



# AGENDA

## Community Services Committee Meeting Tuesday, 21 July 2020

**Date** Tuesday, 21 July 2020

**Time** following the Infrastructure Committee

**Location** Council Chamber  
District Council Building  
King George Place  
Timaru

**File Reference** 1354243

## Timaru District Council

**Notice is hereby given that a meeting of the Community Services Committee will be held in the Council Chamber, District Council Building, King George Place, Timaru, on Tuesday 21 July 2020, at the conclusion of the Infrastructure Committee meeting.**

### **Community Services Committee Members**

Clrs Richard Lyon (Chairperson), Stu Piddington (Deputy Chairperson), Allan Booth, Peter Burt, Barbara Gilchrist, Gavin Oliver, Paddy O'Reilly, Sally Parker, Steve Wills and the Mayor Nigel Bowen

Quorum – no less than 2 members

### **Local Authorities (Members' Interests) Act 1968**

Committee members are reminded that if you have a pecuniary interest in any item on the agenda, then you must declare this interest and refrain from discussing or voting on this item, and are advised to withdraw from the meeting table.

Symon Leggett

**Group Manager People and Digital**

**Order Of Business**

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- 1 Apologies**
- 2 Identification of Items of Urgent Business**
- 3 Identification of Matters of a Minor Nature**
- 4 Declaration of Conflicts of Interest**
- 5 Chairperson's Report**

## **6 Confirmation of Minutes**

### **6.1 Minutes of the Community Services Committee Meeting held on 9 June 2020**

**Author:** Jo Doyle, Governance Advisor

#### **Recommendation**

That the Minutes of the Community Services Committee Meeting held on 9 June 2020 be confirmed as a true and correct record of that meeting.

#### **Attachments**

- 1. Minutes of the Community Services Committee Meeting held on 9 June 2020**



# MINUTES

## Community Services Committee Meeting Tuesday, 9 June 2020

Ref: 1354243

**Minutes of Timaru District Council  
Community Services Committee Meeting  
Held in the Council Chamber, District Council Building, King George Place, Timaru  
on Tuesday, 9 June 2020 at 10.34am**

**Present:** Cr Richard Lyon (Chairperson), Cr Stu Piddington (Deputy Chairperson), Cr Allan Booth, Cr Peter Burt, Cr Barbara Gilchrist, Cr Gavin Oliver (From 10.39am), Cr Paddy O'Reilly, Cr Sally Parker, Cr Steve Wills, Mayor Nigel Bowen

**In Attendance:** **Community Board Representatives**  
Temuka Community Board – Gaye Broker  
Geraldine Community Board – Natasha Rankin  
**Council Officers**  
Acting Group Manager Community Services (Symon Leggett), Chief Executive (Bede Carran), Parks and Recreation Manager (Bill Steans), Customer Services Manager (Grant Hamel), Governance Advisor (Jo Doyle)

## 1 Apologies

### Resolution 2020/9

Moved: Cr Richard Lyon  
Seconded: Cr Paddy O'Reilly

That the apologies from Cr Gavin Oliver and Raewyn Hessel of Pleasant Point Community Board be accepted.

It was noted that Cr Gavin Oliver will attend via Video Link during this meeting.

**Carried**

## 1 Identification of Items of Urgent Business

There were no matters of urgent business.

## 2 Identification of Matters of a Minor Nature

There were no matters of minor nature.

## 3 Declaration of Conflicts of Interest

- Cr Allan Booth declared he is a trustee of Futures Golf Hub, he will be able to remain for the discussion of Highfield Golf Course.
- Mayor Nigel Bowen is a board Member of the South Island Masters Games and will leave the room for the funding request report.



#### **4 Chairperson's Report**

The Chairperson provided a brief report of attendance at Council meetings, workshops and Community Boards.

#### **5 Confirmation of Minutes**

##### **6.1 Minutes of the Community Services Committee Meeting held on 28 April 2020**

##### **Resolution 2020/10**

Moved: Cr Peter Burt

Seconded: Cr Stu Piddington

That the Minutes of the Community Services Committee Meeting held on 28 April 2020 be confirmed as a true and correct record of that meeting.

