

# **Coroners Act 1985**

**No. 10257**

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**Victoria**

**No. 10257**

## **Coroners Act 1985**

**[Assented to 10 December 1985]**

The Parliament of Victoria enacts as follows:

### **PART 1—PRELIMINARY**

#### **Purpose.**

1. The purpose of this Act is to—
  - (a) establish the office of State Coroner;
  - (b) require the reporting of certain deaths;
  - (c) set out the procedures for investigations and inquests by coroners into deaths and fires;
  - (d) establish the Victorian Institute of Forensic Pathology.

#### **Commencement.**

2. This Act comes into operation on a day or days to be proclaimed.

#### **Definitions.**

3. In this Act—

“Coroner” includes the State Coroner and the Deputy State Coroner.

**"Council"** means the Council of the Institute.

**"Death"** includes suspected death.

**"Director"** means the Director of the Institute and includes a person appointed to act as Director.

**"Doctor"** means a person registered as a legally qualified medical practitioner under the *Medical Practitioners Act 1970*.

**"Inquest"** includes a formal hearing.

**"Institute"** means the Victorian Institute of Forensic Pathology.

**"Investigation"** includes an inquest.

**"Pathologist"** means a doctor with a qualification in pathology recognized by the National Specialist Qualification Advisory Committee of Australia.

**"Person held in care"** means—

- (a) a person under the control, care or custody of the Director-General of Community Services, the Director-General of Corrections or a member of the police force; or
- (b) a patient in an assessment or treatment centre under the *Alcoholics and Drug-dependent Persons Act 1968*; or
- (c) a patient in an institution under the *Mental Health Act 1959* other than a voluntary patient and includes a person temporarily removed from such an institution.

**"Prescribed"** means prescribed by the regulations.

**"Reportable death"** means a death—

- (a) where the body is in Victoria; or
- (b) that occurred in Victoria; or
- (c) the cause of which occurred in Victoria; or
- (d) of a person who ordinarily resided in Victoria at the time of death—

being a death—

- (e) that appears to have been unexpected, unnatural or violent or to have resulted, directly or indirectly, from accident or injury; or
- (f) that occurs during an anaesthetic; or
- (g) that occurs as a result of an anaesthetic and is not due to natural causes; or
- (h) that occurs in prescribed circumstances; or
- (i) of a person who immediately before death was a person held in care; or
- (j) of a person whose identity is unknown; or
- (k) that occurs in Victoria where a notice under section 19 (1) (b) of the *Registration of Births Deaths and Marriages Act 1959* has not been signed; or

- (f) that occurs at a place outside Victoria where the cause of death is not certified by a person who, under the law in force in that place, is a legally qualified medical practitioner.

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

4. A rule of the common law that, immediately before the commencement of this section, conferred a power or imposed a duty on a coroner or a coroner's court ceases to have effect.

**Application of Act.**

5. The *Coroners Act* 1958 as in force immediately before the commencement of this section continues to apply to deaths and fires reported to a coroner before the commencement of this section.

**PART 2—CORONERS**

**State Coroner and Deputy State Coroner.**

6. (1) The Governor in Council may appoint a judge of the County Court, a stipendiary magistrate or a barrister and solicitor as the State Coroner or as the Deputy State Coroner.

(2) Appointment as the State Coroner or the Deputy State Coroner does not affect—

- (a) the tenure of office of a judge or a stipendiary magistrate; or
- (b) any right or privilege of the holder of an office of judge.

(3) Service by a judge as the State Coroner or the Deputy State Coroner shall be taken to be service as a judge of the County Court.

(4) The Deputy State Coroner is to act as State Coroner when the State Coroner is absent from duty or the office of State Coroner is vacant and when acting has all the powers and duties of the State Coroner.

**Functions of State Coroner.**

7. The functions of the State Coroner are as follows:

- (a) To ensure that a State coronial system is administered and operated efficiently;
- (b) To oversee and co-ordinate coronial services;
- (c) To ensure that all reportable deaths reported to a coroner are investigated;
- (d) To ensure that an inquest is held whenever it is desirable to do so;
- (e) To issue guidelines to coroners to help them carry out their duties;

- (f) Such other functions as are conferred or imposed on the State Coroner under this Act.

### **Coroners.**

8. The Governor in Council may appoint stipendiary magistrates and barristers and solicitors as coroners.

### **Conditions.**

9. (1) A coroner holds office on the terms and conditions in the instrument of appointment.

(2) A coroner who, immediately before appointment, was an officer or employee of the public service, continues to be such an officer or employee during the period of office as a coroner for the purpose of Division 4 of Part IV. of the *Public Service Act 1974*.

(3) A coroner who, immediately before appointment, was an officer within the meaning of the *Superannuation Act 1958* continues, subject to that Act, to be such an officer during the period of office as a coroner.

(4) A coroner is not, in respect of the office of coroner, subject to the provisions of the *Public Service Act 1974*.

### **Delegation.**

10. A coroner may, by instrument, delegate to a coroner's clerk any power or duty of a coroner other than a prescribed power or duty or this power of delegation.

## **PART 3—CORONER'S CLERKS**

### **Appointment of coroner's clerks.**

11. (1) Coroner's clerks are to be appointed under the *Public Service Act 1974*.

(2) A clerk or deputy clerk of a Magistrates' Court may act as a coroner's clerk if an investigation is held at the Magistrates' Court.

