

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.

12 August 2022

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Part One: General Policy Statement

Objective of Bill

The Coroners Amendment Bill (the Bill) amends the Coroners Act 2006 (the principal Act) to facilitate better access to justice for families and whānau interacting with the coronial system.

The coronial system is currently under considerable pressure. Coroners are struggling to keep pace with the number of cases being accepted into the coronial jurisdiction, which has resulted in an increasing active caseload and an increase in the average time taken to conclude coronial investigations.

The ultimate objective of the Bill is to reduce the distress caused to grieving families and whānau by the increasing length of time they spend waiting to receive coronial findings.

The Bill aims to achieve this by making targeted amendments to the principal Act that are designed to:

- reduce the time it takes for certain types of cases to move through the coronial process; and
- free up coroners' time to work on reducing the number of active coronial cases.

The Bill will also help ensure that public interest in the proper and timely understanding of the causes and circumstances of deaths is well served.

Amendments to principal Act

The Bill will make four targeted amendments to the principal Act as follows—

Establishing new position of coronial associate

The Bill establishes the new position of coronial associate. Coronial associates will take on many of the more straightforward functions, powers, and duties currently performed or exercised by coroners, while still enabling coroners to perform or exercise them.

For example, coronial associates will be able to undertake the more straightforward work currently performed solely by duty coroners¹. Coronial associates will also be able to handle the more simple and straightforward coronial investigations (for instance, deaths that appear to be due to natural causes without any suspicious circumstances for which an inquiry will not be needed; and simpler inquiries).

This will enable some coronial resources, especially resources currently devoted to duty coroner work, to be utilised for more complex cases (particularly those that require an inquiry to be opened, and cases where it is in the public interest for a coroner to make recommendations to prevent similar deaths in future).

¹ Duty coroners are coroners authorised to undertake a range of work and make a range of judicial decisions in the initial period (usually up to 48 hours) after a death is reported to the coroner.

Coronial Associates will be judicial officers (under the judicial branch of government) with a minimum of five years' post-admission experience as a barrister or solicitor. As judicial officers, their salary and allowances will be determined by the Remuneration Authority.

Recording cause of death as unascertained natural causes in certain circumstances

The Bill clarifies that coroners can record a cause of death as unascertained natural causes if the coroner considers that the death is from natural causes and no further investigation is required under the principal Act.

This will enable families and whānau to receive a coroner's findings sooner, particularly when this is undertaken at the duty coroner stage.

Enabling coroners to hold coronial inquiry solely in chambers, where appropriate

The Bill provides coroners with the sole discretion to decide whether a coronial inquiry should also include an inquest.

This will prevent inquests from taking place where, having regard to the statutory criteria in the principal Act, the coroner considers a hearing in chambers is appropriate and an inquest is not needed.

In making this determination, coroners will continue to be required to—

- notify interested parties that the coroner intends to hold a hearing solely in chambers; and
- provide interested parties with a reasonable period of time to make their views known to the coroner; and
- consider the views of interested parties.

Coroners will also be required to be satisfied that, in taking the steps above, an inquest is not necessary, and the hearing may be held on the papers.

Enabling written findings to be issued stating cause of death only, where appropriate

The Bill will enable coroners to issue written findings stating the cause of death only, and not the circumstances of death, if they consider there is no public interest in making findings as to the broader circumstances.²

This will allow certain cases to be concluded more quickly, ensuring families and whānau receive a coroner's findings sooner and freeing up coroners to spend more time on more complex cases.

² The cause of death is how someone died (that is, the immediate and antecedent causes of death) whereas the circumstances are the broader context in which the death took place (for example, the events that led up to the death).

Commencement

The changes above are intended to apply to almost all coronial cases currently in the coronial jurisdiction, as well as new cases.

The changes in the Bill will not apply to existing coronial cases where a coroner has already notified parties (under section 77 of the principal Act) that the coroner considers a hearing in chambers is appropriate and an inquest is not needed.³

The Bill will come into force on the day after receiving Royal assent.

³ Under section 77 of the principal Act, if a party indicates an intention to give evidence, or cross-examine witnesses, in person and makes this known to the coroner, then the coroner must hold an inquest, even if the coroner considers (having regard to statutory criteria in the principal Act) that an inquest is not needed.

