IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2016 5331

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)
Section 67 of the Coroners Act 2008

Findings of:	Caitlin English, Coroner
Deceased:	WM
Date of birth:	1939
Date of death:	9 November 2016
Cause of death:	I(a) Respiratory arrest in the setting of metastatic malignancy
Place of death:	St Vincent's Hospital 41 Victoria Parade, Fitzroy, Victoria

BACKGROUND

1. WM was a 76-year-old man who was serving a term of imprisonment at the time of his death.

2. WM was transferred to the secure inpatient ward at St Vincent's Hospital on 31 October 2016 and died there on 9 November 2016.

THE PURPOSE OF A CORONIAL INVESTIGATION

3. WM's death was reported to the Coroner as WM was immediately before his death a 'person placed in custody or care' under the *Coroners Act 2008* and so fell within the definition of a reportable death.

4. The role of a coroner is to independently investigate reportable deaths to establish, if possible, identity, medical cause of death and surrounding circumstances. Surrounding circumstances are limited to events which are sufficiently proximate and causally related to the death. The purpose of a coronial investigation is to establish the facts, not to cast blame or determine criminal or civil liability.

5. The Coroner's Investigator prepared a coronial brief in this matter. The brief includes statements from witnesses, including family, the forensic pathologist who examined WM, treating clinicians and investigating officers.

6. I have based this finding on the evidence contained in the coronial brief. In the coronial jurisdiction facts must be established to the standard of proof of the balance of probabilities.[1]

IDENTITY

7. A fingerprint comparison identified WM, born in 1939.

8. Identity is not in dispute and requires no further investigation.

---

[1] This is subject to the principles enunciated in *Briginshaw v Briginshaw* (1938) 60 CLR 336. The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about, individuals unless the evidence provides a comfortable level of satisfaction as to those matters taking into account the consequences of such findings or comments.

CIRCUMSTANCES IN WHICH THE DEATH OCCURRED

9. WM had a medical history including hypertension, type 2 diabetes mellitus, transient ischaemic attack (stroke), renal stones and depression.[2]

10. On 18 October 2016 WM informed general practitioner Dr Kiran Kalal '*that he had not been eating for the past week and that he had increased frequency of urination for the past three days*'. He had reported abdominal tenderness to a nurse the day prior.[3]

11. Dr Kalal treated WM for a urinary tract infection and on the following day WM reported '*that his symptoms had improved a lot*'. Dr Kalal documented that '*he was eating well, that there were not vomiting episodes and no back pain*'. Dr Kalal advised WM to seek medical assistance if his symptoms worsened.[4]

12. WM saw Dr Kalal again on 27 October 2016 and '*reported still feeling nauseous*'. Dr Kalal ordered further examinations over the next several days which revealed abnormal liver function. On 31 October 2016 WM reported '*an episode of vomiting the day prior and loin pain for the past day and he was still feeling nauseous*'. Dr Kalal referred WM to Ballarat Health Services Emergency Department.[5]

13. At Ballarat Base Hospital WM had an abdominal ultrasound which identified liver lesions suggestive of metastatic disease. He was transferred to St Vincent's Hospital late on the evening of 31 October 2016.[6]

14. Examinations performed at St Vincent's identified '*multiple liver lesions highly concerning for metastases*' and had findings suggestive of primary lung lesion.[7]

15. Mr Adrian Fox of St Vincent's Hospital has described the course of WM's care:

> '*On 4 November 2016, WM was reviewed by the Medical Oncology Team, the Haematology team and the Respiratory team.*
>
> *The Medical Oncology team initially recommended tissue diagnosis via a liver biopsy. At that time, the Medical Oncology team felt WM was not for chemotherapy given the deranged liver*

---

2 Statement of Mr Adrian Fox dated 16 March 2017, Coronial Brief.
3 Statement of Dr Kiran Kalal (undated), Coronial Brief.
4 Ibid.
5 Ibid.
6 Statement of Mr Adrian Fox dated 16 March 2017, Coronial Brief.
7 Ibid.

function tests, but queries whether this may be surgically correctable. On consultation with the Hepatobiliary/Upper GI team, it was determined WM's liver derangement was unlikely to be surgically correctable; on the basis, the Medical Oncology team amended its recommendation, noting that as chemotherapy was unlikely, a tissue diagnosis was not required. It was Medical Oncology's view that WM should be referred for Palliative Care.

Following review by the Respiratory team, WM was requested undergo a lung biopsy for tissue diagnosis. It does not appear that the Respiratory team was aware of the change to Medical Oncology team's recommendation at the time of making their request. ...

WM continued to be reviewed during daily ward rounds on 5, 6 and 7 November 2016 to monitor his condition. Due to confusion regarding the incongruous plans recommended by the Medical Oncology and Respiratory teams, there was some delay in referring WM to the Palliative Care team. This eventually occurred on 8 November 2016.

The Palliative Care team reviewed WM at 1800 hours that evening for nauses as WM indicated that he did not feel right, stating "I feel like I am going to die". *He was, however, unable to pinpoint his specific symptoms.*

At 0600hours on 9 November 2016, the ward staff made a MET call as WM was experiencing tachypnea (rapid breathing). At that time, the decision was made to actively palliate WM. A Morphine and Midazolam infusion were commenced and other comfort care was provided.

WM subsequently passed away at 0630 hours on 9 November 2016.'[8]

CAUSE OF DEATH

16. On 11 November 2016, Dr Michael Burke, a Forensic Pathologist practising at the Victorian Institute of Forensic Medicine, conducted an inspection of WM's body and provided a written report, dated 15 November 2016. In that report, Dr Burke concluded that a reasonable cause of death was '*I(a) Respiratory arrest in the setting of metastatic malignancy*'.

17. Dr Burke commented that '*there is no evidence to suggest the death was due to anything other than natural causes*'.

18. I accept Dr Burke's opinion as to cause of death.

---

[8] Ibid.

FINDINGS AND CONCLUSION

19. WM was 'a person placed in custody' for the purposes of the Coroners Act 2008. Section 52(2)(b) of the Act requires that I hold an inquest into his death, however section 52(3A) states that no inquest is required if I consider that his death was due to natural causes.

20. As Dr Burke's report includes an opinion that WM's death was due to natural causes, pursuant to section 52(3B) I consider that his death was due to natural causes. I am satisfied that an inquest is not required to make the findings required by section 67(1) of the Act.

21. Having investigated the death, without holding an inquest, I find pursuant to section 67(1) of the *Coroners Act 2008* that that WM, born 1939, died on 9 November 2016 at Fitzroy, Victoria, from I(a) Respiratory arrest in the setting of metastatic malignancy in the circumstances described above.

22. Having investigated the death, without holding an inquest, I find pursuant to section 67(1) of the *Coroners Act 2008* Pursuant to section 73(1B) of the *Coroners Act 2008*, I direct that this finding be published on the Internet.

23. I direct that a copy of this finding be provided to the following:

Senior next of kin.

St Vincent's Health.

Correct Care Australasia c/o Meridian Lawyers

Justice Assurance and Review Office.

Senior Constable Laurence Shanahan, Victoria Police, Coroner's Investigator.

Signature:

CAITLIN ENGLISH
CORONER
Date: 23 April 2018