

Bill introduced on motion by Mr Greg Smith.

Agreement in Principle

Mr GREG SMITH (Epping—Attorney General, and Minister for Justice) [10.10 a.m.]: I move:

That this bill be now agreed to in principle.

The Government is pleased to introduce the Coroners Amendment bill 2012, which will amend the Coroners Act 2009 to improve the operation and effectiveness of the New South Wales Coroner's Court. The Coroners Act 2009 was the result of a substantial review of the previous legislation in 2008 and 2009 by the Department of Attorney General and Justice in consultation with the State Coroner, the Chief Magistrate and a range of internal and external stakeholders. The Coroners Act 2009 modernised and simplified many provisions in the previous Act. It prevents natural deaths from being unnecessarily reported to coroners, and that enables the Coroner's Court to focus more on deaths that are suspicious or unexplained.

The Productivity Commission's recent Report on Government Services 2012 found that the Coroner's Court of New South Wales has one of the best clearance rates and the lowest backlog of any coroner's court in Australia. Resolving coronial matters expeditiously reduces uncertainty and stress for grieving families and can help them to come to terms with the loss of a loved one. The Coroner's Court has adjusted well to the introduction of the Coroners Act 2009, which came into force at the beginning of 2010. As with any significant reform process, however, some issues will only become apparent during implementation. This bill addresses a number of issues identified by the State Coroner and other stakeholders to further improve the operation of the Coroner's Court of New South Wales and to clarify the legislation in certain circumstances. The State Coroner supports each of the proposed amendments and detailed consultation has been carried out with a broad range of other stakeholders. I will now outline each of the amendments in turn.

Items [1] and [3] of schedule 1 to the bill amend the definition of senior next of kin. The senior next of kin has a number of rights and responsibilities under the Coroners Act, including in relation to the conduct of post-mortems and retention of organs. The amendment provides a coroner with discretion to treat a person who was a deceased person's legal personal representative immediately before the deceased person's death as the deceased person's senior next of kin if the coroner is satisfied that other persons available to act as senior next of kin are unable to do so. In some circumstances, a person's legal personal representative immediately prior to his or her death has been appointed because the deceased person's immediate relatives were not able to, or were deemed not able to, manage that person's affairs—for example, a guardian may have been appointed. Without the amendment however, that legal personal representative may not be considered to be the deceased person's senior next of kin following death. The amendment will address this oversight.

Item [2] of schedule 1 makes an amendment to section 6 (1) (f) of the Coroners Act 2009 to clarify New South Wales Health's obligations regarding reportable deaths. Since late 2009 more than 30 emergency departments have been gazetted as a "declared mental health facility" within the meaning of the Mental Health Act 2007. This has been done to allow the short-term detention and treatment of patients in an emergency department before being

discharged or, if the patients require ongoing care, their transfer to an appropriate inpatient declared mental health facility. This amendment will clarify NSW Health's obligations to report deaths that occur in one of these emergency departments. As the section is currently drafted, there is some ambiguity over whether all deaths of people who are in or temporarily absent from one of these gazetted emergency departments must be reported to the coroner, including those who are admitted for general care, treatment or assistance, as opposed to mental health care, treatment or assistance.

The current section also refers to a person who is a "resident" of a declared mental health facility. This term is not used in any health legislation or in the mental health field, and therefore is unclear to hospital staff. It is being amended to "patient", and that will be clearer operationally. This amendment will capture deaths of voluntary and involuntary civil patients under the Mental Health Act 2007 as well as forensic and correctional patients under the Mental Health (Forensic Provision) Act 1990. The amendment will not affect any obligation to report a death that is reportable under one of the other circumstances outlined in section 6 (1). The Department of Health recommended the proposed amendment and the State Coroner supports it.