### **Functions of coroner's clerks.**

12. (1) A coroner's clerk may—

- (a) on behalf of a coroner, receive information about a death or fire which a coroner is investigating otherwise than at an inquest; and
- (b) administer an oath in relation to a death or fire which a coroner is investigating otherwise than at an inquest; and
- (c) issue a summons requiring a witness to attend an inquest to give oral evidence or to produce documents.

(2) An affidavit relating to an investigation by a coroner may be sworn before a coroner's clerk.

#### **PART 4—REPORTING OF DEATHS**

##### **Obligation to report death.**

13. (1) A person who has reasonable grounds to believe that a reportable death has not been reported must report it as soon as possible to a coroner or the officer in charge of a police station.

Penalty: 10 penalty units.

(2) The coroner or the officer must inform the State Coroner of the reported death as soon as possible.

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

- (a) the death is a reportable death; or
- (b) the doctor does not view the body; or
- (c) the doctor is unable to determine the cause of death; or
- (d) no doctor attended the person within 14 days before the death and the doctor who is present is unable to determine the cause of death from the deceased's immediate medical history.

Penalty: 10 penalty units.

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

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

Penalty: 10 penalty units.

##### **Information to coroner.**

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

Penalty: 10 penalty units.

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



**PART 5—INVESTIGATION OF DEATHS****Division 1—General Powers and Duties of Coroners****Jurisdiction of coroners to investigate a death.**

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

(2) A coroner to whom a death is reported must, if it appears to the coroner that the death is or may be a reportable death, investigate it or report it to the State Coroner.

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

**Directions by State Coroner.**

16. The State Coroner may give to a coroner directions about an investigation into a death (other than an inquest) and the manner of conducting it.

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

17. (1) A coroner who has jurisdiction to investigate a death must hold an inquest if the body is in Victoria or it appears to the coroner that the death, or the cause of death, occurred in Victoria or that the deceased ordinarily resided in Victoria at the time of death and—

- (a) the coroner suspects homicide; or
- (b) the deceased was immediately before death a person held in care; or
- (c) the identity of the deceased is not known; or
- (d) the death occurred in prescribed circumstances; or
- (e) the Attorney-General directs; or
- (f) the State Coroner directs.

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

**Application for inquest into death.**

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

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

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

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

#### **Findings and comments of coroner.**

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

- (a) the identity of the deceased; and
- (b) how death occurred; and
- (c) the cause of death; and
- (d) the particulars needed to register the death under the *Registration of Births Deaths and Marriages Act 1959*; and
- (e) the identity of any person who contributed to the cause of death.

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

(3) A coroner must not include in a finding or comment any statement that a person is or may be guilty of an offence.

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

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

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

#### **Reports.**

21. (1) A coroner may report to the Attorney-General on a death which the coroner investigated.

(2) A coroner may make recommendations to the Attorney-General on any matter connected with a death which the coroner investigated, including public health or safety or the administration of justice.

(3) A coroner must report to the Director of Public Prosecutions if the coroner believes that an indictable offence has been committed in connection with a death which the coroner investigated.

#### **Notification of reported deaths to Government Statist.**

22. The coroner must notify the Government Statist as soon as possible of the particulars found by the coroner or, if an inquest is held with a jury, by the jury which are needed to register the death.

**Certificate of burial etc.**

23. (1) A coroner investigating a death must issue as soon as reasonably possible a certificate in the prescribed form permitting burial, cremation, disposal at sea or other disposal.

(2) A certificate under sub-section (1) must not be issued until an application made under section 18 is disposed of or the time for making such an application has expired.

(3) If the Supreme Court makes an order under section 18 a coroner, other than the State Coroner, must not issue a certificate under sub-section (1).

**Control of body.**

24. If a reportable death occurs and the body is in Victoria, the body is under the control of the coroner investigating the death, subject to any directions the State Coroner may give, until the coroner has issued a certificate, in the prescribed form, permitting burial, cremation, disposal at sea or other disposal.

**Aid to coroners in other places.**

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

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

**Division 2—Powers of Investigation****Powers of entry, inspection and possession.**

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

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

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

(3) A coroner may, if the coroner reasonably believes it is necessary for the investigation, in writing authorize a member of the police force to do any one or more of the following at or between specified times during a specified period (not exceeding one month after the authority is given):

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

(4) A member of the police must not exercise a power under an authority unless the member has given a copy of the authority to the owner or occupier of the place or the person in possession of the document or thing inspected, copied or taken.

(5) A coroner may release any thing kept under sub-section (1) (c) and may require a person to whom the thing is released to give an undertaking to comply with any reasonable conditions of release.

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

Penalty applying to this sub-section: 10 penalty units.

#### **Autopsies.**

27. (1) If a coroner reasonably believes that it is necessary for an investigation of a death, the coroner may direct the Institute, a pathologist or a doctor under the direct supervision of a pathologist to perform an autopsy on the body.

(2) A coroner may direct the Institute, a pathologist or a doctor performing an autopsy to cause to be preserved for such period as the coroner directs any material which appears to the Institute, pathologist or doctor to bear upon the cause of death.

#### **Application for autopsy.**

28. (1) If a coroner has jurisdiction to investigate a death, any person may ask the coroner to direct that an autopsy be performed on the body.

