JURISDICTION	**:**	CORONER'S COURT OF WESTERN AUSTRALIA
ACT	**:**	CORONERS ACT 1996
CORONER	**:**	SARAH HELEN LINTON, DEPUTY STATE CORONER
HEARD	**:**	8 JUNE 2022
DELIVERED	**:**	2 AUGUST 2022
FILE NO/S	**:**	CORC 1159 of 2020
DECEASED	**:**	ALLEN, HENRY

Catchwords:

Nil

Legislation:

Nil

Counsel Appearing:

Sgt A Becker assisted the Coroner.
Ms C Wood (ALS) appeared for the family of the deceased.
Mr Z Clifford (SSO) appeared for the Department of Justice.

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

Nil

Coroners Act 1996
(Section 26(1))

RECORD OF INVESTIGATION INTO DEATH

I, Sarah Helen Linton, Deputy State Coroner, having investigated the death of ***Henry ALLEN*** *with an inquest held at Perth Coroners Court, Central Law Courts, Court 85, 501 Hay Street, Perth, on 8 June 2022, find that the identity of the deceased person was* ***Henry ALLEN*** *and that death occurred on 14 June 2020 at Fiona Stanley Hospital from sepsis and aspiration pneumonia in a man with oral squamous cell carcinoma and multiple comorbidities, with terminal palliation in the following circumstances:*

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INTRODUCTION

1. Henry Allen was born and raised in the Halls Creek region in the far north of Western Australia. After leaving school he generally worked as a stockman. Sadly, Mr Allen came into contact with the criminal justice system at a very young age and he spent long periods of his life in custody. His offending behaviour varied and its severity escalated over time. He began to commit a number of violent sexual offences as he grew older and the penalties he received increased from fines through to terms of immediate imprisonment. Mr Allen was eventually declared a dangerous sexual offender, pursuant to the *Dangerous Sexual Offenders Act 2006* (WA) (DSO Act)[1]. He appears to have struggled to comply with the conditions imposed on him on supervision orders under the DSO Act.

2. On 4 December 2014, Mr Allen pleaded guilty to four charges of contravening his supervision order, without reasonable excuse, and he was sentenced to a total term of 16 months' imprisonment with no parole eligibility, backdated to commence on 9 July 2013 when he first went into custody. On the same date, an order was made in the Supreme Court of Western Australia, pursuant to the DSO Act, that Mr Allen should be detained for an indefinite period for control, care or treatment as he posed an unacceptable risk that he would commit a serious sexual offence if not held in custody.

3. At the time of his death in June 2020, Mr Allen was 60 years of age and he had remained in custody subject to this indefinite detention order for several years. His continuing detention order was affirmed in the Supreme Court on 6 September 2018 and his next review hearing was set for 7 September 2020, a few months after his death.[2] The DSO Act was repealed and replaced by the *High Risk Serious Offenders Act 2020* (HRSO Act) on 26 August 2020, so Mr Allen would have been dealt with under the provisions of the new legislation at his next appearance.[3]

4. As Mr Allen was a prisoner when he died at Fiona Stanley Hospital on 14 June 2020, he came within the definition of a 'person held in care' under the terms of the *Coroners Act 1996* (WA) and a coronial inquest into his death is, therefore, mandatory.[4]

5. I held an inquest on 8 June 2022. Extensive written material was tendered in relation to the WA Police and Department of Justice's investigations into Mr Allen's death.[5] Of particular relevance in this case, extensive information was provided about the medical care Mr Allen received for his various health conditions prior to his death. In addition, two witnesses were called to give evidence at the inquest in person: Dr Joy Rowland, the Department's Director of Medical Services, and Ms Toni Palmer, the Senior Review Officer in the Department's Death in Custody Team.

[1] Which has now been repealed and replaced by the *High Risk Serious Offenders Act 2020* (WA).
[2] Exhibit 1, Tab 9.3 and 9.4.
[3] Outline of Submissions by Department of Justice filed 24 June 2022, [4].
[4] Section 22(1)(a) *Coroners Act*.
[5] Exhibit 1 and 2.

