Coroners Act 1996
[Section 26(1)]

Coroner's Court of Western Australia

RECORD OF INVESTIGATION INTO DEATH

Ref: [2020] WACOR 11

I, Sarah Helen Linton, Coroner, having investigated the death of ***Brian Vincent ATTWELL*** *with an inquest held at the* ***Perth Coroner's Court, Court 85, CLC Building, 501 Hay Street, Perth*** *on* ***22 May 2020*** *find that the identity of the deceased person was* ***Brian Vincent ATTWELL*** *and that death occurred on* ***13 July 2017*** *at* ***Fiona Stanley Hospital*** *as a result of* ***cardiac failure in an elderly man with valvular heart disease and other co-morbidities*** *in the following circumstances:*

Counsel Appearing:

Sgt L Houisaux assisting the Coroner.
Ms R Hartley (State Solicitor's Office) appearing on behalf of the Department of Justice (Corrective Services).

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INTRODUCTION

1. Brian Attwell was a well-known businessman in Albany, where he ran his own civil contracting business. After living what was a normal, law abiding life, and at an age when he might have been heading towards retirement, Mr Attwell was convicted after trial of the offence of attempting to procure another person to murder the estranged wife of his son. The offence occurred in the context of the acrimonious breakdown of Mr Attwell's son's marriage and associated property settlement proceedings occurring in the Family Court to which Mr Attwell strongly objected.[1]

2. Mr Attwell was sentenced on 28 January 2014 to a term of 8 years and 6 months' imprisonment, backdated to commence on 1 August 2013. At the time of sentencing, Mr Attwell was 74 years old and had a number of known health conditions. Due to his age and infirmity, Mr Attwell served most of his sentence in the Casuarina Prison Infirmary before being transferred to Fiona Stanley Hospital shortly prior to his death. He died in hospital on 13 July 2017.

3. By virtue of being a sentenced prisoner at the time of his death, Mr Attwell was a 'person held in care' for the purposes of the *Coroners Act 1996* (WA). In such circumstances, a coronial inquest is mandatory.[2] I held an inquest at the Perth Coroner's Court on 22 May 2020.

4. The circumstances of the death were relatively clear. The primary focus of the inquest was on the medical treatment provided to Mr Attwell, to ensure it was of an appropriate standard.

BRIEF BACKGROUND

5. Mr Attwell was born and raised in Albany. He was in a long-term relationship and he had two sons.[3]

6. Mr Attwell had worked as a farmer before starting his own successful earth contracting business in 1970. His hobbies and interests in his spare time included restoring vintage machinery and gardening, and he had a hobby farm near Denmark in Western Australia.[4]

7. Mr Attwell led a normal life and was a productive member of the community in Albany for most of his life. He was found to have been a person of good character until he embarked upon the conduct that led to his conviction and lengthy prison sentence.[5]

8. The offending occurred in the context of Family Court proceedings relating to Mr Attwell's son and estranged daughter-in-law, in particular the property settlement. It seems Mr Attwell was concerned about the financial costs of the

[1] Exhibit 1, Tab 11.
[2] Section 22(1)(a) *Coroners Act*.
[3] Exhibit 1, Tab 8.
[4] Exhibit 1, Tab 8.
[5] Exhibit 1, Tab 11.

proceedings and had developed an intense hatred towards his son's former wife, which led him to behave in a manner that was out of character.[6] He was convicted of the offence after a trial before a jury.

