



Special Commission of Inquiry into LGBTIQ hate crimes

19 May 2023

Frank Lawton
PO Box 196
Montrose VIC 3765

By email: [REDACTED]

Dear Mr Lawton,

Special Commission of Inquiry into LGBTIQ hate crimes

I assist the Honourable Justice John Sackar in the Special Commission of Inquiry into LGBTIQ hate crimes (“the Inquiry”). Kathleen Heath of counsel and Rhys Carvosso, Solicitor, are assisting his Honour in his consideration of the death of Wendy Waine (“Ms Waine”).

Thank you for your willingness to provide an expert report to the Inquiry from the perspective of a ballistics expert.

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 on Darlinghurst Road, Darlinghurst. She was 35 years old. At inquest, the Coroner found that Ms Waine had died on 29 April

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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 Ms Waine’s death to assist the Inquiry. It is requested that you provide your report by no later than **29 May 2023**. In the event that you require further time to prepare your report, please advise Mr Carvosso as soon as possible.

Background

To assist you in the preparation of your report, you are provided with the following background information in relation to 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] [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.
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.

¹ Inquest findings of Coroner 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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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.

Time of death

9. 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.⁷
10. Based on witness statements, investigating police considered time of death to be between 7.45pm and 9.00pm on Monday, 29 April 1985.

Cause of death

11. Upon examination at the crime scene, First Class Constable Raymond Constable from the Ballistics Unit noted:⁸

"From my examination of the bedroom I am of the opinion that the deceased was lying naked, face down on the bed and the first shot fired was either in the back or the neck, the bullet exiting the deceased and travelling through the bedspread stopping at the blanket. The deceased was then pushed off the left side of the bed onto the floor and the second shot discharged into the body. The offender then partially removed the bedspread to where the bullet had stopped at the blanket and removed it. The deceased was then dragged rearwards on the carpet and the bullet believed to be beneath [her] was recovered. A search was made of the room and the fired cartridge cases were found and all of these items removed from the scene by the offender, who then left the premises."

12. At autopsy, Dr Oettle found the cause of death to be two bullet wounds to the neck and thorax. A bruise to the left side of the skull and a recent subarachnoid haemorrhage were also found by Dr Oettle.

Third entry and exit wound

13. Dr Oettle also recorded a third entry and exit wound on Ms Waine's left hand.⁹ He provided no opinion as to whether the third gunshot wound to the left hand was caused by a third bullet, or alternatively was a secondary injury caused by the re-entry of a bullet from one of the first two wounds.
14. 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".¹⁰
15. Dr Iles, a forensic pathologist briefed by the Inquiry, favours the explanation of this wound being caused by a third bullet, rather than being a re-entry wound from a projectile related to the gunshots causing the neck and thorax wounds.¹¹ Dr Iles notes the "apparent circular entry wound"

⁷ Autopsy report of Dr Thomas Oettle dated 15 October 1985 (Tab 4).

⁸ Statement of First Class Constable Raymond Constable dated 4 May 1986 (Tab 10).

⁹ Autopsy report of Dr Thomas Oettle dated 15 October 1985 (Tab 4).

¹⁰ Statement of Detective Sergeant Stephen Desmond McCann dated 22 July 1986, at [5] (Tab 8).

¹¹ Expert report of Dr Linda Iles (Forensic Pathologist) dated 28 October 2022 (Tab 22).

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with “notable blackening” around its margins, which she considered to be suggestive of “bullet wipe” (lubricant, gun barrel residue located on the outer surfaces of a bullet).

16. Although Dr Iles notes that “drying artefact” around a penetrating wound can also give the appearance of blackening similar to bullet wipe, such that the possibility of the hand wound being a secondary entry wound cannot be excluded, she considers the wound to be “more suggestive” of a third gunshot entry wound.
17. Given the absence of stippling or muzzle abrasion in the photograph, she considers the third to be a “distant” or “indeterminate pathological range” gunshot.

