JURISDICTION	**:**	CORONER'S COURT OF WESTERN AUSTRALIA
ACT	**:**	CORONERS ACT 1996
CORONER	**:**	Michael Andrew Gliddon Jenkin, Coroner
HEARD	**:**	19 SEPTEMBER 2023
DELIVERED	**:**	21 SEPTEMBER 2023
FILE NO/S	**:**	CORC 3337 of 2021
DECEASED	**:**	WATERFALL, JOHN HENRY

Catchwords:

Nil

Legislation:

Nil

Counsel Appearing:

Sergeant A. Becker assisted the coroner.

Ms T. Omer (State Solicitor’s Office) appeared for the Department of Justice.

Coroners Act 1996
(Section 26(1))

RECORD OF INVESTIGATION INTO DEATH

I, Michael Andrew Gliddon Jenkin, Coroner, having investigated the death of ***John Henry WATERFALL*** *with an inquest held at Perth Coroners Court, Central Law Courts, Court 85, 501 Hay Street, PERTH, on 19 September 2023, find that the identity of the deceased person was* ***John Henry WATERFALL*** *and that death occurred on 16 December 2021 at St John of God Midland Public Hospital, 1 Clayton Street, Midland, from bronchopneumonia with multiple organ failure in the setting of advanced metastatic prostatic adenosquamous carcinoma (medically palliated) in the following circumstances:*

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INTRODUCTION

1. John Henry Waterfall (Mr Waterfall) died at St John of God Midland Public Hospital (SJOG) on 16 December 2021, from bronchopneumonia with multiple organ failure in the setting of advanced metastatic prostatic adenosquamous carcinoma. At the time of his death, Mr Waterfall was a sentenced prisoner at Acacia Prison (Acacia), and was thereby in the custody of the Chief Executive Officer (CEO) of the Department of Justice (DOJ).[1,2,3,4,5,6,7,8,9,10,11]

2. Accordingly, immediately before his death, Mr Waterfall was a "*person held in care*" within the meaning of the *Coroners Act 1996* (WA) and his death was a "*reportable death*". In such circumstances, a coronial inquest is mandatory. 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 whilst in that care.[12]

3. On 19 September 2023, I held an inquest into Mr Waterfall's death. The documentary evidence adduced at the inquest comprised one volume, and the following witnesses gave evidence:

a. Dr Catherine Gunson, (Prison Medical Officer, DOJ); and

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

4. The inquest focused on the supervision, treatment and care provided to Mr Waterfall while he was in custody as well as the circumstances of his death, including the appropriateness of him being restrained during his transfer to hospital, and during his admission at SJOG.

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[1] Exhibit 1, Vol. 1, Tab 20, SJOG Discharge summary (16.12.21)
[2] Exhibit 1, Vol. 1, Tab 22, P100 - Report of Death (21.12.21)
[3] Exhibit 1, Vol. 1, Tab 23, Report - Sen. Const. K Cooper (17.04.23)
[4] Exhibit 1, Vol. 1, Tab 24, Memorandum - Sen. Const. D Stankevicious (21.12.21)
[5] Exhibit 1, Vol. 1, Tab 25, Death in Hospital form (16.12.21)
[6] Exhibit 1, Vol. 1, Tab 26.1, P92 - Identification of Deceased: Other than by Visual Means (17.12.21)
[7] Exhibit 1, Vol. 1, Tab 26.2, Affidavit - Sgt. A Mason (17.12.21)
[8] Exhibit 1, Vol. 1, Tab 26.3, PathWest Coronial Identification Report (17.12.21)
[9] Exhibit 1, Vol. 1, Tab 26.4, Affidavit - Sen. Const. C Johnson (17.12.21)
[10] Exhibit 1, Vol. 1, Tab 27.1, Supplementary Post Mortem Report (31.12.22)
[11] Section 16, *Prisons Act 1981* (WA)
[12] Sections 3, 22(1)(a) & 25, *Coroners Act 1996* (WA)

MR WATERFALL

Background[13,14]

5. Mr Waterfall was born in England on 14 February 1945. He was a qualified carpenter, and had also worked as a fitter and turner, and as a labourer. He left the United Kingdom in about 1968 and moved to New Zealand, before coming to Western Australia in 1970. He had one child from a previous marriage and was 76 years of age when he died.

