



Special Commission of Inquiry into LGBTIQ hate crimes

20 March 2023

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 in relation to the death of Kenneth Richard Brennan

As you are aware, I assist the Honourable Justice John Sackar in the Special Commission of Inquiry into LGBTIQ hate crimes ("the Inquiry").

The Inquiry

By way of background, on 13 April 2022 the Governor of NSW, by Letters Patent, issued a commission to his Honour to inquire into and report on historical LGBTIQ hate crimes. Specifically, the Letters Patent require his Honour to inquire into and report to the Governor and Premier on the following matters by 30 June 2023:

- A. The manner and cause of death in all cases that remain unsolved from the 88 deaths or suspected deaths of men potentially motivated by gay hate bias that were considered by Strike Force Parrabell; and
- B. The manner and cause of death in all unsolved suspected hate crime deaths in New South Wales that occurred between 1970 and 2010 where:
 - i. the victim was a member of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community; and
 - ii. the death was the subject of a previous investigation by the NSW Police Force.

Request for expert opinion

Mr Kenneth Richard Brennan was a teacher who was found stabbed to death on 12 June 1995 in his ransacked apartment in Elizabeth Bay. He suffered 15 stab wounds to the chest and arms during what appeared to be a frenzied attack.

Special Commission of Inquiry into LGBTIQ hate crimes

Mr Brennan was last seen alive about 10:00pm the previous night at the Oxford Street Cellars, after attending the King Steam Sauna on Oxford Street. Mr Brennan's death is one of the unsolved deaths which his Honour is inquiring into pursuant to item A of the Letters Patent.

By this letter, you are briefed to prepare a written report in relation to Mr Brennan's death to assist the Inquiry. It is requested that you provide your report by no later than **Monday, 3 April 2023**. In the event that you require further time to prepare your report, please advise Hermione Nicholls 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 questions 1 to 4 (at pp. 3-5) below and provide Ms Nicholls 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 Mr Brennan. This information is provided by way of summary only and should not be treated as a comprehensive record or a substitute for your own review of the materials.

1. Mr Brennan (born 6 October 1941) was found dead in the apartment (at [REDACTED] Onslow Avenue, Elizabeth Bay), which he shared with his long-term partner [NP215], shortly after 5:20pm on Monday, 12 June 1995 by [NP215].
2. On the evening of Saturday, 10 June 1995, Mr Brennan and [NP215] had travelled to the home of a recent acquaintance, [NP214] at which time the three men had had sex. Mr Brennan returned home that evening at approximately 10:00pm, citing fatigue, while [NP215] stated that he remained with [NP214] until he returned home two days later to discover Mr Brennan's body.
3. On the morning of Sunday, 11 June 1995, Mr Brennan had retrieved various voicemail responses to an advertisement for sex placed in "Capital Q" magazine on the morning of 11 June 1995, although none of the eleven responding persons were contacted by Mr Brennan on that date.
4. At 6:30pm on 11 June 1995, Mr Brennan was seen at King Steam Sauna (at 38-42 Oxford Street, Darlinghurst), a venue often used by gay men for casual sex, by [NP190], [NP190] and Mr Brennan had previously been sexual partners. On this occasion they engaged in foreplay but were unable to have sex as [NP190] was not aroused. This was the last confirmed sighting of Mr Brennan.
5. Mr Brennan's naked body was found at the entrance to the bedroom, lying on top a bed pillow. A blood-stained cleaning sponge was resting on his right shoulder, and smears of dried blood suggested the body had been partially sponged down.
6. Mr Brennan had been stabbed with a knife from the kitchen (located broken at the scene) fifteen times. He may also have been hit with a frying pan and had his head struck or stomped on, possibly after he was incapacitated.
7. Three used condoms at the scene suggested sex had occurred before the attack (possibly with more than one person).
8. There were no signs of forced entry and no missing keys.
9. [NP215] was initially a suspect. The relationship between [NP215] and Mr Brennan had suffered some deterioration in the six months preceding Mr Brennan's death, as Mr Brennan had allegedly developed a frequent habit of seeking other men for sex (both with and without [NP215]' involvement). Alibi evidence (as yet untested by the Inquiry) from [NP214] is inconsistent with Mr [NP215]' involvement.

Special Commission of Inquiry into LGBTIQ hate crimes

10. A recent police reinvestigation identified an unmatched DNA profile on one of the used condoms found at the scene, suggesting the involvement of at least one unknown party.
11. **NP215** told police that Mr Brennan did not hire sex workers and had agreed with **NP215** not to bring back any potential sexual partners to their apartment in **NP215**' absence.

Post-mortem investigation

12. An autopsy report was carried out by Dr Peter Graham Bradhurst.
13. Dr Bradhurst estimated time of death to be "anytime between 5:00pm and midnight on Sunday the 11th June 1995 or even a little earlier or later than this."
14. Dr Bradhurst noted that because the right knee of the body was flexed and held up against gravity, it appeared that the body had been moved to this position after rigor mortis had set in.
15. Dr Bradhurst recorded that "Kenneth Richard Brennan was found lying, naked, in the lounge room of his unit. There were numerous stab wounds to his body. Post-mortem examination showed he had died of stab wounds to his chest. There were a number of other injuries to his body including injuries, consistent with "defence" injuries, on his left forearm and right hand."
16. Dr Bradhurst's findings are set out in full in the autopsy report at **Tab 2**.

