



Special Commission of Inquiry into LGBTIQ hate crimes

11 December 2022

Professor Robert Brander
 School of Biological, Earth and Environmental Sciences
 University of NSW
 SYDNEY NSW 2052

By email: [REDACTED]

Dear Professor Brander,

Special Commission of Inquiry into LGBTIQ hate crimes: Expert report on death of Simon Blair Wark

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 Simon Blair Wark (known as “Blair”).

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.

The death of Mr Wark is one of the unsolved deaths which his Honour is inquiring into pursuant to item A of the Letters Patent.

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Request for expert opinion

By this letter, you are briefed to prepare an expert report in relation to Mr Wark's death to assist the Inquiry. I would be grateful to receive your report by no later than **20 January 2023**. In the event that you require further time to prepare your report, please advise Ms Healey-Nash as soon as possible.

Assumed facts

To assist you in the preparation of your report, you are provided with the following facts in relation to Mr Wark. 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 Wark was a 28 year old Technical Print Maker who was found deceased in Sydney Harbour on 10 January 1990. Mr Wark had a medium build, with a height of 1.81m and a weight of 78kg.¹
2. Mr Wark was last seen alive at the Double Bay address of his psychologist [REDACTED] at around 2:00pm on 9 January 1990. [REDACTED] was not home, and Mr Wark left.² Enclosed is a map prepared by the Inquiry with Mr Wark's last known location marked as point A. There is no definitive evidence before the Inquiry as to Mr Wark's movements after this time.

Discovery of Mr Wark's body – 10 January 1990

3. At just after 9:00am on 10 January 1990, on berthing at Manly Wharf, a passenger on the 'Freshwater' ferry informed a ferry employee that she had seen a body floating in the water north of Dobroyd Head. Stephen Bird, ferry master of the Freshwater, relayed the information to the Maritime Services Board Tower and the other ferries in the vicinity.³
4. At 9:15am, the Freshwater ferry departed Manly Wharf on route to Circular Quay. Around 200-300m northeast of Dobroyd Head, Mr Bird sighted Mr Wark's body floating face down in the water.⁴ A Maritime Services vessel and the Sydney Water Police duty launch arrived on site at around 9:35am and Mr Wark's body was recovered from the water.⁵ He was wearing denim jeans, socks and lace up shoes, but no shirt. Attending police recorded that his body showed no sign of apparent external injuries.⁶
5. Mr Wark's body was conveyed to Sydney Water Police Station, where it was viewed by an officer from the Pillage Squad.⁷ There does not appear to have been any mapping or photographs taken of the location where Mr Wark's body was found, nor were photographs of the body taken after it was recovered. The estimated location of Mr Wark's body (being 200-300m northeast of Dobroyd Head) is marked as point B in the enclosed map.

¹ P79A Report of Death to Coroner dated 11 January 1990, p. 1 (SCOI.00052.00004) (Tab 1); Autopsy report dated 24 May 1990 (SCOI.00052.00007) (NB: Document not provided and available upon request).

² Letter from [REDACTED] to Coroner dated 12 January 1990 (SCOI.00052.00022) (NB: Document not provided and available upon request).

³ Statement of Stephen William Bird dated 24 January 1990 (SCOI.00052.00018) (Tab 5).

⁴ Ibid (Tab 5).

⁵ Ibid (Tab 5); Second statement of Constable Lisa Ford dated 24 January 1990, p. 1 (Tab 4).

⁶ Second statement of Constable Ford, p. 1 (Tab 4).

⁷ P79A Report of Death to Coroner (Tab 1); P.109 Report of Occurrence – Body of Unidentified Male Person found in Harbour off Dobroyd Head dated 10 January 1990 (SCOI.10022.00025) (NB: Document not provided and available upon request).

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6. Mr Wark's body was formally identified by his family the next day, 11 January 1990.

