowledge of these events which they have never shared with

police. It is a frustrating realisation, and I acknowledge that it offers no comfort to those who love Mark.

7. The importance of this inquest now lies in providing a full record and analysis of all the currently available material. Should further evidence ever emerge it can be assessed against what is now known and a decision can be made as to whether it is appropriate to conduct further proceedings.
8. Once again, I offer Mark's family my sincere condolences. I am aware of the all-consuming impact that the grief and anger arising out of the circumstances of Mark's death has had on their lives for almost forty years. I am sorry there has been no breakthrough during this second inquest into Mark's death.

A. The role of the coroner and the scope of the inquest

9. The role of a Coroner, as set out in s 81(1) of the *Coroners Act 2009* (NSW) (**the Act**), is to make findings as to the:
 - (1) Identity of the person who died;
 - (2) The date and place of the person's death; and
 - (3) In the case of an inquest that is being concluded – the manner and cause of the person's death. The manner of a death relates to the circumstances in which the person died.
10. In this inquest, Mark's identity and the date, time and place of his death are not in issue. However, the specific manner and cause of Mark's death were matters that I was required to explore as part of my statutory function.
11. Pursuant to s 82(1) of the Act, the Coroner may also make any recommendations that the Coroner considers "necessary or desirable to make in relation to any matter connected with the death". This can involve a close consideration of the evidence with a view to identifying anything that could or should be done to improve public health and safety. At times a coroner is called upon to request that a suspicious death is reviewed by the NSW Police Force's (**NSWPF**) Unsolved Homicide team.
12. A coronial inquest takes place, necessarily, after the event. It follows that, unavoidably, a coronial inquest is conducted with the benefit of hindsight.
13. However, in performing the specific statutory functions set out in ss 81 and 82 of the Act, it is accepted that a Coroner must judge the appropriateness of steps taken or not taken by an involved person or organisation against the information that was available to that individual or organisation at the time, and not through the lens of the

tragic outcome of the case. Indeed, coronial inquests routinely examine whether, with the knowledge available to the relevant individual or organisation at the time, a party could have or should have acted differently in the particular circumstances that presented themselves.

B. The evidence

14. The court took evidence over 24 hearing days.
15. The court also received extensive documentary material comprising more than 10 volumes. This material included witness statements, police records, policies and procedures and several expert reports from disciplines including but not limited to forensic pathology, biomechanics, criminology and forensic toxicology. The court heard oral evidence from civilian witnesses, responding police, train and ambulance officers, investigating officers and a number of experts from different fields.
16. While I am unable to refer specifically to all the available material in detail in my reasons, it has been comprehensively reviewed and assessed. In reaching any factual findings, I have satisfied myself of a given fact based on my review of *all* available material.
17. In light of the significant volume of documentary and oral evidence received in this inquest, I have also been assisted by an outline prepared by Counsel Assisting and circulated to the interested parties. This outline provides a comprehensive factual and evidentiary summary of the matters which are considered not contentious or not in dispute as between the parties. I have independently considered the underlying evidence referred to in that outline in making my determinations and have had the benefit of detailed written and oral submissions from Counsel Assisting and the interested parties during the course of this inquest particularly focussing on matters where differences of opinion or emphasis exist.
18. A list of issues was prepared before the proceedings commenced. These issues guided the inquest and were amended at times to reflect the oral and documentary evidence which emerged during the course of the proceedings.

C. Fact finding and chronology

19. As noted above, Mark was aged 17 years when he was found by rail personnel shortly after 6:00am on Saturday, 16 January 1988. A white Holden Torana, which was stolen earlier that morning, was found abandoned near the tracks about 1.5 kms north of

Mark's position on the tracks. Mark was pronounced deceased at Tamworth Base Hospital at about 7:35am. He died of traumatic head injuries.

20. A three-day inquest was held in Tamworth on 19 October and 23 November 1988 and 6 September 1989 before Coroner Peter Byrne, a Local Court Registrar and the appointed coroner in Tamworth at that time (**1988-89 Inquest**).
21. In 2023, on the family's application, a fresh inquest was ordered pursuant to s 83 of the Act. The fresh hearing proceeded before me over 24 days between 8 April 2024 and 30 April 2026 (**2024-2026 Inquest**).
22. The summary of evidence and chronology of events that follows represents my findings in relation to the facts which preceded and followed Mark's death in 1988. Given the significant volume of evidence, I have considered submissions from the interested parties in the context of this chronology where possible. I have also considered further submissions made by the parties on additional matters raised during the course of the inquest below from [744].

D. Preliminary matters

23. At the outset, I note that one significant challenge in this inquest was the considerable passage of time since Mark's death. Understandably, this impacted the reliability of some of the oral evidence which I heard and reduced the amount of documentary material available to me almost 38 years later. The fallibility of memory and the effect of the passage of time upon the capacity of a person to give reliable evidence is well recognised in the case law. Memory fades and may be impacted by events that have come to pass in the intervening period. People are unwittingly influenced by discussions they subsequently have or by media reports they may have been exposed to. This is not to criticise the media and I acknowledge that media attention assisted the family in agitating for this second inquest. Information obtained from interviews broadcast in media reports has been tendered in this inquest and has been considered. Nevertheless, it has been necessary to keep in mind how publicity around Mark's death may have inadvertently influenced some of the later accounts before me.
24. In these circumstances, contemporaneous notes or records and objective evidence such as photographs assume great importance when they can corroborate oral testimony.

25. During the course of the inquest, a dispute arose as to Counsel Assisting's approach to considering the various theories that have emerged in the decades since Mark's death.
26. Based on the available material, Counsel Assisting referred to the following theories that have been identified over the years as to what might have happened to Mark:
 - a. Mark was involved in the theft of the white Torana and travelled in that vehicle to the scene either on his own or with others;
 - b. Mark travelled to the scene in another vehicle (possibly one connected to Terry Souter) in tandem with the stolen white Torana;
 - c. Mark was assaulted or unintentionally injured in some way (e.g. struck by a car/injured in a rollover) and was placed on the tracks in an injured or unconscious state by a person or persons unknown possibly to conceal what had occurred;
 - d. Putting aside how Mark came to be at the scene, he collapsed or fell over while walking along the tracks while placing items on the track as he did so, possibly in an injured state, and was struck by the train;
 - e. Mark willingly placed himself between the tracks in an act of self-harm or misadventure, while affected by alcohol, and was struck by the train.
27. After identifying these scenarios, Counsel Assisting had regard to the documentary and oral evidence available to me in this inquest and made certain submissions as to whether I can be positively satisfied that each scenario could be found or excluded. To this end, Counsel Assisting properly acknowledged that reasonable minds might differ on some of these questions and it is a matter for me based on the available evidence to consider and accept or exclude certain potential scenarios in connection with Mark's death.
28. Counsel on behalf of Mr Donald Craigie (**Mr Razi**) submitted that Counsel Assisting's approach or methodology to the question of Mark's death is flawed and should be rejected.
29. Alternatively, Mr Razi submitted that the Court should first assess, as a threshold issue, whether a scenario or theory is raised on the evidence. In particular, for a theory to be raised on the evidence, it should require more than the mere fact a witness has raised the theory or that a particular theory has been contemplated by a witness involved in the investigation into Mark's death. Mr Razi also noted that in assessing

whether a theory is raised on the evidence, the court should be looking for factual grounding and/or corroboration in witness accounts and/or documentary evidence. This would involve more than conjecture and speculation.

30. Mr Razi proposed that the court should adopt the following approach in connection with the threshold issue raised above:

- (1) Where a theory is not raised on the evidence, but the Court has heard it raised by a witness, I could address it by noting that although the particular theory was raised by the witness it was not raised on the evidence and accordingly does not warrant further consideration.
- (2) Where a theory is raised on the actual evidence, but has very limited support, such that I am unable to make a definitive finding, it remains open to me to make a finding that a particular scenario is more or less likely than another, based on the *weight* given to the available evidence.

31. As I have stated, the passage of time since the events in question and the fallibility of human memory are key challenges I face in examining the circumstances of Mark's death. I am also hampered by various failures to capture important evidence early in the investigative process. In my view, Counsel Assisting has accurately identified the principal theories that have been canvassed over the years in relation to the manner of Mark's death. I accept that there may be others or variations on the ones he elucidates. However, my task is not to rule in or out every theory or rumour that has been identified over the years. In the discharge of my statutory functions, I am tasked to make a finding on the manner of Mark's death, *if the evidence allows it*. In exploring the circumstances leading up to and following Mark's death, I have attempted to examine all the evidence in a holistic manner, making findings of fact where I can. I accept that a close consideration of each scenario does not mean that each scenario should be entertained equally or given equal weight. Further, I do not see my task as involving a requirement to systematically rule in or out the five theories that have been helpfully identified.

32. I acknowledge that certain theories identified above have been a source of great distress to Mark's family at the time of his death and in the years since. Nevertheless, this inquest sought to examine all the available evidence without fear or favour. In my view, a robust inquiry required at least considering theories which I know Mark's family clearly reject. It has been a necessary but unfortunate aspect of my work.

33. While all the theories have been considered, my focus has been on scenarios that are grounded in oral testimony and supported by contemporaneous records, documentary material or expert evidence. As will become clear, while I am able to make certain

findings in relation to the theories outlined above, I was not able to make a definitive finding on each and every one.

E. Background

34. Mark spent periods of his early childhood living in Tamworth. In addition to the descriptions given by Mark's family, he is commonly described as good-natured, friendly and quiet.
35. By about the mid-1980s, Mark had permanently shifted to Tamworth. He attended Peel High School in Tamworth. As of late 1987/early 1988, Mark usually resided with family at 27 Sue Crescent, but also stayed on occasion with his cousin, Leah, at 75 Warral Road.
36. There is no evidence before me that Mark ever suffered poor mental health.
37. Mark did not have a criminal record.

F. Events of 15-17 January 1988

Mark's movements on 15 to 16 January 1988

38. As of Friday 15 January 1988, Mark had been in a relationship with Tanya White for about six months. His friendship group included Glenn Mannion, Jason Wann and others.
39. On the afternoon/early evening of 15 January 1988, Mark and Mr Mannion were at 75 Warral Road with Leah Craigie and her partner, Raymond Irvine. Raymond Irvine described their subsequent movements as follows:

"My girlfriend, Leah Craigie, myself, Mark and Glenn [Mannion] were at Warral Road for most of the evening. Leah and I went to my mother's place to drop off my child at about 8pm for about half an hour. Mark and Glenn [Mannion] stayed at Warral Road and were there when we got back. After a while the four of us decided to go out. We all got ready and at about 10pm we all caught a taxi to Blazes, via Glenn [Mannion's] place, who had to change his clothes. We went into Blazes and stayed for about half an hour, then we all left and walked towards the Workmens Club. When we were

opposite the Workies, Leah and I went to the Workies and Glenn and Mark walked towards town.”

40. Mr Mannion said that after a short stay at Blazes Nightclub, he and Mark walked to town and met up with friends near the No 1 Oval park. At that location, they each had four or five cans of beer while waiting for Ms White.
41. Ms White attended Images Night Club with her friends (including Cheree Wilder) until about midnight. She met up with Mark and others, which included Mr Mannion, and they made their way to Dominoes Nightclub. Ms White described Mark as seeming *“to be walking alright and he wasn’t drunk at this stage”*, and he seemed *“a bit merry and happy”*.
42. During the night, Mark was seen by a multitude of persons, including Ms White (his girlfriend), Mr Mannion, Natalie Blanch, Mitchell Wilder (now deceased), Jason Muldoon, Brett (“Greeny”) Green (now deceased) and Wayne Kingdom (now deceased).
43. Mr Irvine said he saw Mark sitting at the Bridge Street taxi rank. Mark asked him (Irvine) for his birth certificate to use to enter Dominoes Nightclub with Ms White. Mr Irvine gave Mark his birth certificate, which was in a plastic cover, for that purpose. Mr Irvine told police he then took a taxi with Brett Green back to Leah Craigie’s house at 75 Warral Road. Ms Craigie arrived there shortly after him at about 1:00am.
44. Events at Dominoes Nightclub were described as unremarkable save that, according to Natalie Blanch, at one stage Mark appeared *“cranky”* after seeing another male asking Ms White to dance. No one described Mark to appear heavily affected by alcohol while at this venue. Mr Mannion estimated that he and Mark each had one beer while there during about a two-hour period.
45. There are no reports of Mark drinking multiple drinks or appearing overly intoxicated at this venue. For instance, Mr Mannion said he left Dominoes Nightclub at about closing time (2:45am) and shared a taxi with Michael Biddle back home. When he last saw Mark, when leaving, Mark appeared *“a little affected by alcohol, but not much”*.

Leaving Dominoes Nightclub about 2:00 to 2:30am on Saturday 16 January 1988

46. Mark and Ms White left Dominoes Nightclub together between about 2:00am and 2:30am. They walked with Natalie Blanch and Mitchell Wilder as far as the pool on

Bridge Street. Their plan at that point was to stay overnight with friends, but they then decided to walk to Ms White's residence at 8 Kyooma Street, South Tamworth.

47. [REDACTED]

48. After they parted company with Natalie Blanch and Mitchell Wilder, Mark and Ms White walked along Bridge Street, into Goonoo Goonoo Road, down to Bell Street and into Churchill Street, finally ending up at the Edward/Wilburtree Streets' intersection.

49. Their journey on foot is depicted in the following map:



Reported sighting of a car on Wilburtree/Edward Streets at about 3:00am

50. Julie Munro lived at 39 Wilburtree Street. In a written statement made to police on 22 January 1988 (six days after Mark's death), Ms Munro said herself and William Tolmie, her partner, returned to her home in Edward Street in a taxi after a night out. On entering her home, she noted the time on her clock to be 3:10am.

51. As the taxi neared the corner of Edward/Wilburtree Street, shortly before reaching Ms Munro's home, the taxi braked to avoid a white Torana sedan that had made a right turn at speed from Wilburtree Street into Edward Street.
52. Ms Munro said she saw "*two males in the front seat and a few males in the back seat*" of the Torana. Ms Munro stated, "*I think the driver of the car had black, straight hair with a slight moustache and the passenger in the front seat had blonde hair*" and that the other males appeared "*young*". Soon after she saw "*a blonde-headed guy and a girl with long blonde hair walking towards Wilburtree Street*" but she did not recognise these persons.
53. Ms Munro knew Mark by sight before this occasion. When asked if he might have been one of the persons she saw in the car, Ms Munro said, "*I'm not quite sure*".
54. Ms Munro's de facto partner, William Tolmie, in his 1988 statement (undated), confirmed the sighting of a "*small white Torana*" which contained "*at least five people*". He did not recognise who these persons were.
55. While Ms Munro's evidence is interesting, without more, it does not assist me in making firm findings in relation to how Mark came to be on the tracks at Warral Siding.

Ms White and Mark part company at about 3:30am on 16 January 1988

56. Ms White, in a statement made to police on 22 January 1988, said she parted company with Mark at the Wilburtree Street/Edward Street intersection. Mark told her he was going home. She last saw him jogging along Wilburtree Street towards Coledale (westward). When they parted, Mark said, in reference to Ms White's half-sisters (which they had been discussing), "*treat them like sisters*".
57. Ms White did not notice any other persons or cars in the street at the time. She walked the remaining short distance home and recalled seeing the time on the clock as she entered as 3:37am.
58. Ms White, in her statement dated 22 January 1988, described Mark as "*just normal...he'd had a few but he was o.k.*"
59. Ms White, in her 1988-89 Inquest evidence, said they parted on good terms without any fight or arguing. Mark did not present to her as "*that drunk*". In her evidence before me, Ms White confirmed that she did not recall Mark having any difficulties walking nor was his speech suggestive of him being significantly intoxicated.

60. Ms White, in her recent evidence, again affirmed that she had no knowledge of what happened after they parted company, including how Mark ended up at the tracks near Warral Siding. She knew nothing about Mr Sanderson's white Torana or Mark or anyone else close to him having any connection to that vehicle.
61. I was troubled by some aspects of her evidence and found her apparent lack of curiosity somewhat confounding. She told the court that although she knew Glenn Mannion, she did not discuss Mark's death with him. She did not have a clear idea of where Mark was found, although she knew it was "*out of town*". She appears to have been somewhat reluctant to speak with Mark's family after his death. This apparent lack of active engagement in the quest to know what had happened to her boyfriend of some six months standing is difficult to understand, particularly as she was the last person confirmed to have seen Mark that night. Of course, her response may be the result of her intense feelings at the time and I accept she stated that she was traumatised after Mark's death. Nevertheless, almost 40 years later I was surprised she did not appear to have a stronger interest in remembering every aspect of the past in proceedings specifically designed to get to the bottom of what had occurred. Mark's death was a big story in Tamworth at the time and among the cohort she moved with, there must have been countless conversations about what had happened, yet she was firm that she *never* spoke to Glenn Mannion, another important witness about what might have occurred. She appeared to be uncomfortable in discussing any of the rumours or theories she must have heard.
62. Higher Courts have often warned fact finders about the dangers in too readily drawing conclusions about truthfulness and reliability solely or mainly from the appearance of a witness.¹ While there were aspects of Ms White's evidence and her somewhat reluctant demeanour that baffled me and raised a possibility that she might know more than she said, I was unable to make any firm finding in that regard.

Mark's movements between 3:30am and 6:00am on 16 January 1988

63. Since 16 January 1988, no person has reliably reported directly witnessing Mark or his movements after he parted company with Ms White at about 3:30am on Wilburtree Street, until he was found on the tracks by train personnel shortly after 6:00am.

¹ See for example *Fox v Percy* (2003) 214 CLR 118 at [30]

Report of voices heard on Bell/Edward Streets at about 3:20 to 3:25am

64. As of 16 January 1988, June Underwood lived with her husband and children at 24 Churchill Street. Their residence faced onto the Bell/Churchill intersection.
65. Ms Underwood, in a written statement made to police on 30 January 1988, reported being woken at about 3:20am to 3:25am on 16 January 1988 by “*very loud voices arguing*”. She recalled a “*man’s voice...sounded very emotionally upset*” who was stating “[*o*]h fuck off”. The other voice was not as loud.
66. Although Ms Underwood thought the second voice belonged to a male, she did not exclude the possibility that it was female. Ms Underwood could not recall what else was exchanged between the persons.
67. If Ms Underwood did hear voices about this time, as described, it would have been near in time to Mark and Ms White passing through that area before they separated company at 3:30am. However, Ms White did not describe herself and Mark having such an interaction at this point.
68. Ms Underwood gave brief oral evidence before me where she remembered some critical aspects of her earlier account somewhat differently, for example she distinctly remembered hearing the interaction at 3.05am.
69. Ms Underwood was extremely keen to offer further evidence and had clearly been following reportage of Mark’s death from the day of its first announcement. She brought her folder of newspaper articles with her to the witness box. She confirmed to me that she was very confident in her memory of events and was disappointed not to have the opportunity to say more.
70. While I have no doubt Ms Underwood was trying to assist the court I found her account difficult to rely upon. This is no particular criticism of Ms Underwood. Many other witnesses also gave evidence of having followed reporting of these events over the years and in all instances I have needed to approach their evidence carefully where it is not supported by contemporaneous accounts or objective evidence.
71. Ultimately, it is not evident to me what, if any, significance Ms Underwood’s account about the voices she heard has to furthering my understanding of how Mark came to be at the Warral Siding sometime before 6:00am.

Report of car/voices at about 3:40am

72. Julie Munro, in her statement dated 22 January 1988, said that she went to bed shortly after her return home (39 Wilburtree Street). Later that morning, she heard a “*small*” car, likely near to the intersection of Wilburtree/Edward Street, as its headlights shone through her bedroom window.
73. At this point, she heard “*voices sing out ‘Mark’*” after which the car drove off, and she heard no further voices. Ms Munro believed she heard male and female voices call out, but the voice that called out “Mark” she identified as female. Ms Munro then got up and noted the time as 3:40am.
74. Ms Munro, in her evidence in the 1988-1989 Inquest on 23 November 1988, said that in addition to hearing a voice ‘sing out’ to Mark, she heard a voice say “*Mark knew too much*” and “*one of the other voices mentioned something about railway tracks, the railway track*” (she did not recognise any of the voices). The latter detail was not contained in Ms Munro’s written statement to police made six days after Mark’s death. When asked why she omitted to tell police that detail she replied, “*[b]ecause I wasn’t quite sure at the time when I gave my statement...*”.
75. Mr Tolmie, in his statement and in evidence at the 1988-89 Inquest, did not say he heard statements of this kind made (including anyone calling out Mark’s name).
76. I give limited weight to Ms Munro’s account about the conversation she heard. There is no other evidence to corroborate this aspect of her account and what she said in oral evidence during the first inquest about this was not something mentioned in her earlier statement to police. As noted above, I consider that oral evidence supported by other witness testimony or documentary records assumes primacy in shedding light on what happened to Mark and the events of January 1988.

Torana’s theft from outside 78 Wilburtree Street

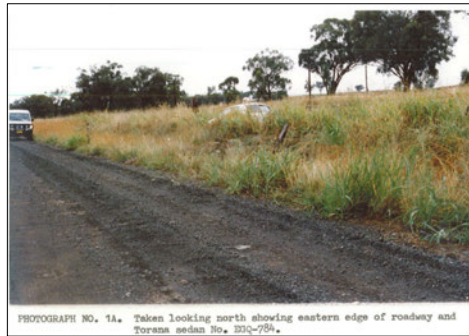
77. As noted above, a white Torana was found later that morning on the side of Warral Road, on the northern side of the track about 1.5km northeast of the Bithramere Road Level Crossing.
78. This vehicle belonged to David Sanderson. Mr Sanderson ran the Shell Service Station on Bridge Street, Tamworth.

79. On 15-16 January 1988, Mr Sanderson stayed overnight at the home of his then partner (now wife), Leonie, at 78 Wilburtree Street. His partner's children also resided there.
80. Mr Sanderson's usual habit involved parking the Torana either in the back yard of his home (116 North Street) or, if he was staying at his partner's place, to leave it in her driveway or on the street outside the house.
81. His partner's home at 78 Wilburtree Street was a short distance from where Ms White said she parted company with Mark. The direction she last saw him jogging would have taken Mark past this residence. In oral evidence Mr Sanderson confirmed that his employee, (Mark's friend) Mr Mannion would probably have been aware of this address.
82. Mr Sanderson reported the theft of his Torana to police at around 6:20am when he exited his partner's home to head to work. He said he parked it on the roadside on Wilburtree Street at about 7:30pm to 8:00pm on Friday, 15 January 1988. He was able to confirm that it was still on the roadside at around 10:30pm to 11:00pm, as he recalled going out to the car, possibly to get items out of it.
83. Mr Sanderson also reported to police, that same day, there had been wrapped Christmas presents and related items left in his car, including:
- (1) Two brown towels and one brown bathmat (wrapped in Christmas paper).
 - (2) One patchwork cushion (brown, orange and pink).
 - (3) One book and lavender bag (wrapped in Christmas paper).
 - (4) One silver plated eight cup tea pot (wrapped in blue paper with a star motif).
 - (5) One book (not wrapped).
 - (6) One lace tablecloth (wrapped in wedding paper) and card.
 - (7) Other small items (possibly socks etc).
84. These "*presents*" were given to Mr Sanderson by his mother, during a recent Christmas visit, to be given to his brother and sister-in-law. He believes they were either on the backseat of the car or in its boot when he parked it on 15 January 1988.
85. Mr Sanderson said it would be easy to force entry into the Torana as the "*rubbers around the quarter windows... were in a poor condition*".

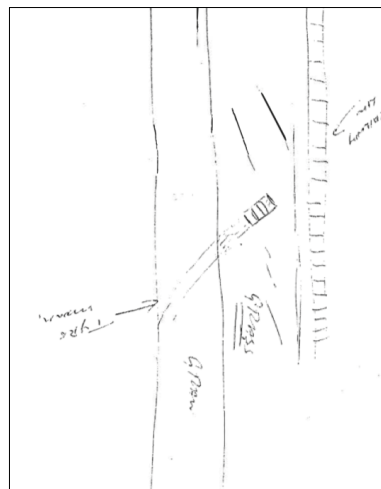
86. Mr Sanderson's key for the Torana was not missing. The exact means by which the car was started is not known however, it seems it would not have been difficult to do for someone mechanically minded.
87. A nearby resident, Helen Kelly, who resided at 80 Wilburtree Street, next door to Mr Sanderson's partner, in a written statement to police dated 14 June 1988 (almost six months after Mark's death), said she knew the sound of the Torana and was awoken on 16 January 1988 by the sound of it starting. She said she looked "*at my clock and saw that it was 3:47am*" and then heard it drive off towards Goonoo Goonoo Road.
88. In her oral evidence on 23 November 1988, Ms Kelly said she heard the car "*started and stalled and then maybe, as I said I don't really remember whether that be once or twice*" and then driven away towards Churchill Street. She heard no voices or doors opening, just the starting of the car.
89. Aside from Ms Kelly's oral evidence, there is no known notebook record, or any other contemporaneous record, of her reporting the time she heard the Torana starting close in time to Mark's death.
90. It is not clear to me, on the face of the available evidence, how Ms Kelly was able to recall the time she saw on her clock when she made her written statement six months later (14 June 1988). Ms Kelly's recollection of the time she heard the car start is significant, given its proximity to the time Mark is said to have parted company with Ms White. However, in the absence of strong corroborative evidence and the fact that it is not clear that Ms Kelly recalled the time prior to giving oral evidence, I place limited weight on the specific time she proffered.

Rollover of the white Torana off Warral Road (near the train tracks)

91. Mr Sanderson's white Torana was later found by police about 1.5km northeast of the Bithramere Level Crossing. This was just north of Timbumburi Creek Bridge Crossing. The vehicle was positioned between Warral Road and the train tracks on the northern side of the track. Photographs taken on 17 January 1988 are extracted below:



92. An examination of Warral Road's gravel roadway and the condition of the Torana itself showed it had been driven north along Warral Road when it veered off the road, rolled and came to a stop in the position (as depicted in the above photographs).
93. The position of the Torana relative to the tracks and the marking on the roadway were depicted in a sketch made by Detective Dallas Lamey on 17 January 2017:

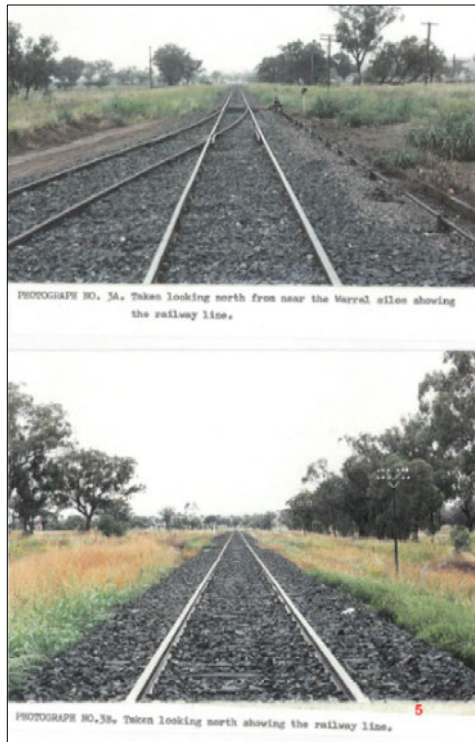


Train track between Bithramere Level Crossing and West Tamworth

94. A single train track ran between Werris Creek and West Tamworth Stations.
95. The track has sleepers with ballast (rock gravel) along its base to absorb weight and vibration.
96. Photographs from a viewpoint of the tracks near the Bithramere Crossing, as of 17 January 1988, are extracted below:



Facing southwest towards Werris Creek Station



Facing Northeast towards West Tamworth

97. Along that stretch, the track is flanked by Warral Road (north side) and Werris Creek Road (south side).
98. The Timbumburi Creek Bridge Crossing is located between the Bithramere Crossing and West Tamworth Station noting that the images below do not depict a roadway that passed under the bridge between Warral/Werris Creek roads in January 1988 or the bridge crossing in 1988:

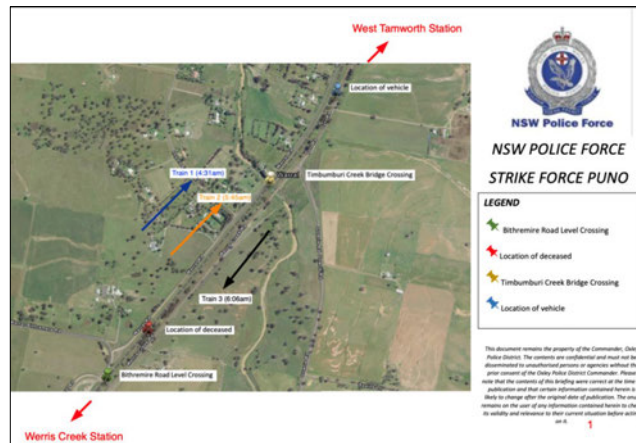


99. The stolen Torana was found abandoned by the tracks just north of the Timbumburi Creek Bridge Crossing. I had the opportunity to visit this area during the inquest.

Trains passing between Bithramere Crossing and Timbumburi Creek Bridge Crossing between about 4:30am and 6:05am

100. Between 4:30am and 6:00am on 16 January 1988, three diesel-electric trains moved along the single track between Bithramere Road Level Crossing and West Tamworth Station.

101. The movements of the trains within this area are depicted on the following map:



102. These were non-passenger trains pulled by diesel-electric locomotives.

103. The lead locomotive had cabins at both ends with a nose at one end and a flat end at the other.

104. Each locomotive end had a steel cow catcher at its front base, with the lowest areas of the locomotive's undercarriage being its cow catcher and brake rigging.

Train 1 ('No.5173') northbound at about 4:31am

105. Train 1 passed through Werris Creek Station at about 3:58am northbound towards West Tamworth.

106. Train 1 was driven by Peter McNamara with Greg Nielson in the observer position. Both were positioned in the front locomotive at the forward end, looking out the window onto the track ahead. The lead locomotive had its nose end facing towards West Tamworth (not its flat end).
107. Mr McNamara described the nose end's viewpoint as follows:
- "The windscreen is set back, that's right, and you see there, when you go in the doorway, you see where the door level is at the bottom, you step up onto a - your seat was up on a bit of a raise. You had to step up onto that and you were sitting right up. The vision wasn't as good as the locomotives of today anyway."*
108. Mr McNamara was on the left-hand side facing towards West Tamworth (north side of the track), with Mr Nielson on the right-hand side (south side of the track).
109. Significant noise entered the cabin, where the driver and observer were seated, from the locomotive's engine. To speak with each other, the driver and observer had to raise their voices to be heard by each other.
110. At around 4:31am, Train 1 passed by Warral Siding. It was still dark at the time. Mr McNamara dimmed the front locomotive's headlights to low beam on approach to the Timbumburi Creek Bridge as a truck approached in the opposite direction on either Warral or Werris Creek Roads. The train was travelling at about 80 km/hr at this point.
111. Shortly after passing Timbumburi Creek Bridge, Mr McNamara saw a stationary car adjacent to the railway fence, near to the tracks, on the north side of the tracks. Mr McNamara mentioned his sighting of the car to Mr Nielson. Mr Nielson stood up to look but could not sight the car at this time.
112. I am satisfied that the car seen by Mr McNamara was the stolen Torana belonging to Mr Sanderson.
113. Mr McNamara's sighting means the car had come to a stop at this position by about 4:30am, being about one hour after Mark is said to have parted company with Ms White in Wilburtree Street. Neither Mr McNamara or Mr Nielson reported seeing any person in this area at this time, seeing items on the track between Bithramere Crossing and Timbumburi Creek Bridge or hearing anything suggestive of the train striking anything on the tracks.

114. Accordingly, I find that the items later seen on the track, by those in Train 2 at 5:45am, were put on the track sometime after 4:30am.

Train 2 ('No. 7 Mail from Werris Creek to West Tamworth'/Locomotive No.4464) northbound at 5:45am

115. At around 5:15am, Train 2 departed Werris Creek Station, travelling northeast towards West Tamworth Station.
116. Train 2 was driven by William Hall (now deceased) with James Jansen in the observer position.
117. The front locomotive (No.4464) was facing with its nose end. Mr Hall was on the left-hand side facing towards West Tamworth (along the north side of the track) with Mr Jansen in the observer's side on the right-hand side (south side of the track).
118. Train 2 passed by Warral Siding.
119. On approach, Mr Hall sounded the Klaxon (whistle) and turned off the front headlights owing to a semi-trailer approaching in the opposite direction along Werris Creek Road.
120. Mr Hall, in his written statement dated 28 January 1988 (also the earliest known account by him), said:

*"... Approaching the [Bithramere Crossing] I sounded the whistle on the locomotive and after passing over the crossing because of a semi approaching on the adjacent road running parallel to the railway line I turned the head light out. Just as the rays of the headlight were ceasing I observed what appeared to be a white box laying the [sic] fourfoot (note: 'fourfoot' refers to the steel rail tracks). **As the units passed over it I heard the noise of slight thud similar to hitting a rabbit or a cat. ...**" (emphasis added)*

121. Mr Hall, in his oral evidence in the 1988-1989 Inquest, said:

"[I saw] a white box or white object which looked as though it was square - - - we're approaching this thing and I've got a semi coming up on the righthand side, and naturally as soon as I seen the crossing clear, I flipped the headlight off and as the rays are dying out of the light, what appeared to be a white box

or something laying in the middle of the track, it only looked small but then again, it's hard to pick out at 60 mile an hour".

(Note: 60mph translates to 95.5kph)

122. In a written statement dated 28 January 1988, Mr Jansen said:

"As the headlight dimmed I observed what I thought to be a couple of white boxes in the middle of the fourfoot but as our train was travelling at approximately [100kph] and heavy rain was falling [windscreen wipers operating] I stood up to try and get a better view and as the nose of the locomotive passed over it we heard a slight thud similar to hitting a sheep or small animal."

123. Mr Jansen, in his 1989-90 Inquest, said:

"... it happened so quick sort of, like we just come over a bit of a rise there to level, the road crossing. And with windscreen wipers going and it was sort of night time and sort of was on low beam at the time. All we could see was sort of, well looked to me like a couple of white boxes...The driver said "What's that up ahead", I said "it looks like a couple of white boxes."

(emphasis added)

124. Neither Mr Hall nor Mr Jansen reported seeing any person on or around the tracks. However, given the train's speed (about 100kph or 27.8 metres per second), the conditions (dark/heavy rain/headlights dimming) and the limited view from the front windows (with windscreen wipers operational), I cannot exclude the possibility that a person or persons were on or near the tracks based on their observations alone.

125. Regarding the sound of the "thud", in his recent oral evidence, Mr Jansen said, *"the noise wasn't consistent with hitting a box or a box shouldn't make a noise. You know, not when you said – you shouldn't be able to hear a noise when you're sitting on an engine like that".*

126. After passing the Timbumburi Creek Bridge they each saw a stationary white car on the north side of the tracks (train driver's side). I am satisfied this was the stolen Torana which Mr McNamara had seen earlier.

127. Train 2 arrived at West Tamworth Station at about 5:50am.

Train 3 ('No.5420 Freight' / Locomotive No.44100) southbound at about 6:05am

128. At about 6:00am, Train 3 left West Tamworth Station heading south-west to Werris Creek Station.

129. The lead locomotive was No.44100 with William Hall in the driver's position and James Jansen in the observer position. The maximum approved speed for this trip was 80kpm.

130. Peter McNamara and Greg Nielson were in a rear cabin, travelling as passengers, to return to Werris Creek Station.

131. Train 3 had 10 vehicles equal to about 174.6 metres in length with a combined weight of 310 tonnes being pulled by the locomotive.

132. According to Mr Jansen, Train 3's lead locomotive (No.44100) led from its "*Number 2 End*" being the end with "*no nose*". This means Train 3's leading locomotive had its flat end leading.

133. A locomotive (4473), an identical make/model to that of locomotive 44100, was inspected in 2024 by Dr Andrew McIntosh (Biomechanical Expert). Images of the "*nose end*" and "*flat end*" are extracted below:



Sighting of Mark within the tracks

134. Mr Hall and Mr Jansen said they decided, before they reached Bithramere Crossing, to "*have a closer look at the white boxes*" they earlier struck in that area.

135. On approach they were travelling at about 70kpm (19.44 metres per second).

136. It was still raining at the time, although some daylight was visible at this time.
137. Both Mr Hall and Mr Jansen say they suddenly saw Mark in the middle of the tracks.
138. Mr Hall, in his 28 January 1988 written statement, said:

“Approaching the place where I had noticed what I thought was a white box with the speed of my train being about 70[kph] I noticed a piece of rag or paper in the middle of the fourfoot. As I got closer I recognised the shape of a human body seeing shoes, jeans etc. But at the speed I was travelling I could not recognise whether it was male or female so I reduced the speed of the train and brought it to a stand with what I considered the rear vehicle of the train to be clear of the actual body...” (emphasis added)

139. Mr Jansen, in his written statement dated 28 January 1988, said:

*“As we approached this location I observed bits of rag **in the middle of the fourfoot**. When the locomotive was practically right on top I observed it to be that of a human body but I couldn’t discern whether it was male or female....As soon as I had recognised that it was a human body I turned my head away as I couldn’t bear to actually look at it again as the train passed over it...”* (emphasis added)

140. The period Mr Hall and Mr Jansen saw Mark before passing over him was likely a matter of seconds.

141. Mr Jansen, in his 2024-2026 evidence, said he first became aware of Mark being on the track when they were “*virtually right on top*” of him. Asked if he noticed any movement, said:

“No well it happened so quick, you know the speed you’re going, you sort of... when you’re looking straight down there’s no nose in front of you and you’re sorta looking straight down like a big semi trailer - - - So you really can’t see much until you’re right on top of it.”

142. He estimated they were about 100 metres from Mark, who initially appeared to him like “*bits of rag*”, when he (Mr Jansen) first noticed him. He described Mark being “*in the fourfoot*”, that is, within the track lines themselves.
143. Mr Jansen and Mr Hall thought Mark’s position was “*roughly*” close to where they had earlier sighted the boxes in Train 2.
144. Neither Mr Hall or Mr Jansen reported seeing any movement from Mark on their approach, however I find it difficult to exclude the possibility of movement by Mark on their observations alone, given the speed they were travelling and their limited opportunity for observation.
145. Neither reported hearing a “thud” sound like that they reported hearing earlier (in Train 2).

Train 3 stops

146. Mr Hall brought Train 3 to a stop clear of Mark’s position on the tracks. Train 3’s front end (locomotive No.44100) stopped just north of the Bithramere Crossing. This was at around 6:05am.

Movements of the train personnel after Train 3 stopped

147. Once pulled over, Mr Hall and Mr Jansen contacted the Control Officer at Broadmeadow by radio and reported there was a body lying on the tracks. They advised they had stopped clear of Bithramere Crossing at Warral.
148. On the accounts of Mr Hall, Mr Jansen, Mr Nielson and Mr McNamara, given in written statements and confirmed in sworn evidence at the inquest, all four remained on or near to the train. None approached Mark on the tracks.
149. According to Mr Nielson, shortly after the train came to a stop, Mr Jansen entered their cabin stating, “*we have just run over somebody*”. Mr Nielson and Mr McNamara listened to two-way radio communications and then walked up to the front locomotive cabin and spoke with Mr Hall (*which is when he mentioned the box on the track and sighting a body within the fourfoot*).
150. Mr Nielson and Mr McNamara returned to their cabin for a time until they were requested to relieve Mr Hall and Mr Jansen in driving Train 3 back to Werris Creek, which they did, leaving the scene about 7:10am.

151. As the totality of the evidence suggests none of the occupants of Train 3 exited and approached Mark, I am satisfied that they can be excluded as having placed a towel or fabric beneath Mark's head which was subsequently observed by persons who attended the scene.
152. Mr Hall and Mr Jansen's evidence of hearing a thud which they recognised as the sound of hitting a small animal while driving Train 2 is alarming and is an issue to which I will return

Mark's position on the track (after the train pulled over)

153. Mark's location on the track was measured on 18 January 1988 as 334 metres (approximately) northeast of the Bithramere Crossing.