MEDICAL HISTORY

6. Mr Allen had a complex medical history and well-established chronic disease. He had been diagnosed with multiple underlying diseases, including diabetes, hypertension, hypercholesterolemia, gastro-oesophageal reflux disease and ischaemic heart disease. He was also a heavy smoker and had a history of alcohol abuse. [6]

7. Mr Allen was prescribed medications for his high cholesterol, diabetes, heart disease, hypertension, gastro-oesophageal reflux disease and pain management. Mr Allen was seen regularly at the prison medical centre for review of his diabetes, blood tests, vaccinations and yearly medicals. His weight, blood pressure, oxygen saturations and glucose levels were monitored regularly.[7]

8. At the time the indefinite detention order was imposed in December 2014, the learned sentencing Judge was aware Mr Allen had a number of health issues, including a heart attack in July 2013, cataract surgery and episodes of low sodium resulting in at least one seizure. He was receiving drug treatments for his diabetes, hypertension, hypercholesterolemia, coronary artery disease and vitamin deficiencies and his health conditions were generally stable.[8]

9. It is apparent from the medical records that Mr Allen's medical treatment was complicated by his, at times, aggressive behaviour and non-compliance with medications and treatment suggestions. He would often refuse appointments, or not attend, and was unwilling to make lifestyle changes to help control some of his chronic health conditions. A mental health nurse had suggested that Mr Allen showed signs of narcissistic and antisocial personality disorder, which may have contributed to some of these issues.[9]

CANCER DIAGNOSIS

10. The most significant health issue for Mr Allen in his final years was his cancer diagnosis, which was made in 2017.

11. In late 2016, Mr Allen was being held at the West Kimberley Regional Prison (WKRP), which was his preferred location as it was the closest prison to his family and country and there were other prisoners from his community held there. He had been moved there on 31 August 2016 at the recommendation of the Supreme Court.[10]

12. On 28 December 2016, Mr Allen was seen at the WKRP medical centre with a sore, red throat and cough. He was given a medical certificate for time off work and was planned to be reviewed the next day. He was seen by a nurse a few days later and reported he was now well and his sore throat had resolved.[11]

[6] Exhibit 1, Tab 14.
[7] Exhibit 1, Tab 14.
[8] Exhibit 1, Tab 9.1.
[9] Exhibit 1, Tab 14.
[10] Exhibit 1; Tab 14; Exhibit 2, DIC Review Report.
[11] Exhibit 1, Tab 14.

13. However, in early February 2017 he again complained of a sore throat. He was reviewed by a doctor, who noted his right tonsil was enlarged and inflamed. He was given antibiotics but his tonsil remained enlarged. Blood tests were arranged and he was initially sent to the Derby Hospital ED before being returned to prison where he was then referred to an Ear, Nose and Throat (ENT) specialist for an opinion. He was seen in the ENT clinic at Derby Hospital on 1 March 2017 and he was diagnosed with squamous cell carcinoma of the right tonsil. He was referred for further management to Fiona Stanley Hospital (FSH). He was, therefore, transferred to Casuarina Prison in Perth on 10 March 2017, so he could access medical treatment at FSH more easily. After a couple of weeks, he was offered, and accepted, placement in the infirmary at Casuarina due to his health needs.[12]

14. Investigations at FSH also revealed a primary cancer (adenocarcinoma) of the lung. Mr Allen received aggressive treatment for both these cancers in the form of chemotherapy, radiotherapy and surgery. Mr Allen also had surgery to remove cancerous lymph nodes found in his neck.[13]

15. It was noted in the medical records that despite his cancer diagnoses and attempts at counselling by doctors and nursing staff, Mr Allen continued to smoke cigarettes. He expressed little interest in quitting until the final stage, when his disease was well and truly advanced. It was noted by Dr Rowland that this was Mr Allen's choice and he could not be forced. All the prison health staff could do was offer advice and support and let him know what was available (such as heavily subsidised nicotine patches), if he chose at some point to try to quit.[14]

IMPROVEMENT IN MR ALLEN'S HEALTH

16. At the request of Corrective Services, Mr Allen was reviewed at the Fremantle Hospital Geriatric Medicine Outpatient Clinic on 28 August 2018 in the context of potentially granting parole so that he could receive palliative care management in a hospice setting. However, the conclusion was that Mr Allen did not require palliative care at that time and it was felt that it was difficult to support a recommendation of parole based on his deteriorating health.

