IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

COR 2021 002741

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 63(2)

*Section 67 of the **Coroners Act 2008***

Findings of:	Coroner David Ryan
Deceased:	Daniel McQuilken
Date of birth:	28 May 1952
Date of death:	26 May 2021
Cause of death:	1(a) Lung cancer
Place of death:	Alfred Health, the Alfred Hospital, 55 Commercial Road, Melbourne, Victoria, 3004

INTRODUCTION

1. On 26 May 2021, Daniel McQuilken was 68 years old when he died at the Alfred Hospital. At the time of his death, Mr McQuilken resided in immigration detention in Fawkner.

2. Mr McQuilken's medical history included chronic obstructive airways disease (**COPD**), osteoporosis, gastro-oesophageal reflux disease (**GORD**), interstitial pulmonary fibrosis, and lung cancer.

THE CORONIAL INVESTIGATION

3. Mr McQuilken's death was reported to the Coroner as it fell within the definition of a reportable death in the *Coroners Act 2008* (**the Act**). Mr McQuilken's death was reportable as he was detained pursuant to the *Migration Act 1958* (Cth) and in the legal custody of Australian Border Force, under the auspices of the Department of Home Affairs, immediately before his death.[1] Deaths of persons in custody, such as when detained in immigration detention, are reportable to ensure independent scrutiny of the circumstances surrounding their deaths. If such deaths occur as a result of natural causes, a coronial investigation must take place, but the holding of an inquest is not mandatory.

4. The role of a coroner is to independently investigate reportable deaths to establish, if possible, identity, medical cause of death, and surrounding circumstances. Surrounding circumstances are limited to events which are sufficiently proximate and causally related to the death. The purpose of a coronial investigation is to establish the facts, not to cast blame or determine criminal or civil liability.

5. Under the Act, coroners also have the important functions of helping to prevent deaths and promoting public health and safety and the administration of justice through the making of comments or recommendations in appropriate cases about any matter connected to the death under investigation.

6. Victoria Police assigned an officer to be the Coroner's Investigator for the investigation of Mr McQuilken's death. The Coroner's Investigator conducted inquiries on my behalf, including taking statements from witnesses – such as family, the forensic pathologist, treating clinicians and investigating officers – and submitted a coronial brief of evidence.

[1] Section 4(2)(c).

7. This finding draws on the totality of the coronial investigation into the death of Mr McQuilken including evidence contained in the coronial brief. While I have reviewed all the material, I will only refer to that which is directly relevant to my findings or necessary for narrative clarity. In the coronial jurisdiction, facts must be established on the balance of probabilities.[2]

BACKGROUND

Mr McQuilken's early life and relationships

8. On 14 June 1965, Mr McQuilken moved to Melbourne from Scotland with his parents, Thomas and Marion McQuilken, and his siblings, Thomas, Michael and Carol. During his time in Melbourne, Mr McQuilken helped care for his siblings and secured casual work while in school to assist in paying the household bills.[3]

9. After completing Year 9 at school, Mr McQuilken commenced a plumbing apprenticeship but after 12 months, he changed to a mechanical apprenticeship which he successfully completed. He remained with his employer for 11 years and he mentored several TAFE students. In her statement to police, Carol recalled that her brother often fixed cars for the elderly at a reduced rate and was well-known in his community for his support of the elderly and those experiencing financial hardship.[4]

10. When he was 18 years of age, Mr McQuilken married Catriona, to whom he was married for nearly 30 years. They had three children, Cathy, Samantha and Daniel, and at the time of his death he had four grandchildren, Krystal, Jesse, William and James. According to Carol, her brother was a devoted father and grandfather but his marriage "*had a few rough years*". Due to stress, he began to drink and smoke heavily and he and his wife later separated.[5]

11. In 2010, Mr McQuilken married Toni, whom Carol described as a "*lovely & caring partner…*[and] *very supportive*". He developed a strong bond with Toni's children and grandchildren.[6]

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[2] Subject to the principles enunciated in *Briginshaw v Briginshaw* (1938) 60 CLR 336. The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about, individuals unless the evidence provides a comfortable level of satisfaction as to those matters taking into account the consequences of such findings or comments.

[3] Statement of Carol Kourtis dated 2 November 2021.

[4] Statement of Carol Kourtis dated 2 November 2021.

[5] Statement of Carol Kourtis dated 2 November 2021.

[6] Statement of Carol Kourtis dated 2 November 2021.

