

Legislative Council—No 83

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South Australia

**Coroners (Inquests and Privilege) Amendment
Bill 2020**

A BILL FOR

An Act to amend the *Coroners Act 2003*, and to make a related amendment to the *Guardianship and Administration Act 1993*.

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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 (Inquests and Privilege) Amendment Act 2020*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Amendment provisions

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

Part 2—Amendment of *Coroners Act 2003*

4—Amendment of section 3—Interpretation

Section 3(1), definition of *reportable death*, (f)(iii)—after "*Mental Health Act 1993*" insert:

or the *Mental Health Act 2009*

5—Amendment of section 21—Holding of inquests

(1) Section 21(1)(b)—after subparagraph (iv) insert:

or

(v) the death of a person (whether before or after the commencement of this subparagraph) who apparently died from natural causes, as certified by a medical practitioner, while—

(A) subject to an order under section 32(1)(b) of the *Guardianship and Administration Act 1993*; or

(B) —

- subject to an inpatient treatment order under Part 5 of the *Mental Health Act 2009*; and
- held in a ward (however described) of a hospital or other facility that is an approved treatment centre under the *Mental Health Act 2009* where the whole of the ward is not set aside for the treatment of persons with a mental illness;

(2) Section 21—after subsection (3) insert:

(4) For the purposes of subsection (1)(a) and the definition of ***death in custody*** in section 3(1), the death or apparent death of a person (whether before or after the commencement of this subsection) from natural causes, as certified by a medical practitioner, while—

(a) subject to an inpatient treatment order under Part 5 of the *Mental Health Act 2009*; and

(b) held in a ward (however described) of a hospital or other facility that is an approved treatment centre under the *Mental Health Act 2009* where the whole of the ward is set aside for the treatment of persons with a mental illness,

will be taken to be a death in custody.

(5) Despite the definition of ***death in custody*** in section 3(1), for the purposes of subsection (1)(a), the death or apparent death of a person (whether before or after the commencement of this subsection) from natural causes, as certified by a medical practitioner, while—

(a) subject to an order under section 32(1)(b) of the *Guardianship and Administration Act 1993*; or

(b) —

(i) subject to an inpatient treatment order under Part 5 of the *Mental Health Act 2009*; and

- (ii) held in a ward (however described) of a hospital or other facility that is an approved treatment centre under the *Mental Health Act 2009* where the whole of the ward is not set aside for the treatment of persons with a mental illness,

will not be taken to be a death in custody.

- (6) In this section—

mental illness has the same meaning as in the *Mental Health Act 2009*;

treatment has the same meaning as in the *Mental Health Act 2009*.

6—Amendment of section 23—Proceedings on inquests

- (1) Section 23(4)—delete "A person" and substitute:

Subject to section 23A, a person

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

- (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 and penalty

- (1) This section applies if a person objects to answering a question, or producing a record or document, at an inquest on the ground that the answer, record or document may tend to—
- (a) in the case of a natural person—incriminate the person in respect of an Australian law or a foreign law; or
- (b) in any case—make the person liable to a penalty under an Australian law or a foreign law.
- (2) The Court must determine whether or not there are reasonable grounds for the objection.
- (3) If the Court determines that there are reasonable grounds for the objection, the Court is to inform the person—
- (a) that the person need not answer the question, or produce the record or document, unless required by the Court to do so under subsection (4); and
- (b) that the Court will give a certificate under this section if—
- (i) the person willingly answers the question, or produces the record or document, without being required to do so under subsection (4); or

- (ii) the person answers the question, or produces the record or document, after being required to do so under subsection (4); and
- (c) of the effect of such a certificate.
- 5 (4) The Court may require the person to answer the question, or produce the record or document, if the Court is satisfied that—
- (a) the answer, record or document does not tend to incriminate the person in respect of, or make the person liable to a penalty under, a foreign law; and
- 10 (b) the interests of justice require that the person answer the question, or produce the record or document.
- (5) If the person—
- (a) willingly answers the question, or produces the record or document, without being required to do so under subsection (4); or
- 15 (b) answers the question, or produces the record or document, after being required to do so under subsection (4),
- the Court must cause the person to be given a certificate under this section in respect of the answer, record or document.
- 20 (6) The Court must also cause a person to be given a certificate under this section if—
- (a) the objection has been overruled; and
- (b) after the question has been answered, or the record or document produced, the Court finds that there were
- 25 reasonable grounds for the objection.
- (7) A certificate under this section may relate to more than 1 question, record or document (or to a combination of 1 or more questions, 1 or more records and 1 or more documents).
- 30 (8) In any proceeding in a court or before any person or body authorised by a law of this State, or by consent of parties, to hear, receive and examine evidence—
- (a) an answer given, or a record or document produced, by a person in respect of which a certificate under this section has been given; and
- 35 (b) any information, document or thing obtained as a direct or indirect consequence of the person having answered a question, or produced a record or document,
- cannot be used against the person.
- 40 (9) However, subsection (8) does not apply to a criminal proceeding in respect of the falsity of the answer given, or the record or document produced.

(10) Subsection (8) 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.

(11) This section does not derogate from Parts 7 and 8 of the *Health Care Act 2008*.

(12) In this section—

Australian law means a law of this State, another State, the Commonwealth or a Territory of the Commonwealth;

foreign law means a law of a foreign country or of a part of, or in force in a part of, a foreign country.

Schedule 1—Related amendment and transitional provision

Part 1—Amendment of *Guardianship and Administration Act 1993*

1—Repeal of section 76A

Section 76A—delete the section

Part 2—Transitional provision

2—Transitional provision

The amendments to section 23 of the *Coroners Act 2003* by section 6 and the insertion of section 23A of the *Coroners Act 2003* by section 7—

- (a) do not apply in respect of inquests commenced before the commencement of sections 6 and 7 (and those inquests may continue as if those sections had not been enacted); and
- (b) apply in respect of inquests commenced after the commencement of sections 6 and 7 (including inquests in respect of an event occurring before the commencement of those sections).