JURISDICTION	**:**	CORONER'S COURT OF WESTERN AUSTRALIA
ACT	**:**	CORONERS ACT 1996
CORONER	**:**	MICHAEL ANDREW GLIDDON JENKIN, CORONER
HEARD	**:**	14 MARCH 2023
DELIVERED	**:**	30 MARCH 2023
FILE NO/S	**:**	CORC 2659 of 2021
DECEASED	**:**	WARD, HUGH

Catchwords:

Nil

Legislation:

Coroners Act 1996 (WA)

Counsel Appearing:

Sergeant A Becker assisted the coroner.

Ms L Italiano (State Solicitor's Office) appeared for the Department of Justice.

Coroners Act 1996
(Section 26(1))

AMENDED RECORD OF INVESTIGATION INTO DEATH

I, Michael Andrew Gliddon Jenkin, Coroner, having investigated the death of ***Hugh WARD*** *with an inquest held at Perth Coroners Court, Central Law Courts, Court 85, 501 Hay Street, PERTH, on 14 March 2023, find that the identity of the deceased person was* ***Hugh WARD*** *and that death occurred on 5 October 2021 at Sir Charles Gairdner Hospital, from complications of cerebrovascular accident (stroke) in the following circumstances:*

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INTRODUCTION

1. Hugh Ward (Mr Ward) died on 5 October 2021 at Sir Charles Gairdner Hospital from complications of a stroke.[1,2,3,4] At the time of his death, Mr Ward was a sentenced prisoner at Casuarina Prison, and thereby in the custody of the Chief Executive Officer (CEO) of the Department of Justice (DOJ).[5]

2. Accordingly, immediately before his death, Mr Ward was a "*person held in care*" within the meaning of the *Coroners Act 1996* (WA) and his death was a "*reportable death*".[6] In such circumstances, a coronial inquest is mandatory.[7]

3. Where, as here, the death is of a person held in care, I am required to comment on the quality of the supervision, treatment and care the person received while in that care.[8]

4. I held an inquest into Mr Ward's death at Perth on 14 March 2023, which his son and daughter attended. The documentary evidence adduced at the inquest comprised one volume and the following witnesses gave evidence:

a. Dr Catherine Gunson, (Acting Director Medical Services, DOJ);[9] and

b. Ms Toni Palmer, (Senior Review Officer, DOJ).[10]

5. The inquest focused on the care, treatment and supervision provided to Mr Ward while he was in custody, as well as the circumstances of his death.

[1] Exhibit 1, Vol. 1, Tab 1, P100 - Report of Death (13.08.22)
[2] Exhibit 1, Vol. 1, Tab 3.1, Supplementary Post Mortem Report (17.11.21)
[3] Exhibit 1, Vol. 1, Tab 5, Death in Hospital form (05.10.21)
[4] Exhibit 1, Vol. 1, Tab 6, P92 - Identification of Deceased (07.10.21)
[5] Section 16, *Prisons Act 1981* (WA)
[6] Sections 3 & 22(1)(a), *Coroners Act 1996* (WA)
[7] Section 22(1)(a), *Coroners Act 1996* (WA)
[8] Section 25(3) *Coroners Act 1996* (WA)
[9] Exhibit 1, Vol. 1, Tab 15, Health Services Review (13.03.23) and ts 14.03.23 (Gunson), pp6-34
[10] Exhibit 1, Vol. 1, Tab 12, Death in Custody Review (09.12.22) and ts 14.03.23 (Palmer), pp34-50

MR WARD

Background[11,12]

6. Mr Ward was born in Scotland on 3 September 1932, and was 89 years of age when he died.[13] When he was about 19 years of age, Mr Ward joined the British Army and served in Korea. In 1966, he and his wife came to Australia. They had four children together, the youngest of whom was born in Australia.

7. In 1983, Mr Ward came to Western Australia, where he worked in the drainage industry, and later as a cleaner/handyman. He subsequently moved to Queensland in about 1998, apparently to assist his daughter, but he returned to Western Australia in about 2001 to care for his wife. Mr Ward was his wife's carer for about 16 years until her death.

Medical history[14,15]

8. Mr Ward's medical history included high blood pressure, atrial fibrillation, heart disease, type-2 diabetes, sleep disorder, unsteadiness on his feet, and hearing loss. Mr Ward had undergone surgery to treat colon cancer, and was taking warfarin (an anticoagulant) to prevent blood clots as a result of his atrial fibrillation. Following his wife's death, Mr Ward reportedly drank alcohol to excess and had contemplated taking his life. He had also been diagnosed with severe depression, dementia, cognitive impairment, and memory loss.

Offending history[16,17,18,19,20]

9. On 12 March 2020, in the District Court of Western Australia at Perth, Mr Ward was convicted of 23 child sex offences. He was sentenced to seven years' imprisonment and made eligible for parole, with his earliest eligibility date for release being 11 March 2025.

