

1997

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CORONERS BILL 1997
AND
CORONERS (CONSEQUENTIAL PROVISIONS) BILL 1997

EXPLANATORY MEMORANDUM

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CORONERS BILL 1997 AND CORONERS (CONSEQUENTIAL PROVISIONS) BILL 1997

BACKGROUND

The *Coroners Act 1956* (the Former Act), which established the Coroner's Court (the Court) and provides for inquests into deaths and inquiries into fires is to be repealed. The Coroners Bill 1997 (the Bill) will continue the Coroner's Court. The Bill is the result of a review of aspects of the Former Act which began in 1994 with the amendment of the Former Act to implement those of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody relevant to the coronial jurisdiction.

In June 1994, after community concern was expressed about the impact of the requirements of the coronial jurisdiction on particular cultural attitudes or spiritual beliefs about death, an issues paper was released which discussed matters relating to the coronial jurisdiction, including multicultural and family concerns about post-mortem procedures, the jurisdiction relating to the investigation of fires and disasters and the power of the Coroner to commit for trial from an inquest or inquiry.

Responses to the issues paper indicated that there was support for requiring that consideration be given by a Coroner to cultural and spiritual attitudes to the treatment of the dead and for formal access to the coronial process for the family of a deceased whose death is the subject of a coronial investigation.

An inquest is conducted in the interests of the public to ensure that violent acts and dangerous goods, practices or occurrences leading to a death are disclosed to the community. While the Bill provides for consideration to be given by a Coroner to the cultural and spiritual sensitivities of members of the community when ordering a post-mortem or an exhumation, and for access to the coronial process for the family of a deceased whose death came within the coronial jurisdiction, the procedures giving access or consideration to individuals should not impede the principal duty of the coronial jurisdiction which is to inform and protect the community as a whole.

There is no intention that the provisions providing access to a member of the family of a deceased codify the availability of access or close off the informal access to the procedure of the Court which is currently available.

THE CORONERS BILL 1997 - SUMMARY

The Bill, essentially, replicates the provisions of the Former Act and, as a result of the review of the Former Act and community consultation, includes a range of new provisions. Significant new matters are noted below.

The particular procedures required to be applied in respect of a death in custody under the Former Act may be found at **Part VI** of the Bill.

- Provision for a 'hearing' for the purposes of an inquest or inquiry is made. An inquest or inquiry commences at the time of a death or fire. However, certain provisions of the Former Act used the terminology of 'inquest' and 'inquiry' for a hearing of the Coroner's Court in relation to those investigations. This inconsistency in the language of the Former Act has been corrected in the Bill [See clause 3 and Part V].

- A jurisdiction to investigate, with the consent of the Attorney-General, a 'disaster' [see clauses 3 and 19].
- An application may be made by a person to the Coroner that a post-mortem examination be dispensed with [see clause 20] A post-mortem examination of a deceased is necessary to establish the cause of death and the extent of that examination, whether superficial or a full pathological examination, is a matter for the Coroner to decide. This provision is intended to provide access to the Coroner in the making of that decision for persons close to the deceased in life.
- A member of the immediate family of a deceased or a representative of such a member may apply to the Coroner that authority be given for-
 - the viewing of the body of a deceased;
 - the inspection of the scene of death;
 - a member of the immediate family of a deceased or a representative to be present at the post-mortem examination; or
 - the same or another medical practitioner conduct another post-mortem examination [see clause 21].
- Where the Coroner refuses to give the authority requested under clause 21, the person may ask the Chief Coroner to request the Coroner to re-consider the decision [see clause 22].
- Provision is made for the removal and analysis of the ashes of a deceased whose body has been cremated. The Former Act provided for the exhumation of a body where necessary for a coronial investigation [see clauses 26 to 32].
- In deciding to make an order for a post-mortem examination, issuing a warrant for the removal of a body for a post-mortem examination or for an exhumation or removal of the ashes of a body, a Coroner must have regard to the desirability of minimising the causing of distress or the giving of offence to persons who, because of their cultural attitudes or spiritual beliefs could reasonably be expected to be distressed or offended by such procedures. The attitudes required to be considered would include the grief of the immediate family or sensitivities of the cultural community of the deceased. The intention is that, as far as is commensurate with the requirements of the coronial investigation, those who were close to the deceased in life are given consideration by those required to carry out a coronial investigation into the death of the deceased [see clause 28].
- A person may ask the Coroner holding an inquest or inquiry that a certain witness be called to give evidence at an inquest or inquiry [see clause 50].
- A Coroner holding an inquest or inquiry may make available to a person with sufficient interest in an inquest or inquiry the evidence to which the Coroner intends to have regard at the inquest or inquiry [see clause 51].
- The Bill provides for a Coroner to make interim findings. This will allow a Coroner who adjourns an inquest or inquiry, for instance, following the notification of the Director of Public Prosecutions of evidence relating to a possible indictable offence, to find that a named person has died or that particular property has been damaged by fire. This should allow matters flowing from a death, such as

registration of the death and probate, and, from a fire, such as insurance claims, to be dealt with pending the issue of final findings by the Coroner [see **clause 53**].

- On the request of a member or a representative of a member of the immediate family of a deceased a Coroner is to make available a copy of the findings of an inquest and, on the request of the owner of property damaged or destroyed by a fire, a Coroner is to make available to that person the findings of an inquiry held into the fire [see **clause 54**].
- A Coroner is not to include comment in a finding or in a report which is adverse to a person unless that person has been given notice of the intended comment and an opportunity to make a submission or written statement to the Coroner in relation to the intended comment [see **clause 55**].
- A Coroner is to notify the Registrar-General of the particulars of a death the subject of an inquest [see **clause 56**].
- A Coroner holding an inquest or inquiry is to notify the Director of Public Prosecutions where, in the course of an inquest or inquiry, the Coroner has reasonable grounds, having regard to the evidence, for believing that an indictable offence has occurred. The Coroner is to inform the Director of Public Prosecutions in writing and not proceed further with the inquest or inquiry until any criminal matter arising out of that notification has been finally determined [see **clause 58**].
- The appointment of an Investigator to assist the Coroner is provided for in the Bill. The Court's current practice is to call an expert witness to inform the Court in an inquest or inquiry. The appointment of an experienced and independent person able to investigate and inform the Court on a particular issue will assist a coronial investigation [see **clause 59**].
- The Chief Coroner may arrange for a hearing to be conducted for the purposes of an inquest or inquiry into a fire on the application in writing of a person [see **subclause 64(1)**].
- Where a Coroner has dispensed with or concluded a hearing conducted for the purposes of an inquest or inquiry into a fire, on the application in writing of a person with sufficient interest in the inquest or inquiry, the Chief Coroner is to ask the Coroner to reconsider the decision to dispense with or conclude a hearing [see **subclause 64(2) and (3)**].
- Where the Coroner does not alter his or her decision as to the conducting of a hearing and the Chief Coroner is satisfied that a hearing should be conducted, the Chief Coroner is to arrange that a hearing be conducted [see **subclause 64(7)**].
- An application may be made to the Supreme Court for an order that a hearing for the purposes of an inquest or inquiry into a fire be conducted where the decision of the Coroner not to conduct a hearing is unchanged. Notice to this effect is to be given to the person who made the application for the reconsideration of the decision as to the conducting of a hearing [see **subclause 64(8) and clause 89**].
- The Bill empowers the Chief Coroner to arrange for a fresh inquest or inquiry into a fire to be held, on his or her own motion or at the request of a person, where the

