

Hon Aupito William Sio
Minister for Courts

Proactive release – Coroners Amendment Bill

Date of issue: 01 September 2022

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982, be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	Coroners Amendment Bill: Policy Decisions <i>Cabinet paper</i> Office of the Minister for Courts <i>Meeting date: 30 March 2022 (SWC) and 4 April 2022 (CAB)</i>	Released in part Some information withheld under the following grounds of the OIA: <ul style="list-style-type: none">• Section 9(2)(h) to maintain legal professional privilege.
2	Cabinet minute: SWC-22-MIN-0048 <i>Cabinet minute</i> Cabinet Office 30 March 2022	Released in part Some information withheld under the following grounds of the OIA: <ul style="list-style-type: none">• Section 9(2)(h) to maintain legal professional privilege.
3	Coroners Amendment Bill: Approval for Introduction <i>Cabinet paper</i> Office of the Minister for Courts <i>Meeting date: 11 August 2022 (LEG) and 15 August 2022 (CAB)</i>	Released in part. Some information withheld under the following grounds of the OIA: <ul style="list-style-type: none">• Section 9(2)(h) to maintain legal professional privilege.• Section 18(d) the information is already publicly available.
4	Cabinet minute: LEG-22-MIN-0133 <i>Cabinet minute</i> Cabinet Office 11 August 2022	Released in part Some information withheld under the following grounds of the OIA: <ul style="list-style-type: none">• Section 9(2)(h) to maintain legal professional privilege.

Budget Sensitive

Office of the Minister for Courts

Cabinet Social Wellbeing Committee

Coroners Amendment Bill: Policy decisions

Proposal

- 1 This paper seeks Cabinet's agreement to policy decisions for the proposed Coroners Amendment Bill (the Bill).

Relation to government priorities

- 2 The Bill will facilitate better access to justice for families and whānau interacting with the coronial system, by reducing the time it takes for grieving families and whānau to receive coronial findings, and therefore reducing the distress caused by delays.

Executive Summary

- 3 The coronial system is currently under considerable pressure. Since 2014, coroners have struggled 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 inquiries (a 38.7 percent increase in the three years from July 2018 – July 2021).
- 4 I am seeking Cabinet's agreement to the proposed Bill, which will make four amendments to the Coroners Act 2006 (the Act). The amendments are supported by coroners, and focused specifically on reducing the time it takes for certain cases to move through the coronial process, and freeing up more of coroners' time to work on reducing the number of active cases. This will help reduce the distress caused to grieving families and whānau from the time spent waiting for a coroner's findings:
 - 4.1 Amendment 1 will enable coroners to record a cause of death as 'unascertained natural causes' in certain circumstances, regardless of whether they are acting in their role as the responsible coroner or the duty coroner. This will enable families and whānau to receive a coroner's findings sooner, particularly if this is done at the duty coroner stage;
 - 4.2 Amendment 2 will enable the coroner to have the sole discretion to decide whether an inquiry should proceed to an inquest, but with input from interested parties. This will prevent unnecessary inquests from taking place – 'unnecessary' in the sense that, in all other respects, and having regard to the statutory criteria in the Act, the coroner considers a hearing in chambers is appropriate and an inquest is not needed;

- 4.3 Amendment 3 will enable coroners to issue written findings about 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. In these cases, this will free up coroners to spend more time on more complex cases, and will ensure families and whānau receive a coroner's findings sooner; and
- 4.4 Amendment 4 will, subject to funding from Budget 2022¹, establish a 'coronial registrar' (or similar) role. Coronial registrars are intended to take on the more straightforward functions, powers and duties currently exercised by coroners (particularly those functions, powers and duties that are currently exercised by coroners performing the duty coroner function).
- 5 Amendment 4 (establishing the 'coronial registrar' role) is subject to further consultation with coroners regarding the precise scope of the role. Therefore, I am also seeking Cabinet's authorisation to make further policy decisions on these matters under the delegated authority of Cabinet, and in consultation with the Minister of Justice and other Ministers as appropriate.
- 6 Subject to Cabinet's agreement, I intend to report back to Cabinet on these delegated policy decisions when the proposed Bill is considered by the Cabinet Legislation Committee (LEG) in May 2022, although the timing of this is subject to the time taken to finalise the precise shape of the coronial registrar role and how this might best be reflected in legislation.
- 7 I intend for the Bill to be passed by the end of 2022. Once passed, the Bill is intended to come into force the day after receiving Royal assent.
- 8 The Bill is the first of a 'two-phased' approach to improving the coronial system. Once the Bill has been introduced to the House, and subject to discussions I have with the Minister of Justice, Phase 2 will involve a more comprehensive review of the Act and wider coronial system. This review will likely commence in approximately mid-2022 and will run independently of progress on the Bill.

Background

The coronial system is currently under considerable pressure...

- 9 Coroners are independent judicial officers who, under the Act, investigate unexpected, violent or suspicious deaths to determine their causes and circumstances, and provide recommendations on how similar deaths may be prevented from occurring in future. There are currently 18 permanent fulltime coroners, including the Chief Coroner, and 8 part-time relief coroners.
- 10 Since 2014, coroners have struggled to keep pace with the number of cases being accepted into the coronial jurisdiction. Coroners are continuing to find it challenging to conclude more cases than they receive each year, and this has resulted in an increasing active caseload and an increase in the average time

¹ Approximately \$9.779m over four years is being sought for the coronial registrar proposal.

taken to conclude coronial inquiries. The number of active coronial cases rose from 4,168 at the end of July 2018 to 5,574 at the end of July 2021 (a 33.7 percent increase in three years), and the average age of coronial cases at disposal rose from 341 days to 473 days over the same period (a 38.7 percent increase in three years). There are a number of drivers for these increases, including the increasing number of deaths referred to the coroner that turn out to be from natural causes and, in recent years, periods when the coronial bench has not been operating at full capacity due to vacancies.

