JURISDICTION	**:**	CORONER'S COURT OF WESTERN AUSTRALIA
ACT	**:**	CORONERS ACT 1996
CORONER	**:**	Philip John Urquhart, Coroner
HEARD	**:**	7 DECEMBER 2022
DELIVERED	**:**	11 JANUARY 2023
FILE NO/S	**:**	CORC 1757 of 2019
DECEASED	**:**	WINTER, COLIN ALBERT

Catchwords:

Nil

Legislation:

Nil

Counsel Appearing:

Mrs S. Markham assisted the Coroner
Mr C. Tan (State Solicitor's Office) 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, Philip John Urquhart, Coroner, having investigated the death of ***Colin Albert WINTER*** *with an inquest held at Perth Coroners Court, Central Law Courts, Court 85, 501 Hay Street, PERTH, on 7 December 2022, find that the identity of the deceased person was* ***Colin Albert WINTER*** *and that death occurred on 19 December 2019 at Bethesda Hospital, 25 Queenslea Drive, Claremont, from end-stage chronic obstructive pulmonary disease and atherosclerotic heart disease in an elderly man on a background of progressive deconditioning, chronic malnutrition and recent pneumonia (medically palliated) in the following circumstances:*

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INTRODUCTION

1 The deceased (Mr Winter) died on 19 December 2019 at Bethesda Hospital, Claremont, from end-stage chronic obstructive pulmonary disease and atherosclerotic heart disease. At the time of his death, Mr Winter, was a sentenced prisoner in the custody of the Chief Executive Officer of the Department of Justice (the Department).[1]

2 Accordingly, immediately before his death, Mr Winter was a "*person held in care*" within the meaning of the *Coroners Act 1996* (WA) and his death was a "*reportable death*".[2] In such circumstances, a coronial inquest is mandatory.[3]

3 I held an inquest into Mr Winter's death at Perth on 7 December 2022. The following witnesses gave oral evidence:

i. Dr Joy Rowland (Director of Medical Services with the Department)
ii. Ms Toni Palmer (Senior Review Officer with the Department

4 The documentary evidence at the inquest comprised of two volumes of the brief which were tendered as exhibit 1.

The inquest focused on the medical care provided to Mr Winter during his final years as a prisoner, with an emphasis on the care provided to him regarding his well-established illnesses, including his chronic obstructive pulmonary disease (COPD).

MR WINTER [4]

5 Mr Winter was born on 19 September 1948 in Carlton, Victoria. He was 71 years old when he died. There is very little information regarding Mr Winter's life

[1] Section 16, *Prisons Act 1981* (WA)
[2] Sections 3, 22(1)(a), *Coroners Act 1996* (WA)
[3] Section 25(3), *Coroners Act 1996* (WA)
[4] Exhibit 1, Volume 1, Tab 1, Report of Senior Constable Anastasiadis dated 6 June 2020; Exhibit 1, Volume 1, Tabs 11.1 and 11.2, Transcript of Sentencing Remarks of Rowland J dated 17 November 1986, Transcript of Sentencing Remarks of Ackland DCJ dated 19 November 1979

before he commenced three stints in prison, beginning in 1976. At the time of his second term of imprisonment in 1979, he was married with two small children.

6 Sentencing remarks from Mr Winter's last court appearance on 17 November 1986 indicated that he had a disturbed background which commenced with the death of his father, who he was very close to. That disturbed background was exacerbated when he was in the army and spent nine months in Vietnam where it was said he witnessed "*some horrifying slaughter*".

7 It is not known when Mr Winter moved to Western Australia; however, it must have been before December 1975, when he first committed what was to become a serious pattern of sexual and violent offending.

Offending history [5]

8 Mr Winter's first court appearance was in Geelong County Court, Victoria in June 1969. He was 21 years old and was convicted of two counts of carnal knowledge for which he was placed on a good behaviour bound. That offending was a disturbing portent for his subsequent criminal behaviour for over a decade in Western Australia.

9 On 24 June 1976, Mr Winter was sentenced in the Perth Supreme Court on one count of rape and one count of unlawful assault occasioning bodily harm. This offending occurred on 21 December 1975 after he picked up two teenage girls who were hitchhiking late at night. He subsequently raped one of the teenagers and assaulted the other. He was sentenced to eight years' imprisonment, with a minimum period of three years before he was eligible for parole.

