



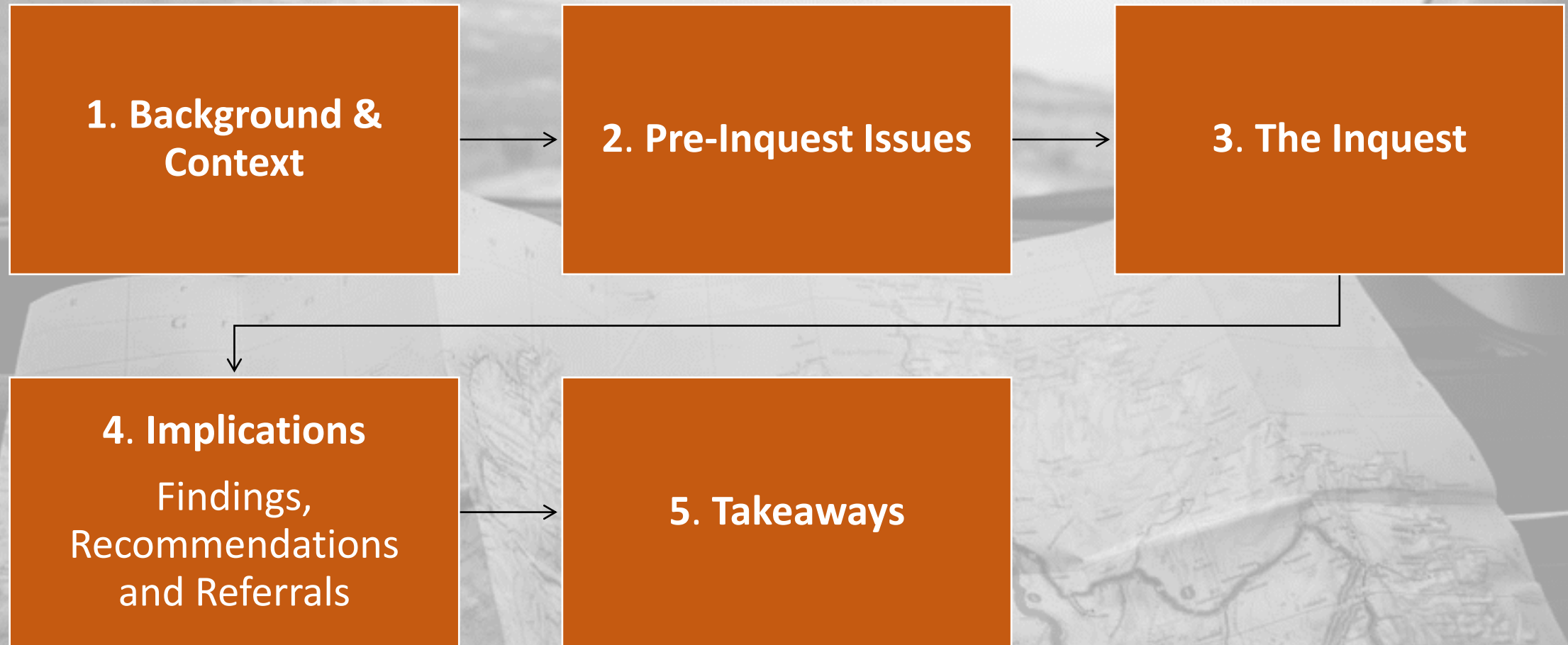
Coronial Inquests and the *Coroners Act 2003* (Qld)

State Coroner Terry Ryan

Deputy State Coroner Jane Bentley

Nicholas Andreatidis QC, Matthew Hickey, Kristi Riedel & Mark Eade – Level Twenty Seven Chambers

>> Roadmap



>> **Background & Context**

- > Purpose

- > Differences between coronial inquest & other litigation

- > Role of Counsel Assisting

- > Coroners Guidelines

>> Background and Context – Old v New Act

Scope Purpose of *Coroners Act 1958* (QLD)

- ‘rider’ v ‘comments’
- Abrogation of privilege
- Against self-incrimination
- Power to commit for trial
- Limitation on submissions

