



Queensland

Coroners and Other Acts Amendment Act 2009

Act No. 32 of 2009



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Contents

| | | Page |
|---------------|--|------|
| Part 1 | Preliminary | |
| 1 | Short title | 6 |
| 2 | Commencement | 6 |
| Part 2 | Amendment of Coroners Act 2003 | |
| 3 | Act amended in pt 2 | 6 |
| 4 | Amendment of s 7 (Duty to report deaths) | 6 |
| 5 | Amendment of s 8 (Reportable death defined) | 7 |
| 6 | Amendment of s 9 (Death in care defined) | 8 |
| 7 | Amendment of s 10 (Death in custody defined) | 10 |
| 8 | Insertion of new s 10AA | 10 |
| | 10AA Health care related death defined | 10 |
| 9 | Amendment of s 10A (State Coroner to notify children's commissioner of deaths) | 12 |
| 10 | Amendment of s 11 (Deaths to be investigated) | 12 |
| 11 | Insertion of new s 11A | 13 |
| | 11A Reviewing coroner's decision about whether death is a reportable death. | 13 |
| 12 | Amendment of s 12 (Deaths not to be investigated or further investigated) | 13 |
| 13 | Amendment of s 13 (Coroner's powers of investigation) | 14 |
| 14 | Amendment of s 14 (Guidelines and directions for investigations) | 14 |
| 15 | Amendment of s 16 (Duty to help investigation) | 15 |
| 16 | Amendment of s 17 (Disclosure of confidential information to Coroners Court) | 15 |
| 17 | Insertion of new s 17A | 16 |
| | 17A Protection from liability for giving information and other things to coroner | 16 |

Contents

| | | |
|----|--|----|
| 18 | Insertion of new s 18A | 17 |
| | 18A Arrangements for and guidelines about assessing suitability of body for Transplantation and Anatomy Act 1979 | 17 |
| 19 | Replacement of s 21 (Observing an autopsy) | 18 |
| | 21 Observing an autopsy | 18 |
| 20 | Amendment of s 22 (Extra medical evidence for autopsy) | 19 |
| 21 | Amendment of s 23 (Autopsy testing) | 20 |
| 22 | Insertion of new s 23A | 20 |
| | 23A Applying for an order for autopsy testing | 20 |
| 23 | Amendment of s 24 (Removing tissue for autopsy testing) | 21 |
| 24 | Amendment of s 24A (Autopsy certificate) | 22 |
| 25 | Amendment of s 25 (Autopsy reports) | 23 |
| 26 | Amendment of s 26 (Control of body) | 24 |
| 27 | Amendment of s 27 (When inquest must be held) | 25 |
| 28 | Amendment of s 28 (When inquest may be held) | 25 |
| 29 | Amendment of s 30 (Applying for inquest to be held) | 26 |
| 30 | Amendment of s 32 (Notice of inquest) | 26 |
| 31 | Amendment of s 34 (Pre-inquest conferences) | 27 |
| 32 | Amendment of s 35 (Directions or orders about inquests) | 28 |
| 33 | Amendment of s 36 (Right to appear etc.) | 28 |
| 34 | Amendment of s 41 (Prohibited publications relating to inquests) | 29 |
| 35 | Amendment of s 43 (Excluding persons from inquest) | 29 |
| 36 | Amendment of s 45 (Coroner's findings) | 29 |
| 37 | Amendment of s 46 (Coroner's comments) | 29 |
| 38 | Amendment of s 47 (Coroner's comments and findings for deaths in care or custody) | 30 |
| 39 | Amendment of s 50 (Reopening inquests etc.) | 30 |
| 40 | Insertion of new ss 50A and 50B | 30 |
| | 50A Reopening inquests on coroner's initiative | 31 |
| | 50B Reopening investigations, other than inquests | 31 |
| 41 | Amendment of s 52 (Documents that can not be accessed) | 32 |
| 42 | Amendment of s 53 (Access to investigation documents for research purposes) | 32 |
| 43 | Amendment of s 54 (Access to investigation documents for other purposes) | 33 |
| 44 | Insertion of new s 54AA | 33 |

| | | | |
|---------------|------------|---|----|
| | 54AA | Access to information in section 7(4) report by prescribed tissue banks | 34 |
| 45 | | Amendment of s 54A (Access to investigation documents by the children's commissioner) | 35 |
| 46 | | Amendment of s 56 (Refusing access in the public interest) | 35 |
| 47 | | Amendment of s 60 (Returning physical evidence) | 35 |
| 48 | | Replacement of pt 3, div 6, hdg (Transferring investigation to another coroner) | 36 |
| 49 | | Insertion of new s 63A | 36 |
| | 63A | Continuation of jurisdiction on retirement etc. | 36 |
| 50 | | Amendment of s 71 (Functions and powers of State Coroner) | 37 |
| 51 | | Insertion of new s 71A | 39 |
| | 71A | Assistance to and from coroners in other jurisdictions | 39 |
| 52 | | Amendment of s 74 (Acting as State Coroner) | 40 |
| 53 | | Amendment of s 77 (Annual report) | 40 |
| 54 | | Insertion of new s 79A | 40 |
| | 79A | Resignation of Deputy State Coroner | 41 |
| 55 | | Amendment of s 86 (Delegation of powers to registrar or deputy registrars) | 41 |
| 56 | | Amendment of s 88 (Immunity) | 42 |
| 57 | | Amendment of s 96 (Application of Act to stillborn child) | 42 |
| 58 | | Amendment of pt 6 hdgs | 42 |
| 59 | | Insertion of new pt 6, div 4 | 42 |
| | Division 4 | Transitional provisions for the Coroners and Other Acts Amendment Act 2009 | |
| | 109 | Definitions for div 4 | 42 |
| | 110 | Continued application of particular provisions | 43 |
| | 111 | Application of s 12 | 43 |
| | 112 | Notice of inquest | 43 |
| | 113 | Application of s 36 | 43 |
| | 114 | Validation relating to State Coroner | 44 |
| | 115 | Validation relating to Deputy State Coroner | 44 |
| 60 | | Amendment of sch 2 (Dictionary) | 45 |
| Part 3 | | Amendment of Births, Deaths and Marriages Registration Act 2003 | |
| 61 | | Act amended in pt 3 | 47 |
| 62 | | Amendment of s 42 (Correcting the register) | 47 |

Contents

| | | |
|---------------|--|----|
| Part 4 | Amendment of Cremations Act 2003 | |
| 63 | Act amended in pt 4 | 48 |
| 64 | Amendment of s 4 (Cremations this Act does not apply to) | 48 |



Queensland

Coroners and Other Acts Amendment Act 2009

Act No. 32 of 2009

**An Act to amend the Coroners Act 2003, the Births, Deaths and Marriages
Registration Act 2003 and the Cremations Act 2003 for particular purposes**

[Assented to 26 August 2009]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Coroners and Other Acts Amendment Act 2009*.

