JURISDICTION	**:**	CORONER'S COURT OF WESTERN AUSTRALIA
ACT	**:**	CORONERS ACT 1996
CORONER	**:**	MICHAEL ANDREW GLIDDON JENKIN, CORONER
HEARD	**:**	20 JUNE 2023
DELIVERED	**:**	25 JULY 2023
FILE NO/S	**:**	CORC 2683 of 2021
DECEASED	**:**	MAJOR, FRANK KENNETH

Catchwords:

Nil

Legislation:

Nil

Counsel Appearing:

Sergeant A. Becker assisted the coroner.

Mr J. Kirke (State Solicitor's Office) appeared for the Department of Justice.

Coroners Act 1996
(Section 26(1))

RECORD OF INVESTIGATION INTO DEATH

I, Michael Andrew Gliddon Jenkin, Coroner, having investigated the death of ***Frank Kenneth MAJOR*** *with an inquest held at Perth Coroners Court, Central Law Courts, Court 85, 501 Hay Street, PERTH, on 20 June 2023, find that the identity of the deceased person was* ***Frank Kenneth MAJOR*** *and that death occurred on 10 October 2021 at Bethesda Hospital, 25 Queenslea Drive, Claremont, from complications of metastatic prostate cancer and end-stage chronic obstructive pulmonary disease, with terminal palliative care in the following circumstances:*

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INTRODUCTION

1. Frank Kenneth Major (Mr Major) died on 10 October 2021 at Bethesda Hospital, from complications of metastatic prostate cancer and end-stage chronic obstructive pulmonary disease, with terminal palliative care. At the time of his death, Mr Major was a sentenced prisoner at Casuarina Prison, and thereby in the custody of the Chief Executive Officer (CEO) of the Department of Justice (DOJ).[1,2,3,4,5,6]

2. Accordingly, immediately before his death, Mr Major was a "*person held in care*" within the meaning of the *Coroners Act 1996* (WA) and his death was a "*reportable death*".[7] In such circumstances, a coronial inquest is mandatory.[8] Where, as here, the death is of a person held in care, I am required to comment on the quality of the supervision, treatment and care the person received while in that care.[9]

3. I held an inquest into Mr Major's death at Perth on 20 June 2023. The documentary evidence adduced at the inquest comprised one volume and the following witnesses gave evidence:

a. Mr Tom Perrin, (Review Officer, DOJ); and

b. Dr Catherine Gunson, (Acting Director Medical Services, DOJ).

4. The inquest focused on the care, treatment and supervision provided to Mr Major while he was in custody, as well as the circumstances of his death.

[1] Exhibit 1, Vol. 1, Tab 1, P100 - Report of Death
[2] Exhibit 1, Vol. 1, Tab 3, Memorandum - FC Const. S-E Larson-Pearse (11.10.21)
[3] Exhibit 1, Vol. 1, Tab 4, Death in Hospital form (10.10.21)
[4] Exhibit 1, Vol. 1, Tab 5, P92 - Identification of Deceased: Visual Means (11.10.21)
[5] Exhibit 1, Vol. 1, Tab 6.1, Supplementary Post Mortem Report (20.10.21)
[6] Section 16, *Prisons Act 1981* (WA)
[7] Sections 3 & 22(1)(a), *Coroners Act 1996* (WA)
[8] Section 22(1)(a), *Coroners Act 1996* (WA)
[9] Section 25(3) *Coroners Act 1996* (WA)

MR MAJOR

Background[10,11]

5. Information about Mr Major's background is limited. However, he was said to have been born "*in country Western Australia*", and to have had a happy and normal childhood. He had five sisters, and left school when he was about 12 years of age. He worked variously as a farmhand, in manual labour positions, and for a civil contracting business. Until their relationship ended, Mr Major and his partner were together for 30 years.

Medical history[12]

6. Mr Major's medical history included peripheral vascular disease, chronic obstructive pulmonary disease (COPD), skin cancers, and metastatic prostate cancer. He was a heavy smoker until 2017 and on admission to prison, he disclosed drinking eight to nine standard drinks per day. He denied using other substances and had no history of mental health issues.

Offending history[13,14,15,16,17]

7. On 16 March 2015, in the District Court of Western Australia at Perth, Mr Major was convicted of nine child sex offences. He was sentenced to eight years' imprisonment and made eligible for parole, with his earliest eligibility date for release being calculated as 29 January 2021.

