

**INQUEST INTO THE DEATH OF**  
**DIANNE BRIMBLE**  
**(Glebe Ref: 1638/02)**

**Overview**

On Monday 23 September 2002, Dianne Brimble boarded the cruise liner 'Pacific Sky' with her 12-year-old daughter Tahlia Mitchell for a 10-day cruise. The first port of call for the travellers was Noumea scheduled for Thursday the 26<sup>th</sup> of September.

Holidaying with her was Ms Brimble's sister Alma Wood, her daughter Kari-Ann and friends the Chard & Setto families.

The Brimble and Wood group were accommodated on Dolphin Deck cabin D188.

The Chards and the Seetos were also accommodated on Dolphin deck in cabins D180 and D172 respectively.

As they boarded the vessel the group posed for a photograph.

Travelling on the same tour were eight friends from Adelaide: Mark Wilhelm, Letterio (Leo) Silvestri, Ryan Kuchel, Matthew Slade, Dragan Losic, Petar Pantic, Sakelarios (Charlie) Kambouris and Luigi Vitale. All men were accommodated on the Dolphin Deck: Wilhelm, Silvestri, Kuchel and Slade had cabin D182 and the others were together in D178.

As they were to board the vessel the group posed for a photograph.

Independent of each other, both groups settled into their cabins, attended the 'Sail Away' cocktail party and went to dinner. Later that evening some members of each group partied at the Starlight Disco. Security Officer Olsen Va'afusuaga saw Ms Brimble in the company of Wilhelm, Losic and Pantic. Silvestri claims a meeting with her at that time.

When the disco closed, Ms Brimble was seen to leave at the same time as some of the men at 4.20am.

At 8.30am Wilhelm called from cabin D182 for medical assistance, as Ms Brimble lay unresponsive on the floor of his cabin. The medical team that attended were unable to revive the woman and she was pronounced dead at 9.03am.

**The need for an inquest**

The Coroners Act 1980 has since been repealed and replaced with the Coroners Act 2009. Whilst there are differences between the two Acts, the latter statute confers the same duties, obligations and powers on the Coroner as the former. This inquest began and was 'terminated' under the provisions of the old. There is no change relating to the coroner's ability to make recommendations "*necessary or desirable to make in connection with the death...with which an inquest...is concerned*".

References to the Coroners Act here refer to the Coroners Act 1980.

Section 13 provides jurisdiction to a coroner to conduct an inquest:

*Section 13 (1) A coroner has jurisdiction to hold an inquest concerning the death or suspected death of a person if it appears to the coroner that the person has died, or that there is reasonable cause to suspect that the person has died in any of the following circumstances:*

- (a) the person died a violent or unnatural death,*
- (b) the person died a sudden death the cause of which is unknown,*
- (c) the person died in suspicious or unusual circumstances,*
- (d) a medical practitioner has not given a certificate as to the cause of death*
- (e) to (h) no relevance here*

Ms Brimble's death was sudden, unnatural, suspicious, and unusual in the circumstances and, at the time of reporting, the cause and manner of death were unknown.

Mark Wilhelm admitted to being the last person to be with Ms Brimble immediately prior to her death. Despite being well aware of the part he played in her demise he did not provide any reason as to why she died.

Ms Brimble's general practitioner Dr Alex Chi had been her treating physician since 1988 and opined that his patient suffered no condition that could explain her death.

The ship's medical officer viewed the death as 'suspicious' and alerted Marine Area Command (Water Police) in Sydney of Ms Brimble's death.

### **Jurisdiction of the Coroner**

At the time Ms Brimble was pronounced dead, the ship was approximately 100 nautical miles, east off Crescent Head New South Wales

New South Wales Marine Area Command (formally the Water Police) was contacted at 9.30am on 24 September 2002. Police were told Ms Brimble was found dead in a cabin that was not her own and that the cabin was occupied by four men. By the time Detective Ozen had contacted the Coronial Investigators at Glebe, the issue of drugs had not been raised as factoring in her death.

NSW Police had given P&O firm directions that cabins D182, where the body was found, and D188 belonging to Ms Brimble's family, had to be secured.

The circumstances in which she died were highly suspicious and required the immediate attention of investigating police.

NSW Police were directed by the Senior Deputy State Coroner to board the vessel and investigate the cause and manner of death on behalf of the NSW State Coroner.

She advised police that the NSW State Coroner was seized of jurisdiction by virtue of Section 13C of the Coroners Act 1980.

Detectives Ozen and Rulewski boarded the vessel in Noumea.

*Section 13C (1) A coroner does not have jurisdiction to hold an inquest concerning a death or suspected death unless it appears to a coroner that:*

*(a), (b) – no relevance-*

*(c) the death or suspected death occurred outside New South Wales but the person had a sufficient connection with New South Wales, as referred to in subsection (2),*

*(2) A person had a sufficient connection with New South Wales if the person:*

*(a) –no relevance-*

*(b) was, when the death or suspected death occurred, in the course of a journey to or from some place in New South Wales, or*

*(c) was last at some place in New South Wales before the circumstances of his or her death or suspected death arose.*

Subsection (b) was satisfied as Ms Brimble and her family had flown to Sydney on 20 September. They had toured the city for 3 days prior to departure.

Subsection (c) was satisfied as the vessel, the 'Pacific Sky', set sail from Wharf 8, Sydney Overseas Terminal.

At the commencement of the inquest Messrs Wilhelm and Silvestri, two of the persons of interest, challenged the coroners jurisdiction. Simply put, they argued that the Federal Crimes at Sea Act applied and that the death of Ms Brimble occurred outside the jurisdictional limits of the State.

The jurisdictional challenge raised constitutional issues, therefore the Solicitor General, Mr Michael Sexton, responded on behalf of the NSW Attorney General.

Mr Sexton confirmed that the NSW State Coroner was firmly seized of jurisdiction and that there was no inconsistency or conflict with the Commonwealth Crimes at Sea Act and the State legislation, the Coroners Act 1980.

The Crimes at Sea Act provides: *"Under the scheme, the criminal law of each State is to apply the area adjacent to the State:*

*(a) for a distance of 12 nautical miles from the baseline for the State – by force of the law of the State; and*

*(b) beyond 12 nautical miles up to a distance of 200 nautical miles from the baseline for the State or the outer limit of the continental shelf (whichever is the greater distance) – by force of the law of the Commonwealth.*

*Responsibility for administering criminal justice in the area covered by the scheme will be divided between the Commonwealth and the states under the scheme and an intergovernmental agreement."*

The argument concerning the jurisdiction of the coroner was complex and I will not set out the details of the many faceted submissions made by the persons of interest, suffice to say their challenge should not be seen as frivolous given the unique nature of this investigation.

