
JURISDICTION : CORONER'S COURT OF WESTERN AUSTRALIA
ACT : CORONERS ACT 1996
CORONER : SARAH HELEN LINTON, DEPUTY STATE CORONER
HEARD : 29 JULY 2021
DELIVERED : 10 SEPTEMBER 2021
FILE NO/S : CORC 1137 of 2019
DECEASED : HECTOR, JAMES DAVID

Catchwords:

Nil

Legislation:

Nil

Counsel Appearing:

Sergeant A Becker assisted the Deputy State Coroner.
Ms A Seen (SSO) appeared on for the Department of Justice.
Ms H Levy and Mr L Withnall (Kimberley Community Legal Services) appeared for the family of Mr Hector.

Case(s) referred to in decision(s):

Nil

Coroners Act 1996
(Section 26(1))

RECORD OF INVESTIGATION INTO DEATH

*I, Sarah Helen Linton, Deputy State Coroner, having investigated the death of **James David HECTOR** with an inquest held at Perth Coroners Court, Central Law Courts, Court 85, 501 Hay Street, PERTH, on 29 July 2021, find that the identity of the deceased person was **James David HECTOR** and that death occurred on 19 August 2019 at Bethesda Claremont Private Hospital, 25 Queenslea Drive, Claremont, from bronchopneumonia and upper airway obstruction in a man with end-stage oral cancer, treated palliatively, in the following circumstances:*

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INTRODUCTION

1. Mr Hector was diagnosed with squamous cell cancer in his mouth in 2006. He underwent treatment and the cancer was successfully removed, but the oral cancer returned in 2017. He again received treatment, and it appears the cancer was again successfully removed. However, a recurrence of the cancer was detected again in his mouth in February 2019, which then progressed.
2. In May 2019, Mr Hector was admitted as a remand prisoner to Broome Prison. He had been in custody before, so the prison health services were aware of his history of cancer. During a nursing admission assessment on 20 May 2019, it was noted that Mr Hector was receiving palliative care for his mouth cancer, but when in the community he frequently failed to attend his appointments. On 7 June 2019, Mr Hector was transferred from Broome to the Infirmary at Casuarina Prison, where his health needs could be more easily met.
3. In July 2019 Mr Hector had a brief hospital admission for pneumonia before he returned to prison. It became clear that the tumour in his mouth was continuing to grow. He was transferred to Bethesda Hospital to receive palliative care on 24 July 2019. Some inquiries were made about transferring Mr Hector to Kununurra or Derby Hospital, as Mr Hector had expressed a desire to return home, but unfortunately this was unable to be arranged.
4. On 19 August 2019, Mr Hector's condition deteriorated and he became confused and distressed, with difficulty breathing. He was given medication to try to calm him and his breathing eventually settled, but he died just after 7.00 am on 19 August 2019.
5. As Mr Hector was a sentenced prisoner at the time of his death, he was a 'person held in care' under the terms of the *Coroners Act 1996* (WA) and a coronial inquest into his death is, therefore, mandatory.¹
6. I held an inquest on 29 July 2021. At the inquest, extensive written material was tendered in relation to the WA Police and Department of Justice's investigations into Mr Hector's death. Of particular relevance in this case, extensive information was provided about the medical care he received prior to his death. In addition, three witnesses were called to give evidence at the inquest in person, to expand upon the information in the brief.
7. At the conclusion of the inquest, I indicated that I required certain additional information to provide confirmation, if possible, of Mr Hector's planned bail application, as well as any information about Mr Hector's partner's request to visit him in hospital prior to his death.² Once that information was provided to the Court, counsel for Mr Hector's family were given an opportunity to file submissions in regard to any issue the family wished to raise, noting that some of Mr Hector's siblings attended the inquest hearing and their counsel had also had prior dealings with Mr Hector's mother.

¹ Section 22(1)(a) *Coroners Act*.

² T 31 – 32.

