CORONER'S COURT OF THE AUSTRALIAN CAPITAL TERRITORY

Case Title:	**Inquest into death of DEAN CHRISTOPHER BRICE**
Citation:	**[2022] ACTCD 1**
Findings Date:	24 February 2022
Before:	**Coroner Morrison**
Decision:	See [22].
Catchwords:	**CORONIAL LAW** – death in care – causation – scope of inquest
Legislation Cited:	*Coroners Act 1977* (ACT) s 3C(1)(c) *Mental Health Act 2015* (ACT) s 59
Cases Cited:	*R v Doogan; ex-parte Lucas-Smith & Ors* [2005] ACTSC 74 *Inquest into the death of Kaitlin McGill* [2020] ACTCD 7 *Inquest into the death of Jacob Cameron* [2021] ACTCD 7
Texts Cited:	*Productivity Commission Inquiry Report into Mental Health in Australia*, Report no. 95 (2020)
Representation:	Counsel Assisting – Ms Baker-Goldsmith Mr and Mrs Brice/Self-represented
File Number(s):	CD 96 of 2020

CORONER MORRISON:

1. An argument has taken place before me about the scope of the Coronial inquest into the death of Dean Christopher Brice who died on 28 March 2020 at about 13:47 hours. I refer to the deceased as Dean without intending any disrespect.

2. A public hearing must take place because at the time of his death Dean was subject to a Psychiatric Treatment Order (PTO) and was therefore a death in custody in accordance with section 3C(1)(c) of the *Coroners Act 1997* ("the Act"). The Act was amended in January 2021 to reclassify these deaths as 'deaths in care'. I note the observations of the Chief Coroner in the *Inquest into the death of Jacob Cameron* [2021] ACTCD 7 and accordingly I will also refer to Dean's death as a death in care.

3. In the opinion of Professor Johan Duflou, the forensic pathologist the direct cause of Dean's death was:

    a. Multiple drug toxicity (Gamma hydroxybutyrate and methamphetamine).

b. Cardiorespiratory arrest with:
    - Aspiration pneumonia
    - Hypoxic ischaemic encephalopathy.

4. Professor Duflou's opinion is not in dispute.

5. Dean had a long history of mental health and substance abuse problems. He had been discharged from the Adult Mental Health Unit (AMHU) on 1 August 2019. He subsequently lived with his parents Michael Brice and Caterina Brice. They experienced many difficulties with Dean. He was living with them when he took what is believed to be an accidental overdose which caused his death, although that did not occur in their home.

6. Mr and Mrs Brice submit that the inquest should investigate the treatment and care received by Dean while in the AMHU and his discharge from it. They have written several letters. Their submissions are contained in one dated 29 November 2021 addressed to me (Exhibit B) and a second dated 27 January 2022 which was tendered at the directions hearing and read onto the record by Mrs Brice. In addition, Mr and Mrs Brice sent a letter to me with further submissions after the hearing. No directions had been made for the delivery of further submissions. Despite that, as a matter of courtesy, I have read and had regard to those additional submissions.

7. The submissions of Mr and Mrs Brice set out in summary what was the long and painful experiences of the family in trying to deal with Dean's problems and obtain assistance for him.

8. For her part, Counsel assisting the Coroner, Ms Sarah Baker-Goldsmith, submits that the scope of the inquest is dictated by the requirement that it be limited to matters going to the cause of Dean's death. According to the submission, the broader scope sought by Mr and Mrs Brice goes beyond investigation of the cause of Dean's death.

9. As a preliminary observation I note that Dean's death occurred more than seven months after his discharge from the AMHU.

10. The scope of a Coroner's authority was the subject of analysis by the ACT Full Court of the Supreme Court in *R v Doogan; ex-parte Lucas-Smith & Ors* [2005] ACTSC 74, albeit in connection with a fire enquiry rather than a death inquest. Nevertheless, the principles are the same. Their Honours had this to say at [29]:

    > *A line must be drawn at some point beyond which, even if relevant, factors which come to light will be considered too remote from the event to be regarded as causative. The point where such a line is to be drawn must be determined not by the application of some concrete rule, but by what is described as the "common sense" test of causation affirmed by the High Court of Australia in* March v E & MH Stramare Pty Ltd *(1991) 171 CLR 506. The application of that test will obviously depend upon the circumstances of the case and, in the context of a coronial inquiry, it may be influenced by the limited scope of the inquiry which, as we have mentioned, does not extend to the resolution of collateral issues relating to compensation or the attribution of blame.*

11. The argument about the scope of the inquest centres around the combined effect of Dean's mental health problems and his substance abuse. Dean had both mental health and substance abuse problems. He received treatment at the AMHU for the former but not the latter. Attempts were made to interest him in drug rehabilitation, but he did not engage with them. Mr and Mrs Brice say that was hardly surprising – Dean lacked insight into the relationship between his mental health problems and both those problems and the cognitive effects of his drug use compromised his ability to make any rational choices about drug rehabilitation. Mr and Mrs Brice submit that, as a result Dean's treatment was not "holistic" and the lack of treatment for his drug abuse problems would inevitably and foreseeably lead, as it tragically did, to a deterioration of his overall condition.

