



CORONERS COURT OF QUEENSLAND

FINDINGS OF INQUEST

CITATION: **Inquest into the death of Herbert Charles Hilsley**

TITLE OF COURT: Coroners Court of Queensland

JURISDICTION: MACKAY

FILE NO(s): 2022/234

DELIVERED ON: 20 October 2023

DELIVERED AT: BRISBANE

HEARING DATE: 20 October 2023

FINDINGS OF: Terry Ryan, State Coroner

CATCHWORDS: Coroners: inquest, death in custody, natural causes

REPRESENTATION:

Counsel Assisting: Ms N Macregeorgos

Central Queensland
Hospital & Health Service: Ms K Richardson

Queensland Corrective
Services: Ms J Villanueva

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Introduction

1. Herbert Charles Hilsley was seventy-nine years of age when he passed away at the Rockhampton Base Hospital (RBH) on the morning of 14 January 2022. Mr Hilsley was transferred to the RBH from the Capricornia Correctional Centre (CCC) on 7 January 2022, where he was serving a term of imprisonment in relation to sexual offences against children. Mr Hilsley died of natural causes as a result of pneumonia, due to or as a result of emphysema. Mr Hilsley's ischaemic heart disease was also determined to have contributed to the death.

The investigation

2. The investigation into Mr Hilsley's death was led by Detective Acting Sergeant Lea-ann Mathews of the Queensland Police Service (QPS) Corrective Services Investigation Unit (CSIU).
3. After being notified of the passing, Police attended Room 2, Ward 4 at the RBH with a Scenes of Crime officer. Police observed Mr Hilsley to have an oxygen tube inserted in his nose and a cannular attached to the inside of his right arm. Bruising was observed to Mr Hilsley's lower left and right arms, the front and back of his hands and sole of his right foot.
4. A direction for a targeted coronial investigation was issued on 19 January 2022. This direction included seeking medical records, interviewing the next of kin about any concerns, and obtaining statements from relevant medical staff and Custodial Corrections Officers (CCOs). A Coronial Investigation Report was prepared and provided to the Coroners Court in March 2023.
5. Detective Acting Sergeant Mathews conducted a thorough investigation in response to the targeted direction. She concluded that there were no suspicious circumstances surrounding Mr Hilsley's passing, and he was provided with appropriate care and treatment while incarcerated. Detective Acting Sergeant Mathews also concluded that the death was not preventable.

The inquest

6. At the time of his death, Mr Hilsley was a prisoner in custody pursuant to the *Corrective Services Act 2006* (Qld). His death was a 'death in custody' and an inquest was mandatory under the *Coroners Act 2003* (Qld).
7. The inquest was held at Brisbane on 20 October 2023. All statements, records of interview, medical records, photographs and materials gathered during the investigation were admitted into evidence. No witnesses were called to give oral evidence. Counsel Assisting proceeded to submissions on the investigation material in lieu of any oral evidence.
8. The issues considered at the inquest were the findings required by s 45(2) of the *Coroners Act 2003* (Qld), and whether Mr Hilsley had access to, and received appropriate medical care, while he was in custody.
9. I am satisfied that all material necessary to make the requisite findings was placed before me at the inquest.

10. The role of the coroner is to independently investigate reportable deaths to establish, if possible, the identity of the deceased, the medical cause of death, and the circumstances surrounding the death – how the person died. Those circumstances are limited to events which are sufficiently connected to the death. The purpose of a coronial investigation is to establish the facts, not to cast blame or determine criminal or civil liability.

