

# Coroners Act 2009 No 41

[2009-41]



New South Wales

## Status Information

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# Coroners Act 2009 No 41



New South Wales

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# Coroners Act 2009 No 41



New South Wales

An Act to provide for the appointment and functions of coroners and assistant coroners; to repeal the *Coroners Act 1980*; and for other purposes.

## Chapter 1 Preliminary

### 1 Name of Act

This Act is the *Coroners Act 2009*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsections (2) and (3).
- (2) Schedule 3.4[1] commences—
  - (a) if Schedule 1.3[4] to the *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009* commences on or before the date of assent to this Act—on the date of assent to this Act, or
  - (b) if Schedule 1.3[4] to the *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009* commences after the date of assent to this Act—on the day on which Schedule 1.3[4] to that Act commences.
- (3) Schedule 3.4[2]-[4] commence—
  - (a) if the *Local Courts Act 1982* is repealed on or before the date of assent to this Act—on the date of assent to this Act, or
  - (b) if the *Local Courts Act 1982* is repealed after the date of assent to this Act—on the day on which the *Local Courts Act 1982* is repealed.

### 3 Objects of Act

The objects of this Act are as follows—

- (a) to provide for the appointment of coronial officers,
- (b) to provide that Magistrates are coroners by virtue of office,

- (c) to enable coroners to investigate certain kinds of deaths or suspected deaths in order to determine the identities of the deceased persons, the times and dates of their deaths and the manner and cause of their deaths,
- (d) to enable coroners to investigate fires and explosions that destroy or damage property within the State in order to determine the causes and origins of (and in some cases, the general circumstances concerning) such fires and explosions,
- (e) to enable coroners to make recommendations in relation to matters in connection with an inquest or inquiry (including recommendations concerning public health and safety and the investigation or review of matters by persons or bodies),
- (f) to provide for certain kinds of deaths or suspected deaths to be reported and to prevent death certificates being issued in relation to certain reportable deaths,
- (g) to prohibit the disposal of human remains without appropriate authority.

#### 4 Definitions (cf [Coroners Act 1980](#), s 4)

(1) In this Act—

**adult** means an individual who is aged 18 years old or older.

**Australian law** has the same meaning as it has in the [Evidence Act 1995](#).

**civil penalty** has the same meaning as it has in the [Evidence Act 1995](#).

**Coronial Medical Officer** means a medical practitioner appointed under section 92.

**coronial proceedings**—see section 46.

**Domestic Violence Death Review Team** means the Domestic Violence Death Review Team constituted under Chapter 9A.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**inquest** means an inquest concerning the death or suspected death of a person.

**inquiry** means an inquiry concerning a fire or explosion.

**place** includes any land, building, mine, ship, vehicle or aircraft or any other vessel or vehicle.

**post mortem investigation direction**—see section 89.

**post mortem investigation report**—see section 89(7).

**practice note** means a practice note issued under section 52.

**relative**, in relation to a person who has or is suspected to have died—see section 5.

**remains** of a deceased person means the body or the remains of the body (or any part of the body or remains of the body) of the person.

**reportable death**—see section 6.

**senior coroner**—see section 22(1).

**senior next of kin**—see section 6A.

**spouse** means—

(a) the person to whom a person is legally married (including the husband or wife of a person), or

(b) a de facto partner,

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

**Note—**

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

**stillbirth** and **stillborn child** have the same meanings as in the [Births, Deaths and Marriages Registration Act 1995](#).

**the State** means the State of New South Wales.

**tissue** includes an organ, or part, of a human body and a substance extracted from, or from a part of, a human body (including bodily fluid).

**whole organ** of a deceased person means the whole or a substantial part of a visibly recognisable structural unit of the person’s body.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

(2) Notes included in this Act do not form part of this Act.

**Note—**

For the purposes of comparison, a number of provisions of this Act contain bracketed notes in headings drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions of the [Coroners Act 1980](#) as in force immediately before its repeal by this Act.

## 5 Meaning of “relative” (cf [Coroners Act 1980](#), s 4(1) and (5))

(1) For the purposes of this Act, a **relative**, in relation to a person who has or is suspected to have died, is an adult who is—

- (a) the spouse of that person, a parent of that person, a person who stands in loco parentis to that person, a guardian of that person or a child of that person, or
  - (b) if there is no relative, as defined in paragraph (a), of that person—a brother or sister of that person.
- (2) A reference in subsection (1)(a) to the child of a person includes, if the person was in a de facto relationship, or a domestic relationship within the meaning of the *Property (Relationships) Act 1984*, a reference to the following—
- (a) a child born as a result of sexual relations between the parties to the relationship,
  - (b) a child adopted by both parties,
  - (c) in the case of a de facto relationship between a man and a woman, a child of the woman of whom the man is the father or of whom the man is presumed, by virtue of the *Status of Children Act 1996*, to be the father (except where the presumption is rebutted),
  - (d) in the case of a de facto relationship between 2 women, a child of whom both of those women are presumed to be parents by virtue of the *Status of Children Act 1996*,
  - (e) a child for whose long-term welfare both parties have parental responsibility (within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*).

**Note—**

“De facto relationship” is defined in section 21C of the *Interpretation Act 1987*.

- (3) A reference in subsection (1)(a) to a parent includes a reference to a party to a relationship referred to in subsection (2) of which the deceased, or suspected deceased, was by virtue of subsection (2) a child.

**6 Meaning of “reportable death”** (cf *Coroners Act 1980*, ss 12B(1)(a)–(g) and 13(1)(a)–(c), (e)–(h) and (2))

- (1) For the purposes of this Act, a person’s death is a **reportable death** if the death occurs in any of the following circumstances—
- (a) the person died a violent or unnatural death,
  - (b) the person died a sudden death the cause of which is unknown,
  - (c) the person died under suspicious or unusual circumstances,
  - (d) (Repealed)
  - (e) the person died in circumstances where the person’s death was not the

reasonably expected outcome of a health-related procedure carried out in relation to the person,

- (f) the person died while in or temporarily absent from a declared mental health facility within the meaning of the *Mental Health Act 2007* and while the person was a patient at the facility for the purpose of receiving care, treatment or assistance under the *Mental Health Act 2007* or the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

(2) (Repealed)

(3) In this section—

**health-related procedure** means a medical, surgical, dental or other health-related procedure (including the administration of an anaesthetic, sedative or other drug), but does not include any procedure of a kind prescribed by the regulations as being an excluded procedure.

#### **6A Meaning of “senior next of kin”**

(1) For the purposes of this Act, the **senior next of kin** of a deceased person is—

- (a) the deceased person’s spouse, or
- (b) if the deceased person did not have a spouse or a spouse is not available—any of the deceased person’s children who are adults, or
- (c) if the deceased person did not have a spouse or child or a spouse or child is not available—either of the deceased person’s parents, or
- (d) if the deceased person did not have a spouse, child or living parent or a spouse, child or parent is not available—any of the deceased person’s brothers or sisters who are adults, or
- (e) if the deceased person did not have a spouse, child, living parent, brother or sister or a spouse, child, parent, brother or sister is not available—
- (i) any person who is named as an executor in the deceased person’s will, or
- (ii) any person who was the deceased person’s legal personal representative immediately before the deceased person’s death.

(2) A coroner may treat a person who was a deceased person’s legal personal representative immediately before the deceased person’s death as the deceased person’s senior next of kin for the purposes of this Act if the coroner is satisfied that the person who is available to act as senior next of kin is unable to do so.

## Chapter 2 Coronial officers

### 7 State Coroner and Deputy State Coroners (cf *Coroners Act 1980*, s 4A(1)–(3), (5) and (7))

- (1) The Governor may appoint any qualified person to be the State Coroner or a Deputy State Coroner.
- (2) A person is qualified to be appointed as the State Coroner or a Deputy State Coroner only if the person is a Magistrate.
- (3) An appointment is to be made by the commission of the person's appointment as a Magistrate or by a subsequent commission under the public seal of the State.
- (4) More than one person may hold the office of Deputy State Coroner at any one time.
- (5) The State Coroner or a Deputy State Coroner holds office for such period (not exceeding 5 years) as may be specified in the commission that appointed the State Coroner or Deputy State Coroner to the office, but is eligible (if otherwise qualified) for re-appointment.
- (6) The State Coroner has, while holding office as such, the same status as a Deputy Chief Magistrate.
- (7) The State Coroner and a Deputy State Coroner are coroners for the purposes of this Act.
- (8) Parts 1 and 3 of Schedule 1 contain general provisions dealing with the vacation of the office of State Coroner or a Deputy State Coroner, remuneration and the effect of an appointment to such offices on other offices held by the person appointed.

### 8 Acting State Coroner (cf *Coroners Act 1980*, s 4F(1A) and (2))

- (1) The Minister may appoint a Deputy State Coroner to be Acting State Coroner during the absence from duty of the State Coroner.
- (2) The Minister may make any appointment for a particular absence or for any absence that occurs from time to time.
- (3) An Acting State Coroner has the functions of the State Coroner and, for the purposes of this or any other Act or law, is taken to be the State Coroner.
- (4) In this section, **absence from duty** includes a vacancy in the office of State Coroner.

### 9 Delegation by State Coroner (cf *Coroners Act 1980*, s 4E)

- (1) The State Coroner may delegate to a Deputy State Coroner or to another coroner the exercise of any of the State Coroner's functions under this Act, except as provided by subsection (2).

**Note—**

Section 49 of the *Interpretation Act 1987* contains general provisions relating to the delegation of functions.

(2) The State Coroner may not—

- (a) delegate the power of delegation conferred by subsection (1), or
- (b) delegate to a coroner who is not a Deputy State Coroner the exercise of any jurisdiction conferred or imposed on the State Coroner by Division 2 of Part 3.2.

**10 Functions of State Coroner and Deputy State Coroners** (cf *Coroners Act 1980*, ss 4D and 4F(1))

(1) The functions of the State Coroner are—

- (a) to oversee and co-ordinate coronial services in the State, and
- (b) to ensure that all deaths, suspected deaths, fires and explosions concerning which a coroner has jurisdiction to hold an inquest or inquiry are properly investigated, and
- (c) to ensure that an inquest or inquiry is held whenever it is required by this Act to be held or it is, in the State Coroner's opinion, desirable that it be held, and
- (d) to issue guidelines to coroners to assist them in the exercise or performance of their functions, and
- (e) to exercise such other functions as are conferred or imposed on the State Coroner by or under this or any other Act.

(2) The State Coroner is, in the exercise of a function under this section, subject to the control and direction of the Chief Magistrate.

(3) The functions of a Deputy State Coroner are—

- (a) to exercise any functions delegated to the Deputy State Coroner by the State Coroner, and
- (b) to exercise such other functions as are conferred or imposed on a Deputy State Coroner by or under this or any other Act.

(4) The State Coroner and each Deputy State Coroner is to support and assist the Domestic Violence Death Review Team in the exercise of its functions under Chapter 9A.

**Note—**

The State Coroner or a Deputy State Coroner may be appointed as Convenor of the Team under section 101E.

**11 Information to be given to State Coroner** (cf *Coroners Act 1980*, s 4G(1))

The State Coroner may issue general directions to coroners requiring them to give to the

State Coroner information they receive concerning deaths, suspected deaths, fires or explosions.

**12 Coroners** (cf *Coroners Act 1980*, ss 5 and 6)

- (1) The Governor may, by instrument in writing on the recommendation of the Minister, appoint any qualified person to be a coroner.
- (2) A person is qualified to be appointed as a coroner only if the person is an Australian lawyer.
- (3) An instrument of appointment may provide that the person appointed as a coroner is appointed for such period (if any) as may be specified in the instrument.
- (4) A person who is aged 72 years old or older may not be appointed as a coroner unless—
  - (a) the Minister recommends to the Governor that the person's appointment is appropriate, and
  - (b) the appointment is made for such term (not exceeding 3 years) as is specified in the person's instrument of appointment.
- (5) A coroner appointed as provided by subsection (4) is eligible for re-appointment from time to time as provided by that subsection.
- (6) The Governor may, for any cause that seems to the Governor sufficient, remove any coroner appointed under this section from office.
- (7) Parts 2 and 3 of Schedule 1 contain general provisions dealing with the vacation of the office of a coroner appointed under this section, remuneration and the effect of an appointment to such an office on other offices held by the person appointed.

**13 Assistant coroners** (cf *Coroners Act 1980*, s 5A(1) and (2))

- (1) The Minister may, by instrument in writing, appoint a person employed in the Department of Communities and Justice to be an assistant coroner.
- (2) An instrument of appointment may provide that the person appointed as an assistant coroner is appointed for such period (if any) as may be specified in the instrument.
- (3) The Minister may, for any cause that seems to the Minister sufficient, remove any assistant coroner from office.
- (4) Parts 2 and 3 of Schedule 1 contain general provisions dealing with the vacation of the office of an assistant coroner, remuneration and the effect of an appointment to such an office on other offices held by the person appointed.

**14 Appointed coroners have full coronial jurisdiction and functions** (cf *Coroners Act 1980*, s



8)

A coroner appointed under this Act—

- (a) has all the jurisdiction and functions conferred or imposed on coroners by or under this Act, but
- (b) does not have any of the jurisdiction or functions of the State Coroner or a Deputy State Coroner unless appointed to such an office under this Act.

**15 Functions of assistant coroners** (cf *Coroners Act 1980*, s 9)

(1) An assistant coroner has the following functions—

- (a) the function of providing administrative assistance to a coroner under the control and direction of the coroner,
- (b) such of the following functions as may be delegated in writing to the assistant coroner by the State Coroner—
  - (i) the function of issuing orders for the disposal of the remains of deceased persons,
  - (ii) the function of issuing post mortem investigation directions,
  - (iii) the function of dispensing with the holding of inquests if death results from natural causes,
  - (iv) the function of dispensing with the holding of inquiries if a fire or explosion does not occur in suspicious circumstances,
  - (v) the function of dispensing with the holding of inquiries if a fire involved only a motor vehicle,
- (c) such other functions as may be conferred or imposed on an assistant coroner by or under this or any other Act.

**Note—**

Section 49 of the *Interpretation Act 1987* contains general provisions relating to the delegation of functions.

- (2) An assistant coroner cannot hold an inquest or inquiry and the function of holding an inquest or inquiry cannot be delegated to an assistant coroner by the State Coroner.
- (3) This section does not authorise an assistant coroner to exercise any function conferred or imposed on a coroner, except as specifically provided for by delegation under this section or by this or any other Act.

**16 Magistrates have coronial functions by virtue of office** (cf *Coroners Act 1980*, ss 6A(4) and

10)

(1) A Magistrate who has not been appointed to any of the offices of State Coroner, Deputy State Coroner or coroner under this Act—

(a) has, by virtue of his or her office as a Magistrate, all of the jurisdiction and functions that are conferred or imposed on coroners by or under this or any other Act, and

(b) is taken to be a coroner,

but does not have any of the jurisdiction or functions of the State Coroner or a Deputy State Coroner.

(2) A Magistrate who is taken to be a coroner by reason of the operation of subsection (1) ceases to have the jurisdiction and functions of a coroner, and ceases to be taken to be a coroner, on ceasing to be a Magistrate.

(3) Despite anything to the contrary in this Act, the Chief Magistrate may (but need not) comply with any direction given by the State Coroner under this Act in relation to the exercise by the Chief Magistrate of any function conferred or imposed on the Chief Magistrate by operation of subsection (1).

## **Chapter 3 Coronial jurisdiction**

### **Part 3.1 General**

#### **17 Coronial jurisdiction generally**

(1) In this Chapter—

(a) Part 3.2 confers jurisdiction on coroners to hold inquests concerning certain deaths and suspected deaths of persons, and

(b) Part 3.3 confers jurisdiction on coroners to hold inquiries concerning certain fires and explosions that do not involve deaths or suspected deaths, and

(c) Part 3.4 deals with miscellaneous matters relating to the exercise of any such jurisdiction.

(2) Subject to this Act, the jurisdiction conferred by this Chapter extends to deaths, suspected deaths, fires and explosions occurring before the commencement of this section.

#### **Note—**

Section 19 provides that there is no jurisdiction to hold an inquest concerning a death or suspected death if it occurred more than 100 years ago. Also, Part 2 of Schedule 2 makes savings and transitional arrangements in connection with inquests and inquiries concerning deaths, suspected deaths, fires and explosions occurring before the commencement of this Act.

**18 Jurisdiction concerning death requires connection with the State** (cf *Coroners Act 1980*, s 13C)

- (1) A coroner does not have jurisdiction to hold an inquest concerning a death or suspected death unless it appears to the coroner that—
  - (a) the remains of the person are in the State, or
  - (b) the death or suspected death or the cause of the death or of the suspected death occurred in the State, or
  - (c) the death or suspected death occurred outside the State but the person had a sufficient connection with the State, as referred to in subsection (2).
- (2) A person had a sufficient connection with the State if the person—
  - (a) was ordinarily resident in the State when the death or suspected death occurred, or
  - (b) was, when the death or suspected death occurred, in the course of a journey to or from some place in the State, or
  - (c) was last at some place in the State before the circumstances of his or her death or suspected death arose.

**19 No jurisdiction concerning death or suspected death unless occurring within last 100 years** (cf *Coroners Act 1980*, s 13B)

A coroner does not have jurisdiction to hold an inquest concerning a death or suspected death unless it appears to the coroner that (or that there is reasonable cause to suspect that) the death or suspected death occurred within the last 100 years.

**20 Jurisdiction does not depend on making of report**

Any jurisdiction of a coroner to hold an inquest concerning a death or suspected death, or an inquiry concerning a fire or explosion, arises even if the death, suspected death, fire or explosion has not been reported to a coroner or other person in accordance with a requirement to do so under this Act.

## **Part 3.2 Inquests concerning deaths**

### **Division 1 General jurisdiction to hold inquests**

**21 Inquests concerning deaths or suspected deaths** (cf *Coroners Act 1980*, s 13)

- (1) A coroner has jurisdiction to hold an inquest concerning the death or suspected death of a person if it appears to the coroner that—
  - (a) the person's death is (or there is reasonable cause to suspect that the person's

death is) a reportable death, or

(b) a medical practitioner has not given (or there is reasonable cause to suspect that a medical practitioner has not given) a certificate as to the cause of death.