(2) If the coroner refuses a person's request, the coroner must immediately give to the person reasons in writing for the refusal.

(3) Within 48 hours after receiving notice of a refusal, the person may apply to the Supreme Court for an order that an autopsy be performed.

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

- (a) directing the State Coroner to require the Institute, a pathologist or a doctor under the direct supervision of a pathologist to perform an autopsy; and
- (b) prohibiting burial, cremation, disposal at sea or other disposal until the State Coroner has the results of the autopsy and has ordered burial, cremation, disposal at sea or other disposal.

**Objections to autopsy.**

29. (1) If the senior next of kin of the deceased asks a coroner not to direct an autopsy but the coroner decides that an autopsy is necessary, the coroner must immediately give notice in writing of the decision to the senior next of kin.

(2) Unless the coroner believes that an autopsy needs to be performed immediately, it must not be performed if a request has been made under sub-section (1) until 48 hours after the senior next of kin has been given notice of the decision.

(3) Within 48 hours after receiving notice of the decision, the senior next of kin may apply to the Supreme Court for an order that no autopsy be performed.

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

(5) In this section, "senior next of kin" in relation to a deceased person, means—

- (a) if the person, immediately before death, was married—the spouse; or
- (b) if the person, immediately before death, was not married or, if married, the spouse is not available—a son or daughter of or over 18; or
- (c) if a spouse, son or daughter is not available—a parent; or
- (d) if a spouse, son, daughter or parent is not available—a brother or sister of or over 18; or
- (e) if a spouse, son, daughter, parent, brother or sister is not available—an executor named in the will of the deceased or a person who, immediately before the death, was a personal representative of the deceased.

(6) In sub-section (5) "spouse" includes a person who, immediately before the death, was living with the deceased person on a permanent and *bona fide* domestic basis.

**Exhumation.**

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

(2) The State Coroner must ensure that at least 48 hours' notice is given to the senior next of kin (within the meaning of section 29) of the deceased person and to the trustees or owners of the cemetery, burial ground or place of burial where the body is buried before the body is exhumed unless the State Coroner is satisfied it is not possible to do so.

(3) If the senior next of kin asks the State Coroner not to exhume the body, the body must not be exhumed until 48 hours after the request has been made.

(4) Within 48 hours after receiving notice of the decision, the senior next of kin may apply to the Supreme Court for an order that the body not be exhumed.

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

## **PART 6—INVESTIGATION OF FIRES**

### **Division 1—General Powers and Duties of Coroners**

#### **Jurisdiction of coroner to investigate a fire.**

31. (1) A coroner has jurisdiction to investigate a fire if the fire occurred in or partly in Victoria and the coroner believes it is desirable or the Country Fire Authority or the Metropolitan Fire Brigade requests an investigation.

(2) A coroner must investigate a fire if the Attorney-General directs.

#### **Application for investigation into a fire.**

32. (1) A person may ask a coroner to investigate a fire.

(2) If a coroner refuses a person's request to investigate a fire, the coroner must give reasons in writing for the refusal to the person and to the Attorney-General.

(3) A person who asks a coroner to investigate a fire must give to the coroner any information which may help the investigation.

Penalty applying to this sub-section: 10 penalty units.

#### **Directions by State Coroner.**

33. The State Coroner may give to a coroner directions about an investigation into a fire (other than an inquest) and the manner of conducting it.

#### **Jurisdiction of coroner to hold inquest into a fire.**

34. (1) A coroner must hold an inquest into a fire if the Attorney-General directs.

(2) A coroner who has jurisdiction to investigate a fire must hold an inquest if the State Coroner directs.

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

**Application for an inquest into a fire.**

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

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

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

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

**Findings and comments of coroner.**

36. (1) A coroner investigating a fire must find if possible—

- (a) the cause and origin of the fire; and
- (b) the circumstances in which the fire occurred; and
- (c) the identity of any person who contributed to the cause of the fire.

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

(3) A coroner must not include in a finding or comment any statement that a person is or may be guilty of an offence.

**Record of findings and comments.**

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

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

**Reports.**

38. (1) A coroner may report to the Attorney-General on a fire which the coroner investigated.

(2) A coroner may make recommendations to the Attorney-General on any matter connected with a fire which the coroner investigated, including public health or safety or the administration of justice.

(3) A coroner must report to the Director of Public Prosecutions if the coroner believes that an indictable offence has been committed in connection with a fire which the coroner investigated.

**Police to report information to coroner.**

39. A member of the police force who has information relevant to an investigation must report it to the coroner investigating the fire.

**Division 2—Powers of Investigation****Restriction of access to fire area.**

40. (1) A coroner investigating a fire may take reasonable steps to restrict access to the place where the fire occurred.

(2) A prescribed notice may be put up at that place by the coroner.

(3) A person must not without good reason enter or interfere with any area to which access is restricted under this section, under section 98 of the *Country Fire Authority Act 1958* or under section 72 of the *Metropolitan Fire Brigades Act 1958*.

Penalty applying to this sub-section: 10 penalty units or imprisonment for three months.

**Powers of entry, inspection and possession.**

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

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

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

(3) A coroner may, if the coroner reasonably believes it is necessary for the investigation, in writing authorize a member of the police force to do any one or more of the following at or between specified times during a specified period (not exceeding one month after the authority is given):

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

(4) A member of the police force must not exercise a power under an authority unless the member has given a copy of the authority to the owner or occupier of the place or the person in possession of the document or thing inspected, copied or taken.



