



**CORONERS COURT OF NEW SOUTH WALES
44-46 Parramatta Road GLEBE**

Jurisdiction: Coronial

Name of Deceased: Mary Ann ROBERTS

File number: 281/05

Hearing dates: 4/5/09; 5/5/09; 6/5/09; 7/5/09; 8/5/09; 11/5/09; 12/5/09;
13/5/09; 14/5/09; 16/11/09; 17/11/09; 18/11/09;
23/11/09 and 24/11/09

Date of Decision: 14 December 2010

Coroner: M.MacPherson

Representation: Chris Longergan of counsel instructed by Tracey Stevens Solicitor with Crown Solicitors Office; Neale Dawson Solicitor for Justice Health; Tony McAvoy of counsel for nurses Annette Griffin, Patricia Thompson and Judith Baldwin; Gillian Mahony of counsel for Corrective Services New South Wales and Robyn Burgess of counsel for the son of Mary Roberts

Introduction

- 1 On 24 September 2004 Mary Roberts, then aged 73 years, was sentenced in the District Court of New South Wales by His Honour Judge Freeman DCJ to five (5) years imprisonment with a non-parole period of three (3) years, following pleas of guilty to twelve (12) charges involving dishonesty against the Commonwealth.¹
- 2 Mary Roberts would have been eligible for supervised parole on 23 September 2007,² however, four and a half months later on 8 February 2005, she was admitted to the Prince of Wales Hospital where, seven (7) days later on Tuesday 15 February 2005, she died.

Role of Coroner

- 3 My role as Coroner is to establish, if possible, the identity, the date of death, the place of death and the manner and cause of death. The formal finding will be recorded at the Registry of Births, Deaths and Marriages
- 4 A Coronial Inquest is essentially an enquiry. It is not a criminal or civil trial in which two opposing parties engage in legal combat. It is not the role of the Coroner to attribute fault or make findings in relation to negligence or breach of duty of care
- 5 Another important function of an inquest is the making of recommendations, which are necessary or desirable in relation to any matter connected with a death. In this way the coronial proceedings can be forward looking, aiming to prevent future deaths, rather than allocating blame.
- 6 I say this not so much for the benefit of leaned counsel, but more for the benefit of the family and friends of Mary Roberts who may not always appreciate and understand the role of a Coroner or the Coronial Inquest.

¹ Social Security Fraud ss.29B and 29D of the Commonwealth Crimes Act 1914 and s.131.5 (1) of the Criminal Code 1995

² Volume 1 Statement of OIC Detective Senior Constable. Pelli Williams page 21 paragraph 20

Background

- 7 On the 24 September 2004, Mary Roberts entered the New South Wales correctional system and was taken to Long Bay Correctional Centre where she was admitted into B Ward of Long Bay Hospital where she remained, except for an admission to Prince of Wales Hospital at Randwick on 25 September, until 19 October 2004.³
- 8 From the 19 October 2004 until she died on 15 February 2005, Mary Roberts, who was by any standard a vulnerable and ailing woman, was transferred on no less than ten (10) separate occasions between various facilities within the correctional system and public hospitals.
- 9 The following is a chronology of Mary Roberts' transfers following her being sentenced on 24 September 2004;

24 September 2004	Mary Roberts taken into custody – Long Bay Correctional Centre – B Ward Long Bay Hospital (LBAH).
25 September 2004	Mary Roberts from LBAH to Prince of Wales Randwick (by Ambulance) – thence back to LBAH.
19 October 2004	Mary Roberts transferred from LBAH to Mulawa Correctional Centre, Silverwater (Mulawa Annexe).
25 October 2004	Mary Roberts transferred from Mulawa Annexe to Dillwynnia (via Tarago van) at 5.00pm.
25 October 2004	Mary Roberts transferred from Dillwynnia back to Mulawa Annexe.
30 November 2004	Attempt made to take Mary Roberts to Mum Shirl Unit at Mulawa but refused by DCS staff.

³ Volume 1 Statement of OIC page 12 paragraph 24

31 December 2004	Mary Roberts transferred from Mulawa Annexe to Dillwynnia.
4 January 2005	Mary Roberts transferred from Dillwynnia back to Mulawa Annexe.
19 January 2005	Mary Roberts transferred from Mulawa Annexe to Auburn Hospital.
1 February 2005	Mary Roberts transferred from Auburn Hospital to B Ward LBAH.
8 December 2005	Mary Roberts transferred from B Ward LBAH to Prince of Wales Hospital Randwick.

10 On 8 February 2005, and following further deterioration in her health, that she was admitted to the Prince of Wales Hospital where, seven (7) days later on Tuesday 15 February 2005, she died at approximately 23.00 hours.

11 The autopsy report of Dr Paul Botterill, Forensic Pathology, Department of Forensic Medicine, Glebe and dated 5 March 2006 gives the direct cause of death as being BACTERIAL ENDOCARDITIS ORGANISM (not identified). In the summary section of Dr Botterill's Autopsy Report, he observed: -

“In plain terms autopsy findings included hardening and narrowing of the arteries of the heart and the rest of the body, scaring of the heart muscle, a mass on one of the heart valves consistent with the consequences of infection of the blood stream, probable cancer of the lung, scaring of the lungs and kidneys, evidence of previous belly surgery and a relatively small brain consistent with the effects of past strokes. At the time of autopsy the cause of death was not completely clear although possible contributions included ischaemic heart disease, the consequences of mitral valve endocarditis and sepsis, pneumonia and a further stroke.”⁴ (Emphasis added)

⁴ Volume 3 see generally `page 837

A DEATH IN CUSTODY

- 12 Notwithstanding the fact that at the time of her death Mary Roberts was at the Prince of Wales Hospital, Randwick, she was otherwise lawfully detained and in the custody of the Corrective Services NSW. Accordingly her death occurred at a point of time that she was in lawful custody.⁵ As such an Inquest into her death was and is mandatory by virtue of ss.13A and 14B of the now repealed Coroners Act 1980.
- 13 It should be noted that from 1 January 2010 the Coroners Act 2009 (“the 2009 Act”) came into effect, and pursuant to Schedule 2 to the 2009 Act (“SAVINGS, TRANSITION AND OTHER PROVISIONS”) and particularly cl.14 thereof, this Inquest is a part completed Inquest before the repeal day of the Coroners Act 1980.
- 14 Accordingly, from 1 January 2010, the Inquest was subject to the 2009 Act in same way as that Act applies to an Inquest commenced on or after 1 January 2010. In any event the provisions of ss.23 and 27 of the 2009 Act, in large measure, replicate the provisions of ss.13A and 14B of the repealed Coroners Act 1980.

