



**STATE CORONER'S COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Matthew John Leveson
Hearing dates:	3,6,11,16,18 November 2015 7-11 December 2015 14-17 December 2015 18 February 2016 23-26 February 2016 16, 17 and 20 May 2016 31 October 2016 1-4 November 2016 6 March 2017 23-25 August 2017 3 October 2017
Date of findings:	5 December 2017
Place of findings:	State Coroner's Court, Glebe
Findings of:	Magistrate Elaine Truscott
Catchwords:	CORONIAL LAW – Suspended inquest; acquittal in criminal proceedings; resumed inquest; missing person; section 61 certificate; indemnity from prosecution for perjury; location of remains; manner and cause of death.
File number:	2008/464554
Representation:	Counsel Assisting the Coroner Lester Fernandez (to 1 June 2017) instructed by Ian Linwood on behalf of the Crown Solicitor Timothy Game SC and Anna Mitchelmore (from 1 June 2017) instructed by Ian Linwood and Emma Sullivan on behalf of the Crown Solicitor The Leveson family: Mark Leveson appeared in person

	<p>for the family</p> <p>Counsel for Michael Atkins: Claire Wasley, instructed by Sharon Ramsden of Marsdens Law Group</p> <p>Counsel for Commissioner of Police: Patrick Saidi (until 6 March 2017) and Michael Spartalis (from 1 April 2017) instructed by Stuart Robinson of NSW Police Force, Office of the General Counsel</p>
<p>Non publication order:</p>	<p>75 Powers of coroner in relation to reports or proceedings concerning self-inflicted deaths (cf Coroners Act 1980, ss 44 (2)–(4) and 45 (1), (2) and (4))</p> <p>(1) A coroner may make an order under this section (a non-publication order) if it appears to the coroner (whether by reason of information reported or received under Chapter 4 or during the course of coronial proceedings) that a death or suspected death is self-inflicted.</p> <p>(2) A non-publication order may prohibit or restrict any or all of the following:</p> <p>(a) the publication of any report (or any further report) of the proceedings (or any specified part of the proceedings) until after the coroner has made his or her findings or, in the case of an inquest held before a jury, the jury has brought in its verdict,</p> <p>(b) the publication of any matter (including the publication of any photograph or other pictorial representation) that identifies any particular person:</p> <p>(i) as being a person whose death or suspected death may have been self-inflicted, or</p> <p>(ii) as being a relative of a person whose death or suspected death may have been self-inflicted.</p> <p>(3) For the purposes of subsection (2) (b), the following persons are relatives of a person whose death or suspected death may have been self-inflicted:</p>

	<ul style="list-style-type: none">(a) the spouse of that person, a parent of that person, a person who stands in loco parentis to that person, a guardian of that person or a child of that person,(b) a person who, at the time of the death or suspected death, was living with that person as her husband or his wife,(c) a brother or sister of that person. <p>(4) To the extent to which a non-publication order prohibits the publication of any matter referred to in subsection (2) (b), the order continues to have effect after the coroner has made his or her findings, or after the jury (if any) has brought in its verdict, but only if the order expressly so provides.</p> <p>(5) If a finding is made in an inquest to the effect that the death of a person was self-inflicted, a report of the proceedings (or any part of the proceedings) must not be published after the finding unless (and to the extent that) the coroner holding the inquest makes an order permitting the publication of the report.</p> <p>(6) A coroner may make an order under subsection (5) only if the coroner is of the opinion that it is desirable in the public interest to permit a report of the proceedings (or part of the proceedings) of the inquest to be published.</p> <p>(7) A person must not contravene (or cause the contravention of):</p> <ul style="list-style-type: none">(a) a non-publication order, or(b) the provisions of subsection (5).
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1. These are the reasons for my findings in this inquest arising from the death of Matthew John Leveson.

Introduction

2. Matthew was born on 12 December 1986 and he died on 23 September 2007. Matthew was 20 years old. Over the previous 12 months he had been living in a de facto relationship with Michael Atkins who leased a unit at Cronulla, Sydney.
3. Matthew is the second son of Mark and Faye Leveson. He is the younger brother of Peter and older brother of Jason. Matthew had been looking forward to his 21st birthday party and Jason was about to turn 18. Matthew was a well-liked, attractive and fun-loving openly gay man. His family gave him unconditional love and support. At the time of his death Matthew had been working at a call centre from Tuesday to Saturday. He was well regarded by his employer and had close relationships with his work colleagues. Matthew had supportive friends and many of them attended this inquest. I will refer to Matthew as Matt throughout these reasons out of respect for how the Leveson family wishes him to be called.
4. Mr Atkins, 25 years Matt's senior, had been out as a gay man for about 4 to 5 years prior to meeting Matt in about early 2006. At that time, Mr Atkins worked as door security at the Sutherland Sports Club and prior to that he worked for 4-5 years as a security guard at Star City Casino in Sydney. Mr Atkins was a third Dan black belt in ninjitsu and had run a dojo in the 1990s. At the time of Matt's death, Mr Atkins was working as an electrician for a large company.
5. Mr Atkins enjoyed socialising with Matt's age group of friends. Matt and Mr Atkins' lifestyle included going to work, the gym, and partying at the ARQ nightclub in Flinders Street, Darlinghurst, on a Saturday night until about 5 or 6 o'clock in the morning. They would often spend the following Sunday recovering at the home of their friends Jack Smith and Sally White (pseudonyms), or back at the apartment in Cronulla. Their partying included taking party drugs – specifically MDMA (ecstasy) and GHB. Both Matt and Mr Atkins sold those drugs at ARQ, usually on a Saturday night.

6. Matt and Mr Atkins would generally take Matt's car to the ARQ nightclub – the car had a large sound system in the boot, through which Matt would play music from his iPod. The car would usually be parked in a lane near a Coles Express service station, access to which was from Flinders Street. Drugs would be taken into the club and some would be left in the car for collection during the night.
7. On Saturday, 22 September 2007, Matt and Mr Atkins arrived at ARQ nightclub with Jack Smith at about midnight. They left the club on Sunday 23 September 2007, between 2:15am and 2:30am, which was unusually early. The last sighting of Matt is recorded on ARQ CCTV footage, which showed him leaving ARQ with Mr Atkins. The time recorded on the footage is 2:11am (that time is about 10 minutes behind the actual time, so it was about 2:20am).
8. The last known contact anyone (other than Mr Atkins) had with Matt was at 3:31am on Sunday, 23 September, when Matt sent a text to his friend John Burns (a pseudonym). I set out the text exchange between Matt and Mr Burns in my reasons below.
9. On Tuesday 25 September 2007, Matt was due at work. When he did not arrive, Matt's work telephoned his family home, as was the appropriate protocol. Jason was home sick and answered the call. Jason then rang his mother, Faye Leveson, saying that Matt hadn't arrived at work.
10. Faye Leveson telephoned Mr Atkins who told her that Matt had gone out. Mr Atkins told Faye Leveson that he had woken up and gone to work, at which time Matt still hadn't arrived home. Faye Leveson left messages on Matt's phone asking him to call her.
11. On a previous occasion, in August 2006, Faye and Mark Leveson had reported Matt as a missing person when they had not heard from him for about a week. The police attended the Sutherland Sports Club and spoke with Mr Atkins. The police asked Mr Atkins if he had seen Matt. They were told that Matt was staying with him in Cronulla. This is the time that Matt had moved in with Mr Atkins. Matt had promised his parents that he would never "go missing"

again as he knew the heartache he had caused by not telling them where he was.

12. On the afternoon of 25 September 2007, Mr Atkins was contacted by Peter Leveson. Mr Atkins was asked to attend the police station with Mark and Faye Leveson to report Matt as a missing person. Mr Atkins did so that night. He said that he and Matt had had a “tiff” about leaving ARQ early; they had spent the Sunday together at home; and Matt went out to ARQ on Sunday night with friends and hadn’t come home since then.
13. The following evening, a friend went to the unit at Cronulla and helped Mr Atkins send a photograph of Matt to the police to assist in the search for Matt.
14. On the morning of Thursday 27 September 2007, the police located Matt’s car, which was parked at Waratah Oval in Sutherland. It was empty but for some food wrappers on the floor near the front passenger seat. They opened the boot which was also empty but for one thing: a receipt.
15. The receipt was issued by the Bunnings Warehouse at Taren Point. It showed the time and date and purchase details for a mattock and duct tape – 12:20pm, Sunday, 23 September 2007.
16. The police then attended the store and obtained CCTV footage for that date and time. The footage showed Mr Atkins entering the store. It also showed Mr Atkins making a purchase and walking out carrying a mattock.
17. On 27 September 2007, the police interviewed Mr Atkins. Mr Atkins told police that he and Matt had left the ARQ nightclub early. He told police Matt was not happy about leaving early, but when they woke up later in the day everything seemed fine. He said he had gone to sleep at about 5:00am and woken between 2:00pm and 3:00pm. He thought that Matt had gone out to ARQ with friends on the Sunday night because they had left the club early the night before. He said that at about 8:30pm, he was with Matt on the couch watching television and fell asleep. When he awoke at 1:00am, Matt was not home. Mr Atkins described the argument with Matt about leaving the club early as a “tiff”.

