JURISDICTION	**:**	CORONER'S COURT OF WESTERN AUSTRALIA
ACT	**:**	CORONERS ACT 1996
CORONER	**:**	Rosalinda Vincenza Clorinda Fogliani, State Coroner
HEARD	**:**	3 OCTOBER 2023
DELIVERED	**:**	28 AUGUST 2024
FILE NO/S	**:**	CORC 877 of 2022
DECEASED	**:**	PICKIN, MATTHEW JOHN

Catchwords:

Nil

Legislation:

Nil

Counsel Appearing:

Sergeant A Becker assisted the State Coroner.

Ms I Darch (State Solicitor's Office) appeared on behalf of the Department of Justice and South Metropolitan Health Service.

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

Nil

Coroners Act 1996
(Section 26(1))

RECORD OF INVESTIGATION INTO DEATH

I, Rosalinda Vincenza Clorinda Fogliani, State Coroner, having investigated the death of ***Matthew John PICKIN*** *with an inquest held at Perth Coroners Court, Central Law Courts, Court 85, 501 Hay Street, Perth, on 3 October 2023, find that the identity of the deceased person was* ***Matthew John PICKIN*** *and that death occurred on 7 April 2022 at Fiona Stanley Hospital, 102-118 Murdoch Drive, Murdoch, from complications, including sepsis, of left leg infection (operated), in a man with multiple comorbidities, including metastatic lung adenocarcinoma, with terminal palliative care, in the following circumstances:*

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INTRODUCTION

1. Matthew John Pickin (Mr Pickin) was 56 years old when he died at Fiona Stanley Hospital on 7 April 2022 from complications, including sepsis, of a left leg infection in association with metastatic lung adenocarcinoma (lung cancer).

2. At the time of his death Mr Pickin was serving his sentence of imprisonment at Casuarina Prison, having recently been transferred there from Bunbury Regional Prison for placement in the infirmary, due to his deteriorating health.[1]

3. Approximately a year earlier, on 3 March 2021, Mr Pickin had been sentenced in the District Court to four years imprisonment in respect of an offence, backdated to commence on 14 December 2020. He would have been eligible for parole, if granted, on 14 December 2022.[2]

4. By reason of s 16 of the *Prisons Act 1981* (WA), as a sentenced prisoner, Mr Pickin was in the custody of the Chief Executive Officer of the Department of Justice. Therefore, immediately before death he was a "*person held in care*" within the meaning of s 3 of the *Coroners Act 1996* (WA) (the Coroners Act).

5. Mr Pickin's death was a reportable death within the meaning of s 3 of the Coroners Act and it was reported to the coroner as required by the Coroners Act.

6. Under s 19(1) of the Coroners Act I have jurisdiction to investigate Mr Pickin's death.

7. Under s 22(1)(a) of the Coroners Act, by reason of Mr Pickin being a person held in care, an inquest was mandated into his death.

8. I held an inquest into Mr Pickin's death on 3 October 2023. I heard from two witnesses and received one exhibit into evidence, containing 22 tabs.

[1] Exhibit 1, tab 17.
[2] Exhibit 1, tab 8.

9. On 28 November 2023, the State Solicitor's Office (SSO) provided further information, by way of a letter and an additional witness statement, in response to my request, and I received these into evidence, together, as exhibit 2.

10. My primary function has been to investigate Mr Pickin's death. It is a fact-finding function. Pursuant to s 25(1)(b) and (c) of the Coroners Act, I must find, if possible, how Mr Pickin's death occurred and the cause of his death.

11. Pursuant to s 25(2) of the Coroners Act, in this finding I may comment on any matter connected with Mr Pickin's death including public health, safety or the administration of justice. This is the ancillary function.

12. Pursuant to s 25(3) of the Coroners Act, as Mr Pickin was a person held in care, in this finding I must comment on the quality of his supervision, treatment and care. This obligation reflects the community's concern about the treatment of those who are deprived of their liberty.

13. Section 25(5) of the Coroners Act prohibits me from framing a finding or comment in such a way as to appear to determine any question of civil liability or to suggest that any person is guilty of an offence. It is not my role to assess the evidence for civil or criminal liability, and I am not bound by the rules of evidence.

14. In making my findings I have applied the standard of proof as set out in *Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J at 361 - 362 which requires a consideration of the nature and gravity of the conduct when deciding whether a matter has been proved on the balance of probabilities.

15. The focus of the inquest was on the quality of the supervision, treatment and care provided to Mr Pickin, within the context of his lung cancer.

16. My findings appear below.

MR PICKIN

17. Mr Pickin was born on 18 February 1966 in the United Kingdom and was one of two children. The family moved to New Zealand when he was a child, and he was raised there.[3]

18. In 1996 when Mr Pickin was 30 years old, he met his former wife, and in 1997 he moved to Western Australia to pursue his relationship with her. They married in 2000 and subsequently had three children. In 2012 together with his family he returned to New Zealand and would have remained living there, save that his former wife wished to return to Western Australia, and they all came back to Western Australia.[4]

19. In Western Australia Mr Pickin worked as a self-employed plumber and was also involved in work on home renovations, conducted through his business in Northam. He and his former wife divorced in 2015. He was upset about the divorce and the effects on his family and began to experience depression. In 2017 he commenced a relationship with his partner and relocated to Victoria.[5]

20. He returned to Western Australia for his trial. He was found guilty, convicted, and sentenced as outlined above. His partner remained supportive of him during his incarceration.[6]

CUSTODIAL STATUS

21. This part of the finding addresses Mr Pickin's custodial status. An outline of his medical care appears separately, under the later heading: *Medical treatment and care in custody*.[7]

22. Mr Pickin was a first-time prisoner when he was remanded in custody at Hakea Prison on 14 December 2020, to await his sentencing. He spent approximately two weeks at Hakea Prison before being transferred to Casuarina Prison.[8]

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[3] Exhibit 1, tabs 1 and 9.
[4] Exhibit 1, tab 8.
[5] Exhibit 1, tabs 8 and 9.
[6] Exhibit 1, tabs 17 and 19.
[7] Ibid.
[8] Exhibit 1, tab 17.