BRIEF BACKGROUND

8. Mr Hector was an Aboriginal man born in Halls Creek. He was one of eight children. Mr Hector later had five children himself, although one of his children sadly passed away from leukaemia prior to his own death. At the time of his death, Mr Hector had been in a long-term de facto relationship with Penelope Paddy for approximately 13 years. He had limited literacy and had never held employment. He mainly lived in the region of Kununurra.³
9. Mr Hector was in trouble with the law from a young age and as an adult he appeared before the courts on multiple occasions, in both Western Australia and the Northern Territory. He spent time in custody for various offences, and other times was fined or released on suspended terms of imprisonment. Prior to his final period of incarceration, he had most recently been released from Casuarina Prison on 28 June 2017.⁴

EARLY CANCER DIAGNOSIS AND TREATMENT

10. Mr Hector was diagnosed with a squamous cell cancer in his mouth for the first time in 2006. Initial medical care was provided at Royal Perth Hospital. He underwent surgical excision on his tongue, radial flap reconstruction and post-operative chemo-radiotherapy treatment.⁵
11. In 2010 Mr Hector developed complications of osteoradionecrosis (bone death) of his jaw and fibrosis of the neck, secondary to radiotherapy treatment. He received further treatment but it was noted by his surgeon that there was a high risk of recurrence. He underwent further chemotherapy. He continued to suffer extreme pain in his jaw and had difficulty eating, so he was kept on a soft diet and nutritional supplements and prescribed analgesia until he left prison in February 2011.⁶
12. Mr Hector returned to prison in September 2011 and was initially held in Broome Regional Prison, before being transferred to Casuarina Prison so that he could be accommodated in the infirmary. He was again provided with a soft diet and nutritional supplements and analgesia. He was also referred to Royal Perth Hospital for debridement surgery. Prison health staff continued to send reminders to RPH regarding the surgery, but he remained on the waiting list at the time he was released from prison in March 2012.⁷
13. In February 2017 Mr Hector returned to prison. During his nursing admission review on 3 February 2017 at Broome Prison, his history of cancer to the tongue, throat and jaw was noted. Note was also made that he was awaiting surgery to his jaw. He told the nurse he was supposed to have flown to Perth a few weeks before for a bone graft reconstruction of his jaw, but it did not occur. He later told a doctor he had been drinking and had family problems at the time, so he did not attend the appointment in

³ Exhibit 1, Tab 2 and Exhibit 2, Tab 2.

⁴ Exhibit 1, Tab 2.

⁵ Exhibit 2, Tab 2.

⁶ Exhibit 2, Tab 2.

⁷ Exhibit 2, Tab 2.

Perth, but he was keen to get things sorted now he was in prison. Mr Hector was underweight, so he was commenced on 'build-up' drinks and a pureed diet. His weight markedly improved over time during his prison term.⁸

14. Mr Hector had an extensive medical review on 15 February 2017 and the doctor noted he required an ENT referral if he was not released from prison. A referral to Fiona Stanley Hospital was completed and he had a review with a maxillofacial surgeon in May 2017. It was confirmed by the surgeon in June 2017 that Mr Hector's cancer had recurred. It was determined that there were no further options for curative treatment and Mr Hector was referred to palliative care services. Mr Hector was said to have taken the news well. Mr Hector was released from prison on 28 June 2017.⁹
15. It appears Mr Hector went to Royal Darwin Hospital in August 2017 for treatment for an upper airway obstruction and underwent an emergency tracheostomy. He underwent a number of investigations in 2017 and 2018 that did not confirm cancer recurrence. However, in February 2019, Mr Hector was seen again at Royal Darwin Hospital, and at this time likely cancer recurrence was identified in the floor of his mouth.¹⁰

ADMISSION TO PRISON MAY 2019

16. On 15 April 2019 Mr Hector appeared in the Kununurra Magistrates Court. He pleaded guilty to a number of offences in relation to failing to report and comply with various orders. The offences pre-dated the imposition of the suspended imprisonment order in the District Court, so they did not breach that order. Fines were imposed for each offence and Mr Hector remained in the community.¹¹
17. However, one month later, on 20 May 2019, Mr Hector was remanded in custody at Broome Regional Prison to appear before the District Court of Western Australia in relation to new charges of breach of protective bail conditions, unlawful wounding and aggravated common assault. His next court date was listed as 2 December 2019 before the District Court sitting in Kununurra.¹²
18. During his reception intake at Broome Prison, Mr Hector advised reception staff of his history of throat cancer and it was noted he had trouble speaking. He indicated he was taking Endone medication for management of his pain. Mr Hector had a nursing admission review and advised he was still waiting for a bone graft to his chin. His weight had markedly dropped from the last time he was in prison and he recorded a very low of BMI of 15.5. He was recommenced on a soft puree diet with supplements. It was noted he had been a frequent non-attende of palliative and GP appointments while in the community. It was planned that he should have various investigations and a doctor review after he attended court.¹³

⁸ Exhibit 2, Tab 2.

