JURISDICTION	**:**	CORONER'S COURT OF WESTERN AUSTRALIA
ACT	**:**	CORONERS ACT 1996
CORONER	**:**	SARAH HELEN LINTON, DEPUTY STATE CORONER
HEARD	**:**	7 DECEMBER 2021
DELIVERED	**:**	21 DECEMBER 2021
FILE NO/S	**:**	CORC 924 of 2019
DECEASED	**:**	TILBURY, JAMES ALEXANDER

Catchwords:

Nil

Legislation:

Nil

Counsel Appearing:

Sgt A Becker assisted the Coroner.
Ms R Eaton (SSO) appeared for the Department of Justice.

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 Alexander TILBURY*** *with an inquest held at Perth Coroners Court, Central Law Courts, Court 85, 501 Hay Street, PERTH, on 7 December 2021, find that the identity of the deceased person was* ***James Alexander TILBURY*** *and that death occurred on 4 July 2019 at Bethesda Hospital, 25 Queenslea Drive, Claremont, from early pneumonia in an elderly man receiving terminal palliative medical care for a brain tumour (atypical meningioma) in the following circumstances:*

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INTRODUCTION

1. James Tilbury died on 4 July 2019 at Bethesda Hospital due to complications of a brain tumour. His death was not, in one sense, sudden or unexpected as Mr Tilbury had been receiving palliative care for a number of years for chronic obstructive pulmonary disease. His condition had worsened over time due to his continued cigarette smoking, and he was expected to have a shortened life span. However, the brain tumour was a relatively recent diagnosis. He was deemed unsuitable for surgery and he deteriorated very quickly, dying just over a month after the brain tumour was first diagnosed. In that sense, his death could perhaps be considered sudden, but it was not unexpected given the rapid course of his disease. He died of natural causes.

2. Mr Tilbury was a sentenced prisoner at the time of his death, so an inquest into his death was mandatory under the *Coroners Act 1996* (WA). As part of the inquest, which was held on 7 December 2021, I was required to consider the treatment, supervision and care provided to Mr Tilbury prior to his death.

BACKGROUND

3. Mr Tilbury was born in Queensland. He was one of 10 children and reportedly did not have a close relationship with his parents. He left school at 14 years of age and went on to work as a farmhand and to do various unskilled labouring jobs. There is an indication that Mr Tilbury was declared an "uncontrollable child" on 6 January 1958 and committed to Westbrook Farm until he was 18 years of age.[1]

4. Mr Tilbury served time as an adult in prison in Queensland and Victoria before moving to Western Australia in 1971 at 30 years of age. In April 1971, Mr Tilbury was sentenced to death after being convicted of the wilful murder of a woman. Mr Tilbury had been living with the woman and killed her by asphyxiating her after an argument. His sentence was later commuted to life imprisonment. Mr Tilbury committed other serious offences while a prisoner being held in Broome Prison, including the attempted rape of a young child, but despite this, and his original sentence, he was eventually released on parole on 18 July 1986.[2]

5. Tragically, this brief period of time in the community led to Mr Tilbury having the opportunity to take another life. He killed another woman in a very similar manner to his first victim, and was returned to custody in June 1988. He was convicted of the young woman's aggravated sexual assault and wilful murder. In February 1989, Mr Tilbury was sentenced to strict security life imprisonment for these crimes. Understandably, Mr Tilbury was never released again, although he was considered for release on parole several times and at least until 2011 he expressed some hope that he might be released. In later years, he indicated to prison staff that given his age, he intended to remain in prison for the remainder of his life and had no interest in being released.[3]

[1] Exhibit 2, DIC Review Report and Tab 1 and Tab 13.
[2] Exhibit 2, DIC Review Report and Tab 1 and Tab 13.
[3] Exhibit 1, Tab 10; Exhibit 2, DIC Review Report and Tab 1 and Tab 13 and Tab 16.

