

CORONERS BILL 2002

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The bill is to provide the legislative framework for the modernisation and coordination of the Queensland coronial system.

Reasons for the objectives and how they will be achieved

Problems with the current coronial system include lack of co-ordination, regional disparity, lack of support and information to families and no single point of accountability.

This bill is the legislative framework to address these problems having regard to relevant recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) and interstate trends.

Specifically the bill provides for:

- the appointment of a State Coroner to co-ordinate the coronial system.
- the following deaths to be reported to the coroner:
 - deaths where it is not known who the person is;
 - violent or otherwise unnatural deaths. Examples of these types of deaths include deaths as a consequence of trauma, drowning, poisoning, asphyxia, or electrocution;
 - deaths that happen in suspicious circumstances;
 - deaths where death was not reasonably expected to be the outcome of a health procedure;
 - deaths in care (defined in clause 9 of the bill);
 - deaths in custody (defined in clause 10 of the bill);
 - deaths where a cause of death certificate has not issued and is unlikely to be issued; and

- deaths of people not been seen by a doctor in the previous three months (the three month rule)
- the Attorney-General to be able to direct that any death (whether or not reportable under the bill) be investigated by a coroner.
- continuation of the current police role of assisting coroners and the enhancement of police powers for this role.
- regard to family and cultural considerations in ordering internal autopsy examinations.
- coronial authorisation for retention of whole organs and foetuses at autopsy.
- mandatory inquests for deaths in custody.
- coroners being able to compel a witness to give self-incriminating answers at an inquest, subject to appropriate safeguards.
- removal of a coroner's power to commit for trial and replacement with obligation for coroners to give information to the Director of Public Prosecutions or relevant department if coroner believes an offence has been committed.
- coroners at inquest to make comments, including recommendations, that relate to public health or safety, the administration of justice and ways to prevent similar deaths happening in the future.
- coroner's comments and findings for deaths in care and custody to be forwarded to the Attorney-General, the relevant minister and chief executive.
- an Annual Report to the Attorney-General by the State Coroner.
- procedures and criteria for release of documents during an investigation (including to family members), by agencies, at inquest and for research.
- recognition of interstate or overseas cause of death certificates or coroners' release certificates as authority to dispose of bodies repatriated to Queensland.

Alternatives to the Bill

The current Act (the *Coroners Act 1958*) is nearly 50 years old. It needs to be updated having regard not only to the relevant RCIADIC recommendations and interstate trends but also current practices in the coronial jurisdiction in this State. The Queensland coronial system needs to be co-ordinated. The position of State Coroner as provided for in the bill is essential for this co-ordination to occur. There are therefore no alternatives to the bill.

Administrative cost to Government of implementation

Funding has been provided as part of this year's budget for:

- the Department of Justice and Attorney-General: the costs associated with the position of State Coroner and staff to assist the State Coroner.
- Queensland Health: Funding for the costs (including staffing) of extra autopsies as a result of deaths in care being reportable under the bill, funding for pathologists and technicians and funding for coronial counsellors to deal with family concerns about aspects of coronial autopsies.

Consistency with Fundamental Legislative Principles

The bill contains the following departures from fundamental legislative principles:

Duty to give information to coroner: Clause 16 of the bill allows a coroner to require a person to give the coroner information that is relevant to the investigation. Section 4(3)(f) of the *Legislative Standards Act 1992* provides that legislation is to provide appropriate protection against self-incrimination. Clause 16 provides that a person does not have to give the coroner information if the person has a reasonable excuse. A reasonable excuse includes that the information would tend to incriminate the person. Accordingly there is an appropriate protection against self-incrimination.

Abrogation of the privilege against self-incrimination at inquest: Section 4(3)(f) of the *Legislative Standards Act 1992* provides that legislation is to provide appropriate protection against self-incrimination. Clause 38 of the bill allows a coroner at an inquest to require a person at an inquest to give oral evidence which would tend to incriminate the person if the coroner is satisfied that it is in the public benefit for the person to give the evidence.

The insertion of this power is to help a coroner at inquest find out what actually happened to cause the death. This in turn will help the coroner to make appropriate comments or recommendations to prevent similar deaths happening in the future.

The clause contains appropriate safeguards in that the evidence is not admissible in any other proceeding against the person other than a proceeding for perjury. Any information, document or other evidence obtained as a direct or indirect result of the evidence given at the inquest is not admissible against the person in a criminal proceeding.

Power of police officer to enter where police officer reasonably suspects that an occupant may be dead or in need of urgent medical assistance: Section 4(3)(e) of the *Legislative Standards Act 1992* provides that a power to enter premises should be with judicial authorisation. Item 9 of Schedule 1 (proposed new section 371AA of the *Police Powers and Responsibilities Act 2000*) allows a police officer to exercise this power without judicial authorisation. The provision is justified because the pre condition to the exercise of the power is that the police officer has to reasonably suspect that an occupant is dead or in need of urgent medical treatment. The situation is analogous to police having the power under existing section 372 of the *Police Powers and Responsibilities Act 2000* to enter property (without warrant) if the police officer reasonably suspects an imminent risk of injury or damage to property or that domestic violence is occurring or has occurred.

Power of police officer to enter and seize: Section 4(3)(e) of the *Legislative Standards Act 1992* provides that a power to enter premises and seize documents or other property should be with judicial authorisation. Under the bill:

- a coroner will be able to authorise a police officer to enter and seize a thing which may be relevant to the coronial investigation (proposed section 371AD *Police Powers and Responsibilities Act 2000* as inserted by item 9 of Schedule 1). Coronial authorisation is consistent with section 4(3)(e) of the *Legislative Standards Act 1992*; and
- a police officer who is lawfully on a place will be able to seize a thing which may be relevant to the coronial investigation (proposed section 371AB *Police Powers and Responsibilities Act 2000* as inserted by item 9 of Schedule 1). Although not dependent upon coronial authorisation, the proposed section is consistent with section 113 of *Police Powers and Responsibilities Act 2000* which allows police officers who are lawfully on a

place to seize a thing they reasonably suspect is evidence of the commission of an offence.

Power of police officer to require information: Proposed section 371AF of the *Police Powers and Responsibilities Act 2000* as inserted by item 9 of Schedule 1 allows a police officer to require a person whom the police officer reasonably believes may be able to give information relevant to the investigation to give the information.

The obligations of a police officer under this section are in addition to the obligations under section 391 of *Police Powers and Responsibilities Act 2000*. Section 391 of the *Police Powers and Responsibilities Act 2000* provides that it is an offence to fail to comply with a requirement under the *Police Powers and Responsibilities Act 2000* unless the person has a reasonable excuse. Section 391 obliges a police officer to inform a person who fails to comply with a requirement that:

- it is an offence to fail to comply unless the person has a reasonable excuse; and
- the person may be arrested for the offence.

Section 4(3)(f) of the *Legislative Standards Act 1992* provides that legislation is to provide appropriate protection against self-incrimination. Proposed section 371AF provides an appropriate protection by providing that a police officer must inform a person who fails to comply with a requirement under section 371AF that the person may:

- fail to give information if the information would tend to incriminate the person; and
- seek legal advice before giving the information.

State Coroner guidelines: Under clause 14 of the bill the State Coroner must issue guidelines to all coroners about the performance of their functions in relation to investigations generally. The guidelines must:

- have regard to the recommendations of the Royal Commission into Aboriginal Deaths in Custody regarding the investigation of deaths in custody;
- deal with the investigation of deaths in custody
- deal with investigations of deaths involving human remains found in a suspected traditional burial site; and
- list the doctors who are approved by the State Coroner to conduct particular types of autopsies, either by name or by reference to particular qualifications.

The State Coroner may also issue guidelines about matters such as the dignity and respect to be accorded to persons (including their cultural traditions or spiritual beliefs) who are at a place from which a body for a reportable death is being removed (clause 18 of the bill).

These guidelines may be seen as a delegation of legislative power within the meaning of section 4(4) of the *Legislative Standards Act 1992*. The guideline power is analogous to the general practice direction power of courts and is needed to provide a co-ordinated and consistent approach on issues as well as flexibility. Any guidelines that were operative during the year to which the Annual Report relates are to be included in the State Coroner's Annual Report to the Attorney-General under clause 76 of the bill.

CONSULTATION

Community

This bill is broadly based on submissions received on a consultation draft that was released for comment in November 2000 (the 2000 Consultation Draft). Over 90 submissions were received on the 2000 Consultation Draft from advocacy groups, medical colleges and associations, private citizens who had dealings with the coronial system, academics, the funeral and crematoria industry, the State Coroner for Western Australia and the Queensland Law Society.

A draft of this bill was sent to targeted stakeholders prior to introduction. These targeted stakeholders included the Australian Medical Association of Queensland, the Association of Australian-owned Funeral Directors, the Queensland Cemeteries and Crematoria Association, the Australian Funeral Directors Association, the Queensland Funeral Directors Association Limited, the Independent Funeral Directors Association, the Local Government Association of Queensland, the Queensland Nursing Council, the Office of the Health Practitioner Registration Boards, the Aboriginal and Torres Strait Islander Advisory Board, the Deaths in Custody Monitoring Unit at the Queensland Aboriginal and Torres Strait Islander Legal Services Secretariat, the Law Society, the Bar Association and the Queensland Council for Civil Liberties.

Government

The 2000 Consultation Draft was widely circulated within government departments. It was also sent to the Chief Justice, the Chief Judge of the

District Court, the Chief Magistrate, the Brisbane Coroner, Legal Aid Queensland, the Commissioner for Children and Young People, the (then) Criminal Justice Commission, the Health Rights Commission, and the Director of Public Prosecutions for comment.

