

CORONERS (AMENDMENT) BILL 1989

NEW SOUTH WALES

EXPLANATORY NOTE

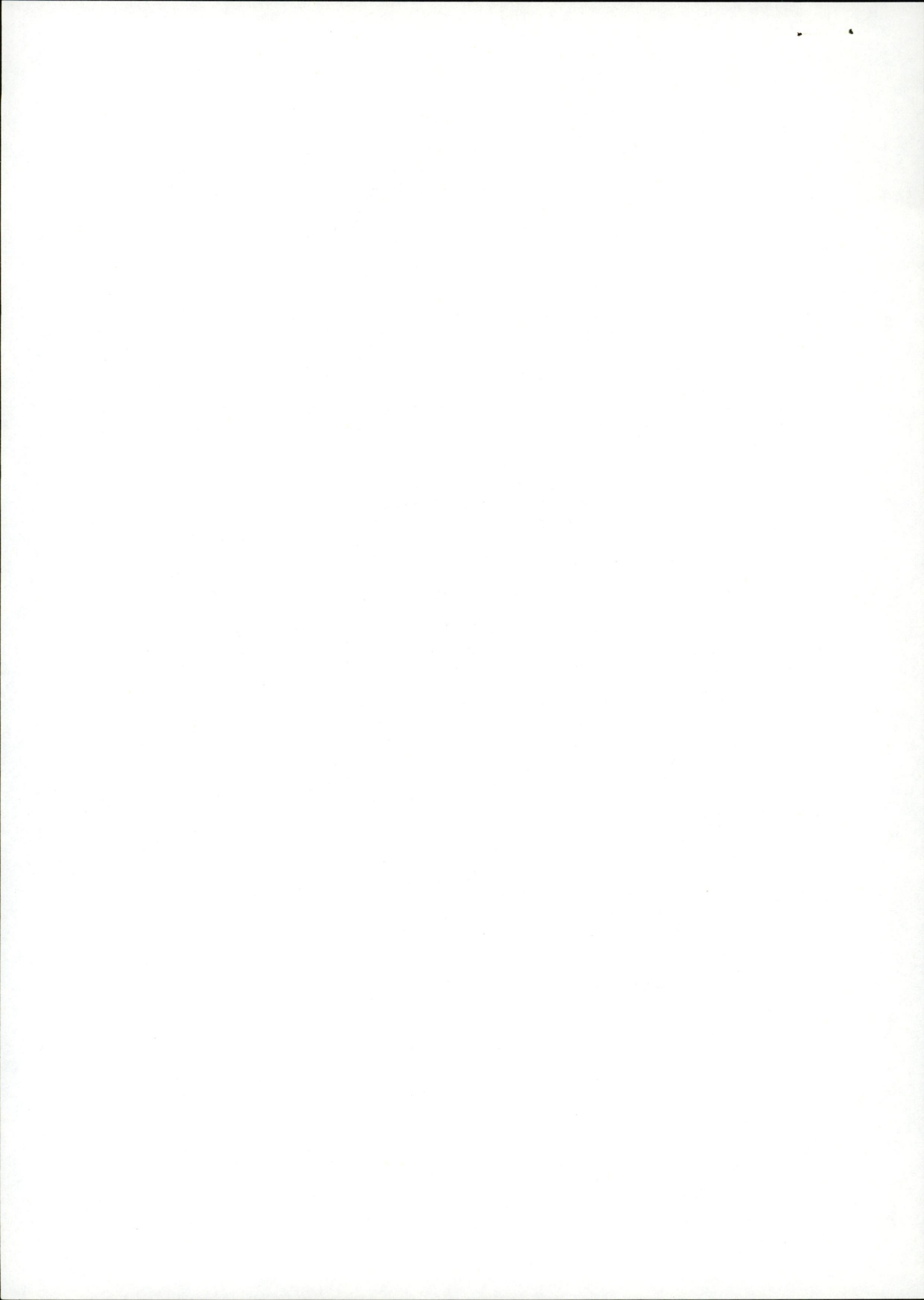
(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Coroners Act 1980 so as to:

- (a) confer an unlimited right of appearance and representation on persons who, and organisations which, wish to appear or be represented before a coroner;
- (b) widen the right of parties appearing before a coroner to request the issue of summonses and warrants requiring the attendance of witnesses or the production of documents;
- (c) widen the scope of an inquiry before a coroner;
- (d) enlarge the nature of the verdict which may be returned by a jury;
- (e) allow any person or organisation to apply to a Judge of the Supreme Court for an order that a special inquest or inquiry into the circumstances surrounding a death or fire be held before a coroner, or a District Court Judge, in accordance with such wider terms of reference as the Judge may direct; and
- (f) provide a right of appeal to the District Court from the finding made at a coronial inquest or inquiry held before a coroner, or a coroner and a jury, and a right of appeal to the Supreme Court from the finding made at a special inquest or inquiry before a District Court Judge.

The Bill also:

- (a) provides that an inquiry be held in relation to certain matters arising from the investigation of a fire at 4 Goroka Street, Whalan, Mount Druitt; and
  - (b) provides that an inquiry be held to determine whether compensation should be paid to Edgar John Azzopardi.
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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act shall commence on 1 January 1990.

Clause 3 defines the Principal Act as the Coroners Act 1980.

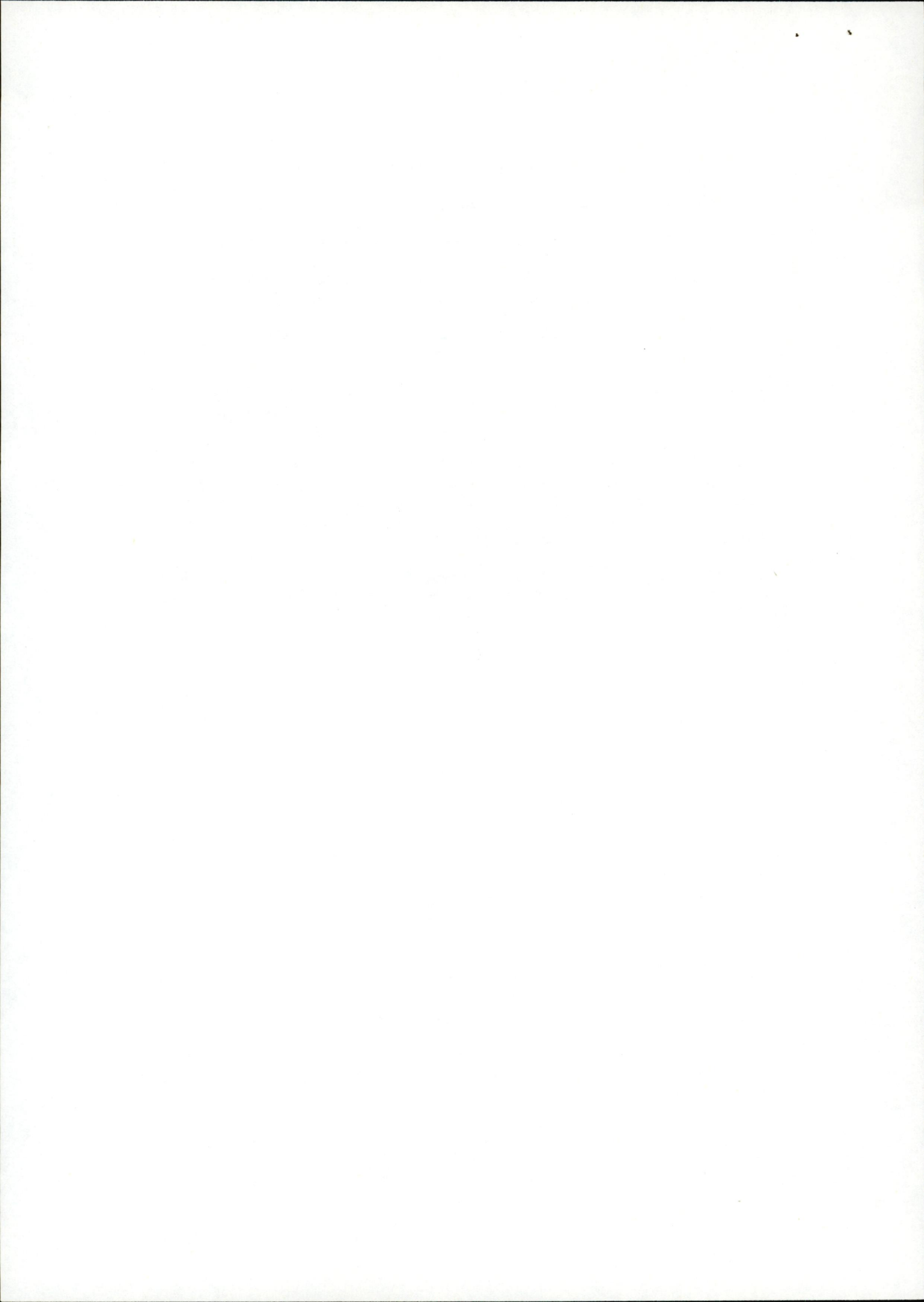
Clause 4 provides that the Principal Act will be amended as set out in Schedule 1.