(2) The reference to a medical practitioner in subsection (1)(b) includes, if it appears to the coroner that the death or suspected death occurred at a place outside the State, a reference to a person entitled under the law in force in that place to issue a certificate as to the cause of death.

## **Division 2 Exclusive jurisdiction of State Coroner and Deputy State Coroners**

### **22 Division confers exclusive jurisdiction** (cf *Coroners Act 1980*, ss 13A(2) and 13AB(2))

- (1) The jurisdiction conferred by this Division is conferred exclusively on any coroner who holds office as the State Coroner or a Deputy State Coroner (a **senior coroner**).
- (2) If jurisdiction to hold an inquest concerning a death or suspected death arises both under this Division and Division 1, an inquest concerning the death or suspected death may be held only by a senior coroner.

### **23 Jurisdiction concerning deaths in custody or as a result of police operations** (cf *Coroners Act 1980*, s 13A(1))

- (1) A senior coroner has jurisdiction to hold an inquest concerning the death or suspected death of a person if it appears to the coroner that the person has died (or that there is reasonable cause to suspect that the person has died)—
  - (a) while in the custody of a police officer or in other lawful custody, or
  - (b) while escaping, or attempting to escape, from the custody of a police officer or other lawful custody, or
  - (c) as a result of police operations, or
  - (d) while in, or temporarily absent from, any of the following institutions or places of which the person was an inmate—
    - (i) a detention centre within the meaning of the *Children (Detention Centres) Act 1987*,
    - (ii) a correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999*,
    - (iii) a lock-up, or
  - (e) while proceeding to an institution or place referred to in paragraph (d), for the purpose of being admitted as an inmate of the institution or place and while in the

company of a police officer or other official charged with the person's care or custody.

(2) In this section—

**police operation** means any activity engaged in by a police officer while exercising the functions of police officer other than an activity for the purpose of a search and rescue operation.

**24 Jurisdiction concerning deaths of children and disabled persons** (cf *Coroners Act 1980*, s 13AB(1), (3) and (4))

- (1) A senior coroner has jurisdiction to hold an inquest concerning the death or suspected death of a person if it appears to the coroner that the person was (or that there is reasonable cause to suspect that the person was)—
- (a) a child in care, or
  - (b) a child in respect of whom a report was made under Part 2 of Chapter 3 of the *Children and Young Persons (Care and Protection) Act 1998* within the period of 3 years immediately preceding the child's death, or
  - (c) a child who is a sibling of a child in respect of whom a report was made under Part 2 of Chapter 3 of the *Children and Young Persons (Care and Protection) Act 1998* within the period of 3 years immediately preceding the child's death, or
  - (d) a child whose death is or may be due to abuse or neglect or that occurs in suspicious circumstances, or
  - (e) a person (whether or not a child) who, at the time of the person's death, was living in, or was temporarily absent from, specialist disability accommodation or an assisted boarding house, or
  - (f) a person, other than a child in care, who—
    - (i) is a person in the relevant group, and
    - (ii) receives assistance of a kind prescribed by the regulations from a service provider to enable the person to live independently in the community.
- (2) If jurisdiction to hold an inquest concerning the death of a child arises under this section or section 23, the senior coroner must use his or her best endeavours to notify the following persons of any right that they have to legal representation at the inquest—
- (a) the persons having parental responsibility for the child,
  - (b) the child's parents (if they do not have that responsibility),

(c) such family members as would be reasonably expected to have an immediate interest in the outcome of the inquest.

(3) In this section—

**assisted boarding house** has the same meaning as it has in the *Boarding Houses Act 2012*, and includes—

- (a) premises that would be an assisted boarding house within the meaning of that Act but for an exemption for the premises granted under section 40 of, or given by the regulations under, that Act, and
- (b) premises that were a residential centre for disabled persons (within the meaning of this section before it was amended by that Act) at the time of the death concerned.

**child** means a person who is less than 18 years old.

**child in care** means a child or young person who is less than 18 years old—

- (a) who is under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*, or
- (b) for whom the Secretary of the Department of Family and Community Services or a designated agency has the care responsibility under section 49 of the *Children and Young Persons (Care and Protection) Act 1998*, or
- (c) who is a protected person within the meaning of section 135A of the *Children and Young Persons (Care and Protection) Act 1998*, or
- (d) who is the subject of an out-of-home care arrangement under the *Children and Young Persons (Care and Protection) Act 1998* or the *Children's Guardian Act 2019*, or
- (d1) who is in specialised substitute residential care within the meaning of the *Children's Guardian Act 2019*, or
- (e) who is the subject of a sole parental responsibility order under section 149 of the *Children and Young Persons (Care and Protection) Act 1998*, or
- (f) who is otherwise in the care of a service provider.

**parental responsibility**, in relation to a child or young person, means all the duties, powers, responsibilities and authority that, by law, parents have in relation to their children.

**person in the relevant group**—see section 24A.

**service provider** has the same meaning as it has in the *Community Services*

*(Complaints, Reviews and Monitoring) Act 1993.*

**specialist disability accommodation** means premises—

- (a) enrolled under the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020* of the Commonwealth, section 26, and
- (b) that is, or is a type of premises, prescribed by the regulations to be specialist disability accommodation, and
- (c) that is not, or is not a type of premises, prescribed by the regulations to not be specialist disability accommodation.

**24A Meaning of “person in the relevant group”**

- (1) For this Act, a **person in the relevant group** is a person who has a disability, whether or not of a chronic episodic nature, that—
  - (a) is attributable to an intellectual, cognitive, neurological, psychiatric, sensory or physical impairment, or a combination of those impairments, and
  - (b) is permanent or likely to be permanent, and
  - (c) results in a significant reduction in the person’s functional capacity in one or more areas of major life activity, including, for example, communication, social interaction, learning, mobility, decision-making, self-care and self-management, and
  - (d) results in the need for support, whether or not of an ongoing nature.
- (2) To avoid doubt, each of the following persons, within the meaning of the *Mental Health Act 2007*, is a person in the relevant group if the person has a disability referred to in subsection (1)—
  - (a) an involuntary patient or a forensic patient,
  - (b) a person subject to a community treatment order,
  - (c) a person under detention in a mental health facility.
- (3) A person in the relevant group includes a child under 6 years of age who has developmental delay within the meaning of the *National Disability Insurance Scheme Act 2013* of the Commonwealth.
- (4) To avoid doubt, a person with a permanent disability is a person in the relevant group even if the severity of the person’s impairment because of the disability may diminish over time or the person’s condition may improve.
- (5) In this section—

**disability**, in relation to a person, includes a long-term physical, psychiatric, intellectual or sensory impairment that, in interaction with various barriers, may hinder the person's full and effective participation in the community on an equal basis with others.

**support** means assistance provided to a person with disability to do one or more of the following—

- (a) help the person undertake the person's day to day activities,
- (b) increase the person's independence,
- (c) facilitate the person's social and economic inclusion in the community.

### **Division 3 When inquest may be dispensed with**

#### **25 Coroner may dispense with inquest unless inquest required** (cf *Coroners Act 1980*, s 14)

- (1) A coroner who has jurisdiction to hold an inquest concerning the death or suspected death of a person may dispense with the inquest unless an inquest is required to be held under this Part.
- (2) Without limiting subsection (1), a coroner who has jurisdiction to hold an inquest concerning the death of a person may dispense with the inquest if the coroner is satisfied (after obtaining relevant advice from police officers and medical practitioners and consulting with a senior next of kin of the deceased person and any other person that the coroner considers appropriate) that—
  - (a) the deceased person died of natural causes (whether or not the precise cause of death is known), and
  - (b) a senior next of kin of the deceased person has indicated to the coroner that it is not the wish of the deceased person's family that a post mortem examination be conducted on the deceased to determine the precise cause of the deceased's death.
- (3) A coroner who has previously dispensed with the holding of an inquest concerning a death or suspected death may subsequently hold an inquest concerning the death or suspected death if the coroner is of the opinion that the discovery of new evidence or facts makes it necessary or desirable in the interests of justice to hold the inquest.

#### **26 Reasons to be given for dispensing with inquest** (cf *Coroners Act 1980*, s 14D)

- (1) A coroner who dispenses with an inquest must, on request by any of the following persons, give the person the coroner's written reasons for dispensing with an inquest—
  - (a) the State Coroner,



(b) the Minister,

(c) any person who, in the opinion of the coroner, has a sufficient interest of any kind in the circumstances of the death or suspected death.

(2) A coroner who refuses a request to give reasons because the person making it does not, in the opinion of the coroner, have a sufficient interest of any kind in the circumstances of the death or suspected death, is required, at the written request of the person, to give the person the reasons for the refusal.

## **Division 4 When inquest is required to be held**

### **27 General circumstances in which inquest required to be held** (cf *Coroners Act 1980*, s 14B)

(1) An inquest concerning the death or suspected death of a person is required to be held in any of the following circumstances—

(a) if it appears to the coroner concerned that the person died or might have died as a result of homicide (not including suicide),

(b) if the jurisdiction to hold the inquest arises under section 23,

(c) if it appears to the coroner concerned that—

(i) it has not been sufficiently disclosed whether the person has died, or

(ii) the person's identity and the date and place of the person's death have not been sufficiently disclosed,

(d) if it appears to the coroner concerned that the manner and cause of the person's death have not been sufficiently disclosed (unless the case is one in which an inquest has been suspended or continued under section 78).

(2) An inquest is not required to be held under this section if it appears to the coroner concerned that an inquest or other official inquiry concerning the death or suspected death has been held, or is to be held, outside the State.

### **28 Minister or State Coroner may direct that inquest be held** (cf *Coroners Act 1980*, s 14A)

An inquest is required to be held if the Minister or the State Coroner directs that it be held.

### **29 Direction to hold inquest where coroner has dispensed with inquest** (cf *Coroners Act 1980*, s 14E)

(1) If a coroner has dispensed with an inquest, the State Coroner may (after considering the coroner's reasons for dispensing with the inquest and any other matters that the State Coroner considers relevant) direct a coroner to hold the inquest if the State Coroner is of the opinion that an inquest should nonetheless be held.

- (2) An inquest is to be held in accordance with the direction.
- (3) The State Coroner is not to give such a direction to a coroner who is a Magistrate (other than the coroner who dispensed with the holding of the inquest) without the Chief Magistrate's consent.
- (4) The State Coroner may hold the inquest instead of directing another coroner to hold the inquest.

### **Part 3.3 Inquiries concerning fires and explosions**

#### **30 Inquiries concerning fires and explosions** (cf *Coroners Act 1980*, s 15(1))

- (1) A coroner has jurisdiction to hold an inquiry concerning the cause and origin of a fire or explosion if the coroner is satisfied that the fire or explosion has destroyed or damaged any property within the State.
- (2) A coroner has jurisdiction to hold a general inquiry concerning a fire or explosion that has destroyed or damaged any property within the State, but only if the State Coroner gives a direction under this Part that such a general inquiry be held.
- (3) The jurisdiction of a coroner to hold a general inquiry concerning a fire or explosion extends to the examination of all of the circumstances concerning the fire or explosion (including, but not limited to, an examination of its cause and origin).

#### **31 Coroner may dispense with inquiry unless inquiry required** (cf *Coroners Act 1980*, ss 15(2) and 15A(1))

- (1) A coroner who has jurisdiction to hold an inquiry concerning a fire or explosion may, unless an inquiry is required to be held under this Part, dispense with the inquiry if the coroner is of the opinion that—
  - (a) the cause and origin of the fire or explosion are sufficiently disclosed, or
  - (b) an inquiry into the cause and origin of the fire or explosion is unnecessary.
- (2) A coroner who dispenses with the holding of an inquiry must, if requested to do so by the State Coroner, give the State Coroner written reasons for doing so.
- (3) A coroner who has previously dispensed with the holding of an inquiry concerning a fire or explosion may subsequently hold an inquiry concerning the fire or explosion if the coroner is of the opinion that the discovery of new evidence or facts makes it necessary or desirable in the interests of justice to hold the inquiry.

#### **32 When inquiry is required to be held** (cf *Coroners Act 1980*, ss 15(3), 15A(2)–(5) and 15B)

- (1) **Inquiries limited to investigating causes and origins** A coroner is required to hold an inquiry concerning the cause and origin of a fire or explosion that has destroyed or damaged property within the State if—

- (a) the coroner has been requested to hold the inquiry by an authorised public official, or
  - (b) the State Coroner gives a direction under this section that the coroner hold the inquiry.
- (2) The State Coroner may direct that a coroner hold an inquiry concerning the cause and origin of a fire or explosion that has destroyed or damaged property within the State if—
- (a) in the case where a coroner has dispensed with the holding of an inquiry—the State Coroner, after considering the coroner’s reasons for dispensing with the inquiry and any other matters that the State Coroner considers relevant, is of the opinion that an inquiry should nonetheless be held, or
  - (b) in any other case—the State Coroner is of the opinion that the inquiry should be held.
- (3) **General inquiries** A coroner is required to hold a general inquiry concerning a fire or explosion that has destroyed or damaged property within the State if the State Coroner gives a direction under this section for such a general inquiry to be held.
- (4) The State Coroner must direct that a coroner hold a general inquiry concerning a fire or explosion that has destroyed or damaged property within the State if—
- (a) an authorised public official has made a request to the State Coroner for a general inquiry to be held, or
  - (b) the State Coroner is of the opinion that a general inquiry should be held.
- (5) **General provisions relating to directions** An inquiry is to be held in accordance with the direction.
- (6) The State Coroner is not to give such a direction to a coroner who is a Magistrate (other than a coroner who dispensed with the holding of the inquiry) without the Chief Magistrate’s consent.
- (7) The State Coroner may hold the inquiry instead of directing another coroner to hold the inquiry.
- (8) **Definition** In this section—
- authorised public official**, in relation to an inquiry concerning a fire or explosion, means any of the following persons—
- (a) if the fire or explosion occurred in a fire district within the meaning of the *Fire and Rescue NSW Act 1989*—the Commissioner of New South Wales Fire Brigades,
  - (b) if the fire is a bush fire within the meaning of the *Rural Fires Act 1997*—the

Commissioner of the NSW Rural Fire Service,

(c) the Minister.

## **Part 3.4 Other provisions concerning exercise of coronial jurisdiction**

### **33 Coroners who are unavailable to exercise jurisdiction** (cf *Coroners Act 1980*, s 16)

- (1) If a coroner is unavailable to hold an inquest or inquiry concerning a death, suspected death, fire or explosion of which the coroner has been informed, the coroner may, with the consent of another coroner (and subject to any direction given by the State Coroner under this section), refer the matter to the other coroner to be dealt with.
- (2) If the State Coroner is satisfied that a coroner is unavailable to hold an inquest or inquiry concerning a death, suspected death, fire or explosion of which the coroner has been informed, the State Coroner may direct that another coroner hold the inquest or inquiry.
- (3) The State Coroner is not to give such a direction to a coroner who is a Magistrate without the Chief Magistrate's consent.
- (4) For the purposes of this section, a coroner is **unavailable** to hold an inquest or inquiry concerning a matter if he or she is unable to act as a coroner in relation to the matter because of any of the following reasons—
  - (a) illness,
  - (b) absence from the place where the coroner ordinarily acts as coroner,
  - (c) the coroner is unable or unwilling to deal with the matter for any other non-jurisdictional reason.
- (5) This section does not apply in relation to a coroner who, under this Act, dispenses with the holding of an inquest or inquiry.

### **34 Notice of particulars of death to be given to Registrar of Births, Deaths and Marriages** (cf *Coroners Act 1980*, s 16A)

- (1) A coroner must, for the purpose of enabling registration of the death of a person to be effected or completed, give written notice to the Registrar of Births, Deaths and Marriages of such particulars as are known to the coroner relating to the death of the person if the coroner—
  - (a) holds an inquest concerning the death, or
  - (b) dispenses with the holding of an inquest concerning the death, or
  - (c) suspends an inquest concerning the death.

- (2) If a coroner is satisfied (whether before or during an inquest concerning the death of a person) that there will be a delay in concluding the inquest and that the coroner is able, on the basis of such evidence as the coroner considers sufficient, to determine the particulars relating to the death of the person, the coroner may, for the purpose of enabling registration of the death of the person to be effected or completed, make that determination and give written notice of the determination to the Registrar of Births, Deaths and Marriages.
- (3) A notice under this section must not include any matter that incriminates any person.
- (4) For the purposes of this section, **particulars relating to the death of a person** are—
  - (a) the identity of the deceased person, and
  - (b) the date, place and cause of death of the deceased person.

## Chapter 4 Reporting of deaths

### 35 Obligation to report death or suspected death (cf *Coroners Act 1980*, s 12A(1)–(2A) and (3))

- (1) This section applies to any person who has reasonable grounds to believe that a death or suspected death of another person—
  - (a) is a reportable death or occurred in circumstances that would be examinable under Division 2 of Part 3.2, and
  - (b) has not been reported in accordance with subsection (2).
- (2) A person to whom this section applies must report the death or suspected death concerned to a police officer, a coroner or an assistant coroner as soon as possible after becoming aware of the grounds referred to in subsection (1).

Maximum penalty (subsection (2)): 10 penalty units.

- (3) A police officer to whom a death or suspected death is reported under this section is required to report the death or suspected death to a coroner or assistant coroner as soon as possible after the report is made.
- (4) An assistant coroner to whom a death or suspected death is reported under this section is required to report the death or suspected death to a coroner as soon as possible after the report is made.
- (5) A coroner to whom a death or suspected death is reported under this section is required to inform the State Coroner of the report as soon as practicable after the report is made.

