
JURISDICTION : CORONER'S COURT OF WESTERN AUSTRALIA
ACT : CORONERS ACT 1996
CORONER : ROBYN HARTLEY, CORONER
HEARD : 14 JANUARY 2025
DELIVERED : 27 MARCH 2025
FILE NO/S : CORC 3399 of 2022
DECEASED : BAUMGARTEN, TRAVIS DION

Catchwords:

Nil

Legislation:

Nil

Counsel Appearing:

Counsel Assisting : Sergeant C Martin
Counsel : Ms J Kasbergen (SSO) appeared on behalf of the
Department of justice

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

Nil

Coroners Act 1996
(Section 26(1))

RECORD OF INVESTIGATION INTO DEATH

*I, Robyn Mary Hartley, Coroner, having investigated the death of **Travis Dion BAUMGARTEN** with an inquest held at Perth Coroner’s Court, Central Law Courts, Court 85, 501 Hay Street, PERTH, on 14 January 2025, find that the identity of the deceased person was **Travis Dion BAUMGARTEN** and that death occurred on 5 December 2022 at Royal Perth Hospital, Victoria Square, Perth, from complications of human immunodeficiency virus infection with terminal palliative care in the following circumstances:*

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INTRODUCTION

- 1 Travis Dion Baumgarten (Mr Baumgarten) was a 48 year old Aboriginal man who died while serving a period of imprisonment at Acacia prison.
- 2 Acacia prison is owned by the Department of Justice (the Department) which contracts management of the facility to Serco.
- 3 As Mr Baumgarten was a serving prisoner at the time of his death, he was a ‘person held in care’ as defined in the *Coroners Act 1996 (WA)* (the Act).¹
- 4 Any death of a person held in care must be the subject of an inquest.²
- 5 The Act requires that a Coroner who conducts an inquest into the death of a person held in care must comment on the quality of the supervision, treatment and care of the person while in that care, as well as finding the cause and manner of death.³

BACKGROUND

- 6 Mr Baumgarten was born on 16 January 1974 in Subiaco. His given names are spelt a number of different ways in documents that formed part of the coronial brief in this matter. Confirmation of birth details were sought from the Registrar of Births, Deaths and Marriages to ensure that Mr Baumgarten’s name is correctly recorded in this finding. Records held by the Registrar of Births, Deaths and Marriages show that Mr Baumgarten’s given names were Travis Dion.⁴

¹ Section 3 *Coroners Act 1996 (WA)*.

² Section 22(1)(a) *Coroners Act 1996 (WA)*.

³ Section 25(1) and 25(3) *Coroners Act 1996 (WA)*.

⁴ Exhibit 1, Volume 1, Tab 9 Application for Confirmation of Birth.

7 Mr Baumgarten lived in Western Australia throughout his life. He had
five siblings, including a twin brother.

8 Mr Baumgarten had a tough and traumatic childhood. His father left the
family when he and his twin brother were toddlers. His mother struggled
to raise the children alone and, as a result, Mr Baumgarten was raised by
extended family in the Carnarvon area.⁵

9 During his life Mr Baumgarten worked in various construction related
roles. He enjoyed sports, especially football and basketball.

10 Mr Baumgarten was married but his wife passed away before him. He
had an adult daughter.⁶

11 Mr Baumgarten had an extensive criminal record, with a clear correlation
between alcohol and substance use and the commission of offences.

12 At the time of his death, Mr Baumgarten was serving a period of
imprisonment for two counts of doing an act with intent to harm that
caused bodily harm.

CHRONOLOGY

13 Mr Baumgarten's prison medical records show he was diagnosed with
Human Immunodeficiency Virus (HIV) in 1994 while in the community.
Treatment of his HIV was managed by the Royal Perth Hospital (RPH)
Immunology Department and included prescription of anti-retroviral
therapy to prevent HIV from developing into AIDS.

⁵ Exhibit 1, Volume 2, Tab 1 District Court Transcript dated 2 November 2020, Sentencing Remarks.

⁶ Exhibit 1, Volume 1, Tab 2 Report of Coronial Investigation Officer David CAREY dated 6 February 2023.

14 When Mr Baumgarten was taken into custody at Greenough Regional
Prison in November 2013, he was often failing to take the full suite of
HIV medication prescribed to him and, at times, refusing to take any of
the medication at all. Prison staff worked hard to encourage
Mr Baumgarten to resume compliance with his medication. Their
success in this regard was evidenced by the fact that his HIV viral
suppression had returned to an adequate level by April 2014.

