CORONERS COURT
OF NEW SOUTH WALES

Inquest:	Inquest into the death of Ian James McAuliffe
Hearing dates:	9 February 2018
Date of findings:	9 February 2018
Place of findings:	NSW Coroners Court - Glebe
Findings of:	Magistrate Elizabeth Ryan, Deputy State Coroner
Catchwords:	CORONIAL LAW – mandatory inquest - death of a person in custody – inmate diagnosed with terminal illness – whether care and treatment provided by Justice Health and Corrective Services NSW was adequate.
File number:	2015/288035
Representation:	Counsel Assisting the Coroner: Mr J Harris, i/b Crown Solicitor's Office. Corrective Services NSW: Mr V Musico, Office of General Counsel, NSW Department of Justice.

NON PUBLICATION ORDER

Pursuant to section 74 (i)(b) of the *Coroners Act 2009*, an order is made that the following evidence not be published:

- Any evidence tending to identify the address at which the deceased lived immediately prior to his going into custody;
- Any evidence identifying or tending to identify the name of the deceased's partner at the time of his death, and the name of the person having his enduring guardianship;
- Any phone numbers, fax numbers and email addresses of Corrective Services NSW staff referred to in the evidence;
- Names and MIN numbers of other inmates referred to in the evidence, and;
- Any evidence identifying or tending to identify the complainant in the offences of which the deceased was convicted on 17 December 2013.

Findings:	**Identity** The person who died is Ian McAuliffe born 2 May 1948 **Date of death**: Ian McAuliffe died on 1 October 2015 **Place of death**: Ian McAuliffe died at Long Bay Correctional Facility, Malabar NSW 2036 **Cause of death:** Ian McAuliffe died as a result of metastatic prostate cancer. **Manner of death:** Ian McAuliffe died as a result of natural causes while in custody.

Table of Contents

Section 81(1) of the *Coroners Act 2009 (NSW)* [the Act] requires that when an inquest is held, the Coroner must record in writing his or her findings as to various aspects of the death.

These are the findings of an inquest into the death of Ian James McAuliffe.

Introduction

1. On 1 October 2015 Ian James McAuliffe aged 67 years died of metastatic prostate cancer. Mr McAuliffe was serving a custodial sentence when he died; therefore the responsibility for ensuring that he received adequate care and treatment lay with the State.

2. Pursuant to sections 23 and 27 of the Act, an inquest is required when a person dies in custody to assess whether the State has discharged its responsibilities.

The role of the Coroner

3. The Coroner must make findings as to the date and place of a person's death, and the cause and manner of death: Section 81 of the Act.

4. In addition the Coroner may make recommendations in relation to matters which have the capacity to improve public health and safety in the future, arising out of the death in question: Section 82 of the Act.

Mr McAuliffe's life

5. Ian McAuliffe was born 2 May 1948. For much of his adult life he worked as a mechanic. He was married and had two children and eight grandchildren.

6. At the time of his death Mr McAuliffe was estranged from his immediate family. He developed a relationship with a person he had met in 2012. This person visited Mr McAuliffe in jail and regularly spoke to him on the phone.

7. In September 2013 Mr McAuliffe was found guilty by a jury of charges of sexual intercourse and indecent assault in relation to a child under 10 years of age. The offences were committed against a family member in 2010.

8. Mr McAuliffe was sentenced on 17 December 2013 to 8 years' imprisonment with a non-parole period of 5 years. This made him ineligible to be released before 16 December 2018.

9. In passing sentence the Court found there to be special circumstances based on Mr McAuliffe's age, reduced life expectancy owing to his ill health (details of which appear below), and the likelihood that he would be serving his sentence of imprisonment in protective custody.

10. Shortly after entering custody Mr McAuliffe requested and was granted placement in Long Bay's Special Programs Centre for prisoners requiring protection.

Mr McAuliffe's medical history

11. When Mr McAuliffe entered custody in 2013 he received a medical screening. This confirmed he had multiple chronic health conditions, including metastatic prostate cancer, bladder cancer, a myocardial infarction suffered in 2009, ischaemic heart disease, non-insulin dependent diabetes, emphysema, impaired renal function, and an epigastric hernia.

12. Mr McAuliffe's prostate cancer had been diagnosed in 2009. He had received radiotherapy for this condition while in the community, as well as ongoing hormone therapy with the drug Zoladex. Unfortunately these treatments had not been able to prevent him developing incurable metastatic disease.