Pre-detention medical history and treatment

12. Police obtained a statement from Mr McQuilken's treating doctor, Dr John Fotakis, who began treating him in 2004. Dr Fotakis attributed several of Mr McQuilken's medical conditions to his heavy drinking and smoking, namely his COPD, pulmonary fibrosis, GORD and subsequent diagnosis of lung cancer. As Mr McQuilken's lung cancer was later diagnosed while in immigration detention, Dr Fotakis did not have any involvement in his subsequent treatment.[7]

13. In 2016, Mr McQuilken was referred by the Western Sleep and Breathing Clinic to Alfred Health Allergy, Immunology and Respiratory Medicine for review of his interstitial lung disease. During his initial appointment, Mr McQuilken reported having directly handled asbestos for work for a three-month period when he was 16 years old, and was again exposed to asbestos while working in plumbing. He also reported ongoing exposure to dust and chemical fumes in his work as a panel beater as they did not wear masks.[8]

14. Mr McQuilken estimated that he smoked between four to five cigarettes each day, but that he could smoke up to 30 cigarettes in one day. He advised that he owned dogs, fish and canaries, and the attending Alfred Health physician recommended removing the birds or limiting his exposure due to their association with interstitial lung disease.[9]

Conviction for historical offences

15. In 2015, Catriona made a report to police of historical family violence offences perpetrated by Mr McQuilken. Subsequent reports were also made by female family members in relation to physical and sexual assaults perpetrated by Mr McQuilken between 1974 and 1991. He was later interviewed by police and on 17 February 2016, he was charged with a total of 36 offences of historical physical and sexual assault.[10]

16. Mr McQuilken subsequently pleaded guilty to the offences and on 20 December 2017, he was convicted and sentenced in County Court of Victoria to six months' imprisonment, with a two year suspended sentence. He was taken into custody at the Metropolitan Remand Centre.[11]

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7 Statement of Dr John Fotakis dated 20 October 2021.
8 Statement of Professor Mark Shackleton dated 16 December 2021.
9 Statement of Professor Mark Shackleton dated 16 December 2021.
10 Statement of Senior Constable Kristen McDonald dated 28 December 2021.
11 Statement of Senior Constable Kristen McDonald dated 28 December 2021.

Immigration detention and medical management

17. It later came to light that Mr McQuilken was not an Australian citizen. According to Carol, she and her brother travelled to Australia under their parents' visas. Mr McQuilken had never travelled overseas while living in Australia and therefore never had cause to apply for an Australian passport. Carol did not believe he was ever aware of his citizenship status.[12]

18. On or around 19 June 2018, Mr McQuilken was placed in immigration detention at Maribyrnong Immigration Detention Centre (**MIDC**) awaiting deportation to Scotland.[13] On 20 June 2018, he underwent a health induction assessment by a general practitioner (**GP**) from International Health and Medical Services (**IHMS**). Mr McQuilken reported a history of lung disease associated with chronic heavy smoking, for which he used bronchodilator medication and suffered "*decreased exercise tolerance*". He reportedly advised that he had no intention to quit smoking.[14]

19. Throughout his detention, Mr McQuilken received several referrals from the IHMS GP to allied health services, including a podiatrist for management of ingrown toenails and ongoing toe pain; a physiotherapist for muscular back and neck pain; an optometrist for regular reviews; and dental reviews for ill-fitting dentures.[15]

20. Mr McQuilken's mental health was also monitored by IHMS clinicians following a mental health screening on his arrival into custody. The IHMS psychiatrist and psychologist considered that Mr McQuilken "*appeared more frustrated with his current situation rather than depressive symptoms*" throughout 2019 and 2020, and he declined any medications for his mental health. He later reported low mood and anxiety associated with his physical health to the IHMS mental health team, but denied any thoughts of self-harm.[16]

21. Due to the planned closure of the MIDC, Mr McQuilken was transferred to the Melbourne Immigration Transit Accommodation (**MITA**) on or around 10 September 2018.

[12] Statement of Carol Kourtis dated 2 November 2021.
[13] Statement of Senior Constable Kristen McDonald dated 28 December 2021.
[14] Statement of Christopher Lever dated 8 December 2021.
[15] Statement of Christopher Lever dated 8 December 2021.
[16] Statement of Christopher Lever dated 8 December 2021.

