



New South Wales

Coroners Amendment Bill 2003

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Coroners Act 1980* (the *Principal Act*) with respect to the holding of inquests and inquiries.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Coroners Act 1980* set out in Schedule 1.

Schedule 1 Amendments

Inquiries into fires and explosions

Schedule 1 [3] and [4] amend section 15 of the Principal Act to provide that a coroner has the jurisdiction and duty to hold an inquiry into the cause and origin of a fire or explosion (not a general inquiry into all circumstances concerning such a fire or explosion) where the coroner is informed that the fire or explosion has destroyed or damaged any property within this State. **Schedule 1 [5]** inserts proposed section 15B into the Principal Act to provide that in certain circumstances the New South Wales Fire Brigades, the Commissioner of the NSW Rural Fire Service and the Attorney General may request a general inquiry concerning such a fire or explosion. If such a request has been made or the State Coroner is of the opinion that a general inquiry should be held, the State Coroner must direct a coroner to hold the inquiry.

Coroners directions to police officers

Schedule 1 [6] and [7] amend section 17B of, and insert proposed section 17C into, the Principal Act to make it clear that all coroners may give police officers directions concerning investigations to be carried out for the purposes of inquests or inquiries into deaths, suspected deaths, fires or explosions.

Inquests and inquiries may be held in private in special circumstances

Section 30 of the Principal Act provides that the room or building in which a coroner holds an inquest or inquiry must be open to the public. **Schedule 1 [10]** amends section 30 to provide that a coroner may hold an inquest or inquiry in a room or building that is not open to the public (such as a room or building in a correctional centre, hospital, private residence or other place not normally open to the public) if the coroner is of the opinion that special circumstances make it necessary or desirable to do so. In such a case, the coroner is to note on the proceedings the special circumstances that in his or her opinion make such a course of action necessary or desirable.

Subpoenas to give evidence

Schedule 1 [11] amends section 35 of the Principal Act to provide that, if it appears to a coroner that a person is likely to be able to give material evidence at any inquest or inquiry or is likely to have in his or her possession or power any document or writing required for the purposes of evidence at the inquest or inquiry, the coroner may issue a subpoena for the appearance of the person to be examined as a witness or to produce the document or writing, or both. The coroner may issue the subpoena at first instance and does not have to be satisfied

that the person will not appear voluntarily. **Schedule 1 [9], [13], [14] and [15]** make various amendments to the Principal Act to change the name of the instrument issued by a coroner from summons to subpoena to make the terminology consistent with the *Local Courts Act 1982*.

Circumstances in which coroner may clear court

Section 44 (5) (a) of the Principal Act provides that a coroner holding an inquest or inquiry may, if of the opinion that it would be in the public interest to do so, order all or any persons to go and remain outside the room or building in which the inquest or inquiry is being held. Section 44 (6) gives examples of some matters that a coroner may have regard to in forming such an opinion, including personal security. **Schedule 1 [17]** amends section 44 (6) of the Principal Act to make it clear that having regard to personal security extends to the personal security of the public or any person.

No jurisdiction unless death occurred in last 100 years

Section 13B of the Principal Act provides that a coroner does not have jurisdiction to hold an inquest concerning a death or suspected death unless it appears or there is reasonable cause to suspect that the death or suspected death occurred within the last 100 years. Clause 7 of Schedule 3 to the Principal Act has the effect of providing that section 13B does not apply to a death or suspected death that occurred before the commencement of that section. The unintended effect of this clause is that section 13B will not have force until 100 years after its commencement. **Schedule 1 [18]** amends clause 7 of Schedule 3 to the Principal Act to provide that section 13B has effect in relation to deaths or suspected deaths that occurred before the commencement of that section.

Miscellaneous

Schedule 1 [1] amends section 4 of the Principal Act to provide that notes included in that Act do not form part of that Act.

Schedule 1 [2] and [16] make amendments by way of statute law revision to take account of the discontinuation of the term “police force” in legislation.

Schedule 1 [8] makes an amendment by way of statute law revision.

Schedule 1 [19] inserts savings and transitional provisions into Schedule 3 to the Principal Act.

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New South Wales

Coroners Amendment Bill 2003

No. , 2003

A Bill for

An Act to make miscellaneous amendments to the *Coroners Act 1980* with respect to the holding of inquests and inquiries; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Coroners Amendment Act 2003*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Coroners Act 1980 No 27

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

Schedule 1 Amendments

(Section 3)

[1] Section 4 Definitions

Insert after section 4 (1):

(1A) Notes included in this Act do not form part of this Act.

[2] Sections 4 (2), 12A (1) and (2), 12B (5), 16 (2) (a), 37 (1A) (a), 41 (1) (d), 53 (1) and 53B (3)

Omit "member of the police force" wherever occurring.

Insert instead "police officer".

[3] Section 15 Inquiries into causes and origins of fires and explosions

Omit "concerning" wherever occurring from section 15 (1), (2) and (3).

Insert instead "into the cause and origin of".

[4] Section 15 (2)

Omit "circumstances". Insert instead "cause and origin".

[5] Section 15B

Insert after section 15A:

15B General inquiries concerning fires and explosions

(1) The following persons may request that a coroner hold a general inquiry concerning a fire or explosion that has destroyed or damaged any property within the State:

- (a) in the case of a fire or explosion occurring within a fire district within the meaning of the *Fire Brigades Act 1989*, the New South Wales Fire Brigades, or
- (b) in the case of a bush fire within the meaning of the *Rural Fires Act 1997*, the Commissioner of the NSW Rural Fire Service, or
- (c) the Minister.

