

Coroners Bill 2009

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to repeal the *Coroners Act 1980*, and
- (b) to re-enact the provisions of the *Coroners Act 1980* (with the modifications noted below) so as to improve the efficiency and effectiveness of the exercise of coronial jurisdiction in the State, and
- (c) to enact provisions of a savings and transitional nature, and
- (d) to make consequential amendments to certain other legislation.

This Bill makes the following modifications to the provisions of *Coroners Act 1980*:

- (a) the existing legislation is rewritten in modern form, including an improved arrangement of provisions, the removal of spent provisions and the updating of outdated references and provisions,
- (b) all persons appointed as coroners under the proposed Act must be Australian lawyers and all persons appointed as assistant coroners must be members of staff of the Attorney General's Department,
- (c) coroners and assistant coroners may be appointed for a period,
- (d) the position of Senior Deputy State Coroner is abolished and the Minister is authorised instead to appoint an Acting State Coroner when the State Coroner is absent from duty,
- (e) the relationship between the State Coroner and the Chief Magistrate is clarified,
- (f) the restriction on the number of Deputy State Coroners (currently limited to 4) is removed,
- (g) the retirement age for appointed coroners is increased from 70 years of age to 72 years of age while the retirement age for assistant coroners is removed, (h) the proposed Act confirms that coronial jurisdiction arises regardless of whether or not a death, suspected death, fire or explosion is reported,
- (i) the current provisions relating to the reporting and investigation of deaths resulting from the use of anaesthetic are replaced with provisions relating to deaths that are not the reasonably expected outcomes of health procedures,
- (j) the current provisions that require a death to be reported (and that prohibit a death certificate being issued) if the deceased person was not attended by a medical practitioner in the 3 months preceding death are replaced with provisions that extend that period to 6 months,
- (k) the current provisions that require a death to be reported (and that prohibit a death certificate being issued) if the deceased person died within a year and a day of an accident to which the death is attributable are not re-enacted,
- (l) a medical practitioner is authorised to give a death certificate concerning a cause of death in respect of a deceased person aged 72 years old or older who died as a result of injuries from an accident even if the accident occurred in a hospital or nursing home,
- (m) a coroner is authorised to direct certain medical investigators to conduct (or arrange for the conduct of) a review of the medical records of a deceased person and report to the coroner on the cause of death based on such a review,

- (n) a person conducting a post mortem examination will be required to endeavour to use the least invasive procedures that are appropriate in the circumstances,
- (o) a coroner is expressly authorised to dispense with an inquest or post mortem examination in cases where the coroner is satisfied that the deceased person died of natural causes and that the deceased person's family does not wish it to be conducted,
- (p) a coroner who has previously dispensed with the holding of an inquest or inquiry concerning a matter is expressly authorised to hold an inquest or inquiry concerning the matter in light of the discovery of new evidence or facts,
- (q) the authorisation to retain tissue obtained from a post mortem examination will not extend to the retention of whole organs of a deceased person unless the coroner expressly makes an order to that effect,
- (r) a senior next of kin of a deceased person may object to an order by a coroner authorising the retention of a whole organ of the deceased person,
- (s) a coroner conducting coronial proceedings in connection with a death or suspected death is authorised to give directions regarding the retention and disposal of tissue obtained from a deceased person before his or her death,
- (t) coroners conducting coronial proceedings are given additional powers in connection with case management (including powers to conduct hearings and obtain evidence before a formal inquest or inquiry is held under the proposed Act),
- (u) the State Coroner is given additional powers to give directions concerning the allocation and transfer of cases and is given power to issue practice notes and approve forms for use in coronial proceedings,
- (v) the Director-General of the Attorney General's Department and the Commissioner of Police are authorised to enter into a memorandum of understanding in relation to the regulation of costs associated with the carrying out of investigations by police officers pursuant to certain directions given by coroners,
- (w) the power of a coroner to make non-publication orders is extended to prohibiting or restricting publication by means of the Internet,
- (x) the current provisions that impose functions on the Minister to ensure that an inquest or inquiry is held if the Supreme Court orders it are imposed instead on the State Coroner,
- (y) the current additional special procedural provisions dealing with inquests concerning deaths in mines are not re-enacted,
- (z) the use of a jury in coronial proceedings is limited to the situation where the State Coroner directs it at an inquest or inquiry that is to be presided over by the State Coroner.

Outline of provisions

Chapter 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for most of the provisions of the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 sets out the objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act. One of the expressions defined by the proposed section is ***senior next of kin*** of a deceased person. The expression is defined to mean:

- (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.

Clause 5 defines the term **relative**. The term is defined in substantially the same way as it is defined in section 4 (1) and (5) of the *Coroners Act 1980*.

Clause 6 defines the expression **reportable death**. The expression is defined largely by reference to the kinds of deaths referred to in sections 12B (1) (a)–(g) and 13 (1) (a)–(c), (e)–(h) and (2) of the *Coroners Act 1980*. Section 12B (1) of the *Coroners Act 1980* provides for the circumstances in which a medical practitioner cannot give a death certificate in respect of a death, while section 13 (1) of that Act specifies the kinds of deaths or suspected deaths that a coroner has general jurisdiction to investigate.

The term **reportable death** is defined to mean a death that 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) the person died in circumstances where the person had not been attended by a medical practitioner during the period of 6 months immediately before the person's death,
- (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 resident at the facility for the purpose of receiving care, treatment or assistance.

The term does not include the following kinds of deaths referred to in sections 12B (1) (a)–(g) and 13 (1) (a)–(c) and (e)–(h) of the *Coroners Act 1980*:

- (a) where the person died while under, or as a result of, or within 24 hours after the administration of, an anaesthetic administered in the course of a medical, surgical or dental operation or procedure or an operation or procedure of a like nature, other than a local anaesthetic administered solely for the purpose of facilitating a procedure for resuscitation from apparent or impending death,
- (b) where the person died within a year and a day after the date of any accident to which the cause of his or her death or suspected death is or may be attributable.

Although the term does not cover deaths resulting from the use of an anaesthetic, the term does include the death of a person in circumstances where the death was not the reasonably expected outcome of a health-related procedure carried out in relation to the person. The proposed section defines **health-related procedure** to mean a medical, surgical, dental or other health-related procedure (including the administration of an anaesthetic, sedative or other drug), but excludes any procedure of a kind prescribed by the regulations as being an excluded procedure. **Schedule 3.5 [1]** amends the *Coroners Regulation 2005* to prescribe certain procedures to be excluded procedures. It should also be noted that the term includes the death of a person in circumstances where the person had not been attended by a medical practitioner during the period of 6 months immediately before the person's death. Currently, sections 12B (1) (a)–(g) and 13 (1) of the *Coroners Act 1980* provide for a period of 3 months.

Chapter 2 Coronial officers

Clause 7 provides for the appointment of a State Coroner and one or more Deputy State Coroners.