### 36 State Coroner to inform Ombudsman and others about certain child and disability

**deaths** (cf *Coroners Act 1980*, s 12A(3A) and (3B))

- (1) The State Coroner is to provide the Ombudsman with all relevant material held by the State Coroner relating to—
  - (a) any death or suspected death of a person in any of the circumstances referred to in section 24(1), or
  - (b) any death of a person who is less than 18 years old in the circumstances referred to in section 23(d).
- (1A) The State Coroner is to provide the Commissioner of the NDIS Quality and Safeguards Commission under the *National Disability Insurance Scheme Act 2013* of the Commonwealth with all relevant material held by the State Coroner relating to any death or suspected death of a person in the circumstances referred to in section 24(1)(e) or (f).
- (2) The relevant material is to be provided as soon as practicable after—
  - (a) a decision is made not to hold an inquest concerning the death or suspected death, or
  - (b) if an inquest is held—the conclusion or suspension of the inquest.
- (3) The requirements of this section are in addition to any requirements of Part 6 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

**37 State Coroner to report on deaths in custody** (cf *Coroners Act 1980*, s 12A(4)–(8))

- (1) The State Coroner is to make a written report to the Minister containing a summary of the details of the deaths or suspected deaths that—
  - (a) the State Coroner has been informed about under section 35 or 38, and
  - (b) appear to the State Coroner to involve the death or suspected death of a person in circumstances referred to in section 23.
- (2) A report under subsection (1) is to be made for the period of 12 months commencing on 1 January of each year. A report is to be made within 4 months after the end of the period to which it relates.
- (3) The Minister is to cause a copy of the report made to the Minister under subsection (1) to be tabled in each House of Parliament within 21 days after the report is made.
- (4) If a House of Parliament is not sitting when the Minister seeks to cause a copy of the report to be tabled before it, the Minister is to cause a copy of the report to be presented to the Clerk of that House of Parliament.
- (5) A copy of the report presented to the Clerk of a House of Parliament under this

section—

- (a) is, on presentation and for all purposes, taken to have been laid before the House, and
- (b) may be printed by authority of the Clerk of the House, and
- (c) if so printed, is taken to be a document published by or under the authority of the House, and
- (d) is to be recorded—
  - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and
  - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the copy of the report by the Clerk.

**38 Medical practitioner must not certify cause of death if death is reportable** (cf *Coroners Act 1980*, ss 12A(2), (2A) and (3) and 12B)

- (1) A medical practitioner must not give a certificate as to the cause of death of a person for the purposes of notification of the cause of death under the *Births, Deaths and Marriages Registration Act 1995* if the medical practitioner is of the opinion that—
  - (a) the person's death is a reportable death, or
  - (b) the person died in circumstances that would be examinable under Division 2 of Part 3.2.
- (2) Despite subsection (1), a medical practitioner may give a certificate as to the cause of death of a person if the medical practitioner is of the opinion that the person—
  - (a) was aged 72 years old or older, and
  - (b) died in circumstances other than in any of the circumstances referred to in paragraphs (b)–(f) of the definition of **reportable death** in section 6(1) or in section 23 or 24(1), and
  - (c) died after sustaining an injury from an accident, being an accident that was attributable to the age of that person, contributed substantially to the death of the person and was not caused by an act or omission by any other person.
- (3) A medical practitioner may not certify the cause of death of a person in accordance with subsection (2) if, before the certificate is given, a relative of the deceased person indicates to the medical practitioner that he or she objects to the giving of the

certificate.

- (4) If a medical practitioner certifies the cause of death of a person in accordance with subsection (2), the certificate must state that it is given in pursuance of that subsection.
- (5) A medical practitioner who is prevented from certifying the cause of death of a person because of this section must, as soon as practicable after the death, report that death to a police officer.
- (6) A police officer to whom a death is reported under this section is required to report the death to a coroner or assistant coroner as soon as possible after the report is made.
- (7) An assistant coroner to whom a death is reported under this section is required to report the death to a coroner as soon as possible after the report is made.
- (8) A coroner to whom a death is reported under this section is required to inform the State Coroner of the report as soon as practicable after the report is made.

## Chapter 5 Coronial investigation scenes

### 39 Definitions (cf *Coroners Act 1980*, s 23C)

In this Chapter—

**coronial investigation scene** means a coronial investigation scene established under section 41.

**coronial investigation scene order**—see section 40.

**coronial investigation scene power** means a function specified in section 43(1) or (2).

### 40 Order establishing coronial investigation scene (cf *Coroners Act 1980*, s 23D)

- (1) If a coroner considers that an investigation should, for the purposes of an inquest or inquiry, be carried out at a particular place, a coroner may issue an order (a **coronial investigation scene order**) in writing or by telephone to a police officer or other person to—
  - (a) establish a coronial investigation scene at a specified place, and
  - (b) exercise coronial investigation scene powers in accordance with this Chapter, and
  - (c) enter and stay at the place for those purposes.
- (2) A coronial investigation scene order may be made—
  - (a) before the commencement of an inquest or inquiry, or



(b) after the commencement but before the completion of an inquest or inquiry.

- (3) This Chapter applies to a place of any kind, whether or not a public place.
- (4) A person acting under the authority of a coronial investigation scene order may, for the purposes of exercising coronial investigation scene powers, obtain the assistance of any other person.
- (5) A coronial investigation scene order authorises a police officer or other person specified in the order (or a person assisting the person acting under the authority of the order) to enter any place referred to in that order.
- (6) A copy of a telephone coronial investigation scene order is to be provided to the police officer or other person to whom it is issued.
- (7) In this section—

**telephone** means radio, facsimile or any other communication device.

**41 Establishment of coronial investigation scene** (cf *Coroners Act 1980*, s 23E)

- (1) A police officer or other person may establish a coronial investigation scene at a place pursuant to a coronial investigation scene order in any way that is reasonably appropriate in the circumstances.
- (2) A police officer or other person who establishes a coronial investigation scene must, if reasonably appropriate in the circumstances, give the public notice that the place is a coronial investigation scene.

**42 Exercise of powers at coronial investigation scene** (cf *Coroners Act 1980*, s 23F)

- (1) A police officer or other person may exercise any of the coronial investigation scene powers if—
  - (a) a coronial investigation scene has been established, and
  - (b) the police officer or other person exercising the power suspects on reasonable grounds that it is necessary to do so to preserve evidence relevant to an investigation by the coroner.
- (2) A police officer or other person may exercise the coronial investigation scene powers for the period of time specified in the coronial investigation scene order concerned.

**43 Coronial investigation scene powers** (cf *Coroners Act 1980*, s 23G)

- (1) A police officer or other person may, in accordance with this Chapter and a coronial investigation scene order, exercise the following functions at, or in relation to, a coronial investigation scene—
  - (a) direct a person to leave the coronial investigation scene or remove a vehicle,

- vessel or aircraft from the coronial investigation scene,
- (b) remove from the coronial investigation scene a person who fails to comply with a direction to leave the coronial investigation scene or a vehicle, vessel or aircraft a person fails to remove from the coronial investigation scene,
  - (c) direct a person not to enter the coronial investigation scene,
  - (d) prevent a person from entering a coronial investigation scene,
  - (e) prevent a person from removing evidence from, or otherwise interfering with, the coronial investigation scene or anything in it and, for that purpose, detain and search the person,
  - (f) remove or cause to be removed an obstruction from the coronial investigation scene,
  - (g) perform any necessary investigation, including, for example, search the coronial investigation scene and inspect anything in it to obtain evidence in relation to the inquest or inquiry,
  - (h) for the purpose of performing any necessary investigation, conduct any examination or process,
  - (i) open anything at the coronial investigation scene that is locked,
  - (j) take electricity, gas or any other utility, for use at the coronial investigation scene,
  - (k) direct the occupier of the place or a person apparently involved in the management or control of the place to maintain a continuous supply of electricity at the place,
  - (l) photograph or otherwise record the coronial investigation scene and anything in it,
  - (m) seize and detain all or part of a thing that might provide evidence in relation to the inquest or inquiry or provide evidence of the commission of an offence,
  - (n) dig up anything at the coronial investigation scene,
  - (o) remove wall or ceiling linings or floors of a building, or panels of a vehicle,
  - (p) take possession of the remains of a deceased person on behalf of the coroner, including body tissue, clothing and items apparently in the possession of the deceased person,
  - (q) remove or cause the removal of the remains of a deceased person to any location nominated by the coroner,
  - (r) any other function reasonably necessary or incidental to a function conferred by

this section.

- (2) The power conferred by this section to seize and detain a thing includes—
  - (a) a power to remove the thing from the coronial investigation scene when it is found, and
  - (b) a power to guard the thing in or on the coronial investigation scene.
- (3) Nothing in this Chapter prevents a police officer or other person who is lawfully at a place from exercising a coronial investigation scene power or doing any other thing, if the occupier of the place consents.

**44 Obstruction or hindrance of person executing coronial investigation scene order** (cf [Coroners Act 1980](#), s 23H)

A person must not, on production to the person of a coronial investigation scene order, obstruct or hinder the person to whom the order was issued in the exercise of his or her powers under this Chapter arising by virtue of the order.

Maximum penalty—100 penalty units or imprisonment for 2 years, or both.

**45 Chapter does not limit other powers** (cf [Coroners Act 1980](#), s 23I)

Nothing in this Chapter limits any power that a police officer or other person has apart from this Chapter to enter a place or to do any other thing when at the place.

## **Chapter 6 Coronial proceedings**

### **Part 6.1 General**

**46 Meaning of “coronial proceedings”**

- (1) In this Act, **coronial proceedings** are any proceedings conducted by a coroner or assistant coroner for the purposes of this Act concerning the investigation of a death, suspected death, fire or explosion.
- (2) Without limiting subsection (1), coronial proceedings include the following—
  - (a) the holding of an inquest or inquiry,
  - (b) proceedings to determine whether or not to hold, or to continue to hold, an inquest or inquiry,
  - (c) proceedings of an interlocutory or similar nature (including proceedings to deal with evidential matters or case management issues).

**47 Hearings in coronial proceedings generally to be open to public** (cf [Coroners Act 1980](#), s

30)

- (1) Any hearing conducted in coronial proceedings is to be open to the public, except as provided by this section and section 74.

**Note—**

See also section 74 for situations in which a coroner may order all or any persons to go and remain outside the room or building in which coronial proceedings are being heard.

- (2) Nothing in subsection (1) prevents a coroner hearing coronial proceedings in a room or building that is not open to the public (such as a room or building in a correctional centre, hospital, private residence or other place not normally open to the public) if the coroner is of the opinion that special circumstances make it necessary or desirable to do so.
- (3) In such a case, the coroner is to note on the record of the proceedings the special circumstances that in the coroner's opinion make such a course of action necessary or desirable.

**48 Coronial proceedings may be conducted with jury only if State Coroner directs** (cf *Coroners Act 1980*, ss 18 and 28)

- (1) Coronial proceedings are to be conducted without a jury, except as provided by subsection (2).
- (2) An inquest or inquiry is to be held before a coroner with a jury if the State Coroner directs it.
- (3) The State Coroner may direct that an inquest or inquiry be held before a coroner with a jury only if—
  - (a) the State Coroner is to act as the coroner for the inquest or inquiry, and
  - (b) the State Coroner considers that there are sufficient reasons to justify the inquest or inquiry being held with a jury.
- (4) An inquest or inquiry that would, but for this subsection, be held before a coroner and a jury at a place that is not a place for which a jury district is constituted under the *Jury Act 1977* is to be held at the nearest place for which there is a jury district constituted.
- (5) The State Coroner must notify the Sheriff of the need for a jury for an inquest or inquiry as soon as practicable after the State Coroner gives a direction under this section that the inquest or inquiry is to be held before a jury.

**49 Case management directions by coroner**

- (1) Subject to any relevant practice notes, a coroner in coronial proceedings may give such directions as the coroner thinks fit for the speedy determination of the real issues

with which the proceedings are concerned.

- (2) In particular, the coroner may do any one or more of the following—
- (a) direct relevant persons in the proceedings to take specified steps in relation to the proceedings,
  - (b) direct relevant persons in the proceedings as to the time within which specified steps in the proceedings must be completed,
  - (c) give such other directions with respect to the conduct of proceedings as the coroner considers appropriate.
- (3) In this section, a **relevant person**, in relation to coronial proceedings, means any of the following persons—
- (a) any person who is appearing in the proceedings personally,
  - (b) any person who is being represented in the proceedings,
  - (c) any person who is acting as a representative of another person in the proceedings,
  - (d) any person assisting the coroner in conducting the proceedings.

**50 State Coroner may assume and give directions concerning exercise of jurisdiction** (cf [Coroners Act 1980](#), s 17A)

- (1) The State Coroner may do any one or more of the following—
- (a) give directions requiring a specified coroner to conduct coronial proceedings that have not yet commenced,
  - (b) personally assume the jurisdiction to conduct particular coronial proceedings,
  - (c) direct that a specified coroner assume the jurisdiction to hold particular coronial proceedings from another coroner in circumstances where the other coroner has been informed of the matter that gives rise to the jurisdiction,
  - (d) direct that a coroner from whom jurisdiction has been assumed (the **former coroner**) following a direction under paragraph (c) is to provide the coroner who assumes the jurisdiction with all relevant information concerning the matter that the former coroner has received.
- (2) The State Coroner may only give a direction concerning the assumption of a coroner's jurisdiction before the coroner—
- (a) decides to dispense with the holding of an inquest or inquiry, or
  - (b) commences an inquest or inquiry in exercise of that jurisdiction.

- (3) The State Coroner is not to give a direction to a coroner who is a Magistrate to assume jurisdiction without the Chief Magistrate's consent.

**51 Directions concerning investigations** (cf *Coroners Act 1980*, ss 17B and 17C)

- (1) The State Coroner may give to a coroner directions concerning investigations to be carried out for the purposes of any coronial proceedings or proposed coronial proceedings.
- (2) A coroner may give a police officer directions concerning investigations to be carried out for the purposes of coronial proceedings or proposed coronial proceedings.
- (3) The Secretary of the Department of Communities and Justice may enter into a memorandum of understanding with the Commissioner of Police in relation to the regulation of costs associated with the carrying out of investigations by police officers pursuant to directions under this section.
- (4) The memorandum of understanding may be amended, revoked or replaced from time to time.
- (5) The functions of giving directions under subsection (2) and carrying out investigations pursuant to such directions must, as far as practicable, be exercised in conformity with the memorandum of understanding. However, a failure to comply with this subsection does not itself invalidate anything done by a coroner or police officer.

**52 Practice notes and approval of forms**

- (1) The State Coroner may—
  - (a) issue practice notes for or with respect to the practice and procedure to be followed in coronial proceedings, and
  - (b) approve forms for use in coronial proceedings.
- (2) The State Coroner may not issue a practice note under this section without the Chief Magistrate's approval.
- (3) A practice note—
  - (a) must be published in the Gazette, and
  - (b) takes effect on the day on which it is published in the Gazette or, if a later day or days are specified in the practice note for that purpose, on the later day or days so specified.
- (4) A practice note issued under this section may be amended or repealed by a further practice note issued under this section.
- (5) Subject to subsection (6), sections 40 and 41 of the *Interpretation Act 1987* apply to a

practice note issued under this section in the same way as they apply to a statutory rule.

- (6) For the purpose of applying section 40 of the *Interpretation Act 1987* to a practice note issued under this section, a reference in that section to the publication of a statutory rule is to be read as a reference to the publication of the practice note as provided by subsection (3).

**53 Power to obtain documents and things for purposes of coronial investigation** (cf *Coroners Act 1980*, s 14F)

- (1) For the purpose of assisting a coroner in the investigation of a death, suspected death, fire or explosion, the coroner may, by notice in writing served on a person, direct the person to produce a document or other thing to the coroner or another person specified in the notice at a time and place specified in the notice.
- (2) The power to give such a direction includes (without limitation)—
- (a) the power to direct that a document be produced relating to the medical care or treatment of a person, and
  - (b) the power to direct a person to provide any tissue in the person's possession or under the person's control that was taken from a deceased person before his or her death.
- (3) The coroner is to withdraw a direction under this section if it appears to the coroner that—
- (a) any person would be entitled on grounds of privilege to refuse to produce the document or other thing in a court of law, and
  - (b) the person does not consent to compliance with the direction.
- (4) A natural person is excused from producing a document or other thing under this section on the ground that it may tend to incriminate the person, unless the document relates to the medical care or treatment of a person, in which case the person is not excused from producing it.
- (5) A person must not, without reasonable excuse, fail to comply with a notice served on the person under this section.

Maximum penalty (subsection (5)): 10 penalty units.

- (6) If a direction under this section requires the production of a document, the production of a copy of the document is taken to be sufficient compliance with the direction unless the direction expressly requires the production of the original document.
- (7) Nothing in this section limits any other power that a coroner may have under this Act

to obtain evidence.

## **Part 6.2 Holding inquests and inquiries**

### **54 Time and place of inquest or inquiry** (cf *Coroners Act 1980*, s 17)

- (1) If an inquest or inquiry is to be held under this Act by a coroner, the coroner—
  - (a) must fix a time and place for the commencement of the inquest or inquiry, and
  - (b) must give particulars of the time and place to any person who has given notice in writing to the coroner of his or her intention to seek leave to appear or to be represented at the inquest or inquiry, and
  - (c) in the case of an inquest concerning the death or suspected death of a person—must give particulars of the time and place to the person's next of kin if the coroner has been informed of the name and address of the next of kin, and
  - (d) may give particulars of the time and place to any person who has, in the opinion of the coroner, a sufficient interest in the subject-matter of the inquest or inquiry.
- (2) Without limiting subsection (1)(b), (c) or (d), the particulars that are to be given under any of those paragraphs are taken to be given if a notice specifying the particulars is sent by post to the person to whom the particulars are to be given.

### **55 Coroner may view deceased person's remains or scene of fire or explosion** (cf *Coroners Act 1980*, s 29)

- (1) A coroner may (but need not) view the remains of a deceased person, or the scene of a fire or explosion, with which coronial proceedings are concerned if the coroner considers it advisable to do so.
- (2) If an inquest or inquiry is being held before a jury, the coroner may (but need not) allow the jury to view the remains of the deceased person, or the scene of the fire or explosion, with which the inquest or inquiry is concerned.

### **56 Coroner's right to possession of deceased person's remains** (cf *Coroners Act 1980*, s 24)

- (1) A coroner has a right to take possession of and retain the remains of a deceased person whenever the coroner has jurisdiction to hold or is holding an inquest concerning the death or suspected death of the person.
- (2) This right of the coroner has priority over any other right to possession of the remains of a person but otherwise does not affect any other such right.
- (3) This section does not prevent the making of an order by a coroner under section 101 or the disposal of the remains of a deceased person in accordance with such an order.
- (4) This section does not limit any rights that the coroner has apart from this Act.