- 11 The increasing length of time that grieving families and whānau are waiting to receive coronial findings is causing a significant amount of distress to them. The increasing time also means the public interest in the proper and timely understanding of the causes and circumstances of deaths is less well-served. The increasing workload is also placing strain on coroners and others working in the coronial system.

...and the Bill will help to reduce the harm caused by delays in the coronial system.

- 12 The proposed Bill will amend the Act to help ensure that coronial cases are dealt with as promptly and efficiently as possible, while not adversely affecting the quality of coronial findings and the judicial independence of coroners.
- 13 To achieve this objective, the Bill includes four amendments to the Act (see below).

The Bill is the first of a 'two-phased' approach to review the coronial system...

- 14 The Bill has a narrow focus to enable a small number of amendments to be progressed, and the benefits realised, in the short term (Phase 1). These amendments are focused specifically on reducing the time it takes certain cases to move through the coronial process, helping to reduce the time it takes to conclude coronial investigations, reduce the number of active cases, and ultimately the distress caused by the increasing time for cases to be closed.
- 15 The amendments will be meaningful for the families and whānau of the deceased concerned, although they are not by themselves expected to have a major impact on the time taken to conclude coronial cases and on reducing the backlog of active cases. The amendments are a first step in improving the coronial system, alongside other initiatives.
- 16 Once the Bill has been introduced to the House, and subject to discussions I have with the Minister of Justice, Phase 2 will involve a more comprehensive review of the Act and wider coronial system. I will be discussing the scope and timing of this review with the Minister of Justice, but it is likely that this will commence in approximately mid-2022. If progressed, this review would be led by the Ministry of Justice (the Ministry).

...which will complement other work to improve the operation of the system.

- 17 The proposed Bill, and the proposed wider review of the coronial system, will complement other work that the Ministry is leading as part of its coronial work programme. This programme was established to explore and progress a range of legislative and non-legislative initiatives to improve the operation of the coronial system.
- 18 Amongst other things, this work programme includes:
 - 18.1 the Budget 2022 initiative “Improving the coronial system for bereaved families and whānau”. This initiative includes funding to appoint four additional permanent coroners and support staff, establish new coronial registrar (see below) and clinical advisor positions, and provide improved support to bereaved families and whānau;
 - 18.2 the development of new regulations to enable doctors to be paid for reports requested by coroners [SWC-22-MIN-0008 refers]; and
 - 18.3 a project to operationalise tikanga practice throughout the coronial system.

The Coroners Amendment Bill

The proposed amendments have been consulted on and are supported by coroners.

- 19 The proposals in the Bill stem from earlier proposals put to me by the Chief Coroner, Judge Deborah Marshall, in May 2021. I asked the Ministry to explore options for progressing these changes, which has resulted in the proposed Bill.
- 20 The Ministry has undertaken targeted engagement with key stakeholders in the coronial system on the four amendments in the Bill, including coroners, forensic pathologists, government agencies, and medical organisations. The amendments are supported by coroners. Forensic pathologists have indicated opposition to some of the amendments, while other submitters indicated varying levels of support.

Amendment 1 – Enabling the cause of death to be recorded as ‘unascertained natural causes’ in certain circumstances.

- 21 Currently, when the duty coroner accepts jurisdiction for a death that is not considered suspicious, unnatural or self-inflicted (that is, they consider the death to be from natural causes), and particularly where the immediate family objects to a post mortem, a duty coroner is able to direct that the body be released without a post mortem.
- 22 The body is released to the family, and the death is then transferred from the duty coroner to the “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. Almost always in natural cause death cases, no further investigation is considered

necessary and the responsible coroner issues a 'Cor 2' certificate² recording the cause of death 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.

- 23 I propose that the Bill should, for the avoidance of doubt, expressly enable coroners to issue Cor 2 certificates recording the cause of death as 'unascertained natural causes' (if they consider no further investigation is required). This would provide certainty to coroners about the process to be followed. I understand that coroners are open to working with the Ministry of Justice and the Ministry of Health on how operational processes can be updated to implement this amendment, including the potential for additional guidance.

Amendment 2 – Ensuring that the decision whether to proceed to an inquest should be solely at the discretion of the coroner, but with input from interested parties.

- 24 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').
- 25 If a coroner intends to hold a hearing on the papers and make findings in chambers, the coroner must 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 they consider a hearing on the papers more appropriate).
- 26 The lack of coronial discretion can lead to inefficient use of court time. I understand from coroners that some interested parties insist on being able to cross examine a witness without being able to explain the issue they wish to explore, or the reasons why it is necessary to cross examine the witness. The result is that some inquests must be held in cases where the coroner considers a hearing on the papers is sufficient to address all the issues required to be determined by the coroner, and an inquest would add little or no value to the overall inquiry.
- 27 I propose that the Bill should enable coroners to have the sole discretion to decide whether an inquiry is more appropriately held on the papers or through an inquest. This will mean fewer unnecessary inquests will need to be held.³ While the number of cases that would not need to go to inquest due to this amendment is not expected to be large, it will still have some impact as any inquest is a significant drain on coroner resources and support staff.

² The prescribed form is provided under regulation 5 of the Coroners (Forms) Regulations 2008.

³ 'Unnecessary' in the sense that, in all other respects, and having regard to the statutory criteria in the Act, the coroner considers a hearing on the papers is appropriate, rather than an inquest.

