



Australian Capital Territory

Coroners Amendment Act 2011

A2011-36

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Australian Capital Territory

Coroners Amendment Act 2011

A2011-36

An Act to amend the *Coroners Act 1997*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Coroners Amendment Act 2011*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Coroners Act 1997*.

4 New division 1.1 heading

before section 1, insert

Division 1.1 Introduction

5 New division 1.2

after section 3B, insert

Division 1.2 Objects and important concepts**3BA Objects of Act**

- (1) The main objects of this Act are to—
- (a) establish the Coroner’s Court and position of Chief Coroner;
and
Note Establish includes continue in existence (see Legislation Act, dict, pt 1, def *establish*).
 - (b) provide—
 - (i) that a person who is a magistrate is also a coroner; and
 - (ii) for the appointment of deputy coroners; and
 - (c) give the following functions to coroners:
 - (i) to hold inquests into particular kinds of deaths or suspected deaths, and to make findings about the deaths, including the identities of deceased people and causes of death;
 - (ii) to hold inquiries into, and make findings about, the cause and origin of—
 - (A) fires that have destroyed or damaged property; and
 - (B) disasters; and
 - (d) allow a coroner, based on the coroner’s findings in an inquest or inquiry, to make recommendations about the following:
 - (i) the prevention of deaths;
 - (ii) the promotion of general public health and safety including occupational health and safety;

- (iii) the administration of justice;
 - (iv) the need for a matter to be investigated or reviewed by an entity.
- (2) As far as practicable, the objects of this Act must be carried out in a way that—
- (a) for an inquest into a person's death—recognises the interests of the person's immediate family—
 - (i) to have all reasonable questions about the circumstances of the person's death answered; and
 - (ii) to be kept informed of important developments throughout the inquest; and
 - (b) maintains the inquisitorial, non-adversarial nature of the Coroner's Court, and its function to inquire into and publicly examine the causes of death, fire and disaster; and
 - (c) promotes the development of a systematic and comprehensive public record of findings made by a coroner and any associated recommendations made by the coroner; and
 - (d) increases public awareness of a coroner's findings about—
 - (i) violent or unusual deaths; and
 - (ii) serious risks to public health and safety; and
 - (iii) ways to protect public health and safety by reducing the risk of death, fire or disaster; and
 - (e) promotes public understanding about the function of the Coroner's Court.

6 Section 7 heading

substitute

7 Chief Coroner's functions

7 Section 9

omit

powers

substitute

functions

8 Section 13, new note

insert

Note A coroner may, or may not, conduct a hearing into a death (see div 5.1 (Hearings)).

9 Section 14

relocate as section 34A

10 Section 39

substitute

**39 Inquests into non-custodial deaths and inquiries—
discretion to appoint counsel assisting**

- (1) A coroner may appoint a lawyer as counsel to assist the coroner (*counsel assisting*) in an inquest (other than for a death in custody) or inquiry if the coroner is satisfied that—
 - (a) it is in the interests of justice to have a lawyer assist the coroner—
 - (i) in the inquest or inquiry; or

- (ii) by appearing at a hearing in the inquest or inquiry; and
- (b) the lawyer appointed—
 - (i) has the appropriate skills and experience necessary to assist the coroner in the inquest or inquiry; and
 - (ii) does not have an actual or perceived conflict of interest (based on the lawyer's personal or professional circumstances) that would prevent the lawyer from properly carrying out the functions of counsel assisting under this Act.

Note For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

- (2) An appointment under subsection (1) may be made either generally or in relation to a particular matter.
- (3) If a coroner appoints the director of public prosecutions as counsel assisting in an inquest or inquiry, the director may, unless the appointment states otherwise, authorise a lawyer who meets the requirements mentioned in subsection (1) (b) to act in the director's name.

Note A coroner must appoint a lawyer as counsel assisting in an inquest into a death in custody, see s 72 (Inquest into death in custody—obligation to appoint counsel assisting).