Discovery of Mr Wark's property – 11 January 1990

7. At around 2:30pm the next day, 11 January 1990, Neil Champion (who was working at Gap Bluff) noticed a pile of clothes on a rock platform under a ledge at a point right at Gap Bluff. Mr Champion recounted that he noticed the clothes whilst he was walking along the track at the edge of the cliff. All the property was wet. Mr Champion drove to Vacluse Police Station to inform them of his discovery; however, he was told that police were unable to attend immediately. Mr Champion returned to the location, collected the items and handed them in at Vacluse Police Station.⁸
8. Again, the precise location of the property is unknown and there are no photographs of the location or items. The location of Gap Bluff is marked as point C on the enclosed map. Records indicate that the property comprised a shirt neatly rolled up and tied with a black leather belt, a pair of glasses, a small tube of ointment and a brown wallet which contained Mr Wark's credit cards, drivers licence and a lost property receipt.⁹ The officer at the Vacluse Police Station who was handed the property noted that it "was either wet or damp and contained sandstone sediment".¹⁰ The property was given over to Sydney Water Police, and subsequently returned to the family on or around 15 January 1990.

Post-mortem investigations

9. An autopsy was conducted by Dr Peter Bradhurst on 14 January 1990. Dr Bradhurst concluded that the direct cause of death was "multiple injuries" and that the date of death was 4½ to 4¾ days prior (i.e. between 11.30pm on 9 January 1990 and 5.30am on 10 January 1990).¹¹ According to the police officers who attended the autopsy, Dr Bradhurst concluded that the injuries were consistent with having fallen from a great height and that there were no suspicious circumstances surrounding Mr Wark's death.¹²
10. Toxicology testing found tricyclic antidepressants in Mr Wark's blood, liver, stomach and bile. Chloride ion was also found in blood from his left and right ventricles. No blood alcohol was detected.¹³

NSW Police investigation

11. It appears that it was not until 15 January 1990 that the Police Crime Scene Unit was sent to photograph the scene at Gap Bluff where Mr Wark's property was found. Further, while the officer in charge refers to the fact of such a visit in his statement, there is no other record relating to it and the precise location where the property was found is therefore not known. There are also no photographs of the items themselves, except copies of sale receipts from David Jones and a Lost Property receipt, which appear to have been copied at some point by Mr Wark's sister, Rebecca.
12. The primary focus of the police investigation was obtaining information regarding Mr Wark's associates and last movements, including as to his mental state in the days prior to his death. Investigating police

⁸ Statement of Neil Champion dated 14 January 1990, pp. 1-2 (SCOI.00052.00021) (Tab 3).

⁹ Statement of Neil Champion, p. 1 (Tab 3); statement of Constable Nichole Brown dated 14 January 1990, at [5] (SCOI.00052.00020) (Tab 4).

¹⁰ Statement of Constable Brown, at [6] (Tab 2).

¹¹ Autopsy report dated 24 May 1990 (NB: Document not provided and available upon request).

¹² Second statement of Constable Ford, p. 3 (Tab 4); Statement of Detective Michael Constable Plotecki, at [5] (SCOI.00052.00026) (NB: Document not provided and available upon request).

¹³ Toxicology report dated 1 May 1990 (SCOI.00052.00009) (NB: Document not provided and available upon request).

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were of the view that Mr Wark died by suicide after he jumped “from the Gap Bluff due to the completion of an eight year homosexual relationship and loneliness”.¹⁴

13. The Coroner dispensed with a formal inquest into Mr Wark’s death,¹⁵ presumably on the basis that there were no suspicious circumstances and that death appeared to be by suicide. Mr Wark’s death certificate records the cause of his death as “multiple injuries”.¹⁶

Investigations into key locations

14. The evidence indicates that Mr Wark entered the water in the vicinity of Gap Bluff, given where his property was found. Gap Bluff is also about 8km from Double Bay, where Mr Wark was last sighted alive. However, Mr Wark’s family have raised concerns as to how his body could have travelled to the area near Dobroyd Head if that was the case. It appears that the family obtained informal advice to the effect that “it was unlikely a body would be carried from outside Sydney Heads, on the south side, to the spot deep inside the northern side of the harbour off Dobroyd Head”.¹⁷ There is no record of NSW Police making any inquiries into this issue.

