



## 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 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 consideration of 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**

Mr Rath was found deceased on 16 June 1977 at the base of a cliff at Fairy Bower, Manly, NSW. He was 27 years old. At inquest, the Coroner found that Mr Rath had died on 15 or 16 June 1977 from “the effects

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of multiple injuries sustained then and there when he fell accidentally onto rocks at the foot of a cliff”.<sup>1</sup> Mr Rath’s death is one of the unsolved deaths which his Honour is inquiring into pursuant to item A of the Letters Patent.

By this letter, you are briefed to prepare a written report in relation to Mr Rath’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 (p. 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 Rath. 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 Rath (born 18 January 1950) resided 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>2</sup>
2. Following a “nervous breakdown” at age 15,<sup>3</sup> Mr Rath was under the treatment of psychiatrist Dr O Reichard.<sup>4</sup> Dr Reichard described Mr Rath’s condition as a schizophrenic disorder and prescribed Haloperidol (1.5mg, 3 times per day) and Melleril (25mg, 3 times per day).<sup>5</sup>
3. According to Dr Reichard and Mr Rath’s family, Mr Rath appeared normal and happy in the days and weeks prior to his death. He gave no indication of suicidal tendencies.<sup>6</sup> He had complained that his legs were aching, which his parents put down to his medication, which they considered would make him slow down and also affected his reactions.<sup>7</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>8</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>9</sup> Mr Rath was due to attend a church meeting at 7.30pm that evening;<sup>10</sup> however, at this stage, it is not known whether he attended or not.

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<sup>1</sup> Findings of Coroner Ray William Henry dated 16 September 1977 (**Tab 4**).

<sup>2</sup> Statement of Elwyn Walter Rath dated 10 August 1977 (**Tab 12**).

<sup>3</sup> Ibid.

<sup>4</sup> Mr Rath had been treated by Dr Reichard since January 1971. Prior to this, Mr Rath was treated by psychiatrist Dr EJA Nuffield.

<sup>5</sup> Statement of Dr O Reichard dated 23 June 1977 (**Tab 11**). According to Mr Rath’s father, Elwyn, Mr Rath’s nervous condition was “very well controlled with the assistance of tablets”: statement of Elwyn Rath (**Tab 12**).

<sup>6</sup> Statement of Dr O Reichard dated 23 June 1977 (**Tab 11**); statement of Elwyn Rath (**Tab 12**).

<sup>7</sup> Statement of Elwyn Rath (**Tab 12**).

<sup>8</sup> Although I note that 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>9</sup> Statement of Gregory John Rath dated 10 August 1977 (**Tab 14**).

<sup>10</sup> Statement of Elwyn Rath (**Tab 12**).

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### *Circumstances of death*

4. Mr Rath's body was found by fisherman Alfred Barrett at 7.20am the next morning, 16 June 1977, at the base of a cliff at Fairy Bower, Manly.<sup>11</sup> Police estimated that there was a 150 foot (45 metre) drop from the headland to the location of the body.<sup>12</sup>
5. Mr Rath's body was wedged between rocks in a sitting position with his head between his legs.<sup>13</sup> He was facing the direction of the ocean. Having recently viewed the location of Mr Rath's body, and its lateral proximity to the cliff ledge, Mr de Mars and Ms Healey-Nash are of the view that it appears possible that Mr Rath's body may have first impacted a sloping area of vegetation near the base of the cliff, before tumbling further to its position in the rocks adjacent to the vegetation.
6. The officer in charge, Constable Ross Parry, who attended the scene, observed Mr Rath to be dressed in a brown suit, with "the trousers down to almost knee level".<sup>14</sup> However, it is noted that a photograph of the body taken in position shows the trousers to be somewhat higher, sitting not far below Mr Rath's underpants. It is unclear if Mr Rath was wearing a belt and, if so, whether the belt was unbuckled.
7. A piece of prose was found on folded paper in Mr Rath's jacket pocket.<sup>15</sup> A search of the vicinity near the body by police located a set of rosary beads and a right shoe belonging to the deceased. Constable Parry also stated that he examined the ledge from which Mr Rath had apparently fallen. No notes were found, nor were any signs of a struggle observed.<sup>16</sup>
8. Apart from the photos and the brief description of the abovementioned matters in Constable Parry's statement, there is no statement or any other record in the coronial file of any examination of the body at the scene, or of the scene more generally. It is not known whether the body had been touched or moved in any way prior to being photographed. As the body position matches the distinct description given by Mr Barrett and Constable Parry, it is currently assumed that it had not been moved in a way that significantly altered its position.
9. 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>17</sup> Mr Rath's father, 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>18</sup>
10. Further, 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 gay beat in the 1970s. There is no evidence presently before the Inquiry in relation to Mr Rath's sexuality.