Receival into prison[18,19]

8. Mr Major was received at Hakea Prison (Hakea) on 30 January 2015. He spent time at Acacia Prison, before he was transferred to Karnet Prison Farm (Karnet) on 24 May 2017. On 18 November 2019, he was transferred to Casuarina Prison (Casuarina) for medical care, and was housed in Unit 12, and the infirmary for the rest of his time in prison.

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[10] Exhibit 1, Vol. 1, Tab 12.1, Sentencing transcript - District Court of WA (16.03.15), pp6-7
[11] Exhibit 1, Vol. 1, Tab 12A, Death in Custody Review (14.04.23), p8
[12] Exhibit 1, Vol. 1, Tab 14, Health Services Review (19.06.23), pp3-4 and ts 20.06.23 (Gunson), pp17-23
[13] Exhibit 1, Vol. 1, Tab 2, Report - Det. Sen. Sgt. A Richards (16.08.22), p2
[14] Exhibit 1, Vol. 1, Tab 12A, Death in Custody Review (14.04.23), pp4 & 8
[15] Exhibit 1, Vol. 1, Tab 12.1, Sentencing transcript - District Court of WA (16.03.15), pp12-13
[16] Exhibit 1, Vol. 1, Tab 12.2, History for Court - Traffic and Criminal
[17] Exhibit 1, Vol. 1, Tab 12.4, Sentence Summary - Offender
[18] Exhibit 1, Vol. 1, Tab 14, Health Services Review (19.06.23), p3
[19] Exhibit 1, Vol. 1, Tab 12.7, Cell Placement History - Offender

MANAGEMENT IN PRISON[20]

9. During the period November 2019 to October 2021, Mr Major was the subject of three classification reviews and four individual management plans. He was described in these reviews as a "*courteous*" prisoner and was not the subject of prison charges or disciplinary offences. During the period identified, Mr Major sent three letters, and made one phone call to a sister. He received no social visits, and was employed as a gardener whilst he was at Casuarina.[21,22,23,24,25,26]

Management of medical issues[27,28]

10. Whilst he was incarcerated, Mr Major saw medical and nursing staff regularly. In November 2018, a routine blood test found his prostate-specific antigen (PSA) level was raised. Following an MRI in February 2019, Mr Major was diagnosed with metastatic prostate cancer which was treated with radiotherapy and chemotherapy.

11. Mr Major was admitted to Armadale Hospital on 15 November 2019 with a urinary obstruction. After treatment, he was discharged to Casuarina on 18 November 2019. When his condition deteriorated, he was transferred to the infirmary at Casuarina, where he was regularly reviewed by nursing staff and prison medical officers (PMO).

12. Key aspects of Mr Major's medical management include:

a. 2 December 2019: sent to Fiona Stanley Hospital (FSH) after urinary retention following removal of indwelling catheter (IDC). Returned to Casuarina the same day;

b. 16 January 2020: started on antibiotics for a urinary tract infection;

[20] Exhibit 1, Vol. 1, Tab 12A, Death in Custody Review (14.04.23), pp8-18
[21] Exhibit 1, Vol. 1, Tab 12.24, Prisoner Mail - Offender
[22] Exhibit 1, Vol. 1, Tab 12.25, Recorded Call Report
[23] Exhibit 1, Vol. 1, Tab 12.26, Visits History - Offender
[24] Exhibit 1, Vol. 1, Tab 12.27, Work History - Offender
[25] Exhibit 1, Vol. 1, Tab 12.28, Loss of Privileges Reports - Prisoner
[26] Exhibit 1, Vol. 1, Tab 12.28, Charge History - Prisoner
[27] Exhibit 1, Vol. 1, Tab 12A, Death in Custody Review (14.04.23), pp8-16
[28] Exhibit 1, Vol. 1, Tab 14, Health Services Review (19.06.23), pp5-21

c. February - March 2020: regularly reviewed by PMO after abnormal urine tests, seen in urology clinic at FSH for ongoing urinary issues;

d. 4 May 2020: Mr Major was seen by a PMO for a tremor in his hands that had become worse since his radiotherapy. He was awaiting a transurethral resection of his prostate and subsequently started chemotherapy;

