



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 Wendy Waine

As you are aware, I assist the Honourable Justice John Sackar in the Special Commission of Inquiry into LGBTIQ hate crimes (“the Inquiry”). Kathleen Heath, of counsel, and Caitlin Healey-Nash, solicitor, are assisting his Honour in his consideration of the death of Wendy Waine (“Ms Waine”).

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

Ms Waine’s death is one of the unsolved deaths which his Honour is inquiring into pursuant to item A of the Letters Patent. On 30 April 1985, Ms Waine’s body was located in the bedroom of her unit at [REDACTED] Darlinghurst Road, Darlinghurst (“the unit”). She was 35 years old. At inquest, the Coroner found that

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Ms Waine had died on 29 April 1985 “of the effect of a bullet wound of the neck and thorax inflicted there and then by a person unknown”.¹ To date, no persons have been arrested in connection with Ms Waine’s death.

By this letter, you are briefed to prepare a written report in relation to Mr Stewart’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. 4) 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 Ms Waine. 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. Ms Waine was born on 26 July 1949. She was a transgender woman who worked in and around Darlinghurst as a drag performer and sex worker.
2. Ms Waine was seen in the early hours of Monday, 29 April 1985 soliciting at Premier Lane in Darlinghurst. At around 3.15am, another sex worker, [I227] saw Ms Waine walking towards her unit with a male client.² At around 3.45pm on 29 April 1985, Ms Waine’s friend [I232] attended the unit and found Ms Waine’s front door slightly open. [I232] knocked but received no answer.³
3. At around 7.45pm, another resident, Michael McCarthy, saw a woman outside Ms Waine’s unit who he believed to be soliciting. His description is vague, and while broadly consistent with the description of Ms Waine, it cannot be confirmed that this was in fact Ms Waine.⁴
4. At around 9.00pm, Ms Waine’s friend [I242] attended the unit and found the front door open and living room light on. [I242] rang the doorbell and peered into the living room, but did not receive a response. [I242] walked past Ms Waine’s unit again at 11.00pm and saw that the front door was still open.⁵
5. At 11.15pm, Ms Waine’s friend [I239] also walked past the unit and saw that Ms Waine’s light was on and door slightly open.⁶
6. At around midday on Tuesday, 30 April 1985, Ms Waine’s friend [I230] went to the unit to check on Ms Waine, after not hearing from her since Sunday evening. [I230] noticed that Ms Waine’s front door was open about 10 inches, and that her heating and television were on. [I230] eventually found Ms Waine lying face down and naked on the side of the bed.

¹ Inquest findings of Coroner GC Glass dated 18 September 1986 (Tab 5).

² Statement of [I227] dated 30 April 1985, at [3] (Tab 11).

³ Interview of [I232] on 1 May 1985 (Tab 14).

⁴ Statement of Michael Francis McCarthy dated 7 May 1985, at [3] (Tab 17).

⁵ Statement of [I242] dated 30 April 1985, at [3] (Tab 13).

⁶ Statement of [I239] dated 3 May 1985, at [11] (Tab 15).

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7. Officers from Paddington Police Station and the Ballistics Unit attended the scene shortly afterwards and conducted a review of the crime scene. Their findings are at **Tabs 9 and 10** of your brief.
8. Dr Thomas Oettle conducted an autopsy on Ms Waine's body at 7.40pm that evening. A copy of the autopsy report and autopsy photographs are at **Tabs 4, 6 and 7** of your bundle.

Cause of death

9. Upon examination at the crime scene, First Class Constable Raymond Constable from the Ballistics Unit noted two bullet wounds to Ms Waine's body: one to Ms Waine's back and one to the base of her skull. He considered that the bullet wounds were consistent with a large calibre projectile, with the muzzle of the weapon held in contact with the skin at the time of discharge. The fired cartridge cases had been removed from the scene by the offender.⁷
10. At autopsy, Dr Oettle found the cause of death to be bullet wounds to the neck and thorax. Dr Oettle also recorded a third bullet entry and exit wound on Ms Waine's left hand.⁸ The officer in charge, Detective Sergeant Stephen McCann, considered that this wound was "consistent with it having been in line with the trajectory of either projectile".⁹ A bruise to the left side of the skull and a recent subarachnoid haemorrhage were also found by Dr Oettle.