Prior to introduction a draft of this bill was sent to relevant government departments including Queensland Health, the Queensland Police Service, the Department of Families, the Department of Aboriginal and Torres Strait Islander Policy, the Department of Corrective Services, the Department of Emergency Services, the Department of Premier and Cabinet, the Department of Industrial Relations, the Department of Local Government and Planning and Queensland Treasury. It was also sent to Chief Justice, the Chief Judge of the District Court, the Chief Magistrate, the Brisbane Coroner, Legal Aid Queensland, the Commissioner for Children and Young People, the Information Commissioner, the Health Rights Commission, the Crime and Misconduct Commission and the Director of Public Prosecutions.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 Short title: Provides that the short title is the *Coroners Act 2002*.

Clause 2 Commencement: Provides the Act commences on proclamation.

Clause 3 Object of Act: Provides the Act's objects are to :

- (a) establish the position of State Coroner; and
- (b) require the reporting of particular deaths; and
- (c) establish the procedures for investigations, including by holding inquests, by coroners into particular deaths; and
- (d) help to prevent deaths from similar causes happening in the future by allowing coroners at inquest to comment on matters connected with deaths, including matters related to:
 - (i) public health or safety; or

(ii) the administration of justice.

Clause 4 Act binds all persons: Provides that the Act binds all persons including the State and, as far as possible, the Commonwealth and other States.

Clause 5 Relationship with other Acts: This clause deals with the relationship between the *Coroners Act 2002* and other Acts, including investigations under other Acts.

The clause provides that the Act:

- is subject to section 4A of the *Commissions of Inquiry Act 1950* which provides that a coroner has no jurisdiction where a commission of inquiry constituted by a Supreme Court judge has been established to inquire into the same matters which the coroner is examining
- does not limit or otherwise affect the functions or powers of a police officer or other person to investigate a death under another Act
- does not limit or otherwise affect the functions or powers of a police officer to do something other than an investigation under this Act.

Clause 6 Definitions: Provides that the dictionary in Schedule 2 defines particular words used in this Act.

PART 2—REPORTING DEATHS

Clause 7 Duty to report deaths: This clause deals with who has a duty to report deaths and to whom they must be reported.

The effect of clauses 7(1) and (2) is that if a person becomes aware of a death that appears to be a reportable death then the death has to be reported to:

- in the case of a death in custody – the State Coroner or Deputy State Coroner; or
- otherwise - a police officer or coroner

There is no such obligation where the person believes that somebody has already reported, or is reporting, the death.

Clause 7(3) provides that a police officer to whom a death is reported must report the death to a coroner in writing.

Clause 7(4) provides however that if the death is reported to a police officer because a cause of death certificate has not issued and is not likely to issue (one of the definitions of “reportable death” in the bill – see clause 8(3)(e)), the officer need not report the death to a coroner until he/she is satisfied that the cause of death certificate is not going to issue. This is to deal with those situations where a person reports a death because the person does not know whether a cause of death certificate will issue - for example the doctor cannot be contacted in the middle of the night. A police officer does not have to “onreport” the death to a coroner until the police officer is satisfied that a cause of death certificate is not likely to be issued. It may be that a police officer will be able to locate the doctor or make other inquiries in the middle of the night which will satisfy the police officer that a cause of death certificate will issue

A coroner to whom a death is reported must report the death to the State Coroner in writing. This is consistent with the State Coroner’s coordination function under clause 70.

Clause 8 “Reportable death” defined: Provides a definition for “reportable death”. The death must be a death to which both clause 8(2) and clause 8(3) both apply.

Clause 8 (2) provides that the death must firstly be:

- (a) a death that happened in Queensland; or
- (b) although the death happened outside Queensland:
 - (i) the person’s body is in Queensland; or
 - (ii) at the time of death, the person ordinarily lived in Queensland; or
 - (iii) the person, at the time of death, was on a journey to or from somewhere in Queensland; or
 - (iv) the person’s death was caused by an event that happened in Queensland.

Clause 8 (3) provides that in addition to satisfying subsection (2), for the death to be to be reportable:

- (a) it has to be not known who the person is; or

- (b) the death was a violent or otherwise unnatural death (The section gives an example of these deaths namely death as a consequence of asphyxiation, drowning, electrocution, fire, poisoning or trauma.); or
- (c) the death happened in suspicious circumstances; or
- (d) the death was not reasonably expected to be the outcome of a health procedure. (The term “health procedure” is defined in the dictionary to mean a dental, medical, surgical or other health related procedure, including for example the administration of an anaesthetic, analgesic, sedative or other drug. The clause gives two examples of what is meant by the unexpected outcome of a health procedure namely:
 - 1. A person’s bowel is mistakenly perforated during an operation. Because of this, the person develops peritonitis and dies. Death from peritonitis was not reasonably expected to be the outcome of the operation.
 - 2. A person is injected with a drug as part of a medical procedure. The person has an adverse reaction to the drug and dies. The death was not reasonably expected to be the outcome of the procedure.); or
- (e) a cause of death certificate has not been issued, and is not likely to be issued, for the person (cause of death certificate is defined in the dictionary to mean a medical certificate of cause of death or perinatal death under the *Registration of Births, Deaths and Marriages Act 1962* or a similar certificate issued under a similar law of a State or country. This means that where body is brought to Queensland for burial then it will not have to be reported to the coroner if there is a certificate as to cause of death issued at the place from where the body came. The words “and is not likely to be issued” have been inserted to make it clear that the death does not have to be reported where, although at the moment of death a certificate has not issued, the certificate is likely to issue. For example a terminally ill patient in a nursing home is expected to die during the night. The doctor has indicated to the nursing home staff that he/she expects the patient to die during the night and that all other things being equal the doctor will issue a cause of death certificate the following day. The patient dies during the night - there is nothing about the death to otherwise require the death to be reported to the coroner. The nursing home staff do not have to report the death to the coroner. On the other hand if the

nursing home staff found the patient dead with a knife inserted in her chest then clearly the death would have to be reported.); or

- (f) the death was a death in care (this term is defined in clause 9) or
- (g) the death was a death in custody (this term is defined in section 10); or
- (h) the person had not consulted a doctor within 3 months before the death.

Clause 8(4) provides that a death that happened outside Queensland is not a reportable death if a death has been reported to a non-Queensland coroner. “Non-Queensland coroner” is defined in the dictionary to mean a person who holds a position equivalent to a coroner at the place where the death happened.

This means that if a person who ordinarily resides in Queensland is killed in a car accident whilst holidaying in London, the death is likely to be reported to the London coroner. If the death is so reported to the London coroner the death will not have to be reported to a coroner in Queensland.

Clause 94, which deals with the authority for burial of a body, recognises the London coroner’s release certificate in the event that the body in the example above is repatriated to Queensland for burial or cremation.

Clause 9 “Death in care” defined: This clause deals with the definition of “death in care”. Its purpose is to make the deaths of particular vulnerable persons reportable to the coroner.

The clause provides that “death in care” (which is a category of reportable death) means if, when a person died:

- (a) the person had a disability mentioned in section 5 of the *Disability Services Act 1992*; and –
 - was living at a level 3 accredited residential service under the *Residential Services (Accreditation) Act 2002*; or
 - was receiving residential services operated, or wholly or partly funded, by the department administering the *Disability Services Act 1992*; or
 - was living at a place—
 - (A) that is not a private dwelling or aged care facility; and
 - (B) that is wholly or partly funded by the department which administers the *Health Services Act 1991* or at which that department provides services;

(Section 5 of the *Disability Services Act 1992* provides that Act applies to a person with a disability—

- (a) that is attributable to an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment or a combination of impairments; and
- (b) that results in—
 - (i) a substantial reduction of the person’s capacity for communication, social interaction, learning or mobility; and
 - (ii) the person needing support.

The disability must be permanent or likely to be permanent.

The disability may be, or may not be, of a chronic episodic nature.)

Subclause (4) of the bill defines a “level 3 accredited residential service” to be a residential service that has, or is required to apply for, a level 3 accreditation under the *Residential Services (Accreditation) Act 2002*. Under that Act level 3 accreditation is required when the residential service provides a personal care service.); or

- (b) the person was, under the *Mental Health Act 2000* –
 - (i) being taken to a place where there is an authorised mental health service under section 25, 39, 292 or 508 of that Act;
 - or
 - (ii) being taken to, or detained in, a place where there is an authorised mental health service as an involuntary patient or under an emergency examination order; or
 - (iii) being detained because of a court order under section 101(2), 273(1)(b), 337(6) or 422(1) of that Act; or
 - (iv) undertaking limited community treatment while accompanied by an employee of the health service; or
- (c) the person was under the guardianship of the chief executive under section 27 of the *Adoption of Children Act 1964*; or
- (d) the person was a child placed in the care of a licensed care service, approved foster carer or other person under section 82 of the *Child Protection Act 1999*.

Clause (9)(2) makes it clear that subsection 9(1)(b) applies even if immediately before the person was detained the person was in the custody

of the chief executive (corrective services) under the *Corrective Services Act 2000*.

Clause 9 (3) makes it clear that the definition applies even if the person died somewhere other than the place where the person ordinarily lived for the purposes of being in care. The clause gives as an example of this a child placed in the care of an approved foster carer who becomes ill, is taken to hospital and subsequently dies in hospital. The child's death is a death in care.

Clause 10 "Death in custody" defined: Provides that a person's death is a death in custody if, when the person died, the person was:

- (a) in custody; or
- (b) escaping, or trying to escape, from custody; or
- (c) trying to avoid being put into custody (for example a suspected bank robber who dies in a car crash while being pursued by police).

