SUBMISSION FROM THE CORONIAL REFORM GROUP (CRG) TO THE PRODUCTIVITY COMMISSION INQUIRY INTO THE SOCIAL AND ECONOMIC BENEFITS OF IMPROVING MENTAL HEALTH

1. BACKGROUND TO THE CORONIAL REFORM GROUP

The Coronial Reform Group (CRG) was established in the ACT in 2016. Our members are people from bereaved families who have been involved in coronial processes. The aim of the group is to advocate for improved coronial processes across Australia to ensure the families and/or carers of those who have lost their lives can have an equal voice in the coronial process. We see reform as essential to ensure systemic failings can be identified and acted on in a timely manner so lives can be saved. Our lived experience is with people with a mental illness, but we are aware that our comments and concerns have relevance to other deaths.

2. WHY CORONIAL REFORM IS RELEVANT TO THE PRODUCTIVITY COMMISSION INQUIRY

At first glance it may seem strange that an inquiry *asking how people can be enabled to reach their potential in life, have purpose and meaning, and contribute to the lives of others*[1] need concern itself with issues relating to coronial reform. CRG believes that a sound coronial process should fulfil a preventative function – pinpointing what has gone wrong and signalling the path to prevent future deaths. Indeed, this function is mandated by coronial legislation around the country. However, in our experience of the coronial system, it often fails.

It is inefficient, frequently unnecessarily adversarial and ineffective in highlighting what has gone wrong and initiating real change. Whilst accurate statistics are not available to our group to indicate how many full coronial inquests in Australia investigate the death of someone with a mental health disorder, we are aware that it is a high percentage.

CRG see that a reformed coronial system would be more cost effective for the community, support the emotional well-being of families and carers bereaved by the death of a family member with a mental illness, provide a much needed opportunity for family/carer concerns to be equally considered and provide valuable input into suicide prevention measures. If we can reduce the number of premature deaths of people with a mental illness, we also reduce the number of expensive coronial inquests.

We note the Commission is examining how the justice sector *can contribute to improving mental health and economic participation and productivity, the effectiveness of current programs and initiatives …to improve mental health, suicide prevention* and assessing *whether the current investment in mental health is delivering value for money and the best outcomes for individuals, their families, society and the economy*.[2] Coronial reform is relevant to each of these matters.

3. EVIDENCE THAT CORONIAL REFORM IS NEEDED?

Our group is based in the ACT and the inquests that have impacted on most of our families and those we have attended in recent years have been ACT inquests, so our experience and

[1] Productivity Commission Issues Paper (2019) *The Social and Economic Benefits of Improving Mental Health*, p.iv
[2] Productivity Commission Issues Paper (2019) *The Social and Economic Benefits of Improving Mental Health*, p.iv

knowledge relates primarily to that jurisdiction. However, we are aware that there is an urgent need for reform across Australia and that there are now many voices calling for reform.

For example Ian Freckelton, in an article titled 'Minimising the Counter-Therapeutic Effects of Coronial Investigations: In Search of Balance' and published in the QUT Law Review talks about the disillusionment of family members.

> *It has become apparent that disenfranchisement from the (coronial) process by inadequate communication from the court, by excessive inhibitions on providing information to a court, by lack of legal representation, and by delays and erroneous or unclear findings are experienced as toxic by many family members. Similarly, a failure to respect cultural and religious sensibilities and a propensity to prioritise throughput and resolution of cases over acknowledgment of the sensitive and individual circumstances of a death can arrest and distort grief, giving a fillip to anger and a propensity to make accusations and allegations, some of which may be based more in suspicion than in fact. Such experiences can disillusion family members, causing them to doubt the authenticity of the coroner's role and the rigour, thoroughness and independence of a coronial inquiry.*[3]

Hugh Dillon, ex-coroner of NSW in a recent interview with Richard Fiedler entitled **Inside the Coroner's Court**, highlights the inequalities of the system and the 'advantages of having money'. He also talks about the need for specialist coroner's courts and for *dedicated research units to try to identify patterns of causes of deaths*.[4]

In 2018 one of CRG's members liaised with *The Canberra Times* to put together a podcast entitled *Losing Paul*.[5] In that podcast Ann Finlay talks about many issues relating to the death of her son and the subsequent long drawn out coronial process. Ann very reluctantly went public in this manner to correct the inaccurate and judgemental recording in Paul's coronial findings. Also, to highlight the shortcomings of the ACT Health system which failed her son and the ACT Coroner who failed to hold ACT Health accountable and responsible for mental health reform. She addresses the expense, both financial and emotional, her inability to have her concerns equally heard and her dissatisfaction with the final recommendations that were factually incorrect and poorly devised. She reflects on the frustration that opportunities for mental health reform were ignored and lost.