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?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
The amendments contained in the Bill are exempt from the requirement to provide a Regulatory Impact Statement (on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities).	

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
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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?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
The Ministry of Justice has not undertaken a detailed analysis of the size of the potential costs and benefits, as the amendments in the Bill are exempt from the requirement to provide a Regulatory Impact Statement (on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities). However, the Ministry of Justice has explored the costs and benefits at a high-level. These are set out in Appendix 1 .	

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?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

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?

As a member state of the World Health Organisation (WHO), New Zealand provides 'cause of death' statistics to WHO. The Ministry of Justice understands that New Zealand's national cause of death statistics are recognised by WHO as being of very high quality, due to their specificity and the low percentage of deaths classified as 'unknown cause of death'.

The Ministry of Justice acknowledges that the Bill may have a small, indirect impact on the quality of New Zealand's cause of death statistics, through enabling a cause of death to be recorded as 'unascertained natural causes' in certain circumstances.

However, this is only expected to have a minor impact for the following reasons:

- The change in the Bill reflects current practice, with respect to certain natural cause deaths.⁴ The Bill will, for the avoidance of doubt, clarify that coroners are able to record a cause of death as 'unascertained natural causes' in certain circumstances.
- Coroners would not be recording deaths as 'unknown cause of death' but rather 'unascertained natural causes' – that is, the coroner must be satisfied that the death was from natural causes. Further, the coroner would also have to be satisfied that no further investigation is necessary.
- Finally, the Ministry of Justice understands that coroners are open to working with the Ministry of Justice and the Ministry of Health on how operational processes can be improved in relation to this change, including the potential for additional guidance.

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 has not undertaken a Treaty analysis on the proposals. However, the Ministry of Justice acknowledges the strong interest that Māori, as a Tiriti partner, have in the coronial system overall.

The Bill is intended to facilitate better access to justice for families and whānau interacting with the coronial system. The ultimate objective of the Bill is to reduce the distress caused to grieving families and whānau by the increasing length of time they spend waiting to receive coronial findings.

The Bill is the first of an intended 'two-phased' approach to improving the coronial system. Subject to decisions by the relevant Ministers, the Ministry of Justice will undertake a wider, longer term review of the Coroners Act 2006 and coronial system, which will involve broad engagement with a range of interested parties, including Māori.

Further, in terms of cultural practices, the Ministry acknowledges that the coronial system should enable Māori to adhere (as far as reasonably possible) to tikanga Māori during the coronial process, particularly in relation to the treatment of Tūpāpaku. The Ministry is currently progressing a separate project to better integrate tikanga practice throughout the coronial system.

⁴ Currently, when a coroner is filling out the relevant certificate, a coroner will generally record other additional information if known, such as the antecedent cause(s) of death, underlying condition(s), and other significant conditions contributing to death.

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
Crown Law has been provided with the Bill and has provided advice to the Attorney-General on consistency with the Bill of Rights Act 1990. A copy of the advice is available at: https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/	

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)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<i>Note regarding (a) above:</i> The Bill makes some minor consequential changes to some of the existing offence provisions in the Coroners Act, to ensure consistency with the functions, powers, and duties of coronial associates (where these overlap with those of coroners). However, these changes do not amend the substance of the existing offence provisions, nor do the changes create any new, or remove any existing, offences under the Act.	

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?	NO
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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
The Ministry of Justice undertook targeted engagement with key stakeholders in the coronial system on the policy proposals to be given effect by this Bill, including coroners, forensic pathologists and medical organisations. The amendments are supported by the coronial bench. Forensic pathologists indicated some opposition to some of the amendments, while other submitters indicated varying levels of support. The Ministry of Justice has also worked closely with the Coronial Bench on the draft Bill.	

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 Ministry has worked closely with the coronial bench to ensure that the proposals are workable in their jurisdiction. The Ministry will continue to work with coroners as the changes are implemented.	

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
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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
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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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?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
People performing the role of a coronial associate (established by the Bill) will be given the same civil and criminal immunities as a coroner under section 117(1) and (2) of the Coroners Act 2006, in relation to their exercise of relevant functions, powers and duties under that Act.	

