CORONERS ACT, 2003

SOUTH  *AUSTRALIA*

FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 17th, 18th, 19th and 22nd, 23rd and 24th days of October 2019, the 20th, 21st, 22nd and 25th, 26th and 27th days of February, the 21st day of March, the 30th day of April and the 1st day of May 2019 and the 26th day of November 2020, by the Coroner's Court of the said State, constituted of Anthony Ernest Schapel, Deputy State Coroner, into the death of Kenneth Ngalatji Ken.

The said Court finds that Kenneth Ngalatji Ken aged 68 years, late of Yatala Labour Prison, 1 Peter Brown Drive, Northfield, South Australia died at Northfield, South Australia on the 16th day of April 2015 as a result of compression of the neck with contributing acute myocardial infarction due to coronary artery thrombosis. The said Court finds that the circumstances of his death were as follows:

1. Introduction and reason for inquest

1.1. Kenneth Ngalatji Ken was a 68-year-old traditional Aboriginal man. He died on 16 April 2015 at the Yatala Labour Prison in Adelaide (Yatala) where he was in custody.

1.2. Mr Ken was on remand at Yatala having been charged with aggravated assault causing harm in respect of his de facto partner. He had been arrested for that alleged offence on 24 March 2015. He had appeared in the Port Augusta Magistrates Court on 25 March 2015 at which time he was remanded in custody by that court. Mr Ken would remain in custody until the day of his death. The charge to which I have referred was unresolved at the time of his death.

1.3. Mr Ken was in the custody of the Port Augusta Prison until he was transferred by road to Yatala in Adelaide on Tuesday 14 April 2015 which was two days prior to his death. The circumstances of and reasons for that transfer will be discussed in the course of these findings.

1.4. Mr Ken had little in the way of a criminal history. His previous court matters had involved drink driving and drinking on the APY Lands. There is no evidence that Mr Ken had ever spent any time in custody prior to his arrest in March 2015.

1.5. There is no suggestion other than that Mr Ken's custody was at all times lawful. I so find.

1.6. Mr Ken died in his cell during the daylight hours of Thursday 16 April 2015. His death occurred during a routine period of cell lockdown. He was alone in that cell. The circumstances in which Mr Ken died, and an analysis of his anatomical cause of death, will be the subject of discussion in these findings. Mr Ken's death was a death in custody in respect of which a mandatory coronial inquest was held. These are the findings of that inquest.

2. Cause of death

2.1. Mr Ken was found deceased and alone in his cell when it was unlocked at about 1pm on the day in question. He was located sitting in a chair. A ligature made from a bedsheet was around his neck. The sheet was tied to a wall mounted shelving unit. It was apparent that Mr Ken had hung himself. There is no suggestion that any other person was involved in this act and I so find. An emergency 'code black' was called. Mr Ken was provided with immediate attempted resuscitative measures including CPR and the use of a defibrillator. South Australian Ambulance Service (SAAS) personnel attended. Timely and adequate resuscitative measures were unsuccessful. Mr Ken was pronounced life extinct by a SAAS Intensive Care Paramedic at 1:55pm.

2.2. Mr Ken had been locked in his cell alone since approximately 11:20am on the day in question.

2.3. Mr Ken's remains were subjected to a post-mortem examination involving a full autopsy. The examination was conducted by Dr Neil Langlois, a forensic pathologist

at Forensic Science South Australia. Dr Langlois' post mortem report[1] was tendered to the inquest.

2.4. Before dealing with Dr Langlois' report it should be noted that the Correctional Services Officers (CSOs) who located Mr Ken found that the sheet was wrapped around Mr Ken's neck and was connected to shelving which was in turn connected to the wall framework. It was obvious that Mr Ken was not breathing. He was placed on to the floor on his back. A CSO used a Hoffman tool to cut the sheet from around Mr Ken's neck. The sheet was still attached at that point. All of this of course is in keeping with compression of the neck. However, complicating matters as far as establishing Mr Ken's precise cause of death is concerned is the fact that at autopsy Dr Langlois found strong evidence that Mr Ken had also experienced a very recent myocardial infarction (heart attack) that could have been fatal of itself. Dr Langlois' report reveals that histological examination of an obtuse marginal branch of the circumflex artery confirmed the presence of occlusive thrombus. The histological appearance suggested that thrombus was at least a day old, but not more than five days old. Samples from the heart revealed that there were changes of acute myocardial infarction in the area of pallor noted in the lateral wall of the left ventricle of the heart. The age of the myocardial infarction could only be estimated and could not be established with precision, but the appearances suggested a timeframe of around one day. I will return to that aspect of the matter in a moment.

2.5. As to the question of neck compression, Dr Langlois notes in his report that Mr Ken was found with a ligature in the form of a sheet around his neck. His report then goes on to explain the various possible mechanisms that can cause death resulting from compression of the neck. These include obstruction of the veins that drain blood from the head resulting in congestion within the head. The reduced blood flow to the brain due to the compression obstructing the arteries of the neck thereby cutting off blood supply to the brain is another possible mechanism. Compression of the neck can also obstruct the airway due to the compression of the wind pipe. Dr Langlois notes that in any case of compression of the neck due to hanging it is difficult to be certain which of the possible mechanisms dominated to cause death.

[1] Exhibit C2a

2.6. Dr Langlois found two areas of bruising identified under the skin of the neck. One area was located under the chin and the other was over the region under the angle of the jaw. The appearances of the bruising suggested that these lesions were sustained at or around the time of death, although the cause was not apparent. To my mind when one considers the evidence relating to the circumstances in which Mr Ken was found by Correctional Services staff together with Dr Langlois' findings it is clear that at the time of Mr Ken's death there was in existence significant compression of his neck. This inference is reinforced by the fact that it is obvious that Mr Ken deliberately placed himself in this situation. It would hardly be surprising that Mr Ken fixed the ligature to his neck with as much tension as possible.

2.7. Returning to the question of the acute myocardial infarction, the evidence is clear that although Mr Ken did not have any previously diagnosed heart disease he had a number of risk factors for the same including a history of untreated high blood pressure and smoking. Indeed, on the day of his death Mr Ken had complained of acute chest pain which is a common symptom of myocardial infarction. Two ECGs taken that morning at the Yatala infirmary (when later compared to an ECG taken earlier in the month of April 2015 at Port Augusta) suggest that an acute event was occurring in respect of Mr Ken's heart. One of the ECGs taken on the morning of Mr Ken's death bore a description of being 'borderline'. At the time of his infirmary presentation Mr Ken was not diagnosed as experiencing a heart attack and was returned to his cell where he would die. I come to discuss the circumstances of that in due course. However, what this all reveals is that in my opinion Mr Ken on the day of his death was experiencing a heart attack. This is certainly the opinion of Dr Langlois which I accept.

2.8. The circumstances of Mr Ken's death were also examined and reported on by an independent cardiologist, Dr William Heddle. Dr Heddle's report was tendered to the inquest[2] and he gave oral evidence. In his report Dr Heddle expresses the opinion that Mr Ken was experiencing an acute myocardial infarction contemporaneously with the act of hanging and that the myocardial infarction had commenced at least some 24 hours beforehand. He opines that the chest pain of which Mr Ken complained on the day of his death makes it likely that this was a continuing event. Dr Heddle confirms

[2] Exhibit C60

in his report and in his oral evidence that the ECGs performed on the morning of his death were in keeping with an acute myocardial infarction.

2.9. It is my view that the evidence demonstrates that both the compression of Mr Ken's neck caused by the ligature affixed to it, and the acute myocardial infarction could both account, on their own, for Mr Ken's death. However, in his report Dr Langlois states as follows:

> 'The cause of death has an element of uncertainty. Sudden death from an arrhythmia can occur due to the presence of a myocardial infarction. The risk is greatest in the first 48 hours. It is possible the stress of attempting suicide triggered a lethal arrhythmia resulting in his death before the constriction of the ligature took effect. The age of a myocardial infarction cannot be defined precisely due to individual variation. The thrombus of the coronary artery appeared at least a day old. The infarction appeared around a day old. The thrombus could be older than the infarct as the thrombus may start and then grow before blood supply of the heart muscle is sufficiently compromised to cause infarction (death of heart muscle cells due to insufficient blood supply). His history of chest pain appears to be less than one day. However, the onset of chest pain may not correlate with the onset of infarction.' [3]

Dr Langlois goes on to state that notwithstanding these circumstances, on balance it is his opinion that it was more likely that Mr Ken died from compression of the neck due to hanging. The absence of an apparent ligature mark does not exclude compression of the neck. Dr Langlois states that in this case the partial suspension (in the sense that only partial body weight was suspended due to his body being seated on a chair) or the use of a broad ligature in the form of a sheet and a likely short duration of suspension would reduce the probability of a mark forming on the skin of the neck, thereby explaining the relative absence of the same. He goes on to say that the presence of the myocardial infarction could have accelerated death by an arrhythmia developing following the onset of constriction of the neck. This leads Dr Langlois to the conclusion as expressed in his report that the cause of death was as follows:

> 'Ia. Compression of the neck
>
> II. Acute myocardial infarction due to coronary artery thrombosis'

The cause of death expressed in this way can be expanded as follows; *compression of the neck with contributing acute myocardial infarction due to coronary artery thrombosis*. I note that in his report Dr Heddle also suggests that the cause of death remains uncertain with potential contributions not only from the compression of the

[3] Exhibit C2a

neck but also from the acute myocardial infarction with a relative contribution of the two circumstances unable to be clarified. I acknowledge that in his oral evidence Dr Heddle said that he could provide no more certainty about the cause of death than Dr Langlois can. Dr Heddle expressed a view that there was insufficient evidence to specify which of the two causes are the preferred cause. However, Dr Heddle suggests that while the fact of the myocardial infarction is certain, whether that was his cause of death or not is not certain.[4] In the event I accept and prefer the unchallenged evidence of the forensic pathologist Dr Langlois where he states that on balance the primary cause of Mr Ken's death was the neck compression. Accordingly, I find that the cause of Mr Ken's death is compression of the neck with contributing acute myocardial infarction due to coronary artery thrombosis.

2.10. I will expand on this issue in due course but I observe here that it is my finding that when Mr Ken complained of and presented with chest pain on the morning of his death he should not have been returned to his cell where he attempted to take his own life by way of hanging and indeed experienced what on its own could have been a fatal heart attack. He should have at least been kept in the infirmary for observation if not transferred to hospital. Keeping Mr Ken within the care and observation that the infirmary could have provided would naturally have acted to prevent his death by way of hanging. A confirmed diagnosis that he was experiencing an acute heart attack may have prevented his death by this mechanism as well. That Mr Ken was not kept in the infirmary when he should have been was one of a number of egregious circumstances that befell Mr Ken since his transfer from Port Augusta to Yatala. As I say, more of that later.

2.11. It is also my finding that when Mr Ken applied the ligature to his neck he did so with an intent to end his own life. Supporting that finding is the potential lethality of the act itself, the fact that Mr Ken would have perceived that alone in his cell he had no realistic prospect of detection or rescue, the fact of his mental disturbance and the fact, as will be seen, that he had attempted to hang himself in the recent past. I make that finding of suicide on the balance of probabilities.

[4] Transcript, page 606

3. Background

3.1. Mr Ken had been in the custody of the Department for Correctional Services (DCS) since 25 March 2015. His transfer from Port Augusta Prison to Yatala on 14 April 2015 was for the purpose of an urgent psychiatric examination by a psychiatrist which was scheduled to take place on Wednesday 15 April 2015. In the event the examination did not take place even though Mr Ken had been transferred for that very purpose.

3.2. I am unaware of any previous diagnosis in relation to or treatment of any mental health concerns in respect of Mr Ken. Mr Ken's first wife, Ms Sandra Ken, gave a statement to investigating police that contains information regarding Mr Ken's background. The statement was tendered to the inquest.[5] Ms Ken provided information that suggested that Mr Ken had an issue with alcohol throughout his life. As indicated earlier there was some history of drink driving. In 2013 Mr Ken was apprehended under the Public Intoxication Act and taken to a sobering up centre in Whitmore Square. However, the police investigation into Mr Ken's death does not refer to any information suggesting that prior to his incarceration in March 2015 Mr Ken had suffered from any mental health issue or that he had been prescribed any medication for the same. In her statement Ms Ken suggests that when Mr Ken consumed alcohol and drugs he became paranoid and would speak about people wanting to kill him in the APY Lands. This paranoia would be a recurring theme when Mr Ken was in custody.

3.3. Ms Ken's statement suggests that Mr Ken had worked doing various jobs, had undergone tribal initiation and was a Christian. Mr Ken was the father of a number of children with whom he kept in contact. He is described as a man who loved working with children and who was a great story teller. He often brought children who were in need of care to his former wife's home. He enjoyed reading the bible and other Christian literature as well as playing the guitar, singing and playing football. At one point Mr Ken was an interpreter.

3.4. Medical records obtained by police indicate that Mr Ken may have experienced high cholesterol, chronic renal failure and high blood pressure. I have earlier indicated that there is no evidence of diagnosed heart disease. There is also no evidence that prior to

[5] Exhibit C34

being taken into custody in March of 2015 Mr Ken had ever attempted to commit suicide or had performed other acts of self-harm.

3.5. However, on 4 April 2015 in the Port Augusta Prison Mr Ken attempted to self-harm by jumping from the top bunk in his cell. On 7 April 2015, again at the Port Augusta Prison, Mr Ken attempted self-harm by tying a piece of clothing around his neck in order to restrict his breathing. It was following this second incident that medical staff at Port Augusta as well as those in Adelaide who had become apprised of Mr Ken's circumstances became particularly concerned about Mr Ken's ongoing welfare in the correctional system and so decided to have Mr Ken transferred to Yatala for an urgent psychiatric assessment as a voluntary patient not detained under the Mental Health Act. It is clear that Mr Ken did not in any way resist that plan.

3.6. It is no exaggeration to say that from the time Mr Ken was received into the custody of the DCS in Yatala the duty of care[6] that is owed by DCS to prisoners in their custody was conspicuously neglected in his case. It is almost as if every historical and contemporary correctional failing of care was carefully assembled and visited upon Mr Ken. This state of affairs is exemplified by a number of matters that I will discuss in detail during the course of these findings.

3.7. The Court has reached the following conclusions as to the standard of care that was administered to Mr Ken:

- DCS staff at Yatala failed to accommodate Mr Ken in the custodial environment that South Australian Prison Health Service (SAPHS)[7] staff at the Port Augusta Prison had recommended and expected, the essential component of which was that Mr Ken be accommodated in circumstances where he could be watched closely if not continuously by correctional staff;
- Contrary to the recommendation and expectations of SAPHS staff at Port Augusta Prison, Mr Ken was accommodated in the mainstream prison population at Yatala;
- Regardless of the recommendations and expectations of SAPHS staff at Port Augusta, it is clear that having regard to Mr Ken's history of attempted self-harm at Port Augusta Prison he should not have been accommodated in the mainstream

[6] see **New South Wales v Bujdoso** (2005) 227 CLR 1
[7] An arm of SA Health

prison population at Yatala. He should at least in the first instance been accommodated in the Yatala infirmary under close observation.

- Mr Ken's 'urgent' psychiatric assessment which was meant to take place on 15 April 2015, the day after his arrival at and admission to Yatala, did not take place and was not rescheduled to take place until Monday 20 April 2015 by which time Mr Ken was deceased;

- The failure of Mr Ken's psychiatric assessment to occur as scheduled was contributed to by the fact that contrary to the recommendation and expectations of Port Augusta SAPHS staff, Mr Ken was accommodated in circumstances that did not readily facilitate the scheduled appointment – if he had been accommodated in the Yatala infirmary as recommended the assessment is more likely to have taken place;

- Notwithstanding that a Notification of Concern (NOC) was in existence in respect of Mr Ken while he was at Yatala, and notwithstanding the fact that Mr Ken was under a High Risk Assessment Team (HRAT) regime which called for Mr Ken to be accommodated in a cell and be 'doubled up' with another prisoner whenever the cell was in lock down mode, on two successive days during the lunchtime lockdown Mr Ken was locked in the cell on his own, thereby giving him an unhindered opportunity to perform the act of hanging during the lunchtime lockdown on 16 April 2015;

- The cell in which Mr Ken was placed on his own and in which he hung himself was not monitored or otherwise observed for the entire duration over which it was locked down during the lunch period;

- The cell into which Mr Ken was placed on his own had an obvious hanging point which was used by Mr Ken;

- On the night before the day of his death, and despite the fact that Mr Ken was hearing voices and at one point was exhibiting a significant degree of agitation if not paranoia, he was not brought to the Yatala infirmary for assessment and, if deemed necessary, accommodation within that facility. He was left in his cell until the cell was unlocked the following morning;

- On the morning of the day of his death, notwithstanding Mr Ken's complaint of chest pain, which I find was reflective of an acute heart attack, and despite Mr Ken's expressed desire that he be taken to hospital, his clinical assessment at the infirmary at Yatala was superficial and inadequate with the result that Mr Ken was taken back to his cell, locked down and accommodated on his own despite the requirement that he be doubled up at all times.

- It has not been possible to determine with precision why Mr Ken was left in the cell alone during the fatal period of lockdown.

- Mr Ken's death probably would have been prevented if the above circumstances had not existed.

4. Relevant events at the Port Augusta Prison

4.1. I have already referred to Mr Ken's attempted acts of self-harm which occurred on 4 and 7 April 2015 respectively.

4.2. On the afternoon of 4 April 2015, following the incident on that day, Mr Ken indicated that *'whites'* in the unit were talking about him and that this was making him angry. He stated that he had jumped from the top bunk to hurt himself. Following this he made assertions that he would not harm himself or had no thoughts of self-harm. As far as the incident on 7 April 2015 is concerned, on 8 April 2015 he indicated that he had no active suicidal thoughts, thought disorder or perceptual disturbances. He did not exhibit overt signs of psychosis. However, when Mr Ken was seen by an Aboriginal Liaison Officer at Yatala the day before his death, he would tell that officer that he had tried to hang himself with his shirt because other Aboriginal prisoners were giving him a hard time and that he could not take the abuse any more.

4.3. On 9 April 2015, while still at the Port Augusta Prison, it is recorded that Mr Ken presented as distressed and was complaining of '*whispers getting louder*'.[8] When seen by Dr Lorelei Sabio she questioned whether Mr Ken was suffering from paranoid delusions. He claimed that '*real people*' from the Northern Territory had been walking up and down the corridor in his unit and that they had been sent to kill him. He went on to say that these people had the power to become invisible and could walk through walls. Dr Sabio of the Port Augusta SAPHS recorded that Mr Ken's fears arose from

[8] Exhibit C43, Transcript, page 88

the belief that his partner's family in the Northern Territory would punish him for the physical assault that he had allegedly committed on his partner. Dr Sabio recorded her impressions in terms of whether Mr Ken was experiencing paranoid delusions or whether his beliefs had a cultural basis.

4.4. After discussing the case with the psychiatrist Dr Narain Nambiar, who is the Clinical Director of the Statewide Forensic Mental Health Service at James Nash House in suburban Adelaide, Dr Sabio prepared and recorded a plan[9] in respect of Mr Ken's management that consisted of the following elements, namely to organise an Aboriginal Liaison Officer to discuss the matter with the patient with a view to ascertaining whether or not Mr Ken's beliefs were within Aboriginal cultural bounds and secondly that Mr Ken be transferred to the Yatala infirmary for a psychiatric assessment to occur on a voluntary basis or by way of the imposition of an Inpatient Treatment Order (ITO) under the Mental Health Act as a last resort or where there was an increased safety risk. Dr Sabio discussed her plan with Ms Melissa Allen who is a registered nurse employed by the SAPHS at Port Augusta. Dr Sabio recorded that she advised Ms Allen of the need for an urgent transfer to the Yatala infirmary for a psychiatric assessment as soon as possible on a voluntary basis. And as indicated earlier, Mr Ken did not resist this course of action and thus no intervention under the Mental Health Act was considered necessary.

4.5. Dr Nambiar who gave oral evidence in the inquest told the Court that the plan as recorded by Dr Sabio was accurate and appropriate. I accept that evidence. It is clear that Dr Sabio's plan was well considered and I so find.

4.6. Ms Allen gave oral evidence in the inquest. Ms Allen is the Nurse Unit Manager at the Port Augusta SAPHS. Ms Allen's evidence was important. In my view she delivered that evidence honestly and with clarity. It was Ms Allen who endeavoured to ensure that the essential elements of Dr Sabio's plan as formulated at Port Augusta would be implemented at Yatala. She embarked upon a series of email communications with various DCS and SAPHS staff in Adelaide to that end.

4.7. Ms Allen told the Court that she first became aware of Mr Ken probably when a NOC was raised at the time Mr Ken's attempts at self-harm had occurred. A NOC is a document that is raised when the safety or wellbeing of a prisoner becomes an issue,

[9] SAPHS clinical record - Exhibit C34, Transcript, page 89

for example when attempts at self-harm have been made or where the behaviour or presentation of a prisoner as observed by a staff member indicates a risk of suicide or self-harm. The consequence of the raising of a NOC is that the institution's HRAT team, that consists of medical practitioners, nurses and DCS staff such as social workers will monitor and manage the prisoners' regime within the prison. It is mandatory for prisoners who are the subject of a NOC to be accommodated in a double cell and for the cell to be dually occupied during any routine period of cell lockdown. If there is any exception to this requirement I did not hear of it in evidence, and any such exception could not conceivably have applied to Mr Ken either in the Port Augusta Prison or in Yatala. As things transpired at the Port Augusta Prison following Mr Ken's incident on 7 April 2015, he was placed on canvas which involves the wearing of a canvas smock and canvas bedding, canvas being a fabric that is difficult if not impossible to fashion into a hanging ligature. I am not certain for how long that remained the case, but it is recorded in Mr Ken's DCS case notes[10] that at Port Augusta Prison he was placed in a camera cell and doubled up with another Aboriginal cell mate.

4.8. Notes of the Port Augusta Prison HRAT review of 14 April 2015, which was the day of Mr Ken's transfer, suggested that Mr Ken was very excited about the prospect of his transfer to Yatala but stated that he was hearing people from other units talking about him and that they were planning to kill him. It is also recorded that Mr Ken had stated that he commits acts of self-harm to make DCS officers listen to him and that he uses self-harm as a tool to gain the attention of staff but that he would not go through with such an act. In any event the recommendation of the Port Augusta Prison HRAT was that he should remain on HRAT monitoring, be in a camera cell and be doubled up with another Aboriginal cell mate of similar age if possible. This recommendation was made in anticipation of Mr Ken's transfer to Yatala and therefore consisted of a recommendation that Mr Ken be accommodated at Yatala in the manner described. At Yatala there were no camera cells with doubling up, the only camera cells being those in G Division which is a specialised high security division. As indicated earlier, Mr Ken would be placed into the general prison population at Yatala. A more refined recommendation would be made that Mr Ken be accommodated in the Yatala infirmary.

4.9. I turn to the communications that Ms Allen of the SAPHS at Port Augusta conducted with staff at Yatala in anticipation of Mr Ken's transfer to Yatala. On Thursday 9 April

[10] Exhibit C39au

2015 Ms Allen transmitted emails to various recipients. The first email at 12:39pm was sent to Ms Mellanie Fernandez of the DCS and Mr Neil Parkinson, Acting General Manager of the Port Augusta Prison. It was cc'd to a number of other people including Ms Melissa Newman and Ms Tracey Markham both of the SAPHS at Yatala. Ms Newman and Ms Markham job shared in their capacity as Clinical Services Coordinators of the SAPHS at Yatala. The subject of the email was described as '*RE: patient requiring urgent transfer from PAP to YLP for medical reason - action required*'. The email was marked with 'High' importance. The essential features of this email were first a reference to Dr Sabio's liaising with Dr Nambiar regarding Mr Ken. It was indicated in the email that Mr Ken needed to be assessed by a forensic psychiatrist as soon as possible and that this would be facilitated sooner at Yatala than at the Port Augusta Prison where, the Court was told, a psychiatric assessment was only available on a once a month basis whereas at Yatala such assessments occurred three days during the week. Secondly, Ms Allen's email pointed out that Dr Sabio had requested support for an urgent transfer of Mr Ken to Yatala in order to '*access the forensic psychiatrist there*'. The email stated '*Neil, would it be possible for you to facilitate this please?*'. Ms Allen foreshadowed that she would liaise with the Yatala Clinical Services Coordinators (Newman and Markham) to ensure that they were aware that the patient was reviewed at the first possible appointment with the forensic psychiatrist. The email ended with the following:

> 'The Medical Officer supports the patient to be continued to be observed under camera, and her preferred option is that the patient is in the infirmary at YLP if possible please?'

4.10. In fact at 2:23pm on the same day, Ms Allen directly emailed personnel in SA Health including Ms Newman and Ms Markham. This was cc'd to Mr Parkinson of the DCS. The email was headed with the same subject matter and it apparently forwarded Ms Allen's earlier email. This second email of Ms Allen indicated that Mr Parkinson had advised her that the DCS would transfer Mr Ken to Yatala on the following Tuesday which was 14 April 2015, the day on which he would in fact be transferred. The email ended with the following emboldened request:

> '**Melissa and Tracey - as per earlier email & Dr Nambia's** (sic) **advice can you please try and accommodate this man in the infirmary at YLP and also book him into urgent first available Psych appointment please?**'

The Melissa and Tracey referred to therein are Ms Newman and Ms Markham in the SAPHS at Yatala.

