# Coroners Amendment Bill.

**Second Reading**

**The Hon. JOHN HATZISTERGOS** (Minister for Justice, and Minister Assisting the Premier on Citizenship) [5.19 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

**Leave granted.**

The purpose of the bill is to amend the Coroners Act 1980 to improve the efficiency and operation of the court and to streamline the procedure for conducting fire inquiries. The office of the Coroner, which is one of the oldest known to English law, was first provided for by statute in 1194 in the Articles of Ayre, though references exist to the office from AD 871. The first statute relating to coronial matters was passed in New South Wales in 1861. The current statute, the Coroners Act 1980, commenced on 1 July 1980. In 1993 substantial amendments were made to the Act as a result of recommendations and proposals examined and evaluated by a consultative committee. The amendments made significant changes to the administration of the coronial system and jurisdiction of the State Coroner.

The Attorney General's Department has continued to monitor and evaluate the effectiveness of the 1993 amendments and to develop protocols to improve the level of service for clients of the coronial jurisdiction. In recent years there has been a marked increase in the level of public interest in the role of the Coroner and the practices and procedures of the Coroner's Court. In the decade since the 1993 amendments there have been substantial procedural and client service initiatives introduced by the Coroner's Court, particularly in the area of counselling and information provision to relatives. There have also been significant developments in police investigative techniques and the conduct of forensic medicine.

As a consequence of this jurisdictional, procedural and technological change and the heightened public interest in diverse aspects of the coronial jurisdiction, the Attorney General commissioned a broad-ranging review of the Act to allow interested members of the community and organisations to contribute submissions on areas of interest and concern. As a result of the broad scope of the review, the submissions produced a diverse range of comments, opinions and suggestions. The reform proposals canvassed in the review range from amendments of a minor procedural nature to matters that substantially affect the rights and obligations of parties.

The Government has decided to refer the more far-reaching proposals contained in the review to an expert working party. This bill contains practical, expedient reforms which have been identified during the review and which are supported by court users. Most importantly, the State Coroner, the Senior Deputy State Coroner and two Deputy State Coroners all approve of and support these amendments, which will clarify or amend the existing law and processes to improve the efficient operation of the court. Schedule 1 to the bill amends sections 15 and 15 (2) of the Coroners Act 1980 and adds section 15B. These amendments require the Coroner to inquire into the cause and origin of a fire unless a broader inquiry is requested by the Minister, the State Coroner, the Commissioner of the Rural Fire Service or New South Wales Fire Brigades. This is one of the most significant aspects of the bill and will have a major impact on enabling more rapid coronial investigation of fires.

At present a fire is required to be reported to the Coroner when there has been a death or damage to property. This bill will not change that requirement. What this bill deals with is the terms of that inquiry, that is, what will be required in most cases. A number of issues were raised in submissions on the review of the Act in relation to coronial inquiries into bushfires. Bushfires attract a great deal of public concern because of their scale and frequency, the potential for fatalities, injury to people and animals, and the large number of firefighters and resources deployed. Property damage, evacuations, travel restrictions and cessation of transport and essential services all add to the trauma experienced by victims. Investigations have become protracted and time-consuming because the unlimited scope of the fire jurisdiction given to New South Wales coroners sees the Coroner go beyond finding the cause and origin of the fire and inquiring into the circumstances of the fire.

The interpretation of the term "circumstances" as contained in the Coroners Act 1980 has tended to be broad, resulting in lengthy and wide-ranging police coronial investigations, adding to the time victims, property owners, firefighters and the public must wait for an outcome. Over recent bushfire seasons the increased complexity of police investigations, due to the broad terms of the jurisdiction, has caused delays in the presentation of the hundreds of briefs of evidence to the Coroner. Many of those briefs contain thousands of pages of evidence covering issues that are not necessarily needed to determine the cause and origin of the fire. In relation to the 2000 fires, investigations and briefs were presented to the Coroner well into the following year. In 2001 and 2002 the police created and resourced a special task

force called Tronto to investigate fires and prepare briefs for the Coroner. In 2001, Strike Force Tronto 1 investigated 573 fires and produced over 6,500 pages of briefs. In 2002, Strike Force Tronto 2 investigated 771 fires and delivered the briefs to the Coroner.

