

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**STANDING COMMITTEE ON
LEGAL AFFAIRS**

CORONERS (AMENDMENT) BILL (NO.2) 1993

REPORT NO. 5

JUNE 1994

COMMITTEE MEMBERSHIP

Mr Gary Humphries MLA	(Chairman)
Mrs Ellnor Grassby MLA	(from 9 August 1993)
Mr David Lamont MLA	(to 9 August 1993)
Ms Helen Szuty MLA	(from 25 February 1993)

Secretary: Mr R Owens (to May 1993; and from June 1993 to April 1994)
Ms J Starceвич (May-June 1993)
Mr R Power (June 1994)

TERMS OF REFERENCE

On 18 June 1993, the Committee resolved:

That the Committee inquire into and report on, by 31 March 1994, the exposure draft of the Coroners (Amendment) Bill 1993 as tabled in the Assembly by the Attorney-General on 17 June 1993.

STANDING COMMITTEE ON LEGAL AFFAIRS

Coroners (Amendment) Bill (No.2) 1993

CHAPTER ONE: INTRODUCTION

Background

1.1 The Standing Committee on Legal Affairs was formed on 27 March 1992 to:

...inquire into and report on matters referred to it by the Assembly or matters that are considered by the committee to be of concern to the community relating to administrative law, civil liberties and human rights, censorship, company law, law and order, criminal law, law reform and consumer affairs.

1.2 On 17 June 1993, the Attorney-General, Mr Connolly, tabled an exposure draft of the [then] Coroners (Amendment) Bill 1993 with a draft explanatory memorandum for community comment and consultation. The draft paper was a response to the findings of the Royal Commission into Aboriginal Deaths in Custody, as well as a review of the *Coroners Act 1956*.

1.3 On 16 December 1993, the Minister tabled the Coroners (Amendment) Bill (No.2) 1993 in the Legislative Assembly, and moved that it be agreed to in principle. The purpose of the Bill was to implement key recommendations of the Royal Commission and to make a number of reforms of coronial proceedings in the Territory. Debate was adjourned.

1.4 On 18 June 1993, the Standing Committee on Legal Affairs resolved, on the motion of Ms Szuty:

That the Committee inquire into and report on, by 31 March 1994, the exposure draft of the Coroners (Amendment) Bill 1993 as tabled in the Assembly by the Attorney-General on 17 June 1993.

1.5 Following the tabling of the Bill on 16 December 1993, the Standing Committee shifted its inquiry to focus on the Bill as tabled.

Conduct of the Inquiry

1.6 The inquiry was advertised in the local press with the Committee calling for public comment on the proposed Bill.

1.7 The Committee received two submissions, one from the National Association for Loss and Grief (NALAG), ACT Chapter, and the other from the Attorney-General, in the form of a response to NALAG's submission.

1.8 On 10 March 1994, the Committee conducted a public hearing into this and other matters before the Committee. At that hearing, it took evidence from representatives of NALAG and officers of the Attorney-General's Department and the Coroners Court.

1.9 On 9 June 1994, the Committee further examined witnesses from both the Attorney-General's Department and NALAG. A list of witnesses is at Appendix A.

CHAPTER TWO: FEATURES OF THE BILL

The Purpose of the Bill

2.1 In presenting the Coroners (Amendment) Bill (No.2) 1993, the Attorney-General described the process whereby the Government was presenting legislation to reform the conduct of coronial proceedings. He referred to the Royal Commission into Aboriginal Deaths in Custody, the previous exposure draft of the Bill and to consultation involving the Aboriginal and Torres Strait Islander Community. The Minister indicated that the ACT Aboriginal and Torres Strait Islander Advisory Council had reviewed the Bill.

2.2 The Minister indicated that the Bill implemented the recommendations of the Royal Commission in all but three respects (see below). The reasons for the departures were twofold: first, to protect the privacy of the family of the person who has died, and second, the administrative difficulty of implementing the Royal Commission's recommendations as stated..

2.3 As well as giving effect to the Royal Commission's recommendations, the Bill generally implemented a number of changes flowing from a review of the *Coroners Act 1956*. The Minister indicated that this had been the first review since the enactment of the legislation in 1956.

The Contents of the Bill

2.4 The Bill proposes special provisions dealing with the circumstances of a "death in custody". This term is widely interpreted, and includes death in a remand centre; while carrying out a community service order; while detained or in care under the Mental Health Act 1983 or the Childrens Services Act 1986 or in the custody of a sheriff or a police officer. It also includes death while being taken into custody or while trying to escape.