10 Mr Winter was on parole for the above offending when he committed serious offences upon another vulnerable female. On 7 June 1979, he lured a young

[5] Exhibit 1, Volume 1, Tabs 11.3 and 12, Western Australian Criminal History for Mr Winter; Exhibit 1, Volume 1, Tabs 11.1-11.3, Transcripts of Sentencing Remarks dated 24 June 1976, 19 November 1979 and 17 November 1986

woman at night-time to stop her car by pretending to be a police officer. He pulled her down into a roadside gully and violently assaulted her, before removing her clothing. He was interrupted when another car came by. Mr Winter later admitted to police that he intended to rape the victim. The victim required surgery to repair fractures to her face.

11 On 19 November 1979, Mr Winter was sentenced in the Perth District Court to four years' imprisonment for one count of indecent assault and one count of stealing. No minimum term was imposed by the sentencing Judge, and it was ordered that the term of imprisonment be cumulative upon his completion of the eight years' imprisonment imposed in 1976.

Circumstances of final imprisonment [6]

12 Following his release from prison for the above offending, Mr Winter committed a number of extremely serious offences in the early hours of 15 June 1986. On this occasion, he offered a lift to two teenage girls who were hitchhiking. He then subjected them to degrading and brutal offending that comprised of two counts of deprivation of liberty, one count of unlawful wounding with intent to do grievous bodily harm, one count of sexual penetration without consent whilst pretending to be armed with a firearm and one count of attempted murder.

13 After pleading guilty to these offences, Mr Winter was sentenced in the Perth Supreme Court on 17 November 1986. He received a sentence of life imprisonment with respect to the attempted murder, with terms of imprisonment ranging from one year to 10 years with respect to the other offences. In handing down these sentences, the sentencing Judge noted:

> My main concern must be for the protection of the public. I can see no other way of dealing with you other than to impose sentences which will have the effect of keeping you in custody until authorities who are better equipped than I can consider your release into the community.

[6] Exhibit 1, Volume 1, Tab 11.1, Transcript of Sentencing Remarks dated 17 November 1986

Prison history [7]

14 Mr Winter had the following prison placements and transfers with respect to his final imprisonment:

a. CW Campbell Remand Centre:[8] 17 June - 23 June 1986 (6 days)
b. Fremantle Prison: 23 June 1986 - 4 January 1988 (560 days)
c. CW Campbell Remand Centre: 4 January - 13 January 1988 (9 days)
d. Fremantle Prison: 13 January - 20 January 1988 (7 days)
e. CW Campbell Remand Centre: 20 January 1988 - 27 October 1988 (281 days)
f. Albany Regional Prison: 27 October 1988 - 10 November 1988 (14 days)
g. CW Campbell Remand Centre: 10 November 1988 - 25 January 1989 (76 days)
h. Fremantle Prison: 25 January 1991 - 3 October 1991 (981 days)
i. Casuarina Prison: 3 October 1991 - 21 February 2002 (3,794 days)
j. Acacia Prison: 21 February 2002 - 27 March 2003 (399 days)
k. Casuarina Prison: 27 March 2003 - 19 December 2019 (6,111 days)

15 Mr Winter was in prison for 33½ years for the offending he committed in June 1986. From March 2003, he was in Casuarina Prison (Casuarina) where he remained until his death. Unsurprisingly, the most significant events regarding the medical conditions which led to his death took place whilst he was at Casuarina.

16 Throughout his last term of imprisonment, Mr Winter held various positions of employment within the prison including carpentry, metal work, maintenance, construction, working in the infirmary and in education. There were also periods where he had unemployment due to sickness.

17 Generally, Mr Winter was regarded as a well-behaved prisoner. He was considered to be an above average worker, generally polite and respectful to staff, and not a management issue. Due to his ongoing medical conditions, Mr Winter remained at Casuarina from 27 March 2003 and in October 2015, he primarily

[7] Exhibit1, Volume 1, Tab 30A, Death in Custody Report dated October 2022
[8] Now Hakea Prison

resided in the prison infirmary. He was not considered for a transfer to a prison with a lower security rating for the following reason stated by Ms Palmer:[9]

> Casuarina Prison is the only prison that has got an infirmary, and with that infirmary comes 24/7 medical care. So, there are a couple of other prisons that do have 24-hour medical care, but Casuarina is the only one with an infirmary.

