

The Conduct of Coronial Inquiries in Western Australia: A Practitioner's Guide

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This article provides a practical overview of the operation of the Coroners Act 1920 (WA) and the conduct of coronial inquiries under the Act. The procedural and evidentiary issues involved in these inquiries are outlined.

It used to be relatively unusual for lawyers to appear in coronial inquiries (or “inquests”) in Western Australia. That is no longer so. In recent times there has been an increasing number of cases in which lawyers appear for interested parties. So too lawyers are occasionally briefed to appear as counsel assisting the coroner. The purpose of this paper is to offer some practical insights into the way in which coronial inquiries are conducted and into issues which may arise during them.

JURISDICTION

Under section 6(1) of the Coroners Act 1920 (WA), a coroner has jurisdiction to inquire into any death within the State where there is reasonable cause to suspect the deceased has died either a violent or unnatural death or a sudden death in which the cause is unknown, or the person has died in prison or a mental hospital.

In addition, jurisdiction over such deaths is conferred under section 6(1a) where a coroner is informed that a person has died outside the State, but the coroner has reasonable cause to believe that (i) the person ordinarily resided within Western Australia, (ii) the death, or the cause of it, occurred within the State, or (iii) the person's body is within the State.

Where a person is missing and the Attorney-General has reasonable cause to believe (i) the person has died, (ii) the person was ordinarily resident within the State, or (iii) the death or the cause of it occurred within the State,

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and (iv) the death was of a nature referred to in subsection (1)(a) of section 6, the Attorney-General may direct an inquiry into the suspected death of the person. On such a direction being given, the coroner has jurisdiction under section 6(1b) and may inquire into the suspected death. If he finds the death established beyond reasonable doubt, then he may further inquire into the manner and cause of the death.

By section 6(2), a coroner has jurisdiction to inquire into the cause and origin of any fire resulting in death, danger to life or property damage.

THE CORONIAL SYSTEM IN WESTERN AUSTRALIA

Before considering the details of the Act, it is first necessary to say something about the framework of the coronial system in this State.

The Act was modelled on the Coroners Act 1887 (UK) and is in virtually identical terms to it. Although the Act contemplates the appointment of a coroner and deputy-coroners for the State,¹ no such appointment has apparently ever been made.

Section 5 of the Act provides that the statutory jurisdiction and powers of coroners may be exercised by a stipendiary magistrate or any authorised justice of the peace. In fact, the coronial jurisdiction has been (and continues to be) exercised by magistrates and occasionally, in respect of specific deaths, by justices of the peace so authorised by the Attorney-General.

One practical consequence of this is that, because the magisterial system operates on a regional basis, so too does the coronial system operated by those magistrates. A further practical result is that, in the absence of any single coronial authority with territorial responsibility over the entire State, or for the system as a whole, the conduct and practice of coronial inquiries varies not only from one place in the State to another, but even between individual magistrates. A lawyer instructed to appear in a coronial inquiry should therefore first make enquiries to ascertain what approach is taken and what procedure is followed by the particular magistrate who will be conducting that inquiry.

Because of the number of deaths which occur in the Perth metropolitan area each year, a stipendiary magistrate has been allocated to perform duties as *ex officio* coroner on a full-time basis since 1947. The present Perth coroner is Mr David McCann SM. The Perth coroner has the support of a registrar and a small secretarial and administrative staff. There is also a police sergeant from the Police Coronial Inquiry Section on permanent attachment to the Perth Coroner's Office and physically located there.² His role, broadly, is to

1. Coroners Act 1920 (WA) s 4(1).

2. For the last six years that has been Sgt Peter Harbison. The Police Coronial Inquiry Section currently has 24 members, most of whom work from an office at Subiaco. There are two members posted to Fremantle and one to Midland.

liaise between the coroner and the police department; receive, review and prepare all incoming files for presentation to the coroner; arrange any further inquiry or investigation required by the coroner, and assist the coroner in the conduct of formal inquests.

Not all deaths are referred to the coroner, and not all deaths which are referred become the subject of a formal inquest. Homicides are dealt with by the Criminal Investigation Branch of the Police Department. Charges are laid and processed through the ordinary criminal courts. Deaths from traffic accidents are similarly handled by the Police Traffic Branch. Apparently natural deaths which doctors have some difficulty certifying, deaths from industrial accidents and other non-natural deaths would usually be referred to the coroner. There are between 1000 and 1200 deaths referred to the Perth coroner each year. Of these 300 to 400 are non-natural deaths. From all of these, the Perth coroner normally conducts between 20 to 30 formal inquests each year.

