

**2011**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**CORONERS AMENDMENT BILL 2011**

**EXPLANATORY STATEMENT**

Presented by  
Mr Simon Corbell MLA  
Attorney General

## CORONERS AMENDMENT BILL 2011

### Overview of Bill

This Bill sets out reforms to the *Coroners Act 1997*.

The Bill adds an objects clause to the Act and guidance for carrying out those objects.

There are new provisions clarifying the criteria for appointment of counsel assisting the coroner and setting out the function of that role.

Arrangements for establishing procedures for inquests, inquiries and the hearings associated with them are established, allowing the Chief Coroner to make practice directions, but also formal rules concerning hearings to be made.

The Bill makes amendment to the provision concerning formal reporting by a Coroner to the Attorney General to clarify this process and require those reports to be tabled in the Assembly.

The Bill proposes that the procedure to be followed when a Coroner finds evidence of an indictable offence be modified, so that inquests and inquiries can sometimes proceed despite that evidence being found.

The Bill adjusts the process for reconsideration of the decision of a coroner not to hold an inquest or a hearing to clarify the way that decision is made and reasons given.

The Bill makes provision for information to be given to the immediate family of a deceased person whose death is the subject of an inquest.

The details of how these changes are made are set out below.

### Clause Notes

**Clause 1 Name of Act** – states the title of the Act as the *Coroners Amendment Act 2011*.

**Clause 2 Commencement** – provides that the Act will commence on the date decided by the Minister and notified on the Legislation Register. By default, the Act will commence 6 months after it is notified.

**Clause 3 Legislation amended** – specifies that the Act amends the *Coroners Act 1997*.

**Clause 4 New division 1.1 heading** – inserts the heading ‘Introduction’ for Division 1.1.

**Clause 5 New division 1.2** – inserts new section 3BA into the Act. This new section adds an objects clause to the Act. Subsection 3BA (1) sets out the objects. In brief, the objects of the Act are to establish the Coroner’s Court and the position of Chief Coroner, provide for appointment of Coroners and deputy Coroners, give Coroners the function of holding inquests and inquiries and allow Coroners to make a range of findings.

Subsection 3BA (2) sets out the manner in which the objects are to be carried out. The matters listed here are intended to inform the decisions and actions of Coroners and others involved in the coronial process in carrying out the investigation and the hearing (if the Coroner decides to hold one).

Accordingly, it is intended that Coroners will attempt to answer the reasonable questions of the family and, where appropriate, keep them informed of developments throughout the inquest. It is intended that proceedings be kept non-adversarial, to the extent possible and appropriate to the circumstances of each matter. It is intended that Coroners will conduct proceedings in such a way to promote the development of a public record of their findings and increase public awareness of violent and unusual death, the risks to public safety that become apparent through their investigations and the means of reducing those risks. Finally, it is intended that Coroners and others involved in carrying out functions under the Act will promote public understanding of the functions of the Coroner’s Court.

**Clause 6 Section 7 heading** – substitutes a new heading for section 7 to reflect current drafting practice, as functions includes powers, as defined in the *Legislation Act 2001*.

**Clause 7 Section 9** – omits ‘powers’ and substitutes ‘functions’ as per the change in clause 6.

**Clause 8 Section 13, new note** – inserts a note to draw attention to the provisions in Division 5.1 concerning the decision to hold a hearing. This will aid the reader given that section 14 is being moved by the next clause.

**Clause 9 Section 14** –relocates section 14 as section 34A, which will place this provision in the division concerning hearings, which is appropriate as the provision concerns the decision whether to hold a hearing in an inquest or inquiry.

**Clause 10 Section 39** – substitutes new provisions concerning counsel assisting. New section 39 concerns appointment of counsel assisting the coroner in non-custodial deaths and inquiries. The new provision introduces a requirement that the coroner be satisfied that the appointment be in the interests of justice, that the lawyer have the appropriate skill and experience and not have an actual or perceived conflict of interest. As reflected in new subsection 39(3), the Coroner will still be able to appoint the Director of Public

Prosecutions (the DPP) as counsel assisting – that subsection provides that the DPP may authorise another lawyer to act in the director’s name.