18 Notwithstanding his good behaviour as a prisoner, Mr Winter's parole suitability was always denied following his regular reviews by the Prisoner Review Board (PRB). On 26 April 2019, the PRB considered Mr Winter's case for parole for the final time before his death. No recommendation was made for his participation in a re-socialisation programme or release to parole at that time. The PRB's reasons for making neither recommendation included (i) that Mr Winter was still considered physically able to reoffend, (ii) he had not completed any treatment programmes or counselling, nor had he indicated any willingness to do so since the PRB's last hearing and (iii) a psychological assessment found he was "*within high-risk range of sexually violent reoffending*".[10]

OVERVIEW OF MR WINTER'S MEDICAL CONDITIONS AND TREATMENT IN PRISON AND IN HOSPITAL[11]

Mr Winter's medical conditions

19 As already noted above, Mr Winter had been in custody since mid-1986. At that time, he was 37 years old. He had multiple significant medical issues, most notably COPD. A major contributor to the COPD was that he had always been a very heavy smoker and had ignored repeated advice from prison health staff and specialists at hospitals to quit.

20 Mr Winter's other conditions included ischaemic heart disease (for which he had a coronary artery bypass graft in 2016) and valvular heart disease (for which he

[9] ts 7.12.22 (Ms Palmer), p.22
[10] Exhibit 1, Volume 1, Tab 16, Letter to Mr Winter from the Prisoners Review Board dated 25 July 2019
[11] Exhibit 1, Volume 1, Tab 31, Health Services Summary into the Death in Custody dated 28 November 2022; Exhibit 1, Volume 2, Tab 2, Fiona Stanley Hospital medical records

received a mitral valve replacement in June 2016). He also had atrial fibrillation and an abdominal aortic aneurysm which had progressed from 2003 and which required surgery in 2010 and 2018. He also had acute kidney injury, hypertension, high cholesterol and osteoporosis. From 2010 until his death, Mr Winter had macrocytic anaemia with intermittent thrombocytopenia and myelodysplastic syndrome.

Medical treatment provided to Mr Winter in Casuarina [12]

21 Prison health staff undertook annual health reviews for Mr Winter in 2010, 2011 and 2012. After 2012, Mr Winter's reviews by nursing staff, prison doctors and specialists became so frequent that annual health reviews were not required.

22 The health care provided to Mr Winter during the final years of his imprisonment extended to a number of specialists in the areas of cardiology, haematology, respiratory, vascular, ENT[13], spinal and scoliosis.

23 In addition to his refusal to accept medical advice regarding his smoking, Mr Winter also ignored advice regarding his diet. Up until his death, he maintained his preference for foods that lacked nutritional value. Compounding this was Mr Winter's chronic malnutrition and weight loss, which were secondary to his respiratory and gastrointestinal diseases, including oesophageal candidiasis. This caused rapid weight loss in 2018.

24 Mr Winter's entrenched smoking habit was not only the major component of the development of COPD, but also to his other serious medical conditions. As noted by Dr Rowland at the inquest:[14]

[12] Exhibit 1, Volume 1, Tab 31, Health Services Summary into the Death in Custody dated 28 November 2022
[13] Ear, Nose and Throat
[14] ts 7.12.22 (Dr Rowland), p.9

> [T]he ischemic heart disease and the vascular disease with his aneurism, and the hypertension and the osteoporosis, you can link them all back to increased risk associated with smoking and lifestyle choices that he was making. So, he continued to smoke and yet managed to survive so many years beyond the major surgery and heart surgery.

Medical treatment provided from August 2018

25 In August 2018, Mr Winter was treated by a prison doctor for a chest infection and increased congestive cardiac failure. Notwithstanding, he continued to smoke.

26 On 23 August 2018, Mr Winter was admitted to Fiona Stanley Hospital (FSH) with increased shortness of breath and difficulties swallowing tablets. He was commenced on a treatment for the exacerbation of COPD. During this admission, he developed a small bowel obstruction and underwent a laparotomy. When he returned to Casuarina on 6 September 2018, he was in a very poor condition. He was cachectic and deconditioned, and it was deemed he was not suitable to be cared for at the prison infirmary. Consequently, Mr Winter was returned to FSH on 7 September 2018, and remained there until he was transferred to Fremantle Hospital (FH) on 10 September 2018.

