



Special Commission of Inquiry into LGBTIQ hate crimes

SUBMISSIONS OF COUNSEL ASSISTING

18 May 2023

IN THE MATTER OF PAUL RATH

Introduction

1. These submissions are filed on behalf of Counsel Assisting the Special Commission of Inquiry into LGBTIQ hate crimes (**Inquiry**).

Summary of matter

Date and location of death

2. Paul Rath died on 15 or 16 June 1977 at a headland adjacent to Shelly Beach in Manly. Because that headland was sometimes referred to as “the Fairy Bower headland”¹ (although in fact it is much closer to Shelly Beach than to Fairy Bower Beach, which is some distance away and further north), the expression “Fairy Bower headland” is also used in these submissions. Mr Rath was 27 years old at the time of his death.

Circumstances of death

3. Mr Rath came from a large and close family of eight siblings who were brought up by their parents in the Sydney suburb of Manly. Mr Rath was the eldest of the siblings, all of whom attended local Catholic high schools. Mr Rath had left school in Year 10, at which time he was described as suffering from a “nervous breakdown.”² According to his treating psychiatrist, Mr Rath had a schizophrenic disorder

¹ See, e.g., P79A Report of Death to the Coroner dated 17 June 1977, 1 (SCOI.82905); Coronial findings of Coroner Ray William Henry dated 16 September 1977, 1 (SCOI.02734.00001); Statement of Alfred Barrett dated 10 August 1977, 1 (SCOI.02734.00014); Statement of Constable Ross Parry dated 10 August 1977, 1 (SCOI.02734.00009).

² Statement of Elwyn Walter Rath dated 10 August 1977, 1 (SCOI.02734.000016).

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which was treated with medication and in the months leading up to his death he had been “fairly well”.³

4. Mr Rath had previously worked at the ‘House with No Steps’ although at the time of his death he was not in paid employment and received a sickness pension.⁴ His Catholic religion was important to him and at the time of his death he was doing voluntary work as a catechist at local schools and he regularly attended church.⁵ He was known to go on walks from the family home around the local area, including sometimes to the Fairy Bower headland.⁶
5. At around 4:30pm on Wednesday, 15 June 1977 one of Mr Rath’s younger brothers, Gregory Rath (**Gregory**), saw and briefly spoke with Mr Rath at the family home on Pittwater Road in Manly where they both lived.⁷
6. A little bit later, in the early evening of 15 June, it appears that Mr Rath’s sister, Helen Colman, saw and spoke with Mr Rath when he dropped by her flat in Denison Street in Manly,⁸ which was only some 300 metres from the family home. Ms Colman thinks that Mr Rath indicated to her, on leaving her flat, that he was due to meet someone, but that he would not tell her who this person was.⁹ This is the last known sighting of Mr Rath prior to his death.
7. Ms Colman’s recollection of her brother’s visit to her house was not recorded in any note or statement until this Inquiry spoke with her, more than 45 years after the event.
8. At around 7:20am the next morning, Thursday, 16 June 1977, Mr Rath’s body was discovered wedged between rocks some distance from the base of the cliffs at Fairy Bower headland. He was dressed in a suit, the trousers of which were down at approximately mid-thigh level, exposing his underpants and upper thighs. One of his shoes, and a set of rosary beads that belonged to him were located on the rocks nearby.
9. As is noted below, injuries to Mr Rath’s body were consistent with a fall from height. Whether or not he may have received any injuries prior to such a fall is the subject of further discussion later in the submission.

³ Statement of Dr O Reichard dated 23 June 1977, 1 (SCOI.02734.00018).

⁴ Statement of Elwyn Walter Rath (n 2), 1.

⁵ Ibid.

⁶ Ibid.

⁷ Statement of Gregory John Rath dated 10 August 1977, 1 (SCOI.02734.00015); Further statement of Gregory Rath dated 16 May 2023, [4] (SCOI.82920).

⁸ Statement of Helen Colman dated 19 May 2023, [13]-[24] (SCOI.82919).

⁹ Ibid, [22].

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Findings of post-mortem examination

10. Forensic pathologist Dr Peter Russell conducted an autopsy on 18 June 1977.¹⁰
11. Dr Russell noted that there were “numerous externally obvious injuries” including: a large contusion (bruise) 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 (bone broken in at least two places) on the lower ends of the tibia and fibula (lower legs); and extensive bruising of the anterior chest wall.¹¹
12. 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.¹²
13. Blood testing was negative for alcohol. It does not appear that blood was tested for any other substances.¹³
14. It also appears that a number of bodily swabs were taken from Mr Rath on 16 June 1977, prior to the autopsy, when his body was at the City Morgue.¹⁴ A one-page forensic biology report dated 21 June 1977 records that four items were received from police 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.¹⁵
15. Dr Russell described the cause of death as “multiple injuries”.¹⁶

Persons of interest

16. No persons of interest in relation to the death were identified at the time. Ms Colman has expressed a concern that there may be some possibility that a male person known to her could have been involved in some way in Mr Rath’s death. However, it is submitted that there is insufficient evidence to conclude that any identifiable third party was involved in Mr Rath’s death.

¹⁰ Autopsy report of Dr Peter Russell dated 30 June 1977 (SCOI.02734.00010).

¹¹ Ibid, 1.

¹² Ibid, 1-2.

¹³ Toxicology report of Rodney Reece dated 23 June 1977, 1 (SCOI.02734.00011).

¹⁴ Referred to in the P79A Report of Death to the Coroner (n 1), 1.

¹⁵ Forensic Biologist report of Dr RJ Goetz dated 21 June 1977, 1 (SCOI.02734.00012).

¹⁶ Autopsy report (n 10), 1.

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Indicators of LGBTIQ status or bias

17. At the time of Mr Rath's death, the evidence that was gathered gave no indication of Mr Rath's sexuality. However, evidence obtained by the Inquiry from one of Mr Rath's siblings indicates that he had been involved in a homosexual relationship.
18. Mr Rath's youngest brother, Gregory, recalls a conversation he had with Mr Rath a year or so prior to Mr Rath's death which involved discussion of sexual matters. Gregory asked his brother whether he was gay. Mr Rath told Gregory that he was and implied that he would have sexual relations with a male friend, who he had worked with at the 'House with No Steps', on occasions when his friend stayed overnight with Mr Rath at the Rath family home.¹⁷
19. Furthermore, the location where Mr Rath's body was found can be pinpointed with some accuracy. The clifftop area above is within or very close to an area known to have been a beat from at least some point in the 1970s until the 1990s.¹⁸ There is some evidence that Mr Rath may have been aware of this fact. His sister Ms Colman recalls a conversation she had with Mr Rath a few months prior to his death, in the knowledge that he sometimes walked in the area, about the bashing of gay men that she understood had occurred at Shelly Beach and "up on the cliff". She recalls telling Mr Rath that he needn't worry, but that he should be careful in case someone approached him.¹⁹
20. The investigating officer, Constable Ross Parry, was evidently aware of the location being a beat. In his Report of Death to the Coroner dated 17 June 1977 he states as follows:

*Det Sgt Ezart of the Chatswood Scientific Branch attended the scene and due to the fact that this area is frequented by homosexuals and the deceased trousers were partly removed a precautionary anal swab was taken by Dr Fletcher on 16.6.77 at the City Morgue.*²⁰
21. However, there is no direct evidence that Mr Rath had a practice of visiting the headland area in connection with it being a beat. In the statement that Mr Rath's father made at the time of the death he states that his son would frequently walk in the Fairy Bower area as it would "relieve any frustrations he might have".²¹ His father further said that Mr Rath would sit on the clifftop at either day or night, saying the rosary with his beads either prior to going to church, or just to relax.²²

¹⁷ Further statement of Gregory Rath (n 7), [19]-[21].

