



ANALYSIS

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Schedule

1979-80, No. 7

An Act to establish the office and functions of Coroners in the Cook Islands and to provide a public procedure for the investigation by a public officer of violent, unexplained or suspicious deaths.

(21 February 1980)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:-

1. Short title - This Act may be cited as the Coroners Act 1979-80.
2. Appointment of Coroners - (1) The High Commissioner may upon the recommendation of the Judicial Services Commission from time to time by warrant under his hand appoint fit persons to be coroners to exercise jurisdiction throughout the Cook Islands.
 - (2) Every coroner shall hold office for one (1) year from the date of appointment and shall be eligible for reappointment.
 - (3) Every coroner shall retire from office on attaining the age of seventy (70) years.
 - (4) Every coroner may at any time resign his office by notice in writing to the Minister of Justice.
 - (5) No person shall be eligible to hold the office of coroner unless -
 - (a) He is a barrister and solicitor of the Supreme Court of New Zealand of five (5) years standing or more; or
 - (b) He is a Commissioner of the High Court who has served a term of not less than twelve (12) months immediately preceding appointment; or
 - (c) He is the Registrar of the High Court of the Cook Islands.
3. Crown Pathologists - (1) The Minister of Justice may from time to time appoint any medical practitioner (being a medical practitioner registered to practice either in the Cook Islands or in New Zealand) to be a Crown Pathologist.
 - (2) A Crown Pathologist may be appointed from private or public practice.
 - (3) A coroner may if he considers it necessary or desirable appoint a Crown Pathologist to conduct or attend any post mortem examination or to make any analysis or report under subsection (4) of section 10 of this Act or otherwise to assist the investigation into any death in respect of which an inquest is required to be held under this Act.

Functions and Powers of Coroners

4. Functions of Coroners - (1) The principal functions of a coroner shall be to inquire, in accordance with the provisions of this Act, into the manner of death of any person in any case where this Act requires that the death be reported to a coroner.
 - (2) Every coroner shall, for the purpose of exercising any of the powers, functions, or duties conferred or imposed on him by this Act, have the same powers, privileges, authorities, and immunities as are possessed by any judicial officer exercising his jurisdiction under any enactment of the Cook Islands and in particular shall have power to issue summonses for and warrants to enforce the attendance of witnesses at an inquest or inquiry under this Act, to maintain order at any such inquest or inquiry, to administer oaths, to examine witnesses, to punish for contempt, and to adjourn any proceedings before him from time to time and from place to place.

5. When coroner to hold inquest - (1) A coroner shall hold an inquest in each case either on his own initiative or where he is informed that a person is dead and there is reasonable cause to suspect that the person -

- (a) Has died either a violent or an unnatural death; or
- (b) Has died while in the legal custody of the Superintendent of a penal institution; or
- (c) Had died in such a place or under such circumstances that, in accordance with the provisions of any enactment other than this Act, an inquest is required to be held.

(2) A coroner shall hold an inquest where he is informed that any person has died a sudden death of which the case is unknown:

Provided that in any such case the coroner may decide, in accordance with section 6 of this Act, not to hold an inquest.

(3) It shall be the duty of any person finding a person lying dead, or having knowledge of the death of any person in any of the circumstances set forth in the foregoing provisions of this section, to report the death to a constable, who shall thereupon report the death to the coroner.

(4) After a constable has reported the death to a coroner in accordance with subsection 3 of this section, the police shall make such inquiries as may be necessary for the purposes of this Act or as may be directed by the coroner.

6. Inquest need not be held in certain circumstances - (1) Where any sudden death of which the cause is unknown is reported to a coroner and he is of the 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 authorise any registered medical practitioner or Crown pathologist 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 or may discontinue any inquest which he has begun.

(3) If, in accordance with this section, a coroner decides not to hold an inquest or to discontinue an inquest he shall, in the prescribed form, notify the Secretary for Justice of his decision.