18. Mr Atkins was asked many questions and told many lies in his record of interview, including denying going to Bunnings and purchasing the mattock. After the interview, the police searched the Cronulla unit and, amongst other things, seized Mr Atkins' car and mobile telephone. After that time, Mr Atkins refused to speak with police. Having received legal advice, he exercised his right to silence.
19. In August 2008, Mr Atkins was charged with Matt's murder. In October 2009, after an 8-week trial by jury, Mr Atkins was acquitted of Matt's murder or manslaughter. During the trial Mr Atkins did not give evidence – that is, he exercised his right to silence. However, the record of interview set out Mr Atkins' version of events. His defence included the possibility that Matt was not deceased and the prosecution called 11 witnesses who testified about possible sightings.
20. From 31 October 2016 to 4 November 2016, Mr Atkins gave evidence before this inquest under the protection of a Certificate issued by me pursuant to s. 61 of the *Coroners Act 2009* ("the Act") ("the 61 Certificate"). Throughout his evidence Mr Atkins maintained that as far as he was aware, Matt was alive and possibly living in Thailand. Mr Atkins told many lies throughout his evidence, which are set out below.
21. On 9 November 2016, Mr Atkins gave an induced statement to the police indicating where he buried Matt. In addition to obtaining authority to give Mr Atkins an inducement, the police had obtained from the then Attorney General an indemnity for Mr Atkins. The condition of the indemnity was that if Mr Atkins told the police information that led to the recovery of Matt's remains, Mr Atkins would not be charged with perjury committed during his evidence to the inquest.
22. On 31 May 2017, Matt's remains were recovered from the Royal National Park, Waterfall.
23. Forensic analysis of Matt's remains, which I will outline in more detail below, has failed to identify a cause of death.

24. In the induced statement, Mr Atkins told the police that on the evening in question, Matt was getting “manky” on drugs (“manky” being a term used to mean drug affected); so he drove Matt home to their apartment. He said that Matt went into the bedroom and the kitchen. Mr Atkins said after he went to the balcony and had a cigarette, he lay on the couch and fell asleep. He said he woke up at 9:30 am and found Matt deceased on the floor of their bedroom. He told the police that he presumed that Matt had died of a drug overdose. He said he later saw a bottle containing GHB on the kitchen bench. Mr Atkins said he decided to conceal Matt’s death so that people did not think Mr Atkins had failed to look after Matt. He did not want people to think badly of him.
25. Matt’s parents, Mark and Faye Leveson, submit that given the overall circumstances of this case I would make a finding about the cause and manner of Matt’s death. They submit that I would find that Mr Atkins had smothered or choked Matt. Though their submission is not inconsistent with the forensic examination of Matt’s remains (which did not identify any evidence as to the manner and cause of death), it is not supported by the evidence generally before the inquest.
26. Mr Tim Game SC, Senior Counsel Assisting, submits that:
- “in the circumstances of this particular case, Mr Atkins’ changed accounts, the lies he told, and his concealment of Matt’s location, suspicious as they are, do not permit the conclusion that it was any act on his part which brought about or contributed to Matt’s death. It does not, and cannot, follow from a finding that Mr Atkins lied – most significantly in relation to whether, to his knowledge, Matt had died and where Matt was – that he engaged in, or was otherwise involved in, whatever acts were causative of Matt’s death. In the absence of any independent objective evidence about the possible cause of Matt’s death, Mr Atkins’ lies provide an insufficient basis on which the Coroner could conclude that Matt’s death was an event in which Mr Atkins was involved”.*
27. For those reasons, Mr Game submits that I would only deliver an “open finding” in relation to manner and cause of Matt’s death. Both counsel for the NSW Police Force and Mr Atkins adopt Mr Game’s submissions.

28. I take Mr Game's referral to "in the particular circumstances of this case" to include both the purpose of this inquest and the circumstances in which Mr Atkins came to provide information about the location of Matt's remains. In my decision of 25 August 2017 to discharge the subpoena to Mr Atkins ("Subpoena Decision"), I canvassed the latter issue in some detail.
29. Mr Game submits that if I was not satisfied that Matt died at Cronulla, I could find on the evidence that Matt died in Sydney.

The Process and Purpose of the Inquest

30. On 5 August 2008, the day Mr Atkins was arrested and charged with the murder of Matt, the police also filed a report to the Coroner. The report is completed on a form called a "P79A" which sets out the background and the facts of the allegations.
31. On 15 August 2008, then Deputy State Coroner MacMahon opened the inquest and received into evidence the P79A. Relying on that evidence, DSC MacMahon made findings as to date, place and identity; namely, Matt had died at Cronulla on 23 September 2007. As required under s. 19 of the (now repealed) *Coroners Act 1980*, DSC MacMahon then suspended the inquest without proceeding to consider the "manner and cause" of Matt's death.
32. On 20 October 2009, after an 8-week trial, the jury acquitted Mr Atkins. Since that date, the Leveson family has sought to have the inquest resume. On 1 September 2010, DSC MacMahon declined to do so but directed further police investigations into Matt's disappearance. Those investigations did not reveal any new evidence.
33. In 2014, the Levesons continued their petition to resume the inquest. They wanted to know "what happened to Matt, where Matt was, and why this happened to [their] son and brother".
34. On 16 January 2015, the then State Coroner expressed his view to DSC MacMahon that an inquest was probably desirable and required. DSC MacMahon exercised his power under s. 79 (1) of the *Coroners Act* to resume the inquest.

35. On 21 July 2015, the then State Coroner authorised me, when I was at that time commissioned as a Deputy State Coroner, to hold the inquest, as DSC MacMahon was no longer available to do so.
36. The purpose of the (resumed) inquest is accordingly to make findings, if possible, as to the manner and cause of Matt's death.
37. Under s. 81 of the *Coroners Act 2009*, the coroner holding an inquest concerning the death or suspected death of a person, must at its conclusion or its suspension, record in writing the coroner's findings as to whether the person died and if so:
 - (a) the person/s identity, and
 - (b) the date and place of the person's death, and
 - (c) in the case of an inquest that is being concluded – the manner and cause of the person's death.
38. Under s. 81 (3) any record made as to the above must not indicate or in any way suggest that an offence has been committed by any person.
39. There is provision under s. 78 (4) requiring a coroner to forward to the Director of Public Prosecutions the name of a known person and the particulars of an indictable offence concerned with the death of a person, if the coroner forms the opinion of the existence of matters referred to in s. 78 (1) (b), which provides for considerations about the evidence and whether the coroner is of the view that a properly instructed jury would convict.
40. Whether any referral should be made to the Director of Public Prosecutions to consider prosecuting Mr Atkins for any indictable offence/s involving Matt's death does not arise in this inquest. Mr Atkins has been tried and acquitted. Whilst NSW does have legislation enabling a retrial under Division 2 of Part 8 of the *Crimes (Appeal and Review) Act 2001*, the procedure is dependent upon the discovery of "fresh and compelling evidence" to found an application for leave to retry. Such an application must be made to the Court of Criminal Appeal.

41. As I have noted above, forensic analysis of Matt's remains has not led to any identification of the cause of his death. Mr Atkins' induced statement to the police indicates that he buried Matt, and provides a new version of events as to Matt's death; the content of that statement has not been tested in this inquest, for the reasons I detailed in the Subpoena Decision. Nothing in that statement can be used against Mr Atkins in any proceedings due to the circumstances of the inducement under which that statement was obtained. Mr Atkins' evidence to the inquest – which whilst not admissions, contained significant lies – also cannot be used in any proceedings (save in any trial for perjury) due to the evidence being compelled and protected by the s. 61 Certificate.
42. In summary, there is no evidence before me upon which I consider any matter should be referred to the Director of Public Prosecutions.
43. As to perjury arising from the inquest, the Attorney General's indemnity protects Mr Atkins from being tried on such a charge because the condition of the indemnity has been met – that is, the information he gave to the police led to the recovery of Matt's remains.

The Course of the Inquest

44. The inquest commenced on 7 December 2015, and over 10 days evidence was taken from 26 witnesses. I then gave notice to parties that I was contemplating requiring Mr Atkins to attend the inquest to give evidence. Proceedings were resumed for that purpose and Mr Atkins was called and sworn and asked a question by then Counsel Assisting, Lester Fernandez. Mr Atkins objected to answering the question and he was stood down. I took evidence from Mark Leveson and Detective Chief Inspector Jubelin ("DCI Jubelin") in relation to matters relevant to the family's wishes and understanding about the implications of a certificate issued under s. 61 of the *Coroners Act* and the position of the police in terms of both the investigation and the certificate. I then adjourned to consider the matter. I determined that Mr Atkins should be compelled to give evidence under the protection of the s. 61 Certificate. That decision was published on 30 May 2016. Mr Atkins unsuccessfully sought judicial review of that decision (*Atkins v Attorney General of NSW* [2016] NSW

SC 1412). On 31 October 2016, Mr Atkins commenced his evidence in the inquest.

