CORONERS COURT OF QUEENSLAND

FINDINGS OF INQUEST

CITATION:	**Inquest into the death of Barry Haynes**
TITLE OF COURT:	Coroners Court
JURISDICTION:	Brisbane
FILE NO(s):	COR 2017/1416
DELIVERED ON:	16 November 2020
DELIVERED AT:	Brisbane
HEARING DATE(s):	6 December 2019 (written submissions January to May 2020)
FINDINGS OF:	Terry Ryan, State Coroner
CATCHWORDS:	CORONERS: Death in custody, natural causes, terminally ill prisoner, capacity issues, substituted decision maker, palliative care, *Human Rights Act 2019.*

REPRESENTATION:

Counsel Assisting:	Sarah Lio-Willie
Queensland Corrective Services:	Taylor Mobbs
GEO Group (Arthur Gorrie Correctional Centre):	James Hall, Ashurst
Princess Alexandra Hospital:	Fiona Banwell
Family:	Klaire Coles, Caxton Legal Service
Public Advocate:	Joanna Sampford, Office of the Public Advocate

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Introduction

1. Mr Barry Haynes was 58 years of age at the time of his death in April 2017. Mr Haynes was a Pitjantjatjara and Nunga man from Kamilaroi country in New South Wales. He was held on remand at the Arthur Gorrie Correctional Centre ('AGCC') from 16 December 2016. He died after being transferred to the Princess Alexandra Hospital Secure Unit ('PAHSU').

2. In June 2015, Mr Haynes was diagnosed with non-small cell lung cancer and he underwent chemotherapy at Gosford in New South Wales. In August 2016, staging discovered Mr Haynes had widespread metastases through his lungs, ribs and vertebrae, as well as lymphangitis carcinomatosis. In November 2016, a CT scan revealed Mr Haynes had intracranial metastases.

3. Mr Haynes was first received into remand custody at Maryborough Correctional Centre on 15 November 2016 for domestic violence offences. From the time of his initial remand and his transfer to AGCC, he was also transferred and accommodated at Brisbane Correctional Centre ('BCC') and Wolston Correctional Centre ('WCC') for short periods of time.

4. While on remand, Mr Haynes received palliative radiotherapy treatment at the Princess Alexandra Hospital ('PAH'). However, during this time Mr Haynes' condition worsened, with advancing intracranial metastatic disease and significant deterioration in the appearance of his right lung and pleural effusion by January 2017.

5. On 9 March 2017, Mr Haynes was to attend the PAHSU palliative care outpatient clinic. However, he had a fall and hit his head on concrete when getting out of the prisoner transport vehicle and was assessed in the Emergency Department. He was found to be hypoglycaemic and was admitted to the PAHSU. A CT scan showed no intracranial injury associated with the fall.

6. On 29 March 2017, Mr Haynes began to rapidly decline and health checks were conducted every two hours.

7. At approximately 3:20am on 3 April 2017, Mr Haynes was found unresponsive and not breathing. Dr Nicholas Kai Duong declared Mr Haynes deceased at 3:50am.

The investigation

8. An investigation into the circumstances surrounding Mr Haynes' death was conducted by Detective Senior Constable ('DSC') Brendan Anderson of the Corrective Services Investigation Unit ('CSIU').

9. DSC Anderson provided a report, along with information about the circumstances of the death and statements and medical records. DSC Anderson did not identify any issues or concerns indicating the death was suspicious. He concluded that Mr Haynes was terminally ill when he entered custody.

10. An external autopsy examination with associated CT scans and toxicology testing was conducted by Forensic Pathologist, Dr Beng Ong. The cause of death, based on a review of the medical records, external post-mortem examination and associated testing including CT scanning, was found to be metastatic non-small cell carcinoma.

11. At the request of the Coroners Court, Dr Natalie MacCormick from the Queensland Health Clinical Forensic Medicine Unit ('CFMU') examined the statements as well as the medical records for Mr Haynes from AGCC and the PAH and reported on them.

12. I am satisfied that the investigation was thoroughly and professionally conducted and that all relevant material was accessed.

The Evidence

Personal history

13. Mr Haynes had seven siblings including his younger brother, John, who attended the inquest by video link. He also had an older brother, Robert, whom Mr Haynes lived with for about 13 years. Mr Haynes had three children Dylan, Ryan and Eva. Mr Haynes was also step father to Jamie-Lea. Mr Haynes is dearly loved and missed by his family who have expressed that their grief is compounded by the fact that Mr Haynes died in custody.

14. I was provided with statements from Mr Haynes' children, Eva and Ryan, and step-daughter, Jamie-Lea, niece Stacey, nephew Bradley and sister-in-law, Shirley. Each of the statements confirms that Mr Haynes was a significant role model for the young people in his life, including his own children, nieces and nephews and that his loss has deeply affected his family.

15. Mr Haynes had wished to return to his traditional country in Lightning Ridge prior to his death. He held a strong desire to see that country and his parents' graves. He wanted to die with his family around him. Unfortunately, Mr Haynes was unable to realise this wish and died alone in the Secure Unit of the Princess Alexandra Hospital.