Lawyers instructed in relation to an anticipated inquest ought not to overlook the possibility of constructive action before the coroner has decided whether or not to hold an inquest at all. In many instances grieving relatives do not want an inquest to be conducted; in other cases there is a strong feeling that one should be. The coroner has a discretion. There is no reason why representations cannot be made to him advocating the client's point of view. Such representations should be in writing and should cogently set out the reasons why it is said an inquest should or should not be held. It would be necessary to address whether or not the particulars the coroner is required to determine and certify (*viz*, who the deceased was and how, when and where he or she died³) can be or have been established by the initial investigation, as well as other relevant factors, such as public notoriety or any other aspect of specific public interest in the matter, the distress or inconvenience to relatives or witnesses and so on.

If the coroner decides not to hold an inquest into a particular death, an application may be made to the Supreme Court of Western Australia for an order that one be held. The authority of the Attorney-General is required for the making of such an application.⁴ The power to give that authority has been delegated to the Minister for Justice pursuant to section 154 of the Supreme Court Act 1935 (WA).⁵

The adoption of general policies as to the categories of deaths in respect of which inquests will or will not ordinarily be held is a matter for individual coroners. The policies vary. In Perth, industrial deaths or deaths in police or prison custody will automatically be listed for formal inquests. So too will

3. Coroners Act 1920 (WA) ss 11(3) & (4).

4. Coroners Act 1920 (WA) s 14(1).

5. WA Govt Gazette 27 Aug 1992.

deaths which appear to arise from events which are recurring or have the potential to cause further deaths.

Once the coroner decides to convene an inquest, the responsibility for organising that will generally fall upon the police sergeant assisting the coroner ("the coronial sergeant"). In exceptional cases the coroner may request the appointment of counsel to assist in the particular inquiry. That request is usually made to the Crown Solicitor. If acceded to (and ordinarily it will be), the Crown Solicitor nominates a Crown Law counsel to assist, or instructs private counsel. The latter would always occur where the nature of the proposed inquiry was such that the Crown Solicitor may have to provide representation for interested parties, such as the Police Commissioner, individual police or prison officers or government departments or agencies.

Since the establishment of the office of Director of Public Prosecutions in 1992 there has been another avenue of assistance available to coroners. Section 15 of the Director of Public Prosecutions Act 1991 (WA) states that it is one of the functions of the DPP to participate in coronial inquiries and, with the concurrence of the coroner, to assist that coroner, if the DPP considers that in a particular case such participation or assistance is relevant to the performance of some other of his functions and is justified by the circumstances of the case.

In Western Australia, inquests are usually conducted by a coroner sitting alone. An inquest must be conducted with a jury when (i) the death is suspected to have been caused by an explosion or accident in a mine or factory,⁶ (ii) the coroner considers it desirable to have a jury,⁷ or (iii) in any special case the Attorney-General so directs.

Further, where a request for a jury is made in writing by any relative of the deceased or by any person knowing the circumstances leading up to the death, the coroner must either accede to that request or give written notice to the Attorney-General forthwith setting out his reasons for not doing so.⁸

The appointment of coroners' juries is covered by sections 28 to 36 of the Act. A coroner's jury consists of three persons.⁹ They may be discharged if they do not agree and return a verdict after six hours' deliberation.¹⁰

Once the nature of the inquest is settled, a date and venue for the hearing is fixed and all interested parties notified. From the file containing the investigating police officer's report, witness' statements and other material, and in consultation with the coroner, the coronial sergeant prepares a list of witnesses. Summonses are prepared in the coroner's office and served by police. The investigating police officer obtains the witness' statements which

6. Coroners Act 1920 (WA) s 9 (1)(a).

7. Coroners Act 1920 (WA) s 9 (1)(b).

8. Coroners Act 1920 (WA) s 9 (2).

9. Coroners Act 1920 (WA) s 30.

10. Coroners Act 1920 (WA) s 35.

may be in the form of sworn affidavits.¹¹ Again, in consultation with the coronial sergeant, the coroner will decide what, if any, expert witnesses will be required and the former will then make any necessary arrangements in relation to them.

