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.

# **GOVERNMENT GAZETTE**

### OF THE REPUBLIC OF SOUTH AFRICA

## REPUBLIEK VAN SUID-AFRIKA

## **STAATSKOERANT**

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No. 13113

#### STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 661.

28 March 1991

No. 661.

28 Maart 1991

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

No. 8 of 1991: Inquests Amendment Act, 1991.

No. 8 van 1991: Wysigingswet op Geregtelike Doodsondersoeke, 1991.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:— Act No. 8, 1991

**INQUESTS AMENDMENT ACT, 1991** 

#### GENERAL EXPLANATORY NOTE:

C	1	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 further regulate the investigation of the circumstances of certain deaths; to make further provision in connection with the holding of inquests; to further regulate the summoning of witnesses; to extend the power of judicial officers in connection with assessors; to further regulate the exclusion of members of the public; to make other provision in respect of the admissibility of statements; to further define a certain finding; and to make further provision in connection with the re-opening of certain inquests; to amend the Dissolution of Marriages on Presumption of Death Act, 1979, so as to effect a consequential amendment; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.) (Assented to 15 March 1991.)

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

#### Amendment of section 3 of Act 58 of 1959, as amended by section 3 of Act 45 of 1990

1. Section 3 of the Inquests Act, 1959 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(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—

<u>(a)</u> investigate or cause to be investigated the circumstances of the death or alleged death; <u>and</u>

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(b) report or cause to be reported the death or alleged death to the magistrate of the district concerned, or to a person designated by that magistrate."; and

(b) by the substitution for subsection (2) of the following subsection:

"(2) If the body of [such] a person who has allegedly died from other than natural causes 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] it shall be examined by the district surgeon or any other medical 20 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."

#### **INQUESTS AMENDMENT ACT, 1991**

#### Amendment of section 5 of Act 58 of 1959, as amended by section 4 of Act 45 of 1990

- 2. Section 5 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:
  - "(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]** directions of the Minister, take such steps as may be necessary to ensure that an inquest as to the circumstances and cause of the death is held by a judicial officer in terms of section 6: Provided that no inquest in respect of which it is alleged that either the death or the incident has occurred outside the Republic shall be held unless the Minister, or any person authorized thereto by him, so directs."

#### Amendment of section 8 of Act 58 of 1959, as substituted by section 8 of Act 45 of 1990

- 3. Section 8 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
  - "(1) The judicial officer who is to hold or holds an inquest may, of his own accord or at the request of any person who has a substantial and peculiar interest in the issue of the inquest, cause to be subpoenaed any person to give evidence or to produce any document or thing at the inquest: Provided that the said judicial officer shall, if so requested by the attorney-general within whose area of jurisdiction the inquest is to be held or is being held, cause persons or any particular person to be subpoenaed to give oral evidence in general or in respect of any particular matter at the inquest."

#### Amendment of section 9 of Act 58 of 1959, as substituted by section 9 of Act 45 of 1990

- 4. Section 9 of the principal Act is hereby amended by the addition of the following 25 proviso to subsection (3):
  - "Provided that, if an assessor dies or is for any reason unable to act as assessor at any time during an inquest, the judicial officer may—
  - (i) direct that the inquest proceed without the said assessor; or
  - (ii) summon any person to his assistance in the place of the said assessor, in which case the judicial officer may cause any person who has already given evidence at the inquest to be subpoenaed to give evidence as if he had not previously so given evidence."

## Substitution of section 10 of Act 58 of 1959, as substituted by section 10 of Act 45 of 1990

- 5. The following section is hereby substituted for section 10 of the principal Act:
  - "When inquest to be held in public
  - 10. (1) Unless the giving of oral evidence is dispensed with under this Act or the judicial officer concerned directs otherwise under subsection (2), an inquest shall be held in public [Provided that the judicial officer 40 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].
  - (2) If it appears to the judicial officer who holds an inquest that it would be in the interest of the safety of any witness or of good order or of the administration of justice that—
  - (a) the inquest be held behind closed doors; or

#### **INQUESTS AMENDMENT ACT, 1991**

(b) the presence of any particular person is not desirable, that judicial officer may direct that members of the public in general or of any particular category, or that particular person, shall not be present at the inquest or any part thereof.