Criminal history

16. Mr Haynes had a lengthy and sporadic criminal history in New South Wales.[1] While his offending commenced in 1976, it consisted of minor nuisance, property and traffic type offences. Mr Haynes had twice been sentenced to terms of imprisonment ranging from 6-12 months in 2009 and 2013 respectively.

17. Mr Haynes had a minor criminal history in Queensland, primarily offences in contravention of bail conditions.[2] He had not spent any time in custody in Queensland until his arrest on 15 November 2016 for charges of assault occasioning bodily harm and choking in a domestic setting.[3]

18. He was held on remand at the Maryborough Correctional Centre until he was transferred to the BCC on 30 November 2016. He was then transferred to WCC on 12 December 2016, where he stayed for four days until he was transferred to AGCC on 16 December 2016.

Medical history

19. Mr Haynes was diagnosed in June 2015 with non-small cell lung adenocarcinoma (Stage 4) and underwent palliative chemotherapy treatment at Gosford Hospital in New South Wales, where he was then living. The goal of the treatment was to slow the progress of the cancer. Staging of the cancer was performed in August 2016 where it was revealed that Mr Haynes had widespread metastases through his lungs, liver, bones, and lymphatic system.

20. Between 8 and 15 November 2016, Mr Haynes was admitted to Gosford Hospital after exhibiting psychosis and aggression, which was unusual behaviour for him. A CT scan of his brain revealed intracranial metastases. He immediately underwent treatment to slow the progress, and reduce the size of the tumour in preparation for radiation therapy. Mr Haynes was scheduled for whole brain radiation therapy but before this could proceed, he was arrested and remanded in custody.

21. On 22 November 2016, the visiting medical officer at Maryborough Correctional Centre referred Mr Haynes to the Radiation Oncology team at the PAH for whole brain radiotherapy. Throughout his time in incarceration Mr Haynes continued to attend the PAHSU for palliative treatment; and by 9 December 2016 he had received all five fractions of radiotherapy.

22. On 12 December 2016, Mr Haynes was transferred to WCC but concerns were raised shortly thereafter about his health care needs and he was subsequently transferred to AGCC on 16 December 2016. It was considered by the General Manager at WCC that the AGCC medical unit could provide better medical attention.

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[1] Ex C5
[2] Ex C3
[3] Ex D2

23. On 26 December 2016, correctional officers asked Health Services Coordinator, Rachael Craig from the AGCC medical centre whether it would be appropriate for Mr Haynes to have a carer or buddy to assist him with day to day requirements, and whether a wheelchair could be provided to facilitate Mr Haynes' movement around AGCC. Ms Craig agreed that these measures would be appropriate, but it does not seem that they were put in place.

24. Mr Stephen Joyce, Health Services Manager at AGCC stated that a relatively short time after Mr Haynes arrived at AGCC he developed the impression that Mr Haynes could not be appropriately managed at AGCC because he would require palliative care as his illness progressed.

25. Mr Joyce recalled that Mr Haynes' condition was discussed by members of the Senior Management Team. At a Senior Management Team meeting shortly after Mr Haynes arrived at AGCC Mr Joyce indicated his opinion that when Mr Haynes' condition deteriorated, he could not be appropriately managed at AGCC.

26. The Senior Management Team agreed that AGCC would attempt to transfer Mr Haynes to the South Queensland Correctional Centre ('SQCC') at Gatton. If the transfer could not occur, the management team would seek to enhance the facilities at the medical centre to be able to better care for Mr Haynes. Measures such as the acquisition of an electric bed and engaging extra nursing care for at least 12 hours per day were discussed.[4]

27. On 29 December 2016, Mr Haynes was treated at the AGCC medical centre by Dr Amir Abbas, and he subsequently planned for palliation and comfort care. Dr Abbas wrote a referral to the PAH requesting oncology follow up.

28. A CT scan of Mr Haynes' head, chest, abdomen and pelvis conducted on 4 January 2017 showed the spread of the cancer. Dr Abbas saw Mr Haynes the following day and observed that he was becoming more confused and expected it was due to the spread of cancer in his brain. On 1 February 2017, Dr Abbas resent a referral, requesting that the PAH consider admitting Mr Haynes under palliative care to manage the progression of his disease. He noted he was 'getting delirium episodes which include agitation, confusion and self-neglect'.[5]

29. By late January 2017, AGCC medical staff noted Mr Haynes' decline and made enquiries for him to be transferred to the SQCC because it had a dedicated care unit and was better equipped to care for Mr Haynes.

30. Mr Haynes' family contacted the Public Advocate in February 2017. On 22 February 2017, the Public Advocate told Ms Craig that she had asked the Aboriginal and Torres Strait Islander Legal Service to make an application for bail for Mr Haynes.

[4] Ex B8 ,58-60
[5] Ex D1, p 85

31. The proposed transfer to SQCC was not pursued due to the possibility that a successful bail application would be made during February 2017.[6] However, while an application for bail was filed in the Supreme Court shortly before Mr Haynes' death it was not determined and he remained in custody.