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[11] Exhibit 1, Vol. 1, Tabs 10 & 12.2, Sentencing transcript - District Court of WA (12.03.20), pp8-9
[12] Exhibit 1, Vol. 1, Tab 12, Death in Custody Review (09.12.22), p7
[13] Exhibit 1, Vol. 1, Tab 1, P100 - Report of Death (13.08.21)
[14] Exhibit 1, Vol. 1, Tabs 10 & 12.2, Sentencing transcript - District Court of WA (12.03.20), p9
[15] Exhibit 1, Vol. 1, Tab 15, Health Services Review (13.03.23), pp3-4 and ts 14.03.23 (Gunson), pp9-10
[16] Exhibit 1, Vol. 1, Tab 2, Report - Det. Sen. Const. M Court (13.08.22), p2
[17] Exhibit 1, Vol. 1, Tab 12, Death in Custody Review (09.12.22), p7
[18] Exhibit 1, Vol. 1, Tabs 10 & 12.2, Sentencing transcript - District Court of WA (12.03.20), pp8-9
[19] Exhibit 1, Vol. 1, Tabs 11 & 12.3, History for Court - Traffic and Criminal
[20] Exhibit 1, Vol. 1, Tab 12.4, Sentence Summary - Offender

MANAGEMENT IN PRISON[21]

Receival at Hakea[22]

10. On 12 March 2020, Mr Ward was received at Hakea Prison (Hakea) and was automatically assigned a "*maximum*" security rating, in accordance with departmental policy. Mr Ward told admissions staff about his pre-existing health conditions, and disclosed he drank alcohol on a daily basis until he became intoxicated.

11. During a review by a prison nurse, Mr Ward mentioned he was taking the anticoagulant, warfarin, and had difficulty walking. The nurse noticed Mr Ward had difficulty getting out of a chair and he was offered a four-wheeled walker. On 13 March 2020, Mr Ward was reviewed by a prison medical officer (PMO), who noted Mr Ward's health conditions and that he had "*stiff joints*". Mr Ward's diabetes was managed with medication and diet, and he was placed on management plans for diabetes and his heart issues.

At Risk Management System and initial assessment[23]

12. When a prisoner is received at prison, they are interviewed by a reception officer who conducts a risk assessment to determine whether they need to be managed under the At Risk Management System (ARMS). ARMS is DOJ's primary suicide prevention strategy and aims to provide staff with clear guidelines to assist with the identification and management of prisoners at risk of self-harm and/or suicide.[24]

13. Mr Ward underwent an ARMS risk assessment on his admission to Hakea and denied any suicidal or self-harm ideation. However, he did say that due to the nature of his charges, he felt he was at risk. At the end of the ARMS risk assessment, the reception officer concluded:

> Offender did not present as being at risk at time of interview. Offender made no statements of ideations of self-harm at time of interview. Engaged well and answered all questions asked.[25]

[21] Exhibit 1, Vol. 1, Tab 12, Death in Custody Review (09.12.22), pp8-16
[22] Exhibit 1, Vol. 1, Tab 12, Death in Custody Review (09.12.22), p8
[23] Exhibit 1, Vol. 1, Tab 12, Death in Custody Review (09.12.22), p8
[24] ARMS Manual (2019), pp2-13 & 21-24
[25] Exhibit 1, Vol. 1, Tab 12.5, At Risk Reception Intake Assessment (12.03.20)

14. Whilst Mr Ward was undergoing a routine electrocardiogram at Hakea on 13 March 2020, he began to vomit and needed help to sit up. He was taken to the crisis care unit, but was later transferred to the infirmary at Casuarina Prison (Casuarina), where he remained until his death.[26,27,28]

Supervision issues[29,30,31]

15. Whilst incarcerated, Mr Ward was the subject of care plans relating to diabetes and his cardiac issues. He used a walking frame when mobilising, and fell on a number of occasions. A management and placement report (MAP) completed on 3 April 2020 noted that he had been placed in the infirmary at Casuarina because of his ongoing health issues. By 1 May 2020, he was moved into a single cell in the infirmary to "*assist in his care*".[32] The MAP also recommended that Mr Ward's security rating be reduced to "*medium*", and that visits be facilitated.[33]

16. A vocational and education training (VET) assessment completed on 6 May 2020 noted that Mr Ward wore glasses and hearing aids and had completed the equivalent of Year 8 at school. Although Mr Ward held a valid driver's licence, he had given up driving several years earlier for medical reasons. The assessment noted that Mr Ward's access to VET opportunities in prison were limited by his status as a protected prisoner. In any case, on the basis that Mr Ward would receive the aged pension on his release from prison, no VET recommendations were made.[34]

17. An individual management plan (IMP) completed on 11 June 2020, noted Mr Ward was a polite and respectful prisoner who posed no management issues. His security rating was maintained at "*medium*" and it was recommended that he attend the next Sex Offender Intellectual Disabilities program, although Mr Ward died before this could occur. An IMP completed on 28 April 2021 was in similar terms.[35,36,37,38]

[26] Exhibit 1, Vol. 1, Tab 12, Death in Custody Review (09.12.22), pp8-9
[27] Exhibit 1, Vol. 1, Tab 12.6, Decision slip rating and transfer
[28] Exhibit 1, Vol. 1, Tab 12.7, Cell Placement History
[29] Exhibit 1, Vol. 1, Tab 12, Death in Custody Review (09.12.22), pp8-18
[30] Exhibit 1, Vol. 1, Tab 12.6, Decision slip rating and transfer
[31] Exhibit 1, Vol. 1, Tab 12.7, Cell Placement History
[32] Exhibit 1, Vol. 1, Tab 16, Email - Ms T Szeremenda to Mr T Murray (01.05.20)
[33] Exhibit 1, Vol. 1, Tab 12.8, Management and Placement Report (03.04.20)
[34] Exhibit 1, Vol. 1, Tab 12.1, Education and Vocational Training Checklist (06.05.20)
[35] Exhibit 1, Vol. 1, Tab 12.9, Individual Management Plan (11.06.20)
[36] Exhibit 1, Vol. 1, Tab 12.13, Individual Management Plan (28.04.21)
[37] Exhibit 1, Vol. 1, Tab 12.20, Treatment Assessment Report (29.05.20)
[38] Exhibit 1, Vol. 1, Tab 12.25, Classification Review (22.04.21)

