STATE CORONER'S COURT
OF NEW SOUTH WALES

Inquest:	Inquest into the death of Allen Burke
Hearing dates:	8 March 2016
Date of findings:	8 March 2016
Place of findings:	State Coroners Court, Glebe
Findings of:	Magistrate Derek Lee, Deputy State Coroner
Catchwords:	CORONIAL LAW – death in custody, natural causes, care and treatment
File number:	2015/44176
Representation:	Sgt Ramavat, Advocate Assisting the Coroner Ms De Castro Lopo for Corrective Services NSW Mr Woods for Justice Health & Forensic Mental Health Network
Findings:	I find that Allen Burke died on 11 February 2015 at Goulburn Correctional Centre at Goulburn, NSW. The cause of death was acute myocardial infarction due to coronary atherosclerosis. Mr Burke died of natural causes whilst serving a custodial sentence.

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Introduction

1. Section 81(1) of the *Coroners Act 2009* requires that when an inquest is held the coroner must record his or her findings as to various aspects of the death. These are the findings of an inquest into the death of Mr Allen Burke, an Aboriginal man aged 50 years old at the time of his death.

The role of a Coroner and purpose of this inquest

2. The role of a Coroner, as set out in section 81 of the *Coroners Act*, is to make findings as to:

   (a) the identity of the deceased;
   (b) the date and place of the person's death;
   (c) the physical or medical cause of death; and
   (d) the manner of death, in other words, the circumstances surrounding the death.

3. As Mr Burke was in lawful custody at the time of his death an inquest is required to be held pursuant to sections 23 and 27 of the Act.

4. Pursuant to section 82 of the Act a Coroner also has the power to make recommendations concerning any public health or safety issues arising out of the death in question.

Mr Burke's personal history

5. Unfortunately little is known about Mr Burke's personal history other than he was born in Kurri Kurri in 1964 and that he had four children. Investigating police spoke to Joshua Burke, Mr Burke's son, who said that he did not wish to make a statement. Mr Burke's son did not respond to several requests from police to provide some information about his father's background and family history.

6. No member of Mr Burke's family was present at the inquest.

Mr Burke's custodial history

7. On 3 December 2013 Mr Burke was sentenced in relation to a number of sexual assault and assault offences. He received a 15 year sentence commencing on 4 May 2012 and expiring on 3 May 2027 with a non-parole period of 11 years and 3 months. Mr Burke's earliest possible release date to parole was 3 August 2023.

8. Mr Burke was initially kept on remand at the Metropolitan Reception and Remand Centre and was later transferred to correctional centres on the South Coast, Parklea, Long Bay and finally Goulburn, where he was housed at the time of his death.

Mr Burke's medical history

9. Mr Burke suffered from asthma since childhood. He was also a heavy smoker. One of his fellow inmates described Mr Burke as the heaviest smoker he had ever seen.[1] He required ongoing treatment for his asthma which included oral corticosteroids, nebulisers, inhalers and antibiotics. Mr Burke also had arthritis in his knees and had cataract surgery in 2014 whilst in custody. Apart from his asthma and arthritis, Mr Burke was not known to have any other chronic health conditions.

10. Records obtained from Corrective Services NSW indicate that during a routine intake assessment in June 2008 Mr Burke told an officer from Probation and Parole (as the service was then known) that he was experiencing some unconfirmed heart trouble, along with being an asthmatic. Mr Burke was not in custody at the time. His comment was recorded but there was no indication that Mr Burke was receiving any medical treatment or taking any medication for this reported condition when the comment was made.

11. It appears that the information was later transferred to an electronic record kept by Corrective Services so that on 23 June 2009 a disability alert was created by Statewide Disability Services on behalf of Mr Burke. Enquiries made by the police officer in charge of the investigation revealed that the alert expired on 9 February 2014 and was rendered inactive (some 12 months before Mr Burke's death).

12. There is no reference to a heart condition contained within any of Mr Burke's other Corrective Services records. More importantly, there is no record of any complaint being made of a heart, or heart-related, condition in any of Mr Burke's Corrective Services records which date back to 1979.