The proposed section re-enacts (with some modifications) the provisions of section 4A (1)–(3), (5) and (7) of the *Coroners Act 1980* (as amended when Schedule 1.19 [1] to the *Miscellaneous Acts (Local Court) Amendment Act 2007* commences). The proposed section differs from the provisions of section 4A of the *Coroners Act 1980* (as amended) in the following respects:

- (a) the provisions of section 4A dealing with the appointment of a Senior Deputy State Coroner are not re-enacted,
- (b) the proposed section (unlike section 4A) enables more than 4 Deputy State Coroners to be appointed,
- (c) the proposed section (unlike section 4A) provides that the State Coroner has, while holding office as such, the same status as a Deputy Chief Magistrate,
- (d) the provisions in section 4A dealing with the effect of a person's appointment to the office of State Coroner or a Deputy State Coroner on the person's appointment as a Magistrate are set out in Part 1 of Schedule 1 to the proposed Act rather than in the proposed section.

The provisions of sections 4B (Vacation of office as State Coroner or Deputy State Coroner) and 4C (Remuneration) of the *Coroners Act 1980* are now located in Part 1 of Schedule 1 to the proposed Act.

Clause 8 enables the Minister to appoint a Deputy State Coroner to be the Acting State Coroner when the State Coroner is absent from duty. There is no comparable provision in the *Coroners Act 1980*. However, the proposed section is intended to replace the current requirement in section 4F (1A) and (2) of the *Coroners Act 1980* for the Senior Deputy State Coroner to act as the State Coroner when the State Coroner is absent from duty.

Clause 9 enables the State Coroner to delegate certain of the State Coroner's functions under the proposed Act to a Deputy State Coroner or to another coroner. The proposed section re-enacts (with some modifications) the provisions of section 4E of the *Coroners Act 1980*. The proposed section differs from section 4E of the *Coroners Act 1980* by making it clear that the State Coroner cannot delegate to a coroner who is not a Deputy State Coroner the exercise of jurisdiction conferred or imposed on the State Coroner by proposed Division 2 of Part 3.2.

Clause 10 sets out the functions of the State Coroner and the Deputy State Coroners. The proposed section substantially re-enacts the provisions of sections 4D and 4F (1) of the *Coroners Act 1980*. However, the proposed section differs from sections 4D and 4F (1) of the *Coroners Act 1980* in the following respects:

- (a) the proposed section provides that, in exercising functions under the proposed section, the State Coroner is subject to the control and direction of the Chief Magistrate,

(b) the proposed section does not re-enact the provisions of section 4F (1A) and (2) of the *Coroners Act 1980* dealing with the functions of Deputy State Coroners who are acting in the office of State Coroner because of the new provisions relating to the appointment of an Acting State Coroner under proposed section 8.

Clause 11 enables the State Coroner to issue general directions to coroners requiring them to give to the State Coroner information they receive concerning deaths, suspected deaths, fires or explosions. The proposed section substantially re-enacts the provisions of section 4G (1) of the *Coroners Act 1980*. However, the proposed section does not re-enact the provisions of section 4G (2) and (3) of the *Coroners Act 1980*.

Clause 12 provides for the appointment of coroners. The proposed section re-enacts (with some modifications) the provisions of sections 5 and 6 of the *Coroners Act 1980*. The proposed section differs from the provisions of sections 5 and 6 of the *Coroners Act 1980* in the following respects:

- (a) the proposed section provides that only Australian lawyers are qualified for appointment as coroners while section 5 provides for the appointment of fit and proper persons,
- (b) the proposed section enables coroners to be appointed for a period,
- (c) the proposed section does not re-enact the provisions of section 5 (2) which provide for the appointment of a coroner at a specified place or in and for the State,
- (d) the provisions of section 6 dealing with the appointment of coroners aged 70 years old or older have been re-enacted with the age being increased to 72 years old or older,
- (e) the provisions of section 5 dealing with the appointment of coroners on a full-time or part-time basis are set out (with some modifications) in Part 2 of Schedule 1 to the proposed Act rather than in the proposed section.

The provisions of sections 6A (Vacation of office of coroners and assistant coroners) and 7 (Oath of allegiance for coroners and assistant coroners) of the *Coroners Act 1980* are now located (with some modifications) in Part 2 of Schedule 1 to the proposed Act.

Clause 13 provides for the appointment of assistant coroners.

The proposed section re-enacts (with some modifications) the provisions of section 5A of the *Coroners Act 1980*. The proposed section differs from the provisions of sections 5A and 6 (1) of the *Coroners Act 1980* in the following respects:

- (a) the proposed section provides that only members of staff of the Attorney General's Department may be appointed as assistant coroners while section 5A provides for the appointment of fit and proper persons,
- (b) the proposed section enables assistant coroners to be appointed for a period,
- (c) the proposed section provides for the Minister rather than the Governor to appoint assistant coroners,
- (d) the proposed section does not re-enact the provisions of section 6 (1) which provide that a person who is aged 70 years old or older may not be appointed as an assistant coroner,
- (e) the provisions in section 5 (3) dealing with the cessation of an assistant coroner's appointment on his or her appointment as a coroner are set out (with some modifications) in Part 2 of Schedule 1 to the proposed Act rather than in the proposed section.

Clause 14 provides that an appointed coroner has all of the jurisdiction and functions that are imposed or conferred on a coroner by the proposed Act. The proposed section substantially re-enacts the provisions of section 8 of the *Coroners Act 1980*.

Clause 15 sets out the functions of assistant coroners. The proposed section substantially re-enacts the provisions of section 9 of the *Coroners Act 1980*.

Clause 16 provides that a Magistrate (other than a Magistrate who has been appointed as the State Coroner, a Deputy State Coroner or a coroner) has all the jurisdiction and functions of a coroner by virtue of holding office as a Magistrate.

Proposed section 16 (1) substantially re-enacts the provisions of section 10 of the *Coroners Act 1980*. However, the proposed section also contains a new provision that makes it clear that the Chief Magistrate may (but need not) comply with any direction given by the State Coroner under the proposed Act in relation to the exercise by the Chief Magistrate of any coronial function conferred or imposed on the Chief Magistrate by operation of proposed section 16 (1). In this regard, it should be noted that proposed section 7 provides that the State Coroner is to have the same status as a Deputy Chief Magistrate and proposed section 10 (2) provides that the State Coroner is subject to the control and direction of the Chief Magistrate.

Chapter 3 Coronial jurisdiction Part 3.1 General

Clause 17 summarises the jurisdiction that is conferred by the proposed Chapter.

The proposed Chapter confers the following 2 kinds of jurisdiction on coroners:

- (a) jurisdiction to hold inquests concerning certain kinds of deaths or suspected deaths of persons,
- (b) jurisdiction to hold inquiries concerning fires and explosions that result in property destruction or damage in the State.

The proposed section also makes it clear that the jurisdiction conferred by the proposed Act extends to deaths, suspected deaths, fires and explosions occurring before the commencement of the proposed section. There is no comparable provision in the *Coroners Act 1980*.

Clause 18 requires a death or suspected death of a person to have a relevant connection with the State before a coroner has jurisdiction under the proposed Chapter to hold an inquest. The proposed section substantially re-enacts the provisions of section 13C of the *Coroners Act 1980*.

Clause 19 provides that a coroner does not have jurisdiction under the proposed Chapter to hold an inquest concerning a death or suspected death of a person 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. The proposed section substantially re-enacts the provisions of section 13B of the *Coroners Act 1980*.

Clause 20 makes it clear that a coroner has jurisdiction under the proposed Chapter to hold an inquest concerning a death or suspected death of a person, or an inquiry concerning a fire or explosion, even if the death, suspected death, fire or explosion has not been reported in accordance with a requirement to do so under the proposed Act. There is no comparable provision in the *Coroners Act 1980*.