17. Indeed, on 29 August 2018, it was noted in the prison records that Mr Allen's condition had significantly improved since July 2018. He had completed his chemotherapy and his most recent CT scan had shown a reduction in the size of his lymph nodes and no new lesions. He had gained weight, his eating had improved and he was compliant with medications.

18. On 3 September 2018, a note was made that Mr Allen also was experiencing ongoing dental issues, but the dentist did not want to see him due to Mr Allen's previous abusive and inappropriate behaviour towards the dentist. He was prescribed antibiotics for a dental infection and a note was made to try to arrange a referral to an

[12] Exhibit 1, Tab 14; Exhibit 2, DIC Review Report.
[13] Exhibit 1, Tab 14.
[14] T 15 - 19; Exhibit 1, Tab 14.

external dentist. A doctor reviewed him on 8 October 2018 and by then his mouth pain had resolved, His antibiotics were continued for a few more weeks.[15]

19. At the time his continuing detention order was affirmed on 5 September 2018 in the Supreme Court, information was available to the Court that Mr Allen had been treated for throat cancer and lung cancer and his condition had settled. His long-term prognosis was unknown, but his death was not expected in the near future. He was de-escalated to Stage 1 on the Department's Terminally Ill Prisoner list in December 2018.[16]

20. Scans performed throughout 2019 showed no recurrence of the cancer. Mr Allen spent much of his time residing in a normal unit, rather than the Infirmary, at his request. Mr Allen made it clear that his continued preference was to return to WKRP. Mr Allen did continue to make some complaints of throat pain and difficulty swallowing, and indicated he was worried the cancer had recurred, but all tests suggested he was in remission. By December 2019, Mr Allen appeared free of cancer and was assessed as medically fit to be granted his request to return to WKRP.[17]

RECURRENCE OF THE CANCER

21. On 16 January 2020, Mr Allen was transferred to Broome Prison and then on to WKRP in Derby, in order to facilitate family contact. During orientation, he indicated his family were aware of his placement there. However, it seems from a review in February 2020 that he had not received any social visits at that time, as the distance for his family to travel to the prison from Fitzroy Crossing and Halls Creek was still too great, particularly given the time of year.[18]

22. Mr Allen's health was monitored weekly. Towards the middle of March 2020, Mr Allen complained of pain in his mouth and difficulty swallowing. It was suspected at that time that he had a recurrence of his cancer.[19]

23. Mr Allen was admitted to Derby Hospital, where the recurrence of his oral cancer was confirmed. He was referred back to the radiation oncologist at FSH for review and transferred back to Casuarina Prison and into the infirmary on 27 March 2020 to better manage his medical treatment.[20]

24. On 31 March 2020, Mr Allen refused oral medication due to the pain in his throat. He was initially prescribed oxycodone liquid for pain relief until he was visited by the palliative care team on 2 April 2020, who recommending commencing Norspan (buprenorphine) patches and lignocaine gel. However, he continued to refuse his medications often.[21]

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[15] Exhibit 1, Tab 14.
[16] Exhibit 1, Tab 9.3, *DPP (WA) v Allen [No 5]* [2018] WASC 274, [119] – [121].
[17] Exhibit 1, Tab 14.
[18] Exhibit 2, DIC Review Report; and Tab 19.
[19] Exhibit 1, Tab 14; Exhibit 2, DIC Review Report.
[20] Exhibit 2, DIC Review Report.
[21] Exhibit 1, Tab 14.

25. On 6 April 2020 Mr Allen's radiation oncology appointment had to be cancelled due to the COVID-19 crisis and the planned biopsy of the tumour was unable to go ahead. Only telehealth consultations were available with the hospital at the time. Instead of a consultation, a PET scan was ordered, with the plan to see him after the scan was completed.[22]

26. By 15 April 2020, Mr Allen had developed increasing difficulties swallowing and nausea. He was no longer accepting oral medications. The nursing staff raised concerns about Mr Allen's repeated refusal to take medications to manage his pain, and after a telephone consult with the Bethesda Hospital palliative care team, he was transferred to the FSH ED, where the PET scan was able to be performed, which showed a large mass in his throat. Mr Allen was also diagnosed with aspiration pneumonia and administered intravenous fluids and antibiotics. Mr Allen was deemed to be a poor candidate for surgical intervention for the tumour and he was referred for palliative care. A PEG feeding tube was inserted into Mr Allen's stomach on 29 April 2020 to assist him with nutrition given the mass made it difficult for him to take food orally.[23]

