

CITATION: *Inquest into the death of Roy Melbourne* [2017] NTLC 017

TITLE OF COURT: Coroners Court

JURISDICTION: Darwin

FILE NO(s): D0185/2015

DELIVERED ON: 21 July 2017

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HEARING DATE(s): 26, 27 June 2017

FINDING OF: Judge Greg Cavanagh

CATCHWORDS: **Hanging from fan in correctional facility, failure to install mechanism to prevent fans holding body weight, lack of reintegration systems for some long term prisoners**

REPRESENTATION:

Counsel Assisting: Kelvin Currie
Counsel for Corrections: Helena Blundell

Judgment category classification: A
Judgement ID number: [2017] NTLC 017
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IN THE CORONERS COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. D0185/2015

In the matter of an Inquest into the death of

ROY MELBOURNE
ON 19 NOVEMBER 2015
AT DARWIN CORRECTIONAL
PRECINCT, HOLTZE

FINDINGS

Judge Greg Cavanagh

Introduction

1. Roy Bernard Melbourne (the deceased) was born in Alpha (via Rockhampton), Queensland on 9 December 1934 to Ellen King and Jeremiah Melbourne. He was the sixth of eleven children.
2. His first job was working as a junior porter for Queensland Rail. He then worked cutting cane at Sarina (between Rockhampton and Townsville). He was working at the Collinsville coal mine when he met Marlene Shaw. They married in 1956 and had four children.
3. From 1955 until 1966 Mr Melbourne worked for the Main Roads in Rockhampton. However in 1966 he and his wife separated and thereafter he worked in various places including New Guinea, Groote Eylandt, Mount Isa, Broome and Port Headland.
4. Sometime prior to Cyclone Tracy, Mr Melbourne moved to Darwin and from that point divided his time between Darwin and Mount Isa until retiring to

Darwin in about 1990 at the age of 55 years. He obtained the disability support pension because of his alcoholism.¹

5. He was known to suffer from depression and to drink heavily, however he had not come to the attention of Police for anything other than driving over 0.08% in 1975.
6. On 27 July 1995, at the age of 60 years, while living in a Northern Territory Housing unit in Millner, he was involved in an altercation with his 71 year old neighbour, Mrs Irene Chambers.
7. There was a noise in his unit. A knocking on the wall. It may have been the water pipes in the wall. However, Mr Melbourne believed his neighbour had been deliberately knocking on the wall to disturb him.
8. He confronted his neighbour in her unit. That ended with him stabbing her three times to the throat and killing her. On 13 June 1996 he was sentenced to life imprisonment for murder. He was not eligible for parole until 27 July 2015.
9. While in prison he was well behaved. It was said that he posed no security risk, and worked extremely hard without complaint.² He was said to be “quiet, courteous, clean and very private in his habits”.³ By 2002 he had a “Low1” security classification.
10. In 2006 he told the review committee that all of his family lived on the East Coast. He said he would not want to transfer to another state to be closer to his family because he considered that would be an imposition on his family. They would feel obligated to visit him.
11. In February 2012 his classification was changed to “Low2” on approval of the Superintendent, to assist with his “reintegration and employment”. In

¹ Offender Management Plan 09.04.2015

² Security Assessment Review 30.11.2000

³ Security Assessment Review 21.11.2002

March 2012 he had a “reintegration interview”. It was suggested that he could go on “outings” later in the year. He said he would prefer not to.

12. Of his 11 April 2013 Offender Management Program review, the reviewer wrote: “He indicates he will apply for parole but does not appear phased whether he achieves parole”.
13. On 20 May 2014 he achieved an “open” security classification, the lowest classification available. That permitted him, with approval, to undertake work in the community without accompanying security. He was eligible for that status because he was in the last two years of his non-parole period (and he was a low security risk). Due to his age and health however there was little work that he could undertake in the community and he continued to do work in the prison.
14. On 11 July 2014 he took a Leave of Absence with the Through Care Officer to buy lunch from the shops in Nightcliff and consume it on the Nightcliff Foreshore.
15. On 9 October 2014 at the Offender Management Program review he said he had plans to transfer to a work camp in Nhulunbuy to work as a storeman. It was discussed that during that time he could engage in reintegration such as grocery shopping and recreational activities.⁴ However he later declined that transfer. He said he would find it hard to live out of a camp bed and tent. He had his own cell and said he was comfortable.⁵
16. On each review it was noted that Mr Melbourne was meticulous about the cleanliness and tidiness of his cell and liked a strict routine.
17. It was also noted that he was “not overly confident about the transition to the new prison in Holtz, the DCP (Darwin Correctional Precinct). It was

