



New South Wales

# Coroners Amendment Act 2012 No 24

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New South Wales

## **Coroners Amendment Act 2012 No 24**

Act No 24, 2012

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An Act to amend the *Coroners Act 2009* to make further provision with respect to the conduct of coronial proceedings and post mortem examinations and the publication of matters arising in coronial proceedings. [Assented to 8 May 2012]

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

**1 Name of Act**

This Act is the *Coroners Amendment Act 2012*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

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## Schedule 1 Amendment of Coroners Act 2009 No 41

### [1] Section 4 Definitions

Omit the definition of *senior next of kin* from section 4 (1). Insert instead:

*senior next of kin*—see section 6A.

### [2] Section 6 Meaning of “reportable death”

Omit section 6 (1) (f). Insert instead:

- (f) the person died while in or temporarily absent from a declared mental health facility within the meaning of the *Mental Health Act 2007* and while the person was a patient at the facility for the purpose of receiving care, treatment or assistance under the *Mental Health Act 2007* or *Mental Health (Forensic Provisions) Act 1990*.

### [3] Section 6A

Insert after section 6:

#### **6A Meaning of “senior next of kin”**

- (1) For the purposes of this Act, the *senior next of kin* of a deceased person is:
  - (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 children who are adults, or
  - (c) if the deceased person did not have a spouse or child or a spouse or child is not available—either of the deceased person’s parents, or
  - (d) if the deceased person did not have a spouse, child or living parent or a spouse, child or parent is not available—any of the deceased person’s brothers or sisters who are adults, or
  - (e) if the deceased person did not have a spouse, child, living parent, brother or sister or a spouse, child, 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 legal personal representative immediately before the deceased person’s death.

- (2) A coroner may treat a person who was a deceased person's legal personal representative immediately before the deceased person's death as the deceased person's senior next of kin for the purposes of this Act if the coroner is satisfied that the person who is available to act as senior next of kin is unable to do so.

**[4] Section 74 Powers of coroner to clear court and prevent publication of evidence or submissions**

Insert at the end of section 74 (1) (b):

, or

- (c) that any submissions made in the proceedings concerning whether a known person may have committed an indictable offence not be published.

**[5] Section 76 Publication of certain questions, warnings, objections, submissions and comments**

Insert after section 76 (1) (c):

- (d) any submissions made by or on behalf of a person appearing or being represented in the proceedings or by a person assisting the coroner, or any comment made by the coroner, concerning whether an inquest or inquiry should be suspended under section 78.

**[6] Section 79 Procedure following suspension of inquest or inquiry**

Omit "subsections (3) and (5)" from section 79 (1).

Insert instead "subsections (2A), (3), (5) and (5A)".

**[7] Section 79 (2A)**

Insert after section 79 (2):

- (2A) An order under subsection (1) that an inquest or inquiry be resumed may not be made unless the coroner has given the State Coroner written notice of:
- (a) the coroner's intention to make the order, and
  - (b) the day on which it is proposed to make the order (being a day that is no earlier than 14 days after the notice is given).

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**[8] Section 79 (5A) and (5B)**

Insert after section 79 (5):

- (5A) If the State Coroner considers that it is inappropriate for a suspended inquest or inquiry to be resumed, the State Coroner may, after consulting the coroner who suspended it, direct that the inquest or inquiry not be resumed.
- (5B) The State Coroner is not to give a direction under subsection (5A) to a coroner who is a Magistrate without the Chief Magistrate's consent.

**[9] Section 86 Notification of application**

Omit section 86 (2).

**[10] Section 86A**

Insert after section 86:

**86A Intervention by Minister in application**

- (1) The Minister may intervene in any application for an order under this Chapter to which the Minister is not a party.
- (2) If the Minister intervenes in an application for an order under this Chapter, the Minister:
  - (a) becomes a party to the application, and
  - (b) has all the rights, including rights of appeal, of a party to the application.
- (3) The Minister is entitled to be heard on the hearing of an application for an order under this Chapter even if the Minister does not intervene in the application or the Minister is not otherwise a party to the application.

**[11] Section 96 Objections by senior next of kin to exercise of relevant post mortem investigative functions**

Insert "under subsection (3)" after "The notice" in section 96 (4).

**[12] Section 96 (5) and (6)**

Insert after section 96 (4):

- (5) The coroner may refuse a request made by the senior next of kin of a deceased person for a post mortem examination not to be conducted on the deceased person if the coroner is satisfied that the senior next of kin has been, or may be, charged with an offence in connection with the deceased person's death.

- (6) Nothing in subsection (5) prevents another senior next of kin of the deceased person from making a request that a post mortem examination not to be conducted on the deceased person.

**[13] Section 97 Applications to Supreme Court by senior next of kin**

Insert “(3)” after “section 96” in section 97 (1).

**[14] Section 98 Senior next of kin may authorise another person to exercise functions**

Insert after section 98 (2):

- (3) If a request by the senior next of kin of a deceased person for a post mortem examination not to be conducted on the deceased person has been refused under section 96 (5), the senior next of kin may not authorise another person to make the request.

**[15] Schedule 2 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

any other Act that amends this Act

**[16] Schedule 2**

Insert at the end of the Schedule (with appropriate Part and clause numbers):

**Part Provisions consequent on enactment of Coroners Amendment Act 2012**

**Definition**

In this Part:

*amending Act* means the *Coroners Amendment Act 2012*.

**Direction not to resume suspended inquest or inquiry**

The amendments made to section 79 by the amending Act extend to inquests or inquiries that were suspended (but which have not yet been resumed) before the commencement of those amendments.

**Interventions by Minister**

Section 86A (as inserted by the amending Act) extends to applications for an order under Chapter 7 made (but not finally determined) before the commencement of the section.

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**Objections by senior next of kin**

The amendments made to sections 96 and 98 by the amending Act extend to requests made (but not determined by a coroner) before the commencement of those amendments.

[Second reading speech made in—

Legislative Assembly on 22 February 2012

Legislative Council on 2 May 2012]