**Carried**

#### **6 Reports**

##### **7.1 Highfield Recreation Area Draft Concepts**

The Committee considered the concept options for the Highfield Recreation Area, for the final stage of public consultation. The Parks and Recreation Manager provided an overview of the three concepts.

Concept A is the preferred option as it incorporates as much as possible from the consultation feedback.

Council discussed the South Canterbury Spaces and Places Plan that states from 2011-2017 there has been a marked decrease in Golf participants and the Timaru district still has many golf courses.

Cr Booth referred to his conflict of interest declaration, and provided details about the Futures Golf Hub which is a non-profit group managed as a trust to help with the development of juniors and golf in general. Highfield Golf Club has been a main feeder for golf played around South Canterbury and there is still a need for a development centre for golf and this area fits well as there is no competition with other clubs.

Many planned walkways will be made accessible for everyone, however some areas will be quite steep and won't meet the criteria. It is aimed to have a access for students to be able to get from one side to the other to get to schools.

Councillors drew attention to the amphitheatre and playgrounds and the duplicity with the Soundshell and planned CPlay area at Caroline Bay.

The Parks and Recreation Manager advised that these areas are set at options, and the amphitheatre, playgrounds and pavilion could be added or subtracted.

The Eco Sanctuary and wildlife reserve was seen as a point of difference for this district, and predator control will allow more access for people going through this area without gates and fencing that would be required with predator free fencing.

The ideas and plans from today's discussions will be referred to the community to have their input through the consultation process. Following the consultation a final draft concept which will come back to Council for confirmation or amendment prior to adoption and then be then forwarded to the Long Term Plan. The Highfield Golf Course has a current lease which is nearing its end. Interim discussions have shown a possibility for the continuation of the lease for 1-2 years, but no commitment to long term..

The Parks and Recreation Manager requires direction on whether all 3 concepts are to go forward and there is an option of making a submission to the Annual Plan and identifying a funding source as \$200k will be required for the design stage.

### **Resolution 2020/11**

Moved: Cr Peter Burt

Seconded: Cr Barbara Gilchrist

1. That the Community Services Committee approves all three concepts for public consultation.
2. That funding estimated to be \$200,000 excluding GST, in the 2020/21 financial year, for the detailed designs of the adopted concept, be referred to the Annual Plan meeting. .
3. That negotiations proceed for leasing the existing reduced golf course (excluding stormwater area) from 1 July 2020, in one year increments, to cover the period prior to development.

**Carried**

### **7.2 Proposed Entry into the New Zealand Heritage List**

The Committee considered a report from the Acting Group Manager Community Services on the opportunity to comment on the proposed entry of Te Kamaka o Arowhenua on the New Zealand Heritage List/ Rarangi Korero.

Council discussed that this should be supported and that the explanation of meaning was enjoyable to read in the report.

### **Resolution 2020/12**

Moved: Cr Peter Burt

Seconded: Cr Barbara Gilchrist

That Council provides a letter of Support for Te Kamaka o Arowhenua to be officially recognised as a wāhi tūpuna on the New Zealand Heritage List.

**Carried**

### **7.3 South Island Masters Games Funding Request**

The Committee considered a report by the Customer Services Manager on a request from the South Island Masters Games for funding of \$60,000 for the South Island Masters Games to be held in Timaru from 9 to 18 October 2020.

At 10:37 am, Mayor Nigel Bowen left the meeting.

In attendance from South Island Master Games (SIMG) is Simon Carter, Event Organiser from Carter Consultants and Tom Nation the Chair of the South Island Masters' Games Committee.

The South Island Masters games are run by and for the community, they are a non-profit society and any reserves are reinvested into future years. Their current reserves sit at approximately \$10k.

The last event in 2018 attracted 2000 participants and created \$1.6m for the Timaru District economy, including \$58,000 paid to local sports clubs. The games usually receive approx. \$62,000 from pub charities, however all were shut during the Covid-19 lock down. They are now not considering funding requests until July, and it is expected that there will be reduced funding available.

SIMG need \$60,000 to guarantee the games to be held in Timaru this year, with minor sponsors expected to contribute the remaining \$25,000 needed. A decision will be made after SIMG's meeting to be held today whether the games can continue.

Discussion was held around the amount requested, and whether a lesser amount still allowed the games to go ahead and whether a smaller cash amount plus no fees charged for Hall Hire could be an alternative.

