



Royal Commission into Aboriginal Deaths in Custody Recommendation

27. Person appointed to assist a coroner

That the person appointed to assist the coroner in the conduct of the inquiry may be a salaried officer of the Crown Law Office or the equivalent office in each State and Territory, provided that the officer so appointed is independent of relevant custodial authorities and officers. Where, in the opinion of the State Coroner, the complexity of the inquiry or other factors, necessitates the engaging of counsel then the responsible government office should ensure that counsel is so engaged.¹

Background²	<p>The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) highlighted the critical need for impartiality and transparency in coronial inquiries, particularly in cases involving deaths in custody. The Commission responded to concerns about the involvement of custodial authorities and police in these investigations by recommending that independent legal counsel be appointed to assist coroners. This was aimed at ensuring greater objectivity and reducing the influence of potentially biased parties.</p> <p>At the time of the report, jurisdictions like Victoria and Queensland already allowed for the appointment of independent legal professionals, and this practice was becoming more widespread across Australia. By involving legal professionals unconnected to custodial authorities, the Commission aimed to introduce a safeguard against bias and reinforce public confidence in the investigation process.</p>
Intent	Ensure that the person appointed to assist a coroner is independent of relevant custodial authorities and officers.
Responsibility	All state and territory governments.
Key contacts	Coroners Court of Victoria.
Key action taken	
2005 Review³	<p>The State Coroner assessed Recommendation 27 as partially implemented and advised that where police were involved in an incident, the Office of the Director of Public Prosecutions provided counsel to assist the coroner at the inquest (sometimes counsel was provided to assist with managing some aspects of the investigation).</p> <p>Counsel was generally instructed by a solicitor from the Office of Public Prosecutions. For most deaths in custody (except where police were involved in the incident or there was another reason for potential conflict), due to limited resources, the Police Assistant's Unit at the State Coroner's Office assisted the coroner in the court process and in overseeing the investigation.</p>

¹ Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991) vol 1, 176 ('RCIADIC').

² Ibid vol 1, 149-152 [4.5.72].

³ Aboriginal Justice Forum (Vic), Department of Justice (Vic), *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody* (Review Report, October 2005) 466 ('2005 Review').

27. Person appointed to assist a coroner

	<p>On some occasions where deaths in custody involved correctional authorities (where the matter was complex or there was a perceived potential for conflict), outside counsel or the Office of Public Prosecutions were briefed to assist the coroner in the inquest.</p>
2018 Review⁴	<p>Deloitte assessed Recommendation 27 as being fully implemented in Victoria, based on the Victorian Government’s 1994 Implementation Report, which stated that in all deaths in custody the Coroner sought assistance from the Office of Public Prosecutions so they could brief independent counsel to assist.</p>
Since then	<p>Coroners Court of Victoria⁵</p> <p>The Coroners Court has a team of lawyers and registrars. At the inquest, the coroner will be assisted by a coroner’s assistant (typically an in-house solicitor), or by a barrister in the role of ‘Counsel Assisting’.</p> <p>The role of a coroner's assistant is to assist in the discovery of facts by presenting material in an orderly fashion and questioning witnesses in place of the coroner. They may direct inquiries along particular lines and may help witnesses in preparing their statements, though not to the point of censoring the evidence. They may also produce summaries of the evidence and outlines of relevant statutory provisions and may identify relevant authorities.</p> <p>The coroner’s assistant may be a police officer, an Australian lawyer, the Director of Public Prosecutions or another person appointed by the coroner that is impartial and unbiased.</p> <p><i>The coroner’s assistant must behave in a manner that does not give rise to an apprehension of bias on the part of the coroner... The assistant must be impartial and independent and must not struggle unduly for a particular result. While the coroner is not directly responsible for the conduct of the assistant, an apprehension of bias may arise where the coroner appears to condone misconduct by the assistant.</i>⁶</p> <p>Practice Direction 3 of 2021 – Police Contact Deaths⁷</p> <p>This Practice Direction notes that in cases involving a police contact death, the investigating coroner will refer the matter to the Court’s In-House Legal Service to assist at all stages of the investigation.⁸ The Police Coronial Support Unit (PCSU) does not lead or have any substantive involvement in the investigation of a police contact death.</p> <p>If there is a real or perceived conflict in the PCSU assisting the investigating coroner—such as concerns about the adequacy of the police coronial investigation—the investigating coroner, in consultation with the Director of Legal Services and the Officer-in-Charge of the PCSU, must determine which unit is most appropriate to take charge.</p>

⁴ Deloitte Access Economics, Department of Prime Minister and Cabinet, *Review of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody* (Report, August 2018) 61 ('2018 Review').

⁵ Judicial College of Victoria, *Coroners Bench Book Victoria* (2023) 56-57.