## Part 6.3 Representation and evidentiary matters

### 57 Representation in coronial proceedings (cf *Coroners Act 1980*, s 32(1) and (2))

- (1) The coroner in coronial proceedings may grant leave to any person, who in the opinion of the coroner has a sufficient interest in the subject-matter of the proceedings, to appear in person in the proceedings or to be represented by an Australian legal practitioner.
- (2) Any person granted such leave may examine and cross-examine any witnesses on matters relevant to the proceedings.
- (3) A coroner holding an inquest concerning the death or suspected death of a person must grant leave under subsection (1) to any person who is a relative of the deceased person (or suspected deceased person) unless the coroner is satisfied that there are exceptional circumstances that justify the coroner refusing leave.
- (4) If an inquest or inquiry is held before a jury—
  - (a) a person appearing, and an Australian legal practitioner representing a person, at the inquest or inquiry is entitled to make an opening and a closing address to the jury, and
  - (b) the person assisting the coroner may make an opening and a closing address to the jury and in addition has a right of reply in respect of any closing address made pursuant to paragraph (a).

### 58 Rules of procedure and evidence (cf *Coroners Act 1980*, s 33)

- (1) A coroner in coronial proceedings is not bound to observe the rules of procedure and evidence that are applicable to proceedings before a court of law.
- (2) Except as otherwise provided by this Act, a witness in coronial proceedings who is a natural person cannot be compelled to answer any question or produce any document that might tend—
  - (a) to incriminate the witness for an offence against or arising under an Australian law or a law of a foreign country, or
  - (b) to make the witness liable to a civil penalty.

### 59 Witnesses may be required to give evidence on oath or affirmation (cf *Coroners Act 1980*, s 31)

- (1) The coroner in coronial proceedings may examine on oath or affirmation all persons who—
  - (a) tender evidence relevant to the proceedings, or

(b) are able, in the opinion of the coroner, to give evidence relevant to the proceedings.

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

(a) may require a person who appears in the proceedings to give evidence to take an oath or to make an affirmation in a form approved by the coroner, and

(b) may administer an oath to, or take an affirmation from, a person appearing in the proceedings.

**60 Persons granted leave may apply for witness to be examined** (cf *Coroners Act 1980*, s 31A)

(1) A person granted leave to appear or be represented in coronial proceedings may apply to the coroner to have a particular person examined in the proceedings. Such an application can be made before or during the hearing of the proceedings.

(2) A coroner who refuses such an application must give the applicant the reasons for refusing the application.

(3) The coroner is required to deal with such an application as soon as reasonably practicable after it is made and in any case before the proceedings are concluded.

**61 Privilege in respect of self-incrimination** (cf *Coroners Act 1980*, s 33AA)

(1) This section applies if a witness in coronial proceedings objects to giving particular evidence, or evidence on a particular matter, on the ground that the evidence may tend to prove that the witness—

(a) has committed an offence against or arising under an Australian law or a law of a foreign country, or

(b) is liable to a civil penalty.

(2) The coroner in the coronial proceedings must determine whether or not there are reasonable grounds for the objection.

(3) If the coroner determines that there are reasonable grounds for the objection, the coroner is to inform the witness—

(a) that the witness need not give the evidence unless required by the coroner to do so under subsection (4), and

(b) that the coroner will give a certificate under this section if—

(i) the witness willingly gives the evidence without being required to do so under subsection (4), or

(ii) the witness gives the evidence after being required to do so under subsection

(4), and

(c) of the effect of such a certificate.

- (4) The coroner may require the witness to give the evidence if the coroner is satisfied that—
- (a) the evidence does not tend to prove that the witness has committed an offence against or arising under, or is liable to a civil penalty under, a law of a foreign country, and
  - (b) the interests of justice require that the witness give the evidence.
- (5) If the witness either willingly gives the evidence without being required to do so under subsection (4), or gives it after being required to do so under that subsection, the coroner must cause the witness to be given a certificate under this section in respect of the evidence.
- (6) The coroner is also to cause a witness to be given a certificate under this section if—
- (a) the objection has been overruled, and
  - (b) after the evidence has been given, the coroner finds that there were reasonable grounds for the objection.
- (7) In any proceeding in a NSW court within the meaning of the *Evidence Act 1995* or before any person or body authorised by a law of the State, or by consent of parties, to hear, receive and examine evidence—
- (a) evidence given by a person in respect of which a certificate under this section has been given, and
  - (b) evidence of any information, document or thing obtained as a direct or indirect consequence of the person having given evidence,
- cannot be used against the person. However, this does not apply to a criminal proceeding in respect of the falsity of the evidence.
- (8) Subsection (7) has effect despite any challenge, review, quashing or calling into question on any ground of the decision to give, or the validity of, the certificate concerned.
- (9) A reference in this section to doing an act includes a reference to failing to act.
- (10) A certificate under this section can only be given in respect of evidence that is required to be given by a natural person.

**62 Refusal of witness to be examined** (cf *Coroners Act 1980*, ss 42 and 54(1))

A person who appears (whether or not on subpoena or warrant) to give evidence or to produce any document or thing in coronial proceedings must not, without lawful excuse—

- (a) refuse to take the oath or affirmation, or
- (b) refuse to be examined on oath or affirmation, or
- (c) having taken the oath or made an affirmation, refuse to answer any question relevant to the subject-matter of the proceedings, or
- (d) refuse or fail to produce the document or thing.

Maximum penalty—10 penalty units.

**63 Documentary evidence** (cf *Coroners Act 1980*, s 34A)

Parts 3 and 4 of Chapter 6 of the *Criminal Procedure Act 1986* apply to and in respect of any coronial proceedings in the same way as they apply to and in respect of proceedings before a court, and any function exercisable by an authorised person under those Parts may, for the purposes of coronial proceedings, be exercised by a coroner.

**64 Fresh inquest or inquiry—admission of previous depositions** (cf *Coroners Act 1980*, s 33A)

- (1) A coroner holding a fresh inquest or inquiry may admit in evidence the depositions taken at any previous inquest or inquiry.
- (2) Subsection (1) is subject to the terms of an order made by a court for the holding of the fresh inquest or inquiry.

**Note—**

Section 83 provides for the circumstances in which a fresh inquest or inquiry concerning a matter may be held by a coroner following the termination or conclusion of a previous inquest or inquiry concerning the matter. Also, section 85 enables the Supreme Court to order that a fresh inquest or inquiry be held in certain circumstances.

**65 Records of evidence** (cf *Coroners Act 1980*, s 34)

- (1) The coroner in coronial proceedings is to ensure that the evidence of every witness in the proceedings is recorded.
- (2) Subject to this section, a coroner or assistant coroner is to supply a person with a copy of a coroner's file (or a part of that file) at the request of the person if—
  - (a) the coroner or assistant coroner is satisfied that it is appropriate for the person to be granted access to the file (or a part of the file), and
  - (b) the person pays the fee that is payable in the Local Court for the provision of a copy of a document (other than a copy of a judgment or order or the reasons for a judgment or order) or such other fee as may be prescribed by (or calculated in

accordance with) the regulations.

- (3) In determining whether it is appropriate to grant a person access to a coroner's file (or a part of the file), the coroner or assistant coroner making the determination is to have regard to the following matters—
  - (a) the principle that coronial proceedings should generally be open to the public,
  - (b) if the coroner's file relates to a deceased person—the impact on the relatives of the deceased person of allowing access,
  - (c) the connection that the person requesting access has to the proceedings concerned,
  - (d) the reasons why access is being sought,
  - (e) any other matter that the coroner or assistant coroner considers relevant.
- (4) A coroner who conducts coronial proceedings may, by notation on the coroner's file on the matter, direct that a copy of the whole or a particular part of the file is not to be supplied under this section.
- (5) A direction by a coroner under subsection (4) must include a statement of the coroner's reasons for the direction.
- (6) A copy of a coroner's file (or of any part of the file) is not to be supplied under this section in contravention of—
  - (a) a direction by a coroner under subsection (4), or
  - (b) an order made under section 74.
- (7) In this section—

**coroner's file** means the documents (including the depositions of witnesses, transcripts and written findings) that form part of the file kept by a coroner in respect of a death, suspected death, fire or explosion.

#### **66 Subpoena for appearance or warrant for arrest of witness** (cf [Coroners Act 1980](#), s 35)

- (1) If it appears to a coroner that any person is likely to be able to give material evidence in coronial proceedings, or is likely to have in his or her possession or power any document or thing required for the purposes of evidence in the proceedings, the coroner may issue any of the following subpoenas—
  - (a) a subpoena for the appearance of the person to be examined as a witness,
  - (b) a subpoena for the person to produce the document or thing,
  - (c) a subpoena both for the appearance of that person to be examined as a witness

and to produce the document or thing.

- (2) However, if the coroner is satisfied by evidence on oath or affirmation that it is probable that the person will not comply with a subpoena unless compelled to do so, the coroner may issue a warrant in the first instance for the arrest of that person.
- (3) A coroner may exercise a function under this section in respect of coronial proceedings being conducted by another coroner, but only with the consent of that other coroner.
- (4) A person is not bound to produce any document or thing—
  - (a) not specified or otherwise sufficiently described in a subpoena or arrest warrant issued under this section in respect of the person, or
  - (b) that the person would not be bound to produce on a subpoena for production in the Supreme Court.
- (5) An assistant coroner may, at the direction of a coroner given in a particular case, exercise the power of the coroner to issue a subpoena or arrest warrant under this section.

**67 Form of subpoena** (cf *Coroners Act 1980*, s 36)

A subpoena issued under this Part must—

- (a) be signed by the coroner or assistant coroner issuing it, and
- (b) be directed to the person whose appearance is required or who is required to produce a document or thing, and
- (c) require that person to appear at a certain time and place before the coroner conducting the coronial proceedings concerned to testify what the person knows concerning the subject-matter of the proceedings or to produce any document or thing specified or described in the subpoena.

**68 Manner of service of subpoena** (cf *Coroners Act 1980*, s 37)

- (1) A subpoena issued under this Part must be served by—
  - (a) a police officer, or
  - (b) where the coroner or assistant coroner issuing the subpoena so directs—the Sheriff, or a sheriff's officer, within the meaning of the *Sheriff Act 2005*.
- (2) Service of a subpoena may be effected—
  - (a) by handing it to the person to whom it is directed, or
  - (b) if the person is an inmate of a correctional centre (within the meaning of the

*Crimes (Administration of Sentences) Act 1999*—

- (i) by handing it to the officer in charge of the correctional centre, or
  - (ii) by sending it by post or facsimile or other electronic transmission to the officer in charge at the correctional centre, or
  - (c) if the person is a police officer or a public officer—
    - (i) by sending it by post or facsimile to the person's business address, or
    - (ii) by sending it by electronic communication to the person's business email address, or
  - (d) if the person is not a police officer, public officer or inmate—
    - (i) by sending it by post or facsimile to the person's residential address, or
    - (ii) by sending it by electronic communication to the person's email address, or
  - (e) if the person is represented by a legal practitioner—by leaving it, with the consent of the relevant legal practitioner for the person, at the relevant legal practitioner's address for service or by sending it to that address by post or facsimile or by sending it to the legal practitioner's email address for service by electronic communication.
- (3) If, on tender of a subpoena, the person refuses to accept it, it may be served by putting it down in the person's presence after the person has been told of the nature of the subpoena.
- (4) Service of a subpoena in the manner specified in subsection (2) or (3) may be proved by the oath or affirmation of the person who served it attending the coronial proceedings concerned, by his or her affidavit or otherwise.
- (5) In this section—

**public officer** means any of the following persons, but only when acting in an official capacity—

- (a) an employee in the Public Service or the NSW Police Force,
- (b) an officer or employee of a statutory body representing the Crown,
- (c) an employee of a council within the meaning of the *Local Government Act 1993*,
- (d) a member of staff of Local Land Services,
- (e) the Director of Public Prosecutions, Deputy Director of Public Prosecutions or Solicitor for Public Prosecutions,

- (f) an officer or employee of a body declared by the regulations to be a public body for the purposes of this definition.

**relevant legal practitioner** for a person means—

- (a) if the person is represented only by a solicitor—the solicitor, or
- (b) if the person is represented only by a barrister under a direct access arrangement—the barrister, or
- (c) if the person is represented by both a solicitor and a barrister—the solicitor.

**69 Arrest warrants for non-appearance in response to subpoena** (cf *Coroners Act 1980*, s 39)

If a person who has been issued with a subpoena to appear in coronial proceedings does not appear at the time and place specified in the subpoena, the coroner before whom the person was required to appear may, on proof of the due service of the subpoena on the person and if no just excuse is offered for the person's non-appearance, issue a warrant for the arrest of the person.

**70 Form of warrant** (cf *Coroners Act 1980*, s 41(1)–(3))

- (1) An arrest warrant issued by a coroner or assistant coroner under this Part must—
  - (a) be signed by the coroner or assistant coroner, and
  - (b) be directed to—
    - (i) a named police officer, or
    - (ii) a person authorised by law to execute a warrant to arrest, or
    - (iii) the senior police officer of the area where the warrant is to be executed, or
    - (iv) the senior police officer and all other police officers, or
    - (v) generally all police officers, and
  - (c) name or otherwise describe the person to be arrested, and
  - (d) order that the person be arrested and brought before a coroner to testify what the person knows concerning the subject-matter of the coronial proceedings or to produce the document or writing specified or described in the warrant.
- (2) An arrest warrant is to be returnable at a time and place to be stated in the warrant.
- (3) An arrest warrant may be executed by arresting the person against whom it is directed at any place in the State.



**71 Arrest of witness under arrest warrant** (cf *Coroners Act 1980*, ss 40 and 41(3))

- (1) A person arrested under an arrest warrant issued under this Part is to be brought before a coroner or authorised justice as soon as practicable after the person's arrest.
- (2) Subject to subsection (3), a person arrested under an arrest warrant may be dealt with in the same way as a witness arrested under a warrant issued under section 231 of the *Criminal Procedure Act 1986*.
- (3) A coroner or authorised justice before whom a person is brought after having been arrested under an arrest warrant issued under this Part—
  - (a) must, subject to the *Bail Act 2013*, order that a warrant be issued for the committal of the person to a correctional centre or other place of security, and
  - (b) must order the person to be brought before a coroner at such time and place as is specified in the order.
- (4) A coroner or authorised justice may make a bail decision in respect of the person under the *Bail Act 2013*.
- (5) The *Bail Act 2013* applies to the person as if—
  - (a) the person were accused of an offence, and
  - (b) the proceedings in which the person is required to be examined or produce a document or thing were proceedings for that offence.
- (6) Bail may be granted for the period between—
  - (a) the person's being brought before a coroner under a warrant for the purpose of being examined as a witness or producing a document or thing, and
  - (b) the person's being examined as a witness or producing the document or thing.
- (7) For the purpose of applying the *Bail Act 2013*, a coroner has the same functions as the Local Court under that Act.
- (8) In this section—

**authorised justice** has the same meaning as in the *Bail Act 2013*.

**72 Certain defects immaterial** (cf *Coroners Act 1980*, s 38)

No objection may be taken or allowed to any subpoena or arrest warrant in respect of any alleged defect in the subpoena or warrant in substance or in form.

## Part 6.4 Disclosure of information

### 73 Meaning of “published” (cf *Coroners Act 1980*, s 46)

For the purposes of this Part, matter is **published** only if it is—

- (a) inserted in any newspaper or any other periodical publication, or
- (b) publicly exhibited, or
- (c) broadcast by radio or by television, or
- (d) published by means of the Internet.

### 74 Powers of coroner to clear court and prevent publication of evidence or submissions (cf *Coroners Act 1980*, ss 44(1), (5) and (6) and 45(1) and (4))

- (1) A coroner in coronial proceedings may, if of the opinion that it would be in the public interest to do so, order—
  - (a) any or all persons (including witnesses in the proceedings) to go and remain outside the room or building in which the proceedings are being heard, or
  - (b) that any evidence given in the proceedings not be published, or
  - (c) that any submissions made in the proceedings concerning whether a known person may have committed an indictable offence not be published.
- (2) For the purposes of subsection (1), the coroner may, in forming an opinion as to the public interest, have regard (without limitation) to the following matters—
  - (a) the principle that coronial proceedings should generally be open to the public,
  - (b) in the case of an order that is proposed to be made in relation to a witness in the proceedings—the likelihood that the evidence of the witness might be influenced by other evidence given in the proceedings if the witness is present when that other evidence is given,
  - (c) national security,
  - (d) the personal security of the public or any person.
- (3) A person must not contravene an order made under this section.

Maximum penalty—10 penalty units or imprisonment for 6 months (in the case of an individual) or 50 penalty units (in any other case).

### 75 Powers of coroner in relation to reports or proceedings concerning self-inflicted deaths (cf *Coroners Act 1980*, ss 44(2)–(4) and 45(1), (2) and (4))

- (1) A coroner may make an order under this section (a **non-publication order**) if it

appears to the coroner (whether by reason of information reported or received under Chapter 4 or during the course of coronial proceedings) that a death or suspected death is self-inflicted.

- (2) A non-publication order may prohibit or restrict any or all of the following—
  - (a) the publication of any report (or any further report) of the proceedings (or any specified part of the proceedings) until after the coroner has made his or her findings or, in the case of an inquest held before a jury, the jury has brought in its verdict,
  - (b) the publication of any matter (including the publication of any photograph or other pictorial representation) that identifies any particular person—
    - (i) as being a person whose death or suspected death may have been self-inflicted, or
    - (ii) as being a relative of a person whose death or suspected death may have been self-inflicted.
- (3) For the purposes of subsection (2)(b), the following persons are relatives of a person whose death or suspected death may have been self-inflicted—
  - (a) the spouse of that person, a parent of that person, a person who stands in loco parentis to that person, a guardian of that person or a child of that person,
  - (b) a person who, at the time of the death or suspected death, was living with that person as the person's spouse,
  - (c) a brother or sister of that person.
- (4) To the extent to which a non-publication order prohibits the publication of any matter referred to in subsection (2)(b), the order continues to have effect after the coroner has made his or her findings, or after the jury (if any) has brought in its verdict, but only if the order expressly so provides.
- (5) If a finding is made in an inquest to the effect that the death of a person was self-inflicted, a report of the proceedings (or any part of the proceedings) must not be published after the finding unless (and to the extent that) the coroner holding the inquest makes an order permitting the publication of the report.
- (6) A coroner may make an order under subsection (5) only if the coroner is of the opinion that it is desirable in the public interest to permit a report of the proceedings (or part of the proceedings) of the inquest to be published.
- (7) A person must not contravene (or cause the contravention of)—
  - (a) a non-publication order, or

(b) the provisions of subsection (5).

