

# Anatomy Act 1977 No 126

[1977-126]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
*Human Tissue and Anatomy Legislation Amendment Act 2003 No 18* (not commenced)

### Authorisation

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## Contents

<b>Long title</b> .....	4
<b>Part 1 Preliminary</b> .....	4
1 Name of Act .....	4
2 Commencement .....	4
3 (Repealed) .....	4
4 Definitions .....	4
5 Act not to apply to certain post mortem examinations.....	6
<b>Part 2 Regulation of anatomy</b> .....	6
6 Director-General may issue licence to person to conduct study and practice of anatomy .....	6
7 Inspectors .....	7
8 Authority for anatomical examination where body of deceased at a hospital .....	7
8A Authority for anatomical examination where body of deceased not at a hospital .....	8
8B Consent by coroner .....	9
8C Effect of authority .....	9
9 Conditions of taking possession of body .....	10
10 Duty to keep register .....	10
11 Transfer of bodies .....	10
12 Disposal of bodies .....	11
13 Duties of person whose licence is revoked .....	12
<b>Part 3 General</b> .....	12
14 Offences .....	12

15 (Repealed) .....	13
16 Proceedings for offences .....	13
17 Regulations.....	13
18 Repeal of Anatomy Act 1901 and the provisions of Acts amending that Act .....	13
19 Savings provisions .....	13
<b>Schedule 1 Repeals</b> .....	<b>14</b>

# Anatomy Act 1977 No 126



New South Wales

An Act to amend and re-enact the law relating to anatomy; and to repeal the [Anatomy Act 1901](#).

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the [Anatomy Act 1977](#).

### 2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 (Repealed)

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

***anatomy*** means anatomy of the human body only.

***body*** means dead human body.

***child*** means a person who has not attained the age of 18 years and who is not married.

***designated officer***, in relation to a hospital, means a person appointed for the time being under section 5 (1) (a) of the [Human Tissue Act 1983](#) to be a designated officer for the hospital.

***Director-General*** means the Director-General of the Department of Health.

***dispose***, in relation to a body, means dispose of the body by burial, cremation or other lawful means.

**hospital** means:

- (a) a public hospital within the meaning of the *Health Services Act 1997*, or
- (b) a private hospital within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988*.

**inspector** means inspector appointed under section 7 (1).

**licence** means licence in force under section 6.

**next of kin** means:

- (a) in relation to a deceased child—a person referred to in paragraph (a) of the definition of **senior available next of kin**, and
- (b) in relation to any other deceased person—a person referred to in paragraph (b) of that definition.

**register** means register required to be kept under section 10.

**regulation** means regulation made under this Act.

**school of anatomy** means a place specified in a licence at which the holder of the licence may conduct the study and practice of anatomy.

**senior available next of kin** means:

- (a) in relation to a deceased child:
  - (i) a parent of the child,
  - (ii) where a parent of the child is not available—a brother or sister of the child, being a brother or sister who has attained the age of 18 years, or
  - (iii) where no person referred to in subparagraph (i) or (ii) is available—a person who was a guardian of the child immediately before the death of the child, and
- (b) in relation to any other deceased person:
  - (i) a person who was a spouse of the deceased person immediately before the deceased person's death,
  - (ii) where the deceased person, immediately before death, had no spouse or the deceased person had a spouse but the person who was then the deceased person's spouse is not available—a son or daughter (if any) of the deceased person, being a son or daughter who has attained the age of 18 years,
  - (iii) where no person referred to in subparagraph (i) or (ii) is available—a parent of the deceased person, or

(iv) where no person referred to in subparagraph (i), (ii) or (iii) is available—a brother or sister of the deceased person, being a brother or sister who has attained the age of 18 years.

(2) In this Act:

- (a) a reference to a parent of a person includes a reference to a step-parent or adoptive parent of the person,
- (b) a reference to a son or daughter of a person includes a reference to any person of whom the person is a parent,
- (c) a reference to a brother or sister of a person includes a reference to any person who is a son or daughter of a parent of the person, and
- (d) a reference to a spouse of a person is a reference to:
  - (i) the person's husband or wife, or
  - (ii) the other party to a de facto relationship within the meaning of the *Property (Relationships) Act 1984*,

but where more than one person would so qualify as a spouse, is a reference only to the last person so to qualify.

