



Special Commission of Inquiry into LGBTIQ hate crimes

31 October 2022

Dr Linda Iles
Victorian Institute of Forensic Medicine
65 Kavanagh Street
SOUTHBANK VIC 3006

By email: [REDACTED]

Dear Dr Iles,

Special Commission of Inquiry into LGBTIQ hate crimes: Review of material regarding Graham Paynter

I assist the Honourable Justice John Sackar in the Special Commission of Inquiry into LGBTIQ hate crimes (“the Inquiry”). Kathleen Heath, of counsel, and Francesca Lilly, solicitor, are assisting his Honour in his consideration of the death of Graham Paynter (“Mr Paynter”). Thank you for your willingness to provide an expert report to the Inquiry from the perspective of a forensic pathologist.

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 Paynter’s death is one of the unsolved deaths which his Honour is inquiring into pursuant to item A of the Letters Patent. On 13 October 1989, Mr Paynter’s body was discovered at the base of cliffs in Tathra, NSW. Mr Paynter’s jeans and underwear were around his knees. The top button of his jeans was done up, but his fly was undone. His jumper was pulled over his head, though his arms were still in the sleeves. An inquest into the death of Mr Paynter was dispensed with on 27 July 1990 on the basis that cause and manner of

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death were sufficiently clearly disclosed. The Coroner found that the cause of death was “Internal bleeding and closed head injury”.

By this letter, you are briefed to prepare a written report in relation to Mr Paynter’s death to assist the Inquiry. It is requested that you provide your report no later than **14 November 2022**. In the event that you require further time to prepare your report, please advise Ms Lilly 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 Mr Paynter. 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 Paynter was born on 12 April 1953. He was an unmarried pensioner and lived in Tathra, NSW.
2. Mr Paynter was drinking with his friend Russell Longmore at the Tathra Hotel from approximately midday on 12 October 1989, apparently for ██████████’s birthday. Both men appeared to the landlord, John David Roberts, to be intoxicated.
3. At approximately 4:15pm Mr Paynter and Mr Longmore were driven to Bega Hotel by Mr Roberts and Steven Ryan, where they declared an intention to continue drinking.
4. Between 7:10pm and 7:30pm Mr Paynter was arrested at Liquorland, Carp Street, Bega, for the alleged theft of a bottle of Bundaberg rum. He was conveyed to Bega Police Station by Constable Castle and Constable Michael Wilhelm Ochs. Mr Paynter was observed to be intoxicated and unsteady on his feet, but sufficiently sober to enter his bail undertaking and be released at 8:05pm. He apparently did not appear depressed or upset whilst in custody.
5. At 10:45pm Mr Paynter and Mr Longmore returned to the Tathra Hotel. They appeared to be heavily intoxicated and were served further drinks.
6. By 11:20pm Mr Paynter was drinking alone, Mr Longmore having returned to his home. Mr Paynter was asked to leave the bar upon closing and did so.
7. Mr Paynter’s body was discovered at 5:00pm on 13 October 1989 by then 16-year-old [I50] [I50] who was walking along the rocks from Tathra Beach. [I50] contacted Police who attended the scene.
8. At the top of the rocks was a pedestrian walkway 10 metres from the cliff edge, which was unmarked by fencing or signs.

Cause of death

9. Upon examination of the crime scene, Constable Ochs noted Mr Paynter was lying on his right side with his jumper pulled over his head with his arms in the sleeves, and jeans and underpants around the middle of his thighs. There were abrasions on his body and some blood on his face. The skin was cold and clammy, the limbs stiff, and the face suffused with blood.
10. A post-mortem examination was performed by Government Medical Officer, Dr Mark George Oakley.
11. Dr Oakley found that the probable cause of death was “internal bleeding and closed head injury”. An antecedent cause was listed as “possible alcohol intoxication”.

Time of death

12. Mr Paynter was last seen alive by staff of the Tathra Hotel at approximately 12:15am on 13 October 1989. Rigor mortis had set in to parts of his body upon its discovery at 5:00pm on 13 October 1989.

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13. Dr Oakley estimated time of death to be about 58 hours prior to examination on 15 October 1989 at 10:20am.

Material 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 investigation 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 Ms Lilly 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. The adequacy of the post-mortem investigations conducted with respect to Mr Paynter;
2. The nature of Mr Paynter's injuries.

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

 - a. Whether Mr Paynter's injuries are consistent with a fall, or whether any injuries are more likely to have been obtained by other means, for example misadventure, suicide or foul play.
3. The position of Mr Paynter's clothing, specifically whether this arrangement is consistent with a fall from the cliffs or whether it is likely Mr Paynter was undressed before the fall.
4. Your view as to the medical cause of Mr Paynter's death (including any reasons for taking a different view to that formed by the forensic pathologist who conducted the autopsy).
5. Your view as to any conclusions that can be drawn from the toxicological analysis.
6. Any recommendations for further investigations with respect to determining the manner and cause of Mr Paynter's death.
7. Please provide any other comment, within your expertise, which you consider to be relevant to the manner and cause of Mr Paynter's death.

The above questions are not intended to be exhaustive. Accordingly, if there is any matter arising from the circumstances of Mr Paynter'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 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."

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Conclusion

Please do not hesitate to contact Ms Lilly at [REDACTED]. If you have any queries in relation to this matter.

Thank you for your consideration and assistance.

Yours faithfully,



Francesca Lilly
Solicitor
for Crown Solicitor