The evidence

Social and Medical History

11. Mr Hilsley was born on 17 July 1942 in Yallourn, Victoria. Mr Hilsley's criminal records indicate that he was also known as "Graeme Charles Hill" with a date of birth recorded as 17 July 1940.
12. A family statement from Mr Hilsley's brother and niece indicated that he was known to the family as "Mickey". They noted his interactions with the criminal justice system started at a young age. The family were aware that he had a bad heart and was regularly in and out of hospital. He had several children but did not have any contact with them.
13. Mr Hilsley's interactions with the criminal justice system commenced when he was fourteen years of age, when he was charged with two counts of larceny. These charges were dismissed by the Moe Childrens Court on 6 December 1956.
14. In 1957, Mr Hilsley was again charged with larceny and was released on probation to a Reverend Pilkington for fifty-two weeks. One year later, Mr Hilsley was the subject of a child welfare application. On 23 January 1959, Mr Hilsley was found to be a child in need of care and protection and he was committed to the care of the Child Welfare Department.
15. Mr Hilsley's offending was consistent throughout most of his adult life, spanning across Victoria, New South Wales and Queensland, and related to stealing and other offences of dishonesty. However, Mr Hilsley's offending significantly escalated in 1997 when he was convicted and sentenced to a total of six years imprisonment (with a non-parole period of four years and nine months) in relation to seven counts of sexual offences against children.
16. On 18 March 1998, Mr Hilsley was sentenced to an additional eighteen months imprisonment for three counts of child sex offences. On 8 October 1999, Mr Hilsley was convicted and sentenced to a total of five years imprisonment (with a non-parole period of four years and three months) for eight counts of child sex offences.
17. Mr Hilsley appealed the last sentence in the Supreme Court of Victoria. However, the appeal was ultimately abandoned on 4 July 2000 and the original sentence affirmed.
18. After serving these sentences and living in the community again, on 18 June 2019, Mr Hilsley was arrested in Mackay, Queensland and remanded in custody for further sexual offences against children.

19. On 24 July 2020, Mr Hilsley plead guilty to two counts of grooming and two counts of indecent treatment in the Mackay District Court and was sentenced to a head sentence of three years imprisonment. The 402 days spent in pre-sentence custody were deemed as time already served and Mr Hilsley's parole eligibility date was set at 24 July 2020. Mr Hilsley applied for parole shortly thereafter on 28 July 2020 and received a letter of acknowledgment from the Parole Board of Queensland (PBQ) on 3 August 2020. He remained incarcerated at the CCC until his death on 14 January 2022.
20. While incarcerated at the CCC, Mr Hilsley received regular treatment for a number of co-morbidities, including:
 - a) Chronic Obstructive Pulmonary Disease (COPD);
 - b) Ischaemic Heart Disease;
 - c) Chronic Kidney Disease;
 - d) Gout;
 - e) Hyponatremia;
 - f) Gastro-Oesophageal Reflux Disease (GORD); and
 - g) An incisional hernia.
21. In 2012, Mr Hilsley had a heart attack and underwent a quadruple coronary bypass. He further underwent surgery in 2015 for an abdominal aortic aneurysm.
22. Mr Hilsley also had a history of smoking approximately 100 cigarettes per day.
23. Mr Hilsley was placed on the Chronic Disease Management list and reviewed by health practitioners (nursing staff, nursing practitioners or medical officers) at a minimum of once per week.
24. Mr Hilsley was admitted to the RBH on eight occasions during his imprisonment at the CCC, the first being on 4 April 2020 after he was observed to be coughing in his cell, appeared pale, sweaty, lethargic and looking generally unwell. Mr Hilsley was escorted to the prison's medical centre and transferred to the RBH Emergency Department where he was diagnosed with an upper respiratory tract infection. He was discharged later in the evening with antibiotics and a Ventolin inhaler.
25. On 12 August 2020, a Code Blue was called as Mr Hilsley was suffering from shortness of breath. Mr Hilsley's oxygen saturation levels were recorded at 89%, which was under his normal range of 91 - 92%. Accordingly, nurses administered Salbutamol via nebuliser and he was transferred to the prison's Medical Unit where he remained for observation until 13 August 2020.
26. On 25 August 2020, a letter was provided to the PBQ by Dr David McGoldrick, outlining Mr Hilsley's chronic illnesses and the assistance he required while in prison. The next day, Mr Hilsley applied for Exceptional Circumstances Parole (ECP).
27. Mr Hilsley was advised on 28 August 2020 that the General Manager's parole recommendation to the PBQ was "Not Recommended". Mr Hilsley understood the recommendation and acknowledged that his application was with the PBQ for determination.