¹⁸ See Exhibit 2, Tab 8, Statement of Ulo Klemmer dated 11 November 2022, [18] (SCOI.77307); Exhibit 2, Tab 1, Statement of Gary Wotherspoon dated 14 November 2022, [40]-[42] (SCOI.77300); Exhibit 6, Tab 252F, Statement of Detective Chief Inspector Pamela Young signed 13 July 2014, [1223], [1238]-[1239], [1254]-[1256], [1269] (SCOI.83088).

¹⁹ Statement of Helen Colman (n 8), [40].

²⁰ P79A Report of Death to the Coroner (n 1), 1.

²¹ Statement of Elwyn Walter Rath (n 2), 1.

²² Ibid.

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22. The question as to whether or not Mr Rath may have deliberately gone to the area because it was a beat is discussed later in the submission.

Exhibits: availability and testing

23. The P79A Report of Death to the Coroner dated 17 June 1977 describes the clothing found on Mr Rath (a suit, jumper, shirt, socks, shoes, underpants and singlet). It also states that property and clothing was destroyed on the authority of Mr Rath's mother.²³
24. Photographs taken at the crime scene appear to indicate the presence of blood on several distinct areas of the clothing.
25. As noted above at [14], a forensic biology report refers to penile and anal swabs having been taken and tested, with the penile swabs testing positive for the presence of semen.
26. These samples have not been retained.²⁴
27. At the time of Mr Rath's death, there was no DNA testing capacity available to NSW Police Force (**NSWPF**). Had either the swabs or the clothing been retained, it now would be possible to conduct DNA testing of both the clothing and swabs, to determine whether any other person's DNA could be detected. However, that possibility no longer exists.

Findings at inquest, including as to manner and cause of death

28. An inquest was conducted by Coroner Ray William Henry on 16 September 1977. The Coroner's finding was that Mr Rath died:

*between the fifteenth and the sixteenth day of 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.*²⁵

29. The Coroner also stated:

*On the evidence, there are no suspicious circumstances, and I formally find there is no prima facie case, against any person for an indictable offence. Whilst on the one hand there is evidence the dec'd under treatment from Dr. Richardt, the Drs. evidence is that earlier that month, the dec'd was quite normal, this situation is confirmed by relatives and there is other evidence, it was not unusual for the dec'd to walk in this area...*²⁶

²³ P79A Report of Death to the Coroner (n 1), 1.

²⁴ Letter from Office of the General Counsel, NSW Police Force, to Solicitor Assisting the Inquiry re: Biological articles for Paul Rath, dated 16 May 2023 (SCOI.83235); Statement of Carrie Field, Forensic Biology/DNA Laboratory, NSW Health Pathology Forensic and Analytical Science Service, dated 10 May 2023 (SCOI.83234).

²⁵ Findings of Coroner Ray William Henry (n 1), 1.

²⁶ Transcript extract, undated (SCOI.02734.00007).

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30. No person was ever charged with any offence in relation to Mr Rath's death.

Features of the original police investigation, and opportunities missed

Context - Gay hate crime on the Northern Beaches in the 1970s

31. An evaluation of the police investigation in this matter requires some broader consideration of the policing and social context of the era, now over 45 years ago. A similar point was made in recent submissions in the matter of Mark Stewart. Mr Stewart's death occurred in the same era (13 months earlier, in May 1976); it occurred at the same location; it also involved the deceased having fallen from the Fairy Bower headland; and police quickly concluded that there were no suspicious circumstances involved in the death.
32. Evidence in other matters being considered by the Inquiry suggests that some NSWPF officers investigating deaths in the late 1980s and early 1990s at times gave little or no attention to the possibility that they may have been homicides motivated by gay hate, notwithstanding that, based on the objective circumstances, there was reason to suspect that they were, or may have been, homicides of that nature. Some notable examples are deaths that involved a fall from a cliff, where the death may have been too readily assumed to have been an accident or suicide.
33. If this was the position in the late 1980s, it is submitted that there is even more reason to expect that it was also often a feature of the approach of police to such deaths in the 1970s. The Inquiry has received ample evidence of the historically low levels of acceptance of the LGBTIQ community in the general community in that era, and of the dramatic upsurge at that time of crimes committed against members of the LGBTIQ community.²⁷ Decriminalisation of homosexual conduct (by adult males) did not occur in NSW until 1984. The environment in which policing was carried out in the 1970s and well into the 1980s, it is submitted, was not conducive to the detection or pursuit of the possibility of such crimes.
34. It is undoubtedly the case that assaults of gay men occurred in various parts of the northern beaches of Sydney during the 1970s. For example, there was a well-documented instance of a gay hate homicide in a suburb near Manly in late October 1975, about 19 months prior to Mr Rath's death. That matter involved a number of young navy recruits who were convicted of the murder of a man called

²⁷ See, e.g., Exhibit 1, Tab 1, ACON, *In Pursuit of Truth & Justice: Documenting Gay and Transgender Prejudice Killings in NSW in the Late 20th Century* (Report, May 2018), 14-15 (SCOI.03667); Exhibit 2, Tab 1, Statement of Garry Wotherspoon (n 18), [107]-[118], [128]; Exhibit 2, Tab 5, Statement of Barry Charles dated 14 November 2022, [25], [44]-[52], [61]-[76], [118]-[128] (SCOI.77304).

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Phillip Jones at Curl Curl Beach, having met the victim and his friend at a hotel in Manly Vale earlier in the evening. Perceiving the men to be gay, the sailors lured them to the beach and assaulted both of them, resulting in the death of Mr Jones.²⁸

Extent of awareness among police of the possible relevance of proximity to the North Head beat

35. The extent of understanding among local police of the existence of a beat at Fairy Bower/North Head at the time appears to have been variable. In the matter of Mark Stewart, the investigating officer professed not to be aware of the beat. By contrast, the officer in charge (**OIC**) in the present matter clearly acknowledged its existence in the Report of Death to the Coroner that he signed on 17 June 1977, the day after the body was found (see above at [20]).
36. However, contemporaneous material suggests that many if not all Manly police must have been aware of the beat as of 1977. For example, a *Manly Daily* newspaper article published on 27 April 1977, about seven weeks before Mr Rath's death, refers to a "*Starsky and Hutch' beach patrol*" policing crime in the beach areas of Manly and describes how the patrol featured plain clothes officers who had, among other things, "busted homosexual activities at North Head".²⁹

The limited extent of consideration given to the possible alternative of foul play

37. Although there initially appears to have been some degree of suspicion that Mr Rath's death may have had some connection to the status of the area as a beat,³⁰ by 17 June (the day after the body was found), the OIC emphasised the words "NO SUSPICIOUS CIRCUMSTANCES", capitalised, at the end of his Report to the Coroner.³¹ This was notwithstanding the fact that as of 17 June the results of the penile and anal swabs taken on 16 June seemingly had not yet been obtained, nor had the autopsy been conducted.
38. In his statement for the coronial brief, the OIC said that he "made an examination of the ledge from where the deceased apparently fell, however, I found no notes left by the deceased or signs of a struggle".³² That is the extent of any attempt, so far as is documented, to search or inspect the vicinity

²⁸ See Exhibit 2, Tab 98, Lex Watson, 'Australian Gays Murdered in 1975', *Campaign* (Sydney) February 1976, 3 (SCOI.76852); Exhibit 2, Tab 30, Thomas Poberezny-Lynch, *We All Thought They Were Poofers': Anti-Homosexual Murder and Violence in Australia, 1970-1980* (Honours Thesis, University of Sydney, 2014), 6-8 (SCOI.76829); 'Beach body identified', *Manly Daily*, 6 March 1976, 1; '5 men jailed for "cowardly" beach death', *Daily Telegraph*, 6 April 1976, 15.