In an issues paper entitled *Saving lives by joining up justice* written on behalf of the Australian Inquest Alliance many issues are highlighted including the *general failure to fully implement the right of families to participate in coronial processes*, [6] the serious consequences of long delays in the coronial process and the need to provide all families with *effective legal advice and representation ….at a level that is consistent with the level of legal representation accorded to government and other institutional parties*.[7]

Furthermore, the issue of coronial reform is also now being seen as a priority on the international stage. The Inquest group in the United Kingdom campaigns for *access to justice for families – equality of arms through developing a system which treats bereaved families with dignity and respect and supports them in navigating the legal process following a death and to achieve the truth.*[8]

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[3] Freckelton, I., Minimising the Counter-Therapeutic Effects of Coronial Investigations: In Search of Balance, *QUT Law Review.*
[4] Dillon H, (26 Nov 2018) Inside the Coroner's Court, *Conversations*, ABC RN Retrieved from http://www.abc.net.au
[5] Back A., Burdon D., Losing Paul,[podcast] *The Canberra Times* , 6 January 2018 Retrieved from http://www.canberratimes.com.au
[6] Atmore C., (2013) Saving lives by joining up justice, *Australian Inquest Alliance,* p.20.
[7] Atmore C., (2013) Saving lives by joining up justice, *Australian Inquest Alliance,* p.10.
[8] *Inquest*, http://www.inquest.org.uk

4. WHAT ARE THE KEY ISSUES OF RELEVANCE TO THE PRODUCTIVITY COMMISSION?

i) Families struggle to get an equal voice

Legislation relating to coronial inquests in Australia states that inquests need to be inquisitorial (truth seeking) in nature rather than adversarial. This is often not the case. Governments and institutional bodies "lawyer up" accessing significant taxpayer dollars to ensure their interests are protected whilst families are left to fend for themselves. Families are rarely at the centre of processes.

One family member recently stated that he felt like an *accidental plug-in*[9] and complained about findings that were *pusillanimous, partisan and pathetic*.[10] Others feel as if they are forced to go through the distressing process so someone can tick a box. Few families can access legal aid so they rely on 'counsel assisting the coroner' to present their case, which is problematic at times.

The coronial process is completely new for most families, often adversarial, certainly intimidating and time consuming. Written documents need to be produced, medical records which may often be up to 3,000 pages or longer need to be read and understood and often complicated family stories/ opinions need to be clearly presented in court.

Many families feel that the onus falls primarily on them to 'come up with evidence', produce documents, find witnesses, make the case and follow the process through. In other instances families fund legal representation themselves – often incurring significant debts to have their voices heard. Families in the ACT can spend upwards of $30,000.

CRG see that one essential way the justice system can contribute to improved mental health services, suicide prevention and assessing *whether the current investment in mental health is delivering value for money and the best outcomes for individuals, their families, society and the economy* is by ensuring proper financial, legal and other support is provided to bereaved families to participate in coronial processes.

ii) Lengthy delays

The interests of families and the community are not well served by long delays. Certainly in the ACT, coronial processes are given low priority leading to delays of years. Inquests that our members were involved with have been delayed 3 to 7 years.

This not only re-traumatises families/carers and stymies emotional progress towards closure after a death, but allows time for records to be misplaced and memories of witnesses to fade. Even more distressing is that delays mean recommendations are not timely and other lives are endangered or lost in the intervening period when matters of public safety are not remedied.

If we don't investigate in a timely and honest manner instances when things have gone wrong, then how can we plan effective suicide prevention measures?

CRG see that one essential way the justice system can contribute to improved mental health services, suicide prevention and assessing *whether the current investment in mental health is delivering value for money and the best outcomes for individuals, their families, society and the economy* is by ensuring coronial processes are implemented in a timely manner.

[9] Pryor S., (8 February 2019) I don't think anybody's irredeemable: Ross Dunn on his daughter's killer, *The Canberra Times*.
[10] Pryor S., (8 February 2019) I don't think anybody's irredeemable: Ross Dunn on his daughter's killer, *The Canberra Times*.

iii) Recommendations are not implemented

CRG members are concerned that recommendations can be summarily dismissed by governments.

In the ACT for example, the government can state that a recommendation is "not accepted' with no requirement to explain this decision to families or the community. This is unreasonable. In the case where recommendations are accepted families are often kept 'out of the loop' about their implementation and the onus is usually on them to follow up and see if real change has eventuated.