28. On 14 September 2020, the PBQ met in relation to Mr Hilsley's ECP application and deferred the decision until receipt of medical advice in relation to his prognosis and treatment needs. The PBQ advised in correspondence dated 17 September 2021 that it would consider his application upon receipt of the further information.
29. On 26 September 2020, a further Code Blue was called due to Mr Hilsley suffering from chest pains and shortness of breath. He was conveyed to the RBH via Queensland Ambulance Service (QAS) and admitted to hospital, where he was treated for pneumonia and low levels of magnesium.
30. On 13 October 2020, the PBQ advised Mr Hilsley that it had formed the preliminary view that the circumstances identified in his application did not meet the threshold for exceptional circumstances pursuant to s 194 of the *Corrective Services Act 2006* (Qld). As a result, Mr Hilsley was invited to provide further written submissions and/or supporting documents to the PBQ within fourteen days of receipt of the letter.
31. On 7 December 2020, Mr Hilsley complained of shortness of breath that had persisted for three days, a productive cough and coughing up yellow phlegm. Mr Hilsley was provided oxygen and then transferred to the RBH via QAS. Investigations concluded that Mr Hilsley had extensive end-stage COPD and he was treated for this.
32. On or around 14 December 2020, it was determined that Mr Hilsley had a permanent need for oxygen upon his discharge. As a result, the nursing staff at CCC investigated whether Mr Hilsley could be transferred to Wolston Correctional Centre (WCC) in order to receive a higher level of care. However, on 23 December 2020, nursing staff at the CCC were advised that the transfer would be on hold until Assistant in Nursing (AIN) support was obtained.
33. On 8 January 2021, Mr Hilsley was discharged and returned to the CCC. He was to continue using his inhalers that were commenced during his admission and oxygen was to be delivered via a condenser. Mr Hilsley was to be accommodated in the Medical Unit for twenty-four-hour assistance/care as required.
34. On 13 January 2021, the PBQ advised Mr Hilsley that it had again considered his application for ECP on 11 January 2021. However, as he failed to provide any new information or make any submissions as to the matters of concern, the PBQ had formed a view that no exceptional circumstances were identified that would warrant his release at that time.
35. As a result, Mr Hilsley wrote to the PBQ on 25 January 2021 outlining why he should be granted parole. In summary, Mr Hilsley provided the following reasons:
 - a) He was seventy-nine years of age and suffered from a number of chronic illnesses;
 - b) He was on a breathing machine, unable to walk long distances or have a conversation;
 - c) The breathing machine needed to be plugged in 24/7 which prevented him from leaving the unit;
 - d) His most recent parole application was denied because he had not completed any courses, but the reason he could not complete courses was due to the breathing machine needing to be plugged in at all times and being unable to leave the unit; and

- e) If granted parole, he would be moving into a nursing home where he would have full-time care and treatment.
36. On 2 March 2021, Mr Hilsley was transferred to the Medical Unit within the CCC after complaining of an increase in his shortness of breath and coughing up blood.
37. The next day, Mr Hilsley was transferred to the RBH via QAS for further assessment as his oxygen saturation levels were not improving. Mr Hilsley was admitted to the RBH where he remained until 10 March 2021 and was treated for an infective exacerbation of COPD (IECOPD).
38. Mr Hilsley was discharged from the RBH and subsequently housed in the Medical Unit at the CCC until 12 March 2021, when he was reviewed by Dr McGoldrick. Dr McGoldrick then referred Mr Hilsley back to the RBH for fulltime care as he was unable to manage his activities of daily living or mobilise further than twenty metres without desaturating to 70%. Dr McGoldrick was “very concerned he [Mr Hilsley] would collapse if not aided”.¹ Mr Hilsley was admitted to the RBH, where he stayed until 31 March 2021 and was again treated for an IECOPD.
39. During this extended admission, Mr Hilsley underwent a chest X-RAY which identified “a bullous formation at the left lung base” and “significant increased interstitial markings presently suggestive of a degree of interstitial lung disease”.² However, upon comparison with previous investigations, there was no significant change in Mr Hilsley’s condition. Hospital staff attempted to discuss Advance Care Planning (ACP) with Mr Hilsley during this admission, but the topic caused him too much discomfort.
40. A Care Management Plan was developed at the CCC in preparation for Mr Hilsley’s discharge, which included the following actions:
- a) Mr Hilsley to be accommodated in the Medical Unit of the CCC due to his future end stage pathway;
 - b) Commencing end stage legal and ethical paperwork completion;
 - c) Organising a carer for Mr Hilsley;
 - d) Ascertaining Mr Hilsley’s food requirements; and
 - e) Liaising with the pharmacy team to ensure morphine stock levels.
41. On 29 March 2021, an AIN commenced at the CCC Medical Unit in order to assist Mr Hilsley with his activities of daily living.
42. Mr Hilsley continued to be accommodated in the CCC Medical Unit from the date of his discharge, being 31 March 2021 until 10 May 2021, when he requested that he be transferred back to his cell. A risk assessment was completed and Mr Hilsley returned to his cell with multiple aids, such as a wheelie walker, wheelchair, shower chair and oxygen concentrator. A carer was also organised for him.
43. On 12 April 2021, the PBQ considered Mr Hilsley’s parole application and on 4 May 2021 wrote to Mr Hilsley to advise that it had formed a preliminary view that his application should be declined. The PBQ was of the view that the risk level presented to the community was unacceptably high due to, in summary, the following factors:

