
JURISDICTION : CORONER'S COURT OF WESTERN AUSTRALIA
ACT : CORONERS ACT 1996
CORONER : SARAH HELEN LINTON, DEPUTY STATE CORONER
HEARD : 23 FEBRUARY 2022
DELIVERED : 3 MARCH 2022
FILE NO/S : CORC 51 of 2020
DECEASED : NGUYEN, VAN THO

Catchwords:

Nil

Legislation:

Nil

Counsel Appearing:

Sgt A Becker assisted the Coroner.
Ms J Perera (SSO) appeared for the Department of Justice.

Case(s) referred to in decision(s):

Nil

Coroners Act 1996
(Section 26(1))

RECORD OF INVESTIGATION INTO DEATH

*I, Sarah Helen Linton, Deputy State Coroner, having investigated the death of **Van Tho NGUYEN** with an inquest held at Perth Coroners Court, Central Law Courts, Court 85, 501 Hay Street, Perth, on 23 February 2022, find that the identity of the deceased person was **Van Tho NGUYEN** and that death occurred on 10 January 2020 at Bethesda Claremont Private Hospital, 25 Queenslea Drive, Claremont, from metastatic lung cancer, with palliation in the following circumstances:*

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INTRODUCTION

1. Van Tho Nguyen was born in Vietnam in 1960. As a young man, he fought in the Vietnam War. After the war, he spent time in a refugee camp in Thailand before he was eventually sponsored to move to Australia when he was about 30 years of age. He became an Australian citizen and lived for the rest of his life in Australia.
2. At some stage, Mr Nguyen became involved with people who sold illicit drugs, which led him to become involved in criminal offending. He served time in prison between 2012 and 2016, before being released back into the community on 11 December 2016.
3. Mr Nguyen was a lifelong cigarette smoker, despite being encouraged to quit smoking when he was in prison. In December 2018, while visiting family in Vietnam, Mr Nguyen was diagnosed with suspected lung cancer. He immediately quit smoking, but sadly his cancer was already advanced by this time. Mr Nguyen's diagnosis was confirmed after he returned to Australia in January 2019 and he received chemotherapy treatment as an outpatient in the community under the care of medical specialists at Fiona Stanley Hospital.
4. In May 2019, Mr Nguyen was charged with new drug-related offences. Bail was set, but Mr Nguyen was remanded in custody as he could not meet the surety condition of his bail. He was housed at the infirmary at Casuarina Prison and his medical care for his cancer continued to be managed in consultation with his specialists at Fiona Stanley Hospital, including attending outpatient appointments at the hospital and a number of hospital admissions.
5. Despite chemotherapy and radiotherapy treatment, Mr Nguyen's cancer spread to other parts of his body and he became increasingly unwell. In November 2019, Mr Nguyen indicated to his doctors that he no longer wished to pursue active treatment. On 6 December 2019, Mr Nguyen was admitted to Bethesda Private Hospital for end of life care, where he remained until his death on 10 January 2020.
6. As Mr Nguyen was a remand prisoner at the time of his death, he was a 'person held in care' under the terms of the *Coroners Act 1996* (WA) and a coronial inquest into his death is, therefore, mandatory.¹
7. I held an inquest on 23 February 2022. At the inquest, extensive written material was tendered in relation to the WA Police and Department of Justice's investigations into Mr Nguyen's death. Of particular relevance in this case, extensive information was provided about the medical care he received prior to his death. In addition, two witnesses were called to give evidence at the inquest in person: Dr Joy Rowland, the Department's Director of Medical Services, and Ms Toni Palmer, the Senior Review Officer in the Department's Death in Custody Team.

¹ Section 22(1)(a) *Coroners Act*.