Part 3.2 Inquests concerning deaths

Division 1 General jurisdiction to hold inquests

Clause 21 confers general jurisdiction on a coroner to hold an inquest concerning a death or suspected death of a person if 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.

The proposed section re-enacts (with some modifications) the provisions of section 13 of the *Coroners Act 1980*. The modifications contained in the proposed section result from the terms of the definition of **reportable death** (see the note concerning proposed section 6 in this Outline).

Division 2 Exclusive jurisdiction of State Coroner and Deputy State Coroners

Clause 22 provides that the jurisdiction conferred by the proposed Division may only be exercised by the State Coroner or a Deputy State Coroner (a **senior coroner**). Proposed section 22 (2) also makes it clear that if there is jurisdiction to hold an inquest both under the proposed Division and proposed Division 1, then the inquest may be held only by a senior coroner. Proposed section 22 (2) substantially re-enacts and consolidates in one section the provisions of sections 13A (2) and 13AB (2) of the *Coroners Act 1980*.

Clause 23 confers jurisdiction on a senior coroner to hold inquests concerning deaths or suspected deaths occurring in police or other lawful custody or as a result of certain police operations. The proposed section substantially re-enacts the provisions of section 13A (1) of the *Coroners Act 1980*.

Clause 24 confers jurisdiction on a senior coroner to hold an inquest concerning deaths or suspected deaths of:

- (a) certain children who are in care or children who may have died in suspicious circumstances or as a result of abuse or neglect, and
- (b) certain disabled persons.

The proposed section substantially re-enacts the provisions of section 13AB (1), (3) and (4) of the *Coroners Act 1980*.

Division 3 When inquest may be dispensed with

Clause 25 provides that a coroner may dispense with holding an inquest concerning a death or suspected death unless an inquest is required to be held under a provision of proposed Part 3.2. Without limiting this general power to dispense with an inquest, the proposed section gives an example of a situation where an inquest may be dispensed with. The example involves the situation where a 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.

The proposed section also enables a coroner who has previously dispensed with the holding of an inquest to hold the inquest in light of the discovery of new evidence or facts. The proposed section re-enacts (with some modifications) the provisions of section 14 of the *Coroners Act 1980*. The proposed section differs from the current section by including the following provisions:

- (a) the provision enabling a coroner to dispense with holding an inquest by reference to the example explained above,
- (b) the provision enabling a coroner to hold an inquest where he or she has previously dispensed with the holding of the inquest.

Clause 26 requires a coroner who dispenses with an inquest concerning a death or suspected death to give written reasons for dispensing with the inquest if requested to do so by the State Coroner, the Minister or a person with a sufficient interest in the circumstances of the death or suspected death. The proposed section substantially re-enacts the provisions of section 14D of the *Coroners Act 1980*.

Division 4 When inquest is required to be held

Clause 27 provides that an inquest concerning a death or suspected death of a person is required if:

- (a) it appears to the coroner concerned that the person died or might have died as a result of homicide (not including suicide), or
- (b) the jurisdiction to hold the inquest arises because of a death in custody or as a result of police operations, or
- (c) 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, or
- (d) 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 where an inquest has been suspended or continued under proposed section 78).

The proposed section substantially re-enacts the provisions of section 14B of the *Coroners Act 1980*.

Clause 28 provides that an inquest is required if the State Coroner or the Minister directs it. The proposed section substantially re-enacts the provisions of section 14A of the *Coroners Act 1980*.

Clause 29 enables the State Coroner to direct that an inquest be held after a coroner has dispensed with the holding of an inquest. The proposed section substantially re-enacts the provisions of section 14E of the *Coroners Act 1980*.

Part 3.3 Inquiries concerning fires and explosions

Clause 30 provides that 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. The proposed section also provides that a coroner has jurisdiction to hold a general inquiry concerning a fire or explosion that has destroyed or damaged property within the State, but only if the State Coroner directs it. A coroner holding a general inquiry is not limited to investigating the cause and origin of the fire or explosion, but may examine all of the circumstances concerning the fire or explosion.

The proposed section re-enacts (with some modifications) the provisions of section 15 (1) of the *Coroners Act 1980*. The proposed section (unlike section 15) does not make the jurisdiction depend on a coroner being informed that a fire or explosion has destroyed or damaged any property within the State. The proposed section also makes it clear that the jurisdiction of a coroner to hold a general inquiry depends on the State Coroner giving a direction to that effect while an inquiry that is limited to investigating the cause and origin of a fire or explosion does not require a direction before jurisdiction can arise.

Clause 31 enables a coroner to dispense with holding an inquiry concerning a fire or explosion, unless an inquiry is required to be held under proposed Part 3.3, if the coroner is of the opinion that the cause and origin of the fire or explosion are sufficiently disclosed or that an inquiry into the cause and origin of the fire or explosion is unnecessary. The proposed section requires a coroner who dispenses with an inquiry to give written reasons to the State Coroner for doing so if the State Coroner requests reasons.

The proposed section also enables a coroner who has previously dispensed with the holding of an inquiry to hold the inquiry in light of the discovery of new evidence or facts.

The proposed section re-enacts (with some modifications) and consolidates in one section the provisions of sections 15 (2) and 15A (1) of the *Coroners Act 1980*. The proposed section differs from the current provisions by including a provision enabling a coroner to hold an inquiry where he or she has previously dispensed with the holding of the inquiry.

Clause 32 sets out the circumstances in which a coroner will be required to hold an inquiry concerning a fire or explosion.

The proposed section distinguishes between an inquiry that is limited to investigating the cause and origin of a fire or explosion and a general inquiry concerning a fire or explosion.

An inquiry concerning the cause and origin of a fire or explosion will be required to be held if it has been requested by an authorised public official or if the State Coroner directs it as provided by the proposed section.

A general inquiry concerning a fire or explosion will be required to be held if the State Coroner directs it as provided by the proposed section. The State Coroner will be required to give such a direction if an authorised public official requests that a general inquiry be held or if the State Coroner is of the opinion that a general inquiry should be held.

An **authorised public official** is defined to mean any of the following persons:

- (a) if the fire or explosion concerned occurred in a fire district within the meaning of the *Fire Brigades Act 1989*—the Commissioner of New South Wales Fire Brigades,
- (b) if the fire concerned is a bush fire within the meaning of the *Rural Fires Act 1997*—the Commissioner of the NSW Rural Fire Service,
- (c) the Minister.

The proposed section substantially re-enacts and consolidates in one section the provisions of sections 15 (3), 15A (2)–(5) and 15B of the *Coroners Act 1980*.

Part 3.4 Other provisions concerning exercise of coronial jurisdiction

Clause 33 provides for the referral of a matter from a coroner who is unavailable to deal with it to another coroner. The proposed section provides for matters to be referred to another coroner either at the behest of the unavailable coroner (but only with the consent of the coroner to whom the matter is to be referred) or by direction of the State Coroner.

The proposed section re-enacts (with some modifications) the provisions of section 16 of the *Coroners Act 1980*. The proposed section seeks to generalise and simplify the circumstances in which a referral is permissible.

Clause 34 provides for a coroner who is investigating the death of a person to notify the Registrar of Births, Deaths and Marriages of particulars concerning the death as they become available so as to enable the Registrar to effect or complete registration of the death. The proposed section substantially re-enacts the provisions of section 16A of the *Coroners Act 1980*.