Chief Coroner is satisfied that new evidence is available and that it would be in the public interest or the interests of justice to do so [see **clause 68**]

- Penalties are converted to penalty units
- The oath of office of a Coroner is brought into line with that required to be made by a Magistrate under the *Magistrates Court Act 1930* [see **clause 10 and Schedule 1**].
- The Coroner's Certificate releasing the body of a deceased the subject of an inquest for burial, cremation or removal from the Territory is provided for in **Schedule 2** to the Bill.

THE CORONERS (CONSEQUENTIAL PROVISIONS) BILL 1997

The *Coroners Act 1956* is to be repealed by the Coroners (Consequential Provisions) Bill 1997 [see clause 3].

The *Registration of Births, Deaths and Marriages Act 1963* is amended in the Consequential Provisions Bill to repeal the provisions which required a person to notify the Coroner of the finding of a body and required a Coroner to notify the Registrar-General of outcome or the findings of an inquest. These notification requirements are now provided for in the Coroners Bill 1997 [see Schedule 1].

The Consequential Provisions Bill also amends other Acts as a consequence of the Coroners Bill 1997, in particular, the *Transplantation and Anatomy Act 1978* is amended to require the agreement of a person before death, or the family of a deceased, to the use for therapeutic, medical or scientific purposes of the body tissue of a deceased removed for the purposes of a post-mortem examination [see Schedule 2].

FINANCIAL CONSIDERATIONS

The amendments proposed in the draft Bill may produce some increase in the administrative work of the Coroner's Court due to the statutory requirement of access to the Court process. However, given that Court procedures currently allow for such access, no additional resources should be required to implement the formalisation of these procedures.

DETAILS OF THE CORONERS BILL 1997

PART I - PRELIMINARY

Clause 1 provides for the short title of the Act to be the *Coroners Act 1997*.

Clause 2 provides for the Bill to commence on the day it is notified in the *Gazette*.

Clause 3 provides for the meaning of words used in the Former Act and in the Bill. Important new definitions are as follows.

A "disaster" is to be interpreted in the Bill to mean an occurrence in the Australian Capital Territory which has caused or which threatened to cause substantial loss of life or property, or injury or distress to persons, or damage to property or to the environment or which in any way substantially endangers the safety of the public. The meaning of "inquiry" includes an inquiry into a disaster. Division 3 of Part III provides for a jurisdiction to hold an inquiry into a disaster.

A "hearing" is to mean the hearing provided for in Division 1 of Part V. Clause 34 provides that a Coroner may conduct a hearing for the purposes of an inquest or inquiry.

In referring to an 'inquest' or 'inquiry' the Former Act refers to the process of the investigation into a death or a fire occurring within the jurisdiction, from the notification of the event to the formal hearing of evidence and the making of findings. The inclusion of the hearing in the meaning of 'inquest' or 'inquiry' results in the provisions of the legislation which apply to the conduct of the hearing being ambiguous or impossible of compliance.

A Coroner's jurisdiction is triggered by a sudden, unexplained or violent death, or a fire which damages property. To make it clear that provisions, principally those in Division 1 of Part V of the Bill, relate to the hearing of an inquest or inquiry, the Bill provides for a hearing to be conducted for the purposes of an inquest or inquiry, and for the procedures applicable to a hearing.

The definition of "immediate family" is taken from section 18 in Division 3 of Part II of the Former Act. Division 3 of the Former Act (now Part VI) provides the procedure for an inquest into a death in custody which includes entitlement to access to the coronial process for the immediate family of the deceased. Access for the family of a person whose death occurred in any circumstances and is the subject of an inquest is given in the Bill and the definition has, therefore, been relocated.

The "Registrar-General" means the Registrar-General responsible for the registration of births, deaths and marriages under the *Registration of Births, Deaths and Marriages Act 1963*.

The meaning of "spouse" in the term "immediate family" is provided to make it clear that the term includes a legally married partner, a de facto married partner or a partner in a like relationship of the same sex or not. No formal or legal consequences are intended to flow from this definition. The intention is that a person in a relationship of a marital kind with the deceased prior to death is accorded access to the coronial process.

PART II - THE CORONER'S COURT

Division 1 - Establishment

Clause 4 provides for the continuation of the Coroner's Court established under section 3 of the Former Act.

Division 2 - Appointment of Coroners

Clause 5 provides that a Magistrate for the Territory is a Coroner for the Territory. It replicates section 4 of the Former Act.

Clause 6 provides that the person who is Chief Magistrate for the Territory is the Chief Coroner. It replicates section 5 of the Former Act.

Clause 7 provide for the powers and functions of the Chief Coroner. It replicates section 6 of the Former Act.

Clause 8 provides for the appointment of Deputy Coroners.

Subclause 8(1) replicates section 7 of the Former Act.

Subclause 8(2) is a new provision for the terms and conditions of the appointment of a Deputy Coroner.

Clause 9 provides for the powers of a Deputy Coroner. It replicates sections 8 and 79 of the Former Act.

Clause 10 provides for an oath or affirmation of office to be taken by a Coroner and a Deputy Coroner before performing the functions of their offices. It replicates section 10 of the Former Act. Part 1 of the Schedule to the Bill provides for the oath and an affirmation similar to that taken by a Magistrate under the *Magistrates Court Act 1930*.

Clause 11 provides for the Registrar and the Deputy Registrars of the Coroner's Court and replicates section 11 of the Former Act.

PART III - JURISDICTION OF CORONERS

Division 1 - Inquests into Deaths

Clause 12 provides, in effect, for the preservation of the common law powers of a Coroner. This clause replicates section 89 of the Former Act.

Clause 13 provides for the jurisdiction of a Coroner in relation to deaths. Other than the amendment of paragraphs (1)(c) and (j) to take a suspected death into account, this clause replicates section 12 of the Former Act.

Clause 14 provides for the circumstances in which a Coroner may decide not to conduct a hearing into a death and replaces section 13 of the Former Act which provides for a Coroner to dispense with the holding of an inquest. An inquest commences on the death of a person in violent, sudden or unexplained circumstances and is required to be held to establish the cause and circumstances of the death. However, the Coroner

need not conduct a Court hearing of evidence relating to the death where, for instance, the cause of death is able to be disclosed without such a hearing.

