

The Coroners' Court – The 'Golden Rules' of The Jurisdiction

Russell Kennedy Government CPD Series
2021/03

Ben Lloyd, Principal



Webinar housekeeping

- All attendees will be on mute and their cameras turned off for the entire webinar.
- We have BD tech support live to assist with any technical issues.
- Use the chat function for any comments/technical issues.
- Use the Q&A function for specific questions related to the webinar content - Questions will be addressed at the end of the webinar.
- There will be a post webinar survey link sent at the end of the webinar. We value attendee feedback. Presentation slides will also be sent to all attendees.
- We will also have a QR code linking to our feedback survey towards the end of the presentation so you can provide instant feedback.

Disclaimer

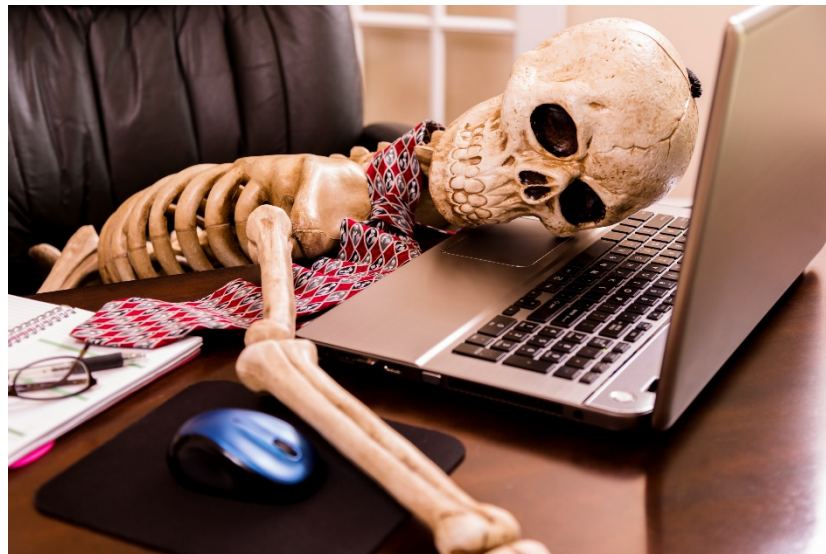
The information contained in this presentation is intended as general commentary and should not be regarded as legal advice. Should you require specific advice on the topics or areas discussed please contact the presenter directly.

Introduction



What this doesn't cover

- **A line by line summary of the *Coroners Act 2008*.**
- **A description about the Coroner's role and what the Coroner's Court does.**



Instead

- **These are some of the odd but true things we have observed over the years working for Government agencies and departments and others in the Coronial jurisdiction.**
- **For new clients we will often explain why we recommend things based on a number of ‘golden rules’ or commandments (because there are 10).**



Rule 1: Whenever a Coroner says 'with the benefit of hindsight' those words will from that moment forth have no meaning



Rule 1

- As much as Coroners say they aren't looking at this with the benefit of hindsight – they are, they must, they will.
- Our job is put the Coroner (and the family) in the head of the decision maker.
- The more we do that, the less the 'retrospectroscope' can distort the picture that is being viewed.



Rule 2: No matter how much you want to, it never helps to point out a stupid thing the dead person did that led to the dead person being dead



Rule 2

- The only thing that is fixed on the playing board is the trajectory of the deceased.
- It will feel like everything else can be shifted but the deceased's actions will be locked in place.
- An Inquest (and investigation) can often seem like a game of pin the tail on the person in authority.



**Rule 3: Like nature, a Coroner
abhors a vacuum**



Rule 3

- Coroners are suspicious about absences – detail is always good because it suggests complete disclosure.
- If we are in a position to identify problems and correct them it reflects better on our department or agency than if the Coroner makes those findings without our input.
- Once something has been built/established/properly worked through it is tempting to leave it to give it a chance to work (if it is not broken don't fix it)



Rule 4: Less is often more



Rule 4

- Often Counsel assisting will do much of the work
- Keeping a low profile is generally good practice.
- Marshalling government documents and resources will occupy more time than you think.
- Be careful to work with the Coroner's solicitor/Counsel assisting and make contact early



Rule 5: Concede to succeed



Rule 5

- A sensible concession will often change the vibe of an Inquest.
- This often encourages a focus on systems rather than individuals.
- Concessions assist the Coroner in carrying out the therapeutic role of the office and can protect your witnesses/key personnel.
- A expression of regret or apology can also be very important for grieving family



**Rule 6: The government witness
least in danger is the witness
that is the greatest danger to
your case**



Rule 6

- Generally, the witnesses at the core of the case will do a good job. They have 'skin in the game' and a reputation to protect.
- Peripheral witnesses on the other hand, often won't read their statements, will freestyle and often introduce inconsistencies that harm collective credit.



**Rule 7: Nothing attracts a
Coroner's attention like
government departments 'going'
other departments or agencies**



Rule 7

- Avoid if you can.
- Telegraph your punches, communicate early and candidly (with full buy in from your stakeholders).
- If you can't avoid the fight, plan the fight so it is at least graceful.
- A public statutory authority gets a reply – the staff don't (other through the public statutory authority).



**Rule 8: Fair and efficient are not
always the same thing**



Rule 8

- The Victorian Coroners Court has been dogged by long delays.
- Summary inquests and chambers findings are a way of reducing these.
- Often Coroners will encourage for criticism by concession.
- There are opportunities to use this process to prevent criticism and to avoid the need for an Inquests.