Simply, the coroner was investigating the cause and manner of Ms Brimble's death. It was not a criminal investigation. It was the NSW Coroners Act that was the legislative basis for the investigation not a Crimes Act of the State or of the Commonwealth.

### **The examination of Ms Brimble's body 'post mortem'**

Dr Duflou, Chief Forensic Pathologist, Glebe Institute of Forensic Medicine examined Ms Brimble's body in Sydney at 10am, 28 September 2002. He reviewed her clinical notes provided by Dr Chi and opined that her only medical issue was a history of sinus problems. She was healthy with no heart disease.

Simply put, he noted (amongst other things) the following injuries on Ms Brimble's body:

- four scratches near her left eye
- three superficial grazes with areas of bruising to her chest
- four marks on her arms
- head and neck injuries
- faint abrasion and bruising to the anterior surface of the right knee
- an abrasion on her right little finger
- abrasion on the left foot

No semen was detected.

His toxicological examination revealed a blood alcohol reading of .127. Gamma Hydroxybutyrate ('GHB') was present with a reading of 210 milligrams per litre – a toxic level (other specialists describe it as a lethal dose). No other drugs were detected.

Dr Duflou opined Ms Brimble had vomited prior to death and her empty bladder was indicative of incontinence shortly before she died. Immediately prior to death she had defecated.

The Autopsy Report was provided to the coroner 5 November 2002.

### **Dianne Brimble – Victimology**

Dianne Brimble was 42 years old. She had divorced the father of her first two children and had been in a long-term defacto relationship with the father of her daughter Tahlia.

She was travelling with her daughter and other members of her family.

Detective Ozen delved into her background during the course of his extensive investigation. He describes her as a person who was well known and respected in her community. Prudish when it came to sex without a hint of promiscuity. Mark Brimble, her ex husband and David Mitchell, her defacto husband said she was

extremely self-conscious of her body, particularly since gaining weight and would insist on making love in the most discrete manner possible.

Oral sex made her gag and she would only engage in this sexual act to please her long-term partner. Sex was an act of love, however she had engaged in a 'one night stand' on one occasion and was disgusted with her own behaviour. This occurred when she had parted company with Mr Mitchell.

Her sister Alma said she was so self-conscious of her body that she would not display herself in a swimming costume.

She drank socially and was happy if affected by alcohol. She did not take any illicit drugs, nor was she someone who would experiment.

The fact that she was holidaying with her 12 year old daughter, her sister and niece was also an indication that the cruise was not intended to be a backdrop for sexual pursuits

Why then would a woman who could not be described as worldly, promiscuous or daring be found naked and dead in a cabin occupied by four previously unknown men, dying from the effects of the 'date rape drug' gamma hydroxybutyrate.

### **Persons of Interest**

At the beginning of the investigation and subsequent inquest, there were eight men of interest. They could be divided into two groups:

Those in cabin D182 where the body was found – Wilhelm, Silvestri, Kuchel and Slade and the occupants of D178 – Losic, Pantic, Vitale and Kambouris. Both cabins were side-by-side sharing a common wall on Dolphin Deck.

Their backgrounds were in complete contrast to Ms Brimble's. Evidence of one of the 'persons of interest' is that the entire group put in to buy ecstasy tablets to take on the cruise. Evidence is that Leo Silvestri had Valium, Viagra, ecstasy, and sleeping tablets. Silvestri asserts that he had prescriptions for those drugs.

There is evidence that Wilhelm, Kuchel, Losic and Pantic dealt with 'fantasy' (gamma hydroxybutyrate) on the cruise.

Evidence from some female witnesses is that they were offered drugs or advised that should the need arise on the cruise they need only ask the men and they would be given them.

Wilhelm eventually admitted to using ecstasy (2 tablets) on the first night and to bringing four ecstasy tablets on board concealed in his shoe.

There is conflicting evidence within the group regarding who initially supplied the ecstasy prior to boarding the ship.

One version is that it was bought off "Adrian in Adelaide", the other is that Silvestri was the source of supply. Other independent evidence supports Leo Silvestri as the probable provider.

There is evidence of the stupefying effects of the drug 'fantasy'. On the same night that Ms Brimble was killed, Ryan Kuchel took the drug and fell asleep in cabin D156. Despite attempts he could not be awakened.

### **Versions of Events proffered by the Persons of Interest**

Immediately on report of Ms Brimble's suspicious death, P&O's Head of Security, Stan Westwood, took incident reports from some of the persons of interest.

In his Incident Report, Mark Wilhelm stated that after meeting Ms Brimble in the disco, Ms Brimble had initiated a sexual encounter and that, as he was aroused due to the effects of 'ecstasy' and alcohol, he obliged. He asserts she then asked to go back to his room D182 as she didn't wish to wake her 'kids' and wanted to continue her sexual activity.

Summarising his account, he states they went to his cabin, undressed and had sex. She remained 'extremely' horny, dissatisfied with his performance. They woke Leo Silvestri when they jumped from the top bunk and Silvestri offered Wilhelm a 'Viagra', which he took.

She sat and talked for about ten minutes when she allegedly offered Silvestri a hug.

It was then Wilhelm states that Ms Brimble engaged in fellatio with Silvestri and at the same time Wilhelm shaved her pubic hair.

He left the cabin to go next door to D178 to see if they were awake. He was naked.

He noticed people kissing in the corridor so he went back to his room to get boxer shorts. It was then that he noticed Ms Brimble and Silvestri asleep next to each other on Silvestri's bed.

(As the cabin he was going to was immediately next door, how could Silvestri and Ms Brimble disengage from a sexual act and fall asleep so quickly? )

He states he visits cabin D156 for approximately 2 hours. Kambouris enters that cabin and alerted Wilhelm to the fact that Ms Brimble had defecated herself.

Wilhelm returns to his cabin, wakes Silvestri for help and they take her to the shower to 'alert her' (sic). He believes there was a 'slight pulse'. She was redressed while he was giving her mouth-to-mouth.

Again he believes he felt a slight pulse but she could not be aroused.