Subclause 14(1) provides that a Coroner may decide not to conduct a hearing if satisfied that cause of death is sufficiently disclosed and that a hearing is unnecessary.

Subclause 14(2) requires that a hearing be conducted where the Coroner has reasonable grounds for believing that the person died in custody or while under or as a result of certain medical procedures.

Subclause 14(3) requires a Coroner who decides not to conduct a hearing to give the Chief Coroner and a member of the immediate family of the deceased a written notice of the decision and which includes the grounds for that decision.

Clause 15 provides for a Coroner to have control of the body of a deceased whose death comes within the coronial jurisdiction.

Subclause 15(1) provides that a Coroner has control of the body of a deceased which is in the Territory and the death is within the jurisdiction of the Coroner until the Coroner has issued a certificate in accordance with the Form in Schedule 2 to the Bill, that is, the Coroner's Certificate authorizing disposal of a body.

Subclause 15(2) prohibits a Deputy Coroner from issuing a Coroner's Certificate.

Clause 16 provides for a Coroner to give a Coroner's Certificate the effect of which is to release the body of a deceased for burial, cremation or removal from the Territory. The form of the Coroner's Certificate is provided in Schedule 2. This provision replicates section 33 and paragraph 39(1)(b) of the *Registration of Births, Deaths and Marriages Act 1963* which are repealed by the Coroners (Consequential Provisions) Bill 1997.

Clause 17 provides for assistance to be given to a coroner of a State or another Territory. It replicates section 16 of the Former Act.

Division 2 - Inquiries into Fires

Clause 18 provides for a jurisdiction to hold an inquiry into the cause and origin of a fire which has damaged property.

Subclause 18(1) replicates section 17 of the Former Act.

Subclause 18(2) provides for an owner or occupier of property damaged or destroyed by a fire to request that an inquiry into the fire be held. Where the Coroner decides not to hold such an inquiry, the Coroner is to give a written notice to that effect and of the grounds for his or her decision.

Division 3 - Inquiries into Disasters

Clause 19 is a new provision for a jurisdiction to hold an investigation into a disaster, that is, an occurrence in the Australian Capital Territory which has caused or which threatened to cause substantial loss of life or property, or injury or distress to persons,

or damage to property or to the environment, or which in any way substantially endangers the safety of the public. This jurisdiction is to be exercised only at the request, or with the consent, of the Attorney-General.

PART IV - POST-MORTEM EXAMINATIONS AND EXHUMATIONS

Clause 20 is a new provision. It provides for a Coroner to dispense with a post-mortem examination if the Coroner is satisfied that the manner and cause of the death are sufficiently disclosed and that a post-mortem examination is unnecessary.

Subclause 20(1) provides for a Coroner to dispense with the conduct of a post-mortem examination if the Coroner is satisfied that the manner and cause of death are sufficiently disclosed.

Subclause 20(2) provides for a Coroner to dispense with the conduct of a post-mortem examination at the request of a member of the immediate family of the deceased if the Coroner is satisfied that that the manner and cause of death are sufficiently disclosed.

Clause 21 provides for a Coroner to give a direction to a medical practitioner to hold a post-mortem examination and for a Coroner to order that the medical records of a person who died in a hospital or other institution are to be given to the medical practitioner conducting the post-mortem examination of that person. It replicates section 28 of the Former Act with the addition of **subclause 21(4)** which provides for a Coroner to direct a medical practitioner holding the records of a deceased to return those records to the hospital or institution unless otherwise directed. The intention is that a Coroner may retain the records for the further purposes of the inquest.

Clause 22 enables a Coroner to substitute the name of another medical practitioner to hold a post-mortem examination if the practitioner in the direction under **clause 23** is not available for any reason. It replicates section 82 of the Former Act.

Clause 23 is a new provision. It provides for a Coroner holding an inquest to give consideration to the immediate family of the deceased whose death is the subject of the inquest. (This provision does not apply to a death in custody. Particular provisions applying to an inquest into a death in custody are in Part VI of the Bill.)

Subclause 23(1) provides for access to the coronial procedure where this is sought by a member of the immediate family of a deceased. If requested by a member of the immediate family of a deceased the Coroner may authorise such a person or a representative of that person to-

- (a) view the body of a deceased;
- (b) inspect the scene of the death;
- (c) inspect the scene of an event which, in the opinion of the Coroner, may have resulted in the death of the person;
- (d) be present at a post-mortem examination; or
- (e) order that a further post-mortem examination be held.

Subclause 23(2) provides that, if the Coroner refuses to give an authorisation when requested to do so according to subclause 21(1), the Coroner shall give the person who made the request written notice of the refusal and an explanation for the refusal.

Subclause 23(3) provides that the notice to be given under subclause 21(2) must include a statement that the person who made the request which was refused may apply to the Chief Coroner for a re-consideration of the decision by the Coroner.

Clause 24 is a new provision which provides for the reconsideration of a decision made under clause 23 as to access for the family of a deceased the subject of an inquest.

Subclause 24(1) provides that, where a Coroner has refused a request under clause 23, and the Chief Coroner receives a written application seeking reconsideration of the decision by the Coroner, the Chief Coroner shall, if satisfied that the latter applicant has sufficient interest in the decision of the Coroner, ask the Coroner to reconsider the application for access made under clause 23.

Subclause 24(2) provides that the application to the Chief Coroner seeking reconsideration of a Coroner's decision shall set out the grounds for seeking that reconsideration.

Subclause 24(3) requires that the Chief Coroner notify the person who made the application for reconsideration of any comments the Coroner made in response to the request for reconsideration of a decision as to access for the immediate family of a deceased.

The intention in clauses 23 and 24 is that a person in a close familial or marital relationship with the deceased prior to death have access to the coronial investigation into the cause and circumstances of the death of the deceased and that, where such access is denied, a written explanation is given for the denial of access.

No time requirements are included in this procedure. The provisions are drafted in imperative form which requires that the Coroner and the Chief Coroner must respond as soon as practicable to the requests and applications made under them.

Clause 25 enables the medical practitioner who attended the person the subject of a post-mortem examination prior to death to be present as an observer at the post-mortem examination. It replicates section 29 of the Former Act.

Clause 26 provides for removal of the body of a deceased, whose death apparently comes within the coronial jurisdiction, to a place where a post-mortem examination may be held. This provision replicates section 30 of the Former Act with the difference that, in section 30 the issue of a warrant for the removal of a body was tied to an order for the holding of a post-mortem examination. Clause 26 allows a Coroner to issue a warrant for the removal of the body of a deceased where the Coroner believes on reasonable grounds that the circumstances of the death trigger the coronial jurisdiction, whether or not a post-mortem examination has been ordered.

