

Legal advice clarifies position regarding direction to hold inquests

Tuesday, 27 October 2020

- Attorney General does not have the power to overrule the State Coroner's decision to not hold a public inquest
- Lawful challenge to a Coroner's decision is through an appeal to the Supreme Court
- Amendments to the Coroners Act 1996 (WA) will provide grieving families with more time to appeal a Coroner's decision to the Supreme Court

The McGowan Government will amend the Coroners Act to allow more time for grieving loved ones to appeal to the Supreme Court if they disagree with a decision not to hold a public inquest.

Attorney General John Quigley has received requests from families to direct that inquests be held into their loved ones' deaths. In each case, the Coroner gave administrative findings but decided against holding public hearings.

The Attorney General sought extensive advice on whether he should grant those requests. The wording of Section 22(1)(d) of the Coroners Act 1996 (WA) (the Act) appears simply to grant an Attorney General power to direct an inquest.

Research 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. Examples of such a decision being made by Attorneys General in other Australian States could not be found.

Given the importance of the issue, the Attorney General sought advice from his principal legal adviser, the Solicitor-General of Western Australia, Joshua Thomson SC.

This advice was provided in the context of an important public interest question, not the subject of litigation, which concerned the proper construction of a statute.

The effect of the advice is that, as a coroner has decided not to hold an inquest into these deaths, the executive does not have the power to overrule that decision and direct that an inquest be held.

The power in the Coroners Act is not intended to be used to overrule a coroner's decision not to hold an inquest. 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.

For example, the Attorney General could direct an investigation into all coronavirus deaths in a particular aged care facility, without waiting for the Coroner to determine whether each death should be investigated.

The Act also specifically contemplates that the Attorney General may direct a separate investigation into a reportable death, even where this death has been investigated in another State or Territory.

At the moment, families who disagree with a coroner's decision to not hold an inquest can apply to the Supreme Court of Western Australia within seven days for an order that an inquest be held.

It is clear that the current timeframe of seven days is far too short and needs to be extended to allow grieving families more time to consider whether to make such an application.

An extension of time to 30 days to make such an application, with a provision for the court to grant exceptions, will be included in a package of wide-ranging reforms to the Coroners Act that are already in the drafting process.

Comments attributed to Attorney General John Quigley:

"It was prudent that I seek legal advice from the Solicitor-General about whether the Act provides the Attorney General with the power to direct an inquest after the Coroner has determined that an inquest ought not to be held, and if so, under what circumstances.

"The legal advice from Mr Thomson SC is clear; the Attorney General should only exercise the power under the Act in limited circumstances and the power should not be used effectively to overturn a decision of a Coroner not to investigate a death.

"To do so outside of these circumstances would effectively amount to an Executive decision to overrule a decision made judicially or quasi-judicially by a Coroner, in circumstances where the Parliament had already provided a mechanism for judicial review of that decision.

"An extension of time to appeal will be included in a package of wide-ranging reforms to the Coroners Act that are already in the drafting process and which I hope to present to the Parliament next year, if the McGowan Government is re-elected."

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<<https://www.mediastatements.wa.gov.au/Pages/McGowan/2020/10/Legal-advice-clarifies-position-regarding-direction-to-hold-inquests.aspx>>