22. On 11 February 2019, Mr McQuilken was referred to the Alfred Hospital for review and management of his COPD, as it was noted he had previously attended the hospital for lung function tests but had not yet been reviewed by a specialist.[17]

23. On 7 May 2019, Mr McQuilken was commenced on antihypertensive medication and the IHMS continued to manage his hypertension in accordance with his Hypertension Care Plan.[18]

24. During a specialist review on 10 May 2019, Mr McQuilken's lung function appeared "*stable compared to previous testing*" but he was encouraged by the specialist to "*quit smoking and avoid exposure to cigarette smoke*". The specialist also recommended further follow-up testing in 12 months.[19]

25. On 26 August 2019, Mr McQuilken underwent a bone density scan, the results of which revealed low but no loss of bone density.[20]

26. On 28 January 2020, Mr McQuilken advised an IHMS GP that he was still smoking. During a further consultation on 31 March 2020, he was counselled in relation to his risk of respiratory illness and COVID-19.[21]

27. On 14 April 2020, Mr McQuilken was referred to the IHMS mental health team for a mental health review and counselling for "*reported poor sleep and ongoing frustration with his situation*".[22]

Diagnosis of lung cancer and subsequent treatment

28. On 22 May 2020, Mr McQuilken attended a routine appointment with his Alfred Health respiratory and sleep physician. He reported increased breathlessness and coughing, reduced exercise tolerance, and he was recorded as having lost approximately eight kilograms. A high resolution computed tomography (**HRCT**) revealed "*three suspicious nodules*", and a subsequent positron emission tomography (**PET**) scan and CT guided lung biopsy confirmed metastatic non-small cell carcinoma.[23]

[17] Statement of Christopher Lever dated 8 December 2021.
[18] Statement of Christopher Lever dated 8 December 2021.
[19] Statement of Christopher Lever dated 8 December 2021.
[20] Statement of Christopher Lever dated 8 December 2021.
[21] Statement of Christopher Lever dated 8 December 2021.
[22] Statement of Christopher Lever dated 8 December 2021.
[23] Statement of Christopher Lever dated 8 December 2021.

29. On 3 July 2020, Mr McQuilken's respiratory and sleep physician advised him of his lung cancer diagnosis and referred him for chemotherapy with the Alfred Health Medical Oncology Unit. He subsequently underwent four cycles of chemotherapy and immunotherapy, during which he experienced lethargy, nausea and "*severe sensory peripheral neuropathy of the lower limbs*".[24] His treating clinicians noted that he was also "*psychologically struggling in detention*" throughout this period.[25]

30. On or around 11 August 2020, Mr McQuilken was transferred to Best Western Hotel, Fawkner, as an Alternative Place of Detention (**APOD**). During his time at MIDC, MITA and the APOD, he received semi-regular visits from Australian Border Force (**ABF**) inspector Clinton Dodd. In his statement to police, Mr Dodd recalled that on occasions, Mr McQuilken and his sister raised issues in relation to food or staff, which Mr Dodd followed up with relevant stakeholders and did his best to resolve.[26]

31. Throughout his detention at the APOD, Mr McQuilken was contacted daily by IHMS clinicians (face-to-face or by telephone) to monitor his progress during cancer treatment, supply medications, and provide mental health support.[27]

32. On 29 September 2020, Mr McQuilken was transferred to the emergency department (**ED**) of the Royal Melbourne Hospital after collapsing in the setting of abdominal discomfort. He was diagnosed with rib fractures[28] and constipation and underwent a period of observation in the ED. Mr McQuilken later described this incident to his treating oncology team as stress-related.[29]

33. On 17 October 2020, Mr McQuilken was transferred to the Alfred Hospital ED after he reported to an IHMS nurse that he felt tired, and the nurse observed he was flushed and had a fever. During his admission, Mr McQuilken's lung cancer was restaged, which revealed "*progressive disease, with increased lung mass, mediastinal and mesenteric adenopathy*".[30] He was subsequently discharged back to the APOD on the evening of 19 October 2020.[31]

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[24] Statement of Professor Mark Shackleton dated 16 December 2021.
[25] Statement of Christopher Lever dated 8 December 2021.
[26] Statement of Clinton Dodd dated 9 December 2021.
[27] Statement of Christopher Lever dated 8 December 2021.
[28] Cough-induced rib fractures are not an uncommon occurrence in individuals with COPD and osteoporosis.
[29] Statement of Christopher Lever dated 8 December 2021.
[30] Statement of Professor Mark Shackleton dated 16 December 2021.
[31] Statement of Christopher Lever dated 8 December 2021.