(3) If it appears to the judicial officer who holds an inquest that the safety of any person may be endangered if he testifies at the inquest, that judicial officer may direct that the identity of that person shall not be revealed, or that it shall not be revealed for such period or except on such conditions as that judicial officer may determine.

(4) Any person who fails to comply with a direction under subsection 10 (2) or (3) shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.".

Substitution of section 13 of Act 58 of 1959, as substituted by section 13 of Act 45 of 1990

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

#### "Admissibility of declarations and interrogatories

13. (1) Upon production by any person, any document purporting to be [an affidavit made] a statement under oath or affirmation by any person in connection with any death or alleged death in respect of which 20 an inquest is held, or any certified copy thereof, shall at the discretion of the judicial officer holding the inquest be admissible in proof of the facts stated therein: Provided that the said judicial officer may admit any statement which is not so admissible, or any certified copy thereof, if that judicial officer, having regard to-

(a) the form and contents of the document in which any such statement is contained;

(b) the availability of the person who made any such statement;

(c) the probative value of any such statement;

(d) any prejudice to any person which the admission of any such 30 statement might entail; and

(e) any other circumstance which should in the opinion of that judicial officer be taken into account,

is of the opinion that any such statement, or any certified copy thereof, should be admitted in the interests of justice.

(2) The judicial officer may in his discretion cause the person who made such [affidavit] statement 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 40

(3) Any person who in any statement in writing under oath or affirmation contemplated in this section makes a false statement knowing it to be false or without reasonable grounds (the onus of proof of which shall be on him) for believing it to be true, shall be guilty of an offence 45 and liable on conviction to the penalties which may in law be imposed for perjury.".

## Amendment of section 16 of Act 58 of 1959, as substituted by section 16 of Act 45 of

7. Section 16 of the principal Act is hereby amended by the substitution for 50 paragraph (d) of subsection (2) of the following paragraph:

"(d) as to whether the death was brought about by any act or omission prima facie involving or amounting to an offence on the part of any person.".

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#### **INQUESTS AMENDMENT ACT, 1991**

## Amendment of section 17 of Act 58 of 1959, as substituted by section 17 of Act 45 of

- 8. Section 17 of the principal Act is hereby amended—
  - (a) by the substitution for paragraph (b) of subsection (1) of the following
    - "(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 prima facie involving or amounting to an offence on the part of any person; or": and
  - (b) by the addition of the following subsection:
    - (3) (a) The provisions of section 16 shall mutatis mutandis apply in respect of any inquest re-opened in terms of subsection (2).
    - (b) The judicial officer who held such inquest shall cause the record of the proceedings to be submitted to the attorney-general concerned.".

#### Substitution of section 2 of Act 23 of 1979

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9. The following section is hereby substituted for section 2 of the Dissolution of Marriages on Presumption of Death Act, 1979:

#### "Effect of certain findings on marriages

2. Whenever an inquest has been held in accordance with the provisions of the Inquests Act, 1959 (Act No. 58 of 1959), in respect of 20 the death of any married person, and any finding in respect of that death has [on review as contemplated in section 18 of that Act] the same effect in terms of section 18 (2) or (2A) of that Act, as if it were an order granted by the relevant reviewing court or judge or by the relevant provincial or local division of the Supreme Court of South Africa, as the case may be, that the death of the person concerned shall be presumed in accordance with such finding, the marriage in question shall for all purposes be deemed to have been dissolved by death as from the date of death of the said person as recorded in terms of section 16 (2) (c) of that Act in that finding.".

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#### Short title and commencement

- 10. (1) This Act shall be called the Inquests Amendment Act, 1991, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.
  - (2) Different dates may be so fixed in respect of different provisions of this Act.