



## Special Commission of Inquiry into LGBTIQ hate crimes

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# SUPPLEMENTARY SUBMISSIONS OF COUNSEL ASSISTING

15 October 2023

### IN THE MATTER OF SAMANTHA RAYE

#### Introduction

1. These submissions are filed on behalf of Counsel Assisting the Special Commission of Inquiry into LGBTIQ hate crimes (**Inquiry**) and supplement the written submissions in this matter dated 24 March 2023 (**WS**).

#### First Report of Dr Iles

2. On 29 March 2023, a report from Dr Iles dated 3 March 2023 as to the cause of Ms Raye's death was tendered at the public hearing of Ms Raye's case (**first report**).<sup>1</sup> Dr Iles' opinion was that the development of bronchopneumonia in an otherwise healthy individual suggests a period of central nervous system depression or obtundation prior to death, but the medical evidence was unable to confirm the mechanism of any central nervous system depression.<sup>2</sup> She stated that "the precipitant of her lung infection is not clear and cannot be determined on the autopsy or toxicological findings."<sup>3</sup>
3. Dr Iles considered that the autopsy findings were "nonspecific", and while they allowed for the possibility that Ms Raye had self-injected insulin, inducing hypoglycaemia, a coma, and then death via acquired bronchopneumonia, such causation would be "implied purely on circumstantial evidence."<sup>4</sup>
4. Dr Iles also noted the reported finding of mild meningoencephalitis was "difficult to reconcile" with the scenario of Ms Raye dying by self-injected insulin.<sup>5</sup> She was unable, on the evidence then available, to assess the extent or likely contribution of mild meningoencephalitis to Ms Raye's death.<sup>6</sup>

<sup>1</sup> Exhibit 17, Tab 36, Expert report of Dr Linda Iles, 3 March 2023 (SCOI.82545).

<sup>2</sup> Exhibit 17, Tab 36, Expert report of Dr Linda Iles, 3 March 2023, 8 (SCOI.82545).

<sup>3</sup> Exhibit 17, Tab 36, Expert report of Dr Linda Iles, 3 March 2023, 10 (SCOI.82545).

<sup>4</sup> Exhibit 17, Tab 36, Expert report of Dr Linda Iles, 3 March 2023, 10 (SCOI.82545).

<sup>5</sup> Exhibit 17, Tab 36, Expert report of Dr Linda Iles, 3 March 2023, 10 (SCOI.82545).

<sup>6</sup> Exhibit 17, Tab 36, Expert report of Dr Linda Iles, 3 March 2023, 9 (SCOI.82545).

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5. On the basis of (*inter alia*) that report, Counsel Assisting submitted that it was not possible to reach a finding as to whether the presence of insulin in Ms Raye's body was a contributing cause of death, nor as to whether Ms Raye self-administered insulin prior to her death: WS [141].

### Subsequent investigative steps

6. After the hearing of Ms Raye's case on 29 March 2023, the Inquiry undertook the following additional investigative steps:
  - a. The Inquiry requested NSW Health Pathology – Forensic Medicine (**Forensic Medicine**) to re-cut slides from the blocks of histological specimens retained from the original autopsy performed on Ms Raye and provide those slides to Dr Iles for examination.<sup>7</sup>
  - b. The Inquiry requested that the Forensic and Analytical Science Service (**FASS**) produce documents or records indicating what testing was conducted on histological specimens collected at autopsy as part of the “routine screening tests for poisons” referred to in the toxicology report of 24 May 1989.<sup>8</sup> In response, FASS provided a letter from Michael Symonds, Director of FASS, summarising the relevant testing, and the case file relating to the toxicological testing.<sup>9</sup> This material was provided to Dr Iles.<sup>10</sup>
  - c. The Inquiry obtained supplementary reports of Dr Iles dated 23 June 2023 (**second report**)<sup>11</sup> and 21 July 2023 (**third report**),<sup>12</sup> following her review of the histological slides and the material relating to the toxicological testing.

