

**JUSTICE AND RELATED LEGISLATION (MISCELLANEOUS
AMENDMENTS) BILL 2025 (No. 38)**

Second Reading

[3.13 p.m.]

Mr BARNETT (Lyons - Minister for Justice, Corrections and Rehabilitation) - Honourable Speaker, before I begin my second reading speech I acknowledge in the Chamber today Jason and Amanda Westbrook, Dontay and Sky as well, and Chase. I can't see Echo, but I think she's there as well; a couple of the grandkids. It is a very special day for the Westbrook family and of course many others as well.

Honourable Speaker, I move -

That the bill be now read the second time.

I am pleased to have the opportunity to speak to this important amendment bill. This bill contains amendments that update, clarify and improve four different acts, three of which are within my Justice portfolio and then the fourth Small Business, Trade and Consumer Affairs one that falls under the responsibility of the Minister for Housing and Planning.

In September last year, I informed the House that I was obtaining advice on the avenues available to family members to access coronial records. One of the amendments in this bill is made in response to that advice.

I take this opportunity to again acknowledge the Westbrook family and their continued efforts to advocate for an improved coronial system in Tasmania. Their advocacy was born out of the tragic loss of Eden Westbrook and it is recognised that they provide a unique perspective on coronial processes in Tasmania. My heartfelt condolences remain with the Westbrooks.

Members - Hear, hear.

Mr BARNETT - The Coronial Division of the Magistrates Court has an important role to play in Tasmania's justice system.

The remaining amendments in the bill arise from requests from the Tasmanian Civil and Administrative Tribunal, the Director of Public Prosecutions and WorkSafe Tasmania within

the Department of Justice. I will now outline the reasons for each of the proposed amendments in turn.

This bill amends the *Coroners Act* to insert section 58C that requires coronial records be provided to the senior next of kin in certain circumstances. The *Coroners Act* specifies that the senior next of kin is the first available person in a list contained in section 3A of the act, commencing with the deceased's current spouse. Section 3 of the act defines 'spouse' as including the other party to a significant relationship within the meaning of the *Relationships Act 2003*. The act sets out the procedures for investigations and inquests by coroners and in doing so allocates various rights to the senior next of kin. It is therefore appropriate to extend the amendment to this person.

Under general principles of law, the right of a senior next of kin can also be exercised by their nominated person or agent. This means a senior next of kin does not personally have to receive the records if they prefer another person, such as a trusted friend or adviser, to make the request and receive the record on their behalf. The amendment also does not prohibit the senior next of kin sharing the record with other people, for example, other family members, an independent expert or legal representative.

Some senior next of kin may wish to obtain a record without wishing to view it themselves, but in order to provide to another person. This can be dealt with administratively, for example, by the senior next of kin receiving a sealed envelope or electronic files in such a way that they do not have to view the records themselves.

I note that other persons may still apply for access to coronial records under Rule 26 of the Coroners Rules 2006.

Under section 58C, the senior next of kin may apply in writing for a coronial record. The definition of a coronial record includes any record held by the court in relation to an investigation of a death under the *Coroners Act* and includes a postmortem report, a document on the court's file and a transcript or recording of oral evidence given to the court. This definition includes all evidentiary material held by the court in relation to a coronial investigation of a death, including documents, photographs and other material of evidentiary value.

The definition also includes such records as can be lawfully provided to the court under this or any other act. This ensures that the court can obtain relevant information that it may not currently hold on the file to disclose to the senior next of kin. For example, this might include autopsy photographs held by the pathologist who informed the written report but are not on the court file.

A coronial authority may not refuse a request unless satisfied on reasonable grounds that release of the coronial record, firstly, is prohibited by the act or another act such as section 57 of the act which, when appropriate, restricts publication of reports of proceedings; or would be contrary to national security or personal security; or would prejudice the investigation of breaches of the law, the administration of the law, or a fair trial of a person. For example, it may be that certain information cannot be disclosed until related criminal proceedings are concluded. In the event that release of the record would be refused on these grounds, the coronial authority may redact the record to the extent necessary to enable the record to be released.

Honourable Speaker, the draft bill that was released for public consultation proposed an additional ground based on the impact to the health and wellbeing of the senior next of kin in receiving a coronial record. The draft proposed to refer a copy of the coronial record to a medical practitioner nominated by the senior next of kin. The intended purpose of this was to facilitate a discussion between the senior next of kin and medical practitioner about the record and provide an opportunity to discuss any medical terminology used. After the discussion, if the senior next of kin still wished to have a copy of the record, the medical practitioner could release it to them.

The bill before the parliament has been amended to remove this ground based on the feedback from Mr and Mrs Westbrook and consideration of submissions and approaches in other jurisdictions. This recognises that the question of whether to seek medical advice or counselling before viewing the records provided is ultimately a matter for the senior next of kin and not appropriate to mandate in the bill. The bill was also amended based on their feedback and with consideration of submissions and other jurisdictions to require the coronial authority to apply to all coronial records, not just postmortem records.

I have personally met with Jason and Amanda Westbrook, and I am grateful for the information they have shared with me and for the time they have taken to provide feedback on these amendments.