Glen Bryant's arrival at about 6:15am

154. Glen Bryant, the Assistant Station Master at the West Tamworth Station, was notified by radio of there being a "*body on the line*".
155. Mr Bryant rode a motorcycle to the scene. He estimates he arrived there at around 6:15am.
156. Mr Bryant pulled up on Werris Creek Road and walked across the ground (not roadway) towards the stationary train.
157. Mr Bryant did not report seeing anyone outside the train in the area.
158. In his 2024-2026 Inquest evidence, Mr Bryant described crossing over "*wet grass and... there was a lot of – there was mud. A lot of red mud there*" to reach the rear end of the train.
159. Mr Bryant arrived before police and paramedics. He is the first known person to arrive on the scene and to have approached Mark after Train 3 stopped.
160. Mr Bryant approached and saw Mark within the tracks.
161. In a statement completed on 22 November 1988, Mr Bryant said there was "*very slight drizzle*" at the time, but it did not require him to wear a raincoat. He believed Mark's clothing appeared "*damp but not saturated*".
162. Mr Bryant approached Mark on the tracks and checked for 'signs of life'. He observed no signs of breathing, but thought he felt a pulse on Mark's neck.

Arrival time of police

163. The exact time police officers arrived at the scene was not electronically captured at the time (which typically occurs now), nor is there any known contemporaneous diary note recording the same. The exact arrival times are those estimated and recorded in the respective individual's statements and oral evidence which I canvass below.

Constable Guyer's arrival about 6:20 to 6:25am

164. Constable Gordon Guyer (**Const Guyer**) arrived on scene in a vehicle on his own. On his estimate he arrived at about 6:25am.

165. Const Guyer, who had been a police officer for about 3 years, was working an 11:00pm to 7:30am shift.

166. Const Guyer, in his oral evidence on 19 October 1988, said "*it was pouring rain*" most of the night (16 to 17 January), but that the rain had subsided to a "*light sprinkle*" by the time of his arrival.

167. He believes he pulled over on or near Bithramere Crossing, near to the front end of locomotive No.44100 (train's front end).

168. Const Guyer spoke to Mr Hall in the front locomotive and then walked to the rear of the train. He saw Mr Bryant further along the track near to Mark and approached that position.

169. Const Guyer says he saw Mark within the tracks and saw head wounds and a large laceration to Mark's left knee and left wrist.

170. After Mr Bryant said he "thought" he had detected a pulse, Const Guyer felt Mark's neck and believed he detected a "*slight pulse*".

171. In his oral evidence on 9 April 2024, Mr Bryant said he did not recall observing signs of chest movements or breathing by Mark.

172. Const Guyer returned to his vehicle and was advised by Tamworth Police Station over radio that an ambulance was enroute.

Senior Constable Alan Pitt's arrival on scene (shortly after Const Guyer's arrival)

173. Senior Constable Alan Pitt (**SC Pitt**) then arrived on scene in a separate vehicle and spoke with Const Guyer (near to Const Guyer's vehicle).

174. The exact time of his arrival cannot be ascertained; however, I am satisfied it occurred before paramedics arrived.
175. SC Pitt was the most senior officer at the scene.
176. After a request was made to expedite the ambulance, Const Guyer walked over to Mark's position on the tracks. He was joined there soon after by SC Pitt.

Checks for signs of life and observations of chest movements

177. Const Guyer and SC Pitt said they briefly observed chest movements and gasping sounds coming from Mark. This was before the paramedics arrived. For instance, Const Guyer said he saw "*slight chest movements*" and heard two distinct gasping sounds.

Paramedics arrival and Mark confirmed deceased (about 6:25 to 6:35am)

178. NSW Ambulance paramedics Julie Bennett and Jonathon Powell travelled together in an ambulance, arriving on scene between about 6:25am and 6:35am.
179. Ms Bennett, in her 1988 statement, described her checks of life on Mark as:

"Whilst making those visual observations I checked for the patients vital signs. I firstly checked for painful stimuli by pinching and tapping the patient in a number of places with no result. I noticed his skin was cold and wet. There was no chest movement and no signs of breathing. I checked the carotid and radial pulse and found nothing. I then checked for blood pressure and obtained a 0/0 blood pressure reading. I checked for pupil reaction and found his pupils fixed and dilated. I checked with a stethoscope for an apex beat and any breath sound and found nothing. After making all these observations and carrying out these tests I once again checked for blood pressure and pulse and it was then that I formed the opinion that [Mark] was deceased."

180. Paramedic Powell confirmed he completed his own checks after Paramedic Bennett and similarly found no signs of life.

Towel or fabric observed beneath Mark's head and blood sighted at the scene

181. The persons who attended on Mark at the tracks, in their evidence in the 1988-1989 Inquest, referred to the presence of a bunched up towel beneath Mark's head on the tracks. No photograph was taken of Mark or of the items in situ at the scene.
182. Mr Guyer described the towel that Mark's head was said to be resting on as "*blood soaked*". SC Pitt also described the towel as "*saturated in blood*". Mr Bryant stated that "*there was a good amount of blood on the towel*" but denied that it was "*saturated*". The blood on the towel was observed as appearing congealed. Mr Bryant and SC Pitt each observed some blood, about the size of a 50 cent piece, on the tracks when Mark was moved to the ambulance. There was otherwise no other blood reportedly seen on the tracks or ground where Mark was found.

SUBMISSIONS AS TO BLOOD AT THE SCENE AND TOWEL

183. Counsel Assisting submits that I would have regard to the observations of Mr Bryant and SC Pitt regarding the amount of blood they observed at the scene.
184. Mr Razi, on behalf of Mr Donald Craigie, submits given the evidence I would be satisfied that the towel under Mark's head had a good amount of blood on it, the blood was not fresh but congealed and there was no other blood at the scene other than on Mark's jeans and a small spot on the sleeper. Further, Mr Razi submits that it is unlikely that any rain would have washed away blood that had been at the scene and therefore it is likely that there was no blood on the tracks around Mark's body.
185. Having regard to the totality of the evidence and in particular the evidence of Const Guyer, SC Pitt and Mr Bryant, I am satisfied that there was a towel with blood present at the scene. That towel has been variously described as "*blood soaked*", "*saturated*" or there being "*a good amount*" of blood present. However, I am not able to safely conclude that the blood was 'fresh' or 'congealed' on the basis of the lay opinions before me.
186. Additionally, I accept that the only blood observed was a small spot at the scene and on Mark's jeans. I consider this lack of blood troubling and difficult to reconcile with the expert evidence canvassed below (at [244], [333]-[335]) as to the blood loss which likely resulted from Mark's head injury. In particular, the weight of the expert evidence indicates that the pallor of Mark's organs was indicative of significant blood loss, however, the witness testimony and documentary material does not demonstrate there was a significant quantity of blood at the scene. Accordingly, this may suggest

external human involvement at the scene prior to the arrival of Train 3. This possibility is supported to some limited degree by the evidence of Mr Hall and Mr Jansen who both describe a thud like the sound of hitting an animal while travelling on Train 2, but only notice a body on the tracks while travelling on Train 3.

Items found on Mark

187. Const Guyer searched Mark's clothing and found a birth certificate in the name of Raymond Irvine within a small plastic identification folder. He also said he found a black comb and a pink lighter in Mark's pockets. Const Guyer said he placed these with other items picked up off the ground around Mark.

Items found near to Mark on the tracks

188. Mr Bryant and Const Guyer picked up items that were scattered along the line within around 10 to 15 metres of Mark.

189. Const Guyer, in his statement dated 1 October 1988, said these were placed in a pile and then moved to his vehicle. The items included:

"... a cassette tape which was found a short distance from [Mark's feet] and... a number of other items within 15 metres north of [Mark] close to the railway line, including a lace tablecloth, some loose book pages, two towels and a pair of broken sunglasses..."

190. These items were contained in an exhibit bag and tendered on the first day of the inquest (Exhibit 4 of the 1988-89 Inquest). They were not available to this Inquest.

191. Const Guyer said, in his 1988-89 Inquest evidence, he believed these items were not subjected to fingerprint examination as *"they were so wet"*.

Pink lighter

192. There are no known notes made on 16 January 1988 recording the exact items that were found on Mark.

193. Const Guyer, in his statement completed 1 October 1988, said he found a pink lighter in Mark's pocket.

194. A pink lighter was tendered and marked as its own exhibit in the First Inquest (Exhibit 5 in the 1988-89 Inquest).

195. In his evidence in the 1988-89 Inquest, Const Guyer said he put the pink lighter with the pile of other items he collected with Mr Bryant. A couple of days later, family members of Mark attended the police station and handed in a pink lighter they reported finding at the tracks. Const Guyer believed this was the same lighter he had removed from Mark's pocket and suspected it had been dropped or inadvertently left at the track when the other items were removed.
196. In his evidence before me, on 10 April 2024, Const Guyer said he could still "*clearly remember finding the comb and cigarette lighter and the plastic container containing the birth certificate*" on Mark's person (that is, in the jeans' pocket).
197. SC Pitt said he was present at the police station when Mark's family provided police with the pink lighter. SC Pitt told Const Guyer of the lighter, and Const Guyer said to SC Pitt that the lighter had been taken from Mark's pockets that morning.
198. Mr Bryant, in his 1988 statement, said he saw Const Guyer remove a comb and pieces of paper (within plastic) from Mark's pockets, but made no mention of seeing a lighter removed. In his 1988-89 Inquest evidence he said he did not see a pink lighter removed.
199. Detective Lamey inspected the tracks on 17 January 1988. He made no record of seeing a lighter at the scene. I note that if the lighter was inadvertently dropped when items were taken by police on 16 January 1988, it was not observed on the tracks by Detective Lamey.
200. I accept Counsel Assisting's submission that the absence of contemporaneous records of what was found on Mark, and the absence of photographs of those items in situ is but one instance of the less than satisfactory investigative practices that were applied on 16 January 1988. I will return to the investigative deficiencies below in my consideration of the respective police investigations into Mark's death.

Train 3's departure from the scene (7:07am)

201. At about 7:07am, Mr Bryant authorised the train to continue its journey to Werris Creek Station.
202. SC Pitt was consulted about this action beforehand and approved, or did not oppose, the train's departure. SC Pitt was questioned before me about his decision to allow Mark to be taken from the scene and for the train to be moved. His recollection appeared to be that if he had considered there to be suspicious circumstances he would have called out the Detectives. He agreed that he did not.

203. Train 3 was driven by Mr McNamara and Mr Nielson, with Mr Hall and Mr Jansen riding as passengers. The train arrived at Werris Creek Station at about or shortly after 8:00am.
204. Train 3, particularly locomotive No.44100, was not examined by crime scene officers, nor were scene photographs taken of the train or its front end in situ, before it left the scene. Train 3 was not subjected to forensic examination on its return to Werris Creek Station. Nor were the other locomotives that had led Trains 1 and 2 that morning.
205. The only evidence before me of checks made to locomotive No.44100 was that of:
- (1) Mr Bryant (said he had a quick look at the front end of the train on arrival but did not observe any blood etc);
 - (2) SC Pitt (said he examined the 'cow catcher' at the scene but didn't see signs of blood, etc.);
 - (3) Russell Roberts (NSW Rail District Manager who said he inspected locomotive No.4464 (N7 mail/Train 2) on 18 January 1988 and saw no signs of blood, etc.); and
 - (4) Henry Bruce (NSW Rail employee who inspected locomotive No.44100 on 16 January 1988 at Werris Creek Station and saw no signs of blood, etc.)
206. In addition to the passage of time since Mark's death, the lack of contemporaneous records and forensic examination of the trains presents a further barrier to ascertaining the cause and manner of Mark's death. This is an issue to which I will return.

Mark is taken to Tamworth Base Hospital (about 7:10am)

207. According to statements made in 1988 by Paramedic Julie Bennett and Const Gordon Guyer, Paramedic Julie Bennett asked police if they (paramedics) were permitted to take Mark's body to Tamworth Base Hospital for certification of death. SC Pitt made inquiries and then advised her that paramedics could transport Mark to the hospital.
208. Mark was placed in the ambulance at about 7:10am and conveyed to Tamworth Base Hospital. No scene photographs were taken of Mark or the items on the track *in situ*.
209. While paramedics had already come to this decision, Mark was formally certified deceased by Dr Needham at about 7:35am while he was in the rear of the ambulance.

He was then conveyed to the mortuary. Mark was determined to have died because of severe head injuries.

Identification

210. After Mark was taken by ambulance, SC Pitt and Const Guyer returned to Tamworth Police Station and continued making inquiries about Mark's identity. Mark was formally identified to police by Mr John Maunder at about 9:50am. At this point, police confirmed it was Mark, not Raymond Irvine. Police also determined at some point that day that Mark had been with Ms White until about 3:30am that morning.

Inspection of the White Torana on the morning of 16 January 1988

211. Sometime that morning, after Mark was taken from the scene, Const Guyer and SC Pitt learnt of the white Torana next to the tracks north of Timbumburi Creek Bridge.

212. The white Torana was found on the side of Warral Road, on the northern side of the track, about 1.5 km along the road/track north of where Mark's body was found (located north of the Timbumburi Creek Bridge Crossing).

213. SC Pitt and Const Guyer attended and inspected the car. The observed wheel marks on the Warral Road (gravel), freshly turned earth on the southern side of the vehicle and panel damage were consistent with it having rolled before coming to a rest near the tracks. The vehicle's windscreen was out and lying on the ground.

214. Const Guyer, in his statement dated 1 October 1988, described what he saw as follows:

"... We saw that it had extensive damage to all panels. It appeared that the vehicle had rolled over whilst travelling in a northerly direction in Warral Road... because of the wheel marks and freshly turned earth on the southern side of the vehicle. Because of the rain that had been falling that morning and the fact that the windscreen was out and lying on the ground, the inside of the vehicle was saturated. There was no blood or physical signs that any person had been injured as a result of the accident. A search of the surrounding area gave a similar result."

215. Mr Sanderson, in his evidence before me, confirmed the car had no damage to its front windscreen and panels before it was stolen.

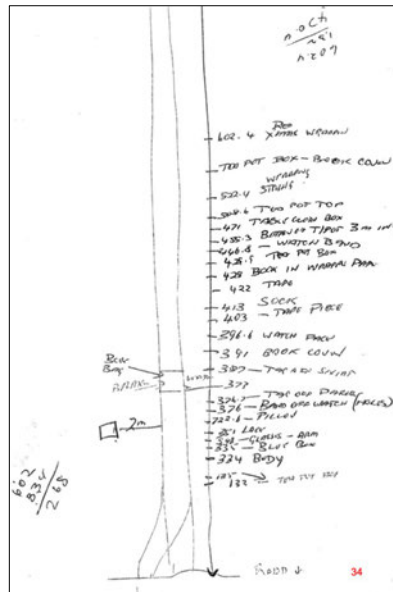
216. No arrangements were made by police to have the Torana removed from the scene to be stored out of the elements.
217. No forensic examination of the Torana was undertaken for fingerprints or testing for the possible presence of blood (e.g., that might not have been immediately visible).
218. In the 1988-89 Inquest, when asked whether fingerprint examination of the Torana was considered, Const Guyer said in evidence *"I think I can recall us having our fingerprint expert go out to the car but I [can't] be sure. I think he was informed."*
219. Neither SC Pitt, the senior officer to Const Guyer, nor any other police officer, including senior police at Tamworth Station with supervisory responsibility for SC Pitt, requested the vehicle's removal from the scene for preservation and possible examination. This is an issue to which I will return.

Mr Sanderson confirms vehicle's theft and identifies items

220. SC Pitt and Const Guyer spoke to David Sanderson that same day. Mr Sanderson confirmed the vehicle's theft while it was parked on the roadway near 78 Wilburtree Street, where he had stayed overnight. Mr Sanderson viewed the items collected at the scene by Const Guyer and Mr Bryant and confirmed that *"some of these items"* had been in his car. There is no evidence that attempts were made to properly identify whether all the items found were connected with the car or whether items were missing.

Detective Sergeant Lamey's attendance on Sunday, 17 January 1988

221. Detective Sergeant James Lamey (**DS Lamey**) went to the scene with SC Pitt on Sunday, 17 January 1988. He inspected the tracks north of the Bithramere Road Crossing and took photographs at the scene.
222. DS Lamey, using Bithramere Road Crossing as a point of origin from which to take measurements, made a sketch of items observed alongside the track and recorded measurements. DS Lamey's sketch did not include the items removed from the scene by Const Guyer the previous day.
223. I consider DS Lamey's sketch to be a significant piece of evidence as it is the only contemporaneous record available to me as to the positioning of Mark when Mr Bryant and the first responders attended on him. DS Lamey's sketch also depicts the location of some of the items found along the track. Given its significance, DS Lamey's sketch is reproduced below:



224. DS Lamey's recorded position of Mark's body, 334 metres northeast from Bithramere Crossing, was indicated to him by SC Pitt. There are no known close-up photographs of the spot where Mark was reportedly found. DS Lamey did not report seeing blood at the scene when he attended.
225. DS Lamey's sketch noted items extending up to about 600 metres northeast of the crossing, including "Xmas wrapping", "tea pot top", "book in wrap paper", "pillow", "blue box" and "tea pot box". The furthest item was about 268 metres north of Mark's position along the tracks. In close proximity to Mark's position was a "blue box" and "tea pot box".
226. DS Lamey took photographs at the scene of the tracks, but not of the specific items he noted in his sketch.
227. In the 1988-89 Inquest, DS Lamey said in evidence that "we picked up as much of the items we saw which was of any significant size". These items were placed in brown bags. These were items contained within a carton box, which were tendered and marked Exhibit 11 in the 1988-90 Inquest.
228. Fingerprint examination of these items was not attempted. During the first Inquest, Constable Guyer stated that he believed items were not fingerprinted because they were wet.

DS Lamey's inspection of the Torana on 17 January 1988

229. DS Lamey, in his written statement dated 12 October 1988, described his inspection of the Torana as follows:

“... most of the outside panels had been damaged, in particular the turret, bonnet and nearside front guard. I noticed that the headlight switch was pulled out and the handbrake was pulled on. I took a series of photographs of the vehicle showing the damage, light switch and handbrake.”

230. DS Lamey reached a similar opinion of the vehicle's movements before it came to a stop near the tracks as that formed by Const Guyer and SC Pitt, namely it had been travelling north on Warral Road and moved across the roadway, through the table drain in the grass, and rolled over back on to its wheels. He did not observe anything that indicated any passenger had been injured (e.g. signs of bloodstains).
231. DS Lamey did not undertake a fingerprint examination of the Torana. He said in his 1988-89 Inquest evidence that *“in my opinion everything was in a wet, wettened condition, it was pointless to even attempt to fingerprint anything in the vehicle”*, and *“[when I arrived at the car] some 24 hours later and during that period of time there had been considerable amount of rain... It had been left out overnight, there was nothing in that vehicle that I considered worth fingerprinting”*.
232. DS Lamey, in his statement and evidence on 19 October 1988, made no mention of seizing any items from the Torana; however, SC Pitt, in his 1988-89 Inquest evidence, said that items were removed from the Torana's backseat and taken to Tamworth Police Station for fingerprint examination. Detective Sergeant John Stanford gave evidence that he examined these items, which consisted of *“two jars, one bottle, one radiator cap, one P-plate, one bangle, one keyring and one car freshener”*, however no fingerprints were found.
233. No request was made at this time for the Torana to be moved from the scene to a site out of the elements or that it be covered.
234. It appears on the evidence that the Torana remained for some weeks next to the tracks.
235. Mr Sanderson, in his 2024-2026 Inquest evidence, said he eventually had the vehicle towed from the scene and later sold it to a wrecker in Tamworth.

DS Lamey takes photographs of Mark at the mortuary on 17 January 1988

236. DS Lamey also attended the Tamworth Base Hospital mortuary on 17 January 1988 and took photographs of Mark. DS Lamey described Mark's clothing and appearance as follows:

"[Mark] was still dressed in a white coloured 'T' Shirt and blue jeans, no shoes. The body had numerous injuries to it, including the top of the front of the head, left shoulder, both wrists and left knee. I also saw a black grease type substance on the body..."

237. One photo, which captures Mark's lower body, shows black markings visible particularly around the exterior left jeans knee area.

Weather conditions on morning of 16 January 1988

238. Various witnesses described rain of varying intensity in the Tamworth and Warral areas during the period 4:30am to 6:30am. A rain gauge at Warral (Hillsia) recorded 4.2mm rainfall as at 9:00am on 16 January 1988.

Autopsies performed in January 1988

239. Two autopsies were performed on Mark in early 1988.
240. *First*, one was completed on 17 January 1988 by Dr John Killen, a local government medical officer in the Tamworth region. Dr Killen observed external injuries, including a frontal head wound with gross skull fracture. A postmortem blood analysis of samples taken by Dr Killen revealed a blood alcohol concentration of 0.105g/ml. Dr Killen certified Mark's direct cause of death to be traumatic brain damage.
241. *Second*, one was completed on 29 January 1988 by Dr Thomas Oettle, who was a senior pathologist across New South Wales. This occurred at the request of Mark's family. That same day, Dr Oettle attended the location of the Torana, which was still in the same position it had been when it was found by police on 16 January 1988.
242. Dr Oettle's report also detailed his observations during autopsy which included:
- (1) Extensive laceration with shearing off of the frontal bone of the skull over 3cm (shear angle more distal on the left side as compared to that on the right side ("*primary area of injury*").

- (2) Skull fractures extending posteriorly (towards the rear of the skull), both superiorly (above), inferiorly (below) and laterally (extending sideways) from the primary area of injury.
 - (3) Gross traumatic haemorrhage with laceration present in the frontal lobes extending posteriorly and a "*generalised recent subdural haemorrhage... also present over the surfaces of the brain*", measuring 1cm in thickness in areas, and a "*traumatic subarachnoid haemorrhage*".
 - (4) Extensive parchment abrasion over the left side of Mark's face, being his left cheek, left side of his nose and left forehead, covering an area of 17 x 8 cm.
 - (5) The presence of grease on the left side of Mark's chin covering an area of 2 x 3 cm.
 - (6) Parchment abrasions over the lateral aspect of Mark's left upper arm extending to his left forearm adjacent to the elbow covering an area about 33 x 10cm.
 - (7) A deep laceration across the radial aspect of Mark's left wrist (10cm length).
 - (8) Parchment abrasion with grease and linear abrasions over Mark's right forearm.
 - (9) A long laceration above Mark's left knee (17cm long) (sutured).
 - (10) Superficial parchment abrasion with recent red bruising lying horizontally over the right posterior chest wall just below the scapula.
243. Regarding Dr Oettle's observation of a generalised recent subdural haemorrhage (**SDH**), this was not something Dr Killen recorded observing.
244. Dr Oettle also recorded observing:
- (1) Minimal fresh blood in air passages; intra-alveolar haemorrhage in lungs on microscopy.
 - (2) Pallor of organs.

245. Dr Oettle, consistent with Dr Killen's finding, certified Mark's direct cause of death as "*head injury*".

Clothing worn by Mark and shoes

246. There is no evidence that the clothing Mark was wearing when he was taken to the mortuary was ever kept by police as an exhibit. It seems likely the clothing was discarded or destroyed at some point. I consider this one of a number of flaws in the investigative process.

247. Detective Senior Constable Craig Dunn (**DSC Dunn**), in his review of the photographs presumably taken of Mark at the mortuary on 17 January 1988, noted the presence of what appeared to be "*grease and blood on the front of the jeans worn by [Mark]*" but no mud, grass stains or grass remnants on Mark's pants consistent with him walking through long grass.

248. DSC Dunn located a photograph of a pair of shoes (pictured on grass), however it is not known whether these were the shoes Mark was wearing when he was taken to the mortuary as there is no date or record accompanying that photograph to establish that connection. Without more it remains possible that these shoes were abandoned at the scene or even that they belonged to some other person.

SUBMISSIONS IN RELATION TO MARK'S CLOTHING

249. Counsel Assisting submits that it is not possible to discern from the photographs how wet Mark's clothing was.

250. Mr Razi, on behalf of Mr Donald Craigie, submits that Mr Bryant's evidence that Mark's clothes were "*damp but not saturated*" when he arrived at the tracks has not been countered. Accordingly, Mr Razi submits that weight should be given to Mr Bryant's evidence and I would be satisfied that Mark's clothes were damp but not saturated when Mr Bryant arrived at the scene on the morning of 16 January 1988 at around 6:15am.

251. I give some weight to Mr Bryant's observation that Mark's clothing appeared damp but not saturated. However, in my view, the degree of saturation is a subjective measurement which does not ultimately have a material bearing on my findings as to the manner and cause of Mark's death.

SUBMISSIONS IN RELATION TO THE MUD ON MARK'S SHOES

252. Counsel Assisting submits that there is no objective evidence as to how much mud was or was not on Mark's shoes when he was found at the tracks. In this regard, Counsel Assisting points to the fact there are no known photographs of Mark's shoes.
253. Mr Razi, on behalf of Mr Donald Craigie, submits that in light of the contemporaneous observations of both Mr Bryant and SC Pitt that there was no mud on Mark's shoes and the lack of evidence to the contrary (as outlined below at [275],[278]-[280]), that I would be satisfied on the available evidence that there was no mud on Mark's shoes when he was approached on the tracks on the morning of 16 January 1988 at around 6:15am.
254. I find Mr Bryant's evidence about there being no mud on Mark's shoes troubling and it raises some suspicion. However, I cannot ascertain with any degree of certainty the amount of mud on Mark's shoes. However, I will consider this evidence in further detail below.

Torana's boot mat

255. Some weeks after 16 January 1988, the family of Mark brought the rubber floor mat from the boot of the Torana to the police station. Family reported to police they had removed it from the Torana, which remained on site next to the tracks, as they suspected it possibly had blood markings on it. DS Lamey, in his evidence in the 1988-89 Inquest, said he rubbed the marking with a 'hemi-stick' to test, but it did not indicate the presence of blood. Without more, I have no confidence in whatever testing took place.

G. 1988-1989 Inquest

256. The inquest hearing ran over 19 October 1988, 23 November 1988 and 6 September 1989, with summing up and findings delivered on 6 September 1988.

Audio recordings/transcript

257. Audio recordings of the hearing days no longer exist. A transcript of the oral evidence on 19 October and 23 November 1988, which was presumably obtained soon after each of those dates does exist. However, there is no known transcript for the hearing on 6 September 1989. The lack of records is unexplained and shows a very serious failure in court record keeping or storage.

Dr Oettle's evidence on Day 1 (19 October 1988)

258. Dr Oettle gave oral evidence on the first day, 19 October 1988, after the oral evidence given by the train personnel and Mr Byrant.
259. In his oral evidence, Dr Oettle said, in his view, Mark's head injuries were consistent with his head being struck by a locomotive, and he thought Mark would have been alive at the time he was struck. Dr Oettle did not express any views as to why he thought Mark would have been alive at the time he was struck.
260. Dr Oettle was examined by both the police advocate and the representative for Mark's family as to his views on which train caused Mark's head injury, the likelihood Mark was alive when Const Guyer and SC Pitt attended, Mark's positioning and the amount of blood reportedly observed at the scene.
261. In summary, Dr Oettle expressed the following views in his oral evidence:
- (1) Mark was likely alive when he suffered his head injury and his death would have been instantaneous given the severity of the injury inflicted and the force involved.
 - (2) Mark was likely lying prone within the tracks with some elevation of his head, facing toward the coming train (feet closest to the coming train), when the train struck "*very close to the top of [his] head*". This was a "*glancing injury so that the degree of force applied to the rest of the body was minimal rather than major*" with the "*majority of the impact [being] in the line of direction of the train*".
 - (3) Owing to the reports of Mr Hall and Mr Jansen, that they heard the "thud" sound as they passed over the white box in Train 2, Mark's fatal head injury was likely caused by Train 2 (about 5:45am).
 - (4) For Train 2 to have caused the head injury, Mark must have been lying on his back with his feet towards Werris Creek Station, and his head towards West Tamworth Station, when Train 2 passed over him (about 5:45am).

- (5) Assuming Mark was found on his back in the opposite direction, after Train 3 passed over, this might be explained by Mark having “*tumbled*” over as the train passed over.
- (6) It was unlikely Mark had an actual “*slight pulse*” when his carotid pulse was checked by Mr Bryant and Const Guyer. This view considered the likelihood of such checks by non-medically trained persons producing a false positive result.
- (7) It was highly unlikely Mark had attempted to breathe while Const Guyer and SC Pitt were present before the arrival of paramedics. That assumes (i) Train 2 caused the head injury (30 to 45 minutes before police’s arrival) and considers (ii) the severity of the injury (*which Dr Oettle expects would have caused instantaneous death*), (iii) the absence of observation of Mark attempting to breath beforehand (e.g. by Mr Bryant), (iv) there being no report of profuse bleeding from the head wound (*which Dr Oettle would expect assuming Mark was still breathing and therefore had a pulse rate*) and (v) the absence of any signs of life when paramedics assessed him soon after.
- (8) Assuming Mark suffered his head injury by being struck by Train 2, if he had managed to survive for another 30 to 45 minutes until Const Guyer and SC Pitt’s arrival, Mark’s “*scalp injuries would...have really bled very very heavily*”. Mark would have lost a “*tremendous amount of blood around*” and exsanguinated (“*lost just about all of his blood volume*”) in that timeframe.
- (9) Dr Oettle agreed that in terminal stages a person may exhibit a type of breathing, which results from an accumulation of carbon dioxide in the blood, which triggers a gasp-like action, however that typically occurs “*at most*” within minutes of death and not 30 to 45 minutes after death.
- (10) If it was accepted that Const Guyer and SC Pitt did observe the chest making breathing-like movements, “*the only explanation for that would have to be*

that [Train 3] was the one that [hit Mark]". However, Dr Oettle considered the most likely scenario was Mark's head injury being caused by him being struck by Train 2 (at 5:45am) and dying instantaneously (with Mark's body shifting so his head was back towards Werris Creek after Train 3 passed).

- (11) Dr Oettle thought it unlikely that Mark would have come to a resting position, after Train 2 and or 3 passed over, with a bunched up towel underneath the nape of his neck. If it was accepted that the towel was in that position, it suggested "*the possibility of an external reason*".
262. Dr Oettle primarily couched his views about Mark's movements under the train and his final positioning in equivocal terms (e.g. "*I think, I think it's possible*").
263. In concluding that Mark was likely struck by Train 2 (at about 5:45am), Dr Oettle placed weight on the report of the train operators (Mr Hall/Mr Jansen) that they heard a "*thud*" sound as they struck or passed over the white box on the tracks at about 5:45am.
264. Dr Oettle considered the minimal amount of blood observed at the scene and the minimal blood observed in Mark's airways, relative to the head injury Mark suffered, to be consistent with Mark having died instantaneously upon suffering his head injury (*rather than a period of survival after impact*).
265. Asked whether Dr Oettle would expect blood to be visible on the tracks, assuming Mark had of "tumbled" under Train 2 so he came to be lying on his back between the tracks with his feet towards West Tamworth when Train 3 approached, Dr Oettle agreed he would but that the absence of blood (other than the 50 cent spot on the tracks) could be explained by the "*very heavy*" rainfall described by the attending witnesses. Dr Oettle suggested that rainfall may have "*washed away some of the blood but not all the blood*".
266. Dr Oettle was not specifically asked to comment on whether a scenario, involving another person(s) placing Mark on the track, whether injured or deceased before the head injury was inflicted, was reasonably open based on what he observed during the autopsy.
267. It is not evident to me what Dr Oettle's expertise was to opine on the potential movement of Mark's body beneath Train 2 and/or Train 3 as one or both passed over.

Dr Oettle may have had experience attending on bodies in railway fatalities in the past however such experience was not detailed in evidence.

268. There is no evidence that, following Dr Oettle's opinion that Mark's body may have "*tumbled*" under the train, any coronial direction was given for the exact dimensions of the locomotive to be measured to test the likelihood of that scenario which is something that Dr McIntosh sought to do in the course of this inquest. On the question of whether Mark is likely to have been able to "tumble" under the train, as will become clear, I prefer the more recent evidence of Dr McIntosh which I discuss below.

Day 2 of the 1988-1989 Inquest (23 November 1988)

269. At the commencement of Day 2, the police advocate advised Coroner Byrne that a further statement had been obtained from Mr Bryant, *after* Day 1 of the inquest, following information provided to the police advocate by "*Mr Brasel [sic - Mr Bernard Brassil] and through him Mr Craigie*". Mr Brassil was then a solicitor with the Aboriginal Legal Service who had been involved in requesting the second autopsy by Dr Oettle in late January 1988.
270. Mr Bryant was recalled to give further evidence on Day 2. It is evident from the second statement and Mr Bryant's subsequent evidence that he was present in court when Dr Oettle gave his evidence on 19 October 1988 (Day 1).
271. In his second written statement dated 22 November 1988, Mr Bryant stated:
- (1) He was involved in shunting a train at West Tamworth Station at about 4:40am on 16 January 1988, and "*there was no rain of any significance*" at that time.
 - (2) He was also involved in shunting trains that arrived and departed West Tamworth Station at 5:51am and 5:57am, respectively. He recalled not needing a raincoat at that time.
 - (3) Upon his arrival at the tracks at about 6:15am, "*there was a very slight drizzle and at that time I still did not need a raincoat. His [Mark's] clothing appeared to be damp but not saturated*".

- (4) When Mark's body was removed from its position inside the "fourfoot" (tracks), he (Mr Bryant) saw "*no visible signs in the ballast of the body being moved or turned at any time*".
272. Mr Bryant, in his evidence on Day 2, said he started work about 6:00pm on Friday, 15 January 1988. His workplace, West Tamworth Station, was about 5km from the area where Mark was found on the tracks. He had approached after giving evidence during Day 1 because:
- "... [Dr Oettle] said the body had turned under the train and I don't, really don't think it could have turned under the train. Upon impact and he said that it had rained heavily...that it had rained heavily during, that the blood, the blood had washed away. Well' I don't think it was raining heavy enough to wash any blood away."*
273. Mr Bryant doubted there had been heavy rain while Mark was on the tracks, as "*his clothes weren't saturated when I got there. They were damp but they weren't saturated. They were quite damp but just weren't totally saturated*". Mr Bryant said he felt Mark's clothing when he checked his pulse. Mr Bryant would have expected more blood at the scene than there was, even allowing for what rain there was proximate to his arrival.
274. As for the ballast between the tracks, "*after the body was removed the only way you could see that there was a body [there] was the small amount of blood [about the size of a 50 cent piece]. The ballast had it been metal hadn't been turned or hadn't been swept in any way, any direction by any way whatsoever*". The ballast between the lines was capable of being "*swept as something is either dragged or pulled across it*", and he (Bryant) would have expected disturbance in the ballast had Mark's body tumbled.
275. Mr Bryant also recalled Mark "*had no mud on his footwear*" or jeans, which was significant as Mr Bryant "*walked from my car across to the line and I was covered halfway up my knee in mud and that was at quarter past six*". He expected someone moving between the Torana's position to where Mark was found would have had to cross over mud. The rain proximate to Mr Bryant's arrival would not have been

sufficient, in his view, to wash mud off Mark's shoes or jeans (assuming it had been there to begin with).

276. Regarding the towel he saw under Mark's head, Mr Bryant recalled it had "*congealed*" or drying blood on it that appeared moist.

277. I have considered the evidence of Mr Bryant canvassed above in making certain findings or observations as to the towel or fabric under Mark's head, his clothing and the mud on Mark's shoes (at [185]-[186], [251] and [254]).

SC Pitt's evidence on Day 2

278. SC Pitt was asked about the potential route someone might have taken from the rolled Torana to the area on the tracks where Mark was found. SC Pitt replied that a person could have (i) walked through the grass onto the track itself, crossed the sleeper/railway line bridge over Timbumburi Creek and then walked along the track towards Bithramere Crossing; (ii) walked along Warral Road (dirt road) and then onto the tracks or (iii) walked along Werris Creek Road (bitumen) and then onto the tracks.

279. SC Pitt confirmed the grass where the Torana came to rest was "*quite long*", but he believed it would have been possible to have walked from the Torana to the tracks without getting much mud on their shoes. He accepted there was a "real likelihood" that someone walking from the Torana to the tracks might have stopped in patches of mud or areas where the ground had been churned up by the Torana. SC Pitt did not observe any footprints in the dirt near the car.

280. SC Pitt said he did not recall noticing mud on Mark's clothing.

Mr Sanderson's evidence on Day 2

281. Mr Sanderson gave evidence on Day 2 of the 1988-89 Inquest. Mr Sanderson, at the commencement of his oral evidence, confirmed his occupation as "*service station proprietor*". There was otherwise no other detail adduced through Mr Sanderson, in his 1988 statement or oral evidence, as to his practice of leaving his Torana there for the use of staff and who his employees were.

Status at the conclusion of Day 2

282. At the conclusion of the oral evidence on Day 2, the police advocate advised the Court that there were witnesses he had intended to call who were not present at Court, and he would have to seek an adjournment "*on that basis alone*". He estimated their evidence would be completed in 30 to 45 minutes.

283. The police advocate also noted he had been provided, through the representatives for Mark's family, documents titled "transcripts and notes of conferences" with two persons named as "Mr X" and "Mr Y". The matter was adjourned with a date to be fixed.
284. Documentary evidence refers to Jack and Donald Craigie attending on a solicitor in Tamworth on 6 July 1988. The solicitor then interviewed two persons, identified as Mr X and Mr Y, who were there in the company of Sharon Porter. A typed transcript of the solicitor's conference notes with Mr X and Mr Y was subsequently forwarded to the Aboriginal Legal Service in July 1988.
285. The written summaries (some of which were redacted) referred to statements made by other persons at a party (e.g. Mary/Kathi Kaspar) about persons being present or involved in Mark's death (e.g. Eddie Davis and Wayne Kingdom).
286. Mr X and Mr Y have since been identified as being Mr Edmonds (who later joined police and assisted in the investigation of Mark's death between about 1999-2001) and Robert Brownlee. Neither were called as witnesses on the final day of the 1988-89 Inquest.

Third/last day of 1988-89 Inquest (6 September 1989)

287. Records show the following persons were called as witnesses on Day 3:
- (1) Glenn Mannion (noted to be with the army at this time).
 - (2) George Sippel (taxi driver who possibly dropped Ms Munro and Mr Tolmie home on the morning of 16 January 1988).
 - (3) Mary Kaspar.
 - (4) Kathi Kaspar.
 - (5) Arne Olsen.
 - (6) Sidney Russell (mechanic relevant to report made by Mr Olsen about statements made to him by a mechanic named 'Sid').
 - (7) Mitchell Wilder.
 - (8) Jason Muldoon.
 - (9) Wayne Kingdom.
 - (10) Eddie Davis.

(11) Detective Peter Neil Jenkins.

(12) Craig Charles Craigie.

288. There is no transcript or audio recording available of the evidence the above witnesses gave on this date. This is unfortunate for many reasons, one of which is that evidence from the taxi driver who dropped Ms Munro and Mr Tolmie home on the morning of 16 January 1988 apparently gave evidence.

Findings made on 6 September 1989

289. Coroner Byrne's recorded finding states that Mark died of "massive head injuries", caused by the train we have referred to in this Inquest as Train 2. Further he stated "the only finding I can come to is an open finding of the fact that the deceased was upon the tracks by means of his own locomotion and placed himself between the fourfoot of the line alone or was placed there by another unknown person or persons."

290. I accept that it cannot be definitively ascertained how Coroner Byrne arrived at his findings without a transcript of his remarks.

291. Coroner Byrne may have accepted Dr Oettle's opinion, or similarly reasoned, that:

(1) Mark was struck by Train 2 while lying supine on the tracks with his feet towards Werris Creek Station and his head towards West Tamworth Station.

(2) Mark would have had to be lying on the tracks on his back, with his head closest to West Tamworth, facing towards the approaching Train 2, when he was impacted and suffered his fatal head injury (*possibly with his head elevated*).

