



Special Commission of Inquiry into LGBTIQ hate crimes

SUBMISSIONS OF COUNSEL ASSISTING

6 February 2023

IN THE MATTER OF RUSSELL PHILLIP PAYNE

Introduction

1. These submissions are filed on behalf of Counsel Assisting the Special Commission of Inquiry into LGBTIQ hate crimes (**Inquiry**).

Summary of matter

Date and location of death

2. The body of Mr Russell Phillip Payne (born Russel Phillip Adnum on 5 January 1956) was discovered in the kitchen of his rented residential unit on Henderson Street, Inverell on 2 February 1989.
3. His time of death was estimated to be about 3 days prior to autopsy – that is, on or about 31 January 1989.¹

Circumstances of death

4. Mr Payne was a 33-year-old man who lived in a flat at a boarding house in Inverell owned by Mr John Wills. Mr Wills considered him to be a quiet, well-mannered person.²
5. At about 6:15pm on Thursday, 2 February 1989, Mr Wills entered Mr Payne's flat. He did so because Mr Payne had, uncharacteristically, failed to pay his rent, and also because a friend had come to visit Mr Payne at 6:00pm, but could not find him, so came to ask Mr Wills where he was. The front door was locked, and so Mr Wills entered through the open bedroom window.³

¹ Autopsy report of Dr Alan Davison dated 6 February 1989, p. 2 (SCOI.75544).

² Statement of John Malcolm Wills dated 2 February 1989 (SCOI.75547).

³ *Ibid.*

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6. Mr Wills walked through the house into the kitchen and found the body of Mr Payne in the kitchen of the flat. Upon finding the body, he immediately left and rang the police. He left through the front door, which he noticed was “heavily locked” such that he had trouble unlocking it.⁴
7. Police arrived at approximately 7:15pm. Among them was Detective Sergeant Patrick Moss, who was engaged in physical evidence duties. He observed the following in Mr Payne’s flat:⁵
 - a. The body of Mr Payne was in the kitchen. He was dressed in a blue coloured singlet and naked from the waist down.
 - b. Mr Payne’s body exhibited bruising on his right hip and penis. There was blood smeared around the upper thighs and legs of the deceased.
 - c. There were small drops of blood on the floor of the kitchen, near the doorway from the living room, and into the bathroom.
 - d. There were no signs of a struggle or ransacking of any rooms.
 - e. There were apparent blood stains on the bedding and a towel in the bedroom.
 - f. There was vomit in two containers on the floor adjacent to the bed, and on the carpet near the two containers.
 - g. Beside the bed were containers which held prescribed drugs for various medical conditions. (The police report does not identify what the drugs were, nor the medical conditions apparently treated.)
 - h. On the floor of the bathroom were a number of handkerchiefs and underpants, each of which was stained with apparent blood. There was also a stained sponge on the bathroom sink and the underside of the toilet lid was also stained.
 - i. Inside the washing machine was a shirt with a small stain, apparently blood, and a stained handkerchief.
 - j. In the bedroom was a sawn piece of timber (apparently a broom handle), the rounded end of which was stained with a dark coloured stain.
 - k. There were a large number of erotic photographs at the flat. The police report does not describe or comment on the content of those photographs. They do not appear to have

⁴ Statement of John Malcolm Wills (n 2).

⁵ Statement of Patrick Moss dated 3 March 1989 (SCOI.75545).

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been retained as exhibits, and were not produced to the Inquiry in answer to summonses to the NSWPF.

