The Statutory Functions of the Coroner

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ARRANGEMENTS FOR CORONIAL SERVICES IN NEW SOUTH WALES.

The office of New South Wales State Coroner was established in 1998. Prior to its establishment, the coronial system comprised a City Coroner, A Westmead Coroner (and before that, Parramatta, Penrith and Campbelltown Coroners) along with coroners in most country towns. These country coroners were never magistrates and were rarely legally qualified, being either private persons such as local dignitaries, or Clerks of the Local Court. Even cities such as Newcastle and Wollongong lacked a coroner who was also a magistrate.

The position today is that the coronial system in NSW comprises the State Coroner and the Deputy State Coroner, both of whom are stationed at Glebe. The Senior Deputy State Coroner is stationed at Westmead. They are the only full-time coroners in NSW. At Newcastle, Wollongong and now Gosford, a magistrate sits as coroner part-time. In country towns and cities Clerks of the Local Court serve as coroner. All magistrates are also commissioned as coroners but until recently, rarely sat in the jurisdiction.

Recent amendments to the Coroners Act 1980 have meant that magistrates in rural NSW are now required to sit as Coroners more often. Recently, the present Chief Magistrate decided to mirror the Newcastle - Wollongong situation on the Central Coast at Gosford - one of the magistrates there will sit as Central Coast Coroner.

The advent of the office of State Coroner has been important to the provision of coronial services for several reasons. Firstly the office has an educative role. We lecture and generally assist the general magistrates and country coroners. We provide forensic advice to them and regularly take over the most difficult country cases. We are often requested to lecture groups such as yourselves, nurses, medical practitioners, legal associations such as the Plaintiff Lawyer’s Association or the NSW Forensic Society. We also lecture various echelons of the

1 Section 33AA
NSW Police Service - trainee homicide detectives, crime scene investigators, crash investigators and the like. Secondly we provide a supervisory role in respect of all NSW coroners. We are sent details of all NSW coronial cases and later, details of their ultimate conclusion. NSW coronial data is presently now part of a national database and the State Coroner, along with the other State and Territory Coroners has seen to the development of that database.  

We have a close working relationship with the Department of Forensic Medicine (Central Sydney Area Health Service) and the Institute of Clinical Pathology and Medical Research (Westmead), including the services of forensic pathologists, forensic pharmacologists, forensic odontologists, forensic anthropologists and even forensic entomologists. The State Coroner plays a consultative role in matters such as the provision of forensic medical services. Similarly these Institutions and a similar one at Newcastle have a close working relationship with the office of State Coroner. Firm links have also been established with the other seven Australian coronial jurisdictions.

One only has to consider an unfortunate event such as a “disaster” to realise the necessity for a coordinated coronial service. It is worth noting that the State of Queensland still does not have a state coronial system. Coroners tend to class disasters as incidents (other than private motor vehicle incidents) which involve the death of five or more persons. The proper coordination of disaster victim identification can be an enormous undertaking. The proper investigation of a major disaster will inevitably be time consuming and difficult.

Clearly the events of September 11th illustrate the extraordinary breadth in terms of sheer size that a disaster can take. In respect of that particular incident the task of victim identification is still ongoing (at 14 June, 2002).

THE STATUTORY FUNCTIONS OF THE CORONER.

Section 12A deals with the obligation to report certain types of death. In effect any person with reasonable grounds to believe that a death or suspected death would be examinable by a

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2 Called the National Coronial Information System (NCIS) and administered by Monash University on behalf of the Australian Coroners’ Society, data will be able to be purchased by research organisations, government instrumentalities and other interested parties.
coroner\(^3\), must report the death to a member of the police force, who in turn has an obligation to report it to a coroner. That coroner must inform the State Coroner.

The purpose of the inquest is to inquire and find, if possible, as to a number of matters set out in Section 22, Coroners Act 1980, which reads:

“22(1) The coroner holding an inquest concerning the death or suspected death of a person shall, at its conclusion or termination, record in writing his findings or, if there is a jury, the jury’s verdict, as to whether the person died, and if so—

(a) his identity;

(b) the date and place of his death; and

(c) except in the case of an inquest continued or terminated under Section 19 or 21, the manner and cause of his death ... .”