CRG see that one essential way the justice system can contribute to improved mental health, suicide prevention and ensure the current investment in mental health is *delivering value for money and the best outcomes for individuals, their families, society and the economy* is by ensuring a national and public register of all coronial recommendations is kept and where governments or others have declined to implement those recommendations a clear explanation must be provided as to the reasons why.

iv) Infringement of human rights

The ACT Coroners ACT (1997) states

> *A coroner must not include in a finding or report under this Act (including an annual report) a comment adverse to a person identifiable from the finding or report unless the coroner has, making the finding or report, taken all reasonable steps to give to the person a copy of the proposed comment and a written notice advising the person that, within a specified period (being not more than 28 days and not less than 14 days after the date of the notice), the person may —*
>
> *(a) make a submission to the coroner in relation to the proposed comment; or*
>
> *(b) give to the coroner a written statement in relation to it.* [11]

Basic human rights are infringed when families have no similar opportunity to comment on incorrect information that will be published in coronial findings in relation to their deceased family member. In the ACT there is no right to appeal against findings other than going to the Supreme Court. This situation is inequitable and breaches Australia's international treaty arrangements and the ACT Human Rights ACT[12].

v) An unequal, expensive system that does not provide value for money.

CRG is calling for a cost benefit analysis to ascertain if the current system is delivering value for money and the best outcomes for families and the community. What is the point of spending large amounts of money in making recommendations that are often not sound, not timely, not implemented and not thoroughly analysed?

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[11] *Coroners ACT 1997* A1997-57, (ACT), Section 55.1.
[12] *Human Rights ACT 2004*, A2004-5 (ACT).

Why is there no dedicated national research body that looks at recommendations, checking for patterns of causes of deaths across Australia? In some cases could a better, more cost effective result be obtained by trialling a restorative process?

Research into restorative approaches has found that they are delivered in a more timely manner, offer the opportunity for those involved to gain a fuller understanding of the issues and result in outcomes that are much more likely to be implemented. In research that has been noted by the Productivity Commission mediation and advocacy processes have been found to deliver an ROI of up to $4.30.[13]

Similarly in Victoria over 80% of the workers compensation cases are completed within 90 days of lodgement, whereas the Productivity Commission has found that in New South Wales and Queensland it typically takes four and a half years to finalise a common law workers' compensation claim. The conciliation process delivers significant savings in court and litigation costs. It also improves the productivity of injured workers and their families. By reducing delays and facilitating more respectful treatment of injured workers the conciliation process can assist in faster returns to work along with better health outcomes. Improved productivity can also extend to the injured workers' families through reducing stress, freeing carers' time and better educational outcomes for injured workers' children.[14]

CRG believe that coronial reform is desperately needed. Doing so in ways that ensure the coronial process is restorative will deliver more timely, cost effective outcomes for all.

5. A SOLUTION - THE ARGUMENT FOR A RESTORATIVE PROCESS

In 2018 CRG made a submission to the ACT Law Reform Advisory Council's inquiry into restorative process. Subsequently, the Council took up our suggestion that it would be worthwhile trialling a restorative process in the ACT in regards to coronial reform. [15] Our arguments supporting this trial are well explained below and we include them as they have relevance to the Commission's inquiry.

Extract from CRG Submission to ACT Law Reform Advisory Council

We believe that coronial reform is desperately and urgently required and that it would be worthwhile trialling a restorative process in the ACT in regards to coronial reform. The results of this trial could be used to inform coronial reform throughout Australia.

Whilst it may be possible through a more traditional process to make some improvement in the coronial system i.e. appoint a coronial liaison officer to support families, build more court facilities etc., we believe that it is time for a different solution and an innovative approach.

The ACT Legislative Assembly has supported the concept of Canberra moving to become a restorative city. Coronial reform would be an ideal area to focus on for the following reasons.

- The process is currently ineffective, expensive for all parties involved and extremely time consuming. (Jack Waterford in his article in The Canberra Times requests *a more efficient system premised on producing answers with a few months of the death*, The Canberra Times, 18 May 2018).

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[13] http://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016
https://www.pc.gov.au/inquiries/completed/ndis-costs/report/ndis-costs2.pdf

[14] https://www.conciliation.vic.gov.au/__data/assets/pdf_file/0020/3476/ACCS-Annual-Report-2017-2018.pdf

[15] Canberra – becoming a restorative city, (Oct 2018) *ACT Law Reform Advisory Council.*

- The process is unnecessarily adversarial, which means that it does not provide a real opportunity for open discussion about what has happened in relation to a death. In many cases lengthy, expensive legal processes could be avoided. The focus for most families is to find out what happened and to ensure that the same sequence of events does not happen to someone else. Families want to see that when there have been systemic failings that those failings are acknowledged and that change is implemented in a timely manner. Most families do not wish to pursue litigious action, however the current adversarial nature of the coronial process either forces them into such a process or means they simply are not able to participate.

- There currently is an engaged, articulate and vocal community group in the ACT who have 'lived experience' of the coronial system and its impact and are prepared to share their expertise and work with relevant parties to develop solutions to improve the process for all concerned.

- There is considerable vocal community discontent with the process. (See *Inquests are wasting our time*, The Canberra Times, 18 May 2018. Jack Waterford talks about coronial inquests as "a very unimpressive advertisement for the Canberra justice system").