28 However, I also share the view of coroners and others that the views of interested parties should continue to be considered when coroners are making such decisions. Therefore, if Cabinet agrees to coroners having the discretion to decide on the most appropriate mode of inquiry, the Bill should also include a requirement for coroners to:

- 28.1 notify interested parties of their intention to hold a hearing on the papers (as opposed to an inquest);
- 28.2 allow a reasonable period for interested parties to make their views known to the coroner on whether and why an inquest, in their view, should be held; and
- 28.3 consider these views when forming their decision on the most appropriate mode of inquiry.⁴

Amendment 3 – Enabling coroners to issue findings without circumstances if they consider there is no public interest in the circumstances of death.

- 29 Currently, when a coroner issues their written findings on a death, they are required to issue findings, so far as is possible, as to the cause of death and the circumstances of death. The cause of death is ‘how’ someone died, whereas the circumstances are the broader context in which the death took place (for example, the events that led up to the death).
- 30 I propose that the Bill should enable coroners to issue written findings about 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.
- 31 Such an amendment is intended to enable more cases to be dealt with in a timelier 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.
- 32 I understand 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.

Amendment 4 – Establishing a ‘coronial registrar’ (or similar) role to take on some of the functions, powers, and duties currently exercised by coroners.

- 33 Currently, when a death is referred to the coroner, they must decide whether to accept a death into the coronial jurisdiction or decline jurisdiction and direct a doctor to issue a medical certificate of cause of death. In addition, there are several circumstances when a death must be investigated by a coroner (for example, if the death is self-inflicted, unnatural or violent; or occurs in official

⁴ This would be similar to the existing requirements in the Act for the coroner to consider the desire of any member of the immediate family that: a post mortem be performed (section 32(h)), and that an inquiry be conducted (s63(e)).

custody or care). These decisions are currently made by a 'duty coroner', as authorised by the Chief Coroner.⁵

- 34 Once a death has entered the coronial jurisdiction, coroners have several other responsibilities, including establishing the identity of the deceased, deciding on whether to order a post mortem, and making decisions as to when a body can be released. These decisions are also made by a 'duty coroner', as authorised by the Chief Coroner.
- 35 I propose that the Bill establish a 'coronial registrar' (or similar) role.⁶ Coronial registrars are intended to take on the more straightforward functions, powers and duties currently exercised by coroners (particularly those functions, powers and duties that are currently exercised by coroners performing the duty coroner function), while still enabling coroners to exercise these. This would include, for example, the following:
- 35.1 accepting jurisdiction in routine matters – for example, those where jurisdiction must be taken, such as with deaths that are obviously self-inflicted, unnatural or violent;
 - 35.2 establishing the identity of the deceased in straightforward cases; and
 - 35.3 deciding whether to direct a post mortem and the scope of that post mortem in straightforward cases.
- 36 Collectively, this would enable some coronial resource currently devoted to duty roster work to be utilised for its primary judicial functions (the investigation of deaths, including inquiries). When coroners are acting as duty coroner, they are unable to progress their responsible coroner case work.
- 37 Coroners would continue to retain overall responsibility for, and general oversight of, the duty coroner function. This reflects feedback from coroners that, while they support the idea of a coronial registrar (or similar) role, they see such a role as supplementing – not replacing – the role of the coroner.
- 38 In addition, it may be also that coronial registrars could also exercise other powers of coroners, such as those relating to natural cause death cases. Coronial registrars are also intended to be able to assist coroners with a range of administrative tasks.

⁵ 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. Currently, duty coroner powers are given practical effect through the duty roster system which operates in tandem with the National Initial Investigation Office (NIIO), to which all reportable deaths need to be reported. Three coroners are rostered on as duty coroner per week, ensuring 24/7 coverage, and 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 NIIO/the coroner.

⁶ In New Zealand's judicial system, a 'registrar' is a statutorily appointed officer of the court who is able to exercise a specified jurisdiction, as well as perform a range of administrative functions.

- 39 Further work is required on the precise scope of the registrar role, and the Ministry is continuing to work with coroners and relevant agencies on this. I am therefore seeking Cabinet's authorisation to make further policy decisions on the precise scope of the coronial registrar role (including its functions, powers and duties) under the delegated authority of Cabinet, and in consultation with the Minister of Justice and other Ministers as appropriate. Subject to Cabinet's agreement, I intend to report back to Cabinet on these delegated decisions when the proposed Bill is considered by LEG in May 2022.

Financial Implications

- 40 Amendments 1, 2, and 3 are not expected to have more than minor additional costs. Any additional costs will be met within the Ministry's existing baseline funding. Therefore, these amendments can be progressed independently of Amendment 4 if required.
- 41 Amendment 4 (coronial registrars) is dependent on funding from Budget 2022 (approximately \$9.779m over four years is being sought).⁷ This funding is expected to enable the hiring of 7 coronial registrars (and support staff) as well as cover implementation costs and overheads:

	\$m – increase/(decrease)						
	2021/22	2022/23	2023/24	2024/25	2025/26 & Outyears	Total 21/22-25/26	
Establish new Coronial Registrar roles to staff the current Duty Coroner roster							
Total	-	0.654	3.251	2.987	2.887	9.779	Vote Courts

- 42 The costs of the coronial registrars proposal cannot be met within the Ministry's existing baseline funding. If the coronial registrars proposal does not receive the funding sought from Budget 2022, the Ministry will need to consider whether there are other options to fund the proposal and report back to me before the Bill is considered by LEG in May 2022.

Legislative Implications

I intend for the Bill to come into force by the end of 2022.

- 43 I intend to seek Cabinet's agreement in May 2022 to introduce the Bill to the House.

- 44 s9(2)(h)

Once passed, the Bill is intended to come into force the day after receiving Royal assent.

⁷ Note that the funding sought for the coronial registrar proposal is part of a broader coronial services Budget 2022 initiative: "Improving the coronial system for bereaved families and whānau".

