1975

NEW SOUTH WALES

REPORT

OF THE

LAW REFORM COMMISSION

ON

THE CORONERS ACT, 1960

L.R.C 22

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PREFACE

The Law Refonn Commission is constituted by the Law Refonn Commission Act, 1967. The Commissioners are—

Chairman: The Honourable Mr Justice C. L. D. Meares.

Deputy Chairman: Mr R. D. Conacher.

His Honour Judge R. F. Loveday, Q.C.

Mr C. R. Alien.

Mr D. Gressier.

The offices of the Commission are in the Goodsell Building, 8-12 Chifley Square, Sydney. Letters should be addressed to the Secretary.

This is the twenty-second report of the Commission on a reference from the Attorney General. Its short citation is L.R.C. 22.

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LAW REFORM COMMISSION

REPORT

ON

THE CORONERS ACT, 1960

To the Honourable J. C. Maddison, B.A., LL.B., M.L.A.,
Attorney General and Minister of Justice for New South Wales.

I. INTRODUCTION

1. We make this report under our reference—

> To review the law relating to coroners and incidental matters.

2. In accordance with the arrangement made with you, this report deals only with the operation of the Coroners Act, 1960, and related legislation. It does not review the Coroners Act, 1960, line by line. That Act was passed to supersede an enactment of 1912 and to "attempt to streamline this important branch of legal procedure and to modernize to a large extent the functions and procedures of a coroner's court".[1] Over the past fifteen years the Act has, for the greater part, served its purpose well. In some respects it has been found a model worthy of adoption elsewhere.[2] We are concerned here only with some blemishes and anomalies, rectification of which will add to its utility.

3. We will come to consider those matters[3] after first examining "Interim Report No. 6" of the Chief Justice's Law Reform Committee, a body charged with responsibility for proposing law reform in New South Wales for several years before the constitution of this Commission in 1966. That report, on "The Powers and Procedures of Coroners at Inquests and of Magistrates at Committal Proceedings", was made on 10th April, 1964. Omitting some introductory material and the matter relating to committal proceedings, we publish that report as Appendix B.

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[1] *N.S.W. Parliamentary Debates,* 3rd series, Vol. 30, p. 2656 (*per* N. J. Mannix).

[2] For example, in Victoria: *Report from the Statute Law Revision Committee upon Coronial Inquiries and Committal Proceedings* (1965), p. 5.

[3] See Part III commencing at paragraph 46.

4. In this report we will refer to that work of the Chief Justice's Law Reform Committee as the "1964 report" and, to avoid confusion with paragraphs of the present report, we will prefix an asterisk to citation of its paragraphs.

5. We do not propose to canvass the whole of the 1964 report. Generally speaking, we agree with its recommendations, and we note that it confirms our impression that the Coroners Act, 1960, for the greater part, operates effectively. But areas of the 1964 report that suggest amendments to the Act call for some elaboration. Our comments follow.

6. For convenience of reference, the Coroners Act, 1960, is set out in Appendix A.

II. MATTERS ARISING OUT OF THE "1964 REPORT"

A. *Jurisdiction* (1964 report paragraphs * 1-7, 12)

7. The question raised here is whether 'the definition of "inquest" in section 4 ("inquest by a coroner into the *manner and cause* of the death of any person") unduly limits the jurisdiction conferred on a coroner by section 11 (1). A similar question arises about the definition of "inquiry" in section 4 ("inquiry held by a coroner into the *cause and origin* of a fire") and its application to section 12.

8. In the case of inquests, the words of the Act have not been taken to oust the coroner's authority to investigate things other than the manner and cause of death. It would make nonsense of section 11(1) if it meant that the "manner and cause" of a death could be the subject of an inquest, but that the identity of a body could not [see section 29].

9. There is judicial recognition that "manner and cause" is capable of quite wide extension. In *Ex parte Flock; re Featherstone,* Wallace, P., observed that:

> Without going into the history of the Coroners Act it can I think be said that the phrase "manner and cause" has been given a wide meaning and so as to *enable* coroners' juries to return verdicts which implicate or exculpate individuals in respect of the death under consideration. But I do not think they are compelled so to do.[4]

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[4] (1967) 86 W.N. (N.S.W.) Pt 2, 349 at 350,

10. We would not propose any amendment to the Act in this respect were the matter taken in isolation. But as we are putting forward other amendments, there is sufficient room for doubt about the extent of coroners' powers of inquest or inquiry to warrant our recommending a less restrictive form of words.

11. Our recommendation involves amendments to section 4 and other sections, as set out in draft legislative form in Appendix E. In summary, our object will be gathered from the amended definitions we propose in section 4, namely:

> "Inquest" means inquest by a coroner concerning the circumstances of the death of any person.
>
> "Inquiry" means inquiry held by a coroner into the circumstances of a fire.

B. *Publication* (1964 report paragraphs *8-11)

12. For the most part, the recommendations made in the 1964 report in relation to the publication of the whole or any part of proceedings before a coroner do not require legislative attention. It is already within the discretion of a coroner to prohibit the publication of *evidence* (Coroners Act, 1960, s. 42).

13. But, as the recommendations of the 1964 report suggest, prohibiting the publication of evidence may not adequately meet all cases that arise. Where, for instance, suicide is involved, a more specific power of controlling what is published may be an advantage and in the public interest. It has been found to be so elsewhere. In particular, we are impressed by the safeguards contained in legislation of New Zealand and Queensland.[5] Section 21 of the Coroners Act 1951 (New Zealand) provides that:

> (1) Subject to the provisions of this Act, where it appears to the Coroner at the commencement or in the course of an inquest that the circumstances are such that it appears possible that death may have been self inflicted, he may direct that no report, or no further report, of the proceedings shall be published until after he has made his finding.
>
> (2) Where the Coroner finds that the death was self inflicted, no report of the proceedings of the inquest shall, without the authority of the Coroner, be published other than the name, address, and occupation of the deceased person, the fact that an inquest has been held, and that the Coroner has found that the death was self inflicted.

[5] The Queensland legislation is referred to in paragraph 14: *cf.* section 30 (4) of the Queensland Act.

14. We have also had regard to section 52 of the Coroners Act 1958-1972 (Queensland) relating to publication of questions disallowed or subject of warning to a witness that he is not obliged to answer—matters to which the 1964 report addressed itself. So far as is relevant here, section 52 states that:

> Every person who publishes or permits or allows to be published in any newspaper—
>
> (b) Any question at any inquest which the coroner—
>
> (i) Has forbidden or disallowed; or
>
> (ii) Has warned the witness he is not obliged to answer and has ordered shall not be published,
>
> commits an offence against this Act.[6]

15. With some alterations, and having regard to the provisions of section 59 of the Evidence Act, 1898, the foregoing New Zealand and Queensland models could, we think, advantageously be adopted here. The latter should, however, be extended to cover the case of a witness' refusing to answer a question on the ground that the answer might tend to incriminate him. Our proposals to that effect appear in section 3 (n) of the draft Bill forming Appendix E to this report (subsection (3) of the proposed new section 42A).

C. *Notification of Time and Place of Inquest or Inquiry* (1964 report paragraph * 18)

16. We substantially agree with what is said in paragraphs * 12-18 of the 1964 report concerning the need for a coroner hi some cases to inquire into matters affecting civil liability. That does occur in practice, and, for reasons such as those set out in paragraph *12, it is in the public interest that it should occur.

17. Section 17 of the Coroners Act, 1960, enables interested persons, by leave of the coroner, to appear personally or by counsel at any inquest or inquiry. We do not propose that this "by leave" requirement be changed. That, however, does not go to the question of notice of inquest or inquiry. We think that parties wishing to seek leave to appear under section 17 should be entitled to apply to the coroner for notification of the time and place of inquest or inquiry, and that the coroner should have a discretion similarly to notify parties whom he thinks have or may have an interest in the proceedings.

18. With amendment to meet our proposals, we think that the substance of section 29 of the Coroners Act 1958-1972 (Queensland) should be applied here. The section provides that:

> Time and Place of Inquest
>
> (1) Where any inquest is to be held the coroner shall fix the time and place of the commencement of the inquest.

[6] *Cf.* section 29 of the Coroners Act 1951 (N.Z.).

(2) The coroner may notify or cause to be notified in such manner and at such time as he sees fit any persons who, in the opinion of the coroner, have a sufficient interest in the subject or result of the inquest, of the holding of the inquest and of the time and place thereof.

(3) Every person whose conduct is likely, in the opinion of the coroner, to be called in question, and in the case of an inquest into a death, also every medical practitioner who, to the knowledge of the coroner, attended professionally the deceased person at or immediately prior to his death or during his last illness or viewed or examined the body of the deceased person at or shortly after death, and also every person who has made a post-mortem or other examination in compliance with a coroner's order under this Act of the body shall, unless in the opinion of the coroner it is impracticable so to do, be given reasonable notice hi such manner as the coroner sees fit of the holding of the inquest and of the time and place of the commencement thereof.

19. We do not recommend adopting subsection (3), but we do recommend making use of an adaptation of subsections (1) and (2), as appearing in a proposed new section 17A of the Coroners Act, 1960 (see section 3 (i) of the draft Bill forming Appendix E to this report).

20. Concerning the responsibility of coroners to ensure that inquests and inquiries are not taken beyond their proper bounds nor abused by parties to whom audience has been allowed, we quote, and endorse, what has been said in this connexion by the Ontario Law Reform Commission:

> The policy of the law ... is clear. The inquest is not to be used as a forum for discovery for subsequent civil litigation nor as an investigatory tool in criminal proceedings. Any weakening of this policy would be ... a serious denegation of due process of law in both civil and criminal matters.[7]

21. It is, we think, for the individual coroner to see to it that the policy of the law is maintained in these respects.

D. *Deaths Under or Following Anaesthesia*

22. Two matters arise here, one from paragraph *20 of the 1964 report, and another out of experience of the working of the Act over fifteen years. The first matter concerns the circumstances in which inquests can be dispensed with in cases of deaths under or following anaesthesia for operations. The second concerns the rights of interested parties to insist upon the holding of an inquest in such cases. We deal with these matters below: the first in paragraphs 23 to 28; the second in paragraphs 29 to 36.

[7] *Report on the Coroner System in Ontario* (1971), p. 100.

23. The law, as it now stands, has its source in the Registration of Births, Deaths and Marriages Act, 1973. Section 24 (7) of that Act prohibits the signing of a death certificate by a medical practitioner in respect of the death of a person "who, in the opinion of that medical practitioner":

> (e) has died while under, or as a result of, or within a period of twenty-four hours after the administration to him of, an anaesthetic administered in the course of a medical, surgical or dental operation or procedure, or an operation or procedure of a like nature.

Subsection (8) requires such a death to be reported to the officer-in-charge of a police station, and subsection (9) obliges that officer to inform a coroner as soon as practicable.

24. Section 11 (1) (f) of the Coroners Act, 1960, in like terms, gives a coroner jurisdiction to conduct an inquest; although section 11 (2) (b) (iii) gives him a discretion to dispense with that inquest if he is "of opinion that the manner and cause of the death are sufficiently disclosed". This power of dispensation applies to deaths under or following anaesthesia but not to deaths as a result of anaesthesia.

25. The point of difficulty is the qualification of section 24 (7) (e) of the Registration of Births, Deaths and Marriages Act, 1973, by the words "in the opinion of that medical practitioner". If death occurs under or within twenty-four hours after the administration of the anaesthetic there should be no opinion to be expressed. That must surely be a question of fact, not of opinion.

26. We think that the provision should be re-cast, so that its operation is not determined by "the opinion of that medical practitioner".

27. We have had regard to the proposals in the 1964 report that the period of twenty-four hours be extended. We are not satisfied, however, that there is a sufficient case for altering the law in this respect.

28. Section 24 (7) of the Registration of Births, Deaths and Marriages Act, 1973, would, if this recommendation is adopted, read as follows:

> (7) A medical practitioner shall not sign a certificate or notice under subsection (2) or (6)—
>
> (a) in respect of the death of a person who, in the opinion of that medical practitioner—
>
> (i) has died a violent or unnatural death;
>
> (ii) has died a sudden death the cause of which is unknown;

(iii) has died under suspicious or unusual circumstances;

(iv) has died, not having been attended by a medical practitioner within the period of three months immediately before his death ; or

(v) has died as a result of the administration to him of an anaesthetic administered hi the course of a medical, surgical or dental operation or procedure, or an operation or procedure of a like nature; or

(b) in respect of the death of a person who has died while under, or within a period of twenty-four hours after the administration to him of, an anaesthetic administered hi the course of a medical, surgical or dental operation or procedure, or an operation or procedure of a like nature.

29. The second matter we will consider was not raised in the 1964 report. It concerns section 11 (2) (c) of the Coroners Act, 1960, which provides that:

(c) The coroner shall not dispense with the holding of an inquest into the manner and cause of the death of a person who has died while under or within a period of twenty-four hours after the administration to him of, but not as a result of the administration to him of, an anaesthetic administered in the course of a medical, surgical or dental operation or procedure, or an operation or procedure of a like nature if within fourteen days after the death he is requested by a relative of such person to hold an inquest into die manner and cause of the death.

This paragraph does not apply where, pursuant to paragraph (a) of this subsection, the coroner dispenses with the holding of an inquest into the manner and cause of the death.

In this paragraph, "relative" means spouse, parent, or child who has attained the age of twenty-one years, or where there is no spouse, parent, or child who has attained that age, a brother or sister who has attained that age.

30. There are two difficulties about the section. In the first place, it can be set in motion only on the initiative of a "relative" (as defined) of the deceased. And in the second place, there is a limitation of time within which it may be used.

31. The definition of "relative" is very narrow indeed. One can visualize cases in which it might cause injustice. And what if there is no relative? A migrant, with no family in Australia, but living in close friendship with fellow migrants may die while under anaesthesia in hospital. His friends may be concerned that the circumstances of his death be publicly investigated, but they have no *locus standi* to apply to the coroner. The true relatives of the deceased, living overseas, may have neither the time nor the opportunity to avail themselves of the section. The death may be passed over without inquest, to the dissatisfaction of those principally seeking the reassurance of a public inquiry.

32. As the law now stands, cases like this may readily be imagined. While we are concerned that the section should not be so enlarged that vexatious requests for inquests are encouraged, we think that it should be open to a party establishing a reasonable interest hi the case to be at liberty to invoke the section.

33. In our view requests under the section should be able to be made not only by "a relative of such person", but also by any person who has, in the opinion of the coroner, a sufficient interest in the circumstances of the death in question.

34. Requests under the section must be made within fourteen days after the death. We think the limitation too restrictive. Most relatives are likely, in such cases, to be, to some extent, in a state of shock or distraction. They have many immediate problems on their minds in re-ordering their lives after the bereavement, quite aside from the burden of distress they may suffer. It is hardly likely that their first move will be to seek out a copy of the Coroners Act to establish that they have fourteen days to request that an inquest be held. It may not occur to them that there is an immediate need to seek legal advice.

35. We think that, although the price to be paid is the delay of certification of death in most cases of this kind, it would be better to give more flexibility so that injustice would be prevented in the minority of cases. We think that the matter should be sufficiently disposed of by extending the time for making application from fourteen to twenty-eight days after date of death.

36. In cases of severe hardship where the provisions of section 11 (2) (c) may be inadvertently passed over, there is still the possibility of obtaining relief by seeking an order of the Supreme Court under section 37 of the Act.

37. As a matter incidental to these proposals, we recommend that the definition of "relative" in the paragraph under review be amended to read, where material, "or child who has attained the age of eighteen years" instead of ". . . the age of twenty-one years". That accords with the law now prevailing as to the age of legal responsibility, and the definition should, we think, take account of that position (see, for

example, the definition of "relative" in section 23 (5) of the Registration of Births, Deaths and Marriages Act, 1973). Such an amendment would also have force for the purpose of sections 14 and 33A of the Coroners Act, 1960.

E. *Proof of Death* (1964 report paragraph *22)

38. From time to time disastrous accidents happen in which many lives are lost. Inquests concerning them tend to be delayed, sometimes extensively, because of time taken to identify bodies and to allow technical evidence to be gathered and other inquiries to be conducted before inquest.

39. In such cases there can be great inconvenience and distress to relatives because certification of death cannot be made, and grants of representation of the deceased's estate and realization of assets may be obstructed or delayed.

40. That problem is shared also by relatives or beneficiaries of those whose inquests are delayed for other reasons. We understand, for instance, from the Registrar-General that there are still nearly thirty inquests, outstanding from the year 1973 alone, in which certification of death cannot yet be made.

41. In all such cases it should be possible for the coroner, as soon as he can entertain evidence from which accurate particulars may be obtained of a deceased person's identity, and of the date, place and cause of his death, to proceed with a hearing. The particulars so obtained could then be notified under section 25 of the Registration of Births, Deaths and Marriages Act, 1973, the inquest being adjourned until any outstanding evidence was able to be received.

42. In may happen that, in such a case, the particulars first given of the cause of death will require revision in the light of the ultimate finding. What at the outset seemed to be an accidental death may, after detailed inquiry, turn out to have been suicide. It is not likely that there would be many cases needing revision. They would be attended to by the Registrar-General as corrections made pursuant to section 35 of the Registration of Births, Deaths and Marriages Act, 1973.

43. We recommend that there be inserted in section 25 of the Registration of Births, Deaths and Marriages Act, 1973, a new subsection (1A) as follows:

> (1A) Where in the course of an inquest concerning the circumstances of the death of a person it appears to the coroner, upon such evidence as he considers to be sufficient—
>
> (a) that he can determine the identity of, and date, place and cause of death of, the deceased person; and
>
> (b) that there will be delay in concluding the inquest or inquiry,

the coroner may, for the purpose of enabling registration of the death to be effected or completed, make the determination and notify in writing a local registrar of the particulars of the determination.

F. *Miscellaneous*

44. For the rest, the 1964 report generally speaks for itself and does not require legislative attention.

45. Findings of suicide are dealt with below (paragraphs 71-79 and Appendix D). It follows from what we say there that no amendment to section 29 (3) of the Coroners Act, 1960, as proposed *in* paragraph *23 of the 1964 report is necessary or warranted.

III OTHER MATTERS

A. *Magisterial Inquiries*

46. Section 11 of the Coroners Act, 1960, makes it a condition precedent to the holding of an inquest that the coroner be informed by a member of the police force of the death of any person "whose body is lying within the State of New South Wales".

47. That section is plain enough when a body is found. But in some cases, although death might be presumed (as, for instance, from the evidence of witnesses who saw a fisherman washed from rocks) the body cannot be discovered, or may be in an advanced state of decomposition or unable to be disinterred. The common law had a settled practice by at least Elizabethan times that such matters should not proceed before a coroner. He had to sit *super visum corporis* and, with his jury where appropriate, he satisfied himself, by inspection, of the cause of death.[8] Without a body, the manner and cause of death could still be inquired into, but by the taking of evidence before justices or, as the procedure has been called in this State, a magisterial inquiry.[9]

48. In *Foxley's Case* it was stated: "if one be *felo de se*, and cast into the sea, or conveyed or buried in so secret a manner that the coroner cannot have the view of the body, and by consequence he cannot inquire of it ... the justices of peace, justices of oyer and terminer, and all others who have power and authority to inquire of felonies, may take a presentment of it, for it is felony".[10] The common law continued to be developed along those lines in a series of seventeenth century cases of which we here refer only to some examples.

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[8] *Ex parte Brady; Re Oram* (1935) 52 W.N. (N.&W.) 109 at 111.

[9] There is further commentary on the historical development of magisterial inquiries in *R.* v. *Registrar-General; Ex parte Lange* [1950] V.L.R. 45 at 47-50 *(per* Fullagar, I.) and other authorities there cited.

[10] 5 Co. Rep. 109a at 110b [77 E.R. 224].

49. In an entry in Rolle's *Reports* it is said:

> Nota per Coke, si home soie mist in ewe & son *corps ne poet estre trove* per que ceo ne poet estre present devant le coroner quel remedie serra a faire son biens destre forfet, ad estre rule—que serra *present & trove devant les justices del' peace, &* donque son biens serra forfet.[11]

That was cited in *Case 556* (1676) in Freeman's *Reports* as authority for the proposition: "where the body cannot be found, that it may be inquired of before the justices of peace in their sessions".[12]

50. There had been other authority on the point over the several preceding years. In *R.* v. *Parker* a coroner's inquest was quashed for having proceeded on erroneous legal grounds and a new inquest was ordered:

> But then it was moved what should be done in this case, for the party being dead and buried for two years, there could be no other view [of the body] in this case. *Et per Curiam,* that may be supplied by commission of inquiry; or the justices of the peace, or of assize, may inquire of it without commission.[13]

Shortly afterwards the same conclusion was reached in *R. v. Aldenham* where "the inquest was quashed for want of the word *murdravit.* And a new inquisition was appointed to be taken before justices of the peace".[14]

51. The effect of the common law is stated in a number of secondary sources of which a few illustrations will suffice. In Hawkins' *Pleas of the Crown* it is said:

> And such inquisitions ought to be by the coroner *super visum* corpora, if the body can be found … But if the body cannot be found so that the coroner, who has authority only *super visum corporis,* cannot proceed, the inquiry may be by justices of the peace, who by their commission have a general power to inquire of all felonies.[15]

52. In Sewell's *A Treatise on the Law of Coroner* it is similarly said:

> Where the body cannot be found, or is so putrefied 'that a view would be of no service, the Coroner without a special commission cannot take the inquest; but in such cases it shall be taken by justices of the peace, or other justices authorized by the testimony of witnesses.[16]

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[11] "17 Coroner", 1 Rolle 217 [81 E.R. 443].
[12] 1 Freeman 419 [89 E.R. 312].
[13] 2 Lev. 141 [83 E.R.. 488]; also reported in 3 Keble 489 [84 E.R. 837].
[14] 2 Lev. 152 [83 E.R. 494].
[15] 8th ed. (1824) Vol. 1, p. 79.
[16] (1843) p. 156.

53. Again, in an edition of Jervis' *Coroners Acts* it appears that:

> So essential is the view to the validity of 'the inquisition, that if the body be not found, or have lain so long before the view, that no information can be obtained from the inspection of it, or if there be danger of infection by digging it up, the inquest ought not to be taken by the coroner, unless he have a special commission for that purpose: but as the proceeding before the coroner is one only of several, application should be made in such cases to the magistrates, or justices authorized to inquire of felonies, etc., who, without viewing the body, may take the inquest by the testimony of witnesses.[17]

54. The expression "magisterial inquiry" is not used in the common law and appears not to have been used in New South Wales much before the middle of the nineteenth century. R, H. Mathews, in his *Handbook to Magisterial Inquiries and Coroners' Inquests in New South Wales* wrote that:

> In this Colony no special Statute has been passed authorizing the holding of Magisterial Inquiries into the cause of death of any person, or regulating the procedure thereat, but an implied authority is given by 'the Medical Witnesses Act, 1 Vic. No. 3, to which practical effect is given by a notice which appeared in the *Government Gazette,* No. 22, page 300, of 18th March, 1845. This notice is dated 15th March, 1845, and after defining the limits within which Coroners should exercise their jurisdiction, states as follows: "In police districts in which there may be no Coroners, the inquiries into the causes of any sudden deaths which may happen within the same are to be conducted by the Police Magistrate, if there be one, or if not, by *any Justice of the Peace* of the district, under the powers granted by the Act of the Governor and Council, 1 Victoria No. 3".[18]

55. Fragments of evidence give a clue to the development of the magisterial inquiry hi New South Wales. In 1862, Attorney General Hargrave wrote an advice in which he referred to "the recent increase of 'Magisterial Inquiries' in lieu of 'Coroners' Inquests' ",[19] "Magisterial inquiry" appears in the fourth (1881) edition of Wilkinson's *Australian Magistrate,* though not in earlier editions. It is there said:

> *Magisterial inquiries, when to be held:* These inquiries should only be instituted, where the local Coroner is unable to hold an inquest, as where the body cannot be found.[20]

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[17] 6th ed. (1898) p. 28.

[18] (Sydney 1890), p. 9.

[19] Quoted in T. E. MacNevin, *Manual for Coroners and Magistrates in New South Wales* 3rd ed. (Sydney 1895), p. 77.

[20] At p. 136.

56. The point was elaborated upon in MacNevin's *Manual for Coroners and Magistrates in New South Wales* where there is a chapter "Magisterial Inquiries before Justices of the Peace in cases of Death". The chapter states that:

> A magisterial inquiry should only be held when the local Coroner is unavoidably absent, or is unable from some sufficient cause to hold the usual and proper inquest, or in those districts in which there is no Coroner appointed, or where the body has lain so long that no information can be obtained from an inspection of it, or is so decomposed that a view would be of no service and the Coroner cannot, therefore, hold the inquest, and such inquiries are to be conducted, if possible by the Police Magistrate (if there be one), or, if not, by any Justice of the Peace.[21]

57. In the long title to the Coroners Act, 1898, the expression "Magisterial Inquiries" was used, but in section 7 and following sections such inquiries were referred to in the traditional terms: "any inquiry by a justice or justices of the peace touching the death of any person". The Coroners Act, 1912, made some passing references to magisterial inquiries but did not regulate them in any way. In particular, section 4 of that Act provided:

> Every stipendiary or police magistrate shall, by virtue of his office, have the powers and duties of a coroner in all parts of the State, except the metropolitan police district:
>
> Provided that nothing herein contained shall affect any jurisdiction conferred on any such magistrate by any commission of the Crown issued to him or the power or jurisdiction of any such magistrate to hold magisterial inquiries.

58. In New South Wales the logical distinction between a coroner's inquest held *super visum carports* and a magisterial inquiry without view of the body has been destroyed by the Coroners Act, 1960. The coroner's exemption from having to view the body, conferred by section 15, got rid of the last link with that ancient practice by which the coroner, in effect, made his finding from his own inspection.

59. But whereas the Act specifies with some particularity what is a coroner's inquest and how and when it should be held, it is silent about magisterial inquiries except broadly to define[22] and otherwise refer to them. Apart from the existence of a body, the only difference between the procedures of an inquest and of a magisterial inquiry is that a jury may be requested or required at an inquest,[23] whereas no jury is impanelled at a magisterial inquiry. In the case of inquests and magisterial inquiries alike "the rules of procedure and evidence applicable to proceedings before a court of law" do not have to be observed.[24]

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[21] 3rd ed. (Sydney 1895), p. 71-72.
[22] Section 4.
[23] Section 14.
[24] Section 18.

60. It is, surely, an anomaly that one need go no further than the Act to ascertain the rules relating to coroners (it has been described by McClemens, J., as being in that connexion "a code in substitution for the system which existed theretofore"),[25] whereas the rules concerning magisterial inquiries have to be established from the common law, usually of great antiquity.

