

Inquest into the death of Daniel James Morcombe

Daniel James Morcombe was 13 years of age when he was reported missing by his parents on 7 December 2003. Earlier in the day, Daniel walked to a bus stop with the intention to catch a bus to a shopping centre. Brett Peter Cowan lured Daniel to his vehicle at the bus stop on the pretext he would drive Daniel to the shops. Instead, he drove Daniel to an isolated property near Beerwah where he sexually assaulted and killed him, and then disposed of his body. Brett Peter Cowan was convicted of Daniel's murder in 2014.

State Coroner Terry Ryan delivered his findings of inquest on 5 April 2019.

The Queensland Government responds to recommendations directed to government agencies at inquests by informing the community if a recommendation will be implemented or the reason why a recommendation is not supported.

The department named in this response will provide implementation updates until the recommendation is delivered. Further information relating to the implementation of recommendations can be obtained from the responsible minister named in the response.

Recommendation 1

The Queensland Police Service's Operational procedures manual be amended to mandate an independent review in circumstances of a homicide or suspicious high risk missing person investigation remaining unsolved for a period of twelve months after the commencement of the investigation.

Response and action: the recommendation is implemented.

Responsible agency: Queensland Police Service.

On 26 November 2019 the Minister for Police and Minister for Corrective Services responded:

The Queensland Police Service *Operational procedures manual* will be updated to require a mandatory investigation review when a homicide or suspicious high-risk missing person investigation remains unsolved for 12 months after it commenced, and an investigation review has not already been initiated.

The Homicide Investigation Unit and the respective regional crime coordinator will appoint suitably experienced investigators — independent of the investigation — to conduct the review and produce an outcome report. The review investigators will have access to all investigation holdings and the review will be forwarded to the Coroners Court of Queensland as a preliminary briefing.

The proposed amendments to the Queensland Police Service *Operational procedures manual* have been drafted and is currently in the consultation stage.

On 5 August 2020 the Minister for Police and Minister for Corrective Services responded:

The Queensland Police service amended section 2.6.2 'Homicide' of the *Operational procedures manual* to mandate an investigation review in circumstances where a homicide investigation or suspicious missing persons investigation remains unsolved after 12 months after the commencement of the investigation.

The amendments were published on 31 January 2020.

Recommendation 2

The Queensland Government amend the Criminal Code to ensure a time limit is imposed on the testing of human remains in circumstances where the prosecution and defence fail to reach agreement on the identity of the deceased.

Response and action: the recommendation is agreed in principle. Implementation is in progress.

Responsible agency: Department of Justice and Attorney-General.

On 19 November 2019 the Attorney-General and Minister for Justice and Leader of the House responded:

The government agrees in principle that there should be a reasonable time limit imposed on the testing of human remains in criminal proceedings.

This is an emotive, sensitive and complex issue.

A coroner has control over the body of a deceased person when they are investigating that person's death. Section 26 of the *Coroners Act 2003* provides that the coroner must release the body for burial as soon as reasonably practicable after autopsy. When someone is charged, in relation to the death, a criminal prosecution might proceed before the remains have been returned to the family. The criminal law in Queensland contains a range of procedures about how evidence, including a deceased's identity and issues relating to their death, is collected, stored and presented to the court in a criminal trial.

There can be a tension then between these two processes: the role of the coroner and the need to release remains as soon as possible to bereaved family members and the criminal process which aims to conduct a fair trial.

The government agrees that a deceased person's remains should be returned to their family and loved ones as soon as possible irrespective of whether there are related criminal proceedings on foot, particularly where the identity of a deceased person has been established with a high degree of certainty and is not in dispute.

However, this needs to be balanced against a court's obligation to safeguard the accused person's right to a fair trial. This fundamental principle seeks to avoid miscarriages of justice and ensure proceedings are conducted in a manner consistent with the fundamental principles of procedural fairness that preserves the interests of justice. The criminal justice system requires that the prosecution prove the case against the accused person beyond a reasonable doubt and has an obligation for pre-trial disclosure to the accused so that they are informed of the case against them. An accused person is presumed innocent until proven guilty and also has a right to silence. Similar obligations for pre-trial disclosure by the defence therefore generally do not currently exist in Queensland and the accused has the right to test and examine the veracity of the evidence which the prosecution relies on to prove its case. That can include evidence about a person's identity such as human remains. There is also currently no time limit in the law as to when the defence needs to inform the prosecution or the court as to whether they wish for those tests to be done or not.

The government is committed to respecting, protecting and promoting the human rights of all Queenslanders. The *Human Rights Act 2019* (HR Act) was recently introduced by the Palaszczuk government. When it commences, the HR Act will protect 23 human rights, including that every person has the right to be brought to trial without unreasonable delay, the right to a fair hearing, and the right to be presumed innocent until proven guilty in criminal proceedings. The HR Act will ensure that people's fundamental rights are better protected in state law, that respect for human rights is embedded in the culture of the Queensland public sector and that public functions are exercised in a principled way that is compatible with human rights.

The government intends to undertake further analysis, research and consultation with key stakeholders, including the legal profession and homicide victim support and advocacy groups and the judiciary, about how best to implement the underlying intent of the coroner's recommendation.

On 24 November 2021 the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence responded:

The government agreed in principle that there should be a reasonable time limit imposed on the testing of human remains in criminal proceedings and that a deceased person's remains should be returned to their family and loved ones as soon as possible irrespective of whether there are related criminal proceedings on foot, particularly where the identity of a deceased person has been established with a high degree of certainty and is not in dispute.

Noting the complexity and sensitivity of this issue, on 19 November 2019 a commitment was given to undertake further analysis, research and consultation about how best to implement the underlying intent of the coroner's recommendation.

The government has undertaken consultation with key stakeholders and the judiciary seeking feedback about how best to implement the recommendation, including whether there are any other possible options to give effect to the underlying policy intent.

Having considered the results of consultation and human rights, the Department of Justice and Attorney-General commenced work on developing a model to implement the recommendation. Following further targeted consultation on the proposed model, the government has introduced amendments to the Criminal Code to insert a new provision, based on section 590AS, which specifically applies in relation to the viewing and examination of a deceased person's body and ensures that regard is had to the need to ensure the release of the body under the Coroners Act is not unnecessarily delayed. The amendment seeks to strike a balance between the timely return of a victim's body to their family and an accused person's right to a fair trial.

Subject to passage of the amendments by Parliament, the Department of Justice and Attorney-General will work, where necessary, with the state coroner and other relevant agencies to support implementation of the amendments.