18. Mr Ward was the subject of three negative offender notes during his placement at Casuarina. These related to him swearing at a cook, pushing his walking frame into another prisoner whilst abusing him, and becoming aggressive with another prisoner in relation to a food tray issue. In relation to each of these matters, Mr Ward was warned and/or secured in his cell.[39]

19. Mr Ward was also subjected to random substance use tests, all of which returned negative results. He received regular visits from his family, made numerous phone calls, and sent one letter. Due to the nature of his offending, Mr Ward was the subject of various alerts and restraining orders. He was not employed whilst incarcerated because of his poor health.[40,41,42,43,44]

Placement on Support and Management System[45,46]

20. The Support and Management System (SAMS) is the DOJ's secondary suicide prevention measure. SAMS adopts a case management system to draw together a variety of staff with relevant expertise and is designed to provide support to prisoners who, whilst not at acute risk,[47] nevertheless require additional support, intervention or monitoring.[48]

21. On 7 May 2021, Mr Ward was reviewed by Psychological Health Services, having been referred due to declining physical health and his ability to cope. He presented as "*mildly irritable and confused*" and said he sometimes felt depressed "*because prison is a depressing place*". Mr Ward seemed unclear as to why he was still in prison, and although he acknowledged his offending behaviour, he denied any guilt. He said he was sleeping "*OK*" but had lost interest in reading and didn't like watching TV. He also said he "*gets on with some prisoners in the infirmary and finds others irritating*", and confirmed he was receiving visits.

22. Mr Ward denied experiencing any suicidal or self-harm ideation, and also denied he had any history of "*this type of thinking or behaviour*". He was

[39] Exhibit 1, Vol. 1, Tab 12.10, Offender Notes
[40] Exhibit 1, Vol. 1, Tab 12.26, Substance Use Test Results - Offender
[41] Exhibit 1, Vol. 1, Tab 12.22, Prisoner Mail - Offender
[42] Exhibit 1, Vol. 1, Tab 12.23, Visits History - Offender
[43] Exhibit 1, Vol. 1, Tab 12.24, Recorded Call Report
[44] Exhibit 1, Vol. 1, Tab 12.21, Alert History - Offender
[45] Exhibit 1, Vol. 1, Tab 12.14, PHS - SAMS File Note (07.05.21)
[46] Exhibit 1, Vol. 1, Tab 12.23, Visits History - Offender
[47] Acute in this context means "*elevated risk in this immediate period of time*"
[48] SAMS Manual (June 2009), pp1-5

placed on SAMS on 20 April 2021 due to his declining health and was the subject of monthly monitoring. At these reviews, Mr Ward often seemed confused, but he never expressed any mental health concerns or issues, or any suicidal or self-harm ideation.[49,50]

Management on the terminally ill register[51,52,53,54]

23. Prisoners with a terminal illness[55] are managed in accordance with a policy known as *COPP 6.2 Prisoners with a Terminal Medical Condition* (COPP6.2). Once a prisoner is identified as having a terminal illness, a note is made in the terminally ill module of TOMS (i.e.: Total Offender Management Solutions, the computer system DOJ uses for prisoner management).

24. Prisoners are identified as Stage 1, 2, 3 or 4 prisoners, on the basis of their expected lifespan. Stage 3 prisoners are expected to die within three months, whereas at Stage 4, death is imminent.

25. On 22 April 2021, Mr Ward was identified as a Stage 3 terminally ill prisoner after he had fallen and experienced a stroke on 16 April 2021. However, at the inquest, Dr Gunson expressed the view that Mr Ward should have been entered into the terminally ill register at an earlier stage on the basis of his age and co-morbidities.[56]

26. Stage 3 and 4 sentenced prisoners may be considered for early release pursuant to the Royal Prerogative of Mercy (RPOM) and Mr Ward's release under the RPOM was considered. However, it was not recommended because of outstanding treatment needs, the lack of a release plan, and the fact that victim needs and community supports had not been considered.[57,58]

[49] Exhibit 1, Vol. 1, Tab 12.14, PHS - SAMS File Note (07.05.21)
[50] Exhibit 1, Vol. 1, Tab 12.11, SAMS Conference Notes (20.04.21 - 03.09.21)
[51] Exhibit 1, Vol. 1, Tab 12, Death in Custody Review (09.12.22), p14 and ts 14.03.23 (Palmer), pp42-43
[52] Exhibit 1, Vol. 1, Tab 12.16, Terminally Ill Health Advice
[53] Exhibit 1, Vol. 1, Tab 15, Health Services Review (13.03.23), p17 and ts 14.03.23 (Gunson), pp20-21 & 30
[54] Exhibit 1, Vol. 1, Tab 13, COPP 6.2 - Prisoners with a Terminal Medical Condition, pp4-6
[55] One or more conditions that on their own or as a group, significantly increase the likelihood of a prisoner's death
[56] Exhibit 1, Vol. 1, Tab 15, Health Services Review (13.03.23), p17 and ts 14.03.23 (Gunson), pp21-22
[57] Exhibit 1, Vol. 1, Tab 12.12, Emails between Corrective services and Prisoners Review Board (07.12.22)
[58] Exhibit 1, Vol. 1, Tab 14.1, RPOM Briefing Note and Exhibit 1, Vol. 1, Tab 14.2, RPOM Attachment

