

UTS Public

28 October 2021

Questions on Notice further to 29 September 2021

1. We thank the Committee for the opportunity to appear on 29 September 2021 and enclose the answers to the questions on notice identified, along with some further submissions.

State Coroner's Draft Protocol

2. At page 32 of the provided transcript, the Committee asked for Jumbunna's views on the State Coroner's Draft Protocol (the **Protocol**). At the time we appeared, Jumbunna had not been consulted on that Protocol, however on 15 October 2021, the State Coroner wrote seeking our views on what appears to be an updated version of the Protocol. Cognisant of the concerns expressed to the Committee about the risk of preferencing the view of lawyers over those who have lost loved ones in custody,¹ we have obtained the consent of the State Coroner to consult with families and advocates with whom we have worked in First Nation deaths in custody to provide comments on that Protocol by 19th November 2021 and will provide a copy of that correspondence to the Committee at that time. We hope that is satisfactory to the Committee.

Response to Question on Notice – Recommendations for prosecutions

The CHAIR: ...” This question is directed to Jumbunna. At page 19 recommendation 2, you recommend the return of directly initiated coronial prosecutions in First Nations deaths in custody matters. I think that is referable to paragraphs 11 and 12 of your submission. Have I understood correctly that you want the coroners to be able to, as it were, to commit people for trial, or are we simply talking about the issue of referral of a matter to the Director of Public Prosecutions (DPP)?”

3. On reflection, we wish to withdraw our proposed Recommendation 2 referred to above. Our submission attempted to make recommendations of hybrid models or specialists courts to attempt to address an oft-expressed criticism by First Nation families of the persistent failure of the coronial process to lead to criminal investigation or prosecution. That submission was also reflective of a perception amongst families (a perception we share), that prosecutorial bodies in Australia have failed to prosecute Police and Corrective Services officers in high-profile and suspicious deaths, with such failure taking place outside judicial oversight.

¹ See the comments of Mr Longman at page 32 of the transcript in response to questions from the Hon. David Shoebridge.

4. That concern however, is, as with all reform of this process, best addressed by recruiting the expertise of First Nation families. Consequently, the first step in reform should in our view be proper consultation with such families. Whilst we hold the professional expertise to recommend reforms that may address systemic issues, it's not our place, nor (with respect), is it the place of this committee. The first step must be to listen.

Additional Comments

5. We refer to the written and oral submissions of Prof. Williams and note that they contain a number of recommendations which advocate for proper and respectful consultation with First Nations families and organisations in reforming the coronial jurisdiction. We respectfully endorse such consultation as the guiding principle, and pre-requisite, for reform. Specifically, at page 37 of the provided transcript, we told the Committee of our experience in the Coroners Court, in which we have observed very insensitive conduct by parties, legal practitioners and witnesses, both within the courtroom and the Court precinct more generally. Such conduct includes counsel or members of the legal team engaging in horseplay, mimicking restraint techniques or discussing the deceased in a grossly insensitive manner. We strongly endorse Prof. Williams' recommendation for a formal complaint mechanism² for families to seek redress in such situations, as well as to address any other insensitivities or violations experienced by families during the investigation and inquest phases.

Regards

Prof. Larissa Behrendt

Prof. Lindon Coombes

Craig Longman

² See the comments of Ms Whittaker at page 37 of the transcript in response to questions from the Hon. David Shoebridge. See also Associate Professor Megan Williams, Submission 25 to *Legislative Council Select Committee, Inquiry into the coronial jurisdiction in New South Wales* (11 July 2021), 5.