23. At the outset, the Hakea Prison reception officer recommended that Mr Pickin be placed on two hourly observations under the At Risk Management System (ARMS), which is the Department of Justice's primary suicide prevention strategy. The reception officer had formed the view that Mr Pickin was at risk of self-harm, having regard to external communications received, and Mr Pickin's own demeanour. Whilst Mr Pickin denied an intention to self-harm, the ARMS placement properly went ahead on 14 December 2020.[9]

24. On 17 December 2020, Mr Pickin was removed from ARMS after it was assessed that he was no longer a risk to himself, and this is addressed in more detail under the later heading: *Medical treatment and care in custody*.[10]

25. Being a New Zealand National, Mr Pickin was offered contact with the New Zealand Consulate, but he declined it.[11]

26. On 28 December 2020, due to population management requirements at Hakea Prison, Mr Pickin was transferred to Casuarina Prison. After Mr Pickin's sentencing, on 3 March 2021, a Management and Placement Report was prepared for him. This was completed on 24 March 2021, and recorded that his security rating was reduced to medium security.[12]

27. In line with this outcome, on 21 April 2021 Mr Pickin was transferred to Acacia Prison. This would facilitate visits and it was noted that he had good external support from his family.[13]

28. A further Management and Placement Report was completed for Mr Pickin on 27 April 2021. The assessor recommended that his security rating be reduced to minimum security, with an intended transfer to Karnet Prison Farm.[14]

29. As it transpired, Mr Pickin was transferred to Bunbury Regional Prison on 27 July 2021, which was also in line with his minimum security rating.[15]

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[9] Ibid.
[10] Ibid.
[11] Ibid.
[12] Ibid.
[13] Ibid.
[14] Ibid.
[15] Ibid.

30. Approximately four months after he was incarcerated at Bunbury Regional Prison, testing showed that Mr Pickin had a suspected lung cancer. He underwent initial investigations at Bunbury Regional Hospital, but further specialised examination and treatment was planned at Fiona Stanley Hospital. He was conveyed and admitted to Fiona Stanley Hospital on 9 December 2021.[16]

31. To accommodate his future treatment needs at Fiona Stanley Hospital, on 11 December 2021 (following discharge from Fiona Stanley Hospital) Mr Pickin was formally transferred from Bunbury Regional Prison to Casuarina Prison for placement in the infirmary there.

32. In accordance with the Department of Justice's processes, on 6 December 2021 Mr Pickin was listed as a Stage Three terminally ill prisoner, on the basis that death within three months or sudden death was possible, due to him having a carcinoma of the lung (lung cancer) with cerebral metastasis (lung cancer spread to the brain).[17]

33. Also, in accordance with the Department of Justice's processes, steps were initiated for a consideration of the exercise of the Royal Prerogative of Mercy, for the early release of Mr Pickin. This first step occurred on 10 December 2021, shortly after Mr Pickin was listed as a Stage Three terminally ill prisoner. Release was not recommended.[18]

34. On 23 February 2022, Mr Pickin's terminally ill status was escalated, and he was listed as a Stage Four terminally ill prisoner, on the basis that death was imminent, due to increasing onset of pain (which was thought to be related to the spread of the cancer).[19]

35. On 1 March 2022, Mr Pickin was de-escalated to Stage Three following further review and when his pain was able to be managed with hydromorphone (an opioid medication to relieve pain). He was then re-escalated to Stage Four on 5 March 2022 due to a subsequent and rapid deterioration in his condition.[20]

[16] Ibid.
[17] Ibid.
[18] Ibid.
[19] Ibid.
[20] Ibid.

36. Mr Pickin's deterioration precipitated a further consideration, on 10 March 2022, of the exercise of the Royal Prerogative of Mercy, for early release. Again, release was not recommended.[21]

37. Ventia guards, used by the Department of Justice to supervise prisoners admitted to hospital, commenced their hospital sit duties to guard Mr Pickin at Fiona Stanley Hospital on 9 March 2022. At the request of the oncology resident medical officer, and with the approval of Casuarina Prison given the same day, Mr Pickin's leg restraints were removed on 21 March 2022. Mr Pickin died at Fiona Stanley Hospital, while held in custody, on 7 April 2022. [22]

38. Overall, records reflect that during Mr Pickin's time in custody, appropriate Management and Placement Reports were undertaken, his security ratings were appropriately reviewed, his prison placements were in line with the outcomes, and he was given access to support from family and friends. Mr Pickin received regular social visits either in person or through means of Skype, with the majority being from his partner, and his friends. He remained in frequent and active written communication with his partner throughout his time in custody.[23]

39. Mr Pickin continued to receive numerous visits from family and friends during his last admission to Fiona Stanley Hospital, prior to his death. However, these had to cease for a time due to COVID-19 related restrictions.[24]

40. The details of Mr Pickin's medical treatment and care in custody appear below.

MEDICAL TREATMENT AND CARE IN CUSTODY

Hakea Prison

41. Mr Pickin's intake into the prison system occurred upon his admission to Hakea Prison on 14 December 2020. He was assessed by the Prison Nurse on that date and his past medical history was noted. This included a history of above-knee deep vein thrombosis, Takotsubo cardiomyopathy, a transient

[21] Ibid.
[22] Ibid.
[23] Ibid.
[24] Ibid.

ischaemic attack (possibly in 2011), gastroesophageal reflux disease, chronic obstructive pulmonary disease (COPD), asthma, and long-standing depression. He had a history of smoking. He was noted to be overweight. The observations of his vital signs were normal.[25]

42. The Prison Doctor saw Mr Pickin the next day (15 December 2020), his medications were noted, an ECG and blood tests were requested, and information was sought regarding his interstate medical records.[26]