## **5 Act not to apply to certain post mortem examinations**

This Act shall not apply to or in respect of any post mortem examination of a body, or the possession of a body for the purposes of a post mortem examination, where that examination is:

- (a) required or directed to be made by a competent legal authority, or
- (b) made or to be made pursuant to an authority under Part 5 of the *Human Tissue Act 1983*.

## **Part 2 Regulation of anatomy**

### **6 Director-General may issue licence to person to conduct study and practice of anatomy**

- (1) The Director-General may issue a licence to a person who has duly made an application under subsection (2) to conduct the study and practice of anatomy at a place specified in the licence.
- (2) An application for a licence may be made by any person who is in charge of the study and practice of anatomy at any university, college, school or other educational institution or at any research or medical institution.
- (3) A licence shall be subject to such terms and conditions as may be determined by the

Director-General and specified in the licence.

- (4) A licence may be issued in the name of the person who applied for the licence or in the name of the holder of that person's office from time to time.
- (5) A licence may be revoked by the Director-General at any time.

## **7 Inspectors**

- (1) The Minister may appoint any of the following people as an inspector for the purposes of this Act:
  - (a) an officer of the Department of Health,
  - (b) an employee of the Health Administration Corporation,
  - (c) an employee of a public health organisation within the meaning of the *Health Services Act 1997*.
  - (d) (Repealed)
- (2) An inspector may inspect at any time any school of anatomy.

## **8 Authority for anatomical examination where body of deceased at a hospital**

- (1) Where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances in relation to a person who has died in the hospital or whose body has been brought into the hospital, that the person:
  - (a) had, during that person's lifetime, expressed the wish for, or consented to, the anatomical examination of that person's body after that person's death, and
  - (b) had not withdrawn the wish or revoked the consent,the designated officer may, by instrument in writing, authorise the anatomical examination of that person's body.
- (2) Where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances in relation to a person who has died in the hospital or whose body has been brought into the hospital, that:
  - (a) the designated officer is not authorised by subsection (1) to give an authority in respect of the person,
  - (b) the person had not, during the person's lifetime, expressed an objection to the anatomical examination of the person's body, and
  - (c) a senior available next of kin of the person has not objected to the anatomical examination of the person's body,

the designated officer may, by instrument in writing, authorise the anatomical examination of the person's body.

(3) Where a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances (which shall include inquiries addressed to the Commissioner of Police), is unable to ascertain the existence or whereabouts of a next of kin of a deceased person, subsection (2) applies as if paragraph (c) of that subsection were omitted.

(4) Where, in relation to a deceased person:

(a) a next of kin of the person indicated to a designated officer for a hospital, when the person was unconscious before death, that the next of kin had no objection to the anatomical examination, after the person's death, of the person's body,

(b) the person did not subsequently recover consciousness before dying, and

(c) the next of kin has not subsequently indicated to the designated officer that the next of kin objects to the anatomical examination of the person's body,

the designated officer may, for the purposes of any inquiry the designated officer is required to make by subsection (2), rely on that indication without further inquiry of that next of kin.

(5) Where there are 2 or more persons having a description referred to in a subparagraph of paragraph (a) or (b) of the definition of **senior available next of kin** in section 4 (1), an objection by any one of those persons has effect for the purposes of subsection (2) (c) notwithstanding any indication to the contrary by the other or any other of those persons.

#### **8A Authority for anatomical examination where body of deceased not at a hospital**

(1) Where:

(a) the body of a deceased person (other than a deceased child) is at a place other than a hospital,

(b) the deceased person had, during the person's lifetime, expressed the wish for, or consented to, the anatomical examination, after the person's death, of that person's body, and

(c) the wish had not been withdrawn or the consent revoked,

the anatomical examination of that person's body is hereby authorised.

(2) Where the body of a deceased person is at a place other than a hospital, a senior available next of kin of the person may, by instrument in writing, authorise the anatomical examination of the person's body.