61. Magisterial inquiries may be innocuous enough not to warrant their displacement. But they do countenance the possibility that a legally unqualified justice of the peace might still exercise jurisdiction in lieu of a coroner in some country areas; a possibility that seems contrary to the spirit of the modern legislation and to present standards in the administration of justice.

62. We think that it would be a practical course to invest coroners with jurisdiction under the Coroners Act to deal with cases where a body has been destroyed or is irrecoverable. A precedent for such legislation is to be found in section 18 of the Coroners Amendment Act 1926 (U.K.).[28] It has been adopted, with some changes, in section 8 of the Coroners Act 1951 (New Zealand), in section 9 of the Coroners Act 1958-1972 (Queensland), and in section 10A of the Coroners Act 1958 (Victoria).

63. The Queensland legislation is in the following terms:

> Where a coroner has reason to believe that a death has occurred in such circumstances that an inquest into the death ought to be held and, because the body has been destroyed or cannot be recovered, the inquest cannot be held except by virtue of the provisions of this section, he may report the facts to the Under Secretary, and the Minister may, if he considers it desirable so to do, direct the inquest to be held, and the inquest shall be held forthwith upon receipt of the direction by the coroner making the report or by such other coroner as the Minister may direct, and the provisions of this Act shall, with and subject to all necessary adaptations, apply to every such inquest.

64. We propose that a provision along similar lines be adopted as section 11A of the Coroners Act, 1960, all reference to magisterial inquiries being deleted from that Act and from the Registration of Births, Deaths and Marriages Act, 1973. Our proposals are set out in legislative language in the draft Bill forming Appendix E to this report (see section 3 (d)).

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[25] *Ex parte Minister of Justice; Re Malcolm* [1965] N.S.W.R. 1598 at 1601.

[26] See also *Report of the Committee on Death Certification and Coroners* (the "Brodrick Report"), (Cmnd. 4810), London 1971, p. 148-149.

B. *Deaths Outside New South Wales*

65. We are concerned here with problems that arise where a person who had a nexus with New South Wales is missing and is believed to have died outside the State. In this event, the Coroners Act, 1960, does not permit the circumstances of the death to be investigated unless the body is recovered and is brought to a place within the State. We think the Act to be defective on this account.

66. A situation of this kind was examined by a magisterial inquiry held in June 1974, the papers of which have been made available to us by the Department of the Attorney General and of Justice. The facts in that case were that a light plane was chartered on the south coast of New South Wales to make a day's business trip to Victoria. The business was not completed until late in the afternoon by which time light and weather conditions were rapidly deteriorating. The pilot resolved regardless to return home with his passenger. An aircraft answering the description of his plane was seen or heard at points along the return path. However, the pilot lost his way in cloud, and ran out of fuel. From radio signals received it was presumed that the aircraft crashed into the sea about thirty miles from the coast of New South Wales. Neither the wreckage nor bodies were recovered.

67. A magisterial inquiry was requested by relatives of the missing pilot and passenger and, although held *pro forma,* the magistrate was constrained to find that he had no jurisdiction, there being no body within 'the jurisdiction.

68. In our view, a coroner should have jurisdiction to hold an inquest in some cases of extra-territorial deaths, whether or not the body is lying in New South Wales or elsewhere or has been destroyed. The cases we have in mind are those involving the deaths of persons having a territorial nexus with this State.[27] The territorial nexus necessary to invoke jurisdiction should, we think, be ordinary residence in New South Wales at the time of death, or death in the course of a journey to or from some place in New South Wales, or that the deceased person was last on land at some place in New South Wales.

69. Where, however, events occurring outside the State might be made the subject of investigation within the State, we think it right that a decision to make the investigation should be taken by government, not by a coroner. Matters that may possibly affect relations with other places and property should be referred to government for decision. We propose therefore that any decision to hold an inquest concerning an extra-territorial death should be made by the Minister.

70. Our proposal is set out in the suggested new section 11c of the Coroners Act, 1960 (see section 3 (d) of Appendix E to this report). A consequential amendment of the Registration of Births, Deaths and Marriages Act, 1973, is set out in section 6 (a) (i) of Appendix E.

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[27] See generally, **Law** Reform Commission (N.S.W.) *Working Paper on Legislative Powers* pp. 74—88.

C. *Suicide*

71. Section 3 (5) of the Coroners Act, 1960, provides that: "The repeal of any enactment by this Act shall not revive the verdict of felo de se". The verdict of felo de se had been "abolished" *in* 1876 by 39 Vic. No. 22 s. 1.[28]

72. Until that verdict was abolished, felo de se was the proper verdict where it was found 'that the deceased, being "of the age of discretion, and *compos mentis"* voluntarily had killed himself.[29] A matter which has been of some concern to coroners is whether it is open to them to find that the deceased "committed suicide" or "suicided" or to make the like finding by other words which include the word "suicide". Is such a finding of "suicide" the same verdict as that otherwise expressed by the verdict of felo de se? We consider that it is. We state our reasons in Appendix D. A finding of "suicide" is not open to a coroner.

73. How, it may be asked, can a coroner discharge 'his duty to find the manner and cause of death if he is precluded from finding "suicide" notwithstanding that 'the deceased deliberately killed 'himself? The answer is that the abolition of the finding of "suicide" (that is, the verdict of "felo de se") does not preclude the coroner from ascertaining the facts and stating them. What it precludes 'him from doing is drawing and stating the legal conclusion that the facts so found constitute the crime of "suicide". Thus he may find that the deceased died from (a named) poison which he administered to himself with intent to take his own life. All that the coroner is precluded from doing is going on to express what, in most cases, would be the correct legal conclusion—namely that the deceased committed "suicide".[30]

74. We do not see that abolition of the finding of "suicide" presents any problems for coroners.

75. But is there any justification for precluding a coroner from making a finding of "suicide" even 'though he is not precluded from finding all the facts from which, inescapably, the legal conclusion is that the deceased did commit suicide? We consider that there is justification. There are two grounds.

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[28] The section provided: "From and after the passing of this Act the verdict of felo de se shall be and the same is hereby abolished. Provided that nothing in this Act contained shall affect the law with respect to attempts to commit suicide." The Coroners' Act, 1898, a consolidating Act, re-enacted this section as section 8 of that Act. The Coroners' Act, 1898, was repealed by the Coroners Act, 1912, which also was a consolidating Act. Section 19 of that Act provided: "The verdict of felo de se is abolished." The Coroners Act, 1912, was repealed by the Coroners Act, 1960.

[29] *Pleas of the Crown,* Dogherty's ed. (London 1800) Vol. 1 **Ch. XXXI, p. 411.**

[30] It would not be the correct legal conclusion in all cases. For example, "suicide" would not be the proper finding if the deceased was insane.

76. The first is that the hurt which people sustain when someone close to them takes his own life is often grievous and the law should be astute not to add to it unnecessarily. For many people the word "suicide" is associated with moral guilt. There are those who would be more pained by the public finding of "suicide" and the recording of that finding for the purposes of the death certificate than they would be of the public finding and recording of the relevant facts—such as that "the deceased died from [a named] poison which was self-administered". It would be presumptuous of the law to say that, if there is no rational distinction between these findings, these people are not to be spared from the greater pain. In many cases, moreover, there will be a rational distinction because the findings of the coroner may not be such that the inference of "suicide" is inescapable. For example, the coroner may not have made any finding as to the sanity of the deceased at the relevant time; or he may have found that the deceased was in a "depressed state of mind", leaving it equivocal whether the deceased was sufficiently sane at the time to have committed "suicide". This may be important. For many people insanity removes the moral guilt from death by one's own hand: just as in law it takes away the criminality.

77. The second ground is that, in New South Wales, suicide still is a crime. This State has not followed the United Kingdom in providing that suicide no longer is a crime.[31] Since the Coroners Act, 1960, it is not any part of the functions of a coroner to find that a person is guilty of a crime.

78. We do not consider that the Act should be amended to permit a coroner to find that the deceased committed suicide.

79. Section 29 (1) of the Act requires the coroner to "set forth in writing his . . . findings". Subsection (3) provides that the "writing . . . shall not indicate or in any way suggest that any person is guilty of any indictable offence". These provisions do not preclude a coroner from making findings which suggest, or indeed make inescapable, the conclusion that the deceased suicided. The deceased cannot be indicted for the crime. In the context of the Act, particularly section 28, it is clear that the provisions are not directed to criminal conduct in respect of which there is no person who can be indicted.

D. *Discretion to Resume Inquest or Inquiry*

80. Section 28 of the Coroners Act, 1960, provides by its first two subsections for the adjournment *sine die* of inquests or inquiries in cases where a person is charged with an indictable offence, it being in issue whether that person caused a death or fire the subject of the inquest or inquiry, or where the inquest or inquiry itself establishes a *prima facie* case against that person.

[31] Suicide Act, 1961 (U.K.).

81. Subsection (3) of section 28 gives a discretion to the coroner to resume the adjourned inquest or inquiry in circumstances there specified. The discretion is absolute and, in our view, needs modification.

82. In *Bilbao* v. *Farquhar* [32] the Court of Appeal considered an application for an order in the nature of *mandamus* brought against a coroner by the nearest of kin of a deceased person whose death had been the subject of an inquest. The inquest was adjourned when a charge of murder was laid against certain parties, but they were not committed for trial. The applicant sought to reopen the inquest, but the coroner declined to exercise his discretion under section 28 (3). The Court of Appeal, while considering that the refusal to reopen the inquest was objectionable, found itself unable to override the discretion.

83. According to Hutley, J.A., in *Bilbao's Case:*

> Just because [the coroner's] discretion is **so** absolute that this Court is not entitled by order to overbear his will, it is important that, in exercising his discretion to determine what he should do, he has regard only to those factors which it is appropriate for him to have. He cannot be compelled to hold an inquest, but his consideration of whether he will resume an inquest can be subject to the superintendence of this Court, to ensure that he only has regard to relevant considerations and does not disregard them.[33]

84. His Honour went on to demonstrate that the coroner "constructively declined a jurisdiction he should have exercised" and that, although the issue of a *mandamus* would necessarily be futile, there was "sufficient evidence of misapplication of principle to justify an order that he should reconsider the application ... to resume the coronial inquiry according to law".[34]

85. Bowen, J.A., in the same case, observed that:

> In deciding whether to resume an inquest under s. 28 (3), the coroner has to consider whether the manner and cause of death has been established in the course of the committal proceedings or the trial. If they have, there is no need to resume. If they have not, then his duty under s. 11 is still operative. As I have said, s. 11 is expressed to be "subject to" the Act. Accordingly this duty does not override the discretion conferred by s. 28 (3). It is not absolute. But this is the matter, which in exercising his discretion, he must have hi the forefront of his consideration. The purposes underlying coronial inquiries; the satisfaction of the legitimate concern of relatives;

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[32] [1974] 1 N.S.W.L.R. 377.
[33] *Id.*, at 381.
[34] *Id.* at 385.

> the concern of the public in the proper administration of institutions, gaols and the care of persons in custody and the like are all matters for consideration. Matters of public as well as private interest, including the position of discharged or acquitted persons, are matters proper for consideration. If a coroner, upon a proper consideration of all these matters, comes to the conclusion that the resumption of an inquest would be futile or a waste of time, that is, in effect, that the duty laid down by s. 11 could not be usefully undertaken, he would be justified in refusing to resume the inquest.
>
> In the present case the defendant did not in his reasons for judgment say that it would be futile or a waste of time to resume the inquest. He expressed three reasons for not resuming . . . But reading his reasons for judgment, I am driven to the conclusion that he has not applied correct principles hi doing so.[35]

86. Hardie, J.A., concurred with the other two members of the Bench yet, notwithstanding the expressions of doubt about the propriety of the exercise of discretion, and the invitation to the coroner to reconsider his refusal to resume, the coroner adhered to his decision. We apprehend that the public may feel some uneasiness about a discretion of so absolute a nature that a coroner may disregard the considered view of the Court of Appeal that his discretion has been exercised wrongly.

87. In olden times the King's Court had more than a supervisory jurisdiction over coroners. It was, according to *Stanlack's Case* in the reign of Charles II, "supream coroner throughout England".[36] We think it appropriate that, *in* New South Wales, the Supreme Court should exercise like powers of oversight and review.

88. With slight amendment, section 37 of the Coroners Act, 1960, would make the powers specific. We propose that the section operate in its broadest terms, the need for application by, or under the authority of, the Minister being dropped, and the Court's authority being extended to ordering that an inquest or inquiry be held or resumed.

89. In our view, the public interest is well served if a court with the independence and impartiality of the Supreme Court is empowered, in effect, to direct that a public examination be held into the thoroughness or otherwise of an official investigation of violent or unusual death or unusual fire.

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[35] *Id.*, at 388, 389.

[36] 1 Vent. 181 [86 E.R. 123]. *Cf.* the statement of Glyn, C.J., in *Barclee's Case* (1658): "Chief Justice d' Angletter est Ch' Coroner de tout Angleter", 2 Sid. 101 [82 E.R. 1279 at 1280]. For the court's supervisory power under the writ *ad melium inquirendum*, now superseded in England and, presumably, superseded in this State by section 37 of the Coroners Act, 1960, see Jowitt, *The Dictionary of English Law*, p. 52-53; Jervis *On Coroners* 6th ed. (1898) p. 55; *Ex parte Routledge* (1943) 60 W-N. (N.S.W.) 184.

90. In this context, we note the words in paragraph *2 of the 1964 report—

> ".. . there is a real and proper demand for the investigation of deaths under certain circumstances, and we instance the deaths of persons in police custody, in gaols and in some cases in hospitals. This is so because there is felt to be a risk of the facts relating to such deaths being suppressed. In such cases ... the coroner is usually assisted, not by the police but by counsel briefed by the Crown ..."

91. As we see it, counsel briefed by the Crown should always assist coroners in inquests concerning deaths in police custody or in gaols. This should not be a usual practice subject to change at the discretion of a public official but an invariable practice. To us, in these cases, public disquiet will be quelled only where a person who is seen to be independent and impartial takes part in both the pre-inquest inquiries and in the inquest itself.[37]

E. *Dispensing with Inquests*

92. Section 11 (2) of the Coroners Act, 1960, states the circumstances in which a coroner may dispense with an inquest. We are here concerned with its paragraph (b)[38] which provides that:

> Where after consideration of any information in his possession relating to the death, of which he has been informed under subsection one of this section, of a person who—
>
> (i) has died, and in respect of whom a medical practitioner has not given a certificate as to the cause of death;
>
> (ii) has died, not having been attended by a medical practitioner within the period of three months immediately before his death; or
>
> (iii) has died while under or within a period of twenty-four hours after the administration to him of, but not as a result of the administration to him of, an anaesthetic administered in the course of a medical, surgical or dental operation or procedure, or an operation or procedure of a like nature,
>
> the coroner is of opinion that the manner and cause of the death are sufficiently disclosed, he may, subject to paragraph (c) of this subsection [relative's right to request inquest], dispense with the holding of an inquest into the manner and cause of the death of such person.

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[37] Our inquiries show that in recent years police officers assist coroners in all cases.

[38] We have commented on section 11 (2) (c) in paragraphs 29-37 above.

93. The subsection seems to us to be more restrictive than is desirable. Over the past few years, statistics from the City Coroner's Court (Sydney) have demonstrated,[39] in broad terms, that two of every three inquests into deaths are dispensed with. Yet, even with that relaxation, there are so many hearings that extended delays are common. We do not, of course, propose that a wider dispensing power be given merely to enable arrears to be swept under a carpet. But we are persuaded that too many cases are brought to a hearing when it is obvious, alike to the coroner and interested parties, that no useful purpose can be served by the inquest.

94. The matter came similarly under review in England by the Committee on Death Certification and Coroners (the "Brodrick Committee") which published its report in 1971.[40] The conclusion reached by the Committee, in the presently material respect, was that:

> The requirement that an inquest should invariably be held on all "violent or unnatural" deaths has meant that some inquests are now held which, in view of a number of our witnesses, serve little purpose, Several witnesses suggested that a coroner should have power to dispense with an inquest in certain cases. The British Medical Association, for example, suggested that the power to dispense should be extended to "simple accident cases" and the Police Federation made a similar suggestion in respect of "cases where the verdict is a mere formality". The suggestions of other witnesses varied from a proposal that the coroner should have virtually a complete discretion to one that he should have no discretion at all. Our own conclusion, based on 'the evidence submitted to us and on *a priori* grounds is that the existing law is too inflexible in 'that it requires the coroner to hold an inquest on a number of occasions hi which there seems to be no reason in the public interest for doing so. Clear cases of suicide, some deaths of elderly persons following falls at home and certain road

[39] The following figures have been furnished to us by the City Coroner:

Year	Inquests Held (Death)	Inquests Dispensed with (Death)	Inquests Held (Fire)	Inquests Dispensed with (Fire)
1970	827	1643	8	477
1971	930	1893	9	548
1972	1205	2565	8	956
1973	1368	2768	16	934
1974	1177	2965	10	1177

[40] Cmnd. 4810. *Cf.* report of the Wright Committee (1936) Cmnd. 5070, Chapter IX.

> accident deaths are most often quoted as examples of unnecessary inquests, but examples can be found within each of the categories of death in which an inquest is mandatory. We are satisfied that the only way to improve the situation is to give to the coroner what will be virtually a complete discretion as to whether or not he should hold an inquest.[41]

95. The Committee went on to elaborate upon their recommendation, proposing that there be three exceptions to the coroner's discretion. In these cases the holding of an inquest would be mandatory:

(a) deaths from suspected homicide,[42]

(b) deaths of persons deprived of their liberty by society, and

(c) deaths of persons whose bodies are unidentified.[43]

With some adaptation, we think that this assessment and recommendation could well apply in New South Wales.

96. In most respects we are disposed to adopt the extended reasons published by the Committee in support of their proposals, and an extract of that portion of the Committee's *Report* forms Annexure C to this report.

97. We note that very wide .powers of dispensing with inquests have been conferred on coroners in some Australian States and in New Zealand. In South Australia, the Coroners Act, 1935, was an early instance. Its section 11, not expressly re-enacted by the Coroners Act, 1975 (S.A.), was as follows:

> (1) Where, after considering any information as to any death or fire, the coroner deems an inquest unnecessary, he shaft forward to the Attorney-General a notice stating that he deemed an inquest unnecessary, and the reason for coming to that opinion.
>
> (2) Nothing in this section shall be deemed to give any discretion to a coroner to hold an inquest or not where pursuant to any law the coroner is required to hold an inquest.

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[41] At p. 157-158, par. 14.08. In commentary on the report, Thurston, a London coroner and author of learned works on the law relating to coroners, remarked that: "most coroners will welcome these proposals, for little is gained by sitting in public on deaths from simple falls, alcoholism, pneumoconiosis, undisputed suicides and some road accidents", *Justice of the Peace* (1971) Vol. 135, 844.

[42] If our recommendations concerning suicide (paragraphs 71-79) above are adopted, cases of suicide will not fall into this category of mandatory inquest.

[43] Cmnd. 4810, p. 158, para. 14.10.

98. Section 6 of the Coroners Act 1951 (New Zealand) makes the following provision:

> (1) Where any sudden death of which 'the cause is unknown is reported to a Coroner and he is of opinion that further inquiries or a *post mortem* examination may prove an inquest to be unnecessary, he may direct any inquiries he thinks proper to be made and may authorize any registered medical practitioner to hold a *post mortem* examination of the body and to report the result thereof to him in writing.
>
> (2) Where the Coroner, as a result of the *post mortem* examination or of inquiries made by him, is satisfied that the death was due to natural causes and did not take place in such place or in such circumstances as to necessitate the holding of an inquest in accordance with the requirements of any enactment, he may decide not to hold an inquest.
>
> (3) If, in accordance with this section, a Coroner decides not to hold an inquest he shall, in the prescribed form, notify the Secretary for Justice of his decision.

99. Part of section 16 of the Coroners Act 1958-1972 (Queensland) may also be noticed here. Where material it provides that:

> (1) (a) ... where 'the coroner as a result of his inquiry, whether with or without a *post mortem* examination, or of an inquiry made pursuant to any other Act by any other person, is satisfied—
>
> (i) That the death was due to natural causes and did not occur in such place or in such circumstances as to require 'the holding of an inquest; or
>
> (ii) That no good purpose will be served by the holding of an inquest,
>
> then, in the case set forth in subparagraph (i) aforesaid, he may decide, and in the case set forth in subparagraph (ii) aforesaid, he may recommend to and for the decision of the Under Secretary, that the holding of an inquest is unnecessary.
>
> (b) Upon receipt from a coroner of a recommendation made under paragraph (a) of this subsection, the Under Secretary may decide, with or without further inquiry for that purpose, that the holding of an inquest is unnecessary . . .
>
> (4) Nothing in this Act shall be read as relieving a coroner from the obligation of holding an inquest into a death where pursuant to any other Act the coroner is required to hold an inquest, or where under the provisions of this Act the Minister has directed that an inquest be held by him.

(5) Notwithstanding that the coroner or the Under Secretary has decided under this section that the holding of an inquest is unnecessary, the Minister may direct that an inquest be held and the coroner so directed shall forthwith comply with that direction and proceed to hold an inquest.

100. We are not persuaded that enacting a transcript of any of these Australasian precedents would meet fully .the objects we have in mind. And we think that the proposals of the Brodrick Committee are in some respects superior to these precedents. But we draw attention to what has been done elsewhere because it lends weight to our suggestion that the existing powers of dispensation in this State are too narrow.

101. If recommendations along the lines of the pertinent part of the Brodrick Committee *Report* are adopted here it will be necessary that some safeguards apply against the abuse of a coroner's discretion to dispense with inquests. There is already a powerful safeguard in section 37 (1) of the Act whereunder the Supreme Court may order an inquest to be held.

102. Interested parties would be in a better position to assess the desirability or otherwise of seeking the Supreme Court's intervention under that section if they had access to a coroner's reasons for dispensing with an inquest. There should, we think, be legislative provision for the coroner's reasons to be made public on request. Any interested party dissatisfied with the decision and the reasons supporting it could then apply to the Court under section 37 (1).

103. The proposals of the Brodrick Committee have not been reduced to legislative language, but we set out our suggested amendment in Appendix E to this report (see section 3 (d) and the proposed new section 11B (4) of the Act).

F. *Deaths of Elderly Persons After Accident*

104. Section 24 (7) of the Registration of Births, Deaths and Marriages Act, 1973, provides that a medical practitioner shall not sign a certificate or notice of death in respect of the death of a person:

who, in the opinion of that medical practitioner—

(a) has died a violent or unnatural death;

(b) has died a sudden death the cause of which is unknown;

(c) has died under suspicious or unusual circumstances;

(d) has died, not having been attended by a medical practitioner within the period of three months immediately before his death; or

(e) has died while under, or as a result of, or within a period of twenty-four hours after the administration to him of, an anaesthetic administered in the course of a medical, surgical or dental operation or procedure, or an operation or procedure of a like nature.

105. A problem arises here in some cases of elderly persons who die after confinement to bed following serious falls. It is a question whether the cause of death, often pneumonia, can be said to be so related to the injury sustained in falling as to render the death "violent or unnatural". The question is a medical one.

106. The existence of the problem has long been recognized. It was said in 1958 in Thurston's *Coroner's Practice* that:

> Latitude is possible [in the case] of the fractured femur in the old person. Such injuries are common and result from trips and falls in the aged. If they directly lead to death the legal nature of the incident is clearly accidental. However, frequently the decline which follows die fracture is ascribable to natural disease. Opinion must play a very large part in any given case. Generally speaking, the longer the period between the fracture and death, the less is the likelihood of an accidental cause . . . Excessive zeal in making inquiry into simple falls in the aged serves no useful purpose and is not in the public interest.[44]

107. In practice, the matter still causes difficulty in New South Wales.[45] It is because of the problem of causation. According to McClemens, J., that problem "has bedevilled philosophers for centuries and will do so in the future. If a man is knocked down by a car and the injury to his system is such that it causes heart failure, does he die from injury or from heart failure? If a senile person who has been sinking for weeks slowly into death contracts a terminal pneumonia and that actually carries him off, does he die of senile degeneration or or does he die of terminal pneumonia?"[46]

108. It is not surprising that, if any element of doubt occurs about causation of the death of an elderly person after a violent accident, a medical practitioner will be loath to bear all responsibility, and possible risk of censure, for, in effect, taking it upon himself to dispense with an inquest.

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[44] *Id.*, at p. 40.

[45] K. M. Waller, *Coronial Law and Practice in New South Wales* (Sydney, 1973), p. 139,

[46] Ex *parte Minister of Justice; Re Malcolm* [1965] N.S.W.R. 1598 at p. 1604.

109. The law should not be officious and inflexible about these matters. Whether the deceased was elderly and suffered a severe accidental injury to which his death was attributable, and which accident was not caused by the act or omission of any other person, a medical practitioner being satisfied that no suspicious circumstances appear to attach to the accident should be at liberty to sign a certificate or notice of death.

110. By "elderly", for this purpose, we think that the age of sixty-five years or upwards might be specified. We also consider that the dispensation should not apply in the case of deaths following accidents sustained in hospitals as defined by the Public Hospitals Act, 1929, in private hospitals or rest homes as defined by the Private Hospitals Act, 1908, or in any of the institutions specified in section 11 (1) (h) of the Coroners Act, 1960.

111. Our recommendation is that there be added to section 24 of the Registration of Births, Deaths and Marriages Act, 1973, a new subsection (7A) as follows:

(a) Where a medical practitioner is of opinion that a person of the age of sixty-five years or upwards has died, in circumstances other than those specified in paragraphs 7 (a) (ii), (iii), (iv) or (v) or 7 (b), after sustaining an injury by accident, which accident in the opinion of the medical practitioner—

(i) was attributable to the age of the person;

(ii) contributed to the death of the person;

(iii) involved no suspicious nor unusual circumstances; and

(iv) was not caused by any act or omission of any other person;

then, notwithstanding subsection (7), the medical practitioner may sign a certificate or notice under subsection (2) or (6) in respect of that person.

(b) Paragraph (a) does not apply to deaths following injury by accident which accident occurred in any hospital within the meaning of the Public Hospitals Act, 1929, in any private hospital or rest home within the meaning of the Private Hospitals Act, 1908, or in any of the institutions or under any of the circumstances referred to in section 11 (1) (h) of the Coroners Act, 1960.

(c) A certificate or notice signed pursuant to this subsection shall state that it is so signed.

