

1997
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Coroners Bill 1997

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1997
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Coroners Bill 1997

**A BILL
FOR**

**An Act to provide for the holding of inquests into
deaths and inquiries into fires and disasters and for
related purposes**

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

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Coroners Act 1997*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

5 “Aboriginal person” means a person who is descended from, identifies as, and is accepted by an Aboriginal community as, an Aboriginal person,

“body” includes part of a body, and the remains of a body;

“Chief Coroner” means the person who is Chief Coroner by virtue of the operation of section 5,

10 “chief police officer” means the police officer who is responsible to the Commissioner of Police for the day-to-day administration of police;

“Coroner” includes a Deputy Coroner appointed under section 7;

“Court” means the Coroner’s Court continued in existence under subsection 4 (1),

15 “custodial officer” means—

(a) a member of the police force;

(b) the Administrator appointed under section 6 or an officer appointed under section 6AA of the *Remand Centres Act 1976*;

20 (c) an authorised officer or a supervisor within the meaning of the *Supervision of Offenders (Community Service Orders) Act 1985*;

(d) the Director of Mental Health appointed under section 112 or a Mental Health Officer appointed under section 119 of the *Mental Health (Treatment and Care) Act 1994*,

25 (e) the Director of Family Services or an officer appointed by the Director to be an officer for the purposes of the *Children’s Services Act 1986*,

(f) the Sheriff, a Deputy Sheriff, or a person appointed to assist the Sheriff under the *Supreme Court Act 1933*,

30 (g) a carer within the meaning of the *Intoxicated Persons (Care and Protection) Act 1994*; or

(h) the manager of a detention centre or a custodial officer as provided for by section 37 of the *Periodic Detention Act 1995*,

35 “death” includes a suspected death.

“disaster” means an occurrence in the Territory due to natural or other causes that—

- (a) caused or threatened to cause substantial—
 - (i) loss of life or property; or
 - 5 (ii) injury or distress to persons or damage to property or the environment; or
- (b) in any way substantially endangered the safety of the public in any part of the Territory;

“hearing” means a hearing under Division 1 of Part V;

10 “immediate family”, in relation to a deceased person the subject of an inquest, means—

- (a) a person who was the spouse of the deceased, or a parent, grandparent, child, brother or sister, or guardian or ward, of the deceased; and
 - 15 (b) if the deceased 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 was a member, had the responsibility for, or an interest in, the welfare of the
- 20 deceased;

“inquest” means an inquest concerning the death of a person;

“inquiry” means an inquiry concerning a disaster or fire;

25 “legal practitioner” means a legal practitioner (however described) of the High Court, of another federal court or of the Supreme Court of the Territory, a State or another Territory;

“medical practitioner” means a person—

- (a) who is registered under the *Medical Practitioners Act 1930*; or
- 30 (b) who is deemed to be registered under that Act by virtue of section 25 of the *Mutual Recognition Act 1992* of the Commonwealth;

“place” includes a vehicle, a vessel or an aircraft;

“Registrar” means the Registrar of the Coroner’s Court appointed under section 11, and includes a Deputy Registrar;

35 “Registrar-General” means the Registrar-General of Births, Deaths and Marriages;

“spouse”, in relation to a deceased person, includes a person who, at the time of death of the deceased, was—

- (a) in a *de facto* marriage relationship with the deceased, or
- 5 (b) in a relationship (whether or not with a person of the same or the opposite sex) in which I provided personal or financial commitment and support of a domestic nature for the material benefit of the other;

“Torres Strait Islander” means a person who is a descendant of an indigenous inhabitant of the Torres Strait Islands.

10 (2) A reference in this Act to a death in custody is to be read as a reference to the death of a person—

- (a) in a prison, lock-up or remand centre; or
- (b) while—
 - 15 (i) performing work pursuant to a community service order under the *Supervision of Offenders (Community Service Orders) Act 1985*,
 - (ii) serving a detention period in accordance with the *Periodic Detention Act 1995*,
 - 20 (iii) being taken into or detained in custody, or subject to an order, under the *Mental Health (Treatment and Care) Act 1994*, or subject to a certificate under section 4 of the *Mental Health Act 1962*,
 - 25 (iv) being taken into or detained in custody, restrained, or otherwise being provided with care under, or subject to an order of the kind referred to in paragraphs 47 (1) (h) to (m) (inclusive) or an arrangement under section 69C or 69M of the *Children’s Services Act 1986*,
 - (v) at a licensed place within the meaning of the *Intoxicated Persons (Care and Protection) Act 1994*;
 - 30 (vi) in, or being taken into, or after being taken into, or while escaping or attempting to escape from, the custody of a custodial officer (other than a custodial officer referred to in paragraph (g) of the definition of “custodial officer” in subsection (1)), or

- (vii) in, or being taken into, or after being taken into, the custody of a custodial officer referred to in paragraph (g) of the definition of "custodial officer" in subsection (1);

5 and includes death as a result of a fatal injury sustained in a place or in any of the circumstances referred to in paragraph (a) or (b)

PART II—THE CORONER'S COURT

Division 1—Establishment

Establishment

10 4. (1) The Coroner's Court established under section 3 of the *Coroners Act 1956* continues in force as the Coroner's Court.

(2) The Court is constituted by a single Coroner.

(3) The Court is a court of record.

Division 2—Appointment etc. of Coroners

A Magistrate is a Coroner

15 5. A person who is a Magistrate is a Coroner for the Territory.

Chief Coroner

6. The person for the time being holding or occupying the office of Chief Magistrate is the Chief Coroner.

Chief Coroner's powers and functions

20 7. (1) The Chief Coroner is responsible for ensuring the orderly and expeditious discharge of the business of the Court.

(2) Subject to this Act, and after such consultation with the Coroners of the Court as is appropriate and practicable, the Chief Coroner shall make such arrangements as to the Coroner who is to constitute a Court in particular matter or class of matters as the Chief Coroner thinks fit.

25

Deputy Coroners

8. (1) The Executive may, by instrument, appoint a person to be a Deputy Coroner

30 (2) A Deputy Coroner holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are specified in his or her instrument of appointment.

Deputy Coroners' powers

9. (1) Subject to the directions of the Chief Coroner, a Deputy Coroner has and may exercise the powers of a Coroner.

(2) The Chief Coroner shall not direct a Deputy Coroner to hold an inquest into a death in custody.

5 (3) A Deputy Coroner who is a medical practitioner is not competent or compellable to hold an inquest into the cause of the death of a person whom he or she attended professionally at or immediately before the death of the person or during the last illness of the person.

Oath or affirmation to be taken or made by a Coroner or Deputy Coroner

10 **10. (1)** A Coroner or Deputy Coroner shall not perform a function or duty of his or her office until he or she has taken the oath or made the affirmation set out in Part 1 of Schedule 1

(2) An oath or affirmation may—

(a) be taken or made before; and

(b) be administered or received by;

15 a Judge of the Supreme Court or a person authorised for the purpose by the Attorney-General.

Registrar and Deputy Registrars

11. (1) The Registrar of the Magistrates Court is the Registrar of the Court.

20 (2) Each Deputy Registrar of the Magistrates Court is a Deputy Registrar of the Court

(3) The Registrar of the Court may appoint such Deputy Registrars of the Court as the Registrar considers necessary for the purposes of this Act.

PART III—JURISDICTION OF CORONERS

25 **Division 1—Inquests into deaths**

General powers of Coroner preserved

12. Except as otherwise provided by this Act, a Coroner has all the powers, authority and jurisdiction which were, immediately before the commencement of the *Coroners Act 1956*, vested in a Coroner.