Offending history[15,16,17,18,19]

6. On 23 May 2014, in the Supreme Court of Western Australia, Mr Waterfall was convicted of murder, and sentenced to life imprisonment with a minimum term of 16 years' imprisonment. He was made eligible for parole and his earliest eligibility date for release was calculated as being 17 March 2029.

Medical history[20,21,22]

7. Mr Waterfall's medical history included a previous history of alcohol dependency, osteoarthritis, and high blood pressure. He used a walking stick to mobilise and was treated for various lesions to the left side of his face, including a basal cell carcinoma (2014) and a squamous cell carcinoma (2018) which was treated with extensive surgery and radiotherapy.

8. Mr Waterfall was "*well known to health services*" but frequently declined investigations and treatment. He also "*periodically refused to attend internal and external health appointments*",[23] but in 2020 his blood pressure was being regularly checked. On 11 December 2021, Mr Waterfall was diagnosed with metastatic disease, meaning cancer had spread (most probably from his prostate) to other parts of his body.

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[13] Exhibit 1, Vol. 1, Tab 23, Report - Sen. Const. K Cooper (17.04.23), p3
[14] Exhibit 1, Vol. 1, Tab A, Death in Custody Review (09.02.23), p7
[15] Exhibit 1, Vol. 1, Tab 23, Report - Sen. Const. K Cooper (17.04.23), p4
[16] Exhibit 1, Vol. 1, Tab A, Death in Custody Review (09.02.23), p7
[17] Exhibit 1, Vol. 1, Tab 1, [2014] WASCR 96 (23.05.14)
[18] Exhibit 1, Vol. 1, Tab 9.10, Warrant of Commitment (23.05.14)
[19] Exhibit 1, Vol. 1, Tab 9.11, Sentence Summary - Offender (05.06.14)
[20] Exhibit 1, Vol. 1, Tab 23, Report - Sen. Const. K Cooper (17.04.23), p4
[21] Exhibit 1, Vol. 1, Tab 29, Serco Health Services Review, p3
[22] Exhibit 1, Vol. 1, Tab 30, DOJ Health Services Review (15.09.23), pp3-4 and ts 19.09.23 (Gunson), pp5-17
[23] Exhibit 1, Vol. 1, Tab 29, Serco Health Services Review, p3

Prison history[24,25,26,27,28,29,30,31,32,33]

9. When Mr Waterfall was received at Hakea Prison on 19 March 2013, he was identified as a "*returning prisoner*". That is because in 1983, he had served 30 days' imprisonment for fine defaults. After Mr Waterfall had been sentenced, a management and placement checklist was completed and he was assigned a "*medium*" security rating.

10. In 2014, Mr Waterfall signed a waiver declining injectable medications on religious grounds,[34] and it was noted he walked with the assistance of an elbow crutch. Mr Waterfall declined any other type of assistance and he was transferred to Acacia on 6 March 2019, where he remained until his death. Mr Waterfall was described as "*always polite and respectful*", and he maintained a high standard of personal and cell hygiene.

11. Following a classification review on 19 May 2020, Mr Waterfall's security classification was reduced to "minimum". He continued to work in the Acacia laundry where he completed all tasks to a high standard with minimal supervision. Mr Waterfall received 15 social visits during his incarceration, and although he did not use the prison telephone service, he regularly sent and received letters.

12. Mr Waterfall committed two prison offences during his incarceration. The first related to his failure to submit a body sample for testing, for which he was confined to a punishment cell for three days on 9 May 2014. The second offence related to the possession of alcohol, and on 6 July 2016, he received a loss of gratuities. Mr Waterfall was also the subject of six random drug and alcohol tests during his incarceration, all of which returned negative results.