6. Mr Tilbury's main hobby was making matchstick models, which he would then donate to charity through Legacy. He also enjoyed making wooden toys. Unfortunately, this activity was often hampered by security and supply issues, which caused him significant frustration as he experienced boredom without this creative outlet. He was given counselling to help him adjust.[4]

7. Before his death, Mr Tilbury was one of an increasingly small number of prisoners still serving time, who had spent time in Fremantle Prison. When Fremantle Prison closed in 1991, he was transferred to Casuarina Prison. In 1996 Mr Tilbury, who was a long time smoker, was diagnosed with asthma/COPD (chronic obstructive pulmonary disease). Although he tried to give up smoking on several occasions, he was unsuccessful in abstaining long term. He was seen regularly at the Fremantle Hospital Respiratory Clinic and given inhalers at increasing levels to maximise his treatment. In 2004, Mr Tilbury was prescribed supplementary oxygen. Despite smoking being a contraindication for the use of oxygen, he continued to smoke.

8. In June 2005, whilst at Casuarina, Mr Tilbury was diagnosed with prostate cancer and underwent radiotherapy.[5]

9. In March 2010, Mr Tilbury was transferred to Acacia Prison. He then moved between Acacia and Casuarina, depending on his medical needs, noting that Casuarina has the only infirmary in the male prison system in Western Australia. Mr Tilbury was recorded at times as expressing his annoyance at the standard of medical treatment in Acacia and he appeared happier when housed in Casuarina.[6]

10. In July 2010 there was an incident when Mr Tilbury suffered facial burns after lighting a cigarette near his oxygen apparatus and causing a small explosion. He was adamant it was accidental and not an attempt to harm himself.[7]

11. On 4 January 2013 Mr Tilbury was assaulted by another prisoner and required hospitalisation due to internal bleeding and a suspected ruptured spleen. He spent time in hospital, then recuperating in the Casuarina infirmary, before returning to Acacia.[8]

12. On 2 May 2014, Mr Tilbury was listed as Phase 1 (equivalent to what is now Stage 1) terminally ill on the Department's Terminally Ill Register after he was diagnosed with chronic obstructive pulmonary disease (COPD) in addition to his prostate cancer. In September of that year, Mr Tilbury returned to Casuarina from Acacia so that he could be permanently housed in the infirmary due to his ongoing health issues. By this stage, he was also experiencing recurrent pneumonia and urinary tract infections and had been diagnosed with ischaemic heart disease, diabetes and depression.[9]

13. Mr Tilbury's health continued to deteriorate, although he had intermittent periods of improvement. There were times when he was put on the At Risk Management System

[4] Exhibit 2, DIC Review Report and Tab 16.
[5] Exhibit 2, DIC Review Report.
[6] Exhibit 2, DIC Review Report and Tab 16.
[7] Exhibit 2, DIC Review Report and Tab 16.
[8] Exhibit 2, DIC Review Report.
[9] Exhibit 2, DIC Review Report.

(ARMS) because he refused to eat, drink or take his medication, and he received ongoing prison counselling services and health interventions.[10]

14. On 31 August 2015, Mr Tilbury was listed as Stage 3 (death likely within three months or one or more medical conditions with the potential for sudden death) related to his already diagnosed illnesses. Mr Tilbury was considered for release under the Royal Prerogative of Mercy on 7 September 2015; however, due to his refusal to complete violence and sex offending programs, lack of community support and his wishes to remain in custody, he was deemed not suitable for release.[11]

15. Mr Tilbury's illnesses continued to fluctuate. He was started on morphine in late 2017 for his worsening breathlessness and by late 2017/early 2018 there were indications he could no longer care for himself and in 2018 a number of additional illnesses were added to his medical conditions. He was reviewed by a palliative care team in June 2018.[12]

DIAGNOSIS OF BRAIN TUMOUR

16. On 31 May 2019 a clinical nurse visited Mr Tilbury in his cell after he failed to attend the morning medication round. The nurse found him sitting in his bed holding an oxygen mask. He appeared confused and unsure how to put the oxygen mask on. His clothes were soiled and he was unable to voice what was wrong but said he had a headache. Mr Tilbury was transferred by ambulance to Fiona Stanley Hospital for medical treatment. Mr Tilbury was diagnosed with a large brain tumour and moved to Sir Charles Gairdner Hospital that same day.[13]

17. After conducting further investigations at SCGH, including CT scans of Mr Tilbury's chest, abdomen and pelvis, which showed no sign of malignancy, his tumour was thought to be a meningioma. He was managed with medication to reduce the brain swelling and anti-epileptic medication to prevent seizures.

