



Coroners Court
of Victoria

21 November 2019

The Hon. Anthony North QC
Victorian Law Reform Commission
DX 144
MELBOURNE VIC

Dear Justice North,

Contempt of Court

I am writing in response to your letter dated 7 November 2019 regarding the restating of the contempt power of the Coroners Court in the same terms as the contempt power conferred on the Magistrates' Court of Victoria.

The Coroners Court of Victoria is unique in the judicial system in Victoria as it is an inquisitorial court where the coroners are both investigators and judicial officers. The contempt provisions in the *Coroners Act 2008 (Vic)* are broad and are designed to protect the investigation and subsequent judicial proceedings. In my opinion, the proposal to restate the contempt power to those of the Magistrates' Court would not reflect the needs of the Coroners Court.

I am pleased to attach the Court's response.

If you need any further clarification regarding the Court's submission, please contact

Yours sincerely

A handwritten signature in black ink, appearing to read 'Caitlin English'.

Caitlin English
Acting State Coroner
Coroners Court of Victoria



SUBMISSION

Why are the Coroners Court of Victoria contempt powers broad?

1. The *Coroners Act 2008* (Vic) (**the Act**) established the Coroners Court of Victoria (**the Court**). It is also the first Victorian Court to be established as an inquisitorial court. The Attorney-General Rod Hull in his second reading speech explained the rationale for the establishment of an inquisitorial court, stating that creating an inquisitorial court will ensure:
 - That the coroners operate independently of the executive and can effectively investigate deaths without the coronial system becoming too adversarial.
 - While the coroner's role has been understood to be an investigative role, for the first time, Parliament has set the coroner into an inquisitorial court setting. Thus, both investigations and public hearings (inquests) will operate within an inquisitorial framework. This is in contrast to criminal and civil proceedings, which in Victoria are adversarial in nature.¹
 - In very broad terms, an adversarial system refers to the common law system of conducting proceedings in which the parties, and not the judicial officer, have the primary responsibility for investigating and advancing the case, including deciding how much evidence and the type of evidence that is gathered. In an adversarial system, the judicial officer is more reactive than proactive and adjudicates on evidence and submissions selected and presented by interested parties or their legal representatives.
 - Compared with the adversarial system, the role of the judicial officer in an inquisitorial setting is both proactive and inquisitive.²
2. Within an inquisitorial framework at the Court, a coroner has primary responsibility for investigating and advancing the case. This means that a coroner must *proactively* supervise the initial investigation and then direct and control the investigation and any inquest held. The scope and conduct of the investigation do not depend on the 'case' put forward by one or more interested parties.³
3. The Court has no inherent jurisdiction to punish for contempt, however section 103 of the Act provides very broad codified contempt powers and section 104 provides for a person convicted of contempt to appeal to the Court of Appeal in accordance with Part VI of the *Crimes Act 1958* (Vic).
4. Section 103 has codified two types of contempt: disobedience contempt (s.103(1)(a) and (1)(b)) and contempt on the face of the court (s.103(1)(c) to (e)). S. 103(1)(f) is a catch-all provision, which gives the Coroners Court the same powers as the Supreme Court.
5. The contempt provisions under the Act are broad because the Court is an inquisitorial court. The disobedience contempt provisions protect the role of the coroner as investigator and the

¹ The Explanatory Memorandum to the new Act states that the investigation and inquest are neither civil nor criminal proceedings, as those terms are understood in Victoria: *Explanatory Memorandum to the Coroners Bill 2008*, 17

² Rob Hulls, Attorney-General, *Coroners Bill 2008* (Vic), *Second Reading Speech*, 9 October 2008, 4037.

³ *Priest v West* [2012] VSCA 327, [3], [169]



investigation itself and the contempt on the face of the court provisions protect the proper administration of justice in an inquest. As Esson CJ commented in *Wastech v Costello*;

*... because [inquests] are inquisitorial in nature and deal with situations which inevitably involve strong feeling, they create a grave danger of injustice to those thought to have been involved in the events leading to death. That being so, it is of particular importance that such a proceeding be conducted in a reasonably restrained and temperate atmosphere.*⁴

Should the contempt power of the Coroners Court be in the same terms as the contempt power conferred on the Magistrates' Court of Victoria?

6. It is acknowledged that the contempt powers under the Act are broad. This codification specifically reflects powers that are important for coroners in both investigation and at inquest. For example, if the coroner makes an order for a person or organisation to provide documents for an investigation and they refuse to comply with the order, under s.103(1)(a), the coroner may commence contempt proceedings, thereby encouraging the person or organisation to comply with the order. Contempt warnings also play an important, although informal, role in addressing perceived or potential interference with the proper administration of justice. Contempt warnings allow the Court to assert its authority without actual recourse to considerable punitive powers.
7. If the Commission were to recommend the removal of disobedience contempt from the Act and require contempt matters to either to be heard at the Supreme Court of Victoria or as a criminal charge, it would cause delay to the coronial investigation, increase costs and possibly impede the investigation itself.

⁴ *Wastech Services Ltd v Costello* (1996) 20 BCLR (#d) 161: 1996 CanLii 435 (BC SC), [22]