15 Mr Baumgarten acquired Hepatitis C in about 2017.⁷

16 When Mr Baumgarten was remanded in custody at Greenough Regional
Prison on 26 March 2020 he was identified during reception as a
returning prisoner with an incarceration history dating back to 1998.

17 On 2 November 2020 Mr Baumgarten was sentenced to three years and
six months in prison after pleading guilty to two counts of doing an act
with intent to harm which caused bodily harm.⁸

18 On 13 November 2020 Mr Baumgarten was transferred to Acacia prison
due to his medium security rating and for population management
purposes.

19 On admission to Acacia prison, Mr. Baumgarten disclosed that he was
refusing blood tests and had refused HIV medication for the previous
year. He informed the prison nurse who conducted his intake assessment
on 18 November 2020 that he did not wish to be a ‘guinea pig’ and
‘just wanted to die’. Mr Baumgarten assured the nurse that he had no
thoughts of self-harm or suicide. He stated that he was aware HIV

⁷ Exhibit 2 Health Services Summary into HIV Management by Custodial Health Staff Baumgarten, Travis Dion.

⁸ Exhibit 1, Volume 2, Tab 1 District Court Transcript dated 2 November 2020, Sentencing Remarks.

complications would end his life and just wanted to let it happen. Mr Baumgarten went on to say that he has had it with his life and just wants to let it happen and not stop it. During the assessment the prison nurse had a long discussion with Mr Baumgarten about Hepatitis C and HIV and the potential consequences of him declining treatment for the conditions. Mr Baumgarten stated he felt well and a plan to review him monthly was formed with risk mitigation strategies implemented including contact sport restrictions.⁹

20 Inquiries with the RPH Immunology Department revealed Mr Baumgarten's last blood tests were taken in 2019 and showed his viral load was high. RPH indicated their expectation that Mr Baumgarten's viral load and potential to infect others would have increased in the time since his last blood test.

21 Throughout 2021 and 2022 Mr Baumgarten refused prescribed medications, blood tests and HIV therapy. He missed scheduled nursing appointments, declined consultations with the RPH Immunology Department and chose not to engage with Aboriginal peer support workers in prison.

22 When Mr Baumgarten did meet with nursing staff, he indicated that his health was normal, and he was not in any discomfort other than knee pain. He very rarely allowed them to measure his vital signs. Nursing staff noted that Mr Baumgarten had lost weight.

⁹ Exhibit 1, Volume 1, Tab 7 Acacia Prison Health Services Summary into the Death in Custody Mr Travis Dion BAUMGARTEN.

- 23 On 26 March 2021 Mr Baumgarten collapsed in the bathroom and struck his head with some loss of consciousness. Mr Baumgarten submitted to a nursing examination following this incident. After establishing that his observations were within normal limits, the prison nurse discussed the case with the duty medical officer who determined the cause of Mr Baumgarten's collapse was likely vasovagal (a sudden drop in heart rate and blood pressure).¹⁰
- 24 On 9 February 2022 Mr Baumgarten was reviewed by a prison medical officer who considered Mr Baumgarten's medical history. It was noted Mr Baumgarten had started declining HIV medication prior to August 2014, with intermittent adherence through to May 2018 and a stronger refusal commencing in late 2019.
- 25 It was considered likely Mr Baumgarten's HIV infection had become multi-drug resistant. Mr Baumgarten was placed on the Terminally Ill Register Stage One (Potential of a death in custody) based on his HIV diagnosis and non-compliance with the anti-viral therapy.¹¹
- 26 In May 2022 Mr Baumgarten was assaulted which led to a medical examination exploring persistent chest pain. X-rays identified a hydropneumothorax (an air bubble between the lungs and chest wall) in Mr Baumgarten's chest cavity and he was transferred to St John of God (SJOG) Hospital Midland.
- 27 Mr Baumgarten was diagnosed with pneumocystis jiroveci pneumonia (a fungal infection of the lungs) and antibiotics were prescribed. During this hospital visit, Mr Baumgarten refused to allow even preliminary

¹⁰ Exhibit 1, Volume 1, Tab 7 Acacia Prison Health Services Summary into the Death in Custody Mr Travis Dion BAUMGARTEN.

¹¹ Exhibit 1, Volume 2 Review of Death in Custody Mr Travis Dion BAUMGARTEN.

examinations including blood tests. He also refused consent for his RPH records to be shared with SJOG Hospital Midland which led to medical consideration of his capacity to decline treatment.

28 While a formal capacity assessment was unable to take place due to Mr Baumgarten's refusal to engage with a psychiatrist, no specific concerns in relation to Mr Baumgarten's ability to make informed health and welfare decisions were identified. Mr Baumgarten's treating Immunology Consultant from RPH communicated the long-held view that Mr Baumgarten possessed the capacity to make treatment decisions and that his refusal to receive medical intervention should be respected.