7. Powers of Judge or Commissioner when no coroner available

(1) Where a death occurs in such circumstances that the death should be reported to a coroner in accordance with the provisions of section 5 of this Act and no coroner is available to act, the death may be reported by a constable to a Judge or Commissioner of the High Court who shall thereupon in respect of the death have the following powers and functions:

- (a) To authorise a post mortem examination and generally to exercise the powers and functions of a coroner under section 10 of this Act:
- (b) To open an inquest:
- (c) To hear and record evidence of identification:
- (d) To authorise the burial of the body:
- (e) To adjourn any inquest open by him under this section.

(2) Where an inquest has been opened by a Judge or Commissioner under this section, the inquest shall be completed by a coroner in all respects as if the death had been originally reported to him:

Provided that the coroner may act upon any evidence already given before the Judge or Commissioner in all respects as if it were given before the coroner.

8. Inquest where body destroyed or irrecoverable - Where a coroner has reason to believe that a death has occurred in such circumstances that an inquest ought to be held and, because of the provisions of section 15 of this Act, an inquest cannot be held except by virtue of the provisions of this section, he may report the facts to the Minister of Justice and the Minister of Justice may, if he considers it desirable so to do, direct an inquest to be held in respect of the death, and an inquest shall be held accordingly by the coroner making the report or such other coroner as the Minister of Justice may direct, and the provisions of this Act shall with the necessary modifications, apply to any such inquest.

9. Coroner may require medical report - Whether or not an inquest is being held, the coroner may require any medical practitioner who has recently attended the person into whose death the coroner is inquiring to supply him with a report relating to the deceased person.

10. Coroner may authorise post mortem examination - (1) The coroner may at any time before the termination of the inquest authorise any registered medical practitioner or Crown pathologist other than a medical practitioner who, to the knowledge of the coroner, has attended the deceased person immediately prior to his death, to perform a post mortem examination of the body of the deceased person.

(2) Any medical practitioner who has attended the deceased person immediately prior to his death shall be entitled to be present at the examination. The coroner may, if he thinks necessary, have notice served on any such medical practitioner requiring him to attend the post mortem examination or to submit a report for the assistance of the person holding the post mortem examination.

(3) Upon application being made to him, the coroner may permit any other person to be represented by a medical practitioner as an observer at any such post mortem examination.

(4) The coroner may authorise an analyst or a pathologist to make an analysis and report in any case where an inquest is held.

(5) For the purposes of this section and of sections 6 and 9 of this Act the coroner may give such directions as he thinks fit as to the disposal or removal of the body of any person whose death has been reported to him under this Act, and any person who fails to comply with any such direction or who does any act to hinder or prevent any such direction being complied with commits an offence and shall be liable on summary conviction to imprisonment for a term not exceeding one month or to a fine not exceeding \$200.00.

11. Coroner may order burial of body - A coroner, by writing under his hand and in the prescribed form, may at any time order the burial of the body of any person whose death has been reported to him under this Act.

The Inquest

12. Purpose of inquest - An inquest shall be conducted by the coroner for the purpose of establishing -

- (a) The fact that a person had died:
- (b) The identity of the deceased person:
- (c) When, where, and how the death occurred.

13. Inquest to be before coroner alone - (1) All inquests shall be held before a coroner alone.

(2) Any inquest may, at the direction of the coroner, be held concurrently with any other inquiry or judicial proceedings.

14. Date and place of inquest - Where an inquest is to be held the coroner shall fix the date, time, and place of the inquest, and shall give notice thereof to the senior officer of police in the place where the inquest is to be held, who shall give notice of the date, time, and place of the inquest to such persons as he thinks fit, or as the coroner directs.

15. View of body - (1) Subject to the provisions of section 8 of this Act, no inquest shall be concluded unless the coroner is satisfied that the body in respect of which the inquest is being held has been viewed by some person giving evidence at the inquest.

(2) Where an inquest or any inquiry under this Act is held by a coroner it shall not be necessary for the coroner to view the body in respect of which the inquest or inquiry is held.