39A Functions of counsel assisting

- (1) The functions of counsel assisting include the following:
 - (a) assisting the coroner as required by the coroner in the inquest or inquiry;
 - (b) if there is a hearing for the inquest or inquiry—
 - (i) appearing at the hearing; and
 - (ii) presenting evidence and examining witnesses at the hearing;

- (c) making submissions to the coroner on any matter relevant to the inquest or inquiry, including any findings that the coroner may make at the end of the inquest or inquiry;
 - (d) acting in the public interest and the interests of justice to assist the coroner to decide matters of fact or law relevant to the inquest or inquiry.
- (2) Counsel assisting must tell the coroner as soon as practicable, in writing, if he or she becomes aware of any matter that could affect his or her eligibility to be appointed as, or ability to exercise the functions of, counsel assisting.
- (3) In this section:

counsel assisting means a lawyer appointed under section 39 or section 72.

examining, a witness, includes cross-examining and re-examining the witness.

39B Counsel assisting—revocation of appointment

A coroner must revoke a lawyer's appointment under section 39 or section 72—

- (a) if satisfied on reasonable grounds that the lawyer is not, or is no longer, eligible for appointment under the section, or is unable to properly exercise the functions of counsel assisting; or
- (b) for any other reason prescribed by regulation.

11 Division 5.3 heading

substitute

Division 5.3 Evidence and procedure

12 Section 47

substitute

47 Rules of evidence do not apply

The rules of evidence do not apply to a proceeding before the Coroner's Court.

13 New section 51A

in division 5.3, insert

51A Practice and procedure for inquests and inquiries

- (1) An inquest or inquiry must be conducted in accordance with any practice or procedure for taking a step in the inquest or inquiry that is prescribed under this Act or another territory law under which the step is to be taken.
- (2) However, if a practice or procedure for taking a step in an inquest or inquiry is not prescribed under this Act or another territory law—
 - (a) the Chief Coroner may give directions for the practice or procedure (a *coronial practice direction*) to be followed for the step; or
 - (b) if the Chief Coroner has not given a coronial practice direction for the step—the coroner holding the inquest or inquiry may give directions about the practice or procedure to be followed in the inquest or inquiry.
- (3) The rules may prescribe matters in relation to the practice and procedure for a hearing.

- (4) In this section:

rules means rules under the *Court Procedures Act 2004* applying in relation to the Coroner's Court.

**14 Coroner's findings
Section 52 (4)**

substitute

- (4) The coroner, in the coroner's findings—
- (a) must—
- (i) state whether a matter of public safety is found to arise in connection with the inquest or inquiry; and
 - (ii) if a matter of public safety is found to arise—comment on the matter; and
- (b) may comment on any matter about the administration of justice connected with the inquest or inquiry.

**15 Notification of registrar-general
Section 56 (2) (a) (i)**

substitute

- (i) an inquest is adjourned because of a notice under section 58 (3) (a) or the presentation of an indictment under section 58 (4); or

**16 Report after inquest or inquiry
Section 57 (3)**

substitute

- (3) A report by a coroner to the Attorney-General—
- (a) must be in writing; and

- (b) must set out the coroner's findings about any serious risks to public safety that were revealed in the inquest or inquiry to which the report relates; and
 - (c) may make recommendations about matters of public safety if the recommendations—
 - (i) relate to the coroner's findings about a cause of death, fire or disaster; and
 - (ii) would, in the coroner's opinion, improve public safety.
- (4) If the Attorney-General receives a report under this section, the Attorney-General must—
- (a) present the report to the Legislative Assembly within 6 months after the day the Attorney-General receives the report; and
 - (b) present a statement of the Executive's response to the report on the same day the report is presented to the Legislative Assembly.

