



16 April 2021

Chris Penk (Chairperson)
Regulations Review Committee
Parliament Buildings
Wellington

Via e-mail to Committee Secretariat
rr@parliament.govt.nz

Tēnā koe Mr Penk

Complaint – Coroner (Pathologist Fees) Regulations 2007

I am writing, on behalf of the general practice members of GenPro, to register a complaint and request the Committee's review of regulations made under the Coroners Act 2006.

This complaint is made pursuant to Standing Order 328. The grounds for complaint are:

- Standing Order 327(2)(a).
- Standing Order 327(2)(c).

Background

Pursuant to section 40 of the Coroners Act 2006 (the 'Act'), a coroner can, by written notice, require a doctor, who attended to a person before their death, to provide a written medical report. Section 137 of the Act further provides that every doctor commits an offence who, without reasonable excuse, fails or refuses to provide a report pursuant to section 40. In practice, general practitioners ('GPs') are frequently required to provide reports pursuant to section 40.

The Act itself does not provide for payment for the provision of medical reports. However, section 140 of the Act provides that:

The Governor-General may, by Order in Council, make regulations for either or both of the following purposes:

- (a) prescribing salaries, fees, allowances, and travelling allowances and expenses, for specialist advisers, witnesses, doctors, analysts, and pathologists, who perform any function under this Act or give evidence for the purposes of an inquiry conducted, or at an inquest held, under this Act;
- (b) providing for other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

The regulations currently in force, made pursuant to section 140, are the Coroners (Pathologists Fees) Regulations 2007 (the '**2007 Regulations**'). As the title suggests, the 2007 Regulations only prescribe fees payable to pathologists who perform post-mortems.

The 2007 Regulations do not extend doctors in respect of the functions they are compelled to perform under the Act.

Schedule 1 attached to this correspondence provides an overview of the legislative history of the Act and relevant regulations.

GenPro and its members are concerned about the distinction that has been made in the 2007 Regulations between doctors and pathologists. In short, pathologists get paid for providing their professional services but doctors do not—they are not entitled to any payment for the compulsory provision of medical reports pursuant to section 40.

In addition to the 2007 Regulations, since 2018, the Ministry of Justice has also paid pathologists, for performing their functions under the Act, through contracts with pathology service providers. No similar arrangement exists for GPs.

Grounds for complaint

- **Standing Order 327(2)(a): the regulation is not in accordance with the general objects and intentions of the enactment under which it is made**
- **Standing Order 327(2)(c): the regulation appears to make some unusual or unexpected use of the powers conferred by the enactment under which it is made**

GenPro considers that the 2007 Regulations are not in accordance with the general objects of the Act, and similarly, that the 2007 Regulations make an unusual use of the powers conferred by the Act.

The stated purpose of the Act is to help to prevent deaths and promote justice through:

- (a) investigations, and the identification of the causes and circumstances, of sudden or unexplained deaths, or deaths in special circumstances...¹

Medical professionals, including doctors, are central to the coroner's role in investigating the causes and circumstances of deaths. This is reinforced by section 7(1)(c) of the Act which provides that the chief coroner's "main function is to contribute to the integrity and effectiveness of the coronial system ... [including] by ... facilitating the provision to coroners of ... medical or other specialist advice."

As outlined in **Schedule 1**, under the Coroners Act 1988 and accompanying regulations, doctors (including pathologists) were entitled to specified fees for performing functions under the Act. GenPro considers that the 2007 Regulations create an inequity in that they provide for payment to pathologists, but not other doctors. That inequity is compounded when one has regard to the fact that pathology providers are also separately paid for the provision of services pursuant to the Act.

In 2018, the Ministry of Justice agreed new contracts with pathology service providers to cover 3000 coronial post-mortem services per year. Those contracts were entered into with four service providers across New Zealand and are for an initial term of seven years with the possibility to extend to 13 years.

In 2018, as a result of the above procurement, the 2007 Regulations were amended to remove various fee entitlements for pathologists. In its press release about the procurement, the Ministry of Justice said:

¹ Section 3 of the Act.

