

2011

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Coroners Amendment Bill 2011

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Coroners Amendment Bill 2011

A Bill for

An Act to amend the *Coroners Act 1997*

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

- 1 **1 Name of Act**
- 2 This Act is the *Coroners Amendment Act 2011*.
- 3 **2 Commencement**
- 4 This Act commences on a day fixed by the Minister by written
5 notice.
- 6 *Note 1* The naming and commencement provisions automatically commence on
7 the notification day (see Legislation Act, s 75 (1)).
- 8 *Note 2* A single day or time may be fixed, or different days or times may be
9 fixed, for the commencement of different provisions (see Legislation
10 Act, s 77 (1)).
- 11 *Note 3* If a provision has not commenced within 6 months beginning on the
12 notification day, it automatically commences on the first day after that
13 period (see Legislation Act, s 79).
- 14 **3 Legislation amended**
- 15 This Act amends the *Coroners Act 1997*.
- 16 **4 New division 1.1 heading**
- 17 *before section 1, insert*
- 18 **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;

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

- 1 **6 Section 7 heading**
- 2 *substitute*
- 3 **7 Chief Coroner's functions**
- 4 **7 Section 9**
- 5 *omit*
- 6 powers
- 7 *substitute*
- 8 functions
- 9 **8 Section 13, new note**
- 10 *insert*
- 11 *Note* A coroner may, or may not, conduct a hearing into a death (see div 5.1
- 12 (Hearings)).
- 13 **9 Section 14**
- 14 *relocate as section 34A*
- 15 **10 Section 39**
- 16 *substitute*
- 17 **39 Inquests into non-custodial deaths and inquiries—**
- 18 **discretion to appoint counsel assisting**
- 19 (1) A coroner may appoint a lawyer as counsel to assist the coroner
- 20 (*counsel assisting*) in an inquest (other than for a death in custody)
- 21 or inquiry if the coroner is satisfied that—
- 22 (a) it is in the interests of justice to have a lawyer assist the
- 23 coroner—
- 24 (i) in the inquest or inquiry; or

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

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

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

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

22 **39A Functions of counsel assisting**

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

- 1 (c) making submissions to the coroner on any matter relevant to
2 the inquest or inquiry, including any findings that the coroner
3 may make at the end of the inquest or inquiry;
- 4 (d) acting in the public interest and the interests of justice to assist
5 the coroner to decide matters of fact or law relevant to the
6 inquest or inquiry.
- 7 (2) Counsel assisting must tell the coroner as soon as practicable, in
8 writing, if he or she becomes aware of any matter that could affect
9 his or her eligibility to be appointed as, or ability to exercise the
10 functions of, counsel assisting.
- 11 (3) In this section:
- 12 *counsel assisting* means a lawyer appointed under section 39 or
13 section 72.
- 14 *examining*, a witness, includes cross-examining and re-examining
15 the witness.
- 16 **39B Counsel assisting—revocation of appointment**
- 17 A coroner must revoke a lawyer’s appointment under section 39 or
18 section 72—
- 19 (a) if satisfied on reasonable grounds that the lawyer is not, or is
20 no longer, eligible for appointment under the section, or is
21 unable to properly exercise the functions of counsel assisting;
22 or
- 23 (b) for any other reason prescribed by regulation.

1 **11 Division 5.3 heading**

2 *substitute*

3 **Division 5.3 Evidence and procedure**

4 **12 Section 47**

5 *substitute*

6 **47 Rules of evidence do not apply**

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

9 **13 New section 51A**

10 *in division 5.3, insert*

11 **51A Practice and procedure for inquests and inquiries**

12 (1) An inquest or inquiry must be conducted in accordance with any
13 practice or procedure for taking a step in the inquest or inquiry that
14 is prescribed under this Act or another territory law under which the
15 step is to be taken.

16 (2) However, if a practice or procedure for taking a step in an inquest or
17 inquiry is not prescribed under this Act or another territory law—

18 (a) the Chief Coroner may give directions for the practice or
19 procedure (a *coronial practice direction*) to be followed for the
20 step; or

21 (b) if the Chief Coroner has not given a coronial practice direction
22 for the step—the coroner holding the inquest or inquiry may
23 give directions about the practice or procedure to be followed
24 in the inquest or inquiry.

25 (3) The rules may prescribe matters in relation to the practice and
26 procedure for a hearing.

- 1 (4) In this section:
2 *rules* means rules under the *Court Procedures Act 2004* applying in
3 relation to the Coroner's Court.

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

6 *substitute*

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

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

17 *substitute*

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

21 **16 Report after inquest or inquiry**
22 **Section 57 (3)**

23 *substitute*

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

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

16 **17 Section 58**

17 *substitute*

18 **58 Procedure where evidence of indictable offence or**
19 **indictment to be presented**

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

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

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

3 (7) In this section:

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

8 **58A When inquest or inquiry may proceed—s 58**

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

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

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

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

17 (b) on a day after—

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

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

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

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

21 **18 Request for hearing or for reconsideration of certain**
22 **decisions**
23 **Section 64 (6)**

24 *substitute*

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

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

13 **19 Section 64 (7)**

14 *relocate as section 64 (5A)*

15 **20 New division 5.7**

16 *insert*

17 **Division 5.7 Other requirements**

18 **68A Coroner to give information to immediate family**

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

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

15 **21 Section 72**

16 *substitute*

17 **72 Inquest into death in custody—obligation to appoint**
18 **counsel assisting**

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

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

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

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

13 **22 Application of Criminal Code, ch 7**
14 **Section 76A (2) (a)**

15 *omit*

16 section 14

17 *substitute*

18 section 34A

19 **23 Section 90 heading**

20 *substitute*

21 **90 Application to hold hearing for inquest or inquiry into fire**

22 **24 Section 90**

23 *omit*

24 section 64 (6)

25 *substitute*

26 section 64 (6) (b) (i)

1 **25 Annual report of court**
2 **Section 102 (2) (b)**

3 *omit*

4 section 14 (3)

5 *substitute*

6 section 34A (3)

7 **26 Dictionary, note 2**

8 *insert*

- 9 • function

10 **27 Dictionary, definition of *immediate family***

11 *omit*

12 **28 Dictionary, new definition of *member of the immediate***
13 ***family***

14 *insert*

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

- 17 (a) a person who was the domestic partner of the deceased person,
18 or a parent, grandparent, child, brother or sister, or guardian or
19 ward, of the deceased person; and
- 20 (b) if the deceased person was an Aboriginal person or Torres
21 Strait Islander—a person who, in accordance with the
22 traditions and customs of the Aboriginal or Torres Strait Island
23 community of which the deceased person was a member, had
24 the responsibility for, or an interest in, the welfare of the
25 deceased person.

26 *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 2011.

2 Notification

Notified under the Legislation Act on 2011.

3 Republications of amended laws

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

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