



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 27th day of April and the 15th day of August 2022, by the Coroner's Court of the said State, constituted of David Richard Latimer Whittle, State Coroner, into the death of John Michael Kelley.

The said Court finds that John Michael Kelley aged 83 years, late of 8 Geneva Court, Mitchell Park, South Australia died at the Noarlunga Hospital, Alexander Kelly Drive, Noarlunga Centre, South Australia on the 29th day of November 2018 as a result of general inanition and aspiration pneumonia on a background of end-stage Alzheimer's dementia. The said Court finds that the circumstances of his death were as follows:

1. Introduction and reason for inquest

- 1.1. John Michael Kelley was born on 5 August 1935, and died on 29 November 2018 at the Noarlunga Hospital. He was 83 years old.
- 1.2. This is a mandatory inquest pursuant to section 21(1)(a) of the Coroners Act 2003 (the Act) as a possible cause of death arose during the time Mr Kelley was subject to a Level 1 Inpatient Treatment Order (ITO) under the Mental Health Act 2009.
- 1.3. This renders Mr Kelley's death a death in custody as defined in section 3 of the Act. I note however that section 21 of the Act was amended on 7 June 2021 and Mr Kelley's death would likely have been certified by a medical practitioner to have been a death due to natural causes, and would not have required a mandatory inquest.
- 1.4. Mr Kelley was first placed on a Level 1 ITO on 21 October 2018. That order was reviewed on 26 October 2018 and replaced with a Level 2 ITO. The Level 2 ITO was

revoked on 1 November 2018. A third ITO was made on 21 November 2018. That order was revoked on 27 November 2018. Mr Kelley was pronounced deceased by Dr Kwan Chia at 1am on 29 November 2018.

2. Cause of death

- 2.1. A pathology review was undertaken by Dr Iain McIntyre of Forensic Science South Australia in consultation with senior forensic pathologist Dr John Gilbert. In his report he proffered an opinion that the cause of Mr Kelley's death was general inanition and aspiration pneumonia in a man with end-stage Alzheimer's dementia.¹
- 2.2. Subsequent to providing that opinion, and at the request of the Deputy State Coroner, Dr Gilbert confirmed that the lack of oral intake leading up to the death of Mr Kelley was a contributing factor in his death.
- 2.3. The decision to transition Mr Kelley to palliative care, and therefore to cease the provision of subcutaneous fluids, occurred while Mr Kelly was subject to the third ITO.
- 2.4. Mr Kelley was diagnosed with pneumonia on two occasions following his admission to hospital on 19 October 2018. This first diagnosis of aspiration pneumonia was made at the Flinders Medical Centre on 21 October 2018 following a chest X-ray. This diagnosis was made on the same day that the Level 1 ITO was imposed.
- 2.5. Mr Kelley was again diagnosed with aspiration pneumonia on 5 November 2018. Viral studies on 6 November 2018 showed a human meta-pneumovirus to be the causative organism.²
- 2.6. Mr Kelley's aspiration pneumonia arose whilst Mr Kelley was subject to an ITO, making his a death in custody. I find the cause of Mr Kelley's death to be general inanition and aspiration pneumonia on a background of end-stage Alzheimer's dementia.

3. Background and medical history

- 3.1. Mr Kelley was a husband to Maureen Kelley, a father to four children, including Giselle Berriman who provided an affidavit³, and a grandfather.

¹ Exhibit C2a

² Exhibit C2a

³ Exhibit C3

- 3.2. Mr Kelley, who went by the name of Jack, came to Australia in 1967 and travelled the world buying fashion for retail store John Martins.
- 3.3. Mrs Berriman's affidavit sets out some background about Mr Kelley. Mr and Mrs Kelley lived in Port Elliot for about 27 years. They moved to Adelaide in February 2018 to be closer to Mrs Berriman. In 2011 Mr Kelley was diagnosed with Alzheimer's dementia by his general practitioner and in 2015 became a patient of geriatrician, Associate Professor Craig Whitehead.
- 3.4. Mrs Berriman details in her affidavit the progression of Mr Kelley's dementia. She observed that as his condition declined, he became confused and disoriented, which at times presented as aggression. Ms Berriman was aware that her father had displayed verbal aggression at times, which had never before been a feature of his personality. At times he forgot the name of his wife and was concerned about being left alone without her. Mrs Berriman was not aware of her father ever being physically aggressive.
- 3.5. Mrs Berriman observed the toll that caring for her father was taking on her mother and urged her to place him into respite care for two weeks to allow her to recuperate. Mrs Kelley reluctantly agreed and arrangements were made for him to attend the Bupa Aged Care home at Morphettville for two weeks respite care. His first and only day at the facility was on 19 October 2018.
- 3.6. Mr Kelley's past medical history included atrial fibrillation, cerebellar infarction, hypertension, chronic obstructive lung disease and gastroesophageal reflux disease.