- 45 A high-level timeline for progressing the Bill can be found below. This timeline is dependent on a truncated select committee process (4 instead of 6 months). It is also dependent on the time taken to finalise the precise shape of the coronial registrar role and how this might best be reflected in legislation.

Date	Milestones
By early/mid-April 2022	Delegated policy decisions regarding the coronial registrar role (by Minister for Courts, in consultation with the Minister of Justice and other Ministers as appropriate)
Mid-May 2022	LEG (19 May) and Cabinet (23 May) decisions to introduce the Bill
Late May 2022	Introduction of Bill and First Reading
June – September 2022	Select Committee (4 months)
By December 2022	Enactment and commencement

The changes in the Bill are independent of, but related to, other proposed legislative changes.

- 46 Note that there are other proposed legislative changes underway to improve the coronial system, which are independent of, but related to, this Bill:
- 46.1 Firstly, a proposed Coroners (Maximum Number of Coroners) Amendment Bill seeks to increase the statutory cap on the number of permanent coroners (from 20 to 23) to help reduce the number of active cases to a more sustainable level. This will allow additional permanent coroners to be appointed if Budget 2022 funding for this is agreed (approximately \$14.265m over four years). I intend to separately seek Cabinet's agreement to the passage of this Bill under urgency as part of the Budget 2022 legislation; and
- 46.2 Secondly, a possible Coroners Amendment Bill No 2, to possibly be introduced in 2023. This Bill would follow the proposed wider review of the coronial system (likely commencing in mid-2022). The proposals in this paper have been narrowly scoped to ensure that some changes can be progressed relatively quickly and independently of the wider review.

Impact Analysis

Regulatory Impact Statement

- 47 The Treasury's Regulatory Impact Analysis team has determined that the four amendments in the proposed Coroners Amendment 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.

Climate Implications of Policy Assessment

- 48 The Climate Implications of Policy Assessment requirements do not apply to this proposal as it does not meet the qualifying criteria.

Population Implications

- 49 The proposals in this paper are not intended to directly impact specific population groups. However, I acknowledge the strong interest that Māori, as a Tiriti partner, have in the coronial system overall.
- 50 In terms of cultural practices, 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. As noted above, the Ministry is currently progressing a project to operationalise tikanga practice throughout the coronial system.
- 51 Similarly, the coronial system should also enable other ethnic and faith communities to adhere (as far as reasonably possible) to their cultural practices during the coronial process. If the proposed wider review of the Act and the coronial system is progressed, the Ministry intends to engage with a broad range of interested parties (including Māori and other ethnic and faith communities) on these matters, as well as the coronial system overall.

Human Rights

- 52 The proposals in this paper have no specific human rights implications.

Consultation

- 53 The following agencies were consulted on this paper: Department of Corrections; Ministry for Ethnic Communities; Ministry for Pacific Peoples; Ministry of Business, Innovation and Employment; Ministry of Health; Ministry of Transport; NZ Police; The Treasury.
- 54 The following agencies were informed: Accident Compensation Corporation; Department of Internal Affairs; Department of the Prime Minister and Cabinet; New Zealand Defence Force; Te Puni Kōkiri.
- 55 Consulted agencies expressed broad support for the proposals and the Bill's overarching intent. Agencies noted the importance of ensuring that families and whānau are, where appropriate, involved throughout the coronial process.
- 56 Agencies also expressed interest in being involved in the proposed wider review of the Act and the coronial system. If this review is progressed, the Ministry of Justice intends to consult a broad range of interested parties, including relevant agencies.

57 To inform the proposals in this paper, the Ministry of Justice invited comments from the following:

57.1 Chief Coroner, Deputy Chief Coroner, and coroners of New Zealand;

57.2 Forensic pathology providers: Communio, National Forensic Pathology Service of NZ, Forensic Pathology South Island;

57.3 General Practice New Zealand;

57.4 Medical Council of New Zealand;

57.5 National Chief Medical Officer Group;

57.6 New Zealand Law Society;

57.7 New Zealand Medical Association;

57.8 Nursing Council of New Zealand;

57.9 Royal College of Pathologists of Australasia; and

57.10 Royal New Zealand College of General Practitioners.

58 As noted above, the Ministry continues to engage with coroners and relevant agencies on the precise scope of the registrar role.

Communications

59 My office will work with the Ministry on a broad coronial services announcement, which will incorporate a range of related work being undertaken to improve the coronial system. This announcement is not intended to be released until after Budget 2022 announcements are made.

Proactive Release

60 I intend to proactively release this paper once the Bill has been introduced to the House.

Recommendations

The Minister for Courts recommends that the Committee:

1 **note** that the proposed Coroners Amendment Bill (the Bill) will make four amendments to the Coroners Act 2006, to help ensure that coronial cases are dealt with as promptly and efficiently as possible, while not adversely affecting the quality of coronial findings and the judicial independence of coroners;

2 **note** that the Bill is the first of a proposed two-phased approach to review the Coroners Act 2006 and wider coronial system;

Amendment 1

- 3 **agree** that the Bill should, for the avoidance of doubt, expressly enable coroners to issue certificates recording the cause of death as 'unascertained natural causes' (if they consider no further investigation is required);

Amendment 2

- 4 **agree** that the Bill should enable coroners to have the sole discretion to decide whether an inquiry is more appropriately held on the papers or through an inquest;
- 5 **agree** that, subject to recommendation 4 above, the Bill should also require coroners to:
- 5.1 notify interested parties of their intention to hold a hearing on the papers (as opposed to an inquest);
 - 5.2 allow a reasonable period for interested parties to make their views known to the coroner on whether and why an inquest, in their view, should be held; and
 - 5.3 consider these views when forming their decision on the most appropriate mode of inquiry;

Amendment 3

- 6 **agree** that the Bill should enable coroners to issue written findings with 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;