29 Mr Baumgarten was returned to Acacia prison and daily nursing checks were conducted, however he refused to allow observations to be taken.

30 In early September 2022 Mr Baumgarten was commenced on antibiotics for a possible respiratory infection and in October he underwent a course of treatment for shingles.

31 In late October 2022 Mr Baumgarten was transferred to SJOG Hospital Midland and onward to RPH due to general weakness and a fever.

32 A CT brain scan at RPH identified a possible brain lesion, however Mr Baumgarten's general refusal of medical treatment or examination continued and he was returned to Acacia prison.

33 On 8 November 2022, Mr Baumgarten's deteriorating health led to his Terminally Ill status being upgraded to Stage Two (Deterioration of terminal medical condition).

34 On 15 November 2022, Mr Baumgarten presented at Acacia prison's medical unit complaining of a headache and dizziness. The doctor who saw Mr Baumgarten described him as looking very ill. He was struggling to stand, nonsensical and his temperature was in excess of 39 degrees. Mr Baumgarten refused any treatment by the prison doctor. The doctor was concerned he was delirious due to an infection. It was determined that Mr Baumgarten was temporarily incapable of making treatment decisions due to delirium. Given how sick he appeared to be, an urgent transfer to the Emergency Department at SJOG Hospital Midland was arranged.

35 Mr Baumgarten was returned to Acacia prison the following day. The medical advice from the hospital was that no source of infection could be found. It was suggested that Mr Baumgarten be sent to RPH rather than SJOG Hospital Midland for any further care. He was kept in the prison's medical unit overnight.

36 On 16 November 2022, Mr Baumgarten's Terminally Ill status was upgraded to Stage Three (Death within three months or sudden death possible).¹²

37 A Briefing Note submitted by the Department's Sentence Management Division to the Minister for Corrective Services addressing Mr Baumgarten's suitability for release pursuant to the Royal Prerogative of Mercy recommended he not be released given his outstanding treatment needs, the lack of a release plan, poor prison conduct, the fact that the appropriate community supports had not been

¹² Exhibit 1, Volume 2 Review of Death in Custody Mr Travis Dion BAUMGARTEN.

explored and the role the Department was playing in managing his medical condition.¹³

38 Records of a medical review with an Acacia prison doctor on 16 November 2022 make it clear Mr Baumgarten understood that HIV would end his life, and it was possible he may not survive until Christmas. Mr Baumgarten expressed a wish to ‘go home and say goodbye to everyone’.¹⁴

39 Mr Baumgarten continued to refuse treatment, however his condition improved slightly, and he was able to leave the medical unit and return to his usual cell block.

40 Over the following days Mr Baumgarten complained of headaches, fever and delirium and, while agreeing to take paracetamol, he declined all other treatment. His mood was described as calm and not distressed. Mr Baumgarten expressed a desire for Panadol and to be left alone.

41 On 22 November 2022 Mr Baumgarten’s condition worsened, with low blood pressure and generally poor health. The RPH Immunology Department agreed to organise a bed for Mr Baumgarten, however one was not available immediately.

42 In the meantime, Mr Baumgarten was admitted to the Acacia medical unit with alternate plans formed to admit him to the Infirmary at Casuarina Prison if a bed did not become available at RPH.

¹³ Exhibit 1, Volume 2 Review of Death in Custody Mr Travis Dion BAUMGARTEN.

¹⁴ Exhibit 1, Volume 1, Tab 7 Acacia Prison Health Services Summary into the Death in Custody Mr Travis Dion BAUMGARTEN.

43 On 26 November 2022, Mr Baumgarten suffered seizures and was unresponsive with the night nurse calling for a priority one ambulance transfer to hospital. An ambulance transferred Mr Baumgarten to SJOG Hospital Midland, where he suffered further seizures. CT scans identified a mass on his right parietal lobe.

44 Mr Baumgarten was transferred to RPH on 27 November 2022. That same day he was made Stage Four Terminally Ill (death is imminent).¹⁵

45 On admission to RPH Mr Baumgarten told the admitting doctor he knew he had something in his head and that he was dying. He requested ‘just let me die’. It was considered Mr Baumgarten’s lobal mass could be from an infection or a malignancy.

46 The RPH Immunology Consultant who had cared for Mr Baumgarten over an extended period was certain on the treatment ceiling Mr Baumgarten had consented to, particularly that he was only to be provided comfort care in the event of severe HIV/AIDS related complications. In line with his expressed wishes, Mr Baumgarten’s non-essential medications were ceased, and palliative care commenced.