⁶ Ibid 57 [5.9].

⁷ Ibid 39-40.

⁸ Coroners Court of Victoria, *Practice Direction No 6 of 2020: Indigenous Deaths in Custody*, 22 September 2020,[3.2] ('*Indigenous Deaths in Custody*').

27. Person appointed to assist a coroner

Assistance may be sought from the Director of Public Prosecutions or elsewhere as outlined in an earlier version of the Coroners Court Bench Book:

In most cases, the coroner’s assistant will be a police officer from the Police Coronial Support Unit, or at regional courts, a local police prosecutor. However, if there is a real possibility that police action connected to a death may be under scrutiny, the coroner may seek assistance from the DPP (usually in the form of a Crown Prosecutor), or from the private bar (with the Victorian Government Solicitors Office, or a private practice instructing).⁹

Evidence of impact

Authorising documents

Coroners Act 2008 (Vic)¹⁰

Section 60 of the *Coroners Act 2008 (Vic)* outlines the types of individuals authorised to support coronial proceedings which include: a police officer, Australian lawyer, the Director of Public Prosecutions, or another person appointed by the coroner.

Practice Direction 3 of 2021 – Police Contact Deaths

3.1 In circumstances where a police contact death has occurred, the investigating coroner as soon as reasonably practicable will refer the matter to the In-House Legal Service (IHLS) to take carriage of and assist the investigating coroner at all stages of the investigation (from inception to closure).

3.2 Under no circumstances are the Police Coronial Support Unit (PCSU) to take carriage of or have any substantive involvement in the investigation of a police contact death.

3.3 Circumstances may arise where PCSU may be conflicted in assisting the investigating coroner (for example the reportable death of a serving Police member/employee or where concerns arise in respect of the adequacy of the Police coronial investigation of a death). The conflict arising may be either actual or perceived, however it is not possible to be prescriptive in identifying what constitutes such a conflict, and each matter is to be assessed on a case-by-case basis. Where a potential conflict arises, a determination is to be made by the investigating coroner in consultation with the Director, Legal Services and Officer-in-Charge, PCSU as to the appropriate Unit to take carriage

Outputs

Relevant legislative provisions, practice directions and other guidance as outlined above.

Outcomes

The *Coroners Act 2008 (Vic)* allows a coroner to be assisted at an inquest by the Director of Public Prosecutions or another appointed person. Recommendation 27 requires this assistant to be independent of custodial authorities. The Coroners Bench Book further stresses the need for the coroner’s assistant to be independent, impartial and avoid any perception of bias.

These guiding documents do not define how to assess independence, leaving it to the coroner’s discretion. In cases involving police contact deaths or potential conflicts, Practice Direction 3 provides guidance on sourcing assistance.

⁹ Judicial College of Victoria, *Coroners Bench Book Victoria* (2009) [9.6.1].

¹⁰ *Coroners Act 2008 (Vic)* 51-52 ('Coroners Act').

27. Person appointed to assist a coroner

Recommendation 27 also states that if a coroner deems counsel necessary, the government should ensure one is engaged. As of 2025, Coroners may seek assistance from the Director of Public Prosecutions or the Victorian Government Solicitor's Office, with those agencies responsible for determining the appointee's independence.

Community views

Victorian Aboriginal Legal Service¹¹

The Coronial Council of Victoria completed a Review into Improving the Experiences of Bereaved Families with the Coronial Process. In their 2021 submission to this review, the Victorian Aboriginal Legal Service (VALS) highlighted aspects of court and coronial processes that 'remain culturally unsafe for Aboriginal families'. They propose employing Aboriginal people in a broader range of Coroners Court roles including coroner's assistants to address these issues:

Further efforts must be made to ensure that there are more Aboriginal people at the Coroners Court. This should include Aboriginal Coroners, Aboriginal Counsel Assisting the Coroner, and community panels of Aboriginal Elders to support the role of the coroner. This will help to enhance the cultural appropriateness of the court and ensure that Aboriginal cultural considerations are taken into account at all levels of the court.

Related recommendations

2005 Review¹²

Recommendation 94

That the Victorian Government provide adequate resources to the State Coroner to appoint counsel to assist the coroner's investigation of an Aboriginal death in custody.

That the Victorian Government continue to implement and monitor Recommendation 27.

Assessment summary¹³

Recommendation 27 was intended to ensure that any person appointed to assist a coroner is independent of custodial authorities and officers.

Actions taken in Victoria partially align with the intent of this recommendation. The *Coroners Act 2008* (Vic) provides for a coroner to be assisted at inquest by a police officer, an Australian lawyer, the Director of Public Prosecutions or another person appointed by the coroner.