BACKGROUND

8. Mr Nguyen was born in Hai Phong City in North Vietnam on 14 January 1960. He grew up with his parents and siblings in Vietnam during the Vietnam War. As an adolescent he lost his mother and some of his siblings when a bomb made a direct hit on his home. He joined the army at the age of 16 years and was deployed to Cambodia, where as a very young man he witnessed atrocities committed by the Khmer Rouge Regime in Cambodia. He remained in the army, fighting on the Thai border, until the 1980's. After leaving the army, he remained in Thailand and spent several years in a refugee camp before migrating to Australia with sponsorship from a church group.²
9. Mr Nguyen moved to Australia in 1990 at the age of 30 years. He initially lived in Sydney, where he remained for many years. Mr Nguyen generally worked in unskilled labouring jobs in Australia. He eventually became an Australian citizen.³
10. Mr Nguyen met and married his wife at the age of 37 years, and he had a son and daughter from the marriage. After his marriage ended, the children remained living with his wife and her new family in the eastern states while Mr Nguyen moved to Perth in 2010.⁴
11. Mr Nguyen first came to the attention of the Western Australian police in 2012 for minor drug offences. At that time, he had no other relevant criminal convictions in Australia. Mr Nguyen apparently denied he was a drug user, but was involved with others who sold and supplied illicit drugs.⁵
12. On 12 December 2012, Mr Nguyen was charged with murder and remanded in custody. He was eventually convicted on his plea of guilty to a charge of being an accessory after the fact to manslaughter, following a successful plea negotiation with the State. Mr Nguyen was unemployed at the time of the offence and had been living with the other offender, who committed the act of manslaughter in the context of a drug deal gone wrong. Mr Nguyen had attempted to assist in deflecting police attention from that offender. On 17 February 2015, Mr Nguyen was sentenced to a term of four years' imprisonment, backdated to commence on 12 December 2012, with eligibility for parole.
13. While in custody Mr Nguyen underwent a full blood screening on 4 January 2013. It showed high cholesterol, for which he was prescribed statin medication. This medication was later discontinued as Mr Nguyen suffered from negative side effects. Mr Nguyen had also been reviewed for tuberculosis, and was found to have a potential history of exposure and some potential symptoms of active disease. A chest x-ray was then performed, which showed scarring of the right upper lobe of the lung, consistent with latent tuberculosis, but no sign of active infection. A repeat chest x-

² The State of Western Australia v Nguyen, No 188 of 2013, Sentencing Transcript 17 February 2015.

³ The State of Western Australia v Nguyen, No 188 of 2013, Sentencing Transcript 17 February 2015.

⁴ Emails to Sgt Becker from Thu Nguyen dated 15 and 17 February 2022.

⁵ Exhibit 2, DIC Review Report, p. 7.

ray was performed on 5 November 2013, with similar result.⁶ The importance of the chest x-rays is that they showed no sign of lung cancer at that time.⁷

14. Mr Nguyen was reviewed by a doctor with the assistance of an interpreter on 5 December 2014. He was assessed as at moderate cardiovascular risk and given some advice about lifestyle changes and the need to try an alternative cholesterol medication. He agreed to trial an alternative treatment, which he remained on while in custody although he expressed some reluctance to continue taking it.⁸
15. In July 2016, Mr Nguyen was reviewed again by a doctor and indicated he felt well and wanted to cease all medications. It was agreed he could cease his cholesterol medication. He was counselled to try and quit smoking at this time. In November 2016, Mr Nguyen had an annual health assessment with a prison nurse and indicated he continued to smoke and had no thoughts of quitting.⁹
16. On 11 December 2016, Mr Nguyen was released from prison into the community. He apparently found work at a food manufacturing facility and moved in to live with a friend.¹⁰ There were no known significant health issues experienced by Mr Nguyen until the end of 2018, although he continued to smoke a packet of cigarettes a day.¹¹
17. On 1 December 2018 Mr Nguyen saw a general practitioner in Como and reported a cough for the past two weeks, which was worse at night, and he felt something in his throat and soreness in his chest. He was also found to be hypertensive, and indicated he had been on blood pressure medications in the past but had stopped taking the medications at some stage. He was prescribed blood pressure medication, given some counselling to stop smoking, and blood tests were ordered. Mr Nguyen told the GP he was intending to visit Vietnam, so he was not planning to return to the doctor until after his holiday.¹²
18. After this initial doctor's visit, Mr Nguyen went to Vietnam as planned to visit his family in December 2018. Mr Nguyen's sister noticed he had a really bad cough and encouraged him to have a health check. He was diagnosed with presumptive lung cancer while in Vietnam. Mr Nguyen returned to Australia to seek further treatment for his lung cancer in early January 2019.¹³
19. Mr Nguyen returned to the Como GP practice on 5 January 2019, a few days after returning to Australia. He reported he had been hospitalised for shortness of breath during his trip to Vietnam and a right pleural effusion was found. He told the doctor he had stopped smoking two weeks ago, after the discovery of fluid in his lung, and had not yet returned to work due to his ongoing shortness of breath. Mr Nguyen had brought with him his medical records from Vietnam, but they were all in Vietnamese. The doctor encouraged him to bring a friend with him to the next visit

⁶ Exhibit 1, Tab 14.

