

WESTERN AUSTRALIA

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# CORONERS ACT 1996

(No. 2 of 1996)

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WESTERN AUSTRALIA

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## **CORONERS ACT 1996**

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**No. 2 of 1996**

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**AN ACT to establish the office of State Coroner, to provide for a State coronial system to inquire into Western Australian deaths, to repeal the *Coroners Act 1920*, to amend certain other Acts and for related purposes.**

*[Assented to 24 May 1996]*

The Parliament of Western Australia enacts as follows:

**PART 1 — PRELIMINARY**

**Short title**

1. This Act may be cited as the *Coroners Act 1996*.

**Commencement**

2. This Act comes into operation on such day as is fixed by proclamation.

**Interpretation**

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

“**agency**” has the same meaning as it has for the purposes of the *Public Sector Management Act 1994*;

“**coroner**” includes the State Coroner;

“**coroner’s clerk**” means a person referred to in section 12;

“**coroner’s investigator**” means a person referred to in section 14;

“**court**” means the Coroner’s Court of Western Australia established under section 5;

“**death**” includes suspected death;

“**Director of Public Prosecutions**” means the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1991*;

“**doctor**” means a medical practitioner registered under the *Medical Act 1894*;

“**guidelines**” means guidelines issued under section 58;

“**inquest**” means a formal hearing by the court;

“**investigation**” includes an inquest;

“**pathologist**” means a doctor with a prescribed qualification in pathology, or a doctor recognized by a prescribed professional body as a pathologist;

“**person held in care**” means —

- (a) a person under, or escaping from, the control, care or custody of —
  - (i) the department of the Public Service principally assisting the Minister administering the *Child Welfare Act 1947* in its administration;
  - (ii) the Chief Executive Officer of the department of the Public Service principally assisting the Minister administering the *Prisons Act 1981* in its administration; or
  - (iii) a member of the Police Force;
- (b) a person admitted to a centre under the *Alcohol and Drug Authority Act 1974*;
- (c) a person admitted, or received, into an approved hospital under the *Mental Health Act 1962*; or
- (d) a person detained under the *Young Offenders Act 1994*;

“**post mortem examination**” means an examination of the body of a person who has died, for the purpose of investigating the death;

**“prescribed”** means prescribed by regulation;

**“reportable death”** means a Western Australian death —

- (a) that appears to have been unexpected, unnatural or violent or to have resulted, directly or indirectly, from injury;
- (b) that occurs during an anaesthetic;
- (c) that occurs as a result of an anaesthetic and is not due to natural causes;
- (d) that occurs in prescribed circumstances;
- (e) of a person who immediately before death was a person held in care;
- (f) that appears to have been caused or contributed to while the person was held in care;
- (g) that appears to have been caused or contributed to by any action of a member of the Police Force;
- (h) of a person whose identity is unknown;
- (i) that occurs in Western Australia where a medical certificate under section 41 (1) (a) of the *Registration of Births, Deaths and Marriages Act 1961* has not been completed and signed; or
- (j) that occurred outside Western Australia where the cause of death is not certified to by a person who, under the law in force in that place, is a legally qualified medical practitioner;

**“senior next of kin”** has the meaning given under section 37 (5);

**“State Coroner”** means the person appointed under section 6;

**“tissue”** includes an organ or part of the human body or a substance extracted from, or from a part of, the human body;

**“Western Australian death”** means a death —

- (a) that occurred in Western Australia;
- (b) where the body is in Western Australia;
- (c) the cause of which occurred in Western Australia;
- (d) of a person who was ordinarily residing in Western Australia at the time of death; or
- (e) of a person who, at the time of death, was in an industry to and in relation to which the *Industrial Relations Act 1979* applies due to the operation of section 3 of that Act.

#### **Common law rules to cease to have effect**

**4.** A rule of the common law that, immediately before the commencement of this section, would have operated to confer a power or impose a duty on a coroner or a coroner’s court ceases to have effect on and after the commencement of this Act.

**PART 2 — CORONERS AND CORONER'S COURT**

***Division 1 — Coroner's Court***

**Establishment of court**

**5.** (1) A court to be known as the Coroner's Court of Western Australia is established.

(2) The court is to be constituted by a coroner and has exclusive jurisdiction to hold all inquests under this Act.

(3) The court constituted by a coroner may sit and exercise the jurisdiction of the court at the same time as any other court constituted by a coroner is sitting and exercising the jurisdiction of the court.

(4) The court is a court of record and is to have an official seal of which judicial notice must be taken.

***Division 2 — State Coroner and other coroners***

**State Coroner**

**6.** (1) A State Coroner is to be appointed by the Governor on the recommendation of the Attorney General.

(2) A person is not eligible for appointment as State Coroner unless that person is eligible to be appointed as a magistrate.

(3) The State Coroner is entitled to the same salary, allowances and reimbursements, leave of absence and superannuation rights, as the Chief Stipendiary Magistrate appointed under the *Stipendiary Magistrates Act 1957* is entitled to in relation to that office.

(4) Subject to subsection (3), the State Coroner is entitled to hold office on the same terms as a magistrate.

