

# SUPREME COURT OF QUEENSLAND

CITATION: *Christensen & Anor v Deputy State Coroner* [2021] QSC 38

PARTIES: **JAYE CHRISTENSEN**  
(first applicant)  
and  
**NEIL THOMAS DAVY AND HEATHER-BELLE DAVY**  
(second applicant)  
v  
**THE DEPUTY STATE CORONER JANE BENTLEY**  
(respondent)  
and  
**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**  
(intervener)

FILE NO: BS 11449 of 2020

DIVISION: Trial Division

PROCEEDING: Application for judicial review

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 4 March 2021

DELIVERED AT: Brisbane

HEARING DATE: 12 February 2021

JUDGE: Rafter AJ

ORDER: **The application for judicial review is dismissed.**

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEWABLE DECISIONS AND CONDUCT – REVIEW OF PARTICULAR DECISIONS – where the applicant seeks judicial review of a Coroner’s directions that a witness be excused from giving oral evidence – where the witness is suffering from post-traumatic stress disorder and giving oral evidence would adversely impact the witness’ mental state – where the witness is instead directed to provide sworn answers in writing – whether the Coroner’s directions are liable to be quashed or set aside because the Coroner did not have the power to make the directions

*Coroners Act* 2003 (Qld), s 3, s 28, s 34, s 35, s 36, s 37, s 39, s 45, s 46, s 48  
*Judicial Review Act* 1991 (Qld), s 29(2), s 51(1)  
*Annetts v McCann* (1990) 170 CLR 596, cited

*Beale v O'Connell* [2018] 1 Qd R 461, cited  
*Doomadgee v Clements* [2006] 2 Qd R 352 cited  
*Hurley v Clements* [2010] 1 Qd R 215, cited  
*Maksimovich v Walsh and the Attorney-General* (1985) 4 NSWLR 318, cited  
*Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24, cited  
*Neumann v Hutton* [2020] 3 QR 419, cited  
*R v South London Coroner; Ex parte Thompson* (1982) 126 SJ 625, cited  
*The Queen v A2* (2019) 93 ALJR 1106, cited  
*Walter Mining Pty Ltd v Hennessey* [2010] 1 Qd R 593, cited

COUNSEL: M O Plunkett for the applicants  
M T Hickey for the intervener, Attorney-General for the State of Queensland

The Deputy State Coroner was granted leave to abide the order of the Court and was excused from further attendance

SOLICITORS: Fisher Dore Lawyers for the first applicant  
Jasper Fogerty Lawyers for the second applicant  
G R Cooper, Crown Solicitor for the Attorney-General

- [1] The Deputy State Coroner is conducting an inquest into the deaths of Corey Christensen and Thomas Davy at Alva Beach.
- [2] By this application for a statutory order of review, the applicants seek orders quashing or setting aside directions made by the Deputy State Coroner that a witness be excused from giving oral evidence; that any party wishing to ask questions of the witness submit those questions in writing; and that the witness respond by sworn statement. The applicants contend that the Deputy State Coroner did not have the power to make these directions. The first applicant is Mr Christensen's wife. The second applicants are Mr Davy's parents.
- [3] On 29 October 2020 the Attorney-General gave notice of intervention in the proceeding.<sup>1</sup>
- [4] On 30 October 2020 the Deputy State Coroner was granted leave to be excused from further appearance, save as to any question in relation to costs. An order was also made staying the decision of the Deputy State Coroner.<sup>2</sup>

### **The factual context**

- [5] The factual background is contained in the evidence before the Deputy State Coroner. I will refer to the evidence to explain the context in which the issue arises. However, it is for the Deputy State Coroner to make the necessary factual findings.<sup>3</sup>

<sup>1</sup> *Judicial Review Act* 1991 (Qld), s 51(1).

<sup>2</sup> *Judicial Review Act* 1991 (Qld), s 29(2).

<sup>3</sup> *Coroners Act* 2003 (Qld), s 45(2).