Clause 5 provides that the Jury Act 1977 will be amended as set out in Schedule 2.

Clause 6 provides for a further inquiry to be held, before a District Court Judge, in relation to the Police investigation of a fire at 4 Goroka Street, Whalan, Mount Druitt, and various matters incidental thereto.

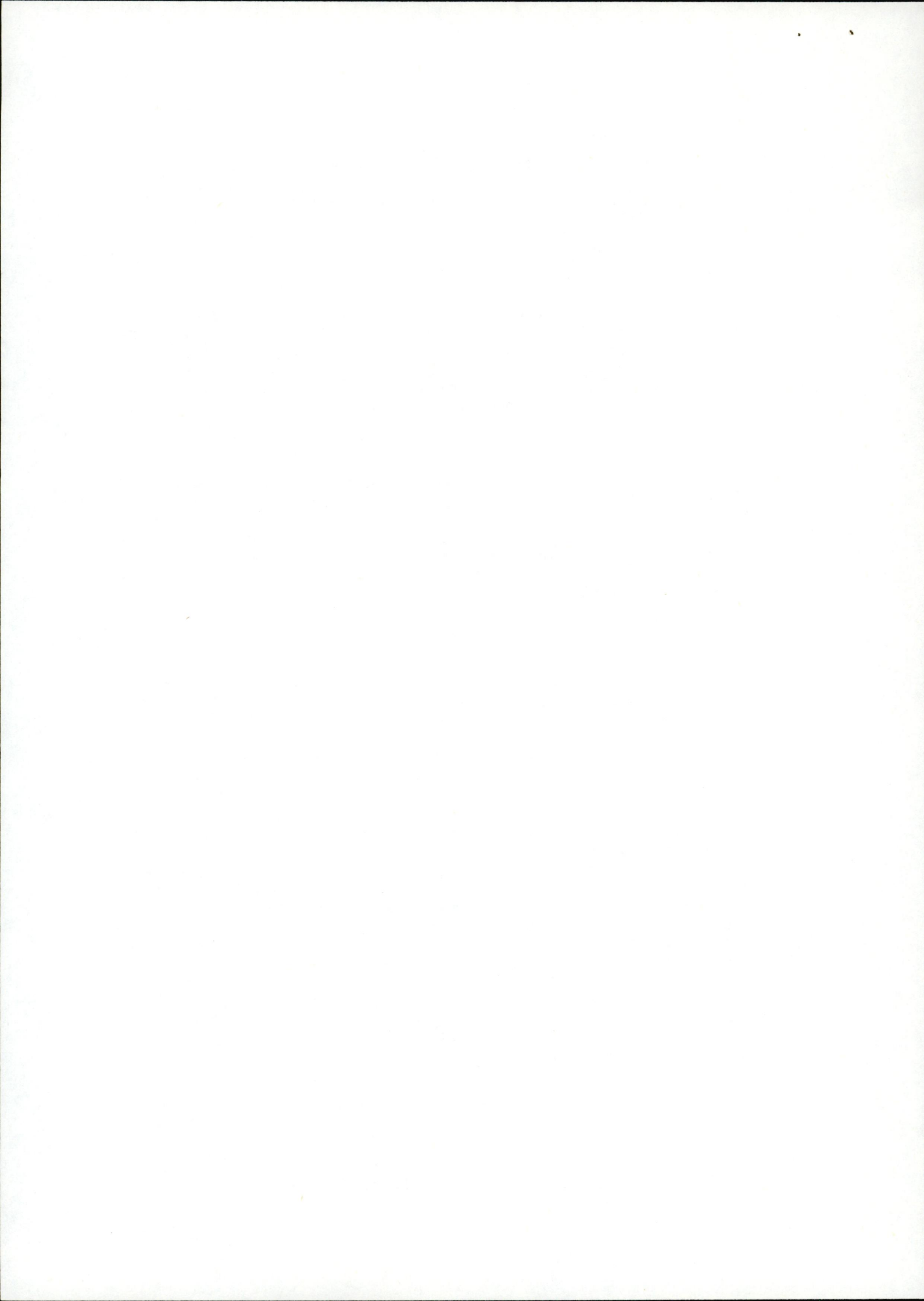
Clause 7 provides for an inquiry to be held before a District Court Judge, to determine whether compensation should be paid to Edgar John Azzopardi because of the failure of the Police, and the coronial and justice system, to properly investigate either the original fire at 4 Goroka Street, Whalan, Mount Druitt, or his subsequent complaints in relation thereto.

Clause 8 provides that inquests commenced prior to 1 January 1990 shall be deemed to have been commenced, and shall be continued, pursuant to the Principal Act as proposed to be amended.



Schedule 1 amends the Coroners Act 1980 as follows:

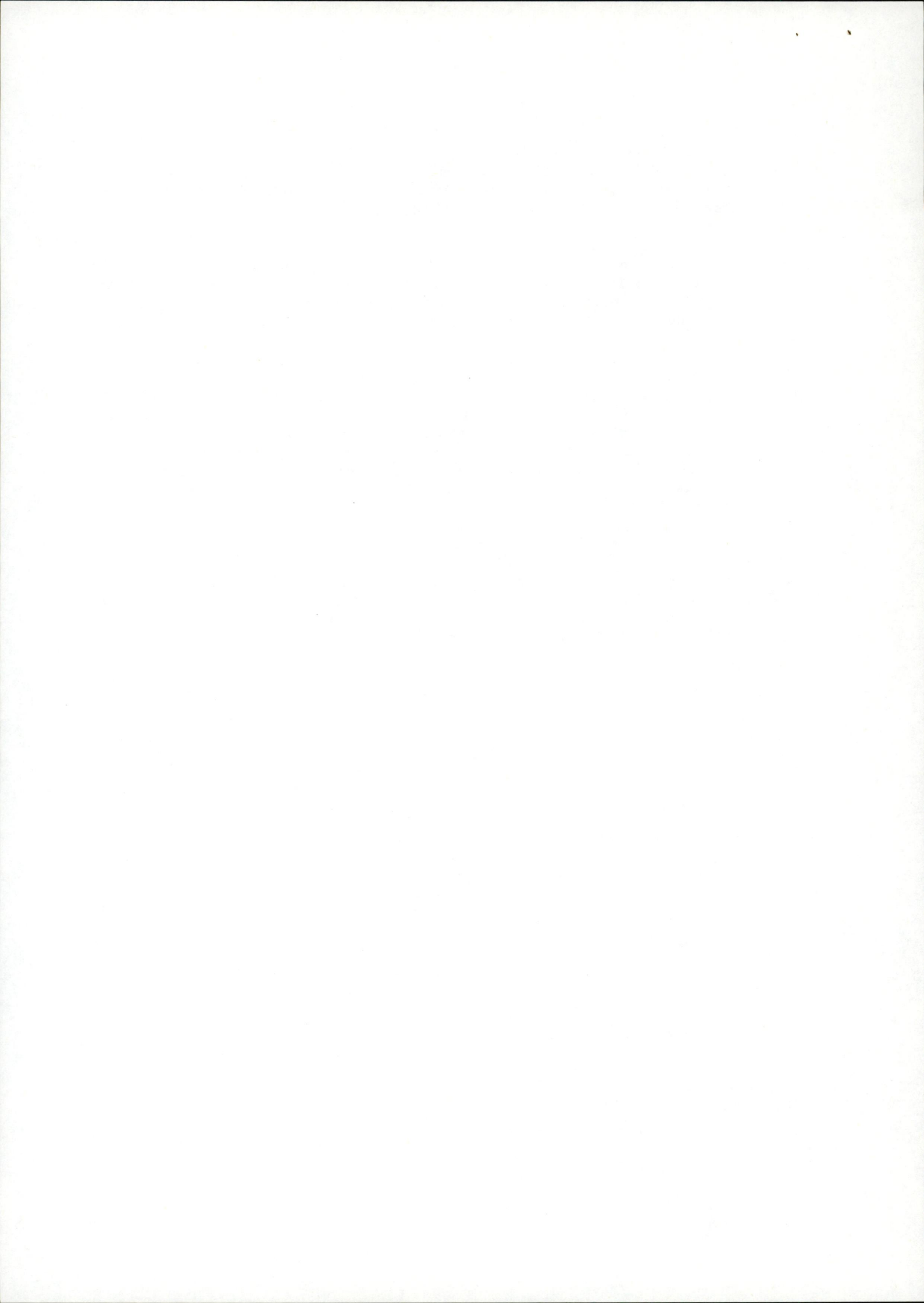
- (1) A wide definition of "organisation" is inserted into the definition section in the Act.
- (2) Section 13 is amended by:
  - (a) widening the ambit of an inquiry into a death to include the circumstances surrounding it, and any question of negligence, misconduct, and means of preventing a similar death; and
  - (b) requiring an inquest to be held where the death occurred whilst the deceased was under arrest, or being arrested, or where he died during the police operation.
- (3) Section 15 is amended to widen the ambit of the inquiry which is to be held in relation to any fire.
- (4) Section 17 is amended to give parties wishing to appear, or be represented, at an inquest or inquiry, an entitlement to apply for a preliminary hearing.
- (5) Section 18 is amended to:
  - (a) enable any person who, or organisation which, intends to appear at an inquest or inquiry to request that it be held before a jury; and
  - (b) allow parties appearing at an inquest or inquiry to address the jury.
- (6) Section 19 is repealed, and replaced by a new section. In lieu of the previous provision whereby an inquest was terminated, and a jury was discharged, if a coroner at any time during the inquest or inquiry formed the opinion that the evidence established a prima facie case against a known person, the new section ensures that an inquest or inquiry will be completed prior to the hearing of any charge relating to any indictable offence alleged to be associated with the death or fire. If, at the conclusion of the evidence, the coroner, or the jury, finds that there is evidence of a prima facie case against any known person, then the coroner will require such person to be charged with that offence, and will thereafter deal with such charge in accordance with the procedure prescribed by the Justices Act 1902 in relation to indictable offences.
- (7) Section 22 is amended to widen the ambit of the findings which may be returned at an inquest or inquiry.
- (8) Section 32 is amended by deleting the need to obtain leave to appear at an inquest or inquiry.