(5) If a person was a contributor within the meaning of the *Superannuation and Family Benefits Act 1938* or a member within the meaning of the *Government Employees Superannuation Act 1987* immediately before appointment as State Coroner then that person may continue to be a contributor, or member, under that Act while holding office as State Coroner.

(6) The State Coroner may not practise as a practitioner as defined by the *Legal Practitioners Act 1893* or be directly or indirectly concerned in such practice.

(7) In the exercise of that office the State Coroner has the same protection and immunity as a Judge has in respect of proceedings in the Supreme Court.

(8) The State Coroner may at any time, by written notice addressed to the Governor, resign from office.

### **Acting State Coroner**

7. (1) The Governor, on the recommendation of the Attorney General, may appoint a person who is eligible for appointment as State Coroner to act in the office of State Coroner.

(2) A person appointed under subsection (1) is to act as State Coroner when the State Coroner is absent from duty or the office of State Coroner is vacant and when acting has all the functions of the State Coroner.

(3) A person appointed under subsection (1) is entitled to such remuneration, allowances and leave of absence as is determined by the Governor on the recommendation of the Minister for Public Sector Management.

**s. 8****Functions of State Coroner**

**8.** The functions of the State Coroner are —

- (a) to ensure that a State coronial system is administered and operates efficiently;
- (b) to oversee and co-ordinate coronial services;
- (c) to ensure that all reportable deaths reported to a coroner are investigated;
- (d) to ensure that an inquest is held whenever there is a duty to do so under this Act or whenever it is desirable that an inquest be held;
- (e) to issue guidelines in accordance with this Act;
- (f) such other functions as are conferred or imposed on the State Coroner under this Act.

**Oath of office**

**9.** The State Coroner must, before proceeding to discharge the duties of that office, take before a Judge of the Supreme Court, an oath or affirmation of office in accordance with the appropriate prescribed form.

**Delegation**

**10.** The State Coroner may, in writing, delegate to a coroner's clerk any power or duty of a coroner other than a prescribed power or duty or this power of delegation.

**Coroners**

**11.** Every magistrate is contemporaneously a coroner.

***Division 3 — Coroner's clerks and investigators***

**Appointment of coroner's clerks**

**12.** (1) Coroner's clerks are to be appointed under Part 3 of the *Public Sector Management Act 1994*.

(2) A clerk of petty sessions appointed under section 25A of the *Justices Act 1902* may act as a coroner's clerk if an investigation is held at a court of petty sessions.

**Functions of coroner's clerks**

**13.** A coroner's clerk may —

- (a) on behalf of a coroner, receive information about a death which a coroner is investigating otherwise than at an inquest;
- (b) issue a summons requiring a witness to attend an inquest to give oral evidence or to produce documents; and
- (c) carry out any other function authorized under this Act.

**Appointment of coroner's investigators**

**14.** (1) The Attorney General, on the recommendation of the State Coroner, may appoint by notice published in the *Gazette* persons to be coroner's investigators.

(2) Every member of the Police Force of the State is contemporaneously a coroner's investigator.

**s. 15**

(3) A coroner's investigator must —

- (a) assist a coroner in carrying out his or her duties under this Act;
- (b) carry out all reasonable directions of a coroner.

(4) Subsection (3) does not require or authorize a member of the Police Force to carry out a direction of a coroner if that direction is inconsistent with a direction of the Commissioner of Police.

**Affidavits**

**15.** An affidavit relating to an investigation by a coroner may be sworn before a coroner's clerk or investigator.

***Division 4 — Counselling***

**Counselling**

**16.** (1) The State Coroner is to ensure that a counselling service is attached to the court.

(2) Any person coming into contact with the coronial system may seek the assistance of the counselling service of the court and, as far as practicable, that service is to be made available to them.

**PART 3 — REPORTING OF DEATHS**

**Obligation to report death**

17. (1) A person must report a death that is or may be a reportable death to a coroner or a member of the Police Force immediately after he or she becomes aware of the death, unless the person has reasonable grounds to believe that the death has already been reported.

Penalty: \$1 000.

(2) A person to whom a death has been reported under subsection (1) must inform the State Coroner of the reported death immediately.

(3) A doctor who is present at or soon after the death of a person must report the death immediately to a coroner if —

- (a) the death is or may be a reportable death; or
- (b) the doctor is unable to determine the cause of death.

Penalty: \$1 000.

(4) If more than one doctor is present at or soon after a death and one of them reports it to a coroner, the other doctors need not report the death but must give to the coroner investigating the death any information which may help the investigation.

(5) The death of a person who, immediately before death, was a person held in care must be reported immediately to a coroner by the person under whose care the deceased was held.

Penalty: \$1 000.

**Information to the coroner**

**18.** (1) A person who reports a death must give to the coroner investigating the death any information which may help the investigation.

Penalty: \$1 000.

(2) A member of the Police Force who has information relevant to an investigation must report it to the coroner investigating the death.

Penalty: \$1 000.

**PART 4 — INVESTIGATION OF DEATHS*****Division 1 — General powers and duties of coroners*****Jurisdiction of coroner to investigate a death**

**19.** (1) A coroner has jurisdiction to investigate a death if it appears to the coroner that the death is or may be a reportable death.

