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HARMSWORTH v THE STATE CORONER - [1989] VR 989

SUPREME COURT OF VICTORIA FULL COURT
NATHAN J

28 February, 1, 9 March 1989

Coroners -- Inquest -- Powers of investigation, comment and recommendation -- Extent of powers -- Matters "connected with" death -- Coroner's Act 1985 (No 10257), s17(1), s19(2), s21(2).

Administrative law -- Remedies -- Declaration -- Prohibition -- Whether State Coroner amenable.

The State Coroner was conducting an inquest into the deaths of five prisoners who had died in the course of a fire which one of them had lit in a cell block. The prisoners had built a barricade, and prison officers and firemen had been unable to reach them before they were overcome by poisonous gases emitted by burning material.

Among the powers conferred on the State Coroner by the Coroner's Act 1985 are power to investigate the death of persons held "in care" (s17(1)), power to comment on any matter connected with a death, including public health or safety or the administration of justice (s19(2)), and power to make recommendations to the Attorney-General on any matter connected with a death, including matters of public health or safety or the administration of justice (s21(2)).

The plaintiff sought declarations that the coroner had exceeded his jurisdiction by admitting into evidence testimony as to a number of matters relating to prison administration and operations.

Held: (1) The State Coroner is amenable to proceedings in which a declaration is sought and to review pursuant to R56 of the Rules of the Supreme Court.

R v Electricity Commissioners; Ex parte London Electricity Joint Committee Co Ltd [1924] 1 KB 171; Heatley v Tasmanian Racing and Gaming Commission (1977)137 CLR 487 and South Australia v O'Shea (1987)163 CLR 378, applied.

(2) The State Coroner's power of investigation arises from a particular death or fire. His enquiry must be relevant to that death or fire. The power to comment arises as a consequence of the obligation to make findings and is not free-ranging. It must be comment on any matter connected with the death or fire. The State Coroner may not enquire for the sole or dominant reason of making comment or recommendation.

Motion

The plaintiff sought an order to review in the nature of prohibition restraining the State Coroner from proceeding further with an inquest and declarations that he had exceeded his jurisdiction. At the hearing the plaintiff did not press the application for orders in the nature of prohibition. The facts are stated in the judgment.

MEJ Black QC and JW Rapke for the plaintiff.

EW Gillard QC and WR Ray for the defendant.

Nathan J:

On the afternoon of 29 October 1987, Wright, a prisoner within K Division of the Melbourne Metropolitan Reception Prison, set fire to a barricade he and four cohorts had constructed on side 1 of unit 4 of the building known as Jika. Within a few minutes all were dead. Before setting fire to the barricade, Wright and his cohorts had blocked off the air-conditioning outlets and had cut off piping from the washing machine and other appliances in order to make rudimentary breathing apparatus. The blocking off of the air-conditioning virtually ensured that unless entry could be made to the

barricaded unit within 10 to 15 minutes, the prisoners would not survive.

K Division was constructed in 1980. It was a high security detention unit providing accommodation for prisoners in units housing six and 12 men respectively. At the time of its construction, it was purportedly "one of the most modern buildings of its type in the world". There were two units on each floor. On the day in question Wright and his cohorts were accommodated on side 1, and five other prisoners on the same level on side 2. The prisoners within both units had erected barricades, using internal fittings and mattresses containing plastic material which, when ignited, emitted poisonous gases. There had been some warning that Wright and his cohorts intended to barricade their section of the prison, but the threat was discounted. Because all doors in K Division operated electronically and pneumatically and slid along tracks fitted into the floors and ceilings, it was relatively easy to immobilise a door. It was at such points the prisoners had constructed their barricades. For some 25 minutes prison officers attempted to negotiate with Wright and his cohorts in an attempt to get them to remove their barricades. They refused.

On the morning of the fire and deaths, Wright had been informed that his applications for reclassification and relocation within the prison system had been rejected. It was assumed by the prison staff that he would accept such news badly and some sort of response was likely. Wright was the longest serving prisoner in K Division and his cohorts were all experienced prisoners.