- (9) Section 35 is substituted to confer a wider right to obtain a summons or warrant requiring a witness to attend and give evidence, or produce documents, at an inquest or inquiry.
- (10) A new section 46A is inserted, entitling a person who has appeared, or an organisation which has been represented at an inquest or inquiry before a coroner, or a coroner and a jury, to appeal against a finding made therein to the District Court.
- (11) A new section 47A is inserted enabling an application to be made to the Supreme Court for an order that a special inquest or inquiry be held, either before a coroner and a jury, or before a Judge of the District Court, sitting with a jury of six, or before a Judge of the District Court, sitting alone, and such special inquest or inquiry may inquire into such other matters, additional to those specified in sections 13 and 16 of the Coroners Act 1980, as the Supreme Court may order.

Schedule 2 provides for an amendment to sections 49 and 50 of the Jury Act 1977, so as to enable parties appearing or represented at an inquest to exercise a right of challenge similar to that enjoyed by parties in a civil trial before a jury in the Supreme Court.

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CORONERS (AMENDMENT) BILL 1989

NEW SOUTH WALES

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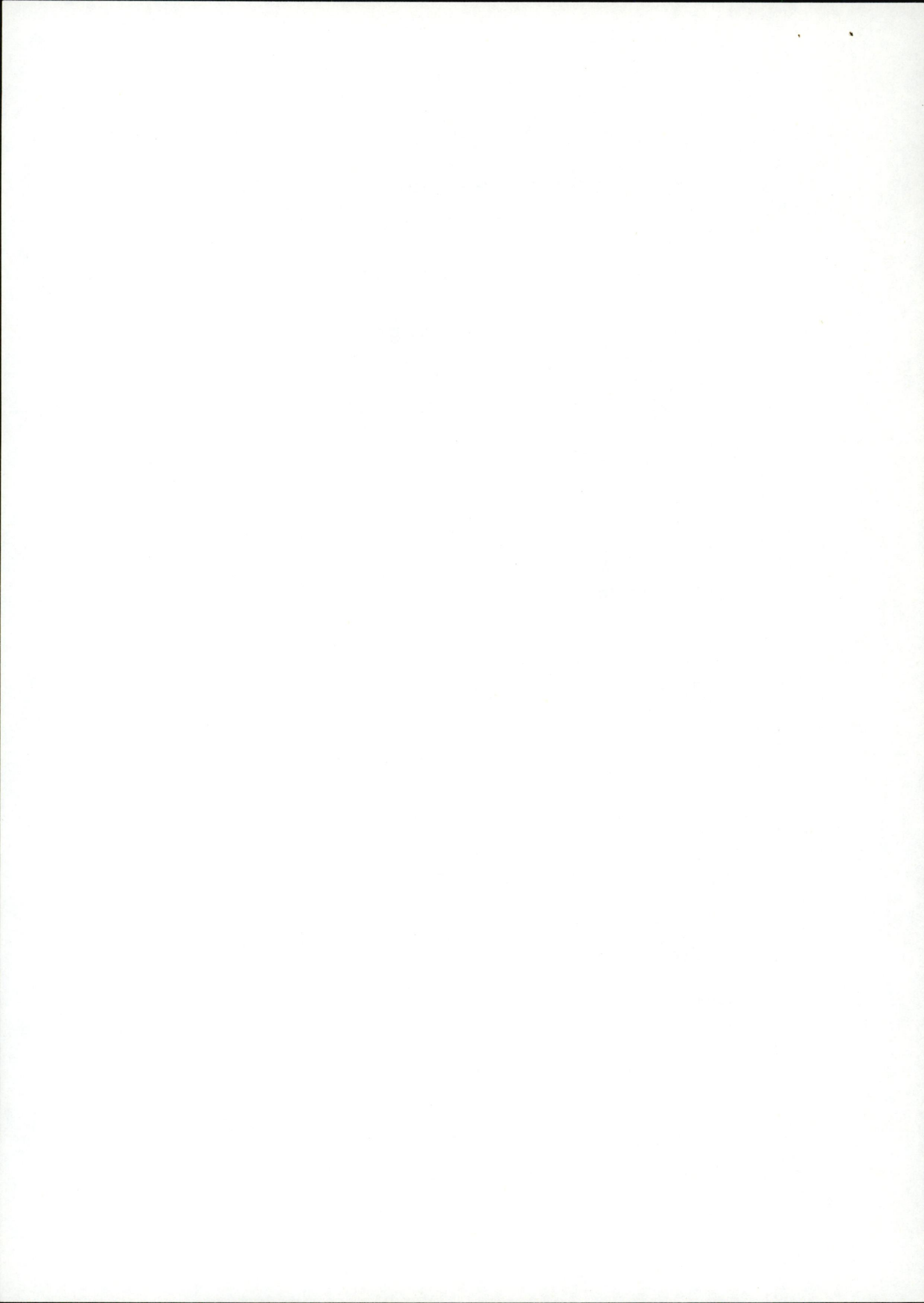
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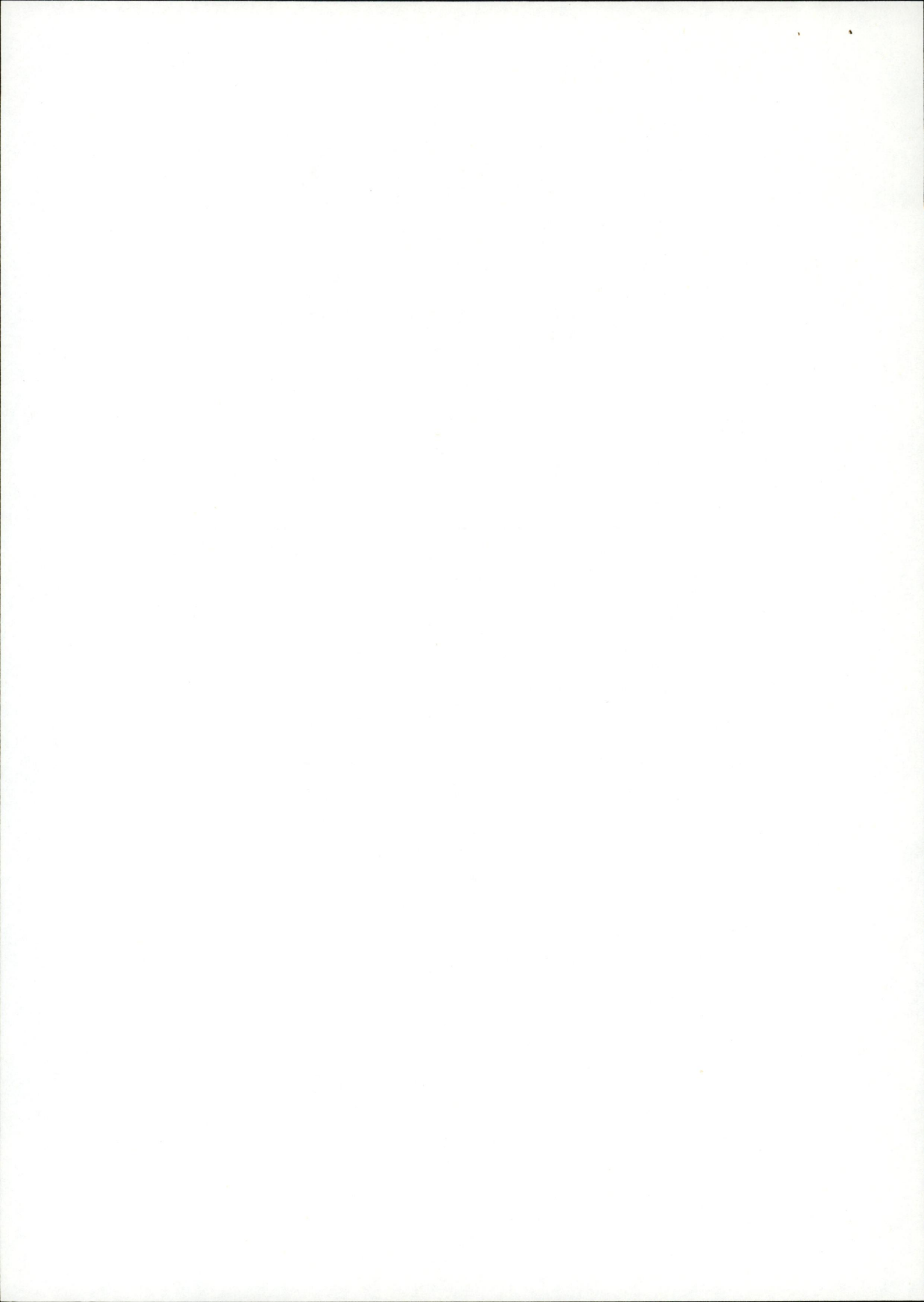
NO. 1989