The purpose of the change is to make it clear that a Coroner has control of the body of a deceased whose death comes within the coronial jurisdiction and may remove it from the place of death for further examination which may or may not include a full pathological examination. Examination in clinical circumstances may reveal the cause

of death sufficiently so that the distress, and the expense, of a full pathological examination may be avoided.

Clause 27 provides for the issue of a warrant for the exhumation of a body from a burial site, or the recovery of the ashes of a deceased who was cremated. This provision replicates section 31 of the Former Act with added provision in subclause (3) for the recovery of ashes. If a body may be exhumed from burial for the purposes of further investigation of the death, so should the ashes of a cremated body be available for further examination. It is possible that evidence of certain chemicals and metals may be obtained from the ashes of a cremated body indicating a cause of death not earlier detected.

Subclause 27(3) provides for the exhumation of the body of a person who died outside the Territory, but which is buried in the Territory, for the purposes of further examination. This provision replicates section 32 of the Former Act with the addition of an order in respect of the recovery of the ashes of a person who died outside the Territory but which are deposited in the Territory.

Clause 28 is a new provision. It requires that, when making an order for the holding of a post-mortem examination, the removal of a body to a place where a post-mortem examination may be held or for the exhumation of a body which has been buried or analysis of the ashes of a body which has been cremated, a Coroner should have regard to specified matters. These are matters which could minimise 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 such an order.

The intention is that sympathetic consideration is given to the attitudes and beliefs of the family and community of a deceased the subject of such orders. This consideration would include the feelings of grief and respect for the deceased of those who were close to the deceased in life.

Clause 29 provides for the form of a warrant (to be issued by a Coroner) directed to a police officer to recover the body or ashes the subject of an exhumation or recovery order and deliver the body or ashes to the place specified in the warrant. This provision replicates section 33 of the Former Act with the addition of the inclusion of the recovery and delivery of ashes.

Clause 30 provides for an order directing that an exhumed body or recovered ashes be re-interred or returned. This provision replicates section 36 of the Former Act with the addition of the inclusion of the return or re-internment of ashes.

Clause 31 provides for a Coroner to make an order for the removal from the Territory of a body or the ashes of a body lying in the Territory of a person who has died outside the Territory when informed by a coroner who has jurisdiction in the place where the death occurred that an inquest is to be held in that place. This provision replicates section 34 of the Former Act with the addition of the recovery of ashes, and supports clause 17 which provides that a Coroner may exercise his or her powers to assist a coroner of a State or another Territory.

Subclause 31(1) provides for a Coroner to make an order for the removal of a body or ashes.

Subclause 31(2) requires the Coroner making an order under subclause 33(1) to notify, and provide particulars of the cause of the death to, the Registrar-General

Clause 32 requires a medical practitioner or analyst to provide a report on the examination of a body or analysis of ashes to the Coroner who made the order for the examination or analysis. This provision replicates section 35 of the Former Act with the addition of the requirement in respect of an analysis of ashes.

Clause 33 provides for the appointment of a person to assist in an exhumation, examination or re-interment of a body or recovery or analysis of ashes and replicates section 37 of the Former Act with the addition of references to assistance in the recovery and analysis of ashes.

PART V - INQUESTS AND INQUIRIES

Division 1 - Hearings

Clause 34 is a new provision and provides for a hearing to be conducted for the purposes of an inquest or inquiry. The Former Act, in its references to an inquest or inquiry, included a hearing for the purposes of an inquest or inquiry in the meaning of those references. However, a hearing for the purposes of an inquest or inquiry may or may not be necessary and certain provisions are particularly applicable to a hearing of the Court. Provision for a hearing is intended to clarify the procedures which apply to a hearing and those which apply generally to the process of an inquest or inquiry.

Clause 35 provides for the time and place to be fixed of a hearing conducted for the purposes of an inquest or inquiry. It replicates section 38 of the Former Act which referred to an inquest or inquiry.

Clause 36 provides for a hearing to be adjourned at any time and from or to any place.

Clause 37 is a new provision which provides for notification of a hearing to be given to the immediate family of a deceased. It does not apply to a hearing into a death in custody. Notification of the conducting of a hearing into an inquest into a death in custody is provided for under Part VI of the Bill.

Subclause 37(1) provides that, before conducting a hearing for the purposes of an inquest, the Coroner shall have regard to whether a member of the immediate family of the deceased has been notified of the time and place of the hearing and, if not, whether reasonable efforts have been made to do so.

Subclause 37(2) provides for the Coroner to conduct the hearing without notification having been made where the Coroner believes, on reasonable grounds, that it would be in the public interest or the interests of justice to do so.

The intention of this provision is to ensure, as far as is reasonable, that the family of a deceased is informed that a hearing for the purposes of an inquest is to be conducted and of its time and place. The provision for notification, while important in according consideration to the family of a deceased, should not operate to hold up the principal

duty of the coronial jurisdiction which is to proceed with an inquest to discover the reasons for a death as soon as possible.

Clause 38 provides for a notice of the date, time and place of a hearing to be conducted for the purposes of an inquest or inquiry to be placed in a newspaper published and circulated daily in the Territory. It replicates section 47 of the Former Act.

Clause 39 provides for the appointment of a legal practitioner to assist the Coroner in an inquest or inquiry. The provision is discretionary: a Coroner may appoint a legal practitioner or not as he or she sees the need and may appoint a legal practitioner to assist the Court either generally in an inquest or inquiry, for the hearing, or in relation to a particular matter which may arise in an inquest or inquiry. This provision can be compared with clause 72 in Part VI which requires that a Coroner holding an inquest into a death in custody appoint a legal practitioner.

Clause 40 provides for a hearing for the purposes of an inquest or inquiry to be held in public subject to a power to restrict access to the hearing and the publication of evidence in particular cases. This provision re-writes and expands section 41 of the Former Act.

Subclause 40(1) provides that, subject to subclause (2), a hearing for the purposes of an inquest or inquiry shall be in public.

Subclause 40(2) provides that a Coroner, if of the opinion that it would be in the public interests or the interests of justice to do so, may, by order -

- (a) direct that a hearing or part of a hearing be held in private, or give directions as to those who may be present at the hearing; and
- (b) give directions prohibiting or restricting the publication, or the disclosure, of evidence or of evidential material whether or not a hearing has been held.

Subclause 40(3) creates an offence of contravening, without reasonable excuse, an order made under subclause (2). A penalty of 100 penalty units or imprisonment for 12 months, or both is provided for a natural person and, if the offender is a body corporate, 500 penalty points are provided for.

Clause 41 provides for a hearing for the purposes of an inquest or inquiry to be held without a jury. It replicates section 50 of the Former Act.

Clause 42 provides for leave to be given by a Coroner for a person who has been summoned to give evidence, or who has sufficient interest in the inquest or inquiry to be represented by a legal practitioner and to examine and cross-examine witnesses on matters relevant to the inquest or inquiry. It replicates section 53 of the Former Act.