¹ Exhibit D8 – Prisoner Health Records, Volume 1, pp 78 - 79.

² Exhibit D8 – Prisoner Health Records, Volume 1, pp 225 – 226.

- a) Mr Hilsley having criminal histories in three States, as well as being convicted of similar sexual offences in Victoria;
 - b) The Sentencing Remarks in relation to Mr Hilsley's offending and previous criminal history;
 - c) Mr Hilsley having outstanding treatment needs to address risk factors linked to his offending, in particular, his sexual offending;
 - d) The limited insight demonstrated by Mr Hilsley in relation to his offending, including:
 - i. Mr Hilsley's intention to return to area in which the offending occurred;
 - ii. Mr Hilsley's refusal to participate in sexual offending programs;
 - iii. Mr Hilsley's inability to understand his role in his offending and the predatory nature he exhibited towards children; and
 - e) Unsuitable proposed accommodation.
44. Mr Hilsley was invited to provide the PBQ with further written submissions and/or supporting documents within fourteen days of receipt of the letter. Mr Hilsley did not receive the letter until 15 June 2021 when it was hand delivered to him.
45. On 20 June 2021, Mr Hilsley made further written submissions to the PBQ in support of his application.
46. On 11 August 2021, Mr Hilsley was reviewed in the Medical Unit and transferred to the RBH for further assessment. Mr Hilsley was discharged on 12 August 2021 after receiving a full protocol for hyperkalaemia and was to undergo further follow up blood tests.
47. The next day, the PBQ wrote to Mr Hilsley to advise him that his application for parole had been refused. Having regard to the whole of his application and notwithstanding the positive aspects, the PBQ did not consider that the risk posed to the community could be mitigated by parole order conditions. However, the PBQ consented to Mr Hilsley lodging a new application within two months of the date of decision, or upon the commencement of a sexual offending program.
48. On 1 September 2021, Mr Hilsley participated in an Aged Care Assessment Team (ACAT) assessment to enable him to be placed in a nursing home if his parole application was successful.
49. At approximately 22:17 hours on 22 October 2021, a Code Blue was called as Mr Hilsley was struggling to breathe. Nursing staff attended Mr Hilsley's cell and increased his oxygen levels. However, there was minimal improvement. As a result, he was transferred to the Medical Unit and an ambulance was called to take Mr Hilsley to the RBH.
50. On this occasion, Mr Hilsley's cellmate provided further collateral information to nursing staff, namely:
- a) that Mr Hilsley had not been able to walk for days;
 - b) that he had been lifting Mr Hilsley from his bed to the toilet; and
 - c) that Mr Hilsley had increasing anxiety/panic attacks when unable to breathe.
51. This information had not been reported to nursing staff prior to the Code Blue occurring.

