

Passed by both Houses



New South Wales

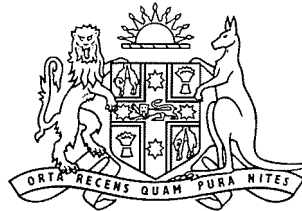
Coroners Amendment (Domestic Violence Death Review Team) Bill 2010

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2010*



New South Wales

Coroners Amendment (Domestic Violence Death Review Team) Bill 2010

Act No , 2010

An Act to amend the *Coroners Act 2009* with respect to the establishment and functions of the Domestic Violence Death Review Team; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Coroners Amendment (Domestic Violence Death Review Team) Act 2010*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Coroners Act 2009 No 41

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

Domestic Violence Death Review Team means the Domestic Violence Death Review Team constituted under Chapter 9A.

[2] Section 10 Functions of State Coroner and Deputy State Coroners

Insert after section 10 (3):

- (4) The State Coroner and each Deputy State Coroner is to support and assist the Domestic Violence Death Review Team in the exercise of its functions under Chapter 9A.

Note. The State Coroner or a Deputy State Coroner may be appointed as Convenor of the Team under section 101E.

[3] Chapter 9A

Insert after Chapter 9:

Chapter 9A Domestic Violence Death Review Team

Part 9A.1 Preliminary

101A Object of Chapter

The object of this Chapter is, through the constitution of the Domestic Violence Death Review Team, to provide for the investigation of the causes of domestic violence deaths in New South Wales, so as to:

- (a) reduce the incidence of domestic violence deaths, and
- (b) facilitate improvements in systems and services.

101B Interpretation

- (1) In this Chapter:

Child Death Review Team means the Child Death Review Team established under Part 7A of the *Commission for Children and Young People Act 1998*.

Convenor means the person appointed as Convenor of the Team under this Chapter.

domestic violence death means the death of a person that is caused directly or indirectly by a person who was in a domestic relationship with the deceased person.

Team means the Domestic Violence Death Review Team.

- (2) For the purposes of this Chapter, a case of a domestic violence death is ***closed*** if:
- (a) the coroner has dispensed with or completed an inquest concerning the death, and
 - (b) any criminal proceedings (including any appeals) concerning the death have been finally determined (as defined in section 79 (4)).

101C Meaning of “domestic relationship”

- (1) For the purposes of this Chapter, a person was in a ***domestic relationship*** with a deceased person if the person:
- (a) was or had been married to the deceased person, or
 - (b) was or had been a de facto partner of the deceased person, or
 - (c) had or has had an intimate personal relationship with the deceased person, whether or not the intimate relationship involved or had involved a relationship of a sexual nature, or
 - (d) was or had been a relative of the deceased person and there have been previous episodes of domestic violence between them, or
 - (e) in the case of an Aboriginal person or a Torres Strait Islander, was or had been part of the extended family or kin of the deceased person according to the Indigenous kinship system of the person’s culture, or
 - (f) was in any other relationship with the deceased person of a kind prescribed by the regulations.
- (2) For the purposes of this Chapter, a person was a ***relative*** of a deceased person if the person was or is:
- (a) a father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law, or
 - (b) a son, daughter, grandson, grand-daughter, step-son, step-daughter, son-in-law or daughter-in-law, or
 - (c) a brother, sister, half-brother, half-sister, step-brother, step-sister, brother-in-law or sister-in-law, or
 - (d) an uncle, aunt, uncle-in-law or aunt-in-law, or

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- (e) a nephew or niece, or
 - (f) a cousin,
- of the deceased person, or of the spouse or a de facto partner of the deceased person.

Part 9A.2 Constitution and procedure of the Team

101D Establishment of Team

The Domestic Violence Death Review Team is constituted by this Act.

101E Members of Team

- (1) The Team is to consist of the Convenor of the Team and other persons appointed by the Minister.
- (2) The Minister is to appoint as Convenor of the Team the State Coroner, a Deputy State Coroner or a former State Coroner or Deputy State Coroner.
- (3) The Team is to include representatives of each of the following:
 - (a) the Department of Human Services,
 - (b) the Department of Health,
 - (c) the Department of Premier and Cabinet,
 - (d) the NSW Police Force,
 - (e) the Department of Education and Training,
 - (f) the Department of Justice and Attorney General,
 - (g) Community Services, within the Department of Human Services,
 - (h) Aboriginal Affairs NSW, within the Department of Human Services,
 - (i) Housing NSW, within the Department of Human Services,
 - (j) Juvenile Justice, within the Department of Human Services,
 - (k) Ageing, Disability and Home Care, within the Department of Human Services.
- (4) Each representative referred to in subsection (3) is to be nominated by the Minister responsible for the organisation concerned.