43. As indicated previously Mr Pickin was initially managed on ARMS for a few days due to concerns about the risk of him self-harming. This was after review by the Psychological Health Services, the Unit Manager and the Prison Support Officer, and assessment by the Prisoner Risk Assessment Group (PRAG), that manages ARMS. This same team recommended his removal from ARMS shortly afterwards, once he was observed to be more settled and positive in his thoughts, and the recommendation was duly implemented.[27]

Casuarina Prison

44. Upon admission to Casuarina Prison on 28 December 2020, Mr Pickin was reviewed by the Prison Nurse for continuity of care. On 19 January 2021, more comprehensive health records from health services in Victoria became available and an appointment with the Prison Doctor was arranged.[28]

45. Mr Pickin was seen by the Prison Doctor for a comprehensive health assessment on 28 January 2021. He was still smoking and was not able to commit to cessation. He was distressed and unhappy with his situation as a prisoner, but was not considered to be at risk of self-harm. He declined the offer to see a counsellor. The Prison Doctor planned to review him again once the blood test results became available.[29]

46. On 10 February 2021, Mr Pickin had a long consultation with the Prison Doctor who reviewed his mental state in light of the presentation. Mr Pickin

[25] Exhibit 1, tabs 15 to 19.
[26] Ibid.
[27] Ibid.
[28] Ibid.
[29] Ibid.

had remained distressed and unhappy. On this occasion he agreed to see the counsellor and was commenced on the antidepressant escitalopram.[30]

47. Following the receipt of Mr Pickin's comprehensive blood tests, he was seen by the Prison Doctor again on 25 February 2021. Treatment was planned in accordance with the results, and appropriate vaccinations were arranged. His mental state was considered to be improved. He reported knee pain and was referred to the physiotherapist (who saw him for this complaint in March and April 2021).[31]

Acacia Prison

48. Upon admission to Acacia Prison on 21 April 2021, Mr Pickin was reviewed for continuity of care and his medications were checked. He was seen by the Prison Doctor on 27 April 2021. In respect of his mental state, he was noted to still be distressed and unhappy. He was concerned about potential deportation to New Zealand once he had served his sentence. The Prison Doctor examined him, revised his COPD medications, noted some hearing impairment, and referred him for a hearing test.[32]

49. Between May and July 2021 Mr Pickin underwent regular medical reviews, where endeavours were made to address his diet (to lower his cholesterol) and to encourage him to cease his smoking. A full blood count was done, with essentially normal results. He reported chest pain, and an ECG was done, which showed a normal sinus rhythm. His COPD medications were monitored, and appropriate vaccinations were administered.[33]

50. When the Prison Doctor reviewed Mr Pickin's mental state in July 2021, it was noted that he was struggling with being in prison. Mr Pickin advised that he had ceased his antidepressant escitalopram, feeling that he had not benefitted from it, and he declined to recommence it. However, he agreed to commence to see a counsellor.[34]

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[30] Ibid.
[31] Ibid.
[32] Ibid.
[33] Ibid.
[34] Ibid.

51. Handover preparations were made, and medications were scripted in readiness for his transfer to Bunbury Prison.[35]

Bunbury Prison

52. Upon admission to Bunbury Prison on 30 July 2021, Mr Pickin was reviewed by the Prison Nurse for continuity of care, and appropriate vaccinations were arranged and administered.[36]

53. Mr Pickin was comprehensively reviewed by the Prison Doctor on 17 August 2021. His hearing impairment was noted. His medications for COPD were reviewed, and he was again encouraged to stop smoking. The use of bupropion (Zyban) to assist with smoking cessation was reviewed and a prescription issued. A possible diagnosis of obstructive sleep apnoea was considered, and he was referred for a sleep study. At a subsequent nursing review on 17 September 2021, the focus was on encouraging Mr Pickin to cease smoking. He had not yet started the medication Zyban that had been prescribed to him to assist in smoking cessation.[37]

54. On 1 October 2021, Mr Pickin attended a further nursing appointment and a range of matters were discussed, including his concern that the Zyban medication, that he had commenced, was irritating his throat. He reported that he had experienced frequent coughing and that he had been expectorating dark blood in both his sputum and his saliva (haemoptysis).[38]

55. This is the first occasion upon which Mr Pickin reported a symptom that was concerning for an underlying pathology such as lung cancer. Mr Pickin thought the bleeding might have been related to the Zyban irritating his throat, and it was decided that he should cease the Zyban. However, the Prison Nurse, being aware that the bleeding was a serious symptom, made prompt arrangements for him to see the Prison Doctor. He was noted to be emotional and unhappy during this nursing review.[39]

56. On 5 October 2021, Mr Pickin duly attended his appointment with the Prison Doctor. Mr Pickin again reported that he felt that his haemoptysis was related

[35] Ibid.
[36] Ibid.
[37] Ibid.
[38] Ibid.
[39] Ibid.

to the effects of the Zyban and that he had stopped coughing up blood when he ceased the Zyban. He was known to have COPD and had been a long-term smoker. The plan was to encourage smoking cessation with the use of nicotine replacement therapy. The observations of his vital signs were normal, and an examination of his chest was normal. Considering his symptoms, the Prison Doctor ordered a chest x-ray, further blood tests, and plans were made for a nursing review within two weeks.[40]

57. Further appointments and reviews in respect of other matters were held in October 2021. Relevantly, in connection with Mr Pickin's subsequently identified lung cancer, the results of his chest x-ray became available on 26 October 2021. These showed a 3.9 cm diameter lesion in the right hilum (top of the lung), which was concerning for a primary lung malignancy. The next step was to have it confirmed by a CT scan.[41]

58. On 2 November 2021, the Prison Nurse informed Mr Pickin of the results of his chest x-ray and explained the further assessment required, by way of a CT scan. The Prison Nurse provided some medication for his sore dry throat, along with some reassurance about the assessment process.[42]

