

INQUIRY INTO CORONIAL JURISDICTION IN NEW SOUTH WALES

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Hon Adam Searle MLC
Chair, Select Committee
Inquiry into the coronial jurisdiction in New South Wales
Parliament of New South Wales
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RE: Inquiry into the coronial jurisdiction in New South Wales

Dear Mr Searle

Thank you for the opportunity to make a submission to the inquiry into the coronial jurisdiction of NSW. I write as an experienced health and social science researcher active in prison health care planning, evaluation and reform. I am Wiradjuri, have recently engaged closely with a Wiradjuri family through a coronial process, and have engaged locally, nationally and internationally with colleagues and human rights instruments to advocate for justice for Indigenous people with health issues in the criminal justice system, and who have died in custody.

I write in relation to the aim of better understanding whether there are any changes to the coronial jurisdiction which are desirable or necessary.

The points I outline first are relevant to (a) and (b) of the Terms of Reference, about the operations of the Coroner's Court of NSW. I then suggest arrangements for (c) – institutional arrangements. My points particularly focus on respecting Aboriginal and Torres Strait Islander cultures.

General cultural competence training and Aboriginal and Torres Strait Islander cultural awareness training at a minimum must occur for all Coroner's Court of NSW staff, and should include anti-racism training.

I have witnessed several Australian coroners and countless legal professionals describe and demonstrate their lack of understanding of Aboriginal and Torres Strait Islander cultures including in relation to death, bereavement and protocols.

- Evidence shows that immersive learning in partnership with community organisations and leaders shows strongest transformation in knowledges, beliefs, practices and attitudes
- Online courses are readily available, and can be strengthened by in-person engagement and on Country learning
- General cultural competence training focusses on critical self-reflection and knowing the influence of one's own culture and its implications for professional decision making – central elements in new curriculum of many health sector and social work training programs, expected to extend to legal professions
- Recommendations and outcomes of coronial inquiries overwhelmingly demonstrate lack of engagement in cultural protocols of Aboriginal and Torres Strait Islander peoples.

Cultural safety framework

To achieve NSW Government commitments and responsibilities, and for quality service delivery in the NSW coronial jurisdiction, achieving cultural safety of Aboriginal and Torres Strait Islander people is fundamental, and a framework and process must be developed.

- Following Eckermann et al. (1994),
Cultural safety is an environment that is spiritually, socially and emotionally safe, as well as physically safe for people; where there is no assault, challenge or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared

knowledge and experience, of learning together with dignity, and truly listening (Lock, n.d. citing Williams, 1999)¹.

- A key principle of cultural safety is that it can only be 'determined by Aboriginal and Torres Strait Islander individuals, families and communities' (AHPRA & National Boards, 2020, p. 9).²
- The NSW coronial jurisdiction should be developed in accordance with the national *Cultural Respect Framework for Aboriginal and Torres Strait Islander Health* (2016-2026)
- Staff development must occur, particularly to ensure they know how to address "power relations, cultural differences... [and]... their own attitudes and beliefs" (Australian Commission on Safety and Quality in Health Care, 2017, p. 22)³
- Aboriginal and Torres Strait Islander peak bodies should be engaged and remunerated to lead the process of cultural safety development in relation to the NSW coronial jurisdiction as a matter of urgency.

Align the NSW coronial jurisdiction with other NSW government policies relevant to Aboriginal and Torres Strait Islander peoples

An increasing array of NSW government documents include statements about centring Aboriginal and Torres Strait Islander cultures, respecting and drawing on strengths of Aboriginal and Torres Strait Islander cultures and supporting Aboriginal and Torres Strait Islander people's rights to social and emotional wellbeing and self-determination. These documents often also clearly outline NSW government responsibilities in addressing upstream determinants of health of Aboriginal and Torres Strait Islander peoples as far as practicable within their jurisdiction and where possible in partnership with Aboriginal and Torres Strait Islander organisations.