(5) A coroner may release any thing kept under sub-section (1) (c) and may require a person to whom the thing is released to give an undertaking to comply with any reasonable conditions of release.

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

Penalty applying to this sub-section: 10 penalty units.

#### **PART 7—INQUESTS INTO DEATHS AND FIRES**

##### **Advertisement of an inquest.**

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

##### **Two or more deaths or fires.**

43. The State Coroner may direct that more than one death or more than one fire or both a death or deaths and a fire or fires be investigated at one inquest.

##### **Rules of evidence not applicable.**

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

##### **Rights of interested persons.**

45. (1) A coroner may make available any statements that the coroner intends to consider to any person with a sufficient interest.

(2) The Attorney-General may appear or be represented at an inquest, call and examine or cross-examine witnesses and make submissions.

(3) A person with a sufficient interest may appear or be represented by a barrister and solicitor or, with permission of the coroner, by any other person, and may call and examine or cross-examine witnesses and make submissions.

(4) If an inquest is held into a death which may have been caused by explosion or accident at a mine, the following persons may appear or be represented by a barrister and solicitor or, with permission of the coroner, by any other person:

- (a) A person who is at the inquest under section 50 of the *Coal Mines Act 1958* or under section 414 of the *Mines Act 1958*; and
- (b) The widow, next of kin or executor of the deceased or their authorized representative;
- (c) The mining manager of the mine;

- (d) A person authorized by the owner of the mine;
- (e) A representative of either the Coal Miners' Association or the Federated Mine Employees' Association;
- (f) A representative of any body approved by the Minister administering the *Coal Mines Act* 1958 or the *Mines Act* 1958.

(5) A person mentioned in sub-section (4) may call, examine and cross-examine witnesses and make submissions.

#### **Powers of coroners at an inquest.**

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

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

(2) A coroner may be assisted by counsel, by the Director of Public Prosecutions if the Director wishes to assist or by such other persons as the coroner determines.

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

Penalty: 10 penalty units or imprisonment for three months.

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

(5) If a person is apprehended under a warrant issued under sub-section (4), the coroner has in relation to the person the same powers as a justice has under section 23 of the *Magistrates (Summary Proceedings) Act* 1975.

#### **Exclusion from an inquest.**

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

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

(3) A coroner may order—

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

#### **Interruption of an inquest.**

48. A person must not interrupt an inquest.

Penalty: 10 penalty units or imprisonment for three months.

#### **Power of coroner to hold inquest with a jury.**

49. (1) A coroner may hold an inquest with a jury if the coroner believes it is desirable.

(2) A coroner must hold an inquest with a jury if the Attorney-General directs or any Act requires it.

(3) A coroner holding an inquest with a jury has, in addition to the powers under this Act, the powers prescribed by the regulations.

(4) Except as provided in this Act or the regulations, the procedure of an inquest with a jury is in the discretion of the coroner.

#### **Application for an inquest with a jury.**

50. (1) A relative of the deceased, a member of the police force or a person knowing the circumstances leading to a death may ask a coroner to hold an inquest into the death with a jury.

(2) If the coroner refuses the request the coroner must give reasons in writing to the person who made the request and to the Attorney-General.

#### **Size of jury.**

51. A jury consists of not less than five and not more than twelve jurors.

#### **Summoning of jury.**

52. A coroner is responsible for summoning the jury and the coroner's summons has the same force and effect as if it were a summons by the Sheriff under the *Juries Act 1967*.

#### ***Juries Act 1967* to apply.**

53. The *Juries Act 1967* with any necessary modifications applies to an inquest with a jury as if the inquest were held in the Supreme Court in the jury district of the Supreme Court in which, or closest to which, the inquest is held.

**Rejection of jurors.**

54. (1) A coroner may hear submissions on the rejection of jurors from any person appearing at an inquest.

(2) A coroner must reject any juror whom the coroner suspects has an interest in the outcome of the inquest.

**Function of jury.**

55. (1) A coroner holding an inquest with a jury must put to the jury questions about the matters which a coroner must find under section 19 (1) or section 36 (1).

(2) A jury must answer the questions so far as is reasonably possible.

(3) A jury's answers have the same force and effect as if they had been found by a coroner.

(4) A coroner must not make any findings under section 19 (1) or section 36 (1) but may make comments under section 19 (2) or section 36 (2).

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

(6) A jury must not include in an answer or a comment any statement that a person is or may be guilty of an offence.

(7) A coroner must make any report or recommendation under section 21 or section 38 which the jury requests the coroner to make to the Attorney-General or the Director of Public Prosecutions.

**Answers of jury to be unanimous.**

56. An answer, comment or request of a jury under section 55 must be unanimous.

**Record of evidence.**

57. (1) Evidence must be recorded in accordance with section 131 of the *Evidence Act 1958*.

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

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

**Restriction on publication of reports.**

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

(a) be likely to prejudice the fair trial of a person; or

(b) be contrary to the public interest.

- (2) A person must not publish a report contrary to an order.

Penalty applying to this sub-section: 50 penalty units.

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

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

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

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

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

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

**PART 8—MISCELLANEOUS**

**Obstruction.**

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

Penalty: 20 penalty units or imprisonment for three months.