ISSUES

- 15 One issue that was not considered or investigated for the purposes of this Inquest was whether Mary Roberts ought have received a custodial sentence for the offences to which she pleaded guilty. The appropriateness of a custodial sentence being imposed was, and indeed clearly must remain, totally within the domain of the sentencing Court, being the District Court of New South Wales.
- 16 What was relevant from the sentencing hearing and was dealt with in detail in this Inquest was the medical condition and ailments experienced by Mary Roberts at the time of sentencing as well as the perceived facilities and services necessary for her care and treatment if she was detained by way of a full-time custodial sentence.
- 17 The *first issue* concerns whether the evidence given by Dr Roberts to the District Court in September 2004 at the sentencing hearing was accurate and adequate.

⁵ See generally s13A(1)(c) of the Coroners Act 1980 as it then applied

- 18 That issue concerns the accuracy and completeness of the evidence provided to the sentencing Court as to the availability of resources and services, as at September 2004, so as to treat and care for Mary Roberts if she received a full-time custodial sentence. That evidence was proffered to the sentencing Court on behalf of Justice Health at the specific request of the Prosecutor by the then Acting Director of Primary Health, Dr Jill Roberts.
- 19 A consideration of this issue will also touch upon the availability of medical and other facilities to Justice Health to care for a person of the age, and disabilities that afflicted Mary Roberts at the time of her sentencing.
- 20 The *second issue* concerns whether there was any valid reason as to why no apparent attempt was made by Justice Health to medically assess Mary Roberts prior to Dr Roberts giving her opinion to the District Court.
- 21 The *third issue* concerns the reasons why, and the effect(s) resulting from, the fact that Justice Health did not undertake an assessment of Mary Roberts' dementia, particularly from a geriatric medical viewpoint, immediately following her entry to full-time custody.
- 22 The *fourth issue* concerns the discharge of Mary Roberts from Long Bay Hospital on 19th October 2009 and then being transferred to Mulawa Correctional Centre and the Annexe thereto – Mulawa Correctional Centre at that time being a facility which was acknowledged as being a sub-standard facility, both in physical presentation and the facilities available.
- 23 The *fifth issue* concerns the apparent lack of understanding and appreciation by Justice Health staff and Corrective Services NSW staff as to the availability of facilities and services in various Correctional Centres.
- 24 The *sixth issue* concerns the fact that during the period from October 2004 through to February 2005, Mary Roberts was transferred within Correctional facilities (Justice Health facilities and public Hospitals) on no less than ten (10) occasions.
- 25 The *seventh issue* concerns the apparent lack of cooperation between Justice Health and Corrective Services NSW staff concerning the provision of assistance to inmates who require medical attention and, in particular, the case of Mary Roberts.

- 26 The *eighth issue* concerns the apparent loss of some medical records of Justice Health referable to Mary Roberts.
- 27 The *ninth issue* concerns the appropriateness and accuracy of various entries made on the available nursing case notes referable to Mary Roberts.
- 28 The *tenth issue* concerns the cause of death of the deceased Mary Roberts

PRELIMINARY MATTERS

- 29 Before considering those issues, it is appropriate to consider and note three (3) preliminary matters.

The Justice Health Statement and Apology

- 30 The first matter concerns helpful statement made by Mr Dawson, who appears for and on behalf of Justice Health, at the commencement of the Inquest on 4 May 2009. The effect of what was said on behalf of Justice Health does impact, to varying degrees, on the identified issues.
- 31 Specifically Mr Dawson provided to the Inquest a written statement behalf of Justice Health and I quote: -

*“... Justice Health apologises to Ms Roberts’ family. It is clear that Ms Roberts’ time under the care of Justice Health **was not managed as well as it should have been.** Following the root cause analysis conducted in relation to Ms Roberts’ death Justice Health has made a number of significant improvements to ensure that improved care is provided to similar patients in the future.*

Justice Health acknowledges the lack of formal assessment of Ms Roberts’ dementia following her imprisonment. The assessment of cognitive functioning within the custodial environment falls at the interface between Justice Health professionals and psychologists who are employed by the Department of Corrective Services. There is an ongoing effort to improve communications between these DCS staff and health professionals employed by Justice Health and the new hospital at Long Bay and new case management procedures have improved this communication.

Justice Health acknowledges the missing documentation in relation to the patient’s case notes and a missing ward book. For this Justice Health apologises to the court and to Ms Roberts’ family. Justice Health is not aware

of any deliberate removal of any records. It has conducted all possible searches. At any one time more than 25,000 active medical records are in circulation within the Justice Health system service statewide. Justice Health has implemented initiatives to attempt to improve document management.

Justice Health further acknowledges that the nursing and medical notes in Ms Roberts' file are not uniformly of an acceptable standard. Justice Health is embarking on a program or ongoing in-serving of its staff, particularly its nursing staff to ensure that all notes meet best practice. Ms Roberts was let down in relation to medical appointments which were either not made or were made and not kept. The co-operation of external medical appointments, particularly for women in custody, was not ideal at that time.

Appointments were negotiated locally with DCS and the ability of DCS to transport the number of patients to outside appointments was severely impacted by any change to DCS staffing at the centre in question. Medical appointments are now centrally co-ordinated in an attempt to ensure that staffing levels are pre-arranged centrally and fewer appointments missed. Justice Health acknowledges that it faced considerable difficulties in finding an appropriate placement for Ms Roberts, as her condition deteriorated and the movement from place to place must have been distressing to her.

For any role Justice Health played in those less than ideal placements and unnecessary movements, Justice Health expresses its deepest apologies to her family. The placements of Ms Roberts into a site most appropriate for her health care was affected by a number of factors. Mulawa's environment was certainly not ideal, including both the physical facilities and limited access to patients via DCS even though 24 hour nursing staff was available. As well, Mulawa was facing demolition and construction which unfortunately added to the difficulties at that site.

Dillwynnia, through its accommodation was more suitable, did not at that time have access to 24 hour nursing staff as it had only recently opened and was still in the process of commissioning and building to a full staffing complement. B ward west in the old hospital at Long Bay generally housed men simply because of the overwhelming majority of prisoners were men, but it did take female patients when necessary. Unfortunately this meant that female numbers were low and often the only other women for patients to socialise with in B ward east and these women were undergoing treatment for severe mental illness.