²⁹ Exhibit 12, Tab 27, '90 arrested by new police beach unit', *The Manly Daily*, 27 April 1977, 1 (SCOI.82350).

³⁰ See above at [20], [35].

³¹ P79A Report of Death to the Coroner (n 1), 1.

³² Statement of Constable Ross Parry (n 1), 1.

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of the clifftop. Where a death resulting from a fall from a clifftop had involved foul play, one would not necessarily expect to find positive evidence indicating that a struggle had taken place.

39. In addition, there does not appear to have been any canvassing of local residents, even though the location is described (accurately) as being close to the end of Bower Street in Manly.³³ Bearing in mind that Mr Rath's father was of the view that his son would ordinarily have attended church at 7:30pm,³⁴ it is also notable that there is no indication as to whether any enquiries were made at the church to see if Mr Rath had attended.
40. It is submitted that further steps which could have been taken but were not include seeking statements from a broader number of family members and friends of Mr Rath concerning any understanding they may have had of his sexuality and any habit he may have had of visiting the Fairy Bower headland as a beat. Further, the forensic pathologist could have been specifically asked for an assessment of the significance, if any, of the particular locations and patterns of the blood on Mr Rath's clothing, and an assessment as to whether any of the recorded injuries may have been caused other than by virtue of a fall.
41. It is far from clear how the possibility of foul play was so readily dismissed, other than by recognising that the social environment and policing practices of the era meant that police were unlikely to devote time and resources to considering and detecting whether a death in these circumstances may have been a gay hate homicide.

The extent of consideration given to the possible alternative of suicide

42. There is evidence suggesting that the conclusion reached by police, that the death was likely to have been the result of an accidental fall (rather than having been either a suicide, or to have involved foul play), was influenced by a sensitivity to the concerns of Mr Rath's parents in relation to either alternative conclusion.
43. In particular, there appears to have been a desire on the part of Mr Rath's parents, as devout practicing Catholics, to avoid the possibility that their son's death might be determined to have been a suicide. Such a finding would have been contrary to Catholic doctrine, which historically has considered suicide to constitute a mortal sin.

³³ See, e.g. Statement of Constable Ross Parry (n1), 1; Statement of Alfred Barrett (n 1), 1.

³⁴ Statement of Elwyn Walter Rath (n 2), 1.

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44. Gregory was only 14 years old in 1977. At the time, he was understood to have been the last person who had contact with Mr Rath. Investigating police were not aware of the later contact between Mr Rath and his sister Helen (now Ms Colman), as to which see below.
45. At 4:30pm on 15 June 1977, Gregory sought Mr Rath's assistance with removing his wetsuit after he had returned from an after-school surf at the local beach.³⁵ Gregory has told the Inquiry that, at the time, his mother told him to tell the police that Mr Rath was in a good frame of mind when he last saw him and that he held no concerns about his mental state. Gregory is of the view that his mother told him to do so in order to "protect Catholic values". As a 14-year-old, he felt obliged to do as his mother asked.³⁶
46. Gregory has told the Inquiry that in fact, in his view, his brother was not in a good frame of mind when he last saw him. Gregory recalls that his brother did not make eye contact with him and that he appeared to "have something on his mind" and be "in a deep place".³⁷ Gregory also noted that he and his mother became concerned about Mr Rath's failure to return home later that night, as he would sometimes go missing for periods of time when he had depressive episodes. Gregory is of the belief that at the time his parents in fact thought it likely that Mr Rath had taken his own life.³⁸
47. The account given at the time by Mr Rath's father, Elwyn Rath, is notable for the fact that it stresses that he was of the view that his son was in a good mood when he last saw him, that Mr Rath was clumsy, and that his reactions were affected by the medication that he took.³⁹ Elwyn Rath explicitly states "[b]oth my wife and I are certain beyond doubt that our son would not take his life as he never said or did anything to indicate this", and that "[w]hile he did suffer from nerves he was never really depressed and being a very devoted Catholic person, to take his life, would be contrary to his religious beliefs".⁴⁰
48. The tenor of Elwyn Rath's statement appears to be consistent with the concern expressed by Gregory: that his parents were at pains to avoid there being a conclusion reached that their son had taken his own life.
49. In the absence of other substantive investigation by the police, it is perhaps not surprising therefore that the OIC also supported the view proffered by Mr Rath's parents, that Mr Rath's death was an accident. In his statement, the OIC expresses the view that he could find no evidence that Mr Rath had

³⁵ Statement of Gregory Rath (n 7), 1.

³⁶ Further statement of Gregory Rath (n 7), [7].

³⁷ Ibid, [8].

³⁸ Ibid, [9]-[11].

³⁹ Statement of Elwyn Walter Rath (n 2), 1.

⁴⁰ Ibid, 1-2.

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taken his own life.⁴¹ He concludes, “in my opinion the deceased went to the Fairy Bower area at a time when it was almost dark and whilst on the ledge apparently lost his footing and fell to his death.”⁴²

50. Putting aside the possibility that foul play was involved, objectively there seems to be little to support a theory of accident over suicide, apart from the view expressed by Elwyn Rath that he and his wife did not believe that Mr Rath would have taken his own life. It is submitted that the acquiescence of the police and ultimately the Coroner in ruling out the possibility of suicide as a matter of objective likelihood, while thoughtful towards Mr Rath’s parents, is questionable.

Later Unsolved Homicide Team reviews

51. Mr Rath’s death has not been the subject of any review by the Unsolved Homicide Team.

Strike Force Parrabell

Use of the Bias Crimes Indicators Form

52. All ten indicators in the Bias Crimes Indicators Review Form (**BCIF**) were answered “Insufficient information”.⁴³
53. In the answers to two of the ten indicators (the fifth, being “Previous existence of Evidence of Bias Crime Incidents” and the eighth, being “Location of Incident”), it is acknowledged that Mr Rath’s death occurred in the vicinity of what is now known as a beat,⁴⁴ but the answers refer only to the “possibility” that at the time of his death it was also a “known beat location”.⁴⁵ However, in fact the investigating officer at the time clearly understood that the location was a beat (see the references at [20] and [35] above to his Report of Death to the Coroner), and acted on this knowledge to see that anal swabs were taken for testing, in circumstances where Mr Rath’s trousers were down at mid-thigh level.

⁴¹ Statement of Constable Ross Parry (n 1), 1.

⁴² Ibid, 1.

⁴³ Bias Crime Indicators Review Form, undated (SCOI.32131).

⁴⁴ Ibid, 10-11, 14-15.

⁴⁵ Ibid, 14-15.

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Results of Strike Force Parrabell

- (a) The “Summary of Findings” box at the end of the BCIF
54. Despite answering all ten indicators on the BCIF as “Insufficient Information”, the Strike Force Parrabell officers nevertheless classified Mr Rath’s death overall as “No Evidence of Bias Crime”.⁴⁶ As has been observed in submissions in relation to a number of other cases, such a stark and unexplained disjunction points to the likelihood of systemic classificatory confusion on the part of the Strike Force Parrabell officers.
55. Generally, the treatment of the matter in the BCIF is in keeping with the limited nature of the review conducted by Strike Force Parrabell, in that it merely repeats various portions of statements from the original investigation and does not seek to explore significant outstanding matters including Mr Rath’s sexuality.
56. It is apparent, from the material produced to the Inquiry by the NSWPF,⁴⁷ that the NSWPF, and the Strike Force Parrabell officers, were aware of Ms Colman’s concerns about the potential involvement of a man known to her in Mr Rath’s death and the possibility that this was a gay hate crime: see below at [94]. However,
- (a) the Strike Force Parrabell officers made no reference to those concerns in the BCIF; and
 - (b) it would seem (on the material produced to the Inquiry) that neither Strike Force Parrabell nor the NSWPF generally took, or have ever taken, any steps to pursue them.