(2) Unless the Attorney General directs otherwise, a coroner need not investigate a death if an investigation is held in another State or Territory.

**Information to be provided to next of kin**

**20.** (1) A coroner who has jurisdiction to investigate a death must, as soon as practicable after assuming that jurisdiction, provide to any of the deceased person's next of kin under section 37 (5) the following information —

- (a) that the body is under the control of the coroner investigating the death;
- (b) that a post mortem examination is likely to be performed on the body under section 34;
- (c) that while the body is under the control of the coroner investigating the death, any of the deceased person's next of kin under section 37 (5) may touch the body, unless the coroner determines that it is undesirable or dangerous to do so;
- (d) that there is a right under section 35 to request that a doctor chosen by the senior next of kin be present at the post mortem examination;
- (e) that if tissue is to be removed from the body under section 34 (3) (b), then there is a right to view the written permission of the deceased;

**s. 21**

- (f) that while the body is under the control of the coroner investigating the death, it may be viewed by any of the deceased person's next of kin under section 37 (5);
- (g) that there is a right under section 37 to object to the post mortem examination, and a right under section 36 to request that a post mortem examination be performed;
- (h) that there is a possibility that tissue may be retained after the completion of the post mortem examination, where it is necessary to do so in order to investigate the death, in accordance with section 34;
- (i) a brief summary stating the manner in which objection under section 37 may be made; and
- (j) that a counselling service is available.

(2) The information provided under subsection (1) must be in writing, where practicable, and in a language and form likely to be understood by the person to whom it is provided.

**Directions by State Coroner**

**21.** (1) Subject to section 10 of the *Stipendiary Magistrates Act 1957*, the State Coroner may give to a coroner directions about investigations into deaths generally and the manner in which they are to be conducted.

(2) The State Coroner may give to a coroner directions about an investigation into a particular death, including a direction to cease to investigate that death.

**Jurisdiction of coroner to hold inquest into a death**

**22.** (1) A coroner who has jurisdiction to investigate a death must hold an inquest if the death appears to be a Western Australian death and —

- (a) the deceased was immediately before death a person held in care;
- (b) it appears that the death was caused, or contributed to, by any action of a member of the Police Force;
- (c) it appears that the death was caused, or contributed to, while the deceased was a person held in care;
- (d) the Attorney General so directs;
- (e) the State Coroner so directs; or
- (f) the death occurred in prescribed circumstances.

(2) A coroner who has jurisdiction to investigate a death may hold an inquest if the coroner believes it is desirable.

**Investigation of suspected deaths**

**23.** (1) Where a person is missing and the State Coroner has reasonable cause to suspect that the person has died and that the death was a reportable death, the State Coroner may direct that the suspected death of the person be investigated.

(2) Where the State Coroner has given such a direction, a coroner must hold an inquest into the circumstances of the suspected death of the person, and if the coroner finds that the death of the person has been established beyond all reasonable doubt, into how the death occurred and the cause of the death.

**Application for inquest into death**

**24.** (1) If a person asks a coroner to hold an inquest into a death which a coroner has jurisdiction to investigate, the coroner may —

- (a) hold an inquest or ask another coroner to do so; or
- (b) refuse the request and give reasons in writing for the refusal to the person and to the State Coroner within 7 days after receiving the request.

(2) Within 7 days after receiving notice of the refusal, the person may apply to the Supreme Court for an order that an inquest be held.

(3) The Supreme Court may make an order that an inquest be held if it is satisfied that it is necessary or desirable in the interests of justice.

**Findings and comments of coroner**

**25.** (1) A coroner investigating a death must find if possible —

- (a) the identity of the deceased;
- (b) how death occurred;
- (c) the cause of death; and
- (d) the particulars needed to register the death under the *Registration of Births, Deaths and Marriages Act 1961*.

(2) A coroner may comment on any matter connected with the death including public health or safety or the administration of justice.

(3) Where the death is of a person held in care, a coroner must comment on the quality of the supervision, treatment and care of the person while in that care.

(4) Where a post mortem examination is held as part of the investigation of a death and a finding has not been made within 21 days after that post mortem examination, then the coroner must provide written information on that examination to any of the next of kin under section 37 (5), unless it is not practicable to do so.

(5) A coroner must not frame a finding or comment in such a way as to appear to determine any question of civil liability or to suggest that any person is guilty of any offence.

### **Record of findings and comments**

**26.** (1) A coroner or the coroner's clerk must keep a record of each investigation into a death in the prescribed form.

(2) A record is not evidence in any court of any fact asserted to in it.

(3) Where the senior next of kin of the deceased asks a coroner for a copy of any part of the record of the investigation into the death of the deceased, including any evidence, the coroner is to provide that person with a copy of the information requested, unless the coroner believes it is not desirable or practicable to do so.

### **Reports**

**27.** (1) The State Coroner must report annually to the Attorney General on the deaths which have been investigated in each year, including a specific report on the death of each person held in care.

(2) The Attorney General is to cause a report submitted under subsection (1) to be laid before each House of Parliament within 12 sitting days of such House after its receipt by him or her.