4. Mr Kelley's admission to hospital

- 4.1. Mr Kelley was admitted to the Flinders Medical Centre (FMC) on 19 October 2018 following an unwitnessed fall at the nursing home on his first day of respite care.
- 4.2. The fall occurred on the evening of 19 October 2018 after an incident involving Mr Kelley becoming agitated and threatening and chasing staff.⁴ The nursing home notes and the statement of Nurse Yan Chen indicate that Mr Kelley had been trying to break open windows and doors, presumably in an attempt to leave the facility.⁵

⁴ Affidavit of Nurse Yan Chen and attached notes: Exhibit C11

⁵ Exhibit C11

- 4.3. Nurse Chen left to make a telephone call to the general manager to seek advice. During this time the nursing home staff had taken refuge in the nursing station and other rooms. When Nurse Chen returned, it was evident that that Mr Kelley had an unwitnessed fall.
- 4.4. The nursing home notes, annexed to the statement of Nurse Chen, provide some detail about the events that occurred while Nurse Chen was on the telephone. In particular, there is an entry at page 2 of the notes, at 2150, which reads:
- '... after trying to close a fire door, resident was found lying on the floor on his right side. Nurse in charge informed immediately.'
- 4.5. Mr Kelley was treated for lacerations to his head at the home before being admitted to the FMC via ambulance.
- 4.6. The medical notes from the FMC⁶ attribute the reason for Mr Kelley's admission to delirium on a background of dementia and BPSD.⁷
- 4.7. While at the FMC Mr Kelley was also treated for injuries suffered during his fall. The notes record that Mr Kelley suffered two lacerations to his forehead above the right eyebrow measuring 4cm and 2cm respectively. He also complained of pain to his left foot.
- 4.8. A CT scan of his brain showed ischaemic small vessel disease but no acute intracranial pathology. An X-ray of his foot did not show any fractures.
- 4.9. At the time of his admission to FMC Mr Kelley was observed by staff to be distressed, disorientated, confused and aggressive. During the weekend there were several code blacks due to his behaviour.
- 4.10. A Level 1 ITO was put in place on 21 October 2018. The notes indicate that Mr Kelley was suffering from hallucinations and that he was frightened. The first order was made by Dr Alexandra Goldsworthy.⁸
- 4.11. Dr Richard Weeks confirmed the ITO the following day, following the review required by section 10(5) of the Mental Health Act. Mr Kelley was suffering from delirium and dementia, he required medical treatment for his own protection from harm, and for the protection of others, he had limited decision making capacity and there was no less

⁶ Exhibit C9

⁷ Behavioural and psychological symptoms of dementia

⁸ Exhibit C7b

restrictive means of ensuring that he received appropriate treatment.⁹ The order was made in writing and on the approved form, and the order was confirmed by a different psychiatrist within 24 hours of the making of the order. I find that this period of detention was lawful.

- 4.12. On 21 October 2018 Mr Kelley was diagnosed with aspiration pneumonia, following a chest X-ray. Antibiotic treatment was commenced, and continued until 29 October 2018.
- 4.13. Mr Kelley was transferred to Myles Ward on 21 October 2018.¹⁰ Consultant psychiatrist Dr Andrew Rosser became involved with Mr Kelley's care once he arrived at the Myles Ward.¹¹ It was his view that Mr Kelley lacked insight into his condition and the need for treatment. At that time, Mr Kelley had been diagnosed with a lower respiratory tract infection and pneumonia.
- 4.14. Dr Rosser expressed the view that the infection likely caused a delirium, which is quite common in patients with a pre-existing cognitive impairment such as dementia. This caused him to be confused and unable to understand what was happening, leading to agitation. It appeared to Dr Rosser that Mr Kelley did not understand that he needed medical treatment for an infection and wanted to go home. In Dr Rosser's view, this would likely have resulted in his death from sepsis.
- 4.15. Dr Rosser reviewed the existing Level 1 ITO on 26 October 2018 and made a decision to replace it with a Level 2 ITO.¹² That order was due to expire on 7 December 2018.
- 4.16. In Dr Rosser's opinion, the Level 2 ITO was necessary to enable Mr Kelley to get the best possible medical care. Dr Rosser expressed the view that Mr Kelley posed a risk of misadventure to himself and others.
- 4.17. Dr Rosser examined Mr Kelley again on 1 November 2018. Dr Rosser noted significant improvement, with a vast reduction in his anxiety.¹³ The antibiotics treating the infection had eased off the delirium, and while Mr Kelley was still confused, he was accepting oral medication, he was not agitated or aggressive, and was willing to be in