34. On 25 November 2020, Mr McQuilken had a telephone consultation with clinicians at the Alfred Hospital in which he was advised of the restaging results.[32]

35. In December 2020, Mr McQuilken was commenced on a medical diet. On 23 December 2020, he attended a further medical oncology review after completing four cycles of multiple agent chemotherapy. On 24 December 2020, Mr McQuilken was commenced on four cycles of single agent chemotherapy treatment as maintenance immunotherapy, his last cycle occurring on 14 January 2021.[33]

36. On 10 February 2021, Mr McQuilken underwent CT scans of his chest, abdomen and pelvis. On 23 February 2021, he attended a review with the medical oncology specialist, who advised that the CT scans revealed his lung cancer had progressed. Mr McQuilken was advised that his overall prognosis was "*very poor and incurable*" and he was commenced on second line palliative chemotherapy for metastatic lung cancer.[34]

37. Throughout February and March 2021, his chemotherapy and symptoms continued to be reviewed by the IHMS GP. On 2 March 2021, Mr McQuilken was referred to the respiratory clinic for an assessment of his ability to fly, however he declined to attend his appointment with the clinic on 23 March 2021.[35]

38. Mr McQuilken began to experience difficulty completing his daily physiotherapy exercises and attended physiotherapy appointments in early March 2021 for a supervised strengthening program, soft tissue release and electrotherapy for management of swelling. He underwent two admissions to the ED of the Northern Hospital in March 2021 for maculopapular rash associated with his new chemotherapy treatment, and for vomiting and rectal bleeding.[36]

39. Throughout March and April 2021, Mr McQuilken did not respond to the IHMS psychologist's attempt to contact him for mental health screenings and consultations, and declined to engage with the IHMS counsellor via telehealth.[37]

[32] Statement of Christopher Lever dated 8 December 2021.
[33] Statement of Christopher Lever dated 8 December 2021.
[34] Statement of Christopher Lever dated 8 December 2021.
[35] Statement of Christopher Lever dated 8 December 2021.
[36] Statement of Christopher Lever dated 8 December 2021.
[37] Statement of Christopher Lever dated 8 December 2021.

40. In April 2021, Mr McQuilken communicated his end-of-life wishes to the IHMS GP, who in turn advised his treating oncology team. He reportedly declined a review by the IHMS mental health team.[38]

41. On 9 May 2021, Mr McQuilken underwent a CT scan of his abdomen, chest and pelvis and a magnetic resonance imaging (**MRI**) brain scan at the Alfred Hospital. He later complained to IHMS clinicians of shortness of breath and swollen legs but declined to reattend ED for assessment.[39]

42. On 12 May 2021, Mr McQuilken had his third cycle of single agent chemotherapy, after which he experienced dyspnoea and fatigue.[40]

MATTERS IN RELATION TO WHICH A FINDING MUST, IF POSSIBLE, BE MADE

Circumstances in which the death occurred

43. On 20 May 2021, Mr McQuilken was referred to the Alfred Hospital ED by the IHMS GP for fever, fatigue and dyspnoea.[41] On admission to the ED, he had an elevated temperature and was administered intravenous antibiotics for suspected sepsis. A chest X-ray revealed findings consistent with interstitial lung disease and "*an indistinct rounded mass in the mid-zone*". Mr McQuilken's intravenous antibiotics were then changed and he was also commenced on intravenous hydrocortisone for possible chemotherapy-related pneumonitis. His condition initially improved with antibiotics and oxygen therapy.[42]

44. On 22 May 2022, Mr McQuilken was observed to be hypoxic, with reduced oxygen saturation and rapid breathing, and a Medical Emergency Team (**MET**) call was initiated. He underwent a CT pulmonary angiogram, which revealed progressive bilateral lung consolidation, worsening bilateral pleural effusions, and "*evidence of progressive disease, with enlarging primary mass*". The findings were discussed with Mr McQuilken and his goals of care were identified as being not for intubation or cardiopulmonary resuscitation (**CPR**), but for treatment of "*reversible causes*" for his condition in the intensive care unit (**ICU**).[43]

[38] Statement of Christopher Lever dated 8 December 2021.
[39] Statement of Christopher Lever dated 8 December 2021.
[40] Statement of Professor Mark Shackleton dated 16 December 2021.
[41] Statement of Christopher Lever dated 8 December 2021.
[42] e-Medical deposition completed by Dr Maeve Barlow dated 26 May 2021.
[43] Statement of Professor Mark Shackleton dated 16 December 2021.

