MAGISTRATES COURT *of* TASMANIA

CORONIAL DIVISION

Inquest into the death of Patricia Iliev

Ruling No. 1

Introduction

1. The issue addressed by this ruling is whether, as the coroner conducting this inquest, I have the power to compel a witness to answer questions where the answer or answers may tend to incriminate him.

2. This issue requires me to decide whether the common law right of privilege against self-incrimination has been abrogated by the *Coroners Act* 1995 ("the *Act*") which governs the conduct of this inquest and the coronial functions in this state.

The factual setting

3. Ms Patricia Iliev passed away in Sheffield on 6 March 2021, aged 57 years. Her death was reported to the coroner late the same day by the completion of a Police Report of Death (ROD) for the Coroner.[1]

4. During the evening of 6 March 2021, Ms Iliev's partner, Philip George Adams, telephoned for the attendance of an ambulance to his home in 32 High Street, Sheffield, as Ms Iliev was deceased. Ms Iliev was determined by ambulance officers, upon their arrival, to be clearly deceased and was noted to be in an extremely emaciated condition. Police officers also attended the scene and commenced an investigation and completion of the ROD.

5. The following information was included in the ROD as a summary of the circumstances as they were able to attain at the time.[2]

> Ms Iliev had been bed bound for approximately eight weeks during which time she had ceased eating as she did not want to soil the couch. She was confined to the living room of the house at 32 High Street, Sheffield.

[1] The standard form satisfying the requirements for reporting a death pursuant to sections 19, 20 of the *Act* and Rule 4 of the *Coroners Rules* 2006.
[2] The following passage replicates the summary of circumstances contained in the ROD with only minor grammatical amendments.

Ms Iliev last received professional medical attention in 1988. Since that time she had been well until several years ago when her back began giving her some pain and her mobility became increasingly restricted.

Ms Iliev had been in a de facto relationship for over 20 years with Mr Adams, aged 68 years. The couple moved to Sheffield approximately 20 years ago. Shortly prior to the move Ms Iliev injured her back for the first time. She recovered without the assistance of medical professionals.

Ms Iliev has had a number of subsequent events which have caused her back pain and suffering. The last of these occurred in approximately October 2020 and this was the point at which she began purchasing medical mobility aids. This was also the time when she last left the house and Mr Adams began taking on all the household tasks and caring for her. Mr Adams stated that he and Ms Iliev discussed obtaining medical intervention but she declined on a number of occasions.

During her declining health, Mr Adams had been the sole care provider.

Ms Iliev was last seen alive on the couch in the living room at 3.30pm on 6 March 2021 by Mr Adams. He went outside to do some gardening, returning to the house at about 5.30pm and found Ms Iliev dead.

Mr Adams spent several hours mourning the passing of Ms Iliev. He then removed her from her place of death and took her clothing and bedding from that spot to the laundry.

Mr Adams spent time cleaning and dressing Ms Iliev before placing her on the bed in the main bedroom fully dressed.

10.42pm that evening, Mr Adams called an ambulance. Ambulance officers attended and following discussions with Mr Adams, the ambulance officers advised him that police would need to attend as a death certificate could not be issued. The ambulance officers confirmed death had occurred and did not make any resuscitation attempts or administer any treatment.

Police officers attended and spoke with the ambulance officers prior to entering the house and speaking with Mr Adams. Mr Adams led police officers to the bedroom where are the officers viewed Ms Iliev.

Ms Iliev was fully dressed and covered with a light blanket.

Ms Iliev had a severely emaciated and pallid appearance and attending police officers requested the attendance of Criminal Investigation Branch (CIB) officers. The attendance of CIB officers led to a decision to involve forensic officers.

6. Ms Iliev's death was reportable on the basis of it appearing to the coroner (in this case, myself) that it may have been within one or more categories of reportable deaths as defined in the *Act*.[3] Relevantly, Ms Iliev's death may, at the time of reporting, have fulfilled the categories of a death which was sudden, unexpected, unnatural, resulted from an accident or injury, or the cause of which was unknown.

7. On 10 March 2021 forensic pathologist, Dr Donald Ritchey, performed an autopsy upon Ms Iliev. Dr Ritchey identified the primary cause of death as starvation. In this regard, he recorded Ms Iliev's weight at 19.1 kg, representing a body mass index of 9.9 kg/m². A normal BMI recording is greater than 18kg/m². He further noted that Ms Iliev had no subcutaneous body fat stores. Dr Ritchey identified secondary causes of death as gastrointestinal stromal tumour of stomach (stage 1A) and advanced lung disease caused by smoking, namely centriacinar emphysema and active respiratory bronchiolitis.

Further evidence obtained in the investigation

8. On 7 March 2021 Mr Adams participated under caution in a recorded police interview at the Devonport Police Station of 64 minutes duration. In that interview he provided further details about his relationship with Ms Iliev, her mental capacity and her health situation. He told the interviewing officers that Ms Iliev had been largely confined to the couch for six months before her death after she suffered injuries in a fall. Mr Adams then prepared all her food for her. He said that Ms Iliev had not washed or showered for several months nor changed her undergarments. He said that she gradually decreased her food intake and, a week or so before her death she stopped eating completely and only drank water through a straw. Mr Adams said that in the days before her death Ms Iliev was not responsive and fell into a very deep sleep. Mr Adams considered that Ms Iliev's death was a possibility at this stage but reinforced his view that, despite her immobility, she had full capacity to make decisions in respect of her care.

9. Following the police interview of Mr Adams, further witness and police affidavits and expert and forensic evidence was gathered in the investigation. The complete

[3] Section 3 exhaustively defines the categories of reportable deaths.

documentary evidence was tendered by counsel assisting in opening at the commencement of the inquest.

The public inquest

10. Pursuant to section 24(2) of the *Act*, a coroner has jurisdiction to hold an inquest if he or she considers it desirable to do so. In this case, I was of the view that a public inquest was necessary to elucidate the circumstances surrounding the death of Ms Iliev. The circumstances of her death by starvation, whilst immobile and with little outside contact required probing questions of those witnesses who could assist. In particular, the evidence of Mr Adams as her partner and carer required amplifying and testing for credibility in light of all evidence received in the investigation.

11. As investigating coroner, my primary function is to make findings, if possible, under section 28(1) of the *Act* – being the identity of the deceased, the cause of death, how death occurred and when and where death occurred.

12. The requirement of *'how death occurred'* has been determined to mean *'by what means and in what circumstances',*[4] a phrase involving the application of the ordinary concepts of legal causation.[5] Any coronial inquest necessarily involves a consideration of the circumstances surrounding the particular death so as to discharge the obligation imposed by section 28(1)(b) upon the coroner.

