

First print



New South Wales

Coroners Amendment Bill 1995

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 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, fire or explosion be held before a coroner, or a District Court Judge, in accordance with such wider terms of reference as the Judge may direct, and
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- 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.

Outline of provisions

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

Clause 2 provides that the proposed Act is to commence on 1 January 1996 or, if not assented to until after that date, is to commence when the Governor assents to it.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the *Coroners Act 1980*.

Clause 4 is a formal provision that gives effect to the Schedule of amendments to the *Jury Act 1977*.

Clause 5 provides that the *Coroners Act 1980* as proposed to be amended is to apply to inquests and inquiries begun, but not completed, before the commencement of the proposed Act.

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 the death and any means of preventing a similar death.
- (3) Section 15 is amended to widen the ambit of the inquiry that is to be held in relation to a fire or explosion.
- (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 want 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.
- (6) Section 19 is repealed and replaced by a new section. Under the existing section an inquest is terminated and a jury is discharged if a coroner at any time during the inquest or inquiry forms the opinion that the evidence establishes a prima facie case against a known person. The new section will ensure that an inquest or inquiry is

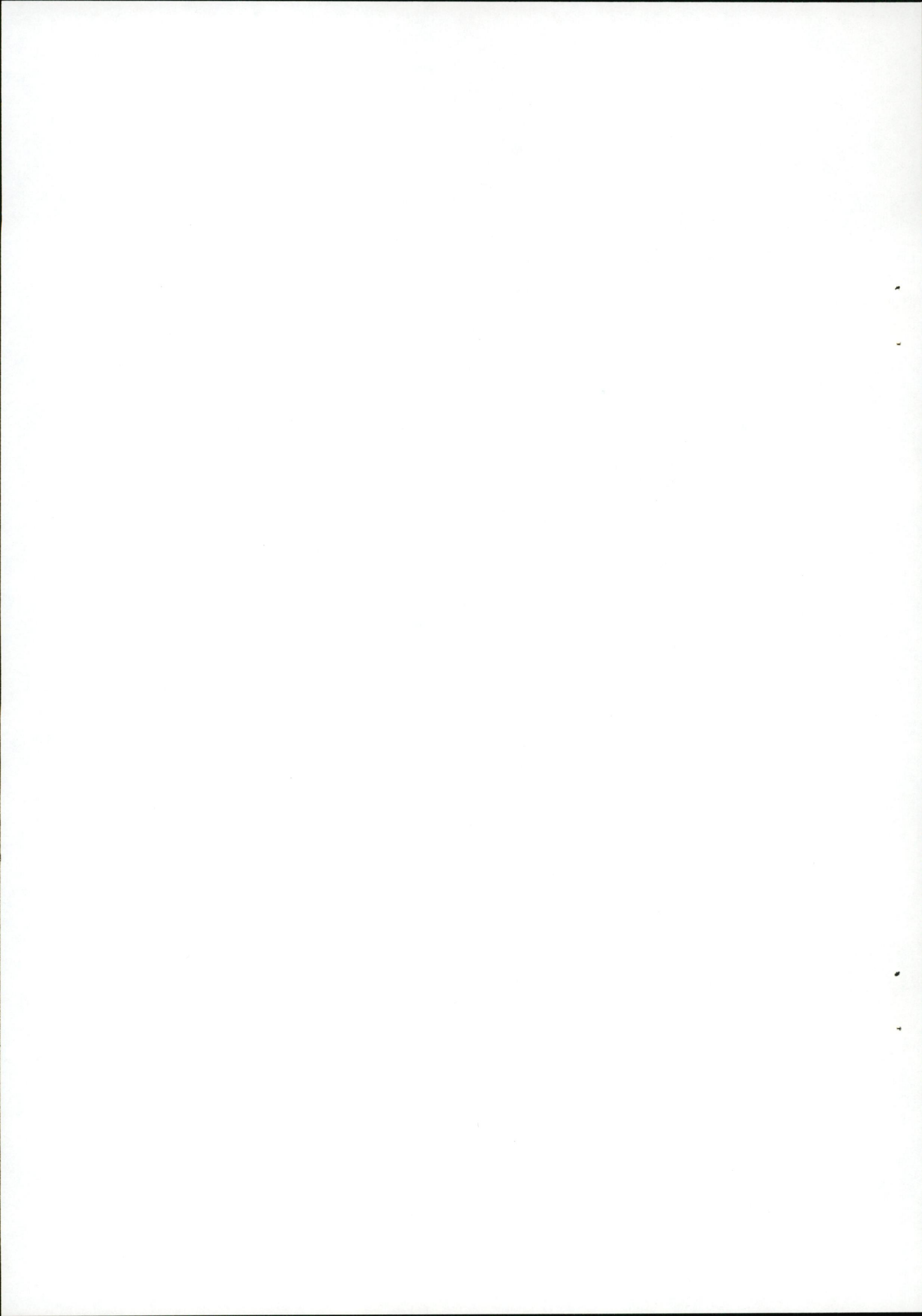
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completed before the hearing of any charge relating to any indictable offence alleged to be associated with the death, fire or explosion with which the inquest or inquiry is concerned. If, at the inquest or inquiry, the coroner, or the jury, finds that there is evidence of a prima facie case against a known person, the coroner will cause the person to be charged with the offence. The coroner will then deal with the 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 replaced by a new subsection which dispenses with the need to obtain leave to appear at an inquest or inquiry. Other amendments being made to section 32 are consequential.
- (9) Section 35 is amended so as 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 47AA 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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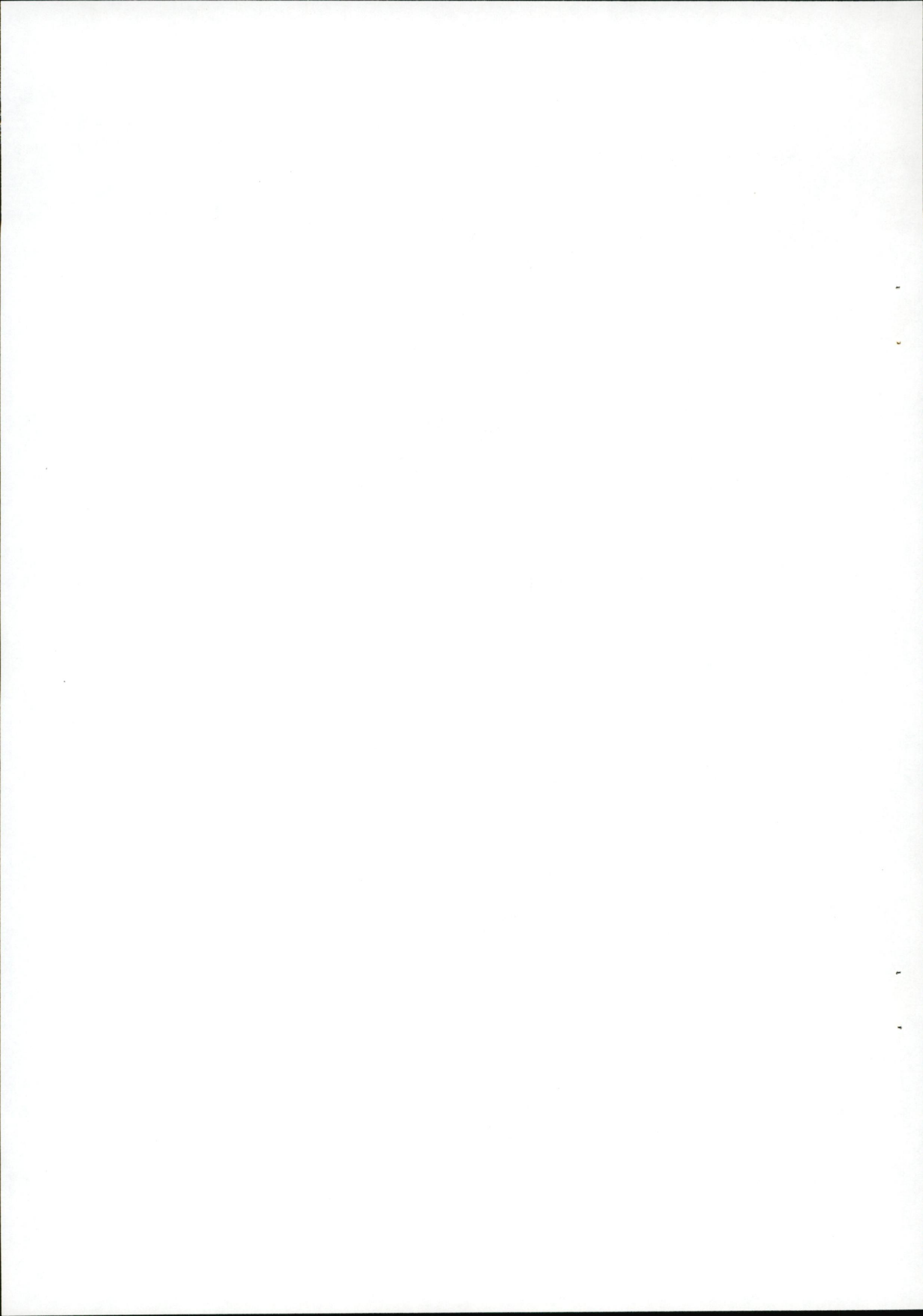
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New South Wales

