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MINISTER FOR JUSTICE

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REPORT TO THE LEGISLATIVE ASSEMBLY

Pursuant to section 46B of the *Coroners Act 1993*

In the matter of the Coroner's Findings regarding the death of
Ishmael Nalaiyir Nangarid

Pursuant to section 46B of the *Coroners Act 1993*, I provide this Report on the findings in the report of Local Court Judge Greg Cavanagh, Territory Coroner, dated 17 July 2020, regarding the death of Ishmael Nalaiyir Nangarid (the Deceased) (Attachment A refers).

The Report includes the response from the Chief Executive Officer (CEO) of the Department of the Attorney-General and Justice (Attachment B refers).

The Deceased, a 51 year old Aboriginal man, died at 6:03 am on 5 December 2018 in the Intensive Care Unit at Royal Darwin Hospital. The cause of death was multiple organ failure due to Influenza A pneumonia, in the context of chronic kidney disease, chronic obstructive pulmonary disease, ischaemic heart disease and myasthenia gravis. The Deceased was a prisoner in the custody of the Commissioner of Correctional Services.

Comments of the Territory Coroner

While no formal recommendations were made with respect to the death of the Deceased, at paragraphs 36 to 39 of the Coronial Findings, the Territory Coroner made the following comments:

36. My Office sought from the Department of Corrections their policies, procedures and directions relating to the use of force while escorting prisoners at the hospital. My Office was provided with the Standard Operating Procedure 'Prisoner In-Patient' and the Directive 2.2.8 'Escorts'. Neither of those documents was of assistance.
37. During the course of the inquest Deputy Superintendent Mark Kruit provided evidence. He thought the instruction was in another Directive, 2.2.4 Use of Force, Control and Restraint. However, that document only addresses the subject by omission. That is, such a circumstance is not listed as one in which force can be used.
38. There are obviously circumstances were [sic] force can and should be used by Corrections Officers when escorting patients. One of those was

seen when the Officer removed the knife from the deceased. However, it is difficult to envisage circumstances requiring the use of force where the prisoner is simply refusing medical treatment and is entitled to do so.

39. I encourage the Commissioner of Corrections to provide a specific direction relating to escorts as to the limits of their powers in such situations.'

Response to Territory Coroner's comments

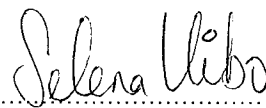
A copy of the Coronial Findings was provided to the CEO of the Department of the Attorney-General and Justice (responsible for Northern Territory Correctional Services) on 28 July 2020 in accordance with section 46A(1) of the *Coroners Act 1993*.

A written response dated 18 November 2020 from the CEO of the Department of the Attorney-General and Justice was prepared, as required by section 46B(1) of the *Coroners Act 1993*, advising as follows:

- Directive 2.8.1, Prisoner In-Patients, has been amended to include the following direction:
 - 7.8 When attending to the prisoner, hospital staff are to be accompanied by a correctional officer at all times. Correctional officers must not intervene with any use of force if a prisoner refuses treatment, except on request by the medical practitioner, as outlined in the Use of Force manual (refer directive 2.2.4).

I am satisfied that Northern Territory Correctional Services, through the Department of the Attorney-General and Justice, has considered the comments of the Territory Coroner and has taken the necessary steps with respect to those comments.

DATE: 26/11/2020



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SELENA UIBO



**NORTHERN
TERRITORY**
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The Hon Selena Uibo MLA
Attorney-General and Minister for Justice
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File reference: D2020/1189-LP
Your reference: 2020/3069-NKF

via e-mail: minister.uibo@nt.gov.au

Dear Minister

CORONIAL FINDINGS - ISHMAEL NALAIYIR NANGARID

Thank you for the copy of the Coronial Findings dated 17 July 2020, regarding the death of Mr Ishmael Nalaiyir Nangarid.

In accordance with section 46B of the *Coroners Act 1993*, I provide the following response.

While the Territory Coroner did not make formal recommendations, at paragraph 39 of the Coronial Findings, the Coroner encouraged the Commissioner of Correctional Services to provide specific direction relating to escorts as to the limits of their powers for the use of force where a prisoner refuses medical treatment.

Directive 2.8.1. Prisoner In-Patients, has been amended to include the following direction:

7.8 When attending to the prisoner, hospital staff are to be accompanied by a correctional officer at all times. Correctional officers must not intervene with any use of force if a prisoner refuses treatment, except on request by the medical practitioner, as outlined in the Use of Force manual (refer directive 2.2.4).

A copy of the directive 2.8.1 is enclosed (*) for your information.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Greg Shanahan', with a long horizontal flourish extending to the right.