13. The further coronial functions, having investigated the circumstances, are to make comments and recommendations, if appropriate.

14. This case raised significant questions in the context of section 28 about the circumstances of death, which were reflected in the scope of inquest as settled. This was as follows:

    a. Whether starvation is an appropriate pathological cause of death for Ms Iliev;

    b. Whether Ms Iliev was reliant on Mr Adams for her basic needs, including food, water and healthcare;

    c. The adequacy of the care provided by Mr Adams in the 12 months prior to Ms Iliev's death;

    d. What, if any, aspects of that care might have contributed to her death;

[4] See *Atkinson v Morrow* [2005] QCA 353.
[5] See *March v E. & M.H. Stramare Pty. Limited and Another [*1990 – 1991] 171 CLR 506.

e. To what, if any, extent Mr Adams was following the decisions and directions of Ms Iliev; and

f. Whether Ms Iliev had capacity to make decisions about her medical care or treatment.

15. Thus, the inquest focussed significantly upon the actions, care and omissions of Mr Adams in connection with the death of Ms Iliev. In the pre-inquest processes, Mr Adams was advised that he had been identified as an interested party and that there was potential for adverse findings to be made against him.

16. Mr Adams was served with a summons to give evidence at inquest and was represented by counsel, Mr Maguire.

17. On 4 May 2022 Mr Maguire filed written submissions on behalf of Mr Adams advising that *"Mr Adams takes a global objection to the giving of any evidence, on the grounds that answers he may give may tend to incriminate him*." These submissions further set out the basis upon which it was asserted that the privilege against self-incrimination had not been abrogated by the provisions of the *Coroners Act* 1995.

18. Notwithstanding the foreshadowed objection by Mr Adams, the public inquest into the death of Ms Iliev commenced at Devonport on 6 May 2022. After an opening address by counsel assisting, Dr Ritchey, Jennifer Sergeant and Constable Tyrone Myers were called and gave oral testimony to the inquest.

19. Following these three witnesses, Mr Adams was called to the witness box and sworn in to give evidence at the inquest.

20. Mr Adams provided answers to counsel assisting's questions asking for his name and occupation. However, counsel for Mr Adams objected to counsel assisting's question, *"[a]nd what is your relationship to Ms Iliev"*. The basis for the objection was that Mr Adams' relationship to the deceased *"would be relevant in the nature and circumstances of this case given potential charges which could be laid … involve[sic] Ms Iliev for [sic] being someone who was under his charge at the time."*[6]

21. Counsel for Mr Adams submitted, therefore, that his client's answer had a *"'tendency to bring him into peril"*; and could potentially expose him to a manslaughter charge under section 144 of the *Criminal Code Act* 1924 (Tas).[7]

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[6] T53.

[7] The following provisions of the *Criminal Code Act 1924* (Tas) may be relevant to the claim of privilege:

144. Duty to provide necessaries

22. The inquest was adjourned to allow counsel assisting the coroner to make submissions. I also invited the Attorney-General to make submissions considering the importance of the matter to the Tasmanian coronial jurisdiction.

23. Counsel assisting submitted that the privilege against self-incrimination had been abrogated by the provisions of the *Act*. Counsel for the Attorney-General submitted that the privilege had not been abrogated and could be claimed in appropriate circumstances. The written submissions from all three counsel were most helpful, particularly with regard to the authorities.[8]

24. All submissions were received by 14 October 2022.

25. This ruling addresses the issue of whether, in the first instance, the common law rule of privilege against self-incrimination has been abrogated by the provisions of the *Act.*

Privilege against self-incrimination

26. The privilege against self-incrimination has been described by the High Court as follows:

> *"A person who believes on reasonable grounds that he or she is suspected of having been a party to an offence is entitled to remain silent when questioned or asked to supply information by any person in authority about the occurrence of an offence, the identity of the participants and the roles which they played. That is a fundamental rule of the common law which, subject to some specific statutory modifications, is applied in the administration of the criminal law in this country."*[9]

27. The privilege against self-incrimination is *"deeply ingrained in the common law."*[10] It has the status of a *"fundamental right"* and is *"not merely a rule of evidence available in judicial*

> *(1) It is the duty of every person having charge of another, who is unable by reason of age, sickness, unsoundness of mind, detention, or any other cause to withdraw himself from such charge, and who is unable to provide himself with the necessaries of life, to provide such necessaries for that other person.*
> *(2) It is immaterial how such charge arose.*
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> ***152. Omission of duty***
> *A person who without lawful excuse omits to perform any of the duties mentioned in this chapter shall be criminally responsible for such omission if the same causes the death of or grievous bodily harm to any person to whom such duty is owed, or endangers his life, or permanently injures his health.*
>
> ***156 Culpable homicide***
> *…includes an omission to perform a duty tending to the preservation of human life, although there may be no intention to cause death or bodily harm.*
>
> ***159. Manslaughter***
> *Culpable homicide not amounting to murder is manslaughter*
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> ***177 Failure to supply necessaries***
> *Any person whose legal duty it is to provide the necessaries of life for any person, and who, without lawful excuse, fails to do so, whereby the life of that person is or is likely to be endangered or his health is or is likely to be permanently injured, is guilty of a crime.*

[8] Counsel have helpfully provided many of the case references covered in the footnotes and numerous others.
[9] *Petty v The Queen* (1991) 173 CLR 95 at 99 by Mason CJ, Deane, Toohey and McHugh JJ.
[10] *Sorby v The Commonwealth* (1983) 152 CLR 281, 309 per Mason, Wilson and Dawson JJ.

proceedings, it is available generally, even in a non-curial context, as a foundation of an entitlement not to answer a question."[11]

28. It was accepted by both counsel that, if Mr Adams was required to answer the question regarding the status of his relationship with Ms Iliev this may, on reasonable grounds, place him in peril in respect of future criminal proceedings.

29. It is to be noted that no criminal proceedings in respect of Ms Iliev's death have been instituted at any time and there was no indication at the time of inquest or at the present time that Mr Adams was likely to be charged with any criminal offence. However, I proceed with this ruling on the basis that the circumstances of the death and the potential applicability of a charge of homicide based upon the provisions of the *Criminal Code* mean that he would be entitled to refuse to answer the question if the privilege against self-incrimination was available.

30. If I am incorrect about the extent of the risk to which such a question exposed Mr Adams, it does not affect the substance of this ruling. This is because I must, in any event, firstly determine whether he is able to successfully claim the privilege at all.