Amendment 4

- 7 **agree** that, subject to funding from Budget 2022, the Bill should establish the role of coronial registrar (or similar role) to undertake some of the more straightforward functions, powers and duties currently exercised by coroners (particularly those functions, powers and duties that are currently exercised by coroners performing the duty coroner function);
- 8 **note** that the Ministry of Justice will continue to work closely with coroners to develop the precise scope of the coronial registrar role and how this might best be reflected in legislation;
- 9 **authorise** the Minister for Courts, in consultation with the Minister of Justice and other Ministers as appropriate, to make further policy decisions regarding the coronial registrar role and its functions, powers and duties;
- 10 **note** that, depending on the outcome of Budget 2022 decisions, the Minister for Courts intends to report back to Cabinet in May 2022 regarding the delegated decisions in recommendation 9;

Financial implications

- 11 **note** that any costs resulting from Amendments 1, 2, and 3 will be met within the Ministry of Justice's existing baseline funding;
- 12 **note** that Amendment 4 (coronial registrars) is dependent on funding from Budget 2022 (approximately \$9.779m over four years is being sought) and the costs of this amendment cannot be met within the Ministry of Justice's existing baseline funding;
- 13 **note** that if the coronial registrars proposal does not receive the funding sought from Budget 2022, the Ministry of Justice will need to consider whether there are other options to fund the proposal and advise the Minister for Courts before the Minister reports back to Cabinet in May 2022;

Next Steps

- 14 **invite** the Minister for Courts to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions in recommendations 3-9 above;
- 15 **authorise** the Minister for Courts, in consultation with the Minister of Justice and other Ministers as appropriate, to resolve any outstanding policy issues arising from or associated with the decisions in this paper;
- 16 **authorise** the Minister for Courts to approve minor, technical and transitional amendments to the Bill identified during the drafting process;
- 17 **note** that the Minister for Courts intends to seek Cabinet's agreement in May 2022 to introduce the Bill to the House;
- 18 **note** that, subject to Cabinet's agreement to the introduction of the Bill, the Minister for Courts intends for the Bill to be enacted by December 2022 and come into force the day after it receives Royal assent.

Authorised for lodgement

Hon Aupito William Sio

Minister for Courts



Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Coroners Amendment Bill: Policy Decisions

Portfolio **Courts**

On 30 March 2022, the Cabinet Social Wellbeing Committee:

Background

- 1 **noted** that the proposed Coroners Amendment Bill (the Bill) will make four amendments to the Coroners Act 2006, to help ensure that coronial cases are dealt with as promptly and efficiently as possible, while not adversely affecting the quality of coronial findings and the judicial independence of coroners;
- 2 **noted** that the Bill is the first of a proposed two-phased approach to review the Coroners Act 2006 and wider coronial system;

Amendment 1

- 3 **agreed** that the Bill should, for the avoidance of doubt, expressly enable coroners to issue certificates recording the cause of death as 'unascertained natural causes' (if they consider no further investigation is required);

Amendment 2

- 4 **agreed** that the Bill should enable coroners to have the sole discretion to decide whether an inquiry is more appropriately held on the papers or through an inquest;
- 5 **agreed** that, subject to paragraph 4 above, the Bill should also require coroners to:
 - 5.1 notify interested parties of their intention to hold a hearing on the papers (as opposed to an inquest);
 - 5.2 allow a reasonable period for interested parties to make their views known to the coroner on whether and why an inquest, in their view, should be held;
 - 5.3 consider these views when forming their decision on the most appropriate mode of inquiry;

Amendment 3

- 6 **agreed** that the Bill should enable coroners to issue written findings with 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;

Amendment 4

- 7 **agreed** that, subject to Budget 2022 funding, the Bill should establish the role of coronial registrar (or similar role) to undertake some of the more straightforward functions, powers and duties currently exercised by coroners (particularly those functions, powers and duties that are currently exercised by coroners performing the duty coroner function);
- 8 **noted** that the Ministry of Justice will continue to work closely with coroners to develop the precise scope of the coronial registrar role and how this might best be reflected in legislation;
- 9 **authorised** the Minister for Courts, in consultation with the Minister of Justice and other Ministers as appropriate, to make further policy decisions regarding the coronial registrar role and its functions, powers and duties;
- 10 **noted** that, subject to Budget 2022 decisions, the Minister for Courts intends to report back to Cabinet in May 2022 regarding the delegated decisions in paragraph 9 above;

Financial implications

- 11 **noted** that any costs resulting from Amendments 1, 2, and 3 will be met within the Ministry of Justice's existing baseline funding;
- 12 **noted** that Amendment 4 (coronial registrars) is dependent on Budget 2022 funding and the costs of this amendment cannot be met within the Ministry of Justice's existing baseline funding;
- 13 **noted** that, if the coronial registrars proposal does not receive the funding sought from Budget 2022, the Ministry of Justice will need to consider whether there are other options to fund the proposal and advise the Minister for Courts prior to the report back in paragraph 10 above;

Next steps

- 14 s9(2)(h)
- 15 **invited** the Minister for Courts to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions in paragraphs 3-9 above;
- 16 **authorised** the Minister for Courts, in consultation with the Minister of Justice and other Ministers as appropriate, to resolve any outstanding policy issues arising from or associated with the above decisions;
- 17 **authorised** the Minister for Courts to approve minor, technical and transitional amendments to the Bill identified during the drafting process;

- 18 **noted** that the Minister for Courts intends to seek Cabinet's agreement in May 2022 to introduce the Bill to the House;
- 19 **noted** that, subject to Cabinet's agreement to the introduction of the Bill, the Minister for Courts intends for the Bill to be enacted by December 2022 and come into force the day after it receives Royal assent.