⁷ T 5 – 6.

⁸ Exhibit 1, Tab 14.

⁹ Exhibit 1, Tab 14.

¹⁰ Exhibit 2, DIC Review Report, p. 7.

¹¹ Exhibit 1, Tab 11.

¹² Exhibit 1, Tab 11.

¹³ Exhibit 1, Tab 11; Emails to Sgt Becker from Thu Nguyen dated 15 and 17 February 2022.

who could assist with translation of the records. Blood and urine tests were ordered and a repeat CT chest scan, as the previous one had been done in Vietnam.

20. Mr Nguyen returned to see the same doctor on 11 January 2019 and was assisted by a friend who could interpret for him. The bloods and CT chest results were discussed and Mr Nguyen was told he had a likely malignancy. He was referred to Fiona Stanley Hospital Emergency Department for urgent assessment. At the hospital, Mr Nguyen was diagnosed with a malignant pleural effusion and adenocarcinoma of the lung. His pleural effusion was drained and he was referred to the medical oncologist at Fiona Stanley Hospital.¹⁴
21. Mr Nguyen returned to Fiona Stanley Hospital on 26 January 2019 in a distressed state as he could not breathe properly. His right sided pleural effusion had re-accumulated, so it was drained again. An interpreter was arranged to explain to Mr Nguyen his diagnosis and he was admitted for treatment in hospital for five days.¹⁵
22. Mr Nguyen was reviewed by an oncologist on 22 February 2019 and he was offered chemotherapy, which he then commenced. Mr Nguyen also received treatment with a catheter coordinated by a respiratory physician in order to reduce the ongoing symptoms associated with the pleural effusion. Mr Nguyen developed an infection in relation to the catheter and was hospitalised at Fiona Stanley Hospital from 17 to 24 April 2019. He was started on a lengthy course of antibiotics before being discharged home for ongoing treatment with antibiotics and regular drainage of his catheter.

ADMISSION TO PRISON

23. In May 2019, Mr Nguyen was arrested on serious drug charges relating to the large scale cultivation and sale of prohibited plants. Mr Nguyen was granted bail, with a large surety imposed as one of the conditions. He was unable to meet the conditions of his bail and was remanded in custody at Hakea Prison on 14 May 2019. Upon his reception he was seen by a nurse. Mr Nguyen reported that he had lung cancer and was being treated at Fiona Stanley Hospital. He seemed distressed and in pain, so the nursing staff directed he be taken to Fiona Stanley Hospital Emergency Department immediately for medical assessment.¹⁶
24. At the hospital, Mr Nguyen complained of gradually worsening pain since the previous evening. He hadn't been able to take his pain medications at the usual rate as he was being held in custody. He was given pain medication at the hospital and then deemed to be fit to return to custody, with follow up by the prison nurse. He was returned to prison late in the evening with prescriptions for antibiotics and pain relief medications.¹⁷

¹⁴ Exhibit 1, Tab 11.

¹⁵ Exhibit 1, Tab 11.

¹⁶ Exhibit 1, Tab 14; Exhibit 2, DIC Review Report, p. 8 and Tab 10.

¹⁷ Exhibit 1, Tab 11; Exhibit 2, DIC Review Report.