⁹ Exhibit 2, Tab 2, pp. 12 - 13.

¹⁰ Exhibit 2, Tab 2.

¹¹ Exhibit 1, Tab 33.

¹² Exhibit 1, Tab 14 and Tab 32.

¹³ Exhibit 2, Tab 2.

19. On 30 May 2019 Mr Hector was listed on the Total Offender Management Solutions (TOMS) system as a terminally ill prisoner, stage one.¹⁴
20. Mr Hector's Management and Placement Remand Report was completed on 4 June 2019 and it was noted Mr Hector was required to consume soft food due to his throat cancer. He indicated his preferred prison placement was Broome Prison or West Kimberley Regional Prison in order to maintain family contact and countrymen kinship.¹⁵ However, Mr Hector was subsequently transferred to Casuarina Prison due to his health needs and population management requirements.¹⁶

CASUARINA INFIRMARY

21. Because of his medical condition, Mr Hector was placed in the infirmary at Casuarina Prison. During orientation, Mr Hector indicated he expected to receive visits from family and friends during his time in custody. However, it appears from records that he did not communicate with family or friends via correspondence and he did not receive any visits. Mr Hector had no management issues related to his behaviour and the primary focus of prison staff was on managing his health needs.¹⁷
22. It was noted the day after his arrival at the infirmary, on 8 June 2019, that he required a palliative care referral and a medical officer appointment for pain management. He had regular nursing reviews and was reviewed by a doctor on 27 June 2019. He gave his pain score as 10/10, so his pain medication dose was increased. A plan was made to follow up his RPH bookings and obtain information from Royal Darwin Hospital. The information from Royal Darwin Hospital came in the following day and, based on that information, it was confirmed he was to continue with palliative care management.¹⁸
23. By early July 2019 Mr Hector had put on 10kg in weight. He was reviewed by the palliative care team on 4 July 2019 and instructions were given to increase his pain relief, increase his laxatives and pathology and CT imaging were to be arranged. He also had a telehealth consultation with a doctor at the RPH Liver clinic that day and liver function tests and an ultrasound were ordered.¹⁹
24. On 8 July 2019 it was noted that Mr Hector had developed a fever and productive cough overnight. It was thought he may have developed pneumonia. He was sent to the Fiona Stanley Hospital ED by ambulance at 11.45 am, where he was given antibiotics and Tamiflu and admitted for observation. Subsequent flu swabs were negative but a chest x-ray was suggestive of pneumonia. He was discharged from FSH and returned to Casuarina the following evening with a five day course of antibiotics.²⁰

¹⁴ Exhibit 2, Tab 1.

¹⁵ Exhibit 2, Tab 1.

¹⁶ Exhibit 2, Tab 1.

¹⁷ Exhibit 2, Tab 1, pp. 9 - 10.

¹⁸ Exhibit 2, Tab 2.

¹⁹ Exhibit 2, Tab 2.

²⁰ Exhibit 1, Tab 12; Exhibit 2, Tab 2.

25. Mr Hector had twice daily nursing reviews from 10 to 23 July 2019, with oversight of his care by a doctor. On 23 July 2019 he attended FSH for an ENT appointment. The next day he had a palliative care review and it was noted he was still suffering pain despite a switch to the powerful opioid Fentanyl, and required oxynorm for breakout pain. On review, pain was evident. He was sent to Bethesda Hospital for urgent review by the Palliative Care Consultant and his terminally ill status was upgraded to Stage 3 and Sentence Management was notified.²¹

