

40TH PARLIAMENT



Community Development and
Justice Standing Committee

Report 10

RESPONSE TO ATTORNEY GENERAL'S
REQUEST TO CONDUCT AN INQUIRY

Presented by
Mr P.A. Katsambanis, MLA
November 2020

Committee Members

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Community Development and Justice Standing Committee

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Laid on the Table of the Legislative Assembly on 19 November 2020

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A letter from the Attorney General

On 27 October 2020, the Community Development and Justice Standing Committee (Committee) received a letter from Hon John Quigley MLA, Attorney General (see Appendix Two). As reported by several media outlets, the letter regarded Mr Aaron Cockman's request that the Attorney General direct the State Coroner to hold a public inquest into the death of his family members on 11 May 2018 in Osmington.

The Attorney General advised the Committee that he had received advice from the Solicitor-General of Western Australia, Mr Joshua Thomson SC, that the Attorney General was unable to make such a direction. The Attorney General considered that the Committee was best placed to conduct a formal inquiry into the matters raised by Mr Cockman, and was hopeful that the Committee would agree to undertaking an inquiry.

As the Attorney General's request was made publicly, the Committee thought it appropriate to respond publicly, and explain why it is unable to undertake an inquiry at this time.

The general inquiry process

A Committee inquiry typically includes the following stages:

- Scoping and determination of terms of reference
- Announcing of terms of reference
- Advertising and calling for submissions
- Writing to stakeholders
- Receiving, reviewing and analysing submissions
- Researching
- Holding hearings
- Seeking expert advice
- Planning and travelling for further hearings or investigations
- Writing and adopting a report
- Reporting to the Legislative Assembly
- Government response

Depending on the nature of an inquiry, not all stages may be necessary. The length of each stage will vary depending on, for example, the number of submissions received or hearings held, whether and where the Committee travels, and the length of the report. However, it would not be unreasonable to expect a scoping period of one to two months, a submissions period of six to eight weeks, holding hearings over the course of several months, as well as two to three months to write and adopt a report.

Some stages must occur in order. For example, scoping an inquiry should occur before terms of reference are determined, and a government response can only be prepared once the report is tabled. Other stages often overlap and run concurrently, and in some cases stages

may be revisited. For example, a Committee may hear from a major stakeholder during the scoping stage, at an initial hearing, and at a hearing towards the end of the inquiry to test potential findings and recommendations. In some inquiries, a Committee may decide to issue an interim report, as this Committee did during its inquiry into the Protection of Crowded Places from Terrorist Acts, to clarify and define issues under active consideration and seek further submissions from stakeholders.

A smaller inquiry, with specific and narrow terms of reference and few stakeholders, may be able to be reported on within a few months. A larger inquiry, with broad terms of reference and many stakeholders, can take significantly longer, in some cases several years.

A response to the Attorney General's request

At the time of receiving the Attorney General's letter, the Legislative Assembly had three sitting weeks, and the Committee only two meetings, scheduled for the remainder of the 40th Parliament. A Standing Committee can continue to meet when the Legislative Assembly is not sitting; however, when the Legislative Assembly is prorogued, a Standing Committee's activities are suspended, and upon dissolution a Standing Committee is terminated.

The date(s) of prorogation and dissolution are at the discretion of the Governor upon advice from the Government. However, if not dissolved earlier, the *Constitution Acts Amendment Act 1899* provides that the Legislative Assembly will be dissolved on 31 January 2021.¹ This set deadline would provide the Committee with, at most, three months to conduct an inquiry.

Although terms of reference for the potential inquiry have not been determined, the Committee anticipates that it would be a sensitive and significant inquiry into an horrific and tragic event, with considerable legal complexities associated with inquiring into the operations of, and potentially the law governing, the Family Court of Western Australia. Clearly, the Committee does not have enough time to tackle such a difficult inquiry in the comprehensive fashion that the situation demands.

¹ *Constitution Acts Amendment Act 1899*, (WA), s. 21(1)(b).

Conclusion

Although the Committee considers an inquiry into these matters to be worthy of further investigation, it is not in a position to undertake the inquiry itself during what remains of this term of Parliament.

The Committee is also not able to bind the activities of a future committee in a future Parliament. Therefore, whether the Community Development and Justice Standing Committee of the 41st Parliament decides to consider this matter further is a matter for it, once established after the 41st Parliament commences following the March 2021 State General Election. However, in making the letter of the Attorney General public through the tabling of it in this report, the Committee is making it available to that Committee for its consideration.