Having a smaller amount will mean having to find additional funding, and in reality 10 weeks of opportunity has been lost with Covid-19 and lockdown. This is considered the 11<sup>th</sup> hour for funding, and from next week entries need to be opened.

The registration fees have been reduced since the previous games, as feedback received was that they were too high. It is proposed that local residents have a further discounted rate of 30%.

The organisers are confident of numbers attending as they have had received significant increases to their data base as well as 100s of emails asking for updates. \$40,000 has been cut from the budget, but SIMG explained running a bare bones event will affect enjoyment for competitors. Costs from suppliers for medals and bags are all expected to increase as well as the cost of Insurance.

Council discussed the possible ways to fund this amount. The Stimulus Fund was unable to be considered as an option, as this fund is out for consultation with the public now and the criteria for any funding needs to be confirmed. The earliest a decision could be received from the Stimulus Fund is expected to be a month from today's date.

A vote was called, to fund the \$60,000 from the Economic Development Fund with the possibility of applying to the Stimulus Fund when available to reimburse this amount.

In Favour: Ctrs Richard Lyon, Peter Burt, Barbara Gilchrist, Paddy O'Reilly, Sally Parker and Steve Wills

Against: Ctrs Stu Piddington, Allan Booth and Gavin Oliver

**Carried 6/3**

At 11:26 am, Mayor Nigel Bowen returned to the meeting.

### **Resolution 2020/13**

Moved: Cr Barbara Gilchrist

Seconded: Cr Steve Wills

1. That the Community Services Committee approves the funding request of \$60,000 for the South Island Masters Games, Timaru 2020, to be funded from the Economic Development Fund; and

2. That Timaru District Council make an application to the Stimulus Fund to be reimbursed for the \$60,000 provided to the South Island Masters Games, Timaru 2020..

**Carried**

## **7 Consideration of Urgent Business Items**

There were no matters of urgent business.

## **8 Consideration of Minor Nature Matters**

There were no matters of minor nature.

## **9 Exclusion of the Public**

### **Resolution 2020/14**

Moved: Mayor Nigel Bowen

Seconded: Cr Peter Burt

That the public be excluded from the following parts of the proceedings of this meeting on the grounds under section 48 of the Local Government Official Information and Meetings Act 1987 as follows:

| <b>General subject of each matter to be considered</b>                            | <b>Reason for passing this resolution in relation to each matter</b>   | <b>Plain English Reason</b>   |
|---|--|-------------------------------|
| <b>11.1 - Temuka Community Board Recommendation - Recognition of Contribution</b> | s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons | To protect a person's privacy |
| <b>11.2 - Donations and Loans Subcommittee Recommendations</b>                    | s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons | To protect a person's privacy |

**Carried**

## **10 Resolution 2020/15**

Moved: Cr Paddy O'Reilly

Seconded: Cr Barbara Gilchrist

That the meeting moves out of Closed Meeting into Open Meeting.

**Carried**

**11 Public Excluded Reports****11.1 Temuka Community Board Recommendation - Recognition of Contribution****11.2 Donations and Loans Subcommittee Recommendations**

The following Donations and Loans decisions, made with the public excluded, were confirmed:

General Donations – Rural Community Halls

**Kingsdown/Salisbury Hall Committee \$7,942.51** – Replace all existing windows with Aluminium double glazed windows.

General Donations – Community Services

**Alpine Energy Brass Band \$1,000.00** – Towards power costs at their premises.

**Volunteering Mid and South Canterbury \$5,000.00** – Towards Rental costs at Community House.

**NZ Council of Victim Support \$1,900.00** - To support with costs to train volunteers in the Timaru region.

**Royal New Zealand Plunket T/A Timaru Plunket \$5,000.00** – Towards the operating costs of the Timaru Plunket premises.

**Cholmondeley Children’s Centre Inc. \$1,000.00** – Towards respite care costs for Children from the Timaru area.

General Donations – Heritage/Historic

**South Canterbury Aviation Heritage Centre - \$4,000.00** – Towards ongoing costs for Rent, Rates, Power and Insurance.

Substantial Donations and Loans

**Rangitata War Memorial \$1,500.00** – Towards painting the Exterior of the Memorial Hall.

**Timaru Indoor Bowls Inc. \$60,000.00** – Loan to replace existing mortgage with Westpac

Other

**Deferred – Athletics SC All Weather Track Trust - \$250,000.00** - Resurfacing of all-weather Athletics track at Aorangi Park – this application has been deferred as the project dates have changed and we require an updated project plan – this application will be reconsidered at a future subcommittee workshop once we the updated plan is received.