The Coroners Court Bench Book stresses that the coroner's assistant must be 'impartial and independent' and behave in a way that 'does not give rise to an apprehension of bias on behalf of the coroner'. However, the guiding documentation does not contain explicit criteria for assessing these qualities during appointment, leaving it to the discretion of the investigating coroner. For a police contact death, or where police may be otherwise conflicted, Practice Direction 3 of 2021 clearly outlines how the determination will be made of the appropriate source of assistance.

¹¹ Victorian Aboriginal Legal Service, 'Submission to the Review of Experiences of Bereaved Families Going Through a Coronial Process' (Submission) 10-11.

¹² 2005 Review.

¹³ Meeting with Aboriginal Justice Caucus Working Group (Project Team, Online, 24 April 2024) ('Working Group Meeting (24 April 2024)'); Meeting with Aboriginal Justice Caucus (Project Team, In person, 12 June 2024) ('Aboriginal Justice Caucus (12 June 2024)').

27. Person appointed to assist a coroner

The latter part of Recommendation 27 states that where a coroner deems it necessary to engage counsel 'then the responsible government office should ensure that counsel is so engaged'. The investigating coroner can seek assistance from the Director of Public Prosecutions or Victorian Government Solicitor's Office. Where these agencies identify a person to assist the coroner, their independence is likely determined by the assisting agency. We are concerned about the transparency and consistency of this process. Overall, there is little evidence of how assessments of impartiality and/or independence of the coroner's assistant are made.

Community concerns about 'police investigating police' reflect the ongoing relevance of this recommendation. Whoever assists a coroner must be independent of custodial authorities and officers.

Assessment of Recommendation 27

Is the intent of the recommendation accurately described?

Yes No

Does the action taken align with the intent of the recommendation?

0 – No action taken

1 – Action taken is of little relevance to the intent of the recommendation

2 – Action taken partially aligns with the intent of the recommendation

3 – Action taken fully aligns with the intent of the recommendation

1.5

(Score out of 3)

Is there evidence of the desired impact or outcome/s?

0 – No evidence

1 – Evidence of output rather than outcome

2 – Some evidence action contributed to outcome/s

3 – Clear link between action and impact or outcome/s

1

(Score out of 3)

How relevant is the recommendation in the current context?

0 – No relevance – refers to practices, agencies or laws that no longer exist

1 – Low – some relevance, but most aspects of the recommendation no longer apply

2 – Moderate – remains relevant, but some aspects of recommendation no longer apply

3 – High – entirely relevant to current context

3

(Score out of 3)

Does full implementation have the potential to reduce incarceration, increase safety in custody and/or progress Aboriginal self-determination?

0 – No potential to improve Aboriginal justice outcomes

1 – Low – potential to improve Aboriginal justice outcomes, but none of the three identified

2 – Moderate – potential to progress one or two of the outcomes identified

3 – High – potential to reduce incarceration AND increase safety in custody AND self-determination

1

(Score out of 3)

Potential actions for further work

Transparent process for assessing the independence of coroner’s assistants

Coroners Court to identify how the independence and impartiality of coroner’s assistants is assessed, including any consideration given to an individual’s current or past associations with custodial authorities or officers. Clear, standardised criteria should be developed to ensure consistency, transparency, and alignment with Recommendation 27, particularly in cases where public confidence is at risk.

Employ Aboriginal people in a broader range of court roles

Ensure that there are Aboriginal Coroners and Aboriginal Counsel Assisting the Coroner.

The Coroners Court should consider the use of community panels consisting of Aboriginal Elders, to assist investigating coroners in relation to all investigations/inquests into the passing of an Aboriginal person.

Moderate priority for further work

Relevance and potential impact

		Low (0-2)	Moderate (3-4)	High (5-6)
Extent of action taken and evidence of outcomes	High (5-6)			
	Moderate (3-4)		Rec 27	
	Low (0-2)			

Bibliography

Meeting with Aboriginal Justice Caucus Working Group (Project Team, Online, 24 April 2024)

Aboriginal Justice Forum (Vic), Department of Justice (Vic), *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody* (Review Report, October 2005)

Meeting with Caucus, Aboriginal Justice (Project Team, In person, 12 June 2024)

Coroners Act 2008 (Vic)

Coroners Court of Victoria, *Practice Direction No 6 of 2020: Indigenous Deaths in Custody*, 22 September 2020

Deloitte Access Economics, Department of Prime Minister and Cabinet, *Review of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody* (Report, August 2018)

Judicial College of Victoria, *Coroners Bench Book Victoria* (2023)

Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991)

Victoria, Judicial College of, *Coroners Bench Book Victoria* (2009)

Victorian Aboriginal Legal Service, 'Submission to the Review of Experiences of Bereaved Families Going Through a Coronial Process' (Submission, 2021)