(3) If Mark's body came to be lying in the opposite direction, after Train 3 passed over, that possibly resulted from movement beneath the train.

(4) The observations of Const Guyer and SC Pitt, of agonal breathing, must not be accurate (as acceptance of this evidence would be more supportive of Mark being struck by Train 3).

292. As will become clear, this Inquest has come to different conclusions.

293. The absence of a transcript of the final day of the inquest is a very serious issue. While Coroner Byrne was a Registrar, rather than a Magistrate, the court was obliged to record and keep a copy of the proceedings. In recent years there have been a number of attempts by police and court staff to find the missing records. These attempts were ultimately unsuccessful and no reason for the absence of these records has ever been conclusively identified.

H. Expert evidence obtained during current proceedings

294. During the course of this Inquest, I had the benefit of comprehensive expert evidence from various disciplines including but not limited to biomechanics, forensic pathology and forensic toxicology. The key aspects of that expert evidence are summarised below to the extent they are of relevance to my findings as to the manner and cause of Mark's death.

Biomechanical opinion (Dr Andrew McIntosh) and related findings

295. Dr McIntosh has expertise in biomechanical analysis and frequently gives expert evidence in this capacity. Dr McIntosh was briefed in 2023-2024 in the context of this inquest.

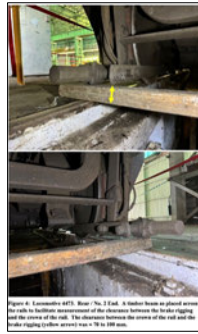
Limitations

296. Dr McIntosh noted the limitations to his analysis which included (i) the stolen Torana was not comprehensively documented at the scene or held and examined at a secure location (e.g. state of seat belts and human tissue transfer not recorded) with the quality of the available photos of the vehicle being "limited"; (ii) the locomotives were not thoroughly documented including images and (iii) images of Mark's body were limited.

Inspection of locomotive no.4473

297. On 29 February 2024, Dr McIntosh inspected another Class 44 diesel-electric locomotive (No.4473), which is understood to be of similar design to that of locomotive No.44100 as of 16 January 1988.

298. The height of the flat end's cowcatcher (pilot) to the top of the rail was measured as 140 to 150mm, with the height of its brake rigging measured at 70 to 100mm, meaning the brake rigging was lower to the tracks / ballast as compared to the cowcatcher's lower end:



299. The limited space between the ballast/tracks and the locomotive's undercarriage, being the space Mark would have had to tumble within (on Dr Oettle's evidence), is evident from the following images:



300. The height from the ballast to the base of the cowcatcher at the flat end was measured at about 280 to 290mm (Dr McIntosh in his analysis assumed a range of 280 to 320mm to allow for variation in ballast depth and wheel condition).

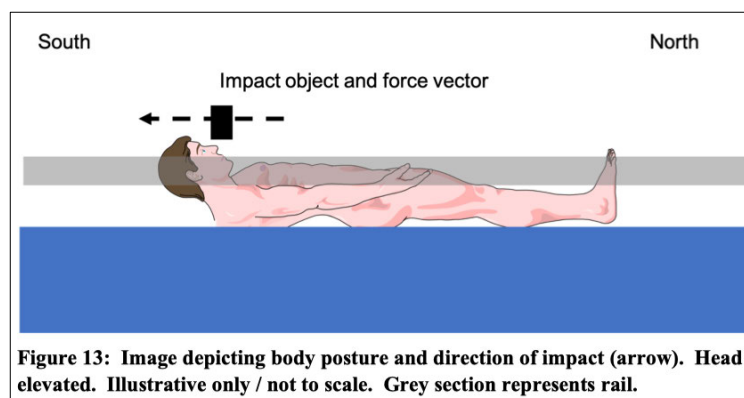
Mark's dimensions

301. Dr McIntosh noted Mark's height (165.7cm) and assumed Mark's head length as 170 to 210mm and his chest depth of about 225mm.

Mechanism of the head injury and Mark's head position

302. Dr McIntosh opined that Mark's head injuries resulted from a combination of sharp and blunt force loading of the frontal area of Mark's head.
303. The available images of Mark's body "strongly suggest...that the direction of loading was anterior-posterior (front to rear)" with the scalp pushed rearward exposing the anterior (front) intracranial area.

304. Although impact with the brake rigging likely accounted for other injuries (e.g. arm/leg lacerations), impact by the flat base of the cowcatcher most likely accounted for Mark's head injury.
305. Accepting the brake rigging has lower clearance as compared to the cowcatcher; an impact with that item would likely have resulted in a different injury because it would involve a narrower contact area.
306. There was no evidence of other "*major injuries to the face or head (except intracranial injuries)*", meaning there is no indication of Mark's head being exposed to multiple head impacts of moderate to high magnitude force.
307. Assuming Mark was lying supine on the ballast with his head and neck in a neutral posture (not elevated) and remained in that position as the cowcatcher passed over, the cowcatcher would have cleared Mark's head by about 7cm. It would also have cleared Mark's chest, but potentially by a smaller margin.
308. Mark's head injury was consistent with his head "*being elevated via neck flexion (i.e. pitched or flexed forward) when the impact occurred*" which would account for his forehead being struck, but not his nose, and the posterior-superior orientation of the head impact. Dr McIntosh depicted this in the following not to scale diagram:



309. Assuming Mark was in a supine position on the ballast with his head/neck in an elevated position, his head would need to be elevated (vertically) by a minimum of 70mm to 150mm to be struck by the cowcatcher/pilot. A flexion of about 45 degrees would put it in a position to be struck, as depicted in the above image. The chest would still be cleared under this scenario.
310. By way of elaboration, Dr McIntosh, in his 2024-2026 Inquest evidence, said:

“... So, if you had a long head and the pilot was relatively low, then the front of the head would need to be brought - elevated upwards by seven centimetres. If there was a large clearance because the pilot was sitting higher above the ballast and you had a short head, then you would have to bring the front of the head forward - upwards by 15 centimetres to hit that - to be hit by the pilot.”

311. As to a scenario whereby Mark might have been lying supine, with his head flat on the track surface, and his head lifting up just before impact (not raised beforehand) immediately before impact; Dr McIntosh could not comment.

Whether impact by Train 3 (southbound) more likely than Train 2 (northbound)

312. Having regard to the available evidence, in my view, Mark’s visible head injury was likely caused by Train 3 (southbound at 6:05am).
313. This assumes Mark was lying head south/feet north when struck (depicted in the above image). Mark would have had to be positioned in the opposite direction for Train 2 (northbound at 5:45am) to have caused the head injury. On this basis it is unlikely that Mark’s visible head injury was caused by Train 2.
314. I accept Dr McIntosh’s evidence that it is unlikely that Mark’s orientation changed 180 degrees in a tumble motion, after being struck by Train 2, to account for the position he was found in after 6:05am.
315. In this regard, a “*tumble*” motion of the kind described by Dr Oettle is unlikely to have occurred given (i) the forces involved, (ii) the limited area available beneath the train for that movement to occur and (iii) the absence of injuries Dr McIntosh considers likely to have occurred if it did (e.g. amputated or crushed limb injuries).
316. In his oral evidence, by way of elaboration, Dr McIntosh said:

“... based on [Mark’s] injuries I find it very hard to believe that he could have rotated and become completely reorientated from north to south or south to north. It’s - the clearance under the locomotive at different parts would mean that he would have - his body parts would have come in contact with the locomotive more than once, so multiple times. The forces involved would have been very high because he’s been hit by a massive object travelling at

a relatively high speed and those parts of the train are all rigid. And so the forces involved would have been very - very large and would have caused substantial injuries to other parts of the body, if not, amputations if a limb was caught between the wheel and the railway head.

...

... the clearance underneath I would not have liked to have crawled underneath that train, the locomotive, and tried to get underneath it when it's sitting out - when it was sitting outside on the ballast, you know, it would be very difficult to try and wriggle underneath it without hitting things."

Possibility Mark injured in Torana roll-over event before train impact

317. I observe that Mark did not have injuries typically associated with rollover crashes, such as cervical spine injuries.
318. On the available evidence, I consider that it is unlikely that Mark was ejected, partially or fully, from the Torana during the rollover given (i) Mark had no bone or joint injuries of his limbs consistent with that scenario, (ii) there were no evident indicators in the photographs of the vehicle suggestive of an ejection scenario and (iii) there were no obvious signs of blood or tissue within the vehicle. To this end, I note that Dr McIntosh considered the evidence tended very strongly against a partial ejection scenario.
319. I accept that had Mark been in an unrestrained rollover there is a reasonable likelihood he might have suffered rib fractures or other injuries of a kind which were not found at autopsy. At its highest, I accept that some of Mark's individual injuries (e.g. wounds to upper limbs) could be consistent with a rollover crash, however I consider there to be an absence of other evidence pointing to that possibility. Nevertheless, given the lack of thoroughness demonstrated in the examination of the car, I have some reservations relying on there having been no signs of blood or tissue within the vehicle. On the basis of Dr McIntosh's evidence I am unable to rule out the *possibility* that Mark was injured to some degree in a rollover, even if he was not ejected from the vehicle.

Pathologist opinions (Dr du Toit-Prinsloo, Prof Woodford and Prof Duflou) and related findings

320. Three specialist pathologists reviewed the records of the autopsies carried out by Drs Killen and Dr Oettle in January 1988, being (i) Dr Lorraine du Toit-Prinsloo (Senior Staff Specialist, Forensic Medicine NSW); (ii) Professor Noel Woodford (specialist forensic pathologist, Victorian Institute of Forensic Medicine) and (iii) Professor Johan Duflou. There was a significant degree of consensus in the expert opinion as outlined below.

Limitations

321. The extent to which the experts can offer opinions is limited by the quality of the records that exist from the January 1988 autopsies.

322. When asked to comment on the possibility that Mark was subject to multiple impacts of force, Prof Duflou said, *“I think it's likely there's been a **minimum** of one impact. How that impact occurred in detail I don't think I can tell, and whether there has been a subsequent lesser force as well or prior lesser force as well I can't tell”.*

Whether Mark's head injury (skull/scalp) was consistent with a 'glancing blow' mechanism

323. The experts did not challenge this aspect of Dr Oettle's opinion which is also consistent with Dr McIntosh's analysis.

Was the subdural haemorrhage (SDH) present at the time of the first autopsy

324. The experts considered Dr Oettle's notation of the presence of a recent SDH over the surfaces of the brain (1cm in thickness in areas), which was not something noted by Dr Killen in the first autopsy. They were asked to give their opinions on whether the SDH was likely to have been present at the time of Dr Killen's autopsy (but not noted) or if it possibly constituted congealed blood or fluid that collected on the brain's surface after Dr Killen's first autopsy and was thus an artifact of the examination. The consensus is that the former is the most likely.

Whether the SDH could have been caused by violence, car rollover and/or train impact

325. I accept the evidence of the experts that the possibility the SDH was caused by one or more of the following factors, violence, a car rollover and/or train impact cannot be excluded. However, the overall appearance of the injuries, the severity of the head injury, and the presence of the grease-like material on the body is typical of that seen in train strikes.

Likelihood the SDH resulted from the strike that caused Mark's head injury

326. Although I cannot exclude the possibility the SDH was present before the train impact, it is also plausible it may have onset *after* train impact (e.g. assuming a period of survival after impact).

Likelihood Mark could have walked 1.5km carrying items assuming the SDH was caused by Mark being involved in a rollover in a car

327. The experts consider it "*less likely that [Mark] could have sustained some sort of trauma as a result of a road collision and then walked a distance*".
328. Relevant to this, Prof Duflou, in his report, opined:

*"If the major injuries sustained (tissue lacerations, skull fracturing, brain maceration/laceration, and subdural and subarachnoid haemorrhage) were the result of a car crash it would in my opinion not be possible for the deceased to have been in a state such that he would have been able to walk 1.5 km and carry a large cardboard box. **Given the nature of the totality of injuries, I do not believe is a likely scenario that the injuries were sustained as a result of a car collision.** However, if as a result of the car collision the deceased sustained relatively minor cutaneous injury, and had also sustained a head injury with bleeding occurring over the surface of the brain in the form of a subdural haematoma, it would be possible for the deceased to have walked some distance in a purposeful way, assuming there was no associated significant brain or skeletal injury at the time."* (emphasis added)

Likelihood Mark's head injury resulted from a car rollover

329. In light of the expert evidence, I consider that it is unlikely that Mark's fatal head injury (skull/scalp injury) was inflicted in a car rollover. This takes into account the severity of that injury. Although they cannot be definitive, the experts considered it more likely his "*injuries were sustained by impact with a train. It is more likely that [Mark] became unconscious after sustaining the head injury at the scene where the train [impact] occurred*".

330. In forming this view, I have also given weight to the observations of Prof Duflou and Dr du Toit-Prinsloo as to the absence of injuries to Mark's body (e.g. lower limb fractures) that would be expected or indicative of trauma sustained from a motor vehicle impact/roll over.
331. For the sake of clarity, I note that in oral evidence, Prof Duflou and Dr du Toit-Prinsloo confirmed they could not exclude the possibility that Mark suffered his SDH through a car rollover, without external bleeding, between 30 to 90 minutes before he suffered his skull/scalp impact injury. However, they considered this scenario unlikely.

Likelihood Mark was alive for a time after the infliction of his head injury (skull/scalp impact injury)

332. The experts agreed there was likely a period of survival after Mark's head injuries were inflicted. They disagreed with Dr Oettle's opinion that death was likely to have been instantaneous on impact. The presence and magnitude of the brain haemorrhages point to a period of survival.
333. In particular, Prof Duflou pointed to the "*pallor of organs*" observed at autopsy, which is "*typically the result of extensive blood loss over a period of time*", and the presence and size of the subdural haemorrhage (its size makes it unlikely Mark died instantaneously).
334. In oral evidence, Prof Duflou said, "*... you wouldn't necessarily expect the person to die within seconds from an injury like that. They may survive for a prolonged period of time, and during that time they can be expected to be quite confused*", and further:

*"... it's the loss of blood plus the formation of the subdural haematoma and the haemorrhages within the brain tissue that can be inferred, so there's traumatic haemorrhage. Traumatic haemorrhages were present in the brain substance posteriorly, laterally and inferiorly. **A recent extradural haemorrhage was present relative to the fractures.** Those all to me indicate that there was a period of survival following the motor injury, and I think as I've mentioned previously, to me the major injury was caused by - by a train.*

...

[Query: is your opinion that, assuming the SDH is caused by whatever impact caused the fracture to the forehead, it couldn't have been instantaneous death, there must have been a period of time over which the SDH developed after impact which tends against death being instantaneous on impact?]

Yes, correct. So there's that and, of course, the assumption there is that the subdural haemorrhage and the skull fracture occurred concurrently. But the presence of the haemorrhages within the brain and the development of a one-centimetre-thick subdural haematoma would, to me, indicate that there has been some period of survival and, at the same time, that I wouldn't expect the deceased to have been conscious at that time."

(emphasis added)

335. Regarding Dr Oettle's evidence that he observed minimal blood in Mark's airways, which was relevant to his opinion that death was instantaneous, Prof Duflou (with whom Dr du Toit-Prinsloo agreed) said:

*"It's certainly the case that people who sustain massive head injuries very, very frequently aspirate blood into the airways, in other words, the trachea and the bronchial lung tissue itself. And that in this case it appears that - well, it's a bit complicated because in his report and this is about three quarters of the way down the second page, and I will just read the entire paragraph: "The air passages showed the presence of a minimal amount of fresh blood. The right lung weighed 360 grams, the left lung 330 grams. Inhaled blood was present." **So I think that in fact there was an indication of inhalation of blood into the lungs.** The lung weights are not particularly increased so it couldn't have been a large amount of blood, but there was breathing of blood into the lungs as I read the report. **Together with the loss of blood, as I have mentioned previously because of the pallor of the organs, that to me would suggest that there has been a period of survival.**"*

(emphasis added)

How long might Mark have survived after suffering his head injury (skull/scalp)

336. The experts could not reasonably estimate a period of survival after Mark's head injury. In oral evidence Prof Duflou and Dr du Toit-Prinsloo said:

“COUNSEL: Professor Duflou and Dr Prinsloo, I would like to ask you some questions about the conclave report first and I would like to take you to paragraph 5D dealing with the assumption that there was a subdural haemorrhage present when the first autopsy was performed. Dr Prinsloo, how long can it take for a subdural haemorrhage to develop?

WITNESS DU TOIT-PRINSLOO: That's really difficult to put a specific time to it. I can't give you an exactly, it would be a period of time, minutes, but I can't put it exactly. The younger person, you know, typically they don't have the large sort of space for the subdural before they will show symptoms but I can put it down to a more exact timeframe.

COUNSEL: Do you agree with that Prof Duflou?

WITNESS DUFLOU: Yes, I believe you can't give an exact timeframe but it's an indication to me that there is a period of time. How long, I can't tell you with any degree of certainty.”

How much blood loss would be expected if Mark survived for a period after the infliction of his head injury (assuming it was caused by train impact) and whether it was inconsistent with observations at the scene

337. As to whether blood loss in such a scenario could be quantified, Prof Duflou said in oral evidence:

“[Whether this can be quantified] No, unfortunately [it] can't. It would be sufficient to cause haemorrhagic shock, so in general, haemorrhagic shock occurs when there's insufficient blood in your circulatory system...to maintain adequate volume of blood passing through the tissues of the body. You're generally looking at, if loss is rapid, of well in excess of 500 millilitres; probably

in excess of a thousand, and quite possibly well in excess of that as well so a considerable amount of blood loss."

338. I accept that the exact quantity of blood lost cannot be quantified based on observation of the body at autopsy.
339. The experts were questioned on whether, if one assumed that Mr Bryant, Const Guyer and SC Pitt did not report observing blood flowing from Mark's head injuries when they attended, this indicated Mark was "very close to death" and was close to having "bled out from [his head injury] as well".
340. On this matter, Prof Duflou said in evidence:

"COUNSEL: ... Two people called to date had said they don't recall seeing blood flowing from the head injury at the time, albeit there was blood and there's descriptions of the towel being blood-soaked. But if Mark, at that time, did gasp or soon after that time, if there were still signs of life, would you expect there to be blood-flow still or blood coming from the head injury, or would it be congealed? Are you able to comment?"

WITNESS DUFLOU: I think if the - if he was giving gasping-type breaths and he wasn't losing significant amounts of blood at that time, that's an indication to me that he is very close to death and probably that he has been - that he has close to bled out from the injury as well.

COUNSEL: Can you just clarify what you mean by "bled out"?"

*WITNESS DUFLOU: Well, essentially, **there's been exsanguination blood loss so he is now in hypovolemic shock**, so there isn't enough blood available to the heart to pump it out effectively and to maintain blood pressure. **And a lack of bleeding at that stage, especially if there is still a limited pulse present, to me, indicates that he's got very, very low blood pressure; and the obvious reason for very low blood pressure in this setting is that he's hypovolemic, he has insufficient blood in his system.***

COUNSEL: *Again, just in terms of significant blood loss, is it right that the blood loss to that point is sufficient to induce the hypodermic shock, but--*

WITNESS DUFLOU: *Hypovolemic shock.*

COUNSEL: *Hypovolemic, apologies. Are you able to quantify how much blood loss that would - no.*

WITNESS DUFLOU: *No, because as I've mentioned previously, it's dependant on how quickly you lose the blood and from what part of the body you're losing the blood. And then added to that, you've also got to consider the injuries themselves, are they contributing in some way to the effect on the heart.*

COUNSEL: *Dr Prinsloo, do you agree or disagree or have anything you would add to that?*

WITNESS DU TOIT-PRINSLOO: *I agree with Professor Duflou."*

(emphasis added)

341. As for Dr Oettle's opinion that Mark likely died instantaneously upon suffering his head injury (assuming it was from a train), the experts disagreed. On this issue, Prof Duflo and Dr du Toit-Prinsloo said:

[Following reference to Dr Oettle's evidence in the 1988-89 Inquest as to his view that Mark's death was instantaneous upon impact as he otherwise "would have expected a tremendous amount of blood around where he would be exsanguinated. With those injuries he would have lost just about all his blood volume"]

*"WITNESS DUFLOU: Yes. **From what I can gather the reason for why [Dr Oettle] believed [Mark] had not exsanguinated was that there wasn't much blood described on the towel under the head. I think that's the reason why and it was certainly something that was of concern to me as well. That just didn't make sense to me. But you asked me just a few minutes back, one of your questions started with the indication that the towel was in fact blood-soaked.***

COUNSEL: Yes.

WITNESS DUFLOU: *And if the towel was indeed blood-soaked, that makes a lot more sense than trying to explain what's going on with no blood on the towel, or minimal blood on the towel, that we don't know where the blood went to. It just didn't make sense to me particularly. **But if there is a lot of blood on that towel, it would make sense to me.** Why of course the towel was under the head to begin with isn't clear to me, but, yeah, it just was.*

COUNSEL: *In terms of the passage that we have been referred to there by Dr Oettle, it would seem that he is agreeing with the proposition that there had been exsanguination, forgive my pronunciation. As I read his evidence, he doesn't elsewhere say that there was evidence of a significant amount of blood loss or if there was blood loss, it was explainable by rain being washed away.*

WITNESS DUFLOU: *Yes, I think I have to disagree with Dr Oettle. **To me there are indications of significant blood loss. There is an indication of a degree of survival or a period of survival.***

COUNSEL: Yes.

WITNESS DUFLOU: *And **I don't think that the deceased died instantaneously or within seconds.** It doesn't particularly make sense and then if you add to that the blood-soaked towel now, I think that fits very nicely.*

COUNSEL: *One moment Dr Prinsloo, I will just add one further thing to that evidence just in case it's relevant is what we have is a blood-soaked towel. We are not sure of the degree of how blood-soaked it was, but also that there's a description of between the size of 50 cent piece and a 10 cm diameter spot of blood on the sleeper underneath Mark at the spot he was found after train 3. We don't have evidence of other blood being sighted outside of what is on Mark and his clothes. And there's reference to this was on a ballast on a train track. Does any of that have any bearing on the view you have just expressed?*

WITNESS DUFLOU: There doesn't sound like there's much blood on the train tracks or on the ballast which is less, I suppose, than what you would expect but on the other hand I gather it was raining as well at that time.

...

COUNSEL: Dr Prinsloo, can you comment on the issue that's just been canvassed with Prof Duflou?

WITNESS DU TOIT-PRINSLOO: I agree with Prof Duflou's opinion and agree with it.

COUNSEL: You agree with it and what was that last part sorry?

WITNESS DU TOIT-PRINSLOO: I agree with what what said by Prof Duflou. Significant blood loss, **there was a period of survival; it doesn't make sense that he died instantaneously. We've got a blood-soaked towel and that there's blood on the photographs, so I agree with that.**" (emphasis added)

(Note: Dr du Poit-Prinsloo's reference to "blood" on the photographs is a reference to the photographs taken of Mark, still in his clothing, at the mortuary on 17 January 1988 before the first autopsy)

342. Prof Duflou and Dr du Toit-Prinsloo further said:

"COUNSEL: Dr Duflou, I'm going to put a hypothetical scenario to you. I would like you, when considering this hypothetical scenario, to remember the facts as you know them, but put aside some key assumptions. Firstly, assume that in this instance the totality of injuries on the body of [Mark] were caused at the scene of his death, so at the train tracks, including massive frontal head wound. That's the first assumption. Also assume that there is agonal breathing, approximately 45 minutes, with the impact of a train; and if you could also assume, please, that there is no towel underneath the head of

[Mark]. My question is, in that scenario, would you expect to see, visually, a lot of blood at that scene?

WITNESS DUFLOU: I suppose the difficulty in part here is that, as I understand it, there was rain as well; but in general, I would expect there to have been bleeding if agonal breathing took place 45 minutes after the impact. So what you're effectively saying is that he survived for 45 minutes, he was very close to death at the time he was seen to have agonal breathing-

COUNSEL: Yes.

WITNESS DUFLOU: **--but he had survived for 45 minutes. He would almost certainly have bled very extensively and it's very likely that a significant quantity of blood would have been visible at that time, at the location.**

COUNSEL: In completeness, Dr Prinsloo, is there anything that you wish to add to those comments made by Dr Duflou?

WITNESS DU TOIT-PRINSLOO: No."

(emphasis added)

Likelihood Mark showed signs of life (chest movement) at about 6:30am

343. The descriptions of what Const Guyer and SC Pitt observed appeared to be "agonal" or "terminal-type breaths". These are "last reflex-type breaths that can be seen in persons who sustain massive trauma". This indicates the person is "probably very close to death". It typically arises immediately preceding death after there has been an irreversible cessation of respiration and circulation.
344. In his oral evidence before me, on 9 April 2024, Mr Bryant recalled observing Const Guyer checking Mark's pulse and that he "yelled and jumped back, as it – as it startled him." If I accept Const Guyer and SC Pitt's evidence that they observed such movements, it can be concluded that Mark had been alive up until that time (e.g. 10 to 20 minutes after Train 3 passed and 45 minutes after Train 2 had passed through that area).
345. However, the experts urged caution in accepting the accuracy of lay observations in relation to pulse in particular. Prof Duflou, with Dr du Toit-Prinsloo agreeing, stated

that it is extremely easy to mistake feeling a pulse in someone who has already died. I accept that opinion. It may be that agonal breathing is less likely to be mistaken by a lay observer, nevertheless some doubt must remain about Mark's condition at this time.

346. Nevertheless I note that neither Prof Duflou nor Dr du Toit-Prinsloo excluded, as a possibility, that Mark could have exhibited agonal breaths at about 6:30am even if it was assumed he had been struck 45 minutes earlier (e.g. by Train 2 at 5:45am).

Likelihood Mark impacted by Train 3 (6:05am) rather than Train 2 (5:45am)

347. The experts cannot say on the autopsy findings alone if Mark's head injury was caused by Train 2 rather than Train 3 or vice versa.
348. The longer the period between the train impact and the reported observations of signs of life, the less likely it becomes that the observations would be accurate.
349. Although this renders it more likely that Mark was hit by Train 3 rather than Train 2, the medical experts could not exclude the possibility that Train 2 accounted for the injuries.
350. The lack of certainty the experts experienced, in whether they felt able to prefer one scenario over the other, is indicated by Prof Duflou's oral evidence that he "*wouldn't like to give a firm preference of one versus the other. In some ways the third train may appear more likely; in other ways I wonder if it wasn't the second. I just can't tell, unfortunately*" and Dr du Toit-Prinsloo "*probably more likely to be train 3, but I don't think you can 100% exclude the possibility that train 2 resulted in the head injury...*"

SUBMISSIONS AS TO THE CAUSE OF MARK'S HEAD INJURY

351. During the course of these proceedings, Counsel Assisting carefully examined the expert witnesses and helpfully summarised their evidence in relation to the cause of Mark's head injury in his submissions. There has been no real challenge to this evidence.
352. Mr Razi, on behalf of Mr Donald Craigie, submits that the court would find that Mark had a SDH at the first autopsy which was not documented by Dr Killen. Mr Razi further submits that Mark could have obtained the SDH through a number of mechanisms including a physical assault, train strike, car rollover or a blunt force head injury. However Mark sustained the head injury, Mr Razi submits that Mark would have become unconscious, but that he was likely alive for a period of time after the

traumatic head injury. It is submitted by Mr Razi, that Mark was alive when police first attended the scene.

353. I have carefully considered the expert evidence as well as any submissions made by the interested parties as to the cause of Mark's head injury. Having regard to that evidence, I find that it is likely that the SDH was present at the first autopsy but was not documented by Dr Killen.
354. As noted above, while there was evidence that a "thud" was heard when Train 2 passed over the location near to where Mark was found, I prefer the weight of the expert evidence (including the evidence of Dr McIntosh above) in finding that Mark's visible injuries were more likely to have been caused by Train 3. Nevertheless, I accept the evidence of the experts that the possibility that Train 2 caused Mark's head injury cannot be conclusively excluded. In relation to the mechanism of Mark's head injury, I accept that the experts cannot rule out how the SDH was sustained and whether the impact of Train 3 masked other earlier injuries to Mark's head.
355. In respect to the witness accounts of Mark breathing, I place them in the context of lay observations made in a stressful and confronting situation and therefore cannot be sure of their accuracy.

SUBMISSIONS AS TO THE LIKELIHOOD THAT MARK WALKED FROM WILBURTREE STREET TO WARRAL SIDING

356. Counsel Assisting submitted that it is not possible to ascertain how Mark got from Wilburtree Street to the train tracks. The most obvious possibilities, Counsel Assisting submitted, are that Mark either walked or he travelled there in a car. Counsel Assisting submits that neither possibility can be excluded.
357. Mr Razi, on behalf of Mr Donald Craigie, submits that on the available evidence it is implausible that Mark walked from Wilburtree Street to Warral Siding. Counsel Assisting ultimately accepted this submission given the distance between the locations and timeframes outlined above.
358. I accept that Mark could not have walked the approximately 8.3km distance in the timeframe. This is based on accepting the approximate time he parted from Ms White as accurate and noting the time the white Torana was first observed by train personnel. Accordingly, I am satisfied Mark was conveyed all or part of that distance by vehicle.

Forensic toxicologist opinion (Associate Professor Alison Jones) and related findings

359. Mark's last known alcoholic drink took place before his exit from Dominoes Nightclub at about 2:00am to 2:30am.
360. In her statement completed 22 January 1988, Ms White said she saw Mark drinking alcohol while they were together over the evening however, she did not describe him as appearing heavily affected when they left Dominoes Nightclub (e.g. imbalance, affected motor skills). They then walked for about 60 minutes before parting company. No alcohol was reportedly consumed during that walk. Ms White's account of Mark's alcohol consumption is consistent with that of others (e.g. Glenn Mannion's 1989 statement).
361. An opinion was sought from Professor Jones about what might be safely inferred from the postmortem blood analysis, as to how much alcohol Mark potentially consumed, and the timing of that consumption, in the hours before his death. While emphasising the limitations of what she could safely infer from a post-mortem toxicology concentration alone, Prof Jones said in evidence, *"...if you're asking me in a broad principal question would I roughly have expected somebody who's not a regular heavy drinker to have some signs at .1, I would have actually. I'm quite surprised that the description that you've read out to me this afternoon is suggesting nobody saw any signs of intoxication. That's a little bit surprising to me"*.
362. As to whether it was possible Mark consumed more alcohol, sometime after he departed company with Ms White and before his death, Prof Jones said, *"I can't back-extrapolate from a single level unless we've got a single time of ingestion. Under those circumstances I could make a reasonable estimation that it's certainly possible that the deceased continued to consume alcohol after he parted company with his girlfriend"*. I accept that it is possible Mark drank further alcohol after parting company with Ms White in the early hours of the morning.
363. In addition to the specific findings identified above, my further findings in relation to the manner and cause of Mark's death having regard to the 1988-89 evidence, more recent expert opinion and evidence obtained during the course of this inquest are canvassed below.

I. Evidence and findings as to Eddie Davis

Overview

364. By mid-1988, there was a rumour in Tamworth that Eddie Davis was responsible for Mark's death.
365. In July to August 1988, there were multiple physical altercations involving Donald Craigie, Eddie Davis and others. This included an incident at a licensed venue, the Tattler, involving Eddie Davis's brother, Robert Davis. The accounts of those involved as to who initiated these altercations, and what exactly unfolded, differs and it is not necessary for these issues to be determined by me.
366. In July 1988, a meeting was held at Tamworth Police Station involving Harry Cutmore (Aboriginal Liaison Officer). Eddie Davis, Donald Craigie, Terry Tolmie, Jack Haines (the latter two in support of Mr Craigie), Arthur Robert 'Digby' Porter and Inspector Alan Donnelly attended. It appears this was convened in an attempt to resolve ongoing disputes.
367. By the third day of the 1988-89 Inquest, several statements had been obtained in which reference was made to rumours of Eddie Davis and other persons involvement in Mark's death, namely:
- (1) Arthur "Digby" Porter said he was contacted by Eddie Davis who told him he'd been told of a rumour that himself (Porter) and others had murdered Mark. He (Porter) and Eddie Davis attended a meeting with Harry Cutmore at his office at Tamworth Police Station with Donald "Duck" Craigie and Terry Tolmie. During the meeting Mr Craigie said there were rumours going around Mr Davis and Mr Porter were involved in the death of Mark which he (Porter) denied.
 - (2) Kathi Kaspar, aged 16 in mid-1988, reported being told by her friend Therese O'Sullivan that Mitchell Wilder and Eddie Davis were responsible for Mark's death (she did not explain how she knew this to be true). She later repeated what she was told to ██████ Edmonds at a party at which Robert Brownlee, Nicky Porter and her sister, Mary were present.

- (3) Therese O'Sullivan reported being told by Peter Rowles, while attending a party in Tamworth (at Peter Rowles' home at which others were present including Michaela Judge, Jason Muldoon, Mitchell Wilder, Jodie Westwell, George Westbrook and Wayne Kingdom), that Mitchell Wilder and Eddie Davis had killed Mark. He (Rowles) did not say how he knew this to be true. Sometime after the party she was told by Kathi Kaspar that Jason Muldoon (O'Sullivan's boyfriend at the time) had killed Mark, which she (O'Sullivan) denied was true and recounted the account given to her by Peter Rowles.
- (4) Mitchell Wilder referred to the rumour of his involvement and denied this was true or that he had any knowledge about Mark's death. He also denied knowing Eddie Davis.

368. In 1998, Tamworth police again received reports alleging Mr Davis's involvement in the death of Mark. This allegation was investigated by police up until about 2001.

369. Mr Davis, when questioned by police and in his evidence at this inquest, has denied having known Mark, having any involvement in Mark's death or having any direct knowledge about his death.

370. Donald Craigie has long suspected Mr Davis's possible involvement.

Eddie Davis and Mitchell Wilder called as witnesses on Day 3 of 1988-89 Inquest

371. Mr Davis and Mr Wilder were both called as witnesses on the third day of the 1988-89 Inquest (6 September 1999). While a transcript of his evidence on that date is not available, I consider it can be safely inferred both denied involvement or knowledge about Mark's death.

Maxwell Ison statements to police in January 1988 and September 1999

372. On 20 January 1998, Maxwell Ison attended Tamworth Police Station and made a written statement to police. In his statement, Mr Ison said:

- (1) His attendance on police was prompted by seeing a news article about Mark Haines' death (likely published on/about 19 January 1998 regarding the 10 year anniversary of Mark's death).
- (2) In about 1991 he was living with his partner, Anne-Marie Connor, and children in a residence in Auburn, Sydney when his stepbrother, Mervyn Mann, and Mervyn's de facto partner at that time, Cherrie Dunning, temporarily stayed with them.
- (3) During her stay Ms Dunning spoke of her prior relationship with Eddie Davis.
- (4) One night Ms Dunning said there was a night when Mr Davis had returned home when it was raining. His (Davis') clothes were "*covered in blood and he was soaking wet*". She said she asked him what happened and he "*bragged to her that he had killed a young guy on the railway line*" and that "*he had stolen a car and after this picked up a young guy [and] rolled the car and after he had put this young guy on the railway to be cut in half by the train*". He also said he put a pillow under his head and that he had bashed him with an iron bar before putting in on the tracks which is when he got blood over his clothes.
- (5) He (Ison) recalled this conversation when reading the newspaper article the day before his attendance on police.

373. In a subsequent statement made on 3 September 1999, Mr Ison said he recalled the conversation happened one night after Ms Dunning and his wife had been out together. They were drinking Jim Beam Bourbon cans at home and talking.

374. Mr Ison died on 6 July 2024 and was not called as a witness in the 2024-2026 Inquest.

Anne-Marie Connor statement to police in September 1999

375. Anne-Marie Connor made a written statement to police on 10 September 1999. She said that during her stay with them, Ms Dunning talked about Mr Davis saying he was violent and that she feared him. On one occasion after she (Connor) had been out with Ms Dunning, while chatting at home, she recalled Ms Dunning talking about Mr

Davis, her fear of him and mentioning “*something about a pillow*”. Ms Connor could not recall any further details about what was said.

Mervyn Mann’s statement to police in September 1999

376. Mervyn Mann made a written statement to police on 8 September 1999. He said he was in a relationship with Ms Dunning from about 1991 until 1994. He recalled an occasion where he and Ms Dunning stayed with his brother Max Ison and his wife Anne-Marie Connor in Sydney. He recalled a time when they were all together speaking when mention was made of the “*young bloke*” found dead in Tamworth. He recalled Ms Dunning saying, “*she thinks Eddie Davis was the one that did it*”. He did not recall any other details mentioned.
377. Mr Mann, in his 2024-2026 Inquest evidence, confirmed the truthfulness of his 1999 statement. He otherwise had no other knowledge or information relating to Mark’s death.

Ms Dunning’s statement in September 1999

378. Ms Dunning made a written statement to police on 16 September 1999 in which she described commencing a relationship with Mr Davis in about 1986 and moving to Tamworth in about September 1987 (from Armidale). She alleged there was domestic violence in their relationship. She later commenced a relationship with Mervyn Mann and recalled staying with Mr Mann’s brother in Sydney (“*Max and Anne*”) in about late 1990. She did not recall speaking about Mr Davis nor report witnessing Mr Davis return home covered in blood or him admitting to having killed someone. She separated from Mr Mann in about 1995.

Ms Dunning’s recorded interview in February 2001

379. On 3 February 2001, Ms Dunning participated in a recorded interview with Detectives Coe and Woods. In that interview:
- (1) When asked if she had knowledge about Mark’s death, Ms Dunning said, “*No, but I know that a lot of allegations got thrown around about Eddy (sic) and thrown around about me, and the Haines want to pay me back big time ‘cause they though Eddy had somethin’ to do with it*” and “*I don’t even know how they think maybe Eddy was involved*”.

- (2) She didn't think, "*Eddy had anything to do with it and I don't want to say anything that might incriminate him as well*".
- (3) She confirmed that herself and Mr Davis were living in Somerton, just outside Tamworth, in late 1987/January 1988.
- (4) She recalled reading a newspaper article about Mark's death.
- (5) She recalled an occasion while living in Somerton, around the time of the Tamworth Country Music festival, when Mr Davis did not return home overnight (Saturday night) and did not come back until lunchtime the next day (*to be clear Ms Dunning did not say he was out on the Friday night*).
- (6) She suspected Mr Davis was involved with other girls in Tamworth (when they lived in Somerton). On his return home she found a photo of another girl in his clothes (she denied there was any blood on the clothes). She questioned him and he said he had "hitchhiked" to Werris Creek to work with his uncle there.
- (7) As to whether this was the weekend Mark died, she thought "*it [was] most probably is a different weekend and I'm not going to say it's the same weekend*".

Eddie Davis interview with police on 31 January 2001

380. Mr Davis voluntarily participated in a record of interview with Detective Coe and Woods on 31 January 2001.
381. The whereabouts of the audio recording of that interview, and transcript of the same (if ever produced), is not known. Handwritten notes made during the interview are available. Those notes attribute the following statements to Mr Davis:
 - (1) He had no knowledge of Mark's death other than what he learnt from newspaper coverage and the 1988-89 Inquest.
 - (2) He denied ever knowing Mark.
 - (3) He had been implicated by Mark's family members.

- (4) He gave evidence in the 1988-89 Inquest and said "*I had no knowledge of death, or even know the bloke*".
- (5) He believed he was living in Somerton (Scotland Street) with Cherrie Dunning and their children in January 1988. As to what he was doing on 15-16 January 1988, "*would have been at...boxing training. Then home*", with him having trained at the PCYC in Tamworth with Denis Woods.
- (6) Mr Davis knew Digby Porter (possibly through boxing).
- (7) He denied knowing Glenn Mannion, Mitchel Wilder or Terry Souter.
- (8) He (Davis) had worked as a brickie's labourer.
- (9) He (Davis) was not drinking or smoking in this period.
- (10) He (Davis) believed he "*came into picture*" because "*Therese O'Sullivan, Kaspar, told Duck Haines, I had something to do with [Mark]*".
- (11) The allegation he was involved in Mark's death was "*absolutely untrue*".