Findings of post-mortem examination

8. A post-mortem examination was conducted on the body at 3:30pm on 3 February 1989 by pathologist Alan Davison.⁶ His pertinent findings were as follows:
 - a. Rigor mortis was absent and early decomposition was present;
 - b. Bruising described around the right anterior iliac crest (5.0 cm x 4.0cm) [the hip] with superficial blister formation and yellow discolouration;
 - c. Bruising of the right scrotum and under the surface of the penis;
 - d. Maggot infestation around the pubis and right eye;
 - e. Small area of bruising to the right occipitotemporal scalp associated with a hairline fracture in the midline extending into the right posterior cranial fossa, with no associated intracranial haemorrhage or brain injury;
 - f. Strap muscles of the neck free from bruising and laryngeal skeleton intact;
 - g. Blood-tinged fluid within the pleural cavities and pericardial sac;
 - h. Soft spleen;
 - i. Bruising of the soft tissues on both sides of the penis with bruising extending to involve the spermatic cord on the right;
 - j. A metal object with a spike at its base present in the penile urethra 1-2cm from its distal end. The urethra was discoloured and there was inflammation with purulent exudate;
 - k. No features to suggest obstructive uropathy (i.e. nothing to indicate that the urethral foreign body resulted in total obstruction of urine flow);
 - l. Bruise of the muscle of the abdomen near the anterior iliac crest and bruising of the muscle around the right shoulder.
9. The metal object with a spike at its base was removed from the urethra. On later inspection by police this was revealed to be an antenna from a television set in Mr Payne's flat.⁷

⁶ Autopsy report of Dr Alan Davison (n 1).

⁷ Statement of Patrick Moss (n 5).

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10. Dr Davison also noted a smear of blood around the fingernails of the left hand and a dried discoloured stain from his right nose and right upper lip.⁸
11. Dr Davison estimated time of death to be approximately 3 days prior to autopsy (i.e. on or about 31 January 1989).⁹
12. Dr Davison examined a number of tissue samples taken from the deceased. He noted that examination of Mr Payne’s organs showed inflammation that indicated “in no uncertain fashion the presence of a severe generalised infection.” Dr Davison gave the following opinion as to cause of death:

“[T]he 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. The injuries to the pelvic and groin regions could have been caused by a fall some 24 to 36 hours prior to death while the fracture of the skull is consistent with a fall occurring immediately prior to death.”¹⁰

Persons of interest

13. No persons of interest were identified in relation to Mr Payne’s death.

Indicators of LGBTIQ status or bias

14. At the time of the original police investigation, Mr Payne’s landlord, Mr Wills, who had known Mr Payne for approximately 18 months at the time of his death, said that Mr Payne had told him that he had once been married but was now divorced, and had a child living in Brisbane. The police file contains no material bearing upon whether Mr Payne was, or might have been, a member of the LGBTIQ community.
15. However, the Inquiry now has some information relevant to Mr Payne’s sexuality. Terry Forster, the ex-partner of Mr Payne’s sister, used to visit Inverell every fortnight or so for a shopping trip, in the period 1988-1989. He would see Mr Payne on those trips. On one of those trips, approximately a year prior to his death, Mr Payne came out as gay to Mr Forster.¹¹
16. Mr Payne’s sister, Julie Kilgour, and her former partner Ray Kilgour, who also knew Mr Payne, were not aware that Mr Payne was gay. However, upon learning, during a recent visit from journalist

⁸ Autopsy report of Dr Alan Davison (n 1) p. 1.

⁹ Ibid.

¹⁰ Ibid p. 2.

¹¹ Statement of Terry Forster dated 30 January 2023 (SCOI.82354).

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Michael Burge, what Mr Payne had said to Mr Forster, they expressed support and understanding of that possibility.¹²

Exhibits: availability and testing

17. Detective Sergeant Moss recorded that a number of items were collected from the crime scene for forensic examination.¹³ However, the results of any such examination are unknown. No certificates of analysis are now on the coronial or police files. There is no record of the location of these exhibits on the coronial or police files, despite the Inquiry summoning all material held by both bodies.
18. After receiving the report of Dr Iles, set out below at [54]-[59], the Inquiry concluded that there was no utility in further requests for these exhibits.
19. The “erotic photographs” referred to in the original police report do not appear to have been retained as exhibits.
20. During the post-mortem examination, histology slides were prepared. The Inquiry requested these slides from both the Department of Forensic Medicine, Newcastle Forensic Medicine and Inverell Hospital, but no records were identified.¹⁴