Chapter 4 Reporting of deaths

Clause 35 requires a person to report a death or suspected death to a police officer, coroner or assistant coroner if the person has reasonable grounds to suspect that the death or suspected death:

- (a) is a reportable death or occurred in circumstances that would be examinable under proposed Division 2 of Part 3.2, and
- (b) has not been reported in accordance with the proposed section.

A failure by such a person to report the death or suspected death as soon as possible after becoming aware of the reasonable grounds will be an offence that is punishable by a maximum penalty of 10 penalty units (currently, \$1,100). The proposed section also provides for relevant officials such as the State Coroner to be informed about deaths or suspected deaths reported under the proposed section. The proposed section re-enacts (with some modifications) the provisions of section 12A (1)–(2A) and (3) of the *Coroners Act 1980*.

The proposed section does not re-enact section 12A (2B) concerning the reporting of deaths in certain Local Court districts because that subsection will in any event be repealed on the commencement of Schedule 1.19 [2] to the *Miscellaneous Acts (Local Court) Amendment Act 2007*. The scope of the obligation to report deaths or suspected deaths differs slightly from the obligation imposed by section 12A (1) of the *Coroners Act 1980* as a result of the terms of the definition of **reportable death** (see the note concerning proposed section 6 in this Outline).

Clause 36 requires the State Coroner to provide the Ombudsman with information about deaths or suspected deaths of:

- (a) certain children who are in care or in custody or children who may have died in suspicious circumstances or as a result of abuse or neglect, and
- (b) certain disabled persons.

The proposed section substantially re-enacts the provisions of section 12A (3A) and (3B) of the *Coroners Act 1980*.

Clause 37 requires the State Coroner to provide annual reports to the Minister on certain deaths in custody or as a result of police operations. The Minister will be required to cause a copy of any such report to be tabled in each House of Parliament. The proposed section substantially re-enacts the provisions of section 12A (4)–(8) of the *Coroners Act 1980*.

Clause 38 provides that a medical practitioner must not give a certificate as to the cause of a person's death 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 proposed Division 2 of Part 3.2.

The proposed section requires a medical practitioner who is prevented from giving a certificate in relation to the death of a person to report the death to a police officer as soon as practicable after the death.

The proposed section also expressly authorises a medical practitioner to give a certificate in the case of a death involving a person aged 72 years old or older who died after sustaining an injury from 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 (the **accidental death exception**). However, a medical practitioner will not be able to give a certificate in these circumstances if a relative of the deceased person objects.

The proposed section re-enacts (with some modifications) the provisions of sections 12A (2), (2A) and (3) and 12B of the *Coroners Act 1980*. The scope of the prohibition on the giving of certificates on the causes of deaths differs slightly from the obligation imposed by section 12B (1) of the *Coroners Act 1980* as a result of the terms of the definition of **reportable death** (see the note concerning proposed section 6 in this Outline). Also, the accidental death exception set out in the proposed section differs from that set out in section 12B of the *Coroners Act 1980* in the following respects:

- (a) the deceased person must be aged 72 years old or older instead of the current requirement that he or she be aged 65 years old or older,
- (b) a relative of the deceased person may object to the giving of such a certificate,
- (c) a certificate may be given under the proposed section regardless of where the accident occurred while section 12B provides that a certificate cannot be given if the accident occurred in a hospital or nursing home.

Chapter 5 Coronial investigation scenes

Clause 39 defines certain terms and expressions used in the proposed Chapter. The proposed section substantially re-enacts the provisions of section 23C of the *Coroners Act 1980*.

Clause 40 enables a coroner to issue an order authorising a police officer or other person to establish a coronial investigation scene at a specified place for the purposes of any inquest or inquiry. The proposed section re-enacts (with some modifications) the provisions of section 23D of the *Coroners Act 1980*.

The proposed section includes a new provision that makes it clear that persons assisting a person authorised by an order to establish a crime investigation scene may also enter a place that the authorised person is permitted to enter by reason of the order.

Clause 41 enables a police officer or other person to establish a coronial investigation scene at a place pursuant to an order of a coroner to establish the scene in any way that is reasonably appropriate in the circumstances. The proposed section substantially re-enacts the provisions of section 23E of the *Coroners Act 1980*.

Clause 42 authorises a police officer or other person to exercise the coronial investigation scene powers set out in proposed section 43 if a coronial investigation scene has been established and the police officer or other person suspects on reasonable grounds that it is necessary to exercise the powers to preserve evidence relevant to the investigation by the coroner. The proposed section substantially re-enacts the provisions of section 23F of the *Coroners Act 1980*.

Clause 43 sets out the powers that a police officer or other person may exercise at, or in relation to, a coronial investigation scene. The proposed section substantially re-enacts the provisions of section 23G of the *Coroners Act 1980*.

Clause 44 makes it an offence for a person to obstruct or hinder a person executing an order to establish a coronial investigation scene. The maximum penalty for the offence will be 100 penalty units (currently, \$11,000) or imprisonment for 2 years, or both. The proposed section substantially re-enacts the provisions of section 23H of the *Coroners Act 1980*.

Clause 45 provides that the proposed Chapter does not limit any other power that a police officer or other person may have to enter a place or do any other thing at the place. The proposed section substantially re-enacts the provisions of section 23I of the *Coroners Act 1980*.

Chapter 6 Coronial proceedings Part 6.1 General

Clause 46 defines the expression **coronial proceedings** for the purposes of the proposed Act. The expression is defined to mean any proceedings conducted by a coroner or assistant coroner for the purposes of the proposed Act concerning the investigation of a death, suspected death, fire or explosion. The proposed section also makes it clear that coronial proceedings include the following kinds of the proceedings:

- (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).

There is no comparable provision in the *Coroners Act 1980*.

Clause 47 provides that, subject to limited exceptions, hearings in coronial proceedings are to be held in public. The proposed section re-enacts (with some modifications) the provisions of section 30 of the *Coroners Act 1980*. The proposed section (unlike the current section) is not limited to the holding of inquests or inquiries, but extends to hearings conducted for coronial proceedings generally.

Clause 48 provides that generally coronial proceedings must be conducted without a jury. The proposed section does enable the State Coroner to direct that an inquest or inquiry be held before a jury, but only if the State Coroner is to act as the coroner for the inquest or inquiry.

The proposed section re-enacts (with some modifications) the provisions of sections 18 and 28 of the *Coroners Act 1980*. The proposed section differs from the provisions of section 18 of the *Coroners Act 1980* by limiting the circumstances in which juries may be used in coronial proceedings to situations where the State Coroner directs it for an inquest or inquiry. Section 18 of the *Coroners Act 1980* currently allows the State Coroner or the Minister to direct that an inquest or inquiry be held, and a relative of a deceased person to request that an inquest be held, before a jury (regardless of whether or not the State Coroner is to preside over the proceedings).

Clause 49 enables a coroner conducting coronial proceedings to give directions in connection with the proceedings to promote better case management. There is no comparable provision in the *Coroners Act 1980*.