- [6] On 30 September 2018 Mr Davy and Candice Locke went to Alva Beach to spend the day fishing. During the late afternoon Mr Christensen and his friend, Louis Bengoa, were driving on the beach in Mr Bengoa's buggy. They stopped to speak to Ms Locke and Mr Davy, and after introducing themselves, invited them to watch the NRL grand final which was being shown on a vacant allotment opposite the surf club. Mr Davy and Ms Locke arrived at the vacant block some time after 6 pm.
- [7] Mr Davy and Ms Locke had been drinking throughout the afternoon. There was an argument between them because Mr Davy wanted to leave and Ms Locke wanted to remain. Mr Davy left the party at about 9.30 pm. At about that time Ms Locke went for a ride with Mr Bengoa in his buggy. While travelling along the beach Ms Locke fell from the buggy and injured her shoulder. She requested medical assistance and when Mr Bengoa made light of the situation she became upset. She got out of the buggy and hid in the carpark area.
- [8] Mr Bengoa attempted to locate Ms Locke but was unable to do so. He then returned to the vacant allotment and collected Mr Christensen. They went to the car park area where Ms Locke was hiding. Mr Christensen called out to Ms Locke and she returned to the buggy. However, when Mr Christensen also made light of her injury, she asked Mr Bengoa to stop. Ms Locke then walked a short distance to the first residence opposite the exit to the car park. Mr Webber was the sole occupant of the residence. He was asleep on the couch. Mr Webber did not know Ms Locke. She told him that she was injured and concerned about two men outside. Mr Webber allowed Ms Locke into the residence.
- [9] Mr Webber made three 000 calls. In the first call, he requested an ambulance for Ms Locke. He said that there were people outside and he did not feel safe. In the second 000 call, he said that there were two men trying to break into his home. He requested police assistance.
- [10] In the third call, Mr Webber said that he had stabbed a male person who had left the residence and gone onto the street. He said that three males had broken into his house and assaulted him and Ms Locke.
- [11] The police and ambulance officers arrived at 1.17 am and located Mr Christensen and Mr Davy on or about the roadway outside the residence. They were unable to be resuscitated.
- [12] Mr Webber was arrested for the offence of murder and taken to the Ayr Watchhouse. He was interviewed on 1 October 2018 commencing at 5.36 am. He said that just before 1 am he was woken by an unknown, distressed, physically shaken and injured woman who knocked on his front door. She asked for help, saying that she had been thrown off a buggy by men he could see sitting across the road. He said that he made an emergency 000 call asking for an ambulance and police. He said that men bashed on the front door. After he told them to leave the property they went away but soon returned. He said that the men broke in through the front door and assaulted him. He said that he used a kitchen knife to defend himself and the woman by stabbing the intruders.
- [13] Detective Sergeant Neal prepared a report for the Coroner which stated that Mr Webber was a small man in fear of his own safety and that he told the intruders to

leave on numerous occasions. It was concluded that Mr Webber's actions were justifiable in self-defence and the defence of Ms Locke. Detective Sergeant Neal concluded that no criminal charge should be preferred against Mr Webber.