Calibre of murder weapon

18. In a police running sheet dated 3 May 1985,¹² authored by “Sandeman/ Constable” of the Ballistics Unit, the opinion is expressed that the wounds are consistent with having been caused “by large calibre projectiles possible .45 calibre.”
19. A photograph taken at autopsy shows a pair of hands holding a black pistol close to the entry wound of gunshot B.¹³ The shape of the muzzle appears to be consistent (at least approximately) with the muzzle abrasion on Ms Waine’s back. There is no record as to the make or model of the firearm being held in the photograph.

Exhibits retained and not retained

20. No fired bullets or cartridge cases were recovered by police. However, on 14 September 2022 the NSW Police Force (“NSWPF”) produced a “J85-267 Ballistics Case File” and “J85-267 Ballistics Scene Photos” (at **Tabs 20** and **21** of your bundle, respectively).
21. The NSWPF also produced a photograph of a pink and blue single-sized flannelette flat sheet, said to have been held by the Ballistics Unit.¹⁴ It appears from crime scene photographs¹⁵ that this may be the flannelette that covered Ms Waine’s bed. There is no police statement recording the collection of this flannelette. A review of the ballistics file does not indicate what examinations, if any, were conducted on the exhibit.

Materials with which you are briefed

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

Please note that the briefing material contains 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 Mr Carvosso and this material will be provided to you (if available).

¹² J85-267 Ballistics Case File, p. 13 (Tab 20).

¹³ Autopsy photographs, pp. 6, 19 (Tab 7).

¹⁴ Photograph of flannelette sheet, undated (Tab 19).

¹⁵ Crime scene photographs (Tab 6).

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Matters to be addressed in your report

I would be grateful if you could address the following matters in your report, having regard to the material with which you are briefed and to the extent that they are matters which fall within your expertise:

1. The likely calibre of the weapon used to shoot Ms Waine;

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

- a) Whether you agree with Constable Raymond Constable's opinion 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? Why/why not?
 - b) Whether you agree with the opinion that the wounds are consistent with having been caused "by large calibre projectiles possible .45 calibre"? Why/why not?
 - c) What make and/or model of firearm is pictured in the photograph taken at autopsy.
2. The number and trajectory of fired bullets;
 3. The position of the shooter(s) and victim at the time of discharge;
 4. Whether any (and if so, what) testing is possible on the flannelette sheet produced by police for gunshot residue or any evidentiary material;
 5. Any recommendations for further investigations with respect to determining the manner and cause of Ms Waine's death; and
 6. Please provide any other comment, within your expertise, which you consider to be relevant to the manner and cause of Ms Waine's death.

In answering the above questions, please comment where appropriate upon the opinions expressed by investigating officers at the time of the original police investigation.

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 the Commissioner, please do so.

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

Expert Code of Conduct

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

"I, Mr Frank Lawton, 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."

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Please do not hesitate to contact me at [REDACTED] or on [REDACTED] if you have any queries in relation to this matter.

Thank you for your consideration and assistance.

Yours faithfully,

Rhys Carvosso
Solicitor
For Solicitor Assisting the Inquiry

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 MR LAWTON (as at 19 May 2023)

Tab	Document	Date	Reference No
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.82948
7.	Autopsy photographs [sensitive]	Undated	SCOI.82934
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 [redacted] I227	30 April 1985	SCOI.00014.00018
12.	Statement of [redacted] I230	30 April 1985	SCOI.00014.00011
13.	Statement of [redacted] I242	30 April 1985	SCOI.00014.00016
14.	Interview of [redacted] I232	1 May 1985	SCOI.10040.00063
15.	Statement of [redacted] I239	3 May 1985	SCOI.10040.00081
16.	Interview of Dr David Bennett	3 May 1985	SCOI.10040.00080
17.	Statement of Michael Francis McCarthy	7 May 1985	SCOI.00014.00009
18.	Statement of Anthony Leslie Reid	7 May 1985	SCOI.00014.00010

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Tab	Document	Date	Reference No
NSW Police ballistics evidence			
19.	Photograph of flannelette sheet	Undated	SCOI.82929
20.	J85-267 Ballistics Case File	Various	SCOI.82952
21.	J85-267 Ballistics Scene Photos	Undated	
Expert reports			
22.	Expert report of Dr Linda Iles (Forensic Pathologist)	28 October 2022	SCOI.82960