32. As a remand prisoner, Mr Haynes was not eligible for exceptional circumstances parole which might have seen him released to a palliative care facility in the community, assuming one was available. His only opportunity to be released from prison was to obtain bail. However, there is no certainty Mr Haynes would have been granted bail, having regard to the serious charges that he faced.

33. On 28 February 2017, Mr Joyce contacted Karen Sacco, Head of Health Services at SQCC and asked about the waiting list for SQCC's specialised care unit and the referral process.[7] On 3 March 2017, Mr Joyce received a response from Ms Sacco noting that the SQCC specialised care unit only had four beds, and all beds were currently occupied

34. On 8 March 2017, Mr Joyce progressed the transfer request to SQCC by submitting the required forms and seeking the required approvals.

Events leading up to the death

35. On 9 March 2017, Mr Haynes was taken to the PAH palliative care outpatient clinic. However, during the transfer he had a fall and hit the back of his head on concrete. He was assessed in the emergency department and found to be hypoglycaemic and subsequently admitted to the PAHSU under the respiratory team. A CT scan showed no injuries to his head as a result of his fall.

36. On 13 March 2017, Mr Haynes and his family met with the palliative care team and agreed that further radiation and chemotherapy would not offer any benefit. Subsequently an Acute Resuscitation Plan ('ARP') was prepared indicating that the family wanted comfort cares. They did not want resuscitation or other advanced medical cares.[8]

37. On 3 April 2017, at approximately 3.20am, Queensland Corrective Services ('QCS') Officer Steve Tatrai and Registered Nurse ('RN') Natasha King checked on Mr Haynes and found Mr Haynes unresponsive and not breathing. Dr Nicholas Kai Duong declared him deceased at 3.50am.[9]

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[6] On 22 February 2017 in an email to Mr Joyce and others Ms Craig queried whether they should hold off with the transfer request to SQCC because it seemed that Mr Haynes might be released very soon, and that Mr Haynes was at that time stable.

[7] Ex B8 [75]

[8] Ex E4, p 3

[9] Ex A3

Autopsy

38. An external post-mortem examination was performed by forensic pathologist, Dr Beng Ong, on 3 April 2017 at Queensland Health Forensic and Scientific Services ('QHFSS').[10] A CT scan was undertaken, and a toxicology sample obtained.

39. The external examination noted Mr Haynes' body was emaciated and he appeared older than his true age. He had some minor healing abrasions on his elbow and knee which were unremarkable.

40. The CT scan confirmed multiple metastases in the brain, lungs and skeletal system and there was possible aspiration pneumonia.

41. Dr Ong found that the cause of Mr Haynes' death was metastatic non-small cell lung carcinoma.[11]

Medical Review

42. Dr Natalie MacCormick of the CFMU conducted a review of the medical treatment provided to Mr Haynes while he was in custody.

43. Mr Haynes' family had raised concerns about his treatment while in custody, specifically that Mr Haynes:

    - did not receive chemotherapy treatment which led to his quick deterioration;
    - only received pain management treatment; and
    - was neglected by the prison health care system.

44. Dr MacCormick addressed the concerns raised by Mr Haynes' family as follows:

    - After Mr Haynes' brain metastases were diagnosed there was no plan for chemotherapy but rather for palliative radiation therapy. By mid-March 2017 it was concluded that Mr Haynes would not benefit from further chemotherapy or radiation therapy. There was no evidence to suggest that Mr Haynes missed any chemotherapy as a result of his incarceration.

    - Mr Haynes received pain management treatment in between his chemotherapy and radiation therapy cycles. During his final

[10] Ex A6
[11] Ex A6

admission, comfort became the primary goal of therapy due to his grim prognosis and increasing distress.

- It is acknowledged that the prison environment is not ideal for palliative patients. Despite this, medical staff in the correctional centres appear to have been attentive, concerned and compassionate. He was reviewed regularly and was appropriately hospitalised for his end-of-life care.

45. Dr MacCormick provided a report detailing her conclusions on the medical treatment provided to Mr Haynes while he was in custody.[12] Her observations can be summarised as follows:

- During Mr Haynes' time in custody at BCC he accessed and completed radiation therapy. This was arranged promptly and there was no consequential delay.

- Mr Haynes was regularly reviewed by AGCC medical staff who advocated for him to be moved to more suitable palliative accommodation.

- Oncology follow-up after Mr Haynes' radiotherapy occurred at six weeks. That was within the acceptable timeframe, albeit at the outer limit but that would not have changed Mr Haynes' outcome.

- The decision to withhold further chemotherapy and radiation therapy was well rationalised and there are no concerns with the health care provided to him during this period.