382. Mr Davis was interviewed by police while in custody. Police carried out an operation involving [REDACTED]. No incriminatory evidence was obtained through this operation.

Eric Munro's interview on 5 October 2000

383. Mr Munro was interviewed by investigators on 5 October 2000 while in custody regarding information he reportedly had about Mark's death.

384. This interview followed Mr Munro, shortly before that date, advising police that he had information of relevance to the investigation into Mark's death.

385. At the time of his interview, Mr Munro was seeking release to parole.

386. In his interview, Mr Munro said:

- (1) He had met Mark a couple of times before his death and that Mark had "*approached us on the street*" offering to supply cannabis and Mr Munro obtained cannabis from Mark over about a two-month period.

- (2) Sometime before Mark's death he (Munro) had been at the Southgate Inn (licensed venue) in South Tamworth with Garth Doring, Scott Burns and Ty Williams.
 - (3) While he was there Digby and Tony Porter, who he knew, joined them.
 - (4) Mr Munro considered the Porter brothers to be "*stand overs and heavies within the community*".
 - (5) At one point when he (Munro) was alone with Digby and Tony Porter, they were speaking about "*pot*" and "*Tony and Digby broke into a, just a irate conversation about being robbed by Stoney [Mark]*" and Mark having "*stolen their money*".
 - (6) While speaking about this "*they were trying to stand over me, to do him over, bash him*".
 - (7) Mr Munro left the conversation at that point.
 - (8) A few days later he (Munro) saw in the newspaper that Mark had been found dead on the railway tracks.
 - (9) Mr Munro suspected that Digby and Tony Porter may have assaulted or tried to rob Mark over their grievance at moneys owed to them (which inadvertently might have led to his death) (Mr Munro did not claim to have direct knowledge that this in fact occurred).
 - (10) Mr Munro believed he had to "*keep me mouth shut*" as he was distantly related to the Porter brothers and he was "*scared*" for his family.
 - (11) Asked what made him come forward now, he said he thought "*it's only right that his parents and his people...know why and how he died. He was killed by his own people, for a lousy \$400 or whatever*".
387. Mr Munro, in his interview with police, did not mention any involvement of Mr Davis in this conversation or discussion.
388. The relevance to Mr Davis is limited to his admitted connection to Digby Porter in late 1987/early 1988. Both boxed at the PCYC in Tamworth in this period.

Ms Dunning's evidence in the 2024-2026 Inquest

389. Ms Dunning gave oral evidence on 28 October 2024.

390. By this time Ms Dunning and Mr Davis had been separated for almost three decades.

391. Ms Dunning addressed the following matters during the course of her evidence:

- (1) Described her time living with Mr Davis and their children in Somerton to be quite isolating for her, as she was not employed and only travelled from Somerton to Tamworth about once a week for shopping. She said she did not know anyone in Tamworth. Mr Davies was working as a bricklayer and heavily engaged in boxing training.
- (2) Denied knowing or ever meeting Mark.
- (3) Denied that Mr Davis ever spoke to her about Mark's death.
- (4) She agreed she may have spoken to Mr Ison and his partner about her difficulties with Mr Davis (e.g. custody dispute) during her stay with them.
- (5) Asked whether it was possible Mark's death was brought up, in discussions with Mr Ison and his partner during this stay, she (Dunning) said, "*It could have been possible. I just don't remember*". She agreed she was upset at Mr Davis at this time and agreed it was possible she make adverse statements about Mr Davis to them.
- (6) Ms Dunning denied making the statements attributed to her by Mr Ison in his statements (e.g. that Mr Davis had killed someone and put him on the tracks with a pillow under his head).
- (7) Regarding whether she said she had witnessed Mr Davis return home (in Somerton) with blood over his clothes, she (Dunning) said, "*No way, that's not true - - - That never happened, I never said it and that never, ever happened*".
- (8) Asked again whether it was possible she might have spoken about Mark to Mr Ison and his partner, Ms Dunning said, "*I might have – I might have*

mentioned that he [Mr Davis] was being accused of it, and that's probably why I was scared of him as well, just in case it might have happened - - - But I never mentioned that he ever done it because I never, ever – I don't know".

Eric Munro's evidence in the 2024-2026 Inquest

392. During his evidence in the 2024-2026 Inquest, Mr Munro exhibited difficulties with his memory and potentially with his mental health. In those circumstances, it was not possible to properly test the reliability of his 2001 allegations in that examination. Amongst other matters he said he had known Mark by the name "Andrew" (no one else has referred to Mark by that name). His allegations about Mark being involved in the supply of hundreds of dollars' worth of cannabis were in any event unsupported by any other evidence and were inherently implausible.

Arthur ("Digby") Porter's evidence in the 2024-2026 Inquest

393. Mr Porter, in his oral evidence on 28 October 2024, said:

- (1) He lived in Tamworth in 1988.
- (2) He knew Mark's family particularly his uncle Donald Craigie but did not know Mark personally.
- (3) He (Porter) was involved in boxing at the PCYC in Tamworth in 1988 and knew Eddie Davis through boxing and his work as a bricklayer.
- (4) He (Porter) recalled attending a meeting at the police station in 1988 (after which he made a statement to police).
- (5) There were rumours about Mr Davis and himself (Mr Porter) being involved in Mark's death.
- (6) He (Porter) knew Eric Munro in 1987-1988 but "*not well*".
- (7) In regards to Eric Munro's allegations of him (Porter) and his brother (Anthony Porter) approaching Mr Munro and discussing assaulting Mark, Mr Porter denied the same ("*No - - - That's just no way*").
- (8) He (Porter) denied any knowledge about Mark's death or any drug rip off at the time.

Mark “Pod” Trindall’s recorded statements (2023)

394. In 2024, after the commencement of the 2024-2026 Inquest, Mr Donald Craigie provided two short video recordings capturing Mark Anthony Trindall speaking to camera.
395. Mr Trindall died on 21 April 2024 aged 52 from health conditions.
396. It is understood the recordings were made sometime in 2023 about 37 years after Mark’s death.
397. In the recording Mr Trindall is seated in a wheelchair and presents in a poor physical condition.
398. Mr Trindall referred to an occasion when he was in prison with Eddie Davis and his brother Rocky [Robert] Davis, stating:

“...they was talking, they didn’t know Uncle Duck was my uncle. They didn’t know Mark was my first cousin. And they started blabbering on, this and that, how big they was in the game. Selling yarndi...up and down Tamworth, (?), Gunnedah. Well a conversation come up about my cousin. Mark Anthony Haines. And I figured this is interesting, never said a word, kept quiet. Well then I find out, Rocky said to Eddie, we took him out the train tracks and shot him in the back of the head. And I was thinking, wow, huh? And I found out later that my cousin was killed on the train tracks. And it was just, well yeah. Uncanny thing that they said. And apparently they shot him in the back of the head, left him there for the train to run over him. That’s exactly what they said to each other. So, yeah. Yeah uncle.”

399. Custodial records show Eddie Davis, Robert Davis and Mark “Pod” Trindall were all housed at Maitland Correction Centre between 5 and 12 November 1990.
400. I note that Mark’s autopsy findings make clear he had no gunshot wound to the head.
401. Additionally, there is no known evidence of Mr Trindall ever making a direct report to police or any other person, prior to this recording, about this information. It is not evident from his statements in the recording why he would not have reported what he knew to police back in the 1990s or subsequently.

Robert Davis's (aka Rocky Davis, Robbie Davis and Jade Mellick) evidence in the 2024-2026 Inquest

402. Robert Davis said in his oral evidence:

- (1) He believed he was residing in Kempsey in late 1987/early 1988 (custodial records show he was out of custody between 9 November 1987 until October 1988).
- (2) In that time, he was living with his girlfriend and was required to report to Kempsey Police Station each Monday, Wednesday and Friday.
- (3) He denied he would have visited his brother (Eddie Davis) in the Tamworth area in early 1988 but did visit later that year (*noting he was present in Tamworth during a violent altercation in a licensed venue in mid-1988*).
- (4) He recalled being in custody at Maitland Correctional Centre at the same time as his brother Eddie Davis and Mark "Pod" Trindall (5-12 November 1990). He also recalled being in a cell with John Trindall and Eddie Davis, not Mark Trindall, but did not deny the cross over of their time in that correctional centre.
- (5) He denied ever saying to Mr Trindall that he had killed Mark or that he had said his brother (Eddie Davis) had done so.
- (6) As for Mark, he (Robert Davis) had "*never heard of who this person was. I didn't even know who Mark was*".

Eddie Davis's evidence in the 2024-2026 Inquest

403. Eddie Davis's evidence, on 31 October 2024, included the following:

- (1) Mr Davis in a First Nation's man.
- (2) His early years were spent living in Moree and then Uralla.
- (3) He moved to Armidale in about October 1986. He moved there for boxing training and he aspired to box competitively at a high level.

- (4) In about October 1987, he moved with Cherrie Dunning and their first child to Somerton, about 40kms west of Tamworth (Ms Dunning was pregnant with their second child at the time). This move was to allow him to train in boxing at the PCYC in Tamworth, which offered greater opportunities for boxing tournaments than Armidale.
- (5) When he lived in Somerton, he would hitchhike into Tamworth two or three times a week for boxing training and also worked in bricklaying with his trainer, Dennis Woods.
- (6) In about February 1988, not long after the birth of their son on 2 February 1988, they moved into Tamworth, living in Margaret Street and later Griffin Avenue. Their third child was born in October 1989 while they were living in Tamworth.
- (7) His day to day routine in this period was focused around training and work, stating he typically *"[got] up before sunrise, about 5 o'clock, go for a bit of - do my roadwork, I was looking at running five to ten miles a day, but then I'd get home, shower, eat, hitchhike to work - - - Go to work, go straight from work to the gym, straight from the gym hitchhike back home"*.
- (8) He recalled hearing the rumours in 1988 of his involvement and attending a meeting with Arthur "Digby" Porter, Mr Craigie and others in mid-1988.
- (9) He had met Therese O'Sullivan, Michaela Judge and Kathi Kaspar in Tamworth (he could not recall the exact timing this occurred and thought he might not have met Ms Kaspar until he moved into Tamworth from Somerton).
- (10) Mr Davis described his experiences with racism in Armidale and other places. He felt he personally experienced less racism upon his move to Tamworth.

- (11) He (Davis) believes himself and Ms Dunning separated in about late 1990/early 1991. Not long after their separation he moved away from Tamworth.
- (12) In about 2016 he moved back to Tamworth and has lived in that area since that time.
404. With regards to the suggestion he was involved in, or has knowledge about, Mark's death, Mr Davis said:
- (1) *"I'd never met him. I knew a lot of people that knew him, and I racked my brains many times trying to think if I ever met him"* (he learnt of these other persons' connection to Mark well after Mark's death).
 - (2) He emphatically denied having any involvement in Mark's death or having any direct knowledge of what happened to Mark.
 - (3) He denied there was ever an occasion he came home in Somerton with blood on his clothes (to the degree reportedly said by Ms Dunning to Mr Ison), or ever saying to her that he had killed a young person on the railway line, striking that person with an iron bar and or that he had placed a pillow under this person's head.
 - (4) He did not shy away from the fact his criminal record involved violence but was proud of the fact none of his crimes had been committed against "black fellas."
 - (5) Regarding the recorded statements of Mark "Pod" Trindall, he (Davis) recalled being in Maitland Correctional Centre with his brother and Mr Trindall. He (Davis) said he had *"no idea how he's come up with that"* and before hearing that recording he had never before heard of Mr Trindall making statements of this kind about him (Davis).

Conclusion as to Eddie Davis' involvement in or knowledge of Mark's death

405. I accept the submission of Counsel Assisting that there is no reliable evidence that establishes Mr Davis had any involvement in Mark's death or even that he knew Mark before his death. While it is possible that Ms Dunning made statements in the early 1990s about seeing Mr Davis covered in blood or being responsible for Mark's death, I note her significant mental health struggles at the time. She did not recall the statements attributed to her and before me resiled from having made them. I give no weight to any statement she may or may not have made to Mr Ison and his partner in the early 1990s. Further I am of the view, having had the opportunity to hear Mr Davis give evidence, that the purported allegation that he returned home on a rainy night covered in blood and admitted to having killed someone appears inherently implausible.
406. I consider that the weight of the evidence as to Mr Davis' potential involvement in or knowledge of Mark's death goes no higher than unsubstantiated rumour. Mr Davis has consistently and repeatedly denied any involvement in or knowledge about Mark's death.
407. Mr Davis was an impressive witness who gave evidence in a forthright and convincing manner, without any hesitation in discussing his prior criminal record or behaviour. I accept the evidence of Mr Davis and consider that he gave truthful and credible answers during the course of this Inquest. In my view it is clear that understandable family dissatisfaction with the early investigation encouraged them to search for answers themselves. In this atmosphere rumours continued to grow unchecked over many years. I have little doubt that this regrettable reality has contributed to the focus on Eddie Davis. This is unfortunate as it also became a focus for police in later years when there were, in my view, other lines of inquiry which deserved closer attention. I do not accept that there is any reliable evidence to suggest Eddie Davis's involvement in Mark's death.

J. Evidence and findings as to Terry Souter

Overview

409. In about mid-1988 Terry Souter was 18 and living with his parents and younger brother, Michael, and sister, Carolyn, in Kenny Drive (Tamworth). He had been in a relationship with Carolyn Butler for about 12 months by that point. Terry Souter had attended Oxley High School in Tamworth until Year 10 (different High School to that attended by Mark).
410. There is no evidence of any connection or friendship between Terry Souter and Mark, save that Fay Souter reported to police in October 1999 her belief that a friendship existed between them and apparently they lived near to each other.
411. On the afternoon of 10 July 1988, after returning home from an Indoor Cricket game, Terry Souter was found deceased in his home with a single gunshot wound to his head. This followed a phone call with his partner about 6:30pm to 7:00pm and a subsequent call made by him to the Ambulance Service NSW in Tamworth.
412. A note was found at the scene that read, *“David and Cristian will be here to pick these up for Caroline. Love you all but can’t handle life. Love, Terry”*. His death was deemed self-inflicted and non-suspicious.
413. In early October 1999, Tamworth Police investigators became aware of a report that Terry Souter had possible involvement in Mark’s death; that he (Souter) had left behind three letters addressed to Carolyn Butler (Terry Souter’s then girlfriend), Peter Livermore (a friend who was deceased as of 2024), and Phillip Heidtman (friend) and that Terry Souter’s suicide may have been connected to this involvement.

Colleen Souter’s 1999 statement

414. On 12 October 1999, a statement was obtained from Colleen Souter, Terry Souter’s sister. Ms Souter stated:
- (1) About 6 years earlier her youngest brother Michael found out from Peter Livermore about some letters her brother Terry had written before he took his life.
 - (2) Michael *“told me that Terry had written 3 letters to [Carolyn], Phillip and Peter...”*
 - (3) *“...Terry had broken up with [Carolyn Butler] the day he took his life...”*

- (4) *“...According to Michael the letter mentioned a fight involving [Mark] and a group of about 12 guys before his death...”*
- (5) *“....The only names [she recognised were] Jody Wedisweiler and George Westbrook....”* (whom she had gone to school with).

415. Colleen Souter, in her statement, did not report seeing the letters, knowing their content or having any direct knowledge about Mark's death. The information she conveyed was reportedly based on statements made to her by Michael Souter.

Fay Souter's 1999 statement

416. On 14 October 1999, police obtained a statement from Fay Souter (Terry Souter's mother). Ms Souter stated:

- (1) Her son's friends at the time he died included *“Peter LIVERMORE, a boy by the name Phillip who was a little older than the other boys. Jodi Weismuller or similar spelling, a George Westbrook, a Tony Gillan and of course Mark HAINES who died as a result of being hit by a train a few months before my son died. All of the boys called into my home which was at [22 Kenny Drive, Tamworth] just visiting my son and mucking around as kids do”*.
- (2) Her son Michael was 14 at the time of his brother's death.
- (3) *“About five or six years ago I was talking to Michael about Terry and he told me...I would be shocked if I knew the truth about Terry. He also told me that he had been approached by someone who had demanded his copy of Terry's letter. When I questioned Michael about the letter he informed [me] that he had learned that just before Terry died he had handed out three letters. One to his girlfriend Caroline [Butler], Peter [Livermore] and the other boy Phillip. Everybody apparently believed that Michael also had a letter. When I asked Michael what was in these letters he told me he had read the letter that Phillip had had. I said, “I want to read it because it's my last link to Terry”. Michael said, “No if Phillip finds out that you or the Police know about the letter and try to get it Phillip will destroy it”. I said, “What's in the*

letter?" Michael said, "No I'm not telling you". I insisted but again he said, "No".

- (4) "...I have had lots of conversations with the late Mr Jenkins, the Solicitor who was the original Police Investigating Officer in Mark HAINES' death. Mr Jenkins told me that he believed that maybe my son, Mark HAINES and their mates may have been mucking around doing something and as a result Mark was killed. To cover up his cause of death Mark was placed on the railway tracks. I and Mr Jenkins believe that Terry, finally, could not accept the fact of his involvement in Mark's death and committed suicide."

417. As with Colleen Souter, the information provided by Fay Souter is primarily based on statements made to her by Michael Souter. She did not see any of the letters her son was reported to have written.

Interview with Phillip Heidtman in November 1999

418. On 23 November 1999, police interviewed Phillip Heidtman. Mr Heidtman said he was friends with Terry Souter before the latter's death. He recalled Terry Souter providing him with a letter before his death. This was read by his then partner, Robyn Stonestreet, who told him of its contents namely that it concerned a falling out they had about 1-year prior and contained no mention of Mark's death (to Mr Heidtman's knowledge). Mr Heidtman confirmed the same under oath on 12 April 2024.
419. A statement was subsequently taken from Ms Stonestreet in August 2017. She recalled Terry Souter attending a gathering at their place in Tamworth in about June 1988, not long before his death, and apologising for his behaviour at a previous gathering about one year before. Terry had been a good friend of Mr Heidtman until a falling out that previous year. She did not recall receiving a letter and denied any knowledge about Mark's death.

Michael Souter's account to police in October 1999

420. On 27 October 1999, Plain Clothes Constable Andrew Woods spoke by phone with Michael Souter. The note of this conversation included following:

“...Michael said he heard that [Mark] was apparently not alive when he got to where he was found. He then stated that he has a lot of trouble remembering a lot of his younger years.

...

Michael states that he was told [that] Terry saw two people lying a dead man on a railway track. He was further told that Terry placed a towel under the head of the dead person. Michael then [stated] that due to his memory problems that he cannot be sure if he was in fact there and that Terry told him to “Fuck off home”. Michael cannot state how Terry came to be at the location and people of Coledale were demanding silence about the matter. Michael [stated] that at the time there was a lot of friction in the Coledale area and that Terry had a lot of trouble with Jason Trindall and when he spoke with Pod Trindall, Pod has said, “All you’ve got to do is say sorry to Jason”. Terry would reply “But I didn’t do anything”. Michael went on to say [that Mark] may have just been in the wrong place at the wrong time.”

421. From this record, it appears that Michael Souter was not certain that he was present or whether he was reporting what he had been told by others (unidentified). He also made clear the difficulties he had with his memory.

Carolyn Butler’s account to police in November 1999

422. On 30 November 1999, police investigators spoke with Carolyn Butler. She denied receiving any letter from Terry Souter. She had not known Mark before his death. Ms Butler again confirmed her account of this in her evidence in the 2024-2026 Inquest hearing (she also denied having any knowledge of Mark’s death).

Police interview with Michael Souter in January 2002

423. On 10 January 2002, police interviewed Michael Souter about his statements on 27 October 1999. Michael Souter’s statements in that interview included the following:

Q37: OK. What I’d like you to do now, Mr Souter...is just to give us any information that you have in relation to the death of a young Aboriginal male in Tamworth back in 1988.

A: *Well, his death, I have no information.*

Q38: *Yep.*

A: *But I was walking with my older brother, um, as I used to enjoy time with him. And, un, I was walking in area where the rail track..., I believe, possibly mistakened it between West...and Taminda.*

Q39: *Yep.*

A: *Uh, he told me to wait where I was standing, that he'd be back in a minute. He was wearing a jacket and he left me. Um, I sort of turned around and seemed like one of the jacket under a man's head. If I think hard, I think I can remember asking him what was wrong. And for some reason, my brother said, Nothing. He'll be fine. He didn't have the jacket on that he left with, and we walked off. I'm not sure if my brother knew...I don't feel good when I think about it. My brother shot himself in the same year, just little...*

...

A40: *...I was, I...by two different people in the past years asking if I knew anything about the boy...Um, I just, um, can't think of this young man's name...*

...

A41: *Livermore.*

...

Q44: *Uh-huh. Do you remember what he, what he asked ya?*

A: *I think my brother might've spoken to him because he asked me, howe much did your brother tell you about the harness? I think that's, I think that's right. I told him, nothing. That was said, I don't know whether it's connected or, ...but I didn't see how that boy would know anything about that day.*

Q45: *You didn't discuss it any further?*

A: *No, I found him quite cautious about he's asked to - - -*

Q46: *When you saw your brother on the railway tracks, did, did you see anyone else?*

A: *My brother?*

Q47: *Uh, when you see - - - -*

A: *When I see him walk back to the situation?*

Q48: *Yep.*

A: *No.*

Q49: *OK. Do you remember what the jacket that he took off, do you remember what that looked like?*

A: *I'm not sure if it was a mixed coloured jacket...I don't think...I don't think it was one colour, I think it was like...of, of, uh, two dull colours, I think, if I remember correctly.*

(NOTE: no jacket was reportedly found at the scene with Mark on 16 January 1988)

Q50: *And do you remember why you were walking in that area?*

A: *Nuh, that could've been any reason. My, uh, my brother was a big walk, constant walker, um, and I pretty well used to leave the house whenever I could and go with him. I liked me older brother...*

Q51: *How what, how old were you back in 1988?*

A: *I would've been uh, 14 turning 15. Not far off. Maybe a few weeks. There's only nine days before me birthday.*

Q52: *OK. Can you just describe the, how the person was laying? D id you see it at all?*

A: *I thought that the boy was laying in his back.*

Q53: *Uh-huh.*

A: *...see Terry....with, sort of put a jacket....*

...

Q69: *An you can't say exactly where it was?*

A: *Well, I thought it was...but I think I was given the impression it was in a different spot.*

Q70: *So where do you, where did you think it was?*

A: *I thought it was in Taminda I think.*

Q71: *Changed area.*

Q: *You see? There you go, there's the memory problems. I, I know for a fact that I either mentioned the Taminda or Werris Creek and someone else has gone, no, it happened here...*

...

Q87: *There's been an allegation made that your brother left a number of suicide notes.*

A: *A number?*

Q88: *Mmm.*

A: *Well, I only know of one of them, which is the one that my mother showed me, which is this little paper with a few words I just mentioned ['I can't handle life'].*

[After confirming Terry knew Peter Livermore and Phil Heidtman]

Q101: *So to your knowledge, there was only the, the one bit of writing left to your mother, probably just stating general...is that right?*

A: *Yeah. Yeah. Yeah. Do you have, uh, do you have more letters, do ya?*

Q102: *No, just I'm sayin' that it's just, been an allegation made that a number of letters were left. Uh, one to Peter Livermore, one to Phil [Heidtman] and one to [Carolyn].*

Q: *Oh, I think now I remember one little letter that he asked to be given to Caroline. I don't know if, I think my mother gave it to her. But I, I don't remember there were other letters...yeah..*

...

Q118: *So do you know anything about the death of [Mark]?*

A: *In my mind, all I know about Mark Haines is the fact that a boy was found, I was walking with my brother once, who seemed to comfort someone. Whether they were dead or alive at the time, I don't know. **But when I look back and he comforted someone, I might've even thought it too much, you know and just mistaken the walk, you know?** 'Cause we used to walk around the town and we used to walk out West...and even, we used to walk out, we used to walk out till...You known? Took what, an hour and a half, two hour, beautiful walk...*

(emphasis added)

424. In giving his answer at A118, it appears to me that Michael Souter was not confident in his own mind about his recollection of seeing Terry Souter giving a jacket to someone related to the person on the tracks.
425. Regarding letters written by his brother before his death, he referred to the note left at the scene and, possibly, a letter written for his girlfriend Carolyn although he did not say if that letter was in fact provided to her. I find his account inconsistent with the statements he reportedly made to his mother, some years earlier, about having seen a letter by Terry Souter to Phillip Heidtman.

Michael Souter's oral evidence in the 2024-2026 Inquest

426. Michael Souter, in his evidence on 15 April 2024, said he used to walk with his brother to Timbumburi Creek to fish. He said in evidence:

"My brother was a bit of a fisherman, so he used to go down there even more often than I did, but on the rare occasion I used to go with him, and on this occasion he'd asked me to go for a walk, and that's when we walked down the creek. Went down, checked the lines, and then I assumed we were walking back home, and he said, "I feel like going for a longer walk. Let's go for a walk", and we went out that way, and that's when that - what's written down in my statement. That's what I remember, going for a walk with my brother, and I remember him saying to me, "Stay back." When my brother

said something, you know, you did it. He was four years older than me, so he had stated to me, "Wait back there." I think it was about 40 odd metres or so, I think. If I got the memory right, being a kid, I stood for a bit, ten minutes or so, but I started sort of just walking towards him a bit, and that's when my memory - I remember Terry standing over a person. I - I also - I'm going to state that years ago in my memory I used to - my brother wore a certain jacket for a couple of years before he passed. It was just one of them white sleeves, red, with - it had an A on it, and in my memory I thought he'd left - come back without the jacket, but then I realised that wasn't the case.

He - did - leave - have a towel around his neck. He didn't have that when he come back. That's all I know.

...

...Like, I think he had - if I remember correctly, he had a towel around his neck. That's - was something. Not at the time, I didn't think anything of it, but I heard a towel was brought up. Apparently Mark, this is my memory of it is that Mark was comforted, and I think - well, I know, that was my - that was my brother who comforted him. I know that.

...

But I - like, I wasn't even close enough, honestly. I wasn't even close enough to see who, or - or - I remember saying to Terry, what - you know, what - is that someone laying over there, and he said, "Mind you own, fucking", and then he turned around, and I did.

[Asked what time of day they typically went to Timbumburi Creek to fish]

It would have been afternoon time.

...

My memory of the time of day. I - this is the problem. When I think about it sometimes I think about it in the - late afternoon, but in my memory I've often - I think I said earlier it was the morning too, so that's where I get - my memory's not there when it comes to that part. I don't know why."

Jason Becker's account

427. Jason Becker completed a statement to police on 28 July 2018. In his statement, Mr Becker said:

- (1) He had gone to school with Terry Souter in Tamworth.
- (2) A few days before Terry Souter's death, he (Becker) was parking his car in Peel Street to head to the movies when Terry Souter approached him.
- (3) Terry Souter spoke to him (Becker) about Mark Haines.
- (4) Mr Becker couldn't recall the conversation "*but I remember him saying that he was there but wasn't involved*". He (Souter) also mentioned a Burgundy Commodore owned by Brett Johnston.
- (5) Terry Souter gave Mr Becker "*a note*", written on a piece of paper, and said to him (Becker) "*something about this being for later*".
- (6) Mr Becker thought it strange but took the note.
- (7) He later took it home and read it (*he does not disclose what it said in his statement*).
- (8) A few days later Terry Souter died.
- (9) After that Mr Becker placed the note into a wall cavity between his unit and the next unit.

428. Mr Becker subsequently moved from this accommodation and the unit block was subsequently torn down. The effect of Mr Becker's evidence is that he did not recover the note and it was lost when the block was destroyed (*the fact of the unit complex's existence and it being destroyed was independently verified by DSC Dunn*).

429. Mr Becker gave oral evidence on 16 April 2024 which included the following statements:

- (1) He knew Terry Souter from Oxley High School and considered him a friend.
- (2) He recalled Terry Souter waving him down on Peel Street, before Terry Souter died, and giving him (Becker) "*...three envelopes and said, "one's for you." I can't even actually tell you who the other two were for and said, "put*

these away for a later date". These were folded up with tape across the top of them.

- (3) Mr Becker could not recall what else was said at the time, "*...it's a long, long time ago. I've had accidents and head injuries...and other things since then and I don't – I have no idea what he said then*".
- (4) This was the first time Terry Souter had ever asked him to hold something for him. Mr Becker "*thought it was actually strange that he gave - that he did that because, like, we weren't the closest, closest friends. We were friends and we were friends through school, in the same class and things like that*".
- (5) Mr Becker was staying with a female, Brenda Morrison, in a flat on Carthage Street which was one of "*four flats that were in Carthage Street that used to be old squash courts*". He returned there with the letters and put them in a wall downstairs in that unit. This was in the bathroom where part of the fibro was missing at top of the shower.
- (6) He planned on looking at them later but "*I don't know why, I just forgot about it, like, I didn't bother doing it or anything*".
- (7) Mr Becker later moved to another residence in Tamworth and "*forgot all about*" the notes / envelopes.
- (8) Mr Becker said he had no memory of reading the notes and did not know their content.
- (9) He had no knowledge about why Terry Souter committed suicide or Mark's death.

Statements made by Leanne Bienke

430. On 28 August 2003, police investigators again spoke with Colleen Souter. An investigator's note of that interview recorded the following:

"Colleen SOUTER states that she was visiting Tamworth in recent weeks (around the 17/08/2003) and visited a friend in the Coledale area. While at

the friends place she met with a Leanne BINKE who identified herself and then commenced to cry. BINKE stated that she knew of about twelve people who may have been involved in the death of Mark Haines and one of them was Colleens brother, Terry SOUTER. The people nominated as being involved were:

John 'Pod' TRINDALL

Denise HAINES

Jody WEDESWEILER

'George' WESTBROOK

Peter LIVERMORE

Brett GREEN

Phil HEIDTMANN

Paul KENNEDY

Matthew KENNEDY

*All of the above nominated people are long-time residents of Tamworth and all have adverse criminal histories. **It has been suggested that Mark Haines was punished for an incident or as a consequence of something Denise HAINES had done.** It is suspected that this may have been the theft of an amount of drugs. **It was further suggested that Mark was picked up in a white Torana two door sedan which was driven by Terry SOUTER and taken to the Moonbi Lookout off the New England Highway, Moonbi where a group of about 12 people commenced to assault Haines which resulted in his death.** This group then took Haines out onto the railway track near Duri and dumped his body on the railway line in an attempt to have it appear as suicide or misadventure.*

***Colleen SOUTER stated that Terry SOUTER owned a two door white Torana sedan at the time of the incident or thereabouts.** The white Torana sedan which was located near the body of Haines appears not to have been owned by Terry SOUTER...*

The information provided to police on this instance is 3" hand and at this stage cannot be linked to a source who was involved in the incident. Leanne BINKE required to be interviewed concerning her knowledge and where she obtained this information.... (emphasis added)

...

Content of the interviews relating to notes from Terry SOUTER being left for persons Peter LIVERMORE, Phil HEIDTMANN and Caroline BUTLER have been addressed in the past with the three people denying the existence of such letters at any time.

The attending police of the suicide of SOUTER are required to be interviewed to assess their knowledge of any such letters. This is the first occasion there has been a nominated person being in the vehicle with HAINES prior to his death.

Further investigation required to confirm [or] dispel versions of events given by SOUTER family. Require information from a person closer to the source of information."

(emphasis added)

431. Leanne Bienke resided next door to the Souter family in Kenny Drive, Tamworth for a time.
432. Brett Green and Denise Haines died in 2004 and 2005 respectively (both of suspected overdoses). There is no evidence either was interviewed by police about the above report.
433. Peter Livermore is also deceased. A running sheet notes that Mr Livermore was spoken to by police about whether he received a letter from Terry Souter (which he denied) however there isn't a specific record of that conversation with police.
434. Jodie Wedesweiler is alive and has been spoken to police (including very recently in 2026). He denies having any involvement or knowledge about Mark's death.
435. Leanne Bienke was not interviewed by police until 26 May 2017. Ms Bienke's statements in that interview included:

- (1) She knew Mark and had supplied him “yarny” in Kenny Drive Tamworth when he was about 17.
- (2) She knew Terry Souter as he and his family “*moved next door to us*” in Tamworth when he was about 14.
- (3) She knew of no connection between Terry Souter and Mark (A77).
- (4) While living in Newcastle with her husband, David Bienke, shortly before they relocated to Queensland, she received a call from Terry Souter who said, “*he was in trouble over Mark Haines’ death*” and asked if he could stay with her in Newcastle.
- (5) In the call Terry Souter sounded “*stressed out*”.
- (6) She (Bienke) asked where he had been and he said, “[*w*]ell *we won cricket, this is what he’s told me, they won the cricket - - - he was playin’ cricket, and apparently they were at the loco - - - and he got the house keys off his mum, and he went home, and he signed up, and he rang me up and said, I’ll be down, I don’t know if he turned up because like I said we had to move straight away...*”.
- (7) “[When asked what Terry Souter said about Mark during their phone call] *He just said, Mark’s dead, he said, And these people are chasing me, that’s all he said*”.
- (8) She (Bienke) later heard, from other persons (not Terry Souter), that “[*Mark*] *was put in a car up here at Moonbi and they bashed him and - - - they left him on the railway line and - - - Terry was supposed to see all that happening on the railway line*”. Asked if she was told who “they” were, she (Bienke) said “*no*”.
- (9) Terry Souter never said to her (Bienke) that he actually saw what happen to Mark.
- (10) She (Bienke) later found out, not “*too long*” after their phone conversation, that Terry Souter had taken his own life.

436. Ms Bienke, in her interview, did not say she had been told the names of the persons involved in the assault on Mark (*although Colleen Souter, in her report to police, gave names based on what Ms Bienke told her*).

Whether Terry Souter had access to a white sedan (Torana) in early 1988

How this arises as an issue

437. A report about Terry Souter owning a white Torana was made to police as early as 2003 in an interview with Colleen Souter. This issue is of relevance to the “*two car theory*” and/or the possibility this was the white Torana reportedly sighted by June Munro and Terry Tolmie on Edward Street shortly after 3:00am on 16 January 1988.

Fay Souter’s account

438. Fay Souter, in a statement made to police on 26 August 2018, said she recalled her son coming home with a white Holden Torana in or about late 1987 or early 1988. She still had infringement notices for registration OMM-385 issued to her son for that car. She did not know what happened to that car as of the date her son died.

RMS records

439. Terry Souter was issued multiple infringement notices which included an infringement issued for driving the vehicle registered OMM-385 on 15 December 1987 (e.g. driving with inefficient muffler silencer). A defect notice for this vehicle was issued in relation to the 15 December 1987 pull over. The vehicle registered OMM-385 was recorded as a white “72 Chrysler Sedan”. Fay Souter, in her statement, said she owned a Chrysler which her son sometimes drove.
440. Terry Souter was also issued a traffic infringement notice earlier on 25 February 1987. This was for an offence of driving without a “*P plate on vehicle*”. The registration of that vehicle was listed as “OBD-986”. That registration is recorded as relating to a white “86 Holden Sedan”. There is no record of that vehicle being registered in Terry Souter’s name.
441. Registration records list the owner in September 1987 as including “*Kosmo Smash Repairs*” (McIntosh Street, Tamworth) and “*Kensell Sales Pty Ltd*” (a Holden Dealership that sold new and used cars on Bourke Street, Tamworth). The registered ownership next changed in August-September 1988.

Carolyn Butler's evidence in the 2024-2026 Inquest

442. Carolyn Butler was examined in the 2024-2026 Inquest about vehicles Mr Souter had access to during their relationship.
443. Ms Butler said during her relationship with Terry Souter she lived in Boggabri. Terry Souter lived with her for a couple of months, and they worked together doing "*cotton chipping*" which involved removing weeds on cotton fields.
444. Ms Butler said she owned a white Torana sedan while she was together with Terry Souter, this being a car he sometimes drove. She said they had this vehicle when they were living with her mother, and they later sold it to a wrecking yard in Tamworth (before Terry's death).
445. It can be inferred that the Holden Torana that Terry Souter received an infringement notice for in February 1987 was that owned by Ms Butler.
446. Ms Butler said she stayed with Terry Souter at his parents' place "*now and then*". In relation to Terry Souter's death, Ms Butler said she received a call from him at her mother's house. He sounded quiet and said, "*I think we might need to have a break, split up*". This call had followed Ms Butler confronting him, a couple of days earlier, about suspected infidelity.
447. Ms Butler denied having any direct knowledge of Mark or his death.

Conclusion as to Terry Souter's involvement in or knowledge of Mark's death

448. Having regard to the available evidence, I accept the submission of Counsel Assisting that there is not a cogent basis to positively find that Mr Souter was involved in, present or otherwise had direct knowledge about Mark's death. While there is evidence that Mr Souter may have written letters to persons before his death, as reported by Mr Hiedtman, there is no evidence before me that those letters concerned Mark. While there is also evidence that Mr Souter may have had access to a white vehicle, there is no evidence before me as to whether any such vehicle played a role in Mark's death. Most of the evidence I heard in relation to a possible connection between Terry Souter and Mark's death was of a hearsay nature or was confused and contradictory.

K. Evidence and findings as to Glenn Mannion

449. Mr Mannion lived near Mark and had attended high school with Mark at Peel High School. He described Mark as one of his best friends. He was described to having shown considerable distress at Mark's funeral. Mr Mannion was also employed by Mr Sanderson at the Shell Service Station in 1987-1988, being a location where Mr Sanderson kept his Torana during work hours. His close friendship with Mark and their presence together earlier in the evening, as well as his connection to the owner of the white Torana made him an important witness in these proceedings.

Mr Mannion's reported movements on 15 16 January 1988

450. Mr Mannion had been out with Mark from the afternoon or evening of Friday, 15 January 1988 into the early morning of Saturday, 16 January 1988.

451. In a statement made to police in 1988 or 1989, Mr Mannion said he took a taxi home with Michael Biddle. He remained there and later learnt of Mark's death that same day. He had no knowledge of Mark's movements after they parted company at Dominoes Nightclub or what happened to Mark.

452. Mr Mannion was called as a witness on Day 3 of the 1988-1989 Inquest. A transcript of his evidence is not available. It is not known what evidence he gave or the reasons for which he was called. However, I accept that in that evidence he denied any knowledge regarding the circumstances of Mark's death.

453. Mr Mannion participated in an interview with DSC Dunn on 1 August 2018.

454. Mr Mannion made another written statement for the 2024-2026 Inquest and willingly gave evidence on two occasions.

455. At all times, Mr Mannion has consistently denied any involvement in Mark's death or any direct knowledge of the circumstances.

Background

456. Mr Mannion spent several years in childhood living in Currabubula with his parents and siblings. His parents operated a licensed venue there.

457. In early high school, his family moved to Tamworth and they lived at 15 Bent Street, West Tamworth (near to Coledale).

458. After this move, Mr Mannion attended Peel High School. He was in the same grade as Mark. Mark began attending that school a year or two after Mr Mannion began there. This was after Mark and his family's move to Tamworth.
459. Mr Mannion believes he finished school at the end of Year 10 in 1986.
460. In 1987 he undertook a TAFE pre-apprenticeship in metal fabrication and worked casually as a fuel attendant at the Service Station operated by Mr Sanderson. During that same year his mother passed away.
461. As of January 1988, Mr Mannion was residing with his father at 15 Bent Street, Tamworth.
462. On 9 February 1988, Mr Mannion signed an application for enlistment to the Australian Army. It recorded his 'civil employment' as "*driveway attendant*". The application included his father's formal consent (also dated 9 February 1988) to Mr Mannion's enlistment owing to him still being under 18 years of age. The application listed the 'date of enlistment' as 4 May 1988.
463. Other Defence Force records also record Mr Mannion's enlistment date as 4 May 1988 (possibly the date he commenced basic training).
464. Mr Mannion was enlisted in the army continuously until his discharge in October 1993. In that time, he had advanced to a specialist role within the army. His discharge related to him being injured through exposure to a significant traumatic event or events that occurred during his service. He was diagnosed, then or subsequently, to be suffering from post-traumatic stress disorder (**PTSD**).
465. After discharge, he returned to Tamworth and lived with his father in Bent Street.
466. Mr Mannion was in Tamworth about 1 to 2 years or more. He worked in catering supplies.
467. During this time, he began a relationship with Kathryn Arthur (Bird) in about 1994-1995 which lasted about 1 to 1 ½ years. Their relationship ended about the time Mr Mannion moved to Mount Isa for work purposes (likely around late 1995).
468. Mr Mannion estimates he lived and worked in Mount Isa for about 2 years, after which he moved back to Tamworth and lived at Bent Street. He remained living there continuously for about 3 to 4 years.