30 **Coroner's jurisdiction in relation to deaths**

13. (1) A Coroner shall hold an inquest into the manner and cause of death of a person who—

(a) is killed;

(b) is found drowned;

- (c) dies, or is suspected to have died, a sudden death the cause of which is unknown;
- (d) dies under suspicious circumstances;
- (e) dies during or within 72 hours after, or as a result of—
- 5 (i) an operation of a medical, surgical, dental or like nature; or
- (ii) an invasive medical or diagnostic procedure;
- other than an operation or procedure that is specified in the regulations to be an operation or procedure to which this paragraph does not apply;
- 10 (f) dies and a medical practitioner has not given a certificate as to the cause of death;
- (g) dies not having been attended by a medical practitioner at any time within the period commencing 3 months prior to the death;
- 15 (h) dies after an accident where the cause of death appears to be directly attributable to the accident;
- (j) dies, or is suspected to have died, in circumstances that, in the opinion of the Attorney-General, should be better ascertained; or
- (k) dies in custody.
- 20 (2) A Coroner has jurisdiction to hold an inquest into the manner and cause of death, outside the Territory, of a person, if—
- (a) the person was ordinarily resident in the Territory; and
- (b) the death occurred in any of the circumstances referred to in subsection (1).
- 25 (3) A Coroner has jurisdiction to hold an inquest notwithstanding that—
- (a) the body of the deceased—
- (i) is not within the Territory,
- (ii) has been destroyed; or
- (iii) is in a place from which it cannot be recovered; or
- 30 (b) in the case of a suspected death—the body of the deceased can not be found

Decision not to conduct hearing

14. (1) A Coroner may decide not to conduct a hearing into a death if, after consideration of information given to a Coroner relating to the death of a person, the Coroner is satisfied that—

- 5 (a) the manner and cause of death are sufficiently disclosed, and
- (b) a hearing is unnecessary.

(2) A Coroner shall not dispense with conducting a hearing into a death if the Coroner has reasonable grounds for believing that the person died—

- (a) in custody; or
- 10 (b) while under, or as a result of the administration of, an anaesthetic administered in the course of a medical, surgical or dental operation.

(3) A Coroner who decides not to conduct a hearing into a death shall give to the Chief Coroner and a member of the immediate family of the deceased written notice of his or her decision including the grounds on which the decision was based.

Control of the body of the deceased

15. (1) Where—

- 20 (a) a death occurs in respect of which a Coroner is required to hold an inquest, and
- (b) the body of the deceased is in the Territory,

a Coroner has control of the body until the Coroner has issued a certificate in accordance with the Form in Schedule 2

25 (2) A Deputy Coroner is not authorised to issue a certificate under subsection (1).

Form of Coroner's certificate

16. Where—

- (a) the death of a person has been reported to the Coroner, and
- 30 (b) the Coroner is satisfied that there is no reason why the body of the deceased should not be buried, cremated, or taken out of the Territory for burial or cremation,

the Coroner may give a certificate in accordance with the Form in Schedule 2

Assistance to State and other Territory Coroners

17. (1) A Coroner may exercise any of his or her powers under this Act to assist a Coroner of a State or another Territory in relation to a death in that State or other Territory.

- 5 (2) If the Attorney-General requests, a Coroner shall exercise any of his or her powers under this Act to assist a Coroner of a State or another Territory in relation to a death in that State or other Territory.

Division 2—Inquiries into fires

Coroner's jurisdiction in relation to fires

- 10 18. (1) A Coroner shall hold an inquiry into the cause and origin of a fire that has destroyed or damaged property, if—

- (a) requested to do so by the Attorney-General; or
- (b) the Coroner is of the opinion that an inquiry into the cause and origin of the fire should be held

- 15 (2) Where—

- (a) the owner or occupier of destroyed or damaged property requests a Coroner to hold an inquiry into the cause and origin of a fire; and
- (b) the Coroner is of the opinion that an inquiry into the cause and origin of the fire should not be held:

- 20 the Coroner shall give to each owner or occupier who requested that an inquiry be held written notice of his or her opinion and the grounds on which the opinion is based.

Division 3—Inquiries into disasters

Coroner's jurisdiction in relation to disasters

- 25 19. (1) The Chief Coroner shall, if requested to do so by the Attorney-General, cause an inquiry to be held into the cause and origin of a disaster.

- 30 (2) The Chief Coroner shall not cause an inquiry to be held into the cause and origin of a disaster except with the consent of the Attorney-General.

PART IV—POST-MORTEM EXAMINATIONS AND EXHUMATIONS

Dispensing with post-mortem examination

5 **20. (1)** A Coroner may dispense with the conduct of a post-mortem examination of a body if the Coroner, after considering the information furnished to him or her relating to the death, is satisfied that the manner and cause of death are sufficiently disclosed.

10 **(2)** A Coroner may dispense with the conduct of a post-mortem examination of a body if, on the request of a member of the immediate family of the deceased or a representative of that person, the Coroner is satisfied that the manner and cause of death are sufficiently disclosed

Directions to medical practitioners to conduct post-mortem examinations

15 **21. (1)** Subject to section 28, a Coroner may, by order, direct a medical practitioner to conduct a post-mortem examination of the body of a person who has died in any of the circumstances in respect of which the Coroner has jurisdiction to hold an inquest

20 **(2)** A Coroner may, by order, direct the same or another medical practitioner to conduct a further or more complete post-mortem examination of a body if satisfied that it is desirable to do so

25 **(3)** Where a Coroner makes an order under subsection (1) or (2) in relation to a person who has died in a hospital or an institution, the Coroner may, by order, direct the person in charge of the hospital or institution to give the medical records relating to that person to the medical practitioner specified in the order

(4) Unless otherwise directed by the Coroner by order, the medical practitioner to whom the records are given shall return the records to the person in charge of the hospital or institution as soon as practicable after the completion of the post-mortem.

30 **(5)** An order under subsection (1), (2) or (4) shall be in writing.

Unavailability of medical practitioner directed to conduct a post-mortem examination

35 **22.** If a medical practitioner specified in an order under subsection 21 (1) or (2) is, for any reason, unable to conduct the post-mortem examination, the Coroner may—

- (a) amend the order by substituting the name of another medical practitioner, or
- (b) direct that a specified medical practitioner conduct the post-mortem

Consideration of immediate family

23. (1) A Coroner holding an inquest into a death (other than a death in custody) may, if requested to do so by a member of the immediate family of the deceased or a representative of that person, authorise—

- 5 (a) the viewing of the body of the deceased by the member or a representative of that member;
- (b) an inspection of the scene of the death by the member or a representative of that member;
- 10 (c) an inspection of the scene of an event, being an event which, in the opinion of the Coroner, may have resulted in the death of the person;
- (d) the member or a representative of that member to be present at any post-mortem examination conducted on the body; or
- 15 (e) the same or another medical practitioner to conduct a further post-mortem examination on the body.

(2) If a Coroner refuses to give an authorisation under subsection (1) on the ground that he or she believes that it would not be in the public interest or the interests of justice to do so, the Coroner shall give to the person who made the request written notice of his or her refusal and an explanation for the refusal

(3) A notice under subsection (2) shall include a statement that the person who made the request may apply to the Chief Coroner requesting that the Coroner who made the decision reconsider his or her decision.

Reconsideration of decisions

- 25 24. (1) Where—
- (a) a Coroner refuses to give an authorisation under subsection 23 (1); and
 - (b) the Chief Coroner receives a written application requesting that the Coroner who refused to give the authorisation be requested to
- 30 reconsider his or her decision;

the Chief Coroner shall, if satisfied that the applicant has sufficient interest in the decision, request the Coroner to whom the application relates to reconsider his or her decision.

(2) A request shall set out the grounds on which the person relies

35 (3) The Chief Coroner shall notify the applicant of any comments of a Coroner in response to the request.

Previous attending medical practitioner entitled to observe post-mortem examination

5 **25.** A medical practitioner who attended a person professionally at or immediately before the person's death or during the person's last illness is entitled, on request, to be present as an observer at a post-mortem examination of the body of the deceased

Removal of body to place of post-mortem examination

10 **26. (1)** Subject to section 28, if a Coroner has reasonable grounds for believing that a person has died in circumstances in respect of which the Coroner has jurisdiction to hold an inquest, the Coroner may issue a warrant to a police officer named in the warrant authorising him or her, with such assistance as the police officer considers necessary, to take and remove the body to a specified place for post-mortem examination.

15 **(2)** A police officer named in the warrant may, at any time of the day or night, with such assistance as he or she considers necessary—

- 20 (a) enter into and search, and, where necessary, break open, any house, building, premises or place, where he or she has reasonable cause to suspect the body may be found; and
- (b) remove the body to the place where the post-mortem examination is to be conducted.