⁴ Offender Management Plan 09.10.2014

⁵ Offender Management Plan 09.04.2015

suggested that he might require “support in the lead up”. That was because he felt comfortable in his routines. It was noted he didn’t like to “mix it up”.

18. Indeed, on the day of the transition he became so stressed he was taken to Royal Darwin Hospital suffering chest pains.
19. On 14 October 2014 he took a Leave of Absence to go with the Through Care Officer to the Motor Vehicle Registry at 9.00am to obtain an Evidence of Age Card and then to the Commonwealth Bank at 11.00am to open a bank account and from there to Stokes Hill Wharf for lunch.
20. On 19 December 2014 he took a Leave of Absence to travel with the Through Care Officer to Darwin Airport at 9.00am to look at the process of catching a plane and then at 11.00am to the Commonwealth Bank to activate his bank account and had lunch at Stokes Hill Wharf again.
21. On 9 April 2015, following the Offender Management Program review, it was noted that Queensland had accepted the transfer of his parole. Mr Melbourne said he was very happy and looking forward to his release.
22. He was told that attendance at Alcoholics Anonymous (AA) might be required as a condition of his Parole. He said he was not interested in attending AA and felt there was no point as he had not had a drink for 20 years and never wanted to drink again. He said he would rather stay in prison than go to AA meetings.
23. At that review he asked for another accompanied Leave of Absence to buy clothes and a mobile phone. He was asked whether he would like to visit more places of interest and he replied, “A lot does not interest me anymore”.
24. On 6 October 2015 when discussing travel arrangements to Rockhampton he suggested he might reapply to the Parole Board in 2016. He said he was not wanting to attend AA meetings. He also said he was willing to report to Police but he couldn’t understand why the Police would attend at his

brother's house in the middle of the night to breath-test him. He asked if inquiries could be made to see if he could defer the transfer to Queensland for a year.

25. On that same date he indicated that he had blood tests (normal protocol before release) that showed discrepancies in his white and red blood cell levels. The doctor told him he may have a form of Leukaemia but needed further tests.
26. On 14 October 2015 Mr Melbourne's parole was approved with a condition that he live in Rockhampton with his brother. He was due for release on 4 November 2015.
27. On 26 October 2015 Mr Melbourne submitted a Request:

“Sir, Due to unforeseen circumstances beyond my control, I wish to cancel the transfer of my parole to Rockhampton – Queensland. My brother with whom I was to reside has contracted a serious illness (Leukaemia) and is to enter hospital for chemo-therapy treatment. I feel that my presence would only complicate matters as I would be living alone and this would be a breach of my parole conditions.
Sincerely, R. Melbourne”
28. His Through Care Co-ordinator went to speak to him about it. He said that the previous Friday (23 October 2015) his brother had told him that he had been diagnosed with Leukaemia. He said he believed he would be a burden on his brother and other family members particularly while his brother was undergoing chemo-therapy. He said he had made up his mind to cancel his parole and had told his brother of his decision that morning. He said his brother had sounded disappointed.
29. On 28 October 2015 his parole was revoked.
30. On 30 October 2015 the Through Care Officer checked on Mr Melbourne to see how he was feeling after cancelling his parole. He said the main reasons for his decision were:

- “He was not happy with the condition that he attend AA meetings;
- He did not like the idea of having checks and Random Breath Tests in the middle of the night. He thought that would impact on his brother;
- He was not happy with the travel arrangements. He was going to have to move to Sector 5 the night before to facilitate the early departure and he would get to Rockhampton in the middle of the night and would therefore have to wake his brother;
- Seeing so many people about the granting of parole and signing papers confused him and got him up tight;
- His brother’s illness was the final part that convinced him he needed to cancel. His brother would be spending time in hospital and he thought it a condition of his parole that his brother be at home with him.”