The following, at a minimum, should be critiqued for their relevance to the NSW coronial jurisdiction:

- OCHRE Plan – NSW Government Aboriginal Affairs Strategy⁴
- NSW Health *Aboriginal Health Plan 2013-2023*⁵
- Mental Health Commission of NSW *Living Well: A Strategic Plan for Mental Health in NSW 2014–2024*⁶.

Use Aboriginal cultural protocols in the NSW coronial jurisdiction

Further to NSW Government already documenting its commitments to respecting Aboriginal and Torres Strait Islander cultures, according to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁷, Aboriginal and Torres Strait Islander peoples have the right to experience cultural protocols in processes such that the NSW coronial jurisdiction uses. The following articles should be reflected in the NSW coronial jurisdiction:

- Article 2: Freedom from discrimination based on Indigeneity and identity, and for Banga-ma-lanha in practice in addressing disparities
- Article 3: The right to self-determination including social and cultural development
- Article 4: The right to autonomy and self-government in internal and local affairs
- Article 5: The right to maintain and strengthen political, legal, economic, social and cultural institutions

¹ Lock, M. J. (n.d.). An Aboriginal cultural safety & security framework for mainstream healthcare governance. Poster presentation. Williams, R. (1999). Cultural safety—What does it mean for our work practice? *Australian and New Zealand Journal of Public Health*, 23(2), 213–214. <https://doi.org/10.1111/j.1467-842X.1999.tb01240.x>

² <https://www.ahpra.gov.au/About-AHPRA/Aboriginal-and-Torres-Strait-Islander-Health-Strategy/health-and-cultural-safety-strategy.aspx>

³ <https://www.safetyandquality.gov.au/sites/default/files/migrated/National-Safety-and-Quality-Health-Service-Standards-second-edition.pdf>

⁴ <https://www.aboriginalaffairs.nsw.gov.au/our-agency/staying-accountable/ochre/the-ochre-plan/>

⁵ <https://www.health.nsw.gov.au/aboriginal/Publications/aboriginal-health-plan-2013-2023.pdf>

⁶ <https://www.nswmentalhealthcommission.com.au/report/living-well-strategic-plan-mental-health-nsw-2014-2024>

⁷ <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

- Article 8(2): States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities
- Article 11: The right to practise and revitalize their cultural traditions and customs
- Article 15: States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination
- Article 16: Indigenous peoples have the right to participate in decision-making in matters that affect their rights
- Article 23: The right to be actively involved in developing and determining health and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions

Work in partnership with Aboriginal and Torres Strait Islander organisations

- Conduct culturally safe, facilitated discussions led by Aboriginal and Torres Strait Islander leaders to develop plans, content and direction of the NSW coronial jurisdiction
- Ensure diversity of Aboriginal and Torres Strait Islander peoples across NSW is respected
- Ensure future developments of the NSW coronial jurisdiction are beyond consultation with Aboriginal and Torres Strait Islander people, and include leadership by Aboriginal and Torres Strait Islander people and strategic partnerships with Aboriginal and Torres Strait Islander peak bodies
- Remunerate Aboriginal and Torres Strait Islander leaders and organisations for all contributions to future development of the NSW coronial jurisdiction.

Develop an Aboriginal and Torres Strait Islander workforce plan for the NSW coronial jurisdiction

