

30 October 2020

Ministry of Health
PO Box 5013
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burialandcremation@health.govt.nz

Re: Death, Funerals, Burial and Cremation: a Review of the Burial and Cremation Act 1964 and Related Legislation

Tēnā koe

Thank you for the opportunity to provide a written submission on this consultation document.

Regional Public Health (RPH) is the public health unit for the greater Wellington region (Wairarapa, Hutt Valley and Capital & Coast District Health Boards). Our purpose is to improve and protect the health of the population in the greater Wellington region with a focus on achieving equity.

We work with our community to make it a healthier and safer place to live. We promote good health, prevent disease, and improve the quality of life for our population.

The Ministry of Health requires us to reduce potential health risks and promote good health by various means, which includes making submissions on matters of importance to the communities we serve.

We are happy to provide further advice or clarification on any of the points raised in our written submission. The contact point for this submission is:

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Ngā mihi

Dr Jill McKenzie
Medical Officer of Health

Peter Gush
General Manager

Introduction: Proposed overarching duties regarding the disposal of bodies

1. Do you agree that there should be a general duty on everybody to ‘treat any dead human body or human remains with respect’?

Regional Public Health (RPH) agrees there should be a general duty on every person to treat any dead human body or remains respectfully. This includes the funeral services sector and local authority cemetery services – the parts of the system involving the majority of the Public Health Unit statutory functions.

A specific example around the concept of ‘respect’ is provided by our work during disinterments, where RPH note that respect is a subjective concept. There are times during a disinterment where the remains are in such a state (e.g. due to flooding or being in a lead lined coffin) that the family may feel that respect is not being given to their loved ones remains.

Therefore expectations of what ‘respect’ means to each party should be discussed prior to the disinterment to avoid offence and misunderstanding. Disinterments can be distressing situations and families should be informed of what to expect.

2. Do you agree that any breach of this duty should be an offence punishable by infringement notice, or, on conviction, by a fine?

RPH agrees with the above statement, however as with question 1, consideration needs to be taken of the events surrounding the situation where the alleged breach has taken place.

3. Do you agree that there should be a requirement that the person who has the duty to dispose of the body must do so without undue delay, including considering the mourning needs of the bereaved, any ceremonies to be performed, tikanga or other cultural practices, and any other relevant considerations (such as police investigations)?

RPH supports this measure as there can be public health implications with keeping bodies for extended periods of time. For example, decomposing bodies can become a host for vectors which can spread disease. If the deceased suffers from a limited number of communicable diseases this could pose potential risk to others.

4. Do you agree that any breach of this duty should be an offence punishable by infringement notice, or, on conviction, by a fine?

It will be important that the circumstances surrounding a potential breach are carefully reviewed prior to determining an offence has been committed.

Section A: Death certification and auditing

5. What do you think are the key problems with the current system for certifying the cause of death and existing auditing systems?

RPH does not deal specifically with this issue, other than to sight the documents to recommend approval for disinterment or repatriation. RPH are users of national mortality data to inform areas of our work and note that improved accuracy around certifying cause of death supports robust data to inform policy decisions. It is also important that death certification associated with notifiable diseases is accurate and matches the national notifiable disease surveillance database (EpiSurv) recording of notifiable disease contribution to death.

6. Can you provide any evidence about the size or extent of the problems with the current cause of death certification and auditing systems?

No comment.

7. What do you think about the options identified for modernising the death certification system? Do you want to suggest any additional options? If so, please provide the reasons for your alternative options.

No comment.

8. Do you agree with the presented impacts of the options identified for modernising the death certification system? Why/why not? Can you suggest other likely impacts from the three options?

No comment.

9. Can you provide any information to help the Ministry gauge the size of any potential impacts, costs or benefits that could affect you?

This is unlikely to impact RPH.

10. What is your preferred option to modernise the death certification system? Please provide the reasons for your view.

RPH agrees with the Ministry's choice of Option 2 as being the preferred choice as it is likely to provide the best balance between improving accuracy, completeness and consistency of certification and managing the risk of misidentification.

11. What do you think about the options identified regarding the auditing of death certification? Do you want to suggest any additional options? If so, please provide the reasons for your alternative options.