Justice Health notes that the material before the court indicates that there were differences of opinion between nursing staff in relation to Ms Roberts' level of functioning and the reasons for such things as her lack of mobility.

Justice Health is sorry for any distress this may have caused Ms Roberts. Justice Health intends to in-service its staff in relation to the management of the aged and recognition of the early stages of dementia. Justice Health now had the opportunity to place a patient such as Ms Roberts in a specialist aged care wing within the new hospital at Long Bay, which also has a geriatrician on staff.

*The clinic Mulawa now called Silverwater Women's Correctional Centre, has been rebuilt. Dillwynnia was 24 hour nursing staff. As well, Justice Health has established a chronic care team and an aged care steering committee, both of which would oversee the management of a patient such as Ms Roberts. **One of the outcomes of this framework is that patients such as Ms Roberts are now carefully case managed as Ms Roberts should have been.** Movement of patients with complex needs should now only occur following consultation between health professionals working at the point of care, expert health professionals within Justice Health and DCS staff.*

***In many respects Ms Roberts fell through the cracks in what was at the time a system struggling to cope with inadequate facilities for patients such as Ms Roberts.** Justice Health hopes that such a multitude of factors will not emerge in such a way as to negatively impact upon the dignity and comfort of those in its care in the future. Ms Roberts entered the care of Justice Health with a complex combination of significant medical problems. It is acknowledged that the patient journey for Ms Roberts was less than ideal but such complex presentations have poor prognosis.”⁶ (Emphasis added)*

32 As a consequence of this statement the following points are now acknowledged by Justice Health: -

That the care provided by Justice Health to Mary Roberts was not managed as well as it should have been following her entry into custody on 24 September 2004.

There was a lack of formal assessment of Mary Roberts' dementia following her entry into custody.

That notwithstanding the evidence provided to the sentencing Court by Dr Roberts Justice Health faced considerable difficulties in finding an appropriate placement, within the custodial system, as where best to treat Mary Roberts and, as a consequence, her condition deteriorated. Further, that her various movements between various locations within the custody system, would have caused distress to Mary Roberts.

That the “Mulawa environment” was not an “ideal place” from the viewpoint of the physical facilities there available that included limited access available to patients, notwithstanding the supposed availability of 24 hour nursing care to inmates there detained.

That the Dillwynnia Correctional Centre, although newly opened as at the end of 2004/early 2005, did not, at the time of the placement of Mary Roberts, have 24 hour nursing care.

⁶ Exhibit '3'

That there were differing opinions amongst professional nursing staff of Justice Health as to Mary Roberts' level of functioning and the reasons as to her apparent lack of mobility.

THE BRENNAN EVIDENCE

33 Dr Nicholas Brennan provided evidence to the sentencing Court in September 2004, on behalf of Mary Roberts. Dr Brennan, the Director of Geriatric Services at the War Memorial Hospital Waverley, had prior to August 2004, reviewed Mary Roberts on two (2) occasions.

34 Dr Brennan told the sentencing Court;

*“Well Mrs Roberts has a number of medical conditions that I think combined, make her a very dependent person. This is a combination of cerebrovascular disease and strokes with the dementia secondary to that. That dementia has made her such that she requires prompting and reminding to do things. She’s resistive of personal care. She really needs people around her to actually do things for her. She would need assistance in most of the basic activities of daily living. At this stage she is requiring some supervision with personal care and that would not ordinarily be appropriately provided by non-professional or allied health staff. Mrs Roberts is also suffering from diabetes, so she would need a twice daily monitoring of her blood sugar levels and appropriate adjustment of her insulin requirements accordingly. She’s also taking a blood thinning agent called Warfarin, which would need to be regularly adjusted or monitored and I feel that she would need attention to the psychological aspects of what a custodial sentence might imply. **I believe that the care that she’s getting at the moment is really the one thing that is keeping her going.** The twice weekly support of socialisation activities at the hospital is really one of the few things which this lady enjoys. **So take that away from her via virtue of a custodial sentence and I think her depression will substantially deteriorate.**”⁷ (My emphasis added)*

35 In his written report to that Court of 19 August 2004 Dr Brennan indicated;

*“I am certainly of the opinion that she would not be fit to undertake a custodial sentence. If she were to be taken out of her current living environment, **she would require a nursing home level of care.**”⁸ (Emphasis added)*

36 In circumstances where Justice Health had made no individual assessment of Mary Roberts for the purposes of the information provided by Dr Jill Roberts to the Office of

⁷ Volume 1 pages 147 to 156 and his report at paged 167

the Director of Public Prosecutions and then to the sentencing Court, the specialist geriatric medical opinion of Dr Brennan would have been particularly valuable to Justice Health at the time as to the level and standard of treatment that needed to be provided to Mary Roberts.

37 The “*Brennan Evidence*” of September 2004 was available to Justice Health prior to, and at the date of entry of Mary Roberts to full-time custody. It could have been utilised to quickly and efficiently implement a diagnostic and treatment regime for Mary Roberts once she entered custody.

THE STATUTORY RESPONSIBILITY OF JUSTICE HEALTH AND CORRECTIVE SERVICES NEW SOUTH WALES

38 The third preliminary point concerns the statutory responsibilities of Justice Health and Correctives Services NSW with respect to the provisions of health services to inmates.

39 Justice Health has imposed upon it the statutory responsibility to provide health services to offenders and other persons in custody. For this purpose s.236A of the *Crimes (Administration of Sentences) Act 1999* (“the CAS Act”) provides: -

Justice Health, in addition to any other functions conferred on it by or under this or any other Act or law, has the following functions:

(a) to provide health services to offenders and other persons in custody within the meaning of section 249,

(b) to monitor the provision of health services in managed correctional centres,

(c) to prevent the spread of infectious diseases in, or in relation to, correctional centres,

(d) to keep medical records of offenders and other persons in custody within the meaning of section 249,

(e) to provide advice to the Commissioner on the diet, exercise, clothing, capacity to work and general hygiene of inmate..