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
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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?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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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?	YES
<p>The Act allows the chief coroner to issue 'practice notes' to help inform, and to achieve consistency in, coronial decision-making and other coronial conduct. Practice notes are issued under section 132 and cannot be inconsistent with the Act.</p> <p>The Bill will enable practice notes to be used in relation to the new coronial associate role as follows:</p> <p><u>Functions, powers, and duties of coronial associates set out in legislation, but may be limited under a practice note</u></p> <p><i>New section 104B</i> in the Bill provides for coronial associates to have the functions, powers, and duties of coroners appointed under section 103 – except to the extent stated in section 104B, in or under legislation, or in a written practice note (<i>see clause 17</i>).</p> <p><u>Practice note may constrain the functions, powers, and duties</u></p> <p><i>Clause 26</i> amends section 132 to give the chief coroner the power to also issue a practice note setting out any conditions or limitations on the performance or exercise of coroners' functions, powers, and duties by coronial associates. The practice note may also provide for the transfer of deaths between coroners and coronial associates.</p>	

Appendix One: Further Information Relating to Part Two

Extent of impact analysis available – question 2.5(a)

1. The Ministry of Justice has not undertaken a detailed analysis of the size of the potential costs and benefits, as the amendments in the Bill are exempt from the requirement to provide a Regulatory Impact Statement (on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities).
2. However, the Ministry of Justice has explored the costs and benefits at a high-level. This information is set out below.
3. Overall, the Bill is expected to help certain cases in the coronial system to be progressed more efficiently. This, combined with the new coronial associate position, will also help to relieve the pressure on coroners by freeing up coroners' time and enabling coroners to focus on more complex cases.

Establishing the new position of coronial associate

1. This amendment will enable the establishment of a new “coronial associate” role under the Act.⁵
2. Notwithstanding the targeted nature of the Bill, this amendment is the most significant change in the Bill. The introduction of coronial associates will enable coronial resource to be better utilised for its primary judicial functions, by:
 - allowing new coronial associates to primarily undertake some of the work currently undertaken by duty coroners – that is, the tasks completed in the first 48 hours after notification of a death⁶; and
 - allowing coronial associates to also undertake other coronial work where capacity allows, primarily working on cases considered by coroners to be more straightforward, when not engaged in duty work.
3. The support of coronial associates will also help to free up coroners to spend more time on more complex cases.
4. Like coroners, coronial associates will be independent judicial officers (that is, part of the judiciary) and will be required to have a legal background.

⁵ Budget 2022 has provided funding for this new role

⁶ Duty coroners are coroners who are authorised by the Chief Coroner to exercise or perform any function, duty or power that would ordinarily be performed or exercised by a responsible coroner, but “in the circumstances, is more appropriately performed or exercised by a coroner who is immediately available” (refer to section 16(3) of the Coroners Act 2006). In practice, coroners are rostered on to provide 24/7 coverage as ‘duty coroners’ to make a range of judicial decisions in the initial period (usually up to 48 hours) after a death is reported to the coroner.

Recording the cause of death as 'unascertained natural causes' in certain circumstances