2.5 To facilitate the new procedures, the Bill establishes the office of Chief Coroner of the Territory.

2.6 The rights of members of a deceased's family are set out in the Bill. They include the right to view the body of the deceased, to inspect the scene of the death, to be present at the post-mortem and to have a further post-mortem examination of the deceased's body carried out. Family members are to be entitled to receive a copy of the Coroner's finding

on request. Where the deceased is an Aboriginal or a Torres Strait Islander, the Coroner is required to notify the Aboriginal Legal Service of the holding of an inquiry, and to supply to it a copy of the findings.

2.7 As well as widening the powers of the Coroner in respect of inquests, the Bill allows him or her to include findings as to whether the quality of care, treatment and supervision of the deceased may have contributed to the death.

2.8 The Bill provides detailed procedures for the Coroner's findings to be dealt with. A copy of the findings are to be provided to the agency in whose custody the death has occurred, as well as to the Minister responsible for that agency. The agency is required to forward a written response to the findings to the Minister within three months. The findings and responses are in turn to be contained in the annual report of the Coroner for tabling in the Legislative Assembly.

2.9 The Coroner is required to appoint a legal practitioner to assist the inquest in the event of a death in custody. In all inquiries, police assistance is made mandatory by a requirement that the Chief Police Officer provide the assistance of police officers if so requested by the Coroner.

2.10 In his speech, the Minister indicated that there were three areas in which the Bill departed from the recommendations of the Royal Commission. These relate to:

- the requirement that Coronial Reports be provided automatically to all parties who appeared at an inquest (the Bill provides for such parties to receive the report on request);
- the Coroner's power to require the Minister responsible to give further explanations in response to a coronial report (the Bill provides for agencies to respond to a Coroner's report and for the report to be tabled in the Assembly as part of the Coroner's annual report);
- The requirement that the Coroner appoint a legal practitioner to assist in an inquest into a death in custody within forty-eight hours of being advised of the death (the Bill makes no provision for such counsel to be appointed within a particular time).

2.11 A number of other powers are conferred on the Coroner in broad terms.

2.12 The powers of search and entry are strengthened, as is the capacity of the Coroner to require a witness to be sworn, to answer questions and to produce documents to an inquiry or inquest. Contempt of court provisions are also inserted into the Act.

2.13 The Bill creates a number of offences, including those relating to giving of false or misleading evidence, improper dealing with evidence and the intimidation or bribery of a witness.

2.14 The Minister also made reference in his presentation speech to the intention of the Government to make Regulations to order the practice and procedure of the Coroners Court. Regulations would include procedures specifically directed to inquests into deaths in custody. He also indicated that an information pamphlet would be redrafted to elucidate procedures relating to deaths in custody and other coronial issues.

2.15 The Minister also advised the Assembly that further amendments to the *Coroners Act 1956* were being prepared, particularly with respect to the practices and procedures of coronial inquiries in relation to the consideration of religious and traditional beliefs of certain members of the community concerning death. He indicated that his Department would pursue these amendments in consultation with the Ethnic Communities Council and other community bodies.

CHAPTER THREE: ISSUES IN THE BILL

3.1 The Committee examined witnesses from the Attorney-General's Department, the Coroners Court and NALAG with respect to the practical operation of the proposed changes to the *Coroners Act 1956*. Extensive improvements to the powers of the Coroner are foreshadowed in the Bill and are part of a general scheme to ensure the widest possible examination of factors leading up to a non-routine death, particularly a death in custody.

3.2 The Committee notes that police officers and correctional staff in the ACT have historically had a relatively good record on the issue of deaths in custody. The Committee was advised that it was possible, in the last twenty years, that about six persons might have died in custody in circumstances described in the Aboriginal Deaths in Custody report.

3.3 The Committee considers that the scheme proposed by the Government, reflecting as it does the thrust of the recommendations of the Royal Commission into Aboriginal Deaths in Custody, is a sound way of addressing the issues in a pre-emptive fashion.

3.4 The Committee recommends that further issues be examined as follows:

Scope of Aboriginal-specific Provisions

3.5 The Committee inquired of officers of the Attorney-General's Department as to the reason that certain provisions in the Bill applied only to the families of Aboriginal and Torres Strait Islander deceased people. In its submission, NALAG suggested that many of the provisions specific to this section of the community could easily be extended to all members of the community.

3.6 Mr Dalton, of the Attorney-General's Department, indicated that the philosophy behind the changes was that generated by the Royal Commission, and that the extension of the changes to the broader community had not been contemplated because it was outside the Royal Commission's purview. He said:

We would not have put those sorts of matters in the Act but for the recommendations of the Royal Commission into Aboriginal Deaths in Custody.¹

¹ Proof Hansard, 10 March 1994, page 27

3.7 The Committee considers that there is a strong case for making provisions which enhance the role of a deceased's family in a coronial process applicable to the whole community. The provisions which are specific to the Aboriginal community are not expensive to implement, except insofar as they relate to involvement by the Aboriginal Legal Service.