Clause 50 enables the State Coroner to assume jurisdiction to conduct coronial proceedings and to give directions for a coroner to assume jurisdiction. The proposed section re-enacts (with some modifications) the provisions of section 17A of the *Coroners Act 1980*. The proposed section (unlike the current section) is not limited to the holding of inquests or inquiries, but extends to coronial proceedings generally. It also enables the State Coroner to give directions concerning the transfer of relevant information by the coroner who formerly conducted the proceedings to the new coroner assuming jurisdiction to deal with the proceedings.

Clause 51 enables the State Coroner to give directions concerning investigations to be carried out for the purposes of any coronial proceedings or proposed coronial proceedings. It also enables a coroner to give directions for such purposes to police officers.

The proposed section re-enacts (with some modifications) and consolidates in one section the provisions of sections 17B and 17C of the *Coroners Act 1980*. The proposed section differs from sections 17B and 17C of the *Coroners Act 1980* by including provisions that enable the Director-General of the Attorney General's Department and the Commissioner of Police to enter into a memorandum of understanding in relation to the regulation of costs associated with the carrying out of investigations by police officers pursuant to directions under the proposed section.

Clause 52 enables the State Coroner (with the approval of the Chief Magistrate) to issue practice notes for use in coronial proceedings. In this regard, it should be noted that proposed section 7 provides that the State Coroner is to have the same status as a Deputy Chief Magistrate. It also enables the State Coroner to approve forms for use in coronial proceedings.

There is no comparable provision in the *Coroners Act 1980*.

Clause 53 enables a coroner investigating a death, suspected death, fire or explosion to direct a person to produce a document or other thing for the purpose of assisting the coroner in his or her investigation. The power of a coroner to give directions under the proposed section includes the power to direct a person to provide tissue in the person's possession or under the person's control that was taken from a deceased person before his or her death.

The proposed section re-enacts (with some modifications) the provisions of section 14F of the *Coroners Act 1980*. The proposed section differs from section 14F of the *Coroners Act 1980* in the following respects:

- (a) the proposed section is not limited to giving directions for the purpose of enabling a coroner to decide whether or not to dispense with the holding of an inquest or inquiry,
- (b) the proposed section makes it clear that the production of a copy of a document is sufficient compliance with a direction to produce a document unless the direction expressly requires the production of the original document,
- (c) the proposed section expressly recognises that a direction may be given to obtain tissue taken from a deceased person before his or her death.

Part 6.2 Holding inquests and inquiries

Clause 54 provides for a coroner who is holding an inquest or inquiry to fix a time and place for the commencement of the inquest or inquiry and to give certain particulars about that time and place to next of kin and other persons. The proposed section substantially re-enacts the provisions of section 17 of the *Coroners Act 1980*.

Clause 55 provides that a coroner and a jury may (but need not) view the remains of a deceased person, or the scene of a fire or explosion, with which an inquest or inquiry is concerned if the coroner considers it advisable to do so. The proposed section re-enacts (with some modifications) the provisions of section 29 of the *Coroners Act 1980*. The current section has a different emphasis. It provides for there

not to be a viewing unless a coroner considers it appropriate to do so.

Clause 56 provides that a coroner has a right to take possession of, and to retain, the remains of a deceased person whenever the coroner has jurisdiction to hold or is holding an inquest concerning the person's death or suspected death. The proposed section substantially re-enacts the provisions of section 24 of the *Coroners Act 1980*.

Part 6.3 Representation and evidentiary matters

Clause 57 enables a coroner in coronial proceedings to grant leave to persons with a sufficient interest in the subject-matter of the proceedings to appear in person in the proceedings or be represented by an Australian legal practitioner. The proposed section also requires leave to be granted to a relative of a deceased person (or suspected deceased person) who is the subject of an inquest unless satisfied that there are exceptional circumstances justifying the refusal of leave.

The proposed section re-enacts (with some modifications) the provisions of section 32 (1) and (2) of the *Coroners Act 1980*. The proposed section (unlike the current section) is not limited to the holding of inquests or inquiries, but extends to coronial proceedings generally.

Clause 58 provides that a coroner in coronial proceedings is not bound to observe the rules of procedure and evidence applicable in a court. The proposed section re-enacts (with some modifications) the provisions of section 33 of the *Coroners Act 1980*. The proposed section (unlike the current section) is not limited to the holding of inquests or inquiries, but extends to coronial proceedings generally.

Clause 59 provides that a coroner in coronial proceedings may examine on oath or affirmation all persons who tender evidence relevant to the proceedings or who, in the coroner's opinion, are able to give relevant evidence. The proposed section re-enacts (with some modifications) the provisions of section 31 of the *Coroners Act 1980*. The proposed section (unlike the current section) is not limited to the holding of inquests or inquiries, but extends to coronial proceedings generally.

Clause 60 enables a person granted leave to appear or be represented in coronial proceedings to apply for a particular person to be examined in the proceedings. The proposed section re-enacts (with some modifications) the provisions of section 31A of the *Coroners Act 1980*. The proposed section (unlike the current section) is not limited to the holding of inquests or inquiries, but extends to coronial proceedings generally.

Clause 61 provides for a procedure for giving a witness in coronial proceedings who objects to giving particular evidence a certificate which grants that person certain immunity against use of the evidence if the person can claim the privilege against self-incrimination.

The proposed section re-enacts (with some modifications) the provisions of section 33AA of the *Coroners Act 1980*. The proposed section differs from section 33AA of the *Coroners Act 1980* in the following respects:

- (a) the proposed section does not limit the power to give certificates to coroners who are Magistrates (unlike the current section) because all coroners under the proposed Act will either be Magistrates or Australian lawyers,
- (b) the proposed section (unlike the current section) is not limited to the holding of inquests or inquiries, but extends to coronial proceedings generally.

Clause 62 makes it an offence for a person who appears in coronial proceedings to give evidence or produce a document or any other thing to refuse to take an oath or affirmation, be examined or produce the document or other thing. The maximum penalty for the offence will be 10 penalty units (currently, \$1,100).

The proposed section re-enacts (with some modifications) the provisions of section 42 (when read with section 54 (1) of the *Coroners Act 1980*). The proposed section (unlike the current section) is not limited to the holding of inquests or inquiries, but extends to coronial proceedings generally.

Clause 63 applies the provisions of Parts 3 (Medical examinations and law enforcement devices) and 4 (Depositions and written statements) of Chapter 6 of the *Criminal Procedure Act 1986* to evidence gathering in coronial proceedings. The proposed section re-enacts (with some modifications) the provisions of section 34A of the *Coroners Act 1980*. The proposed section (unlike the current section) is not limited to inquests or inquiries, but extends to coronial proceedings generally.

Clause 64 enables a coroner conducting a fresh inquest or inquiry to admit in evidence depositions taken at a previous inquest or inquiry. The proposed section substantially re-enacts the provisions of section 33A of the *Coroners Act 1980*.

Clause 65 provides for the following matters:

- (a) requiring a coroner to ensure evidence given by witnesses in coronial proceedings is recorded,

- (b) the granting of access to a coroner's file by a coroner or assistant coroner by means of providing copies of material in the file,
- (c) the criteria by reference to which a coroner or assistant coroner is to decide whether granting access to a person requesting it is appropriate,
- (d) prohibiting the granting of access to a coroner's file where the coroner who prepared the file directs it.

