

COMMUNITY LEGAL CENTRES TASMANIA

17 July 2026

Tasmania Law Reform Institute
Private Bag 89
HOBART TAS 7001

via email: law.reform@utas.edu.au

To the Tasmania Law Reform Institute,
Re: *Review of the Coroners Act 1995 (Tas)*

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Review of the Coroners Act 1995 (Tas)* ('the Review').¹ Our submission is limited to addressing three issues: better recognition of cultural and religious practices, senior next of kin and coronial recommendations.

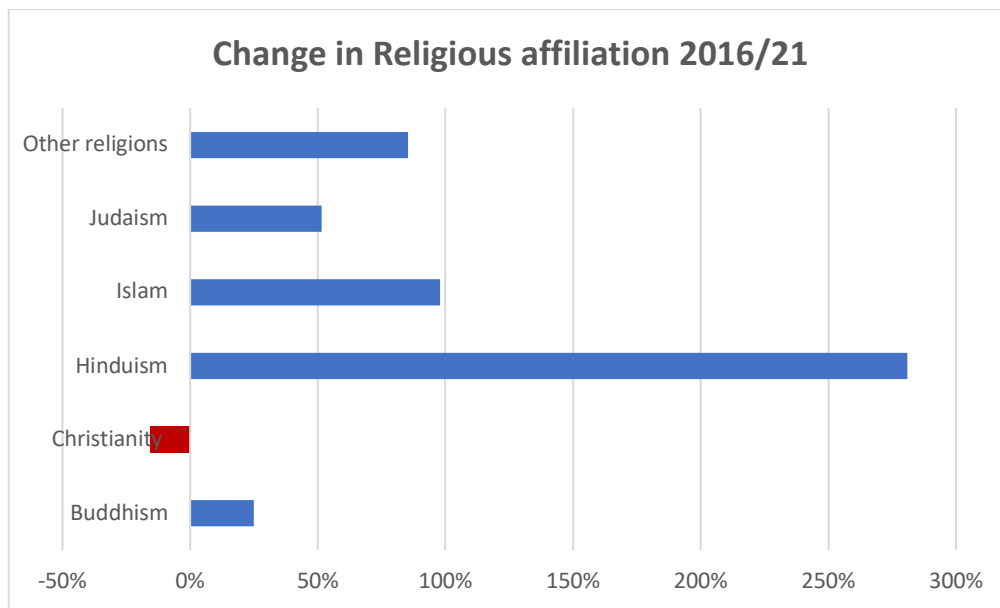
CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice,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

Better recognition of cultural or religious practices

Tasmania's religious affiliation is changing. Although Christianity remains the religion most Tasmanians affiliate with, the recent Census found that Christian affiliation has dropped by 16 per cent, from 253,000 persons in 2016 to 214,000 in 2021. The Census also found that between 2016-2021, Tasmania had the highest growth rate in Islam and Hinduism of any State or Territory in Australia.² In 2016, there were around 2550 people living in Tasmania who practiced Hinduism but by 2021 this had increased to around 9700 people, a 280 per cent increase. Likewise, in 2016 there were around 2500 people living in Tasmania who practiced Islam but by 2021 this had increased to 4900, a 98 per cent increase. Other growing religious affiliations include Buddhism, with an increase from around 4000 to 5600 (38 per cent increase) and Judaism from 250 to 380 (51 per cent increase).

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

² Australian Bureau of Statistics, Religious affiliation in Australia (July 2022). As found at <https://www.abs.gov.au/articles/religious-affiliation-australia> (accessed 17 July 2026).



Source: Australian Bureau of Statistics, *Census of Population and Housing 2021*, Table 1.