46. Dr MacCormick's opinion was that Mr Haynes received excellent treatment despite his incarceration. Further, she could not identify any omissions to his care that would have hastened his death. However, she noted:

> *"it is regrettable that Mr Haynes could not be moved into a more appropriate palliative care setting sooner. His treating doctors appear to have wanted to facilitate this process, but there appears to have been little progress on this front for several months."*

[12] Ex A9

The inquest

47. Although Mr Haynes died from natural causes, an inquest was required as he died in custody.[13] The inquest was commenced on 6 December 2019. All of the statements, medical records and material gathered during the investigation into Mr Haynes' death were tendered to the court. Counsel Assisting proceeded to submissions in lieu of any oral testimony being heard.

48. Notwithstanding Dr MacCormick's report, the submissions from Mr Haynes' family at the inquest expressed the following concerns about the care that Mr Haynes received during his time in custody:

    - Mr Haynes' accommodation at AGCC was not suitable for a person requiring the level of care he required;
    - Mr Haynes' transfer to SQCC, a facility with appropriate palliative care was delayed; and
    - Steps were not taken to have a substitute decision maker appointed even when it became apparent that Mr Haynes did not have capacity to make personal, health care or legal decisions.

49. Mr Haynes' family submitted that AGCC did not, and could not, provide appropriate care to Mr Haynes given his condition. It was also submitted that further steps should have been taken to ensure that Mr Haynes was accommodated appropriately while in custody and more quickly moved into a facility that could offer palliative care.

50. Mr Haynes' family also submitted that the absence of a substitute decision-maker hampered efforts by Mr Haynes' family and legal representatives to obtain information about his condition and to access the medical information necessary to prepare and progress a bail application.

51. They submitted that further steps should have been taken by staff at the AGCC medical centre to apply to the Queensland Civil and Administrative tribunal ('QCAT') for the appointment of a substitute decision-maker. Those staff had all of the information necessary to make such an application and were clearly aware of Mr Haynes' impaired capacity. Making an urgent application to QCAT for the appointment of a guardian for personal, healthcare and legal matters could have expedited access to the medical information necessary for a Supreme Court bail application.

52. At the inquest, the Public Advocate was given leave to appear under s 36(2) of the *Coroners Act.* The Public Advocate joined with the submissions from the family. The Public Advocate also submitted that it was necessary to expand the scope of the inquest to cover matters under s 46 of the *Coroners Act*.

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[13] *Coroners Act 2003*, s27

Written submissions

53. Given the nature of the submissions from the family and the Public Advocate at the hearing, the inquest was adjourned to enable the submissions on behalf of the family to be distributed to obtain a response to the matters raised. Written submissions and submissions in reply were provided between January and May 2020.

Haynes Family

54. In supplementary written submissions the family stressed that they were not critical of the actions of individual staff members at the AGCC medical centre. They accepted that each of the persons who had contact with Mr Haynes during his incarceration at AGCC were concerned for his welfare and did what they could within the scope of their role and correctional centre policies and procedures to assist Mr Haynes.

55. The family were concerned that there were systematic barriers which prevented Mr Haynes from receiving appropriate palliative care. Staff at AGCC had assessed that Mr Haynes lacked decision making capacity and were aware that he did not have a formal substituted decision maker appointed. However, those staff did not consider that one of the members of the family may automatically act as a statutory health attorney under the *Powers of Attorney Act 1998,* nor did they ensure that an appropriate substitute decision maker was appointed.

Public Advocate

56. The Public Advocate's submissions indicated that her Office became involved in relation to Mr Haynes following contact from Mr Haynes' niece on 17 February 2017. An offer was made to assist Mr Haynes' solicitors to progress a bail application. He was represented by the Mackay office of the Aboriginal and Torres Strait Islander Legal Service and supported by the Prisoners Legal Service. The Public Advocate was concerned about the "*lack of progress on what appeared to be a relatively straight forward bail application*".

57. The Public Advocate endorsed the written submissions provided on behalf of Mr Haynes' family.

58. The Public Advocate referred to Queensland Health Clinical Excellence Division's *Guide to Informed Decision-Making in Care,* which upholds the presumption of capacity and provides guidance to health practitioners about what to do when they suspect a patient may lack decision making capacity. The guide advises that any questions about capacity can be resolved by the medical practitioner caring for the patient, or by consultation with a suitably qualified and experienced practitioner such as a geriatrician, psychiatrist or neurologist.

59. The Public Advocate submitted that there were several indications Mr Haynes' capacity was impaired during his incarceration at AGCC. The Public Advocate also submitted that he had a number of family members who could have acted as statutory health attorney, and were available and culturally appropriate to perform that role. It was not until 13 March 2017 that his brother was nominated as his substitute decision-maker and an acute resuscitation plan was prepared at the PAH.

60. The submissions from the Public Advocate asserted that there were critical gaps in the understanding by AGCC and PAH staff of capacity and guardianship laws, as well as Mr Haynes' custodial status in the criminal prosecution process. However, those specific issues were not canvassed in evidence at the inquest. In addition, the Pubic Advocate was granted leave under 36(2) and may only make submissions about a matter on which the coroner may comment under s 46(1).