13. Mr McAuliffe's treatment with Zoladex continued after he entered custody. However following a full medical review by his treating oncologist Dr Elizabeth Hovey, in January 2015 his cancer medication was changed to the drug cyclophosphamide.

14. During his time in custody Mr McAuliffe had regular external medical appointments. These included cardiology and oncology reviews, urology consultations, renal function tests, and regular admissions to Prince of Wales Hospital annex for the purpose of changing his ureteric stents and catheter. These devices had been inserted in December 2013 to assist with his problems of urethral blockages. They had to be changed on a regular basis and under general anaesthetic. Mr McAuliffe also underwent bone and CT scans.

15. As a result of his serious health conditions, much of Mr McAuliffe's time in custody was spent in the Long Bay Hospital. Mr McAuliffe spent periods there in 2014 and was readmitted on 28 January 2015, effectively remaining there for the eight months of life that were left to him. During this time he also had frequent admissions to the Prince of Wales Hospital annex for the specialised treatment referred to above.

16. Throughout the latter part of 2015 Mr McAuliffe's condition steadily deteriorated. By September he was considered to be in the terminal phase of his life.

17. On 26 September 2015 he asked not to receive any further medical investigations or invasive treatment, requesting treatment only to alleviate his symptoms. At his request he was also transferred back to the Long Bay Hospital. An order was approved for his hospital cell door to be kept permanently open so that clinical staff could have access at all times.

18. On 30 September the Palliative Care Registrar at Long Bay Hospital recorded that Mr McAuliffe was minimally responsive. He continued to be monitored on a regular basis, and was last noted to be alive at about 8.45pm on the night of 1 October. At this time he was breathing with the assistance of an oxygen mask. However when he was checked at 9.15pm there were no signs of life and he was pronounced life extinct.

19. On 9 October 2015 Deputy State Coroner Dillon issued a Coroner's Certificate giving the cause of death as metastatic prostate cancer.

The issue at inquest

20. Following Mr McAuliffe's death the Legal Aid Commission wrote to the Coroner's Court drawing attention to a matter raised by Mr McAuliffe's treating oncologist, Dr Elizabeth Hovey. Dr Hovey is a Senior Staff Specialist at Prince of Wales Hospital's Oncology Department, and treated Mr McAuliffe from November 2014 until his death. She asserted that Mr McAuliffe had not been able to access a cancer treatment that was otherwise available to public patients with a subsidy from the Commonwealth Government's Pharmaceutical Benefits Scheme.

21. The background to Dr Hovey's assertion was an application to the State Parole Authority made on Mr McAuliffe's behalf on 27 August 2015 by Mr Stephen Eccleshall of the Legal Aid Commission, seeking an early compassionate release to parole. Mr McAuliffe was by then bed bound and in poor general condition with a short prognosis. Citing Dr Hovey's claim, the Legal Aid Commission submitted that Mr McAuliffe's pain and suffering would be better addressed by him receiving treatment as a public patient in the community rather than as an inmate.

22. Dr Hovey had provided a report dated 17 June 2015 in support of Mr McAuliffe's early release application. In her report she explained his complex palliative care and analgesia requirements. She had treated Mr McAuilffe's cancer in the early months of 2015 with the drug docetaxel, but by May 2015

it had to be discontinued '*in part due to a mixed response'* but also because of deterioration in his nerve conduction function.

23. Dr Hovey went on to state that had Mr McAuliffe not been in custody, at that point:

'..we would have commenced him on a new generation hormone therapy called enzalutamide which is on the PBS [Pharmaceutical Benefits Scheme] however prison inmates in the medical unit at Long Bay are not covered by the PBS and it is my understanding that the medical oncology unit would have had to bear the cost of the enzalutamide which we do not have the budget for as it involves thousands of dollars ….In view of this we recommended the use of a more old-fashioned chemotherapy drug called oral cyclophosphamide…'.

24. Dr Hovey went on to state:

'I have no doubt that he would be better served being out in the community in terms of both our therapeutic choices and level of care.'

25. The State Parole Authority declined Mr McAuliffe's application for early release, due to the serious nature of his offences, the small amount of time he had served in custody to that date, and the Board's finding that Mr McAuliffe was currently receiving adequate care and treatment at Long Bay Hospital.

26. Mr McAuliffe died three weeks after this decision. On 25 October 2105 the Legal Aid Commission wrote to the Coroner's Court raising the matters referred to above in Dr Hovey's report.