31. As a rule of statutory interpretation, it is presumed that Parliament does not intend to interfere with fundamental principles or rights including entrenched general law rights, such as the privilege against self-incrimination, without expressing its intention clearly.[12]

32. Whilst the privilege is said to be 'unqualified', it can be overridden or modified by the legislature or waived by the person entitled to claim it.[13]

33. To exclude the privilege against self-incrimination, the *Act* must indicate an "unmistakeable and unambiguous" intention. Such an intention may be discerned from the express words of the *Act* or by 'necessary implication'.[14]

34. The authorities clearly indicate that the privilege is not matter lightly abrogated and the phrase "necessary implication" imports a high degree of certainty as to legislative intention.[15]

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[11] *Griffin v Pantzer* (2004) 207 ALR 169, 184 [44] per Allsop J; See also *X7 v Australian Crime Commission and Another* (2013) 298 ALR 570.
[12] *Potter v Minahan* (1908) 7 CLR 277 at 304; *Sorby v The Commonwealth* (1983) 152 CLR 281, 294–295 per Gibbs CJ and 309–310 per Mason, Wilson and Dawson JJ.
[13] *Reid v Howard* (1995) 184 CLR 1 at 5 per Deane J).
[14] *Coco v The Queen* (1994) 179 CLR 427 at 438.
[15] See *Hamilton v Oades* (1989) 166 CLR 486 at 495.

Whether the privilege is expressly abrogated

35. A rule of common law may be expressly abrogated by statute, but I do not consider that any express provision exists under the *Act*.

36. There are only three provisions in the *Act* which may tend to indicate that the privilege has been *expressly* abrogated- these being sections 4, 53(1)(c) and 54. I set these provisions out and they will be referred to throughout the remainder of this ruling.

Section 4: Common law rules cease to have effect

A rule of the common law that, immediately before the commencement of this section, conferred a power or imposed a duty on a coroner or a coroner's court ceases to have effect.

Section 53: ***Powers of coroners at an inquest***

(1) If a coroner reasonably believes it is necessary for the purposes of an inquest, the coroner may –

(a) summon a person to attend as a witness or to produce any document or other materials; and

(b) inspect, copy and keep for a reasonable period any thing produced at the inquest; and

(c) order a witness to answer questions; and

(d) order a witness to take an oath or affirmation to answer questions; and

(e) give any other directions and do anything else the coroner believes necessary.

(2) A coroner may be assisted by counsel or by such other persons as the coroner determines.

(3) If a coroner determines that the assistance of counsel is required, the coroner must request the Director of Public Prosecutions to provide counsel to assist the coroner and the Director of Public Prosecutions may provide counsel to assist the coroner.

(4) A person must not, without reasonable excuse, disobey a summons, order or direction under subsection (1) .

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months.

(5) If a person to whom a summons is issued does not appear, the coroner may issue a warrant to apprehend the person.

(6) If a person is apprehended under a warrant issued under subsection (5) , the coroner may –

(a) commit the person to prison until the inquest or the further hearing of the inquest; or

(b) admit the person to bail; or

> *(c) orally order the person to appear before the coroner at the time and place to which the inquest in which that person is required as a witness has been adjourned.*

> ***Section 54: Statements or disclosures made by witnesses at inquest***
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> *A statement or disclosure made by any witness in the course of giving evidence before a coroner at an inquest is not admissible in evidence against that witness in any civil or criminal proceeding in any court other than a prosecution for perjury in the giving of that evidence.*

37. There is *no* provision in the *Act* that specifically expresses that a person is not excused from answering a question on the ground that the answer *may tend to incriminate* the person. As observed by counsel for the Attorney-General, there are examples of such legislative provisions in other Acts.[16]

38. The argument in favour of express abrogation in this case might be that the combination of one or more of these three provisions referred to above expressly abrogates the privilege. The argument might be summarised as;

- The privilege against self-incrimination is a common law rule that confers a duty on a coroner and coroner's court to apply it when it is claimed, assuming the claim is valid in the particular circumstances. Being in this category, privilege is abolished by the plain words of section 4; and/or

- The combination of the power of the coroner to order a witness to answer questions with the use immunity provided by section 54 is a clear expression of the abrogation of privilege.

39. In relation to section 4 of the *Act*, there is little authority on the extent to which rules of the common law are excluded from operation. It has been held that, whilst a contemporary *Coroners Act* may be regarded as a Code, that does not mean that the provisions cannot create, by the application of common law rules of construction of the Code, an obligation upon the coroner to observe one or more of the rules of natural justice.[17]

40. Whilst section 4 serves to emphasise the statutory intention to codify the law relating to the coronial function, I do not consider that the provision can be found to abrogate a common law rule that is fundamentally designed to protect a person's rights, even

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[16] See for example *Commission of Inquiry Act 1995* (Tas) s 26; *Explosives Act 2012* (Tas) section 41; *Biosecurity Act 2019* (Tas) section 68; *Work Health and Safety Act 2012* (Tas) section 172; *Royal Commission Act 1902* (Cth) section 6A.

[17] *Herald and Weekly Times v Attorney-General* [1991] 1 VR 95 per Fullager J at 96-97.

though it may be said that the privilege against self-incrimination previously imposed *"a duty on a coroner or a coroner's court"* (using the words of section 4) to recognise and, in appropriate circumstances, uphold a claim of privilege. The authorities are unclear in the extent of the meaning of section 4 and appear likely to relate to historical powers and duties of the coroner. I am unable to find any authority indicating that a provision identical to section 4 in itself abolishes fundamental common law rights enjoyed by persons appearing in a Coroners Court.[18] I would be incorrect to find otherwise.[19]

41. Further, there are no expressly worded provisions in the *Act* stating that a person is compelled to answer questions notwithstanding that they may tend to incriminate him or her. I therefore find that the privilege against self-incrimination has not been expressly abrogated by the *Act*.

Necessary implication

The approach

42. In *Pyneboard Pty Ltd v Trade Practices Commission,* Mason ACJ, Wilson and Dawson JJ stated:

> *"In deciding whether a statute impliedly excludes the privilege much depends on the language and character of the provision and the purpose which it is designed to achieve. The privilege will be impliedly excluded if the obligation to answer, provide information or produce documents is expressed in general terms and it appears from the character and purpose of the provision that the obligation was not intended to be subject to any qualification. This is so when the object of imposing the obligation is to ensure the full investigation in the public interest of matters involving the possible commission of offences which lie peculiarly within the knowledge of persons who cannot reasonably be expected to make their knowledge available otherwise than under a statutory obligation. In such cases it will be so, notwithstanding that the answers given may be used in subsequent legal proceedings."* [20]

43. A fundamental principle of statutory interpretation, including with respect to the issue before me, is to interpret the relevant provisions in accordance with their ordinary and natural meaning. This entails *'an exercise in statutory interpretation which*