31. At the end of that conversation he said he would consider writing to the March 2016 Parole Board meeting. He said he might be more prepared the second time around. He thought he might put his name on a waitlist for Aged Care facilities in Darwin as a backup plan.
32. On 6 November 2015 testing on his blood suggested he may have Chronic Myeloid Leukaemia (CML) and further testing was recommended. Blood samples were taken on 10 November 2015.
33. On 13 November 2015 Mr Melbourne’s security classification was changed from “open” to “Low1”. The reason was said to be because, “he no longer meets the criteria for OPEN due to the change of procedures relating to prisoners convicted of murder, as per Executive Directors directive”.
34. The directive followed the Minister for Correctional Services statement of Government Policy on 10 November 2015. The Minister stated that no prisoner who had ever been convicted of a sexual assault or the offence of murder was to be assigned an open security classification. That change

followed and was in response to the escape of the prisoner, Edward Horrell, from the Datjala Work Camp.

35. On Tuesday 17 November 2015, Mr Melbourne spoke to a fellow inmate and told him that he rejected his parole for a number of reasons that included his brother's illness, that he might be ill himself and that he had lost his open security status. He said, "*by the looks of it, I will end up dying in here*".
36. The following day, Wednesday 18 November 2015, Mr Melbourne retired to bed before 8.00pm. The next morning he was seen shaving between 4.30am and 5.00am. That was not uncommon for Mr Melbourne.
37. At 7.30am he was not sitting in his usual spot near the window. His door was locked and there was a towel over the small window in the door. The guards were alerted. Mr Melbourne was found hanging from the fan in his room by a sheet. He showed no signs of life and was not able to be revived. He was 81 years of age.
38. The day after his death, 20 November 2015, the further blood testing confirmed Mr Melbourne had Chronic Myeloid Leukaemia.
39. The investigation, following Mr Melbourne's death, was undertaken by Detective Senior Constable First Class Wayne Smith of the Major Crime Squad and I thank him for the high quality of the investigation and brief of evidence.

Issues

The fan as a hanging point

40. Mr Melbourne hung himself from a fan in the middle of his cell. He accessed the fan by means of a table in the room proximate to the fan.

41. Fans have long been understood to be a classic hanging point. Much work has been undertaken over the decades since the Royal Commission into Aboriginal Deaths in Custody to eliminate such hanging points.
42. Where fans are desirable or necessary it is possible to use mechanisms to ensure the fans are not able to hold a person's weight. However clearly that had not been done in the case of the fans in the new Darwin Correctional Precinct.
43. I was told by the Commissioner for Corrections that the fans were the result of the cost cutting required by the Government. However, that did not explain why the fans did not utilise a mechanism to ensure they couldn't be used as a hanging point. On that issue he said that he had been told by the previous Commissioner that there was a conversation with the builders where the builders said that the fan would not hold a person's weight.
44. The Commissioner was unable however to provide any documentary evidence of such a specification, requirement or understanding.
45. If there was such an understanding it was not shared by the architects for the Darwin Correctional Precinct. They provided a lengthy report to the Department of Corrections on 24 February 2016 titled, "Report into hanging points in Low Security Cottages". The report is to the effect that the hanging points were present because the design specifications only sought that they be reduced in the medium and high security classifications. That report made no mention of any mechanism or maximum loading to mitigate the risks posed by the fans.
46. It is most unlikely that there was ever any expectation that the fans would be of a specification unable to hold a person's weight. Much of the report from the Architects is utilised arguing that in the low security areas such

hanging points are permissible. The Commissioner agreed no testing was undertaken to determine that issue.

