JURISDICTION	**:**	CORONER'S COURT OF WESTERN AUSTRALIA
ACT	**:**	CORONERS ACT 1996
CORONER	**:**	SARAH TYLER, CORONER
HEARD	**:**	13 NOVEMBER 2025
DELIVERED	**:**	9 MARCH 2026
FILE NO/S	**:**	CORC 1337 of 2025
DECEASED	**:**	PENNY, RUSSELL GRAHAM

Catchwords:

Nil

Legislation:

Nil

Counsel Appearing:
Sergeant C. Martin assisted the Coroner
Ms F. Negus and Ms A. Jakupovic (SSO) appeared on behalf of the Department of Justice.
Ms O. Roberts and Ms Y. Tamba (ALSWA) appeared on behalf of Mr Nicholas Penny and Ms Marie Williams.

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

Nil

Coroners Act 1996
(Section 26(1))

RECORD OF INVESTIGATION INTO DEATH

*I, Sarah Tyler, Coroner, having investigated the death of **Russell Graham PENNY** with an inquest held at Perth Coroners Court, Central Law Courts, Court 85, 501 Hay Street, PERTH, on 13 November 2025, find that the identity of the deceased person was **Russell Graham PENNY** and that death occurred on 10 May 2025 at Fiona Stanley Hospital, 102-118 Murdoch Drive, Murdoch, from complications of viral hepatitis related advanced-chronic liver disease (medically palliated) in the following circumstances:*

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INTRODUCTION

1. Russell Graham Penny (Russell) died at Fiona Stanley Hospital on 10 May 2025 from complications of viral hepatitis related advanced-chronic liver disease. He was 56 years old.

2. At the request of Russell's family, I have referred to Russell by his first name throughout this finding. No disrespect is intended from the use of Russell's first name.

3. At the time of his death, Russell was a sentenced prisoner in the custody of the Chief Executive Officer at the Department of Justice (the Department).[1]

4. As Russell was a sentenced prisoner immediately before his death, Russell was a 'person held in care' under the *Coroners Act 1996* (WA) (the Act) and his death was a "*reportable death*".[2] In these circumstances, a coronial investigation is mandatory.[3]

5. The Act requires a Coroner who conducts an inquest into the death of a person held in care to comment on the quality of the treatment, supervision and care of the person while in that care.[4]

6. I held an inquest into Russell's death at Perth on 13 November 2025. The following witnesses gave oral evidence at the inquest:

    a. Anthony Brackenreg (Review Officer, at the Department); and

    b. Dr Catherine Gunson (Deputy Director, Medical Services, at the Department).

[1] *Prisons Act 1981* (WA) s 16
[2] *Coroners Act 1996* (WA) s 3
[3] *Coroners Act 1996* (WA) s 22(1)(a)
[4] *Coroners Act 1996* (WA) s 25(3)

7. The documentary evidence at the inquest comprised three volumes of the coronial brief, which was tendered by Sergeant assisting as exhibit 1 to exhibit 3, in accordance with the corresponding volumes, at the commencement of the inquest.

8. At the conclusion of the inquest, I sought further information from the Department regarding some of the issues identified in the course of the inquest. I received a response to this request in a letter dated 26 November 2025. I sought copies of the documents referred to in that letter, and received those documents on 15 December 2025. These materials were incorporated into exhibit 4. I also received written submissions on behalf of Russell's family, and from the Department after the oral evidence had been heard in this case.

9. The inquest primarily focused on the supervision, treatment and care provided to Russell during his imprisonment. Given the circumstances of Russell's death, there was a focus on the medical care provided to Russell, with an emphasis on the care provided to him regarding his aggressive form of liver cancer.

RUSSELL

Background

10. Russell was born on 21 July 1968 in Narrogin. He was a Noongar man who primarily lived in the Albany and Tambellup region.

11. Russell was the oldest of four children. He had a challenging upbringing, experiencing periods of hardship and poverty, including times living in Aboriginal missions. Given these challenges, Russell struggled at school, and struggled with literacy, completing school partway through year 8. However, despite these difficulties, Russell was able to learn to read and write later in his life[5] and he achieved a TAFE qualification in horticulture.

[5] Exhibit 1, Vol 1, Tab 15.2.

12. While Russell experienced challenges in his life, he was also a loved son, brother, father, grandfather and family member.[6] I note that multiple members of Russell's family attended the inquest, reflecting the close-knit nature of Russell's family, and their grief following his passing.

13. Russell had four adult children, two sons, and two daughters.

14. Russell's family explained that Russell was a man who always wanted the best for his family.[7] He was a handyman, with a skill for fixing cars, and he would chop wood to help his family.[8]

15. Sadly, Russell also struggled with alcohol and illicit substance abuse during his life. He spent many years of his life in prison.

Circumstances of imprisonment

16. On 7 September 2023, Russell was remanded into custody at Albany Regional Prison after he was convicted after trial in the District Court, sitting in Albany, of persistently engaging in family violence.[9]

17. On 23 February 2024, Russell was sentenced to imprisonment for 6 years, backdated to commence on 1 September 2023. His earliest eligible date for parole was 31 August 2027.[10]

Prison history

18. Russell had the following prison placements and transfers during his final admission to prison:

    i. Albany Regional Prison: 7 September 2023 to 2 January 2025 (483 days);

[6] Exhibit 1, Vol 3, Tab 2.
[7] Exhibit 1, Vol 3, Tab 2.
[8] Exhibit 1, Vol 3, Tab 5.
[9] Exhibit 1, Vol 1, Tab 15.2.
[10] Exhibit 1, Vol 1, Tab 15.

ii. Casuarina Prison: 2 January 2025 to 3 March 2025 (60 days);

iii. Albany Regional Prison: 3 March 2025 to 25 March 2025 (22 days); and

iv. Casuarina Prison: 25 March 2025 to 10 May 2025 (46 days).

19. When Russell was remanded into custody at Albany Regional Prison in 2023, he was identified as a returning prisoner, as his adult incarceration history dated back to 1987.[11] In total, it appears that Russell had spent more than 20 years of his life in custody at various prisons.

20. During his final period of imprisonment, Russell spent most of his time in custody at Albany Regional Prison. When he entered custody in September 2023 he was assessed as requiring a maximum-security rating. In March 2024, Russell's security rating was reduced to medium-security, and it was recommended that he remain at Albany Regional Prison, which was Russell's preference. [12]

21. Russell experienced a significant deterioration of his health in December 2024, and he was transferred to Casuarina Prison to assist in the management of his health issues.

22. An examination of the Department's Total Offender Management Solution (TOMS) data for Russell demonstrated that he was, during his final period of imprisonment, a generally well behaved prisoner who was not a management issue, other than when Russell disagreed with placement decisions in respect of the prison location in which he was to be housed.[13]

[11] Exhibit 1, Tab 15.8, p 5.
[12] Exhibit 1, Tab 15, p 9; Exhibit 1, Tab 15.8, p 9, Exhibit 3, Tab 5, p 1.
[13] Exhibit 1, Tab 15.14; Exhibit 1, Tab 15.15.