Clause 10 (2) defines custody to mean detention:

- (a) by a police officer,
- (b) under the *Corrective Services Act 2000* -
 - (i) in a corrective services facility or watch-house; or
 - (ii) under the escort of a corrective services officer; or
 - (iii) by a law enforcement agency; or
 - (iv) by the proper officer of a court; or
- (c) under section 104 of the *Corrective Services Act 2000* (this section deals with the temporary detention of persons for security offences); or
- (d) under sections 41, 43, 120 or 121 of the *Juvenile Justice Act 1992*

Clause 10(3) defines detention to include detention under arrest, the authority of a court order or the authority of an Act.

PART 3—CORONER’S INVESTIGATION, INCLUDING BY INQUEST, OF DEATHS

Division 1—Investigations generally

Clause 11 “Deaths to be investigated”: As noted in subclause (1), this clause deals with the types of deaths that may be investigated and the type of coroner who conducts the investigation.

Clause 11 (2) provides that the only deaths that a coroner can investigate are those deaths that he/she considers to be reportable and those deaths where he is not aware that any other coroner is investigating the death.

Clause 11(3) provides that a coroner must investigate a death if the State Coroner directs the coroner to investigate the death.

Clause 11(4) provides the State Coroner may direct a coroner to investigate a death when:

- State Coroner considers the death is a reportable death; or
- State Coroner has been directed by the Minister to have the death investigated, whether or not the death is a reportable death.

In other words the Minister can direct any death be investigated. The State Coroner can only direct that deaths he/she considers are reportable be investigated.

Clause 11 (5) provides that a coroner must investigate the suspected death of a person if directed by the State Coroner to do so.

Clause 11 (6) provides when the State Coroner may give such a direction, namely if:

- the State Coroner suspects the person is dead; and
- the State Coroner considers the death is a reportable death.

or

- the Minister directs the State Coroner to have the suspected death investigated.

The “suspected death” category replaces section 9 (“inquiry when body destroyed or recoverable” and section 10 (“inquiries respecting missing persons”) of the *Coroners Act 1958*.

Clause 11 (7) makes it clear that deaths in custody can only be investigated by the State Coroner or Deputy State Coroner.

Clause 12 Deaths to be investigated or further investigated: This clause deals with deaths that a coroner must not investigate or which cannot be further investigated.

Clause 12(1) provides that a coroner must not investigate a death, unless directed to do so by the Minister if –

- (a) the death happened in another State and has been reported to a non Queensland coroner; or
- (b) the death happened outside Australia.

As a result of the definition of “reportable death” in clause 8, the unnatural death of a Queensland in a remote part of the world where there is no office of coroner or its equivalent is reportable. This section ensures that the coroner must not investigate the death unless there is a direction from the Minister that the coroner do so.

Clause 12 (2) provides that a coroner must stop investigating a death if –

- (a) the coroner’s investigation shows that the body is indigenous burial remains (defined in the dictionary to mean burial remains to which section 34 of the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987* applies); or
- (b) the coroner’s investigation of 1 of the following types of deaths shows that an autopsy of the body is not necessary and the coroner decides to authorise a doctor to issue a cause of death certificate –
 - (i) a death that was a violent or otherwise unnatural death; or
 - (ii) a death that happened in suspicious circumstances; or
 - (iii) a death was not reasonably expected to be the outcome of a health procedure; or
 - (iv) a death that was a death in care; or
 - (v) a death where the person had not consulted a doctor within 3 months before the person’s death.

(Subclause 12(2) is based on section 11 of the current *Coroners Act 1958*. There have been varying approaches under section 11 of the *Coroners Act 1958* as to what happens to the coronial inquiry once the consent to the certificate has been given. Subclause 12(2) makes it clear that if the coroner does consent to

the issue of the cause of death certificate then the coroner stops investigating the death.); or

- (c) an autopsy ordered by the coroner reveals the body is that of a stillborn child

(Like the common law and the *Coroners Act 1958* it is the bill's intention that the coroner must not investigate the circumstances of a stillborn child. This is reinforced by clause 95 of the bill. However, like section 18 of the *Coroners Act 1958*, the coroner can, under the bill, order an autopsy to determine whether the body is that of a stillborn child. Clause 19 (1)(b) specifically allows for this.); or

- (d) the State Coroner directs the coroner to stop the investigation; or
- (e) the coroner becomes aware that the death is a death to which subsection (1) refers (ie a death that is being investigated by a coroner in another State or a death outside Australia, unless the Minister directs the corner to continue the investigation).

Clause 12 (3) allows the coroner to give the results of the coroner's investigation, including any autopsy report, to a non Queensland coroner who is investigating the death.

Clause 13 Coroner's powers of investigation: This section applies to a coroner who is investigating a death under the act, whether before or during an inquest.

A coroner can:

- make, or arrange for, any examination, inspection, report or test that the coroner considers is necessary for the investigation. (This is based on section 7(3) of the *Coroners Act 1958*).
- authorise a police officer to exercise a power under section 371AD of the *Police Powers and Responsibilities Act 2000* as inserted by this bill. (Section 371AD of the *Police Powers and Responsibilities Act 2000* allows a coroner to issue a search warrant to a police officer for the purposes of the coroner's investigation.)

The coroner may be present while a police officer exercises powers under the search warrant.

Clause 14 Guidelines and directions for investigations: This clause allows the State Coroner to issue specific directions and general guidelines in order to achieve best practice in the coronial system. The directions are

about a particular death and a particular investigation whilst the guidelines are of a more general application.

The guidelines are to have regard to the recommendations of the Royal Commission into Aboriginal Deaths in Custody that relate to the investigation of deaths in custody.

The guidelines must:

- deal with the investigations of deaths in custody
- deal with the investigation of human remains from a suspected traditional burial site; and
- list doctors who can conduct autopsies under the Act either by name or reference to particular qualifications.

Other clauses in the bill provide for guidelines to be made about particular issues. For example clause 18 provides for the issue of guidelines about the dignity and respect to be accorded to persons who are at a place from which a body is to be taken, and their cultural traditions or spiritual beliefs.

Clause 14 (5) makes it clear that a direction cannot be about the findings a coroner may make.

Clause 15 Help in investigation: Provides that a coroner can seek help from a lawyer or other person. The clause also notes that the duty of police officers to help coroners is contained in section 447 *Police Powers and Responsibilities Act 2000* as inserted by this bill.

Clause 16 Duty to help investigation: Provides that the coroner may require people to give information that is relevant to the investigation. The person does not have to give the information if he/she has a reasonable excuse (which could be that the answer may incriminate the person).

Clause 17 Disclosure of confidential information to a Coroners Court: Provides that where a provision in an Act allows for the disclosure of confidential information to a court or a party to a proceeding before the court, the provision is taken to enable the disclosure of the information to the Coroners Court as if:

- (a) a reference to the court is a reference to the Coroners Court;
- (b) a reference to a proceeding is a reference to an inquest;
- (c) a reference to a party is a reference to a police officer, lawyer or the person helping the Coroners Court or a person who is to appear or is appearing at the inquest.

A Coroners Court may only disclose information obtained under the clause for a purpose connected with the inquest being conducted by the Court.

A person who has been given access to confidential information by a Coroners Court cannot directly or indirectly disclose the information other than for the inquest or unless disclosure is permitted or required under the Bill or an Act. If a person discloses confidential information for other purposes the maximum penalty is 100 penalty units or 2 years imprisonment.

Division 2—Autopsies

Clause 18 Transferring body to mortuary: This clause applies to the transferring of bodies to a mortuary at the direction of a coroner or police officer under new section 371AB of *Police Powers and Responsibilities Act 2000* inserted by this bill. Mortuaries to which the clause applies are mortuaries where autopsies ordered by coroners are conducted.

People who are involved in taking the body to the mortuary have to comply with:

- any direction by the coroner or police officer
- the guidelines issued by the State Coroner about:
- the dignity and respect to be accorded to persons who are at a place from which a body is to be taken, and their cultural traditions or spiritual beliefs; and
- the way in which bodies are taken to a mortuary.

Clause 19 Order for autopsy: Provides that a coroner must order a doctor to perform an autopsy as part of the investigation of a person's death or to find out whether the body is that of a stillborn child. (Like the common law and the *Coroners Act 1958* it is the bill's intention that the coroner must not investigate the circumstances of a stillborn child. This is reflected in clause 95 of the bill. However like section 18 of the *Coroners Act 1958*, the coroner can, under this clause, order an autopsy to find out whether the body is that of a stillborn child. This is to deal with situations such as where what appears to be an abandoned stillborn child has been discovered. The coroner can order the autopsy to confirm whether or not it is a stillborn child.)

The clause provides for the following types of autopsy examination:

- for a body that has been cremated – an examination of the cremated remains of the body (this has been included to allow for the possibility of scientific advancements which may allow for information about the death to be obtained from such an examination)
- for a body that has not been cremated -
 - an external examination;
 - an external and partial internal examination;
 - an external and full internal examination.

Subclause 19(4) provides that before making an order for an internal examination the coroner must wherever practicable consider:

- (in the general sense) that in some cases a deceased person’s family may be distressed by the making of this type of order, for example, because of cultural traditions or spiritual beliefs;
- (specifically) any concerns raised by a family member or another person with an interest in the type of order.

An example of a person with an interest in the type of order may be the doctor who is to conduct the autopsy who may be concerned about exposure to infectious disease.

(The term “family member” is defined in the dictionary to mean -

- (a) a spouse of the deceased person; or
- (b) if a spouse is not reasonably available—an adult child of the deceased person; or
- (c) if a spouse or adult child is not reasonably available—a parent of the deceased person; or
- (d) if a spouse, adult child or parent is not reasonably available—an adult sibling of the deceased person; or
- (e) 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.