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A BILL FOR

An Act to amend the Coroners  
Act 1980 to provide for a wider right of  
representation of parties at inquests and  
inquiries; to provide for certain inquiries  
relating to Edgar John Azzopardi to be held;  
to amend the Jury Act 1977 and for other purposes.

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The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Coroners (Amendment) Act 1989.

Commencement

2. This Act commences on 1 January 1990.

Principal Act

3. The Coroners Act 1980 is referred to in this Act as the Principal Act.

PART 2 - AMENDMENTS

Amendment of Principal Act

4. The Principal Act is amended as set out in Schedule 1.

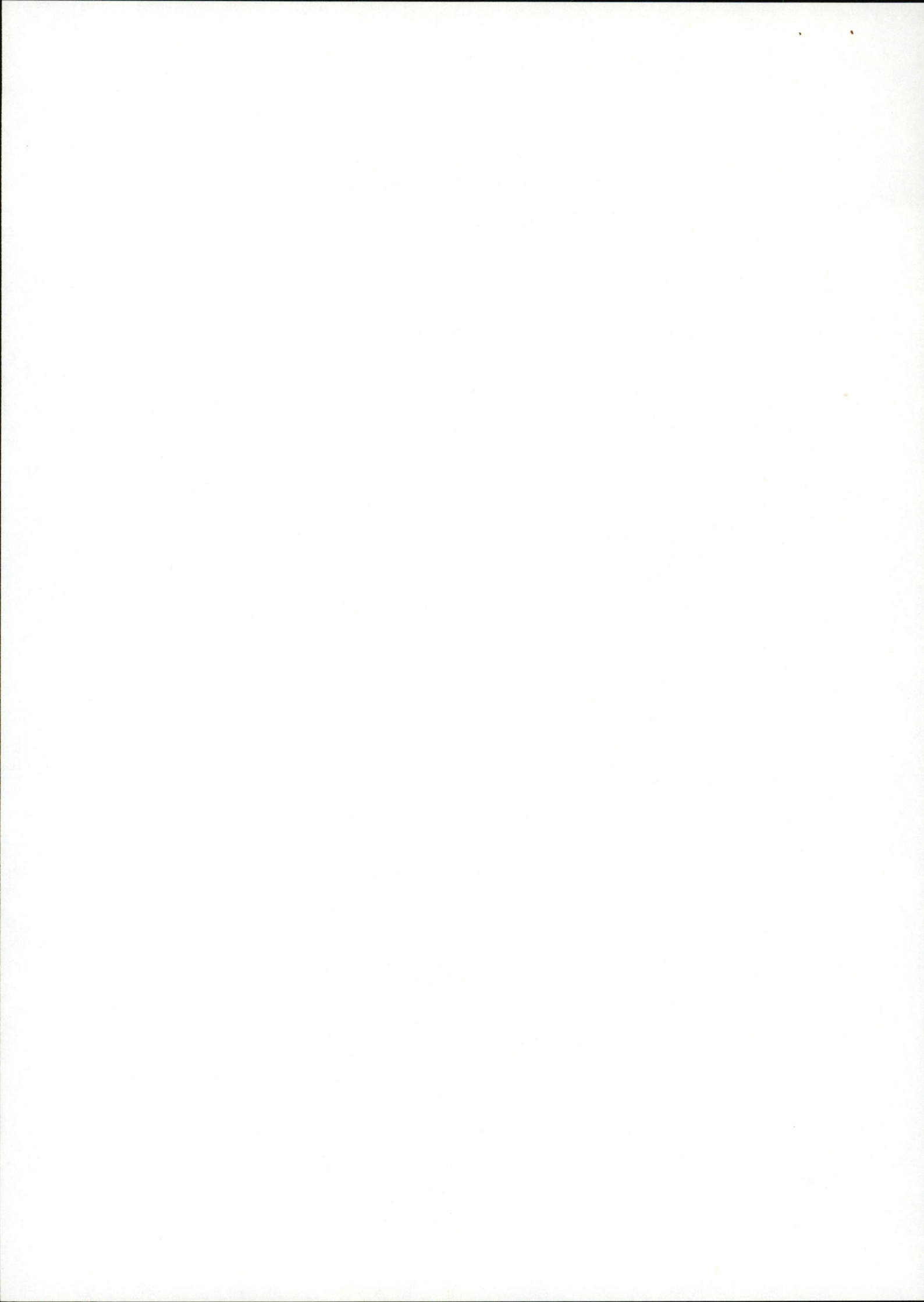
Amendment of Jury Act 1977

5. The Jury Act 1977 is amended as set out in Schedule 2.

PART 3 - FURTHER INQUIRIES

Inquiry into a fire at 4 Goroka Street, Whalan

6. A further inquiry shall be held, before such Judge of the District Court of New South Wales as the Chief Judge may appoint, into the following questions in relation to the Police Investigation of a fire at 4 Goroka Street, Whalan, Mount Druitt, on 22 March 1971 namely:
  - (a) Whether the investigation into that fire by members of the Police Force was adequate.
  - (b) Whether any individual Police Officers, and, if so, which officers, were guilty of neglect in failing to investigate the fire, or any subsequent complaints by Edgar John Azzopardi in relation to the fire, and associated matters.



- (c) Whether, if there is evidence of neglect by any Police Officer, it was culpable.
- (d) Whether, if there is evidence of culpable neglect by any Police Officer, any, and if so, what, action should be taken in relation to the same.
- (e) Such further and other matters incidental to the foregoing as to the presiding Judge shall seem meet.

Inquiry whether compensation should be paid to Edgar John Azzopardi

- 7. An inquiry shall be held, before such Judge of the District Court of New South Wales as the Chief Judge may appoint, to determine whether any, and, if so, how much, compensation should be awarded to Edgar John Azzopardi because of the failure of the police, and the coronial and justice system, to properly investigate either the fire at 4 Goroka Street, Whalan, on 22 March 1971 or his subsequent complaints in relation to the conduct of each inquiry into such fire and in relation to the conduct of the Police.

