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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1121.

23 Mei 1990

No. 1121.

23 May 1990

Hierby word bekend gemaak dat die Waarnemende Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

It is hereby notified that the Acting State President has assented to the following Act which is hereby published for general information:—

No. 45 van 1990: Wysigingswet op Geregte Doods-ondersoeke, 1990.

No. 45 of 1990: Inquests Amendment Act, 1990.

INQUESTS AMENDMENT ACT, 1990

Act No. 45, 1990

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Inquests Act, 1959, so as to insert or replace certain definitions; to increase certain fines; to further regulate the holding of inquests; to provide that an inquest may also be held by a judge or regional magistrate; to make provision for a joint inquest in certain cases; and to rectify or delete obsolete expressions; and to provide for matters connected therewith.

*(Afrikaans text signed by the Acting State President.)
(Assented to 15 May 1990.)*

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 58 of 1959

1. Section 1 of the Inquests Act, 1959 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the insertion before the definition of “magistrate” of the following definitions:
- “incident” means, in relation to a death, the occurrences during which an injury which gave rise to the death was sustained or during which other occurrences which directly gave rise to the death occurred;
- “judicial officer” means a judge of the Supreme Court of South Africa, a regional magistrate or a magistrate;”;
- (b) by the substitution for the definition of “magistrate” of the following definition:
- “‘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 Commissioner, an Assistant Commissioner and an officer in charge of Black affairs] , but not a regional magistrate;”;
- (c) by the insertion after the definition of “public prosecutor” of the following definition:
- “‘regional magistrate’ means a magistrate appointed under section 9 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), to the court for a regional division.”.

Amendment of section 2 of Act 58 of 1959

2. Section 2 of the principal Act is hereby amended by the substitution in subsection (2) for the expression “fifty pounds” of the expression “R1 000”.

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Amendment of section 3 of Act 58 of 1959

3. Section 3 of the principal Act is hereby amended by the substitution in subsection (6) for the expression "one hundred pounds" of the expression "R2 000".

Amendment of section 5 of Act 58 of 1959

5 4. The following section is hereby substituted for section 5 of the principal Act:

"When inquest to be held

10 5. (1) If criminal proceedings are not instituted in connection with the death, or alleged death, the public prosecutor referred to in section 4 shall submit [the] those statements, documents and information [mentioned in section four] submitted to him to the magistrate of the district concerned.

15 (2) If on the information submitted to him in terms of subsection (1) it appears to the magistrate that a death has occurred and that such death was not due to natural causes, he shall, subject to the provisions of section 6, proceed to hold an inquest as to the circumstances and cause of the death.

20 (3) If an inquest has to be held by a judicial officer other than the magistrate to whom the statements, documents and information concerned were submitted such magistrate shall transmit them to the judicial officer who is to hold such inquest as to the circumstances and cause of the death."

Substitution of section 6 of Act 58 of 1959, as substituted by section 1 of Act 52 of 1983

5. The following section is hereby substituted for section 6 of the principal Act:

"Judicial officer who is to hold inquest

25 6. An inquest shall be held—

(a) subject to the provisions of paragraphs (c) and (d), by the magistrate of the district in which the incident [death] is alleged to have occurred; or

30 (b) subject to the provisions of paragraphs (c) and (d), where it is alleged that the death has not occurred on land, by the magistrate of the district where the body has been brought ashore or on land or has been found, as the case may be; or

35 (c) where the Minister or any person authorized thereto by him deems it expedient, or where it is uncertain whether a death has occurred in or outside the Republic, by any regional magistrate or magistrate designated by the Minister or person so authorized at a place so designated; or

40 (d) where the Minister has so requested a judge president of a provincial division of the Supreme Court, by any judge of the Supreme Court of South Africa designated by the judge president concerned, and notwithstanding anything to the contrary in any law contained, such inquest may be held at any place from time to time determined by such judge."

Insertion of section 6A in Act 58 of 1959

45 6. The following section is hereby inserted in the principal Act after section 6:

"Multiple deaths which are connected

50 6A. (1) Where more than one death has occurred, the attorney-general or the public prosecutor within whose area of jurisdiction or district the incident is alleged to have occurred may request the judicial officer who is to hold an inquest to hold a joint inquest into the deaths of the persons involved.

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(2) After the hearing of the request referred to in subsection (1) the judicial officer may order that a joint inquest shall be held if he is of the opinion that the deaths concerned are connected.

5 (3) The Minister may, if he deems it expedient in the interests of the efficient administration of justice, order that a joint inquest into multiple deaths, whether or not they occurred during the same incident, but which are connected, shall be held at a place designated by him.

