

CORONERS AMENDMENT BILL 2001

Explanatory Notes

Clause 1 Short title

Short title of the Act.

Clause 2 Commencement

The Act comes into operation on a date fixed by proclamation, as it will be necessary to prepare and promulgate regulations to support the amendments contained in clause 11 of the Act.

Clause 3 The Act amended

The various amendments proposed throughout this Act in clauses 4 to 15 (inclusive) are amendments to the *Coroners Act 1996*.

The amendments proposed in clause 16 of this Act are amendments to the *Evidence Act 1906*.

Clause 4 Section 3 amended

Section 3 of the *Coroners Act 1996*, which contains the definitions of words and phrases used throughout the Act, is amended to:

- include “Deputy State Coroner” in the definition of “Coroner” to rectify an earlier omission; and
- substitute the reference relating to persons detained under the *Mental Health Act 1962* in the definition of “person held in care” as the present definition relates to the 1962 Act which was repealed and replaced by a new Act in 1996. The proposed definition cites the new Act and uses terminology consistent with the provisions of that Act.

Clause 5 Section 11 amended

At present the position in relation to all coroners, apart from the State and Deputy State Coroner, is that they are coroners by virtue of being a magistrate pursuant to section 11 of the *Coroners Act 1996*. The Act does not provide for the appointment of other persons as a coroner. The State Coroner has identified that there may be, in respect of a particular inquest, a benefit of appointing a person to be a coroner who is not already a magistrate. In the case of a particularly complex or unusual inquest, there may be benefit in appointing a person with particular background to conduct the inquest. Also, where the State and Deputy State Coroners may not be available due to their involvements in lengthy inquests, and no magistrates are available to be assigned the function, it would be helpful if a person other than an existing magistrate could be appointed as a coroner.

The amendments to section 11 provide for Attorney General, on the recommendation of the State Coroner, to appoint a person to be a coroner for a specific period and on terms as specified in the appointment. Such a person would need to be qualified for appointment as a magistrate and when appointed would have the same immunity and protection as all other coroners.

Clause 6 Section 14 amended

Section 14 presently provides for the appointment of persons to be coroner's investigators. Members of the Police Service, who by virtue of this section are contemporaneously coroner's investigators, are issued with and are required to produce, if requested, a Police Service identity card.

The section presently does not contain provisions for the issue of an identity card to a person who is appointed as an investigator and is not a member of the Police Service. This amendment will provide for the issue of such an identity card so that an investigator, who is not a member of the Police Service, can identify themselves when attending at a place where a body has been located or it is believed a death occurred. A requirement that such identity card be returned to the State Coroner upon the person ceasing to be an investigator is included along with a penalty for failure to return an identity card.

Clause 7 Section 24 amended

Practice has shown that the specification of "7 days", as prescribed in section 24 (1)(b) as the time in which a coroner must respond with reasons to a request to conduct an inquest if the request is to be refused, is not practical. It often takes several months for initial police investigations to be completed before the coroner is in a position to comment on whether or not it is believed an inquest should be conducted. Section 24 (1)(b) is therefore amended to provide that in lieu of "7 days", a coroner respond "within a reasonable period". This amendment is in line with the Victorian experience that saw their Act similarly amended.

Not infrequently, difficulties are experienced in responding to verbal requests relating to inquests. This is primarily due to verbal requests not containing sufficient information or being misconstrued as an inquiry seeking information rather than a request of an inquest. In order to reduce the incidence of misunderstanding, or confusion by persons inquiring, and to provide information on which a reply can be accurately based, subsection (1a) has been inserted to provide that all requests are to be in writing and are to contain reasons.

As a protection against "reasonable time", that has been inserted in subsection (1)(b), becoming "unreasonable", provision has been included in subsection (2) that if a coroner has not responded within 3 months of having received a written request, an application may be made to the Supreme Court for an order that an inquest be held.

Clause 8 Section 26 amended

Section 26(3) is repealed and a new section 26A is included to address the issues relating to access by senior next of kin to evidence obtained. Further explanation is included in the following clause note.

Clause 9 Section 26A inserted

This section is inserted to replace section 26(3) that is now repealed by clause 8. The existing provisions in section 26(3) are ambiguous and use terminology in a manner inconsistent with that used in subsection (1) and (2) of the same section.

In subsections (1) and (2) the “record” of the investigation into the death it is clearly intended to refer to a recording of findings and comments of the Coroner on a prescribed form. In subsection (3) the reference to “record” of the investigation into a death includes evidence obtained.

In addition, section 26(3) is unclear as to at what stage the senior next of kin of a deceased would be entitled to obtain copies of documents.