The proposed section re-enacts (with some modifications) the provisions of section 34 of the *Coroners Act 1980*. The proposed section differs from section 34 of the *Coroners Act 1980* in the following respects:

- (a) the proposed section places the obligation to ensure that evidence is recorded on the coroner in the coronial proceedings rather than by reference to rules of court made by the Local Court Rule Committee,
- (b) the proposed section confers the power to grant access on coroners and assistant coroners rather than on coroners or, in the absence of a coroner, registrars of the Local Courts,
- (c) the proposed section (unlike the current section) is not limited to the holding of inquests or inquiries, but extends to coronial proceedings generally.

Clause 66 enables a coroner in coronial proceedings to issue subpoenas for the appearance of a person to give evidence or to produce a document or thing (or both). The proposed section also enables a coroner to issue an arrest warrant for a witness if the coroner considers that it is probable that the witness will not comply with a subpoena. The proposed section re-enacts (with some modifications) the provisions of section 35 of the *Coroners Act 1980*.

The proposed section (unlike the current section) is not limited to inquests or inquiries, but extends to coronial proceedings generally.

Clause 67 provides for the form of a subpoena issued under the proposed Part. The proposed section substantially re-enacts the provisions of section 36 of the *Coroners Act 1980*.

Clause 68 provides for the manner of service of a subpoena issued under the proposed Part. The proposed section re-enacts (with some modifications) the provisions of section 37 of the *Coroners Act 1980*. The proposed section now provides for the service of a subpoena in a manner that is consistent with service of subpoenas under clause 44 of the *Local Courts (Criminal and Applications Procedure) Rule 2003*.

Clause 69 enables a coroner to issue an arrest warrant for a person who does not appear in coronial proceedings when required to do so by subpoena. The proposed section re-enacts (with some modifications) the provisions of section 39 of the *Coroners Act 1980*. The proposed section (unlike the current section) is not limited to inquests or inquiries, but extends to coronial proceedings generally.

Clause 70 provides for the form of an arrest warrant issued under the proposed Part. The proposed section substantially re-enacts the provisions of section 41 (1)–(3) of the *Coroners Act 1980*.

Clause 71 provides for how a person who is brought before a coroner or authorized justice (within the meaning of the *Bail Act 1978*) under an arrest warrant is to be dealt with (including the granting of bail).

The proposed section re-enacts (with some modifications) the provisions of sections 40 and 41 (3) of the *Coroners Act 1980*.

The proposed section differs from section 40 of the *Coroners Act 1980* in the following respects:

- (a) the proposed section expressly provides for a person arrested under an arrest warrant to be brought before a coroner or authorised justice as soon as practicable after the person's arrest,

(b) the proposed section enables an authorised justice as well as a coroner to deal with the arrested person,

(c) the proposed section makes it clear that the presumption in favour of bail contained in section 9 of the *Bail Act 1978* applies in relation to the arrested person.

Clause 72 provides that no objection may be taken or allowed to any subpoena or arrest warrant in respect of any alleged defect in the subpoena or arrest warrant in substance or in form. The proposed section substantially re-enacts the provisions of section 38 of the *Coroners Act 1980*.

Part 6.4 Disclosure of information

Clause 73 defines when a matter is **published** for the purposes of the proposed Part. The proposed section re-enacts (with some modifications) the provisions of section 46 of the *Coroners Act 1980*. The proposed section (unlike the current section) includes matter that is published by means of the Internet.

Clause 74 enables a coroner in coronial proceedings to order that the room or building in which the proceedings are being heard be cleared of witnesses or other persons or that evidence given in the proceedings not be published. A failure to comply with such an order will be an offence punishable by a maximum penalty of:

(a) in the case of an individual—10 penalty units (currently, \$1,100) or imprisonment for 6 months, or

(b) in any other case—50 penalty units (currently, \$5,500).

The proposed section re-enacts and consolidates in one section (with some modifications) the provisions of sections 44 (1), (5) and (6) and 45 (1) (and section 45 (4) in its application to these provisions) of the *Coroners Act 1980*. The proposed section (unlike the current section) is not limited to the holding of inquests or inquiries, but extends to coronial proceedings generally.

Clause 75 enables a coroner in coronial proceedings to make an order (a **non-publication order**) restricting or prohibiting the publication of certain information about a death or suspected death if it appears to the coroner that it was self-inflicted. The proposed section also prohibits the publication of a report of an inquest that finds that a death was self-inflicted unless the coroner permits the publication.

The proposed section makes it an offence for a person to contravene (or cause the contravention) a non-publication order or the provision of the proposed section prohibiting publication of a report on an inquest that finds a death was self-inflicted. The maximum penalty for the offence will be:

(a) in the case of an individual—10 penalty units (currently, \$1,100) or imprisonment for 6 months, or

(b) in any other case—50 penalty units (currently, \$5,500).

The proposed section re-enacts and consolidates in one section (with some modifications) the provisions of sections 44 (2)–(4) and 45 (1) and (2) (and section 45 (4) in its application to these provisions) of the *Coroners Act 1980*. The proposed section (unlike the current section) is not limited to the holding of inquests or inquiries, but extends to coronial proceedings generally.

Clause 76 makes it an offence for a person to publish, without the express permission of the coroner in coronial proceedings, any of the following matters:

(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.

The maximum penalty for the offence will be:

- (a) in the case of an individual—10 penalty units (currently, \$1,100) or imprisonment for 6 months, or
- (b) in any other case—50 penalty units (currently, \$5,500).

The proposed section re-enacts (with some modifications) the provisions of section 45 (3) (and section 45 (4) in its application to section 45 (3)) of the *Coroners Act 1980*. The proposed section (unlike the current section) is not limited to the holding of inquests or inquiries, but extends to coronial proceedings generally.

Clause 77 provides that nothing in proposed Part 6.4 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 the proposed Part, or
- (b) the publication of matter in such other circumstances as may be prescribed by the regulations.

There is no comparable provision in the *Coroners Act 1980*.

Part 6.5 Resolution of coronial proceedings

Clause 78 sets out the procedure to be followed if:

- (a) it appears to a coroner who is holding (or who proposes to hold) an inquest or inquiry concerning a matter that a person has been charged with an indictable offence in circumstances where the offence raises the issue of whether the person caused the matter to which the inquest or inquiry relates, or
- (b) the coroner holding an inquest or inquiry concerning a matter forms the opinion from evidence given in the proceedings that there is a reasonable prospect that a jury would convict a person of an indictable offence in circumstances where the offence would raise the issue of whether the person caused the matter to which the inquest or inquiry relates.

The proposed section provides that the functions of a coroner are limited to the following functions:

- (a) in the case of an inquest concerning a death—taking evidence to establish the death, the identity of the deceased and the date and place of death,
- (b) in the case of an inquiry concerning a fire or explosion—taking evidence to establish the date and place of the fire or explosion,
- (c) suspending the inquest or inquiry (and discharging the jury if there is one) after taking such evidence and forwarding relevant evidence and information to the Director of Public Prosecutions.

The proposed section substantially re-enacts the provisions of section 19 of the *Coroners Act 1980*.

Clause 79 enables a coroner to commence or resume an inquest or inquiry that 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 if the charge for the offence has been finally determined or the coroner has been notified that no proceedings for the offence will be taken.

The proposed section substantially re-enacts the provisions of section 20 of the *Coroners Act 1980*.

