

6 January 2020

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE 4000

Only by email: lacsc@parliament.qld.gov.au

Dear Committee Secretary,

Justice and other Legislation Amendment Bill 2019

We thank you for the opportunity to make this submission to the inquiry into the *Justice and Other Legislation Amendment Bill 2019 (Bill)*.

Background

1. Caxton Legal Centre (**Caxton**) is Queensland's oldest community legal centre. Caxton's vision is for a just and inclusive Queensland.
2. We are an independent, non-profit community legal centre providing free legal advice, representation, social work services, information and referrals to low income and disadvantaged persons in need of relief from poverty, distress, misfortune, destitution and helplessness.
3. Caxton Legal Centre has a long history of representing and advising bereaved families in the coronial jurisdiction. In mid-2017 Townville Community Legal Service and Caxton were successful in obtaining funding from the Queensland Government to establish the Coronial Assistance Legal Service which formalised and expanded our advice and representation programs in the coronial jurisdiction.
4. Since the Coronial Assistance Legal Service Commenced Caxton has assisted 110 families with legal advice and representation. We have assisted clients with all aspects of the coronial process including:
 - 4.1. Where there is a dispute between family members about the burial or cremation plans for a deceased person;
 - 4.2. Applications for a burial assistance grant where there are inadequate funds to pay for the cremation or burial of the deceased;

- 4.3. In ongoing investigations, for example, in relation to the coronial investigation process generally, assistance to communicate family concerns about the circumstances of the death to the Coroner, advice and assistance to access information or coronial documents, as well as advice and assistance for family members to request and inquest where appropriate;
- 4.4. Representation at and advice about inquests;
- 4.5. The review of decisions made by a Coroner such as:
 - 4.5.1. Where a death has been found not to be reportable under the *Coroners Act 2003* and therefore is not investigated;
 - 4.5.2. A decision not to hold an inquest;
 - 4.5.3. In relation to reopening coronial investigations, including in matters where the inquest took place a long time ago.
5. This submission will only address the proposed amendments to the *Coroners Act 2003 (Act)* set out in the Bill.

Clause 28 – Insertion of new s. 11AA

6. We support the concept of the new section 11AA which will allow the performance of a preliminary examination of the deceased person's body to assist the coroner to perform functions under the Act, for example, to determine whether the death is a reportable death.
7. We note that the Queensland Audit Office recommended that there be a coordinated state-wide triage process for deaths reported to the Coroner by the Queensland Police Service.¹ The new section 11AA will assist the Coroner to triage deaths reported by the Queensland Police Service.
8. We are however, concerned that section 11AA(5) may impinge on the rights of families from particular religious or cultural backgrounds.
9. Section 11AA(4) allows a doctor (or other suitably qualified person under the general supervision of the doctor) approved by the State Coroner to perform preliminary examinations of a body.
10. Section 11AA(3) provides that the preliminary examination may include:
 - 10.1. A visual examination of the body;
 - 10.2. The collection and review of relevant information including health and personal information;

¹ Queensland Audit Office, "Delivering Coronial Services – Report 6: 2018-19, p. 28

- 10.3. The taking of samples of bodily fluid from the body including blood, urine, saliva, mucus and vitreous humour samples, and testing those samples;
 - 10.4. Imaging of the body, including the use of CT scan, MRI scan, x-ray, ultrasound and photography;
 - 10.5. The taking of samples from the surface of the body, including swabs from wounds and inner cheek, hair samples and samples from under fingernails and from the skin, and the testing of those samples;
 - 10.6. The fingerprinting of the body.
11. We note that section 11AA(5) requires that the examiner (or the person supervised by the examiner), whenever practicable, must consider the following factors prior to the preliminary examination:
 - 11.1. That in some cases the person's family may be distressed by the procedures to be performed in the examination, including, for example, because of cultural traditions or spiritual beliefs;
 - 11.2. Any concerns raised by a family member, or another person with sufficient interest, in relation to the procedures to be performed for the examination.
 12. This section is similar to the requirement placed on a coroner under section 19 of the Act before the Coroner orders an internal autopsy. Section 19(6) however, requires a coroner to provide a copy of the order to the person who raised the concern if the coroner decides that it is still necessary to order the internal examination.
 13. The proposed section 11AA does not require any information to be provided to the person who raised the concern.

Human Rights Act 2019

14. The *Human Rights Act 2019 (HR Act)* became fully operational on 1 January 2020. The HR Act requires public entities, including public servants to make decisions that are compatible with human rights and to only limit human rights to the extent that is reasonable and demonstrably justifiable.²
15. The HR Act requires that giving proper consideration to a human right in making a decision, includes:
 - 15.1. Identifying the human rights that may be affected by the decision; and
 - 15.2. Considering whether the decision would be compatible with human rights.³

² s. 8 *Human Rights Act 2019*

³ s. 58(5) *Human Rights Act 2019*

16. A decision under the proposed section 11AA (or section 19) will require the careful consideration of human rights.
17. The HR Act protects 23 rights including:
 - 17.1. The right to life⁴
 - 17.2. Freedom of thought, conscience, religion and belief⁵
 - 17.3. Cultural Rights⁶
 - 17.4. Cultural rights of Aboriginal and Torres Strait Islander peoples⁷.
18. The right to life includes the imposition of a procedural duty on the “State to conduct an effective investigation into any death occurring in circumstances where the substantive obligations not to take life arbitrarily and to protect life have been (or may have been) breached.”⁸
19. We acknowledge the importance of coronial investigations in the State fulfilling its obligation to conduct effective investigations into deaths. We also acknowledge that the proposed section 11AA will allow for the more appropriate triaging of matters so that the resources of the coronial jurisdiction are not unnecessarily engaged.
20. There are, however, other important rights that must also be considered when a decision to conduct a preliminary examination under the proposed section 11AA is made.
21. The right to freedom of thought, conscience, religion and belief may be infringed by Coroners and examiners making decisions under the proposed section 11AA. The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person’s religion or belief in worship, observance, practice and teaching.
22. Cultural rights generally provide that all persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy their culture, to declare and practise their religion and to use their language.
23. The HR Act recognises that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights and provides that Aboriginal and Torres Strait Islander peoples must not be denied the right to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings.

