SUPREME COURT OF QUEENSLAND

CITATION:	*Beale v O'Connell & Ors* [2017] QSC 127
PARTIES:	**JAMES ANDREW BEALE** (applicant) v **DAVID O'CONNELL** (first respondent) **ANGIE JORGENSEN** (second respondent) **WOMEN'S LEGAL SERVICE QUEENSLAND** (third respondent) **ATTORNEY-GENERAL FOR THE STATE OF QLD** (intervening)
FILE NO/S:	BS9640/16
DIVISION:	Trial Division
PROCEEDING:	Originating Application
DELIVERED ON:	19 June 2017
DELIVERED AT:	Brisbane
HEARING DATE:	11 May 2017
JUDGE:	Jackson J
ORDER:	**The order of the court is that:** 1. **The application dated 19 September 2016 is dismissed.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEWABLE DECISIONS AND CONDUCT – REVIEW OF PARTICULAR DECISIONS – where the applicant was committed for trial by a magistrate on a charge of manslaughter in relation to the death of the applicant's wife – where the Director of Public Prosecutions declined to present an indictment on the charge – where the first respondent decided to hold an inquest into the death – where the applicant submitted at a pre-inquest hearing that the first respondent should revoke the decision to hold an inquest – where the first respondent declined to revoke the decision to hold an inquest – where the applicant argued that the first respondent's decisions were invalid on the basis that the first

respondent had failed to take into account relevant considerations and had acted unreasonably – whether the first respondent's decisions were invalid

ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEWABLE DECISIONS AND CONDUCT – REVIEW OF PARTICULAR DECISIONS – where the applicant was committed for trial by a magistrate on a charge of manslaughter in relation to the death of his wife where the Director of Public Prosecutions declined to present an indictment on the charge – where the first respondent decided to hold an inquest into the death – where the first respondent decided to call certain persons as witnesses at the inquest – where the applicant challenged the decisions to call certain witnesses – whether the first respondents' decisions were invalid

Acts Interpretation Act 1954 (Qld)
Coroners Act 2003 (Qld)
Judicial Review Act 1991 (Qld)

Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (2009) 260 ALR 1, cited
Annetts v McCann (1990) 170 CLR 596, cited
Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223, cited
Attorney-General of NSW v Borland [2007] NSWCA 201, cited
Australian Broadcasting Corporation Tribunal v Bond (1990) 170 CLR 321, discussed
Buck v Bavone (1976) 135 CLR 110, discussed
Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation (1981) 147 CLR 297, cited
Cornall v AB [1995] 1 VR 372, followed
Deitz v Abernethy (unreported, BC9602510), cited
Doomadgee v Clements [2006] 2 Qd R 352, distinguished
Federal Commissioner of Taxation v Consolidated Media Holdings Ltd (2012) 250 CLR 503, cited
Griffith University v Tang (2005) 221 CLR 99, discussed
Hogan v Hinch (2011) 243 CLR 506, cited
Minister for Aboriginal Affairs v Peko-Wallsend Ltd (1986) 162 CLR 24, followed
Minister for Immigration and Citizenship v Li (2013) 249 CLR 332, distinguished
Minister for Immigration and Ethnic Affairs v Kurtovic (1990) 21 FCR 193, cited
Minister for Immigration v Eshetu (1999) 197 CLR 611, discussed
MJD Foundation Ltd v Minister for Indigenous Affairs [2015] FCA 1172, followed
O'Sullivan v Farrer (1989) 168 CLR 210, cited
Rich v Attorney-General of New South Wales [2013] NSWCA 419, cited

Sean Investments Ltd v MacKellar (1981) 38 ALR 363, cited
Thales Australia Ltd v Coroners Court of Victoria [2011] VSC 133, distinguished
Walter Mining Pty Ltd v Hennessey [2010] 1 Qd R 593, followed
X v Deputy State Coroner for New South Wales (2001) 51 NSWLR 312, cited

COUNSEL: A Boe and P Morreau for the applicant
J Horton QC for the Attorney-General
A Scott for the second respondent
K Hillard for the third respondent
No appearance for the first respondent

SOLICITORS: Robertson O'Gorman for the applicant
Crown Solicitor for the Attorney-General
Indigo Law for the second respondent
Wallace O'Hagan Lawyers for the third respondent

[1] **Jackson J**: This application for judicial review challenges six decisions made by the first respondent as the central coroner in relation to an investigation into the death of Tracey Ann Beale under the *Coroners Act* 2003 (Qld) ("the Act"). The decisions alleged were made chronologically as follows:

(a) on 31 May 2016, a decision to hold an inquest (first decision);

(b) on 25 August 2016, a decision to order the applicant to attend at the inquest to give evidence (third decision);

(c) on 7 September 2016, a decision not to revoke the first decision (second decision);

(d) on 7 September 2016, a decision not to revoke the third decision (fourth decision);

(e) on 7 September 2016, a decision that Lisa Maree Sigbart, Kyle James Blaar and Gillian Joy Cathcart be required as witnesses at the inquest (fifth decision);

(f) on 7 September 2016, a decision that Professor Heather Douglas be required as a witness at the inquest (sixth decision).

[2] The application seeks a statutory order of review[1] or order in the nature of *certiorari* or prohibition in relation to each decision.[2]

[3] The applicant was the husband of the deceased.

[4] On 21 January 2013, she died at their home after a physical struggle between them during which he applied a headlock.

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1 *Judicial Review Act* 1991 (Qld), s 20.
2 *Judicial Review Act* 1991 (Qld), s 41.

[5] On 21 January 2013, within hours of the death the applicant was formally interviewed by police and gave an account of what had happened.

[6] On 21 January 2013, the applicant was charged with the murder of the deceased.

[7] On 24 and 25 October 2013, a magistrate conducted the committal hearing on the charge of murder.

[8] On 25 October 2013, a magistrate committed the applicant to stand trial on a charge of manslaughter.

[9] On 24 April 2014, the Director of Public Prosecutions advised the Queensland Police Service of his decision not to present an indictment on the charge.

[10] The first respondent is the coroner who is investigating the death of the deceased.

[11] On 31 May 2016, the first respondent decided to hold an inquest into the death.

[12] On 19 July 2016, the first respondent notified the applicant and other interested persons that he would hold a pre-inquest conference.

[13] On 8 August 2016, the first respondent notified the interested persons of a draft list of witnesses.

[14] On 23 August 2016, the applicant made a submission to the first respondent.

[15] On 25 August 2016, the first respondent decided to order the applicant to attend the inquest to give evidence.