Returning to the fire, after it was lit, the prisoners on side 2 removed their barricade and were rescued alive, although some suffered from smoke inhalation. The intensity of the heat and smoke generated by the fire probably exceeded 130 degrees celsius. The nature of the barricade, the extreme thickness of the glass in the sliding door and the difficulty in smashing it open, resulted in more than one hour being spent before the barricade was removed and the fire extinguished. When that was done, the bodies of the five prisoners were found.

Within two years of opening, problems with the design and operation of K Division became apparent, and special reports upon its mode of operation were prepared. By October 1987 the original regime in K Division had been considerably altered in response to prisoners' demand, and, it is conceded, made to operate less strictly.

The Metropolitan Reception Prison is contiguous with Pentridge Prison. Both were formerly operated as a unit. The prisons have now been separated in function and management but can be referred to as the Coburg Complex.

[1989] VR 989 at 991

The State Coroner, on 21 November 1988, commenced to conduct an inquest into the fire and related deaths of the prisoners. He is the defendant to this action. The Director-General of the Office of Corrections, the Metropolitan Fire Brigade, the Ministry for Housing and Constructions and relatives of the deceased were and are represented at the inquest. The plaintiff is the Director-General of the Office of Corrections, the department of State having responsibility for K Division. The inquest has proceeded for 22 days, and I am informed it is likely to take a further five weeks and hear approximately 30 more witnesses.

The coroner has adjourned the proceedings, pending my determination of a summons and originating motion addressed to him, seeking an order to review, in the nature of prohibition, restraining him from further proceeding with the inquest. The motion also seeks declarations that:

(a) the defendant has exceeded his jurisdiction by admitting into evidence testimony (i) relating to the policy of permitting remand and convicted prisoners to be housed together, (ii) the reasons for and functioning of the administrative and physical division of the prisons located in the Coburg Complex, (iii) the functioning of the security unit operated from the Pentridge Division of the Coburg Complex, (iv) aspects of the budgetary arrangements of the prisons in the Coburg Complex, and (v) the input by the Metropolitan Reception Prisons Tactical Response Group into prison design;

(b) that the defendant will exceed his jurisdiction by intending to inquire into the theory of and attitude to maximum security detention within K Division and the prison system generally from the late 1970's to the present day;

(c) that the defendant has exceeded his jurisdiction by requiring evidence as to--

(i) all letters written by all inmates of the unit within K Division which housed the deceased and addressed to the Ombudsman and the Office of Corrections, and

(ii) details of all fires occurring within or at the Coburg Complex in the last decade.

I shall return to consider each of these grounds seriatim, but I shall deal first with two submissions propounded by Mr Gillard for the defendant. First, review in the nature of prohibition is not available where a tribunal has incorrectly determined it has jurisdiction to hear or investigate a matter. It was contended that if the coroner had done so in this case, it was an error in the exercise of the jurisdiction invested in him under the terms of the Coroner's Act 1985 (the Act). The second threshold submission is that the State Coroner is not subject to the judicial review of this court: see RSC, O 56.

Both these submissions fail for the same and different reasons. The same reason is that the plaintiff seeks declarations and not merely orders to review in the nature of prohibition. The court's declaratory power is wider than that which it formerly exercised in respect of the prerogative writ of prohibition (see Supreme Court Act, s37 and RSC, O 23.05; also Forster v Jododex Australia Pty Ltd (1972) 127 CLR 421, at 435). In any event, judicial review is not constrained to offering the remedies of the former prerogative writs.

[1989] VR 989 at 992

The substantive relief sought are declarations and not prohibition. Mr Black, for the plaintiff, has not pressed the claims for prohibition and has rightly conceded that the State Coroner would not conceivably act contrary to a declaration. Therefore this first submission becomes vacuous. In any event, I am satisfied that were it necessary, prohibition could be addressed to a State Coroner. That remedy sounds in public rather than private law and is entirely appropriate to prevent a tribunal from mistakenly taking to itself jurisdiction it does not have. The mere exercise of jurisdiction cannot create it where none exists, yet the contrary is the real gravamen of the first submission. So obvious is this finding that I hardly need refer to those cases where the exercise of power for an improper purpose was prohibited, but see Municipal Council of Sydney v Campbell [1925] AC 338; Swan Hill Corporation v Bradbury (1937) 56 CLR 746; R v Toohey, Ex parte Northern Land Council (1981) 151 CLR 170; 38 ALR 439, and as to the efficacy of a declaration, see R v Judges of the Federal Court of Australia; Ex parte Pilkington ACI (Operations) Pty Ltd (1978) 142 CLR 113; 23 ALR 69.

