



10 August 2022

Attorney-General

Coroners Amendment Bill (PCO24520, v 13.0) – Consistency with the New Zealand Bill of Rights Act 1990 – Supplementary Advice
Our Ref: ATT395/365

1. On 25 July we provided advice on the consistency of the Coroners Amendment Bill 2022 (PCO24520, v 8.0) with the New Zealand Bill of Rights Act 1990 (**the Bill of Rights Act**). We advised that the Bill appeared to be consistent with the Bill of Rights Act. **Attached** is a copy of that advice.
2. Late on 5 August 2022, we received an amended version of the Bill, the Coroners Amendment Bill (PCO24520, v 13.0).
3. We have considered the amended version and are satisfied that the Bill remains consistent with the Bill of Rights Act.
4. Apart from minor and technical changes, the amendments:
 - 4.1 clarify coronial associates are not authorised to hold inquests or decide whether inquests should be held under the new ss 77 and 77A of the Coroners Act 2006 (**the principal Act**);
 - 4.2 require a matter be referred to the chief coroner, rather than a coroner, under the new s 77A(4) of the principal Act if a coronial associate notifies interested parties of an intention to hold a hearing on the papers and receives any views from interested parties that an inquest should be held;
 - 4.3 provide for the chief coroner to refer complaints about coronial associates to the Attorney-General, rather than the Minister (as in the previous version of the Bill), under new s 113A of the principal Act;
 - 4.4 amend the chief coroner’s power to issue practice notes under s 132 of the principal Act, including by providing practice notes setting out any conditions or limitations on the performance or exercise of the coroner’s functions, powers, and duties by coronial associates, and the transfer of deaths between coroners and coronial associates;

- 4.5 removes amendments to s 133 of the principal Act which enabled coronial associates to be designated coroners;¹
- 4.6 remove the previously proposed new s 133B which provided for the transfer of roles between coroners and coronial associates as an alternative form of case management; and
- 4.7 introduce s 140A into the principal Act to authorise the Secretary (being the chief executive of the Ministry of Justice) to approve and issue forms with the agreement of the chief coroner.
5. Our previous advice discussed the new ss 77 and s 77A of the principal Act which provided a coroner with the sole discretion to determine that an inquest is not necessary. The previous version of the Coroners Amendment Bill required coronial associates to refer the matter to a coroner if they received views of interested parties on whether an inquest should be held. The amended version of the Bill requires the matter instead be referred to the chief coroner, and clarifies that the chief coroner must assign a coroner to hold an inquest if satisfied that an inquest is necessary. Ended
6. In our previous advice we informed you that the right to justice is engaged by providing coroners with a sole discretion to dispense with an inquest, but that the Bill was consistent with the Bill of Rights Act as the Bill preserved the right of interested parties to be heard and have their views considered. We consider that the amended version of the Bill does not affect our conclusion as the chief coroner will still be required to consider the views of interested parties.
7. In accordance with Crown Law's policies, this advice has been peer reviewed by Helen Carrad, Crown Counsel.

Debra Harris
Crown Counsel

Noted / Approved / Not Approved

Hon David Parker
Attorney-General

10 / 8 / 2022

Encl.

¹ Note however that a coronial associate may be appointed as a responsible or replacement coroner under the amended s 133A of the principal Act.



25 July 2022

Attorney-General

Coroners Amendment Bill 2022 (PCO24520, v 8.0) – Consistency with the New Zealand Bill of Rights Act 1990
Our Ref: ATT395/365

1. We have considered the Coroners Amendment Bill 2022 (**the Bill**) for consistency with the New Zealand Bill of Rights Act 1990 (**the Bill of Rights Act**). We consider the Bill is consistent with the Bill of Rights Act.

Outline of the Bill

2. The Bill proposes to amend the Coroners Act 2006 (**the principal Act**) to facilitate better access to justice for families and whānau interacting with the coronial system by increasing the efficiency of the system. This will be achieved by reducing the time for certain cases to move through the coronial process and freeing up coroners' time to work on reducing the number of active coronial cases.
3. The Bill makes four targeted amendments to the principal Act.
 - 3.1 The new position of coronial associate will be established to take on many of the straightforward functions, powers and duties currently exercised by coroners, while still enabling coroners to exercise them. This will enable coronial resource to be utilised for more complex cases. Coronial associates may be authorised as duty coroners and in that role may decide not to open an inquiry into a death. They will be able to hold hearings on the papers and make chambers findings but will not be authorised to hold inquests or decide whether inquests should be held. Coronial associates will be judicial officers with a minimum of 5 years post-admission experience as a barrister or solicitor. As judicial officers, the Remuneration Authority will determine the salary and allowances for coronial associates.

- 3.2 A coroner who decides not to open an inquiry will be able to 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.
 - 3.3 Coroners will have the sole discretion to determine whether a coronial inquiry should include an inquest.
 - 3.4 A coroner will not be required to issue written findings in relation to the circumstances of the death concerned, if they consider there is no public interest in making the findings.
4. The introduction of a discretionary power for coroners to determine that an inquest is not necessary raises consideration of rights under the Bill of Rights Act.

Right to justice – s 27 Bill of Rights Act

Providing Coroners with the sole discretion to decide whether a coronial inquiry should also include an inquest

5. Section 77 of the principal Act currently requires a coroner to hold an inquest if they receive a notification of an intention to give evidence, or cross-examine witnesses, in person.
6. Clause 12 will replace s 77, providing a coroner with the sole discretion to determine that an inquest is not necessary. A coroner will still be required to notify interested parties of an intention to hold a hearing on the papers and dispense with an inquest and afford interested parties a reasonable time to make their views known. However, having considered those views, the coroner will be vested with a discretion to determine that an inquest is not necessary.
7. Clause 13 will introduce s 77A, providing a coronial associate with the powers to hold a hearing on the papers and make chambers findings, having notified interested parties of their intention to do so. However, if a coronial associate receives the views of interested parties on whether an inquest should be held, the matter must be referred to a coroner for decision, as explained above.
8. The proposed amendments will therefore prevent inquests from taking place where, having regard to the statutory criteria in the Act, a coroner considers an inquest is not necessary and a hearing on the papers is all that is required.

9. The right to justice is engaged by providing coroners with a sole discretion to dispense with an inquest. However, cls 12 and 13 preserve the rights of interested parties to be heard and have their views considered, in the exercise of this decision-making power. An interested party's right to make a complaint to the Judicial Conduct Commissioner about a coroner's conduct under s 113 of the principal Act is preserved. Additionally, cl 12 does not affect the right of an interested party to seek judicial review if they are dissatisfied with the decision.
10. We consider that providing coroners with the sole discretion to determine whether an inquest is required is consistent with the Bill of Rights Act.

Conclusion

11. We conclude that the Bill is consistent with the Bill of Rights Act.
12. This advice has been peer reviewed by Helen Carrad, Crown Counsel.



Debra Harris
Crown Counsel

~~Noted~~ / ~~Approved~~ / ~~Not Approved~~



Hon David Parker
Attorney-General

30/7 /2022

Encl.