45. On 23 May 2022, Mr McQuilken was reviewed by the ICU consultant, who noted that in the context of his underlying disease, he "*should receive active ward-based management*" but not undergo CPR, intubation or an admission to the ICU.[44]

46. In the 24 hours prior to his death, Mr McQuilken required increasing oxygen therapy and suffered a progressive drop in haemoglobin. He was also observed to cough up small amounts of blood.[45]

47. On the morning of 26 May 2021, Mr McQuilken was referred to the Palliative Care Team and reiterated his wish to not undergo CPR or intubation. He agreed to receive only ward-based treatment and was reportedly understanding of his poor prognosis and possibility of rapid deterioration in his condition.[46]

48. At approximately 10.09am, a MET call was initiated for Mr McQuilken due to his increased respiratory rate and a reduced oxygen saturation, despite receiving between 10 to 15 litres of oxygen. Active management was withdrawn and measures were implemented for his comfort. Mr McQuilken's condition continued to deteriorate and he was subsequently pronounced deceased at 11.13am.[47]

Identity of the deceased

49. On 28 May 2021, Toni McQuilken visually identified the deceased as her husband, Daniel McQuilken, born 28 May 1952.

50. Identity is not in dispute and requires no further investigation.

Medical cause of death

51. Forensic Pathologist Dr Judith Fronczek, supervised by Forensic Pathologist Dr Joanna Glengarry from the Victorian Institute of Forensic Medicine (**VIFM**), conducted an examination on 27 May 2021 and provided a written report of her findings dated 31 May 2021.

[44] Statement of Professor Mark Shackleton dated 16 December 2021.
[45] Statement of Professor Mark Shackleton dated 16 December 2021.
[46] e-Medical deposition completed by Dr Maeve Barlow dated 26 May 2021; Statement of Professor Mark Shackleton dated 16 December 2021.
[47] e-Medical deposition completed by Dr Maeve Barlow dated 26 May 2021; Statement of Professor Mark Shackleton dated 16 December 2021.

52. Dr Fronczek reviewed a post-mortem computed tomography (**CT**) scan, which revealed coronary artery and general calcifications, bilateral pleural effusions, severely enhanced lung markings and a lesion in the left upper lung lobe. Dr Fronczek did not identify any evidence of fractures to the head and neck, nor any intracranial haemorrhage or brain atrophy.

53. Dr Fronczek provided an opinion that the medical cause of death was 1(a) Lung cancer. She considered that Mr McQuilken's death was due to natural causes.

54. I accept Dr Fronczek's opinion.

REVIEW OF MEDICAL CARE AND MANAGEMENT

55. In her statement to police, Carol raised several concerns regarding her brother's treatment while in detention and its effect upon his physical and mental health. Having considered all of the available evidence, in particular Dr Fronczek's advice as to the medical cause of death, I am satisfied that these concerns are not sufficiently connected to the cause and circumstances of Mr McQuilken's death and are therefore not within the scope of the coronial investigation.

56. Having reviewed the available evidence, I consider that the assessment and monitoring of Mr McQuilken's physical and mental health by International Health and Medical Services, on behalf of the Australian Border Force, was reasonable and appropriate. I am satisfied that Mr McQuilken's treating clinicians made multiple allied health referrals in respect of his pre-existing health complaints, and that his care was appropriately escalated following his cancer diagnosis. I am therefore satisfied that no further investigation is required.

57. As noted above, Mr McQuilken's death was reportable by virtue of section 4(2)(c) of the Act because, immediately before his death, he was placed in immigration detention and in the legal custody of Australian Border Force. Section 52 of the Act requires an inquest to be held, except in circumstances where someone is deemed to have died from natural causes. In the circumstances, I am satisfied that Mr McQuilken died from natural causes and that no further investigation is required. Accordingly, I exercise my discretion under section 52(3A) of the Act not to hold an inquest into his death.

FINDINGS AND CONCLUSION

58. Pursuant to section 67(1) of the *Coroners Act 2008* I make the following findings:

    a) the identity of the deceased was Daniel McQuilken, born 28 May 1952;

    b) the death occurred on 26 May 2021 at Alfred Health, the Alfred Hospital, 55 Commercial Road, Melbourne, Victoria, 3004, from lung cancer; and

    c) the death occurred in the circumstances described above.

I convey my sincere condolences to Mr McQuilken's family for their loss.

Pursuant to section 73(1B) of the Act, I order that this finding be published on the Coroners Court of Victoria website in accordance with the rules.

I direct that a copy of this finding be provided to the following:

Toni Mcquilken, Senior Next of Kin

Keren Day, Alfred Health

Laura Bampton, British Consulate-General Melbourne

Constable Harriette Lukaitis, Coroner's Investigator

Signature:

Coroner David Ryan

Date : 09 March 2022

NOTE: Under section 83 of the ***Coroners Act 2008*** ('the Act'), a person with sufficient interest in an investigation may appeal to the Trial Division of the Supreme Court against the findings of a coroner in respect of a death after an investigation. An appeal must be made within 6 months after the day on which the determination is made, unless the Supreme Court grants leave to appeal out of time under section 86 of the Act.