Mr Gillard, for the coroner, advanced, or more accurately, tentatively proposed an argument based on Parisienne Basket Shoes Pty Ltd v Whyte (1938) 59 CLR 369 that the coroner being possessed of an investigatory role had unrestricted power to investigate that which needed to be investigated. The case does not support that proposition; in any event the judicial review power is directly applicable to defining the parameters of the investigation, in order to ensure it does not travel outside those parameters for which there is jurisdictional power. I shall return to this point.

For a different reason, the second threshold submission which has some substance is also unsound. It is that the State Coroner is not amenable to an order to review. This proposition is based upon a construction of the Act which contends the State Coroner is not a court, and that conducting an inquest is the exercise of restricted ministerial functions not affecting the rights of citizens. It was also put the State Coroner cannot be the subject of prohibition. In coming to the conclusion these submissions are unsound I have had to have recourse to a detailed examination of the Act which now follows.

I am satisfied that when conducting an inquest or making investigations the State Coroner is not a court. The Act is specific in its omission. A Coroner's Court has not been established. In its place the offices of State and deputy coroners have been created: Pt2, s6 to s8. The common law is to cease to have effect, viz s4:

"A rule of the common law that, immediately before the commencement of this section, conferred a power or imposed a duty on a coroner or a coroner's court ceases to have effect."

The second reading speech of the Attorney-General requoted in the Assembly by the Minister for the Arts (see Hansard, 21 November 1985), while making it apparent the Bill largely reflected the recommendations of the report into the Coroners Act 1958 prepared by the Honourable J Norris QC formerly of this bench, did not set up the Coroner's Court as suggested by him.

[1989] VR 989 at 993

A coroner's powers set out in s7 are inquisitorial and not curial. A coroner does not have the power, formerly exercised, of committing persons for trial.

Despite the fact that the proceedings presently being conducted by the defendant have been referred to as "the Coroner's Court", it is not. The previous cases and the common law which presumed the coroner to be exercising a curial role, no longer have any application.

But this conclusion does not dispose of the issue of whether the State Coroner's proceedings are amenable to declaration. There is authority for the conclusion that an administrative or ministerial body bound to observe the rules of natural justice can have its functions reviewed pursuant to O 56; for example Heatley v Tasmanian Racing and Gaming Commission (1977) 137 CLR 487 and South Australia v O'Shea (1987) 163 CLR I must now consider the actual inquisitorial functions performed. They are set out in Pt5 and Pt6 of the Act. For these purposes there is no need to distinguish between the powers in relation to deaths or fires. They are as follows:

1. Power to investigate

(a) s15(1): a general power, if it appears to a coroner to be a reportable death (as defined in s3).

(b) s15(2): an obligation where the death is in fact reported to a coroner and appears to be a reportable death, or alternatively a coroner may report that death to the State Coroner:

"A coroner to whom a death is reported must, if it appears to the coroner that the death is or may be a reportable death, investigate it or report it to the State Coroner." (My emphasis.)

2. Power to hold an inquest This power is a separate source of authority and of obligations, because not all investigations will lead to an inquest. The power is bifurcated between those circumstances set out in s17(1) where an inquest "must be held" (my emphasis), viz:

"(a) the coroner suspects homicide; or

(b) the deceased was immediately before death a person held in care or

(c) the identity of the deceased is not known; or

(d) the death occurred in prescribed circumstances, or

(e) the Attorney-General directs; or

(f) the State Coroner directs. " and other cases where a coroner believes it desirable (s17(2)). Further a coroner may, if requested hold an inquest (s18). (Again my emphasis.)

Results of investigation or inquest The Act sets out three consequences which may ensue from either an investigation or an inquest. They are the making of "findings" and "comments" and the delivery of "reports".