47 On 29 November 2022 the Sentence Management Division provided a further Briefing Note to the Minister for Corrective Services in relation to the Royal Prerogative of Mercy. The recommendation remained the same as in the previous Briefing Note with release not recommended.¹⁶

48 It is noted that the application of restraints from the time of Mr Baumgarten’s escort from Acacia prison to SJOG Hospital Midland onwards very likely did not accord with the Department’s restraint

¹⁵ Exhibit 1, Volume 2 Review of Death in Custody Mr Travis Dion BAUMGARTEN.

¹⁶ Exhibit 1, Volume 2, Tab 24 Terminally Ill Sentence Management Briefing.

policy. This issue will be dealt with in more detail further on in this finding.

49 Ultimately, on 2 December 2022, an External Movement Risk Assessment (EMRA) was completed and Mr Baumgarten's restraints were removed.

50 Mr Baumgarten's family was approved to visit him in RPH and his mother, sister, daughter, brother and other family and community members took that opportunity over the following days.

51 Mr Baumgarten passed away peacefully on 5 December 2022.

CAUSE AND MANNER OF DEATH

52 Following an external postmortem examination, CT scan and consideration of Mr Baumgarten's medical records, forensic pathologist, Dr Reimar Junckerstorff (Dr Junckerstorff) formed the opinion that the cause of death was Complications of Human Immunodeficiency Virus with Terminal Palliative Care and that Mr Baumgarten's death was due to natural causes.¹⁷

53 I accept and adopt the opinion of Dr Junckerstorff as to the cause and manner of death.

54 Accordingly, I find that Mr Baumgarten's death occurred by way of natural causes.

¹⁷ Exhibit 1, Volume 1, Tab 5.1 Supplementary Post Mortem Report BAUMGARTEN Travis Dion.

TREATMENT, SUPERVISION AND CARE

55 An internal review of Mr Baumgarten’s custodial management, supervision and care conducted by the Department’s Performance Assurance and Risk (PAR) Directorate found compliance with almost all applicable policies and procedures.¹⁸

Use of Restraints from 26 November to 2 December 2022

56 The only issue identified in the PAR review was in relation to the application and maintenance of restraints when Mr Baumgarten was transported from Acacia prison to SJOG Hospital Midland and then transferred to RPH in the days leading up to his death.¹⁹

57 Through their counsel, the Department provided the Court with submissions in relation to the interaction between Commissioner’s Operating Policy and Procedure (COPP) 12.3 Conducting Escorts and COPP 12.2 Coordination of Escorts – External Movement Risk Assessments and the application of both to Mr Baumgarten’s final movements.²⁰

58 COPP 12.3 Conducting Escorts version 5 (in operation in late November 2022) provided:

5.3 Reasons prohibiting the use of restraints

5.3.1 Prisoners with significant medical and/or mobility issues shall not be placed in restraints unless there is a requirement following the completion of an EMRA (or PMRA for coach/air transport) by prison staff and approval by the Superintendent/OIC (or equivalent risk assessment by the Contractor approved by the Contract Director or their

¹⁸ Exhibit 1, Volume 2 Review of Death in Custody Mr Travis Dion BAUMGARTEN.

¹⁹ Exhibit 1, Volume 2 Review of Death in Custody Mr Travis Dion BAUMGARTEN, p 16 – 17.

²⁰ Submissions submitted by the State Solicitor’s Office on behalf of the Department dated 3 February 2025.

delegate). Particular consideration shall be given, but not limited, to the following cohorts:

- a) prisoners who are not conscious
- b) prisoners who are terminally ill (stage 4), refer to COPP 6.2 – Prisoners with a Terminal Medical Condition
- c) prisoners who are elderly and frail
- d) prisoners with significant mobility issues
- e) prisoners with significant injuries or health challenges which may prevent the use of handcuffs/ankle-cuffs or hobbles
- f) prisoners who are pregnant, in labour, or post-natal care (refer COPP 11.3 – Use of Force and Restraints).

5.3.2 Where relevant, risk assessments shall be conducted in consultation with medical staff.²¹

59 COPP 12.2 Coordination of Escorts version 3 (in operation in November 2022) provided:

5.6 External Movement Risk Assessments

5.6.1 For movements conducted by the Department, the Superintendent/OIC shall ensure an EMRA is completed prior to movement in the following circumstances:

- a) when a non-secure vehicle is required (see COPP 12.1 Escort Vehicles)
- b) when a variation to the minimum number of escorting officers is required (see section 5.2.2)
- c) when a variation to the recommended standard restraints is required (see COPP 12.3 Conducting Escorts).

