

COMMUNITY LEGAL CENTRES TASMANIA

19 September 2022

Department of Justice
Office of the Secretary
GPO Box 825
Hobart TAS 7001
attn: Acting Director, Strategic Legislation and Policy

via email: haveyoursay@justice.tas.gov.au

Dear Bruce Paterson,

Re: Justice and Related Legislation Miscellaneous Amendments Bill 2022

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to respond to the *Justice and Related Legislation Miscellaneous Amendments Bill 2022* ('the Bill').¹ We support the Government's intent to clarify the crime of bestiality, the Long Title in the *Births, Deaths and Marriages Registration Act 1999* (Tas) and the procedures the Coroner will adopt when investigating a death pursuant to the *Coroners Act 1995* (Tas). However, we believe some additional amendments to the *Coroners Act 1995* (Tas) should be included as they will further strengthen the rights of the senior next of kin.

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

Criminal Code Act 1924 (Tas)

The *Criminal Code Amendment (Sexual Assault) Act 2017* (Tas) amended section 122 of the *Criminal Code Act 1924* (Tas) (the Code) by replacing the crime of "unnatural crimes" with the crime of "bestiality". The Amending Act also broadened the definition of "sexual intercourse" to provide as follows:

2B Sexual intercourse

(1) In this Code –

sexual intercourse means –

(a) the penetration, to the least degree, of a person's vagina, genitalia, anus or mouth by a penis; or

¹ CLC Tas would like to acknowledge those persons and organisations who gave freely of their time in assisting with our submission.

(b) the penetration, to the least degree, of a person's vagina, genitalia or anus by a body part of a person other than a penis; or
(c) the penetration, to the least degree, of a person's vagina, genitalia or anus by an object held or manipulated by, or attached to, another person; or
(d) the continuation of an act of penetration referred to in paragraph (a), (b) or (c) of this definition.

*(2) In this section –
penetration does not include penetration carried out for a proper medical purpose, for the purposes of hygiene or for any purpose that is authorised by law.*

However, in the recent case of *Elnami v Tasmania*² the intention of Parliament in seeking to clarify the crime of bestiality was called into question. In that case, the accused was indicted for the crime of bestiality, particularised as follows:

"[The accused] at Hobart on or about the 15th day of September 2019 engaged in sexual activity with a dog, namely by inserting his finger into the dog's anus on multiple occasions, touching and attempting to masturbate the dog's penis on multiple occasions, touching the dog's anus, attempting to induce the dog to lick his penis and attempting to penetrate the dog's anus with his penis".

The accused sought an order that he be discharged from that indictment on the basis that the crime of bestiality was only committed if there was penetration with a penis by, or of, an animal. In his judgment Justice Estcourt found that because Parliament had not expressed a clear intention that "bestiality" be construed to mean anything other than as penetration with a penis by, or of, an animal, the 2017 amendment was inconsequential.

The amendment proposed in the Bill is supported because it clarifies Parliament's intention that sexual activity of any kind between a human being and an animal that is not for a genuine veterinary, agricultural or scientific research purpose will amount to bestiality.

Births, Deaths and Marriages Registration Act 1999 (Tas)

The Bill seeks to amend the Long Title by omitting "uniform legislation in relation to the registration of births, deaths and marriages and to provide for the rights of persons who have undergone gender reassignment surgery" and to substitute "the registration of births, deaths and marriages and to provide legal recognition for trans and gender-diverse Tasmanians and those with intersex variations of sex characteristics".

We strongly support the joint TasCOSS, Intersex Peer Support Australia and Equality Tasmania submission that recommends replacing "those with intersex variations of sex characteristics" with "those with innate variations of sex characteristics". As the authors note in their submission "the term 'intersex' is an umbrella term used to describe a wide range of innate bodily variations in sex characteristics. Hence it is redundant to use the term 'intersex' in combination with 'variations of sex characteristics'".

² [2020] TASSC 54.