45. Mr Atkins gave evidence over 4 and a half days. Despite the protection of the s. 61 Certificate and his oath to tell the court the truth, he did not do so. He maintained that he did not know what had happened to Matt and that for all he knew Matt was still alive. He claimed he told the police the truth in his record of interview of 27 September 2007, except for admitting that he had lied to the police about not having bought the mattock and duct tape at Bunnings.
46. Mr Atkins had already made that admission to Mark and Faye Leveson on 15 January 2008 which was recorded on a listening device and played to the jury at his trial. In Mr Atkins' evidence during the inquest, he maintained the nonsense explanation that he had told Faye and Mark Leveson as to why he bought the mattock – namely, to make a vegetable garden for Matt outside the unit block.
47. It was after the luncheon adjournment on the fifth day of Mr Atkins' evidence that the inquest was adjourned. DCI Jubelin had approached Mr Atkins' counsel with a view to Mr Atkins providing information to recover Matt's remains in exchange for indemnity from being charged for perjury in the inquest.
48. On 7 November 2016, DCI Jubelin obtained the consent of the then Attorney General to provide an indemnity to Mr Atkins. DCI Jubelin also obtained consent from the Commander of the Homicide Unit to provide the protection of an induced statement to Mr Atkins, protecting Mr Atkins from any information he gave to police from being used against him.
49. On 9 November 2016, Mr Fernandez, who was then Counsel Assisting, provided an undertaking to Mr Atkins. I discuss later in these reasons further details in relation to that undertaking.
50. On 9 November 2016 and into 10 November, Mr Atkins made his induced statement. It has been tendered as evidence obtained in the police investigation. It is not evidence of the truth of its contents in this inquest for reasons already set out in the Subpoena Decision. I discharged Mr Atkins from his subpoena to give further evidence in the inquest.

Lies, Contradictions, Inconsistencies and Nonsense

Lies about when and why Mr Atkins left ARQ and that he was concerned for Matt's welfare

51. The evidence in the inquest establishes that Mr Atkins and Matt had not been getting on well at the nightclub on the evening of 22- 23 September 2007. Matt was avoiding Mr Atkins and he was happily dancing with friends. They left the club because Mr Atkins wanted to collect more drugs from the car to sell to Mr Steve Jones (a pseudonym). It is likely Mr Atkins and Matt sat in the car for about an hour; it is likely that either or both of them had attended the nearby service station to buy food. After Mr Atkins completed his drug supply, he drove Matt away from the club against Matt's wishes.
52. Mr Atkins says that they left the club and he took Matt home because Matt was adversely affected by drugs. Mr Atkins claims that he was worried and concerned for Matt's welfare. Mr Atkins maintains that they only had a "tiff" about Matt not being happy about having left the club so early. In his evidence when questioned about his text to Matt, which said "I've said sorry 3 times!", he denied having any recollection of sending that text or about arguing at the club.
53. I do not accept Mr Atkins' account of why he and Matt left the nightclub, and I do not accept Mr Atkins' account as to why he drove Matt home. I do not accept Mr Atkins' evidence that he cannot recall the hour between leaving the club with Matt and returning to give Mr Jones drugs. Mr Atkins' account of why he and Matt left the nightclub is inconsistent with: the evidence that Matt was dancing rather than falling asleep; the content of Mr Atkins' telephone texts to Matt; and Mr Jones' evidence that Mr Atkins supplied him with drugs as seen on the ARQ CCTV footage. Mr Atkins' explanation that Matt was asleep and/or drug affected when Mr Atkins drove home is inconsistent with the text Matt sent Mr Burns.
54. The evidence of Ken Silver (a pseudonym) and Mr Burns was that they were dancing with Matt that evening at the ARQ nightclub. They said Matt was energetic and at no time was he dozy or falling asleep.

55. In the police interview, Mr Atkins said that they had left the club to get some air because Matt was falling asleep (Q534); that Matt was getting dozy on the balcony or at the semi-circle seats (Q546); and that Matt was walking around and was “like getting dozy, he was probably [a]ffected by drugs”. In the police interview, Mr Atkins stated that he said to Matt “let’s go outside and get some air”, and following this, they went to the car, Matt sat in the passenger seat and “he fell asleep snoring”. Mr Atkins said that he then drove home (Q534-556). Later in the police interview, Mr Atkins said that Matt was not in the best of moods at the club because he gets tired (Q755).
56. Mr Atkins was asked if Matt slept all the way home and he said “no”, and that when he awoke, “he was like, he was, you know he just wasn’t happy” (Q558). Mr Atkins was asked “so whereabouts were you when you (sic) woke up?” He said: “Just. Southern Cross Drive or something like that” (Q561). He was not asked what he meant by “or something like that”.
57. Mr Atkins was asked how Matt got cranky and he said “He just, you know he said, he wants to go back to the club, you know and he was, he wasn’t happy...and I said “we’re going home, you know you just need some sleep and ... raised his voice and ... was angry ... saying ... I want to go back ... and was angry” (Q557-571).
58. Mr Atkins barely saw Matt for the two or so hours that they were at the club. At different times, Mr Atkins did not know where Matt was and sent him text messages:
- 1:45am: Mr Atkins texted Matt: “Where are you? I’m on balcony with Pete.”
- 2:12am: Mr Atkins again texted Matt: “where are you?”
- [After receiving a text from Matt, the contents of which is unknown, he replied]:*
- 2:15am: “I said sorry 3 times! I need more jollies I sold out and owe [Steve] 2 I’m near cloakroom x”.

59. Peter Leveson arrived at ARQ at about 1:30am and whilst he was on the balcony with Mr Atkins, he saw Matt “bouncing up the stairs”. Other than saying hello, Matt did not stop and talk to him.
60. Peter Leveson said that Mr Atkins looked upset and worried and when he asked Mr Atkins how it was going he replied “Not good”. Mr Atkins told Peter Leveson that Matt was in “one of his moods”. Peter Leveson said Matt was drug affected but not incoherent. He said Mr Atkins followed Matt down the stairs. Shortly after, Peter Leveson left the club and went home.
61. When it was suggested to Mr Atkins at the inquest that his text at 2:15am indicated that he and Matt had had an argument, he said he had no memory of that. Mr Atkins conceded that the texts suggested that he didn’t even know where Matt was most of the time. He also conceded that it would appear that they left the club to get more drugs out of the car, rather than because Matt was falling asleep.
62. In his police interview, Mr Atkins said that after he and Matt left the nightclub he drove straight home to Cronulla. However, this evidence is contradicted by ARQ CCTV footage which shows Mr Atkins returning to the footpath outside the club at about 3:15am (timestamp 3:05am on video).
63. This evidence was not identified until the inquest. In his evidence, Mr Atkins was barely able to concede that the person depicted in the footage was him, despite being told that Mr Jones had identified himself and Mr Atkins making a drug transaction. It was obviously Mr Atkins. In his evidence, Mr Atkins claimed he had no memory of the hour between leaving the club and driving to Cronulla.
64. Mr Atkins was also referred to the following texts between Mr Burns and Matt:
 - 3:03am: Mr Burns sent Matt a text: “Hey babe where are you?”
 - 3:20am: Matt replied: “Mikes having a fucken cry. He is taking me home and won’t let me stay! Fucken cunt!”
Mr Burns replied: “Oh shit that’s not too good”.
 - 3:31am: Matt’s next and last text was: “He needs to get over himself”.
 - 3:32am: Mr Burns responded: “Oh well I’m sure you’ll be alright”.

65. In his evidence Mr Atkins said he could not recall the hour between leaving the club and driving away. He was unable to give any account for that hour. He denied that he and Matt had been in the car arguing. He then suggested that Matt could have gone to Stonewall (another nightclub in the vicinity of ARQ nightclub) or could have visited friends. That evidence was fanciful.
66. Despite the texts and CCTV footage evidence, Mr Atkins maintained in his evidence to the inquest that Matt was asleep or dozy when they left Darlington. He said that Matt woke up half way home and he turned the stereo up; Mr Atkins turned it down and Matt turned it up again. In later evidence, however, Mr Atkins contradicted himself, saying that Matt was awake when they left Darlington and nothing happened for him to think that Matt was still not awake.
67. Mr Atkins told Mr Smith that he took Matt home because Matt was drug affected. Mr Smith is seen on the CCTV footage crossing the road towards Mr Atkins' position at about 3:15am, after Mr Atkins had returned to the footpath outside the club to supply drugs. Mr Smith's evidence to the inquest was that he saw Matt in the car with a manky face flailing his arms around.
68. Mr Smith's evidence about seeing Matt in this drug-affected state was inconsistent with Matt being able to send the text messages around that time to Mr Burns. Further, it was inconsistent with all previous statements of Mr Smith, and his evidence at Mr Atkins' trial.
69. Mr Smith's initial statement to the police made on 7 October 2007 – just two weeks after Matt was last seen – does not refer to having seen Matt in the car at all. In that statement, he said that Matt was taken home by Mr Atkins because Matt had taken too many drugs. This was based solely on what Mr Smith had been told by Mr Atkins. Whether Mr Smith was told this at the time or at a later date is not known.
70. Mr Smith had not himself made any observations that Matt was adversely affected by drugs. In his initial statement, he indicated that Matt seemed to have taken fewer drugs than usual.