They placed her in the coma position and called for the nurse.

He threw his remaining two ecstasy tablets overboard. Importantly he says "**At no time did I offer or in fact give any drugs to anybody**".

Wilhelm was interviewed a number of times by police. He never admitted to supplying any drug to Ms Brimble.

Other evidence contradicts his farcical account of his involvement with Ms Brimble. Importantly:

- In one of the last police interviews Wilhelm says that Ms Brimble “was not satisfied - she jumped down . She was going to go but when she heard the Viagra thing she thought she might hang around”
- this completely contradicts his earlier assertion that Ms Brimble asked to stay in his cabin as she didn’t want to wake her children.
- If the taking of the Viagra was a reason for her to remain with him, why was there no further sexual intercourse with the chemically enhanced Wilhelm
- witnesses who saw him shortly after in the corridor state he had an erection.

Ryan Kuchel’s Incident Report states that he met Ms Brimble at the disco and that she tried to make a move. He went straight to bed after that. 1 1/2 to 2 hrs later Ms Brimble and Wilhelm enter his room and ‘sounded pretty drunk’. They had sex on the top bunk and disrupted everyone else sleeping. He went down the hall to another room until about 10am “when I found out about the situation”. Importantly:

- he makes no mention of hearing Wilhelm say anything to Ms Brimble.
- He states that their activity ‘disrupted everyone else sleeping’
- He makes no mention of any of his involvement with the drug ‘fantasy’

Leo Silvestri told Westwood: “Awaken at night and saw lady laying next to me in bed. Told her to go. Enden (sic) up on floor. I fell back to sleep. I woken up. Concerned Mark was awake. Carryed (sic) her to shower...checking pulse. Were (sic) I believed thjere was a faint pulse. Hoping the water wood (sic) wake her up. I(t) didn’t. Brought her back into the middle of the room. Still thought she had a faint pulse. Then myself and Mark dressed her then Mark called the doctor. When I went to sleep to take 3 sleeping pills and only awoken(sic) when I reliezed (sic) she was next to me. I noticed she had frof (sic) in her mouth. After shower Mark tried mouth to mouth to resus”. Importantly:

- he states he was asleep until he noticed Ms Brimble next to him on the bed (Kuchel says he was ‘disrupted’ therefore awakened)
- he makes no mention of offering and giving Wilhelm a ‘Viagra’ (Wilhelm said that it occurred)
- he contradicts his evidence at inquest where he says he remained asleep and only felt something beside him in bed which led him to push whatever it was off.
- Wilhelm states Ms Brimble offered Silvestri a ‘hug’, why would anyone ‘offer’ a hug to a sleeping man

- apart from referring to his sleeping tablets he did not mention any other drugs
- Wilhelm states in an interview with police that Silvestri had woken and was resting on his elbows when he heard Ms Brimble complain about Wilhelm's performance. Wilhelm states it was then that Silvestri offered him a Viagra and he took it – Silvestri makes no mention of this in any account except in evidence at inquest he thinks he may have offered the Viagra when 'groggy' and half asleep

In a later account to police, Silvestri's memory is expanded "I actually remember like encouraging her to get off, like get the fuck off my bed. She just rolled over and hit the floor. I tried to encourage her to fuckin (sic) get out the door, leave, see you later. bye, you know. I went back to sleep, next thing I know Mark woke me up"

When asked by police "Do you know if anyone else had any sort of like prescription drugs or illegal drugs in your cabin" He answered: "Not so far as I'm aware"

Later when he was asked by Wilhelm to help with Ms Brimble he presumed the girl on the floor was the girl that had been next to him in the bed.

Matthew Slade told Westwood he took sleeping tablets (prescribed) as he expected the others might come and party in his room later. He woke in the morning with a large headache and wanted a cigarette. He left the room to buy coffee and cigarettes. "There was person on ground but didn't take notice who it was, being hung over and quite dazed from tablets. Passed Leo and Mark in doorway who I ignored on my way to get coffee and cigarettes/lighter".

Slade's viva voce account at inquest was in similar terms. Assessing his credibility is of little value because he is not considered worthy of mention by any of the other persons of interest.

All the occupants of cabin D182 were interviewed by police on board the 'Pacific Sky'.

Wilhelm was further interviewed by police in Adelaide on 12 May 2003. Slade was further interviewed in Adelaide on 14 May 2003. Kuchel was further interviewed by police in Sydney 28 May 2003.

Dragan Losic, Charlie Kambouris, Peta Pantic and Luigi Vitale refused to speak with police. They did however give evidence at inquest.

Lawfully intercepted telephone conversations see some of the 'persons of interest' nominate Wilhelm as the source of the GHB that was found in Dianne Brimble's system.

In what appears to be rehearsals for their 'up coming' appearance at inquest, they are heard to describe how it was offered to her and her willing acceptance. Kuchel develops a memory of hearing Wilhelm 'offer' the drug to her and hears him describing its effects when Ms Brimble asks what it is like.



At times these phone calls appear credible but any value is outweighed by the constant reminder to each other that the phones are 'off' and that they are being 'listened too'. They tell each other their lawyers have warned them to be careful for this reason. Significantly Wilhelm admits to supplying the drug to Dianne Brimble but states she took it willingly.

These telephone versions must be weighed against the performance of each 'person of interest' when they gave evidence and at the time of the death. The only remotely credible witness was Matthew Slade. Wilhelm exercised his right to silence. The other 'persons of interest', Silvestri, Losic, Kuchel, Vitale, Kambouris and Pantic had convenient memories and could not be regarded as witnesses of truth.

Wilhelm agreed to speak to P&O Security and NSW Police about the death of Ms Brimble and despite knowing that the investigation was focussed on the cause of Ms Brimble's death, he did not allude to the possibility that she may have ingested any illicit substance. It is only via the telephone intercepts that he discloses she took the drug willingly when he offered it to her.

### **What is known following inquest**

I distinguish the evidence of Matthew Slade from the following comments. The evidence of Luigi Vitale is also set aside for the purpose of the following critique. Whilst Vitale's account is questionable, further scrutiny of his evidence is not necessary.

None of the accounts from the men who were of interest to this inquest could be considered credible. The telephone intercepts reveal efforts by some to rehearse accounts, persuade others to adopt particular versions. Ryan Kuchel in particular appears to be orchestrating much of the telephone activity. He is the one they seem to look to for guidance. He factors heavily in their efforts to deceive the investigation.