52. At 00:35 hours on 23 October 2021, Mr Hilsley was reviewed in the RBH Emergency Department for IECOPD. Mr Hilsley was initially treated with back-to-back nebulization with salbutamol, oral prednisolone and intravenous ceftriaxone and azithromycin. A Bilevel Positive Airway Pressure (BiPAP) ventilator was trialled, however Mr Hilsley had difficulty tolerating the mask and eventually refused to continue with its use. Accordingly, Mr Hilsley was placed back on to high flow nasal prongs. Mr Hilsley was then admitted to the Medical Ward, where he stayed until he was stable enough for discharge on 17 December 2021.
53. During this admission, Mr Hilsley required the intervention of the Medical Emergency Team (MET) on two occasions (being 25 and 26 October 2021) due to increasing heart and respiratory rates, as well as decreasing oxygen saturation levels. As a result, Mr Hilsley was diagnosed with Multifocal Atrial Tachycardia (MAT), which was treated secondary to his respiratory issues. Further investigations were undertaken which showed that Mr Hilsley had widespread interstitial consolidation and a small build-up of fluid in his right lung.
54. Mr Hilsley was eventually weaned off the high-flow oxygen. The allied health team and social worker also regularly reviewed Mr Hilsley and by 17 December 2021, he had improved to the point where he was able to be discharged.
55. On 24 December 2021, Mr Hilsley finalised his Advanced Health Directive. In summary, Mr Hilsley:
 - a) Refused any treatments that were aimed at sustaining or prolonging his life;
 - b) Refused CPR and assisted ventilation;
 - c) Consented to artificial nutrition, artificial hydration and antibiotics being provided to him;
 - d) Consented to supportive treatment for the management of illnesses; and
 - e) Consented to a blood transfusion if necessary.
56. Shortly after Mr Hilsley's return to the CCC, he commenced second daily medical officer reviews. He continued to be assisted by an AIN during the day in relation to his activities of daily living and support was provided from allied health. Mr Hilsley's condition continued to decline and by 31 December 2021, he was unable to mobilise, was incontinent, was only tolerating Sustagen (nutritional supplement) and required assistance to be repositioned in bed.

Circumstances of Death

57. On 7 January 2022, Mr Hilsley was transferred by QAS to the RBH as his condition had further declined. Medical records indicate that Mr Hilsley had dramatically decreased mobility, was incontinent of urine and faeces, had a decrease in oxygen saturation levels during cares and was exhibiting some confusion. He was also exhibiting fevers and had productive sputum.
58. Mr Hilsley was initially treated at the RBH Emergency Department with intravenous fluids, intravenous antibiotics, steroids, high flow oxygen and salbutamol via puffer. Investigations were ordered and a chest X-Ray revealed bullous bilateral lung disease in the lower zones with an increased patchy consolidation in his left lung. An ECG also revealed Atrial Fibrillation (AF). Mr Hilsley was then referred to the Medical Ward for admission.

59. He was treated for IECOPD, Acute Kidney Injury (AKI), AF and a Urinary Tract Infection (UTI). It was assessed that his delirium was likely secondary to the infection.
60. From 9 January to 13 January 2022, Mr Hilsley's was treated for AF, as well as fluctuating heart and respiratory rates. During this time, Mr Hilsley also suffered from hypoxia, an ongoing cough and bilateral crackles in his lungs.
61. On 11 January 2022, a Registrar reviewed Mr Hilsley and noted that his prognosis was poor and that he could continue to deteriorate overnight despite the provision of high flow oxygen.
62. On the morning of 13 January 2022, Mr Hilsley was reviewed by the Medical Consultant and Medical Ward team. Mr Hilsley was informed that he may not make it through the current episode of exacerbation and that he was at the "ceiling of care".³ Mr Hilsley agreed to obtaining input from the palliative care team and to commence comfort cares. He stated that there was no family to inform. Accordingly, Mr Hilsley's high flow oxygen was reduced to oxygen for comfort. Subcutaneous fentanyl and midazolam were also administered to Mr Hilsley for respiratory distress.
63. At 14:50 hours, the Palliative Care team reviewed Mr Hilsley and confirmed that it was appropriate to commence care of the dying pathway.
64. By 16:30 hours, Mr Hilsley's regular medications were ceased but for digoxin and metoprolol, in order to control symptoms of AF.
65. On 14 January 2022, Mr Hilsley was being observed second hourly by nursing staff. At approximately 06:22 hours, Mr Hilsley was observed by CCO Courtney O'Neill to have laboured breathing. Accordingly, CCO O'Neill left Mr Hilsley's room to notify the medical staff of same, while CCO Michael Naske remained with him.
66. At approximately 06:28 hours, nursing staff attended upon Mr Hilsley. They observed him to have an abnormal pattern of breathing (Cheyne-stokes). Nursing staff then left the room to obtain fentanyl for Mr Hilsley. Shortly thereafter, a doctor attended Mr Hilsley's room to assess him and informed the CCOs that he would return to check his vitals.
67. After nursing staffed to administer the fentanyl, they observed that Mr Hilsley was not breathing and a pulse could not be found. At 06:50 hours, Mr Hilsley was declared deceased.

