

**Practice and Procedure for
Coronial Inquests (NSW) and Royal Commissions (Cth)**

	Coronial Inquest (NSW)	Royal Commission (Cth)
Jurisdiction/Nature	Inquisitorial – but in reality it has adversarial and inquisitorial elements, the coroner exercises judicial power and the proceedings involve the administration of justice: <i>Musumeci v Attorney-General of NSW</i> (2003) 57 NSWLR 193 at [33]. ‘Therapeutic Jurisprudence’	Inquisitorial – but with a distinctly adversarial flavour.
Legislation	<i>Coroners Act 2009</i> (NSW)	<i>Royal Commissions Act 1902</i> (Cth)
Open to the Public	Yes. (See sections 47 and 74(2)(a))	Yes.
Private Hearings	No	Yes – section 6OB. Called ‘private sessions’ and are distinct to a hearing of the Commission (section 6OC(2)). ‘Evidence’ obtained in a private session cannot be used in other civil or criminal proceedings against a person (section 6OE). Information obtained at a private session can only be included in a report or recommendation if it is also given as evidence in a hearing OR the information is de-identified (section 6OJ)
Objective of Proceedings	To determine answers to the following questions (s.81(1)): <ul style="list-style-type: none"> - Has someone died? - Identity of deceased - Place and time of death - Manner of death - Cause of death 	Whatever is in the terms of reference!
Counsel Assisting	Works with the Coroner and OIC	Works with the Commissioner and solicitors/investigators
Rules of Evidence	Do not apply – section 58(1)	Do not apply

<p>Privilege Against Self-Incrimination</p>	<p>Yes –section 58(2) is the provision that allows for a witness to object to providing a document or answering a question that might incriminate them/expose them to civil penalty.</p> <p>Section 61 sets out the certificate provision (i.e. ‘equivalent’ to section 128 of the <i>Evidence Act</i>) if compelled to give evidence (s.61(4))</p>	<p>Yes: Right to object to answering questions etc on the basis of self-incrimination exists but only if person the relevant (civil or criminal) proceedings have commenced but not been finalized (Section 6A (3) and (4)).</p> <p>But – section 6DD provides that statement, documents or disclosure of witness during Commission or produced under summons is not admissible in evidence in any civil or criminal proceedings against any person.</p> <p>NOTE – this does not include coronial proceedings!</p>
<p>Legal Professional Privilege</p>	<p>Still exists because section 58(1) does not explicitly and expressly override it’s existence.</p>	<p>Yes – section 6AA of the Act. (See <i>AWB Ltd v Cole</i> (2006) 152 FCR 382 at [34] per Young J)</p>
<p>Public Interest Immunity</p>	<p>Still exists because section 58(1) does not expressly override its existence.</p> <p>Test: Is the public interest in admitting the material outweighed by the public interest in preserving its confidentiality? <i>Sankey v Whitelaw</i> (1978) 142 CLR 1</p>	<p>Arguably still exists because Act does not explicitly provide otherwise.</p> <p>Test: Is the public interest in admitting the material outweighed by the public interest in preserving its confidentiality? <i>Sankey v Whitelaw</i> (1978) 142 CLR 1</p>
<p>Browne v Dunn</p>	<p>No – see <i>Re Ruddock; Ex pare Applicant S154/2002</i> [2003] HCA 60 at [55] per Gummon and Heydon JJ</p> <p>BUT</p> <p>Procedural fairness considerations mean that the substance of allegations should be put to a witness if a party intends to submit that adverse findings should be made against that witness.</p>	<p>No – see <i>Re Ruddock; Ex pare Applicant S154/2002</i> [2003] HCA 60 at [55] per Gummon and Heydon JJ</p> <p>BUT</p> <p>Procedural fairness plays a part. See Practice Guidelines for each Commission. Note – in the Royal Commission into Institutional Responses to Child Sexual Abuse, explicit reference is made to the rule only applying when:</p> <ul style="list-style-type: none"> - the Commission is to be invited to disbelieve a witness; - it is contended that deliberately false evidence has been given by a witness; or, - there has been a mistake on the part of the witness about a significant issue.

