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Ms Franchesca Walker
A/Principal Research Officer
Community Development and Justice Standing Committee
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

by email: lacdjsc@parliament.wa.gov.au

Dear Ms Walker

SUBMISSION TO INQUIRY INTO THE PROTECTION OF CROWDED PLACES IN WESTERN AUSTRALIA FROM TERRORIST ACTS

I refer to the letter dated 6 March 2018 from Mr P. A. Katsambanis MLA, inviting a submission to the Committee in relation to the above inquiry.

Thank you for the invitation. My response relates to item 1; specifically the role of the State Coroner concerning the state-based emergency management framework.

It may assist if I outline at the outset that the functions of the coroner are set out in s 25(1) of the *Coroners Act 1996* (Coroners Act):

A coroner investigating a death must find if possible —

- (a) *the identity of the deceased; and*
- (b) *how death occurred; and*
- (c) *the cause of death; and*
- (d) *the particulars needed to register the death under the Births, Deaths and Marriages Registration Act 1998.*

In the unfortunate event that a terrorist act occurs that results in mass fatalities and/or there is a need to identify any deceased person, there are procedures in existence.

I am the chair of the Disaster Victim Identification (DVI) Committee which meets to discuss procedures. The DVI Committee membership is multi-disciplinary with representatives from a range of agencies.



The purpose of the DVI Committee is to maintain lines of communication, remain in a state of preparedness in the event of a DVI incident (terrorist related or not), and to exchange information on relevant developments e.g. law, technology.

Full details regarding membership of the DVI Committee and its deliberations are confidential.

There are agreed plans and procedures in place regarding the DVI response and management in the event of mass fatalities. The procedures involved are confidential.

Whilst the coroner's role is to investigate deaths that are violent or that have resulted, directly or indirectly, from injury, it is to be borne in mind that a terrorist incident would enliven the investigative powers of a range of entities.

Where both coronial and criminal law is enlivened, the criminal law would ordinarily take precedence. As a consequence coronial powers to restrict access to areas and/or take possession of documents or things would be secondary to the exercise of the police's investigative functions under the relevant criminal laws (at the State and/or Federal level).

In the event of a criminal prosecution, any inquest will need to await the outcome of the conclusion of those proceedings. Further, any subsequent coronial finding must not be inconsistent with the result of those proceedings (see s 53 Coroners Act).

An inquest may be mandated by law, or a coroner may exercise a discretion to hold an inquest.

It is unlikely that an inquest following a terrorist act would be mandated by law under s 22(1) of the Coroners Act, though having regard to those provisions, that eventuality cannot be discounted.

The question of whether an inquest would be desirable, within the meaning of s 22(2) of the Coroners Act, would depend upon the circumstances surrounding such an incident.

The primary purpose of an inquest is to assist the coroner in making findings as to the cause and manner of death, and to receive evidence in a manner that is consistent with the principles of open justice, subject to orders regarding non publication and confidentiality.

After an inquest, the coroner may make recommendations with a view to preventing deaths in similar circumstances. This is the ancillary function.



The most immediate and vital contribution by the coroner in the event of any fatalities would involve the identification of deceased victims and liaison with their families. Family liaison may be undertaken with the assistance of the Western Australia Police and/or the Australian Federal Police depending on the nature of an incident.

The Coroner's Court is staffed with grief counsellors who are psychologists and are able to assist families by explaining the victim identification process to them, outlining the reasons why certain requests may be made of them to assist with identification, supporting them through that process and as far as is possible, providing them with timelines. The counsellors are adept at communicating such information expeditiously and with sensitivity.

In the event that an incident involves the deaths of persons from overseas the coroner would liaise with the Department of Foreign Affairs and Trade and/or the relevant consulate to assist with repatriation.

The coroner's role commences immediately upon the report of a death that is or may be a reportable death, and the coroner's duty is to investigate that death and if possible, make the findings that I outlined above, set out in s 25(1) of the Coroners Act (which includes finding the identity of the deceased). When the coroner completes the investigation (whether by inquest or by administrative process) and finalises his or her finding, and creates the written record of investigation of death as required by s 26 of the Coroners Act, the role of the coroner is ordinarily complete.

Yours faithfully

R V C FOGLIANI
STATE CORONER
29 March 2018