Warrant for exhumation of body or recovery of ashes

27. (1) Subject to section 28, a Coroner may issue a warrant for—

- 25 (a) the exhumation for post-mortem examination of a body that has been buried, or
- (b) if the body of the deceased has been cremated—the recovery of the ashes,

if the Coroner is satisfied that—

- 30 (c) there is reasonable cause to believe that the person died in circumstances in respect of which the Coroner has jurisdiction to hold an inquest; and
- (d) a post-mortem examination of the body or an analysis of the ashes of the deceased should be made.

(2) Where—

- 35 (a) the body of a deceased person has been buried or cremated and the inquest concerning the death of that person has not been completed, or

- (b) the Supreme Court has quashed an inquest and has directed that a fresh inquest be held;

a Coroner may, if he or she is of the opinion that—

- 5 (c) a post-mortem or a more complete post-mortem examination should be made of the body; or

- (d) an analysis or more complete analysis should be made of the ashes of the deceased;

10 issue a warrant for the exhumation of the body or, if practicable, for the recovery of the ashes for the post-mortem examination or analysis or the more complete post-mortem examination or analysis, as the case requires.

(3) Where—

- (a) the body of a person who died outside the Territory has been buried in the Territory or the ashes of a person who so died are in the Territory; and

15 (b) a coroner having jurisdiction in the place where the person died informs a Coroner that—

- (i) an inquest is to be, or is being, held into the cause of the death of the person, and

20 (ii) it is desirable that a post-mortem examination or a more complete post-mortem examination should be made of the body or an analysis or more complete analysis be made of the ashes,

25 the Coroner may issue a warrant for the exhumation of the body or for the recovery of the ashes of the deceased for a post-mortem examination or a more complete post-mortem examination or an analysis or more complete analysis of the ashes.

Prior considerations before directing post-mortem examinations

28. In determining whether or not to—

- 30 (a) make an order under subsection 21 (1); or
- (b) issue a warrant under section 26 or 27,

a Coroner shall have regard to the desirability of minimising the causing of distress or offence to persons who, because of their cultural attitudes or spiritual beliefs, could reasonably be expected to be distressed or offended by the making of that decision

Form of warrant for exhumation

29. A warrant for the exhumation of the body or the recovery of the ashes of a person shall—

- 5 (a) authorise the police officer to whom it is directed to exhume the body or recover the ashes of the person named in the warrant; and
- (b) direct the person to whom it is directed to take the body or ashes to the place specified in the warrant as the place for the post-mortem examination of the body or analysis of the ashes

Re-interment of remains or ashes

10 30. (1) A Coroner by whom a warrant for the exhumation of the body or the recovery of the ashes of a person was issued shall, as soon as he or she is satisfied that the exhumed body should be re-interred or the ashes returned to the person entitled to them, by order, direct a person named in the order to re-inter the body or return the ashes.

15 (2) The Coroner shall give a copy of an order under subsection (1) to a member of the immediate family of the deceased or a representative of that member.

Removal of body or ashes for purposes of inquest outside the Territory

20 31. (1) Where—

- (a) the body of a person who has died outside the Territory is lying, or the ashes of a deceased are, in the Territory; and
- 25 (b) a Coroner is informed by a coroner having jurisdiction in the place where the person died that an inquest is to be held in that place into the manner and cause of the death of the person,

the Coroner may make an order directing a person named in the order to remove the body or ashes to the place at which the inquest is to be held.

(2) Where a Coroner makes an order under subsection (1), the Coroner shall—

- 30 (a) notify the Registrar-General, and
- (b) give to the Registrar-General such of the particulars specified in subsection 56 (2) as are known to the Coroner.

Report by medical practitioner or analyst

35 32. Where, under section 21, 27 or 71, a post-mortem examination of the body, or an analysis of the ashes, of a deceased is carried out, the person carrying out the examination or analysis shall, as soon as practicable after the examination or analysis is completed—

- (a) furnish a report to the Coroner by whom the order was made; and
- (b) if a request has been made under section 71—furnish a report to the person who made the request, or his or her representative or a representative (if any) of the deceased.

5 **Assistance at post-mortems etc.**

33. A Coroner who—

- (a) makes an order for a post-mortem examination, re-interment or analysis of ashes; or
- 10 (b) issues a warrant for an exhumation of a body or the recovery of the ashes of a deceased;

may, by instrument, appoint a person or persons to assist in the examination, re-interment, exhumation, analysis or recovery.

PART V—INQUESTS AND INQUIRIES

Division 1—Hearings

15 **Hearings**

34. For the purposes of an inquest or inquiry a Coroner may conduct a hearing.

Time and place of hearing

35. A Coroner shall fix the time and place of a hearing.

20 **Adjournment of hearing**

36. A Coroner may, by order made in or outside the Court, adjourn a hearing from time to time and from place to place.

Notification of immediate family

25 37. (1) Before conducting a hearing for the purposes of an inquest into a death (other than a death in custody), the Coroner shall have regard to—

- (a) whether a member of the immediate family of the deceased has been notified of the time and place of the hearing; or
- 30 (b) if a member of the immediate family of the deceased has not been notified of the time and place of the hearing—whether reasonable efforts have been made to do so.

(2) Nothing in subsection (1) prevents a Coroner from conducting a hearing if the Coroner believes, on reasonable grounds, that it would be in the public interest or the interests of justice to do so.

Notice relating to conduct of hearing

38. A Coroner shall, where practicable, not less than 14 days before conducting a hearing, publish in a daily newspaper published and circulating in the Territory the date, time and place of the hearing.

5 **Non-custodial deaths and fires—discretion to appoint legal practitioner**

39. (1) A Coroner may appoint a legal practitioner to assist the Coroner for the purposes of an inquest in relation to a death (other than a death in custody) or in an inquiry.

10 (2) An appointment under subsection (1) may be made either generally or in relation to a particular matter.

Hearing in public except in certain cases

40. (1) Subject to subsection (2), a hearing shall be in public.

15 (2) Where a Coroner is of the opinion that it is desirable in the public interest or in the interests of justice to do so, the Coroner may, by order—

(a) direct that a hearing or part of it shall take place in private and give directions as to the persons who may be present, and

(b) give directions prohibiting or restricting the publication or disclosure of evidence whether or not a hearing has been held.

20 (3) A person shall not, without reasonable excuse, contravene an order under subsection (2)

Penalty.

(a) if the offender is a natural person—100 penalty units or imprisonment for 12 months, or both;

25 (b) if the offender is a body corporate—500 penalty units

Hearing to be held without jury

41. A hearing for the purposes of an inquest or inquiry shall be conducted without a jury.

Representation at hearing

30 42. A Coroner may grant leave to a person—

(a) who has been summoned to give evidence in relation to an inquest or inquiry, or

(b) who, in the opinion of the Coroner, has a sufficient interest in the subject matter of the inquest or inquiry;

5 to appear in person at a hearing or to be represented by a legal practitioner and, at the hearing, to examine and cross-examine witnesses on matters relevant to the inquest or inquiry to which the hearing relates.

Division 2—Witnesses

Power of Coroner to summon witnesses etc.

43. (1) If a Coroner is satisfied that—

10 (a) a person may be able to give evidence or produce a document or thing to the Coroner; or

(b) a person who may be able to give evidence before a Coroner will not voluntarily, or does not, appear at a particular time and on a particular date;

15 the Coroner may issue a summons requiring the person to appear before the Coroner at a time and on a date specified in the summons—

(c) to give that evidence or produce that document or thing;

(d) to give that evidence and produce a document or thing in the possession, custody or control of the person that is mentioned in the summons; or

20 (e) to produce a document or thing in the possession, custody or control of the person that is mentioned in the summons.

(2) A person shall be taken to have complied with a summons under paragraph (1) (a) if the person delivers the document or thing to the Court before the date specified in the summons.

25 **Service of summons on witness**

44. (1) A summons may be served on a witness—

(a) personally;

30 (b) by sending it to the witness's last known place of residence or employment by a form of post that requires a signature on receipt; or

(c) by leaving it with a responsible adult at the witness's last known place of residence or employment.

(2) The summons shall be accompanied by—

35 (a) an undertaking to appear for signature by the person and return to a Coroner by the date specified in the summons; and

(b) a form to be completed by the person to claim his or her reasonable costs and expenses of attendance at the inquest or inquiry

5 (3) A person is not entitled to refuse to comply with a summons because of a failure at the time the summons was served to give the person the form.