Power to compel a provision of a statement	No power in the OIC or coroner to compel a witness to provide a statement.	Can compel provision of a statement (section 2(1)(b)).
Investigative powers	Police retain usual powers under LEPR but are also given specific powers relating to the ascertainment of evidence from a 'coronial scene' (see Chapter 5).	Extensive. Once Letters Patent have issued, then the Commission will likely start to issue Summons to Produce and search warrants (see sections 2-4).
Investigator	A police officer is assigned to be the Officer in Charge (OIC) of a coronial investigation (s.51)	No single investigator. Often a team of investigators (usually solicitors) working on the matter. In big Royal Commissions - the Commission itself employs these persons.
Overview of the 'brief'	Can be seen from the OIC's statement – contained at the front of the brief. The OIC gives evidence – often at the beginning and again at the end of the inquest. Also – Counsel Assisting will determine the list of witnesses and list of issues with the Coroner. These will be circulated in advance and set out the issues.	Can only be gleaned from the Counsel Assisting's opening address and the terms of reference.
Family of Deceased	Family of the deceased has a 'right' to appear (section 57(3)). They are always given a copy of the brief of evidence. They have a right to make a victim impact statement	-
Cross-examination	Limited to issues in the inquest (including recommendations) and must relate to the interests of your client. You cannot cross-examine at large.	Limited right, controlled by Commissioners and as per relevant Practice Guidelines.
Witnesses remain in court during proceedings	Yes. But Coroner has the power to order any or all persons to remain outside the Court (s.74).	Yes.
Power to refer to DPP for criminal charges	Yes. Section 78(4) provides that a referral must be made to the DPP if at any time the coroner forms the opinion that: <ul style="list-style-type: none"> - the evidence is capable of satisfying a jury beyond reasonable doubt that a known person has committed an 	Yes.

	<p>indictable offence; and,</p> <ul style="list-style-type: none"> - there is a reasonable prospect of a jury convicting that person. <p>If a person is charged before the inquest, then it can only proceed to take evidence with respect to the death of a person, the identity and the date and place of death. At that point, the inquest MUST be suspended.</p>	
Offences	Contempt	<p>There are a raft of offences contained in the Act that relate to non-compliance or ‘contempt’ type of behaviours. They include:</p> <ul style="list-style-type: none"> - false/misleading evidence (s.6H) - bribery and fraud (s.6J) - destruction of documents (s.6K) - preventing a witness from attending (s.6L) or injuring a witness (s.6M) - dismissal by employer of a witness (s.6N) - Contempt (s.6O)
Case Management	<p>There will be a formal case management process – call-overs and directions hearings. These allow for:</p> <ul style="list-style-type: none"> - directions re service of the brief on interested persons - interested persons to indicate their intention or otherwise to seek leave to appear - raise any preliminary issues e.g. conflict of interest, particular witnesses who might be called etc 	None.
Leave to Appear	<p>Application must be made before appearing. Requires the Coroner to grant leave if satisfied that the person has a ‘sufficient interest’.</p> <ul style="list-style-type: none"> - Guiding principle is one of procedural fairness - Section 57(1)(d) ‘Sufficient Interest’ letter sent to those persons against whom adverse findings might be made or a recommendation will affect their area of operation - Person of interest vs person with an interest 	<p>Granted generally when an applicant:</p> <ul style="list-style-type: none"> - has been summoned to give evidence - in an institution, or representative of an institution, that is subject to the inquiry to be undertaken; - may be the subject of an adverse allegation

Can you tender evidence?	No. But discuss with counsel assisting.	Only on application, and subject to agreement from Counsel Assisting and/or the Commissioners.
Recommendations	<p>s.82(1) – recommendations can be made “in relation to any matter connected with the death”</p> <p>Usually in relation to systemic problems – not a one-off issue. Consideration will be given to relevant policies and procedures of a concerned government agency</p>	They can do what they like. Generally prepare a report in response to the Terms of Reference. These will include recommendations.