- (3) Notwithstanding subsection (2), where it appears to a senior available next of kin of a deceased person, after making such inquiries (if any) as are reasonable in the circumstances, that:
- (a) the person had, during the person's lifetime, expressed an objection to the anatomical examination of the person's body and had not withdrawn that objection, or
  - (b) another next of kin of the same or a higher order of the classes in paragraph (a) or (b) of the definition of **senior available next of kin** in section 4 (1) has an objection to the anatomical examination of the person's body,

the senior available next of kin shall not authorise the anatomical examination of the person's body.

Maximum penalty for an offence against this subsection: 10 penalty units.

#### **8B Consent by coroner**

- (1) This section applies to a person in respect of whose death a coroner has jurisdiction to hold an inquest under the [Coroners Act 1980](#).
- (2) A designated officer for a hospital or a senior available next of kin shall not authorise the anatomical examination of the body of a person to whom this section applies unless a coroner has given consent to the examination.

Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.

- (3) Section 8A (1) does not apply in relation to a person to whom this section applies unless a coroner has given consent to the anatomical examination of the person's body.
- (4) A consent by a coroner under this section may be expressed to be subject to such conditions as are specified in the consent.
- (5) A consent by a coroner under this section may be given orally and, if so given, is to be confirmed in writing as soon as practicable.
- (6) A coroner shall, in determining the conditions (if any) to which a consent shall be subject, have regard only to the effect which the conduct of an anatomical examination of the body of the person to whom the consent relates may have in relation to the conduct of any inquest which a coroner has jurisdiction to hold in respect of that person's death.

#### **8C Effect of authority**

- (1) An authority under section 8 or 8A is sufficient authority for a person who has lawful possession of a body to permit the body to be used for anatomical examination by the

holder of a licence.

- (2) For the purposes of this section, a person does not have lawful possession of a body if that person is a funeral director or other person entrusted with the body for the purposes only of its disposal.

### **9 Conditions of taking possession of body**

The holder of a licence shall not take possession of a body for anatomical examination, other than a body transferred pursuant to section 11, unless:

- (a) the holder is permitted to use the body for anatomical examination pursuant to section 8C (1), and
- (b) where section 53A of the *Coroners Act 1980* applies, the holder is satisfied that a document referred to in that section has been signed, issued, made or given in relation to the body.

Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.

### **10 Duty to keep register**

- (1) The holder of a licence shall, on taking possession of a body for anatomical examination, enter in a register kept for that purpose:
- (a) the name and address of the person who had lawful possession of the body and who delivered the body into the holder's possession,
- (b) the date on which the holder took possession of the body,
- (c) the date, place and cause of death of the deceased and the sex, name, age and last place of abode of the deceased, and
- (d) such other information as may be prescribed.

Maximum penalty: 10 penalty units.

- (2) The holder of a licence shall, whenever required to do so by an inspector, produce the register kept by the holder to the inspector.

Maximum penalty: 10 penalty units.

- (3) Each part of a register which contains particulars of a body shall be retained until the expiration of 5 years from the date on which in respect of the body an entry has been made pursuant to section 11 (3) or 12 (4), as the case may require.

### **11 Transfer of bodies**

- (1) The holder of a licence may transfer a body which is in the holder's possession:

(a) to another holder of a licence, or

(b) with the approval of an inspector, to any person who is in charge of the study and practice of anatomy at any place outside New South Wales,

for anatomical examination unless the holder has reason to believe that to do so would be contrary to the wishes of the deceased or the senior available next of kin of the deceased.

(2) The holder of a licence shall transmit with a body transferred under subsection (1) a copy of the particulars relating to that body contained in the register kept by the holder.

Maximum penalty: 10 penalty units.

(3) The holder of a licence shall, forthwith after transferring a body under subsection (1), enter in the register kept by the holder opposite the particulars relating to the body:

(a) the fact that the body was transferred,

(b) the date on which the body was transferred, and

(c) the name and address of the person to whom the body was transferred.

Maximum penalty for an offence against this subsection: 10 penalty units.

## **12 Disposal of bodies**

(1) Subject to subsection (2), the holder of a licence shall dispose of any body which is in the holder's possession for anatomical examination if 4 years have elapsed, or, where some other period is prescribed for the purposes of this section, that period has elapsed, since the death of the deceased.

Maximum penalty: 10 penalty units.