25. Mr Nguyen was reviewed by a prison nurse just before midnight on 14 May 2019, after his return from hospital. He was noted to seem much more settled and comfortable than earlier and was now able to walk. His observations were checked and were noted to be normal. The nurse rang and spoke to the Registrar at Fiona Stanley Hospital who discussed Mr Nguyen's recent treatment in the community and his ongoing treatment needs. The nurse admitted Mr Nguyen to the Crisis Care Unit overnight so that he could be closely observed and arranged for an urgent doctor admission to take place the next day.¹⁸
26. Mr Nguyen was seen by a doctor on 15 May 2018 and he was then transferred to Casuarina Prison so that he could be housed in the prison infirmary, where he could receive appropriate nursing care and medical treatment. Mr Nguyen provided consent for the nursing staff to obtain his medical records from his community GP and Fiona Stanley Hospital and appointments were made for CT scans.¹⁹
27. On 16 May 2019 Mr Nguyen was placed on the Department of Justice's terminally ill prisoner register as Stage Two (Deterioration of terminal medical condition). The Department's Health Staff had confirmed with Fiona Stanley Hospital that Mr Nguyen had Stage Five Adenocarcinoma of the lungs and was under active review by the Respiratory and Oncology Clinics at Fiona Stanley Hospital. He had an intracostal catheter in situ and was taking antibiotics for the infection associated with the catheter. It was unclear whether he would be receiving further chemotherapy cycles, given his recent infection. A doctor indicated that Mr Nguyen should have weekly observations taken and authorisation was sought for Mr Nguyen to be given opioids in prison. He was also charted to have twice daily review by nursing staff.²⁰
28. Mr Nguyen continued to be managed with specialist input from Fiona Stanley hospital for the next seven months, until his death on 10 January 2020. The palliative care team was involved in managing his care and they arranged for increases in his pain relief doses when required.²¹
29. Mr Nguyen underwent further chemotherapy on 7 August 2019 and he became well about a week later. He was admitted to Fiona Stanley Hospital on 15 August 2019 and kept in overnight. A reactivation of his tuberculosis was excluded and it was thought that his symptoms were related to progression of his lung disease. He attended a further chemotherapy appointment on 21 August 2019 and a few days later again became very distressed. He was sent to Fiona Stanley Hospital by ambulance on 26 August 2019 and was admitted. A new metastatic lesion was identified on his vertebrae, indicating that the cancer was spreading. His status as a terminally ill prisoner was escalated to Stage Three at that time.²²
30. Mr Nguyen returned to prison on 30 August 2019 and it was noted he looked better and his pain management regime had been changed. He had a pain management review with a doctor on 9 September 2019 to ensure it was optimal, while he

¹⁸ Exhibit 1, Tab 14.

¹⁹ Exhibit 1, Tab 14.

²⁰ Exhibit 1, Tab 14.

²¹ Exhibit 1, Tab 14.

²² Exhibit 1, Tab 14.

continued to attend chemotherapy appointments. On 12 September 2019 the Radiation Oncology Outpatient Clinic indicated that Mr Nguyen would commence palliative radiotherapy to his spine. His pain management was altered in anticipation of his post-radiation pain therapy needs. He attended radiation therapy and had completed five doses by 14 October 2019. A doctor reviewed Mr Nguyen on this date and they discussed ways to manage his pain better. On 21 October 2019, the palliative care team increased Mr Nguyen's pain medications.²³

31. Mr Nguyen's health was clearly deteriorating in October and November 2019 and the nursing and medical staff at Casuarina Prison saw him regularly to try to help manage his symptoms of pain, fatigue and nausea. On 22 November 2019 it was identified that a CT scan showed new bone metastases that required localised radiotherapy. The infirmary staff continued to try to manage Mr Nguyen as his health declined, but it was apparent that he required more specialised palliative care.²⁴
32. Mr Nguyen was transferred to Fiona Stanley Hospital on 27 November 2019 and admitted for treatment of hypercalcemia and hemodynamic instability. He returned to prison on 3 December 2019, but the following day he deteriorated and on 5 November 2019 he was found unresponsive by a nurse in his cell. He was transferred back to Fiona Stanley Hospital. Mr Nguyen was assessed in the Emergency Department and indicated that he no longer wanted active treatment and requested assistance to die. Palliative Care were informed of his decision not to pursue active treatment and that he wished to elect for comfort care only. Mr Nguyen's Terminally Ill Patient Status was upgraded to Stage Five.²⁵
33. On 6 December 2019, Mr Nguyen was transferred to Bethesda Hospital for end of life care. He remained settled for a few weeks and was considerably more comfortable as his pain management had improved, but he then deteriorated over Christmas with an unresponsive episode. On 3 January 2020 he required more breakthrough pain relief and was drowsy when awake and sleeping most of the time.²⁶
34. Mr Nguyen passed away peacefully at 3.20 am on 10 January 2020.²⁷ This was the date he was due to next appear in court. The Coronial Investigation Squad were notified and they attended at the hospital and commenced an investigation into Mr Nguyen's death as his death was a reportable death.