71. In his evidence in the inquest, Mr Smith said that he and Mr Atkins were some 10 to 20 metres from the car when they spoke that evening. This is different to an earlier version of evidence he gave, when Mr Smith said he saw Mr Atkins in the driver's seat of the car. He also gave evidence in the inquest that from that distance he saw Matt through the windscreen, waving his arms around. This cannot be true because the vehicle would have been facing the opposite direction, given it was parked in a one-way street. He had never told anyone before that he had seen Matt when he said goodbye to Mr Atkins. By the end of Mr Smith's examination, he conceded that it may not have been 23 September 2007 when he saw Matt in the car.
72. Mr Smith said he went down to say goodbye to Mr Atkins and Matt. I think it is more likely that he went down to obtain drugs from Mr Atkins (I have referred earlier to Mr Atkins and Matt leaving drugs in the car). The ARQ CCTV footage shows that after meeting up with Mr Atkins, Mr Smith met up with his girlfriend, Ms White and another friend and together they walked away from ARQ down a laneway. Ms White had arrived at the club looking for Matt, and looking for drugs. She was told that Matt had left. Although she said a friend, Joshua, procured drugs for her, in light of the evidence above, it was likely Mr Smith who did so.
73. Mark Leveson has submitted that Mr Smith knows something about Matt's death that he has kept secret. There is no evidence to support that submission. That said, I agree with Mark Leveson that Mr Smith was a most unreliable and unimpressive witness, who has a poor recollection of events and cannot now separate what Mr Atkins told him from what he in fact saw, or did not see, in the early hours of 23 September 2007.
74. Matt was neither asleep when Mr Atkins drove away from Darlington, nor was he so drug affected that he could not articulate his anger at Mr Atkins in the texts to Mr Burns. The evidence leads to the only sensible conclusion that Mr Atkins wanted to take Matt home, because the evening was not going well, because Matt was angry with him and they were arguing, or as Mr Burns put it, "fighting". The evidence does not support Matt being asleep because he was drug affected, waking up half way home and then having a "tiff".

75. According to Mr Atkins' evidence in the inquest and his police interview, he had no need to be concerned for Matt's wellbeing, because by the time they arrived at Cronulla, Matt was fine.
76. In the police interview, Mr Atkins said Matt did not need assistance to leave the car and Matt entered the apartment on his own. Mr Atkins was asked what they did next and he said, "... just like sat down in the lounge really ... just normal sort of thing ..." (Q578). He said that he could not recall if he had a shower or not but "just like got out the clothes". He went to the kitchen and had something to eat. He said he then went to bed at about 5:00am. He was asked if he knew if Matt had something to eat or drink. Mr Atkins said he did not know, but that Matt was better (that is, not affected by drugs) when he went to bed. They both went to bed and both went to sleep.
77. In the inquest, Mr Atkins said that Matt went into the bedroom, but that he did not go in to check on Matt as he wanted to give Matt "space".

Lies and inconsistencies about Matt's drug-taking

78. In the police interview, Mr Atkins was asked about drugs (Q345-385). He said "I just don't want to get him into trouble. ...I used to try and stop him". He said he would say to Matt "... just tell me how much you've had ...", in case he had to go to St Vincent's (a hospital near ARQ). Mr Atkins suggested that Matt would take 2-3 pills and 3-5 vials of "G" (GHB) and snort Ketamine powder (Q380-387). Atkins said that he (himself) only sometimes took drugs. In relation to that night, he said he took 1 pill at 12:00am on Saturday (night) and saw Matt take one pill at 1:00am, after he took his (Q482-495).
79. In his evidence in the inquest, Mr Atkins said that he recalled dividing the ecstasy tablets with Matt but could not recall if they took any vials of GHB to ARQ. This did not sit well with Mr Atkins' other evidence, that Matt was "manky" from too much GHB.
80. Later on 27 September 2007, during the search of the apartment, drugs and cash were found in the kitchen. The police found glad bags of over 50 plastic fish shaped vials (the type usually used for soy sauce) containing GHB. Mr Atkins lied about his involvement with drugs, blaming it on Matt. He told the

police the drugs all belonged to Matt and that he did not want Matt to sell them. He said "That's why he wanted to go clubbing on Sunday night ... to sell more and I ... didn't want him to" (Ex 7. p.53).

81. In his induced statement to police, Mr Atkins said that he presumed that Matt had overdosed because he later saw a bottle of GHB on the bench. He said that they would sometimes "free-pour", implying this is what Matt must have done when they arrived home. In his evidence in the inquest Mr Atkins never mentioned that they would sometimes "free-pour". His evidence was that they would depress the empty fish vial into the GHB and release it to fill it by vacuum.
82. In the police interview (at Q1005), Mr Atkins was asked "is it possible that Matt suffered an adverse reaction to drugs or otherwise as a result of you and him going out on the Sunday (sic) night and something has happened to him that you don't wish to disclose with us or that you're afraid to tell us about". He replied, "No, I am not sure".
83. On 29 January 2008, Mark and Faye Leveson spoke with Mr Atkins. Their conversation was recorded by listening device. They asked him if Matt could have overdosed and he replied he did not think so because Matt was careful with his drug doses (Ex. 10, pp 31-32).
84. In Mr Atkins' induced statement he says that he presumed that Matt had overdosed but he would not know because he had fallen asleep on the couch.

The state of the relationship between Matt and Mr Atkins

85. In the police interview, Mr Atkins lied about the status of his relationship with Matt. He maintained that lie in his evidence before the inquest, claiming that they were not having any relationship problems.
86. On 22 September 2007, Matt had told his work colleague, Kerriane Waud, that he was going to stand up to Mr Atkins. He was unhappy in the relationship and wanted to end it. Over the previous month he had confided in Ms Waud about what was happening in his relationship with Mr Atkins and how he was feeling about it.

87. Some weeks prior, Mr Atkins had instigated Mr Burns, who was about the same age as Matt, to engage in three-way sex. It occurred on two occasions, with Matt watching the first time and Mr Burns the second. Since then Mr Atkins had been trying to convince Matt to engage other young men for three-way sex. Matt did not want to and it made him uncomfortable. Ms Waud counselled him that he did not have to do anything he did not want to do.
88. In the police interview, Mr Atkins said it was Matt's idea to have a threesome and Matt got jealous (Q304). However, on Ms Waud's evidence, it was Mr Atkins who was trying to enlist Matt to induce more young friends to participate. Mr Atkins also described how in the last month Matt had become distant (Q287-9), homely (Q290) and jealous (Q291). By contrast, in his evidence in the inquest, Mr Atkins said that they were happy and there were no problems with the relationship.
89. Matt also complained to Ms Waud and his friends, Mr Silver and Mr Burns, that Mr Atkins was very possessive and controlling of him. Mr Atkins would not let Matt do anything on his own. He felt smothered.
90. Mr Burns said that Matt and Mr Atkins' relationship had seemed, to him, strained since the threesome. He said Matt was dismissive of Mr Atkins and tried to go out without him, which he complained that he was never able to do.
91. On the Sunday prior to Matt's death, Mr Burns had picked Matt up to go to ARQ without Mr Atkins and meet with other friends. Mr Atkins was not invited but followed them in his car and stayed with them at ARQ. He only left when he had to go to work on the Monday and rang Mr Burns during the day to find out where Matt was and what he was doing. After work, he went back into town to pick Matt up and take him home. Matt had not wanted him at the club or keeping tabs on him. Mr Silver also gave evidence about Mr Atkins' possessiveness of Matt.
92. In his police interview and in evidence before the inquest, Mr Atkins sought to rely on Matt going out on the previous Sunday to show how Matt went out whenever he wanted. However, when it was put to him during the inquest that he was not invited to go but followed anyway, he conceded that was the case.

93. There is evidence that on occasion, Mr Atkins had become physically aggressive to Matt. As recently as 7 September 2007, Matt and Mr Atkins had attended a family event in Wollongong. There was tension between Matt and Mr Atkins, and Matt's brother, Jason Leveson, saw Mr Atkins push Matt hard.
94. On an earlier occasion in their apartment, Ms White had seen Mr Atkins punch Matt hard on the arm when Matt was teasing the cat. However, in his evidence to the inquest, Mr Atkins denied ever engaging in physical altercations with Matt.
95. Of the weeks prior to his death, Matt's mother, Faye Leveson, said that Matt had been planning his 21st birthday and that Matt was getting excited about that. However, she felt Matt was quieter than usual if, in her company, Mr Atkins was also there. She said that when Matt was saying goodbye to her he would hug her longer and closer than usual.