1. Findings

"19. (1) A coroner investigating a death must find if possible--

(a) the identity of the deceased; and

(b) how death occurred, and

(c) the cause of death; and

(d) the particulars needed to register the death under the Registration of Births Deaths and Marriages Act 1959; and

(e) the identity of any person who contributed to the cause of death." (My emphasis.)

[1989] VR 989 at 994

It is mandatory. after investigation, and by necessary inference, inquest to make these findings if possible. The obligation is constrained by subs(3).

"(3) A coroner must not include in a finding or comment any statement that a person is or may be guilty of an offence."

2. Comments A coroner is not restricted to making findings but is specifically given the power to make comments. However that power is limited to being "upon material connected with the death", viz s19(2):

"A coroner may comment on any matter connected with the death including public health or safety or the administration of justice."

3. Reports Having made findings or delivered comment a coroner must proceed to report if he believes an indictable offence has occurred: viz. s21(3):

"(3) A coroner must report to the Director of Public Prosecutions if the coroner believes that an indictable offence has been committed in connection with a death which the coroner investigated."

This is really an obligation common to all citizens. However, a coroner has further discretions arising out of an enquiry or inquest. A report may be made to the Attorney-General and/or recommendations may be proffered: viz s21(1) and (2):

"(1) A coroner may report to the Attorney-General on a death which the coroner investigated.

"(2) A coroner may make recommendations to the Attorney-General on any matter connected with a death which the coroner investigated including public health or safety or the administration of justice."

The power to make findings, deliver comment and render reports is supported by an immense range of powers relating to the investigations upon which they are founded. The investigatory powers are set out in Div 2, s26 and do not need to be quoted in full other than to say a coroner may, if it is believed necessary, enter and inspect any place and take possession of anything found.

I turn now to consider the legislative matrix which governs inquests. A coroner is not bound by the rules of evidence (s44) but interested parties or the Attorney-General may be represented by counsel (s45) or the coroner may also be assisted by counsel (s46(2)). A coroner has the authority to summon witnesses (s46(17)) or exclude persons in the interests of justice (s47(1)). A coroner retains the power to sit with a jury. A record of evidence must be kept but it is not evidence in any court of any fact asserted in it (s51(1) and (3)).

Although there are no parties as such appearing before a coroner, he has the power to admit the representation by counsel of "interested persons". No issues as defined by pleadings are "triable" but there are clear contested contentions as to facts, upon which findings and possibly further comment or reports may be made. Although there is no decision as such, the coroner must report to the Director of Public Prosecutions if it is believed indictable offences have occurred and this means coroners must define those offences. Further reports of findings may also be made. Therefore conclusions with almost certain juridical consequences are commonly made.

[1989] VR 989 at 995

The above rehearsal of the powers duties and discretions given to a coroner lead inevitably to the conclusion that the coroner also has a duty to comply with the rules of natural justice and to act judicially: R v Electricity Commissioners, Ex parte London Electricity Joint Committee Co (1920) Ltd[1924] 1 KB 171.

This matrix reveals, in my view, no doubt that a coroner is also amenable to judicial review. It is not now relevant that former coroners were also subject to the prerogative courts, Lang v Registrar-General of the State of Victoria[1950] VLR 307 because s4 has removed the application of common law rules.

I add some observations about this inquest. Power to conduct it could derive from s17(1)(b), namely, that the prisoners were "in care". Plainly, even those persons who are in the custody of the State, albeit against their will, should not be subjected to any unnecessary risk by fire or of death. The coroner could also be of the view that the deaths were "reportable" and this warranted an investigation and inquest. It is appropriate, however, for this inquest to proceed under the terms of s17(1)(b) rather than s17(2).

I am now able to return to the declarations sought. They fall into two classes. First, the State Coroner exceeded his power of investigation: this remedy is sought on the grounds that the proper characterisation of his enquiries and requirements show he is investigating the corrections or prison system generally, and is not limiting himself to the relevant causes or issues surrounding the fire and subsequent deaths of the prisoners. These are grounds (1) to (6). The second class is that he has misconceived his power to make comments and is using or is likely to use his investigations to proffer a commentary upon the prison system generally or the management of the Coburg Complex in particular. This is ground (7)(i) and Before turning to the particulars, I shall dispose of the legal issues raised. Mr Black has contended the power to investigate is limited to relevant enquiries relating to the causes or circumstances of the fire and deaths. Mr Gillard contends the coroner's enquiries and requirements do, in fact, fall within that class. He contends the class of enquiries must be broadly construed, because a coroner will not know whether an enquiry is relevant or whether it is likely to lead to the discovery of material likely to assist him in making his findings, until it is made.