### Second report of Dr Iles

7. Dr Iles reviewed 35 slides cut from histological specimens retained from the autopsy of Ms Raye, including sections from the brain and central nervous system, the cardiovascular system, the respiratory system, the gastrointestinal tract, the genitourinary track, the haemopoietic and lymphoreticular system, and the endocrine system.<sup>13</sup>

<sup>7</sup> Exhibit 17, Tab 33, Letter from Solicitor Assisting the Inquiry to NSW Health Pathology – Forensic Medicine, 25 February 2023 (SCOI.82546); Exhibit 17, Tab 33A, Summons to produce (DOFM4), 25 February 2023 (SCOI.82548); Exhibit 17, Tab 45, Statement of Caitlin Healey-Nash, 28 July 2023, [4]-[6] (SCOI.84887).

<sup>8</sup> Exhibit 17, Tab 6, Toxicology report, 24 May 1989 (SCOI.11038.00010); Exhibit 17, Tab 40, Letter from Solicitor Assisting the Inquiry to Forensic and Analytical Science Service, re: toxicology testing, 23 June 2023 (SCOI.84885).

<sup>9</sup> Exhibit 17, Tab 41, Letter from Forensic and Analytical Science Service to Solicitor Assisting the Inquiry, 30 June 2023 (SCOI.84884); Exhibit 17, Tab 41A, Case File (T9469), various dates (SCOI.84883).

<sup>10</sup> Exhibit 17, Tab 45, Statement of Caitlin Healey-Nash, 28 July 2023, [8] (SCOI.84887).

<sup>11</sup> Exhibit 17, Tab 42, Supplementary Expert Report of Dr Linda Iles, 23 June 2023 (SCOI.84881).

<sup>12</sup> Exhibit 17, Tab 43, Further Supplementary Expert Report of Dr Linda Iles, 21 July 2023 (SCOI.84882).

<sup>13</sup> Exhibit 17, Tab 42, Supplementary Expert Report of Dr Linda Iles, 23 June 2023, 2-3 (SCOI.84881).

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8. Dr Iles observed “acute bronchitis and well-developed bronchopneumonia”. The latter is consistent with the observations made at the time of the original autopsy.<sup>14</sup>
9. On review of slides from Ms Raye’s brain, Dr Iles observed the presence of “a lymphocytic infiltrate in the subarachnoid space”, and “perivascular lymphocytosis”, that “may indicate mild aseptic (viral) meningitis.”<sup>15</sup> However, in her view this was not associated with encephalitic change (i.e. inflammation of the brain) and may not have been symptomatic. In her view it is unlikely that this light chronic inflammation in the sub-arachnoid space was a primary operating factor in Ms Raye’s death.<sup>16</sup>
10. Accordingly, it is submitted that there is insufficient evidence to establish that meningoencephalitis was a cause of Ms Raye’s death.
11. Dr Iles observed evidence of “significant acute neuronal injury” within the hippocampus, and “patchy acute neuronal injury” in the section of the cortex that was sampled.<sup>17</sup> Dr Iles considered that the combination of these findings suggest “a prolonged period of decreased consciousness prior to death, with features of early hypoxic ischaemic or metabolic neuronal injury.”<sup>18</sup> (A hypoxic ischaemic injury is caused by a lack of oxygen or blood to the brain; a metabolic injury occurs with the abnormal functioning of the metabolic system, including a deficiency of glucose caused by excess insulin.)
12. In her first report of March 2023, Dr Iles had expressed the opinion that the development of bronchopneumonia suggested a period of central nervous system depression prior to death (see at [2] above). The opinions now expressed in her second report point to the probability that Ms Raye suffered a prolonged period of decreased consciousness prior to death and also sustained a brain injury.
13. Dr Iles considered that the non-specific findings at autopsy could be accounted for by two possibilities:
  - a. “insulin toxicity precipitating hypoglycaemia and consequent hypoglycaemic brain injury”;
  - or
  - b. “intoxication with a central nervous system depressing agent resulting in a prolonged period of decreased consciousness and hypotension prior to death”.<sup>19</sup>

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<sup>14</sup> Exhibit 17, Tab 42, Supplementary Expert Report of Dr Linda Iles, 23 June 2023, 3, Comment [1] (SCOI.84881).

