



## Special Commission of Inquiry into LGBTIQ hate crimes

9 May 2023

Jae Gerhard  
Principal Scientist  
Independent Forensic Services  
PO Box 2466  
NORTH PARRAMATTA NSW 1750

By email: [REDACTED]

Dear Ms Gerhard,

### **Special Commission of Inquiry into LGBTIQ hate crimes: Expert opinion 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, Counsel Assisting the Inquiry, and Caitlin Healey-Nash, Senior 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'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 Rath's death to assist the Inquiry. It is requested that you provide your report by no later than **15 May 2023**. In the event that you require further time to prepare your report, please advise Ms Healey-Nash as soon as possible.

### 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 was found deceased at around 7:20am on 16 June 1977 at the base of a cliff at the Fairy Bower headland in Manly. He was 27 years old and under treatment for a schizophrenic disorder. On the evidence currently before the Inquiry, Mr Rath was last seen by his sister on the evening of 15 June 1977 in Manly.
2. Mr Rath's body was wedged between rocks in a sitting position with his head between his legs.<sup>1</sup> He was facing the direction of the ocean. Police estimated that there was a 150 foot (45 metre) drop from the Fairy Bower headland to the location of the body.<sup>2</sup> Having 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.
3. Photographs of the scene show Mr Rath dressed in a brown suit, with his trousers down at approximately mid-thigh level, exposing his underpants and upper thighs. One of his shoes and a set of rosary beads were located nearby. The investigating officer, Constable Ross Parry, 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>3</sup>
4. 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 the witness who found the body and Constable Parry, it is currently assumed that it had not been moved in a way that significantly altered its position.

### *Post-mortem investigations*

5. Forensic pathologist Dr Peter Russell conducted an autopsy on 18 June 1977. Dr Russell recorded the direct cause of death as "multiple injuries".<sup>4</sup> His findings are set out in full in the autopsy report at **Tab 3**.
6. Dr Russell noted that there were "numerous externally obvious injuries" including: a large contusion with "good deal of superficial oedema" overlying the right eye and cheek; "old" blood issuing from both nostrils; a small amount of blood present in right ear which appeared to be "passive" in nature and not associated with skull fracture; bruising to the right upper arm; bilateral compound comminuted fractures on the lower ends of the tibia and fibula; and extensive bruising of the anterior chest wall.

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<sup>1</sup> See Crime scene photographs are located at **Tab 4**.

<sup>2</sup> Statement of Constable Ross Parry dated 10 August 1977 (Not provided and available upon request).

<sup>3</sup> Ibid.

<sup>4</sup> Autopsy Report of Dr Peter Russell dated 30 June 1977, p. 1 (**Tab 3**).

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7. Other significant injuries were fracturing of the sternum and a number of ribs and spinal fractures at the C7 level (near the base of the neck) and at the L1 level (the top of the lumbar spine/lower back). No skull fracture was observed.
8. A blood sample was analysed for alcohol, and none was found present.<sup>5</sup>
9. 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>6</sup>

### *Coronial proceedings*

10. 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>7</sup>

### *Expert opinion of Dr Linda Iles*

11. As part of its investigations into Mr Rath’s death, the Inquiry has obtained an expert report from Dr Linda Iles, Head of Pathology Services at the Victorian Institute of Forensic Medicine. A copy of Dr Iles’ report is at **Tab 5** of your brief.
12. Dr Iles considered the cause of Mr Rath’s death to be “spinal injuries sustained in a fall from a height”, but was unable to express an opinion as to whether the fall was due to accident, suicide or homicide.<sup>8</sup> Dr Iles considered that the distinctive positioning of Mr Rath’s body indicated that he either landed directly in this position after falling from the clifftop, or that he landed further up the embankment and tumbled to his final resting position. She thought it unlikely that Mr Rath “moved himself” to his final resting position due to the nature of his spinal cord injuries (which would have resulted in a loss of function of the lower limbs).<sup>9</sup>
13. The “old blood” from Mr Rath’s nostrils and the bruising to his face, upper arm and chest could have been sustained prior to or during the fall. Dr Iles was unable to determine the likelihood of either proposition on the available material.<sup>10</sup> She also noted injuries to the fingers of both hands, which had not been documented in the autopsy report, but was unable to determine their significance.<sup>11</sup>
14. Notably, Dr Iles opined that the staining of Mr Rath’s clothing, particularly if the staining was due to blood, is the most concerning element of Mr Rath’s case and is out of keeping with the scene and circumstances described. She recommended further investigations by a forensic biologist in this regard.<sup>12</sup>

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<sup>5</sup> Toxicology Report dated 23 June 1977 (**Tab 2**).

<sup>6</sup> Forensic biology report dated 21 June 1977 (**Tab 1**).

<sup>7</sup> Inquest findings of Coroner Ray William Henry dated 16 September 1977 (Not provided and available upon request).

<sup>8</sup> Expert report of Dr Linda Iles dated 26 October 2022, p. 10 (**Tab 5**).

<sup>9</sup> *Ibid*, p. 6.

<sup>10</sup> *Ibid*, p. 9.

<sup>11</sup> *Ibid*, p. 5.

<sup>12</sup> *Ibid*, pp. 4-5, 8.

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### Materials with which you are briefed

For the purpose of preparing your report, you are briefed with the materials in the **enclosed** index. Please note that the briefing materials contain sensitive images. The relevant tabs of your briefing material have been marked in **red**.

Please contact Ms Healey-Nash if you consider there are additional materials which would be of assistance in preparing your expert report, and these will be provided to you if available.

### 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. Your view as to whether the staining on Mr Rath's clothing evident in the crime scene photographs is blood and/or another substance.
2. On the assumption that the staining is blood, please provide a blood pattern analysis of the staining evident on Mr Rath's clothing and visible skin. Without limiting the matters which you may consider relevant to this question, please address the staining on:
  - a. The back of Mr Rath's coat jacket;
  - b. The cuffs of Mr Rath's coat jacket;
  - c. The lower half of Mr Rath's trousers; and
  - d. Mr Rath's lower arms and hands
3. On the assumption that the staining is blood, your view as to whether the location and/or pattern of the blood is a cause for suspicion.

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.

### 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, Ms Jae Gerhard, 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

I note your fees of **\$462 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.

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Please do not hesitate to contact Ms Healey-Nash on 0466 480 286 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,

A handwritten signature in blue ink, appearing to read 'CHN', with a long horizontal line extending to the right.

Caitlin Healey-Nash  
Senior Solicitor  
**for Solicitor Assisting the Inquiry**

Encl. 2

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**Inquiry into the death of Paul RATH**  
**INDEX TO EXPERT BRIEF TO JAE GERHARD**  
 (as at 9 May 2023)

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
<b>Photographs</b>			
4.	Crime scene photographs [sensitive]	Undated	SCOI.02734.00021-25
<b>Expert opinions</b>			
5.	Expert report of Dr Linda Iles	26 October 2022	SCOI.82906