In their accounts to Police, they contradict themselves and each other.

The evidence of other independent and credible witnesses is relied on to piece together the last hours of Dianne Brimble's life and to understand what happened to her in cabin D182.

- Dianne Brimble boarded the Pacific Sky at 3.15pm
- She attended the first Dinner sitting at 6pm
- She visited the Legends Sports Bar after dinner
- She returned to her cabin D188 to freshen up and change her shoes
- At 4am Security operative Olsen Va'afusuage saw Ms Brimble sitting at a table with Losic, Pantic and Wilhelm
- She was seen to touch Losic's leg but in a friendly flirty manner, not sexual
- Wilhelm and Pantic appeared 'switched on' meaning affected by drugs, alcohol or both
- Earlier at 2.30am Ms Brimble looked OK, laughing, speech not slurred, she was content and happy.
- Peter Hawthorne, Ship's Petty Security Officer said whilst she appeared 'tipsy' she was not unsteady on her feet. In fact she had placed her hands on his waist in a dancing motion and remained steady

- Contrast those observations with her demeanour at 4.20am
- Ms Brimble was seen leaving in the company of Wilhelm
- Hawthorne says that she was staggering and very intoxicated. Whilst she walked without any assistance she appeared drunk
- Hawthorne saw Losic with two other males in the pizzeria and they left at 6am
- from 2.20am to 3.42am Ms Brimble is believed to have consumed a further four drinks. This would not account for her appearance of being drunk.
- her alcohol reading was .127 not indicative of being severely affected or drunk
- Leanne McDonald occupied cabin D186, immediately next to D182. She heard the men returning to the cabin at about 4.30am and heard a lot of thumping and noises coming from the cabin
- Kelly Davis states Wilhelm and the others arrived at their cabin at about 6.30am and left about 8am
- Wilhelm arrived naked and kept running in and out of their cabin
- At one stage he returned wearing boxer shorts.
- There is a photo of Wilhelm in the room naked. He does not have his lanyard around his neck. When he is photographed with this underpants on he is wearing the device.
- Jocelyn and Reg Greenway, cabin D170, were woken in the early hours of the morning by noises of people partying.
- they again woke at about 5.30 - 6am. They were walking in the corridor and looked into cabin D182. They saw naked people on the floor and on the beds apparently sleeping
- they noticed the floor near the door to be excessively wet, describing it as a 'puddle'
- Glenda Leonarduzzi states she saw a 'male bottom' that had the appearance of belonging to Wilhelm (she describes why she came to that conclusion)
- she says the wet spot near the door 'squelched'
- Sterina Gollan went to breakfast at 5.30am and saw people lying everywhere in cabin D182
- she looked in and saw Wilhelm holding his penis. He swung around and asked "if we wanted a bit of this"
- the evidence of these witnesses confirm the cabin door to D182 was left completely open
- Gregory Williams was in cabin D158. This cabin shares a common wall with cabin D156. At about 5 – 5.30am he heard a loud male voice say " The fucking slut shit all over me"
- Cabin D156 housed Lisa Davis, Kellie Davis, Tanya Power and Natasha McCann. Evidence from the occupants of D156 is that Wilhelm did complain of Ms Brimble's 'shitting herself' but this was said at a later time
- Natasha McCann had been in the company of Michael Maybury when they returned to her cabin. Both McCann and Maybury saw a naked Wilhelm running up the corridor wearing a life jacket
- both say he had an erection
- McCann returned to her cabin at 8am
- the women in cabin D156 had the company of Pantic, Losic, Wilhelm and Kuchel
- evidence is that Kuchel went to his cabin and brought back the drug 'fantasy' in a water bottle. It was offered to the women. They declined

- Tanya Power remembers being in her bunk and asleep for one hour before she was awakened to find a drugged and naked Wilhelm next to her on the bed
- Wilhelm kept running in and out of the cabin every 5 minutes
- whilst Wilhelm had on boxer shorts he kept removing them
- Dragan Losic offered Kelly Davis the drug GHB
- on more than one occasion some of the women were taken to cabin D182 to view the apparently lifeless body of Ms Brimble
- those women who participated in the viewing commented that Ms Brimble had faeces next to her bottom and that the room smelt of excrement
- this conflicts with Wilhelm's account. He says Charlie Kambouris came into cabin D156 to alert him to the fact that Ms Brimble had defecated and that he should do something
- the women say Kambouris was also a visitor to their cabin entering the room at various stages throughout the morning
- Lisa Davis has a distinct memory of the men telling the women that as well as the photographs they had taken a video of the woman having sex with Wilhelm
- Losic, Pantic and Kuchel admitted to her they had watched Wilhelm have sex with Ms Brimble.
- the clear evidence of the women is that Wilhelm knew of the faeces as they were present when he took them to ridicule his victim. There was no need for Kambouris to alert him to something he already knew
- the women remember being shown photographs and a video and being told that 'Mark fucked a fat chick'
- the women wanted the men to leave their cabin so they pretended that they would meet them for breakfast
- the men left with this promise at 8am
- at 8.30am Lisa Davis rang cabin D182 to tell the men they were not going to meet them as promised. She was told that something serious was going down and they could not talk.
- Ms Brimble was pronounced dead at 9.03am in cabin D182
- that morning when Tanya Power knew of the death of Ms Brimble, Wilhelm told her that 'he tried to put her in the shower to wake her up but no one would help him'
- Alison McKain had met Silvestri at the 'sail away' party where he had boasted of having drugs. He had spoken to her mainly about drugs on the first night of the cruise, telling her he was disappointed there were no sniffer dogs at the terminal.
- That next morning he told her "the bitch is dead. The fucking bitch is dead" He said some "top secret stuff had gone down. That they had got busy with her down in the cabin a few of the boys"
- Kerry Polson was also given the same information
- this conversation supports the view of the investigating police that Ms Brimble was sexually abused by a number of the 'persons of interest'
- Silvestri said they tried to return her to her cabin but 'there was too much traffic around'. He went on to say they were going to throw her overboard but they had the same problem with 'too much traffic'
- all witnesses who dealt with Silvestri describe him as a person who obviously uses drugs, nervy, twitchy and continues to bite his lip

