

Anatomy Act 1977 No 126

[1977-126]



New South Wales

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Anatomy Act 1977 No 126



New South Wales

An Act to regulate the conduct of anatomical examinations; 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3 (Repealed)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:

anatomical examination of a body includes use of the body for medical or scientific purposes.

Note—

However, an anatomical examination does not include a post mortem examination that is required, directed or authorised as provided by section 5.

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 means:

- (a) in relation to a hospital, 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, or
- (b) in relation to a forensic institution, a person appointed for the time being under section 5 (3) of the *Human Tissue Act 1983* to be a designated officer for the forensic institution.

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.

exercise a function includes perform a duty.

forensic institution means:

- (a) an institution that is under the control of a public health organisation (within the meaning of the *Health Services Act 1997*), or
- (b) an accredited pathology laboratory under the *Health Insurance Act 1973* of the Commonwealth, or
- (c) an institution that is under the control of the Health Administration Corporation, at which post mortem examinations of bodies are carried out, but does not include a hospital.

function includes a power, authority or duty.

hospital means:

- (a) a public hospital within the meaning of the *Health Services Act 1997*, or
- (b) a private health facility within the meaning of the *Private Health Facilities Act 2007*.

human tissue means an organ or other part of a body.

inspector means inspector appointed under section 7 (1).

licence means licence in force under section 6.

licensed premises means a place specified in a licence at which the holder of the licence may conduct anatomical examinations.

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.

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) a person to whom the person is legally married (including a husband or wife of the person), or

(ii) the person's de facto partner,

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

Note—

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

Note—

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

(3) In this Act, a reference to the use of a body for medical or scientific purposes includes carrying out any procedure on the body, or subjecting the body to an experiment, process or research, for medical or scientific purposes.

(4) In this Act, a reference to medical or scientific purposes includes educational purposes connected with medicine or science.

4A Notes

Notes included in this Act do not form part of this Act.

4B Delegation of functions of next of kin

(1) A next of kin of a deceased person may from time to time, by instrument in writing, authorise a person to exercise his or her functions under this Act as a next of kin of the deceased person.

(2) In such a case, the person so authorised:

(a) may exercise the functions of a next of kin of the deceased person under this Act (other than the function conferred by subsection (1)), in the place of the person who authorised him or her, and

(b) is taken, for the purposes of this Act, to be a next of kin of the deceased person, and

(c) for the purposes of the definition of **senior available next of kin** in section 4 (1), is taken to be a next of kin of the same order as the person who authorised him or her to exercise the functions of a next of kin.

5 Anatomical examination does not include post mortem examination

In this Act, a reference to an anatomical examination, or to the possession of a body for the purposes of an anatomical examination, does not include a post mortem examination, or the possession of a body for the purposes of a post mortem examination, if that post mortem 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*.

Note—

Accordingly, a licence under this Act is not required to conduct such a post mortem examination.

Part 2 Regulation of anatomical examinations

6 Director-General may issue licence to person to conduct anatomical examinations

- (1) The Director-General may issue a licence to a person who has duly made an application under subsection (2) to conduct anatomical examinations 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 conduct of anatomical examinations 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 licensed premises.

8 Authority for anatomical examination where body of deceased at a hospital or forensic institution

- (1) If a designated officer for a hospital or forensic institution is satisfied, after making such inquiries as are reasonable in the circumstances in relation to a person whose

body is at the hospital or forensic institution, that:

- (a) the person had, during the person's lifetime, given his or her consent in writing to the anatomical examination of the person's body after the person's death, and
- (b) the consent had not been revoked,

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

- (2) An authority under subsection (1) is not to be given in relation to a deceased child.
- (3) If the designated officer is not satisfied as to the matters referred to in subsection (1), or the deceased person is a deceased child, and the designated officer is satisfied, after making such inquiries as are reasonable in the circumstances in relation to the deceased person, that:
 - (a) the deceased person had not, during the person's lifetime, expressed an objection to the anatomical examination of the person's body after the person's death or, if the person had expressed such an objection, based on the most recent views expressed by the deceased person, the person no longer had an objection to the anatomical examination of the person's body, and
 - (b) a senior available next of kin has given his or her consent in writing to the anatomical examination of the person's body, and
 - (c) there is no 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) who objects 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.

- (4) An authority must be given in accordance with the terms and any conditions of the relevant consent (that is, the consent referred to in subsection (1) (a) or (3) (b)).

8A Authority for anatomical examination where body of deceased not at a hospital or forensic institution

- (1) If the body of a deceased person (other than a deceased child) is at a place other than a hospital or forensic institution, the anatomical examination of that person's body is authorised if:
 - (a) the deceased person had, during the person's lifetime, given his or her consent in writing to the anatomical examination of the person's body after the person's death, and
 - (b) the consent had not been revoked.