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<sup>11</sup> Statement of Alfred Barrett dated 10 August 1977 (**Tab 15**).

<sup>12</sup> Statement of Constable Ross Parry dated 10 August 1977 (**Tab 10**).

<sup>13</sup> Crime scene photographs are located at **Tab 7**.

<sup>14</sup> Statement of Constable Ross Parry dated 10 August 1977 (**Tab 10**).

<sup>15</sup> A full copy of the note can be found at **Tab 8**.

<sup>16</sup> Statement of Constable Ross Parry dated 10 August 1977 (**Tab 10**).

<sup>17</sup> Based on calculations using Geoscience Australia data: <https://www.ga.gov.au/home>.

<sup>18</sup> Statement of Elwyn Rath (**Tab 12**).

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### *Post-mortem investigations*

11. Dr Peter Russell conducted an autopsy on 18 June 1977. Dr Russell recorded the direct cause of death as “multiple injuries”.<sup>19</sup> His findings are set out in full in the autopsy report at **Tab 3**.
12. I note that there did not appear to be extensive torn skin in the area of Mr Rath’s upper body, arms or head. There are references to old blood issuing from both nostrils and a small amount of blood being present in the right ear, though not thought to be associated with skull fracture.
13. The most significant injuries appear to have been spinal fractures, multiple fractures to the lower legs, fractures to the sternum and ribs, and bruising overlying the right eye and cheek, right upper arm and anterior chest wall. No skull fracture was identified.
14. A blood sample was analysed for alcohol, and none was found present.<sup>20</sup> There does not appear to have been any other toxicology conducted, including of Mr Rath’s prescription medications.
15. A one page forensic biology report recorded that four items were received from Constable Parry on 16 June 1977 (one anal smear, one anal swab, one penile smear and one penile swab). Semen was detected on the two penile samples but not on the anal samples.<sup>21</sup>

### *Cause and manner of death*

16. On 16 September 1977, the Coroner found that Mr Rath died between 15 and 16 June 1977 at Fairy Bower, Manly “of the effects of multiple injuries sustained then and there when he fell accidentally onto rocks at the foot of a cliff”.<sup>22</sup> The Coroner stated that, on the evidence, he could find no suspicious circumstances or prima facie case against any person for an indicatable offence. The Coroner also noted the evidence of Dr Reichard and the Rath family that Mr Rath was acting “quite normal” and that it was not unusual for him to walk in the Fairy Bower area.<sup>23</sup>

### **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**.

I have attempted to select the documents most relevant to the questions you are asked to address in your report, set out below. However, I 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.

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<sup>19</sup> Autopsy Report of Dr Peter Russell dated 30 June 1977, p. 1 (**Tab 3**).

<sup>20</sup> Toxicology Report dated 23 June 1977 (**Tab 2**).

<sup>21</sup> Forensic biology report dated 21 June 1977 (**Tab 1**).

<sup>22</sup> Inquest findings of Coroner Ray William Henry dated 16 September 1977 (**Tab 4**).

<sup>23</sup> Transcript extract of Inquest dated 16 September 1977 (**Tab 5**).



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### 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 Rath's injuries and cause of death; and
  - 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 Rath.
3. Your view as to the medical cause of Mr Rath's death (including, if relevant, any reasons for taking a different view to that formed by Dr Russell). Without limiting the matters which you may consider relevant to this question, please address:
  - a. Mr Rath's distinctive body position, including whether this is a cause for suspicion;
  - b. Mr Rath's spinal injuries, and whether it is possible that Mr Rath survived the initial fall for a period of time and was capable of moving his body to its final position;
  - c. the extensive fracturing to Mr Rath's lower legs; and
  - d. the "peculiar yellow staining of the internal periosteum" of the skull.
4. Your view as to the blood found on Mr Rath's clothing (including the extensive areas of blood on the lower half of his trousers and the spots of blood on the outside surface of his jacket). Is there any cause for suspicion arising from the location of this blood?
5. Your view as to the significance, if any, of the presence of semen in the penile swab and smear. Are you able to estimate a likely time period for its presence?
6. Your view as to whether Mr Rath'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 old blood issuing from Mr Rath's nostrils and the small amount of blood present in the right ear;
  - b. the bruising to Mr Rath's right eye and cheek, right upper arm and anterior chest wall; and
  - c. the position of Mr Rath's trousers when his body was found.
7. Please provide any other comment, within the area of your expertise, regarding the likely cause of Mr Rath's death.

The above questions are not intended to be exhaustive. Accordingly, if there is any matter arising from the circumstances of Mr Rath'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.

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### 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.”

Please do not hesitate to contact Ms 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 )



# 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 Paul RATH

INDEX TO EXPERT BRIEF TO DR ILES

(as at 5 October 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**

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Tab	Document	Date	Reference No
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<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