⁴ S. 16 *Human Rights Act 2019*

⁵ s. 20 *Human Rights Act 2019*

⁶ s. 27 *Human Rights Act 2019*

⁷ s. 28 *Human Rights Act 2019*

⁸ ACT Human Rights Commission – *The Right to Life* accessed at <https://hrc.act.gov.au/wp-content/uploads/2015/03/Right-to-life-281011.rtf> on 5.01.2020

Objections to Autopsy and delay in burial

24. Comprehensive research regarding religious and cultural objections to autopsy was conducted by Professors Belinda Carpenter and Gordon Tait of the Queensland University of Technology.⁹
25. This research found that Aboriginal and Torres Strait Islander people tend to be over-represented in coronial investigations and Muslim and Jewish populations tend to be under-represented.¹⁰ Further, the researchers identified that the identified status and raised objections of Aboriginal and Torres Strait Islander people tend to have little impact on autopsy decision making, while Jewish and Muslim populations tend to have less invasive autopsies performed when their status is identified or a concern is communicated to the Coroner.¹¹
26. Aboriginal and Torres Strait Islander beliefs often require that a body is quickly moved to a special place for viewing and the performance of burial rituals or mourning ceremonies.¹²
27. Members of the Muslim and Jewish faiths usually require burial to take place within 24 hours of death and, also prohibit the cutting of the body and the removal of body parts.¹³
28. Members of the Buddhist, Hindu and Taoist religions also have beliefs which restrict the interference with bodies.¹⁴
29. Burial and mourning practices may be disrupted if a body must be removed to another location for autopsy.
30. Similar disruption will occur where a preliminary examination takes place under the proposed section 11AA.

Decisions regarding family concerns

31. As outlined above, section 11AA requires an examiner or person supervised by an examiner to consider:
 - 31.1. That in some cases the person's family may be distressed by the procedures to be performed in the examination, including, for example, because of cultural traditions or spiritual beliefs;

⁹ *Managing Family Objection to Autopsy: A case study of the Queensland Coronial System* accessed at <https://research.qut.edu.au/autopsy-objections-professional-guide/project-description/> on 5.01.2020

¹⁰ Carpenter, Belinda, Tait, Gordon and Quadrelli, Carol (2014) The body in grief: death investigations, objections to autopsy, and the religious and cultural 'other', *Religions*,5(1), pp 165-178 at 168

¹¹ Ibid.

¹² Byard, Roger (2011) Indigenous communities and the forensic autopsy, *Forensic Sci Med Pathol* 7 pp 139 – 140 at 139

¹³ Queensland University of Technology, *Objections to Autopsy Professional Guide* accessed at <https://research.qut.edu.au/autopsy-objections-professional-guide/family-objections/> on 5.01.2020

¹⁴ Ibid.

- 31.2. Any concerns raised by a family member, or another person with sufficient interest, in relation to the procedures to be performed for the examination.
32. Section 11AA does not require the examiner to provide any information to the family member or person with sufficient interest about their decision.
33. Research conducted by Carpenter and Tait indicates that Coroners are likely to take into account the importance of an objection to autopsy raised by family in their decision making.¹⁵ However, the same research found that pathologists and police were the most vocal in challenging the importance of autopsy despite family objections.¹⁶
34. Given that decisions made under the proposed section 11AA are likely to require consideration of human rights we consider Coroners, rather than examiners (or persons supervised by examiners) would be best placed to make decisions under section 11AA as they do under section 19.
35. Given that the HR Act requires that decision makers give proper consideration to human rights in reaching their decision and that preliminary examinations and autopsies necessarily have to take place within a short period of time after death, we consider that it would be appropriate for Coroners to provide brief written reasons for any decision which may limit human rights.

Recommendation

Section 11AA be amended to require the Coroner (rather than the examiner (or person supervised by the examiner)) to consider any concerns raised by family or other person with sufficient interest.

Section 11AA and section 19 of the Act be amended to require the Coroner to provide written reasons justifying the decision to order a preliminary examination or autopsy despite concerns raised by family or other person with sufficient interest.

Clause 41 – Insertion of new ss 100A-100E

36. We support the introduction of new sections 100A-100E of the Act which will allow a coroner to stop an inquest currently being held under the *Coroners Act 1958* and reopen it as an inquest under the Act.
37. In our Coronial Assistance Legal Service we have provided advice and representation to a number of families who will benefit from these amendments, and may after many years, understand the truth of what caused the death of their loved one.
38. These amendments will retrospectively abrogate the privilege against self-incrimination for persons involved in inquests currently being held under the *Coroners Act 1958*. However, we consider that section 39 of the Act appropriately balances the rights of a

¹⁵ Ibid 10 at 172

¹⁶ Ibid 10 at 173

person who may wish to claim privilege against self-incrimination as any evidence given is not admissible against the person in criminal proceedings, and the public interest in the coroner being able to make the findings required under section 45(2) of the Act.

This submission was prepared by Klaire Coles, Director, Coronial and Custodial Justice Practice.

Please do not hesitate to contact Klaire Coles [REDACTED] [REDACTED] [REDACTED] [REDACTED] if you have any questions regarding this submission or if we can be of any further assistance to the Committee.

Yours faithfully



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