47. As I mentioned during the inquest, it beggars belief that a prison designed and constructed in the 21st century has such classic hanging points with no mitigation of that risk.
48. The Commissioner of Correctional Services, Mr Mark Payne, agreed with that assessment and gave evidence that he was seeking confirmation of a specification for either bolts or a coupling mechanism to mitigate the risks. As soon as that is available he indicated that the recommended bolts or mechanism would be installed prioritising the areas of greatest risk (single room accommodation).
49. Sadly, Mr Melbourne was not the only prisoner to utilise the fans as a hanging point. There was another hanging in the prison some nine months after Mr Melbourne took his life that will be the subject of another mandatory inquest later this year and an attempted hanging in the female sector. I therefore encourage the Commissioner to ensure that the mitigating solution is installed at the earliest possible time.
50. During the course of the Commissioner's affidavit and oral evidence there was mention of the need for a therapeutic environment. No issue is taken with that. However, that does not seem to be directly relevant. The problem is not the existence of the fan. The problem is the failure to mitigate the known and obvious risks (by use of some load sensitive mechanism) so as to prevent a person from successfully using the fan as a hanging point.

Failure to record significant events

51. The affidavit of the Commissioner contained a reference to the possibility of cell checks being an issue. In speaking of the cell check regime the Commissioner made mention the previous Commissioner had sent me two letters. He said:

“On 25 August 2010, the then Commissioner, Mr Ken Middlebrook, wrote to the NT Coroner, Mr Greg Cavanagh, regarding a proposal to cease the practice of Correctional Officers conducting counts after lockdown ... A copy of the correspondence is provided at Annexure D. There is no record of receiving a response to this letter from the Coroner’s Office.

On 19 February 2015, Mr Middlebrook again wrote to Mr Cavanagh regarding the ceasing of welfare checks and counts after lockdown as it was deemed to be unproductive. A copy of this correspondence is provided at Annexure E. Again there is no record of receiving a response to this letter from the Coroner’s Office.”

52. The context of those paragraphs seemed to suggest that if there was an issue, then I was complicit because of my failure to respond. That suggestion was misguided as I note below. However, I did respond, and I responded explicitly in open court during a previous inquest.
53. As I pointed out to the Commissioner during this inquest it is inappropriate and improper to seek from a judicial officer some sort of imprimatur for operational policy. If I had responded that would be inappropriate and would have the likely result that I would need to disqualify myself from any inquest to do with cell checks.
54. Moreover, that was not the first time that same correspondence (and the perceived failure of my Office) had been raised. Similar paragraphs were in an affidavit from Correctional Services in the Inquest into the death of Raymond McDonald (2015). In that case I asked Counsel Assisting (Ms Truman) to email the representatives of the Department of Correctional Services to describe the inappropriateness of both the correspondence and the allegations contained in the affidavit.
55. During the course of that inquest I asked Counsel Assisting to read that email onto the record. The lawyer from the Department of Attorney General and Justice and barrister representing the Department of Corrections appeared to accept the inappropriateness of the correspondence.

56. I went on to explain that I am not an expert in penal best practice. The Commissioner and the Department of Correctional Service are however, expected to either have that expertise or to obtain it.
57. It was therefore somewhat of a surprise to see the same issues arising two years later as if the matters addressed in that inquest had never occurred. There was obviously no learning and no corporate record or understanding by the Department and its lawyers.
58. The Commissioner, Mr Payne apologised and put the following on the record:

“I undertake to prepare formal correspondence to you in these regards. I do this for the purposes of official record and to ensure that these records will be immediately discoverable to my successor in the role of Commissioner, Northern Territory Correctional Services, and to which your position of March 2015 will be affixed thereto.

In addition I have taken steps that all recommendations of this Court, and of reviews and enquiries, are centrally stored on a database of information to ensure that findings, recommendations and actions undertaken by Northern Territory Correctional Services in response thereto, are also more readily discoverable.

It is my view that such responses will ensure that circumstances such as these can be made avoidable into the future.”

59. I accepted the apology and the undertaking of the Commissioner.

Denial of the lowest security classification to murderers and sexual offenders

60. It may be that humans have a natural emotional response against the idea of murderers and sexual offenders ever being freed from prison let alone being able during the last years of their term (or non-parole period) to engage in community activities and employment.
61. However, the fact is that terms of imprisonment usually end. Even those receiving a sentence of “life imprisonment” generally have a non-parole

period after which they can apply to the Parole Board for conditional release into the community.