The events of 11 February 2015

13. On Wednesday 11 February 2015 Mr Burke was inside his cell within the Multi Purpose Unit (MPU) at Goulburn Correctional Centre. Although Mr Burke was housed in a two out cell he was the only occupant. At about 5:28am he activated his cell call button. A correctional officer, Mark Cohen, answered and Mr Burke told him that he had a headache and was vomiting. Officer Cohen asked Mr Burke if he had any known medical conditions. Mr Burke answered no. Officer Cohen asked if Mr Burke could wait for the Justice Health nurses to arrive later that morning and Mr Burke answered that he could.

14. About ten minutes later Officer Cohen tried to call Mr Burke back using the cell call system to check on his welfare. The call system was not working so Officer Cohen asked another officer, Jeff Edwards, to attend Mr Burke's cell to check on him.

[1] Exhibit 1, tab 4.

15. At about 5:55am Officer Edwards and three other correctional officers went to Mr Burke's cell. Mr Burke was sitting on his bed. He told the officers that he had a headache and felt sick. Officer Edwards told Mr Burke that he was not permitted to give Mr Burke any medication and asked him if he could wait for the Justice Health staff to attend later when they started duty. Mr Burke said that he could and asked for his cell light to be turned off. Officer Edwards obliged, reported the matter to his Area Manager, and informed the Justice Health clinic staff of Mr Burke's complaint. The clinic staff indicated that they would check on Mr Burke in the morning.

16. Correctional Officer Derek Haine performed a head check at about 8:30am. He spoke to Mr Burke who told him that he had been vomiting during the night and that he had a sore throat. Officer Burke asked if there was anything else and Mr Burke told him that he had a headache. Officer Haine told Mr Burke that he would call the clinic and advise them of Mr Burke's complaint.

17. Officer Haine subsequently contacted the clinic. One of the clinic staff advised that Mr Burke would be seen by one of the nurses attending the MPU that morning. A short time later Officer Haine heard noises that sounded like vomiting coming from Mr Burke's cell.

18. At about 10:00am whilst nurse Melanie Ross was distributing medication within the MPU, Mr Burke approached her and told Ms Ross that he had had a sore throat for two days but it was feeling worse. Mr Burke also said that he had been vomiting overnight and into the morning, and that he had a severe headache. Ms Ross checked Mr Burke's blood pressure and found it to be normal for Mr Burke. Ms Ross noted that Mr Burke was not in any respiratory distress and that he denied having any chest or abdominal pain.

19. Ms Ross told Mr Burke to use the cell call button if he felt worse and that she would return after distributing medication to other inmates. Ms Ross gave Mr Burke a new Ventolin inhaler and some medication (metoclopramide) to treat nausea and vomiting, along with Mr Burke's usual medication.

20. Correctional Officer Christopher Greenwood was present and helping Justice Health staff with medication distribution when Mr Burke spoke to Ms Ross. Officer Greenwood recalls Mr Burke mentioning that he had been vomiting and that he had a sore throat.

21. One of Mr Burke's fellow inmates, Darin Wheeldon[2], said that when he went to collect his medication he saw Mr Burke crouched down near a door speaking to Ms Ross. Mr Wheeldon says that he saw Mr Burke indicate something with his hand to his chest and that he heard Mr Burke say something similar to, "It is just uncomfortable and causing a

[2] Ibid.

bit of pain". Mr Wheeldon said that Ms Ross replied with words similar to, "I have not got any equipment here. I will come back and see you after I finish here".

22. Mr Wheeldon returned to his cell and had a conversation with Mr Burke who by that time had also returned to his cell. Mr Wheeldon saw that Mr Burke looked pale and appeared to be in pain. Mr Wheeldon said that he asked Mr Burke if he was OK. Mr Burke said that he was not and that he had been up all night unable to sleep. When Mr Wheeldon asked what was wrong, Mr Burke replied that he had pains in his chest. Mr Wheeldon offered to notify a correctional officer but Mr Burke said, "Don't do that. I don't want to overplay it as they will move me to a safety cell and I want to be able to smoke". Mr Wheeldon suggested that Mr Burke should tell someone about his pain but Mr Burke said, "No, it's OK, I can't stand the safety cell", and then changed the subject.

23. Between about 10:00am and 11:00am correctional officers saw Mr Burke coming and going from his cell and speaking with other inmates. At around 11:00am Mr Burke presented for lunch muster. It is not known whether Mr Burke collected his lunch tray and ate his lunch, or whether he collected it and gave it to another inmate. After lunch, Mr Burke was secured back in his cell.