27 This transfer was for Mr Winter's ongoing rehabilitation, with the principal diagnosis listed as physical deconditioning. He had severe malnutrition with ongoing weight loss, despite dietetics input. He was provided treatment for atrial flutter (irregular heartbeat), and for an infective exacerbation of COPD. He was discharged from FH and returned to Casuarina on 18 September 2018.

28 On 26 October 2018, a gastroscopy preformed at FH to investigate Mr Winter's difficulty in swallowing showed a severe candida infection of his oesophagus, and oral anti-fungal treatment was recommended.

29 On 31 October 2018, Mr Winter attended the respiratory clinic at FSH. He had shown some improvement since his admission to FSH the previous month; however, his exercise tolerance was limited to 100 metres. Mr Winter was

cachectic and deconditioned, attending the appointment in a wheelchair. He continued to smoke and said he was not able to cease. A doctor noted that Mr Winter had severe COPD that was likely to progress given his ongoing smoking.

30 On 11 November 2018, Mr Winter was taken to FSH with back pain and was diagnosed with a lumbar spine crush fracture as a result of osteoporosis. He was fitted with a back brace and returned to Casuarina the next day. Mr Winter was commenced on treatment for osteoporosis.

31 On 21 November 2018, Mr Winter was admitted to FSH where he remained for seven days following an endovascular repair of an abdominal aortic aneurysm.

32 From January 2019 to September 2019, Mr Winter had regular appointments at specialist clinics at RPH and FSH. These clinics were for spinal surgery, vascular, cardiology and haematology.

33 By the end of July 2019, Mr Winter was coughing with an increased shortness of breath and a decreased exercise tolerance to 40 metres. He was commenced on a treatment for an infective exacerbation of COPD and his diuretics were increased for congestive cardiac failure. At a pulmonary physiology appointment at FSH on 7 August 2019, it was documented that there was no further intervention available to improve Mr Winter's shortness of breath. He continued to smoke.

EVENTS LEADING TO DEATH [15]

34 On 15 November 2019, Mr Winter was admitted to FSH and began further treatment for an infective exacerbation of severe COPD. He was treated with oral steroids, intravenous antibiotics, inhalers and non-invasive ventilation. He had

[15] Exhibit 1, Volume 1, Tab 31, Health Services Summary into the Death in Custody dated 28 November 2022; Exhibit 1, Volume 2, Tab 2, Fiona Stanley Hospital medical records

also developed an acute kidney injury and had elevated troponin (indicating heart muscle damage). He only weighed 45 kg.

35 On his return to prison on 25 November 2019, Mr Winter was breathless and clearly still unwell. He was taken by ambulance back to FSH that evening. Again, he was treated for an acute exacerbation of COPD. Despite prison medical staff advising FSH doctors of the limited health care resources at the prison infirmary, Mr Winter was discharged from FSH on 2 December 2019, and returned to Casuarina. He remained weak and unwell and had difficulty standing for longer than several minutes. Once again, prison medical staff determined he was not safe to remain in prison and he was returned to FSH on 2 December 2019. However, he was discharged from the emergency department at FSH late that same evening.

36 On 3 December 2019, the prison doctor recorded that Mr Winter had been returned from FSH with extreme frailty and respiratory failure due to progressive COPD. He had great difficulty standing unaided. Given the terminal nature of Mr Winter's COPD and the insufficient resources at the infirmary to treat him, Bethesda Hospital was contacted by the prison doctor regarding the provision of palliative care.

37 On 4 December 2019, Mr Winter was admitted to the palliative care unit at Bethesda Hospital. His admission history recorded he had end-stage COPD and significant ischemic heart disease, with previous admissions to FSH. His main problems were identified as low oxygen levels, increased work of breathing, fatigue, worsening malnutrition and swallowing difficulty.

38 After an assessment period to determine if Mr Winter had any improvement, his care at Bethesda Hospital was directed to palliation and he received end-of-life care with medication to keep him comfortable. Mr Winter subsequently died on 19 December 2019.

CAUSE AND MANNER OF DEATH [16]

39 On 15 January 2020, a forensic pathologist (Dr Jodi White) conducted an external post mortem examination of Mr Winter's body. Dr White was of the view that an examination of the FSH and Bethesda Hospital medical records would allow a cause of death to be given without an internal post mortem examination.

