

## Practice Direction for the Use of Concurrent Evidence in the Queensland Coronial Jurisdiction<sup>1</sup>

### Introduction

1. This practice direction is made by the State Coroner pursuant to s 69(1) of the *Coroners Act 2003* (Qld).
2. The concurrent evidence procedure involves two or more experts giving evidence at the same time in an inquest. It provides a forum in which, in addition to providing their own evidence, experts can listen to, question and comment on the evidence of the other expert(s).
3. The objectives of using the concurrent evidence procedure in an inquest are to:
  - create a setting in which the evidence and opinions of expert witnesses can be better explained, analysed and understood, thereby enhancing a Coroner's capacity to make the correct or preferable decision;
  - assist expert witnesses in fulfilling their role as impartial advisers, whose duty it is to assist the Coroner; and
  - enhance the efficient operation of inquests by reducing the overall time taken to hear and determine applications.

### Purpose of this practice direction

4. This practice direction outlines how the concurrent evidence procedure operates in the coronial jurisdiction. They include information on:
  - factors that may be taken into account in deciding whether or not the concurrent evidence procedure will be used;
  - the process for deciding whether or not the concurrent evidence procedure will be used;
  - how the concurrent evidence procedure usually operates; and
  - the roles of the participants in the inquest.

---

<sup>1</sup> This practice direction is largely an adoption of the guidelines issued by the President of the Administrative Appeals Tribunal on 9 November 2011 modified to suit the coronial jurisdiction.

5. This practice direction has two purposes:
- to ensure that court staff, counsel assisting, parties to an inquest, counsel representing and experts have a clear understanding of the concurrent evidence procedure; and
  - to encourage consistency in its application.

### **Identification and selection of matters**

6. The concurrent evidence procedure may be used in any matter where counsel assisting will call oral evidence from experts. Its use is not limited to particular kinds of expert evidence.

7. The Coroner will decide whether or not the concurrent evidence procedure is to be used. A range of factors may be taken into account in deciding whether or not the concurrent evidence procedure should be used in a particular matter. These include:

- the nature and complexity of the issues in relation to which expert evidence is to be given;
- the areas of expertise and level of expertise of the experts who will be giving evidence;
- the likely impact of using the concurrent evidence procedure on the length of the inquest; and
- the views of the parties.

The Coroner may take into account other factors that he or she considers relevant to deciding whether or not to use the concurrent evidence procedure.

8. The concurrent evidence procedure is more likely to be considered suitable for use where:

- expert evidence is central to the issues in dispute in the inquest;
- experts will be commenting on the same issues;
- the concurrent evidence procedure will assist in clarifying and understanding areas of difference in the expert evidence;
- experts are of like disciplines;
- experts have comparable levels of expertise; and
- use of the concurrent evidence procedure may reduce the length of the inquest.

## **The process for deciding whether the concurrent evidence procedure will be used**

9. The potential use of the concurrent evidence procedure should be considered as early as possible in the proceedings. Counsel assisting, counsel representing or a party to an inquest may raise the issue for discussion during a pre-inquest conference. A Coroner may direct that the concurrent evidence procedure is appropriate for use in the inquest.

10. If the Coroner considers that the concurrent evidence procedure may be suitable, a pre-inquest conference may be convened to discuss its use. The Coroner will issue a direction as necessary. The direction may require the parties to provide to the experts copies of relevant reports and other documents and confirm the availability of the experts to give evidence concurrently.

11. The Coroner is likely to prefer that experts participate in the concurrent evidence procedure in person. However, an expert may request to participate by telephone or video link. The Coroner will determine whether this is appropriate in the circumstances.

12. In general, a decision that the concurrent evidence procedure is to be used should be made as early as possible and, in any event, not less than a week before the inquest.

## **The concurrent evidence procedure**

### ***Expert conference***

13. The Coroner will direct that the experts who are to give evidence concurrently are to confer prior to the day of the inquest. The expert conference must be attended and facilitated by counsel assisting.

14. The purpose of the expert conference is for the experts to identify any areas of agreement and clarify areas of disagreement in relation to the issues before the inquest. Counsel assisting must prepare a written memorandum identifying areas of agreement and disagreement. The memorandum is to be distributed to the parties as soon as practicable prior to the inquest and should be tendered as evidence during the inquest.

15. It is improper for an expert to be given, or to accept, instructions from any person, not to reach agreement.

### ***Facilities***

16. The case manager within the Office of the State Coroner will ensure that appropriate court room facilities are available when concurrent evidence is to be used for the experts to give evidence. Facilities include chairs, tables, microphones, name tags, water, computer access for electronic evidence and copies of documents)

17. The case manager within the Office of the State Coroner will also ensure that appropriate conference room facilities are available for the expert conference.

### ***Inquest procedure***

18. This section of the practice direction sets out the way in which the concurrent evidence procedure will generally be conducted in an inquest. The Coroner may determine that a departure from the standard procedure is appropriate in the circumstances of a particular inquest.

- Counsel assisting will outline the way in which the concurrent evidence procedure will proceed.
- The experts will each take an oath or make an affirmation.
- Counsel assisting will commence questioning the expert witnesses. The expert witnesses should generally be addressed by name. This will assist in the preparation of the transcript.
- Each expert will be given the opportunity to express his or her views on the issues and to engage in a dialogue with the other expert, which may involve asking questions of the other expert. In general, this stage of the procedure will occur without the intervention of the parties or their representatives.
- The Coroner will then invite the parties or their representatives to ask questions of the expert witnesses.
- At the conclusion of the questioning, the Coroner may invite each expert witness to give a brief final summary of their views on any of the issues before the Coroner.
- At any stage of the process, the Coroner may intervene and ask questions.

## **Roles of the participants**

### ***The role of counsel assisting***

19. It is the responsibility of counsel assisting to ensure that the use of the concurrent evidence procedure is considered and determined by the Coroner as early as possible so that the parties and experts are given sufficient notice that it will be used.

### ***The role of the Coroner***

20. The Coroner is responsible for managing the concurrent evidence procedure to ensure that it proceeds fairly and efficiently.

### ***The role of parties and their representatives***

21. Parties and their representatives should be prepared to consider the use of the concurrent evidence procedure during a pre-inquest conference and to suggest its use where it may be appropriate.

22. Parties and their representatives must ensure that all relevant matters are undertaken to facilitate the use of the concurrent evidence procedure.

23. The concurrent evidence procedure involves a departure from the traditional method of taking evidence from expert witnesses. Parties and their representatives are expected to adjust their approach to take account of the procedure outlined in paragraph 18 and any specific directions given by the Coroner. Parties and their representatives may ask questions of the experts to ensure that all relevant views and material are clarified and put to the Coroner.

### ***The role of experts***

24. Coroners expect that experts will participate in the concurrent evidence procedure in good faith. Experts should be willing to consider and comment on alternative factual premises and opinions.

This practice direction has effect from 30 June 2013 2013.

**Michael Barnes**  
State Coroner  
30 June 2013