As well, the number of Tasmanians identifying as indigenous has almost doubled from 15,773 in 2001 (3.5 per cent of Tasmania’s population) to 30,186 (5.4 per cent) in 2021. The growing number of First Nations Tasmanians and those who affiliate with a religion other than Christianity strongly points to the need for an Act that recognises other cultural and religious practices. In Hinduism for example, no jewellery, sacred threads or other religious objects should be removed from the body. And in Islam, the health professional attending to the body should, where possible, be the same sex as the deceased.³

Whilst the Act does recognise Australia’s First Nations peoples,⁴ the recognition is limited and there is no express recognition of other cultural or religious practices. Similarly, whilst the *Tasmanian Coronial Practice Handbook* acknowledges other religions and cultures, the onus is on the senior next of kin/persons with sufficient interest to report concerns to the coroner.⁵ Given that the death of a loved one often leaves those left behind in a state of grief, shock and vulnerability we believe that the law should be strengthened so that the coroner has a positive duty in ensuring that other religious and cultural practices are considered. The Victorian model provides a useful example with the Act’s objectives include that, in exercising a function, the coroner is expected to respect the cultural or religious practices of the deceased.⁶

³ Coronial Council of Victoria, *Review into the appropriate and responsive care of deaths in multifaith and multicultural communities by the Coroners Court of Victoria and related entities involved in coronial processes* (Final Report: July 2020) at para. 3.5.1. As found at <https://www.justice.vic.gov.au/justice-system/courts-and-tribunals/review-into-the-appropriate-and-responsive-care-of-deaths-in> (accessed 17 July 2026).

⁴ The Act defines ‘senior next of kin’ as including “if the deceased person is an Aboriginal person, a person who, according to the customs and tradition of the community or group to which the person belongs, is an appropriate person”: section 3A of the *Coroners Act 1995* (Tas). Also see section 23 of the Act which outlines what is to occur with aboriginal remains.

⁵ Magistrates Court of Tasmania, *Tasmanian Coronial Practice Handbook* (2016) at 39 and 107.

⁶ Section 8(c) of the *Coroners Act 2008* (Vic). Also see sections 3BA(2)(iv) and 17A of the *Coroners Act 1997* (ACT).

Whilst Islam and Judaism object to internal postmortem examinations unless required by law,⁷ many others -regardless of cultural or religious background- would also have a reluctance to agree to internal postmortem autopsy. We therefore recommend that the Act expressly recognise the preferencing of less invasive procedures where possible. A model that should be considered is New South Wales which expressly directs the use of the least invasive appropriate method and lists a range of options including an external examination, a radiological examination, blood and tissue sampling or a partial postmortem examination.⁸

Senior next of kin

The ‘senior next of kin’ plays an important role in the coronial process including the ability to object to an autopsy or exhumation and being informed of the coroner’s decision in relation to the holding of an inquest.⁹ To ensure that the appropriate person is appointed and conflict is minimised, all States and Territories provide a statutory hierarchy in which the first available person listed is the senior next of kin.¹⁰

Compared with other Australian jurisdictions, the Tasmanian Act has a number of advantages including express recognition of the more recent spouse as well as elders and other members of the Aboriginal community.¹¹ However, as the Review has observed, the list can be problematic with a coroner required to select a spouse over an adult child even where the spouse was estranged and the adult child was in regular contact with the deceased. Concerns also arise where the senior next of kin’s mental status is uncertain or they are very elderly.

In most cases, “coroners expect families to reach an agreed position as to who is the single point of contact/senior next of kin”,¹² but in the small number of cases in which there is no agreement, the coroner should have a broad discretion to determine the most appropriate senior next of kin. Respecting the wishes of the deceased is crucial to the coronial process and the advantage of the coroner having the power to appoint the most appropriate person is that those wishes are more likely to be recognised. It is also crucial that parties aggrieved by the coroner’s decision are made aware that there is a right of appeal (see below).

Similarly, while we strongly support the Act’s recognition of elders and other senior members of the Aboriginal community, we also believe that the Act should accommodate other cultural concepts of family and senior next of kin. A model that could be replicated is found in New Zealand where ‘immediate family’ is defined as including:¹³

immediate family, in relation to a dead person,—
(a) means members of the dead person’s family, whānau, or other culturally
recognised family group, who—
(i) were in a close relationship with the person; or

⁷ Coronial Council of Victoria, *Review into the appropriate and responsive care of deaths in multifaith and multicultural communities by the Coroners Court of Victoria and related entities involved in coronial processes* (Final Report: July 2020) As found at <https://www.justice.vic.gov.au/justice-system/courts-and-tribunals/review-into-the-appropriate-and-responsive-care-of-deaths-in> (accessed 6 July 2026).