40 Dr White noted Mr Winter's last admission at Bethesda Hospital for end-of-life care following multiple recent admissions to FSH and significant deterioration in his health against a background of end-stage COPD and complex chronic heart disease, with severe malnutrition. He weighed only 40 kg when examined.

41 Toxicological analysis showed the presence of prescription-type medication in keeping with Mr Winter's clinical conditions and palliative medical management.

42 At the conclusion of the external post mortem examination, and after reviewing the hospital medical records and the results of the toxicological analysis, Dr White expressed the opinion that the cause of Mr Winter's death was end-stage chronic obstructive pulmonary disease and arteriosclerotic heart disease in an elderly man on a background of progressive deconditioning, chronic malnutrition and recent pneumonia (medially palliated).

43 I accept and adopt that conclusion expressed by Dr White and I find that Mr Winter's death occurred by way of natural causes.

ISSUES RAISED BY THE EVIDENCE

Mr Winter's discharge from FSH on 25 November 2019 and 2 December 2019

44 Based on all the information available, I agree with Dr Rowland's observation that Mr Winter's discharges from FSH on 25 November 2019 and 2 December 2019

[16] Exhibit 1, Volume 1, Tabs 5.1-5.3, Supplementary Post Mortem Report dated 6 March 2020, Post Mortem Report dated 15 January 2020, Interim Post Mortem Report dated 15 January 2020; Exhibit 1, Volume 1, Tabs 6.1-6.2, Final Toxicology Report dated 26 January 2020, Interim Toxicology Report dated 17 January 2020

were not appropriate.[17] On both occasions, Mr Winter was returned to Casuarina in an extremely unwell state and requiring medical attention well beyond the capacity of the prison's infirmary. Given his extremely poor health, Casuarina medical staff are to be commended for the arrangements that were undertaken on 3 December 2019 for Mr Winter to be admitted to Bethesda Hospital for palliative care.

45 Dr Rowland noted:[18]

> [D]ischarges from hospital back into custody are a known source of risk, and expectations of both services regarding the capacity of the other can be discordant. Processes are in place with the MOU between DOJ [Department of Justice] and DOH [Department of Health] regarding good communication and discharge planning and DOJ has implemented a post-hospital discharge review as routine practise. Although the discharge process appears to have failed, most likely due to internal pressure within the DOH facility, the response from Health Services DOJ once Mr Winter was returned to our facility on both these occasions was appropriate and insured safety of the patient.

46 I am satisfied with the post-hospital discharge review that the Department now has in place. This review includes an escalation to Dr Rowland (or someone acting under her delegation) contacting the hospital doctors to discuss what the needs are and to try and establish a discharge plan, a transfer care plan, and work out what is required and negotiate a shared decision about that.[19] Dr Rowland further explained:[20]

> [S]o, my impression is that these issues are improving compared to how they were a few years ago. I am involved less often so the conflicts must be getting resolved at the level of the nurses, and I haven't heard of a turnaround or a rapid return to hospital as often as was occurring in the past. So, I think we are making progress in terms of that understanding of both services.

47 I am satisfied with the measures now in place to ensure that what happened to Mr Winter on 25 November 2019 and 2 December 2019 is unlikely to occur again. I am also satisfied with Dr Rowland's observation that the discharges from FSH

[17] Exhibit 1, Volume 1, Tab 31, Health Services Summary into the Death in Custody dated 28 November 2022, p.7
[18] Exhibit 1, Volume 1, Tab 31, Health Services Summary into the Death in Custody dated 28 November 2022, p.7
[19] ts 7.12.22 (Dr Rowland), p.15
[20] ts 7.12.22 (Dr Rowland), pp.15-16

were unlikely to have impacted on Mr Winter's overall health status or his final outcome.[21] As Dr Rowland stated at the inquest:[22]

> It was recognised very quickly. He was assessed immediately on return. It was recognised what his issues were. They responded to those. They monitored him and he was monitored until he returned to a tertiary centre.