Coroners Amendment Bill 1995

No. , 1995

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 amend the *Jury Act 1977*; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Coroners Amendment Act 1995*.

2 Commencement

This Act commences on 1 January 1996 or, if not assented to until after that date, on the date of assent. 5

3 Amendment of Coroners Act 1980 No 27

The *Coroners Act 1980* is amended as set out in Schedule 1.

4 Amendment of Jury Act 1977 No 18

The *Jury Act 1977* is amended as set out in Schedule 2. 10

5 Transitional provision

The *Coroners Act 1980* as amended by this Act applies to inquests and inquires begun before the commencement of this Act and not completed before that commencement.

Schedule 1 Amendment of Coroners Act 1980

(Section 3)

[1] Section 4 Definitions

Insert after the definition of *justice*:

organisation includes any voluntary association, public interest group, society, trade union, corporation, government department, statutory body or commission. 5

[2] Section 13 Inquests into deaths or suspected deaths

Insert after section 13 (2):

- (3) A coroner who holds an inquest concerning the death or suspected death of a person must also inquire into and report on the circumstances surrounding the death or suspected death and any means of preventing a similar death. Those circumstances include any question as to whether or not negligence, malpractice, misconduct or criminal conduct was committed by any person regarding the death or suspected death. 10
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[3] Section 15 Inquiries into fires and explosions

Insert after section 15 (1):

- (1A) When holding such an inquiry, the coroner must investigate the following matters: 20
- (a) the cause and origin of the fire or explosion,
 - (b) whether there was any negligence, malpractice or misconduct that may have led to or may have been associated with the fire or explosion, 25
 - (c) any question regarding the detection, extinguishing, control or prevention of the fire or the prevention of the explosion,
 - (d) the means that are available to detect, extinguish, control or prevent any similar fire, or to prevent any similar explosion, in the future. 30

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Schedule 1 Amendment of Coroners Act 1980

[4] Section 17 Time and place of inquest or inquiry

Insert after section 17 (2):

- (3) Any person or organisation intending to appear or be represented at an inquest or inquiry may serve a written request on the Clerk of the Coroner's Court in which the inquest or inquiry is to be held, requesting that the coroner hold a preliminary hearing. The coroner must hold a preliminary hearing within 14 days after receiving such a request. 5
- (4) At a preliminary hearing, persons or organisations intending to appear as parties at the inquest or inquiry may apply for access to such statements and documents: 10
- (a) as are held by the coroner in relation to the inquest or inquiry, or
- (b) as are held by those charged with investigating the death, fire or explosion to which the inquest or inquiry relates. 15
- (5) The coroner must make available to those persons or organisations or their representatives such statements and documents as are then so held, other than those: 20
- (a) that, in the opinion of the coroner, would, if made available, be likely to impede or prejudice any continuing investigation, or
- (b) whose probative value would, in the opinion of the coroner, be outweighed by their prejudicial impact. 25

[5] Section 18 Inquests and inquiries with or without juries

Section 18 (2)

Insert "or inquiry" after "inquest".