OVERVIEW OF RUSSELL'S MEDICAL CONDITIONS AND TREATMENT IN PRISON

Medical History

23. Russell's medical history included diagnoses of asthma, type 2 diabetes, hypertension, hypercholesterolaemia, chronic hepatitis C, and cirrhosis of the liver, secondary to chronic hepatitis C and alcohol misuse.[14]

24. Russell was first diagnosed with hepatitis C in March 2010, and it was suspected he contracted that virus through intravenous drug use.[15] He was successfully treated for that virus, but it seems Russell continued to use intravenous drugs. He again tested positive for hepatitis C in 2016[16] during a period of incarceration, and again was successfully treated.[17]

25. Given his history of hepatitis C infection, while Russell was in prison from around 2016 he received regular liver scans, and regular blood tests, to monitor for signs of chronic liver disease, and liver cancer. These are known complications of hepatitis C. Russell also received methadone while he was in custody between 2015 and 2018, in an effort to assist him to cease his intravenous drug use.[18]

26. In January 2020, blood tests showed that Russell had contracted hepatitis C again, and while treatment for this virus was planned, Russell was released from prison into the community before any treatment could be prescribed.

27. In February 2022, Russell returned to custody for less than three months, at which time he was still testing positive to hepatitis C. He was released from prison into the community in May 2022, again before any treatment could occur.

[14] Exhibit 3, Tab 1, p 4.
[15] Exhibit 3, Tab 1, p 7.
[16] Exhibit 3, Tab 1, p 4.
[17] Exhibit 3, Tab 1, p 4.
[18] Exhibit 3, Tab 1, p 5.

28. Upon his return to prison in September 2023, Russell advised he had not taken any medications for over a year, and said he had been using intravenous drugs again in the community.[19]

Management of medical issues

29. Russell was reviewed by medical staff upon his admission to Albany Regional Prison, and his existing health conditions were closely monitored.[20]

30. Blood tests taken shortly after Russell's entry into custody on 25 October 2023 as part of the regular monitoring of Russell's health showed raised AFP levels, which can be a marker for liver cancer. However a routine ultrasound taken on 25 March 2024 showed Russell's expected chronic liver disease, but no lesions or masses associated with cancer growth.[21]

31. In June 2024, Russell was started on hepatitis C treatment, and he was successfully cleared of the virus by October 2024.

32. On 15 November 2024, a routine ultrasound undertaken due to Russell's chronic liver disease identified new lesions on Russell's liver, which hadn't been detected on scans taken 6 months earlier.[22] On the same day, Russell had a CT scan taken, which confirmed the new lesions were suspicious for liver cancer (hepatocellular carcinoma).[23] Blood tests showed that Russell's AFP levels had also significantly risen from his March 2024 blood test results, which increased the concern that Russell had developed cancer.

33. Russell spoke with a doctor at Albany Regional Prison about these results on 20 November 2024.[24] The medical team at Albany Regional Prison also consulted with local specialists at Albany Health Campus, and at Fiona Stanley Hospital which is where the specialist

[19] Exhibit 3, Tab 1, p 5.
[20] Exhibit 3, Tab 1, p 6.
[21] Exhibit 2, Tab 1, p 192.
[22] Exhibit 3, Tab 1, p 6.
[23] Exhibit 3, Tab 1, p 18.
[24] Exhibit 3, Tab 1, p 11.

Gastroenterology Team is based, and further imaging scans were booked for Russell to look for evidence of metastases, and to confirm the cancer diagnosis.[25] The possible cancer diagnosis and the additional investigations that were required were explained to Russell by the doctor on that date.

34. Russell underwent a liver MRI on 24 December 2024, which confirmed that he had developed liver cancer.

35. Russell's condition deteriorated through December 2024. At a medical review on 27 December 2024, Russell was noted as having worsening vagueness and confusion, decreasing mobility due to a left leg oedema, ascites on the abdomen and displaying asterixis (tremor of the hand).[26] He was found to have developed decompensated liver failure (also known as Child Pugh B).

36. He was taken by ambulance to Albany Health Campus, for treatment for a decline in brain function that can occur as a result of severe liver dysfunction (hepatic encephalopathy).[27]

Russell is classified at Stage 3 on the Department's terminally ill register

37. On the same day, Russell was classified as a Stage 3 terminally ill prisoner, on the Department's terminally ill prisoner list. A Stage 3 terminally ill prisoner is considered by the Department to be at high risk of sudden death or rapid deterioration, and is expected to die within three months. Russell's liver cancer and decompensated liver failure appear, in the end, to have therefore greatly reduced his life expectancy.

38. Russell's management on the terminally ill prisoner list is explored further below, under the heading *Issues Raised by the Evidence*.

[25] Exhibit 3, Tab 1, p 21.
[26] Exhibit 3, Tab 1, p 21.
[27] Exhibit 2, Tab 1.6 20241227 Discharge Summary

Admission to Albany Health Campus on 27 December 2024

39. Russell remained at Albany Health Campus until 31 December 2024, a period of 5 days.

40. While he was in hospital, MRI and CT scans were reviewed, and they confirmed Russell had liver cirrhosis, and multifocal liver cancer. This means that Russell had multiple, small tumours in different parts of his liver. As they were not confined to one area of the liver, surgery was not an option for Russell.[28] The treating team at Albany Health Campus felt that Russell's hepatic encephalopathy was likely precipitated by constipation, and he was given medication to manage that condition.

41. While Russell was in hospital, he was visited by his ex-partner and three of his children. Given Russell's diagnosis, medical staff took the opportunity to speak with Russell and his family on 28 December 2024 about Russell's Goals of Care, in light of his liver cancer.

42. Russell said that he would want all treatment options considered if they were medically indicated in managing his condition. However, he said that he valued quality of life, and understood that his cancer prognosis may alter his treatment choices.[29]

43. Russell's condition improved, and he was discharged from hospital on 31 December 2024. The ongoing management of Russell's liver cancer was referred to the Fiona Stanley Hospital Gastroenterology Team, given their specialist knowledge.[30]

Transfer to Casuarina Prison on 2 January 2025

44. Russell was originally discharged from hospital back to Albany Regional Prison on 31 December 2024. On 2 January 2025, he was transferred to Casuarina Prison. There were two reasons identified for that transfer.

[28] Transcript, p 58.
[29] Exhibit 1, Tab 13, p 2.
[30] Exhibit 3, Tab 1, p 12; Transcript, p 44-45.

45. Firstly, although Russell's health had been stabilised at Albany Health Campus, he required ongoing close monitoring after the worsening of his liver failure. Casuarina Prison has health staff on site 24 hours a day at the Casuarina Infirmary, and is therefore better able to respond if prisoners experience an acute deterioration in their health.[31] As a result, it was determined that Russell was "*to be transferred to the Infirmary at Casuarina to facilitate 24-hour nursing support.*"[32]

46. Secondly, Russell's liver cancer was to be managed by Fiona Stanley Hospital. The specialty treatment that the specialist teams at Fiona Stanley Hospital could offer Russell could not be offered in Albany.[33]

47. Russell was placed in the Casuarina Infirmary upon his transfer to Casuarina Prison. He was regularly reviewed while in the infirmary, and reported to be feeling much improved, with his hepatic encephalopathy having resolved.[34] By 13 January 2025, Russell was well enough to leave the infirmary, and he entered the general population of Casuarina Prison.