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[24] Exhibit 1, Vol. 1, Tab A, Death in Custody Review (09.02.23), pp8-11 and ts 19.09.23 (Palmer), pp18-24
[25] Exhibit 1, Vol. 1, Tab 3, Management and Placement Checklist - Sentenced (28.05.14)
[26] Exhibit 1, Vol. 1, Tab 4, Individual Management Plan (14.05.19)
[27] Exhibit 1, Vol. 1, Tab 5, Classification Review (19.05.20)
[28] Exhibit 1, Vol. 1, Tab 13, Work history
[29] Exhibit 1, Vol. 1, Tab 14, Visits history
[30] Exhibit 1, Vol. 1, Tab 15, Prisoner mail history
[31] Exhibit 1, Vol. 1, Tab 16, Charge history
[32] Exhibit 1, Vol. 1, Tab 17, Substance use test results
[33] Exhibit 1, Vol. 1, Tab 18, Call records history
[34] However, in 2018 Mr Waterfall agreed to a transfusion when a squamous cell carcinoma was excised from his face

MANAGEMENT OF HEALTH ISSUES[35,36,37]

13. While Mr Waterfall was at Acacia he periodically attended the medical centre for treatment of various medical issues, from 2020 he had regular blood pressure checks. In 2014, a basal cell carcinoma was excised from his left lower jaw, and although he was also diagnosed with anaemia, he declined any further investigations. Key aspects of Mr Waterfall's medical management from 2019 include:

a. *21 February 2019*: transferred to Fiona Stanley Hospital (FSH) for the surgical removal of a squamous cell carcinoma from the left side of his face. Following the procedure Mr Waterfall was noted to have left-sided facial palsy. He was discharged to the Casuarina Prison infirmary, and was returned to Acacia on 6 March 2019;

b. *May - June 2019*: attended FSH on various occasions for oncology and radiotherapy appointments, and completed his course of radiotherapy in mid-June 2019;

c. *19 June 2020*: Mr Waterfall signed a waiver declining to attend appointments at the ear nose and throat clinic, and was discharged from the clinic on 26 June 2020;

d. *11 September 2021*: Mr Waterfall noted to be struggling to walk and he was reviewed by a physiotherapist. He was given a four-wheel walking frame on 23 September 2021;

e. *2 December 2021*: Mr Waterfall attended the medical centre where he was reviewed by a prison medical officer (PMO). Mr Waterfall was "*weak and frail*" and had an offensive urine odour. He was prescribed antibiotics for a suspected urinary tract infection and a chest X-ray was ordered;

f. *6 December 2021*: Mr Waterfall was taken to the medical centre in a wheelchair by a fellow prisoner smelling strongly of urine. It was noted he had lost 15 kg since January 2021, was failing to present for meals, and was neglecting his personal hygiene;

g. *9 December 2021*: Blood tests showed Mr Waterfall had a very high prostate specific antigen level (PSA). Although a PMO thought it likely Mr Waterfall had advanced prostate cancer, Mr Waterfall declined any further investigations or treatment.

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[35] Exhibit 1, Vol. 1, Tab A, Death in Custody Review (09.02.23), pp8-18
[36] Exhibit 1, Vol. 1, Tab 29, Serco Health Services Review, pp15-21
[37] Exhibit 1, Vol. 1, Tab 30, DOJ Health Services Review (15.09.23), pp7-14 and ts 19.09.23 (Gunson), pp5-17

Admission to hospital[38,39,40,41,42,43,44,45,46]

14. On 10 December 2021, Mr Waterfall was reviewed by a PMO. His medical condition had deteriorated further, and it was noted he had previously declined further investigations. Mr Waterfall appeared frail and his weight loss was again noted. He also smelt strongly of urine, was unsteady on his feet, and appeared to be unaware of his recent significant deterioration.