Clause 80 requires a coroner who is holding an inquest concerning a death or suspected death of a person to terminate the inquest if it appears to the coroner that the person has not died or if the jury for an inquest brings in a preliminary verdict to that effect following the coroner's request for a preliminary verdict. The proposed section also requires the coroner to make a finding to that effect (if there is no jury) and record it in writing.

The proposed section substantially re-enacts the provisions of section 21 of the *Coroners Act 1980*.

Clause 81 requires the coroner holding an inquest or inquiry to record in writing the coroner's findings or the jury's verdict (if there is a jury) at the conclusion or suspension of the inquest or inquiry.

The proposed section substantially re-enacts the provisions of section 22 of the *Coroners Act 1980*.

Clause 82 enables a coroner who holds an inquest or inquiry (and, if there is a jury, the jury) to make recommendations in relation to any matter connected with the death, suspected death, fire or explosion with which the inquest or inquiry is concerned.

The proposed section re-enacts (with some modifications) the provisions of section 22A of the *Coroners Act 1980*. The proposed section (unlike the current section) will require the coroner to forward any such recommendations to:

- (a) the State Coroner (unless the coroner is the State Coroner), and
- (b) any persons or bodies to which recommendations are directed, and
- (c) the Minister, and
- (d) any other Minister (if any) that administers legislation, or who is responsible for the persons or bodies, to which recommendations relate.

Clause 83 provides for the circumstances in which a fresh inquest or inquiry concerning a matter that was previously the subject of another inquest or inquiry may be held. The proposed section also requires a fresh inquest or inquiry to be held if an application for it is made and the State Coroner is of the opinion that it is necessary or desirable to do so based on new evidence or facts.

The proposed section substantially re-enacts and consolidates in one section the provisions of sections 23 and 23A of the *Coroners Act 1980*.

Chapter 7 Powers of Supreme Court

Clause 84 enables the Supreme Court, on the application of the Minister or any other person, to order that an inquest or inquiry be held if it is satisfied that it is necessary or desirable to do so in the interests of justice. The proposed section substantially

re-enacts the provisions of section 47 (1) of the *Coroners Act 1980*.

Clause 85 enables the Supreme Court, on the application of the Minister or any other person, to quash an inquest or inquiry that has been held (or purportedly held) and order that a fresh inquest or inquiry be held. The proposed section substantially re-enacts the provisions of section 47 (2) of the *Coroners Act 1980*.

Clause 86 requires the Minister to be served with an application for an order made under the proposed Chapter if the application is made by a person other than the Minister. The proposed section also provides that the Minister is entitled to be heard in any application for an order under the proposed Chapter.

Clause 87 requires the State Coroner to be served with any order made by the Supreme Court under the proposed Chapter. If the order served on the State Coroner requires that an inquest or inquiry is to be held, the State Coroner is required to arrange for it to be held.

The proposed section re-enacts (with some modifications) the provisions of section 47 (3)–(6) of the *Coroners Act 1980*. The proposed section (unlike the current provisions) places the obligation to ensure that an inquest or inquiry is held pursuant to an order of the Supreme Court on the State Coroner rather than the Minister.

Chapter 8 Post mortem investigative procedures

Part 8.1 Investigation directions, exhumations and related matters

Clause 88 provides that regard is to be had to the dignity of a deceased person when a post mortem examination or other examination or test is conducted on the remains of the deceased person. The proposed section also provides that 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.

The proposed section substantially re-enacts the provisions of section 53AA of the *Coroners Act 1980* in relation to the provisions concerning the dignity of the deceased person. The provisions dealing with the use of the least invasive procedures for a post mortem examination are new provisions for which there are no comparable provisions in the *Coroners Act 1980*.

Clause 89 enables a coroner (or an assistant coroner at a coroner's direction) to give any of the following kinds of 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 the proposed Act:

- (a) a direction that a post mortem examination be conducted on the remains of the deceased person,
- (b) a direction that a special examination or test be conducted on the remains, or the contents of the body, of the deceased person or on such other matters or things (including tissue obtained before the person's death) specified in the direction,
- (c) a direction that a review of medical records of a deceased person be conducted,
- (d) a direction that a new examination, test or review be conducted if it appears to the coroner that a previous report on an examination, test or review did not satisfactorily explain the cause of death of a deceased person.

The proposed section defines an ***appropriate medical investigator*** to mean 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.

The proposed section makes it clear that the power to give such a direction includes the power to direct an appropriate medical investigator to arrange for another appropriately qualified person to carry out the examination, test or review specified in the direction.

The proposed section also allows a coroner to 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. The proposed section requires a person to whom a post mortem investigation direction is given to provide a written report (a **post mortem investigation report**) to the coroner on the results of an examination, test or review.

The proposed section makes it clear that a coroner may dispense with a post mortem examination 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.

The proposed section re-enacts and consolidates in one section (with some modifications) the provisions of sections 48, 49 and 53B (4) of the *Coroners Act 1980*. The proposed section differs from the current provisions in the following respects:

- (a) the proposed section does not re-enact the provisions of section 48 (2) and (3) of the *Coroners Act 1980* dealing with the giving of directions to a person who may have contributed to the death of the deceased person,
- (b) section 48 of the *Coroners Act 1980* does not include an express provision enabling a coroner to dispense with a post mortem examination in relation to a deceased person who died of natural causes,
- (c) section 48 does not include an express power to direct that there be a review of a deceased person's medical records or that an examination or test be conducted on tissue samples taken from a deceased person before the person's death,
- (d) the proposed section does not re-enact the provisions of section 50 of the *Coroners Act 1980*, which make it an offence for a person to whom a direction is given under section 48, 49 or 53B (4) not to obey the direction.

Clause 90 authorises the removal, use and retention of certain tissue samples taken from a deceased person for the purposes of an investigation into the person's death or proceedings for an offence in connection with that death. The proposed section makes it clear that whole organs of a deceased person may not be retained under the proposed section following an order authorising the disposal of the person's remains without a further order of a coroner. Such an order may be made only if the coroner is satisfied that the retention of the organ is necessary or desirable to assist in the investigation of the manner or cause of the deceased person's death.

The proposed section re-enacts (with some modifications) the provisions of section 48AA (1)–(3) of the *Coroners Act 1980*. The proposed section differs from the current provisions in the following respects:

- (a) the proposed section (unlike the current section) authorises the retention and use of a tissue sample taken before a person's death where a post mortem investigation direction requires such a sample to be examined or tested,
- (b) the proposed section (unlike the current section) prohibits the retention of whole organs without further order of a coroner,
- (c) the proposed section (unlike the current section) does not contain a definition of **tissue** because that definition has been re-located to proposed section 4.

Clause 91 enables a coroner to issue a warrant to a police officer in certain circumstances for the exhumation of the buried remains of a deceased person for the purpose of conducting a post mortem examination or other examination or test. The proposed section substantially re-enacts the provisions of section 53 of the *Coroners Act 1980*.

Clause 92 enables the Director-General of the Department of Health to appoint Coronial Medical Officers for the purposes of the proposed Act.

Section 47A of the *Coroners Act 1980* currently provides that the regulations under that Act may make provision for or with respect to the appointment of medical practitioners as Coronial Medical Officers. Clause 5 of the *Coroners Regulation 2005* currently provides for the Director-General of the Department of Health to make such appointments. The proposed section does not re-enact the provisions of section 47A (2) of the *Coroners Act 1980* given the extensive general direction powers conferred on the State Coroner by the proposed Act and the inclusion of Coronial Medical Officers as appropriate medical investigators for the purposes of the proposed Act.