New section 39A sets out the functions of counsel assisting. This list is not meant to be exhaustive, so the word ‘includes’ is used in the provision. Counsel assisting can help the Coroner in the investigation and hearing phases of an inquest or inquiry. Counsel assisting can also make submissions to the inquest or inquiry and act in the public interest to decide matters of fact or law relevant to the inquest or inquiry.

Subsection 39A (2) requires counsel assisting to disclose any matter that could affect his or her eligibility to be appointed. Subsection (3) defines counsel assisting as a lawyer pointed under section 39 or section 72. Section 72 concerns counsel assisting in a death in custody matter. Also, ‘examining’ is defined to include cross examining and re-examining a witness.

Section 39B empowers the Coroner to revoke the appointment of counsel assisting if satisfied that they are no longer eligible for appointment, or no longer able to properly perform the function or for any other reason prescribed. It is not proposed to prescribe any further reasons at this time. The power to do so is included to allow a mechanism to provide for as yet unforeseen circumstances.

**Clause 11 Division 5.3 heading** –substitutes a new heading for Division 5.3 to better reflect its content.

**Clause 12 Section 47** – recasts the old section 47 concerning the application of the rules of evidence. The power to set procedures set out in old subsection 47(2) has been moved into new section 51A.

**Clause 13 New section 51A** – inserts new section 51A. Subsection (1) requires inquests and inquiries to be conducted in accordance with practices and procedures prescribed under this Act or any other law.

Subsection (2) empowers the Chief Coroner to make practice directions for steps to be taken in inquests and inquiries (which includes both the investigation and the hearing) if there is nothing prescribed. In the absence of anything prescribed or general practice directions, a coroner may give directions about the practice or procedure to be followed in the matter he or she is conducting.

Subsection (3) provides that the Court Procedures Rules may prescribe matters in relation to practice and procedure for a hearing.

**Clause 14 Coroner’s findings Section 52(4)** – amends section 52(4) to require the coroner to consider whether a matter of public safety is raised by the inquest or inquiry and comment accordingly. The power of the coroner to comment on matters concerning the administration of justice is preserved.

**Clause 15 Notification of registrar-general Section 56 (2) (a) (i) –** amends section 56 (2) (a) (i) to reflect the change to section 58 in clause 17 below. This is intended to preserve the existing arrangement of notification of the Registrar-General when an inquest is adjourned and only reflects a change in numbering of section 58.

**Clause 16 Report after inquest or inquiry Section 57 (3) –** amends the provisions concerning a coroner making a report to the Attorney General. The existing provision allows a coroner to report to the Attorney General on matters connected to the inquest or inquiry, including matters relating to public health or safety and the administration of justice. The amended provision still allows this to occur, but specifies that it must be in writing and set out the Coroners findings about serious risks to public safety revealed in the inquest or inquiry. It also empowers the coroner to make recommendations that, in the opinion of the coroner would improve public safety.

New subsection (4) requires the Attorney General to present such reports to the Assembly within 6 months of receipt together with the Executive's response to the report.

**Clause 17 Section 58 –** Subsections (1), (2) and (3) change the circumstances in which a coroner must halt an inquest after finding evidence that an indictable offence has been committed. Presently, the coroner must halt an inquest when *any* indictable offence is found. The amendment will make it so that the coroner need only halt the inquest or inquiry when an indictable offence is found that raises the issue of whether the relevant person caused a death, suspected death, fire or disaster that is the subject of the inquest or inquiry. (This is called a 'related indictable offence' in the new section). This means that a coroner can continue when criminal matters are found in the inquest or inquiry that are not connected to the death, fire or disaster.

The coroner may go on to make findings to establish the death of the person, the person's identity, the date and the place of the person's death. In an inquiry, the coroner may make findings about the date and place of the fire or disaster. This provision allows the coroner to proceed to find these 'basic facts' and, to that extent, provide some closure for those with an interest in the matter, such as the family of the deceased, without having to wait for the resolution of any criminal charges that have arisen.

Subsections (4) and (5) relate to when the DPP or the Attorney-General lay charges or present an indictment against a person for a related indictable offence. Again, the coroner must not proceed except to find the 'basic facts' mentioned above.

Subsection (6) maintains the existing requirement on a coroner not to continue with an inquest or inquiry if satisfied it should not continue.