The section goes on and involves inquiries into the fires and explosions, but in essence the coroner must find, if possible, to the balance of probabilities, the fact of death, identity, date, place, manner and cause of death. If there is an inquiry into a fire or explosion, the date, place and circumstances of it. There is also a common law jurisdiction to inquire into the finding of treasure trove.\(^4\)

Obviously many types of cases lead to the assumption of jurisdiction. The relevant Sections of the Act are Sections 13 and 13A. Examples of “Section 13” deaths include violent or unnatural death; sudden death of unknown cause; deaths in suspicious or unusual circumstances; where a medical practitioner will not give a death certificate; where a medical practitioner cannot give a death certificate; deaths under, as a result of or within 24 hours of an anaesthetic; deaths within one year and a day of an accident where the cause of death may be attributable to that accident; and deaths of persons in or temporarily absent from certain types of establishments in which the person has been receiving care and treatment (Mental Health Act 1990 institutions, Community Welfare Act 1987 facilities and the like).

\(^3\) Viz: deaths falling within Ss. 13 and 13A.

\(^4\) See “The (Petty Sessions) Review” Volume One at P. 249 (Inquest 149 of 1961 at Ryde. The inquest involved an inquiry into the findings of a quantity of sovereigns and half sovereigns under a house at Woolwich.
In the vast bulk of these cases the statutory issues referred to above are quite clear to the coroner and in those circumstances an inquest can usually be dispensed with. Suicides, for example, generally do not require an inquest, nor do many types of accidental death or misadventure. Many deaths turn out, after all to be by way of natural cause.

Certain deaths must go to inquest - unsolved homicides, deaths as a result of administration of an anaesthetic, and those cases where the statutory issues to which I have referred are not clear to the balance of probabilities. In addition, Section 13A, Coroners Act 1980 provides that deaths in custody and during or as a result of police operations must go to inquest and that the inquest must be conducted by either the State Coroner or a Deputy State Coroner. An annual report to the NSW Parliament must be furnished in respect of deaths which fall within Section 13A.

From time to time, although an inquest can be dispensed with one or more interested parties may still request the holding of one and if cogent reasons are given it is usual in this State to conduct a hearing, particularly in relation to any issues raised. From the point of view of counsel for the family, it is worth noting that an inquest may even be conducted where strictly unnecessary, as an integral part of the grief process.

For example, a young woman, not on the Methadone Program, dies of an overdose of the drug Methadone. The manner and cause of her death are clear to the coroner. Her parents, however, indicate that they are concerned about aspects of the NSW “take away” Methadone Program. They are also concerned that the boyfriend of the deceased may have supplied her with his Methadone. The Coroner, in those circumstances, decided to conduct an inquest. He took the view that as a NSW Government Program was being looked at, the relevant Statutory Authority should be given an opportunity to be heard as an “interested party”. There was an element of “public interest” in conducting the inquest. Whilst on one view the coroner’s

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5 Section 14B(a)
6 Section 14C(1)
7 Even “natural cause” deaths of persons in custody require the holding of an inquest. “Custody” includes custody of the Department of Corrective Services, NSW Police Service and Department of Juvenile Justice, whilst escaping from such custody and whilst en route to or from such custody.
jurisdiction or ambit may appear quite narrow, in another sense the word “manner” for example evokes a concept which may be quite wide.\textsuperscript{8}

His Honour, Judge Barry Thorley said in his report into the \textit{Azzopardi Inquiry}, paraphrasing Bowen, JA, in \textit{Bilbao v Farquhar}\textsuperscript{9}:

\begin{quote}
“The purposes underlying coronial inquiries include the satisfaction of legitimate concern of relatives, the concern of the public in the proper administration of institutions and matters of public and private interest.”
\end{quote}

That is a fair summary of the points I have been making.

However, whilst it is generally agreed that one role of the coroner is to alert the community and public authorities to the existence of perils or dangers which have been revealed in the course of an inquest or inquiry, the process should never amount to a “de facto Royal Commission” in order to air controversies or disputes which do not relate directly to the statutory issues under consideration.