Rachel Clarke
Committee Secretary

Present:

Hon Kelvin Davis
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon Poto Williams
Hon Jan Tinetti
Hon Dr Ayesha Verrall
Hon Aupito William Sio
Hon Meka Whaitiri
Hon Priyanca Radhakrishnan

Officials present from:

Office of the Prime Minister
Office of the Chair
Officials Committee for SWC

In Confidence

Office of the Minister for Courts

Cabinet Legislation Committee

Coroners Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks agreement to introduction of the Coroners Amendment Bill (the Bill). It also advises Cabinet of further policy decisions I have made on a new Coronal Associate role, under delegated authority granted to me by Cabinet [SWC-22-MIN-0048].

Background

- 2 Coroners are independent judicial officers who, under the Coroners Act 2006 (the Coroners Act), investigate unexpected, violent or suspicious deaths to seek to determine their causes and circumstances, and provide recommendations on how similar deaths may be prevented from occurring in future.
- 3 The coronial system is currently under considerable pressure. Since 2014, Coroners have struggled 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.
- 4 The number of active coronial cases has risen from 4,168 at the end of July 2018 to 6,337 at the end of June 2022 (a 52 percent increase in just under four years), and the average age of coronial cases at disposal has risen from 341 days to 499 days over the same period (a 46.3 percent increase). There are several drivers for these increases, including the increasing proportion of deaths referred to the coroner which are accepted into jurisdiction, over half of which are ultimately found to be from natural causes; periods in recent years when the coronial bench has not been operating at full capacity due to vacancies; and over the last two years a decrease in the number of findings issued.
- 5 The increasing length of time that grieving families and whānau are waiting to receive coronial findings is causing a significant amount of distress to them. The increasing time also means the public interest in the proper and timely understanding of the causes and circumstances of deaths is less well-served. The increasing workload is also placing strain on Coroners and others working in the coronial system.

Policy

- 6 The Bill makes four targeted amendments to the Coroners Act, focused on reducing the time it takes for certain cases to move through the coronial process, and on freeing up Coroners' time to work on reducing the number of active cases. The Bill will help ensure that coronial cases are dealt with as promptly and efficiently as possible, while not adversely affecting the quality of coronial findings and the judicial independence of Coroners. This will help reduce the distress caused to grieving families and whānau from the time spent waiting for a Coroner's findings.

- 7 The Bill implements Cabinet's April 2022 policy approvals for the Bill [SWC-22-MIN-0048].
- 8 The Bill complements other work that the Ministry of Justice is leading as part of its coronial work programme. This programme is progressing a range of legislative and non-legislative initiatives to improve the operation of the coronial system. It includes a proposed wider, longer-term review of the Coroners Act and the coronial system.
- 9 The Bill amends the Act to:
 - 9.1 establish the new position of Coronial Associate, which will take on many of the more straightforward functions, powers and duties currently exercised by Coroners (further information on the new role is provided below);
 - 9.2 enable Coroners to record a cause of death as 'unascertained natural causes' in certain circumstances, which will enable families and whānau to receive a Coroner's findings sooner;
 - 9.3 provide Coroners with the sole discretion to decide whether an inquiry should include an inquest, but with input from interested parties. This will prevent inquests from taking place where, having regard to the statutory criteria in the Act, the coroner considers a hearing in chambers is appropriate and an inquest is not needed; and
 - 9.4 enable Coroners to issue written findings about 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. This will allow certain cases to be concluded more quickly, ensuring families and whānau receive the Coroner's findings sooner, and freeing up Coroners to spend more time on more complex cases.

New Coronial Associate position

- 10 In April 2022, Cabinet agreed to establish a 'coronial registrar (or similar) role' to undertake some of the more straightforward functions, powers and duties currently exercised by Coroners, particularly those that are exercised by Coroners performing the 'National Duty Coroner' function.¹ [SWC-22-MIN-0048]. Funding for the role, including support staff, has been provided through Budget 2022 (\$9.779m over four years).
- 11 Cabinet also authorised the Minister for Courts, in consultation with the Minister of Justice and other Ministers as appropriate, to make further policy decisions regarding the new role and its functions, powers and duties.

¹ Duty Coroners are Coroners authorised by the Chief Coroner under the Coroners Act 2006 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. A number of Coroners are rostered on each week to act as the National Duty Coroner supporting the National Initial Investigation Office (NIIO), which operates 24/7 to ensure decisions in the early stages after a death is reported are made in a timely and culturally sensitive manner (the 'duty roster' system). The tasks typically undertaken by the National Duty Coroner include: receiving notifications of reportable deaths; deciding whether to take jurisdiction over the death; establishing the identity of the deceased; deciding whether a post-mortem will be needed for the investigation into the death, and the extent and timing of that post-mortem; considering any objections to a post-mortem; and making decisions as to when and to whom the body can be released. After these decisions are made at the duty stage, a death is assigned to a 'responsible Coroner' to complete the investigation into the death.