9. Mr Attwell's sentence of 8 years and 6 months' imprisonment was backdated to commence on 1 August 2013, so the earliest date that he was eligible for release on parole was not until 31 January 2020.[7]

10. The learned sentencing Judge was aware Mr Attwell had been diagnosed with type 2 diabetes and had related issues with his eyes and feet that affected his sight and mobility.[8] He was noted to be physically frail, with limited mobility, and it was acknowledged the term of imprisonment was likely to have a further substantial effect on his physical health. However, it was felt that his needs could be satisfactorily managed in prison. Mr Attwell did not, at that time, show any signs of dementia although he had risk factors for the development of a frontotemporal neurocognitive disorder.[9]

11. An appeal against his sentence, including a ground relating to a failure to take into account his advanced age and health conditions, was dismissed by the Western Australian Court of Appeal on 30 April 2015.[10]

INITIAL ADMISSION TO PRISON

12. Mr Attwell initially served his sentence in Albany Prison, where he could be close to his family. He had already spent a period of time there on remand in 2012 and 2013 before being granted bail. However, not long after his return to custody on 29 January 2014, it became clear Mr Attwell's health needs had increased. Test results suggested poor diabetic control and associated impaired kidney function. In particular, he was considered to be at risk of falls due to his age, diabetes, peripheral vascular and nerve disease and failing vision. His frailty put him at increased risk of serious outcomes such as a hip fracture or brain haemorrhage if he did fall.[11]

13. On 25 February 2014 Mr Attwell was noted to have significantly deteriorated in the last 12 months and the physiotherapist reported he had poor dynamic balance and had developed a fear of falling. Staff raised concerns that his health needs could no longer be appropriately managed in a general unit at Albany Prison.[12] Although his desire to be near his family was important, it was considered that Mr Attwell's health needs overrode this important social factor.[13] As a result, on 18 March 2014 Mr Attwell was transferred to Casuarina Prison where he could receive more supervised care. Casuarina Prison was (and remains) the only prison in the State with an Infirmary, so it

[6] Attwell v The State of Western Australia [2015] WASCA 84.
[7] Exhibit 1, Tab 19, Sentence Summary.
[8] Exhibit 1, Tab 40.
[9] Exhibit 1, Tab 11.
[10] Attwell v The State of Western Australia [2015] WASCA 84.
[11] T 12 – 13.
[12] Exhibit 2, Tab 62.
[13] T 10.

was better equipped to provide the care Mr Attwell required, which was supportive care and close monitoring, similar to nursing home level of care.[14]

14. From the time of his arrival and for the rest of his sentence, Mr Attwell was housed in Casuarina Prison's Infirmary due to his age, health and mobility-related issues. A plan was put in place for Mr Attwell to have regular daily nursing checks at least twice daily. He was not assigned employment or booked into offender treatment programs due to his health issues.[15]

15. On 24 March 2014 Mr Attwell was reviewed by one of the prison medical officers and found to have a heart murmur. He was referred for an echocardiogram.[16]

16. On 1 April 2014 a prison doctor reviewed Mr Attwell, including the results of his recent blood tests, which showed worsening kidney function and anaemia. Mr Attwell was referred to the Royal Perth Hospital Renal Clinic and it was noted he already had a specialist appointment scheduled for review of his glaucoma. His referral to cardiology, made on 24 March 2014, was also noted. Mr Attwell declined an endoscopy referral.[17]

17. Mr Attwell continued to have twice daily nursing checks in the Infirmary between medical appointments but his observations were changed to bi-weekly on 30 April 2014, with only a daily blood glucose test required. He attended allied health appointments intermittently and was taken to hospital outpatient appointments as scheduled. Mr Attwell required full assistance with all activities of daily living and required walking aids for mobility. He was able to walk, albeit slowly, with these aids, but a wheelchair was also made available, as needed.[18]

18. Mr Attwell attended his ophthalmology review for his diabetic retinopathy on 20 May 2014 as scheduled and the following day he was referred for a hepatology review based on pathology results. On 4 June 2014 a prison doctor discussed his results with a hepatology registrar at Fiona Stanley Hospital to formulate a plan depending on results of other tests.[19]

19. On several occasions Mr Attwell declined to take his medications and he also refused to have a flu vaccination. He continued to decline to have an endoscopy, despite medical advice, and also declined to undertake the tests recommended by the hepatology registrar, indicating he was not keen to further investigate the abnormality and did not want hepatitis testing.[20]