2 Commencement

This Act, other than section 50(5) to (9) and section 59 (to the extent it inserts a new part 6, division 4 heading and new sections 114 and 115), commences on a day to be fixed by proclamation.

Part 2 Amendment of Coroners Act 2003

3 Act amended in pt 2

This part amends the *Coroners Act 2003*.

4 Amendment of s 7 (Duty to report deaths)

(1) Section 7(1)(b), ‘subsection (2)’—

omit, insert—

‘subsection (3)’.

(2) Section 7—

insert—

‘(1A) Despite subsection (1)(b), a relevant service provider who becomes aware of a death in care as mentioned in section 9(1)(a) must report the death under subsection (3), regardless of whether someone else has reported or may report the death.

Note—

Under section 9(3), a person’s death is a death in care even if the deceased person died somewhere other than the place where the deceased person ordinarily lived for the purposes of being in care.’.

(3) Section 7(2)(a) and (b)—

renumber as section 7(2)(b) and (c).

(4) Section 7(2)—

insert—

‘(a) if the death happened in the course of or as a result of police operations—the State Coroner or the Deputy State Coroner; or’.

(5) Section 7—

insert—

‘(5A) Nothing in this section prevents a person from reporting a death in the way mentioned in subsection (3) if the person considers the death may be a reportable death.’.

(6) Section 7(6)—

insert—

relevant service provider, in relation to a death in care, means the provider of the residential service mentioned in section 9(1)(a) in which the deceased person ordinarily lived for the purposes of being in care.’.

(7) Section 7(1A) to (6)—

renumber as section 7(2) to (8).

5 Amendment of s 8 (*Reportable death defined*)

(1) Section 8(3)(d)—

omit, insert—

[s 6]

‘(d) the death was a health care related death; or’.

(2) Section 8(3)—

insert—

‘(h) the death happened in the course of or as a result of police operations.

Examples of police operations—

- a police motor vehicle pursuit for the purpose of apprehending a person
- an evacuation’.

(3) Section 8—

insert—

‘(5) For subsection (3)(b), an unnatural death includes the death of a person who dies at any time after receiving an injury that—

- (a) caused the death; or
- (b) contributed to the death and without which the person would not have died.

Examples—

- a person’s death resulting from injuries sustained by the person in a motor vehicle accident many months before the death
- a person’s death from pneumonia suffered after fracturing the person’s neck or femur
- a person’s death caused by a subdural haematoma not resulting from a bleeding disorder’.

6 Amendment of s 9 (*Death in care defined*)

(1) Section 9(1)(a)(ii), ‘residential services’—

omit, insert—

‘services providing accommodation to persons with a disability and’.

(2) Section 9(1)(a)(iii), ‘at a place’—

omit, insert—

‘in a residential service’.

(3) Section 9(1)(b)(i)—

omit, insert—

‘(i) being taken to an authorised mental health service under section 25, 34, 39, 292 or 508 of that Act; or’.

(4) Section 9(1)(b)(ii), ‘a place where there is’—

omit.

(5) Section 9(1)(b)(iii), ‘detained’—

omit, insert—

‘taken to, or detained in, an authorised mental health service’.

(6) Section 9(1)(d)—

omit, insert—

‘(d) the person was a child who was—

(i) in the custody or guardianship of the chief executive (child safety) under the *Child Protection Act 1999*; or

(ii) placed in care under an assessment care agreement; or

(iii) the subject of a child protection order granting custody of the child to a person, other than a parent of the child, who is a member of the child’s family; or

(iv) the subject of a child protection order granting long-term guardianship of the child to—

(A) a suitable person, other than a parent of the child, who is a member of the child’s family; or

(B) another suitable person, other than a member of the child’s family, nominated by the chief executive.’.

[s 7]

(7) Section 9(4)—

insert—

‘assessment care agreement means an assessment care agreement as defined under the *Child Protection Act 1999*.

authorised mental health service means an authorised mental health service as defined under the *Mental Health Act 2000*.

child protection order means a child protection order as defined under the *Child Protection Act 1999*.’.

7 Amendment of s 10 (*Death in custody defined*)

Section 10(2)—

omit, insert—

‘(2) In this section—

custody means detention, whether or not by a police officer, under—

- (a) an arrest; or
- (b) the authority of a court order; or
- (c) the authority of an Act of the State, other than—
 - (i) the *Education (General Provisions) Act 2006*; or
 - (ii) the *Mental Health Act 2000*; or
- (d) the authority of an Act of the Commonwealth.’.

8 Insertion of new s 10AA

After section 10—

insert—

‘10AA *Health care related death defined*

‘(1) A person’s death is a *health care related death* if, after the commencement, the person dies at any time after receiving health care that—

- (a) either—

-
- (i) caused or is likely to have caused the death; or
 - (ii) contributed to or is likely to have contributed to the death; and
 - (b) immediately before receiving the health care, an independent person would not have reasonably expected that the health care would cause or contribute to the person's death.
- '(2) A person's death is also a *health care related death* if, after the commencement, the person dies at any time after health care was sought for the person and the health care, or a particular type of health care, failed to be provided to the person and—
- (a) the failure either—
 - (i) caused or is likely to have caused the death; or
 - (ii) contributed or is likely to have contributed to the death; and
 - (b) when health care was sought, an independent person would not have reasonably expected that there would be a failure to provide health care, or the particular type of health care, that would cause or contribute to the person's death.
- '(3) For this section—
- (a) health care contributes to a person's death if the person would not have died at the time of the person's death if the health care had not been provided; and
 - (b) a failure to provide health care contributes to a person's death if the person would not have died at the time of the person's death if the health care had been provided.
- '(4) For this section, a reference to an independent person is a reference to an independent person appropriately qualified in the relevant area or areas of health care who has had regard to all relevant matters including, for example, the following—
- (a) the deceased person's state of health as it was thought to be when the health care started or was sought;

[s 9]

Example of a person's state of health—

an underlying disease, condition or injury and its natural progression

- (b) the clinically accepted range of risk associated with the health care;
- (c) the circumstances in which the health care was provided or sought.

