



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 24th day of September 2019 and the 15th day of January 2021, by the Coroner's Court of the said State, constituted of David Richard Latimer Whittle, State Coroner, into the death of Kenneth Frederick Ballard.

The said Court finds that Kenneth Frederick Ballard aged 75 years, late of Yatala Labour Prison, 1 Peter Brown Drive, Northfield, South Australia died at the Royal Adelaide Hospital, North Terrace, Adelaide, South Australia on the 5th day of May 2016 as a result of cerebral metastatic malignancy. The said Court finds that the circumstances of his death were as follows:

1. Introduction and reason for inquest

- 1.1. Mr Kenneth Frederick Ballard was born on 19 February 1941 and died at the Royal Adelaide Hospital on 5 May 2016, aged 75 years. He was the father of three children and a grandfather of seven. Mr Ballard suffered a stroke in mid-2009 which caused him memory and balance problems. His wife passed away in April 2011. Mr Ballard had spent most of his life as a truck driver.
- 1.2. At the time of his death Mr Ballard was a serving prisoner in lawful custody. This is therefore a mandatory inquest pursuant to section 21(1)(a) of the Coroners Act 2003.
- 1.3. Mr Ballard was arrested on 4 December 2009 and in due course pleaded guilty to offences of gross indecency occurring in 2004 and persistent sexual exploitation occurring between 1976 and 1983. On 7 December 2010 he was sentenced by the District Court of South Australia to imprisonment for 11 years, with a non-parole period

of seven years, both backdated to 4 December 2009. He was not eligible to apply for parole until December 2016. He had no prior criminal history.

2. Cause of death

- 2.1. I find the cause of Mr Ballard's death to be cerebral metastatic malignancy, as proposed by Dr Jane Alderman from Forensic Science South Australia, who conducted a pathology review.¹

3. Medical care provided by the Department for Correctional Services

- 3.1. Once sentenced, Mr Ballard was transferred to the Mount Gambier Prison in April 2011. He was provided medical care at the Mount Gambier prison by Dr Letitia Kavanagh, a general practitioner and prison medical officer.² She first saw Mr Ballard on 22 June 2011, due to a complaint of difficulty breathing. Mr Ballard was an ex-smoker and she considered him likely to have chronic obstructive pulmonary disease. He also had a history of right-sided cerebral vascular accident.
- 3.2. In June 2012 he had episodes of weakness on the left side and dizziness. Dr Kavanagh was concerned this might represent transient ischaemic attacks and increased his blood thinners. Following an ECG he was referred to the Mount Gambier Hospital for review and, in September 2012, was seen by Dr Priyadarshana, a consultant nephrologist and physician. A CT scan of the head and neck revealed prominent lymph nodes in the neck and left axilla and a lymph node biopsy was performed on 30 October 2012. Mr Ballard was transferred to the Yatala Labour Prison on 7 November 2012 and was placed in the infirmary upon admission.
- 3.3. On 9 November 2012 he was referred to the Oncology Department at the Royal Adelaide Hospital as his lymph node biopsy had confirmed he had small lymphocytic lymphoma. On 30 January 2013 he was seen by Professor Peter Bardy, haematologist. Mr Ballard's blood tests were only mildly abnormal. It was decided he was to be managed with observations for 12 months with three-monthly blood counts. He was transferred back to Mount Gambier Prison on 9 May 2013. Dr Kavanagh reviewed him on 15 May 2013 and ordered further blood tests and blood monitoring. At this time she decided he was no longer fit for the prison work program and provided a certificate.

¹ Exhibit C3a

² Exhibit C8 and further statement dated 6/11/19, admitted at the time of delivering this finding and marked Exhibit C8a