- McKain was concerned for her own welfare and believed she too could have been 'killed'
- Wilhelm later told McKain the men had been offered a free cruise
- Silvestri told her following the autopsy the captain had offered them a formal apology
- on 28/9/02 Pantic approached McCann and told her they had lost the photos from the night before. Pantic did not realise that Wilhelm had earlier told her that he had disposed of the photos on the morning of the 24<sup>th</sup>.
- the women in cabin D156 had been told not to tell anyone they saw photos of Ms Brimble and not to disclose they had viewed her body
- despite the men's initial failure to disclose they were involved in any activity with Dianne Brimble there is evidence that a number of photographs were taken by some (perhaps Pantic and Kuchel)
- Kambouris' camera was used
- Kuchel, Kambouris, Wilhelm, Pantic, Losic and Silvestri were aware of the sexual activity with Ms Brimble
- given the statements of Wilhelm and Silvestri and the photographs, I find that a number of men were present and involved in the sexual degradation of Ms Brimble

### **Photographic evidence**

The missing memory stick belonging to Kambouris' digital Sony camera was given to police. In their effort to destroy the evidence the persons of interest had erased the images. Unfortunately for them, they had lost the memory stick somewhere on the vessel. Kambouris had reported it missing.

A young boy found it on the floor in a corridor and handed it into the purser's office. It was found on the morning of 24/9/02. Whilst it was locked in the lost property cabinet, it was taken by another employee who intended to use it in his own camera.

This dishonest act proved to be a windfall for the investigating officers. When Kambouris went to collect it, it could not be located. That person can forward with the memory stick when he realised it was of significance to police.

Police were able to retrieve many (but not all) of the deleted images and it is this 'hard' evidence that depicts the fate of Ms Brimble and the approximate time of her victimisation.

### **The Discovery of Ms Brimble in cabin D182**

The ship's purser received a call for assistance to cabin D182 at about 8.30am.

Nurse Donna Winter was the first to arrive at the scene. She describes Ms Brimble as being 'blue' with no pulse.

Nurse Wendy Hall was part of the 'Code Alpha' response team. She observed Ms Brimble had 'wet legs'. She noticed a small white tablet in the room when Ms Brimble was being resuscitated and insured its safekeeping.

Dr Wellensiek and Dr McAliskey were also in attendance. Nurse Winter was administering CPR. Wilhelm was in the room and told to leave. There is evidence that Silvestri was demanding they remove Ms Brimble immediately as it displeased him that she was in his way.

Dr McAliskey remembers her lower inner leg to be wet but not due to incontinence.

They attempted to resuscitate Ms Brimble for 20 to 25 minutes however she remained 'asystolic'. Dr McAliskey believes she was possibly dead when he arrived or at least in a state of cardiac arrest. He said she was warm to touch and her body was flaccid. She would have been dead for less than 3 hours.

Dr McAliskey asked Wilhelm for a history of his patient to try and ascertain the best treatment for her and later to understand the cause of death. He specifically asked Wilhelm whether she had ingested any drugs. Despite this being a life-threatening situation where Ms Brimble deserved the best possible chance of survival, Wilhelm denied that fact. He simply told the treating doctor that they had sex and he had left to visit friends and when he returned he found her lying on the floor. He told the doctor he had rolled her on her side and called the purser for medical assistance.

He could not even tell the truth to save her life.

Wilhelm did not mention that he had 'showered' and redressed Ms Brimble before seeking assistance.

Nurse Kirsty Donaldson who also attended the 'Code Alpha' agrees with Dr McAliskey that the wetness to the jeans was not in a place that would indicate incontinence.

Nurse Donaldson noticed two wet patches in the cabin near the bathroom door. This is close to the area that other witnesses noticed a 'puddle' in the corridor.

Nurse Donaldson describes Wilhelm as nervous, appearing as a 'startled rabbit'.

She very sensibly told Melvin Armitage, the Ships Purser, and others, to prohibit anyone entering the cabin once Ms Brimble's body was removed.

The ship clinicians acted promptly and professionally in dealing with Ms Brimble.

They intubated her, engaged in CPR and applied a defibrillator to try and stimulate her back to life. They worked tirelessly to try and have her regain consciousness.

Wilhelm failed to deal decently with Ms Brimble in that crisis. His incipit and cowardly response when asked by the doctor to try and proffer a reason why she lay dying or dead is indicative of his callous disregard for her decency and her safety.

Ms Brimble was pronounced 'life extinct' at 9.03am. No cause of death was known at that time.

Sensibly the ship's doctor identified it as a 'suspicious death' and evoked the protocols.

**The Cause of Death and the effects of Gamma Hydroxybutyrate**

Forensic Pathologist Dr Duflou states that Ms Brimble's system had a toxic level of GHB. He believes she may have simply had the one dose of the drug.

Dr Allender, Forensic Scientist, Medicinal Chemistry, gave evidence that the disinhibiting effect of the drug depends on the dose. If the dose is sufficient it could encourage participation in group sex. She had twice the recreational level of the drug plus alcohol, which would have enhanced the disinhibiting effect of the drug.

He states that giving her the drug at the disco would have had the disinhibiting effect of seeing her enter cabin D182.

He believes she died between 5am and 6.30am. He states that if it was a large single dose it could have been administered 30 – 45 minutes prior to her death.

Dr Louisa Degenhardt, National Drug and Alcohol Research Centre, NSW, has conducted studies into the use of GHB and the profile of its users. Her evidence is that an experienced user would know that a 'normal' dose for them would be too much for a naive user. Those that use GHB will most probably use ecstasy. GHB is also used in bodybuilding.

Professor Starmer, Consultant Pharmacologist, Pharmacology Research Unit he states that 50% of the GHB in Ms Brimble could be naturally occurring after death. He agrees that it has all the properties desirable in a date rape drug. It is purported to be disinhibiting and also produces amnesia.

He agrees with Dr Degenhardt in that body builders are known to use the drug. He states the illicit use of the drug is as a sexual stimulant.

He cites the physiological effects as including nausea, vomiting, profuse sweating, blurred vision, sleepiness, loss of peripheral vision, short term amnesia, uncontrolled shaking or seizure, slowing of heart rate, drop in body temperature, suspension of the gag reflex, respiratory depression, transient or persistent unconsciousness. It can also cause incontinence.

Importantly he says he can't see how a pharmacologist could say she's had one or more than one dose. He says unless you took a sample of blood at the time of death, you could not proffer a time that it was ingested.