10 (4) The Minister may issue an order referred to in subsection (3) in respect of deaths which have occurred in the same district or in more than one district."

Substitution of section 7 of Act 58 of 1959

7. The following section is hereby substituted for section 7 of the principal Act:

"Notice of inquest to be given

15 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] judicial officer** 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] judicial officer**, unduly delay the holding of the inquest."

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Substitution of section 8 of Act 58 of 1959

8. The following section is hereby substituted for section 8 of the principal Act:

"Witnesses and evidence at inquests

25 8. (1) The **[magistrate] judicial officer** 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.

30 (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."

Substitution of section 9 of Act 58 of 1959, as substituted by section 1 of Act 65 of 1979

9. The following section is hereby substituted for section 9 of the principal Act:

"Assessors at inquests

35 9. (1) A judge may of his own accord, and a regional magistrate or 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, experience in the administration of justice or skill in any matter which may have to be considered at an inquest, to sit with him at an inquest as assessor or assessors.

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45 (2) Before the commencement of an inquest, an assessor shall take an oath or make an affirmation, which shall be administered by the **[magistrate] judicial officer**, that he will, on the evidence placed before him, make a true finding in terms of section 16.

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(3) Where a **[magistrate] judicial officer** has under subsection (1) summoned an assessor or assessors to his assistance—

- 5 (a) the **[magistrate] judicial officer** alone shall decide any question of law, or whether any matter constitutes a question of law or a question of fact, and he may for this purpose sit alone;
- 10 (b) the decision of the majority on the facts shall be the decisive finding, except when the **[magistrate] judicial officer** sits with only one assessor, in which case the decision of the **[magistrate] judicial officer** shall, in the event of a difference of opinion, be the decisive finding.

15 (4) If any such assessor is not a person in the full-time employment of the State, he shall be entitled to such compensation in respect of expenses incurred by him in connection with his attendance at the inquest, and in respect of 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]**.”

Substitution of section 10 of Act 58 of 1959

10. The following section is hereby substituted for section 10 of the principal Act:

“When inquest to be held in public

20 10. Unless the giving of oral evidence is dispensed with under this Act, an inquest shall be held in public: Provided that the **[magistrate] judicial officer** 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.”

25 Substitution of section 11 of Act 58 of 1959

11. The following section is hereby substituted for section 11 of the principal Act:

“Examination of witnesses

30 11. (1) The public prosecutor or any person designated by the **[magistrate] judicial officer who is holding or is to hold** an inquest to act in his stead may examine any witness giving evidence at such inquest.

35 (2) Any other person who satisfies the **[magistrate] judicial officer** 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] judicial officer** may allow.”

Substitution of section 12 of Act 58 of 1959

12. The following section is hereby substituted for section 12 of the principal Act:

“Adjournment of inquest, and continuation by different judicial officer

40 12. (1) An inquest may, if it is necessary or expedient, be adjourned at any time.

45 (2) An inquest commenced by any **[magistrate] judicial officer** who through absence, death or incapacity becomes unable to continue such inquest, may, subject to the provisions of section 6, be continued by any other **[magistrate] judicial officer** as if the inquest had been commenced by such other **[magistrate] judicial officer**, 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.”

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Substitution of section 13 of Act 58 of 1959

13. The following section is hereby substituted for section 13 of the principal Act:

“Affidavits and interrogatories

5 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] judicial officer** holding the inquest be admissible in proof of the facts stated therein.

10 (2) The **[magistrate] judicial officer** 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.”.

15 Substitution of section 14 of Act 58 of 1959

14. The following section is hereby substituted for section 14 of the principal Act:

“Copies of records of inquiries

20 14. Upon production by any person, any document purporting to be a copy of the record of any inquiry referred to in subsection (1) of section 23 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] judicial officer** holding an inquest in respect of the death which was the subject of such inquiry, be admissible in evidence at the inquest.”.

25 Amendment of section 15 of Act 58 of 1959

15. Section 15 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

30 “(1) Whenever in the course of any inquest proceedings it appears to the **[magistrate] judicial officer** 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] such delay, expense or inconvenience [which] as would** in the circumstances **[would]** be unreasonable, the **[magistrate] judicial officer** 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] Republic [or the territory of South-West Africa]** or elsewhere, in regard to such matters or facts as the **[magistrate] judicial officer** may indicate, and thereupon the provisions of **[subsection (2) of section two hundred and thirty-five of the Criminal Procedure Act, 1955 (Act No. 56 of 1955)] section 171 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)**, shall *mutatis mutandis* apply.”.

40 Substitution of section 16 of Act 58 of 1959

16. The following section is hereby substituted for section 16 of the principal Act:

“Finding

45 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] judicial officer** holding such inquest shall record a finding accordingly, and thereupon the provisions of subsection (2) shall apply.