Management of medical issues[59,60,61]

27. Whilst Mr Ward was in the infirmary at Casuarina he was reviewed on a daily basis by nursing staff and regularly reviewed by PMOs. He was taken to hospital on several occasions for treatment of various issues, and key aspects of his management in the infirmary include:

a. 22 April 2020: unwitnessed fall in the bathroom of the infirmary, no apparent injuries;

b. 29 April 2020: urgent review by PMO after vomiting blood. Transferred to Fiona Stanley Hospital (FSH) for treatment of bleeding gastric ulcers. Discharged back to Casuarina on 4 May 2020;

c. 5 May 2020: PMO review to discuss whether to cease warfarin given balance between competing risks of a stroke and gastrointestinal bleeding. Decision to cease warfarin as risk of further bleeding was deemed greater;

d. 21 May 2020: Dr Rowland discussed Mr Ward's cognitive impairment, falls risk and decision to cease warfarin with Mr Ward's daughter who reportedly agreed with decision;

e. 22 May 2020: Mr Ward tests positive to *Helicobacter pylori* which can cause gastritis and ulcers. Antibiotic treatment commenced;

f. 27 May 2020: mini mental state examination completed. Enduring Power of Guardianship (EPG) forms signed by Mr Ward and PMO on 2 June 2020;

g. 22 June 2020: gastroscopy shows stomach ulcers healing and biopsy shows *Helicobacter pylori* infection has resolved;

h. 12 July 2020: fell in garden, grazed forehead;

[59] Exhibit 1, Vol. 1, Tab 12, Death in Custody Review (09.12.22), pp8-16
[60] Exhibit 1, Vol. 1, Tab 15, Health Services Review (13.03.23), pp5-14
[61] Exhibit 1, Vol. 1, Tab 12.27, Temporary placement History - Offender

i. 14 August 2020: had an unwitnessed fall in his cell and was unable to get up. Admitted to FSH and diagnosed with multiple embolic cerebral infarctions (strokes). Apixaban (anticoagulant) started. Fall in hospital. Given non-slip socks and discharged back to Casuarina on 18 August 2020;

j. 14 September 2020: planned repeat gastroscopy cancelled as anaesthetist concerned Mr Ward unable to consent. Returned to Casuarina, where existence of EPG is identified on 15 September 2020 and "alert added to file";

k. 24 September 2020: fell after tripping over walking frame and taken to FSH. Discharged same day after assessment;

l. 27 September 2020: experienced chest pain and found to have atrial fibrillation. Taken to FSH and discharged back to Casuarina the same day following treatment;

m. 19 - 20 November 2020: fell three times, no apparent injuries. Taken to FSH, then Fremantle Hospital (FH). CT scans showed no intracranial bleeding or fractures, discharged back to Casuarina on 28 November 2020;

n. 2 December 2020: review at the FSH Cardiology Clinic, recommended to continue on apixaban;

o. 6 & 16 February 2021: falls in infirmary cell, sustained minor skin tears on each occasion;

p. 16 April 2021: unwitnessed fall in infirmary, lacerated scalp. Taken to FSH where CT scans confirm intracranial haemorrhage and apixaban withheld for two weeks. Discharged back to Casuarina on 18 April 2021. Fall on 20 April 2021, using wheelchair for safety from 22 April 21;

q. 1 May 2021: fell in the infirmary and sustained a haematoma to the back of his head. On 2 May 2021, he was taken to FSH for CT scans;

r. 10 May 2021: review of anticoagulant therapy given falls and bleeding/stroke risk. Apixaban withheld as no antidote;

s. 19 May 2021: fell in the infirmary, lacerations to his forehead, and sore ribs. Taken to FSH on 21 May 2021 for assessment and cleared to restart apixaban. Given low bed and "*crash mattress*" placed on the floor of his cell;

t. 3 July 2021: referred to FSH with incontinence and confusion. Diagnosed with a urinary tract infection and discharged back to Casuarina on 9 July 2021 after treatment. Apixaban not restarted as "*Bleeding risk felt to exceed stroke risk*";[62,63]

u. 23 July 2021: taken to hospital for a cystoscopy to examine his bladder lining. Found to have a "*Moderately occluded prostate*" but "*No sinister lesions in bladder*";[64]

v. 3 August 2021: palliative care review completed; and

w. 26 September 2021: unwitnessed fall, no apparent injuries.

Mr Ward's collapse on 4 October 2021[65,66,67,68,69,70,71,72]

28. At about 3.30 pm on 4 October 2021, Mr Ward was found slumped over in his wheelchair in the infirmary. The right side of his face was drooping and he had right-sided weakness and no grip strength. He was taken to Sir Charles Gairdner Hospital by ambulance, where CT scans showed blockages in multiple blood vessels in his brain (embolic stroke).