Dr Caldicott, Emergency Doctor, Royal Adelaide Hospital, said that with GHB death is due to cardio respiratory depression and loss of airways. If Ms Brimble had been intubated and put on a respirator in time she may well have survived.

When asked to comment on her extreme display of intoxication at the disco at 4am, when an hour and a half earlier she was unaffected, he stated that if her usual behaviour at that level of intoxication (.127) was that she would not be affected to

that degree then it would have to be presumed that another substance had been administered.

He opines that given Ms Brimble's victimology it is possible that a smaller dose was administered earlier. The evidence is inconclusive with either one or two doses. The evidence supports the proposition that if a second dose was administered in the cabin, she would have been under the affects of the first dose administered at the disco and would not be acting consciously.

He says that an experienced user knows not to take it with alcohol. GHB can cause incontinence and could be an indication that someone is about to go into respiratory depression. At that time you could still have a pulse.

Had medical assistance been available, Ms Brimble would have had a 'big' chance of survival.

He states you would be dead within an hour of this lethal dose,

Both Starmer and Caldicott agree that the four-day delay in testing the post mortem blood would have affected the reading for the GHB.

Dr Caldicott asserts showering the deceased was not consistent with given her the best chance of survival.

**Was Ms Brimble a Willing Participant?**

Ryan Kuchel pleaded guilty to 'concealing a serious indictable offence'. He stated in evidence "I heard a female voice ask Mark what he was doing, he told her he was having some fantasy. She asked 'What's fantasy?' He told her its similar to ecstasy. He asked if she wanted some. She asked what the effects were and he said it will make you 10 times hornier than ecstasy".

In evidence Kuchel admitted to lying on three occasions to investigating police.

There are credible witness accounts that have Kuchel as a spectator in Wilhelm's sex acts with Dianne Brimble. There is also evidence that he was responsible for some photography. He does not admit to any of these actions.

At best he states that he was disgusted with Wilhelm for engaging with Ms Brimble when he had a very nice girlfriend at home. He also says he felt embarrassed for them. His account is completely contradicted by other evidence.

I do not accept his account as credible.

Silvestri also pleaded guilty to 'concealing a serious indictable offence'

Evidence is that he was awake during part of the activity in the cabin. Dr McAliskey discredits his nonsense excuse that he was severely affected by sleeping tablets.

During the course of his evidence, Dr McAliskey was asked to comment on Silvestri's assertion that his three sleeping tablets had affected him to such an extent

that he could not be awakened during oral sex or any other activity in the cabin. The doctor's opinion is that he would have been aware of what was taking place, particularly given that he is an experienced user of sleeping tablets.

Dr Jean Edwards, Medical Services & Sexual Assault Services Co-ordinator, Royal North Shore Hospital was asked by Detective Ozen to provide an opinion as to Ms Brimble's likelihood to knowingly take GHB. Dr Edwards reviewed the brief of evidence and her opinion is that Ms Brimble would not have willingly engaged in the sexually overt behaviour exhibited in the photographs. Nor would she willingly take any drug let alone GHB.

Dr Edwards said whilst she couldn't discount that Ms Brimble intended to 'let her hair down' whilst on holiday, it was extremely unlikely. Dr Edwards states that with a toxic dose in her system she would not be able to exercise sound judgement.

The security personnel that observed Ms Brimble in the disco all gave evidence that her deterioration to a drunken staggering woman was rapid. This is consistent with her being given an unknown dose of the drug at the disco. This would have had a disinhibiting effect on her.

Engaging in sexual acts with numerous partners so close to her own cabin is also highly unlikely. Her cabin containing other members of her family (including her 12 year old daughter) was extremely close to cabin D182.

Ms Brimble did not go out of her way to visit Wilhelm's cabin, it was on the way to hers, diagonally across and up one.

Cabin D182 was immediately opposite cabin D180 that housed the Chard family.

There is evidence that for much of the activity the door to cabin D182 was wide open. It is inconceivable that Ms Brimble would engage in sexual acts with a number of men in such an open setting.

Ms Brimble would never have consented to multiple partners. She would never have allowed anyone to photograph her in any sexual act. A sexual performance with an audience is also not something she would willingly engage in.

She had embarked on her holiday with her 12 year old daughter and other family members, hardly indicative of a woman who intends to cruise, party and engage in a sexual 'free for all'.

Wilhelm first tells investigators that she asked to stay in his cabin as she did not want to wake the occupants in hers. He contradicts himself by stating that prior to engaging with Silvestri, she jumped from the bunk to leave the cabin to go home.

Mark Wilhelm desperately tried to conceal the circumstances of Dianne Brimble's death. His evidence is that he put her under the shower to revive her. Why not simply call the medicos?



Silvestri farcically suggests that they dressed Ms Brimble to save her embarrassment. Where was that consideration when they were laughing about her, photographing her and putting her lifeless body on display for others to ridicule.

Silvestri says that Ms Brimble was a heavy woman. He nastily describes one of her legs as weighing 76 kilos.

There is no doubt that she would have been a dead weight. If reviving her was foremost in their minds, why not pour water over her where she lay using the ice bucket.

All the indicia of death were present with Ms Brimble. She had vomited, defecated and urinated. Any medical clinician would have been able to tell at a glance that she was a victim of an illicit drug and possibly foul play. This was the reason to 'clean her up'.

Moving her into a small shower cubicle would have been extremely problematic. If Silvestri and Wilhelm did shower her, they would have had to dry her before applying her clothing. To dress a wet, heavy body would have been extremely difficult.

Ms Brimble was wearing socks when she was crumpled on the floor of the cabin. Did they remove her socks prior to the 'shower' and then place them back on her feet?

If she was dressed to 'preserve' her dignity, why take valuable time to put on her bra and underpants.

The motive was to restore Ms Brimble to her original condition to avoid detection. This would have allowed them to dump her body. But at the time they had readied her, other passengers were using the corridor to get to breakfast.

When asked by the treating doctor what could have caused Ms Brimble's medical emergency, Wilhelm did not have the courage or decency to alert the doctor to the fact that she was given a fatal dose of a drug.

Following the death, Wilhelm immediately engaged in a sexual relationship with a young woman on board the ship. The night following Ms Brimble's demise Wilhelm, Silvestri and others attended the 'Pyjama Party'. On another night they participated in the 'Fright Night' party theme, dressed in slashed and bloodied t-shirts. Ms Brimble's death appeared not to affect their interest in socialising.