The issue of causation as exemplified by the above arguments has vexed philosophers and judges since Socrates was obliged to drink the hemlock. I deal with this issue of causation, not by way of assessing the correctness or otherwise of the coroner's questions or requirements, but by dealing with the issue as being one of jurisdictional error of law. That is whether or not he had the ministerial power, to be exercised judicially, to investigate the issues he characterised as causative? For discussion of this question see Ex parte Minister of Justice; Re Malcolm [1965] NSWR 1598, per McClemens J, at 1604 and John Fairfax and Sons Ltd v Gill (1988) 12 NSWLR 77.

[1989] VR 989 at 996

The coroner's source of power of investigation arises from the particular death or fire. A coroner does not have general powers of enquiry or detection (see s15(1) and s17(1)). The enquiry must be relevant, in the legal sense to the death or fire, this brings into focus the concept of remoteness". Of course the prisoners would not have died, if they had not been in prison. The sociological factors which related to the causes of their imprisonment could not be remotely relevant. This can be tested by considering how wide, prolix and indeterminate the inquest might be if each of the many facets of the individual personalities, of all those involved were to be considered. A coroner would be confronted with a need to enquire into the personal peculiarities of all of the prisoners who barricaded themselves in. Both those who relented and those who did not. Whether for example, one group or person suborned others, and if so why and how. The personalities of all of the prison officers who interacted with all of the prisoners could also be investigated. Even the interaction of all of the other prisoners at any time in Jika with the deceased. Such an inquest would never end, but worse it could never arrive at the coherent, let alone concise, findings required by the Act, which are the causes of death, etc. Such an inquest

could certainly provide material for much comment. Such discursive investigations are not envisaged nor empowered by the Act. They are not within jurisdictional power.

Enquiries must be directed to specific ends. That is the making of the findings as required and set out in s19(1).

The power to comment, arises as a consequence of the obligation to make findings: see s19(2). It is not free-ranging. It must be comment "on any matter connected with the death". The powers to comment and also to make recommendations pursuant to s21(2) are inextricably connected with, but not independent of the power to enquire into a death or fire for the purposes of making findings. They are not separate or distinct sources of power enabling a coroner to enquire for the sole or dominant reason of making comment or recommendation. It arises as a consequence of the exercise of a coroner's prime function, that is to make "findings".

The extensive powers of investigation and enquiry which I have already noted attach to the purpose of making the "findings" which the coroner must, if possible do, pursuant to s19(1). Not only does the Act speak for itself in this respect, it is impossible to conceive the legislature would consider otherwise.

Mr Gillard contended the coroner would be emasculated if the investigatory power was narrowly construed. A curious use of the subjunctive given its"plain English" gender-neutral language. He contended the verb "to investigate" carried its usual meaning of gathering and collating evidence or material and that the best person to judge its relevance was a coroner. A coroner not being able to assess its relevance until after the enquiry was completed. The verb is used in its ordinary "plain English" way, but that does not expand or illuminate the concept of relevance or causation.

An inquest into particular deaths in a prison, is not and should not be permitted to become an investigation into prisons in which deaths may occur. A comment on the particular deaths may be pertinent, especially so if the prison facilities were found to be inadequate. It could even be that a comment could have general application, and so much is envisaged by the Act which gives commentary and recommendatory powers in matters of public safety. But the power to comment is incidental and subordinate to the mandatory power to make findings relating to how the deaths occurred their causes and the identity of any contributory persons.

[1989] VR 989 at 997

Pt8, the miscellaneous provisions, contains in s61 provisions protecting the coroner from legal proceedings unless acting mala fide. subs(2) requires the consent of the Director of Public Prosecutions to initiate such proceedings and that permission should not be given unless there is substantial evidence of bad faith. This provision does not inhibit or expand the investigatory powers. It does not confer immunity from judicial review defining the limits of jurisdictional power. It is plainly directed at giving the coroner immunity from civil process arising out of his conduct of investigations and inquests.