(4) Service of a summons on a witness may be proved by the oath or affirmation of the person who served it or by affidavit

Warrant to bring witness to court

45. (1) Where—

10 (a) a summons under section 42 has been served on the person to whom it is directed; and

(b) the person fails to attend at the time and place specified in the summons;

the Coroner may issue his or her warrant for the arrest of the person

15 (2) A warrant under subsection (1) may be directed to all members of the Police Force, and any member of the Police Force may execute the warrant as if it had been directed specifically to him or her by name

20 (3) The member of the Police Force who executes a warrant under subsection (2) shall, as soon as possible after the arrest of the person named in the warrant, take the person before a Coroner.

(4) Where a person who has been so arrested is brought before a Coroner, the Coroner—

(a) may direct that the person remain in such custody as the Coroner directs; or

25 (b) may release the person upon the person entering into a recognizance, with or without sureties, in such sum as the Coroner determines that the person will attend at a time and place specified in the recognizance

30 (5) If a person who has been released under paragraph (4) (b) fails to attend at the time and place specified in the recognizance—

(a) the Coroner may issue his or her warrant for the arrest of the person, and

(b) the Coroner may declare the recognizance of the person and the recognizance of his or her sureties to be forfeited and—

35 (1) such a declaration shall be deemed to be the declaration of the forfeiture of a recognizance under section 254 of the *Magistrates Court Act 1930*, and

- (ii) the provisions of that section apply to the declaration accordingly.

Persons about to leave Territory—examination and production of documents etc.

5 **46. (1)** Where, by evidence on oath or affirmation, a Coroner is satisfied that—

- (a) a person is able to give material evidence or to produce a relevant or material document or thing relating to an inquest or inquiry; and
- 10 (b) the person is likely to be absent from the Territory during the conduct of a hearing,

the Coroner may order that the evidence of that person be taken or the document or thing be produced before him or her, at any time before the hearing, in the same manner as the evidence would be taken or the document or thing be produced at the hearing

15 **(2)** When an order under subsection (1) is served on a person, it shall be accompanied by a form to be completed by the person to claim his or her reasonable costs and expenses of attending the examination or production.

20 **(3)** A person is not entitled to refuse to comply with an order under subsection (1) because of a failure at the time the order was served to give the person the form.

Division 3—Evidence

Procedure

47. (1) A Coroner is not bound to observe the rules of procedure and evidence applicable to proceedings before a court of law

25 **(2)** Where the procedure for taking any step in an inquest or inquiry is not prescribed in this Act or the law under which the step is to be taken, a Coroner may give directions as to the procedure to be followed for the taking of that step.

Evidence

30 **48. (1)** For the purposes of an inquest or inquiry, a Coroner may take evidence on oath or affirmation and, for that purpose—

- (a) the Coroner may require a witness either to take an oath or to make an affirmation; and
- 35 (b) the Coroner, Registrar or other appropriate officer of the Court may administer an oath or affirmation to a witness.

(2) A Coroner may—

- (a) require a witness to answer a question put to the witness; and

(b) where a person appears before a Coroner pursuant to a summons—require the person to give evidence or produce a document or thing specified in the summons

5 (3) Except in relation to proceedings under Part VII, a record of evidence made for the purposes of an inquest or inquiry is not, by reason only that it is such a record, admissible in any court as evidence that any person made the depositions included in that record

Recording of proceedings

10 **49. (1)** Subject to subsection (2), sections 54A, 60, 255B and 255C of the *Magistrates Court Act 1930* (in this section called the “relevant provisions”) apply in relation to the depositions of a witness who gives evidence at a hearing as if those depositions were depositions in proceedings in the Magistrates Court

(2) For the purposes of subsection (1)—

15 (a) a reference in the relevant provisions to the Magistrates Court shall be read as a reference to a Coroner;

(b) a reference in the relevant provisions to the Registrar of the Magistrates Court shall be read as a reference to the Registrar of the Coroner’s Court;

20 (c) subsection 54A (5A) of the *Magistrates Court Act 1930* applies as if the proceedings at an inquest or inquiry were proceedings referred to in that subsection, and

(d) section 255C of the *Magistrates Court Act 1930* applies as if the following subsection were substituted for subsection 255C (2)

25 “(2) A person is not entitled to receive a copy of a record made at an inquest or inquiry unless he or she has satisfied the Registrar or a Coroner that he or she has good reasons for so applying”.

Informal request for evidence

30 **50. (1)** A Coroner may, on being requested by a person having sufficient interest in an inquest or inquiry, request another person to give evidence relevant to the inquest or inquiry

(2) The request may be made to the Coroner during an inquest or inquiry, or before or after a hearing.

35 Access to documents etc.

51. A Coroner may make available to any person with sufficient interest in an inquest or inquiry—

- (a) any document or thing that is produced at, or the Coroner intends to consider in relation to, an inquest or inquiry; and
- (b) any evidence relevant to the inquest or inquiry to which the Coroner intends to have regard.

5 **Division 4—Findings and reports**

Coroner's findings

52. (1) A Coroner holding an inquest shall find, if possible—

- (a) the identity of the deceased;
- (b) when and where the death occurred;
- 10 (c) the manner and cause of death; and
- (d) in the case of the suspected death of a person—that the person has died.

(2) A Coroner holding an inquiry shall find, if possible—

- (a) the cause and origin of the fire or disaster; and
- 15 (b) the circumstances in which the fire or disaster occurred

(3) At the conclusion of an inquest or inquiry, the Coroner shall record his or her findings in writing.

20 (4) A Coroner may comment on any matter connected with the death, fire or disaster including public health or safety or the administration of justice.

Interim findings

53. A Coroner may, at any time before concluding an inquest or inquiry, make an interim finding on any matter connected with the inquest or inquiry.

25 **Requests for copies of reports of findings**

54. (1) A Coroner holding an inquest (other than an inquest into a death in custody) shall, on the request of a member of the immediate family of the deceased or a representative of that member, make available a copy of his or her findings to that member or representative.

30 (2) A Coroner holding an inquiry into a fire shall, on the request of the owner of the property damaged or destroyed by the fire, make available a copy of his or her findings to the owner.

Adverse comment in findings or reports

5 **55. (1)** A Coroner shall not include in a finding or report under this Act (including an annual report) a comment adverse to a person identifiable from the finding or report unless he or she has, prior to the making of the finding or report, taken all reasonable steps to give to the person a copy of the proposed comment and a written notice advising the person that, within a specified period (being not more than 28 days and not less than 14 days after the date of the notice), the person may—

10 (a) make a submission to the Coroner in relation to the proposed comment; or

(b) give to the Coroner a written statement in relation to it

(2) The Coroner may extend, by not more than 28 days, the period of time specified in a notice under subsection (1)

15 (3) Where the person so requests, the Coroner shall include in the report the statement given under paragraph (1) (b) or a fair summary of it.

Notification of Registrar-General

56. (1) A Coroner shall give notice, in writing, to the Registrar-General of an inquest being held.

(2) The Coroner shall—

20 (a) where—

(i) an inquest is adjourned by reason of a notice or the filing of an information under subsection 58 (1) or (3), or

(ii) the Coroner decides that an inquest so adjourned is to be, or will not be, proceeded further with;

25 give notice, in writing, to the Registrar-General, or

(b) where the inquest—

(i) is adjourned (otherwise than as referred to in paragraph (a))—give written notice to the Registrar-General of the particulars of any interim findings; or

30 (ii) is completed—give written notice to the Registrar-General of his or her findings,

together with such particulars as are required to be entered by the Registrar-General in the Register of Deaths under the *Registration of Births, Deaths and Marriages Act 1963* as have come to the knowledge of the Coroner.

Report after inquest or inquiry

57. (1) A Coroner may report to the Attorney-General on an inquest or an inquiry into a fire held by the Coroner.

5 (2) A Coroner shall report to the Attorney-General on an inquiry into a disaster.

(3) A Coroner may make recommendations to the Attorney-General on any matter connected with an inquest or inquiry, including matters relating to public health or safety or the administration of justice.

Division 5—Indictable offences

10 **Procedure where evidence of indictable offence**

58. (1) If, during the course of holding an inquest or inquiry, a Coroner has reasonable grounds for believing that, having regard to the evidence given at an inquest or inquiry, a person has committed an indictable offence, the Coroner—

15 (a) shall, by written notice, inform the Director of Public Prosecutions; and

(b) shall not proceed further with the inquest or inquiry until the date ascertained in accordance with subsection (4).