20. On 10 July 2014 Mr Attwell was seen at the Fremantle Hospital Renal Clinic and diagnosed with Stage 3B Chronic Renal Failure secondary to diabetes. He also had peripheral vascular disease in his lower limbs and an enlarged prostate. Some tests were suggested and a plan was made for review at the clinic in six months. A prison doctor initiated testing on 30 July 2014, based

[14] T 14.
[15] Exhibit 1, Tab 40; Exhibit 2, Tab 62.
[16] Exhibit 2, Tab 62.
[17] Exhibit 2, Tab 62.
[18] Exhibit 2, Tab 62.
[19] Exhibit 2, Tab 62.
[20] Exhibit 2, Tab 62.

on the clinic's recommendation, and also indicated follow-up needed to be done on the echocardiogram referral that had been requested by medical staff in March 2014.[21]

21. On 22 July 2014 Mr Attwell requested a transfer to Bunbury Prison so his family could visit him more often. This prompted a referral for an Aged Care Assessment, but they received a response from Fiona Stanley Hospital Aged Care Assessment Team (ACAT) that it was not appropriate as Mr Attwell still had a lengthy sentence to serve. They did pass on the referral to the Falls Assessment Clinic.[22]

22. Mr Attwell reported falls on 14 and 15 August 2014, but showed no visible injuries. He was given anti-inflammatory gel, massage and assistance with showering to prevent further falls and was reviewed by a prison doctor on 18 August 2014 to investigate the reason for the increased falls. He declined to have x-rays or analgesia. He was reviewed again by a doctor a month later, on 15 September 2014, after two more falls. Mr Attwell said he had felt generally weak lately. Nothing of note was detected on examination. Mr Attwell indicated he was not keen to investigate his heart murmur but the echocardiogram request was followed up anyway and the cardiology referral was refaxed.[23]

23. On 10 October 2014 Mr Attwell was reviewed in the Geriatric Medicine Clinic at Fremantle Hospital in relation to his history of recent falls. He was advised to commence aspirin for cardiovascular prevention but he refused. He was also seen by a physiotherapist, who recommended he commence use of a wheeled Zimmer frame.[24]

24. On 9 November 2014 Mr Attwell reported a loss of vision in one eye. He indicated it had happened months previously but he had chosen not to report it. He was seen by a prison doctor the following day and an urgent referral was made to the Royal Perth Hospital Eye Clinic. He was seen at Royal Perth Hospital on 12 November 2014, two days after the referral was requested.[25]

25. Mr Attwell seemed to become progressively less cooperative with medical treatment in 2015. On 19 January 2015 he was reviewed by a prison doctor and they discussed his continued refusal to be referred to a gastroenterologist for an endoscopy. Mr Attwell was noted as indicating he realised that it might mean the doctors were missing a diagnosis or more sinister problem, such as cancer, that could shorten his lifespan. He also declined a referral to vascular surgeons to explore options for treating his peripheral vascular disease. It was unclear to the doctor why Mr Attwell was refusing the referrals but he was aware of the repercussions to his health through the failure to investigate and treat the issues and it was considered he had the capacity to make those decisions, despite the fact they were against medical advice.[26]

[21] Exhibit 2, Tab 62.
[22] Exhibit 2, Tab 62.
[23] Exhibit 2, Tab 62.
[24] Exhibit 2, Tab 62.
[25] Exhibit 2, Tab 62.
[26] Exhibit 2, Tab 62.

26. On 12 February 2015 Mr Attwell had another medical review as he was refusing to go to hospital for an appointment. Mr Attwell told the doctor he did not want to go to the doctor for any reason. He also declined to have a blood test as he said he did not want any investigations for anything.[27]

27. I am aware from other inquests that it is not uncommon for prisoners with chronic health conditions to decline regular hospital visits, as they are subject to strip-searches and restraints and other security measures as part of each visit, which can be a strong deterrent. Further, they may simply not wish to undergo more invasive procedures, which is a common feeling in chronically ill patients even in the general community. Although the medical officer attempted to persuade Mr Attwell to change his mind, his choice not to go to hospital was respected.

