STATE CORONER'S COURT
OF NEW SOUTH WALES

Inquest:	Robert Gordon Britten
Hearing dates:	13 March 2015
Date of findings:	13 March 2015
Place of findings:	State Coroners Court, Glebe
Findings of:	Deputy State Coroner E.Truscott
Catchwords:	Coronial Law-Cause and manner of death-section 27 Inquest Required- section 23 whether "lawful custody" includes Forensic Patients under the Mental Health (Forensic Provisions) Act 1990
File number:	2014/253769
Representation:	Sgt D Welsh – Coroner's Advocate Assisting
Findings:	Robert Gordon Britten died on 28 August 2014 of natural causes at Macquarie Hospital North Ryde. The direct cause of death was bronchopneumonia with underlying Chronic Obstructive Pulmonary Disease. Other conditions included congestive cardiac failure, organic brain syndrome, dementia and epilepsy. At the time of his death Robert Gordon Britten was a patient under the Mental Health (Forensic Provisions) Act 1990 and there are no issues regarding his care and treatment.
Recommendations:	N/A

IN THE STATE CORONER'S COURT
GLEBE
NSW
SECTION 81 CORONERS ACT 2009

REASONS FOR DECISION

1. This inquest concerns the death of Robert Gordon Britten who was a forensic patient under the Mental Health (Forensic Provisions) Act 1990 (MH(FP) Act). Mr Britten was detained in a unit of the Macquarie Hospital known as "Lavender House" which is a 30 bed secure Rehabilitation Unit for Older people who have a mental illness and challenging behaviour[1]. The facility is a "Declared Inpatient Mental Health Facility" so gazetted on 9 March 2001.[2]

2. Mr Britten had been admitted to Lavender House in July 2009. On 11 February 2004 in the District Court, Mr Britten was been found not guilty by reason of mental illness of charges of attempt aggravated sexual intercourse with child under 16 and aggravated indecent assault of child under the age of 16. He had been arrested on the day of the alleged offence being 7 March 2002. Following the finding of not guilty by reason of mental illness Mr Britten was detained in the Long Bay Prison Hospital until his transfer to Morisset Hospital on 1 March 2007 but he was transferred back to Long Bay Prison Hospital on 5 June 2007 where he remained until his transfer to the Forensic Hospital. 24 March 2009. On 19 August 2009 Mr Britten was transferred to Macquarie Hospital, specifically the Lavender House secure unit.

[1] NSW Northern Sydney Local Health District webpage as at 13 March 2015.
[2] Brief of Evidence.

3. In 30 March 2010 the Mental Health Tribunal determined it was appropriate to review Mr Britten every 12 months and his reviews have been annual reviews since that time. His last review was on 25 March 2014 under s46(1) of the MH(FP) Act. The Tribunal had determined to continue Mr Britten's detention due to his physical state and mental illness (see s43 of the MH(FP) Act. The Tribunal determined to again review Mr Britten in 12 months.

4. From 25 March to 28 August 2014 Mr Britten's physical health continued to deteriorate. The record shows that his treating doctor, Dr G McLean signed "End of Life-Care orders" on 3/11/13 following a previous directive dated4/10/2012. The document indicates that Mr Britten did not have capacity to consent nor was there a family member or guardian involved. From the records by at least early August 2014 he appears to have been mainly bedridden and dependent on oxygen by mask. By mid to late August he was receiving palliative care until his death on 28 August 2014 when he was found deceased in bed that morning.

5. From a review of the medical records relating to the months prior to his death, it is apparent that Mr Britten received appropriate and adequate care and treatment whilst he was a detained in Lavender House under Mental Health (Forensic Provisions) Act.

6. On 4 September 2014 a Coronial Certificate setting out the cause of Mr Britten's death was issued by the Coroner's Office in Glebe. Mr Britten's death, though natural and not unexpected, was required to be reported to the Coroner under s6(f) of the Coroner s Act 2009 as died in a declared mental health facility within the meaning of the Mental Health Act 2007 and while the person was a resident at the facility for the purpose of receiving care, treatment and assistance . That was not the sole purpose of Mr Britten's detention though it can be said he was receiving care, treatment and assistance.