5.6.2 Exceptions to the above requirement for an EMRA include:

- a) when the movement is being conducted by the Contractor (Contractor to complete their own

²¹ Exhibit 3A COPP 12.3 Conducting Escorts v5.0.

equivalent risk assessment to be authorised by the Contract Director or their delegate)

- b) when a prisoner is engaging in an external activity under a pre-existing risk assessment system (ie work camps, s. 95 activities, PEP, RIL)
- c) if the movement involves coach/air travel (the Superintendent/OIC shall ensure the Prisoner Movement Risk Assessment (PMRA) on TOMS is completed in place of the EMRA)
- d) emergencies.²²

60 The Department's interpretation of the interaction between the two policies is as follows:

- a) The default position for all prisoners is that restraints are to be applied during escorts in non-secured vehicles, using a minimum of two points of restraint.
- b) Where a prisoner is considered to have significant medical and/or mobility issues, the default position is reversed. That is, no restraints are to be applied. In considering whether a prisoner has significant medical and/or mobility issues, consideration is to be given to the cohorts listed in COPP 12.3 section 5.3.1 (i.e. prisoners who are not conscious, terminally ill stage 4, elderly and frail, have significant mobility issues, with significant injuries/health challenges or pregnant).
- c) The default position can only be overridden and restraints applied to a prisoner who is considered to have significant medical and/or mobility issues where an EMRA is completed by prison staff and approval is granted by the prison Superintendent/OIC. An example of a situation where this might occur is when it is determined that a prisoner with a significant medical issue poses a threat to staff and/or the community or is a flight risk.
- d) EMRAs are to be completed prior to the movement of any prisoner in a non-secure vehicle (such as an ambulance).
- e) However, pursuant to section 5.6.2(d) of COPP 12.2, an EMRA will not be required to be completed prior to movement of a prisoner in a non-secure vehicle where, relevantly, the movement is being conducted in an emergency.

²² Exhibit 4A COPP 12.2 Coordination of Escorts v3.0.

61 The Department has submitted the following application of COPP 12.2 v3.0 and COPP 12.3 v5.0 to Mr Baumgarten's final movements:

- a) Mr Baumgarten was transferred from Acacia prison to SJOG Hospital Midland via ambulance on 26 November 2022 after he was found trembling and unresponsive. An EMRA was completed on 26 November 2022 but did not reference Mr Baumgarten's significant medical and mobility issues.
 - i. Acacia acknowledges that Mr Baumgarten could have been transported and managed without restraints; however, Mr Baumgarten was transported in restraints to manage the risk to staff, medical practitioners and the community in line with his active alerts and risks.
 - ii. The Department of Justice acknowledges that all significant medical conditions known to the facility at the time should be considered as part of an EMRA. An incident report from 26 November 2022²³ indicates that Mr Baumgarten's medical conditions were considered as part of the preliminary assessment, albeit it was not documented in the EMRA.²⁴
 - iii. An upgrade to the Total Offender Management System (TOMS) subsequent to the incident now automatically includes a prisoner's medical status when the prisoner is included in the Terminally Ill Register. Prior to this upgrade, this information was not available on TOMS as it was considered medical in confidence.
 - iv. In an emergency situation, preservation of life prevails, and reasonable restraints can be applied to prisoners (irrespective of whether they have a 'significant medical or mobility issue') without an EMRA in accordance with section 5.6.2 of COPP 12.2. Where possible, the level of restraints used in these circumstances should be proportionate with a prisoner's medical issue and determined in consultation with treating medical staff.
 - v. The Department acknowledges there is further opportunity to consider and clear up any ambiguities

²³ Exhibit 1, Volume 2, Tab 21 Incident Summary Report of Custodial Officer Eaton G.

²⁴ Exhibit 1, Volume 2, Tab 22 EMRA 26 November 2022.

within the COPPs to ensure officers and contractors are aware of the obligations under the COPPs.

- b) Mr Baumgarten was transferred to RPH with restraints on 27 November 2022. No EMRA was completed on this day.
 - i. Given that Mr Baumgarten was transferred to Royal Perth Hospital in an emergency, pursuant to COPP 12.2 Section 5.6.2, no EMRA was required.
- c) Later that day, on 27 November 2022, Mr Baumgarten's terminally ill status was upgraded to stage four.
 - i. Acacia acknowledges that an EMRA for Mr Baumgarten should have been reviewed on 27 November 2022 when he was upgraded to stage four terminally ill.
- d) Five days later on 2 December 2022, the EMRA was updated and the Deputy Director of Acacia Prison approved the removal of Mr Baumgarten's restraints.²⁵

62 Turning first to my assessment of whether the use of restraints when Mr Baumgarten was transferred by ambulance from Acacia prison to SJOG Hospital Midland on 26 November 2022 was in breach of section 5.3.1 of COPP 12.3 v5.0.