### **The inquest**

- [14] In 2019 the Deputy State Coroner decided to hold an inquest into the deaths.<sup>4</sup> At a pre-inquest conference on 13 August 2020 it was determined that, apart from the essential matters required by s 45(2) of the *Coroners Act 2003* ('the Act') relating to the identity of the deceased and how they died, the inquest would consider the adequacy of the responses by the Queensland Ambulance Service and Queensland Police Service, whether earlier intervention may have prevented the deaths and the decision not to charge Mr Webber.
- [15] The inquest was scheduled to commence in Cairns on 12 October 2020. On 8 October 2020 the Office of the State Coroner forwarded the legal representatives for the applicants a report from Dr Michael Likely, psychiatrist, in relation to Mr Webber and foreshadowed that an application was to be made excusing him from giving evidence. Dr Likely said that Mr Webber suffered from a moderate to severe post-traumatic stress disorder and expressed the opinion that he should be medically excused from giving evidence due to the impact on his mental state.
- [16] The inquest commenced in Cairns on 12 October 2020. Counsel appeared for Mr Webber and made application for him to be excused from giving evidence. Counsel for the applicants opposed the application. At that stage the Deputy State Coroner indicated that she was considering hearing from Mr Likely as to whether any strategies could be implemented that would allow Mr Webber to give evidence while minimising any adverse impact upon him.
- [17] Dr Likely was called to give evidence on 15 October 2020. The Deputy State Coroner explored the options of Mr Webber giving evidence from a remote witness room, limiting cross-examination for a specific period of time such as one hour and 15 minutes in total, or answering questions in writing. Dr Likely remained concerned about Mr Webber giving evidence from a remote witness room because of the severity of his condition. He did not consider that limiting the cross-examination for a specific period of time would alleviate those concerns. However, Dr Likely supported the option of Mr Webber answering questions that were put to him in writing, although he indicated that Mr Webber would require 48 hours to provide written answers.
- [18] After Dr Likely had given evidence the Deputy State Coroner stated that it appeared there were three issues to be considered. The first option involved Mr Webber being called to give evidence and each party being restricted to questioning him for 15 minutes and that none of the recordings or videos would be played. The second option was that Mr Webber provide answers to written questions and having at least 48 hours to respond. The final option was that Mr Webber be excused completely.
- [19] After hearing submissions the Deputy State Coroner gave directions that Mr Webber be excused. The Deputy State Coroner accepted Dr Likely's evidence that giving evidence in person would cause Mr Webber considerable psychological distress and

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<sup>4</sup> *Coroners Act 2003*, s 28.

decompensation of his symptoms of post-traumatic stress disorder, and that this may result in Mr Webber being unable to assist the inquest in any meaningful way. The Deputy State Coroner took into account that there were some inconsistencies in Mr Webber's evidence and inconsistencies between his evidence and other evidence. It was therefore determined that the most reliable means of obtaining the relevant information from Mr Webber was to direct that he provide written answers to questions that were submitted.

- [20] After the ruling was given it was determined that Mr Webber should be called for the purpose of claiming privilege against self-incrimination, so at that stage the directions were revoked.
- [21] On 16 October 2020 Mr Webber was called to give evidence by audio link. He declined to give evidence on the ground that his evidence would tend to incriminate him. The Deputy State Coroner was satisfied that it was in the public interest for Mr Webber to give evidence and directed pursuant to s 39(2) of the Act that he do so. Mr Webber's counsel applied for him to be excused from giving evidence or that he give evidence in writing on the basis of his psychiatric condition.
- [22] The Deputy State Coroner then gave directions that Mr Webber be excused from giving oral evidence; that any party wishing to ask questions of him provide those questions in writing to the other parties by close of business on 30 October 2020; that final questions were to be provided to the Deputy State Coroner by close of business on 6 November 2020; and that Mr Webber was to respond by sworn statement within 72 hours of receiving the written questions.

### **The relevant provisions of the *Coroners Act 2003***

- [23] Sections 35, 36 and 37 of the Act relevantly provide:

#### **“35 Directions or orders about inquests and pre-inquest conferences**

- (1) To the extent that the conduct of an inquest or pre-inquest conference is not provided for by rules or practice directions, the Coroners Court may give the directions and make the orders the court considers appropriate for the conduct of the inquest or pre-inquest conference.

*Example –*

The Coroners Court may make an order to close the court while a witness is giving evidence that the witness claims would tend to incriminate the witness.

- (2) Subsection (1) does not limit the power of the Coroners Court to control an inquest or pre-inquest conference.

...

### 36 Right to appear etc.

- (1) The following persons may appear, examine witnesses, and make submissions, at an inquest –
- (a) a police officer, lawyer or other person assisting the Coroners Court;
  - (b) the Attorney-General;
  - (c) a person who the Coroners Court considers has a sufficient interest in the inquest.