- (2) The authority conferred by subsection (1) is subject to the terms and any conditions of the consent referred to in that subsection.
- (3) If the body of a deceased person is at a place other than a hospital or forensic institution, a senior available next of kin of the person may, by instrument in writing, authorise the anatomical examination of the person's body.
- (4) A senior available next of kin must not grant an authority under subsection (3) if it appears to the senior available next of kin, after making such inquiries as are reasonable in the circumstances, that:
 - (a) the deceased person had, during the person's lifetime, expressed an objection to the anatomical examination of the person's body after the person's death unless, based on the most recent views expressed by the deceased person, it appears that the person no longer had an objection to the anatomical examination of the person's body, or
 - (b) another next of kin of the same or higher order of the classes in paragraph (a) or (b) of the definition of **senior available next of kin** in section 4 (1) objects to the anatomical examination of the person's body.

Maximum penalty: 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 2009](#).
- (2) A designated officer for a hospital or a forensic institution 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:
 - (a) for a person who has lawful possession of a body to cause or permit the body to be used by a holder of a licence for anatomical examination in accordance with the authority, and
 - (b) for the holder of a licence, or a person authorised by the holder of a licence, to conduct an anatomical examination of the body, at licensed premises, in accordance with the authority, subject to the terms or conditions of the 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 100 of the *Coroners Act 2009* 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 conduct of anatomical examinations 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.

11A Transfer of human tissue

- (1) The holder of a licence may transfer human tissue from a body that is in the holder's possession for anatomical examination:

- (a) to another holder of a licence, or
- (b) to an authorised officer of a hospital, or
- (c) to an authorised officer of an interstate hospital, or
- (d) to any other person approved in writing by the Director-General, subject to such conditions as may be imposed by the Director-General,

for use for medical or scientific purposes, 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 must ensure that arrangements are made for the return of the human tissue to the holder of the licence as soon as practicable and by no later than the end of the period (if any) within which the human tissue is required to be disposed of under section 12.

Maximum penalty: 10 penalty units.

Note—

Section 12 requires a body that is retained for anatomical examination, and any human tissue from that body, to be disposed of within a certain period after the death of the person. Section 12 does not apply if a specific authority has been given to retain the human tissue.

- (3) The holder of a licence must, immediately after transferring human tissue under subsection (1), enter in the register kept by the holder opposite the particulars relating to the body concerned:
- (a) the fact that the human tissue was transferred, and
 - (b) the date on which it was transferred, and
 - (c) the name and address of the person to whom it was transferred and of the licensed premises, hospital or other place at which the human tissue is to be retained, and
 - (d) details of the arrangements made with respect to the return of the human tissue.

Maximum penalty: 10 penalty units.

- (4) Subject to subsection (5), the following persons are authorised to use, for medical or scientific purposes, human tissue transferred under this section:
- (a) the person to whom the tissue was transferred,
 - (b) any person authorised by that person.
- (5) A person who has possession of human tissue that has been transferred by the holder of a licence under this section must ensure that the human tissue is returned to the possession of the holder of the licence:
- (a) within the period specified in the arrangements referred to in subsection (2), or
 - (b) if no period is specified, by the end of the period within which the human tissue must be disposed of under section 12.

Maximum penalty: 10 penalty units.

(6) Subsections (2) and (5) do not apply in respect of any human tissue:

- (a) that will be or has been wholly or substantially destroyed as a consequence of its use for medical or scientific purposes, or
- (b) that is not required to be disposed of by section 12.

(7) In this section:

authorised officer means an employee or officer of a hospital or interstate hospital who is authorised by the governing body of the hospital to take possession of human tissue on behalf of the hospital.

interstate hospital means a public or private hospital of another State or a Territory.

12 Disposal of bodies

(1) The holder of a licence must dispose of any body which is in the holder's possession for anatomical examination (including any human tissue from that body):

- (a) within 4 years after the death of the deceased person, or
- (b) in accordance with the terms of an authorisation granted under subsection (2).

Maximum penalty: 10 penalty units.

(2) An inspector may, by instrument in writing, authorise the following:

- (a) the retention of a body for anatomical examination for a period specified by the inspector, being a period that does not end more than 8 years after the death of the deceased person,
- (b) the retention of human tissue from a body (whether for a specified period or otherwise).

(2A) An inspector must, in exercising his or her functions under subsection (2):

- (a) consider the purposes for which retention of the body, or human tissue, is sought, and
- (b) ensure that any authorisation granted by the inspector complies with the terms and any conditions of the authority under section 8 or 8A that initially authorised the retention of the body for anatomical examination.