**Protection from legal proceedings.**

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

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

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

**Coroner not to be called as witness.**

62. (1) A coroner or a person acting under an authority given under this Act must not be called to give evidence in any court or judicial proceedings about anything coming to their knowledge in carrying out their powers, duties or functions under this Act.

(2) Sub-section (1) does not apply in relation to proceedings against a coroner or a person acting under an authority under this Act for any thing done in bad faith.

**Regulations.**

63. The Governor in Council may make regulations for or with respect to prescribing forms for the purposes of this Act and prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

**PART 9—VICTORIAN INSTITUTE OF FORENSIC PATHOLOGY****Establishment and objects of the Institute.**

64. (1) The Victorian Institute of Forensic Pathology is established.

(2) The objects of the Institute are as follows:

- (a) To provide, promote and assist in the provision of forensic pathology and related services in Victoria and, as far as practicable, oversee and co-ordinate those services in Victoria;
- (b) To promote, provide and assist in the post-graduate instruction and training of trainee specialist pathologists in the field of forensic pathology in Victoria;
- (c) To promote, provide and assist in the post-graduate instruction and training of persons qualified in biological sciences in the field of toxicological and forensic science in Victoria;
- (d) To provide training facilities for doctors, medical undergraduates and such other persons as may be considered appropriate by the Council to assist in the proper functioning of the Institute;
- (e) To conduct research in the fields of forensic pathology, forensic science and associated fields as approved by the Council.

**The Institute to be a body corporate.**

65. (1) The Institute—

- (a) is a body corporate with perpetual succession; and
- (b) has a seal; and

- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its own name; and
- (e) may seek and accept funds from the University of Melbourne, Monash University or any other person for the purposes of carrying out the objects of the Institute.

(2) All courts, judges and persons acting judicially are to take judicial notice of the seal of the Institute.

#### **Functions of the Institute.**

66. (1) Subject to the directions of the State Coroner, the functions of the Institute are as follows:

- (a) To provide facilities and staff for the conduct of examinations in relation to deaths investigated under this Act;
- (b) To conduct chemical, microscopic, serological, toxicological and other examinations of organs, tissues and fluids taken from deceased persons coming under the jurisdiction of coroners in Victoria;
- (c) To identify by radiological or odontological examination or other means the remains of deceased persons whose deaths are being investigated under this Act;
- (d) To conduct other appropriate investigations or examinations in relation to the cause of death of any person;
- (e) To properly document and record findings and results of investigations and examinations;
- (f) To provide reports to coroners about the medical causes of deaths and the findings and results of investigations and examinations.

#### **The Council.**

67. (1) The governing body of the Institute is the Victorian Institute of Forensic Pathology Council.

(2) The Council consists of—

- (a) the State Coroner; and
- (b) the Director of the Institute; and
- (c) a nominee of the Council of the University of Melbourne; and
- (d) a nominee of the Council of Monash University; and
- (e) a nominee of the Minister for Health; and
- (f) a nominee of the Minister for Police and Emergency Services; and
- (g) a nominee of the Chief Justice; and

- (h) two nominees of the Attorney-General, at least one of whom is to be a Fellow of the Royal College of Pathologists of Australasia.

(3) The Attorney-General must appoint one of the members as Chairperson.

#### **Director.**

68. (1) The person who holds the Chair of Forensic Medicine at Monash University is the Director of the Institute.

(2) If no-one holds the Chair, the Governor in Council may appoint a person to act as Director on the terms and conditions in the instrument of appointment.

(3) The Director must carry out the objects of the Institute under the direction of the Council.

(4) An Acting Director may be re-appointed.

#### **Members of the Council.**

69. (1) The members of the Council, other than the Director and the State Coroner, are to be appointed by the Governor in Council on the terms and conditions in the instrument of appointment.

(2) A member, other than the Director or the State Coroner, holds office for three years or for the shorter period stated in the instrument of appointment.

(3) A member is not subject to the *Public Service Act 1974* in respect of the office as member.

#### **Procedure of the Council.**

70. (1) The Chairperson has a deliberative vote and, in the case of a tie, has a second or casting vote.

(2) The Council may regulate its own proceedings.

#### **Officers of the Institute.**

71. (1) The Institute may employ any person it considers necessary to carry out the objects of the Institute.

(2) An employee of the Institute who, immediately before appointment, was an officer or employee of the Public Service continues to be such an officer or employee while an employee of the Institute for the purposes of Division 4 of Part IV. of the *Public Service Act 1974*.

(3) An employee of the Institute who, immediately before appointment, was an officer within the meaning of the *Superannuation Act 1958* continues, subject to that Act, to be such an officer while an employee of the Institute.



**Director may act as consultant.**

72. With consent of the Council, the Director may act as a consultant in relation to any matter which has not been investigated and which a coroner is unlikely to investigate.

**Director's duties relating to autopsies.**

73. If a coroner directs the Institute to perform an autopsy on a body under section 27, or the Supreme Court orders the State Coroner to require the Institute to perform an autopsy on a body under section 28, the Director must—

- (a) ensure that an autopsy is performed; and
- (b) report the results of the autopsy to the coroner or State Coroner; and
- (c) keep a record of the autopsy.

**Accounts and records.**

74. (1) The Institute must ensure that there are kept proper accounts and records of the transactions and affairs of the Institute and such other records as will sufficiently explain the financial operations and financial position of the Institute.