12. Mr and Mrs Brice submit that there is an obvious gap in the treatment options available to persons who suffer from both mental health and substance abuse problems which should be the subject of investigation at the inquest.

13. I have more to say later about the treatment for both mental health and substance abuse, but I will record here the conclusion I have reached about the scope of the inquest.

14. I have already mentioned the in excess of seven month period which had elapsed between Dean's discharge and his death. There is no suggestion that anything actively done by or on behalf of the AMHU in the intervening period made any direct contribution to his death. The evidence points to Dean's death being an accident albeit as a result of his intentional ingestion of drugs apparently given to him by an acquaintance. It is not in contest that Dean did not engage with suggestions/recommendations made to him about drug rehabilitation.

15. In their letter to me dated 31 January 2022, Mr and Mrs Brice draw attention to sections 59, 60 and 61 of the *Mental Health Act 2015* and submit that these provisions enable a person to be admitted, and involuntarily detained, to an approved mental health facility to undertake a counselling, training, therapeutic or rehabilitation program.

16. It is useful to set out in full section 59:

59 Content of psychiatric treatment order

(1) A psychiatric treatment order made in relation to a person may state 1 or more of the following:

(a) an approved mental health facility to which the person may be admitted;
(b) that the person must do either or both of the following:

(i) undergo psychiatric treatment, other than electroconvulsive therapy or psychiatric surgery;
(ii) undertake a counselling, training, therapeutic or rehabilitation program;

(c) that limits may be imposed on communication between the person and other people.

(2) A psychiatric treatment order made in relation to a person must—

(a) state that the person must comply with any determination made under section 62 (Role of chief psychiatrist—psychiatric treatment order); and

(b) be accompanied by a statement about how the person meets the criteria under section 58 (2) (Psychiatric treatment order).

(3) A psychiatric treatment order must not include any requirement mentioned in section 61 (1) (Content of restriction order made with psychiatric treatment order).

17. Part of the evidence before me comprises a copy of a letter from Katrina Rea, the Executive Director of Mental Health, Justice Health and Alcohol & Drug Services, Canberra Health Services to Mr and Mrs Brice dated 21 December 2021 (Exhibit C). In that letter Ms Rea says:

> *"The Drug and Alcohol team at the hospital had reviewed Dean and stated that he was in the pre-contemplative stage of recovery from drug and alcohol use.* ***In the ACT, orders under the Mental Health Act 2015 cannot be used to force treatment for drug and alcohol dependence.*** *Drug rehabilitation must be sought voluntarily."*

18. And later:

> *"Attempts at holistic treatment for Dean's condition were made. Alcohol and drug treatment was offered on multiple occasions. Unfortunately, it is apparent that Dean was not truly contemplating ceasing his drug use, which was also the assessment of the specialist Drug and Alcohol team involved while in AMHU.* ***For the reasons noted above, such treatment cannot be enforced under the current statutory framework.****"* [emphasis added]

19. It is apparent from Exhibit C that Canberra Health Services interprets the legislative power for ACAT to order a person to undertake a "counselling, training, therapeutic or rehabilitation program" as being limited to a program etc which is directed towards and is part of the treatment for the person's mental health condition, and not for any broader purpose such as drug rehabilitation. Given the objects of the Act and the general approach in it of minimising restrictions on the freedom of choice and movement of the person, that interpretation is likely to be a legally correct one.

20. Having reached that conclusion the position remains that it was not possible for any order to be made imposing mandatory drug rehabilitation treatment for Dean.

21. In the circumstances I am not persuaded that the relationship between Dean's treatment in the AMHU or his subsequent discharge from the unit bears a sufficiently close relationship to his death to be regarded as causative, or contributory in the sense to be applied for the purposes of the *Coroners Act 1997*.

22. The directions I make therefore are, subject to any further order, as follows:

    a. The scope of the inquest does not extend to investigation into the treatment received by Dean at AMHU or his discharge from it.

    b. The inquest proceed on the basis of the written material already tendered into evidence and without calling any witness to give oral testimony.

    c. The inquest take place at a time and place to be determined.