59. The CT scan was duly held and on 10 November 2021, the results showed a 49 x 49 mm right perihilar mass, suspicious for primary bronchial malignancy (lung cancer), along with enlarged right sided paratracheal and hilar lymph nodes. The Prison Doctor reviewed it the next day and made urgent arrangements for a referral for Mr Pickin to be reviewed by a Respiratory Specialist.[43]

60. On 16 November 2021, the Prison Doctor informed Mr Pickin of the results of the CT scan, that showed a mass suspicious for lung cancer. Mr Pickin reported another episode of haemoptysis, and he was strongly advised to reduce and then cease smoking. Straight after the consult the Prison Doctor ascertained that the Respiratory Specialist did not have capacity to see Mr Pickin, so he contacted a Respiratory Specialist at Fiona Stanley Hospital, and made an urgent referral that same date.[44]

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[40] Ibid.
[41] Ibid.
[42] Ibid.
[43] Ibid.
[44] Ibid.

61. Shortly afterwards on 18 November 2021, the Prison Doctor contacted a local Respiratory Specialist who was able to see Mr Pickin soon. In between this time and Mr Pickin's specialist appointment, his mental state was assessed and reviewed, due to concerns about his low mood, and some incoherent responses given to the Prison Nurse. He was seen by the Prison Doctor in November 2021, commenced on another antidepressant, and referred to the Prison Counselling Service.[45]

62. On 2 December 2021, Mr Pickin was seen by the local Respiratory Specialist. He was vague in his responses and his medical history was obtained primarily from the Prison Doctor's referral letter. It was noted that Mr Pickin had recently ceased smoking. The Respiratory Specialist provisionally considered that Mr Pickin's lung cancer was unlikely to be amenable to surgical resection and ordered further testing by way of a bronchoscopy. Mr Pickin was distressed upon being informed of this and was subsequently provided with support through the prison system.[46]

63. On 4 December 2021 it was noted, upon examination at Bunbury Prison, that Mr Pickin had a marked weakness to his right arm and hand, uneven gait, and speech difficulties. He was promptly transferred by ambulance to Bunbury Hospital, with possible stroke symptoms being considered. He was admitted to Bunbury Hospital between 5 and 8 December 2021, for assessment. A CT scan of his brain on 6 December 2021 showed multiple cerebral metastases (meaning the lung cancer had spread to his brain).[47]

64. As a result, Mr Pickin was transferred to Fiona Stanley Hospital for ongoing care, being admitted under the respiratory team on 9 December 2021, and formally transferred to Casuarina Prison infirmary, so he could remain close by, for ongoing treatment.[48]

Casuarina Prison

65. At Fiona Stanley Hospital Mr Pickin promptly underwent a bronchoscopy, and biopsies of the mass were taken, that confirmed he had a non-small cell lung cancer. He was commenced on the steroid dexamethasone to decrease the swelling associated with the metastases in the brain, and on 11 December

[45] Ibid.
[46] Ibid.
[47] Ibid.
[48] Ibid.

2021 he was discharged to the Casuarina Prison infirmary, with plans for the urgent commencement of medical oncology and radiation oncology appointments within the following one to two weeks.[49]

66. Mr Pickin was reviewed by the Prison Nurse upon his admission to Casuarina Prison infirmary on 11 December 2021, who updated his records for continuity of treatment. He was upset and did not have an adequate understanding of his diagnosis. It was planned to refer him to the Prison Counselling Service and the Bethesda Palliative Care Service.[50]

67. Shortly afterwards on 13 December 2021, the Prison Doctor reviewed Mr Pickin and discussed his cancer diagnosis with him, and his COPD medication. Mr Pickin had also been found to have type 2 diabetes and the blood sugar monitoring was commenced.[51]

68. During his final period in custody at Casuarina Prison infirmary, Mr Pickin was reviewed, and nursing observations were taken daily or every second day. He was regularly transferred to Fiona Stanley Hospital for courses of radiotherapy, chemotherapy and immunotherapy in accordance with his treatment plan, and reviewed at intervals by the Metropolitan Palliative Care Consultancy Service. Mr Pickin was also treated for a range of other ailments. The details of his treatment in connection with his cancer diagnosis follow immediately below.[52]

69. On 16 December 2021 the Radiation Oncology Clinic at Fiona Stanley Hospital reported that molecular study results on Mr Pickin's non-small cell lung cancer were pending, and these results would guide the treatment options and reflect upon his prognosis. Mr Pickin was informed of varying potential prognoses and the news upset him. It was made clear that investigations as to the appropriate treatment were ongoing.[53]

70. Following the outcomes of investigations, on 21 January 2022, Mr Pickin was seen in the Medical Oncology Clinic at Fiona Stanley Hospital. It was explained to him that he had Stage IV lung cancer (being advanced cancer that had spread beyond his chest). The plan, to which he consented, was to

[49] Ibid.
[50] Ibid.
[51] Ibid.
[52] Ibid.
[53] Ibid.

commence with whole brain radiotherapy treatment within the week, followed by chemotherapy and immunotherapy. It was explained that the treatment would not be curative, but that it would be administered with palliative intent.[54]

71. Mr Pickin commenced whole brain radiation therapy at Fiona Stanley Hospital on 27 January 2022, and completed it on 2 February 2022. His side effects were managed, and his medications were titrated to his symptoms, balancing the need to decrease the brain swelling around the cancer with dexamethasone and the management of his hyperglycaemia (because the dexamethasone raised his blood sugar levels). When not being treated at Fiona Stanley Hospital, he remained at the Casuarina Prison infirmary, where his health was monitored.[55]

72. I have considered the potential impact in the apparent delay of a 28 January 2022 letter from Fiona Stanley Medical Oncology being noted by prison medical staff. The letter recommended an increase to the dosage of the steroid medication dexamethasone to 4 – 8 mg daily, to decrease the brain swelling around the cancer. For a short period of time, Mr Pickin was administered a lower dose of dexamethasone than had been advised by the oncology team and then, when the letter was noted, it was promptly rectified. I do not consider this had a deleterious impact upon the outcome of Mr Pickin's treatment.[56]