- 3.4. On 15 January 2014 Mr Ballard was transferred by the prison transport bus to Yatala Labour Prison pending his haematology review appointment on 29 January 2014. He was returned to Mount Gambier Prison on 30 January 2014.
- 3.5. By 5 November 2014 he had developed a lump in his left leg, which resolved, and a lump behind his left ear. Dr Kavanagh discussed with Mr Ballard a return to Adelaide for a haematology review, but Mr Ballard said he never wanted to go to Adelaide on the bus again because it made him too unwell. Mr Ballard perceived that Professor Bardy would come and see him in Mount Gambier. This was not possible and there were no haematologists visiting the Mount Gambier Hospital.
- 3.6. On 17 December 2014 Dr Kavanagh again spoke with Mr Ballard about his need for a specialist review. Mr Ballard again said he would not go on the prison transport bus and said it would 'kill him'. Dr Kavanagh states Mr Ballard was of sound mind, he understood the ramifications and he made a choice not to go to Adelaide. She wrote a certificate stating that he was unfit for long travel on the basis of severe vomiting, bringing up blood.
- 3.7. On 10 March 2015 Mr Ballard had an infected lesion on his forehead and was prescribed antibiotics. Dr Kavanagh had a conversation with him about his wishes regarding the haematologist and he stated he did not wish to make any more trips to Adelaide due to his haematemesis. Mr Ballard had a haematology appointment booked at the Royal Adelaide Hospital on 18 March 2015. Dr Kavanagh discussed with Mr Ballard the possible consequences of not attending and she states that Mr Ballard understood the risks. She considered that he was mentally of full capacity and had no signs of dementia, cognitive issues or mental health issues. She considered him to be capable of making informed decisions about his health. Nevertheless, despite his stated wish not to attend, the appointment at the Royal Adelaide Hospital was maintained in case he decided to do so. Dr Kavanagh discussed his case with prison management but no other modes of transport were offered at the time.
- 3.8. The next day, 11 March 2015, Dr Kavanagh arrived at work to find Mr Ballard vomiting blood. He said he was anxious about going on the bus to Adelaide. He was taken to the Emergency Department at the Mount Gambier Hospital and was found to be bleeding from a lesion in his gastric fundus, which was treated by injection with adrenaline. His appointment at the Royal Adelaide Hospital for 18 March 2015 was cancelled.

- 3.9. In April 2015 Dr Kavanagh explored options for local haematology review but it was not available.

4. Mr Ballard's continued decline in health

- 4.1. In the following months Mr Ballard presented to the Mount Gambier Prison medical clinic on several occasions. He suffered from various joint pains, began to lose weight and became increasingly frail.
- 4.2. On 10 November 2015 an ultrasound was organised as Mr Ballard complained of a lump in his left armpit which was painful. The result showed multiple enlarged lymph nodes, which was considered to be consistent with his leukaemia.
- 4.3. During February 2016, Mr Ballard saw nursing staff at the prison for back pain but was finding it difficult to attend the medication window to be issued his medications. It became necessary for the nurses often to deliver his medications to him.
- 4.4. Dr Kavanagh then saw Mr Ballard on 23 February 2016. She noted that he still had pain on the right side which had been ongoing for about a week and he was losing weight. She queried the progression of his chronic lymphocytic lymphoma. She noted he was very frail and needed a walking stick. He wished to continue to be managed at the Mount Gambier Prison. Dr Kavanagh states that all she could do was palliate him, which she tried to do. It is evident that Dr Kavanagh considered Mr Ballard to be suffering from a terminal condition.
- 4.5. Dr Kavanagh became increasingly concerned about Mr Ballard's frailty, and the need for higher level care than Mount Gambier Prison could provide and on 7 March 2016, Dr Kavanagh informed prison management that Mr Ballard could no longer be properly managed at the Mount Gambier Prison and that he should be moved to a more suitable place. In a discussion with her on 8 March 2016 Mr Ballard agreed and said he was willing to travel to Adelaide by car but not by bus. Dr Kavanagh considered that even travel by car was inappropriate, having regard to Mr Ballard's health, and at her request for transfer by air ambulance was arranged. On 11 March 2016 Mr Ballard was transferred by air to Adelaide and then by ambulance to the Health Centre at Yatala Labour Prison.

- 4.6. On 8 April 2016 Dr Farrall, senior medical practitioner at the Yatala Labour Prison conducted a review of Mr Ballard, who was willing to consider a new CT to see if his leukaemia was advancing.³ A full body CT scan, gastrology referral and haematology referral were arranged. It was recorded that Mr Ballard stated he did not want any blood transfusions, despite the fact that he was anaemic. It appears Mr Ballard was making a choice towards palliation. For reasons which are not recorded in the South Australian Prison Health Service (SAPHS) notes, Mr Ballard then did not attend his appointment for the CT scan on 26 April 2016.
- 4.7. By 29 April 2016 there had been a generalised decline in Mr Ballard's condition and at about 8pm there was a code black called in the High Dependency Unit when Mr Ballard was found semi-conscious. He was treated to maintain his airway and provided oxygen, following which he was transferred to the Royal Adelaide Hospital.
- 4.8. During transport to hospital by ambulance he was witnessed to have a generalised seizure and, in the Emergency Department at the Royal Adelaide Hospital, he was witnessed to have a left-sided focal seizure.⁴

