

Legislative Council—No 101

As introduced and read a first time, 19 June 2019

South Australia

Coroners (Miscellaneous) Amendment Bill 2019

A BILL FOR

An Act to amend the *Coroners Act 2003*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Coroners (Miscellaneous) Amendment Act 2019*.

5 2—Commencement

This Act comes into operation 3 months after it is assented to by the Governor.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

10 Part 2—Amendment of *Coroners Act 2003*

4—Amendment of section 13—Jurisdiction of Court

Section 13—after its present contents (now to be designated as subsection (1)) insert:

- 15 (2) In ascertaining the cause or circumstances of an event, the Coroners Court is to promote the public interest in open justice which may include, without limitation—
 - (a) the public identification of a person, public sector agency or other organisation involved in the event, in particular in circumstances where it appears that such a person, agency or organisation caused or contributed to a death;

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- (b) requiring a person, public sector agency or other organisation to provide information about and explain their action or inaction in the circumstances of the event; and
 - (c) assessing, subject to this Act, the accountability and responsibility of a person, public sector agency or other organisation involved in the event.

5—Insertion of section 20A

After section 20 insert:

20A—Right of appearance for nominated representative of families

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- (1) This section applies to proceedings before the Coroner's Court relating to the death or disappearance of a person.
 - (2) Without limiting any other provision of this Act, the nominated representative of the family of a person to whom proceedings to which this section applies is entitled to appear in those proceedings and may examine and cross-examine any witness testifying in the proceedings.
 - (3) The reasonable costs of the nominated representative of a family are to be met by the Crown.
 - (4) For the purposes of this section, a reference to the *nominated representative* of a family will be taken to be a reference to a legal practitioner—
 - (a) engaged by or on behalf of the family to represent them in particular proceedings; and
 - (b) nominated, in accordance with any rules of the Court, by the family as their nominated representative.
 - (5) In this section—

Aboriginal or Torres Strait Islander person means a person who—

- (a) is a descendant of the indigenous inhabitants of Australia or the Torres Strait Islands; and
- (b) regards themselves as Aboriginal or Torres Strait Islander or, if they are a child, is regarded as Aboriginal or Torres Strait Islander by at least 1 of their parents;

family, in relation to a person, means—

- (a) the person's immediate family; and
- (b) the person's extended family (being all other persons to whom the person is related by blood or marriage); and
- (c) in relation to an Aboriginal or Torres Strait Islander person, includes any person held to be related to the person according to Aboriginal kinship rules, or Torres Strait Islander kinship rules, as the case may require.

6—Amendment of section 23—Proceedings on inquests

Section 23(5)—delete subsection (5) and substitute:

- 5 (5) However, a person is not required to answer a question, or to produce a record or document, under this section if answering the question, or producing the record or document, would result in a breach of legal professional privilege.

7—Insertion of section 23A

After section 23 insert:

23A—Privilege in respect of self-incrimination

- 10 (1) This section applies if a witness, being a natural person, refuses to answer a question, or to produce a record or document, on the grounds that the answer to the question, or the contents of the record or document, would tend to incriminate the person of an offence or expose the person to a civil penalty.
- 15 (2) The Court may require the witness to answer the question, or to produce the record or document, if the Court is satisfied that the interests of justice require that the witness answer the question or produce the record or document.
- 20 (3) If the Court requires the witness to answer the question, or to produce the record or document, the Court must cause the witness to be given a certificate under this section in respect of the evidence given.
- 25 (4) In any proceedings (other than criminal proceedings in respect of the falsity of the evidence)—
- (a) evidence given by a person in respect of which a certificate under this section has been given, and
- (b) evidence of any information, document or thing obtained as a direct or indirect consequence of the person having given such evidence,
- 30 cannot be used against the person.
- (5) Subsection (4) has effect despite any challenge, review, quashing or calling into question on any ground of the decision to give, or the validity of, the certificate concerned.
- 35 (6) A person who refuses or fails to comply with a requirement of the Court under subsection (2) commits a contempt of the Court.

8—Amendment of section 25—Findings on inquests

(1) Section 25(2)—delete subsection (2) and substitute:

(2) The Court may add to its findings any recommendation that, in the opinion of the Court—

(a) might prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the inquest; or

(b) relates to a matter arising from the inquest, including matters concerning—

(i) the quality of care, treatment and supervision of the dead person prior to death; and

(ii) public health or safety; and

(iii) the administration of justice,

and is, in the circumstances, an appropriate matter on which to make a recommendation.

(2) Section 25(4)(a)—after "Attorney-General" insert:

and any relevant Minister other than the Attorney-General

(3) Section 25(4)(b)(i)—delete subparagraph (i)

(4) Section 25(5)—delete subsection (5) and substitute:

(5) Each relevant Minister must, within 8 sitting days of the expiration of 3 months after receipt of a copy of a recommendation resulting from an inquest—

(a) cause a report to be laid before each House of Parliament—

(i) giving details of any action taken or proposed to be taken in consequence of the recommendation; or

(ii) if no action has been taken or is proposed to be taken—giving reasons for not taking action or proposing to take action; and

(b) forward a copy of the report to the State Coroner.

(6) The State Coroner may, at any time after the provision of a report under subsection (5), request a supplementary report to be prepared by the Minister that addresses any matter that the State Coroner considers necessary arising out of the report.

(7) If the State Coroner makes a request under subsection (6), the Minister to whom the request was made must, within 8 sitting days of the expiration of 3 months after receiving the request—

(a) cause a supplementary report to be laid before each House of Parliament addressing the matters requested to be addressed by the State Coroner; and

(b) forward a copy of the supplementary report to the State Coroner.

(8) In this section—

relevant Minister, in relation to findings and recommendations of the Court, means—

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- (a) if a recommendation is directed to a Minister, or to an agency or other instrumentality of the Crown, as a result of the inquest—the Minister to whom, or the Minister responsible for the agency or other instrumentality of the Crown to which, the recommendation is directed; or
 - (b) in any other case—the Attorney-General.

10 **Schedule 1—Transitional provisions**

1—Transitional provisions

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- (1) The amendments of the *Coroners Act 2003* effected by sections 4, 5, 6 and 7 of this Act apply in relation to any inquest commenced after the commencement of this Act (whether the event the subject of the inquest occurred before or after that commencement).
 - (2) The amendments to section 25 of the *Coroners Act 2003* effected by section 8 of this Act apply in relation to any inquest completed after the commencement of section 8 of this Act (whether the event the subject of the inquest occurred before or after that commencement).