31 August 2018

The Hon Martin Pakula MP
Attorney-General
121 Exhibition Street
MELBOURNE VIC 3000

Dear Attorney-General

Coronial Council Annual Report 2017–18


The report was approved by the Coronial Council of Victoria on 22 August 2018.

Yours sincerely

Professor Katherine McGrath MB BS, FRCPA FAICD
Chair, Coronial Council of Victoria
Message from the Chair

I am pleased to report on the activities of the Coronial Council of Victoria for the 2017-18 reporting period.

During the past year, the Council has undertaken a formal review of the provisions of the Coroners Act 2008 that allow for the re-opening of a coronial investigation, or an appeal of coronial findings. The review was prompted by concerns raised by a number of families who have engaged with the coronial system in recent years.

On 29 November 2017, the Council presented its report to the Attorney-General. The Council made 11 recommendations aimed at improving the experience for people, particularly families, who participate in coronial proceedings.

The Council’s recommendations were informed by the valuable insights of the families and organisations that contributed to the review. I would like to thank the many people who made a submission to, or met with, the review team, for their important contribution to the work of the Council. I would also like to thank Penny Armatage and Sophie Vasenszky for their work on the review.

I would like to acknowledge my fellow Council members for their ongoing support and dedication to the work of the Council, and the Department of Justice and Regulation for its secretariat support. Finally, I am delighted to report that in July 2017, the Council welcomed Maryjane Crabtree, Maria Dimopoulos and Michele Lewis as new members.

I am honoured to serve as Chair and look forward to continuing the important work of the Council.

I am pleased to present the 2017-18 Coronial Council Annual Report.

Professor Katherine McGrath
Chair, Coronial Council of Victoria
The Coronial Council of Victoria

Established under Part 9 of the Coroners Act 2008, the Coronial Council of Victoria is independent of the Coroners Court of Victoria. The Council’s function is to provide advice, and make recommendations, to the Attorney-General on:

- issues of importance to the coronial system in Victoria;
- matters relating to the preventative role of the Coroners Court;
- the way in which the coronial system engages with, and respects the cultural diversity of, families; and
- any other matters relating to the coronial system that are referred to the Council by the Attorney-General.

The Council is a body that is advisory, in that it can identify issues where a particular field of medical, legal, scientific or other expertise would be relevant, and is consultative, in that it is reflective of various community groups that are affected by death investigation processes.

The Council is unique in Australia and is the only known body of its kind in the world. A history of the Council can be found in Appendix 1.

In undertaking its function, the Council is expected to act in a way that:

- does not impinge on the independence of a coroner’s decision-making and investigation of death as well as the role of the State Coroner;
- delivers strategic advice reflecting the changing physical, social and political environment to foster a modern and responsive coronial system;
- promotes and strengthens different relationships including collaboration between agencies across the coronial system;
- focuses on advice to strengthen services to families and improve the prevention role of the coroner;
- ensures that the views of bereaved families are reflected in the development of advice and recommendations;
- complements existing governance structures in the State coronial jurisdiction; and
- promotes transparency, accessibility and accountability regarding the functions of the Victorian coronial system.

During the reporting period, the Council met in July and October 2017, and in February and May 2018.

Further information
coronialcouncil.vic.gov.au
coronial.council@justice.vic.gov.au
(03) 8684 1433
The Council Members

Professor Katherine McGrath
Chair from July 2013, appointed member from March 2010

Professor Katherine McGrath is a widely respected health care executive with over 30 years’ experience in government, public and private health, and clinical and academic posts.

Professor McGrath’s roles have included Deputy Director General of NSW Health and Chief Executive Officer of the Hunter Area Health Service, and she was a founding commissioner of the Australian Commission for Safety and Quality in Healthcare. Professor McGrath has been a member of the Council since it was established, and was appointed Chair on 9 July 2013.