Mr Winter's refusal to give up smoking

48 Prison records indicate that Mr Winter was a smoker before his first imprisonment back in 1976. He was repeatedly provided with medical advice as to the dangers of smoking to his health. I completely agree with Dr Rowland's observation that, "*his continued smoking did contribute significantly to the development and progression of his chronic diseases and the timing and nature of his death.*"[23]

49 I endorse the decision that has been made by the Department since Mr Winter's death to eventually make all prisons "smoke free". As noted by Dr Rowland, "*this will result in prisoners having no access to tobacco, regardless of their personal preference.*"[24]

Royal Prerogative of Mercy not considered by the Department

50 At the time of Mr Winter's death, prisoners with a terminal illness were managed in accordance with the Department's Policy known as "*Policy Directive 8: Prisoners with a Terminal Medical Condition*" (PD 8). PD 8 defines "*Terminal Medical Condition*" as:[25]

> [O]ne or more medical conditions that on their own or as a group may significantly increase a prisoner's potential to die in custody, having regard to the nature of the condition(s) and the length of the prisoner's sentence.

51 Under PD 8, once a prisoner is identified as having a terminal illness, a note is to be made in the terminally ill module of TOMS (Total Offender Management

[21] Exhibit1, Volume1, Tab 31, Health Services Summary into the Death in Custody dated 28 November 2022, p.7
[22] ts 7.12.22 (Dr Rowland), p.17
[23] Exhibit 1, Volume 1, Tab 31, Health Services Summary into the Death in Custody dated 28 November 2022, p.7
[24] Exhibit 1, Volume 1, Tab 31, Health Services Summary into the Death in Custody dated 28 November 2022, p.7
[25] Policy Directive 8: Prisoners with a Terminal Medical Condition

System). From late 2014, the prisoner's expected prognosis was designated by identifying them, with increasing levels of seriousness, as Stages 1, 2, 3 or 4.

52 The TOMS terminally ill health module indicated that Mr Winter was listed at Phase 1 terminally ill under the old two-phase process.[26] This listing took place on 9 August 2001 for several issues that included asthma, a cardiac condition, hypertension and arthritis. Mr Winter was subsequently removed from the terminally ill register on 5 October 2006.[27] On 15 October 2014, he was relisted as Phase 1 terminally ill as he had severe ischemic heart disease in three vessels which was not amenable to cardiac surgery.[28]

53 Relevant to the four-stage process, on 21 July 2018, Mr Winter was classified at Stage 3 of the Department's Terminally Ill List as he was due to undergo surgery for a leaking abdominal aortic aneurysm which carried a significant risk of rupture prior to, and during, surgery.[29] On 22 January 2019, Mr Winter was reclassified at Stage 2, as his condition was regarded as stable following the surgery.[30]

54 On 4 December 2019, Mr Winter was reclassified to Stage 3 of the Department's Terminally Ill List as a result of his exacerbation of COPD and atrial fibrillation. On 12 December 2019, his terminally ill status was escalated to Stage 4.[31]

55 One of the outcomes from these classifications is that a prisoner who has been classified as Stage 3 or Stage 4 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). Pursuant to PD 8, a terminally ill prisoner is classified at Stage 3 if the

[26] Exhibit 1, Volume 1, Tab 30A, Review of Death in Custody dated October 2022, p.7. Amendments to PD 8 in 2014 developed the classification of terminally ill prisoners from a two-phase process to a four-stage process.
[27] Exhibit 1, Volume 1, Tab 30A, Review of Death in Custody dated October 2022, p.8
[28] Exhibit 1, Volume 1, Tab 30A, Review of Death in Custody dated October 2022, p.8
[29] Exhibit 1, Volume 1, Tab 30A, Review of Death in Custody dated October 2022, p.11
[30] Exhibit 1, Volume 1, Tab 30A, Review of Death in Custody dated October 2022, p.13
[31] Exhibit 1, Volume 1, Tab 30A, Review of Death in Custody dated October 2022, pp.15-16

Department's Director of Health Services is of the opinion that the prisoner has a "*Terminal Medical Condition*" and "*is likely to die within three months*" and/or "*has one or more medical conditions which may increase the potential for sudden death*".[32] A terminally ill prisoner is to be classified at Stage 4 if the prisoner's death is imminent.

56 PD 8 required that certain tasks must be undertaken once a prisoner is classified at Stage 3. One of those tasks is that the Department's Manager, Sentence Management (or their delegate), within seven working days of the notification of the classification, will:[33]

> Prepare a briefing note for the Minister of Corrective Services which notifies the Minister of the prisoner's medical situation and life expectancy, the likelihood of the prisoner dying in custody and any other relevant information.