(3) The State Coroner may make recommendations to the Attorney General on any matter connected with a death which a coroner investigated, including public health or safety, the death of a person held in care or the administration of justice.

(4) Where a recommendation made under subsection (3) regarding a death of a person held in care is relevant to the operation of an agency, the State Coroner must inform that agency in writing of the recommendation.

(5) A coroner must report to —

- (a) the Director of Public Prosecutions if the coroner believes that an indictable offence has been committed in connection with a death which the coroner investigated; or
- (b) to the Commissioner of Police if the coroner believes that a simple offence has been committed in connection with a death which the coroner investigated.

#### **Notification of reported deaths to the Registrar General**

**28.** (1) A coroner investigating a death must notify the Registrar General within the meaning of the *Registration of Births, Deaths and Marriages Act 1961* as soon as possible of the particulars found by the coroner which are needed to register the death.

(2) If a coroner believes —

- (a) that there will be a delay in concluding an investigation; and
- (b) that there is sufficient evidence to determine the identity of the deceased and the date, place and cause of death,

then the coroner may make that determination for the purpose of enabling registration of the death to be effected or completed, and must notify the Registrar General of the particulars of the determination.

### **Certificate of disposal of body**

**29.** (1) A coroner investigating a death must issue as soon as reasonably possible a certificate in the prescribed form permitting burial, cremation or other disposal of the body or any parts of the body.

(2) A certificate under subsection (1) must not be issued until an application made under section 24 is disposed of or the time for making such an application has expired.

(3) If the Supreme Court makes an order under section 24 a coroner, other than the State Coroner, must not issue a certificate under subsection (1).

### **Control of body**

**30.** (1) If a reportable death occurs and the body is in Western Australia, the body is under the control of the coroner investigating the death, subject to any directions the State Coroner may give, until the coroner has issued a certificate under section 29 (1).

(2) While a body is under the control of the coroner investigating the death, the coroner is to ensure that any of the deceased person's next of kin under section 37 (5) who wish to view the body are permitted to do so and any of those persons who wish to touch the body are permitted to do so, unless the coroner determines that it is undesirable or dangerous to do so.

**Aid to coroners in other places**

**31.** (1) The State Coroner may use any of the powers of a coroner under this Act to help a coroner of another State or a Territory to investigate a death.

(2) If the Attorney General so directs, the State Coroner must use any of the powers of a coroner under this Act to help a coroner of another State or a Territory to investigate a death.

***Division 2 — Powers of investigation*****Restriction of access to area**

**32.** (1) A coroner, or coroner's investigator, investigating a death may take reasonable steps to restrict access to the place where the death occurred, or the place where the event which caused or contributed to the death occurred.

(2) A coroner must, in writing, agree with any restriction imposed by a coroner's investigator under subsection (1) as soon as is practicable after the restriction is imposed.

(3) A restriction imposed by a coroner's investigator ceases to have effect 6 hours after it is imposed unless subsection (2) has been complied with by that time.

(4) A prescribed notice may be put up at the place to which access is to be restricted.

(5) A person must not without good cause enter or interfere with an area to which access is restricted under this section.

Penalty: \$2 000.

(6) A coroner is to ensure that access to an area is not restricted for any longer than necessary.

(7) Any person aggrieved by the operation of this section may apply to the State Coroner and the State Coroner may order the variation or removal of the restriction.

**Powers of entry, inspection and possession**

**33.** (1) A coroner who has jurisdiction to investigate a death may, with any help thought fit —

- (a) enter and inspect any place and anything in it;
- (b) take a copy of any document relevant to the investigation; and
- (c) take possession of anything which the coroner reasonably believes is relevant to the investigation and keep it until the investigation is finished.

(2) A coroner may only exercise those powers if the coroner reasonably believes it is necessary for the investigation.

(3) A coroner may, if the coroner reasonably believes it is necessary for the investigation, in writing authorize a coroner's investigator at or between specified times during a specified period (not exceeding one month after the authority is given) —

- (a) to enter a specified place;
- (b) to inspect a specified place and anything in it;
- (c) to take a copy of specified documents or classes of documents; and
- (d) to take possession of specified things or classes of things.

(4) A coroner's investigator must not exercise a power under an authority unless the investigator has given a copy of the

**s. 34**

authority to the owner or occupier of the place or the person in possession of the document or thing inspected, copied or taken.

(5) A coroner may release anything kept under subsection (1) (c) or (3) (d) and may require a person to whom the thing is released to give an undertaking to comply with any reasonable conditions of release.

(6) A person must comply with an undertaking concerning release.

Penalty for an offence against this subsection: \$2 000.

**Post mortem examinations**

**34.** (1) If a coroner reasonably believes that it is necessary for an investigation of a death, the coroner may direct a pathologist or a doctor to perform a post mortem examination on the body.

(2) The coroner may direct the pathologist or doctor performing the post mortem examination to cause to be removed from the body, for such period as the coroner directs, any tissue which it appears necessary to remove in order to investigate the death.