#### PART 4 - TRANSITIONAL PROVISIONS

##### Transitional provisions

- 8. Inquests and inquiries commenced prior to 1 January 1990 shall be deemed to have been commenced, and shall be continued, pursuant to the Principal Act as hereby amended.

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#### SCHEDULE 1 - AMENDMENT OF PRINCIPAL ACT

- (1) Section 4 (Definitions):

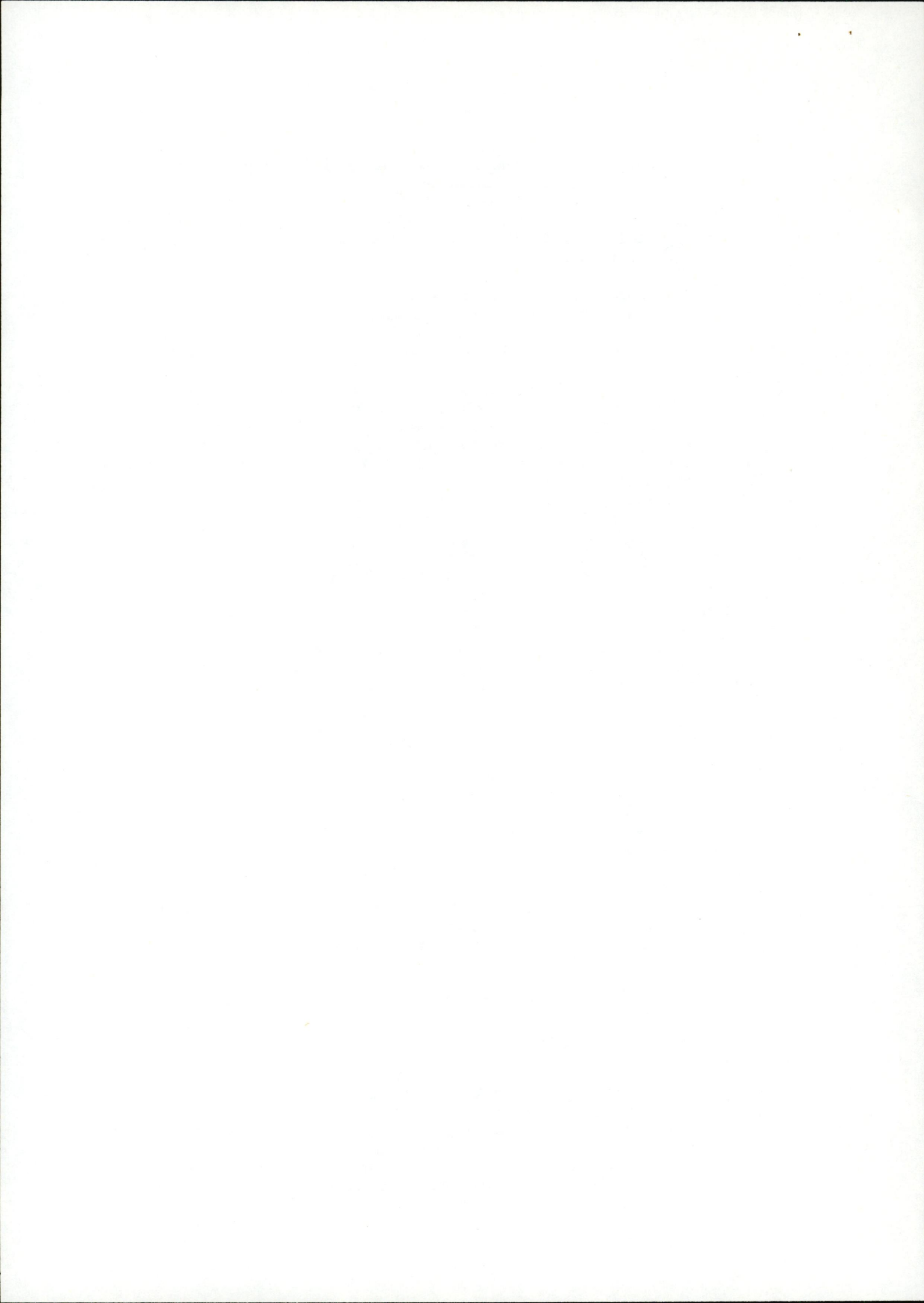
After the definition of "justice", insert:

"organisation" includes any voluntary association, public interest group, society, trade union, corporation, government department, statutory body or commission;

- (2) Section 13 (Inquests into deaths or suspected deaths):

- (a) Section 13(1):

After "has jurisdiction to hold an inquest concerning the death or suspected death", insert, "and, subject to the provisions of section 14, shall inquire into, and report upon, the circumstances surrounding such death or suspected death, including any question of negligence, malpractice, misconduct, or criminal conduct, by any person in relation to the same, and any means of preventing a similar death".





(b) Section 13(3)(h):

Before "in a prison", insert "in a residential child care centre, a centre for intellectually handicapped persons, a centre for handicapped persons, or any other institution in which persons under the age of 18 are held or detained", and at the end of that paragraph insert the words "or died during the course of any police operation, including an attempt to arrest or interrogate any person, or died at the scene of a crime, or whilst any person was evading or attempting to evade arrest".

(3) Section 15 (Inquiries into fires):

Section 15(1):

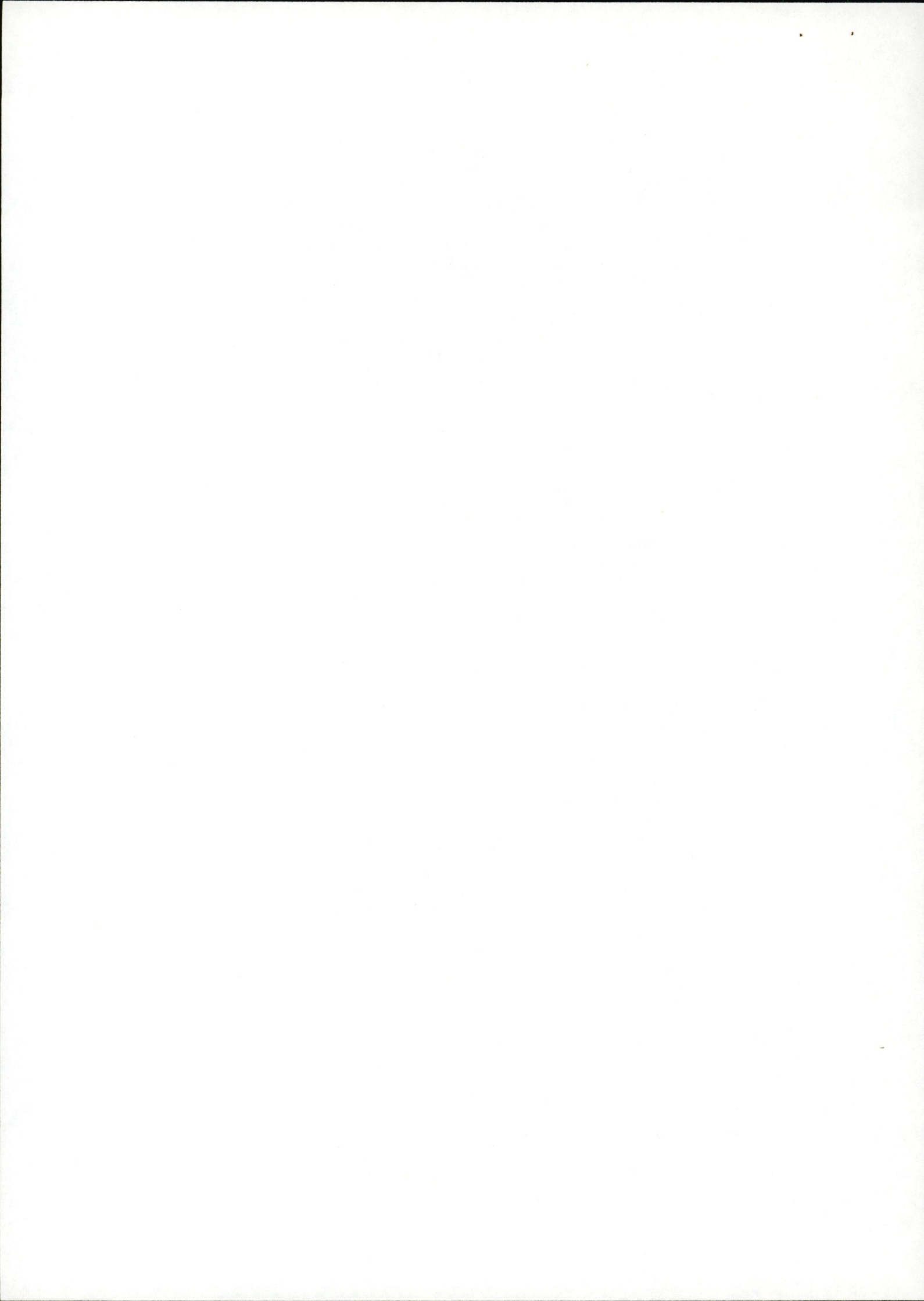
Omit "concerning the fire", insert instead "in relation to the cause and origin of such fire, including any question of negligence, malpractice, misconduct, or criminal conduct which may have led to or may have caused such fire, or have been associated therewith, and in relation to any means of preventing a similar fire, and in relation to any question relating to the detection of, or extinguishing of, or controlling such fire, or to the prevention of similar fires".