469. Mr Mannion was involved in a period of heavy drug use, including heroin use (he estimated it lasted 3 to 4 years). He was in a relationship with Misty Coleman during this period (he estimates their relationship lasted about 12 to 18 months with them living together for about 6 months).
470. By about 2001, Mr Mannion had left Tamworth again. This was after his father's death. He succeeded in abstaining from substance use and attended drug rehabilitation (he estimates he did so for about 6 months). He subsequently obtained work as a driller's assistant in the mining industry working in locations out of Tamworth (e.g. Muswellbrook, Gold Coast, Gunnedah). He currently works in the mining industry and enjoys long-term abstinence from drug use.
471. Mr Mannion's last known conviction for an offence was in late 1999 (possession of a prohibited drug). He has not come to the attention of police since that time.

Relevance of Mr Mannion to the inquest

472. As of January 1988, Mr Mannion was employed as a casual fuel attendant at the Shell Service Station on Bridge Street operated by Mr Sanderson, the owner of the stolen Torana found at the tracks. Of all persons close to Mark, Mr Mannion is the only one known to have had a direct connection to that car before its theft.
473. Reports and rumours have arisen from other persons about Mr Mannion's possible use of the Torana before Mark's death.
474. There is no evidence that Mr Mannion's connection to the stolen Torana was something actively investigated during the second investigative period (1999-2003).
475. It was not until 2016 following the resumption of the police investigation into Mark's death, that police began to investigate reports that Mr Mannion might have been present or might have direct knowledge of the circumstances of Mark's death. For example, police received information from Arne Olsen in July 2017 (regarding him being told by another that Tanya White and Glenn Mannion "*knew all about what happened to Mark*") and information provided by Rodney Lavender.
476. It is important to make clear once again that I have not been provided with direct evidence that could conclusively establish that Mr Mannion has had involvement in or has further knowledge of Mark's death. It should be stressed that Mr Mannion, in his statements to police and his evidence under oath at the 2024-2026 Inquest, has repeatedly denied any involvement or knowledge.

Michael Biddle's account about 15-16 January 1988

477. Mr Mannion told police in his first statement he had travelled home in a taxi with Michael Biddle in the early hours of 16 January 1988.
478. Save for Mr Mannion, no other witness who was out that night, who provided a statement to police in 1988 or 1989, mentioned Mr Biddle being present that night.
479. For reasons not known, police did not obtain a statement from Michael Biddle or confirm Mr Mannion's report about this in 1988-1989.
480. Mr Biddle made a statement to police on 13 February 2018. Mr Biddle knew Mark and Glenn Mannion through their attendance at Peel High School. In year 11 and 12, Mr Biddle regularly attended licensed premises each weekend including Dominoes Nightclub. The people he associated with, in that context, included Mr Edmonds, Glenn Mannion, Greg Reynolds, Geoff Thomas, Nick Porter and Gavin Tumeth.
481. Mr Biddle told police he regularly caught a taxi home with Glenn Mannion, who lived in Bent Street not far from Mr Biddle's home in Quinn Street at the end of the night. He believed he was out in Dominoes Nightclub on 15-16 January 1988 but had no memory of what happened that night or how he got home.
482. In his evidence on 15 April 2024, Mr Biddle initially said he believed he could recall "*fragments*" of that night including leaving Dominoes Nightclub with Glenn Mannion although he did not report such memories in his 2018 statement.
483. Mr Biddle recalled attending a reunion of ex-Peel High School students in Coffs Harbour in about 2016 or 2017. Numerous persons were there including Mr Lavender and Barbara Braun. Mr Biddle said Mark's death was frequently brought up in reunions of this kind. He recalled an exchange with Ms Braun during which he said he couldn't recall where he had been, and whether he was in Tamworth, on 15-16 January 1988. He ultimately accepted it was possible he wasn't present then. His evidence about this is as follows:

Q. Were you sitting at a table with Barbara Brawn (sic) or were you standing, chatting or how--

A. I was sitting and standing, yeah.

Q. Can you recall how this conversation came up?

A. Well it comes up every time we meet up with somebody from Tamworth, like, somebody will always bring up the issue of Stoney.

Q. What do you recollect as best you can that you said to her and if you can use--

A. No, I said - I probably said like I used to get sent away all the time in Christmas time. **I used to get sent away all the time on holidays. I can't even remember where I was. That's pretty much the statement that I think I made.**

Q. You said that you can't remember "where I was," were you meaning at the time that Mark died?

A. That's right - yeah, that's right, yeah, like in terms of whether I was in Tamworth or not, but I'm pretty sure that I was in Tamworth.

Q. When you said that to her in your mind were you unsure if you had in fact been in Tamworth that weekend?

A. Yeah, I was unsure, yep.

Q. So how can you be sure now at this point that you were--

A. I think because of the conversation I had with those detectives in the car.

(NOTE: Mr Biddle described an occasion, when he was a probationary constable, of travelling with detectives from Tamworth to Gunnedah, one of whom was Detective Peter Jenkins, where the topic of Mark's death came up and he was questioned about it)

Q. So is that something that you have thought about further after this—

A. I've been wracking my brain on this, it's just so - just so difficult to put everything together and so long ago, you know. I don't want to give you wrong information but it just feels that what I'm saying is right.

Q. Is there a possibility that the memory you have of getting a cab home, Glenn Mannion, wasn't this weekend but it was another weekend?

A. Sure, there's always that possibility because they all blend into each other. They're all so similar and such a long time ago.

Q. I think what you said in your statement at paragraph 8 is, "I cannot remember what exactly happened on the night of 15 January 1988. I remember being in Dominos that night. I do not clearly remember how I got home that night"?

A. Other than the fact that I think I caught a cab or walked - no, I think I caught a cab with Glenn Mannion, that's what I think happened.

Q. What you said in the earlier paragraph is, "The usual thing at the end of the night would be that I would catch a cab with Glenn"?

A. Yep.

Q. So you are describing there something is a practice you frequently do but that's different from having an actual memory. Do you understand what I mean?

A. Yeah, I do understand thank you.

Q. You can't say for sure as you sit there now that you do have a memory that on 15/16 January you got in a cab with Glenn Mannion to go home?

A. Yeah, I guess I can't say for sure, yep.

Q. But if someone said to you there was a practice of you doing that around that time you would readily agree with that?

A. Yeah, yep.

(Emphasis added)

484. Mr Biddle said in evidence before me that he had no other knowledge about Mark's death.

Mr Sanderson's 2024-2026 Inquest evidence

485. Mr Sanderson said he generally drove the Torana to his workplace (Bridge Street Shell Service Station) and parked it there for staff use if required (assuming they were licensed). That included picking up parts for the mechanic workshop, dropping off customers and shifting trailers kept on site for hire.

486. Staff didn't require his permission to use the car for work purposes, and he generally left the keys on a wall in the office.
487. As of 1987-1988, he employed a full-time mechanic and part-time/casual driveway attendants who pumped fuel for customers. He expects he employed two or three attendants at the time. Glenn Mannion was employed for about 13 months as a casual attendant between 1987-1988 including at the time of Mark's death.
488. When asked if he had a memory of ever seeing Mr Mannion drive his Torana, Mr Sanderson said in his evidence on 12 April 2024 "...[he] probably [did]...he would've at some stage moved it on the site at least to clear the space for other vehicles...he probably would've been in the vehicle at some stage" (Mr Sanderson did not report having an actual memory of that now).
489. Mr Sanderson speculated that Mr Mannion likely knew in early 1988 that he (Mr Sanderson) spent time at Wilburtree Street however he could not say that for certain.
490. In oral evidence before me, Mr Sanderson also stated that he had "*no suspicions or any ideas at all*" about who might have taken his car and Christmas presents. Further, he stated that he had heard nothing since which might indicate to him who was involved. Mr Sanderson was specifically questioned about whether he had ever discussed the Torana going missing with Mr Mannion, who continued to work for him before joining the army. I was surprised to hear that Mr Sanderson could not recall ever speaking with Mr Mannion about the theft of this vehicle.

Kathryn Arthur's (also known as Kathryn Bird) evidence

Background

491. Ms Arthur met Glenn Mannion while working at a pub in Currabubula, near Tamworth, in the 1980s. That pub was operated for a time by Glenn Mannion's parents (Bill and Fay Mannion).
492. They began a relationship in about 1993 or 1994. About that time, Ms Arthur began living in Tamworth, in Caloom Street. Mr Mannion was residing with his father in Bent Street when she moved to Tamworth. Ms Arthur estimates their relationship lasted about one and a half years to two and a half years, during which time Mr Mannion resided with her in Tamworth for about 12 months.
493. Ms Arthur described Mr Mannion and their relationship together in positive terms. Their relationship ended after he moved away to work in the mines in Mount Isa.

Mr Mannion later returned to Tamworth and Ms Arthur saw him periodically around town. She reported no animosity between them.

494. Ms Arthur met Jason Wann, and his partner Michelle Robinson, through Mr Mannion while they were together.

495. Ms Arthur and Ms Robertson became friends, with their friendship continuing to this day.

How Ms Arthur came to the attention of police

496. Ms Arthur was contacted by police in 2017 after being spoken to for a podcast *Blood on the Tracks*. Ms Arthur said she was contacted by persons involved with the podcast after she was mentioned to them by Mr Wann. She believes this occurred in about 2017.

Jason Wann and Michele Robertson's evidence

497. Jason Wann and Michele Robertson, in statements made to police in 2017, recount an occasion when Ms Arthur attended their home in Dilley Street, Tamworth. Their evidence is relevant as it provides corroboration for Ms Arthur's account about her conversation with Mr Mannion (namely, it is not a case of Ms Arthur reporting this conversation for the first time in 2017).

498. Mr Wann said he was friends with Mark and Mr Mannion in 1987 or early 1988. In the 1990s, when Mr Mannion returned to Tamworth (after the army), Mr Wann's friendship with Mr Mannion resumed. Mr Wann and Ms Robertson met Ms Arthur (also known as Bird) through her relationship with Mr Mannion.

499. As of 2024, Mr Wann and Ms Robertson were separated. Ms Robertson has remained close friends with Ms Arthur since the mid-1990s.

500. Ms Robertson, in a statement completed 23 August 2017, stated:

"12. [Sometime between about 1994 and 1996]...Kate coming around to home one night. She was shaking. This was very unusual and I had not seen her like that before. She said something like, "Glenn just told me something really weird to me about Stoney's death. He said he was there that night." I really remember three distinct things. Kate said that Glenn had said it was raining, he was there and there was a box.

...

14. *The three of us went out to the office at the back of the house. Jason sat at my desk and rang Crime Stoppers. I remember Jason said our three names and gave our home phone number. He repeated what Kate had said. He had the conversation with Crime Stoppers and the call ended. We assumed that the Police would contact us. They never did.*"

501. Ms Robertson, in her oral evidence on 30 October 2024, stood by this account and said that she recalled being present when Mr Wann called Crime Stoppers. Ms Robertson said she did not follow up this report because "*[w]e thought ringing Crime Stoppers was what you do. We never heard back from the detectives or from the police*".

502. Mr Wann, in a statement completed 20 February 2017, stated:

"16. I think it was early 2000. I was living at...West Tamworth with my partner Michele Robertson and our children...Kate came around to home. Kate said something like, "I've got something to tell you!" Kate had previously heard me talk about Mark Haines' death.

17. Kate said something like, 'Glenn told me that he was there when Mark died. They rolled a car and Mark was killed. They dumped him on [the] railway lines'. I was a bit shaken. We spoke about what we would do. The decision was made for me to ring Crime Stoppers. I went inside and called Crime Stoppers that night.

18. I had heard a lot of stories about what had happened to Mark. I thought this might help the Police. I am pretty sure I used my name but I cannot be sure."

(Underline added)

503. Mr Wann's oral evidence, on 30 October 2024, included the following:

- (1) Mr Wann lived in Coledale in 1987 near Mark. He regularly saw Mark and considered that they had a "very close" friendship.

- (2) He similarly described Mr Mannion as a “*very close friend*”. He recalled Mr Mannion being physically unwell as they drove home together after Mark’s funeral.
- (3) Mr Wann and Mr Mannion resumed their friendship when Mr Mannion returned to Tamworth (after the army) in 1993, but they became estranged in about 1996 or 1997.
- (4) Mr Wann maintained he recalled making a call to Crime Stoppers, from an office in their residence. He believes he would have mentioned Mark and Mr Mannion’s name when making the report.
- (5) Mr Wann said he had never seen Mr Mannion driving Mr Sanderson’s white Torana before Mark’s death.
- (6) He agreed with the proposition that his call to Crime Stoppers, on his account, would likely have been in about 1997.
- (7) When asked why he didn’t take any action to follow up the Crime Stoppers report, Mr Wann said, “*I can’t explain. I don’t know why. I think life got in the way. I know that I remember thinking that - that Duck had been, you know, in so many rumours and things like that. I probably didn’t want to add to his troubles*”. He also admitted he did not tell Mr Craigie about Ms Arthur’s statements when they were made, stating, “*I should have went to Duck. I should have went and told Uncle Duck what I had found out, and I regret that now, as you said, with the benefit of hindsight. It was a poor decision on my behalf*”.
- (8) Mr Wann agreed he saw Mr Mannion in about 2017 at a reunion (on the Gold Coast) and had socialised with Mr Mannion on that occasion. He agreed he had not raised Ms Arthur’s statements with Mr Mannion on that occasion, stating “*I didn’t think that was an appropriate time or place to bring something like that up*”.

Ms Arthur's 2017 statement to police

504. Ms Arthur, in a statement completed for police on 15 April 2017, said:

"9. I know at some stage Glenn told me that the Mark's death was an accident. The car rolled and they put him on the railway tracks, it was raining, they put a towel under his head and covered him with a box.

10. I don't know why I know this. I don't remember where I was when Glenn told me this. I have watched a recent television series about Mark Haines. I knew this information before I watched that program. I have also spoke to Michelle and I cannot remember anything more about the conversation with Glenn. I don't remember Glenn saying who else was in the car at the time."

(NOTE: the reference to a recent television series refers to an ABC program, connected with a Podcast series, about Mark's death)

505. On the face of this statement, Ms Arthur did not say Mr Mannion said he himself had put Mark on the tracks. Ms Arthur uses the word *"they put him on the tracks"*. It is unclear who "they" is.

Ms Arthur's 2024 oral evidence

506. Ms Arthur, in her oral evidence on 15 April 2024, said she recalled this conversation taking place in her dining room in Tamworth. She remembered Mr Mannion was intoxicated and upset at the time of this conversation. Ms Arthur recalled Mr Mannion's use of the word "they" but her recollection about other details was hazy. Her evidence about this included the following:

Q. In your statement you referred to a conversation you remember having with Glenn, about Mark's death. Do you have a memory of that conversation now?

A. I do. I have a specific two things, for that conversation, what was said, but as - I know he was intoxicated, but I couldn't figure out why he was at my house intoxicated. Was in the dining room. He was very upset, and he said the two things, that - and was very upset, so.

Q. When you say he, do you mean Glenn?

A. Yes. Sorry, Glenn.

Q. When you say your dining room, do you know what house that was?

A. That was at Caloom Street. I think it's Caloom Street.

Q. Are you sure about where it was, or?

A. Yes. I know the house, I just can't - is it Caloom Street. Yeah, I don't know.

It was--

Q. Was it the one you were living in for--

A. Yeah.

Q. --23 years?

A. Yeah.

Q. In your memory, does he appear affected by alcohol?

A. Yes.

Q. How did that manifest, do you remember?

A. No.

Q. What I mean by that is, and I'm not trying to suggest what you should say, but someone can slur or they can how it in their eyes, or--

A. No, he was - he was drunk, you know. I think he was drunk, yeah.

Q. Was there something about him being drunk like that that - was that unusual?

A. **He was so emotional. He was really emotional. He was super-emotional. He was crying, but he was really intoxicated.**

Q. Was he being emotional, was that something that you'd seen on other occasions with him?

A. **Not like that.**

...

Q. Do you remember how this conversation comes about?

A. No.

Q. *Doing the best you can, and to the extent you can, if you can remember what words were used, or you think were used, if you do that, but to the best you can, can you explain to her Honour how it unfolded?*

A. *I just - I don't remember the words, but I do remember two specific things. That was he talked about Mark, and what happened, cause I was unaware about any of that at that time. I had no idea about Mark Haines, and **he said - he said there was "They put a towel under his head, and a box over him." I've never forgotten those two things**, ever, so I can't remember the - the whole conversation, but the towel, I've never forgotten. It makes me emotional to think about. The towel, and the box, and it's something that you just don't forget. I go to Currabubula quite a bit, back and forwards, and every time I past the railway line, I've never forgotten it, ever, so those two things. I've never forgotten. Towel under his head. Who put it there, **I remember "they". I remember "they", but that's the - the towel under his head, and a box.***

HER HONOUR

Q. **Did he say that he was one of the ones - when you say, "they", where was Glenn in that?**

A. **I don't know.**

Q. *You don't know?*

A. *No, I don't. I don't know. I've never had - I've had that vision forever, but I don't know - I can't - that's what I remember. That's what I specifically remember. I'm very specific about that, but everything else would just be a guesstimate, and I really--*

Q. *We don't want that.*

A. *Yeah. No, I'm specifically those two things, I've never forgotten, **but I remember a "they". There was a lot of "they". "They", or - like, when I think**, because I've thought about it a lot, because every time you pass there you think about it, but I - I think raining, that's another thing, so that's another*

thing. I always thought raining, the towel under his head, and the - and a box, and like, it was an accident. I've never thought it was - but I can't tell you why, but I just - specifically that, but I've never thought, oh, my God, this - you know, it's a horrendous thing, but I don't - I don't know. **I always thought it was an accident, and there's a "they", but I can't be specific.** Sorry.

COUNSEL

Q. When you say, "accident", do you remember that word being used or that might've been your impression of what he was describing?

A. **Maybe that's my impression.**

Q. I know as you said that you remember the word, "they"--

A. Yeah.

Q. --but do you have a memory now, did you have an impression when he was - what were you thinking he meant by, "they". I'm asking you, you were in the conversation and this is an exchange between you and him. Did you walk away from that with a view that he was talking about, "they", as in him and others or that it was, "they", as in some others, or you can't say?

A. No, I can't tell you honestly. It's hard to explain, I've just - every time I think, I think about that one thing, **but I don't think of Glenn actually being there. So, I've never thought of that. I've never thought he did this, this happened, but - does that make sense?**

Q. Your impression of what he said to you didn't make you think he was describing what he saw, or he was right present when that happened, is that what you mean?

A. No, I don't know whether he was there. So, I've never thought maybe he knew - I don't - I can't - I don't know. I know those two things. **I couldn't tell you if he was there, if he saw other ones, he's spoken to somebody. I thought about it but I just don't remember.**

(Emphasis added)

507. Ms Arthur could not recall, now, what the trigger for this conversation had been.
508. Ms Arthur could not be sure of the date this conversation occurred, but thinks it most likely occurred while they were in a relationship.
509. Ms Arthur, in her oral evidence, said she told Michele Robertson about this conversation at some point and she recalled a call being made to Crime Stoppers. This memory is contrary to what she said in her 2017 statement, namely that she had no memory of speaking to Michele Robertson and Jason Wann about her conversation with Mr Mannion and Mr Wann calling Crime Stoppers. Ms Arthur's oral evidence about this includes the following:

Q. I think her Honour just asked you do you remember telling Michelle about this.

A. I do. I remember going to her house and we would've been in her back room, so, I do remember telling her, and I know we rang Crime Stoppers, but I don't particularly remember doing that, but I remember ringing Crime Stoppers, if that makes sense.

Q. Can I just break some things down with you?

A. Mm.

Q. Do you have a memory of where Michelle was living when you would've said this to her for the first time and whether she was still with Jason or not?

A. They were together and I think it was Dilby Street, I think that was the name. It started with a D and ended in a Y.

Q. In your statement to police on 6 August 2017, there's a question answer here. I don't know if you've got your statement there still?

A. Yes.

Q. Do you want to just turn to the second page--

A. Yes.

Q. --and look at the last sentences and it has question, "Do you remember?".

A. No, I don't - well, I do now, I do. That's didn't sound right, did it, but I do - I remember being in their back room and I'm pretty sure Jason was there as well.

Q. *At the time you made this statement--*

A. *I said I don't.*

Q. *You prefer to say your memory of what you recall saying to Michelle or Jason in 2017 was fresher than it is now?*

A. *God no, no. I've certainly - I've certainly thought about it recently.*

Q. *Yes. What I mean by that is more time has passed since then, another six years plus since you've made your statement. Is it possible that your memory would have been better in 2017 than it is now about that?*

A. *No.*

Q. *No?*

A. *No.*

Q. *You also said do you remember Jason contacting Crime Stoppers and your answer there was no?*

A. *Look, I know that happened. I don't remember it. I don't remember the phone call but I know he rang. I've always known that--*

Q. ***How do you know--***

A. ***Because we've talked - me and Michelle have talked about that over the years, so.***

Q. *Putting aside what you and Michelle have spoken about, do you have an actual memory yourself of contacting Crime Stoppers or being present when they contacted Crime Stoppers?*

A. *Not actually but I'm pretty sure we did. That's fair--*

Q. *Just put that to one side though, we are just starting with your memory.*

A. *Yes.*

Q. ***Do you have a memory of that?***

A. ***Not really.***

Q. ***Do you actually have a memory now of telling Michelle at the Dilley Street residence or that's what you think you would have done because--***

A. ***I would have done that. There's just no two ways--***

Q. Yes.

A. --I - I told Michelle this. I don't remember the conversation. I just 100% know I would have told Michelle.

Q. You know Michelle certainly knows about something from you about--

A. Yes.

Q. --what's been said but do you have a memory of the first time you told her that or you just know that at some point you did?

A. I would have told her the next day. There is just no two ways about it.

Q. Why would you have told her the next day?

A. She's my best friend and that was a traumatic thing and she was friends with them, like, she was friends with Glenn. It was pretty--

Q. So you expected you would have shared it with her--

A. **100% I would have told her, there's just no doubt. I just don't remember the conversation.**

(Emphasis added)

510. The effect of Ms Arthur's evidence is that she expects she would have told Michele Robertson about the call, she is aware (from other sources) that Jason Wann reportedly called Crime Stoppers, but Ms Arthur does not have an actual memory of these events now.

511. Neither in her 2017 statement, or her 2024 oral evidence did Ms Arthur say she had been told by Mr Mannion that "*he was there*".

Investigations into whether a Crime Stoppers report was made

512. Checks have been made with Crime Stoppers as to whether they have record of a report being made by Kathryn Arthur (or Bird), Jason Wann or Michele Robertson about Mark's death. No record was located.

513. On 19 September 2004, the University of Newcastle Legal Centre, which was assisting Mark's family for a time, sent a facsimile to Tamworth Police regarding information it had received about a "*woman called Kate*", surname known, who "*is a former girlfriend of Glenn Mannion*". The letter advised that Mr Mannion "*is reported to have told Kate about the circumstances of Mark's death*". The Centre further stated

“[w]e know that Kate was encouraged to pass this information on to Crime Stoppers. We are uncertain as to whether or not she did so”.

514. It does not appear from the information contained in the letter dated 19 September 2004, that “Kate” had definitely told the Legal Centre, that the matter had in fact been reported to Crime Stoppers, by that time. And I note that the Commissioner of the NSWPF submits that appropriate searches have been made for records such as any Crime Stoppers call and that no party has submitted to the contrary.
515. I consider it possible that Kathryn Arthur, or James Wann on her behalf, contacted the Legal Centre and their recollection (Ms Arthur, Mr Wann and Ms Robertson), that the report was made to Crime Stoppers, is mistaken. On the other hand, even after considering the Commissioner’s submissions on this issue, in a case where other important records have been lost I cannot conclusively say that the fact a Crime Stoppers Report cannot be located today means that it did not occur.

Rodney Lavender and Belinda Matheson’s evidence

516. Rodney Lavender and Belinda Matheson were living in Tamworth when Mark died. They both gave evidence before me. Unfortunately, I have been informed that Mr Lavender has subsequently died.

Crime Stopper report in April 2016

517. Belinda Matheson first came to the attention of police in 2016, in relation to a Crime Stoppers report she made on 4 April 2016. Ms Matheson was recorded to have reported (to the effect):
- (1) Jason Muldoon was responsible for Mark’s death
 - (2) Mark, Jason Muldoon and two other unknown males had stolen a vehicle earlier that evening.
 - (3) Mark was either hit by the car or pushed out of that car following “some sort of argument”.
 - (4) Mark was killed and placed into the back of the stolen vehicle.
 - (5) The vehicle was driven out towards Duri.
 - (6) Mark was placed on the tracks to cover up what had occurred.

518. On 14 April 2016, DSC Dunn spoke with Ms Matheson about her Crime Stoppers report. Ms Matheson said she had no firsthand information and was relaying what Rodney Lavender had told her.

Conversation with Mr Lavender in May 2016

519. On 19 May 2016, DSC Dunn spoke to Mr Lavender. An investigator's note made DSC Dunn recorded the following:

"Lavender stated that he was aware of a party at Shane Robinson's house.

There was Glenn Mannion, Shane Robinson and Glenn's girlfriend Misty Coleman at the party. At some stage they disappeared drunk. The next morning Glenn turned up at work late and...acting funny.

Information was that Mannion had rolled a little white car but there was no talk of Haines. He does not remember where he heard this information.

Lavender stated that he was not involved in the death of Haines and unable to provide further information other than the above."

520. The reference to a party involving "Misty Coleman" appears likely to be referable to sometime in the late 1990s when Mr Mannion and Ms Coleman were in a relationship together rather than being a party proximate to Mark's death.

Belinda Matheson statement in February 2024

521. On 17 February 2024, Belinda Matheson provided a written statement to police with regard to her Crime Stoppers report. Ms Matheson's statements included:

- (1) She had known Mark, Glenn Mannion and Rodney Lavender from high school.
- (2) In about 1987-1988, herself and Rodney Lavender stayed with Liat Morris at her unit attached to an old superette on Goonoo Goonoo Road.
- (3) On Saturday 16 January 1988, she (Matheson) awoke at Ms Morris' flat about 10am. While in the lounge room she had a conversation with Rodney Lavender. Mr Lavender told her that Mark had "been killed" and that Jason Muldoon had put Mark "on the train tracks". She asked how he (Lavender)

knew this and he replied, "*I just know*". Ms Morris then joined them, and they discussed what Mr Lavender had just told them.

Liat Morris's statement in June 2024

522. In a statement made to police on 10 June 2024, Liat Morris confirmed that Rodney Lavender was staying in her unit next to the superette in January 1988 and that Ms Matheson was a good friend and regularly stayed there. Ms Morris has no recollection of how she learnt of Mark's death and did not recall a conversation about this with Mr Lavender. She did recall Ms Matheson saying at one point that Jason Muldoon was involved.

Mr Lavender's evidence in the 2024-2026 Inquest

523. Mr Lavender, in his sworn evidence on 15 April 2024, said:

- (1) He was 18 at the time of Mark's death and living in Tamworth.
- (2) He knew Glenn Mannion, Jason Wann, Shane Robinson and Michael Biddle at that time.
- (3) He knew Glenn Mannion to work at the Bridge Street Service Station.
- (4) When asked how he learnt of Mark's death, "*Glenn Mannion - - - what I can recall now, is the – the morning after it actually happened, I called around to his work, and it was about 6am, and he sort of just turned up for work, in a little white Torana, and that's – yeah, he was a bit shaken up, and he told me that [Mark] was dead*". The vehicle was a "little two door, white Torana" which Mr Lavender believed to belong to Mr Mannion's boss.
- (5) Asked what happened to that car, Mr Lavender said, "*I don't know. Glenn told me that he bought it off his boss. That was, like, a few days before all this accident happened, and yeah, that was sort of the last time I seen it, was when he come back. I don't even recall whether I seen him come back that morning in it, or - I know I seen it the previous night. He was driving it - - - The previous night to the accident*". When asked what he meant by "previous night" he replied, "*[t]he previous night to the accident*".

- (6) That morning Mr Mannion *“was shaken up and said he had an accident”, “he was a bit of a mess”* and Mr Lavender noticed Mr Mannion had cuts and blood.
- (7) When questioned further about seeing Mr Mannion on the morning of Mark’s death in the car, Mr Lavender said, *“No, I seen him the previous night. I know he drove home in it, and that’s when he told me that he’d bought it off his boss, and I can’t recall whether he turned up in that morning, or he just told me that he had an accident. Yeah.”*
- (8) Asked if anyone else was in the car when Mr Mannion was driving the Torana, Mr Lavender said, *“I think he was. He had someone in the passenger seat, I think it could’ve been Shane Robinson, I think. I’m not 100% sure”*.
- (9) When he saw Mr Mannion at the service station, he saw him open up the shop *“but I can’t remember whether he was in the car”* and he recalled *“scratches, nothing major...like, fresh scratches, bit of blood - - - I think on his arm or his arms”*.
- (10) When asked what made him think Mr Mannion was “shaken up”, he said, *“I don’t even know what the conversation was. I just remember that he was hurried to open up the shop and, yeah, he seemed worried, and I’m pretty sure that he didn’t turn up in the white car. I think I’m only guessing, but a pretty good guess I think, he didn’t turn up in it, but he said that he had an accident in it. That’s what I recall”*.
- (11) He expects he would have gone straight from his interaction with Mr Mannion to tell his friend, Barbara Braun, about it, stating *“Barbara was one of my best mates at the time. I had a talk with her when I’d reached out to the guy on the podcast and I tried to remind her, I said, “Didn’t I go back to you and explain what was said? Like, you’d have more of a memory than I would”, and she said, “I can’t recall you coming back and saying anything to me”*.

- (12) He could not recall if he told Belinda Matheson, back then, about his interaction with Mr Mannion or sighting him in the Torana.
- (13) Mr Lavender said he never reported this information to police because *"I've been in trouble a fair bit with them"* and he assumed Mark's family *"ha[d] all this information"*.
524. Mr Lavender resumed his oral evidence on 16 April 2024, during which time he gave the following evidence:
- (1) When asked again to outline what he saw as regards Mr Mannion, he said, *"Well, I'm thinking this was the same night that the accident had happened. We would have went out to the club and I'm pretty sure I seen Mark give Barbara a rose at the taxi rank. That was - it would have been 3, 3.30 in the morning, maybe a bit earlier. We were waiting for a cab. I would have went back to Barbara's in the taxi and probably pick my car up I would say, and I would have went home Edward - probably Edward Street if I didn't give anyone a lift, and I'm pretty sure I seen Mark walking another girl down Wilburtree Street and that was early hours of the morning. I don't know what time, I don't recall, and yeah after that I - I don't know where I would have been going or what I would have been doing, but I seen Glenn at 6 o'clock in the morning. I was probably still a bit drunk, I don't know. He was late to work. He didn't turn up at 6 in the morning but I sat there and waited. He turned up I'm pretty sure, I'm not 100%, but it might have been a cab he got in - he got out of and I seen him and he was all shaken up and I said, "What's happened" and he said, "Oh, I've had an accident." So there wasn't much talk about it, just that. As I said, he had a few bruises and grazes on him. There wasn't much more that was really said about it."*

- (2) Mr Lavender recalls teasing Mr Mannion about the Torana, saying to him *"It's a little old lady's car", and he said, "Yeah, I bought it off my boss for \$500"*.
- (3) When pressed further about when he saw Mr Mannion driving this vehicle relative to Mark's death, he believes it was on the afternoon of the Friday, 15 January 1988 but *"I'm not 100%, but I think I'm pretty sure"*.
- (4) Mr Lavender had watched the television series about Mark's death.
- (5) Mr Lavender seemed to say that his memory of seeing Mr Mannion in the Torana, and his interaction with Mr Mannion at the service station, followed a "vivid dream" he had, stating, *"I never - as I said, I think I repressed most of my memory because I didn't want to know about it. Mark was a friend, but he wasn't a close friend. We never sort of hung around each other, but we seen each other out and, you know, at school all the time, but we'd never hung at each other's place or anything, and yeah. I just - I don't know. It just all come rushing back to me in the dream"* and *"If you asked me all this, like, 20 years ago, maybe I'd have a lot more clarity to it, but it's been so long"*.
- (6) Regarding the timing of his dream, this occurred before he listened to the podcast, stating *"[i]t wasn't 'til I had that dream, and it was straight away I rang Barbara. I hadn't talked to Barbara for 10 years. I rung her straight away that morning and I told her about it and she said, "You really need to listen to the podcasts". So, it was after that dream that I listened to those"*.
- (7) In regards to the occasion when he saw Mark walking on Wilburtree Street, Mr Lavender said, *"I remember him walking with a girl, yes, I do. - - - I just - I don't know how I remember that but I remember him walking with a girl in Wilburtree Street and I remember thinking when I seen Glenn I wondered if he picked him up because he was going down Wilburtree Street. He would have been needing a lift - - -"* and then added, *"So it might have been the previous week that he walked this girl home"*.

- (8) Mr Lavender stated he was doing his best to recall events, stating *"I'm trying to do my best to remember but it's been so long and as I said, I've done lot of drugs between now - between then and now"*.
- (9) Mr Lavender had spoken to Belinda Matheson more so in recent years, including at a school reunion in Coffs Harbour (believed to be their 30th reunion) but he denied speaking to her then about Mark.
- (10) When Ms Matheson's account of their conversation on the morning of Saturday 16 January 1988 was put to him for comment, he stated, *"I don't recall ever mentioning Jason Muldoon being involved"* and he had no knowledge of Mr Muldoon being involved. Nor did he recall saying to Ms Matheson that Mark had been 'put on the train tracks' but accepted it was possible he did. If he did say this, he thinks he based it off his interaction with "Glenn at 6:00am" and then stated, *"I know - I do know something, like, yeah. I need refreshing, but I do know something, but I don't know if I should say it because I don't know if it's 100% true because it's been so long - - - I'm pretty strong about that, always. That's never left me - - - [asked what he understood Mr Mannion meant by 'rolled'] Well, that's what the dream was about, him saying to me that he rolled the car and he thinks - he said, "I think I killed him"*.
- (11) Asked further about what he thinks Mr Mannion said to him at the service station, Mr Lavender stated, *"All right, this is what I think. I think Glenn told me when I seen him and he pulled up he had blood on him, he had scratches and bruises and he wasn't in the Torana and I said, "What's happened" and he says, "I think I killed him" and I'm sure he went back out there the second time. I don't know why now but I'm sure he did - - Yeah, and I'm sure that the told me that Stoney was dead. This is what - how I remember it, "Stoney was dead" and he thinks - "I think I killed him." That's what my memory is"*. This was all part of the same conversation at the services station that

morning. Mr Lavender said, *"I still remember being in shock like that morning because of how he was and I don't think that anybody knew that Stoney was dead at that time"*.

- (12) Regarding his statements to DSC Dunn in April 2016, Mr Lavender did not dispute he made the statements recorded in the investigators note. When asked when the party at Shane Robinson's house was relative to Mark's death, Mr Lavender stated, *"I thought it was that night -- That's how I think of it, yeah. They all went to a party and then the next thing I'm in there at 6.00am and he told me that there was an accident"*.

Belinda Matheson's oral evidence in the 2024-2026 Inquest

525. Ms Matheson, in her oral evidence in the 2024-2026 Inquest, maintained she had a good memory of Mr Lavender telling her these things that morning. She further stated that she had always believed or assumed that Mr Lavender had been present for the events he recounted to her on 16 January 1988. She believed she provided information to police, about what Mr Lavender had told her, in 1991 (there is no known record of such a report). She regretted not following it up further and said she thought *"going and speaking to Crime Stoppers in 2016"* would help.
526. I have carefully considered Ms Matheson's evidence which relies heavily on what she remembers Mr Lavender saying. There are inconsistent versions and I am able to give it little weight.

Evidence of Jason Muldoon

527. Jason Muldoon, during a conversation with police in June 2018, and subsequently in his evidence in the 2024-2026 Inquest, referred to rumours about Mr Mannion's use of Mr Sanderson's vehicle. A record of that conversation noted:

"Mannion bragged a lot to Dale [Summers] (deceased) about pinching his bosses (David Sanderson) vehicle of a night to go joy riding. The car would be returned to where it had been previously parked".

528. In his evidence in the 2024-2026 Inquest, Mr Muldoon confirmed he had been told by Dale Summers that *"apparently Glenn [Mannion] and Mark used to take [Mannion's]*

boss's car and go joyriding in it on a Friday/Saturday night when his boss wasn't there". Mr Muldoon believed, or was told by Dale Summers, that he (Mr Summers) had seen Mr Mannion driving that car. This was not something Mr Muldoon himself ever saw or had been confirmed to him by Mark or Mr Mannion.

529. Mr Muldoon said he knew Mr Mannion back in 1987-1988, however they were not friendly as Mr Muldoon suspected that Mr Mannion was the source of the rumours back in 1988 about his involvement. Mr Muldoon considered Dale Summers to be good friends with Mark and Mr Mannion at that time.

530. It is noted Dale Summers passed away in about 2000 (there is no record of him giving evidence in the 1988-89 Inquest nor is there any known statement by Mr Summers to police).

531. Mr Muldoon thinks he did not mention this rumour to police or during his evidence in the 1988-89 Inquest. In his 2024-2026 Inquest evidence Mr Muldoon said:

Q. This was after Mark's death you heard about this [report of Mr Mannion and Mark driving the Torana]?

A. Yep, this was a - once everybody knew that it was the white Torana, I think it was, yeah, and everybody knew - when everybody knew it was Glenn's boss's car, they'd worked that out and then Dale said that he'd seen them in it and they used to take it all the time. Like I said, Dale was a lot better friends with Mark and Dale was a lot better friends with Glenn than what I was.

Q. That information that you've just told us about, is that something that you remember telling police?

A. As in - no, look, no, no. I wasn't - I made it quite clear at the very first inquest this situation that I've found myself in for god knows what reason, it's absolutely ridiculous, I wasn't prepared to put my hand up on speculation and start saying things about other people because I obviously had people saying things about me and I've got no idea why because I was on the other side of town with totally different people than what they were saying I was with and I didn't want that to be put on anybody else because I've gone through now 35 years of having this on my back.

532. Mr Muldoon was referring to the rumours in 1988 that himself, Mitchell Wilder and/or Eddie Davis were involved in Mark's death which he, Mr Wilder and Mr Davis have all denied.
533. Mr Muldoon's evidence highlights the number of rumours that were circulating after Mark's death.

Glenn Mannion's evidence in the 2024-2026 Inquest

534. The evidence given by Mr Mannion during the course of these proceedings is summarised below.

Friendship with Mark

535. In 1987 to early 1988, Mr Mannion said his main friendship group was made up of Mark, Michael Biddle, Jeff Thomas, █████ Edmonds, Nicky Porter, Joseph Wann and Dale Summers. He and Mark had been "*real good mates*" since Mark started at Peel High School in either year 8 or year 9. Mark lived near to him (Mannion) and they regularly attended each other's houses. They used to "*just hang out, listen to music, go over town, that sort of stuff. Played footy during school*". Mr Mannion admitted he was emotionally affected at Mark's funeral, stating "*I got upset by his death*" (for example, vomiting).

