



New South Wales

# Coroners Amendment Act 1997 No 130

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# Coroners Amendment Act 1997 No 130

Act No 130, 1997

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An Act to amend the *Coroners Act 1980* with respect to the functions of assistant coroners, the publication of certain matter and post mortem examinations; to amend the *Coroners (Amendment) Act 1993* consequentially; and for other purposes. [Assented to 16 December 1997]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Coroners Amendment Act 1997*.

**2 Commencement**

- (1) This Act commences on the commencement of Schedule 1 (10) to the *Coroners (Amendment) Act 1993*, except as provided by subsection (2).
- (2) Section 4 commences on the date of assent.

**3 Amendment of Coroners Act 1980 No 27**

The *Coroners Act 1980* is amended as set out in Schedule 1.

**4 Amendment of Coroners (Amendment) Act 1993 No 79**

The *Coroners (Amendment) Act 1993* is amended by omitting Schedule 1 (14).

## Schedule 1 Amendments

(Section 3)

### [1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

*senior next of kin* of a deceased person means:

- (a) the deceased person's spouse, or
- (b) if the deceased person did not have a spouse or a spouse is not available—any of the deceased person's sons or daughters who are of or above the age of 18 years, or
- (c) if the deceased person did not have a spouse, son or daughter or a spouse, son or daughter is not available—either of the deceased person's parents, or
- (d) if the deceased person did not have a spouse, son, daughter or living parent or a spouse, son, daughter or parent is not available—any of the deceased person's brothers or sisters who are of or above the age of 18 years, or
- (e) if the deceased person did not have a spouse, son, daughter, living parent, brother or sister or a spouse, son, daughter, parent, brother or sister is not available:
  - (i) any person who is named as an executor in the deceased person's will, or
  - (ii) any person who was the deceased person's personal representative immediately before the deceased person's death.

In this definition, *spouse* includes any person who, immediately before the deceased person's death, was living with the deceased person as the deceased person's spouse on a bona fide domestic basis.

**[2] Section 9**

Omit the section. Insert instead:

**9 Functions of assistant coroners**

- (1) An assistant coroner has and may exercise the following functions:
  - (a) the function of providing administrative assistance to a coroner under the control and direction of the coroner,
  - (b) such functions as may be conferred or imposed on an assistant coroner by or under this or any other Act.
- (2) An assistant coroner also has and may exercise the following functions if delegated in writing to the assistant coroner by the State Coroner:
  - (a) the function of issuing orders for the disposal of dead bodies,
  - (b) the function of issuing orders for the performance of post mortem examinations,
  - (c) the function of dispensing with the holding of inquests if death results from natural causes,
  - (d) the function of dispensing with the holding of inquiries if a fire does not occur in suspicious circumstances,
  - (e) the function of dispensing with the holding of inquiries if a fire involved only a motor vehicle.

- (3) An assistant coroner cannot hold an inquest or inquiry and the function of holding an inquest or inquiry cannot be delegated to an assistant coroner by the State Coroner.
- (4) This section does not authorise an assistant coroner to exercise any function conferred or imposed on a coroner, except as specifically provided for by delegation under this section or by this or any other Act.
- (5) Section 49 of the *Interpretation Act 1987* applies to a delegation under this section.

**[3] Section 44 Power of coroner to clear court and prohibit publication of matter relating to inquest or inquiry**

Omit “at the commencement or in” from section 44 (2).  
Insert instead “after a coroner receives a report or is informed of a death or suspected death under section 12A or during”.

**[4] Section 44 (2)**

Omit “with which the inquest is concerned”.

**[5] Sections 48A and 48B**

Insert after section 48:

**48A Objection to post mortem examination by senior next of kin**

- (1) A deceased person’s senior next of kin may, by notice in writing, request a coroner or an assistant coroner not to direct a post mortem examination of the remains of the deceased person.
- (2) If such a request is made, an assistant coroner must not make any further decision concerning the performance of the post mortem examination but must refer the matter to a coroner.

- (3) If the coroner decides that the post mortem examination is necessary or is desirable in the public interest, the coroner must immediately cause written notice of that decision to be given to the senior next of kin who made the request.
- (4) The notice must:
  - (a) indicate the earliest time at which the post mortem examination may be performed, and
  - (b) state that the senior next of kin may apply to the Supreme Court for an order that no post mortem examination of the remains of the deceased person be performed.
- (5) Unless the coroner believes the post mortem examination must be performed immediately, the post mortem examination must not be performed until 48 hours after the senior next of kin has been given notice of the decision.
- (6) Within 48 hours after the notice has been given to the senior next of kin, the senior next of kin may apply to the Supreme Court, in accordance with rules of court, for an order that no post mortem examination of the remains of the deceased person be performed.
- (7) The making of the application to the Supreme Court operates to stay the operation of the coroner's order for the performance of the post mortem examination.
- (8) The Supreme Court may make an order that:
  - (a) no post mortem examination, or
  - (b) a partial post mortem examination,be performed if it is satisfied that it is desirable in the circumstances.

**48B Objection to post mortem examination by other persons**

- (1) Nothing in section 48A prevents a person, other than the deceased person's senior next of kin, from objecting to the performance of a post mortem examination of the remains of a deceased person.

- (2) If such an objection is made to an assistant coroner, the assistant coroner must not make any further decision concerning the performance of the post mortem examination but must refer the matter to a coroner.
- (3) The provisions of section 48A do not apply in relation to any such objection.

**[6] Schedule 3 Savings and transitional provisions**

Omit “coroner or” from clause 7 (2) where firstly occurring.

[Minister’s second reading speech made in—  
Legislative Assembly on 12 November 1997  
Legislative Council on 2 December 1997]