16. Hearing in public - (1) Subject to the provisions of this Act, the room in which an inquest is held shall be open to the public:

Provided that if the coroner considers it desirable in the interests of justice, decency, or order, he may exclude all or any persons from the whole or any part of the proceedings at the inquest or may prohibit the publication of any part of the evidence given at the inquest.

(2) The coroner may direct that any witness not yet heard at an inquest shall go and remain outside the place of hearing until required to give evidence.

17. Coroner to examine witnesses on oath - (1) The coroner shall at the inquest examine on oath all persons who tender their evidence respecting the facts in issue and all other persons whom he thinks it expedient to examine.

(2) At any inquest any person who, in the opinion of the coroner, has a sufficient interest in the subject or result of the inquest may attend personally or by counsel, and may examine and cross-examine witnesses.

(3) In all proceedings under this Act the coroner may admit any evidence that he thinks fit, whether or not the same is otherwise admissible in a Court of Law, but no evidence shall be admitted by the coroner for the purposes of the inquest unless in his opinion the evidence is necessary for the purpose of establishing any of the matters referred to in section 12 of this Act.

(4) Where -

(a) The coroner is satisfied that there is no reason making it desirable that the witness should give the whole of his evidence orally; and

(b) No person attending the inquest and entitled to examine and cross-examine witnesses objects to the procedure being followed -

the coroner may permit any witness to give the whole or part of his evidence by tendering a previously prepared statement in writing and confirming the same on oath. The witness may be cross-examined on any evidence in the statement as if it had been given orally at the inquest, and the statement shall form part of the depositions taken at the inquest.

(5) The coroner shall put into writing the evidence admitted by him at the inquest, and the depositions of each witness giving evidence at the inquest shall be read over to and signed by him and by the coroner.

18. Evidence at a distance - (1) Where in the opinion of the coroner it is necessary or expedient to have the evidence of some person taken at a place other than where he intends to hold or is holding an inquest, the coroner may, by writing under his hand, appoint some other coroner or, if no coroner is available, a Commissioner or Chief Administration Officer to take the evidence of that person.

(2) The coroner or Commissioner or Chief Administration Officer so appointed shall have, for the purpose of any such examination, the same powers under this Act as if he were himself conducting the inquest, and shall appoint a time and place for taking the evidence and cause notice to be given to any persons in accordance with the direction of the coroner holding the inquest.

(3) Any persons notified in accordance with subsection 2 of this section and any other person so permitted by the coroner or Commissioner or Chief Administration Officer taking evidence may attend personally or by counsel, and may examine and cross-examine witnesses in the same manner and to the same extent as if the proceedings were an inquest.

(4) The evidence of any witness so examined shall be reduced to writing, read over to the witness and signed by him and by the coroner or Commissioner or Chief Administration Officer before whom it is taken, and forwarded by him to the coroner holding the inquest, who may receive and act upon any such evidence in all respects as if it had been given before him at the inquest.

19. Witness neglecting to attend - Every witness on whom any summons is served, either personally or by leaving the same at his residence with an inmate appearing to be above the age of fourteen (14) years, in sufficient time for the witness to obey the same, who fails without good sufficient excuse to obey any such summons, and every medical practitioner who is directed by a coroner to attend a post mortem examination or to furnish a report in accordance with this Act, and who neglects or refuses to obey any such summons, direction, or order, commits an offence and shall be liable on summary conviction to a fine not exceeding \$40.00.

20. Procedure where person charged with offence - (1) If at an inquest the coroner is informed before he has given his findings that some person has been charged with causing the death in respect of which the inquest is being held and in the opinion of the coroner the result of the charge may have a material bearing on the inquest, he shall adjourn the inquest until after the conclusion of the criminal proceedings.

(2) After the conclusion of the criminal proceedings the coroner may, subject as hereinafter provided, resume the adjourned inquest.

(3) If, having regard to the result of the criminal proceedings, the coroner decides not to resume the inquest, he shall, in the prescribed form, notify the Secretary for Justice of his decision.