Division 2 - Witnesses

Clause 43 provides for the summoning of witnesses to a hearing for the purposes of an inquest or inquiry. The provision updates and re-writes section 52 of the Former Act in particular in providing for the issue of a summons to a witness to appear who the Coroner is satisfied will not voluntarily appear at a hearing.

Subclause 43(1) provides that, if satisfied that a person is able to give evidence at a hearing and may not or does not appear voluntarily, a Coroner may issue a summons to the person to give evidence, to give evidence and produce any document or thing, or to produce any document or thing mentioned in the summons.

Subclause 43(2) provides that, if a person delivers a document or thing to the Coroner before the date mentioned in the summons, a summons requiring the person to produce a document or thing shall be taken to have been complied with

Clause 44 provides for service of a summons on a person required to be a witness. It replicates subsections 52(3) and (4) of the Former Act.

Subclause 44(1) provides that a summons may be served by personal service, by postal service which requires a signed receipt to the last known place of residence or employment of the person, or by leaving the summons with a responsible adult at the person's last known place of residence or employment.

Subclause 44(2) provides that the summons is to be accompanied by an undertaking to appear to be signed by the person the subject of the summons and a form which may be completed by the person for the reasonable costs and expenses of his or her appearance.

Subclause 44(3) provides that a person is not entitled to refuse to comply with a summons because the form for expenses did not accompany the summons.

Subclause 44(4) provides that service of a summons may be sworn to orally or in writing by affidavit.

Clause 45 provides for a warrant to be issued for the arrest of a person who has been summoned but has failed to appear at the time and place specified in the summons and, in effect, replicates paragraphs 52(5)(a) and (c) and subsections 52(6), (7), (8) and (9) of the Former Act.

Clause 46 provides for the taking of evidence at any time from a person who is likely to be absent from the Territory during the conduct of a hearing.

Subclause 46(1) provides that, where a Coroner is satisfied that a person may have evidence material to an inquest or inquiry, and is likely to be absent from the Territory during a hearing into an inquest or inquiry, the Coroner may order that, at any time before the hearing, the evidence be taken, or a document or thing produced in the same manner as would have taken place at the hearing.

Subclause 46(2) provides that a notice of the order to the person of the taking of evidence under subclause (1) is to be accompanied by a form for the costs and expenses of the person appearing to give evidence.

Subclause 46(3) provides that a person is not entitled to refuse to comply with the order because the form for expenses did not accompany the notice of the order.

Division 3 - Evidence

Clause 47 provides that a Coroner is not bound to observe the rules of procedure and evidence and allows a Coroner to give directions as to procedure where no procedure is prescribed. It replicates section 54 of the Former Act.

Clause 48 is a new provision which provides for the procedure for the taking of evidence for the purposes of an inquest or inquiry.

Subclause 48(1) provides that a Coroner may take evidence on oath or affirmation and require a witness to take an oath or make an affirmation which may be administered by the Coroner, the Registrar or other officer of the Court.

Subclause 48(2) provides that, at a hearing, a Coroner may require a witness to answer a question put to him or her, and may require a witness to give evidence or to produce a document or thing.

This provision is supported by clauses 79 and 80 in Part VII of the Bill which provide for the offences of failing to attend, and refusal to be sworn and to give evidence.

Subclause 48(3) provides that, except in relation to proceedings under Part VII (which provides for offences under the Act), a record of evidence made for the purposes of an inquest or inquiry is not admissible in any court as evidence.

Subclause 48(3) replicates subsection 55(3) of the Former Act.

Clause 49 provides for the recording of the proceedings of a hearing and replicates subsections 55(1) and (2) of the Former Act.

Clause 50 is a new provision. It provides for a person with sufficient interest in an inquest or inquiry to ask the Coroner to request another person to give evidence to the inquest or inquiry. The request of the person with sufficient interest may be made to the Coroner at any stage of an inquest or inquiry and either before or after a hearing conducted for the purposes of an inquest or inquiry. The intention is that access is provided for a person with sufficient interest in the matter to indicate to the Coroner the identity of any person who may have material evidence as to a death, fire or disaster.

Clause 51 is a new provision. It provides for access to the documents to be considered by a Coroner holding an inquest or inquiry. The intention of this provision is that any person with a sufficient interest may apply to the Coroner for access to evidence to be produced at or considered in an inquest or inquiry.

Division 4 - Findings and Reports

Clause 52 provides for the findings of a Coroner at an inquest or inquiry. Section 56 of the Former Act provided for a Coroner's findings; that provision is re-written in clause 52 to include findings as to a suspected death and as to a disaster.

Subclause 52(1) provides that a Coroner holding an inquest shall find, if possible, the identity of the deceased, when and where the death occurred, the manner and cause of the death, and, in the case of an inquest into a suspected death, that the person has died.

Subclause 52(2) provides that a Coroner holding an inquiry shall find, if possible, the cause and origin of the fire or disaster and the circumstances in which the fire or disaster occurred.

Subclause 52(3) provides that, at the conclusion of an inquest or inquiry, the Coroner shall record his or her findings in writing.

Subclause 52(4) provides for a Coroner to comment on any matter connected with a death, fire or disaster including a matter relating to public safety or the administration of justice.

Clause 53 is a new provision. It provides for a Coroner to make an interim finding on any matter connected with the inquest or inquiry at any time before concluding the inquest or inquiry. An inquest or inquiry is generally concluded by the issue of the findings of the Coroner. This provision will enable a Coroner to issue findings which are not final and conclusive.

An example of the benefit of such a provision would be where evidence of an indictable offence emerges in an inquest or inquiry and the Coroner passes the evidential material to the Director of Public Prosecutions and adjourns the inquest or inquiry. So as not to delay probate, insurance claims and like matters which may depend on the outcome of an inquest or inquiry, the Coroner could make interim findings relating to matters not connected with the possible offence which lead to the adjournment of the inquest or inquiry.

Clause 54 is a new provision. It provides for access to the coronial process for those close to, or affected by, the findings of an inquest or inquiry.

Subclause 54(1) provides that a Coroner holding an inquest shall, on the request of a member of the immediate family of the deceased the subject of the inquest, or a representative of that member, make available a copy of the findings of the inquest.

Subclause 54(2) provides that a Coroner holding an inquiry into a fire shall, on the request of the owner of the property the subject of the inquiry, make available to the owner a copy of the findings of the inquiry.

Clause 55 is a new provision. It provides that, before making a comment adverse to a person in a finding or report, a Coroner shall notify the person and allow the person to be heard on the proposed adverse comment.

Subclause 55(1) provides that, before making an adverse comment, the Coroner must have taken all reasonable steps to give the person the subject of the proposed comment a copy of the proposed comment and a notice that the person may make a submission or provide a written statement to the Coroner on the proposed comment within a specified period being not more than 28 and not less than 14 days after the date of the notice.