*Examples for paragraph (c) –*

- 1 a family member
  - 2 the representative of a department
  - 3 the representative of a company that manufactured a product that is believed to have killed the deceased person
- (2) Subsection (3) applies if the Coroners Court considers a person mentioned in subsection (1)(c) has a sufficient interest only because it is in the public interest, and consistent with the purposes of this Act, that the person appear and make submissions at the inquest about a matter on which the coroner may comment under section 46(1).

*Example of a person for subsection (2)–*

a specialist advocacy group with particular expertise in a matter on which a coroner may comment under section 46(1)

- (3) Despite subsection (1), the person—
- (a) may not examine witnesses at the inquest without the court's leave; and
  - (b) may only make submissions about a matter on which the coroner may comment under section 46(1).
- (4) The Attorney-General or a person who the Coroners Court considers has a sufficient interest may be represented by a lawyer.
- (5) In this section –
- examine* includes cross-examine.

### 37 Evidence

- (1) The Coroners Court is not bound by the rules of evidence, but may inform itself in any way it considers appropriate.

- (2) The Coroners Court may require a person to produce a document to the court before the start of an inquest.
- (3) The Coroners Court may inspect anything produced at an inquest, copy it, or keep it for a reasonable period.
- (4) The Coroners Court may do any of the following –
  - (a) order a person to attend an inquest, until excused by the court –
    - (i) to give evidence as a witness; or
    - (ii) to produce something;
  - (b) order a person called as a witness at an inquest –
    - (i) to take an oath; or
    - (ii) to answer a question.

...”

#### **The contentions of the parties**

- [24] Mr Plunkett for the applicants submitted that, as family members of the deceased, the applicants had a sufficient interest in the inquest to be granted leave to appear.<sup>5</sup> Accordingly they had a right to appear at the inquest, examine witnesses and make submissions. The right to examine witnesses includes to cross-examine.<sup>6</sup>
- [25] Mr Plunkett submitted that where a witness claims privilege against self-incrimination, the Coroner may nevertheless require the witness to give evidence if satisfied that it is in the public interest for the witness to do so.<sup>7</sup> He submitted that the directions made by the Deputy State Coroner expressly exclude Mr Webber from giving oral evidence which is inconsistent with s 37(4) of the Act which allows the Coroners Court to order a person to attend to give evidence as a witness, until excused.
- [26] Mr Plunkett submitted that the power of the Coroners Court to give directions contained in s 35(1) of the Act is a general provision whereas the right to examine or cross-examine witnesses in s 36(1) is a specific provision. He sought to place reliance on the maxim *generalia specialibus non derogant* and submitted that the specific provision conferring a right of examination and cross-examination of witnesses should prevail.
- [27] Mr Plunkett emphasised the importance of cross-examination which can elicit helpful evidence and test the veracity and accuracy of the evidence of a witness. He submitted that there are internal inconsistencies in Mr Webber’s account and that his

<sup>5</sup> *Coroners Act 2003*, s 36(1)(c).

<sup>6</sup> *Coroners Act 2003*, s 36(5).

<sup>7</sup> *Coroners Act 2003*, s 39(2).

evidence is inconsistent with other evidence in material respects. Mr Plunkett also referred to the importance of the coronial process in providing answers to the families of the deceased.

- [28] Mr Hickey for the Attorney-General submitted that s 35(1) of the Act confers upon the Coroners Court a broad discretion to give directions and make orders that are considered appropriate for the conduct of the inquest. He submitted that the argument for the applicants provides no textual analysis of the Act, nor authority to support the proposition that their right to cross-examine witnesses should prevail over the broad discretion reserved to the Coroner. Mr Hickey submitted that by reserving broad and unfettered discretion to the Coroners Court to inform itself in any way that it considers appropriate, without being bound by the rules of evidence, the Act recognises the fact finding exercise engaged in by the Court.