63 As I flagged with counsel for the Department at the conclusion of the inquest, my reading of COPP 12.3 was that, if section 5.3.1 applied to Mr Baumgarten as at 26 November 2022 due to his significant medical issues, then the only way that restraints could be applied was following completion of an EMRA and with the approval of the Superintendent/OIC.²⁶

64 I maintain this position and understand that the Department concurs with this interpretation given that their submissions refer to the default

²⁵ Exhibit 1, Volume 2, Tab 25 EMRA 2 December 2022.

²⁶ T 26 – 28.

position (that restraints be applied during escorts in non-secured vehicle) being reversed for prisoners with significant medical issues.

65 The Incident Description Reports completed by Acacia prison staff who assisted Mr Baumgarten in the evening on 26 November 2022 record him as trembling, unresponsive and seizing. One custodial officer recalled in his Incident Summary Report that “Due to the nature of his illness and advice from the medical team restraints were only applied to his legs”.²⁷

66 Given how acutely unwell Mr Baumgarten was when an ambulance was called to transfer him to hospital from Acacia prison, I would consider that he fell within the definition of a prisoner with significant medical issues. Additionally, Mr Baumgarten was suffering from the end stages of an illness that was terminal as is reflected by the fact that he was on Stage Three of the Terminally Ill Register. This further strengthens the argument that he fell within the definition of a prisoner with significant medical issues.

67 However, I make this assessment armed with a large amount of information about Mr Baumgarten’s medical history and status as at 26 November 2022.

68 The Department has informed the Court that at the time of Mr Baumgarten’s final transfer to SJOG Hospital, TOMS did not include a prisoner’s medical status. TOMS is the system that custodial officers rely upon to obtain information about prisoners. Without access to the details of Mr Baumgarten’s medical issues, including the fact that he was at Stage 3 on the Terminally Ill Register at the time, I can understand

²⁷ Exhibit 1, Volume 2, Tab 21 Incident Summary Report

why custodial staff completing the EMRA were not confident in making a determination that section 5.3.1 of COPP 12.3 applied to him.

69 Looking at the EMRA that the Operations Manager completed while ambulance officers were at the prison attending to Mr Baumgarten and preparing to transfer him to hospital, I can see that there were a number of security alerts on the system for Mr Baumgarten including ‘threat to staff’ which would militate against approving transport without restraints.

70 Given the custodial staff completing the EMRA did not have ready access to the requisite medical history or status required to make an informed decision as to whether section 5.3.1 of COPP 12.3 applied to Mr Baumgarten at the time of his transfer to SJOG Hospital Midland, I am loath to be overly critical of those who clearly did their best in an emergency situation.

71 I am glad to have learnt of the subsequent upgrade to TOMS that means a prisoner’s medical status is automatically available on that system when they are included on the Terminally Ill Register.

72 I accept the submissions made by the Department that Mr Baumgarten’s transfer from SJOG Hospital Midland to RPH on 27 November 2022 occurred in circumstances that constitute an emergency. Pursuant to section 5.6.2 (d) of COPP 12.2, the requirement to conduct an EMRA does not apply in an emergency.

73 However, by this time I believe it would have been evident to all those involved in his care that Mr Baumgarten was gravely unwell and close to death. This is evidenced by the fact that he was moved to Stage 4 (death is imminent) on the Terminally Ill Register later in the day on

27 November 2022. Even before Mr Baumgarten was formally progressed to Stage 4 hours after his transfer to RPH, I am confident he was suffering from what COPP 5.3.1 is intended to cover in terms of ‘significant medical issues’.

74 If that is the case, then section 5.3.1 of COPP 12.3 should have been applied and his restraints removed. Once a prisoner is deemed to fall within the definition that enlivens section 5.3.1, my interpretation of COPP 12.3 is that the only way in which restraints can be used is following an EMRA and with the approval of the Superintendent/OIC.

75 I do not accept that section 5.6.2(d) of COPP 12.2 applies to allow the application of restraints in emergency situations involving prisoners with significant medical and/or mobility issues. It simply permits movement to occur without an EMRA taking place. If an EMRA cannot be completed prior to the emergency transfer of a prisoner who is covered by section 5.3.1 of COPP 12.3 then the first step towards approving restraints has not been completed and they should not be used.