Subclause 55(2) provides that the Coroner may extend the time for the submission by not more than 28 days.

Subclause 55(3) provides that, if the person so requests, the Coroner shall include in the report a copy of the written statement provided under subclause 55(1), or a fair summary of it.

Clause 56 is a new provision. It provides for notification by the Coroner of the findings of an inquest to the Registrar-General. This provision is taken from sections 30 and 31 of the *Registration of Births, Deaths and Marriages Act 1963* which are repealed by the Coroners (Consequential Provisions) Bill 1997. The provision imposing on a Coroner the duty of advising the Registrar-General of the details of a coronial death is appropriately located in the legislation providing for the coronial function.

Subclause 56(1) provides that the Coroner holding an inquest is to give the Registrar-General notice in writing that the inquest is being held.

Subclause 56(2) provides that the Coroner shall give the Registrar-General notice in writing where an inquest is adjourned or, having been adjourned will not be proceeded with further, and that where an inquest is adjourned or completed, the Coroner is to give notice in writing to the Registrar-General together with the findings of the inquest and such of the particulars of the death as are required under the *Registration of Births, Deaths and Marriages Act 1963* and as have come to the knowledge of the Coroner.

Clause 57 provides for a Coroner to report on an inquest or inquiry to the Attorney-General and replicates section 58 of the Former Act with the addition of the requirement to provide a report on a disaster.

Division 5 - Indictable Offences

Clause 58 provides for the procedure where evidence of an indictable offence emerges at an inquest or inquiry.

Subclause 58(1) provides that, if in the course of an inquest or inquiry a Coroner has reasonable grounds, having regard to the evidence, for believing that a person has committed an indictable offence, the Coroner shall inform the Director of Public Prosecutions and not proceed further with the inquest or inquiry until the date ascertained under subclause 58(4). In these circumstances the Coroner would adjourn the inquest or inquiry. Interim findings might be made at this point.

Subclause 58(2) provides that, in determining whether or not to inform the Director of Public Prosecutions, the Coroner is to have regard to the admissibility of the evidence at trial and whether the Director of Public Prosecutions or a person who may be affected by the referral to the Director of Public Prosecutions is or has been given an opportunity to give evidence about the alleged offence.

Subclause 58(3) provides that, if the Director of Public Prosecutions gives written notice to the Coroner holding an inquest or inquiry that an information is to be laid or presented charging a person with an indictable offence in relation to the subject of the inquest or inquiry, or the Attorney-General lays or presents an information against a person, the Coroner shall not proceed further with the inquest or inquiry until after the date ascertained in accordance with subsection 58(4).

Subclause 58(4) provides that, for the purposes of subsections 58(1) and 58(3), the date after which an inquest or inquiry may be proceeded with is -

(a) where a prosecution is not commenced, on or before the day after the day which is 3 months after -

- (i) the day the Coroner issued the written notice as to the evidence of an indictable offence to the Director of Public Prosecutions;
 - (ii) the receipt by the Coroner of a notice provided to the Coroner by the Director of Public Prosecutions;
- or

(b) on a day after -

- (i) the day on which the Director of Public Prosecutions notifies the Coroner that no information is to be laid or presented or that proceedings in respect of the information have been or are to be discontinued;
- (ii) if the person is committed or indicted, the day on which the Director of Public Prosecutions notifies the Coroner that all proceedings in respect of the offence are finally determined, or the Director of Public Prosecutions notifies the Coroner that proceedings in respect of the information have been or are to be discontinued;
- (iii) if the person is not committed or indicted, the day after the day on which the person is discharged;
- (iv) the day which is 30 days after the expiration of the period within which an appeal to the Supreme Court, the Federal Court or the High Court may be filed.

Subclause 58(5) provides that a Coroner may continue the inquest or inquiry after the day referred to in subclause 58(4) but may not make a finding which is inconsistent with the judgement of the Court which has finally determined the guilt or innocence of the person charged.

Subclause 58(6) provides that a Coroner shall not continue the inquest or inquiry if he or she is satisfied that the inquest or inquiry should not be continued.

Division 6 - General powers of a Coroner

Clause 59 is a new provision which provides for a Coroner to appoint an investigator to assist in an inquest or inquiry.

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

Subclause 59(2) provides that an investigator so appointed shall inquire into and report in writing to the Coroner on any matter referred to the investigator by the Coroner in the instrument of appointment.

Subclause 59(3) provides that the instrument of appointment of an investigator shall specify the particulars of the matter to be investigated and reported on, the conditions to which the appointment is subject and the remuneration, if any, to be received by the investigator.

Subclause 59(4) provides that a public servant appointed as an investigator is not entitled to receive any remuneration as an investigator.

Subclause 59(5) provides that a Coroner holding an inquest or inquiry in which investigations are made by an investigator shall have regard to the report of the investigator and give it such weight as the Coroner sees fit.

Clause 60 provides that a Coroner may not be called as a witness, except in proceedings against a Coroner for an offence. It replicates section 57 of the Former Act.

Clause 61 provides that a Coroner is not required to view the body or ashes or the scene of a fire or disaster and, with the inclusion of the references to 'ashes' and the scene of an event resulting in a death, replicates section 51 of the Former Act.

Clause 62 provides that a Coroner may act on a Sunday. It replicates section 81 of the Former Act.

Clause 63 provides for the assistance of the police in an inquest or inquiry and replicates section 49 of the Former Act, with the addition of subclause 63(3).

Subclause 63(1) provides that 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.

Subclause 63(2) provides that the chief police officer shall, as far as is practicable, comply with the request.

Subclause 63(3) provides that any act done by a police officer when assisting a Coroner pursuant to a request made by a Coroner is to be taken to be done of behalf of the Coroner.

Clause 64 is a new provision. It provides that, where a hearing for the purposes of an inquest or inquiry has not been conducted or has concluded, a person may apply to the Chief Coroner for a hearing to be conducted.

Subclause 64(1) provides that, on a written application from a person that a hearing for the purposes of an inquest or inquiry into a fire be conducted, the Chief Coroner may arrange for the conducting of a hearing.

Subclause 64(2) provides that, on receiving an application for a hearing for the purposes of an inquest or inquiry into a fire to be arranged, where the Chief Coroner is satisfied that the applicant has sufficient interest in

the inquest or inquiry into a fire, the Chief Coroner shall request the Coroner who made the decision to dispense with a hearing to reconsider that decision.

Subclause 64(3) provides that if the decision to dispense with a hearing was made by the Chief Coroner, the Chief Coroner is to re-consider his or her decision.

Subclause 64(4) provides that an application for reconsideration of a decision as to a hearing is to be in writing and set out the grounds on which the person believes that a hearing into an inquest or inquiry into a fire should be conducted.

Subclause 64(5) provides that the Coroner asked to reconsider a decision shall respond to the Chief Coroner within 14 days of the Chief Coroner's request.

