



Special Commission of Inquiry into LGBTIQ hate crimes

31 May 2023

Clint Cochrane
 Laboratory Manager
 Forensic and Analytical Science Service
 3 Weerona Road
 LIDCOMBE NSW 2141

By email: [REDACTED]

Dear Mr Cochrane,

NSW Special Commission of Inquiry into LGBTIQ hate crimes – Robert Malcolm

I refer to the above Inquiry, and to the conference held on 1 November 2022 between the Forensic and Analytical Science Service (“FASS”) and the Inquiry to discuss the possibility of further forensic testing in relation to a number of deaths being considered by the Inquiry.

Among the matters discussed on that date was the death of Robert Malcolm (born 8 March 1950, died 29 January 1992).

Exhibit analysis and current locations

In the course of the NSW Police Force (“NSWPF”) investigation into Mr Malcolm’s death in 1992, records held by the Inquiry indicate that a number of exhibits were submitted to the then Division of Analytical Laboratories for forensic analysis. In a report dated 3 June 1992, Mr Rudi Weigner indicated that human blood was detected on a number of the exhibits. The results of the blood group analysis were summarised in that report.

On 18 May 2023, the NSW Police Force (“NSWPF”) advised as follows in relation to the location of the exhibits in this matter:

Item	Status
Broken brick with blood staining	Destroyed on 1 May 1996
Multiple pieces of blood stained timber	Destroyed on 1 May 1996
‘Toohey’s Draught’ beer bottle	Destroyed after examination
‘Victorian Bitter’ beer bottle	Destroyed after examination

Special Commission of Inquiry into LGBTIQ hate crimes

Swab of blood from veranda	Sample in cold storage at FASS
'Telegraph Mirror' newspaper	Destroyed after examination
Pair of black male shoes	Destroyed on 1 May 1996
Red jumper	Destroyed on 1 May 1996
2 x buttons	Destroyed on 1 May 1996
Sexual Assault Investigation Kit (SAIK #5956).	Destroyed on 1 May 1996
Pair of grey trousers	Sample in cold storage at FASS
Belt	Destroyed on 1 May 1996
Pair of underwear	Destroyed on 1 May 1996
Bloodstained singlet (torn)	Sample in cold storage at FASS

I note that on 29 May 2023, Michele Franco of FASS confirmed by email to the Inquiry that the following remain in cold storage at FASS:

- A. A blood reference (post-transfusion) from Mr Malcolm (FS92/63-1a).
- B. Sample from the swab of blood from the verandah of 6 Holden Street, Redfern.
- C. Sample from the staining on the back of the right leg of a pair of grey trousers.
- D. Sample from a bloodstained singlet.

Request for further forensic analysis

The Inquiry requests that further forensic analysis be conducted on the remaining crime scene samples with a view to recovering one or more DNA profiles from the apparent bloodstaining.

The Inquiry would be grateful if any profiles obtained could be compared to profiles in any relevant database available to FASS, including the National Criminal Investigation DNA database.

Request for statement

Further, the Inquiry requests a statement or expert certificate from an appropriate officer at FASS regarding the following topics:

DNA Testing

1. The results of the DNA testing carried out on the crime scene samples listed at A - D above. Where particular tests and/or analysis cannot be undertaken, or are considered to be of no utility, please refer to this in the statement.
2. The impact of the blood transfusions given to Mr Malcolm as part of his care and treatment at Royal Prince Alfred Hospital on the results of the DNA testing.
3. If a DNA profile other than Mr Malcolm's is identified, whether the following persons can be excluded as contributors:

Special Commission of Inquiry into LGBTIQ hate crimes

- a. Anthony Hookey (DOB: [REDACTED] 1971);
- b. Kirk Anthony Phillips (DOB: [REDACTED] 1960); or
- c. Richard Green (DOB: [REDACTED] 1963).

Forensic analysis in original investigation

4. The conclusions that can be drawn from the blood grouping analysis outlined in the report of Mr Weigner dated 3 June 1992.
5. The results of any testing conducted in relation to the Sexual Assault Investigation Kit (SAIK) #5956. In the event that no testing was conducted, the reasons for this decision.

Destroyed exhibits

6. The nature of the forensic analysis that could now be conducted in relation to the exhibits contained in the above table noted to be destroyed, had they been retained, that was either not available at the time of the initial forensic analysis in 1992 or that was available but was not carried out at the time.

Other comments

7. Any other comments you wish to make regarding forensic analysis in this matter of relevance to the Inquiry.

It is anticipated that such a statement would be formally admitted into evidence before the Inquiry and assist in making findings regarding the manner and cause of Mr Malcolm's death.

Timeframe

We would be grateful if you could provide that statement by no later than **Friday, 9 June 2023**.

In the event that you anticipate any difficulty with this timeframe, I would be grateful if you could please notify me as soon as possible.

Thank you in advance for your ongoing assistance to the Inquiry.

Please do not hesitate to contact Kate Lockery on [REDACTED] or [REDACTED] if you have any queries in relation to this matter.

Yours faithfully,



Kate Lockery
Principal Solicitor
Solicitor Assisting the Inquiry