At times there is an expectation that the coroner can hear evidence and conduct a “criminal trial” in a matter. Of course, such an expectation will always be inappropriate. The “person of interest” does not know the precise nature of any allegation and often will have little or no opportunity to prepare a defence. The proceedings are firmly inquisitorial in nature with the rules of evidence relaxed.

**THE NEXUS BETWEEN THE INQUEST AND THE CIVIL CLAIM.**

Legal practitioners will often seek to use the inquest as a source of evidence for future civil proceedings. This not the purpose of the inquest as coroners frequently point out. However it

\textsuperscript{8} In the example given above, the Methadone was “illicit”, and the coroner looked as closely as possible at how the young woman came to have in her system a drug not prescribed for her. Not only did he look closely at how she came to have the drug, and whether there was sufficient evidence to amount to an indictable homicide against another person (the supplier), but also whether the system of dispensing Methadone in NSW was adequate. He found in the negative on both questions. There was insufficient evidence to indicate that a friend had given his Methadone to the young woman; and the system of dispensing the drug was inadequate. As a result of coronial recommendations the protocols for delivery of “take away” doses were improved and tightened.

\textsuperscript{9} \cite{1974NSWLR377}. 
has often been said that the inquest is a useful vehicle for the gathering of information whilst it is fresh and available. The inquest is impartial and so the evidence should normally be reliable. The whole process may result in the clarification of issues which might be expected to be raised at the civil proceedings. For these reasons, coroners normally permit some questioning which may not go strictly to the statutory issues set out in the Act.  

Coroners will, of course, notify lawyers once the bounds of relevance in statutory or forensic terms have been stretched beyond reasonable limits.

My view is that the inquest and the civil proceedings are interrelated. We sometimes say in court that the inquest is not to be used as a “fishing expedition” to garner evidence for the later claim. To an extent this has to be said with tongue in cheek, as it is often impossible to draw a dividing line between a legitimate series of questions going to, say, manner or cause of death for the purposes of Section 22, and a series going beyond that and aimed firmly at assisting with the civil claim. It really is a matter for the coroner to decide when a line of questioning is no longer of assistance in the carrying out of his or her forensic or statutory duty.

There is seldom argument with the bar table as to whether a line of questioning should be allowed or disallowed. Counsel usually understands the coroner’s function and takes care not to question so as to go much beyond the achieving of that function.

**APPEARING AT A CORONIAL INQUEST OR INQUIRY.**

**Applying for an inquest.**

A coroner has wide powers to dispense with the holding of an inquest, but before doing so will naturally consider any representation made to him or to her. In making representations a lawyer should perhaps consider:

(a) Are any of the Section 12 “statutory issues” (fact of death, identity, time, place, manner or cause) not clear to the required standard of proof? 

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10 *Section 22.*

11 In missing persons, or “no body” cases, Waller states in *Coronial Law and Practice in New South Wales (3rd Edition) at Page 64:*
(b) Is there any other private concern held by a near relative which should be satisfied?
(c) Is there a public interest to be served by the holding of an inquest?

The submission, if not accepted by the coroner may be repeated to the State Coroner or even the Minister.

**Appearing before a coroner as an advocate.**

There is no automatic right of appearance before a coroner, so the advocate does not announce his appearance but seeks leave to appear. The announcement by the advocate of the party for whom he or she wishes to appear will generally be sufficient to disclose that there is a “sufficient interest” within the meaning of Section 32, Coroners Act 1980.

Examples of persons usually permitted to be represented at inquests or inquiries are:

- a) A person whose actions caused a death;
- b) Relatives of the deceased;
- c) Employer of the deceased where death occurred in an industrial situation;
- d) An insurance company interested in a fire;
- e) An insurance company interested in a death;
- f) The owner of premises where a fire occurred;
- g) A person connected with the causation of the fire who might be suspected of starting it, whether deliberately or by accident; and
- h) A person likely to be a crucial witness.

A witness before a coroner cannot in general terms be compelled to incriminate himself or herself \(^{12}\) and appearance is often sought mainly to protect that right. \(^{13}\)

**Counsel assisting the coroner.**

\(^{12}\) Coroners Act 1980, Section 33.