4.11. I digress from this narrative to observe that in his oral evidence Dr Nambiar indicated a measure of disappointment that Mr Ken could not be transferred until 14 April 2015 when these arrangements were being made as early as 9 April 2015.[11] Be that as it may, the plan was that Mr Ken would be seen by the psychiatrist very soon after his arrival at Yatala.

4.12. Ms Allen told the Court that once she had sent these emails her duties in respect of Mr Ken were described as:

> 'Only in overseeing in my role as a CSC the care that he was provided while he was at Port Augusta Prison until he was transferred, and obviously we were keeping a very, very close eye on him because we were very worried about him.' [12]

4.13. In cross-examination by counsel assisting, Ms Waite, Ms Allen shared some interesting observations in relation to her expectations in the light of her own experiences at the Port Augusta Prison. Asked by Ms Waite as to the reason that she recommended the infirmary at Yatala for Mr Ken she explained as follows:

> 'Yes, because anecdotally from what I've learnt across the years is that the Yatala, my Yatala counterparts, nurses have issues in accessing their prisoners at Yatala Prison, accessing their patients when they need to and being able to have them at easy reach to be able to keep any *(sic – it should read 'an eye')* on them, especially if they're flagged as someone that might potentially go pear-shaped. So that's why I had asked for the infirmary. I can't speak for Dr Sabio; I don't know what her reason for that was. But that was my reasoning, yes.' [13]

As to what she had in mind as far as the first available psychiatric appointment was concerned, and asked whether she would have been happy if she had had any appreciation of Mr Ken being placed down the bottom of the psychiatrist's next list, which as will be seen would prove to be the case, Ms Allen said that she would not have been happy with that arrangement. She explained that from her personal perspective she wanted Mr Ken to experience the best outcome and that in any event it was apparent from Dr Sabio's intervention and discussion with Dr Nambiar that there was a need for Mr Ken to be transferred for an urgent review especially given the mention of the possibility of an ITO which to her was an indication that Mr Ken needed '*some very obvious and urgent assessment*'.[14]

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[11] This email chain appears in Exhibit C39bw
[12] Transcript, page 82
[13] Transcript, page 125-126
[14] Transcript, page 127

4.14. Ms Allen had no further involvement in the matter after Mr Ken was transferred. She said that she was not aware of what transpired after he had arrived at Yatala. Ms Allen also stated that she had not been aware of the appointment that was made for Mr Ken to be seen by the psychiatrist on Wednesday 15 April 2015.[15] She explained that she was not able to facilitate the appointment from Port Augusta Prison,[16] but her expectation was that '*as soon as he hit Yatala he would see a psychiatrist on the same day or the following day if it was a business day*'.[17]

4.15. On 10 April 2015 at 10:32am Ms Newman emailed Mr Jamie Baker, who was an administrative officer who had responsibility for maintaining the psychiatric appointment records, requesting Mr Baker to book Mr Ken into the psychiatrist Dr Jennings' clinic next Wednesday 15 April 2015 '*as an urgent review*'. The email indicated that Mr Ken would transfer to Yatala on Tuesday 14 April 2015 and '*will be housed in the Health Centre*'. The expressions 'health centre' and 'infirmary' are interchangeable expressions for the same medical facility as it existed at that time at Yatala. The email went on to indicate that it was Ms Newman's understanding that Dr Jennings' list was full at that stage, but that she would review some casenotes and see who could be moved to make room for Mr Ken. Mr Baker responded almost immediately with a simple '*no problems*'. In the event Mr Ken would be booked in for the following Wednesday and was initially given some priority, but in circumstances that are puzzling he was then placed at the bottom of the list and would not be seen.

4.16. As this evidence in the inquest unfolded it became apparent that contrary to her evidence, Ms Allen must have been aware of the arrangements for the psychiatric appointment. During the course of the evidence given by Ms Newman it was revealed that on Friday 10 April 2015 at 10:34am, the day following Ms Allen's initial emails, Ms Newman advised Ms Allen by email that she had booked Mr Ken into the next available psych clinic on Wednesday 15 April 2015 with the psychiatrist Dr Jennings. She also advised that they did not have camera cells in the health centre at Yatala and asked Ms Allen to advise whether Mr Ken will require constant observation so she could arrange that with the DCS as soon as possible. Ms Allen responded to that email within a few minutes at 10:38am advising Ms Newman and others not relevant here

[15] Transcript, pages 110 and 118
[16] Transcript, page 118
[17] Transcript, page 118

that Mr Ken was currently undergoing constant observation under camera at Port Augusta and so '*will need to be there too, please, Melissa*'.[18] These two emails were not put to Ms Allen in cross-examination so she did not have an opportunity to respond to the suggestion contained within them that she must have known of the arrangement that Mr Ken was to be seen on 15 April 2015, the day after his anticipated arrival at Yatala. I was satisfied that Ms Allen must have simply forgotten about the emails. Ms Allen was an impressive and patently honest witness. Although I observe that Ms Allen's response did not really address the issue stated in Ms Newman's email, namely that they do not have camera cells in the health centre, the only camera cells in Yatala being those in G Division, the thrust of Ms Allen's emails in my view made it perfectly clear that Mr Ken, while pending his psychiatric appointment on 15 April 2015 and possibly even beyond, required constant observation by whatever means within the Yatala infirmary, the corollary of that requirement being that he should not be placed in the general prison population.

4.17. At 10:47am on 10 April 2015 Ms Newman emailed Ms Stephanie Flint, Mr David Oates and Mr Joe Decicco, all of the DCS. I shall refer to this email as the Newman email. Ms Flint was the Assistant General Manager of Yatala. Mr Oates until very recently had been the Acting General Manager and Mr Decicco was the Manager of Offender Development at Yatala whose responsibilities included the supervision of social workers and Aboriginal Liaison Officers. Mr Decicco was Chair of the Yatala HRAT. Mr Decicco had particular responsibility in relation to the accommodation of HRAT prisoners. I should add that all of these emails appear to have forwarded earlier relevant emails in a chain and were all titled as indicating that they involved the urgent transfer of Mr Ken. The Newman email to Ms Flint, Mr Oates and Mr Decicco, marked as it was with 'High' importance, referred to that email chain and to Mr Ken's transfer for the following Tuesday and it went on to say that Mr Ken:

> '… will be required to be housed in room one of the Health Centre under constant observations for an urgent psychiatrist review Wednesday 15/4/15.
>
> Are you able to facilitate please?'[19]

[18] Transcript, page 400
[19] Exhibit C39bw

Room 1 of the health centre was a room in the infirmary that allowed for a CSO to maintain direct and constant observation of a prisoner within that room. In her oral evidence before the Court Ms Newman described it as follows:

> 'In the health centre, room 1 it's considered the safest room we have. No hanging points, no bathroom, it would be a canvass mattress and smock and then an officer would sit outside watching the patient 24-hours a day'.[20]

Ms Newman added that she regarded Room 1 as safer even than G Division.[21]

4.18. Ms Newman did not receive a reply to her email from any of its addressees. It was not forwarded to any individual who had capacity to action what it requested. Its content was not entered into the electronic DCS Justice Information System (JIS) casenotes for Mr Ken. The email constituted a clear indication to the three DCS staff to whom it was sent that Mr Ken required constant observation in the infirmary with the added implication that he should not be placed in the general prison population.

4.19. In her oral evidence before the Court Ms Newman was quite candid in respect of a number of shortcomings on her part. Ms Newman acknowledged that she did not follow up her email to Ms Flint, Mr Oates and Mr Decicco when she should have.[22] In cross-examination by counsel assisting Ms Waite, Ms Newman admitted it was a failure on her part not to have followed the email through. The failure to follow through appears to have had important consequences for Mr Ken. Ms Newman told the Court that not chasing a reply meant that she herself did not take the next step of examining the roster to ascertain who would be on the shift on which Mr Ken would arrive at Yatala so as to ensure that staff on that shift would facilitate the admission of Mr Ken to the infirmary. Ms Newman also suggested that in hindsight she should have let them know about Mr Ken's arrival in any event.[23] Ms Newman spoke of an effort on her part to locate an email chain in which she would have indicated to her staff the requirements relating to Mr Ken. However, she said that she had been unable to find any email chain. She said '… *I did look for one and I thought I had handed it over at handover but as far as I'm aware the staff weren't aware*'.[24] Ms Newman therefore agreed with the proposition put to her by her counsel Mr Keane that the fact that Mr Ken was not

[20] Transcript, page 337
[21] Transcript, page 338
[22] Transcript, pages 371 and 407
[23] Transcript, pages 339 and 408
[24] Transcript, page 340

accommodated in the infirmary led her to believe that she had not told her staff that this is what she had anticipated.[25]

4.20. The other matter that Ms Newman conceded was that she had received from Registered Nurse Kylie Pierce an email, sent on the evening of Mr Ken's arrival, advising that notwithstanding that Port Augusta had requested an infirmary admission, Mr Ken had been placed in doubled up accommodation in B Division owing to the fact that he was a heavy smoker and was keen to socialise in the units. This information had not been in accordance with Ms Newman's own expectations. Ms Newman acknowledged that she would have read Ms Pierce's email on the morning of 15 April 2015. Asked as to whether she did anything in response upon receiving that email she said that she had a discussion with Ms Flint and Mr Decicco at one of their meetings to make sure that Mr Ken was settled in B Division[26]. Ms Newman said:

> 'We had just a brief catch up to find out if there were any issues between health and DCS and we checked in that Mr Ken was settled in B Division and he was celled up with another Aboriginal man that maybe spoke language, because I think Mr Ken was a traditional Aboriginal man who spoke language and so they tried to cell him up with someone that would - so that's my understanding was he was settled and he was going to be linked in with that ALO.'

Ms Newman said that she could not recall whether she had raised with Ms Flint or Mr Decicco the fact that the information that Mr Ken was in B Division was contrary to the request from Port Augusta Prison and was contrary to the information that she herself had passed on. She said that she must have raised this issue, '… *but being that it's quite uncomfortable to be in canvas and they said he was settled and I trusted their assessment on admission that he presented well*'.[27]

4.21. Asked by me as to whether Ms Newman would have been comfortable challenging Ms Flint or Mr Decicco by insisting that Mr Ken should have been in the infirmary, she said that she would have been comfortable but given that they had already put him in B Division and that as a consequence he was able to smoke and have the privileges of being in a unit, she did not think that her advice to them '… *would have been welcomed*'.[28] I will later deal with the evidence that Ms Flint and Mr Decicco gave in relation to this issue.

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[25] Transcript, page 340
[26] Transcript, page356
[27] Transcript. page 357
[28] Transcript, page 359

4.22. In the event, as will be seen, although a fresh NOC was raised in respect of Mr Ken when processed upon arrival at Yatala, he was neither placed in the infirmary nor placed under camera and not subjected to the constant observation that would undoubtedly have protected him. Rather, he was placed in a double cell, a measure that broke down when Mr Ken was placed into the cell on his own thereby giving him the opportunity to commit the act of self-harm.

4.23. Mr Ken did not see the psychiatrist on 15 April 2015 due to a number of circumstances that included the need for Mr Ken to be locked in his cell during the lunchtime lock down period. Ms Allen of the Port Augusta SAPHS made an observation that this scenario would not happen at Port Augusta Prison given her strong working relationship with the General Manager of that institution, so much so that she stated:

> '… he would put officers on during the lunch hour to make sure that rain, hail or shine, whatever was going on in that prison, that we would be able to access prisoners to the psychiatrist clinic to be seen.'

Ms Allen added that there were very few times that she could recall in the six years that she had been at the Port Augusta Prison where the General Manager would not move mountains to make sure that everyone on the list was seen. She added that postponed appointments were not usually due to DCS not helping her.[29]

4.24. What Ms Allen described as far as the Port Augusta Prison was concerned was a vastly different scenario from that which befell Mr Ken at Yatala.

5. Mr Ken is processed on arrival at Yatala

5.1. Mr Ken arrived at Yatala in the evening of Tuesday 14 April 2015. Tendered to the Court was Mr Ken's DCS case management file.[30] The file contains documentation that was raised at the time of Mr Ken's admission procedures. The documentation suggests that the processing took place from approximately 6:30pm onwards.

5.2. As part of this process Mr Ken was seen by a DCS officer, in this case Mr Paul Miranda who at that time was a DCS acting supervisor at CO4 Level. That evening Mr Miranda was performing the duties of the Yatala admission supervisor whose task it was to assess all transfer prisoners and new prisoners coming in to the institution and to assign

[29] Transcript, page 125
[30] Exhibit C44

their accommodation within the prison. Also as part of the process a Prisoner Stress Screening form was compiled which constitutes a risk assessment of the prisoner with emphasis on risk of self-harm while in the institution. The resulting document which is a PRISONER STRESS SCREENING FORM – ON TRANSFER,[31] makes provision for the recording of a NOC if raised in respect of the admitted prisoner. In fact a NOC was raised by Mr Miranda in relation to Mr Ken in circumstances that I will discuss in a moment. As indicated earlier a NOC carries certain consequences in relation to HRAT supervision and accommodation within the prison.

5.3. Mr Miranda's NOC, which would be placed on the DCS Case Management File for Mr Ken and would travel with him to his places of accommodation in Yatala, clearly documented the requirement that he be accommodated in a double cell both during the day and night.

5.4. Also as part of the admission process the prisoner is examined by a member of the clinical staff of the SAPHS. In this case the staff member was Ms Kylie Pierce, a Registered Nurse. When Ms Pierce assessed Mr Ken she had possession of Mr Ken's SAPHS file which had travelled with him from Port Augusta. The file contained the progress notes that had been compiled in the Port Augusta Prison in respect of Mr Ken's medical and general clinical issues.

5.5. Both Mr Miranda and Ms Pierce gave oral evidence in the inquest.

5.6. In the course of this admission process a decision was made in respect of Mr Ken's accommodation. The decision was that Mr Ken be accommodated in double cell accommodation. As a result he was accommodated in B Division in a double cell, not in the infirmary as had been recommended and expected by SAPHS at Port Augusta. The decision regarding accommodation was essentially a matter for DCS. The responsibility for Mr Ken's placement within Yatala was that of Mr Miranda. However, it is clear from the evidence of both Mr Miranda and Ms Pierce that Ms Pierce acquiesced in that placement.

5.7. I have already referred to email communications that had taken place prior to Mr Ken's arrival at Yatala. As far as staff at Yatala were concerned the most significant email would have been that of Ms Newman of SAPHS timed 10:47am on Friday 10 April

[31] In Mr Ken's case Exhibit C44, page 2

2015. This was the email that advised Ms Flint, Mr Oates and Mr Decicco that Mr Ken would be arriving at Yatala on Tuesday 14 April 2015 and would be required to be housed in Room 1 of the health centre under constant observations for an urgent psychiatric review the following day. I have accepted the evidence of both Mr Miranda and Ms Pierce that the requirements as set out in that email were not brought to the attention of either of them. However, in the case of Ms Pierce she had access to the material contained within Mr Ken's SAPHS file in which the recommendations and expectations of staff of the Port Augusta Prison SAPHS were clear. In her oral evidence Ms Pierce acknowledged that she had the SAPHS file for Mr Ken and had referred to it both at the time of her assessment of Mr Ken when he was before her in person and subsequently before she sent her own email that I have already mentioned above. As seen earlier, the SAPHS file[32] set out Dr Sabio's plan, as discussed with the psychiatrist Dr Nambiar, that Mr Ken was to be transferred specifically to the Yatala infirmary for a psychiatric assessment to be performed as soon as possible. The fact that Ms Pierce obviously read that entry and understood its purport is evidenced by the contents of the email that she later sent on the evening of Mr Ken's arrival at Yatala. How was it then that this plan was thwarted?

5.8. Dealing firstly with the evidence of Mr Miranda, it is clear that he did not see the SAPHS file to which I have just referred. Mr Miranda told the Court that at the time he conducted the admission process in respect of Mr Ken he was not aware of the Port Augusta recommendation regarding where Mr Ken should be placed.[33] It is implicit in that assertion that he is saying that he was not made aware of the Port Augusta recommendation by Ms Pierce or from any other source. He said he did not discuss the matter of Mr Ken with her in detail, his communication with Ms Pierce only taking place over a few seconds with Ms Pierce at one end of a corridor and him at the other.[34] For her part Ms Pierce in her evidence said that after she had spoken with Mr Ken and had read the relevant parts of the SAPHS casenotes she spoke to Mr Miranda and in particular about the NOC that had existed at Port Augusta and which should be reinstated at Yatala.[35] In her evidence-in-chief Ms Pierce elaborated on those discussions and said that she had discussed Mr Ken's presentation with Mr Miranda and the fact that he had presented quite well, had said nothing about thoughts of

[32] Exhibit C42, page 23
[33] Transcript, page 154
[34] Transcript, page 225-226
[35] Transcript, page 252

self-harm or hearing voices and that she did not have any immediate concerns for his safety. There was also mention of the fact that Mr Ken was a heavy smoker and wanted to smoke in the institution. Therefore, there was a consensus that he be accommodated in doubled up accommodation in B Division so that he could have the support from other '*clients*' of the institution. In her evidence-in-chief Ms Pierce did not lay claim to having told Mr Miranda specifically about the recommendation and expectations of Port Augusta Prison SAPHS staff regarding Mr Ken's placement in the Yatala infirmary. Indeed, when cross-examined by Ms Waite of counsel assisting and asked whether she had any discussion with Mr Miranda about potentially placing Mr Ken in the infirmary, she said '*Specifically, no*'.[36] However, the following evidence was given under questioning by me:

> 'Q. Did you or did you not have any discussion with Mr Miranda about the suggestion, if I can put it that way, that Mr Ken be accommodated in the infirmary.
>
> A. I mentioned that to Mr Miranda what I read in here about the psyche review and that it had had said that they'd like him placed in the infirmary. Yes'.[37]

This answer contradicted everything on that subject that Ms Pierce had said to date in her oral evidence. However, I note that in her original interview with police she said:

> 'Q. When making your notes up here did you read the plan discussed with Doctor Nambiar in regards to what they were hoping to occur?
>
> A. Yes, yeah I had, that was after I interviewed him though. That I read that and that's um it was all kind of done at the same time in discussion with Paul and I was saying this is what they have written, but often the Health Centre isn't necessarily actually the best place. I needed to ascertain what was the safer option for Mr Ken at the time'.[38]

This lends some support to Ms Pierce's belated assertion in her oral evidence that she had in fact discussed the infirmary recommendation with Mr Miranda, but I did not find Ms Pierce to be a particularly reliable historian and accordingly I am unable to make any positive finding that there was any discussion between Ms Pierce and Mr Miranda about the infirmary recommendation. Clearly, however, there should have been.

5.9. Mr Miranda also asserted in his evidence that at the time of his processing of Mr Ken he did not know that he had been transferred for the purpose of having a psychiatric examination. He said that he believed that it was simply a standard transfer and that he

[36] Transcript, page 289
[37] Transcript, page 293
[38] Exhibit C55a, page 6

did not know of the reason for that transfer.[39] This assertion seemed to contradict an earlier answer that he had given in cross-examination by Mr Homburg of counsel for Dr Nambiar and the psychiatrist Dr Jennings when he was asked:

> 'Q. And Mr Ken was one of those, you understand that he was being moved to facilitate an urgent psychiatric appointment.
>
> A. Yes'.[40]

This asserted lack of knowledge is important because Mr Miranda agreed with the proposition that he would not place a prisoner in a situation which would frustrate any arrangement which was in place for a medical appointment.[41] On the contrary, Mr Miranda agreed that he would place a prisoner in accommodation which would enable the appointment to occur.[42] Asked as to whether if he knew that there was an appointment for the following morning he would have needed to consider whether or not the chosen accommodation for the prisoner would frustrate the appointment or facilitate it, he agreed that he would need to consider that issue[43] In the event, the accommodation that Mr Ken was placed in would frustrate the appointment. Mr Miranda's asserted lack of knowledge about Mr Ken's circumstances and why he was at Yatala is to say the least unsatisfactory. The only comment I would make is that it may not have been entirely Mr Miranda's fault that this was the case. I note that although Mr Miranda was aware of Mr Ken's HRAT status at Port Augusta and that he himself raised his own NOC based on his view that Mr Ken required further assessment and monitoring due to his recent self-harming behaviour, he needed to be aware of the recommendation for his accommodation as well as the fact that Mr Ken needed to be seen by the psychiatrist the following morning.

5.10. However, one thing is certain about Mr Miranda's knowledge of Mr Ken's circumstances is that he had access to the DCS JIS electronic casenotes that had been compiled at Port Augusta Prison regarding Mr Ken.[44] The most recent casenote timed at 2:37pm on 14 April 2015 was entered in anticipation of Mr Ken's transfer to Yatala that day. It was entered by a member of the Port Augusta HRAT team, Ms Iaman Abdul Hafiz. The entry recorded that Mr Ken was hearing people from other units talking

[39] Transcript, page 171
[40] Transcript, page 170
[41] Transcript, page 220
[42] Transcript, page 220
[43] Transcript, page 220
[44] Exhibit C39au

about him and planning to kill him. Although it was recorded that Mr Ken was denying thoughts of self-harm and suicidal ideation at that time, and had made mention of using self-harm as a tool to gain the attention of staff and would not go through with any such attempt, it was recommended that he should remain on HRAT monitoring in a camera cell and be doubled up with another Aboriginal cell mate of similar age if possible, the regime under which Mr Ken was being maintained at Port Augusta. There was much evidence given during the inquest about the lack of feasibility of Mr Ken being doubled up in a camera cell at Yatala given that only G Division had camera cells at that time. Mr Miranda rejected the suggestion put to him in cross-examination that he effectively downgraded Mr Ken's care arrangements by not conforming with that DCS recommendation. To my mind G Division may not have been the appropriate accommodation for Mr Ken in any event and would not have been in conformity with the SAPHS recommendation that he be placed in the medical environment of the infirmary which also had the 24/7 personal scrutiny by an actual prison officer as distinct from camera observation. That said, the fact of the matter was that Port Augusta's clear expectation was that Mr Ken would be subjected to greater scrutiny than what routine doubled up accommodation could provide.

5.11. It is for all those reasons that the staff of the SAPHS at Yatala needed to have made it plain to the DCS that the recommendation and expectation was that Mr Ken be placed in Room 1 of the infirmary where he could be scrutinised constantly and also be available for the psychiatric appointment the following morning. Mr Miranda himself told the Court that he should have received the Newman email of 10 April 2015 in which the Room 1 infirmary arrangement was pointedly requested. Mr Miranda suggested that he should have received that email from the General Manager of Yatala and that he could have been notified by any one of the three recipients of that email, namely Ms Flint, Mr Oates or Mr Decicco. Asked in cross-examination by Ms Waite, counsel assisting, as to what he would have done if he had received the information contained in that email he said:

> 'Placed him in the infirmary under constant obs as directed. '[45]

5.12. Ms Pierce who said in her evidence that she did not receive or see the Newman email,[46] which evidence I accept, told the Court that if she had received it Mr Ken would have

[45] Transcript, page 211
[46] Transcript, page 259

been '*…placed under camera observations in the health centre*'.[47] She added that she would have notified DCS so that Mr Miranda would have been aware of it and she would have advocated that Mr Ken be accommodated accordingly, acknowledging though that the decision would have been Mr Miranda's. We have seen from Mr Miranda's evidence that he also would have complied with the request as contained in the Newman email. One thing, however, that needs to be said in relation to Ms Pierce's answer as reproduced above is that Mr Ken could not have been placed under camera observations in the health centre, but I take it from her answer that what would have happened is that Mr Ken would have been placed in the health centre in Room 1 and therefore been under constant observation of an actual DCS officer. Ms Pierce more or less confirmed that in later evidence when questioned by me.[48] She added that she would have actioned this notwithstanding the fact that the original email of Ms Newman was dated five days previously on 10 April 2015.

5.13. All of this naturally begged the question of Ms Pierce as to why simply on the basis of what she had read in Mr Ken's Port Augusta SAPHS casenotes she did not advocate for accommodation in the infirmary in any event. In cross-examination by Ms Waite, Ms Pierce asserted that the Newman email would have made a difference in respect of the decision for Mr Ken's accommodation because the email was affectively '*like a directive from my manager*'[49]. Questioned by me as to why simply on the basis of the Port Augusta SAPHS casenotes that clearly described the plan of Dr Sabio and the fact that it had been discussed with the psychiatrist Dr Nambiar she would not have acted on that basis in any event, Ms Pierce simply said '*I can't answer that*'.[50] The answer is probably quite simple, and that is that the Newman email would have carried additional gravitas, sent as it had been to senior staff within DCS.

5.14. As seen above, the Newman email sent of Friday 10 April 2015 to Ms Flint, Mr Oates and Mr Decicco indicated that Mr Ken would be required to be accommodated in Room 1 of the health centre under constant observation, the request being for recipients of that email to facilitate that accommodation.

5.15. Ms Flint and Mr Decicco were called to give oral evidence at the inquest. Ms Flint advised the Court that Mr Oates had been the acting General Manager of the Yatala

[47] Transcript, page 260
[48] Transcript, page 268
[49] Transcript, page 291
[50] Transcript, page 295

Prison, his substantive role being the General Manager of Cadell Training Centre. Ms Flint advised the Court that Mr Oates had returned to his substantive position on or about 10 April 2015. Mr Oates was not called to give oral evidence.

5.16. Ms Flint told the Court that she had undergone two periods of employment with DCS, the first period occurring between 2001 and 2005 and the second occurring between 2012 and the date of the inquest. She had been involved in managerial roles in both the Mobilong and Port Augusta Prisons. In February of 2015 she commenced her substantive role as Assistant General Manager at Yatala.