28. From late February 2015 Mr Attwell was back to having daily nursing reviews. He was noted to be able to ambulate independently with a Zimmer frame but required assistance showering.[28]

29. Mr Attwell finally agreed to go to hospital for review on 12 April 2015 and he attended Fiona Stanley Hospital the following day. He was considered well enough to return to prison that day with some further testing suggested.[29]

30. After nearly a year of waiting for a cardiology appointment, and after follow up by the prison staff, Mr Attwell was allocated an appointment at Fiona Stanley Hospital for 28 April 2015 but on the day he refused to attend.[30]

31. Mr Attwell had a fall on 18 May 2015. His care plan was reviewed by a nurse afterwards and it was noted that he now required full assistance with all aspects of daily living.[31] He had another fall on 28 May 2015 but he refused to go to hospital to be reviewed. He had ongoing difficulties moving and the nurses were concerned that he was not himself after the fall, so they arranged a review with a doctor. He was eventually persuaded by the prison doctor to attend hospital on 12 June 2015. He was taken to Fiona Stanley Hospital and was noted to be cachetic and deconditioned but he refused to be treated and was returned to prison after signing a waiver at the hospital.[32]

32. Mr Attwell had started to experience some urinary incontinence around this time, particularly at night, and various measures were put into place to help him with this issue, including a urinal bottle that he was reluctant to use. He was noted to be increasingly forgetful and the nursing and medical staff were becoming progressively more concerned for him. On 30 June 2015 a prison doctor discussed the staff's various concerns with Mr Attwell but he refused any more investigations.[33]

33. Pathology on 5 August 2015 showed Mr Attwell had developed a urinary tract infection but he refused to go to hospital and it was felt he still had capacity

[27] Exhibit 2, Tab 62.
[28] Exhibit 2, Tab 62.
[29] Exhibit 2, Tab 62.
[30] Exhibit 2, Tab 62.
[31] Exhibit 2, Tab 62.
[32] Exhibit 2, Tab 62.
[33] Exhibit 2, Tab 62.

to make that decision. He was treated with antibiotics but his condition worsened and he was eventually taken to hospital and treated for delirium two days later. He was admitted and treated until 11 August 2015.[34] The following day a doctor undertook a mental state assessment for testamental capacity at Mr Attwell's request as he said he wanted to make his will. He was found to have capacity at the end of the assessment.[35]

34. Another cognitive assessment was performed on 18 August 2015 and Mr Attwell was found to show moderate cognitive impairment but remained clinically stable. He was registered as a terminally ill prisoner in the same month.[36]

35. Throughout the end of 2015 and 2016 Mr Attwell continued to be monitored closely and he continued to require full assistance with all aspects of his day to day care. He had several admissions to hospital, including once for a right elbow fracture after a fall, which was conservatively managed.[37]

36. In May 2016 note was made that Mr Attwell was becoming very difficult to manage due to increasing stiffness and contractures of his limbs. He was transferred to Fremantle Hospital for rehabilitation on 25 May 2016. Mr Attwell remained at Fremantle Hospital until 12 July 2016 for optimisation of his mobility and functioning. During his admission he underwent an ACAT assessment to consider whether he could be paroled to a nursing home. He was assessed as requiring a high care nursing home placement.[38]

37. On return to prison Mr Attwell was orientated to time and place. He was unable to ambulate and required two person assistance and a full hoist for transfers. He still had pain from his fractured elbow and efforts were made to make him more comfortable by being placed on an air bed with a pillow placed under his right shoulder for support.[39]

38. On 19 August 2016 Mr Attwell had a Geriatrician review in the Casuarina Infirmary performed by a nurse and doctor from Fremantle Hospital.[40]