e. 22 July 2020: a note in the medical record states Mr Major was seen by a PMO who noted he was continuing to receive chemotherapy;

f. mid-August 2020: Mr Major is discharged from the urology clinic at FSH, after it is noted that there are limited treatment options for his urinary retention and that he will require a permanent IDC;

g. 27 September 2020: Mr Major is transferred to FSH for treatment for a blocked IDC, and returned to Casuarina the same day;

h. 28 September 2020: Mr Major is reviewed by a nurse and noted to be lethargic and "*generally weak*". He is assessed as a falls risk and is using a wheelchair and later a four-wheeled walker to assist his mobility;

i. October - November 2020: Mr Major experiences several episodes of urinary retention and abdominal pain. He is regularly reviewed by nurses and PMO;

j. 10 February 2021: Mr Major declines to continue to take medication for his metastatic prostate cancer (enzalutamide), saying it makes him dizzy, and signs a medical waiver;

k. 18 February 2021: Mr Major is seen by doctors from the palliative care team and his dose of enzalutamide (which he agreed to resume) was reduced;

l. 22 February 2021: Mr Major is assessed as having a cognitive deficit and it is noted that after he started on the blood pressure medication, propranolol, his hand tremor had improved;

m. 3 March 2021: Mr Major's dose of enzalutamide is increased and he is discharged from the palliative care service;

n. 12 March 2021: Mr Major is transferred to FSH and diagnosed with non-infective exacerbation of his COPD, and discharged to Casuarina on 17 March 2021 after treatment;

o. 12 April 2021: Mr Major is transferred to FSH (and later to Fremantle Hospital) and diagnosed with acute exacerbation of COPD (non-infective). After treatment, he was discharged back to Casuarina on 22 April 2021;

p. 24 April 2021: Mr Major is transferred to FSH with breathing issues and diagnosed with hospital acquired pneumonia, started on antibiotics and discharged to Casuarina the same day;

q. 25 April 2021: Mr Major is transferred back to FSH with breathing issues and diagnosed with asthma and COPD overlap syndrome. He was discharged to Casuarina the following day;

r. May - August 2021: Mr Major is regularly reviewed by medical staff and treated for a recurring urinary tract infection. He was encouraged to walk to maintain his mobility and chest function;

s. 11 September 2021: Mr Major is transferred to FSH after a nursing review found he was dehydrated and slow to respond to questions. He was diagnosed with dehydration and discharged back to Casuarina on 12 September 2021;

t. 22 September 2021: Mr Major is transferred to FSH after his IDC became dislodged. He is discharged back to Casuarina on 23 September 2021;

u. 25 September 2021: Mr Major is transferred to FSH after being found at the morning unlock with shortness of breath, and returned to Casuarina later the same day;

v. 26 September 2021: Mr Major is re-referred to the palliative care team;

w. 29 September 2021: Mr Major's condition deteriorates and he requires increased care. However, he says he does not want to be taken to hospital "*because they cuff my hands and (I'm) unable to drink my coffee*";

x. 30 September 2021: during a nursing review, Mr Major says on his last admission his hands and feet were cuffed, making it impossible for him to eat and drink. He says he was traumatised by the admission, but is receptive to a transfer to Bethesda Hospice for palliative care; and

z. 1 October 2021: Mr Major is transferred to FSH with laboured breathing. Later the same day, he is admitted to Bethesda Hospital for end-of-life care.

Mr Major's death

13. After his admission to Bethesda Hospital on 1 October 2021, Mr Major's condition slowly deteriorated. During his admission, he was supervised by security officers from Ventia, who provided these services under contract on DOJ's behalf.[29]

14. At about 3.10 pm on 10 October 2021, the security officers supervising Mr Major noticed that Mr Major appeared to have stopped breathing. The officers alerted nursing staff, who conducted end-of-life checks, and confirmed that Mr Major had died.[30,31]

Management on the terminally ill register[32,33,34]

15. Prisoners with a terminal illness[35] are managed in accordance with a policy known as *COPP 6.2 Prisoners with a Terminal Medical Condition*. Once a prisoner is identified as having a terminal illness, a note is made in the terminally ill module of the Management Solution Total Offender Management Solution (Management Solution) the computer system DOJ uses for prisoner management.

