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Submissions
Ministry of Health
WELLINGTON 6143

Submission to Death, Funerals, Burial and Cremation: a Review of the Burial and Cremation Act 1964 and Related Legislation - Consultation document 2019

Introduction

District Health Boards are required by the Public Health and Disability Act 2000 to improve, promote, and protect the health of people and communities, to promote the inclusion and participation in society and independence of people with disabilities and to reduce health disparities, by improving health outcomes for Māori and other population groups.

This submission has been prepared by Toi Te Ora Public Health (Toi Te Ora) which is the Public Health Unit for both Bay of Plenty District Health Board and Lakes District Health Board (the DHBs).

The key role of Toi Te Ora is to promote, protect and improve population health, prevent ill health and minimise the risk of disease and injury through population based interventions.

Public health approaches wellbeing and health in terms of the social, economic, cultural, environmental and political context and from a “determinants of health” perspective. Many of the factors that determine health are directly influenced by the decisions and activities of Government, which is why it is important New Zealand has fit for purpose legislation for death, burial, cremation and funerals.

Designated officers within Toi Te Ora have responsibilities to reduce conditions within the local community which are likely to cause disease. This is undertaken by assisting the Ministry of Health to select and design final policy proposals to Parliament for law reform that safeguard public health.

For these reasons the DHBs welcome the opportunity to inform changes to improve the quality, relevance and effectiveness of the laws that relate to death, burial, cremation and funerals.

Declaration of interest

The DHBs including designated officers within Toi Te Ora could not gain any financial or other interest in business that may be affected, positively or negatively as a result of the proposal contained within the consultation document.

This submission aims to provide objective and independent input to promote good health for current and future populations. By this the DHBs mean that suitable provision is provided for the disposal of the dead in a manner that is managed, respectful and protects health.

Submission

Medical Officers of Health and Health Protection Officers have had a long standing role in burial and cremation for example with exhumation, where the role is to make sure the disinterment is done in a dignified and respectful manner. Our role is not only about infection control but to ensure the psychological wellbeing of family and the public so as not to cause mental anguish or stress to the family and public.

The health risks posed by dead bodies from communicable diseases are likely to be negligible, especially if death has resulted from natural causes or trauma. When infectious disease has been the feature of the end of life, those risks are managed by other acts and regulations. However all humans may carry pathogens in their gastrointestinal tracts and therefore care needs to be taken that the burial site does not contaminate ground or surface waters. Likewise, care needs to be taken to prevent cremation polluting the air.

The disposal option can affect the psychological wellbeing of those who have lost a loved one and also the psychological wellbeing of the public and wider community.

Therefore the policy to implement the Government's decisions needs to consider the protection of public health by ensuring that:

- The disposal of the dead occurs in a managed, hygienic and dignified manner which as far as possible demonstrates respect for the wishes, as well as the cultural and spiritual beliefs, of the deceased and next of kin.
- Accurate records are kept, such as registers of death, records of burials and cremations, as well as appropriate controls to prevent the concealment of crimes.
- All matters relating to the disposal of the dead are carried out promptly.
- All planning of new facilities for the disposal of the dead are carefully scrutinised.
- Regular auditing of existing facilities and certification processes occur.

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'?

Yes.

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

Yes.

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)?

Yes.

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

Yes.

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?

That no agency has statutory oversight of the entire death certification system and that there is no national medical certificate cause of death audit system. A primary purpose of the Medical Certificate of Cause of Death (MCCD) is to inform the development of and resource allocation to public health policies and programmes in the health sector. Inaccurate population data undermines the effectiveness of public health policy and programme interventions and the primary function of the health sector to improve, promote and protect health.

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

The current situation involves running two systems; paper and electronic. This causes a lot of confusion. Funeral services not registered with the Department of Internal Affairs need to obtain electronic copies. DHB mortuary staff cannot access Medical Certificate of Cause of Death to sight prior to releasing a person unless the funeral service provider collecting the deceased person presents with the Medical Certificate of Cause of Death. Ideally, one system which provides registered funeral service providers and hospital staff that release deceased person's access is recommended.

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?

No comment.

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

Option 2: Implementing a package of changes to the current system based on most of the Law Commission's recommendations

The DHBs note that there is no evidence of misidentification for deaths certified by certifying practitioners and that existing administrative processes provide checks to reduce 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.

