

Avant factsheet:

The coroner and you

Many medical practitioners at some stage in their career find themselves involved in coronial proceedings. Coroners often seek statements from medical practitioners when reportable deaths are investigated.



The role of the coroner

Coroners investigate reportable deaths. The legislation in each state and territory defines a 'reportable death' somewhat differently however it will usually include accidents and suicides, as well as violent, unnatural or unexpected deaths. It can also include deaths that occur in care or in custody.

The coroner's role is to determine the identity of the deceased as well as when and where they died and the circumstances and cause of death.

The preliminary investigation and gathering of evidence for the coroner is generally conducted by the police under the coroner's instruction.

Producing a statement for the coroner's court

You may become involved in the coronial process if you provided medical care to the deceased. You can be approached by the police or coroner's staff to provide some initial background information.

This might be followed with a request for a formal legal statement. Avant strongly recommends that you do not provide a signed statement or enter into detailed conversations with a police officer without first contacting us.

Avant assists its members with this process. It is our practice to cooperate with the coroner's request and the police during the investigation process by assisting and advising you on how to respond. For example, it is not advisable for you to comment upon the care provided by other medical practitioners in your statement – concentrate on your involvement in the matter.

Once a statement has been obtained from the relevant witnesses, those assisting the coroner may seek an independent expert report commenting on the role of the various individuals in the care and treatment of the deceased.

End of the investigation

The coroner will review all of the evidence and determine whether an inquest (a court hearing) is necessary.

If the manner and cause of death are clear, the coroner will usually dispense with an inquest. A great majority of coronial proceedings are finalised by the coroner without the need for an inquest.

If, however, at the conclusion of the investigation, the manner and cause of death remain unclear or if there are issues of public interest, the coroner will usually hold an inquest. Coronial investigations can be both complex and lengthy.

Coronial inquest

If you have provided a statement to the coroner and an inquest is held, it is likely that you will be summoned to give evidence at the inquest. Occasionally, you may be asked to attend to give evidence at short notice. This may be because it is not until the inquest commences that it becomes clear that further evidence is needed. In either case, you should contact Avant immediately so that steps can be taken to ensure your interests are protected.

When you request assistance, Avant will advise you on your position and the need for you to have legal representation at the inquest. If necessary, an Avant lawyer will be appointed to represent you.

The investigating officer will compile a coronial brief for the coroner, which contains all relevant statements, medical records, autopsy reports and expert reports obtained by the coroner in relation to the investigation. Avant will obtain a copy of the coronial brief and review it to identify possible areas for adverse comments that the coroner may find.

If called to give evidence, you will be asked to adopt or confirm the statement you have previously provided. Those parties who have an interest in the matter are then entitled to ask questions in cross-examination. Generally, at the end of such questioning, you will be asked questions by your lawyer to clear up any ambiguities or issues that may have arisen.

It is important to remember that an inquest is an inquisitorial process, a fact-finding exercise, and not a method of apportioning blame. The rules of evidence do not apply in the

coroner's court and those called to give evidence are either factual or expert witnesses. Proceedings are not adversarial and there are no parties.

Inquest hearing time can vary from hours to many weeks, depending on the complexity of the case and the number of witnesses called to give evidence. Generally, we will be notified of the amount of time the inquest is 'set down' for. Regardless of the duration of the inquest, as a witness you should be excused after giving your evidence, which may range from a few minutes to a day or two.

The result of a coronial inquest

Following the completion of an inquest, the coroner will hand down their findings and sometimes recommendations.

Although it is not a court of blame, sometimes coroners may be critical of a medical practitioner and refer them to a disciplinary body such as a state health care complaints body or AHPRA, following which a separate assessment or investigation will take place into the practitioner's conduct.

The coroner may form the view that there is a case for an indictable criminal offence to be made against an individual. If so, the coroner will suspend the inquest and forward the documents to the director of public prosecutions. Fortunately, this is a rare event concerning medical practitioners.

Following the handing down of the findings by the coroner, the deceased's family may consider taking civil proceedings alleging negligence and seeking damages against individual practitioners.

Publicity and talking to the media

Inquests are generally open to the public and an inquest is likely to attract publicity. We recommend that you do not speak to the media concerning the matter as this may prejudice not only the coronial proceedings, but any subsequent civil proceedings or disciplinary investigation.

Take-home messages

Do not provide a signed statement or enter into detailed conversations with police without first contacting Avant.

Should you receive a summons to give evidence at a coronial inquest, you should contact Avant immediately so that steps can be taken to protect your interests.

It is important to bear in mind that practitioners are asked to give evidence at inquests for a variety of reasons. Often the practitioner's involvement is not contentious. They simply possess one or two pieces of the factual jigsaw puzzle that the coroner needs to assemble. Avant will help you appreciate the nature and the extent of your involvement as the case progresses. Coronial investigations or inquests may cause great stress for all those involved, so we would always advise you to seek support and advice from Avant or your other support networks.

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