

CORONERS BILL 2016

SAMOA

Explanatory Memorandum

Objects and reasons:

The purposes of the Bill are:

- (a) to provide for a coronial system to investigate sudden or unexplained deaths or deaths in special circumstances through inquiries and inquests, to establish the cause and circumstances of deaths;
- (b) to set out functions, powers and duties of coroners; and
- (c) to provide procedures in which coroners must carry out coronial inquires and inquests.

PART 1 - PRELIMINARY

Clause 1: - states that when enacted, the Bill will be called the Coroners Act 2016, and it will commence on a date nominated by the Minister.

Clause 2: - provides for the definitions of terms used within the Bill.

PART 2 - CORONERS

Clause 3: - provides for the appointment of coroners by the Head of State acting on the advice of the Judicial Service Commission.

Clause 4: - provides that a person is qualified to be a coroner if the person is a lawyer who is qualified for appointment as a District Court Judge.

- Clause 5:** sets out the terms of office for a coroner.
- Clause 6:** provides for the oath of office that a coroner must take and subscribe before the Chief Justice.
- Clause 7:** - provides for the salaries and allowances of a coroner.
- Clause 8:** - provides for the resignation of a coroner by written notice to the Head of State and sets out the criteria's in which the Head of State acting on the advice of the Judicial Service Commission can remove a coroner from office.
- Clause 9:** - provides for the conditions in which the office of a coroner becomes vacant.
- Clause 10:** - sets out the functions of a coroner.
- Clause 11:** - provides for the privileges and other powers that a coroner possesses when carrying out any functions, duties or powers under the Act.

PART 3 - REPORTING OF DEATHS AND POST-MORTEMS

Division 1 - Reporting of deaths and custody of body

- Clause 12:** - provides for a person who finds a body or who learns of a death to report it to a police officer.
- Clause 13:** - provides when the Police and the coroner have respective custody of the body.
- Clause 14:** - provides for the removal of a body from the coroner's custody for post-mortem purposes.

Division 2 - Family rights

- Clause 15:** - sets out the rights of the family of the dead person.

Division 3 - Post-mortem

- Clause 16:** - provides for the power of a coroner to direct a pathologist to perform a post-mortem of a body. The pathologist must not be the doctor who attended the person immediately before death.
- Clause 17:** - provides for a doctor who attended the person before death to provide a written report which is given to the pathologist performing post-mortem and the Commissioner of Police (if the death of a person is under police investigation).
- Clause 18:** - sets out persons who are entitled to attend post-mortems.
- Clause 19:** - empowers the Supreme Court to direct a pathologist pursuant to clause 16 to perform a post-mortem of a body upon the application of the Attorney General.

Division 4 - Release of body retention of body parts, etc.

- Clause 20:** - provides for a coroner to authorise the release of a body if not prohibited from doing so under clause 21 and 22.
- Clause 21:** - provides for restrictions on the release of a body if a post-mortem was not directed by a coroner.
- Clause 22:** - provides for a coroner not to authorise the release of a body under clause 20 if the pathologist wishes to retain a body part of bodily sample under clause 25(2).

- Clause 23:** - provides for the coroner to authorise the release of the body of a child under clause 20 if the pathologist concludes that the child is a still-born child as a result of a post-mortem.
- Clause 24:** - provides for a pathologist to receive or remove a body part or take a bodily sample, or both if the pathologist believes it is necessary for post-mortem purposes.
- Clause 25:** - provides for the retention of body parts and samples on the release of a body by a pathologist, if the retention of such body parts and samples is necessary for the purposes of a post-mortem and if the family members or other persons to whom the body is to be released have no objections.

PART 4 - CORONIAL INQUIRIES AND INQUESTS

Division 1 - Coronial inquiries

- Clause 26:** - sets out the purpose of a coronial enquiry, which is to establish the cause and the circumstances of death.
- Clause 27:** - provides for the coroner not to comment adversely on a dead person or on any other person without taking reasonable steps to notify family members or that other person about the proposed comment.
- Clause 28:** - empowers a coroner to open and conduct a coronial inquiry.

- Clause 29:** - provides for cases where a coroner may not open a coronial inquiry.
- Clause 30:** - provides for the procedure to be undertaken by the coroner who has been informed that a person has been charged for the death of the person.
- Clause 31:** - provides for the opening of coronial inquiries to be adjourned if further investigations are being conducted under any other enactment of the death concerned.
- Clause 32:** - empowers a coroner not to open or resume a coronial inquiry if the cause or circumstance of death has been established under a criminal proceeding or investigation.
- Clause 33:** - prohibits a person from making public the details of a self-inflicted death (suicide cases) without the prior approval of a coroner.
- Clause 34:** - empowers a coroner to prohibit evidence given at any part of inquiry proceedings to be made public.
- Clause 35:** - allows for a person to apply to the Supreme Court for a review of the coroner's decision not to publicise any details or evidence of an inquiry.
- Clause 36:** - provides for the duty of a coroner to receive evidence.
- Clause 37:** - empowers a coroner to hold hearing on papers and make chambers findings.
- Clause 38:** - provides for privileges and immunities for witnesses and lawyers.

- Clause 39:** - empowers a coroner to admit any evidence even if the evidence is not admissible.

Division 2 - Conduct of inquests

- Clause 40:** - provides for cases where a coroner is obliged to hold a coronial inquest if the death relates to a person in official custody such as a prisoner.

