

# DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

## *Validation Bill 2023*

*\*check Hansard for delivery\**

Mr Speaker, I move that the Bill now be read a second time.

The Validation Bill 2023 appropriately addresses two technical but separate issues that have come to light. The Bill validates appointments of the State Forensic Pathologist under the *Coroners Act 1995* (Coroners Act); and provides that the Law Society By-laws 2010 (By-laws) are taken to have been validly made.

### ***Coroners Act***

The first issue that the Bill addresses are appointments of the State Forensic Pathologist under the Coroners Act.

The Coroners Act provides that the State Forensic Pathologist is a State Service officer or employee appointed by the Minister for Justice. The Department of Health employs a senior forensic pathologist, currently titled Director - Statewide Forensic Medical Health Services. The duties of that position (and its predecessors) include performing the duties of the State Forensic Pathologist, and the position in practice has fulfilled the role of the State Forensic Pathologist.

For almost three decades, the State Service position and the statutory office were in practice treated as one and the same, to the extent that appointment to the State Service position was taken to be an appointment as State Forensic Pathologist.

That is, the need for an appointment of the State Service employee under the Coroners Act was overlooked. While errors of this nature are rare and indeed can be puzzling in hindsight, it is not unusual for such administrative oversights to arise and require validation from time to time.

Once the issue was identified, a review confirmed that no record of an appointment of the Department of Health's officer to the statutory office of State Forensic Pathologist could be found prior to an appointment made on 15 August 2022.

The validating provisions in the Bill follow an approach that is consistent with prior validating legislation where issues with statutory appointments have been identified.

As I have said, this oversight goes back almost three decades since the commencement of the Coroners Act, across multiple governments. Once administrative errors of this nature are identified, good governance requires correction. This Bill will validate the appointments and actions taken by people undertaking the role of the State Forensic Pathologist over this time. It is important that such appointments and actions are beyond any legal doubt.

The functions of the State Forensic Pathologist under the Coroners Act include: to oversee and co-ordinate forensic pathology services; to undertake coronial autopsies; to issue guidelines to approved pathologists for undertaking coronial autopsies; to attend at scenes of homicides and other suspicious deaths; to provide expert evidence to magistrates, coroners and the courts; and to ensure that the provision of forensic pathologist services is administered and operated efficiently.

Mr Speaker, I would like to emphasise that the people appointed to the Department of Health positions were all appropriately qualified and senior forensic pathologists, and there is no concern with any of their actions taken during this period.

I would also like to take this opportunity to thank the state servants who have undertaken this important role and function.

The Bill provides the circumstances where the Minister is taken to have validly appointed a person to the position of the State Forensic Pathologist.

The Bill also validates the functions and powers exercised by these people, who reasonably believed they had also been appointed as the State Forensic Pathologist. This relates to functions performed or powers exercised by the person in good faith.

The Bill also contains an avoidance of doubt provision, making it clear that the validation extends to approval of pathologists or medical practitioners to undertake coronial autopsies. These approvals are given by the State Forensic Pathologist.

### ***Law Society By-laws***

Mr Speaker, the second issue that the Bill addresses relates to a procedural error by the Law Society of Tasmania when making the *Law Society By-laws 2010* in 2012, which affects their historical validity. As they commenced in 2012, the Bill refers to them as the 2012 By-laws.

This is a historical issue, as the new *Law Society By-laws 2023* were recently made, with effect from 1 February 2023.

The 2012 By-laws provided for administrative matters relating to the operation of the Law Society.

The procedural error affecting the 2012 By-laws is that they were gazetted one day before they were made, rather than within 21 days of them being made, as required by the *Acts Interpretation Act 1931*.

The Law Society requested that the operation of the By-laws be put beyond technical challenge by the passage of validating legislation.

The Bill provides that the 2012 By-laws are taken to have been validly made, and in force, for the period 1 December 2012 to 31 January 2023.

As a consequence of this, the Bill also provides that actions taken under the By-laws are not invalid solely on the basis of being taken during that period where the By-laws' invalidity arose. In effect, these actions are valid where otherwise properly taken.

The relevant actions are listed in the Bill. They include decisions made by the Council, an election, a general meeting, the suspension of a person's membership, payment of fees and fixing of the common seal, in accordance with the By-laws.

The Bill provides certainty for administrative actions undertaken by the Law Society during this period.

As I have said, new *Law Society By-laws 2023* have been correctly made. They were gazetted on 25 January 2023 and commenced on 1 February 2023.

In conclusion, the Bill was developed with input from the Department of Health, the Coroners Court and the Law Society of Tasmania.

The Bill is to commence on Royal Assent.

Mr Speaker, I commend the Bill to the House.