(2) Subsection (1) does not apply if the holder of the licence:

(a) is authorised in writing by an inspector to retain the body,

(b) complies with any terms and conditions which may be imposed by the inspector in giving the authority, and

(c) enters in the register kept by the holder opposite the particulars relating to the body the fact that the authority has been given and the terms and conditions to which the authority is subject.

(3) Where the holder of a licence disposes of a body which has been in the holder's possession for anatomical examination, the holder shall dispose of the body as far as practicable in accordance with any wishes of the deceased but if that is not

practicable, or if the deceased has expressed no such wishes, the body shall be disposed of as far as practicable in accordance with any wishes of the senior available next of kin of the deceased.

Maximum penalty: 10 penalty units.

(4) The holder of a licence shall, forthwith after disposing of a body which has been in the holder's possession for anatomical examination, enter in the register kept by the holder opposite the particulars relating to that body:

- (a) the fact that the body was disposed of,
- (b) the date on which the body was disposed of, and
- (c) the name and address of the person engaged to dispose of the body.

Maximum penalty for an offence against this subsection: 10 penalty units.

### **13 Duties of person whose licence is revoked**

A person whose licence is revoked under section 6 (5) shall forthwith after the revocation of the person's licence:

- (a) deliver up the licence and the register kept by the person to an inspector, and
- (b) transfer or dispose of any body in the person's possession in accordance with section 11 or 12, as the case may be, as if the person were the holder of a licence.

Maximum penalty: 10 penalty units.

## **Part 3 General**

### **14 Offences**

(1) A person shall not keep a body in the person's possession for anatomical examination at any place other than a school of anatomy.

Maximum penalty: 10 penalty units.

(2) A person shall not examine any body anatomically at any place other than a school of anatomy.

Maximum penalty: 10 penalty units.

(3) A person shall not examine any body anatomically unless the person is the holder of a licence or is authorised to do so by the holder of a licence.

Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.

(4) A person shall not obstruct an inspector acting in the execution of this Act.

Maximum penalty: 10 penalty units.

- (5) The holder of a licence shall not contravene the terms or conditions of the licence.

Maximum penalty for an offence against this subsection: 10 penalty units.

#### **15 (Repealed)**

#### **16 Proceedings for offences**

Proceedings for any offence against this Act or the regulations shall be disposed of summarily before a Local Court.

#### **17 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without affecting the generality of subsection (1), the Governor may make regulations for or with respect to:
  - (a) the manner in which an application for a licence shall be made,
  - (b) the duties of inspectors, and
  - (c) hygiene in relation to the transport, possession and examination of bodies for the purposes of this Act.
- (3) A regulation may be made so as to apply differently according to such factors as are specified in the regulation.
- (4) A regulation may impose a penalty not exceeding 5 penalty units for any contravention thereof.

#### **18 Repeal of [Anatomy Act 1901](#) and the provisions of Acts amending that Act**

Each Act specified in Column 1 of Schedule 1 is, to the extent specified opposite that Act in Column 2 of Schedule 1, repealed.

#### **19 Savings provisions**

- (1) A licence in force under section 6 of the [Anatomy Act 1901](#) immediately before the commencement of this section shall be deemed to be a licence under section 6 of this Act if the holder of the licence is a person who is eligible to make an application for a licence under this Act.
- (2) A licence which is continued in force by virtue of subsection (1) shall be deemed to contain a provision that the place at which the holder of the licence may conduct the study and practice of anatomy is the place at which the holder does so immediately

before the commencement of this section.

(3) (Repealed)

(4) The book kept pursuant to section 14 (c) of the *Anatomy Act 1901*, as in force immediately before the commencement of this section, by the holder of a licence continued in force by virtue of subsection (1) shall be deemed to be a register kept by the holder under section 10.

## Schedule 1 Repeals

(Section 18)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Year and Number of Act</b>	<b>Short title of Act</b>	<b>Extent of Repeal</b>
1901 No 9	<i>Anatomy Act 1901</i>	The whole Act.
1970 No 52	<i>Supreme Court Act 1970</i>	So much of the Second Schedule as relates to Act No 9, 1901.
1973 No 9	<i>District Court Act 1973</i>	So much of Schedule 2 as relates to Act No 9, 1901.
1974 No 9	<i>Metric Conversion Act 1974</i>	Item 4 of the Schedule.