Events on 15-16 January 1988

536. As of April 2024, Mr Mannion's recollection of his movements on 15 to 16 January 1988 is vaguer than it once was. In this he is no different to other witnesses who gave evidence before me. When he completed his first written statement, which set out his movements on 15 and 16 January 1988, he said he had been truthful. He stated that he last saw Mark in the Dominoes Nightclub. Thereafter he travelled home to his Bent Street residence and remained there. As of that date he had caught taxis home with Michael Biddle "a few times", and often Mr Biddle would get out at Mr Mannion's residence and walk home from there.
537. As best he recalled, Mr Mannion learnt of Mark's death later that morning from Leah Craigie. The news of that came as a shock to Mr Mannion.
538. Mr Mannion stated that he has no knowledge of how Mark came to be on the tracks and denied any involvement in the same.

Mr Sanderson's Torana

539. In late 1987 and early 1988, Mr Mannion had a motorbike licence and a motorbike. He also drove his father's car, a brown Ford Falcon Station Wagon, from time to time although he did not have a licence. He conceded it was possible he had driven a car to 75 Warral Road before Mark's death. If that occurred, he expects he would have driven the family's Ford Falcon station wagon.
540. Mr Mannion believed the Service Station used to open early (5:00am or 6:00am) and shut about 10:00pm. He mostly worked mornings, starting about 8:00am, but did not open the Service Station.
541. In his written statement dated 24 February 2024, Mr Mannion said "*I never moved or taken Mr Sanderson's Torana without his permission*". In his oral evidence on 17 April 2024, when asked who typically used the Torana when it was at the service station outside Mr Sanderson, Mr Mannion said "*I think one of the other blokes that used to work there with me was Grant Carr, he used to use it...and I think I'd been in it once or twice maybe to move a trailer from one side of the servo to the other, that's about it*" (in reference to the hire trailers kept on site). Mr Mannion had no recollection of being asked to drive the car off premises to pick up parts, stating he "*was only 16. Didn't have a licence*".
542. Mr Mannion admitted knowing where Mr Sanderson's partner lived in Tamworth and having seen the Torana which he recognised parked out front.
543. Mr Mannion learnt that Mr Sanderson's Torana was found near the tracks. He said the possible connection between that car, and Mark's death, was something discussed back then.

Timing of his enlistment into the Army

544. Mr Mannion was examined as to the timing of his army enlistment application relative to Mark's death.
545. Mr Mannion said he had a long-term interest during his teen years in the army. He had intended joining the army for quite some time. This plan predated his completion of High School in 1986. The Australian Army would not accept his enlistment until he was 17 years of age, even then that required the consent of his father, so he had to wait another year or more to enlist once he completed Year 10 (end of 1986). In that time, he undertook metal fabrication studies at TAFE to help fill time until he could

enlist. He did not undertake this course because he was intending to pursue a career in metal fabrication.

546. A few weeks before he turned 17 on 25 February 1988, he completed his application to enlist. His father's consent was required as he was still below 18 years of age. At the time of Mark's death, Mr Mannion states "*I'd already decided that I was going to join the army*". Mr Mannion denied the timing of his decision to join the army, and the timing of him completing his application to enlist, was in any way connected to Mark's death.

Theft of motor car in late 1988

547. In the latter part of 1988, Mr Mannion was stationed at Portsea, Victoria. In December 1988, while stationed there, Mr Mannion was charged by Victoria Police for the theft of a motor vehicle. That was dealt with at Dromana Magistrates Court (Victoria) on 5 and 6 December 1988, with Mr Mannion being sentenced to a good behaviour bond presumably after entering a plea of guilty.
548. Mr Mannion's account of that event is that a fellow enlisted friend, James Keys, had lent his car to another person, Craig Caddies. Mr Mannion had accompanied Mr Caddies in that car on a drive into town. On the way back to their base, Mr Caddies "*damaged the car and I think in order – for Keys not to get in trouble that it was decided that we would say that we took the car*". They did not have permission to be off base at the time, and they did not sign out when they left. On their return the vehicle "*went off the road, but I can't remember what happened after that*". Mr Mannion believes they walked back to base from there.
549. As to how much damage there was to the vehicle and why a criminal charge was laid (at least against himself rather than Mr Caddies solely) rather than the matter being dealt with as a military disciplinary issue, Mr Mannion could not say.
550. During the course of the inquest, attempts were made to obtain the police facts and military records for this incident. Those attempts were unsuccessful and there is no objective record against which to compare Mr Mannion's account about this.

Drug use in late 1990s to early 2000s

551. Mr Mannion was examined as to the circumstances of him becoming involved in heroin use in late 1990s, noting this occurred in the later part of his twenties when he had no prior history of heavy substance misuse. Mr Mannion said his drug use in this

period began through people he was associating with but otherwise he was not able to explain how this difficulty onset.

552. As to the possibility his past trauma may have contributed, Mr Mannion did not think that had contributed to his serious drug use.

Ms Arthur's account about their conversation regarding Mark

553. Mr Mannion was examined about the evidence given by Ms Arthur regarding the conversation she described having with him about Mark.

554. Mr Mannion, in his evidence, did not describe Ms Arthur or their relationship in an adverse way or suggest she had a motive to lie or to embellish statements about him.

555. In his statement completed 28 February 2024, Mr Mannion said, "*I have no knowledge of making any statement to Kathryn Bird concerning the circumstances of the death of Mark Haines. I have never said anything to her and [I am not aware] why she would make any statement concerning this. I am unaware of anything that may affect her credibility but I steadfastly refute that I made any statement to her involving Mark*". However, in his oral evidence in the 2024-2026 Inquest, Mr Mannion did not outright deny the possibility a conversation of the kind described by Ms Arthur in fact occurred but said he had no memory of it happening. His evidence on that matter included:

Q. You're aware Ms Bird has made a statement describing a conversation she says that she had with you?

A. Yep.

Q. She's given evidence about this in this Court to the effect that she recalled it being - this is via oral evidence - her memory of it was that it was in the house that she had lived with you for a time, okay?

A. Mm-hmm, yep.

Q. And that she has a memory of you being in the house with her and that you were - had been drinking - you were affected by alcohol to some degree. She hasn't suggested you were falling over or anything like that, but that you had been drinking, and that she described you being very emotional. Do you have a memory of any sort of incident like that with Ms Bird or Ms Arthur?

A. No.

Q. Is it possible that there was a time you became very emotional when you were speaking with her?

A. I don't think so.

Q. Do you remember speaking to Ms Bird about Mark's passing at any time?

A. No.

Q. Mark's death - it was a relatively significant thing in your early life. You agree?

A. Yep.

Q. Close friend of yours dies tragically on a night that you'd been out with him?

A. Yep.

Q. You were very emotional at the funeral to the extent you vomited. Might that be something that you spoke about with Ms Bird that, you know, you had a good friend who died in this sort of mysterious way that no one really knew about?

A. Could be, but I can't recall it.

Q. That's something that might have come up in conversation with her?

A. It could be.

Q. She might have had an interest in asking you about it as well?

A. Not that I can recall.

Q. It would seem that Mark Haines's death was quite big news in Tamworth before you left for the army; is that right?

A. Yeah and for a lot of years, I imagine.

Q. Including a matter of interest to people when you were with Ms Bird you'd spoken about?

A. I think so, yeah.

Q. Was there still talk about Mark's death and what had happened with Ms Bird. Was that something that was talked about around to your knowledge in Tamworth community?

A. No.

Q. Do you remember speaking to her about Mark's death and it being an accident?

A. No.

Q. When you say no to that, are you saying you have no memory of that, or are you saying that it's not possible that was ever spoken about?

A. I can't see how whatever's been through about it.

HER HONOUR

Q. Why is that? Why can't you see that's possible you'd speak to--

A. Because I know nothing about it. I know nothing about it, so I fail to see how I would have that conversation.

Q. You're saying you know nothing about Mark's death?

A. No, nothing at all.

...

Q. And so might you have spoken to [Ms Bird] at some point about what you had heard?

A. No, I don't think so.

Q. And why do you say that?

A. I don't know, I just can't recall ever having a conversation with Kate about it.

Q. Are you denying that it was ever spoken about between you two?

A. No.

Q. So it's possible it was?

A. It could be, yeah.

Q. But you don't have a memory of it?

A. No.

Q. Did you understand in 1988 that Mark was found with some type of cloth or item under his head on the tracks?

A. Do I understand?

Q. Yes, did you understand that? Was that spoken about that Mark had like a pillow or a towel or something under his head?

A. Yeah, that's what - yeah, there was something going around about that, yeah.

Q. And this is in 1988 I'm talking about?

A. I can't recall what I knew back then.

Q. At the time you were in a relationship with Ms Bird, might you have heard about that; that there was something that had been found under Mark's head?

A. Yeah, could have been, yep.

Q. Might that have been something you had spoke to her about, that you heard this thing happen and he was found with a towel under his head. People are saying that someone put a towel under his head. Isn't that conceivable--

A. Once again--

Q. --that you said that to her?

A. --once again, I can't recall any conversation about that at all.

Q. Are you saying that you would never have spoken to anyone about theories or information you heard about Mark's death?

A. No.

Q. So you have never said--

A. No, I'm not saying that--

Q. --I've heard someone said this, or I heard this theory, or this is what these people are saying. Is that something you might have conveyed to someone?

A. No.

...

Q. Ms Bird gave evidence that she had this memory of you saying that there had been an accident or a car rolled, something to that effect. They put Mark on the tracks. This is words you used to the effect "they". That a towel was

put under his head and he was covered with a box. Okay. Is it possible that you might have said that to Ms Bird in any way?

A. I don't think so, no.

Q. Do you know any reason Ms Bird would make something up about that?

A. No.

Q. You don't know her to be someone who has got animus towards you?

A. No.

Q. Do you consider her to be an honest person generally?

A. Yep, generally, yep.

Q. Knowing that Ms Bird has said this and given evidence about this, and she says she has this memory of this conversation, as you sit there now do you think well maybe I did say these things to her?

A. No.

Rodney Lavender's account

556. Mr Mannion knew Mr Lavender back in 1987-88. He had been on the "fringes" of Mr Mannion's friendship group. He agreed that he saw Mr Lavender at the Service Station from time to time. During his evidence, Mr Mannion specifically denied Mr Lavender's account of seeing him that morning at the petrol station, of him having scratches on his arms and making statements about having been in some type of accident.

Evidence of Mr Mannion

557. Mr Mannion denied that (i) he drove Mr Sanderson's Torana away from the Service Station premises, (ii) he saw Mark after they separated at Dominoes Nightclub and (iii) being involved or having any knowledge in how Mark came to be on the tracks.

Jason Cupitt's evidence

558. Jason Cupitt made a statement to police on 5 August 2025, which was after the main examination of Mr Mannion in the 2024-2026 Inquest, in which he stated:

- (1) He knew Mr Mannion and Mark through living in Tamworth.
- (2) He left Tamworth in June 1987 and returned to live there by late 1987.

- (3) Earlier this year (2025) Mr Cupitt saw a news story about Mark's death which mentioned Mr Mannion's evidence denying he had ever driven his boss's white Torana.
 - (4) That report surprised Mr Cupitt as "*I immediately remembered a night which I believe is the night that "Stoney" died*" and notes what he observed occurred while he was riding a bike home along Hilvue Road at about 3:00am. This indicates to Mr Cupitt it would have been a Friday night as it was his practice to visit his friend's house each Friday and walk home in the early hours.
 - (5) As he was crossing the road he was nearly hit by a white Torana.
 - (6) He thinks he saw about 4 people in the car.
 - (7) He recognised Mr Mannion driving the car, with Mr Mannion hanging out the driver's window yelling, before driving off. Specifically, he remembered Mr Mannion shouting "*Cupitt, get off the road you fuckwit.*"
 - (8) The car was being driven erratically and at excessive speed.
559. In his evidence on 13 October 2025, Mr Cupitt said he had not come forward earlier about what he saw because he could not be sure, in his own mind, the occasion he saw Mr Mannion driving was the same night that Mark died. However, his view about this changed when he saw the report of Mr Mannion denying ever driving the white Torana. Mr Cupitt recalled no other occasion of seeing Mr Mannion driving this vehicle.
560. Mr Cupitt, when discussing the strength of his recollection of his memory, gave the following evidence:
- Q. Just in terms of your memory of that occasion of the car going by, has that been a continuous memory or is that something you remembered in more recent times?*
- A. That's something I remember in more recent times.*
- Q. So when did you first have--*
- A. Mate, I've got no idea.*

Q. *We know that you had a memory about that from what you've said--*

A. *Yep.*

Q. *--when Blood on the Tracks was on. So that was a few years ago?*

A. *Yep.*

Q. *Would it have been earlier than that or would it have been at the time of watching the show?*

A. *I'd always - how can I say it. I - I had recollections. I don't even know how to say the word. I had memories of that moment but not vivid memories. Does that make sense?*

Q. *I know this can be difficult to explain. Can you just elaborate on that a bit? When you say "vivid memories", does that mean?*

A. *Like flashes. Like, I - I can remember things that had happened but I didn't put it together until what I'd seen. Like, I don't know if you've gotten flashbacks. I don't know what you'd call them.*

Q. *I'm not being critical, I'm just trying to understand the narrative of it?*

A. *Yep.*

Q. *You remember things maybe not as vividly, possibly flashbacks or otherwise that had happened before you saw the Blood on the Tracks program?*

A. *Yes.*

Q. *As to when that started, do you--*

A. *Mate, I can't - I'm 54 years old mate like, you know.*

Q. *But that memory is more vivid now as you sit here?*

A. *Yes. Yes.*

Q. *And it was made more vivid after watching Blood on the Tracks?*

A. *I'm not going to say it was made more vivid. It become more clearly.*

Q. *It became, sorry, clearer?*

A. *Made more clear.*

Q. *Is there any possibility, do you think, that your memory about this occasion might be inaccurate?*

A. No.”

561. I consider Mr Cupitt’s evidence unreliable. His descriptions of having memory flashbacks after viewing *Blood on the Tracks* make the evidence hard to accept coming so long after Mark’s death.

SUBMISSIONS IN RELATION TO GLENN MANNION

562. Counsel Assisting submitted that there is not a cogent basis to find that Mr Mannion was involved or has direct knowledge of Mark’s death. Mr Mannion gave sworn evidence that he was not present and has no direct knowledge of what had occurred to Mark.

563. Mr Razi, on behalf of Mr Donald Craigie, submitted that while there is no cogent basis to find Mr Mannion was involved in Mark’s death, the available evidence suggests that he remains a person of interest in light of the evidence of Ms Kate Arthur and there being no basis to reject the evidence of Ms Arthur.

564. I have reviewed Mr Mannion’s evidence carefully and am of the view that there are aspects of Mr Mannion’s behaviour immediately after Mark’s death that appear somewhat unusual. Mark was one of Mr Mannion’s best friends and yet over the years he appears to have shown a lack of curiosity in relation to the link between Mark’s death and his employer’s car which was found close by. He has not engaged with Mark’s family who have for decades publicly searched for answers and information.

565. There is no doubt that Mr Mannion’s possible connection to the car could and should have been more carefully investigated at the time of Mark’s death. This flaw in the investigation means that much of the evidence in relation to the possible link comes decades after Mark’s death.

566. Mr Lavender’s evidence about Mr Mannion’s link to the car strikes me as unreliable. He did not give his account in a timely manner and it has changed and evolved even over the course of his recent oral evidence. Mr Lavender and Mr Mannion have had difficulties in their friendship over the years and as I understand it were not in contact at the time they both gave evidence after having had a falling out some years earlier. It is impossible to know how or if Mr Lavender’s recollection has been contaminated by the passage of time and/or his exposure to conversations and media reports about Mark’s death or for some other reason such as the strength of a dream he had or his feelings about Mr Mannion. Ms Matheson’s evidence relies on her memory of an earlier recollection belonging to Mr Lavender and can be given little weight. Jason

Cupitt's evidence, which apparently places Mr Mannion driving a white Torana at the relevant time, appears to have been first raised in 2025 without a really plausible explanation for why it was withheld for decades. I find I can place little weight on it.

567. Kate Arthur's evidence is in a different category. While there are differing versions given by her, Jason Wann and Michele Robertson about a report to Crime Stoppers I find her evidence that there was an emotional conversation about Mark's death between her and Mr Mannion quite compelling. Ms Arthur impressed the court as a truthful witness whose evidence showed no obvious signs of enmity, suggestion of exaggeration or of any attempt to insert herself in the situation for personal notoriety. Ultimately, I accept that she had a conversation with Mr Mannion about Mark's death. Her evidence about his unusually emotional state and his intoxication appeared plausible. While she was unable to recall all aspects of the conversation, she was able to place where the conversation took place and its unusual features have remained with her.
568. Mr Mannion gave evidence that he had no memory of speaking to Ms Arthur about Mark's death, but when pressed agreed that it *could* have occurred. While I accept that there was a conversation which referred to a towel and other relevant matters, it could not be said that Ms Arthur recalls Mr Mannion expressly stating that he was present or involved in Mark's death.
569. The strength of Ms Arthur's evidence alone causes me to doubt that Mr Mannion has been fully open with the court. It is not a conversation one would be expected to forget and I accept it occurred.
570. Mr Mannion gave evidence voluntarily and was subject to lengthy questioning. His demeanour was reserved, and at times he had limited memory about matters one might expect him to remember, pertaining as they did to the death of his close friend. He was clearly nervous and uncomfortable as he gave evidence. There may be many reasons for that and I need to be extremely cautious in using that fact when assessing his demeanour and credibility. Nevertheless, I remain unconvinced that Mr Mannion has shared all he knows with this court.

L. Evidence and findings as to Jason Muldoon

571. Some statements taken in 1988-1989 mentioned the possible involvement of Jason Muldoon in Mark's death.

572. On their face these were unsubstantiated rumours (e.g. see statements of Therese O’Sullivan and Mitchell Wilder).
573. Mitchell Wilder is deceased. Records show he was called to give evidence on Day 3 of the 1988-89 Inquest. I accept the submission of Counsel Assisting that it can be safely assumed he did not give evidence contrary to his known statement.
574. In 1987-1988, Jason Muldoon was aged 18 and living in Tamworth in Tingira Street, Coledale with his father. He had finished school in 1986 and was working fulltime. Mr Muldoon was in a long-term relationship with Therese O’Sullivan.
575. Mr Muldoon knew Mark and his family through family and friends and considered Mark a friend. He attended Mark’s funeral.
576. Mr Muldoon provided a statement to police in April 1989 in which he said:
- (1) Mr Muldoon had been in town on 15-16 January 1988 and recalled seeing Mark and Tanya White outside a licensed venue just before midnight.
 - (2) Mr Muldoon got a lift home with a friend, Mark Pennell, about 1:00am. In his evidence on 16 April 2024, Mr Muldoon said Dale Summers, Michael Humphreys and Ken Thomas were also in that car. I note that firsthand accounts have not been obtained from these persons confirming this.
 - (3) The following morning, Raymond Ervine, Leah Craigie and Tanya White came to his home in Coledale and told him Mark had died after being hit by a train.
 - (4) Mr Muldoon had heard rumours since about his supposed involvement in Mark’s death, with the *“main rumour...that Mitchell Wilder and I held Mark while Eddie Davis punched him. This is completely false...”*
 - (5) Mr Muldoon knew who Eddie Davis was, but they had no friendship (he alleged Mr Davis had attempted to fight him some years earlier over a grievance concerning Ms O’Sullivan).
 - (6) Mr Muldoon denied any involvement in Mark’s death.

- (7) As to his theory of what might have occurred, “*due to the fact Mark could not drive, I think someone would had to have been with him when he died*” but he had no idea who that person(s) might be.
577. Mr Muldoon gave evidence on the third day of the 1988-89 Inquest (6 September 1989). A transcript of his evidence is not available, however it can be safely inferred that he would have denied in his evidence having direct knowledge or involvement in Mark’s death.
578. Mr Muldoon, in his evidence on 16 April 2024, said he was threatened by persons (Mark’s uncles) at his home and workplace in 1988 or 1989, about which he made a report to police.
579. Mr Muldoon, in his sworn evidence in this inquest, again denied any involvement in, or direct knowledge about, Mark’s death. Having regard to the available evidence, I am not positively satisfied that Mr Muldoon or Mr Wilder were involved in Mark’s death.

M. Police and Coronial response in 1988-1989

1989-1990 Inquiry into the death of Bruce Thomas Leslie

580. Before turning to my consideration of the police response to Mark’s death, I first observe the findings made by an inquiry in 1990 into the death of Bruce Thomas Leslie which had occurred in 1985. In my view those considered findings are useful in terms of outlining some of the police practices and coronial standards that likely existed in Tamworth at the relevant period. The Royal Commission findings in relation to Mr Leslie’s death provide useful context for my own considerations in relation to Mark’s death.
581. In 1990, Commissioner J H (Hal) Wootten QC completed a report of his inquiry into the death of Bruce Thomas Leslie that had been undertaken as part of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). The Commissioner of course had much broader powers than my own. He also had greater resources and was able to conduct a wide-ranging review of Mr Leslie’s death and the broader circumstances and societal factors in which it occurred. The findings of the Royal Commission are useful given the depth of the analysis that was able to be undertaken. Commissioner Wootten QC’s report was tendered in this inquest without objection.
582. In the early hours of 30 May 1985 (shortly after midnight), Mr Leslie was taken into police custody at Tamworth as an “intoxicated person” after being found outside a

licensed venue (Town Talk Hotel). At about 7:00am police officers contacted paramedics who attended and transported him to Tamworth Base Hospital. An X-ray there revealed a skull fracture and he was found to have widespread intracranial and intracerebral haemorrhages.

583. Mr Leslie was transported to Sydney that same day for intensive care treatment but by the time of his arrival his injuries were non-operable. He remained in intensive care and died on 6 June 1985 with the cause of death found to be brain injuries consequent on the fractured skull.

584. Commissioner Wootten QC found that Mr Leslie's skull fracture, and subsequent haemorrhaging, most likely resulted from a free fall backwards onto a hard surface. His skull fracture/haemorrhaging had occurred sometime after he left the licensed venue and him being taken to Tamworth Base Hospital the next day (either while outside the venue or while in police custody). The timing of these injuries could not be ascertained by the medical evidence.

585. The Commissioner also relevantly found:

- (1) *"The possibility that Mr Leslie may have sustained his injury in the police station was never considered in the ludicrously inadequate police investigation, and consequently was not considered by the coroner, who relied entirely on the police"*. The first time that possibility was examined was in the Royal Commission Inquiry.
- (2) There was no serious police investigation of what happened to Mr Leslie at Tamworth Police Station or whether he was properly cared for.
- (3) The Coronial Inquest, conducted by a clerk of the Local Court (understood to have been Coroner Byrne), did not question police evidence.

586. Additionally, Commissioner Wootten QC observed:

- (1) The initial officer in charge of the investigation (not any of the officers involved in Mark's case) made a note on the afternoon of 30 May 1985 that Mr Leslie's injuries had resulted from him falling over outside the licensed

venue. That was a view formed without written statements from paramedics or doctors being obtained or an inspection of records.

- (2) The officer-in-charge did not “*engage in any serious investigation of what may have happened to Mr Leslie or his treatment*”, with his investigation based entirely on the unquestioned assumption that Mr Leslie had sustained his fractured skull before coming into police custody.
- (3) Coroner William Byrne presided over the Inquest into Mr Leslie’s death. Coroner Byrne had been Clerk of the Court since 1984 and was appointed a coroner in 1976. He had not been trained as a coroner but had worked since 1964 in Local Courts, including the City Coroner’s Court, and he had acted as a depositions clerk at several inquests. He had the option of referring the inquest to a magistrate but considered he was competent to handle the matter.
- (4) The coroner had known the police officers concerned through the courthouse, with those officers being situated in the adjoining police station.
- (5) Although the coroner gave some directions to the officer-in-charge, nothing of materiality came of that. Apart from the belated collecting of statements from police in September, two weeks before the hearing, all the investigative work was completed before its referral to the coroner in August 1985, with “*any legitimacy given to the police investigation by supposed coronial supervision [being] mere window-dressing*”.
- (6) The coroner was assisted by a police sergeant based in Sydney. The fact of a sergeant being brought in from out of Tamworth “*did not result in the conduct of police coming under any critical scrutiny*”. The advocate had “*assisted the coroner only in a completely formal sense*”. The advocate had, in reality, “*assisted the police by presenting their version of events without questioning it*”.

- (7) The inquest had essentially consisted of witnesses, who had made statements sworn, reading their statements out with little to “no probing examination to test the accounts of witnesses”. The involved officers “were asked practically nothing”. The hearing itself amounted to “*little more than a ritualistic rehearsal of the superficial police investigation*” with no detailed review of the evidence by the coroner.
- (8) While the coroner said he had privately held views critical of the way Mr Leslie was handled, the coroner’s public comments on the matter were exculpatory of police and ambulance officers involved.
- (9) Ultimately the inquest was inadequate as an investigation of whether the actions of police had in any way contributed to Mr Leslie’s death and was “*quite inadequate as a means of dispelling concerns of the family*”.

587. The Commissioner also repeated comments he had made in the *Inquiry into the death of Mark Wayne Revell* namely:

“It would miss the point to make the particular coroner a scapegoat. He was an honest man with a large clerical and administrative responsibility, who was given a nominally judicial task for which he had neither training nor qualification, and which he was expected to perform without being given the status or independence, or remoteness from police, which was essential if judicial work was to be carried out effectively and with public confidence. He did not devise, but found himself thrust into, a system which prostituted the precious tradition of judicial independence and competence to rubber-stamp inadequate police investigations on the cheap. If certain inquests are to be formalities carried out by administrative officers, they should be presented as administrative acts, not passed off as judicial.”

588. The Commissioner also concluded that Mr Leslie's case illustrated:

- (1) The "*unsatisfactory practice of having supposedly judicial proceedings conducted by a clerk of the court, an administrative officer without judicial standing or independence*".
- (2) The limits to the assistance a police advocate can provide when police misconduct arises potentially presents as an issue.

589. While my consideration of the investigation of and first inquest into Mark's death is necessarily based on my own assessment of the processes which took place, Commissioner Wootten QC's findings in relation to the death of Mr Leslie provide useful and contemporaneous contextual background. As will become clear, I am of the view that the first inquest into Mark's death, also presided over by Coroner Byrne, has some similar issues to those described by Commissioner Wootten QC in the Leslie Inquest. In my view, an inadequate and superficial police investigation was insufficiently questioned by a coroner who was not a judicial officer. To be clear, I am not specifically critical of the coroner involved, as Commissioner Wootten QC points out, he was conducting the inquest in the manner he had learnt on the job and without legal training. It appears this was the usual approach at that time. Like Mr Leslie's inquest, the first inquest into Mark's death appears to have proceeded as essentially an administrative proceeding rather than an independent judicial review of the evidence. Had that occurred, it would have been immediately obvious that further inquiries were urgently needed.

590. The fact that records of the last day are now lost either by police or the court is also extremely concerning.

Tamworth Police Station as of January 1988

591. The evidence available to me demonstrates that in about January 1988, Tamworth Police Station had officers in general duties, criminal investigation detectives (approximately four detectives and a Detective Sergeant), a stock squad detective (livestock) and officers in the scientific investigation section (one or two officers). A Sergeant was assigned to assist inquest matters (Sergeant Garland).

592. The criminal investigation section was involved in investigations, not just in Tamworth, but outer areas including Moree, Tenterfield, Glen Innes, Armidale, Werris Creek and Singleton, in other words a large geographical area.

593. The NSW Police Force did not have a computerised electronic database akin to COPS (Computerised Operational Policing System). Contemporaneous notes were made in diary notebooks issued to each officer and on occurrence pads kept at the station.
594. The Royal Commission Findings in relation to Mr Leslie's death describe a close relationship between police and the Clerk of the Court.

Evidence concerning decisions made by SC Pitt at the scene on 16 January 1988

595. SC Pitt was the senior ranking police officer on scene on the morning of Saturday, 16 January 1988. As best he recalled, when giving evidence on 11 April 2024, he expects he would have been the most senior officer on night shift at the Tamworth Police Station.
596. The nightshift was outside the detective and scientific officers' normal rostered hours however, SC Pitt was authorised to call such officers on to duty if he considered that necessary.
597. SC Pitt, in his statement dated 1 October 1988, said he inquired by police radio as to the availability of Plain Clothes or Physical Evidence Police. He did not detail in his statement what the response to that query was, however no such officers attended the scene.
598. The reasons underpinning the actions taken by SC Pitt on that morning were not matters he was examined on during his evidence in the 1988-1989 Inquest.
599. In his evidence on 11 April 2024, SC Pitt appeared not to have a clear recollection of the events of 16 January 1988. As I noted at the outset of these findings, this is understandable given the passage of time since Mark's death and the fallibility of human memory.
600. SC Pitt said he believes his priority was to see if scientific police could attend and that *"[f]rom memory...the scientific police were away on another job in another town. That's – that's all I remember. Was unavailable at that time."*
601. When asked if he considered accessing a camera himself to take photos at the scene, SC Pitt said he did not think he had access to cameras however accepted that one could have been secured if necessary.
602. When asked what he expects his reasons were for not requesting detectives (plain clothes) to attend the scene, SC Pitt said *"I considered it just to be a – a body on the*

railway line with no evidence of foul play so to speak but I just had no real need for the detectives at that time I thought”.

603. It is clear that this early decision that there was “*no evidence of foul play*” is a serious flaw in the investigation which had significant repercussions on the evidence that is now available.

Officer-in-charge role

604. Court documents refer to SC Pitt as the officer-in-charge of the investigation into Mark’s death at least up to November 1988 (Day 2 of the 1988-89 Inquest).
605. At the time, SC Pitt was a general duties officer. He was not performing detective duties. Detective Peter Jenkins likely assumed the officer-in-charge role after Day 2 of the 1988-89 Inquest. Detective Jenkins was one of the last witnesses called on Day 3 of the 1988-89 Inquest. It is not known what led to that change or why the officer-in-charge role was not assigned to a detective from the outset of the investigation on 16 January 1988.
606. In his evidence before me, SC Pitt was asked what he thinks led to him performing the officer-in-charge role. SC Pitt responded, “*...while it’s considered a coronial matter and not a criminal matter, I have charge of that and then if something had have come to light in a criminal nature, the detectives would’ve handled that. But as far as the coroner goes, I – up to the inquest at that stage, it would’ve been me, I’d say*”.
607. As to how determinations were made about evidence to be obtained in the lead up to an inquest hearing, SC Pitt said:

“...it’s not a clear-cut direction. Like, you would consult with an experienced - like [Coronial Police Sergeant] - and you’d say, “Do we need this, do we need that, should we do this, should we do that”, and things would work out; but there was never any official structures, if you can sort of understand what I mean.”

608. I accept that SC Pitt was offered little guidance.

Factors underpinning the 1988-1989 shortcomings

Summary of Professor Chris Cunneen's evidence

609. Professor Chris Cunneen (**Prof Cunneen**) is a Professor of Criminology with the Jumbunna Institute of Indigenous Education and Research, University of Technology.
610. Prof Cunneen prepared two reports in these proceedings, being a report dated 5 April 2024 (**1st Cunneen Report**) and a supplementary report dated 25 June 2024 (**2nd Cunneen Report**). Prof Cunneen also gave oral evidence in these proceedings on 15 October 2025.
611. Prof Cunneen, in his oral evidence, when outlining his background and methodology, said:

“During a period of the 1980s, I worked - the NSW Bureau of Crime Statistics and Research and was engaged in research in north-west New South Wales in relation to criminal justice issues and Aboriginal people. I also did some consultancy work for the Royal Commission into Aboriginal Deaths in Custody and for the Australian Human Rights Commission's National Inquiry into Racist Violence, and independently of that I've published numerous articles and more - and later a book on Aboriginal police relations in Australia. I've drawn on the work that I did for the NSW Bureau of Crime Statistics, I've drawn on the reports from the Royal Commission into Aboriginal Deaths in Custody. I've also drawn on a report from the working group of what was then the Ministry of Aboriginal Affairs. I was a party to that - a member of that working group which looked at the - what were referred to as the Bourke disturbances of the mid-1980s. And I've also drawn on other literature in relation to Aboriginal police relations, all of which is documented in the report.”

612. Prof Cunneen outlined the conclusions of literature and reports concerning Aboriginal community experiences with bias in policing. This included the *Regional Report of Inquiry in New South Wales, Victoria and Tasmania, Royal Commission into Aboriginal Deaths in Custody* completed by Commissioner Wootten QC (1991).

613. In that report Commissioner Wootten QC stated, with regard to understanding systemic and institutional forms of racism within policing, “[i]t is not necessarily deliberate discrimination or conscious prejudice on the part of police, although it sometimes is. Particular ways of treating Aboriginals may have become so entrenched as to seem normal or necessary, and be carried on without any individual ill-will, or desire or intention to discriminate (Wootten 1991, p. 269)”.
614. Commissioner Wootten QC also found the quality or otherwise of police investigations, in the context of Aboriginal Deaths in Custody, was of key concern to the Royal Commission. With respect to the case of Mark Revell, who died while in custody at Grafton Police Station in October 1982, Commissioner Wootten QC remarked:

“Coming to the critical period of 28 and 29 October 1982, when [Mark Revell] was arrested and met his death in Grafton Police Station, there are considerable difficulties in the way of ascertaining the facts with certainty. At best witnesses are seeking to remember events which they have had no reason to think about for over six years, and which were not the subject of any thorough examination and testing at the time. There was only a perfunctory police investigation and coronial inquiry.

***These are common difficulties** in the cases that come before the Commission, but in the present case the difficulties are exacerbated by delays in the production of Government records, **by the inability to find police files that are supposed to have come into existence and have not been destroyed, and by the recent destruction of routine police records which had been subpoenaed months before and which normally help considerably to provide a firm framework for the reconstruction of the facts.** These circumstances are, to say the least, disturbing to a Royal Commissioner investigating the conduct of Government officers, but Mr Finnane Q.C., counsel for the New South Wales Government, assured me that they have occurred despite his best endeavours and that he shares the frustration of the Commission. He is*

satisfied that the events are due to inefficiency, not conspiracy. While I accept that assurance on this occasion, I give notice that it is an excuse that is wearing thin.” (emphasis added)

615. In his oral evidence, Prof Cunneen said, with respect to Commissioner Wootten QC’s findings in the Mark Revell Inquiry:

Q. Accepting that what the royal commission was examining was death in a particular context - that is, in custody - there was a concern that investigators arriving or assuming at an early stage a death was a suicide and the investigation being conducted from that perspective rather than obtaining all evidence, viewing that critically, and then determining what scenarios that gave rise to?

*A. That's correct. I mean, I think that's the - yeah, definitely the point that he's making there, that, you know, the investigations were not thorough. And he goes on to make the point that, you know, if there had been thorough - which was made not only by him but also Commissioner Johnston for the national report - that **if investigations into deaths in custody had been thorough and independent in the first instance**, then there may well have been no need for a royal commission into Aboriginal deaths in custody at all. **And it was the distrust that came, that arose from those investigations that really fuelled the establishment of the inquiry into Aboriginal deaths in custody.**”* (emphasis added)

616. Prof Cunneen, in his supplementary report, after consideration of Mr Craigie’s affidavit, which set out Mr Craigie’s perception of his experiences engaging with investigators (most particularly in the early stages), opined that it “*accords with other evidence presented in my expert report relating to problems with communication between police and families, and potentially poor investigations of Aboriginal deaths*”.

Changes in police investigative practices and coronial practices since 1988-89

Evidence regarding change in police practices

617. The court was advised that the NSW Police Force has recognised that institutional bias towards Aboriginal people has occurred and has instituted programs to address that.
618. In his statement, Mr Green explained that the NSWPF Aboriginal Strategic Direction has been implemented since 2003 and aside from driving engagement with local communities, the direction:
- (1) Identifies critical opportunities for police to strengthen and maintain cohesive partnerships with Aboriginal communities and key agencies.
 - (2) Provides a sound engagement framework and strategies to break down barriers between police and Aboriginal people.
 - (3) Places a strong emphasis on the local aboriginal community induction training and cultural awareness for all NSW police force officers and staff.
 - (4) The particularly important role played by Aboriginal Community Liaison Officers in assisting investigating police to liaise with family and friends.
619. I received evidence about the Aboriginal Strategy and Coordination Team which, amongst other things, provide a specialist Aboriginal lens in the development of culturally considered corporate policy, training, information and engagements.
620. I also received very compelling evidence from Inspector Jayde Symons, the Manager of Aboriginal Strategy & Coordination Team within the NSW Police Force (**NSWPF**), about the work being undertaken in this area. That includes the provision of cultural awareness training packages aimed at building the capacity and knowledge of staff working with First Nations communities.
621. Inspector Symons previously worked as a sworn officer within the NSWPF beginning in 2002. She has worked in a variety of different roles including in general duties, detective duties and as a police prosecutor. Inspector Symons, a First Nations person, gave evidence about NSWPF's culture and her experiences:

Q. Just on that matter - just interested in your experience. Do you consider the training of the kind that, in cultural matters, is of benefit in terms of change to culture in the police?

A. So in terms of to the police, like feedback that we've received, or--

Q. Also in--

A. --or what I can see?

Q. Yes, and to the extent that - and I'm not trying to put you in a difficult position, but to the extent that you had experiences in your early time with the police, and to the extent that you have the exposure to these programs being offered, do you consider that it has been beneficial to--

A. In my - from my story, from my experience, absolutely. It's extremely different. It's--

Q. Can you speak to that a little bit in what you mean by that--

HER HONOUR:

Q. What you think, in 20 years - it's about that that you've been around, isn't it, that--

A. Yeah.

Q. It's improved, the situation?

A. Absolutely. I would say that, you know, the language that people use. The - perhaps the myths of stereotypes that people used to bind to. I mean, I heard Professor Cunneen and, you know, some of that resonates with me. That, you know, when you look at the broader aspects can permeate into certain other places, and that is - certainly has been my experience, particularly in my early days in the police.

I think the changes now, when you look at policy, we're - you know, we're openly acknowledging, you know, what police have done, and I think it's putting people in that position that have those stories as to why we can openly talk about that now, and I think that that's one of the important aspects of the change.

Q. Yes, it's hard to imagine 20 years ago, people talking about the effects of colonisation on a police force.

A. Very different.

Q. Yes.

A. And we openly--

Q. And now you do, don't--

A. No, we absolutely acknowledge it.

Q. Yes.

A. And not only acknowledge it, we talk about it, and that's why we want those panels, so that we can openly talk about it, and you know, it could be something, for example, in Armidale, you know. It's so different. You have an aunt and uncle talk about their experience even 20 years ago. Like, because all this is within our generation.

Q. Yes.

A. And, you know, that's what you want to hear. You need to know what's actually happened in that place, so you know, that's the only way we're going to move forward and try and work together. So it's those things that are different. We acknowledge those in policies as well now, so we - because I know, because I write a lot of the policies, so we write that into the policy, that there's an expectation that our leaders in the police are aware of those impacts of colonisation and how that impacts us now and all those generations before us.

Q. But nothing Professor Cunneen said surprised you, I presume, about the history?

A. That's our history.

Q. Yes.

A. That's our history."

622. I accept Inspector Symons' evidence that there has been positive change in the last 20 years, and I note that she did not alert me to areas where recommendations in relation to training or policy might be appropriate. Similarly, no party asked me to consider recommendations in this area.

SUBMISSIONS AND FINDINGS AS TO POLICE/CORONIAL RESPONSE IN 1988-1989

AND INSTITUTIONAL FAILINGS

Shortcomings in initial coronial response to Mark's death

623. Counsel Assisting identified the following shortcomings in the initial coronial proceedings concerning Mark's death:

- (1) There is no evidence of a request being made for the appointment of an alternate officer-in-charge, at least until Detective Peter Jenkins took over that role; given SC Pitt's involvement in what unfolded on 16 January 1988.
- (2) There is no evidence that the adequacy of the police actions was expressly examined as an issue.
- (3) There is no evidence that a request was made for someone other than a police officer to perform the assisting role.
- (4) There is no evidence that a request was made for police to obtain exact measurements of the locomotives for the purposes of scrutinising the validity of Dr Oettle's opinion; in regards to Mark potentially tumbling under the train.
- (5) The examination of witnesses tended to be quite limited.