Maximum penalty—10 penalty units or imprisonment for 6 months (in the case of an individual) or 50 penalty units (in any other case).

**76 Publication of certain questions, warnings, objections, submissions and comments** (cf *Coroners Act 1980*, s 45(3) and (4))

A person must not publish any of the following matters without the express permission of the coroner in the coronial proceedings concerned—

- (a) any question asked of a witness that the coroner has forbidden or disallowed,
- (b) any warning that a coroner has given to a witness that he or she is not compelled to answer a question,
- (c) any objection made by a witness to giving evidence on the ground that the evidence may tend to prove that the witness has committed an offence,
- (d) any submissions made by or on behalf of a person appearing or being represented in the proceedings or by a person assisting the coroner, or any comment made by the coroner, concerning whether an inquest or inquiry should be suspended under section 78.

Maximum penalty—10 penalty units or imprisonment for 6 months (in the case of an individual) or 50 penalty units (in any other case).

**77 Certain matters not prohibited or prevented**

Nothing in this Part prohibits or prevents—

- (a) the publication of a judgment of a court that contains matter the publication of which would otherwise have been prohibited by this Part, or
- (b) the publication of matter in such other circumstances as may be prescribed by the regulations.

**Part 6.5 Resolution of coronial proceedings**

**78 Procedure at inquest or inquiry involving indictable offence** (cf *Coroners Act 1980*, s 19)

(1) This section applies in relation to any of the following inquests or inquiries—

- (a) an inquest or inquiry held by a coroner to whom it appears (whether before the commencement or during the course of the inquest or inquiry) that—
  - (i) a person has been charged with an indictable offence, and
  - (ii) the indictable offence raises the issue of whether the person caused the death, suspected death, fire or explosion with which the inquest or inquiry is

concerned,

- (b) an inquest or inquiry if, at any time during the course of the inquest or inquiry, the coroner forms the opinion (having regard to all of the evidence given up to that time) that—
  - (i) the evidence is capable of satisfying a jury beyond reasonable doubt that a known person has committed an indictable offence, and
  - (ii) there is a reasonable prospect that a jury would convict the known person of the indictable offence, and
  - (iii) the indictable offence would raise the issue of whether the known person caused the death, suspected death, fire or explosion with which the inquest or inquiry is concerned.
- (2) If this section applies to an inquest or inquiry as provided by subsection (1)(a), the coroner—
  - (a) may commence the inquest or inquiry, or continue it if it has commenced, but only for the purpose of taking evidence to establish—
    - (i) in the case of an inquest—the death, the identity of the deceased person and the date and place of death, or
    - (ii) in the case of an inquiry—the date and place of the fire or explosion, and
  - (b) after taking that evidence (or if that evidence has been taken), must suspend the inquest or inquiry and, if there is a jury, must discharge the jury.
- (3) If this section applies to an inquest or inquiry as provided by subsection (1)(b), the coroner may—
  - (a) continue the inquest or inquiry and record under section 81(1) or (2) the coroner's findings or, if there is a jury, the verdict of the jury, or
  - (b) suspend the inquest or inquiry and, if there is a jury, discharge the jury.
- (4) The coroner is required to forward to the Director of Public Prosecutions—
  - (a) the depositions taken at an inquest or inquiry to which this section applies, and
  - (b) in the case of an inquest or inquiry referred to in subsection (1)(b)—a written statement signed by the coroner that specifies the name of the known person and the particulars of the indictable offence concerned.

**79 Procedure following suspension of inquest or inquiry** (cf *Coroners Act 1980*, s 20)

- (1) Subject to subsections (2A), (3), (5) and (5A), a coroner who has suspended, or not commenced, an inquest or inquiry under section 78 may make an order—

- (a) that the inquest or inquiry is to resume or commence (as the case may be), or
  - (b) to dispense with the resumption or holding of the inquest or inquiry.
- (2) An order under subsection (1) may be made on a coroner's own motion or on the application of a person who has been granted leave to appear or to be represented at the inquest or inquiry.
- (2A) An order under subsection (1) that an inquest or inquiry be resumed may not be made unless the coroner has given the State Coroner written notice of—
- (a) the coroner's intention to make the order, and
  - (b) the day on which it is proposed to make the order (being a day that is no earlier than 14 days after the notice is given).
- (3) If a person has been charged with an indictable offence in which the question of whether the person caused a death, suspected death, fire or explosion is in issue, an inquest or inquiry that has been suspended, or that has not commenced, under section 78 may not be resumed or commenced (as the case may be) until the charge is finally determined.
- (4) For the purposes of subsection (3), a charge is taken to be **finally determined** if—
- (a) the person has been discharged from proceedings with respect to the offence to which the charge relates, or
  - (b) no further appeal can be made in proceedings in respect of the charge without an extension of time being granted, or
  - (c) the Attorney General, and Minister for the Prevention of Domestic Violence or the Director of Public Prosecutions directs that no further proceedings be taken against the person in respect of the charge.
- (5) If the coroner has suspended an inquest or inquiry after forming the opinion referred to in section 78(1)(b) (and a person has not been charged as referred to in subsection (3) in relation to an indictable offence), the suspended inquest or inquiry may not be resumed until the Attorney General, and Minister for the Prevention of Domestic Violence or the Director of Public Prosecutions advises that no proceedings will be taken against the known person (as referred to in section 78(1)(b)) in relation to the indictable offence.
- (5A) If the State Coroner considers that it is inappropriate for a suspended inquest or inquiry to be resumed, the State Coroner may, after consulting the coroner who suspended it, direct that the inquest or inquiry not be resumed.
- (5B) The State Coroner is not to give a direction under subsection (5A) to a coroner who is a Magistrate without the Chief Magistrate's consent.

- (6) If the coroner who suspended, or did not commence, an inquest or inquiry under section 78 is not available to resume, commence or dispense with the inquest or inquiry for any reason, the State Coroner or a coroner authorised by the State Coroner, may resume, commence or dispense with the inquest or inquiry in accordance with this section.

**80 Procedure at inquest if finding that person did not die** (cf *Coroners Act 1980*, s 21)

- (1) If, at any time during the course of an inquest concerning the death or suspected death of a person, it appears to the coroner from the evidence that the person has not died—
- (a) where there is no jury—the coroner must make a finding that the person has not died and terminate the inquest, or
  - (b) where there is a jury—the coroner may request the jury to bring in a preliminary verdict as to whether or not the person has died.
- (2) The following provisions apply when a preliminary verdict is brought in by a jury following a request by the coroner referred to in subsection (1)(b)—
- (a) if the verdict of the jury is that the person has not died—the coroner must terminate the inquest and discharge the jury,
  - (b) if the verdict of the jury is that the person has died or that it is uncertain whether the person has died—the inquest is to be resumed.
- (3) If a coroner terminates an inquest under this section, the coroner must record in writing the coroner's findings or, if there is a jury, the jury's verdict.

**81 Findings of coroner or jury verdict to be recorded** (cf *Coroners Act 1980*, s 22)

- (1) The coroner holding an inquest concerning the death or suspected death of a person must, at its conclusion or on its suspension, record in writing the coroner's findings or, if there is a jury, the jury's verdict, as to whether the person died and, if so—
- (a) the person's identity, and
  - (b) the date and place of the person's death, and
  - (c) in the case of an inquest that is being concluded—the manner and cause of the person's death.
- (2) The coroner holding an inquiry concerning a fire or explosion must, at its conclusion or on its suspension, record in writing the coroner's findings or, if there is a jury, the jury's verdict—
- (a) as to the date and place of the fire or explosion, and

(b) in the case of an inquiry that is being concluded—as to the circumstances of the fire or explosion.

(3) Any record made under subsection (1) or (2) must not indicate or in any way suggest that an offence has been committed by any person.

**82 Coroner or jury may make recommendations** (cf *Coroners Act 1980*, s 22A)

(1) A coroner (whether or not there is a jury) or a jury may make such recommendations as the coroner or jury considers necessary or desirable to make in relation to any matter connected with the death, suspected death, fire or explosion with which an inquest or inquiry is concerned.

(2) Without limiting subsection (1), the following are matters that can be the subject of a recommendation—

(a) public health and safety,

(b) that a matter be investigated or reviewed by a specified person or body.

(3) The record made under section 81 is to include any recommendations made by the coroner or jury. The record must not indicate or in any way suggest that an offence has been committed by any person.

(4) The coroner is to ensure that a copy of a record that includes recommendations made under this section is provided, as soon as is reasonably practicable, to—

(a) the State Coroner (unless the coroner is the State Coroner), and

(b) any person or body to which a recommendation included in the record is directed, and

(c) the Minister, and

(d) any other Minister (if any) that administers legislation, or who is responsible for the person or body, to which a recommendation in the record relates.

**83 When fresh inquests and inquiries may be conducted** (cf *Coroners Act 1980*, ss 23 and 23A)

(1) This section provides for the circumstances in which—

(a) a new inquest (a **fresh inquest**) concerning the death or suspected death of a person may be held even though the death or suspected death was previously the subject of another inquest (a **previous inquest**), and

(b) a new inquiry (a **fresh inquiry**) concerning a fire or explosion may be held even though the fire or explosion was previously the subject of another inquiry (a **previous inquiry**).



- (2) A fresh inquest may be held if—
  - (a) a previous inquest was terminated before its conclusion because it appeared to the coroner that the person did not die, or
  - (b) a previous inquest was concluded and the coroner's finding, or the jury's recorded verdict, was that the person did not die or that it is uncertain whether the person had died.
- (3) If the remains of a person are found in the State, a fresh inquest may be held concerning the death of the person even though a previous inquest was held concerning the suspected death of the person.
- (4) A fresh inquest or inquiry must be held if—
  - (a) an application for a fresh inquest or inquiry is made under this section, and
  - (b) on the basis of the application, the State Coroner is of the opinion that the discovery of new evidence or facts makes it necessary or desirable in the interests of justice to hold a fresh inquest or inquiry.
- (5) An application for a fresh inquest or inquiry may only be made by a police officer or by a person who was granted leave to appear or be represented at a previous inquest or inquiry.
- (6) If a successful application for a fresh inquest or inquiry is made under this section, the State Coroner can hold the fresh inquest or inquiry or can direct another coroner to hold it.
- (7) The findings on the fresh inquest or inquiry may be expressed to be in addition to or in substitution for the findings on any previous inquest or inquiry (even if the previous inquest or inquiry was a fresh inquest or inquiry).
- (8) This section does not limit or otherwise affect any other power of a coroner (including the State Coroner) to hold a fresh inquest or inquiry and does not limit or affect the provisions of this Act with respect to the termination or suspension of inquests.

## Chapter 7 Powers of Supreme Court

### 84 Orders for inquests or inquiries (cf *Coroners Act 1980*, s 47(1))

- (1) The Supreme Court may, on the application of the Minister or any other person, make any of the following orders if the Court is satisfied that it is necessary or desirable to do so in the interests of justice—
  - (a) an order that an inquest concerning a death or suspected death be held,
  - (b) an order that an inquiry concerning a fire or explosion should be held.

- (2) An order may be made under this section regardless of whether an inquest concerning the death or suspected death or an inquiry concerning the fire or explosion has been partly held and terminated or suspended.

**85 Orders for fresh inquests or inquiries** (cf *Coroners Act 1980*, s 47(2))

The Supreme Court may, on the application of the Minister or any other person, make an order that an inquest or inquiry that has been (or that has purportedly been) held be quashed and that a new inquest or inquiry be held if the Court is satisfied that it is necessary or desirable to do so in the interests of justice because of—

- (a) fraud, or
- (b) the rejection of evidence, or
- (c) an irregularity of proceedings, or
- (d) an insufficiency of inquiry, or
- (e) the discovery of new evidence or facts, or
- (f) any other reason.

**86 Notification of application** (cf *Coroners Act 1980*, s 47(2A) and (2B))

- (1) If an application for an order under this Chapter is made by a person other than the Minister, notice of the application must be served on the Minister in accordance with the rules of court of the Supreme Court.
- (2) (Repealed)

**86A Intervention by Minister in application**

- (1) The Minister may intervene in any application for an order under this Chapter to which the Minister is not a party.
- (2) If the Minister intervenes in an application for an order under this Chapter, the Minister—
  - (a) becomes a party to the application, and
  - (b) has all the rights, including rights of appeal, of a party to the application.
- (3) The Minister is entitled to be heard on the hearing of an application for an order under this Chapter even if the Minister does not intervene in the application or the Minister is not otherwise a party to the application.

**87 State Coroner to be served with orders** (cf *Coroners Act 1980*, s 47(3)-(6))

- (1) If the Supreme Court makes an order under this Chapter, the order must be served on

the State Coroner within 21 days after it is made in accordance with the rules of court of the Court or any directions given by that Court in making the order.

- (2) If the State Coroner is served with an order made by the Supreme Court under this Chapter that an inquest or inquiry (or a fresh inquest or inquiry) be held—
  - (a) the State Coroner is to hold the inquest or inquiry or direct another coroner to hold the inquest or inquiry, and
  - (b) any coroner who is to hold the inquest or inquiry is taken to have jurisdiction to hold it under this Act.
- (3) Despite any other provision of this Act, a coroner who has jurisdiction to hold an inquest or inquiry by virtue of subsection (2) may not dispense with the holding of the inquest or inquiry.

## **Chapter 8 Post mortem investigative procedures**

### **Part 8.1 Investigation directions, exhumations and related matters**

#### **88 Dignity of deceased person to be respected** (cf *Coroners Act 1980*, s 53AA)

- (1) When a post mortem examination or other examination or test is conducted on the remains of a deceased person under this Part, regard is to be had to the dignity of the deceased person.
- (2) If more than one procedure is available to a person conducting a post mortem examination to establish the cause and manner of a deceased person's death, the person conducting the examination is to endeavour to use the least invasive procedures that are appropriate in the circumstances.
- (3) Without limiting subsection (2), examples of procedures that are less invasive than a full post mortem examination of the remains of a deceased person include (but are not limited to) the following—
  - (a) an external examination of the remains,
  - (b) a radiological examination of the remains,
  - (c) blood and tissue sampling,
  - (d) a partial post mortem examination.

#### **88A Preliminary examination of remains of deceased person**

- (1) A pathologist may carry out (or arrange for another person to carry out) a preliminary examination in relation to the remains of a deceased person even if a post mortem investigation direction has not been given authorising the examination.

- (2) A preliminary examination in relation to the remains of a deceased person may only involve any one or more of the following—
- (a) a visual examination of the remains (including a dental examination),
  - (b) the collection and review of information, including personal and health information relating to the deceased person or the death of the person,
  - (c) the taking of samples of bodily fluid, including blood, urine, saliva, vitreous humour and mucus samples from the remains (which may require an incision to be made) and the testing of those samples,
  - (d) the imaging of the remains, including the use of computed tomography (CT scan), magnetic resonance imaging (MRI scan), x-rays, ultrasound and photography,
  - (e) the taking of samples from the surface of the remains (including swabs from wounds and inner cheek, hair samples and samples from under fingernails and from the skin) and the testing of those samples,
  - (f) the fingerprinting of the remains,
  - (g) any other procedure that is not a dissection, the removal of tissue or invasive in any other way.

**89 Coroner may give certain post mortem investigation directions** (cf *Coroners Act 1980*, ss 48, 49 and 53B(4))

- (1) A coroner may, by written order, give any one or more of the following directions (a **post mortem investigation direction**) to an appropriate medical investigator if the coroner considers that it is necessary or desirable to do so for the purpose of assisting in the investigation of the death of a deceased person under this Act—
- (a) a direction that the investigator conduct (or arrange for another person to conduct) a post mortem examination on the remains of the deceased person,
  - (b) a direction that the investigator conduct (or arrange for another person to conduct) a special examination or test specified in the direction of—
    - (i) the remains of the deceased person, or
    - (ii) the contents of the person's body or any part of the person's body, or
    - (iii) such other matters or things as the coroner considers ought to be examined for the purpose of coronial proceedings (including, without limitation, any tissue taken from the deceased person before the person's death),
  - (c) a direction that the investigator conduct (or arrange for another person to conduct) a review of the medical records of the deceased person, which may include consultations with medical practitioners involved in the treatment of the

deceased person,

- (d) if it appears to the coroner that the cause of death of the deceased person has not been satisfactorily explained by a report given pursuant to a previous post mortem investigation direction (whether given by the same investigator or another person)—a direction that the investigator conduct (or arrange for another person to conduct) another examination, test or review of the kind referred to in paragraph (a), (b) or (c) (whether or not it is of the same kind as that specified in the previous direction).
- (2) In addition to the kinds of directions referred to in subsection (1), the coroner may also give a post mortem investigation direction to an appropriate medical investigator that directs the investigator to conduct (or arrange for another person to conduct) an examination of human remains for the purpose of determining whether the remains are those of a stillborn child.
- (3) An **appropriate medical investigator** for the purposes of a post mortem investigation direction is any of the following persons—
  - (a) a Coronial Medical Officer,
  - (b) a pathologist,
  - (c) any other person that the coroner considers has appropriate qualifications to conduct (or has the capacity to arrange for another appropriately qualified person to conduct) the examination, test or review specified in the direction.
- (4) A post mortem investigation direction is subject to such limitations (if any) as may be specified in the order.
- (5) The following provisions apply in relation to a post mortem investigation direction that requires or permits an appropriate medical investigator to arrange for another person to conduct an examination, test or review specified in the direction—
  - (a) the investigator may (subject to any limitations specified in the direction) arrange for a person (the **selected person**) to conduct the examination, test or review if the investigator considers that the person has appropriate qualifications to do so,
  - (b) the selected person is authorised to conduct the examination, test or review on behalf of the investigator,
  - (c) the investigator may, for the purposes of subsection (7), rely on any report prepared by the selected person on the examination, test or review.
- (6) Without limiting subsection (1), a coroner may decide to dispense with a post mortem examination on a deceased person if the coroner is satisfied (after obtaining relevant advice from police officers and medical practitioners and consulting with a senior next

of kin of the deceased person and any other person that the coroner considers appropriate) that—

- (a) the deceased person died of natural causes (whether or not the precise cause of death is known), and
- (b) a senior next of kin of the deceased person has indicated to the coroner that it is not the wish of the deceased person's family that a post mortem examination be conducted on the deceased to determine the precise cause of the deceased's death.