**Rule 9: No matter is said
Coroners will often not want to
hear from the witnesses in the
centre of things**



Rule 9

- The Coroners Act 2008 introduced the section 57 certificate to encourage key personnel to give their account.
- Often, despite that, those witnesses will be often be encouraged not to give evidence.
- It is a powerful thing for a witness to give oral evidence – particularly where combined with a concession.

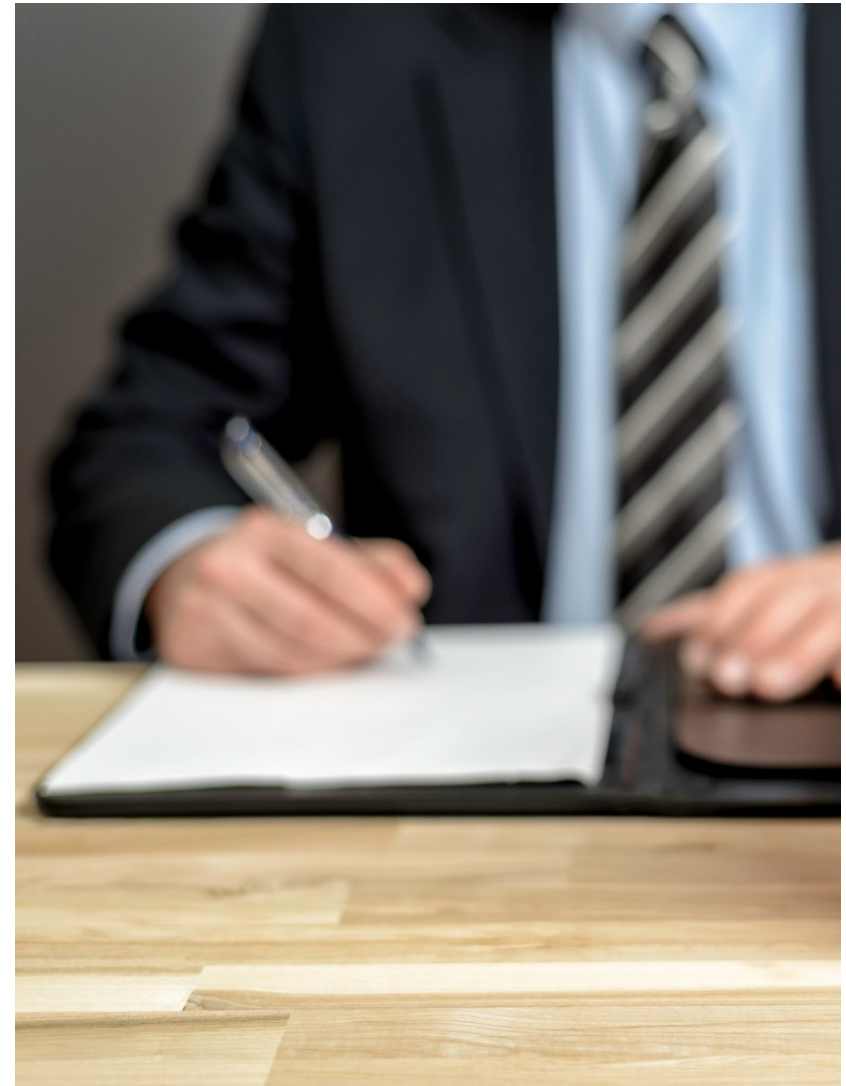


Rule 10: Grief (and pro-bono legal assistance) does funny things to people and a Coroner will probably allow it



Rule 10

- There seems no limit on the circumstances where parties will seek to criticise decision makers, departmental staff or officers.
- Preparing witnesses for 'scatter-gun' attacks on government employees or officers is prudent.
- Focus on explaining the rationale for the decisions that were made and save the rebuttal for submissions.



Contact



Ben Lloyd
Principal

(03) 9609 0000

blloyd@rk.com.au



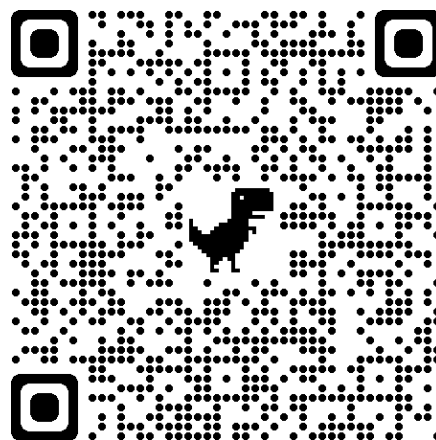
Feedback

Scan this QR code to provide instant feedback on the session.

Upcoming Victorian Government CPD Sessions

Session	Date	Presenter/s	CPD
Session 5: Ethics and Professional Development	<i>Friday 19 March</i>	Anna Hinder – Guest Speaker	1 Point in <i>Ethics</i>
Session 6: Making Defensible Administrative Decisions	<i>Friday 26 March</i>	Emma Turner – Russell Kennedy	1 Point <i>Substantive Law</i>

** All session will run from 11:00 am – 12:00 pm.



Register!

Scan this QR code to register and get more information on upcoming session.



Russell Kennedy Pty Ltd
info@rk.com.au
russellkennedy.com.au

Melbourne

Level 12, 469 La Trobe Street
Melbourne VIC 3000
PO Box 5146
Melbourne VIC 3001 DX 494 Melbourne
T +61 3 9609 1555 **F** +61 3 9609 1600

Sydney

Level 6, 75 Elizabeth Street
Sydney NSW 2000
Postal GPO Box 1520
Sydney NSW 2001
T +61 2 8987 0000 **F** +61 2 8987 0077

Liability limited by a scheme approved under Professional Standards Legislation.

An international member of



russellkennedy.com.au