Example for paragraph (c)—

It would be reasonably expected that a moribund elderly patient with other natural diseases would die following surgery for a ruptured aortic aneurysm.

‘(5) In this section—

commencement means the commencement of this section.

health care means—

- (a) any health procedure; or
- (b) any care, treatment, advice, service or goods provided for or purportedly for the benefit of human health.’.

9 Amendment of s 10A (State Coroner to notify children's commissioner of deaths)

Section 10A(1)(b), ‘section 7(3)’—

omit, insert—

‘section 7(4)’.

10 Amendment of s 11 (Deaths to be investigated)

Section 11(7), after ‘custody’—

insert—

‘, or a death mentioned in section 8(3)(h) that is not also a death in custody,’.

11 Insertion of new s 11A

After section 11—

insert—

‘11A Reviewing coroner’s decision about whether death is a reportable death

- ‘(1) A person dissatisfied with a coroner’s decision about whether a death that happens after the commencement of this section is a reportable death may apply for an order about whether it is a reportable death.
- ‘(2) The application must be made to—
 - (a) if the coroner is not the State Coroner—the State Coroner; or
 - (b) if the coroner is the State Coroner—the District Court.
- ‘(3) A person dissatisfied with the State Coroner’s decision under subsection (2)(a) may apply to the District Court.
- ‘(4) An application under subsection (3) must be made within 14 days after the person receives written reasons for the decision.
- ‘(5) If the State Coroner or the District Court orders that the death is a reportable death, the coroner is taken to have considered the death to be a reportable death for section 11(2)(a).’.

12 Amendment of s 12 (Deaths not to be investigated or further investigated)

- (1) Section 12(1), after ‘Minister’—

insert—

‘or by the State Coroner under section 11(4)(b)’.

- (2) Section 12(2)(b)—

omit, insert—

‘(b) each of the following applies—

- (i) the death was not a reportable death under section 8(3)(a) or (g);

[s 13]

- (ii) the coroner's investigation shows that an autopsy of the body is not necessary;
- (iii) the coroner decides to authorise a doctor to issue a cause of death certificate; or'.

13 Amendment of s 13 (Coroner's powers of investigation)

- (1) Section 13(3) and (4)—
renumber as section 13(4) and (5).
- (2) Section 13—
insert—
- '(3) Without limiting subsection (2), the coroner may authorise a doctor or nurse to take a sample of the deceased person's blood for testing.
- '(6) In this section—
nurse means a registered nurse under the *Nursing Act 1992*'.

14 Amendment of s 14 (Guidelines and directions for investigations)

- (1) Section 14(4) to (6)—
renumber as section 14(5) to (7).
- (2) Section 14—
insert—
- '(4) Without limiting subsection (1)(b) or (3), the State Coroner may also issue guidelines applying to all persons who carry out a function under this Act about the following—
 - (a) the types of reportable death mentioned in section 8;
 - (b) a preliminary investigation to decide whether a death is a reportable death;
 - (c) the investigation of a suspected death;
 - (d) any other matter that is relevant and desirable to ensure best practice in the coronial system.'

15 Amendment of s 16 (Duty to help investigation)

- (1) Section 16(1)(b) and (2), after ‘information’—
insert—
‘, a document or anything else’.
- (2) Section 16(4) to (6), ‘give the information’—
omit, insert—
‘comply with the requirement’.
- (3) Section 16(6), ‘giving the information’—
omit, insert—
‘complying with the requirement’.

16 Amendment of s 17 (Disclosure of confidential information to Coroners Court)

- (1) Section 17, heading, ‘Coroners Court’—
omit, insert—
‘**coroner**’.
- (2) Section 17(2)—
omit, insert—
‘(2) The provision is taken to enable the disclosure of the information to a coroner investigating a death as if—
 - (a) a reference to the court is a reference to a coroner; and
 - (b) a reference to a proceeding is a reference to an investigation; and
 - (c) a reference to a party is a reference to—
 - (i) a police officer, lawyer or other person helping the coroner; or
 - (ii) a person who is to appear or is appearing at an inquest.’.
- (3) Section 17(4)—

[s 17]

omit, insert—

‘(4) A coroner may only disclose information obtained under this section for a purpose connected with the investigation being conducted by the coroner.’.

(4) Section 17(5), ‘Coroners Court’—

omit, insert—

‘coroner’.

(5) Section 17(5)(a), ‘inquest’—

omit, insert—

‘investigation’.

17 Insertion of new s 17A

Part 3, division 1—

insert—

‘17A Protection from liability for giving information and other things to coroner

‘(1) A person is not liable, civilly, criminally or under an administrative process, for giving a coroner any of the following—

(a) information, a document or anything else (the *required item*) in compliance with a requirement made under section 16;

(b) confidential information under section 17.

‘(2) Also, merely because the person gives the required item or confidential information, the person can not be held to have—

(a) breached any code of professional etiquette or ethics; or

(b) departed from accepted standards of professional conduct.

‘(3) Without limiting subsections (1) and (2)—

-
- (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the required item or confidential information; and
 - (b) if the person would otherwise be required to maintain confidentiality about the required item or confidential information under an Act, oath or rule of law or practice, the person—
 - (i) does not contravene the Act, oath or rule of law or practice by giving the required item or confidential information; and
 - (ii) is not liable to disciplinary action for giving the required item or confidential information.’.

18 Insertion of new s 18A

After section 18—

insert—

‘18A Arrangements for and guidelines about assessing suitability of body for Transplantation and Anatomy Act 1979

- ‘(1) This section applies if a prescribed tissue bank is a party to an arrangement under section 54AA to access section 7(4) reports.
- ‘(2) Before an autopsy is performed on a body, the prescribed tissue bank, or a person acting for the prescribed tissue bank, may conduct an external examination of the body for the purpose of assessing whether the body is suitable for the removal of tissue for the *Transplantation and Anatomy Act 1979*.
- ‘(3) However, subsection (2) does not apply if the State Coroner, the coroner who is investigating the death, or a person acting for the prescribed tissue bank is aware that the deceased person had, during his or her lifetime, objected to the removal after death of tissue from his or her body.
- ‘(4) A person who conducts the examination must comply with—

[s 19]

- (a) any directions of the coroner; and
 - (b) any guidelines issued by the State Coroner about the conduct of the process by which donor suitability for the removal of tissue under the *Transplantation and Anatomy Act 1979* is assessed.
- ‘(5) However, to the extent that a direction conflicts with the guidelines, the person must comply with the direction.
- ‘(6) In this section—
tissue see the *Transplantation and Anatomy Act 1979*, section 4(1).’

