

No. 58, 1959.]

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.

ACT

To provide for the holding of inquests in cases of deaths or alleged deaths apparently occurring from other than natural causes and for matters incidental thereto, and to repeal the Fire Inquests Act, 1883 (Cape of Good Hope) and the Fire Inquests Law, 1884 (Natal).

*(Afrikaans text signed by the Governor-General.)
(Assented to 27th June, 1959.)*

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Definitions.

1. In this Act, unless the context otherwise indicates—
 - (i) "magistrate" includes an additional magistrate and an assistant magistrate and, in relation to the area in the territory of South-West Africa beyond the Police Zone, as defined in section three of the Prohibited Areas Proclamation, 1928 (Proclamation No. 26 of 1928), of the said territory, a native commissioner, an assistant native commissioner and an officer in charge of native affairs; (ii)
 - (ii) "Minister" means the Minister of Justice; (iii)
 - (iii) "policeman" includes any member of a force established under any law for the carrying out of police powers, duties and functions; (iv)
 - (iv) "public prosecutor" means a public prosecutor attached to the magistrate's court of the district wherein an inquest is held or to be held under this Act; (v)
 - (v) "this Act" includes any regulation made thereunder. (i)

Duty to report deaths.

2. (1) Any person who has reason to believe that any other person has died and that death was due to other than natural causes, shall as soon as possible report accordingly to a policeman, unless he has reason to believe that a report has been or will be made by any other person.
- (2) Any person who contravenes or fails to comply with the provisions of sub-section (1) shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds.

Investigation of circumstances of certain deaths.

3. (1) Subject to the provisions of any other law providing for an investigation of the circumstances of any death, any policeman who has reason to believe that any person has died and that such person has died from other than natural causes, shall investigate or cause to be investigated the circumstances of the death or alleged death.
- (2) If the body of such person is available, any magistrate to whom the death is reported shall, if he deems it expedient in the interests of justice, cause it to be examined by the district surgeon or any other medical practitioner who may, if he deems it necessary for the purpose of ascertaining with greater certainty the cause of death, make or cause to be made an examination of any internal organ or any part or any of the contents of the body, or of any other substance or thing.
- (3) For the purposes of any examination mentioned in sub-section (2)—
 - (a) any part or internal organ or any of the contents of a body may be removed therefrom;
 - (b) a body or any part, internal organ or any of the contents of a body so removed therefrom may be removed to any place.
- (4) A body which has already been interred may, with the written permission of the magistrate or the attorney-general within whose area of jurisdiction it has been interred, be disinterred for the purpose of any examination mentioned in sub-section (2).

(5) At any examination conducted by a medical practitioner in terms of sub-section (2), no person other than—

(a) a policeman; or

(b) any other medical practitioner nominated by any person who satisfies the magistrate within whose area of jurisdiction such examination takes place, that he has a substantial and peculiar interest in the issue of the examination,

shall be present without the consent of such magistrate or the medical practitioner conducting the examination.

(6) Any person who contravenes the provisions of sub-section (5), or who hinders or obstructs a medical practitioner, a policeman, or any person acting on the instructions of a medical practitioner or policeman in carrying out his powers or duties under this section, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or in default of payment to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine.

Report to public prosecutor.

4. The policeman investigating the circumstances of the death or alleged death of any person shall submit a report thereon, together with all relevant statements, documents and information, to the public prosecutor, who may, if he deems it necessary, call for any additional information regarding the death.

When inquest to be held.

5. (1) If criminal proceedings are not instituted in connection with the death, or alleged death, the public prosecutor shall submit the statements, documents and information mentioned in section *four* to the magistrate.

(2) If on the information submitted to him in terms of sub-section (1) it appears to the magistrate that a death has occurred and that such death was not due to natural causes, he shall proceed to hold an inquest as to the circumstances and cause of the death.

Magistrate who is to hold inquest.

6. An inquest shall be held by the magistrate of the district in which the death is alleged to have occurred, or in case of any doubt or dispute as to such district or whenever the Minister or any person authorized thereto by him deems it expedient, by any magistrate designated by the Minister or person so authorized.

Notice of inquest to be given.

7. Except in cases where the spouse or a near adult relative of the alleged deceased person is being subpoenaed as a witness, the magistrate who is to hold an inquest shall cause reasonable notice thereof to be given to such spouse or relative, provided the spouse or relative is available and the giving of such notice will not, in the opinion of the magistrate, unduly delay the holding of the inquest.

Witnesses and evidence at inquests.

8. (1) The magistrate who is to hold or holds an inquest may cause to be subpoenaed any person to give evidence or to produce any document or thing at the inquest.