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[18] *Coroner Act 1996* (WA) section 4 is identical - but deals with privilege abrogation in separate provisions.
[19] Counsel Assisting and counsel for Mr Adams both submitted that the common-law privilege against self-incrimination is not abolished by virtue of section 4.
[20] (1983) 152 CLR 328 at 341.

seeks to discern … the intention of the legislature in enacting the specific provision, having regard to its context, scope and purpose.'[21]

44. The context of the *Act* is to be considered from the outset and not merely at some later stage when ambiguity might be thought to arise.[22] '*Context*' comprehends such things as the existing state of the law and the mischief which the statute was intended to remedy. Legislative purpose, text and context have a role to play when considering its application.'[23]

Purpose of a coronial inquest

45. The office of the coroner originated in the twelfth century in England. During the reign of Richard 1, the principal obligation of the coroner was to protect the Crown's financial investment in its subjects. Thus, the primary duties of the coroner were those of a tax gatherer and, in performing this function, coroners were obliged to enquire into circumstances that would result in enrichment or entitlement of the Crown. The coroner, with the aid of a jury, was also obliged to investigate deaths occurring in unusual circumstances – this being principally for the determination of pecuniary interests to the Crown. However, before the rise of the local magistracy and police forces, the coroner was also the principal agent for investigation of crime, especially homicide. It was the duty of the coroner to examine the body of the deceased and determine how the person died. If there was evidence to accuse someone of a homicide offence, the inquisition of the coroner's jury, naming the suspect, operated as an indictment and committed the suspect to trial.[24]

46. The role of the coroner evolved to the modern role of the coroner - investigating the circumstances and causes of death where it was in the public interest that there be an investigation. As stated by Freckleton and Ranson, systems for the investigation of deaths are found in most societies and they sit alongside and intersect importantly with criminal investigations and trials, civil actions for negligence and disciplinary hearings into unprofessional conduct. [25] However, coronial systems have distinctive features - the holding of public hearings in difficult matters, clarification of the public

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[21] *Forsyth v Deputy Federal Commissioner of Taxation* (2007) 231 CLR 531 at 548 [39] per Gleeson CJ, Gummow, Hayne, Callinan, Heydon and Crennan JJ, citing *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 197 CLR 384 at 408 per Brennan CJ, Dawson, Toohey and Gummow JJ.
[22] *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 197 CLR 384 at 408 per Brennan CJ, Dawson, Toohey and Gummow JJ.
[23] *Lee v New South Wales Crime Commission* (2013) 251 CLR 196 at 217–218 [29] per French CJ.
[24] See Freckleton and Ranson, *Death Investigation and the Coroner's Inquest*, (Oxford University Press, 2006) Ch. 1.
[25] Ibid. Introduction 1iii.

record on causes and circumstances of death and learning from death so as to minimise the risk of recurrence. [26]

47. The *Act* establishes a Coronial Division of the Magistrates Court for the express purpose of requiring the reporting of certain deaths, to set out the procedures for investigations and inquests by coroners into deaths fires and explosions and to provide for related matters.[27]

48. Every other state and territory in Australia has its own Coroners Act, each with the object of death investigation. However, each such Act is not identical in its provisions, and in particular, there are different legislative approaches and provisions in respect of the privilege against self-incrimination.[28]

Statutory context

49. Given the task of this ruling, I set out below relevant provisions of the *Act* which assist in gleaning context and legislative purpose to understand the issue in question.

50. Under section 21(1) of the *Act*, a coroner has jurisdiction to investigate a death if it appears to the coroner that the death is or may be a reportable death. *"Reportable death"* is defined exhaustively in section 3. Relevantly, the definition of 'reportable death' under section 3 includes one *"… (iv) that appears to have been unexpected, unnatural or violent or to have resulted directly or indirectly from an accident or injury;…".*

51. Under section 24 of the *Act*, a coroner is mandated to hold a public inquest in certain circumstances, and retains the discretion to hold inquests into other reportable deaths if they consider it desirable to do so. By section 24 (1)(a), a coroner *must* hold an inquest if the coroner suspects homicide.

52. The essential functions of a coroner are specified under section 28(1)-(5), whereby a coroner investigating a death must find the identity of the deceased, how death occurred, the cause of death and when and where death occurred. In line with the important death prevention function of a coroner, these provisions contain requirements of the coroner, where appropriate, to make comments and recommendations. The coroner, by these provisions is allowed a broad, but not unlimited, scope to investigate the circumstances and to determine the matters

[26] Ibid. Introduction 1iv.
[27] Long Title of the *Act*.
[28] See, for example, the *Coroners Act 2003* (Qld), section 39 and the *Coroners Act 2009* (NSW), section 61.

contributing to death. In any such investigation, there may be matters with sufficient connection death that may be the subject of comments and recommendations.

53. Part 7 of the *Act* is headed *"Conduct of Inquests"* and comprises sections 50 to 57. These provisions are applicable only to the holding of public inquests and not to coronial investigations more generally under section 21.

54. The critical provisions for consideration in this ruling, being sections 53(1)(c) and 54, are set out in full above.

55. Under section 53(1)(c) of the *Act*, a coroner has the power to order a witness to answer questions. Upon the plain words of the section, this discretionary power is only fettered by the requirement that the coroner must, in making the order, reasonably believe it is necessary for the purposes of an inquest. I also observe that even if satisfied of reasonable necessity, the coroner is not *obliged* to make an order compelling a witness to answer.

56. Pursuant to section 53(4) of the *Act*, it is an offence for a person to disobey a summons, order or direction under section 53(1) *"without reasonable excuse"*. This proviso includes the failure to answer a question when directed by a coroner under section 53(1)(c). The question of whether a valid claim to the privilege against self-incrimination is a "*reasonable excuse*" requires a separate discussion and that is set out below.

57. The immunity provided by section 54 serves as direct use immunity, save the specified exception concerning perjury. It does not provide immunity from derivative use where the answers provided under compulsion may be used to discover further evidence which is admissible against the person providing the answer.[29]

58. Consistent with the broad enquiry role of the coroner to make the necessary factual findings, section 51 provides that a coroner holding an inquest is not bound by the rules of evidence and may be informed and conduct an inquest in any manner the coroner reasonably thinks fit.

Summary of arguments relating to the existence of the privilege under the Act

59. Counsel assisting submitted that the jurisdiction to investigate unnatural or violent deaths, the mandate to hold inquests into suspected homicides, and the duty to make the findings under section 28(1), would be wholly inconsistent with the operation of

[29] *Lee v New South Wales Crime Commission* (2013) 251 CLR 196 at 202 per French CJ at [2]

the privilege against self-incrimination in respect of a coroner's power under section 53(1)(c) to order a witness to answer questions.