20 (2) In determining whether to inform the Director of Public Prosecutions or not to proceed further with an inquest or inquiry, the Coroner shall have regard to—

(a) the admissibility at trial of the evidence given at the inquest or inquiry on which the Coroner bases his or her opinion that the Director of Public Prosecutions should be informed; and

25 (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 give evidence in connection with the alleged offence.

30 (3) If, during the course of holding an inquest or inquiry—

(a) the Director of Public Prosecutions, by written notice, informs the Coroner holding the inquest or inquiry that an information is to be laid or presented charging a person with an indictable offence in relation to the death of a person the subject of the inquest or the matter the subject of the inquiry, or

35

- (b) the Attorney-General lays or presents an information against the person;

the Coroner shall not proceed further with the inquest or inquiry until the date ascertained in accordance with subsection (4).

5 (4) For the purposes of subsections (1) and (3), the Coroner may proceed with the inquest or inquiry—

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

10 (i) the day the Coroner issued the written notice required to be given to the Director of Public Prosecutions under paragraph (1) (a); or

- (ii) receipt of a written notice provided to a Coroner under paragraph (3) (a), or

- (b) on a day after—

15 (i) the day on which the Director of Public Prosecutions gives notice to the Coroner that—

- (A) no information is to be laid or presented in relation to the alleged offence, or

20 (B) the Director of Public Prosecutions has discontinued or intends to discontinue proceedings in respect of the information;

- (ii) if the person is committed or indicted to take his or her trial for the alleged offence, the day after the day on which—

25 (A) the Director of Public Prosecutions gives notice to the Coroner that all proceedings in respect of an information laid or presented are finally determined, or

30 (B) the Director of Public Prosecutions gives notice to the Coroner that proceedings in respect of the information have been or will be discontinued;

- (iii) if the person is not so committed or indicted—the day after the day on which the person is discharged, or

35 (iv) the day 30 days after the expiration of the period within which an appeal may be filed in the Supreme Court, Federal Court or High Court

(5) A Coroner may continue an inquest or inquiry after the relevant day referred to in subsection (4), but shall not make a finding which is

inconsistent with the judgment or verdict of the Court which finally determined the guilt or innocence of the person charged.

(6) A Coroner shall not continue with the holding of an inquest or inquiry if satisfied that the inquest or inquiry should not be continued.

5 **Division 6—General powers of Coroners**

Investigators

59. (1) A Coroner may, by instrument, appoint a person to assist him or her in the investigation of any matter relating to an inquest or inquiry.

(2) An investigator appointed under subsection (1) shall—

10 (a) inquire into; and

(b) report in writing to the Coroner on;

any matter referred to the investigator by the Coroner by his or her instrument of appointment.

(3) The instrument of appointment of an investigator shall specify—

15 (a) particulars of the subject matter into which the investigator is to inquire and report,

(b) the conditions (if any) to which his or her appointment is subject; and

(c) the remuneration (if any) to which he or she is entitled to receive.

20 (4) An investigator who is a public servant is not entitled to be paid remuneration under subsection (3).

(5) The Coroner holding the inquest or inquiry in relation to which the investigations are made shall have regard to the report of the investigator and shall give it such weight as the Coroner thinks fit.

25 **Coroner not to be called as witness**

60. (1) A Coroner shall not be called to give evidence in a court or judicial proceedings about anything coming to his or her knowledge in exercising a power or performing a function or duty under this Act.

30 (2) Subsection (1) does not apply in relation to proceedings against a Coroner for an offence.

Coroner not required to view the subject matter of inquest or inquiry

61. Unless a Coroner considers it advisable to do so, it is not necessary for him or her—

- (a) to view the body or ashes of a person; or
- (b) to inspect the scene of an event, being an event which, in the opinion of the Coroner, may have resulted in the death of the person; or
- 5 (c) to view the scene of a fire or disaster

Coroner may act on a Sunday

62. (1) A Coroner may hold an inquest, inquiry or hearing on a Sunday if of the opinion that it is necessary or desirable to do so.

10 (2) A Coroner may do any act or issue any summons, warrant or order on a Sunday.

Police assistance

63. (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.

15 (2) The chief police officer shall, as far as practicable, comply with a request under subsection (1)

(3) Any act or thing done by a police officer pursuant to subsection (1) is to be taken to have been done by or on behalf of the Coroner who made the request.

20 **Request for hearing or for reconsideration of certain decisions**

64. (1) The Chief Coroner may, on application in writing by a person, arrange for a hearing to be conducted for the purpose of an inquest or an inquiry into a fire.

(2) Subject to subsection (3), the Chief Coroner shall—

25 (a) on application by a person requesting that a Coroner who made a decision to dispense with or to conclude a hearing, reconsider his or her decision, and

(b) if satisfied that the applicant has sufficient interest in the inquest or inquiry into a fire to which the hearing relates;

30 request the Coroner to whom the application relates to reconsider the decision

(3) If the application relates to a decision of the Chief Coroner, he or she shall, if satisfied that the applicant has sufficient interest in the inquest or inquiry into a fire, reconsider his or her decision

35 (4) An application made to the Chief Coroner shall—

(a) be in writing; and

(b) set out the grounds on which the person relies.

(5) The Coroner shall respond to the Chief Coroner's request within 14 days after receipt of the request.

5 (6) The Chief Coroner shall, within 14 days after receipt of the Coroner's response under subsection (5)—

(a) notify the applicant of any comments of the appropriate Coroner in response to the request; and

(b) give the applicant notice in writing containing—

10 (i) a statement that the Coroner, in relation to whose decision the request was made, does or does not intend to conduct a hearing or to alter his or her original finding; and

(ii) if the Coroner does not intend to conduct a hearing or to alter his or her original finding—an explanation why.

(7) If—

15 (a) after reconsidering the original finding, the Coroner who made it notifies the Chief Coroner that he or she does not intend to conduct a hearing or to alter the finding; or

(b) the Coroner in respect of whose finding the request was made is unavailable (for whatever reason) to reconsider his or her finding;

20 the Chief Coroner shall arrange for a hearing to be conducted, if satisfied that a hearing should be conducted.

25 (8) An explanation under subparagraph (6) (b) (ii) shall include a statement to the effect that application may be made to the Supreme Court, within 30 days after receipt of the notice, for an order that a hearing be conducted.

Restriction of access

30 65. (1) A Coroner holding an inquest or an inquiry may take reasonable steps to restrict access to the scene of the death of a person, the scene of an event which, in the opinion of the Coroner, may have resulted in the death, or the place where the fire or disaster occurred.

(2) A person shall not, without reasonable excuse, enter or interfere with any area to which access is restricted under this section.

Penalty: 100 penalty units.

Search warrants

66. (1) A Coroner may issue a warrant if the Coroner believes on reasonable grounds that it is necessary for the purposes of an inquest or inquiry

5 **(2)** A warrant shall authorise a police officer named in the warrant with such assistance, and by such force, as is necessary and reasonable—

(a) to enter a place;

(b) to search the place for a document or thing relevant to the inquest or inquiry;

10 **(c)** to take any measurements or photographs of the place or any thing in or on the place.

(d) to inspect, or take copies of, or extracts from, any document in or on the place that is, or is reasonably believed to be, relevant to the inquest or inquiry,

15 **(e)** to seize any document or thing that the Coroner believes on reasonable grounds to be relevant to the inquest or inquiry, and

(f) to deliver anything so seized to the Coroner

20 **(3)** A warrant may authorise an investigator to accompany the police officer named in the warrant and to exercise such of the powers under subsection (2) as are specified in the warrant

(4) A warrant shall—

(a) state the purpose for which it is issued,

(b) specify particular hours during which the entry is authorised or state that the entry is authorised at any time of the day or night;

25 **(c)** include a description of the kind of things in relation to which the powers under the warrant may be exercised, and

(d) specify the date, being a date not later than 1 month after the date of issue of the warrant, on which the warrant ceases to have effect.

30 **(5)** A warrant may be executed, in accordance with its terms, at any time during the period commencing on the date of issue of the warrant and ending at the expiration of the date specified for the purpose of paragraph (4) (d).

35 **(6)** Before exercising a power under a warrant, the person executing the warrant shall give a copy of the warrant to the owner or occupier of the place to which it relates.

