



## Special Commission of Inquiry into LGBTIQ hate crimes

30 September 2022

Dr Danny Sullivan  
 Consultant Forensic Psychiatrist  
 PO Box 1060  
 NORTH MELBOURNE VIC 3051

By email: [REDACTED]

Dear Dr Sullivan,

### **Special Commission of Inquiry into LGBTIQ hate crimes: Expert report in relation to the death of Paul Rath**

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 inquiry into the death of Paul Rath.

### **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**

Further to your conferences with the Commissioner and assisting team on 23 May 2022 and 31 August 2022, by this letter, you are briefed to prepare an expert report for the Inquiry in relation to death of Mr Rath from the perspective of a forensic psychiatrist addressing certain matters identified below.

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I would be grateful if you could provide your report by **17 October 2022**. If you anticipate any difficulties with this timeframe, please let Ms Healey-Nash know as soon as possible.

In addition to providing your report, you may be required to give oral evidence at any hearing in relation to Mr Rath's death. If you are required to give oral evidence, I will notify you as soon as practicable to discuss suitable arrangements.

### Assumptions

In preparing your report, you are requested to assume the facts set out in the below summary. Additionally, please have regard to any other relevant information contained in the briefing materials provided to you.

1. Mr Rath was born on 18 January 1950 in North Sydney to parents Elwyn and Catherine Rath. He lived at [REDACTED] Pittwater Road, Manly ("the Rath residence"), with his parents and seven siblings. At the time of his death, Mr Rath was on a pension. He was, however, deeply Catholic and volunteered as a catechist at local public schools "where he would write small pieces of prose for the children".<sup>1</sup>
2. According to his father Elwyn, Mr Rath had a "nervous breakdown" when aged 15, and thereafter suffered from a "nervous condition".<sup>2</sup> Mr Rath had been under the treatment of psychiatrist Dr O Reichard since January 1971 (when Mr Rath was 21 years old).<sup>3</sup> Dr Reichard described Mr Rath's condition as a schizophrenic disorder.<sup>4</sup>
3. Mr Rath last saw Dr Reichard on 1 June 1977, two weeks prior to his death. On this occasion, Mr Rath "appeared in quite good spirits and gave no special indication of any current suicidal tendencies".<sup>5</sup> Mr Rath's family also described him as normal and happy in the days prior to his death.<sup>6</sup> On the evidence currently before the Inquiry, Mr Rath was last seen by his brother Gregory at the Rath residence at around 4.30pm on 15 June 1977.<sup>7</sup> According to Gregory, Mr Rath was "in a happy mood" and did not do or say anything to suggest he would take his own life.<sup>8</sup> Mr Rath was due to attend a church meeting at 7.30pm that evening;<sup>9</sup> however, at this stage, it is not known whether he attended or not.
4. Mr Rath's body was found by a fisherman at 7.20am the next morning, 16 June 1977, at the base of a 45 metre cliff at Fairy Bower, Manly.<sup>10</sup> Mr Rath's body was wedged between rocks in a sitting position with his head between his legs.<sup>11</sup> His trousers were lowered to his mid-thigh and a piece of prose was

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<sup>1</sup> Statement of Elwyn Walter Rath dated 10 August 1977 (**Tab 12**).

<sup>2</sup> Ibid.

<sup>3</sup> Prior to this, Mr Rath was treated by psychiatrist Dr EJA Nuffield.

<sup>4</sup> Statement of Dr O Reichard dated 23 June 1977 (**Tab 11**).

<sup>5</sup> Ibid.

<sup>6</sup> Statement of Elwyn Rath (**Tab 12**).

<sup>7</sup> Although I note that Senior Constable Ross Parry refers to Mr Rath last being seen at 5.00pm at the Rath residence where he stated he was going for a walk: see P. 109 Report of Occurrence dated 16 June 1977 (**Tab 9**).

<sup>8</sup> Statement of Gregory John Rath dated 10 August 1977 (**Tab 14**).