5. Currently, when a duty coroner accepts jurisdiction for a death that is not considered suspicious, unnatural or self-inflicted (that is, where Police have not identified any suspicious circumstances, and the duty coroner considers the death to be from natural causes), and particularly where the immediate family objects to a post-mortem, a duty coroner may direct that the body be released without a post-mortem.
6. The death is then transferred from the duty coroner to a 'responsible coroner' (the coroner who is assigned the case). The responsible coroner will then consider whether further investigation is required, including deciding whether or not to open an inquiry.
7. Almost always in such natural cause death cases, no further investigation is considered necessary and the responsible coroner decides not to open an inquiry. The responsible coroner must then notify the Secretary for Justice (the Secretary) of their decision using the prescribed form.
8. Notifying the Secretary is commonly referred to as the issuing of a 'Cor 2 certificate'. It is at this point that the coroner may, subject to the conditions outlined above, record the cause of death on the form/certificate as 'unascertained natural causes'. While this is current practice, there is currently some doubt as to whether coroners – whether acting in their role as duty coroner or as responsible coroner – are able to do this.
9. This amendment will:
 - codify into primary legislation an existing process, providing coroners with certainty that they can continue to (subject to the conditions above) issue Cor 2s that record the cause of death as 'unascertained natural causes', and
 - enable duty coroners to issue Cor 2 certificates, rather than having to assign the death to a responsible coroner (as is currently the case). This will mean less delay in affected families receiving the coroner's findings.
10. While the latter part of this amendment is new, overall the amendment is expected to have only very minor impacts. However, the change will be meaningful for the families concerned.
11. The Ministry understands that, out of the 1800 (on average) natural cause deaths referred to the coroner each year, 144 (on average) of these (or 8%) are deaths that would be affected by this amendment (i.e. natural cause deaths where no post-mortem is undertaken and the coroner issues a 'Cor 2' certificate recording the cause of death as 'unascertained natural causes').
12. Further, of the 144 natural cause deaths that are referred to the coroner each year (and that do not have a post-mortem) these currently take 85 days (on average) to finalise from referral to file closure. This is based on the current process of referring these deaths on to a responsible coroner. Allowing a duty coroner to issue a Cor 2, as proposed by the amendment, should reduce the time to finalise such deaths to below 85 days (on average) because all decisions will be made by one coroner (rather than having two coroners review the death).

Enabling Coroners to hold a coronial inquiry solely in chambers, where appropriate

13. Currently, if a coroner decides to open an inquiry into a death, this can either be held in chambers ('on the papers') or in open court (an 'inquest').
14. If a coroner intends to hold a hearing on the papers and make findings in chambers, the coroner must first give notice to witnesses and other 'interested parties'. If any witness wishes to give evidence in person, and/or any interested party (or their counsel) wishes to cross examine any witness in person, the coroner must hold an inquest, even if the coroner considers that a hearing on the papers would more appropriate in the circumstances. The lack of coronial discretion can lead to inefficient use of court time.
15. The amendment would still allow input from interested parties as to whether the inquiry should proceed to an inquest, but the decision as to whether to conduct an inquest would be a decision of the coroner. This will mean fewer unnecessary inquests will need to be held (unnecessary in the sense that in all other respects, and having regard to statutory criteria in the Act, the coroner considers a hearing on the papers is appropriate, rather than an inquest). This will avoid the costs of the inquest and free up coroner time to progress other cases.
16. This amendment is expected to have minor impacts. Coroners have advised that, currently, very few cases proceed to inquest. Further, the Ministry understands that there are very few cases where a coroner deems it not necessary to hold an inquest, but is required to do so because someone wishes to give evidence or cross-examine orally (as required by the current legislation).

Enabling written findings to be issued with the cause of death only, where appropriate

17. When a coroner delivers their 'findings' into a death - following their investigation and, in some cases, their inquiry - they are required to report on the cause of death (how someone died) and the circumstances of the death (the broader context in which the death took place, such as the events that led up to the death).
18. The reporting on the circumstances of death relates to the coroner's primary public interest function, which is to prevent similar deaths from happening in future. However, in cases where there is no public interest in the circumstances of the death, the need to report on the circumstances (in addition to the cause of death) can lead to unnecessary delay and cause additional stress to whānau interacting with the coronial system.
19. This amendment will enable coroners to issue written findings with the cause of death only, and not the circumstances of death, if the coroner considers there is no public interest in making findings as to the broader circumstances.
20. It is intended to enable more cases to be dealt with in a more timely way, particularly with respect to deaths that prove to be of natural causes. This will mean families and whānau receive a coroner's findings sooner, and free up coroner time to work on more complex cases.

21. The Ministry expects the impact of the amendment to be minor. While a coroner will still be required to consider the public interest in the circumstances of death in all cases, a coroner won't have to prepare written findings on the circumstances if they determine there is no public interest in these. However, it is difficult to precisely determine the time and cost savings of this amendment as coroners are independent judicial officers and how they interpret the public interest will vary.
22. The Ministry understands from coroners that this amendment will help most with cases where an inquiry is opened, but the results of a post-mortem subsequently indicate the person died of natural causes and there is no public interest to be served in elaborating on the circumstances in which they died.