The Supreme Court may declare that some or all of the findings of an inquest are void (s59), but there is no similar power of oversight in respect of comments made after investigations which did not take the form of an inquest. This provision has no application in characterising the power to comment or make recommendations.

Finally, I can now deal with each of the particulars seriatim.

Ground (1) concerns the coroner's comments relating to the policy of permitting remand and convicted prisoners to be housed together. I accept Mr Gillard's assertion the coroner no longer intends to pursue this line of enquiry and accordingly a declaration is not appropriate. However, had the coroner intended to pursue investigations along these lines they would, in my view, have been without jurisdictional support and ultra vires. Investigations into the general management of the Correctional Services of Victoria either at the Coburg Complex or elsewhere relating to the classification or allocation of prisoners within the system could not be supported by an inquest directed to ascertaining the causes of death of these particular prisoners within K Division.

Ground (2) relates to enquiries addressed to the reasons for and functioning of the two prisons located within the Coburg Complex. I am satisfied that enquiries of this broad nature would be ultra vires and in so far as the coroner has purported to pursue such enquiries there would be grounds for pronouncing a declaration. However, in so far as the ground relates to the provision and availability within K Division of pneumatic pressure bags which could have been used as rams to break down the barricades, the enquiries are within power. Apparently instruments of this nature were available within the Pentridge section of the Coburg Complex but not at the Metropolitan Reception Prison. In my view, the availability of appropriate fire-fighting equipment or barricade-bursting equipment is a proper line of enquiry for the coroner. The duration and intensity of the fire giving rise to the deaths are all matters of appropriate investigation. The availability or the non-availability of appropriate equipment is a pertinent and relevant line of investigation. If that equipment was available nearby the coroner is entitled to enquire as to why it was not forthcoming. That enquiry would be appropriate whether the equipment was next door at the Pentridge Prison or at some other location within easy access of the Reception Prison. The transcript indicates the coroner, at one stage, was limiting his enquiries as to the availability of appropriate fire-fighting equipment and at another point he said: "If a problem is identified it's also my responsibility to try at least in a general sense to see if you can say how you could avoid that problem from happening again, that's all."

[1989] VR 989 at 998

There could be no exception to that comment if it were not coloured by other references indicating the coroner was seeking to investigate the wisdom of the management decision to have divided the Coburg Complex into two separate prisons. In so far as his line of investigation sought to pursue the management structure of the Coburg Complex in order to make comments about it, then those investigations would be without jurisdiction. If the enquiries were limited to investigating why the management structure at Pentridge was incapable of responding to a request from the Reception Prison for fire equipment, then the investigations could be attached to an enquiry relating to the fire or causes of death.

Ground (3) relates to the functioning of the Pentridge security unit. Enquiries addressed to the expertise of this unit in general would be without jurisdiction. However, if the coroner had come to a preliminary belief that the deaths were caused by an inadequate response within K Division and that the Director-General had available to him a more competent or better equipped fire-fighting force at Pentridge; then an enquiry for the purposes of making a comment about improving the fire-fighting forces available in K Division, would have been relevant and not too remote. I reiterate that the foundation for the enquiry must be for the purpose of making "findings" concerning the deaths, even if incidentally, it also provides the basis for comment on a matter connected with the death. My observation relates to the legislative dictates contained in s19(2).

Ground (4) relates to budgetary arrangements of both prisons at the Coburg Complex. An examination of the transcript does not support a contention that the coroner was investigating the budgets of the prisons. A declaration is not available on this ground.

Ground (5) relates to the input by prison tactical response groups into prison design. This ground is largely a reiteration of ground (2) and I need not repeat my observations. However, if the line of investigation related to the advice such groups gave as to fire-fighting equipment or design then, in general terms they would not be relevant as to causation. However, if there had been suggestions upon which the coroner had preliminarily concluded that advice could have abated the fires or in some way prevented death then such a line of enquiry would be permissible.

