

## Local Court of New South Wales

### Practice Note – Coronial Practice No 1 of 2018

Commences: 19 November 2018

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## **1. Commencement and Application of Practice Note**

- 1.1 This Practice Note commences on 19 November 2018.
- 1.2 This Practice Note applies to proceedings pursuant to the *Coroners Act 2009* ('the Act') in the Local Court and is issued in accordance with s 52 of the Act.

## **2. Purpose**

- 2.1 The object of this Practice Note is to ensure all coronial proceedings are finalised in accordance with the published Time Standards of the Local Court relating to the Coronial jurisdiction.
- 2.2 This Practice Note recognises the nature and impact of coronial proceedings on all persons involved, especially the families of deceased persons.
- 2.3 This Practice Note sets out the procedural requirements for the hearing of inquests into deaths, suspected deaths and inquiries into fires and/or explosions pursuant to the *Coroners Act 2009*.
- 2.4 This Practice Note recognises the need to promote consistency and efficiency in the determination of coronial proceedings whilst ensuring procedural fairness to all persons involved in the process.
- 2.5 This Practice Note recognises the statutory power of a Coroner to give directions necessary to ensure the speedy determination of the real issues in coronial proceedings in accordance with s 49 of the *Coroners Act 2009*.

## **3. General Principles**

- 3.1 Coronial proceedings are not adversarial in nature. Coronial proceedings do not involve adjudications of criminal responsibility, civil liability, negligence or duty of care.
- 3.2 The role of the Coroner is to investigate deaths, suspected deaths, fires and explosions and to deliver findings in accordance with s 81 of the *Coroners Act 2009*. A Coroner may also make any recommendations considered necessary or desirable in accordance with s 82 of the Act.
- 3.3 In accordance with s 58 of the *Coroners Act 2009* a Coroner is not bound to observe the rules of procedure and evidence. The *Evidence Act 1995* does not apply to coronial proceedings. Generally, relevance to identified issues at the hearing and procedural fairness determine what evidence is to be admitted and considered.
- 3.4 In identifying and resolving the real issues in coronial proceedings, it is the responsibility of all persons and legal representatives granted leave to appear to ensure proceedings are conducted as sensitively, expeditiously and efficiently as practicable in the circumstances.

## **4. Case Management**

- 4.1 A Coroner pursuant to section 49 of the *Coroners Act 2009* "may give such directions as the coroner thinks fit to ensure the speedy determination of the real issues in coronial proceedings."
  - (a) A Coroner may direct any of the following persons:
    - i. any person who is appearing in the proceedings personally;

- ii. any person who is being represented in the proceedings;
  - iii. any person who is acting as a representative of another person in the proceedings;
  - iv. any person assisting the Coroner in conducting the proceedings.
- (b) To do any of the following:
- i. Take specified steps in respect of the proceedings;
  - ii. Direct the time within which those steps are to be taken and completed;
  - iii. Give such other directions with respect to the conduct of proceedings as the Coroner considers appropriate.
- 4.2 Persons and legal representatives granted leave to appear at coronial proceedings are to ensure directions issued by a Coroner are complied with to facilitate the expeditious and efficient conduct of proceedings.

## **5. Provision of Briefs of Evidence to the Coroner**

- 5.1 Following a direction by a Coroner that a brief of evidence is to be prepared, a notice of that direction and the date when the brief of evidence is to be served is to be provided to the police officer in charge.
- 5.2 Any application to extend the date for the filing of the coronial brief must be made at least 14 days prior to the due date. All requests for extensions of time must contain written reasons for the extension.
- 5.3 Where a brief is not filed on the due date or the Coroner does not approve an extension of time for the service of the brief, the matter may be listed by the Coroner on a court mention date with the officer in charge to appear and provide reasons for the failure to comply with the direction of the Coroner.

## **6. Provision of the Brief of Evidence to Interested Parties**

- 6.1 A person seeking leave to appear or an unrepresented relative of the deceased may be supplied a copy of the brief of evidence at the discretion of the Coroner.

## **7. Directions Hearings**

- 7.1 The Coroner at any time may list the case for a directions hearing.
- 7.2 The purpose of a directions hearing is to ensure any hearing is limited to the speedy determination of the real issues in the proceedings. At the directions hearing the following issues are to be determined if not previously resolved:
- i. Applications for the granting of leave to persons with sufficient interest who wish to appear at the inquest or inquiry;
  - ii. Venue;
  - iii. Confirmation of issues to be determined at the hearing;
  - iv. The witnesses to be called to give evidence including the use of audio-visual link or other technology;

- v. Applications by persons granted leave to appear for additional witnesses to be called or any additional evidence obtained to be tendered;
- vi. The reception of expert evidence at the hearing;
- vii. Claims for public interest immunity;
- viii. Confirming a proper estimation for the length of the hearing and hearing dates;
- ix. Special arrangements or facilities required during the course of the proceedings;
- x. Non publication orders;
- xi. The Coroner may set timetables for the service of evidence by interested persons;
- xii. Any other preliminary/procedural issues;