“Spouse” is defined in the dictionary to include a de facto partner. The meaning of de facto partner is contained in clause 96 and accords with the definition in section 32DA of the *Acts Interpretation Act 1954*.)

If a specific concern has been raised with the coroner and the coroner still thinks it necessary to make the order then he must give a copy of the order to the person who raised the concern.

Clause 19(6) provides that the order for autopsy must be directed to 1 of the doctors listed in the guidelines with skills necessary to conduct an autopsy in circumstances similar to the particular circumstances of the case.

Clause 19(7) states the doctors and other persons who cannot conduct or help at an autopsy. These are people who are accused of causing the deceased person's death or the deceased person's attending doctor.

Clause 19(8) allows an order for autopsy to be made even if:

- an autopsy had been previously conducted under this Act or other lawful authority; or
- a cause of death certificate had been issued; or
- even if the death had previously been investigated under this Act or the *Coroners Act 1958*.

Clause 20 Exhuming body or recovering remains: Provides the procedures to be followed if, after a body has been buried or cremated, the State Coroner forms the belief that the death was a reportable death and the body is to be exhumed to allow an autopsy to be conducted.

Clause 20(3) obliges the State Coroner to give at least 2 days notice of the State Coroner's intention to make the order to:

- the person in charge of the place where the body is or the cremated remains are;
- any person the State Coroner considers has a sufficient interest in the autopsy. (Such a person could be a family member.)

This notice does not have to be given where the State Coroner cannot contact the person or the State Coroner considers that it is not in the public interest for the notice to be given.

Clause 20(4) obliges the State Coroner to have regard to any concerns raised in relation to the order being made (this would include a concern based on cultural traditions or spiritual values). If the State Coroner thinks the order should still be made then the State Coroner is to make the order and give a copy to the person who raised the concern.

Clause 20(8) provides for the return of the body or cremated remains to the place from where they were taken as soon as reasonably practicable after the autopsy.

Clause 21 Observing an autopsy: Provides the procedures to be followed if a person with a sufficient interest in the autopsy wishes to observe the autopsy.

The coroner or police officer who is investigating the death under this or another Act is entitled to observe or participate in an autopsy.

Clause 21(5) makes it clear that persons who are required to observe or participate in an autopsy for their vocational training may do so with the consent of the doctor who is conducting the autopsy.

Clause 22 Extra medical evidence for autopsy: This clause is based on section 18(6) of the *Coroners Act 1958*. The clause provides that a coroner may by notice require:

- an attending doctor (defined in the dictionary to mean a doctor who attended the deceased at his/her death or during his/her last illness) to be present at the autopsy or produce a report to the doctor conducting the autopsy; or
- a person who has the deceased person's medical records or tissue samples to give them to the doctor conducting the autopsy.

The purpose of the clause is to allow a doctor conducting the autopsy to have as much information as possible about the deceased person's medical condition. This should ensure a more accurate determination of cause of death by the doctor conducting the autopsy.

The notice must be complied with unless the person has a reasonable excuse.

The records have to be returned as soon as practicable after the autopsy unless the coroner orders otherwise.

Clause 23 Autopsy testing: Provides that the coroner can order the doctor conducting the autopsy to conduct a particular test.

Clause 23(2) allows the doctor conducting the autopsy to conduct a test that is consistent with the type of autopsy ordered by the coroner.

The doctor is allowed to remove tissue from the deceased person's body for a test. Tissue is defined in the dictionary to mean –

- (a) an organ, blood or part of a body or foetus; or

- (b) a substance extracted from an organ, blood or part of a body or foetus.

The clause makes it clear that irrespective of the type of autopsy ordered, blood samples may be taken for testing.

Clause 24 Removing tissue for autopsy: This clause governs the procedures to be followed when tissue is to be removed for testing.

Clause 24(2) provides that the doctor conducting the autopsy must inform the coroner about any whole organ or foetus that has been removed prior to the coroner ordering the body's release.

The coroner can order the release of the body without the whole organ or foetus if the coroner is satisfied that:

- where practicable a family member has been informed of the removal of the whole organ or foetus; and
- the retention is necessary for the investigation of the death despite any concerns that may have been raised about the retention of the whole organ or foetus.

Clause 24(5) provides that the coroner is to review the continued retention of the whole organ or foetus at 6 monthly intervals.

Clause 24(6) provides that specimen tissue as defined under *Transplantation and Anatomy Act 1979* ("blocks and slides" or tissue taken from the tissue block) must be kept indefinitely.

Clause 24(7) provides that all other tissue cannot be disposed of except with the consent of a coroner.

Clause 24(8) provides that if the coroner orders disposal of the tissue then the entity that has the tissue has to give it to a family member for burial (which because of the dictionary includes cremation) if the family member has told the coroner that they want it. Otherwise the entity can arrange for it to be buried.

Clause 24(9) provides that the coroner's order for disposal of the tissue is sufficient authority for its disposal.

"Coroner" in this clause means the coroner who ordered the autopsy or if that coroner is not available - another coroner.

"Burial" is defined in the dictionary to mean cremation or other lawful disposal either in Queensland or elsewhere.

Clause 25 Autopsy reports: Provides that the doctor who conducts the autopsy must give a report to the coroner and an investigating police officer who asks for a copy of it.

The clause also allows copies of autopsy reports and test reports (being a document that contains the results of a test performed for the purpose of an autopsy) to be provided to certain chief executives upon request. The reason for this is to that it may be several months before a coroner is in a position to make public findings as to the cause of death and to issue riders based on the information from any autopsy tests or autopsy final report findings. This time lapse can be quite critical when the autopsy or associated tests highlight issues that may need to be addressed urgently. For example:

- Blood tests of a young person who has died from a heroin overdose may indicate that the purity for street heroin is higher than normal, placing drug users at even greater risk.
- Preliminary autopsy test results may indicate that there is an undiscovered allergic reaction to a particular medication. This may warrant an early withdrawal of the medication or an urgent warning advice to doctors.

Clause 26 Control of body: This clause deals with when the coroner has control of a deceased person's body.

Clause 26(1) provides that the coroner starts having control of a deceased person's body when the coroner starts investigating the deceased person's death.

Clause 26(2) provides that the coroner stops having control when the coroner :

- (a) if the coroner stops investigating the death under section 12(1)(a)—orders the release of the body to the Minister responsible for administering the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*; or
- (b) if the coroner stops investigating the death under section 12(1)(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(1)(c) or (d)—orders the release of the body for burial; or

- (d) if the coroner stops investigating the death under section 12(1)(e)—orders the release of the body to the other jurisdiction; or
- (e) the coroner 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 orders the release of the body for burial.

In this case clause 26(3) provides that the coroner must order the release of the body as soon as reasonably practicable after the autopsy.

However under clause 26(4) the coroner cannot order the release of a body for burial that has not been identified unless the coroner believes it is necessary to bury the body in particular circumstances. This is based on section 23(4) of the *Coroners Act 1958*.

“Burial” is defined in the dictionary to include cremation or other lawful disposal, either in Queensland or elsewhere.

Clause 26(6) prohibits a doctor from issuing a cause of death certificate:

- (a) if the death appears to be a reportable death, unless a coroner advises the doctor that the death is not a reportable death. (This is to deal with the situation where a doctor may not have a correct understanding of the various categories of reportable deaths under the Act. The coroner is not consenting to the issue of a cause of death certificate (see clause 12) in these situations because the coroner is not even investigating the death); or
- (b) if a coroner is investigating the death unless the coroner authorises its issue (this is the situation contemplated by clause 12).

Division 3—Inquests

Clause 27 **When inquest must be held:** Provides that an inquest must be held if –

- the coroner considers the death to be a death in custody or a death in care that has occurred in circumstances that raise issues about the deceased person’s care; or
- the Minister directs the State Coroner to arrange for an inquest to be held; or

- the State Coroner directs that an inquest be held.; or
- the District Court, on an application under section 30, orders an inquest to be held into the death.

Clause 28 When inquest may be held: Provides that an inquest may be held into a reportable death if the coroner investigating the death considers it desirable to hold an inquest. These are the factors that the coroner is to have regard to in considering whether it is desirable to hold the inquest:

- the wish of any family member communicated to the coroner
- the extent to which drawing attention to the circumstances of the death may prevent deaths in similar circumstances happening in the future; and
- any guidelines issued by the State Coroner about the issues that may be relevant for deciding whether to hold an inquest for particular types of deaths.

Clause 29 When inquest must not be held or continued: This clause, like section 42 of the *Coroners Act 1958*, is designed to ensure that certain criminal proceedings (namely those where the question of whether the accused caused the death may be in issue) are not compromised because of an inquest.

The clause applies when the coroner is informed that someone has been charged with an offence in which the question of whether the accused caused the death may be in issue.

If the coroner is informed before an inquest is started: the coroner must not start the inquest until the end of the proceedings for the offence (including any appeal started within the appeal period).

If the coroner is informed after the start of the inquest: the coroner must adjourn the inquest. The coroner may resume or close the inquest after the end of the proceedings, including any appeal period.

Clause 30 Applying for inquest to be held: This clause provides that a person can apply for an inquest to be held. The coroner has 6 months to decide the application. This period of time is so long because if the application is made very early in the investigation then the coroner may not be in a position to decide whether an inquest is necessary.

If the coroner decides not to have an inquest the person applies firstly to the State Coroner (except where the coroner is the State Coroner in which case the person applies to the District Court). If unsuccessful before the State Coroner the person can apply to the District Court.

Both the State Coroner and the District Court can order an inquest if satisfied it is in the public interest to do so.

Clause 31 Inquests to be held by the Coroners Court: Provides that an inquest must be held by the Coroners Court in open court. An inquest may be held on any day of the week.