624. I accept Counsel Assisting's summary of shortcomings.

Shortcomings in initial police response to Mark's death

625. Counsel Assisting also identified several shortcomings in the initial police response to Mark's death in 1988-1989 against the factual backdrop canvassed above. In particular, Counsel Assisting pointed to the following investigative deficiencies which he submits are directed at the institutional rather than individual level:

- (1) The disturbance of the scene (removal of items/permitting the train to depart) without any scene examination, photographing or contemporaneous notes or sketches of the scene being made. Even assuming crime scene examiners could not attend the scene in a reasonable time frame, other alternatives were not pursued including (i) obtaining a camera and taking photographs at the scene or (ii) sketching Mark's position and the exact items beneath and immediately around Mark.

- (2) Allowing the train to depart without forensic examination or at least arranging for that to occur as soon as possible. This included not obtaining measurements of the space beneath the locomotive carriage, or even photographs of that space, at least following Dr Oettle raising the “tumbling” theory in Day 2 of the 1988-89 Inquest.
 - (3) The failure to seize the towel seen under Mark’s head or to examine the same.
 - (4) The failure to seize Mark’s clothing as exhibits (from the mortuary).
 - (5) The failure to arrange for the stolen Torana’s removal from the scene, and its preservation for examination purposes.
 - (6) The absence of contemporaneous notes as to the reports of persons questioned soon after Mark’s death with many statements not completed for many months after Mark’s death (e.g. Ms Kelly’s estimate of time).
 - (7) What appears to have been a lack of investigation into whether anyone else was known to have an association with the stolen Torana and obtaining contemporaneous accounts from all persons close to Mark that were out with Mark on the night (e.g. Michael Biddle).
 - (8) The assignment of the officer-in-charge role to a general duties officer (SC Pitt), who was involved in the initial response on 16 January 1988, rather than a detective.
626. Counsel on behalf of Mark’s family identified further deficiencies in the initial police investigation. These included but are not limited to only employing two junior officers to attend Warral Siding on 16 January 1988, delegating responsibility to junior or low ranking officers, the lack of senior officers at the scene to provide investigative oversight and the lack of involvement by detectives within the NSWPF in the initial investigation.
627. In particular, Mr Razi submits on behalf of Mr Craigie that viewing the individual investigative failings collectively, there was a lack in the most basic elements of what might be considered a genuinely forensic inquiry.
628. Additionally, Mr Rumbewas on behalf of Lorna and Ron Haines, pointed to the following further significant deficiencies in the initial police response, the list was comprehensive and I accept its content:

- (1) The failure to involve Detectives to assist SC Pitt and Const Guyer at the scene of Mark's death on 16 January 1988.
- (2) The failure of forensics or physical evidence officers to attend the location of Mark Haines' death on 16 January 1988.
- (3) The failure of initial attending officers to keep an open mind regarding the possibility of third-party involvement in the death of Mark Haines.
- (4) The failure of police to keep an exhibits register of all items found at or taken from the crime scene.
- (5) The failure to properly secure exhibits obtained by police (e.g. the pink lighter).
- (6) The failure to take a sufficient number of photographs of the crime scene, including the location of Mark's body, the Torana crash site, the Timbumburi Bridge Crossing and the three potential pathways that Mark would have had to have taken if walking on foot from the Torana to the Warral siding.
- (7) The failure to inspect and investigate all the potential pathways which might have been taken by Mark if he had walked from the Torana crash site to the Warral siding.
- (8) The failure to check for footprints, tyre tracks or other evidence of third parties at the locations relevant to Mark's death.
- (9) The failure by officers to thoroughly examine the Torana vehicle on the morning of 16 January 1988, including the boot, for the presence of blood.
- (10) The failure to investigate any link between Mark Haines and the Torana, including any link between those close to Mark such as his friends and the Torana.
- (11) The lack of any record of police officers making any of the following investigations or observations, either on the morning of 16 January 1988 or subsequently on 17 January 1988, and the lack of any record of the results of any such investigations or observations, if they were made: the boot of the vehicle, how the vehicle had been entered or started; whether the car doors were unlocked at the time it was found; and how much fuel was left in the petrol tank.

- (12) The lack of any explanation as to why some of the pictures of the Torana vehicle entered into evidence appear to show the vehicle's front seats with car seat covers on, and others appear to show the car seats without covers.
 - (13) The failure to obtain any reports or other material relating to the inspection of the Train 3 locomotives by Mr Henry Adams on the morning of 16 January 1988 at Werris Creek, including how thorough that inspection was, or how long it took.
 - (14) The failure to interview members of the family in the initial investigation as part of the 1988 Inquest.
 - (15) The failure to make enquiries regarding Mark's mental health with a view to either proving or disproving the possibility of suicide.
 - (16) The failure to preserve relevant occurrence pads and notebooks.
 - (17) The failure to properly record the visit to the site by head pathologist (Dr Oettle) on 29 January 1988, or to record any observations made at that visit.
629. The Commissioner of the NSWPF drew a distinction between the *initial* police response, which referred to the steps taken by SC Pitt, Const Guyer, Detective Lamey and other officers on 16 and 17 January 1988 and what was described as *the first investigation*. Throughout submissions, the Commissioner of the NSWPF utilised the expression *first police investigation* to refer to investigative steps taken by police officers after 17 January 1988 and until the conclusion of the 1988-89 Inquest. I adopt the same distinction in relation to the initial police response and first police investigation below.
630. I will now turn to consider the submissions on behalf of Counsel Assisting and the interested parties in relation to the initial police response and the first police investigation.
631. To the extent that I have not made specific reference in these findings to each of the submissions made on behalf of Mark's family as well as the Commissioner of the NSWPF in respect of certain aspects of the initial police response or subsequent investigations, I confirm I have given detailed consideration to those submissions in making any findings below.

Factors underlying investigative decisions and shortcomings

632. Counsel Assisting submitted that the standards and practices of the police and coronial processes that operated in Tamworth in 1988-1989 were undoubtedly a major factor in the aforementioned shortcomings. Counsel Assisting observes that a separate matter is whether unconscious bias at an institutional, rather than individual, level may have also been a contributing factor.
633. Counsel Assisting noted that the focus of this inquest is solely on Mark's death and does not involve an examination of several cases simultaneously with a view to identifying broader causal factors as might be the case in a Royal Commission. In particular, Counsel Assisting observed the considerable passage of time since Mark's death and the impact this has on individual recollections as a further limitation. Counsel Assisting further observed that some shortcomings may have stemmed from rushed or ill formed judgment as opposed to any bias attributable to any individual involved. This is an issue to which I will return in the context of whether racial bias is a factor in the investigation.
634. Having regard to the available evidence and aforementioned limitations, Counsel Assisting submitted that the causes underlying the shortcomings with the initial police investigative response cannot be ascertained.
635. Irrespective of the cause, Counsel Assisting ultimately submitted that the initial police and coronial response to Mark's death was not robust or adequate. In this regard, Counsel Assisting noted that the lack of rigour in the early investigation has contributed to the disquiet experienced by Mark's loved ones and many in the community. This disquiet continues more than 38 years after Mark's passing.
636. In relation to the allocation of an officer-in-charge (OIC), Counsel Assisting submits to the extent SC Pitt was involved or responsible for some of the above investigative decisions, he was operating under a chain of command and answerable to superiors. Counsel Assisting notes that there is no evidence of any attempted intervention or direction by SC Pitt's superiors that he disregarded. He submitted that the standards and practices of the police and coronial processes that operated in Tamworth in 1988-89 were undoubtedly major factors in these shortcomings. I accept that submission.
637. Mr Razi submits that in addition to the absence of basic forensic procedure, the investigation appears to have been marred by a stubborn lack of curiosity as to the circumstances of Mark's death beyond an immediate presumption that Mark's death was the result of suicide or misadventure. Mr Razi submits that this was maintained

despite a lack of evidence at the scene that suggested suicide or misadventure and a of the existence of evidence at the scene which should reasonably have given rise to suspicious circumstances. Mr Razi further submitted that there was a definite view early in the initial police response that Mark's death was not suspicious. I accept that the initial police response lacked curiosity. Further, by immediately anchoring to a case theory which gave priority to suicide or misadventure, vital information was lost. In my view, an adequate initial response would have actively considered that suspicious circumstances may exist, and officers should have approached the collection and retention of evidence with that in mind.

638. Mr Rumbewas, on behalf of Lorna and Ron Haines, submits that had a more robust investigation taken place, in a manner not beset by the failings identified above, Mark's family would very likely be in a position far closer to the truth regarding the circumstances of Mark's death. Mr Rumbewas further submits, like Mr Razi, that it is apparent from the available evidence that the initial police responders arrived at a very early assumption that Mark's death was either self-inflicted or caused by his own misadventure alone. Namely, the initial view formed by police was that Mark had not died in suspicious circumstances, or circumstances involving foul play or the involvement of other persons. I accept that submission.
639. Mr Rumbewas submits that the assumption that Mark's death was not suspicious prevailed in the minds of the initial investigating officers to the extent that the police did not pause to contemplate the possibility of third-party involvement and carry out a more thorough police investigation. It is further submitted that this defect in the initial police investigation has had a consequential and far-reaching effect on the overall ability to investigate the death of Mark Haines not only initially, but also subsequently when renewed efforts were made to re-investigate Mark's death in 1999 - 2003 and 2016 - present. Mr Rumbewas accepted Counsel Assisting's submission that the investigative shortcomings should be directed at an institutional rather than individual level. I accept these submissions.
640. In this regard, Counsel Assisting noted that in addition to what is outlined above at [625] that to the extent individual officers were involved or responsible for certain investigative decisions, they were operating under a chain of command and answerable to their superiors. Counsel Assisting also noted that there is no evidence of any attempted intervention or direction by his superiors that SC Pitt disregarded. Counsel Assisting also pointed to the possibility that applicable policies were in place, however, the culture on the ground meant that standards were not being consistently

met. Counsel Assisting notes that not only is the Commissioner of the NSWPF responsible for creating policy and setting expectations, the Commissioner must ensure that appropriate mechanisms exist to ensure that policy is implemented. This includes adequate supervision to ensure monitoring and compliance. I accept this submission.

Institutional criticism of the NSWPF

641. On behalf of the Commissioner for the NSWPF, Mr Varley submitted that when contemplating findings about deficiencies in the initial police response or the first police investigation, it is essential to consider the standards reasonably expected of investigations in 1988 and 1989. This is undoubtedly correct. Similarly, when considering whether various forensic procedures could or should have been carried out in 1988 and 1989, it is essential to consider the forensic technology available at the time. It was submitted by the Commissioner, that to apply modern standards of investigation to acts and omissions that occurred in 1988 and 1989 would be both unfair to the individual officers and also to the NSWPF as a whole. He submitted that care should be taken to avoid inadvertently criticising individual officers or the NSWPF as an institution for their failure to comply with standards that were not in existence. It is appropriate to urge caution, however I am confident that this has not occurred.
642. I was drawn to the evidence of Detective Sergeant Rudens as well as the oral evidence of SC Pitt, Const Guyer and Detective Mark Ferguson relating to policing standards in 1988 and 1989, applicable policies and procedures, the conduct of police investigations at that time as well as the technology available to NSWPF officers at the time as outlined in a “Scientific Aids to criminal Investigation” booklet provided by Detective Sergeant Rudens.
643. Additionally, the Commissioner for the NSWPF submitted that any submissions that merely assert that the failure of an individual officer or a group of officers should be attributed to the institution of the NSWPF, should be rejected.
644. Whilst the Commissioner for the NSWPF accepts that there is evidence that some of the decisions made in the initial police response were contrary to the policies, procedures and training that applied in 1988 and 1989, the Commissioner submits that NSWPF should not be criticised for the conduct of individual officers, if that conduct is found to be contrary to the policies, procedures and training of the NSWPF. Nor should the lack of evidence of intervention by more senior officers’ amount to an institutional failing, in the absence of evidence about why they failed to intervene.

645. In this regard, reference was made to Detective Sergeant Ruden's conclusions that if the NSW Police Rules and other material had been correctly applied, further evidence would now be available. The Commissioner of the NSWPF also noted that SC Pitt's more senior officers were not available to give evidence about why they failed to intervene and the observation that there is no evidence of an intervention by more senior officers, without more, does not establish that there was some institutional failing. Mr Varley noted that there was no suggestion throughout this inquest that the system for monitoring and supervising investigations by way of occurrence pad entries, had it been applied correctly, was deficient or inadequate.

646. The Commissioner of the NSWPF also made the following submissions in response to certain investigative deficiencies outlined above at [628]:

- (1) In relation to the deployment of a junior low-ranking police officer to the scene: Whilst someone needs to go to the scene it cannot always be a senior officer given resourcing constraints. Officers need to make decisions on the spot. If general duties officers, especially in the 80s and 90s in regional areas, had not been deployed to events such as this, no-one would be deployed, because there would just be too many jobs.
- (2) The delegation of operational authority to junior officers: Decisions need to be made on the spot and sometimes decisions will be made in error, however this is not a reason to attribute institutional responsibility to the Commissioner. In particular, if an officer makes a bad decision this does not equate to an institutional shortcoming and someone needs to make the decisions and someone needs to hold authority.
- (3) Lack of oversight at the scene by detectives: SC Pitt attempted to call out detectives and then, despite not getting a clear response about their availability, approved the removal of Mark's body and the movement of the train. It is not apparent how the lack of oversight arises when SC Pitt made the decision to allow the train and Mark's body to be moved.
- (4) Lack of review or audit of investigative steps: The evidence of Detective Ferguson was that there was an occurrence-pad system, where steps that were taken in investigations could be surveyed by more-senior officers back at the station, so this simply does not arise on the evidence.
- (5) Not replacing the OIC immediately: There was a process going on in parallel to the coronial investigation involving detectives. Why decisions were not

made to remove SC Pitt from the investigation is simply not capable of being explored given the passage of time and the recollection of the officers involved.

- (6) Policies and procedure dissemination: If policies and procedures had been properly disseminated then they would have been known to officers. Mr Varley points to the evidence of SC Pitt that a copy of the applicable policies and procedures would have been kept in the station but that just was not the reality of how things were done.

647. Additionally, Mr Varley on behalf of the Commissioner of the NSWPF noted Counsel Assisting's submission as to the role that police culture may have played in the disregard or disobedience of practices and procedures that had been put in place. This submission was made by Counsel Assisting in the context of exploring whether certain investigative deficiencies should be directed at an individual or institutional level. Mr Varley noted the significant limitation on my ability to discern the nature and the scope of the culture for which Counsel Assisting contended. In particular, I do not have the evidence of officers who, it appears, bore responsibility at the relevant time for certain directions that could have been made (for example in respect of the seizure of the white Torana). Mr Varley also pointed to the evidence of distinctions between police culture in the city and police culture in the regions at this time which he says is relevant to any finding I may make about the culture for which Counsel Assisting contends.

Submissions as to the initial police response

648. The Commissioner of the NSWPF submits that the policies and procedures adopted by the NSWPF, if followed, would not have resulted in certain investigative deficiencies outlined above, including the failure to take thorough observations of Mark's body and the train or Torana in situ, the failure to arrange forensic examination of Mark's body, the train or the Torana in situ and the failure to guard or seize the Torana. The Commissioner of the NSWPF also pointed to certain shortcomings identified by Counsel Assisting which it is submitted should not be understood as institutional shortcomings.

649. Although the Commissioner acknowledges the evidence that those deficiencies hindered subsequent investigations, including by denying investigators photographic evidence of the scene, the condition of Mark's clothes and shoes, and information

about the Torana, the Commissioner nonetheless submits that those deficiencies should not be attributed to an institutional failure.

650. With respect to Mr Razi's submission that there was a failure to "in any way capture or seize physical evidence at the scene", the Commissioner of the NSWPF submits that while there were shortcomings, even against the standards in 1988 and 1989, in the manner in which physical evidence was collected at the scene, it is not the case that there was a complete failure to do so. In particular, Const Guyer collected items at the scene on 16 January 1988, and SC Pitt and DS Lamey prepared sketches, took photographs and collected items on 17 January 1988.
651. SC Pitt did not minimise the significance of omissions he made. Rather, it was submitted that any failures should be properly understood as being predominantly driven by factors which were systemic, historical and resource based. They were not errors of diligence or integrity and should be viewed in the context of 1988 police resourcing, training, and practices. SC Pitt acknowledges that Mark's death was not treated as suspicious pending the exclusion of alternative explanations and accepts that best practice required a "suspicious until excluded" approach particularly given the unusual features of the scene. In my view he made appropriate concessions and gave honest evidence. SC Pitt submits that any findings made in relation to his conduct and shortcomings in the police investigation should be directed at the institutional rather than individual level. In my view this is appropriate.
652. In submissions made on behalf of Const Guyer, it was accepted that with the benefit of hindsight, there were shortcomings in the initial police investigation at the scene on the morning of 16 January 1988. This was an appropriate concession. It was submitted that the evidence before me demonstrates that if a case like Mark's arose today, there is a high likelihood of homicide squad involvement (at least for an initial period to direct the investigation) and preservation of evidence at the scene (including securing of the white Torana) would occur. Consistent with the approach taken by Counsel Assisting and Mr Rumbewas on behalf of Lorna and Ron Haines, Const Guyer submits that any shortcomings in the initial police investigation should be directed at the institutional rather than individual level.

The first police investigation in 1988-1989

653. I was assisted by a chronology prepared by the Commissioner of the NSWPF which set out the steps taken in the first police investigation.

654. On the available evidence, Tamworth detectives became involved in the investigation into Mark's death during the first police investigation. The chronology prepared by the Commissioner of the NSWPF demonstrates that Detectives Jenkins and Ferguson took statements prior to the first day of the 1988-1989 Inquest. There was no identifiable moment at which general duties officers ceased to take statements, and detectives took over. In particular, SC Pitt took two statements in November 1988 (between the first and second days of the inquest) and Const Guyer took a statement as late as March 1989.
655. To this end, the Commissioner of the NSWPF notes that the sequence tends to confirm Mr Craigie's understanding that detectives had taken over the investigation into Mark's death by April 1988 and SC Pitt's memory that detectives took over a lot of the investigation and Const Guyer's memory that Detective Jenkins had taken over prior to the 1988-1989 Inquest.
656. In this regard, Counsel Assisting submitted that Detective Jenkins likely assumed the role of OIC after Day 2 of the 1988-1989 inquest. The Commissioner of the NSWPF submits that:
- (1) Detectives Jenkins and Ferguson were heavily involved in the investigation into Mark's death by at least April 1988, when they met with Mr Craigie and his brothers at Tamworth Police Station; and
 - (2) If SC Pitt maintained the formal status of officer-in-charge of the 1988-89 Inquest until the second day on 23 November 1988, that does not exclude the possibility that detectives were investigating Mark's death as a criminal matter.
657. Mr Varley, on behalf of the Commissioner of the NSWPF, submits that on the available evidence SC Pitt was the OIC of the coronial investigations while detectives were making enquiries into Mark's death as a criminal matter.
658. As to whether detectives had an open mind, the Commissioner of the NSWPF submits that during 1988 and 1989, detectives came to understand that Mark's death could not be explained unless he was in the company of someone else between leaving Ms White and being found on the tracks. In particular:
- (1) On 29 January 1988, Dr Oettle visited the location where the Torana was found and the location where Mark's body was found. A number of "senior Police" were present.

- (2) In February 1988, a week after Mark's funeral, police had an open mind about his death, and said so publicly. They also appealed to witnesses to come forward, and in particular, witnesses who *"may have been in his company after 3.30am"*. Implied in that appeal was a suspicion by police that someone may have been with Mark after he parted ways with Ms White.
- (3) When Eddie Davis, Arthur Porter and Donald Craigie met at the Tamworth police station with senior officers and ACLO Harry Cutmore, on 25 July 1988, those senior officers told Mr Davis that *"We know it's his mates and it's just a matter of time before they come forward"*. Mr Davis gave the ABC a similar account of what those officers had told him, and added that he did not understand police to have treated Mark's death as a suicide.
- (4) When Detective Jenkins interviewed Jason Muldoon, he was interested in what Mr Muldoon had to say and wanted to know everything. Mr Muldoon formed the understanding that the detectives thought that Mark's death was suspicious.
- (5) Detective Peter Jenkins took several statements, including from important witnesses such as Arthur Porter and Donald Craigie. He was the last witness called by Sergeant Garland in the 1988-89 Inquest. The Commissioner supports the submission of Counsel Assisting that the fact that Detective Jenkins was called as the last witness is consistent with him being in charge of the investigation by that stage. I am not convinced this follows.
- (6) While Detective Jenkins is deceased, Mr Craigie recounted that Detective Jenkins said to him *"I believe you that Mark was not out there alone"*. Mr Craigie thought that this conversation occurred just before the events at the Town Talk Hotel on 27 August 1988.
- (7) In 1998, (former) Detective Jenkins recounted: *"Although we believe [Mark] was in the car that was stolen we were never able to prove that ... In my view somebody was with him either when he died or just after he died."* I note that this version appears in a Newspaper article and the Commissioner of the NSWPF accepts that there is some ambiguity on the face of the article as to whether some of the words spoken were by Detective Jenkins or Mr Craigie. However, Mr Craigie noted in his evidence that we were all *"thinking the same sort of way"*.

- (8) Detective Jenkins' theory about Mark's death is preserved by Fay Souter's account in October 1999.
- (9) The detectives understood that members of the community who had information about Mark's death may be unwilling to speak to police. They also understood that those members of the community may be more willing to speak to Mark's family. They said as much to Donald Craigie and his brothers. For that reason, they appear to have followed family members around to observe whether anyone gave information to those family members.
659. With reference to the steps identified above, the Commissioner of the NSWPF submits that the steps taken are quite inconsistent with detectives forming the view that Mark had died committed suicide and closing their minds to other theories. It is submitted that, to the contrary, the recollection of Mr Craigie and others who dealt with police was that they believed the family and suspected that someone else had been with Mark before his death.
660. Additionally, with respect to Mr Craigie's submission that there was a lack of curiosity into the circumstances of Mark's death and the submissions on behalf of Lorna and Ron Haines that the assumption that there were no suspicious circumstances prevailed in the mind of initial investigating officers, the Commissioner of the NSWPF submits that for the reasons set out above, to the extent that those submissions relate to the entirety of the first police investigation they should be rejected. To this end, the Commissioner notes that it is acknowledged by Mr Craigie that there were ongoing rumours of foul play.
661. With respect to Mr Razi's submission that the first police investigation "*was lacking in the most basic elements of what might be considered a genuine forensic inquiry*", the Commissioner of the NSWPF submits that such a submission should be rejected, and whilst it may be found that there were shortcomings in the investigation, officers made public appeals for information, made enquiries with potential witnesses, took witness statements, and tested physical items, which form at least the basic elements of a genuine forensic inquiry.

Absence of contemporaneous records and witness statements

662. Counsel Assisting submits that the absence of contemporaneous notes as to reports of persons questioned soon after Mark's death with many statements not completed for many months after Mark's death. Counsel Assisting attributes these shortcomings at an institutional level, as did Mr Craigie. Mr Craigie also submitted that there was a

“failure to take contemporaneous witness statements, with the earliest statements being completed six months after Mark’s death”.

663. The Commissioner of the NSWPF submits that those submissions should be rejected. The Commissioner submits that if those submissions are to the effect that contemporaneous notes were not made when witnesses were questioned, that is contrary to the evidence of the practices of the officers involved. If the submissions are to the effect that notebooks completed in 1988 and 1989 should have been retained and produced at this inquest, it is contrary to the evidence that such notebooks were authorised for destruction in approximately 1994. If the submissions are to the effect that the officers did not question witnesses as early as they could have, the Commissioner submits that this could have been explored with SC Pitt, Const Guyer and Detective Ferguson in their oral evidence at this inquest.
664. I accept that the chronology prepared by the Commissioner of the NSWPF in respect to the first investigation demonstrates that eight statements were taken within the six-month period after Mark’s death.

Changes in coronial and police investigative practices/standards since 1988-89

665. Counsel Assisting submitted that investigative and coronial standards have significantly improved since 1988. From an investigative perspective, if a case like Mark’s arose today, Counsel Assisting submits there is a high likelihood of homicide squad involvement (at least for an initial period to direct the investigation) and preservation of evidence at the scene (including securing of the white Torana). Further, The NSWPF has recognised that institutional bias towards Aboriginal people has occurred and has initiated programs to address that. In this regard, I again acknowledge the evidence of Inspector Symons.
666. In addition to the submissions canvassed above, the Commissioner of the NSWPF supports the submission of Counsel Assisting that if the investigation were to occur today it would be quite different:
- (1) General duties officers would not only apply policies and procedures sufficient to ensure the preservation of physical evidence but receive training in such matters that surpasses the training available in the 1980s.
 - (2) The chain of command above general duties officers would take an interest in ensuring that specialist crime scene officers were called out.

- (3) Specialist crime scene officers are rostered on 24 hours each day, and if such officers were delayed in attending a scene, the scene would be guarded and physical evidence protected from the elements. Any physical evidence would be handled with gloves and placed in evidence bags.
- (4) Multiple photographs would be taken of the body at the scene.
- (5) It is now clearly understood by police that it is their responsibility to collect items that travel with a body to autopsy.
- (6) Further searches and canvassing would also be done of the Torana and the surrounding area. Crash investigators may be called out to perform more thorough physical investigations of the circumstances of a crash.
- (7) Significant advances have been made by NSWPF in the management and accountability of exhibits.
- (8) Experienced investigators would make decisions about whether to involve the Homicide Squad, and the Homicide Squad could be involved in either a joint investigation with local detectives, a consultative investigation, or with the ability to become involved at a later stage as required. The Commissioner of the NSWPF submits that it is inconceivable that an investigation into similar circumstances would be left with general duties officers, if it recurred today.
- (9) Similarly, if a similar investigation were to recur today, there would be no prospect of an investigation languishing without a defined officer-in-charge, and no prospect that the officer-in-charge would be unaware that they had been assigned the investigation.
- (10) A major priority for investigators would be liaising with family and friends, in order to build conflicts that they might have experienced. It would also be important for investigators to establish a relationship and connection with the next of kin.
- (11) The Commissioner of the NSWPF also notes that it is also important to acknowledge that vast technological advances since 1988 and 1989 have dramatically increased the information that would be available to investigators. a comprehensive picture of the deceased person's activities and relationships, and any conflicts that they might have experienced. It would also be important for investigators to establish a relationship and connection with the next of kin.

- (12) It is also important to acknowledge that vast technological advances since 1988 and 1989 have dramatically increased the information that would be available to investigators.

Findings in relation to 1988-1989 police and coronial response

667. I accept that the *initial* investigation into Mark's death was deeply flawed, superficial and inadequate from the outset. I accept each of the factors summarised by Counsel Assisting and added to by counsel for Mark's family. The failure of officers to capture immediate objective evidence from the scene including no photographs of Mark's body in situ, no forensic examination of the car or train, inadequate collection and storage of evidence, and no senior officer taking control of the investigation, have resulted in the loss of crucial evidence which has in turn affected the work of this inquest.
668. I accept that the presumption at the scene that Mark's death was a result of suicide or solitary misadventure was a critical error and resulted in many lost investigative opportunities. SC Pitt quite properly conceded this fact. Nevertheless, I accept that former officer SC Pitt was under a chain of command at the time he made a number of critical decisions. In my view this creates an institutional failure of training or supervision.
669. In making the above findings, I acknowledge that regard must be had to the standards reasonably expected of investigations in 1988 and 1989 as well as the forensic technology available to officers at that time. I also accept the submission on behalf of the Commissioner of the NSWPF that it is essential to distinguish between a failure to make a record of an investigative step, a failure to take such an investigative step and the inability to find such a record now. However, notwithstanding the expected investigative standards and the inherent limitation that attends locating relevant investigative records (given the passage of time since Mark's death), I am comfortably satisfied that there were significant omissions and failings in the initial police investigation.
670. In my view, there continued to be significant problems after the initial days extending into what has been described as the *first investigation* period including preparation for the first inquest. I accept that the evidence establishes that some members of the NSWPF came to a view that there were others somehow involved or who knew information they had not shared. This is evidenced in some of Mr Craigie's discussions

with Detective Jenkins around the time of the events at the Town Talk Hotel and in a meeting between Detective Jenkins and the Craigie brothers.

671. Much later Detective Jenkin's views regarding the involvement of others were expressed in the newspaper report he was involved with in 1998. His apparent discussion with Fay Souter on this topic in 1999 is also evidence of this.
672. Nevertheless, the first investigative period is characterised by a lack of direction. Statements were taken on an ad hoc basis and there is nobody driving a coherent investigation. Statements were taken by detectives and general duties police officers if available. By the time the first Inquest commenced, little real progress appears to have been made.

N. 1999-2003 investigation into Mark's death

Overview

673. The investigation into Mark's death was resumed in about 1999 following Mr Ison making statements to police about Ms Dunning/Mr Davis.
674. The investigation was run by detectives at Tamworth Police Station.
675. As of 1999 the criminal investigations unit (detectives) consisted of a detective sergeant with five junior ranked detectives (three based in Tamworth and two based in Gunnedah). The detective sergeant role reported to the Crime Manager who was Detective Inspector Richard ("Dick") Letchford.
676. Detective Sergeant Brad Tayler (**DS Tayler**) was the initial detective sergeant with responsibility for Mark's investigations. He continued in that position until about 2000. Detective Garth Coe commenced as a detective in Tamworth in about August 1999 (**Det Coe**). He began as a detective senior constable and progressed to hold the detective sergeant role by about 2000.
677. Detective Edmonds (**Mr Edmonds**) and Plain Clothes Senior Constable Andrew Woods (**PCSC Woods**) were also involved during this period. Mr Edmonds involvement was between 1999 and January 2021.
678. There was no task force devoted full-time to Mark's death. The officers involved managed other investigations simultaneously. There were periods of intensity and periods of time where no investigatory steps were undertaken.

679. The criminal investigations unit were responsible for a significant geographical area (Oxley) and each officer had significant workloads.

680. DS Tayler said in evidence that Mark's matter "was one of numerous cases" being managed at the time. When asked to quantify the workload he said:

"It was super busy...Like I came from Sydney and it was crazy. We had armed robberies and murders everywhere in a short stretch that I was there, and it was really busy. Like we had 60,000 square kilometres and had to do everything. Like some days you know you'd drive away and leave the command, and you don't see the guys for a couple of days. So that was the reality of it..."

681. Det Coe, in his evidence, described the workload as higher, stating:

"There was serious crime being undertaken, drugs, there was murder, and those type of things take precedence. - - - During this time the detectives were on call, so if something happened that night of course you have to finish that investigation straightaway cause it's a fresh matter. This was a cold case protracted matter, so in regards to prioritising that comes into play."

682. In the early stages investigators took steps that included:

- (1) Consulted a Homicide Squad officer (DSC Allison) between July 1999 and January 2000 and received broad level guidance on the conduct of the investigation (this consultancy ceased by about February 2000).
- (2) Located available records and entered those into its electronic management system (a significant task of itself).
- (3) Re-interviewed some of the witnesses previously spoken to by police in 1988-89. This included Tanya White, Theresa O'Sullivan, Jason Muldoon, June Underwood and Donald Craigie. This did not extend to others who had a known close friendship with Mark such as Glenn Mannion or Michael Biddle.

- (4) Ascertained the whereabouts of the locomotives and obtained measurements/dimensions where able.
 - (5) Met with Dr Oettle to discuss his autopsy and opinions in the inquest.
683. The information provided by Mr Ison about Mr Davis' possible involvement was investigated, which included interviewing Ms Dunning in 1999 and 2001 and then Mr Davis in January 2001 (the latter also involved [REDACTED]).
684. During this period investigators also received information going to Terry Souter's possible involvement, which led to subsequent interviews with persons including Fay Souter, Colleen Souter and Michael Souter.
685. Eddie Davis and Terry Souter appear to have been the key investigative focus in this period.
686. It appears there was no formal determination to cease this investigatory period. Rather, less and less action was taken after the investigation of Mr Davis ended in 2001. It is not clear if any investigative steps were taken beyond 2003.
687. Police records indicate that as at least 9 April 2001, police held sufficient information to suggest the connection between Mr Mannion and the white Torana deserved close attention. However, this was not investigated.

Mr Edmonds participation in the investigation

688. Early on in Mr Edmonds involvement in the resumed investigation into Mark's death, a potential conflict was identified owing to Mr Edmonds' childhood in Tamworth and past connection to persons connected with Mark (if not to Mark himself).
689. A police running sheet dated 14 October 1999 recorded:

"Detective Edmonds was spoken to on 14/10/99 regarding his involvement in historical matters of the HAINES investigation. EDMUNDS stated that about the time that HAINES died he was told by a female person [Kathi] Kaspar that Eddie Davis was the offender. The information was believed to be fourth hand when relayed to EDMONDS.

EDMONDS informed former Detective Peter Jenkins of this information.

JENKINS spoke to EDMONDS but did not call upon same to give any evidence at the Coroners hearing. EDMONDS did not go out with any person the night of the death. He was aware of who DAVIS and HAINES were through the local area of Tamworth, but did not associate with the same. The information was previously advised to Detective Sergeant TAYLER upon the commencement of the investigation. This information was also relayed to Detective Alison from Crime Agencies during a face to face meeting. There is no threat to the investigation from this information. It is anticipated and has been shown that knowledge of persons and locations of Tamworth in 1988 held by EDMONDS has in fact assisted the inquiry. Detective EDMONDS will continue in his role of investigator in this matter. He has been advised that should any information come to hand that relates to him or may be seen as a conflict of interest, this should be notified to Det Sgt TAYLER."

DS Brett Tayler's evidence

690. DS Tayler was examined about the potential conflict in DSC Edmonds being involved in the investigation. DS Tayler's evidence about this included:

Q. Just to ask you to comment on this sort of scenario, that there was a possibility, wasn't there, as of mid-1999 that someone who had given a statement or given evidence back in 1988 or 89, may well know something about what happened to Mark?

A. Yes. That's possible, yes.

Q. And had not been frank with investigators back in 1988 and 89?

A. Of course, yes.

Q. And may well have lied about that as well?

A. Yes.

Q. That would be potentially someone that [REDACTED] Edmonds had been friends with at some stage and had a connection with?

A. Possibly, yeah. That's quite possible.

Q. That's in terms of him being part of that peer group, that age group?

A. Yeah, I think he went to school, yeah, which was better when we locked up at Tamworth there for a while, but yeah.

Q. Do you accept that that may well pose a challenge to anyone, notwithstanding their integrity, at being objective?

A. I can see that the risks are there. The risk is always there, but I mean it's something you, I think in a small detectives office that you just have to manage. Because otherwise he wouldn't be able to work in that office. Or that town. Which would preclude probably 70% of the police that were at Tamworth at the time. Anyone who was from Tamworth, they all went back to Tamworth and no-one ever left.

Q. Would there be someone else who might've been able to take that role in the detective unit?

A. Yeah, quite possibly, but as I said, I don't know what other stuff we had going. I don't know whether [REDACTED] was the only one available or - but it wasn't as if it was just exclusively [REDACTED] like it was that - we'd all talk about all our jobs and, you know, they'd go back and forth between all of us all the time.

691. DS Tayler said the decision was also impacted by the limited number of detectives available to assist, with there only being three detectives at Tamworth Police Station.

Det Coe's evidence

692. Det Coe recalled the conflict issue being raised. It had first been raised before he became detective sergeant. He understood nothing "untoward" was identified. He understood the conflict basically involved him being a "local boy who went to school and was aware of some of the people involved, including Mark". Det Coe did not view that as "uncommon" in a community the size of Tamworth. Any potential conflict, if it arose, would be managed. Det Coe was not aware DSC Edmonds was "Mr X".

Mr Edmonds' evidence

693. During the course of his evidence, Mr Edmonds said he attended Peel High School in Tamworth and knew Mark through school. He believes he was in Mark's grade for some of that time.
694. Mr Edmonds described his main peer group leading into year 11 as "*Probably Jeff Thomas, Michael Biddle, Brett Follington, Grey Reynolds – it's really hard to think back that far – Solomon Ambrose*". He also knew Mr Mannion and described him as someone "*I knew...but he was not somebody I would speak with or see. He went to a different school.*"
695. Mr Edmonds recalled being in Tamworth when Mark died and learning of it at the time.
696. Mr Edmonds recalled speaking with Detective Peter Jenkins at some point in 1988-89 sometime after he was spoken to at the solicitor's office in July 1988.
697. Mr Edmonds recalled the meeting or discussion about whether his involvement would pose a conflict issue. His recollection of what was discussed was to the effect that he was told by his superiors "*they could see no issue*" and he was expected to keep them informed if further conflicts arose.
698. Mr Edmonds did not consider his involvement posed a conflict.

Submissions regarding 1999-2003 investigation

Investigative steps taken in second police investigation

699. I have considered the chronology of the second police investigation which was annexed to the submissions filed on behalf of the Commissioner of the NSWPF.
700. The Commissioner of the NSWPF submits that the second investigation between 1998-2004 was sparked by the allegations made by Maxwell Ison about what Cherrie Dunning had told him about Mr Davis. It was submitted that those allegations were obviously deserving of investigation and it was entirely reasonable for investigators to focus their attention on Mr Davis at least until the allegations had been confirmed or dispelled. At least by June 1998, the investigation into Mark's death had been reopened and steps had been taken to obtain the coronial brief and locate Ms Dunning. While it was submitted on behalf of Mr Craigie that nothing was done for a period of 18 months after Mr Ison's statement was obtained and the police re-investigation only commenced in July 1999, I accept that some steps were taken by

the NSWPF in that period. Significantly, those steps did not extend to re-interviewing Mr Ison or other witnesses.

701. On 14 July 1999, Detective Sergeant Taylor and Mr Edmonds met with the Homicide Serial Violent Crime Agencies (**Crime Agencies**). During the course of that meeting, several lines of enquiry were identified including re-interviewing Mr Ison and the “main witnesses”, attempting to locate the original files from the 1988-89 inquest and using TIMS to record the remainder of the investigation.
702. Counsel Assisting observes that it appears the fact of Mr Mannion’s connection to the white Torana was not realised by the involved officers during the investigation in 1999-2003. Counsel Assisting submitted that with the benefit of hindsight, there was a missed opportunity during this period to more actively investigate persons who potentially had a connection to the Torana.
703. Mr Razi, on behalf of Mr Donald Craigie, submitted that despite specialist investigative advice from experts in Homicide Squad that all main witnesses be re-interviewed, police did not re-interview a number of significant witnesses spoken to during the initial investigation and submits that in hindsight, this was clearly a significant shortcoming in the investigation in 1999-2003. Further, Mr Razi submits that the failure to re-interview Mr Mannion and the failure to investigate the white Torana were both significant oversights.
704. The Commissioner of the NSWPF submits that the submission by Mr Razi that the second police investigation featured a general lack of resourcing or prioritisation should be rejected on three key bases.
705. First, the Commissioner submits that the level of resourcing of the investigation should be measured against the resources available to Tamworth police generally throughout that period. The unchallenged evidence of officers, as canvassed below, is that the investigation into Mark’s death was not singled out for lower resources compared to other investigations.
706. In this regard, Counsel Assisting noted that the second investigation into Mark’s death was not devoted full-time resources as the officers involved managed other investigations. There were periods of intensity and periods of time where no investigative steps were taken. Counsel Assisting observed that the criminal investigations unit were responsible for a significant geographical area, each had significant workloads as described in the evidence of DS Tayler and Det Coe who noted that *“it was super busy...like I came from Sydney and it was crazy”* and *“there*

was serious crime being undertaken.. if something happened that night of course you have to finish the investigation straightaway cause it's a fresh matter. This was a cold case protracted matter so in regards to prioritising that comes into play".