(4) Where the coroner decides under subsection 3 of this section not to resume an inquest, he shall notify the Registrar of Births and Deaths of his decision and the date of it and give him all other particulars required to be registered concerning the death, including the cause of death, and shall attend at the Registrar's office and sign the register in the same manner as if he had completed the inquest.

(5) Nothing in this section shall be deemed to prevent an inquest being held concurrently with criminal proceedings under any Act but in any such case the coroner shall not give his finding until after the conclusion of the criminal proceedings.

(6) For the purposes of this section, the expression "the criminal proceedings" means the proceedings before any Court to which the accused person is committed for trial or before which an appeal from the conviction of that person is heard, and criminal proceedings shall not be deemed to be concluded until no further appeal can, without an extension of time being granted be made in the course thereof.

21. Inquest where death was self inflicted - (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.

22. Coroner's order prohibiting publication of evidence subject to review by Judge - (1) Where under section 16 or section 21 of this Act a coroner makes an order or gives a direction prohibiting or restricting the publication of any evidence at an inquest any person affected by the order or direction may apply to a Judge of the High Court for a review thereof.

(2) The Judge may, in his absolute discretion, and on such grounds as he thinks fit, either approve, reverse, or modify the order or direction of the coroner, and any decision given by the Judge shall be final and binding on all persons.

(3) Where an application is made to a Judge under this section in respect of an order or direction of a coroner, the order or direction shall remain in full force and effect until the decision of the Judge in respect of the application is made.

(4) Nothing in this section shall apply to any order or direction made or given by a coroner who is also a Judge.

23. Inquest may be completed by a coroner other than the coroner who commenced it - Where a coroner has commenced to hold an inquest and dies or is incapacitated by illness, absence, or other sufficient cause from completing the inquest, the inquest may be completed by some other coroner, who may act upon any evidence already given at the inquest in all respects as if it were given before him.

24. Finding of coroner at inquest - (1) After considering all the evidence before him at the inquest the coroner shall give his finding and shall sign a certificate in the prescribed form.

(2) The certificate, together with all depositions of witnesses taken at the inquest and a certificate of the registration of the death, shall be transmitted by the coroner to the Secretary for Justice.

Deaths in Outer Islands

25. Special provisions for deaths in Outer Islands - (1) When a death occurs in any of the Outer Islands in such circumstances that the provisions of section 5 of this Act apply and there is no coroner or person authorised by section 7 of this Act to open an inquest then the police constable to whom the death is reported shall require a medical officer or other qualified medical practitioner or medical personnel to either -

- (a) Perform a post mortem either with or without instruction from a Crown pathologist; or
- (b) Conduct a medical inspection of the body either with or without instruction from a Crown pathologist; or
- (c) Compile a report relating to the deceased either with or without instruction from a Crown pathologist.

(2) For the purposes of subsection 1 of this section a Crown pathologist may give instructions by radio telephone or other means of communication.

(3) No burial may be authorised or take place where death has occurred in circumstances that the provisions of subsection 1 of this section apply until such time as the provisions of subsection 1 of this section have been carried out.

(4) Any police constable to whom a death is reported under subsection 1 of this section shall as soon as practicable after receipt of information as to the death advise the nearest coroner, Judge or Commissioner who may authorise burial and open and complete an inquest in accordance with the provisions of this Act with any necessary modifications.

(5) Any police constable to whom a death is reported under subsection 1 of this section may authorise burial of the body after the medical examination required has been concluded in the absence of authorisation from a coroner, Judge or Commissioner if -

- (a) After reasonable attempts have been made it is not possible to notify a coroner, Judge, or Commissioner; and
- (b) The condition of the body or the interests of public health require immediate burial.

(6) Where a burial is authorised by a constable under subsection 5 of this section the constable shall lodge a full report on the death and circumstances surrounding burial with the nearest coroner. Such report may be lodged by radio telephone, telegram, or other means of communication.

Miscellaneous

26. Police to assist at inquests and inquiries - It shall be the duty of the police to assist at all inquests, inquiries, and investigations under this Act.