(b) Case Summary

57. The Strike Force Parrabell case summary (no. 2) for this matter reads as follows:⁴⁸

Identity: Paul Edward Rath was 27 years old at the time of his death.

Personal History: Mr Rath was last seen alive by his brother at their family home the day before his death. He was in a happy mood and had never previously indicated suicidal tendencies. Mr Rath was a religious person, working as a catechist at local public schools and devoting much of his time to the Catholic Church. He worked at the ‘House with no steps’ three years before leaving with pension entitlements. Mr Rath’s parents stated that Paul often went for walks along the Fairy Bower area to calm himself and would often sit on the cliff tops to relax

⁴⁶ Ibid, 2, 18.

⁴⁷ Exhibit 6, Tab 56, Email correspondence between Craig Middleton and John Lehmann dated 16-17 June 2015 (SCOI.74113); Exhibit 6, Tab 56B, Excel spreadsheet titled ‘Possible Gay Hate Murders List’ provided to Michael Willing by Sue Thompson in about 2013 (SC01.77315); Transcript of the Inquiry, 20 February 2023, T1677.24.

⁴⁸ Exhibit 6, Tab 49, Strike Force Parrabell: Case Summaries, undated, 1 (SCOI.76961.00014).

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Location of Body/Circumstances of Death: Mr Rath's body was found between rocks at the base of the Fairy Bower cliffs, Manly about 300 metres south of a parking area. A handwritten note signed by Mr Rath was located in his pocket which read: *'God loves little children. 'Children love God with your whole heart and whole soul. Let God's light shine upon you from day to day. Let your little hearts become a replica of His. Place your faith and love in his sacred heart. And he will find a special place in heaven where you will be with Him for eternity.'*

Sexual Orientation/Psychological Health: Mr Rath's sexual orientation at the time of his death could not be confirmed. Mr Rath suffered from schizophrenia and was taking medication up until the time of his death.

Coronial/Court Findings: The Coroner found Mr Rath, *'died of the effects of multiple injuries sustained then and there when he fell accidentally onto rocks at the foot of a cliff... on the evidence, there are no suspicious circumstances, and I formally find there is no prima facie case, against any person, for an indictable offence.'*

SF Parrabell concluded there was no evidence of a bias crime

58. The case summary is broadly consistent with the BCIF completed in relation to Mr Rath's death.

(c) Academic review

59. The Flinders academic team classified Mr Rath's matter as "Insufficient Information".⁴⁹

Investigative and other steps undertaken by the Inquiry, and their outcomes

Request for coronial file

60. On 11 May 2022 the Inquiry requested the coronial file in relation to Mr Rath's death. A file of 44 pages was produced on 26 May 2022.

Attempts to locate and contact family members

61. After making contact with some of Mr Rath's siblings, on 30 November 2022, members of the Inquiry's legal team held a conference with five of Mr Rath's seven siblings: Chris, Liz and Helen (in person), and Gregory and Rosemary (over the phone).

62. On 14 December 2022, a separate conference was held with Helen Colman. Ms Colman provided a statement which includes her recollections of the last occasion she saw Mr Rath and the events following his death.⁵⁰

⁴⁹ Ibid.

⁵⁰ Statement of Helen Colman (n 8).

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63. On 16 March 2023, the Inquiry’s legal team also held a separate conference with Mr Rath’s brother Gregory. Gregory assisted the Inquiry by providing a statement containing his own recollections of his last meeting with Paul and related matters.⁵¹

Summonses issued

64. On 18 May 2022, the Inquiry issued a summons to the NSWPF for, among other things, all NSWPF investigative material, including any material held or created by the Unsolved Homicide Team, in relation to Mr Rath’s death (summons NSWPF1).⁵² On 8 June 2022, the NSWPF produced a hard copy file purportedly in relation to Mr Rath, but which erroneously was a file relating to a different deceased person. On 21 July 2022, the NSWPF produced a number of electronic documents relating to Mr Rath’s death in response to a different summons (summons NSWPF3), all of which were duplicates of material in the coronial file.
65. On 9 August 2022, the NSWPF produced a Manly Occurrence Pad entry in relation to Mr Rath’s death.⁵³ On 6 September 2022, the legal representative for the Commissioner of NSWPF emailed the Inquiry’s legal team indicating that there were no further holdings in relation to Mr Rath.⁵⁴
66. On 23 August 2022, the Inquiry issued a summons to the NSW Registry of Births, Deaths and Marriages (**BDM**) requesting Mr Rath’s birth and death certificates (summons BDM2), both of which were produced on 26 August 2022.⁵⁵
67. On 22 August 2022, the Inquiry issued a summons to NSW Health Pathology – Forensic Medicine requesting all records (including photography, CT images or notes) relating to Mr Rath’s autopsy on 18 June 1977 (summons DOFM1).⁵⁶ On 30 August 2022, the Inquiry received a USB containing a single 18-page electronic file in relation to Mr Rath, which comprised the autopsy report, toxicology report, forensic biologist report and the P79A Report of Death to Coroner.

Searches for Dr O Reichard

68. The Inquiry also made attempts to locate Dr O Reichard (believed to be Dr “Otto” Reichard), Mr Rath’s treating psychiatrist before his death. A death certificate for Dr Reichard was produced on 19

⁵¹ Further statement of Gregory Rath (n 7).

⁵² Summons to produce to NSW Police Force dated 18 May 2022 (summons NSWPF1) (SCOI.82904).

⁵³ P109 Report of Occurrence dated 16 June 1977 (SCOI.82907).

⁵⁴ Email correspondence between Office of the General Counsel, NSW Police Force, and the Solicitor Assisting the Inquiry re: Response to summons NSWPF1, dated 6 September 2022 (SCOI.82896).

⁵⁵ See Death Certificate of Paul Rath, updated 6 October 1977 (SCOI.73988).

⁵⁶ Summons to produce to Department of Forensic Medicine (summons DOFM1) dated 22 August 2022 (SCOI.82S36).

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September 2022 in response to summons BDM3, stating that Dr Reichard had died on or about 2 October 2005.⁵⁷

Professional opinions obtained

69. The Inquiry sought the opinion of expert forensic pathologist Dr Linda Iles, Head of Pathology Services at the Victorian Institute of Forensic Medicine. Dr Iles' report dated 26 October 2022 is addressed below at [101]-[113].
70. The Inquiry also sought the opinion of expert forensic psychiatrist Dr Danny Sullivan as to Mr Rath's psychiatric history and state at the time of his death. Dr Sullivan's report dated 24 October 2022 is addressed below at [114]-[116].
71. Finally, the Inquiry sought the opinion of forensic scientist Jae Gerhard as to the staining evident on Mr Rath's clothing.⁵⁸ Supplementary submissions will be prepared in relation to any matter arising after provision of Ms Gerhard's report, as required.