(2)	If a request has been made under subsection (1) or the State Coroner is of the opinion that a general inquiry concerning a fire or explosion that has destroyed or damaged any property within the State should be held, the State Coroner must direct a coroner to hold the inquiry.	1 2 3 4 5
(3)	An inquiry is to be held in accordance with any such direction.	6
(4)	The State Coroner must not give such a direction to a coroner who is a Magistrate without the Chief Magistrate's consent.	7 8
(5)	The State Coroner may, instead of directing another coroner to hold the inquiry, hold the inquiry himself or herself.	9 10
[6]	Section 17B Directions by State Coroner	11
	Omit section 17B (2).	12
[7]	Section 17C	13
	Insert after section 17B:	14
17C	Directions to police by coroners	15
	A coroner may give a police officer directions concerning investigations to be carried out for the purposes of an inquest or inquiry into a death, suspected death, fire or explosion, whether or not the inquest or inquiry has commenced.	16 17 18 19
[8]	Section 27 Inquest or inquiry on Sunday	20
	Insert "the record of" after "note on" in section 27 (2).	21
[9]	Sections 27 (3), 35 (2) and (3), 38 and 42 (1)	22
	Omit "summons" wherever occurring. Insert instead "subpoena".	23
[10]	Section 30 Place of inquest	24
	Insert at the end of the section:	25
(2)	However, nothing in subsection (1) prevents a coroner holding an inquest or inquiry in a room or building that is not open to the public (such as a room or building in a correctional centre, hospital, private residence or other place not normally open to the public) if the coroner is of the opinion that special circumstances make it necessary or desirable to do so.	26 27 28 29 30 31 32

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- (3) In such a case, the coroner is to note on the record of the proceedings the special circumstances that in his or her opinion make such a course of action necessary or desirable. 1
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Note. See also section 44 (5) and (6) for situations in which a coroner may order all or any persons to go and remain outside the room or building in which an inquest or inquiry is being held. 4
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- [11] Section 35 Subpoena for appearance or warrant for apprehension of witness** 7
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- Omit section 35 (1). Insert instead: 9
- (1) If it appears to a coroner that any person is likely to be able to give material evidence at any inquest or inquiry being held, or to be held, or is likely to have in his or her possession or power any document or writing required for the purposes of evidence at the inquest or inquiry, the coroner may issue any of the following subpoenas: 10
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- (a) a subpoena for the appearance of the person to be examined as a witness, 16
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- (b) a subpoena for the person to produce the document or writing, 18
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- (c) a subpoena both for the appearance of that person to be examined as a witness and to produce the document or writing. 20
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- (1AA) However, if the coroner is satisfied by evidence on oath or affirmation that it is probable that the person will not appear to be examined or to produce the document or writing or both appear to be examined and produce the document or writing unless compelled to do so, the coroner may issue a warrant in the first instance for the apprehension of that person. 23
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- [12] Section 35 (1A) and (2)** 29
- Omit “subsection (1)” wherever occurring. Insert instead “this section”. 30
- [13] Section 36 Form of subpoena** 31
- Omit “summons” wherever occurring. Insert instead “subpoena”. 32
- [14] Section 37 Manner of service of subpoena** 33
- Omit “summons” wherever occurring. Insert instead “subpoena”. 34
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[15] Section 39 Warrants for non-appearance in response to subpoena	1
Omit “summons” wherever occurring. Insert instead “subpoena”.	2
[16] Section 41 Form of warrant	3
Omit section 41 (1) (b). Insert instead:	4
(b) be directed to a police officer by name or generally to the senior police officer of the district or place where it is to be executed, or to that senior police officer and to all other police officers in this State, or generally to all police officers in this State,	5 6 7 8 9
[17] Section 44 Power of coroner to clear court and prohibit publication of matter relating to inquest or inquiry	10 11
Omit section 44 (6). Insert instead:	12
(6) For the purposes of subsection (5), in forming an opinion as to the public interest, a coroner may, without limitation, have regard to the following:	13 14 15
(a) the administration of justice,	16
(b) national security,	17
(c) the personal security of the public or any person.	18
[18] Schedule 3 Savings and transitional provisions	19
Omit clause 7 (6). Insert instead:	20
(6) Divisions 1 and 2 of Part 3 of the Act (other than section 13B) as inserted by Schedule 1 (18) to the 1993 Act do not apply to a death or suspected death that occurred, or is suspected of having occurred, before the commencement of those Divisions.	21 22 23 24 25
(6A) Section 13B (No jurisdiction unless death occurred in last 100 years) as inserted by Schedule 1 (18) to the 1993 Act extends to a death or suspected death that occurred, or is suspected of having occurred, before the commencement of that section.	26 27 28 29

[19] Schedule 3, clauses 13 and 14	1
Insert after clause 12:	2
13 Previous summons or warrants	3
A summons or warrant issued and in force before the commencement of this clause continues to have effect, and may be executed and enforced, as if any relevant section of the Act that applied in relation to that summons or warrant were still in force.	4 5 6 7 8
14 Inquiries into fires and explosions	9
Section 15B, as inserted by the <i>Coroners Amendment Act 2003</i> , and the amendments to section 15 made by that Act, do not apply to a fire or explosion that occurred before the commencement of that section or those amendments, respectively.	10 11 12 13 14