The options address the Law Commission recommendations. Option 2 is considered a reasonable approach when weighing up the need to audit death certification. Rather than the Ministry of Health providing oversight and guidance to death certification auditing committees, it is suggested

mechanisms be available to the Ministry of Health to require auditing committees to implement improvements and address errors when identified.

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?

Yes. While auditing death certification is necessary, option 3 is overly prescriptive for the additional accuracy likely to result. Requiring the review before the body was disposed of increases the potential risk to public health which otherwise wouldn't exist.

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: Establishing a death certification auditing committee system.

The DHBs agree that option 2 presents lower administrative and compliance costs for both the Ministry and DHBs, however accurate information is needed because death documentation informs the development and resourcing of public health policy and programmes which are intended to prevent death and improve life.

The DHBs preference is option 2 with the addition of specific statutory powers to the Ministry of Health to review where there is doubt over the validity of cause of death described in option 3.

Section B: Regulation of the funeral services sector

There is a need to improve cultural awareness of funeral services the needs and aspirations of tāngata whenua. This is particularly acute in the Bay of Plenty as coronial services are provided through funeral services rather than the hospital campus. This has seen conflict as funeral services have attempted to control access of Māori whānau to their tūpāpaku and at times even exclude them. To incorporate knowledge of tikanga and kawa, to build strong relationships with iwi and Māori communities and to have Māori leadership within funeral services will improve the quality and appropriateness of services for Māori. This will promote equitable health outcomes and reduce the likelihood of cultural offence by enabling Māori customary practices to be performed. Two minimum expectations should be that at all times services support and encourage whānau to accompany tūpāpaku at all stages from death, through preparation and to their return of their loved one to them, and that there is support of and access to traditional Māori practices of body preparation.

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

Yes.

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

The DHBs consider the issues with the current system in the consultation document do not adequately recognise impact to public health from poor quality services. Poor services which do not treat human remains with respect or dispose of bodies in an appropriate and timely manner will harm health.

Currently there is a lack of qualification and minimum competency requirements for funeral service providers who essentially arrange for the disposal of the body of the deceased person. In doing so the funeral service sector provides services to protect public health and avoidance of offence.

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

The DHBs note that only option 4 provides for the funeral service sector to demonstrate that they understand the laws and regulations which apply to handling human remains.

It is recommended that people providing funeral services to the public, commercially or not, must identify and have access to suitable premises and transportation methods for registration before being allowed to operate. Option 4 needs to include an on-the-ground premise and transport suitability assessment. Local authority environmental health officers and/or public health officers have the skillset to make this assessment.

The DHBs do not support the option for funeral directors practicing continuously for the previous three years to be deemed to have achieved the training requirements. All persons handling human remains must be competent to obtain registration and provide Medical Officer of Health and Health Protection Officers reassurance that public health will be protected.

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?

Yes.

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

Most people are likely to be ill equipped to prepare and store the deceased before disposal. As such, the main role of funeral service providers is to arrange for the disposal of the body of the deceased person and in doing so ensure protection of public health and avoidance of offence. Due to the sensitive nature of death and post death practices, poor quality services are likely to be unacceptable and distressing to most people, which is why the funeral services sector needs to operate to minimum acceptable standards and professionalism to protect public health.

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

Option 4: Providing central regulation for funeral directors.

The DHBs acknowledge that the funeral service sector appears to be respectful of the deceased; however the DHBs' preferred option is to regulate the funeral service sector to ensure anyone undertaking funeral services and other post death practices is registered. What may be considered suitable, inoffensive and respectful to one person may not be to another person, particularly children. Locally, the location of a funeral service and disposal of deceased ashes are examples when cultural preferences differ.

The discussion document mentions, *"botched' funeral issues can be potentially traumatising'*. Unless any post death practice is undertaken in a manner that is respectful of the deceased and mindful of the public, disturbing and distressing situations are likely to arise that will impact the psychological wellbeing of family, friends of the deceased and the wider community.

The DHBs would like to see mechanisms to investigate and address issues that may pose a risk to public health to prevent future issues.

The DHBs have no preference whether registration is locally or centrally managed.

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?

The DHBs have no comment on the three options; however the cost of funeral services needs to be affordable to be inclusive and available to everyone. Particularly when funeral services arrange for the disposal of the body of a deceased person and in doing so ensure the protection of public health and the avoidance of offence.