61. While staff at AGCC and the AGCC medical centre had hoped Mr Haynes would be successful in obtaining bail, and made decisions not to progress referrals to the SQCC health care unit on that basis, the Public Advocate considered there were issues with facilitating the provision of the information necessary for a bail application to have reasonable prospects of success.

62. Although Mr Haynes was legally represented by an experienced lawyer, the Public Advocate was also particularly critical of health staff at AGCC for not bringing an application before QCAT and not contacting the Public Guardian.

63. The submission from the Public Advocate sought to attribute responsibility for the delay in the provision of the medical information to support a bail application solely to AGCC staff. The Public Advocate identified systemic issues relating to:

- the legal bases for information sharing in the health context;
- a lack of clear systems and pathways within AGCC to triage and escalate information access issues; and
- a lack of protocols, pathways and partnerships to support effective information-sharing between AGCC and PAH, between AGCC and the family, and between AGCC, PAH and other support services (including legal services working in the interests and for the welfare of patients).

64. Although not an issue for the inquest, it is not clear why Mr Haynes' legal representatives persisted with a Right to Information application to obtain copies of his medical file to support a bail application. Although they were advised to pursue that mode of access by AGCC staff, in my view a subpoena would have been the most effective way for Mr Haynes' lawyers to obtain medical information to support his bail application.

65. It was also open to the Public Advocate to directly refer Mr Haynes to the Public Guardian when first contacted in February 2017. The Public Guardian would have been in a position to investigate his needs and, if necessary, bring an application before QCAT for the appointment of a guardian. Alternatively, the Public Guardian might have informed Mr Haynes' family of their rights to access information as statutory health attorneys.

QCS

66. QCS submitted that steps were being taken by medical staff at AGCC to facilitate Mr Haynes transfer to SQCC. While at AGCC he was regularly transferred to the PAHSU for required treatment, lastly on 9 March 2017. When a bed subsequently became available at SQCC on 28 March 2017, Mr Haynes was too unwell to be discharged and remained at the PAHSU until his death on 3 April 2017.

67. QCS submitted that medical staff at AGCC were acting appropriately and in compliance with QCS policies and procedures, and that the care afforded to Mr Haynes was reasonable and satisfactory. It noted that AGCC was transitioned back to QCS' operation from 1 July 2020.

68. QCS also submitted that the SQCC did not offer palliative care at the time of Mr Haynes's death. Rather, what was offered was an Advanced Care Unit that could provide 24-hour medical care for up to four prisoners. QCS also noted that SQCC had transitioned to a female prison from 20 August 2018.

69. QCS submitted that issues with respect to informed consent, assessment of capacity, and supported and substitute decision making are the responsibility of medical staff employed by Queensland Health working in Correctional Centres, who are qualified to make such assessments.

70. In September 2018, QCS implemented a Custodial Operations Practice Directive ('COPD'), *Prisoner Entitlements - Office of the Public Guardian* that provides a protocol to support QCS work with the Office of the Public Guardian to meet the needs of prisoners under guardianship and administration orders.

71. An application to QCAT for the appointment of a guardian can be made through Queensland Health or QCS if there is information to indicate the need for an appointment. The preference of QCS is for Queensland Health to make these applications as that agency is likely to have more detailed information relevant to the application to QCAT. While a QCS psychologist or other employee could make an application, the information available for a prisoner who has recently been received into custody may be limited.

72. COPDs and formal assessments provide for the identification of and planning for, the needs of vulnerable adults in custody including those who may have a cognitive impairment and/or progressive conditions such as dementia.

73. Vulnerability may be identified upon admission into custody, or at any point within the custodial period where relevant information becomes known that indicates a prisoner presents with one or more or vulnerabilities

74. Upon admission to custody, an Immediate Risk Needs Assessment is administered by a psychologist or correctional counsellor to inform immediate risk factors, including intellectual and physical disability and any issues requiring immediate intervention.

75. This process assists in identifying prisoners requiring additional levels of assistance and referral to relevant services where their risks and needs are considered to be immediate. It also allows for the identification of vulnerable prisoners whose risks and needs are not immediate, and their subsequent referral for additional assistance in the future.

76. The Immediate Risk Needs Assessment ('IRNA') process[14] incudes the administration of the Hayes Ability Screening Index (HASI) which is a cognitive impairment screening tool to identify prisoners who may have intellectual difficulties. Where a prisoner is identified as having prominent or profound factors that significantly impair their functioning indicating the need for special care support or monitoring, the assessing officer must make a referral for consideration under the COPD for Prisoners of Concern.[15] Prisoners of Concern must be managed appropriately and in accordance with their individual factors, risks, and the vulnerabilities. The relevant COPD provides:

    A prisoner can be considered for management under the PoC procedure at any point during their custodial episode where relevant information becomes known that indicates that prisoner presents with one or multiple prominent and/or profound vulnerability factors. All staff involved in the management of prisoners are to remain vigilant in identifying and recognising any vulnerability factors, and must advise the senior psychologist and correctional supervisor.