Coroners Act 2003 (Qld) and transitional provisions

- 1958 Act applies to ‘pre-commencement deaths’ being a death reported to a police officer or coroner prior to the 2003 Act or ‘a death in relation to which an inquest was held’ prior to the 2003 Act but reopened afterwards: 2003 Act s 100

Recent amendments to the *Coroners Act 2003* (Qld)

- Commenced 25 May 2020
- Repealed s 100 and replaced with new division
- Effect: (1) 2003 Act applies unless inquest presently active under 1958 Act
- Effect: (2) inquest active under 1958 Act can be stopped and reopened under 2003 Act

>> Background & Context – Natural Justice

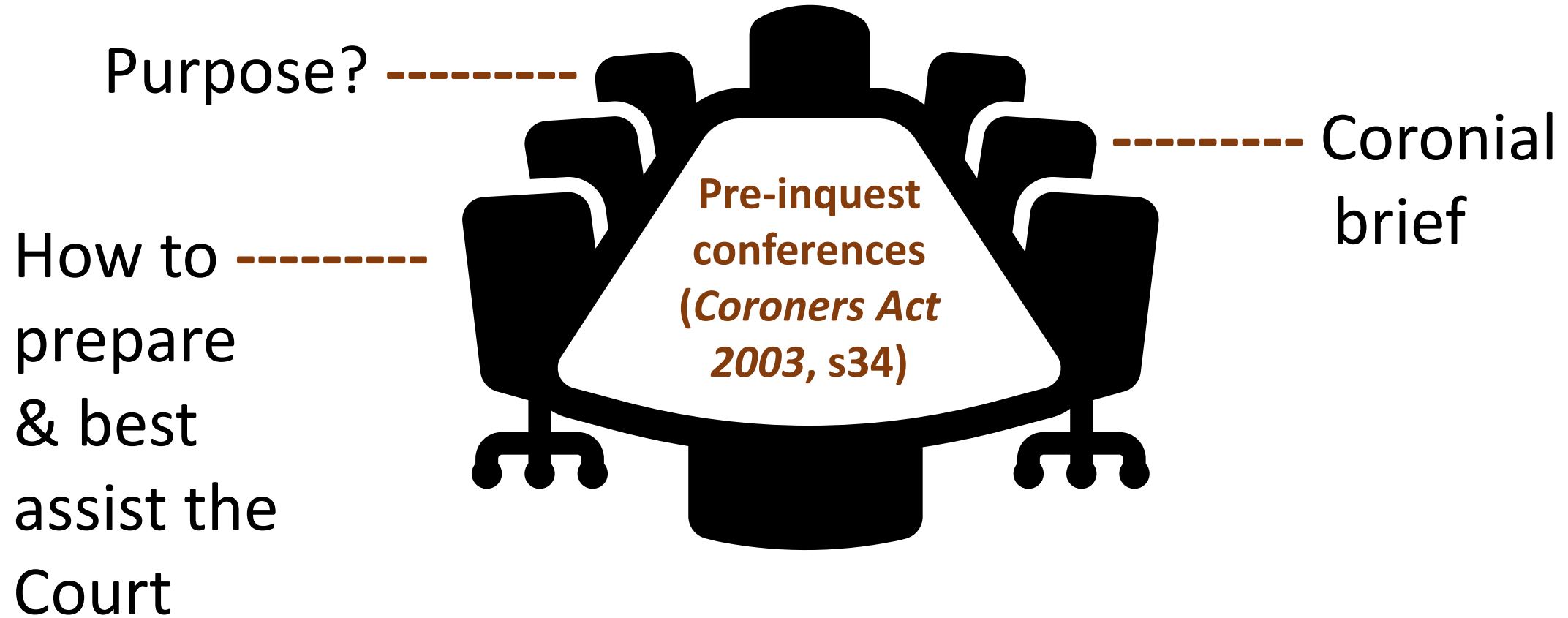
- > Focus: avoiding practical injustice
- > Content dependent upon circumstances and progression of inquest
- > If Coroner likely to make an adverse comment about a person or a referral to a disciplinary or regulatory body:
 - notice given
 - material provided
 - right to examine relevant witnesses
 - right to make submissions and proffer material
 - request re-opening of any closed inquest

