MAGISTRATES COURT *of* TASMANIA

CORONIAL DIVISION

Record of Investigation into Death (Without Inquest)

Coroners Act 1995

Coroners Rules 2006

Rule 11

I, Robert Webster, Coroner, having investigated the death of Barry Ronald Tate

Find, pursuant to Section 28(1) of the *Coroners Act* 1995, that

a) The identity of the deceased is Barry Ronald Tate (Mr Tate);

b) Mr Tate died in the circumstances set out below;

c) Mr Tate's cause of death was bronchopneumonia; and

d) Mr Tate died on 5 October 2019 at Launceston, Tasmania.

Introduction

In making the above findings I have had regard to the evidence gained in the comprehensive investigation into Mr Tate's death. The evidence includes:

- Police Report of Death for the Coroner;
- Affidavits establishing identity and life extinct;
- Affidavit of Dr Terence Brain, forensic pathologist;
- Affidavit of Mrs Yvonne Tate, wife of Mr Tate;
- Affidavit of Mrs Carleen Pears, daughter of Mr Tate;
- Affidavit of Ms Janette Stubbs;
- Affidavit of Ms Thirumangai Durairjaoo;
- Affidavit of Constable Carleen Barcham;
- Affidavit of Constable Joseph Cook;
- Affidavit of Senior Constable Maree Fish;
- Medical records of Mr Tate obtained from Calvary St Luke's Hospital;
- Report of the Coronial medical consultant Dr Anthony Bell MD FRACP FCICM; and
- Photographs and forensic evidence.

Background

Barry Ronald Tate was born in Launceston on 28 May 1944. At the time of his death, he was aged 75 years, married, had four step-children, retired and lived in Ravenswood.

Mr Tate was born to the marriage of Ronald and Ivy Tate and he had two siblings. He grew up in the Launceston area and attended local schools. Upon leaving school, he completed an apprenticeship as a carpenter. Mr Tate moved to Zeehan and worked as a carpenter. There he met his future wife, Yvonne, with whom he dated for a number of years prior to them marrying. Mrs Tate had 4 children to her previous marriage and therefore Mr Tate became a step father to her four children; namely Marilyn, Carleen, Nigel and Shane. The family moved to Gravelly Beach in Tasmania and Mr Tate worked as a mechanic with Northern Motors for a number of years.

In 1976, the family moved to Western Australia where Mr Tate worked in a number of different occupations which included a shoe repair business and a roadhouse. The family moved back to Tasmania in 1995 and moved into the family home at Ravenswood. Mr Tate continued to work different jobs for the rest of his life until he retired, including owning a shoe repair store in Mowbray.

By way of hobbies, Mr Tate was a car enthusiast and active member of a car club in Launceston. He and his wife would go away on trips with the club. In addition Mr and Mrs Tate's sold antique china at a local market.

Mr Tate had an extensive medical history which included hypertension, Type II diabetes, hyperlipidaemia, atrial fibrillation, chronic back pain and anaemia. He was diagnosed with prostate cancer in 2017 and by August 2019 chemotherapy which Mr Tate was receiving at the Launceston General Hospital (LGH) was discontinued due to disease progression. He was known to have metastatic involvement of the spine and skull from the prostate malignancy. There was also a pancytopenia due to marrow involvement.

Circumstances of death

Mr Tate was transferred to Calvary St Luke's Hospital for end of life care on 11 September 2019. He was admitted to the Melwood ward which is a palliative care ward. He was suffering from deteriorating cognitive function, poor mobility, chronic back pain and lethargy. Medical management appears to have been progressing well until 26 September 2019, when he had an unwitnessed fall.

On that day Mr Tate was present in his room. Janine Stubbs, a registered nurse with 40 years' experience at this hospital, attended to him, took him to the toilet and then assisted