**Declined – South Island Masters Games - \$25,000.00** - the application for South Island Masters Games was declined, because it is ineligible under the Donations and Loans Policy Clause 4.2 1, C.

**The Meeting closed at 12.30pm.**

.....  
**Chairperson**

## 7 Reports

### 7.1 Extension of CBay Outdoor 50m Pool Season Petition

**Author:** Craig Motley, Recreation Facilities Manager

**Authoriser:** Symon Leggett, Group Manager People and Digital

#### Recommendation

That the Community Service Committee review the petition to extend the CBay Outdoor 50m Pool Season and determine an appropriate response.

#### Purpose of Report

- 1 To advise of the receipt of a petition received from Jill Tutty/John Bradley with respect to the CBay Outdoor 50m pool opening and closing dates and determine an appropriate response to the petition.

#### Assessment of Significance

- 2 This matter is not deemed significant under the Council's Significance and Engagement Policy.

#### Background

- 3 Timaru Districts Outdoor Pools season runs from Canterbury Show weekend in November through until the 3<sup>rd</sup> Sunday in March.
- 4 On March 5 2020 Recreation and Facilities Manager (RFM) Craig Motley met with Jill Tutty and John Bradley who are 2 regular lane swimmers at CBay.
- 5 At this meeting Jill and John requested TDC consider an extension of the season for the Outdoor 50m pool. Craig discussed and explained the reasoning behind some of their concerns including:
  - 5.1 If we keep the 50m pool open we would likely have to extend the opening of the other district pools as this would be the community expectation.
  - 5.2 A longer season would require the retention of our seasonal staff for a further period of time. A majority of our seasonal lifeguards are students who head back to University or school in the beginning to middle of February, so keeping the District pools open and fully staffed is always a struggle over the last month with a number of staff working overtime. Extending the season would exacerbate this problem.
  - 5.3 As the daily temperatures decrease – cooler mornings and nights increase the costs of heating the pools. It is also noticeable that numbers using the 50m pool and outdoor pools start dropping in the time we are open in March.
- 6 Whilst Jill and John seemed accepting of this information provided, at the completion of the meeting they presented the RFM with a petition with 61 signatures requesting that CBay management and the Timaru District Council review the operating hours for the outdoor pool this upcoming season. **(Attachment 1)**

- 7 They have asked that Council consider extending the season for the outdoor pool until all school swimming sports have been completed, which varies each year.
- 8 In their request the group advised that there are a number of times when the indoor 25 m pool is fully booked for school swimming sports after the outdoor pool has closed for the season which leaves the regular pool users without a lane swimming option during the day. The most recent season this only happened on two occasions.
- 9 Another point the group believe is worth considering is the changing weather patterns. The temperatures were above average and the rainfall below average in March 2019.

### **Discussion**

- 10 The issue of extending outdoor pool hours has been raised for the CBay 50m Pool and also for the District Pools from time to time. Usually it is when we get a North Wester or a short period of warmer weather just after we have closed for the season, or on the occasions when Easter falls close to the third Sunday of March. The argument against extending the season is always about our ability to actually be able to staff the pools appropriately for longer into March than we currently do.
- 11 In addition to the extra staff cost (1 for CBay, 2 each, for each of the District Pools) for each hour we open there would also be additional costs in terms of heating and chemicals for each pool. It is difficult to quantify these latter costs exactly as it does depend on the external temperatures (for heating) and also bather load (for chemical dosing).
- 12 Every effort is made by our Bookings team to have the majority of school swimming sports completed by the 3<sup>rd</sup> Sunday in March but it is not always possible for the schools to fit in with this timeline. For instance we try and book smaller schools who only utilise 6 lanes for their swimming sports after the 3<sup>rd</sup> Sunday so lanes are still available for other swimmers.

