



Special Commission of Inquiry into LGBTIQ hate crimes

31 October 2022

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

By email: [REDACTED]

Dear Dr Iles,

Special Commission of Inquiry into LGBTIQ hate crimes: Review of material regarding Russell Phillip Payne

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 Russell Phillip Payne (“Mr Payne”). 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 Payne’s death is one of the unsolved deaths which his Honour is inquiring into pursuant to item A of the Letters Patent. On 2 February 1989, Mr Payne’s body was discovered at his residential flat in Inverell, NSW. On 18 May 1989 an inquest was dispensed with by the Coroner.

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By this letter, you are briefed to prepare a written report in relation to Mr Payne'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 Payne. 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. My Payne was born on 5 January 1956. Mr Payne was last seen at 2:30pm on 30 January 1989.
2. At 6:15pm on 2 February 1989, the owner of the flat rented by Mr Payne, John Malcolm Wills, gained entry to the flat by way of an open bedroom window, and discovered Mr Payne to be deceased. Mr Wills entered the flat on the basis that Mr Payne had not paid his rent, and a friend had made enquiries after being unable to locate Mr Payne.
3. At approximately 6:35pm, Police attended Mr Payne's residential premises. Police observed the following:
 - a. Mr Payne was lying on the kitchen floor with his arms near his head, dressed only in a singlet and naked from the waist down.
 - b. Mr Payne's body exhibited bruising on the right hip and his penis was swollen and bruised.
 - c. There was what appeared to be blood smeared around the upper thighs and legs of the deceased.
 - d. There were small drops of what appeared to be blood on the floor of the kitchen, near the doorway from the living room and into the bathroom.
 - e. In the bedroom there were containers which appeared to contain vomit, and there was vomit on the bedroom floor.
 - f. Items of clothing in the laundry and the bedclothes appeared to have blood on them.
 - g. Beside the bed were a number of containers which contained prescription drugs, as well as a sheet from which all tablets had been expressed.
4. Police observed no signs of forced entry to the flat, nor of violence or theft.
5. A large number of erotic photographs and a broom handle with a dark stain on the rounded end were also located, and led Police to believe Mr Payne engaged in unusual sexual practices.

Post-mortem investigations

6. A post-mortem examination of Mr Payne's body was performed by Dr Alan Davison, pathologist, on 3 February 1989. Dr Davidson noted, among other things, bruising around Mr Payne's genitals and right hip, bruising in the region of the right shoulder, and a hairline fracture of the skull.
7. Dr Davidson further located a metal object with a spike at its base present in the penile urethra approximately 1-2 cm from its distal end. Police believed this to be the tip of the antenna from a television set at the flat. The urethra showed discolouration and inflammation.
8. Following examination of sections of tissue taken at the time of the post-mortem examination, Dr Davidson formed the opinion that the cause of death was due to septicaemia as a result of an acute urethritis most probably caused by insertion of a foreign body into the penile urethra.

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9. Dr Davidson considered that the injuries to the pelvic and groin regions could have been caused by a fall some 25 to 36 hours prior to death, while the fracture of the skull was consistent with a fall occurring immediately prior to death.

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 Payne;
2. The nature of Mr Payne'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 Payne's injuries (including, but not limited to, the injuries to genitals, the bruising to his hip and pelvic region, and the fracture of his skull);
 - b. Whether Mr Payne's injuries to his genitals appear to be self-inflicted;
 - c. Whether Mr Payne's injuries (excluding the injuries to his genitals) are consistent with a fall in his home, or are more likely to have been caused by other means, for example misadventure, suicide or foul play.
3. Your view as to the medical cause of Mr Payne's death (including any reasons for taking a different view to that formed by the forensic pathologist who conducted the autopsy).
 4. Your view as to any conclusions that can be drawn from the toxicological analysis.
 5. Any recommendations for further investigations with respect to determining the manner and cause of Mr Payne's death.
 6. Please provide any other comment, within your expertise, which you consider to be relevant to the manner and cause of Mr Payne's death.

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

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“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.”

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