

Departmental Disclosure Statement

Coroners Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

31 July 2014

Contents

Contents..... 2

Part One: General Policy Statement 3

Part Two: Background Material and Policy Information 6

Part Three: Testing of Legislative Content..... 8

Part Four: Significant Legislative Features 11

Part One: General Policy Statement

This Bill makes a number of amendments following a targeted review of the Coroners Act 2006 (the Act). Good progress has been made in improving the coronial system since the Act was passed, and the system is working well in many respects. However, there are still opportunities to enhance the current service to ensure it is clear, timely, and efficient, and that it supports families and improves public safety.

The focus of the current reforms has been on providing greater certainty for families and the general public, and enhancing the role of coroners as independent judicial officers. The amendments will—

- improve the quality, consistency, and timeliness of coronial investigations and decision making
- clarify the role of coroners and reduce duplication between coroners and other authorities that investigate deaths and accidents
- clarify the role coroners have in making recommendations to prevent future deaths and the relationship with agencies that have policy and operational responsibility in those areas
- ensure resources are used effectively.

Key changes include—

Strengthening coroners' recommendations

- requiring a coroner's recommendations or comments to be specific to the case and the evidence before the coroner, and to be clear about how the recommendations will reduce the likelihood of future deaths in similar circumstances. These changes will make it easier for members of the public to understand how recommendations link to the death
- strengthening the requirement for the coroner to consider which individuals or organisations have an interest in the death and to ensure that those individuals or organisations have the opportunity to give evidence or consider any recommendations that may be directed to them before the coroner finalises his or her decisions.

Improving processes in the coronial system

- reprioritising the chief coroner's functions, allowing the chief coroner more flexibility to manage workloads, appointing a deputy chief coroner, and encouraging the use of practice notes to improve consistency between coroners
- clarifying the role of pathologists and improving the processes for retaining or returning human tissue samples to be more sensitive to the needs of families

- better protecting the rights of people whose conduct may be called into question in an inquiry by requiring the coroner to notify them of their right to be represented, and to cross-examine witnesses, at the inquest
- reducing potential duplication with other investigating authorities, for example, by allowing the chief coroner to direct that no further investigation is needed if another authority has already investigated the death.

Better defining which cases need to be reported to the coroner or go to inquest

- focusing the requirement to report medical-related deaths on cases where the death was not reasonably expected immediately prior to the treatment, operation, or procedure so that families are not unnecessarily disrupted by the death being reported to the coroner
- removing the requirement for a mandatory inquest into deaths in official custody or care to provide the coroner with more flexibility, particularly when the death is from natural causes and there are no suspicious circumstances (however, the coroner would still be required to hold an inquiry)
- clarifying that a person may report a death that occurred overseas if the body is in New Zealand and the person has concerns about how overseas authorities responded to the death, but that there is no requirement to do so
- providing for the Attorney-General to determine whether coronial inquiry is required for the deaths of New Zealand Defence Force members on operational service that are directly caused by hostile action and limiting the scope of the coronial inquiry to establishing the person's identity and the causes and circumstances of the death.

Suicide reporting

The Bill also amends the restrictions on reporting self-inflicted deaths set out in sections 71 to 73 of the Act. The Act restricts the information that can be made public about a self-inflicted death without the authorisation of the coroner. During the targeted review, concerns were raised that some aspects of the current restrictions were unclear and did not recognise the growing role of social media.

As there was likely to be a range of views on the scope of restrictions on reporting self-inflicted deaths, the Government invited the Law Commission to undertake a first principles review of the restrictions. The purpose of the review was to examine whether the law struck an appropriate balance between preventing suicide deaths and the principle of freedom of expression.

The Law Commission recommended amending the legislation to—

- restrict the making public of the method of the death (including the place at which the death occurred if the place suggests the method), unless the chief coroner has granted an exemption

- allow the chief coroner to grant an exemption only if satisfied that the circumstances are such that any risk of copycat suicidal behaviour, is small and is outweighed by other matters in the public interest
- prevent anyone from describing a death as suicide unless the chief coroner has granted an exemption, or a coroner has made a finding that the death is suicide
- allow a death to be reported as a suspected suicide where the facts support that conclusion.

These recommendations were accepted by the Government and are reflected in this Bill.

To support the amendments to the current provisions, the Law Commission also recommended that the Minister of Health be required to prepare a set of non-legislative standards for suicide reporting, in consultation with representatives of the media and mental health interests. The Minister of Health would also be required to implement an ongoing programme to promote and support the implementation of the standards, and evaluate their success in achieving the goal of low-risk suicide reporting.