IV SUMMARY OF RECOMMENDATIONS

Coroners Act, 1960

112. We recommend an enlargement of the definitions of "inquest" and "inquiry" (see paragraphs 7-11, and section 3 (b) (i) and (ii) of draft Bill).

113. We recommend that a coroner be given power to prohibit publication wholly or in part of an inquest hi progress or concluded where suicide is suspected or established; and that publication of certain questions asked during the examination of witnesses at an inquest or inquiry be prohibited (see paragraphs 12-15, and sections 3 (m) and (n) of draft Bill—proposed new sections 42 (2) and (3) and 42A (3)).

114. We recommend that the coroner be obliged to notify specified persons of the time and place of the holding of an inquest or inquiry (see paragraphs 16-21, and section 3 (i) of draft Bill—proposed new section 17A).

115. We recommend that the time within which interested persons may request the holding of an inquest under section 11 concerning deaths under or following anaesthesia be extended from fourteen to twenty-eight days; that persons other than relatives be enabled to make such request; and that the definition of "relative" be amended (see paragraphs 29-37, and section 3 (d) of draft Bill—proposed section HB (3) (e)).

116. We recommend that "magisterial inquiries", as now recognized by the Coroners Act, 1960, be abolished, and that in all cases where a "magisterial inquiry" is now held before a justice or justices touching the death of any person, an inquest be held by a coroner (see paragraphs 46-64, and sections 3 (b) (iii), 4 and 5 of draft Bill).

117. We recommend that jurisdiction be conferred on coroners to conduct inquests into deaths occurring outside New South Wales where some territorial nexus with New South Wales can be established (see paragraphs 65-70 and section 3 (d) of draft Bill—proposed new section 11c).

118. We recommend that the Supreme Court be invested with power to require the resumption of an inquest adjourned under section 28 (1) or (2) of the Coroners Act, 1960, (see paragraphs 80-91, and section 3 (1) of draft Bill).

119. We recommend that the discretion of a coronor to dispense with the holding of inquests (other than those into deaths from suspected homicide, excepting suicide; deaths of persons deprived of their liberty by society; and deaths of persons whose bodies are unidentified) be widened (see paragraphs 92-103, and section 3 (d) of draft Bill and proposed new section 11B). But, where an inquest is dispensed with, there should be provision for the coroner's reasons to be published (see paragraphs 101-102, and section 3 (d) of draft Bill—proposed new section 11B (4)).

Registration of Births, Deaths and Marriages Act, 1973

120. We recommend that section 24 (7) be amended. The effect of the proposed amendment is to require all deaths occurring under, or within twenty-four hours after the administration of, an anaesthetic liable to be the subject of an inquest, unless the coroner dispenses therewith (see paragraphs 22-28, and section 6 (b) of draft Bill—proposed new subsection (7) (b)).

121. We recommend that where a coroner has received sufficient evidence to make a notification of particulars of death under section 25, he be enabled to make that notification before concluding his inquest, if there may be delay in receiving all necessary evidence, (as, for example, in cases of disaster involving multiple deaths and complicated inquiries), (see paragraphs 38-43, and section 6 (d) (ii) of draft Bill —proposed new section 25 (1A)).

122. We recommend that medical practitioners be given wider power to notify death without inquest hi the case of certain deaths of elderly persons following accidents involving no suspicious nor unsual circumstances (see paragraphs 104-111, and section 6 (c) of draft Bill —proposed new section 24 (7A)).

Acknowledgements

123. Our investigations were greatly assisted by Messrs A. L. Barnett (Assistant Under Secretary, Department of the Attorney General and of Justice), J. B. Goldrick (City Coroner), and A. W. Imrie (of the Registrar General's Department). We thank them for their help.

C. L. D. MEARES
Chairman.

D. GRESSIER
Commissioner.

30th June, 1975.

APPENDIX A

CORONERS ACT, 1960.

Printed in accordance with the provisions of the Amendments Incorporation Act, 1906.

[Certified 20th June,)972.]

New South Wales

ANNO NONO

ELIZABETH*AE* II REGINAE

* *

Act No. 2, 1960[1], as amended by Act No. 15, 1963[2]; Act No. 33, *1965*[3]; Act No. 52, 1967[4]; Act No. 1, 1969[5]; and Act No. 63, 1970[6].

The Act No. 2, 1960, is also amended or otherwise affected in certain respects which cannot be dealt with under section 2 of the Amendments Incorporation Act, 1906, by Act No. 43, 1962, s. 73 (1) (h).

An Act to make provision with respect to the appointment of coroners and deputy coroners and the holding of inquests into deaths, inquiries into fires and magisterial inquiries; to repeal the Coroners Act, 1912; to amend the Registration of Births Deaths and Marriages Act 1899 and certain other Acts; and for purposes connected therewith. BE

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(1) Coroners Act, *I960,* No. 2. Assented to, 24th March, 1960. Date of commencement, 1st February, 1961, sec. 1 (2) and Government Gazette No. 7 of 20th January, 1961, p. 137.
(2) Coroners (Amendment) Act, 1963, No. 15. Assented to, 3rd April, 1963.
(3) Decimal Currency Act, 1965, No. 33. Assented to, 20th December, 1965. Date of commencement of sec. four, 14th February, 1966, secs. 1 (3), 2 (1) and the Currency Act 1965 (Commonwealth), sec. 2 (2).
(4) Coroners (Amendment) Act, 1967, No. 92. Assented to, 30th October, 1967.
(5) Coroners (Amendment) Act, 1969, No. 1. Assented to, 14th March, 1969, (Repealed by Act No, 63, 1970, sec. 2 (2).)
(6) Coroners (Amendment) Act, 1970, No. 63. Assented to, 19th November. 1970.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short tide and commencement

1. (1) This Act may be cited as the "Coroners Act, 1960".

(2) This Act shall commence upon a day to toe appointed by the Governor and notified by proclamation published hi the Gazette.

Division into Parts.

2. This Act is divided into Parts as follows :—

PART I.—PRELIMINARY—*ss.* 1-4.

PART II.—APPOINTMENT OF CORONERS AND ADMINISTRATION—*ss.* 5-10.

PART III.—JURISDICTION OF CORONERS IN RESPECT OF INQUESTS AND INQUIRIES—*ss.* 11-13.

PART IV.—SPECIAL PROVISIONS RELATING TO INQUESTS INTO DEATHS, INQUIRIES INTO FIRES AND MAGISTERIAL INQUIRIES—*ss.* 14-29.

PART V.—POST MORTEM EXAMINATIONS **AND** EXHUMATIONS—*ss.* 30-35.

PART VI.—ACCIDENTS IN MINES—*s.* 36,

PART VII.—MISCELLANEOUS—*ss.* 37-45.

PART VIII.—AMENDMENTS OF REGISTRATION op BIRTHS DEATHS AND MARRIAGES ACT 1899, AS AMENDED BY SUBSEQUENT ACTS—s, 46.

SCHEDULE.

3. (1) The several enactments mentioned in the Schedule to this Act are to the extent therein expressed hereby repealed. Repeals and savings.

(2) Where a person held office immediately before the commencement of this Act as coroner or deputy coroner and—

(a) the instrument approving of the appointment of such person and signed by the Governor specified a particular place at which such person was to be coroner or deputy coroner, as the case may be, such person shall be deemed to have been appointed by the Governor under the provisions of this Act to be the coroner or deputy coroner, as the case may be, at that place; or

(b) the instrument approving of the appointment of such person and signed by the Governor approved of his appointment as a coroner or deputy coroner, as the case may be, in and for the State of New South Wales without specifying any particular place at which he was to be coroner or deputy coroner, as the case may be, such person shall be deemed to have been appointed by the Governor under the provisions of this Act to be a coroner or deputy coroner, as the case may be, in and for the State of New South Wales.

(3) All proceedings initiated, pending or part heard at the commencement of this Act under any of the enactments repealed by this Act shall, subject to this Act, be continued as if such proceedings had been taken or initiated under this Act.

(4) A warrant of commitment for an offence or recognizance for the appearance of any person charged to take his trial for an offence, issued or taken by a coroner and in force immediately before the commencement of this Act, shall notwithstanding subsection one of this section continue in force and have effect according to its tenor after such commencement.

(5)

(5) The repeal of any enactment by this Act shall not revive the verdict of felo de se.

Nothing contained in this subsection shall limit any saving in the Interpretation Act of 1897.

Interpretation.

4. In this Act, unless the context or subject matter otherwise indicates or requires :—

"Coroner" includes a deputy coroner and a stipendiary magistrate exercising or performing the jurisdiction, powers or duties of a coroner.

"Inquest" means inquest by a coroner into the manner and cause of the death of any person.

"Inquiry" means inquiry held by a coroner into the cause and origin of a fire.

"Justice" means justice of the peace.

"Magisterial inquiry" means an inquiry by a justice or justices touching the death of any person.

"Prescribed" means prescribed by this Act or the regulations.

"Regulations" means regulations made under this Act.

"Supreme Court" means Supreme Court of New South Wales.

PART II.

APPOINTMENT OF CORONERS AND ADMINISTRATION.

Appointment of coroners and deputy coroners.

5. (1) (a) The Governor may by instrument in writing appoint fit and proper persons to be coroners.

(b)

(b) Any such instrument may provide that the person thereby appointed shall be a coroner—

(i) at such place as may be specified in the instrument, or

(ii) in and for the State of New South Wales.

(c) The Governor may appoint any fit and proper person to be a deputy coroner at any place if there is a person appointed to be a coroner at that place.

(d) The Governor may, for any cause which to him seems sufficient, remove any coroner or deputy coroner from office.

(2) (a) No person of or above the age of seventy years shall be appointed as a coroner or deputy coroner.

(b) A coroner or deputy coroner shall cease to hold office as such—

(i) if he is a member of the Public Service, upon the day upon which he ceases to be such a member;

(ii) if he is not a member of the Public Service, upon the day upon which he attains the age of seventy years.

(c) Nothing hi paragraph (b) of this subsection—

(i) prevents the appointment as a coroner or deputy coroner of a person who has been and has ceased to be a member of the Public Service; or

(ii) affects the tenure of office as a coroner or deputy coroner of a person, not being a member of the Public Service, who was, at the commencement of this Act, of or above the age of seventy years.

Jurisdiction of all coroners to be State-wide.

6. Every coroner, whether or not he is appointed to be a coroner in and for the State of New South Wales, and every deputy coroner, shall have and may exercise, subject to the provisions of this Act, jurisdiction throughout the State of New South Wales.

Oath of allegiance and judicial oath to be taken by coroners.

7. (1) A coroner or deputy coroner appointed after the commencement of this Act shall not act as such unless he has taken and subscribed, and transmitted to the Minister, the oath of allegiance and the judicial oath prescribed by the Oaths Act, 1900, as amended by subsequent Acts:

Provided that a coroner or deputy coroner may, instead of taking and subscribing any such oath, make and subscribed a solemn affirmation in the form of such oath appointed by the said Act, as so amended.

(2) Any such oath may be taken before and may be administered and received by any justice without a writ of dedimus protestatem being issued to him.

(3) A coroner or deputy coroner who does not, within three months after his appointment as such, comply with the provisions of subsection one of this section shall cease to hold office as coroner or deputy coroner, as the case may be.

Stipendiary magistrates to have powers of coroners.

8. Every stipendiary magistrate shall, by virtue of his office, have the jurisdiction, powers and duties of a coroner throughout the State of New South Wales.

Delegation by stipendiary magistrates.

New section added, Act No. 63, 1970, s. 2 (1) (a).

8A. (1) A stipendiary magistrate may, by instrument in writing, delegate his jurisdiction, powers and duties—

(a) to issue burial and cremation orders;

(b) to dispense with the holding of an inquest where death results from natural causes; or

(c) in respect of any prescribed matters relative to his jurisdiction, powers and duties as a coroner,

to

to an officer of the court at which he acts as coroner and may in like manner revoke wholly or in part any such delegation.

(2) Any jurisdiction, power or duty delegated under this section may, while the delegation remains unrevoked, be exercised or performed from time to time by the delegate.

(3) Notwithstanding any delegation made under this section, the stipendiary magistrate may continue to exercise or perform any jurisdiction, power or duty delegated.

(4) Any act or thing done or suffered by the delegate when acting in pursuance of a delegation made under this section shall have the like force or effect as if the act or thing had been done or suffered by the stipendiary magistrate who made the delegation.

Stipendiary magistrates to act as coroners in certain police districts.

9. (1) This section applies to—

(a) the Metropolitan Police District and the police districts of Liverpool, Newcastle, Parramatta and Ryde, and

(b) any other police district to which the provisions of this section are, by order of the Governor published in the Gazette, applied.

Amended, Act No. 1, 1969,1.2 (a);* Act No. 63, 1970,s.2 (1) (b) (1).

(2) Except as provided in section 8A of this Act a person who is not a stipendiary magistrate shall not exercise or perform the jurisdiction, powers or duties of a coroner within any police district to which this section applies.

Act No. 1, New subsection added, 1969, s. 2 (b).* Repealed, Act No. 63, 1970,s.2 (1) (b) (11).

(3) * * * * *

10.

* Act No. 1, 1969, was repealed by *Act* No. 63, 1970, s. 2 (2).

Jurisdiction, powers and duties of deputy coroners.

Amended, Act No. 15, 1963, s. 2 (a).

10. (1) A deputy coroner shall not hold an inquest or inquiry unless the coroner at the place at which such deputy coroner is appointed—

(a) is unable by reason of illness, absence from such place or other sufficient cause to act as coroner, or

(b) directs such deputy coroner to hold such inquest or inquiry, or

(c) has ceased to hold office.

(2) A deputy coroner, when holding an inquest or inquiry, shall have the same jurisdiction, powers and duties as a coroner.

PART III.

JURISDICTION OF CORONERS IN RESPECT OF INQUESTS AND INQUIRIES.

Inquests into deaths.

11. (1) Where a coroner is informed by a member of the police force of 'the death of any person whose body is lying within the State of New South Wales and who—

(a) has died a violent or unnatural death;

(b) has died a sudden death the cause of which is unknown;

(c) has died under suspicious or unusual circumstances;

(d) has died, and in respect of whom a medical practitioner has not given a certificate as to the cause of the death;

(e) has died, not having been attended by a medical practitioner within the period of three months immediately before his death;

(f) has died while under, or as a result of, or within a period of twenty-four hours after, the administration to him of, an anaesthetic administered in the course of a medical, surgical or dental operation or procedure, or an operation or procedure of a like nature; Amended, Act No. 15, 1963, s.2 (b)(i).

(g) has died within a year and a day after the date of any accident where the cause of the death is attributable to the accident; or

(h) has died in an admission centre, or mental hospital, within the meaning of the Mental Health Act, 1958, an institution within the meaning of the Child Welfare Act, 1939, as amended by subsequent Acts, or a prison within the meaning of the Prisons Act, 1952, as amended by subsequent Acts, or in any lockup or otherwise whilst in the lawful custody of any member ci the police force,

the coroner so informed shall have jurisdiction, and it shall be his duty, subject to this Act, to hold an inquest into the manner and cause of the death of the deceased person.

An inquest may be held under this subsection whether or not the cause of the death, or the death, occurred within the State of New South Wales.

(2) (a) Where the cause of the death of any person referred to in subsection one of this section, or the death of such person, occurred outside the State of New South Wales, the coroner may, if he is satisfied that an inquest concerning the death has been or is to be held in the place where the cause of the death or the death occurred, dispense with the holding of an inquest into the manner and cause of the death of such person.

(b) Where after consideration of any information in his possession relating to the death, of which he has been informed under subsection one of this section, of a person who—

(i) has died, and in respect of whom a medical practitioner has not given a certificate as to the cause of the death; (ii)

(ii) has died, not having been attended by a medical practitioner within the period of three months immediately before his death; or

Amended, Act No. 15, 1963, *s. 2* (b) (ii) (iii).

(iii) has died while under or within a period of twenty-four hours after the administration to him of, but not as a result of the administration to him of, an anaesthetic administered hi the course of a medical, surgical or dental operation or procedure, or an operation or procedure of a like nature,

the coroner is of opinion that the manner and cause of the death are sufficiently disclosed, he may, subject to paragraph (c) of this subsection, dispense with the holding of an inquest into the manner and cause of the death of such person.

Amended, Ibid. s. 2 (b) (iv) (v).

(c) The coroner shall not dispense with the holding of an inquest into the manner and cause of the death of a person who has died while under or within a period of twenty-four hours after the administration to him of, but not as a result of the administration to him of, an anaesthetic administered in the course of a medical, surgical or dental operation or procedure, or an operation or procedure of a like nature if within fourteen days after the death he is requested by a relative of such person to hold an inquest into the manner and cause of the death.

This paragraph does not apply where, pursuant to paragraph (a) of this subsection, the coroner dispenses with the holding of an inquest into the manner and cause of the death,

In this paragraph, "relative" means spouse, parent, or child who has attained the age of twenty-one years, or where there is no spouse, parent, or child who has attained that age, a brother or sister who has attained that age.

Inquiries into fires.

12. (1) Where a coroner is informed by a member of the police force of any fire which has destroyed or damaged any property within the State of New South Wales, the coroner so informed shall have jurisdiction, and it shall be his duty, subject to this Act, to hold an inquiry into the cause and origin of the fire. (2)

(2) Where after consideration of any information in his possession relating to a fire, the coroner is of opinion that the cause and origin of the fire are sufficiently disclosed or that an inquiry into the cause and origin of the fire is unnecessary, he may, subject to subsection three of this section, dispense with the holding of an inquiry into the cause and origin of the fire

(3) A coroner shall have jurisdiction, and it shall be his duty, subject to this Act, to hold an inquiry into the cause and origin of a fire if he has been requested to hold the inquiry—

(a) in the case of a fire occurring within a fire district within the meaning of the Fire Brigades Act, 1909, as amended by subsequent Acts, by the Board of Fire Commissioners of New South Wales; or

Ob) in the case of a bush fire within the meaning of the Bush Fires Act, 1949, as amended by subsequent Acts, by the Bush Fire Committee constituted under that Act, as so amended.

Cases where a coroner is not bound to hold an inquest or inquiry.

13. A coroner having jurisdiction to hold an inquest or inquiry under this Act is not bound to hold the inquest or inquiry in any case where after being informed in accordance with this Act of the death or fire concerned—

(a) he is unable through illness, absence from the place where he holds office or ordinarily acts as coroner or other cause to hold the inquest or inquiry; or

(b) he, being a person holding office as a stipendiary magistrate or clerk of petty sessions, or duly acting as a clerk of petty sessions, is after being so informed and before holding the inquest or inquiry transferred within the Public Service from the place where he held or acted in that office when he was so informed to some other place or position; or

(c) in the case of an inquest, he is satisfied that the cause of death arose at some other place than that at which he holds office or ordinarily acts as coroner and that on 'the ground of public convenience the inquest should be held by the coroner at that other place,

but

Am No 5 1963, s.2 (c)

but in any such case any other coroner who is informed of the death or fire by a member of the police force or by any coroner so transferred shall have jurisdiction, and it shall be his duty, subject to this Act, to hold the inquest or inquiry, as the case may be.

PART IV.

SPECIAL PROVISIONS RELATING TO INQUESTS INTO DEATHS, INQUIRIES INTO FIRES AND MAGISTERIAL INQUIRIES.

Inquests and inquiries to be held before coroner alone.

14. All inquests and inquiries shall be held before a coroner without a jury :

Provided that—

(a) in the case of an inquest, where a relative of the deceased or the secretary of any society or organisation of which the deceased was a member at the tune of his death so requests, or

(b) in the case of an inquest or inquiry, where the Minister so directs,

the inquest or inquiry shall be held before a coroner and a jury of six persons.

In this section, "relative" has the meaning ascribed thereto in paragraph (c) of subsection two of section eleven of this Act.

Coroner and jury not required to view body or scene of fire.

15. A view of the body of a deceased person or of the scene of a fire shall not, upon any inquest or inquiry, be taken by the coroner, or where there is a jury, by the jury unless the coroner deems it advisable to do so.

Witnesses to be examined on oath.

16. The coroner, justice or justices holding an inquest, inquiry or magisterial inquiry shall examine on oath all persons—

(a) who tender evidence relevant to the inquest, inquiry or magisterial inquiry; or

(b) who, in the opinion of the coroner, justice or justices are able to give evidence relevant to the inquest, inquiry or magisterial inquiry.

17.

Representation at inquests, inquiries and magisterial inquiries.

17. Any person who in the opinion of the coroner, justice or justices holding an inquest, inquiry or magisterial inquiry has a sufficient interest in the subject matter of the inquest, inquiry or magisterial inquiry may by leave of the coroner, justice or justices, as the case may be, appear in person at the inquest, inquiry or magisterial inquiry or be represented thereat by counsel or a solicitor, and may examine and cross examine any witnesses on matters relevant to the inquest, inquiry or magisterial inquiry.

Coroner holding inquest or inquiry, or justices holding magisterial inquiry not to be bound by rules of procedure and evidence.

18. A coroner, justice or justices holding an inquest, inquiry or magisterial inquiry, shall not be bound to observe the rules of procedure and evidence applicable to proceedings before a court of law, but no witness shall be compelled to answer any question which criminates him, or tends to criminate him, of any felony, misdemeanour or offence.

Depositions to be taken.

19. (1) Subject to subsection two of this section, the deposition of every witness at an inquest, inquiry or magisterial inquiry shall be taken down in writing and shall be read over either to or by the witness as the coroner, justice or justices holding the inquest, inquiry or magisterial inquiry may direct and be signed by the witness and the coroner, justice or justices, as the case may be.

(2) Where the coroner, justice or justices holding an inquest, inquiry or magisterial inquiry directs or direct that the deposition of any witness at the inquest, inquiry or magisterial inquiry, as the case may be, be recorded by such one of the following means as the coroner, justice or justices, as the case may be, may specify, namely, by means of shorthand, stenotype machine or sound-recording apparatus, or by such other means as may be prescribed by regulations made under paragraph (b) of subsection (1A) of section one hundred and fifty-four of the Justices Act, 1902, as amended by subsequent Acts, the deposition of that witness shall not be taken down in the manner specified in subsection one of this section but shall be recorded by the means so specified; and, in such case, it shall not be necessary for the deposition as so recorded to

be

be read or played over to or by the witness or to be signed by the witness and the coroner, justice or justices or for their signatures to be appended or affixed thereto.

Any reference in this Act to "depositions" shall where the depositions were recorded by any of the means referred to in this subsection be read and construed as a reference to a transcript certified in the manner prescribed by regulations made under the Justices Act, 1902, as amended by subsequent Acts, of the depositions so recorded.

Amended, Act No. 15, 1963, s. 2 (d)(i).

(3) (a) The coroner, justice or justices holding an inquest, inquiry or magisterial inquiry shall, as soon as practicable after the completion thereof, cause the depositions of the witnesses to be filed in the office of the clerk of petty sessions where or nearest to the place where the inquest, inquiry or magisterial inquiry was held or in such other office of a clerk of petty sessions as the Minister in writing may direct.

Amended, Ibid. s.2 (d) (ii)-(iv).

(b) Any person who—

(i) shows cause sufficient in the opinion of the clerk of petty sessions in whose office the depositions are filed why that person should be supplied with a copy of any depositions taken at any inquest, inquiry or magisterial inquiry; and

(ii) pays a fee calculated on the rate prescribed by the regulations for the time being in force under section one hundred and fifty-four of the Justices Act, 1902, as amended by subsequent Acts, for copies of depositions,

shall be supplied by the said clerk of petty sessions with a copy of the depositions so taken.

New subsection added, Ibid. s. 2 (d) (v).

(4) In relation to any such depositions transmitted to the Under Secretary, Department of the Attorney General and of Justice, before the commencement of the Coroners (Amendment) Act, 1963, and received by him, paragraph (b) of subsection three of this section shall be read and construed as if a reference to the clerk of petty sessions in whose office the depositions are filed were a reference to the said Under Secretary.

Summons to give evidence or to produce document, etc.

cf. Act No. 27,1902, s.26.

20. Whenever it is made to appear to a coroner, justice or justices—

(a) that any person is likely to be able to give material evidence at any inquest, inquiry or magisterial inquiry being held, or to be held, by him or them, or to have in his possession or power any document or writing required for the purposes of evidence at that inquest, inquiry or magisterial 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 holding of the inquest, inquiry, or magisterial inquiry.

the coroner, justice or justices, as the case may be, shall issue his or their 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 the coroner, justice or justices is or are 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 or they may issue his or their warrant in the first instance for the apprehension of such person :

Provided further 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 duces tecum in the Supreme Court.

Form of summons, cf. *Ibid.* s. 27.

21. Every such summons shall—

(a) be under the hand and seal of the coroner, justice or justices issuing it, and

(b) be directed to the person whose appearance is required, and

(c) require such person to appear at a certain time and place before such coroner, justice or justices to testify what he knows concerning the subject matter of

of the inquest, inquiry or magisterial inquiry, or to produce the document or writing, as the case may be.

Manner of service of summons. cf. Act No. 27, 1902, s.28.

22. (1) Every such summons shall be served by a member of the police force upon the person to whom it is directed by delivering it to him personally, or if he cannot conveniently be met with then by leaving it with some person for nun at his last or most usual place of abode.

Proof of service.

(2) Service of a summons in manner aforesaid may be proved by the oath of the member of the police force who served it, or by affidavit or otherwise.

Certain defects immaterial. cf. *Ibid.* s.30(l).

23. No objection shall be taken or allowed to any summons or warrant in respect of any alleged defect therein in substance or in form.

On non-appearance to summons, warrants maybe issued. cf. *Ibid,* s.31.

24. (1) Wherever any person for whose appearance a summons has been issued does not appear at the time and place appointed thereby, the coroner, justice or justices by whom such summons was issued may, upon proof of the due service of the summons upon such person, and where such person is required to be examined as a witness or to produce a document or writing, if no just excuse is offered for his non-appearance, issue his or their warrant for the apprehension of such person.

Person apprehended under warrant, how dealt with.

(2) Whenever any person is apprehended under any such warrant, or under a warrant issued under the provisions of section twenty of this Act, the coroner, justice or justices before whom such person is brought shall thereupon either—

(a) commit him—

(i) by warrant to prison, or some lock-up, or place of security; or

(ii) verbally to such safe custody as such coroner, justice or justices may think fit;

and order him to be brought up at a time and place to be appointed by such coroner, justice or justices; **or**

(b)

(b) discharge him upon his entering into a recognizance.

General condition of recognizances.

(3) Every such recognizance shall be entered into with or without a surety or sureties, as such coroner, justice or justices may direct, conditioned that the person entering into it shall appear at the time and place appointed or named in such recognizance.

cf. Act No. 27, 1902, s. 96.

