

FIRST PRINT

CORONERS (AMENDMENT) BILL 1991

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:

- confer an unlimited right of appearance and representation on persons who, and organisations which, wish to appear or be represented before a coroner; and
- 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; and
- widen the scope of an inquiry before a coroner; and
- enlarge the nature of the verdict which may be returned by a jury; and
- 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
- 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:

- 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
- provides that an inquiry be held to determine whether compensation should be paid to Edgar John Azzopardi.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on 1 January 1992.

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

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Clause 4 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

Clause 5 is a formal provision that gives effect to the Schedule of amendments to the Jury Act 1977.

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 incidental matters.

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 to it.

Clause 8 provides that inquests and inquiries commenced prior to 1 January 1992 are taken to have been commenced, and are to 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:
 - 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
 - requiring an inquest to be held where the death occurred whilst the deceased was at the scene of a crime or was under arrest, or being arrested, or where the person 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 intending to appear, or be represented, at an inquest or inquiry, an entitlement to a preliminary hearing if they wish one.
- (5) Section 18 is amended to:
 - enable any person or organisation intending to appear at an inquest or inquiry to request that it be held before a jury; and
 - 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 cause that person to be charged with the offence, and will thereafter deal with the charge in accordance with the procedure prescribed by the Justices Act 1902 in relation to indictable offences.

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- (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 dispensing with 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 to the District Court against a finding made at the inquest or inquiry.
- (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 6, or before a Judge of the District Court sitting alone. The special inquest or inquiry may inquire into such other matters, additional to those specified in sections 13 and 15 of the Coroners Act 1980, as the Supreme Court may order.

Schedule 2 provides for an amendment to section 50 of the Jury Act 1977, so as to enable parties appearing or represented at an inquest or inquiry 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 1991

NEW SOUTH WALES



No. , 1991

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 1991.

Commencement

2. This Act commences on 1 January 1992.

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 No. 18

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 is to 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 police officers 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.

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- (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 may seem meet.

Inquiry whether compensation should be paid to Edgar John Azzopardi

7. An inquiry is to 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 the fire and in relation to the conduct of police officers.

PART 4—TRANSITIONAL PROVISION

Transitional provision

8. Inquests and inquiries commenced before 1 January 1992 are taken to have been commenced, and are to be continued, pursuant to the Principal Act as amended by this Act.

SCHEDULE 1—AMENDMENT OF PRINCIPAL ACT

(Sec. 4)

(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) In 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, is to inquire into and report upon the circumstances surrounding the death or

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SCHEDULE 1—AMENDMENT OF PRINCIPAL ACT—*continued*

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) Omit section 13 (3) (h), insert instead:

(h) the person died:

- (i) while in the custody of a police officer; or
- (ii) during the course of a police operation (including an attempt to arrest or interrogate the person or any other person); or
- (iii) at the scene of a crime; or
- (iv) while the person or any other person was evading or attempting to evade arrest; or
- (v) while in, or temporarily absent from, an institution to which this subparagraph is applied by subsection (5) and of which the person was an inmate.

(3) Section 15 (**Inquiries into fires**):

After section 15 (1), insert:

(1A) In holding such an inquiry, the coroner is to investigate the following matters:

- (a) the cause and origin of the fire;
- (b) whether there was any negligence, malpractice or misconduct which may have led to or may have been associated with the fire;
- (c) any question regarding the detection, extinguishing, control or prevention of the fire;
- (d) the means that are available to detect, extinguish, control or prevent any similar fire in the future.

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

After section 17 (2), insert:

(3) Any person or organisation intending 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 the inquest or inquiry will be held, requesting that the coroner

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SCHEDULE 1—AMENDMENT OF PRINCIPAL ACT—*continued*

hold a preliminary hearing. Thereupon the coroner must hold a preliminary hearing within 14 days after receiving the request.

(4) At the preliminary hearing, persons or organisations intending to appear as parties at the 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 the subject of the inquest or inquiry. The coroner is to make available to those persons or organisations or their representatives such statements and documents as are then so 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 whose probative value, in the opinion of the coroner, 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:

(b) any person or organisation intending to appear, or be represented, at the inquest or inquiry so requests.

(c) In section 18 (2A), after “person” wherever occurring, insert “or organisation”.

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

(4) At any inquest or inquiry (including any special inquest or inquiry) held before a coroner with 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 and intending to adduce evidence, or their representatives, 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 has a right of reply.

*Coroners (Amendment) 1991*SCHEDULE 1—AMENDMENT OF PRINCIPAL ACT—*continued*

(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) If, 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 the charge is to be adjourned until the completion of the inquest or inquiry.

(2) If, 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 the inquest or inquiry as would be admissible in a criminal trial would be capable of satisfying a jury, properly instructed, beyond reasonable doubt that an indictable offence has been committed by any known person, then the coroner is to cause that person to be charged with the offence, and is then to proceed to deal with the matter 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 the inquest is capable of satisfying a jury, properly instructed, beyond reasonable doubt that an indictable offence has been committed by any known person (and if so, by whom).