23. I said that I would make some additional comments about treatment for both mental health and substance abuse.

24. In support of their submissions Mr and Mrs Brice refer to the *Productivity Commission Inquiry Report into Mental Health in Australia*, Report no. 95 (2020).

25. The Commission's terms of reference were as follows:

> *The Commission should consider the role of mental health in supporting economic participation, enhancing productivity and economic growth. It should make recommendations, as necessary, to improve population mental health, so as to realise economic and social participation and productivity benefits over the long term.*
>
> *Without limiting related matters on which the Commission may report, the Commission should:*
>
> - *examine the effect of supporting mental health on economic and social participation, productivity and the Australian economy;*
> - *examine how sectors beyond health, including education, employment, social services, housing and justice, can contribute to improving mental health and economic participation and productivity;*
> - *examine the effectiveness of current programs and initiatives across all jurisdictions to improve mental health, suicide prevention and participation, including by governments, employers and professional groups;*
> - *assess whether the current investment in mental health is delivering value for money and the best outcomes for individuals, their families, society and the economy;*
> - *draw on domestic and international policies and experience, where appropriate; and*
> - *develop a framework to measure and report the outcomes of mental health policies and investment on participation, productivity and economic growth over the long term.*

26. Chapter 14.2 of the report deals with what it refers to as "substance use comorbidities". It concludes that substance use comorbidities are common, and that persons with such comorbidities do not receive integrated care and experience poor outcomes. The report identifies that governments and other stakeholders have known for some time that many people with substance use comorbidities are not receiving adequate care. It goes on to refer to the many plans, initiatives or strategies which have been developed over the last 20 years at national, state and territory government levels and elsewhere to address comorbidity before concluding that, despite them and previous reviews identifying the same problems, "insufficient progress has been made and problems remain".

27. The Report’s recommendations in this area, appearing under the heading “ACTION 14.2 – Integrating mental health and substance use planning, commissioning and service provision” includes the following:

    - *Regional commissioning bodies, in conjunction with the relevant State and Territory Government departments, should integrate commissioning of substance use and mental health services.*

    - *Governments should require mental health services, including hospitals and clinical community health services, to ensure treatment is provided for both substance use and other mental disorders for people with both conditions.*

    - *Governments should provide for this treatment within specialised, integrated mental illness and substance use disorder services (‘dual diagnosis’ services) to meet regional needs or by ensuring integrated treatment and care delivery where the mental health service and the alcohol and other drug services are organisationally separated.*

    - *Governments should require mental health services and alcohol and other drug services to jointly develop and implement operational guidelines, including:*

        - *screening for substance use and mental illness*
        - *referral pathways between alcohol and other drug and mental health services, where service arrangements exist for the consumer with a comorbid condition*
        - *working with professional colleges, associations, and bodies, and education providers to develop and provide training, guidelines and other resources for mental health and alcohol and other drug workers so they can provide evidence-based, coordinated care for comorbid conditions.*

    - *Governments should continue to monitor and report on outcomes for people with substance use comorbidities, consistent with the Productivity Commission’s framework for monitoring, evaluation and research (chapter 24).*

28. In their letter of 31 January 2022 to me, Mr and Mrs Brice clarified that they would have liked Dean to have received “integrated treatment across flexible modalities with multi-faceted interventions for people suffering mental illness and substance use comorbidities”. They state that this treatment is available elsewhere in Australia but not in the ACT.

29. The Commission’s enquiry was far reaching and extended over some 18 months. It is apparent on the face of the Report that it received submissions from a large number of interested parties and organisations. The conclusions and recommendations to which I have referred appear to be well-founded having regard to the extracts of submissions which are reproduced in the Report.

30. It is apparent that there is no simple or straightforward answer to the difficulties which are the subject of the Report and recommendations, and which are apparent in Dean’s case. That may be at least in part as a result of the dilemma presented by the

traditional clinical approach that drug treatment must be voluntary to be effective when many mental health patients are incapable of making rational choices in their best interests. (I made some observations in my decision in the *Inquest into the death of Kaitlin McGill* [2020] ACTCD 7 about circumstances where giving primacy to the personal choices made by mental health patients may not be in their best interests.)

31. Despite my conclusion about the scope of the inquest not extending to examination of Dean's treatment in the AMHU or his discharge from that facility, I observe that this conclusion would not necessarily exclude the hearing for the inquest into Dean's death resulting in a recommendation supporting the recommendations from the Productivity Commission Report and urging the ACT Government to act upon them.

I certify that the preceding [31] numbered paragraphs are a true copy of the Reasons for Decision of his Honour Magistrate Morrison.

Associate: Xiao Lin King

Date: 24 February 2022