27. High Court may in certain cases order inquest to be held -
 (1) Where in respect of any death the High Court on application made by or under the authority of the Minister of Justice, is satisfied either -

- (a) That a coroner refuses or neglects to hold an inquest which ought to be held; or
- (b) Where an inquest has been held by a coroner, whether before or after the passing of this Act, 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 another inquest should be held, -

the Court may order an inquest to be held in respect of the death; and where an inquest has already been held, may quash the finding of the coroner.

(2) Subject to the order of the High Court, any such inquest may be held by the same coroner or any other coroner.

(3) On any such inquest, unless the High Court otherwise orders, all depositions taken on any former inquest in respect of the said death shall be deemed to have been taken on the new inquest.

(4) Except as otherwise provided by this section, any such inquest shall be held in the same manner as any other inquest.

28. Inquest may be reopened - (1) Where an inquest has been concluded and it is shown to the satisfaction of the Minister of Justice that the finding is defective or erroneous in whole or in part, the Minister of Justice may direct that the inquest be reopened before the coroner who held the inquest or some other coroner.

(2) The coroner so directed to reopen an inquest may conduct such inquiries as may appear necessary to him or as may be directed by the Minister of Justice, and the coroner may accept such of the findings and of the evidence given at the previous inquest as appear to him to be correct.

(3) At the conclusion of the reopened inquest the coroner shall give his findings in the manner provided by section 24 of this Act and any such finding shall for all purposes replace the finding previously given.

29. Protection of witnesses and counsel - Every witness attending and giving evidence at any inquest or inquiry held under this Act and every counsel appearing before a coroner shall have the same privileges and immunities as witnesses and counsel in Courts of Law.

30. Penalty for unlawful publication of proceedings - Every person who publishes -

- (a) A report of any proceedings in contravention of this Act; or
- (b) Any question or inquiry 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, and shall be liable on summary conviction to imprisonment for a term not exceeding one (1) month or to a fine not exceeding \$200.00.

31. Inquests may be held on Sundays - It shall be lawful to hold any inquest upon a Sunday whenever in the opinion of the coroner it is expedient to hold the same on that day.

32. Fees and allowances - Salaries, fees and travelling allowances shall be paid, in accordance with regulations under this Act, to every coroner performing any function under this Act, to any witness attending an inquest, and to any registered medical practitioner, analyst, or pathologist giving evidence at any inquest, or performing any function under this Act.

33. Regulations - (1) The High Commissioner may from time to time, by Order in Executive Council, make regulations for any purpose for which regulations are contemplated or required by this Act, and may make all such other regulations as he thinks necessary or expedient for the purpose of giving effect to the provisions of this Act and for the due administration thereof.

(2) All regulations made under this Act shall be laid before the Legislative Assembly within twenty eight (28) days after the making thereof if the Legislative Assembly is then in session, and if not, shall be laid before the Legislative Assembly within twenty eight (28) days after the commencement of the next ensuing session.

34. Offences - (1) Every person commits an offence who -

- (a) knowingly fails to report a death to which the provisions of this Act apply to a constable.
- (b) Obstructs, hinders, or in any way endeavours to interfere with a coroner or police constable in the administration of his duty under this Act.

(2) Every official including a police constable commits an offence who, being charged with any duty under this Act, refuses or fails to carry out such duty as required.

(3) Any person convicted of an offence under this section shall be liable to a fine not exceeding \$500.00.

35. Repeals and savings - (1) The enactments specified in the Schedule to this Act are hereby repealed.

(2) All Orders in Executive Council, orders, warrants, appointments, findings, verdicts, regulations, registers, records, instruments, and generally all acts of authority that originated under any of the enactments hereby repealed, and are subsisting or in force at the commencement of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.

(3) All matters and proceedings commenced under any such enactment and pending or in progress at the commencement of this Act may be continued and completed under this Act.

Schedule

New Zealand Gazette 1923 p. 519, 520 Regulations relating to the holding of inquests in the Cook Islands.

This Act is administered in the Justice Department