<sup>15</sup> Exhibit 17, Tab 42, Supplementary Expert Report of Dr Linda Iles, 23 June 2023, 4, Comment [2] (SCOI.84881).

<sup>16</sup> Exhibit 17, Tab 42, Supplementary Expert Report of Dr Linda Iles, 23 June 2023, 4, Comment [3] (SCOI.84881).

<sup>17</sup> Exhibit 17, Tab 42, Supplementary Expert Report of Dr Linda Iles, 23 June 2023, 4, Comment [2] (SCOI.84881).

<sup>18</sup> Exhibit 17, Tab 42, Supplementary Expert Report of Dr Linda Iles, 23 June 2023, 4, Comment [3] (SCOI.84881).

<sup>19</sup> Exhibit 17, Tab 42, Supplementary Expert Report of Dr Linda Iles, 23 June 2023, 4, Comment [4] (SCOI.84881).

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14. Dr Iles was unable to differentiate between these two possibilities based on the autopsy findings alone.<sup>20</sup> Only the first of these possibilities would be consistent with Ms Raye self-injecting insulin.

### Third report of Dr Iles

15. Dr Iles' third report was written following review of the documentation provided by FASS as to toxicological testing of histological specimens obtained at autopsy.
16. Dr Iles observed that the toxicological testing excluded the presence of a number of important central nervous system depressants, including morphine, methadone, tricyclic antidepressants, and phenothiazines. "Insignificant traces" of benzodiazepines were noted in the liver.<sup>21</sup>
17. This testing tends to exclude, albeit not definitively, the second of the possibilities set out at [13.b] above.
18. Dr Iles' conclusion was that, "on the balance of probabilities and given the information available ..., the most likely precipitant of a period of decreased consciousness prior to Ms Raye's death is hypoglycaemia following the use of insulin in a non-diabetic person."<sup>22</sup>
19. Accordingly, it was Dr Iles' opinion that, "notwithstanding some of the limited data available and the limitations of the toxicological studies performed, on the balance of probabilities it is most likely that Ms Raye... died as a consequence of hypoglycaemic brain injury secondary to insulin toxicity."<sup>23</sup>

### Further submissions as to Ms Raye's manner and cause of death

20. On the basis of the additional information now available, and Dr Iles' views thereon, it is submitted that there is now sufficient evidence to sustain findings that:
- a. Ms Raye died as a consequence of hypoglycaemic brain injury secondary to insulin toxicity; and
  - b. Ms Raye self-administered insulin prior to her death.
21. A finding expressed in these terms departs from the opinion of Dr Bradhurst at autopsy, who recorded Ms Raye's cause of death as acute bilateral bronchopneumonia and viral meningoencephalitis. There is insufficient evidence that viral meningoencephalitis was a cause of Ms Raye's death. While Dr Iles made observations of bronchopneumonia, she considered that bronchopneumonia was best viewed

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<sup>20</sup> Exhibit 17, Tab 42, Supplementary Expert Report of Dr Linda Iles, 23 June 2023, 4, Comment [4] (SCOI.84881).

<sup>21</sup> Exhibit 17, Tab 43, Further Supplementary Expert Report of Dr Linda Iles, 21 July 2023, 2, Comment [1] (SCOI.84882).

<sup>22</sup> Exhibit 17, Tab 43, Further Supplementary Expert Report of Dr Linda Iles, 21 July 2023, 2, Comment [1] (SCOI.84882).

<sup>23</sup> Exhibit 17, Tab 43, Further Supplementary Expert Report of Dr Linda Iles, 21 July 2023, 3, Comment [3] (SCOI.84882).