(4) Section 17 (Time and place of inquest or inquiry):

After section 17(2), insert:

(3) Any person who, or organisation which, intends to appear, or be represented at, an inquest or inquiry may serve a written request upon the Clerk of the Coroner's Court in which such inquest or inquiry will be held, requesting that the coroner hold a preliminary hearing, and thereupon the Coroner shall hold a preliminary hearing within 14 days after he has received such request.

(4) Where the coroner holds a preliminary hearing in relation to an inquest or an inquiry, persons who, or organisations which, intend to appear as parties at such inquest or inquiry, may apply for access to such statements and documents as are held by the coroner, or which are held by those charged with investigating the death or fire which is to be the subject of such inquest or inquiry, and the coroner shall make available to such persons, and organisations, or their representatives, such statements and documents as are then held, other than those which, in the opinion of the coroner, would, if made available, be likely to impede or prejudice any continuing investigation or, in relation to which, their probative effect is outweighed by their prejudicial impact.



(5) Section 18 (Inquests and inquiries with or without juries):

(a) In section 18(2), after "inquest", insert "or inquiry".

(b) Omit section 18(2)(b), insert instead:

any person who, or organisation which, intends to appear, or be represented, at an inquest or inquiry so requests.

(c) Omit section 18(4), insert instead:

(4) At any inquest or inquiry or special inquest or inquiry before a jury:

(a) the person assisting the coroner may make an opening address to the jury; and

(b) at the conclusion of the evidence adduced by the person assisting the coroner, persons and organisations appearing (or their representatives) and intending to adduce evidence, may make an opening address before so doing; and

(c) at the conclusion of the evidence, each of the persons or organisations appearing, or their representatives, may make a closing address to the jury, and the person assisting the coroner shall have a right of reply thereto.

(6) Section 19:

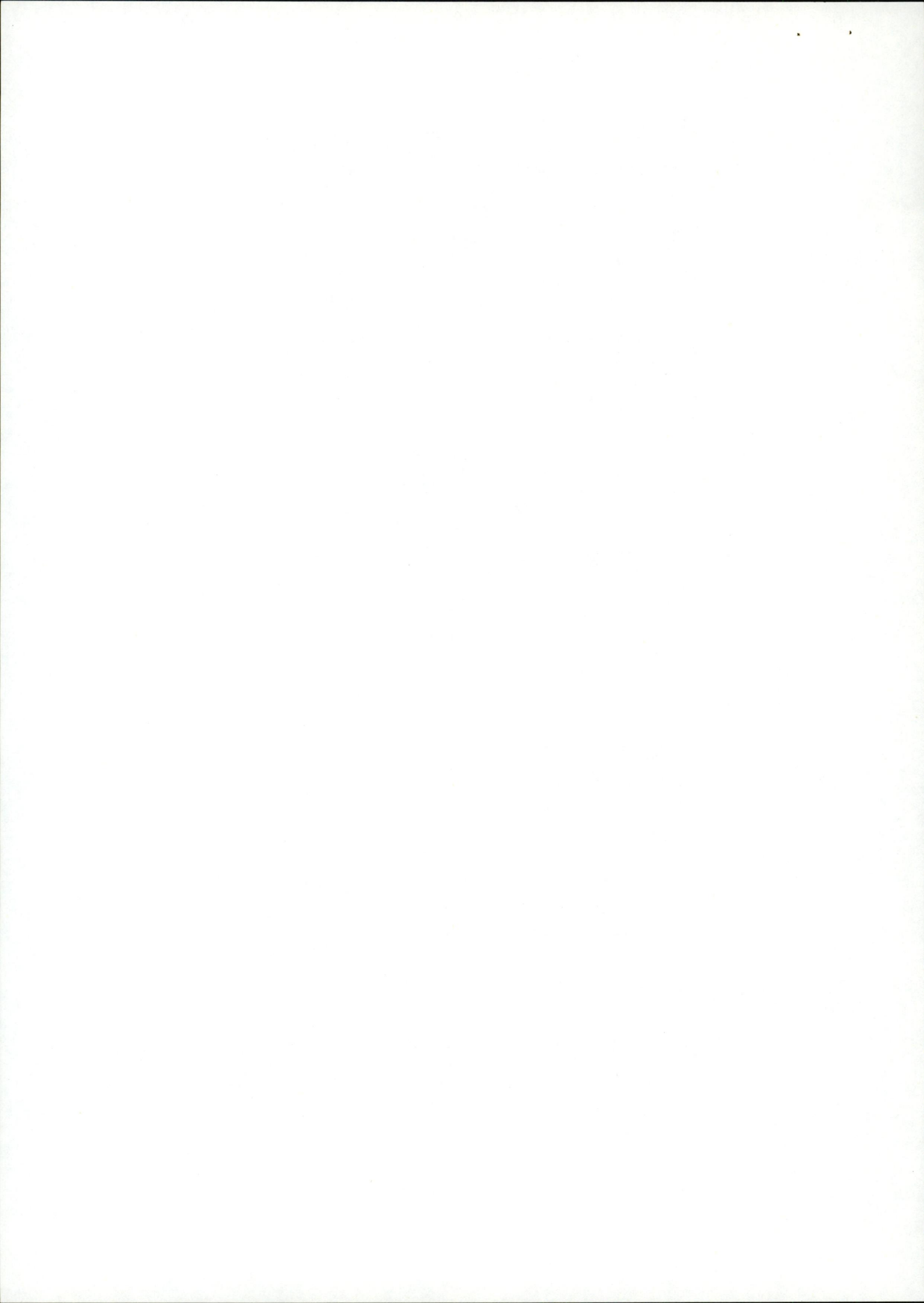
Omit the section, insert instead:

Procedure where person charged with, or evidence before coroner raises a prima facie case for, indictable offence

19(1) Where, before an inquest or inquiry commences, or after it has commenced, any person is charged with an indictable offence, and that offence is one in which the question whether that person, or some other person, caused the death, or suspected death, or the fire is in issue, the hearing of such charge shall be adjourned until the completion of the inquest or inquiry.

(2) Where at the conclusion of any inquest or inquiry, it appears to the coroner, or a jury finds that so much of the evidence adduced at such inquest or inquiry as would be admissible in a criminal trial would be capable of satisfying a jury beyond reasonable doubt that an indictable offence has been committed by any known person, then the coroner shall cause such person to be charged with such offence, and shall then deal with the same in accordance with the provisions of section 41(4), (5) and (6) of the Justices Act 1902.

(7) Section 22 (Finding of coroner or verdict of jury to be recorded):



(a) Omit section 22(1)(c), insert instead:

(c) whether the evidence adduced at such inquest is capable of satisfying a jury, beyond reasonable doubt, that an indictable offence has been committed by any known person; and

(b) After section 22(1)(c), insert:

(d) the coroner, or, if there is a jury, the jury, may make such further and other findings as to the facts and circumstances relative to such death, including such findings as to negligence, malpractice and misconduct (or any of them) by any person in relation to the same, as to the coroner, or the jury, shall seem appropriate.

(c) Omit section 22(2)(a) and (b), insert instead:

(a) as to the date, place, origin, and cause of the fire; and

(b) whether the evidence adduced at such inquiry is capable of satisfying a jury beyond reasonable doubt that an indictable offence has been committed by any known person, and, if so, by whom; and

(c) the coroner, or, if there is a jury, the jury, may make such other findings as to the facts and circumstances relative to such fire, including such findings as to negligence, malpractice or misconduct by any person in relation to the same, and any recommendation as to the prevention of a similar fire, or in relation to any change which seems desirable in relation to the method of detecting, or extinguishing or controlling similar fires, as to the coroner, or jury, shall seem appropriate.