ATTENDANCE AND REPRESENTATION

Section 24(1) of the Act provides that:

[A]ny person who, in the opinion of the coroner, has a sufficient interest in the subject or result of the inquest — (a) may attend personally or by counsel; and (b) may examine and cross-examine witnesses; provided that such examination and cross-examination — (c) is relevant to the subject of the inquest, and (d) is conducted according to the law and practice of coroners' inquests.

The High Court has held that the effect of this provision is to abolish the discretion formerly had by a coroner as to who would be permitted representation at an inquest, and to give interested parties the absolute right to attend the inquest, examine and cross-examine witnesses and to be represented by counsel.¹² In addition, the section was not intended to exclude the rules of natural justice, so those rules are applicable to coronial inquiries under the Act. That being so, as the Court pointed out, a coroner cannot lawfully make any finding adverse to the interests of an interested party without first giving that party the opportunity to present submissions against the making of such a finding.¹³

However, an inquest is not an adversarial hearing; it is an inquisition — an inquiry conducted by the coroner to ascertain the facts to enable findings to be made as to the particulars of the deceased and the circumstances of the death. Only those persons who, in the opinion of the coroner, have “a sufficient interest in the subject or result of the inquest” may appear.

The practice is for counsel, or parties wishing to appear, to attend and apply for leave to appear at the commencement of the hearing. The classes of persons with “sufficient interest” to attend and to be allowed to examine and cross-examine witnesses are, or may well be, larger than the class of persons against whom a coroner may contemplate making an unfavourable finding.¹⁴ Witnesses are called by the coroner (in practice, by the coronial sergeant or counsel assisting, on behalf of the coroner) and not by the parties or their representatives. If a party considers further evidence should be called, the practice is for that party to suggest that to the coronial sergeant. He will discuss it with the coroner who will decide whether or not the witness will

11. Coroners Act 1920 (WA) s 11 (2a), (2b), (2c).

12. *Annetts v McCann* (1990) 170 CLR 596, per Mason CJ, Deane & McHugh JJ, 600.

13. *Id.*, 601.

14. *Id.*, 609.

be called. If it is decided to do so, a witness statement is usually sought before the witness is called. If the coroner decides not to call the witness, the party's representative may make a formal application at the hearing for the coroner to do so. That would be argued and ruled upon as with any other application. It does not yet seem to have occurred, but the express reference in section 24(1) to the right to "examine" witnesses suggests that it does extend to enable a party to call the witness and examine that witness. I would suggest, therefore, that if a party were to insist that a particular witness be called notwithstanding the refusal of the coroner to call the witness himself, the application should be granted and the witness called by or on behalf of that party, for examination. Of course, the coroner would still retain control of the examination by confining it to questions which were relevant and proper¹⁵ and the coronial sergeant or counsel assisting would be entitled to cross-examine.

Even where parties do appear or are represented, that does not mean they may make submissions on the general subject matter of the inquest. They are entitled to make submissions only as to matters which are identified as a possible source of adverse findings concerning their interests.¹⁶ Once again, however, the actual practice may vary from inquest to inquest and from coroner to coroner.

ACCESS TO MATERIALS

Before the inquest commences, the coronial sergeant will have arranged for the compilation of the investigating officer's report, all statements and affidavits and proposed exhibits. Unlike civil or (serious) criminal adversarial proceedings, there is no requirement for these materials to be served on interested parties, and the practice is not to do so.

In Perth, the coroner may give interested parties or their representatives access to these materials prior to an inquest, on request. Logistical problems and lack of resources do not permit the coroner's office to provide copies, although this has been done in exceptional cases. Although the materials on the coroner's file may not be removed from his office — for obvious reasons — notes may be taken and on occasion solicitors have even obtained permission to bring in their own photocopying equipment and copy documents in situ.

Access to the inquiry file will not necessarily be given to interested parties prior to an inquest. Sometimes material has been received or obtained by the investigators on a confidential basis, or there may be other investigative reasons why disclosure before the hearing may be thought unwise. Such

15. Coroners Act 1920 (WA) s 24 (1)(c), (d).

16. *Annetts v McCann* supra n12, per Mason CJ, Deane & McHugh JJ, 601.

cases are dealt with individually, having regard to their own circumstances.