76 Both the Department and Serco have expressly acknowledged that an updated EMRA should have been completed for Mr Baumgarten when he was moved to Stage 4 on the Terminally Ill Register on 27 November 2022.²⁸ This accords with section 5.3.1 (b) of the version of COPP 12.3 in place at the time which provided that particular consideration of the application of the section should be given to “prisoners who are terminally ill (stage 4)”.

²⁸ Submissions submitted by the State Solicitor’s Office on behalf of the Department dated 3 February 2025; Submissions made by Serco dated 13 February 2025.

- 77 COPP 12.3 has been updated since November 2022. The current version has expanded the list of cohorts who should be given particular consideration under section 5.3.1 to include those at Stage 3 (in addition to Stage 4) on the Terminally Ill Register.²⁹
- 78 Given Mr Baumgarten was at Stage 3 on the Terminally Ill Register when he was transferred from Acacia prison to hospital on 26 November 2022 it is my hope that the expansion of the definition in section 5.3.1 of COPP 12.3, along with the upgrade to the medical information included in TOMS, would mean that there would be a different outcome in terms of restraints if the same situation occurred today.
- 79 I agree with the Department's submission that there is further opportunity to consider and clear up any ambiguities within the Commissioner's Operating Policy and Procedures to ensure that all those who are bound by them are aware of the way they operate.
- 80 I am aware of the significant work undertaken by the Department in recent years to ensure that the use of restraints is guided by policies that further the aim that "Transport of persons in custody is conducted in a safe and humane manner, taking into account the dignity of the person being transported".³⁰
- 81 I strongly encourage the Department to take all possible steps to consolidate and simplify COPP 12.2 and 12.3 without undoing any of the recent improvements made in this area.

²⁹ Exhibit 3B COPP 12.3 Conducting Escorts v10.0.

³⁰ 3.1.12 Guiding Principles for Corrections in Australia, 2018.

82 As is the case with all policies and procedures, the more training and awareness raising that takes place to explain and embed them into daily operations the better.

Management of Mr Baumgarten’s medical issues

83 Serco conducted an internal review of the health care provided to Mr Baumgarten during his time at Acacia. The report covers the period from his transfer to Acacia prison on 13 November 2022 up until his death on 5 December 2022.³¹

84 It is evident from the report that health services staff did their utmost to care for Mr Baumgarten.

85 Mr Baumgarten was very resistant to accepting health care services while incarcerated at Acacia prison. This is consistent with his approach to medical treatment in the community and whenever he was transferred to hospital.

86 As set out in the report:

“Despite encouragement to have health assessments completed, he regularly declined investigations, especially he refused to have any blood tests completed. He was seen regularly in the health centre, had regular reviews with the nursing staff and medical staff. As his health status worsened it was noted that he presented to medical more frequently, stating he was unwell, but not often willing to have diagnostics and assessments completed. Sometimes he did consent to be assessed but also did withdraw his consent often mid consultation, despite the efforts of the nursing and medical staff to persuade him to have the assessments and the benefits of being assessed fully”.³²

³¹ Exhibit 1, Volume 1, Tab 7 Health Services Summary into the Death in Custody Mr Travis Dion Baumgarten.

³² Exhibit 1, Volume 1, Tab 7 Health Services Summary into the Death in Custody Mr Travis Dion Baumgarten, p 78.

- 87 Given that Mr Baumgarten was deemed to be competent and mentally capable of making reasonable medical decisions for himself, it was entirely appropriate for health services staff to respect his wishes when he declined treatment.
- 88 On 20 May 2022 Mr Baumgarten was transferred to hospital after x-rays revealed that the cause of his ongoing pain and shortness of breath was a left sided hydropneumothorax. When Mr Baumgarten declined treatment during this admission a psychiatric review was ordered in a bid to assess his medical decision-making capacity. The review was limited by Mr Baumgarten's poor engagement with the process but, nonetheless, no concerns were identified in relation to his capacity.³³
- 89 On 9 June 2022 Acacia prison health services received correspondence from the RPH Immunology Clinic summarising Mr Baumgarten's HIV management from diagnosis to the present. The correspondence included an express reference to Mr Baumgarten having and retaining decisional capacity. The recommendation was to respect Mr Baumgarten's decision to avoid HIV treatment. RPH Immunology Department anticipated that, if he experienced any complications of his HIV infection and maintained his wish to avoid appropriate treatment, then only symptomatic management would be offered. In treating any symptoms of a possible complication of his HIV, the Immunology team expressed their view admission to ICU and resuscitation should be avoided, in accordance with Mr Baumgarten's wishes.³⁴

³³ Exhibit 2 Health Services Summary into HIV Management by Custodial Health Staff Baumgarten, Travis Dion, p 47.