## **8. Procedures at Hearing**

- 8.1 Counsel assisting will make an opening address to the Court. The opening address is to outline; the background and nature of the proceedings, the witnesses who will give evidence, other evidence to be presented and the issues to be determined at the hearing.
- 8.2 The Coroner determines what witnesses will give evidence and the order of witnesses.
- 8.3 Subject to leave of the Coroner, legal representatives for interested persons may only cross-examine witnesses where the Coroner is of the opinion that the evidence received legitimately affects the interests of their client in all the circumstances.
- 8.4 Subject to leave of the Coroner, unrepresented interested persons may only cross examine witnesses where the Coroner is of the opinion that the evidence received legitimately affects their interests in all the circumstances.
- 8.5 Unrepresented relatives of the deceased may request counsel assisting to ask specific questions of witnesses on their behalf relating to the real issues in the proceedings.
- 8.6 In accordance with s 49 of the Coroners Act 2009 the Coroner may give directions regarding specific timeframes for cross examination of witnesses to ensure the speedy determination of the real issues in the proceedings.
- 8.7 Any document not contained in the brief of evidence that is sought to be tendered by an interested party or a legal representative must first be provided to counsel assisting the Coroner as soon as possible and before being shown to a witness.
- 8.8 Following examination of a witness by counsel assisting, the order in which other interested persons may cross examine the witness will be determined by the Coroner presiding.
- 8.9 Counsel assisting may re-examine the witness after the conclusion of examination by other interested persons.

## **9. Concurrent Evidence by Expert Witnesses**

- 9.1 To reduce the overall time taken to hear and determine coronial proceedings involving the taking of expert evidence a Coroner may direct that expert witnesses give evidence concurrently.

- 9.2 In making that decision, the Coroner is to consider the nature and complexity of the issues to be determined including but not confined to:
- i. The extent to which expert evidence is in dispute and the number of expert;
  - ii. Witnesses;
  - iii. The particular discipline of expertise to which the evidence relates;
  - iv. That concurrent evidence will assist in clarifying and understanding areas of difference in expert evidence;
  - v. The views of persons with leave to appear involved in the coronial proceedings;
  - vi. Whether concurrent evidence will assist in the speedy determination of the real issues with which the proceedings are concerned.
- 9.3 The decision whether experts will give evidence concurrently is a matter for the Coroner.

## **10. Preparation of a Joint Expert Report**

- 10.1 If required by the Coroner expert witnesses are to prepare a joint report for the Coroner outlining the areas not in dispute and the issues that are in dispute.
- 10.2 The report is to be provided to persons granted leave to appear at the inquest as soon as possible and prior to the expert witnesses being called to give evidence.

## **11. The Reception of Concurrent Expert Evidence**

- 11.1 In the taking of evidence from experts the following procedure applies unless the Coroner otherwise orders:
- i. Each expert witness will take an oath or affirmation;
  - ii. For the purpose of the transcript each witness will be properly identified;
  - iii. The primary report of each expert witness is to be tendered;
  - iv. The joint report of the expert witnesses is to be tendered.
- 11.2 Each expert may express their view on the issues in dispute within their area of expertise and must comply with their duties under the Expert Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules 2005. Counsel assisting or the Coroner will determine the manner of taking evidence from experts giving evidence concurrently.
- 11.3 Persons granted leave to appear at the inquest will be provided the opportunity to ask questions of the expert witnesses.
- 11.4 At the conclusion of the joint evidence the Coroner may allow each expert witness to give a brief final summary of their opinion taking into account the questioning that has taken place.

## **12. Family Statements**

- 12.1 At the completion of the evidence and prior to final submissions, a statement by the family of the deceased may be read to the Court. The reception of a family statement is at the discretion of the presiding Coroner.

- 12.2 Prior to allowing any family statement to be read to the Court, a Coroner may require the statement to be provided in written form to counsel assisting the Coroner.
- 12.3 A family statement is not evidence in the proceedings. A person providing a family statement to the Court is not to be subject to questioning by other interested persons.

### 13. Closing Submissions

13.1 At the conclusion of the evidence the Coroner will determine if closing submissions are to be made orally or in writing.

(a) Oral submissions

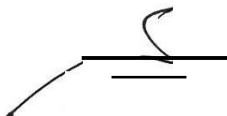
- i. Where oral submissions are made, counsel assisting is to have first right of address and retains the right of reply following the reception of submissions from all other interested persons.
- ii. Following submissions by counsel assisting, the Coroner is to determine in what order submissions are made by other interested persons.
- iii. Where findings are reserved, the Coroner must set a date for written findings to be delivered.

(b) Written submissions

- i. Where closing submissions are directed to be in writing, a time table must be set for the date of receipt of submissions. A date must be set for written findings to be handed down by the Coroner.

### 14. Requirement for Written Findings and Recommendations

- 14.1 A Coroner is to record in writing any findings made in accordance with s 81 of the *Coroners Act 2009*.
- 14.2 A Coroner is to record in writing any recommendations made in accordance with s 82 of the *Coroners Act 2009*.
- 14.3 Where a Coroner proposes to publish any findings or recommendations, written reasons for the making of those findings are to be provided subject to any non-publication orders made.



Chief Magistrate



State Coroner