15. After encouragement Mr Waterfall agreed to be assessed at hospital, and he was transferred to SJOG by ambulance. Mr Waterfall underwent X-rays, CT scans and blood tests and these investigations confirmed he had metastatic disease. Although the primary cancer was unclear, it was thought to be "*a prostate primary*".

16. Mr Waterfall's case was discussed with oncology specialists who felt it was inappropriate to proceed with treatment without "*a tissue diagnosis*". However, after extensive discussions with his treating team, Mr Waterfall declined any further investigations or management, and instead he expressed a "*strong preference*" for palliative care.

17. Mr Waterfall was reviewed by a speech pathologist and dietician in relation to some swallowing issues, and he was also assessed by the palliative care team. Initially it was thought Mr Waterfall's condition was sufficiently stable for him to be transferred to the Casuarina Prison infirmary, but on 15 December 2021 his condition deteriorated.

18. At 12.10 pm on 16 December 2021, officers from Ventia (the company DOJ uses to supervise prisoners admitted to hospital) noted Mr Waterfall appeared to have stopped breathing. Clinical staff were alerted, and Mr Waterfall was declared deceased at 12.19 pm.[47]

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[38] Exhibit 1, Vol. 1, Tab A, Death in Custody Review (09.02.23), pp10-11
[39] Exhibit 1, Vol. 1, Tab 23, Report - Sen. Const. K Cooper (17.04.23), pp1-2
[40] Exhibit 1, Vol. 1, Tab 24, Memo - Sen. Const. D Stankevicious (21.12.21)
[41] Exhibit 1, Vol. 1, Tab 29, Serco Health Services Review, pp4-5
[42] Exhibit 1, Vol. 1, Tab 30, DOJ Health Services Review (15.09.23), pp13-15
[43] Exhibit 1, Vol. 1, Tab 19, St John Ambulance Patient Care Record - Team NOR71DC (10.12.21)
[44] Exhibit 1, Vol. 1, Tab 20, SJOG Discharge Summary Referral (16.12.21)
[45] Exhibit 1, Vol. 1, Tab 21, SJOG Progress Notes (10-16.12.21)
[46] Exhibit 1, Vol. 1, Tab 25, Death in Hospital Form (16.12.21)
[47] Exhibit 1, Vol. 1, Tabs 9.4 - 9.6, Ventia Incident Reports (16.12.21)

Management on the terminally ill register[48,49,50,51]

19. Prisoners with a terminal illness[52] are managed in accordance with a departmental policy known as *COPP 6.2 Prisoners with a Terminal Medical Condition*. Once a prisoner is identified as having a terminal illness, a note is made in the terminally ill module of the computer system DOJ uses for prisoner management, namely the Total Offender Management Solution system (colloquially known as "TOMS").

20. Prisoners are identified as Stage 1, 2, 3 or 4, on the basis of their expected lifespan. Stage 3 prisoners are expected to die within three months, whereas for Stage 4 prisoners, death is expected imminently. On 10 December 2021, Mr Waterfall was identified as a Stage 3 terminally ill prisoner on the basis of his likely diagnosis of metastatic prostate cancer. On 16 December 2021, Mr Waterfall was escalated to Stage 4, and as noted, he died the same day.[53,54]

21. Stage 3 and 4 sentenced prisoners may be considered for early release pursuant to the Royal Prerogative of Mercy. However, in Mr Waterfall's case, his death occurred before a briefing note could be prepared for consideration by the Minister for Corrective Services.[55,56]

Restraints[57,58]

22. Whenever a prisoner is being taken to an external appointment, a risk assessment document known referred to as an "*External Movement Risk Assessment*" (EMRA) is completed. The EMRA requires a number of questions to be answered including the following:

> *3.4 Are there any other known medical objections to the use of restraints?* (e.g. psychiatric/cognitive/unconscious/terminally ill/ elderly/frail/significant mobility issues/significant injury/experiencing childbirth or termination, etc.).[59]