The court may be closed while particular evidence is given. An example of this could be when evidence is given under section 38 (incriminating evidence).

Clause 32 Notice of inquest: Provides that the Coroners Court must publish a notice of inquest in a daily newspaper unless the State Coroner has directed that a notice not be published. The clause does not apply to an inquest that has been adjourned.

Clause 33 Inquests into multiple deaths: Provides that the State Coroner may investigate or may direct a coroner to investigate at an inquest:

- a number of deaths that happened at different times and places but in similar circumstances (An example of this is that the State Coroner may direct a coroner to investigate several deaths that are suspected of being caused by an overdose of methadone.); or
- a number of deaths that happened at the same time and place.

Clause 34 Pre-inquest conferences: Provides for the holding of pre-inquest conferences by the Coroners Court to:

- (a) decide:
 - (i) what issues are to be investigated at the inquest; or
 - (ii) who may appear at the inquest
 - (iii) which witnesses will be required at the inquest;
 - (iv) what evidence will be required at the inquest; or
- (b) to work out how long the inquest will take
- (c) to hear any applications under section 17; or
- (d) to otherwise ensure the orderly conduct of the inquest.

Clause 35 Directions or orders about inquests: Provides for the making of such directions and orders by the Coroners Court as are considered appropriate for the conduct of the inquest. An example is that the Coroners Court may make an order to close the court while a witness is

giving evidence under clause 38 that the witness claims would tend to incriminate the witness.

Clause 36 Right to appear: Provides that the following people have a right to appear, examine (including cross-examine) witnesses and make submissions at an inquest:

- a police officer, lawyer or other person assisting the Coroners Court
- the Attorney – General.
- a person who the Coroners Court considers has a sufficient interest (this could be the representative of a government department or a family member).

The Attorney – General or person who has a sufficient interest may be represented by a lawyer.

Clause 37 Evidence: Provides that the Coroners Court is not bound by the rules of evidence and may inform itself as it sees appropriate.

Clause 37(3) provides that the Coroners Court may:

- order a person to produce a document to the Coroners Court prior to the start of the inquest (this will give the Coroners Court the opportunity to peruse the document prior to the commencement of the inquest)
- order a person to attend until excused to give evidence or produce something
- order a person called at an inquest to take an oath or answer a question.

Clauses 37(6) and (7) provide for the Coroners Court to issue a warrant for the arrest of a person who fails to attend the inquest as ordered by the Coroners Court.

Clause 38 Incriminating evidence: This clause allows a coroner at an inquest to require a witness to give oral evidence that may incriminate the witness.

Clause 38(1) provides that the coroner at an inquest may require a person to give oral evidence that would tend to incriminate the witness. The coroner can only do this if the coroner is satisfied that it is in the public interest for the witness to do so.

Clause 38(3) provides that the evidence is not admissible against the witness in any other proceeding other than a proceeding for perjury.

Clause 38(4) provides that derivative evidence (namely any information, document or other evidence obtained as a direct or indirect result of the evidence given by the witness) is not admissible against the witness in a criminal proceeding.

Clause 39 Exhibits: Provides for the custody of exhibits by the registrar or deputy registrar. The clause also allows the coroner to make an order about the custody of exhibits.

Clause 40 Prohibited publications relating to inquests: Provides for the coroner to make orders in relation to the publication of information relating to or arising at inquest.

Clause 40(1) provides for the coroner to either before, during or immediately after the holding of an inquest, make an order prohibiting the publication of information relating to or arising at an inquest. For example the coroner may prohibit the publication of information that a deceased person's death may possibly have been self-inflicted.

Clause 40 (3) prohibits the publication of disallowed questions and answers to disallowed questions.

Clause 40(4) allows the coroner to make orders prohibiting filming, photographing, sketching or recording.

Clause 41 Contempt: Provides that the Magistrates Court contempt powers apply to the Coroners Court.

Clause 42 Excluding persons from inquest: Provides that the Coroners Court may order a person to be excluded from an inquest if it is in the interest of justice, the public or a particular person to do so. For example a person may be excluded from the inquest until the person has given evidence.

Clause 43 Adjourning inquest: Provides that the Coroners Court may adjourn an inquest to any time and place.

Clause 44 Coroners findings: Provides the findings that a coroner is to make, if possible, whether at inquest or otherwise. These findings are:

- whether a death happened (for a suspected death);
- who the deceased person is;
- how the person died;
- when the person died;
- where the person died; and
- what caused the person to die.

Clause 44(4) provides that a copy of the findings are to be given to:

- a family member (defined in the dictionary) who has indicated that the family member will accept the document for the family
- a person with a sufficient interest who appeared at the inquest
- if the coroner is not the State Coroner - the State Coroner.

Clause 44(5) provides that the coroner must not include in the findings any statement that a person is or may be guilty of an offence or civilly liable for something.

Clause 45 Coroner's comments: Provides that a coroner at inquest may comment on anything connected with the death that relates to:

- public health or safety.
- the administration of justice.
- ways to prevent deaths from happening in similar circumstances in the future.

Clause 45(2) provides that a copy of the comments are to be given to:

- a family member (defined in the dictionary) who has indicated that the family member will accept the document for the family
- an person with a sufficient interest who appeared at the inquest
- if the coroner not the State Coroner - the State Coroner.
- If a government entity deals with the matters to which the comment relate – the Minister administering the entity and the chief executive officer of the entity.

Clause 45(3) provides that the coroner must not include in the comments any statement that a person is or may be guilty of an offence or civilly liable for something.

Clause 46 Coroner's comments and findings for deaths in care or custody: Provides that copies of findings and comments for deaths in care and deaths in custody have to go to:

- the Attorney – General
- the appropriate chief executive (which means the chief executive of the department in which the relevant Act (itself defined by reference to the particular category of death in care referred to in clause 9 or death in custody in clause 10) is administered. For example the deaths of certain persons in certain situations under

the *Mental Health Act 2000* are deaths in care. The *Mental Health Act 2000* is the relevant Act in these cases.

- the appropriate Minister (which means the Minister administering the relevant Act).

Clause 47 Reporting offences or misconduct: This clause deals with the fact that coroners under the bill cannot commit for trial (compare section 41 of the *Coroners Act 1958*).

Instead the clause provides that a coroner must give information about suspected offences to the director of public prosecutions (for indictable offences) or the chief executive of the department dealing with the type of offence (for other offences).

In addition the coroner may give:

- information about official misconduct or police misconduct to the Crime and Misconduct Commission; and
- information about a person's conduct in a profession or trade to a disciplinary body.

Clause 48 Reporting to State Coroner: Provides for coroners to give the State Coroner information about an investigation when requested to do so by the State Coroner.

Clause 49 Reopening inquests: Provides for the reopening of inquests either on application to the State Coroner or District Court. The application can be made to the District Court or the State Coroner.

Clause 49(2) provides that a person may apply to the District Court even if an unsuccessful application based on the same or substantially the same grounds has been made to the State Coroner.

Clause 49(3) provides that a person may not apply to the State Coroner if an unsuccessful application based on the same or substantially the same grounds has already been made to the District Court.

Clause 49(4) provides that the State Coroner may set aside the finding if satisfied:

- new evidence casts doubt on the finding; or
- the finding was not correctly recorded.

If the State Coroner sets aside the finding the State Coroner can reopen the inquest to re-examine the finding or hold a new inquest (or direct another coroner to do either of these things) – clause 49(6).

Clause 49(5) provides that the District Court may set aside the finding if satisfied -

- (a) new evidence casts doubt on the finding; or
- (b) the finding was not correctly recorded; or
- (c) there was no evidence to support the finding; or
- (d) the finding could not be reasonably supported by the evidence.

If the District Court sets aside the finding the District Court may order the State Coroner to re-open the inquest to re-examine the finding or hold a new inquest (or direct another coroner to do either of these things) – clause 49(7).

Clause 49(8) provides that a coroner who has reopened an inquest, or is holding a new inquest, may accept any of the evidence given, or findings made, at the earlier inquest as being correct.

Clause 50 Record of coroner’s findings and comments: Provides that coroners are to keep a record of their comments and findings. The record cannot be used as evidence in any court or tribunal. The reason for this is that coroners are not bound by the rules of evidence and their findings may well be based on a completely different standard of proof to that in another court or tribunal.

Division 4—Accessing investigation documents

Clause 51 Documents that cannot be accessed: Provides that a coroner must not give a person access to an investigation document for research or other purposes, to the extent that the document:

- (a) is subject to legal professional privilege;
- (b) contains information that is likely to prevent a person from receiving a fair trial;
- (c) contains information that is likely to prejudice the investigation of a contravention or possible contravention of the law;
- (d) contains information that is likely to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained;
- (e) contains information that is likely to endanger a person’s life or physical safety;

- (f) contains information that is likely to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law;
- (g) contains information that is likely to prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety;
- (h) contains information that is likely to facilitate a person's lawful escape from custody;
- (i) contains information about a living or dead person's personal affairs unless the information is relevant to the purposes of a coronial investigation;
- (j) contains information that was obtained from a person under a requirement in another Act that compelled the person to give the information.

Clauses 52 and 53 are subject to this clause.

Clause 52 Access to investigation documents for research purposes: Details the preconditions and types of investigation documents that may be accessed for genuine research purposes. Under the clause, the State Coroner can release an investigation document to a "genuine researcher".

A "genuine researcher" is defined as:

- (a) a person who is approved under the *Health Act 1937* to conduct research to reduce morbidity or mortality in Queensland;
- (b) a person who is a member of an approved quality assurance committee under the *Health Services Act 1991*; or
- (c) another person who the chief executive considers to be a person conducting genuine research.