(3) The pathologist or doctor performing the post mortem examination may cause tissue to be removed from the body —

- (a) in accordance with a direction under subsection (2);
- (b) in accordance with the written permission of the deceased; or
- (c) subject to subsection (5) (b), in accordance with the written informed consent, in the prescribed form, of the senior next of kin of the deceased specifying the tissue which may be removed and the purpose (therapeutic, medical, teaching or scientific) for which the tissue may be removed.

(4) The coroner may direct the pathologist or doctor performing the post mortem examination not to cause tissue to be removed as authorized under subsection (3) (c) if the coroner is satisfied that the removal would be contrary to or inconsistent with wishes expressed in writing by the deceased.

(5) Where a post mortem examination is performed under this Act a person who causes tissue to be removed from the body —

- (a) otherwise than as authorized under subsection (3); or
- (b) contrary to a direction of a coroner under subsection (4),

commits an offence.

Penalty: \$10 000.

(6) Tissue removed under subsection (2) is to be dealt with in accordance with the coroner's directions and any relevant guidelines.

(7) Where tissue is to be removed as authorized under subsection (3) (b), the coroner is to ensure that before the tissue is removed, the senior next of kin of the deceased is informed in writing what tissue is to be removed and the purpose for which it is to be removed and is given a chance to view the written permission of the deceased.

### **Independent doctor at post mortem examination**

**35.** If the senior next of kin of the deceased asks a coroner to allow a doctor chosen by the senior next of kin to be present at a post mortem examination, the coroner is to allow that doctor to be present and is to ensure that the doctor is informed as to the time and place that the examination is to take place.

**s. 36****Application for post mortem examination**

**36.** (1) If a coroner has jurisdiction to investigate a death, any person may ask the coroner to direct that a post mortem examination be performed on the body.

(2) If the coroner refuses the person's request, the coroner must immediately give to the person and to the State Coroner, reasons for the refusal.

(3) Within 2 days after receiving notice of a refusal, the person may apply to the Supreme Court for an order that a post mortem examination be performed.

(4) If the Supreme Court is satisfied that it is desirable in all the circumstances, it may make an order —

- (a) directing the State Coroner to require a pathologist or a doctor to perform a post mortem examination; and
- (b) prohibiting burial, cremation or other disposal.

**Objections to post mortem examinations**

**37.** (1) If the senior next of kin of the deceased asks a coroner not to direct a post mortem examination but the coroner decides that a post mortem examination is necessary, the coroner must immediately give notice in writing to the senior next of kin and to the State Coroner.

(2) Unless the coroner believes that a post mortem examination needs to be performed immediately it must not be performed if a request has been made under subsection (1) until 2 days after the senior next of kin has been given notice of the decision.

(3) Within 2 days after receiving notice of the decision, the senior next of kin may apply to the Supreme Court for an order that no post mortem examination be performed.

(4) The Supreme Court may make an order that no post mortem examination be performed if it is satisfied that it is desirable in the circumstances.

(5) In this section, unless otherwise prescribed, “**senior next of kin**” in relation to the deceased person means —

- (a) if the person, immediately before death, was married — the spouse;
- (b) if the person, immediately before death, was not married, or if married, the spouse is not available — a son or daughter of or over the age of 18 years;
- (c) if a spouse, son or daughter is not available — a parent;
- (d) if a spouse, son, daughter or parent is not available — a brother or sister of or over the age of 18 years;
- (e) if a spouse, son, daughter, parent, brother or sister is not available — an executor named in the will of the deceased or a person who, immediately before the death, was a personal representative of the deceased; or
- (f) if no other person mentioned in this subsection is available — any person nominated by the deceased as a person to be contacted in an emergency.

(6) In subsection (5) “**spouse**” includes a person of the opposite sex to the deceased who, immediately before death, was living with the deceased on a permanent and *bona fide* domestic basis.

**Exhumation**

**38.** (1) The State Coroner may order that a body be exhumed if the State Coroner reasonably believes that it is necessary for an investigation of a death.

(2) The State Coroner must ensure that at least 2 days notice is given to the senior next of kin of the deceased person and to the Board, local government authority or owner of the cemetery, burial ground or place of burial where the body is buried before the body is exhumed unless the State Coroner is satisfied that it is not possible to do so, or if the State Coroner considers it is not appropriate to do so.

(3) If the senior next of kin asks the State Coroner not to exhume the body, the body must not be exhumed until 2 days after the request has been made.

(4) A request referred to in subsection (3) must be made within 2 days after the senior next of kin receives notice that the State Coroner has made an order that the body be exhumed.

(5) Where the State Coroner rejects a request by the senior next of kin that the body not be exhumed, he or she must ensure that written notice of that decision is given to the senior next of kin immediately.

(6) Where notice is given under subsection (5), the exhumation of the body must be postponed until 2 days after that notice is received by the senior next of kin.

(7) Within 2 days after receiving notice of the decision to reject a request that the body not be exhumed under subsection (5), the senior next of kin may apply to the Supreme Court for an order that the body not be exhumed.

(8) The Supreme Court may make an order that a body not be exhumed if it is satisfied that it is desirable in the circumstances.

## **PART 5 — INQUESTS INTO DEATHS**

### **Advertisement of an inquest**

**39.** Unless the State Coroner otherwise directs, a coroner must, at least 14 days before an inquest, publish in a daily newspaper circulating generally in the State, the date, time, place and subject of the inquest.