⁸ Section 88 of the Coroners Act 2009 (NSW).

⁹ See, for example, sections 38, 39 and 28A of the *Coroners Act 1995* (Tas).

¹⁰ Section 3A of the *Coroners Act 1995* (Tas).

¹¹ Sections 3A(a) and (i) of the *Coroners Act 1995* (Tas).

¹² Magistrates Court of Tasmania, *Tasmanian Coronial Practice Handbook* (2016) at 30.

¹³ Section 9 of the *Coroners Act 2006* (NZ).

- (ii) had, in accordance with customs or traditions of the community of which the person was part, responsibility for, or an interest in, the person's welfare and best interests; and
- (b) to avoid doubt, includes persons whose relationship to the dead person is, or is through 1 or more relationships that are, that or those of—
 - (i) spouse, civil union partner, or de facto partner of the dead person:
 - (ii) child, parent, guardian, grandparent, brother, or sister of the dead person:
 - (iii) stepchild, stepparent, stepbrother, or stepsister of the dead person

- **Right of appeal**

In 2015, Benjamin Jago, a young gay man found his partner dead in their home. Despite being in a relationship for around five years and owning a house together Jago was not recognised as 'senior next of kin' with the coroner's office informing him that the relationship would only be recognised if registered with the Office of Births, Deaths and Marriages. When Jago contacted the Office, he was informed that the relationship could only be registered if both Jago and his deceased partner agreed. The body of Jago's partner was subsequently released to his mother and meant that Jago was "refused the opportunity to see [his partner's] body, had no role to play in the funeral and had no say in the burial arrangements".¹⁴ In a newspaper article, Jago said "To be treated like I meant nothing to him and was not even a part of his life left me feeling like a part of my soul has been crushed into dust".¹⁵

Jago filed a complaint of discrimination with Equal Opportunity Tasmania who found that there was an arguable case. On referral, the Anti-Discrimination Tribunal ruled that the coroner had immunity pursuant to the *Coroners Act 1995* (Cth) and the *Magistrates Court Act 1987* (Tas) and as a result the Tribunal did not have jurisdiction. On appeal, the Supreme Court upheld the Tribunal's decision.¹⁶

Following the Supreme Court decision, law reform was pursued on the basis that it was not clear that an aggrieved party had a right of appeal to the Supreme Court against a coroner's senior next of kin determination. Following advocacy by Equality Tasmania, a Bill was tabled by the Attorney-General who observed in her Second Reading Speech:¹⁷

The Bill's amendment responds to a case in 2015 where the deceased's spouse (as defined under the Relationships Act) was initially, incorrectly, not recognised as the spouse, and thus as the respective senior next of kin. Although that was ultimately corrected by the Coroner, that initial decision was understandably very distressing for that surviving spouse.

Mr Speaker, I have previously expressed the Government's sincere sympathy and deep regret that this occurred, and I would like to restate that regret here and now. The Tasmanian Government recognises that members of the community are often in a very vulnerable and distressed state when they come into contact with the coronial system, which is why we are committed to ensuring the process and avenues of complaint and

¹⁴ Rodney Croome, 'With a marriage certificate, Ben Jago could have laid his partner to rest. Without it, he was a stranger', *The Guardian*, 13 November 2015. As found at <https://www.theguardian.com/commentisfree/2015/nov/13/with-a-marriage-certificate-ben-jago-could-have-laid-his-partner-to-rest-without-it-he-was-a-stranger> (accessed 6 July 2026).

¹⁵ Ibid.

¹⁶ *Jago v Anti-Discrimination Tribunal* [2021] TASSC 10 at para. [1]-[2].

¹⁷ Parliament of Tasmania, *Hansard*, Tuesday 18 October 2022 (Elise Archer MP).

review are well understood, so both the Court and individuals can be confident the right decisions are made using the information available.

The Coronial Division of the Magistrates Court started important work by producing comprehensive supporting material for those interacting with this Court. In 2016 the Tasmanian Coronial Practice Handbook and The Coroner's Court: A Guide for Families and Friends were developed. These resources can now be found on the Coronial Division's website, and are intended to assist members of the community who come into contact with the coronial system.