\(^{13}\) See also Section 33AA; Decker v State Coroner of NSW (1999) 46NSWLR 415.
Usually a police officer performs the task of assisting the coroner though in the more complex or important cases the Coroner arranges for the NSW Crown Solicitor to instruct private counsel. This will certainly occur in matters where officers of the NSW Police Service are involved in the death (deaths during or as a result of police operations; deaths in police custody).

The task of counsel assisting is to ensure that all relevant witnesses are called and that all relevant information is obtained from them. Counsel, like anyone else appearing before a coroner must seek leave to appear and can ask leading questions if it is thought fit. In many cases that course of action may be forensically inferior to the usual practice of allowing the evidence to flow in the traditional adversarial manner.

Counsel assisting a coroner when addressing, makes submissions as to what he or she genuinely believes is reflected by the evidence. Counsel assisting is not arguing a cause but is assisting an inquisitorial process.

Thus, a number of important contrasts can be made between proceedings at inquest and adversarial proceedings. The inquiry is that of the coroner who will often proceed in quite an informal manner. To function effectively the coroner must be able to discuss the case at any time with counsel assisting and, it appears, other persons such as the police officer in charge of the case, and one or more of those representing interested parties.

**Procedure before a coroner.**

The coroner is not bound by the rules of evidence and the procedure is informal. No person with leave to appear has a right to call a witness. The correct procedure is to ask the coroner to arrange for a witness to be called and where possible provide the coroner or counsel assisting the coroner with a proof of that witness’ evidence.

Statements of witnesses have usually been made available to those appearing beforehand and their evidence in chief is, in the main, swearing to the truth of the statement, with such further questions as the advocate assisting the coroner may see fit to ask. All persons granted leave to

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14 Section 33.
appear may “examine and cross examine” any witness. Again it will usually be more effective if
the witness is not led by counsel. Counsel assisting may re-examine, but in reality that may
take the form of further cross examination. There is always a certain flexibility in the procedures
so that if counsel for any of the interested party wishes to ask further questions, leave can be
sought. It is not uncommon to alter the order of bar table examination depending on whose
witness is giving evidence.

The coroner does have a power to restrict the questions of an advocate to matters relevant to
the interest represented. If the advocate refuses to obey the coroner, he or she would be at risk
of losing the leave to appear. At the end of the evidence the coroner usually invites succinct
addresses. In the more complex and lengthy cases, written submissions are commonplace. It
is unusual for the adversarial “cross submissions” to apply.

Most inquests are reasonably short and are determined in one or two days. Some are very
short and may be finalised in a matter of hours or even minutes. Occasionally, however,
inquests may take weeks or months to conclude. The Sydney - Hobart Yacht Race inquest
involved eight weeks of evidence culminating in a 350 page judgment which included some 15
coronial recommendations. The Dalamangas - Star City Casino inquest heard five weeks of
evidence by a coroner and jury of six. A police shooting near Tumut, Hallinan, was heard over
eight weeks, again with a jury.

Representing a “sufficient interest”

As in all advocacy it is necessary for the advocate to decide beforehand the objectives sought to
be achieved. Every question asked carries a risk and should only be asked if the likely
advantage will exceed the risk. Sometimes of course, risks have to be taken. Sometimes it
may well be in the interests of the party represented to know the truth as early as possible. The
usual rules of “good advocacy” apply equally in the Coroner’s Court.

Protective compared with investigative appearances.

The protective appearance.
An advocate appearing for the person who caused a death, whether deliberately or accidentally, or who may have been concerned with starting a fire, is interested to protect his client against non-indictable prosecutions (e.g., negligent driving causing death) or civil proceedings. Further, the advocate may be concerned that the coroner may form a view in respect of indictable criminality against the client. The advocate may be concerned to protect the general reputation of the client. The task is to see that the client is not questioned unfairly, that if necessary there is time to answer properly, or give complete answers and that re-examination elicits that which may be necessary to explain the cross-examination.

In many cases the advocate should advise the client to refuse to answer questions which might incriminate the client. This may lead to some questioning of the client, though the coroner will be concerned to ensure that the fundamental right of the client against self-incrimination is preserved. Where an unrepresented witness elects to answer incriminating questions, it is common for coroners to remind that person of his or her fundamental right.