73. Between 8 and 15 February 2022, Mr Pickin was admitted to the oncology ward at Fiona Stanley Hospital due to right arm weakness and slurred speech. A CT scan showed an increase in the size and number of the brain metastases, with swelling around the lesions resulting in a midline shift and left subfalcine and early left uncal herniation. An insulin regime was commenced to address his dexamethasone induced hyperglycaemia. His chemotherapy treatment commenced during this period, on 11 February 2022.[57]

74. On 15 February 2022, Mr Pickin was discharged back to Casuarina Prison infirmary with a recommendation for one person to be on standby to assist him with daily tasks. Daily nursing reviews, frequent medical reviews and

[54] Ibid.
[55] Ibid.
[56] Exhibit 1, tabs 13 and 15.
[57] Ibid.

palliative care service reviews continued. Dexamethasone continued to be prescribed.[58]

75. Mr Pickin reported some left hip pain that was monitored and on 25 February 2022 he was transferred to Bethesda Hospital for assessment. A CT scan and further investigations identified that trochanteric bursitis was the cause of this pain. He was treated with a steroid injection into the trochanteric bursa (in his left hip), and his pain relief medications were reviewed. On 2 March 2022, Mr Pickin was discharged back to Casuarina Prison infirmary with a recommendation for bed centred care and two persons to be on standby to assist him with daily tasks. He was continually monitored in the infirmary.[59]

76. Mr Pickin's condition deteriorated and a few days later, on 5 March 2022, he was conveyed to Fiona Stanley Hospital due to progressive left hip pain and worsening mobility. Following medical investigations there, he was found to have a serious bacterial infection in his left leg, which was resulting in his hip pain. His pain was managed, and he was commenced on intravenous antibiotics, with further tests to guide his ongoing treatment. On 6 March 2023, he underwent a surgical washout for his left leg infection and blood cultures the next day showed Staphylococcus aureus in his bloodstream. Mr Pickin remained critically unwell and continued to have high inflammatory markers despite appropriate antibiotic therapy.[60]

77. On 9 March 2022, a CT scan was performed at Fiona Stanley Hospital to review the status of Mr Pickin's lung cancer. It confirmed a significant progression of his cancer, with the superior vena cava being compressed by the tumour in his chest. Due to his underlying infection, it was not safe to administer further chemotherapy, given its detrimental effects on his immune system.[61]

78. Mr Pickin's prognosis was very poor, and he was referred to radiation oncology for palliative radiation treatment, which occurred between 15 and 21 March 2022. During this period, on 17 March 2022, Mr Pickin had further surgery, namely left hip debridement, in an attempt to treat his left leg infection. He was also, though ultimately unsuccessfully, tried on the new anti-cancer treatment afatinib.[62]

[58] Ibid.
[59] Ibid.
[60] Ibid.
[61] Ibid.
[62] Ibid.

79. Despite the surgeries and ongoing intravenous antibiotics, Mr Pickin's inflammatory markers remained elevated, and his condition continued to deteriorate. His left leg infection persisted and it was considered that he would not survive further surgery. Further anti-cancer treatment was not feasible given his frailty.[63]

80. The decision was made for comfort care measures, with terminal palliative care. The palliative care team managed Mr Pickin's symptoms and provided supportive care. He died at Fiona Stanley Hospital in the early hours on 7 April 2022.[64]

CAUSE AND MANNER OF DEATH

81. On 12 April 2022 the forensic pathologist Dr J.W. Ong (Dr Ong) made a post mortem examination on the body of Mr Pickin by means of an external examination of the body and a CT scan, together with a review of medical records.[65]

82. Dr Ong noted that the CT scan showed features in keeping with a history of metastatic lung carcinoma, including a mass within the upper lobe of the right lung; there was no evidence of significant injury.[66]

83. On his review of Mr Pickin's medical records, Dr Ong noted that microbiology testing from the left hip showed growth of Staphylococcus aureus, that a blood culture sample showed growth of similar bacteria, that he was subsequently diagnosed to have a systemic bacterial infection (sepsis) and that he was treated with antibiotics. Dr Ong also noted that a number of surgeries were undertaken to attempt to treat Mr Pickin's left leg infection, but that his condition continued to deteriorate.[67]

84. Dr Ong formed an opinion on Mr Pickin's cause of death on 12 April 2022, but ordered toxicological analysis to be undertaken as part of the examination. The toxicological analysis became available on 27 April 2022, and was reviewed by Dr Ong the next day. It showed several medications in keeping

[63] Ibid.
[64] Ibid.
[65] Exhibit 1, tab 6.
[66] Ibid.
[67] Ibid.

with terminal medical care and Dr Ong confirmed that his opinion on the cause of death remained unchanged.[68]

85. I accept and adopt Dr Ong's opinion on cause of death. **I find that Mr Pickin's cause of death was complications, including sepsis, of left leg infection (operated), in a man with multiple comorbidities, including metastatic lung adenocarcinoma, with terminal palliative care**.

86. When Mr Pickin was diagnosed with lung cancer in November 2021, it was already advanced. Some weeks later he was found to have brain metastases. He then developed a serious infection around his left leg and hip, which complicated and limited his lung cancer treatment options. Despite sustained efforts to treat his left leg infection, he developed sepsis and died. **I find that Mr Pickin's death was by way of Natural Causes**.

QUALITY OF SUPERVISION, TREATMENT AND CARE

87. Immediately before death, Mr Pickin was a person held in care and under s 25(3) of the Coroners Act. I must comment on the quality of his supervision, treatment and care while he was in that care. In the case of Mr Pickin, my comments are focussed upon his treatment and care in connection with his lung cancer.