- (5) In addition, the Team is to include the following persons:
 - (a) 2 non-government service provider representatives,
 - (b) 2 persons who, in the opinion of the Minister, have expertise appropriate to the functions of the Team.
- (6) The Minister is to appoint 1 person who is an Aboriginal person or a Torres Strait Islander and who is a non-government service provider representative as a member of the Team.
- (7) The Team must consist of not less than 15 members (in addition to the Convenor) and not more than 19 members (in addition to the Convenor) at any one time.
- (8) A person who is a member of the Legislative Council or the Legislative Assembly is not eligible to be a member of the Team.
- (9) Schedule 3 contains provisions with respect to the members and procedure of the Team.

Part 9A.3 Functions of the Team

Division 1 General functions

101F Functions of Team

- (1) The Team has the following functions:
 - (a) to review closed cases of domestic violence deaths occurring in New South Wales,
 - (b) to analyse data to identify patterns and trends relating to such deaths,
 - (c) to make recommendations as to legislation, policies, practices and services for implementation by government and non-government agencies and the community to prevent or reduce the likelihood of such deaths,
 - (d) to establish and maintain a database (in accordance with the regulations) about such deaths,
 - (e) to undertake, alone or with others, research that aims to help prevent or reduce the likelihood of such deaths.
- (2) The Team may review a domestic violence death even though the death is or may be the subject of action by the Child Death Review Team.

- (3) Any function of the Team with respect to domestic violence deaths may be exercised with respect to the death of a person who dies outside New South Wales while ordinarily resident in New South Wales.
- (4) The Convenor may enter into an agreement or other arrangement for the exchange of information between the Team and a person or body having functions in another State or Territory that are substantially similar to the functions of the Team, being information relevant to the exercise of the functions of the Team or that person or body.

101G Matters to be considered in reviews

- (1) In carrying out a review of closed cases of domestic violence deaths, the Team is to consider the following matters:
 - (a) the events leading up to the death of the deceased persons,
 - (b) any interaction with, and the effectiveness of, any support or other services provided for, or available to, victims and perpetrators of domestic violence,
 - (c) the general availability of any such services,
 - (d) any failures in systems or services that may have contributed to, or failed to prevent, the domestic violence deaths.
- (2) This section does not limit the matters that the Team may consider or examine in any review of closed cases of domestic violence deaths.

101H Referral of cases for review to Team

- (1) The Team may select the domestic violence death cases that are to be the subject of a review by the Team.
- (2) Any person may refer a closed case of a domestic violence death to the Team for inclusion in a review. The Team may, but is not required to, select any such case for review.

101I Appointment of expert advisers

- (1) The Convenor may, otherwise than under a contract of employment, appoint persons with relevant qualifications and experience to advise the Team in the exercise of its functions.
- (2) A person so appointed is entitled to be paid such remuneration and allowances (including travelling and subsistence allowances) as may be determined by the Minister in respect of the person.

Division 2 Reports by Team

101J Reports

- (1) The Team must prepare, within the period of 4 months after 30 June in each year, and furnish to the Presiding Officer of each House of Parliament, a report on domestic violence deaths reviewed in the previous year.
- (2) Without limiting subsection (1), the report may include the following:
 - (a) identification of systemic and procedural failures that may contribute to domestic violence deaths,
 - (b) recommendations as to legislation, policies, practices and services for implementation by government and non-government agencies and the community to prevent or reduce the likelihood of such deaths,
 - (c) details of the extent to which its previous recommendations have been accepted.

101K Reporting to Parliament

- (1) A copy of a report furnished to the Presiding Officer of a House of Parliament under this Part must be laid before that House on the next sitting day of that House after it is received by the Presiding Officer.
- (2) The Team may include in a report a recommendation that the report be made public forthwith.
- (3) If a report includes a recommendation that a report be made public forthwith, a Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.
- (4) A report that is made public by a Presiding Officer of a House of Parliament before it is laid before that House attracts the same privileges and immunities as if it had been laid before that House.
- (5) A Presiding Officer need not inquire whether all or any of the conditions precedent have been satisfied as regards a report purporting to have been furnished in accordance with this Part.
- (6) In this Part, a reference to a Presiding Officer of a House of Parliament is a reference to the President of the Legislative Council or the Speaker of the Legislative Assembly. If there is a vacancy in the office of President, the reference to the President is taken to be a reference to the Clerk of the Legislative Council

and, if there is a vacancy in the office of the Speaker, the reference to the Speaker is taken to be a reference to the Clerk of the Legislative Assembly.