³⁴ Exhibit 2 Health Services Summary into HIV Management by Custodial Health Staff Baumgarten, Travis Dion, p 47 – 48.

90 Significantly, when Mr Baumgarten presented to the medical centre at Acacia prison on 15 November 2022 clearly very unwell, unsteady on his feet, with a high fever and saying things that did not make sense, the prison doctor determined that he was delirious and temporarily lacked medical decision-making capacity. In that instance, Mr Baumgarten’s desire to decline treatment was overridden and transfer to hospital was arranged.³⁵

91 This decision by the prison doctor was justified in the circumstances and shows that health services staff were mindful of assessing Mr Baumgarten’s capacity each time they interacted with him. Importantly, in the vast majority of instances when he was deemed fit to make his own treatment decisions, Mr Baumgarten’s wishes were respected.

92 As set out in the Health Services Summary report prepared by Serco, MM09 – Policy and Procedure. PM03 – Consent to Medical Treatment provides:

“Competent adults have the right to refuse health care and treatment, including the consumption of medication. An adult prisoner’s common law and statutory rights to refuse medical treatment are not removed by reason of incarceration. They remain and should be complied with unless a Medical Practitioner considers in good faith that the statutory mechanism set out in 95D of the *Prisons Act 1981*, should be invoked to override those common laws and statutory rights”.³⁶

³⁵ Exhibit 1, Volume 1, Tab 7 Health Services Summary into the Death in Custody Mr Travis Dion Baumgarten, p 61 - 62.

³⁶ Exhibit 1, Volume 1, Tab 7 Health Services Summary into the Death in Custody Mr Travis Dion Baumgarten, p 78.

- 93 Section 95D of the *Prisons Act 1981* (WA) empowers a medical officer, acting in good faith, to administer medical treatment to a prisoner who refuses it if the medical officer is of the opinion that the life or health of the prisoner or any other person is likely to be endangered by the refusal.
- 94 Ms McNally, who authored the Serco Health Services Summary report in relation to Mr Baumgarten, gave evidence at the inquest. She confirmed that this legislative power to override a prisoner's refusal of medical treatment would only be relied upon in the most exceptional circumstances. Ms McNally advised that a prisoner with capacity would have their treatment decisions respected.³⁷
- 95 The Department prepared a Health Services Summary report covering Mr Baumgarten's HIV Management by Custodial Health Staff.³⁸
- 96 The report details the comprehensive health care provided to Mr Baumgarten during his periods in custody, with a particular focus on the countless efforts made to encourage him to comply with the treatment regimen prescribed for his HIV
- 97 Mr Baumgarten's prison medical records contain a large number of consultations where health services staff were appropriately frank with him about the seriousness of his HIV diagnosis and the fact that continued refusal of treatment would likely result in his death from complications associated with the condition.

³⁷ T 22 – 23.

³⁸ Exhibit 2 Health Services Summary into HIV Management by Custodial Health Staff Baumgarten, Travis Dion.

98 It is clear from all the records that Mr Baumgarten was well aware of the consequences of his refusal and that he had the requisite capacity to decline treatment.

99 Importantly, Mr Baumgarten was able to discuss his care and needs with Aboriginal health workers and counsellors to ensure that the health teams were not ignoring possible cultural aspects to his treatment choices.

100 I concur with the concluding paragraph of the report:

“While Mr Baumgarten was at times a challenging patient to work with and disinclined to engage with medical treatments – he received excellent health care which was holistic and patient-centred, whilst he was in custody. At all times his health autonomy was respected, but he was given the information and the freedom to make informed decisions for himself. Health Services can confirm that his care was certainly commensurate with, and possibly better than, he would have received in the community”.³⁹

CONCLUSION

101 Mr Baumgarten spent a significant portion of his adult life in custody and received high quality supervision, treatment and care while incarcerated.

102 Having been diagnosed with HIV in the community in 1994, his subsequent periods of imprisonment presented opportunities for him to receive comprehensive treatment for his condition.

103 Over time, Mr Baumgarten became more and more resistant to treatment for his HIV, or any other medical issues.

³⁹ Exhibit 2 Health Services Summary into HIV Management by Custodial Health Staff Baumgarten, Travis Dion, p 7.

104 Mr Baumgarten was deemed to have capacity to make treatment decisions and was fully informed of the consequences of his refusal to accept medical intervention.

105 Mr Baumgarten's wishes were respected and once left largely untreated, his HIV progressed to a stage where it ended his life.

RM Hartley

Coroner

27 March 2025