RPH agrees the status quo should be replaced with a process including regular review and audit of certification data.

12. Do you agree with the impacts of the options regarding the auditing of death certification? Why/why not? Can you suggest other likely impacts from the three options?

No comment.

13. Can you provide any information to help the Ministry gauge the size of any potential impacts, costs or benefits that would affect you?

No comment.

14. What is your preferred option for auditing death documentation? Please provide the reasons for your view.

Option 2 or 3, however due to financial costs option 2 is more feasible.

Section B: Regulation of the funeral services sector

15. Do you agree that there are issues that could be improved with the funeral services sector? Are you aware of any other problems?

RPH agrees there are issues within the funeral services sector that need improving and supports increased transparency of services provided to allow greater informed decision making by families and those acting on their behalf.

RPH supports a complaints mechanism for the consumer to help support consistent standards and assurances of all funeral services provided. If a dispute ensues the current legislation is not clear on who is responsible. A formal code of conduct and regulatory body would provide the reassurances the public require that funerals will be conducted in a respectful manner and any disputes arising can be managed.

16. Can you provide any evidence about the size or extent of the problems in the funeral service sector?

No comment.

17. What do you think about the options identified for regulating the funeral services sector? Do you want to suggest any additional options?

Option 1: maintaining the status quo.

This option is not ideal as it has been proven to have major faults as discovered by the Law Commission review in 2015.

Option 2: removing local council registration and encouraging an industry self-regulation model.

Repealing local government oversight would mean territorial authorities would lose the knowledge of identifying who their local funeral directors are as well as knowing where deceased bodies are stored in the community. In times of a pandemic cold storage of bodies is an important public health concern.

Industry self-regulation needs strong support from the government and would need to be made mandatory to be effective. Currently the Funeral Directors Association of New Zealand (FDANZ) offers registration which requires members to have a nationally recognised qualification in funeral directing and to undergo mandatory ongoing training (professional development). Other industries have shown that self-regulation is not always effective.

Option 3: Providing Central Government Registration

No comment.

Option 4: Providing central regulation for funeral directors

A centralised regulatory authority will provide consistency of services across the sector and assurances to the public that codes of conduct will be met. It will also ensure that funeral service

providers are suitably qualified and trained to a high national standard. This would prevent such circumstances occurring where a body has been incorrectly embalmed causing distress to families. Correctly trained staff will also ensure that there will be limited public health risk when embalming and caring for human remains.

RPH understands that central regulation may create increased administrative costs which could then be passed onto the public, again causing financial concerns.

18. Do you agree with the impacts of the options identified for regulating the funeral services sector? Why/why not? Can you suggest other likely impacts from the four options?

No comment.

19. Can you provide any information to help the Ministry gauge the size of any potential impact, cost or benefit that would affect you?

No comment.

20. What is your preferred option for regulating (or not) the funeral services sector? Please provide the reasons for your view.

Although RPH would prefer a form of regulated industry to provide assurances to the public about the quality and standard of services they are receiving and to manage potential public health risks (e.g. trained embalmers could reduce any potential risk to others from exposure to communicable diseases associated with deceased bodies), we are unable to provide any evidence to support this preference.

21. What do you think about the options identified for better informing consumers about the cost of funeral services? Do you want to suggest any additional options?

Increased transparency of services being provided allows the public to be better informed in their decision making.

22. Do you agree with the presented impacts of the options regarding better informing consumers about the cost of funeral services? Why/why not? Can you suggest other likely impacts from the three options?

No comment.

23. Can you provide any information to help the Ministry gauge the size of any potential impact, cost or benefit that would affect you?

No comment.

24. What is your preferred option for ensuring that consumers are fully informed of the component prices of funeral services? Please provide the reasons for your view.

RPH would support options that would better inform the public on the funeral services that they are purchasing to provide greater transparency. We note that the impact analysis does not support a

change from the status quo and so it will be important for the views of the general public to inform the final decision.

Section C: Burial and cemetery management

25. Do you agree that there are issues that could be improved with the current framework for burials and cemetery management? Are you aware of any other problems?