PUBLICATION

Section 11A of the Act empowers a coroner “on proper cause shown” to make an order forbidding the publication of the name of any witness, or of any person referred to in the course of the inquest, and to vary or revoke any such order.

What is a “proper cause” will depend upon the circumstances. The generality of those words is not limited in any way. The discretion is obviously an extremely wide one, but like any judicial discretion it must be exercised fairly. Suppression orders have been made in the interests of public security so as not to compromise undercover police operations,¹⁷ to protect individual witnesses from possible reprisal or to protect the identity of juveniles.¹⁸ But coronial inquiries are part of the public administration of justice and the public has an interest in publication of such proceedings.

The Full Court of the Supreme Court of Western Australia has held that the media have standing to be heard in relation to a suppression order. In *Bromfield ex parte West Australian Newspapers Ltd*,¹⁹ the court upheld an application for certiorari against a suppression order made by a magistrate prohibiting publication of evidence given at a preliminary hearing. Counsel for *The West Australian* had sought to be heard, but the magistrate refused to allow it. The Full Court held the newspaper had standing to make the application and the magistrate’s refusal to hear it was a denial of natural justice.

In practice, if there is no media representative present when a suppression order is made, counsel for a media organ may appear subsequently and make a further application under section 11A for either revocation or variation of the original order.

THE TAKING OF EVIDENCE

Witnesses are called by the coronial sergeant, examined by him, cross-examined by counsel appearing for interested parties (but only as to matters relevant to their interests in those proceedings) and then re-examined by the coronial sergeant. Some coroners allow considerable latitude to counsel in the extent of cross-examination permitted, whilst others take a more restricted

17. But see *A v Haydn (No 2)* (1984) 156 CLR 532.

18. For cases in which the principles relating to the making of suppression orders generally have been considered, see *Rockett v Smith ex parte Smith* (1991) 55 A Crim R 79 and *Re a Prosecution under the Customs Act* (1980) 30 ALR 647.

19. (1991) 6 WAR 153.

view.²⁰

Similarly, the practice in relation to evidence in chief also varies. Some coroners merely require the witness to identify his statement, which is then tendered and the witness cross-examined on it. Others allow the witness simply to read the statement aloud, have it tendered and then pass to cross-examination. The usual practice of the current Perth coroner is to have the witness give unaided oral evidence in chief, the statement then being identified and tendered before cross-examination. Relieving magistrates sitting as *ex officio* coroners in Perth, however, usually tend to have the witness read the statement and then tender it.

The Perth coroner also often prefers to question the witnesses himself, rather than leave that to the coronial sergeant — particularly in cases which involve professional expertise, such as medicine, engineering and the like. Evidence may be given by affidavit, although the coroner “if he thinks just cause exists for doing so” may summon a deponent to be examined or cross-examined.²¹ Otherwise, the coroner will examine on oath all persons who proffer their evidence respecting the facts and whom he thinks it expedient to examine.²² In addition, the coroner may summon any person whose evidence he may deem necessary to attend and give evidence or to produce at the inquest anything the coroner thinks ought to be produced.²³

The flexibility of coronial inquiries is an advantage. It not infrequently happens that new issues or lines of investigation become apparent during the hearing. The coroner may then adjourn to enable the coronial sergeant to arrange further re-investigation (usually through the investigating police officer or by obtaining the services of medical, scientific or other experts) or may use the power to summons additional witnesses.

The coroner may direct a post mortem examination, with or without an analysis of any part of the body or the contents of it.²⁴ Where the attendance of a prisoner is required to enable him to give evidence before an inquest, the coroner may issue a “bring up” order.²⁵

If a witness fails to attend on summons, the coroner may impose a fine of not more than \$40 and issue a warrant for the witness to be apprehended and brought before the inquest. Any witness at an inquest (whether appearing voluntarily or on summons) who refuses to be sworn or, having been sworn, refuses to answer questions may be committed to prison for up to seven days.²⁶ A coroner has the same power of punishing for wilful misbehaviour,