57 This briefing note commences the process for the exercise of the Royal Prerogative of Mercy. A similar briefing note is to be prepared when a prisoner is classified at Stage 4.

58 Unfortunately, a briefing note was not prepared for Mr Winter when he was classified at Stage 3 (either on 21 July 2018 or 4 December 2019), or when he was classified at Stage 4 on 12 December 2019.[34]

59 Ms Palmer has provided an explanation for identical oversights by the Department regarding terminally ill prisoners at other inquests held prior to this one. In short, the position of Manager, Sentence Management was not filled from January 2018 to June 2020. Nor was the task regarding the preparation of briefing notes delegated to another employee at the Department during this period.

60 The Department has previously conceded that the decision to remove the position of Manager, Sentence Management and not reassign the task of preparing the

[32] Policy Directive 8: Prisoners with a Terminal Medical Condition, p.2
[33] Policy Directive 8: Prisoners with a Terminal Medical Condition
[34] Exhibit 1, Volume 1, Tab 30A, Review of Death in Custody dated October 2022, pp.15-16

briefing notes "*was a serious failure in judgement*".[35] I need only repeat what I stated in my finding from the inquest where this concession had been made:[36]

> That concession was properly made. In my view, it was inexcusable that such an important task was not reassigned for a period of approximately 2½ years whilst dozens of terminally ill prisoners were being classified as Stage 3 or Stage 4. It rendered an important outcome of the classification process entirely nugatory.

61 Although I accept it is extremely rare for a Minister for Corrective Services (the Minister) to grant a pardon in the exercise of the Royal Prerogative of Mercy, I note that in this case Mr Winter was first classified at Stage 3 nearly 18 months before he subsequently died. By then he had been imprisoned for over 32 years. This meant he would have been, at that time, one of the longest serving prisoners incarcerated in Western Australia for offences that did not include murder. Had a briefing note been prepared in July 2018, it is not known whether he would have been granted a pardon by the Minister prior to his death.

62 Since Mr Winter's death, the staff position that generates briefing notes to the Minister about the early release of prisoners has been reinstated. In addition, arrangements are now in place to ensure that the list of terminally ill prisoners on TOMS is closely monitored. The upshot is that the errors made from January 2018 to June 2020 are very unlikely to reoccur.[37]

QUALITY OF THE DEPARTMENT'S SUPERVISION, TREATMENT AND CARE

63 Having carefully considered the documents tendered into evidence and the evidence of Dr Rowland at the inquest, I am satisfied that Mr Winter's various chronic and progressive medical conditions were appropriately managed by the Department. Accordingly, I am satisfied that the standard of supervision, treatment and care he received whilst he was in custody at Casuarina in his final

[35] See letter dated 8 February 2022 from Mr Mike Reynolds, the Commissioner for Corrective Services at the Department of Justice, that was provided following the Inquest into the death of ***Jeffrey Lee Strettles*** [2022] WACOR 13 delivered 14 February 2022 at pp.15-16
[36] Inquest into the death of ***Jeffrey Lee Strettles*** [2022] WACOR 13 delivered 14 February 2022 at p.16
[37] Inquest into the death of ***David Arthur Rice*** [2022] WACOR 44 delivered 5 October 2022 at p.16

years of incarceration was appropriate. In addition, there was no evidence before me that the standard of supervision, treatment and care he received during the entirety of his last incarceration was deficient.

64 I agree with the following assessment by Dr Rowland regarding Mr Winter's care during his final term of imprisonment:[38]

> Mr Winter spent 33 years in custody, during which time he continued to smoke, despite documented advice and education to quit. He developed multiple progressive chronic diseases, had several serious health events, and had major surgery. Overall, he consistently received comprehensive, compassionate and multi-system care, including many attempts to encourage him to quit smoking and engage in other lifestyle changes. He had good access to primary health services and specialist care and responses to acute presentations were appropriate. It is considered that the care he received was likely better than he would have accessed in the community.

PJ Urquhart
Coroner
11 January 2023

[38] Exhibit1, Volume 1, Tab 31, Health Services Summary into the Death in Custody dated 28 November 2002, p.8