[16] On 2 September 2016, the applicant requested an adjournment of the pre-inquest conference.

[17] On 5 September 2016, the first respondent held the pre-inquest conference.

[18] On 7 September 2016, the first respondent published a series of decisions on matters that had arisen before and during the hearing of the pre-inquest conference.

[19] The first respondent as a coroner must investigate a death if he or she considers it is a reportable death and is not aware that any other coroner is investigating the death.[3] There is no question that the deceased's death was a reportable death within the meaning of the Act,[4] as one that happened in Queensland and was a violent or otherwise unnatural death or happened in suspicious circumstances.

[20] A coroner's powers of investigation are supported by a number of specific powers under the Act. A coroner may arrange for a report that he or she consider is necessary.[5] He or she may require a person to give him information, a document or anything else that is relevant to the investigation.[6] He or she must in some circumstances and may otherwise order a doctor to perform an autopsy.[7] A doctor

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3 *Coroners Act* 2003 (Qld), s 11(2).
4 *Coroners Act* 2003 (Qld), s 8.
5 *Coroners Act* 2003 (Qld), s 13(1).
6 *Coroners Act* 2003 (Qld), s 16(2).
7 *Coroners Act* 2003 (Qld), s 19(2).

who conducts an autopsy must complete an autopsy certificate and give a signed copy to the coroner who orders the autopsy.[8] A coroner has control of the deceased person's body during the investigation.[9]

[21] In circumstances not relevant to this case a coroner must hold an inquest into a death. Otherwise, a coroner investigating a death has a discretionary power to order that an inquest be held.[10]

[22] Subject to exceptions, an inquest must be held by the Coroners Court and in open court.[11] The Coroners Court must publish a notice of the matter to be investigated, the issues to be investigated and of the date, time and place of the inquest.[12] A coroner holding an inquest may hold a pre-inquest conference to decide, inter alia, what issues are to be investigated, who may appear and what witnesses will give evidence.[13] Further, a coroner holding an inquest has a discretionary power to order a person to attend an inquest to give evidence as a witness.[14]

[23] Each of the first to sixth decisions was made by the first respondent in the purported exercise of the powers to hold an inquest and to order a person to attend to give evidence. For each decision, the applicant claims to be a person aggrieved for the purposes of an application for a statutory order of review. He also claims to be a person who has standing to apply for an order in the nature of *certiorari* or prohibition.

[24] It will be necessary to consider each decision and the grounds of review that were argued either separately or in relevant groups. However, there are three overarching themes which inform many of the grounds.

[25] First, the applicant submits that the first respondent failed to take into account the transcript of the depositions of the evidence from the committal hearing ("the depositions"). This fact is set up as supporting grounds of review that the first respondent denied the applicant natural justice[15] or failed to take into account a mandatory relevant consideration[16] or that a decision was unreasonable in the sense required for judicial review.[17]

[26] Second, the applicant submits that the evidence (including the depositions) shows that there is no doubt as to the cause of death or the truthfulness and accuracy of the applicant's account of what happened immediately before the death. These facts are said to support the ground that a relevant decision was unreasonable.

[27] Third, the applicant submits that there is no occasion for an inquest into the history of the applicant's relationship with the deceased in terms of domestic violence or for the first respondent to give consideration to whether it might be appropriate to make

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8 *Coroners Act* 2003 (Qld), s 24A(3).
9 *Coroners Act* 2003 (Qld), s 26.
10 *Coroners Act* 2003 (Qld), s 28.
11 *Coroners Act* 2003 (Qld), s 31(1).
12 *Coroners Act* 2003 (Qld), s 32.
13 *Coroners Act* 2003 (Qld), s 34.
14 *Coroners Act* 2003 (Qld), s 37(4).
15 *Judicial Review Act* 1991 (Qld), s 20(2)(a).
16 *Judicial Review Act* 1991 (Qld), s 20(2)(e) and 23(b).
17 *Judicial Review Act* 1991 (Qld), s 20(2)(e) and 23(g).

comments in relation to the law relating to deaths by domestic violence or deaths by domestic violence.

[28] Two central provisions of the Act are ss 45 and 46. Section 45 provides as follows:

> **"45 Coroners findings**
> (1) A coroner who is investigating a suspected death must, if possible, find whether or not a death in fact happened.
> (2) A coroner who is investigating a death or suspected death must, if possible, find—
> (a) who the deceased person is; and
> (b) how the person died; and
> (c) when the person died; and
> (d) where the person died, and in particular whether the person died in Queensland; and
> (e) what caused the person to die.
> (3) However, the coroner need not make the findings listed in subsection (2) if—
> (a) the coroner is unable to find that a suspected death in fact happened; or
> (b) the coroner stops investigating the death under section 12(2).
> (4) The coroner must give a written copy of the findings to—
> (a) a family member of the deceased person who has indicated that he or she will accept the document for the deceased person's family; and
> (b) if an inquest was held—any person who, as a person with a sufficient interest in the inquest, appeared at the inquest; and
> (c) if the deceased person was a child— …
> (5) The coroner must not include in the findings any statement that a person is, or may be—
> (a) guilty of an offence; or
> (b) civilly liable for something.
> (6) This section applies whether or not an inquest is held."

[29] In these reasons I will describe the findings that a coroner must make, if possible, under s 45(2), as the "required findings". As s 45(6) provides, they must be made whether or not an inquest is held.

[30] Section 46 provides, in part:

> "**46 Coroners comments**
> (1) A coroner may, whenever appropriate, comment on anything connected with a death investigated at an inquest that relates to—
> (a) public health or safety; or
> (b) the administration of justice; or
> (c) ways to prevent deaths from happening in similar circumstances in the future. …"

[31] Section 46(1) provides for the modern form of what was once called a coroner's jury "rider". Importantly, it only applies where the death is investigated at an

inquest. For brevity, in these reasons I will call a comment made under s 46(1) an "authorised comment".

[32] The history of a coroner's jury rider was explained in *X v Deputy State Coroner for New South Wales*, as follows:[18]

> "Notwithstanding that under the common law a coroner and a coroner's jury need do no more than make the findings or give the verdict in an inquest or an inquiry, a coroner and a coroner's jury could add a rider or recommendation to the findings made or verdict given. This was done at the time the findings were made or the verdict was given: *Jervis on Coroners* 4th ed (1880) at 251. However, the addition formed no part of the verdict. It was mere surplusage (*Jervis on Coroners* 4th ed (1880) at 251, 8th ed, (1946) at 110). This view of the law was accepted in *R v Harding* (1908) 1 Cr App R 219. Darling J with whom Phillimore J agreed, said (at 225):
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> > "The coroner's jury find facts and a verdict is entered which is a conclusion from their finding. … The rider attached to the coroner's verdict is not part of the verdict itself and has no legal effect."
>
> Although at common law such riders or recommendations were not part of the finding of the coroner or of the verdict of the jury, they could be recorded if their nature was concerned with avoiding a repetition of a like event or circumstance (*Jervis on Coroners* 8th ed (1946) at 110)."