### Consideration

- [29] The issue is limited to whether the Deputy State Coroner had the power to make directions that Mr Webber provide sworn answers in writing. It was not argued that the decision itself was unreasonable or that the Deputy State Coroner failed to consider relevant evidence or took into account irrelevant evidence or that the reasons are inadequate.
- [30] The issue depends upon the proper construction of the relevant provisions of the Act within their statutory context.<sup>8</sup> One of the objects of the Act is to establish procedures for investigations, including by holding inquests into particular deaths.<sup>9</sup>
- [31] The nature of a coronial inquest has been explained by Lord Lane CJ in a frequently cited judgment in *R v South London Coroner; Ex parte Thompson*:<sup>10</sup>

“Once again it should not be forgotten that an inquest is a fact finding exercise and not a method of apportioning guilt. The procedure and rules of evidence which are suitable for one are unsuitable for the other. In an inquest it should never be forgotten that there are no parties, there is no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish facts. It is an inquisitorial process, a process of investigation quite unlike a trial where the prosecutor accuses and the accused defends, the judge holding the balance or the ring, whichever metaphor one chooses to use.”

- [32] The Coroners Court is a court of record and is constituted by a Coroner.<sup>11</sup> The common law, to the extent that it operated to impose a duty or confer a power on a Coroner of the Coroners Court, has no effect after the commencement of the Act.<sup>12</sup>

<sup>8</sup> *The Queen v A2* (2019) 93 ALJR 1106 at 1116-1118 [31] – [37], 1136 [148]; *Beale v O’Connell* [2018] 1 Qd R 461 at 469 [37].

<sup>9</sup> *Coroners Act* 2003, s 3(b).

<sup>10</sup> (1982) 126 SJ 625, 628 (per Lord Lane CJ); cited in *Annetts v McCann* (1990) 170 CLR 596 at 616 (per Toohey J); *Hurley v Clements* [2010] 1 Qd R 215 at 232 [26]; *Neumann v Hutton* [2020] 3 QR 419 at 426 [12].

<sup>11</sup> *Coroners Act* 2003, s 64.

<sup>12</sup> *Coroners Act* 2003, s 104. In particular, a Coroner investigating a death need not view the person’s body and a Coroners Court does not sit with a jury: s 104(2).



- [33] The Coroners Court is not bound by the rules of evidence, and may inform itself in any way it considers appropriate.<sup>13</sup> A Coroner who is investigating a death must, if possible, find the identity of the deceased person, how the person died, when the person died, where the person died and in particular whether the person died in Queensland, and what caused the person to die.<sup>14</sup> A Coroner may, when appropriate, comment on anything connected with a death that relates to public health or safety, the administration of justice or ways to prevent deaths from happening in a similar manner.<sup>15</sup>
- [34] The Coroner must not include in any findings or comments any statement that a person is or may be guilty of an offence or civilly liable for something.<sup>16</sup> However, where the Coroner reasonably suspects a person has committed an offence, the Coroner is required to give the information to the Director of Public Prosecutions in respect of indictable offences or to the relevant chief executive for other offences.<sup>17</sup> In respect of corrupt conduct or police misconduct, the Coroner may make a referral to the Crime and Corruption Commission.<sup>18</sup> In respect of a person's conduct in a profession or trade, the Coroner may make a reference to the relevant disciplinary body.<sup>19</sup>
- [35] The Coroners Court investigating a death may hold a pre-inquest conference in order to decide which witnesses will be required at the inquest.<sup>20</sup> The Coroners Court may give directions and make orders that it considers appropriate for the conduct of the inquest.<sup>21</sup> The power to give directions and make orders does not limit the power of the Coroners Court to control an inquest.<sup>22</sup>
- [36] In *Walter Mining Pty Ltd v Hennessey*,<sup>23</sup> McMeekin J observed that the power of the Coroners Court to inform itself in s 37(1) of the Act is expressed in very wide terms. Because of the width of the power to gather evidence, his Honour considered it would be "a rare case indeed" where the Court would interfere in the process.<sup>24</sup>
- [37] The fact that there are disputed facts does not create an obligation on the Coroners Court to call witnesses for examination or cross-examination. The applicants clearly had a sufficient interest in the inquest to be granted leave to appear pursuant to s 36(1)(c) of the Act. They were not in the category of persons who had a sufficient interest only because it was in the public interest.<sup>25</sup> Where the interest of a party arises only because it is in the public interest, the court's leave is required to examine witnesses.<sup>26</sup>

<sup>13</sup> *Coroners Act* 2003, s 37(1).