19 Replacement of s 21 (Observing an autopsy)

Section 21—

omit, insert—

‘21 Observing an autopsy

- ‘(1) The coroner, or a police officer who is investigating a death under this or another Act, is entitled to observe and participate in the autopsy.
- ‘(2) If the coroner considers it appropriate, a person may observe and participate in an autopsy for his or her vocational or clinical education or training with the consent of the doctor who is conducting the autopsy.

Examples—

an attending doctor, medical students, mortuary staff, nurses and police officers

- ‘(3) The coroner may allow a person, or the person’s representative, to observe the autopsy if the coroner considers—
- (a) the person has a sufficient interest in the autopsy; and
 - (b) the attendance of the person, or the person’s representative, at the autopsy would not compromise the integrity of the coronial investigation or any other investigation into the death; and

Example of other investigation—

a criminal investigation, workplace health and safety investigation or disciplinary investigation

- (c) the attendance of the person, or the person's representative, at the autopsy is otherwise appropriate.
- '(4) Before allowing a person to observe an autopsy under subsection (3), the coroner—
- (a) must, whenever practicable, consult with and consider the views of—
 - (i) a family member of the deceased person; and
 - (ii) the doctor who is to conduct the autopsy; and
 - (b) may consult with, and consider the views of, anyone else the coroner considers appropriate.
- '(5) If the coroner allows a person to observe an autopsy under subsection (3), the coroner must give the person notice of the time and place of the autopsy before it is conducted.'

20 Amendment of s 22 (Extra medical evidence for autopsy)

- (1) Section 22(1)(a)(ii), after 'conduct'—

insert—

‘, or conducted,’.

- (2) Section 22(1)(b) and example—

omit, insert—

'(b) a person who has any medical records of the deceased person, or tissue samples from the deceased person, to give them to the doctor who is to conduct, or conducted, the autopsy.

Example—

The coroner may require the person in charge of the nursing home in which the deceased person died to release the deceased person's medical records.'

- (3) Section 22(3), after 'means'—

[s 21]

insert—

‘, unless the notice requires the original copy of the written report or medical records to be given’.

21 Amendment of s 23 (Autopsy testing)

(1) Section 23(2) to (5)—

renumber as section 23(3) to (6).

(2) Section 23—

insert—

‘(2) The coroner may make the order on an application under section 23A or on the coroner’s own initiative.’.

22 Insertion of new s 23A

After section 23—

insert—

‘23A Applying for an order for autopsy testing

‘(1) A person may apply to the coroner in writing for an order that the doctor who has been ordered to conduct an autopsy, or who conducted an autopsy, also conduct a test for any or all of the following as stated in the application—

- (a) an infectious condition;
- (b) a notifiable condition;
- (c) an emergency notifiable condition;
- (d) a controlled notifiable condition.

‘(2) The coroner may grant the application only if the coroner is satisfied the applicant has a sufficient interest in the test result.

‘(3) In this section—

conduct, a test, includes arrange for a test to be conducted.

controlled notifiable condition means a controlled notifiable condition as defined in the *Public Health Act 2005*, section 63.

coroner means the coroner who ordered the doctor to conduct an autopsy or the State Coroner.

emergency notifiable condition means an emergency notifiable condition as defined in the *Public Health Act 2005*, section 315.

notifiable condition means a notifiable condition as defined in the *Public Health Act 2005*, section 64.’.

23 Amendment of s 24 (Removing tissue for autopsy testing)

- (1) Section 24(2), from ‘the tissue’ to ‘foetus’—
omit, insert—
‘prescribed tissue is removed’.
- (2) Section 24(5) to (10)—
renumber as section 24(6) to (11).
- (3) Section 24(4)—
omit, insert—
- ‘(4) However, if prescribed tissue has been removed, the coroner must not order the release of the body unless satisfied that—
 - (a) if practicable, a family member of the deceased person has been informed of the removal of the prescribed tissue; and
 - (b) the retention of the prescribed tissue is necessary for the investigation of the death, despite any concerns raised with the coroner about the retention of the prescribed tissue.
- ‘(5) If the coroner is not satisfied as mentioned in subsection (4)(a) and (b), the coroner must order the doctor to return the prescribed tissue to the body before the body is released.’.
- (4) Section 24(6), as renumbered, ‘an organ or foetus’—

[s 24]

omit, insert—

‘prescribed tissue’.

- (5) Section 24(9)(a), as renumbered—

omit, insert—

‘(a) if a family member of the deceased person has told the coroner that he or she wishes to test, or use, the tissue for a lawful purpose or to bury the tissue—release the tissue to the family member, or the family member’s representative, for the test, use or burial; or’.

- (6) Section 24(11), as renumbered—

insert—

‘***prescribed tissue*** means—

- (a) a whole organ or foetus; or
- (b) an identifiable body part.

Example for paragraph (b)—

a limb, digit or jaw’.

24 Amendment of s 24A (Autopsy certificate)

- (1) Section 24A(2)(b)—

omit, insert—

‘(b) give a signed copy of the notice to—

- (i) the registrar under the *Births, Deaths and Marriages Registration Act 2003*; and
- (ii) the coroner who ordered the conduct of the autopsy.’.

- (2) Section 24A(3)(b), other than example—

omit, insert—

‘(b) give a signed copy of the certificate to—

- (i) the registrar under the *Births, Deaths and Marriages Registration Act 2003*; and

- (ii) the coroner who ordered the conduct of the autopsy.’.

25 Amendment of s 25 (Autopsy reports)

- (1) Section 25(1)(b)—

omit, insert—

‘(b) give the report to the coroner.’.

- (2) Section 25(2) to (5)—

renumber as section 25(3) to (5) and (7).

- (3) Section 25—

insert—

- ‘(2) If an investigating police officer asks for a copy of the autopsy report, or a copy of a test report, the doctor who conducted the autopsy or the person who did the test must give a copy of the report to the police officer.’.

- (4) Section 25(3), as renumbered, after ‘subsection (1)’—

insert—

‘or (2)’.

- (5) Section 25—

insert—

- ‘(6) However, subsections (4) and (5) do not apply if the State Coroner has given the chief executive or health chief executive written notice stating—

- (a) that the reports mentioned in the subsections are not to be given to—

- (i) the chief executive or the health chief executive; or
(ii) a public service employee, health service employee or health executive; and

- (b) the reasons why the reports are not to be given.’.