27. Given the matters raised by Dr Hovey, a central issue in this coronial inquiry was whether the level of care which Mr McAuliffe was able to receive as an inmate was less than that regarded as adequate for patients not in custody. Dr Hovey's comments had suggested there was a financial disincentive to prescribe the drug enzalutamide to Mr McAuliffe, because he was in prison rather than in the community, and the costs would not be covered by the PBS.

Dr Hovey's report dated 27 September 2017

28. Following receipt of the above letter from the Legal Aid Commission the Coroner's Court requested Dr Hovey to assist its inquiry, by providing her opinion as to:

- whether enzalutamide would have been an appropriate treatment for Mr McAuliffe; and

- whether she would have prescribed it for him had he been in the community.

29. In response Dr Hovey provided a detailed and most helpful statement dated 27 September 2017, supplying an overview of Mr McAuliffe's diagnosis and prognosis, and explaining the treatment decisions she had made.

30. Dr Hovey described Mr McAuliffe's primary disease of prostate cancer, as well as his other health conditions of bladder cancer, ischaemic heart disease and diabetes. Mr McAuliffe's diabetes made him vulnerable to infections of his urethra and kidneys, the treatment of which disrupted his cancer chemotherapy. A contributing factor in his recurring infections were the uretic stents and catheter which were required to deal with his kidney blockages.

31. When Dr Hovey commenced Mr McAuliffe's treatment in November 2014 these co-morbidities and conditions had caused her to assess his prognosis as likely to be between 10 to 12 months, if not shorter.

32. A bone scan on 8 January 2015 confirmed multiple bone metastases affecting Mr McAuliffe's back, hip and pelvis and causing him significant pain. After consultation with Mr McAuliffe Dr Hovey decided to commence palliative chemotherapy with the drug docetaxel. Mr McAuliffe received monthly cycles of this drug in January, February, March and April 2015.

33. On 4 May 2015 Dr Hovey decided to discontinue docetaxel and replace it with second line chemotherapy, namely the drug cyclophosphamide. This was because a scan had revealed a new lesion, and there was evidence that the docetaxel treatment was impairing Mr McAuliffe's neuropathic system.

34. Unfortunately repeated kidney and urinary tract infections interrupted Mr McAuliffe's cyclophosphamide therapy, which had to be suspended while he received antibiotics. Then in August 2015 an ultrasound confirmed likely liver metastases.

35. Mr McAuliffe's condition deteriorated throughout September 2015 and in consultation with him Dr Hovey determined that he would not be assisted by further chemotherapy. He was placed in the care of Long Bay Hospital's Palliative Care Team and he died on 1 October.

36. In answer to the question whether the drug enzalutamide would have been an appropriate treatment for Mr McAuliffe, Dr Hovey made the following points:

- Enzalutamide was considered as a potential treatment for Mr McAuliffe. The appropriate time for consideration of it was following completion of the docetaxel therapy.

- Dr Hovey discussed with the Prince of Wales Medical Oncology Team the possibility of arranging oral enzalutamide for Mr McAuliffe. She was informed by a colleague that as he was a prisoner a PBS authority script could not be written for him; nor would the Hospital's Oncology Department be able to meet the cost of the drug.

- She was unable to recall to what extent she escalated her request for consideration of enzalutamide.

37. In response to the question whether she would have prescribed enzalutamide for Mr McAuliffe if he had been in the community, Dr Hovey made the following comments:

- In her 15 years of using palliative cyclophosphamide she had had good results; therefore on reflection there was a high chance she would have decided to administer cyclophosphamide to Mr McAuliffe prior to considering enzalutamide, even if he had been in the community.

- Although enzalutamide was a relatively new drug with promising results, the decision as to what therapeutic option to use in his case would have been '*more complex and nuanced'* and enzalutamide *'might not in fact have been the first choice post-docetaxel depending on his clinical status at the time'.*

38. Dr Hovey commented further that Mr McAuliffe's death on 1 October 2015 was in keeping with her prognosis in November 2014 of 10-12 months. In her view, had Mr McAuliffe been discharged from jail for his last few months he would have had other therapeutic options and a likely better quality of life. However she concluded her report as follows:

'*Despite my letter to the Parole Board, it was my view then, and continues to be my view now that his death could not have been prevented by treatment with enzalutamide, nor that he received inferior treatment without it'.*

39. In retrospect therefore, Dr Hovey is of the view that treatment of Mr McAuliffe with cyclophosphamide was clinically appropriate, and that had he been in the community she would likely have elected to proceed with cyclophosphamide prior to considering enzalutamide.