60. She submitted that if a witness at an inquest is able to claim the privilege, the power under section 53(1)(c) cannot be used to achieve its purpose, namely to conduct an inquiry that gathers all available evidence upon which findings under section 28 can be made. It is therefore necessary to conclude that the privilege has been impliedly abrogated. She further submitted that the wording of section 53(1)(c) empowering the coroner to *"order a witness to answer questions"* is general out of necessity and not ambiguity. The power of a coroner is intended to be as broad as the plain meaning of the provision allows.

61. She further submitted that without the power to compel a witness to answer an incriminating question, the operation of section 54 of the *Act* would largely be redundant, save its application to civil proceedings.

62. Counsel assisting submitted that a conclusion of implied abrogation is supported by the way the *Act,* in comparison with its predecessor, cements the distinction between the coronial and criminal jurisdictions in Tasmania, including the abolition of jury inquests and the power to commit a person to trial for various offences including homicide. These were available under the repealed 1957 Act. She also referred to section 28(4) prohibiting a coroner from including in a finding or comment any statement that a person is or may be guilty of an offence.

63. Counsel assisting submitted that the suite of provisions promote the inquisitorial nature of the coronial jurisdiction while clearly separating it from the operation of criminal proceedings. This distinction, in addition to the purpose, powers, mandates and prohibitions within the legislative scheme necessitates the implied abrogation of the privilege.

64. In answer to counsel assisting's submissions, counsel for the Attorney-General submitted in respect of the purpose of the *Act* and its relationship to the issue of privilege:

> *"A coroner's principal role under the Act is to investigate and determine the circumstances and cause of certain deaths. Although this may include investigating deaths where a coroner suspects homicide, it is clear that any evidence a coroner obtains in the course of an inquest is not intended to be directly used for the purpose of any criminal proceeding and that a coroner no longer has any role in committing persons to trial. In fact, if on an inquest relating to a death a coroner is informed, before making a finding, that a person*

has been charged before justices with any of the offences specified in s 25(2) of the Coroners Act, the coroner must, in the absence of reason to the contrary, adjourn the inquest until after the conclusion of the proceedings with respect to any of those offences. A coroner's investigative function is, in these circumstances and absent reason to the contrary, subordinate to the functions of the State's police and prosecutorial services.

A coroner therefore is not afforded coercive powers under the Coroners Act with the object, much less the principal object, of uncovering potential serious offences, although such offences may well be uncovered in the course of a coroner's inquest. Further, whilst a coroner's investigation into the circumstances of a death will be made more difficult if a witness objects to answering certain questions or producing certain documents on the grounds of privilege, this, of its own, does not frustrate or otherwise make a coroner's task of investigating and determining the circumstances and cause of a death impossible. A coroner has, and traditionally had, a suite of resources and investigative powers that do not require any particular witness' cooperation to discover information and materials concerning a death. It is to be recalled, the privilege against 'self-incrimination' is not a privilege against 'incrimination'. A coroner can compel a witness that is not entitled to claim any relevant privilege to give evidence or produce documents, notwithstanding that evidence or document incriminates, or has the tendency to incriminate, another person.

The Attorney-General also submits, to this end, it should be remembered that by its nature the privilege against self-incrimination makes the investigation of a crime more difficult. This is justified by reference to the benefits derived from the privilege some of which reflect fundamental values of the criminal justice system. Courts are astute to recognise therefore that the mere fact the privilege has costs in terms of the efficient investigation of crime is not taken as a factor implying that the privilege has been abrogated. Courts balance the purposes of the legislation, some of which may point in different ways in relation to the abrogation of the privilege, against the purposes that underlie the privilege itself, and find the privilege to be abrogated only when the legislation necessarily requires its abrogation."[30]

65. Counsel for the Attorney General relied particularly upon the case of *Sorby v The Commonwealth* (1983)152 CLR 281 in submitting that notwithstanding the provisions of sections 53, 54 and 57, the *Act* falls far short of the "high-degree of certainty as to legislative intention" required for a Court to conclude that there is a legislative intention to abrogate the privilege against self-incrimination by necessary implication.

[30] Submissions of Attorney-General, paragraphs 31 to 33.

66. Counsel for Mr Adams, Mr Maguire, also submitted that the legislature did not abrogate the privilege against self-incrimination with "irresistible clearness" as is required by the authorities.[31] He submitted that a person who may have no "cloud of suspicion" hanging over them will be protected by section 54 the *Act.* However, a person who has a cloud of suspicion or who may give answers which tend to incriminate them, even indirectly, has the further protection of the common law rule.[32]

Offence of disobeying an order without reasonable excuse: section 53(4) of the Act

67. It is an offence under section 53(4) of the *Act* for a person to disobey a summons, order or direction under section 53(1) "without reasonable excuse". This includes the failure to answer a question when directed by a coroner under section 53(1)(c).

68. The phrase *"reasonable excuse"* is not defined by the *Act.* It has been interpreted broadly in other contexts to include both lawful authority, referring to rights, privileges or immunities recognised by the law, and also physical or practical difficulties.[33] However, decisions on other statutes provide no adequate guidance because what is a reasonable excuse depends not only on the circumstances of the individual case but also on the purpose of the provision.

69. *In Taikato v The Queen* Brennan CJ, Toohey, McHugh and Gummow JJ stated:

> *"[T]he reality is that when legislatures enact defences such as "reasonable excuse" they effectively give, and intend to give, to the courts the power to determine the content of such defences. Defences in this form are categories of indeterminate reference that have no content until a court makes its decision. They effectively require the courts to prescribe the relevant rule of conduct after the fact of its occurrence."*[34]

70. Counsel assisting, Ms Belonogoff, submitted that the primary purpose of the offence provision in section 53(4) is to prevent witnesses obstructing or frustrating an inquest. She submitted that orders, summons and directions issued under section 53(1) are only given *"if a coroner reasonably believes it is necessary for the purposes of an inquest"* with the statutory aim of assisting fulfil the functions required by section 28 of the *Act.*

71. Counsel assisting further submitted that the specific immunity provided by section 54 demonstrates legislative contemplation that incriminating evidence will be given at an

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[31] *Al-Kateb v Goodwin* (2004) 219 CLR 562 at 577.
[32] Submissions of counsel for Mr Adams, page 6.
[33] *Bank of Valletta plc v National Crime Authority* (1999) 164 ALR 45 at [36]-[47].
[34] *Taikato v The Queen* (1996) 186 CLR 454 at 466.

inquest; and that the power under section 53(1)(c) may be used to elicit such evidence, provided the coroner reasonably believes it is necessary to make a finding or recommendation under section 28.