The amendment to the Coroners Act continues this work by legislating a positive duty on the Court for the senior next of kin, along with others who have a 'sufficient interest' in the death, to be provided with prescribed categories of information about the operation of the Coroners Act. The Coroners Act has several key processes available to persons with a 'sufficient interest', and consideration of who has a sufficient interest is a routine and straightforward part of the Court's everyday work. This term does not place a burden on the individual or the Coroner, but ensures the focus of the duty to provide information is to those people who need it, such as family members and partners – and not simply any member of the public.

This amendment is modelled on a similar provision in the Victorian Coroners Act 2008. Regulations will also be developed in consultation with stakeholders that specify the type of information that needs to be provided under this section. It is anticipated that this will include information relating to:

- the rights that exist in the Coroners Act, for example, regarding the viewing of a deceased person or objections to autopsies; and*
- the meaning of senior next of kin, and what rights, including dispute resolution and appeal, flow on from that.*

Mr Speaker, while the law is now clear, this positive duty supports and reinforces the Court's commitment to providing plain English information on coronial processes to family and others involved. I expect the information will ensure there is now an explicit understanding that the current law provides that spouse includes a person in a significant relationship under the Relationships Act, whether registered under that Act or not. It could also provide information on what information the Court needs to resolve who is the spouse or next of kin where there is any dispute between family members.

The Bill passed with section 3B of the Act now providing:

3B. Determination of senior next of kin of deceased person

(1) If a person is aggrieved by a decision made under this Act specifying who is the senior next of kin of a deceased person for the purposes of this Act, the person may appeal the decision to the Supreme Court.

(2) On hearing an appeal under subsection (1), the Supreme Court may –

- (a) affirm the decision; or*
- (b) quash the decision and make any further orders as the Supreme Court thinks fit in the circumstances.*

Tasmania is the only Australian jurisdiction where it is legislatively clear that parties aggrieved by a senior next of kin ruling have a right of appeal to the Supreme Court. We strongly support the amendment and believe that if the coroner is provided with discretion

to determine the appropriate senior next of kin, aggrieved parties will be aware that they can appeal the decision.

Coronial recommendations

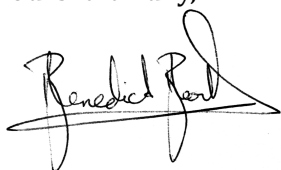
The Coroner has the ability to enhance public health or safety with section 28 of the Act providing that as part of an investigation into a death the coroner can make recommendations¹⁸ and report those recommendations to the Attorney-General.¹⁹ However, there is no express recognition of the important role the coroner does play in preventing death and serious injury and no legislative requirement for a response to be provided to coronial recommendations. Instead, the coroner relies on “the good will and energy of individual government entities and private organisations to take on coronial recommendations and implement them...”²⁰

We strongly recommend the inclusion in the Act of a statutory provision recognising death and serious injury prevention as a statutory purpose of the coronial process. Rather than being seen as an “incidental by-product of coronial work”,²¹ the ability of the coroner to make recommendations that prevent death and serious injury should be encouraged through its express inclusion in a purpose/objects/functions section of the Act.

We also strongly recommend that a formal response be provided by parties to whom recommendations are directed. We do not believe that the response should be restricted to government agencies but should be broader, extending to entities that have functions of a public nature and are exercising those functions on behalf of the State or a public authority. An additional benefit is that a response also has therapeutic benefits for friends and family of the deceased to know that recommendations have been made and preventative measure will be strengthened.

If you have any queries, please do not hesitate to contact us.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Benedict Bartl', with a stylized flourish at the end.

Benedict Bartl
Policy Officer
Community Legal Centres Tasmania

¹⁸ Section 28(2)-(3) of the *Coroners Act 1995* (Tas).

¹⁹ Section 30(2) of the *Coroners Act 1995* (Tas).

²⁰ Magistrates Court of Tasmania, *Tasmanian Coronial Practice Handbook* (2016) at 100.

²¹ Hugh Dillon, ‘SOS: Saving the Coronial System’ *Journal of the NSW Bar Association* (2025) 43. As found in Tasmania Law Reform Institute, *Review of the Coroners Act 1995 (Tas)* (Issues Paper No 33: April 2026) at 223.