17 Section 58

substitute

58 Procedure where evidence of indictable offence or indictment to be presented

- (1) Subsection (3) applies if, during an inquest or inquiry, a coroner has reasonable grounds for believing that, having regard to the evidence given at the inquest or inquiry, a person mentioned at the inquest or inquiry has committed an indictable offence.
- (2) For subsection (1), the coroner must have regard to—
 - (a) the admissibility at trial of the evidence given at the inquest or inquiry; and

- (b) whether the director of public prosecutions, or a person who may be affected by the referral to the director of public prosecutions of evidence relevant to the alleged offence, is, or has been, given the opportunity to present or give evidence in connection with the alleged offence.
- (3) The coroner—
- (a) must, by written notice, tell the director of public prosecutions about the coroner's belief; and
 - (b) for a related indictable offence—must not proceed further with the inquest or inquiry until the day worked out under section 58A, other than to establish the following facts:
 - (i) for an inquest—the death of a person, the person's identity and the date and place of the person's death;
 - (ii) for an inquiry—the date and place of a fire or disaster.
- (4) Subsection (5) applies if, during an inquest or inquiry—
- (a) the director of public prosecutions, by written notice, tells the coroner holding the inquest or inquiry that an indictment will be presented against a person for a related indictable offence in relation to—
 - (i) the death of a person who is the subject of the inquest; or
 - (ii) the matter the subject of the inquiry; or
 - (b) the Attorney-General presents an indictment against the person for a related indictable offence.
- Note* **Indictment** includes information, and **present** an indictment includes lay an information (see Legislation Act, dict, pt 1).
- (5) The coroner must not proceed further with the inquest or inquiry until the day worked out under section 58A unless the coroner limits the inquest or inquiry to establishing only the facts mentioned in subsection (3) (b) (i) or (ii).

(6) A coroner must not continue holding an inquest or inquiry if satisfied that the inquest or inquiry should not be continued.

(7) In this section:

related indictable offence, in relation to an inquest or inquiry, means an indictable offence that raises the issue of whether a person caused a death, suspected death, fire or disaster the subject of the inquest or inquiry.

58A When inquest or inquiry may proceed—s 58

(1) For section 58 (3) or (5), the coroner may proceed with the inquest or inquiry—

(a) if a prosecution is not started on or before the day after the day that is 3 months after the day the coroner—

(i) gave notice to the director of public prosecutions under section 58 (3) (a); or

(ii) received notice from the director of public prosecutions under section 58 (4) (a); or

(b) on a day after—

(i) the day the director of public prosecutions gives notice to the coroner that—

(A) no indictment is to be presented in relation to the related indictable offence; or

(B) if an indictment was presented in relation to the offence—the director of public prosecutions has discontinued or intends to discontinue the proceeding started by the indictment; or

- (ii) if the person is not committed to stand trial for the offence (the person is *discharged*), and is not indicted for the offence by the director of public prosecutions or the Attorney-General within 28 days after the day the person is discharged—30 days after the day the person is discharged; or
 - (iii) if the person is committed for trial or indicted for the offence—the day after the day the director of public prosecutions gives notice to the coroner that the proceeding for the offence has been finally decided; or
 - (iv) if the person is found guilty of the offence, and the director of public prosecutions has not given notice under subparagraph (iii) that the proceeding for the offence is finally decided—30 days after the proceeding is finally decided.
- (2) A coroner may continue an inquest or inquiry after the day mentioned in subsection (1), but must not make a finding inconsistent with the judgment or verdict of the court that finally determined the guilt or innocence of the person for the related indictable offence.

18 Request for hearing or for reconsideration of certain decisions
Section 64 (6)

substitute

- (6) The Chief Coroner, within 14 days after receiving the coroner's response under subsection (5), must—
- (a) if the coroner intends to conduct a hearing, or the Chief Coroner is satisfied under subsection (5A) that a hearing should be conducted—give the applicant notice in writing that a hearing will be conducted; or

- (b) if the Chief Coroner is not satisfied under subsection (5A) that a hearing should be conducted—give the applicant the following:
 - (i) notice in writing that a hearing will not be conducted;
 - (ii) if the coroner was available to reconsider the original finding—a written statement setting out any comments by the coroner in response to the applicant’s request, and the coroner’s reasons for not conducting a hearing or altering the original finding;
 - (iii) a written statement setting out the Chief Coroner’s reasons for not being satisfied that a hearing should be conducted.