(7) If, in the course of searching under a warrant for a thing relevant to an inquest or inquiry—

- 5 (a) the person executing the warrant finds a thing that the person believes on reasonable grounds to be connected with the matter into which the Coroner is inquiring, although not of a kind specified in the warrant; and
- (b) the person believes on reasonable grounds that it is necessary to seize that thing in order to prevent its being concealed, lost, mutilated, destroyed or disposed of;
- 10 the person may seize that thing and shall deliver the thing so seized to the Coroner.

Inspection and retention of seized things

67. (1) A Coroner may—

- 15 (a) inspect a document or other thing produced before, or delivered to, the Coroner and make copies of, or take extracts from, such parts of the document as are relevant to a matter the subject of the inquest or inquiry; and
- (b) retain possession of the document or thing for such period as is necessary for the purposes of the inquest or inquiry to which the document or thing relates.
- 20

(2) A person otherwise entitled to possession of a document retained under paragraph (1) (b) is entitled to be supplied with a copy of the document certified by the Coroner to be a true copy.

25 (3) A certified copy of a document shall be received in all courts as evidence as if it were the original.

(4) Until the certified copy is supplied, the Coroner shall, at such times and places as the Coroner thinks appropriate, permit—

- (a) the person otherwise entitled to possession of the document; or
- (b) a person authorised by that person,
- 30 to inspect and make copies of, or take extracts from, the document.

(5) Where the retention of a document or other thing by a Coroner ceases to be necessary for the purposes of an inquest or inquiry, the Coroner shall, if a person who appears to the Coroner to be entitled to the document or thing so requests, give the document or thing to the person.

35 (6) On the completion of an inquest or inquiry, a Coroner shall take all reasonably practical steps to give any thing taken or seized under this

Division to the person whom the Coroner reasonably believes to be entitled to it.

Chief Coroner—power to hold fresh inquest or inquiry

5 **68. (1)** Notwithstanding that an inquest or an inquiry into a fire has been completed, the Chief Coroner may—

- (a) of his or her own motion; or
- (b) at the request of a person;

arrange for the holding of a fresh inquest or an inquiry into the fire.

10 **(2)** The Chief Coroner shall not arrange for the holding of an inquest or inquiry under subsection (1) unless satisfied that—

- (a) by reason of the discovery of new facts or evidence of material significance to the inquest or inquiry that was not available to be put before a Coroner at the time of the previous inquest or inquiry; and
- 15 (b) it is desirable in the public interest or the interests of justice to do so.

PART VI—DEATHS IN CUSTODY: ADDITIONAL PROVISIONS

Consideration of deceased's family etc.

20 **69. (1)** The Coroner shall not conduct a hearing into a death in custody unless satisfied that—

- (a) a member of the immediate family of the deceased has been notified of the time and place of the hearing; or
- 25 (b) reasonable efforts to notify a member of the immediate family of the deceased have been made but were unsuccessful;

and, if the deceased was an Aboriginal person or Torres Strait Islander, the appropriate local aboriginal legal service has been notified

30 **(2)** Nothing in subsection (1) prevents a Coroner from conducting a hearing if the Coroner believes, on reasonable grounds, that it would be in the public interest or the interests of justice to do so.

Viewing of body etc.

70. (1) The Coroner holding an inquest into a death in custody shall, if requested to do so by a member of the immediate family of the deceased or a representative of that member, authorise—

- 5 (a) the viewing of the body of the deceased by the member or a representative of that member;
- (b) an inspection of the scene of the death by the member or a representative of that member;
- 10 (c) the member or a representative of that member to be present at any post-mortem examination conducted on the body; or
- (d) the same or another medical practitioner to conduct a further post-mortem examination on the body;

unless the Coroner believes, on reasonable grounds, that it would not be in the interests of justice to do so.

15 (2) If a Coroner does not give an authorisation under subsection (1) the Coroner shall give written notice of his or her decision and the reasons on which the decision was based—

- (a) to the person by whom the request was made; and
- 20 (b) if the deceased was an Aboriginal person or Torres Strait Islander—to an appropriate local aboriginal legal service.

Post-mortem examinations by pathologists

71. The Coroner holding an inquest into a death in custody shall, whenever practicable, direct a post-mortem examination to be made of the body by a pathologist who has not less than 2 years experience in the conduct of post-mortem examinations.

Obligation to appoint legal practitioner

72. The Coroner holding an inquest into a death in custody shall appoint a legal practitioner to assist him or her, either generally or in relation to a particular matter.

30 **Records of deaths in custody**

73. The Registrar shall keep a record of the inquest into a death in custody for a period of not less than 7 years after the completion of the inquest.

Findings as to quality of care, treatment and supervision

35 74. The Coroner holding an inquest into a death in custody shall include in a record of the proceedings of the inquest findings as to the

quality of care, treatment and supervision of the deceased which, in the opinion of the Coroner, contributed to the cause of death.

Copies of reports of findings

5 75. (1) After the Coroner has completed an inquest into a death in custody, he or she shall, in writing, report his or her findings to—

- (a) the Attorney-General;
- (b) the custodial agency in whose custody the death occurred and to the Minister responsible for that agency;
- (c) the Australian Institute of Criminology;
- 10 (d) if the deceased was an Aboriginal person or Torres Strait Islander—an appropriate local aboriginal legal service; and
- (e) any other person whom the Coroner considers appropriate.

(2) The Coroner shall make available a copy of a report of his or her findings into a death in custody to—

- 15 (a) a member of the immediate family of the deceased or a representative of that member; and
- (b) a witness who appeared at an inquest into the death.

Response to reports

20 76. (1) The custodial agency to which a report is given under section 72 shall, not later than 3 months after the date of receipt of the report, give to the Minister responsible for the custodial agency a written response to the findings contained in the report.

25 (2) A written response under subsection (1) shall include a statement of the action (if any) which has been, or is being, taken with respect to any aspect of the findings contained in the report.

(3) The Minister to whom a copy of a response is given under subsection (2) shall give a copy of the response to the Coroner in respect of whose findings the report relates.

30 (4) The Coroner shall give a copy of the response to each person or agency to whom a copy of his or her report was given under section 75

PART VII—OFFENCES

Obligation to report death

77. (1) A person shall report a death to a Coroner or a police officer if the person has reasonable grounds for believing that—

- 5 (a) the death is one in respect of which a Coroner would have jurisdiction to hold an inquest; and
 (b) the death has not been reported to a Coroner.

(2) A police officer to whom a death has been reported under subsection (1) shall report the death to a Coroner.

10 Penalty: 50 penalty units or imprisonment for 6 months, or both.

Obligations on custodial officers

78. A custodial officer shall report a death in custody to a Coroner as soon as is reasonably practicable after becoming aware of the fact.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

15 **Failure of witnesses to attend or produce documents**

79. (1) A person served with a summons under section 42 shall not, without reasonable excuse—

- (a) fail to appear as required by the summons, or
20 (b) fail to attend from day-to-day unless excused, or released from further attendance, by the Coroner holding the inquest or inquiry.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
 (b) if the offender is a body corporate—250 penalty units.

25 (2) A person shall not, without reasonable excuse, refuse or fail to produce a document or thing that the person was required to produce by the Coroner.

Penalty:

- 30 (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
 (b) if the offender is a body corporate—250 penalty units.

(3) It is a defence to a prosecution for an offence against subsection (2) that the document or thing was not relevant to the matter into which the Coroner was inquiring

- 5 (4) A person is not excused from producing a document or thing on the ground that the production of the document might tend to incriminate the person, but any document or thing obtained as a direct or indirect consequence of subsection (2) is not admissible in evidence against the person in proceedings, other than proceedings for an offence against section 86.

Refusal to be sworn or give evidence

80. A person appearing as a witness before a Coroner shall not, without reasonable excuse—

- 10 (a) refuse or fail to comply with a requirement under paragraph 48 (1) (a) to take an oath or make an affirmation, or
(b) having taken an oath or made an affirmation—refuse or fail to answer a question that the person is required by the Coroner to answer.

15 Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
(b) if the offender is a body corporate—250 penalty units.

False evidence

- 20 **81.** A person shall not, at an inquest or inquiry or hearing, knowingly give evidence that is false or misleading in a material particular.