Subclause 64(6) provides that, within 14 days of the receipt of the Coroner's response, the Chief Coroner shall notify the applicant of the comments of the Coroner and provide written notification as to whether a hearing is to be conducted or not and, if a hearing is not to be conducted, an explanation why a hearing is not to be conducted.

Subclause 64(7) provides that, if the Coroner, after reconsidering his or her decision, does not intend to conduct a hearing, or that Coroner is not available, the Chief Coroner, if satisfied that a hearing should be conducted, shall arrange for a hearing to be conducted.

Subclause 64(8) provides that the notice of explanation to be given under subclause 64(6) is to include a statement to the effect that an application for an order that a hearing for the purposes of an inquest or inquiry into a fire be conducted may be made to the Supreme Court within 30 days of receipt of the notice.

This provision is supported by clause 90 which provides for an application to the Supreme Court, to be made by a person who has been notified by the Chief Coroner that an application made under clause 64 is not successful, for an order that a hearing for the purposes of an inquest or inquiry into a fire be conducted.

Clause 65 provides for a Coroner to restrict access to the site of an event the subject of an inquest or inquiry and, with the inclusion of the references to the place of an event which, in the opinion of the Coroner, may have resulted in a death and to the site of a disaster, replicates section 62 of the Former Act.

Subclause 65(1) provides for a Coroner to restrict access to the site of a death, the place of an event which, in the opinion of the Coroner, may have resulted in a death, and to the site of a fire or of a disaster.

Subclause 65(2) creates an offence of entering or interfering with a restricted site and provides for a penalty of 100 penalty units.

Clause 66 provides for the issue of search warrants by a Coroner. It replicates section 61 of the Former Act.

Clause 67 provides for the inspection and retention of things seized in the course of an inquest or inquiry by a Coroner. It replicates section 68 of the Former Act.

Clause 68 is a new provision. It empowers the Chief Coroner to hold a fresh inquest or a fresh inquiry into a fire.

Subclause 68(1) provides that, even though an inquest or inquiry into a fire has been held, the Chief Coroner, either of his or her own motion or at the request of a person, may arrange for a fresh inquest or inquiry into a fire to be held.

Subclause 68(2) provides that the Chief Coroner shall not arrange for the holding of a fresh inquest or inquiry into a fire unless satisfied that new evidence is discovered and that it would be desirable in the public interest or the interests of justice that a fresh inquest or inquiry into a fire should be held.

PART VI - DEATHS IN CUSTODY: ADDITIONAL PROVISIONS

Part VI replicates Division 3 of Part III of the Former Act. The meaning of a 'death in custody' is provided in **subclause 3(2)**. Part VI provides for the procedure particular to the investigation of the circumstances and the findings, the responses and the reporting of a death in custody. Where a particular procedure is not provided for in Part VI, the general provisions of the Bill will apply to an inquest into a death in custody.

Clause 69 provides for notification by the Coroner of a hearing into an inquest into a death in custody of the family of a deceased, and, if the deceased was an Aboriginal person or a Torres Strait Islander, the appropriate local aboriginal legal service. This clause is similar to section 20 of the Former Act which provided for notification of the Aboriginal Legal Service Ltd.

Clause 70 provides for the viewing of the body of a deceased. It replicates section 21 of the Former Act.

Clause 71 provides that an experienced pathologist is to conduct a post-mortem examination of a deceased who died in custody. It replicates section 22 of the Former Act.

Clause 72 provides that a Coroner holding an inquest into a death in custody must appoint a legal practitioner to assist him or her. It replicates section 19 of the Former Act.

Clause 73 provides that the Registrar of the Coroner's Court must keep the records of an inquest into a death in custody for 7 years after the inquest. It replicates section 23 of the Former Act.

Clause 74 provides that a Coroner holding an inquest into a death in custody shall include in the record of the inquest findings as to the quality of the care, treatment and supervision of the deceased prior to death which may have contributed to the death. It replicates section 24 of the Former Act.

Clause 75 provides that the Coroner holding an inquest into a death in custody shall give a copy of the findings of the inquest to the Attorney-General and the relevant agencies and persons concerned. It replicates section 25 of the Former Act.

Clause 76 provides that an agency to whom a copy of the findings of an inquest into a death in custody was given must provide a written response within 3 months to the relevant Minister. It replicates section 26 of the Former Act.

PART VII - OFFENCES

The offence provisions, with the exception of the provision for offence of improper dealing with the ashes of a deceased in clause 83 and the conduct of officers of a body corporate in clause 89, replicate those of the Former Act. The penalties the offences attract have been re-written to be expressed in penalty units.

Clause 77 provides a requirement that a person report a death to a Coroner or to a police officer. This provision restates the common law and subsection 29(1) of the *Registration of Births, Deaths and Marriages Act 1963* which is to be repealed by the Coroners (Consequential Provisions) Bill 1997.

Subclause 77(1) provides that a person shall report a death to a Coroner or to a police officer if the person has reasonable grounds for believing that-

- (a) the death is one which would come within the coronial jurisdiction; and
- (b) the death has not been reported to a Coroner.

Subclause 77(2) provides that a police officer to whom a death is reported shall report the death to a Coroner.

50 penalty points or imprisonment for 6 months or both is provided for non-compliance.

Clause 78 obliges a custodial officer to report a death in custody. It replicates section 27 of the Former Act.

Clause 79 provides for the offence of the failure of a witness to attend an inquest or inquiry or to produce a document or thing. It replicates section 64 of the Former Act.

Clause 80 provides the offence of refusing to be sworn or to give evidence. It replicates section 65 of the Former Act.

Clause 81 provides for the offence of giving false evidence. It replicates section 66 of the Former Act.

Clause 82 provides for the offence of dealing improperly with documents. It replicates section 67 of the Former Act.

Clause 83 provides for the offence of dealing improperly with a body or the ashes of a body. This provision, with the addition of the inclusion of dealing with the ashes of a body, replicates section 68 of the Former Act.

Clause 84 provides for the offence of the intimidation or dismissal from employment of a witness. It replicates section 69 of the Former Act.

Clause 85 provides for the offence of preventing a witness from attending and giving evidence for the purposes of an inquest or inquiry. It replicates section 70 of the Former Act.

Clause 86 provides for the offence of bribery of a witness. It replicates section 71 of the Former Act.

Clause 87 prohibits the practise of any fraud or deceit on a witness with the intention to affect the testimony of the witness. It replicates section 87 of the Former Act.

Clause 88 provides for contempt of the Coroner's Court and replicates section 73 of the Former Act.

Clause 89 is a new provision which provides for the liability of directors, servants or agents of a body corporate.

Subclause 89(1) provides that, where it is necessary for the purposes of a prosecution of an alleged offence against the Act to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it will be sufficient to show -

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

Subclause 89(2) provides that a reference to the state of mind of a body corporate or natural person is to include the knowledge, intention, opinion, belief or purpose, and the reason for the state of mind of the body corporate or natural person.

