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Melissa Crennan
A/g Director
Courts Policy, Strategy and Legislation
Justice System Coordination and Reform
Department of Justice and Community Safety
Victorian Government

Dear Melissa Crennan

Subject: Equality Australia's response to the Consultation Paper: Senior next of kin hierarchy under the Coroners Act 2008

Thank you for the invitation to make a submission in response to the Victorian Department of Justice and Community Safety's Consultation Paper regarding senior next of kin hierarchy under the *Coroners Act 2008* (the Act).

Equality Australia is a national organisation dedicated to achieving equality for LGBTIQ+ people. Equality Australia brings together legal, policy and communications expertise to address discriminate, disadvantage and distress experienced by LGBTIQ+ people.

Issues with the current senior next of kin hierarchy

We are pleased that the Victorian Government is implementing Coroner Ingrid Giles' recommendation to consider whether the current definition of 'senior next of kin' can be reformulated to reduce the hurdles and distress it can create for the loved ones of LGBTIQ+ Victorians who die in reportable circumstances. Amendments are required to ensure respect for the inherent dignity of LGBTIQ+ Victorians, including those who may be estranged from family members, while still allowing senior next of kin to be identified quickly and with certainty.

Senior next of kin are entrusted to make highly sensitive and consequential decisions about the coronial process. As the main point of contact throughout a coronial investigation, they have wide-ranging rights under the Act, including rights to: receive updates about the coronial process that contain the deceased's medical or other personal information; have opportunities to object to an autopsy; have the deceased's body released to them if the executor does not apply; and appeal at various stages of the process.

As outlined in the Consultation Paper, the senior next of kin hierarchy caused significant issues for Bridget Flack's family and the investigation into her death because her senior next of kin did not recognise her gender identity. Accordingly, Coroner Giles found that the current hierarchy may create undue distress for the loved ones of LGBTIQ+ people who die in reportable circumstances.

Bridget Flack's coronial investigation findings illustrate the serious and detrimental impact the senior next of kin hierarchy can have on both the dignity of the deceased and the wellbeing of their families and



friends in circumstances where it is inappropriate for the highest-ranked relative or associate to undertake that role. The distress caused is likely compounded in circumstances where the deceased has intersecting identities.

We note that while these issues are most apparent for LGBTIQ+ people who are estranged from family members, they may also be experienced where the deceased is an LGBTIQ+ person whose family members are not estranged but may not fully support or recognise their sexuality or gender identity. In these circumstances, it may still be inappropriate and against the deceased's wishes for the highest-ranked relative or associate to be recognised as senior next of kin.

Proposal 1: Allowing coroners to refuse to recognise a person as a senior next of kin

Currently, coroners cannot depart from the senior next of kin hierarchy. We understand that Proposal 1 would allow a coroner, at their discretion, to refuse to recognise the highest-ranked person as the senior next of kin if the coroner considers that it is not appropriate for the person to have that role in the circumstances. Where the discretion is exercised, the coroner would instead recognise the next available person within the current hierarchy.

In our view, it would be useful to provide coroners with a discretion to depart from the existing hierarchy where they consider it is not appropriate for the person to have the role in the circumstances. We recommend that the coroner should be able to exercise this discretion having regard to all of the circumstances, including any representations made by family members and associates about the appropriateness of the person for the role of senior next of kin. We recommend specifying in the Act that the coroner must have regard to any evidence of the deceased's wishes and the person's level of support and acceptance of the deceased sexuality and gender identity, to ensure these are adequately factored into the coroner's consideration of the person's appropriateness as senior next of kin.

We agree that this discretion should be able to be exercised on their own initiative or on request from an applicant, and that this discretion should be available at any time during the investigation to account for the possibility of changed circumstances.

Further, we consider that a family member or associate should have a right to appeal a decision by the coroner to exercise or decline to exercise their discretion, acknowledging that applicants would face a high threshold for the appeal. We consider that allowing family members or associates of the deceased to appeal these decisions within a limited period of time, for example within a certain number of days, would not unduly delay the coronial process and would still allow for the senior next of kin to be 'identified quickly and with certainty'.

Thank you again for the opportunity to provide our views in relation to the senior next of kin hierarchy.

Kind regards

Heather Corkhill

Legal Director, Equality Australia