    …

    A PoC may require a greater level of care than that of the general prisoner population. For some prisoners, a different care pathway may be required. This should be considered on a case by case basis and professional discretion is to be used in decision making regarding the required management strategies for each individual prisoner. This may include review by a multi-disciplinary team or case conference process, which would be particularly relevant for prisoners who have complex needs requiring input from a number of disciplines.

[14] Implemented 24 June 2019
[15] Implemented 17 September 2018

77. The COPD for Reception Processes, Admission and Assessments provides that before placement within a Correctional Centre a prisoner is to undergo a medical examination. Staff should consider the most appropriate placement for prisoners with a cognitive impairment offender warning flag upon admission.

78. The COPD for Prisoner Accommodation Management, Cell Allocation[16] provides for the placement of a prisoner in suitable accommodation having consideration to various factors including individual special needs and the prisoner's known physical and mental health, disability and/or cognitive impairment.

79. The QCS submission noted that health and medical information is stored on a prisoner's Queensland Health medical file. Any request received by QCS from a family member or legal representative is referred to Queensland Health.

80. With respect to the availability of appropriate palliative care, QCS submitted that it does not have any policy on palliative care because it does not provide medical treatment.[17] There is currently no dedicated palliative care unit in any Queensland Correctional Centre. Prisoners requiring hospitalisation are transferred to medical facilities closest to the Correctional Centre or the PAH Secure Unit.

81. Cultural needs of Aboriginal and Torres Strait Islander prisoners requiring palliative care are managed by the cultural team at the prison location.

82. QCS noted that it has established a Human Rights Implementation Working Group to review its policies, procedures and practices against compliance with the *Human Rights Act 2019*. This is an ongoing process. However, QCS submitted that at all times staff consider human rights when making decisions.

<u>GEO Group</u>

83. At the time of Mr Haynes' death AGCC was operated by the GEO Group under a contract with QCS. The GEO Group's submission noted Dr MacCormick's opinion that Mr Haynes had received excellent treatment despite his incarceration. Dr MacCormick said:

> *Whilst palliation in a correctional facility is not an ideal environment, I cannot identify any omissions to his care that would have hastened his death. It was recognised that transfer to a community or hospital-based palliative care service would be more compassionate given his poor prognosis, and reasonable attempts were made to facilitate this.*

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[16] Implemented on 27 November 2019

[17] However, I note that the May 2020 Memorandum of Understanding between Queensland Health and Queensland Corrective Services provides at 4.2 and 5.2 that QH and QCS *"will adopt a shared management approach for Prisoners with disability, aged care needs or palliative care needs to ensure their needs are appropriately managed while in a Corrective Services Facility.*"

84. The GEO Group submitted that when viewed as a whole, the steps taken by staff at AGCC to attempt to secure a transfer for Mr Haynes to a palliative facility were appropriate and reasonable. This was a view shared by Dr MacCormick and borne out when the steps taken at AGCC as outlined in the statements of AGCC staff are considered.

85. However, the systemic shortcomings in prisoners accessing palliative care identified by Dr MacCormick should not be equated with a finding of fault on the part of AGCC medical staff. Dr MacCormick noted:

> *At present there does not seem to be an efficient streamlined custodial pathway for terminally ill prisoners to transfer into inpatient care within a dedicated palliative care unit. There are limited medical beds within prisons and the Princess Alexandra Hospital Secure Unit also has limited capacity. With an aging prison population, this situation is likely to recur.*

86. In response to the submission from the Caxton Legal Centre that further steps should have been taken by staff at the AGCC Medical Centre to apply to QCAT for the appointment of a substitute decision maker, the GEO Group noted that Ms Craig made contact with QCAT on 3 February 2017 to facilitate a guardianship application. This was not progressed as Ms Craig was hopeful that Mr Haynes would be granted bail.[18]

87. Ms Craig said that she approached QCAT in relation to making arrangements for guardianship for Mr Haynes because she formed the view that Mr Haynes' illness was impacting his cognitive functions significantly and that he had very little capacity. She was aware that he did not have a power of attorney in place.

88. The GEO Group submitted that the absence of a substitute decision maker could not be said to have hampered efforts by Mr Haynes' family and legal representatives to obtain information about his condition and to access medical information necessary to prepare and progress a bail application. The ultimate progress of Mr Hayne's bail application was a matter relevant to his legal representatives. I agree with that submission.

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[18] Exhibit D1, p50

Conclusions and comments

89. After considering all of the evidence, including the report from Dr MacCormick, the CSIU investigation report and the autopsy report, I am satisfied there is no evidence to indicate that Mr Haynes died from anything other than natural causes. I am satisfied he received adequate medical care during his time in correctional centres and at the PAHSU.

90. It was apparent from the information provided on behalf of Mr Haynes' children and other family members that he was loved and respected by them. He was connected to his Aboriginal heritage and shared his knowledge of traditional culture with his children and his nieces and nephews.

