



GREENWAY CHAMBERS

Pondering Restorative Justice and the Coronial Process in NSW

Wednesday, 11 March | 5:30 pm

SESSION SPEAKERS



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What is restorative justice?

“What is certain is that where restorative justice is done well, it goes beyond what traditional responses can achieve and as a result, the potential impact upon individuals, communities and society is substantial.”

Larsen, JJ *‘Restorative Justice in the Australian Criminal Justice System’*

Australian Institute of Criminology 16 March 2014



Key Principles

- seeks to repair harm
- through a flexible, inclusive, empathetic process
- involving all parties/stakeholders
- having regard to the social context
- with a preventative focus



An example – Circle Sentencing

39 Objectives of the program

- The objectives of the program are as follows—
- (a) to include members of Aboriginal communities in the sentencing process,
- (b) to increase the confidence of Aboriginal communities in the sentencing process,
- (c) to reduce barriers between Aboriginal communities and the courts,
- (d) to provide more appropriate sentencing options for Aboriginal offenders,
- (e) to provide effective support to victims of offences by Aboriginal offenders,
- (f) to provide for the greater participation of Aboriginal offenders and their victims in the sentencing process,
- (g) to increase the awareness of Aboriginal offenders of the consequences of their offences on their victims and the Aboriginal communities to which they belong,
- (h) to reduce recidivism in Aboriginal communities.



Coronial Practice Note No. 3 of 2021

Objects

4.1 This Practice Note sets out the procedural requirements for the listing and case management of deaths which fall within the scope of section 23 of the Act.

4.2 In setting out these requirements, the objects of this Practice Note are to ensure:

- a) All coronial investigations and inquests into reported deaths which fall within its scope are conducted in a timely and proper manner.
- b) **The families of the deceased are provided with appropriate information and material on the status of the investigation and the coronial process in a timely and proper manner**, including advice in relation to delay and the reason(s) for the delay.
- c) **Together with the First Nations Protocol, all coronial investigations and mandatory inquests into deaths of First Nations Peoples are conducted in a culturally sensitive and appropriate manner** which is respectful of the needs of First Nations Peoples.



First Nations Protocol

1.6 Through this Protocol, the Court is committed to maintaining cultural appropriateness at each stage of an investigation into the death of a First Nations person, particularly in ensuring that the impact of the work of the coronial jurisdiction on First Nations families **does not perpetuate cycles of grief and loss.**



Family Meetings

10.2 The purpose of the family meeting is to discuss the following matters:

- a. The coronial process, including case management steps and timeframes set out in Coronial Practice Note 3 of 2021,
- b. The findings of any post-mortem examination, including initial findings where a final post-mortem report is not available,
- c. **Any cultural considerations relevant to the conduct of the hearing, and**
- d. **Any other issue the family wishes to raise in relation to the coronial investigation.**



Legislative Direction – Statutory Review

Recommendation 2

That the objects clause of the Act be amended to recognise the importance of the following:

a) the coronial jurisdiction investigates certain kinds of deaths and certain kinds of fires and explosions

b) the processes adopted by the coronial jurisdiction should be sensitive to and supportive of trauma and distress

c) the processes adopted by the coronial jurisdiction should be cultural safety and responsive, and respectful of different beliefs and practices

d) the unique status and needs of Aboriginal and Torres Strait Islander peoples

e) the coronial jurisdiction should contribute to the reduction in the number of preventable deaths, fires and explosions by considering systemic factors and issues and making recommendations

f) the coronial jurisdiction should be inquisitorial in nature

g) the coronial system should operate in a fair and efficient manner

...



Legislative Direction – Statutory Review

- **Recommendation 3**

That the Act be amended to prescribe **factors a person should consider**, as far as possible in the circumstances, when exercising a function under the Act as follows:

a) that the death of a family member, friend or community member is distressing, and distressed persons **may require referral for professional support or other support**

b) that different cultures and religions have different beliefs and practices surrounding death that should, where appropriate, be respected

c) that family members affected by a death being investigated should, where appropriate, **be kept informed of the particulars and progress of the investigation**

...

f) that unnecessarily lengthy or protracted coronial investigations may **exacerbate the distress of family, friends and others affected by the death**

...



Legislative Direction – Select Committee

Recommendation 19

That the NSW Government develop and propose reform options, legislative or otherwise, **to ensure the provision of information and material to families in a timely manner, in order to support their meaningful participation in investigations and inquests.** Specifically, unless contrary orders are sought, all materials provided to the Coroners Court of New South Wales should also be provided to the family or families concerned within one month of the brief being returned to the Coroners Court from the Crown Solicitor's Office or Department of Communities and Justice Legal.



Legislative Direction - Select Committee

That the NSW Government allocate funding to increase the First Nations workforce capacity at the Coroners Court of New South Wales, **including expansion of the Aboriginal Coronial Information and Support Program Officer team,** and the creation of other identified positions in the registry and other support positions, including in NSW Health Pathology's Forensic Medicine Social Work service.



Questions?



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