Other sources of information

72. The Inquiry spoke with Ross Parry, the OIC of the original investigation into Mr Rath's death on 11 May 2023. While Mr Parry had no independent recollection of Mr Rath's death or the surrounding investigation, he did confirm his understanding of the Fairy Bower headland being a location for gay men to meet in the 1970s and 1980s.⁵⁹
73. A request was also submitted to the Bureau of Meteorology on 19 September 2022 for information about the weather conditions in the Manly area from 8 to 16 June 1977. On 20 October 2022, the Inquiry received daily weather and rainfall observations for that period, as well as synoptic observations for 15 and 16 June 1977.⁶⁰

Scene visit by Inquiry officers

74. On 2 August 2022, Inquiry lawyers visited the Fairy Bower headland and North Head, with a view to pinpointing the location where Mr Rath's body was found using scene photographs taken at the time of the original investigation. It was possible to pinpoint the precise crevice, between rocks at the base of the headland, where Mr Rath's body was found. This was of assistance in the consideration of evidence relating to the likelihood or otherwise of Mr Rath falling from the cliff above this particular

⁵⁷ Statement of Caitlin Healey-Nash, Senior Solicitor Assisting the Inquiry, dated 18 May 2023, [11]-[12] (SCOI.82921).

⁵⁸ Letter of Instruction to Jae Gerhard dated 9 May 2023 (SCOI.83087).

⁵⁹ Statement of Caitlin Healey-Nash (n 57), [13]-[15].

⁶⁰ Weather, Synoptic and Rainfall Observations for Manly area for period 8-17 June 1977 (Document CAS-37787-S5G0Y9-9) dated 26 September 2022 (SCOI.82913).

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site. This visit and some of the photos taken as a result are referred to in the statement of Caitlin Healey-Nash.⁶¹

Newspaper articles

75. By searching historical copies of the *Manly Daily* newspaper, the Inquiry obtained a copy of a newspaper report published at the time of the death.⁶²

Submission as to the evidence now available

76. This part of the submission sets out key matters arising from the Inquiry's consideration of the evidence and the conclusions that it is suggested can be drawn from the evidence.

Paul Rath's background and mental health

77. Mr Rath was 27 years old when he died, having been born on 18 January 1980. He had always lived at [REDACTED] Pittwater Road in Manly with his parents and seven siblings.⁶³

78. According to his late father, Elwyn Rath, Mr Rath suffered a "nervous breakdown" in Fourth Form (Year 10), when aged 15. He then worked for three years at The 'House with No Steps'. However, he left this work as he found it depressing, and thereafter he was on a pension.⁶⁴

79. Elwyn Rath described Mr Rath as "deeply religious", and stated that he devoted himself to the Catholic Church and working as a catechist at local public schools "where he would write small pieces of prose for the children".⁶⁵

80. Mr Rath's psychiatrist, Dr O Reichard, provided a very brief report to the Coroner.⁶⁶ He had been Mr Rath's treating psychiatrist since January 1971 (when Mr Rath would have been either 20 or 21) and notes that "long before" then, Mr Rath was being treated by another psychiatrist.⁶⁷ Dr Reichard described Mr Rath's condition as a "schizophrenic disorder".⁶⁸ He stated:

He had ups and downs in his mood and condition but over the last several months he was fairly well and when last seen on 1st June, 1977, he appeared in quite good spirits and gave no special indication of any current suicidal tendencies. He has been on a moderate

⁶¹ Statement of Caitlin Healey-Nash (n 57), [4]-[8].

⁶² 'Man, 27, dies in cliff plunge', *Manly Daily*, 17 June 1977, 1 (SCOI.83078).

⁶³ Statement of Elwyn Walter Rath (n 2), 1.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Statement of Dr O Reichard (n 3), 1.

⁶⁷ Ibid.

⁶⁸ Ibid.

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*amount of tranquillizers as follows: HALOPERIDOL 1.5mg. 3 times per day and MELLERIL 25mg. 3 times per day.*⁶⁹

81. Mr Rath's brother Gregory recalls that there was a belief by some of his family that Mr Rath's "breakdown" may have come about as a result of some form of trauma suffered while at school.⁷⁰ He describes his brother's walking gait as unusual. He would keep his head down and look like he was on a mission, and for this reason people would view him as different.⁷¹ As noted at [18] above, about 12 months prior to his death, Mr Rath implied to Gregory that he had engaged in sex with a male friend on occasions.

Movements prior to death

82. In his statement, Elwyn Rath said that he last saw his son during the day on 14 June 1977, when he seemed "normal and happy".⁷² He said that on 15 June 1977 Mr Rath was due to attend a church meeting at 7:30pm, and that it was not uncommon for him to sit on the clifftop at either day or night and say the rosary with his beads prior to going to church, or otherwise just to relax.⁷³ A brief note of Elwyn Rath's oral evidence at the Inquest records him as stating that, on the day of his death, Mr Rath went down to the Corso (Manly's pedestrian mall) and "did a couple of messages".⁷⁴ The source of Elwyn Rath's knowledge about these movements is not known.
83. As noted above at [44]-[46], his brother Gregory saw Mr Rath at around 4:30pm on 15 June when Gregory returned home from surfing. He went into Mr Rath's bedroom to get his assistance to remove his wetsuit. Mr Rath was playing records when Gregory left his room.⁷⁵ He was wearing a jumper and trousers.⁷⁶ At the time of the inquest, this was the last known sighting of Mr Rath.
84. In his 1977 statement, Gregory described his brother as being in a happy mood.⁷⁷ As noted above at [44], Gregory has told the Inquiry that he made this observation because he felt some pressure from his mother to do so, but that he in fact thought something was not quite right with his brother.

⁶⁹ Ibid.

⁷⁰ Further statement of Gregory Rath (n 7), [13].

⁷¹ Ibid, [14].

⁷² Statement of Elwyn Walter Rath (n 2), 1.

⁷³ Ibid.

⁷⁴ Deposition of Elwyn Rath at inquest on 16 September 1977 (SCOI.02734.00006).

⁷⁵ Statement of Gregory John Rath (n 7), 1.

⁷⁶ When his body was found, Mr Rath was wearing a brown suit and a jumper.

⁷⁷ Statement of Gregory John Rath (n 7), 1.

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Account given by Helen Colman

85. At the time of her brother's death, in June 1977, Ms Colman was 18 years of age. She had finished her HSC at the end of 1976.⁷⁸
86. Ms Colman was at that time in a relationship with [1266] (AB), who was about 15 years older than she was, and was then a teacher at the school that her brothers had attended.⁷⁹ In February or March 1977, three or four months prior to Mr Rath's death, Ms Colman had moved into a flat with AB, in Denison Street in Manly, a distance of only about 300 metres from her family home on Pittwater Road.⁸⁰
87. Ms Colman has told the Inquiry that on the evening of 15 June 1977, Mr Rath visited her at the Denison Street flat, the first time that he had done so. She describes him as wearing a suit and closed shoes.⁸¹ They sat together in the lounge room, and Mr Rath told her that AB had phoned the Rath family home and asked that Mr Rath pass on a message to Ms Colman that he (AB) would be staying an extra night in the country town he was visiting with a friend, and that he would therefore not be home that evening as anticipated. It was necessary to have the message relayed this way as there was no phone at the Denison Street flat.⁸²
88. Ms Colman recalls that Mr Rath also told her that during his phone conversation with AB, AB had said that he wanted to meet with him (Mr Rath). She says that her brother seemed somewhat puzzled by this. At the time Ms Colman thought nothing of it, and that it was probably a friendly suggestion of a casual catch-up.⁸³
89. Ms Colman is not sure what time it was on 15 June when her brother visited, but recalls that when he left it was very dark. He was wearing a suit and closed shoes, as he usually did when attending church, but she recalls thinking that it was quite late for him to be going to church. As noted above, Mr Rath's father said in 1977 that Mr Rath had been going to attend a "church meeting" at 7:30pm.
90. Ms Colman describes her brother as being in a reflective mood, discussing his desire to get a job and move out of home so that he could attain some independence.⁸⁴ He was there for around 20 minutes. Ms Colman asked him where he was going and he said that he was going to meet someone. When Ms Colman asked who this was, Mr Rath told her that the person had asked him to keep it

⁷⁸ Statement of Helen Colman (n 8), [4].