⁸ Ibid

40 Further it was ultimately Corrective Services NSW that is principally involved in the administration of the CAS Act as regards the detention, transfer and classification of inmates who were held within Correctional Centres.⁹ In this respect, whilst there was some evidence available to the Inquest to suggest that recommendations are made from time to time by Justice Health and Corrective Services NSW as to where inmates ought be detained, particularly for the purpose of providing health services, it was ultimately the Commissioner who is responsible for the functions as just identified.¹⁰

The First Issue

The adequacy and accuracy of the evidence of Dr Roberts

41 Dr Roberts gave evidence to the Inquest, commencing on 5 May 2009¹¹. Dr Roberts indicated that her report, dated 9 March 2009, was prepared for the purposes of the Inquest and resulted from a request of the legal advisors of Justice Health.¹² In that report Dr Roberts refers to the evidence given at, and the report she prepared for, the sentencing hearing.¹³ Dr Roberts emphasised that her written report, as tendered to the District Court, was based upon the premise that it was not considered to be particularly specific to Mary Roberts as it was not possible to give a “*very accurate medical*” opinion with respect to a patient whom she had not seen.¹⁴ Further, that her report was tendered so as to answer specific questions set out in a letter to her from the Office of the Director of Public Prosecutions.¹⁵

42 Dr Roberts did confirm that she was the person who arranged for Mary Roberts to go directly to B Ward at Long Bay Hospital after her sentencing.¹⁶ Dr Roberts also confirmed that Mary Roberts was to be medically “*assessed*” on entry to full-time custody. It was her understanding that such an assessment did in fact take place.

⁹ See s.3(1) of the CAS Act, definition of “*Corrective Services NSW*”

¹⁰ Volume 1 page 11 paragraph 22

¹¹ Transcript 5 May 2009 page 13

¹² Volume 5 – supplementary materials of the brief at page **1610**.

¹³ Ibid paragraph 38 at **1616**

¹⁴ Transcript 5 May 2009 page 19 paragraph 39 and Volume 5 at **1616**

¹⁵ Ibid

¹⁶ Ibid at **1617**

43 However Justice Health acknowledged in the statement of the 4 May 2009 to the Inquest that no formal assessment of Mary Roberts' dementia was made following her sentencing to full-time custody.¹⁷

44 Dr Roberts' direct involvement with Mary Roberts was then limited to a telephone conference "*hook up*" that took place on 6 January 2005, and that she had been shown some case notes from the progress notes regarding that conference for the purposes of her statement.¹⁸

45 In her statement of the 9 March 2009 she said;

*"Apart from the telephone conference on 6th January 2005, I did not have any direct contact nor, to the best of my recollection, was I asked to give any particular advice in relation to the medical care or appropriate placement of Ms Roberts in the prison system"*¹⁹

46 Dr Roberts said, in her statement of 9 March 2009, that she answered the questions put to her at the sentencing hearing "*in a general fashion*"²⁰ and she was not supplied with any medical reports of Mary Roberts' treating medical practitioners prior to her attending the District Court.²¹

47 Dr Roberts confirmed that she was asked to remain in Court so as to listen to Dr Brennan's evidence given before the sentencing Court and she states that having read Dr Brennan's report and then hearing his oral evidence, she was still not clear about Ms Roberts' level of functioning.²²

48 There is no doubt that Dr Brennan provided to the sentencing Court evidence that documented, in detail, Mary Roberts' level of functioning.²³

49 In her oral evidence Dr Roberts, whilst adopting unequivocally the opening statement made on behalf of Justice Health by Mr Dawson²⁴ seemed to have difficulty in the answering directly the question put to her whether she still "*stood by her statement in the*

¹⁷ Transcript 4 May 2009 page 12 para 45 and exhibit "3"

¹⁸ Volume 5 pages 1617 to 1618

¹⁹ Volume 5 page 1618 paragraph 43

²⁰ Ibid paragraph 16

²¹ Volume 5 page 1618 paragraph 18

²² Ibid see generally pages 1612 to 1613

²³ Volume 1 pages 147 to 156 and 166

sentencing Court” that a high standard of nursing, medical, psychiatric and specialist care would be provided to Mary Roberts.²⁵ Dr Roberts confirmed that she did not discuss with officers of Corrective Services NSW her views concerning Mary Roberts if she received a full-time custodial sentence.²⁶

50 In addition, when questioned in this hearing regarding certain aspects of her evidence given before the District Court as to her opinion at that time as to where Mary Roberts would be detained, being Emu Plains,²⁷ Dr Roberts essentially denied that she held this position.²⁸

51 Further Dr Roberts acknowledged that she was unaware of some of the facilities and conditions at the Annexe at Mulawa at that time.²⁹ In addition Dr Roberts was asked this question by Counsel for the family;

“Q. Having been asked to make inquiries by the Director of Public Prosecutions it was your obligation, was it not, to provide accurate information to the Court?”

*A. I didn’t provide any accurate information about the disabled bathroom facilities at Mulawa Annexe and I – look, I withdraw that, I – it – there – as I said, we have 79 sites across the whole State, we have a huge load of responsibilities, I think it’s impractical to expect that I would have visited every single possible site that she may have gone to and examine every bathroom facility in every site that she may have possibly gone to. I don’t think that would have been – an impractical expectation of me to have done”.*³⁰

52 Dr Roberts also confirmed that she did not believe that she had spoken to Registered Nurse Annette Griffin about the facilities at Mulawa, prior to giving her evidence to the sentencing Court.³¹

Finding

53 In all the circumstances significant segments of the evidence given before the sentencing Court by Dr Roberts was neither accurate nor reliable. This is because it was not based

²⁴ Transcript 5 May 2009 page 22 para 9,

²⁵ Ibid pages 21 and 22

²⁶ Transcript 5 May 2009 pages 23 and 24

²⁷ Volume 5 page 1615, Volume 1 pages 143, 145 and 157

²⁸ Transcript 5 May 2009 page 24 paragraph 6

²⁹ Transcript 5 May 2009 page 61 paragraphs 21 to 45

³⁰ Ibid page 62 paragraph 11

³¹ Ibid paragraph 36

upon the known or established factual circumstances of the various facilities that were said to be available through the Correctional system. It was only during the evidence given at the Inquest that it became clear that Dr Roberts' evidence to the sentencing Court was "*generalised*" and not particularly specific to the matter of Mary Roberts. Accordingly the evidence given by Dr Roberts to the District Court in September 2004 did not, in large measure, accurately portray the medical and physical facilities available to Justice Health to care for a person of the age, illnesses and disabilities that afflicted Mary Roberts at the time.

54 It should be noted that in recent times Corrective Services NSW has initiated contact with the Judicial Commission of NSW to formulate mechanisms for the provision of information to the Judiciary about programs, services, resources and facilities available to inmates within Correctional Centres.³²

The Second Issue

The failure of Justice Health to have Mary Roberts medically assessed prior to Dr Roberts giving evidence to the sentencing Court

55 It follows from the findings made with respect to the *First Issue* that the only purposeful and relevant medical assessment available at the time of sentencing Mary Roberts was the evidence of Dr Brennan³³ and that no such assessment was attempted nor sought by or on behalf of Justice Health. Had such an assessment been made by Justice Health for the purposes of the evidence to be presented to the sentencing Court, Justice Health would have had a greater and more relevant appreciation of the views forcefully expressed, and relevant to, the condition of Mary Roberts as made by Dr Brennan.