48. On 21 January 2025, Russell attended the Fiona Stanley Hospital Liver Clinic, where he was being assessed for suitability for Selective Internal Radiation Therapy (SIRT) to treat his liver cancer. As Russell's liver lesions were atypical, the Liver Clinic decided that Russell required further tests, including a liver biopsy, before a decision could be made about his suitability for SIRT treatment.[35] The Liver Clinic doctor noted that Russell received this information "*stoically*" and it appears Russell was willing to undergo the further tests to assess his suitability for SIRT treatment.[36]

49. On 31 January 2025, Russell attended Fiona Stanley Hospital where a SIRT workup and a liver biopsy were performed.[37] These procedures

[31] Exhibit 3, Tab 1, p 12.
[32] Exhibit 1, Tab 17.1 p 2.
[33] Exhibit 3, Tab 1, p 12.
[34] Exhibit 3, Tab 1, p 23.
[35] Exhibit 2, Tab 1.6 20250121 Hepatology Outpatient Clinic.
[36] Exhibit 2, Tab 1.6 20250121 Hepatology Outpatient Clinic.
[37] Exhibit 2, Tab 1.6 20240131 Operation Documentation.

took place without complications[38], and Russell returned to the Casuarina Infirmary for monitoring after the procedure. He remained stable, and was cleared to leave the infirmary and re-join the general population in Casuarina Prison on 24 February 2025.

50. It was noted that Russell would have ongoing follow up with the Liver Clinic, and that there was a plan for Russell to start radiation therapy in the near future, pending his biopsy results. It was also noted that Russell remained at high risk of rapid clinical deterioration.[39]

51. On 26 February 2025, Russell was directed to move from the infirmary to a general population unit within Casuarina Prison. He refused to move from the infirmary into the general population units. Russell told prison staff that he wanted to return to Albany Regional Prison.[40]

52. In light of Russell's refusal of a direct order to leave the infirmary and move back to the general population units, Russell was placed on a confinement regime, and was confined to a cell for 3 days.[41]

53. However, on 27 February 2025, one day into Russell's confinement, prison staff began the process to arrange Russell's transfer back to Albany Regional Prison, in accordance with his wishes. This included a Prisoner Movement Risk Assessment, which noted that Russell had a "*terminal illness*" and recorded that Russell's attitude towards the proposed transfer back to Albany Regional Prison was positive, and that he was accepting of the transfer.[42]

54. On 3 March 2025, Russell was transferred back to Albany Regional Prison.[43] Records of a nursing assessment completed on 2 March 2025 for the purposes of this transfer indicate that Russell had "*Nil*" external appointments expected, or already existing.[44]

[38] Exhibit 3, Tab 1, p 12.
[39] Exhibit 2, Tab 1, Medical Records – Summary & Progress Notes, p 52.
[40] Exhibit 1, Tab 15, p 10.
[41] Exhibit 1, Tab 15, p 11.
[42] Exhibit 1, Tab 15.16, p 2.
[43] Exhibit 1, Tab 15, p 11.
[44] Exhibit 2, Tab 1, Medical Records – Summary & Progress Notes, p 51 – 52.

55. In fact, Russell had an appointment with the Fiona Stanley Hospital Liver Clinic scheduled for 5 March 2025 as a follow up to his SIRT workup and liver biopsy, which he was unable to attend, given his transfer to Albany Regional Prison.

56. The evidence at the inquest was unable to clarify exactly why it was decided that Russell should be transferred to Albany Regional Prison at this time, however Dr Gunson explained that Russell's "*overall condition looked to have improved and stabilised over January and February 2025, and he had undergone his SIRT procedure without complications; therefore, it was reasonable for him to transfer back to Albany Regional Prison, once he had been assessed as fit to do so. He was keen to return there as he had supportive friends and family within the prison, and his mother lived in Albany*."[45]

57. After Russell missed his scheduled appointment on 5 March 2025, the appointment was re-scheduled for 21 May 2025, as confirmed by an email dated 7 March 2025.[46]

58. The issue of this missed appointment on 5 March 2025 is explored further below, under the heading *Issues Raised by the Evidence*.

Return to Albany Prison on 3 March 2025

59. Russell arrived at Albany Regional Prison on 3 March 2025, however less than a week into his time at Albany Regional Prison, on 9 March 2025, Russell was seen by a nurse to be unable to self-inject his insulin for the management of his diabetes. The nurse assisted Russell to inject his medication on that date, but it quickly became apparent that health staff at Albany Regional Prison were concerned that Russell required a level of health support that couldn't be offered at Albany Regional Prison.[47]

[45] Exhibit 3, Tab 1, p 12.
[46] Exhibit 4, p 23
[47] Exhibit 3, Tab 1, p 13.

60. Russell needed help from other prisoners to walk up and down stairs, and relied on family members and friends within the prison to assist him in his daily activities. He was unable to maintain a steady grip, and appeared to be experiencing short term memory loss. His diabetes, which was previously stable and controlled through self-administered medication, became unstable with Russell experiencing very high blood sugar levels almost daily, despite assistance from the Albany Regional Prison medical team.

61. As a result, on 13 March 2025, only ten days after Russell's arrival at Albany Regional Prison, preparations began to transfer Russell back to Casuarina Prison.[48] The explanation located in the transfer paperwork was that Russell was to be temporarily transferred to Casuarina Prison for a medical appointment.[49] This transfer was deferred for unknown reasons, and subsequent transfer paperwork completed on 21 March 2025 explained that Russell was to be permanently transferred to Casuarina Prison for ongoing medical care.[50]

62. Dr Gunson explained that there were two reasons for the decision to return Russell permanently to Casuarina Prison; to allow Russell to be located in close proximity to a tertiary hospital and his treating team at Fiona Stanley Hospital, and to ensure he had access to the additional health support that could be provided at Casuarina Prison.[51]

63. On 25 March 2025, Russell returned to Casuarina Prison.

Return to Casuarina Prison on 25 March 2025

64. On Russell's return to Casuarina Prison, there was no available space in the Casuarina Infirmary. Russell was reviewed by the medical team, who considered that Russell did not yet require the level of close monitoring

[48] Exhibit 1, Tab 15.19.
[49] Exhibit 1, Tab 15.19, p 3.
[50] Exhibit 1, Tab 15.21, p 3.
[51] Exhibit 3, Tab 1, p 13.

and nursing care provided in the Infirmary, and that he could be housed in the general population.[52]

65. Despite being in the general population, Russell was assessed daily or every second day by the medical team.[53] Russell expressed his preference to be managed in the Casuarina Infirmary, but ultimately, Russell remained housed in the general population, receiving regular reviews by nursing staff and the prison doctor, including after hours as required. It appears that this level of care would not have been available to Russell at Albany Prison.

66. On 6 April 2025, Russell went to the medical centre and saw a nurse. He said he'd been experiencing shortness of breath for the past two days, had dull shoulder pain, and upper abdomen pain. The nurse consulted with a prison doctor, and arranged Russell's transfer to Fiona Stanley Hospital for assessment.