[29] Exhibit 1, Vol. 1, Tabs 12.20.4 - 12.20.8, Ventia PIC Record of Events, 285812-285893 (01.10.21 - 10.10.21)
[30] Exhibit 1, Vol. 1, Tab 12.20.8, Ventia PIC Record of Events, 285890 (3.10 pm, 10.10.21)
[31] Exhibit 1, Vol. 1, Tab 4, Death in Hospital form (10.10.21)
[32] Exhibit 1, Vol. 1, Tab 12A, Death in Custody Review (14.04.23), pp15 & 17
[33] Exhibit 1, Vol. 1, Tab 14, Health Services Review (19.06.23), pp4-5
[34] COPP 6.2 - Prisoners with a Terminal Medical Condition, pp4-6
[35] One or more conditions that on their own or as a group, significantly increase the likelihood of a prisoner's death

16. Prisoners are identified as Stage 1, 2, 3 or 4, on the basis of their expected lifespan. Stage 3 prisoners are expected to die within three months, whereas for Stage 4 prisoners, death is expected imminently. On 25 April 2021, Mr Major was identified as a Stage 1 due to the progression of his prostate cancer, and escalated to Stage 4 on 30 September 2021, when his medical condition deteriorated.[36,37]

Parole application and Royal Prerogative of Mercy[38]

17. A parole review report dated 1 December 2020 notes that Mr Major asked that his parole be denied, and had signed a "waiver" to that effect on 30 November 2020. Mr Major said he wanted help finding accommodation, and the Prison Review Board (PRB) wrote to him on 9 December 2020 acknowledging his request, and made no order for his release.[39,40]

18. Mr Major reapplied for parole in early 2021, but a parole review report, dated 9 March 2021, noted he had not participated in any programs to address his offending behaviour, and had no community based support or accommodation. The PRB wrote to Mr Major on 10 February 2021, to advise him that his application had been adjourned to allow him to submit a parole plan setting out, amongst other things, his proposed protective strategies and supports.[41,42]

19. On 30 March 2021, the PRB wrote to Mr Major and again adjourned his parole application, noting that he had continued to deny the offences for which he had been convicted. Although he had been assessed as being at "*very low*" risk of sexual recidivism, a report from DOJ's Specialist Psychological Services recommended monitoring of his "*social relationships and access to children within these relationships*".[43]

[36] Exhibit 1, Vol. 1, Tab 12.14, Terminally Ill Health Advice (25.04.21)
[37] Exhibit 1, Vol. 1, Tab 12.16, Terminally Ill Health Advice (30.09.21)
[38] Exhibit 1, Vol. 1, Tab 12A, Death in Custody Review (14.04.23), pp12-13 and ts 20.06.23 (Perrin), p12
[39] Exhibit 1, Vol. 1, Tab 12.8, Parole Review Report (01.12.20)
[40] Exhibit 1, Vol. 1, Tab 12.9, Letter Prisoner Review Board (09.12.20)
[41] Exhibit 1, Vol. 1, Tab 12.11, Parole Review Report (09.03.21)
[42] Exhibit 1, Vol. 1, Tab 12.10, Letter Prisoner Review Board (10.02.21)
[43] Exhibit 1, Vol. 1, Tab 12.12, Letter Prisoner Review Board (30.03.21)

20. The PRB also told Mr Major he did not have a viable parole plan because it was lacking detail about his community supports and where he was going to live. He was advised that he may need supported accommodation because of his health issues and that this would require an assessment. The PRB recommended Mr Major "*work with the transition manager at the prison"* and arrange an assessment by the Aged Care Assessment Team.[44]

21. Mr Major's parole application was eventually rejected by the PRB. In a letter to Mr Major dated 29 June 2021, the PRB advised that it had decided that his release: "*would present an unacceptable risk to the safety of the community*" because his parole plan included no confirmed accommodation and no community support. The letter encouraged Mr Major to seek the assistance of the "*Transitional Manager*" to find suitable accommodation and advised him of his right to seek a review of the PRB's decision.[45]

22. Stage 3 and 4 sentenced prisoners may be considered for early release pursuant to the Royal Prerogative of Mercy (RPOM). A briefing note is prepared, and after endorsement by the CEO, it is forwarded to the Minister for Corrections. In Mr Major's case, a briefing note was forwarded to the Minister for Corrections on 5 October 2021, but it did not recommend Mr Major's early release under a grant of the RPOM.[46,47]

CAUSE AND MANNER OF DEATH[48,49,50]

23. A forensic pathologist (Dr V Kueppers) conducted an external post mortem examination of Mr Major's body on 20 October 2021 and reviewed CT scans. Dr Kueppers found no evidence of injury and noted Mr Major's documented medical history.