BETHESDA HOSPITAL

26. Mr Hector remained at Bethesda Hospital to receive palliative care. It was noted his pain management was challenging but he was otherwise stable. However, it was noted that he could deteriorate suddenly. Mr Hector indicated he would like to return to Kununurra, so the Superintendent began to make enquiries about the transfer options to Kununurra.²²
27. In early August 2019, the options of transferring Mr Hector to Derby or Kununurra Hospital, or releasing him on bail, were all explored, so that he could be closer to family and country prior to his death.²³ Unfortunately, these efforts were unsuccessful. Because he was a remand prison, Mr Hector was not eligible for consideration of the Royal Prerogative of Mercy.
28. He was given permission to transfer to Derby Hospital in early August 2019, but it seems the medical staff at the hospital were unwilling to accept the transfer due to concerns about managing his care.
29. On advice from the treating physician that Mr Hector was expected to continue to deteriorate and the shackles were a pressure risk injury, and noting his death was imminent, the Prison Superintendent gave approval on 26 July 2019 for Mr Hector to have no restraints.²⁴ A report from the Director General of the Department of Justice confirmed that restraints were not then applied.²⁵
30. Mr Hector was also given approval to receive telephone calls from his wife and his sister, brother and mother in hospital.²⁶
31. On 16 August 2019, a hospital social worker provided information that Mr Hector's wife was in Perth as an inpatient on the Cardiac Ward at Royal Perth Hospital. She requested permission to visit Mr Hector while she was in Perth. Verbal approval was provided from Casuarina Prison staff to the guards that day and it was indicated written approval would come through that night, although it seems there were suggestions the actual visit might not be able to be arranged until 19 August 2019.²⁷

²¹ Exhibit 2, Tab 2.

²² Exhibit 2, Tab 2.

²³ Exhibit 2, Tab 1.

²⁴ Exhibit 2, Tab 1, 1.16.3 and 1.16.5.

²⁵ Exhibit 2, Tab 1, Letter from Director General to State Coroner, dated 29 June 2021.

²⁶ Exhibit 2, Tab 1, 1.16.5.

²⁷ Exhibit 1, Tab 10.

32. Written permission for Mr Hector to receive a visit from his partner was received during the evening of 16 August 2019.²⁸
33. Overnight on 19 August 2019 Mr Hector appeared confused, had developed a fever and had difficulty breathing. Medical staff indicated he was not expected to live much longer. He was given additional medications to calm his distress and he settled slightly. A nurse conducted an observation check on Mr Hector at 7.12 am on the morning of 19 August 2019 and determined he had died. This was later confirmed by a doctor.²⁹ The Prison Superintendent and the WA Police Coronial Squad were informed.

CAUSE AND MANNER OF DEATH

34. On 21 August 2019 Forensic Pathologist Dr Kueppers performed an external post mortem examination on Mr Hector and reviewed his medical notes and other relevant information. The external examination revealed evidence of medical intervention in keeping with the clinical history of longstanding oral cancer, which had been previously surgically treated. There was no evidence of injury. It was noted that while at Bethesda Hospital Mr Hector had a clinical CT scan that appeared to show underlying bronchiectasis, a change seen with chronic obstructive pulmonary disease. This can predispose to lower respiratory tract infection. The medical notes indicate during the early hours of 19 August 2019 Mr Hector experienced a sudden deterioration, including noisy breathing and a high temperature, which were in keeping with an infective process. The post mortem CT scan showed likely consolidation changes in the right lung, which would also be in keeping with bronchopneumonia. Limited toxicology analysis was also conducted.³⁰
35. At the conclusion of these investigations, and without a full internal examination, Dr Kueppers formed the opinion the cause of death was bronchopneumonia and upper airway obstruction in a man with end-stage oral cancer, treated palliatively. In her opinion, the death was due to natural causes.³¹
36. I accept and adopt the opinion of Dr Kueppers as to the cause and manner of death.

COMMENTS ON TREATMENT, SUPERVISION & CARE

Bail Application or Hospital Transfer

37. Mr Hector's family are understandably distressed that he was not released from custody prior to his death, or alternatively transferred to a hospital up north, so that he could be nearer to his home and family in Kununurra in the last stages of his life.

²⁸ Exhibit 1, Tab 13, PIC Record of Events, 18270.

²⁹ Exhibit 1, Tab 10; Exhibit 2, Tab 1, 1.16.8.

³⁰ Exhibit 1, Tab 6 and Tab 7.

³¹ Exhibit 1, Tab 6.