[s 26]

26 Amendment of s 26 (Control of body)

- (1) Section 26(2)—
omit, insert—
- ‘(2) The coroner stops having control of the body when the coroner—
- (a) if the coroner stops investigating the death under section 12(2)(a)—orders the release of the body to the Minister responsible for administering the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003*; or
 - (b) if the coroner stops investigating the death under section 12(2)(b)—authorises a doctor to issue a cause of death certificate for the deceased person; or
 - (c) if the coroner stops investigating the death under section 12(2)(c) or (d)—orders the release of the body for burial; or
 - (d) if the coroner stops investigating the death under section 12(2)(e)—orders the release of the body to the other jurisdiction; or
 - (e) transfers control of the body to another coroner; or
 - (f) decides that it is not necessary for the coroner’s investigation to keep the body after an autopsy and the coroner orders the release of the body for burial.’
- (2) Section 26(5), penalty, ‘for subsection (5)’—
omit.
- (3) Section 26—
insert—
- ‘(6) For subsection (2)(a), (c), (d) and (f), a reference to the coroner, in relation to an order for the release of a body, includes, if the coroner investigating the death is not available, another coroner.’

27 Amendment of s 27 (When inquest must be held)

(1) Section 27(1)(a)—

insert—

‘(iii) a death mentioned in section 8(3)(h) that is not also a death in custody, unless the coroner is satisfied the circumstances of the death do not require the holding of an inquest; or’.

(2) Section 27(2)—

renumber as section 27(3).

(3) Section 27—

insert—

‘(2) For subsection (1)(a)(i), a death in custody—

(a) includes a death that is also another type of reportable death under section 8; but

Example—

A death in custody may also be a death in care under section 8(3)(f) or a death in the course of police operations under section 8(3)(h).

(b) does not include the death of a person if, when the person died, the person was detained under the *Public Health Act 2005*.’.

28 Amendment of s 28 (When inquest may be held)

(1) Section 28(1), from ‘considers’—

omit, insert—

‘is satisfied it is in the public interest to hold the inquest.’.

(2) Section 28(2), ‘desirable’—

omit, insert—

‘in the public interest’.

[s 29]

29 Amendment of s 30 (Applying for inquest to be held)

- (1) Section 30(1), ‘, in the approved form,’—
omit.
- (2) Section 30(2) to (7)—
renumber as section 30(3) to (8).
- (3) Section 30—
insert—
‘(2) The application must—
 - (a) be written; and
 - (b) outline why the applicant considers it is in the public interest for an inquest to be held.’.
- (4) Section 30(3), as renumbered, ‘6 months after receiving the application’—
omit, insert—
‘the prescribed period’.
- (5) Section 30—
insert—
‘(9) In this section—
prescribed period, for the coroner to decide the application, means—
 - (a) 6 months after the coroner receives the application; or
 - (b) the longer period the coroner considers necessary to enable the coroner to obtain relevant information for making the decision.’.

30 Amendment of s 32 (Notice of inquest)

- (1) Section 32(1)(b)—
renumber as section 32(1)(c).
- (2) Section 32(1)—

insert—

‘(b) the issues to be investigated at the inquest; and’.

(3) Section 32(2), ‘14’—

omit, insert—

‘28’.

(4) Section 32(3)—

omit, insert—

‘(3) Subsections (1) and (2) do not apply—

(a) to an adjourned inquest; or

(b) if the State Coroner directs that a notice not be published; or

(c) if the Coroners Court has published a notice about a conference for the inquest under section 34(2).

‘(4) The Coroners Court must publish a statement of the issues to be investigated at the inquest and the date, time and place of the inquest on an appropriate website of the Office of the State Coroner.

Editor’s note—

At the commencement of this subsection, the website is <www.courts.qld.gov.au/129.htm>.’.

31 Amendment of s 34 (Pre-inquest conferences)

(1) Section 34(2)—

renumber as section 34(4).

(2) Section 34—

insert—

‘(2) The Coroners Court may publish, in a daily newspaper circulating generally in the State, a notice of—

(a) the matter to be investigated at the inquest; and

(b) the proposed issues to be investigated at the inquest; and

[s 32]

(c) the date, time and place of the conference set by the coroner.

‘(3) If the Coroners Court decides to publish a notice as mentioned in subsection (2), the notice must be published at least 28 days before the conference is to be held.’.

32 Amendment of s 35 (Directions or orders about inquests)

(1) Section 35, heading, after ‘inquests’—

insert—

‘and pre-inquest conferences’.

(2) Section 35, after ‘inquest’—

insert—

‘or pre-inquest conference’.

(3) Section 35—

insert—

‘(3) In this section—

pre-inquest conference means a conference mentioned in section 34.’.

33 Amendment of s 36 (Right to appear etc.)

(1) Section 36(2) and (3)—

renumber as section 36(4) and (5).

(2) Section 36—

insert—

‘(2) Subsection (3) applies if the Coroners Court considers a person mentioned in subsection (1)(c) has a sufficient interest only because it is in the public interest, and consistent with the purposes of this Act, that the person appear and make submissions at the inquest about a matter on which the coroner may comment under section 46(1).

Example of a person for subsection (2)—

a specialist advocacy group with particular expertise in a matter on which a coroner may comment under section 46(1)

- ‘(3) Despite subsection (1), the person—
- (a) may not examine witnesses at the inquest without the court’s leave; and
 - (b) may only make submissions about a matter on which the coroner may comment under section 46(1).’.

34 Amendment of s 41 (Prohibited publications relating to inquests)

- (1) Section 41, heading, after ‘inquests’—

insert—

‘and pre-inquest conferences’.

- (2) Section 41(1), (3) and (4), after ‘inquest’—

insert—

‘or pre-inquest conference’.

35 Amendment of s 43 (Excluding persons from inquest)

Section 43, after ‘inquest’—

insert—

‘or pre-inquest conference’.

36 Amendment of s 45 (Coroner’s findings)

Section 45(3)(b), ‘section 12(1)’—

omit, insert—

‘section 12(2)’.

37 Amendment of s 46 (Coroner’s comments)

Section 46(2)(d)(i) and (ii)—

[s 38]

omit, insert—

- ‘(i) the Attorney-General; and
- (ii) the Minister administering the entity; and
- (iii) the chief executive officer of the entity; and’.

38 Amendment of s 47 (Coroner’s comments and findings for deaths in care or custody)

- (1) Section 47, heading—

omit, insert—

‘47 Coroner’s comments and findings for particular deaths’.

- (2) Section 47(1), from ‘care’—

omit, insert—

‘care, death in custody or death that happened in the course of or as a result of police operations.’.