5. Mr Ballard's diagnosis of lung cancer

- 5.1. A CT scan undertaken at the hospital revealed a very large lung mass, which was presumed to be a primary lung cancer, with metastases in the spine and brain, which were presumed to be the cause of his seizures and decreased conscious state.
- 5.2. Mr Ballard was considered to have a very poor prognosis and after consultation with his daughter he was palliated and all active treatment was withdrawn, except for seizure medication, until he died on 5 May 2016, aged 75.
- 5.3. Dr Sudarshan Selva-Nayagam⁵, a consultant medical oncologist and Director of Medical Oncology at the Royal Adelaide Hospital expresses the opinion that the lung cancer with metastases to the brain and elsewhere was most likely a separate entity to, and not likely to have been caused by, the chronic lymphatic leukaemia Mr Ballard was originally diagnosed with in 2012. Dr Selva-Nayagam states that lung cancer is often silent for a long time and it is not uncommon for the first presentation of patients with lung cancer to be in the advanced phase of the disease.

³ Exhibit C7, Statement of Dr Michael Findlay

⁴ Exhibit C5, Statement of Dr Ghia Spangenberg

⁵ Exhibit C6

- 5.4. The Medical Head of Unit at SAPHS, Dr Michael Findlay⁶, states that at the Mount Gambier Prison, prisoner health is managed by its private operator, G4S, which provides onsite nursing care, and employs Dr Kavanagh on a contractual basis to provide general practitioner care.
- 5.5. Dr Findlay states it was clear that once Mr Ballard developed an enlarged lymph node in his upper leg, and then armpit, review by a haematology unit would have been useful. He says that the ultrasound taken at the time showed multiple enlarged lymph nodes consistent with underlying lymphoproliferative disorder which would be related to his leukaemia.
- 5.6. Dr Findlay has also provided an opinion on the lung cancer, and states Mr Ballard was a 'slightly tricky presentation', in that he already had chronic cancer, and many of the symptoms he exhibited could easily have been attributed to that. Dr Findlay states it is both unfortunate and unusual to develop a second new cancer, and the symptoms of this new lung cancer were somewhat masked by his existing leukemia. Dr Findlay states it was quite reasonable to suspect that the symptoms he was experiencing were related to the existing cancer, rather than the new one. Obviously, the new cancer was identified on a CT scan, but by this time it had progressed too far. Dr Findlay says it is impossible to speculate on how long the lung cancer had been there, and it is unlikely that had it been detected earlier that it would have made any significant changes to how Mr Ballard was treated, or the duration of his life.
- 5.7. Although they were not quite specific on this issue, it may be inferred from the statements of Dr Kavanagh that in the last 15 months of his life not only was Mr Ballard reluctant to attend appointments in Adelaide due to the effects of road transport, but he understood the consequence of choosing to travel to Adelaide by air, that he would be regarded as unfit to be returned to and remain at the Mount Gambier Prison, due to the high level of his medical needs, which could not be provided for in Mount Gambier. It is clear from Dr Kavanagh's statements that Mr Ballard made a choice to remain at Mount Gambier Prison as long as was practicable despite his declining health, even if it meant missing out on medical treatment which would otherwise be provided.

⁶ Exhibit C7, Dr Michael Findlay

6. Coronial investigation and conclusions

- 6.1. As this death falls within the definition of death in custody, a police report was prepared by Detective Brevet Sergeant Peter Moore.⁷ Detective Moore's investigation found no evidence of criminal conduct or neglect and the death was due to natural causes, however, it remained unclear who ultimately makes the decision as to the method of transport for prisoners at the Mount Gambier Prison for whom standard transport options cause stress and discomfort.
- 6.2. In Mr Ballard's case, air travel was eventually authorised, and there is no reason to think it would not have been authorised earlier if Mr Ballard had been prepared to accept that he would be regarded as not sufficiently well to remain housed at Mount Gambier Prison, given his increasing treatment needs. Such a decision by the Department for Correctional Services would not have been unreasonable in the circumstances.
- 6.3. Mr Ballard was in lawful custody at the time of his death. He suffered chronic leukaemia for which he received appropriate medical treatment to the extent that it was available in Mount Gambier. His leukaemia was not the eventual cause of his death. I find that his terminal lung cancer might have been diagnosed at an earlier state had Mr Ballard been willing to give up being housed at the Mount Gambier Prison, although it is not clear that his life would have been extended in this event.
- 6.4. I make no recommendations.

Key Words: Death in Custody; Prison; Natural Causes

In witness whereof the said Coroner has hereunto set and subscribed his hand and

Seal the 15th day of January, 2021

State Coroner