The bill also includes amendments which I moved on the Floor of this place on 6 May 2025 to ensure the rights of the senior next of kin to appropriate records are promoted. These amendments replace the power to impose conditions on the use or release of the record, with a power only to order that the record not be published, ensuring that use of records by a senior next of kin is not subject to other kinds of restriction.

Further, they insert a ground to refuse a request for a record if the coroner is satisfied on reasonable grounds that it would be contrary to the public interest to release the record due to the release having an unreasonable intrusion on the privacy of another person other than the deceased person to which the request relates. The record can still be released in redacted form. Finally, they insert an appeal provision to either the Chief Magistrate or the Supreme Court, so a senior next of kin has a clearer process for review of a coroner's decision.

These amendments passed this place unopposed. I thank members here today who participated in that vote for their support and collaborative approach.

I have continued to consider these issues, and I can advise the House that the bill contains a further amendment which was not included in its previous iteration before the previous parliament. This amendment requires the coronial record to be provided within 28 days after the request is made, or such longer period as is agreed with the senior next of kin, and an avenue for review if there is a failure to comply with that timeframe. This will ensure the timely provision of coronial records.

The amendments to the *Coroners Act 1995* provide for a clear and direct right of access by senior next of kin to coronial records. This is essential, in the spirit of open justice, to ensure transparency, accountability and public confidence in our justice system. I also hope that the provision of this material can provide some amount of closure to families following an investigation into a death.

I express my appreciation for the hard work of the chief coroner, the coroners, the coronial division and many others involved in this jurisdiction. They do a great service to the community, with over 1000 reportable deaths investigated in 2023-24 and 31 inquests that year. They have worked to facilitate access to records under their current practices and rules. They provide support to family members every day.

I particularly note the great initiative of a dedicated coronial liaison officer who assists family members to understand the coronial process and come to terms with the grief and trauma of losing loved ones. There have been understandable concerns in the community that the right balance of access to records has not been clearly provided for in the legislation to date. This bill gets the balance right, to ensure access to these records by senior next of kin, acknowledging the sensitive and private nature of these records. I am pleased that this bill provides certainty and clarity to the law for the community and the court.

Amendments to the *Corrections Act 1997*: part 3 of the bill makes minor technical amendments to update sections 68 and 69 of the *Corrections Act 1997*. These amendments reflect the repeal of sections 19 of the *Sentencing Act 1997* and the commencement of its replacement, section 7 of the *Dangerous Criminals and High Risk Offenders Act 2021*. Section 98 of the *TASCAT Tasmanian Civil and Administrative Tribunal Act 2020*, is about representation of a party to proceedings. It says that a party to proceedings before TASCAT is entitled to appear personally, be represented by a lawyer or, with leave of TASCAT, be represented by another representative.

The bill amends section 98(3)(c) to allow a lawyer subject to disciplinary proceedings under the *Legal Profession Act 2007*, or corresponding law in another state or territory, to appear as a representative. This prohibition is proposed to be removed on the basis that disciplinary proceedings are not necessarily an indicator of wrongdoing. It presupposes a finding of guilt before proceedings are resolved. Frivolous or vexatious disciplinary proceedings brought by third parties may unfairly impact upon lawyers, preventing them from appearing before TASCAT.

Under the *Legal Profession Act 2007*, the legal profession board of Tasmania may suspend a lawyer's practising certificate if they are subject to a disciplinary proceeding. In those circumstances, a lawyer will not be eligible to appear under section 98(3)(a) of the *TASCAT Act*. This remains unchanged.

Amendments to the *Workers Rehabilitation and Compensation Act 1998*: Currently, under the *Workers Rehabilitation Compensation Act 1998*, a workers compensation certificate must be signed by a medical practitioner. The amendment to this act inserts section 77I, which provides that, in certain circumstances, a nurse practitioner may also sign a workers compensation certificate. A nurse practitioner may issue a certificate if they are employed in an emergency department of a hospital or other prescribed circumstance, or for prescribed purposes and in issuing the certificate they are acting in accordance with that employment.

The bill also requires that the issue of any certificate may be in accordance with a certificate protocol. A certificate protocol must be prepared by the Department of Health and approved by the secretary of the Department of Health and the WorkCover Tasmania Board. It will outline the circumstances or conditions under which a nurse practitioner may issue a certificate: for example, that a certificate be time limited or relate to new injuries that have not been previously treated.

A certificate protocol will come into force seven days after it has been approved and must be published on the Department of Health website. This provides time for nurse practitioners to be notified. Nurse practitioners are advanced practice nurses, educated to a masters level in their specialty of practice. Nurse practitioners can assess and treat patients, order diagnostic tests and write prescriptions. This amendment will reduce duplication and service costs and result in a more efficient health system, as patients will no longer require reassessment by a medical practitioner for the purposes of a workers compensation certificate. It will also improve the patient experience, as an injured worker will no longer have to wait to see a doctor for that important piece of paper.

I thank members of the public who provided comments on this bill, as well as other justice stakeholders who were consulted during the drafting of this bill. Your feedback was carefully considered and is valued. It ensures that Tasmania's legislation is fit for purpose. I commend the bill to the House.