- (3) Section 47(3), definition *relevant Act*, paragraph (b)(vi)—

omit, insert—

‘(vi) for the death of a person in custody under the *Juvenile Justice Act 1992*—that Act; or

- (c) for a death that happened in the course of or as a result of police operations—the *Police Powers and Responsibilities Act 2000*.’.

39 Amendment of s 50 (Reopening inquests etc.)

Section 50, heading, after ‘etc.’—

insert—

‘—on application’.

40 Insertion of new ss 50A and 50B

After section 50—

insert—

‘50A Reopening inquests on coroner’s initiative

- ‘(1) The coroner who held an inquest, or the State Coroner, may on his or her own initiative, reopen the inquest to re-examine a finding, or hold a new inquest, if satisfied—
 - (a) new evidence casts doubt on the finding; or
 - (b) it is otherwise in the public interest.
- ‘(2) A coroner who has reopened an inquest, or is holding a new inquest, under this section may accept any of the evidence given, or findings made, at the earlier inquest as being correct.

‘50B Reopening investigations, other than inquests

- ‘(1) The State Coroner may, on his or her own initiative—
 - (a) reopen an investigation into a death; or
 - (b) direct the coroner who conducted an investigation into a death, or another coroner, to reopen the investigation.
- ‘(2) The State Coroner may take the action mentioned in subsection (1) if the State Coroner considers—
 - (a) the circumstances of the death warrant further investigation; or
 - (b) the coroner’s findings could not be reasonably supported by the evidence; or
 - (c) new evidence casts doubt on the findings.
- ‘(3) The coroner who conducted an investigation into a death may, on his or her own initiative, reopen the investigation.
- ‘(4) The coroner may take the action mentioned in subsection (3) if the coroner considers—
 - (a) the circumstances of the death warrant further investigation; or
 - (b) new evidence casts doubt on the findings.
- ‘(5) The State Coroner, or another coroner, who has reopened an investigation under this section may accept any of the evidence given at the earlier investigation as being correct.

[s 41]

‘(6) In this section—
investigation does not include an inquest.’.

41 Amendment of s 52 (Documents that can not be accessed)

Section 52(1)(c), from ‘unless’—

omit, insert—

‘unless—

- (i) the information is the result of a test ordered to be done by the coroner on application under section 23A and the person wanting access is the applicant for the order; or
- (ii) the information is relevant to a matter mentioned in section 45(2), whether or not the coroner has made the findings mentioned in that subsection; or’.

42 Amendment of s 53 (Access to investigation documents for research purposes)

(1) Section 53(2)(a), from ‘relates’—

omit, insert—

‘relates, unless the State Coroner considers it appropriate having regard to—

- (i) the importance of the research; and
- (ii) the public interest in allowing the access before the investigation has finished; or’.

(2) Section 53(3), ‘another investigation document’—

omit, insert—

‘an investigation document, other than a document mentioned in subsection (2)(b),’.

(3) Section 53(4)(d), ‘police document’—

omit, insert—

‘document mentioned in paragraph (c)’.

(4) Section 53(5) to (7)—

renumber as section 53(6), (7) and (9).

(5) Section 53—

insert—

‘(5) The State Coroner’s consent allows the person to access 1 or more stated types of investigation documents—

(a) for the period stated in the consent; or

(b) until the State Coroner withdraws the consent;

whichever happens first.’.

(6) Section 53(9), as renumbered, definition *genuine researcher*, paragraph (c)—

omit, insert—

‘(c) another person who is conducting genuine research.’.

43 Amendment of s 54 (Access to investigation documents for other purposes)

(1) Section 54(2)(b), after ‘available’—

insert—

‘and has not delegated his or her power to the registrar under section 86(4)(c)’.

(2) Section 54(3), example, paragraph (b)—

omit.

(3) Section 54(3), example, paragraph (c)—

renumber as paragraph (b).

44 Insertion of new s 54AA

After section 54—

insert—

[s 44]

‘54AA Access to information in section 7(4) report by prescribed tissue banks

‘(1) The State Coroner may enter into an arrangement with a person who owns a prescribed tissue bank about giving the prescribed tissue bank, or a person acting for the prescribed tissue bank, access to documents that are section 7(4) reports for the purpose of ascertaining the following information about a deceased person from the documents—

- (a) the deceased person’s name;
- (b) the deceased person’s age;
- (c) a brief description of the circumstances of the deceased person’s death;
- (d) the deceased person’s previous medical information;

Examples for paragraph (d)—

- details of the deceased person’s recent hospitalisation
 - the name and contact details of a doctor the deceased person consulted
 - the deceased person’s medical history
- (e) the name of the deceased person’s senior available next of kin;
 - (f) an address, telephone number or other contact details of the deceased person’s senior available next of kin.

‘(2) Without limiting what may be included in an arrangement, the arrangement may provide for how and where the prescribed tissue bank or person may access the documents.

‘(3) The State Coroner may provide access to a document to the prescribed tissue bank or person under the arrangement.

‘(4) Sections 52(1)(c), 53, 54 and 55 do not apply in relation to access to a document under the arrangement.

‘(5) However, access to a document under the arrangement is otherwise subject to this division.

‘(6) A fee prescribed under a regulation for access to an investigation document does not apply to a document accessed under this section.

‘(7) A person who has been given access to a document under this section must not directly or indirectly disclose information in the document.

Maximum penalty—100 penalty units.

‘(8) A person does not contravene subsection (7) if the disclosure—

(a) is made in the performance of a function under the *Transplantation and Anatomy Act 1979*, including as a person acting for a prescribed tissue bank under the arrangement; or

(b) is permitted or required under this or another Act.

‘(9) In this section—

access a document does not include obtain a copy of the document.’.

45 Amendment of s 54A (Access to investigation documents by the children’s commissioner)

Section 54A(1)(a) and (b), ‘section 7(3)’—

omit, insert—

‘section 7(4)’.

46 Amendment of s 56 (Refusing access in the public interest)

Section 56(5)—

omit.

47 Amendment of s 60 (Returning physical evidence)

Section 60(2), from ‘if’—

[s 48]

omit, insert—

‘if—

- (a) it is not lawful for the owner to possess the physical evidence; or
- (b) under the guidelines issued by the State Coroner, it is not desirable that the physical evidence be returned to its owner because of its nature, condition and value.

Example of physical evidence for paragraph (b)—

a cracked safety helmet that a deceased person was wearing when killed’.