Judge Sara Hinchey
Ex officio member from February 2016

County Court Judge Sara Hinchey is the Victorian State Coroner. Her Honour has appeared before the Coroners Court in some of the State’s most high-profile inquests. Her inquisitorial experience also extends to appearances before the Royal Commission into Institutional Responses to Child Sexual Abuse and the Victorian Bushfires Royal Commission.

Judge Hinchey was appointed as a Judge of the County Court in May 2015 following more than 19 years’ experience as a trial and appellate barrister. During this time, she appeared in the higher courts of Victoria, New South Wales, Tasmania and the ACT, as well as the Federal Court and the High Court of Australia. Her areas of interest include occupational health and safety, corporate crime, construction law, medical and other professional negligence.

Deputy Commissioner Shane Patton APM
Ex officio member from February 2016

Deputy Commissioner Shane Patton has been a member of Victoria Police for over 38 years and in June 2015 was promoted to Deputy Commissioner, Specialist Operations. This position has overall responsibility for the portfolios of Crime, Road Policing, Forensics, Intelligence and Covert Support and Legal Services. Since joining Victoria Police, he has had a varied career in a wide range of diverse policing roles including operational uniform policing, criminal investigations, internal investigations, prosecutions, public transport safety, traffic and education.

Deputy Commissioner Patton has been involved in, and overseen, several major projects, including the creation of a Counter Terrorism Command within his current portfolio, as well as leading the design of ‘Schools of Practice’ within the Victoria Police training environment. He has had significant involvement in change management, public order and road safety strategic policy.
Professor Noel Woodford
Ex officio member from July 2014

Professor Noel Woodford holds the Chair in Forensic Medicine at Monash University and was appointed Director at the Victorian Institute of Forensic Medicine in July 2014.

Prior to his appointment, Dr Woodford worked as a senior forensic pathologist at the Institute from 2003. Previously, he was a Consultant Home Office Pathologist and Senior Lecturer in Forensic Pathology in the Department of Forensic Pathology at Sheffield University, UK. Whilst in the UK, Dr Woodford obtained a Masters of Laws in Medical Law from the University of Cardiff. His special interests include sudden unexpected natural adult death and radiological imaging as an adjunct to medico-legal death investigation.

Dr Ian Freckelton QC
Appointed member from March 2010

Dr Ian Freckelton is a Queen’s Counsel in full-time practice as a barrister throughout Australia. He has appeared in many of Australia’s leading coronial cases at trial and on appeal over the past 25 years. He is also a judge of the Supreme Court of Nauru; a Professorial Fellow in Law and Psychiatry, University of Melbourne; an Adjunct Professor of Forensic Medicine, Monash University; an Adjunct Professor of Law, La Trobe University; and an Adjunct Professor, Queensland University of Technology. Dr Freckelton is also a member of the Mental Health Tribunal of Victoria and the Australian Advisory Council on Medicinal Cannabis. He is an elected Fellow of the Australian Academy of Law and the Academy of Social Sciences Australia.

Dr Freckelton is the founding editor of the ‘Journal of Law and Medicine’ and the founding editor-in-chief of ‘Psychiatry, Psychology and Law’. He is the author and editor of leading texts on coronial law, health law, evidence law, compensation law, disciplinary law, causation, therapeutic jurisprudence, mental health law, criminal law, sentencing, policing, and scholarly misconduct.

Christopher Hall
Appointed member from March 2010

Christopher Hall is a psychologist and the Chief Executive Officer of the Australian Centre for Grief and Bereavement (ACGB). ACGB is a clinical, educational and research organisation, and operates the State-wide Specialist Bereavement Service, funded by the Department of Health and Human Services. More broadly, Mr Hall has been Chair of the International Work Group on Death, Dying and Bereavement and President of the Association for Death Education and Counseling.