5.17. In her oral evidence Ms Flint acknowledged that she received the Newman email and read it although she could not recall the exact point in time at which she did. As things happened, her attention on the morning of Friday 10 April 2015 was fixed on another death in the prison. In any event she read the email before Mr Ken arrived at Yatala. She had been aware of the time of Mr Ken's arrival. Ms Flint explained to the Court that she personally did not take any action upon reading the email given that it was addressed to Mr Decicco who was the prison's Manager of Offender Development. She said that the information contained in the email was particularly relevant to Mr Decicco's area of responsibility. She also suggested that the email had been sent to her for information purposes only. Ms Flint told the Court that on receipt of the Newman email she would have expected Mr Decicco to respond to the email by confirming that he had received it and by addressing the specific request regarding Mr Ken's placement upon arrival at Yatala. She said that the role of Manager of Offender Development included making decisions about the placement of prisoners who are the subject of HRAT monitoring. Mr Decicco was the Chair of that team at Yatala. She said it was his role to make determinations and to inform decisions about placement of prisoners within the prison. Additionally, she said that the practice has always been for communication to occur between the Managers of Offender Development of the institutions in the event of a transfer of a prisoner who is under HRAT monitoring from one DCS prison to another as was the case with Mr Ken. He had been under the HRAT regime at Port Augusta and was placed on a HRAT regime in Yatala, this always being the expectation. Given that this was the appropriate procedure, Ms Flint said that there should have been such a communication between Mr Decicco and his counterpart at Port Augusta. I accepted all of that evidence.

Mr Decicco whose evidence I will discuss in a moment did not in any way seek to challenge Ms Flint's characterisation of his role.

5.18. As referred to above Ms Flint confirmed that she met with Ms Newman and Mr Decicco on the morning of Wednesday 15 April 2015. Although Ms Flint had not been a recipient of Ms Pierce's email of the evening of 14 April 2015 that advised that the decision had been made to place Mr Ken in B Division in doubled up accommodation, it was nevertheless apparent to Ms Flint that Mr Ken had not been placed in the infirmary but was in B Division. Mr Decicco had been cc'd into that communication. In her evidence Ms Flint explained that the meeting between herself, Ms Newman and Mr Decicco was a standing weekly meeting that occurred every Wednesday morning at about 9:30am. Ms Flint confirmed that a discussion was entered into regarding Mr Ken in which it was confirmed that Mr Ken had been transferred to Yatala for an urgent psychiatric review that morning. She was also aware that a NOC was in existence in respect of Mr Ken. However, she had no recollection of Ms Newman mentioning her emailed request of 10 April 2015 that Mr Ken be accommodated in the infirmary. Ms Flint also told the Court that she could not recall any discussion about the appropriateness of the accommodation in which Mr Ken had been placed, but suggested that if anybody had entertained a concern it could have been raised at the meeting. There was no note within the minutes of the meeting to reflect any such discussion. In answer to me, Ms Flint stated that if there had been something said about his accommodation and whether there was any difficulty about that issue she would have noted it,[51] and that such a note would have included reference to any discussion about the original recommendation regarding accommodation not being acted upon. If any such concern had been expressed there would have been some discussion as to whether or not there needed to be a review of his accommodation.[52] She told the Court in effect that there had not been any discussion of that nature.

5.19. In questioning by me Ms Flint acknowledged that on the morning of 15 April 2015 she had also been aware that Mr Ken's placement in B Division was in conflict with the original recommendation that he be accommodated in the health centre.[53] However, she stated that at that time she did not believe that there was any reason for her to intervene in that decision. She acknowledged that in hindsight this had been a matter

[51] Transcript, page 1671
[52] Transcript, pages 1671-1672
[53] Transcript, page 1688

of concern but that if it had concerned her at the time she would have acted upon it. Asked as to why she was not concerned at the time Ms Flint stated:

> 'What was informing that decision or assessment at the time was Mr Ken's presentation upon arrival at Yatala, in hindsight the preceding events that occurred at Port Augusta should have also been taken into account'.[54]

In her evidence Ms Flint acknowledged that she should have been concerned and that at the meeting she should have questioned the appropriateness of Mr Ken being in B Division.[55] Ms Flint also acknowledged in cross-examination that the fact that a prisoner had been transferred from another prison on the basis of a need for an urgent psychiatric review of itself meant that it had not been appropriate for the prisoner to have been accommodated in any environment other than a high observation environment at the prison.[56] In my view Ms Flint's acknowledgments of those matters were well made.

5.20. As far as Ms Flint's involvement in the failure to accommodate Mr Ken in the infirmary as recommended and requested was concerned, I accepted her evidence that this was not an issue that she personally should have pursued on receipt of the Newman email on 10 April 2015 given that one of the other recipients, Mr Decicco, had responsibility in relation to the content of that email. To my mind it was a fair observation that Ms Flint could not be expected to micro manage the performance of every duty and responsibility of every senior member of DCS staff at Yatala.

5.21. Mr Decicco gave oral evidence in the inquest and acknowledged with some candour that it was his responsibility to have actioned the Newman email of 10 April 2015. He acknowledged that he received it and read it. His reason for not doing anything with it was that at the time the email was received Mr Ken was not at the institution and was not expected to arrive that day. He said that he then obviously overlooked the email. He said that if the email had arrived on the day of Mr Ken's arrival he would have forwarded it to the holding cells for their action when processing Mr Ken. As to the content of the email, containing as it did the request for Mr Ken to be housed in Room 1 of the health centre, and when asked by his own counsel Mr Keane as to what he should have done about that, Mr Decicco acknowledged that he should have taken more steps

[54] Transcript, page 1688
[55] Transcript, page 1688
[56] Transcript, page 1690

to ensure that Mr Ken was housed appropriately.[57] Although he had the power to issue a direction that Mr Ken be accommodated in accordance with the request contained in the Newman email, he believed it would not have come to that because he was sure that if he had forwarded the email to the processing staff they would have enacted what was requested.[58]

5.22. As to the accommodation that Mr Ken was assigned, namely doubled up in B Division while under the supervision of the HRAT, Mr Decicco acknowledged that during lockdown the prisoner should never be left alone and that if a cell mate had to go to court or to some other appointment another prisoner would be moved into the cell so as to maintain dual occupancy.

5.23. Mr Decicco acknowledged that he received Ms Pierce's email of the evening of 14 April 2015 which indicated that Mr Ken was in B Division rather than the infirmary. Again, he did not do anything as a consequence of receiving that email because he had felt reassured that Mr Ken was stable and not at immediate risk. In addition, Mr Ken was to be seen that day by an Aboriginal Liaison Officer and a social worker who ultimately indicated that Mr Ken was presenting as stable. And so a decision was made to leave Mr Ken where he was and not place him in the health centre under constant observation which would have consisted of a DCS officer sitting outside that room and observing continuously.

5.24. In cross-examination Mr Decicco candidly acknowledged that the Newman email was not Ms Flint's responsibility to have actioned. He said:

> 'I mean, the email came to me. I should have enacted it and I would have had authority to act. It was just an oversight. I lost track of the email. If I'd have kept track of it I would have organised it and it wouldn't have been an issue'.[59]

One matter that Mr Decicco did indicate that could have taken place instead of or as well as the Newman email being actioned, was that he could have placed an entry on Mr Ken's DCS casenotes. It will be remembered that when Mr Miranda was processing Mr Ken at Yatala, he had access to the DCS casenotes from Mr Ken's time at Port Augusta. There was the entry by the HRAT member, Ms Hafiz, at Port Augusta. Clearly if Mr Decicco had indicated on the DCS casenotes that Mr Ken was to be

[57] Transcript, page 1616
[58] Transcript, page 1616
[59] Transcript, page 1629

accommodated in the infirmary Mr Miranda would have seen this. I find that having regard to Mr Miranda's own evidence, such an entry would have ensured that Mr Ken was accommodated in Room 1 of the health centre.[60]

5.25. In cross-examination by Ms Waite, counsel assisting, Mr Decicco acknowledged that Mr Ken's experiencing difficulties in B Division, feeling threatened and uncomfortable, was an indication that his accommodation arrangements were not working. He acknowledged that another assessment should have occurred. He would have had the social worker see Mr Ken and make an assessment as to whether Mr Ken needed to be moved.[61] In the event the social worker did see Mr Ken. She did not intervene. I discuss that aspect of the matter below.

5.26. Dr Allan Moskwa, a SAPHS medical practitioner who would examine Mr Ken's ECG traces in connection with Mr Ken's complaints of chest pain on the morning of his death, told the Court that if he had known of Mr Ken's HRAT status and had read his clinical record, which he insisted he did not read, he *'perhaps might have insisted he come into the infirmary so he could be watched more closely'.*[62] He maintained in his evidence that he did not know that Mr Ken had attempted self-harm at Port Augusta or had been aware of the nature of his delusions.[63] Dr Moskwa told the Court that although he knew at a time before Mr Ken's arrival at Yatala that Mr Ken was meant to be accommodated in the infirmary, and came to know that he had not been accommodated there but in a Division, he did not know that this had been an incorrect decision and that in any event *'occasionally when we have suggested things for DCS to do they just ignored us'.*[64] He added that he had not been concerned about the issue of Mr Ken's placement as he did not *'know much about him'*.[65]

5.27. It is my finding that the processing of Mr Ken upon his arrival at Yatala and the decision to not place Mr Ken in the infirmary but in the general prison population was flawed. The decision miscarried because important communications were either not passed on or acted upon. Mr Ken manifestly should have been placed in Room 1 of the infirmary from the outset notwithstanding any need on his part to smoke or for any other reason. The placement in the infirmary would have protected Mr Ken and would have

[60] Transcript, page 1630
[61] Transcript, page 1635
[62] Transcript, page 503
[63] Transcript, page 562
[64] Transcript, page 545
[65] Transcript, page 545

facilitated with ease the psychiatric examination that was scheduled to take place the following morning, an arrangement that was at least in part thwarted by the fact that he was accommodated in B Division and not in the infirmary as those sending him to Yatala had expected.

6. Mr Ken's psychiatric appointment is missed

6.1. It will be recalled that on the morning of 10 April 2015 Ms Newman emailed Mr Baker, Administrative Officer, requesting Mr Baker to book Mr Ken into Dr Jennings clinic on Wednesday 15 April 2015 '*as an urgent review*'. The email also advised that Mr Ken would be transferred to Yatala on Tuesday 14 April 2015. Mr Baker responded indicating that there would be no problem about the list being modified to make room for Mr Ken. An urgent review, particularly given that Mr Ken was being transferred for the purpose of such a review, would naturally mean that he should have been given some priority.

6.2. Mr Baker was interviewed by police investigating Mr Ken's death. The interview took place on 13 July 2016. The record of that interview, verified by a written statement,[66] was tendered to the inquest.[67] In his record of interview Mr Baker asserted that as an administrative officer he did not triage appointments. However, given that Mr Ken was coming from Port Augusta he believed he was contacted directly to ensure he was included in the list for 15 April 2015. It will be seen that he replied in a positive manner to Ms Newman's request. Mr Baker also explained that on Tuesday 14 April 2015 he contacted Port Augusta to ensure that Mr Ken's clinical notes came with him and was told that Mr Ken was not on the transfer bus. He thus assumed that Mr Ken would not be arriving at Yatala that day. As a result he removed Mr Ken's name from the list of appointments for the following morning. Contrary to Mr Baker's information, Mr Ken did in fact travel to Adelaide on 14 April 2015, arriving at Yatala in the early evening. Mr Baker explained that the following morning he learnt that Mr Ken had indeed arrived at Yatala. Mr Baker stated that when Dr Jennings arrived that morning they attempted to reinstate Mr Ken on the list of appointments. The electronically generated list of appointments was tendered to the inquest.[68] It was clear that Mr Ken's name was then placed at the bottom of the list with priority given to others, and in particular to a

[66] Exhibit C15
[67] Exhibit 15a
[68] Exhibit C39bc

prisoner DT who was in G Division and who was ultimately seen first by Dr Jennings. Evidence given at the inquest strongly suggested that prisoners at the bottom of a psychiatric clinic list stood a very good chance of not being seen as scheduled. This was due to a number of circumstances explained by Mr Baker and by other witnesses. The clinic times were from 9am to 12pm. However, the fact that the Yatala Labour Prison divisions, including Mr Ken's B Division, were all locked down sometime between 11am and 11:30am, usually around 11:20, with the unlocking not occurring until 1pm, in effect meant that the clinic time of 9am to 12pm was by and large a fiction. The result was that prisoners at the end of the list were regularly not reached. This proved to be the case with Mr Ken. In the event the psychiatrist Dr Jennings would make a note in Mr Ken's clinical progress notes as follows, '*not seen due to escort difficulties*'.[69] '*Escort difficulties*' was something of a euphemism for the seemingly inflexible practice at Yatala of prisoners being locked down in their cells regardless of the fact that they were scheduled to attend a psychiatric appointment in the infirmary.

6.3. Mr Ken missing his appointment could have been avoided if one of two circumstances had prevailed. The first is if Mr Ken had been accorded the priority that he originally had been accorded and had not been removed from the list on the bizarre misunderstanding that he was not travelling from Port Augusta to Adelaide to be in time for his appointment. The second circumstance that would have avoided Mr Ken missing the appointment was if he had been accommodated in the infirmary overnight. He would not have been locked down in Room 1 in the infirmary where he was meant to be. Accommodation in Room 1 of the infirmary involved a DCS officer remaining outside the room constantly observing. The evidence was clear that the escorting that would have enabled Mr Ken to be seen by the psychiatrist at the infirmary could have been facilitated by the officer who was constantly observing Mr Ken in that room.

6.4. The psychiatrist Dr Jennings gave oral evidence in the inquest. He has practised as a consultant psychiatrist since 1989. As part of his practice he provides services to the Forensic Mental Health Services. He conducted a clinic on Wednesday mornings at the Yatala Labour Prison. Other consultant psychiatrists conducted clinics on other days, although not every day.

[69] Exhibit C43, page 25

6.5. Dr Jennings confirmed that the clinic commenced at 9am. Yatala records demonstrated that Dr Jennings entered the prison just after 9am and proceeded to G Division where he saw the prisoner DT. The records show that Dr Jennings exited G Division at about 9:50am which meant that he did not commence his clinic at the infirmary until just after 10am. He would have had no forewarning of the prisoners whom he was to see at the infirmary nor of their presentations. Dr Jennings asserted that he did not have any independent recollection of the events of 15 April 2015 other than of seeing DT who was a regular patient. Having regard to the fact that Dr Jennings would not have arrived at the infirmary until shortly after 10am, and given that Yatala records showed that he ultimately left the prison shortly after 11am, that only left him about one hour to conduct the clinic within the infirmary. It appears that priority must have been given to as many as five other prisoners over Mr Ken. I am not certain how many of those five prisoners were in fact seen in the hour that Dr Jennings was able to conduct his clinic. Dr Jennings told the Court that he had no recollection of speaking to anyone that morning about prioritising Mr Ken's review.[70] There is no evidence that any consideration was given to the same.

6.6. Dr Jennings gave evidence concerning his impression of Mr Ken's clinical progress notes that recorded the events at Port Augusta and those that had occurred since his arrival at Yatala the night before. On the basis of those notes Dr Jennings asserted in his oral evidence that they did not necessarily exhibit any cause for concern. He said this having regard to notations from the night before compiled by the nurse Pierce that Mr Ken had been talking freely to staff, was bright and reactive and apparently looking forward to seeing his family in Adelaide. In addition, it was recorded that Mr Ken was very settled and denied any thoughts of self-harm although he was admitting to hearing some voices. Also reassuring for Dr Jennings was the notation that Mr Ken had been placed in his unit and doubled up with a cell mate and would be subject to daily health reviews before ultimately being psychiatrically assessed. As to the observations and opinions and plans of Dr Sabio and Dr Nambiar that had been formed earlier and which were recorded in the notes, Dr Jennings observed that he would have been '*a little more concerned*' if Mr Ken's worrying presentation had continued up until 15 April 2015.

[70] Transcript, page 1375

However, it was apparent that Mr Ken's mental state had been fluctuating quite a lot.[71] Dr Jennings said:

> 'One day he was expressing suicidal ideation, the next day he was talking about being much happier and not having the - to use his terms - silly thoughts. So it was very much, it seemed to me, a situational situation and it seemed to be also fairly specific to Port Augusta Prison initially because he was having problems with other white inmates and with, I understand it, younger Aboriginal inmates'.[72]

Unsurprisingly Dr Jennings was vigorously cross-examined by Ms Waite, counsel assisting, about those observations. When it was pointed out to Dr Jennings that Mr Ken had proceeded from circumstances in which he was not voicing suicidal ideation on the one hand to making attempts on his life on the other, and whether that had concerned him Dr Jennings said among other things '*this is very common in prison*'.[73] He stated that one constantly deals with a very volatile situation regarding prisoners. While agreeing that the infirmary would have been better for Mr Ken, there were restrictions that were in place in the infirmary including a prohibition on smoking. Mr Ken was a heavy smoker. There is a certain irony in this given that the DCS has now banned smoking throughout all South Australian correctional institutions.

6.7. Ms Waite also cross-examined Dr Jennings about the fact that it had been recorded that Mr Ken had been hearing voices that he believed were threatening. To this Dr Jennings suggested that the voices would be significant if they were potentially going to affect Mr Ken's behaviour. He added that many people with schizophrenic illnesses live with voices chronically and so voices per se are not something that one acts on immediately. However, if there was a risk that the person could respond to those voices in a way that presented as a danger to themselves or to others then one would have to act upon them. Counsel assisting suggested to Dr Jennings that the fact that one could not know what risk Mr Ken posed made it all the more critical that he be psychiatrically evaluated. Dr Jennings responded as follows:

> 'But there's also a strong cultural aspect to that and certainly from my viewpoint reading the notes, again I didn't assess him, but I would have thought there's a strong cultural element from what people have described behind that and so that would also reduce my belief that it was due to a mental illness as opposed to cultural fears.' [74]

[71] Transcript, page 1378
[72] Transcript, page 1378
[73] Transcript, page 1383
[74] Transcript, page 1387

6.8. To my mind when one particularly considers the evidence of Dr Nambiar who also gave oral evidence, the question of there being a cultural explanation for Mr Ken's delusions was something of a distraction. This is particularly so when regard is had to the fact that on no less than two occasions at Port Augusta Mr Ken did commit dangerous acts with an apparent intent to cause himself serious harm if not death. Against that background it could have come as no surprise to anyone in Dr Jennings' position that an urgent psychiatric appointment was necessary. In his evidence Dr Nambiar said that he believed that the frequency at which hallucinations experienced by Aboriginal persons were found to be culturally based as opposed to medically based was not great.[75] Dr Nambiar said that in any event such an evaluation should not be delayed and he suggested it was important for an assessment of such a person to occur fairly quickly.[76] In answer to me about whether a risk of self-harm should not be dismissed simply on the basis that the patient is thought to have cultural visions as distinct from psychotic visions, Dr Nambiar said:

> 'No, well that was the point I made earlier. If, you know, irrespective of whether it's a cultural belief or not, if there were issues around risk, you'd manage the risk'.[77]

I asked Dr Nambiar as follows:

> 'Q. So let's just say, in general terms, this: we've got a prisoner who has been reporting visions; there is a question mark as to whether that has some underlying cultural source, but you know that the visions are ongoing; and this is against background of recent suicide attempts. Taking all that into consideration, what would you need to consider as the appropriate course of action in the short term, in respect of that prisoner.
>
> A. Maintaining safety. That's always the paramount consideration'.

He went on to suggest that matters such as the prisoner's preference to be in an environment where he could smoke had limited relevance and *'was a minor factor in comparison to assessing his risk'.* He added *'If there was a risk, that overrides everything'.*[78] Further asked as to what weight should be given to the preferences of DCS staff if, for instance, they wanted to keep a prisoner in a cell overnight for the sake of convenience, Dr Nambiar said that once again risk outweighs all other considerations.[79] I unhesitatingly prefer the approach of Dr Nambiar to that of

[75] Transcript, page 1415
[76] Transcript, page 1418
[77] Transcript, page 1429
[78] Transcript, pages 1429-1430
[79] Transcript, page 1430

Dr Jennings. Dr Nambiar's plan involved Mr Ken being seen urgently for very sound reasons including the mitigation of risk to Mr Ken regardless of whether the source of his hallucinations were cultural or psychotic. I do not believe that Dr Jennings could sensibly have derived any reassurance from Mr Ken's history as set out in his clinical record. Quite the opposite in fact.

6.9. In the event another psychiatric appointment for Mr Ken was not arranged for that week. Rather, an appointment was made for him to be seen the following Monday 20 April 2015. The appointment schedule was marked '*urgent T/F from Port Augusta Prison **To be seen First***'. Dr Nambiar confirmed in his evidence that the clinic session time of 9am to 12pm was, in reality, notional only and that the practice was that the clinic would more likely finish soon after 11am when the officers would stop bringing patients. He also confirmed that this meant that routinely a number of patients from the list would not be seen. Asked whether it would ever be the case that one would get through the entire list, he said that this did happen but rarely.[80] He explained in this context that the psychiatrists are visitors to the institution, are not employed by the DCS and that therefore '*we have to work around their regime*'.[81] In fairness Dr Nambiar did acknowledge that there had been occasions when he had personally rung the manager of the institution and this had facilitated his seeing a prisoner. One has to wonder why it would have to come to that.

6.10. I will now discuss the issue as to whether Mr Ken missing his appointment was the subject of any attempted rectification.

6.11. It is apparent and I find that on 15 April 2015 no action was taken in respect of Mr Ken missing his psychiatric appointment other than by way of its rescheduling to the following Monday by which time he was deceased. In addition, it is also clear and I find that no or no adequate consideration was given to the issue as to whether Mr Ken ought to have been removed from the general prison population in B Division pending the rescheduled psychiatric examination. In my view in considering Mr Ken's circumstances undue weight was given to the fact that Mr Ken would remain in dual accommodation and that this would be regarded as a protective factor for him.

[80] Transcript, page 1422
[81] Transcript, page 1425

6.12. If anyone at Yatala knew of Mr Ken's circumstances on 15 April 2015, and in particular the fact that he had not been seen by the psychiatrist, nothing of a formal nature was mentioned about that until the next scheduled HRAT meeting which occurred on the following day on 16 April 2015. That meeting probably commenced at about 10:30am. The meeting had a number of attendees including the social worker who by then had seen Mr Ken, psychologists, Mr Decicco and Ms Flint. The minutes of the meeting[82] record that Mr Ken was to have been seen by the psychiatrist '*today*' but that due to escort issues he was not seen. The reference to '*today*' suggests that this entry was made in the record the day before on 15 April 2015. In any event it was recorded that Mr Ken would be re-booked and would see the medical officer next week with nil issues noted. There is also an entry by the social worker Ms Petraccaro dated 15 April 2015 which recommended that he remain on HRAT for a further week. An entry apparently made on 16 April 2015, the day of the meeting, stated as follows:

> 'Ongoing monitoring by social worker, ALO and unit staff any concerning issues to be reported to supervisor. Current variable presentation however generally stable. Was seen by MO this morning regarding chest pains. Due to see MO again this afternoon. Need to ensure he is seen by a psychiatrist at next booked appointment'.[83]

6.13. Ms Flint, one of the attendees at the HRAT meeting, was questioned by Ms Waite, counsel assisting. Ms Waite asked Ms Flint whether at a HRAT meeting one would expect to have a longitudinal overview of the prisoner's welfare while in the prison system as a whole and not just at Yatala. She stated that her expectation would be that the information that is shared at the meeting was relevant in order to determine that the plan that was in place for the prisoner would keep him safe, which may include information relating to the prisoner's circumstances prior to his placement at Yatala. Ms Waite asked Ms Flint the following question and she gave the following answer:

> 'Q. Had you received information at this meeting that Mr Ken had twice tried to self-harm in Port Augusta for reasons that he was hearing voices and he was hearing voices again whilst in Yatala what would you have done.
>
> A. My approach is to rely on the risk assessment and the outcome of that, that is undertaken by the HRAT team and the social worker that does the assessment, and I would expect that they do review all information that is known. So I would expect at that point that that had been taken into account by both health and the responsible

[82] Exhibit C39aa
[83] Exhibit C39aa

> staff - DCS staff within Yatala to inform the current plan - placement plan for Mr Ken.' [84]

The comment that is to be made about that approach is that while there would naturally be an expectation that Mr Ken's circumstances would be taken in to account by both Prison Health and DCS staff, the question would always remain as to whether the information would have been taken into account properly. It is clear that the information was not so taken in to account.

6.14. I note that although Mr Ken missed the psychiatric appointment of 15 April 2015, that at 11:20 that morning he was seen in the B Division '*satellite clinic*' by a registered nurse Mr Duc Le who was attached to the infirmary. In his evidence at inquest Mr Le explained that he saw Mr Ken during the period of lockdown. For this purpose Mr Ken would have been brought to see Mr Le by a DCS officer who would have been required to stay outside the room but remain present. Mr Le explained that because Mr Ken had not been seen by the psychiatrist as scheduled, he performed Mr Ken's daily health review. This all begs the question as to why he could not have been seen by Dr Jennings after all that morning. For instance, why could he not have been taken from the satellite clinic to the infirmary? I note that Dr Jennings left the Yatala Labour Prison shortly after 11am. The clinic was not scheduled to conclude until 12 midday. Why could he not have waited? The only sensible explanation for these questions is the seemingly unbending notion that all prisoners had to be locked in their cells between 11:30 and 1pm.