Findings at inquest, including as to manner and cause of death

21. On 18 May 1989, the Coroners Court at Inverell dispensed with an inquest. Consistent with Dr Davison’s report, Mr Payne’s cause of death was listed as “septicaemia as a result of an acute urethritis most probably caused by insertion of foreign body into the penile urethra.”
22. It is apparent that Mr Payne’s death was treated as being the result of misadventure, rather than suicide or foul play.¹⁵

Features of / concerns with original police investigation

23. Julie and Ray Kilgour have expressed concern at the lack of communication between themselves and the investigating police. According to Ray Kilgour, he first learned of Mr Payne’s actual cause of death in 2022, more than thirty years after Mr Payne died, when journalist Michael Burge provided documents from the coronial file to him.

¹² Statement of Michael Burge dated 31 January 2023 (SCOI.82352).

¹³ Statement of Patrick Moss (n 5) at [9].

¹⁴ Statement of Francesca Lilly dated 5 February 2023 at [15]-[18] (SCOI.82353).

¹⁵ Notice of Dispensing with Inquest dated 18 May 1989 (SCOI.82202).

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24. The police file as provided to the Inquiry contains no indication of any interactions between police and any of the family of Mr Payne following his death.
25. As noted earlier, the “erotic photographs” referred to in the original police report do not appear to have been retained, and it is accordingly not possible to assess their contents.

Strike Force Parrabell

Use of the Bias Crimes Indicators Review Form

26. Strike Force Parrabell conducted its documentary review in 2016 without contacting Mr Payne’s family. This was consistent with the general approach of Strike Force Parrabell, which was to consider only the already-existing historical material and not to engage in any reinvestigation of cases.
27. It is noted on page 2 of the Bias Crimes Indicators Review Form (**BCIF**) that “no information relating to the sexual orientation of PAYNE was located”.¹⁶
28. The BCIF includes references to Mr Payne’s “bizarre sexual practices” and to “erotic photographs” (as so described in the statement of Detective Sergeant Moss in 1989, found in Mr Payne’s flat). The BCIF contains no indication as to what the SF Parrabell officers meant by those references.

Results of Strike Force Parrabell

(a) The “General Comment” and “Summary of Findings” boxes at the end of the BCIF

29. The ten “indicators” in the BCIF are all answered as either “No Evidence of Bias Crime”, or “Insufficient Information” to make a determination as to bias.
30. Throughout the BCIF, the ‘General Comment’ sections consistently indicate that the authors were not of the view that Mr Payne’s death ought to be considered a bias crime. Rather, they considered that the circumstances surrounding Mr Payne’s death were not suspicious and that the evidence suggested that Mr Payne died by misadventure, as the result of a self-inflicted wound.¹⁷
31. The ‘Summary of Findings’ again gives the opinion that Mr Payne’s injuries were self-inflicted, and states that “there is no suggestion any persons were identified as being responsible of having any involvement in PAYNE’S death”. Consistent with this analysis, the Summary of Findings settles on the overall conclusion of “No Evidence of Bias Crime.”¹⁸

¹⁶ Strike Force Parrabell Bias Crimes Indicators Review Form – Russell Payne (undated), p. 2 (SCOI.74987).

¹⁷ Ibid, pp. 4, 5, 7, 10, 12 and 13.

¹⁸ Ibid p. 13.