### **Options and Preferred Option**

- 13 Option 1 – To decline the request.  
Option 2 – To agree to the request to extend the season for the CBay 50m pool only.  
Option 3 – To agree to extend the season for all outdoor pools.  
Option 4 – To have the RFM further investigate staffing solutions, and the costs of keeping the facilities open and report back to this committee.

### **Consultation**

- 14 Recreation and Facilities Manager met with the group in March 2020 where he outlined some of the reasoning behind the current season.

### **Relevant Legislation, Council Policy and Plans**

- 15 Not applicable

### **Financial and Funding Implications**

- 16 To extend the dates of operation for the CBay 50m Outdoor pool will cost approximately \$1700/week in wages (one staff member for 91.5 hours). NB for Geraldine and Temuka this would be doubled (two staff on at all times) and approximately the same for Pleasant Point which would also require two staff, but is open half the hours. This also presumes that we could find staff to fill these positions.

17 There would also be additional heating and chemical costs but these would be variable as pointed out above.

**Other Considerations**

18 Nil

**Attachments**

1. **Petition received for CBay Outdoor 50m Pool - Extended Season Request**  



CBay Outdoor 50m Pool – Extended Season Request

We, the undersigned regular users of the CBay outdoor 50m pool request that CBay management and the Timaru District Council review the operating hours for the outdoor pool this upcoming season.

We ask that you consider extending the season for the outdoor pool until ALL school swimming sports have been completed. There are a number of times when the indoor 25m pool is fully booked for the purpose of school swimming sports after the outdoor pool is closed for the season which leaves the regular pool users without a lane swimming option during the day.

Another point to consider in this review is the changing weather patterns. The temperatures were above average and the rainfall below average in March 2019. We ask that you take this into account when looking at the viability of extended hours.

Thank you for your consideration and we would welcome the opportunity to meet as a group to discuss this further.

Shelley Chatter  
 E K White  
 B Mackay  
 Janis Parsons  
 Sally McLaughlin  
 Bernadette Wastling  
 Janet Mathewson  
 Jim Tutty  
 Jane Stallman  
 W. H. H. H.

Jane Donald  
 Julie Ward  
 Mary Lynn Borene  
 J. A. Brady  
 G. A. Enser  
 R. Watson  
 A. G. Watson  
 R. H. H. H.  
 Robb GRAM


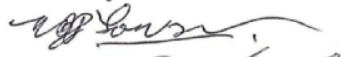


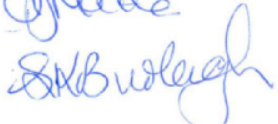


CBay Outdoor 50m Pool – Extended Season Request


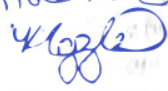


We, the undersigned regular users of the CBay outdoor 50m pool request that CBay management and the Timaru District Council review the operating hours for the outdoor pool this upcoming season.

We ask that you consider extending the season for the outdoor pool until ALL school swimming sports have been completed. There are a number of times when the indoor 25m pool is fully booked for the purpose of school swimming sports after the outdoor pool is closed for the season which leaves the regular pool users without a lane swimming option during the day.

Another point to consider in this review is the changing weather patterns. The temperatures were above average and the rainfall below average in March 2019. We ask that you take this into account when looking at the viability of extended hours.

Thank you for your consideration and we would welcome the opportunity to meet as a group to discuss this further.

Jim McBratney  
 Chad  
  
 Callum  
 Steve Geddes  
 SL Geddes  
  
 M O'Sullivan  
 J D Cameron  
  
 D. Kisi  
  
  
  


Discontinuing  
 Marcel Popma  
 Amanda Bisset-Popma  
  
 Ray Steel  
 LAUCHLAN STEEL  
 James Smith  
 Ollie Smith  
 Karen Smith  
 Howard Smith  
  
  


M

**CBAY Outdoor 50m Pool – Extended Season Request**

We, the undersigned regular users of the CBay outdoor 50m pool request that CBay management and the Timaru District Council review the operating hours for the outdoor pool this upcoming season.

We ask that you consider extending the season for the outdoor pool until ALL school swimming sports have been completed. There are a number of times when the indoor 25m pool is fully booked for the purpose of school swimming sports after the outdoor pool is closed for the season which leaves the regular pool users without a lane swimming option during the day.

