



Special Commission of Inquiry into LGBTIQ hate crimes

5 October 2022

Dr Linda Iles
 Head of Forensic Pathology
 Victorian Institute of Forensic Medicine
 65 Kavanagh St
 Southbank VIC 3006

By email: [REDACTED]

Dear Dr Iles,

Special Commission of Inquiry into LGBTIQ hate crimes: Expert report on death of Mark Stewart

As you are aware, I assist the Honourable Justice John Sackar in the Special Commission of Inquiry into LGBTIQ hate crimes (“the Inquiry”). Bill de Mars, of counsel, and Caitlin Healey-Nash, solicitor, are assisting his Honour in his consideration of the death of Mark Stewart (formerly, Mark Spanswick).

The Inquiry

By way of background, on 13 April 2022 the Governor of NSW, by Letters Patent, issued a commission to his Honour to inquire into and report on historical LGBTIQ hate crimes. Specifically, the Letters Patent require his Honour to inquire into and report to the Governor and Premier on the following matters by 30 June 2023:

- A. The manner and cause of death in all cases that remain unsolved from the 88 deaths or suspected deaths of men potentially motivated by gay hate bias that were considered by Strike Force Parrabell; and
- B. The manner and cause of death in all unsolved suspected hate crime deaths in New South Wales that occurred between 1970 and 2010 where:
 - i. The victim was a member of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community; and
 - ii. The death was the subject of a previous investigation by the NSW Police Force.

Request for expert opinion

Mr Stewart was found deceased on 11 May 1976 at the base of a cliff at Fairy Bower, Manly, NSW. He was 18 years old. Mr Stewart’s death is one of the unsolved deaths which his Honour is inquiring into pursuant to item A of the Letters Patent.

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By this letter, you are briefed to prepare a written report in relation to Mr Stewart's death to assist the Inquiry. It is requested that you provide your report by no later than **21 October 2022**. In the event that you require further time to prepare your report, please advise Ms Healey-Nash as soon as possible.

However, in the interests of time it would be appreciated if, following your review of the material with which you are briefed, you could consider question 1 (pp. 4-5) below and provide Ms Healey-Nash with your preliminary views in advance of provision of your final report.

Background

To assist you in the preparation of your report, you are provided with the following background information in relation to Mr Stewart. This information is provided by way of summary only, and should not be treated as a comprehensive record or a substitute for your own review of the materials.

1. Mr Stewart was born Mark Spanswick on 18 July 1957. He was raised in Papua New Guinea and Fiji, before attending college in New Zealand at around age 14. Mr Stewart joined the Royal New Zealand Navy as a cadet when he was 16 years old. After some time, Mr Stewart's letters to his parents indicated that he had become disenchanted with navy life, and he sought permission to resign. In August 1974, the Navy sent Mr Stewart's parents a communication advising that Mr Stewart had apparently deserted and was absent without leave.¹
2. Mr Stewart's parents emigrated to New Zealand in December 1974. They made extensive inquiries to locate Mr Stewart, to no avail. In mid-1975, Mr Spanswick was advised that Mr Stewart was in Fiji. Mr Stewart flew to New Zealand and stayed with his parents for a few days, before flying to Brisbane, Queensland for "an appointment". Mr Stewart wrote to his parents shortly after, stating that he had arrived safely, got a job and that everything was ok. Mr Stewart's parents did not hear from him after that.²
3. Mr Stewart changed his name by deed poll from Mark Spanswick to Mark Stewart during the early part of 1976. His parents were not aware of the name change and later assumed that it was due to the fact that Mr Stewart had deserted from the Navy.³
4. On 9 May 1976, Mr Stewart checked into room 3117 at the Hilton Hotel on George Street, Sydney. He advised hotel receptionist Patricia Cupitt that he intended to stay for two nights. Ms Cupitt described Mr Stewart as slightly built, but with a commanding and self-confident manner. Ms Cupitt did not see Mr Stewart after that time.⁴ There is currently no evidence before the Inquiry as to Mr Stewart's movements on Monday, 10 May 1976.

¹ Statement of John Spanswick dated 28 May 1976, p. 1 (**Tab 13**).

² Ibid, pp. 1-2 (**Tab 13**).

³ Ibid, p. 2 (**Tab 13**).

⁴ Statement of Patricia Cupitt dated 7 July 1976 (**Tab 14**).