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as an indicator of the mechanism of death (prolonged central nervous system depression), rather than the primary cause of death.<sup>24</sup>

### **Ms Raye's intent at the time of self-administering insulin**

22. In light of the evidence establishing the probability that Ms Raye self-administered insulin prior to her death, it is necessary to reconsider the question of Ms Raye's intention at the time of administering the insulin, including whether she intended to die by suicide.
23. At the outset it may be observed that there is no one settled definition of suicide, or test to be applied on that issue, at common law in Australia.<sup>25</sup> Moreover, none of the Coroners Acts in Australia requires coroners to make an explicit determination of suicide or of a deceased's intent.<sup>26</sup>
24. One formulation, proposed by Coroner Coate in the Coroners Court of Victoria,<sup>27</sup> is that the appropriate question to be asked is "whether or not, in doing what [the male deceased] did on that [occasion], [he] was engaged in a voluntary or deliberate course of conduct or act or acts in which [he] consciously intended at the moment of engagement in the acts, by those acts, to end [his] own life".
25. On that formulation, suicide comprises three elements:
  - a. a voluntary or deliberate act of the deceased, where
  - b. the intent behind the act was to end their own life, with
  - c. a conscious understanding, at the moment of engagement in the act, that such an act would necessarily result in death.<sup>28</sup>
26. In the case of Ms Raye, there is now sufficient evidence to establish the first of those three elements. However, it is submitted that that is not so for the second and third elements.
27. It has long been accepted in Australia that a finding of suicide should not be made lightly.<sup>29</sup> Historically, there were significant consequences of a finding of suicide, including for religious burial

<sup>24</sup> Exhibit 17, Tab 44, Email from Dr Linda Iles, 9 August 2023 (SCOI.86173).

<sup>25</sup> See Stephanie Jowett, Belinda Carpenter and Gordon Tait, 'Determining a Suicide under Australian Law' (2018) 41(2) *UNSW Law Journal* 355, 363.

<sup>26</sup> See Stephanie Jowett, Belinda Carpenter and Gordon Tait, 'Determining a Suicide under Australian Law' (2018) 41(2) *UNSW Law Journal* 355, 360ff.

<sup>27</sup> *Inquest into the Death of Tyler Jordan Cassidy* [2011] Coroners Court of Victoria.

<sup>28</sup> See Stephanie Jowett, Belinda Carpenter and Gordon Tait, 'Determining a Suicide under Australian Law' (2018) 41(2) *UNSW Law Journal* 355, 364.

<sup>29</sup> *American Home Assurance Company v King* [2001] NSWCA 201 at [10]-[13] (Stein JA, Handley JA and Beazley JA agreeing); *Australian Associated Motor Insurers Ltd v Elmore Haulage Pty Ltd* (2013) 39 VR 365 at [55].

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and life insurance policies, and coroners have traditionally employed a high standard of proof on this issue, usually encapsulated by reference to the *Briginshaw* principle.<sup>30</sup>

28. However, social attitudes towards suicide have changed over time.<sup>31</sup> Thus for example in *Clark v NZI Life Ltd* (1991) 2 Qd R 11, at 16, Thomas J suggested that a finding of suicide may no longer be one of such gravity as to "bring it toward the top of the range of what is sometimes called the *Briginshaw* test". Nevertheless, it remains the case that Australian coroners continue to employ a high standard of proof in suicide determinations.<sup>32</sup>