If a witness has already made a statement, or record of interview to police, (as is common in indictable traffic matters) that statement will be admitted into evidence at inquest. Where a witness exercises the right against self-incrimination at inquest it is usual not to attempt to have such statement adopted by the witness as such adoption may encroach upon the right against self-incrimination.

In September, 2000, following the decision of the Supreme Court of NSW, Section 33AA was enacted. The Section, in similar terms to Section 128, Evidence Act 1995 provides for the giving of a Certificate by coroners who are also magistrates, in circumstances where the coroner has required the giving of incriminating evidence, so that the evidence cannot be used later against the witness in court proceedings.

There will always be the temptation to take advantage of the right against self-incrimination at inquest. Such a course has all the attraction of safety. However, for certain persons in the community, to take such a course may subject the client to considerable criticism within that person’s professional calling (medical practitioners refusing to describe how a procedure was

15 Section 19.
16 Section 33.
performed by them; police officers refusing to describe their part in a death, say, by shooting during a police operation). It is therefore appropriate to take great care when advising the client whether or not to exercise the right against self-incrimination. Although the recourse to the right against self-incrimination cannot be published or commented on by the media without permission of the coroner, that permission may well be given.\footnote{Section 45(3)(b).}

**The investigative appearance.**

The appearance of the “investigative” advocate is, of course, quite different because that person’s clients may be looking for evidence sufficient to enable civil suit; the insurance company may be looking for evidence of arson or suicide; relatives may be accusing police officers or prison officers. If no questions are asked, nothing will be ascertained beyond that which is already in the statements in the brief, or elicited by other advocates.

The advocate in this position is seeking information and of course it is information which may well be contrary to the interests of the witness being examined. Often the advocate has indefinite and vague instructions raising suspicion, but no more. The advocate should be looking for clarification, but care must be taken to avoid asking questions and making accusations which cannot be justified by the instructions.

Of course, if reasonable instructions can be obtained justifying serious accusations, then the advocate, if it is in the client’s interests, must be fearless.

**CORONERS ACT 1980 - IMPORTANT PROVISIONS AND HOUSEKEEPING SUGGESTIONS.**

Some important Sections.

I have already referred to Sections 13 and 13A which deal with jurisdiction. Section 22 refers to those statutory issues with which the coroner must be concerned in returning a finding. Findings must generally be made to the balance of probabilities. There is, however, a
rebuttable presumption against suicide under our law so that findings of suicide are to be made
to the higher standard of proof.19

Section 22A empowers the coroner to make recommendations.

Sections 48, 48A and 48B may be of importance to the practitioner. Section 48 empowers the
coroners to order a post mortem examination and to carry out tests. Almost every coronial case
will involve an order pursuant to Section 48. Whilst the Supreme Court of this State has always
had jurisdiction to order that a post mortem examination not be carried out, or not be carried out
as directed by a coroner, Sections 48A and 48B have now codified the area of objection to post
mortem examination. In Seemah Morris v Derrick Hand20 the NSW Supreme Court quite
succinctly expressed what coroners believe to be the law in relation to the ordering of post
mortem examinations:-

“The religious matters and sensibilities which would have been brought to the attention
of the coroner are matters which are taken into account, but do not of themselves
displace the duty of the coroner to ensure that the manner and cause of death be
established”.

Section 19: Coroners deal with many cases of “unsolved homicide” or “unsolved arson”. In the
main there will usually be evidence of the crime but insufficient evidence to charge a known
person. Once the police investigation (on behalf of the coroner) is completed, the matter, if a
homicide, must go to inquest21 and the evidence reviewed. If, at any time during the course of
the inquest or inquiry the coroner is of the opinion that, having regard to all the (admissible in a
court of law) evidence given up to that time, the evidence is both capable of satisfying a jury
beyond reasonable doubt that a known person has committed an indictable offence, and there
is a reasonable prospect that a properly instructed jury would convict the known person of the
indictable offence, and that indictable offence is one in which the question whether the known
person caused the death, the coroner must terminate the inquest. The coroner then forwards
the depositions taken at inquest together with a statement specifying the name of the known

19 See footnote 11.
20 (300XX/1997 - per Dowd J.,)
21 Section 14B(1)(a)
person and the particulars of the offence(s) to the Director of Public Prosecutions. *Section 19* is thus similar to *Section 41, Justices Act 1902*.