Clause 93 requires the payment of fees calculated in accordance with the regulations to certain medical practitioners and other persons who (at the direction or request of a coroner) conduct post mortem examinations or other examinations or tests or who give evidence at inquests about examinations or tests they have conducted.

The proposed section re-enacts (with some modifications) the provisions of section 52 of the *Coroners Act 1980*. The modifications reflect changes to the structure of the public health system resulting from the enactment of the *Health Services Act 1997*.

Clause 94 provides protection from certain civil liability for persons who conduct examinations, tests or reviews of medical records pursuant to a direction given under the proposed Act.

The proposed section re-enacts (with some modifications) the provisions of section 52A of the *Coroners Act 1980*. The proposed section differs from the current section because it extends to the review of medical records as well as to examinations and tests.

Part 8.2 Objections to exercise of post mortem investigative functions

Clause 95 defines the expression ***relevant post mortem investigative function*** for the purposes of the proposed Part. The expression is defined to mean 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 proposed section 90.

There is no comparable provision in the *Coroners Act 1980*.

Clause 96 enables a senior next of kin of a deceased person to request that a relevant post mortem investigative function not be exercised by a coroner or assistant coroner in relation to the deceased person. The proposed section requires a coroner to give written notice to the senior next of kin if the coroner decides to proceed with a post mortem examination or organ retention despite the senior next of kin's objection.

The proposed section re-enacts (with some modifications) the provisions of section 48A (1)–(5) of the *Coroners Act 1980*. The proposed section differs from the current provisions because it extends to the exercise of the function of authorising the retention of whole organs as well as to the function of issuing directions for the conduct of post mortem examinations.

Clause 97 enables a senior next of kin of a deceased person who has received written notice that a coroner has decided to proceed with a post mortem examination or organ retention despite the senior next of kin's objection to apply to the Supreme Court for an order to prevent the exercise of the function.

The proposed section re-enacts (with some modifications) the provisions of section 48A (6)–(8) of the *Coroners Act 1980*. The proposed section differs from the current provisions because it extends to the exercise of the function of authorising the retention of whole organs as well as to the function of issuing directions for the conduct of post mortem examinations.

Clause 98 enables a senior next of kin of a deceased person to authorise another person to exercise his or her functions as the senior next of kin under the proposed Part. The proposed section substantially re-enacts the provisions of section 48A (9) and (10) of the *Coroners Act 1980*.

Clause 99 makes it clear that nothing in the proposed Part prevents a person, other than a senior next of kin of a deceased person, from objecting to the exercise of a relevant post mortem investigative function in relation to the deceased person. The proposed section re-enacts (with some modifications) the provisions of section 48B of the *Coroners Act 1980*. The proposed section differs from the current provisions because it extends to the exercise of the function of authorising the retention of whole organs as well as to the function of issuing directions for the conduct of post mortem examinations.

Chapter 9 Disposal of human remains

Clause 100 makes it an offence for a person to 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, without appropriate authorisation. The proposed section also makes it an offence for a person to 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, without appropriate authorisation. The maximum penalty for both offences will be 50 penalty units (currently, \$5,500).

The proposed section substantially re-enacts the provisions of section 53A (1)–(4) of the *Coroners Act 1980*. The proposed section (unlike the current section) does not contain a definition of **stillborn child** because that definition has been re-located to proposed section 4.

Clause 101 enables a coroner, by order in writing, to authorise the disposal of human remains. The proposed section substantially re-enacts the provisions of section 53B (1)–(3) and (5) of the *Coroners Act 1980*.

Chapter 10 Miscellaneous

Clause 102 enables the State Coroner:

- (a) to request, in writing, the assistance of a person holding a corresponding office in another State or Territory (or a coroner in another State or Territory) in connection with the exercise of any power under the proposed Act, and
- (b) to assist a person holding a corresponding office in another State or Territory (or a coroner in another State or Territory), in connection with the exercise of a power under the law of that State or Territory, at the written request of that person.

The proposed section substantially re-enacts the provisions of section 54A of the *Coroners Act 1980*.

Clause 103 provides for certain provisions of the *Local Courts Act 1982* relating to contempt in proceedings in a Local Court to apply in relation to coronial proceedings.

The proposed section re-enacts (with some modifications) the provisions of section 43 of the *Coroners Act 1980*. The proposed section applies to coronial proceedings generally, and not simply to inquests and inquiries as does the current section. The proposed section also makes it clear that an assistant coroner conducting coronial proceedings must refer contempt matters to a coroner for determination.

Clause 104 enables the Governor to make regulations for the purposes of the proposed Act. The proposed section substantially re-enacts the provisions of section 58 of the *Coroners Act 1980*.

Clause 105 provides for how documents may be served on, or given to, a person for the purposes of the proposed Act. There is no comparable provision in the *Coroners Act 1980*.

Clause 106 provides that proceedings for offences under the proposed Act are to be dealt with summarily before a Local Court. The proposed section substantially re-enacts the provisions of section 54 (2) of the *Coroners Act 1980*.

Clause 107 provides for the circumstances in which directors and managers of corporations will be taken to be liable for offences committed by corporations under the proposed Act or regulations.

The proposed section re-enacts (with some modifications) the provisions of section 45 (5) and (6) of the *Coroners Act 1980*. The proposed section extends to all offences under the proposed Act, while the current provisions are limited to offences involving the contravention of an order made under section 44 (1), (2) or (5) of the *Coroners Act 1980*.

Clause 108 repeals the *Coroners Act 1980*.

Clause 109 provides for the review of the proposed Act in 5 years.

Schedule 1 Provisions relating to coronial officers

Schedule 1 contains general provisions concerning coronial officers, including provisions dealing with when coronial offices are vacated, remuneration of coronial officers and the effect of an appointment to a coronial office on other offices held by the person appointed.

Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

The provisions contained in the Schedule include the following:

- (a) provisions to continue the appointments of the current State Coroner and Deputy State Coroners,
- (b) provisions to abolish the office of Senior Deputy State Coroner,
- (c) provisions to enable current appointed coroners who are Magistrates or Australian lawyers to continue in office as appointed coroners or, if they are not Magistrates or Australian lawyers, to appoint them as assistant coroners (but only if they are members of staff of the Attorney General's Department),
- (d) provisions to enable assistant coroners to continue in office as assistant coroners (but only if they are members of staff of the Attorney General's Department),
- (e) provisions to enable pending coronial proceedings to be continued and dealt with under the proposed Act,
- (f) provisions to save the effect of certain warrants, subpoenas, directions and orders issued under the *Coroners Act 1980*,

(g) provisions that provide for the *Coroners Regulation 2005* to be treated as if it were a regulation made under the proposed Act.

Schedule 3 Consequential amendment of Acts and Regulations

Schedule 3 makes consequential amendments to the Acts and Regulations specified in the Schedule.

Schedule 4 Amendments replacing “Coroners Act 1980” with “Coroners Act 2009”

Schedule 4 amends the provisions of the Acts and Regulations specified in the Schedule by omitting references to “*Coroners Act 1980*” and replacing them with references to “*Coroners Act 2009*”.