Greg Shanahan PSM
Chief Executive Officer

13 November 2020

encl. (*)

NT Correctional Services Directive

2.8.1 PRISONER IN-PATIENTS	
TRM Reference	CS2017/0035~0074
Directive Approver	Signature <i>D R Thompson</i>
	Name & Title David Thompson, Acting Commissioner
	Date July 2020
Principal Directive Owner	Deputy Commissioner Custodial Operations
Directive Responsibility	Custodial Operations
Implementation Responsibility	Deputy Commissioner Custodial Operations
Directorates Impacted	Custodial Operations
Authority (Enabling Act or Regulation)	
Sections 9, 18, 19, 20, 36, 39, 86, 87 and 205 of the <i>Correctional Services Act 2014</i>	
Associated Documents	
2.1.11 Duties of Correctional Officers 2.2.4 Use of Force 2.2.8 Escorts 2.2.21 Procedure in the Event of Escape 2.8.17 Notification of Prisoners Critically Illness, Palliative Care or Serious Injury	

Document Version Control

Version	Effective Date	Reason for Update
V.5	8 May 2015	Directive Review
V.6	11 July 2016	Directive Review
V.8	July 2020	Directive Review

Next Review Date	July 2022
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1 Directive

- 1.1 A prisoner who is admitted to hospital under escort remains in the custody of correctional officers. The correctional officers are responsible for maintaining the security and safe custody of the prisoner, just as they would if the prisoner were confined to a correctional centre.
- 1.2 Correctional officers are to remain within sight and hearing of the prisoner at all times. The General Manager may vary this requirement following consultation with the health practitioner, dependant on individual circumstances.

2 Purpose

- 2.1 To establish clear criteria and accountability, and to ensure prisoner in-patients are escorted and remain in secure custody during their period of confinement in hospital.
- 2.2 To ensure there is due regard to community protection and the safety of hospital staff, while ensuring effective and a humane standard of medical care is maintained.

3 Links to Strategic Priorities

- 3.1 Developing our people and our leadership capabilities to facilitate informed, responsible and accountable governance and to ensure that we promote a diverse, equitable and safe workplace.

4 Scope

- 4.1 This directive applies to all correctional centres.

5 Definitions

in-patient means a person who is admitted to hospital for the purposes of receiving hospital treatment, as defined in the *Medical Services Act 1982*.

health practitioner means a person registered under the Health Practitioner Regulation National Law to practise in a health profession (other than as a student).

medical practitioner means a person registered with the Medical Registration Board in accordance with the *Health Practitioner Regulation (National Uniform Legislation) Act 2010* to practise in the medical profession (other than as a student).

6 Roles and Responsibilities

- 6.1 The Deputy Commissioner Custodial Operations is responsible for the management of this directive.

7 Procedures

- 7.1 In dealing with a prisoner inpatient, correctional officers on duty will ensure the safety and security of the prisoner.
- 7.2 The prisoner remains in lawful custody while in hospital and is subject to any security arrangements agreed between the General Manager and the person in charge of the health care facility.

- 7.3 Unless directed by related legislation to hand the prisoner into the custody of the health care facility administration, or the prisoner is handed over to the health care facility pursuant to section 87 of the *Correctional Services Act 2014*, Northern Territory Correctional Services remains responsible for the safe custody and supervision of the prisoner, and the safety of staff and other patients during the period of treatment.

7.4 Role of Officers conducting hospital shifts

7.4.1 Officers must:

- a. remain professional and vigilant at all times and not allow themselves to be unnecessarily distracted from their primary role of closely supervising the prisoner;
- b. not use headphones while supervising the prisoner or use any device that interferes with effective audio or visual observation of the prisoner;
- c. carry hospital escort kits that include emergency contact numbers, instructions on how and when to apply restraints, the hospital journal and any relevant information about the hospital (e.g. security information pack including instructions on actions to take in the event of an escape);
- d. at handover, check that the hospital escort kit including equipment and handover information is complete and up to date;
- e. regularly physically check that the prisoner's restraints are properly applied, remain intact and are not tampered with and record the details in the hospital journal;
- f. maintain a consistent method of communication with and provide regular reports to the correctional centre. The frequency of reporting-in should be pre-agreed with General Manager, but should always occur on each occasion any significant event takes place;
- g. ensure that the prisoner wears night-clothes and that all day clothes and footwear are returned to the correctional centre;
- h. ensure that when restraints are not applied, staff are positioned between the prisoner and any exit(s) and as close to the prisoner as is practical;
- i. ensure that the prisoner is within sight or sound of at least one officer at all times, unless otherwise directed by the risk assessment;
- j. exercise close control and observation of any permitted visitors to the prisoner;
- k. ensure that correctional centre management are kept informed of any significant changes in the prisoner's clinical condition and that the risk assessment is reviewed to ensure that security measures remain appropriate and proportionate.

7.5 Journals

- 7.5.1 Hospital shift officers must maintain a record of important events. These events can be recorded on the hospital journal by the officer as appropriate.

