

“Crime x Coronial – Representing clients in the crossover world of crime and inquests”

Panel: Matt Johnston SC, Sarah Crellin, and Claire Wasley

Resources

1. Abernethy et al, *Waller's Coronial Law and Practice in NSW* (Lexis Nexis, 4th ed, 2010)
2. [Coroners Act 2009 \(NSW\)](#)
3. [Coroners Court Website](#)
4. [Coronial Recommendations and Responses](#) (searchable via Coroners Court Website)
5. [Coronial Findings](#) (published on Austlii)
6. [Coroners Court papers at Criminal CPD](#) (A not-for-profit Website for Criminal Lawyers in New South Wales, Australia)
7. [Local Court Bench Book – Coronial Matters](#)

Coroners Act 2009 No 41

Current version for 21 November 2024 to date (accessed 4 March 2025 at 12:59)

[Chapter 6](#) > [Part 6.3](#) > Section 61

61 Privilege in respect of self-incrimination (cf [Coroners Act 1980](#), s 33AA)

- (1) This section applies if a witness in coronial proceedings objects to giving particular evidence, or evidence on a particular matter, on the ground that the evidence may tend to prove that the witness—
 - (a) has committed an offence against or arising under an Australian law or a law of a foreign country, or
 - (b) is liable to a civil penalty.
- (2) The coroner in the coronial proceedings must determine whether or not there are reasonable grounds for the objection.
- (3) If the coroner determines that there are reasonable grounds for the objection, the coroner is to inform the witness—
 - (a) that the witness need not give the evidence unless required by the coroner to do so under subsection (4), and
 - (b) that the coroner will give a certificate under this section if—
 - (i) the witness willingly gives the evidence without being required to do so under subsection (4), or
 - (ii) the witness gives the evidence after being required to do so under subsection (4), and
 - (c) of the effect of such a certificate.
- (4) The coroner may require the witness to give the evidence if the coroner is satisfied that—
 - (a) the evidence does not tend to prove that the witness has committed an offence against or arising under, or is liable to a civil penalty under, a law of a foreign country, and
 - (b) the interests of justice require that the witness give the evidence.
- (5) If the witness either willingly gives the evidence without being required to do so under subsection (4), or gives it after being required to do so under that subsection, the coroner must cause the witness to be given a certificate under this section in respect of the evidence.
- (6) The coroner is also to cause a witness to be given a certificate under this section if—
 - (a) the objection has been overruled, and
 - (b) after the evidence has been given, the coroner finds that there were reasonable grounds for the objection.
- (7) In any proceeding in a NSW court within the meaning of the [Evidence Act 1995](#) or before any person or body authorised by a law of the State, or by consent of parties, to hear, receive and examine evidence—
 - (a) evidence given by a person in respect of which a certificate under this section has been given, and

- (b) evidence of any information, document or thing obtained as a direct or indirect consequence of the person having given evidence,

cannot be used against the person. However, this does not apply to a criminal proceeding in respect of the falsity of the evidence.

- (8) Subsection (7) has effect despite any challenge, review, quashing or calling into question on any ground of the decision to give, or the validity of, the certificate concerned.
- (9) A reference in this section to doing an act includes a reference to failing to act.
- (10) A certificate under this section can only be given in respect of evidence that is required to be given by a natural person.