67. Russell was taken to the Emergency Department, and underwent scans and tests which showed no changes from Russell's baseline functioning. It was felt that Russell's chest pain was likely secondary to his known liver cancer. The hospital noted that Russell had missed an appointment with the Liver Clinic on 5 March 2025, and prison staff were asked to confirm Russell's new appointment and arrange appropriate transport.[54] Russell was then discharged back to Casuarina Prison.

68. Upon his return to Casuarina Prison, Russell was placed in the Crisis Care Unit overnight for monitoring following his discharge from hospital, and was then returned to the general population the following day.

69. According to notes made by a Casuarina Prison nurse on 6 April 2025 at 5.51 pm, Russell's appointment with the Fiona Stanley Hospital Liver

[52] Exhibit 3, Tab 1, p 14.
[53] Exhibit 3, Tab 1, p 14.
[54] Exhibit 1, Tab 15.23, p 2.

Clinic on 21 May 2025 had been confirmed as requested.[55] Sadly, Russell passed away before this appointment could take place.

Admission to Fiona Stanley Hospital on 20 April 2025

70. On 20 April 2025, Russell had shortness of breath after having had a viral illness for the past week. During a cell call, Russell said he was having difficulty breathing, and was experiencing chest pain. As a result, a Code Red Medical call was made, and Russell was seen by medical staff in the general population unit.[56]

71. As a result of that review, Russell was transferred to the Fiona Stanley Hospital Emergency Department for investigations and treatment that day. At the hospital, Russell tested positive to RSV (respiratory syncytial virus) and was suspected to have pneumonia.[57] A CT scan was performed which showed that Russell's hepatocellular carcinoma had increased in size, and that he had an enlarged spleen.[58]

72. The hospital medical team initially planned to treat Russell with antibiotics, and return him to Casuarina Prison. However, by 30 April 2025, Russell's condition had worsened, and he was too unwell to be discharged. The hospital medical team suspected that the antibiotic medication was making Russell's liver function worse, so the antibiotics were stopped.[59]

73. Russell's condition continued to deteriorate. His liver function became worse, he remained in pain, and he developed kidney impairment and significant anaemia. On 7 May 2025, Russell had a further medical review in which his very poor prognosis was explained to him, and Russell agreed to end-of-life care.

[55] Exhibit 3, Tab 1, p 29, Exhibit 2, Tab 1, Medical Records – Summary & Progress Notes, p 26.
[56] Exhibit 2, Tab 1, Medical Records – Summary & Progress Notes, p 10.
[57] Exhibit 3, Tab 1, p 31.
[58] Exhibit 1, Tab 12.1, p 35.
[59] Exhibit 1, Tab 12.1, p 35.

EVENTS LEADING TO RUSSELL'S DEATH

74. Russell remained in hospital at Fiona Stanley Hospital from 20 April 2025 until his death on 10 May 2025.

75. On 9 May 2025, Russell's status on the Department's terminally ill list was escalated to Stage 4 (i.e. death is imminent) due to his deteriorating liver function as a result of his aggressive form of liver cancer.[60]

76. Russell remained very frail, and the palliative care team at Fiona Stanley Hospital became involved in his care. Russell received regular pain relief, and was advised by the hospital medical team that he could have extra pain medication if needed.

77. Sadly, on 10 May 2025 in the early hours of the morning, Russell became unresponsive and a doctor at Fiona Stanely Hospital confirmed that he had died at 5.55 am.[61]

CAUSE AND MANNER OF DEATH

78. On the recommendation of the forensic pathologist, Dr Grewal, a full internal post mortem examination was not performed. Dr Grewal performed an external post mortem examination and CT scan of Russell's body. Dr Grewal also reviewed the medical records.

79. These examinations showed diffuse yellow discolouration (jaundice), widespread pulmonary shadowing with areas suggestive of pneumonia, extensive calcification of the coronary arteries and haemorrhage within the abdominal cavity (hemoperitoneum).

80. At the conclusion of the limited investigations, Dr Grewal expressed the opinion the cause of death was complications of viral hepatitis related advanced-chronic liver disease (medically palliated).[62] Dr Grewal also

[60] Exhibit 1, Tab 15.30.
[61] Exhibit 1, Tab 4, p 2.
[62] Exhibit 1, Tab 6.

stated that in his opinion, Russell's death was consistent with natural causes.

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

ISSUES RAISED BY THE EVIDENCE

Russell's missed appointment on 5 March 2025

82. As outlined above, Russell missed a scheduled appointment at the Fiona Stanley Hospital Liver Clinic on 5 March 2025, after he was transferred from Casuarina Prison to Albany Regional Prison. It appears this transfer occurred in no small part due to Russell's request to return to Albany.

83. The purpose of the scheduled appointment on 5 March 2025 was to discuss what, if any, treatment options were available to Russell in relation to his liver cancer.[63]

84. Russell had undergone a liver biopsy and SIRT workup on 31 January 2025 to consider whether he was suitable for SIRT therapy. On 12 February 2025, the results of these investigations established that Russell was not suitable for SIRT therapy, as his liver disease was extensive, and there was a high risk of liver decompensation from liver failure, if this therapy was undertaken.[64] As a result, the SIRT therapy appointment scheduled for 18 February 2025 was cancelled by Fiona Stanley Hospital.

85. The appointment scheduled for 5 March 2025 was for the purpose of discussing treatment options for Russell, but he did not attend, due to prison transport problems, namely that Russell was in Albany and not in Perth as anticipated when the appointment was booked.

[63] Exhibit 1, Tab 16, p 1.
[64] Exhibit 1, Tab 16, p 1.

86. The evidence at the inquest was unable to establish why the appointment could not have proceeded in a different way, such as through a telehealth appointment.

87. In a letter to the Coroner's Court of Western Australia dated 3 November 2025, Ms Shaw from the South Metropolitan Health Service, of which Fiona Stanley Hospital is part, confirmed that any treatment that would have been discussed with Russell at the appointment on 5 March 2025 was for palliative intent. Russell's condition was not curable.

88. Options that would have been discussed with Russell at the appointment would have included potential immunotherapy, depending on Russell's clinical picture at the time of the review, but also on Russell's own views and wishes. Ms Shaw emphasised that it is possible immunotherapy may not have been suitable in Russell's circumstances.[65]

89. When the missed appointment was noted after Russell's attendance to the Fiona Stanley Hospital Emergency Department on 6 April 2025, it was re-scheduled. Russell was due to see the Fiona Stanley Hospital Liver Clinic on 21 May 2025. Sadly, Russell's condition deteriorated, and he passed away before that appointment could take place.

90. Russell was reviewed by the Fiona Stanley Hospital Liver Clinic when he was hospitalised on 20 April 2025. By the time of that review, Russell's disease had progressed to the point that immunotherapy was no longer an option, if it had ever been.[66]

91. It is unfortunate that Russell was transferred from Casuarina Prison to Albany Regional Prison on 2 March 2025, resulting in him missing his scheduled appointment with the Fiona Stanley Hospital Liver Clinic on 5 March 2025.

92. It appears that the transfer to Albany Regional Prison was in accordance with Russell's wishes, so that Russell could be close to family and friends, particularly his mother who was based in Albany.[67] Russell's brother explained that Russell was writing to politicians trying to

[65] Exhibit 1, Tab 16, p 1.
[66] Exhibit 1, Tab 16, p 1.
[67] Exhibit 1, Tab 12.1.

persuade the prison to house him at Albany Regional Prison.[68] Russell's family and friends were also strongly advocating for Russell to remain in Albany.[69] However, it is not clear whether anyone at the prison, within Russell's family, or Russell himself, appreciated that this transfer to Albany Regional Prison meant he would miss a scheduled appointment.

