DRAFT SECOND READING SPEECH

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Justice and Related Legislation (Miscellaneous Amendments) Bill 2024

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- Honourable Speaker, I move that the Bill now be read a second time.
- This Bill contains amendments that update and clarify five different Acts in my Justice portfolio.
- The Department of Justice has undertaken stakeholder and public consultation on the Bill, which was also released for consultation on the Department's website.
- Honourable Speaker, I will now address each of the proposed changes and outline the reasons behind them.

Amendment to the *Coroners Act 1995*

- Firstly, the Bill makes important amendments to the *Coroners Act 1995.* To set the scene for these amendments, I will first pay my great respect to the Coronial Division of the Magistrates Court, known simply as the 'Coroner's Court'. The Coroners Court performs crucially important work. While exercising independence in their findings, the role and function of the Court is of course guided by Government reforms to the legislation over time.
- I am very pleased to be introducing a further reform highlighting the importance of the ongoing work of the Coroners Court to address family violence when relevant in the deaths that come before them.
- To explain the role of the Coroner's Court, it investigates what are known as reportable deaths by collecting and examining evidence and making findings, either with or without inquest.
- As the Coroner's Court Handbook explains, there are a lot of people involved in this process, most importantly, the families and friends of people who have died suddenly. Often the coronial process is an emotional one and friends, families, employees and professionals and others touched by a death need many levels of help and support.
- The purposes and objectives of a Coroner's Court are varied and include:

    - finding out how and why a person died
    - learning from experience to help prevent similar deaths occurring
    - improving the accountability of Government services
    - allaying suspicions and fears
    - investigating deaths in public where appropriate
    - reinforcing the rule of law in democratic societies
    - providing quality assurance in the death investigation process.

- Coronial investigations involve a delicate balance between the rights of the public and the rights of the individual. It is important to protect the privacy of individuals, especially the deceased who can no longer speak for themselves. Families have a right to privacy and a period of grief, but often they feel the need to know what happened to their loved one. The promotion of public health and safety is amongst the most important roles for the coroner's court and sometimes the knowledge gained from a detailed investigation of a particular death can assist greatly in preventing deaths.

- The general Coronial process includes the key steps of reportable deaths being reported to the Coroner. These deaths cover a range of categories, but importantly all deaths that appear to be 'unexpected, unnatural or violent' or to have resulted 'directly or indirectly from an accident or injury'.

- There is a post mortem examination, which can confirm if a death was in fact due to natural causes. If so, the coronial process concludes.

- Otherwise, a preliminary investigation is undertaken. For example, witnesses are interviewed, statements taken, reports written, and evidence and documents gathered.

- The Coroner then decides whether to hold an inquest, or whether making a finding without inquest is sufficient. In either case, the Act requires a Coroner to make recommendations when appropriate to prevent further deaths or address other relevant matters.

- Findings considered in the public interest, particularly inquest findings, are published, with deidentification if necessary. There were over 130 findings published in 2022-2023. In 2021-2022 the Coroners received 880 reportable deaths, and finalised 19 inquests.

- The Coroner has discretion whether to hold an inquest, subject to section 24 of the Act, which identifies the circumstances where inquests must be held.

- Section 24 gives direction to those matters of justice or public policy where a public examination of the circumstances of the death is required.

- Apart from where the coroner suspects homicide, section 24 covers a range of factors including the deaths of persons who die while being held in care or custody, or at their place of work.

- As I said earlier, this Bill adds a further category where an inquest is required, being where the Coroner suspects that family violence materially contributed to the death.

- Of course, there are deaths caused by family violence which are homicides that are already required to be subject to inquest. However, it is important to provide that Coroners must decide to hold inquests into non-homicides where the Coronial investigation identifies evidence to found a reasonable suspicion that family violence materially contributed to the death.

- Currently, the Coroner may exercise their discretion to hold inquests in these circumstances. This amendment ensures that the decision to hold an inquest is made consistently.

- The test of 'material contribution' was finalised after the consultation period and further discussions. 'Material' includes things that are substantial, or of much consequence, under its common meaning for interpretation purposes.

- The Coronial Division already makes findings, with or without inquest, on deaths such as suicide, intentional or accidental drug overdoses, and accidents, where family violence may sadly have been a feature of the person's life to some degree.

- In the great majority of these, family violence did not substantially contribute to the death to such an extent that requires an inquest. For example, there may be many reasons for a person's state of mental health before a suicide, or accidental death.

- To set the threshold at any level of contribution of family violence to the death would make the level of evidence required for the threshold unclear. It would mean inquests would be held without any likelihood of that assisting the coroner, families or the public interest.

- Setting the threshold too low, and requiring inquests for no purposeful outcome, would add to the intrusion upon privacy and burden of grief of surviving family members unnecessarily.

- The threshold in the Bill has been finalised so that it requires appropriate evidence from the Coronial investigation to create a suspicion that family violence was a substantial contribution to the death. For a judicial officer, the statutory threshold of 'suspicion' requires the suspicion to be reasonable in the circumstances.