Penalty:

- (a) if the offender is a natural person—500 penalty units or imprisonment for 5 years, or both,
25 (b) if the offender is a body corporate—2,500 penalty units

Improper dealings with documents

82. A person, knowing or having reasonable grounds for believing that a document or other thing is or may be required in evidence at an inquest or inquiry or hearing, shall not wilfully—

- 30 (a) conceal, mutilate, destroy or alter the document or thing;
(b) render the document or other thing incapable of identification; or

(c) in the case of a document—render it illegible or indecipherable.

Penalty:

(a) if the offender is a natural person—200 penalty units or imprisonment for 2 years, or both;

5 (b) if the offender is a body corporate—1,000 penalty units.

Improper dealings with body or ashes of deceased

10 **83. (1)** A person shall not interfere with or remove the body or ashes of a deceased with intent to prevent or hinder the holding of the post-mortem examination or an analysis of the ashes, if the person has reason to believe that a post-mortem examination of the body or an analysis of the ashes has been, or may be, ordered under this Act.

Penalty:

(a) if the offender is a natural person—200 penalty units or imprisonment for 2 years, or both;

15 (b) if the offender is a body corporate—1,000 penalty units.

(2) A person shall not interfere with or remove the body or ashes of a deceased with intent to prevent or hinder the conducting of an inquest, if the person has reason to believe that an inquest has been, or may be, ordered under this Act.

20 Penalty:

(a) if the offender is a natural person—200 penalty units or imprisonment for 2 years, or both,

(b) if the offender is a body corporate—1,000 penalty units.

Intimidation or dismissal of witnesses

25 **84. (1)** A person shall not use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage on or to a person—

(a) because the person appeared or is to appear as a witness before a Coroner; or

(b) because of any evidence so given by the person.

30 Penalty:

(a) if the offender is a natural person—500 penalty units or imprisonment for 5 years, or both;

(b) if the offender is a body corporate—2,500 penalty units.

35 **(2)** An employer shall not dismiss an employee from employment or prejudice an employee in employment—

- (a) because the employee appeared or is to appear as a witness before a Coroner; or
- (b) because of any evidence so given by the employee.

Penalty:

- 5 (a) if the offender is a natural person—500 penalty units or imprisonment for 5 years, or both,
 - (b) if the offender is a body corporate—2,500 penalty units.
- (3) If all the elements of an offence against subsection (2), other than the reason for the employer's action are proved, the onus of proving that the dismissal or prejudice was not because the employee appeared or was to appear as a witness or gave evidence is on the employer

Preventing witnesses from attending

85. A person shall not wilfully prevent a person who has been summoned to attend at an inquest or inquiry from—

- 15 (a) attending the inquest or inquiry,
- (b) answering a question that the person is required by a Coroner to answer; or
- (c) producing a document or thing referred to in the summons.

Penalty:

- 20 (a) if the offender is a natural person—100 penalty units or imprisonment for 12 months, or both,
- (b) if the offender is a body corporate—500 penalty units.

Bribery of witnesses

86. A person shall not—

- 25 (a) give, confer or procure, or promise or offer to give, confer or procure any property or benefit of any kind to, on or for, any person on any agreement or understanding that any person called or to be called as a witness before a Coroner will give false testimony or withhold true testimony,
- 30 (b) induce a person called or to be called as a witness before a Coroner to give false testimony or to withhold true testimony, or

- 5 (c) ask for, receive or obtain, or agree to receive or obtain, any property or benefit of any kind, whether for the person or for another person, on any agreement or understanding that any person called or to be called as a witness before a Coroner will give false testimony or withhold true testimony.

Penalty:

- (a) if the offender is a natural person—500 penalty units or imprisonment for 5 years, or both;
- (b) if the offender is a body corporate—2,500 penalty units.

10 **Fraud on witnesses**

87. A person shall not practise any fraud or deceit, or knowingly make or exhibit any false statement, representation, token or writing, to any person called or to be called as a witness before a Coroner with intent to affect the testimony of that person as a witness.

15 Penalty:

- (a) if the offender is a natural person—200 penalty units or imprisonment for 2 years, or both;
- (b) if the offender is a body corporate—1,000 penalty units.

Contempt

20 **88. (1)** A person shall not—

- (a) wilfully threaten, disturb or insult the Court;
- (b) wilfully interrupt, interfere with or obstruct the proceedings of the Court; or
- (c) commit any other act that is a wilful contempt of the Court.

25 Penalty:

- (a) if the offender is a natural person—100 penalty units or imprisonment for 12 months, or both;
- (b) if the offender is a body corporate—500 penalty units.

30 **(2)** Subsection (1) only applies to acts in the face, or within the hearing, of the Court.

(3) Without limiting the operation of any other provision of this Act, where a person commits an offence against subsection (1), a Coroner may proceed to charge the person and hear and dispose of the matter immediately and for that purpose receive evidence including unsworn evidence.

(4) Where—

- 5
- (a) a person has been charged under subsection (3) but the matter has not been disposed of;
 - (b) a Coroner has reasonable grounds to believe that the person has committed an offence against subsection (1); and
 - (c) the Coroner considers that it is reasonable in all the circumstances—
 - 10 (i) to order that the person be taken into custody to appear before the Court;
 - (ii) to order that the person be remanded in custody from time to time for periods not exceeding 15 clear days at any one time;
 - (iii) to release the person on bail; or
 - 15 (iv) to make an order in respect of the person under subsection (8) before the alleged offence has been heard,

the Coroner may make such an order

(5) An order under subsection (4) need not be in writing but such an order shall be reduced to writing, and a copy served on the alleged offender, as soon as practicable.

20 (6) Failure to comply with subsection (5) does not invalidate an order.

(7) Where a person is convicted of an offence against subsection (1), the Court, in addition to any penalty provided for under that subsection that it imposes, may make an order in relation to the person under subsection (8)

25 (8) An order under this subsection may provide for—

- (a) the exclusion of the person from any building in which the Court sits or the environs of such a building;
- (b) prohibiting the person from approaching a Coroner, an officer of the Court or a witness; or
- 30 (c) the imposition of any reasonable condition on the person

(9) In this section—

“Court”, subject to subsection (10), includes a Coroner when exercising the jurisdiction of the Court.

(10) In this section—

- (a) a reference in subsections (3), (4) and (9) to a Coroner is not to be read as including a reference to a Deputy Coroner; and
- 5 (b) a reference in subsection (4) to a Court is not to be read as including a reference to a Deputy Coroner.

Conduct of directors, servants and agents

89. (1) Where, for the purposes of a prosecution for an alleged offence against this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- 10 (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind, and
- (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

15 (2) A reference in subsection (1) to the state of mind of a body or person is to be read as including a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
- 20 (b) the body's or person's reasons for the intention, opinion, belief or purpose.

(3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an alleged offence against this Act, to have been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

(4) Where—

- (a) a natural person is convicted of an offence against this Act; and
- 30 (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(5) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

(6) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

PART VIII—POWERS OF SUPREME COURT

Application to hold inquest or inquiry

5 **90.** A person to whom notice under subsection 64 (6) has been given may, within 30 days after receipt of the notice, apply to the Supreme Court for an order that a hearing into a death or fire be conducted.

Supreme Court—general

10 **91.** The Supreme Court may, on application by a person, if it is of the opinion that it would be in the interests of justice to do so, make an order directing a Coroner to conduct a hearing into a death or fire.

Supreme Court—power to order inquest or inquiry

15 **92.** The Supreme Court may make an order directing a Coroner to conduct a hearing into a death or fire if, on an application made by or under the authority of the Attorney-General, it is satisfied that—

- (a) a Coroner does not intend to conduct a hearing into a death or fire; and
- (b) it is in the public interest or the interests of justice that a hearing into a death or fire should be conducted.

20 **Supreme Court—power to quash, or order fresh, inquest or inquiry**

93. Where—

- (a) an inquest into the cause of the death of a person, or an inquiry into the cause of a fire or disaster, has been held; and
- 25 (b) the Supreme Court, on an application made by, or under the authority of the Attorney-General is satisfied that, by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, discovery of new facts or evidence or otherwise, it is necessary or desirable in the public interest or the interests of justice that the inquest or inquiry be quashed and that
- 30 another inquest or inquiry be held;

the Supreme Court may order that the inquest or inquiry be quashed and another inquest or inquiry be held into the death, fire or disaster.