Recognizances to be acknowledged and subscribed.

(4) Every such recognizance shall be duly acknowledged by the person who enters into it, and shall be subscribed by the coroner, justice or justices before whom it is acknowledged.

cf. *Ibid.*

Notice of recognizance.

(5) A notice of every such recognizance, signed by the coroner, justice or justices, shall at the same time be given by the coroner, justice or justices to each person bound thereby.

cf. *Ibid.*

Procedure on non-appearance of person discharged on recognizances.

(6) Where a person discharged on any such recognizance does not appear at the time and place appointed or named in such recognizance, the coroner, justice or justices shall transmit the recognizance to the Clerk of the Peace to be proceeded upon according to law.

cf. *Ibid.* s.97.

(7) The coroner, justice or justices so transmitting any such recognizance shall certify on the back thereof the non-appearance of the person bound thereby.

cf. *Ibid.*

(8) Such certificate shall be prima facie evidence of the non-appearance of such person.

cf. *Ibid.*

Form of warrant.

25. (1) Every warrant, issued by a coroner, justice or justices under the provisions of this Act, for the apprehension of any person shall—

cf. *Ibid.* s.29.

(a) be under the hand and seal of the coroner, justice or justices issuing it; and

(b) be directed to a member of the police force or other person by name; or generally to the senior officer of police of the district or place where it is to be executed, or to such officer of police and to all other members

members of the police force in New South Wales, or generally to all members of the police force in New South Wales; and

(c) name or otherwise describe the person whose appearance is required; and

(d) order the member of the police force or person to whom it is directed to apprehend the person whose appearance is required, and cause him to be brought before such coroner, justice or justices to testify what he knows concerning the subject matter of the inquest, inquiry or magisterial inquiry or to produce the document or writing, as the case may be.

(2) Every such warrant shall be returnable at a time and place to be stated therein.

(3) Every such warrant may be executed by apprehending the person against whom it is directed at any place in New South Wales.

Refusal of witness to be examined.

26. A person who appears, whether or not upon summons or warrant, to give evidence or to produce any document or writing, at an inquest, inquiry or magisterial inquiry and who, without lawful excuse—

(a) refuses to take the oath; or

(b) refuses to be examined upon oath; or

(c) having taken the oath, refuses to answer any question relevant to the subject matter of the inquest, inquiry or magisterial inquiry; or

(d) refuses or neglects to produce such document or writing,

shall be guilty of an offence against this Act.

Contempt. **Amended. Act No. 33, 1965, s. 4 (2).**

27. (1) Any person who at any inquest, inquiry or magisterial inquiry is guilty of contempt shall be liable, upon summary conviction by the coroner, justice or justices holding such inquest, inquiry or magisterial inquiry, to a penalty not exceeding ten dollars or to imprisonment for a period not exceeding seven days.

(2)

(2) A coroner who is not a justice and any justice shall in respect of any such conviction by such a coroner have all the powers of a justice in respect of a conviction by a justice and the provisions of the Justices Act, 1902, as amended by subsequent Acts, with respect to the enforcement of convictions shall apply mutatis mutandis to any such conviction or order made thereupon.

Inquest, inquiry or magisterial inquiry to be adjourned if person charged in respect of death or fire, or if prima facie case for an indictable offence is made out.

28. (1) Where a coroner, justice or justices is or are informed by a member of the police force either before he commences or they commence any inquest, inquiry or magisterial inquiry or after he commences or they commence but before he completes or they complete any inquest, inquiry or magisterial inquiry that a person has been charged before one, or more than one, justice with an indictable offence in which the question—

(a) whether .the person charged caused the death of the deceased person concerned; or

(b) whether the person charged caused the fire concerned,

as the case may be, is in issue such coroner, justice or justices—

(i) may, where he has or they have not commenced the inquest, inquiry or magisterial inquiry, or where he has or they have commenced it but has or have not taken the evidence hereinafter referred to, commence or continue, as the case may be, the inquest, inquiry or magisterial inquiry for the purpose only of taking evidence of the identity of the deceased person concerned and the place and date of his death or evidence of where the fire concerned occurred, as the case may be, and upon taking such evidence shall thereupon adjourn the inquest, inquiry or magisterial inquiry without fixing a date or place for the resumption thereof; or

(ii) shall, where he has commenced such inquest, inquiry

or magisterial inquiry and has taken the evidence referred to in subparagraph (i) of this subsection, immediately upon being so informed adjourn such inquest, inquiry or magisterial inquiry without fixing a date or place for the resumption thereof,

and where a jury has been impanelled shall discharge such jury.

(2) Where the evidence given at any inquest, inquiry or magisterial inquiry establishes, in the opinion of the coroner, justice or justices holding it, a prima facie case against any known person for an indictable offence in which the question—

(a) whether such known person caused the death of the deceased person concerned; or

(b) whether such known person caused the fire concerned,

as the case may be, is in issue and the coroner, justice or justices has or have not been informed in accordance with subsection one of this section the coroner, justice or justices shall—

(i) immediately after the evidence at the inquest, inquiry or magisterial inquiry, as the case may be, has been taken and before making his or their findings, or where there is a jury, taking the jury's verdict, adjourn the inquest, inquiry or magisterial inquiry without fixing a date or place for the resumption thereof; and

(ii) forward to the Attorney General the depositions taken at the inquest, inquiry or magisterial inquiry together with a statement signed by the coroner, justice or justices setting forth the name of the person against whom a prima facie case for an indictable offence has, in his or their opinion, been established and particulars of such offence; and

(iii) where a jury has been impanelled, discharge the jury.

(3) The coroner, justice or justices may if he thinks or they think fit to do so resume an inquest, inquiry or magisterial inquiry adjourned under subsection one or two of this section but shall not do so until—

(a) where the inquest, inquiry or magisterial inquiry is adjourned under subsection one of this section, and

(i) the person charged with the indictable offence is committed for trial for such offence to a sittings of the Supreme Court or a Court of Quarter Sessions, and

(a) an information is filed against such person in respect of such charge—after the date upon which the charge is finally dealt with; or

(b) the Attorney General directs that no further proceedings be taken against such person in respect of such charge—after the date upon which the Attorney General so directs;

(ii) the person charged with the indictable offence is committed to a sittings of the Supreme Court or a Court of Quarter Sessions to be dealt with as provided in section 51A of the Justices Act, 1902, as amended by subsequent Acts, and

(a) 'the Attorney General does not direct that no further proceedings be taken against such person in respect of such charge—after the date upon which the charge is finally dealt with; or

(b) the Attorney General directs that no further proceedings be taken against such person in respect of such charge—after the date upon which the Attorney General so directs; or

(iii)

(iii) the information against the person charged with the indictable offence is dismissed by the justice or justices hearing the charge—after the date upon which the charge is so dismissed,

(b) where the inquest, inquiry or magisterial inquiry is adjourned under subsection two of this section, and

(i) an information is filed against the person named in the statement referred to in paragraph (ii) of subsection two of this section, or any other person, for an indictable offence in which the question—

(a) whether such known person caused the death of the deceased person concerned; or

(b) whether such known person caused the fire concerned,

as the case may be, is in issue—after the date upon which the charge set out in the information is finally dealt with;

(ii) the Attorney General directs that no proceedings be taken against the person so named for the indictable offence, particulars of which are set out hi the statement so referred to—after the date upon which the Attorney General so directs.

For the purposes of this subsection a charge shall be deemed to be finally dealt with when no further appeal can be made in respect thereof without an extension of time being granted by the Court of Criminal Appeal or without special leave of the High Court of Australia or of Her Majesty in Council.

(4) Where a coroner resumes an inquest or inquiry which has been adjourned pursuant to this section and in which the jury has been discharged, the coroner shall proceed in all respects as if the inquest or inquiry had not previously been commenced, and the provisions of this Act shall apply accordingly as if the resumed inquest or inquiry were a fresh inquest or inquiry, as the case may be.

Finding of coroner, justice or justices, or verdict of jury, to be recorded.

29. (1) The coroner, justice or justices holding an inquest or a magisterial inquiry shall at the conclusion thereof set forth in writing his or their findings, or, in the case of an inquest held before a jury, the jury's verdict, as to—

(a) the identity of the deceased person concerned;

(b) when and where such deceased person died; and

(c) the manner and cause of the death of such deceased person.

(2) The coroner holding an inquiry shall at the conclusion thereof set forth in writing his findings, or, in the case of an inquiry held before a jury, the jury's verdict, as to the cause and origin of the fire concerned.

(3) Any writing made under the provisions of subsection one or two of this section shall not indicate or in any way suggest that any person is guilty of any indictable offence.

PART V.

POST MORTEM EXAMINATIONS AND EXHUMATIONS.

Post mortem or other examination may be ordered by coroner, justice or justices.

30. (1) A coroner, justice or justices may, either before commencing or after commencing and before completing an inquest or magisterial inquiry, as the case may be, by order in writing direct—

(a) any medical practitioner to perform a post mortem examination of the body of the deceased person concerned; and

(b) the same or any other medical practitioner or any other person whom the coroner, justice or justices considers or consider has sufficient qualifications to do so, to make a special examination or test, specified in the order, of any part of the body of the deceased person concerned or of the contents of the body or any part thereof, or of such other matters or things as the coroner, justice or justices considers or consider ought to be examined for the purpose of the inquest or magisterial inquiry.

(2)

(2) Where it appears to a coroner, justice or justices that the death of a deceased person was probably caused, partly or entirely, by the improper or negligent treatment of a medical practitioner or other person, such coroner, justice or justices shall not issue an order under subsection one of this section relating to such deceased person to that medical practitioner or other person, but shall, where he issues an order under the said subsection one relating to such deceased person, cause such medical practitioner or other person to be informed either verbally or in writing that an order under the said subsection one relating to such deceased person has been issued and of the name and address of the medical practitioner or other person to whom the order has been issued.

A medical practitioner or other person so informed shall not carry out or assist in carrying out any order under subsection one of this section relating to such deceased person but shall if he attends at the time and place that the order is being carried out be entitled to be present while the order is being carried out.

Additional medical evidence in certain cases. cf. Act No. 36,1912, s. 13.

31. Whenever it appears to the coroner, or to a majority of the jury at any inquest, or to the justice or justices holding a magisterial inquiry, that the cause of death has not been satisfactorily explained by the evidence given in the first instance at such inquest or magisterial inquiry by the medical practitioner or medical practitioners by whom the post mortem examination of the body of the deceased person concerned was made, or by the medical practitioner or medical practitioners or other person by whom any special examination or test of any part of the body of the deceased person concerned was made pursuant to paragraph (b) of subsection one of section thirty of this Act, the coroner, justice or justices shall by order in writing direct any other medical practitioner or medical practitioners or other person referred to in that paragraph to perform a post mortem examination or a special examination or test referred to in that paragraph.

Medical witness neglecting to obey order.

32. Where any order issued under subsection one of section thirty, or under section thirty-one, of this Act is served upon any medical practitioner, or other person, to whom it is directed or is left at his usual residence in sufficient time for him to obey it and he nevertheless does not obey it he shall, unless he shows a good and sufficient cause, be guilty of an offence against this Act.

cf. Act No. 36, 1912, s. 15.

Report of post mortem examination, special examination or test to be furnished.

33. A medical practitioner or other person who performs a post mortem examination of the 'body of a deceased person, or who makes any special examination or test, pursuant to an order issued under subsection one of section thirty, or under section thirty-one, of this Act shall, as soon as practicable after performing the post mortem examination or making the special examination or test, furnish a report thereon to the coroner, justice or justices by whom the order was issued.

Copies of medical reports. New section added, Act No. 52, 1967, s. 2.

33A. A coroner, justice or justices to whom a report in writing referred to in section thirty-three of this Act is furnished shall, on the request in writing of a relative of the deceased person or of any person who has, in the opinion of the coroner, justice or justices, as the case may be, a sufficient interest in the cause of death of the deceased person, furnish a copy of that report to the relative or other person making the request.

In this section "relative" has the meaning ascribed thereto in paragraph (c) of subsection two of section eleven of this Act.

Remuneration of medical practitioners.

34. A medical practitioner or other person who in accordance with an order or request of a coroner or of a justice or justices—

(a) makes any post mortem examination or any special examination or test; or

(b) attends and gives evidence at an inquest or magisterial inquiry with respect to such post mortem examination or special examination or test,

shall be entitled to be paid fees calculated at the prescribed rate: Provided

Provided that a medical officer appointed at a salary or other remuneration to attend a public hospital, gaol or other public building, shall not be entitled to such fees in respect of any post mortem examination, special examination or test of the body, or part of the 'body, of a deceased person who died in such hospital, gaol or building.

Warrant for exhumation of body.

35. Where the body of a deceased person has 'been buried and an inquest concerning the death of such person—

(a) has not been held;

(b) has been commenced but not completed; or

(c) has been completed and the Supreme Court has quashed such inquest and has ordered a fresh inquest to foe held,

a coroner may, if he considers it desirable to do so for the purpose of ordering a post mortem examination, or a further or more complete post mortem examination, of the body, or a special examination or test, or a further or more complete special examination or test, of the body or any part thereof, issue his warrant for the exhumation of the body and any member of the police force to whom the warrant is addressed shall cause it to be executed, and, upon it being executed, shall report the fact to the coroner.

PART VI.

ACCIDENTS IN MINES.

Accident in coal and other mines.

cf. Act No. 36, 1912,s. 17.

36. (1) With respect to coroners' inquests on the bodies of persons whose deaths may have been caused by explosions or accidents in or about mines, the following provisions shall have effect:—

(a) Where a coroner holds an inquest on the body of any person whose death may have been caused by any explosion or accident, of which notice is required by the Mines Inspection Act, 1901, as amended by subsequent Acts, or the Coal Mines Regulation Act, 1912, as amended by subsequent Acts, to be given to an inspector, the coroner shall adjourn

adjourn the inquest, unless an inspector, or some person on behalf of the Minister for Mines, is present to watch the proceedings

(to) The coroner, at least four days before holding the adjourned inquest, shall send to the inspector for the district notice in writing of the tune and place of holding the adjourned inquest.

(c) The coroner, before the adjournment, may take evidence to identify the body, and may order the interment thereof.

(d) If an explosion or accident has not occasioned the death of more than one person, and the coroner has sent to the inspector of the district notice of the time and place of holding the inquest at such time as to reach the inspector not less than twenty-four hours before the time of holding the same, it shall not be imperative on him to adjourn the inquest in pursuance of this section unless the majority of the jury, if there is a jury, think it necessary so to adjourn.

(e) An inspector may at any such inquest examine any witness, subject nevertheless to the order of the coroner.

(f) Where evidence is given at an inquest at which an inspector is not present of any neglect as having caused or contributed to the explosion or accident, or of any defect in or about the mine appearing to the coroner or jury to require a remedy, the coroner shall send to an inspector notice in writing of such neglect or defect

(g) Any person having a personal interest in, or employed in, or in the management of the mine in which the explosion or accident occurred shall not be qualified to serve on the jury impanelled on the inquest; and no constable or other person shall summon any person disqualified under this provision, nor shall any coroner allow any such person to be sworn or to sit on the jury.

(h) The coroner shall not allow to be sworn or to sit on

on the jury any person who, in his opinion, might exhibit animus against the mine owner; nevertheless, whenever it is practicable, one-half of the jurymen shall be miners :

Provided that the provisions of this paragraph shall not apply in the case of an explosion or accident in a coal or shale mine.

(i) Any relative of any person whose death may have been caused by the explosion or accident with respect to which the inquest is being held, and the owner or manager of the mine in which the explosion or accident occurred, and any person appointed by the order in writing of the majority of the persons employed at the said mine, shall, notwithstanding any other provision of this Act, be at liberty to attend and examine any witness, either in person or by his counsel, solicitor or agent.

Interpretation.

(2) In this section, unless the subject matter or context otherwise indicates—

"Inspector" means an inspector of mines or the Chief Inspector of Mines under the Mines Inspection Act, 1901, as amended by subsequent Acts, and an inspector of collieries under the Coal Mines Regulation Act, 1912, as amended by subsequent Acts.

"Mine" means mine of any metal or mineral as defined by the Mines Inspection Act, 1901, as amended by subsequent Acts, and mine of coal or shale as defined by the Coal Mines Regulation Act, 1912, as amended by subsequent Acts.

Penalty.

Amended, Act No. 33, 1965,s.4 (2).

(3) Every person who fails to comply with the provisions of this section shall be liable to a penalty not exceeding ten dollars for each offence.

Prosecution against a coroner.

(4) No prosecution shall be instituted against a coroner for any offence under this section, except with the consent in writing of the Minister for Mines.

(5) The provisions of this section shall apply, mutatis mutandis, to and in respect of coroners' inquests on the bodies

of

of persons whose deaths may have been caused by explosions or accidents on dredges within the meaning of the Mines Inspection Act, 1901, as amended by subsequent Acts.

PART VII.

MISCELLANEOUS.

Powers of Supreme Court to order inquest, inquiry or magisterial inquiry.

37. (1) Where the Supreme Court upon an application made by, or under the authority of, the Minister is satisfied that it is necessary or desirable in the interests of justice that an inquest, inquiry or magisterial inquiry should be held, the Supreme Court may order that the inquest, inquiry or magisterial inquiry be held.

(2) Where an inquest, inquiry or magisterial inquiry has been held and the Supreme Court, upon an application made by, or under the authority of, the Minister is satisfied that, by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, discovery of new facts or evidence, or otherwise, it is necessary or desirable in the interests of justice that the inquest, inquiry or magisterial inquiry be quashed and another inquest, inquiry or magisterial inquiry be held, the Supreme Court may order that the first inquest, inquiry or magisterial inquiry be quashed and that instead thereof another inquest, inquiry or magisterial inquiry, as the Supreme Court directs, be held.

(3) Upon service on the Minister of any order made by the Supreme Court under subsection one or two of this section, the Minister shall endorse on a copy thereof the name of some coroner, justice or justices, as the case may require, and shall send that copy so endorsed to the coroner, justice or justices whose name or names he has endorsed thereon.

Upon receipt of the copy so endorsed, such coroner, justice or justices shall have jurisdiction, and it shall be his or their

duty

duty, subject to this Act (subsection two of section eleven and of section twelve excepted) to hold the inquest, inquiry or magisterial inquiry, as the case may be, ordered to be held.

(4) The power vested by this section in the Supreme Court may be exercised by any Judge of that Court.

Powers of coroners and certain justices defined.

38. The jurisdiction, powers and duties conferred or imposed upon a coroner, justice or justices in relation to inquests, inquiries or magisterial inquiries, as the case may be, or in relation to deaths or fires, shall be exercised and performed by him or them only in relation to inquests, inquiries and magisterial inquiries which he has, or they have, jurisdiction to hold or in relation to deaths or fires concerning which he has, or they have, jurisdiction to hold an inquest, inquiry or magisterial inquiry, as the case may be.

Order authorising entry of certain places.
New section added, Act No. 63, 1970.s.2 (1) (c).

38A. (1) Where a coroner, justice or justices considers or consider that an examination should, for the purposes of an inquest, inquiry or magisterial inquiry, be made in relation to any place or that any measurements or photographs should, for those purposes, be taken in relation to any place, he or they may issue an order in writing to a specified person authorising him to enter any specified place during a specified period and to—

(a) make such examination of—

(i) the nature and condition of the place or any equipment or machinery therein or thereon; or

(ii) any other matter or thing; or

(b) take such measurements or photographs,

as is or are specified or referred to in the order.

(2) An order may be made under subsection one of this section—

(a) before the commencement; or

(b) after the commencement and before the completion, of the inquest, inquiry or magisterial inquiry referred to in that subsection.

(3)

(3) A person to whom an order is issued under subsection one of this section may, during the specified period enter the specified place and—

(a) make the examination; or

(b) take the measurements or photographs,

specified or referred to in the order.

(4) A person who, upon production to him of an order issued under subsection one of this section, obstructs or hinders the person to whom the order was issued in the exercise of his powers under this section arising by virtue of the order shall be guilty of an offence against this Act.

(5) In this section—

"place" includes—

(a) land;

(b) premises or a mine; and

(c) a ship, aeroplane or cither vessel or vehicle;

"specified", in relation to an order issued under subsection one of this section, means specified in the order.

Coroner who is medical practitioner not to hold certain inquests.

39. Notwithstanding any other provision of this Act, a coroner, being a medical practitioner, shall not hold an inquest concerning the death of any person whom he attended professionally at or immediately before the death of such person or during such person's illness terminating in his death.

Inquest or inquiry on Sunday.

40. (1) A coroner, justice or justices may commence or hold an inquest, inquiry or magisterial inquiry, as the case may be, on a Sunday if the coroner is of opinion that such a course is necessary or desirable.

(2) In such a case, the coroner, justice or justices shall note on the proceedings the circumstances which in his or their opinion render such a course necessary or desirable.

(3) A coroner, justice or justices may, for the purposes of this Act, do any act or issue a summons, warrant or order on a Sunday.

Place of inquest.

41. The room or building in which a coroner holds an inquest or inquiry, or a justice or justices holds or hold a magisterial inquiry, shall be open to the public.

Power of coroner, justice or justices to clear court and prohibit publication of evidence.

42. A coroner, justice or justices holding an inquest, inquiry or magisterial inquiry may order—

(a) any witness or all witnesses thereat to go and remain outside the room or building in which the inquest, inquiry or magisterial inquiry is being held until required to give evidence; and

(b) that any evidence given at the inquest, inquiry or magisterial inquiry being held by him be not published.

Any person who fails to comply with any such order shall be liable—

Amended, Act No. 33, 1965, s.4 (2).

(c) if a body corporate—to a penalty not exceeding one thousand dollars;

Amended, Ibid.

(d) if any other person—to a penalty not exceeding five hundred dollars, or to imprisonment for a term not exceeding six months, or to both such penalty and imprisonment.

Prisoners not to be jurors.

43. No prisoner in any prison shall be summoned, impanelled or serve as a juror at any inquest or inquiry concerning the death of a prisoner in such prison.

Penalty.

Amended, Ibid.

44. (1) Any person convicted of an offence against this Act or the regulations shall for every such offence for which no other penalty is provided by or under this Act be liable to a penalty not exceeding one hundred dollars.

(2) Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a stipendiary magistrate or any two justices in petty sessions.

Regulations.

45. (1) The Governor may make regulations not inconsistent with this Act for and with respect to—

(a) the conduct of and procedure at inquests, inquiries and magisterial inquiries;

(b) the procedure for summoning persons to attend as jurors at any inquest or inquiry;

(c) notwithstanding the provisions of any other Act, prescribing the qualifications of such jurors;

(d) prescribing any forms to be used under this Act;

(e)

(e) the allowances to be paid to witnesses attending inquests, inquiries and magisterial inquiries;

(f) all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may impose a penalty not exceeding one hundred dollars for any breach thereof. Amended, Act No. 33, 1965, s. 4 (2).

*(3) The regulations shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the regulations;

(c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid 'before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

PART VIII.

AMENDMENTS OF REGISTRATION OF BIRTHS DEATHS AND MARRIAGES ACT 1899, AS AMENDED BY SUBSEQUENT ACTS

46. (1) The Registration of Births Deaths and Marriages Act, 1899, as amended by subsequent Acts, is amended— Amendment of Act No. 17, 1899.

(a) by omitting section 27A and by inserting in lieu thereof the following section :— Substituted sec. 27A.

27A. (1) The Registrar-General shall, from time to time, on application therefor furnish to every medical Issue of medical certificates of cause of death.

*See Interpretation Act, 1897, s. 41.

medical practitioner printed forms in or to the effect of the forms in the Ninth, Tenth and Eleventh Schedules to this Act

(2) Where a person dies and—

(a) he was immediately before 'his death, or during his illness terminating in his death, attended by a medical practitioner, such medical practitioner shall, subject to subsection 'three of this section, sign and deliver or forward forthwith to the district registrar a certificate in or to the effect of the form in the Ninth Schedule to this Act; or

(b) he was not immediately before his death, or during his illness terminating in his death, attended by a medical practitioner, any medical practitioner who has viewed the body of such person after his death may, subject to subsection three of this section, sign and deliver or forward to the district registrar a certificate in or to the effect of 'the form in the Eleventh Schedule to this Act,

and, as soon as practicable after signing any such certificate, shall deliver to the tenant of the house or place in which the death occurred a notice in writing in or to the effect of the form in the Tenth Schedule to this Act of the signing of the certificate.

(3) A medical practitioner who—

(a) has attended a person immediately before his death, or during his illness terminating in his death; or

(b) has viewed the body after death of a person who was not immediately before his death, or during his illness terminating in his death, attended by a medical practitioner,

shall

shall not sign a certificate in or to the effect of the form in the Ninth Schedule or Eleventh Schedule to this Act or a notice in or to the effect of the form in the Tenth Schedule to this Act in respect of the death of any such person who, in the opinion of such medical practitioner—

(i) has died a violent or unnatural death;

(ii) has died a sudden death the cause of which is unkonwn;

(iii) has died under suspicious or unusual circumstances;

(iv) has died, not having been attended by a medical practitioner within the period of three months immediately before his death;

(v) has died while under, or as a result of the administration of, an anaesthetic administered in the course of a medical, surgical or dental operation or procedure, or an operation or procedure of a like nature,

but shall as soon as practicable after the death, report the death to the officer in charge of the police station nearest to the place where the death occurred.

It shall be the duty of the officer in charge of any police station to whom any such report is made as soon as practicable after the report is made to him to inform a coroner of the death in respect of which the report was made.

(b) (i) by omitting from subsection two of section twenty-nine the word "magistrate" wherever occurring and by inserting in lieu thereof the words "justice or justices of the peace"; Sec. 29. (Finding of body.)

(ii) by inserting next after the same subsection the following new subsection :—

(3) Where—

(a) a coroner dispenses with the holding

of

of an inquest in pursuance of the provisions of subsection two of section eleven of the Coroners Act, 1960; or

(b) a coroner, justice or justices adjourns or adjourn an inquest, inquiry or magisterial inquiry, as the case may be, in pursuance of the provisions of section twenty-eight of that Act,

such coroner, justice or justices shall notify in writing to the district registrar such information as he possesses or they possess as to the identity of the deceased person concerned, and the date, place and cause of the death of such person, and such registrar shall make the entry accordingly or if the death has been previously registered shall add to or correct the entry, as the case may require.

Sec. 30. (Certificates of death.)