- The process does not achieve what it sets out to do. It is not an effective or cost effective way to identify matters of public safety, neither does it implement change in a timely manner.

- The current process is not restorative. Families and friends of the deceased are often re-traumatised by the legal processes and the lack of consultation with families.
- Bereaved families do not have the opportunity to tell how the death of their loved one has impacted on them.

- It appears to be a one-sided process. The coroner can decide not to make adverse comments about witnesses but the deceased person's reputation is not seen as important and families have no recourse to correct untrue, distressing and judgmental information presented in court, which then remains on the public record.

- Restorative justice processes have been demonstrated to be an effective means to resolve other somewhat similar processes overseas. (Prof Jennifer Llewellyn from Dalhousie University in Nova Scotia recently spoke in Canberra about a successful restorative process relating to a death in custody).

- The current process may be breaching the ACT Human Rights ACT.

- Negative experiences of coronial processes can be understood as an expression of unmet justice needs of the families involved and the broader community.

A restorative justice program would enable families to resolve outstanding issues and questions either during or following the conclusion of a coronial investigation.

A 2013 paper by the Federation of Community Legal Centres Victoria revisited the need for coronial reform in Australia. It identified that despite the therapeutic ideals of coronial frameworks, for many families and communities the experience of the process was 'neither fair nor healing'.

The Centre for Innovative Law at RMIT has identified it is important to note that:

- Restorative justice conferencing should not prohibit parties from accessing formal rights of appeal and review. Restorative justice conferences can complement appeal and review processes. However, the introduction and timing of such conferences would have to be factored into any decisions regarding how long appeal rights should be observed.

- Restorative justice conferences cannot take the place of a coronial investigation or inquest, or substitute formal appeal and review processes. However, conferences can complement coronial processes to enable outcomes that better respond to the needs of all parties, including non-family members. The availability of an alternative, complementary forum may also help to reduce appeals, preserving the finality of coronial findings and improving efficiency, while serving to protect the integrity of the conventional coronial processes, functions and purposes.

- Restorative justice researchers have established a framework for identifying needs relevant to victims' sense of justice. While this framework originated in research about the needs and interests of victims of criminal offending in the context of criminal justice processes, it provides a good model for understanding the needs and interests of participants in other justice processes, including families involved in coronial processes. Researchers have identified that those involved in justice processes often have unmet 'justice needs'. 'Justice needs' have been defined to include a need for 'participation, voice, validation, vindication, and accountability'. Restorative justice provides a useful framework for identifying the needs of families.

The table below drawn from the work of the Centre for Innovative Law at RMIT describes negative experiences families have experienced which arise from justice needs that have not been met by the coronial process.

Coronial system processes that contribute to negative experiences for families	Justice needs/interests that, if met, would improve the experience of families..
• - Formality of proceedings • - Processes that exclude participation • - Delay between the time of death and a coroner's findings • - Backlog of cases and resource limitations • - Formality of communication from the court: lack of sensitivity and compassion • - Lack of understanding about what to expect from the proceedings • - Lack of information and preparation prior to the inquest • - Limited opportunity to contribute to decisions, such as whether the deceased's name is used in the coroner's findings • - Conduct of the inquest: lack of confidentiality and sympathy • - Lack of clarity about the role and function of the coroner and other personnel • - Lack of regular follow-ups with the court	Participation
• - Barriers to having a voice in proceedings • - Lack of knowledge about legal rights and the right to representation • - Lack of access to free legal representation	Voice
• - Lack of opportunity to tell their story • - Lack of acknowledgment of their loss • - Lack of adequate support services • - Funding and access to counselling services • - Failure of the court to accommodate cultural and spiritual sensibilities • - Carrying out of autopsies in cases where there is no suspicious circumstances • - Inability to view or touch the body while it is in the coronial jurisdiction	Validation
• - Lack of resolution from inquest findings • - Inadequate case investigation or inability to have case investigated by coroner • - Unanswered questions and lack of explanation • - Inability to say how the death has affected them • - Feeling that certain parties have not been made accountable	Vindication
• - Steps not taken to ensure similar event will not happen again • - Inability to see how recommendations of the court are being implemented and monitored • - Failure of coronial decisions to address systemic issues	Accountability / Prevention

If a restorative process focussing on coronial reform is to be embarked upon by the ACT Government, CRG would recommend that:

- an independent facilitator is chosen with the consent of all parties to oversee the process
- family and community members are involved from the beginning
- the process is commenced soon
- there is no expense to the families of those involved in the process.

6. IN CONCLUSION

At Attachment A please find a document outlining CRG's key concerns with the ACT coronial process based on our personal family experiences and research activities around this issue.

Coronial Reform Group

Ann Finlay, Eunice Jolliffe, Ros Williams

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