

CORONERS AMENDMENT BILL 1999
Explanatory Notes

Clause 1 Short title

Short title of the Act.

Clause 2 The Act amended

The various amendments proposed throughout the Act are amendments to the *Coroners Act 1996*.

Clause 3 Section 3 amended

Section 3 of the *Coroners Act 1996*, which contains the definitions of words and phrases used throughout the Act, is amended to include the definition of "Deputy State Coroner".

The purpose of including such a definition in the *Coroners Act 1996* is to specify and identify the position in its use throughout the Act.

Clause 4 Section 7 replaced

Section 7 of the *Coroners Act 1996*, which presently deals with the appointment of an acting State Coroner, is replaced with new provisions which provide for the appointment of a Deputy State Coroner and an acting Deputy State Coroner.

It has been identified that there is a need for the position of Deputy State Coroner to assist the State Coroner. The appointee to the position of Deputy State Coroner will be a person who holds an appointment already as a magistrate and, by virtue of the provisions of section 11 of the *Coroners Act 1996*, is contemporaneously a coroner. The appointment will be made by the Attorney General on the recommendation of the State Coroner.

The position of Deputy State Coroner is vested with authority to perform the duties and functions of the State Coroner as assigned by the State Coroner and to act in that position during the absence of the appointee or if the position is vacant.

A new section 7A is inserted to provide for the appointment of an acting Deputy State Coroner. This is necessary so that a temporary appointment can be made to the position of Deputy State Coroner when that person is acting as the State Coroner.

Clause 5 Section 29 amended

Section 29 (2) of the *Coroners Act 1996* presently provides that a coroner must not issue a certificate authorising the disposal of a body until an application for the conduct of a post mortem is dealt with or the time for making such application has expired.

Section 36 of the *Coroners Act 1996* is being amended, through Clause 6 of this Bill, to provide the Supreme Court with power to grant an extension of time in which applications for the conduct of post mortems can be made. It is therefore necessary to include in section 29 (2) of the *Coroners Act 1996* provision that a certificate of disposal of a body cannot be issued until after the determination of any application made to the Court to extend time.

Subsection (3) of section 29 is amended to delete the figures "24" and replace them with "36 (4)" to correct a typographical error that occurred at the time of drafting the *Coroners Act 1996*.

Clause 6 Section 36 amended

Subsection (3) of section 36 currently provides that where a coroner refuses a request for the conduct of a post mortem, the person requesting may apply within 2 days, after receiving notice of the refusal, to the Supreme Court for an order that a post mortem be performed. Experience has shown that the period of "2 days" is unduly restrictive particularly where family members live in remote country locations. By prescribing "2 clear working days", by virtue of the *Interpretation Act*, the members will now have 4 days as the day of receipt of the notice and day the application is lodged with the Court are excluded. Due to the need for a final decision to be reached in a timely manner in these cases, because of deterioration of the body with consequent reduction in the value of the post mortem, as well as other obvious reasons relating to the retention of bodies, a longer period is not considered appropriate. Consideration of appropriate time limits must take place within the context of the importance of reaching a final determination as soon as possible.

This subsection is further amended to include that an application to the Court for an order that a post mortem be conducted must be made either within the 2 clear working days " or before the end of any extension granted by the Court". This amendment is required to include in the provision any extension of time that the Court may allow as a result of an application being made in accordance with the power being granted to the Court under the new subsection (3a) of section 36.

Section 36 (3a) is being inserted to address difficulties existing in the present provisions of the *Coroners Act 1996* that do not allow the Supreme Court to grant an extension of time in which to make an application for the conduct of a post mortem. The new provisions will allow the Court to extend the time where there are exceptional circumstances.

The present provisions of subsection (4) of section 36 enable the Supreme Court, on the hearing of an application to conduct a post mortem, to direct that a post mortem be performed and to prohibit the disposal of the body. The existing provisions do not provide however, for how long the prohibition for disposal should apply or that if a body has already been buried that it be exhumed for the purposes of the conduct of a post mortem as directed by the Court. These amendments will specify that the order for prohibition will be until the post mortem is performed and that if the body has already been buried, the Court may direct that it be exhumed for the purposes of performing a post mortem.

Clause 7 Section 37 amended

This section deals with the situation where the senior next of kin of a deceased person objects to the conduct of a post mortem. Subsections (2) and (3) are amended in relation to the time periods of 2 clear working days, and including any period of extension of time granted by the Court, on the same basis as that applying to section 36 as set out in Clause 6 of this Bill.

Subsection (2a) is added to section 37 of the *Coroners Act 1996* to provide that a coroner may direct that a post mortem be conducted once a request not to perform a post mortem is withdrawn by the senior next of kin. In the vast majority of cases since the commencement of the 1996 Act, where the senior next of kin has objected to a post mortem examination but the Coroner has decided that one is necessary and has given written reasons for that decision, the senior next of kin has accepted that decision and has not proceeded with an application to the Supreme Court.

In these cases the senior next of kin very often wishes to have the funeral conducted as quickly as possible and, so that this can occur, asks for the post mortem to be conducted with immediate haste. In many cases cultural or religious beliefs require the family to make arrangements for the funeral as quickly as possible. In these circumstances, particularly with the period of time for an application to the Supreme Court being extended, the Coroner should be specifically empowered to order that a post mortem be conducted immediately on receipt of clear advice from the senior next of kin that the objection has been withdrawn. The provisions will also allow for the withdrawal of an objection at any time.

Subsection (3a) is added to section 37 of the *Coroners Act 1996* to address difficulties existing in the present provisions of the Act that do not allow the Supreme Court to grant an extension of time in which to make an application objecting to the conduct of a post mortem. The new provisions will allow the Court to extend the time where there are exceptional circumstances.

Clause 8 Section 38 amended

Section 38 of the *Coroners Act 1996* addresses the issues relating to exhumation of bodies. Subsections (2), (3), (4), (6) and (7) each presently contain the time period of "2 days" with regard to the giving of notice by the State Coroner with respect to exhumations, and the period provided for the lodging of a request by the senior next of kin. These time periods are expanded to "2 clear working days" for the same reasons as apply to the amendments to sections 36 and 37 of the Act, as contained in the explanations given in Clauses 6 and 7 of this Bill.

Subsections (6) and (7) are also amended to accommodate the consequences of the power now given to the Supreme Court to extend the time in which an application for extension of time can be made.

Subsection (7a) is added to grant to the Supreme Court the power to extend the time in which an application with respect to an exhumation can be made.

Subsection (9) is added to clarify the situation, by specifically excluding the provisions of this section, where the Court makes a direction for exhumation so that a post mortem can be conducted.