(c) (i) by omitting from subsection two of section thirty the words "or magistrate holding an inquest or inquiry upon any dead body" and by inserting in lieu thereof the words ", justice or justices of the peace holding an inquest or magisterial inquiry upon any dead body or a coroner who has dispensed with the holding of an inquest upon any dead body in pursuance of the provisions of subsection two of section eleven of the Coroners Act, 1960,";

(ii) by omitting from subparagraph (ii) of paragraph (a) of subsection three of the same section the word "magistrate" and by inserting in lieu thereof the words "justice or justices of the peace";

(iii) by inserting in paragraph (b) of the same subsection after the word "coroner," the word "stipendiary";

(d)

(d) (i) by omitting the Ninth Schedule and by inserting in lieu thereof the following Schedule:— Ninth and Eleventh Schedules.

NINTH SCHEDULE. Sec. 27A(2).

Registration of Births Deaths and Marriages Act 1899, as amended—Section *27 A* (2) (a).

Registrar to enter No. of Death Entry.

.....

MEDICAL CERTIFICATE OF CAUSE OF DEATH.

(For use only by a legally qualified medical practitioner who has been in attendance immediately before the deceased's death or during his illness terminating in his death, and to be delivered or forwarded by that medical practitioner to the District Registrar of Births, Deaths, and Marriages direct.)

Name of deceased

Date of death as stated to me day of , 19 .

Age as stated to me

Place of death

Last seen alive by me day of , 19 . **Not seen* **Seen after death by me.*

Postmortem **not held*

Cause of Death.	Duration of Disease.		
	Years.	Months.	Days.
I.			
Immediate cause			
Morbid conditions, if any, giving (a) .. .. rise to immediate cause (stated			
in order proceeding backwards (b) .. .. from immediate cause)			
(c)			
II.			
Other morbid conditions (if important) contributing to death but not related to immediate cause			

~ hereby certify that I was in medical attendance—

* immediately before the deceased's death *or*

* during the deceased's illness terminating in his death

and that the particulars and cause of death above written are true to the best of my knowledge and belief.

I may not be in a position later to give, on application by the Registrar-General, additional information as to cause of death for the purpose of more precise statistical classification.

Signature

Residence Date

* Strike out whichever is inapplicable.

~ This means the disease, injury, or complication which caused death, not the mode of dying, as, e.g., heart failure, asphyxia, asthenia, &c.

(ii) by omitting the Eleventh Schedule and by inserting in lieu thereof the following Schedule:—

Sec. 27A (2).

ELEVENTH SCHEDULE.

Registration of Births Deaths and Marriages Act 1899, as amended—Section 27A (2) (b).

Registrar to enter No. of Death Entry.

.....

MEDICAL CERTIFICATE OF CAUSE OF DEATH.

(For use only by a legally qualified medical practitioner who has viewed the body of the deceased after death, and to be delivered or forwarded by him to the District Registrar of Births, Deaths, and Marriages direct.)

Name of deceased

Date of death as stated to me day of , 19 .

Age as stated to me

Place of death

Last seen alive by me day of , 19 .

Postmortem*held

Cause

Cause of Death.		Duration of Disease.		
		Years.	Months.	Days.
I. Immediate cause~	.. ..			
Morbid conditions, if any, giving rise to immediate cause (stated in order proceeding backwards from immediate cause)	(a)			
	(b)			
	(c)			
II. Other morbid conditions (if important) contributing to death but not related to immediate cause	.. ..			

I hereby certify that I viewed the body of the above-named deceased after death, and that the particulars and cause of death above written are true to the best of my knowledge and belief.

I may not be in a position later to give, on application by the

Registrar-General, additional information as to cause of death for the purpose of more precise statistical classification.

Signature

Residence Date

* Strike out whichever is inapplicable.
~ This means the disease, injury, or complication which caused death, not the mode of dying, as, e.g., heart failure, asphyxia, asthenia, &c.

(2) The Registration of Births Deaths and Marriages Act 1899, as amended by subsequent Acts and by this Act, may be cited as the Registration of Births, Deaths, and Marriages Act, 1899-1960.

SCHEDULE.

Sec. 3. SCHEDULE.

No. of Act.	Name of Act.	Extent of Repeal.
1912, No. 36 ..	Coroners Act, 1912. . ..	The whole.
1937, No. 35 ..	Statute Law Revision Act, 1937.	So much of the Second Schedule as amended Act No. 36, 1912.
1945, No. 4 ..	Mines Inspection (Amendment) Act, 1945.	Section 11.
1954, No. 32 ..	Justices (Amendment) Act, 1954.	Subsection (4) of section 1, section 5.

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APPENDIX B

EXTRACTS FROM THE LAW REFORM COMMITTEE—INTERIM REPORT No. 6

THE POWERS AND PROCEDURES OF CORONERS AT INQUESTS AND OF MAGISTRATES AT COMMITTAL PROCEEDINGS

The Law Reform Committee has studied 'the powers and procedures of Coroners and as appears from the annexed detailed report finds that, in the main, the position since the Coroners Act, 1960, is satisfactory. It is, however, unanimously of the opinion that action should be 'taken to give effect to the following recommendations, for the reasons appearing in that report.

(1) Whether unnatural deaths or fires involve an indictable offence or not, inquests as at present conducted are of real value and should be retained. [See para. 1]

(2) They would be of considerably less value if the scope and nature of the inquiry was confined to matters upon which the coroner may make an express finding, but they are usually not in fact so confined, and follow the traditional pattern except where s. 28 (1) applies. This is in accord with the Coroners Act, 1960, in our opinion; and if there is any doubt as to the correctness of our view the Act should be amended to put it beyond question. [See paras 1-7]

(3) Proceedings at inquests should be published for the information of the public. The Coroner's discretionary power to prohibit publication should, however, ordinarily be exercised in the case of suicides.

It should also be exercised except in special circumstances in relation to evidence which is likely to injure any person if published. [See paras 8-11]

(4) Neither the fact that any witness is warned that he need not answer if the answer is likely to incriminate him nor the fact that a witness declines to answer on that ground should be published in the Press. A provision should be inserted in the Act to this effect, and when warned a witness should be informed accordingly. [See paras 8-11]

(5) Coroners should not refrain from making a full inquiry into the manner and cause of death, or cause and origin of a fire, merely because it appears that no indictable offence is involved. [See paras 12, 17]

(6) They are not, however, concerned to inquire into matters which relate *only* to civil liability and should not go or permit others to go beyond the investigation of the statutory matters in order to do so. Their findings should be limited to these matters, and it is usually not desirable for reasons to be given. In no case should a coroner express his view as to negligence or any other cause of action, or entitlement to Workers Compensation or Pensions. It is proper for him to add a rider designed to prevent the recurrence of a fatality by drawing attention to a dangerous state of affairs, but he should never attribute moral blameworthiness to or criticize the act, omission, character or conduct of an individual. Effect to these recommendations and to those contained in pars 3 and 5 above could be given by circulating this Report, or by drafting and circulating short Rules for Guidance. [See paras 13-17, 19]

(7) Every person or organization having a legitimate interest in the ascertainment of the facts into which it is the Coroner's duty to inquire should be entitled as of right to appear by himself or his counsel. The Nominal Defendant in appropriate cases is such a person.

Every person claiming to be so interested should be given reasonable notice by the Coroner of the time, date and place of the inquest. Provision should be made in the Act accordingly. [See para. 14]

(8) The decision whether or not an inquest should be held into a death occurring under or after anaesthesia should rest with the Coroner, unless an inquest is demanded by relatives (as it now does), and not, as until recently it in effect did, with the doctor. Consideration should be given as to whether the applicability of the provision only to deaths occurring within 24 hours of the administration of the anaesthetic is adequate. [See para. 20]

(9) Persons without legal qualifications should not be appointed to the office of Coroner or Deputy Coroner, and as soon as is practicable it and the office of the Deputy Coroner should be held only by Stipendiary Magistrates. [See para. 21]

(10) Section 29 (3) of the Registration of Births, Deaths and Marriages Act, 1899, should be extended to cover all cases in which an inquest is likely to be unduly prolonged or delayed. [See para. 22]

(11) "Any person" in s. 29 (3) [of the Coroners Act, 1960] should be defined to enable verdicts of suicide to be validly given by providing that in such cases it does not include the deceased. [See para. 23]

(Signed) L. J. HERRON,
Chairman,
Chief Justice.

10th April, 1964.

The Powers and Procedures of Coroners

1. Our terms of reference were so wide that our first substantial task was to elicit what were or might be matters of complaint or topics for constructive criticism in relation to coroners inquests as they are in fact conducted under the Coroners Act, 1960. Our investigations disclosed that generally speaking proceedings in Coroners Courts are formal, uniform and dignified. Indeed, the rare exceptions occur where the coroner is not a stipendiary magistrate. There are, however, slight but noticeable divergences of practice and some disagreement on principle even amongst the stipendiary magistrates.

The following matters were felt to be worthy of investigation and report:

(i) The extent to which coroners should go beyond the investigation of the basic facts of a death or fire to enquire into questions of criminal responsibility. In other words, is it in the public interest and is it of practical value to retain the residual investigatory function (as defined under Par. 3 below) in fact exercised by coroners in cases where no charge has been laid by the police. [See paras 1-7]

(ii) Whether publication of proceedings at inquests should be prohibited because of—

(a) Distress caused to relatives and others

(b) Damage to suspects against whom no charge is laid

(c) Imitative suicides. [See paras 8-11]

(iii) The extent to which in cases possibly involving crime suspects should be summoned, examined and cross-examined. [See para. 10]

(iv) Whether in such cases strict rules of evidence should be observed. [See para. 11]

(v) The extent to which coroners should go beyond the investigation of the basic facts of a death or fire to enquire into matters affecting civil liability for that death or fire on the part of any person or aspects of the matter which may affect pension rights or workers' compensation claims, or whether on the other hand a coroner, once satisfied that no crime is involved, is fulfilling his function if he does not fully investigate the surrounding facts and circumstances and merely contents himself with a finding that the death or fire was accidental. [See paras 12-17]

(vi) The extent to which parties interested in questions of civil liability arising out of the death or fire should be given the right to appear at the inquest. [See para. 18]

(vii) The extent to which the procedure and practice of Coroners Courts, which vary to some degree with different coroners on some of the above subjects and especially in regard to the representation of interested parties, should be regularized by rules. [See paras 13, 18]

(viii) The extent to which coroners may make findings of fact, in the course of giving reasons for a finding or otherwise, against individuals who have had no opportunity of being heard in their own defence and the extent to which they may properly comment upon the character and conduct of such individuals. [See para. 19]

(ix) Whether the law as to the need for inquests into deaths during or after surgical operations should be changed. [See para. 20]

(x) Whether the practice of appointing persons without legal qualifications to the office of coroner or deputy coroner should be continued, and whether the office of City Coroner should be a more senior position. [See para. 21]

(xi) Whether the provisions of s. 29 (3) of the Registration of Births, Deaths and Marriages Act, 1899, should be extended in all cases in which an inquest is likely to be unduly prolonged or delayed. [See para. 22]

(xii) Whether it should be provided that "any person" in s. 29 (3) [of the Coroners Act, 1960] does not include—

(a) a person whose identity is unknown

(b) the deceased in suicide cases

(c) either of the deceased in murder and suicide cases. [See para. 23]

2. We did not consider it to be any part of our function to enquire whether the nature and scope of the coroner's inquest today are such as to accord fully with the traditional function of the coroner, and the history of the office is from this point of view not relevant. Our only function, we consider, is to determine what in the public interest and with due regard to the rights of individuals the nature and scope of an inquest should be. However, the conduct of inquests under the Coroners Act, 1960, and the interpretation of the scope of the coroner's inquiry, especially in relation to "the manner and cause of death" and "the cause and origin" of a fire are undoubtedly influenced by tradition. It is accordingly desirable to note briefly the history of the coroner's inquest.

Originally, the Coroner's duties were of a fiscal nature; but as an unnatural death might bring revenue to the Crown, it soon became one of his most important duties to inquire into such deaths. In 1276 the Coroner's duties were set out in detail in the Statute *De Officio Coronatoris.* When informed of a sudden death, he was to go to the place

and bring before him representatives of the four nearest townships; and to inquire where the person was slain and who was there and who was guilty. Those found guilty were to be delivered to the Sheriff and gaoled, and steps were to be taken to ensure the availability of witnesses at the Assizes. In time, this became the Coroner's only substantial function.

With the establishment of a police force, the Coroner's function as an investigator was largely, if not entirely, superseded. Indeed, in this State, he becomes seised of jurisdiction only when notified of a death by the police. He formerly examined the evidence placed before him by the police (or in special cases such as those of deaths in police cells by counsel briefed by the Crown) to ascertain whether a prima facie case was made out against any person but he could summon witnesses and he could hear other evidence if he thought fit. This rarely happened. Since 1960, however, this function has been further restricted. If a charge is laid against any person before or during an inquest, the inquest is adjourned till it is disposed of (s. 28 (1)) ; if no charge is laid, but it appears to the coroner that there is a prima facie case against any person, he adjourns the inquest after hearing the evidence but before making a finding and forwards the depositions to the Attorney-General, naming that person (s. 28 (2)).

An enquiry into "the manner and cause of death" had always involved an enquiry into the identity of the person who, as well as into the facts and circumstances which, occasioned the death. Similar considerations applied to inquests into fires. Questions of means, motive and opportunity were ordinarily investigated. Coroners generally do not regard the scope of this traditional inquiry as having been in any way limited or restricted by the Coroners Act, 1960, except where a charge has been laid. Section 28 (1) of the Coroners Act, 1960, is as follows:

> 28. (1) Where a coroner, justice or justices is or are informed by a member of the police force either before he commences or they commence any inquest, inquiry or magisterial inquiry or after he commences or they commence but before he completes or they complete any inquest, inquiry or magisterial inquiry that a person has been charged before one, or more than one, justice with an indictable offence in which the question—
>
> (a) whether the person charged caused the death of the deceased person concerned; or
>
> (b) whether the person charged caused the fire concerned,
>
> as the case may be, is in issue such coroner, justice or justices—
>
> (i) may, where he has or they have not commenced the inquest, inquiry or magisterial inquiry, or where he has or they have commenced it but has or have not taken the evidence hereinafter referred to, commence or continue, as the case may be, the inquest, inquiry or magisterial inquiry for the purpose only of taking evidence of the identity of

the deceased person concerned and the place and date of his death or evidence of where the fire concerned occurred, as the case may be, and upon taking such evidence shall thereupon adjourn the inquest, inquiry or magisterial inquiry without fixing a date or place for the resumption thereof; or

(ii) shall, where he has commenced such inquest, inquiry or magisterial inquiry and has taken the evidence referred to in subparagraph (i) of this subsection, immediately upon being so informed adjourn such inquest, inquiry or magisterial inquiry without fixing a date or place for the resumption thereof, and where a jury has been impanelled shall discharge such jury.

Section 28 (2), would at least seem to countenance the traditional inquiry in cases to which s. 28 (1) does not apply.

28. (2) Where the evidence given at any inquest, inquiry or magisterial inquiry establishes, in the opinion of the coroner, justice or justices holding it, a prima facie case against any known person for an indictable offence in which the question—

(a) whether such known person caused the death of the deceased person concerned; or

(b) whether such person caused the fire concerned,

as the case may be, is in issue and the coroner, justice or justices has or have not been informed in accordance with subsection one of this section the coroner, justice or justices shall—

(i) immediately after the evidence at the inquest, inquiry or magisterial inquiry, as the case may be, has been taken and before making his or their findings, or where there is a jury, taking the jury's verdict, adjourn the inquest, inquiry or magisterial inquiry without fixing a date or place for the resumption thereof; and

(ii) forward to the Attorney-General the depositions taken at the inquest, inquiry or magisterial inquiry together with a statement signed by the coroner, justice or justices setting forth the name of the person against whom a prima facie case for an indictable offence has, in his or their opinion, been established and particulars of such offence; and

(iii) where a jury has been impanelled, discharge the jury.

By s. 29 (3), however, the coroner is precluded from indicating in any finding or in any way suggesting that any person is guilty of an indictable offence. A suggestion has been made that the prevailing view adopted by coroners is not correct and that the scope of the inquiry is limited in effect to matters as to which the coroner is permitted or

required to publish a finding. This view has the support of the Solicitor-General, but we do not share that view. In our view the function currently exercised by Coroners in inquiring in a broad way as to how, when, and where a death occurred is within their powers as defined by the Coroners Act, 1960, whether or not criminality may be involved. We think, further, as will subsequently appear, that it is desirable in the public interest that Coroners should continue to inquire as they now do, subject only to the safeguards contained in our subsequent recommendations, and that if 'there is real doubt about the matter, the position should be clarified so as to substantiate their power to do so.

3. We use the phrase "residual investigatory function" to describe the inquiry in fact conducted by coroners in cases in which no charge has been laid in the exercise of their traditional function, and notwithstanding that they may publish no finding indicative or suggestive of guilt. It is true that they seldom if ever investigate of their own initiative or summon witnesses other than those produced by the police or by counsel. None the less the inquest affords to the police an opportunity of which advantage is sometimes taken of furthering their investigations by the examination and perhaps cross-examination of witnesses under oath. The recent Bogle case affords a clear instance of this. It also affords persons interested the same opportunity which is availed of to a very marked degree in cases which may involve civil liability.

It is put on the question of usefulness that as a matter of practical experience inquests do not in fact provide a supplement to police investigations which is of any real value. Although up to the present date twenty-six cases had been referred by coroners to the Attorney-General under s. 28 (2), in none of them did the Attorney-General file a bill. We have not the details but it is believed that most of these were fatal accident cases in which there was a difference of opinion between the coroner and the police as to whether criminal negligence was evidenced. We have no knowledge of any case in which the police have laid a charge after an inquest as a result of information elicited in the course of it. It is suggested in the Wright Committee's report that this may well happen in certain classes of inquest.

None the less the police themselves and the Public Solicitor, who was formerly a Clerk of the Peace, hold the view that the coroner's power to summon witnesses and to examine them (including the suspect, if any) did in fact assist police investigations, particularly as the evidence was given on oath, and that information might be thus forthcoming which could otherwise have been lost to investigating officers. It is also to be noticed that the coroner's power to summon a witness may be the only way of preventing a witness from leaving the country while investigations are pending. However, although an inquest does provide an interested party who may be unwilling to give information to the police with an opportunity of placing it before a judicial functionary, our inquiries indicate that seldom if ever is any information of value so obtained. The most that can be said is that in this regard the inquest

has undoubted potentialities which have not in recent times been of significant practical value and in the future it would seem are not likely to be. We would, however, draw attention to the views of Sir Archibald Bodkin expressed in an addendum to the report of the Wright Committee.

But that is not the only consideration. An inquest as at present conducted provides an opportunity for the public examination of the thoroughness or otherwise of police investigations which have been unsuccessful. This is welcomed by 'the police, it is a stimulus to efficiency and a safeguard against inefficiency, and as such we consider it to be in the public interest.

Moreover there is a real and a proper demand for the investigation of deaths under certain circumstances, and we instance the deaths of persons in police custody, in gaols and in some cases in hospitals. This is because there is felt to be a risk of the facts relating to such deaths being suppressed. In such cases, as has been mentioned, 'the Coroner is usually assisted not by the police but by counsel briefed by the Crown. This demand would not be satisfied by an inquiry so restricted as to preclude investigation as to who if anyone caused the death and in what circumstances. We would conclude that the coroner's inquest as currently conducted is of some real practical value.

4. There are, however, weighty considerations which lend support to the view that certain concomitant features of such enquiries are so undesirable that any benefit to be had from them is entirely outweighed.

The Bar Council recommended that "the Coroner's Court should not be part of the machinery for investigating crime". The coroner today is undoubtedly regarded generally as presiding over a court of justice and not over a mere enquiry although he does not in fact adjudicate between parties. He is usually a magistrate and he usually sits in a court building. Although there are in the strict sense no litigants before him, he makes findings in a judicial way which may well be to the advantage or disadvantage of persons interested. It is not entirely satisfactory that in what has come to be regarded in public estimation as a court of justice, whether it is or not, an investigatory function should be exercised.

There are more serious aspects. Investigations of this sort occur and can only occur where the police have been unable to establish against any person a case sufficiently strong to warrant laying a charge, but there may be someone under suspicion. Evidence is taken whether strictly admissible or not, and the enquiry proceeds into matters as to which a coroner cannot publish any finding of guilt. The effect may well be to cast suspicion in the minds of the public upon some person whom the police themselves do not regard as suspect. A person suspected by the police or in the minds of the public may be summoned to give evidence, called and cross-examined. If he declines to answer a

question the suspicion against him is accentuated although the evidence against him is no stronger. He cannot be found guilty by the coroner but he may well be held guilty and wrongly so in public estimation as a result of proceedings which in some respects contravene the basic principles of our criminal law. Our enquiries disclosed the opinion unanimously held that publication of evidence given at an inquest could seriously prejudice a person subsequently put on trial. Since the Coroners Act, 1960, no person has in fact been subsequently put on trial but only because the Attorney-General has not filed a bill in any case referred to him under s. 28 (2). It was also generally agreed that irreparable damage could be done to persons who were rightly or wrongly suspect but against whom no charge was or could be laid. With these opinions we entirely agree. What happened in the Yeates case could equally well happen under the present law.

The Solicitor-General and the Clerk of the Peace, both of whom adopt what we refer to as the restricted view of the proper function of the coroner under the Coroners Act, 1960, were of the opinion that this had to be accepted in the public interest. It is not to be forgotten that whether or not the coroner is considered to preside over a court of justice, he does not in fact do so. His function is now almost entirely ministerial; it is simply and solely to conduct an enquiry, and since the enactment of s. 29 (3) this is no longer a "fiction" as it was called in the Wright report. He conducts this enquiry on behalf of the public and for their information. Unnatural deaths and fires are properly matters of public concern. There is a general distrust of enquiries conducted behind closed doors but in any case such enquiries could not meet the public interest. If it is held, however, that proceedings at inquests as currently conducted ought to be publishable by the press, it cannot consistently be also held that the coroner's enquiry into whether or not a crime was committed should be altogether taken from him, for the result would be to leave that enquiry entirely in the hands of the police and thus, unless a charge is laid, behind closed doors. It may be that the cases in which any serious injustice is done to individuals are relatively few in number and therefore weigh little in the scales. As to this we take the liberty of quoting the report of the Wright Committee (paragraph 89):

> It may be said that these cases are too few in number to call for any change in the law; but in fact though few they are very serious in character because they shock the public conscience of this country and outrage the views of the public on the manner in which a criminal charge—especially of a capital character—should be advanced.

6. In search of possible alternatives the Committee examined the Scottish system. No other practicable alternative likely to receive any measure of public support has been suggested to us. Under the Scottish system the investigation of unnatural deaths, except in the case of fatal industrial accidents or unless the Lord Advocate deems it in the public interest to hold a public enquiry, is conducted in private by a Procurator

Fiscal. As a result where criminal proceedings are instituted the accused is not prejudiced by the previous public disclosure of the evidence against him, and where they are not no damage is done to persons at whom the finger of suspicion may point. Moreover in cases in which criminality is not involved the intimate private details of the deceased and his family receive no publicity. The Wright Committee did not undertake a detailed investigation of the relative merits of the Scottish and English systems of enquiry because it came to the conclusion that without extensive alterations to the English criminal procedure, it was not practicable even if it were desirable to adapt the Scottish system to English conditions.

The reason was that in England there is no centralised system of public prosecution. The Director of Public Prosecutions is responsible for the conduct of only a small proportion of prosecutions for indictable offences. The majority are conducted at all stages by the police and each county has its own police force. The situation is of course quite different here as the Clerk of the Peace is responsible for the conduct of all prosecutions at Quarter Sessions and the Central Criminal Court and the same difficulty does not arise. With some enlargement of staff the Clerk of the Peace could undertake a role similar to that of the Procurator Fiscal and after enquiry report to the Attorney-General as to whether a prosecution should be instituted or other action taken.

The Procurator Fiscal makes his own enquiries and if he considers it advisable takes statements from persons acquainted with the cause of the death.

These statements are signed but are not ordinarily made on oath. If a witness is obstinate he may be brought before a sheriff and may be put on oath and examined before him. Statements are not taken from suspects and if a suspicion emerges while a statement is being taken the witness is not further examined.

It cannot be envisaged that in this country the Clerk of the Peace or any other functionary acting as Procurator Fiscal would either invade the province of the police or set up an independent homicide bureau to investigate unnatural deaths. He would no doubt study the material gathered by the police in the form of statements by witnesses, and from the replies we have received it is clear that such material is often not as satisfactory as a sworn deposition taken from a witness either at committal proceedings or at an inquest where the witness is examined by a skilled police prosecutor and cross-examined by counsel for the defence. He might suggest further enquiries, the result of which would come before him in the same form. He could be given power to summon an obstinate witness before a magistrate or judge but if the interrogation was to be held *in camera* it would be met with great disfavour, and it is extremely doubtful whether any useful purpose would be achieved. The same power to summon an obstinate witness could indeed be afforded to the police under the present system but our replies indicate that exactly the same comment applies.

In short, despite its manifest advantages in avoiding damage to suspects, the adaptation of the Scottish system to local conditions would result in no advantage from the point of view of value or usefulness, and if the Clerk of the Peace's enquiries were, like the Procurator Fiscal's, to be conducted in private unless the Attorney General otherwise ordered a great deal of public unease would be engendered. This has not apparently happened in Scotland where the system is traditional. The Scottish people have always been accustomed to having enquiries into unnatural deaths conducted in private. Our own history produces the opposite result. It has encouraged people to take an interest in these matters. There is no doubt that they do, and we feel it to be in the public interest that they should. What was formerly the King's Peace to be maintained by the Crown is today properly to be regarded in fact if not in theory as the People's Peace in the maintenance of which every member of the public is concerned.

7. Being satisfied as we are that there is some real value in the residual investigatory powers of the coroner; being also satisfied that the exercise of such powers can and does do unjustifiable damage to individuals, and being unable to find any satisfactory alternative to the coronial enquiry as at present conducted, it remains to consider what steps can be taken so that the public interest may be satisfied and at the same time the rights of the individual safeguarded. It may be noted here that we have reached the conclusion that there is a real value in the coroner's residual investigatory function upon a consideration only of those cases in which criminality may be involved. Any doubt about this conclusion is we think in any case dispelled by the considerations arising from discussion in paragraph 12 below of inquests in which there is no element of crime.

The great majority of inquests are into matters which involve no element of criminality, and one cannot reach any final conclusion as to how wide the public interest requires an enquiry into the "manner and cause" of death or "cause or origin" of a fire to be, and as to whether it is desirable or indeed practicable for it to be in some way restricted or whether other action should be taken to mitigate the unfair damage it may do, without giving some attention also to this class of case. It may often occur that until an enquiry has proceeded for some distance the possibility of a crime being involved cannot be excluded, and this is so particularly in the case of motor vehicle accidents; accordingly, any curtailment of the field of enquiry into "manner and cause" of death to be effective might necessarily need to apply to all classes of inquest, whether a crime is or may be involved or not. If we are to balance public interest against individual rights, the full measure of the public interest and the extent to which it would be unavoidably affected by restrictive action must be ascertained and considered.