Adjunct Clinical Associate Professor Robert Roseby
Appointed member from March 2010

Adjunct Clinical Associate Professor Robert Roseby is a respiratory (and general) paediatrician, Head of Medical Specialties and Head of Medical Education at Monash Children’s Hospital, and visiting paediatrician to the Western Suburbs Indigenous Gathering Place. He is a member of the Child and Adolescent subcommittee of the Consultative Council on Obstetric and Paediatric Mortality and Morbidity. His previous roles include the co-chair of the Board of Inquiry into the Northern Territory Child Protection System 2009–10, Deputy Director of Adolescent Medicine at the Royal Children’s Hospital 2009–12, and Head of Paediatrics at Alice Springs Hospital 2003–2009.
Maria Dimopoulos
Appointed member from July 2017

Maria Dimopoulos is a nationally recognised expert specialising in the intersections of diversity, gender equality and the law. Maria brings over 25 years’ experience in policy formulation for all tiers of government, research for social planning and in legal education. She is a member of the Judicial Council on Cultural Diversity and a Board member for the Castan Centre for Human Rights.

Michele Lewis
Appointed member from July 2017

Michele Lewis was appointed as mecwcare’s Chief Executive in 2007. Ms Lewis has over 40 years’ experience in health and aged care, including senior management at clinical and strategic levels within the acute, sub-acute, aged and community sectors. Her areas of interest include governance and risk, consumer choice, financial management, and diversity.

Maryjane Crabtree
Appointed member from July 2017

Maryjane Crabtree was a senior litigation partner at Allens for 23 years, and acted in several high profile coronial inquests. She retired from the partnership in 2016, to give her time to contribute to a range of organisations in the legal, health, education and sporting sectors. Among other positions, she is currently a director of the Law Institute of Victoria, Deputy President of Epworth Healthcare, and a member of the ethics committee of the Australian Institute of Health and Welfare.

Council Membership 2017–18

Under section 111 of the Coroners Act 2008, the Council consists of three ex officio members and between five and seven members appointed by the Governor in Council on the recommendation of the Attorney-General.

Members are appointed for up to three years and are eligible for re-appointment. The appointed members were chosen for the diversity of experience they bring to the role, including an understanding of the issues that affect, and intersect with, the coronial jurisdiction.

Ex officio members
Her Honour Judge Sara Hinchey, State Coroner
Deputy Commissioner Shane Patton APM, Victoria Police
Professor Noel Woodford, Victorian Institute of Forensic Medicine

Appointed members
Professor Katherine McGrath
Dr Ian Freckelton QC
Christopher Hall
Adjunct Clinical Associate Professor Robert Roseby
Maria Dimopoulos
Michele Lewis
Maryjane Crabtree

Council Secretariat
During the reporting period, the Council was supported by a secretariat provided by the Department of Justice and Regulation.
The Year in Review

During 2017–18, the Council completed the Coronial Council Appeals Reference and provided its final report and recommendations to the Attorney-General, the Hon Martin Pakula MP, on 29 November 2017.

Coronial Council Appeals Reference

On 15 December 2016, the Attorney-General asked the Council to review the provisions of the Coroners Act 2008 that allow for the re-opening of a coronial investigation, or an appeal of coronial findings.

During the course of its 11-month review, the Council met with people who had engaged with coronial processes. The Council received 22 submissions from families and interested members of the public, and nine submissions from organisations with expertise in the coronial system, including the Coroners Court, the Supreme Court, the Victorian Bar and Victoria Police.