18. The prison health services were notified that Mr Tilbury was assessed as too high risk for neurosurgery, so the non-surgical option of oncology was to be discussed. Mr Tilbury indicated to the doctors at SCGH that he was not interested in pursuing further investigations or oncology treatment.[14] Mr Tilbury's terminally ill status was upgraded to Stage 4 (death is imminent), but then downgraded a few days later to Stage 3 again after he was noted to be stable. On 6 June 2019, Mr Tilbury returned to Casuarina as he remained in a stable condition. He seemed in good spirits and indicated he was not interested in further investigations or oncology. He was cared for in the Casuarina infirmary until 21 June 2019, when Mr Tilbury began to experience an increase in shortness of breath, swelling to his ankles and confusion. He was transferred to Fiona Stanley Hospital again for further treatment and assessment. On

[10] Exhibit 2, DIC Review Report.
[11] Exhibit 2, DIC Review Report.
[12] Exhibit 2, DIC Review Report.
[13] Exhibit 2, Tab 17.
[14] Exhibit 1, Tab 18.

22 June 2019, Mr Tilbury was again transferred back to Casuarina after he had received treatment for pneumonia.[15]

19. On 24 June 2019, Mr Tilbury was transferred to Bethesda Hospice by ambulance for palliative care. On the same day, Mr Tilbury was assessed as requiring a variation of restraint regime due to the deterioration of his medical condition. The Superintendent of Casuarina gave approval for Mr Tilbury's restraints to be removed, with the instruction that they should be re-applied if his condition improved. Attempts were made to contact Mr Tilbury's next of kin to advise of his transfer to Bethesda, but the registered phone number was disconnected. Mr Tilbury had received intermittent visits from family over the years of his incarceration, but it was noted the visits had ceased by the start of January 2016.[16]

20. At 10.35 am on 4 July 2019 a doctor declared Mr Tilbury deceased. WA Police were notified and began a coronial investigation into Mr Tilbury's death.[17]

CAUSE AND MANNER OF DEATH

21. On 16 July 2019 Forensic Pathologist Dr Clive Cooke performed a post mortem examination on Mr Tilbury. The examination showed changes of recent medical care, and confirmed a tumour in the side of the brain, which showed microscopic features of an atypical meningioma. The lungs showed changes of emphysema, with changes of early pneumonia, and there was calcified coronary arteriosclerosis found in the heart.[18]

22. Toxicology analysis showed a number of medications present, consistent with terminal medical care.[19]

23. At the conclusion of all investigations, Dr Cooke formed the opinion the case of death was early pneumonia in an elderly man receiving terminal palliative medical care for a brain tumour (atypical meningioma).[20] I accept and adopt Dr Cooke's opinion as to the cause of death. It follows that the manner of death was by way of natural causes.

TREATMENT, CARE & SUPERVISION

24. Mr Tilbury was a long-term prisoner with complex health needs, which increased over time. The Department conducted its own internal health review and noted that while most of his health conditions were managed well, there was a gap in monitoring his prostate cancer between 2014 and 2019, when his PSA was not checked annually as recommended. Fortunately, the rate of rise remained low and this had no impact on his overall health. However, the gap in monitoring was identified as the kind of omission that might have been avoided if a documented unifying management plan and allocation of a consistent medical officer had been possible within the prison health

[15] Exhibit 1, Tab 13; Exhibit 2, DIC Review Report and Tab 17.
[16] Exhibit 1, Tab 8 and Tab 14; Exhibit 2, DIC Review Report.
[17] Exhibit 1, Tab 14; Exhibit 2, DIC Review Report.
[18] Exhibit 1, Tab 6A.
[19] Exhibit 1, Tab 6A and Tab 7.
[20] Exhibit 1, Tab 6A.

system. The report identified that "time pressure for doctors and nurses has been cited as a major barrier to implementation, including at Casuarina for the Infirmary patients."[21]

25. In terms of the diagnosis of Mr Tilbury's brain tumour, which led to his death, it was noted that he was largely asymptomatic prior to the sudden onset of confusion and incontinence on the day he was diagnosed. He had been comprehensively reviewed by a nurse only two weeks earlier and no new symptoms had been identified that might have prompted investigation.[22]