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Circumstances of death

5. At 10.00am on Tuesday, 11 May 1976, local fisherman Colin McGuire found Mr Stewart's body on rocks about 250 metres south of the Fairy Bower headland.⁵ Police attended shortly afterwards and noted the following:⁶
 - a. Mr Stewart was lying face down on rocks about 20 feet from the cliff face.
 - b. A piece of Banksia tree was located near the body. The piece of tree was similar to trees growing at the cliff top about 150 feet above.
 - c. A men's Seiko wristwatch was found about 21 feet further east of Mr Stewart's body. The watch had stopped at "8.02 TUE 11".
 - d. The only property found on Mr Stewart's body was a small piece of notepaper with the telephone number of the Chevron Hotel, Sydney, on one corner and the notation "7.20 11.5.76" written in biro.
 - e. A search of the headland found no sign of Mr Stewart's prior presence. The area was described as "dense bushland" with "rocky sections jutting out of the bush" and with "a number of small trails leading to the edge of the cliff". There was "no safety fence or other facility to prevent persons from ... falling to their deaths".⁷
6. There is no evidence currently before the Inquiry as to any clothing that Mr Stewart was wearing when his body was found. However, in light of the reference to the notepaper found on Mr Stewart's body (see 5d above), it is assumed that his body was clothed.
7. The precise location where Mr Stewart's body was found has not been pinpointed beyond police's description that it was 250m south of the Fairy Bower headland. Nevertheless, the description places it either within or very close to an area now known to have been a gay beat from at least some point in the 1970s until the 1990s. The type of terrain described by police at the clifftop, including areas of rock platform, is similar to that known to have been used as part of the beat. There is no evidence before the Inquiry as to Mr Stewart's sexuality.
8. Mr Spanswick said that Mr Stewart knew the Fairy Bower area fairly well as the family holidayed in Manly on at least three occasions when Mr Stewart was a child. He said that Mr Stewart loved the walk from Shelley Beach to Fairy Bower, and that he loved climbing rocks and going for walks.⁸
9. Following the identification of Mr Stewart's body, police searched his hotel room and collected his property on 13 May 1976.⁹ Notably, no wallet or money was found in Mr Stewart's room (or on his person). It does not appear that any observation of this fact was made by police or the Coroner.

⁵ Statement of Colin Richard McGuire (undated) (**Tab 12**).

⁶ Statement of Senior Constable Keith Douglas Thoms (undated) (**Tab 8**); statement of Constable Ronald James Fyson (undated) (**Tab 9**); statement of Constable Christopher John Ure dated 4 July 1976 (**Tab 10**).

⁷ Statement of Constable Ure (**Tab 10**).

⁸ Statement of John Spanswick, p. 2 (**Tab 13**).

⁹ See list of personal effects from Mr Stewart's room 3117 (**Tab 11**).

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Post-mortem investigations

10. Dr Thomas Oettle conducted an autopsy at 11.00am on 14 May 1976. Dr Oettle recorded the direct cause of death as “multiple injuries” and estimated that death had taken place 3-4 days previously (i.e. 10 or 11 May 1976).¹⁰
11. Dr Oettle’s findings are set out in full in the autopsy report at **Tab 4**. In summary, he noted extensive injuries, including fracturing of the left arm, left leg, pelvis and C3 spine, and numerous parchment scrape abrasions on the left, back side of Mr Stewart’s body. There was shattering of the skull and laceration of the brain. Dr Oettle also found extensive tearing in both hilar regions, with small amounts of blood inhaled. Further, there was gross/extensive tearing in the liver and spleen.
12. No alcohol was found in Mr Stewart’s blood.¹¹ There does not appear to have been any other toxicology testing conducted.

Cause and manner of death

13. At inquest, the Coroner found that Mr Stewart had died on 11 May 1976 at Manly of “multiple injuries sustained then and there as the result of falling from the clifftop of Fairy Bower Headland”. The Coroner made an opening finding as to whether the fall was accidental or intended by Mr Stewart.¹² A partial typed record of the inquest proceedings records that the Coroner was satisfied that there were no circumstances giving rise to suspicion of foul play.¹³

Materials with which you are briefed

For the purpose of preparing your report, you are briefed with the materials in the **enclosed** index. The material contained in the index has been extracted from the court file from the Coroners Court of NSW, documents from NSW Police Force and documents from the Registrar of Births, Deaths and Marriages.