CAUSE AND MANNER OF DEATH

35. On 15 January 2020, Forensic Pathologist Dr Kueppers performed a post mortem examination of Mr Nguyen's body. Dr Kueppers reviewed Mr Nguyen's medical records as part of the process and was aware of his medical history. On the basis of the information that was available, and with the benefit of a post mortem CT scan,

²³ Exhibit 1, Tab 14.

²⁴ Exhibit 1, Tab 14.

²⁵ Exhibit 1, Tab 13 and Tab 14.

²⁶ Exhibit 1, Tab 13 and Tab 14; Exhibit 2, Tab 13.

²⁷ Exhibit 1, Tabs 12, 13 and 14.

which confirmed the presence of malignancy within the lung, spinal column and ribcage in keeping with the clinical history, Dr Kueppers was able to give an opinion on the cause of death without performing an internal examination. Dr Kueppers expressed the opinion the cause of death was metastatic lung cancer, with palliation [external examination only].²⁸

36. Limited toxicology analysis was conducted, which detected multiple medications in keeping with the clinical history of terminal palliative medical care. Alcohol and common illicit drugs were not detected.²⁹ The toxicology results did not alter the course of death.
37. Dr Kueppers expressed the opinion the death was consistent with natural causes. I accept and adopt Dr Kueppers' opinion. I find that the cause of death was due to metastatic lung cancer, with palliation, and that the death occurred by way of natural causes.

COMMENTS ON SUPERVISION, TREATMENT AND CARE

Medical Care

38. Mr Nguyen's sister had raised some concerns with Sergeant Becker prior to the inquest hearing about whether he received appropriate medical treatment during his last period of time in prison, prior to his death. She was particularly concerned, after visiting him in hospital prior to his death, at the meals he was receiving and the fact that he was shackled in the hospital bed, even though he was so weak that he could not move.³⁰
39. I understand that Mr Nguyen's family had been approved to visit him in hospital, which they did in December 2019. Approval was granted to his doctors at Bethesda Hospital for his restraints to be removed on 9 December 2019, so I'm not sure if the family visited before or after this time. It is clear from the records that his restraints were removed for some time in the lead up to his death, which was appropriate given his deteriorating health and limited risk of absconding.³¹
40. As to the concerns about his weight loss, this was addressed in evidence by Dr Rowland. Dr Rowland advised that weight loss often occurs with cancer patients, as the cancer itself needs energy and will use up a lot of the person's energy intake while the cancer is also reducing the person's appetite and desire to eat. Mr Nguyen's food intake and weight was being regularly monitored and he was offered anti-nausea medicine to combat the potential side effects of his medicines and assist him to eat. He was given access to soup and noodles on request, as it was something that he indicated he was willing to eat, but his weight loss still occurred, as was typical for someone with his illness.³²

²⁸ Exhibit 1, Tab 7.

²⁹ Exhibit 1, Tab 7 and Tab 8.

³⁰ Email to Sgt Becker from Thu Nguyen dated 12 October 2021.

³¹ Exhibit 2, DIC Review Report, p. 10 and Tab 5.

³² T 7 -8.