91. I acknowledge that Mr Haynes' remand in custody in Queensland prior to his death compounded his family's grief as his health deteriorated under palliative care in prison, and in the secure unit at the PAH. As a consequence, his children were unable to communicate with him and look after him. They were only able to spend limited time with him in the last hours of his life while they were supervised by correctional officers.

92. While I accept that Mr Haynes' capacity declined significantly during February and March 2017, there was insufficient evidence to reach a conclusion about exactly when Mr Haynes lost capacity to the extent he required the formal appointment of a substitute decision maker. While the submission from the Public Advocate suggested that reliance could be placed on the reports of family members and the opinions of nursing staff at AGCC, based on all the evidence it is likely that his capacity was fluctuating but declined rapidly in the month before his death.

93. Mr Haynes was interviewed by a counsellor on reception to AGCC on 16 December 2016. He was reported to be calm and stable. He was aware that he was to be transferred due to being remanded for further charges. He denied any concerns about the transfer or his ongoing incarceration.[19]

94. Records from the PAH indicate that his capacity was fluctuating. In a letter addressed to the Parole Board dated 31 January 2017, Dr Joanne Tan, Medical Oncology Registrar noted that Mr Haynes had multiple brain metastases which were likely affecting his judgement.

95. On 15 March 2017, Dr Malcolm Wilson, Respiratory Registrar, noted that "principally his issues at the moment are behavioural with fluctuating confusion and occasional aggression."[20]

[19] Exhibit D1, p14
[20] Exhibit E4, p15

96. Mr Haynes was committed for trial on 7 February 2017. His solicitor stated that he spoke with Mr Haynes on that date and Mr Haynes was able to give instructions with respect to a bail application and gave full instructions on the brief of evidence some days before the committal. He said he had no major concerns about his capacity.[21]

97. On 1 January 2020 the *Human Rights Act 2019* became operational in Queensland. While this legislation was not in force at the time of Mr Haynes' death it is relevant to consider in relation to any comment or recommendation under s 46 of the *Coroners Act*. The *Human Rights Act* requires that all persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person. The Act also provides a right to health services.

98. The submission from QCS indicates that remand prisoners requiring palliative care would be cared for either within the prison environment or the PAHSU. There is no dedicated palliative care unit in any Queensland Correctional Centre.

99. The issue of palliative care for prisoners was previously considered in the August 2018 findings of the Inquest into the death of Jay Maree Harmer. There it was recommended that:

> *The Queensland Government comprehensively review the current model for the provision of palliative care to prisoners with a view to improving how and where palliative care is delivered, including the provision of a range of post-release supported accommodation options for infirm prisoners eligible for parole, including exceptional circumstances parole.*

100. The Queensland Government Response to that recommendation[22] notes that following an independent review of offender health services, the Office for Prisoner Health and Wellbeing was established in Queensland Health. That Office has oversight of state-wide health service delivery for prisoners, 'ensuring that these services are equivalent to those that are available in wider community'. Hospital and Health Services remain responsible for the day to day delivery of prisoner health services for correctional facilities within their catchment area.

101. The Government Response also notes that Queensland Health has a State-Wide Strategy for End-Of-Life Care 2015. This strategy promotes palliative care services across all healthcare settings and includes correctional centres. The Office of Prisoner Health and Wellbeing was to collaborate with prisoner health services in relevant Hospital and Health Services to raise awareness of the 2015 strategy and 'to address any practical issues arising from the implementation of the strategy within Queensland's publicly operated correctional centres'.

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[21] Letter from ATSILS to the Public Advocate dated 22 May 2017.
[22] https://www.justice.qld.gov.au/__data/assets/pdf_file/0005/613085/qgr-harmer-jm-20200609.pdf

102. The April 2020 response from the Government indicated that Queensland Health had formed the Prisoner Health and Wellbeing Community of Practice for clinicians working in correctional centres, and that 'options for the provision of personal care, including for people in prison who are ageing and/or approaching the end of their life have been explored jointly by staff in the Office for Prisoner Health and Wellbeing and Queensland Corrective Services'. However, the response does not indicate whether any changes to the model of personal care are proposed.

103. Mr Haynes' family submitted that I should consider recommending that the Office of Prisoner Health and Wellbeing urgently review the adequacy and availability of palliative care facilities for remand prisoners in Queensland Correctional Centres, and that the Office of Prisoner Health and Wellbeing should ensure that available facilities promote the right of all prisoners to be treated with humanity and with respect for their human dignity and the right to access health services.

104. The Public Advocate submitted that I consider whether it is appropriate for Queensland prisoners with diagnosed terminal illnesses to be detained in a prison until their death on the basis that 'there are currently no palliative care beds available in any Queensland correctional centre and it is inhumane to detain a prisoner dying of a terminal illness in a correctional facility without the appropriate level of palliative care available'.