27. Mr Allen returned to the Casuarina Infirmary on 6 May 2020. He was being fed through his PEG feeding tube and had a buprenorphine patch in situ and was prescribed regular doses of oxycodone to manage his pain. He was being reviewed closely by FSH medical staff and the palliative care team. Mr Allen was still requesting to return to WKRP but it was explained to him that, due to his high nursing care requirements and ongoing specialist input, this was unlikely.[24]

28. On 26 May 2020 Mr Allen returned to hospital as he had developed a chest infection and needed to recommence IV antibiotics. He continued to suffer with bouts of pneumonia and issues with his feeding tube. He was discharged from hospital and returned to the Casuarina Infirmary on 30 May 2020.[25]

29. Mr Allen was still requesting to return to WKRP at this stage. On 2 June 2020 a prison doctor had a discussion with Mr Allen about the terminal nature of his illness, as he was seemingly not aware that the recurrence of the malignance in his head and neck meant that he had a very poor prognosis. It was explained to Mr Allen that he could not be transferred back to WKRP at this point in time as he could not be cared for appropriately in that prison at that time.[26]

LAST ADMISSION TO HOSPITAL

30. Mr Allen's last admission to FSH was on 3 June 2020. He was diagnosed with aspiration pneumonia and bacteraemia (bacteria in the blood). He was commenced on IV antibiotics.

[22] T 12; Exhibit 2, DIC Review Report.
[23] T 13; Exhibit 1, Tab 14.
[24] Exhibit 1, Tab 14.
[25] Exhibit 1, Tab 14.
[26] Exhibit 1, Tab 14.

31. Mr Allen's care was discussed with the oncology and palliative care teams, who confirmed there were no further treatment options available. He was admitted to the Acute Medical Unit for ongoing care.[27]

32. Mr Allen remained uncooperative with some of his care towards the end of his life. On 9 June 2020, he refused to have his blood taken by medical staff and he refused to have a bed wash or change of bedclothes. His wishes were respected.[28]

33. At Mr Allen's request, planning commenced to transfer Mr Allen back to Derby Hospital for end-of-life care in an environment closer to family members and his country but where he could still receive palliative care. Approval for the transfer was granted by the Superintendent of Casuarina Prison on 12 June 2020 and his transfer had been accepted by Derby Hospital. Arrangements were being made for Mr Allen to be flown to Derby by the Royal Flying Doctor Service. Unfortunately, Mr Allen's condition rapidly deteriorated and he died on the morning of 14 June 2020 before the transfer could be completed. The failure to transfer him prior to his death was not due to any delay caused by the Department, but simply the need to coordinate his transfer with various external health services.[29]

34. A request was made on 14 June 2020 for his restraints to be removed while in hospital, as it was apparent his death was imminent. The request was approved by the Superintendent of Casuarina Prison but was not communicated in sufficient time for them to be removed before his death. The approval came through minutes after his death. However, a doctor recorded that Mr Allen appeared comfortable and peaceful, with no distress, at the time he passed away.[30]

CAUSE AND MANNER OF DEATH

35. Following an external post-mortem examination and review of the extensive medical records, a forensic pathologist formed the opinion the cause of death was sepsis and aspiration pneumonia in a man with oral squamous cell carcinoma and multiple comorbidities, with terminal palliation. The forensic pathologist also expressed the opinion the death was consistent with natural causes.[31]

36. Toxicology testing demonstrated the presence of antibiotics, consistent with his medical care. Alcohol and common illicit drugs were not detected.[32]

37. At the conclusion of all investigations Dr N N Vagaja formed the opinion the cause of death was sepsis and aspiration pneumonia in a man with oral squamous cell carcinoma and multiple co-morbidities with terminal palliation. I accept and adopt the opinion of Dr Vagaja as to the cause of death.