An inquest under section 46

[33] One of the Attorney-General's general responses to the application is that the first respondent decided to hold the inquest for the purpose of considering whether to make an authorised comment or comments. Two possible subject areas for comment identified by the first respondent are whether there should be a change in the law as to when a death caused by vaso-vagal nerve stimulation constitutes an offence and whether public awareness of the risk of death by vaso-vagal nerve stimulation should be raised.

[34] The Attorney-General submits that whether or not the challenge to the first and second decisions would otherwise succeed, those decisions were valid because it was valid to decide to hold an inquest for the purpose of considering whether to make an authorised comment or comments.

[35] The applicant submits that a coroner may not decide to hold an inquest under s 28 for the sole reason that the coroner is considering whether to make comments under s 46. The applicant submits that an authorised comment or comments are ancillary to making the required findings. I accept that submission to the limited extent that it would not be permissible to hold an inquest solely to make a comment or comments under s 46 where an investigation has been completed and the required findings have been made and notified previously.

[36] However, in this case the required findings have not been made. The investigation must proceed until they are made, if possible. The question for the first respondent

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18 (2001) 51 NSWLR 312, 318-319.

in making the first decision was whether he should proceed with the investigation by inquest or not.

[37] The proper construction of a statutory provision should begin with[19] and ordinarily will end with the statutory text,[20] although context is to be considered also in the first place.[21] As a matter of the ordinary meaning of ss 45 and 46, read in the context of the Act, nothing precludes a coroner from deciding to hold an inquest so that an authorised comment or comments may be considered.

[38] The applicant submits that *Thales Australia Ltd v Coroners Court of Victoria*[22] and *Doomadgee v Clements*[23] support the contrary view. I do not agree. *Thales* touched on the power of a coroner to continue with an inquest after the required findings had been made. It decided that there is no power to hold an inquest under the Victorian legislation that does not involve making the required findings because:

> "The power to comment arises as a consequence of the obligation of the Coroner to make findings (if possible) as to the identity of the deceased, the cause of death and the circumstances in which the death occurred."[24]

[39] That is not this case. Nor are the proposed possible subjects of comment in the present case unrelated to matters connected with the death or making the required findings.

[40] Nevertheless, the first respondent did not reason that he should hold an inquest in the present case because he wished to consider making an authorised comment or comments. It is appropriate, therefore, to proceed to consider the applicant's challenges to the first and second decisions by reference to the grounds of review raised for those decisions.

First decision – to hold an inquest

[41] Section 28 of the Act provides:

> "(1) An inquest may be held into a reportable death **if** the coroner investigating the death is **satisfied that it is in the public interest** to hold the inquest.
>
> (2) In deciding whether it is in the public interest to hold an inquest, the coroner may consider –
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> (a) the extent to which drawing attention to the circumstances of the death may prevent deaths in similar circumstances happening in the future; and
>
> (b) any guidelines issued by the State coroner about the issues that may be relevant to deciding whether to hold

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19 *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 260 ALR 1, 16 [47].
20 *Federal Commissioner of Taxation v Consolidated Media Holdings Ltd* (2012) 250 CLR 503, 519 [39].
21 *Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation* (1981) 147 CLR 297.
22 [2011] VSC 133.
23 [2006] 2 Qd R 352, 360 [28]-[31].
24 [2011] VSC 133, [67].

> an inquest for particular types of deaths." (emphasis added)

[42] There is no dispute that on the proper construction of s 28(1), a coroner investigating a death must be satisfied that it "is in the public interest to hold an inquest" before he may do so. In other words, satisfaction that it is in the public interest to hold the inquest is a jurisdictional fact or condition precedent to exercise of the power to hold the inquest. The coroner must decide whether or not he or she is so satisfied.

[43] What is in the public interest is a matter that the coroner is to decide. The width of possible relevant considerations is apparent. The applicant submitted that the meaning is informed by a passage taken from *O'Sullivan v Farrer*[25] as follows:

> "…the expression 'in the public interest', when used in a statute, classically imports a discretionary value judgment to be made by reference to undefined factual matters, confined only 'in so far as the subject matter and the scope and purpose of the statutory enactments may enable … given reasons to be [pronounced] definitely extraneous to any objects the legislature could have had in view': *Water Conservation and Irrigation Commission*, per Dixon J at 505."

[44] The Attorney-General relied on a similar passage from *Hogan v Hinch*:[26]

> "The term 'public interest' and its analogues have long informed judicial discretions and evaluative judgments at common law. Examples include the enforceability of covenants in restraint of trade, claims for the exclusion of evidence on grounds of public interest immunity, governmental claims for confidentiality at equity, the release from the implied obligation relating to the use of documents obtained in the course of proceedings, and in the application of the law of contempt. When used in a statute, the term derives its content from 'the subject matter and the scope and purpose' of the enactment in which it appears.http://0-www.lexisnexis.com.catalogue.sclqld.org.au/au/legal/ - 72 The court is not free to apply idiosyncratic notions of public interest."[27] (footnotes omitted)

[45] For review by way of statutory order of review under the *Judicial Review Act* 1991 (Qld) ("JRA"), an initial question is whether the first decision was a "decision" of an administrative character that was "made under an enactment".[28] Section s 28 of the Act provides for the making of a decision to hold an inquest. However, one of the points made by Mason J in *Australian Broadcasting Corporation Tribunal v Bond*[29] was that a number of considerations point to the word "decision" in the JRA having a "relatively limited field of operation".[30] And in *Griffith University v Tang*[31] the plurality judgment pointed out that not only must there be a decision but the decision must be one "made under an enactment", meaning that it has the quality

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25 (1989) 168 CLR 210, 216
26 (2011) 243 CLR 506.
27 (2011) 243 CLR 506, 536.
28 *Judicial Review Act* 1991 (Qld), s 4.
29 (1990) 170 CLR 321.
30 (1990) 170 CLR 321, 336.
31 (2005) 221 CLR 99.