72. Counsel assisting submitted that to interpret a claim of privilege against self-incrimination as a *"reasonable excuse"* for refusing to answer a question would obstruct the very purpose of the inquest. Further, she submitted, it would render the power under section 53(1)(c) "inconsequential" in the cases that would most require its exercise, namely inquests into suspected homicides. Therefore what might otherwise constitute a valid claim of the privilege against self-incrimination is not a reasonable excuse for the purposes of section 53(4) of the *Act.*

73. To the contrary, counsel for the Attorney-General, Mr Osz, emphasised the important nature of the privilege at common law. He cited the decision in *R v The Coroner; ex parte Alexander,*[35] which provided that it was a long-standing practice in a Coroner's Court (prior to modifying provisions) not to call a witness who was likely to be implicated in a serious crime. He relied particularly upon *Sorby v The Commonwealth,* in submitting that a valid claim of privilege against self-incrimination may be a "reasonable excuse" for failure to give evidence in appropriate legislative contexts.[36] He submitted that I may apply the reasoning of the Court in that decision given the similarity of the relevant legislative provisions being considered in that case, even though a purposive approach may have less application to royal commission legislation being considered in that case.

74. For the reasons dealt with below, and before deciding on this particular matter, it is appropriate to give consideration to extrinsic materials regarding the question of what is a "reasonable excuse" as it is also appropriate to do so for the other provisions in question. Ultimately, the purpose of the legislation and the provisions need to be interpreted as a whole.

The use of extrinsic material in interpretation of the relevant provisions of the Act

75. Section 8B of the *Acts Interpretation Act* 1931 provides:

> ***Section: 8B. Use of extrinsic material in interpretation***
>
> *(1) Subject to subsection (2) , in the interpretation of a provision of an Act, consideration may be given to extrinsic material capable of assisting in the interpretation –*
>
> *(a) if the provision is ambiguous or obscure, to provide an interpretation of it; or*

[35] [1982] VR 731.
[36] (1983) 152 CLR 281 at 311.

(b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable, to provide an interpretation that avoids such a result; or

(c) in any other case, to confirm the interpretation conveyed by the ordinary meaning of the provision.

(2) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be given to –

(a) the desirability of a provision being interpreted as having its ordinary meaning; and

(b) the undesirability of prolonging legal or other proceedings without compensating advantage; and

(c) other relevant matters.

76. In my view, the present case is plainly one where I may properly have regard to the use of extrinsic material as provided by section 8B of the *Acts Interpretation Act*, particularly regarding the quest to have sections 53 and 54 interpreted with reference to their ordinary meaning.[37] There is a need for this assistance in reconciling the various provisions of the *Act* in light of the privilege against self-incrimination being a fundamental right at common law. Additionally, the authorities referred to, whilst accepting the general principles, have limited application in the context of the present statutory scheme.[38]

77. The second reading speech for the *Act* does not explicitly make reference to the coroner's power to order a witness to answer questions in 53(1)(c). The Deputy Leader for the Government commenced the second reading speech stating *"this bill repeals the Coroners Act 1957 and replaces it with a new act based on the recommendations made by the Coroners Review Committee chaired by Mr E. Sikk."*[39]

78. The second reading speech itself did not deal specifically with the power of a coroner to order a witness to answer questions, nor the provision relating to use immunity.

79. However, the clause notes for the *Coroners Bill* 1995 explain the pertinent clauses (sections) as follows:

> *Clause 53: This clause relates to the powers of a coroner at an inquest. Subclause (1) states what the general powers of a coroner are in relation to the summoning of a witness, the production of documents, and the ordering of a witness to answer questions… There are*

[37] Within section 8B of the *Acts Interpretation Act 1931* **"*ordinary meaning*"** means the ordinary meaning conveyed by a provision having regard to its context in the Act and to the purpose or object of the Act.

[38] See *A v Boulton* [2004] FCAFC 101 which considered and placed emphasis on the legislative history and second reading speech of the *Act* in question in similar circumstances.

[39] Second Reading Speech, *Coroners Bill 1995*.

provisions to enforce the issuing of a summons against a witness who without reasonable excuse disobeys the summons.

Clause 54: In view of the fact that clause 53 gives the coroner the power to order a witness to answer questions which the witness must not refuse, this clause gives a witness protection in respect of statement(sic) or disclosures made during the inquest. Such statements or disclosures cannot be used as evidence in any civil or criminal proceedings other than a prosecution for perjury.

80. The new *Act* referred to in the clause notes was based upon the *Report of a Committee set up to Review the Tasmanian Coroners Act 1957 and Human Tissue Act 1985* ('the Report') signed by Committee Chairman Edward Sikk.

81. The report reviewed the history and what was then the current operation of the Tasmanian coronial jurisdiction. The report particularly noted that, due to the number of amendments to the previous Act and Regulations, the Act had become difficult to follow and obscure in a number of respects. The committee recommended *"repeal of the historical link with the common law so far as the powers and duties of coroners was concerned."* It recommended repeal of the *Coroners Act* 1957 and the passing of an entirely new Act. The committee was guided by the *Coroners Act* 1985 (Vic) and a report of the Coroners Act Review Committee in Western Australia.[40]

82. The definition of "extrinsic material" to which I may have regard extends to such reports.[41]

83. A draft *Coroners Act* was attached to the Report at Appendix 1. The particular provisions relating to this ruling were passed by Parliament almost exactly as drafted.[42] In the body of the Report, the Committee *'draw[s] attention to some features of its recommendations as set out in the draft Act'*.[43]

84. In respect of the draft section 41(1)(c)[44] the Report states (with my emphasis) *"There is power on the part of a coroner* ***to compel a witness to answer an incriminating question*** *(Section 41(C)). However the answer given by a witness will not be admissible in any subsequent civil or criminal proceeding (Section 42)."*[45]

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[40] The Report, pp. 4, 16. The proposed draft Tasmanian *Coroners Act*, The Victorian *Coroners Act 1985* and the Western Australian draft *Coroners Act* and *Report by Coroners Act Review Committee* were appendices to the Report.
[41] *Acts Interpretation Act* 1931 section 8B(3).
[42] With the exception that the passed Act contained the element of "without reasonable excuse" in relation to the offence provision under section 53 – discussed further in this ruling.
[43] The Report, page 12.
[44] The enacted section 53(1)(c) of the *Coroners Act 1995*.
[45] The Report, page 15, referring to the enacted section 54 of the *Coroners Act 1995*.

85. The Report was relied upon explicitly in the second reading speech, and this draft provision, which became section 53(1)(c), was adopted into the final *Act* without amendment.