[44] Exhibit 1, Vol. 1, Tab 12.12, Letter Prisoner Review Board (30.03.21)
[45] Exhibit 1, Vol. 1, Tab 12.13, Letter Prisoner Review Board (29.06.21)
[46] Exhibit 1, Vol. 1, Tab 12A, Death in Custody Review (14.04.23), p17
[47] Exhibit 1, Vol. 1, Tab 12.17, Email from Ms R Silva to Mr T Perrin (11.01.23)
[48] Exhibit 1, Vol. 1, Tab 6.1, Supplementary Post Mortem Report (11.10.22)
[49] Exhibit 1, Vol. 1, Tab 6.2, Post Mortem Report (20.10.21)
[50] Exhibit 1, Vol. 1, Tab 7.1, ChemCentre Final Toxicology Report (15.11.21)

24. Toxicological examination found the medications, midazolam and morphine in Mr Major's system, which were consistent with his medical care. Alcohol was not detected.

25. At the conclusion of her external post mortem examination, Dr Kueppers expressed the opinion that the cause of Mr Major's death was complications of metastatic prostate cancer and end-stage chronic obstructive pulmonary disease, with terminal palliative care. Dr Kueppers also stated that in her opinion, Mr Major's death was due to natural causes.

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

QUALITY OF SUPERVISION, TREATMENT AND CARE

27. In relation to the care and treatment Mr Major received whilst he was in custody, the Health Review made the following observation, with which I agree:

> Mr Major received comprehensive care across over almost 7 years whilst he was in custody, both for his main diagnosis of prostate cancer, and for his other health conditions including COPD and skin cancers. Although testing for prostate cancer had not been clinically indicated at the time it was undertaken, nonetheless due to this comprehensive screening, his cancer was detected before he had developed symptoms related to its progression. It is unfortunate that at the time of diagnosis the cancer was already metastatic, but early treatment is highly likely to have afforded him more time than he would otherwise have had, prior to his final deterioration. It is also highly likely that his PSA would not have been tested, had he remained in the community. His COPD had been untreated in the community, but maintenance therapies were commenced within months of his reception into prison, and he remained relatively stable until his last year of life.

> Other significant conditions were managed appropriately as they arose, including radiotherapy treatment for skin cancer. Preventative health management was also a routine part of his health care.
>
> I note that several mental state examinations had identified some cognitive deficits, mainly around memory; however, it was still clear in all interactions with Mr Major that he had retained his capacity to consent to or decline medical treatments and interventions. Acute illnesses and exacerbations were acted upon promptly and Mr Major was transferred to tertiary care in a timely manner on all occasions.
>
> Compassionate care was shown when he was assisted to see his mother before her passing in 2020. The Palliative Care Team was requested to be involved early on and therefore was very familiar with [Mr Major's] health situation by the time his end-of-life care was required. In conclusion, health care for Mr Major whilst he was in the care of the Department of Justice was seen to be excellent, and in many ways, was likely superior to care that he would have received in the community.[51]

28. In relation to the management of Mr Major's prostate cancer, an independent urological surgeon (Dr Paul McRae) reviewed Mr Major's records and concluded:

> In my opinion Mr Major received all the appropriate diagnostic and therapeutic measures available for his prostate cancer. There were no untoward delays in his diagnosis or treatment measures. In fact he received exemplary treatment, despite the difficulties associated with being incarcerated. I do not consider that his incarceration contributed to his disease progression and final death in any way whatsoever.[52]

29. After carefully reviewing the available evidence, I have concluded that the management of Mr Major's prostate cancer was of a very good standard. Further, with the exception of his inappropriate restraint during hospital transfers on three occasions (which I discuss below) it is my view that Mr Major's supervision, treatment and care was of an acceptable standard.