of "affecting of legal rights and obligations", so that "rights or duties owe in an immediate sense their existence to the decision, or depend upon the presence of the decision of their enforcement".[32]

[46] A decision to hold an inquest was described in this way by Brennan J in *Annetts v McCann*:

> "It is difficult to envisage a case in which a coroners exercise of the mere power to hold an inquest is likely to adversely affect the interest of any person, but a coroners finding as to 'how, when and where the deceased came by his death' is plainly to affect adversely the interests of any person upon whom the finding would reflect unfavourably even if that person is not committed for trial and the finding is not framed in such a way as to appear to determine any question of civil liability or guilt of an offence."[33]

[47] No case was referred to in argument in the present case where a court has judicially reviewed a decision to hold an inquest under s 28 or its predecessors or comparators, whether the review was under an enactment or at common law. There does seem to be at least one Australian case of that kind.[34] However, the respondents did not positively contend that the first decision was not a decision made under an enactment or otherwise was not amenable to judicial review by an order in the nature of *certiorari* prohibition. So it is unnecessary to consider this point further.

[48] The first ground of review of the first decision is that the respondent failed to observe natural justice by failing to give the applicant an opportunity to be heard before deciding to hold an inquest.

[49] Section 28 is the presently relevant statutory provision empowering a coroner to hold an inquest. There are comparator provisions in many jurisdictions. A statutory coronial power to hold an inquest is one of long standing in this State's history.[35]

[50] If a coroner is obliged to afford an opportunity to be heard to a person in the applicant's position, before deciding to hold an inquest under a provision such as s 28, it is remarkable that there is no prior case in which such an obligation has been recognised or postulated.

[51] This case is not one where a detailed analysis of the application of the principles of procedural fairness or natural justice in the form of the hearing rule is called for. It is enough to identify the more important reasons for finding whether or not a coroner is obliged to afford natural justice before exercising the power under s 28 of the Act to hold an inquest. First, as Brennan J said in *Annetts*, that decision does not adversely affect the interest of anyone, except to the extent that it may affect reputation or is a step that may later adversely affect someone during the inquest process. The opinion to be formed before exercising the power is whether the coroner is satisfied it is in the public interest. Second, to the extent that it does affect persons, the decision is likely to affect multiple persons, as in this case.

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32 (2005) 221 CLR 99, 128 [80].
33 (1990) 170 CLR 596, 608.
34 *Deitz v Abernethy* (unreported, BC9602510).
35 *Inquests of Deaths Acts* 1866 (Qld); *Coroners Act* 1930 (Qld); *Coroners Act* 1958 (Qld).

Third, a decision to hold an investigation by inquest is only an intermediate step in the process of an investigation that will necessarily result in the making of the required findings, if possible. Fourth, the hearing of the inquest itself and the making of the required findings or authorised comments are attended by rights of procedural fairness or natural justice under the hearing rule. Fifth, the Act makes express provision for notice of[36] and appearance by interested persons[37] at the inquest, but makes no provision for notice of a decision whether to hold an inquest. Sixth, the Act expressly provides for a person to request an investigation to proceed by inquest[38] and a right to apply to higher authorities from a decision refusing to hold an inquest,[39] but no right of review from a decision to hold an inquest. Seventh, in referring to the relevant principles to be considered on a question such as this the Court of Appeal of Victoria in *Cornall v AB*[40] said:

> "It is therefore important to look at the principles which lie behind these authorities. In our opinion they do not stand for any principle that every investigator or investigative body must afford a person under investigation an opportunity to be heard in the sense understood in the law before they recommend a further step of a kind which will result in a judicial or quasi-judicial determination of the correctness or otherwise of the allegation made by the investigator. To do so would be to stifle the necessary functions performed by the police and the other many and varied authorities who for the protection of the public have to investigate alleged breaches of the law. That is not to imply that police and investigative bodies ought not to act fairly, nor, where appropriate, to seek answers (to the extent permitted by law) from those who are under investigation, but ordinarily the investigative process cannot be hedged around with requirements to seek further explanations at each stage of an inquiry… Regrettably the reputation of those… brought before disciplinary or other tribunals will suffer to an extent in the eyes of those who fail to appreciate the different functions of investigator and decision-maker, whether judicial or quasi-judicial."

[52] In my view, the first respondent was not obliged to afford the applicant an opportunity to be heard by way of natural justice before deciding to exercise the power to hold an inquest under s 28.

[53] The second ground of review of the first decision is that the decision to hold an inquest was an improper exercise of power because the first respondent failed to take a mandatory relevant consideration into account. As Mason J said in *Minister for Aboriginal Affairs v Peko-Wallsend Ltd*[41]:

> "The ground of failure to take into account a relevant consideration can only be made out if a decision maker fails to take into account the consideration which he is *bound* to take into account in making that decision …

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36 *Coroners Act* 2003 (Qld), s 32.
37 *Coroners Act* 2003 (Qld), s 36.
38 *Coroners Act* 2003 (Qld), s 30(1).
39 *Coroners Act* 2003 (Qld), s 30(4).
40 [1995] 1 VR 372, 396.
41 (1986) 162 CLR 24, 39-40.

> What factors a decision maker is bound to consider in making the decision is determined by construction of the statute referring the discretion …
>
> … where a statute confers the discretion which in its terms is unconfined, the factors that may be taken into account in the exercise of discretion are similarly unconfined, except as there may be found in the subject matter, scope and purpose of the statute some implied limitation on the factors …
>
> By analogy, where the ground of review is that a relevant consideration has not been taken into account and the discretion is unconfined by the terms of the statute, the court will not find that the decision maker is bound to take a particular matter into account unless an implication that he is bound to do so is to be found in the subject matter, scope and purpose of the Act."

[54] An inquest is held for the purposes of making the required findings and in an appropriate case to make an authorised comment or comments. It is one method of proceeding upon an investigation of a reportable death. In some cases, an inquest must be held. But in any case, the procedure of holding an inquest does not itself determine the required findings or the authorised comments to be made. No substantive rights are established by a decision to hold an inquest. It has the consequence that the investigation of the death proceeds publicly and in the Coroners Court, with the attached powers and procedures. But the decision in no way cements the outcome of the investigation in any other sense.

[55] In my view, there is nothing in the subject matter, scope or purpose of s 28 in its context in the Act that requires a coroner who is investigating a death and considering whether to hold an inquest under s 28 to obtain all available and relevant documentary evidence relating to the death before exercising the power to decide to hold an inquest. More particularly, in my view, there is no implication that a coroner must obtain the depositions of a relevant committal hearing before exercising the power.