<sup>14</sup> *Coroners Act* 2003, s 45(2).

<sup>15</sup> *Coroners Act* 2003, s 46(1).

<sup>16</sup> *Coroners Act* 2003, s 45(5), s 46(3).

<sup>17</sup> *Coroners Act* 2003, s 48(2).

<sup>18</sup> *Coroners Act* 2003, s 48(3).

<sup>19</sup> *Coroners Act* 2003, s 48(4).

<sup>20</sup> *Coroners Act* 2003, s 34(1)(a)(iii).

<sup>21</sup> *Coroners Act* 2003, s 35(1).

<sup>22</sup> *Coroners Act* 2003, s 35(2).

<sup>23</sup> [2010] 1 Qd R 593 at 597 [19].

<sup>24</sup> *Walter Mining Pty Ltd v Hennessey* [2010] 1 Qd R 593 at 603 [58] citing *Doomadgee v Clements* [2006] 2 Qd R 352 at 361 [37].

<sup>25</sup> *Coroners Act* 2003, s 36(2).

<sup>26</sup> *Coroners Act* 2003, s36(3)(a).

- [38] In *Beale v O'Connell*,<sup>27</sup> Jackson J held that a decision by a Coroner to require a person to attend an inquest was an example of a matter of practice and procedure in the gathering of evidence. I consider that a decision by a Coroner to direct that a witness provide written answers is similarly a matter of procedure in the fact finding exercise.
- [39] The applicants' submission that the specific right to cross-examine witnesses should prevail over the general provision conferring a wide discretion upon the Coroners Court to give directions and make orders considered appropriate, cannot be accepted.
- [40] The broad discretion conferred upon the Coroners Court to inform itself in any way it considers appropriate must be exercised in accordance with the subject matter and the scope and purpose of the Act.<sup>28</sup> The discretion permits the Coroners Court to inform itself in any way that "it considers appropriate".<sup>29</sup> The Coroners Court does not conduct inquests in the same manner as civil or criminal proceedings.<sup>30</sup> A direction that a witness who is medically incapable of giving oral evidence, is to provide written evidence instead, is consistent with the necessary flexibility in the conduct of an inquest, and accords with the power of the Coroners Court to inform itself in any way it considers appropriate: see for example *The Law and Practice on Coroners* at 19.56.<sup>31</sup>
- [41] The Coroners Court may order a person to attend an inquest until excused in order to give evidence or produce something.<sup>32</sup> There is nothing in the text of the provision that requires the evidence to be given orally. The parties at an inquest have no right or entitlement to insist that the Coroner compel a witness to attend to give oral evidence.
- [42] It was within the power of the Deputy State Coroner to direct that Mr Webber provide answers in writing. The application must be dismissed.

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<sup>27</sup> [2018] 1 Qd R 461 at 481 [98].

<sup>28</sup> *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 at 40, (per Mason J).

<sup>29</sup> *Neumann v Hutton* [2020] 3 QR 419 at 430-431 [30]-[31].

<sup>30</sup> *Maksimovich v Walsh and the Attorney-General* (1985) 4 NSWLR 318 at 335-336 (per Samuels JA).

<sup>31</sup> P Knapman and M J Powers, *Thurston's Coronership: The Law and Practice on Coroners* (Barry Rose Publishers, 3<sup>rd</sup> ed, 1985) at 134 [19.56].

<sup>32</sup> *Coroners Act* 2003, s 37(4)(a).