(8) Section 32 (Representation at inquests or inquiries)

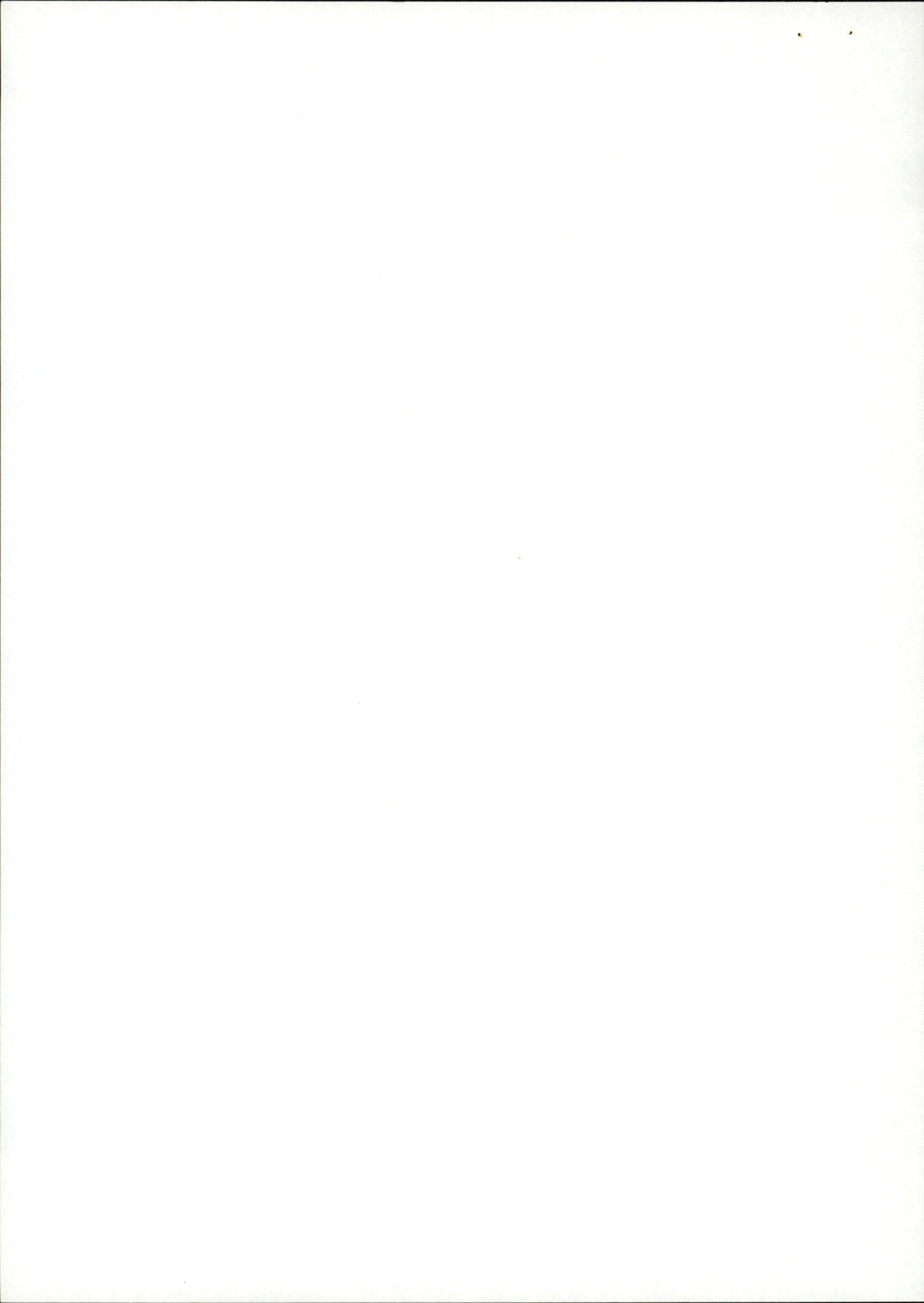
Omit "who, in the opinion of the coroner holding an inquest or inquiry, has a sufficient interest in the subject-matter of the inquest or inquiry may by leave of the coroner appear in person at the inquest or inquiry or be represented thereat", insert instead, "or organisation may appear or be represented at an inquest or inquiry".

(9) Section 35:

Omit the section, insert instead:

Summons for appearance or warrant for apprehension of witness

35. Whenever by the oath of a credible person it is made to appear to a coroner, or any justice:



- (a) that any person is likely to be able to give material evidence, or to have in his possession or power any document or writing required for the purposes of evidence at an inquest or inquiry; and
- (b) that such person will not appear voluntarily to be examined as a witness, or to produce such document or writing at the time and place appointed for the hearing of the inquest or inquiry,

such coroner or justice shall issue his summons for the appearance of such person to be examined as a witness, or to produce such document or writing as the case may be:

Provided that if such coroner or justice is satisfied by evidence upon oath that it is probable that such person will not appear to be examined, or to produce such document or writing, unless compelled to do so, he may issue his warrant in the first instance for the apprehension of such person:

Provided that no person shall be bound to produce any document or writing not specified or otherwise sufficiently described in the summons or warrant, or which he would not be bound to produce upon a subpoena for production in the Supreme Court.

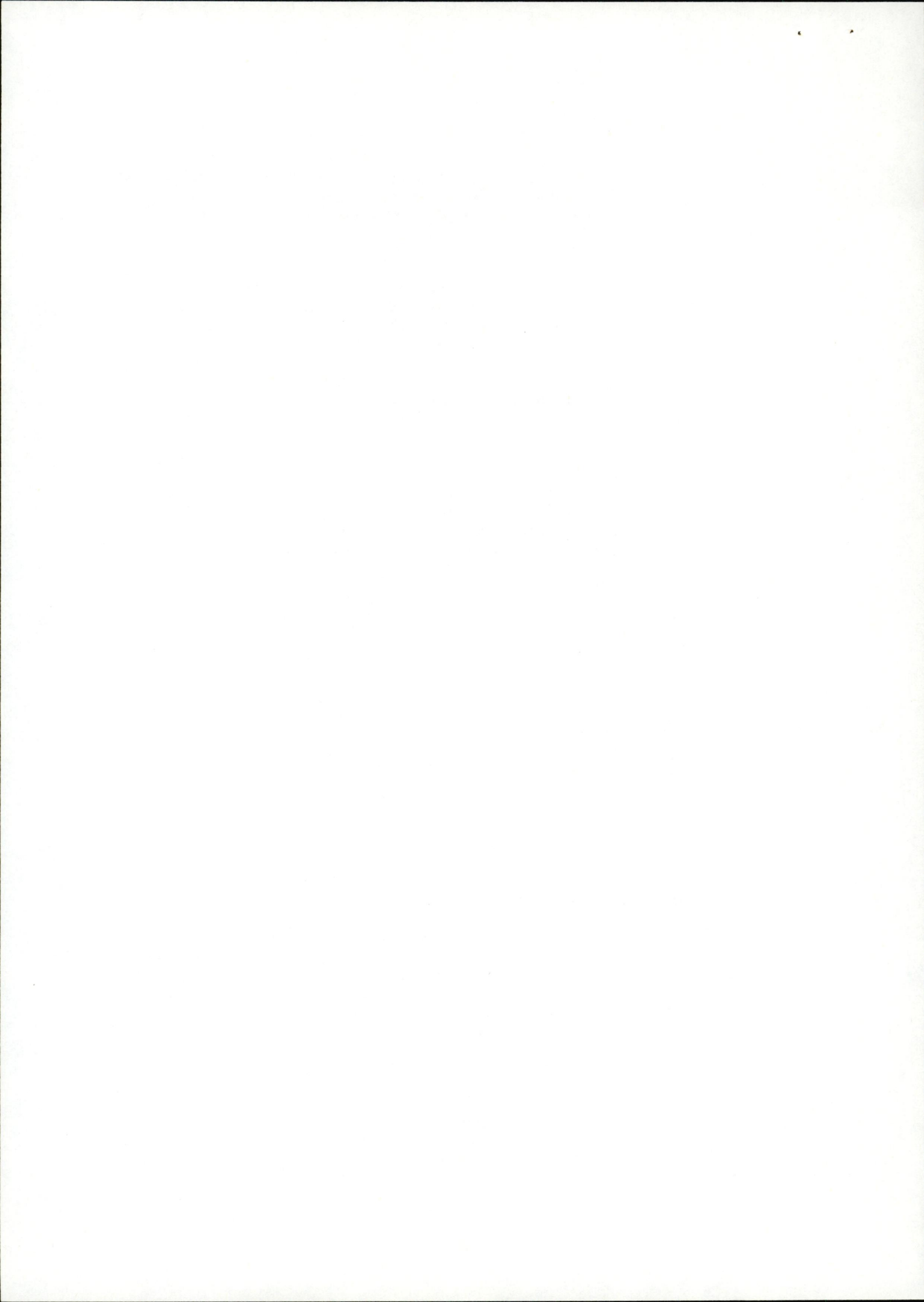
(10) Part 4, Division 3:

After section 46, insert:

DIVISION 3 - APPEAL

Appeal

46A(1) Except where a person has been committed for trial pursuant to section 19(2), a person who has, or any organisation which has, appeared, or has been represented, at an inquest or inquiry, or a special inquest or inquiry, held before a coroner, or a coroner and a jury, may appeal against the finding made therein, within 28 days after it was made to the District Court, provided that a written notice of appeal, containing the general grounds on which it is brought, shall be filed with the Clerk of the Coroner's Court where such finding was made, and the Clerk shall forward the same to the Registrar for the nearest proclaimed place at which the District Court is held, and shall forward copies thereof to all other parties who appeared, or were represented, at such inquiry.

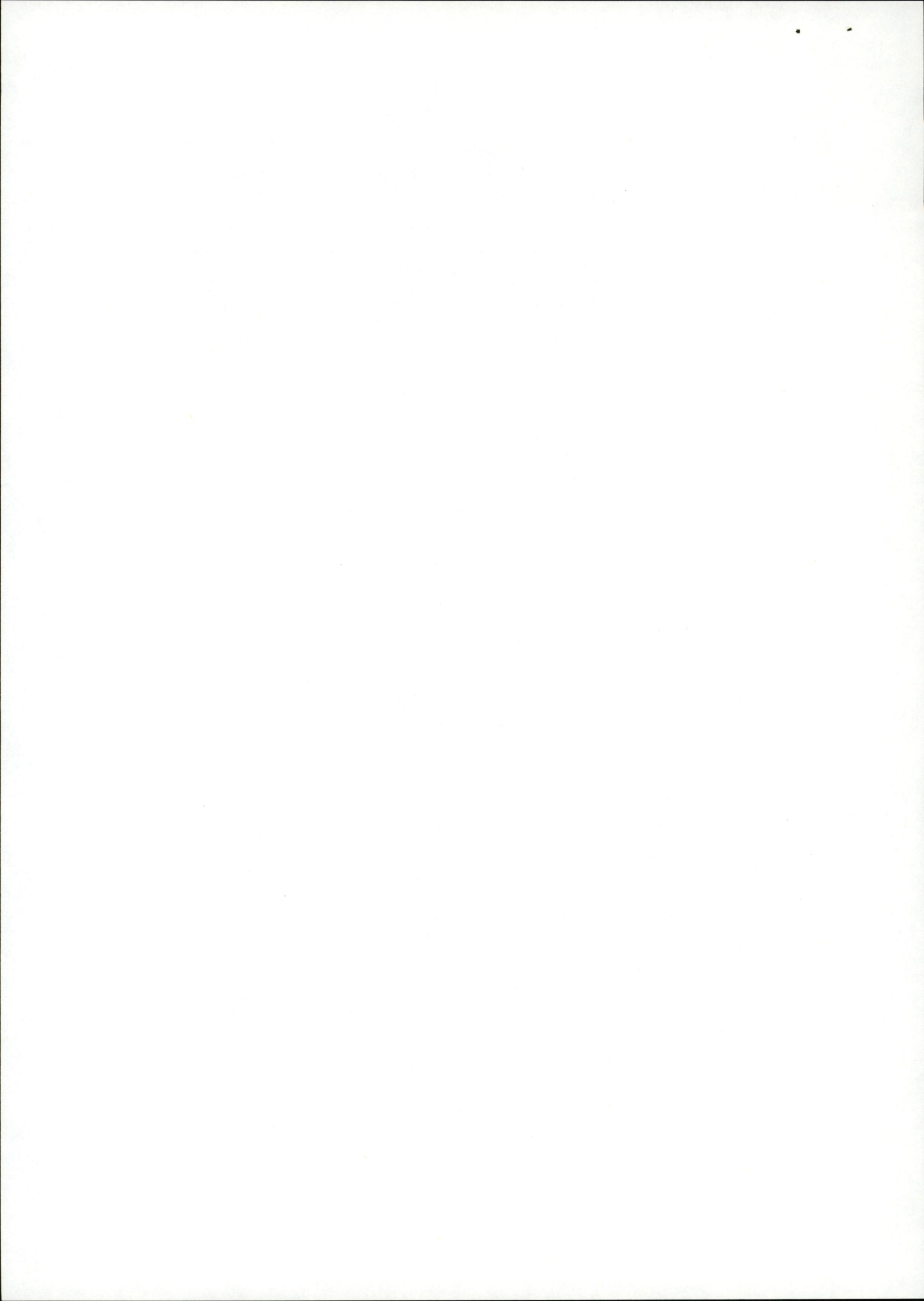




- (2) Except where a person has been committed for trial pursuant to section 19(2), a person who has, or any organisation which has, appeared, or has been represented at a special inquest or inquiry before a Judge of the District Court, sitting either with a jury, or sitting alone, may appeal against the finding made therein, within 28 days after it was made to the Supreme Court, provided that a written notice of appeal, containing the general grounds on which it is brought, shall be filed with the Registrar of the District Court in which the finding was made, and the Clerk shall thereafter deal with the same in the manner prescribed for appeals to the Supreme Court from the trial of civil actions in the District Court, and shall forward copies thereof to all other parties who appeared, or were represented, at such inquest or inquiry.
- (3) Where a person who, or an organisation which, would have been entitled under subsections (1) and (2) to give the notice referred to in those subsections, fails to do so within the period prescribed, such person or organisation may apply to the District Court, within three months from the making of the finding against which it is desired to appeal, for leave to appeal against the same.
- (4) An application made by any person or organisation pursuant to subsection (3) shall:
  - (a) state the reasons for failure to comply with subsection (1) or (2); and
  - (b) be accompanied by a written notice of appeal containing the general grounds on which the appeal is brought; and
  - (c) shall be filed with the Clerk or Registrar of the Court, where the finding was made.
- (5) If the application is lodged with a Clerk of the Coroner's Court, then he shall forthwith forward it to the Registrar for the nearest proclaimed place at which the District Court is held, and shall forward a copy thereof to all other parties who appeared or were represented at the inquest or inquiry, and if it is lodged with the Registrar of the District Court, he shall forward a copy thereof to all other parties who appeared or were represented at such inquest or inquiry.

(11) Section 47A:

After section 47, insert:



Power of Supreme Court to order a special inquest or inquiry

- 47A(1) Where the Supreme Court, upon application made by, or under the authority of, the Minister, or by any other person or organisation, is satisfied that it is necessary or desirable in the interests of justice, or in the public interest, that an inquest concerning a death or suspected death, or an inquiry concerning a fire, should inquire into matters additional to those specified in sections 13 and 15, then the Supreme Court may order that a special inquest or inquiry be held in accordance with the provisions of section 13 or 15, and in relation to such further and other matters as the Court may determine. The Court may further order that such special inquest or inquiry be held before a coroner and a jury, or before a Judge of the District Court, sitting with a jury of six, or before a judge of the District Court, sitting alone.
- (2) Where the Court orders that a special inquest or inquiry be held with a jury, such jury shall be summoned, and selected, in accordance with the provisions of the Jury Act 1977.

SCHEDULE 2 - AMENDMENT OF JURY ACT 1977

(1) Section 49 (Selection of jury in civil proceedings):

(a) Section 49(1):

After "District Court", insert "or for any coronial or special coronial inquest or inquiry".

(b) Section 49(3):

After "barrister or solicitor" wherever occurring, insert "or to each person or organisation appearing or represented at a coronial or special coronial inquest or inquiry".

(2) Section 50 (Balloting for jury at coronial inquest):

Omit section 50(2)(b), insert instead:

- (b) draw out of that box those cards, one after another, and call out the names thereon, until all just challenges for cause have been allowed, and a sufficient number of persons appear for the purposes of section 49(3).
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