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? Comments

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.

No comment.

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 discussion document in C1.3 explains that establishing a new cemetery, burial ground or place of burial requires resource consent. To the knowledge of the DHBs, resource consent is not always required by local authority plans and the Minister of Health may be the only avenue of regulatory oversight to the burial of human remains including taking into consideration any environmental and public health impact.

The DHBs note that Urupa (Maori Burial grounds) are regulated by the Te Ture Whenua Act 1993 and are out of scope of this Act review. The DHBs also note the issue with the current framework for burial and the inconsistent management between the different types. The DHBs share the confusion discussed in the consultation document and have had similar experiences. For example, it can be difficult to determine which Act, the Te Ture Whenua Act or the Burial and Cremation Act, a site is administered under. To the understanding of the DHBs the Maori Land Court does not hold a database of specific urupa which causes uncertainty about where and who manages urupa in the Bay of Plenty and Lakes districts. For the protection of public health it is important to know where human remains are buried so the potential risks can be identified and appropriately managed. For instance, so unlawful burial or disinterment can be identified and to allow for the assessment of health and environment impacts from land use activities.

Currently The Burial and Cremation Act require every local authority to establish and maintain a suitable cemetery only where sufficient provision is not otherwise made for burials within its district, however cemeteries and crematoria are sanitary works under the Health Act 1956 which local authorities are required to provide. Local authorities are also not required to consult with their communities over the development and management of new and existing cemeteries or seek input and direction from the Medical Officer of Health. This lack of consistency, clarity and detail means individual community's demographic, cultural and spiritual needs have not been accessible and

affordable to everyone. It also means that other provisions which will be suitable to the community's current and future needs (eg crematoria and alternative burial methods), may not be identified and therefore not meet the needs for the psychological wellbeing of the population now and into the future.

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

The DHBs often receive enquiries from the public about private burial grounds and places, and denominational burial grounds. This reflects a lack of recourse towards meeting the community's cultural and spiritual needs and a lack of adequate provision for people dying within the Bay of Plenty and Lakes health district, although this is a requirement of local authorities.¹ As the population ages, if suitable provision isn't made a number of burial sites throughout the district is likely to result if uncontrolled, which could have land use management issues for local authorities in the future.

Although New Zealand Standards exist for cemetery and crematoria, these are not mandatory and there is no regulatory authority to oversee compliance and require operator accountability before an issue arises, which is not protective of health. Although the Health Act requires local authorities to inspect their district this is not routinely carried out in a proactive manner.

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?

The types of burial land included in the proposed cemetery management framework are supported. The provision of appropriate services needs to remain accessible and affordable to everyone. Requiring local authorities to provide facilities for the disposal of bodies will ensure the number, location and proximity of burial land will be coordinated at a district level, ensuring there is sufficient provision.

Cemeteries are core public services necessary for community wellbeing. The DHBs support the proposal to retain local authority current responsibilities to provide suitable cemeteries. The DHBs recommend that guidelines, be developed to clarify what is considered 'suitable'. From the DHBs' perspectives, suitable means sufficient provision which is affordable and acceptable to the community and meets the needs of the psychological wellbeing of the local authority community now and into the future.

The DHBs recommend that local authorities be required to assess burial and cremation service provision in their district to ensure suitable sanitary services are planned and provided in advance. The DHBs recommend that the Medical Officer of Health has the legal ability to provide advice on the adequacy of these services prior to policy approval.

The DHBs support the approval of burial on private land in accordance to the Resource Management Act process; however the DHBs recommend that local authorities must retain discretion to decline an application for burial on private land. Lawful burial within a reasonable time is necessary for the protection of public health. However, as mentioned in the discussion document, the current system lacks recognition of New Zealand's diverse needs in relation to burial. Burial on family land is an example of this, particularly for Māori for whom the whenua, the land is a familial relationship, and burial an affirmation of that relationship. Obtaining approval to bury on family land is an involved process which can take a substantial time meaning the deceased or next of kin wishes may not be met. The DHBs recommends that the process to obtain consent, particularly when death is unexpected, can occur without delay to enable burial within a reasonable period of time.

¹ Health Act 1956, Section 25.

The DHBs also recommend that the Resource Management Act process requires consultation with the Medical Officer of Health to ensure the health and psychological wellbeing of the public is taken into consideration, in addition to the benefits to a person and their family's wellbeing, in allowing burial on private land.