38. It is deeply regrettable that his dying request to return to Kununurra to his family and country was not able to be fulfilled, particularly as he was a remand prisoner at that time and entitled to a presumption of innocence. However, I acknowledge that efforts were made by the Department to try to arrange for this to occur.
39. In terms of the bail application, the Casuarina Prison Superintendent had contacted the Aboriginal Legal Service on or about 9 August 2019 and suggested they approach the District Court requesting Mr Hector be released on bail. Entries in Mr Hector's Bethesda Hospital medical notes indicate that hospital staff had also previously had contact with Mr Hector's lawyers on 2 August 2019, who advised that Mr Hector's lawyer was overseas on leave and was due back on 12 August 2019.³²
40. It seems that immediately upon the lawyer's return, urgent steps were taken to make the appropriate arrangements for a bail application.³³ This information was communicated to the Department. There is an entry in the Department's ECHO medical notes on 13 August 2019 indicating staff were trying to get Mr Hector "bail or parole so he can return to his own family & country."³⁴ Dr Joy Rowland, the Director of Medical Services for the Department, also gave evidence she understood that on 12 August 2019 arrangements were being made by Mr Hector's lawyers for a bail application to be listed for 19 August 2019.³⁵
41. I have been provided with an email that was sent to the Department by a solicitor from the Aboriginal Legal Service on 14 August 2019 confirming that a bail application had, indeed, been listed for 19 August 2019 in the District Court. The solicitor sought a letter from the Department's medical staff as to Mr Hector's condition and prognosis and whether his needs could be met in Kununurra.³⁶ Unfortunately, while these efforts were appropriate, they were sadly too late for Mr Hector, who died the same day his bail application was listed.
42. Pending the outcome of any possible bail application, the Department had been taking its own steps to try to arrange a transfer for Mr Hector to a hospital in the Kimberley. There was no option of moving him to a prison up north, as he was too unwell and required hospital care.³⁷
43. It was confirmed in the medical notes that Mr Hector had been assessed as fit to fly on a commercial flight on 5 August 2019.³⁸ The option of flying Mr Hector to Kununurra Hospital or Derby Hospital was explored, but unfortunately the Department's attempts to arrange this were unsuccessful. Kununurra Hospital was considered unsuitable as there is only a workcamp in the region, so it seems there were not the appropriate staff available to assist with the security measures required for supervision of a prisoner in hospital, and the Bethesda Hospital notes also record

³² Exhibit 5.

³³ Exhibit 1, Tab 10, Entry 2.8.2019, 1400, Addit; Exhibit 3.

³⁴ T 23; Exhibit 3.

³⁵ T 23.

³⁶ Exhibit 5.

³⁷ T 24.

³⁸ T 27 - 29; Exhibit 3.

that it was considered that Kununurra Hospital would be unable to provide the level of medical care required for Mr Hector.³⁹

44. Derby Hospital was then considered, as it was at least within driving distance for Mr Hector's family.⁴⁰ The Department of Justice approved the transfer, but as a prisoner, the Department required the consent of the Department of Health to arrange his admission as a patient at the hospital. Dr Rowland gave evidence that Derby Hospital medical staff refused to accept Mr Hector as a medical transfer. This is confirmed in the medical notes from Bethesda Hospital, which includes an entry that a Bethesda Hospital doctor discussed the proposed transfer with a doctor from Derby Hospital, who indicated he was unwilling to accept Mr Hector at that time due to concerns over the hospital's ability to care for him long term. Dr Rowland was advised of the decision and she made her own phone call to Derby Hospital to try to convince them to take Mr Hector and talk through the barriers to this occurring. Unfortunately, she wasn't successful in convincing the Derby Hospital staff. Dr Rowland gave evidence she understood there were "resourcing issues on their side which were insurmountable"⁴¹ by the Department in terms of their capacity to take on a patient as unwell as Mr Hector.⁴²
45. In the end, Mr Hector remained for his final days at Bethesda Hospital. While not close to his home, Dr Rowland did explain that Bethesda provides a high level of specialist palliative care in a comfortable and pleasant environment, with very caring staff, so it was the best environment Mr Hector could be placed in, if his wish to return home could not be met.⁴³
46. As he was a remand prisoner, release on the Royal Prerogative of Mercy was not an option available to Mr Hector. However, it was indicated in the Department's Death in Custody Review report that ordinarily an information briefing note would be prepared for the Minister in any event once he was noted as prisoner with a Stage three terminal illness. No briefing note was able to be located in this case and it is believed it was not done due to a resourcing issue. However, I am satisfied that this had no impact on whether Mr Hector was able to be released prior to his death.⁴⁴