707. Accordingly, the Commissioner of the NSWPF submits that the investigation into Mark's death was not singled out as a lower priority than other investigations. Rather, the limited resources affected investigations "*right across the board*" and there were periods of activity and inactivity. In particular, it was submitted that the following features attended the second police investigation:

- (1) In July 1999, officers worked on the investigation when they had time. The progress reports prepared by Crime Agencies suggest that, in the second half of 1999, the time spent on the investigation varied significantly from 300 hours during the period 31 August 1999 to 5 October 1999, to minimal hours in the rest of the second half of 1999.
- (2) Investigators promptly attended to new information. On 30 September 1999, Mr Craigie told investigators that Colleen and Fay Souter might have relevant information. By 14 October 1999, statements had been taken from both Colleen and Fay.
- (3) Investigators experienced hindrances other than a lack of resources. For example, on 9 November 1999, DS Tayler wrote that the investigation had been delayed by difficulties in locating material from 1988, and difficulties in locating witnesses. In the same document, he wrote that "no additional resources are required at this stage". While resources were not always available, nor were they always required.
- (4) Officers decided to pause the investigation for a number of months in late 1999 or early 2000 when it became apparent that there was a risk that Eddie Davis had been tipped off.
- (5) Investigators devoted considerable resources to finding material from 1988-89, capturing that material in TIMS, and then when TIMS was replaced by e@gle.i, transferring the material from TIMS to e@gle.i. This latter step included the laborious process of printing documents out of TIMS, scanning them, and then uploading the scans to e@gle.i. Despite the monotony of that task, Det Coe gave evidence that officers undertook it "*meticulously*".

- (6) The Sydney Olympic Games in September-October 2000 was a particularly difficult time for investigators. There was no money for anything, and the detectives' office was closed for six weeks.
 - (7) By 3 October 2000, DS Tayler had ceased to be involved in the investigation, and Det Coe had taken a leading role. On that date Det Coe and DSC Edmonds discussed the investigation, which resulted in Senior Constable Woods assisting on the investigation.
 - (8) Later in October 2000, DSC Coe became the Operation Commander for the investigation.
708. In early 2000, steps were taken to arrange for a [REDACTED] with a view to exploring the Eddie Davis line of enquiry. I accept that significant steps were taken and resources allocated to this operation which also involved interviews with Eddie Davis, Ms White, Mr Porter and Ms Dunning between 31 January 2001 and 3 February 2001.
- (1) Officers attempted to liaise with Mark's family to the extent they could. Mr Craigie was interviewed on 30 September 1999, gave a statement on 15 December 1999, and was briefed by DI Letchford and Det Coe in early 2001. The information that Mr Craigie provided in that latter briefing was summarised in police databases for the benefit of the investigation. Det Coe gave evidence that he met with Mr Craigie regularly and tried to keep him up to date.
709. Secondly, [REDACTED] and the significant work involved in obtaining, reviewing, organising and migrating material from 1988-89, demonstrated that the investigation was allocated relatively significant resources at certain times.
710. Thirdly, the evidence does not establish that the investigation into Mark's death was given lower priority than other investigations. While from time to time the officers were required to attend to urgent matters, the investigation was otherwise prioritised the same as all other cases and investigations.
711. It is submitted on behalf of former officer Coe that he acknowledges that certain key witnesses, including Glenn Mannion, were not re-interviewed during the re-investigation period. On behalf of former officer Tayler, it is submitted that understanding the constraints at the time is central to any fair and balanced evaluation of his decisions. When viewed in their proper operational context, former DS Tayler's

actions reflect a conscientious and pragmatic effort to advance a complex investigation in difficult circumstances, and do not support any inference of unreasonableness, neglect, bad faith or professional shortcoming.

712. The former officers acknowledge the missed investigative opportunities. However, they submit that these should be treated as collective and structural failings, not omissions for which former Detective Edmonds alone bears responsibility.

Conflict of interest

713. Counsel Assisting submits that it appears Mr Edmonds' participation in the second police investigation was considered beneficial owing to his historical knowledge, however, this decision risked giving rise to the perception of a conflict and in hindsight that would have been avoided by excluding him from the investigation.
714. Mr Razi submits in relation to Mr Edmonds, that the court would be satisfied that Mr Edmonds did not disclose that he was Mr X or that he knew Glenn Mannion. However, even if he had, the court could not be satisfied that he would have been excluded from the investigation. Mr Razi further submits that it is open to me to find that it appears *likely* that Mr Edmonds did not disclose to police that he provided a statement to police in the initial investigation or that he was Mr X.
715. Additionally, Mr Razi submits that, with the benefit of hindsight Mr Edmonds should never have been involved in the investigation and by being involved in the investigation until 2003, it has regrettably given rise to an unresolvable suspicion on the part of Mr Craigie that, viewed in hindsight, his conflict of interest may have interfered or influenced the investigation.
716. Submissions on behalf of former officers Coe, Tayler and Edmonds note that while hindsight may give rise to a perception of an appearance-of-bias issue, Counsel Assisting is clear that no impropriety was identified at the time the relevant decisions were made. This distinction is critical.
717. Mr Edmonds submits that a conflict perceived only retrospectively cannot properly be equated with misconduct or deficient judgment in the circumstances as they then existed. Further, Mr Edmonds submits that it would be inappropriate to assess his conduct through the lens of hindsight, and that no adverse inference should be drawn from circumstances that only assumed significance after the fact.

718. The Commissioner of the NSWPF submits that any criticism arising from the handling of the conflict being attributable at an institutional level should be rejected. In particular, the Commissioner of the NSWPF submits:

- (1) First, Counsel Assisting does not articulate why any failing was institutional, rather than individual.
- (2) Second, Counsel Assisting does not address the policies and procedures that governed the handling of conflicts of interest in 2000 and 2001, and which are in evidence before me. Such policies and procedures would be the starting point for any assessment that the failing was institutional.
- (3) Third, the officers involved in the decision to involve DSC Edmonds appear to have approached the decision as allowing substantial discretion. They appear to have approached the decision on the basis that their discretion extended to:
 - i. the types of conflict that could warrant intervention,
 - ii. the measures that could be applied to limit the risk arising from conflict, and
 - iii. the considerations relevant to their decision about the management of the conflict.

719. Accordingly, the Commissioner notes that the substantial discretion that the officers applied is a further obstacle to any failing being attributed at an institutional level.

720. In relation to Mr Razi's submissions above at [714], the Commissioner of the NSWPF submits that these should be rejected on the basis that:

- (1) DSC Edmonds disclosed the fact that he had made a statement to police in 1988 or 1989, and also disclosed that he knew Mr Mannion.
- (2) DSC Edmonds made a note of a conversation with DSC Coe that occurred on 17 October 2000 where it was indicated amongst other things that Mr Mannion is known to Edmonds through schooling and "*D/Sgt Tayler was previously made aware of these conflicts by DSC Edmonds.*"
- (3) As for the submission that DSC Edmonds did not disclose that he was Mr X, police appear to have first become aware of the existence of that person as a result of a meeting between Mr Craigie, DI Letchford and DSC Coe in early

2001. The transcripts of the interviews with Mr X and Mr Y do not appear to have been provided at that meeting. This meeting was well after the decision to involve DSC Edmonds had already been made, and very shortly before DSC Edmonds was transferred to Tweed Heads and ceased to be involved in the investigation. It is unclear how DSC Edmonds could be expected to disclose that he was Mr X, as opposed to disclosing that he had provided information in 1988-89, when the information from Mr X was not in the officers' hands.

721. In relation to Mr Razi's submission above at [715], the Commissioner submits that this overlooks crucial evidence. Namely, DSC Edmonds left Tamworth detectives in January 2001. His last task was to swear the affidavit in support of the application for [REDACTED]. He gave evidence that DSC Coe had largely taken over the investigation, and DSC Edmonds's involvement in the investigation ceased at that time. That is supported by DSC Coe's operation orders, which do not refer to DSC Edmonds. It follows that DSC Edmonds did not have any responsibility for investigative tasks after January 2001. It also follows that his conflict could not have interfered with the investigation after January 2001.

Findings in relation to 1999-2003 investigation

722. In my view, it was proper to investigate whether Mr Davis was involved, given the information NSWPF had received. I also note that Mr Craigie had a longstanding interest in having this possibility investigated. Nevertheless, it should not have been the only line of inquiry pursued.
723. I accept the submission that the 1999 to 2003 re-investigation did not appear to appreciate or investigate Mr Mannion's connection to the Torana. I accept that this was a major oversight and that the police records and running sheets disclose that from at least 9 April 2001 police had sufficient information to prioritise this line of inquiry.
724. Having the Homicide Unit review the initial investigation was a positive development, however their advice to re-interview all of the main witnesses was not followed and there appears to have been a tendency to focus exclusively on Eddie Davis during this period. I accept that police at Tamworth may have been stretched for resources at that time, but I am unable to determine exactly how that affected the prioritisation of their further inquiries in this matter.

725. Once again, with the benefit of hindsight the investigation appears to have lacked a cohesive or systematic approach. Bits and pieces were done where possible, but very real possibilities were not considered in a structured manner.
726. In relation to Mr Edmonds, I agree that the conflict of interest had the capacity to undermine the integrity of the re-investigation. I am critical of the decision to allow Mr Edmonds to be involved in the investigation of this matter. It was inappropriate and this should have been clear to him and others.

O. 2016-2026 investigation into Mark's death

Overview

727. The investigation into Mark's death resumed in April 2016 following the receipt of three Crime Stoppers reports that month (one of which was made by Belinda Matheson).
728. In April 2016, DSC Dunn was the acting team leader within the Oxley Police District Criminal Investigation, based in Tamworth Police Station.
729. DSC Dunn assumed carriage of the investigation because he was involved in the second investigatory period ([REDACTED]).
730. DSC Dunn was the officer-in-charge of the investigation until 2025.
731. DSC Dunn consulted with Detective Sergeants Glenn Moorfoot and Peter Rudens of the NSWPF Unsolved Homicide Squad during the period of his involvement.
732. The information within the Crime Stopper reports led to a focus on Glenn Mannion and his possible connection with Mr Sanderson's Torana in January 1988. Other lines of inquiry were also pursued during this period.
733. In May 2024, Acting Inspector Matthew Harmer assumed the officer-in-charge role. He has continued in that role to present.

Destruction of the pink lighter

734. One matter examined during the course of this inquest was the destruction of a pink lighter found by DSC Dunn after he commenced in the officer-in-charge role in 2016. After it was submitted for forensic examination, which yielded no fingerprints or discernible DNA, DSC Dunn approved its destruction. That was done without Coronial approval and is contrary to police procedures for the preservation of exhibits. DSC Dunn, in his evidence, accepted he erred in that decision. I note DSC Dunn made other positive contributions to the investigation.

735. It should be clear to any police officer that given the very real advances that continue to occur in forensic science, all physical evidence should be retained until considered orders for destruction have been made.

Submissions as to 2016-2026 police investigation

736. In the course of the third police investigation, Detective Sergeant Rudens of the Unsolved Homicide Unit prepared a report dated 10 February 2022 regarding certain competing theories in relation to Mark's death. Detective Sergeant Rudens opined that the most likely scenario leading to Mark's death was suicide/misadventure and the most likely cause of Mark's death was the third train. Detective Sergeant Rudens also noted a number of hindrances to the investigation, and he described "*the initial police response compared to today's standards can reasonably be considered as inadequate.*"
737. In the submissions filed on behalf of Mr Craigie and Lorna and Ron Haines, criticism is levelled at the conclusions reached by Detective Sergeant Rudens.
738. I accept that Detective Sergeant Rudens gave his evidence frankly to assist the inquest. As I observed in my consideration of preliminary matters, reasonable minds might differ and it is a matter for me based on the available evidence to consider and accept or exclude certain potential scenarios in connection with Mark's death. In doing so, I have examined all the available evidence without fear or favour including the evidence of Detective Sergeant Rudens. I acknowledge that the opinion expressed by Detective Sergeant Rudens may have been a source of distress to Mark's family. However, it has been appropriate for me to consider his evidence in addition to all other available evidence regarding what may have happened to Mark.
739. Detective Rudens was asked for his opinion. He gave it. His view is that Mark's death was caused by the third train and involved suicide or misadventure. As it happens I do not share his opinion on this issue but I have no criticism of him for giving it when asked. In other matters we agree. He was undoubtedly correct in his observation that the initial police investigation was inadequate.
740. The Commissioner submits that the third investigation involved appropriate, thorough and reasonable steps and that no criticism could reasonably be made in relation to anything occurring in the third investigation.
741. The Commissioner of the NSWPF submits that the court would not find that Detective Sergeant Rudens' opinion is "highly misinformed or misconstrued" and that this

criticism sits uncomfortably with the acceptance that the possibility of accident or unintended misadventure cannot be ruled out.

Findings in relation to 2016-2026 investigation

742. In my view the investigations between 2016 and 2026 have properly focused on obtaining all the available documentary evidence and reviewing it. A full review by experienced detectives from the Unsolved Homicide Unit has taken place. From that full review lines of inquiry which should have been taken up many years ago, finally commenced, including a re-interview of Glenn Mannion.
743. In the lead up and during this inquest, many further statements have been taken and NSWPF have been responsive to requisitions made by the team assisting me.

P. Findings as to additional matters raised by Counsel Assisting and interested parties

(1) Records, exhibits and observations as to prior investigations into Mark's death

744. An attempt has been made in these proceedings to locate as many records as possible that concern the investigation into Mark's death. The attempts to locate investigative material or other relevant records pertaining to Mark's death has extended beyond just any records held by the NSWPF. In my capacity, I have issued several orders for production or subpoenas to produce with a view to locating as many relevant records as possible for my consideration in discharging my statutory functions.
745. I have heard evidence that officers involved in the initial police response and first police investigation had created records, or had a practice of creating records, that included notebooks and occurrence pads. A miscellaneous property book and an exhibit book were also maintained. Searches have been made for those and other records, and it has not been suggested by Counsel Assisting that those searches were inadequate. I accept that almost forty years after Mark's death, the notebooks were most likely destroyed in accordance with destruction authorities that were previously in force.
746. I also accept that it is important to distinguish between the failure to make a record (on one hand) and the inability to locate or identify such records given the passage of time since it was made (on the other hand). The Commissioner of the NSWPF submitted that, to the extent that a criticism is based on the absence of records, it is important to take into account (a) the authorised destruction of records, (b) the

unavailability of people who might have given evidence of what steps were and were not taken (such as Detective Jenkins and Sergeant Lamey), and (c) the unwillingness of some people to speak to police. The Commissioner further submitted that it is essential to distinguish between a failure to make a record of an investigative step, a failure to take such an investigative step, and the inability to identify such a record now.

747. It was submitted on behalf of Mr Craigie as well as Ron and Lorna Haines that officers failed to keep certain records or that there is a lack of records of certain investigations or observations. In particular, it was submitted on behalf of Lorna and Ron Haines that:

- (1) a deficiency in the first police investigation was the failure to preserve occurrence pads and notebooks;
- (2) officers failed to properly record the visit by Dr Oettle; and
- (3) there is no explanation of inconsistencies between photographs of the Torana in the evidence before me.

748. The Commissioner of the NSWPF submitted that the authorities permitted the destruction of notebooks five years after last action, the visit by Dr Oettle was not put to Const Guyer who was present at the time and does not account for the likelihood that any records that were created have since been destroyed, and Detective Lamey was not asked about the inconsistency in the photographs of the Torana. The Commissioner notes that Detective Lamey's unavailability renders it unfair to criticise the absence of such an explanation. The Commissioner again submitted that officers involved in the second police investigation undertook the substantial task of recovering and capturing records from 1988 and 1989.

749. Finally, the Commissioner submitted that appropriate searches have been made for contemporaneous exhibits and records. Detective Inspector Warren described his comprehensive and detailed searches. He has substantial expertise in searching for historical NSWPF records. His searches led to the production of a significant volume of documents, only some of which have been tendered in this inquest. Detective Inspector Warren gave evidence that he was confident that the NSWPF had done the best it can to find everything.

750. I accept that the passage of time makes it difficult for me to make firm findings about the absence of records, some of which may have been destroyed in accordance with police protocols.

751. I accept Detective Inspector Warren has now undertaken a comprehensive search.

(2) Possibilities attending Mark's death

(a) Connection between white Torana and Mark's death

Submissions as to the possibility that Mark drove the white Torana to the scene

752. Counsel Assisting submits that based on the totality of the evidence I can comfortably make a finding that the presence of the Torana at the tracks is connected with how Mark came to be in that area and on the tracks.

753. In particular, Counsel Assisting submits that it is inconceivable that these two events coincidentally occurred, especially given the short period of time between each (1 to 2 hours). However, Counsel Assisting submits that the exact connection between these two events cannot be ascertained on the available evidence. Further, Counsel Assisting submits that it is not possible to conclude, based on the evidence, that Mark was not involved in the theft of the white Torana and travelled in that vehicle to the scene either on his own or with others.

754. Mr Razi, on behalf of Mr Donald Craigie, submits that given the evidence that Mark could not drive as well as the evidence of Donald Craigie, Tanya White, Glenn Mannion and Jason Muldoon in relation to this, the court can positively exclude the theory that Mark drove the white Torana to the scene.

755. Mr Rumbewas, on behalf of Lorna and Ron, also submits that the evidence that Mark could not drive significantly outweighs the limited evidence that he could drive.

756. Additionally, Mr Rumbewas points to evidence available to me which tends against the likelihood that Mark would have instigated the theft of the white Torana. In particular, he notes Mark's character, lack of interaction with police and lack of a criminal record as outlined above.

757. On the basis of the available evidence, I find that the presence of the white Torana is connected with Mark being on the tracks, however I am unable to conclude how. I cannot rule out that Mark travelled willingly in the Torana to the location where it was later located. This does not establish that he knowingly travelled in a stolen vehicle. I find that it is highly unlikely that Mark drove the Torana himself, as there is no reliable

evidence that he had any prior connection to the car and no evidence that he had ever stolen a car or knew how to start a stolen car. The evidence at the inquest has been either that Mark could not drive or could not drive well and I accept that.

758. In my view, the weight of the evidence suggests that others were present or somehow involved at a time proximate to Mark's death. Further, I am satisfied that Mark's death is suspicious in the sense that persons with information did not or have not come forward. Whether there is also an accidental element to Mark's death associated with the white Torana, I am unable to say.

(b) Possibility that Mark walked from the white Torana to the tracks

Submissions as to Mark walking from the white Torana to the tracks

759. Mr Razi, on behalf of Mr Donald Craigie, submits that the available evidence would allow the court to be satisfied that a scenario where Mark walked from the white Torana to where his body was found on the tracks is highly unlikely. In this regard, Mr Razi points to the evidence from the expert pathologists, SC Pitt as well as the evidence regarding Mark's clothes and shoes. Mr Razi submits that on the totality of the evidence, the court would be satisfied that if Mark suffered a SDH as a result of the white Torana rollover, it is most likely that he would have been unconscious and unable to walk from the car to the place on the tracks where he was found.
760. Mr Razi submits in the alternative, that if Mark was in the white Torana when it rolled over but did not suffer a SDH at that time, then the court would find that it is highly unlikely that Mark would have been able to walk from the car to the place on the tracks where he was found without getting mud on his shoes or clothing.
761. I accept that there is evidence before me that there was little mud on Mark's shoes and that this is difficult to reconcile with weather conditions on the day, but without photographic evidence I find the description difficult to rely upon with any degree of certainty.
762. Assuming Mark was in or near the Torana, I cannot be sure how he got from the car to the tracks. If he was injured, it would have been difficult, however on the available evidence I cannot safely conclude if he was injured or involved in a rollover type accident. Therefore, I decline to make a finding as to whether Mark walked from the Torana to the tracks or walked part of that way.

(c) Likelihood that other persons were at the scene with Mark or present at the time of his death

Submissions as to the presence of third parties

763. Counsel Assisting submits that the circumstances point to the likelihood that Mark was not alone when he came to be on the tracks and that other person(s) were likely present.
764. Mr Razi, on behalf of Mr Donald Craigie, submits that the presence of the Torana near the tracks is connected with how Mark came to be in that area and on the tracks, that it is implausible that Mark walked to the scene from Wilburtree St, and that it is impossible that Mark drove himself to the scene. Mr Razi submits that it logically follows from the above evidence that Mark must have been transported to the tracks by another person or persons, either in the white Torana or in another as yet unidentified car.
765. Mr Rumbewas, on behalf of Lorna and Ron Haines, submits that the evidence before me overwhelmingly suggests that Mark was not alone when his body ultimately arrived (conscious or unconscious) at Warral Siding. In particular, the available evidence supports the view that Mark came into contact with another person(s) who: (1) was capable of not only driving but also stealing the Torana and, (2) effected the movement or transportation of Mark's body from the Torana crash site to Warral Siding over a 1.6km distance. Mr Rumbewas pointed to several aspects of the available evidence in this regard including that Mark was unable to drive, lacked the skill to steal the Torana, ability to walk to Warral siding from the crash site and the positioning of Mark's body.
766. As I have previously stated, I am persuaded that it is highly likely that others were present with Mark at some point near the tracks or vehicle.

(d) Possibility that Mark's death was self inflicted

Submissions as to the possibility that Mark's death was self inflicted

767. Counsel Assisting submits that the available evidence does not allow the court to definitely exclude the possibility that Mark willingly placed himself on the tracks in an act of self-harm or misadventure, while affected by alcohol and was struck by a train. Counsel Assisting notes that even accepting this scenario may appear unlikely, it is necessary to stand back and consider if the available evidence permits the positive exclusion of this possibility.

768. Counsel Assisting accepts that reasonable minds may differ as to whether the possibility that Mark's death was self-inflicted could be positively excluded on the basis of the totality of the evidence.
769. Mr Razi, on behalf of Mr Donald Craigie, submits that there is a complete lack of evidence in relation to any indicia of self-harm. Mr Razi points to there being no suicide note, no indications or reports of self-harm, a high likelihood that Mark was not alone when he came to be at the tracks, and express evidence from those that knew Mark well that he did not, in their belief, engage in suicide. Mr Razi submits that the court could comfortably exclude the possibility that Mark died by self-inflicted means.
770. Mr Rumbewas on behalf of Ron and Lorna Haines, submits that the court can exclude the possibility that Mark caused his own death by suicide or intentional self-harm. In support of this submission, Mr Rumbewas notes there is no evidence before the inquest to suggest that Mark had a history of suicidal ideation, self-harm or other relevant history of mental illness, Mark did not exhibit any signs of suicidal ideation, self-harm or mental distress to those known to be with Mark in the hours leading up to his death.
771. Mr Rumbewas further submitted that the positive exclusion of suicide would not rule out the possibility of accident or unintended misadventure.
772. I have considered the evidence carefully. The submissions of Counsel Assisting have some force. As an experienced coroner, I am well aware that the circumstances in which intentional self-harm can take place vary greatly. Many people who choose to take their own life do not leave notes or inform others of their intentions. Sometimes the decision is long planned, sometimes it is made on impulse. The lack of a note or known mental health history is not necessarily a barrier to making a finding of suicide. While subsequent investigations will sometimes reveal prior distress or discomfort, this is not always the case and in my experience some families remain shocked and never accept that their loved one has chosen to make this heartbreaking decision.
773. There are certainly times when a completely unexpected death is ruled a suicide such as when a person is known to take clear and unambiguous action which *in itself* demonstrates a wish to die. If someone is seen for example taking a running jump from a tall building, the act itself *may* ground a finding of suicide even without other evidence. Clearly this is not such a case as there is no direct evidence that Mark willingly took any intentional action which caused his death. We just do not know how he came to be on the tracks or what his condition was at that time.

774. There will be cases where an open finding is appropriate because while suicide cannot be positively established, it is also not possible to conclusively rule it out. Counsel Assisting suggests this is such a case.
775. It is necessary to consider the totality of evidence on this question.
776. Firstly, while it is not conclusive, I have taken into account the very strong evidence from every person who knew Mark that he was not demonstrating signs of depression or voicing thoughts of self-harm in the lead up to his death. Nor had he ever expressed these thoughts. This evidence is unanimous amongst his family and friends. It is in the circumstances of this case highly persuasive.
777. Secondly, there is no reliable information about how Mark came to be on the tracks but his position in close proximity to items from the car make it highly likely that he was in the company of others at some time in the early hours of that morning in the vicinity of the tracks. A sudden decision to take his own life in these circumstances seems unlikely.
778. Thirdly, the circumstances are highly suspicious and baffling. Mark was found lying neatly between the tracks with his head on a towel. In the circumstances I have reviewed I find it so implausible that he would voluntarily lie on the tracks with a towel as a pillow waiting for a train, surrounded by Mr Sanderson's Christmas presents which had apparently been carried some distance, in an attempt to end his own life that I am able to reject it as a possibility.
779. Based on the evidence, I am satisfied on balance, that Mark did not end his own life *intentionally*. Mark's death was not suicide.
780. In considering whether there could have been some sort of accident that night which contributed to his death I am less certain. Alcohol may have affected his judgement. As such, I cannot rule out that, in the company of others, there was some kind of accident or reckless conduct which injured Mark and which somehow led to Mark being discovered on the tracks. Therefore, misadventure in suspicious circumstances remains a possibility as does homicide.

(3) The role of unconscious bias

Submissions as to the presence of unconscious bias

781. As noted above at [634]-[635], Counsel Assisting submitted that the causes underlying the shortcomings with the initial police investigative response and coronial process cannot be ascertained.
782. However, Counsel Assisting notes that acceptance of that should not be taken as diminishing the experience that some witnesses in this inquest especially, Mr Donald Craigie, who shared his experiences of racism and his perceptions of bias or indifference by the NSWPF at different stages of the investigation into Mark's death.
783. Mr Razi, on behalf of Mr Donald Craigie, submits that a lack of direct evidence of unconscious bias would not be determinative in whether a Court would find that unconscious bias may have been a causal factor in the significant deficiencies in the investigation into Mark's death in 1988-89.
784. Mr Razi relies on the evidence of Professor Cunneen who sets out in his expert report:
- “The Royal Commission [into Aboriginal Deaths in Custody] pointed to the importance of understanding the systemic and institutional forms of racism within policing. ‘It is not necessarily deliberate discrimination or conscious prejudice on the part of police, although it sometimes is. Particular ways of treating Aboriginals may have become so entrenched as to seem normal or necessary, and be carried on without any individual ill-will, or desire or intention to discriminate’”*
785. Mr Razi submits, that unconscious bias is, as the name suggests, unconscious. A person can exhibit unconscious bias unintentionally and without knowing the source of the bias or its impact on decision making. As such, it is unsurprising that if a person is asked whether a particular act or omission was affected by a particular form of unconscious bias (in this case a racial bias), they may deny it.
786. Mr Razi submits that the proper approach is to consider whether similarities exist between the police investigations identified by Professor Cunneen in which unconscious bias has been identified as a factor, and the police investigation into the death of Mark Haines, such that the court could be satisfied that, on the balance of probabilities, unconscious bias can be considered to be a *causal* factor in the police investigation into Mark's death.

787. Mr Razi submits that there are clear similarities in the characteristics of the police investigations outlined in Professor Cunneen's first expert report and the deficiencies in the police investigation into Mark's death in 1988-89 which include:
- (1) That the police investigation into Mark's death proceeded on the presumption that Mark's death was a suicide;
 - (2) The police investigation into Mark's death featured poor record keeping, including a failure to seize, examine or retain vital forensic evidence, and a failure to locate or produce police records;
 - (3) There was a perception on the part of Mr Craigie of inadequate communication between police and the family that was a source of great distress to him; and
 - (4) Mark's family were of the view that the police investigation, particularly in the days and weeks following Mark's death, had not been thorough.
788. Mr Razi conceded during oral submissions that there is no definitive or direct evidence that can definitively state that unconscious bias was at play. However, Mr Razi submitted that there are signs and hallmarks of unconscious bias such that the Court could find it highly likely that unconscious bias operated in the investigations into Mark's death.
789. The Commissioner of the NSWPF supports the submission of Counsel Assisting that whether unconscious bias was a causal factor in any deficiencies in the initial police response and first police investigation cannot be ascertained. In this regard, the Commissioner notes the reports of Professor Cunneen. The first report describes the long and distressing history of the relationship between the Aboriginal community and the NSWPF, focussing on certain regions of New South Wales. The Commissioner does not challenge the conclusions in Professor Cunneen's first report. The Commissioner made reference to the words of Inspector Jade Symons, "*That's our history*".
790. As to Professor Cunneen's second report, the Commissioner noted that is important to understand the limitations of that report. Namely, Professor Cunneen's second report is not evidence that the initial police response and the first police investigation were deficient, or that any deficiencies were caused by unconscious bias. First, Professor Cunneen did not purport to give evidence about the adequacy of the investigation, and did not have the expertise to do so. Secondly, given the questions

that were asked of Professor Cunneen in preparing the second report, this report is only an opinion about whether Mr Craigie's *perceptions* as recorded in his statement are consistent with his first report. Thirdly, Professor Cunneen was only briefed with a limited portion of the evidence before me which would have been required for him to form an opinion on whether the initial police response and first police investigation was in fact consistent with his first report. Professor Cunneen acknowledged that if there was evidence that police believed Mr Craigie, this would change his opinion.

791. Accordingly, the Commissioner of the NSWPF submitted that Professor Cunneen's second report should not be understood as evidence of anything more than that Mr Craigie's perceptions of the initial police response and first police investigation are consistent with Professor Cunneen's first report.

792. As to Mr Razi's submission at [787], the Commissioner of the NSWPF submitted that this should be rejected on the following bases:

- (1) The first police investigation did not proceed on the assumption of suicide. As outlined above at [658]-[659], the Commissioner submits that police kept an open mind and believed Mr Craigie when he said that Mark was not alone.
- (2) The first police investigation involved detectives and other senior officers, who met with Mr Craigie and other family members, and made public appeals for information.
- (3) The first police investigation involved ACLO Harry Cutmore, at least in the meeting involving Mr Davis and Mr Craigie.
- (4) At the time of the first police investigation, the officers involved had a practice of using their notebooks and the occurrence pad system to record information and supervise investigations. The fact that those records were not able to be identified for production in this inquest is consistent with the destruction authorities, and does not establish that they were never created

793. I have given this issue considerable thought. Racism and unconscious bias in an organisation arises out of prevailing social conditions. There was, in my view, strong evidence of racism existing in Tamworth at the time of Mark's death just as it has been found to exist in other towns in NSW during the 1980s. I note the State Coroner's findings in relation to the deaths of Mona Lisa and Jacinta Smith² in this respect. Her Honour, Judge O'Sullivan made findings about racial tensions in Bourke in the 1980s

² *Inquest into the death of Mona Lisa and Jacinta Smith*, 23 April 2024

and accepted that it was a factor in the kind of investigation which took place in that case. Her Honour describes unconscious racial bias in the police force as “simply representative of the ill-informed, and frankly racist social views of many within the Australian community at the relevant time.”³ It is in my view necessary to grapple with the uncomfortable truth of this assessment in the circumstances of the present case.

794. Donald Craigie gave the court some considerable insight into his experience of living with racism and the ongoing effects of colonisation on his life and the lives of his family.

795. Specifically in relation to this investigation Mr Craigie gave evidence that “*we never felt believed. We never felt like anyone was particularly interested in what we had to say, on what information we had or what we were concerned about. We were made to feel like black fellas, we can only ever be the suspect or the criminal, never the victim or the family of a victim deserving of care, respect and dignity.*”

796. There was also a significant amount of other evidence before me on this topic which I will refer to only briefly. Mr Craigie’s perception of racism is corroborated by the matters raised in the report of Professor Cunneen outlined above including the quality of police investigations in the context of Aboriginal deaths in custody around the relevant time. Professor Cunneen quoted Commissioner Wootten QC in regard to understanding systemic and institutional forms of racism within policing:

“[i]t is not necessarily deliberate discrimination or conscious prejudice on the part of police, although it sometimes is. Particular ways of treating Aboriginals may have become so entrenched as to seem normal or necessary, and be carried on without any individual ill-will, or desire or intention to discriminate.”

797. This sentiment was again echoed by Inspector Jade Symons who did not shy away from openly acknowledging the difficult history between NSWPF and Aboriginal people in NSW. When asked about Professor Cunneen’s report Inspector Symons endorsed it, saying, “*that is our history.*”

798. I note also her evidence that ACLOs had commenced as a pilot program in 1988 with Tamworth selected as a first location. It is unlikely this location would have been selected, if there were already cohesive and productive relationships between police and the local Aboriginal community.

³ *Inquest into the death of Mona Lisa and Jacinta Smith*, 23 April 2024 at [316]

799. As we have seen the RCIADIC looked at the death of Bruce Leslie who died after being held in police custody at Tamworth Police Station in 1985. Commissioner Wootten QC noted in relation to the death of Bruce Leslie that *“some police consider that they can say nearly anything and get away with it.”* The RCIADIC found strong evidence of racial bias within the police force and the coronial system. The Coroner who presided over Mr Leslie’s inquest also presided over Mark’s first inquest. Commissioner Wootten QC was critical of the coronial process in the Leslie inquest describing it as *“a system which prostituted the precious tradition of judicial independence and competence to rubber-stamp inadequate police investigations on the cheap.”*
800. The every day nature of racism in NSW country towns was also described by Eddie Davis who gave evidence that during the relevant period real estate agents in Armidale would have signs in their windows, *“no rentals for blacks”* and that some people didn’t employ Aboriginal people or allow “black fellows” to drink at the pub.
801. Racial bias is further evidenced by Coledale, the local area in Tamworth which was predominantly home to Aboriginal people, being referred to as ‘Vegemite Village’ during the inquest. I found it instructive that witnesses used that term in court with barely a thought that it may sound problematic to an outsider.
802. I am surprised given all of the above, that anyone would deny the pervasive existence of racism in Tamworth in the 1980s. I question how a police investigation could be quarantined from these widespread attitudes.
803. I am comfortably satisfied that having found the existence of racism and unconscious bias operating in Tamworth at the relevant time, that it is appropriate to take the further step and in the context of Mr Craigie’s strong evidence find that these attitudes affected the investigation of his nephew’s death.
804. When asked about the adequacy of the initial police investigation Donald Craigie told the court *“the train would still be there if it was a white boy.”* I accept the truth behind the emotion in that statement and find the approach to the investigation in the days and weeks following Mark’s death was indeed affected by the prevailing racism of the time. While it may not be possible to elucidate how racism or racial bias affected each and every decision, in my view it is highly likely that the lack of care and thoroughness demonstrated in those early days is related to the prevailing attitudes of the time. In my view it is impossible to ignore the strength of Mr Craigie’s lived experiences of racism when trying to identify what was going on. I found Mr Craigie a forthright

witness and I have no hesitation in accepting his evidence on this issue. There is a need to speak openly about how racism affected the lives of Aboriginal people in NSW country towns in the 1980s and I thank Mr Craigie for his honesty.

805. It is perfectly clear that Donald Craigie and other family members felt they had to investigate what had happened themselves because they had no confidence in the police. My analysis has shown me that their lack of confidence was well placed in those early days. Early anchoring to a suicide theory closed off important avenues to consider. Mark's family rejected suicide from the start and they were not listened to. Mark's body, the train and the Torana and its contents were inadequately examined. Evidence was lost because of a lack of curiosity and care.
806. In making that finding I do not suggest that racial bias was the *only* factor contributing to the flawed early investigation, but I am confident that it played a role and that it impacted the level of thoroughness brought to bear on early decisions. It certainly affected the family's ability to trust the investigators and to develop a useful rapport. I accept Mr Craigie's perception that his views were not given the consideration that would have been given to someone with more status in the community.
807. I also accept that the initial coronial inquest was flawed and superficial. Questioning was minimal and evidence was subsequently lost. I acknowledge the loss of court records has significantly hampered this inquest and it was the responsibility of the court to retain its own records in relation to transcripts and exhibits.
808. Mr Craigie's words have stayed with me and I find it inconceivable that such a superficial initial investigation would have taken place in those first crucial days had a young white teenager from the right side of town been found on the tracks in similar circumstances. I have given careful consideration to the submissions made against this finding. However, in my view while some deficiencies may be explained by poor resourcing, I am comfortably persuaded that there was another factor at play. That factor grows out of our colonial history and should not be ignored.

Q. Findings

809. The findings I make under section 81(1) of the *Coroners Act 2009* (NSW) are:

Identity

The person who died was Mark Anthony Haines

Date of death

Mark died on 16 January 1988

Place of death

810. Mark died on the railway tracks just north of the Bithramere Crossing, a short distance outside Tamworth, NSW

Cause of death

Mark died of traumatic head injuries

Manner of death

Mark's death occurred in suspicious circumstances. The exact circumstances remain unknown. I am satisfied Mark's death was not intentionally self-inflicted.

R. Recommendations

811. For reasons stated above I am satisfied having regard to the totality of the evidence that Mark's death occurred in suspicious circumstances such that it is necessary and desirable to make a recommendation in the following terms to the Commissioner of Police, NSW Police Force:

That the death of Mark Haines be referred to the Unsolved Homicide Unit of the NSW Police Homicide Squad for further investigation in accordance with the protocols and procedures of that Team. Further that a copy of the brief of evidence and transcript of the Inquest into the death of Mark Haines be provided to the Unsolved Homicide Team for this purpose. That review to include consideration at a future date to further DNA examination of the swab from the pink lighter located at the scene in January 1988 (be conducted assuming technological advances).

Conclusion

812. Despite holding a further inquest, I am unable to clarify the circumstances of Mark's death. At the conclusion of the First Inquest Coroner Byrne recorded Mark's death as having been caused by what we have called Train 2 in these proceedings. I have heard a substantial amount of expert evidence which was not available to Coroner Byrne and which places doubt on this conclusion. As will be clear I do not accept this finding can be made to the requisite standard on the evidence before me. There remain too many unanswered questions.

813. On the other hand, Coroner Byrne was unable to say whether Mark willingly placed himself on the tracks or was placed there unwillingly by a person or persons unknown. I do not know the circumstances which led to Mark to be found on the tracks, but after careful consideration I have been able to rule out suicide. Mark's death is suspicious and I am convinced that there are still people in the community who have information about what happened.
814. This inquest has laid bare the flawed investigation that took place after Mark's death. Plainly these matters were not considered by Coroner Byrne. The importance of examining the way the investigation progressed lies with properly understanding how it impacted the task before me. Loss of evidence at an early stage cannot be rectified. While some inadequacies identified may have been driven by resourcing constraints or failures to implement existing policies, racism or unconscious bias within the court and coronial system is also a factor.
815. Once again, I express regret that this second inquest has been unable to uncover more information about Mark's last hours. I gave the family my solemn undertaking to review all the available evidence and I have completed that task. I thank Acting Inspector Matt Harmer for the further investigations which have taken place.
816. I thank members of the assisting team Chris McCorey, Sarah Crellin, Aleks Jez, Jessica Best, Ayesha Bhalla, Laura Carter and Jock Webb for their extraordinary commitment to this difficult process.
817. I thank Nicolle Lowe and Simone Kubeca, Aboriginal Coronial Information and Support Program (ACISP) workers from the Coroners Court whose assistance is always so greatly appreciated.
818. I wish to acknowledge my sincere respect for Mr Donald (Duck) Craigie, whose untiring dedication to fighting for a full investigation into Mark's death has taken up a great part of his life. Without Mr Craigie's tenacity and determination there would have been no second inquest. His persistence is inspirational and I admire his leadership role in seeking justice for his community.
819. I also acknowledge Ron and Lorna, Mark's siblings whose dedication to their brother's memory was palpable every day we sat. Their quiet grace in listening to the details of a flawed investigation did not go unnoticed. I respect their ability to remain calm during lengthy and often heartbreaking proceedings. Their unfailing presence also protected the integrity of this inquest and I thank them.

820. Finally, I offer Mark's wider family my personal condolences. Your loss is profound and ongoing. I am aware that the various failures to adequately investigate Mark's death by both police and the court system have exacerbated your grief. For that I am truly sorry.

821. I close this inquest.

Judge Harriet Grahame
Deputy State Coroner
NSW Coroners Court
18 June 2026