Finding

56 That greater appreciation of Dr Brennan's evidence at the time of sentencing would, have led to a re-assessment of what was required immediately upon Mary Roberts entering the prison system. Certainly the level of her cognitive impairment, as described by Dr Brennan as being moderately severe, would have been fully appreciated³⁴ Such lack of

³² Statement of Rhonda Booby Exhibit "13" Transcript 24 November 2009 page 40 paragraph 7

³³ Volume 1 147 to 156 and 166

³⁴ Volume 1 page 168

assessment was a contributor to the poor standard of care provided to Mary Roberts by Justice Health once she entered the Correctional system.

The Third Issue

The failure of Justice Health to undertake an assessment of Mary Roberts' dementia following the entry of Mary Roberts into full-time custody

57 Justice Health has appropriately acknowledged the lack for formal assessment of Mary Roberts' dementia following her imprisonment. It is said that the assessment of cognitive function within the custodial environment falls at the interface between Justice Health professionals and psychologists employed by the Department of Corrective Services. Whilst that is said, it is nonetheless the position that Justice Health was certainly on notice, and Dr Roberts in particular, as to the views of a respected specialist geriatrician, Dr Brennan, as regards the level functioning and cognitive impairment of Mary Roberts prior to her being sentenced.

58 Dr Lawrence Varga, a medical practitioner and employee of Justice Health, gave evidence regarding his duties at B Ward Long Bay Hospital in 2004. When shown Dr Brennan's report he stated that he agreed with the conclusions therein and specifically as regards Mary Roberts being fit and able to undertake a custodial sentence. Dr Varga also agreed that if taken out of her current level of care Mary Roberts would require nursing home placement.³⁵

Finding

59 The failure of Justice Health to undertake an assessment of Mary Roberts' dementia following her entry into full-time custody adversely impacted upon the care and attention provided to her during the period in custody.

The Fourth Issue

The transfer of Mary Roberts to Mulawa from Long Bay Hospital

³⁵ Transcript 11 May 2009 page 11 paragraph 10

60 Dr Lawrence Varga signed the transfer documentation for Mary Roberts on 15 October 2004³⁶ and on 19 October Mary Roberts was transferred and detained at Mulawa Correctional Centre, particularly at the Annexe. Dr Varga gave evidence to the effect that he had nothing specific in mind as to where Mary Roberts would be transferred to after being taken from B Ward.³⁷

61 I then asked some questions in relation to Dr. Varga obtaining a geriatric assessment³⁸ by the Aged Care Assessment Team (ACAT);

“Q. Given the opinion that you agreed to by Dr Brennan, why wasn’t that [ACAT] considered in this case?”

*A. It seemed pointless. There was no question of her being released on medical grounds. The sentencing people were fully aware of her needs, ignored it and put her in gaol. What was the point of sought of doing the same thing again?”*³⁹

62 In relation to whether Justice Health had, as at 2004, facilities to deal with an aged and frail inmate such as Mary Roberts Dr. Varga’s stated;

*“Well, we were **struggling to cope**. Struggling to cope even in the male system. It was – there was one section at Long Bay Gaol which we had had a quite nice outdoor area and a clinic where some elderly people were housed, but it was still not the ideal thing ... so the elderly people were a strain. Difficult – placement difficulties, because I suppose a lack of a dedicated facility for them at that time”*⁴⁰ (Emphasis added)

63 Turning to Mulawa, the statement provided by Justice Health should be noted where it was acknowledged that Mulawa’s environment was “*not ideal*”, including both the physical facilities and the limited assess to patients, notwithstanding that 24 hour nursing was available.⁴¹

64 At the relevant time Mulawa was facing demolition and reconstruction taking place added to the difficulties already being experienced on site. Even Dr Roberts

³⁶ Volume 1 page 256

³⁷ Transcript 11 May 2009 page 11 paragraph 44

³⁸ Ibid page 17 paragraph 2

³⁹ Ibid paragraph 7

⁴⁰ Transcript 11 May 2009 page 19 paragraph 36

⁴¹ Exhibit “3”

acknowledged that whilst Mulawa had 24-hour nursing staff care, the facilities were otherwise run down.⁴²

65 The Officer in Charge Detective Senior Constable Peni Williams in her statement observed;

“The Annexe (at Mulawa) contacted (sic) eight beds which may or may not have been classed as in patient beds. According to several nursing staff employed at Mulawa Correctional Centre, from whom statements were obtained, at this time the facilities at the clinic and the Annexe were substandard. The clinic was secured by DCS and access to the clinic and the Annexe was facilitated by DCS staff. According to several Justice Health nurses DCS procedures prevented access to the cells without two officers present, even in the case of a medical emergency.”⁴³

The beds within Mulawa clinic were individual rooms and each room was like a cell with a locked door, with a viewing window in each door. One of the cells was designated as a camera cell and was for patients who required observation. The other seven cells were for sick inmates. The beds in the Mulawa clinic were basic beds with thin mattresses on them. They were not hospital beds and they did not have the ability to be raised or lowered. There were two or three general practitioner clinics a week with two doctors, Dr Penny Abbott and Dr Di Lawrence. The documents were not on duty 24 hours a day but there was always a primary health medical officer on call.”⁴⁴

66 Lesley Jordan was the Service Director, Women’s Health, Justice Health at the time Mary Roberts was incarcerated. Her responsibility concerned the management of health services provided to women in the custody of Corrective Services NSW. She provided a statement where she indicated that she did have an independent memory of Mary Roberts.⁴⁵ That was because she recalled that Mary Roberts was elderly and coming into custody as being “*old and frail*”⁴⁶

67 For the purposes of taking her statement the OIC, Detective. Senior Constable Williams showed Ms Jordan the original Justice Health file for Mary Roberts. However Ms Jordan stated that she could not “*specifically remember*” matters relating to the general

⁴² Volume 5 Statement Dr. Roberts 1618 at paragraph 42

⁴³ Volume 1 page 27 paragraph 41

⁴⁴ Ibid paragraph 42

⁴⁵ Volume 2 page 670

⁴⁶ Ibid page 672

management of Mary Roberts.⁴⁷ Ms Jordan further stated that whilst she could identify several entries made by her within the Justice Health notes for Mary Roberts where it is mentioned that “*I was notified of certain things regarding Ms Roberts*”, unfortunately she did not “*specifically remember*” these conversations.⁴⁸

68 Ms Jordan then gave evidence at the Inquest on 7 May 2009. During the course of her evidence she indicated that, in her view, Emu Plains was not a reasonable option as to where to detain Mary Roberts because it had no 24-hour health care. She also confirmed that her office was in fact located at the Mulawa complex and, accordingly, the clinic at Mulawa was well known to her.⁴⁹ .