93. The evidence at the inquest was unable to establish exactly what information was considered by the Department at the time Russell's move to Albany occurred.

94. It is clear that Russell's scheduled appointment on 5 March 2025 was properly recorded in the Total Offender Management System (TOMS) database that is used by the Department to record prisoner movements. This means that the Department had information about Russell's upcoming appointment, that was available to the Department to inform their movement decisions.

95. The possibilities that appear open on the evidence are therefore:

    a. The decision to transfer Russell to Albany was made without reference to the information that was available on the TOMS database about Russell's upcoming appointment, despite that information being available, for reasons unknown; or
    b. The decision to transfer Russell to Albany was made with the knowledge that Russell had an upcoming medical appointment in Perth, in accordance with Russell's preference to be in Albany.

96. On the basis of evidence that a nursing assessment completed on 2 March 2025 recorded that Russell had "*Nil*" external appointments expected, or already existing,[70] it appears that option (a) is the more likely alternative.

97. However, on the evidence before me, it appears unlikely that this missed appointment significantly altered the course of Russell's deterioration from his terminal liver cancer. It is clear that from December 2024, Russell was considered highly likely to pass away from his terminal

[68] Exhibit 3, Tab 5, p 1.
[69] Exhibit 3, Tab 5, p 1.
[70] Exhibit 2, Tab 1, Medical Records – Summary & Progress Notes, p 51 – 52.

medical condition within three months of that diagnosis, and he in fact survived for five months after his diagnosis. The treatment that would have been discussed was not a curative treatment.

98. Despite this, it is unfortunate that Russell did not have the opportunity to speak with the Liver Clinic about treatment options that may have, at a minimum, improved the quality of the final months of his life.

99. As Dr Gunson explained in her evidence, it was important for Russell to know his treatment options, and to make his own decisions on the course of his treatment. While I have found that the delay caused by the missed appointment following Russell's transfer to Albany was unlikely to have significantly altered the course of Russell's deterioration from his terminal cancer, the reality is that anything that may have relieved Russell's symptoms, or potentially extended his life, is significant, and sadly we will never know what may have occurred had Russell attended this appointment.

100. I am satisfied that the Department was endeavouring to provide Russell with the outcome he sought, by authorising his return to Albany to be close to his family at a time where his health was very poor and it appears both he and his family were strongly advocating for that outcome. It is unfortunate that we cannot know whether Russell was making an informed choice to prioritise being with his family over attending his scheduled appointment, or whether had the appointment been noted and discussed before his move, Russell may have asked to remain at Casuarina Prison to attend his appointment, or arrangements may have been made for Russell to speak with his specialist team via telehealth or through other means without preventing his transfer.

101. In her evidence at the inquest, Dr Gunson had given careful thought to what could be done in the future to prevent custodial movements officers either being unaware of, or overlooking, urgent upcoming medical appointments when entering plans for transport in the TOMS database.

102. Dr Gunson contemplated an alert being inserted into the TOMS database to notify custodial movements officers of urgent upcoming medical appointments, which could be done without breaching patient privacy, and could inform any decision making about prisoner movements.

103. Russell's family have urged me to make a recommendation to the Department regarding the introduction of such an alert on the TOMS database.

104. As a result, I sought further information from the Department, in which the Department confirmed that existing current practice requires the inclusion of this information on the TOMS database for consideration in movement decisions, and in Russell's case, that information was available on the TOMS database when he was moved. Accordingly, a recommendation as contemplated does not appear likely to have any utility.

105. Instead, I urge the Department to review and consider whether their current processes on the TOMS database appropriately highlights urgent upcoming medical appointments for prisoners when custodial movements officers are considering prisoner placements.

106. It may be that a more prominent alert on the TOMS database would assist custodial movements officers in their functions, or that further training would assist all staff in accessing all relevant information on the TOMS database to inform movements decisions.

107. I trust that the circumstances of Russell's transfer, and his subsequent missed medical appointment, will be a helpful example in training all staff to understand the importance of movements decisions being appropriately informed by a person's medical status and pending external appointments.

108. However, I take some comfort that in Russell's case, in April 2025 after Russell missed his 5 March 2025 medical appointment, it is apparent that custodial movements officers were aware of the rescheduled outstanding medical appointment in Perth due on 21 May 2025. It seems that this pending appointment (amongst other considerations) prevented Russell's return to Albany at that time, despite Russell's wishes and those of his family.[71]

[71] Exhibit 4, p 10.

109. This suggests that when the TOMS database is used as intended, the information about urgent medical appointments is available to, and used by, custodial movements officers to appropriately inform their decision making.

Russell's Management on the terminally ill register

110. Prisoners with a terminal illness[72] are managed in accordance with the Department's policy titled, "*Commissioner's Operating Policy and Procedure 6.2: Prisoners with a Terminal Medical Condition*" (COPP 6.2). Once a prisoner is identified as having a terminal illness they are placed on a register and a note is made in the terminally ill module of the Department's Total Offender Management Solution (TOMS).

111. A prisoner with a terminal illness is identified as Stage 1, 2, 3 or 4 depending on their expected lifespan.

112. On 27 December 2024, following his cancer diagnosis (multifocal hepatocellular carcinoma), Russell was identified as a Stage 3 terminally ill prisoner.[73] Prisoners at Stage 3 are considered to be at high risk of sudden death or rapid deterioration, and are expected to die within three months. Russell was maintained on the register with updates made on 26 February 2025, 29 April 2025 and 9 May 2025.

113. Russell was admitted to Fiona Stanely Hospital on 20 April 2025, and diagnosed with pneumonia. His liver function deteriorated further, and he developed renal failure. On 8 May 2025, active treatment was withdrawn and input was sought from the Palliative Care Team. As a result, Russell was escalated to Stage 4 on the terminally ill register on 9 May 2025. For prisoners at Stage 4, death is expected imminently.

114. An outcome of a classification at either Stage 3 or Stage 4 is that a prisoner can be considered for release on compassionate grounds by the Governor before the expiration of the term of their imprisonment (i.e. the grant of a pardon in the exercise of the Royal Prerogative of Mercy). It is entirely a matter for the Governor to determine whether release on compassionate grounds is appropriate.

[72] A terminal illness is defined as one or more conditions that on their own, or as a group, significantly increases the likelihood of a prisoner's death.
[73] Exhibit 1, Vol 3, Tab 1, p 9.

115. COPP 6.2 requires that certain tasks must be undertaken by the Department once a prisoner is classified at Stage 3 or Stage 4. One of those tasks is that a briefing note is prepared for the Minister for Corrective Services (the Minister) which is to notify the Minister of the prisoner's medical condition and life expectancy, the likelihood of the prisoner dying in custody, and any other relevant information. This briefing note is to also contain a recommendation as to whether the grant of a pardon should be exercised. This briefing note is to be prepared by the Department's Director, Sentence Management, within seven working days of the classification.

