

CLAUSE NOTES

Justice and Related Legislation (Miscellaneous Amendments) Bill 2025

PART 1 – PRELIMINARY

Clause 1 Short title

Specifies the name of the proposed Act.

Clause 2 Commencement

Provides that Parts 3 and 4 of the Act commence on the day on which the Act receives Royal Assent. Parts 2 and 5 commence on a day or days to be proclaimed.

Clause 3 Repeal of Act

This automatically repeals the amending legislation on the first anniversary after the Act commences. The provisions that are amended by this Act in the listed Principal Acts remain in force after the repeal of the amending Act.

PART 2 – CORONERS ACT 1995 AMENDED

Clause 4 Principal Act

Provides that the Principal Act being amended in this part is the *Coroners Act 1995*.

Clause 5 Section 58C inserted

Inserts section 58C which requires that certain records be provided to the senior next of kin in certain circumstances.

Senior next of kin is defined in section 3A of the Principal Act.

Subsection (1) provides definitions for “coronial authority” and “coronial record”. The definition of coronial authority is consistent with rule 26 of the *Coroners Rules 2006* and includes the Chief Magistrate or the coroner who has jurisdiction to investigate the death of the deceased person. The definition of coronial record includes the following records in relation to an investigation of a death under the Principal Act and held by the Coronial Division:

- A report, in respect of the investigation or death that is prepared by, or on behalf of the State Forensic Pathologist or a pathologist or medial practitioner approved under section 35 of the Principal Act;
- Any other record or document, including any photographs, that contains evidentiary material from the investigation or made under the Principal Act in relation to the investigation or death or is made as part of an autopsy performed under section 36 in relation to the death;

- Transcripts or recordings of oral evidence given to the court in respect of the investigation; or
- Any of the above records if the record can be provided lawfully to the Coronial Division under the Principal Act or any other Act.

This broad definition of coronial records captures a range of material including autopsy and other postmortem reports as well as photographs taken during an autopsy. These and other records may be either on the coronial file, or held by others such as pathologists and can be provided to the Coronial Division when a request under this section is received. The definition ensures evidence is included but other administrative documentation is not.

Subsection (2) provides that the senior next of kin may request to be provided with a copy of one or more coronial records prepared in respect of the deceased person.

Under subsection (3) a request is to be in writing to the coronial authority and may relate to a specific coronial record or all coronial records in respect of the deceased person to whom the request relates.

Subsection (4) provides that a coronial authority must provide a copy of the record within 28 days after the request is made or such later period as agreed between the person and the coronial authority. This is subject to subsection (5).

Due to the sensitive nature of coronial records and the often-complex circumstances in which coronial proceedings take place, subsections (5), (6), (7), (8) and (9) provide some limited restrictions to ensure an appropriate balance of the right to disclosure. Subsection (5) provides that a coronial authority may only refuse a request if satisfied on reasonable grounds that the:

- a) coronial record is unable to be released by virtue of section 57, or another provision in the Principal Act or any other Act; or
- b) release of the coronial record would be an unreasonable intrusion on the privacy of a person referred to in the record other than the deceased person to whom the request relates and contrary to the public interest due to that intrusion on the third person's privacy; or
- c) release of the coronial record would be likely to prejudice the investigation of a breach, or possible breach, of the law; the enforcement or proper administration of the law or the fair trial of a person; or
- d) release of the coronial record would be contrary to the administration of justice, national security or personal security.

For example, in circumstances where a coronial record discloses evidence relevant to criminal proceedings, a coronial authority may refuse to release a record as it may prejudice the fair trial of a person.

Ground (b) also recognises that there may be highly sensitive personal information about other people, living or deceased, in a coronial file and

it will not always be appropriate to release that information to a senior next of kin.

A power to redact or modify a record is provided in subsection (6). This enables the coronial authority to redact a record to the extent necessary, if the record would otherwise be prohibited from release due to one of the grounds in subsection (5).

Subsection (7) provides that the coronial authority may order that a coronial record released under this section not be published. “Publish” is intended to have the same meaning as in section 57 of the Principal Act. In this context it is intended to mean “public to the public generally”, for example in newspapers or on social media platforms. It is not intended to prohibit the sharing of the record between a few people.

Subsection (8) provides that a non-publication order under subsection (7) can only be made if the coronial authority is satisfied on reasonable grounds that the publication of the coronial record is contrary to the public interest. Due to the highly personal and sensitive nature of coronial records it may not be appropriate to have them published on social media or in newspapers in some circumstances. The public interest test requires the coronial authority to identify the relevant public interest considerations in favour of publication and restricting publication and determine which ones are outweighed.

Subsection (9) provides that it is an offence to fail to comply with a non-publication order imposed under subsection (7) punishable by a fine not exceeding 50 penalty units. This is the same penalty as under section 57, which applies to prohibited publication of reports.