[27] Exhibit 1, Tab 3.
[28] Exhibit 1, Tab 3 and Tab 12.
[29] T 7 – 11; Exhibit 1, Tab 2, Tab 4 and Tab 11; Exhibit 2, DIC Review Report, and Tab 21.
[30] Exhibit 1, Tab 2, Tab 4 and Tab 11; Exhibit 2, DIC Review Report, and Tab 21.
[31] Exhibit 1, Tab 6.2.
[32] Exhibit 1, Tab 6.3 and Tab 7.

COMMENTS ON TREATMENT, SUPERVISION & CARE

38. Mr Allen was a lifelong smoker, who developed tonsillar cancer whilst in prison on a continuing detention order in 2017. His management was complicated by the detection of another primary cancer in his lungs, which could only be treated once the treatment for his tonsillar cancer had been completed. Despite advice to the contrary, Mr Allen continued to smoke after both diagnoses had been made.

39. I am satisfied Mr Allen received excellent medical care by prison and FSH medical and nursing staff and his early treatment of the tonsillar cancer allowed him 19 months of remission and the opportunity to return to Derby, at least for a short period. Unfortunately, when he suffered a recurrence of the oropharyngeal cancer in March 2020, his treatment was complicated by issues surrounding the COVID-19 crisis and he was becoming increasingly frail and unwell, which limited his further treatment options. He was given palliative care and kept as comfortable as possible until his death.

40. In terms of his other treatment, I note his other medical conditions were managed reasonably well, depending upon Mr Allen's willingness to accept treatment and comply with taking medication. There were some ongoing issues with his dental care in the last years prior to his death, due to his behaviour towards the dentist, but he did eventually see a dentist in 2019. I note the dentist advised Mr Allen that he would need all his teeth extracted and to be fitted with dentures, as he did not brush his teeth and had too many cavities and such extensive gum disease that ordinary dental treatment would not suffice. This was consistent with the advice of the previous dentist in 2018. On both occasions, Mr Allen refused treatment, although he did eventually change his mind and have two teeth extracted in February 2020 and a few more while in hospital in April 2020. Mr Allen requested glasses and he was promptly reviewed by an optometrist and reading glasses were ordered in 2019. He saw a podiatrist regularly for his diabetic foot care and was also reviewed by a physiotherapist as he became increasingly frail. All of this suggests he was being given reasonably comprehensive allied health care, supporting an overall impression of good treatment and care.[33]

41. One issue that was raised in relation to Mr Allen's supervision prior to his death was a failure on the part of the Department to initiate procedures for the consideration of the potential for Mr Allen to be released on the Royal Prerogative of Mercy when his status on the Terminally Ill Prisoner register escalated.[34]

42. Dr Rowland indicated that the Royal Prerogative of Mercy was mentioned quite early in a conversation between herself and the Superintendent of Casuarina, when discussing Mr Allen's terminally ill status, and it was felt that he was an unlikely candidate for release under that process.[35] Nevertheless, the process should have been followed. This was frankly acknowledged by the Director General of the Department of Justice in a letter to the State Coroner dated 26 April 2022, noting that notwithstanding the likelihood that the Department would recommend Mr Allen's

[33] Exhibit 1, Tab 14.
[34] Exhibit 2, Tab 32.
[35] T 21.

early release was low considering the nature of his offending and sentence, it still should have been initiated and the Minister for Corrective Services notified of his terminal illness status prior to his death.[36]

43. This issue has arisen in a number of mandatory inquests involving the deaths of prisoners from natural causes. I am aware that the issue arose due to a change in staff positions within the Sentence Management Unit that meant that there was no staff member specifically allocated to monitor and perform that task when required. I also understand that last year the Department did a blanket review of every prisoner that was terminally ill, from stages 1 to 4 (which is beyond the usual scope of the policy) to ensure that all prisoners' circumstances were reviewed. No prisoner was released on the Royal Prerogative of Mercy as a result of that review process. Since that time, a new staff member has commenced in the Sentence Management Unit and that person is charged with ensuring there is compliance with the early release policy. I am, therefore, reassured that this issue is unlikely to arise in future matters.[37]

44. However, I did raise at the inquest the question whether it might have been more appropriate for Mr Allen, as a declared 'dangerous sexual offender' being managed by the Supreme Court under that Act (and then later as a 'high risk offender'), to have been brought back before the Supreme Court for early review? This would have been in addition to the Royal Prerogative of Mercy process.