Recommendation One

3.8 The Committee recommends that:

- The Government give consideration to extending those provisions in the Bill specific to the Aboriginal and Torres Strait Islander Community to the whole community, except insofar as they relate to the role of the Aboriginal Legal Service.

Co-operation with the Coroner

3.9 Proposed section 22L of the Bill provides as follows:

- 22L
- (1) A Coroner may, in writing, request the chief police officer for the assistance of a police officer in an investigation for the purpose of an inquest or inquiry.
 - (2) The chief police officer shall, as far as practicable, comply with a request under sub-section (1).

3.10 Mr Dalton, of the Attorney-General's Department, advised the Committee that the intention of the section was to address the point that the police are the investigative arm of the Coroner and that it was appropriate to place the control of the investigation under the Coroner. This, he said, might avoid problems arising from a conflict of interest where police needed to investigate other police.

3.11 The Committee accepts the sentiment of this provision but believes that the principle can be applied more broadly to other public servants. A range of such public servants may have relevant knowledge to an inquest or inquiry and their co-operation should be no less forthcoming in their capacity as public servants.

Recommendation Two

3.12 The Committee recommends that:

- **The power in proposed section 22L to direct a police officer, via the chief police officer, to assist an inquiry should be extended to apply to all ACT public servants.**

Information to be Made Available by the Coroner

3.13 Members noted that the proposed Bill uses the word “statement” in describing the information able to be made available by the Coroner following an inquest. Members considered the term “statement” may limit - whether intentionally or not - the type of information able to be provided by the Coroner.

3.14 Further, members were advised by representatives of NALAG that, provided such information is able to be handled sensitively when passed on to those affected by a coronial inquest, the information is likely to assist the grieving process of the deceased’s family.

3.15 The Committee appreciates the need for great sensitivity toward the needs of families involved in coronial inquiries, yet also appreciates that it is desirable for families not to be left in ignorance of the outcomes of coronial inquiries (unless extenuating circumstances apply). Therefore, the Committee is reluctant to see the term “statement” remain in the Bill. It suggests that proposed section 35 be widened to allow the Coroner to make available any document or other evidence under his or her control.

Recommendation Three

3.16 The Committee recommends that:

- **Proposed section 35 of the Bill be amended to allow the Coroner to make available any document or other evidence that the Coroner intends to consider to any person with sufficient interest.**

General Coronial Statistics

3.17 In its response to the submission of NALAG, the Attorney-General's Department referred to the collation on a national basis of general coronial statistics. It indicated that the Australian Institute of Criminology may be interested in collecting such information. It also indicated that "the transmission of general coronial statistics to the Institute will be inquired into".²

3.18 Mr Thompson, of the Coroners Court, indicated that, although such transfer of statistical information may be a priority, it had not happened as of March this year.

3.19 The Committee believes that such information relating to certain coronial matters may have value if provided to a national body for comparative purposes. The Committee believes that the Government should give priority to the forwarding of such information to the Institute of Criminology or other suitable bodies which may be interested in comparative analysis.

Recommendation Four

3.20 The Committee recommends that:

- **The Government co-operate with national bodies such as the Australian Institute of Criminology in the collation of information relating to coronial proceedings for the purposes of analysis and comparison.**

² Attorney-General's Department Submission, page 6

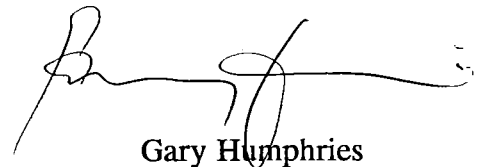
Community Consultation

3.21 The Committee was gratified to learn of the close co-operation between officers of the Attorney-General's Department and community groups, such as NALAG, in reviewing the proposed Bill. Further, the Committee was advised that NALAG would be closely involved in shaping regulations to be brought in under the legislation once it takes effect. Also, the Committee was advised that NALAG would contribute to the review of procedures to be followed by the Coroner. The Committee commends government officers for this level of close consultation with interested community groups.

Recommendation Five

3.22 The Committee recommends that:

- The close level of co-operation demonstrated in reviewing this legislation by the involvement of community groups and officers of the Attorney-General's Department be continued during the implementation of this legislation, including the development of Regulations under the legislation and the review of coronial processes.

A handwritten signature in black ink, appearing to read 'Gary Humphries', is written over the printed name.

Gary Humphries
Chairman

APPENDIX ONE

LIST OF WITNESSES:

Attorney-General's Department

Mr C Dalton	Director, Administrative Law Policy and Courts
Ms C Donovan	Legal Officer, Administrative Law Policy and Courts
Mr P Thompson	Magistrates Court

National Association for Loss and Grief (ACT Chapter)

Ms K Rodgers
Ms N Wilkinson