Another point to consider in this review is the changing weather patterns. The temperatures were above average and the rainfall below average in March 2019. We ask that you take this into account when looking at the viability of extended hours.

Thank you for your consideration and we would welcome the opportunity to meet as a group to discuss this further.

MURRAY MACKAY  
*[Signature]*  
*[Signature]*  
*[Signature]*  
*[Signature]*  
*[Signature]*  
*[Signature]*  
 KJ  
 J.A. McConachie - Carol McConachie

**CBAY Outdoor 50m Pool – Extended Season Request**

We, the undersigned regular users of the CBay outdoor 50m pool request that CBay management and the Timaru District Council review the operating hours for the outdoor pool this upcoming season.

We ask that you consider extending the season for the outdoor pool until ALL school swimming sports have been completed. There are a number of times when the indoor 25m pool is fully booked for the purpose of school swimming sports after the outdoor pool is closed for the season which leaves the regular pool users without a lane swimming option during the day.

Another point to consider in this review is the changing weather patterns. The temperatures were above average and the rainfall below average in March 2019. We ask that you take this into account when looking at the viability of extended hours.

Thank you for your consideration and we would welcome the opportunity to meet as a group to discuss this further.

Martin Devries *M Devries*  
Susan Cosgrove *S Cosgrove*  
Les Cosgrove *L Cosgrove*

Sandra O'Shaunessy *Sandra O'Shaunessy*

## 7.2 Review of the Burial and Cremation Act 1964 Submission

**Author:** Fabia Fox, Policy Analyst  
Bill Steans, Parks & Recreation Manager

**Authoriser:** Symon Leggett, Group Manager People and Digital

### Recommendation

That the Community Services Committee approves the submission on the Review of the Burial and Cremation Act 1964 with, or without amendments.

### Purpose of Report

- 1 To consider and approve Council's submission to the Ministry of Health's *Death, Funerals, Burial and Cremation: a Review of the Burial and Cremation Act 1964 and Related Legislation* consultation document.

### Assessment of Significance

- 2 The draft submission is of low significance in accordance with the Significance and Engagement Policy. If the proposed changes to cemetery management included in the consultation document, become legislation, Council would be required to undertake consultation with the community on the development of new Cemetery Policy to set levels of service for the management of cemeteries in the Timaru District.

### Background

- 3 In 2015, the New Zealand Law Commission published its report *Death, Burial and Cremation: A new law for contemporary New Zealand*. The report made 127 recommendations to modernise the law that governs death, burial, cremation and funerals in New Zealand.
- 4 The Law Commission found that the law is outdated, overly specific and difficult to understand. Passed in 1964, the Burial and Cremations Act (the Act) has not kept pace with other legislative developments such as the New Zealand Bill of Rights Act 1990, the Resource Management Act 1991 and the Local Government Act 2002.
- 5 The Law Commission also found that the wording of the Act makes it difficult to respond to general trends in society. The Act is not designed to deal with:
  - 5.1 The increasing use of cremation instead of burial (approximately 70 percent of our dead are now cremated);
  - 5.2 The increasing demand for eco-burial or other non-traditional body disposal mechanisms;
  - 5.3 The increasing demand for alternatives to traditional funeral arrangements (such as new methods of body disposal like alkaline hydrolysis or do-it-yourself funerals).
- 6 In 2016, the then Government accepted almost all of the Law Commission's recommendations but directed officials to undertake further policy work and consultation on specific elements

of the recommendations. The aim was to establish the scope and severity of the issues identified by the Law Commission before making any final decisions.

- 7 A consultation document, released by the Ministry of Health in December 2019, discusses proposed changes to modernise legislation relating to death, burial, cremation and funerals in New Zealand. The affected legislation includes the Burial and Cremation Act 1964, Cremation Regulations 1973 and the Health (Burial) Regulations 1946.