62. The reintegration and resocialisation activities (particularly obtaining employment) are considered crucial to the success or failure of the prisoner abiding community standards once released.
63. The Commissioner, Mr Payne attached to his affidavit a Memorandum to the Minister (Ministerial) dated 16 January 2017 that set out some of the arguments for such programs in these terms:

“NTCS has well-structured pre-release pathways to assist long term prisoners in their rehabilitation and resocialisation to prepare them for their reintegration into the community.

Opportunities for work placements and links with mentors to assist in obtaining accommodation and appropriate additional support upon release can be facilitated more readily for prisoners permitted to participate in off-site activity. These prisoners are able to gain valuable work experience and skills that will assist in the successful reintegration into society. This is consistent with best practice that has been demonstrated based on the best available worldwide research and expertise in the field of prisoner rehabilitation.

Releasing a prisoner from a correctional centre into the community without access to some external leave programs could potentially increase the risk of reoffending and decrease community safety. External leave programs allow NTCS to monitor the prisoner’s ability to effectively reintegrate into the community under progressively less restrictive conditions.

While prisoners convicted of murder or sex offences are not permitted to progress to open security and participate in external activities, NTCS has limited options in implementing a full reintegration plan for such prisoners. At present, there are 104 prisoners convicted of either murder or sexual offences that are low security and unable to progress further to an open rating.”

64. The Ministerial indicates that the Government chose to continue the policy of preventing those ever convicted of murder or sexual offences from going into the community without security (until the day of their release) or

benefitting from the much vaunted Sentence to a Job program or achieving an open classification.

65. The reasons for that are unclear. The Commissioner referred to “perceptions”. But, it clearly makes sense that if prisoners are to be released, that is undertaken in a progressive, supervised and supported way.
66. In circumstances where failure to do so is believed to increase the risk of offending and decrease community safety, such a failure becomes a real issue. Where that impacts those serving the longest sentences the issue is potentially amplified.
67. In the case of Mr Melbourne, by the time he obtained open status he was well and truly institutionalised. He had only a limited desire for release. He was a low risk of reoffending. He was a man of 81 years of age. He was not a security risk. He had served the non-parole period of his sentence (20 years). He had been granted parole by the Parole Board (although it was cancelled at his request). There was no rational reason for the revocation of his open security classification less than a week before he took his life.
68. Given the inflexibility of the system and the potential for such a system to make it less safe for the community, I urge the government to re-evaluate its policy.

Care, Supervision and Treatment

69. Section 26(1)(a) of the *Coroner’s Act* requires that I must investigate and report on the care, supervision and treatment of the deceased while he was being held in custody.
70. The care supervision and treatment of Mr Melbourne from the prison files and from his interactions with the Through Care Coordinator, Debbie

Treloar, were of a high standard. Indeed, Ms Treloar demonstrated very evident care and compassion toward Mr Melbourne

71. There was no indication by Mr Melbourne, at any time, that he might self-harm and no basis upon which to find that the prison staff should have taken a different action or a different course such that his death might have been avoided.
72. There is no criticism that can or should be made of the prisoner officers involved with his care and supervision.

Formal Findings

73. Pursuant to section 34 of the *Coroner's Act*, I find as follows:

- (i) The identity of the deceased was Roy Melbourne born 9 December 1934, in Rockhampton, Queensland.
- (ii) The time of death was between 5.00am and 7.30am, 19 November 2015. The place of death was Block 7D1, Darwin Correctional Precinct, Holtze, Northern Territory.
- (iii) The cause of death was self-inflicted hanging.
- (iv) The particulars required to register the death:
 1. The deceased was Roy Melbourne.
 2. The deceased was of Caucasian descent.
 3. The deceased was a prisoner and not employed at the time of his death.
 4. The death was reported to the Coroner by the Darwin Correctional Precinct staff.
 5. The cause of death was confirmed by Forensic Pathologist, Dr John Rutherford.
 6. The deceased's mother was Ellen King and his was father Jeremiah Melbourne.

Recommendation

74. I **recommend** the Commissioner of the Northern Territory Correctional Services ensure that the risk posed by the fans in the Darwin Correctional Precinct being used as hanging points are mitigated by the fitting a load sensing mechanism or other similar device.

Dated this 21st day of July 2017.

GREG CAVANAGH
TERRITORY CORONER