Lies about what Mr Atkins was wearing and the whereabouts of those clothes

96. In the police interview, Mr Atkins was asked what he wore to the ARQ nightclub on 22 September 2007. He lied and said he wore a white three buttoned shirt (when he was in fact wearing a black t-shirt) and that the pants he was wearing were "light blue jeans, no, ... darkish jeans...." (415-424). The clothes Mr Atkins wore have never been located and their absence has never been explained.

Lies about where Mr Atkins parked Matt's car on Sunday after returning from ARQ

97. In the police interview, Mr Atkins was asked where he parked Matt's car when they returned from the nightclub. He was not able to say – he ultimately said he was not sure which side of the street it was or at what location but that it was in the same street as the apartment (Q800-807). In the interview he denied being familiar with the location where Matt's car was found. The evidence in the inquest showed that he was familiar with the location as he used to operate a vending machine at the basketball stadium at the oval.

Lies about items in the garage during the search

98. When Mr Atkins was in the garage with the police during the search he lied when he said that there were no belongings of his or Matt's in the garage. Matt's "boombox" (stereo system) was in fact there. There were likely other items to have also been there. On my review of the search warrant video Mr Atkins can be seen, upon entering the garage to bend over and look, in my view, consistent with an intention to check that whatever was there was well hidden. This can be seen on video, however none of the police officers executing the warrant, including the video operator, picked this up.

Lies about the whereabouts of old shoes

99. When the police executed the search warrant, they found an empty shoe box and a receipt of purchase from Monday, 24 September 2007. Mr Atkins was wearing the shoes and when asked where the old ones were, he said he thought they were in the bathroom. When they could not be located he told them he did not know where they were.

Lies about what happened when he got home – bed or couch, and who went into the kitchen

100. Mr Atkins sent a text to a friend who had been texting him since 3:45am and who then left three voice messages at 4:01am. Mr Atkins did not reply until 4:47am, with his message stating, "I am home, in bed". Mr Atkins also sent a text at 4:50am to Mr Silver, the contents of which are unknown.

101. In his police interview, Mr Atkins said that when they got home Matt put on some music and Mr Atkins had a shower. Mr Atkins said Matt was fine and no longer drug affected, and they went to bed.

102. In his evidence to the inquest, Mr Atkins changed his version of events and said that Matt went into the bedroom. Mr Atkins said that he had a shower, lay on the couch and watched television for about half an hour. Mr Atkins said he then went to the kitchen, had something to eat and laid back on the couch for about another half hour. He then went onto the balcony and had a cigarette before returning to the couch and dozing off until mid-morning. He said that he did not see Matt after he went into the bedroom. When it was put to him that his

evidence was inconsistent with his claim that he was concerned for Matt's welfare, he said that he wanted to give Matt "space". He also claimed to have no recollection of sending the text at 4:47am which said "I'm in bed".

103. In the induced statement, Mr Atkins said that after arriving home Matt went into the bedroom and then into the kitchen and then back to the bedroom.

Lies about the events of Sunday, 23 September 2007

104. The entirety of Mr Atkins' numerous versions of the events of Sunday 23 September 2007 – given to family and friends, in the police interview and to the inquest – were obviously lies. They contained inconsistencies about times, activities, and differing versions of when he last saw Matt. Additionally, Mr Atkins attempted to provide evidence (which was implausible) of his gardening prowess, to justify purchasing the mattock.

105. Much of what Mr Atkins has said about the events of that Sunday in his induced statement is untested by police investigation. The recovery of Matt's remains was only able to be achieved in circumstances where any prospect of further criminal proceedings against Mr Atkins was effectively relinquished.

106. When asked at the inquest how much he loved Matt, Mr Atkins said "... the most I've ever loved anybody" and that in September 2007 their relationship was "very loving, close and beautiful, really". However, in the afternoon of 23 September 2007, at about 1:50pm, and 2:30pm, he had had text exchanges with at least two young men whom he contacted, apparently looking for a date. At about 4:00pm, he used Matt's laptop to visit the Mardi Gras website and then the Ticketek website, apparently looking at tickets for Sleaze Ball. At 4:10pm, Mr Atkins then went on to the Manhunt website. At the inquest, Mr Atkins said he did not remember using the laptop or texting. Mr Atkins did not refer to this Sunday afternoon activity in his induced statement.

Creating false evidence and feigning concern for Matt's whereabouts and wellbeing

107. Mr Atkins deliberately created false evidence. Mr Atkins sought to bolster his claim in the police interview that Matt had disappeared on the basis that Matt had "done it before", referring to the time in 2006 that Faye and Mark Leveson

reported Matt as a missing person. The truth of that matter, as known to Mr Atkins, was that Matt had never really been missing at all – he had in fact moved in with Mr Atkins and had not told anyone.

108. Each day before the police executed the search warrant, Mr Atkins sent text messages to Matt's phone urging Matt to call him or call Faye Leveson, leaving messages professing his love and concern for Matt. This was a deliberate creation of false evidence to fortify Mr Atkins' claim that Matt had disappeared and that he had nothing to do with his disappearance. Matt's phone was discovered by police to be hidden under the car mat in the front passenger side of Mr Atkins' vehicle. Mr Atkins' explanation in the induced statement as to why he concealed Matt's death is because he was concerned that people would think badly of him for not looking after Matt as he had taken him home from ARQ to look after him. I accept that he had told people like Mr Jones and Mr Smith that was the reason he was taking Matt home, but it was not true.

Some features of the police investigation

Circumstances of the police interview leading to the exclusion of the lies about the mattock at trial

109. The most significant evidence that the police had in 2007 was the CCTV footage from the Bunnings Warehouse store at Taren Point, which showed Mr Atkins purchasing the mattock on Sunday, 23 September 2007 at about noon. That evidence became even more significant when Mr Atkins lied about it in his police interview. That part of the record of interview was excluded at the trial.
110. Prior to the interview, the police had located Matt's car at Waratah Oval in Sutherland. They had found the Bunnings receipt and obtained and viewed the CCTV footage showing Mr Atkins purchasing the mattock. Detective Cooper telephoned Mr Atkins and arranged for him to attend the police station after he finished work. Mr Atkins however, went home. Anticipating the need to monitor Mr Atkins' movements, police were at the house and after he parked his car, Mr Atkins was conveyed in a police vehicle to the police station.

111. Mr Atkins was introduced to the custody manager and advised of his rights as a person participating in a voluntary interview. He was not under arrest and he was advised he could leave at any time. He was advised he could seek legal assistance or could advise anybody else that he was at the station. He was advised that he did not have to say anything but anything he said or did might be used against him. He was cautioned that his answers would be recorded and used in court. He was advised that if the investigating police told him he was no longer free to leave they were required to bring him back to the custody manager.
112. Two detectives interviewed Mr Atkins. Detective Cooper had recently been promoted from Sutherland Police Station and the other was an experienced Homicide Squad officer, Detective Russell. At the commencement of the interview, Mr Atkins was again cautioned about his right to silence.
113. By the end of the police interview, Mr Atkins had told the police he had not gone out of his unit at Cronulla, except for a 10 minute walk to Cronulla Mall at about 5:00pm. He told them that he and Matt had slept in bed and not woken up until 2:00pm or 3:00pm in the afternoon. The interviewing police knew that to be a lie and at that point at least he should have been cautioned as a suspect in Matt's disappearance or death. However, that did not occur.
114. At that point Detective Russell was in charge of the interview and it would seem to have been an "operational decision" to not have cautioned Mr Atkins. In any event, Mr Atkins was told that the police had located the receipt in Matt's car and had been to Bunnings and obtained CCTV footage which showed Mr Atkins buying the mattock. Mr Atkins denied going to Bunnings, denied buying a mattock and denied having a mattock at home (Q966-1053). He said he did not think it was him. Mr Atkins declined to look at the Bunnings CCTV footage and the police did not pursue the interview.
115. From 27 September 2007 onwards, Mr Atkins exercised his right to silence. The investigating police at some stage obviously became concerned that the record of interview of Mr Atkins denying buying the mattock would be excluded at trial given they had not complied with the legislation relevant to cautioning a suspect.