7. Under s27 (b) of the Coroners Act an Inquest is required to be had if jurisdiction arises under s23 which is entitled "Jurisdiction concerning deaths in custody or as a result of a police operation. Section 23 relevantly provides jurisdiction to a Senior Coroner to hold an inquest concerning the death of a person if it appears to the coroner that the person had died (a) while in the custody of a police officer or in some other lawful custody. There is no definition of what constitutes that "other lawful custody" but under (d) a "detention centre" within the meaning of the Children's Detention Centre

Act 1987, a correctional centre within the meaning of the Crimes (Administration of Sentences) Act 1999 or a lock up is specified if the death occurred in one of those places or where the deceased was temporarily absent from one of those places.

8. A person resident in a declared mental health facility for the purpose of receiving care treatment and assistance is not necessarily a detained person under the Mental Health Act a person can be resident as both an involuntary or voluntary patient. If an involuntary patient leaves the premises without permission an order for their apprehension and detention can be made under s49 of the Mental Health Act 2007. Under s59 Mental Health (Forensic Provisions) Act 1990 a Mental Health Tribunal can order a forensic patient to be transferred back to a correctional centre.

9. The Mental Health (Forensic Provisions) Act 1990 distinguishes a forensic patient from a correctional patient or an involuntary patient (under the Mental Health Act) : see s3 definitions and sections s41and 42:
"correctional patient" means a person (other than a forensic patient) who has been transferred from a correctional centre to a mental health facility while serving a sentence of imprisonment, or while on remand, and who has not been classified by the Tribunal as an involuntary patient.

10. Mr Britten has never been classified as an involuntary patient by the Mental Health Tribunal – he has always remained as a Forensic Patient. Under s54 a person who ceases to be a forensic patient (other than a person classified as an involuntary patient under section 53) must be discharged from the mental health facility in which the person is detained.

11. The word detained must refer to being lawfully detained. Indeed section 70 Mental Health (Forensic Provisions) Act 1990 refers to a person who is absent from a mental health facility without a leave of absence by the Tribunal under s75 as an "escapee" who is liable to be apprehended and detained:

(1) A forensic patient or correctional patient who escapes from a mental health facility or other place may be apprehended at any time by any of the following persons:

(a) the medical superintendent of the mental health facility or any other suitably qualified person employed in the mental health facility who is authorised to do so by the medical superintendent,

(b) a police officer,

(c) a person authorised by the Director-General or the medical superintendent,

(d) a person assisting a person referred to in paragraph (a), (b) or (c).

(2) On being apprehended, the patient is to be conveyed to and detained in the mental health facility or other place from which the patient escaped.

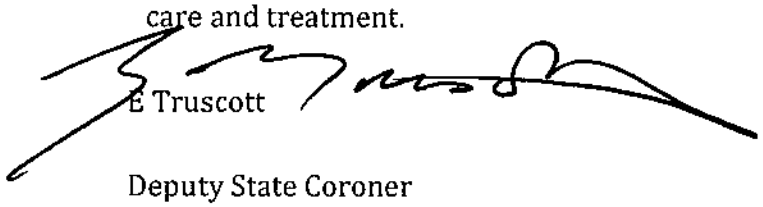
(3) This section does not affect any power of any other person to apprehend a person under the *Crimes (Administration of Sentences) Act 1999* .

12. Mr Britten had been in lawful custody since his arrest on 7 March 2002, initially police custody until his transfer to corrections custody from Queanbeyan Local Court on 12 March 2002. He remained solely in corrections custody until his first transfer to a mental health facility on 5 March 2007 and his was transferred back and forth between a mental health facility and a corrections centre until his final transfer in 2009 to Lavender House.

13. I would think that under those circumstances he is in "lawful custody" at the time of his death and I accordingly consider that the Inquest is mandated under s27 of the Coroners Act.

14. My findings are accordingly that Robert Gordon Britten died on 28 August 2014 of natural causes at Macquarie Hospital North Ryde. The direct cause of death was bronchopneumonia with underlying Chronic Obstructive Pulmonary Disease. Other conditions included congestive cardiac failure, organic brain syndrome, dementia and

epilepsy. At the time of his death Robert Gordon Britten was a patient under the Mental Health (Forensic Provisions) Act 1990 and there are no issues regarding his care and treatment.



E Truscott

Deputy State Coroner

13 March 2015