105. I do not consider that it is appropriate to recommend that all prisoners diagnosed with diagnosed terminal illnesses should not be detained in a prison. It will not always be appropriate to transfer a prisoner receiving palliative care from a custodial setting where the risk of further offending cannot be managed. The *Bail Act 1980* enables the individual circumstances of alleged offenders such as Mr Haynes to considered by courts in making bail decisions. Similarly, the *Corrective Services Act 2006* enables sentenced prisoners to apply for exceptional circumstances parole at any time. In addition, the evidence was that Mr Haynes received high quality medical care while he was in prison. As Dr MacCormick noted, palliation in a correctional facility is not an ideal environment but at present there are few options.

106. The 2018 National Palliative Care Standards[23] note that the need for delivery of palliative care in prison is likely to rise given the increasing number of people in prison custody who are 65 years and older. The Standards also recognise that many people in prison are considered older from 50 years (and 45 years for Aboriginal and Torres Strait Islander people) given their experience of accelerated ageing due to poor health.

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[23] https://palliativecare.org.au/wp-content/uploads/dlm_uploads/2018/11/PalliativeCare-National-Standards-2018_Nov-web.pdf

107. Research published in 2018 in the Medical Journal of Australia[24] indicated that the number of prisoners in Australia aged over 65 years had increased by 348% over the previous 16 years. Rates for older women, many of whom are Indigenous, increased 767% over the same period.

Recommendation 1

Having regard to the April 2020 Queensland Government response to recommendation 1 from the Harmer inquest, I recommend that the Queensland Government publish a policy on the provision of personal and health care for prisoners who are ageing and/or requiring palliative care, addressing matters such as arrangements to support family contact with prisoners while undergoing palliative care and at the time of their death (including the circumstances in which restraints can be removed in secure hospital units) and consistency with National Palliative Care Standards.

108. The Public Advocate also submitted that I should make a number of recommendations relating to the release of information, including that AGCC and West Moreton Hospital and Health Service ('WMHHS') review the operations and governance of the Information Access Unit "with a focus on processes to identify whether existing information needs to be released, or a new report provided, and how these could be improved".

109. The Crime and Corruption Commission's December 2018 Taskforce Flaxton Report[25] identified that "almost 50 per cent of people entering prison have disabilities (including cognitive and psychosocial disabilities), and the incidence of cognitive impairment, acquired brain injury, mental illness or other disabilities within the prisoner cohort is increasing".

110. It appears that a lack of awareness of the regime for the appointment of a substitute decision makers, including statutory health attorneys, may have contributed to a delay in the provision of Mr Haynes' medical information to his legal representatives to support a bail application. The absence of appropriate substitute decisions-makers and advocates increases the vulnerability of persons with impaired capacity in prisons.[26]

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[24] Ginnivan, N, Butler, T & Withall, A 2018, 'The rising health, social and economic costs of Australia's ageing prisoner population', *The Medical Journal of Australia*, vol. 209, no.10, pp. 422 – 424

[25] https://www.ccc.qld.gov.au/sites/default/files/Docs/Public-Hearings/Flaxton/Taskforce-Flaxton-An-examination-of-corruption-risks-and-corruption-in-qld-prisons-Report-2018.pdf Page 7.

[26] Ibid, page 8.

Recommendation 2

I recommend that QCS and the Office of Prisoner Health and Wellbeing, in consultation with West Moreton Hospital and Health Service, the Office of the Public Advocate and the Public Guardian:

- *develop an agreed pathway for inclusion in the COPD on Prisoners of Concern to ensure that suitable substitute decision-makers are identified for prisoners with impaired capacity;*
- *review the policies, procedures, training and resources for clinicians, administrative and correctional staff on information-sharing and release to substitute decision-makers for prisoners with impaired capacity; and*
- *consider the training and appointment of suitably qualified persons within each correctional centre who can support prisoners with impaired capacity (or suspected impaired capacity) to navigate the health and justice systems.*

Findings Required

111. I am required to find, as far as is possible, the medical cause of death, who the deceased person was and when, where and how he came by his death. After considering all the evidence I make the following findings:

Identity of the deceased –	Barry Haynes
How he died -	In June 2015, Mr Haynes was diagnosed with non-small cell lung adenocarcinoma. In November 2016, Mr Haynes was diagnosed with multiple brain metastases in Gosford, New South Wales. He was subsequently arrested in Queensland and remanded in custody. His cancer was incurable from the time of his admission to custody. He died as a result of metastatic non-small cell lung adenocarcinoma with advancing intracranial metastatic disease and widespread metastases through his liver, bones and lymphatics. Unfortunately, his condition did not respond to chemotherapy or radiation treatment and he died in secure custody before a bail application could be heard in the Supreme Court of Queensland.
Place of death –	Princess Alexandra Hospital Secure Unit, Woolloongabba in the State of Queensland.
Date of death –	3 April 2017.
Cause of death –	Metastatic non-small cell lung carcinoma.

112. I extend my sincere condolences to Mr Haynes' family. Although the evidence indicates he received good medical care while in prison, it was unfortunate that his bail application was unable to be dealt with in a timely way. While it is not certain, that may have his seen release from custody and allowed him to die in the presence of his family in an unsecured setting.

113. I close the inquest.

Terry Ryan
State Coroner
Brisbane
16 November 2020