⁷⁹ Ibid, [6]-[7].

⁸⁰ Ibid, [4].

⁸¹ Ibid, [17].

⁸² Ibid, [18].

⁸³ Ibid, [19].

⁸⁴ Ibid, [20].

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confidential.⁸⁵ She recalls going to bed soon after her brother left, as she had to make an early start in her waitressing job the next morning.⁸⁶

91. Ms Colman learned of her brother's death the next morning, 16 June 1977. Later that day, her partner AB returned home. She shared the terrible news with him. She says that AB asked her not to say anything about her interaction with Paul on the night of 15 June or about AB's phone conversation with him earlier on that day.⁸⁷ According to Ms Colman, AB said this was because he was concerned that if these matters came to light in a police or coronial investigation they would draw attention to the fact of his relationship with her and this might jeopardise his job (bearing in mind their age difference, her relatively young age and the fact that AB was a teacher at a school that two of her brothers attended).⁸⁸
92. Ms Colman says that subsequently she did not feel comfortable withholding information about her conversation with her brother. She told her mother about the conversation but was told by her parents that there was "no need to stir anything up".⁸⁹
93. AB's fears of losing his job seem to have been well-founded, as he lost his job later in 1977 when, for other reasons, their relationship became known to the school where he taught.⁹⁰
94. At the time of her brother's death in June 1977, Ms Colman was not interviewed by police or approached to make any statement to the police. In February 2013, Ms Colman did contact the family members of another man who had died at a similar location to Paul in the 1980s and pass on her concerns about AB (as referred to above at [88] and [91]).⁹¹ This information was forwarded to Sue Thompson (former NSWPF Gay and Lesbian Client Consultant) that same month, and was included in a spreadsheet provided by Ms Thompson to Michael Willing at some point in 2013, as well as to Strike Force Parrabell officers in 2015.⁹² However, no police officer has ever subsequently communicated with Ms Colman about those matters.⁹³
95. It was not until Ms Colman was contacted by this Inquiry in 2022, some 45 years after the death of Mr Rath, that her recollection of relevant events was recorded in the form of a statement. Such a

⁸⁵ Ibid, [22].

⁸⁶ Ibid, [24].

⁸⁷ Ibid, [28]-[31].

⁸⁸ Ibid, [31].

⁸⁹ Ibid, [35].

⁹⁰ Ibid, [10].

⁹¹ Ibid, [44].

⁹² Exhibit 6, Tab 56, Email correspondence between Craig Middleton and John Lehmann (n 47); Exhibit 6, Tab 56B, Excel spreadsheet titled 'Possible Gay Hate Murders List' (n 47).

⁹³ Statement of Helen Colman (n 8), [46].

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lengthy passage of time necessarily means, without any reflection whatsoever on Ms Colman, that her 2023 evidence needs to be considered with an appropriate degree of caution.

96. Since approximately 2013, as noted above, the NSWPF (and in due course Strike Force Parrabell) have been aware that Ms Colman may have had relevant information concerning AB and events surrounding her brother's death.⁹⁴ However, the police have never sought to speak to her or question her about such matters.

Location and body position

97. The scene visit made by the Inquiry, which enabled the precise spot where Mr Rath's body was found to be pinpointed, was of assistance in assessing how Mr Rath's body came to be in its resting position. Mr Rath's body position as seen in the scene photos is distinctive.⁹⁵ At first instance it may seem curious that a person would land in a seated position after a fall of this nature. However, having viewed the location where the body was found, and its lateral distance from the ledge, it seems likely that Mr Rath may have first impacted a sloping area of vegetation near the base of the cliff, before tumbling further to his position in the rocks adjacent to the vegetation. This would account for his body's resting position, as well as the fact that his body was some distance from the cliff face. Dr Iles expressed a similar view: see [105] below.
98. Further, the nature of the injuries (discussed further below) appears to be consistent with Mr Rath's legs having taken the initial impact of the fall onto the sloped area of vegetation before the body came to its resting position in the rocks near the vegetation.
99. For these reasons, it is not submitted that the distinctive body position is itself a cause of suspicion. Moreover, it is difficult to see how or why a third party would have altered Mr Rath's body position after the fall had occurred, particularly given how difficult the area would have been to access in the dark.

Weather conditions and lighting

100. 15 June is close to the shortest day of the year. Records indicate that sunset on 15 June 1977 was 4:53pm and sunrise on 16 June was 6:58am.⁹⁶ Temperatures in Sydney appear to have been in a range of approximately 17 degrees Celsius at 5:00pm on 15 June, dropping to 13 degrees Celsius overnight,

⁹⁴ Exhibit 6, Tab 56, Email correspondence between Craig Middleton and John Lehmann (n 47); Exhibit 6, Tab 56B, Excel spreadsheet titled 'Possible Gay Hate Murders List' (n 47).

⁹⁵ See scene photographs of Mr Rath (photographs 2, 3 and 4), undated (SCOI.82908).

⁹⁶ Sunrise, Sunset and Twilight Times for Manly, 15 June 1977 (SCOI.82911); Sunrise, Sunset and Twilight Times for Manly, 16 June 1977 (SCOI.83085).

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and 15 degrees Celsius at 7:30am on 16 June.⁹⁷ No rain was recorded at North Head over this period.⁹⁸

The moon was a waning crescent moon (3%), suggesting it would have been a dark night.⁹⁹

Expert report of Dr Iles

101. While allowing for changes in autopsy practice that have occurred over time, Dr Iles noted the absence of a number of matters from the original autopsy report that made review of the matter challenging.¹⁰⁰

These included:

- a. the limited description of external injuries, including ambiguity as to what was meant by the expression “old blood” issuing from the nostrils, and there being no indication of the origin of the “passive blood” identified in the right ear;
- b. that there was no description of any injuries to the fingers of both hands, despite scene photographs appearing to suggest such injuries;
- c. that there was no description of cutaneous injuries to the lower legs, the absence of which is unusual given the description of extensive comminuted fractures as described in the autopsy report;
- d. the specific location of bruising to the right upper arm not being indicated;
- e. no description of the presence or absence of anogenital injuries, or of the presence or absence of scalp bruising; and
- f. there being no comment regarding whether there was spinal injury associated with the C7 and L1 spinal fractures, this being the most serious of the injuries described.¹⁰¹

102. More generally Dr Iles observed that accurate external and internal injury descriptions, ideally documented by photos, along with relevant negative observations, are required in order to correlate injury patterns with scene findings and to thereby test propositions around injury causation and event reconstruction. She also observed that, given that Mr Rath was prescribed two antipsychotic medications that may cause sedation, toxicological analysis for drugs other than alcohol would have been advisable.¹⁰²

⁹⁷ Weather, Synoptic and Rainfall Observations for Manly area for period 8-17 June 1977 (n 60), 8-9.

⁹⁸ Ibid, 15.

⁹⁹ Dates of Primary Phases of the Moon in 1977 (SCOI.83086).

¹⁰⁰ Expert report of Dr Linda Iles received 26 October 2022, 4 (SCOI.82906).

¹⁰¹ Ibid, 5.

¹⁰² Ibid, 5-6.