39. On 25 October 2016 Mr Attwell indicated he was now open to cardiology review and a cardiology referral was completed. Later that day Mr Attwell became confused and had difficulties speaking. An ambulance was called and Mr Attwell was taken to Fiona Stanley Hospital. He was assessed as suffering a transient ischaemic attack (TIA). An echocardiogram showed results consistent with a myocardial infarction (heart attack). A CT brain scan showed no acute changes. He was commenced on aspirin to reduce his risk of further TIA's/strokes. He was discharged the next day.[41]

40. In mid-November 2016 Mr Attwell became uncooperative and refused to have bloods taken. He was considered competent to make that decision, so his

[34] Exhibit 2, Tab 62.
[35] Exhibit 2, Tab 62.
[36] Exhibit 2, Tab 62.
[37] Exhibit 2, Tab 62.
[38] Exhibit 2, Tab 62.
[39] Exhibit 2, Tab 62.
[40] Exhibit 2, Tab 62.
[41] Exhibit 2, Tab 62.

refusal was respected and no testing was performed. On 21 November 2016 Mr Attwell eventually agreed to have bloods taken and he seemed to improve after this time. By 7 December 2016 he was noted as seeming quite cheerful and sitting outside during the day. He was receiving daily phone calls from family and had a family visit coming up.[42]

41. However, by mid-December 2016 Mr Attwell was noted to be deteriorating, again, with further cognitive decline. He was refusing solid food and medication and when asked why he simply said he was not hungry, although it was noted he also had swallowing difficulties. Enquiries were made with the pharmacy to come up with liquid alternatives and in the meantime he was given his medication crushed.[43]

42. In January 2017 a recommendation for an aged care facility placement was not approved as his death was not considered imminent and he was felt to be receiving appropriate care in prison.[44] On 23 February 2017 the Attorney General declined a recommendation to exercise the Royal Prerogative of Mercy, despite extensive submissions.[45] He continued to struggle with eating so his diet was supplemented.

43. On 19 April 2017 Mr Attwell was diagnosed with a chest infection and a nurse noted the following day that he was elderly and frail and deteriorating in line with his disease process, but appeared to be well looked after in the Infirmary. His capacity to walk was noticeably diminishing.[46]

44. He continued to occasionally refuse to have bloods taken and to attend scheduled hospital appointments in May and June 2017, but he eventually agreed to undergo blood tests at the start of July 2017. The blood tests came back and showed worsening anaemia, so Mr Attwell was transferred to Fiona Stanley Hospital by ambulance on 4 July 2017.[47]

FINAL HOSPITAL ADMISSION

45. At the hospital, Mr Attwell was diagnosed with congestive heart failure and chronic anaemia. He was also found to have bilateral pleural effusions (fluid in the space between the lungs and the chest wall). He underwent a procedure to remove the fluid to improve his breathing and comfort. Ongoing attempts were then made to correct his fluid balance. However, Mr Attwell continued to experience episodes of hypotension (low blood pressure) and recurrent fluid overload, with worsening renal function.[48]

46. On 7 July 2017, at the request of the medical team, Mr Attwell's restraints were reduced to a single point and on 10 July 2017 the rest of the restraints were removed.[49]

[42] Exhibit 2, Tab 62.
[43] Exhibit 2, Tab 62.
[44] Exhibit 2, Tab 40; Exhibit 2, Tab 61.
[45] Exhibit 2, Tab 62.
[46] Exhibit 2, Tab 62.
[47] Exhibit 2, Tab 62.
[48] Exhibit 1, Tab 6 and Tab 36.
[49] Exhibit 1, Tab 19, Tab 36, Tab 37 and Tab 40.