The government has also revoked regulations that had constrained fee levels for over a decade, and increased funding across the service providers, which will enable fair and reasonable remuneration to the people providing the services.²

Despite an acknowledgement that service providers should be provided with 'fair and reasonable remuneration', the 2018 amendment to the 2007 Regulations did not introduce any payment for doctors. GenPro considers that the 2007 Regulations are not consistent with the general object of the Act, which is to promote justice through the investigation of the cause and circumstances of certain deaths, including through the provision of specialist medical advice. The 2007 Regulations are an unusual use of the powers conferred under the Act in that they provide payment for pathologists only, but not to other doctors who perform a function under the Act.

Conclusion

For the reasons outlined above, GenPro considers that the 2007 Regulations are not consistent with the general objects of the Act, and reflect an unusual use of the powers to issue regulations under section 140 of the Act.

Thank you in advance for your review and consideration of this issue. I would welcome the opportunity to address the Committee in relation to this complaint. GenPro intends to independently contact the Ministry of Justice in relation to this issue.

In the meantime, please do not hesitate to contact me if you require any further information or clarification. I look forward to your reply.

Nāku iti noa, nā



Philip Grant
Chief Executive

Enc.

² <https://www.justice.govt.nz/about/news-and-media/media-releases/funding-for-improved-coronial-post-mortem-services/>.

Schedule 1

Legislative History of payment for medical reports under the Coroners Act

- 1 The Coroners Act 2006 (the '**Current Act**') replaced the Coroners Act 1988 (the '**1988 Act**'). Both Acts contain a provision enabling a coroner to request a medical report from a doctor who attended on the deceased before death.
- 2 As with the Current Act, the 1988 Act itself did not provide for payment for the medical report. However, section 45 of the 1988 Act provided that:
 - 3 The Governor-General may from time to time, by order in Council, make regulations for all or any of the following purposes:
 - (a) Prescribing salaries, fees, allowances, and travelling allowances and expenses, for coroners, deputy coroners, assessors, witnesses, doctors, analysts, and pathologists, who perform any function under this Act or give evidence at an inquest held under this Act...
- 4 Before 2007, there were regulations in place providing for coroners and other parties involved in the coronial process to be paid for various services. A copy of the Coroners (Fees) Regulations 1992 (the '**1992 Regulations**') is **attached**.
- 5 The 1992 Regulations provided for fees payable to doctors (including pathologists) for various tasks carried out under the 1988 Act. Most related to post-mortem examinations. There was no specific fee for the preparation of a medical report. However, the regulations did provide for doctors to be paid:
 - a A fee of \$100 to be paid for 'every examination (not amounting to a post-mortem examination) done under the Coroners Act 1988'.
 - b A small fee of \$19 to be paid for 'every function performed under the Act for which no other fee is prescribed'.
- 6 Accordingly, pursuant to the 1988 Act and associated regulations, doctors were entitled to some payment for completing a medical report. Section 140 of the Current Act provides for the Governor-General to make regulations for the purpose of:
 - (a) Prescribing salaries, fees, allowances, and travelling allowances and expenses, for specialist advisers, witnesses, doctors, analysts, and pathologists, who perform any function under this Act or give evidence for the purposes of an inquiry conducted, or at an inquest held, under this Act ...
- 7 The Coroners (Pathologists Fees) Regulations 2007 ('**2007 Regulations**'), came into force on 1 July 2007. By these regulations the 1992 Regulations were expressly revoked, and provision was made, solely, for pathologists to be paid for undertaking certain work under the Current Act. Doctors (other than pathologists) were not mentioned.
- 8 In 2018, the Ministry of Justice agreed new contracts with pathology service providers to cover 3000 coronial post-mortem services per year. Those contracts were entered into with four service providers across New Zealand and are for an initial term of seven years with the possibility to extend to 13 years.
- 9 In 2018, as a result of the above procurement, the 2007 Regulations were amended. Pathologists are now only entitled to payment where they have completed a post mortem *and* given evidence as an expert at an inquest. Their entitlement to all other fees was revoked. Doctors (other than pathologists) are not entitled to any payment under the 2007 Regulations.