116. In Russell's case, that briefing note from the Department's Director, Sentence Management, was prepared on 7 January 2025[74], within the necessary timeframe under the Department's policies and procedures. A formal briefing note to the Minister was completed on 14 January 2025 with a recommendation that the grant of a pardon through a Royal Prerogative of Mercy is not exercised.[75]

117. The reasons given for that recommendation were the serious nature of the offence for which he was imprisoned, that Russell's treatment needs had not been assessed and therefore remain outstanding, that the victim's wishes were unknown, that appropriate community supports had not yet been explored, and therefore, that there was no current release plan.[76]

118. A prisoner who is classified at Stage 4 is to have a briefing note prepared within three working days of the classification.[77] While this process had commenced for Russell when his death was imminent, given that Russell died one day after the classification to Stage 4 was made, there was no opportunity for a briefing note to be forwarded to the Minister prior to his death.

119. I am therefore satisfied that the Department complied with its own policies and procedures in relation to Russell's management on the terminally ill register.

[74] Exhibit 1, Vol 1, Tab 17.
[75] Exhibit 1, Vol 1, Tab 17
[76] Exhibit 1, Vol 1, Tab 17.1.
[77] Exhibit 3, Tab 9, p 6.

Communication with Russell's family regarding his health

120. In the course of the inquest into Russell's death, members of Russell's family raised concerns about the degree to which they were notified of developments in Russell's health, and his transfers to hospital as his medical condition deteriorated.[78]

121. As a result, I requested some information from the Department as to communications with Russell's family.[79]

122. Department policy provides that the Superintendent, or Officer in Charge of the relevant prison, will ensure that the prisoners next of kin or appointed legal guardian is advised when a prisoner is removed to a hospital due to serious injury or illness, other than in certain specific circumstances.[80] Department policy also provides that the reasons for notifying, or not notifying, the prisoners next of kin (including any unsuccessful attempts at contacting them) shall be recorded in the TOMS database.[81] Russell's next of kin with the Department was listed as his son, Nicholas Penny.[82] However, various other members of Russell's family had contacted the Department during Russell's incarceration, to advocate for him.

123. When Russell was hospitalised at Albany Health Campus on 27 December 2024, the notes from prison officers made at the time of Russell's admission state that Russell's next of kin was unable to be contacted, although there were multiple attempts by those prison officers to telephone various family members. As a result, Russell asked prison staff to contact another person, which appears to have been successful, as five members of Russell's family were then able to arrange to visit Russell at the hospital on 29 December 2024.

[78] See Exhibit 3, Tab 2; Exhibit 3, Tab 3; Exhibit 3, Tab 4 and Exhibit 3, Tab 5.
[79] Exhibit 4.
[80] Exhibit 3, Tab 8, s 9.1.2; Transcript, p 26.
[81] Exhibit 3, Tab 8, p 10.
[82] Submission from the State Solicitor's Office dated 26 November 2025.

124. However, when Russell was hospitalised on 6 April 2025, and then returned to Casuarina Prison the same day, Russell's brother was telephoned by prison staff only on the following day, on 7 April 2025. Prison staff told Russell's brother that Russell was in good care (at that time, he was in the Crisis Care Unit), and that the medical staff would determine whether Russell needed to stay in the infirmary, or whether he could be managed in the general population.[83]

125. It does not appear that anyone contacted Russell's family about Russell's hospital admission on the date it occurred. The reasons for this are not known, but it is apparent that this was a short hospital admission, and that the Department contacted Russell's family relatively quickly (the next day), to provide information about Russell's wellbeing.

126. On 20 April 2025, Russell was again hospitalised at Fiona Stanley Hospital, and he remained in hospital until he died on 10 May 2025.

127. Dr Gunson and Mr Brackenreg both gave oral evidence at the inquest that they would expect Russell's family to have been notified of Russell's transfer to hospital by custodial staff upon his transfer.

128. Despite enquiries, the Department has been unable to identify a record of Russell's family, including Russell's listed next of kin Nicholas Penny, being notified of Russell's transfer to hospital, in accordance with the Department's policy.[84]

129. There is evidence that on 28 April 2025, Russell was granted permission to call his brother Vernon while he was in hospital, and he made a call to him at 1.45 pm that day.[85] This is consistent with Vernon's evidence that he found out about Russell's transfer to hospital about a week after it occurred.[86]

130. The next day, on 29 April 2025, Vernon contacted the Department to seek to be placed on the approved visitors list so that he could visit

[83] Exhibit 4, p 12.
[84] Submission from the State Solicitor's Office dated 26 November 2025.
[85] Exhibit 4, p 18.
[86] Exhibit 3, Tab 5, p 27; Submission from the Aboriginal Legal Service Western Australia dated 30 January 2026.

Russell at Fiona Stanley Hospital.[87] On 30 April 2025, Russell told Ventia officers supervising him at hospital that he did not want to be visited that day, but that he would pursue visits from his brother and his parents the following day.

131. It is therefore apparent that notwithstanding the Department's failure to formally notify Russell's next of kin of his hospitalisation, in accordance with Departmental policy, Russell's family had become aware of his status in hospital and were making arrangements to visit him.

132. However, the evidence suggests that Russell's listed next of kin, Nicholas Penny, and other family members, were only formally notified by staff of the Department directly about Russell's condition on 8 May 2025, when Russell's medical care was directed towards end-of-life care.[88]

133. By that time, Russell's family were well aware of his hospitalisation, and had visited him at Fiona Stanley Hospital, with the permission of the Department.

134. There is no evidence that has been placed before me to suggest that the Superintendent or any other person within the Department decided (and documented that decision) that Russell's next of kin or appointed legal guardian should not be notified that Russell had been removed to a hospital due to a serious illness, for any of the reasons outlined in Departmental policy. Nor is there any evidence that has been placed before me to indicate that attempts were made to contact Russell's next of kin, which were unsuccessful, in relation to this admission to hospital.

135. Rather, it appears that the Department overlooked the requirement to notify Russell's next of kin or appointed legal guardian of his removal to hospital on 20 April 2025 until Russell had been in hospital for some time.

[87] Exhibit 1, Tab 10, p 12.
[88] Exhibit 4, p 20.

136. In light of Russell's terminal medical condition, it is unfortunate that the Department does not appear to have complied with its own policy[89] on this occasion.

137. It is fortunate that Russell was able to telephone his brother Vernon when he asked to do so, and Russell's family were not deprived of the opportunity to visit him in hospital before his passing due to this oversight.

Approved Visitor List

138. In a similar vein, Russell's family experienced confusion and difficulty in their dealings with the Department when attempting to book visits with Russell as a prisoner in hospital during his final admission to Fiona Stanley Hospital.

139. Social visits for prisoners are governed by a Departmental policy known as the Commissioner's Operating Policy and Procedure (COPP) 7.2 "*Social Visits*".[90]

140. Departmental policy provides that visits to external facilities, such as a hospital, should be booked through the prison in which the prisoner is originally from. The Superintendent of that prison is responsible for approving the visits, and they then inform the Supervising Officers of the approval.[91]

141. New visitors are required to report to the prison in which the prisoner is originally from to have their identification checked, except in exceptional circumstances.[92]

142. For visitors who have visited that prisoner before, and have had their identity previously confirmed with a visitor photograph having been uploaded, prison officers are able to use the visitors TOMS profile that has been previously created to confirm the visitors identity, although they may need to provide photographic identification when they visit.[93]

[89] Exhibit 3, Tab 8, s 9.
[90] Exhibit 3, Tab 10.
[91] Exhibit 3, Tab 10, p 13.
[92] Exhibit 3, Tab 10, p 13.
[93] Exhibit 3, Tab 10, p 6.

