



## Special Commission of Inquiry into LGBTIQ hate crimes

3 April 2023

Professor Robert Brander  
 School of Biological, Earth and Environmental Sciences  
 University of NSW  
 SYDNEY NSW 2052

By email: [REDACTED]

Dear Professor Brander,

### **Special Commission of Inquiry into LGBTIQ hate crimes: Expert report on death of Gilles Mattaini**

As you are aware, I assist the Honourable Justice John Sackar in the Special Commission of Inquiry into LGBTIQ hate crimes (“the Inquiry”). Christine Melis and Kathleen Heath, of counsel, and Emily Burston, solicitor, are assisting his Honour in his consideration of the disappearance of Gilles Mattaini.

#### **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.

The disappearance (and presumed death) of Mr Mattaini is one of the unsolved deaths which his Honour is inquiring into pursuant to item A of the Letters Patent.

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### Request for expert opinion

By this letter, you are briefed to prepare an expert report in relation to Mr Mattaini's disappearance to assist the Inquiry. I would be grateful to receive your report no later than **25 April 2023**. In the event that you require further time to prepare your report, please advise Ms Burston as soon as possible.

### Background

To assist you in the preparation of your report, you are provided with the following facts in relation to Mr Mattaini. 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 Mattaini (aged 27) was a French National, residing in Bondi at the time of his disappearance. He was last seen walking in the Bondi area on or around 15 September 1985, by an unknown witness.
2. Mr Mattaini was in a long-term relationship with Mr Jacques Musy. His sexuality does not appear to have been a secret, at least amongst his social circle.
3. Mr Mattaini enjoyed taking long walks along coastal routes during the day and evening while listening to music using headphones, including to the Ben Buckler Headland and the coastal walk from Bondi to Mackenzies Point, including around Marks Park.

### *Prior to disappearance*

4. On 15 September 1985, Antony Wyszynski, who was located in France, had a telephone call with Mr Mattaini to discuss the purchase of items for their unit. This was sometime during the day, noting the timezone difference, with Australia being approximately 8 hours ahead of French time.
5. On the morning of the same day, Mr Mattaini was seen walking in "Bondi" by an unknown neighbour, who later described him to Mr Musy as seeming "aloof".
6. In 2002, Mr Mattaini's mother told French police that Mr Wyszynski had mentioned to her that Mr Mattaini was intending to go swimming in the sea on the day of his disappearance. According to Ms Mattaini, Mr Mattaini was an amateur scuba diver. According to Mr Musy, however, Mr Mattaini did not scuba dive or snorkel and was not generally an athletic person. This conversation was never independently confirmed with Mr Wyszynski. Both Mr Wyszynski and Ms Mattaini are now deceased.

### *Disappearance*

7. On the evening of 16 September 1985, Mr Mattaini failed to attend his rostered shift at the Menzies Hotel in Wynyard. Searches were undertaken by Mr Mattaini's friends but he could not be located.
8. On Mr Musy's return to Australia, he noticed that Mr Mattaini's keys and Walkman were missing from the apartment, as well as a bright yellow rubber spray jacket.
9. Mr Mattaini's body has never been found and the exact circumstances of his disappearance remain unknown.

### Materials with which you are briefed

For the purpose of preparing your report, you are briefed with the documents in the enclosed index.

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Please notify Ms Burston if you believe that there are any additional materials which would be of assistance in preparing your expert report.

### Matters to be addressed in your report

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

1. Following your review of your briefing material, please identify:
  - a. Any additional areas of expert opinion you consider would assist his Honour on the issues of Mr Mattaini's location, date and manner of death; and
  - b. If relevant, appropriate experts from which his Honour may wish to seek further expert opinion.
2. Please provide a summary of the prevailing weather, tidal, current and rip conditions at and around Bondi, Ben Buckler Headland and Mackenzies Point on 15 – 17 September 1985.
3. Whether Mr Mattaini would have encountered difficulty if he had gone swimming at or around the identified areas (noting that he may not have been a strong swimmer).
4. Approximately where Mr Mattaini's body may have travelled on the assumption that he entered the sea from the shoreline:
  - a. At any point along the coastal walk around Marks Park; or
  - b. At any point along the walk from Bondi Beach to Ben Buckler Point (at the end of Brighton Boulevard).

In answering the above questions, please explain your reasoning process and identify the information that you have relied upon. Please also provide any further related information or materials that you consider will be of assistance to the Commissioner.

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 Robert Brander, 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."

### Fees

I confirm your expert rate of **\$180 per hour** to review the briefing material and attend a conference with the assisting team. Please address your invoice to the Department of Premier and Cabinet, ABN: 34 945 244 274.

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Please do not hesitate to contact Ms Burston on [REDACTED], or by email at [REDACTED], if you have any queries in relation to this matter.

Thank you for your consideration and assistance.

Yours faithfully,



Emily Burston  
Senior Solicitor  
**for Solicitor Assisting the Inquiry**

Encl. 2



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**Inquiry into the death of Gilles MATTAINI**  
**INDEX TO BRIEF FOR PROFESSOR BRANDER**  
 (as at 3 April 2023)

Tab	Document	Date
<b>Bureau of Meteorology</b>		
1.	Weather, Synoptic and Rainfall Observations for Bondi area (Bureau of Meteorology Data Document CAS-37787-S5G0Y9-20)	20 October 2022
2.	Excel spreadsheet of Sea Level Observations at Fort Denison for 1985	1985
<b>Port Authority of NSW</b>		
3.	Excel Spreadsheet of Sydney Offshore Wave Data for 7-30 September 1985	7-30 September 1985
<b>Sydney Morning Herald</b>		
4.	Synoptic Charts	9 – 21 September 1985



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# Uniform Civil Procedure Rules 2005

Current version for 1 December 2021 to date (accessed 21 September 2022 at 11:52)

## Schedule 7

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### 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.