

CORONERS AMENDMENT BILL 2017

EXPLANATORY MEMORANDUM

Overview of the Bill

Over the past few years there have been several reviews of the functioning of the coronial jurisdiction in Western Australia including by Michael Barnes, State Coroner NSW, whose report *Review of the Coroners Act 1996 (WA)* was published in August 2008 and the WA Law Reform Commission which published its report *Review of Coronial Practice in Western Australia* in 2012.

The LRCWA investigated and carried out research and consultations which identified a number of problems affecting the coronial system in Western Australia including lengthy delays in completion of coronial cases which exacerbates the distress of grieving families.

The amendments proposed by the Coroners Amendment Bill 2017 (WA) will reduce delays and remove the current unnecessary impost on the resources of the Office of the State Coroner and the Western Australia Police.

Deaths due to natural causes do not come within the coronial jurisdiction and therefore are not required to be reported to the Office of the State Coroner.

However, the Act imposes an obligation to report a death from natural causes if there is any perception that the death was unexpected, unnatural or violent or to have resulted, directly or indirectly from injury.

There are a large number of deaths each year reported to the coronial jurisdiction which on forensic examination are found to be due to natural causes and therefore non contentious.

Currently, notwithstanding that it is open to make a determination that the death was due to natural causes the State Coroner and therefore officers of the Coronial Investigation Squad (WA Police) are statutorily required to fully investigate the circumstances of the death which will involve seizing medical records, obtaining reports, taking statements from the hospital staff, family and witnesses.

The continuation of the investigation of a death from natural causes is a waste of limited resources, causing delays on important investigations and is unnecessarily intrusive for the family of the deceased

The proposed amendments will remove the obligation to investigate, or continue to investigate, where the death was due to natural causes and comes within the definition of a reportable death solely because it appears to have been unexpected. The obligation to investigate remains where there is a duty to hold an inquest or where the death occurred during anaesthetic.

The proposed amendments will also remove the obligation upon the coroner to include a detailed exposition, a "narrative" where there is no duty to hold an inquest and the coroner determines that there is no public interest in making a detailed finding into how death occurred.

As with the previous proposed amendment this also seeks to implement the LRCWA objective to 'reduce delay in the coronial process

Clause Notes

Clause 1: Short title

Clause 1 provides that the Bill, once enacted will be known as the *Coroners Amendment Act 2017*.

Clause 2: Commencement

Clause 2 makes provision for the commencement of the Act. Clause 2(a) provides that sections 1 and 2 will commence on the day the Act receives the Royal Assent. Clause 2(b) provides that the rest of the Act will commence on the day after receiving the Royal Assent.

Clause 3: Act amended

Clause 3 provides that the amendments are to the *Coroners Act 1996*.

Clause 4: Section 19A inserted.

Clause 4 inserts the new section 19A which will remove the obligation on the State Coroner to investigate, or continue to investigate, where the death was due to natural causes and comes within the definition of a reportable death solely because it appears to have been unexpected.

Clause 4(2) makes a written opinion from the forensic pathologist that the death is due to natural causes or consistent with natural causes a pre-condition for a determination by a coroner that a death was due to natural causes or consistent with natural causes.

Clause 4(3) prescribes that where there is a duty to hold an inquest into the death or if the death occurred under anaesthetic then the investigation must continue.

Clause 4(4) prescribes that where a determination is made that the death was from natural causes and reported only because it was unexpected the coroner must notify the Registrar of Births, Deaths and Marriages as soon as possible the particulars (if any), found by the coroner needed to register the death.

Clause 5 Section 25 amended.

Section 25(1) provides that the State Coroner is statutorily obliged to investigate all reported deaths and to find, if possible:

- the identity of the deceased;
- the cause of death;
- how the death occurred; and
- the particulars needed to register the death under the *Births, Deaths and Marriages Registration Act 1998* (WA).

Clause 5 inserts new subsection 25(1A) to remove the obligation to make a finding as to how the death occurred where there is no duty to hold an inquest into the death and the coroner determines there is no public interest to be served in making a finding as to how the death occurred.

Clause 6: Section 28 amended

Clause 6 inserts in section 28(1) after “particulars” (if any) to achieve drafting consistency with the new section 19A.