<sup>9</sup> Statement of Elwyn Rath (**Tab 12**).

<sup>10</sup> Statement of Alfred Barrett dated 10 August 1977 (**Tab 15**).

<sup>11</sup> Crime scene photographs are located at **Tab 7**.

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found on folded paper in his jacket pocket.<sup>12</sup> At autopsy, forensic pathologist Dr Peter Russell recorded the direct cause of death as “multiple injuries”.<sup>13</sup>

### Medications

5. Dr Reichard prescribed Mr Rath the following medications (which he described as a “moderate amount of tranquilisers”):<sup>14</sup>
  - a) Haloperidol: 1.5mg, 3 times per day; and
  - b) Melleril: 25mg, 3 times per day.
6. Elwyn says that Mr Rath’s nervous condition was “very well controlled with the assistance of tablets”.<sup>15</sup> However, Mr Rath had recently complained that his legs were aching. His parents put it down to his medication, which would make him slow down and also affected his reactions.<sup>16</sup>
7. Post-mortem testing found no alcohol in Mr Rath’s blood.<sup>17</sup> It does not appear that any other toxicology was conducted, including of Mr Rath’s prescription medications.

### Location

8. The location of Mr Rath’s body was about a 20 minute walk from the Rath residence. It is noted, based on weather data, that the sunset on 15 June 1977 was at 4.53pm.<sup>18</sup> Elwyn told police that Mr Rath would often walk in the Fairy Bower area, as it helped with his “nervous condition”. Mr Rath was known to sit at the clifftop at either day or night and say the rosary or otherwise just relax.<sup>19</sup>
9. It is noted that evidence given at an Inquest in 2017 into a death that occurred in 1988 indicated that the area in the vicinity of the relevant clifftop was an active beat in the 1970s. There is no evidence presently before the Inquiry in relation to Mr Rath’s sexuality.

### Material 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, the investigation file from NSW Police File 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

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<sup>12</sup> A full copy of the note can be found at **Tab 8**.

<sup>13</sup> Autopsy Report of Dr Peter Russell dated 30 June 1977, p. 1 (**Tab 3**).

<sup>14</sup> Statement of Dr Reichard (**Tab 11**).

<sup>15</sup> Statement of Elwyn Rath (**Tab 12**).

<sup>16</sup> Ibid.

<sup>17</sup> Toxicology Report dated 23 June 1977 (**Tab 2**).

<sup>18</sup> Based on calculations using Geoscience Australia data: <https://www.ga.gov.au/home>.

<sup>19</sup> Statement of Elwyn Rath (**Tab 12**).

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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. Did Mr Rath meet the diagnostic criteria for any psychiatric condition/s at the time of his death in June 1977? If yes, please:
  - a) Identify the condition/s;
  - b) Describe its symptoms, duration and amenability to treatment at the time; and
  - c) Indicate whether you agree with Dr Reichard's diagnosis and the reasons why/why not.
2. In relation to the medications that Mr Rath was prescribed:
  - a) Were they appropriate to treat his condition, according to the standards of the day?
  - b) Assuming the medications to have been taken in accordance with the prescription, what impact, if any, might they have had on Mr Rath's mood and functioning at around the time of his death; and
  - c) Could they have caused leg aches, slow reactions and/or any other significant side effects?
3. From the material before you and your expertise as a forensic psychiatrist, do you have any opinion on the manner of death recorded by the Coroner; namely, that Mr Rath died by misadventure? In particular:
  - a) Are there any observations you are able to make concerning the potential for Mr Rath's death to have involved some form of accident;
  - b) Are there any observations you are able to make concerning the potential for Mr Rath's death to have been a deliberate act on his part; and
  - c) Are there any observations you are able to make concerning the potential for Mr Rath's death to have involved foul play by a third party?
4. In connection with the manner and cause of Mr Rath's death, and based on your expertise as a forensic psychiatrist, do you consider there to be any particular relevance to:
  - a) The position of Mr Rath's trousers when his body was found;
  - b) The note that was found in Mr Rath's pocket; and/or
  - c) The rosary beads that it appears Mr Rath had in his possession.
5. Any other issues you consider require comment being in your area of expertise.

