



Coroners Court of Victoria

Practice Direction 5 of 2011

Briefing Counsel to Assist

Background

1. This practice direction is issued in conjunction with Practice Direction 4 of 2011:
 - (a) Regulating the briefing of Counsel to Assist coroners is aimed at endeavouring to achieve the proper balance between the conduct of complex areas of coronial investigation with the need to ensure that the community purse is not unnecessarily burdened with the cost of briefing counsel to assist in those investigations where the In-House Solicitors Service are assisting the coroner but external counsel is required; and
 - (b) to endeavour to achieve a statewide consistent and managed approach to the obtaining of Counsel to Assist.

Request Criteria

2. A coroner may request the In House Solicitors Service to provide assistance with an investigation if the matter meets the following criteria:
 - a. an investigation involving police contact death, such as
 - i. a police shooting;
 - ii. a police pursuit;
 - iii. a death in police presence or in police custody; or
 - iv. in any circumstances where the police conduct associated with the death is likely to come under scrutiny;
 - b) Matters accepted as justifying in house legal assistance such as:
 - v. advice and assistance with a specific area of complex coronial law;
 - vi. advice and assistance with a complex medico-legal issue;
 - vii. a workplace death involving expert safety and/or regulatory or legal issues; or
 - viii. cluster inquests
 - ix. Any appeals or reviews of a coroner's determination, order, ruling or finding.

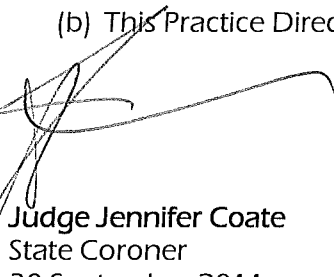
3. If the In-house Solicitors Service have been allocated to assist a coroner it may be considered necessary to Brief Counsel to Assist.

Process for obtaining Counsel to Assist

4. If, having reviewed the brief of evidence or as a result of being made aware of the circumstances of a particular investigation and in consultation with the In-House Solicitors Service, a coroner considers that it is necessary or appropriate to appoint Counsel to assist, a request, **in the attached form**, must be made to the State Coroner to authorise briefing Counsel to assist.
5. The request needs to set out:
 - a) The brief circumstances of the matter
 - b) Why Counsel is required to assist
 - c) Advice as to whether any other interested party is participating in the investigation
6. Each time such approval is granted, a copy of the State Coroner's authorisation is be forwarded to the investigating coroner (with a copy to the Principal In-House Solicitor and the C.E.O)
7. Once approved by the State Coroner, the Principal In-House Solicitor will negotiate the fee or rate payable for the provision of Counsel Assisting. From time to time, it may be appropriate to exceed standard or average rates including where Counsel is the only available or best available Counsel for the particular matter or the level of time required or complexity of the case warrants a deviation from standard rates.
8. Once authorised by the State Coroner, the CEO and Principal In-House Solicitor will co-author a letter of engagement to brief Counsel for a specified fee or rate. The allocated in-house solicitor will provide Counsel with a backsheets.

To enable the above to take effect, the following direction is made:

- (a) Practice Direction No 4 of 2010 is rescinded.
- (b) This Practice Direction is made pursuant to section 107 of the *Coroners Act* 2008.



Judge Jennifer Coate
State Coroner
30 September 2011



Coroners Court of Victoria

REQUEST FOR COUNSEL ASSISTING

Name of deceased:

Case No:

Coroner: Coroner

Court Location:

Outline of circumstances of matter:

Reasons why Counsel Assisting is required:

Is any other interested party participating in the investigation?

Recommendation as to suitable Counsel/Solicitors:

Signed
Coroner

Date:



Coroners Court of Victoria

STATE CORONER RESPONSE FOR APPROVAL OF COUNSEL ASSISTING

I Approve / Disapprove the request for Counsel Assisting.

Reasons for non/approval (If applicable)

The approval is subject to the following conditions:

Signed

Date:

Judge Jennifer Coate
State Coroner