69 When it was put to Ms Jordan whether she agreed with Dr Roberts’ statement given to the sentencing Court that “*Should the Court deem this appropriate [a custodial sentence], a high standard of nursing, medical, psychiatric and specialist care would be provided [to Mary Roberts]*”, Ms Jordan said that she did agree.⁵⁰ Ms Jordan however acknowledged that the facilities at Mulawa were “*substandard*”⁵¹

70 When asked the question, in her capacity as the Service Director, Women’s Health, for Justice Health, as to the available options for Mary Roberts given her age and frailty, Ms Jordan proffered the view that most appropriate place to accommodate her was Mulawa.⁵²

71 I was disappointed that Ms. Jordan had problems with her memory. On many occasions on 7^{May} 2009 she answered, “*I don’t recall*” or “*I do not specifically recall*”. Whilst it is appreciated that Ms Jordan, at the time she was called to give evidence in May 2009, was no longer employed by Justice Health, having resigned in September 2009, her poor memory of events and documentation is difficult to understand given that she held the responsible position of Service Director, Women’s Health for three (3) years. Added to this is the fact, which Ms Jordan acknowledged that Mary Roberts was a unique “*patient*” by reason of her age and condition.

⁴⁷ Ibid page 673 paragraph 18

⁴⁸ Ibid

⁴⁹ Transcript 7 May 2009 pages 26, 32 paragraph 5

⁵⁰ Ibid pages 41 and 42

⁵¹ Ibid page 42 paragraph 10

⁵² Transcript 7 May 2009 page 31 paragraph 19

- 72 One would have expected given the fact that a person like Mary Roberts had never been encountered in the custodial setting before, that Ms Jordan's recall of events would have been better and more detailed in all the circumstances.
- 73 In short the lack of any credible reasons for the transfer of Mary Roberts from B Ward to Mulawa is of concern. It may well be the position that ultimately the transfer from B Ward Long Bay Hospital to Mulawa was a result of a process of elimination, Dillwynnia not yet operational and Emu Plains without 24-hour health care.
- 74 It gives the impression that apart from Ward B at Long Bay, there was no other facility within the system that could properly accommodate Mary Roberts but the relevant persons with the authority to say so and take appropriate action, in either Justice Health or Corrective Services NSW, could not or would not make that decision and have her moved to either B Ward Long Bay or a suitable facility outside the custodial setting.

Finding

- 75 The Transferring of Mary Roberts From B Ward Long Bay Hospital to the Annexe at Mulawa, and all that that entails particularly as regards the lack of facilities gave rise to a significantly decreased level of care with a consequent deterioration in her overall health.

The Fifth Issue

The lack of understanding and appreciation by Justice Health staff of facilities available at Dillwynnia

- 76 Corrective Services NSW acknowledged that there was pressure, as a consequence of Corrective Services Staff not wanting to perform "nursing home" type care for inmates as well as concerns that the environment at Mulawa was unsuitable, to have Mary Roberts placed elsewhere.
- 77 As a result on 25 October 2004 Mary Roberts was transferred albeit briefly from Mulawa to Dillwynnia because Justice Health staff believed there to be a frail aged unit at Dillwynnia.

78 Despite being returned because no such frail an aged unit existed , she was again sent to Dillwynnia on 31 December 2004 for 5 days The problem was no one bothered to ask on either occasion if such a unit existed.

Finding

79 In the circumstances it is clear that Justice Health staff and certain Corrective Services staff were unaware of the availability of facilities and services particularly at Dillwynnia Correctional Centre. Further, the attempted transfer of Mary Roberts on 25 October and again the brief transfer that took place on 31 December were done without full or any knowledge of the range of services then available at Dillwynnia, which were clearly inappropriate for Mary Roberts given her frailty. Accordingly these transfers would have severely impacted adversely on the health of Mary Roberts.

The Sixth Issue

The ten (10) transfers of Mary Roberts between Correctional facilities and Public Hospitals between September 2004 and February 2005

80 It was said that the movements “*from place to place*” must have been distressing for Mary Roberts. When one considers the purported rationale, firstly for the movement from B Ward to Mulawa, and then the embarrassing attempt to move Mary Roberts from Mulawa Annexe to Dillwynnia on 25 October and then back again on that same day because it was thought to have had “*an aged and frail unit*”, would have most certainly been “distressing”.

81 In this regard Registered Nurse (RN) Annette Griffin, Nurse Unit Manager at Mulawa, indicated that with respect to the proposed move of Mary Roberts to Dillwynnia, there was a certain amount of pressure from Correctives Services to get her out of Mulawa.⁵³ In any event (RN) Lynette Shaw noted that when Mary Roberts arrived at Dillwynnia on the evening of 25 October 2004;

“I can remember she was in a very unkempt state, she had long toenails. Her hands were contracted with arthritis, she had long fingernails that were digging in the palms of her hands. I remember she hadn’t had her insulin, she hadn’t had

⁵³ Volume2 Statement Annette Griffin at 653 to 654 at paragraph 25.

her dinner...I was upset about a lot of things regarding her care, I documented a lot of things in the notes, **and none of these notes are here**,”⁵⁴ (Emphasis added)

82 Governor Marilyn Wright, Governor of Dillwynnia, knew that, at that point of time, there was no “*aged and frail unit*” at Dillwynnia. In consultation with Nurse Unit Manager Lynette Shaw, and based upon a medical assessment, Mary Roberts was transferred back to Mulawa that same evening.⁵⁵

83 There is then the spectacle to be derived from a comparison between the respective *Health Problem Notification Forms* completed, firstly at Mulawa, and thence at Dillwynnia on the transfer of Mary Roberts on 31 December 2004.⁵⁶

84 The Health Problem Notification Form is a Justice Health form. The form for the transfer of Mary Roberts from Mulawa indicates “Does not require 24 hour nursing care, is clear to leave Mulawa, normal medical services is appropriate”. It appears to have been signed off by RN Patricia Thompson for Justice Health on 31 December 2004.⁵⁷

85 Upon transfer and arrival at Dillwynnia the Health Problem Notification Form indicates a diametrically opposed view to the first form. It is indicated that Mary Roberts was “incontinent of urine ... of faeces, confused at times, at times non-compliant with nursing procedures, requires assistance with showering”. Rather than indicating normal cell placement appropriate, the special needs section is noted as “requires constant supervision and assistance with all procedures”. These observations made, on the same day, by otherwise professional staff, are irreconcilable.