- 7.5.2 Officers must ensure that entries are legible, and that the observations are informative, timed and signed.
- 7.5.3 Information that must be recorded includes but is not limited to:
- a. the names of officers on duty and time of handovers;
 - b. details of visitors to the prisoner;
 - c. details of the prisoner's behaviour (mood, eating habits, requests);
 - d. details of the removal and/or re-application of restraints, including the time the restraints were removed/re-applied and the reason. Note: where restraints have been removed on the advice/instruction of a healthcare professional that person's name and position must be recorded along with the name of the correctional centre manager authorising the removal of the restraints and the time authorisation was given;
 - e. checks that restraints are applied properly and have not been tampered with at least every once 60 minutes;
 - f. visits by correctional centre management;
 - g. the times the escorts provides a report to the correctional centre; and
 - h. any other information deemed significant in support of the safety and security of the hospital shift.

7.6 Use of Instruments of Restraint on Prisoner Patients

- 7.6.1 Escorting officers are to apply means of restraint for high and medium security rated prisoner in-patients.
- 7.6.2 Restraints may be used in other cases where the prisoner patient's behaviour changes/deteriorates, further criminal charges are received/laid or additional intelligence is received about them that justify the use of restraints, or where no other suitable means are available to prevent the risk of escape or injury to any person or self-injury to the prisoner patient.
- 7.6.3 Advice on the use of instruments of restraint to be sought from the General Manager or delegate if:
- a. there are security concerns in relation to a low security rated prisoner;
 - b. a prisoner patient has a significant injury whereby restraints cannot be secured;
 - c. a Registrar specifically advises against their use on medical reasons (e.g. MRI scan);
 - d. the prisoner patient's general medical condition renders restraints inappropriate, (e.g. incapacity to walk, seriously ill etc.); or
 - e. a prisoner is pregnant.

NT Correctional Services Directive

- 7.6.4 Instruments of restraint may be removed at the request of a health practitioner while the patient is undergoing consultation, examination or treatment subject to the directions of the General Manager or delegate and any delegations to the senior escorting officer who may do so after assessing that their removal will not jeopardise the security of the escort.
- 7.6.5 Instruments of restraint will not be applied when the prisoner's general medical condition renders the use of restraints inappropriate.
- 7.6.6 Where restraints are utilised, officers must ensure the keys are securely fastened to their person.
- 7.7 Unless expressly approved by the General Manager that a door may be closed, the door to a prisoner's room must remain open at all times. Approval to close the door will only be given in extraordinary circumstances, i.e. infectious disease.
- 7.8 When attending the prisoner, hospital staff are to be accompanied by a correctional officer at all times. Correctional officers must not intervene with any use of force if a prisoner refuses treatment, except on request by the medical practitioner, as outlined in the Use of Force manual (refer directive 2.2.4).
- 7.9 Correctional officers may be requested to leave the room, but remain in visual distance, for confidentiality, privacy and dignity purposes of the prisoner patient, in the following instances:
- a. undergoing assessments or examinations;
 - b. during ward rounds or consultations;
 - c. undergoing a ward based procedure or treatment;
 - d. during an emergency event.
- 7.10 Correctional officers will escort the prisoner during any movements through the hospital campus.
- 7.11 Where a prisoner is to undergo general anaesthesia, correctional officers are to remain with the prisoner until the patient is under the care and control of the anaesthetist.
- 7.12 The correctional officers are to remain in the theatre foyer until the prisoner is transferred to the recovery room where direct supervision will resume.
- 7.13 Prisoner patients who are sedated or ventilated in the Intensive Care Unit (ICU) will be subject to any security arrangements agreed between the General Manager and the ICU Manager on a case-by-case basis.
- 7.14 Correctional officers will remain with the prisoner when he or she is undergoing local anaesthetic, but are to be positioned so as not to impede the clinical process.
- 7.15 Attending hospital staff should be made aware that the prisoner does not enjoy the same privileges as other patients in the hospital; however they are entitled to the same standards of medical care.
- 7.16 Should any security procedures cause significant concern to the health practitioner or hospital staff, their comments should be relayed to the General Manager immediately. The General Manager will advise the correctional officers of any change to procedures after consultation with the appropriate personnel.
- 7.17 For security purposes, hospital staff are to be requested not to discuss a prisoner's imminent transfer or discharge in the presence of the prisoner. This information should

NT Correctional Services Directive

be given directly to the correctional officers, who will then make arrangements for the prisoners' movement back to the correctional centre.

- 7.18 Prisoner in-patients are not to use the telephone, computers or receive visits unless authorised by the General Manager.
- 7.19 In the event of an escape, the following are to be notified immediately:
- a. Hospital security;
 - b. NT Police; and
 - c. The General Manager or delegate.

8 Directive Evaluation and Review

8.1 Evaluation

The Deputy Commissioner Custodial Operations in consultation with the Compliance and Performance Review Committee will be responsible for the evaluation of this directive.

8.2 Review

This directive is effective from July 2020 and its scheduled review should occur on or before July 2022.

9 Appendices (if applicable)

- Nil.

----- End of Directive -----