Ground (6) asserts that the coroner has manifested an intention to enquire into the theory and attitudes to maximum security detention as practised in the past. The coroner has permitted questions from counsel for the deceased, which, in my view travel outside the grounds of relevance. He appears to have admitted those questions on the basis of making a comment as to the suitability of K Division for maximum security detention. That enquiry would now be irrelevant. First, because K Division has been closed and secondly, because it is too wide. Theories of maximum security will vary in substance and emphasis with each theoretician. If the coroner has come to a preliminary view that frustration and anger induced the prisoners to build the barricades and disrupt the air-conditioning system and that, in turn, led Wright to ignite the barricade and suffocate himself and his companions, then the sources of that frustration and anger could provide a line of enquiry, which is within the coroner's jurisdiction. Namely, that the frustration and anger led to dangerous behaviour resulting in death. However, I take that issue no further, it is for the coroner. In this case part of the frustration and anger revealed in the admitted facts, must be the rejection of Wright's application for relocation within the Reception Prison, and so much is obvious, whereas the causes of frustration and anger will vary with each individual according to time and place. Maximum security detention however practised and to whatever degree of harshness, must have some effect upon any prisoner. So much is also readily apparent. Therefore the coroner has the jurisdiction to investigate the frustration and anger which afflicted each of the deceased at the time the fire was lit but he does not have jurisdiction to enquire into the levels of frustration and anger which maximum security incarceration as practised at K Division, may have been induced in other prisoners in bygone years. He would be entitled to ascertain whether the levels of frustration and anger induced by incarceration in K Division required extra diligence or care by the Office of Corrections but that would be an enquiry as to an existing fact and not too remote.

[1989] VR 989 at 999

Salient lines of enquiry yet to be pursued by the coroner appear to be the reason why Wright and his cohorts refused to abandon their barricade during the 25 minute period of negotiation and what were the immediate precipitating factors causing him to ignite the barricade. Supplementary lines of enquiry relating to the deaths of the cohorts, would be to examine their individual participation in the barricade building, their part in the negotiations and whether they were dissuaded from abandoning their positions by pressure from other prisoners.

Not all questions of causation can be related to time. As a general proposition the greater the time lapse between the event enquired of is from the allegedly causative factor, the less relevant as an initiating cause that factor will be.

The second category of grounds upon which declarations are sought, are those relating to the coroner's purported misconception of his jurisdiction. They are contained in ground (7)(i) and (ii). Part (i) relates to all letters written by inmates of unit 4 to the Ombudsman and the Office of Corrections. I have been informed that this correspondence has been supplied and the ground is no longer pursued. Ground (ii) relates to the coroner requiring the production of all materials relating to all fires in the Coburg Complex for the last decade. As I have already observed, the coroner's powers are extensive and must only be used for the permitted purposes. Although it is notorious that prisoners resort to fire as a method of protest in prisons, a requirement to produce all records relating to all fires in the last decade is far too wide and

would amount to abusing the power requiring the production of relevant documents. Any previous fire in like circumstances, or in the same division could, however, well be significant. If the coroner has reasonable grounds for believing previous fires in K Division or the Coburg Complex as a whole when it operated as the single unit, were illustrative of the causes of this fire and deaths, then such documents could be called for.

[1989] VR 989 at 1000

I come to my conclusion. Although there are grounds upon which declarations could be made I shall decline to do so. I have a discretion to be exercised judicially whether I pronounce such declarations: see Forster v Jododex Australia Pty Ltd. I shall not do so. First, because much of the reasoning behind the questions asked or permitted by the coroner or of the requirements made by him is not apparent from the limited transcript taken. Secondly, it would be inappropriate to direct a court order in these circumstances where the proceedings are not concluded and any detriment caused can be abated by following the reasons given in this judgment. Thirdly, it is inconceivable that a State Coroner would proceed in any way in conflict with the law as I have defined it. It is appropriate in these circumstances to decline to make declarations. However, I do not pronounce any general proposition, as there may be many cases where formal orders are appropriate. The notice of motion will be dismissed.

Order

Motion dismissed.

Solicitor for the plaintiff: Victorian Government Solicitor

Solicitors for the defendant: Phillips Fox

R.R.S. TRACEY