### Discussion

- 8 Timaru District Council currently has various roles and responsibilities in relation to burials, established under the existing legislative framework. These include the duty to establish and maintain cemeteries for the disposal of bodies, administering the registration of funeral directors and keeping a record of cemeteries and burials within the District.
- 9 In undertaking these roles, Council operates eight cemeteries within the district, managing all burial and cremation interments and maintenance for six of these cemeteries (Timaru, Geraldine, Pleasant Point, Temuka, Arundel and Pareora West), with the remaining two cemeteries managed by local communities (Woodbury and Mesopotamia). Council also maintains burial records, including historic records, and provides an online database, including burial mapping for these cemeteries.
- 10 The proposed amendments to the legislation are likely to have an impact on Council's roles, responsibilities, decisions and operations, as well as on the funeral sector and the wider public.
- 11 The consultation document covers a variety of issues relating to the existing burial and cremation framework and outlines the options that the Ministry of Health is considering in order to address such issues.
- 12 The five central topics covered by the consultation document are:
- 12.1 Death certification and auditing;
  - 12.2 Regulation of the funeral services sector;
  - 12.3 Burial and cemetery management
  - 12.4 Cremation regulations and the medical referee system; and
  - 12.5 New methods of body disposal.
- 13 Urupā (Māori burial grounds), registration of mortuaries, burial at sea and international transportation of bodies are out of scope of this review.
- 14 For each of these topics the consultation document identifies the existing issues and the Ministry's preferred options for resolving these issues. A full copy of the consultation document is attached.
- 15 The draft submission has been prepared in recognition of Council's desire to maintain a high level of service for cemeteries in the district, to protect the wellbeing of our communities, and to highlight the increasing cost of responsibilities being shifted from central to local government without adequate funding provisions.

### Options and Preferred Option

- 16 **Option One (recommended):** Approve the submission (with or without amendments). This option ensures the Ministry of Health receives Council's feedback in relation to the proposed

reforms of the Burial and Cremation Act 1964. The submission supports the reform of the current legislation, advocates for the wellbeing of our communities, and raises concerns with the proposal to increase local authority responsibilities without adequate consideration by the Ministry for how the increased costs will be met.

- 17 There are no identified disadvantages for this option.
- 18 **Option Two:** Do not approve the submission. Under this option, the Ministry of Health will not receive Council's feedback on the proposed reforms.
- 19 There are no identified advantages of this option.

### Consultation

- 20 No public consultation has been undertaken for the development of this submission.
- 21 If the proposed amendments to cemetery management are approved Council will undertake public consultation to assist in the development of a Cemetery Policy relating to the levels of service for the District's cemeteries.

### Relevant Legislation, Council Policy and Plans



- 22 *Burial and Cremation Act 1964* – The current legislation governing death, burial, cremation and funerals. The Act establishes the requirement for councils to provide cemeteries, and sets the powers, functions and other obligations councils have relating to cemeteries. The Act also allows councils to make bylaws relating to cemeteries.
- 23 Additional regulations under consideration as part of the Ministry of Health's review are set out in the Burial and Cremation (Removal of Monuments and Tablets) Regulations 1967; Cremation Regulations 1973; Births, Deaths, Marriages and Relationships Registration (Prescribed Information) Regulations 1995 and Health (Burial) Regulations 1946. The Ministry of Health administers most of the legislation.
- 24 *Timaru District Council Cemeteries Bylaw* – In accordance with the Burial and Cremation Act 1964 this bylaw regulates the purchase of plots, interment procedures, erection of statues and maintenance of cemeteries in the District. The bylaw may need to be amended as a result of the proposed changes.
- 25 *Timaru District Council Cemeteries Policy* – Sets out Council's policy on replacement cemeteries, the establishment of denomination areas and the pre-purchasing of plots. It is likely this policy will need to be amended as a result of the proposed changes.

### Financial and Funding Implications

- 26 There are no budget implications for this submission.
- 27 The outcome of the reform of the Burial and Cremations Act may have considerable financial implications for the cemeteries activity. Council's submission raises these concerns with the Ministry of Health. Any amendments to the Act will be fully considered as part of activity management planning in the future to ensure the financial implication of these amendments are accounted for.

### Attachments

1. **Death, Funerals, Burial and Cremation: A Review of the Burial and Cremation Act 1964 and Related Legislation - Consultation Document** [!\[\]\(029651ce9ee64da8525b17c64e266edc\_img.jpg\) !\[\]\(05d3bfcaecedf25939aadd260bd34af7\_img.jpg\)](#)

2. **Review of the Burial and Cremation Act 1964 - Submission - Timaru District Council - July 2020**  





New Zealand Government

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

Consultation document

2019

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# Introduction

## 1 Purpose

This consultation document sets out a range of options for modernising the legislation relating to death, burial, cremation and funerals in New Zealand, including the Burial and Cremation Act 1964 (the Act), Cremation Regulations 1973 and the Health (Burial) Regulations 1946.