41. Moving to his overall medical care, I note that when Mr Nguyen had been held in custody for his first period of incarceration from 2012 to 2016, he received comprehensive medical care, including for his latent tuberculosis and elevated cardiovascular risk. He was counselled on several occasions about the benefits of quitting smoking, but unfortunately he continued to smoke during his prison term and after release. Lung cancer is a known risk of cigarette smoking, and in Mr Nguyen's case he first showed signs of lung cancer in December 2018, around the time he visited his family in Vietnam for the last time. Upon returning to Australia, his diagnosis was confirmed in January 2019. Despite chemotherapy treatment, his cancer progressed.
42. By the time Mr Nguyen was imprisoned as a remand prisoner in May 2019, his lung cancer was already well advanced. The prison health staff immediately appreciated the need to have him reviewed in hospital, and thereafter his care was managed in close consultation with the specialists from Fiona Stanley Hospital, who had been managing Mr Nguyen's medical care while in the community, and the palliative care team. I am satisfied that his overall medical care while in prison was of a high standard. Unfortunately, Mr Nguyen was suffering from an aggressive disease that led to a significant deterioration in his health over a short period of time. When he became too unwell to be cared for in prison, he was appropriately transferred to Bethesda Hospital, which I am aware provides a lovely, caring and supportive environment for end of life patients from the community, as well as prisoners, so Mr Nguyen received some of the best palliative care services available in this State. Although having to be supervised by security staff was obviously not ideal, I am advised his restraints had been removed as he was reaching his final weeks of life, and he was kept as comfortable as possible.
43. I am satisfied that Mr Nguyen's medical care was of a very high standard and as good, or better, than he might have expected to receive if he had remained in the community.³³

Bail application

44. As Mr Nguyen was a remand prisoner, release on the Royal Prerogative of Mercy was not an option available to Mr Nguyen. However, there was an option for Mr Nguyen to make a bail application based upon the change in circumstances of his deteriorating health. There is a Department of Justice policy requirement where a remand prisoner has a Terminal Medical Condition classified as Stage Three or Stage Four (as was the case for Mr Nguyen), that the "Designated Superintendent shall ensure that the prisoner, their legal representative(s), the court and family members (where applicable) are consulted with a view to assisting the prisoner too apply for, and if possible, secure a suitable bail arrangement given his or her medical condition."³⁴ In Mr Nguyen's case, he had bail set but could not meet the surety condition, so he would have needed to make a bail application to amend his surety amount.

³³ T 12.

³⁴ Exhibit 2, Tab 15, Policy Directive 8, Part 6.5.2.

45. There was no contemporaneous documentation in the materials as to what contact was made with Mr Nguyen's counsel or family to progress a bail application. There was an email obtained from the Deputy Superintendent as part of the Department's death in custody review, which indicated that the Deputy Superintendent left a message on Mr Nguyen's legal representative's answering service on 23 December 2019, but as it was Christmas time the office was not attended and no response was received from Mr Nguyen's lawyer. Contact was also made with Mr Nguyen's friend, who was nominated as the contact point for his next of kin as Mr Nguyen had no family in Western Australia. The friend was known to be in contact with Mr Nguyen's son in the eastern states and Mr Nguyen's family in Vietnam. The information provided was that the friend, whose English was said to be basic, was told that he or the family were to make contact with Mr Nguyen's lawyers in relation to the charges. Some family members had actually travelled to Western Australia and visited Mr Nguyen in hospital in early December 2019, but the issue of bail does not appear to have been discussed then.³⁵
46. The policy referred to above also requires that, in respect of a remand prisoner who is classified as Stage Three on the Terminally Ill Register, the Manager of Sentence Management must prepare a briefing note for the Minister of Corrective Services including:³⁶
- the details of the prisoner's remand offences,
 - the details of the prisoner Terminal Medical Condition and estimated life expectancy,
 - relevant information regarding the prisoner's ongoing management and placement, including the actions taken by the holding prison in relation to consulting the legal representatives and family about a bail application.
47. I am aware from other inquests, and this inquest, that at the relevant time there was a resourcing issue in the Sentence Management Unit as the Manager of Sentence Management position had been made redundant through the WA Government's Voluntary Targeted Separation Scheme in 2017. It was apparently thought that the duties of that position could be absorbed within other roles in the Sentence Management Directorate, but that did not occur and compliance with the policy did not occur. The problem was rectified mid-2020 as Sentence Management were given an additional resource to take on the role of provision of the Terminally Ill briefing notes, but that was long after the time Mr Nguyen's health was deteriorating in late 2019. As a result, no briefing note was prepared for the Minister in relation to Mr Nguyen, or any other prisoner in similar circumstances between January 2018 and June 2020.³⁷
48. A letter to the Court in relation to a similar matter acknowledged that the decision to remove the Manager of Sentence Management position and not reassign their duties to another staff member was a serious failure in judgment, but none of the people

³⁵ T 14; Exhibit 2, Tab 10.

