

The question taken on notice was 'In relation to the first proposition about First Nations coroners, I should not have to ask this but, given your knowledge of the state of the bar, are there a number of sufficiently experienced practitioners who could be appointed as First Nations Coroners should the Government decide to make this a priority? [**Transcript, p. 25**]

With the benefit of further inquiries we can advise that there are at least five (5) barristers who identify as being First Nations persons who are currently practising at the New South Wales Bar. It remains a commitment of the NSW Bar Association to increase the number of First Nations barristers practising, however, due to various structural and institutional challenges, realising that aspiration is a task which will take considerable time. As advised during the hearing, the most senior First Nations Barrister is Tony McAvoy SC who was the first indigenous person to be appointed Senior Counsel in Australia. The remaining First Nations barristers practising at the NSW Bar have been at the bar for between at least 3 years and in excess of ten (10) years. The areas of practice of those barristers is diverse with some having acted and appeared in inquests and inquiries. Subject to consent from those barristers, further details could be provided upon request. However, we take this opportunity to make two (2) further observations.

First, it is the understanding of the NSW Bar Association that solicitors are often appointed as magistrates of the Local Court of New South Wales. The number of First Nations solicitors is considerably greater than the number of First Nations barristers. It may well be that amply qualified First Nations solicitors could be appointed as coroners of the Coroner's Court in lieu of First Nations barristers.

Secondly, and by way of extrapolation upon the observations of Ms Edwards at the select committee hearing on 29 September 2021 and in particular her observation that 'there may be a role for somebody, a First Nations person, to sit aside a senior coroner, for example in a death in custody matter', we direct the Committee's attention to sections 12, 13 and 37 of the *Land and Environment Court Act 1979* (NSW). In particular, we direct attention to section 12(2)(g) *Land and Environment Court Act 1979* (NSW) which prescribes that 'A person is qualified to be appointed as a Commissioner, if the person has, in the opinion of the Minister ... suitable knowledge of matters concerning land rights for Aborigines and

qualifications and experience suitable for the determination of disputes involving Aborigines'. Section 13 *Land and Environment Court Act 1979* (NSW) provides for the appointment of part time or Acting Commissioners. Section 37 *Land and Environment Court Act 1979* (NSW) prescribes the roles and limits of authority of a commissioner sitting with a judge of the NSW Land and Environment Court (see also *Carlewie Pty Ltd v Roads and Maritimes Service* [2018] NSWCA 181). It may be that a more immediately attainable outcome would be to appoint First Nations persons as Acting Commissioners to sit with coroners at inquests in respect of the death of a First Nations person, especially in instances arising from a death in custody or during a police operation. The abovementioned legislative regime and the experience of the NSW Land and Environment Court in their jurisdiction involving their jurisdiction with respect to the *Aboriginal Land Rights Act 1983* (NSW) would provide ample guidance and insight into legislative reform of the *Coroners Act 2009* (NSW) to effect that legislative reform.