19 Section 64 (7)

relocate as section 64 (5A)

20 New division 5.7

insert

Division 5.7 Other requirements

68A Coroner to give information to immediate family

- (1) A coroner required to hold an inquest must tell a member of the immediate family of a deceased person (a *family representative*) to whom the inquest relates that an inquest will be held.
- (2) After the inquest has begun, the coroner holding the inquest must take reasonable steps to ensure that any information prescribed by regulation is given to a family representative.

-
- (3) However, a requirement under subsection (1) or (2) does not apply if the coroner is satisfied on reasonable grounds that—
- (a) for subsection (1)—no member of the immediate family wishes to be told about the holding of an inquest, or it is impracticable to tell any of the members of the immediate family; or
 - (b) for subsection (2)—no member of the immediate family wishes to be given information prescribed for the subsection, or it is impracticable to give the information to any of the members of the immediate family.
- (4) When carrying out a requirement under this section—
- (a) the coroner must, as far as practicable, select a family representative who is in a position to give members of the immediate family information from the coroner; and
 - (b) the coroner may select more than 1 family representative.

21 Section 72

substitute

72 Inquest into death in custody—obligation to appoint counsel assisting

- (1) The coroner holding an inquest into a death in custody must appoint a lawyer as counsel to assist the coroner (*counsel assisting*).
- Note* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.
- (2) An appointment under subsection (1) may be made either generally or in relation to a particular matter.
- (3) A lawyer appointed under subsection (1)—
- (a) must have the appropriate skills and experience necessary to assist the coroner in the inquest; and

- (b) must not have an actual or perceived conflict of interest (based on the lawyer's personal or professional circumstances) that would prevent the lawyer from properly carrying out the functions of counsel assisting under this Act.

Note Section 39A (Functions of counsel assisting) and s 39B (Counsel assisting—revocation of appointment) apply to counsel assisting in an inquest into a death in custody.

- (4) If a coroner appoints the director of public prosecutions as counsel assisting in an inquest into a death in custody, the director may, unless the appointment states otherwise, authorise a lawyer who meets the requirements mentioned in subsection (3) to act in the director's name.

**22 Application of Criminal Code, ch 7
Section 76A (2) (a)**

omit

section 14

substitute

section 34A

23 Section 90 heading

substitute

90 Application to hold hearing for inquest or inquiry into fire

24 Section 90

omit

section 64 (6)

substitute

section 64 (6) (b) (i)

**25 Annual report of court
Section 102 (2) (b)**

omit

section 14 (3)

substitute

section 34A (3)

26 Dictionary, note 2

insert

- function

27 Dictionary, definition of *immediate family*

omit

28 Dictionary, new definition of *member of the immediate family*

insert

member of the immediate family, for a deceased person the subject of an inquest, means—

- a person who was the domestic partner of the deceased person, or a parent, grandparent, child, brother or sister, or guardian or ward, of the deceased person; and
- if the deceased person was an Aboriginal person or Torres Strait Islander—a person who, in accordance with the traditions and customs of the Aboriginal or Torres Strait Island community of which the deceased person was a member, had the responsibility for, or an interest in, the welfare of the deceased person.

Note For the meaning of ***domestic partner***, see the Legislation Act, s 169.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 23 June 2011.

2 Notification

Notified under the Legislation Act on 27 September 2011.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Coroners Amendment Bill 2011, which was passed by the Legislative Assembly on 20 September 2011.

Acting Clerk of the Legislative Assembly

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