Part 9A.4 Access to and confidentiality of information

101L Duty of persons to assist Team

- (1) It is the duty of each of the following persons to provide the Team with full and unrestricted access to records that are under the person's control, or whose production the person may, in an official capacity, reasonably require, being records to which the Team reasonably requires access for the purpose of exercising its functions:
 - (a) the Department Head, chief executive officer or senior member of any department of the Government, statutory body or local authority,
 - (b) the Commissioner of Police,
 - (c) a coroner,
 - (d) a medical practitioner or health care professional who, or the head of a body which, delivers health services,
 - (e) a person who, or the head of a body which, delivers welfare services.
- (2) A person subject to that duty is not required to provide access to records if the person reasonably considers that doing so may prejudice an existing investigation or inquiry of a matter under an Act being undertaken by or for the person.
- (3) Access to which the Team is entitled under subsection (1) includes the right to inspect and, on request, to be provided with copies of, any record referred to in that subsection and to inspect any non-documentary evidence associated with any such record.
- (4) A provision of any Act or law that restricts or denies access to records does not prevent a person subject to a duty under subsection (1) from complying, or affect the person's ability to comply, with that subsection.
- (5) The regulations may make provision with respect to the duty to provide access to records under subsection (1), including prescribing limitations and conditions on that duty.

- (6) In this section, *record* means any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by other means.

101M Confidentiality of information

- (1) A Team-related person must not make a record of, or directly or indirectly disclose to any person, any information (including the contents of any document) that was acquired by the person by reason of being a Team-related person, unless:
- (a) the record or disclosure is made in good faith for the purpose of exercising a function under this Chapter, or
 - (b) the record or disclosure is authorised to be made by the Convenor in connection with research that is undertaken for the purpose of helping to prevent or reduce the likelihood of domestic violence deaths in New South Wales, or
 - (c) the record or disclosure is made by the Convenor for the purpose of:
 - (i) providing information to the Commissioner of Police in connection with a possible criminal offence, or
 - (ii) reporting to the Director-General of the Department of Human Services that a child or class of children may be at risk of harm, or
 - (iii) providing information to the State Coroner that may relate to a death that is within the jurisdiction of the State Coroner, whether or not the death has been the subject of an inquest under this Act, or
 - (iv) providing information to the Child Death Review Team in connection with that Team's functions, or
 - (v) providing information to the Ombudsman concerning the death of a person that is relevant to the exercise of any of the Ombudsman's functions, or
 - (vi) giving effect to any agreement or other arrangement entered into under this Chapter or with coroners in other jurisdictions for the exchange of information, or
 - (vii) providing information to a national database compiled for the purposes of, and contributed to by, coroners of States and Territories, or

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- (d) the record or disclosure is made by a member of the Team to a Minister, or to a Department Head, chief executive officer or senior member of any department of the Government or a statutory body, in connection with a draft report prepared for the purpose of this Chapter.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) A Team-related person who makes a record or disclosure that is authorised under this section in connection with research that is undertaken for the purpose of helping to prevent or reduce the likelihood of domestic violence deaths in New South Wales must ensure that the information does not identify a person who is the subject of the information.
- (3) A Team-related person is not required:
- (a) to produce to any court any document or other thing that has come into the person's possession, custody or control, or
 - (b) to reveal to any court any information that has come to the person's notice,
- by reason of being a Team-related person.
- (4) Any authority or person to whom any information referred to in subsection (1) is revealed, and any person or employee under the control of that authority or person:
- (a) is subject to the same obligations and liabilities under subsections (1) and (2), and
 - (b) enjoys the same rights and privileges under subsection (3), in respect of that information as if he or she were a Team-related person who had acquired the information for the purpose of the exercise of the functions of the Team. Failure to comply with obligations and liabilities referred to in this subsection is taken to be a contravention of subsection (1).
- (5) In this section:
- court** includes any tribunal or person having power to require the production of documents or the answering of questions.
- produce** includes permit access to.