[6] Section 18 (2) (b) 30

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.

[7] Section 18 (2A)

Insert "or organisation" after "person" wherever occurring.

[8] Section 18 (4)

Omit section 18 (4).

[9] Section 19

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Omit the section. Insert instead:

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

(1) If: 10

(a) before an inquest or inquiry relating to a death or suspected death, or a fire or explosion, begins, or after it has begun, a person is charged with an indictable offence, and

(b) the offence is one in which the question whether that person, or some other person, caused the death or suspected death, or the fire or explosion, is in issue, 15

the hearing of the charge is to be adjourned until the completion of the inquest or inquiry. 20

(2) If, at the end of an inquest or inquiry, it appears to the coroner, or a jury finds, that so much of the evidence presented 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 a known person, the coroner must: 25

(a) cause the person to be charged with the offence, and

(b) then deal with the matter in accordance with section 41 (4), (5) and (6) of the *Justices Act 1902*. 30

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Schedule 1 Amendment of Coroners Act 1980

- [10] Section 22 Finding of coroner or verdict of jury to be recorded**
- Section 22 (1) (c)**
- Omit section 22 (1) (c). Insert instead:
- (c) whether the evidence presented at the inquest is capable of satisfying a jury, properly instructed, beyond reasonable doubt that an indictable offence has been committed by a known person and, if so, by whom. 5
- [11] Section 22 (1A)** 10
- Insert after section 22 (1):
- (1A) The coroner or, if there is a jury, the jury, may make such further findings as to the facts and circumstances relating to the death as seem appropriate to the coroner or jury. Those findings may include findings as to negligence, malpractice or misconduct by any person in relation to the death. 15
- [12] Section 22 (2) (a) and (b)**
- Omit section 22 (2) (a) and (b). Insert instead:
- (a) as to the date, place, origin and cause of the fire or explosion, and 20
- (b) whether the evidence presented at the inquiry is capable of satisfying a jury, properly instructed, beyond reasonable doubt that an indictable offence has been committed by a known person and, if so, by whom. 25
- [13] Section 22 (2A)**
- Insert after section 22 (2):
- (2A) The coroner or, if there is a jury, the jury, may make such other findings as to the facts and circumstances relating to the fire or explosion as seem appropriate to the coroner or jury. Those findings may include findings as to negligence, malpractice or misconduct by any person in relation to the fire or explosion. 30

[14] Section 32 Representation at inquests or inquiries

Omit section 32 (1). Insert instead:

- (1) Any person or organisation claiming to have an interest in the subject-matter of an inquest or inquiry is entitled to appear at the inquest or inquiry, either in person or by a legal practitioner. Any such person, organisation or legal practitioner may examine and cross-examine witnesses on matters relevant to the inquest or inquiry.

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[15] Section 32 (2)

Omit section 32 (2).

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[16] Section 32 (3) (a)

Insert "or organisation" after "person", wherever occurring.

[17] Section 35 Summons for appearance or warrant for apprehension of witness

Omit section 35 (1) and (2). Insert instead:

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- (1) Whenever by the oath of a credible person it appears to a coroner or justice:

(a) that a person is likely to be able to give material evidence, or to have possession of, or power over, a document required for the purposes of an inquest or inquiry, and

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(b) that the person is not willing to be examined as a witness, or to produce the document at the time and place appointed for the hearing of the inquest or inquiry,

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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.