>> Background and Context – Right to Appear (Coroners Act 2003, s36)

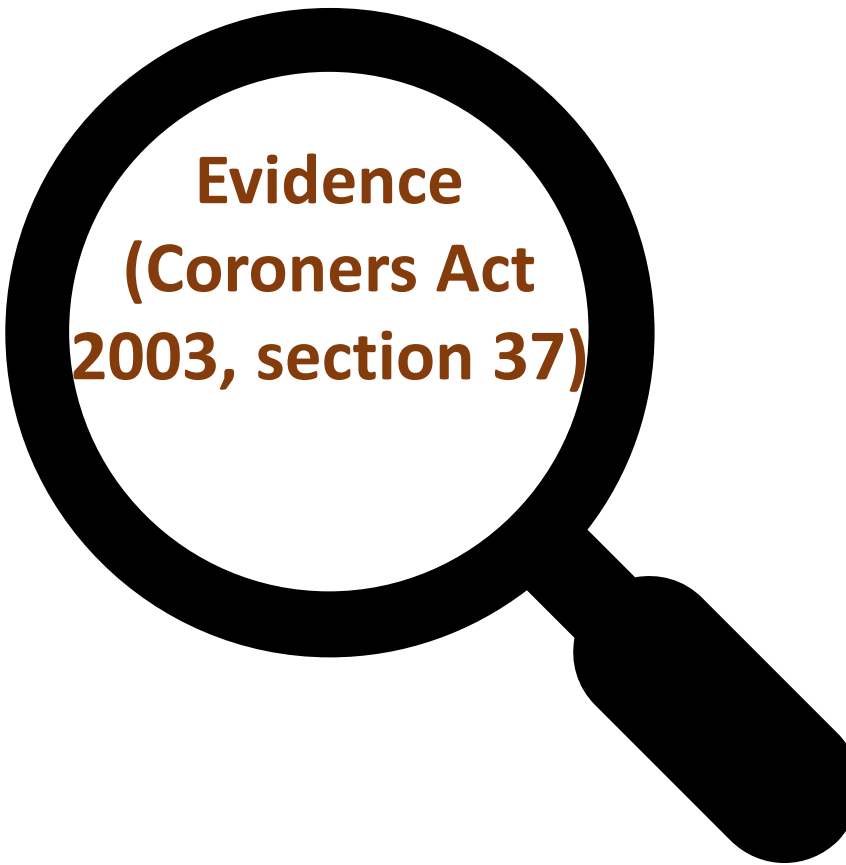
> Any **person who has ‘sufficient interest’** entitled to appear, examine witnesses & make submissions (s 36) and ordinarily receive the brief of evidence (s 54, s 55)

- Persons assisting the Coroners Court
- Attorney General
- Person the Coroners Court considers to have sufficient interest
- Limitations

>> Pre-Inquest Issues



>> The Inquest



**Evidence
(Coroners Act
2003, section 37)**

- > Not bound by the rules of evidence
- > Guiding principles are relevance & fairness

>> The Inquest

> Standard of proof

✓ Civil standard of proof

✓ With respect to findings and adverse comments: Briginshaw sliding scale

>> The Inquest

> Expert evidence

- Practice direction 1/2012 – use of concurrent evidence

*From the
real experts*

>> The Inquest



POWERS TO COMPEL EVIDENCE

(Coroners Act 2003, s39)