Specific appeal provisions are provided in subsections (10)–(13). It provides that a senior next of kin aggrieved by one or more matters in respect of a request may appeal the matter. The following matters are appealable:

- a decision that a record is not a coronial record;
- a failure to provide a copy of the coronial record as required under subsection (4);
- a decision that one of the grounds to refuse a request applies in respect of a coronial record; and
- the making of a non-publication order.

Subsections (11) and (12) provide that an appeal is to be determined by the Chief Magistrate if the appeal relates to a decision of a coronial authority other than the Chief Magistrate and the Supreme Court if the appeal relates to a decision of the Chief Magistrate. If the appeal is determined by the Chief Magistrate, that decision can be further appealed by the Supreme Court.

Subsection (13) provides that a person determining an appeal may do one or more of the following:

- affirm or quash the decision to which the appeal relates;
- affirm, amend, revoke or substitute the order to which the appeal relates; or

- make any further orders as the person thinks fit in the circumstances.

PART 3 – CORRECTIONS ACT 1997 AMENDED

Clause 6 Principal Act

Provides that the Principal Act being amended in this part is the *Corrections Act 1997*.

Clause 7 Section 68 amended (Statutory non-parole period)

Omits “section 19 of the *Sentencing Act 1997*” from section 68(2)(b) of the Principal Act and substitutes it with “section 7 of the *Dangerous Criminals and High Risk Offenders Act 2021*”. This reflects the repeal of section 19 of the Sentencing Act, with the relevant reference now being section 7 of the Dangerous Criminals and High Risk Offenders Act.

Clause 8 Section 69 amended (Prisoner not to be released on parole in certain circumstances)

Omits “section 19 of the *Sentencing Act 1997*” from section 69(2) of the Principal Act and substitutes it with “section 7 of the *Dangerous Criminals and High Risk Offenders Act 2021*”. This reflects the repeal of section 19 of the Sentencing Act, with the relevant reference now being section 7 of the Dangerous Criminals and High Risk Offenders Act.

PART 4 – TASMANIAN CIVIL AND ADMINISTRATIVE TRIBUNAL ACT 2020 AMENDED

Clause 9 Principal Act

Provides that the Principal Act that is being amended in this part is the *Tasmanian Civil and Administrative Tribunal Act 2020*.

Clause 10 Section 98 amended (Representation)

Amends section 98(3) of the Principal Act by removing subsection (c), which currently prevents a legal practitioner subject to disciplinary proceedings under the *Legal Profession Act 2007*, or a similar law in another Australian jurisdiction, from representing a party in proceedings before the Tribunal.

Disciplinary proceedings are not necessarily an indicator of wrongdoing and the operation of subsection (c) may unfairly impact lawyers who are the subject of frivolous or vexatious disciplinary proceedings brought by third parties, or who are ultimately found to be not guilty when a complaint is finalised.

Section 98(3)(a) of the Principal Act will continue to prohibit a lawyer from representing a party in circumstances where that lawyer’s

practicing certificate has actually been suspended by the Legal Profession Board of Tasmania or its equivalent in another jurisdiction.

PART 5 – WORKERS REHABILITATION AND COMPENSATION ACT 1998

Clause 11 Principal Act

Provides that the Principal Act that is being amended in this part is the *Workers Rehabilitation and Compensation Act 1988*.

Clause 12 Section 3 amended (Interpretation)

Amends the definition of accredited person in section 3(1) of the Principal Act to include, in relation to the issuing of a certificate, a nurse practitioner acting in accordance with section 77I and a person accredited under section 77C and in any other case, a person accredited under section 77C.

Inserts a definition for nurse practitioner. It does not require a nurse practitioner to be practicing in Tasmania.

Clause 13 Section 77I inserted

Inserts section 77I providing that a nurse practitioner is accredited for the purposes of issuing a certificate under the Principal Act in certain circumstances. These circumstances include if the nurse practitioner is employed or engaged in an emergency department of a public or private hospital or in prescribed circumstances or for a prescribed purpose. This enables regulations to prescribe further circumstances or purposes as required in the future, for example to allow nurse practitioners to issue certificates in general practice clinics or day procedure centres.

Subsection (1)(b) provides that a nurse practitioner must act in accordance with their employment or engagement and within the scope of practice that applies to the nurse practitioner in issuing a certificate.

Subsection (1)(c) provides that a certificate must be issued in accordance with a protocol in force under subsection (3) at the time the certificate is to be issued.

The Secretary of the Department of Health is to prepare a certificate protocol which specifies the circumstances in which or conditions under which a nurse practitioner may issue a certificate under subsection (2). This may include for example a limit on the duration of the certificate and that it may only cover injuries that have not been previously treated. The Secretary may delegate the preparation of the certificate protocol to the Department of Health.

Subsection (3) provides that a certificate protocol must be approved by the Secretary of the Department of Health and the WorkCover Board before it is in force. In order to provide time for nurse practitioners to be notified of any changes under a certificate protocol, subsection (3)(b)

provides that a certificate protocol comes into force 7 days after it has been approved, or such later day as specified in the protocol.

A certificate protocol is to be published on the Department of Health's website while it is in force under subsection (3)(c).