### **Two or more deaths**

**40.** The State Coroner may direct that more than one death be investigated at one inquest.

### **Rules of evidence not to apply**

**41.** A coroner holding an inquest is not bound by the rules of evidence and may be informed and conduct an inquest in any manner the coroner reasonably thinks fit.

### **Rights of interested persons**

**42.** A coroner may make available any statements that the coroner intends to consider to any person with a sufficient interest.

### **Attorney General may appear at inquest**

**43.** The Attorney General may appear or be represented at an inquest, examine or cross-examine witnesses and make submissions.

**Other persons may appear at inquest**

**44.** (1) An interested person may appear, or be represented by a barrister or solicitor, at an inquest and examine or cross-examine witnesses.

(2) Before a coroner makes any finding adverse to the interests of an interested person, that person must be given the opportunity to present submissions against the making of such a finding.

(3) There may be prescribed a list of persons who are interested persons for the purpose of this section, but such a list is not a conclusive list of interested persons.

(4) A coroner may disallow any question which in the coroner's opinion is not relevant or otherwise not a proper question.

**Exclusion from an inquest**

**45.** (1) A coroner may order the exclusion from an inquest of all or any persons if the coroner reasonably believes it is in the interests of any person, of the public or of justice.

(2) The coroner's clerk must put a copy of any order under this section in a conspicuous place on or in the building where the inquest is held.

(3) A coroner may order —

- (a) the removal from an inquest of a person who disobeys an exclusion order; and
- (b) the imprisonment of the person for not more than 24 hours if the coroner reasonably believes that the person will continue to disobey the order.

**Powers of coroners at inquests**

**46.** (1) If a coroner reasonably believes it is necessary for the purpose of an inquest, the coroner may —

- (a) summon a person to attend as a witness or to produce any document or other materials;
- (b) inspect, copy and keep for a reasonable period any thing produced at the inquest;
- (c) order a witness to answer questions;
- (d) order a witness to take an oath or affirmation to answer questions; and
- (e) give any other directions and do anything else the coroner believes necessary.

(2) A coroner may be assisted by counsel, or by any other person that the coroner believes will be of assistance.

(3) A person must obey a summons, order or direction under subsection (1).

Penalty: \$2 000.

(4) If a person to whom a summons is issued does not appear, the coroner may issue a warrant to apprehend the person.

(5) If a person is apprehended under a warrant issued under subsection (4), the coroner has in relation to that person the same powers as a justice has under section 77 of the *Justices Act 1902*.

**Statements made by witness**

**47.** (1) If a person called as a witness at an inquest declines to answer any question on the ground that his or her answer will criminate or tend to criminate him or her, the coroner may, if it appears to the coroner expedient for the ends of justice that the person be compelled to answer the question, tell the person that if the person answers the question and other questions that may be put to him or her, the coroner will grant the person a certificate under this section.

(2) After a person has been offered a certificate, the person is no longer entitled to refuse to answer questions on the ground that his or her answers will criminate or tend to criminate him or her, and if the person gives evidence to the satisfaction of the coroner, the coroner must give the person a certificate to the effect that the person was called as a witness in the inquest and that the person's evidence was required for the ends of justice and was given to the coroner's satisfaction.

(3) Where a person is given a certificate under this section in respect of any evidence given at an inquest, a statement by the person as part of that evidence in answer to a question is not admissible in evidence in criminal proceedings against the person other than on a prosecution for perjury committed in the proceedings.

**Record of evidence**

**48.** (1) The coroner must ensure that evidence given at an inquest is —

- (a) recorded in writing; or
- (b) recorded by sound recording apparatus.

(2) If the evidence is recorded in writing, the record must be read and signed by the witness and the coroner.

(3) If the evidence is recorded by sound recording apparatus and is transcribed, it must be certified as a correct transcript of that recording by —

- (a) the person who prepared the transcript; or
- (b) the person who checked the transcript, if the transcript has been checked by a person other than the person who transcribed it.

(4) A person must not —

- (a) certify that a transcript is a correct transcript unless authorized to do so under subsection (3); or
- (b) provide a certificate in respect of any transcript which that person knows to be false in any material particular.

Penalty: \$2 000.

(5) A record is not evidence in any court of any fact asserted to in it.

### **Restriction on publication of reports**

**49.** (1) A coroner must order that no report of an inquest or of any part of the proceedings or of any evidence given at an inquest be published if the coroner reasonably believes that it would —

- (a) be likely to prejudice the fair trial of a person; or
- (b) be contrary to the public interest.

(2) A person must not contravene an order made under subsection (1).

Penalty: \$5 000.

**Reference to a disciplinary body**

**50.** (1) A coroner may refer any evidence, information or matter which comes to the coroner's notice in carrying out the coroner's duties to a body having jurisdiction over a person carrying on a trade or profession if the evidence, information or matter —

- (a) touches on the conduct of that person in relation to that trade or profession; and
- (b) is, in the opinion of the coroner, of such a nature as might lead the body to inquire into or take any other step in respect of the conduct apparently disclosed by the evidence, information or matter so referred.