- Yes

The issues highlighted in the consultation document are an accurate reflection of the problems associated with outdated and prescriptive legislation which is not aligned with New Zealand's increasingly diverse and multi-cultural society. RPH supports the need for flexibility and the need to recognise these cultural differences in our country. RPH does note that Māori Burial grounds (Urupā) are not covered under this review and are regulated by the Te Ture Whenua Act 1993.

RPH agrees the framework for burials is unclear, particularly around who has the powers, duties, distinctive features, management obligations or statutory restrictions that relate to the land. RPH also agrees that regardless of the type of burial land there needs to be consistent management and protection.

RPH supports the need to update and simplify the types of burial land classifications and provide a broader range of powers. This will remove ambiguities over the rights, powers and duties of managers of cemeteries and burial grounds.

Overall our principle concern is to ensure that deceased are handled in a safe, hygienic and respectful manner to prevent the spread of disease and other indirect impacts on health. There are limited health concerns relating to burials and to disinterments. RPH agrees that the main issues now are in relation to land management. RPH supports incorporating the Resource Management Act and Local Government Act legislation into the burial legislative framework.

26. Can you provide any evidence about the size or extent of such problems outlined about the current framework for burials and cemetery management?

No comment.

27. What do you think about the options identified regarding a new framework for burial and cemetery management? Do you want to suggest any additional options?

RPH supports the clarification of types of burial land included in Table 3 with clear explanations of their defining features, who the cemetery manager is, management obligations and their statutory restrictions. This will help establish clear rights, powers roles and responsibilities for each type of burial land. As noted Urupā are not covered in this review. Future reviews could consider the relationship between the Te Ture Whenua Act and other Burial and Cremation legislation.

RPH supports the approval of burial on private land in accordance with the Resource Management Act process, however local authorities should retain discretion to decline an application for burial on private land. The Resource Management Act can manage any perceived or potential public health risks associated with burials outside of an established cemetery.

RPH supports the prohibition of burials in places that are not approved. However in the unlikely event this is required, a thorough risk assessment should be undertaken and appropriate controls and documentation put in place.

28. Do you agree with the impacts of the options identified regarding a new framework for burial and cemetery management? Why/why not? Can you suggest other likely impacts from the three options?

- Yes

RPH agrees with the impacts laid out in the consultation document for all the options. RPH supports development of clear standards and guidance documents for burial and cemetery management.

29. Can you provide any information to help the Ministry gauge the size of any potential impact, cost or benefit that would affect you?

There is unlikely to be any significant cost or benefits to RPH.

30. What is your preferred option for a new framework for burial and cemetery management? Please provide the reasons for your view.

- Option 3: Implementing a package of changes to the current system based on most of the Law Commission's recommendations

RPH supports the Ministry of Health's preferred Option 3

RPH supports local authorities or cemetery managers approving disinterments. Currently Health Protection Officers (HPO) provide an assessment of potential health risks during a disinterment. However, RPH considers the role to be largely one of ensuring respectful and lawful proceedings, while the process is unlikely to represent any potential public health risk. Local Authorities employ staff that could fulfil this role, for example Environmental Health Officers who are familiar with undertaking legislative tasks.

RPH recommends the development of national guidance to be provided to the public on how a person applies for a disinterment licence and for the responsible agencies around handling of the remains. These measures will ensure consistency throughout the country and provide assurances to individuals handling the remains that they are doing so in an appropriate manner.

RPH is in agreement that the resource consent process should be included in aspects of burial and cemetery management. Recently "eco" or "natural burials" have become popular as has a growing concern for the state of the environment. By utilising the resource consent process, councils are able to adapt to changing philosophies and technological advancements.

Section D: Cremation regulations and the medical referee system

31. Do you agree that there are issues that could be improved with the current cremation or medical referee systems? Are you aware of any other problems?

- Yes

There needs to be consistency at a national level for opening a crematoria and currently there is duplication of roles between the Ministry of Health and the RMA District Plans.

32. Can you provide any evidence about the size or extent of such problems outlined with the cremation or the medical referee systems?

No comment.

33. What do you think about the options identified regarding the reform of cremation and crematorium management? Do you want to suggest any additional options?