Subject to *clause 52*, the State Coroner may give access to a document to a genuine researcher if:

- (a) The State Coroner is satisfied that the person is a "genuine researcher";
- (b) The State Coroner is satisfied that the document is reasonably necessary for the research; and
- (c) For a "police document" – if the State Coroner decides not to obliterate the information in the document about a person's identity, the Commissioner of Police agrees to the release; and

- (d) For another type of investigation document, other than a “coronial document”, the chief executive of the entity that prepared the document agrees to the person having access to the document.

The State Coroner is not able to give a researcher access to an investigation document if a coroner is investigating the death to which the document relates or to confidential information in an investigation document that has been obtained under clause 17.

Before giving a genuine researcher access to a document, the State Coroner must ensure that any information in the document that identifies a person is obliterated. However, the State Coroner need not obliterate this information if of the reasonable belief that the person’s identity is necessary for the research to be effective, and the opportunity for increased knowledge that may result from the research outweighs the need to protect the privacy of any person living or dead.

Clause 53 Access to investigation documents for other purposes: Details the preconditions and types of investigation documents that may be accessed for non-research purposes.

A person may access an investigation document with the consent of the coroner who is conducting, or had conducted the coronial investigation to which the document relates. However, if that coroner is not available another coroner nominated by the State Coroner may give access.

For an investigation document, other than to the extent that the document contains confidential information obtained under *clause 17*, a coroner may consent to give access to the document if the coroner is satisfied that the person has a sufficient interest in the document. Examples of person’s who might have sufficient interest in a document are provided.

Clause 52(4) provides that a person may access a “coronial document” only under this clause while a coroner is investigating the death to which the document relates. The effect of *clause 52(4)*, and the amendment in Schedule 1 inserting section 11C into the *Freedom of Information Act 1992*, is that access to a “coronial document” during the period of the coronial investigation can only be obtained with the consent of the coroner conducting the investigation. This consent is required notwithstanding that an agency may have in its possession a copy of the document. An exception, however, is where the agency obtained the document under clauses 25 or 53(4). See also explanatory notes for item 6 in Schedule 1.

Provision is made for police to access “coronial documents” without the coroner’s consent for the investigation or prosecution of an offence relating

to a death. A police officer may also give someone else access to the document for the investigation or prosecution, without the coroner's consent. For example, a police officer would be able to give a copy of a coronial document to the Director of Public Prosecutions for the purposes of a prosecution related to the death. However, a police officer cannot access information in a coronial document that was obtained under a provision in an Act that compelled a person to give the information.

This clause is subject to *clause 17* and *clause 51*.

Clause 54 Conditions imposed on access: Provides that when consenting to give a person access to an investigation document, a coroner may impose conditions on the consent that the coroner considers are necessary to protect the interests of justice, the public or a particular person. Unless the person has a reasonable excuse, a person given access to an investigation document subject to a conditional consent must comply with the conditions. The maximum penalty for breaching a condition is 100 penalty units or 2 years imprisonment.

Clause 55 Refusing access in the public interest: Provides that a coroner may refuse to allow a person access to part or all of an investigation document if the coroner considers that disclosure of the information in the document (or part thereof) would not be in the public interest, when weighed against other interests. Examples of when a coroner may refuse access to a document are provided.

Clause 55 applies even if a person seeking access to a document is otherwise eligible under this division to be given access.

Clause 55 gives the coroner the discretion to refuse access to a coronial document until a stated time. An example of when a coroner may refuse access is provided.

Under this clause, a person may apply to a coroner who refused access to an investigation document for the coroner to amend or revoke an order containing a refusal to give access to a document. An example of when an application to amend or revoke might be made is provided.

Clause 56 Coroner to pass on refused request for investigation document: Provides for the coroner to inform an entity that prepared an investigation document if there has been a request for access to the document which has been refused due to *clause 52 (Documents that can not be accessed)*.

Clause 56 also requires the coroner to advise the chief executive officer of any concerns that the coroner has about how the coroner's investigation

may be affected if the document were released to the person. The intention of this requirement is to assist the agency in making a decision under the *Freedom of Information Act 1992* as to whether the document is to be released (see in particular section 51 of the *Freedom of Information Act 1992*).

Clause 56 provides that the applicant must be advised in writing by the coroner that the coroner has forwarded the person's request to the chief executive officer. *Clause 56* does not apply if the document in question is a "coronial document".

Clause 57 Identifying coronial documents: Provides that if an entity gives a coroner an investigation document, the entity must inform the coroner of whether or not the document was specifically prepared in connection with the investigation.

Division 5—Physical evidence

Clause 58 What division applies to: Provides that the division applies to the following physical evidence:

- anything seized by a police officer for an investigation.
- any exhibits that were tendered at inquest.
- any other property that came into the possession of a coroner, police officer, registrar or deputy registrar for the investigation.

The division does not apply to an investigation document except an investigation document that was seized by a police officer for the investigation.

Clause 59 Returning physical evidence: Provides that the coroner must order the return of physical evidence to its owner as soon as the coroner decides that the evidence is no longer required for:

- the investigation; or
- the investigation of another death under the Act; or
- a proceeding for an offence relating to the death.

Clause 60(3) provides that the owner of property is the person who appears to the coroner to be the lawful owner or if the owner has died – the deceased person's personal representative.

Clause 60 Forfeiting physical evidence to the State: Provides that physical evidence becomes State property if the coroner:

- Cannot return it to the owner; or
- Does not return it to the owner because it is not lawful for the owner to possess the physical evidence; or
- Decides it is not desirable to return the physical evidence to the owner (for example a cracked safety helmet that a deceased person was wearing when killed).

Once the physical evidence becomes State property the coroner may arrange for it to be dealt with in accordance with guidelines issued by the State Coroner. If the physical evidence that becomes State property is in the possession of the police service then it is dealt with under section 441 of *Police Powers and Responsibilities Act 2000*.

Clause 61 Access to physical evidence: Provides that an owner is to be given access to physical evidence.

Division 6—Transferring investigation to another coroner

Clause 62 Transferring investigation to another coroner: This clause deals with the ability of the State Coroner to reassign investigations in certain situations.

Clause 62(2) provides that the State Coroner may reassign investigations that have not gone to inquest if the State Coroner considers it necessary for the efficient operation of the coronial system.

Clause 62(3) allows the State Coroner to reassign the investigation, whether or not it has gone to inquest, if the original coroner;

- stops being a coroner; or
- is not available to finish the investigation because of absence or another reason.

A new coroner at a reassigned inquest can:

- continue the inquest; or
- rehear part of the evidence heard by the original coroner; or
- hold a new inquest.

A new coroner for a reassigned investigation can

- consider any evidence that was before the original coroner
- do anything the original coroner could do.

PART 4—ADMINISTRATION

Division 1—Coroners Court

Clause 63 **The Coroners Court:** Provides for:

- the Coroners Court to be established
- the Coroners Court to be a court of record.
- the Coroners Court to be constituted by a coroner

Clause 64 **Jurisdiction of the court is exclusive:** Provides that only the Coroners Court may hold inquests.

Clause 65 **Where the court may be held:** Provides that the Coroners Court:

- may be held at any place
- may be held in more than 1 place at the same time
- held at a place may be referred to as the Coroners Court at the place.

Clause 66 **Seals of the court:** Provides for a seal for the Coroners Court.

Clause 67 **Rule making power:** Provides for the making of rules for the practice and procedure of the Coroners Court including rules about pre-inquest conference practice and procedure.

Clause 68 **Practice directions:** Provides for the State Coroner to make practice directions about the Coroners Court's general procedures. The clause provides that this power does not limit any inherent or other power to make practice directions for a particular inquest.

Division 2—State Coroner

Clause 69 Appointment of State Coroner: Provides for the appointment of a magistrate as State Coroner by the Governor in Council. Although the State Coroner has to be a magistrate, a person who is not an existing magistrate can be appointed provided the person is first appointed as a magistrate.

The initial term of appointment is for not more than 5 years. The appointment may be renewed once for not more than 5 years.

Clause 70 Functions and powers of State Coroner: Provides the specific functions of a State Coroner, namely:

- to oversee and coordinate the coronial system; and
- to ensure the coronial system is administered and operated efficiently; and
- to ensure deaths reported to coroners that are reportable deaths are investigated to an appropriate extent; and
- to ensure an inquest is held if:
 - (i) the inquest is required to be held under this Act; or
 - (ii) it is desirable for the inquest to be held; and
- to be responsible, together with the Deputy State Coroner, for all investigations into deaths in custody; and
- to issue directions and guidelines about the investigation of deaths under the Act; and
- any other function given to the State Coroner or a coroner under this or another Act.

Clause 70 (6) provides that certain sections of the *Magistrates Act 1991* do not apply to the State Coroner.

Clause 71 Resignation of State Coroner: Provides how the State Coroner may resign.

Clause 72 When person stops being the State Coroner: Provides that a person stops being the State Coroner when the person stops being a magistrate. The clause goes on to provide that a person cannot be the State Coroner while the person is suspended as a magistrate.

Clause 72(3) provides that for a State Coroner, the duties mentioned in Section 15(4) of the *Magistrates Act 1991* include the duties of State Coroner. This means that if the State Coroner is incompetent in the performance of his duties as State Coroner the suspension procedure under section 15 of the *Magistrates Act 1991* can be activated against the State Coroner.

Clause 73 Acting as State Coroner: This clause deals with who may act as the State Coroner.

Clause 73(2) allows for the Governor in Council appointment of a magistrate as Acting State Coroner. The appointment must not be longer than 6 months. The appointment may be renewed at any time.