29. Mr Ward underwent a procedure to treat the blocked blood vessels (percutaneous thrombectomy) and although the procedure was uneventful, a follow-up CT scan showed a subarachnoid haemorrhage and associated swelling of the brain. Mr Ward's prognosis was poor and following discussions between his family and his treating team it was decided to treat him palliatively. He was kept comfortable until his death on 5 October 2021 at about 9.30 pm.[73,74]

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[62] Exhibit 1, Vol. 1, Tab 9.1, FSH Discharge Summary (09.07.21)
[63] Exhibit 1, Vol. 1, Tab 12.15, NOK Notification of Hospital Admission (05.07.21)
[64] Exhibit 1, Vol. 1, Tab 7, FH Operation Report (23.07.21)
[65] Exhibit 1, Vol. 1, Tab 12, Death in Custody Review (09.12.22), 16-17
[66] Exhibit 1, Vol. 1, Tab 15, Health Services Review (13.03.23), p14
[67] Exhibit 1, Vol. 1, Tab 8, SJA Patient Care Record (04.10.21)
[68] Exhibit 1, Vol. 1, Tab 9.2, SCGH Discharge Summary (05.10.21)
[69] Exhibit 1, Vol. 1, Tab 3.1, Supplementary Post Mortem Report (17.11.21)
[70] Exhibit 1, Vol. 1, Tab 12.17, Incident Description Report - Officer M Walsh (05.10.21)
[71] Exhibit 1, Vol. 1, Tab 12.18, Incident Description Report - Officer C Somers (05.10.21)
[72] Exhibit 1, Vol. 1, Tab 12.19, Incident Description Report - Officer M Kumar (05.10.21)
[73] Some records give the time of death as 9.30 pm, whereas the Death in Hospital Form gives the time of death as 9.00 pm.
[74] Exhibit 1, Vol. 1, Tab 5, Death in Hospital form (05.10.21)

CAUSE AND MANNER OF DEATH[75,76,77,78]

30. A forensic pathologist (Dr V Kueppers) conducted a post mortem examination of Mr Ward's body on 15 October 2021 and found evidence of his recent medical care. A post mortem CT scan confirmed a catastrophic left-sided stroke, which was in keeping with Mr Ward's known medical history.

31. Dr Kueppers noted that at the time of his death, Mr Ward was not on anticoagulation therapy because he was at high risk of gastrointestinal bleeding.

32. However, I accept Dr Gunson's evidence that the risk of an embolic stroke due to blood clots had to be carefully balanced against the risk of a further gastrointestinal bleed or a haemorrhagic stroke if anticoagulation therapy was resumed, especially as Mr Ward was experiencing an increasing number of falls.[79,80]

33. Toxicological examination found multiple medications in Mr Ward's system that were consistent with his medical care. Alcohol and other common drugs were not detected.

34. At the conclusion of her post mortem examination, Dr Kueppers expressed the opinion that the cause of Mr Ward's death was complications of cerebrovascular accident (stroke). Dr Kueppers also stated that Mr Ward's death was likely due to natural causes.

35. I accept and adopt Dr Kueppers' conclusion as my finding in relation to the cause of Mr Ward's death and I find that Mr Ward's death occurred by way of natural causes.

[75] Exhibit 1, Vol. 1, Tab 3.1, Supplementary Post Mortem Report (17.11.21)
[76] Exhibit 1, Vol. 1, Tab 3.2, Post Mortem Report (15.10.21)
[77] Exhibit 1, Vol. 1, Tab 4.1, Final Toxicology Report (11.11.21)
[78] Exhibit 1, Vol. 1, Tab 4.2, Urgent Interim Toxicology Report (18.11.21)
[79] Exhibit 1, Vol. 1, Tab 15, Health Services Review (13.03.23), p16 and ts 14.03.23 (Gunson), pp13-15
[80] See also: Exhibit 1, Vol. 1, Tab 9.1, FSH Discharge Summary (09.07.21)

CONCERNS RAISED BY FAMILY

ACCESS service

36. Prisoners, staff and members of the community are able to make complaints about a prisoner's treatment to ACCESS, a dedicated service within DOJ. Complaints may be lodged by phone or email, or by using an online form. Mr Ward's family contacted ACCESS on a number of occasions and made two formal complaints. The evidence establishes that both these complaints were addressed in a timely fashion.[81,82]

Communication issues[83]

37. Mr Ward's family had considerable difficulty obtaining information about his medical care whilst Mr Ward was incarcerated.[84] The ACCESS complaint described the family's concerns in these terms:

> (Mr Ward's daughter) emails concerns in relation to her father's health specifically his hearing loss preventing ability to communicate via telephone. Other concerns relate to his placement and an alleged assault. The family would also like updates in relation to his health specifically if hospitalisation is required. Also request assistance in Mr Ward signing a release of information authority.[85]

38. The following extract from Mr Ward's daughter's email to ACCESS provides an insight into the anguish being experienced by the family:

> This is an 87 year old man who is our father. He has dementia, he is deaf, he is not very mobile and has taken several falls with the last one being in the shower. I am not complaining about the staff as they have been more than helpful and I am grateful that the nurses are now showering him, but please let sanity prevail and all we want to know is he OK? As we fear we will never get to see him again. He is only 8 weeks into a 7 year sentence and there is no way he will make parole. He told me in hospital that he was going to stop eating. We are so worried…I am now desperate please help us.[86]