- (2) If the coroner or justice is satisfied by evidence on oath that the person is not likely to appear to be examined, or to produce the document, unless compelled to do so, the coroner or justice may issue a warrant in the first instance for the apprehension of the person.

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Schedule 1 Amendment of Coroners Act 1980

(2A) With the consent of the coroner who is responsible for conducting an inquest or inquiry, another coroner or a justice may exercise a function under this section in respect of the inquest or inquiry.

(2B) A person is not bound to produce a document that is not sufficiently identified in the summons or warrant, or that the person would not be bound to produce on being served with a subpoena for production in the Supreme Court. 5

[18] Part 4, Division 3 10

Insert after section 46:

Division 3 Appeal

46A Appeal

(1) Except where a person has been committed for trial under 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, within 28 days after the finding at the inquest or inquiry was made, appeal to the District Court against the finding. 15 20

(2) A written notice of appeal, containing the general grounds on which it is based, must be filed with the Clerk of the Local Court where the inquest or inquiry was held. That Clerk must:

(a) forward the notice to the Registrar for the nearest proclaimed place at which the District Court is held, and 25

(b) forward copies of it to all other parties who appeared or were represented at the inquiry.

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- (3) Except where a person has been committed for trial under 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 alone or sitting with a jury, may, within 28 days after the finding at the inquest or inquiry was made, appeal to the Supreme Court against the finding. 5
- (4) A written notice of appeal, containing the general grounds on which it is based, must be filed with the Registrar of the District Court in which the finding was made. That Registrar must: 10
- (a) 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
- (b) forward copies of it to all other parties who appeared or were represented at the inquest or inquiry. 15
- (5) A person or organisation that would have been entitled to give notice of appeal under subsection (1) or (3), but has failed to do so within the requisite period, may, within 3 months from the making of the finding against which it is desired to appeal, apply to the District Court for leave to appeal against the finding. 20
- (6) An application under subsection (5) must: 25
- (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 inquest or inquiry was held. 30
- (7) If the application is lodged with the Clerk of a Local Court, the Clerk must: 35
- (a) forward it to the Registrar for the nearest proclaimed place at which the District Court is held, and

- (b) 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 a 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. 5

[19] Section 47AA

Insert after section 47:

47AA Power of Supreme Court to order a special inquest or inquiry 10

- (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 the interests of justice, or in the public interest, that an inquest concerning a death or suspected death, or an inquiry concerning a fire or explosion, should inquire into matters additional to those specified in sections 13 and 15, the Supreme Court may order that a special inquest or inquiry be held in accordance with section 13 or 15, and in relation to such further and other matters as the Court may determine. 15 20
- (2) The Supreme Court may further order that the special inquest or inquiry be held:
 - (a) before a coroner and a jury, or 25
 - (b) before a Judge of the District Court sitting with a jury of 6, or
 - (c) before a Judge of the District Court sitting alone.
- (3) If the Supreme 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 *Jury Act 1977*. 30

Schedule 2 Amendment of Jury Act 1977

(Section 4)

[1] Section 4 Definitions

Insert "or a special inquest or inquiry held before a coroner and a jury, or before a District Court Judge and a jury, under section 47AA of that Act" after "the *Coroners Act 1980*" in the definition of *coronial inquest* in section 4 (1).

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[2] Section 50 (2) (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 this section.

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[3] Section 50 (3)

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. The list is then to be given in turn to each person or organisation appearing at the inquest or to the barrister or solicitor representing the person or organisation.
- (4) On being given the list, a person or organisation (or the barrister or solicitor representing the person or organisation) is entitled to have the opportunity to have up to 3 of those names struck from the list.
- (5) When all of the persons and organisations appearing at the inquest or inquiry, or their barristers or solicitors, have had the opportunity to have names struck from the list, then:

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Schedule 2 Amendment of Jury Act 1977

- (a) if the names of only 6 persons remain on the list, those 6 persons, after being duly sworn, constitute the jury for the inquest or inquiry, or
- (b) if the names of more than 6 persons remain on the list, the first 6 of those persons, after being duly sworn, constitute that jury. 5