116. On 29 January 2008, the police arranged for Faye and Mark Leveson to visit Mr Atkins with a listening device attached to Mark Leveson. Their task was to tell to Mr Atkins that they had been told that he lied to the police about the mattock. Mr Atkins admitted to them that he did lie, but told them the reason he lied was because he was scared of the police. They asked him why he purchased the mattock. He said that he and Matthew were going to grow zucchinis and he was going to use the mattock to make a garden. That listening device recording evidence was played to the jury.
117. The jury also had evidence that Mr Atkins told the police that he did not wake up until 2:00pm, which was obviously a lie, given he had been out at Bunnings by about noon.
118. If it had not been for Mark and Faye Leveson's efforts on 29 January 2008, the prosecution would not have had evidence that Mr Atkins lied to the police regarding the mattock at Bunnings.

Events following the police interview: 27 to 28 September 2007

119. After the police interview but while still in the interview room, Detective Cooper spoke with Mr Atkins and told him that she believed he knew what had happened to Matt and that he should tell her. He replied, "I want to tell you but I'm scared about what will happen to me". Mr Atkins was driven to Waratah Oval and urged by the police to tell them what had happened, but Mr Atkins' concern for himself prevailed. Obviously, this evidence was not before the jury.
120. Mr Atkins must have realised that the police knew he was lying to them. Despite this situation, he and the police continued together to his premises for the execution of the search warrant. The search involved the police asking questions of Mr Atkins about the drugs located, clothing and shoes, items found in the lounge-room and what was in the garage. Mr Atkins maintained his lies. There were a number of items not seized until a later date which should have been seized at that time, particularly the laptops.
121. The police did not know that Mr Atkins had lied about there being no property of Matt's in the garage, namely the boombox. The police did not notice that upon entering the garage, as noted above, Mr Atkins appeared to check that

something remained hidden. None of the police identified this act or noted its significance. Accordingly, Mr Atkins was not asked what he was looking at and the police did not search that part of the property. Given the police knowledge that Mr Atkins had told lies, his every move should have been closely scrutinized and that very moment – whilst fleeting – was a lost opportunity.

122. The police did not adequately search the garage. However, the terms of the search warrant did not authorize the police to search premises occupied by other residents.

The missing hour – lack of police realization of this evidence

123. The investigating police apparently did not review the CCTV footage at ARQ as closely as they should have. The fact that Mr Atkins re-attended the location nearly an hour after he claimed to have left due to his concern for Matt, was not a feature of the trial or apparently of the investigation.

124. The evidence at the inquest established that Matt's car was parked in Linden Lane, a one-way street at the end of which was a Coles Express Service Station. There were food wrappings in the front passenger side of the car where Matt was sitting. The wrappings were marked "Coles Express". I think it likely the food was bought that evening. Accordingly, it would appear that either or both Matt and Mr Atkins had gone to the service station. It is likely that there would have been CCTV footage at the service station. There is no evidence in this inquest that the investigating police attended the service station to inquire about any footage. I note that Mr Atkins said in his interview that they parked near the service station. Given that the investigating police did not appreciate that the ARQ CCTV footage showed that Mr Atkins returned to the club about an hour after leaving, the significance of this evidence may not have been apparent.

125. DCI Jubelin in his evidence before the inquest said that he thought that there were some "lost opportunities" by the investigating police. While the Leveson family has raised a number of concerns about the police investigation, particularly in relation to continuity of the lead investigator and their treatment by some of the investigators, a critique of the investigation has not been the

focus of this inquest. DCI Jubelin said that there is now a protocol whereby a detective from the Homicide Squad leads an investigation for 72 hours only handing it over to the local area command (“LAC”) detectives if they are of the view the LAC is appropriately resourced to lead the investigation. I have not sought to determine whether the new protocol would have meant that the Homicide Squad would have remained in the investigation and, if so, whether that would have had an impact on the investigation.

The listening device recording

126. On 29 January 2008, Faye and Mark Leveson agreed with police to visit Mr Atkins at his apartment at Cronulla. Prior to going to the apartment, Mark and Faye Leveson met with the police for the purpose of Mark Leveson being fitted with a listening device. It was then that they learned, for the first time, that Mr Atkins had bought the mattock at Bunnings and that he had denied doing so in his police interview. They were tasked with raising the subject with Mr Atkins.
127. It is extraordinary that the police left it until this moment to tell the Levesons that they had this evidence, although I understand that the decision was made for “operational reasons”. The Levesons probably did not appreciate the significance of the request to engage Mr Atkins in a conversation about the mattock in terms of the portion of record of interview being inadmissible.
128. It is shocking that the Levesons had to endure that experience, but I suspect that they would say it was just one example of what they, as Matt’s parents, and what their sons, Peter and Jason, have had to endure due to Mr Atkins’ actions. The distress to Faye Leveson was evident as she had to leave Mr Atkins’ lounge-room and throw up in the bathroom. Despite Mr Atkins not wanting to talk about Matt, Mark and Faye Leveson persisted and obtained a recording of what Mr Atkins said. He admitted to them that he had lied to the police about buying the mattock. There was also evidence the Levesons obtained, the significance of which has not been as important until Mr Atkins’ induced statement in 2016. In 2008, Mark and Faye Leveson asked Mr Atkins if he thought Matt might have died from a drug overdose. He replied, no. He said that the reason he did not think Matt had died of a drug overdose was

because Matt was careful with the doses he took. Mr Atkins' induced statement setting out Matt's cause of death is a direct contradiction of this position.

129. If it was not for Mark and Faye Levesons' participation and assistance to the police in 2008, this evidence would not have been obtained. I commend both Faye and Mark Leveson and I recommend that they receive an official commendation for their assistance to the police investigation into the death of their son.

Police operational decisions and compliance with legislative requirements

130. DCI Jubelin gave evidence in relation to the investigating detectives' failure to caution Mr Atkins as a suspect. He told the Court that sometimes "operational decisions" need to be made. Counsel Assisting correctly submits that the police need to comply with legislative requirements.

131. Mr Atkins' record of interview with the police, except for the questions and answers about going to Bunnings and buying the mattock and tape, was evidence in the trial.

132. The jury did hear the listening device recording obtained on 29 January 2008. They had the evidence of the CCTV footage showing Mr Atkins buying the mattock at the time he had told the police he was in bed asleep with Matt. They received directions about Mr Atkins' lies. During the trial, Mr Atkins exercised his right to silence and his counsel submitted to the jury that Mr Atkins' version of events was contained in the police interview.

133. The defence case included the possibility that Matt was still alive. The trial was held just two years after Matt's disappearance and the jury heard evidence from eleven witnesses in relation to possible sightings of Matt. Whether Matt was even deceased was a question the jury had to deal with.

Place of Matt's death

134. I note that the findings that DSC MacMahon made on 18 August 2008 included a finding that Matt died at Cronulla. Although I am hearing a resumption of the inquest which was originally before his Honour, I have had the benefit of

significant additional evidence as compared to the evidence that was before his Honour. In those circumstances, it is in my view appropriate to make a finding as to place of death which will, in effect, replace the finding made by his Honour. I do not consider that the terms of any of ss. 78, 79 or 81 of *Coroners Act* preclude me from taking that course.

135. I am not satisfied that there is evidence on which I can make a positive finding as to precisely where Matt died. The finding of DSC MacMahon that Matt died at Cronulla does not, in my view, sit well with evidence found upon discovery of Matt's remains which indicated that he was buried in the clothes that he wore to ARQ on the evening of 22 September 2007. In so far as Mr Atkins told police, and gave evidence at the inquest, that he took Matt home and that Matt went to bed, on the basis of my assessment of Mr Atkins' credibility, and in light of the clothing fragments found with Matt's remains, I do not consider his evidence to be a sufficient basis on which to find that Matt died at Cronulla.

136. Accordingly, I propose to find that the place Matt died was Sydney.

The Induced statement to police and the Attorney General's indemnity

137. On 7 November 2016, DCI Jubelin obtained from the Attorney General an indemnity for Mr Atkins. The indemnity protected Mr Atkins from being prosecuted for perjury and contempt of court at the inquest.

138. The indemnity was conditional on Mr Atkins providing information to police that resulted in the recovery of Matt's remains. Accordingly, the s. 61 Certificate afforded to Mr Atkins did not, and could not, provide him protection from prosecution in relation to the information he provided to the police. DCI Jubelin secured authorization from the Commander of Homicide for Mr Atkins to provide an induced statement to police. That is, whatever he said could not be used in any prosecution against him. DCI Jubelin, at the request of Mr Atkins' legal representatives, agreed to include in the induced statement that it was made under the protection of the s. 61 Certificate. As DCI Jubelin conceded in evidence however, that representation was in fact made without the Coroner's authorization (such a certificate could only be issued to evidence given by Mr Atkins, from the witness box in Court, during the inquest). However, in

providing the induced statement, Mr Atkins believed that the representation as to the protection of the s. 61 Certificate had the Coroner's imprimatur.

139. At the time Mr Atkins gave his induced statement to DCI Jubelin, he was not taken to a police station and the statement was not recorded by video. It was taken in the office of his solicitor and in the presence of both his solicitor and counsel. On 9 November 2016, my then counsel assisting provided an undertaking to Mr Atkins that he would make a submission to the Coroner not to require Mr Atkins to be recalled to give evidence to the inquest on the condition that Mr Atkins provide a "full and complete" statement, including complete details about the location of Matt's body and the manner and cause of his death. There were other features of the undertaking, which I discussed in the Subpoena Decision.