15. I also note the proximity of Dobroyd Head to Reef Beach in Balgowlah Heights. Reef Beach is marked as point D on the enclosed map. There is evidence before the Inquiry that the bushland surrounding Reef Beach was a known gay beat, at which local gangs were known to attack gay men.¹⁸

Weather and tidal information

Contained within your brief is weather, tidal and offshore wave information obtained from the Bureau of Meteorology and Manly Hydraulics Laboratory. In summary:

Temperature

- The highest temperature at Sydney Observatory Hill on 9 and 10 January 1990 was 28.8 degrees Celsius (“degrees”). The highest temperature at Sydney Airport was 28.2 and 30.2 degrees respectively.¹⁹
- The lowest temperature at Sydney Observatory Hill on 9 and 10 January 1990 was 20.0 and 21.7 degrees respectively. The lowest temperature at Sydney Airport was 17.5 and 15.0 degrees respectively.²⁰
- The temperature between 12.00am and 6.00am on 10 January 1990 was between 22.2 and 23.8 degrees.²¹

¹⁴ Second statement of Constable Ford, p. 3 (**Tab 4**).

¹⁵ Coroners Court Summary Sheet (SCOI.00052.00001) (NB: Document not provided and available upon request).

¹⁶ Death certificate of Simon Wark (NB: Document not provided and available upon request).

¹⁷ SBS Hate Crime Decades (SCOI.10396.00012) (**Tab 6**).

¹⁸ Ibid.

¹⁹ Weather, Synoptic and Rainfall Observations for Watsons Bay area (Bureau of Meteorology Data Document CAS-37787-S5G0Y9-18), pp. 2 and 4 (**Tab 7**).

²⁰ Ibid.

²¹ Ibid, p. 9.

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Rainfall

- No rainfall was recorded in the period between 3.00pm on 9 January 1990 and 9.00am on 10 January 1990.²²
- 7.1mm of rain was recorded at the Rose Bay site in the 24 hours to 9.00am on 9 January 1990.²³

Wind

- At between 3.00pm on 9 January and 9.00am on 10 January 1990, the wind at Sydney Observatory Hill was between 0 and 19 kilometres per hour.²⁴
- During this period, the wind blew in an easterly direction; with the exception of between 12.00am and 3.00am on 10 January where it blew in a north easterly direction.²⁵

Sunlight

- The time of sunset at the Gap on 9 January 1990 was 8.10pm (AEDT). Sunrise was 5.55am (AEDT) on 10 January 1990.²⁶

Visibility

- Between 3.00pm on 9 January 1990 and 6.00am on 10 January 1990, visibility was recorded to be 30kms, with cloud cover at one to two eighths (sunny or mostly sunny).²⁷

Tides

- The tide level at 3.00pm on 9 January 1990 was 0.34m. The tide level peaked at 1.76m at 9.00pm on 9 January, before falling to 0.03m at 4.00am on 10 January 1990.²⁸
- 10 January 1990 was one day before the full moon, which occurred on 11 January 1990.²⁹

Wave data

- Wave data recorded by the Department of Planning and Environment's Sydney offshore Waverider buoy is **enclosed** at Tab 13.
- I am informed by Mark Kulmar from Manly Hydraulics Laboratory that this data was recorded by a non-directional Waverider buoy and hence wave direction information is not available (a Waverider buoy that also recorded wave direction was not deployed off Sydney until March 1992). As at 9-10

²² Ibid.

²³ Ibid, p. 15.

²⁴ Ibid, p. 9.

²⁵ Ibid.

²⁶ Sunrise, Sunset and Twilight Times for the Gap on 9 and 10 January 1990 (**Tab 10 and 11**).

²⁷ Weather, Synoptic and Rainfall Observations for Watsons Bay area (Bureau of Meteorology Data Document CAS-37787-S5G0Y9-18), p. 9 (**Tab 7**).

²⁸ Sea Level Observations at Fort Denison for 1990 (Bureau of Meteorology Data Document CAS-40581-G1G8T901), p. 2 (**Tab 9**).

²⁹ United States Naval Observatory Dates of Primary Phases of the Moon (**Tab 14**).

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January 1990, the non-directional Waverider buoy was deployed at location 3 as marked on the 'Location History' map.³⁰

- I am also advised by Mr Kulmar that modelled inshore wave data at the 10m contour in Port Jackson (Sydney Harbour) will not be available. Therefore, it is not possible to provide modelled wave data off Dobroyd Head/Balgowlah Heights.

Materials with which you are briefed

For the purpose of preparing your report, you are briefed with the documents in the **enclosed** index.