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103. Dr Iles expressed the view that the nature of the lower leg fractures was in keeping with a fall from a height, with primary impact forces being directed through the feet.¹⁰³ The absence of any associated pelvic injuries was surprising and may have been overlooked.¹⁰⁴
104. Dr Iles also commented on the significance of the distinctive position in which Mr Rath's body was found. She considered it extremely unlikely that the body would have been placed in its position by persons unknown, given that Mr Rath had injuries in keeping with a fall and the difficulty in accessing the site. Absent her own analysis of the topography, she was unable to say whether Mr Rath might have landed directly in the position. A fall onto the grassy area above the rocks, followed by the body tumbling into position, could have accounted for the position.¹⁰⁵
105. Dr Iles did not consider it likely that Mr Rath could have fallen and then moved himself into his final position, as his injuries were such that he would not have had the capacity to do so after the initial impact.¹⁰⁶
106. Although qualified by whether or not the remainder of the autopsy report could be considered accurate, it appeared to Dr Iles that the spinal injuries would have been the cause of Mr Rath's death (particularly in the absence of any documented head injury other than bruising). The nature of the spinal dislocations described in the autopsy report potentially may have left Mr Rath with some degree of upper body movement. However, Dr Iles was of the view that the lack of any described intracavitary haemorrhage associated with fractures suggested that "death was rapid in onset".¹⁰⁷
107. Dr Iles cautioned that the emission of semen after death is a relatively common post mortem phenomenon, and that the detection of semen from a penile swab at autopsy (unless it is demonstrated by DNA analysis to have come from another individual) should not be interpreted as evidence of recent sexual activity.¹⁰⁸
108. What Dr Russell meant by "old blood" issuing from the nostrils was not clear to Dr Iles. She considered it possible that it was a reference to dried blood, which could have issued as a result of injuries sustained either during or prior to the fall.¹⁰⁹ Dr Iles was of the view that the bruising to Mr Rath's right eye, cheek and upper arm could have been sustained in the fall, particularly if there were "secondary impacts" in addition to the primary impact. Without knowing the particular location of the upper arm

¹⁰³ Ibid, 6, 8.

¹⁰⁴ Ibid, 8.

¹⁰⁵ Ibid, 6.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid, 6-7.

¹⁰⁸ Ibid, 8.

¹⁰⁹ Ibid, 9.

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bruising, it was not possible for her to reach a view as to whether or not this could be considered suspicious.¹¹⁰

109. Dr Iles observed that the lowered trouser position may have been a prompt for the penile and anal swabbing that occurred, but that the incomplete nature of the autopsy examination made it difficult to determine the significance of the trouser position. In particular, there was no recorded observation as to whether the trousers were fastened or loose or tight fitting. Nor was there any documented detailed anogenital examination. She expressed the view that on first principles, the trouser position should have been a prompt for a more thorough examination at the scene and at autopsy.¹¹¹
110. Dr Iles also made note of the fact that the scene photographs appear to indicate a degree of injury to Mr Rath's fingers. While she acknowledged that a spectrum of injuries could occur in a fall, she again observed that the lack of any detailed documentation of the nature of these injuries made it difficult for her to make any meaningful comment on them.¹¹²
111. Apart from the very limited nature of the documented autopsy examination, the primary matter of concern noted by Dr Iles was the staining that can be seen in the scene photographs of various areas of Mr Rath's clothing, which she states is likely to be blood, dirt, or a combination of both. She expressed that view as follows:
- The staining of Mr Rath's clothing, in my view, particularly if the staining is due to blood, is the most concerning element of the materials under review. It is out of keeping with the scene and circumstances as described, along with autopsy findings as documented. As above, it is strongly recommended that these photographs be reviewed by a forensic biologist.*¹¹³
112. Consequently, the Inquiry has sought a report from a forensic scientist, Ms Gerhard, in order to address the concern identified by Dr Iles. Ms Gerhard's report will be tendered at a later date, along with supplementary submissions.
113. Dr Iles was of the view that the cause of death could reasonably be described as "spinal injuries sustained in a fall from a height".¹¹⁴ However, she noted that cause of death does not imply manner of death. Based on the medical evidence, it was not possible to distinguish between whether the fall was due to accident, suicide or homicide.¹¹⁵

¹¹⁰ Ibid.

¹¹¹ Ibid, 9-11.

¹¹² Ibid, 10.

¹¹³ Ibid, 8.

¹¹⁴ Ibid, 10.

¹¹⁵ Ibid.

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Expert report of forensic psychiatrist Dr Danny Sullivan

114. The Inquiry obtained a report from forensic psychiatrist Dr Danny Sullivan in relation to Mr Rath's diagnosis, medications and likely cause of death.¹¹⁶ In his report dated 24 October 2022, Dr Sullivan noted that relevant information in relation to Mr Rath's condition was sparse and lacked detail, but observed that he had no basis to dispute Mr Rath's treating psychiatrist's diagnosis of schizophrenia.¹¹⁷
115. Dr Sullivan observed that Mr Rath's medications (haloperidol and thioridazine) had been prescribed in moderate and low doses respectively. He noted that the side effect of "restless legs" can be a common effect of haloperidol in particular, and that the medications would have led to stability in mood and functioning. They would have also resulted in a degree of sedation and reduced facial movement, and would possibly have slowed Mr Rath's reactions. However, without reference to Mr Rath's symptoms, Dr Sullivan could not comment further on the likely effect of the medications.¹¹⁸
116. Dr Sullivan noted that speculation about Mr Rath's behaviour at the time of his death is limited by the paucity of relevant material. As a consequence, his discussion of the possible alternative causes of death is necessarily limited and inconclusive. He did not think that any particular conclusions could be drawn from the presence of the rosary beads or the note in Mr Rath's pocket, as the presence of such items would appear to have been usual for Mr Rath.¹¹⁹

The suggestion of the possible involvement of a known third party

117. Ms Conlon's recent statement to the Inquiry includes the suspicion on her part that AB may have been back in Sydney earlier than he had suggested, and that he might have been the person whom Mr Rath had said he was going to meet on the evening of 15 June 1977. On her account, AB dissuaded Ms Colman from making known to others both that her brother had visited her that evening, and that he (AB) had spoken to Mr Rath on the phone prior to that visit. His motivation for doing so was said to have been to avoid the possibility that his relationship with the 18-year-old Ms Colman would become known to school authorities.
118. However, it is submitted that these concerns and suspicions on the part of Ms Colman do not provide a sufficient basis for a conclusion or finding that AB had any involvement in the circumstances of Mr Rath's death.

¹¹⁶ Letter of instruction to Dr Sullivan dated 30 September 2022 (SCOI.82912).

¹¹⁷ Expert report of Dr Danny Sullivan dated 24 October 2022, 3 (SCOI.82895).

¹¹⁸ Ibid.

¹¹⁹ Ibid, 4.

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Consideration of alternative hypotheses

a) The possibility of suicide

119. At the time of the original investigation in 1977, it appears that a high level of significance was placed on the account of Elwyn Rath as to Mr Rath's "happy" and "normal" disposition in the lead-up to his death. Additionally, Gregory's account at that time that his brother appeared to be happy, made at the urging of his mother, evidently contributed to the original dismissal of the possibility of suicide.
120. That said, there is no clear indication that Mr Rath was contemplating suicide in the lead up to his death. The most that can be said is that Gregory, then 14 years old, "felt like something was wrong" with his brother on the afternoon of 15 June,¹²⁰ and that Ms Colman, who saw her brother a little later that evening, thought that he was in a contemplative mood about his life more generally.¹²¹
121. Apart from confirming that Mr Rath evidently had a significant long term mental disorder (schizophrenia), there is limited information, in the brief report prepared by Mr Rath's treating psychiatrist, that assists in evaluating the likelihood that Mr Rath may have died by suicide.
122. It is submitted that the possibility that Mr Rath deliberately took his own life cannot be ruled out. This is particularly so given the evidence that has come to the Inquiry's attention suggesting that the information provided to the original investigation painted a more optimistic picture of Mr Rath's mood than was justified, and given that the alternative possibilities of accident or foul play also cannot be positively established.

b) The possibility of accident

123. It is submitted that there is no compelling evidence pointing to the likelihood that Mr Rath's death was an accident. Elwyn Rath's references to his son being clumsy, complaining of aching legs and having slowed reactions find support in the observations Dr Sullivan has made about the potential effects of the anti-psychotic medication that Mr Rath took. However, his father also observed that it was a location that his son was familiar with and would regularly visit, and it would therefore seem likely that the terrain would have been familiar to him.
124. Given the position of Mr Rath's trousers, one speculative possibility is that Mr Rath could have been masturbating or urinating at the time of his fall. If so, a further speculation might be that that might have rendered an accidental fall more likely. However, such speculations are essentially fruitless. It is

¹²⁰ Further statement of Gregory Rath (n 7), [8].