6.15. As far as Mr Le's assessment is concerned he made some observations about Mr Ken's appearance and manner that were unremarkable. Mr Ken told him that he had been eating and sleeping well with no thoughts of self-harm and no hallucinations.

6.16. An arrangement was also made for Mr Ken to see the SAPHS doctor during the afternoon clinic of the following day, 16 April 2015, an arrangement that was overtaken by the fact that Mr Ken was taken to see the doctor on the morning of that day with chest pain. He died before the afternoon clinic occurred.

6.17. Dr Le would again see Mr Ken in the Division the following morning when Mr Ken was experiencing chest pain. I will return to that issue in another section.

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[84] Transcript, page 1700

7. The incident on the evening of 15 April 2015 at Yatala

7.1. During the B Division routine medication round conducted by two SAPHS nurses, attention was drawn to the fact that Mr Ken was the subject of concern while in his cell. This was investigated in the first instance by the two nurses conducting the medication round. They were a registered nurse by the name of Sylvia Mosey and an enrolled nurse Michelle Dunn. Ms Mosey was interviewed by investigating police in July 2016. A transcript of that interview was tendered to the inquest.[85] Ms Mosey gave oral evidence at the inquest. Ms Dunn was not interviewed as part of the original police investigation. However, a statement of Ms Dunn that was prepared during the course of the inquest was tendered to the inquest.[86] Ms Dunn gave oral evidence.

7.2. This incident represents another missed opportunity for Mr Ken to have been brought to the infirmary on the night of 15 April 2015. If he had been brought to the infirmary it is likely that he would have been subjected to constant observation. Further, it seems likely that he would have been kept in the infirmary having regard to two aspects of his health, firstly his psychological health and secondly the fact that he would present to the infirmary in any event the next morning complaining of chest pain. It is also likely that he would not have been returned to his cell and placed in it alone during the fatal lockdown on 16 April 2015.

7.3. The incident is also characterised by the failure of the relevant participants to properly inform themselves of Mr Ken's background and his experiences at the Port Augusta Prison about which so much concern had been entertained and expressed about him prior to his arrival at Yatala on 14 April 2015.

7.4. The incident began to unfold at about 5:30pm. This was the second evening of Mr Ken's custody within Yatala. At that time Mr Ken was locked down in his cell with another prisoner. To begin with the attention of the DCS officers on duty during what has been referred to as the first watch was drawn to Mr Ken's behaviour in his cell. It is possible that what happened was that the cell mate used the cell intercom to speak to a DCS officer or officers. A Mr Daniel Reu was one of the officers on duty that evening. He was the B Division induction officer. Mr Reu attended at the cell and spoke to Mr Ken through the trap in the cell door. Mr Ken was distressed. Mr Reu

[85] Exhibit C6a
[86] Exhibit C71

gave oral evidence. He told the Court that Mr Ken said that he had heard other Aboriginal prisoners yelling out to him and threatening him and his family. Mr Reu would note in the JIS casenotes that the voices Mr Ken was hearing were speaking his language and specifically made threats against his daughter. As the incident unfolded it became apparent that Mr Ken had formed a belief that people were planning to kill him and that he was hearing voices in Pitjantjatjara. There was no evidence that this was anything other than the result of Mr Ken experiencing some kind of delusion or hallucination. Such beliefs, as seen, were in keeping with Mr Ken's presentation at earlier points in time. Mr Reu made a detailed entry into Mr Ken's JIS casenotes about this incident.

7.5. As a result of DCS officers becoming aware of Mr Ken's circumstances the two nurses were asked to attend at his cell. Ms Dunn, the enrolled nurse, spoke to Mr Ken through the trap of the cell door. This was, of course, by no means ideal. Ms Mosey, the registered nurse, was unable to participate fully in the assessment. Based on Ms Dunn's assessment, and as a result of imparting to Ms Mosey what had been said by Mr Ken, both nurses were of the view that Mr Ken should be removed from his cell and brought to the infirmary for further observation and assessment and admission to the infirmary if necessary.

7.6. A note within Mr Ken's SAPHS notes that would later be made by Ms Dunn records that Mr Ken was stating that people were planning to kill him and that he was hearing voices in Pitjantjatjara whereas the DCS officers had indicated that no person had been heard to threaten Mr Ken in the unit. Mr Ken indicated that he was very worried about his family and the fact that people were out to kill them. There was something specifically said about his daughter, although that is not recorded in the note. It is recorded by Ms Dunn that he denied thoughts of self-harm and had no suicidal ideation. However, she recorded that his mood appeared '*flat and anxious*' and '*very paranoid*'. Mr Ken was administered 5mg of olanzapine which is an anti-psychotic and sedative. The note also records that the nurses had expressed a preference for Mr Ken to be accommodated in the high security G Division but that there was no room to accommodate him there. The alternative was for him to attend the health centre and be accommodated in Room 1. This is all recorded in Ms Dunn's note.

7.7. In circumstances that are not entirely clear the officer who was in charge of the prison during that shift, Mr Oliver Goels, was advised of these developments and was brought

into the matter of where Mr Ken would be accommodated. In addition, the SAPHS nursing team leader for that shift, and as it was to transpire the next shift as well, would also be brought into the matter. That person was a registered nurse Ms Sarah Legg. Ms Legg was also interviewed by SAPOL investigating police in July 2016. Ms Legg also gave oral evidence in the inquest.

7.8. There is no or no sufficient evidence in my opinion to conclude that Mr Reu or his B Division colleagues for that shift were in any way obstructive to the wishes of the two nurses Mosey and Dunn that Mr Ken be removed from his cell and taken at least to the infirmary. In any case none of those officers had the authority to move Mr Ken from his cell to another part of the prison. That would have required at least the authority of the supervisor for that shift. The nursing staff also had no such authority. However, it is fair to say that Mr Goels, the supervisor and officer in charge of the prison for that shift, was less than enthusiastic about Mr Ken being moved out of the Division.

7.9. After Ms Mosey and Ms Dunn visited Mr Ken's cell and spoke to him they returned to the infirmary where they spoke to the team leader Ms Legg. Ms Legg was the person in charge of the infirmary for that shift. As a result of their discussion Ms Legg and Ms Dunn returned to Mr Ken's cell just before 8pm. Ms Legg spoke to Mr Ken, again through the trap of the cell door. As a result of that assessment Ms Legg decided that Mr Ken could remain where he was for the night. I will come to the basis of her decision in a moment. Curiously, Ms Legg obtained Mr Ken's signature to an acknowledgment of medical advice and in particular to that part of the document that relates to refusal of treatment. I say curiously because Ms Legg told the Court that although Mr Ken indicated that he did not want to be transferred to the health centre, it was Ms Legg's view in any event that he not be transferred. In other words she said that she acquiesced in Mr Ken's decision to remain where he was in the cell. Why then the need for Mr Ken to sign a document that recorded his refusal? I do not know the answer to that but it is just as well he did because in my view the document settles any debate that exists as to whether or not Mr Ken was refusing to come to the infirmary regardless of Ms Legg's attitude. That said, to my mind given the circumstances that existed, Mr Ken's attitude to going to the infirmary should not have determined the matter in any event.

7.10. Ms Mosey and Ms Dunn said in their evidence that they disagreed with Ms Legg's decision not to pursue Mr Ken's transfer from B Division to the infirmary. Of course, it was not purely Ms Legg's decision because DCS have the ultimate authority as to whether Mr Ken should be transferred or not. However, it is clear that Ms Legg's attitude was if not determinative then certainly instrumental in Mr Ken not being transferred. However, neither Ms Mosey nor Ms Dunn stated that at any stage either when they together spoke to Mr Ken, or when Ms Dunn and Ms Legg spoke to Mr Ken, did Mr Ken show any reluctance to come to the infirmary. That does not mean in my view that when Mr Ken spoke to Ms Legg he did not indicate that to Ms Legg without Ms Dunn hearing this. Ms Legg spoke to Mr Ken through the trap of the cell door. When asked as to whether or not she could recall whether Mr Ken expressed any reluctance on the second occasion to go to the health centre Ms Dunn said she could not recall.[87] That said, Ms Dunn asserted that Mr Ken was still acting strangely at the second visit. As earlier indicated Mr Ken's reluctance to be moved was duly documented. I return to that in a moment.

7.11. It is evident that neither Ms Mosey nor Ms Dunn nor Ms Legg read Mr Ken's SAPHS notes before he was seen by any of them. Ms Mosey said that if she had read Mr Ken's medical file and seen reference to his previous self-harm attempts at Port Augusta and the fact that he had been on camera and on canvas there, she does not know what she could have done given that she had only been working at the prison for a few months. However, looking back in hindsight with the knowledge that she has now about Mr Ken and with her current experience with mental health nursing, she asserts that she might have rung a more senior nurse on call.[88]

7.12. Ms Mosey worked the following day and at some point was made aware of Mr Ken's attendance at the infirmary in the morning. However, Mr Ken had already been returned to the Division and it was by then lockdown time.[89] She did not call the Division or do anything else about Mr Ken. She said that she did not know if there was anything she could do.[90] Although she was still unhappy that he was not in the infirmary, she '…*felt powerless to take it any further*'.[91] Ms Mosey could not recall the

[87] Transcript, page 1715
[88] Transcript, page 1253
[89] Transcript, page 1255
[90] Transcript, page 1258
[91] Transcript, page 1258

involvement of the supervisor Mr Goels, but suggested that the DCS officers with whom she had contact had done all they could.

7.13. Ms Dunn for her part said that she was also not happy with Ms Legg's decision and disagreed with it. She maintained that when she spoke to Mr Ken at his cell he never said that he did not want to come to the health centre and that she did not tell Ms Legg that he had said that.[92] She said that she did not recall whether he expressed reluctance on the second occasion when she went there with Ms Legg.[93] Ms Dunn said that in the event she deferred to her senior colleague Ms Legg who was a registered nurse.[94] Ms Dunn said that she feels that she should have escalated the matter and to have perhaps obtained a second opinion from a medical officer whom she could have telephoned.[95]

7.14. Ms Dunn made a handwritten note in Mr Ken's SAPHS notes. I have already referred to that note in part. It is also evident that following Ms Dunn's visit to the cell with Ms Legg she made a further note that she says was dictated to her by Ms Legg. The note in part states as follows:

> '… after discussion with TL, DCS and client re coming to Health Centre, client declined, after explaining lucidly his concerns for his family only. Risk form signed'.

That note follows on from Ms Dunn's previous note regarding her own conversation with Mr Ken earlier that evening. The note is signed by both Ms Dunn and Ms Mosey, but not Ms Legg. Ms Dunn made a further note to the effect that Mr Ken was booked to see a medical officer the following day, that DSC would arrange a phone call to Mr Ken's daughter and that an Aboriginal Liaison Officer would see him in the morning. Ms Dunn stated that this information was given to her by Ms Legg.

7.15. One matter that Ms Dunn did emphasise in her evidence and also in the statement that she produced to the Court was that the supervisor Mr Goels did not want to move Mr Ken.[96] In her evidence she said that she could not now recall what Mr Goels had said that had led her to believe that he did not want to move Mr Ken. And Ms Dunn

[92] Transcript, page 1714-1715
[93] Transcript, page 1715
[94] Transcript, page 1731-1744
[95] Transcript, page 1744
[96] Transcript, page 1704

said that she could not recall the reason for Mr Goels' reluctance. He may have provided a reason but not to her.[97]

7.16. It is difficult to know what to make of the evidence of Ms Mosey and Ms Dunn when they say that they disagreed with the decision of Ms Legg. The note that Ms Dunn made, signed by both her and Ms Mosey, contains no hint of dissent or disagreement. Quite the contrary if anything. One matter that Ms Dunn emphasised in her evidence is that she would not have used the word *'lucidly'* in her note, suggesting I think that this word was dictated to her by Ms Legg who by coincidence or otherwise used that word in a retrospective handwritten record that Ms Legg made of these events in 2015. Ms Dunn said that in her view Mr Ken had not been lucid on the second occasion that she went to his cell. That begs the question as to why she would have written that he had explained his concerns lucidly. An available explanation would be that the note, as she asserts, was dictated to her by Ms Legg. Another is that on this second visit to the cell by the nurses Mr Ken had been comparatively lucid, possibly due to the effect of the sedative that he had earlier been given.

7.17. It is not necessary for the Court to make any finding about the attitude of both Ms Mosey or Ms Dunn to Ms Legg's ultimate decision. This is because it is clear from Ms Legg's own evidence that as the nurse in charge for that shift, and for her own reasons, she made the decision that Mr Ken could stay in his cell, taking into account her own perceptions. Whether her conclusions were correct and properly based is another matter I will come to in a moment. I now turn to Ms Legg's evidence.

7.18. I should first deal with an issue that in hindsight became something of an unnecessary distraction in the inquest. And this relates to the fate of a note Ms Legg said she made during her shift in order to record her version of events in Mr Ken's SAPHS casenotes. In the police statement that Ms Legg provided to investigating police in July 2016 she indicated that on the night in question she had made her own notation of these events in Mr Ken's casenotes. However, when shown the SAPHS file by police it was evident to her that the page on which she had made her note was missing. It is apparent from the notes as a whole that if she did make a note on the file and if it had gone missing it must have gone missing sometime before 10:35am the following morning. This is due to the fact that a note made at that time ought to have followed on from the bottom of

[97] Transcript, page 1739

Ms Legg's note if such a note had been made. Rather, it follows on from Ms Dunn's notes. Ms Legg told the Court that she had originally become aware that her note was missing from the file when she returned after the two or three weeks leave that she took immediately following 16 April 2015. She says that she was alerted to the fact that her note was missing by a colleague whom she named in evidence. However, to add to the mystery it appears that the colleague must have been Ms Dunn who said in evidence that it was she who had told Ms Legg that there had been no note on the file made by Ms Legg. By then the entire SAPHS file for Mr Ken had been seized by police. Some might view Ms Legg's assertion that she made a note on Mr Ken's file with suspicion, but in the event I do not need to make any finding about that.

7.19. Ms Legg produced to the Court the retrospective handwritten account of these events which she said she made after discovering that her note from Mr Ken's file was no longer there. This account and the account given by her in her evidence makes it plain in my view that putting all disputes of fact aside, Ms Legg takes full responsibility for Mr Ken not being moved from his cell.

7.20. Ms Legg asserted in her evidence that the DCS were very reluctant for Mr Ken to be moved. As seen, Ms Dunn supported her in that regard insofar as Ms Dunn said that Mr Goels, the supervisor who had the ultimate authority to move or not move prisoners during that shift, was exhibiting that reluctance. However, at first Ms Legg said in her evidence that she could not recall having a discussion with Mr Goels about Mr Goels' reluctance to remove Mr Ken.[98] What she said she did remember was Ms Dunn saying that she wanted to move Mr Ken but that '*the officers didn't want him to be moved*'.[99] She said that it was on the basis of that and her speaking with Ms Dunn about Ms Dunn's interaction with Mr Ken that she decided to go and see Mr Ken herself. She said it was possible that Mr Goels said that he did not want to move Mr Ken but she did not recall it.[100] However, later in her oral evidence Ms Legg did say that she had some understanding from Ms Dunn that Mr Goels was of the view that he did not want to bring Mr Ken to the infirmary. She then recalled actually speaking to Mr Goels who had afterwards said that he was quite happy to leave Mr Ken where he was and that he did not want to move him. In effect she said that in any event there had been no need for anyone to be obstructive which I took to mean that for the most part it had been her

[98] Transcript, page 1300
[99] Transcript, page 1300
[100] Transcript, page 1301

decision that Mr Ken stay where he was and that any obstruction or lack of enthusiasm to move Mr Ken on the part of DCS had not been a significant factor in her decision.[101] Ms Legg was not a particularly good historian. I am not certain as to the role that DCS played in any conclusion reached or decision that Ms Legg made about Mr Ken.

7.21. To my mind reluctance to move Mr Ken could only have originated from Mr Goels. I will deal with Mr Goels' evidence separately.

7.22. Ms Legg told the Court that she went with Ms Dunn to the cells and she spoke to Mr Ken who explained to her that he was worried that someone was out to get his daughter and family and he was desperate to warn them. He said that voices were warning him to watch out. He said the voices were not harming him but were trying to help him. He shrugged when Ms Legg, who had a knowledge of aboriginal culture and language, asked him if the voices were from ancestors or mumals and therefore might be explained by cultural beliefs. Nevertheless, Mr Ken appeared lucid during this discussion. Mr Ken being lucid with her had not been in keeping with Ms Dunn's earlier description of him.[102] Ms Legg also believed that Mr Ken's Aboriginal cellmate had some of the same cultural beliefs as Mr Ken and that they understood each other. His cellmate indicated to her that he would watch Mr Ken. She regarded the cellmate as a protective factor. Mr Ken indicated quite clearly that he did not wish to come to the infirmary, one relevant matter being that he could smoke where he was. Ms Legg's handwritten document states:

> 'I understood that he was stressed and adding nicotine withdrawals would not help him and being in a cell alone with a white fella glaring at him all night would only increase his stress levels. Also wearing a canvas gown'.

This of course was a reference to the situation that would have prevailed if Mr Ken was placed into Room 1 of the infirmary. Mr Ken, as a prisoner, could have been moved to the infirmary contrary to his wishes.

7.23. Ms Legg also stated that she sought and was given assurances that Mr Ken would not be left on his own in his cell. She felt he was safe so long as he remained doubled up and was able to speak with his family the following day.

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[101] Transcript, page 1305
[102] Transcript, page 1303

7.24. Ms Legg also said that she created an appointment for Mr Ken to be seen by the medical officer the following day. Events would be overtaken the following morning by Mr Ken complaining of chest pain which caused him to be brought to the infirmary for that reason in any case.

7.25. As indicated earlier when Ms Legg attended at the cell she had Mr Ken sign a refusal of treatment form. Ms Legg wrote on that form and specified the reasons for the refusal. She wrote as follows:

> '**refusing to come and stay overnight in the health centre**. Client states he is not thinking of hurting himself. He is concerned for his family's safety + is frustrated he has not been able to call his family to check they are allright'.[103] (emboldening added).

It is apparent that when Ms Legg attended at the cell she had taken that form with her. She told the Court that she did so on the understanding that Mr Ken had already indicated some reluctance to leave his cell when he had been spoken to by Ms Dunn. Ms Legg said in effect that she armed herself with the form in case Mr Ken demonstrated the same reluctance which in fact he did. Ms Legg rejected the suggestion that she had taken the form because of a preconceived notion or already formed decision that she would not advocate for Mr Ken's removal from his cell and placement in the infirmary. Mr Legg's explanation for taking the form with her in my view would make sense if Mr Ken had indeed already told Ms Dunn of his reluctance to move. The form that Mr Ken signed is an apparently genuine document made contemporaneously with the event it records. There is no proper basis to conclude that Ms Legg's note within the refusal form as reproduced above is a fabrication. I think it is likely that Ms Legg is telling the truth about the issue of Mr Ken's reluctance. I think it is likely that Mr Ken had indicated to Ms Dunn that he did not want to leave his cell and that Ms Dunn in fact had told Ms Legg that. I think it is more likely than not, and I so find, that Ms Legg attended Mr Ken's cell with an open mind as to what the appropriate course of action might be and did not go there with a determination not to advocate his removal come what may.

7.26. However, that is not the end of the matter. In my view Ms Legg's decision not to advocate Mr Ken's removal from the cell was necessarily flawed as it did not take into account important information about Mr Ken as contained in his SAPHS casenotes to which she had access. The reason I say that is because of Ms Legg's failure to inform

[103] Exhibit C39ce

herself of Mr Ken's recent history at Port Augusta, a step that she could easily have taken before she gained any impression of Mr Ken that night. In her oral evidence Ms Legg was shown Mr Ken's SAPHS casenotes. Ms Legg acknowledged that before making her assessment of Mr Ken she did not read Dr Sabio's note in particular.[104] She only came to read it after her assessment of Mr Ken and after the decision had been made to leave him in his cell. She was asked by Mr Keane of counsel for the DCS and the Adelaide Health Network whether reading the note had caused her to reconsider her views about Mr Ken's wellbeing in B Division and her answer was:

> 'I was mortified, yes, and I thought about it some more, but I felt that being with another prisoner in his cell, having a cell mate, and I felt that he would be okay overnight and I expected for him to come to the health centre in the morning and be seen by the nurses as well as a doctor during the day. I felt that he would be safe. The officers had already assured me while I was there in B Division that he would not be left alone'.[105]

Asked by Ms Waite to elaborate on that Ms Legg said that she was shocked that Mr Ken had not been seen by Dr Jennings when he was meant to have been and that he had not been sent straight to G Division when he had entered the facility. She said that although she knew the regime under which Mr Ken had been in Port Augusta, she felt that there was no reason to move him until the following day.[106] Asked pointedly by Ms Waite as to whether she would agree that had she known his history she would have made a different decision on the night '*No, I wouldn't have, I don't believe. No.*'.[107]

7.27. I find that answer difficult to accept having regard to the fact that Mr Ken's presentation that night, even as witnessed by Ms Legg, was very much in keeping with his presentation at Port Augusta and particularly having regard to the fact that in Port Augusta he had made two attempts at self-harm. Ms Legg also maintained that she would have done nothing differently notwithstanding that the nursing staff at Port Augusta had recommended that he be placed on camera at Port Augusta in the infirmary. She also no doubt would have seen the reference to similar recommendations having been made by Port Augusta in respect of his accommodation in Yatala.

7.28. Ms Legg's decision is somewhat mitigated by her hope and expectation that Mr Ken would be removed from B Division the following day, but in the event it was more of

[104] Transcript, page 1307
[105] Transcript, page 1308
[106] Transcript, page 1348-1349
[107] Transcript, page 1349

a hope than an expectation. There was an opportunity in my view for Mr Ken to have been moved on the night of 15 April 2015 and it was a missed opportunity.

7.29. I have referred to Mr Goels. During the inquest Mr Goels was questioned at considerable length about his involvement in this incident. In some ways his attitude is perhaps peripheral given Ms Legg's candid concession in her evidence that although she may have understood that Mr Goels had said that he would rather not move Mr Ken she '*…assessed him myself and I made the decision that he was okay to be in the unit with his cell mate*'.[108] What Ms Legg seems to be saying there is that any reluctance demonstrated by Mr Goels was in any event overtaken by her own assessment and decision.

7.30. Mr Goels was the officer in charge of the prison and was the person who ultimately could have made the decision to move Mr Ken or not. For his part he maintained in his evidence that he had an incomplete recollection of the events of that night. He maintained on a number of occasions during his evidence that one would only move someone like Mr Ken as a '*last resort*'.[109] He also said it was a substantial security risk to take prisoners out of the cells after hours. He suggested at one point that as many as four officers would be needed to do that, in my view an exaggeration. Mr Goels said that he did not recall any request for Mr Ken to be transferred to the infirmary that night. He added that normally what he would do would be to try not to have Mr Ken taken to the infirmary if at all if possible if the assessment could be made through the trap of the cell door. One would comment that it would hardly be appropriate for a judgment of Mr Goels along those lines to prevail over the judgments of those professionally and clinically qualified to make them. The approach that a prisoner should only be removed from a cell as a last resort is nonsense. If it is deemed clinically appropriate for a prisoner to be removed from a cell, at any time of the day or night, then he should be removed.

7.31. One matter of significance in Mr Goels' evidence was his assertion that he believed that Mr Ken was '*happy*' with his circumstances in just about every respect. This was based on a perusal of Mr Ken's DCS casenotes to date. But Mr Goels on the other hand told the court that he believed that the issue at stake on the night in question was a medical issue only and not a psychiatric one. He did not know of the circumstances surrounding

[108] Transcript, pages 1306-1307
[109] Transcript, page 1826

Mr Ken's transfer from Port Augusta to Yatala. Mr Goels' assertions in that regard appear to have been contradicted by his own acknowledgment that he would have read the entry that Mr Miranda made in the casenotes upon Mr Ken's admission to the prison which recorded the raising of the NOC due to concerns of Mr Ken's safety, welfare and mental health status. Be that as it may, if Mr Goels was of a belief that the only difficulty posed to Mr Ken was a medical one as opposed to a psychiatric one, then any decision that he made or attitude that he adopted or expressed that night in relation to Mr Ken's removal from the cell was flawed as well. I intend making a recommendation to the effect that DCS officers should, unless there is very good reason to the contrary, defer to the opinions of and assessments made by staff of the Prison Health Service.

8. Mr Ken is taken to the infirmary after experiencing chest pain

8.1. I have already referred to the SAPHS registered nurse Mr Duc Le. As indicated earlier Mr Le saw Mr Ken on the morning of 15 April 2015. He next saw Mr Ken on the morning of the following day, again at the B Division satellite clinic. This was another of Mr Ken's daily health reviews. Mr Le noted that Mr Ken's systolic blood pressure was 145 which is above normal. He noted that Mr Ken looked clean and tidy but was anxious, saying that people are planning to hurt him and his family. Mr Ken whispered, '*they're trying to kill me tonight*'. Mr Le noted that Mr Ken said that people would be hurting his family repeatedly. On this occasion Mr Ken complained of chest pain which he stated, and was noted to have stated, were '*very painful*'. As a result Mr Le decided to have Mr Ken brought to the infirmary for the purpose of undergoing an ECG.

8.2. Mr Ken was escorted to the infirmary from B Division by DCS officers James and Pavlovich. James was a designated Yankee (escort) officer whose duties that day consisted of the escorting of prisoners. He was accompanied by DCS officer Pavlovich who was a trainee at that time. Mr James and Ms Pavlovich were present when the ECG was carried out by Mr Le at the infirmary. They would also be the escorting officers when after the taking of the ECG and a review of that by a medical officer, Mr Ken was taken back to B Division and was placed in his cell.