Delays in investigating, preparing briefs, and holding and finalising a fire inquiry mean that the Coroner's recommendations are sometimes made several bushfire seasons after the event, lessening their effectiveness as a tool for disaster prevention or better fire management. After considering the submissions to the review and the results of subsequent consultation, the Government is of the view that delays in holding coronial fire inquiries could best be avoided by clarifying the scope of the inquiry to the cause and origin of the fire rather than the broader and less easily defined term, "circumstances". The current New South Wales coronial jurisdiction can be contrasted with those of the Australian Capital Territory, South Australia and the Northern Territory. These jurisdictions allow the Coroner to inquire into and make findings in relation to the cause and origin of a fire.

There will almost certainly be circumstances in which a broader inquiry could be considered to be in the public interest, such as when it is alleged that the fire damage occurred due to the misconduct or negligence of a government official or instrumentality. This amendment also allows the parties who are currently able to request a coroner to conduct an inquest—that is, the State Coroner, the Minister, the Commissioner of the Rural Fire Service or New South Wales Fire Brigades—the discretion to request a broader inquiry into the circumstances of a fire. The fact that the State Coroner, an independent judicial officer, can request this broader investigation means that investigations cannot be arbitrarily restricted by narrow political or bureaucratic interests.

Schedule 1 also replaces references to "member of the police force" with "police officer" in line with the current title of the position. Schedule 1 also clarifies that all coroners have the right to give directions to police officers concerning investigations to be carried out for the purpose of a coronial inquest or inquiry. Section 17B of the Act expressly allows the State Coroner to give a police officer directions. This restates the common law duty of police officers to investigate matters for the benefit of the Coroner and, where necessary, at the Coroner's direction. The amendment adds section 17C, which expressly confers the power on all coroners. All coroners, not only the State Coroner, rely on police to investigate matters for them and police instructions require police to investigate matters for all coroners. It is confusing that the Act confers the power only on the State Coroner when the common law and current practice confers it on all coroners.

Schedule 1 further amends the Act to allow a coroner to issue a subpoena to any person whose evidence is deemed necessary for the inquest or inquiry. Section 35 of the Act allows a coroner to issue a summons for a witness to appear to give evidence only if satisfied that the witness would not attend voluntarily. This provision means that coroners and investigators must make inquiries prior to the hearing about the likelihood of a witness attending. Witnesses do not always advise police of their reluctance to give evidence and non-attendance on the date of the hearing causes disruption and the adjournment of proceedings. Witnesses are better protected from criticism for giving evidence if they are compelled to do so. Many willing witnesses require a written document from the court as an official record of their attendance to arrange or explain their absence from work or educational institutions. Subpoenas also protect witnesses who are compelled to give evidence that may otherwise constitute a breach of privacy or confidentiality.

Schedule 1 amends sections 30 and 44 of the Act to allow a coroner, in special circumstances, to exclude any or all persons from an inquest or inquiry if it is in the public interest to do so. This includes the administration of justice, national security or the security of any person or the public. Section 30 of the Act currently provides that the room or building in which a coroner holds an inquest or inquiry shall be open to the public. While the general principle of holding hearings in public must be supported in the interests of justice, there are special circumstances when it may be preferable for the coroner to exclude some or all people from the hearing room. Such circumstances would include hearings held in hospitals, gaols and psychiatric facilities from which the public are generally excluded, or when a witness may be in danger.

The common law allowed coroners to exclude individuals or the public generally. The Victorian and Queensland coronial legislation similarly allows exclusion of any or all persons if it is in the interests of any person, or the public, or of justice. The amendment preserves the general requirement that hearings be open to the public so that justice can be seen to be done, and proceedings can be fairly and accurately observed and reported to the public by the media. The amendment to exclude any person is expressed to be exercisable by the coroner only in special circumstances, when it is in the interests of any person, of the public or of justice.

Schedule 1 amends the savings and transitional provisions of the Act to ensure the jurisdiction of the coroner is limited to deaths that occurred less than 100 years ago. Section 13B of the Act purports to do this. The section was commenced on 1 February 1994. It was inserted by the previous Government to prevent the coroner from having jurisdiction over what are essentially relics of the past. However, there is a great deal of doubt about the effectiveness of that section to achieve the purpose for which it was enacted. The weight of legal opinion holds that the amendments do not apply to inquests into deaths that occurred prior to the amendment. This means that the section, in its current form, would not become effective until 1 February 2094. It is necessary to amend the Act so that the section can operate as it was intended, that is, to prevent the coroner from holding an inquest into historical remains. This is particularly important for members of indigenous communities, for whom the coronial processes of investigation and inquest into ancestral remains could cause serious problems and great distress. I commend the bill to the House.