140. Accordingly, Mr Atkins gave his statement in circumstances where he knew that he would not be tested and nor would the content of the statement be used against him; he also knew that he would not receive the indemnity if he did not tell the police the truth in relation to where he had buried Matt, and if the police did not locate Matt's remains. In other words, Mr Atkins was free to say whatever he liked about what happened to Matt, but needed to tell the police the truth about where Matt was buried so that the police could recover Matt's remains, thereby preventing Mr Atkins being prosecuted for perjury.

141. Mark and Faye Leveson agreed that Mr Atkins ought to be provided the indemnity so that Matt could be returned to them. For them, it must have been a hideous decision because from their perspective, they would like Mr Atkins to be punished even if "only" for perjury.

142. Whilst the recovery of Matt's remains has arisen in the course of the inquest, the purpose of the inquest to conclude with findings as to the manner and cause of Matt's death has not been met.

Locating Matt's remains

143. After providing the induced statement to DCI Jubelin, in the early hours of the morning on 10 November 2016, Mr Atkins was taken to the National Park where he showed the police the location in which he had buried Matt. The area

is known as “Couranga Track, McKell Avenue, Waterfall”. Mr Atkins walked some 70 metres into the bush and nominated a location and another two possibilities. He thought he had walked up a hill.

144. On 11 November 2016 a Coronial Investigation Scene was established. Crime Scene Officer Detective Sergeant Richard Crimmins was in charge of the search and under his direction the NSW Police engaged a significant number of personnel to carry out a very careful and systematic excavation of the site. The excavation was ever widening, so that when it was completed on 17 November 2016, they had covered 4000 square metres. The police initially hand excavated the sites nominated by Mr Atkins, but when nothing was found, engaged in a large-scale excavation of the site. National Parks and Wildlife provided a backhoe loader and operator. At points, trench excavations at 30 cm intervals were conducted. On the final day, a large squad engaged in a line search. The search ended with the police literally having left no stone unturned.
145. In March 2017, Mr Atkins returned to the site at the request of the police and engaged in relaxation induced sessions with a psychologist to assist in the recovery of Matt’s remains. A site across the road and a little further down the road was identified as an unlikely site. A further Coronal Investigation Scene was established between 9 – 11 January 2017, but that search met with no success.
146. On 22 May 2017 the police returned to the original site and Mr Atkins was asked to re-enact carrying Matt’s body using a 70 kg manikin. It was at that point that Mr Atkins resiled from having taken Matt so far into the bush and it was determined that it must have been within 15 metres of the road where he parked his car.
147. Mr Leveson says that this lends weight to his belief that someone, specifically Mr Smith, assisted Mr Atkins to bury Matt. There is no evidence whatsoever of any other person being involved with Matt’s death or burial. Further, the evidence shows that Mr Atkins avoided Matt’s friends, including Ms White and Mr Smith. The lack of any person making any disclosure over the last 10 years, particularly in times of high media exposure of this case, leads me to conclude

that Mr Atkins acted alone and had neither enlisted the assistance of another person nor spoke of what he had done to another person.

148. The police returned to the initial site for a final search and a third Coronial Investigation Scene was established from 22 – 31 May 2017. It was due to expire at 5:00pm.
149. It was in the last hour of daylight on the last day of the Coronial Scene Investigation Order that it was determined to uproot a large cabbage palm. It was under the palm that Matt's remains were located.
150. This final search had again engaged the National Parks and Wildlife Service as well as a private excavating contractor. The technique used was to remove the topsoil scraping across the surface in small segments with a person on the ground checking what was found. The police had excavated nearly 7500 square metres to find Matt's remains in the two searches of this site.
151. The cabbage palm was the smaller of two located about 15 metres from the car park or 17.6 metres from the bitumen edge of McKell Avenue (some 30 metres from the site initially nominated by Mr Atkins). After the palm was removed, the excavator scraped about 500m below the service and Detective Sergeant Craddock identified what appeared to be a human pelvic bone below the soil. The excavation stopped.
152. A forensic anthropologist, Dr Denise Donlon, attended the scene and met with Detective Sergeant Crimmins. They determined to cover the site and commence exhumation the following morning.

Recovering Matt's remains

153. Dr Donlon oversaw the initial excavation until shortly after midday on 1 June 2017. A mound of soil initially taken from scraping under the palm was examined. A small section of teeth and sections of bone were located. There was also some fabric consistent with the pocket area of shorts or pants. Matt's remains were exhumed and taken to the morgue. Some bones were not located. On 2 June 2017, further bones were recovered when the removed soil

was sieved. On 3 June 2017, pieces of fabric were located, including labels from the singlet and pants Matt wore to ARQ.

154. Also in a nearby pile of dirt was the sole of a shoe with debris growing in it. There were no bones such as foot or toe bones located in the item. The size of the shoe or its identification could not be determined due to its degradation. The degradation of the sole and the material growing from it and its location would appear consistent with it being associated with Matt's grave. DCI Jubelin's evidence was that the shoe was incidental debris, noting its proximity to the road. He also ascribed pieces of carpet found in the vicinity of Matt's grave as items not warranting further investigation for the same reason.
155. There was damage to Matt's remains and some bones have not been located. It is likely that some damage has been occasioned due to the heavy machinery used in the excavation. It was estimated that the 30 cm interval trench technique employed in the first search came within about that distance of parts of Matt's remains. The cabbage palm probably provided some protection from the excavator driving over the entire grave.
156. The use of heavy machinery for a search of this nature was necessary due to the large area and Mr Atkins' inability to identify specifically the location he buried Matt.

Forensic anthropological examination and analysis

157. DNA analysis confirmed the identity of the remains as those of Matt. On 2 June 2017, Dr Donlon examined the bones that had been initially exhumed. On 5 June 2017, she examined the additional bones recovered after the excavation, which she understood were recovered from the spoil heap. As noted above, following the excavation of Matt's remains, and the sieving of the soil stockpile created by the excavator, a number of his bones remain missing:

- the hyoid bone;
- the xiphoid bone;
- bones from the left foot and ankle;
- almost all bones from the right foot; and

- hand bones, the right ulna and part of the distal right radius.

158. On 15 June 2017, Dr Donlon expressed the view that the prospect of finding those missing bones was very slim. In her opinion, the method of sieving used by police was very thorough and appropriate. Indeed, it may have gone further than necessary, given the whole mound of soil was sieved when only the last excavator bucket had disturbed the remains.

159. In her report of August 2017, Dr Donlon noted that on 14 June 2017, she attended the grave site with DCI Jubelin and Senior Crime Scene Officer Richard Crimmins (to whom she mistakenly referred as Cremmer) to discuss the practical considerations and utility of further searching the burial site and, subject to that discussion, the best methodology to use in the circumstances. After discussing the recovery methods used by police, Dr Donlon confirmed the view she expressed in her report of 4 June 2017. In her view, while wet sieving of the already sieved spoil heap might help recover small bones, it would be a long process, taking days to a week, requiring a specialised sieve and a water truck. Even if recovered, the bones may now have postmortem damage, which might be difficult to distinguish from peri-mortem trauma.

160. In her reports of 4 June and August 2017, Dr Donlon expressed the following views about the missing bones:

- a. On the question of damage to the bones, which have been recovered, much of the damage was clearly post-mortem. Damage to other bones appeared to be, or was probably, post-mortem. The missing bones were unlikely to have been scavenged, as the remaining bones did not show any tooth marks.
- b. In most cases, the missing bones were unlikely to have decomposed, with the possible exception of the **hyoid** bone. The possibility that the hyoid may not have been preserved and may have disintegrated was suggested by the fact that the proximate cervical vertebrae were also not very well preserved. The **xiphoid** bone, which can be very small and irregular, may also have decomposed.

- c. The missing bones may have been picked up by the excavator, dropped in the spoil heap and not recovered, noting that most were small and may be difficult to find. The exception was the right ulna, a larger bone, and this may have been broken post-mortem, noting that the bone next to it, the right radius, was broken and incomplete.
- d. Alternatively, the missing bones may have been disturbed during the trenching process used during the first search, as that trenching had come close to the burial site.

161. There was “hinging” damage to the skull and ribs, however, Dr Donlon could not express a concluded view as to whether the damage was post-mortem or peri-mortem. As she remarked in her report, distinguishing between peri-mortem and post-mortem defects is one of the most challenging issues in forensic anthropology. The hinging effect that she found in the skull and ribs was more typical of peri-mortem damage, but it could also be found postmortem. Given it was not clear how or when the bones were damaged (by the excavator); Dr Donlon could not interpret the timing or sequence of the damage (noting that other damage may have been caused by mould and plant roots). That said, in relation to the rib damage, Dr Donlon concluded that the hinging was probably post-mortem which may have resulted from soil pressure.