Team-related person means a member of the Team, a member of staff of the Team and any person engaged to assist the Team in the exercise of its functions, including persons appointed under section 101I.

Part 9A.5 Miscellaneous

101N Execution of documents

A document required to be executed by the Team in the exercise of its functions is sufficiently executed if it is signed by the Convenor or another member authorised by the Convenor.

101O Protection from liability

- (1) A matter or thing done or omitted by the Team, a member of the Team or a person acting under the direction of the Team does not, if the matter or thing was done or omitted in good faith for the purposes of executing this or any other Act, subject the member of the Team or person so acting personally to any action, claim or demand in respect of that matter or thing.
- (2) However, any such liability attaches instead to the Crown.

101P Review of Chapter

- (1) The Minister is to review this Chapter to determine whether the policy objectives of this Chapter remain valid and whether the terms of this Chapter remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the commencement of this Chapter.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

[4] Section 104 Regulations

Insert after section 104 (2) (d):

- (e) the constitution, functions, procedure and other matters relating to the Domestic Violence Death Review Team.

[5] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Coroners Amendment (Domestic Violence Death Review Team)
Act 2010*

[6] **Schedule 3**

Insert after Schedule 2:

**Schedule 3 Members and procedure of
Domestic Violence Death Review
Team**

(Section 101E (9))

1 Definitions

In this Schedule:

Convenor means the Convenor of the Team.

member means any member of the Team.

Team means the Domestic Violence Death Review Team.

2 Terms of office of members

Subject to this Schedule, a member (other than the State Coroner or a Deputy State Coroner) holds office for such period (not exceeding 2 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Remuneration

A member, other than the State Coroner, a Deputy State Coroner or a representative of a department of the Government, the NSW Police Force or a statutory body, is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

4 Deputies

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member (including the Convenor), and the Minister may revoke any such appointment.
- (2) A person is not eligible to be appointed as the deputy of a member unless the person has the same qualification that was required for appointment as that member.
- (3) In the absence of a member, the member's deputy may, if available, act in the place of the member.

- (4) While acting in the place of a member, a person:
 - (a) has all the functions of the member and is taken to be a member, and
 - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (5) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

5 Vacancy in office of member

- (1) The office of a member (other than the State Coroner or a Deputy State Coroner) becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is absent from 4 consecutive meetings of the Team of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (f) becomes a mentally incapacitated person, or
 - (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (h) is the subject of a communication in writing to the Minister by the Minister that nominated the member, stating that he or she no longer represents that organisation.
- (2) The Minister may at any time remove a member (other than the Convenor) from office.
- (3) The Minister may at any time remove the Convenor from office.

6 Filling of vacancy in office of member

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

7 Effect of certain other Acts

(1) Chapter 1A of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

8 General procedure

(1) The procedure for the calling of meetings of the Team and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Convenor.

(2) The Team is to meet not less than 4 times in each calendar year.

9 Quorum

The quorum for a meeting of the Team is a majority of the members of the Team for the time being.

10 Presiding member

(1) The Convenor is to preside at a meeting of the Team.

(2) If both the Convenor and the deputy of the Convenor are absent from any meeting, a member elected by the members present at the meeting is to preside at that meeting.

(3) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

11 Voting

A decision supported by a majority of the votes cast at a meeting of the Team at which a quorum is present is the decision of the Team.

12 Transaction of business outside meetings or by telephone

- (1) The Team may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Team for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Team.
- (2) The Team may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Convenor and each member have the same voting rights as they have at an ordinary meeting of the Team.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Team.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

Schedule 2 Amendment of other Acts

2.1 Commission for Children and Young People Act 1998 No 146

[1] Section 45N Functions of Team

Insert after section 45N (2):

- (2A) The Team may exercise functions with respect to the death of a child even though the death is or may be the subject of a review by the Domestic Violence Death Review Team established under the *Coroners Act 2009*.

[2] Section 45U Confidentiality of information

Insert after section 45U (1) (c) (iii):

- (iiia) providing information to the Domestic Violence Death Review Team established under the *Coroners Act 2009* in connection with that Team's functions, or

2.2 Government Information (Public Access) Act 2009 No 52

Schedule 2 Excluded information of particular agencies

Insert at the end of clause 2:

The Domestic Violence Death Review Team—all functions.