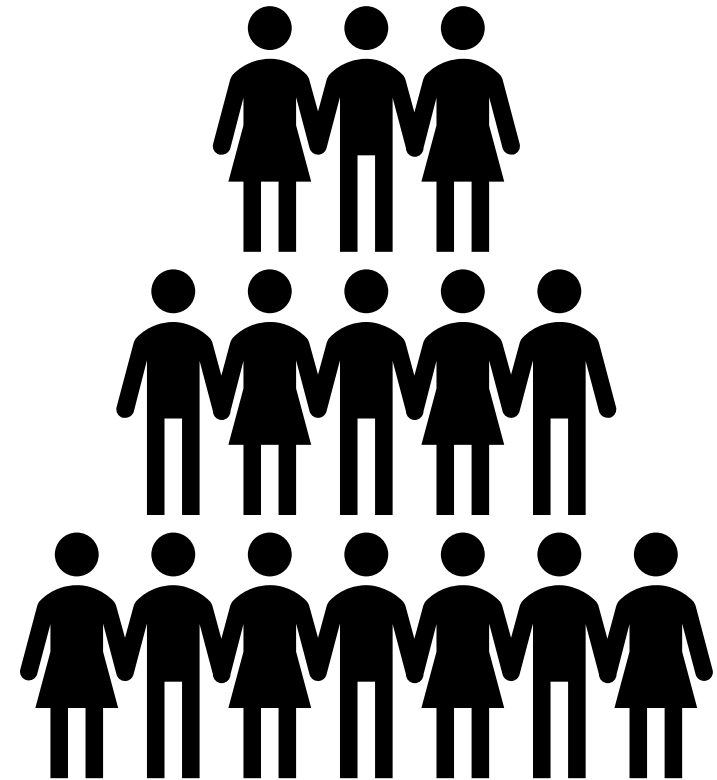
- An extraordinary power

>> The Inquest

- > What does 'in the public interest' mean in the context of section 39?
- > Claiming privilege against self incrimination

>> The Inquest

> Submissions of interested persons



>> The Inquest

> When an inquest must not be held or continued (*Coroners Act 2003*, section 29)



>> Implications

FINDINGS (s 45)

- Who the person is
- How the person died
- When the person died
- Where the person died
- What caused the person to die

'COMMENTS' (s 46)

- Public health or safety
- Administration of justice
- Ways to prevent deaths from happening in similar circumstances

STATEMENTS OF CRIMINAL OR CIVIL LIABILITY (or possible liability)

- Prohibited from being published in both 'findings' and 'comments': s 45(5); s 46(3)
- Only explicit statement of guilty or liability prohibited: full & complete findings of fact and statements of conclusions permitted: *Perre v Chivell* [2000] SASC 279.

>> Implications - Referrals

Section 48(3) of the *Coroners Act 2003* (Qld):

(2) If, from information obtained while investigating a death, a coroner **reasonably suspects** a person has committed an offence, the coroner must give the information to—

- (a) for an indictable offence—the director of public prosecutions; or
- (b) for any other offence—the chief executive of the department in which the legislation creating the offence is administered.

(3) A coroner may give information about **corrupt conduct or police misconduct** under the Crime and Corruption Act 2001 to the Crime and Corruption Commission.

(4) A coroner may give information about a **person's conduct in a profession or trade**, obtained while investigating a death, to a disciplinary body for the person's profession or trade if the coroner reasonably believes the information might cause the body to inquire into, or take steps in relation to, the conduct.

(5) In this section—

disciplinary body for a person's profession or trade means a body that—

- (a) licenses, registers or otherwise approves the carrying on of the profession or trade; or
- (b) can sanction, or recommend sanctions for, the person's conduct in the profession or trade.

>> Implications - Referrals

> Referral to Director of Public Prosecutions (s 48(2))

- Publication of fact of referral – different practices and views
- Right to be heard and make submissions on referral?

> Referral to disciplinary or regulatory body (s 48(4))

- Publication of fact of referral?
- Right to be heard and make submissions on referral?

> Referral to Crime and Corruption Commission (s 48(3))

- Similar to referral to prosecutorial authority or similar disciplinary/regulatory body?

>> Implications – Judicial Review & Justiciability

> What can be challenged by way of judicial review?

- Determination as to the admissibility of evidence?
- Findings?
- Comments?
- Referrals to prosecutorial and disciplinary bodies?
- The institution or failure to institute an inquest?
- Re-opening or refusal to reopen an inquest?

>> Key takeaways

- > Not a trial
- > Great resource in the Coroners Guidelines
- > No entitlement to appear, seek leave
- > Thoroughly prepare for pre-inquest conferences
- > Keep submissions brief
- > Collegiality of the jurisdiction

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