The Coronial Council Appeals Reference Report made 11 recommendations aimed at improving the experiences of families and others who engage with coronial proceedings. Of the 11 recommendations:

- four recommendations proposed that the Government make minor amendments to the Coroners Act to clarify or enhance the way in which parties can seek to have a coronial investigation re-opened, have findings set aside, have the wording of a coroner’s decision amended, or appeal a finding of a coroner;¹
- three recommendations asked the Government to fund improved support services for families who participate in coronial processes;²
- two recommendations proposed that the Coroners Court and the Victorian Institute of Forensic Medicine develop guidelines that would enable the Court to better meet the needs of families³ through the improved provision of information, enhanced engagement at key stages in a coronial investigation, and by making the content of coronial findings clearer and more accessible;⁴
- one recommendation asked the Coroners Court to work with Victoria Legal Aid, the Victorian Bar and the Law Institute of Victoria, to better assist families to access legal representation in public interest cases;⁵ and
- one recommendation proposed that the Coroners Court enhance data collection and evaluation.⁶

Government Response

On 21 June 2018, the Victorian Government published its formal response to the Council’s recommendations. The Government indicated that it supports eight of the Council’s 11 recommendations, and will further consider the other three recommendations.⁷

Amendments to the Coroners Act to give effect to four of the Council’s recommendations are included in the Justice Legislation Miscellaneous Amendment Bill 2018, which was introduced into Parliament on 20 June 2018.

A copy of the Council’s Appeals Reference Report and the Government’s response can be found on the Council’s website at coronialcouncil.vic.gov.au.

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1 Recommendations 1, 2, 8 and 9.
2 Recommendations 4, 6 and 10.
3 Recommendation 3.
4 Recommendation 5.
5 Recommendation 7.
6 Recommendation 11.
7 The Government supports Recommendations 1-3, 5, 7-9 and 11, and will further consider Recommendations 4, 6 and 10.
Summary of Expenditure for the 2017–18 Year

Council meetings, project and reference work, and associated costs during the reporting period, were funded by annual appropriation through the Department of Justice and Regulation.

These costs included sitting fees, paid in accordance with the Appointment and Remuneration Guidelines, meeting costs and other incidentals. Council members who also hold full-time positions in the Victorian Public Sector at Executive Officer level or equivalent, are not eligible for remuneration under the Guidelines.

The table below includes all expense items for the reporting period ending 30 June 2018. Significant expenditure items detailed in the table are:

- project and reference costs – comprising two consultants engaged on the Coronial Council Appeals Reference, and project costs;
- secretariat costs – salary and on-costs for a Secretariat Officer (VPSG4, 0.5 FTE), and incidentals. The secretariat is responsible for preparing meeting papers, attending meetings, undertaking research, and performing administrative and operational matters on behalf of the Council, as directed by the Chair; and
- project manager costs – salary and on-costs for one project manager (VPSG6, 1.0 FTE) from early 2017 to manage the Coronial Council Appeals Reference.

<table>
<thead>
<tr>
<th>Major Expense Items</th>
<th>Summary of Council Expenditure ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project and Reference costs</td>
<td>132,000.00</td>
</tr>
<tr>
<td>Secretariat and Project Manager costs</td>
<td>130,475.00</td>
</tr>
<tr>
<td>Meeting costs / sitting fees / incidentals</td>
<td>2,861.00</td>
</tr>
<tr>
<td>TOTAL</td>
<td>265,336.00</td>
</tr>
</tbody>
</table>

Details of consultancies (valued at $10,000 or greater)

In 2017–18, there were two consultancies engaged where the total fees payable to consultants were $10,000 or greater. The total expenditure incurred during 2017–18 in relation to these consultancies was $128,000 (excluding GST). Details of these consultancies can be viewed on the Council’s website: coronialcouncil.vic.gov.au.

There were no consultancies engaged during 2017–18, where the total fees payable to an individual consultancy were less than $10,000.
Appendix 1 – History of the Coronal Council

In December 2004, the Governor in Council referred an inquiry to the Victorian Parliament Law Reform Committee (the Committee), into the effectiveness of the previous Coroners Act 1985.

The Committee was asked to consider whether the Act provided an appropriate legislative framework for:

- the independent investigation of deaths and fires in Victoria;
- the making of recommendations to prevent deaths and fires in Victoria, and improve the safety of Victorians; and
- the provision of support for the families, friends and others associated with a deceased person who is the subject of a coronial inquiry.