Cause and manner of death

17. At inquest, Senior Deputy State Coroner John Abernethy found on 17 September 1996:

"That Kenneth Richard Brennan died on or about 11 June 1995 at [REDACTED] Onslow Avenue, Elizabeth Bay, of stab wounds to chest, inflicted then and there by persons unknown."

Material 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 NSWPF investigation file and the court file from the Coroners Court of NSW.

Please note that the briefing materials contain sensitive images. The relevant tabs of your briefing material have been marked with an asterisk on the index.

If there is any additional material that you consider would be of use to you in forming your opinion, please contact Ms Nicholls 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. 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 Mr Brennan's injuries and cause of death (for example, a blood splatter analyst able to comment on the bloodstain patterns identified at the crime scene); and
 - b. if relevant, appropriate experts from whom his Honour may wish to seek further expert opinion.

Special Commission of Inquiry into LGBTIQ hate crimes

2. Your view as to the adequacy of the post-mortem investigations conducted with respect to Mr Brennan.
3. Information about the crime that can be ascertained from Mr Brennan's injuries.

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

- a. the likely sequence of Mr Brennan's injuries; and
 - b. the possibility that Mr Brennan was injured by two or more assailants.
4. Please any other comment, within your expertise, which you consider to be relevant to the manner and cause of Mr Brennan's death.

The above questions are not intended to be exhaustive. Accordingly, if there is any matter arising from the circumstances of Mr Brennan's death within your area of expertise on which you wish to express an opinion and which will be of assistance to his Honour, please do so.

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

Expert Witness Code of Conduct

I **enclose** a copy of the Expert Code of Conduct with which expert witnesses in Supreme Court proceedings in NSW are typically required to comply. While the present inquiry is not a Court proceeding, I would be grateful if you would read the Code of Conduct and agree to be bound by it. I suggest the following form of words be included in the body of your report in due course:

"I, Dr Linda Iles, acknowledge that I have read the Expert Witness Code of Conduct in Schedule 7 to the Uniform Civil Procedure Rules 2005 (NSW) and agree to be bound by it."

Thank you for your consideration and assistance.

Please do not hesitate to contact Hermione Nicholls, Senior Solicitor on [REDACTED] or Emily Burston, Senior Solicitor on [REDACTED] if you have any queries in relation to this matter.

Yours faithfully,



Hermione Nicholls
Senior Solicitor
Solicitor Assisting the Inquiry

Encl. 2



Special Commission of Inquiry into LGBTIQ hate crimes

Death of Kenneth Brennan

Index to Brief to Dr Iles

23 January 2023

Tab	Document	Date	Relativity reference
Formal documents			
1.	P79A Report of Death to Coroner	13 June 1995	SCOI.00009.00071
2.	Autopsy Report of Peter Graham Bradhurst	6 October 1995	SCOI.00009.00132 and SCOI.00009.00133
3.	Crime scene photographs*	12 June 1995	SCOI.00009.00137
4.	Autopsy photographs*	13 June 1995	SCOI.00009.00138
5.	Results of forensic examination by Michele Anne Franco (DAL)	24 January 1996	SCOI.10183.00004
6.	Further results of forensic examination by Michele Anne Franco (DAL)	10 September 1999	SCOI.10181.00005
7.	Neuropathy report of Dr W Evans	19 August 1995	SCOI.00009.00134
8.	Toxicology report of Natalie Michailidis	31 August 1995	SCOI.00009.00135
9.	Inquest findings	17 September 1996	SCOI.00009.00063
10.	Transcript of Inquest	17 September 1996	SCOI.00009.00059
NSW Police documents			
11.	Statement of Sergeant Paul Loftus Shiels	2 April 1996	SCOI.00009.00010

Special Commission of Inquiry into LGBTIQ hate crimes

12.	Statement of Detective Senior Constable Lyle William Van Leeuwen	13 August 1996	SCOI.00009.00013
13.	Statement of Constable Laura Clare Thurtell	19 January 1996	SCOI.00009.00008
14.	Statement of Detective Senior Constable Brad Edmund Tayler	29 January 1996	SCOI.00009.00141
15.	Statement of Senior Constable Robert Andrew Ford	13 August 1996	SCOI.00009.00014
16.	Post-operational assessment of Strike Force Skarratt	1 August 2019	N/A
Statements of family, friends and witnesses			
17.	Statement of [NP215]	15 June 1995	SCOI.00009.00019
18.	Statement of [NP215]	29 June 1995	SCOI.10278.00007
19.	Record of interview with [NP215]	12 June 1995	SCOI.10183.00008
20.	Notes of interview with [NP215]	Undated	SCOI.10307.00096
21.	Statement of [NP214]	12 June 1995	SCOI.00009.00018
22.	Statement of [NP214]	16 June 1995	SCOI.00009.00022
23.	Statement of Ronda Helen Saler	3 August 1995	SCOI.00009.00028
24.	Statement of [NP189]	16 June 1995	SCOI.00009.00020
25.	Statement of Graham Frank Duckett	3 August 1995	SCOI.00009.00052
26.	Statement of [NP190]	20 June 1995	SCOI.00009.00029

Uniform Civil Procedure Rules 2005

Current version for 11 November 2022 to date (accessed 20 December 2022 at 08:53)

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.