- 12 Since then, my officials have worked with the coronial bench to further develop the recommended scope of the role. Based on this further work, and following consultation with the Minister of Justice and the Attorney-General, I have decided that the new position will have the following key features:
- 12.1 the new position will be a judicial officer, called a Coronial Associate, rather than a Ministry employee (as a registrar would be). There are three broad reasons for this:
- 12.1.1 the recommended scope of the role entails many of the judicial decision-making powers currently undertaken by Coroners, rather than the quasi-judicial decision making made by Ministry employees such as court registrars;
- 12.1.2 the position's exercise of statutory powers needs to be, and needs to be seen to be, independent from the Executive; and
- 12.1.3 establishing the position as a judicial officer, with a broader range of powers, will have the greatest impact on reducing Coroners' workloads, giving Coroners more capacity to conduct and complete the more complex inquiries, some of which will require inquests, those being the most valuable and publicly beneficial uses of their time. As a judicial officer, the Remuneration Authority will determine the salary and allowances for Coronial Associates.
- 12.2 Coronial Associates will undertake certain duty roster work, as well as being responsible for the more straightforward coronial investigations where capacity allows:
- 12.2.1 with respect to duty roster work, Coronial Associates will undertake the more straightforward duty coroner functions, with more complex matters referred to the Duty Coroner. Duty Coroners would continue to have overall responsibility for, and general oversight of, the duty roster system.
- 12.2.2 Coronial Associates would also handle some of the more simple and straightforward coronial investigations – for example, deaths that appear to be due to natural causes and without any suspicious circumstances, for which an inquiry will not be needed; and simpler inquiries, for example road deaths.
- 12.3 Coronial Associates will be able to exercise most of the functions, powers, and duties of Coroners contained in the Coroners Act, subject to any written practice note issued by the Chief Coroner which may limit these powers etc in particular circumstances (for example, in relation to more complex cases, which will continue to be dealt with by Coroners). This provides for flexibility to alter the powers etc and how they will be exercised if appropriate. However, the Bill precludes Coronial Associates from holding inquests, or deciding whether an inquest should be held.
- 12.4 Coronial Associates will be required to have five years' post-admission experience as a barrister or solicitor, the same minimum experience as a Coroner²; and

² In practice, new Coronial Associate appointments, like Coroner appointments, will typically have substantially more than five years post-admission experience.

- 12.5 a Coronial Associate appointment will be a fixed term appointment of up to five years with the ability for reappointments for further terms. This will enable the role to be evaluated and, if necessary, adjusted through any Bill implementing changes arising from the proposed wider review. Like Coroners and all other judicial officers, Coronial Associate appointments and reappointments will be made by the Governor-General, on the advice of the Attorney-General, given after consultation with the Minister responsible for the Coroners Act.
- 13 I expect 6-7 Coronial Associates will be able to be appointed within the funding provided through Budget 2022. The number of appointments will depend on the remuneration the Remuneration Authority sets for these positions following enactment.
- 14 The Bill provides for funding to be provided through the existing Permanent Legislative Authority for Coroners. I am proposing that Coronial Associates not be subject to a statutory limit on their maximum number in the way that Coroners are.³ Because of this, at Treasury's suggestion, I am also seeking Cabinet's agreement in this paper that any future proposed increases to the number of Coronial Associates be considered by Cabinet and any additional funding agreed for this expenditure counted against Budget allowances. This means additional Coronial Associates can be appointed in future without the need for legislative change, while at the same time providing Cabinet with the opportunity to consider the funding implications of any increases.

Impact analysis

- 15 The Treasury's Regulatory Impact Analysis team has determined that the four 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.

Compliance

- 16 The Bill complies with:
- 16.1 the principles of the Treaty of Waitangi;
 - 16.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 16.3 the disclosure statement requirements (a disclosure statement prepared by the Ministry of Justice is attached);
 - 16.4 the principles and guidelines set out in the Privacy Act 2020;
 - 16.5 relevant international standards and obligations; and
 - 16.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

³ Section 109 of the Coroners Act provides that the maximum number of permanent Coroners is 22. Budget 2022 provided funding for an additional four permanent, fulltime Coroners, and an amendment to the Act was made as part of Budget night legislation to increase the cap from 20 to 22 to provide for these additional Coroners (which will take the total number from the currently funded 18 to 22). Relief Coroners, of which there are currently 8, are not included in the statutory cap.

Consultation

- 17 The following agencies have been consulted on the policy proposals the Bill gives effect to, or on this paper and the draft Bill: Accident Compensation Corporation; Crown Law, Department of Internal Affairs; Ministry for Ethnic Communities; Ministry for Pacific Peoples; Ministry of Business, Innovation and Employment; Ministry of Health; Te Whatu Ora – Health NZ; Ministry of Social Development, Office for Disability Issues; Whaikaha – Ministry of Disabled People; Ministry of Transport; New Zealand Police; and The Treasury.
- 18 The following agencies were informed: Department of Corrections; Department of the Prime Minister and Cabinet; Ministry for Women; New Zealand Defence Force; Oranga Tamariki - Ministry for Children; Te Puni Kōkiri - Ministry of Māori Development.
- 19 Consulted agencies expressed broad support for the proposals and the Bill's overarching intent.
- 20 My officials at the Ministry of Justice have also worked closely with the coronial bench during the development of the Bill, including on the scope of the new Coronial Associate position. Officials have also consulted the Office of the Chief Justice.
- 21 The Ministry of Justice also invited comment from a range of other coronial system participants and other stakeholders on the proposals the Bill gives effect to, including:
 - 21.1 forensic pathology providers: Communio, National Forensic Pathology Service of NZ, Forensic Pathology South Island;
 - 21.2 General Practice New Zealand;
 - 21.3 Medical Council of New Zealand;
 - 21.4 New Zealand Law Society;
 - 21.5 New Zealand Medical Association;
 - 21.6 Royal College of Pathologists of Australasia; and
 - 21.7 Royal New Zealand College of General Practitioners.
- 22 No public consultation has been carried out on the Bill, but there will be an opportunity for the public to make submissions during the select committee process. If the proposed wider review of the coronial system is progressed, the Ministry of Justice intends to undertake wider consultation with a broad range of interested parties, including the public.
- 23 The government caucus has been consulted.

Binding on the Crown

- 24 The Bill will bind the Crown.

Creating new agencies or amending law relating to existing agencies.

- 25 The Bill does not create any new agencies or amend law relating to existing agencies.

Allocation of decision-making powers

- 26 The Bill does not involve the allocation of decision-making powers between the executive, the courts, and tribunals. It does provide for new decision-making powers within the coronial system – namely, the creation of a new Coronial Associate position able to exercise many of the powers already afforded to Coroners.