47. A medical emergency team call was made on 8 July 2017 for an acute drop in Mr Attwell's oxygen saturations. He was reviewed by the General Medicine Consultant who noted Mr Attwell had advanced heart failure, atrial stenosis and chronic anaemia. He was bed bound and was considered to have a very limited life span.[50]

48. On 9 July 2017 a family meeting was held with Mr Attwell's partner and it was agreed that he should not undergo any resuscitation or escalation of care. The following day he was reviewed by the palliative care team. It was the impression of treating doctors that Mr Attwell was suffering from refractory end-stage cardiac failure that was not responding to treatment, with concurrent acute-on-chronic renal failure.[51]

49. On 11 July 2017 Mr Attwell was escalated to Stage 4 of the Department's Terminally Ill Prisoner Register. Although formal palliation had not yet commenced, he was provided with some comfort measures until he died in the early hours of the morning on 13 July 2017.

CAUSE AND MANNER OF DEATH

50. An external post mortem examination was performed on 14 July 2017 by Forensic Pathologist Dr Vicky Kueppers. Dr Kueppers also reviewed the medical records and limited toxicology analysis, which showed medications in keeping with Mr Atwell's medical care. No alcohol, opiates or common illicit drugs were detected.[52]

51. At the conclusion of these limited investigations, Dr Kueppers formed the opinion the cause of death was cardiac failure in an elderly man with valvular heart disease and other co-morbidities (external examination only).

COMMENTS ON TREATMENT, SUPERVISION AND CARE

52. Mr Attwell was already a frail, elderly man in poor health with chronic and progressive health issues and poor mobility when he was received into prison to serve his first prison sentence. He spent most of his sentence in the Infirmary of Casuarina Prison due to his high health and care needs. His health conditions were regularly monitored and he was provided with assistance with most of his activities of daily living.

53. Over time Mr Attwell's condition deteriorated, with worsening anaemia, renal failure and heart failure. He had a number of hospital admissions before his final admission to Fiona Stanley Hospital on 4 July 2017. At this stage, it was apparent to the medical team that he had reached the end of his life and, after discussions with his family, a decision was made to withdraw any life saving measures and treat him palliatively until his death on 13 July 2017.

[50] Exhibit 2, Tab 62.
[51] Exhibit 1, Tab 6 and Tab 25.
[52] Exhibit 1, Tab 6 and Tab 7.

54. The evidence before me indicates that Mr Attwell's chronic health problems were managed appropriately while in prison, with regular input from allied health professionals and in-hospital treatment when required. His management appears to have been complicated by his intermittent refusal to follow medical advice, but it was his right as a patient to choose to refuse aspects of recommended treatment and his choices were respected.

55. The care Mr Attwell received while in custody appears to have been of a high standard at least comparable to the care he could have received in the general community.

56. From a supervision point of view, appropriate decisions were made to remove Mr Attwell's restraints when he was nearing the end of his life and he did not pose a security risk. The Department also took appropriate steps to raise with the Honourable Attorney General the possibility of Mr Attwell being granted early release, who exercised his discretion to decline to refer the request.[53]

57. An internal review of Mr Attwell's management as a prisoner, following his death, showed compliance with all policies and procedures and no areas for improvement were identified.[54] No evidence was identified at the inquest to contradict that conclusion.

CONCLUSION

58. Mr Attwell was an elderly man in poor health when he began to serve his prison sentence in 2014. He was known to be at risk of falls and steps were taken to try to reduce his risk of falling, although it could not be eliminated entirely.[55] Mr Attwell's health slowly deteriorated further over the next few years.

59. Mr Attwell died in hospital in July 2017 as a result of natural causes. No concerns have been raised in the evidence before me about the care he received prior to his death. There were some limitations to the care provided to him as a result of decisions Mr Attwell made regarding what care he would accept, but it was appropriate to allow him to make those decisions given he was assessed as having the capacity to do so. At the end, Mr Attwell's family were also consulted in making decisions about end of life care and it was decided not to pursue aggressive treatment and to provide palliative care, which was also appropriate.

60. I am satisfied Mr Attwell received a high standard of medical care while incarcerated, comparable to what might be expected to be provided in the community.

[53] T 10 - 11.
[54] T 9.
[55] T 13.

S H Linton
Coroner
3 June 2020