8. It is convenient next to consider what action could be taken to mitigate damage to individuals. The most obvious course would be to place a total ban on the publication by the Press of proceedings at

inquests. Again no final conclusion can be reached until inquests involving no criminality are considered, because it may be impracticable in fact, if not in theory, to distinguish between the two classes of case for the purpose of such a ban.

It is already clear that we would rule out immediately any suggestion that all inquests be held *in camera*. Such a step would properly be viewed by the public with misgiving, and would be wrong in principle. The public distrust of proceedings behind closed doors is well justified. Such proceedings tend to be unsatisfactory. It is essential that those who have an interest in them should be able to see and hear what transpires. The Coroners Act at present provides that the Coroner may prohibit the publication of any evidence, and this, wisely administered, we consider sufficient to meet the occasional case in which distress to relatives of the deceased, or other considerations, outweigh the public interest.

Slightly different considerations apply, however, to the question of a total ban on publicity in the newspapers as distinct from a hearing *in camera*. Our enquiries suggest that the immediate purpose of an inquest is not appreciably advanced, nor is the investigation significantly assisted, by such publicity; witnesses of any value do not in fact come forward as a result of it; and it can do far more damage to the individual than publication merely to the few who choose to attend the hearing. Nonetheless our enquiries showed that no one was prepared to suggest a total ban. Several expressed the view that there should be no restriction whatever. Others suggested a discretionary power to prohibit publication of all or part of the evidence. This already exists. Others suggested some control over the manner of publication, to avoid sensationalism. This we regard as impracticable.

The placing of any limitation on the freedom of the Press is always an invidious matter. "To uphold that freedom is a matter of the highest public importance and it should be jealously guarded." Nonetheless the freedom of the Press is restricted by the law of defamation in the interests of the individual, and the only reason it can by the publication of evidence given at inquests do damage without incurring liability is that inquests are considered to be court proceedings within the category to which qualified privilege relates. Should they be? We feel that the answer must be that they should. For the Coroner's function is to inquire, on behalf of the people, and in their interests, into a matter of public concern, an unnatural death or a fire. His function is not merely to inform himself, nor is he appointed to be the final and ultimate repository of the information gleaned. He inquires so that the public may know.

His role is thus fundamentally different from that of the magistrate conducting committal proceedings. Even though today a Coroner cannot make a finding of guilt, his inquest is not, as are committal proceedings, a mere preliminary. It is an inquiry complete and final in itself.

It is true that cases in which s. 28 (2) applies (at least if a prosecution follows), and also cases under s. 28 (1) (if the charge is not laid until after some evidence has been taken) bear the strongest of superficial resemblances to committal proceedings, and publicity may seriously prejudice the person ultimately charged in his defence and at bis trial. Nonetheless the fundamental difference in the purpose to be served must be kept steadily in mind. An inquest of which the public can be told nothing would be a purposeless proceeding.

We have already noticed that there may be cases in which the public interest is outweighed by other considerations—either because, in the particular case, the public interest is negligible or the other considerations exceptionally weighty. In such cases the Coroner should, under his existing power, prohibit publication.

9. We refer especially to suicide cases. The Wright Committee extensively investigated certain undeskable features of inquests into suicides and, so far as is relevant here, came to the following conclusions:

(i) That a great deal of distress to relatives and others was caused by the reading aloud in Court, and subsequent publication of written material left by the deceased, sometunes written while of unsound mind, often dealing with intimate personal details or adverting upon others.

(ii) That imitative suicides may result from publicity given to inquests.

(iii) That there should be a total prohibition of publication in the Press of proceedings at inquests into suicides, and that publication of the name and address of the deceased and of the verdict only should be permitted.

The Committee also drew attention to the mischief which can ensue from the publication in the Press before any inquest is held of photographs and statements by potential witnesses and others where a death has occurred under unusual circumstances.

While in this State there is no longer any need for an inquiry into the deceased's state of mind—which introduced much of the distressing material above referred to, it is to be noticed that the Wright Committee's recommendations involved the abolition of this inquiry but none the less also recommended a ban on publicity.

The Wright Committee examined a great number of witnesses and was impressed by their unanimity and the force of their views.

We have made no similar inquiry, but we have no doubt that the Wright Committee's conclusions apply with equal validity here although some magistrates expressed doubts. The imitative suicide is undoubtedly a phenomenon which has been noticed here. The Harbour Bridge suicides soon after it was opened, and the popularity of the Gap are notable instances.

A suicide is not in general a matter of public concern, but we doubt the wisdom of an arbitrary total ban on publicity. It may be difficult to apply, especially in cases in which there is a real issue as to whether the death was not accidental. Moreover, where the circumstances are such that a suspicion of murder may have rested upon some person, it may be in that person's interest as well as that of the public for the proceedings to be published.

We were informed that according to normal practice Coroners do not permit the publication of suicide notes. This practice might well be extended to all but formal evidence in most suicide cases. If it is, no other action is necessary.

10. As has been noted, a substantial cause of unjustifiable damage to individuals arises from the Coroner's power to summon and examine a suspect, upon whom suspicion will become the more firmly fastened if he declines to answer questions.

There is nothing obnoxious to the principles of our criminal law and practice in the interrogation of suspects, provided they are properly warned as soon as the occasion for warning them arises. Such interrogations are regular practice on the part of the police, but are conducted privately. They are obviously a proper part of a coroner's inquiry, which is had in public. Should an inquest be, to some extent, hampered or frustrated by depriving the Coroner of his power to summon and interrogate a suspect? In Scotland the Procurator Fiscal never questions a suspect. The Wright Committee recommended that a suspect should not be put on oath unless he desired to give evidence and that if he did so desire, "the questions addressed to him should be directed simply to eliciting his statement and he should not be cross-examined on the inconsistency of his evidence with that of other witnesses".

The difficulty we feel about this recommendation lies in its application to particular cases. It does not arise where the identity of the person who caused the death (or fire) is known, the only question being whether his act was criminal or not, as is usually the case in motor vehicle fatalities. He, and he alone, can be described as the "suspect". Where, however, the identity of the person responsible is not apparent, who is to qualify for the proposed protection? Is it to be any person who appears to have had the means, motive, or opportunity? In any one case there may be several such persons. Is it to be such person only as the Coroner regards as suspect? What is to happen if a person is called and cross examined in the usual way, before any suspicion arises, out of the inquiry at all events, and subsequent evidence renders him suspect? Must a person brand himself a suspect in order to claim protection? If so he is in just as difficult a position as a witness who declines to answer questions is at present. However the protection was applied in practice, the suspect would be publicly identified and branded as effectively as under the present system.

It must be remembered that we are concerned with more than one problem. In the first place it is a cardinal principle that no person should be required or compelled to incriminate himself out of Ms own mouth. In the second place a witness may feel reluctant to decline to answer because of the damage which may flow from 'the publication of his refusal. In the third place, if he should be subsequently indicted, potential jurors may be influenced by knowledge of his refusal to answer; and if he has not refused to answer, his defence may be prejudiced by the answers given. Alternatively, if he is never charged, his reputation may be adversely affected either by publication of his refusal or by what he says. Finally, *ex hypothesi*, because of s. 28 (1) no prima facie case exists against him; nonetheless he is asked for his account of the matter with suspicion directed at him; the difference between this, and actually being called upon to answer an unsubstantiated charge, is negligible.

It is apparent that most of the vice inherent in this situation lies in the threat of publicity. It is from 'this that the element of compulsion arises. Without it a suspect is free to answer or not as he pleases, his decision divorced from extraneous considerations. If he answers and prejudices his defence, or even implicates himself, it is by his own free choice. If he declines, without publicity, potential jurors and his reputation are equally unaffected. Notwithstanding questions of public interest, this is a field in which the right of the individual is regarded as paramount.

We think, therefore, that it should be provided that neither a warning that a witness need not answer nor a refusal to answer questions on the ground that the answer might tend to incriminate the witness should be published in the Press, and that every witness who is warned that he need not answer should be so informed.

We are conscious that this is not a complete answer. It remains possible that an innocent person willing therefore to answer, or a person not innocent but proclaiming his innocence and relying on his ability to withstand interrogation and against whom there is no prima facie case, may be subjected to a long cross examination suggestive of guilt. Such occurrences must be rare and are not susceptible, we feel, of control by any general rule. It is for individual coroners to ensure that their processes are not abused, and legally qualified coroners, at least, can be relied upon to do so.

11. We have accepted as a general principle that the public is entitled to know what evidence is given at inquests. It is entitled to have placed before it material from which individuals, if they see fit, may draw their own conclusions.

A coroner, however, is not bound by strict rules of evidence. His function is to inquire, and by receiving inadmissible evidence of no probative value he may be led to sources of admissible evidence hitherto

undisclosed. It is at least doubtful whether this has ever happened, at least since the establishment of reasonably efficient police forces, but it is a possibility; and there can be no other justification (apart from shortening the proceedings) for the reception of inadmissible evidence. Should it lead to nothing, he will himself reject it in reaching a decision and if there is a jury will no doubt direct the jury to do so. Nonetheless it will be published, and its publication may cause damage to individuals.

The Wright Committee recommended that in any case in which questions of criminality were involved strict rules of evidence should be observed. Again, however, there is a difficulty in the application of such a rule. Who is to say, in a fatal accident case, at the time when inadmissible evidence is tendered, whether a question of criminality is involved or not? In what appears to be a suicide case at first, a suggestion of murder may appear later, and perhaps from the inadmissible material itself. If so made it should be dealt with, if only to refute it. Furthermore, in the ordinary litigious proceeding the parties themselves police the rules of evidence and ordinarily the magistrate or judge intervenes only when objection is taken. Before a coroner there are in the strict sense no parties. In many cases it would be left to the coroner himself to maintain a vigilant eye on the admissibility or otherwise of any evidence presented. This might impose a serious responsibility as objections to admissibility are not always readily apparent. Finally, it is to be remembered that as there is no appeal in any shape from a coroner, there is no way of correcting his error should he in fact depart from the strict rules. A better alternative, although still subject to these latter considerations, lies we feel in the coroner's power to prevent publication.

The public is entitled to be made aware of relevant matters, and of evidence from which a conclusion may validly be drawn; but there is, we feel, no public interest in the publication of mere rumour, or of evidence which has of itself no probative value. We think the Coroner should take the responsibility of banning the publication of evidence, whether strictly admissible or not, if it is likely to do damage to any individual if published.

12. We now turn to consider the value, and the proper or desirable role, of the Coroner's inquest in relation to matters in which no criminality is involved. Leaving aside suicide cases, a very large proportion of these, as the event shows, are fatal accident cases. Cases of death under or after the administration of an anaesthetic are also not uncommon. In such cases there is, more often than not some suggestion of negligence, and, if no charge has been laid, the coroner enquires whether or not there was criminal negligence. If, in his opinion, there was, he makes no public finding, but acts under s. 28 (2). Otherwise, he makes a finding. This makes it impossible to adopt, as a practicable basis for classifying inquests, or for introducing rules applicable to one class and not to another, the involvement of any criminal charge. Nonetheless, the "fatal accident" class of case is deserving of special consideration, because it is inevitable that the inquest—according to existing practice—will touch on matters affecting civil liability.

The value and importance of the inquest in fatal accident cases is unquestioned. The victim cannot himself give an account of what happened, and the inquest affords to his relatives and friends, and to others who may be concerned, and indeed emotionally disturbed, a means of ascertaining the details. This of itself fulfils a real need; but in addition it is by no means uncommon for an inquest to disclose matters affecting public safety, the safety of employees, the safety of travellers in public transport, and others. Inquests into motor vehicle fatalities, unless they disclose dangerous roads, level crossings, or the like, rarely fall into this category, but in these the question of criminal negligence or culpable driving is always latent. The police having laid no charge, it is important that there should be an independent check on their opinion.

Whether or not in such cases an inquest into the "manner and cause" of death ought to involve an inquiry as to the existence of criminal negligence, it is certainly concerned with preventable hazards; and even if there were no value in the coroner's residual power of enquiry into criminality in cases in which criminality is manifest, we would conclude from what appears above that it would be quite impracticable to restrict the interpretation of "manner and cause" in such cases only. In other words, the importance of the wide enquiry in fatal accident cases is of itself such as to justify the retention of the coronial enquiry in its present form, and we see no practicable means of drawing any distinction, as at the opening of the enquiry, between these and other cases.

The value and importance of inquests into fatal accidents is not diminished by the fact that many of 'them are the subject of some other form of inquiry. Industrial accidents are investigated by the Department of Labour and Industry; mine accidents by the Mines Department; aircraft accidents by the Civil Aviation Department; railway accidents by the Commissioner for Railways; bus accidents by the Commissioner for Government Transport. Shipwrecks or collisions are investigated by a Court of Marine Inquiry. These investigations however are not all conducted in public and not always exhaustively. They are usually held to answer the particular queries of the authority holding them; and the acts or omissions of that authority itself may call for examination. Indeed, the object of inquiry in some cases is merely to record statements of witnesses in case a civil action is brought against the authority holding the inquiry. The object of the inquest, however, is to place on record all relevant evidence as to the facts and ckcumstances of the death; to provide material for the registration of the death in the absence of a certificate by a medical practitioner; to inform the public, through an impartial inquirer of the broad facts of the matter, and to inform all concerned, in appropriate cases, of *the* precautions desirable to avoid repetitions.

An inquest does not become unnecessary because an inquiry of one of the types enumerated is undertaken. On the other hand it is felt that the material elicited in these inquiries, including as it often does statements taken within a day or two of the death, might be valuable to

the coroner and should in all cases be sent to him; not only because evidence changes with the passage of time, but also because it tends to change according to the nature and intent of the proceedings in which it is given. It must be remembered that the findings in the instant case may not be the end of the matter; the inquest provides a permanent record which may afford material for subsequent research.

13. The scope and nature of an inquiry into a fatal accident varies greatly from case to case, and to some extent from Coroner to Coroner. Much depends upon the extent to which the police have seen fit to press their inquiries. The Coroner seldom *it* ever requires any further investigation. Much depends on whether the accident is one for which compensation or damages may be payable. In these cases the inquiry is pressed, sometimes to undue lengths, by the parties interested.

At one end of the scale we instance this type of case. A man, arrested for drunkenness, is found dead in a police cell, as a result of cerebral haemorrhage. The Coroner, once satisfied that the police concerned were in no way responsible, all too often records a finding without further inquiry, and this notwithstanding the fact that in such a case the Coroner is usually assisted by Counsel. The police have had no reason to make searching inquiries; no relative or friend (if located and notified) comes forward on the part of the deceased to press an investigation. The deceased may have been hit with a bottle in a fight; he may have been knocked down by a car; he may equally have died of natural causes. A finding is made without the manner of his death ever being looked into, except by way of excluding one possibility; yet, quite apart from the question whether any person was criminally responsible, the manner and the cause of death may be of considerable concern to his widow and children, who may be unaware of the death, or if aware of that, unaware of the inquest touching it. They are not likely to be capable of pursuing their own inquiries; but their rights under the Compensation to Relatives Act, or Workers' Compensation Act, may be very much affected as also may rights to a war pension.

At the other end **of** the scale there is the case of a car passenger killed in a level crossing accident. The widow, his driver, the Commissioner of Railways, and in certain circumstances the train crew and the crossing keeper may be separately represented. Under the guise of investigating whether or not criminal negligence was displayed by any person concerned, the proceedings are used, by the various interests, in an endeavour to place or shift the civil liability. At times, questions which could relate only to damages are asked. The inquest thus becomes a dress rehearsal for a nisi prius action, and even when from the outset there is not the slightest likelihood of the matter being referred under s. 28 (2).

A coroner in giving his reasons may indicate what he accepts as being the facts of an accident, and may even in his finding state that one party or another was negligent. There is absolutely no statutory or traditional warrant for the latter, and the desirability of giving reasons

is open **to** question. But it is not with these things in mind that the representatives of interested parties examine and cross-examine; the Coroner's finding, and *a fortiori his* reasons, are of no binding effect on any of them. The essential particulars ultimately incorporated in the Death Certificate become prima facie evidence of the facts stated, and that is all. The importance of the inquest to the parties interested lies entirely in the material adduced; in eliciting favourable answers from witnesses; in breaking down unfavourable evidence; and in extracting admissions; for in subsequent litigation witnesses will be confronted with and held to their depositions.

14. Because criminal negligence is within the field of inquiry, negligence must be. It is inescapable, whether desirable or not, in the inquest as at present conducted. But other matters tending to establish civil liability may equally be investigated by the interested parties, if not by the Coroner, who, as at present constituted, is in no way concerned. Questions may be asked tending to show that a machine is or is not dangerous, or that a place is a factory; that a breach of a statutory regulation has been committed, or that a state of affairs existed to which the rule in *Rylands* v. *Fletcher* applied.

At both ends of the scale, and in the intermediate cases, practices of Coroners vary both as to the representation of parties and as to the latitude given in examination and cross-examination of witnesses. The Nominal Defendant, who is vitally interested in fatal motor vehicle cases in which a car said to be involved is unidentified, rarely if ever gets leave to appear. Interested parties are not notified of an inquest and have difficulty in ascertaining when and where this is to be held.

15. The question arises whether—

(i) The investigation of matters affecting civil liability should be, as far as possible, excluded; or

(ii) The present situation should be regarded as being in the public interest and regularized, even though the Coroner can make no relevant finding. (By "regularized" we mean recognized and controlled to achieve uniformity of practice) ; or

(iii) The Coroner's powers should be extended to enable him to make findings of negligence (or contributory negligence) and of facts relevant to other causes of action.

There was general agreement amongst those interrogated that the investigation of matters affecting civil liability was of real value to the parties to subsequent litigation. Although there was some support for the third of these proposals, we feel that on examination it cannot be supported. There would be no real virtue in giving the Coroner such a power unless his findings were binding on the parties interested.

It is said that, even if they were not, they would be of value in negotiating the settlement of claims at an early date. It may well be that a precise and thorough ascertainment of the facts by a coroner will furnish a guide to the parties, although it is doubted whether in this country it leads as often to the settlement of civil claims as the evidence before the Wright Committee apparently suggested (Par. 119). It is the Coroner's duty to ascertain the facts; and no more would be achieved, in our opinion, if he were empowered to add the construction placed by him upon them in terms of negligence (short of criminal negligence), Workers' Compensation or Pension Rights (though not in such a way as to bind the parties). Indeed, in so doing he might well be merely raising false hopes in the breasts of prospective plaintiffs or defendants. There would be a very great risk of creating a dissonance between different tribunals such as to weaken the faith of the public in the administration of justice, for coroners and civil juries would not be expected always to see eye to eye.

And the findings of the Coroner could not be made binding on the parties. In the first place, the nature of the proceedings is not susceptible to it; it is an enquiry, not an adjudication. Secondly, the coroner may still be a person without legal training; and even where a magistrate sits, conceding that magistrates adjudicate nowadays on matters involving very large sums, it is not desirable 'that sitting as coroners, from whom there is no appeal on fact or law, they should do so.

16. Not only is an enquiry into negligence probably inescapable; the Coroner can and should enquire into the circumstances giving rise to the condition which caused the death, and ascertain whether they disclose a preventable hazard, or errors or weaknesses in systems or in administration affecting public safety, and this must involve the investigation of fact bearing on civil liability. Moreover, the inquest may well be the only means by which interested parties can fully acquaint themselves with the circumstances of the death.

It follows that in our view the course sometimes adopted in the type of case instanced above—that of the man found dead in a police cell—is not in the public interest. The Coroner in that instance is not carrying out his function.

17. We see great practical difficulties about implementing the first proposal which in any case received no support. It may be that matters relating *only* to civil liability should be excluded from coronial investigations, as being irrelevant to the issue before the Coroner. Clearly enough, questions which could only go to measure of damage ought not to be allowed. But if any fact has any relevance to the manner and cause of death, or cause and origin of a fire, investigation of that fact can hardly be restricted because it has a bearing on civil liability, even though, but for that aspect, it might have properly received very much less attention. The Wright Committee in dealing with this topic, drew a sharp distinction between the investigation of facts and a trial

of liability pointing out that the inquest was by no means an appropriate forum for the latter procedure. It recommended, in order to assist Coroners in keeping inquests within proper limits, the introduction of a declaratory section enacting that the Coroner is not concerned with questions of civil liability.

This recommendation should not be misunderstood. It was not suggested that facts affecting questions of civil liability are for that reason only not the concern of the Coroner. If they are facts touching the manner and cause of death they very definitely are. The mischief identified by the Wright Committee was the use of inquests by interested parties, either to elicit facts relevant to civil liability but *not* to the issue before the Coroner or for the purpose of securing a rider to the verdict imputing blame to one person or exonerating another. The latter of these courses is much less common here than the former, probably because it is realized that there is no practical utility in such riders and also that most coroners will not make them in any case. As we have already pointed out, and as the Wright Committee reported, there is no statutory justification for either of these courses, which are properly to be regarded as abuses of the inquest. But here, as in England, it is the Coroner's function to ascertain the facts as to the manner and cause of death, whether or not these facts bear on civil liability. If formerly his attention was almost entirely directed to the question of criminality, that is no longer the case; indeed in but a small proportion of inquests is it so directed. Nowadays, the fact that no crime is involved in no way curtails the enquiry into the manner and cause of death; the inquest is not, primarily, a mode of criminal investigation; it is essentially an enquiry as to how, when and where an unnatural death or a fire occurred.

18. Insofar as the relevant facts and circumstances may also bear on civil liability, interested parties are prima facie entitled to be represented, and providing their questioning is confined to matters relevant to the manner and cause of the death or cause and origin of the fire they can materially assist the Coroner. Once a substantial interest is disclosed, representation should be as of right; and interested parties who have notified the Coroner of their wish to appear should be notified of the date and place of hearing. But it is essential that the Coroner limits himself to findings of fact, and confines the parties interested to the facts relevant to the issue before him.

So far as representation of parties is concerned, the Act would require amendment. The matter of notice of hearing could be dealt with at the same time by amendment, or by Rule.

19. As has been already noticed, the desirability of Coroners giving reasons for their findings, or indeed of doing any more than stating, in the shortest possible terms, the answers to the questions they are required by the Act to answer, is questionable. Nothing is gained by doing more than stating, adequately, the facts which the Coroner is required by the Act to find. Damage may be done, unfairly, if the Coroner goes further.

There is undoubtedly not the same ground for complaint here as was noticed by the Wright Committee in England. It is not common, especially where a magistrate acts as Coroner, for imputations of moral blame, to be made against individuals. It is perhaps a little less uncommon for comment to be made upon the acts or omissions of individuals or of public authorities. It is of course inevitable that from tune to time findings of fact are made which are adverse to a person who may or may not be represented.

It is completely wrong in principle, and it is no part of the Coroner's function, for moral blameworthiness, whether evidenced by directly relevant material or merely appearing incidentally or collaterally to real issue, to be attributed to any person. It is wrong in principle because no charge has been laid; and the individual concerned, even if appearing, is not there to be heard upon it, especially if it is a collateral matter. The same applies to comment upon the acts or omissions even of public authorities. A Coroner may ask rhetorically, why a doctor failed to appear at the scene, or why the deceased had to wait so long for attention at hospital, even where the delay in receiving treatment was clearly not a factor in causing death. In such a case the doctor who did not appear will of course not be represented at the inquest—he has no right to be. Nor ordinarily will the hospital. Their explanations would probably not be relevant even if they were.

This is not to say that from time to time in appropriate cases Coroners should not add riders drawing attention to preventable hazards and designed to prevent the recurrence of fatalities. It is, in fact, desirable that they should, as the public will rarely be as fully informed by the Press as the Coroner is by his witnesses. It may be that such riders will sometimes be based on inadequate material, or on a unilateral view of the facts; they should as far as possible be confined to drawing attention to a state of affairs and should not attribute the responsibility for it to any person; and they should relate only to facts relevant to the manner and cause of death, never to purely collateral matters or side issues.

If this is kept in mind, and if our recommendations as to representation of and notice of hearing to interested parties are adopted, such riders will be unlikely to dp unjustifiable harm, and will be more soundly based than is sometimes the case at present. Provided these recommendations are adopted there can also be little complaint about findings of relevant facts adverse to any party interested. If they are not, then we would note that in our view it is wrong in principle for any fact finding to be undertaken unless all persons who may be affected by the findings have the opportunity of being heard.

20. Under the law as it stands, a medical practitioner may not sign a certificate in respect of any person who in the opinion of such medical practitioner has died whilst under or as a result of the administration of an anaesthetic, but shall as soon as practicable after the death report the death to the officer in charge of the police station nearest to the place where the death occurred.

There is undoubtedly at the present time a good deal of public concern over deaths in hospitals during and after operations; the fact that an anaesthetic is used is no longer the real criterion. The necessity for "surgical audits" has been suggested.

The adequacy of the existing provision is challenged principally insofar as its applicability is dependent on the opinion of a doctor, who may be the very man whose act or omission is or ought to be in question. The Legislature has seen fit to provide that a medical practitioner should not act as Coroner in any case in which he attended the deceased professionally; yet the medical practitioner is charged with the responsibility in effect of determining whether there should be an inquest at all, and the man who takes this responsibility may be the very man whose conduct ought to be enquired into.

We are satisfied that there is substantial ground for concern. We have no reason to doubt the Magistrate who said, in discussing this topic, that many members of the medical profession failed to do their duty, and did not apply their minds to the things the Act required them to consider. This is confirmed from other sources.

It would be expected that all deaths occurring under or as a result of anaesthesia would be reported to the Coroner; but it does not appear that all cases are so reported. The phrase "in the opinion of" leaves the way open for deaths which have not actually occurred while the patient is "under" the anaesthetic to be certified as having been due to other causes such as the disease for which the operation was being performed or to intercurrent and fortuitous events such as coronary occlusion, cerebral thrombosis and so on. There is no doubt that a significant proportion of cases in which the anaesthetic has probably paid a major part in the catastrophe are not reported to coroners. It may well be the medical practitioner's opinion that death was due to surgical condition for which the patient was being treated. However, many anaesthetics which are poorly chosen and perhaps indifferently administered as well as being primarily responsible for deaths also contribute to an enhanced mortality in patients suffering from certain pathological states. This tends to confirm the view that the Act should not leave it to the doctor concerned to determine whether a death is the result of the administration of an anaesthetic but that the substitution of an arbitrary time limit would be preferable. The question was addressed to the Government Medical Officer, Dr Percy, and to the Secretary of the Australian Medical Association. Dr Percy was of the opinion that it would be in the interests of the medical profession and of hospitals if the field were extended to cover deaths after operation. He was not, however, sure of the advisability of a suggested time limit of 14 days and suggested substituting the phrase "as a result of". This, however, would still leave the decision to the doctor. The Australian Medical Association had no adverse criticism to offer of the existing requirements and did not approve of the proposed amendment. The Association did mention, however, that a member of the medical profession who was attached to the Special Committee had proposed

an amendment as follows: "A medical practitioner shall not sign a certificate in respect of any person who has died whilst under or as a result of or within 24 hours of an anaesthetic". The Council, however, strongly opposed this proposal.