(2) Save as is otherwise provided in this Act, the laws governing criminal trials in magistrates' courts shall *mutatis mutandis* apply to securing the attendance of witnesses at an inquest, their examination, the recording of evidence given by them, the payment of allowances to them and the production of documents and things.

Assessors at inquests.

9. (1) A magistrate may with the approval of the Minister or any person acting under the authority of the Minister, summon to his assistance any person who has, or any two persons who have, in his opinion, skill in any matter which may have to be considered at an inquest, to sit with him at the inquest as assessor or assessors for the purpose of advising him on any such matter.

(2) Any such assessor may put such questions to a witness giving evidence at the inquest as the magistrate may allow.

(3) No such assessor shall have a voice in any decision at the inquest or in the finding to be recorded in terms of section *sixteen*.

(4) If any such assessor is not a person in the full-time employment of the State, he shall be entitled to a refund of any reasonable expenditure which he may have necessarily incurred in connection with his attendance at the inquest and to such remuneration for his services as assessor as he would

be entitled to receive if he were an assessor acting at a criminal trial in a magistrate's court.

When inquest to be held in public.

10. Unless the giving of oral evidence is dispensed with under this Act, an inquest shall be held in public: Provided that the magistrate holding the inquest may in his discretion exclude from the place where the inquest is held any person whose presence thereat is, in his opinion, not necessary or desirable.

Examination of witnesses.

11. (1) The public prosecutor or any person designated by the magistrate holding an inquest to act in his stead may examine any witness giving evidence at such inquest.

(2) Any other person who satisfies the magistrate that he has a substantial and peculiar interest in the issue of the inquest may personally or by counsel or attorney put such questions to a witness giving evidence at the inquest as the magistrate may allow.

Adjournment of inquest, and continuation by different magistrate.

12. (1) An inquest may, if it is necessary or expedient, be adjourned at any time.

(2) An inquest commenced by any magistrate who through absence, death or incapacity becomes unable to continue such inquest, may be continued by any other magistrate as if the inquest had been commenced by such other magistrate, who may cause any person who has already given evidence at the inquest to be subpoenaed to give evidence as if he had not before so given evidence.

Affidavits and interrogatories.

13 (1) Upon production by any person, any document purporting to be an affidavit made by any person in connection with any death or alleged death in respect of which an inquest is held, shall at the discretion of the magistrate holding the inquest be admissible in proof of the facts stated therein.

(2) The magistrate may in his discretion cause the person who made such affidavit to be subpoenaed to give oral evidence at the inquest or may cause written interrogatories to be submitted to him for reply, and such interrogatories and any reply thereto purporting to be a reply from such person shall likewise be admissible in evidence at the inquest.

Copies of records of inquiries.

14. Upon production by any person, any document purporting to be a copy of the record of any inquiry referred to in sub-section (1) of section *twenty-three* and purporting to be certified as a true copy of such record by any person describing himself as the holder of a public office, shall at the discretion of the magistrate holding an inquest in respect of the death which was the subject of such inquiry, be admissible in evidence at the inquest.

Taking evidence on commission.

15. (1) Whenever in the course of any inquest proceedings it appears to the magistrate holding the inquest that the examination of a witness is necessary and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which in the circumstances would be unreasonable, the magistrate may dispense with such attendance and may appoint a person to be a commissioner to take the evidence of such witness, whether within the Union or the territory of South-West Africa or elsewhere, in regard to such matters or facts as the magistrate may indicate, and thereupon the provisions of sub-section (2) of section *two hundred and thirty-five* of the Criminal Procedure Act, 1955 (Act No. 56 of 1955), shall *mutatis mutandis* apply.

(2) Any person mentioned in sub-section (2) of section *eleven* may appear before the person so appointed by counsel or attorney or in person and may examine the said witness.

(3) The evidence recorded in terms of this section shall be admissible in evidence at the inquest.

Finding.

16. (1) If in the case of an inquest where the body of the person concerned is alleged to have been destroyed or where no body has been found or recovered, the evidence proves beyond a reasonable doubt that a death has occurred, the magistrate holding such inquest shall record a finding accordingly, and thereupon the provisions of sub-section (2) shall apply.

(2) The magistrate holding an inquest shall record a finding upon the inquest—

- (a) as to the identity of the deceased person;
- (b) as to the cause or likely cause of death;
- (c) as to the date of the death;
- (d) as to whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person.

(3) If the magistrate is unable to record any such finding, he shall record that fact.

Submission of record to attorney-general.