### *Factors relevant to the assessment of Ms Raye's intent*

29. As previously submitted, Ms Raye had a history of severe depression, suicidal ideation and possible suicide attempts: WS [78]-[79]. All of Ms Raye's treating doctors indicated their opinion that Ms Raye was capable of taking her own life: WS [83]. Her mental health had been observed to deteriorate significantly in the months prior to her death, due, at least in part, to harassment and abuse by a neighbour. Two of her doctors had suggested that her living situation placed her in danger of dying by suicide: WS [80]-[82], [88]-[89]. An intention to die by suicide is a realistic possibility in the context of Ms Raye's poor mental health.
30. However, a finding as to Ms Raye's intention is significantly complicated by the cause of her death, which can now be identified as the self-administration of insulin.
31. As noted in WS [71]-[73], there was conflicting evidence as to whether Ms Raye was a diabetic. On the one hand, her friend Mr Hurrell said she **was** diabetic, as did the P79A: see WS [71]. Mr Hurrell stated that she "had to take insulin with a syringe and she used to inject the insulin into her behind."<sup>33</sup> Indeed Mr Hurrell said that a previous suicide attempt by Ms Raye had been implemented in part by "not taking her insulin": see WS [79b]. Further, Ms Raye told her GP, Dr Grieve, that she was an insulin-dependent diabetic (though his blood tests and enquiries did not indicate that to be so).<sup>34</sup> She also told Dr Grieve that she was seeing two doctors in the city in relation to her diabetes: see WS [73] and footnote 65. Those doctors do not appear to have been questioned by police.

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<sup>30</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336, 361-2 (Dixon J).

<sup>31</sup> Stephanie Jowett, Belinda Carpenter and Gordon Tait, 'Determining a Suicide under Australian Law' (2018) 41(2) *UNSW Law Journal* 355, 364.

<sup>32</sup> Stephanie Jowett, Belinda Carpenter and Gordon Tait, 'Determining a Suicide under Australian Law' (2018) 41(2) *UNSW Law Journal* 355, 370-373; Senate Community Affairs References Committee, Parliament of Australia, *The Hidden Toll: Suicide in Australia* (2010) 26.

<sup>33</sup> Exhibit 17, Tab 10, Statement of Wayne Hurrell, 20 March 1989, [6] (SCOI.11038.00030).

<sup>34</sup> As noted in the submissions on behalf of the Commissioner of NSW Police Force, 12 April 2023, [32(i)].

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32. On the other hand, several treating doctors (including Dr Grieve and Dr Steinheuer) expressed doubt that she was diabetic, local chemists seemingly had not supplied the insulin to her, and no medical records were found which made reference to her being diabetic: see WS [72], [73], [115].
33. In her third report, Dr Iles observes that insulin is not regarded as a drug of abuse.<sup>35</sup> Accordingly, it may be thought unlikely that Ms Raye administered insulin to herself to induce an altered state of consciousness. However, the evidence summarised above suggests that Ms Raye may have used insulin for a prolonged period, perhaps believing herself to be diabetic, perhaps despite a lack of medical indication.
34. Balancing these factors, notwithstanding her poor mental health and evidence of her suicidal ideation, it is submitted that although suicide may have been the explanation for Ms Raye's death, other explanations cannot be ruled out. One such possibility is that Ms Raye administered insulin to herself on the day of her death, believing (perhaps wrongly) that it was medically indicated, and without a conscious understanding that doing so would result in her death.
35. As also noted previously (see WS [113]), the note left on Ms Raye's mantelpiece, which read "At lighthouse, will be back????", does not assist in distinguishing between a scenario of suicide and one of misadventure. One possible interpretation of her note, as submitted by the NSWPF, is that Ms Raye had in mind that she would not return.<sup>36</sup> However, it is also possible that the note was simply meant to indicate that she was not sure how long she would stay at the lighthouse: see WS [113].
36. Accordingly, it is submitted that there is insufficient evidence to support a positive finding that Ms Raye self-administered insulin with the intention of causing her own death. It is submitted that no finding should be made as to Ms Raye's intention.

### Recommendations

37. In addition to the recommendations at WS [144], it is submitted that a recommendation should be made to the Registrar 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:
- a. Ms Raye's cause of death be recorded as "hypoglycaemic brain injury secondary to insulin toxicity".

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<sup>35</sup> Exhibit 17, Tab 43, Further Supplementary Expert Report of Dr Linda Iles, 21 July 2023, 3, Comment [2] (SCOI.84882).

<sup>36</sup> Submissions on behalf of the Commissioner of NSW Police Force, 12 April 2023, [32(e)].

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