- (7) A person to whom a post mortem investigation direction is given must, as soon as is reasonably practicable after the examination, test or review specified in the direction is completed, provide the coroner with a written report (a **post mortem investigation report**) on the results of the examination, test or review.
- (8) If a post mortem investigation report relates to a review of the medical records of a deceased person, the report is to contain a statement from the person who conducted the review about the person's opinion (if any) as to the probable cause of death based on that review.
- (9) An assistant coroner may, in accordance with the directions of a coroner given either generally or in a particular case, exercise any function of the coroner under this section.

**90 Retention and use of human tissue pursuant to direction** (cf *Coroners Act 1980*, s 48AA(1)–(3))

- (1) This section applies to a post mortem investigation direction for the conduct of an examination or test in relation to a deceased person's remains.
- (2) A post mortem investigation direction to which this section applies is taken to authorise the removal and use of tissue from the body of the deceased person for any of the following purposes—
  - (a) an investigation by a coroner of the person's death,
  - (b) an investigation of any offence,
  - (c) proceedings for any offence.
- (3) A post mortem investigation direction to which this section applies is also taken to authorise the following—
  - (a) the retention of small samples of any of the following tissue removed from the body of the deceased person under subsection (2)—
    - (i) bodily fluid,

- (ii) skin, hair and nails,
  - (iii) any other tissue retained in the form of a tissue slide or tissue block which enables microscopic examination of the tissue,
  - (iv) such tissue as may be directed in writing by a coroner in any particular case,
- (b) if the tissue is tissue that was taken from the deceased person before his or her death—the retention of the tissue,

**Note—**

Section 53(2)(b) enables a coroner to give directions to a person to provide any tissue taken from a deceased person before his or her death to a specified person for the purposes of investigating the deceased person's death. Section 89(1)(b)(iii) enables a coroner to give a post mortem investigation direction that any such tissue be examined or tested.

- (c) the use of any sample retained under paragraph (a) or (b) for any of the following purposes—
- (i) the exercise by a coroner of his or her functions under this Act,
  - (ii) an investigation of any offence,
  - (iii) any legal proceedings (whether or not in connection with an offence),
  - (iv) a purpose authorised by an authority given under the [Human Tissue Act 1983](#) that is sufficient authority to use the tissue for that purpose,
  - (v) in relation to a sample referred to in paragraph (a)(iii), any medical, therapeutic or scientific purpose,
  - (vi) such other purposes as may be prescribed by the regulations.
- (4) However, nothing in this section authorises the retention of whole organs of a deceased person after a coroner makes an order authorising the disposal of the deceased person's remains unless a coroner makes a further order under subsection (5) authorising the retention.
- (5) A coroner may make an order authorising the retention of specified whole organs of a deceased person only if the coroner is satisfied that the retention is necessary or desirable to assist in the investigation of the manner or cause of the person's death.
- (6) A coroner who makes an order under subsection (5) is to cause notice of the making of the order to be given to a senior next of kin of the deceased person as soon as is reasonably practicable after the order is made.
- (7) This section does not limit the rights of a coroner under section 56 and does not affect anything authorised by or under any other law.

**91 Warrant for exhumation of deceased's remains** (cf *Coroners Act 1980*, s 53)

- (1) A coroner may issue a warrant (an **exhumation warrant**) to a police officer for the exhumation of the remains of a deceased person who has been buried if the coroner considers it desirable to do so for the purpose of directing any of the following—
  - (a) a post mortem examination, or a further or more complete post mortem examination, of the remains (or part of the remains),
  - (b) a special examination or test, or a further or more complete special examination or test, of the remains (or part of the remains).
- (2) Subject to subsection (3), an exhumation warrant may be issued if—
  - (a) an inquest concerning the death of the deceased person has not been held, or
  - (b) an inquest concerning the death of the deceased person has been suspended because of a person being charged with (or there being evidence that may lead to a person being charged with) an indictable offence, or
  - (c) an inquest concerning the death of the deceased person was terminated following a finding that the person had not died, or
  - (d) an inquest concerning the death of the deceased person was not completed for any other reason, or
  - (e) the Supreme Court has quashed an inquest concerning the death of the deceased person and ordered that a fresh inquest be held.
- (3) If a previous inquest concerning the death of the deceased person has been suspended or terminated as referred to in subsection (2)(b) or (c), the coroner may not issue an exhumation warrant unless the inquest may be resumed or a fresh inquest may (or is required to be) held under this Act.
- (4) A police officer to whom an exhumation warrant has been issued is to cause the warrant to be executed and, following its execution, is to report the fact to the coroner.

**92 Coronial Medical Officers** (cf *Coroners Act 1980*, s 47A)

The Secretary of the Ministry of Health may appoint such medical practitioners as the Secretary is satisfied are suitably qualified to be Coronial Medical Officers for the purposes of this Act.

**93 Remuneration of medical practitioners and other persons** (cf *Coroners Act 1980*, s 52)

- (1) This section applies to a medical practitioner or any other person who, in accordance with a direction or request of a coroner, does any of the following—
  - (a) conducts any post mortem examination or any special examination or test,



- (b) attends and gives evidence at an inquest with respect to a post mortem examination or special examination or test conducted by the medical practitioner or other person.
- (2) Subject to subsection (3), a medical practitioner or other person to whom this section applies is entitled to be paid fees calculated at the rate prescribed by the regulations (the **prescribed fees**).
- (3) A medical practitioner or other person is not entitled to be paid the prescribed fees for carrying out a function referred to in subsection (1) if the medical practitioner or other person carried out the function in his or her capacity as an employee of a public health organisation, correctional centre or other public institution.
- (4) A medical practitioner who is a visiting practitioner (within the meaning of the [Health Services Act 1997](#)) of a public health organisation is not an employee of the organisation for the purposes of subsection (3).
- (5) In this section—  
**public health organisation** has the same meaning as in the [Health Services Act 1997](#).

**94 Protection for persons acting under coroner's direction** (cf [Coroners Act 1980](#), s 52A)

Anything done or omitted to be done by a medical practitioner or other person does not subject the person to any action, liability, claim or demand if the act or omission was done or omitted to be done in good faith for the purposes of—

- (a) conducting a post mortem examination or other examination or test pursuant to a direction under this Act, or
- (b) conducting a review of the medical records of a deceased person pursuant to a direction under this Act.

## **Part 8.2 Objections to exercise of post mortem investigative functions**

**95 Meaning of "relevant post mortem investigative function"**

For the purposes of this Part, a **relevant post mortem investigative function** means any of the following functions of a coroner or assistant coroner—

- (a) the function of issuing a post mortem investigation direction for the conduct of post mortem examinations on deceased persons,
- (b) the function of authorising the retention of whole organs of deceased persons under section 90.

**96 Objections by senior next of kin to exercise of relevant post mortem investigative**

**functions** (cf *Coroners Act 1980*, s 48A(1)–(5))

- (1) A senior next of kin of a deceased person may, by notice in writing, request a coroner or an assistant coroner not to exercise a relevant post mortem investigative function in relation to the deceased person.
- (2) If such a request is made, an assistant coroner must not make any further decision concerning the exercise of the relevant post mortem investigative function but must refer the matter to a coroner.
- (3) If the coroner decides that the post mortem examination or whole organ retention concerned is necessary or is desirable, the coroner must immediately cause written notice of that decision to be given to the senior next of kin who made the request.
- (4) The notice under subsection (3) must—
  - (a) if the objection relates to the conduct of a post mortem examination—indicate the earliest time at which the post mortem examination may be conducted (being a time that is not earlier than 48 hours after the senior next of kin has been given the notice), and
  - (b) state that the senior next of kin may apply to the Supreme Court for an order that a post mortem examination not be conducted or a whole organ not be retained (as the case requires).
- (5) The coroner may refuse a request made by the senior next of kin of a deceased person for a post mortem examination not to be conducted on the deceased person if the coroner is satisfied that the senior next of kin has been, or may be, charged with an offence in connection with the deceased person's death.
- (6) Nothing in subsection (5) prevents another senior next of kin of the deceased person from making a request that a post mortem examination not to be conducted on the deceased person.

**97 Applications to Supreme Court by senior next of kin** (cf *Coroners Act 1980*, s 48A(6)–(8))

- (1) A senior next of kin to whom a notice has been given under section 96(3) may apply to the Supreme Court within 48 hours after the notice was given for an order that a relevant post mortem investigative function not be exercised.
- (2) The making of the application to the Supreme Court operates to stay the operation of any order or direction of the coroner for the exercise of the relevant post mortem investigative function.
- (3) On any such application, the Supreme Court may make any of the following orders if the Court is satisfied that it is necessary or desirable in the circumstances to do so—
  - (a) in the case of an application concerning a post mortem examination being

conducted on a deceased person—

- (i) an order that the post mortem examination not be conducted, or
  - (ii) an order that a post mortem examination be conducted subject to such limitations as the Court may specify in the order, or
  - (iii) an order confirming the direction of the coroner,
- (b) in the case of an application concerning the retention of a whole organ of a deceased person—
- (i) an order that the whole organ not be retained, or
  - (ii) an order confirming the order of the coroner.

**98 Senior next of kin may authorise another person to exercise functions** (cf *Coroners Act 1980*, s 48A(9) and (10))

- (1) A senior next of kin of a deceased person may, by instrument in writing, authorise another person to exercise his or her functions as senior next of kin under this Part.
- (2) In such a case, the person so authorised—
  - (a) may make a request under this Part if a copy of his or her authority to exercise the functions of the senior next of kin is provided to the coroner or assistant coroner concerned with that request, and
  - (b) is taken, for the purposes of this Part (other than subsection (1)), to be the senior next of kin of the deceased person.
- (3) If a request by the senior next of kin of a deceased person for a post mortem examination not to be conducted on the deceased person has been refused under section 96(5), the senior next of kin may not authorise another person to make the request.

**99 Objection to exercise of relevant post mortem investigative functions by other persons** (cf *Coroners Act 1980*, s 48B)

- (1) Nothing in this Part prevents a person, other than the deceased person's senior next of kin, from objecting to the exercise of a relevant post mortem investigative function in relation to a deceased person.
- (2) If such an objection is made to an assistant coroner, the assistant coroner must not make any further decision concerning the exercise of the function but must refer the matter to a coroner.
- (3) The other provisions of this Part do not apply in relation to any such objection.

## Chapter 9 Disposal of human remains

### 100 Unauthorised disposal of human remains (cf *Coroners Act 1980*, s 53A(1)-(4))

- (1) A person must not bury or cremate human remains, or place human remains in a mausoleum or other permanent resting place, or cause the remains to be so buried, cremated or placed, unless—
- (a) the person has been given, or has in his or her possession, an appropriate disposal authorisation for the disposal of the remains, or
  - (b) the disposal of the remains is otherwise authorised by the regulations.

Maximum penalty—50 penalty units.

- (2) A person must not deliver or hand over human remains for anatomical or medical research, or remove human remains (other than cremated remains) from the State, or cause such remains to be so delivered, handed over or removed, unless—
- (a) an appropriate disposal authorisation for the disposal of the remains has been issued, or
  - (b) the disposal of the remains is otherwise authorised by the regulations.

Maximum penalty—50 penalty units.

- (3) An **appropriate disposal authorisation** is—

- (a) in relation to the disposal of the remains of a deceased person (other than a stillborn child)—any of the following documents—
  - (i) a notice given by a medical practitioner for the purpose of section 39 of the *Births, Deaths and Marriages Registration Act 1995* relating to the deceased person,
  - (ii) an order made by a coroner under section 101 authorising the disposal of the remains,
  - (iii) a certificate issued under section 51 of the *Births, Deaths and Marriages Registration Act 1995* that relates to the deceased person, or
- (b) in relation to the disposal of the remains of a stillborn child—any of the following documents—
  - (i) a certificate or notice given by a medical practitioner for the purpose of section 12(3) of the *Births, Deaths and Marriages Registration Act 1995* relating to the stillborn child,
  - (ii) an order made by a coroner under section 101 authorising the disposal of the

remains.

**101 Order authorising disposal of human remains** (cf *Coroners Act 1980*, s 53B(1)–(3) and (5))

- (1) A coroner may, by order in writing, authorise the disposal of human remains.
- (2) Without limiting subsection (1), the order may be made by a coroner who—
  - (a) is holding, has held or is intending to hold an inquest in respect of the death, or
  - (b) has dispensed with the holding of an inquest in respect of the death.
- (3) If the remains are that of a stillborn child and a medical practitioner has not certified the cause of death of the child, the order may be made by a coroner who has been informed by a police officer of the stillbirth and who is, after consideration of any information in the possession of the coroner, satisfied as to the occurrence of the stillbirth.

**Note—**

A post mortem investigation direction may be given by a coroner to an appropriate medical investigator under section 89(2) for the conduct of an examination of human remains for the purpose of determining whether the remains are those of a stillborn child.

- (4) If an order is made under subsection (1) authorising the disposal of human remains and it is established at an inquest that the remains were those of a stillborn child, the order is valid and is taken to have been made under subsection (3).

## **Chapter 9A Domestic Violence Death Review Team**

### **Part 9A.1 Preliminary**

#### **101A Object of Chapter**

The object of this Chapter is, through the constitution of the Domestic Violence Death Review Team, to provide for the investigation of the causes of domestic violence deaths in New South Wales, so as to—

- (a) reduce the incidence of domestic violence deaths, and
- (b) facilitate improvements in systems and services.

#### **101B Interpretation**

- (1) In this Chapter—

**Child Death Review Team** means the Child Death Review Team established under Part 5A of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

**Convenor** means the person appointed as Convenor of the Team under this Chapter.

**domestic relationship** has the same meaning it has in the *Crimes (Domestic and*

*Personal Violence) Act 2007.*

**domestic violence death** means the death of a person caused directly or indirectly by a person (the **perpetrator**) where, at the time of the death—

- (a) the deceased person was in a domestic relationship with the perpetrator and the death occurred in the context of domestic violence, or
- (b) the deceased person was in a domestic relationship with a person who was or had been in a domestic relationship with the perpetrator and the death occurred in the context of domestic violence, or
- (c) the perpetrator mistakenly believed that the deceased person was in a domestic relationship with a person who was or had been in a domestic relationship with the perpetrator and the death occurred in the context of domestic violence, or
- (d) the deceased person was a witness to or present at, or attempted to intervene in, domestic violence between the perpetrator and a person who was or had been in a domestic relationship with the perpetrator.

**Team** means the Domestic Violence Death Review Team.

- (2) For the purposes of this Chapter, a case of a domestic violence death is **closed** if—
  - (a) the coroner has dispensed with or completed an inquest concerning the death, and
  - (b) any criminal proceedings (including any appeals) concerning the death have been finally determined (as defined in section 79(4)).

**101C (Repealed)**

**Part 9A.2 Constitution and procedure of the Team**

**101D Establishment of Team**

The Domestic Violence Death Review Team is constituted by this Act.

**101E Members of Team**

- (1) The Team is to consist of the Convenor of the Team and other persons appointed by the Minister.
- (2) The Minister is to appoint as Convenor of the Team the State Coroner, a Deputy State Coroner or a former State Coroner or Deputy State Coroner.
- (3) The Team is to include representatives of each of the following—
  - (a) the Premier's Department,

- (b) the Department of Education,
  - (c) the Department of Communities and Justice,
  - (d) (Repealed)
  - (e) the NSW Health Service,
  - (f) the NSW Police Force,
  - (g) the Legal Aid Commission of New South Wales.
- (3A) The regulations may set out additional requirements in respect of the appointment of representatives of an organisation referred to in subsection (3) including, but not limited to, the following—
- (a) the number of representatives to be appointed,
  - (b) the parts or functions of the organisation that are to be represented,
  - (c) the qualifications, experience or expertise that any representative is required to have.
- (4) Each representative referred to in subsection (3) is to be nominated by the Minister responsible for the organisation concerned.
- (4A) (Repealed)
- (5) In addition, the Team is to include the following persons—
- (a) 1 Deputy Chief Magistrate, recommended by the Chief Magistrate,
  - (b) the Commissioner of Victims Rights,
  - (c) 2 non-government service provider representatives,
  - (d) 2 persons who, in the opinion of the Minister, have expertise appropriate to the functions of the Team.
- (6) The Minister is to appoint 1 person who is an Aboriginal person or a Torres Strait Islander and who is a non-government service provider representative as a member of the Team, and if no other member of the Team is an Aboriginal person or Torres Strait Islander, the Minister is to appoint an additional person who is an Aboriginal person or a Torres Strait Islander as a member of the Team.
- (7) The Team must consist of not less than 15 members (in addition to the Convenor) and not more than 20 members (in addition to the Convenor) at any one time.
- (8) A person who is a member of the Legislative Council or the Legislative Assembly is not eligible to be a member of the Team.

- (9) Schedule 3 contains provisions with respect to the members and procedure of the Team.

## **Part 9A.3 Functions of the Team**

### **Division 1 General functions**

#### **101F Functions of Team**

- (1) The Team has the following functions—
- (a) to review closed cases of domestic violence deaths occurring in New South Wales,
  - (b) to analyse data to identify patterns and trends relating to such deaths,
  - (c) to make recommendations as to legislation, policies, practices and services for implementation by government and non-government agencies and the community to prevent or reduce the likelihood of such deaths,
  - (d) to establish and maintain a database (in accordance with the regulations) about such deaths,
  - (e) to undertake, alone or with others, research that aims to help prevent or reduce the likelihood of such deaths.
- (2) The Team may review a domestic violence death even though the death is or may be the subject of action by the Child Death Review Team.
- (3) Any function of the Team with respect to domestic violence deaths may be exercised with respect to the death of a person who dies outside New South Wales while ordinarily resident in New South Wales.
- (4) The Convenor may enter into an agreement or other arrangement for the exchange of information between the Team and a person or body having functions in another State or Territory that are substantially similar to the functions of the Team, being information relevant to the exercise of the functions of the Team or that person or body.