(2B) The holder of a licence must:

- (a) comply with any terms or conditions that are imposed by an inspector in granting an authorisation under subsection (2), and
- (b) enter 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.

Maximum penalty: 10 penalty units.

- (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.

- (5) This section does not require the disposal of human tissue if the permanent retention of the tissue has been expressly authorised:
- (a) by the consent in writing of the deceased person given during his or her lifetime (except in the case of a deceased child), or
 - (b) by the consent in writing of the senior available next of kin of the deceased person.
- (6) This section does not require the disposal of any small samples of human tissue that are retained in the form of tissue slides or tissue blocks that enable microscopic examination of the tissue.

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 licensed premises.

Maximum penalty: 10 penalty units.

- (2) A person must not conduct an anatomical examination of a body at any place other than licensed premises.

Maximum penalty: 10 penalty units.

- (3) A person must not conduct an anatomical examination of a body 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.

- (3A) A person must not conduct an anatomical examination of a body except in accordance with an authority that is, under this Act, sufficient authority for the person to conduct the anatomical examination.

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

- (3B) A person must not give an authority under this Act without having made the inquiries that the person is required by this Act to have made.

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.

- (6) Subsections (1)–(3A) do not apply to or in respect of anything authorised by or under:

- (a) the *Coroners Act 2009*, or
- (b) the *Human Tissue Act 1983*, or
- (c) any other law.

15 Authority not to be given in respect of child in care of the State

- (1) A person must not authorise the anatomical examination of the body of a deceased child if the child was, immediately before his or her death, in the care of the State.

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

- (2) Subsection (1) applies despite any other provision of this Act.
- (3) This section does not apply to or in respect of anything done under the *Coroners Act 2009* or any other law.
- (4) For the purposes of this section, a child is ***in the care of the State*** if:
 - (a) the Minister administering the *Children and Young Persons (Care and Protection) Act 1998* has sole parental responsibility in respect of the child (whether under that Act or otherwise), or
 - (b) the Director-General under the *Children and Young Persons (Care and Protection) Act 1998* has sole parental responsibility in respect of the child (whether under that Act or otherwise).

16 Proceedings for offences

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

16A General

In the conduct of an anatomical examination of a body under an authority conferred by this Act, regard is to be had to the dignity of the deceased person.

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, and
 - (d) the standards to be complied with in connection with anything authorised by or under this Act, including by requiring those standards to be complied with as a condition of an authority conferred by or under this Act.
- (2A) The regulations may apply, adopt or incorporate, wholly or in part and with or without modification, any guidelines or other document (such as a code of practice),

as in force at a particular time or as in force from time to time, prescribed or published by the National Health and Medical Research Council or by any other person or body.

- (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, transitional and other provisions

Schedule 2 has effect.

Schedule 1 Repeals

(Section 18)

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

Schedule 2 Savings, transitional and other provisions

(Section 19)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

[Human Tissue and Anatomy Legislation Amendment Act 2003](#)

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of [Human Tissue and Anatomy Legislation Amendment Act 2003](#)

2 Saving of licences

A licence issued under section 6 and in force immediately before the commencement of the amendments made to that section by the [Human Tissue and Anatomy Legislation Amendment Act 2003](#) is taken, on the commencement of those amendments, to authorise the conduct of anatomical examinations at the place specified in the licence as the place at which the study and practice of anatomy may be conducted.

3 Application of amendments to section 12

- (1) The amendments made to section 12 by the [Human Tissue and Anatomy Legislation Amendment Act 2003](#) are taken to extend to a body that is in the possession of a holder of a licence for anatomical examination immediately before the commencement of those amendments, including any human tissue from that body.
- (2) If such a body has been retained for more than 4 years after the death of the person (under an authority granted under former section 12 (2)), new section 12 (1) applies as if a reference in that subsection to the death of the deceased person were a reference to the commencement of new section 12 (1).
- (3) In this clause:

former section 12 (2) means section 12 (2) as in force immediately before its substitution by the [Human Tissue and Anatomy Legislation Amendment Act 2003](#).

new section 12 (1) means section 12 (1) as substituted by the [Human Tissue and Anatomy Legislation Amendment Act 2003](#).

Part 3 Provision consequent on enactment of [Human Tissue Legislation Amendment Act 2012](#)

4 Authority for anatomical examination where prior objection or views expressed

Sections 8 and 8A, as amended by the [Human Tissue Legislation Amendment Act 2012](#),

extend to any relevant expression of objection or views that occurred before the commencement of that Act.