(2) The Institute must do all things necessary to—

- (a) ensure that all money payable to the Institute is properly collected; and
- (b) ensure that all money expended by the Institute is correctly expended and properly authorized; and
- (c) ensure that adequate control is maintained over assets owned by or in the custody of the Institute; and
- (d) ensure that all liabilities incurred by the Institute are properly authorized; and
- (e) ensure efficiency and economy of operations and the avoidance of waste and extravagance; and
- (f) develop and maintain an adequate budgeting and accounting system; and
- (g) develop and maintain an adequate internal control system.

(3) The Institute must in respect of each financial year prepare financial statements which must—

- (a) contain such information as is determined by the Treasurer; and
- (b) be prepared in a manner and form approved by the Treasurer; and
- (c) present fairly the results of the financial transactions of the Institute during the financial year to which they relate and

the financial position of the Institute as at the end of that year; and

- (d) be signed by the principal accounting officer (by whatever name called) of the Institute and by the Director who must—
- (i) state whether in their opinion the financial statements present fairly the results of the financial transactions of the Institute during the financial year to which they relate and whether they sufficiently explain the financial position of the Institute as at the end of that year; and
  - (ii) state whether at the date of signing the financial statements they were aware of any circumstances that would render any particulars included in the statements misleading or inaccurate and, if so, particulars of the circumstances.

(4) The financial statements must be audited by the Auditor-General who shall have in respect of the accounts and records of the Institute all the powers conferred on the Auditor-General by any law now or hereafter in force relating to the audit of the public accounts.

(5) The Institute must as soon as is practicable after the end of each financial year and not later than the following 30 September submit to the Minister a report of its operations during the financial year together with the audited financial statements.

(6) The Minister must cause the report and the audited financial statements submitted to the Minister under this section to be laid before the Legislative Council and the Legislative Assembly before the expiration of the fourteenth sitting day of the Legislative Council or the Legislative Assembly, as the case may be, after the report and the audited financial statements have been received by the Minister.

(7) The Institute must pay in each year to the Consolidated Fund an amount to be determined by the Auditor-General to defray the costs and expenses of the audit under sub-section (4).

(8) The financial year of the Institute is the year ending on 30 June.

#### PART 10—REPEALS AND AMENDMENTS

##### *Coroners Act 1958.*

75. The *Coroners Act 1958* is repealed.

##### *Alcoholics and Drug-dependent Persons Act 1968.*

76. Section 28 of the *Alcoholics and Drug-dependent Persons Act 1968* is repealed.

**Bail Act 1977.**

77. In section 13 (2) (b) (iii) of the *Bail Act 1977*, omit "coroner or".

**Cemeteries Act 1958.**

78. In the *Cemeteries Act 1958*—

- (a) in section 19 (2) (b) for "of an order for burial in the form set forth in the Second Schedule to the *Coroners Act 1958*" substitute "in the form prescribed under section 23 of the *Coroners Act 1985* permitting burial"; and
- (b) in section 48 (1) for "for the purpose of an inquest as provided by the *Coroners Act 1958*" substitute "for the purposes of an investigation or an inquest as provided by the *Coroners Act 1985*"; and
- (c) in section 77 (1) (b) for sub-paragraph (ii) substitute—
  - "(ii) in the form prescribed under section 23 of the *Coroners Act 1985* certifying that cremation is permitted"; and
- (d) in section 77 (3) for "who personally attended the deceased and who has seen the deceased not more than twenty-eight days before his death or had personally examined the body of the deceased before his death" substitute "who has signed the notice prescribed under section 19 (1) (b) of the *Registration of Births Deaths and Marriages Act 1959* in relation to the deceased"; and
- (e) section 77 (5) is repealed; and
- (f) in section 77 (7) for "the coroner" substitute "a coroner under the *Coroners Act 1985*".

**Coal Mines Act 1958.**

79. For section 50 of the *Coal Mines Act 1958* substitute—

**Inquests.**

"50. An inspector or another person appointed for the purpose shall be present at every inquest under the *Coroners Act 1985* into the death of a person whose death may have been caused by explosion or accident in or about a mine."

**Community Welfare Services Act 1970—Registered homes.**

80. In the *Community Welfare Services Act 1970*, for section 70 substitute—

**Report of inquest.**

"70. The Director-General must give to the Minister a report of any inquest into the death of an infant in a registered home."

**Community Welfare Services Act 1970—Prisoners.****81. In the *Community Welfare Services Act 1970*—****(a) for section 97 (1) substitute—**

“(1) Where a judge, justice or proper officer of a court, or a coroner holding an inquest under the *Coroners Act 1985* or the coroner’s clerk requires by an order in the form of Schedule Three A that a person in a remand centre or youth training centre be brought before the court or inquest—

(a) the person may be brought before the court or inquest, as often as is necessary for the person to be dealt with according to law or to give evidence, without a writ of *habeas corpus* or other writ for that purpose; and

(b) the person shall then be returned to the custody from which the person was brought.”; and

**(b) for section 129 substitute—****Prisoners to be brought before court or inquest.**

“129. Where a judge, justice or proper officer of a court, or a coroner under the *Coroners Act 1985* or the coroner’s clerk requires by an order in the form of Schedule Three that a prisoner detained in a prison or lock-up be brought before the court or the coroner—

(a) the prisoner may be brought before the court or the coroner, as often as is necessary for the person to be dealt with according to law, or to give evidence, without a writ of *habeas corpus* or other writ for that purpose;

(b) the prisoner is in the legal custody of the member of the police force, governor or prison officer having the temporary custody of the prisoner and acting under the order; and

(c) the person having legal custody of the prisoner shall in due course return the prisoner to the custody from which the prisoner was brought.”.