PART IX—FEES AND EXPENSES

Determination

94. (1) The Minister may, by notice in writing published in the *Gazette*, determine fees and charges for any of the following purposes:

- 5 (a) proceedings in the Court, and matters incidental to such proceedings, including the service and execution of the process of the Court;
- (b) facilities and services provided by the Court;
- (c) the general purposes of this Act and the regulations.

10 (2) A determination under subsection (1) may provide for any of the following matters:

- (a) the exemption of persons from liability to pay fees for the service and execution of process, in whole or in part;
- 15 (b) exemptions from liability for the payment of fees for the service and execution of process, in whole or in part, in particular circumstances;
- (c) the remission or refund of fees or charges by the Registrar, in whole or in part, in particular circumstances;
- 20 (d) the deferral of liability by the Registrar for the payment of fees or charges, in whole or in part, in particular circumstances.

(3) A determination under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Payment

25 **95.** (1) A fee or charge determined under subsection 94 (1) is payable, in advance, in accordance with the determination, subject to this section.

(2) A fee or charge determined under subsection 94 (1) is payable on notification from the Registrar if it is calculated by reference to expenses actually incurred in performing the function, or in providing the facility or service, for which the fee or charge is payable

30 (3) If a fee or charge determined under subsection 94 (1) and payable in advance is not paid when due, there is no obligation on the Registrar or the Court to perform the function, or provide the facility or service, for which the fee or charge is payable.

Remission, refund, deferral, waiver, exemption

96. (1) A fee or charge determined under subsection 94 (1) may be remitted or refunded, or liability for its payment deferred, in accordance with the determination.

5 (2) A fee or charge determined under subsection 94 (1) is not payable—

(a) if the person otherwise liable to pay the fee or charge is—

(i) exempt from paying the fee or charge under subsection 95 (1) of the *Legal Aid Act 1977*; or

10 (ii) legally assisted under a scheme or service provided or approved by the Attorney-General; or

(b) if the Registrar waives payment of the fee or charge in whole or in part because he or she considers that it would impose hardship on the person liable to pay the fee or charge—to the extent of the waiver.

15

Review of decisions

97. (1) The following decisions of the Registrar are reviewable under this section:

20 (a) a decision referred to in paragraph 94 (2) (c) to refuse to remit or refund a fee or charge in whole or in part;

(b) a decision referred to in paragraph 94 (2) (d) to refuse to defer liability for the payment of a fee or charge in whole or in part;

(c) a decision under paragraph 96 (2) (b) to refuse to waive payment of a fee or charge in whole or in part.

25 (2) After making a reviewable decision, the Registrar shall give a written notice of the decision to the eligible person including a statement to the effect that—

(a) the person may apply to the Registrar for a statement of reasons for the decision, and

30 (b) the person may apply to a Coroner for review of the decision within the review period.

(3) On written application by the eligible person within 28 days after the person's receipt of a notice under subsection (2), the Registrar shall give the person a written statement of reasons for the relevant decision.

35 (4) On written application by the eligible person within the review period, a Coroner may review a reviewable decision.

(5) On a review under subsection (4), the Coroner may make such order as he or she considers appropriate.

(6) No fee or charge is payable in relation to an application for review under subsection (4).

5 (7) In this section—

“eligible person”, in relation to a reviewable decision, means the person who claims to be entitled to the relevant remission, refund, deferral or waiver;

“review period”, in relation to a reviewable decision, means—

- 10 (a) the period of 28 days after receipt by the eligible person of notice of the decision under subsection (2); or
- (b) if the eligible person applies under subsection (3) for a statement of reasons for the decision—the period of 28 days after he or she receives the statement of reasons.

15 **Witnesses’ expenses**

98. A Coroner may allow to a witness who gives evidence before the Coroner, whether or not in obedience to a summons, such expenses as the Magistrates Court may allow to a witness under the *Magistrates Court Act 1930*.

20 **Amounts payable to assistants**

99. A person who, for the purposes of this Act, assists—

- (a) in the exhumation of a body;
- (b) in the conduct of a post-mortem examination or the analysis of the ashes of the deceased, or
- 25 (c) in the re-interring of a body;

shall be paid such amount (if any) as a Coroner directs.

PART X—MISCELLANEOUS

Deaths in institutions—retention of deceased’s records

- 30 100. (1) Where a person dies while a patient in a hospital or other institution in circumstances in which a Coroner has jurisdiction to hold an inquest, the person in charge of the hospital or institution shall ensure that all records relating to that person are retained intact for not less than 3 years after the date of the death.

(2) Where a person dies in custody, the person in charge of the hospital or institution in which, or the agency in whose care or custody, the death occurred, shall ensure that records relating to that person are retained intact for not less than 7 years after the date of the death.

5 Penalty: 50 penalty units.

Forms

101. (1) The Chief Coroner may, by notice published in the *Gazette*, approve a form for the purposes of this Act.

(2) A notice shall include the text of the form

10 (3) A notice is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 198*.

Annual report

15 102. (1) The Chief Coroner shall furnish to the Attorney-General for presentation to the Legislative Assembly a report relating to the activities of the Court during each financial year.

(2) A report under this section is a periodic report for the purposes of section 30A of the *Interpretation Act 1967*.

(3) An annual report prepared under this section shall include particulars of—

20 (a) reports prepared by Coroners into deaths in custody and findings contained in those reports,

(b) notices given under subsection 14 (3);

(c) any recommendations made under subsection 57 (3), and

25 (d) responses of agencies under section 76, including correspondence in relation to those responses

Regulations

103. (1) The Executive may make regulations for the purposes of this Act.

30 (2) Without limiting the generality of subsection (1), the regulations may make provision regulating the practice and procedures to be followed in inquests and inquiries.

PART XI—SAVINGS AND TRANSITIONALS

Interpretation

104. In this Part—

5 “commencement date” means the date on which section 3 of this Act commences;

“former Act” means the *Coroners Act 1956*.

Appointments and authorisations

10 105. (1) A person appointed to be a Deputy Coroner under section 7 of the former Act continues to hold office on the same terms and conditions as if he or she had been appointed under section 8 of this Act.

(2) A person authorised by the Attorney-General under subsection 10 (2) of the former Act, being an authority in force immediately before the commencement date, shall be taken to have been authorised by the Attorney-General under subsection 10 (2) of this Act.

15 (3) A person appointed to be a Deputy Registrar under subsection 11 (3) of the former Act continues to hold office on the same terms and conditions as if he or she had been appointed under subsection 11 (3) of this Act.

Inquests or inquiries part heard

20 106. The former Act continues to apply in relation to an inquest into a death or an inquiry into a fire (being a death or fire that occurred before the commencement date) but which had not been concluded before that date.

Determinations

25 107. (1) A fee or charge determined under subsection 74 (1) of the former Act shall be taken to have been determined under subsection 94 (1) of this Act.

(2) A determination under section 86 of the former Act in relation to a form continues in force until the Minister publishes a notice under subsection 101 (1) of this Act in relation to that form

30 (3) A direction given under subsection 54 (2) of the former Act continues in force as a direction given under subsection 47 (2) of this Act.

SCHEDULE 1

Section 10

OATH

I, A B , do swear that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth the Second, Her heirs and successors, according to law, that I will well and truly serve in the office of _____ and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will So help me God!

AFFIRMATION

I, A B , do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth the Second, Her heirs and successors, according to law, that I will well and truly serve in the office of _____ and that I will do right to all manner of people, according to law, without fear or favour, affection or ill-will

SCHEDULE 2

Sections 15 and 16

AUSTRALIAN CAPITAL TERRITORY

Coroners Act 1997

CORONER'S CERTIFICATE

Full name of deceased _____

Usual place of residence of deceased _____

I certify that—

- (a) the death of the deceased was reported to me on the _____ day of _____, 19____, and
- (b) the medical report of Dr _____, states that the cause of death was established as _____

(Insert cause of death)

I am satisfied that there is no reason why the body of the deceased should not be buried, cremated or taken out of the Territory

I authorise—

- * the burial of the body,
- * the cremation of the body,
- * the removal of the body from the Territory

(* *Strike out whichever is inapplicable*)

Dated _____ 19____

Coroner

Coroners No. , 1997

NOTE

Penalty units

See section 33AA of the *Interpretation Act 1967*

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