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(b) Case summaries

32. The Strike Force Parrabell Case Summary for Mr Payne's case read as follows:

Identity: *Russell Payne was 33 years old at the time of his death.*

Personal History: *Mr Payne was an Invalid Pensioner with his marital status listed as unknown.*

Location of Body/Circumstances of Death: *Mr Payne's body was located in his residential unit at Henderson Street, Inverell. The post mortem noted the following '...a metal piece, which upon closer examination appears to be the tip of the antenna from a television set at the flat...was found inserted inside the urethra of the deceased, about 1cm from the tip.' Mr Payne's Death Certificate lists the cause of death as 'Septicaemia as a result of an acute urethritis most probably caused by insertion of a foreign body into the penile urethra.'*

Sexual Orientation: *Mr Payne's sexual orientation could not be confirmed.*

Coroner/Court Findings: *This cause of death together with other evidence located at the scene indicated that the injuries causing the death of Mr Payne were self-inflicted.*

SF Parrabell concluded there was no evidence of a bias crime.¹⁹

33. The content of this case summary is consistent with the comments made in the BCIF.

(c) Academic review

34. The review by Flinders University found that Mr Payne was one of 23 of the 85 cases reviewed that found no evidence of bias. The authors stated that they were "greatly influenced" in their categorisation of 'no bias' cases by coronial findings of misadventure.²⁰ Under the heading 'No Bias Cases', the academic review noted:

*In Payne (31), the victim appears to have been responsible for his own death by inserting a steel object into his urethra, resulting in fatal septicaemia.*²¹

¹⁹ Exhibit 6, Tab 49, Strike Force Parrabell Case Summaries – Russell Payne, p. 15 (SCOI.76961.00014).

²⁰ Exhibit 1, Tab 2, Strike Force Parrabell Report, p. 99 (SCOI.02632).

²¹ Ibid p. 100.

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Investigative and other steps undertaken by the Inquiry

35. In the course of assessing Mr Payne's case, the Inquiry has taken various investigative and other steps, including:
- a. Compelling the production of police investigative material in relation to Mr Payne's death;
 - b. Obtaining the Coroners Court file from Inverell Local Court in relation to the inquest into Mr Payne's death;
 - c. Conducting research and considering other material held by the Inquiry of potential relevance to the matter, for example information on sexual practices involving insertions into the urethra;
 - d. Reviewing and analysing all material held, and considering further investigative steps;
 - e. Obtaining an expert report from an independent forensic pathologist;
 - f. Consulting with a journalist who had conducted research into Mr Payne's death; and
 - g. Making contact with Mr Payne's family.

Attempts to locate and contact family members

36. On 4 August 2022, the Inquiry was contacted by Michael Burge, a freelance journalist, author and artist, who lives in the New England region of NSW. His work has covered issues of equality and LGBTIQ+ history, and he has reported on LGBTIQ hate crimes in regional NSW.
37. In around 2020, Mr Burge began investigating the death of Mr Payne, and he later published an article about the case.²² In the course of his investigations, he spoke to family members of Mr Payne, including sister Julie Kilgour, Julie's former husband Ray Kilgour, her daughter Lou Kilgour, and Julie's ex-partner Terry Forster. With the permission of those family members, Mr Burge provided their contact details, and the information he obtained, to the Inquiry.
38. Mr Burge also provided a statement to the Inquiry, in which he records *inter alia* Mr Forster's account of Mr Payne coming out to him as gay within the year or so before his death.
39. The Inquiry also spoke via telephone with Terry Forster on 27 and 30 January 2023. Mr Forster then provided a statement outlining how Mr Payne told him he was gay in about 1988-1989.

²² Michael Burge, 'What will the NSW inquiry into historical gay-hate crimes mean for the bush?', *Guardian Australia* (online, 14 November 2021) <<https://www.theguardian.com/australia-news/2021/nov/14/what-will-the-nsw-inquiry-into-historical-gay-hate-crimes-mean-for-the-bush>>.