MR P.A. KATSAMBANIS, MLA
CHAIRMAN

Appendix One

Committee's functions and powers

The functions of the Committee are to review and report to the Assembly on: -

- a) the outcomes and administration of the departments within the Committee's portfolio responsibilities;
- b) annual reports of government departments laid on the Table of the House;
- c) the adequacy of legislation and regulations within its jurisdiction; and
- d) any matters referred to it by the Assembly including a bill, motion, petition, vote or expenditure, other financial matter, report or paper.

At the commencement of each Parliament and as often thereafter as the Speaker considers necessary, the Speaker will determine and table a schedule showing the portfolio responsibilities for each committee. Annual reports of government departments and authorities tabled in the Assembly will stand referred to the relevant committee for any inquiry the committee may make.

Whenever a committee receives or determines for itself fresh or amended terms of reference, the committee will forward them to each standing and select committee of the Assembly and Joint Committee of the Assembly and Council. The Speaker will announce them to the Assembly at the next opportunity and arrange for them to be placed on the notice boards of the Assembly.

Appendix Two

The Attorney General's letter



ATTORNEY GENERAL; MINISTER FOR COMMERCE

Our ref: 67-18031/8

Mr Peter Katsambanis MLA
Chair
Community Development and Justice Standing Committee
Level 1, 11 Harvest Tce
WEST PERTH WA 6005

Dear Mr Katsambanis

MR AARON COCKMAN

I refer to Mr Aaron Cockman's request that I, as Attorney General, direct the State Coroner to hold a public inquest into the deaths of his family members on 11 May 2018 in Osmington.

As you know, there has been significant local and national community interest surrounding these deaths, the largest gun massacre in Australia since Port Arthur.

I am advised that in considering Mr Aaron Cockman's application for an inquest pursuant to section 24 of the *Coroners Act 1996 (WA)* (the Act), the State Coroner undertook extensive analysis of statements, documentary evidence, reports and expert reports.

Some of the issues Mr Aaron Cockman wanted examined publicly by the Coroner's Court related to perceived deficiencies with respect to the family law system.

I understand the State Coroner considered all relevant matters that were central to Mr Cockman's application and made the determination that there were no further lines of inquiry that could be undertaken to assist the State Coroner in making further findings.

The State Coroner acknowledged that that the deaths were indeed tragic and shocking, however, investigating the deaths in a public forum had to be balanced with the function of an inquest which is to provide information that has not already been disclosed or made available. The State Coroner also noted that while Mr Cockman held concerns with respect to the family law system, this was not an aspect that could be considered as a reason to hold an inquest. Even if the State Coroner had decided to hold an inquest into this matter, the Coroner's Court would not have been in a position to make recommendations relating to the operation of a court within another jurisdiction.

The State Coroner made an administrative finding that a public inquest into the deaths of Mr Cockman's family was not "desirable" pursuant to section 22(2) of the Act. The cause and manner of death of Mr Cockman's family members were determined through the police reports and the extensive range of materials available to the State Coroner.

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As referred to above, Mr Cockman has requested that I direct the State Coroner to conduct an inquest under section 22(1) of the Act. Research carried out by my office, the State Solicitor's Office and the Department of Justice during the course of seeking legal advice indicated that in the records available, a Western Australian Attorney General has never overruled a coroner to direct an inquest when it had been declined. In addition, examples of such a decision being made by Attorneys General in other Australian states could not be found.

Given the importance of the issue, I sought advice from the Solicitor-General of Western Australia, Joshua Thomson SC.

The Solicitor-General advised that as a coroner has already decided not to hold an inquest into these deaths, I, as Attorney General, do not have the power to overrule that decision and direct that an inquest be held in those circumstances. I am advised that the power in the Act is not intended to be used to overrule a coroner's decision not to hold an inquest. Rather, it should only be used in exceptional circumstances where a coroner has not yet decided on whether an inquest should be held, where there is an obvious and immediate public interest in an investigation.

Nevertheless, I acknowledge Mr Cockman's courage and strength in seeking to have the circumstances surrounding the death of his beloved family members inquired into through a coronial inquest, in the hope that this tragedy is not repeated.

I am of the view that the Legislative Assembly's Community Development and Justice Standing Committee (the Committee), which you Chair, is best positioned to conduct a formal inquiry into the matters Mr Cockman has raised relating to the family law system within Western Australia, and the other factors he has identified as being potentially associated with this horrific tragedy that could not be considered by the Coroners Court. I note the Committee has responsibility for portfolios including the Attorney General, Child Protection and Prevention of Family and Domestic Violence.

I am hopeful that the Committee will agree to undertaking an inquiry into this matter and, as a result, the concerns that you have raised are properly investigated and addressed.

Yours sincerely



Hon. John Quigley MLA
ATTORNEY GENERAL, MINISTER FOR COMMERCE

27 OCT 2020



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