86. Section 42 of the draft Act became section 54 of the *Act* and was adopted without amendment. That draft provision included a notation which stated:

> *"There is presently power to compel a witness to answer an incriminating question in Section 87 of the Evidence Act 1910. However the witness is then entitled to a certificate which is a* ***bar to all future criminal proceedings*** *(my emphasis). The committee agrees with the report of the West Australian Coroners Act Committee that this provision goes too far. Accordingly the committee recommends the limited protection provided by Section 42."*

87. From this explanation, it can be seen that section 54 of the *Act* was intended to serve the same purpose section 87 of the then in force *Evidence Act* 1910 in so far as it provided power to compel a witness to answer an incriminating question. However, the committee did not consider that compelling answers to such questions should be a complete bar to prosecution, hence the reference to the *Evidence Act* provision "going too far" in its protection.

88. It is apparent that the Committee relied upon the report of the Western Australian committee in drafting section 42 (what is now section 54 of the *Act*). The Western Australian committee considered that the words of the use immunity provision contained in the *Royal Commissions Act* 1902 (Cth) section 6DD (and almost identical to section 54 of the *Act*) was an adequate immunity in response to the compulsion to answer an "incriminating" question.[46]

89. In relation to the "reasonable excuse" provision, the draft Act attached to the Report contained an offence provision for failing to obey a coroner's order, direction or summons that did not contain the words "*without reasonable excuse".* However, that phrase was subsequently inserted. The extrinsic materials do not reference that privilege against self-incrimination is a reasonable excuse and only reference this provision in the context of a witness disobeying a summons.

90. Therefore, the extrinsic materials properly considered show, on their face, that there was consideration given to the question of privilege against self-incrimination and it was intended that section 53 permitted a coroner to order a witness to answer

[46] Page 26 of the *Report of An Ad Hoc Committee for the Review of the Coroners Act* (WA). The Western Australian committee also considered wording of Canadian and ACT immunity provisions.

incriminating questions, and that section 54 was intended to provide corresponding immunity. The question nevertheless remains whether the provisions did in fact remove the privilege in light of the other important matters and principles to which I must have regard.

Conclusion

91. In considering whether the privilege has been abrogated I must have regard to the provisions in in question in light of the purpose and objects of the *Act.* [47]

92. The distinct purpose of the coronial jurisdiction was articulated by Lord Lane CJ in *R v South London Coroner; Ex parte Thompson (1982) 126 SJ 625*:[48]

> *"Once again it should not be forgotten that an inquest is a fact finding exercise and not a method of apportioning guilt. The procedure and rules of evidence which are suitable for one are unsuitable for the other. In an inquest it should never be forgotten that there are no parties, there is no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish facts. It is an inquisitorial process, a process of investigation quite unlike a trial where the prosecutor accuses and the accused defends, the judge holding the balance or the ring, whichever metaphor one chooses to use."*

93. The interpretation of provisions of the *Act* should be determined by the particular powers and functions of the coroner, the legislative policy as a whole and upon the principle that its provisions are intended to give effect to harmonious goals.[49] Adjustments to the meaning of apparently conflicting provisions should be made if required to give effect to the purpose and language of those provisions and the enactment as a whole.[50]

94. In *Commissioner for Railways (NSW) v Agalianos*, Dixon CJ stated that "*the context, the general purpose and policy of a provision and its consistency and fairness are surer guides to its meaning than the logic with which it is constructed*".[51] I also treat this as a cautionary note in respect of disproportionate reliance upon the extrinsic materials to which I have earlier referred.

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[47] *Acts Interpretation Act 1931*, section *8A; Project Blue Sky Inc and Others v Australian Broadcasting Authority* [1998] HCA 28 at [69] and [70].
[48] Cited by Freckleton and Ranson (n 23) p. 546.
[49] *Ross v The Queen* (1979) 141 CLR 432 at 440 per Gibbs J.
[50] *Project Blue Sky Inc and others v Australian Broadcasting Authority* (n 46) [70].
[51] (1955) 92 CLR 390 at 397.

95. The *Act* gives the coroner very broad powers, consistent with the important inquiry function of the coroner. These include;

- Section 16, whereby a coroner's officer (in reality, a police officer) must carry out all reasonable directions of a coroner in the functions under the *Act;*
- Section 34, whereby a coroner may restrict entry to a place where death occurred;
- Section 24(2), allowing a coroner a wide discretion to hold an inquest when the coroner considers it desirable;
- Section 59, a coroner has extensive powers of entry, inspection and possession of articles, substances, things and documents that the coroner reasonably believes necessary for the investigation, using any assistance a coroner considers necessary;
- Penalty provisions under section 65 for hindering or obstructing a coroner in exercising powers under the *Act*;
- Contempt powers under section 66 in respect of insulting a coroner, interrupting an inquest or creating a disturbance in or near an inquest.
- Section 53(5), whereby a coroner may issue a warrant for any person not answering a summons and then commit that person to prison until the inquest or the further hearing of the inquest.
- Section 53A, whereby a coroner has power to defer records held by an Agency or a Minister from being provided pursuant to a request under the *Right to Information Act* 2009 where the coroner reasonably believes that it is necessary for the purpose of an investigation to do so.
- Importantly, section 53(1) provides extensive powers for coroners in conducting an inquest, including the power to order a witness to answer questions. There is also power for a coroner to *"give any other directions and do anything else the coroner believes is necessary".*[52] Failing to comply with the exercise of these powers is punishable by a fine or imprisonment.

[52] Section 53(1)(e) of the *Act.*

96. In my view, having regard to these provisions and the *Act* as a whole, there is exhibited a clear legislative aim of facilitating the coroner in the inquiry mandate to the fullest extent. In doing so, the public interest is served in a thorough fact-finding process together with the important power of making comments and recommendations regarding death prevention, public health, safety and the administration of justice.

97. There is considerable legislative attention given in the *Act* to deaths that are violent or are the result of homicide or suspected homicide. One of the significant public purposes and public expectation of the coronial system is to investigate the cause of those deaths where homicide is suspected. The coroner's numerous powers in the *Act* may be used fully and equally in such an investigation. The coronial function of investigating homicides has existed since medieval times and the coroner continues to perform this unique and important investigative role.

98. The *Act* recognises that persons may be examined for their part or alleged part in a homicide and, recognising that the process is inquisitorial, provides considerable protections in addition to the immunity in section 54. These provisions include:

- Section 57: allowing a coroner to not publish any reports or part of inquest proceedings if it would be likely to prejudice the fair trial of the person or would be contrary to the administration of justice.

- Section 25: prohibiting a coroner from including in a finding or comment a statement that a person may be guilty of an offence.

