



Special Commission of Inquiry into LGBTIQ hate crimes

6 June 2023

Professor Alison Jones
 Director of Medical Education
 Fiona Stanley and Fremantle Hospital Groups
 PERTH WA 6160

By email: [REDACTED]

Dear Professor Jones,

Special Commission of Inquiry into LGBTIQ hate crimes: Samantha Rose

I assist the Honourable Justice John Sackar in the Special Commission of Inquiry into LGBTIQ hate crimes (“the Inquiry”). Christine Melis, of counsel, and Aleksandra Jez, senior solicitor, are assisting the Commissioner in his consideration of the death of Samantha Rose. Thank you for your willingness to provide an expert report to the Inquiry from the perspective of a clinical toxicologist.

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 August 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 death sin 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

Ms Rose’s death is one of the unsolved deaths which his Honour is inquiring into pursuant to item A of the Letters Patent. On 22 December 1998, Ms Rose was found deceased in her home in Kensington. Her estimated time of death was between the afternoon of 20 December 1997 and the morning of 21 December 1997. On 18 November 1999, Deputy State Coroner John Abernethy found that Ms Rose died on 20 December 1997 due to head injuries inflicted by a person unknown.

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One key person of interest in relation to Ms Rose's death is Sandra Durward (date of birth, 6 April 1955). Ms Durward died on 12 March 2006. Ms Durward had extant substance abuse issues and no stable accommodation at the time of Ms Rose's death. There is evidence of her drinking almost every day and some documented instances of aggression and violent outbursts in the lead up to Ms Rose's death. Relevantly, there is also some evidence before the Inquiry that Ms Durward consumed methylated spirits on a number of occasions.

By this letter, you are briefed to prepare a written report in relation to the cognitive impacts of the consumption of methylated spirits. It is requested that you provide your report no later than **3 July 2023**. In the event that you require further time to prepare your report, please advise Ms Jez as soon as possible.

Assumed facts

To assist you in the preparation of your report, you are provided with the following assumed facts, including in relation to the limited evidence the Inquiry has received regarding Ms Durward's consumption of methylated spirits:

1. Ms Rose was born on 26 April 1956. Ms Rose was a transgender woman and given the name David Rose at birth. She was found deceased in her home in Kensington on 22 December 1997. Her time of death was estimated to be between the afternoon of 20 December 1997 and 21 December 1997.
2. Ms Rose told a friend, Ms Marcia Vagg, that she threw Ms Durward out of her apartment on one occasion after she "caught her [Ms Durward] drinking turps or metho, and she had put cordial in it."¹
3. Donna Devitt, a mutual friend of Ms Durward and Ms Rose, recalls a conversation she had with Ms Rose who told her "[s]he mentioned that [s]he noticed [her] bottles of methylated spirits disappearing but it didn't make sense until [s]he realised that Sandra was drinking it obviously because of her drinking problems."²
4. Ms Durward was called as a witness in the coronial proceedings into Ms Rose's death. During cross-examination, Ms Durward conceded that she had consumed methylated spirits on two occasions.³ On one of these occasions, Ms Durward mixed methylated spirits with cordial. No further details as to the quantity or frequency of her consumption were provided.

Material with which you are briefed

For the purpose of preparing your report, you are briefed with the documents contained in the **enclosed** index. The material contained in the index has been extracted from the NSWPF investigation file and the court file from the Coroners Court of NSW.

If there is any additional material that you consider would be of use to you in forming your opinion, please contact Ms Jez and this material 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) Please outline the manner in which methylated spirits or 'turps' are absorbed and metabolised, including any cognitive effects of oral consumption. In addressing this matter, please also comment on:

¹ Statement of Marcia Vagg dated 31 December 1997, [19].

² Statement of Donna Ann Devitt dated 5 January 1998, [9].

³ Transcript of coronial inquest on 19 August 1999, T46.33.

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- (a) The immediate and longer-term effects of oral consumption, with reference to the requisite quantities and frequencies of consumption for those effects to occur;
 - (b) The impact of oral ingestion on memory recall; and
 - (c) Whether mixing methylated spirits with cordial would affect the degree to which a person is impacted by consumption.
- (2) The estimated toxicity of methylated spirits; and
- (3) Any other matter arising, not addressed in response to (1)-(2), on which you wish to express an opinion.

I also request that you please attach a detailed curriculum vitae to your report.

Expert Code of Conduct

I **enclose** a copy of the Expert Code of Conduct and ask that you read it carefully. In the report you should acknowledge that you have read the Code and agree to be bound by it. I suggest the following form of words be included in the body of your report:

“I, Professor Alison Jones, 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.

Conclusion

Please do not hesitate to contact Aleksandra Jez, Senior Solicitor on [REDACTED] or Kate Lockery, Principal Solicitor on [REDACTED] if you have any queries in relation to this matter.

Yours faithfully,



Aleksandra Jez
Senior Solicitor
Solicitor Assisting the Inquiry

Encl. (2)



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Index to Brief to Professor Alison Jones

As at 6 June 2023

TAB	DOCUMENT	DATE	SCOI REFERENCE
Statements			
1.	Statement of Marcia Vagg	31 December 1997	SC01.00041.00049
2.	Statement of Donna Devitt	5 January 1998	SC01.00041.00056
Transcript			
3.	Transcript of coronial inquest	19 August 1999	SCOI.83318

Uniform Civil Procedure Rules 2005

Current version for 11 November 2022 to date (accessed 6 June 2023 at 11:24)

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.