[51] Exhibit 1, Vol. 1, Tab 14, Health Services Review (19.06.23), p26
[52] Exhibit 1, Vol. 1, Tab 9, Report - Dr P McRae (24.01.23), p3

Restraints issue[53]

30. When a prisoner is transported outside of prison for a medical appointment or to attend hospital, an Offender Movements Information (OMI) report is prepared. The DIC Review states that OMI reports are self-generated from information that has been entered into TOMS.[54]

31. The DIC Review also states that the field in TOMS that relates to whether restraints are required defaults to "*Yes*", and that movement staff are required to alter this field to "*No*" for prisoners like Mr Major using a drop-down box. This information was provided in an email dated 10 March 2023 to the author of the DIC Review (Mr Perrin), from Mr Danny Turner, the Assistant Superintendent Assessments and Movements at Casuarina.[55,56]

32. However, in an email dated 6 July 2023, Mr Kirke (counsel for DOJ) advised that Mr Perrin had made additional enquiries and that the relevant field defaults to blank, noting:

> It has been confirmed that when completing an Offender Movement Information form on TOMS, the fields for 'handcuffs' and 'leg irons' default to 'blank' on the Transfer and Discharge module. This field is a mandatory field and the movements officer cannot save without making a selection.[57]

33. At all relevant times, DOJ's restraints policy provided that, subject only to an adverse risk assessment, Mr Major should not have been restrained when he was being transferred from Casuarina to FSH on 11 or 22 September 2021, or to FSH and then to Bethesda Hospice on 1 October 2021. That is because he was terminally ill, elderly and frail, and had significant mobility issues.[58]

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[53] ts 20.06.23 (Perrin), pp7-12
[54] Exhibit 1, Vol. 1, Tab 12A, Death in Custody Review (14.04.23), p21
[55] Exhibit 1, Vol. 1, Tab 12.23, Email from Asst. Supt. Assessments & Movements (10.03.23)
[56] Exhibit 1, Vol. 1, Tab 12A, Death in Custody Review (14.04.23), p21
[57] Email - Mr J Kirke, counsel for DOJ to Sgt A Becker (06.07.23)
[58] DOJ's Restraints Policy: COPP 12.3 Conducting Escorts, para 5.3.1 (effective from 04.01.21)

34. According to the DIC Review, a medical certificate issued on 11 September 2021 states that Mr Major had been assessed as requiring: "*travel in (a) soft (seated) vehicle with minimum restraints as possible*". However, an OMI Report dated 11 September 2021 for Mr Major's transfer to FSH stated he required handcuffs and leg irons.[59,60]

35. Following that transfer, a "*movement alert*" was entered into TOMS on 12 September 2021, stating Mr Major required a soft-seated vehicle and "*nil restraints to lower limbs*". A second medical certificate issued on 26 September 2021 stated Mr Major: "*should be transported in a soft-seated vehicle with no restraints to his lower limbs*".[61]

36. Nevertheless, the OMI report for Mr Major's transfer to FSH on 22 September 2021 again stated he required handcuffs and leg irons, as did the OMI report for Mr Major's transfer to FSH and then the Bethesda Hospital on 1 October 2021.[62,63]

37. However, documentation in relation to Mr Major's transfer to Bethesda Hospital is contradictory. An external movement risk assessment dated 1 October 2021 notes that Mr Major is elderly and frail and has mobility issues. The document also notes he has a skin condition and that handcuffs "*would cause more damage to his skin*".[64]

38. The risk assessment document's recommendation of "*modification of restraints to NIL*" was approved and the document concludes with the following comments:

> Prisoner is 75 years of age and frail with multiple health issues. He is rated at minimum security and is being transferred to Bethesda Hospice for palliative care. **Nil restraints approved due to the above.** Should the prisoner's condition improve, standard restraints are to be reinstated.[65] [Emphasis added]

[59] Exhibit 1, Vol. 1, Tab 12A, Death in Custody Review (14.04.23), p21
[60] Exhibit 1, Vol. 1, Tab 12.22, Offender Movement Information Report (11.09.21)
[61] Exhibit 1, Vol. 1, Tab 12A, Death in Custody Review (14.04.23), p21
[62] Exhibit 1, Vol. 1, Tab 12.22, Offender Movement Information Report (22.09.21)
[63] Exhibit 1, Vol. 1, Tab 12.22, Offender Movement Information Report (01.10.21)
[64] Exhibit 1, Vol. 1, Tab 13.5, External Movement Risk Assessment (01.10.21)
[65] Exhibit 1, Vol. 1, Tab 13.5, External Movement Risk Assessment (01.10.21)