48 Replacement of pt 3, div 6, hdg (Transferring investigation to another coroner)

Part 3, division 6, heading—

omit, insert—

‘Division 6 Transferring, or continuing, jurisdiction of coroner’.

49 Insertion of new s 63A

Part 3, division 6, after section 63—

insert—

‘63A Continuation of jurisdiction on retirement etc.

- ‘(1) This section applies if—
 - (a) a person stops being a coroner for any reason, other than death or removal from office; and
 - (b) the person has not made all the findings of an investigation into a death conducted by the person before the person stopped being a coroner (the *existing investigation*).
- ‘(2) If the person agrees, the person is taken to continue to be a coroner for the existing investigation so far as it is necessary to make findings for matters the State Coroner, in consultation

with the Chief Magistrate, decides are matters for which the coroner should make findings.’.

50 Amendment of s 71 (Functions and powers of State Coroner)

- (1) Section 71(1)(d)(ii), ‘desirable’—

omit, insert—

‘in the public interest’.

- (2) Section 71(1)(f), after ‘deaths’—

insert—

‘and for other matters’.

- (3) Section 71(1)(g)—

renumber as section 71(1)(h).

- (4) Section 71(1)—

insert—

‘(g) to promote public awareness of the coronial system;
and’.

- (5) Section 71—

insert—

- ‘(2A) Without limiting subsection (2), the State Coroner may enter into an arrangement with a government entity to facilitate the entity’s relationship with the coronial system.

Example—

a memorandum of understanding between the State Coroner and a government entity with functions including the investigation of deaths’.

- (6) Section 71(5), ‘subsection (4)’—

omit, insert—

‘subsection (5)’.

- (7) Section 71(6)—

omit, insert—

[s 50]

- ‘(6) Despite subsections (4) and (5), the State Coroner—
- (a) may be appointed to act as, and perform the functions and exercise the powers of, the Deputy Chief Magistrate; and
 - (b) may be appointed as, and perform the functions and exercise the powers of, a member of the Child Death Case Review Committee under the *Commission for Children and Young People and Child Guardian Act 2000*; and
 - (c) may be appointed to, and perform the functions and exercise the powers of, another office if—
 - (i) holding the office, performing the functions and exercising the powers are compatible with the office of State Coroner; and
 - (ii) the Attorney-General, after consulting with the Chief Magistrate, approves of the State Coroner holding the office, performing the functions and exercising the powers.

Example of another office—

appointed member of the Police Education Advisory Committee

- ‘(6A) The State Coroner must immediately stop holding an office, performing a function or exercising a power mentioned in subsection (7)(c) if required to do so by the Attorney-General.’.
- (8) Section 71(2A) to (7)—
renumber as section 71(3) to (9).
- (9) Section 71—
insert—
- ‘(10) However, if the State Coroner is acting as Deputy Chief Magistrate, the *Magistrates Act 1991*, section 41(1) applies to the extent it requires an acting Deputy Chief Magistrate to comply with every reasonable direction given to, or requirement made by, the Chief Magistrate.

-
- ‘(11) To remove any doubt, it is declared that the *Magistrates Act 1991*, section 14(b) applies to the State Coroner while acting as Deputy Chief Magistrate.
- ‘(12) The State Coroner may not perform the functions, or exercise the powers, of the State Coroner while the State Coroner acts as Deputy Chief Magistrate or, under the *Magistrates Act 1991*, section 14(b), as Chief Magistrate.
- ‘(13) In this section—
government entity means a government entity as defined in the *Public Service Act 2008*, section 24.’

51 Insertion of new s 71A

After section 71—

insert—

‘71A Assistance to and from coroners in other jurisdictions

- ‘(1) The State Coroner may request in writing the person holding a corresponding office in another State to provide assistance in connection with the exercise by the State Coroner or another coroner of any power under this Act.
- ‘(2) The State Coroner, at the written request of the person holding a corresponding office in another State, may provide assistance to that person or a coroner of that State in connection with the exercise of a power under the law of that State.
- ‘(3) If the Attorney-General so directs, the State Coroner must provide assistance in response to a request of a kind referred to in subsection (2).
- ‘(4) For the purpose of providing assistance, the State Coroner or another coroner may exercise any of his or her powers under this Act irrespective of whether he or she would, apart from this section, have authority to exercise that power.

Note—

The State Coroner has, in addition to all the powers of a coroner, a general function of overseeing and coordinating coronial services and

[s 52]

ensuring that inquests and other investigations are held. The assistance provided may involve the exercise of administrative powers by the State Coroner or the exercise by him or her or another coroner of coronial powers.

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

‘(6) In this section—

corresponding office means an office that corresponds to the officer of the State Coroner.’.

52 Amendment of s 74 (Acting as State Coroner)

Section 74(6)(b), from ‘but’—

omit, insert—

‘but is not available to perform the State Coroner’s functions because of absence or another reason.’.

53 Amendment of s 77 (Annual report)

(1) Section 77(2)—

insert—

‘(d) the names of the persons given access to investigation documents as genuine researchers under section 53.’.

(2) Section 77—

insert—

‘(4) The Attorney-General must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.’.

54 Insertion of new s 79A

After section 79—

insert—

‘79A Resignation of Deputy State Coroner

- ‘(1) The person appointed as Deputy State Coroner may, by written notice to the Minister, resign as Deputy State Coroner.
- ‘(2) However, on resigning as Deputy State Coroner, the person does not stop being a magistrate.’.

55 Amendment of s 86 (Delegation of powers to registrar or deputy registrars)

- (1) Section 86, heading, after ‘of’—
insert—
‘duties or’.
- (2) Section 86(4) and (5)—
renumber as section 86(7) and (8).
- (3) Section 86—
insert—
- ‘(4) Also, without limiting subsection (1) or (2), a coroner may delegate any or all of the following duties or powers to the registrar—
 - (a) the act of ordering the disposal of tissue under section 24;
 - (b) the act of ordering the release of a body for burial under section 26;
 - (c) the power to consent to a person accessing an investigation document under section 54(2), if the investigation to which the document relates is finished.
- ‘(5) However, a coroner who is not the State Coroner may only delegate a duty or power as mentioned in subsection (4) with the State Coroner’s consent.
- ‘(6) In performing a duty or exercising a power delegated under subsection (4), the registrar must consult with the coroner who delegated the duty or power.’.

[s 56]

56 Amendment of s 88 (Immunity)

Section 88(2), ‘A’—

omit, insert—

‘A person mentioned in section 36(1)(a) or a’.