Coroners Act 1997 (Tas)

The case of *Jago v Anti-Discrimination Tribunal*³ was concerned with Benjamin Jago a homosexual man who despite being in a relationship for five years was not recognised by the Coroner as his deceased partner's senior next of kin in the days after his partner's death. The complaint of discrimination was dismissed by the Anti-Discrimination Tribunal and then the Supreme Court on the basis that the Coroner was immune from legal proceedings.⁴

We strongly support the Government's intention to ensure that Benjamin Jago's experience with the Coroner's Office does not occur again. The Bill seeks to achieve this aim by clarifying that upon the investigation into a death the Coroner will provide information to the senior next of kin and any other person who has an interest in the investigation. The Bill sets out that "any general, or specific, information that is specified in the regulations" will be provided to both the senior next of kin and other persons with an interest in the investigation. Information that we believe should be included in the regulations includes the purpose of the coronial investigation, applying for senior next of kin and the rights of the senior next of kin.⁵

However, we strongly recommend that the *Coroners Act 1995 (Tas)* ('the Act') is further amended, to explicitly make clear that a party aggrieved by the senior next of kin decision may appeal to the Supreme Court. Currently, the Act clearly sets out that persons who have a sufficient interest in the findings of the coronial investigation can appeal to the Supreme Court:

- seeking the reopening of an investigation;⁶ and
- that an inquest be held;⁷ and
- that an autopsy be performed;⁸ and
- that an autopsy not be performed;⁹ and
- that the body of the deceased person not be exhumed;¹⁰ and
- that there be an inquest in relation to a fire or explosion;¹¹ and
- that there be an order that all or any of the findings of an inquest are void;¹² and
- the return of an "article, substance or thing" in the legal custody of the Coroner.¹³

³ [2021] TASSC 10.

⁴ The immunities are found in section 67 of the *Coroners Act 1995 (Tas)* and section 10A of the *Magistrates Court Act 1987 (Tas)*. See also *Jago v Magistrates Court of Tasmania (Coronial Division)* [2018] TASADT 7.

⁵ These rights include objecting to an autopsy or exhumation, being notified of a coroner's decision not to hold an inquest and requesting that a coroner not hold an inquest into a workplace death: sections 26, 26A, 38, 39 of the *Coroners Act 1995 (Tas)*.

⁶ Section 58(7) of the *Coroners Act 1995 (Tas)*.

⁷ Sections 26(2) and 27(3) of the *Coroners Act 1995 (Tas)*.

⁸ Section 37(3) of the *Coroners Act 1995 (Tas)*.

⁹ Section 38(3) of the *Coroners Act 1995 (Tas)*.

¹⁰ Section 39(4) of the *Coroners Act 1995 (Tas)*.

¹¹ Section 44(2) of the *Coroners Act 1995 (Tas)*.

¹² Section 58A(1) of the *Coroners Act 1995 (Tas)*.

¹³ Section 63 of the *Coroners Act 1995 (Tas)*.

Whilst it is acknowledged that parties are able to appeal senior next of kin status to the Supreme Court, the Act is silent and parties would only be aware of their right to appeal under the *Judicial Review Act 2000* (Tas) if they had engaged a lawyer. Given the heightened emotional state of persons grieving the loss of a loved one whilst the coronial investigation takes place, and the rights of appeal already set out in the Act for other decisions of the Coroner, it is imperative that parties are made aware through the Act of their right to appeal. We therefore recommend that section 3A of the Act is amended to clarify that an aggrieved person may appeal the senior next of kin decision to the Supreme Court.

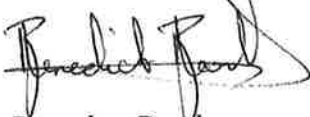
To ensure that discriminatory conduct is minimised in future, we also recommend that the definition of “spouse” in the Act is amended to emphasise that de-facto relationships include both those registered under the *Relationships Act 2003* (Tas) and those not registered. The suggested amendment to the definition of “spouse” is underlined:

spouse includes the other party to a significant relationship whether or not the relationship is registered, within the meaning of the *Relationships Act 2003*;

Finally, as a result of the *Jago v Anti-Discrimination Tribunal* decision and the finding that the Coroner is immune from legal proceedings, some LGBTIQ+ couples may have a heightened sense of anxiety about how their relationship will be judged. To allay any concerns, we also recommend that section 3A of the Act expressly provide that senior next of kin will be assessed “regardless of sex, sexual orientation, gender, gender identity or innate variations of sex characteristics”.

If you have any queries, or would like to discuss our submission further, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl
Policy Officer

Community Legal Centres Tasmania