While this report was in the process of being drafted legislation substantially to the effect of that proposal came before Parliament and is now to be found in the Coroners (Amendment) Act, 1963.

Beyond suggesting that the period of 24 hours might well be extended, we have no comment to offer.

21. It emerges clearly from what has already been said on various topics that criticism of proceedings at inquests is least likely to arise where they are conducted by magistrates of experience, and only slightly more likely in other cases provided the Coroner is trained and qualified in law. It is the Coroner of no legal training who is called on once or twice in his life and then has the chance of making his own voice heard over the length and breadth of the land who is most likely to offend. The proper conduct of an inquest necessitates some legal knowledge and if our recommendations are accepted some knowledge of the rules of evidence. It calls for the judgment necessary to determine what interests are involved. It calls for balance and insight, and a constant weighing of the public interest against individual rights.

In large areas of the State only a magistrate can act as Coroner. In remoter areas this is not so, and deputy Coroners may also be called upon to act. It should, as a matter of policy, be ensured that in due course, 'throughout the State, a magistrate and only a magistrate may hold an inquest.

The office of City Coroner is a Grade I posting, and on promotion to Grade II the magistrate goes to another task. The result is that the average term of office is about two years.

This is too short. There must, of necessity be inexperienced City Coroners from time to time; but every two years is too often. The responsibilities of the office, which is a highly specialized one, fully warrant its being made a Grade II appointment, if only to ensure that 'the post is held by an experienced man, and that his term of office will be longer than is now the case.

22. Section 29 (3) of 'the Registration of Births, Deaths and Marriages Act, 1899, provides:

"Where

(a) a coroner dispenses with the holding of an inquest in pursuance of the provisions of subsection two of section eleven of the Coroners Act, 1960; or

(b) A coroner, justice or justices adjourns or adjourn an inquest, inquiry or magisterial inquiry, as the case may be, in pursuance of 'the provisions of section twenty-eight of that Act,

such coroner, justice or justices shall notify in writing to the district registrar such information as he possesses or they possess as to the identity of the deceased person concerned, and the date, place and cause of the death of such person, and such registrar shall make the entry accordingly or if the death has been previously registered shall add to or correct the entry, as the case may require".

The section ought to be extended to cover all cases in which an inquest may be unduly prolonged or delayed, as in the case of an aircraft disaster into which a lengthy enquiry is held by the Department of Civil Aviation, so that grants of Probate or Administration can be made.

23. Section 29 (3) of the Coroners Act, 1960, provides:

"Any writing made under the provisions of subsection one or two of this section shall not indicate or in any way suggest that any person is guilty of any indictable offence."

Doubts have arisen in the minds of coroners as to whether "any person" includes (i) a person whose identity is unknown, (ii) the deceased, in suicide cases, and (iii) either of the deceased, in cases of murder followed by suicide.

It seems clear that the object and intention of s. 29 (3) read in conjunction with s. 28 (2) is to put an end to the former anomalous practice of bringing in verdicts of guilt of indictable offences in proceedings in which the person found guilty was never charged and to which he was not a party, and the reason for so doing is the damage that such verdicts may unjustifiably do. We are of the view that "any person" should not include the deceased i cases of suicide, but that the provision should not be otherwise altered.

APPENDIX C

EXTRACT FROM REPORT OF THE COMMITTEE ON DEATH CERTIFICATION AND CORONERS (1971) ("THE BRODRICK REPORT" Cmnd. 4810)

The inquest

14.07 As we indicated in the previous chapter the coroner is absolutely obliged to hold an inquest on all violent or unnatural deaths, deaths in prison or deaths occurring in circumstances in which an inquest is statutorily required. He must also do so for any sudden death the cause of which remains insufficiently determined after post mortem examination. If the coroner proceeds to hold an inquest he becomes responsible for ascertaining not only the cause of death but also the particulars which are required for the purpose of registration. He is obliged to supply the registrar with all this information on a document known as a "Certificate after Inquest". In the column headed "Cause of Death" on this certificate, the coroner records not only the medical cause of death but also circumstantial causes of death. On receipt of this document, the registrar registers the death without requiring the personal attendance of an informant. He is required to copy the whole of the entry in the "Cause of Death" column into his register of deaths and it follows that all this appears on the copy of the entry in the register (the document commonly referred to as the "death certificate").

14.08 The requirement that an inquest should invariably be held on all "violent or unnatural" deaths has meant that some inquests are now held which, in view of a number of our witnesses, serve little useful purpose. Several witnesses suggested that a coroner should have power to dispense with an inquest in certain cases. The British Medical Association, for example, suggested that the power to dispense should be extended to "simple accident cases" and the Police Federation made a similar suggestion in respect of "cases where the verdict is a mere formality . . ." The suggestions of other witnesses varied from a proposal that the coroner should have virtually a complete discretion to one that he should have no discretion at all. Our own conclusion, based on the evidence submitted to us and on a priori grounds is that the existing law is too inflexible in that it requires the coroner to hold an inquest on a number of occasions in which there seems to be no reason in the public interest for doing so. Clear cases of suicide, some deaths of elderly persons following falls at home and certain road accident deaths are most often quoted as examples of unnecessary inquests, but examples can be found within each of the categories of death in which an inquest is mandatory. We are satisfied that the only way to improve the situation is to give to the coroner what will be virtually a complete discretion as to whether or not he should hold an inquest. We consider the implications of this conclusion in the second half of this chapter.

B. *Our Proposal for the Future*

14.09 In Part II of our Report we have stated our belief in the value of retaining the coroner's office as the most convenient form of "appropriate authority" for carrying out two functions:—

(a) establishing the medical cause of death, when for one reason or another, certification by a doctor is impracticable or inappropriate, and

(b) for initiating enquiries into circumstantial causes of death where this seems desirable in the public interest.

For coroners to be able to carry out this role we conceive the basic requirements to be that—

(i) coroners should be recipients, not seekers, of reports of deaths which call for their investigations;

(ii) coroners' enquiries should extend so far as, but no further than, is necessary to enable them to complete the task of establishing the cause of death.

14.10 We recommend that, in future, subject to three exceptions, a coroner should have a complete discretion as to the form which his enquiries may take after a death has been reported to him. In the case of the three exceptions we consider that an inquest should be mandatory. The exceptions concern—

(a) deaths from suspected homicide,

(b) deaths of persons deprived of their liberty by society, and

(c) deaths of persons whose bodies are unidentified.

14.11 We consider that a death from suspected homicide is preeminently a death in which there should be some form of public inquiry. At present, the forum for this inquiry is more often a criminal rather than a coroner's court. We hope that this will continue to be the situation. We therefore recommend no change in the existing law under which a coroner must adjourn his inquest if he is informed that anyone has been charged with causing the death and which prevents him from resuming an inquest until the question of responsibility for a death has been finally determined by the criminal courts. In any case in which someone is charged with causing the death the coroner's inquest should continue to be merely formal in character. But it is important that a coroner should open an inquest even when he knows that the principal enquiry into the cause of death will be conducted in the criminal courts. When murder is an issue, the disposal of the body is too important a matter to be left to a registrar of deaths. The determination of when the disposal of a body may be allowed is essentially a judicial decision and by opening an inquest a coroner will put himself in a position to make that decision. Coroners are accustomed to maintain

contacts with the process of criminal investigation and they are likely to be much better placed than registrars to know, for example, whether or not defence counsel is likely to require a second post mortem examination of the body and to decide when disposal may safely be allowed to proceed. We recommend in Chapter 28 below that a registrar of deaths should be responsible for the issue of certificates authorising the disposal of a body in any case in which a coroner has not opened an inquest.

14.12 It is even more important that an inquest should be held in any case of homicide or suspected homicide in which there are no criminal proceedings in connection with the death, for legitimate public interest in these deaths is at least as great as it is in deaths which become the subject of criminal proceedings. An inquest held in such circumstances could demonstrate publicly that there was no need for any further enquiry into the death (for example, because the person likely to have caused the death was himself dead) or it could indicate that police enquiries into the death were still continuing. But in any case it would be unrealistic to attempt to differentiate between a death from homicide which later becomes the subject of criminal proceedings and one which does not. At the moment when a death is reported to him a coroner will often have no idea into which category it will ultimately fall. We therefore believe that a coroner should be required to open an inquest whenever he suspects that a death reported to him may be a homicide.

14.13 By our reference to persons deprived of their liberty by society we intend to cover all those persons mentioned in Chapter 12 above, whose deaths we have recommended should automatically be reported to a coroner. We have in mind, in particular, persons detained in police custody or in prison service establishments and persons detained under the Mental Health Act 1959. Most people, we think, want to have assurance that prisoners (and other persons set apart from society as a whole) do not die from maltreatment. We accept that it is perfectly proper for a coroner's inquest to be used for this purpose and that, to be fully effective, the procedure must apply to all deaths occurring in such circumstances. We believe that the pain to family and friends caused by such inquests is likely to be minimal and that they may well have a strong desire for an independent enquiry into the death.

14.14 We propose that an inquest should also be mandatory whenever the coroner is informed that there is lying within the area in which he exercises jurisdiction the body of a person whose identity is in doubt but who appears to have died within living memory. An inquest in such a case will provide the best possible opportunity for witnesses to come forward with information. We believe that the finding and subsequent disposal of an unidentified body is always a matter of legitimate public interest.

14.15 The three exceptional categories described above are not likely to be large, so that the general effect of pur proposal to give coroners a discretion to decide the form of their enquiry will be to place them in an entirely new situation. In future, a coroner will have a free choice in nearly every death which is reported to him, either to arrange for an autopsy to be performed or to hold an inquest (with or without an autopsy) or to dispose of the case on the basis of his preliminary enquiry. We now consider how he should exercise this discretion.

14.16 When a death is reported to him the coroner's first task should be to satisfy himself as to the identity of the body and that it lies within his area. After these facts have been established his principal duty should be to ascertain the medical cause of death.

14.17 We recognise that some of the deaths reported to the coroner will not require him to make more than a preliminary inquiry, e.g. of the doctor with evident knowledge of the case. There are two reasons for this. First, the operation of the new procedure for certifying the facts and cause of death, which we have recommended in Part I above, will probably ensure that some deaths are reported to coroners for "technical" reasons even though a doctor has great confidence that he knows the medical cause of death. Second, a few reports may be frivolous or malicious. Accordingly, we recommend that the coroner should retain the right to accept the cause of death given to him by a doctor, but, having done so he should take responsibility for certifying the cause of death. He should send his certificate to the registrar on the basis of the information which the doctor has provided. We would expect a coroner to decide to certify after a preliminary inquiry only in straightforward cases. He might certify in this way when, for example, a doctor who is in other respects qualified to give a certificate of the fact and cause of death is disqualified from doing so only by reason of a lack of recent attendance, or when a doctor who has been treating a patient is temporarily unavailable and a partner, who has access to the deceased person's case notes is confident that he knows the cause of death. Provided that he can be satisfied that the cause of death is already accurately known, a coroner might also choose to act in this way in relation to some of the hospital deaths reported to him because they occurred during surgery or under or before recovery from the effects of an anaesthetic.

14.18 If, however, the report made to the coroner raises any doubt as to the cause or circumstances of death, it will be his duty to resolve this doubt using the most suitable means at his disposal. In some cases, he may be able to resolve any doubt simply by making further inquiries. More often, however, it will be necessary for him to arrange for an autopsy to be performed, and, on some occasions, he may feel it necessary to hold an inquest.

14.19 We think that it is possible to identify and commend certain principles of public interest which coroners should bear in mind when they consider the form of investigation which they propose to undertake into deaths reported to them. We have already referred to the concept

of the "public interest" in our consideration of what deaths should be reported to coroners (see Chapters 6 and 12 above). We now use the phrase in a slightly different context. Below we suggest some grounds of public interest which we believe that a coroner's inquiry should serve. These are:—

(i) to determine the medical cause of death;

(ii) to allay rumours or suspicion;

(iii) to draw attention to the existence of circumstances which, if unremedied, might lead to further deaths;

(iv) to advance medical knowledge; and

(v) to preserve the legal interests of the deceased person's family, heirs or other interested parties.

The determination of the medical cause of death

14.20 We have argued that it should be the principal aim of any system of death certification to ensure that the cause of death is accurately ascertained in every case because we believe that the ascertainment of the cause of death of individuals is important to the whole community. It is, therefore, with the simple intention of improving the accuracy of certificates of the fact and cause of death that we have recommended, in Chapter 6, that doctors should be placed under a new statutory obligation to report any death to the coroner if they cannot confidently certify its cause. The operation of this requirement is likely to increase the number of deaths reported to the coroner for purely medical reasons. We hope that coroners will respond by using their power to order autopsies in any case in which the medical cause of death is in doubt. We doubt if they will need to resort to inquests except on those infrequent occasions when a number of doctors are known to disagree on a point of substance, or the results of an autopsy are vitiated in any way (e.g. by the state of the body or the length of time since death), or when an inquest may be the best means of elucidating, by circumstantial inquiry, the opinions of medical practitioners.

Investigation to allay rumour or suspicion

14.21 At present the coroner fulfils an important function in the allaying of gossip and, in some cases, suspicion, to which a death can sometimes give rise. At worst, these rumours and suspicion are harmful to individuals and, even at best, they leave a feeling of unease in the community concerned. We believe that coroners should be ready either to arrange an autopsy or to hold an inquest in order to allay such rumours and suspicions. The knowledge that an autopsy has been performed by a reputable independent pathologist may often be enough to clear up such doubts. On occasions, however, coroners may well feel it necessary to hold inquests in order to demonstrate publicly that adequate inquiry has been made into the circumstances of death and that there are no grounds for alarm, suspicion or self-condemnation.

Publicity for circumstances which, if unremedied, might lead to further deaths

14.22 A coroner should consider, on the basis of his preliminary inquiry, whether it is in the public interest that he should hold an inquest in order to draw attention to a possible fatal hazard so that an adequate warning can be given to the public and precautions taken, whether by individuals or by a responsible authority, against any new fatality. In Chapter 16 we develop our views on the coroner's right to make public comments on particular matters and his right to refer his papers to an appropriate authority.

The advancement of medical knowledge

14.23 So far as we are aware, coroners' autopsies and inquests have never been overtly in order to advance medical knowledge. We do not think that the coroner's powers should be sought as a last resort by doctors who fail to get the consent of relatives to an autopsy which they wish to conduct for purely research purposes. But we do not discount the possibility that a number of deaths could occur, either within a particular district or nationally which, although they could be certified by doctors under the procedure we have proposed in Part I, might appear to indicate the presence of some hitherto unsuspected hazard, and justify research in the interests of public health generally. We believe that if such research were promoted and the systematic co-operation of coroners were deemed essential, individual coroners would be justified in ordering post mortem examinations, and, if necessary, in proceeding also to inquests, in order to determine the relative significance of factors leading to those deaths and in order to enable possible methods of prophylaxis to be studied.

The preservation of rights of the deceased person's family, heirs or other interested parties

14.24 A coroner's investigation can often help to safeguard the legal interests of persons 'affected by a death. For example, me results of a post mortem examination can be useful in helping to decide questions of inheritance, where there may be a question as to which of two relatives died first. Again, a coroner's inquest can, on occasion, be an extremely valuable method of enabling relatives to assess the chances of a successful civil claim, and sometimes the record of evidence given at an inquest may be of prime importance in a subsequent claim for compensation. But these are incidental by-products of the system and not intrinsic to it. Indeed, we are convinced that it would be against the public interest for the scope of the coroner's investigations to be enlarged in the area of civil liability. At present the coroner is precluded *(by* Rule 33 of the Coroners' Rules 1953) from returning any verdict which may appear to determine any question of civil liability. We recommend that this restriction should be retained. It is inevitable, however, that a coroner should sometimes have to face the question whether a particular inquest, if held, would be likely to turn largely into a "dummy-run" for subsequent civil proceedings. We suggest that the consideration which

should weigh most with a coroner in such circumstances, is whether if an inquest is not held, the true circumstances of the death will become known. If it seems to the coroner that it is most unlikely that the circumstances of a death will become known if an inquest is not held, he should have a bias towards holding an inquest.

14.25 It is an essential feature of the changes we proposed in this and the preceding chapters that coroners should have wide discretion to decide what form of inquiry (if any) they should adopt in particular cases. By way of guidance, we have suggested some simple operational principles. There remains the question whether there will 'be need for some measure of outside influence. In Chapter 19, we consider proposals for rights of appeal against a coroner's decision not to hold an inquest (and other aspects of his activity). In our Conclusion we consider the need for a continuing review of the way in which the coroner's discretion works in practice so that coroners may be advised of any changes which are considered desirable in 'the practical exercise of this discretion.

APPENDIX D

NOTES ON THE LEGAL MEANING OF "SUICIDE"

1. The law in New South Wales concerning suicide is put thus by Professor Howard: "suicide is a felony equivalent to murder and attempted suicide is a misdemeanour. It is of course immaterial in terms of punishment to the person who is at once the perpetrator and the victim of the crime 'that suicide is a felony. The practical significance of the rule in the criminal law is in relation to complicity".[1] In the modern development of *the* law, suicide and felo *de se* have increasingly been equated, an interesting return to 'the earliest legal exposition of the matter by Hale who said that: *"Felo de se* or suicide is, where a man of the age of discretion, and *compos mentis* voluntarily kills himself".[2]

2. It took some time for "self murder" to acquire the element of criminality in ancient English law. Professor Glanville Williams 'has made an extensive study of the reasons that lay behind it. They need not be repeated here: but his conclusion is pertinent:

> The object of the king's judges was to enrich their master, and their readiest argument to this purpose was that suicide was a felony. Since every felon forfeited his goods to the king, it had only to be decided that suicide was a felony to divert the forfeiture from the suicide's immediate lord to the royal coffers. This step had been taken at least by Britton's day. It was, of course, facilitated by the ecclesiastical view of suicide as mortal sin.[3]

3. A notable later case in the development of the felonious quality in suicide was *Hales v. Petit* (1562) where it was held that the act:

> is in a degree of murder, and not of homicide or manslaughter, for homicide is the killing a man feloniously without malice prepense, but murder is the killing a man with malice prepense. And here the killing of himself was prepensed and resolved in his mind before the act was done . . .
>
> It is an offence against nature, against God, and against the King. Against nature, because it is contrary to the rules of self-preservation, which is the principle of nature, for every thing living does by instinct of nature defend itself from destruction, and then to destroy one's self is contrary to nature, and a thing most horrible. Against God, in that it is a breach of His commandment, *thou shalt not kill;* and to kill himself, by which act he kills in presumption his own soul, is a greater offence than to kill another. Against the King in that hereby he has lost a subject and . . . he being the head has lost one of his

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1 C. Howard, *Australian Criminal Law* 2nd ed. (Melbourne 1970), 123-124.

2 *Pleas of the Crown,* Dogherty's ed. (London 1800) Vol. 1, ch. XXXI, p. 411.

3 *The Sanctity of Life and the Criminal Law* (London 1958), Chapter 7, at p. 245.

> mystical members. Also he has offended the King, in giving such an example to his subjects, and it belongs to the King, who has the government of the people, to take care that no evil example be given them, and an evil example is an offence against him.[4]

4. In finding *felo de se* it used to be essential that the coroner and his jury declare that the deceased "feloniously, wilfully, and of his malice aforethought did kill and murder himself"[5]. If the conclusion *"seipsum murdravit"* were omitted the inquest was, at first, defective and liable to be quashed. But, by the time of Queen Anne, it had come to be acknowledged that *seipsum occidit* would be sufficient.[6] The only exceptions to a finding of *felo de se* were where there was a demonstrable lack of intent or where the death was attributable to unsoundness of mind.[7]

5. The assimilation of suicide and *felo de se* by Hale (see paragraph 1 above) was subjected, expressly or by implication, to some criticism in the nineteenth century. There are two leading cases in each of which the Bench was divided. In *Borradaile* v. *Hunter* (1843)[8] Tindal, C.J., although in a dissenting judgment concerning construction of the terms in a policy of life assurance, summed up the point of difficulty:

> As the result of the finding of the jury is, that the assured killed himself intentionally, but not feloniously, the short question before us becomes this, whether the defendant can make out. . . that the death of the assured under those circumstances falls within the meaning of the words in the proviso "dying by his own hands". And it appears to me that he cannot; but that, looking at the words themselves, and the context and position in which they are found, a felonious killing of himself, and no other, was intended to be excepted from the policy. The words of the proviso are, "If the assured shall die by his own hands, or by the hands of justice, or in consequence of a duel" . . . Now, the dying in consequence of a duel is a dying in consequence of a felony then in the very act or course of being committed by the assured; the dying by the hands of justice is a dying in consequence of a felony previously committed by him; and it appears to me, upon the acknowledged rule of construction, viz. *noscitur a sociis*, that the dying by his own hands, the first member of the same sentence and the third

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[4] 1 Plowd. 253 at 261-2 [75 E.R. 387 at 399-400]. See also Sewell, *A Treatise on the Law of Coroner* (1843) p. 113-114.

[5] *Toomes* v. *Etherington* 1 Wms. Saund. 353 [85 E.R. 515 at 516 n. 2]; *R.* v. *Aldenham* (1672) 2 Lev. 152 [83 E.R. 494].

[6] *R.* y. *Clerk* 1 Salk 377 [91 E.R. 328]. "It was answered, that the word *"murdravit"* is not necessary in such an inquisition as this, though it be otherwise in an indictment of murder of another person, because there are degrees in the offence of killing another, as manslaughter, murder, which ought to be expressed in words, but in the offence of killing one's self there can be no such degrees": *R.* v. *Clerk* 7 Mod. 16 [87 E.R. 1067].

[7] Hale, *op. cit.* note 2, p. 412.

[8] 5 Man. & G. 639 [134 E.R. 715].

> excepted case, should, if left in doubt as to its meaning, be governed by the same condition as the other two, and be taken to mean a felonious killing of himself, that is, self-murder. Upon what principle of construction shall the two latter cases be confined to a dying by, or in consequence of, a felonious act, and the former, viz. the dying by his own hands, be open to a double construction, and include not only the case of felonious suicide, which it undoubtedly would, but also suicide not felonious? The expression—"dying by his own hand,"—is, in fact, no more than the translation into English of the word of Latin origin —"suicide"—but, if the exception had run in the terms "shall die by suicide, or by the hands of justice, or in consequence of a duel," surely no doubt could have arisen that a felonious suicide was intended thereby.[9]

6. That begged the question. The three other members of the Bench were not prepared to separate suicide into felonious and non-felonious compartments. As Erskine, J., put it:

> When I find the terms "shall commit suicide", that have been popularly understood and judicially considered as importing a criminal act of self-destruction, exchanged for terms not hitherto so construed, it may, I think, be fairly inferred that the terms adopted were intended to embrace all cases of intentional self-destruction, unless it can be collected from the immediate context that the parties used them in a more limited sense.[10]

7. Life assurance companies then altered the standard terms in their policies. Excepted from the benefits of the policy were those who died because of committing suicide, duelling, or at the hands of justice. A dispute upon such a form of words came in error before the Exchequer Chamber in 1846 and, again, the Bench was divided. In that case, *Clift v. Schwabe,*[11] the majority took the view that suicide could be non-felonious as well as felonious.

8. Rolfe, B., held that "suicide" was not "a word of art, to which any legal meaning is to be affixed different from that which it is popularly understood to bear". He distinguished Hale's reference to *"felo de se* and suicide as convertible terms" as not being intended for a definition, and he concluded:

> After all, our decision must rest entirely on what is the ordinary meaning of the term. In my opinion, every act of self-destruction is, in common language, described by the word suicide, provided it be the intentional act of a party knowing the probable consequence of what he is about.[12]

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[9] 134 E.R. at 727.
[10] *Id.,* at 724.
[11] 3 C.B. 437 [136 E.R. 175].
[12] 136 E.R. 175 at 185. Note the adoption of this by Sellers, L.J., in *Re Davis* [19671 1 All E.R. 688 at 690. An act may be "deliberate" but not necessarily "intentional": *In the Matter of Loftus* (1862) 1 S.C.R. (N.S.W.) 1.

9. Patteson, L, whose attention seems not to have been called to *R.* v. *Clerk?*[13] said of the words "commit suicide":

> It is argued, first, that these words have a technical meaning, and import a felony. No authority is cited for this position: no case in which the finding of a jury that A. had "committed suicide", has been held equivalent to a finding that A. had "murdered himself", or that A. was "a felon of himself". I apprehend that the word *"murdravit"* was as necessary in a case or *felo de se,* as in the case of the murder of another person; and, unless some records could be found, or some decisions of the courts, in which the word "suicide" has been held to have the same meaning as "self-murder", I am at a loss to know what ground there is for saying that the words "commit suicide" have any technical meaning.
>
> It is argued, secondly, that the words, in their ordinary acceptation, import felony. Now, the word "suicide", literally translated, means only "lolling himself or herself": the circumstances attending the act manifestly cannot affect the literal meaning of the word.[14]

10. Alderson, B., and Parke, B., took similar views, but Pollock, C.B., and Wightman, J., dissented. As the later course of the law has been in accord with that dissent, and as Pollock, C.B., gave an almost definitive review of the meaning of "suicide", the minority opinion is of importance. And the judgment of Pollock, C.B., calls for quotation at some length. He said:

> Now, what is the meaning of the word "suicide", merely as an English word, according to the best authorities? Does it mean the killing of one's self, in the same way as "homicide" means, simply, the killing of a human being—whether by accident, negligence, or in self-defence? or, does it imply a criminal taking away of one's own life?
>
> The word is of modern origin: it does not occur in the Bible, or in any English author before the reign of Charles II.; probably, not till after the reign of Anne. As far as I have been able to trace it, it first occurs as an English word in Hale's *Pleas of the Crown.* Hale was a judge during the Commonwealth, and died in 1676. His work was published in 1736. It is not in Hawkins, first published in 1716: but it is to be found in Blackstone. These, as legal authorities, will be adverted to presently; but I wish to notice first the authorities not legal.
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> The meaning assigned to the word by Johnson in his *Dictionary,* is "self-murder—the horrid crime of destroying one's self—a self-murderer;" and he gives no other signification. In

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[13] 7 Mod. 16, quoted above, note 6.