¹²¹ Statement of Helen Colman (n 8), [20].

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submitted that, as with the possibility of suicide, the possibility of an accident also cannot be ruled out, particularly in the absence of a clearly established alternative.

c) The possibility of foul play

125. No evidence was located at the clifftop indicative of a struggle or assault having taken place there. It is suggested, however, that very little weight can be given to the absence of such evidence in circumstances where such a death can readily be effected by a simple push and where the autopsy report may not have adequately documented any external injury.
126. The combination of the fact that Mr Rath's trousers were at mid-thigh level and the known status of the location as a beat was sufficient for the police, in conjunction with a doctor at the morgue, to decide that it was appropriate to take anal and penile swabs from Mr Rath. It would appear that, at that stage, police entertained some suspicion that Mr Rath may have been engaged in a sexual act at the time of his death and that another person may have been present.
127. In summary, features of this matter that suggest the possibility that Mr Rath may have been the victim of foul play are as follows:
 - a. the absence of particularly compelling evidence in support of alternative hypotheses;
 - b. the fact that the death occurred in the vicinity of a beat;
 - c. evidence concerning Mr Rath's sexuality that indicates the possibility that Mr Rath may have been visiting the location because it was as a beat;
 - d. the possibility, based on Ms Colman's account, that Mr Rath had arranged to meet a person at or near the location;
 - e. the possibility, based on the position of his trousers where he came to rest, that Mr Rath may have had his pants lowered prior to falling from the cliff, and that this occurred either while he was present with another person, or that someone approached him having seen Mr Rath in that state of undress; and
 - f. the many uncertainties concerning the pattern of (what is likely to be) blood that was on Mr Rath's clothing, and the possibility that these were the product of an act of violence that occurred prior to Mr Rath falling from the cliff.

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Submission as to bias

128. In light of the uncertain state of the evidence as to the circumstances of Mr Rath's death, it is submitted that it is not possible to determine whether Mr Rath's death was a homicide, and therefore it is not possible to determine whether it was the result of a LGBTIQ hate crime, although it may have been.

Submission as to manner and cause of death

129. As to cause of death, Dr Iles suggests that an appropriate description would be "spinal injuries sustained in a fall from a height" and it is submitted that this should be adopted in preference to the Coroner's more general finding of "multiple injuries".

130. As to manner of death, the evidence available to the Inquiry is insufficient to support a positive finding preferring any one of the three possibilities namely suicide, accident or foul play.

131. It is submitted therefore that the Coroner's finding, that the death was the result of an accident, should not be adopted by the Inquiry.

132. Accordingly, it is suggested that the Inquiry should find that Mr Rath died on 15 or 16 June 1977 as a result of spinal injuries sustained in a fall from a height, the cause of which cannot be determined.

Submission as to recommendations

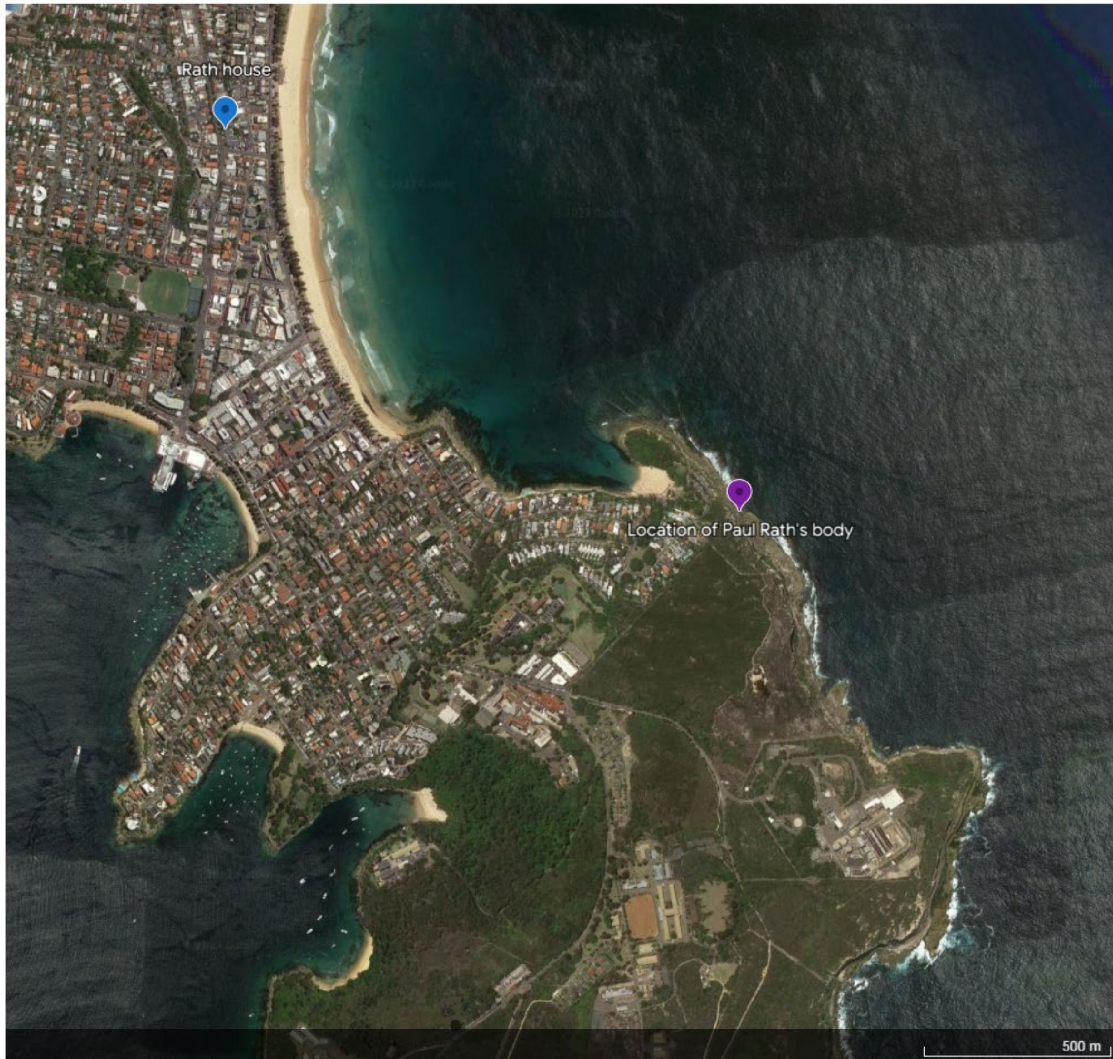
133. There are no proposed recommendations arising from the matter.

Peter Gray SC

William de Mars

Counsel Assisting

Annexure A



Map showing location of the Rath house and Mr Rath's body.

Source: Google Earth