88. After hearing the evidence at the inquest, I made my comments on the quality of Mr Pickin's treatment and care in connection with his lung cancer, which were to the effect that:

    a) Medical investigations for the suspected lung cancer commenced at the earliest reasonable opportunity and the diagnosis of his lung cancer was done at an appropriate stage, also being the earliest reasonable opportunity;

    b) The care and treatment of his cancer was appropriate; and

    c) The steroid injection into the trochanteric bursa to alleviate his pain was appropriate.[69]

[68] Exhibit 1, tabs 6 and 7.
[69] ts 56 to 57.

89. My reasons for these comments on the quality of Mr Pickin's treatment and care appear below under the heading: *Comments on medical care*.

90. After hearing evidence at the inquest, I determined that I required further information in order to comment upon the quality of his supervision insofar as restraints were used upon him during his final hospital admission on 5 March 2021, up until 21 March 2021. That further information was provided to me on 28 November 2023.[70]

91. My comments, and reasons, in connection with the restraints appear below under the heading: *Comments on usage of restraints*.

Comments on medical care

92. This first paragraph concerns the quality of Mr Pickin's medical treatment and care prior to detection of his lung cancer symptoms. For the reasons set out previously in this finding, under the heading: *Medical treatment and care in custody*, Mr Pickin's supervision, treatment and care from the time of his admission into custody on 14 December 2020, until the time that his lung cancer was identified was reasonable and appropriate. His physical and mental health was regularly reviewed, specialist referrals were made as required, psychological support was offered, and proper steps were taken to treat or allay his conditions, and to encourage improvements (such as the cessation of smoking).

93. I turn now to the identification and treatment of Mr Pickin's lung cancer. The first sign of there being a potential lung cancer was when Mr Pickin reported haemoptysis (coughing up blood) on 1 October 2021, during a nursing appointment. He was seen by the Prison Doctor a few days later and a chest x-ray was promptly ordered, along with further blood tests. I am satisfied that the investigations and follow up following this initial sign were carried out in a timely manner.

94. The chest x-ray results, becoming available in late October 2021, showed a lesion at the top of his right lung, and a CT scan of his chest was promptly ordered. On 10 November 2021, it was seen that the CT scan confirmed a likely lung cancer, and immediate steps were taken to commence

[70] Exhibit 2; ts 57.

arrangements for a Respiratory Specialist review, which was able to be achieved within a reasonable time frame (being on 2 December 2021).

95. On 6 December 2021, following a CT scan of his brain Mr Pickin was found to have brain metastases (being the spread of the lung cancer to the brain). He was commenced on whole brain radiotherapy on 27 January 2022. I considered whether there was a delay to the commencement of treatment for Mr Pickin's brain metastases, given that such treatment commenced eight weeks after it was diagnosed.

96. I have had regard to the opinion of Dr Lydia Warburton, Consultant, Medical Oncology, Fiona Stanley Hospital (Dr Warburton), on the matter of the time interval between diagnosis of brain metastases and commencement of whole brain radiotherapy. Dr Warburton reported that the time from initial specialist review to commencing Mr Pickin's treatment was two weeks longer than the optimal six-week care pathway.[71]

97. Dr Warburton explained that it had been necessary to undertake further testing to confirm the primary site of the tumour. The histopathology of the cancer was confirmed on 15 December 2021, identifying it as a non-small cell carcinoma arising from the lung. This assisted in informing the type of treatment selected.[72]

98. Mr Pickin was reviewed by the oncology team the next day (16 December 2021) and at this point he was asymptomatic from his brain metastases. It was therefore considered appropriate to await the results of molecular testing, to further inform treatment selection and prognosis, given that, as Dr Warburton explained, whole brain radiotherapy is not always the best treatment in the case of brain metastases in lung cancer. I am satisfied that this was an appropriate clinical consideration.[73]

99. Mr Pickin did not die from progressive intercranial disease, as pointed out by Dr Warburton, and therefore the time interval for the commencement of whole brain radiotherapy is not likely to have led to any adverse outcome for Mr Pickin. Dr Warburton opined that the two-week delay in commencement of

[71] Exhibit 1, tab 18.
[72] Ibid.
[73] Ibid.

whole brain radiotherapy did not have a meaningful impact on Mr Pickin's prognosis, and I accept that opinion.

100. Relevantly, for the purposes of s 25(3) of the Coroners Act, Casuarina Prison medical staff did not have input into the timing of his whole brain radiotherapy treatment, as it was appropriately considered by the Specialist Oncology team at Fiona Stanley Hospital. From the custodial perspective I am satisfied that the Casuarina Prison medical staff appropriately escalated Mr Pickin's care for external specialist medical services when required, and prompt arrangements were made to convey him to hospital in accordance with his treatment plans.

101. At the inquest I heard evidence from Dr Catherine Gunson (Dr Gunson), Prison Medical Officer and Acting Director of Medical Services, Department of Justice, regarding the medical management of Mr Pickin's lung cancer. Dr Gunson had regard to Mr Pickin's medical records, and Dr Warburton's report. In Dr Gunson's opinion, from the moment Mr Pickin mentioned concerning signs, he was investigated and managed very quickly and thoroughly, noting that his care was escalated to appropriate specialists on time or as quickly as can be managed in the public health system. I also accept this opinion.[74]

102. Dr Gunson considered Mr Pickin's care was comparable to that which a person in his condition would have received in the community, and that in some ways it was of a higher standard given that he was placed at Casuarina Prison infirmary, with a doctor close by or readily accessible. I am satisfied that Mr Pickin's care and treatment in connection with his lung cancer was comparable to that which a person in his condition would have received in the community.[75]

103. Dr Gunson considered there were some deficiencies in Mr Pickin's care, unrelated to his death. He was not, as a new patient, questioned about prior colon cancer screening, upon admission to custody, nor was he prescribed pneumococcal immunisation, despite fulfilling the criteria due to his history of COPD. I accept those comments, and also note that such deficiencies were unrelated to Mr Pickin's death.[76]

[74] ts 9; ts 16 to 17; ts 26.
[75] ts 26.
[76] Exhibit 1, tab 19; ts 9 to 11; ts 22.