**Country Fire Authority Act 1958.****82. For section 98 of the *Country Fire Authority Act 1958* substitute—****Place where fire occurs.**

“98. (1) The Authority or the Chief Fire Officer may cause any place in the country area of Victoria where any fire has occurred to be searched, and may remove and keep possession of any materials which may tend to prove the cause or origin of the fire.

(2) The Authority or Chief Fire Officer may act under sub-section (1) in relation to a fire on the Authority's or the Officer's own initiative but shall not so act if a coroner is investigating the fire.

(3) Where the Authority or Chief Officer causes a search to be made or takes possession of anything under sub-section (1) in relation to a fire, the Authority or Officer shall, if a coroner subsequently investigates the fire—

- (a) report to the coroner any information found in the search concerning the cause or origin of the fire; and
- (b) give to the coroner anything of which the Authority or Officer has taken possession.

(4) Anything given to the coroner under sub-section (3) (b) shall be deemed to have come into the coroner's possession under section 41 of the *Coroner's Act 1985*.

(5) If in the opinion of the Authority or the Chief Officer there are suspicious circumstances in relation to the cause or origin of any fire in the country area of Victoria, the Authority or the Chief Officer—

- (a) may restrict access to the place where the fire occurred until a coroner with jurisdiction to investigate the fire under the *Coroners Act 1985* orders otherwise or until an inquest into the fire is held under that Act, whichever first occurs;
- (b) may cause to be erected at the entrance or boundary of the place a notice in the prescribed form of the restriction; and
- (c) may request a coroner to investigate the fire.”.

***Director of Public Prosecutions Act 1982.***

83. In section 9 (1) (b) (iii) of the *Director of Public Prosecutions Act 1982* for “*Coroners Act 1958*” substitute “*Coroners Act 1985*”.

***Evidence Act 1958.***

84. In the *Evidence Act 1958*—

- (a) in section 12, for “*Coroners Act 1958*” substitute “*Coroners Act 1985*”; and
- (b) in section 75A (1)—
  - (i) omit “At any inquest, or”; and
  - (ii) omit “coroner”; and
- (c) in section 75A (2) omit “coroner” (where twice occurring); and
- (d) in section 140 (1) (d) after “or proceedings” insert “or coroner's inquests”; and
- (e) in section 140 (2) (a)—
  - (i) after “proceeding” (where first occurring) insert “or coroner's inquest”; and

- (ii) after "proceeding" (where secondly occurring) insert "or inquest"; and
- (f) in section 151, omit "any inquiry held before any justice in the nature of coroner's inquests respecting sudden deaths"; and
- (g) in section 152 (c) omit "and deputy coroners".

***Human Tissue Act 1982.***

**85. In the *Human Tissue Act 1982*—**

- (a) in section 3 (1)—
  - (i) for the interpretation of "Coroner" substitute—  
"Coroner" has the same meaning as it has in the *Coroners Act 1985*.; and
  - (ii) after the definition of "Senior available next of kin" insert—  
"State Coroner" means the person appointed to be the State Coroner under the *Coroners Act 1985*.; and
- (b) in section 27 (1) for "has jurisdiction to hold an inquest into the manner and cause of the death of the person" substitute "has jurisdiction under the *Coroners Act 1985* to investigate the death of the person"; and
- (c) in section 27 (2) for "jurisdiction to hold an inquest into the manner and cause of the death of a person" substitute "jurisdiction under the *Coroners Act 1985* to investigate the death of a person"; and
- (d) for section 29 (1) substitute:  
"(1) This section applies to a deceased person whose death a coroner has jurisdiction to investigate under the *Coroners Act 1985*."; and
- (e) in section 30 (3) for "*Coroners Act 1958*" substitute "*Coroners Act 1985*"; and
- (f) in section 33 (1) for "has jurisdiction to hold an inquest into the manner and cause of the death of the person" substitute "has jurisdiction under the *Coroners Act 1985* to investigate the death of the person"; and
- (g) in section 44 (5) (a) for "*Coroners Act 1958*" substitute "*Coroners Act 1985*".

***Magistrates' Courts Act 1971.***

**86. In the *Magistrates' Courts Act 1971*—**

- (a) section 2 (1) is repealed; and
- (b) in section 17, omit "every coroner and deputy coroner"; and

- (c) in section 18A, omit "a coroner or a deputy coroner or"; and
- (d) in section 22A, paragraph (i) is repealed; and
- (e) Schedule One is repealed.

***Magistrates (Summary Proceedings) Act 1975.***

**87. In the *Magistrates (Summary Proceedings) Act 1975*—**

- (a) in section 75, omit "or coroner"; and
- (b) in section 163—
  - (i) in sub-section (1) (a) omit "or coroner"; and
  - (ii) in sub-section (1) (c) for "justice, coroner, or justice acting as a coroner" (where twice occurring) substitute "justice"; and
  - (iii) sub-section (3) is repealed.