[14] 136 E.R. 175 at 185-186,

Richardson's *Dictionary* it is, "the slayer of himself;" also, "the slaying of himself—self-murder." In the *Dictionnaire Universel* of the French language, published in 1771, it is said that the word was introduced into the French language by the Abbe Desfontaines; and a quotation is given from his works, where it is manifestly used in the sense given to it by Johnson. Desfontaines was born in 1685, and died in 1745 . . .

In 1785, Archdeacon Paley published his work on the Principles of Moral and Political Philosophy. The third chapter of book iv. is on "Suicide". Throughout that chapter the word is used as denoting the act of a reasonable, moral, and responsible agent; and in no other sense.

In 1790, Charles Moore, M.A., rector of Cuxton, in Kent, published *A Full Enquiry into the Subject of Suicide; to which are added (as being closely connected with the subject) two Treatises on Duelling and Gaming.* Page 4 contains the following passage: "There are points, then, to be settled, and exceptions to be made, previous to a general charge of guilt on all who put a sudden end to their own lives. For, though every person who terminates his mortal existence by his own hand commits suicide, yet he does not therefore always commit murder, which alone constitutes its guilt. Some distinction is necessary in regard to a man's killing himself, as it would be had he killed another person; which latter he may do either inadvertently or legally, and therefore, in either case, inocently, and without the imputation of being the murderer of another. When a man kills himself inadvertently or involuntarily, it comes under the legal description of accidental death, or *per infortunium;* but, as to his doing it legally, the law allows of no such case. The only instance of innocence which it allows to the commission of voluntary suicide, is in the case of madness; when a man, being deemed under no moral guidance, can be subject to no imputation of guilt on account of his behaviour to himself or others."

In the *Encyclopaedia Britannica,* the explanation of the word "suicide," is, "the crime of self-murder," or "the person who commits it." There is a treatise on law, in the *Encyclopaedia Metropolitans,* in which suicide is spoken of: it is in the 2nd volume of pure sciences (page 711), "On Offences against Self." Speaking of the cases where society may interfere to prevent or punish, the writer says: "This observation applies to suicide—the greatest offence a man can commit against himself."

These are all the lay authorities I think it necessary to refer to. But there are legal authorities, which, if unopposed by other and greater authorities, I should deem binding and conclusive upon the subject, in a court of law.

Hale, in the work already alluded to, defines *felo de se,* or suicide, to be "where a man of the age of discretion, and *compos mentis,* voluntarily kills himself by stabbing, poison, or any other way." Judge Blackstone, in his *Commentaries,* first published in 1765-1768, uses the word in connection with self-murder, and in the same sense as Hale (see 4 *Bl. Comm.* p. 189). In Burn's *Ecclesiastical Law,* first published in 1760, it is said (tit. "Suicide") "By the rubric before the burial office, persons who have laid violent hands upon themselves, shall not have that office used at their interment. And the reason thereof given by the canon law, is, because they die in the commission of a mortal sin: and therefore this extendeth not to idiots, lunatics, or persons otherwise of insane mind, as, children under the age of discretion, or the like. So also not to those who do it involuntarily, as, where a man kills himself by accident; for, in such case, it is not their crime, but their very great misfortune." The 4 Geo. 2 c. 52, relates only to *felo de se:* but the editor says, "Suicides are to be buried in the churchyard at night; but no service is to be performed over them." In Jacob's *Law Dictionary,* in the edition of 1772, under title "Suicide", reference is made to title "Self-murder"; where it is said that "self-murder is ranked amongst the highest crimes, being a peculiar species of felony—a felony committed on one's self. The party must be in his senses, else it is no crime. In this, as well as all other felonies, the offender must be of the age of discretion, and *compos mentis;* and, therefore, an infant killing himself under the age of discretion, or a lunatic during his lunacy, cannot be a *felo de se."* Blackstone says (see 4 *Bl. Comm.* p. 189): "Self-murder, the pretended heroism, but real cowardice, of the stoic philosophers, who destroyed themselves, to avoid those evils which they had not fortitude to endure, though the attempting it seems to be countenanced by the civil law, yet was punished, by the Athenian law, with cutting off the hand which committed the desperate deed. And also the law of England wisely and religiously considers that no man hath a power to destroy life, but by commission from God, the author of it: and, as the suicide is guilty of a double offence—one spiritual, in invading the prerogative of the Almighty, and rushing into his immediate presence uncalled for—the other temporal, against the King, who hath an interest in the preservation of all his subjects; the law has therefore ranked this among the highest crimes, making it a peculiar species of felony—a felony committed on one's self. A *felo de se,* therefore, is he that deliberately puts an end to his own existence, or commits any unlawful malicious act, the consequence of which is his own death: as, if, attempting to kill another, he runs upon his antagonist's sword; or, shooting at another, the gun burst, and kills himself. The party must be of years of discretion, and in his senses, else it is no crime."

> It should seem, therefore, that the word has never been used by law writers, except in the sense of a criminal taking away of one's own life: at least, I am not aware of any instance in any law writer, of its use in any other sense.[15]

11. So, he concluded that: "although it may possibly sometimes admit, in modern tunes, of a more loose and vague interpretation", suicide meant "self destruction by a person *compos mentis"*, in which case it imported "not merely an act, but a criminal act". It followed that a person not being *compos mentis* was unable to commit suicide:

> In the eye of the law, with reference to crime, a man is either *compos mentis* and responsible, or he is *non compos mentis* and irresponsible ... In point of law, as soon as it is ascertained that a person . . . has lost his sense of right and wrong, it matters not what else of the human faculties or capacities remain; he ceases to be a responsible agent; and, in my judgment, can no more commit suicide than he can commit murder.[16]

12. In this century, the leading English case has been *Beresford* v. *Royal Insurance Co. Ltd,*[17] a decision of the House of Lords. There Lord Atkin made it clear that suicide and *felo de se* were identical terms:

> Deliberate suicide, *felo de se,* is and always has been regarded in English law as a crime, though by the very nature of it the offender escapes personal punishment. Indeed, Sir John Jervis, in his first edition of his book on the office and duties of coroners, said: "Self murder is wisely and religiously considered by the English law as the most heinous description of a felonious homicide". The coroner's inquisition, as Lord Wright pointed out, formerly recorded *"felonice se murderavit"*, is now (Coroners' Rules, 1927) "the said C.D. did feloniously kill himself'. The suicide is a felon.[18]

13. In that case reference was made with approval to *R.* v. *Mann,*[19] a decision of the Court of Criminal Appeal, where Lord Reading, C.J., on behalf of the Bench said that:

> With respect to the Forfeiture Act, 1870, which enacts that "No confession, verdict, inquest, conviction or judgment of or for any treason or felony or *felo de se* shall cause any attainder or corruption of blood, or any forfeiture or escheat", it was said that as *felo de se* is not classed with felonies, but treated as a

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[15] 136 E.R. 175 at 189-190.
[16] *Id.,* at 191.
[17] [1938] A.C. 586.
[18] *Id.,* at 599.
[19] [1914] 2 K.B. 107.

> class of offence by itself, that was a legislative recognition that it was not a felony. The answer to 'that is that suicide must be either a felony or a misdemeanour, and there is nothing to show that before 'the Act of 1870 it was ever treated as a misdemeanour.[20]

14. Having regard to these authorities, we consider that the definition formerly given in Halsbury's *Laws of England:* "suicide is self murder by a person of sound understanding and of an age sufficient to be convicted of murder",[21] correctly states the current legal meaning of the word in New South Wales.

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[20] *Id.*, at 108.

[21] 3rd ed. Vol. 10, p. 727 para. 1395. That definition would, of course, no longer apply in England having regard to the Suicide Act 1961. See now Halsbury's *Laws of England,* 4th ed. Vol 9, para. 1124.

APPENDIX E

No. , 1975

A BILL

To amend the law relating to coroners; to amend the Coroners Act, 1960, and the Registration of Births, Deaths and Marriages Act, 1973; and for purposes connected therewith.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the Coroners (Amendment) Act, 1975.

2.

2. This Act shall commence upon such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette. Commencement.

3. The Coroners Act, 1960, is amended— Amendment of Act No. 2, 1960.

(a) by omitting from section 2 the words ", INQUIRIES INTO FIRES AND MAGISTERIAL INQUIRIES" and by inserting instead the words "AND INQUIRIES INTO FIRES"; Sec. 2. (Division into Parts.)

(b) (i) by omitting from section 4 the definition of "Inquest" and by inserting instead the following definition— Sec. 4. (Interpretation.)

"Inquest" means inquest by a coroner concerning the circumstances of the death of any person.

(ii) by omitting from section 4 the definition of "Inquiry" and by inserting instead the following definition—

"Inquiry" means inquiry held by a coroner into the circumstances of a fire.

(iii) by omitting from section 4 the definition of "Magisterial inquiry";

(c) (i) by omitting from section 11 (1) the words "into the manner and cause" and by inserting instead the words "concerning the circumstances"; Sec. 11. (Inquests into deaths.)

(ii) by omitting section 11 (2);

(d)

Sees. 11A-11D.

(d) by inserting next after section 11 the following sections—

Suspected deaths within New South Wales,

11A. Where a coroner is informed by a member of the police force that there is reasonable cause to suspect that a person has died within the State of New South Wales in any of the circumstances set out in section 11, the coroner so informed shall have jurisdiction and it shall be his duty, subject to this Act, to hold an inquest on the question whether that person has died within the State of New South Wales and, if so, concerning the circumstances of the death of that person, whether or not the body of that person is lying within the State of New South Wales or has been destroyed.

Power of coroner to dispense with holding of inquests.

11B. (1) Where it appears to the coroner that the death or cause of death of a person occurred or may have occurred outside the State of New South Wales or that, in the case of a suspected death of a person, the death if there was a death or the cause of death if there was a death occurred or may have occurred outside the State of New South Wales, and that an inquest concerning the death or suspected death has been or is to be held in a place outside the State of New South Wales, the coroner may dispense with the holding of an inquest concerning the death or suspected death under section 11 or section 11A.

(2) Where it appears to the coroner that the circumstances of the death of a person are sufficiently disclosed, or in the case of a suspected death of a person that the circumstances of the death if there was a death are sufficiently disclosed, he may, subject to subsection (3), dispense with the holding of an inquest concerning the death or suspected death under section 11 or section 11A.

(3) A coroner shall not dispense, under subsection (2), with the holding of an inquest concerning the death or suspected death of a person—

(a) where the person has not been identified;

(b) where it appears to the coroner that the death or suspected death of the person may be a result of homicide other than suicide;

(c) where the death or suspected death occurred under any of the circumstances set out in section 11 (h);

(d) where it appears to the coroner that the death or suspected death of the person may be a result of the administration to him of an anaesthetic administered in the course of a medical, surgical or dental operation or procedure, or an operation or procedure of a like nature; or

(e) where the person died or is suspected to have died while under, or within a period of twenty-four hours after the administration to him of, an anaesthetic administered in the course of a medical, surgical or dental operation or procedure, or an operation or procedure of a like nature if within twenty-eight days after the death or suspected death the coroner is requested by a relative of such person or by any person who has, in the opinion of the coroner, a sufficient interest in the circumstances of the death or suspected death to hold an inquest concerning the death or suspected death.

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In this paragraph, "relative" means spouse, parent or child who has attained the age of eighteen years, or where there is no spouse, parent or child who has attained that age, a brother or sister who has attained that age.

(4) Where, pursuant to this section, a coroner dispenses with the holding of an inquest concerning the death or suspected death of a person, the coroner shall give the reasons for his decision, in writing—

(a) at the request of the Minister—to the Minister; and

(b) at the request, in writing, of any person who has, in the opinion of the coroner, a sufficient interest in the circumstances of the death or suspected death—to that person.

(5) Where, pursuant to subsection (3) (e), a coroner refuses a request to hold an inquest on the ground that the person making the request has not, in the opinion of the coroner, shown a sufficient interest in the circumstances of the death or suspected death, the coroner shall, at the request, in writing, of that person, give the reasons for his opinion to that person,

Suspected deaths outside New South Wales.

11c. Where the Minister is of opinion—

(a) that a person has died in any of the circumstances set out in section 11 (a) to (g) inclusive;

(b) that the death of the person occurred outside the State of New South Wales (but not in another State of the Commonwealth or a Territory of the Commonwealth) or it is uncertain where the death occurred;

(c)

(c) that the person—

(i) was ordinarily resident within the State of New South Wales at the time of his death;

(ii) died in the course of a journey to or from some place within the State of New South Wales; or

(iii) was last on land at some place within the State of New South Wales; and

(d) that an inquest concerning 'the circumstances of the death ought to be held,

the Minister may inform a coroner of the death and direct him to hold an inquest concerning the circumstances of the death of that person, whether or not the body of that person is lying within the State of New South Wales or has been destroyed, and an inquest shall be held accordingly.

Inquests in cases of suspected deaths.

11D. (1) Where, pursuant to section 11A or section 11C, a coroner holds an inquest concerning the circumstances of the death or suspected death of any person, the coroner shall—

(a) where it appears to him that the person has not died—

(i) conclude the inquest; and

(ii) where a jury has been impanelled, discharge the jury; or

(b) where it appears to him that it is uncertain whether the person has died—

(i) adjourn the inquest without fixing a date or place for its resumption; and

(ii)

(ii) where a jury has been impanelled, discharge the jury.

(2) The coroner may, if he thinks fit to do so, resume an inquest adjourned under subsection (1).

(3) Where a coroner resumes an inquest which has been adjourned under subsection (1) and in which a jury has been discharged, the coroner shall proceed in all respects as if the inquest had not previously been commenced, and the provisions of this Act shall apply accordingly as if the resumed inquest were a fresh inquest.

Sec. 12. (Inquiries into fires.)

(e) by omitting from section 12 the words "cause and origin" wherever occurring and by inserting instead the word "circumstances";

Sec. 13. (Cases where a coroner is not bound to hold an inquest or inquiry.)

(f) (i) by omitting from section 13 the words "of the death" wherever occurring and by inserting instead the words "of the death, suspected death";

(ii) by omitting from section 13 (c) the words "arose at some other place" and by inserting instead the words "or suspected death occurred at some other place within the State of New South Wales".

Part IV. (Heading.)

(g) by omitting the heading to Part IV and by inserting instead the following heading—

PART IV.

SPECIAL PROVISIONS RELATING TO INQUESTS INTO DEATHS AND INQUIRIES INTO FIRES.

Sec. 14. (Inquests and inquiries to be held before coroner alone.)

(h) by omitting from section 14 the words "paragraph (c) of subsection two of section 11 of this Act" and by inserting instead the word and matter "section 11B (3) (e)";

(i) by inserting next after section 17 the following section— Sec. 17A.

17A. Where, under this Act, an inquest or inquiry is to be held, the coroner holding the inquest or inquiry— Time and place of inquest or inquiry.

(a) shall fix a time and place for the commencement of the inquest or inquiry;

(b) shall give particulars of the time and place to any person who has given notice in writing to the coroner of his intention to seek leave to appear or to be represented at the inquest or inquiry; and

(c) may give particulars of the time and place to any person who has, in the opinion of the coroner, a sufficient interest in the subject matter of the inquest or inquiry.

(j) by omitting from section 33A the words "paragraph (c) of subsection two of section 11 of this Act" and by inserting instead the word and matter "section 11B (3) (e)"; Sec. 33A. (Copies of medical reports.)

(k) (i) by omitting from sections 36 (1) and (5) the words "on the bodies" and by inserting instead "concerning the circumstances of the deaths or suspected death"; Sec. 36. (Accident in coal and other mines.)

(ii) by omitting from section 36 (1) (a) the words "on the body" and by inserting instead "concerning the circumstances of the death or suspected death";

(iii) by omitting from sections 36 (1) (d) and (i) the word "death" and by inserting instead the words "death or suspected death".

(1)

Sec. 37. (Powers of the Supreme Court to order inquest, inquiry or magisterial inquiry.)

(1) (i) by omitting from section 37 (1) the words "upon an application made by, or under the authority of, the Minister";

(ii) by omitting from section 37 (1) the word "held," and by inserting instead the words "held or resumed,";

(iii) by omitting from section 37 (1) the word "held." and by inserting instead the words "held or resumed, as the case may be.";

(iv) by omitting from section 37 (2) the words ", upon an application made by, or under the authority of, the Minister";

(v) by omitting from section 37 (3) the words "subsection two of section eleven and of section twelve" and by inserting instead the words "sections 11B and 12 (2)";

(vi) by inserting in section 37 (3) after the word "hold" the words "or to resume";

(vii) by deleting from section 37 (3) the word "held." and by inserting instead the words "held or resumed.";

(viii) by omitting section 37 (4) and by inserting instead the following subsection—

(4) Subsection (1) applies to an inquest if, and only if, the Supreme Court is satisfied—

(a) in the case of the death of a person, that the body of the person is lying within the State of New South Wales, whether or not the cause of the death, or the death, occurred within the State of New South Wales; or

(b)

(b) in the case of the suspected death of a person, that the cause of the death if there was a death, or the death if there was a death, occurred within the State of New South Wales, whether or not the body of the person, if there was a death, is lying within the State of New South Wales or has been destroyed.

(m) by omitting section 42 and by inserting instead the following section— Sec. 42. (Power of coroner, justice or justices to clear court and prohibit publication of evidence.)

Power of coroner to clear court and prohibit publication of evidence and reports of proceedings.

42. (1) A coroner holding an inquest or inquiry may order—

(a) any witness or all witnesses thereat to go and remain outside the room or building in which the inquest or inquiry is being held until required to give evidence; and

(b) that any evidence given at the inquest or inquiry being held by him be not published.

(2) Where, at the commencement or in the course of an inquest concerning the circumstances of the death of a person, a coroner holding the inquest forms the opinion that the death may have been self inflicted, the coroner may order that no report, or no further report, of the proceedings be published until after he has made his findings, or, in the case of an inquest held before a jury, the jury has brought in its verdict.

(3) Subject to subsection (4), where, in an inquest concerning the circumstances of the death of a person, there is a finding or verdict that, or to the effect that, the death was self inflicted, no report of the proceedings shall be published after the finding or verdict.

(4) Where, in an inquest concerning the circumstances of the death of a person, there is a finding or verdict that, or to the effect that, the death was self inflicted and the coroner holding the inquest is of opinion that it is desirable in the public interest to permit a report of the proceedings of the inquest to be published, the coroner may, by order, permit the whole of the proceedings, or such part of the proceedings as are specified in the order, to be published.

(5) For the purposes of this section and section 42A, a matter is published if it is—

(a) inserted in any newspaper or any other periodical publication;

(b) publicly exhibited; or

(c) broadcast by wireless transmission or by television.

Sec. 42A.

(n) by inserting next after section 42 the following section—

Offences.

42A. (1) A person who fails to comply with an order made under section 42 (1) or (2) is guilty of an offence.

(2)

(2) Where, in an inquest concerning the circumstances of the death of a person, there is a finding or verdict that, or to the effect that, the death was self inflicted, any person who publishes or causes to be published any report of the proceedings of the inquest after the finding or verdict is guilty of an offence if the report does not comply with an order made under section 42 (4) in relation to the proceedings.

(3) Where—

(a) a coroner holding an inquest or inquiry forbids or disallows any question or warns any witness that he is not compelled to answer any question; or

(b) a witness in an inquest or inquiry refuses to answer any question on the ground that it criminates him, or tends to criminate him, of any felony, misdemeanour or offence,

any person who publishes the question, warning, refusal or claim of privilege without the express permission of the coroner is guilty of an offence.

(4) A person who is guilty of an offence under this section is liable—

(a) if a body corporate, to a penalty not exceeding $5,000;

(b) if any other person, to a penalty not exceeding $1,000 or imprisonment for a period not exceeding 6 months or both.

Further amendment of Act No. 2,1960.

4. The Coroners Act, 1960, is further amended—

(a) by omitting from the provisions specified in Part 1 of the Schedule the words ", justice or justices", "or magisterial inquiry", "or a magisterial inquiry" wherever occurring;

(b) by omitting from the provisions specified in Part 2 of the Schedule the words "inquest, inquiry" wherever occurring and by inserting instead the words "inquest or inquiry".

Further amendment of Act No. 2,1960.

5. A provision of the Coroners Act, 1960, specified in Column 1 of Part 3 of the Schedule is amended in the manner specified opposite that provision in Column 2 of that Part of the Schedule.

Amendment of Act No. 87,1973.

6. The Registration of Births, Deaths and Marriages Act, 1973, is amended—

(a) (i) by inserting in section 22 next after subsection (1) the following subsection—

(1A) It is the duty of the Registrar-General to cause any death to be registered, where—

(a) an inquest concerning the circumstances of the death is held; and

(b) under section 25, the coroner notifies in writing a local registrar of such particulars as are known to him relating to the identity of, and date, place and cause of death of, the deceased person.

(ii) by inserting in section 22 next after subsection

(2) the following subsection—

(2A) Subsection (2) does not affect the operation of subsection (1A).

(b) by omitting section 24 (7) and by inserting instead the following subsection—

(7) A medical practitioner shall not sign a certificate or notice under subsection (2) or (6)—

(a) in respect of the death of a person who, in the opinion of that medical practitioner—

(i) has died a violent or unnatural death;

(ii) has died a sudden death the cause of which is unknown;

(iii) has died under suspicious or unusual circumstances;

(iv) has died, not having been attended by a medical practitioner within the period of three months immediately before his death; or

(v) has died as a result of the administration to him of an anaesthetic administered in the course of a medical, surgical or dental operation or procedure, or an operation or procedure of a like nature; or

(b) in respect of the death of a person who has died while under, or within a period of twenty-four hours after the administration to him of, an anaesthetic administered in the course of a medical, surgical or dental operation or procedure, or an operation or procedure of a like nature.

(c)

(c) by inserting in section 24 next after subsection (7) the following subsection—

(7A) (a) "Where a medical practitioner is of opinion that a person of the age of sixty-five years or upwards has died, in circumstances other than those specified in paragraphs (7) (a) (ii), (iii), (iv) or (v) or (7) (b), after sustaining an injury by accident, which accident in the opinion of the medical practitioner—

(i) was attributable to the age of the person;

(ii) contributed substantially to the death of the person;

(iii) involved no suspicious or unusual circumstances; and

(iv) was not caused by any act or omission of any other person,

then, notwithstanding subsection (7), the medical practitioner may sign a certificate or notice under subsection (2) or (6) in respect of that person.

(b) Paragraph (a) does not apply to a death following injury by accident where the accident occurs in any hospital within the meaning of the Public Hospitals Act, 1929, in any private hospital or rest home within the meaning of the Private Hospitals Act, 1908, or in any of the institutions or under any *of,* the circumstances referred to in section 11 (a) of the Coroners Act, 1960.

(c)

(c) A certificate or notice signed pursuant to this subsection shall state that it is so signed.

(d) (i) by omitting from section 25 the words "or magisterial inquiry", the words ", justice or justices" and the words "or them", wherever occurring; Sec. 25. (Notification of particulars by coroner, justice or justices.)

(ii) by inserting in section 25 next after subsection (1) the following subsection—

(1A) Where in the course of an inquest concerning the circumstances of die death of a person it appears to the coroner, upon such evidence as he considers to be sufficient—

(a) that he can determine the identity of, and date, place and cause of death of, the deceased person; and

(b) that there will be delay in concluding the inquest or inquiry,

the coroner may, for the purpose of enabling registration of the death to be effected or completed, make the determination and notify in writing a local registrar of the particulars of the determination.

(iii) by inserting in section 25 (2) after the matter "(1)" the word and matter "or (1A)";

(iv) by omitting section 25 (3) (b) and by inserting instead the following paragraph—

(b) under section 28 of that Act, a coroner adjourns an inquest or inquiry.

Savings.

7, (1) Subject to subsection (2), the amendments made by this Act apply only in relation to—

(a) an inquest concerning the circumstances of the death or suspected death of a person who dies or who is suspected to have died after the commencement of this Act; and

(b) an inquiry into the circumstances of a fire which occurs after the commencement of this Act.

(2) The amendments made by this Act apply in relation to an inquest concerning the circumstances of the death or suspected death of a person and to an inquiry into the circumstances of a fire where it is uncertain whether the death, suspected death or fire occurred before or after the commencement of this Act.

SCHEDULE

SCHEDULE.

AMENDMENT OF THE CORONERS ACT, 1960

PART 1 Sec. 4 (a).

Sections 16, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 33, 33A, 34, 37, 38, 38A, 40.

PART 2 Sec.4(b).

Sections 16, 17, 18, 19, 20, 21, 25, 26, 27, 28, 37, 38A, 40.

PART 3 Sec. 5.

Column 1		Column 2
Section	Subsection	
11	(1) (f)	Omit "or as a result of,".
11	(1) (f)	Omit "twenty-four"; insert "forty-eight".
17		Omit ", as the case may be,".
19	(1)	Omit ", as the case may be".
19	(2)	Omit "or direct", ", as the case may be,".
19	(2)	Omit ", as the case may be,".
20		Omit ", as the case may be,".
20		Omit "or their" wherever occurring.
20		Omit "or them", "or are", "or they".
24	(1)	Omit "or their".
28	(1)	Omit "or are", "or they complete", "or have".
28	(1)	Omit "or they commence" and "or they have" wherever occurring.
28	(2)	Omit "or have".
28	(2)	Omit "or their" wherever occurring.
28	(3)	Omit "or they think".
29	(1)	Omit "or their".
30	(1)	Omit ", as the case may be,".
30	(1)	Omit "or consider" wherever occurring.
31		Omit "or to the justice or justices holding a magisterial inquiry,".
33A		Omit ", as the case may be,".
34		Omit "or of a justice or justices".
37	(3)	Omit ", as the case may require", "or names" "or their", ", as the case may be,".
38		Omit "or magisterial inquiries, as the case may be", "or them", "and magisterial inquiries".
38		Omit ", or they nave," wherever occurring.
38		Omit "inquests, inquiries" wherever occurring; insert "inquests or inquiries".
38A	(1)	Omit "or consider", "or they".
40	(2)	Omit "or their".
41		Omit ", or a justice or justices holds or hold a magisterial inquiry,".
45	(1)	Omit "inquests, inquiries" wherever occurring; insert "inquests and inquiries".
45	(1)	Omit "and magisterial inquiries" wherever occurring.

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