I turn now to the publication of submissions and comments. Items [4] and [5] amend sections 74 and 76 of the Coroners Act 2009 to ensure that the coronial process does not potentially interfere with the future course of criminal justice. It enacts recommendations of the State Coroner, which she made as part of her findings in August 2010 after the inquest into the death of Kate Therese Bugmy. An issue arose during the course of that inquest concerning the ability of a coroner to make a non-publication order covering submissions. It related to the referral of papers to the Director of Public Prosecutions on whether a known person may have committed an indictable offence. The publication of such submissions could have a potential to cause prejudice to future criminal proceedings. The amendments ensure that there is now an express power to order non-publication of submissions and comments made in relation to whether a known person may have committed an indictable offence or whether an inquest or inquiry should be suspended for this reason.

Item [8] makes amendments to section 79 of the Coroners Act 2009 to improve the court's ability to case manage files, particularly when closing coronial proceedings. Section 79 of the Act empowers a coroner who has suspended, or not commenced, an inquest or inquiry to allow criminal charges to be determined, to reopen the inquest and to make recommendations after any charges have been dealt with. The amendment will enable the State Coroner to direct that a suspended coronial inquest or inquiry not be resumed in order to more efficiently manage coronial matters. It requires consultation with the individual coroner who has carriage of the suspended inquest or inquiry, and is subject to consultation with the Chief Magistrate where the coroner is also a magistrate. The State Coroner recommended the amendment.

I refer now to intervention by the Minister in application under chapter 7 of the Act. Items [9] and [10] amend section 86 of the Coroners Act 2009 to clarify the rights of the Attorney General, as the Minister administering the Coroners Act, to intervene in applications made to the Supreme Court under sections 84 or 85. These sections provide for an application to be made to the Supreme Court for the holding or re-holding of a coronial inquest or inquiry. This amendment is intended to clarify the rights of the Attorney General to "be heard" under section 86. The amendment in section 86A (2) makes it clear that the Attorney General has a right to intervene as a party with all the rights this entails. This will avoid future ambiguity

and expense on this point. The amendment in section 86A (3) expressly provides that the Attorney General will have the right to be heard without formally intervening. This relates to where the Attorney General seeks to be heard as amicus in situations where submissions are confined to matters of law with a view to assisting the court, but where advocacy for a particular outcome is not desired. In this situation the Attorney General will not become a party.

Items [12] and [14] amend sections 96 and 98 of the Coroners Act 2009 and enable a coroner to refuse a request by a senior next of kin for a post-mortem examination not to be held, if the senior next of kin has been, or may be, charged with an offence in connection with the deceased person's death. Part 8.2 of the Coroners Act provides for the senior next of kin of a deceased person to request that a post-mortem not be conducted. If the coroner decides that the post-mortem is necessary or desirable, the coroner must give the senior next of kin notice of that decision. A post-mortem then cannot be conducted for a minimum period of 48 hours, during which time the senior next of kin may apply to the Supreme Court to overturn the coroner's decision.

Presently the Coroners Act does not take into account circumstances where the senior next of kin has been charged or may be charged in relation to the death of the person on whom it is intended to conduct a post mortem for coronial purposes. The purpose of the amendment to section 96(5) is to prevent a senior next of kin from benefiting from a delay in the conduct of a post mortem on the victim of an alleged crime. If a request by the senior next of kin has been refused under section 96(5), the amendment to section 98 prevents the senior next of kin from authorising another person to make the request. This is to ensure that the effect of the amendment to section 96 is not frustrated. The State Coroner requested these amendments.

The amendments in the bill have been the subject of thorough consultation with key stakeholders, including the Chief Magistrate, the Chief Justice of New South Wales, New South Wales Ministry of Health, the Ministry for Police and Emergency Services, the NSW Police Force, Legal Aid NSW, the Crown Solicitor's Office, the Minister for Citizenship and Communities, the Minister for Aboriginal Affairs, the Community Relations Commission, the New South Wales Bar Association and the Law Society of NSW. I thank the State Coroner, the Coroner's Court of New South Wales and these stakeholders for their assistance. I commend the bill to the House

Debate adjourned on motion by Mr Paul Lynch and set down as an order of the day for a future day.