39. A restraints risk assessment prepared by the contractor responsible for supervising Mr Major at Bethesda Hospital (Ventia) states "nil" restraints were approved in accordance with COPP, which is presumably a reference to the DOJ restraints policy.[66] A Ventia record of events document contains an entry at 5.30 pm on 1 October 2021, that states: "*No restraints required - Approved from control - confirmation on email*.[67]

40. During the inquest, I requested a copy of the email referred to in the Ventia document. Surprisingly, after the inquest, Mr Kirke advised that Mr Perrin had made enquiries with Ventia, but they had advised they did not have either an electronic or a physical copy of the email I requested.[68]

41. As I have noted, recent information from DOJ establishes that the fields for handcuffs and leg irons default to blank on the Transfer and Discharge module, and these fields must be completed before the OMI report can be produced.[69] I also note that each of the three OMI reports referred to state that Mr Major required both handcuffs and leg irons when being transferred to FSH.

42. It follows that in preparing those OMI reports, the relevant officer must have overlooked or ignored Mr Major's TOMS alert, and the information in his medical certificates. This is a wholly unsatisfactory state of affairs.

43. There seems little point in placing alerts on TOMS and in PMO providing medical certificates, if they are going to be routinely overlooked or ignored.

44. As I have noted, Mr Major told nursing staff at Casuarina he was reluctant to attend hospital in restraints, and reportedly said he found the transfers whilst restrained "*traumatic*".[70]

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[66] Exhibit 1, Vol. 1, Tab 12.20.3 Restraints Risk Assessment (4.20 pm, 01.10.21)
[67] Exhibit 1, Vol. 1, Tab 12.20.4, Ventia PIC Record of Events, 285812 (5.30 pm, 1.10.21)
[68] Email - Mr J Kirke, counsel for DOJ to Sgt A Becker (06.07.23)
[69] Email - Mr J Kirke, counsel for DOJ to Sgt A Becker (06.07.23)
[70] Exhibit 1, Vol. 1, Tab 12A, Death in Custody Review (14.04.23), pp16-17

45. As a result of the errors I have referred to in Mr Major's OMI reports, the DIC Review recommended that the following action be taken:

> A Superintendent's notice/broadcast will be circulated reminding staff of the importance of reviewing TOMS alerts and recording correct information relating to restraints in the Offender Movement Information reports.[71]

46. The DIC Review notes that the "*target date*" for this action was 21 April 2023. I note that a Deputy Commissioner's broadcast dated 14 March 2023 (Broadcast), was issued and stated that its purpose was to remind staff "*of the requirements relating to the use of restraints during prisoner escorts, particularly in a secure vehicle*". The Broadcast also noted that "*prisoners shall not be restrained when in a secure vehicle*".[72]

47. In emails to relevant staff at Casuarina dated 18 April 2023 and 16 June 2023, the Deputy Superintendent of Casuarina (Officer Marlow) reminded staff: "*of the importance of accurately recording restraints in the Offender Movement Information documents and any variations recommended by medical staff via Movement Notification Alert.*[73,74]

48. On 16 June 2023, Officer Marlow also provided the following responses to questions forwarded to him by Mr Perrin:

> *Question 1*: Does the broadcast and email adequately address the issue you identified and if so, how?
>
> *Response 1*: The broadcast was sent to all staff who deal regularly with prisoner escorts. To ensure no Casuarina staff that may move into one of these areas has missed the broadcast, this has been sent site wide this morning.
>
> *Question 2*: Also, what can you say about how the Department can ensure something like this doesn't happen again?

[71] Exhibit 1, Vol. 1, Tab 12.22, Offender Movement Information Report (11.09.21)
[72] Exhibit 1, Vol. 1, Tab 13.1, Deputy Commissioner's Broadcast (14.03.23)
[73] Exhibit 1, Vol. 1, Tab 13.2, Email Mr W Marlow, Dep. Supt. Casuarina Prison (18.04.23)
[74] Exhibit 1, Vol. 1, Tab 13.4, Email Mr W Marlow, Dep. Supt. Casuarina Prison (16.06.23)

> *Response 2*: Due to the human element and the speed that some of our prisoners are required to depart the prison on medical grounds, there can be no guarantee that this will never occur again. However, by reminding staff of their responsibilities when escorting a prisoner that falls into the criteria of those outlined in COPP 12.3.5, the risk will be minimised.[75]

49. In his response, Officer Marlow also noted that: "*variation of restraints is a custodial decision and on occasions may not be facilitated if there is an unacceptable risk to the safety of escorting staff, hospital staff and community*". Whilst this observation is no doubt sensible from a security perspective, it cannot be said to be relevant to Mr Major's situation, given his medical condition and frailty.