- A long-term plan is required increase Aboriginal and Torres Strait Islander staff numbers engaging in all roles and levels of the NSW coronial jurisdiction
- The workforce plan must outline strategies, stakeholders and targets for recruitment and retention of Aboriginal and Torres Strait Islander staff, as well as supporting Aboriginal and Torres Strait Islander people in career progression
- Aboriginal and Torres Strait Islander staff should meet general population parity and/or NSW Public Service Commission targets, at all levels of the organisation and among contractors
- Evidence shows that the environment in which Aboriginal and Torres Strait Islander staff are employed influences career progression and retention⁸
- An increasing amount and range of evidence demonstrates Aboriginal and Torres Strait Islander people frequently experience racism, and this includes in workplaces
- An Aboriginal and Torres Strait Islander workforce plan must include a plan for cultural competence and cultural awareness training of all staff in the NSW coronial jurisdiction – of all cultures, and must include
- Critical success factors in Aboriginal and Torres Strait Islander people's career progression and retention include cultural safety and anti-racism training and development among the general staff body, role-modelling and peer support, partnerships with Aboriginal and Torres Strait Islander organisations, supportive human resources policies and careful management of cultural load and cultural isolation.⁹

Develop and keep up to date a database of Aboriginal and Torres Strait Islander people to serve as expert witnesses and other supports for the coronial jurisdiction

- Develop this through an Expression of Interest process and in partnership with Aboriginal and Torres Strait Islander leaders and peak bodies

⁸ https://www.lowitja.org.au/content/Image/Career_Pathways_Report_Working_for_Our_People_2020.pdf

⁹ Williams, M., Ragg, M., & Manton, D. (2020). *Aboriginal allied health workforce pathways scoping project: Final report*. [Unpublished manuscript]. Sydney: UTS.

- Ensure Aboriginal and Torres Strait Islander expert witnesses and community members brought in to support the coronial process have support of Aboriginal and Torres Strait Islander organisations and/or peak bodies, to
 - Ensure credentials and positioning as experts are relevant to the culture/s of the Aboriginal and/or Torres Strait Islander person whose death is being inquired into
 - E.g. as Wiradjuri female, I may be able to provide a general level of expertise about Aboriginal and Torres Strait Islander health and wellbeing issues and professional service delivery, as well as human rights and policy responses, however it is likely to be inappropriate for me to provide insights into specific cultural protocols for death and dying of someone from a different Aboriginal nation, cultural role and gender
 - Boundaries in expertise must be outlined and respected in practice, but not used as an excuse to exclude Aboriginal and Torres Strait Islander expert involvement e.g. 'We couldn't find any other Aboriginal person to do it, so we just asked that one'
- A database (or other process of networking and supporting the NSW coronial jurisdiction to connect with Aboriginal and Torres Strait Islander Elders and leaders) could be collaboratively developed with and a resource shared by Aboriginal and Torres Strait Islander peak bodies.

Aboriginal and Torres Strait Islander family support plan and implementation

- The coronial process is a profound, distressing and culturally alienating process for Aboriginal and Torres Strait Islander families
- It often occurs in conflict with Aboriginal and Torres Strait Islander cultural protocols, rights and expertise, and through its exclusion of Aboriginal and Torres Strait Islander knowledges for addressing deaths and justice, causes harm
- A process for supporting Aboriginal and Torres Strait Islander families should be developed for the NSW coronial jurisdiction
- This should be developed in partnership with Aboriginal and Torres Strait Islander peak bodies and leaders, and in accordance with recommendations made above
- This should include preparation for a coronial inquest, engagement during the inquest, and support post-inquest, until all findings have been reported on and responded to by relevant agencies
- Aboriginal and Torres Strait Islander peak bodies should be engaged to lead the development of this plan, and remunerated
- Aboriginal and Torres Strait Islander community organisations and individual Aboriginal and Torres Strait Islander speciality consultants should be funded to provide support.

Legal representation for Aboriginal and Torres Strait Islander families

- Funded legal representation is required for families of Aboriginal and Torres Strait Islander people whose deaths are being inquired into and reported on by the NSW coronial jurisdiction
- Legal aid is not guaranteed and has limitations for Aboriginal and Torres Strait Islander people in relation to the coronial process
- Mainstream legal professionals often do not have adequate experience to support Aboriginal and Torres Strait Islander people through particularly sensitive legal issues associated with coronial inquests
- Any reform or redesign of the NSW coronial jurisdiction should include economic modelling and projections of expenses related to inquests into deaths of Aboriginal and Torres Strait Islander people in NSW over coming generations, and legal support for families funded accordingly.