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48 Exhibit 1, Vol. 1, Tab A, Death in Custody Review (09.02.23), p10
49 Exhibit 1, Vol. 1, Tab 29, Serco Health Services Review, p5
50 COPP 6.2 - Prisoners with a Terminal Medical Condition, pp4-6
51 Exhibit 1, Vol. 1, Tab 30, DOJ Health Services Review (15.09.23), p7
52 One or more conditions that on their own or as a group, significantly increase the likelihood of a prisoner's death
53 Exhibit 1, Vol. 1, Tab 6, Terminally Ill Health Advice (10.12.21)
54 Exhibit 1, Vol. 1, Tab 10, Terminally Ill Health Advice (16.12.21)
55 Exhibit 1, Vol. 1, Tab 7, Email Prisoners Review Board Delegate to Mr T Perrin (10.02.22)
56 Exhibit 1, Vol. 1, Tab 10, Terminally Ill Health Advice (16.12.21) and ts 19.09.23 (Palmer), p24
57 Exhibit 1, Vol. 1, Tab A, Death in Custody Review (09.02.23), p10 and ts 19.09.23 (Palmer), pp18-24
58 COPP 6.2 - Prisoners with a Terminal Medical Condition, pp4-6 and see also: ts 19.09.23 (Gunson), pp13-15
59 Exhibit 1, Vol. 1, Tab 31, External Movement Risk Assessment (10.12.21), p2

23. At all relevant times, DOJ's restraints policy[60] provided that subject only to an adverse risk assessment, Mr Waterfall should not have been restrained when he was being transferred to SJOG or during his subsequent admission there. That is because he was terminally ill, elderly and frail, and he had significant mobility issues.[61]

24. It is therefore extraordinary that in Mr Waterfall's EMRA, question 3.4 was answered "*No*" when quite obviously the answer should have been "*Yes*". Part of the problem may lie in the fact that clinical staff do not appear to have been consulted about Mr Waterfall's medical conditions, which the response to question 3.5 on his EMRA makes clear.[62]

25. In the final assessment section of Mr Waterfall's EMRA, question 4.1, which asks: "*Restraints required?*", is answered "*Yes*". No explanation is given for this response, and the restraints for Mr Waterfall, a terminally ill, elderly, frail man with significant mobility issues are listed as "*Mechanical restraints. Leg irons. Flexi cuffs.*".[63]

26. The incorrect application of DOJ's restraints policy in Mr Waterfall's case was perpetuated by a document entitled "*Hospital Admittance Advice - Prisoner*" which states that restraints are to be used, although it does provide that: "*Handcuffs, Security Chain Link, Restraints variation to be reviewed upon deterioration in health*".[64]

27. During Mr Waterfall's admission to SJOG his supervision was the responsibility of Ventia, the company DOJ uses for so called "*hospital sits*".[65] A risk assessment document prepared by Ventia states that Mr Waterfall is to be restrained by "*1 x leg ratchet to ankle and fixed to a point on bed*", and that:

> At any time an officer is required to leave the room for comfort break or any reason an extra restraint in the form of a single handcuff to a fixed point is to be affixed.[66]

[60] Although Mr Waterfall was housed at Acacia, relevant policies are consistent: ts 19.09.23 (Palmer), p19
[61] Exhibit 1, Vol. 1, Tab 33, COPP 12.3 Conducting Escorts (29.01.21), paras 5.2.1(b)-(d)
[62] Exhibit 1, Vol. 1, Tab 31, External Movement Risk Assessment (10.12.21), pp2-3
[63] Exhibit 1, Vol. 1, Tab 31, External Movement Risk Assessment (10.12.21), pp2-3
[64] Exhibit 1, Vol. 1, Tab 9.1, Ventia Hospital Admittance Advice - Prisoner (10.12.21)
[65] Exhibit 1, Vol. 1, Tab 9.1, Ventia Death in Custody Package
[66] Exhibit 1, Vol. 1, Tab 9.2, Ventia Risk Assessment (12.12.21)

28. Documents in Ventia's Death in Custody Package establish that Mr Waterfall was restrained in this manner until 8.58 am on 16 December 2021. At that time, Ventia officers received verbal approval from their supervisor to remove Mr Waterfall's restraints in light of his declining medical condition.[67,68]

29. In my view, in the absence of an adverse risk assessment, it was completely inappropriate for Mr Waterfall to have been restrained during his transfer to hospital and during the time he was an inpatient at SJOG. Given DOJ's very clear policy guidance, it is unclear why restraints were applied to Mr Waterfall, a prisoner who, as noted, was terminally ill, frail and elderly and who had significant mobility issues.