Clause 73 (6) provides that despite clause 73(2), the Deputy State Coroner can automatically act as State Coroner (in other words no special appointment needs to be made) when:

- no one holds a Governor in Council appointment to act as State Coroner; or
- someone does hold such an appointment but is not immediately available to act under the appointment.

Clause 74 Staff of the State Coroner: Provides the staff of the State Coroner are to be appointed under the *Public Service Act 1996*.

Clause 75 Consulting with the Chief Magistrate: Provides that the State Coroner must consult with the Chief Magistrate about:

- the resources necessary to ensure the efficient administration of the coronial system.
- the amount of work conducted by magistrates as coroners.
- any guidelines or practice directions the State Coroner wishes to issue.

Clause 76 Annual report: Provides for a report to be prepared by the State Coroner as soon as practicable after the end of each financial year and given to the Minister.

The report must contain:

- the State Coroner guidelines that were operative in the year;
- a summary of the investigation, including the inquest, into each death in custody.

The report may also contain a summary of any other investigation that the State Coroner considers should be brought to the Minister's attention.

Division 3—Deputy State Coroner

Clause 77 Appointment of Deputy State Coroner: Provides for the appointment of a magistrate as Deputy State Coroner by the Governor in Council.

The initial term of appointment is for not more than 5 years. The appointment may be renewed once for not more than 5 years.

Clause 78 Functions and powers of Deputy State Coroner: Provides that in addition to the functions and powers of a magistrate and coroner the Deputy State Coroner has the powers and functions of the Deputy State Coroner under this or another Act.

Whilst the State Coroner must devote the whole of the State Coroner to the duties of the office of State Coroner (clause 72(4)) there is no such requirement for the Deputy State Coroner. It is therefore possible that the Deputy State Coroner may perform some duties as a magistrate whilst the person is Deputy State Coroner.

Clause 79 When person stops being the Deputy State Coroner: Provides that a person stops being the Deputy State Coroner when he/she stops being a magistrate. The clause also provides that a person cannot be the Deputy State Coroner while the person is suspended as a magistrate.

Clause 79(3) provides that for a magistrate who is the Deputy State Coroner the duties mentioned in section 15(4) of the *Magistrates Act 1991* include the duties of Deputy State Coroner. This means that if the Deputy State Coroner is incompetent in the performance of his duties as Deputy State Coroner the suspension procedure under section 15 of the *Magistrates Act 1991* can be activated against the Deputy State Coroner.

Clause 80 Acting as Deputy State Coroner: Provides for the appointment by the State Coroner of a magistrate as Acting Deputy State Coroner following consultation with the Chief Magistrate. The appointment must not be for longer than 6 months. It can be renewed at any time.

Division 4—Other coroners

Clause 81 Local coroners: Provides that every magistrate is a local coroner with the functions and powers of a coroner under this or another Act. The reference to magistrate includes a person who is acting as a magistrate.

The clause goes on to provide that that a person stops being a local coroner when the person stops being a magistrate and that a person cannot be a local coroner whilst suspended as a magistrate.

The clause provides that for the purpose of section 15(4) of the *Magistrates Act 1991* the duties of office of magistrate include the duties of a coroner. Section 15(4) of the *Magistrates Act 1991* details when there is proper cause to suspend a magistrate from office and includes references to duties. This means that if the coroner is incompetent in the performance of his duties as coroner the suspension procedure under section 15 of the *Magistrates Act 1991* can be activated against the coroner.

Clause 82 Appointed coroners: Provides for the appointment of coroners by the Governor in Council.

Division 5—Registrar and deputy registrars

Clause 83 Registrar: Provides for the appointment by the Governor in Council of a public servant as registrar.

Clause 84 Deputy registrars: Provides:

- for the appointment by the Governor in Council of a public servant as deputy registrar
- that each clerk of the court under the *Justices Act 1886* is a deputy registrar of the Coroners Court.

Clause 85 Delegation of powers to registrars and deputy registrars: This clause deals with the mechanism for delegation of powers. Its intention is to ensure that the State Coroner has control over which powers are delegated. It does this by:

- allowing the State Coroner to delegate powers to the registrar and an appropriately qualified deputy registrar

- allowing a coroner, with the State Coroner's approval, to delegate a power to the registrar and an appropriately qualified deputy registrar.

Consultation must also occur with the chief executive in relation to the delegation of powers to a deputy registrar.

The act of receiving a report about a reportable death can also be delegated under this clause.

The powers that can be delegated include the power to issue a permission to cremate under the *Cremations Act 2002*. The following powers cannot be delegated:

- the power to conduct an inquest
- the power require a person to give information relevant to an investigation under clause 16
- the power to authorise a police officer to exercise a power under *Police Powers and Responsibilities Act 2000*.

Division 6—Other general provisions about coroners

Clause 86 Obstruction: Provides that a person must not obstruct a coroner or other person performing a function under the Act, unless the person has a reasonable excuse.

Clause 87 Immunity: Provides for immunities for coroners, representatives and witnesses.

When performing a function under this Act (including an administrative function) a coroner has the same protection and immunity as a Supreme Court judge in a Supreme Court proceeding.

A person representing a person before the Coroners Court has the same protection as a lawyer appearing for a party in a Supreme Court proceeding.

A witness has same protection and immunity as a witness appearing in a Supreme Court proceeding. This is subject to clause 38 of the bill under which a witness may be required to give oral evidence that may incriminate the witness.

Clause 88 Coroner as witness: Provides that a coroner cannot be called as a witness in relation to anything that came to the coroner's knowledge

whilst performing a function under the Act. The clause does not apply to a proceeding relating to the suspension of a coroner from the office of magistrate.

Clause 89 Coroner's orders: Provides that coroner's orders must be reduced to writing.

Clause 90 Coroner's service counts as magistrate's service: Provides that when working out a coroner's rights as a magistrate, service as a coroner counts as service as a magistrate.

PART 5—MISCELLANEOUS

Clause 91 Register of deaths: Obliges the State Coroner to keep a register of deaths or suspected deaths investigated under the Act. The register is to contain the following information for each death:

- (a) the date on which the person's death was reported or otherwise brought to the coroner's notice;
- (b) a summary of any findings of the investigation, including any inquest;
- (c) a summary of any comments made at any inquest.

Clause 92 National coronial database: Allows for the State to enter into an arrangement with a government or non-government entity that maintains a database about coronial investigations. The clause provides that the minister may, on behalf of the State, enter into an arrangement with the entity for stated information obtained under this Act to be included in the database. The clause also specifies certain matters that the Minister must be satisfied of before entering into such an agreement.

Clause 93 Evidentiary aids: Provides for certain presumptions including:

- the appointment of the State Coroner, registrar and deputy registrar
- the power of a coroner, the registrar or deputy registrar to do anything under the Act.

Clause 94 Authorising burial of body etc: This clause deals with what is required before a body can be prepared for burial, buried or taken out of

Queensland. Local laws under the *Local Government Act 1993* may have additional requirements

“Burial” is defined in the dictionary to include cremation or other lawful disposal either in Queensland or elsewhere.

The clause provides that a person must not prepare a body for burial, bury the body or remove it out of Queensland unless the person is authorised to do so by clause 94 (2). A person is authorised by clause 94(2) if :

- (a) for a death investigated by a coroner -
 - a medical certificate of the cause of death under *Registration of Births, Deaths and Marriages Act 1962* has been issued with the coroner’s consent (see clause 12); or
 - the coroner has ordered the release of the body under clause 26; or
- (b) for a death investigated by a non-Queensland coroner (defined in the dictionary) - a non-Queensland coroner’s release certificate has been issued; or
- (c) otherwise – a cause of death certificate has been issued. (Cause of death certificate is defined in the dictionary to mean –
 - a medical certificate of the cause of death, or perinatal death, under the *Registration of Births, Deaths and Marriages Act 1962*; or
 - a similar certificate issued under a law of another State or country that is similar in effect to the *Registration of Births, Deaths and Marriages Act 1962*.

The clause has the effect of recognising documentation from outside Queensland for the purpose of burial in Queensland.)

The clause does not apply to:

- (a) parts of a body taken during a coronial or other autopsy.
- (b) parts of a body taken during a medical procedure.
- (c) indigenous burial remains as defined in the dictionary by reference to section 34 of the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*.
- (d) taking a human body to any type of mortuary.

Clause 95 Application of Act to stillborn child: This clause makes it clear that the Act, like the common law and the *Coroners Act 1958*, does not apply to a stillborn child (which is defined in the dictionary to mean a child not born alive as defined in the *Registration of Births, Deaths and Marriages Act 1962*). The exceptions to this are that the coroner can order an autopsy to find out whether the body is that of a stillborn child (clause 19(1)(b)). The other clauses mentioned in the provision are the consequence of the coroner making the order for autopsy to find out whether the body is that of a stillborn child ie

- the coroner has to stop investigating if the autopsy establishes that the body is that of a stillborn child (clause 12(2)(c); and
- the coroner has to order the release of the body if the autopsy establishes that the body is that of a stillborn child (clause 26(2)(c))

Clause 96 Meaning of ‘de facto partner’: Defines de facto partner. This is relevant because the dictionary defines “family member” to include “spouse” which is in turn defined to include a de facto spouse.

The definition reflects section 32DA of the *Acts Interpretation Act 1954*.

De facto partner” means a person with whom another person is living as a couple on a genuine domestic basis. The person and the other person must not be married or related by family. The gender of the two people is not relevant. Subclause 96 (2) sets out a non-exhaustive list of factors to be considered when deciding whether 2 people are living together as a couple on a genuine domestic basis. These include things such as the length of the relationship, the degree of financial dependence or interdependence and the reputation and public aspects of the relationship.