him back to his recliner. She provided him with a drink and made sure he was alright and had a call bell beside him. She explained to Mr Tate she would not be present for a little while because she was admitting a patient. Her note indicates she told him to ring if he needed anything and that she was going to admit a new patient. He said he was fine and he did not need anything. Ms Stubbs was speaking to another patient and their partner when she heard Mr Tate fall. She and another nurse attended and found Mr Tate lying on his front with his head turned to the right between his locker and his bed. Ms Stubbs assisted Mr Tate back into bed. He was able to move with assistance. She checked for bone injuries and his mobility. She says Mr Tate was conscious and alert. In bed she checked his neurological observations. He had a graze to the side of his head which bled slightly. She dressed that and placed a bandage on it. He appeared to be fine and was not sleepy which she says is common after an event of this kind. Mr Tate informed her he had gotten out of the recliner to give himself a shave, believing he could do it without assistance. His electric shaver was located nearby. He subsequently repeated this account to Mrs Pears. Ms Stubbs says Mr Tate's recliner did not have an alarm however he had never attempted to move without the assistance of nursing staff previously. She says he had always been compliant. Her nursing note says Mr Tate told her he did what he did because he thought they were busy. Ms Stubbs has recorded the fact that Mr Tate does not normally get up himself and he has always rung the bell for help.

Dr Formby attended and examined Mr Tate. Mr Tate had no recollection of the events of the fall but he recalled subsequent events well. Mr Tate complained of a slight pain in the neck but he had no tenderness in the cervical spine, ribs, pelvis or limbs. There was no leg deformity. He was alert and answered questions readily. The doctor's impression was Mr Tate had suffered a laceration and mild concussion. He was advised to call nursing staff if he wanted to get up. He was not to get up unsupervised. Dr Formby gave instructions to maintain observations of Mr Tate and continue conservative care. Ms Stubbs confirms Mr Tate's only complaint was that his neck was a bit sore when he turned it in a particular way. However she says he subsequently returned to his normal self and was sitting out in his chair everyday as he usually would.

On 30 September 2019 a CT scan of the neck showed a fractured C2 vertebra with an odontoid process fracture. Diffuse osteoblastic metastatic disease was also seen throughout the skull and cervical spine which would have no doubt weakened those structures. Given Mr Tate's health he was not suitable for surgical intervention. As a result Mr Tate was required to wear a neck brace which he did not like doing and which he would often try and remove. Given this development Dr Lim applied to the Guardianship and Administration Board for an emergency guardianship order on the basis that the C2 cervical fracture needed to be immobilised with a Philadelphia collar and that Mr Tate is "*unwilling to comply*

and would likely need chemical sedation/restraint to tolerate the collar which would prevent permanent cord damage." Dr Lim indicated that if Mr Tate did not remain immobilised in the Philadelphia collar there was a risk he could become a paraplegic and suffer lockdown syndrome. The board member, given the evidence which was before her, noted Mrs Pears was listed as the next of kin at the hospital however the relationship between her and her brothers, Shane and Nigel Kerslake, had become dysfunctional and had deteriorated to the extent that Nigel had made an application for a restraint order to protect himself and another against Mrs Pears. Mrs Pears had also made an application for a restraint order to protect herself and Mr Tate from Nigel and Shane. An interim order was made in Nigel's favour against Mrs Pears on 2 October 2019 and interim orders were made protecting Mr Tate from Shane and Nigel Kerslake on 26 September 2019. The board member also notes the hospital was concerned about Mrs Pears' understanding of Mr Tate's condition and cited an example in her decision. Accordingly she was not satisfied there was a 'person responsible' within the meaning of s4 of the *Guardianship and Administration Act* 1995 who was able to act in the best interests of Mr Tate as is required in s6 of that Act. On the basis of the evidence before her the board member was satisfied Mr Tate may have a disability, may be incapable of making reasonable judgements and may need a guardian. She therefore made an emergency guardianship order[1] that the Public Guardian be appointed and that person's powers and duties were limited to decisions concerning consent to any healthcare and/or medical treatment that is in Mr Tate's best interests.

Section 24(1)(b) of the *Coroners Act* 1995 requires me to hold an inquest if Mr Tate was immediately before his death a person held in care. By s3 of the *Coroners Act* 1995 the definition of 'a person held in care' is:

> a) *" A child, within the meaning of the Children, Young Persons and Their Families Act 1997, in the custody or under the guardianship of the Secretary, within the meaning of that Act;*
>
> b) *A person detained or liable to be detained in an approved hospital within the meaning of the Mental Health Act or in a secure mental health unit or another place while in the custody of the controlling authority of a secure mental health unit, within the meaning of that Act."*

Self-evidently Mr Tate does not satisfy paragraph (a) of that definition and the order made by the Guardianship and Administration Board is limited to the appointment of a guardian who is authorised to make decisions concerning consent to any healthcare and/or medical treatment. The order does not result in Mr Tate's detention or make him liable to be

[1]The order was made on 2 October 2019 and remained in effect until 30 October 2019.

detained anywhere. Accordingly he was not, immediately before his death, a person held in care and therefore an inquest is not mandatory.