8.3. Before dealing with what transpired at the infirmary and why it was that Mr Ken was taken back to B Division and placed in his cell, it is as well to discuss here what the significance of the ECGs and other aspects of Mr Ken's clinical presentation were in reality.

8.4. Mr Le conducted two 12 lead ECG's approximately one minute apart. The ECG traces were tendered to the inquest. They form part of Mr Ken's SAPHS casenotes.[110] The earlier ECG was timed at 11:15:38. I am not certain if this was the exact time it was taken. It possibly does not matter. The first ECG was reported as being a '*BORDERLINE ECG*'. It also reported that there was a '*borderline prolonged QT interval*'. There was sinus tachycardia (elevated heart rate) which was recorded at 107 beats per minute. The second ECG was described as '*OTHERWISE NORMAL ECG*'. It recorded left access deviation and sinus tachycardia with beats per minute of 109.

8.5. It is clear that during this attendance by Mr Ken at the infirmary that the clinical staff had access to Mr Ken's casenotes from Port Augusta. The casenotes contained a trace of an ECG that had been administered to Mr Ken on 8 April 2015 at the Port Augusta Prison. This ECG was reported as an '*OTHERWISE NORMAL ECG*'. It reported a normal sinus rhythm of 84 beats per minute, with borderline left access deviation and abnormal R-wave progression, early transition. I should also add here that when Mr Ken was at the Port Augusta Prison he had recorded systolic blood pressure readings of 150 on 8 April 2015, 165 on 9 April 2015 and 165 on 11 April 2015. These readings are all significantly elevated. Mr Ken had a history of elevated cholesterol. Mr Ken was also possibly diabetic and was a smoker. He was 68 years of age.

8.6. The earlier ECG taken on 8 April 2015 is of significance in that there were changes as between the results of that ECG and the results of the ECGs taken on the morning of 16 April 2015. Changes in ECG traces can be of some diagnostic significance. It is apparent from expert evidence that in Mr Ken's case the changes were of some significance. The earlier ECG of 8 April 2015 was not taken into consideration when Mr Ken was seen at Yatala on 16 April 2015. It should have been.

8.7. Independent expert evidence was given by Dr Heddle, a consultant cardiologist. I have referred to Dr Heddle elsewhere in these findings. Dr Heddle pointed out that Mr Ken had three major risk factors for cardiovascular illness. They were his ongoing smoking, untreated high blood pressure with a number of recent readings that were elevated and also elevated cholesterol. Mr Ken was pre-diabetic as distinct from truly diabetic. There was also a question of documented intermittent heavy alcohol use. Dr Heddle

[110] Exhibit C40, pages 33-34

suggested that these risk factors were '*red flags*' in someone presenting with chest pain.[111] He suggests that a doctor assessing chest pain should know the history of any risk factors for heart disease. He said that this was '*standard procedure*'.[112] He said:

> '…but if you're being asked to advise on the management of a patient on the basis of an ECG you would always ask what are the risk factors for this patient'.[113]

8.8. Other questions that are relevant when assessing chest pain include the location and nature of the pain and whether the pain radiated to the arms and/or to the jaw. They were all described by Dr Heddle as '*standard questions*'.[114]

8.9. Dr Heddle suggested that while these were questions that a nurse acting on behalf of a medical practitioner would ask, he would expect the medical practitioner to actually assess the patient in person.[115]

8.10. As to the ECGs taken at Yatala as well as the ECG taken on 8 April 2015 at Port Augusta, Dr Heddle compared the results from all ECGs, stating that to do so is also '*standard practice*'.[116] He explained that the significance of an ECG is much greater if there is a change from previous patterns. If a patient has undergone sequential ECGs it is valuable to compare them. The reason for this is that a person's ECG pattern changes very little over a lifetime unless a cardiac event occurs. Thus, the possibility of the existence of previous ECGs should be explored when assessing a patient.[117] As already indicated, Mr Ken's previous ECG taken the week before was available to the staff at the Yatala infirmary when evaluating Mr Ken's ECGs taken on the morning in question. Having compared the ECGs and having identified changes as between the ECG of 8 April 2015 and those of 16 April 2015, Dr Heddle formed the view that while the differences represented a nonspecific finding, the change from one ECG to the others in association with chest pain could be a marker of impaired blood flow to the heart with resultant myocardial ischemia.[118] He added that even when examining the 16 April 2015 ECGs taken in isolation from that of 8 April 2015, there were some minor abnormalities which although in themselves would not necessarily indicate a heart attack, were significant in association with Mr Ken's chest pain. In his opinion they

[111] Transcript, page 583
[112] Transcript, page 583
[113] Transcript, page 584
[114] Transcript, page 585
[115] Transcript, page 586
[116] Transcript, page 587
[117] Transcript, page 588
[118] Transcript, page 588

were such as '*to raise a strong suspicion of a heart attack*'.[119] Dr Heddle added that as far as the question of resolved chest pain was concerned, the ECGs of 16 April 2015 would raise red flags suggesting they could be evidence of a cardiac event.

8.11. Dr Heddle also suggested that the administration of two ECGs undertaken within minutes of each other as was the case with Mr Ken on 16 April 2015 does not provide any additional meaningful information. He said that an ECG needs to be repeated at six to eight hours. He said:

> 'Yes, if you're wanting to exclude a heart attack, you have to presume the patient may have had a heart attack which means you have to keep them on ECG monitoring, have resuscitation equipment available, have intravenous access available to give medications while you're waiting for these results to come, so you have to do that for the six hours'.[120]

8.12. In short Dr Heddle stated that with a person presenting with chest pain and cardiac risk factors, a medical practitioner was under a medical duty to exclude myocardial infarction even if the chest pain was said to have resolved and the patient was appearing as unremarkable.[121] He suggested that a prison doctor would be expected to follow the usual chest pain protocols that are followed in hospitals. A suspicion of anxiety as being the possible diagnosis and explanation for a patient's presentation would not obviate the need to exclude myocardial infarction.[122]

8.13. Dr Heddle referred to the autopsy report from which it can be concluded that Mr Ken had experienced a myocardial infarction of approximately 24 hours duration. This would have meant that blood tests including Troponin would have been elevated if such a test had been performed. The elevation of itself would have meant automatic transfer to a hospital for further assessment.[123] At the time at which this inquest is concerned such a test if the sampling was performed at the Yatala infirmary would have involved a period of delay pending analysis. The infirmary did not have point of care Troponin testing. To my mind this fact of itself meant that Mr Ken should have been transferred to hospital to enable more expeditious testing to occur.

8.14. As to Mr Ken's chances of survival of his heart attack, it will be borne in mind that the principal cause of death was his act of hanging. In his report Dr Heddle refers to the

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[119] Transcript, page 589
[120] Transcript, page 592
[121] Transcript, page 597
[122] Transcript, page 599
[123] Transcript, page 600

issue of survivability and states that if action had been taken to manage what appears to have been severe chest pain to the current accepted standard of care, there is a reasonable possibility the deceased would have survived the heart attack. In his oral evidence Dr Heddle also suggested that if Mr Ken had been kept under observation in the infirmary over lunch with continued ECG monitoring and resuscitation facilities available, that there was a very high probability that he would been revived in the situation of cardiac arrest.[124] I accept that evidence. While it seems that a heart attack would almost certainly have been fatal in a situation where Mr Ken was on his own without resuscitative measures being available, if he had experienced it in the infirmary there was a high degree of probability that he would have been revived.

8.15. Of course, the other issue is that if Mr Ken had been kept in the infirmary under observation he would not have been afforded the opportunity to have performed an act of self-harm, an opportunity that was provided by his being returned to B Division and being placed in a cell on his own.

8.16. The inquest heard from four witnesses of importance in relation to Mr Ken's presentation at the infirmary. They consisted of the two escorting officers, the registered nurse Mr Le and the medical practitioner Dr Moskwa. A number of issues arose out of their evidence. These included whether or not when Mr Ken was at the infirmary his chest pain had resolved, whether the clinicians present had any belief in that regard and whether or not Dr Moskwa adequately examined and assessed Mr Ken before he was sent back to B Division.

8.17. The issue as to whether Mr Ken's chest pain had resolved by the time he attended at the infirmary was of some significance, at least to Dr Moskwa, although as seen, Dr Heddle suggested that the significance of the issue was limited in a clinical sense. Nevertheless, it was relevant to the question as to why and whether Mr Ken should have been sent back to his cell. Dr Moskwa testified that he believed that Mr Ken's chest pain had resolved by the time he was asked to examine his ECG traces. In short, when Dr Moskwa examined those traces he did not believe that they demonstrated any abnormality. He did not seek out Mr Ken's casenotes which contained the earlier ECG taken on 8 April 2015 at Port Augusta. Dr Moskwa maintained that although he did not speak to Mr Ken himself and did not really consider personally examining him, in

[124] Transcript, page 600

passing he saw Mr Ken lying on the bed within the infirmary and formed the view that he did not display any signs of concern. The question of the resolution of Mr Ken's chest pain was of some significance in that Dr Moskwa put down Mr Ken's chest pain and other signs such as his high blood pressure and rapid pulse rate to anxiety and not to any cardiac issue. Had he believed that Mr Ken had continuing chest pain he would most probably have sent him to hospital.[125] Such a course of action would be in keeping with the independent evidence of Dr Heddle. And yet, it is obvious that Dr Moskwa did not make any enquiry of the patient that could have established for certain one way or the other whether the patient was still experiencing chest pain.

8.18. In the course of his rather protracted time in the witness box Dr Moskwa insisted on many occasions either that Mr Ken's chest pain had resolved or at least that he believed it had resolved by the time Mr Ken had entered the infirmary.

8.19. I think it highly unlikely that when Mr Ken was at the infirmary he was not still experiencing chest pain. It will be remembered that he told the nurse Mr Le that he was experiencing chest pain that was '*very painful*'. Unfortunately when Mr Le was interviewed by the investigating police on 28 June 2016[126] he was not pinned down as to whether or not in the infirmary itself Mr Ken was complaining of chest pain at that time as distinct from earlier when Mr Le examined him at the satellite clinic in B Division. In his oral evidence before this Court and Mr Le was asked whether before Mr Ken left the infirmary his chest pain had resolved or whether he still had it. To that Mr Le said he could not recall.[127] Mr Le was questioned whether Dr Moskwa had asked him if Mr Ken was still experiencing chest pain. Mr Le could also not recall that.[128] When asked whether it was possible that when Mr Ken was sent back to the Division he was still suffering from chest pain Mr Le said:

> 'Well he doesn't - his appearance didn't look distressed to me at all. That's why we didn't raise a flag'.[129]

[125] Transcript, page 550
[126] Exhibit C58
[127] Transcript, page 449
[128] Transcript, page 449
[129] Transcript, page 449

When pressed by counsel Mr Keane on the issue as to whether it was possible that Mr Ken still had chest pain at the time he left the infirmary Mr Le said he could not answer that question. Mr Keane asked Mr Le:

> 'Q. Well if it was the same pain as he'd been experiencing all along would you have sent him back to the division.
>
> A. As mentioned before his presentation doesn't look distressed to me, even though he say he got chest pain, but he doesn't look distressed on the face, he doesn't look distressed on any presentation at all, that's why I sent him back'.[130]

Further cross-examination of Mr Le by other counsel on the same subject elicited unhelpful answers to the effect that he could not recall anything about current chest pain and whether he had had any conversation with the doctor about that.[131] Mr Le insisted that Mr Ken did not look in any way distressed. He did agree with counsel assisting Ms Waite that if a patient continued to report pain the patient should not have been sent back to his cell.[132]

8.20. At no stage did Mr Le either in his interview with police or in his oral evidence claim to have informed Dr Moskwa that Mr Ken's chest pain had resolved. The simple thrust of Mr Le's evidence was that he showed the ECGs to Dr Moskwa in another room of the infirmary to where Mr Ken was situated and that the doctor said that Mr Ken was good to go back to his cell.

8.21. In his oral evidence Mr Le agreed that the characterisation of the ECG as *'Borderline'* signified that it was on the borderline between normal and abnormal, the abnormality being the suggestion of a borderline prolonged QT interval. It was due to the fact that the first ECG stated that it was borderline that he repeated the process.[133] Before dealing with Dr Moskwa's evidence I should mention the evidence of the two escorting officers. Both officers James and Pavlovich on 16 April 2015 compiled employee report forms in respect of Mr Ken's death. They were also interviewed by police and gave oral evidence in the inquest.

8.22. Mr James' employee report form[134] simply asserts that the nurse showed the ECG to the doctor and instructed him and his partner that Mr Ken '*was fine*' and was to be returned

[130] Transcript, page 450
[131] Transcript, page 451
[132] Transcript, page 472
[133] Transcript, pages 27-36
[134] Exhibit C39am

to the unit where he would be seen in the afternoon clinic for further assessment. His interview with police on 25 May 2016 records that Mr Ken had said that he wanted to go to hospital.[135] In his oral evidence Mr James suggested that Mr Ken's desire that he go to hospital was expressed in the infirmary room.[136] He believed that the comment was not directed to any person in particular. Mr James also said that he could not make any assumption about how Mr Ken felt at that time.[137] Mr James told cross-examining counsel Ms Waite that he believed that Mr Ken repeated his request to go to the hospital.[138] He said that to his recollection Mr Ken did not at any stage describe his symptoms.[139] In my view it is highly unlikely that Mr James, as an escorting officer, would have said anything within the infirmary room to suggest that Mr Ken's chest pain had resolved.

8.23. Ms Pavlovich's employee report form[140] also compiled on 16 April 2015 records that on completion of the ECG the nurse advised that Mr Ken could be returned to his unit. She confirmed that Mr Ken mentioned that he felt that he needed to go to hospital to which he was told that he would be seen by a doctor in the divisional clinic in the afternoon. When asked in her police interview[141] on 25 November 2015 whether Mr Ken had complained to her about chest pains she stated to the interviewing officer that the only time she could remember Mr Ken complaining was when he was in the infirmary lying on the bed and said to the nurses that he needed to go to hospital. When asked whether anything was said about him still experiencing chest pain, Ms Pavlovich said '*no, not that I recall*'.[142]

8.24. In my view it is highly unlikely that Ms Pavlovich would have given anybody to understand that Mr Ken was no longer experiencing chest pain.

8.25. Dr Moskwa is a medical practitioner who has worked for the SAPHS since approximately 2009. He obtained his basic medical degrees in 1973 from the Adelaide University. He lectured for several years in physiology at the university and has been involved in medical research. He left the university after approximately 20 years. He also had an association with the practice of medicine in the Australian Defence Force.

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[135] Exhibit C8a
[136] Transcript, page 1185
[137] Transcript, page 1186
[138] Transcript, page 1190
[139] Transcript, page 1195
[140] Exhibit C16c
[141] Exhibit C16d
[142] Transcript, page 1020

He was at Woodside as the Regimental Medical Officer for the 16th Air Defence Regiment. Dr Moskwa is not admitted to the College of General Practitioners. He is now retired. Dr Moskwa was represented at the inquest by Ms Cliff of counsel.

8.26. Dr Moskwa had also been interviewed by investigating police. His record of interview was tendered in evidence.[143] Asked by Ms Cliff as to whether the transcript of the interview was true and correct to the best of his recollection Dr Moskwa said as far as he was aware it was.[144] In that interview Dr Moskwa confirmed that he examined the ECG traces. They were brought to him for review because Mr Ken had complained of chest pain. He said it was normal routine for an ECG to be performed on a prisoner who complained of chest pain and then have it reviewed by a doctor to see if there was any need for further action. When he examined the ECGs he noted the heart rate was '*a little high*'.[145] To him this was easily explained by anxiety, but there was no sign of any acute condition such as a heart attack. Dr Moskwa believed that Mr Ken was to be seen by another doctor in the afternoon. He said the ECGs were really no cause for concern.

8.27. In his oral evidence Dr Moskwa asserted that as far as the borderline ECG was concerned, most adults will have that type of borderline ECG which is *'quite acceptable'*, and so he considered Mr Ken's to be *'essentially normal'*[146] and that is why he was allowed to go back to his cell.[147]

8.28. It is of some significance that on three occasions in the course of his police interview he said that he never saw Mr Ken himself. He said as follows:

> 'No, no I never saw Mr Ken myself, so there was no need for me to write anything as well.' [148];
>
> '…although I didn't see him personally at the time I imagine that we thought it was other than Cardiac…' [149];

and

> '…as I said I never saw the man and he was due to be seen by a Doctor other than myself that afternoon, so I didn't really have much involvement with him.' [150]

[143] Exhibit C59
[144] Transcript, page 483
[145] Exhibit C59, page 3
[146] Transcript, pages 29-37
[147] Transcript, page 561
[148] Exhibit C59, page 2
[149] Exhibit C59, page 3
[150] Exhibit C59, page 4

In his interview Dr Moskwa did not assert that he had actually laid eyes on Mr Ken at any stage when Mr Ken was in the infirmary.

8.29. I observe that neither Mr Le nor the DCS officers James and Pavlovich claim that Dr Moskwa had ever entered the area where Mr Ken had been on the bed. In his oral evidence Mr Le stated that Dr Moskwa never consulted with Mr Ken at any time.[151] In cross-examination by Ms Waite of counsel assisting Mr Le said that he could not recall whether he had asked Dr Moskwa to see the patient. He said that he was happy with the doctor's decision after being shown the ECG tracings.[152] At no stage has Mr Le ever maintained that Dr Moskwa came into the area where Mr Ken was situated, the examination of the ECG traces having taken place in another room of the infirmary.

8.30. DCS officer James said he did not have any communication with the medical staff and remained present during the entirety of Mr Ken's appointment.[153] When asked as to whether he saw Dr Moskwa (whom he knew) during the time that Mr Ken was in the infirmary, he said no.[154] He reiterated this later in his evidence.[155] He said that he knew that the ECG had been assessed by a doctor because the nursing staff took the printout from the ECG and said that they were going to have the doctor assess it. The nursing staff left the room for that purpose.[156] He repeated in his evidence that he did not see Dr Moskwa at any point and that he did not enter the room nor approach the nurses station.[157] He said that the nursing staff came back to the room and had the ECG printout with them.[158] When asked by Dr Moskwa's counsel Ms Cliff whether he had seen Dr Moskwa walk past Mr Ken when he was lying on the table, Mr James said that he did not recall seeing Dr Moskwa at all.[159] When asked whether that meant that it did not happen or it may have happened and that he could not recall Dr Moskwa doing that, Mr James said '*It means I don't recall it so there is always a possibility that he was in the vicinity*'.[160]

8.31. When asked as to whether the doctor had come into the examination room at any stage, Ms Pavlovich told the court that she did not remember seeing the doctor. She said that

[151] Transcript, page 455
[152] Transcript, page 467
[153] Transcript, page 1180
[154] Transcript, page 1184
[155] Transcript, page 1187
[156] Transcript, page 1187
[157] Transcript, page 1188
[158] Transcript, page 1190
[159] Transcript, page 1194
[160] Transcript, page 1194

she did not remember whether the doctor was present or not.[161] She was with Mr Ken for the entire visit to the infirmary.[162] In cross-examination she reiterated that she did not see the doctor and although he may have been there she added '*but my memory from what I remember of the day I don't remember seeing him*'. Ms Pavlovich knows who Dr Moskwa is. When asked by me as to whether she discounted the possibility that the doctor came in to the examination room at some point she said that he may have come in but that she did not remember seeing him.[163] To be fair she also said that she had no recollection of seeing Mr Le. Ms Pavlovich said that she knows who Mr Le is as he is the Vietnamese nurse.[164] It is clear that Mr Le was there, and so limited reliance can be placed on Ms Pavlovich's lack of recollection.

8.32. In his own evidence Dr Moskwa insisted that when Mr Ken was in the infirmary he did not view Mr Ken as a patient. Accordingly he did not examine him, ask him questions or seek out his medical notes.[165] I rejected this characterisation of his professional relationship with Mr Ken. Mr Ken was brought to the infirmary as a patient in need of a medical assessment quite apart from the administration of ECGs. If he was not Dr Moskwa's patient then the question remains whose patient was he. I find that Mr Ken was Dr Moskwa's patient.

8.33. Despite no other person recalling seeing him in the same room as Mr Ken, Dr Moskwa insisted that he actually did see Mr Ken. He said that when he was returning the ECG to the nursing staff he walked through the examination room and could see Mr Ken lying on the couch with the ECG leads still attached. He was just lying there quietly and in no apparent distress, he was not sweating or moving around in pain or calling out to the nurses. He was not asked to come over and so he assumed that Mr Ken '*was ok*'.[166] Dr Moskwa also insisted on numerous occasions during the course of his evidence that Mr Ken had been brought to the infirmary in relation to a complaint of chest pain that he had experienced earlier in the morning but which he believed had resolved by the time Mr Ken was in the infirmary.

8.34. As seen, there is no evidence from any source other than Dr Moskwa that he at any stage entered the room in which Mr Ken was situated. However, the possibility that

[161] Transcript, page 1009
[162] Transcript, page 1015
[163] Transcript, page 1030
[164] Transcript, page 1034
[165] Transcript, page 498
[166] Transcript, page 499

Dr Moskwa did enter the room momentarily cannot be discounted. That said, I do not believe that Dr Moskwa made any observation of Mr Ken that could have led him to conclude anything one way or the other about Mr Ken's condition. It is at the very least surprising that Dr Moskwa would not have asked Mr Ken any questions about his current state, including questions as to whether Mr Ken was still experiencing chest pain and to describe that pain if he was experiencing it. If Mr Ken had said that he was not experiencing chest pain Dr Moskwa could easily have asked him whether or not, for instance, the chest pain had been of severity or whether it had radiated to other parts of his body in a manner consistent with its source being cardiac.

8.35. It is my finding that Dr Moskwa had no reasonable basis to come to the belief that Mr Ken was still not experiencing chest pain. To my mind it is highly likely and I find that Mr Ken was still experiencing chest pain. I have accepted the evidence of the two DCS officers that while Mr Ken was still in the room he expressed the desire to go to hospital, a desire that was highly consistent with him still experiencing worrying symptomatology such as chest pain. There is no evidence of any person asking Mr Ken about his chest pain within the clinic and there is no note of any response to any such enquiry. On the whole it seems to have been assumed that Mr Ken was still experiencing chest pain in the examination room.

8.36. Dr Moskwa's reasoning in relation to Mr Ken is encapsulated in the following piece of testimony. When asked by Ms Powell, counsel for Mr Ken's family, why Mr Ken was not kept in the infirmary he said:

> 'Well there's really no reason why he should have been detained from going back to his cell and kept in the infirmary instead, at least I didn't come to that conclusion at the time. I considered it, I mean there are plenty of things that I would've considered, I even considered sending him to hospital, but again the evidence before me, the presentation and everything, indicated that none of that was necessary'.[167]

The difficulty with that answer is that Dr Moskwa in reality did not properly inform himself as to the *evidence before him* when he had had the opportunity to do so.

8.37. I have taken into account that Dr Moskwa is an experienced medical practitioner in the prison environment and that he is an expert in his own field of practice. However, I unhesitatingly prefer the evidence of the independent expert Dr Heddle where it in any

[167] Transcript, page 529

manner conflicts with that of Dr Moskwa. It is my finding that Dr Moskwa's clinical management of Mr Ken was inadequate in that he:

- did not regard Mr Ken as his patient.
- devolved responsibility for the patient to the nursing staff.
- did not examine Mr Ken.
- did not make any enquiry about and establish whether or not Mr Ken was still experiencing chest pain.
- did not make any enquiry of Mr Ken as to the nature of Mr Ken's chest pain, resolved or otherwise, and in particular whether it was radiating or had radiated to any other part of his body.
- did not make any enquiry about Mr Ken's risk factors for myocardial infarction.
- did not access Mr Ken's casenotes which contained the earlier ECG. In this regard Dr Moskwa himself acknowledged that the earlier ECG meant that there were relevant changes that may have been consistent with Mr Ken experiencing a heart issue at the time he was at the infirmary.
- did not keep Mr Ken under observation but caused him to be sent back to his cell.
- did not have regard to the contents of the SAPHS Chest Pain Management clinical procedure[168] which mandated all SAPHS clinicians to maintain a high index of suspicion that a patient's chest pain is related to a cardiac cause and which advised that unresolved chest pain might be a medical emergency – this is so bearing in mind that Dr Moskwa made no proper enquiry and did not inform himself adequately as to whether Mr Ken's chest pain was resolved or not. In this regard Dr Moskwa offered a rather lame excuse that he believed that this document was for the benefit of nursing staff and that in any event he was computer illiterate and did not have access to the document.

8.38. I take into account that Dr Moskwa is not a cardiologist, nor indeed an experienced general practitioner. I take into account also that Dr Moskwa was working in a prison infirmary and not a teaching hospital emergency department with all of the resources that such a department has. I have also had regard to Dr Moskwa's expectation that Mr Ken was scheduled to be seen in the afternoon by another medical practitioner.