[56] It may be considered to be good practice if all readily available and relevant information is gathered and considered before a decision whether to hold an inquest is made, and in some cases that might avoid the need to hold an inquest, but that is not the same thing as characterising gathering and reviewing such evidence as a mandatory relevant consideration before the power to decide to hold an inquest is exercised.

[57] The applicant's third ground of review of the first decision is that it was an improper exercise of the power under s 28 because the decision was so unreasonable that no reasonable person could so exercise the power.

[58] This formulation of unreasonableness is sourced from the judgment of Lord Greene MR in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation*.[42] Hence it is often called "*Wednesbury* unreasonableness". However, since 2013, application of the relevant principles in this country must take account of *Minister*

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42 [1948] 1 KB 223, 230.

for Immigration and Citizenship v Li.[43] One important passage from the reasons of the plurality in that case is:

> "The legal standard of unreasonableness should not be considered as limited to what is in effect an irrational, if not bizarre, decision – which is to say one that is so unreasonable that no reasonable person could have arrived at it – nor should Lord Greene MR be taken to have limited unreasonableness in this way in his judgment in *Wednesbury*. This aspect of his Lordship's judgment may more sensibly be taken to recognise that an inference of unreasonableness may in some cases be objectively drawn even where a particular error in reasoning cannot be identified. This is recognised by the principles governing the review of a judicial discretion, which, it may be observed, were settled in Australia by *House v The King*, before *Wednesbury* was decided."[44] (footnote omitted)

[59] The question in *Li* was whether the Tribunal constituted under the *Migration Act* wrongly exercised the discretion whether to adjourn a hearing to afford the applicant an opportunity to provide further evidence and information. The High Court held that the decision denying that opportunity was made unreasonably in the *Wednesbury* sense. The starting point was the court's acceptance of the presumption of law that the legislature is taken to intend that a discretionary power, statutorily conferred, will be exercised reasonably.[45] As well as the passage cited immediately above, in which the plurality indicated that unreasonableness is not confined to a decision no reasonable person could have arrived at, the plurality continued as follows:

> "Further, in *Minister for Aboriginal Affairs v Peko Wallsend Ltd*, Mason J considered that the preferred ground for setting aside an administrative decision which has failed to give adequate weight to a relevant factor of great importance, or has given excessive weight to an irrelevant factor of no importance, is that the decision is 'manifestly unreasonable'. Whether a decision maker be regarded, by reference to the scope and purpose of the statute, as having committed a particular error in reasoning, given disproportionate of weight to some factor or reasoned illogically or irrationally, the final conclusion will in each case mean that the decision maker has been unreasonable in a legal sense.
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> In *Fares Rural Meat & Livestock Co Pty Ltd v Australian Meat and Live-Stock Corporation*, reference was made to an analysis of three paradigm cases of unreasonableness which were thought to be consistent with a view of Lord Greene MR's 'doctrine', as based on the law as to the misuse of fiduciary powers. The third paradigm involved the application of a proportionality analysis by reference to the scope of the power."[46]

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43 (2013) 249 CLR 332.
44 (2013) 249 CLR 332, 364 [68].
45 (2013) 249 CLR 332, 362 [63].
46 (2013) 249 CLR 332, 365-366 [72]-[73].

[60] Although the applicant's challenge is based on the ground that the decision to hold the inquest was unreasonable, it also amounts to a challenge to the necessary jurisdictional condition that the first respondent was satisfied it was in the public interest to hold an inquest. The relationship between *Wednesbury* unreasonableness and a condition of this kind was explored by Gummow J in *Minister for Immigration v Eshetu*.[47] In Gummow J's view, satisfaction of such a condition was not the same thing as an exercise of discretionary power. The latter would but the former would not attract judicial review on the ground of *Wednesbury* unreasonableness.[48] Instead, judicial review in such a case is to be governed by analysis in accordance with the line of cases of which *Buck v Bavone*[49] is an exemplar.[50] The taxonomical bases of review in such cases may differ, yet the approach is similar, as shown by a passage from Gibbs J's reasons in *Buck*:

> "In all such cases the authority must act in good faith; it cannot act merely arbitrarily or capriciously. Moreover, a person affected will obtain relief from the courts if he can show that the authority has misdirected itself in law or that it has failed to consider matters that it was required to consider or has taken irrelevant matters into account. Even if none of these things can be established, the courts will interfere if the decision reached by the authority appears so unreasonable that no reasonable authority could properly have arrived at it. However, where the matter of which the authority is required to be satisfied is a matter of opinion or policy or taste it may be very difficult to show that it has erred in one of these ways, or that its decision could not reasonably have been reached."[51]

[61] In my view, the first decision was not made invalidly, whether the question is approached as one of *Wednesbury* unreasonableness, informed by the reasoning in *Li*, and having regard to the subject matter, scope and purpose of s 28 in its context in the Act, or as whether no reasonable authority could properly have arrived at the first decision.

[62] In reaching that view I am guided, in particular, by two of the points discussed above. First, a decision to hold an inquest does not of itself affect rights and interests, even though it may be expected to lead to other orders that may or will affect rights and interests. Second, failure to gather all the reasonably available documentary evidence before making a decision to hold an inquest, including depositions of a relevant committal proceeding, is not a failure to take into account a mandatory relevant consideration. Once those points are accepted, in my view, the applicant's submission on unreasonableness amounts to an invitation to the court to trespass into the forbidden field of review on the merits.[52]

[63] The Attorney-General submitted that, in any event, as a matter of common sense, the first decision should be treated as having been overtaken by the second decision not to revoke the decision to hold an inquest. It is unnecessary to consider that point.

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47 (1999) 197 CLR 611.
48 (1999) 197 CLR 611, 650 [127].
49 (1976) 135 CLR 110.
50 (1999) 197 CLR 611, 651-657.
51 (1976) 135 CLR 110, 118-119.
52 *Minister for Immigration v Eshetu* (1999) 197 CLR 611, 627 [43].

Second decision – refusal to revoke the decision to hold an inquest

[64] Before and at the pre-inquest conference the applicant applied to the first respondent to revoke the first decision. On 7 September 2016, the first respondent decided to proceed with the inquest. The parties have proceeded before the court on the footing that the first respondent thereby refused to revoke the first decision and that the refusal amounts to a decision under the Act.

[65] There is no express provision of the Act empowering or authorising a coroner who has decided to hold an inquest under s 28 to revoke that decision.[53] The question arises whether there is a power to revoke the decision. There are two potential sources of power. First, there are the statutory provisions contained in ss 23 and 24AA of the *Acts Interpretation Act* 1954 (Qld) ("AIA"). Second, there may be an implied power to be ascertained on the proper construction of the Act itself.