The Government has accepted these recommendations in principle. The implementation of these recommendations does not require any legislative changes and will be considered alongside other Government suicide prevention activity.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
The changes to suicide reporting restrictions were informed by the New Zealand Law Commission's report entitled " <i>Suicide Reporting</i> " (NZLC R131) dated 28 March 2014 and tabled in Parliament on 1 April 2014: http://www.lawcom.govt.nz/project/media-reporting-suicide?quicktabs_23=report	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	N/A

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
The Ministry of Justice produced 3 regulatory impact statements dated 5 June 2013, 17 September 2013 and 8 May 2014. Copies of the regulatory impact statements can be found at: http://www.justice.govt.nz/policy/regulatoryimpactstatements/regulatory-impact-statements	
2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The regulatory impact statements did not meet the threshold for RIA team assessment.	
2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
---	-----------

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>The regulatory impact statements available on the Ministry of Justice website at: http://www.justice.govt.nz/policy/regulatoryimpactstatements/regulatory-impact-statements provide information on the costs and benefits of the various policy options. However, it is difficult to quantify the likely impact of the Bill on coronial decision-making because coroners are independent judicial officers and inquiries are sometimes influenced by matters outside the coronial process (eg a criminal investigation).</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
<p>The regulatory impact statements available on the Ministry of Justice website at: http://www.justice.govt.nz/policy/regulatoryimpactstatements/regulatory-impact-statements http://www.justice.govt.nz/policy/regulatoryimpactstatements/regulatory-impact-statements provide information on the costs and benefits of the various policy options. However, it is difficult to quantify the likely impact of the Bill on coronial decision-making because coroners are independent judicial officers and inquiries are sometimes influenced by matters outside the coronial process (eg a criminal investigation).</p> <p>The Law Commission's report on suicide reporting at: http://www.lawcom.govt.nz/project/media-reporting-suicide?quicktabs_23=report provides analysis on the potential costs and benefits of the changes to reporting restrictions and the extent to which media are likely to comply with the new requirements.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
--

Most of the changes in the Bill focus on improving the operation of the coronial system and do not significantly affect individual rights and responsibilities.

We consulted the Office of the Ombudsman on whether removing the requirement to hold a public inquest into every death that occurs in official custody would be inconsistent with the Ombudsman's monitoring role as part of New Zealand's obligations under the United Nations Optional Protocol to the Convention Against Torture. Further information can be found in the regulatory impact statement at: http://www.lawcom.govt.nz/project/media-reporting-suicide?quicktabs_23=report

To assist in determining whether the proposals raise issues of consistency with international obligations, we consulted the NZ Defence Force (NZDF) and Customs on proposed changes to reporting overseas deaths and the NZDF on the proposal relating deaths of NZ Defence Force members.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Ministry of Justice consulted iwi authorities when developing the policy proposals. The Ministry gave particular consideration to Treaty of Waitangi principles when proposing:

- changes to the process for retaining and returning human tissue samples for a post-mortem; and
- to establish a panel of experts to assist the Chief Coroner when making decisions on exemptions from the suicide reporting restrictions (the Bill provides that the panel must include a member with expertise in tikanga Māori and Māori youth suicide).

We consulted Te Puni Kōkiri on the proposed changes to the retention and return of human tissue samples.

<http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/14.htm>

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by Crown Law, or a Bill of Rights Act 1990 section 7 report of the Attorney-General, is expected to be available on the Ministry of Justice's website upon a Bill's introduction. Any such advice, or reports, will be accessible on the Ministry's website at:

<http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
The Ministry of Justice is the responsible department and led the policy development of the Bill.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
The Bill authorises coroners to request full copies of health information from a person's doctor. This is necessary to assist in determining whether a post-mortem is needed for the purposes of opening an inquiry. The Coroners Act 2006 already allows coroners to receive information from medical professionals, but in the form of a report or specific information requested in a notice.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
The Office of the Privacy Commissioner did not raise any concerns.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The Bill implements policy changes informed by consultation with relevant government agencies, investigating authorities, District Health Boards, pathologists, funeral directors and iwi authorities. The Chief Coroner was consulted and informed throughout the policy development process and provided comments on an early draft of the Bill.</p> <p>The Law Commission consulted interested individuals and organisations during its review of suicide reporting in the media. Due to time constraints, this was targeted consultation rather than a public submission process. Further details can be found in the Commission's report at: http://www.lawcom.govt.nz/project/media-reporting-suicide?quicktabs_23=report</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
---	------------

The Chief Coroner was consulted on the policy proposals and a draft Bill which included most of the proposed changes. The Ministry consulted relevant government agencies on the draft Bill before finalising it for introduction.

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
---	----

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
---	----

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
--	----

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
<p>The Bill refines and clarifies the offence of making public details about a suicide without the authorisation of a coroner. The current offence is broad and unclear, which makes it difficult to comply with and enforce.</p> <p>The offence of breaching suicide reporting restrictions will not apply to a person who hosts online material unless they publish the information themselves. This ensures that a content host cannot be held liable for content posted by another person which they don't know about. This approach is similar to that taken for breaches of suppression orders.</p> <p>The Government's suicide prevention activities are likely to assist in raising awareness of the revised legislative restrictions and responsible suicide reporting more generally.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
--	----

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
---	----

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
--	-----

The Bill allows the Secretary of Justice to define “minute samples” by Gazette notice. This will clarify the size and/or nature of human tissue samples which pathologists can retain for the purposes of a post-mortem without having to seek the approval of the coroner. As the definition will be new and highly technical, there needs to be flexibility to refine the definition in future once it becomes clear how it is working in practice.

4.8. Does this Bill create or amend any other powers to make delegated legislation?

NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?

NO