104. Like Dr Warburton, Dr Gunson did not consider that the two-week delay in commencing Mr Pickin's whole brain radiotherapy made a difference to his outcome, given that he had Stage IV lung cancer. In her experience an average of 19% of patients remain alive 12 months from diagnosis of Stage IV lung cancer. Dr Gunson also agreed with Dr Warburton's opinion, that it was appropriate to await the results of molecular testing, to consider options for a less toxic treatment selection.[77]

105. Ultimately Mr Pickin died from complications of his left leg infection. At the inquest, Dr Gunson explained that cancer treatment can affect a person's vulnerability to infection: "*…. something that might easily be managed by an immunocompetent person could result in sepsis for a person who is …. on cancer treatment*."[78]

106. In Mr Pickin's case, at the inquest it was posited by Dr Gunson that the leg infection may have taken hold when they injected his bursa with corticosteroid, given that the needle was introduced through the skin. However, she noted it was carried out in a hospital environment at Bethesda Hospital and the procedure was likely to have been undertaken using a normal aseptic technique. Another possibility posited by Dr Gunson, given his inflamed bursa, was that it became the focus of any bacteria circulating in his bloodstream.[79]

107. However, Dr Gunson agreed that it is not possible to say, in retrospect, how Mr Pickin's leg became infected. In her opinion it was reasonable to give Mr Pickin the corticosteroid injection given he was in extreme pain. I accept that opinion and can make no finding on how his leg infection occurred.[80]

108. Dr Gunson had no concern about Mr Pickin being discharged from hospital on the various occasions, and did not consider, from a clinical perspective, that he should have been kept in hospital the whole time.[81] I accept those comments and note that on each occasion he was discharged into the care of the Casuarina Prison infirmary.

[77] Exhibit 1, tab 19; ts 12 to 16; ts 28; ts 32.
[78] ts 18.
[79] ts 18 to 19.
[80] ts 18 to 19; ts 29.
[81] ts 20 to 21.

109. On the matter of Mr Pickin being in restraints during his last admission at Fiona Stanley Hospital (being shackles on his hands and/or feet) until they were removed on 21 March 2022, Dr Gunson explained that they were removed due to him having pressure sores. Within the context of Mr Pickin's last admission at Fiona Stanley Hospital, Dr Gunson felt that restraints should not be used if it is not considered that the patient will try and escape or be violent towards the hospital staff. My comments on the usage of restraints are made below.[82]

110. Overall, I am satisfied that Casuarina medial staff made prompt and justifiable decisions to convey Mr Pickin to Fiona Stanly Hospital for Specialist Oncology treatment as and when required, and that when Mr Pickin was discharged back to Casuarina Prison infirmary, the clinical staff carried out the hospital's recommendations in respect of his treatment and care.

Comments on usage of restraints

111. The Department of Justice, through its lawyer the SSO, advises that unless a variance is provided for a prisoner who is conveyed and admitted to hospital has standard restraints applied. Standard restraints on a hospital sit (being the time when the Ventia officers guard the prisoner in hospital) involve either a handcuff to the bed or ankle cuffs and chain to the bed.[83]

112. I have had regard to the Commissioner's Operating Policy and Procedure (COPP 12.3). It is entitled: *Conducting Escorts* and it addresses the procedures for the transport of persons in custody in a safe and humane manner. Paragraph 5.3 of COPP 12.3 outlines the reasons as to why the usage of restraints may be prohibited. It provides that prisoners with significant medical and/or mobility issues shall not be placed in restraints unless there is a requirement to do so following an External Movement Risk Assessment, that has been approved by the Superintendent or the Officer in Charge. A range of particular considerations are noted, when deciding upon the usage of restraints in the hospital setting, including whether the prisoner is terminally ill, or frail.[84]

[82] ts 23.
[83] Exhibit 2; ts 43 to 44.
[84] Exhibit 1, tab 21.

113. At the inquest Ms Toni Palmer, Senior Review Officer for the Death in Custody Team, Department of Justice (Corrective Services) (Ms Palmer) confirmed that, on 25 February 2022 when Mr Pickin was transferred from Casuarina Prison infirmary to Bethesda Hospital for management by the palliative care staff, he was assessed as not requiring restraints, due to his medical status and prognosis, his minimum security rating, and the arrangement for two escorting officers to sit with him.[85]

114. However, I was informed that when Mr Pickin was subsequently transferred from Casuarina Prison infirmary to Fiona Stanley Hospital on 5 March 2022, there was no External Movement Risk Assessment for this occasion, and he was transferred there under a standard restraint regime. Ms Palmer posited that it may have been an oversight and explained that upon her own inquiry she was informed that the COPP 12.3 Policy was not adhered to. At the inquest Ms Palmer's view was that Mr Pickin, being terminally ill or nearing death, should not have been conveyed in restraints on the occasion of his transfer to Fiona Stanley Hospital on 5 March 2022. Ms Palmer referred to there being an element of frailty about him and confirmed that the Department of Justice accepted this view.[86]

115. After the inquest the Department of Justice, through its lawyer the SSO, subsequently informed the court that Mr Pickin was transferred to Fiona Stanley Hospital on Saturday 5 March 2022 and being outside usual business hours, an External Movement Risk Assessment would not have been done, as such assessments are only undertaken by authorised staff who work during usual business hours.[87]

116. A Hospital Admittance Advice was prepared for Mr Pickin, in respect of his 5 March 2022 transfer to Fiona Stanley Hospital. It recorded that Mr Pickin was to be kept in restraints, namely handcuffs and a security chain link, and that he was to be transferred at 11.00 am on that date. At the inquest it was not immediately apparent as to how the decision regarding the restraints on this occasion was made.[88]