Standard of Medical Care

47. I am satisfied on the evidence before me that Mr Hector received a high level of medical care while he was in custody, over the many years following his initial cancer diagnosis, and in particular in the months leading up to his death.
48. I note that when he was out in the community, Mr Hector's lifestyle meant that he did not always attend medical appointments and he generally lost weight and was non-compliant with his medication regime. Although it would obviously be preferable for someone so sick to have his freedom, while in custody the opportunity

³⁹ T 22; Exhibit 1, Tab 10, Entry 6.8.2019.

⁴⁰ T 22.

⁴¹ T 22.

⁴² T 30; Exhibit 1, Tab 10, Entry 13.8.2019, 11.30 am.

⁴³ T 21.

⁴⁴ T 9 – 11, 14 - 15; Exhibit 2, Tab 1, Review of Death in Custody Report, p. 10.

was taken to provide Mr Hector with closer nursing supervision and help to get his treatment back on track. He was regularly referred to hospital for specialist review and had access to all medical service he would have had in the community, and possibly more given he came from a remote part of Western Australia.

49. As his health deteriorated in his final days, Mr Hector was provided with pain management to keep him comfortable, and the palliative care team were happy that his pain relief was under control.⁴⁵ He was cared for at Bethesda Hospital, which was able to provide all of the specialist care he required.
50. I am satisfied the medical care Mr Hector received was reasonable and appropriate and of the same, or higher, standard than he would have received if he had been living in the community.

Restraints

51. As noted above, one of Mr Hector's treating doctors at the hospital requested that his restraints be removed, and the request was approved by the Superintendent of the prison. However, there was some confusion in the documentation in the brief relating to Mr Hector's security checks in hospital prior to his death. In particular, in the Broadspectrum security officers PIC Escort Record notes, there is a note made at 6.45 am on 19 August 2019 indicating there had been a restraint and security check. Mr Hector's death is recorded less than half an hour later.
52. Ms Palmer from the Department gave evidence that the entry was most likely related to confirming that the restraints were in the materials handed over to the next shift of security officers, as they are required to be kept there as part of the 'kit', rather than indicating that Mr Hector was restrained prior to his death. This is consistent with the entry immediately prior to the one of interest, where at 6.40 am the same officer recorded, "Paperwork – nil restraints."⁴⁶ This was completed at the time of handover between the night shift and the day shift, and Ms Palmer gave evidence it would have formed part of the handover to ensure all of the restraints were accounted for.⁴⁷
53. Senior Constable James Robinson, who attended the hospital shortly after Mr Hector's death, confirmed that he did not see any restraints on Mr Hector when he arrived.⁴⁸
54. I am satisfied that Mr Hector properly had his restraints removed as he became increasingly unwell and his death was imminent, and he remained unrestrained until his death.

CONCLUSION

55. Mr Hector was a 47 year old Aboriginal man from the far north of Western Australia who had a long history of oral cancer, dating back to 2006. Despite treatment, the

⁴⁵ T 24.

⁴⁶ Exhibit 1, Tab 13, PIC Record of Events 182739.

⁴⁷ T 11 – 14.

⁴⁸ T 8.

cancer recurred and eventually led to Mr Hector's death on 19 August 2019. During this long period of illness Mr Hector spent various periods of time in custody. In particular, he was in custody for the last few months leading up to his death. While in custody, he received a high level of medical care for his very complex health needs.

56. Mr Hector's dying wish was to return Kununurra to be closer to his family and on his country before he death. Despite the efforts of medical staff, both within the Department and at Bethesda Hospital, and the involvement of his lawyers, unfortunately this could not be arranged prior to his death. However, I am satisfied he was given some of the best palliative care that was available in Perth, which is hopefully a small comfort to his family.

S H Linton
Deputy State Coroner
10 September 2021