26. It was also noted that there was an error in Mr Tilbury's medication after his return from hospital in June 2019, due to a communication error between the prison medical officer and the Palliative Care Team, which resulted in Mr Tilbury receiving a higher dose of his dexamethasone medication than he should have for a short period. It was unlikely that this impacted on his overall health status or rate of deterioration. Since this error was identified, the Department has arranged for the Palliative Care Team to provide a written note of the outcome of their visit with patients, and the Department has also successfully recruited a Vocationally Registered General Practitioner with a special interest in palliative care, who is rostered to work at Casuarina.[23]

27. Dr Joy Rowland, the Director of Medical Services for the Department expressed the opinion that overall Mr Tilbury's medical care was excellent. However, she emphasised that the opportunity to introduce multidisciplinary meetings within the prisons, particularly Casuarina where the infirmary is based, would make management of someone like Mr Tilbury, who had many complex medical conditions and was in the infirmary for a long time, better as it would allow a comprehensive review of patients for coordination of care. Unfortunately, the continued time pressures on health staff has made it difficult to implement as there is no spare time for the meetings to occur. Nevertheless, the doctors who work in the prisons are keen to make it happen, so they are trying to work with their local nurse managers to find a way to establish such meetings and a suitable time and way for staff to be involved in them.[24]

28. For Casuarina, Dr Rowland noted there is a regular lockdown on Tuesday mornings when prisoners can't be brought to the clinic, so it would be possible in Casuarina health staff to hold multidisciplinary meetings at that time. Dr Rowland also noted that they have been able to recruit additional staff at Casuarina, so that the number of doctors currently allocated at Casuarina is the best it has been in a long time, which would also make regular meetings possible, as well as beneficial to new staff.

29. Some significant changes are planned for the future of health care in Casuarina, with a planned construction of a new high Needs Care and Assisted Living building (for those requiring a high level of health care) and refurbishment of the current Infirmary. It is planned that the new construction will commence in early 2023, for completion in April 2024, and the refurbishment would then start in April 2024, concluding July 2024. There is also a plan to construct a dedicated Mental Health building in 2023,

[21] Exhibit 1, Tab 16.
[22] Exhibit 1, Tab 16.
[23] Exhibit 1, Tab 16.
[24] T 6 – 8.

with the hope it will be completed in 2024. Of course, all the work must take place within a functioning maximum security prison, and within the context of known construction delays throughout the nation, so the timeframes are merely estimated at this stage.[25]

30. These planned changes are obviously a positive step forward for health care provision in the male prisons system in Western Australia, but I note that my impression so far is that there are also many staffing limitations in providing the kind of health care that is expected, particularly for older, more complex prisoners like Mr Tilbury. Therefore, I hope that the Department will focus its attention on ensuring that once the construction and refurbishment is complete, the necessary resources are put towards staffing the health services appropriately. I say this in the context of my general impression that from Dr Rowland down, all of the health staff in the Department work extremely hard to provide high quality medical care to all prisoners in Western Australia. However, it is clear that there are constant resourcing constraints, which necessitate a focus on provision of acute medical care, rather than allowing the staff the opportunity to provide planned management of chronic diseases and continuity of care.

CONCLUSION

31. Mr Tilbury was serving a life sentence for murder at the time of his death. He had been a prisoner for a very long time, spending the majority of his life in custody from 1971 onwards. He was 77 years old at the time of his death, having been a lifelong chain smoker. In those circumstances, it was unsurprising that he developed a number of serious medical conditions, which progressively worsened as he aged.

32. Mr Tilbury's various medical conditions were generally managed well within the prison system, although his treatment was frustrated by his continued chain smoking, even when on oxygen. He had access to subsidised nicotine replacement therapy, but did not access it. Currently Western Australia still allows prisoners to smoke cigarettes in prison facilities in this State, so he was entitled to make that choice and bear the risk of harm that might ensue.

33. I am satisfied Mr Tilbury received a high standard of care, which was generally better than he would have received if he had been in the community when he became terminally ill. It seems Mr Tilbury had accepted this was the case, and expressed no desire to be considered for release from prison in his later years as his health declined.

S H Linton
Deputy State Coroner
21 December 2021

[25] Email from Toni Palmer to SSO and forward to Sgt Becker, dated 10 December 2021.