The DHBs recommend that consent for discharge and land use be captured as both have the potential to impact on the short and long term health of the community. The DHBs also recommend that public consultation needs to be for all post death services including cemeteries, mortuaries and crematoria irrespective of where they are located.

The DHBs support the prohibition to bury a body in places that are not approved cemeteries and recognise that there may be occasions when it is impractical to transport a body. Although burying the body with respect is necessary, so too is ensuring the body and burial is managed in a hygienic manner. Burial outside an approved cemetery should be extremely rare and when it does happen, there needs to be a site risk assessment, accurate records as well as ongoing management controls for the protection of public health.

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. The DHBs are supportive of local authority and cemetery managers approving disinterment provided a regulatory authority with an audit function oversees disinterment applications and procedures. This will provide the DHBs confidence that potential public health issues are investigated and appropriate processes are followed that respectfully manages and protects health.

29. 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.

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.

Option 3 will ensure decisions are protective of public health by remaining appropriate and up to date with general trends in society and future population views about post death activities.

The DHBs agree that the Environment Court is not the appropriate authority for burial and cemetery management issues including disinterment. The location of any place where a body is buried needs to be managed in perpetuity and should be agreed by the community which is why the DHBs support the exclusion of independent cemeteries. Independent cemeteries may not be located in areas that are in the interests of the community, may not be affordable to everyone and are likely to pose an increased risk to public health if they are not maintained and operated properly.

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. The current cremation forms for processing requests for cremation do not appear to include radioactive material questions of the medical practitioner or nurse. There are certain isotopes and timeframes required for radioactive material to become harmless. It is suggested that the forms for cremation authorities requesting information about whether the deceased has been treated with

radioactive material, how long ago that treatment was and what isotope was used. This will ensure the clinician takes into account radioactive material, for instance when treating prostate cancer.

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?

The DHBs support option 2 to move establishment and operation of crematoria into the Resource Management Act process. The DHBs note the local authority must consider the risks posed to public health and to the environment. Bearing in mind that public health approaches wellbeing and health from a 'determinants of health' perspective, consideration by local authorities must be for all the determinants of public health not only the risks to public health and environmental effects.

Dealing with unclaimed ashes or custody issues appear to be addressed, however the DHBs recommend regulatory controls about what can be done with the ashes. Although the physical public health risk from handling ashes is negligible, scattering ashes in public places needs to be managed to prevent contamination of the environment and also protect the aesthetic values of other people.

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?

Yes. The DHBs wish to highlight that while the discussion document mentions that there is limited public health interest in the construction, design, or operation of a crematoria, public concern and risk perception should not be underestimated.

The reform of cremation management should ensure, as far as practicable, that cremation activities are aesthetically acceptable to all cultures and spiritual beliefs in the community. For this reason, the DHBs recommend approval for establishing new crematoria to require resource consent (both land use and air discharge), and for the application to be publicly notified. Public consultation needs to be for all crematoria irrespective of where they are proposed to be located, including rural areas. The DHBs also recommend that the Medical Officer of Health be considered an interested party to the establishment and use of new crematoria and be required to be consulted.

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.

Option 2: Adopting all the Law Commission's recommendations relating to cremation and dealing with ashes.

This view is for the same reasons mentioned in the consultation document.

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?

No comment.

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?

Yes. 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.

Option 3: Reforming the medical referee system.

The DHBs agree that the medical referee system duplicates both the death certification and coronial systems; however controls to prevent the concealment of crimes are essential. The DHBs also recommend that a process to identify and remove potentially harmful items such as pace makers and radioactive material continues to ensure cremation adequately mitigates these risks to health.

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.

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

Yes. The DHBs agree with the issues and 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?

No comment.

46. 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. Regulating different methods of body disposal will better protect public health from inappropriate disposal practice and allow the opportunity for new methods to be carefully scrutinized prior to their use. This will better protect the dignity of the deceased.

47. 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.

48. 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.

Body disposal must occur in a hygienic and dignified manner which as far as possible demonstrates respect for the wishes, as well as the cultural and spiritual beliefs, of the deceased and next of kin.

The DHBs wish to thank the Ministry for the opportunity to submit and share the public health perspective to death, funerals, burial and cremation.

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