[66] It may seem surprising that if such a power exists, no prior reference to it appears in the case-law of this and other jurisdictions relating to coronial investigations by inquests. However, none of the parties was able to refer to any consideration of such a power.

[67] That said, there is considerable discussion at a more general level, among members of the academy[54] and judges alike,[55] about circumstances in which a statutory power to make an administrative decision will be construed to authorise a revocation or variation of the decision.

[68] Section 23 of the AIA provides, in part, as follows:

> "(1) If an act confers a function or power on a person or body, the function may be performed or the power may be exercised, as occasion requires.
>
> (2) If an act confers a function or power on a specified officer or the holder of a specified office, the function may be performed, or the power may be exercised, by the person for the time being occupying or acting in the office concerned. …"

[69] Section 24AA of the AIA provides as follows:

> "If an act authorises or requires the making of an instrument or decision –
> (a) the power includes power to amend or appeal the instrument or decision; and
> (b) the power to amend or appeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrumental decision."

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53 Contrast the *Coroners Act* 2003 (Qld), s 12.

54 For example, E Campbell, *Revocation and Variation of Administrative Decisions*, (1996) 22 Monash University Law Review 30; S Moloney, *Finality of Administrative Decisions and Decisions of the Statutory Tribunal*, (2008) AIAL Forum 35.

55 For example, *Minister for Immigration and Ethnic Affairs v Kurtovic* (1990) 21 FCR 193, 211.

[70] A recent decision of the Full Court of the Federal Court of Australia considered an equivalent provision to s 23 of the AIA: *MJD Foundation Ltd v Minister for Indigenous Affairs*.[56] Perram J considered two lines of authority as to the proper interpretation of the section corresponding to s 23, in particular on the question whether the power to exercise a power from time to time includes a power to revoke an earlier exercise of the power. In a searching examination of the available materials, his Honour held that it could.[57]

[71] Even if there were doubt as to that conclusion as to the operation of s 23, in my view there can be no doubt about the meaning of s 24AA of the AIA. It clearly confers a power to revoke a decision made under s 28, unless on the proper construction of s 28 it appears that the application of s 24AA is displaced by a contrary intention appearing.[58]

[72] None of the parties argued that there is a contrary intention that appears in the context of the Act so as to repel the application of ss 23 and 24AA of the AIA to a decision made under s 28 of the Act.

[73] At the time the second decision was made, the first respondent had also made an order for the applicant to attend the inquest to give evidence as a witness. By that point, it is clear that the applicant was a person interested in the making of the second decision. From those circumstances, in my view, it more clearly appears that the second decision was one made under an enactment within the meaning of s 5 of the JRA because the applicant's rights and obligations as a person ordered to attend the inquest to give evidence were affected by a decision to refuse to revoke the decision to hold the inquest. It follows, in my view, that the decision to refuse an application to revoke the decision to hold an inquest was a decision to which the JRA applies as a decision of an administrative character made under an enactment.

[74] The applicant's first ground of challenge to the second decision is that the first respondent failed to afford natural justice in failing to permit the applicant to obtain the depositions and to put them before the first respondent to consider them. Alternatively, the applicant submits that the failure by the first respondent to take the depositions into account for the second decision was a failure to take a mandatory relevant consideration into account.

[75] The applicant submitted to the first respondent that he should obtain (or permit the applicant to obtain) the depositions so that the first respondent could consider them. The effect of the first respondent's refusal to do so for the purposes of the second decision does not mean that the evidence in them will not be considered, but the time for consideration will be in the course of the inquest or in considering the required findings or authorised comments.

[76] The effect of the second decision is the same as if the first respondent had found that to hold an inquest was the appropriate course, irrespective of the contents of the depositions. He did not, however, make that express finding. Rather, he simply put aside whether he should consider the depositions before proceeding further.

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56 [2015] FCA 1172.
57 [2017] FCAFC 37, [22]-[84].
58 *Acts Interpretation Act* 1954 (Qld), s 4.

[77] *Li* concerned the refusal of a Tribunal to adjourn a hearing and thereby defer a decision until some updated information would become available. There was a discretionary power to adjourn. The law required that the power must be exercised reasonably. It was held that it was exercised unreasonably.

[78] The plurality judgment recognised that a failure to accede to a reasonable request for an adjournment can constitute procedural unfairness.[59] But the requirements of procedural fairness were possibly excluded in that case by statute,[60] so the question was analysed from the perspective of *Wednesbury* unreasonableness.[61] In the course of their reasoning, the plurality recognised that a more specific error such as failing to take a mandatory relevant consideration into account may also be explained as a decision that is unreasonable in the *Wednesbury* sense because unreasonableness in the legal sense encompasses the more specific errors, so that "all these things run into one another".[62]

[79] When the applicant applied to revoke the decision to hold an inquest he was entitled to be heard on that application. The refusal of the first respondent, in effect, to adjourn or wait to receive the depositions is capable of being characterised as procedural unfairness in the sense of a denial of natural justice if the request was reasonable and the decision was unreasonable in the *Wednesbury* sense. I will return to these grounds of review.

[80] The second ground of review raised by the applicant in relation to the second decision is that the state of the evidence, including the depositions, was not considered or properly considered when the second decision was made, and the first respondent thereby failed to take a mandatory relevant consideration into account.

[81] Although the first respondent was not required to obtain the depositions as a mandatory relevant consideration when the first decision was made, in my view, the facts that might affect the mandatory relevant considerations were different by the time of the second decision. First, the applicant (and others) had been given leave to appear at the pre-inquest conference. Second, the first respondent had ordered the applicant to attend the inquest to give evidence. Third, the applicant had brought the potential relevance of the depositions to the attention of the first respondent and urged that the evidence in them was decisive as to whether the inquest should proceed. Although the question whether a consideration is a mandatory relevant consideration is decided having regard to the subject matter, scope and purpose of the statute, it is still necessary to consider the factual context in which the decision is to be made in order to determine whether a consideration is a mandatory relevant consideration in the particular circumstances.[63]

[82] The Attorney-General submits that the depositions are relevant material that must be taken into account for the purpose of the required findings when the inquest is held. Nevertheless, she submits that does not raise them to the level of a mandatory relevant consideration for the decision whether or not to revoke the decision to hold the inquest.