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

(1A) 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 the death, including such findings as to negligence, malpractice and misconduct (or any of them) by any person in relation to it, as to the coroner, or the jury, 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

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SCHEDULE 1—AMENDMENT OF PRINCIPAL ACT—*continued*

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

(d) After section 22 (2), insert:

(2A) The coroner or, if there is a jury, the jury, may make such other findings as to the facts and circumstances relative to the fire, including such findings as to negligence, malpractice or misconduct by any person in relation to it, 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, extinguishing or controlling similar fires, as to the coroner, or the jury, 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. (1) 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 or her 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 the document or writing at the time and place appointed for the hearing of the inquest or inquiry,

the coroner or justice may issue a summons for the appearance of the person to be examined as a witness, or to attend and produce the document or writing.

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SCHEDULE 1—AMENDMENT OF PRINCIPAL ACT—*continued*

(2) If the coroner or justice is satisfied by evidence upon oath that it is probable that the person will not appear to be examined, or to produce the document or writing, unless compelled to do so, the coroner or justice may issue his or her warrant in the first instance for the apprehension of the person.

(3) No person is bound to produce any document or writing not specified or otherwise sufficiently described in the summons or warrant, or which the person 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 or organisation that has appeared or been represented at an inquest or inquiry (including any special inquest or inquiry) held before a coroner, or before a coroner and a jury, may appeal to the District Court against the finding made at the inquest or inquiry within 28 days after it was made.

(2) A written notice of appeal, containing the general grounds on which it is brought, must be filed with the Clerk of the Coroner's Court where the finding was made, and the Clerk is to forward the notice to the Registrar for the nearest proclaimed place at which the District Court is held, and is to forward copies of it to all other parties who appeared or were represented at the inquiry.

(3) Except where a person has been committed for trial pursuant to section 19 (2), a person or organisation that has appeared or been represented at a special inquest or inquiry before a Judge of the District Court, whether sitting with a jury or sitting alone, may appeal to the Supreme Court against the finding made at the inquest or inquiry within 28 days after it was made.

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SCHEDULE 1—AMENDMENT OF PRINCIPAL ACT—*continued*

(4) A written notice of appeal, containing the general grounds on which it is brought, is to be filed with the Registrar of the District Court in which the finding was made, and the Clerk is thereafter to deal with the notice in the manner prescribed for appeals to the Supreme Court from the trial of civil actions in the District Court, and is to forward copies of it to all other parties who appeared or were represented at the inquest or inquiry.

(5) A person or organisation that would have been entitled to give a notice of appeal but fails to do so within the period prescribed may apply to the District Court, within 3 months from the making of the finding against which it is desired to appeal, for leave to appeal against the finding.

(6) An application made by any person or organisation under subsection (5) must:

- (a) state the reasons why notice of appeal was not lodged in time; and
- (b) be accompanied by a written notice of appeal containing the general grounds on which the appeal is intended to be made; and
- (c) be filed with the Clerk or Registrar of the Court where the finding was made.

(7) A Clerk of the Coroner's Court with whom the application is lodged must forward it to the Registrar for the nearest proclaimed place at which the District Court is held and forward a copy of it to all other parties who appeared or were represented at the inquest or inquiry.

(8) If the application is lodged with the Registrar of the District Court, the Registrar must forward a copy of it to all other parties who appeared or were represented at the inquest or inquiry.

(11) Section 47A:

After section 47, insert:

Power of Supreme Court to order a special inquest or inquiry

47A. (1) If the Supreme Court, on 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

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SCHEDULE 1—AMENDMENT OF PRINCIPAL ACT—*continued*

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 the 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 6, 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, the jury is to be summoned and selected in accordance with the provisions of the Jury Act 1977.

SCHEDULE 2—AMENDMENT OF JURY ACT 1977

(Sec. 5)

Section 50 (Balloting for jury at inquest or inquiry):

- (a) In section 50 (1), after “inquest”, insert “or inquiry (including a special inquest or inquiry)”.
- (b) Omit section 50 (2) (b), insert instead:
 - (b) draw out of that box those cards, one after another, and call out the names on them, until all just challenges for cause have been allowed, and a sufficient number of persons appear for the purposes of subsection (3).
- (c) Omit section 50 (3), insert instead:
 - (3) A list of the names appearing on the cards drawn out of the box under subsection (2) (b) is to be prepared in the order in which they were drawn and delivered to each person or organisation appearing at the inquest or inquiry (or to the barrister or solicitor representing the party concerned) by whom 3 of those names may be struck from the list. The list so reduced is then to be delivered to each other party who has pleaded separately (or his or her barrister or solicitor) by each of whom 3 of the names may also be struck from the list.

SCHEDULE 2—AMENDMENT OF JURY ACT 1977—*continued*

(4) The persons whose names then remain on the list or, where:

- (a) a party, or the party's barrister or solicitor, does not strike 3 names from the list; or
- (b) a party does not appear in person or by a barrister or solicitor,

the first 6 persons whose names appear on the list, after being duly sworn, constitute the jury for the inquest or inquiry.