57 Amendment of s 96 (Application of Act to stillborn child)

Section 96, ‘19(1)(b),’—

omit, insert—

‘19, 25(1) to (3),’.

58 Amendment of pt 6 hdgs

Part 6, division 1 heading and division 2 heading,
‘Transitionals’—

omit, insert—

‘**Transitional provisions**’.

59 Insertion of new pt 6, div 4

Part 6—

insert—

**‘Division 4 Transitional provisions for the
Coroners and Other Acts
Amendment Act 2009**

‘109 Definitions for div 4

‘In this division—

amendment means amendment under the *Coroners and Other Acts Amendment Act 2009*.

previous, followed by a provision number, means the provision of that number as in force before its amendment.

‘110 Continued application of particular provisions

‘Despite the *Coroners and Other Acts Amendment Act 2009*, each of the following provisions continues to apply to the death of a person who died before the provision’s amendment commenced—

- previous section 8
- previous section 9
- previous section 10.

‘111 Application of s 12

‘Section 12 applies in relation to the death of a person whether the person died before or after the commencement of this section.

‘112 Notice of inquest

‘A notice of inquest complying with previous section 32 and given before the commencement of this section is taken to comply with section 32.

‘113 Application of s 36

‘(1) This section applies if—

- (a) before the commencement, the Coroners Court considered a person had a sufficient interest in an inquest; and
- (b) on the commencement, the person had not exercised the person’s rights under section 36(1).

‘(2) Previous section 36 continues to apply in relation to the person for the inquest.

‘(3) In this section—

commencement means the commencement of this section.

‘114 Validation relating to State Coroner

- ‘(1) This section applies to—
- (a) the purported appointment, at any time before the commencement of this section, of the State Coroner to act as Deputy Chief Magistrate; and
 - (b) the purported acting, at any time before the commencement of this section, of the State Coroner as Chief Magistrate under the *Magistrates Act 1991*, section 14(b) while purportedly appointed as Deputy Chief Magistrate.
- ‘(2) The purported appointment or purported acting is taken to have been valid and always to have been valid.
- ‘(3) Every decision or order made, sentence imposed or anything done by the State Coroner—
- (a) while purportedly appointed as Deputy Chief Magistrate; or
 - (b) while purportedly acting as Chief Magistrate under the *Magistrates Act 1991*, section 14(b) while purportedly appointed as Deputy Chief Magistrate;
- is taken to have been valid, and always to have been valid, to the same extent as would be the case if the purported appointment or purported acting were valid.

‘115 Validation relating to Deputy State Coroner

- ‘(1) This section applies to the purported acting, at any time before the commencement of this section, of the Deputy State Coroner as State Coroner under section 74(6) because of a purported appointment or purported acting mentioned in section 114(1).
- ‘(2) The purported acting as State Coroner is taken to have been valid and always to have been valid.
- ‘(3) Every decision or order made or anything done by the Deputy State Coroner while purportedly acting as State Coroner is taken to have been valid, and always to have been valid, to the

same extent as would be the case if the purported acting were valid.’.

60 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definitions *coronial document*, *family member*, *indigenous burial remains* and *investigation*—

omit.

- (2) Schedule 2—

insert—

‘autopsy certificate means an autopsy certificate mentioned in section 24A(3)(a).

autopsy notice means an autopsy notice mentioned in section 24A(2)(a).

coronial document means a document prepared for an investigation, other than a record, or a copy of a record, of an inquest made under the *Recording of Evidence Act 1962*.

Examples—

- an autopsy certificate, autopsy notice or autopsy report
- a report from a police officer helping a coroner about the investigation into a reportable death
- a record of the coroner’s findings and comments

family member, of a deceased person, means—

- (a) if the coroner investigating the death becomes aware of a document satisfying the coroner that the deceased person’s wish would have been that a particular person be the deceased person’s family member for this Act—the particular person; or

Example of document for paragraph (a)—

an advance health directive under the *Powers of Attorney Act 1998* appointing the particular person as the deceased person’s attorney

- (b) if paragraph (a) does not apply—

- (i) a spouse of the deceased person; or

[s 60]

- (ii) if a spouse is not reasonably available—an adult child of the deceased person; or
- (iii) if a spouse or adult child is not reasonably available—a parent of the deceased person; or
- (iv) if a spouse, adult child or parent is not reasonably available—an adult sibling of the deceased person; or
- (v) if a spouse, adult child, parent or adult sibling is not reasonably available—an adult who, immediately before the deceased person's death, had a relationship with the deceased person that the coroner investigating the death considers is sufficient for being a family member of the deceased person for this Act; or
- (vi) if the deceased person was an Aboriginal person or Torres Strait Islander and a spouse, adult child, parent or adult sibling is not reasonably available—an ATSI family member.

health care related death see section 10AA.

indigenous burial remains means—

- (a) Aboriginal human remains as defined in the *Aboriginal Cultural Heritage Act 2003*; or
- (b) Torres Strait Islander human remains as defined in the *Torres Strait Islander Cultural Heritage Act 2003*.

investigation includes—

- (a) a preliminary investigation by a coroner to decide, for section 11(2)(a), whether a death is a reportable death; and
- (b) the holding of an inquest.

owns, in relation to a prescribed tissue bank, see the *Transplantation and Anatomy Act 1979*, section 42A(6).

prescribed tissue bank means a tissue bank prescribed under the *Transplantation and Anatomy Act 1979*.

residential service see the *Residential Services (Accreditation) Act 2002*, section 4.

section 7(4) report means a report given under section 7(4) by a police officer to a coroner.

senior available next of kin see the *Transplantation and Anatomy Act 1979*, section 4(1).

tissue bank see the *Transplantation and Anatomy Act 1979*, section 42A(6).’.

Part 3 Amendment of Births, Deaths and Marriages Registration Act 2003

61 Act amended in pt 3

This part amends the *Births, Deaths and Marriages Registration Act 2003*.

62 Amendment of s 42 (Correcting the register)

Section 42(1)—

insert—

‘(c) subject to section 41(5), to reflect a coroner’s findings if the findings differ from the information entered on a register.’.

[s 63]

Part 4 **Amendment of Cremations Act 2003**

63 Act amended in pt 4

This part amends the *Cremations Act 2003*.

64 Amendment of s 4 (Cremations this Act does not apply to)

Section 4(c)—

omit, insert—

‘(c) Aboriginal human remains as defined in the *Aboriginal Cultural Heritage Act 2003* or Torres Strait Islander human remains as defined in the *Torres Strait Islander Cultural Heritage Act 2003*.’.

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