By 3 October 2019 Mr Tate's condition had deteriorated. Contact was therefore made with Shane Kerslake and it was suggested Mrs Tate be brought in for a visit as soon as possible. Understandably Mr Kerslake was very upset by this news but willing to help coordinate his mother's visit. Mrs Pears was also contacted and advised of her father's deteriorating condition. She was also very upset. Mr Tate's condition continued to deteriorate and he died on 5 October 2019 at approximately 6.10pm. His attending nurse had commenced her shift at 2.00pm that day and she says in her statement that at no stage during her shift did Mr Tate speak or move.

Investigation

Shortly after 6.30pm on 5 October 2019, police were tasked to attend St Luke's Calvary Hospital in respect of Mr Tate's death. Mr Tate was examined and noted to be wearing a neck brace. At approximately 7.10pm Senior Constable Fish attended the hospital and examined both the scene and Mr Tate. As a result of her examination she was of the view there were no suspicious circumstances surrounding Mr Tate's death. I agree with that opinion. Police then requested the attendance of the mortuary ambulance whereupon Mr Tate was taken to the mortuary at the Launceston General Hospital.

On 8 October 2019 a post mortem was conducted by the forensic pathologist Dr Terry Brain. As a result of his examination he determined the cause of death to be bronchopneumonia which arose as a result of Mr Tate becoming bed ridden following the fall. An antecedent cause was leukopenia which is a decrease in disease fighting white blood cells which was secondary to the chemotherapy Mr Tate had received to fight prostate cancer. The reduced level of white blood cells meant it was more difficult for Mr Tate to fight off infection caused by bronchopneumonia. I accept Dr Brain's opinion.

This case has been reviewed by Dr Bell who specifically looked at the decision to delay the CT scan after the fall. Dr Bell noted Mr Tate had been transferred to the Melwood unit at the hospital for end-of-life care. He says forceful flexion and extension of the head in an interior–posterior position, as might occur when someone falls, may result in a fracture of the odontoid process. Fractures can occur above the transverse ligaments (type I) or, most commonly, at the base of the odontoid process where it attaches to C2 (type II). Type I fractures are stable. Although spinal cord injuries are uncommon, type II fractures are unstable and complicated by non-union in over 50% of patients treated with halo vest immobilisation. Slight angulation of the force may result in extension of the fracture through the upper portion of the body of C2 and these are called type III fractures, which are

mechanically unstable. Type II fractures are the most common geriatric spinal fractures. Dr Bell goes on to say:

> *"The treatment is spinal immobilization for 3-6 months with imaging proof of stability before release. This treatment places a significant burden on the geriatric patient. A clinical decision was made not to investigate the fall with imaging on the days after the fall. Due to deterioration the cervical fracture was discovered. Treatment proved traumatic to the patient making continued care less effective. Also the trauma injury places greater stress on the vulnerable patient. The decision not to image the patient following the fall was reasonable and made directly by a senior palliative care physician."*[2]

I accept Dr Bell's opinion. Given Mr Tate's poor prognosis and deterioration, he was not a candidate for spinal surgery.

The medical records disclose Mr Tate's last weeks were marred by significant family disputes, resulting in restraint orders being issued, family members being denied access to the hospital and communication issues between the hospital and family members. Mr Tate told nursing staff he believed his children were fighting over the family's house and money and who was his primary carer. If this is so this is most unfortunate. These are of course matters over which I have no jurisdiction under the *Coroners Act* 1995.

Comments and Recommendations

The circumstances of Mr Tate's death are not such as to require me to make any comments or recommendations pursuant to Section 28 of the *Coroners Act* 1995.

I extend my appreciation to investigating officer Constable Joseph Cook for his investigation and report.

I convey my sincere condolences to the family and loved ones of Mr Tate.

Dated: 9 November 2022 at Hobart in the State of Tasmania.

Robert Webster
Coroner

[2] Dr Formby.