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Request for coronial file

40. On 15 June 2022, the Inquiry issued a written request to the Registrar of the Coroners Court of NSW at Lidcombe to obtain the coronial file in relation to the death of Mr Payne. A further request was issued to Inverell Local Court, where the coronial inquest had taken place, on 12 August 2022.
41. The Coroners Court at Lidcombe answered the request on 1 August 2022, and Inverell Local Court provided materials on 19 August 2022.²³

Summons for police files and documents

42. A summons to the NSW Police Force (**NSWPF**) was issued on 18 May 2022 for, *inter alia*, the investigative file in relation to the death of Mr Payne (summons NSWPF1). An electronic folder of material in relation to Mr Payne was produced on 12 August 2022.
43. A summons the NSWPF was issued on 25 August 2022 for all NSWPF records in relation to, *inter alia*, Strike Force Parrabell (summons NSWPF12). This material was produced in tranches between 9 September 2022 and 18 November 2022. This material included the BCIF and relevant Investigator's Notes in relation to the review of Mr Payne's death by Strike Force Parrabell.²⁴

Summons to Births, Deaths and Marriages

44. On 30 September 2022, the Inquiry issued summons BDM4 to the NSW Registry of Births, Deaths and Marriages for the death certificate of Mr Payne.²⁵
45. From this summons, it was confirmed that Mr Payne's name at birth was Russel Phillip Adnum.²⁶

Request to Hunter New England Local Health District

46. On 7 October 2022, the Inquiry requested from the Hunter New England Local Health District all medical records for Mr Payne in summons HNE01.²⁷
47. On 13 October 2022, the Hunter New England Local Health District advised that no records had been located.²⁸ By email dated 18 October 2022, it was further confirmed that they had searched using variations of the name Russell Phillip Payne and Russel Phillip Adnum.²⁹

²³ Statement of Francesca Lilly (n 12) at [4]-[5].

²⁴ *Ibid* at [6]-[7].

²⁵ *Ibid* at [8]-[9].

²⁶ Copy of Death Certificate of Russell Phillip Payne dated 13 October 2016 (SCOI.37332).

²⁷ Summons HNE01 dated 7 October 2022 (SCOI.82170).

²⁸ Letter from John Hunter Hospital re summons HNE01 dated 13 October 2022 (SCOI.82173).

²⁹ Statement of Francesca Lilly (n 12) at [12]-[13].

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Professional opinions obtained

48. The Inquiry sought an independent review of the autopsy report prepared by Dr Davison, including as to the cause of Mr Payne's death and whether his injuries appeared to be self-inflicted or a result of foul play.
49. The Inquiry briefed forensic pathologist Dr Linda Iles on 31 October 2022,³⁰ and obtained an expert report by Dr Iles on 11 November 2022,³¹ summarised below: see below [57]-[62].
50. Dr Iles indicated she would be assisted by the histology slides. Enquiries were made with the Department of Forensic Medicine (**DOFM**) on 3 November 2022. On 7 November 2022, DOFM advised that that they held no records for Russell Payne. Enquiries were also made with Newcastle Forensic Medicine and Inverell Hospital (where the autopsy was performed) on 8 November 2022, but no records were identified for Mr Payne.³²

Steps which could / should have been taken, but which were not

51. Details should have been recorded as to the content of the "erotic photographs" found at Mr Payne's flat, and these items should have been secured as exhibits.
52. There appears to have been no engagement between police and Mr Payne's family at the time of his death. Such engagement not only would have been courteous but would also have resulted in the obtaining of relevant information as to Mr Payne's circumstances.

Results of investigative and other steps undertaken by the Inquiry

53. This part of the submission sets out key matters arising from the Inquiry's consideration of the evidence and the conclusions that it is suggested can be drawn from the evidence.

Medical evidence as to manner and cause of death

54. In her report, Dr Iles considers that the autopsy of Dr Davison was reasonably comprehensive and conducted in "a thoughtful way, with a view to excluding major trauma contributing to or directly causing death."³³ She considered the material was adequate to allow her to express a view as to cause of death.³⁴

³⁰ Letter of Instruction to Dr Iles – Russell Payne dated 31 October 2022 (SCOI.82171).

³¹ Expert report of Dr Linda Iles (undated, provided on 11 November 2022) (SCOI.82113).

³² Statement of Francesca Lilly (n 12) at [15]-[18].

³³ Expert report of Dr Linda Iles (n 30) p. 5.

³⁴ Ibid.