30. The incorrect application of DOJ's restraints policy has featured in several death in custody inquests dealt with by this Court, including an inquest relating to the death of Mr Bartlett-Torr presided over by Coroner Urquhart. In his record of investigation of death (published on 22 May 2023), Coroner Urquhart made the following recommendation in relation to restraints applied to a prisoner receiving palliative care:

> I recommend that when a prisoner is escorted to hospital for palliative treatment only, the documentation provided to the officers responsible for the hospital sit should clearly specify that the prisoner is to receive palliative care and is not expected to be returned to prison.[69]

31. In a letter to the Court dated 23 July 2023, the Minister for Corrective Services advised DOJ's response to this recommendation was as follows:

> The Department is in the process of amending the Offender Management Information (OMI), External Movement Risk Assessment (EMRA), Prisoner Movement Risk Assessment (PMRA) and Hospital Admittance Advice (HAA) forms to ensure that escorting officers are provided with pertinent information regarding the purpose of the transfer to hospital and the medical status of the person they are escorting. Proposed changes that are currently in consultation include the addition of the following fields:

[67] Exhibit 1, Vol. 1, Tab 9.3, Ventia PIC Record of Events 291231 - 291265 (10-16.12.21)
[68] Exhibit 1, Vol. 1, Tab 9.3, Ventia PIC Record of Events 291262 (8.58 am, 16.12.21)
[69] [2023] WACOR 11, Record of Investigation of Death, Mr E Bartlett-Torr, per Coroner Urquhart at p27

- The inclusion of Palliative Care in the drop-down list as a reason for the transfer within the respective forms; and

- The inclusion of a checkbox asking if the prisoner is expected to return to the prison.

Additionally, the Department is in the process of amending the OMI, EMRA, PMRA and HAA to require officers to specifically consider whether a prisoner has a significant medical or mobility issue such that they should not be restrained unless otherwise determined. This will include a review of Ventia's Standard Operating Procedure and risk assessment form and similar inclusions.[70]

32. In an email dated 18 September 2018, Ms Tuba Omer (counsel for DOJ) provided the following update on the actions DOJ is taking to ensure terminally ill prisoners are not inappropriately restrained:

1. (DOJ) is in the process of proposing the addition of a terminal illness medical alert within TOMS which will be completed by medical staff and is visible to all TOMS users. (DOJ) has consulted with a developer on this matter and is in the process of obtaining final approval to commence work. Adding the medical alert within TOMS will assist prison officers to (1) identify prisoners who are terminally ill, and (2) ascertain whether restraints are required or whether a prisoner satisfies an exclusion to the restraint regime under provision 5.3.1 when completing the Transfer & Discharge sheet, Offender Movement Information and prisoner's External Risk Assessment;

2. Amendments to the (EMRA), (PMRA) and (OMI) to include a mandatory field requiring employees to record when a prisoner is terminally ill, and an amendment to the OMI to include a mandatory field requiring the employees to record when (the prisoner is) being transported for palliative care and whether (the prisoner) is likely to return. With the inclusion of this information, a prison officer can more accurately assess the requirement for the use of restraints (if any) in completing the (EMRA). The changes to the form will also ensure that where a prisoner is attending palliative care for end of life treatment, it is documented; and

[70] Exhibit 1, Vol. 1, Tab 32, Letter - Minister for Corrective Services to Court (23.07.23)