- Section 25: requiring a coroner to adjourn an inquest without making a finding where a person is charged with a number of offences involving causing death.[53]

99. As already discussed, the *Act* does not include an expressly worded power to order the witness to answer questions by adding words to the effect of "*notwithstanding they may tend to incriminate"*. The power in section 53 is worded in broad terms and sits beside four other crucial powers of a coroner to enable a fully functioning inquest to occur.[54]

100. Section 54 does not provide protection from derivative use. As counsel assisting correctly submitted, the authorities acknowledge that privilege against self-incrimination may be abrogated without a person being afforded both direct and derivative use

[53] The practice in Tasmania almost always involves charges occurring (or at least being considered) before an inquest is held. However, this reality does not affect the principles under discussion.
[54] Cf *Coroners Act 1993* (NT) section 38, for example, which provides a self-contained section whereby a person who declines to answer a question on the ground of self-incrimination may be provided with a certificate and, only then, may the direct use immunity apply.

immunity in respect of their evidence. In fact, there is no requirement that the person be afforded any immunity providing the words of the legislation are very clear. I note that the legislative schemes in several other Australian coronial jurisdictions have, in more recent times, incorporated both direct and derivative use immunities. Others do not protect against derivative use. However, there is no other statutory scheme which exactly replicates the Tasmanian provisions.

101. In my view, the plain intention of the *Act* is that section 53(1)(c) and section 54 cover the field in respect of the power of the coroner to compel answers to questions and the corresponding protection that applies. Parliament has chosen to put in place a blanket protection for every witness giving evidence in an inquest, making no statutory distinction between those whose evidence is more likely to incriminate them (a "persons of interest"). This broad immunity for all witnesses, applicable without the need to make a claim for privilege, promotes the purpose of the coroner's inquest as a means to elicit all possible relevant and credible evidence relating to the circumstances of death.

102. Further, the array of other provisions to which I have referred dealing with protection for those who may be more likely to face criminal charges add to this legislative intention. [55]

103. It should not be overlooked that, under the *Act,* the coroner only has power to compel answers to questions if the coroner "*reasonably believes it is necessary for the purposes of an inquest"*.[56] A coroner must specifically turn his or her mind to the satisfaction of this condition when making an order that a witness answer a question. Nevertheless, by section 28 of the *Act* a coroner is required to pursue all reasonably possible lines of inquiry to determine the cause and circumstances of death; and therefore this power is broad. Unlike some Acts in other states, there is no additional requirement that the coroner be satisfied that it is "in the interests of justice" before ordering the witness who has made a claim of privilege to answer questions.[57]

104. However, in exercising discretion under section 53(1)(c) a coroner may, in appropriate circumstances, engage in a balancing exercise regarding a number of competing factors

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[55] The High Court decisions of *Lee v The Queen (2013) 251 CLR 196* and *X7 v Australian Crime Commission (2013) 248 CLR 92* are of assistance in respect of the important principles but may be distinguished factually because they involved settings where a person was compulsorily questioned whilst having been charged with a related indictable offence.

[56] Cf *Coroners Act 1993* (NT) section 38.

[57] *Kontis v Coroners Court of Victoria* [2022] VSCA 274; *Priest v West* (2012) 40 VR 521; See the analysis of the meaning of "interests of justice" in *The Privilege Against Self-incrimination in Coroners Inquests* (2015) 22 JLM 491 authored by Ian Freckleton QC p. 498-505.

before an order is made - tantamount to a consideration of the interests of justice. The factors may include the nature of the circumstances of the death under investigation, the evidence likely to be adduced from the witness, credibility consderations, other evidence the witness has provided, other means of obtaining the evidence and the significance of the witness's evidence in the context of the investigation. Additionally, the coroner may consider the nature and extent of any risk to the witness, ill-health of the witness, the seriousness of any potential criminal charges that may occur, and the risk of section 54 providing insufficient immunity from derivative use.[58] For example, the coroner may have reason to believe that charges against the witness may imminently be laid and that the witness should not be ordered to answer questions at that particular time that may jeopardise his or her forensic choices.

105. Notwithstanding the submission of counsel for the Attorney-General, I do not consider that the coronial functions could be adequately fulfilled in a large number of inquests if the coroner is unable to hear sworn oral testimony, properly tested, from significant witnesses.[59]

106. The arguments raised by the Attorney-General and Mr Adams focused significantly upon a valid claim of privilege against self-incrimination constituting a *reasonable excuse* within section 53(4) which creates an offence of disobeying a summons, order or direction *"without reasonable excuse".*

107. In *Rolfe v The Territory Coroner and Ors,* the Court of Appeal of the Northern Territory observed in respect of provisions the equivalent of the offence provisions in sections 53(4) and 66 of the *Act* that such provisions were designed to cover the common-law notions of contempt by disobedience and contempt in the face of the court.[60]

108. These offences are directed to the matters relating to order and compliance with the numerous different powers that may be exercised by a coroner under that section. In light of the statutory scheme, a valid claim of privilege against self-incrimination does not sit naturally in context as a defence of "reasonable excuse" for a charged offence. A reasonable excuse is intended to focus upon practical reasons for non-compliance.

109. Further, the issue of privilege is one that should be properly ruled upon by the presiding coroner to ensure an uninterrupted inquiry, rather than fall for subsequent adjudication

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[58] See *Priest v West* [2012] VSCA 327.

[59] I also note the likely imminent passing of the amendment in the *Justice and Related Legislation (Miscellaneous Amendments) Bill (No.2) 2023* mandating inquests in deaths where family violence has contributed. Inquests of this type are predicated upon the coroner's ability to hear all necessary oral testimony.

[60] [2023] NTCA 8 at [49].

by a prosecuting authority as a defence to a summary complaint and at a time likely well after the inquest. The legislative scheme in *Sorby,* concerning a commission of inquiry,[61] may be distinguished from the *Act* because punishment for contempt and the pleading of any reasonable excuse for the contempt occurred within the immediate setting of the inquiry.

110. Therefore, in my view it is very clear that the *Act* abrogates the privilege against self-incrimination by necessary implication. In coming to this conclusion I have fully considered the meaning of and interrelationship between the provisions in the unique statutory scheme of the *Act*. The extrinsic material, as I have discussed, unarguably confirms that this was Parliament's intention and reinforces my ruling.

Outcome of ruling

111. For the reasons given, I am satisfied that the provisions of the *Act* abrogate the common law rule of privilege against self-incrimination. Mr Adams is therefore not entitled to invoke a claim of privilege as a reason to refuse to answer the question.

112. I will re-list this matter for mention to hear submissions regarding concluding this inquest.

Dated: 7 December 2023 at Hobart in the State of Tasmania.

Olivia McTaggart
CORONER

[61] Relevantly the *Commissions of Inquiry Act 1950* (Qld).