***Mental Health Act 1959.***

**88. In the *Mental Health Act 1959*—**

- (a) in section 62, for "coroner or the district in which the person has died" substitute "State Coroner under the *Coroners Act 1985*"; and
- (b) for section 67 substitute—

**Official visitor.**

"67. An official visitor who is a coroner shall not investigate the death of a patient under the *Coroners Act 1985*."; and

- (c) section 112A is repealed.

***Metropolitan Fire Brigades Act 1958.***

**89. For sections 71 and 72 of the *Metropolitan Fire Brigades Act 1958* substitute—**

**Place where fire occurs.**

"71. (1) The Board or the Chief Fire Officer may cause any place in the metropolitan district where any fire occurred to be searched, and may remove and keep possession of any materials which may tend to prove the cause or origin of the fire.

(2) The Board or Chief Fire Officer may act under sub-section (1) in relation to a fire on the Board's or the Officer's own initiative but shall not so act if a coroner is investigating the fire.

(3) Where the Board or Chief Fire Officer causes a search to be made or takes possession of anything under sub-section (1) in relation

to a fire, the Board or Officer shall, if a coroner subsequently investigates the fire—

- (a) report to the coroner any information found in the search concerning the cause or origin of the fire; and
- (b) give to the coroner anything of which the Board or Officer has taken possession under sub-section (1).

(4) Anything given to the coroner under sub-section (3) (b) shall be deemed to have come into the coroner's possession under section 41 of the *Coroners Act 1985*.

(5) If in the opinion of the Board or the Chief Fire Officer there are suspicious circumstances in relation to the cause or origin of any fire in the metropolitan district, the Board or the Chief Fire Officer—

- (a) may restrict access to the place where the fire occurred until a coroner with jurisdiction to investigate the fire under the *Coroners Act 1985* orders otherwise or until an inquest into the fire is held under that Act, whichever first occurs;
- (b) may cause to be erected at the entrance or boundary of the place a notice in the prescribed form of the restriction; and
- (c) may request a coroner to investigate the fire.”.

***Mines Act 1958.***

90. For section 414 of the *Mines Act 1958* substitute—

**Inspector to attend inquest.**

“414. An inspector of mines shall be present at every inquest under the *Coroners Act 1985* into the death of a person whose death may have been caused by accident in any mine.”.

***Police Regulation Act 1958.***

91. In the *Police Regulation Act 1958*—

- (a) after section 18 insert—

**Assistance to coroners.**

“18A. The Chief Commissioner of Police shall direct that a sufficient number of members of the police force be present at any place at which an inquest may be held (whether or not an inquest is being held) whenever a coroner so requests.”; and

- (b) in section 20, after “any court or any justice” insert “or any coroner under the *Coroners Act 1985*”.



**Registration of Births Deaths and Marriages Act 1959.****92. In the *Registration of Births Deaths and Marriages Act 1959*—****(a) in section 3—****(i) for the definition of “Coroner” substitute—**

“‘Coroner’ has the same meaning as it has in the *Coroners Act 1985*.”; and

**(b) for section 18 (2) and (3) substitute—**

“(2) Where a coroner investigates the death of a person under the *Coroners Act 1985*—

(a) the particulars required for the registration of the death shall be the prescribed particulars; and

(b) the Government Statist shall enter the particulars in the register of death on receiving notice of the particulars from the coroner.

(3) Where a coroner directs that an autopsy be performed on the body of a deceased person, the entry in the register of deaths in relation to the death of that person shall include—

(a) a statement that an autopsy was performed; and

(b) the names of the coroner and the person who performed the autopsy.”; and

**(c) in section 19 (1)—**

(i) after paragraph (a) insert “and”; and

(ii) in paragraph (b), for “(except in any case where he is required by this section to report the death to the Coroner)” substitute “(except in any case where the medical practitioner is required by section 13 of the *Coroners Act 1985* to report the death to a coroner)”;

and

(iii) paragraph (c) and the word “and” after paragraph (b) are repealed; and

**(d) for section 19 (2) substitute:**

“(2) A legally qualified medical practitioner who—

(a) does not sign, deliver or forward a certificate or notice required by this section;

(b) signs, delivers or forwards any such certificate or notice which is lacking in any material particular of which the medical practitioner has knowledge;

(c) signs, delivers or forwards any certificate or notice under sub-section (1) (b) where the medical practitioner is required by section 13 of the *Coroners Act 1985* to report the death in respect of which the notice is given; or

(d) knowingly makes a false statement in any such certificate or notice—  
is guilty of an offence and liable to a penalty of 10 penalty units.”.

***Wrongs Act 1958.***

93. In section 4 of the *Wrongs Act 1958*, for “inquiry before a coroner or other legally constituted court” substitute “or other legally constituted court or in any inquest under the *Coroners Act 1958* or investigation under the *Coroners Act 1985*”.

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NOTES

1. *Minister's second reading speech—*

*Legislative Council: 23 October 1985*

*Legislative Assembly: 21 November 1985*

2. The long title for the Bill for this Act was “A Bill to establish the office of State Coroner, to amend the law relating to coroners, to establish the Victorian Institute of Forensic Pathology, to repeal the *Coroners Act 1958* and for other purposes.” (Legislative Council)  
and “A Bill to establish the office of State Coroner, to amend the law relating to coroners, to repeal the *Coroners Act 1958* and for other purposes.” (Legislative Assembly)