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Subject to your discretion, the Inquiry requires only a succinct analysis of the above matters. Unless you consider it necessary or appropriate, there is no need for you to provide a summary of the background materials provided to you.

In the event that you are called to give evidence before the Inquiry, either as to general matters in connection with LGBTIQ hate crimes or particular cases, it may be necessary for the Inquiry to disclose to interested parties any correspondence or conference notes with you.

### Expert Witness Code of Conduct

I **enclose** a copy of the Expert Code of Conduct with which expert witnesses in Supreme Court proceedings in NSW are typically required to comply. While the present inquiry is not a Court proceeding, I would be grateful if you would read the Code of Conduct and agree to be bound by it. I suggest the following form of words be included in the body of your report in due course:

“I, Dr Danny Sullivan, acknowledge that I have read the Expert Witness Code of Conduct in Schedule 7 to the *Uniform Civil Procedure Rules 2005 (NSW)* and agree to be bound by it.”

Please do not hesitate to contact Caitlin Healey-Nash on 02 9372 8497 or [caitlin.healey-nash@specialcommission.nsw.gov.au](mailto: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

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**Inquiry into the death of Paul RATH**  
**INDEX TO EXPERT BRIEF TO DR SULLIVAN**  
(as at 30 September 2022)

Tab	Document	Date	Reference No
<b>VOLUME 1</b>			
<b>Formal Documents</b>			
1.	Forensic biology report	21 June 1977	SCOI.02734.00012
2.	Toxicology report	23 June 1977	SCOI.02734.00011
3.	Autopsy report	30 June 1977	SCOI.02734.00010
4.	Inquest findings	16 September 1977	SCOI.02734.00001
5.	Transcript extract of Inquest	16 September 1977	SCOI.02734.00007
6.	Death Certificate	21 July and 6 October 1977	N/A
<b>Photographs</b>			
7.	Crime scene photographs [sensitive]	Undated	SCOI.02734.00021-25
8.	Copy of handwritten note	Undated	SCOI.02734.00020
<b>Statement of officer in charge</b>			
9.	P. 109 Report of Occurrence	16 June 1977	SCOI.45359
10.	Statement of Constable Ross Parry	10 August 1977	SCOI.02734.00009
<b>Statements of family and witnesses</b>			
11.	Statement of Dr O Reichard (consultant psychiatrist)	23 June 1977	SCOI.02734.00018
12.	Statement of Elwyn Walter Rath (father)	10 August 1977	SCOI.02734.00016
13.	Deposition of Elwyn Walter Rath at Inquest	16 September 1977	SCOI.02734.00006
14.	Statement of Gregory John Rath (brother)	10 August 1977	SCOI.02734.00015
15.	Statement of Alfred Barrett (witness)	10 August 1977	SCOI.02734.00014

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**INDEX TO ADDITIONAL MATERIAL**

(as at 30 September 2022)

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Reference No</b>
<b>VOLUME 2</b>			
<b>Formal Documents</b>			
16.	Birth Certificate	24 January 1950	N/A
17.	Certificate of Life Extinct	16 June 1977	SCOI.02734.00017
<b>Coroners Court material</b>			
18.	Information and Deposition of Witnesses (Inquest)	16 September 1977	SCOI.02734.00002
19.	Deposition of Constable Ross Parry	16 September 1977	SCOI.02734.00003
20.	Deposition of Alfred Barrett	16 September 1977	SCOI.02734.00004
21.	Deposition of Gregory John Rath	16 September 1977	SCOI.02734.00005
22.	Record of Exhibits	16 September 1977	SCOI.02734.00008
<b>Statements of family and witnesses</b>			
23.	Statement of Peter Gregory Rowan (brother in law, identifying body)	10 August 1977	SCOI.02734.00013