143. Mr Brackenreg's evidence at the inquest was that if a visitor is listed on TOMS as a visitor for that prisoner, then the visitor would be on the approved visitors list for a prisoner at an external facility, like a hospital.[94] In that case, the process would simply be for an approved visitor to book a visit through the prison for the Superintendent to approve or not approve, and if approved, the visit could go ahead. Importantly, the visit itself would still need to be booked and approved by the Superintendent under this policy.

144. Russell's brother Vernon described to the court difficulties he and his family experienced in trying to visit Russell at Fiona Stanley Hospital during Russell's final admission to hospital. He stated that prison staff at the hospital, who I understand to be Ventia staff, would "*push back and say we had to ring the prison to book a visit first. We would have already done this before going to the hospital*."[95]

145. Unfortunately, it is not clear on the evidence when it is said that this occurred for Vernon, and it does not appear that any family visits were requested and then booked and approved, other than those outlined below.

146. As explained above, Russell was granted permission to call his brother Vernon on 28 April 2025, and that call took place at 1.45 pm that day.[96]

147. The available evidence suggests that Russell was approved to have his lawyers visit him on 29 April 2025, and his lawyers were placed on the approved visitors list. Russell was visited by his lawyers at 2.00 pm that day.

148. On the same day, Russell asked to have his brother Vernon placed on the approved telephone call list, so that he could speak with his brother again, and Ventia officers made enquiries about that approval.[97] On 30 April 2025, Ventia officers were advised that calls could not be approved, but the Ventia officers asked Russell if he would like to pursue visits from his brother. Russell declined that offer, but said he

[94] Transcript, p 28.
[95] Exhibit 3, Tab 5, p 3.
[96] Exhibit 4, p 18.
[97] Exhibit 1, Tab 10, p 12.

would pursue visits from both his brother and parents tomorrow.[98] It does not appear that Russell pursued that request the next day.

149. On 30 April 2025, Russell was approved to receive visits from a different lawyer, and he was visited by his lawyer on 1 May 2025.

150. On 4 May 2025, Russell asked to make a phone call to his brother Vernon. Ventia officers contacted their supervisor requesting phone calls and visits for Russell's brother Vernon. The note also records that the Ventia officers "*will follow up Monday*" [99], and I note that 4 May 2025 was a Sunday.

151. On Tuesday, 6 May 2025, Russell's brother Vernon, and his mother and father, were added to the approved visitors list.[100] Ventia officers were contacted and notified that a visit had been booked for these three approved visitors at 1.00 pm on Wednesday, 7 May 2025.[101]

152. Russell's family visited Russell at Fiona Stanley Hospital between 1.16 pm and 2.15 pm on Wednesday, 7 May 2025.[102] A note was recorded that an additional sister tried to visit but she had not been approved to visit. It seems her name was not part of the request approved by the Superintendent. Russell's sister was not allowed to visit on that occasion and she was asked to "*get permission first from the prison*."[103]

153. At 10.17 am on Friday, 9 May 2025, Ventia officers were notified that Russell's brother Vernon had been again approved to visit his brother.[104]

154. It appears that on that date, Russell's family member Delson Smith[105] was also added to the approved visitors list, and given permission to visit. Delson attended Fiona Stanley Hospital at 11.20 am, but he had brought a person with him that was not lawfully permitted to attend with

[98] Exhibit 1, Tab 10, p 21.
[99] Exhibit 1, Tab 10, p 65.
[100] Exhibit 1, Tab 15.
[101] Exhibit 1, Tab 10, p 81.
[102] Exhibit 1, Tab 10, p 93-94.
[103] Exhibit 1, Tab 10, p 96.
[104] Exhibit 1, Tab 10, p 117.
[105] Exhibit 3, Tab 6, p 6.

him, and Delson advised he would come back later on alone.[106] It does not appear he returned.

155. It is apparent that Russell's family felt that the approval process for visits to Fiona Stanely Hospital were not straightforward. Russell's family felt that it should have been a simple process for the family, particularly those family members who had visited Russell in prison before and had been vetted and approved to visit in that context, to call the prison and receive approval from the Superintendent to visit Russell.

156. There are obvious security vetting considerations that the Superintendent must consider before allowing members of the public to visit a prisoner in a hospital setting. However, Russell was a prisoner who was receiving palliative care, and was approaching the end of his life. It was important to his family to see and spend time with him as his condition deteriorated.

157. On the limited information before me, I am unable to make a positive finding that the Department failed to follow its policies in relation to visits and phone calls for Russell while he was in hospital.

158. However, I have outlined the above information, and the views of Russell's family, in the hope that the Department will review the policies and procedures that apply in cases such as these and will endeavour to ensure that for people like Russell's family, there is clear, straightforward and simple information readily available about the process involved for family members visiting prisoners who have been moved to external facilities.

159. In cases where a prisoner is reaching the end of their life, these processes for families should be easy to understand, and accessible, and visits (where safe and appropriate to facilitate) should be approved without delay.

The use of restraints during hospital admissions

[106] Exhibit 1, Tab 10, p 118.

160. In the course of the inquest into Russell's death, members of Russell's family raised concerns as to whether Russell had been inappropriately handcuffed or otherwise restrained while he was in hospital.[107]

161. Considerations of the inappropriate use of restraints during the hospitalisation of prisoners who are elderly, terminally ill, and/or in palliative care has been the subject of comment by the Court in a number of previous inquests.[108]

162. I accept that the Department has provided 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. I am satisfied that the Department is aware of the need to carefully assess whether the use of restraints for prisoners who are elderly, terminally ill, and/or in palliative care is necessary and appropriate, and that there is a focus on ensuring prisoners are transported in a humane manner, whilst taking account of safety considerations.

163. In Russell's case, I am satisfied that the Department made appropriate assessments and provided appropriate instructions to reduce and remove restraints for Russell within reasonable timeframes, taking into account Russell's security rating, criminal history[109], and the circumstances of his respective transfers to hospital.[110]

164. I have carefully reviewed the concerns raised by Russell's brother Vernon that he saw his brother handcuffed while Russell was in hospital. I am satisfied that the evidence does not support the contention that Russell was handcuffed at Fiona Stanley Hospital during Vernon's visit on 7 May 2025. Contemporaneous records reflect that "*no restraints*" were required for Russell at that time, and this was documented repeatedly throughout that day.[111]

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[107] Vernon Penny statement.
[108] See Inquest into the death of Raymond Sydney Cheek [2024] WACOR 45; Inquest into the death of Errol Warren Bartlett-Torr [2023] WACOR 11; Inquest into the death of Edward Ivan Africh [2023] WACOR 14; Inquest into the death of Frank Kenneth Major [2023] WACOR 23; Inquest into the death of Alan David Ratcliff [2024] WACOR 18; Inquest into the death of Matthew John Pickin [2024] WACOR 36.
[109] Exhibit 1, Tab 15.8, p 4.
[110] See for example Exhibit 1, Tab 15.25. p3; Exhibit 1, Tab 15.28, p 2; Exhibit 1 Tab 10.
[111] Exhibit 1, Tab 29.3, p 6.