[168] Exhibit C57a

However, even allowing for those circumstances it is my finding that Dr Moskwa's dealing with Mr Ken was simply inadequate and not of a standard that would be expected in the circumstances in which he operated. The circumstances that prevailed did not, for instance, preclude Dr Moskwa from examining Mr Ken and asking him appropriate questions. They did not prevent him from examining Mr Ken's SAPHS records or from establishing Mr Ken's relevant medical history. Mr Ken should have been examined by Dr Moskwa and have been kept within the infirmary at least for observation and not have been sent back to the Division and in the expectation that another doctor would see him in the afternoon. The fact that Mr Ken was to be seen by another doctor is of very limited relevance in any event. Whatever it was that was ailing Mr Ken, be it chest pain from a cardiac issue or from anxiety, the time to deal with it was then and there. There was no proper basis not to deal with Mr Ken's presentation at the infirmary when he was there. There was no proper basis to allow the fact that Mr Ken was due to be locked down to prevail over health and welfare concerns. There is no reason why a medical assessment of Mr Ken could not have taken place then and there in the infirmary and at the hands of Dr Moskwa.

8.39. Dr Moskwa's counsel, Ms Cliff, did not seek to persuade me that Dr Moskwa's performance in respect of Mr Ken was adequate.

8.40. When Mr Ken returned to the Division it was close to or after lunch time lockdown commencement time. Mr Ken was handed over by the escorting officers, James and Pavlovich, to the unit staff. It was during that lockdown that Mr Ken met his death.

8.41. In their oral evidence both Ms Pavlovich and Mr James stated that no person at any time had asserted that Mr Ken's ECG had been abnormal.[169] However, as will be seen, there was other material in the evidence to suggest that when Mr Ken was returned to B Division there was an understanding that his ECG was abnormal and that he was returned to his cell notwithstanding.

9. Mr Ken's HRAT status – why was he left in his cell alone?

9.1. Mr Ken's High Risk Assessment Team (HRAT) status was governed by DCS Standard Operating Procedure 090 - Management of Prisoners of Risk of Suicide or Self-Harm.[170] This document speaks of the NOC and of the involvement of the HRAT in the

[169] Transcript, pages 1026-1027 and 1192-1194
[170] Exhibit C39bm

management of a prisoner identified as being at risk of suicide or self-harm. The document also specifies the duties and responsibilities of certain DCS personnel.

9.2. As indicated earlier in these findings Mr Ken had been the subject of a NOC at the Port Augusta Prison and he had there been subject to a HRAT regime at that prison. DCS officer Miranda raised his own NOC when he processed Mr Ken upon Mr Ken's arrival at the Yatala Prison in the early evening of 14 April 2015. The raising of the NOC had a number of consequences in respect of Mr Ken's management. Firstly, he would be subject to HRAT management and scrutiny. The second more practical consequence given that Mr Ken was not placed either in G Division or in the infirmary, but was placed in the general prison population in B Division, was the mandatory requirement that during all periods of lockdown, including the lunch time lockdown between 11:20am and 1pm, he would be doubled up with another prisoner in the cell. More specifically, the requirement was that Mr Ken should not be left on his own in a cell during any period of lockdown including the lunch time lockdown. This requirement naturally dictated that DCS officers working within the unit in which Mr Ken was accommodated, including DCS officers for any shift during which Mr Ken would be locked down, should be aware of the fact that Mr Ken was the subject of a NOC and was therefore either under HRAT management or would be under HRAT management shortly.

9.3. Another DCS document being the 'Yatala Labour Prison Duty Statement – Accommodation Supervisor'[171] specified that supervisors were under a duty to ensure staff update and maintain prisoner placement on the JIS and that prisoner regimes were reflected on cell location boards. Another specified duty was to assist with the effective management of prisoners on HRAT in conjunction with case management coordinators and managers, meaning of course that a supervisor would be required to know that a particular prisoner was subject to an HRAT regime.

9.4. SOP 090 paragraph 3.3.1 stipulated that any correctional officer who became aware of a prisoner at risk or who observed the behaviour or presentation of a prisoner as indicating an increase in the risk of suicide or self-harm, must ensure that the responsible officer was notified verbally and must complete a NOC immediately. It would mean that any DCS officer who, say, was unaware of a prisoner's HRAT status

[171] Exhibit C65c

but had himself or herself identified prisoner behaviour of the kind that I have just described, would be under an obligation to raise a fresh NOC. There is no reason why a prisoner could not be the subject of multiple NOCs should the behaviour I have described be identified.

9.5. There are other obligations connected with the raising of NOCs including the need to make an entry into the JIS casenotes for the prisoner. I add here that as earlier indicated Mr Miranda did make such a casenote. That casenote would be available to be scrutinised by subsequent DCS officers who handled a prisoner subject to a NOC.

9.6. The HRAT team itself consisted of a number of personnel including social workers and SAPHS staff. A daily email attaching a list of prisoners subject to the HRAT regime was circulated to DCS personnel some of whom were circulated by way of a general distribution list and others being circulated personally. For the purposes of discussion it is clear that the emails were circulated identifiably by name to officers Goels, Kanas, Edwards and Massie. The list of prisoners identified each prisoner by name and location of accommodation within the prison. The list also referred to the '*cell status*' of the prisoner and identified whether the prisoner needed to be doubled up in a cell with another prisoner. That this was a list of HRAT prisoners meant that all of the prisoners on it needed to be doubled up. The lists that were tendered to the Court for both 15 and 16 April 2015 inevitably identified all prisoners on the lists as prisoners who needed to be doubled up. Mr Ken's name was included in the HRAT list circulated by the email sent by the HRAT team on 15 April 2015. That email was sent at 9:33am on Wednesday 15 April 2015. At that time the list identified Mr Ken as being accommodated in B Division in the Lower East section. I shall refer to this unit as BLE. B Division also had a Lower West section to which Mr Ken would be transferred on the morning of 15 April 2015. I shall refer to this unit as BLW. The fact of his transfer to BLW would not be the subject of any HRAT email. This is due to the fact that the next emailed list was sent at 3:28pm on Thursday 16 April 2015 which was a few hours after Mr Ken's death. It was said in evidence that the reason for the email of 16 April 2015 being sent in the afternoon and not in the morning of that day was that it was sent in the light of the weekly HRAT meeting that occurred earlier in the day. Had an email been sent in the morning it should have identified Mr Ken now as an occupant of BLW to which he had been transferred the day before. Nevertheless, the email and list of the morning of 15 April 2015 identified Mr Ken as an occupant of a B Lower

accommodation unit and as a prisoner subject to HRAT management and therefore as a prisoner who needed to be doubled up regardless of where he was situated in B Division. The email had currency until the next email.

9.7. The HRAT list emails were worded in a standard format. They directed all unit supervisors to print off the list of prisoners and to place the list in the Unit Officers' stations on a daily basis. The clear inference is that supervisors and unit officers on a particular shift should familiarise themselves with the contents of the lists and to identify prisoners under their care who were under HRAT regime and who should therefore be doubled up at all times during lockdowns. The standard email also stipulated in bold that supervisors should ensure that custodial staff enter a daily casenote on the JIS for all HRAT prisoners as per the requirements of SOP 90.

9.8. There were three shifts in existence within the B Division of Yatala in April 2015. The day shift was said to occur between 7:30am and 4pm. The next shift, called the first watch, occurred between 4pm and 12am. The second watch was from 12am to 7:30am. It will be seen from those times that the day shift personnel were responsible for the care of prisoners during the lunch period. All prisoners were locked in their cells during the lunch time lockdown between 11:20am and 1pm. It was during that lockdown period that Mr Ken met his death. In circumstances that I will describe shortly, contrary to the requirements that related to Mr Ken as a result of the raising of Miranda's NOC, he was locked down in the cell on his own which gave him the opportunity to hang himself.

9.9. Mr Miranda, the DCS officer who processed Mr Ken upon Mr Ken's arrival at Yatala, told the Court that an email would have been sent to approximately 275 recipients within DCS that a NOC had been raised in respect of Mr Ken. This was known as a HRAT email. The Prisoner's Stress Screening form compiled for Mr Ken at the time of his admission indicates that the email was sent. In addition, Mr Miranda explained that the bunker at B Division where Mr Ken was to be sent would have been notified of his arrival and of the fact that he would be under a HRAT regime. Mr Miranda could not recall to whom he spoke on the evening of 14 April 2015 about this. It is quite clear that the HRAT was in fact notified because the daily HRAT email of the morning of 15 April 2015 had Mr Ken's name on the attached list of HRAT prisoners.

9.10. The DCS case management file for Mr Ken would also have been sent to B Division with him. I find that it was so sent. The file contained the NOC raised by Mr Miranda which stipulated that Mr Ken was to be accommodated in a double cell under both day placement and night placement conditions. The evidence suggested that at that stage the NOC would have been placed on the front cover of the file. Other evidence suggested that once in the unit, the NOC would be placed inside the file. It is possible therefore that when Mr Ken was transferred from BLE to BLW the NOC was inside the file during this transfer process. Evidence was clear that a NOC would automatically have triggered a double cell requirement with the further requirement that the cell be occupied by two persons at all lockdown periods.

9.11. In addition to Mr Ken's HRAT status, when he was inducted into B Division by DCS officer McLaren the following morning, he was placed under what has been termed seven day observations. The evidence did not suggest that this measure necessarily meant that as a prisoner transferred from another DCS institution Mr Ken would be subject to double cell occupancy for that entire seven day period, but the evidence suggested that it would be unusual for a person under seven day observation to be in a single cell. In any event Mr Ken's HRAT status dictated beyond all doubt that double cell occupancy was mandated for him.

9.12. In each of the B Lower units, both East and West, there were offices in which the identities of prisoners accommodated within the two units and their details were depicted on a magnetic white board. The evidence was that if a prisoner was on seven day observations a red sticker would be affixed to a magnet with the prisoner's name on it. If the prisoner was under HRAT management a yellow sticker would also be placed on the magnet. There was no direct evidence as may have been provided by photographs taken by police in the course of their investigation as to whether in the B Division unit offices a red or a yellow sticker had been fixed to Mr Ken's magnet. However, the usual practice would have dictated that this should have been the case. Unfortunately the line of investigative inquiry as to whether there had been the appropriate stickers in the unit office for BLW where Mr Ken was accommodated at the time of his death does not appear to have been pursued in a timely manner. That said, as will be seen the social worker who saw Mr Ken on 15 April 2015 in BLW testified that the HRAT sticker was definitely present on the board for Mr Ken.

9.13. Mr Ken spent his first night at Yatala in BLE which is the induction unit for Yatala Labour Prison. There is no reason to suppose that he was not doubled up within that unit during the course of that night.

9.14. On the morning of 15 April 2015 after Mr Ken's cell was unlocked, Mr Ken advised DCS staff in the BLE unit that he had received threats overnight from other Aboriginal prisoners, the suggestion appearing to be that his current alleged offending had upset his immediate Aboriginal community and that they would be seeking reprisal. DCS officer Mr David Kanas who would be Mr Ken's case manager spoke to Mr Ken at approximately at 8:35am about this. Mr John Massie, the B Division supervisor for the day, also asserted in evidence that he was aware of this development. As a result of these revelations it was decided that Mr Ken should be moved to BLW which had a minimal number of Aboriginal prisoners. Mr Kanas made a note in the JIS casenotes of his conversation with Mr Ken and also of the fact that an Aboriginal Liaison Officer would be asked to contact Mr Ken while at Yatala. That in fact would take place later that morning. Mr Ken was moved from BLE to BLW where the daily occurrence log would record that at 9:20am Mr Ken was placed in to cell 128 which was the cell in which he would die the following day.

9.15. Mr Kanas who gave oral evidence in the inquest told the Court that he took Mr Ken's allegations of having been threatened at face value. However, it will be noted that at Port Augusta Mr Ken was recorded as having experienced similar paranoid delusions about people wanting to kill him and people walking up and down the corridors in his unit uttering those threats. I find that Mr Ken's assertions made on the morning of 15 April 2015 were also delusional.

9.16. The JIS casenotes would not reflect Mr Ken's actual transfer from East to West until 9:49am. As indicated earlier the HRAT email which listed Mr Ken as being in BLE. was sent at 9:33am. However, to my mind this did not create any unnecessary confusion as it should have been known throughout the entire B Lower facility that Mr Ken needed to be doubled up regardless of which unit of B Division lower he was in.

9.17. As far as the transferring process is concerned Mr Ken was escorted by two officers from BLE only a short distance to BLW where he was received by two other DCS officers working their shift in that latter unit. When Mr Ken was transferred his case

management file containing as it did the NOC went with him and would have been handed over to BLW unit staff. The evidence suggested that procedures in respect of transfers like this were such that there would have been a verbal handover of the prisoner with the officers of BLE informing the officers of BLW of Mr Ken's HRAT status, thereby signifying that Mr Ken needed to be doubled up at all times during lockdowns. That information would then have meant that the yellow sticker signifying his HRAT status would also be placed on the West unit office white magnetic board.

9.18. Mr Ken's status as a prisoner who was the subject of a NOC was also recorded in the JIS casenotes. DCS officer Miranda had made that notation on the evening of 14 April 2015.

9.19. Called to give oral evidence at the inquest were the DCS officers involved in Mr Ken's transfer and the officers responsible for his care during the day of his transfer from East to West and the following day which was the day of Mr Ken's death. For the most part, if not entirely, these officers disavowed knowledge of the fact that Mr Ken was the subject of a NOC or was subject to the HRAT regime, which amounted to the same thing. There was an almost universally asserted claim that nobody knew that Mr Ken needed to be doubled up at all times during lockdown. This unedifying circumstance meant that it was virtually impossible for this Court to accurately reconstruct how it was that Mr Ken's HRAT status was overlooked and how the need for him to have been doubled up during lunch time lockdowns was also overlooked.

9.20. Special mention, however, needs to be made in relation to the officer who was the acting supervisor in BLW on the day of Mr Ken's death. That person was Mr Michael Barry Edwards. In the event Mr Edwards would admit in evidence that on 16 April 2015 the day of Mr Ken's death, he knew that Mr Ken was subject to the HRAT regime and therefore needed doubling up at all times of lockdown. I will deal with Mr Edwards' evidence in some detail.

9.21. What it clear is that on 15 April 2015, as well as on 16 April 2015 the day of Mr Ken's death, Mr Ken was locked down during the lunch period on his own when this was contrary to the requirement that he be doubled up. This circumstance owed itself to the fact that on 15 April the other prisoner occupying cell 128 was at a video court for most of the day. In the event another prisoner would be placed in Mr Ken's cell during the overnight lockdown period. The absence of the cell mate during the fatal lunchtime

lockdown on 16 April 2015 is explained by the fact the cell mate was at a Parole Board hearing.

9.22. Following Mr Ken's transfer from BLE to BLW a number of incidents or events on 15 April 2015 occurred in respect of him.

9.23. I have referred to the fact that following his placement in BLW Mr Ken was inducted by the DCS officer Ms McLaren. Ms McLaren entered her note in respect of this induction procedure into the JIS casenotes at 10:21am on 15 April 2015. In her oral evidence Ms McLaren told the Court that following the induction process leading as it did to seven day observations, she would have placed a red dot against Mr Ken's name on the unit office noticeboard. She said that she did not recall actually doing that, but said that she knows that she would have done it.[172] Ms McLaren made it plain that she was fully aware that Mr Ken was on HRAT and that there was a NOC in existence in relation to him. She said that she did not communicate with the unit staff to the effect that Mr Ken should therefore be doubled up at all times because she suggested that the staff should know that through the indications on the noticeboard.[173] She maintained that in any event a red dot that would have been placed there by herself would have signified that Mr Ken needed to be doubled up. Ms McLaren correctly said that with the existence of a NOC in relation to Mr Ken he should have had the yellow dot on the notice board as well.[174] She did say, however, that a seven day observation regime did not necessarily involve placement in a double cell as some prisoners can be in a single cell when they have been transferred from another institution. Ms McLaren could not specifically recall whether there was in fact a yellow dot against Mr Ken's name when she attended the unit office, but given Mr Ken's circumstances and the fact that he was in a double cell and therefore doubled up, the staff ought to have known that he needed to be doubled up. She said that the red dot on its own would have signified that.[175] She suggested that it would only be in a situation where she wrote against his name that there was no need for him to be doubled up that he would not need to be doubled up. She also suggested that she would have verbally instructed personnel in the unit that a prisoner needed to be doubled up.[176]

[172] Transcript, page 915
[173] Transcript, page 915
[174] Transcript, page 915
[175] Transcript, page 920
[176] Transcript, page 921

9.24. It is clear in my view that Ms McLaren would have at least placed a red dot in the unit office against Mr Ken's name. She could not recall whether she had put a yellow dot on the board.[177] Ms McLaren did say in cross-examination by Mr Keane that she would have been looking for a yellow dot given that he was a HRAT prisoner.[178] She says that she also would have drawn the absence of a yellow dot to the attention of unit staff.[179] She had no memory of doing those things because the yellow dot could already have been on the board.[180] Given the fact that she would have placed a red dot on the board and taking into account that she knew that Mr Ken was on HRAT, if there was no yellow dot already on the board in my view it is likely that she would have placed one there knowing that he was on a NOC and would be on HRAT.[181]

9.25. Ms McLaren testified that she did not examine the casenotes from Port Augusta Prison and in particular a note requiring Mr Ken to be on camera. She said that if she had seen that note she would have taken the view that he needed to be housed in the health centre.[182] She added that such a placement decision in any case would have been appropriate when he was inducted into the institution.[183] She acted on the assumption that the prisoner's accommodation was a matter that was determined when he first entered the institution.[184]

9.26. In the JIS casenotes Ms McLaren noted that Mr Ken seemed to be *'happy'* with his placement in Yatala.

9.27. Ms McLaren said that she believed that the Aboriginal Liaison Officer, Ms Graham, was waiting outside the room to see Mr Ken after she had seen him.

9.28. Ms Kim Graham is an Aboriginal Liaison Officer. She did see Mr Ken that day. Her note in the JIS casenotes is timed at 3:59pm on 15 April 2015. I am not certain that this time reflects the occasion on which Ms Graham saw Mr Ken. The time noted is the time that the note was entered onto the JIS system. So as to avoid confusion it would be sensible and helpful if DCS staff, when making JIS casenote entries, could note the time at which the recorded event occurs. Ms Graham told the Court that as soon as the

[177] Transcript, page 923
[178] Transcript, page 933
[179] Transcript, page 933
[180] Transcript, page 933
[181] Transcript, page 922
[182] Transcript, page 943
[183] Transcript, page 943
[184] Transcript, page 944

lunch lockdown had finished she had gone over to the B Division and it was then that she saw Mr Ken. I do not believe she saw Mr Ken in the afternoon following the lockdown. It is more likely that in accordance with Ms McLaren's evidence that Ms Graham saw Mr Ken in the morning but made her note in the mid-afternoon. In the event the timing does not particularly matter. As already indicated Ms Graham noted in the JIS casenotes that Mr Ken told her that he had tried to hang himself with his shirt because other Aboriginal prisoners were giving him a hard time and he could not take the abuse anymore. He also mentioned that he was being threatened by young Aboriginal prisoners from Yalata (not Yatala), a settlement on the West Coast of the State. He indicated that he was *'very happy'* to be in Yatala. Ms Graham recommended that Mr Ken remain on HRAT for a further week. In her evidence before the Court Ms Graham indicated that Mr Ken actually volunteered the information that he had tried to hang himself with his shirt.[185] She did not know that Mr Ken had been under camera and canvas at Port Augusta.[186] Had she known this she would have entertained some concerns about that and would have raised the issue with him.[187] She did not know anything about the fact that Mr Ken was meant to have been examined by a psychiatrist that morning.[188] Ms Graham made the sensible observation that there ought to be a formal handover procedure between ALO officers in Port Augusta and ALO officers in Yatala so that everything known about a prisoner is imparted to the receiving ALO at Yatala. She says that she has in fact made that recommendation. I intend to endorse that recommendation.

9.29. Ms Graham was also well aware of Mr Ken's HRAT status. It was not her experience that cell staff would not know a prisoner to be a HRAT prisoner.[189] She said that the white board has the appropriate stickers. The HRAT yellow stickers were '*like a bright yellow like the sun*'.[190]

9.30. Ms Graham told the Court that as a result of her assessment she did not have any concerns about where Mr Ken was then currently accommodated.[191]

[185] Transcript, page 315
[186] Transcript, page 315
[187] Transcript, page 315
[188] Transcript, page 316
[189] Transcript, page 318
[190] Transcript, page 318
[191] Transcript, page 325

9.31. As indicated earlier in these findings it is obvious in my view that contrary to Mr Ken's status as a prisoner subject to a NOC and therefore as a HRAT prisoner, he was locked down in his cell on his own for the luncheon lockdown period on that day.

9.32. The evidence is clear in my view that shortly after the unlock on 15 April 2015 Mr Ken spoke to DCS officer Aaron Banks. Mr Banks made a note of his conversation with Mr Ken in the JIS casenotes. He noted that Mr Ken said that he was worried and lonely in the unit as he was the only Aboriginal person in the wing. His expressed loneliness would be in keeping with the fact that he had been locked down on his own. Mr Banks caused an Aboriginal prisoner Mr Raymond to be moved into Mr Ken's cell 128. Mr Banks' note included an observation that both prisoners in that cell were '*happy*' showing no signs of distress, the word 'happy' now becoming being a recurring theme which I would not take literally as meaning anything like happiness but rather as a resignation to one's fate.

9.33. Later that afternoon, before the ultimate daily lockdown, Mr Ken's circumstances were again drawn to Mr Banks. Mr Banks' note timed at 3:09pm reads as follows:

> 'Ken was showing signs of hearing things and seeing his wife. after talking through these things the social worked (sic) seen him to follow up on the ALO's visit earlier in the day. Ken seems content and is now talking without the visions etc'.

Such a presentation is in keeping with earlier history of hallucinations and delusions.

9.34. Also during the course of that afternoon Mr Ken was seen by the HRAT social worker Ms Ida Petraccaro. Ms Petraccaro made a note onto the JIS casenotes timed at 3:18pm. Ms Petraccaro gave oral evidence in the inquest. There is no evidence that before her meeting with Mr Ken that afternoon Ms Petraccaro accessed his JIS casenotes. The only relevant entry within the JIS audit log report[192] recording access by Ms Petraccaro is timed at 3:18pm which is the time at which she entered her casenote. There was a suggestion in the course of the inquest that Ms Petraccaro may have accessed information about Mr Ken from some other recorded source, but no evidence was adduced either directly from her or through her counsel Mr Keane of any other source. However, it is apparent that Ms Petraccaro at some point knew about Mr Ken's recent attempts at self-harm because her note makes reference to at least one of them.

[192] Exhibit C63

9.35. In her JIS casenote Ms Petraccaro recorded that her visit to Mr Ken was for the purposes of a HRAT review upon his transfer to Yatala from Port Augusta. She recorded that Mr Ken presented with a stable and bright affect and engaged lucidly in conversation. Once again, Mr Ken is recorded as being '*happy*' to be at Yatala as he had found the environment and regime at Port Augusta difficult to adjust to as it was his first time in prison. Ms Petraccaro recorded as follows:

> 'Kenneth spoke about his recent s/h attempt at PTA and stated this was directly related to his inability to cope in that environment and that he has no other history of s/h'. (ed, s/h is an abbreviation for self-harm)

Contrary to the note made by Ms Graham in her casenote that Mr Ken had not been sleeping well, Ms Petraccaro's note records that his '*sleep is stable*'. Ms Petraccaro recorded that despite earlier reports from unit staff that Mr Ken had presented '*with some issues*', he presented to her as stable and with minimal concern. She then went on to record:

> 'Given his recent s/h attempt at PTA and this being his first time in prison, it is recommended he remain on HRAT for a further week and a review with the ALO with (sic) suffice'.

9.36. Ms Petraccaro gave oral evidence at the inquest. Ms Petraccaro naturally acknowledged that as a member of the HRAT she knew of the NOC that had been raised in respect of Mr Ken and the fact that he was under the HRAT regime. Ms Petraccaro rejected the notion that a NOC did not mean that the prisoner was automatically subject to HRAT management. She said, '*the raising of a NOC means that a prisoner is automatically on HRAT*'.[193] I mention this because of suggestions made elsewhere in the evidence that the raising of a NOC did not necessarily mean that the HRAT would be involved. To my mind Ms Petraccaro as a member of the HRAT put that issue to bed. I accept her evidence in that regard. Mr Ken was at all times at Yatala subject to an HRAT regime.

9.37. The other matter of controversy that Ms Petraccaro dealt with was the presence or non-presence of the yellow HRAT sticker against Mr Ken's name on the white board in the BLW unit. Ms Petraccaro was adamant that the HRAT sticker was present. Asked by her counsel Mr Keane as to whether that was her present recollection as she

[193] Transcript, page 1911

testified her reply was '*absolutely*'.[194] Ms Petraccaro was not challenged in respect of that evidence.

9.38. Ms Petraccaro also told the Court that when she was in B Division that afternoon she spoke to the unit DCS officer's. It was indicated to her that Mr Ken might be agitated or unstable. She could not recall specifically the individual who imparted that information to her. Ms Petraccaro told the Court that she recalled speaking to a DCS officer by the name of Thomas Shone. Mr Shone was in fact on duty during that shift. Ms Petraccaro said that when she spoke to Mr Shone or other officers in the unit the conversation centred around the fact that she was in the unit '*to see him for HRAT purposes*'.[195] She could not recall the names of all the officers who participated in that conversation other than Mr Shone. She said that everyone in the room was involved in the conversation.[196] Ms Petraccaro could not recall whether she had spoken to the supervisor of Division B Lower level that day, Mr Massie, but it seems clear from the evidence as a whole including that of Mr Massie that he did in fact speak with Ms Petraccaro after she saw Mr Ken. Both Mr Shone and the supervisor Mr Massie were two of a number of DCS witnesses who asserted that they did not know that Mr Ken was under the HRAT regime or had a NOC raised in respect of him. In fact in his evidence Mr Shone maintained that Mr Ken was not shown as being subject to the HRAT regime on the white board.[197] I have accepted the evidence of Ms Petraccaro that the information regarding Mr Ken on the white board signified that he was under a HRAT regime. I prefer her evidence to that of Mr Shone. She was a member of the HRAT team and would have been acutely alive to the need for the white board to reflect a prisoner's status and alive to the question of whether the board did or did not do so.