(2) In subsection (1) “**a body having jurisdiction over a person carrying on a trade or profession**” means a body empowered under a written law to —

- (a) register, license or otherwise approve a person as a prerequisite to the person lawfully carrying on that trade or profession; and
- (b) impose or recommend any punishment or liability in respect of wrongful, incompetent or otherwise unsatisfactory conduct of that person in relation to that trade or profession.

**Interruption of an inquest**

**51.** A person must not interrupt an inquest.

Penalty: \$5 000.

**New inquests and re-opening of inquests**

**52.** (1) Any person may apply to the Supreme Court for an order that some or all of the findings of an inquest are void.

(2) The Supreme Court may declare that some or all of the findings of the inquest are void and may order the State Coroner —

- (a) to hold a new inquest, or direct any coroner, other than the coroner who held the first inquest, to hold a new inquest; or
- (b) to re-open (or direct another coroner to re-open) the inquest and re-examine any finding.

(3) The Supreme Court may only make an order if it is satisfied that —

- (a) it is necessary or desirable because of fraud, consideration of evidence, failure to consider evidence, irregularity of proceedings or insufficiency of inquiry;
- (b) there is a mistake in the record of the findings;
- (c) it is desirable because of new facts or evidence; or
- (d) the findings are against the evidence or the weight of the evidence.

**Inquest not to proceed where criminal proceedings instituted**

**53.** (1) Where a coroner is informed that some person has been charged with an offence in which the question whether the accused person caused a death is in issue —

- (a) the coroner must not commence to hold an inquest into the death until the proceedings in respect of the offence have been concluded; or

- (b) if the coroner has already commenced an inquest into the death, the coroner must adjourn the inquest until the proceedings in respect of the offence have been concluded.

(2) The finding of the coroner on an inquest into a death must not be inconsistent with the result of any earlier proceedings where a person has been charged on indictment or dealt with summarily for an indictable offence in which the question whether the accused person caused the death is in issue.

(3) In this section, proceedings are to be taken to have been concluded when no appeal, or no further appeal, can be made, without an extension of time being granted.

**PART 6 — MISCELLANEOUS**

**Obstruction**

**54.** A person must not hinder or obstruct a coroner or a person acting under a coroner's authority in exercising powers under this Act.

Penalty: \$5 000.

**Protection from legal proceedings**

**55.** (1) Neither the coroner nor a person acting under an authority given under this Act is liable to any legal proceedings in relation to anything done under this Act, unless it was done in bad faith.

(2) Proceedings must not be brought against a coroner or a person acting under an authority given under this Act without the permission of the Director of Public Prosecutions.

(3) The Director of Public Prosecutions must not give permission unless there is substantial evidence that the coroner or person acting under an authority given under this Act has acted in bad faith.

**Coroner not to be called as witness**

**56.** (1) A coroner must not be called to give evidence in any court or legal proceedings about anything coming to the coroner's knowledge in carrying out the coroner's powers, duties or functions under this Act.

(2) Subsection (1) does not apply in relation to proceedings against a coroner for anything done in bad faith.

**Review of Act**

**57.** (1) The Attorney General is to carry out a review of the operations of this Act as soon as practicable after every fifth anniversary of the commencement of this Act and in the course of such review the Attorney General is to consider and have regard to —

- (a) the attainment of the objects of this Act;
- (b) the administration of this Act;
- (c) the effectiveness of the operation of the court; and
- (d) such other matters as appear to be relevant to the operation and effectiveness of this Act.

(2) The Attorney General is to prepare a report based on the review and, as soon as practicable after the report is prepared, must cause it to be laid before each House of Parliament.

**Guidelines**

**58.** (1) The State Coroner must issue guidelines with respect to the principles, practices and procedures of the State coronial system, but those guidelines must not be inconsistent with this Act or any other written law.

(2) Without limiting the generality of subsection (1), the State Coroner may issue guidelines relating to —

- (a) the administration of the State coronial system;
- (b) forms that are to be used and the circumstances when a particular form is appropriate;
- (c) the general desirability of enabling any next of kin of the deceased under section 37 (5) to view and to maintain as much contact with, and control over, the body as is practicable;

- (d) the establishment and functions of an advisory ethics committee;
- (e) the functions of coroners, coroner's clerks and coroner's investigators and the manner in which those functions are to be carried out;
- (f) tissue removed under section 34 (2).

### **Regulations**

**59.** (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) Without limiting the generality of subsection (1), regulations may —

- (a) specify the matters to be taken into account when considering whether or not a post mortem examination should be performed;
- (b) prescribe fees and forms for the purposes of this Act, other than fees and forms with respect to any application to the Supreme Court;
- (c) prescribe who is to be the “**senior next of kin**” in prescribed circumstances or in relation to a prescribed group or class of persons;
- (d) give effect to any recommendation contained in the National Report of the Royal Commission into Aboriginal Deaths in Custody which relates to the investigation of the death of a person held in care.