In each of these situations, the coroner can resume the inquest or inquiry after the time established by section 58A. This is intended to reproduce the circumstances in existing subsection 58 (4), with changes to update the drafting style and the changes in section 58. The inquest or inquiry can resume if:

- no charge is laid by the DPP within three months of the coroner giving the notice of the related indictable offence, or the DPP giving notice of the intention to lay a charge;
- the DPP gives notice that no indictment will be presented or no charge is to be laid;
- a charge is laid or indictment presented and the proceedings are discontinued;
- the DPP gives notice that the proceedings are finished;
- no indictment or charge is laid and the person is discharged; or
- if the person is convicted, no notice has been given by the DPP and 30 days has passed.

Subsection (2) provides that when the coroner resumes the inquest, the coroner may not make findings inconsistent with the judgement or verdict of the court.

**Clause 18 Request for hearing or reconsideration Section 64(6) –** Section 64 of the Act establishes a process for a person with sufficient interest in an inquest or inquiry to make an application to the Chief Coroner for the Chief Coroner to reconsider a decision by a coroner not to have a hearing, or to conclude a hearing. The process calls for the Chief Coroner to ask the coroner who made the decision to reconsider his or her decision (or to do so if he or she is the relevant coroner).

This change and the change proposed in clause 19 (moving subsection (7) to subsection (5A) to be ahead of this new subsection) are intended to maintain the current position but improve the drafting and readability of the provision.

If the original coroner agrees to the request for reconsideration, the Chief Coroner must tell the person that there will be a hearing or a further hearing. If the original coroner does not change their decision and the Chief Coroner agrees, then the applicant is notified accordingly, together with an explanation. However, if the original coroner does not change their decision, the Chief Coroner can arrange for another coroner to hold the hearing.

**Clause 19 Section 64(7) –** relocates subsection 64 (7) to 64 (5A), as mentioned in relation to clause 18.

**Clause 20 New division 5.7 –** inserts new section 68A, which contains requirements about providing information to the immediate family of a deceased person when there is an inquest. (Note that immediate family is defined in the dictionary. That definition is amended by clause 28 below.)

Subsection (1) requires the coroner to tell a member of the immediate family of a deceased person that an inquest will be held. Subsection (2) requires that the coroner provide information prescribed by regulation to a member of the immediate family.

Subsection (3) provides that this information need not be provided if the coroner is satisfied on reasonable grounds that no member of the immediate family wishes to be told, or it is impracticable to do so.

Subsection (4) requires the coroner to choose a family representative who is in a position to provide this information to other members of the immediate family, but allows the coroner to choose more than one family representative if need be. This recognises that sometimes members of families do not always communicate with each other, especially in times of loss. The intent is that the coroner will only have to provide information to one (or possibly a few) of the family members who can pass the information on to others, not to require the coroner to provide the same information to all of the immediate family members.

**Clause 21 Section 72** – substitutes the provision about appointing counsel assisting in death in custody inquests. The requirement to do so is preserved. The provisions about skill, experience and conflict of interest in new section 39 (clause 10 above) are set out here also.

**Clause 22 Application of Criminal Code, ch 7 Section 76A (2) (a)** – changes the reference to section 14 to section 34A, a change consequential on the moving of section 14 as set out in clause 9 above.

**Clause 23 Section 90 heading** – changes the heading of section 90 to reflect that it is about applying to the Supreme Court for an order that a hearing be held in an inquest or inquiry.

**Clause 24 Section 90** – changes the reference in section 90, to reflect the redrafting in section 64 in clause 18 above.

**Clause 25 Annual report of court Section 102 (2) (b)** – changes the reference to section 14 in section 102 (2) (b) to section 34A, a change consequential on the moving of section 14 as set out in clause 9 above.

**Clause 26 Dictionary, note 2** – inserts the word ‘function’ into note 2 to the dictionary, which points the reader to the *Legislation Act 2001* for the definition of a series of terms. This is done because the references to ‘powers’ have been changed to ‘functions’ by this Bill: see clauses 6 and 7.

**Clause 27 Dictionary, definition of *immediate family*** – omits the definition of immediate family. ‘Member of the immediate family’ is defined in the next clause.

**Clause 28 Dictionary, definition of *member of the immediate family* –** adds in a definition of ‘member of the immediate family’. This preserves the concept of ‘immediate family’ from the provision omitted by clause 27 above. This term is used in new section 68A added in clause 20 above.