45. Submissions were filed on behalf of the Department to address this point on 24 June 2022. It was acknowledged that at the time of his death, Mr Allen remained subject to a continuing detention order under the DSO Act, which had converted with the repeal of that Act to a continuing detention order under the HRSO Act. Being subject to that order under the HRSO Act, Mr Allen was detained in custody for an indefinite term for control, care or treatment, with regular two yearly reviews by the Supreme Court. In addition to those reviews, an offender who is subject to a continuing detention order may also apply to the Supreme Court for review of that order, subject to certain conditions.[38]

46. At the time of Mr Allen's death, the Department's policy directive that related to prisoners with a terminal medical condition had various processes for different categories of prisoners (such as remand prisoners and mentally impaired accused prisoners) but not in relation to a prisoner subject to a continuing detention order. The new policy that replaced the earlier policy, namely the Commissioner's Operating Policy and Procedure 6.2 (COPP 6.2), also does not currently provide a specific procedure of the provision of information concerning terminally ill prisoners held in custody pursuant to a continuing detention order. The Department is aware of this omission and submitted that it is considering amendment to COPP 6.2 to specifically provide for information sharing in relation to terminally ill prisoners held under continuing detention orders. It is submitted by the Department that this may better facilitate consideration of scheduling an early review application in circumstances where a person held under a continuing detention order is terminally

[36] T 21; Exhibit 2, Tab 32.
[37] T 31 - 33; Exhibit 2, Letter from Director General dated 26 April 2022.
[38] Outline of Submissions by Department of Justice filed 24 June 2022.

ill. That decision would be made by the State Solicitor, who is responsible for managing these cases that are before the Supreme Court.

47. It was also submitted that, in Mr Allen's particular case, his fluctuating health may have presented difficulties even if such a process existed at the time, although it may still have been an option to consider if the process had been in place.

48. An amendment to COPP 6.2 is supported by Mr Allen's family in their submissions to the Court and I agree that it is appropriate and proper that some form of guidance be formalised for the Department to liaise with the State Solicitor's Office in such cases. Accordingly, I propose to make a recommendation that such an amendment be implemented.

Recommendation

I recommend that the Honourable Minister for Corrective Services, the Hon. William (Bill) Johnston MLA, give consideration to directing the Commissioner of Corrective Services to amend Commissioner's Operating Policy and Procedure 6.2 to include specific reference to the procedures to be followed when a prisoner subject to a continuing detention order is terminally ill, in order to facilitate early review by the Supreme Court of the change in circumstances of the prisoner, where appropriate.

49. I am satisfied that Mr Allen received an appropriate standard of supervision, treatment and care while in custody, other than the failure to ensure that his case be considered for whether or not a recommendation should be made for his early release under the RPOM procedures.

50. In making that comment, I acknowledge that it was very unlikely that Mr Allen would have been recommended for release under those provisions, given his lack of community support, his very high treatment and care needs and the serious nature of his offending. Nevertheless, it is important that these processes are followed and that prisoners are afforded every opportunity to have their particular circumstances considered by the appropriate authority in terms of whether they are suitable for early release when they become terminally ill and the end of their life is considered imminent.

51. I also acknowledge that steps were appropriately taken to try to transfer Mr Allen back to Derby Hospital, where he was closer to his family and country, but unfortunately it was unable to be arranged before he became too unwell to travel. Even if he had been considered suitable for early release, the same barriers to his transfer to Derby Hospital would still have applied, as the delay related primarily to his medical transfer.

CONCLUSION

52. Mr Allen unfortunately spent much of his life in prison in his later years. He was a lifelong smoker who ultimately developed associated cancers in his neck and lungs. He received appropriate and timely medical treatment, that was initially successful and he was able to return for a brief period to the Kimberley, which was his very clear wish. However, the cancer then returned and he was brought back to Perth to receive specialist treatment. After review, the specialists determined that there was no further treatment available and he required end of life care. Mr Allen was given palliative care and other treatments to try to keep him as comfortable as possible in his final months. Efforts were also made to assist him to be transferred to Derby Hospital, so that he could die closer to family and country. Sadly, Mr Allen died before the transfer could be completed.

S H Linton
Deputy State Coroner
2 August 2022