40. On the basis of Dr Hovey's statement of 27 September 2017 therefore, I conclude there is no evidence to support the assertion that because of his ineligibility for the PBS subsidy for enzalutamide, Mr McAuliffe received inferior treatment for his prostate cancer to that which he would have received had he not been a prisoner.

Funding of treatment and medication for prisoners

41. The above conclusion is determinative of the central issue in this inquest. However it may be helpful to consider a related question: whether the ineligibility of prisoners for PBS-subsidised medicines such as enzalutamide may result in them receiving a level of care inferior to those in the community.

42. During the coronial investigation information was sought from the NSW Department of Health regarding the funding of treatment and medication for prisoners. In response information was received as follows:

- All patients receiving treatment from NSW public hospitals, whether they are prisoners or not, are excluded from receiving PBS-subsidised pharmaceuticals. This is because by the combined operation of the Commonwealth *National Health Act 1953* and *Health Insurance Act 1973*, a person is not entitled to receive benefits from the PBS if their services are provided by a State Government. This means that prisoners, in common with other NSW public hospital patients, are not entitled to PBS-subsidised medicines.

- In the case of prisoners, their health care is the responsibility of the States and Territories. NSW Health Policy directs that a prisoner's inpatient and outpatient treatment costs are to be borne by the public hospital treating that prisoner. This includes costs for medication. As their health services are provided by the NSW Government, PBS subsidies are not payable for them.

- Prisoners are only entitled to receive PBS-subsidised medicines where these are listed under the Highly Specialised Drug Program [HSD Program] of the PBS. Enzalutamide is not listed under the HSD Program, so Dr Hovey's understanding of the situation (ie that a PBS subsidy would not be available for enzalutamide if prescribed for Mr McAuliffe) was correct.

- It is understood that a Local Health District is able to provide a mechanism for a treating clinician to apply for authority for supplementary funding to supply a certain medicine to a patient.

43. In summary therefore, prisoners such as Mr McAuliffe receiving treatment from a public hospital are not eligible for a PBS-subsidised medicine, because their treatment costs are the responsibility of the NSW public hospital treating them. However the situation is the same for all other members of the community who receive public hospital treatment. They too are excluded from the PBS scheme, other than in relation to Highly Specialised Drugs.

44. It is not the case therefore that NSW public hospitals bear a greater cost with respect to medicines for prisoners than for other members of the community.

45. According to information received, NSW Health officials have raised the issue of prisoner access to the PBS scheme with the Commonwealth Minister for Health, but they have been advised that there is no present plan to change the policy.

Conclusion

46. As Mr McAuliffe was in custody, an inquest is required into the circumstances of his death to assess whether the State has discharged its responsibilities in relation to him.

47. Having considered the evidence I am able to conclude that Mr McAuliffe died as a result of natural causes. There are no suspicious circumstances, and no evidence that the care and treatment he received when he was in custody was inadequate or inferior to that which he would have received had he not been an inmate of a prison.

48. This is the case in relation to the specific issue highlighted above as to whether his treatment was inadequate because he was not eligible for a PBS subsidy for the drug enzalutamide. For the reasons given above, my conclusion is that his treatment for cancer while an inmate was adequate and was not inferior to that which he would otherwise have received.

49. It is also the case in relation to his general care and treatment as an inmate. From the outset of his time in custody Mr McAuliffe had a serious health problem which together with his other health problems was properly managed. Appropriate decisions were made and implemented about his treatment and palliative care.

50. I would like to record my thanks to the Legal Aid Commission for raising with the Coroner's Court an issue about Mr McAuliffe's welfare that required clarification.

Findings required by s81(1)

As a result of considering all of the documentary evidence and the oral evidence heard at the inquest, I am able to confirm that the death occurred and make the following findings in relation to it.

Identity

The person who died was Ian McAuliffe, born 2 May 1948.

Date of death

Ian McAuliffe died on 1 October 2015.

Place of death

Ian McAuliffe died at Long Bay Correctional Centre, Malabar NSW.

Cause of death

Ian McAuliffe died as a result of metastatic prostate cancer.

Manner of death

Ian McAuliffe died of natural causes while in custody.

I close this inquest.

E Ryan
Deputy State Coroner
Glebe

Date
9 February 2018