50. Thus, notwithstanding the fact that Mr Major (a frail, terminally ill prisoner) was inappropriately restrained on three occasions whilst being transferred to FSH and Bethesda, DOJ's response has been to issue the Broadcast and send two emails to staff at Casuarina. With all due respect, it is my view that this response is unsatisfactory.

51. I consider that instead of defaulting to "blank", the fields for 'handcuffs' and 'leg irons' on the Transfer and Discharge module in TOMS should default to "No" for prisoners being managed as terminally ill. This would ensure that movements staff would be required to give active consideration to whether these prisoners actually require restraints during the relevant transfer.[76]

52. As I have mentioned, DOJ's restraints policy provides (absent a risk assessment to the contrary) that terminally ill prisoners being transferred outside of a prison do not require restraints. In my view, the amendment to TOMS that I have suggested will be more likely to ensure that movements staff carefully assess the restraints required when moving terminally ill patients. Presumably, for these prisoners, restraints will rarely be required.

[75] Exhibit 1, Vol. 1, Tab 13.3, Email Mr W Marlow, Dep. Supt. Casuarina Prison (16.06.23)
[76] See also: ts 20.06.23 (Perrin), pp15-16

RECOMMENDATIONS

53. In view of the observations I have made in this finding, I make the following recommendation:

> **Recommendation No. 1**
> I recommend that the Department of Justice amend the "Transfer and Discharge" module in the Total Offender Management Solution system (TOMS) so that the "Restraints Required" tab defaults to "No" for all prisoners being managed on the Terminally Ill register in TOMS.
>
> The aim of this amendment is to ensure that before a terminally ill prisoner leaves a prison for an external appointment, a movements officer (or other relevant person) will be required to carefully review TOMS to determine whether the prisoner is required to be restrained during the relevant movement, and if so, what restraints are required.

Response to Recommendation

54. A draft of my proposed recommendation was sent to counsel for DOJ by Sergeant Becker on 23 June 2023, with a request that any comments be forwarded to the Court by close of business on 6 July 2023.[77] In an email dated 6 July 2023, Mr Kirke (counsel for DOJ), advised DOJ was not supportive of the proposed recommendation because the proposed amendment:

> [P]oses a greater risk that prisoners who are required to be restrained due to safety/escape concerns are not restrained. The current system (with the field defaulting to blank) balances the risk of terminally ill prisoners being placed in restraints when they should not be; and prisoners who do not satisfy an exclusion to the restraint regime being unrestrained.[78]

[77] Email - Sgt A Becker to Mr J Kirke, counsel for DOJ (23.06.23)
[78] Email - Mr J Kirke, counsel for DOJ to Sgt A Becker (06.07.23)

55. In his email, Mr Kirke also provided the following additional observations from DOJ:

> With that being said, the Department is however continuing to explore ways to mitigate the risk of terminally ill prisoners being placed in restraints and to ensure that movement officers completing the Transfer and Discharge sheet, (which subsequently feeds into the Offender Movement Information) are privy to pertinent information that would indicate that a prisoner is not suitable for restraints and to ensure that this information is considered prior to completion of the Transfer and Discharge sheet.[79]

56. In my considered view, DOJ's response to my proposed recommendation is not acceptable. However, noting that the original draft of my recommendation related to "*all prisoners*", I have taken account of the risks referred to by DOJ and amended my recommendation so that it now relates to: "*all prisoners being managed on the Terminally Ill register in TOMS*".

57. In my view, amending the recommendation in this way means it will only apply to a very limited number of prisoners. This will hopefully ensure that terminally ill prisoners (like Mr Major) who are assessed as not requiring restraints because of their medical condition and frailty, are not (as Mr Major was) inappropriately restrained because of errors by responsible staff.

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

MAG Jenkin
Coroner
25 July 2023

[79] Email - Mr J Kirke, counsel for DOJ to Sgt A Becker (06.07.23)