Finding

86 This leaves one with the impression that at various Correctional facilities both Justice Health and Corrective Services NSW staff simply was unable to cope with Mary Roberts by way of offering appropriate treatment and merely sought to transfer her “*out*” so that she became someone else’s problem.

⁵⁴ Ibid page 728 paragraph 7

⁵⁵ Ibid page 721 at paragraph 11

⁵⁶ Volume 1 pages 302 and 306

⁵⁷ Ibid page 302

The Seventh Issue

The lack of cooperation between Justice Health and Corrective Services Staff

87 There are numerous events documented in the evidence that indicated that there was a clear breakdown in many facets of the relationship between Corrective Services NSW and Justice Health in fulfilling their statutory roles. This was certainly evident with respect to the treatment of Mary Roberts and the concern is that such difficulties are systemic.

88 Governor Karen Boyko, who was at the relevant time the Governor of Silverwater Correctional Centre, in addition to giving evidence as to her knowledge and recollections with respect to Mary Roberts, also gave evidence as regards her conversations with Justice Health staff.

89 In her statement Governor Boyko offered the opinion as to the problems then existing between Justice Health and Corrective Services NSW stating;

*“It appeared to me that from both union perspectives, each party felt that it was the others responsibility to provide these services to inmate Roberts, but in my view it became quite personal between some people within both sides. The notion of sticking to principle of their defined role became more important to some, than caring for the inmate”.*⁵⁸

90 There were numerous other examples of a lack of cooperation between the two (2) entities. Associate Professor Caplan expressed the following view on the issue where he stated;

*“The care provided by the Department of Corrective Services/Justice Health appears to be **fragmented and uncoordinated** with different parts of the system not aware of what care other parts could provide and, apparently, not seeking to find out. Plans seemed to be made and unmade without evidence of overall coordination or adequate communication between different medical officers”.*⁵⁹
(Emphasis added)

91 Counsel for Mary Robert’s son, Robyn Burgess, pointed to five areas of concern that directly impacted on the health and wellbeing of Mary Roberts. It is a submission I agree with.

⁵⁸ Volume 2 page 648

⁵⁹ Ibid page 1552

92 The first related to the restricted access to nurses for medical care, which was described by RN Patricia Thompson as “*incredibly poor*”.⁶⁰ RN Thompson said there were difficulties gaining access to obtain Mary Robert’s blood sugar levels for her diabetes and for providing other medical care including the administration to her of her medications.

93 A Department of Corrective Services (DCS) Officer was required to be present on all occasions and either the DCS were short staffed or there would be two officers on duty and one would not open the door until the other came back.

94 RN Rosemary Blazer, another nurse working in the annex at Mulawa stated that Mary Roberts was never under constant supervision and access depended on the mood of the DCS officer on duty and some were unco-operative.⁶¹

95 The second involved restricted access to visits by family because DCS officers would not push her wheelchair to those visits.⁶² RN Patricia Thompson also expressed the view;

*“Mary could not receive visitors because of her incapacity to walk to the visitor’s area. Corrective Services officers would not push her to visits in a wheelchair. It is my opinion that Mary was treated as a political football, who was being moved from facility to another and seemed to me that no facility could manage her”.*⁶³

96 The third was a problem with restricted access to showers again involving the use of a wheelchair and who would push it. There were no disabled facilities in the annex and the only alternative was a shower in the Mum Shirl Block, which was some distance away, and the difficulty in co-ordinating the unit and staff being available at the same time.⁶⁴

97 The fourth area of concern was access to relevant information in DCS running sheets. RN Judith Baldwin gave evidence that problems with Mary Roberts’ eating, which were recorded in DCS running notes, were brought to her attention.⁶⁵

⁶⁰ Volume 2 page 674 paragraphs 5 to 8

⁶¹ Ibid page 689 paragraph 14

⁶² Ibid page 674 paragraph 11

⁶³ Ibid page 677 paragraph 11

⁶⁴ Ibid page 697 paragraph 6

⁶⁵ Transcript 18 December 2009 pages 11 and 12

98 The final area was the failure to make a timely application for Mary Roberts' release on license. Maureen Hanley, Executive Director Clinical and Nursing Services, described the system for application for release on license through the Clinical Services Manager Alison Stephens, working closely with DCS Sentence Management but the final decision is made by DCS based on the medical information provided by Justice Health.⁶⁶

99 Maureen Hanley conceded that had the robust management and administrative arrangements and processes now said to be in place between DCS and Justice Health been there at the time of Mary Roberts' deterioration and ultimate death consideration for release on license would have occurred more expeditiously.⁶⁷

The Eighth Issue

The loss of Justice Health Medical records relating to Mary Roberts

100 Detective Senior Constable Williams has documented the dates of the missing clinical notes referable to the treatment of Mary Roberts.⁶⁸ Various witnesses and employees of Justice Health were questioned as regards these missing notes but were unable to proffer any explanation. Whilst it would seem to be the case that there is no evidence of any deliberate removal or destruction of the records, as indicated by Justice Health in their opening statement, it remains a cause of concern that the issue of these many missing pages of clinical notes was not detected when Mary Roberts was in custody.

The Ninth Issue

The appropriateness and accuracy of various entries made on nursing case notes for Mary Roberts

101 Justice Health acknowledged in their opening statement, that the medical records in Mary Roberts' file are not uniformly of an acceptable standard. In this respect reference is also made to the various medical case notes concerning Mary Roberts maintained at Dillwynnia and at Mulawa concerning the perceived observations of Mary Roberts as being cantankerous. As Dr Brennan observed, persons who are suffering from dementia

⁶⁶ Volume 5 page 1572 paragraph 26

⁶⁷ Ibid paragraph 35

⁶⁸ Volume 1 page 92 paragraph 182

often give the external appearance of being cantankerous where in fact the underlying issue is dementia.