Payment of costs for families of Aboriginal and Torres Strait Islander people

- Respecting Aboriginal and Torres Strait Islander cultural protocols and principles including involvement of extended family and intergenerational care, funding should be made routinely available to reimburse Aboriginal and Torres Strait Islander family members for all costs incurred during coronial inquests
- Family members should be self-defined and members self-nominated by Aboriginal and Torres Strait Islander families and not restricted to definitions for e.g. Anglo or other migrant families
- Funding should be accessible, and not restricted by burdensome administration.

Aboriginal and Torres Strait Islander telephone helpline

- Develop a telephone information helpline specifically for Aboriginal and Torres Strait Islander people
- This will be responsive to the over-representation of Aboriginal and Torres Strait Islander people in deaths in custody in NSW as well as specific factors in the mortality rate of Aboriginal and Torres Strait Islander people in NSW
- This is in recognition of the minimal training mainstream staff in social services and government employment have to be confident in their effective engagement with Aboriginal and Torres Strait Islander people
- It recognises the frequent experiences Aboriginal and Torres Strait Islander people have of racism in mainstream services¹⁰
- A dedicated telephone line will provide specific, targeted support for Aboriginal and Torres Strait Islander peoples, recognising social issues and cultural protocols
- Other telephone helplines and support services have over time developed specific supports for Aboriginal and Torres Strait Islander peoples, recognising specialty training and skills required of workforces¹¹

Debriefing for Aboriginal and Torres Strait Islander people

My experience in coronial inquests and that of other Aboriginal and Torres Strait Islander families has resulted in many concerns, unanswered questions, poor interpersonal treatment, disregard for government policies and human rights, and frequent re-exposure to traumatic information and levels of distress among other Aboriginal and Torres Strait Islander people.

- The coronial inquest process itself produces trauma, compounding the loss of a loved one, often with frequent administration errors and difficulties, and often poor interpersonal treatment by people inexperienced in engaging with or respecting Aboriginal and Torres Strait Islander cultures.
- Professional debriefing by specialist Aboriginal and Torres Strait Islander professionals should be made available to all Aboriginal and Torres Strait Islander people involved in coronial inquiries – families, staff, contractors, witnesses and others
- Peer support by Aboriginal and Torres Strait Islander Elders and community members should also be made available
- These supports should be made available before, during and after coronial inquests
- These should occur in accordance with local cultural protocols and supported by Aboriginal and Torres Strait Islander people
- Debriefing should be funded by the NSW coronial jurisdiction, planned for, and sensitively reported on.

Complaints process for Aboriginal and Torres Strait Islander people

I have witnessed administration errors, shortcomings in information availability, racism and confusion in coronial inquests experienced by Aboriginal and Torres Strait Islander people, with little clear recourse or support for resolving these.

- A well-promoted, accessible, timely and meaningful complaints process must be developed and available for all Aboriginal and Torres Strait Islander people involved in coronial inquests
- One process must be applicable to all government agencies involved in the coronial inquest – NSW Health, Corrective Services NSW, NSW police and others – not a separate process for each
- Formal apologies in writing and according to Aboriginal and Torres Strait Islander cultural protocols should be made to Aboriginal and Torres Strait Islander people when errors have been found in relation to the death of an Aboriginal and Torres Strait Islander person, and during the coronial inquest, by any agent involved in the death or inquest.