17. (1) Upon the determination of an inquest the magistrate concerned shall cause the record of the proceedings to be submitted to the attorney-general within whose area of jurisdiction the inquest was held.

(2) The attorney-general may at any time after the receipt of the record direct the magistrate to re-open the inquest and take further evidence generally or in respect of any particular matter or to cause an examination or further examination of a dead body or of any part, internal organ or any of the contents thereof to be made and, if necessary, to cause such body to be disinterred for the purpose of the examination, and the provisions of sub-section (3) of section *three* shall apply to such examination.

Certain findings on review equivalent to orders that death should be presumed.

18. (1) Whenever a magistrate has in the case of an inquest referred to in sub-section (1) of section *sixteen* recorded a finding in regard to the matters mentioned in that sub-section and in paragraphs (a) and (c) of sub-section (2) of that section, the attorney-general shall, subject to the provisions of section *seventeen*, submit the record of such inquest, together with any comment which he may wish to make, to any provincial or local division of the Supreme Court of South Africa having jurisdiction in the area wherein the inquest was held or, if the inquest was held in the territory of South-West Africa, to the High Court of South-West Africa, for review by the court or a judge thereof.

(2) Such finding, if confirmed on such review, or, if corrected on review, as so corrected, shall have the same effect as if it were an order granted by such court or such judge that the death of the deceased person concerned should be presumed in accordance with such finding.

(3) Nothing in this Act contained shall affect the right of any person to apply to any competent court for an order that the death of any person should be presumed, or the right of any competent court or any judge thereof to grant any such order.

Inquest records.

19. (1) When the record of any inquest which has been submitted under this Act to an attorney-general or a court is no longer required by such attorney-general or court for the purposes of this Act, it shall be returned to the magistrate concerned.

(2) Such record shall be deemed to form part of the records of the magistrate's court of the district wherein the inquest was held.

Offences in connection with inquests.

20. (1) The provisions of section *one hundred and eight* of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), shall *mutatis mutandis* apply in respect of inquest proceedings as if such proceedings were proceedings of a court contemplated in that section.

(2) Any person who at an inquest gives false evidence knowing it to be false, or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.

Inquest not to prevent institution of criminal proceedings.

21. (1) Nothing in this Act contained shall be construed as preventing the institution of criminal proceedings against any person, or as preventing any person authorized thereto from issuing a warrant for the arrest of or arresting any person, in connection with any death, whether or not an inquest has commenced in respect of such death.

(2) Whenever it comes to the knowledge of the magistrate concerned that criminal proceedings are being or to be instituted in connection with any death in respect of which inquest proceedings may have been instituted, he shall stop such inquest proceedings.

- Regulations. 22. The Minister may make regulations prescribing forms to be used for the purposes of this Act and generally for the better carrying out of the objects and purposes of this Act.
- Savings. 23. (1) Nothing in this Act contained shall be construed as affecting the provisions of section *eighty-six* of the Prisons Act, 1959 (Act No. 8 of 1959), or of any other law prescribing an inquiry into an accident attended with loss of human life.
- (2) Any such enquiry may be held jointly with an inquest under this Act.
- (3) Notwithstanding anything to the contrary in any other law contained, the magistrate shall preside at, and the provisions of this Act shall *mutatis mutandis* apply to, any such joint inquest and inquiry, but any report required to be made in terms of any other law shall be so made.
- Repeal of laws. 24. The Fire Inquests Act, 1883 (Act No. 33 of 1883), of the Cape of Good Hope, the Fire Inquests Law, 1884 (Law No. 5 of 1884), of Natal, the Inquests Proclamation, 1920 (Proclamation No. 9 of 1920), of the territory of South-West Africa, the Inquests Amendment Proclamation, 1940 (Proclamation No. 32 of 1940), of the said territory and the Inquests Act, 1919 (Act No. 12 of 1919), are hereby repealed: Provided that the said laws shall continue to apply in respect of any inquest or fire inquest, as the case may be, which at the commencement of this Act has already commenced thereunder or for the holding of which any steps have already been taken thereunder at the commencement of this Act.
- Application of Act to South-West Africa. 25. This Act shall apply also in the territory of South-West Africa, including the area known as the Eastern Caprivi Zipfel and described in the Eastern Caprivi Zipfel Administration Proclamation, 1939 (Governor-General's Proclamation No. 147 of 1939), and in relation to all persons in the portion of the said territory known as the "Rehoboth Gebiet" and defined in the First Schedule to Proclamation No. 28 of 1923 of the said territory.
- Short title and date of commencement. 26. This Act shall be called the Inquests Act, 1959, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*.