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[81] ts 14.03.23 (Palmer) pp36-37 & 44-45 and see: www.justice.wa.gov.au/feedback/Add_New_Contact_NORMAL.aspx
[82] Exhibit 1, Vol. 1, Tab 16, ACCESS Complaints I049809 (12.05.20) & I054360 (06.09.21)
[83] ts 14.03.23 (Gunson), pp17-21 & 25-29
[84] Emails - Mr Ward's daughter to ACCESS (11.05.20, 16.07.20 & 25.11.20)
[85] Exhibit 1, Vol. 1, Tab 16, ACCESS Complaint I049809 (12.05.20)
[86] Email - Mr Ward's daughter to ACCESS (11.05.20)

39. At the inquest, Dr Gunson noted that when Mr Ward was first admitted to Hakea, he gave written consent for his GP to release information about his medical history.[87] On 5 May 2020, Mr Ward also gave consent for his daughter to be provided information about his medical management. However, this document was not scanned into EcHO (the electronic system that DOJ uses to record information about the management of a prisoner's health) until 24 June 2020.[88] A copy of this document was emailed to the Court on 30 March 2023.

40. On 6 May 2020, Mr Ward also gave consent for his son and his daughter to be provided information about "*My current health condition, physical and mental. My mobility. Whether I will be relocated*".[89] A copy of this document was also emailed to the Court on 30 March 2023. Given the fact that Mr Ward had given his consent, on two occasions, it is utterly regrettable that information about his condition was not conveyed to his family.

41. Eventually, Mr Ward's daughter managed to arrange for her father to execute an Enduring Power of Guardianship (EPG), naming herself and her brother as joint enduring guardians. The EPG was executed by Mr Ward on 2 June 2020, and his signature was witnessed by DOJ employees, including a PMO on that date. Mr Ward's children accepted their respective appointments as joint enduring guardians on 16 June 2020.[90,91]

42. It appears that the existence of the EPG was recorded in Mr Ward's prisoner profile on TOMS. However, for reasons which remain unclear, the existence of the EPG was not recorded in Mr Ward's prison medical record in EcHO.[92] DOJ's failure to record the existence of the EPG in Mr Ward's EcHO notes led to the cancellation of a planned gastroscopy on 14 September 2020, because Mr Ward was not deemed to have the requisite capacity to consent to the procedure.[93]

[87] ts 14.03.23 (Gunson), pp9 & 26-27
[88] Consent to Release/Discuss Information (05.05.20) emailed to the Court on 30.03.23
[89] Prisoner Consent for Verbal Release of Information (06.05.20) emailed to the Court on 30.03.23
[90] Exhibit 1, Vol. 1, Tab 15, Health Services Review (13.03.23), p16
[91] Letter - Ms L Trpchev to Infirmary, Casuarina Prison (27.05.20)
[92] Exhibit 1, Vol. 1, Tab 15, Health Services Review (13.03.23), p16
[93] Enduring Power of Guardianship - Mr H Ward (16.06.20)

43. A gastroscopy in June 2020 had shown Mr Ward's stomach ulcers were healing, but had not completely resolved. The purpose of the September 2020 gastroscopy was to check if the ulcers had completely healed, and had his daughter and son been contacted, consent could have been provided.[94]

44. At the inquest, Dr Gunson confirmed that in her view, the failure to carry out the gastroscopy on 14 September 2020 did not materially affect Mr Ward's medical management. However, the cancellation was clearly unfortunate, especially given that Mr Ward's daughter had gone to considerable effort to arrange for the EPG to be executed.[95]

45. Aside from the EPG issue, the family's difficulties in maintaining regular contact with Mr Ward were clearly exacerbated by his deafness and fluctuating cognitive state. In addition, prison lockdowns made necessary by the COVID-19 pandemic meant that at various times, face-to-face visits were impossible.

46. Attempts to maintain contact with Mr Ward via telephone and Facetime conversations had various degrees of success, because of his deafness and cognitive decline.[96] Had Mr Ward's family been provided with updates on his medical condition, then his family's distress about his ongoing welfare could have been more easily addressed.

47. For that reason I have recommended that when prisoners are received into custody, DOJ should consider asking them to provide written consent for their nominated NOK to be provided with information about their medical condition.

48. I have also recommended that DOJ consider applying this procedure to all prisoners who are likely to require ongoing medical treatment and/or intervention because of their age, cognitive ability, and/or medical conditions, and that the prisoner's consent be entered into their profile on TOMS to ensure visibility.

[94] ts 14.03.23 (Gunson), pp23-24
[95] ts 14.03.23 (Gunson), pp23-24
[96] ts 14.03.23 (Becker), p47

49. At the inquest, Ms Palmer acknowledged that these communication issues had not been addressed in her review into the circumstances of Mr Ward's death. Ms Palmer said that in future, these sorts of issues (and any ACCESS complaints which had been lodged) would be examined in the context of a broader enquiry into the relevant death.[97]

Alleged assault

50. As noted, Mr Ward was admitted to FSH on 29 April 2020 for treatment of bleeding stomach ulcers, and he had tested positive to the bacterium *Helicobacter pylori* which is known to cause stomach irritation (gastritis) and in some cases, stomach ulcers.[98] When his family visited him in hospital, Mr Ward told them he had been punched in the stomach. Mr Ward's family also say that he "*begged us to help him as he did not want to go back to his cell which he shared with four other inmates*".[99]

51. Dr Gunson said it would be unusual for a blow to the stomach to cause stomach ulcers, and that in Mr Ward's case the more likely explanation was that his stomach ulcers were due to his *Helicobacter pylori* infection. Further, Ms Palmer confirmed that DOJ had no record of any alleged assault involving Mr Ward, although she agreed that prisoners do not always report such incidents.[100]

52. Given Mr Ward's reported comments to his family, it does appear something had made him fearful of returning to his shared cell in the infirmary.