20. As to the scope of cross-examination generally, see *R v Wakely* (1990) 93ALR 79.

21. Coroners Act 1920 (WA) s 11(2a).

22. Coroners Act 1920 (WA) s 11(2).

23. Coroners Act 1920 (WA) s 37.

24. Coroners Act 1920 (WA) s 40.

25. Coroners Act 1920 (WA) s 48.

26. Coroners Act 1920 (WA) s 42(3).

or wilful interruption of the proceedings of the court, or wilful prevarication in giving evidence, as is had by any court of petty sessions.²⁷

The Act says nothing about the rules of evidence. It is generally accepted that formal rules of evidence do not apply. Historically, they have never applied in coroners' courts in England.²⁸ That position is probably maintained in this State by section 7(a) of the Act, which provides that every coroner shall have, in respect of all inquests "all the powers, authority and jurisdiction which belong to the office of a coroner in England, except so far as the same are varied by, or are inconsistent with, this Act."

The situation is not, however, free from doubt. Section 4 of the Evidence Act 1906 (WA) stipulates that, "[all] the provisions of this Act, except where the contrary intention appears, shall apply to every legal proceeding." And the reference in section 42 (4) of the Coroners Act to section 11 of the Evidence Act 1906 implies an assumption in the former that the latter does apply in coronial inquiries.

SELF-INCRIMINATION

There is express reference in the Act to the privilege against self-incrimination. It is contained in section 42(4):

Without derogating from section 11 of the Evidence Act 1906 at or in relation to an inquest, a person shall not be obliged to answer a question put to him if the answer to that question would incriminate him, or to produce any books, papers or documents if their contents would tend to incriminate him.

The effect of section 42(4) presumably is that a person is not obliged to answer a question if that answer would tend to incriminate him, unless the coroner gives a certificate under section 11 of the Evidence Act 1906. So far as is pertinent here, that section is in the following terms:

(1) Whenever in any proceeding any person called as a witness, or required to answer any interrogatory, declines to answer any question or interrogatory on the ground that his answer will criminate or tend to criminate him, the judge may, if it appears to him expedient for the ends of justice that such person should be compelled to answer such question or interrogatory, tell such person that, if he answers such question or interrogatory, and other questions or interrogatories that may be put to him, in a satisfactory manner, he will grant him the certificate hereinafter mentioned.

(2) Thereupon such person shall no longer be entitled to refuse to answer any question or interrogatory on the ground that his answer will criminate or tend to

27. Coroners Act 1920 (WA) s 7(b). As to these powers in courts of petty sessions, see ss 41 and 77 of the Justices Act 1902 (WA).

28. *R v Davies*, *The Times* 18 March 1980. See also *R v Divine ex parte Walton* [1930] 2 KB 29, 36 and P Matthews & J Foreman (eds) *Jervis on the Office and Duties of Coroners* 10th edn (London: Sweet & Maxwell, 1986) 177.

criminate him; and thereafter if such person shall have given his evidence to the satisfaction of the judge, the judge shall give such person a certificate to the effect that he was called as a witness or interrogated in the said proceedings and that his evidence was required for the ends of justice, and was given to his satisfaction.

(2a) Where in a proceeding a person is given a certificate under subsection (2) in respect of any evidence, a statement made by him, as part of that evidence, in answer to a question or interrogatory is not admissible in evidence in criminal proceedings against the person other than on a prosecution for perjury committed in the proceeding.

Note the limited nature of the protection afforded under subsection (2a). That was inserted in 1990. Until then, the protection was far more comprehensive, and extended to free the witness “from all criminal prosecutions and penal actions, and from all penalties, forfeitures and punishments to which he was liable for anything done before that time in respect of the matters touching which he is ... examined”.

The procedure to be followed under section 11 was set out in some detail in *Attorney-General (WA) v Cockram*.²⁹ The Full Court there made it clear that when a certificate is sought under section 11, the presiding judicial officer must: (i) satisfy himself by independent inquiry that there is some substance in the claim of incrimination; (ii) then, once satisfied that the claim has substance, decide whether it is expedient for the ends of justice that the witness be compelled to answer the question.

It is the practice of the Perth coroner to take a “blanket” approach to claims of self-incrimination and simply to stand the witness down and not require him or her to answer any questions at all, where the claim is made. This is the approach that was taken in the inquest into the death of Stephen Wardle, at which some 16 police officers refused to answer questions on the ground that the answers might tend to incriminate them. This inquest was conducted before the 1990 amendment to section 11.