Associated regulations

- 27 Regulations will not be required.

Other instruments

- 28 The Bill does not include any provision empowering the making of other instruments deemed to be legislative instruments or disallowable instruments.

Definition of Minister/Department

- 29 The Bill does not contain a definition of Minister, Department or Chief Executive of a department.

Commencement of legislation

- 30 The Bill will come into force on the day after the date of Royal assent.

Parliamentary stages

- 31 The Bill should be introduced into the House on the first available date after Cabinet approval. I propose the Bill be referred to the Justice Committee.
- 32 I also propose that the Bill be passed by mid-March 2023, subject to House time, to enable Coronial Associates to be appointed and start as soon as possible.

Proactive Release

- 33 I propose to release this Cabinet paper, and related minute, with any necessary redactions, following the introduction of the Bill. I intend to proactively release the Cabinet paper seeking policy approvals for the Bill, and related minute, at the same time.

Recommendations

- 34 The Minister for Courts recommends that the Committee:

1 s9(2)(h)

- 2 **note** that the Bill makes targeted amendments to the Coroners Act 2006 to reduce the time it takes for certain types of cases to move through the coronial process, and to free up more of Coroners' time to work on reducing the number of active coronial cases and the time taken to conclude coronial investigations;
- 3 **note** the Bill will facilitate better access to justice for families and whānau interacting with the coronial system, and reduce the distress caused to them by the increasing length of time they spend waiting to receive coronial findings;

IN CONFIDENCE

- 4 **note** that the Minister for Courts has decided under delegated authority, in consultation with the Minister of Justice and the Attorney-General, that a new position of Coronial Associate be established, which will take on many of the more straightforward functions, powers and duties currently exercised by Coroners, and have the following key features:
 - 4.1 The new position will be a judicial officer;
 - 4.2 Coronial Associates will undertake certain duty roster work, as well as being responsible for some of the more straightforward coronial investigations;
 - 4.3 Coronial Associates will be able to exercise most of the functions, powers, and duties of Coroners, subject to any written practice note issued by the Chief Coroner limiting these functions, powers, and duties in particular circumstances;
 - 4.4 Coronial Associates will be required to have five years post-admission experience as a barrister or solicitor; and
 - 4.5 A Coronial Associate appointment will be a fixed term appointment of up to five years, with the ability to re-appoint for further terms.
- 5 **agree** that any future proposed increases to the number of Coronial Associates be considered by Cabinet and any additional funding agreed for this expenditure counted against Budget allowances;
- 6 **approve** the Coroners Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 7 **agree** that the Bill be introduced to the House on the first available date after Cabinet approval;
- 8 **agree** that the Government propose that the Bill be:
 - 8.1 referred to the Justice committee for consideration; and
 - 8.2 enacted by mid-March 2023, subject to House time.

Authorised for lodgement

Hon Aupito William Sio
Minister for Courts

IN CONFIDENCE

Coroners Amendment Bill: Approval for Introduction

Cabinet paper

Attachment 1 – Departmental Disclosure Statement

Withheld under section 18(d) of the OIA. The final Departmental Disclosure Statement is already publicly available here:

<http://disclosure.legislation.govt.nz/bill/government/2022/157/>

Proactive Release

Coroners Amendment Bill: Approval for Introduction

Cabinet paper

Attachment 2 – Coroners Amendment Bill

Withheld under section 18(d) of the OIA. The Coroners Amendment Bill is already publicly available here:

<https://www.legislation.govt.nz/bill/government/2022/0157/latest/whole.html#LMS737265>

Proactive Release



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Coroners Amendment Bill: Approval for Introduction

Portfolio

Courts

On 11 August 2022, the Cabinet Legislation Committee:

- 1 **s9(2)(h)**
- 2 **noted** that the Bill makes targeted amendments to the Coroners Act 2006 to reduce the time it takes for certain types of cases to move through the coronial process, and to free up more of Coroners' time to work on reducing the number of active coronial cases and the time taken to conclude coronial investigations;
- 3 **noted** that the Bill will facilitate better access to justice for families and whānau interacting with the coronial system, and reduce the distress caused to them by the increasing length of time they spend waiting to receive coronial findings;
- 4 **noted** that the Minister for Courts has decided under delegated authority, in consultation with the Minister of Justice and the Attorney-General, that a new position of Coronial Associate be established, which will take on many of the more straightforward functions, powers and duties currently exercised by Coroners, and have the following key features:
 - 4.1 the new position will be a judicial officer;
 - 4.2 Coronial Associates will undertake certain duty roster work, as well as being responsible for some of the more straightforward coronial investigations;
 - 4.3 Coronial Associates will be able to exercise most of the functions, powers, and duties of Coroners, subject to any written practice note issued by the Chief Coroner limiting these functions, powers, and duties in particular circumstances;
 - 4.4 Coronial Associates will be required to have five years post-admission experience as a barrister or solicitor; and
 - 4.5 a Coronial Associate appointment will be a fixed term appointment of up to five years, with the ability to re-appoint for further terms;
- 5 **agreed** that any future proposed increases to the number of Coronial Associates be considered by Cabinet and any additional funding agreed for this expenditure counted against Budget allowances;

- 6 **approved** the Coroners Amendment Bill [PCO 24520/13.0] for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 7 **agreed** that the Bill be introduced to the House on the first available date after Cabinet approval;
- 8 **agreed** that the government propose that the Bill be:
- 8.1 referred to the Justice committee for consideration; and
- 8.2 enacted by mid-March 2023, subject to House time.

Rebecca Davies
Committee Secretary

Present:

Hon Grant Robertson
Hon David Parker (Chair)
Hon Aupito William Sio
Dr Duncan Webb, MP

Officials present from:

Office of the Prime Minister
Officials Committee for LEG