**PART 7 — REPEAL OF *CORONERS ACT 1920*,  
AMENDMENT OF CERTAIN OTHER ACTS AND SAVINGS  
PROVISION**

***Coroners Act 1920* repealed**

**60.** The *Coroners Act 1920* is repealed.

**Consequential amendments to other Acts**

**61.** The Acts referred to in Schedule 1 are amended as set out in that Schedule.

**Savings provision**

**62.** The *Coroners Act 1920* as in force immediately before the commencement of this Act continues to apply to deaths and fires reported to a coroner before the commencement of this Act.

## SCHEDULE 1

[Section 61]

## CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

Short Title of Act	Amendment
1. <i>Bail Act 1982</i>	In section 29 (e) delete “under section 4 (2) of the <i>Coroners Act 1920</i> ” and substitute the following —  “ within the meaning of the <i>Coroners Act 1996</i> ”.
2. <i>Bush Fires Act 1954</i>	Repeal section 49.
3. <i>Constitution Acts Amendment Act 1899</i>	In Part 1, Division 1 of Schedule V delete “or deputy coroner appointed under the <i>Coroners Act 1920</i> ” and substitute the following —  “ appointed under the <i>Coroners Act 1996</i> ”.
4. <i>Cremation Act 1929</i>	In section 2 delete the definition of “Coroner” and substitute the following definition —  “ <b>“coroner”</b> means a coroner within the meaning of the <i>Coroners Act 1996</i> or within the meaning of any other law of another State or Territory; ”.  In section 8A (f) delete “of holding an inquest on the body” and substitute the following —  “ to investigate the death ”.
5. <i>Director of Public Prosecutions Act 1991</i>	In section 15 (a) delete “ <i>Coroners Act 1920</i> ” and substitute the following —  “ <i>Coroners Act 1996</i> ”.

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6. *Evidence Act 1906* In section 119 (2) (b) delete “*Coroners Act 1920*” and substitute the following —  
 “ *Coroners Act 1996* ”.
7. *Fire Brigades Act 1942* Repeal section 63.
8. *Health Act 1911* In section 281 (5) delete “magistrate, and such magistrate shall inquire into the circumstances and determine whether an inquest be held” and substitute the following —  
 “ coroner ”.  
 In sections 336 (7), 336A (7) and 336B (9) delete “*Coroners Act 1920*” in each place where it occurs and substitute in each place the following —  
 “ *Coroners Act 1996* ”.
9. *Human Tissue and Transplant Act 1982* In section 3 (1) —  
 (a) in the definition of “coroner” delete “*Coroners Act 1920*” and substitute the following —  
 “ *Coroners Act 1996* ”;  
 and  
 (b) insert in the appropriate alphabetical position the following definition —  
 “ **“reportable death”**  
 means a  
 reportable  
 death within  
 the meaning of  
 the *Coroners  
 Act 1996*; ”.  
 In section 23 (1) delete “the circumstances applicable in relation to the death of a person are such that a coroner has jurisdiction to hold an inquest into the manner and cause of

the death of the person” and substitute the following —

“ the death of a person is or may be a reportable death ”.

In section 27 (1) delete “the circumstances applicable in relation to the death of a person are such that a coroner has jurisdiction to hold an inquest into the manner and cause of the death of the person” and substitute the following —

“ the death of a person is or may be a reportable death ”.

In section 27 (2) delete “where a coroner has or may have jurisdiction to hold an inquest into the manner and cause of the death of a person” and substitute the following —

“ where the death of a person is or may be a reportable death ”.

Repeal section 28 (3).

In section 33 (3) delete “Coroners Act 1920” and substitute the following —

“ *Coroners Act 1996* ”.

10. *Juries Act 1957*

In section 62 (3) delete “and on a coroner’s inquest”.

11. *Mines Safety and Inspection Act 1994*

In section 34 (1) delete “the coroner” and substitute the following —

“ a coroner ”.

12. *Prisons Act 1981*

Repeal section 34.

13. *Queen Elizabeth II Medical Centre Act 1966*

In section 3 (1a) delete “*Coroners Act 1920*” and substitute the following —

“ *Coroners Act 1996* ”.

## Sch. 1

14. *Registration of Births, Deaths and Marriages Act 1961* In section 3 (2) delete “inquiry in accordance with the *Coroners Act 1920*, it is certified pursuant to section 11 of that Act that the death of the person has been established beyond” and substitute the following —
- “ investigation in accordance with the *Coroners Act 1996*, a coroner finds that the death has been established beyond all ”.
- In section 42 delete “stated by the Coroner in the information given by him pursuant to section 44,” and substitute the following —
- “ notified by a coroner under section 28 of the *Coroners Act 1996* ”.
- In section 44 (3) (a) delete “the Coroner or his clerk” and substitute the following —
- “ a coroner ”.
- Repeal section 44 (4) and (5).
15. *Stipendiary Magistrates Act 1957* In section 9 —
- (a) insert “and” after paragraph (b);
- (b) delete “; and” after paragraph (c) and insert a full stop; and
- (c) delete paragraph (d).
16. *Timber Industry Regulation Act 1926* In section 16 delete “the coroner” and substitute the following —
- “ a coroner ”.
- Repeal section 22.
17. *Young Offenders Act 1994* In section 180 (2) delete “enquire into the manner and cause of” and substitute “investigate”.