Please notify Ms Healey-Nash if you believe that there are any additional materials which 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 (to the extent that they are matters which fall within your expertise, having regard to the material with which you are briefed (so far as it is relevant to your area of expertise):

1. Following your review of your briefing material, please identify:
 - a. any additional areas of expert opinion you consider would assist his Honour on the issues of Mr Wark's location, date and manner of death; and
 - b. if relevant, appropriate experts from whom his Honour may wish to seek further expert opinion.
2. Please provide a summary of the prevailing weather, tidal, current and rip conditions at and around Gap Bluff and Dobroyd Head on 9 and 10 January 1990.
3. Please identify the variables that must be taken into account in any opinion provided as to the likely direction of travel of a human body entering the water at a particular coastal location or being found at a particular location.
4. Is the location where and time when Mr Wark's body was found consistent with it potentially having entered the water from the area in the vicinity of Gap Bluff at some point between 2:30pm on 9 January 1990 and 9:00am on 10 January 1990?
5. If the answer to question 4 is yes, can you indicate:
 - a) the time that it would have taken for the body to float from Gap Bluff to Dobroyd Head; and
 - b) the likelihood of this having been the entry point and any matters that you consider are relevant to assessing the likelihood.
6. Is the location where and time when Mr Wark's body was found consistent with it potentially having entered the water from the area in the vicinity of Reef Beach at some point between 2:30pm on 9 January 1990 and 9:00am on 10 January 1990?

³⁰ Sydney Waverider Buoy location History dated November 2010 (**Tab 12**).

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7. If the answer to question 6 is yes, can you estimate:
 - a) the time that it would have taken for the body to float from Reef Beach to Dobroyd Head; and
 - b) the likelihood of this having been the entry point and any matters that you consider are relevant to assessing the likelihood.
8. Any other matters arising from the circumstances of Mr Wark's death within your area of expertise on which you wish to express an opinion and which will be of assistance to his Honour.

In answering the above questions please explain your reasoning process and identify the information that you have relied upon. Please also provide any further related information or materials that you consider will be of assistance to the Commissioner.

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, Professor Robert Brander, 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."

Fees

You are engaged at a rate of **\$180 per hour** to review the briefing material and prepare your expert report. Please address your invoice to the Department of Premier and Cabinet, ABN: 34 945 244 274. Ms Healey-Nash will be in contact separately about any further paperwork required.

Please do not hesitate to contact Ms Healey-Nash on 0466 480 286 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 Solicitor Assisting the Inquiry

Encl. 4

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Inquiry into the death of Simon Blair WARK
INDEX TO EXPERT BRIEF TO PROFESSOR BRANDER

(as at 11 December 2022)

Tab	Document	Date	Reference No
VOLUME 1			
Formal Documents			
1.	P79A – Report of Death to Coroner (post-identification)	11 January 1990	SCOI.00052.00004
Statements			
2.	Statement of Constable Nichole Louise Brown	14 January 1990	SCOI.00052.00020
3.	Statement of Neil Andrew Champion	14 January 1990	SCOI.00052.00021
4.	Second statement of Constable Lisa Gaye Ford	24 January 1990	SCOI.00052.00024
5.	Statement of Stephen William Bird	24 January 1990	SCOI.00052.00018
Media Publications			
6.	Extract of SBS Hate Crime Decades website	31 October 2016	SCOI.10396.00012
Bureau of Meteorology			
7.	Weather, Synoptic and Rainfall Observations for Watsons Bay area (Bureau of Meteorology Data Document CAS-37787-S5G0Y9-18)	20 October 2022	N/A
8.	Excel spreadsheet of Sea Level Observations at Fort Denison for 1989	Undated	N/A
9.	Sea Level Observations at Fort Denison for 1990 (Bureau of Meteorology Data Document CAS-40581-G1G8T9-1)	14 November 2022	N/A
Geoscience Australia			
10.	Sunrise, Sunset and Twilight Times for the Gap	9 January 1990	N/A
11.	Sunrise, Sunset and Twilight Times for the Gap	10 January 1990	N/A

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Tab	Document	Date	Reference No
Manly Hydraulics Laboratory			
12.	Sydney Waverider Buoy location History	November 2010	N/A
13.	Excel Spreadsheet of Sydney Offshore Wave Data for 1990	Generated 9 November 2022	N/A
United States Naval Observatory			
14.	Dates of Primary Phases of the Moon	1990	N/A