

## Practice Direction 5 of 2020

### Directions Hearings in Mandatory Inquests

#### **Background**

1. On 9 April 2014, the State Coroner issued 'Practice Direction 4 of 2014 – Police Contact Deaths' (**Practice Direction 4 of 2014**), which outlines certain procedures to be followed where a reportable death occurs in circumstances of police contact.<sup>1</sup>
2. One procedure outlined at paragraph 13 therein is the convening of a Directions Hearing within 28 days of a police contact death being reported to the coroner. The Directions Hearing is defined at paragraph 7 of Practice Direction 4 of 2014 as 'a public hearing held by the Coroners Court of Victoria in respect of a death (or fire) for the purpose of the coroner providing interested parties direction as to the scope of the inquest, witness to be called, and expected duration'.

#### **Current Practice Direction**

3. Noting that the practice of convening of a Directions Hearing within 28 days promotes efficiency and ensures that interested parties and families are aware of proceedings and the timeline of the investigation, the State Coroner considers this procedure to constitute best practice not only in the context of police contact deaths, but in relation to **all** deaths for which holding an inquest will be mandatory.
4. Section 52(2) of the *Coroners Act 2008* (Vic) (**the Act**) provides that, subject to subsections (3) and (3A), a coroner must hold an inquest into a death if the death or cause of death occurred in Victoria and:
  - (a) the coroner suspects the death was a result of homicide; or
  - (b) the deceased was, immediately before death, a person placed in custody or care;  
or
  - (c) the identity of the deceased is unknown; or
  - (d) the death occurred in prescribed circumstances.<sup>2</sup>


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<sup>1</sup> Practice Direction 4 of 2014 – Police contact deaths. Available: <https://www.coronerscourt.vic.gov.au/sites/default/files/2018-11/practice%2Bdirection%2B4%2Bof%2B2014%2B-%2Bpolice%2Bcontact%2Bdeaths.pdf>

5. The current Practice Direction is being issued to provide that, in all cases where an inquest must be held, and unless reasons exist otherwise, a Directions Hearing will be convened within 28 days in order to:
  - i) Confirm the coroner's investigator for the coroner;
  - ii) Fix the date of delivery of the coronial brief; and
  - iii) Provide any other directions as considered appropriate at that time as relevant to the investigation, including regarding potential witnesses and scope of inquest.
6. Where a coroner determines that an inquest will not be held on the basis of the factors outlined in section 52(3) of the Act, the current Practice Direction does not apply.
7. This Practice Direction may still apply where a coroner ultimately determines under section 52(3A) of the Act that an inquest is not required to be held on the basis that the death was due to natural causes, as: (i) the evidence under section 52(3B) of the Act that the death was due to natural causes may not yet be available by the 28-day point; and (ii) even if the death is due to natural causes, it may be appropriate in some circumstances to examine, by way of inquest, certain issues (such as medical care received) to determine whether or not the death was preventable. Accordingly, in order to receive submissions from interested parties and families on any such relevant issues that are apparent by that stage, and unless reasons exist otherwise, the 28-day Directions Hearing procedure will also apply to deaths that may ultimately proceed by way of a determination under section 52(3A) of the Act, where such determination has not yet been made.
8. This Practice Direction is made pursuant to section 107 of the *Coroners Act* 2008.

The following directions are made in connection with the Practice Direction:

- a) This Practice Direction is complementary to Practice Direction 4 of 2014; and
- b) This Practice Direction takes effect on 17 September 2020.



**Judge John Cain**  
State Coroner  
17 September 2020

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<sup>2</sup> It is noted that there are not presently any 'prescribed circumstances' for the purposes of section 52(2)(d) of the Act in the *Coroners Regulations 2019* (Vic) (noting, however, the relevance of Regulation 7 to the definition of 'a person placed in custody or care' for the purposes of section 52(2)(b) of the Act).