⁹ Exhibit C7d

¹⁰ Exhibit C7e

¹¹ Exhibit C5

¹² Exhibit C7l

¹³ Exhibit C19, page 167

hospital. After discussions with Mr Kelley's wife, and in accordance with the principles of least restrictive care, Dr Rosser revoked the Level 2 ITO.

- 4.18. Geriatrician Dr Spiliopoulou also examined Mr Kelley on 1 November 2018.¹⁴ Dr Spiliopoulou reviewed the medical notes and obtained a history from Mr Kelley's wife. Dr Spiliopoulou noted that the extreme behaviours being exhibited by Mr Kelley are often a sign of end stage dementia. Dr Spiliopoulou observed that between 25 October and 4 November 2018 Mr Kelley was well. He was pleasant, cooperative and had a course of physiotherapy.
- 4.19. However, pneumonia was detected on about 5 November 2018. This was Mr Kelley's second bout of aspiration pneumonia, which was again treated. Dr Spiliopoulou was unable to say when or why Mr Kelley acquired the pneumonia. However, the following day Mr Kelley tested positive for meta-pneumovirus. Dr Iain McIntyre opined in his pathology review that human metapneumovirus was the causative organism of Mr Kelley's pneumonia.
- 4.20. Mr Kelley had another fall on 7 November 2018, tripping over the feet of another patient, and his behaviour deteriorated, likely due to pain.¹⁵
- 4.21. Dr Spiliopoulou noticed that Mr Kelley declined rapidly from 21 November 2018. He became combative with the nurses and resisted much needed care. Mr Kelley was treated with a buprenorphine patch, along with risperidone and clonazepam. This caused drowsiness, and again Mr Kelley began to refuse medication. Accordingly, a third and final ITO was imposed by Dr Natalie Pink on 21 November 2018.¹⁶ This order was confirmed by Dr Rosser the following day. After that order was made, and in consultation with the family, a decision was made to withdraw therapy and focus on comfort care.
- 4.22. From 24 November 2018 Mr Kelley ceased eating and drinking. Dr Spiliopoulou notes that this was part of the progression of his dementia. Subcutaneous fluids were administered for 24 to 48 hours to no avail. Mr Kelley removed his subcutaneous line on 27 November 2018 and that line was not replaced, following the decision to focus on comfort care.

¹⁴ Exhibit C4

¹⁵ Exhibit C2a

¹⁶ Exhibit C7k

4.23. Dr Rosser reviewed the ITO on 27 November 2018 and satisfied himself that it was no longer necessary. Mr Kelley had his family around him and was no longer resistive to care. The ITO was revoked by Dr Rosser. On 29 November 2018 Mr Kelley passed away.

5. Conclusions

5.1. Consistent with the conclusions of the SAPOL investigation officer, I find that Mr Kelley was in lawful detention at the time that his cause of death arose.¹⁷ The decision to withdraw active treatment, and in particular, not to continue subcutaneous fluids, was made while Mr Kelley was still subject to the ITO.

5.2. The circumstances of Mr Kelley's death are not suspicious and do not indicate the involvement of any third party. I have no concerns relating to his care. The investigating officer's opinion is that Mr Kelley's care and treatment at the Bupa nursing home, and by all of the medical practitioners involved in his care, was appropriate. I agree and so find.

5.3. I make no recommendations.

Key Words: Inpatient Treatment Order; Death in Custody; Natural Causes

In witness whereof the said Coroner has hereunto set and subscribed his hand and

Seal the 15th day of August, 2022

State Coroner

Inquest Number 66/2020 (2326/2018)

¹⁷ Exhibit C7