RPH supports option 2 to establish and operate crematoria under the RMA. This aligns with a contemporary approach. The local authority employs staff (such as Environmental Health Officers) with the skills to undertake public health risk assessment and recommend appropriate mitigation of any identified risks.

34. Do you agree with the impacts of the options identified regarding the reform of cremation and crematorium management? Why/why not? Can you suggest other likely impacts from the two options?

RPH agrees with the potential impacts. RPH recommends that the Medical Officer of Health be considered an interested party to the establishment and use of new crematoria. This is because air discharges from crematoria can create concerns from nearby residents and involving communities early in establishment of a crematoria can help to reduce future concerns.

35. Can you provide any information to help the Ministry gauge the size of any potential impact, cost or benefit that would affect you?

No comment.

36. What is your preferred option to modernise the regulations for cremation in New Zealand? Please provide the reasons for your view.

RPH supports option 2: Adopting all of the Law Commission's recommendations relating to cremation and dealing with ashes. This includes local authorities having the legislative role in permitting cremation in a place other than a crematorium and disposal of ashes. It is important that the resource consent process for establishment of new crematoria considers the use of limited notification, to address any concerns from nearby residents.

37. What do you think about the options identified regarding the reform of the medical referee system? Do you want to suggest any additional options?

We agree that the current system duplicates the death certification and coronial systems and that the purpose of the role is primarily crime prevention.

38. Do you agree with the impacts of the options regarding medical referee system? Why/why not? Can you suggest other likely impacts from the four options?

No comment.

39. Can you provide any information to help the Ministry gauge the size of any potential impact, cost or benefit that would affect you?

No comment.

40. What is your preferred option for changes to the medical referee system? Please provide the reasons for your view.

RPH's preference is for an option that removes the current Public Health Unit largely administrative role, working as an intermediary between the applicant and the Ministry of Health for the approval of Medical Referees. We are unable to comment on our preferred option to manage the crime prevention purpose, given the impact of options 3 and 4 will be on other government sectors.

Section E: New methods of body disposal

41. Are you aware of any particular new methods of body disposal that could be made available in New Zealand?

No comment.

42. Do you agree with the issues outlined regarding new methods of body disposal? Are you aware of any other problems?

- Yes

RPH are not aware of any other problems.

43. Can you provide any evidence about the size or extent of the problems regarding new methods of body disposal?

No comment.

44. What do you think about the options identified for regulating new methods of body disposal? Do you want to suggest any additional options?

RPH agrees with the need to build in a mechanism for regulating new methods of body disposal to ensure the legislation remains fit for purpose in the future.

45. Do you agree with the impacts of the options identified for regulating new methods of body disposal? Why/why not? Can you suggest other likely impacts from the two options?

- Yes

RPH agrees with the impact analysis of the options. There is a need to recognise new methods in legislation. However, it is important to ensure that the safety and cultural appropriateness of new practices are assessed before being approved.

46. Can you provide any information to help the Ministry gauge the size of any potential impact, cost, or benefit that would affect you?

No comment.

47. What is your preferred option to regulate new methods of body disposal? Please provide the reasons for your view.

- Option 2: Regulating new methods of body disposal

RPH recognises that the current system is inflexible and does not recognise new methods for body disposal. RPH would prefer Option 2 as this allows flexibility for new methods to be recognised and regulated in the future.

Your details

What is your name? (Required)

Demelza O'Brien

What is your email address?

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

Email: Demelza.obrien@huttvalleydhb.org.nz

Are you responding on behalf of a group or organisation, or as an individual? (Required)

- Group or organisation

If you selected group or organisation, please specify

Regional Public Health

Are you a member of the funeral service sector? (Required)

- No

Are you responding on behalf of a local or regional council? (Required)

- No

Are you responding on behalf of a veterans' organisation? (Required)

- No

Do you identify as Māori, Pacific, Asian, Pākeha/European or another ethnicity? (Required)

- Other

If you selected other, please specify

Organisation – ethnicity N/A

Are you a member of the disabled community? (Required)

- No

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We will redact commercially sensitive information before publishing submissions or releasing them under the Official Information Act.

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