

CORONERS BILL 2002

EXPLANATORY NOTES

AMENDMENTS TO BE MOVED IN COMMITTEE BY THE HONOURABLE ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

General Outline

Title of the Bill

Coroners Bill 2002

Objectives of the Amendments

A number of people provided further comments on the Bill following its introduction.

Those comments highlighted the need to:

- make it clear that the *Recording of Evidence Act 1962* governed the recording of proceedings in the Coroners Court and access to copies of the transcriptions of the recording of proceedings made
- provide some additional safeguards for the exercise by police of the powers they are given under the Bill to assist coroners
- extend the definition of family member to provide for other relatives in certain circumstances.
- make a number of technical amendments to the Bill.

Achievement of the Objectives

The objectives are being achieved by:

- inserting a new clause 37A to provide that:
 - proceedings in the Coroners Court are to be recorded under the *Recording of Evidence Act 1962*

- subject to an order by the Coroners Court and the requirements of the *Recording of Evidence Act 1962* (for example the payment of the relevant fee), anyone can obtain a copy of the record made under the *Recording of Evidence Act 1962* (Note: the amendment to the Dictionary in Schedule 2 defines “record” made under the *Recording of Evidence Act 1962* to include a transcription of the record.)
- amending proposed new section 371AD of the *Police Powers and Responsibilities Act 2000* to provide:
 - extra requirements for the coroner’s search warrant, namely that the warrant must state brief particulars that identify the death that the coroner is investigating and the evidence that may be seized under the warrant; and
 - that the coroner’s search warrant only has to state the hours the place may be entered when the warrant is being executed at night. (This is consistent with the general warrant requirements of section 73(1)(d) of *Police Powers and Responsibilities Act 2000*.)
 - a police officer cannot exercise the powers under the section to inspect, take things for testing and copy documents under the clause unless the police officer reasonably suspects that the exercise of the powers is necessary for the coroner’s investigation.
- amending proposed section 371AF of the *Police Powers and Responsibilities Act 2000* to provide that police must inform persons that:
 - they do not have to incriminate themselves;
 - they can get legal advice as part of the requirementas part of the requirement to provide information (as opposed to doing this after there has been a failure to comply which is currently the case under the Bill)
- providing in the definition of a “family member” that if a spouse, adult child, parent or adult sibling is not reasonably available, family member can also mean the next nearest adult relative of the deceased person
- making a number of technical amendments to the Bill including amending the transitional provisions regarding payment of fees

for access to documents under the *Coroners Act 1958* and defining what “not reasonably available” means in the definition of “family member”.

The amendments also amend the *District Court of Queensland Act 1967* as a result of the *Sexual Offences (Protection of Children) Amendment Act 2003*.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways of achieving the policy objectives.

Estimated Cost for Government Implementation

There should not be any cost to government associated with implementation of the amendments.

Consistency with Fundamental Legislative Principles

The amendments are consistent with fundamental legislative principles. The amendment to proposed section 371AF of the *Police Powers and Responsibilities Act 2000* provides greater reinforcement of section 4(3)(f) of the *Legislative Standards Act 1992* (appropriate protection against self-incrimination) by providing that police must inform persons that:

- they do not have to incriminate themselves;
- they can get legal advice

as part of the requirement to provide information (as opposed to doing this after there has been a failure to comply which is currently the case under the Bill).

Consultation

Queensland Health and the Queensland Police Service were consulted in relation to the proposed amendments.

NOTES ON PROVISIONS

Amendment 1 amends clause 2 of the Bill to provide that the amendment to the *District Court of Queensland Act 1967* contained in Schedule 1 (inserted by amendment 12) commences on 1 May 2003.

Amendment 2 amends clause 7 of the Bill to make it clear that a police officer has to “on report” to a coroner every death that is reported to the police officer under the section and not just deaths that the police officer might determine are reportable. It is for the coroner, not the police officer, to make a determination as to whether a death is a reportable death. The clause is still subject to clause 7(4) which provides for what happens where the death is reported to a police officer because a cause of death certificate has not issued and is not likely to be issued.

Amendment 3 amends clause 28 by deleting paragraph (a) of clause 28(2) which provides that in deciding whether it is desirable to hold an inquest the coroner may consider the wish of any family member that an inquest be held. The paragraph is being deleted because it is superfluous given that clause 30 of the Bill allows any person (which obviously includes a family member) to apply to the coroner to hold an inquest.

Amendment 4 inserts a new clause 37A to provide:

- the Coroners Court can decide whether pre-inquest conferences are to be recorded under the *Recording of Evidence Act 1962*;
- proceedings in the Coroners Court must be recorded under the *Recording of Evidence Act 1962* ; and
- subject to an order by the coroner under section 40 and the requirements of the *Recording of Evidence Act 1962*, anyone is entitled to obtain a copy of the record under that Act. This includes a copy of the transcription of a record because Amendment 20 inserts in to the Dictionary in Schedule 2 a definition of record under the *Recording of Evidence Act 1962* to include a transcription of the record.

The requirements of the *Recording of Evidence Act 1962* include the regulations under the *Recording of Evidence Act 1962*. The regulations determine the fees payable for a copy of a transcription of the record in printed form and a copy of a transcription of the record in computer disc form (if available) and for copies of the record in cassette tape form (if available).

Amendment 5 amends clause 40 by inserting new sub clauses to allow the Coroners Court to prohibit:

- the issue of the whole or part of a copy of the record made under the *Recording of Evidence Act 1962*; or
- the publication of the whole or part of a copy of the record made under the *Recording of Evidence Act 1962*.