53. However, on the basis of the available evidence it is impossible to know whether Mr Ward's concerns were due to some sort of incident, his impaired cognitive state, or both. In the absence of any other information, I am unable to take this matter further.

[97] ts 14.03.23 (Gunson), pp36-37
[98] Exhibit 1, Vol. 1, Tab 15, Health Services Review (13.03.23), pp5-8
[99] Email - Ms L Trpchev to DOJ Complaints Access (11.05.20)
[100] ts 14.03.23 (Gunson), pp15-16 & 22 and ts 14.03.23 (Palmer), p42

Alleged misuse of prison account

54. Mr Ward's family also made a complaint to ACCESS relating to the possible misuse of Mr Ward's prison account funds.[101,102] DOJ investigated these concerns and concluded Mr Ward's prison accounts were in order.[103]

55. As this matter was arguably related to the quality of the care Mr Ward received whilst incarcerated, I reviewed his prison account statements, and emails relating to DOJ's investigation of the family's concerns. Having reviewed that material, I am satisfied there is no evidence that Mr Ward's prison funds were mishandled.[104]

Appropriateness of prison placement[105]

56. At various times, Mr Ward's family had expressed concern about whether it was appropriate for him to be managed in prison given his age, cognitive decline and physical infirmity.[106] The issue of how to appropriately accommodate elderly and/or infirm prisoners is not new, and has been the subject of a number of academic papers and studies.

57. In Western Australia, the increase in the number of elderly prisoners is due, at least in part, to a police taskforce targeting historical child sexual abuse as well as the general ageing of the population.[107] In an email to the Court dated 13 March 2023, Ms Italiano (counsel for DOJ) advised that in Western Australia, there are 39 prisoners aged 75 years of age or over, of whom 10 are on the terminally ill register. Twelve prisoners are housed at Casuarina, with seven in the infirmary.[108]

58. At Casuarina, some elderly prisoners are accommodated in a 13-bed unit known as the Assisted Care Unit (ACU). The ACU caters to aged and infirm prisoners who are able to self-manage (i.e. meals and ablutions) and who do not require acute medical care. Carers may provide some prisoners in the ACU with specific care as required.

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[101] See for example: Emails - Ms L Trpchev to ACCESS (09.10.20 & 04.09.21)
[102] DOJ Complaints ACCESS - Complaint Number I054360 (06.09.21)
[103] Exhibit 1, Vol. 1, Tab 16, Email - Mr B Chadwick, Manager Standards and Audits to ACCESS (06.09.21)
[104] See also: Email - Ms L Italiano, counsel for DOJ to Sgt A Becker (10.02.23)
[105] ts 14.03.23 (Gunson), pp10-13 & 24 and ts 14.03.23 (Palmer), pp39-42
[106] For example, see: Email - Ms L Trpchev to ACCESS (11.05.20)
[107] Exhibit 1, Vol. 1, Tab 17, Email - Ms L Italiano to Sgt. A Becker (13.03.23) and ts 14.03.23 (Gunson), p13
[108] Exhibit 1, Vol. 1, Tab 17, Email - Ms L Italiano to Sgt. A Becker (13.03.23)

59. As for the infirmary, there are 20 beds to accommodate prisoners with "*acute medical needs*". At the time of Mr Ward's incarceration, there were two registered nurses, and up to five carers between 7.00 am and 6.00 pm. A shift nurse or carer may also be available between 12.00 pm and 2.00 am to assist with high care needs patients. DOJ also advised that it employs carers to assist certain prisoners and that these carers are equivalent to those employed in aged care facilities.

60. In an email dated 13 March 2023, Ms Italiano advised that DOJ's position was that the infirmary at Casuarina is designed to operate as "*a general patient support medical centre and is not used as a long term placement option for vulnerable and elderly (prisoners)*".[109] DOJ also made the following assertion about Mr Ward's placement in the Infirmary:

> Mr Ward's placement in the Infirmary was determined by Health Services due to his acute medical needs. It should also be noted that Mr Ward was admitted to a public hospital on ten occasions due to his ongoing medical needs. It is therefore <u>not</u> correct to say that the Infirmary was used as a long term placement option for Mr Ward for any reason other than to ensure his medical needs were being met. While Mr Ward was elderly and vulnerable, it was his ongoing and acute medical condition that was the driver for his placement in the Infirmary, not his age and vulnerability.[110]

61. Mr Ward was accommodated in the infirmary from the day after he was admitted into prison until his death, a period of 571 days, or just over 18 months. For some of that time, Mr Ward had allocated carers who assisted him with activities of daily living, including showering. The stark reality is that for prisoners like Mr Ward, who are not suitable for placement in the ACU, other than the infirmary, there are no other placement options.