24. At about 11:00am Ms Ross returned to the clinic and notified the on-call doctor, Dr Haddrick (as there was no doctor on-site), of Mr Burke's complaints. Dr Haddrick ordered that penicillin be given to Mr Burke.

25. At about 12:40pm Ms Ross returned to Mr Burke's cell, with Officer Haine, to give Mr Burke the penicillin and check on his welfare. Ms Ross saw Mr Burke lying on his bed with his arms behind his head. Officer Haine opened the cell door and Ms Ross noticed that Mr Burke was not breathing. She immediately began CPR and told the Officer Haine to alert the clinic that there was a medical emergency.

26. At about 12:46pm another nurse arrived with a defibrillator which was used on a number of occasions without effect. During the resuscitation attempts the nurses gave Mr Burke three doses of adrenalin. About ten minutes later ambulance officers arrived and took over the efforts to resuscitate Mr Burke. Unfortunately they were unable to revive him and Mr Burke was declared deceased at 1:10pm.

What caused Mr Burke's death?

27. Professor Johan Duflou, forensic pathologist, performed an autopsy on 13 February 2015. In his report Professor Duflou identified that Mr Burke had severe atherosclerosis of his left anterior descending coronary artery and right coronary artery. Professor Duflou also observed that Mr Burke had changes to his lungs that were typical of heavy smoking.

28. Professor Duflou concluded that the cause of death was acute myocardial infarction due to coronary atherosclerosis.

Are there any other issues to investigate?

29. When a person is detained in custody, the responsibility for ensuring that person receives adequate care and treatment rests with the State. Even when a person in custody dies of apparent natural causes an inquest is required to independently assess whether the State has discharged its responsibility.

30. In his statement, Mr Wheeldon suggests that Mr Burke complained of experiencing chest pain to Ms Ross. If this was the case it would raise cause for concern given that Mr Burke died about three hours after the alleged complaint.

31. However, I find that the alleged complaint is improbable for a number of reasons. Firstly, Ms Ross in her statement said that she specifically asked Mr Burke if was experiencing any chest pain, which he denied. Secondly, Ms Ross was the only person to make a contemporaneous note of her interaction with Mr Burke.[3] The note contains no reference to Mr Burke complaining of chest pain. Thirdly, Officer Greenwood makes no mention of hearing any such complaint made by Mr Burke. Fourthly, the evidence gathered from Officers Haine, Cohen and Edwards is that each of them asked Mr Burke how he was feeling and no mention of chest pain was made in any of those three exchanges. Finally, Mr Wheeldon said that Mr Burke told him not to tell anybody about his chest pain because he (Mr Burke) did not want to go to the safety cell. If this was the case, then it is difficult to understand why Mr Burke would make the complaint himself, only a short time before telling Mr Wheeldon about his reluctance to go to the safety cell.

32. I am also satisfied that the disability alert created in 2009 was not a factor in Mr Burke's death. The information provided in 2008 was vague and unsupported by any medical evidence. Further, in the approximate seven years that elapsed since the comment was made, there is no other evidence consistent with it. In any event the alert had expired by the time of Mr Burke's death and was inactive.[4] There is no evidence to suggest that failure to notice the alert contributed to Mr Burke's death in any way.

Conclusion

33. I am satisfied that the evidence reveals that Mr Burke's death is not suspicious and that he died as a consequence of a natural cause process.

34. I am also satisfied that Mr Burke received health care of an appropriate standard whilst in custody. There is no evidence to suggest that any action or inaction by either

[3] Exhibit 1, Volume 2.
[4] Exhibit 2.

Corrective Services or Justice Health contributed to Mr Burke's death in any way. It does not appear that anything could have reasonably been done to prevent Mr Burke's death.

Findings

35. I find that Allen Burke died on 11 February 2015 at Goulburn Correctional Centre at Goulburn, NSW. The cause of death was acute myocardial infarction due to coronary atherosclerosis. Mr Burke died of natural causes whilst serving a custodial sentence.

36. I close this inquest.

Magistrate Derek Lee
Deputy State Coroner
NSW State Coroner's Court, Glebe
8 March 2016