9.39. As to Ms Petraccaro's interaction with Mr Ken, this was conducted by her with Mr Ken through the B Lower barrier due to the unavailability of the interview room. She agreed in her evidence that this was not best practice but that it occurred from time to time. The purpose of her HRAT assessment was to gauge a prisoner's presentation, mental status, their current train of thought, appetite and thoughts of self-harm.[198] For this purpose she said that she would do a quick check of the last few JIS casenotes. She says that she must have checked although she did not recall this. Based on previous

[194] Transcript, page 1896
[195] Transcript, page 1896
[196] Transcript, page 1897
[197] Transcript, page 622-623
[198] Transcript, page 1892

practice, however, she says that it was likely that she did. As indicated above, there is no evidence that Ms Petraccaro accessed the JIS casenotes except when she made her own note. Nevertheless, she must have at least known about one or both self-harm attempts from some source or another. That said, I am not certain as to how much detail Ms Petraccaro had at her disposal when she spoke to Mr Ken in what appears to have been an interview conducted under less than ideal circumstances.

9.40. The thrust of Ms Petraccaro's evidence was that she did not entertain any significant concern for Mr Ken's welfare. She maintained Mr Ken engaged very well, that his affect was bright. He advised that he was '*happy*' to be in Yatala. Significantly, Ms Petraccaro told the Court that he had only attempted the self-harm at Port Augusta because he was angry and did not like the treatment he had received there. She said his act of self-harm was out of frustration and she suggested that his behaviour may have been attention seeking. He did not appear agitated or unstable. When cross-examined by Ms Powell of counsel for Mr Ken's family, Ms Petraccaro suggested that Mr Ken had entertained no intention to commit suicide.[199] She did not consider what Mr Ken had done to have been a serious or lethal attempt.[200] Ms Petraccaro did say that she did not recall if she knew of two '*suicide attempts at Port Augusta Prison*'.[201] Certainly Ms Petraccaro's casenote only refers to one attempt of an unspecified nature.

9.41. Ms Petraccaro's interpretation of Mr Ken's actions is at odds with things that Mr Ken had said at Port Augusta, acknowledging of course that Mr Ken said different things at different times about his motivation in committing acts of self-harm. But on 7 April 2015 Ms Hafiz of the Port Augusta Prison HRAT had noted Mr Ken had presented as upset and agitated and had made a sign with his finger indicating that he was going to kill himself, presumably by cutting his throat. His inability to contact his partner had caused him great distress which had led him to want to commit suicide. He did not deny that he would attempt to suicide again and had stated '*I can do it anyway*'. He indicated that he had been hearing voices that had informed him that he was about to be harmed. Ms Petraccaro in cross-examination by Ms Powell suggested that it is likely that she would have read Ms Hafiz's entry. When taken by Ms Waite to entries in the casenotes for 15 April 2015, the day she saw Mr Ken, she agreed that based on those

[199] Transcript, page 1903
[200] Transcript, page 1904
[201] Transcript, page 1904

notes Mr Ken did not seem very stable.[202] Notwithstanding all of those matters Ms Petraccaro insisted that she had not seen any basis to have Mr Ken removed from B Division to any other type of accommodation.[203] Thus, based on his current presentation she supported his current placement.[204] Ms Petraccaro also agreed that she had not been aware of the plan that had been devised between Dr Sabio in Port Augusta and Dr Nambiar, the psychiatrist.[205]

9.42. Mr Keane, counsel for Ms Petraccaro, submitted to the Court in his final address that Ms Petraccaro simply speaking to Mr Ken through the barrier was indisputably not best practice and not a proper way of obtaining a full range of information about a person's status and wellbeing.[206] That said, Mr Keane submitted that there was nothing to indicate that Mr Ken withheld from Ms Petraccaro information that she might otherwise have obtained. He did agree with Ms Waite's submission that the process of conducting an assessment such as this through prison bars and standing up in a corridor was not appropriate. For Ms Waite's part she submitted to the Court that Ms Petraccaro's assessment was based simply on '*a snapshot*' of Mr Ken's presentation at the barrier gate when in fact Mr Ken was a man who had a volatile history and presentation that included repeatedly hearing voices threatening him. She submitted that a reliance on Mr Ken denying suicidal intent was not consistent with a person who is expressing that they are hearing voices and maintaining an unreasonable belief that they would be harmed.

9.43. It is also a fact the Ms Petraccaro's casenote says nothing about any denial on Mr Ken's part that he had not intended to commit suicide. Indeed, Ms Petraccaro has characterised Mr Ken's behaviour within that note as being a '*recent s/h attempt*'. I do not accept that Mr Ken was so dismissive of his own behaviour at Port Augusta, especially when it is borne in mind that he volunteered to Ms Graham earlier in the day that he had tried to hang himself with his shirt.

9.44. To my mind Ms Petraccaro's assessment of Mr Ken was superficial, probably as the result of the less than ideal circumstances in which she conducted it.

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[202] Transcript, page 1923
[203] Transcript, page 1928
[204] Transcript, page 1933
[205] Transcript, page 1935
[206] Transcript, page 2043

9.45. I have already referred to the fact that during the course of the lockdown that early evening Mr Ken again complained of hearing voices as a result of which nurses from the infirmary were asked by DCS personnel to see him. This incident is the subject of Part 7 of these findings.

9.46. I have also referred in these findings to the events of the following morning after lockdown where in the B Division satellite clinic Mr Ken complained of chest pain. The findings of the Court are contained in Part 8 of this document.

9.47. Turning to the events of 15 April 2015, I have referred to the fact that the supervisor for the day shift was Mr John Massie. Mr Massie gave oral evidence at length. It is apparent from his evidence that he played a role of some significance in Mr Ken being transferred from BLE to BLW. Mr Massie was interviewed about this matter internally by DCS personnel, for the first time it seems on 30 October 2018. He said in his interview and also told the Court in his evidence before it that his first involvement with Mr Ken occurred the morning of 15 April 2015, which was the morning after he had been admitted to the institution. He was asked these questions:

> 'DM. Can you recall whether he was on a NOC or anything like that?
>
> JM. No, I can't, not for the life of me I can't. So I just treated him, because he was an elder Aboriginal…
>
> DM. Yes
>
> JM. …I treated him with, he's got to be doubled up for a start. I knew, someone mentioned to me that he was new in, so that's why I went in to the process of doubling him up and making sure that he was looked after' [207]

9.48. In his oral evidence Mr Massie was asked by his counsel Mr Perrotta whether it was possible that he did not know of the NOC on 15 April 2015. Mr Massie said that it was a possibility. Asked by Mr Perrotta as to how he could know that any given prisoner was a HRAT prisoner, Mr Massie described the process where they would be notified by what was depicted on the white board, in particular the yellow dot. As well there was the email from the HRAT team that contained a list of the HRAT prisoners as alluded to earlier. There was also the JIS which would contain warnings. Mr Massie went on to assert that he did not find out that Mr Ken had been the subject of a NOC until 17 April 2015 which was the day after Mr Ken's death. As far as 15 April 2015 was concerned he said with an air of conviction, '*I had no idea that he was on HRAT*

[207] Exhibit C69

or had a NOC'.[208] This bald assertion of having no idea seems to fly in the face of what he had said in his DCS internal interview where he said that he could not remember whether he was on a NOC, suggesting in effect that he could not remember whether or not he knew Mr Ken was on a NOC.

9.49. Mr Massie also asserted that he had no knowledge of the 9:33am email that set out Mr Ken's HRAT status as he had not been on his computer that morning. Mr Massie did say that in any event it had been his direction for Mr Ken to be in a doubled up cell.[209] He agreed with the proposition that in effect he treated him as a HRAT prisoner even though he may not have known him as one on that day.

9.50. Much of Mr Massie's evidence was devoted to an investigation as to how it could be that after Mr Ken was transferred from BLE to BLW he could be left on his own in his cell during the lunch time lockdown on 15 April 2015 and 16 April 2015, although Mr Massie would not be the B Lower supervisor on 16 April 2015. For his part Mr Massie insisted on a number of occasions in his evidence that he did not know of Mr Ken's HRAT status. He said that he did not look at Mr Ken's JIS casenotes. It is true that there is no evidence within the JIS audit log report that he did so at any time on 15 April 2015.[210] Mr Massie said that he was that day '*under the pump*'.[211] He also said that he was not sure whether he had printed out the HRAT email or if he had checked the HRAT email at all.[212] He also said that he could not recall checking the white board to see whether there was a yellow dot against Mr Ken's name.[213] That said, Mr Massie suggested that Mr Ken's HRAT status should have been obvious to the officers who escorted him to B Division in the first place[214]. He also suggested that the BLW staff should have known because the escorting officers who took him from BLE to BLW should have told the BLW officers of his status. Mr Massie suggested that as far as doubling up is concerned one has to rely on word of mouth communication by asking his officers about that issue. He said '*I'll ask the staff "Are the prisoners - are the HRAT team all doubled- up?"*'[215]

[208] Transcript, page 1461
[209] Transcript, page 1470
[210] Exhibit C63
[211] Transcript, page 1513
[212] Transcript, page 1511, 1535
[213] Transcript, page 1553
[214] Transcript, page 1506
[215] Transcript page 1568

9.51. Mr Massie found it hard to accept that Mr Ken had been left alone in his cell during the lunch time lockdown on 15 April 2015 under his watch. Asked in cross-examination whether he would know that a prisoner was left in his cell on his own during a lunch time lockdown when the prisoner was meant to have been doubled up, Mr Massie insisted that it just would not happen.[216] Asked whether it was possible that Mr Ken was left in his cell on his own on that day during the lunch time lockdown, Mr Massie insisted that it was not the case.[217] Mr Massie told the Court that he was not aware of any practice or culture whereby prisoners who are meant to be doubled up might not be doubled up at the lunch time lockdown or that such a practice was tolerated. Mr Massie said he had never encountered such a practice. Mr Massie maintained all of that in the face of the evidence that this occurred in respect of Mr Ken two days in a row in BLW.

9.52. Mr Massie who was the supervisor for 15 April 2015 was, like everyone else, who was called to give evidence, quite unable to explain how it was that Mr Ken was left in his cell on his own on 15 April 2015.

9.53. Mr Massie seemed to have derived some assurance from Ms Petraccaro indicating that to her Mr Ken was fine. Yet Mr Massie acknowledged that he knew nothing of Mr Ken's prison history at Port Augusta, knew nothing about Mr Ken's transfer for the purpose of psychiatric assessment[218], nor that Mr Ken was suffering from hallucinations when it was reported that Mr Ken had seen his wife in the division. He said that when Mr Ken described this he and his then cell mate had appeared to be in a jocular frame of mind.

9.54. Mr Massie did say that he should have been given '*a heads up*' regarding the request that had been made for Mr Ken to be accommodated in the infirmary and said that he would have expected to have been told of Mr Ken's particular vulnerabilities and the fact that placed within his Division was a person of that description.[219] Mr Massie said that the information about Mr Ken that was in possession of Port Augusta and in particular of a code black having been called there when Mr Ken had attempted to harm himself by tying a t-shirt around his neck, came as a bit of a shock to him. He said that if Mr Ken had been suffering from hallucinations or had been identified as suicidal he

[216] Transcript, page 1564
[217] Transcript, page 1565
[218] Transcript, pages 1487, 1489
[219] Transcript, page 1573-1574

would not have wanted such a prisoner in his Division. He suggested that G Division was a more appropriate place for such a prisoner.[220]

9.55. Mr Massie's evidence was not helpful.

9.56. I now turn to the evidence of Mr Michael Edwards. On 16 April 2015 Mr Edwards was an acting DCS officer CO4. On that day, the day of Mr Ken's death, he was the B Lower floor supervisor at Yatala Labour Prison. As such he was the supervisor of both B lower units East and West. Mr Edwards provided a number of statements to the police. He was also formally interviewed by police. As well, he was interviewed by DCS personnel.

9.57. Mr Edwards first police statement[221], taken on the day of Mr Ken's death, for the most part contained a description of the fatal incident. The statement recorded that Mr Edwards had been aware of Mr Ken's presence as a prisoner in B Division. He told police that Mr Ken had been in the Division for two days and that another prisoner had been staying in Mr Ken's cell since that morning. He named the prisoner as Shannon O'Toole. Other evidence demonstrated that at about 8:30am on 16 April 2015 prisoner Raymond was moved from Mr Ken's cell 128 and prisoner O'Toole was moved into that cell to share with Mr Ken. In his first statement to police Mr Edwards said that Mr O'Toole had left the prison at approximately 10:45am to attend a Parole Board hearing. This fact is actually recorded in the occurrence log for BLW for that day. I am not certain whether Mr Edwards was making that statement from his recollection of what had transpired in the unit or whether it was simply from the log. In any event it is obvious that on 16 April 2015 Mr Edwards knew at some point that Mr Ken had been left in his cell on his own. Mr Edwards' statement goes on to state that Mr Ken had been acting strangely the previous night, saying that he was hearing voices. He also said that Mr Ken had a history of self-harm over the last month but that he was '*continually being monitored*'. There is nothing in the statement specifically about whether or not Mr Edwards knew that Mr Ken was a subject of a NOC or was on HRAT.

9.58. A further statement taken on 1 May 2015 gave further detail about the fatal incident.[222]

[220] Transcript, page 1534, 1569
[221] Exhibit C5
[222] Exhibit C5a

9.59. On 13 June 2016 Mr Edwards was interviewed with audio recording equipment by Detective Justin Leverington from the Police Corrections Section. In that interview Mr Edwards told Detective Leverington that the prisoner O'Toole was due to attend the Parole Board and at some point during the morning he had been removed from the cell which meant that Mr Ken was left on his own when they went into lockdown. When asked whether he had been aware that Mr Ken had been transferred from Port Augusta, Mr Edwards said that he was not aware of his history at the time but had looked at his casenotes and had ascertained his history '*after the fact*'.[223] He said that he did not know anything about Mr Ken on the day in question. The following passage in the interview then ensued:

> 'Q. Were you aware of why he was transferred, or were you aware he'd come down from Port Augusta.
>
> A. 'No, I wasn't aware of his, his history. I, I do know now. I have looked, yeah, in the case notes after the fact, and I saw what his history was. However, at the time, as I said earlier, I was rostered in Foxtrot that morning as a, as a GD and I was acted up at late notice into that area because another supervisor had gone sick.
>
> Q. Yeah.
>
> A. And I had no known dealings, no idea, I didn't, didn't know anything about him at that point in time.
>
> Q. Okay, in regards to- I take it, was he listed on the B Lower East ward as a HRAT prisoner.
>
> A. B Lower East, I don't know.
>
> Q. Don't know.
>
> A. I don't know.
>
> Q. At any stage were you aware when you got into B Lower West that morning that he was a HRAT prisoner.
>
> A. No, I wasn't aware.
>
> Q. Okay, so because you can't- I mean it's a long, it's twelve months ago. Was, was there no yellow dot next to his name, or is it just that it was not looked at or-
>
> A. My discussion with the staff after the fact told me that there was no notification on the board that, that he was HRAT. I hadn't actively pursued, on that day, who were the HRATs, however on that particular day, we get a HRAT notification every single day, the HRAT notification wasn't sent out until approximately 3.30 this afternoon. So obviously that was after the fact again, and the previous day's HRAT I had deleted from my email because I was working in Foxtrot that day, and we don't have HRAT prisoners in Foxtrot, and when I knocked off my shift prior I have cleared out my emails.
>
> Q. And as someone who's acting up as a supervisor, is there anything you believe that could be done better to help staff in each unit handle HRAT prisoners.

[223] Exhibit C5c, page 6

A. Um in- No, I don't think there is. I think the processes were, were there. I think that it was just a failure on this account, so-

Q. And in regards to Shannon O'Toole being moved, oh, was there any discussion with the other staff members in there in regards to why a, he wasn't doubled up again on lock down

A. Um, from, from me, no there wasn't. We, we had some discussions afterwards. The guys told me they were not aware that he was on HRAT, SO-

Q. Okay.

A. Given that it wasn't, we weren't aware that he was an HRAT prisoner. There wouldn't have been no reason to have, to have needed to double him up.

Q. Okay, in regards to that, I think, this is before, they got someone, well Mr O'Toole, to go and double up with him for one changeover. Is there any reason why he was doubled up at that stage.

A. I'm not sure why that, why that arrangement was made. That was, that was not an arrangement made by the staff. I don't know, I don't know why. Well as a supervisor that's, that's not something I need, needed to question'. [224]

9.60. To take a step back it should be noted that on 2 March 2016 Mr Edwards had also been interviewed by Mr Don Muller, an Investigations Officer for the DCS. On that occasion Mr Edwards had told Mr Muller that he was aware that Mr Ken had been taken to the infirmary in the morning, had been the subject of a report, that he had had an abnormal ECG and that he had been escorted back to the unit. He had been told that he was due to see the Doctor that afternoon. Although he saw Mr Ken being returned to the unit and put into the wing, at that point the unit was not in lockdown and so Mr Ken went into '*association*' which I took to mean that he could congregate with other prisoners generally in the unit. Mr Edwards was asked by Muller whether he knew that Mr Ken had been on HRAT to which Mr Edwards said '*I was not aware he was on HRAT at that stage no*'.[225] He said that he did know that Mr Ken was doubled up with another Aboriginal prisoner. He said that he had been aware that the cell mate O'Toole had been brought over from BLE. He said he had no idea that Mr O'Toole had Parole Board on that day. It was not until late in the morning when they came to collect him. It is not clear to me whether Mr Edwards was admitting that he knew that Mr O'Toole had been taken away from B Division to the Parole Board at a time before Mr Ken was locked down at lunch time. He did say at one point in the interview that he thought

[224] Exhibit C5a, page 7-8
[225] Transcript of interview between Muller and Edwards of 2 March 2016, Exhibit C5c

Mr O'Toole was still in the cell, but it is not clear to me from this interview at what stage he had that understanding.

9.61. Thus in two interviews Mr Edwards stipulated without any apparent hesitation that he was not aware at any stage prior to Mr Ken's death that Mr Ken was on HRAT. As well, he stated that he did not know why a double up arrangement for Mr Ken had been made and that as a supervisor it was not something that he needed to question.

9.62. It is apparent that in none of the statements that were taken from Mr Edwards were records of Mr Edward's access to Mr Ken's JIS casenotes or to other JIS sources referred to him for his comment.

9.63. From time to time I have referred in these findings to the JIS audit log report. An extract from that computerised document as it relates specifically to access made by Mr Edwards was tendered to the inquest.[226] It is apparent from that document that on several occasions during the course of the morning of 16 April 2015, and before Mr Ken's death, Mr Edwards accessed Mr Ken's casenotes and other computerised records. He also did so in the afternoon of that day, that is to say at a time after Mr Ken's death. It will be recalled that in Mr Edwards' interview with Detective Leverington he said that he was not aware of Mr Ken's history, that he had looked at Mr Ken's casenotes '*after the fact*' and that he did not know anything about Mr Ken at the time.

9.64. In his oral evidence Mr Edwards told the Court that first thing on the morning of 16 April 2015 he was unexpectedly reassigned from F Division to be the B Lower supervisor, acting in that role for the day. The reassignment took place at about 7:35am at the F Division muster. He then proceeded to B Division where he had missed the B Division morning muster. He described his duties in the role of supervisor as being to oversee the two units on the lower floor being East and West. The staff would consist of six persons and there were approximately 90 prisoners. He was stationed in the Lower West unit office. There was a white board in the staff office of the unit which is a separate office from the one he occupied. There was no white board in the supervisor's office. He was aware, however, that there was a white board in each of the units, the white boards displaying prisoners' names, seven day obs status and HRAT status among other things.

[226] Exhibit C61a

9.65. In his evidence in chief, Mr Edwards was taken by his counsel Mr Joyce to the JIS audit log reports relating to Mr Edwards' access to the JIS casenotes during 16 April 2015. Mr Joyce had Mr Edwards identify the occasions on which he had accessed information in relation to Mr Ken. Mr Joyce established through Mr Edwards that at 7:54am Mr Edwards accessed information from the JIS that Mr Ken was the subject of a 'current warning', namely that Mr Ken was subject to the HRAT. Mr Edwards confirmed that that this access must have occurred.[227] However, Mr Edwards said that he had no independent recollection of having so accessed.[228] Mr Joyce also demonstrated through these records that at 7:52am Mr Edwards accessed Mr Ken's JIS casenotes. Mr Edwards said '*It looks that way, yes*'.[229] As well, it was established in Mr Edwards' evidence in chief that at 8:52am Mr Edwards had accessed the 'warning details' in respect of Mr Ken. Mr Edwards accepted that such access would have enabled Mr Edwards to see the reason why Mr Ken had been placed on HRAT.[230]

9.66. In his examination of his client Mr Joyce fell short of asking Mr Edwards in terms whether all this demonstrated that Mr Edwards must have known on 16 April 2015 prior to Mr Ken's death that Mr Ken was the subject of HRAT management and therefore was required to be doubled up at all times during any lockdown.

9.67. In cross-examination by Mr Keane for the DCS further acknowledgements from Mr Edwards were made. Mr Keane established through Mr Edwards and his JIS access that on the morning of Mr Ken's death Mr Edwards had accessed Mr Ken's warning details on the JIS which set out that Mr Ken was '*placed on HRAT and Noc raised due to concerns re mental state*'.[231] Asked whether he recalled looking at that screen Mr Edwards said that he did not recall it but accepted that the documentation indicated that he had accessed it.[232]

9.68. These revelations prompted me to take Mr Edwards to his interview with Detective Leverington and in particular to his assertions that he did not know that Mr Ken had been a HRAT prisoner. I put it to Mr Edwards that his assertion that he did not know that Mr Ken was a HRAT prisoner on the morning in question was not correct to which Mr Edwards said, '*It wouldn't seem so with the evidence provided,*

[227] Transcript, page 755
[228] Transcript, page 755
[229] Transcript, page 753
[230] Transcript, page 757
[231] Exhibit C5d
[232] Transcript, page 776

no'.[233] I also took Mr Edwards to his police statement taken on 16 April 2016 where he had said that Mr Ken had a history of self-harm over the last month but that he was continually being monitored. I asked Mr Edwards in what capacity Mr Ken had been continually monitored to which Mr Edwards said '*I'm assuming that would have been with the HRAT status*'.[234] Mr Edwards agreed with the proposition that the circumstance of Mr Ken having been an HRAT prisoner in a cell on his own at the time of his death, would have been a matter of some significance to him particularly as he had been the person in charge of the lower part of the Division that day. Asked as to how something of such importance and significance could have been forgotten by him when police came to investigate the matter in 2016, Mr Edwards said '*I don't know*'.[235]

9.69. It is apparent also from the JIS audit log report that Mr Edwards used the facility to browse Mr Ken's casenotes at 8:58am on the morning of Mr Ken's death.

9.70. In addition, it is apparent from the JIS audit log report that Mr Edwards accessed Mr Ken's current warnings at 4:48pm which was some three to four hours after his death. Mr Edwards agreed that that would also have told him that Mr Ken had been a HRAT prisoner.[236]

9.71. Particularly telling in relation to Mr Edwards' interview with Detective Leverington was his answer that he was not aware of Mr Ken's history but that he did come to know it when he had looked at Mr Ken's casenotes '*after the fact*'. So, if Mr Edwards recalled having examined Mr Ken's casenotes after the fact in order to establish Mr Ken's history, one has to ask why it was that he would not have recalled the more important circumstance that he knew that Mr Ken was on HRAT management at a time before Mr Ken's death. There must have been a question in Mr Edwards' mind as to how it could have been that a HRAT prisoner was left on his own in a cell in effect under his watch. This question alone would have meant that Mr Edwards' own knowledge of Mr Ken's circumstances and the fact that he had been so negligently left alone in his cell would have been uppermost in his mind and something that he would never forget.

[233] Transcript, page 790
[234] Transcript, page 791
[235] Transcript, page 792
[236] Transcript, page 791

9.72. Yet in his evidence Mr Edwards insisted that he had not deliberately misled Detective Leverington when he said that he knew nothing about Mr Ken at a time before his death. He said that he made a mistake in his statement and that he did not deliberately do anything to mislead anyone. Furthermore, he had not been endeavouring to protect the team of people whom he had been supervising. He was asked by me:

> 'Q. So why is it then that when you spoke to Detective Leverington in this audio-recorded interview in June 2016, why is it that it was not uppermost in your mind during that interview that an error had occurred and that the reason for the error was that he was an HRAT prisoner who hadn't been doubled up.
>
> A. I don't know, your Honour. I don't know why I said what I said in that interview. At the time I thought I was saying what I knew. I will clearly admit that I was wrong in that interview. But I don't know why I said that. I'm not sure why it wasn't clear in my mind at that time.'.[237]

9.73. In his evidence in chief Mr Edwards maintained that he had no recollection of accessing Mr Ken's JIS records on the morning of his death. However, he was asked by his counsel what if anything he would he have done with the JIS information in his role as supervisor. Mr Edwards said he could possibly have spoken to the staff working in the unit just to make sure that they knew, presumably meaning that they knew about Mr Ken's HRAT status. Mr Edwards said, '*I probably should have spoken to the staff to see what they're recollection on it was or what their knowledge of him was*'. He said that he did not remember doing so in this particular case. Asked whether it was the case that he remembered that he did not specifically do that with the information that he had accessed, he said '*I specifically remember not speaking to the staff about it*', suggesting that Mr Edwards has a rather selective memory.