117. Again, after the inquest the Department of Justice, through its lawyer the SSO, explained that the prison officer who completed the Hospital Admittance

[85] Exhibit 1, tab 20; ts 34 to 35.
[86] ts 36 to 37; ts 48 to 49.
[87] Exhibit 2.
[88] Exhibit 1, tab 17; ts 37.

advice did so later in the day on 5 March 2022, upon commencing his shift, having noted one had not been filled out. It was filled out by him after Mr Pickin had been admitted to Fiona Stanley Hospital, and in reliance upon the information contained within the Offender Movement Information form.[89]

118. The Senior Prison Officer who completed the Offender Movement Information form on Saturday 5 March 2022 subsequently reported to the court that this form is populated by data for the prisoner that is drawn from the Total Offender Management System's records. He explained that these records do not include information about the prisoner's terminal illness status or the reason for their transfer. He could not recall whether the automatic default position on the Offender Movement Information Form was for the usage of restraints (unless restraints were specifically rejected). At the time he completed the Offender Movement Information Form, he did not know of Mr Pickin's terminally ill status.[90]

119. By way of improvement, the Senior Prison Officer who completed the Offender Movement Information Form suggested that having a terminal illness alert on the prisoner's Total Offender Management System would be helpful.[91]

120. Also, by way of improvement Ms Palmer suggested adding a prompt in the Hospital Admittance Advice Form, to request a response as to whether an External Movement Risk Assessment has been done for the prisoner. Ms Palmer informed the court she had raised this within the Department of Justice (Corrective Services) with a view to seeking its implementation.[92]

121. The further steps being taken to ensure that terminally ill prisoners are not wrongly restrained are outlined below under the heading: *Improvements*.

122. On the matter concerning the restraints that were applied to Mr Pickin during his final hospital admission, I am satisfied that if the Total Offender Management System had provided for a terminal illness alert, it is likely that the Senior Prison Officer would not have made the arrangements for the application of the restraints, and that would have been the appropriate

[89] Exhibit 2.
[90] Ibid.
[91] Exhibit 2.
[92] ts 39.

outcome. They should not have been applied because he was terminally ill and frail.

123. The systemic improvements directed towards guiding appropriate decision making on the application of restraints are referred to immediately below.

IMPROVEMENTS

124. At the inquest Ms Palmer outlined the further steps being taken to ensure that terminally ill prisoners are not wrongly restrained by reference to information reported to the court by the Department of Justice, through its lawyer the SSO, as follows:

a) The Department of Justice is working on the addition of a terminal illness medical alert within the Total Offender Management System to be completed by medical staff and to be visible to all users of such a system. The aim is to assist prison officers in identifying terminally ill prisoners, ascertaining whether or not restraints are required by reference to the requirements of the COPP 12.3 Policy, and to record this information, so that appropriate instructions are communicated and implemented;

b) A mandatory field is being added to the forms related to the movement of prisoners, including the External Movement Risk Assessment documentation, for staff to record, when a prisoner is being transported for palliative care, whether they are likely to return to prison, or whether they are being transported to a hospital or hospice for end-of-life care; this will allow the prison officer to more accurately assess the requirement for the usage of restraints; and

c) An amendment is being made to the COPP 12.3 Policy to make clear that the considerations militating against the usage of restraints (unless there is a requirement) include the prisoner being categorised as a Stage Three or a Stage Four terminally ill prisoner.[93]

125. As indicated earlier in this finding, further information was provided to me after the inquest, following my query regarding the level of guidance that is available for prison officers under COPP 12.3, concerning the usage of restraints. Through its lawyer the SSO, the Department of Justice draws my

[93] Exhibit 1, tab 22; Exhibit 2; ts 39 to 40.

attention to the following improvements, in addition to those referred to immediately above, to provide clearer guidance on the usage of restraints, for officers who are escorting prisoners who are terminally ill:

a) The inclusion of an explanatory note within COPP 12.3 that, if the prisoner comes within one of the cohorts listed within paragraph 5.3.1 (such as, now, a Stage Three or Stage Four terminally ill prisoner), then restraints are not to be applied unless there remains a need to do so after a Prisoner Movement Risk Assessment, or an External Movement Risk Assessment has been done; and

b) The amendment of the processes for the Prisoner Movement Risk Assessment, the External Movement Risk Assessment, the Offender Movement Information, and the Hospital Admission Advice, so as to require staff to specifically consider whether the prisoner has a significant medical condition or mobility issue, and if so, to justify any restraint usage.[94]

126. I have considered the sufficiency of the guidance available for prison officers when deciding whether or not to recommend and/or implement the usage of restraints, by reference to the further information provided to me. I accept the submission of the Department of Justice, through its lawyer the SSO, that the above changes will result in clearer guidance on the usage of restraints for prison officers who are arranging the escort of prisoners who are terminally ill.[95]

127. In reliance upon the information provided to me, there is therefore no need for me to make recommendations concerning clearer guidance in the area of the usage of restraints.

CONCLUSION

128. From the time that Mr Pickin showed a sign that raised a suspicion for lung cancer, his treatment and care at Casuarina Prison was appropriately and assiduously managed by the clinical staff in the infirmary, in consultation with external medical specialists. Despite treatment efforts that were commensurate with what may be expected in the community, he continued to deteriorate and died.

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[94] Exhibit 2; ts 51 to 56.
[95] Ibid.

129. Other than the matter of the application of restraints during his final admission to Fiona Stanley Hospital, the supervision, treatment and care he received was of an appropriate standard, and his medical care overall, including at Fiona Stanley Hospital, was of a high standard. I accept that steps have been taken by the Department of Justice to provide further guidance to prison staff on the usage of restraints for terminally ill prisoners who are being conveyed to hospital, and during their stay in hospital. This should be an improvement in the area of supervision of terminally ill prisoners, to better support their transportation in a humane manner, whilst taking account of safety considerations.

R V C Fogliani
State Coroner

28 August 2024