



New South Wales

Coroners Amendment Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Coroners Act 2009*:

- (a) to enable a coroner to treat a person who was a deceased person's legal personal representative as the deceased person's senior next of kin for the purposes of the Act if the coroner is satisfied that the person who is available to act as senior next of kin is unable to do so, and
- (b) to provide that the death of a person in or temporarily absent from a declared mental health facility within the meaning of the *Mental Health Act 2007* is reportable to a coroner if 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*, and
- (c) to enable a coroner to order that submissions in coronial proceedings concerning whether a known person may have committed an indictable offence not be published, and
- (d) to prevent the publication of certain submissions and comments in coronial proceedings concerning the suspension of coronial proceedings without the consent of a coroner, and

- (e) to enable the State Coroner to direct that suspended coronial proceedings not be resumed, and
- (f) to enable the Attorney General to intervene in applications made to the Supreme Court for a coronial inquest or inquiry to be held, and
- (g) to enable a coroner to refuse a request by a senior next of kin of a deceased person for a post mortem examination not to be conducted if he or she has been, or may be, charged with an offence in connection with the deceased person's death, and
- (h) to make provision for savings and transitional matters consequent on the enactment of the proposed Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Coroners Act 2009 No 41

Schedule 1 [2] provides that a death that occurs while the deceased person is in or temporarily absent from a declared mental health facility within the meaning of the *Mental Health Act 2007* is reportable to a coroner if 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*.

Schedule 1 [3] enables a coroner to 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 the Act if the coroner is satisfied that the person who is available to act as senior next of kin is unable to do so. **Schedule 1 [1]** makes a consequential amendment.

Schedule 1 [4] enables a coroner to order that submissions made in coronial proceedings concerning whether a known person may have committed an indictable offence not be published. A failure to comply with such an order will constitute an offence. The maximum penalty for such an offence will be 10 penalty units or imprisonment for 6 months (in the case of an individual) or 50 penalty units (in any other case).

Schedule 1 [5] makes it an offence to publish submissions made to, or comments made by, the coroner concerning the suspension of coronial proceedings without the consent of a coroner. The maximum penalty for the offence will be 10 penalty units or imprisonment for 6 months (in the case of an individual) or 50 penalty units (in any other case).

Schedule 1 [8] enables the State Coroner (after consulting with the coroner who ordered it) to direct that a suspended coronial inquest or inquiry not be resumed. For

Coroners Amendment Bill 2012

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this purpose, **Schedule 1 [7]** will require a coroner to notify the State Coroner before resuming coronial proceedings. **Schedule 1 [6]** makes a consequential amendment.

Schedule 1 [10] enables the Minister to intervene in applications made to the Supreme Court by another person for a coronial inquest or inquiry to be held. **Schedule 1 [9]** makes a consequential amendment.

Schedule 1 [12] enables a coroner to refuse a request by a senior next of kin of a deceased person for a post mortem examination not to be held if the senior next of kin has been, or may be, charged with an offence in connection with the deceased person's death. **Schedule 1 [11], [13] and [14]** make consequential amendments.

Schedule 1 [15] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act and any future amending Act.

Schedule 1 [16] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

First print



New South Wales

Coroners Amendment Bill 2012

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Coroners Act 2009 No 41	3



New South Wales

Coroners Amendment Bill 2012

No. , 2012

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Coroners Amendment Act 2012</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5

Schedule 1	Amendment of Coroners Act 2009 No 41	1
[1]	Section 4 Definitions	2
	Omit the definition of <i>senior next of kin</i> from section 4 (1). Insert instead:	3
	<i>senior next of kin</i> —see section 6A.	4
[2]	Section 6 Meaning of “reportable death”	5
	Omit section 6 (1) (f). Insert instead:	6
	(f) the person died while in or temporarily absent from a declared mental health facility within the meaning of the <i>Mental Health Act 2007</i> and while the person was a patient at the facility for the purpose of receiving care, treatment or assistance under the <i>Mental Health Act 2007</i> or <i>Mental Health (Forensic Provisions) Act 1990</i> .	7 8 9 10 11 12
[3]	Section 6A	13
	Insert after section 6:	14
	6A Meaning of “senior next of kin”	15
	(1) For the purposes of this Act, the <i>senior next of kin</i> of a deceased person is:	16 17
	(a) the deceased person’s spouse, or	18
	(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	19 20 21
	(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	22 23 24
	(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	25 26 27
	(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:	28 29 30
	(i) any person who is named as an executor in the deceased person’s will, or	31 32
	(ii) any person who was the deceased person’s legal personal representative immediately before the deceased person’s death.	33 34 35

(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.	1 2 3 4 5
[4]	Section 74 Powers of coroner to clear court and prevent publication of evidence or submissions	6 7
	Insert at the end of section 74 (1) (b):	8
	, or	9
	(c) that any submissions made in the proceedings concerning whether a known person may have committed an indictable offence not be published.	10 11 12
[5]	Section 76 Publication of certain questions, warnings, objections, submissions and comments	13 14
	Insert after section 76 (1) (c):	15
	(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.	16 17 18 19 20
[6]	Section 79 Procedure following suspension of inquest or inquiry	21
	Omit "subsections (3) and (5)" from section 79 (1).	22
	Insert instead "subsections (2A), (3), (5) and (5A)".	23
[7]	Section 79 (2A)	24
	Insert after section 79 (2):	25
	(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:	26 27 28
	(a) the coroner's intention to make the order, and	29
	(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).	30 31

[8] Section 79 (5A) and (5B)	1
Insert after section 79 (5):	2
(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.	3 4 5 6
(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.	7 8 9
[9] Section 86 Notification of application	10
Omit section 86 (2).	11
[10] Section 86A	12
Insert after section 86:	13
86A Intervention by Minister in application	14
(1) The Minister may intervene in any application for an order under this Chapter to which the Minister is not a party.	15 16
(2) If the Minister intervenes in an application for an order under this Chapter, the Minister:	17 18
(a) becomes a party to the application, and	19
(b) has all the rights, including rights of appeal, of a party to the application.	20 21
(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.	22 23 24 25
[11] Section 96 Objections by senior next of kin to exercise of relevant post mortem investigative functions	26 27
Insert "under subsection (3)" after "The notice" in section 96 (4).	28
[12] Section 96 (5) and (6)	29
Insert after section 96 (4):	30
(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.	31 32 33 34 35

(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.	1 2 3
[13]	Section 97 Applications to Supreme Court by senior next of kin	4
	Insert “(3)” after “section 96” in section 97 (1).	5
[14]	Section 98 Senior next of kin may authorise another person to exercise functions	6 7
	Insert after section 98 (2):	8
(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.	9 10 11 12
[15]	Schedule 2 Savings, transitional and other provisions	13
	Insert at the end of clause 1 (1):	14
	any other Act that amends this Act	15
[16]	Schedule 2	16
	Insert at the end of the Schedule (with appropriate Part and clause numbers):	17
Part	Provisions consequent on enactment of Coroners Amendment Act 2012	18 19
	Definition	20
	In this Part:	21
	<i>amending Act</i> means the <i>Coroners Amendment Act 2012</i> .	22
	Direction not to resume suspended inquest or inquiry	23
	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.	24 25 26 27
	Interventions by Minister	28
	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.	29 30 31

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.

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