SECOND READING SPEECH

Coroner's Amendment Bill 2014

Madam Speaker

The purpose of this Bill is to amend the *Coroners Act* 1995 to improve the efficiency and the quality of the service delivered by the Magistrates Court (Coronial Division) and to reduce delays in finalising coronial cases.

The changes have been recommended by the Chief Magistrate.

The proposed amendments include provisions more clearly to specify when deaths related to medical procedures are reportable and assist medical personnel by clarifying their obligations under the Act; to update the Principal Act to take account of social changes which have occurred since the Principal Act was drafted; and to clarify some aspects of coroners' powers.

I now turn to the provisions of the Bill.

This Bill will amend the definition of "reportable death" expressly to include some deaths which arise from medical or health care.

At present, the *Coroners Act* makes it mandatory to report a person's death to a coroner or a police officer if the death occurs in specified circumstances. A death in one of those circumstances is referred to, and defined as, a "reportable death".

A general and broadly expressed category of "reportable death" is that defined as a death which appears to have been unexpected or unnatural or appears to have resulted directly or indirectly from an accident or injury.

That description would apply to many of the deaths which are subject to an inquest, including perhaps a death related to medical treatment.

In order to remove any doubt about whether the general provision might be relied upon to include a death related to medical treatment where specific provisions are provided for that purpose, it would be preferable if the Act specified when deaths

related to medical procedures were reportable. This would assist medical personnel to clearly understand their reporting obligations, a matter which is currently the source of some confusion and concern.

Currently, the specific categories of medical treatment that are included in the definition of "reportable death" are limited to deaths associated with anaesthesia or sedation.

The specific medical categories do not, for example, encompass deaths from misdiagnosis or an error in administering medication.

On the other hand, they operate to include the death of a terminally ill elderly cancer patient, where death is entirely expected, simply because a sedative was administered as part of palliative care treatment.

The majority of other States have adopted a provision which makes reportable, a death which occurs during or following any medical procedure, but only in circumstances where a registered medical practitioner would not have reasonably expected the death as an outcome of that procedure.

The Victorian *Coroners Act* 2008 provides a clear and workable approach to dealing with these issues in the way that it specifies the circumstances in which medically related deaths are defined as "reportable deaths" and the amendment in this Bill has been modelled on the approach taken in the Victorian Act.

The Bill will also amend the definitions of the terms "investigation" and "inquest". In the Principal Act the terms are defined so as to be used interchangeably and that has created some level of confusion.

The coronial process clearly involves two parts: an investigation and an inquest. The word "investigation" does not require statutory definition as its ordinary dictionary meaning is clear and the Bill deletes the current definition of "investigation".

The definition of the term "inquest" will be amended and expressed in similar terms to that used in the Victorian *Coroners Act* 2008 to mean a public inquiry that is held by the Magistrates Court, Coronial Division, in respect of a death, a fire, or an explosion.

Under the Principal Act it is necessary for various reasons to be able to establish who is the "senior next of kin" of a deceased person. For example, there are statutory notification requirements to the "senior next of kin" and that person has a statutory right to apply to the Supreme Court for an order that an inquest be held, if a coroner makes a decision not to hold one.

The Principal Act contains an exhaustive list in the definition of "senior next of kin" to enable an easy determination of who this may be. However, in this day and age it is entirely possible for a deceased person to be survived by two (or even more) "spouses". For example, a deceased person may be survived by an estranged husband or wife and by a person who was in a significant relationship with the deceased person immediately before their death.

There is a precedent in the Tasmanian *Intestacy Act* 2010 which provides for the situation where a deceased person is survived by multiple "spouses".

This Bill will amend the Principal Act by adopting the New South Wales solution that, where more than one person would qualify as the deceased person's spouse, the most recent person to so qualify will be recognised as the senior next of kin.

This amendment will clarify a situation that may otherwise lead to unnecessary disputes.

This Bill will also rectify an apparent inconsistency and vagueness in the conferral of jurisdiction to hold an inquest in differing circumstances.

A coroner is empowered to "investigate" a death if it appears that it is, or may be, a reportable death within the meaning of the

Principal Act (section 21) and section 24(1) confers on a coroner power to hold an inquest but only in circumstances where an inquest is mandatory.

Although section 26 of the Principal Act implies that a coroner may determine whether or not to hold an inquest, at present there is no provision which expressly confers a general power on a coroner to do so.

This Bill will amend the *Coroners Act* expressly to confer upon a coroner a general discretionary power to hold an inquest into a reportable death.

This Bill will also amend section 28 of the Principal Act by repealing subsection (1)(f) of that section.

A coroner does not have, and has never exercised, jurisdiction to make findings of fault and the coroners have requested that section 28(1)(f) be removed from the Act. As it stands section 28(1)(f) states that a coroner must identify any person who contributed to the cause of death.

A coroner makes findings of fact concerning actions that may have contributed to a death but the naming of a person requires a coroner to make a finding of fault which is the function of a criminal or civil court.

Repealing section 28(1)(f) will not alter the operation of a coronial inquiry and coroners will continue to make findings of fact in relation to the circumstances surrounding a person's death.

The Bill will amend references to the Crown in sections 60, 61, 62 and 63 of the Principal Act.

Sections 60, 61, 62 and 63 currently refer to "the Crown" as being entitled to make an application and also to be heard on applications made by others.

In practice, if the Coroner's Court has considered that the Crown may wish to be involved in the coronial process, it has served notice and any formal documentation on the Director of Public

Prosecutions. The Coroner's Court has advised that the DPP has expressed doubt about whether the DPP in fact constitutes the Crown for this purpose and has suggested that instead of the Crown, which could be constituted by any Minister, the Attorney-General would be the relevant Minister in this circumstance.

As it is the DPP who has the relevant expertise to consider whether or not an application is warranted in any particular circumstance or to determine to apply for review of an order made under section 60, 61 or 62, it would be appropriate that the power to make such applications and be heard with respect to those matters, rest with the DPP. The relevant documentation could then properly be served directly on the DPP.

Finally, when section 12 of the Principal Act was repealed in 2005 the repealing Act overlooked the reference to section 12 in the definition of the term "coroner". This Bill deletes that reference.

I commend this Bill to the House.