³⁶ Exhibit 2, Tab 15, Policy Directive 8, Part 6.5.3.

³⁷ T 13 – 14; Exhibit 2, Tab 15 and Tab 16.

involved in that decision making are currently employed in the Department of Corrective Services.³⁸

49. Although it is of concern that the briefing note was not prepared due to a lack of resourcing in the unit, I am satisfied that the failure to prepare a briefing note made little difference to Mr Nguyen's circumstances.
50. I am more concerned about the failure to document what steps were taken to alert Mr Nguyen's legal representatives and family in relation to the possibility of making a bail application. I note the policy required the Designated Superintendent to ensure that the Manager of Sentence Management was advised in writing of what relevant actions were taken, which were then to be documented by the Manager in the Terminally Ill Module of the Total Offender Management System (TOMS). This aspect of documentation presumably fell away due to the absence of anyone filling the role of Manager of Sentence Management, but it makes it difficult to assess the adequacy of the efforts made in those circumstance.³⁹
51. Based upon what limited information was able to be provided at the inquest, I am concerned that the efforts did not commence early enough, and did not go far enough, particularly for someone like Mr Nguyen who was socially isolated as he had no family and apparently few friends in the community, limited English skills and was very unwell. The relevant section of the policy uses language that suggests active steps being taken to support the prisoner in making a successful bail application, given their terminal medical condition. This includes a reference to notifying the relevant court, as well as the legal representatives and family members.
52. Although I accept that this task would be made harder during the Christmas period, I note first of all that the steps should have been initiated in August 2019, when he was made a Stage Three Terminally Ill Prisoner on the Register. When efforts were finally commenced to contact his lawyer and family in late December 2019, there should have been more proactive steps taken to ensure that information was clearly communicated to the lawyer, given the friend's English was said to be basic. If, as in this case, there were problems contacting the lawyers by telephone, then the next obvious step would be to make that communication by way of email or letter, copying in the relevant court where the next court appearance was scheduled for the prisoner. In Mr Nguyen's case, his next court appearance was in the Magistrates Court on 10 January 2020, but in fact he died that day.
53. I note in Mr Nguyen's case that he had been unemployed prior to his arrest due to his poor health, and it seems the friend with whom he had been living with was also arrested, so if he was released from prison on bail he may have had great difficulty finding somewhere appropriate to live and people to support him in accessing necessary regular medical care. He may, in those circumstances, have chosen not to try to seek a variation of his bail conditions to enable his release. However, it was not clear on the brief of evidence whether the opportunity to make that decision was communicated properly to him. It is also possible that a magistrate may have

³⁸ Exhibit 2, Tab 16.

³⁹ Exhibit 2, Tab 15, Police Directive 8, Part 6.5.5.

declined to reduce his surety amount to a level he could meet. But again, I can only speculate.

54. In my view, the policy itself is appropriate, so I do not consider it is necessary to make a recommendation that the policy be amended. Rather, I make the comment that the policy should be followed more robustly, both in the steps that are taken to fulfil its requirements, and in the documentation of those steps. In some cases, I appreciate that there is not much time for these processes to be followed, but in Mr Nguyen's case, his status as a terminally ill prisoner was escalated to Stage Three in late August 2019, so there was plenty of time to take the necessary steps.⁴⁰

CONCLUSION

55. Mr Nguyen was admitted to prison with a pre-existing terminal illness, that eventually progressed and led to his death while in custody. I am satisfied that the Department took all necessary steps to provide Mr Nguyen with appropriate and timely medical care while he was held in custody, and his death could not have been prevented. I have made some comments about the necessity for the Department to follow its own policy for remand prisoners who become terminally ill, but I also note that I am satisfied in this case that Mr Nguyen's care was as good as, or better than, what he might have received if he had managed to have his bail conditions altered and been released into the community.



S H Linton
Deputy State Coroner
3 March 2022

⁴⁰ Exhibit 1, Tab 14.