### **Interference with the Crime Scene**

Mr Brimble, Mr Mitchell and the family's needs were simple in the investigation of Dianne's death. They simply wanted to understand what happened to the mother of their children. As Mr Brimble has stated many times 'Dianne went on a holiday and didn't come back'.

There is evidence that steps were taken to secure the crime scene as directed by police. Nurse Donaldson had, independently of the police, determined that the cabin should be preserved.

The cabin was sealed and a guard was positioned to ensure the integrity of the area.

There is evidence that passengers saw the occupants of D182 'barge' in to retrieve their items.

Melvyn Armitage was the ship's purser who allowed the men to clean out the cabin after the direction had been given to seal it.

This shameful and inexplicable act has allowed Wilhelm, Silvestri and perhaps others to escape accountability for their awful actions.

Photos of the cabin retrieved on the memory stick, show a number of items that would have been of great forensic value. Fingerprints, DNA and the like had been contaminated as a result of his neglect. Bottles and other containers were removed.

Any drugs (particularly GHB) would have been taken by the men.

Ms Brimble's glasses had a lens missing. This probably happened when Silvestri pushed her off the bed. Marks around her left eye coincide with that event. The lens has never been found.

One of the attending nurses said she noticed cameras including a video camera in the cabin at the time she was treating her patient.

Her lanyard was never recovered however it can be clearly seen around her neck when she is on the bed with Silvestri. If her pubic hair was shaved as stated by Wilhelm, was the lanyard souvenired as well as the product of the shaving? Or were these items discarded.

### **P&O's initial response**

Ms Brimble's cabin D188 was sealed at the same time as the crime scene cabin D182. Unlike the persons of interest who were able to retrieve all of their property, 12-year-old Tahlia, her aunt and cousin were left without any personal effects.

They had to rinse out underwear to use each day as everything they had brought with them on the cruise was under lock and key.

Add to that, the families frustration in not being given any timely information about the death of Ms Brimble.

Ann Taylor, P&O's Night Manager had taken Wilhelm under her care. She believed he was terribly distraught by the death of Ms Brimble and sought to comfort and console him. He was provided with a cabin of his very own. This was fortuitous for Wilhelm as it allowed him to pursue a sexual relationship with a young woman he met on the first night of the cruise. They were able to use the new cabin for their sexual enjoyment.

Ann Taylor offered counselling services to Wilhelm at the same time counselling Ms Brimble's family.

### **The Police Investigation**

Ms Brimble's death was reported on 24 September 2002. The initial police response by Detectives Ozen and Rulewski was timely. They arranged with authorities to board the ship in Noumea and were committed to investigate the circumstances of Ms Brimble's death.

They provided situation reports to the coroner and it appeared they were undertaking all that was required of them.

Their initial concern was the preservation of Ms Brimble's body and that was as important a concern as the preservation of the crime scene itself. It was imperative that the mishandling of the deceased did not compromise any post mortem.

Prior to leaving Sydney, Homicide police had offered to assist them. Marine Area Command was satisfied that it was well equipped to undertake the investigation.

A lot has been said of the number of audiotapes that they took with them to use during the course of interviewing witnesses, but other tapes were obtained on board and that did not appear to be an impediment to their progress.

The interviews that were conducted by the detectives were thorough and useful.

The task, however, of speaking to the many passengers that had been affected by the 'persons of interest' and had some knowledge of the events leading up to Ms Brimble's death were almost overwhelming. The police had a limited period of time on the cruise to capture their accounts.

Many important witnesses were not spoken to until years later.

I have no criticism of the individual officers. They did the best they could in the circumstances. My criticism rests with their Marine Area Command.

It took more than 3 years to work up the brief of evidence to a less than optimum standard for inquest. All efforts to have Superintendent Dalton satisfy the coroner's outstanding requisitions to complete the brief of evidence were ignored and at times resisted. Promises were made by the Commander and not kept.

The inquest was delayed waiting for the requisitions to be satisfied. Nothing was done. The inquest was forced to commence with the police investigation not completed. The difficulties this visited on the inquest were substantial. The coroners file note chart the progress or lack thereof.

Detective Ozen complained to me that they were not being properly resourced or supported by their Commander. In dealing with Superintendent Dalton and his failure to honour his obligations to the coroner, I had first hand experience of the investigators frustrations.

At the beginning of the investigation Detective Ozen had struck an affidavit to seek warrants for the use of telephone intercepts. This was done to supplement the

investigation on behalf of the Senior Deputy State Coroner. Further intercepts were undertaken later in the investigation for the same reason.

Efforts for the coroner to view the product of the lawfully intercepted calls were resisted.

Criminal activity had been revealed during the course of the intercepts that was of interest to the South Australian Police. NSW Police had given that police force product from the operation to allow further investigation in that State. It was for this reason that there was an impasse that was crippling to the inquest.

The South Australian Police had acted properly and, naturally were keen to investigate all matters that were brought to their attention.

I do not intend to go into chapter and verse of the difficulties that were faced by the withholding of the material by NSW Police. It was of grave concern to me and Counsel Assisting that the persons of interest were soon to be called to give evidence and the coroner could not make use of the material that had been purposely gathered for the inquest.

If the calls were to be of any value, procedural fairness dictated that the persons of interest who may have had conversations captured, be given an opportunity to explain their conduct.

Regrettably significant witnesses were examined without the coroner knowing what was contained in that material.

I am grateful to the members of the Homicide Unit for furthering the investigation into Ms Brimble's death. I have the greatest confidence in their ability to always undertake a thorough investigation on behalf of the Coroner.

### **The Media**

Whilst there are many who would criticise the reporting of this inquest, my view is that for the most part the reporting of the inquest was balanced.

I do not condone the 'ambulance chasing' approach to journalism, however without the efforts of the press, many witnesses would have gone unnoticed.

The press perform a crucial role in the reporting of coronial inquests and inquiries.

I was always mindful of the distress some of the evidence would cause to the Brimble family and the anguish that would be visited on some witnesses following their presentation at court.

The death of Ms Brimble was tragic in the extreme. She was a person who lived a decent and innocent lifestyle. She was unknowingly drugged by unscrupulous individuals who were intent on denigrating her for their own gratification.

The dangers of the drug GHB also known as 'fantasy' needed to be known in the general community.

Every attempt that was made to withhold any information from publication was challenged. The legal authorities governing the concept of 'open justice' ensured that much of the material delivered at inquest was published.