The Coroners Court may want to do this in relation to evidence given under clause 38 (incriminating evidence).

Amendment 6 amends the definition of “record” in clause 40 to delete the exclusion of a recording under the *Recording of Evidence Act 1962*. This is because the exclusion is now superfluous given that the new clause 37A (amendment 4) makes it absolutely clear that proceedings in the Coroners Court (except pre-inquest conferences) must be recorded under the *Recording of Evidence Act 1962*.

Amendment 7 amends clause 50(2) to clarify the intention of that clause namely that the record of the coroner’s findings and comments (which may be based on a completely different standard of proof to that of another court or tribunal) is not evidence in any court or tribunal of the facts asserted in the record.

Amendment 8 amends clause 76 to provide that the Annual Report is also to contain a summary of the types of directions that the State Coroner has given to coroners under section 14 (Guidelines and directions for investigations).

Amendment 9 amends clause 99 to:

- provide that for a pre-commencement death or pre-commencement fire, the State Coroner has the functions and powers of coroner under the *Coroners Act 1958*. This will allow a State Coroner to continue an inquiry under the *Coroners Act 1958* which he/ she may have started prior to the commencement of the new Act because the functions of State Coroner (clause 70) will now specifically include functions under the *Coroners Act 1958*.
- provide a unique definition of “investigation document” for the purpose of clause 99. The definition includes documents under the *Coroners Act 1958*. This is because it is intended under clause 99 that the new Act applies to:

- the release for research purposes of documents under the *Coroners Act 1958* that are the equivalent of investigation documents under the *Coroners Act 2002*; and
- the fees for release of the equivalent of investigation documents for any purpose.

Amendments 10 and 11 amend the titles of Part 8, section 105 and Schedule 1 to “Minor and consequential amendments” to accommodate the amendment to the *District Court of Queensland Act 1967* in amendment 12.

Amendment 12 inserts an amendment to the *District Court of Queensland Act 1967* as a new item into Schedule 1 of the Bill.

The Sexual Offences (Protection of Children) Amendment Act 2003 increased the penalty in section 210 of the Criminal Code (indecent treatment of children under 16 years) to 20 years. Jurisdiction in the District Court only goes to 14 years unless the section is specifically named in section 61(2)(b) of the *District Court of Queensland Act 1967*. An amendment therefore needs to be made to section 61(2)(b) of the *District Court of Queensland Act 1967* to insert section 210(3) or 210(4) of the Criminal Code. The relevant parts of the *Sexual Offences (Protection of Children) Amendment Act 2003* are scheduled to commence on 1 May 2003. This amendment will also commence on 1 May 2003.

Amendment 13 amends proposed new section 371AD of the *Police Powers and Responsibilities Act 2000* which is being inserted as part of the amendments to the *Police Powers and Responsibilities Act 2000* contained in Schedule 1 of the Bill. The amendment:

- introduces some extra requirements for the coroner’s search warrant, namely that the warrant must state brief particulars that identify the death that the coroner is investigating and the evidence that may be seized under the warrant; and
- provides that the warrant only has to state the hours the place may be entered when the warrant is being executed at night. (This is consistent with the general warrant requirements of section 73(1)(d) of *Police Powers and Responsibilities Act 2000*.)

Amendment 14 amends proposed new section 371AD of the *Police Powers and Responsibilities Act 2000* which is being inserted as part of the amendments to the *Police Powers and Responsibilities Act 2000* contained in Schedule 1 of the Bill. The amendment provides that a police officer cannot exercise the powers to inspect, take things for testing and copy

documents under proposed new section 371AD unless the police officer reasonably suspects that the exercise of the powers is necessary for the coroner's investigation. The amendment also removes the definition of "coroner" for the purpose of proposed section 371AD. This is because the amendment 16 now deals with this.

Amendment 15 amends proposed new section 371AF of the *Police Powers and Responsibilities Act 2000* which is being inserted as part of the amendments to the *Police Powers and Responsibilities Act 2000* contained in Schedule 1 of the Bill. The clause gives police the power to require persons to give information in certain circumstances. The amendment provides that police must inform persons that:

- they do not have to incriminate themselves;
- they can get legal advice

as part of the requirement to provide information (as opposed to doing this after there has been a failure to comply which is currently the case under the Bill).

Amendment 16 amends the amendments to the *Police Powers and Responsibilities Act 2000* contained in Schedule 1 of the Bill by inserting a definition of "coroner" into Schedule 4 of the *Police Powers and Responsibilities Act 2000*. The definition means a coroner under the *Coroners Act 2002*.

Amendment 17 amends the definition of coronial document in the Dictionary in Schedule 2 of the Bill to make it clear that it does not include either the record under the *Recording of Evidence Act 1962* or a copy of the record under the *Recording of Evidence Act 1962*. This includes a copy of the transcription of a record because Amendment 20 inserts a definition of record under the *Recording of Evidence Act 1962* to include a transcription of the record.

Amendment 18 amends the definition of "family member" in the Dictionary in Schedule 2 of the Bill by providing that if a spouse, adult child, parent or adult sibling is not reasonably available, "family member" means the next nearest adult relative of the deceased person.

Amendment 19 inserts a new definition into the Dictionary in Schedule 2 of the Bill. It defines "not reasonably available" (which is a term used in the definition of "family member" in the Dictionary) to mean:

- (a) a family member of that particular type does not exist; or
- (b) the family member can not be reasonably contacted; or

- (c) a family member is unable or unwilling to act as a family member for this Act.

Amendment 20 inserts a new definition into the Dictionary in Schedule 2 of the Bill. It defines “record” made under the *Recording of Evidence Act 1962* to include a transcription of the record.