165. On the available evidence, I am satisfied that the Department appropriately followed their policies and procedures in relation to the use of restraints during the hospitalisation of prisoners who are elderly, terminally ill, and/or in palliative care in Russell's case.

QUALITY OF TREATMENT, SUPERVISION AND CARE

166. Following Russell's death, the Department completed an internal review of Russell's custodial management, supervision and care whilst he was incarcerated.

167. The Department concluded that:

> This review found that Mr Penny's custodial management, supervision and care were in accordance with the Department's policy and procedures as listed in Appendix 1. Records indicate the level of care received by Mr Penny for treatment of his medical conditions was appropriate and escalation of that care was timely. Relevant death in custody procedures, including notifications and handover to WA Police were followed.[112]

168. No business improvement recommendations were made at the conclusion of the Department's review.[113]

169. Russell's clinical care was also reviewed after his death by the Department, and given the circumstances of Russell's death, it is this internal Health Review which is more significant in this case.

170. In the Health Review, Dr Gunson expressed the following opinion about the medical care and treatment provided to Russell:

> Health Services can confirm that during his time in custody, that Mr Russell Graham Penny received regular, timely, compassionate and appropriate health care. When Mr Penny required additional support, this was always provided in a timely manner, and regular follow ups were always in place. It can be seen in the medical record that the health team caring for Mr Penny were dedicated and thorough and that they strove to deliver the best care possible for his final illness.

[112] Exhibit 1, Tab 15, p 6.
[113] Exhibit 1, Tab 15.

> In conclusion, the health care provided to Mr Penny was certainly of a standard equivalent to the standard of care he would have received in the community, and possibly of a higher standard than is often seen in the community. This was in no small part due to the dedication of the health staff at Albany and Casuarina Prisons.[114]

Quality of supervision, treatment and care

171. Having considered the documents tendered into evidence, and the evidence of Mr Brackenreg at the inquest, alongside the submissions of the parties in this case, I consider that Russell received an appropriate standard of supervision, treatment and care from the Department during his incarceration prior to his passing, save for two matters summarised below.

172. The first relates to the unfortunate circumstances in which Russell missed his scheduled medical appointment on 5 March 2025, which are explored further below in respect of the quality of the medical treatment and care provided to Russell.

173. The second relates to the Department's failure to notify Russell's next of kin of his removal to Fiona Stanley Hospital on 20 April 2025, in accordance with Departmental policy. Russell's family were only made aware of his transfer to hospital a week later, apparently due to Russell's own efforts to notify his brother.

174. While it is fortunate that Russell's family were able to visit him in hospital before his passing, timely notification to the family of Russell's removal to hospital may have assisted both his family, and the Department, to swifty request, approve and book visits for family members so that Russell's family could have had the opportunity to spend quality time with Russell before his passing.

Quality of the medical treatment and care provided to Russell

[114] Exhibit 34, Tab 1, p 17.

175. Having also considered the documents tendered into evidence, the evidence of Dr Gunson at the inquest, and the submissions of the parties in this matter, I am satisfied that Russell's health, namely his various chronic and progressive medical conditions, including the management of his advanced-chronic liver disease, were appropriately managed by the Department.

176. As I have explained above, it was unfortunate that Russell missed a scheduled appointment with Fiona Stanley Hospital on 5 March 2025. I have found that it is likely that this occurred due to an administrative oversight regarding Russell's upcoming appointment, as opposed to an active decision to transfer Russell despite his upcoming appointment given Russell's repeatedly expressed desire to be transferred back to Albany, although that cannot be definitely known.

177. Given this missed appointment, Russell did not have the opportunity to be assessed for suitability for immunotherapy until it was too late. We can therefore never know if he had been suitable, and that treatment had occurred, whether the treatment would have increased his comfort, or even possibly prolonged his life. However, I have found that on the available evidence, it appears unlikely that this treatment option would have significantly altered the course of Russell's deterioration from his terminal liver cancer.

178. Other than the above, I am satisfied that the standard of the medical supervision, treatment and care Russell received whilst he was in custody was appropriate.

179. As a result, I agree with the assessment of Dr Gunson in her evidence that "*overall his medical care was very well managed by the Albany team and then by the Casuarina team*."[115] I accept Dr Gunson's conclusion that Russell received care that was "*certainly comparable to what he might have had access to in the community.*"[116]

[115] Transcript, p 53.
[116] Transcript, p 52.

CONCLUSION

180. Russell was 56 years of age when he died at Fiona Stanley Hospital on 10 May 2025. His cause of death was complications of viral hepatitis related advanced-chronic liver disease, and I have determined the manner of death was natural causes.

181. Russell was successfully treated for hepatitis C infection while in prison in 2010 and 2017 and received regular liver scans and blood tests during the occasions he was imprisoned to monitor for signs of chronic liver disease and liver cancer, which are known complications of hepatitis C infection.

182. By 1 January 2017, Russell had developed liver cirrhosis. In January 2020, Russell had again contracted hepatitis C, and it seems he remained infected with this condition in the community without successful treatment.

183. Upon Russell's return to custody in 2023 his hepatitis C infection was detected and again treated, and he was successfully cleared of the virus in October 2024. However, in November 2024, a routine ultrasound showed multiple liver lesions and Russell was shortly afterwards diagnosed with an aggressive form of liver cancer.

184. Russell was keen for treatment options for his liver cancer to be explored, but after assessment, he was found not suitable for intensive radiation therapy, given the risk this treatment would further damage his liver.

185. Unfortunately, Russell missed an appointment with the Fiona Stanley Hospital Liver Clinic on 5 March 2025, which was scheduled to discuss treatment options after he was found to be unsuitable for radiation therapy. The treatment options that would have been discussed if that appointment went ahead were not about a cure to Russell's illness, which was terminal. Instead, the discussion would have been about whether any treatment, such as immunotherapy, may have extended Russell's lifespan, or increased his comfort in the final months of his life. Had this

appointment occurred as planned, Russell may or may not have been offered immunotherapy, depending on his symptoms at that time, and his own views and wishes.

186. Sadly, by the time Russell again spoke with the medical team after his admission to the Emergency Department in April 2025, Russell's disease had progressed, and any other treatment options, such as immunotherapy, were no longer possible.

187. On 7 May 2025, Russell's very poor prognosis was explained to him, and Russell agreed to end of life care, and was commenced on the palliative care pathway. Russell was provided with regular pain relief, and efforts were made to keep him comfortable until his passing.

188. Russell's mother, father and brother were able to visit him in hospital. Sadly, Russell died shortly after, in the early hours of 10 May 2025, as a result of natural causes.

189. In the course of the inquest, the circumstances in which Russell missed his scheduled appointment on 5 March 2025 were carefully explored, with the aim of ensuring that pending medical appointments are noted and factored in to prison transfer decisions, in the hope that a situation such as this does not arise again in the future.

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

S Tyler
Coroner
09 March 2026