Those that were concerned with the publication of 'distressing' photographs themselves published the images for their own purpose.

Wilhelm when he was running naked down the corridor of Dolphin deck, had no concerns regarding 'exposure'. The men who exhibited Ms Brimble to others to gawk at did not consider her privacy.

Had the Director of Public Prosecutions determined that the publicity of this matter was such that it would compromise any trial, he would have declined to proceed.

He accepted the indictment and proceeded to trial not once, but twice.

As a result of this inquest three men have been held criminally accountable in the death of Ms Brimble.

### **Hindsight**

I commend P&O for their magnificent response to the issues raised at inquest.

I was concerned at the beginning of this matter that P&O had a 'what's it got to do with me' attitude.

I was also concerned of the lack lustre approach by Marine Area Command in properly resourcing the two fine investigators that were dispatched to investigate on behalf of the coroner.

It was also of great concern to the coroner, that P&O had employed a serving member of the constabulary when he was on 'sick report'. The NSW Police Commissioner did not approve any secondary employment for the officer.

The use of NSW Police officers on 'schoolies' cruises was also a practice that could be seen to compromise any fair investigation into the death of Ms Brimble. I am satisfied that the Detectives were not compromised. That practice has since ceased.

When P&O failed to recognise the jurisdictional reach of the coroner and suggested that Counsel Assisting and the coroner would be welcome on board the vessel on presentation of our drivers licences, I was ready for battle. Common sense prevailed and the inquest progressed to its very pleasing conclusion.

In terms of the shortcomings in the police investigation, the coroner's monitor Ms Trish Townsend, had to brief the coroner on the subtleties of cruising ie (amongst other things) the use of the lanyard system for purchasing drinks. When this was

known, we were able to get receipts from bar purchases to ascertain the movements of certain individuals.

Ms Townsend had disembarked the Pacific Sky prior to Ms Brimble's departure. Her information was fresh and relevant. Her plans of the ship came in handy as did her holiday photos where the different areas of the ship could be seen.

This information should have been given to the coroner by either the police or P&O as a matter of routine.

I am satisfied that P&O have taken steps to ensure the behaviour that was exhibited by the 'persons of interest' on Ms Brimble's cruise will be confined to history.

Had the initiatives now implement by P&O to ensure the comfort and safety of their passengers been in place in 2002, Ms Brimble's holiday may have been an uneventful one.

Her death did not occur in a vacuum. These persons of interest displayed anti social behaviour from the moment the vessel left port.

- Silvestri interfering with a life jacket
- Losic removing his shirt in an act of bravado and when challenged by security told them to 'get fucked' and gave them the 'bird'
- young women being propositioned by Losic and Silvestri who asked them if they could 'go down on them'
- Wilhelm running naked in the corridor on Dolphin deck
- Losic, Kuchel, Pantic, Wilhelm and Silvestri offering drugs to female passengers
- Losic lifting women above his head on the dance floor where they feared they'd fall
- the terrifying experience of Tiffany McDonald and her friend Karli when on the first night of the cruise Wilhelm, Losic and Pantic (and perhaps Silvestri) barged into their cabin uninvited. When told to leave, Wilhelm punched the wall 6 inches above Karli's head. Tiffany and Karli had to threaten to call security before they left. Wilhelm walked up the corridor screaming Karli's name.
- Jessica Kornaki's account of Wilhelm and Pantic discussing the social use of ecstasy and cocaine at the disco. Both men offered to fly Jessica and her friends to America. Losic asked if she would go to their cabin and dance to music videos for payment. Jessica was 15 years old.

### **Conclusion**

Despite any misgivings in the initial police investigation, I commend Detectives Ozen's and Rulewski for their application to the investigation into the circumstances of Ms Brimble's death. They were decent and hard working, undertaking a difficult and complex investigation with the minimum of resources.

I am extremely grateful to the NSW Police Commissioner Scipione, Assistant Commissioner Shearer, Counsel for the Commissioner Mr Spartalis and his

instructing solicitor Mr Robinson for facilitating a smooth and satisfying relationship with NSW Police to ensure the best investigation possible for Ms Brimble and her family.

I am also extremely appreciative of the utmost co-operation given to this inquest by the South Australian Police Commissioner, his Counsel Mr Illingworth and his instructing solicitor Ms Fuda.

Mr Sheahan SC, Counsel for P&O, Mr Biggins and the team of solicitors that have worked tirelessly for the time this inquest has been running, I applaud the commitment you have shown to the family and to the coroner in bringing about much needed reform. This inquest was never about discouraging cruising by exposing its weaknesses. It was always intended to highlight the need for an introspective assessment of your industry in the hope of bringing about much needed change. I have a friend who is a veteran of fifty cruises, many on P&O and Carnival Cruise Ships. She has told me about the many changes your client has implemented since the beginning of this inquest. I am most pleased.

Mr Hoenig and your Instructing solicitor Ms Graham, I thank you for your support. Ms Graham you came into a lengthy inquest at the very end and never missed a beat. You were on top of all the issues.

Mr Hoenig, my great friend and colleague I could never thank you enough for the guidance and support you have given me over the years that we have been working together.

Despite anyone's misgivings into the original police investigation, Detective Ozen formed an early opinion that Ms Brimble did not knowingly consume or consent to consume GHB. His opinion is that the drug was unknowingly given to her to reduce her sexual inhibitions.

I concur.

### **Further**

The release by the coroner of 'distressing' photos has been criticised. I am of a different opinion.

However the most distressing photo I believe that was published is the photo of Ms Brimble, her 12-year-old daughter and family on the escalator boarding the ship.

They all turn towards the camera waving and smiling about to embark on a holiday of a lifetime. Within 14 hours of that photo being taken, Ms Brimble was dead.

### **Finding**

***I find that Dianne Brimble died on 24 September 2002 in cabin D182, P&O Vessel the "Pacific Sky", 100 nautical miles off the coast at Crescent Head, New South Wales, Australia.***

***The cause of death is the effects of gamma hydroxybutyrate***

***The manner of death is the administration of that drug by a known person***

**Recommendations**

Recommendations will be published Friday 3 December 2010 at Waverley Local Court – 10am.

Copies will be sent to all parties at the time of publication

Magistrate Jacqueline M. Milledge  
(former Senior Deputy State Coroner)  
30 November 2010