102 Associate Professor Caplan gave the following opinion on this issue where he observed:

“Nursing notes at times suggest a defensive quality to justify the action as when, around the last week in December, it was noted that Mrs Roberts (sic) was not walking but this was reported as refusing to walk, and back up (sic) by a report from an unnamed male DCS that she was walking ‘prior’ though the exact timing prior is not specified”.⁶⁹

103 Justice Health in their submissions have stated that since the death of Mary Roberts Justice Health have initiated changes aimed at improving both patient care and the proper recording of that care and these include;

Comprehensive Health Assessment and Plan (CHAP), which directs clinicians to specific Clinical Pathways as specified by a patient’s presenting clinical condition;

Clinical Assessment Template (CAT Form) which is utilized when nursing staff assess a patient and need to consult with the on-call Doctor for treatment advice’

Clinical Handover an issue that emerged from recommendations of the ‘Garling Inquiry’ which has resulted in the establishment of a Clinical Handover Working Party that has developed and submitted an implementation and evaluation plan for ensuring the standard key principles of clinical handover are in place across Justice Health;

SOAP which stands for Subjective data, Objective Assessment, Assessment and Plan and is a poster to assist clinicians on the ground to provide some structure with the assessments and the documentation of same;

Clinical and Health Information Protocol (CHIP), which is a statewide business process for the management of pathology and medical imaging results, discharge summaries, specialist consultation letters and clinical information from other service providers.

Patient Administration System (PAS) an integrated computer system for managing patient administration and management dated which includes the bookings of medical appointments.

⁶⁹ Volume 5 page 1552

104 In the circumstances a lot has been done by Justice Health to overcome the problems highlighted in this Inquest in relation to the care and treatment of Mary Roberts and in particular the accuracy and appropriateness of the medical records and I do not propose to say any more on this issue apart from acknowledging the work done by Justice Health.

The Tenth Issue

The cause of death of Mary Roberts

105 Dr. Botterill found the direct cause of death was BACTERIAL *ENDOCARDITIS ORGANISM* arising from *STAPHYLOCOCCAL* infection.

106 Associate Professor Gideon Caplan, Senior Specialist Geriatrician and Consultant Physician at Prince of Wales and Prince of Wales Private Hospitals and Conjoint Associate Professor, University of New South Wales provided a report to the Inquest dated 18 February 2009. In that report Associate Professor Caplan noted that on transfer to Prince of Wales Hospital on 8 February 2009 Mary Roberts fell under his care.⁷⁰

107 Associate Professor Caplan notes that the post-mortem indicated death to be directly due to Bacterial Endocarditis⁷¹ Associate Professor Caplan also acknowledged that Mary Roberts was suffering from underlying terminal conditions, namely dementia and cancer of the lung.⁷²

108 Associate Professor Caplan stated;

“On 28th Nov 2004 a Grade 1 pressure area was noted, another sentinel event, but it appears that no intervention was arranged, such as measures to prevent progression of the pressure area to what became ultimately a large ulcer and, arguably, led to the infection seeding into her psoas muscle and then onto her heart valve causing endocarditis which ultimately led to her demise. Obviously, this line of argument is somewhat speculative, but the temporal connection is strongly suggestive.”

109 When giving evidence before the Inquest Associate Professor Caplan was asked as regards the staphylococcal infection, diagnosed on 20 January 2005 with Mary Roberts having been admitted to Auburn Hospital on 19 January 2005;

⁷⁰ Volume 5 page 1546

⁷¹ Ibid page 1550

⁷² Ibid 1552

“Q. Are you able to express an opinion as to how long that infection may have been present?”

A. It’s very difficult to be 100% certain but I would say it would probably be in the order of a few days, perhaps seven to ten days, that it would have, you know, been brewing inside her and again you can’t be certain but I would expect that the infection would have come through a break in the skin and most likely seeded onto the heart valve causing endocarditis ...”

Q. And is it your opinion that the staphylococcal infection the most likely cause of the endocarditis?”

A. Yes.”⁷³

110 On the issue as to whether the pressure sore(s) may have been a source of infection, that being staphylococcal, neither Associate Professor Caplan nor Dr Brennan could be “100% certain” as to that fact. However when asked that question Dr Brennan indicated: -

“I do think, however, that a sacral pressure area is a breach of the skin integrity and that is usually what is required to get staphylococcal infections so that would be certainly one of the more likely origins of where the infection came from”.⁷⁴

111 On this important issue Gillian Mahony of counsel for Corrective Services New South Wales essentially supports the finding that the death of Mary Roberts was most likely caused by endocarditis arising from a staphylococcal infection.

112 Tony McAvoy for Nurses Griffin, Thompson and Baldwin did not dispute this finding and suggested that the bacterial infection was most likely contracted at Mulawa between 9 and 12 January 2005.

113 Neale Dawson for Justice Health agree that the cause of death is clearly endocarditis from a staphylococcal infection submit that I cannot be *comfortably satisfied* (on the **Briginshaw** standard) as to the initial point of entry of the infection.

⁷³ Transcript 23 November 2009 pages 7 and 8

⁷⁴ Ibid

Finding

114 I am satisfied to the requisite standard which is on the balance of probabilities that the point of entry of the infection was through a breach of Mary Robert's skin integrity being either a pressure sore or foot ulcer.

FORMAL FINDING

115 **I FIND THAT MARY ANNE ROBERTS DIED ON THE 15 FEBRUARY 2005 AT THE PRINCE OF WALES HOSPITAL AS A RESULT OF A BACTERIAL ENDOCARDITIS ORGANISM ARISING FROM A STAPHYLOCOCCAL INFECTION THAT ENTERED HER BLOODSTREAM THROUGH EITHER A PRESSURE SORE OR A FOOT ULCER.**

RECOMMENDATIONS

116 Under s.82 of the *Coroners Act 2009*, I make the following recommendation both to Minister for Corrective Services NSW and to the Minister for Health responsible for Justice Health NSW: -

That Corrective Services NSW, in consultation with Justice Health NSW, develop protocols to ensure that sentencing courts are provided with sufficient relevant information regarding any special needs of a person who is to be considered for a custodial sentence, where those special needs result from a significant physical or mental disability.

I note that Corrective Services NSW has (already) engaged in deliberations/consultations with the Judicial Commission of NSW to assist in developing such protocols.

117 I acknowledge the work done by Detective Senior Constable Pelli Williams in the preparation of the brief of evidence, which I will bring to the attention of her superiors.

118 I thank my team Chris Lonergan counsel assisting and Tracey Stevens Solicitor with Crown Solicitors Office.

119 Finally I extend mine and the courts sympathies to Mary Roberts Son and family on their sad loss.

M.MacPherson
Deputy State Coroner
Glebe
14 December 2010