3. A scheduled review of (prisoner movements) has also been undertaken, and following consultation (DOJ) has reconsidered its stance on the inclusion of Stage 3 and Stage 4 within COPP 12.3 and has determined to include (Stages 3 and 4) in provision 5.3.1 within COPP 12.3. The Amendments to the COPP will be implemented once final approval has been granted. The amendment to the COPP will allow particular consideration to be given to prisoners classified at Stages 3 and 4 of Terminal Medical Condition in prohibiting the use of restraints, and will avoid further confusion in the application and interpretation of provision 5.3.1.[71,72]

33. The proposed changes to DOJ's and Ventia's documentation, and the update on actions referred to above, seem appropriate and will hopefully ensure what happened to Mr Waterfall cannot occur again. However, there is an **urgent** need for the changes to be implimented.

34. At the inquest, Ms Palmer advised that she had been informed that once approved, the proposed changes could be implemented quickly. However, Ms Palmer confirmed that she had been unable to identify a timeline for the consultation and approval process.[73]

35. In my view, as I stated at the inquest, the only punishment prisoners ought to be subjected by the State is deprivation of liberty. Further, the improper restraint of terminally ill prisoners is a significant human rights issue.

36. For those reasons, I urge DOJ in the **strongest possible terms** to ensure that the consultation and approval process in relation to the proposed changes to prisoner restraint procedures is prioritised and completed as quickly and efficiently as possible.

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[71] Exhibit 1, Vol. 1, Tab 34, Email - Ms T Uber to Sgt. A Becker (18.09.23)
[72] The reference to para 5.3.1 relates to the current version of COPP 12.3, not the version in place at the time of Mr Waterfall's death
[73] ts 19.09.23 (Palmer), pp21-23

CAUSE AND MANNER OF DEATH[74,75]

37. A forensic pathologist (Dr Jodi White) conducted a post mortem examination of Mr Waterfall's body on 30 and 31 December 2022 and reviewed CT scans. Dr White noted Mr Waterfall had "*an enlarged necrotic prostatic tumour*" with "*extensive metastatic spread through the abdominal cavity and solid organs*".

38. Mr Waterfall's lungs showed signs of emphysema and "*evident bilateral pneumonia*", and these findings were confirmed by histological studies. This analysis also showed advanced metastatic cancer involving the liver, adrenal glands, abdominal lymph nodes, mesentery, kidneys and bladder.

39. Multiple sclerotic bony deposits were also noted on CT scans, particularly within the cervical spine, along with a likely pathological fracture of the seventh cervical vertebra in association with bony metastases. The imaging found "*no other injuries of note*".

40. Toxicological examination found multiple medications in Mr Waterfall's system that were consistent with his recent medical care.[76]

41. At the conclusion of her post mortem examination, Dr White expressed the opinion that the cause of Mr Waterfall's death was:

> Bronchopneumonia with multiple organ failure in the setting of advanced metastatic prostate adenosquamous carcinoma (medically palliated).

42. Dr White also stated that in her opinion, Mr Waterfall's death had occurred by way of natural causes.

43. I respectfully accept and adopt Dr White's conclusion as my finding in relation to the cause of Mr Waterfall's death and further, I find that Mr Waterfall's death occurred by way of natural causes.

[74] Exhibit 1, Vol. 1, Tab 27.1, Supplementary Post Mortem Report (03.12.22)
[75] Exhibit 1, Vol. 1, Tab 27.2, Post Mortem Report (31.12.21)
[76] Exhibit 1, Vol. 1, Tab 28, Toxicology Report (10.01.22)

QUALITY OF SUPERVISION, TREATMENT AND CARE

44. Following Mr Waterfall's death, DOJ investigated his management and supervision whilst he was incarcerated. The results of that review were published in a document entitled "*Death in Custody Review*", which made no business improvements, having concluded that:

> This review found that Mr Waterfall's custodial management, supervision and care were in accordance with the Department's policy and procedures as listed in Appendix 1. Records indicate that the relevant death in custody procedures, including maintenance of the scene until handover to WA Police were followed.[77,78]