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55. She adopts a view of the cause of death that is “not significantly different” to that of Dr Davison – namely, “death as a consequence of septicaemia secondary to Fournier’s gangrene, precipitated by a urethral foreign body.” Fournier’s gangrene is a life-threatening, necrotising soft tissue infection of the perineum and surrounding tissues. Urethritis, the term used by Dr Davison, is a bacterial or viral infection in the urethra.
56. Dr Iles noted that findings at the scene indicate Mr Payne had been unwell for a period of time preceding his death, consistent with systemic sepsis.³⁵
57. Dr Iles refers to literature to support the propositions that insertion of foreign bodies into the urethra, although uncommon, is “well described in the setting of autoeroticism and masturbatory behaviour”, and further that there are cases in the literature of Fournier’s gangrene precipitated by self-inserted urethral foreign bodies.³⁶
58. Dr Iles makes the following comments in relation to the bruising or other injuries observable on Mr Payne’s body:
- a. In relation to the swelling and bruising to Mr Payne’s genital region, it is highly likely that these are a manifestation of Fournier’s gangrene;
 - b. The bruising described to Mr Payne’s hip and pelvic region could be as a result of direct trauma (noting that Mr Payne is likely to have bruised easily in the setting of sepsis) or soft tissue infection and necrosis;
 - c. In relation to Mr Payne’s skull fracture, it is not associated with intracranial injury, and is consistent with an agonal event (i.e. a fall backwards at the time of death) rather than being the primary cause for Mr Payne’s death; and
 - d. The bruising to Mr Payne’s right shoulder muscle would also be consistent with a fall backwards.³⁷
59. Dr Iles is of the view that there were “no findings in the material... that necessitates the involvement of another person in Mr Payne’s death.” She expresses the view, on the available material, that “Mr Payne’s death can be completely explained as a consequence of a natural disease process secondary to misadventure (i.e., a foreign body in the urethra)”, and that there are “no features in

³⁵ Expert report of Dr Linda Iles (n 30) p. 6.

³⁶ Ibid.

³⁷ Ibid pp. 5-6.

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the materials... to suggest either suicide or foul play”.³⁸ It is submitted it follows that the probability is that the foreign body was self-inserted by Mr Payne.

60. It is submitted that the Inquiry should accept the expert opinion of Dr Iles, which is essentially largely consistent with the original opinion of Dr Davison.

Other factors relevant to manner and cause of death

61. In addition to the literature referred to by Dr Iles, other relevant factors include: there were no signs of struggle or ransacking in Mr Payne’s unit; there was evidence that Mr Payne was unwell for some time prior to his death; and Mr Payne’s unit was “heavily locked”. All of these factors tend against a conclusion that another person was involved in or responsible for Mr Payne’s death, and tend to suggest that Mr Payne himself inserted the foreign body into his urethra.

Conclusions as to bias

62. Notwithstanding the new information as to Mr Payne’s sexuality, it is submitted that Mr Payne’s death was not the result of an LGBTIQ hate crime.

Submissions as to manner and cause of death

63. In view of the totality of the circumstances, it is more probable than not that the foreign body was self-inserted by Mr Payne into his urethra, likely in the setting of autoeroticism. It is submitted that the Inquiry should find:

Mr Payne died at ██████████ Henderson Street, Inverell between 31 January and 2 February 1989, as a consequence of septicaemia, precipitated by a urethral foreign body, which was self-inserted.

64. Accordingly, it does not fall within Category A of the Inquiry’s terms of reference.

³⁸ Expert report of Dr Linda Iles (n 30) p. 7.

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Submissions as to recommendations

65. It is submitted that a recommendation should be made to the Registry of Births, Death and Marriages to correct the Register of Births, Deaths and Marriages pursuant to s 45(1)(b) of the *Births, Deaths and Marriages Registration Act 1995*, such that Mr Payne's cause of death is recorded as: "septicaemia secondary to Fournier's gangrene, precipitated by a urethral foreign body."

Kathleen Heath
Counsel Assisting