9.74. Asked about other matters in connection with what Mr Edwards knew or did not know, Mr Edwards said he was not aware of whether or not the information about HRAT status or seven day observation status was on the white board.[238] He also said that as far as the latest HRAT email was concerned, that is to say the email that had been issued the day before on the morning of 15 April 2015, he said that in the capacity that he was working on the 15 April 2015 he would have received it but had no specific recollection of having done so. He said that on that day he had been an operational security supervisor and not attached to a Division. He said he would not have printed the

[237] Transcript, page 814
[238] Transcript, page 759

document off in that capacity,[239] and in any event he had deleted that email.[240] This of course was the email that demonstrated that Mr Ken was on the HRAT list and needed to be doubled up.

9.75. There was one other matter that led me to the conclusion that Mr Edwards was a singularly unreliable witness. In his oral evidence Mr Edwards' counsel Mr Joyce asked him whether he had been aware that Mr Ken had been taken to the infirmary on the morning of 16 April 2015. Mr Edwards said that he had been so aware. He was also asked whether he had been aware that Mr Ken had said that he was experiencing chest pains during the morning. Mr Edwards said that he had been aware of that but could not remember if it was that morning or '*after the fact*' that he had been aware of that.[241] Asked as to whether he had any interaction with Mr Ken when he was returned to B Division after being at the infirmary, Mr Edwards said that he could not recall and gave the same reply as to whether at that time he had any interaction with any other officers in respect of Mr Ken.[242]

9.76. In cross-examination by Ms Waite of counsel assisting Mr Edwards said that he recalled Mr Ken going to the infirmary, believing that Mr Ken was on the doctor's list that day and that he was attending the infirmary to undergo a '*…standard doctor's appointment*'.[243] Asked specifically by Ms Waite as to whether he had received any communication from escort staff about why he had gone to the infirmary he said '*Not that I recall, no*'.[244] Asked as to when it was that he received information about Mr Ken experiencing chest pain, he said that his first knowledge of that was from reports that were written afterwards. Further, in cross-examination Mr Edwards continued to insist as follows:

> 'No, I didn't know what the medical appointment was for. It's a common occurrence; everyday there's a list of nurse's clinics and doctor's clinics, so it's not generally something I would question.'[245]

9.77. It was during the course of Mr Edwards' oral evidence at the inquest that the existence of the transcript of the interview that Mr Edwards had undergone in March of 2016 with

[239] Transcript, page 761
[240] Transcript, page 763
[241] Transcript, page 765
[242] Transcript, page 765
[243] Transcript, page 821
[244] Transcript, page 822
[245] Transcript, page 823

Mr Muller, the Investigations Officer for the DCS, emerged for the first time.[246] This document was not part of the original brief. In that interview there was the following passage of interrogation:

'DM: What time did you start your shift?

ME: Ah 7:30.

DM: Did you have any involvement with Mr Ken?

ME: There was a small amount of involvement; he was taken to the nurses station in B division in the morning at some, some time, I can't recall the exact time ...

DM: Yep.

ME: I was asked to come in as, with a, have a discussion with a nurse, basically the [inaudible] ECG or something and they wished to get him to the doctors after, after lunch and I made the arrangements at that point, no sorry, it wasn't after lunch, they wanted to get him to the nurses then and there, that's when they found the abnormal ECG.

DM: At the infirmary?

ME: At the infirmary ...

DM: Yes.

ME: So they, they took him to the infirmary, I had him escorted down there by two [inaudible] and they brought him back and said that they'd booked him on to see the doctor this afternoon, he was coming in ...

DM: Okay.

ME: So I believe they mentioned to me about the abnormal ECG at that point so he was due to see the doctor that afternoon.

DM: Right. Did you see him put back in the cells again?

ME: I saw him returned to the unit and put into the wing, at that point we weren't in lock-down SO…

DM: It was associations?

ME: He went into association yeah ...

OM: Yeah.

ME: He would have access to his cell and the part of the wing area.

OM: Right. Were you involved in the process for the, the lockdown so to speak for, for lunch?

ME: No, not directly that day no.' [247]

[246] Exhibit C5e

[247] Exhibit C5e, pages 2-3

9.78. In the light of the contents of that belatedly revealed interview, Ms Waite further cross-examined Mr Edwards on its contents. By this stage of Mr Edwards' evidence he had been afforded the opportunity to read through the transcript of the Muller interview. He said that he had completely forgotten about the interview up until now. He said that having read the interview he now remembered going to the B Division satellite clinic where the nurses wanted to send Mr Ken to the infirmary. This accords of course with the evidence of Mr Le. Mr Edwards said in evidence that Mr Ken was then taken off to the infirmary a short time later. He said that he had forgotten about the attendance at the satellite clinic and the events that occurred there prior to Mr Ken being sent to the infirmary. When confronted with this interview Mr Edwards acknowledged that he had then requested the escorting officers to attend. However, in his evidence he denied that he had then known that an abnormal ECG had been taken but had obtained that understanding from incident reports at the end of the day. This assertion seemed to fly in the face of an assertion as contained in the Muller interview that the escorts who had brought him back to the Division had mentioned to him the abnormal ECG and that Mr Ken was due to see a doctor that afternoon. Of course the observation regarding the fact that Mr Ken was due to see a doctor that afternoon accords with what is known about that very arrangement. Thus, when Mr Edwards spoke to Mr Muller much of what he said had a sound basis in fact. Indeed, the ECG first taken that morning did describe an abnormality. I take into account the evidence of Ms Pavlovich and Mr James that they both said that they had no knowledge of any abnormality. However, the coincidence of Mr Edwards having some knowledge of an ECG abnormality cannot be overlooked. Nevertheless, under cross-examination by Ms Waite Mr Edwards continued to insist that he may only have learnt about the ECG later in the day. That is contradicted in my opinion by what he said to Muller. In addition, what Mr Edwards told Muller contradicted what he would say in evidence which was that he believed that Mr Ken was taken to the infirmary simply as part of a standard appointment.

9.79. I find that Mr Edwards knew of Mr Ken's HRAT status on the morning of 16 April 2015 and that for that reason he needed to be doubled up in any lockdown period. I also find that Mr Edwards believed that Mr Ken reportedly had an abnormal ECG. I am uncertain as to the source of that information.

9.80. Other aspects of Mr Edwards' evidence were as follows:

- He said he was not aware of what was on the BLW white board on 16 April 2015.
- Mr Edwards acknowledged that Mr Ken's cell should have been '*filled*' over the lunch period given Mr Ken's status.[248]
- That it was very difficult to get other prisoners from single cells to double up with a prisoner over lunch.[249]
- He conceded the possibility that he had conducted a discussion with his unit officers about Mr Ken being doubled up because he was on HRAT,[250] although he reiterated his understanding that the three officers working in BLW on 16 April 2015, Mr Banks, Mr Shone and Ms Daurka, had told him after the event that they did not know that Mr Ken was on HRAT. That being the case I find it extraordinary that if Mr Edwards had ever had such an understanding that he did not in the aftermath of Mr Ken's death go into the unit office to see what the state of the white board was in respect of Mr Ken and whether he had been marked down as HRAT.[251] He conceded that he did not make this obvious enquiry.
- Mr Edwards acknowledged that it was likely that in any discussion regarding the movement of Mr O'Toole into Mr Ken's cell it would have been understood that Mr Ken was on HRAT.[252] Mr Edwards suggested that '*alarm bells*' should have rung with the unit staff and that they should have picked up on Mr O'Toole's absence from the cell during the lockdown period.[253]
- Mr Edwards said that he believed that Mr O'Toole was still in the unit at lockdown but that he personally had not been required to check this.[254] He said that he did not witness the lockdown himself.[255]
- When asked by Ms Waite in cross-examination whether the escorting officers had told him that Mr Ken had an abnormal ECG his answer was '*Potentially. One of the escort officers raised it in their report. I know that much*'.[256] I make the observation here that neither Pavlovich nor James' incident reports mention

[248] Transcript, page 782
[249] Transcript, page 782
[250] Transcript, page 788
[251] Transcript, page 789
[252] Transcript, page 819, 827
[253] Transcript, page 820
[254] Transcript, page 845
[255] Transcript, page 847
[256] Transcript, page 844

anything about an abnormal ECG. The possibility remains in my view that one or either of those officers mentioned this to Mr Edwards verbally. Mr Ken did have an abnormal ECG in that it was reported as borderline and in any case revealed sinus tachycardia.

- Mr Edwards acknowledged that placing someone with an abnormal ECG alone in to their cell was the wrong thing to do, although he reiterated that the nurses had said that Mr Ken was appropriate to be returned to his cell and that in any event he believed that Mr O'Toole was still there.[257]

9.81. In respect of Mr Edwards' evidence it was difficult to separate fact from fiction. The multiplicity of Mr Edwards' changes of story on important matters meant that I was not able to rely on anything he said.

9.82. Neither Mr Shone, Mr Banks nor Ms Daurka, who were the three officers on duty on 16 April 2015, acknowledged that they knew of Mr Ken's HRAT status that day. Mr Shone said in evidence that Mr Edwards did not tell him this.[258] Mr Shone acknowledged that he had been present when Mr Ken was placed back in his cell before the lockdown but asserts that he does not remember whether anyone else was in his cell at that time.[259] He said he was not aware one way or the other as to whether the prisoner O'Toole had been returned to the Division.[260] Mr Shone disagreed with the suggestion that Mr O'Toole should not have been removed from the cell without being replaced. He maintained that because Mr Ken was not flagged as a HRAT prisoner there was no need for him to have been doubled up on the information that was available to them.[261]

9.83. Ms Daurka who described herself as the '*third officer*' in that unit[262] said that her responsibilities would not have dictated a need on her part to be aware of a prisoner who needed to be doubled up. As the third officer she would be positioned at the barrier and therefore would not personally lock the prisoners down.[263] She said that she observed Mr Ken being taken back to his cell after returning from the infirmary. She was standing at the barrier when this took place at about 11:20am. She could not remember who placed him back into his cell. She had no concerns about Mr Ken.[264]

[257] Transcript, page 845
[258] Transcript, page 644
[259] Transcript, page 677
[260] Transcript, page 678
[261] Transcript, page 683
[262] Transcript, page 697
[263] Transcript, page 697
[264] Transcript, page 699-700

She was aware of the fact that Mr Ken was placed into the cell on his own but was not aware that he was supposed to be doubled up.[265] She said that it just simply did not enter her mind that he needed to have a cell mate with him in his cell.[266] She reiterated that she was not aware that Mr Ken was on HRAT.[267] She said that if she had known that it would definitely have made a difference. She would have checked to see why his cell mate was not there and would have ensured that Mr Ken was placed in another cell with someone else or have made sure that someone else was with Mr Ken over lunch in his cell.[268] Ms Daurka testified that she did not know why Mr Ken had been taken to the infirmary that morning.[269]

9.84. Ms Daurka said she could not remember whether she and other correctional officers in BLW on the day of Mr Ken's death had discussed the question of the officer's awareness that Mr Ken had been on HRAT. She said that she did not remember this. She did not think that they checked the white board.[270]

9.85. There is no evidence that either Mr Shone or Ms Daurka at any stage on 15 or 16 April 2015 checked Mr Ken's DCS casenotes on the JIS.

9.86. As for Mr Banks, the other DCS officer on duty on both 15 and 16 April 2015, it is clear that Mr Banks knew much about Mr Ken from his interaction with him the day before his death. It was Mr Banks who had arranged for Mr Ken's cell mate to be substituted and he knew that Mr Ken during the afternoon of 15 April 2015 had been experiencing hallucinations. The JIS audit log report[271] demonstrates that Mr Banks accessed Mr Ken's JIS records on a number of occasions during the afternoon of 15 April 2015 and it is clear that on two occasions that afternoon he made his own notations in the casenotes. In spite of all of that Mr Banks maintained that he was not aware that Mr Ken had been the subject of a NOC raised on his admission to Yatala.[272] When asked as to whether he had a belief that Mr Ken needed to be doubled up he said '*Going my memory, no, I'm not sure*'.[273] Mr Banks also said he had no recollection of Mr Ken being taken to the infirmary on the morning of 16 April 2015.[274] He said he

[265] Transcript, page 700
[266] Transcript, page 700
[267] Transcript, page 701
[268] Transcript, page 701
[269] Transcript, page 715
[270] Transcript, page 719
[271] Exhibit C63
[272] Transcript, page 1071
[273] Transcript, page 1072
[274] Transcript, page 1083

had no recollection of Mr O'Toole being taken to the Parole Board that morning or of Mr Ken returning from the infirmary.[275] He said that his first memory of Mr Ken on 16 April 2015 was from the fatal incident itself. When asked whether he had personally locked Mr Ken down on 16 April 2015, Mr Banks said that he did not know and that he did not know who in fact had locked him down.[276] Mr Banks was an unsatisfactory witness whose memory on many important matters strangely simply deserted him. Mr Banks maintained his assertion that he did not know of Mr Ken's HRAT status in spite of every indication available that Mr Ken was of that status.

9.87. For all of the above reasons it has not been possible to establish the precise circumstances in which Mr Ken was accommodated singly within his cell on 16 April 2015.

10. Recommendations

10.1. Pursuant to section 25(2) of the Coroners Act 2003 I am empowered to make recommendations that in the opinion of the Court might prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the Inquest.

10.2. Tendered to the Court was the 2017 final report, '*South Australian Prison Health Service – Model of Care for Aboriginal Prisoner Health and Wellbeing for South Australia*'. Under Part 5 the report states as follows:

> 'The quality and standard of mental and physical health care needs to be the same within prisons as it is in the broader community. This means treating all conditions in a timely manner and addressing the continuum of care, from prevention and health promotion, to screening and diagnosis, to acute care and urgent transfer, to management and ongoing care, which includes self-management'.[277]

In the same section the report cites with apparent approval passages from the New Zealand Prison Model of Care for serious mental illness wherein that document states:

> 'Compulsory mental health care of prisoners needs to take place in a timely fashion within a hospital setting, outside of the prison environment …A multi-disciplinary approach (medical, social work, nursing, occupational therapy, cultural expertise, alcohol and other

[275] Transcript, page 1083
[276] Transcript, page 1084
[277] Exhibit C72

drug, psychological input) should be adopted across all culturally competent forensic prison mental health teams'.[278]

10.3. Among the recommendations contained within the report there are the following:

'25. Establish facilities in all prisons to support the use of telehealth and videoconferencing for Aboriginal prisoners to access specialist assessments, treatments and care and avoid unnecessary, costly and disruptive transfers.

26. Increase the number of in-reach programs, especially to form links with primary health and to provide therapeutic services for alcohol and other drug misuse mental illness, domestic and family violence and other trauma'.[279]

I bring that document to the attention of the current South Australian government.

10.4. These recommendations are directed for the attention of the Minister for Health, the Minister for Correctional Services, the Chief Executive of the Department for Correctional Services and the Medical Director of the South Australian Prison Health Service. It is recommended:

1) That the Department for Correctional Services and the South Australian Prison Health Service revise procedures relating to the transfer of prisoners from one DCS institution to another DCS institution, which revised procedures should contain the following elements:

a. There should be a formal handover from the HRAT at the transferring institution to the HRAT at the receiving institution. The handover should be conducted by the respective Managers of Offender Development. The handover should identify any recommendations that have been made within DCS and SAPHS as to the accommodation of the prisoner in the receiving institution. The handover should also identify the reason or reasons for the transfer and in particular whether it involves the need for a medical or psychiatric evaluation of the prisoner at the receiving institution. There should be an automatic take-up of the prisoner's HRAT regime at the receiving institution without the need for the raising of a fresh NOC.

b. There should be a formal handover as between DCS staff at the transferring institution and the DCS staff at the receiving institution. The handover should

[278] Exhibit C72
[279] Exhibit C72

involve a formal communication between the General Managers of both institutions or as between their designated delegates.

c. There should be a formal handover as between the SAPHS staff at the transferring institution and the SAPHS staff at the receiving institution.

d. All transfers of prisoners should involve the strict implementation of any recommendation relating to the accommodation of the prisoner in the receiving institution.

e. There should be more effective formal communication between DCS personnel and SAPHS personnel involved in the transfer of a prisoner, such communication being facilitated by greater access of DCS personnel to SAPHS records in relation to the transferred prisoner.

f. In the case of an Aboriginal prisoner there should be a formal handover as between the Aboriginal Liaison Officer at the transferring institution and the Aboriginal Liaison Officer at the receiving institution.

g. DCS Prisoner Movement orders should refer in detail to the reasons for the prisoner's transfer and contain reference to the recommended accommodation arrangements if any are in place.

h. A communication should be made as between the transferring institution and the receiving institution at the time the prisoner leaves the transferring institution. The receiving institution should thus have a reasonably accurate expectation of the time of arrival of the transferred prisoner. If for whatever reason the prisoner is not transferred on the expected date or at the expected time, the receiving institution should be immediately informed of that circumstance.

2) That the Department for Correctional Services implement more effective measures to ensure that prisoners under a HRAT regime and who therefore should not be left alone in cells during lockdown periods are not left alone in those periods, such measures to include:

a. The use of electronic monitors within the staff offices of each accommodation unit that display a live list of prisoners accommodated within the particular unit who are the subject of HRAT monitoring.

b. That DCS staff be obliged to endorse a document in respect of each HRAT prisoner whenever the HRAT prisoner is locked down, the endorsement to acknowledge that the DCS officer is satisfied that the HRAT prisoner has not been left in the cell on his or her own.

c. Transfers of HRAT prisoners as between one DCS unit and another in the same institution should never be solely reliant on word of mouth communications that the transferred prisoner is a HRAT prisoner.

d. All transfers of HRAT prisoners as between DCS units in the same institution should involve a formal enquiry on the part of the receiving staff as to whether the prisoner is a HRAT prisoner or not.

e. Induction checklists conducted in DCS accommodation units should invariably involve an examination of the JIS casenotes in relation to the inducted prisoner. The checklist document itself should refer to the prisoner's HRAT status. The officer conducting the induction should ensure that all documentation indicating that the prisoner is on an HRAT regime is prominently displayed in the unit offices.

f. There should be as far as possible in each unit continuity of supervisory personnel. Supervisors of DCS accommodation units should as a matter of priority establish the identities of all prisoners within their unit who are on HRAT.

g. DCS unit supervisors should personally oversee the transfer of HRAT prisoners from one unit to another. Supervisors on receipt of the prisoner's case management file should endorse the NOC within the file to the effect that they have been made aware of the fact that the transferred prisoner is an HRAT prisoner.

3) The following <u>recommendation</u> is directed to the Medical Director of South Australian Prison Health Service in respect of prisoners complaining of or presenting with chest pain.

a. Under no circumstances should a prisoner complaining of or presenting with chest pain be sent away from the DCS institution Health Centre or infirmary without a thorough examination having been conducted by a medical practitioner. If an examination by a medical practitioner is not practicable, the

prisoner should be kept within the Health Centre or infirmary until such time as an examination by a medical practitioner can be undertaken.

b. In respect of prisoners complaining of or presenting with chest pain the prisoner should be questioned in relation to risks of cardiac disease by reference to the prisoner's known medical history and risk factors. An examination of the prisoner's SAPHS health records should be regarded as a bare minimum investigation. In particular, any previous ECG trace should be isolated from the prisoner's SAPHS medical records and be examined in conjunction with ECGs currently being conducted.

c. The SAPHS should compile and introduce for use in all SAPHS facilities a chest pain protocol of a kind similar to chest pain protocols that are routinely used in public hospital emergency departments.

d. In cases of doubt a SAPHS medical practitioner conducting an investigation of a prisoner complaining of or presenting with chest pain should be enabled to access professional advice from a specialist medical practitioner outside of the institution.

e. Point of care Troponin testing should be available in all SAPHS facilities.

f. The imminence of a period of lockdown in respect of the presenting prisoner should never constitute a consideration in the clinical management of that prisoner. Prisoners should not be sent back to their units until such time as acute cardiac illness to the satisfaction of the medical practitioner can be discounted.

4) This recommendation is directed to the attention of the Medical Director of South Australian Prison Health Service.

a. In respect of Aboriginal prisoners who are presenting with hallucinations or delusions, such a presentation should be assumed to be psychiatrically based and not culturally based until demonstrated otherwise. In any event for the purposes of risk analysis and management in respect of the presenting prisoner a consideration that the presentation may be culturally based should in the first instance not be regarded as having particular relevance.

b. All SAPHS facilities should employ or have ready access to qualified Mental Health nurses.

c. A triage process should be introduced in respect of managing the order in which prisoners presenting with a mental health issue should be seen and evaluated by a psychiatrist. Cases said to be urgent should be accorded greater priority in any triaging process. Appointments for psychiatric evaluation and treatment, especially in such urgent cases, should never be postponed. If necessary a psychiatrist from the private profession or from other sections of the public sector should be gauged to evaluate the patient. The imminent lockdown of a prisoner should never play any role in the ability or otherwise of the prisoner to engage in a scheduled psychiatric appointment.

d. The relevant institution's HRAT should oversee and manage the carrying out of any psychiatric appointment so as to ensure that a scheduled appointment takes place.

e. Where appropriate, psychiatric appointments by way of CCTV should be conducted so as to avoid the need for a prisoner to be transferred from one DCS institution to another.

f. In situations involving a difference of opinion between SAPHS personnel and DCS personnel about the presentation of a prisoner and whether there is a need for a prisoner to be transferred from a DCS unit to a SAPHS health facility, the opinion of the SAPHS personnel should prevail. A decision as to whether a prisoner should be transferred to a SAPHS health care facility should not in any way be influenced by the time of day or night or the exigencies of DCS personnel workloads or rosters.

5) I direct this <u>recommendation</u> to the Minister for Health, the Minister for Correctional Services, the Chief Executive of the Department for Correctional Services and the Medical Director of the South Australian Prison Health Service.

a. I <u>recommend</u> that close attention should be given to the opinions of Dr Narian Nambiar, the Clinical Director of the Statewide Forensic Mental Health Service, as expressed in his oral evidence given to the Court in this matter. In particular

I recommend the establishment of a prison '*In-reach team*' to be operated by the Statewide Forensic Mental Health Services. The In-reach team would comprise the following elements:

- Nursing staff who are qualified mental health nurses and who actually work in the prison and who are able to triage and provide mental health assessments of prisoners on an ongoing basis.
- Video link assessments in respect of prisoners who are situated outside the metropolitan area.
- Consultation as between members of the In-reach team and a prisoner's family, especially an Aboriginal prisoner's family, concerning the prisoner's history and presentation and other relevant matters.
- A multi-disciplinary approach to the care of mental health patients in the prison system, such an approach being provided by nursing staff, psychologists and social workers, and in the case of Aboriginal prisoners, Aboriginal Liaison Officers.

6) This recommendation is directed to the attention of the Minister for Health, the Minister for Correctional Services, the Chief Executive of the Department for Correctional Services and the Medical Director of the South Australian Prison Health Service.

   a. I recommend that consideration be given to an amendment to the Mental Health Act 2009 in respect of the imposition of inpatient treatment orders on persons in DCS custody. In his evidence Dr Nambiar agreed with the observation that certain elements of the operation of the Mental Health Act are inappropriate in a consideration as to whether or not an inpatient treatment order should be imposed under the Mental Health Act on a prisoner. In this regard it will be remembered that guiding principal 7(1)(b) in the Act asserts that mental health care should be provided in the least restrictive way and in the least restrictive environment that is consistent with the efficacy of the mental health services to be engaged and with public safety. An inpatient treatment order which involves the detention of a person under the Act may only be imposed where there is no less restrictive means than an inpatient treatment order of ensuring appropriate

treatment of a person's illness.[280] Less restrictive means than the imposition of an inpatient treatment order would include a community treatment order. It is at least questionable as to whether a community treatment order can effectively be imposed on a person already in custody. If anything, the least restrictive environment for a detained prisoner would involve detention under the Act as distinct from custody in the general prison population. The other relevant matter as pointed out to the Court by Mr Homburg, counsel for Dr Nambiar, is that a structural obstacle for the treatment of mentally ill prisoners is the absence of any recognition in the Mental Health Act of the reality faced by all prisoners, namely, the absence of their liberty to choose when and how to seek psychiatric care. Mr Homburg exemplifies this by pointing out that prisoners restricted in their ability to attend medical appointments or to voluntarily present at an emergency department when an acute need arises. Mr Homburg argues that the objects of the Mental Health Act do not conform with the reality that is faced by people who are incarcerated. He points out that the Mental Health Act is predicated on an expectation that persons to whom the Act might apply are capable of retaining freedom rights. He argues that it is very difficult to achieve all of the Act's objectives and to satisfy its guidelines where an individual whose liberty is already restricted needs to be considered for detention under the Act. In my opinion there is much force in those submissions.

10.5. The Court repeats the many recommendations that have been made in coronial inquests in this jurisdiction and in other jurisdictions that hanging points should be eliminated from all cells in correctional institutions.

Key Words: Death in Custody; Suicide; Prison; SAPHS

In witness whereof the said Coroner has hereunto set and subscribed his hand and Seal the 26th day of November, 2020.

Deputy State Coroner

[280] See Section 20(1)(c) for example