- Section 25(3) and the new 24B(2) of the Coroners Act enable a coroner to elect not to hold an inquest where certain criminal proceeding arising from the death has been conducted and the coroner considers that there is no longer sufficient cause to hold an inquest. This Bill also includes a new section 26B which further guides the coroner as to when it is appropriate to not hold an inquest where family violence contributed to the death.

- My objective in progressing this important reform is to ensure that we do have a consistent approach to inquests where the investigation gives the Coroner a reasonable suspicion that family violence was a substantial contribution to the death. Unlike the process of making findings without inquest, there is greater opportunity at inquest for evidence and witnesses to be examined, to inform any recommendations for preventing further deaths in future and any other matters the Coroner identifies.

- I thank the Coroners for their existing work in this area, and look forward to the continuing contribution they make to a fair, safe and just Tasmania.

- For cases not captured by the amendment, Coroners will of course retain their discretion to hold an inquest in any event. There are also existing provisions by which family members can request an inquest be held. As Members know, I am also prepared to exercise my power and responsibility as Attorney-General to direct that an inquest be held if I consider it appropriate.

- The other amendments to the Coroners Act address previous comments from a Coroner that the provisions in section 25(4) were difficult to understand and apply. Section 25 provides that in particular criminal proceedings, a coroner may resume an inquest after the proceedings if there is cause to do so. Section 25(4) provides the findings after inquest must not be inconsistent with the determination of the proceedings.

- This is an important principle of law. An inquest after criminal proceedings may make many relevant findings, particularly of a systemic nature to avoid future deaths, but should not undermine confidence in the criminal courts. To clarify what 'determination' means in

section 24, the amendment substitutes a new clause to clarify the findings must not be inconsistent with the facts as determined during the proceedings.

- As section 25 only applies to inquests that had commenced before criminal proceedings adjourned the inquest, a new section 24B includes similar provisions for inquests that start after criminal proceedings.

- Finally, the amendments clarify the circumstances when an inquest that is otherwise required to be held under section 24 may not need to proceed.

Amendment to the *Criminal Code 1995*

- The Bill makes 3 amendments to the *Criminal Code 1924*.

- It clarifies the Governor's power to appoint Crown Law Officers.

- Recent advice about the power of the Governor to appoint Crown Law Offers is that power to appoint derives from section 5 of the *Australian Courts Act 1828 (Imp) 9 Geo IV*, rather than any provision within the *Criminal Code 1924*.

- The amendment clarifies the appointment power by transferring it within the Code. The amendment does not interfere with any existing appointments.

- The Bill creates two indictable offences to mirror summary offences in section 72 and 74 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*. The indictable offences relate to the production or possession of bestiality products.

- The Bill removes the provisions relating to blasphemy. This reflects that the last successful prosecution for blasphemy was in 1871, no longer exists in some Australian jurisdictions, and law reform processes have recommended blasphemy offences be abolished.

- I note that the version of this Bill that was tabled last year included an amendment to section 371 to include a crime relating to family violence, and the crime of persistent family violence. Section 371A currently only applies to sexual crimes, and rape, abduction, stalking and bullying.

- Under section 371A, a judge gives a warning to the jury that absence of complaint or delay in complaining does not necessarily indicate the allegation is false; and informs the jury there may be good reasons why such a person may hesitate in making, or may refrain from making, a complaint.

- This section ensures the jury is aware that a complainant's evidence should not necessarily be discredited due to a delay.

- Amendment to section 371A will now progress in a Bill scheduled for June that progresses Commission of Inquiry amendments. This allows the amendments to be expanded to protect victims of family violence and sexual offences in a broader manner.

- The expanded amendment to section 371A will reflect the Government's commitment to improving the law for victims of family violence and child sexual offences.

Amendment to the *Legal Profession Act 2007*

- The Bill amends the *Legal Profession Act 2007* to clarify that the current provisions for the Attorney-General to approve an amount to be paid from the Solicitors' Guarantee Fund to meet the costs of the Legal Profession Board can be exercised if the Fund is reduced below the maintenance amount determined by the Attorney-General and the Trust, which administers the fund (currently $11m). It does not allow the Fund to reduce below the minimum amount in s 358(3)(a), which is $3.5m. This amendment supports the purposes for which the Fund is to be applied under section 358, including funding the Board.

Amendment to the *Police Offences Act 1935*

- The Bill makes two amendments to this act.

- It amends section 35 to ensure there is no time limit for commencing prosecutions of 'indecent assault' under section 35, with retrospective effect to historical offending and validation of any proceedings commenced since 20 April 2023, consistent with the intention of amendments to that section that commenced on 20 April 2023.

- The Bill also removes the 'blasphemous language' from the offence of prohibited behaviour in section 12, for consistency with the Criminal Code amendments.

Amendment to the *Variation of Trusts Act 1994*

- The Bill amends section 5 to remove doubt about making applications under the Act to vary charitable trusts established prior to the introduction of this Act.

- Honourable Speaker, I commend the Bill to the House.