[109] Exhibit 1, Vol. 1, Tab 17, Email - Ms L Italiano to Sgt. A Becker (13.03.23)
[110] DOJ - Responses to Coroner's Request for Further Information (28.03.23), p2

62. DOJ advised that a building project at Casuarina which is currently underway is due to be completed in late 2025 or early 2026. The works will provide the following additional facilities:

- Mental Health Unit: 34 therapeutic beds with two additional observation cells for cohorts suffering psychiatric conditions;
- Assisted Care Unit: 24 beds for cohorts who require assistance in their structured day. This may include those requiring aged care assistance;
- High Needs Care Unit: 15 beds, including a cell modified to accommodate a comorbidity patient for cohorts who require more intense health management and intervention. Prisoners located in the High Needs Care Unit may be non-ambulatory; and
- Crisis Care Unit: 15 beds (12 current, plus three new - for cohorts considered to be at risk of self-harm or suicide).[111]

63. DOJ also advised that its Health Services Directorate is in the final stages of drafting "*a specific policy*" for the management of older prisoners in custody. The policy is due to be completed by mid-2023. DOJ also noted that:

> In addition to utilising placement options within Casuarina Prison together with the foreshadowed construction of placement options for the elderly and infirm and those with mental health issues, Acacia Prison currently operates a 20 bed Assisted Care Unit. This unit is designed to accommodate the elderly and those with cognitive or intellectual disabilities who have been assessed as requiring additional custodial support and management from the general mainstream population. Furthermore, the Department's current and future infrastructure plans ensure a balanced approach to its ligature minimisation program so accessibility adjustments and aides can adequately assist older prisoners where required.[112]

64. It is pleasing that DOJ is seriously considering the complexities of managing older prisoners in custody. The construction work currently underway will hopefully provide additional placement options and I would also urge DOJ to complete work on the policy referred to above as quickly as possible.

[111] DOJ - Responses to Coroner's Request for Further Information (28.03.23), pp3-4
[112] DOJ - Responses to Coroner's Request for Further Information (28.03.23), p4

RECOMMENDATIONS

65. In view of the observations I have made in this finding, I make the following recommendations:

Recommendation No. 1
I recommend that when a prisoner is being received into custody, the Department of Justice (DOJ) should consider asking the prisoner to provide written consent for their nominated next-of-kin to be provided with information about their medical condition and/or its management.

I further recommend that DOJ consider applying this procedure to all prisoners who are likely to require ongoing medical treatment and/or intervention because of their age, cognitive ability, and/or medical conditions.

Recommendation No. 2
I recommend that the DOJ consider implementing a practice of including, within the 'Medical Alert' tab on a prisoner's profile within the Total Offender Management Solutions system, any information relating to the prisoner's consent to provide third parties with information about their medical condition and/or its management.

Recommendation No. 3
I recommend that when a prisoner is the subject of an enduring power of attorney or a guardianship order, the Department of Justice ensure that an alert is placed on the prisoner's profile within the Total Offender Management Solutions system, to alert users to that fact.

Response to Recommendations

66. A draft of my proposed recommendations was forwarded to counsel for DOJ by Sergeant Becker on 14 March 2023, with a request that any comments be forwarded to the Court by close of business on 28 March 2023.[113]

67. In an email dated 28 March 2023, Ms Italiano advised that the DOJ response to my proposed recommendations was as follows:[114]

a. Recommendation 1: this recommendation is supported in principle, subject to an assessment of the feasibility of the recommendation with relevant business areas. DOJ advised that it already has a form referred to as "*MR033*", which can be used to implement the recommendation;

b. Recommendation 2: DOJ made a sensible suggestion to the wording of this recommendation, which I have adopted. DOJ would support this recommendation in principle, subject to an assessment of the feasibility of the recommendation with relevant business areas; and

c. Recommendation 3: DOJ advised that TOMS already has an alert for guardianship and administration orders. However, in Mr Ward's case, an alert about his EPG was not placed on TOMS until 25 September 2020, sometime after the EPG was executed. I amended the text of this recommendation so that DOJ would be required to ensure that such alerts are placed on a prisoner's profile whenever an order is executed.

[113] Email - Sgt A Becker to Ms L Italiano, counsel for DOJ (14.03.23)
[114] Email - Ms L Italiano, counsel for DOJ to Sgt A Becker (28.03.23)

QUALITY OF SUPERVISION, TREATMENT AND CARE

68. In relation to the care and treatment Mr Ward received whilst he was in custody, the Health Review made the following observation, with which I agree:

> Mr Ward's health care whilst he was incarcerated was excellent, thorough, and compassionate. A patient-centred approach meant that his care involved a multidisciplinary team, and a co-ordinated approach, in order to provide the best management possible for his multiple serious health problems. Access to medical, specialist, and allied health staff was excellent, and he was reviewed regularly by team members. In the Infirmary at Casuarina Prison, Mr Ward was able to utilise the required equipment, and was assisted daily by carers.
>
> Overall, Mr Hugh Ward's health care management whilst in custody was of an extremely high standard and would be considered equivalent (and at times better - due to more immediate access to doctors and nurses in acute situations), to that which he would have received in the community.[115]

69. I have addressed several matters of concern raised by Mr Ward's family and I repeat those comments here. Those issues aside, having carefully considered the available evidence, I am satisfied that the supervision, care and treatment Mr Ward received whilst he was incarcerated was of a good standard. In particular, the medical care he received was commensurate with (and indeed in many ways superior to) the standard of care he would have received in the general community.

MAG Jenkin
Coroner
30 March 2023

[115] Exhibit 1, Vol. 1, Tab 15, Health Services Review (13.03.23), p17 and ts 14.03.23 (Gunson), p22