50 (2) The **[magistrate] judicial officer** holding an inquest shall record a finding upon the inquest—

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- (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 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.
- 5 (3) If the **[magistrate]** judicial officer is unable to record any such finding, he shall record that fact.”.

Substitution of section 17 of Act 58 of 1959, as substituted by section 1 of Act 46 of 1977

10 17. The following section is hereby substituted for section 17 of the principal Act:

“Submission of record to attorney-general

17. (1) Upon the determination of an inquest the **[magistrate concerned]** judicial officer who held the inquest shall—
- 15 (a) if he has in terms of section 16 (3) recorded the fact that he is unable to record any finding mentioned in section 16 (2);
- (b) if he has in terms of section 16 (2) (d) recorded a finding upon the inquest that the death was brought about by any act or omission involving or amounting to an offence on the part of any person; or
- 20 (c) if requested to do so by the attorney-general within whose area of jurisdiction the inquest was held, cause the record of the proceedings to be submitted to such attorney-general.
- (2) If the attorney-general at any time after the receipt of the record so requests, the **[magistrate]** judicial officer shall re-open the inquest and take further evidence generally or in respect of any particular matter or 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, cause such body to be disinterred for the purpose of the examination, and the provisions of section 3 (3) shall apply to such examination.”.
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Amendment of section 18 of Act 58 of 1959, as amended by section 2 of Act 46 of 1977

18. Section 18 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- 35 “(1) Whenever a regional magistrate or magistrate has in the case of an inquest referred to in subsection (1) of section 16 recorded a finding in regard to the matters mentioned in that subsection and in paragraphs (a) and (c) of subsection (2) of that section, **[the]** such regional magistrate or magistrate shall 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, for review by the court or a judge thereof.”; and
- 40 (b) by the insertion after subsection (2) of the following subsection:
- “(2A) Whenever a judicial officer who is a judge of the Supreme Court of South Africa has in the case of an inquest referred to in section 16 (1) recorded a finding in regard to the matters mentioned in that subsection and in section 16 (2) (a) and (c), such finding shall have the same effect as if it were an order issued by a provincial or local division of the Supreme Court of South Africa having jurisdiction in the area wherein the inquest was held, that the death of the deceased concerned is presumed in accordance with that finding.”.
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Amendment of section 19 of Act 58 of 1959

19. Section 19 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

5 “(1) When the record of any inquest which has been submitted under **[this Act]** section 17 to an attorney-general or under section 18 to 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]** of the district in which the inquest was held.”.

Substitution of section 20 of Act 58 of 1959, as amended by section 2 of Act 65 of 1979

10 20. The following section is hereby substituted for section 20 of the principal Act:

“Offences in connection with inquests

15 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]** Any person who wilfully insults a judicial officer or assessor during his sitting at an inquest, or a clerk or other officer of the court present at the inquest, or wilfully interrupts the proceedings of the inquest or otherwise misbehaves himself in the place where the inquest is being held, shall, in addition to the judicial officer having him removed and detained until after the termination of the sitting, be liable to be sentenced summarily or upon summons to a fine not exceeding R2 000 or in default of payment to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine.

25 (2) In any case in which a magistrate commits or fines any person under subsection (1), the magistrate shall without delay transmit to the registrar of the provincial or local division of the Supreme Court of South Africa having jurisdiction in the area wherein the inquest was held, for the consideration and review of a judge in chambers, a statement, certified to be true and correct, of the grounds and reasons for his proceedings.

30 **[(2)] (3)** 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.

35 **[(3)] (4)** Any person who prejudices, influences or anticipates the proceedings or findings at an inquest **[on which a magistrate has decided in terms of section 5 (2)]** shall be guilty of an offence and liable on conviction to a fine not exceeding **[five hundred rand]** R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.”.

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Amendment of section 21 of Act 58 of 1959

21. Section 21 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

45 “(2) Whenever it comes to the knowledge of the **[magistrate concerned]** judicial officer who is holding or is to hold the inquest 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.”.

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Amendment of section 23 of Act 58 of 1959

22. Section 23 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

- 5 “(3) Notwithstanding anything to the contrary in any other law contained, the
[magistrate] judicial officer shall preside at, and the provisions of this Act shall
15 *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 section 25 of Act 58 of 1959

23. Section 25 of the principal Act is hereby repealed.

10 Transitional provision

24. Any inquest commenced with immediately prior to the commencement of this Act, shall be proceeded with as if this Act had not been passed.

Short title and commencement

- 15 25. This Act shall be called the Inquests Amendment Act, 1990, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.