The Committee’s Final Report, published in September 2006, recommended that the Department of Justice establish a Coronial Council. The Committee considered that a Council ‘would ensure that appropriate policy decisions relating to the Coroner’s Office could have input from experts with medical and epidemiological expertise, as well as in other areas as deemed appropriate and depending on the council’s mandate’. The Committee endorsed the formalisation of a public policy approach to death investigation and supported the proposal by the Victorian Institute of Forensic Medicine that a Coronial Council be established “to take on the role of reviewing research and providing the policy direction for death investigation.” It suggested a hybrid model, establishing the Council as an advisory board as well as a reference group for engaging with the community and stakeholders. It also suggested a number of purposes such as setting public policy and developing guidelines to support the operations of the coronial jurisdiction.

In its response to the Committee’s Final Report, the Government supported the proposal for a Coronial Council to advise on the coronial system as a whole.

In his second reading speech for the Coroners Bill 2008, the then Attorney-General, the Hon Rob Hulls MP, introduced the Coronial Council of Victoria as an advisory body to:

> ‘…provide advice to the Attorney-General, of its own motion or at the Attorney-General’s request, regarding the operation of the coronial system. The council will ensure that the coronial system will continue to be effective and responsive to the needs of people who interact with the coronial system in the future.

> The council will consider emerging issues of importance to the Victorian coronial system, matters relating to the prevention role of the Coroners Court, the way the coronial system engages with families and respects the cultural diversity of families and any other matters referred by the Attorney-General.’

The Council was established under section 109 of the Coroners Act 2008.

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2 Ibid 608.
3 Ibid.
5 Victoria, Parliamentary Debates, Legislative Assembly, 9 October 2008, 4038 (Rob Hulls, Attorney-General).
Appendix 2 – Coroners Act 2008

Part 9—Coronial Council of Victoria

109 Coronial Council of Victoria
The Coronial Council of Victoria is established.

110 Function of the Council
(1) The function of the Council is to provide advice, and make recommendations, to the Attorney-General either—
(a) of its own motion; or
(b) at the request of the Attorney-General.
(2) Advice and recommendations prepared under subsection (1) must be in respect of—
(a) issues of importance to the coronial system in Victoria;
(b) matters relating to the preventative role played by the Coroners Court;
(c) the way in which the coronial system engages with families and respects the cultural diversity of families;
(d) any other matters relating to the coronial system that are referred to the Council by the Attorney-General.

111 Members of the Council
(1) The Council consists of—
(a) the State Coroner; and
(b) the Director of the Institute; and
(c) the Chief Commissioner of Police; and
(d) 5 to 7 other members appointed by the Governor in Council on the recommendation of the Attorney-General.
(2) A member of the Council appointed under subsection (1)(d)—
(a) holds office for the term, not exceeding 3 years, that is specified in his or her instrument of appointment; and
(b) is eligible for re-appointment; and
(c) may resign from office by delivering a letter of resignation to the Attorney-General; and
(d) is entitled to the remuneration and allowances specified in the instrument of appointment and to be reimbursed for expenses.
(3) The Governor in Council, on the recommendation of the Attorney-General, must appoint a member appointed under subsection (1)(d) to be the Chairperson of the Council.
112 Procedure at meetings
(1) The Chairperson or, in his or her absence, a member of the Council elected by the members present at the meeting, must preside at a meeting of the Council.
(2) The person presiding at the meeting must ensure that decisions made at the meeting, including any recommendations, are recorded in writing.
(3) 5 members constitute a quorum of the Council.
(4) Subject to this section, the Council may otherwise regulate its own procedure.

113 Annual report
(1) As soon as practicable each year but not later than 31 October, the Council must submit to the Attorney-General a report— of its operations for the year ending on 30 June that year; and that includes any prescribed matter.
(2) The Attorney-General must cause each annual report submitted to him or her under this section to be presented to each House of Parliament within 7 sitting days of that House after receiving it.