Subclause 89(3) provides that, for the purposes of the prosecution of an alleged offence against the Act, any conduct engage in on behalf of a body corporate or natural person by a director, servant or agent of the body corporate or the servant or agent of the person within the scope of his or her actual or apparent authority is to be taken to have been engaged in also by the body corporate or the natural person unless the latter establishes that reasonable precautions were taken and due diligence exercised to avoid the conduct.

Subclause 89(4) provides that, where a natural person is convicted of an offence against the Act and the person would not have been convicted but for the enactment of subclauses 89(1) and 89(3), the person is not liable to be punished by imprisonment for the offence.

Subclause 89(5) provides that a reference to a body corporate includes a reference to a body corporate incorporated for a public purpose under a law of the Territory or a law of a State, another Territory or the Commonwealth.

Subclause 89(6) provides that a reference in the section to engaging in conduct is to be taken to include a reference to failing or refusing to engage in conduct.

PART VIII - POWERS OF THE SUPREME COURT

Clause 90 provides that, within 30 days of receiving the notice, a person to whom a notice under subclause 64(6) (that is, a notice to an applicant who has sought the conducting of a hearing for the purposes of an inquest or inquiry into a fire that a hearing will not be held) has been given may apply to the Court for an order that a hearing into a death or fire be conducted.

Clause 91 provides for the Supreme Court, on an application by any person, and if the Court is of the opinion that a hearing should be held, to make an order for a hearing for the purposes of an inquest or inquiry into a fire to be conducted.

Clause 92 provides for the Supreme Court, on an application made by or under the authority of the Attorney-General, if the Court is satisfied that a Coroner does not intend to conduct a hearing and that it is in the public interest or the interests of justice that a hearing be conducted, to make an order directing that a hearing be conducted for the purposes of an inquest or inquiry into a fire.

Clause 93 provides for the power of the Court to quash, or to order a fresh inquest or inquiry and, with the inclusion of an inquiry into a disaster, replicates section 46 of the Former Act.

PART IX - FEES AND EXPENSES

Clauses 94 to 97, inclusive, provide for the determination, payment, remission, refund, deferral and waiver of fees and charges and for review of decisions in relation to fees and charges and replicate sections 74 to 77 inclusive of the Former Act.

Clause 98 provides for witnesses' expenses such as those provided for under the *Magistrates Court Act 1930* to be allowed a witness by a Coroner and replicates section 83 of the Former Act.

Clause 99 provides for amounts payable to assistants. It replicates section 85 of the Former Act.

PART X - MISCELLANEOUS

Clause 100 provides for a requirement for the retention of the records of a person who died in an institution for not less than 3 years after the death, and not less than 7 years after the death in respect of the death of a person in custody. It replicates section 80 of the Former Act.

Clause 101 provides for the Chief Coroner, by notice in the *Gazette*, to approve forms for the purposes of the Act.

Clause 102 provides that the Chief Coroner is to furnish the Attorney-General with an Annual Report for presentation to the Legislative Assembly. It replicates section 88 of the Former Act.

Clause 103 provides that the Executive may make regulations for the purpose of the Act. It replicates section 90 of the Former Act.

PART XI - SAVINGS AND TRANSITIONALS

Clause 104 provides that, in Part XI, 'commencement' is to mean the date of which section 3 of the *Coroners Act 1997* commences, and that the 'former Act' is to mean the *Coroners Act 1956*.

Clause 105 provides for the saving of appointments and authorisations made under the Former Act.

Clause 106 provides that the Former Act applies in relation to an inquest or inquiry into a death or fire which occurred before the commencement date and which inquest or inquiry was not concluded immediately before that date.

Clause 107 provides for the saving of determinations made under the Former Act.

Subclause 107(1) provides that a fee or charge determined under section 74(1) of the Former Act is to be taken to be a fee or charge determined under subsection 93(1) of the Bill.

Subclause 107(2) provides that a determination in force under section 86 of the Former Act in relation to a form is to continue in force until the Minister publishes a notice in the *Gazette* in relation to that form.

Subclause 107(3) provides that a direction given under subsection 54(2) of the Former Act continues in force as a direction under subclause 47(2) of the Bill.

SCHEDULE 1

Schedule 1 provides for the form of the oath of office to be taken by a Coroner or a Deputy Coroner.

SCHEDULE 2

Schedule 2 provides for the form of the Coroner's Certificate certifying to the cause of death and authorising the release of the body of a deceased the subject of an inquest for burial, cremation or removal from the Territory.

THE CORONERS (CONSEQUENTIAL PROVISIONS) BILL 1997

The *Coroners Act 1956* (the Former Act), which established the Coroner's Court and provides for inquests into deaths and inquiries into fires, is to be repealed by the Coroners (Consequential Provisions) Bill 1997.

DETAILS OF THE CORONERS (CONSEQUENTIAL PROVISIONS) BILL 1997

Clauses 1 and 2 provide for the title and commencement of the Consequential Provisions Bill.

Clause 3 repeals the Former Act and the Acts which have amended the Former Act.

Clause 4 provides for the formal amendment of the Acts set out in Schedule 1, for the amendment of the *Transplantation and Anatomy Act 1978* in Schedule 2 and, in Schedule 3, for the amendment of the Coroners Regulations and the Canberra Public Cemeteries Regulations.

The amendment of the *Transplantation and Anatomy Act 1978* is to apply to a death which occurs after the commencement of the Consequential Provisions Bill.

Clause 5 provides for the saving and continuation in force of the Coroners Regulations.

Schedule 1 makes formal or technical amendments to the *Cemeteries Act 1933*, the *Cremation Act 1966*, the *Evidence Act 1971*, the *Registration of Births, Deaths and Marriages Act 1963* and the *Supreme Court Act 1933*.

The amendments to the *Registration of Births, Deaths and Marriages Act 1963* include those made as a consequence of the removal into the Coroners Bill 1997 of the form of the Coroner's Certificate and notifications to be made for the purposes of entry into the Register of Deaths by the Registrar of details of the death of a person the subject of an inquest.

Schedule 2 amends the *Transplantation and Anatomy Act 1978* to make technical changes as a consequence of the provisions in the Coroners Bill.

The *Transplantation and Anatomy Act* is also amended to require the agreement of a person before death, or, after death, the agreement of the family of a deceased, to the use for therapeutic, medical or scientific purposes of the body tissue of a deceased removed for the purposes of a post-mortem examination. The effect of this amendment is to bring the consent required for the use of the body tissue of a deceased whose death was the subject of an inquest into line with the consent required for the use of the body tissue of 'non-coronial' deceased.

Schedule 3 provides for the technical amendment of the Coroners Regulations and the Canberra Public Cemeteries Regulations.