**Some housekeeping suggestions.**

It is suggested that you establish clearly in your mind the basis of the interest to be represented, and be ready with the necessary argument to justify leave to appear.

It is also suggested that you try to decide, so far as possible, the objectives of the appearance - whether “protective” or “investigative” and what is hoped to be achieved.

If yours is a “Sydney” case, it is usually possible to obtain copies of most of the statements in the brief through a group of police seconded to the Office of the State Coroner. Called the *State Coroner's Support Section*, they are stationed either at Glebe or Westmead and assist the coroners in most cases. In country centres the local police prosecutor will usually be involved in a similar way. These officers are expected to be co-operative with the profession generally. They like to see people legally represented. In certain complex cases, and cases where the police actions are likely to be criticised or scrutinised closely (as in police shooting and police pursuit cases) the NSW Crown Solicitor, and perhaps private counsel will be involved. Again co-operation with the profession is expected.

The present executive coroners will not tolerate surprises and other gamesmanship during an inquest. There is little place for that in the inquisition. The role of the coroner, and counsel or “sergeant” assisting is quite different to that of the magistrate and police prosecutor. So not only will you generally be provided with a copy of the brief of evidence, you will be shown photographs, plans and other likely exhibits usually not contained in the brief. Sergeant or counsel assisting will generally be more than happy to confer with you, as will the coroner should it be necessary or useful. In general terms, coroners only canvass those issues which need canvassing. We do like to know what those issues of interest are beforehand. In fact, in view of the nature of coronial proceedings, we like to know all that we possibly can about a case before a word of evidence is heard. It follows that we believe that proceedings should usually be entirely open. To that end, we like to ensure that interested parties and their legal
representatives are appraised of the entirety of the brief of evidence beforehand. Conversely, if you the advocate have a witness you wish to call, the coroner will expect to be advised beforehand, and provided with a proof of that witness's evidence.

Without doubt, openness regularly shortens proceedings, and it is not uncommon to have an interested party, who has always wanted an inquest, attend on the day of hearing with a legal representative, and after a conference, change his or her mind and consent to the dispensing with inquest, or more often the shortening of it.

The Central Sydney Area Health Service Department of Forensic Medicine and its Westmead counterpart have close links with the Coroners’ Courts. The forensic pathologist involved in your case, with some notice, will be more than happy to discuss aspects of a finding at post mortem with you should that assist you and your client. Again this can often be arranged by the police officer assisting the coroner, or where private counsel is performing that task, through the instructing solicitor. Sometimes a conversation with the pathologist on the day of court will be very useful to explain matters not readily apparent to the lay person. For example a surprising number of lawyers do not realise that heroin (diamorphine) very quickly metabolises on entering the body so that analysts invariably give a “morphine” reading. The question is thus too often asked: “How would he have got the morphine and overdosed?”

The post mortem examination is a completely impartial procedure performed by highly skilled and qualified specialist medical practitioners - forensic pathologists who normally possess advanced training in morbid anatomy and other relevant fields of pathology. They are not servants of either the coroner or the police. They are fiercely independent and can be of great assistance to the practitioner.

The Coroner Act 1980 does provide for the requesting of a jury. Occasionally juries of six are empanelled to hear an inquest. The process has been found to be quite cumbersome. As the brief of evidence cannot really be taken into the jury room, the evidence has to be led viva voce, quite a time consuming exercise. Significantly the jury will return a finding as to the identity, quite a time consuming exercise. Significantly the jury will return a finding as to the identity,

22 Though, parts of a brief may be withheld in homicide/serious crime inquests (Musumeci v Attorney General of NSW & Anor (2002) NSWSC 425 (Hidden J). In such cases, the coroner must accord procedural fairness to the extent that the excluded parts must be provided to enable submissions pursuant to Section 19; and (semble) recall witnesses if they haven’t been examined in terms of the withheld material.

23 Section 18.
date, place, manner and cause of death only. It will not provide a detailed summing up of the matter, as is normal coronial practice. The question of indictable criminality remains one for the coroner and not the jury.