Forensic pathologist examination and analysis

162. Dr Istvan Szentmariay, forensic pathologist, provided a report dated 22 August 2017. Dr Szentmariay recommended that the cause of death be recorded as “undetermined”. He identified no clear anatomical cause of death, noting the lack of soft tissue, the missing bones and the condition and recovery of Matt’s remains. Relying on the report of Dr Donlon, Dr Szentmariay observed that “no unequivocal ante-mortem injury was detected on bone samples received”; he subsequently rephrased this statement in the following manner:

“Most of the injuries present on the bones are clearly post-mortem, however in the case of a small number of injuries, it is not possible to determine with certainty whether they are ante-mortem or post-mortem injuries.”

Forensic pharmacologist and toxicologist

163. Due to Mr Atkins' statement in relation to how he says he found Matt deceased, and that he presumed Matt had died of an overdose of GHB, Professor Olaf Drummer, a forensic pharmacologist and toxicologist and currently a Professor of Forensic Medicine at Monash University, was requested to provide an expert opinion in relation to GHB.
164. By report dated 19 June 2017, Professor Drummer provided an outline of the usual effects of the drug Gamma-Hydroxy-Butyrate, known as GHB. GHB is a water-soluble substance that is readily available on the "street" and for which there is no legal use in Australia. GHB is odourless and has a "slightly salty taste that can be masked by flavoured drinks" and is usually consumed orally. Professor Drummer noted that GHB is most commonly available illicitly for recreation – i.e. as a liquid form of ecstasy. GHB is produced in humans naturally.
165. Professor Drummer states that GHB is absorbed rapidly, reaching peak effect about 30 minutes after ingestion. Once absorbed, GHB is rapidly eliminated for a half-life (time for the blood concentration to halve) of about one hour.
166. As to its effects, GHB is a central nervous system (**CNS**) depressant and adds to the CNS effects of alcohol. It can also cause dizziness, disorientation, disinhibition, amnesia, aggression, hallucinations, confusion and anxiety. Professor Drummer also noted that GHB could cause loss of consciousness (although persons resume consciousness relatively quickly owing to the "rapid offset of actions"). Professor Drummer further stated:
- "Death can occur from excessive use, usually through oral consumption. Blood concentrations tend to be over 200 mg/L, however the substance can be produced post-mortem and, within a day or more, significant formation can occur from bacterial action. This confounds any interpretation of post-mortem concentrations particularly when blood is taken from a site other than peripheral blood."*
167. GHB is a substance that is chemically unstable and will degrade with time. Professor Drummer stated that "[d]elays of weeks to months are likely to lead to

substantial loss of substance”. The substance can be detected relatively easily by toxicological means (usually a form of chromatography and mass spectrometry).

168. Professor Drummer’s report confirms that while the use of GHB has been suggested, no toxicological test could confirm its use by Matt due to the following:

- a. the delay from the likely date of Matt’s death to discovery of his remains would have caused substantial, if not complete, destruction of any GHB that might have been consumed (even in overdose amounts);
- b. only skeletal remains were located; and
- c. any residue of GHB that might be detected in the remains could not be distinguished from natural production.

No further lines of inquiry available

169. There are no further forensic or police investigations that can now be pursued in relation to Matt’s death. Ultimately, there is no forensic evidence which identifies the cause of Matt’s death for reasons explained above.

The manner and cause of Matt Leveson’s death

170. From what I have set out above, it is plain that I consider that from the point starting with Mr Atkins and Matt leaving the ARQ nightclub to Mr Atkins’ interview with the police, and throughout his sworn evidence before the inquest, Mr Atkins has maintained a plethora of lies. His account in the induced statement that Matt died of a drug overdose was also given in circumstances where Mr Atkins knew it would be untested.

171. Counsel Assisting submits that Mr Atkins’ lies provide an insufficient basis upon which I could conclude that Matt’s death was an event in which Mr Atkins was involved. I re-iterate Mr Game’s submissions:

“In the circumstances of this particular case, Mr Atkins’ changed accounts, the lies he told, and his concealment of Matt’s location, suspicious as they are, do not permit the conclusion that it was any act on his part which

brought about or contributed to Matt's death. It does not, and cannot, follow from a finding that Mr Atkins lied – most significantly in relation to whether, to his knowledge, Matt had died and where Matt was – that he engaged in, or was otherwise involved in, whatever acts were causative of Matt's death.”

172. The Levesons submit that circumstantially, the evidence supports a finding that Mr Atkins was involved in Matt's death.
173. Counsel for Mr Atkins does not submit that a finding as to the manner and cause of Matt's death be entered despite Mr Atkins' version that it was a presumed "accidental drug overdose" because Mr Atkins' induced statement is not tendered as evidence of truth in the inquest and Mr Atkins has not been subject to examination on oath about it.
174. Mark and Faye Leveson submit that the cause of Matt's death was by smothering or choking which is not inconsistent with the state of the forensic evidence. However, Counsel Assisting submits that the circumstances in which the bones were uncovered, and the likely damage caused during the earlier and later excavations, disallow any findings in relation to the missing bones or damage identified by the forensic examiners. Dr Donlon says that the hyoid bone and xiphoid bone may not have been preserved. The analysis indicates it was not possible to identify the damage to the skull being peri-mortem or post-mortem and there was obvious damage caused by the excavation.
175. Counsel Assisting correctly submits that in light of that evidence, there is no identifiable physical injury which would inform a cause of death. Nor is there any forensic evidence that Matt died of a drug overdose as put forward by Mr Atkins.
176. Ultimately, the lies that Mr Atkins told during the course of his evidence to the inquest, as with other lies he had told, to a range of people, including the police, since Matt's disappearance, give rise to a considerable degree of suspicion that Mr Atkins had some connection with Matt's death apart from the fact that he buried Matt's body. However, it does not follow from that degree of suspicion that I can find that Mr Atkins was involved in any acts which were causative of Matt's death. The course of events in this inquest (including its suspension

while Mr Atkins was tried for Matt's murder or manslaughter and acquitted by a jury), and the evidence upon which to make findings, is such that I am unable to positively determine – to the requisite standard – how or why Matt died. Accordingly, I enter open findings in relation to both the manner and cause of Matt's death.

177. As stated earlier, I am not satisfied that the evidence supports a finding as to where precisely Matt died. Accordingly, I find that the place Matthew John Leveson died was Sydney.

Recommendations – s. 82 of the *Coroners Act 2009*

178. For the reasons canvassed below, I am not of the view that it is necessary or desirable for any recommendations to be made in this matter.

179. The Leveson family has raised a number of issues about how they were treated by the police in the investigation leading to Mr Atkins' trial. They were asked not to contact the media where they thought they should and they were not told about the progress of the investigation. As alluded to earlier, it was not until 15 January 2008 that they learned that Mr Atkins had bought the mattock at Bunnings – information that the police had some four months prior. DCI Jubelin explained that there are always operational reasons for the police to withhold information even from families. He did not address the issue of investigating police asking the family not to speak with the media. However, in hindsight it must be understood that the investigating police were apprised of information that they did not pass onto the family. Specifically, they suspected Mr Atkins to be involved in Matt's death given his purchase of the mattock. The family was not told of the mattock until January 2008. The family and Matt's friends were hoping for the media to circulate information about Matt as a missing person, however at that time the police investigation was being conducted on another basis.

180. There have been concerns about the failure to obtain evidence – such as obtaining the content of text messages from persons such as Mr Burns, Ms White, Mr Smith or interviewing Mr Atkins' family members. At the time, mobile telephone data and its storage was not as sophisticated as it is now.

DCI Jubelin pointed out hindsight often shows deficiencies in any investigation but such deficiencies cannot always be known or realized until after the event. He said that there is now an electronic exhibit keeping process, which minimizes the risk of the loss or misplacing of any exhibits.

181. The family has asked that I recommend that every unsolved suspicious death attract a reward of a standard amount of \$1 million for information leading to the arrest of the offender. They said it was demeaning to have to beg the government to increase the reward for Matt from \$100,000 to \$250,000. I am unable to make such a recommendation as I have not invited the appropriate government body to be heard. I do not know what the policies and processes are behind the setting the quantum of rewards offered. Accordingly, I decline to make any recommendations in this regard although I note that the current Leader of the Opposition has announced an adoption of the suggestion.

The identity of the deceased

Matthew John Leveson

Date of death

23 September 2007

Place of death

Sydney

Cause of death

The evidence does not support a finding as to the cause of death of Matthew John Leveson.

Manner of death

The evidence does not support a finding as to the manner of death of Matthew John Leveson.

Recommendations

To the Commissioner of the NSW Police Force:

I recommend that Faye and Mark Leveson receive an official commendation for their assistance to the police investigation into the death of their son.

I close this inquest.

Magistrate E Truscott

Glebe

5 December 2017