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59 *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332, 357 [48].
60 *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332, 360 [55].
61 *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332, 362-369 [63]-[86].
62 *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332, 365 [72].
63 *Sean Investments Ltd v MacKellar* (1981) 38 ALR 363, 375.

[83] There is a possible analogy between the application for the second decision and a decision made by a court to dismiss a proceeding in a summary way. In the court context, a proceeding will only be stopped summarily in rare circumstances. For example, in the inherent jurisdiction of a superior court that will only be done when to continue the proceeding would be an abuse of process,[64] absent a statutory provision for summary termination.[65] The analogy is limited, but it shows the reluctance of a court to interfere with the ordinary process to decide a case where the court's jurisdiction is regularly engaged in the first place.

[84] So it must be also in the case of a decision made to hold an inquest, even though there is power to revoke the decision in an appropriate case. First, the coroner is obliged to proceed to make the required findings upon his or her investigation of a reportable death, whether or not an inquest is held. Second, the long history of coroners proceedings by inquest was not fundamentally changed by the text or purpose of the condition in s 38 of the Act that a coroner must be satisfied that it is in the public interest to hold an inquest. Third, there is neither text nor context in the Act that suggests an intention that it should be a common occurrence that a decision to hold an inquest is revoked following a summary process of review of the merits of the decision to hold an inquest. Fourth, if a coroner were bound to gather and consider all reasonably available evidence up to that time on an application to revoke a decision to hold an inquest, there is a risk of fracturing of the hearing of an inquest by strategic challenges designed to stop or slow the proceeding.

[85] In my view, these considerations lead to the conclusion that although it was open to the first respondent to take the depositions into account in deciding whether to proceed with the inquest, it was not a failure to take a mandatory relevant consideration into account for him not to do so.[66]

[86] However, the slightly unusual set of circumstances in this case were that in making an application to revoke the decision to hold the inquest, the applicant had urged upon the first respondent that consideration of the depositions would be a turning point or decisive factor, yet the first respondent declined to consider them. This approaches a refusal to accord a fair hearing by denying natural justice or unreasonableness as discussed in *Li*.

[87] Even so, the present case differs from *Li* in a number of relevant respects. First, the refusal to revoke the decision to hold an inquest did not result in a final decision adverse to the applicant in terms of the required findings – it was only a procedural decision. Second, the first respondent's reasons are consistent with the view that whether or not the depositions strongly support the applicant's view as to the outcome upon the required findings is a matter to be decided at the inquest. Third, the first respondent's reasons also indicate that he is considering whether this death is one where it may be appropriate to make an authorised comment or comments which may only be done where a death is investigated at an inquest.

Third and fourth decisions – order that the applicant attend to give evidence

[88] Section 37 of the Act provides, in part:

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64 *Batistatos v Roads and Traffic Authority of NSW* (2006) 226 CLR 256.

65 *Uniform Civil Procedure Rules* 1999 (Qld), rr 171 and 293.

66 Compare *Foster v Minister for Customs and Justice* (2000) 200 CLR 442.

> "(1) The Coroners Court is not bound by the rules of evidence, but may inform itself in any way it considers appropriate.
> (2) The Coroners Court may require a person to produce a document to the court before the start of an inquest.
> (3) The Coroners Court may inspect anything produced at an inquest, copy it, or keep it for a reasonable period.
> (4) The Coroners Court may do any of the following—
> (a) order a person to attend an inquest, until excused by the court—
> (i) to give evidence as a witness; or
> (ii) to produce something;
> (b) order a person called as a witness at an inquest—
> (i) to take an oath; or
> (ii) to answer a question. …"

[89] The applicant submits that the account he gave to police only hours afterwards of the events resulting in the deceased's death is so clear that there can be no good reason to order him to attend to give evidence about them.

[90] He relied on two decisions as supporting that conclusion: *Attorney-General of NSW v Borland*[67] and *Rich v Attorney-General of New South Wales*.[68] Those and other cases show that there can be judicial review by way of an order in the nature of certiorari of a decision to order a person responsible for a death to attend at an inquest to give evidence as a witness. But they are not otherwise relevant to the present case.

[91] Section 39 of the Act provides:

> **"39 Incriminating evidence**
> (1) This section applies if a witness refuses to give oral evidence at an inquest because the evidence would tend to incriminate the person.
> (2) The coroner may require the witness to give evidence that would tend to incriminate the witness if the coroner is satisfied that it is in the public interest for the witness to do so.
> (3) The evidence is not admissible against the witness in any other proceeding, other than a proceeding for perjury.
> (4) Derivative evidence is not admissible against the witness in a criminal proceeding.
> (5) In this section—
> *derivative evidence* means any information, document or other evidence obtained as a direct or indirect result of the evidence given by the witness.
> *proceeding for perjury* means a criminal proceeding in which the false or misleading nature of the evidence is in question."

[92] The applicant may give evidence that affects the conclusion that he submits otherwise would be drawn that the deceased's death was caused by vaso-vagal nerve compression. Whatever evidence he may give could not be admitted as evidence against him in any proceeding and any information, document or other

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67 [2007] NSWCA 201.
68 [2013] NSWCA 419.

evidence obtained as a direct or indirect result of that evidence could not be admitted as evidence against him in any criminal proceeding.

[93] It is possible that derivative evidence could be admitted against him in a non-criminal proceeding. But there is no suggestion that a proceeding of that kind is on foot, or is contemplated, or could be brought.

[94] Accordingly, the legal risks to the applicant if he were to give evidence appear slight, if they exist at all. The applicant relied on evidence that his mental health has been affected by the deceased's death but that was not evidence before the first respondent. Accordingly, it is not relevant on an application for judicial review of the third and fourth decisions, although it might be a relevant factor at the time when the first respondent decides whether or not to require him to give evidence.

[95] As a matter of legal characterisation, the applicant submits that the first respondent failed to have regard to the extent, timing and context of the applicant's prior account given in the interview with police in deciding to require the applicant to attend the inquest to give evidence and thereby failed to take into account a mandatory relevant consideration. In my view, the subject matter, purpose and scope of s 37 in the light of s 39 do not support that conclusion. In any event, there is no clear basis for concluding that the first respondent did not consider the relevant considerations, given that he reasoned that in his view the interview was of limited utility.

[96] The applicant's alternative ground of challenge is that it was unreasonable in the *Wednesbury* sense to order the applicant to attend to give evidence because it would be futile for him to give evidence.