My own view is that such practice does not accord with the requirements of the Act nor the practice in England, and necessarily tends to detract from the inquisitorial purpose of a coronial inquiry.

On this matter, *Jervis on the Office and Duties of Coroners*³⁰ states:

[A] witness cannot refuse to go into the witness box on the ground that he might incriminate himself: he can only claim privilege after he is sworn and the question put (*Wakley v Cooke* (1947) 4 Ex 511; *Boyle v Wiseman* (1855) 10 Ex 647). The witness must pledge his oath that he honestly believes that the answer will, or may tend to, incriminate him (*Webb v East* (1880) 5 Ex D 108; *Lamb v Munster* (1883) 10 QBD 110). It is for the Coroner to decide whether or not the witness is entitled to the privilege. He must first satisfy himself ... that the answer would tend to incriminate the witness (*Re Reynolds, ex parte Reynolds* (1882) 20 Ch D 294).

29. (1990) 2 WAR 477.

30. *Supra* n 28, 182.

The proper procedure would therefore be that: (i) the witness is sworn, (ii) the question is put, (iii) the witness objects to answering the question on the ground of self-incrimination, and (iv) the coroner decides whether he is satisfied that the witness has reasonable ground to apprehend the answer would tend to incriminate him given the circumstances of the case and the nature of the evidence the witness is called to give.

The objection may be taken either by the witness or by his legal representative.³¹ The privilege does not operate automatically on the objection being taken: "The court is bound to form a judgment as to whether the claim is bona fide and has substance".³² Of course, it is not only questions which would directly incriminate a witness in respect of which the privilege may be claimed. The section itself refers to questions which would "tend" to incriminate. A degree of latitude should be allowed the witness.³³

In *Ex parte Alexander*,³⁴ Gray J referred to the long-standing practice of the Coroner's Court of Victoria in not calling a witness who is likely to be implicated in a serious crime. But that is not authority for the proposition that a witness once called and sworn can claim privilege against self-incrimination before a single question is asked, nor for the proposition that a witness is entitled to take the stand and decline to answer any questions.

Waller suggests³⁵ that the procedure whereby a witness is asked a series of questions, all of which he may decline to answer, is futile, and that if a witness intimates that he wishes to answer no questions at all, he should be permitted to leave the box immediately. The reason for this is that if "[the] answer to a question is relevant to the inquiry, it is probably criminating; if it is not so relevant, it is not admissible".³⁶

That, of course, may be the situation in a particular case; but this still does not absolve the coroner from the duty of determining the matter himself in the particular circumstances.

In my view, the reference in section 42(4) of the Act to section 11 of the Evidence Act 1906 strengthens the argument that under the former the witness must first be asked the question to which the objection may be taken, as the operation of section 11 is also dependent upon the witness declining to answer a specific question.

Since the operation of section 11 of the Evidence Act 1906 in coronial inquiries is expressly preserved, this means that the issue of self-incrimination in any given instance is not resolved merely by the claim being sustained. The coroner must then go on to consider whether or not the exigencies of

31. *R v The Coroner, ex parte Alexander* [1982] VR 732.

32. *Id*, per Gray J, 736.

33. *Id*, 735.

34. *Id*, 738.

35. K Waller *Coronial Law and Practice in NSW* 2nd edn (Sydney: Law Book Co, 1982) 93.

36. *Ibid*.

the situation require the evidence to be given under the protection afforded by a certificate under section 11 or whether the interests of justice would better be served by simply not pressing the question. This calls for a conscious and deliberate decision in each case in accordance with the strictures of the Full Court in *Cockram*.³⁷

COMMITTAL FOR TRIAL

Where a coroner forms the opinion that the evidence given at an inquest is sufficient to establish a prima facie case against a person for wilful murder, murder, manslaughter, infanticide or, in the case of a fire, for any indictable offence in which the question whether the person caused the fire will be in issue, the coroner must order that person be committed for trial accordingly.³⁸

I say “must” because, in my view, committal is mandatory once the coroner has formed the relevant opinion.³⁹ Section 12A (1) of the Act stipulates that in such event the coroner “shall” order that person to be committed for trial. Committals for trial from coronial inquiries (in Perth at least) are now rare, there being only about one each year. There are obviously significant disadvantages for a person at risk of being committed to trial from an inquest.