Autopsy results

68. On 22 January 2022, Forensic Pathologist, Dr Beng Ong, conducted an autopsy consisting of an internal and external examination of the body, blood tests, a whole-body CT scan, histology and a review of Mr Hilsley's medical records.
69. Dr Ong conducted an external and partial internal examination of the thoracic cavity. Dr Ong stated:

³ Exhibit D4 – Rockhampton Base Hospital Medical Records, Volume 3, p 61.

The lungs showed severe emphysematous change with pneumonia and pulmonary hypertension. There was extensive ischaemic heart disease with previous coronary artery bypass grafts and atherosclerotic occlusion of native arteries.⁴

70. Dr Ong concluded that:

Death was due to the severe respiratory condition which did not improve even with optimum treatment. His illness was further aggravated by his cardiac condition and is listed as a significant contributing condition.⁵

71. The cause of death was identified as:

- 1(a). *Pneumonia, due to or as a consequence of;*
- 1(b). *Emphysema (chronic obstructive pulmonary disease).*

Other significant conditions:

2. *Ischaemic heart disease.⁶*

Conclusions

72. After considering the material gathered in the coronial investigation, I am satisfied that Mr Hilsley died from natural causes. I find that none of the inmates, correctional or health care staff at the RBH or the CCC caused or contributed to his death. There were no suspicious circumstances.
73. It is an accepted principle that the health care provided to prisoners should not be of a lesser standard than that provided to other members of the community. Mr Hilsley had been regularly reviewed by health practitioners in the CCC and regularly admitted to the RBH and reviewed by medical staff. Those staff did not raise concerns about his treatment and care.
74. Further, the Forensic Pathologist conducting the autopsy also commented that Mr Hilsley's treatment was optimum. There is no evidence that the care afforded to Mr Hilsley by clinical staff at the Central Queensland Hospital and Health Service was other than appropriate. His passing was expected and the final stages of his illness were managed in accordance with his Advanced Health Directive.
75. The primary issue for consideration was whether Mr Hilsley had access to, and received, appropriate medical treatment while he was incarcerated. From the medical records and the statements provided, I am satisfied that Mr Hilsley received regular, timely and appropriate medical care.

Findings required by s. 45

76. I am required to find, as far as possible, the medical cause of death, who the deceased person was and when, where and how he came to his death. After considering all of the evidence, including the material contained in the exhibits, I am able to make the following findings:

⁴ Exhibit A4 – Autopsy Report, p 5.

⁵ Exhibit A4 – Autopsy Report, p 5.

⁶ Exhibit A4 – Autopsy Report, p 6.

Identity of the deceased – Herbert Charles Hilsley

How he died – Mr Hilsley was serving a term of imprisonment for sexual offences against children. He had a number of comorbidities and experienced a steady decline in health in the months preceding his death as a consequence of end-stage chronic obstructive pulmonary disease. Mr Hilsley had applied for exceptional circumstances parole but his application was declined.

On 7 January 2022, Mr Hilsley was admitted to the RBH as his health had further declined. Given he had reached the ceiling of care, Mr Hilsley agreed to commence palliative care. Mr Hilsley died from natural causes.

Place of death – Rockhampton Base Hospital, Canning St THE RANGE QLD 4700 AUSTRALIA

Date of death– 14 January 2022

Cause of death – 1(a). Pneumonia, due to or as a consequence of;
1(b). Emphysema (chronic obstructive pulmonary disease).

Other significant conditions:

2. Ischaemic heart disease.

Comments and recommendations

77. Section 46 of the *Coroners Act 2003* enables a coroner to comment on anything connected with a death that relates to public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in the future.

78. In the circumstances, I accept that there are no comments or recommendations to be made that would assist in preventing similar deaths in future, or that otherwise relate to public health or safety or the administration of justice.

79. I extend my condolences to Mr Hilsley's family.

80. I close the inquest.

Terry Ryan
State Coroner
BRISBANE