[97] The first respondent reasoned that there is an area to be explored as to precisely how the applicant restrained the deceased and there is an issue as to the force applied during their altercation. The applicant submits that those matters were asked of and answered by the applicant during the police interview and that almost four years after the events he could not enlarge upon them. Perhaps that will prove to be so. Perhaps another coroner might have accepted that it is so. But the first respondent has decided that he wishes to attempt to enlarge upon the existing account given by the applicant. That is not an impossible proposition. The applicant faces an uphill battle in seeking to prove that the decision to make that attempt was one no reasonable coroner would make.

[98] As well, a decision to require a person to attend to give evidence is an example of a matter of practice and procedure in the gathering of evidence. The approach of the court to questions of this kind was summarised by McMeekin J in *Walter Mining Pty Ltd v Hennessey*:[69]

> "…the very width of the evidence gathering power that Parliament has entrusted to a coroner will make it a rare case indeed where this Court should interfere with the gathering of that evidence. The inappropriateness of doing so was explained by Muir J in *Doomadgee,* in a passage which seems to have been ignored in the present application:
>
> 'The scope and indefinite boundaries of a coroners roles under ss 45

[69] [2010] 1 Qd R 593.

> and 46, generally make it inappropriate to interfere with the gathering of evidence by a coroner, at least where the exercise on which the Coroner is engaged is within the ambit of either of s 45 or s 46. Normally, it will be inappropriate also to seek from a coroner a ruling that one piece of evidence or another is inadmissible or irrelevant as if the coroner were conducting a civil or criminal trial. Questions of judgment which require the exercise of commonsense and restraint are involved and reasonable minds may well differ as to what evidence ought be received.'[70]

[99] His Honour also drew an analogy between a Coroners Court inquest and committal proceedings, concluding:

> "… considerations have led to what Kirby P (as his Honour then was) termed in *Cain v Glass (No 2)* the 'basic rule of restraint'. His Honour spoke in the context of intervening in the process of committing for trial but his comments have as much or greater application to a review of an evidential ruling in a coronial inquiry as is evident from the reasons given for that restraint:
>
> > '(1) the undesirability of discontinuity, disruption or delay in committal proceedings; (2) the superior knowledge of the committing magistrate concerning the whole facts and circumstances of the case under his consideration; (3) the undesirability of the beneficial remedies of declaration or the prerogative writs being misused to justify transfer to the superior courts of matters committed by law to the magistracy; (4) the cost, much of it borne by the public purse, of proliferating litigation, especially at an interlocutory stage, which diverts attention from the real substance of the accusations brought and concentrates instead upon peripheral and often procedural matters; (5) the undue advantage that may be given to rich and powerful defendants to interrupt and delay the operation of the criminal law in a way not so readily available to ordinary citizens; ..."[71]

[100] In my view, whether or not there is any real prospect that the applicant will give useful evidence beyond the contents of the police interview is not the relevant question and is not a reason for this court to interfere in the first respondent's decision to order him to attend at the inquest to give evidence.

Fifth decision - orders that Ms Sigvart, Mr Vlaar and Ms Calthcart attend to give evidence

[101] The applicant's first two grounds of review of this decision or these decisions are that he was denied natural justice and the first respondent failed to take a mandatory relevant consideration into account in failing to receive and consider the depositions before making the fifth decision. The reasons for rejecting those grounds in respect of the first and second decisions apply to this decision, mutatis mutandis. In my view, these grounds must fail.

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70 [2010] 1 Qd R 593, 603 [58]

71 [2010] 1 Qd R 593, 604 [61].

[102] The applicant's third ground of review of this decision is that their evidence is not logically probative of a fact in issue and has no reasonable likelihood of influencing the outcome of the hearing. The applicant submits this demonstrates an error of law in the decision to order the witnesses to attend to give evidence.

[103] The first respondent reasoned that the witnesses may assist him in having a fuller understanding of the dynamics of the relationship between the applicant and the deceased and as to her general and historical health, especially as there is a question of a vaso-vagal "episode" occurring. The logic of this reasoning is not immediately apparent. The reference to the dynamics of the relationship seems to be a reference to possible prior incidents of conflict or domestic violence between the applicant and the deceased. Nothing in the coroner's brief of evidence suggests that has any particular thing to do with the mechanism of vaso-vagal nerve stimulation or the likelihood of it having occurred. Nor can any of the foreshadowed evidence have anything to do with the deceased's general and historical health in the sense of any medical condition.

[104] The true character of the foreshadowed evidence seems to be that it might be treated as propensity evidence of domestic violence by the applicant towards the deceased on prior occasions to be taken into account in considering the applicant's conduct towards the deceased on the occasion of her death. The applicant criticises whether the foreshadowed evidence would have any significance in that regard. The applicant submits further that the first respondent's reasons do not appear to show that he appreciates the limited possible role of the foreshadowed evidence in making the required findings.

[105] That may be true. But an error as to the relevance of the foreshadowed evidence or as to whether it is likely to have any value in making the required findings is not a ground of judicial review of a decision to order that a person attend to give evidence under s 37 as an error of law. If any error goes unchecked, and it results in a finding, that may have relevance on an application to set aside a finding but that point has not been reached yet.

[106] In my view, the application to review the fifth decision must be dismissed.

Sixth decision – order that Professor Douglas attend to give evidence

[107] The sole ground of review is that the first respondent's decision to require Professor Douglas to give evidence was unreasonable. The applicant submits that it was unreasonable to do so when there was no statement from Professor Douglas to assess the potential relevance of the evidence she might give. Second, the applicant submits that Professor Douglas expertise as a lawyer and academic is not a subject that engages a relevant expertise for admissible opinion evidence.

[108] In my view, neither point renders the decision to order Professor Douglas to attend to give evidence unreasonable.

[109] The starting point is that the Coroners Court is not bound by the rules of evidence on an inquest, so unreasonableness is not to be measured by the admissibility of expert evidence at common law or under any statute. Second, in any event, the relevant expertise of Professor Douglas lies in the content and operation of laws of this State and elsewhere in connection with domestic violence. That is an expertise

capable of assisting a coroner considering making an authorised comment or comments. It is unnecessary to go further as to any question of admissibility

[110] Further, in my view, it is not a condition of exercise of the power to require a witness to attend to give evidence that a statement or report of the proposed evidence has been produced before the decision to require a witness to attend the inquisitorial proceeding can be made. Whether the first respondent had any other evidence before him in making the sixth decision does not appear from the affidavits filed by the applicant. It should not be forgotten that the applicant did not object to Professor Douglas being ordered to attend to give evidence at the pre-inquest conference hearing.

[111] In my view, the application to review the sixth decision must be dismissed.