Time of death

11. Dr Oettle estimated time of death as one day prior to examination (i.e. around 7.30pm on Monday, 29 April 1985). He noted that the liver, spleen and pancreas showed early decomposition change. Further, Ms Waine's stomach was full of partly digested food (likely large pieces of steak and vegetables), which had not passed the pylorus.¹⁰
12. Based on witness statements (outlined at p. 2, [2]-[5]), investigating police considered time of death to be between 7.45pm and 9.00pm on Monday, 29 April 1985.

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 and the NSW Police Force investigation file.

Please note that the briefing materials contain sensitive images. The relevant tabs of your briefing material have been marked in **red**.

If there is any additional material that you consider would be of use to you in forming your opinion, please contact Ms Healey-Nash 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:

⁷ Statement of First Class Constable Raymond Constable dated 4 May 1986 (**Tab 10**).

⁸ Autopsy report of Dr Thomas Oettle dated 15 October 1985 (**Tab 4**).

⁹ Statement of Detective Sergeant Stephen Desmond McCann dated 22 July 1986, at [5] (**Tab 8**).

¹⁰ Autopsy report of Dr Thomas Oettle dated 15 October 1985 (**Tab 4**).

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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 Ms Waine'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 Ms Waine.
3. The time of Ms Waine's death.

Without limiting the matters which you may consider relevant to this question, please outline:

- a. Whether you agree with the estimated time of death expressed in the original autopsy report. Why/why not? What factors relevant to Ms Waine's death impact upon the precision with which time of death can be estimated?
 - b. If it is possible that Ms Waine died prior to the alleged sighting by Mr McCarthy at 7.45pm on Monday, 29 April 1985. Why/not?
4. The location and nature of gunshot wounds found on Ms Waine's body.

Without limiting the matters which you may consider relevant to this question, please outline your views regarding:

- a. The entry and exit wounds found on Ms Waine's left hand;
 - b. Whether two or three bullets (or a different number) likely caused the three wounds to Ms Waine's neck, back and hand; and
 - c. Whether you agree with the opinion of the officer in charge that the wound to the left hand was consistent with it having been in line with the trajectory of either of the bullets to the neck and back? Why/why not?
5. Please provide any other comment, within your expertise, which you consider to be relevant to the manner and cause of Ms Waine's death.

The above questions are not intended to be exhaustive. Accordingly, if there is any matter arising from the circumstances of Ms Waine'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 [REDACTED] or [REDACTED] 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. (3)



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 Wendy WAINÉ

INDEX TO EXPERT BRIEF TO DR ILES

(as at 5 October 2022)

Tab	Document	Date	Reference No
VOLUME 1			
Formal Documents			
1.	P79A – Report of Death to Coroner	30 April 1985	SCOI.10040.00005
2.	Forensic biology report	22 May 1985	SCOI.00014.00020
3.	Toxicology report	27 May 1985	SCOI.00014.00015
4.	Autopsy report	15 October 1985	SCOI.00014.00022
5.	Inquest findings	18 September 1986	SCOI.00014.00001
Photographs			
6.	Crime scene photographs [sensitive]	Undated	SCOI.00014.00024
7.	Further crime scene and autopsy photographs [sensitive]	Undated	SCOI.00014.00026
Statements of NSW Police Officers			
8.	Statement of Detective Sergeant Stephen Desmond McCann (officer in charge)	22 July 1986	SCOI.00014.00008
9.	Statement of Senior Constable Stephen Mark Coles	30 April 1985	SCOI.00014.00013
10.	Statement of First Class Constable Raymond Constable	4 May 1986	SCOI.00014.00017
Statements and interviews of witnesses			
11.	Statement of [I227]	30 April 1985	SCOI.00014.00018
12.	Statement of [I230]	30 April 1985	SCOI.00014.00011
13.	Statement of [I242]	30 April 1985	SCOI.00014.00016
14.	Interview of [I232]	1 May 1985	SCOI.10040.00063
15.	Statement of [I239]	3 May 1985	SCOI.10040.00081
16.	Interview of Dr David Bennett	3 May 1985	SCOI.10040.00080

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Tab	Document	Date	Reference No
17.	Statement of Michael Francis McCarthy	7 May 1985	SCOI.00014.00009
18.	Statement of Anthony Leslie Reid	7 May 1985	SCOI.00014.00010