¹⁰ Kelaher, M. A., Ferdinand, A. S., & Paradies, Y. (2014) Experiencing racism in health care: The mental health impacts for Victorian Aboriginal communities. *Medical Journal of Australia*, 201(1), 44-47.
doi:10.5694/mja13.10503

¹¹ <https://headspace.org.au/blog/headspace-innovative-support-for-aboriginal-and-torres-strait-islander-youth-mental-health/>

Plain language document about coronial inquests

The NSW Coroner's Court website provides only minimal information about the inquest process, few links to related services or supports, and no information for Aboriginal and Torres Strait Islander peoples specifically despite our over-representation e.g. in deaths in custody and in relation to mortality rates

- Plain language information about coronial inquests should be written and included on the website, and as a downloadable document for wider sharing
- This is best targeting Aboriginal and Torres Strait Islander people, and written by Aboriginal and Torres Strait Islander people
- Other mainstream organisations have sections of their website to provide information to Aboriginal and Torres Strait Islander peoples
- Plain English language that Aboriginal and Torres Strait Islander communications experts write with on websites means people of all cultures can also benefit.

Timeliness

- It is usual that coronial inquests of Aboriginal and Torres Strait Islander people take several years
- Mixed-methods research should occur to investigate reasons for this timeframe, including from Aboriginal and Torres Strait Islander people's perspectives, and mainstream workforce perspectives
- With the over-representation of Aboriginal and Torres Strait Islander people in deaths in custody and in relation to mortality trends, economic modelling should occur to estimate future burden and future service delivery
- This should also identify if Aboriginal and Torres Strait Islander people experience inequity in timeframes in the coronial process compared to people of other cultures
- Strategies should be implemented to reduce current timeframes Aboriginal and Torres Strait Islander people experience, and also any inequity should research reveal it occurs.

Repatriation

- If any tissues of Aboriginal and Torres Strait Islander people have been retained for any function of the NSW coronial jurisdiction, these should be repatriated as soon as practicable, with priority and without delay or administration burden
- Repatriation should occur at the expense of the NSW coronial jurisdiction and no costs should be incurred by Aboriginal and Torres Strait Islander families in any way
- Repatriation should occur in accordance with Aboriginal and/ Torres Strait Islander cultures of the deceased
- Support for families should be funded by the NSW coronial jurisdiction, including professional debriefing by Aboriginal and Torres Strait Islander professionals.

Inquest recommendations clearinghouse

- Given the increasing number of coronial inquests into deaths of Aboriginal and Torres Strait Islander people occurring across Australia and similar findings about system failures, workforce limitations and reforms required, a clearinghouse should be established that reports and organises all recommendations made by coroners
- This clearinghouse serves as one central repository of coronial inquests and recommendations
- This should be a searchable database, that is kept up to date and is accessible to the public.

Institutional arrangements: separation of court and forensic medicine location

In relation to (c) – the most appropriate institutional arrangements for the coronial jurisdiction in NSW

- Ensure separation of the physical location of the place forensic medicine occurs compared to coronial inquests
- It is inappropriate from a Wiradjuri perspective, and likely from the perspective of many other cultures, for court proceedings to occur in the presence of the deceased; separation should occur
- Coronial inquests should occur local to the deceased's family; Aboriginal and Torres Strait Islander families are more likely than other people to live outside urban NSW or Sydney

- A trial should be made and evaluated of Coroner's courts occurring as an autonomous division of the Local Court, particularly for the purposes of being accessible by families and not co-located with forensic medicine or in the presence of the deceased.

Other matter

- Ensure that Aboriginal and Torres Strait Islander experts advise on appropriateness of people present at coronial inquests at the same time
- Aboriginal and Torres Strait Islander people often have frequently reported being over-scrutinised by police and other government department staff
- Review lists of witnesses, their movements in and out of courts and assess risks to wellbeing of Aboriginal and Torres Strait Islander people
- Provide additional support including peer support, access to local Elders and debriefing for Aboriginal and Torres Strait Islander people should they or their loved one/s have already experienced poor treatment by witnesses, or experience this during the coronial inquest.

If you require more information about any of the points documented above, please do not hesitate to contact me.

Yours sincerely

Megan

Associate Professor Megan Williams