Unlike committal proceedings under the Justices Act 1902 (WA) no charge is formulated prior to the hearing, there is no right to witness’ statements and the risk that there may be a committal may not become apparent until some way through the proceedings. Of great significance is the non-applicability of formal rules of evidence — although in deciding whether or not the evidence is sufficient to establish a prima facie case, *ex hypothesi*, a coroner could have regard only to evidence which would be admissible on a trial.

It is the practice of the Perth coroner to warn a party (or that party’s legal representatives) once the possibility of a committal arises. In such cases, the potential “defendant” would normally not be called as a witness until last (if at all) and would be warned that he is not obliged to answer questions nor produce documents.

FINAL SUBMISSIONS

In some cases the evidence and issues will be such that final submissions

37. *Supra* n 29.

38. Coroners Act 1920 (WA) s 12A.

39. A recent illustration was the committal for trial of Dr Zylvain Jemielita on a charge of the wilful murder of his wife. Dr Jemielita was committed for trial at the conclusion of an inquest before the Bunbury Magistrate sitting as a coroner on 9 Oct 1994.

to the coroner are not necessary. In others they will be. The coronial sergeant normally addresses first, followed by counsel for interested parties, with the coronial sergeant exercising a right of reply if required. In Perth, the coroner tends not to call upon the coronial sergeant to make submissions or a final address, and he therefore usually does not do so.

The right of counsel to make final submissions on behalf of a party will depend upon whether or not there is a prospect that the coroner may make findings adverse to the interests of that party. It is incumbent upon the coroner to invite counsel to make submissions as to those matters, identified by the coroner, which could result in findings adverse to a party, or to inform counsel he does not propose to make any adverse findings affecting that party.⁴⁰ As already observed, however, this does not entitle counsel to make final submissions on the general subject matter of the inquest.⁴¹ Whether or not counsel will nonetheless be permitted to do this is, of course, a matter for the individual coroner.

In the preparation of final submissions, there are some statutory provisions which should not be overlooked. Section 7A of the Act empowers a coroner to refer a transcript of the evidence given on an inquest, or any other information or matter which comes to his notice in the discharge of his duties, to any professional or trade body with appropriate jurisdiction. Section 11(5) deals specifically with the death of an infant. In such a case, it authorises the coroner to inquire, not only into the immediate cause of death and the circumstances of it, but also into all the circumstances which may throw light upon the treatment and condition of the infant before death, "and into such other matters as, in the opinion of the coroner, require investigation in the interests of public justice."

Although a coroner has no power to commit a person to trial from an inquest on a charge of dangerous driving causing death⁴² nonetheless, if a coroner forms the opinion on an inquest that the evidence is sufficient to put a person on trial for that offence, section 12B requires the coroner to state that opinion and name that person in the inquisition.⁴³ Where such an opinion is formed and expressed, the transcript is referred to the Attorney-General who may refer it to the DPP to decide whether or not there should be a prosecution.

If an inquest is held after a person has been dealt with on indictment or for an indictable offence dealt with summarily, in relation to the same death,

40. *Annetts v McCann* supra n 12, 601.

41. *Ibid.*

42. Dangerous driving causing death is an offence under the Road Traffic Act 1974 (WA) s 59.

43. The "inquisition" is the formal written document certifying the coroner's findings under s 11(3). The format of it is set out as Form 16 in the 2nd Schedule to the Act.

the coroner's inquisition may not contain any finding that is inconsistent with the determination of the criminal proceedings.⁴⁴

Finally, a coroner may not express an opinion on any matter outside the scope of the inquest except in a rider which, in the opinion of the coroner, is designed to prevent the recurrence of similar occurrences.⁴⁵

CONCLUSION

I have sought to deal with the topic of this paper in a general way. For that reason, I have not covered particular types of inquest, such as those relating to fires or accidents in or about factories or mines. The Act contains specific provisions which apply to such inquests and regard must be had to them in an appropriate case.

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44. Coroners Act 1920 (WA) s 13A(3) (including the outcome of committal proceedings: see s 13A(6)).
 45. Coroners Act 1920 (WA) s 43(1)(i)(a). S 43(1)(j) is an important provision. It stipulates that: "A coroner shall not frame his decision or finding in such a way as to appear to determine any question of civil liability or as to suggest that any person is found guilty of an indictable or simple offence."