The clause also makes it clear that two persons are not to be regarded as de facto partners of each other merely because they share a residence.

Clause 96(6) provides that this section, the definition of “de facto partner” and the definition of “spouse” will all expire on commencement of section 32DA of the *Acts Interpretation Act 1954*.

Clause 97 Approval of forms: Provides that the State Coroner may approve forms for use under the Act.

Clause 98 Regulation making power: Provides for making of regulations including the fees payable to a doctor for an autopsy and the fee payable for a copy of an investigation document.

PART 6—TRANSITIONAL PROVISIONS

Clause 99 When repealed Act still applies: Provides when the repealed Act still applies.

Clause 99(1) provides that the *Coroners Act 1958* continues to apply to a pre-commencement death and a pre-commencement fire. Pre-commencement death and pre-commencement fire are defined in clause 99(3).

Clause 99(2) provides that despite clause 99(1) the *Coroners Act 2002* applies to:

- the release of an investigation document relating to a pre-commencement death or fire for research purposes; and
- the fees payable for the release of an investigation document for any purpose.

Clause 99(3) defines pre commencement death as a death:

- (a) that was reported to a police officer or coroner before the commencement of this section; or
- (b) in relation to which an inquest was held before the commencement of this section, but reopened after the commencement.

Clause 99(3) defines “pre-commencement fire” to mean a fire in relation to which—

- (a) a coroner formed the opinion, before the commencement of this section, that an inquest should be held; or
- (b) the Minister has, before the commencement of this section, directed a coroner to hold an inquest; or
- (c) a person who requested that an inquest into the fire be held had complied with the *Coroners Act 1958*, section 8(1)(c) before the commencement of this section.

Clause 100 Appointments continue: Provides that certain appointments continue under the repealed Act.

Clause 100(1): Provides that a clerk of court or acting clerk of court who immediately before the commencement of the section was holding an inquest, is taken to be a coroner for the purpose of the inquest.

Clause 100(2): Provides that a person who, immediately before commencement held an appointment to a position under the *Coroners Act 1958* that is equivalent to a position under this Act is taken to hold the position under this Act..

Clause 100(3): Provides that the person continues to hold the appointment subject to this Act until –

- (a) the end of the term of appointment; or
- (b) reappointed under this Act.

Clause 101 Orders continue: Provides for the continuation of orders in force immediately before the commencement of the section.

Clause 102 References to repealed Acts: Provides that references to the repealed Act (ie the *Coroners Act 1958*) in an Act or document may, if the context allows, include a reference to the *Coroners Act 2002*.

Clause 103 Common law overridden: Provides that a rule of common law that before commencement imposed a duty or conferred a power on a coroner or the Coroners Court has no effect after commencement. In particular—

- a coroner investigating a death does not have to view the person’s body unless the coroner chooses to do so; and
- a Coroners Court does not sit with a jury.

PART 7—REPEAL

Clause 104 Repeal: Provides for the repeal of the *Coroners Act 1958*.

PART 8—CONSEQUENTIAL AMENDMENTS

Clause 105 Consequential amendments: Provides for a series of consequential amendments to other Acts in Schedule 1

SCHEDULE 1**CONSEQUENTIAL AMENDMENTS*****DIRECTOR OF PUBLIC PROSECUTIONS ACT 1984***

Item 1: Amends section 10 of the Act so that the function of the Director of Public Prosecutions to assist a coroner or instruct counsel assisting a coroner in an inquest under the *Coroners Act 1958* extends to a coroner and inquest under the *Coroners Act 2002*.

EVIDENCE ACT 1977

Items 2 and 3: Amends the references in the Act to include the Coroners Court.

FIRE AND RESCUE AUTHORITY ACT 1990

Item 4: Omits section 130 of the *Fire and Rescue Authority Act 1990* which deals with coronial inquiries into fires. This is because this bill does not give a coroner jurisdiction over non fatal fires.

FREEDOM OF INFORMATION ACT 1992

Item 5 Inserts a definition that “coroner” means State Coroner or another coroner under the *Coroners Act 2002*.

Item 6 Provides that the *Freedom of information Act 1992* does not apply to a coronial document if the coroner is investigating the death to which the document relates. The effect of item 6 and *clause 52(4)* is that a “document of an agency”, if it is a “coronial document” and the coronial investigation to which it relates is not finalised, can only be released by the agency with the consent of the coroner.

However, the *Freedom of Information Act 1992* will apply to a coronial document that is a “document of an agency” where the agency obtained it under clauses 25 or 53(4).

The term “document of an agency” is defined in section 7 of the *Freedom of Information Act 1992*

HEALTH SERVICES ACT 1991

Item 7: Inserts a new section 57A to make it clear that the duty that officials have under section 57 not to disclose information does not preclude the officials from giving information to a coroner or other person performing a function under the *Coroners Act 2002*.

Item 8: Inserts a new section 63A to make it clear that the duty that employees and others have under section 63 not to disclose information does not preclude the employees and others from giving information to the coroner under the *Coroners Act 2002*.

POLICE POWERS AND RESPONSIBILITIES ACT 2000

Item 9: Inserts a new Part4A into Chapter 9 of the *Police Powers and Responsibilities Act 2000* to give police certain powers when assisting coroners under the *Coroners Act 2002*.

Proposed section 371AA allows a police officer, without warrant, to enter premises if the police officer reasonably suspects that someone is dead or in need of urgent medical attention.

If a person at a place is found dead or in need of a urgent medical attention the police officer can stay on the place for only as long as is necessary to ensure that anything necessary to be done for the person is done.

This could include the body being taken to a mortuary. If the death was not reportable to the coroner then the police officer may choose to wait whilst the family organises the removal of the body to a mortuary. If the death is reportable to the coroner then the police officer would have to exercise his powers under proposed section 371AB(2) of *Police Powers and Responsibilities Act 2000* to arrange for the body to be taken to a mortuary where autopsies ordered by coroners are conducted.

This could also include an ambulance being called to take the person to a hospital.

Proposed section 371AB: The section applies if a police officer attends a place where there is a body of a deceased person and the police officer reasonably believes the death is a reportable death.

A police officer may arrange for the body to be removed to a mortuary where autopsies ordered by coroners are conducted.

The police officer may:

- take reasonable steps to restrict entry
- seize anything at the place that the police officer reasonably suspects may be relevant to an investigation of the death by a coroner
- photograph the body or anything else at the place that the officer reasonably suspects may be relevant to the investigation.

Proposed section 371AC allows a police officer to restrict entry to a place where the death that is being investigated is believed to have happened or something that caused or contributed to the death is believed to have happened when:

- the place is not a crime scene; and
- the coroner directs the police officer to restrict entry.

Proposed section 371AD allows for the issue of a coroner's search warrant by a coroner on the coroner's own initiative. Under the search warrant a police officer has the following powers:

- (a) the powers described in section 74(1)(a) to (e) and (g) of the *Police Powers and Responsibilities Act 2000* (this includes

power to open things that are locked and power to pass over places to get to the place where the search is to be conducted) ;
and

- (b) power to seize a thing found at the place, or on a person found at the place, that the police officer reasonably suspects may be relevant to the coroner's investigation (an example is given of a suicide note); and
- (c) power to inspect, measure, photograph or film the place or anything at the place; and
- (d) power to take a thing, or a sample of a thing, from the place for testing; and
- (e) power to copy a document at the place; and
- (f) power to require a person at the place to give the police officer reasonable help to exercise the powers mentioned in paragraphs (a) to (e).

Proposed section 371 AE provides for the dealing with seized things by a police officer.

Proposed section 371AF gives police officer the power to require information for the investigation. A police officer must tell a person who fails to comply with the requirement that the person may :

- fail to comply with the requirement if the information would tend to incriminate the person; or
- seek legal advice before giving the information.

A police officer's obligations under this section are in addition to the police officer's obligations under section 391 of the *Police Powers and Responsibilities Act 2000* which provides obligations upon police officers when the police officer makes a requirement of a person under the *Police Powers and Responsibilities Act 2000*.

Proposed section 371AG makes it clear that things obtained by a police officer under this part may be used in a criminal proceeding.

Items 10 and 11: Make consequential amendments to the *Police Powers and Responsibilities Act 2000* as a result of the insertion of the new Part.

Item 12: Inserts new section 447A of the *Police Powers and Responsibilities Act 2000* The section provides for the general duty of police officers to assist coroners in the performance of their functions or exercise of a power under the *Coroners Act 2002*, including the

investigation of deaths and the conduct of inquests. The clause is based on section 50 of the *Coroners Act 1958*.

Items 13 to 15: Make further consequential amendments to the *Police Powers and Responsibilities Act 2000* as a result of the insertion of the new Part.

PRIVATE HEALTH FACILITIES ACT 1999

Item 16 Inserts a new section 147A to make it clear that the duty under section 147 not to disclose information does not apply to the disclosure of information to a coroner or other person performing a function under the *Coroners Act 2002*.

REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES ACT 1962

Items 17 to 25: Make a series of consequential amendments to the act having regard to the provisions of the bill.

For example, section 31 of the *Registration of Births, Deaths and Marriages Act 1962* refers to the provision of a post mortem examination certificate to the Registrar General by the doctor conducting a post mortem for the coroner. The amendment to section 5 of the *Registration of Births, Deaths and Marriages Act 1962* has the effect that the certificate will be able to be called an autopsy examination certificate. This reflects the use of the term “autopsy” as opposed to “post mortem” in the bill.

TRANSPLANTATION AND ANATOMY ACT 1979

Items 26 to 29: Make a series of consequential amendments having regard to the provisions of the bill.

SCHEDULE 2

DICTIONARY

Inserts various definitions for terms used in the Act.