45. Mr Waterfall's clinical care was also reviewed after his death by both Acacia and DOJ. In relation to the care and treatment Mr Waterfall received whilst he was in custody, DOJ's Health Review made the following observation, with which I agree:

> For the majority of his time in prison, Mr John Henry Waterfall received excellent and timely health care, patient centric and respectful of his personal wishes.
>
> He was regularly offered health checks and investigations, but his health management was hampered by the fact that he also frequently declined any interventions and tests that might have improved his ultimate health outcomes.
>
> I would consider his overall management to be commensurate with, and often times better, than treatment he would have received in the community.[79]

46. As I have mentioned, the evidence establishes that Mr Waterfall frequently declined internal and external medical appointments, and that he often refused recommended investigations and/or treatment. Even when his metastatic cancer had been confirmed, Mr Waterfall continued to decline medical treatment and opted instead to be treated palliatively.

[77] Exhibit 1, Vol. 1, Tab A, Death in Custody Review (09.02.23), p6 and ts 19.09.23 (Palmer), pp23-24
[78] See also: ts 19.09.23 (Gunson), pp7-9 & 16-17
[79] Exhibit 1, Vol. 1, Tab 30, DOJ Health Services Review (15.09.23), p17

47. At the inquest, Dr Gunson confirmed that in common with anyone in the general community who is of sound mind, Mr Waterfall was entitled to make decisions about his medical care. Dr Gunson explained that the consequences of such decisions are explained to the prisoner, and their refusal of care is periodically revisited.[80]

48. In relation to Mr Waterfall's competence to make decisions about his medical care and treatment, the DOJ Health Review relevantly states:

> At no time whilst he was in custody was his competence to make these decisions called into question. He was kept fully informed of all of his options, at all stages and was advised that he was able to change his mind and re-engage with care whenever he might wish to.[81]

49. Having carefully reviewed the available evidence, I am satisfied that with exception of his inappropriate restraint during his transfer to, and admission at SJOG, the standard of supervision, treatment and care Mr Waterfall received whilst he was incarcerated was of an acceptable standard.

50. In relation to the restraints issue, at the inquest, Ms Palmer properly conceded on DOJ's behalf that "*Mr Waterfall should not have been in restraints*", and Dr Gunson agreed that applying restraints to Mr Waterfall was totally unwarranted.[82]

51. As I have mentioned, in terms of addressing the restraints situation, sensible changes to DOJ's and Ventia's documentation, and to TOMS are planned. On that basis, I have decided it is not necessary from me to make any further recommendations in this matter.

52. However, as I said at the inquest, it is my **strong view** that the consultation and approval process in relation to the proposed changes must be completed as a matter of **urgency**. It is my hope that the proposed changes will clarify the restraint of prisoners with significant medical issues being transported outside of the precincts of a prison.

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[80] ts 19.09.23 (Gunson), pp6-7 & 17
[81] Exhibit 1, Vol. 1, Tab 30, DOJ Health Services Review (15.09.23), p16
[82] ts 19.09.23 (Palmer), p20 and ts 19.09.23 (Gunson), p14

CONCLUSION

53. Mr Waterfall was 76 years of age when he died at St John of God Midland Public Hospital on 16 December 2021. His cause of death was bronchopneumonia with multiple organ failure in the setting of advanced metastatic prostatic adenosquamous carcinoma, and I determined the manner of death was natural causes.

54. During his transfer to hospital and whilst he was an inpatient at SJOG, Mr Waterfall was improperly restrained, contrary to DOJ policy. As departmental witnesses conceded at the inquest, this was entirely inappropriate.

55. However, with the exception of the restraint issue, after reviewing the available evidence, I concluded that the standard of supervision, treatment and care that Mr Waterfall received whilst he was incarcerated was of an acceptable standard.

56. As I did at the conclusion of the inquest, I wish to again convey to Mr Waterfall's family and loved ones, on behalf of the Court, my very sincere condolences for their loss.

MAG Jenkin
Coroner
21 September 2023