Please note that the briefing materials contain sensitive images. The relevant tabs of your briefing material have been marked in **red**.

We have attempted to select the documents most relevant to the questions you are asked to address in your report, set out below. However, we also **enclose** a list of the additional materials in the draft brief of evidence that have not been provided to you. Please contact Ms Healey-Nash if you believe that any of these additional materials would be of assistance in preparing your expert report.

Matters to be addressed in your report

I would be grateful if you could address the following matters in your report, having regard to the material with which you are briefed and to the extent that they are matters which fall within your expertise:

1. Following your review of your briefing material, please identify:
 - a. any additional areas of medical investigation or expert opinion you consider would assist his Honour on the issues of Mr Stewart’s injuries and cause of death; and

¹⁰ Autopsy report dated 3 June 1976, p. 1 (**Tab 4**).

¹¹ Toxicology report dated 20 May 1976 (**Tab 3**).

¹² Inquest findings of City Coroner John Brian Goldrick dated 16 July 1976 (**Tab 5**).

¹³ Transcript extract of Inquest dated 16 July 1976 (**Tab 6**).

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- b. if relevant, appropriate experts from whom his Honour may wish to seek further expert opinion.
2. Your view as to the adequacy of the post-mortem investigations conducted with respect to Mr Stewart.
3. Your view as to the medical cause of Mr Stewart's death (including, if relevant, any reasons for taking a different view to that formed by Dr Oettle). Without limiting the matters which you may consider relevant to this question, please address:
 - a. The likelihood of the pulmonary hilar tears (with no report of broken ribs) with this type of fall.
 - b. The small amount of blood inhaled and in air passages in the lungs.
4. Your view as to the timing of Mr Stewart's death. Without limiting the matters which you may consider relevant to this question, please address:
 - a. Whether you agree with the estimated time of death expressed in the original autopsy report. Why/why not? What factors relevant to Mr Stewart's death impact upon the precision with which time of death can be estimated?
 - b. If it is possible that Mr Stewart died prior to the stopped time on the wristwatch found near his body "8.02 TUE 11". Why/not?
5. Your view as to whether Mr Stewart's injuries were consistent with misadventure, suicide, or foul play. Without limiting the matters which you may consider relevant to this question, please address:
 - a. The position Mr Stewart was found in (i.e. face down, 20 feet from the cliff face).
 - b. The fractures and abrasions down the left side of Mr Stewart's body (including the parchment scrap abrasions on the left, back side of the body).
6. Please provide any other comment, within the area of your expertise, regarding the likely cause of Mr Stewart's death.

The above questions are not intended to be exhaustive. Accordingly, if there is any matter arising from the circumstances of Mr Stewart's death within your area of expertise on which you wish to express an opinion and which will be of assistance to his Honour, please do so.

I also request that you please attach a detailed curriculum vitae to your report.

Expert Code of Conduct

I **enclose** a copy of the Expert Code of Conduct and ask that you read it carefully. In the report you should acknowledge that you have read the Code and agree to be bound by it. I suggest the following form of words be included in the body of your report:

"I, Dr Linda Iles, acknowledge for the purpose of Rule 31.23 of the Uniform Civil Procedure Rules 2005 that I have read the Expert Witness Code of Conduct in Schedule 7 to the said rules and agree to be bound by it."

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Please do not hesitate to contact Ms Healey-Nash on (02) 9372 8497 or caitlin.healey-nash@specialcommission.nsw.gov.au if you have any queries in relation to this matter.

Thank you for your consideration and assistance.

Yours faithfully,



Caitlin Healey-Nash
Senior Solicitor
for Crown Solicitor

Encl. 4



New South Wales Consolidated Regulations

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UNIFORM CIVIL PROCEDURE RULES 2005 - SCHEDULE 7

SCHEDULE 7 – Expert witness code of conduct

[\(Rule 31.23\)](#)

1 Application of code

This code of conduct applies to any expert witness engaged or appointed--

- (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings, or
- (b) to give opinion evidence in proceedings or proposed proceedings.

2 General duties to the Court

An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the court impartially on matters relevant to the area of expertise of the witness.