#### **101G Matters to be considered in reviews**

- (1) In carrying out a review of closed cases of domestic violence deaths, the Team is to consider the following matters—
- (a) the events leading up to the death of the deceased persons,
  - (b) any interaction with, and the effectiveness of, any support or other services provided for, or available to, victims and perpetrators of domestic violence,
  - (c) the general availability of any such services,



(d) any failures in systems or services that may have contributed to, or failed to prevent, the domestic violence deaths.

(2) This section does not limit the matters that the Team may consider or examine in any review of closed cases of domestic violence deaths.

#### **101H Referral of cases for review to Team**

(1) The Team may select the domestic violence death cases that are to be the subject of a review by the Team.

(2) Any person may refer a closed case of a domestic violence death to the Team for inclusion in a review. The Team may, but is not required to, select any such case for review.

#### **101I Appointment of expert advisers**

(1) The Convenor may, otherwise than under a contract of employment, appoint persons with relevant qualifications and experience to advise the Team in the exercise of its functions.

(2) A person so appointed is entitled to be paid such remuneration and allowances (including travelling and subsistence allowances) as may be determined by the Minister in respect of the person.

### **Division 2 Reports by Team**

#### **101J Reports**

(1) The Team must prepare, within the period of 4 months after 30 June 2017 and then every 2 years after that, and furnish to the Presiding Officer of each House of Parliament, a report on domestic violence deaths reviewed in the previous 2 years.

(2) Without limiting subsection (1), the report may include the following—

(a) identification of systemic and procedural failures that may contribute to domestic violence deaths,

(b) recommendations as to legislation, policies, practices and services for implementation by government and non-government agencies and the community to prevent or reduce the likelihood of such deaths,

(c) details of the extent to which its previous recommendations have been accepted.

#### **101K Reporting to Parliament**

(1) A copy of a report furnished to the Presiding Officer of a House of Parliament under this Part must be laid before that House on the next sitting day of that House after it is received by the Presiding Officer.

- (2) The Team may include in a report a recommendation that the report be made public forthwith.
- (3) If a report includes a recommendation that a report be made public forthwith, a Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.
- (4) A report that is made public by a Presiding Officer of a House of Parliament before it is laid before that House attracts the same privileges and immunities as if it had been laid before that House.
- (5) A Presiding Officer need not inquire whether all or any of the conditions precedent have been satisfied as regards a report purporting to have been furnished in accordance with this Part.
- (6) In this Part, a reference to a Presiding Officer of a House of Parliament is a reference to the President of the Legislative Council or the Speaker of the Legislative Assembly. If there is a vacancy in the office of President, the reference to the President is taken to be a reference to the Clerk of the Legislative Council and, if there is a vacancy in the office of the Speaker, the reference to the Speaker is taken to be a reference to the Clerk of the Legislative Assembly.

## **Part 9A.4 Access to and confidentiality of information**

### **101L Duty of persons to assist Team**

- (1) It is the duty of each of the following persons to provide the Team with full and unrestricted access to records that are under the person's control, or whose production the person may, in an official capacity, reasonably require, being records to which the Team reasonably requires access for the purpose of exercising its functions—
  - (a) the head, chief executive officer, senior executive or senior member of any Public Service agency, statutory body or local authority,
  - (b) the Commissioner of Police,
  - (c) a coroner,
  - (d) a medical practitioner or health care professional who, or the head of a body which, delivers health services,
  - (e) a person who, or the head of a body which, delivers welfare services.
- (2) A person subject to that duty is not required to provide access to records if the person reasonably considers that doing so may prejudice an existing investigation or inquiry of a matter under an Act being undertaken by or for the person.

- (3) Access to which the Team is entitled under subsection (1) includes the right to inspect and, on request, to be provided with copies of, any record referred to in that subsection and to inspect any non-documentary evidence associated with any such record.
- (4) A provision of any Act or law that restricts or denies access to records does not prevent a person subject to a duty under subsection (1) from complying, or affect the person's ability to comply, with that subsection.
- (5) The regulations may make provision with respect to the duty to provide access to records under subsection (1), including prescribing limitations and conditions on that duty.
- (6) In this section, **record** means any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by other means.

#### **101M Confidentiality of information**

- (1) A Team-related person must not make a record of, or directly or indirectly disclose to any person, any information (including the contents of any document) that was acquired by the person by reason of being a Team-related person, unless—
  - (a) the record or disclosure is made in good faith for the purpose of exercising a function under this Chapter, or
  - (b) the record or disclosure is authorised to be made by the Convenor in connection with research that is undertaken for the purpose of helping to prevent or reduce the likelihood of domestic violence deaths in New South Wales, or
  - (c) the record or disclosure is made by the Convenor for the purpose of—
    - (i) providing information to the Commissioner of Police in connection with a possible criminal offence, or
    - (ii) reporting to the Secretary of the Department of Communities and Justice that a child or class of children may be at risk of harm, or
    - (iii) providing information to the State Coroner that may relate to a death that is within the jurisdiction of the State Coroner, whether or not the death has been the subject of an inquest under this Act, or
    - (iv) providing information to the Child Death Review Team in connection with that Team's functions, or
    - (v) providing information to the Ombudsman concerning the death of a person that is relevant to the exercise of any of the Ombudsman's functions, or

- (vi) giving effect to any agreement or other arrangement entered into under this Chapter or with coroners in other jurisdictions for the exchange of information, or
- (vii) providing information to a national database compiled for the purposes of, and contributed to by, coroners of States and Territories, or
- (d) the record or disclosure is made by a member of the Team to a Minister, or to the head, chief executive officer, senior executive or senior member of any Public Service agency or a statutory body, in connection with a draft report prepared for the purpose of this Chapter.

Maximum penalty—50 penalty units or imprisonment for 12 months, or both.

- (2) A Team-related person who makes a record or disclosure that is authorised under this section in connection with research that is undertaken for the purpose of helping to prevent or reduce the likelihood of domestic violence deaths in New South Wales must ensure that the information does not identify a person who is the subject of the information.
- (3) A Team-related person is not required—
  - (a) to produce to any court any document or other thing that has come into the person's possession, custody or control, or
  - (b) to reveal to any court any information that has come to the person's notice, by reason of being a Team-related person.
- (4) Any authority or person to whom any information referred to in subsection (1) is revealed, and any person or employee under the control of that authority or person—
  - (a) is subject to the same obligations and liabilities under subsections (1) and (2), and
  - (b) enjoys the same rights and privileges under subsection (3),in respect of that information as if he or she were a Team-related person who had acquired the information for the purpose of the exercise of the functions of the Team. Failure to comply with obligations and liabilities referred to in this subsection is taken to be a contravention of subsection (1).

- (5) In this section—

**court** includes any tribunal or person having power to require the production of documents or the answering of questions.

**produce** includes permit access to.

**Team-related person** means a member of the Team, a member of staff of the Team

and any person engaged to assist the Team in the exercise of its functions, including persons appointed under section 101I.

## **Part 9A.5 Miscellaneous**

### **101N Execution of documents**

A document required to be executed by the Team in the exercise of its functions is sufficiently executed if it is signed by the Convenor or another member authorised by the Convenor.

### **101O Protection from liability**

- (1) A matter or thing done or omitted by the Team, a member of the Team or a person acting under the direction of the Team does not, if the matter or thing was done or omitted in good faith for the purposes of executing this or any other Act, subject the member of the Team or person so acting personally to any action, claim or demand in respect of that matter or thing.
- (2) However, any such liability attaches instead to the Crown.

### **101P Review of Chapter**

- (1) The Minister is to review this Chapter to determine whether the policy objectives of this Chapter remain valid and whether the terms of this Chapter remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the commencement of this Chapter.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

## **Chapter 10 Miscellaneous**

### **102 Assistance to and from coroners in other jurisdictions** (cf [Coroners Act 1980](#), s 54A)

- (1) The State Coroner may request in writing that the person holding a corresponding office in another State or a Territory provide assistance in connection with the exercise by the State Coroner or another coroner of any power under this Act.
- (2) The State Coroner, at the written request of the person holding a corresponding office in another State or a Territory, may provide assistance to that person or a coroner of that State or Territory in connection with the exercise of a power under the law of that State or Territory.
- (3) For the purpose of providing assistance, the State Coroner or a coroner may exercise any of his or her powers under this Act irrespective of whether he or she would, apart

from this section, have authority to exercise that power.

**Note—**

The State Coroner has, in addition to all the powers of a coroner, a general function of overseeing and coordinating coronial services and ensuring that inquests and other investigations are held. The assistance provided may involve the exercise of administrative powers by the State Coroner or the exercise by him or her or another coroner of coronial powers.

- (4) For the purposes of this section, this Act applies as if the matter that is the subject of the request or direction were the subject of an investigation under this Act.

**102A Sharing of information with coronial database**

- (1) The Minister may, on behalf of the State, enter into an arrangement (a **coronial information sharing arrangement**) with a person or body that is responsible for the creation or maintenance of a database under which specified NSW coronial information can be provided and included in that database if the Minister is satisfied that—

- (a) the person or body has a legitimate interest in storing the information in the database, and
- (b) the person or body will make the information available only to persons with a legitimate interest in obtaining it, and
- (c) the conditions for making the information available to database users are reasonable.

- (2) NSW coronial information may be provided in accordance with a coronial information sharing arrangement despite any prohibition in, or the need to comply with any requirement of, any Act or law (in particular, the [Privacy and Personal Information Protection Act 1998](#) and the [Health Records and Information Privacy Act 2002](#)).

- (3) In this section—

**NSW coronial information** means information obtained in the exercise of functions under this Act.

**103 Contempt** (cf Coroners Act 1980, s 43)

- (1) Subject to subsections (2) and (3), the provisions of section 24 of the [Local Court Act 2007](#) are taken to apply to coronial proceedings as if any reference in those provisions to the Local Court or Magistrate were a reference to the coroner or assistant coroner conducting the coronial proceedings.
- (2) An assistant coroner conducting coronial proceedings cannot exercise a power conferred by subsection (1) to deal with a contempt or alleged contempt in the proceedings, but must instead refer the matter to a coroner for determination.

- (3) A coroner to whom a contempt matter in coronial proceedings is referred under subsection (2) may determine the matter as if the contempt or alleged contempt had been committed while the coroner was conducting the proceedings.

**103A Disrespectful behaviour in coronial proceedings**

- (1) **Offence** A person is guilty of an offence against this section if—
- (a) the person is appearing in or being represented in coronial proceedings or has been called to give evidence in coronial proceedings, and
  - (b) the person intentionally engages in behaviour during those proceedings, and
  - (c) that behaviour is disrespectful to the coronial proceedings or the coroner or assistant coroner presiding over the coronial proceedings (according to established practice and convention for coronial proceedings).

Maximum penalty—14 days imprisonment or 10 penalty units, or both.

- (2) In this section, **behaviour** means any act or failure to act.
- (3) This section does not apply to the following persons—
- (a) an Australian legal practitioner appearing in that capacity,
  - (b) a person assisting the coroner, but only when acting in that capacity.
- (4) **Proceedings for offences** Proceedings against a person for an offence against this section are to be dealt with summarily before—
- (a) if the person is a child—the Children’s Court, or
  - (b) if the person is not a child—the Local Court.
- (5) Proceedings for an offence against this section may be brought at any time within 12 months after the date of the alleged offence.
- (6) Proceedings for an offence against this section may be brought only by a person or a member of a class of persons authorised, in writing, by the Secretary of the Department of Communities and Justice for that purpose.
- (7) A coroner may refer any disrespectful behaviour in proceedings over which the coroner is presiding to the Attorney General, and Minister for the Prevention of Domestic Violence.
- (8) An assistant coroner cannot refer a matter to the Attorney General, and Minister for the Prevention of Domestic Violence under this section, but may instead refer the matter to a coroner.
- (9) Proceedings for an offence against this section may be commenced only with the

authorisation of the Attorney General, and Minister for the Prevention of Domestic Violence. Authorisation may be given by the Attorney General, and Minister for the Prevention of Domestic Violence whether or not the disrespectful behaviour is referred to the Attorney General, and Minister for the Prevention of Domestic Violence by a coroner under this section.

- (10) **Evidence** An official transcript or official audio or video recording of the coronial proceedings is admissible in evidence in proceedings for an offence against this section and is evidence of the matter included in the transcript or audio or video recording.
- (11) The coroner or assistant coroner presiding over the coronial proceedings in which the alleged disrespectful behaviour occurred cannot be required to give evidence in proceedings before any court for an offence against this section.
- (12) **Contempt and double jeopardy** This section does not affect any power with respect to contempt or the exercise of any such power.
- (13) A person cannot be prosecuted for an offence against this section and proceeded against for contempt in respect of essentially the same behaviour. However, nothing in this section prevents proceedings for contempt in respect of behaviour that constitutes an offence against this section.

**104 Regulations** (cf *Coroners Act 1980*, s 58)

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to any of the following matters—
  - (a) the conduct of and procedure for coronial proceedings,
  - (b) the functions of the State Coroner and of the Deputy State Coroners,
  - (c) forms to be used under this Act,
  - (d) the allowance to be paid to witnesses attending coronial proceedings,
  - (e) the constitution, functions, procedure and other matters relating to the Domestic Violence Death Review Team.
- (3) Without limiting subsection (1), the regulations may make provision for or with respect to the use of an electronic case management system whose use, in respect of coronial proceedings, is authorised by an order in force under clause 3 of Schedule 1 to the *Electronic Transactions Act 2000*, including provisions for or with respect to—



- (a) the kinds of coronial proceedings in respect of which that system may or must be used, and
  - (b) the kinds of documents that may or must be filed in connection with coronial proceedings by means of that system, and
  - (c) the kinds of documents that may or must be issued in connection with coronial proceedings by means of that system, and
  - (d) the practice and procedure to be followed in connection with documents that are filed or issued by means of that system, and
  - (e) the persons to whom, the circumstances in which and the conditions on which access may be given to information contained on that system in connection with coronial proceedings.
- (4) The regulations may create offences punishable by a penalty not exceeding 5 penalty units.

#### **105 Service or giving of documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on or given to any person may be served or given—
- (a) in the case of a natural person—
    - (i) by delivering it to the person personally, or
    - (ii) by sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
    - (iii) by sending it by facsimile transmission to the facsimile number of the person, or
  - (b) in the case of a body corporate—
    - (i) by leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
    - (ii) by sending it by facsimile transmission to the facsimile number of the body corporate.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

**106 Nature of proceedings for offences** (cf [Coroners Act 1980](#), s 54(2))

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

**107 Offences by corporations** (cf [Coroners Act 1980](#), s 45(5) and (6))

- (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

**108 (Repealed)**

**109 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**Schedule 1 Provisions relating to coronial officers**

**Part 1 State Coroner and Deputy State Coroners**

**1 Public Service employment provisions excluded**

The offices of State Coroner and Deputy State Coroner are statutory offices and the [Government Sector Employment Act 2013](#) (including Part 6) does not apply to those offices.

**2 Vacation of office as State Coroner or Deputy State Coroner** (cf [Coroners Act 1980](#), s 4B)

- (1) A person vacates the office of State Coroner or Deputy State Coroner if the person—
  - (a) dies, or
  - (b) ceases to be a Magistrate, or

(c) resigns the office by instrument in writing addressed to the Governor, or

(d) completes the person's term of office and is not re-appointed.

(2) A person does not cease to be a coroner or a Magistrate merely because of vacating the office of State Coroner or Deputy State Coroner.

**3 Remuneration** (cf *Coroners Act 1980*, s 4C)

The State Coroner and a Deputy State Coroner are entitled to be paid—

(a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of each of them.

**Part 2 Coroners and assistant coroners**

**4 Part-time arrangements** (cf *Coroners Act 1980*, s 5(3))

(1) A person's appointment as a coroner—

(a) if the person is a Magistrate—is taken to be on either a full-time or part-time basis, according to whether the person holds the office of Magistrate on a full-time or part-time basis, or

(b) if the person is not a Magistrate—is taken to be an appointment on a full-time basis unless the appointment is expressed, in the person's instrument of appointment, to be on a part-time basis.

(2) A coroner who is not a Magistrate, although not appointed on a part-time basis, may, by agreement in writing entered into with the State Coroner, exercise the functions of the office of coroner on a part-time basis.

**5 Vacation of office as an appointed coroner or assistant coroner** (cf *Coroners Act 1980*, ss 5A(3) and 6A(1)–(3))

(1) A person appointed to the office of coroner or assistant coroner vacates that office if the person—

(a) dies, or

(b) resigns the office by instrument in writing addressed to the Minister, or

(c) ceases to hold office as such by operation of clause 6, or

(d) is removed from office, or

(e) in the case of a person holding office for a term—completes the person's term of

office and is not re-appointed, or

(f) in the case of a person holding office as a coroner (but without limiting paragraphs (a)–(e))—

(i) ceases to be qualified for appointment as a coroner for the purposes of section 12, or

(ii) attains the age of 72 years where the person was appointed to the office before attaining that age, or

(g) in the case of a person holding office as an assistant coroner (but without limiting paragraphs (a)–(e))—

(i) is appointed as a coroner, or

(ii) ceases to be employed in the Department of Communities and Justice.

(2) A person who is a Magistrate does not cease to be a Magistrate merely because of vacating the office of coroner or assistant coroner.

**6 Oaths or affirmations to be taken or made by coroners and assistant coroners** (cf [Coroners Act 1980](#), s 7)

(1) A person appointed as a coroner who is not a Magistrate must not act as a coroner unless the person has—

(a) taken and subscribed the oath of allegiance and the judicial oath prescribed by the [Oaths Act 1900](#) or made and subscribed solemn affirmations in the form of those oaths, and

(b) transmitted them to the Minister.

(2) A person appointed as an assistant coroner must not act as an assistant coroner unless the person has—

(a) taken and subscribed the oath of allegiance prescribed by the [Oaths Act 1900](#) or made and subscribed a solemn affirmation in the form of that oath, and

(b) transmitted it to the Minister.

(3) Any such oath or affirmation may be taken or made before and may be administered and received by any Magistrate.

(4) A person appointed as a coroner who does not, within 3 months after appointment as a coroner, take the oaths or make the affirmations referred to in subclause (1) ceases to hold office as coroner when that period ends.