In order to address the proper intention of section 26(3), that a senior next of kin have reasonable access to the results of the investigation into a death, new section 26A is inserted. This will allow the senior next of kin to have access to evidence obtained for the purposes of investigating the death. In such circumstances the Coroner is to give that person access to the evidence, unless the Coroner believes that it is not desirable or practicable to do so.

This provision will allow families to have reasonable access to the results of the investigations, but not necessarily copies of all documents. In any event, prior to every inquest hearing copies of all necessary documents for use at the hearing are made available to interested parties including the senior next of kin.

Clause 10 Section 27 amended

Section 27 (5) is amended by deleting the word “must” and replacing it with “may” thus rendering it discretionary rather than mandatory for a coroner to make a report to the Commissioner of Police or Director of Public Prosecutions. The present situation requires a report to be made notwithstanding that a coroner may be satisfied that a proper and thorough investigation of the circumstances of the death had been conducted and that any decision not to prosecute was appropriate and proper. This results in additional unnecessary work being placed upon coroners and other agencies.

This amendment will allow a coroner to report to the relevant authority if at the conclusion of the coroner’s investigation it is considered that the police investigation had not been sufficiently thorough, the decision not to prosecute or indict was not appropriate, or additional evidence became available at the hearing which was not previously available to the investigating or prosecuting authorities. If all these issues have been properly and appropriately addressed a coroner will not be required to make a report.

Clause 11 Section 33 amended

Section 33 is amended by adding new subsections (2a) to (2e) inclusive, amending subsection (5) and adding subsections (7) and (8).

The amendments contained within subsection (2a) will empower police officers and other coroner’s investigators, who attend at the scene of a death, or where a body has been located, or where in the opinion of the investigator the event which caused or contributed to the death occurred, to enter and inspect any such place. It will also allow them to seize anything reasonably believed to be directly relevant to an investigation of a death without the need to apply for a warrant. This amendment formalise the present “unofficial” practice and removes the danger of a subsequent prosecution, for an offence related to the death, failing due to the unauthorised seizure of evidence.

Subsection (2b) requires that anything taken by an investigator be to be kept and dealt with in accordance with the regulations until the investigation of the death is finished or it is decided that there is no jurisdiction to investigate further.

Subsection (2c) requires a coroner's investigator, who is not a police officer in uniform, to produce identification prior to exercising any of the powers provided above.

Subsection (7) provides that a person must not obstruct or otherwise hinder a coroner or coroner's investigator, exercising their power under this section, and inserts a penalty of \$2000 that may be imposed upon a person who so obstructs or hinders.

A statutory obligation is imposed on coroner's investigators under subsection (8) to ensure that as far as is practicable, they conform to reasonable requirements of the owner/occupier of any place where the powers of entry, inspection and seizure are being exercised so as to limit the extent of obstruction to the lawful use of the place.

Clause 12 Section 37 amended

Subsection (5) which prescribes those persons deemed to be "senior next of kin" for the purposes of objecting to the conduct of a post mortem and subsection (6), which specifies that a "spouse" is a person of the opposite sex to the deceased, are repealed.

A new subsection (5) is inserted into section 37 providing a revised priority as to who is deemed to be a "senior next of kin". It now includes any person who was living with the deceased immediately before death in a marriage like relationship whether or not they were of the same sex. The section as amended will now include married partners and defacto partners and will not differentiate whether or not they were of the same sex.

Clause 13 Section 38 amended

During the course of preparing the foregoing amendments it was noted that in subsection 38(9) there had been technical drafting error in that the subsection refers to "section 38" whereas more correctly it should refer to "this section". This amendment is merely a technical drafting amendment.

Clause 14 Section 62 replaced

The existing section 62 of the 1996 Act contains a savings provision that was designed to be a transitional protection for the conduct of investigations and inquests into deaths and fires reported prior to the commencement of that Act. Any deaths or fires reported prior to the commencement of the 1996 Act were to be dealt with in accordance with the provisions and procedures contained within the repealed 1920 Act.

Due to the lapse of time since the 1996 Act was proclaimed it is now no longer considered necessary to continue the transitional savings provisions. Section 62 is therefore amended to provide that the 1996 Act will apply to all deaths whether or not they were reported prior to the proclamation of that Act. A savings protection will however, continue with regard to any inquest that has been commenced under the 1920 Act and not finalised at the time of proclamation of these amendments.

It is not considered necessary to continue any savings provisions with regard to the investigation of fires reported prior to the commencement of the 1996 Act.

Clause 15 Section 3 of the Evidence Act is amended

Section 3 of the *Evidence Act 1906* is amended to include within the definition of “judge” a coroner within the meaning of the *Coroners Act 1996*. This amendment is necessary to overcome an omission that occurred at the time of drafting the *Coroners Act 1996*. Provision was not then made for the State Coroner to issue an order, in accordance with section 51 of the *Evidence Act*, directing a gaoler to produce a person at an inquest hearing.