3 Content of report

Every report prepared by an expert witness for use in court must clearly state the opinion or opinions of the expert and must state, specify or provide--

- (a) the name and address of the expert, and
- (b) an acknowledgement that the expert has read this code and agrees to be bound by it, and
- (c) the qualifications of the expert to prepare the report, and
- (d) the assumptions and material facts on which each opinion expressed in the report is based (a letter of instructions may be annexed), and
- (e) the reasons for and any literature or other materials utilised in support of each such opinion, and
- (f) (if applicable) that a particular [question](#), issue or matter falls outside the expert's field of expertise, and
- (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications, and
- (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person, and
- (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of

significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the court, and

(j) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate, and

(k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason, and

(l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

4 Supplementary report following change of opinion

(1) Where an expert witness has provided to a party (or that party's legal representative) a report for use in court, and the expert thereafter changes his or her opinion on a material matter, the expert must forthwith provide to the party (or that party's legal representative) a supplementary report which must state, specify or provide the information referred to in [clause 3\(a\)](#), (d), (e), (g), (h), (i), (j), (k) and (l), and if applicable, [clause 3\(f\)](#).

(2) In any subsequent report (whether prepared in accordance with subclause (1) or not), the expert may refer to material contained in the earlier report without repeating it.

5 Duty to comply with the court's directions

If directed to do so by the court, an expert witness must--

(a) confer with any other expert witness, and

(b) provide the court with a joint report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing, and

(c) abide in a timely way by any direction of the court.

6 Conferences of experts

Each expert witness must--

(a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the court and in relation to each report thereafter provided, and must not act on any instruction or request to withhold or avoid agreement, and

(b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.

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Inquiry into the death of Mark STEWART

INDEX TO EXPERT BRIEF TO DR ILES

(as at 5 October 2022)

Tab	Document	Date	Reference No
VOLUME 1			
Formal Documents			
1.	P79A Report of Death to Coroner	13 May 1976	N/A
2.	Interim autopsy report	14 May 1976	N/A
3.	Toxicology report	20 May 1976	SCOI.02724.00010
4.	Autopsy report	3 June 1976	SCOI.02724.00009
5.	Inquest findings of City Coroner John Brian Goldrick	16 July 1976	SCOI.02724.00001
6.	Transcript extract of Inquest	16 July 1976	SCOI.02724.00007
7.	Death Certificate	7 June and 21 July 1976	N/A
NSW Police Force statements and material			
8.	Statement of Constable Keith Douglas Thoms (officer in charge)	Undated	SCOI.02724.00019
9.	Statement of Constable Ronald James Fyson	Undated	SCOI.02724.00017
10.	Statement of Constable Christopher John Ure	4 July 1976	SCOI.02724.00016
11.	List of personal effects from Mr Stewart's room 3117	Undated	SCOI.02724.00020
Statements of family and witnesses			
12.	Statement of Colin Richard McGuire (witness)	Undated	SCOI.02724.00018
13.	Statement of John Spanswick (father)	28 May 1976	SCOI.02724.00015
14.	Statement of Patricia Cupitt (receptionist)	7 July 1976	SCOI.02724.00012

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INDEX TO ADDITIONAL MATERIAL

(as at 5 October 2022)

Tab	Document	Date	Reference No
VOLUME 2			
Formal Documents			
15.	Certificate of life extinct	11 May 1976	SCOI.02724.00021
Statements of witnesses			
16.	Statement of William Eugene Muirhead (Sydney Hilton Hotel)	7 July 1976	SCOI.02724.00013
17.	Statement of David John Ford (Sydney Hilton Hotel)	7 July 1976	SCOI.02724.00014
Coroners Court material			
18.	Note to Coroner of Senior Constable Keith Douglas Thoms	29 May 1976	SCOI.02724.00011
19.	Information and Deposition of Witnesses (Inquest)	16 July 1976	SCOI.02724.00002
20.	Deposition of Constable Keith Douglas Thoms	16 July 1976	SCOI.02724.00003
21.	Deposition of Constable Christopher John Ure	16 July 1976	SCOI.02724.00004
22.	Deposition of Constable Ronald James Fyson	16 July 1976	SCOI.02724.00005
23.	Deposition of Colin Richard McGuire	16 July 1976	SCOI.02724.00006
24.	Record of Exhibits	16 July 1976	SCOI.02724.00008
NSW Police Force material			
25.	Special Crime Squad synopsis	21 May 1976	SCOI.47558
26.	Special Crime Squad synopsis	24 May 1976	SCOI.47557