(5) A person appointed as an assistant coroner who does not, within 3 months after appointment as an assistant coroner, take the oath or make the affirmation referred to

in subclause (2) ceases to hold office as assistant coroner when that period ends.

## 7 Remuneration

- (1) A person appointed as a coroner or assistant coroner who is a public servant is not entitled, while a public servant, to be paid any remuneration for acting as a coroner or assistant coroner that is in addition to his or her remuneration as a public servant.
- (2) A person appointed as a coroner or assistant coroner who is not a public servant is entitled to be paid such remuneration, and such travelling and subsistence allowances, as the Minister may from time to time determine.
- (3) In this clause—

**public servant** means a person employed in the Public Service.

## Part 3 General provisions

### 8 Definitions

In this Part, **coronial officer** means any of the following—

- (a) the State Coroner,
- (b) a Deputy State Coroner,
- (c) a coroner appointed under this Act,
- (d) a Magistrate exercising coronial jurisdiction conferred on the Magistrate by section 16,
- (e) an assistant coroner,

and **coronial office** has a corresponding meaning.

### 9 Effect of appointment and service as coroner (cf *Coroners Act 1980*, s 4A(6) and (8))

- (1) Except as provided by section 7(6), the appointment of a Magistrate as a coronial officer does not affect the Magistrate's tenure of office, rank, title, status or precedence as a Magistrate.
- (2) The service of a Magistrate as a coronial officer is taken, for all purposes, to be service as a Magistrate.

### 10 Continuation of proceedings after vacation of office

- (1) A person who vacates office as a coronial officer otherwise than by death or having been removed from office may, despite vacating his or her office, continue to hear and determine and otherwise deal with any proceedings that have been heard, or partly heard, by the person before vacating his or her office.

- (2) While a person continues to deal with, under subclause (1), any proceedings that have been heard or partly heard by the person before vacating office, the person has all the entitlements and functions of a coronial officer that the person had immediately before vacating office and, for the purpose of those proceedings, is taken to continue to be a coronial officer holding the same coronial office as the person had immediately before vacating office.
- (3) Nothing in this clause operates to authorise a person who has vacated office as the State Coroner to continue to exercise the functions of the State Coroner generally.

## **Schedule 2 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts—
  - this Act
  - Coroners Amendment (Domestic Violence Death Review Team) Act 2010*
  - any other Act that amends this Act
- (2) If the regulations so provide, any such provision may—
  - (a) have effect despite any specified provision of this Act (including a provision of this Schedule), and
  - (b) take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **Division 1 Interpretation**

#### **2 Definitions**

In this Part—

**former Act** means the [Coroners Act 1980](#).

**repeal day** means the day on which the former Act is repealed by this Act.

### **Division 2 Provisions relating to existing coronial officers**

#### **3 Current State Coroner and Deputy State Coroners**

- (1) A person who immediately before the repeal day held office as the State Coroner under the former Act is taken, on and from that day, to have been appointed and to hold office as the State Coroner under this Act until such time as he or she vacates office under this Act.
- (2) A person who immediately before the repeal day held office as a Deputy State Coroner under the former Act is taken, on and from that day, to have been appointed and to hold office as a Deputy State Coroner under this Act until such time as he or she vacates office under this Act.
- (3) A person to whom subclause (1) or (2) applies is taken to have been appointed to the office of the State Coroner or a Deputy State Coroner (as the case may be) under this Act for the balance of the term of office for which the person was appointed under the former Act.

#### **4 Senior Deputy State Coroner**

- (1) The office of Senior Deputy State Coroner is abolished on the repeal day.
- (2) Any Deputy State Coroner who, immediately before the repeal day, held office as the Senior Deputy State Coroner under the former Act ceases on and from that day to hold that office.
- (3) A person who, by operation of this clause, ceases to hold office as the Senior Deputy State Coroner—
  - (a) is not entitled to any remuneration or compensation because of the loss of that office, and
  - (b) continues to hold the office of a Deputy State Coroner under this Act until such time as the person vacates that office.

## **5 Current appointed coroners and assistant coroners**

- (1) Any person who immediately before the repeal day held office as a coroner appointed under the former Act—
  - (a) in the case of a person who is either a Magistrate or an Australian lawyer—is taken, on and from the repeal day, to have been appointed and to hold office as a coroner under this Act until such time as he or she vacates office under this Act, or
  - (b) in the case of a person who is neither a Magistrate nor an Australian lawyer (but is a member of staff of the Attorney General’s Department)—ceases to hold office as a coroner on the repeal day and is taken, on and from that day, to have been appointed and to hold office as an assistant coroner under this Act until such time as he or she vacates office under this Act, or
  - (c) in the case of a person who is neither a Magistrate nor an Australian lawyer and is not a member of staff of the Attorney General’s Department—ceases to hold office as a coroner on the repeal day.
- (2) Any person who immediately before the repeal day held office as an assistant coroner under the former Act—
  - (a) in the case of a person who is a member of staff of the Attorney General’s Department—is taken, on and from the repeal day, to have been appointed and to hold office as an assistant coroner under this Act until such time as he or she vacates office under this Act, or
  - (b) in any other case—ceases to hold office as an assistant coroner on the repeal day.
- (3) If a person to whom subclause (1)(a) or (b) applies was appointed as a coroner under the former Act for a specified term, the person is taken to have been appointed to the office of coroner or assistant coroner (as the case may be) under this Act for the balance of that term.
- (4) Any person who ceases to hold office as a coroner or assistant coroner by operation of this clause is not entitled to any compensation because of the loss of that office.
- (5) The State Coroner may give such directions as the State Coroner considers appropriate (whether generally or specifically) with respect to—
  - (a) the transfer to other coroners or assistant coroners of matters that were being dealt with by persons who have ceased to be coroners or assistant coroners by operation of this clause, and
  - (b) the continuation and resolution of proceedings arising from or involving such matters.



## **6 Current Coronial Medical Officers**

Any person who immediately before the repeal day held office as a Coronial Medical Officer for the purposes of the former Act is taken, on and from that day, to have been appointed and to be a Coronial Medical Officer for the purposes of this Act until such time as he or she vacates office as such.

## **7 Existing commissions and other instruments that appoint persons to office on or after repeal day**

- (1) A commission or other instrument of appointment made under or for the purposes of the former Act (an **existing appointment instrument**) that, but for the repeal of the former Act, would have operated on or after the repeal day to appoint a person to the office of State Coroner, a Deputy State Coroner, a coroner or an assistant coroner is taken on and from that day to have been issued under or for the purposes of this Act.
- (2) An existing appointment instrument operates, on the day specified in the instrument, to appoint the person named in the instrument—
  - (a) in the case of the appointment of a person to the office of coroner where the person is not a Magistrate or Australian lawyer (but is a member of staff of the Attorney General's Department)—to the office of assistant coroner under this Act, and
  - (b) in any other case (but subject to subclause (3))—to the office under this Act that corresponds to the office specified in the instrument.
- (3) An existing appointment instrument has no force or effect for the purposes of this Act if it provides for—
  - (a) the appointment of a person to the office of coroner where that person is not a Magistrate or Australian lawyer and not a member of staff of the Attorney General's Department, or
  - (b) the appointment of a person to the office of assistant coroner where that person is not a member of staff of the Attorney General's Department.

## **8 Oaths of office required for certain coronial officers appointed before repeal day**

Clause 6 of Schedule 1 extends to a person appointed as a coroner or assistant coroner under the former Act who has not taken the oaths or made the affirmations required of them by section 7 of that Act as in force immediately before the repeal day.

## **Division 3 Reports and death certificates**

### **9 Reporting of deaths occurring before repeal day**

- (1) A person who, immediately before the repeal day, had not complied with an obligation

to report a death or suspected death imposed on the person by section 12A of the former Act is taken on and from the repeal day to be under an obligation to report the death or suspected death under section 35.

- (2) Nothing in subclause (1) prevents a person from being prosecuted or convicted for a contravention of section 12A(1) of the former Act that occurred before the repeal day.

#### **10 Death certificates in relation to deaths occurring before repeal day**

Section 12B of the former Act, as in force immediately before the repeal day, continues to apply in relation to the giving of certificates as to the cause of any death that occurred before the repeal day.

#### **11 Provision of information to Ombudsman**

The repeal of section 12A of the former Act does not affect any obligation that the State Coroner may have had under that section immediately before the repeal day to provide relevant material to the Ombudsman.

#### **12 Annual reports on deaths in custody**

The State Coroner is to include in his or her first annual report to the Minister under section 37 any details of deaths or suspected deaths occurring before the repeal day that the State Coroner would have had to include in a report under section 12A(4) of the former Act had the former Act not been repealed.

### **Division 4 Jurisdiction and current proceedings**

#### **13 Jurisdiction in relation to matters occurring before repeal day**

- (1) Any death or suspected death that occurred (or is suspected to have occurred), or any fire or explosion that occurred, before the repeal day is examinable under this Act if it would have been examinable under the former Act had the former Act not been repealed.
- (2) If any such death, suspected death, fire or explosion would have been examinable under the former Act only by the State Coroner or a Deputy State Coroner, it continues to be examinable only by the State Coroner or a Deputy State Coroner under this Act.
- (3) Nothing in this clause prevents a matter being examinable under a provision of this Act even if the matter would not have been examinable under the former Act.

#### **14 Pending or part completed inquests or inquiries**

- (1) Subject to this Part and the regulations, this Act applies in relation to any inquest or inquiry under the former Act that was pending or part completed immediately before the repeal day (a **current inquest or inquiry**) in the same way as this Act applies to an inquest or inquiry that is commenced on or after the repeal day.

- (2) Without limiting subclause (1), the provisions of this Act dealing with functions of or in relation to juries extend to any current inquest or inquiry that was being held before a jury (or was required to be held before a jury under section 18 of the former Act) immediately before the repeal day as if—
- (a) a direction for the use of the jury had been given by the State Coroner under section 48 of this Act, and
  - (b) in the case where the coroner for the current inquest or inquiry is not the State Coroner—section 48 of this Act authorised the coroner to preside over the current inquest or inquiry with the jury.
- (3) For the purpose of facilitating the continuation and conclusion of a current inquest or inquiry, the coroner holding the inquest or inquiry may give such directions concerning the conduct of the inquest or inquiry as seem appropriate to the coroner in the circumstances.

#### **15 Re-opening inquests and inquiries and use of depositions taken in former proceedings**

Subject to the regulations—

- (a) the provisions of this Act that enable or require a fresh inquest or fresh inquiry to be held (or that enable or require a suspended or terminated inquest or inquiry to be resumed or continued) extend to inquests or inquiries that were previously held, suspended or terminated under the former Act (or any previous Act or other law dealing with coronial inquests or inquiries), and
- (b) the provisions of this Act that enable a coroner who has dispensed with holding an inquest or inquiry concerning a matter to subsequently hold an inquest or inquiry concerning the matter extend to inquests or inquiries that the coroner dispensed with under the former Act (or any previous Act or other law dealing with coronial inquests or inquiries), and
- (c) the provisions of section 64 of this Act extend to depositions taken at any inquest or inquiry previously held under the former Act (or any previous Act or other law dealing with coronial inquests or inquiries).

#### **16 Orders of Supreme Court under section 47 of former Act**

- (1) This clause applies to an order made by the Supreme Court under section 47 of the former Act if—
- (a) the order is in force immediately before the repeal day, and
  - (b) the Minister administering the former Act has not, before the repeal day, endorsed the name of a coroner on a copy of the order for the purposes of that section.
- (2) Section 87 of this Act is taken to extend to an order to which this clause applies as if

the State Coroner had been served with the order under that section on the repeal day.

### **17 Existing warrants and subpoenas**

- (1) Any warrant or subpoena in force under a provision of the former Act immediately before the repeal day is taken, on and from that day, to be a warrant or subpoena in force under the provision of this Act that corresponds or substantially corresponds to the provision in the former Act, and may be executed and enforced accordingly.
- (2) Without limiting subclause (1), a warrant for the apprehension of a person in force under the former Act immediately before the repeal day is taken, on and from that day, to be a warrant for the arrest of the person issued under Part 6.3 of this Act, and may be executed and enforced accordingly.

## **Division 5 Miscellaneous**

### **18 Continuation of [Coroners Regulation 2005](#)**

The [Coroners Regulation 2005](#) is taken on and from the repeal day to be a regulation under this Act, and may be amended and repealed accordingly.

### **19 References to former Act and this Act**

- (1) In any other Act or in any instrument made under another Act (and except as provided by subclauses (2) and (3))—
  - (a) subject to paragraph (b), a reference to the former Act is to be read on and from the repeal day as a reference to this Act, and
  - (b) a reference to a provision of the former Act is to be read on and from the repeal day as a reference to the provision or provisions (if any) of this Act that correspond or substantially correspond to the provision of the former Act.
- (2) Subclause (1) does not apply to a reference to the former Act in any of the following provisions—
  - (a) Schedule 3 to the [Births, Deaths and Marriages Registration Act 1995](#),
  - (b) Schedule 1 to the [Local Courts Act 1982](#),
  - (c) Schedule 8 to the [Jury Act 1977](#),
  - (d) Schedule 1 to the [Subordinate Legislation \(Repeal\) Act 1985](#),
  - (e) such other provisions of other Acts, or instruments made under other Acts, as may be prescribed by the regulations.
- (3) A reference to this Act in any of the following provisions is to be read as including a

reference to the former Act—

- (a) section 39(2) and (4) of the *Births, Deaths and Marriages Registration Act 1995*,
- (b) section 45U(1)(c)(iii) of the *Commission for Children and Young People Act 1998*,
- (c) such other provisions of other Acts, or instruments made under other Acts, as may be prescribed by the regulations.

## 20 General savings provision

- (1) Subject to this Part and the regulations, anything done under or for the purposes of a provision of the former Act is, to the extent that the thing has effect immediately before the repeal day, taken on and from that day to have been done under or for the purposes of the provision of this Act (if any) that corresponds or substantially corresponds to the provision of the former Act.
- (2) Without limiting subclause (1) (and subject to this Part and the regulations), any dispensation, delegation, notice, notification, notation, objection, request, order or direction in force or having effect under a provision of the former Act immediately before the repeal day is taken on and from that day to be a dispensation, delegation, notice, notification, notation, objection, request, order or direction in force or having effect under the provision of this Act (if any) that corresponds or substantially corresponds to the provision of the former Act.

## Part 3 Provisions consequent on enactment of *Coroners Amendment Act 2012*

### 21 Definition

In this Part—

**amending Act** means the *Coroners Amendment Act 2012*.

### 22 Direction not to resume suspended inquest or inquiry

The amendments made to section 79 by the amending Act extend to inquests or inquiries that were suspended (but which have not yet been resumed) before the commencement of those amendments.

### 23 Interventions by Minister

Section 86A (as inserted by the amending Act) extends to applications for an order under Chapter 7 made (but not finally determined) before the commencement of the section.

### 24 Objections by senior next of kin

The amendments made to sections 96 and 98 by the amending Act extend to requests made (but not determined by a coroner) before the commencement of those

amendments.

## **Part 4 Provisions consequent on enactment of Justice Legislation Amendment Act 2019**

### **25 Definitions**

In this Part—

**amending Act** means the *Justice Legislation Amendment Act 2019*.

**repeal day** means the day on which section 6(1)(d) is repealed by the amending Act.

### **26 Application of amendment to section 6**

(1) A death of a kind referred to in section 6(1)(d) occurring before the repeal day continues to be a reportable death for the purposes of this Act despite the repeal of that paragraph by the amending Act.

(2) Accordingly—

(a) any obligations under this Act immediately before the repeal day to report those deaths continue on and after that day, and

(b) section 38(2) continues to apply in relation to those deaths.

### **27 Application of section 88A**

Section 88A (as inserted by the amending Act) applies only in relation to deceased persons who died on or after the day the section commenced.

## **Schedule 3 Members and procedure of Domestic Violence Death Review Team**

(Section 101E(9))

### **1 Definitions**

In this Schedule—

**Convenor** means the Convenor of the Team.

**member** means any member of the Team.

**Team** means the Domestic Violence Death Review Team.

### **2 Terms of office of members**

Subject to this Schedule, a member (other than the State Coroner or a Deputy State Coroner) holds office for such period (not exceeding 2 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-

appointment.

### **3 Remuneration**

A member, other than the State Coroner, a Deputy Chief Magistrate, a Deputy State Coroner or a representative of a Public Service agency, the NSW Police Force or a statutory body, is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

### **4 Deputies**

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member (including the Convenor), and the Minister may revoke any such appointment.
- (2) A person is not eligible to be appointed as the deputy of a member unless the person has the same qualification that was required for appointment as that member.
- (3) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (4) While acting in the place of a member, a person—
  - (a) has all the functions of the member and is taken to be a member, and
  - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (5) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

### **5 Vacancy in office of member**

- (1) The office of a member (other than the State Coroner or a Deputy State Coroner) becomes vacant if the member—
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is absent from 4 consecutive meetings of the Team of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
  - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt

or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

- (f) becomes a mentally incapacitated person, or
- (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (h) is the subject of a communication in writing to the Minister by the Minister that nominated the member, stating that he or she no longer represents that organisation.

(2) The Minister may at any time remove a member (other than the Convenor) from office.

(3) The Minister may at any time remove the Convenor from office.

## **6 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **7 Effect of certain other Acts**

(1) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to a member.

(2) If by or under any Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **8 General procedure**

(1) The procedure for the calling of meetings of the Team and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Convenor.

(2) The Team is to meet not less than 4 times in each calendar year.



## **9 Quorum**

The quorum for a meeting of the Team is a majority of the members of the Team for the time being.

## **10 Presiding member**

- (1) The Convenor is to preside at a meeting of the Team.
- (2) If both the Convenor and the deputy of the Convenor are absent from any meeting, a member elected by the members present at the meeting is to preside at that meeting.
- (3) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **11 Voting**

A decision supported by a majority of the votes cast at a meeting of the Team at which a quorum is present is the decision of the Team.

## **12 Transaction of business outside meetings or by telephone**

- (1) The Team may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Team for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Team.
- (2) The Team may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of—
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Convenor and each member have the same voting rights as they have at an ordinary meeting of the Team.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Team.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **Schedule 4 (Repealed)**