- Clause 41:** - provides for a coroner who decides to hold an inquest to fix a date, time and place for the inquest.

- Clause 42:** - provides for inquests to be held before a coroner sitting alone.

- Clause 43:** - empowers a coroner to appoint advisers to sit in the inquest and assist the coroner.

- Clause 44:** - empowers a coroner to hold a single inquest if the coroner has opened two (2) or more separate coronial inquiries in relation to two (2) or more deaths arising out of the same incident or series of incidents.

- Clause 45:** - provides that an inquest is to be held in a public place that is open to the public.

- Clause 46:** - empowers a coroner to exclude any person from all or any part of an inquest.

- Clause 47:** - empowers a coroner to direct a witness to remain outside the place where the inquest is conducted until he or she is required to give evidence.

- Clause 48:** - provides for the manner in which evidence may be given by a person at an inquest.

- Clause 49:** - provides for persons who may attend an inquest.
- Clause 50:** - authorises a written statement to be tendered by a witness at an inquest.
- Clause 51:** - provides for a coroner to authorise (by written notice) another coroner or a lawyer (who have the same powers on the taking of evidence as the coroner holding the inquest) to take the evidence.

Division 3 - Completion of inquiry

- Clause 52:** - states that a certificate of interim findings must not be issued by a coroner, or an inquiry must not be concluded unless the body concerned has been viewed in Samoa or lost.
- Clause 53:** - empowers a coroner to issue an interim certificate of findings on the fact and cause of death.
- Clause 54:** - empowers a coroner to issue a final certificate of findings.

Division 4 - Inquiries or further inquiries ordered by Supreme Court

- Clause 55:** - empowers the Court to open a coronial inquiry if the Court is satisfied that a coronial enquiry is desirable and if a coroner has failed or refused to open one.

- Clause 56:** - empowers the Court to open a coronial inquiry if new facts have been discovered making it desirable to open a coronial inquiry.
- Clause 57:** - empowers the Court to order another inquiry because of new facts, fraud, rejection of evidence or an irregularity of proceedings.
- Clause 58:** - provides for the powers exercised under clauses 55 to 57 to be exercised only on an application made by the Attorney General.
- Clause 59:** - states that the forms and service of orders under clauses 55 to 57 must be in writing and must specify the coroner who is to open and conduct the coronial inquiry.
- Clause 60:** - provides that the findings of a coronial inquiry pursuant to orders under clauses 55 to 57 to replace any previous findings.

PART 5 - OTHER DUTIES AND POWERS

- Clause 61:** - provides for the Police to help the coroners.
- Clause 62:** - provides for the Ministry to provide administrative support to the coroners to carry out their functions, duties and powers.
- Clause 63:** - empowers a coroner to require another person to carry out any investigation, before deciding whether to open an inquiry or to complete an inquiry.
- Clause 64:** - provides for a coroner to refer a death concerned to one (1) or more authorities for investigation.

- Clause 65:** - empowers a coroner to require a person to provide information or documents for the purposes of an inquiry.
- Clause 66:** - provides grounds of refusal for a person whom a notice is served under clause 65 to provide the information or document.
- Clause 67:** - empowers a District Court Judge to issue a search for the purposes of obtaining information.
- Clause 68:** - authorises a police officer to execute the search warrant issued under clause 67.
- Clause 69:** - provides for duties that a police officer must perform when executing a warrant under clause 67.
- Clause 70:** - provides for grounds for withholding a thing sought by a warrant under clause 67.
- Clause 71:** - provides for a person applying to the Supreme Court for a review of a dismissal of claim under clause 66(2).
- Clause 72:** - limits the use of information by a person in response to a notice under clause 65 or obtained through the execution of a warrant under clause 67.
- Clause 73:** - empowers a District Court Judge to issue a warrant authorising a police officer to remove a body from a specified place.
- Clause 74:** - provides for the extent of powers under a warrant issued under clause 73.
- Clause 75:** - provides for a police officer executing a warrant under clause 73 to produce the warrant.
- Clause 76:** - provides for the power to seize a thing when a police officer is complying with a direction or warrant to remove a body.

PART 6 - MISCELLANEOUS

- Clause 77:** - creates offences.
- Clause 78:** - states that inquests can be held on Sundays if the coroner is of the opinion that it is practical to hold the inquest on that day.
- Clause 79:** - provides for fees and allowances a coroner may award for those giving evidence at an inquest.
- Clause 80:** - provides for exemptions from personal liability.
- Clause 81:** - empowers the Chief Justice to issue practice notes.
- Clause 82:** - provides for a coroner to hold an inquiry concerning fines if requested so by the Commissioner of Police, the Chief Fire officer or the Chief Executive Officer.
- Clause 83:** - provides for coronial inquiries for members of visiting forces that must not be opened if the coroner has not opened the inquiry.
- Clause 84:** - deals with coronial inquiry or inquest on a person who has diplomatic privileges.
- Clause 85:** - empowers the Chief Justice to approve forms.
- Clause 86:** - provides for the coroner not to disclose to any other interested party any information provided by the Attorney General or the Police as amicus (friend of court) to assist any inquiry or inquest.
- Clause 87:** - empowers the Head of State acting on the advice of Cabinet to make regulations.

- Clause 88:** - repeals the Coroners Ordinance 1959 and provides for transitional provisions.

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(Hon FAAOLESA Katopau T. Ainuu)

**MINISTER OF JUSTICE AND
COURTS ADMINISTRATION**