Urupā (Māori burial grounds), registration of mortuaries, burial at sea and international transportation of bodies are out of scope of this review.<sup>1</sup>

The Ministry of Health (the Ministry) is seeking feedback on the options from industry and other interested stakeholders, including the general public. This consultation will help inform the development of a modern, fit-for-purpose legislation for death, burial, cremation and funerals.

Given the range and complexity of the issues involved in updating the legislation, this consultation document is split into five sections:

- A. Death certification and auditing
- B. Regulation of the funeral services sector
- C. Burial and cemetery management
- D. Cremation regulations and the medical referee system
- E. New methods of body disposal.

Each section proposes a range of options to modernise the law in relation to the topic. The Ministry has indicated its preferred option in each section. We now want to seek the views of stakeholders to inform further policy development.

## 2 How do I make a submission?

There are two options for submitting feedback around this consultation document.

- a. You can complete the online survey on the Ministry's Health Consultation Hub at <https://consult.health.govt.nz/environmental-and-border-health/death-funerals-burial-and-cremation>. This is our preferred way of receiving feedback

<sup>1</sup> Urupā are regulated by the Te Ture Whenua Act 1993, and burials at sea within the territorial sea or terrestrial water bodies are dealt with by regional councils; the scattering of ashes within the Exclusive Economic Zone is dealt with under the Exclusive Economic Zone and Continental Shelf (Environmental Effects —Burial at Sea) Regulations 2015.

as it allows the information to be collected in a single, safe place and provides fill-in fields that ensures respondents provide all necessary information.

In this method, you can complete your submission over a number of sessions and save it as you go. If you select 'Save and come back later', you will be sent an email with a unique link that will let you return to your submission to edit and submit it. You can share the link with your colleagues if you require their contribution or wish them to review your submission.

Once you have submitted your completed submission, you will be sent a pdf copy for your records.

- b. You can send a separate email submission to **burialandcremation@health.govt.nz**

If you decide to send your submission via email, please ensure your email includes a completed submitter profile form. You can find this form on the Ministry's website at: [www.health.govt.nz/publication/death-funerals-burial-and-cremation-review-burial-and-cremation-act-1964-and-related-legislation](http://www.health.govt.nz/publication/death-funerals-burial-and-cremation-review-burial-and-cremation-act-1964-and-related-legislation)

Submissions have been extended until **5 pm on Saturday 31 October 2020**, and we will continue to review the situation in light of the COVID-19 pandemic

Your feedback is important because it will help influence the selection and design of final policy proposals. We appreciate you taking the time to make a submission.

## 2.1 Submissions are public information

Your submission and any correspondence you send to the Ministry may be requested by a third party under the Official Information Act 1982 (OIA).

If somebody requests information from your submission under the OIA, we are obliged by law to handle such information in accordance with the OIA. In many cases, this means that we will release your submission and supporting information to the person who requested it unless there is a justifiable reason for withholding this information under the OIA.

If you consider that any part of your submission could be withheld under the OIA, please make this clear in your submission, noting the reasons why you think the information ought to be withheld (eg, you may consider some information to be commercially sensitive).

## 2.2 Declaration of interest

We ask all submitters to declare any financial or other interests they may have in businesses that may be affected, positively or negatively, as a result of the proposals contained within this document. We ask other stakeholders to provide a short statement or explanation of the purpose or focus of any organisations they represent that have an interest in these proposals.

## 3 Background

### 3.1 Death, Burial and Cremation: A new law for contemporary New Zealand

In 2015, the New Zealand Law Commission (the Law Commission) published its report *Death, Burial and Cremation: A new law for contemporary New Zealand* (Law Commission 2015). The report made 127 recommendations to modernise the law that governs death, burial, cremation and funerals in New Zealand.

The Law Commission found that the law is outdated, overly specific and difficult to understand. For example, the penalties for offences are still stated in the monetary unit of the New Zealand pound, which was abolished in 1967. Further, the Law Commission noted that the law has not always kept pace with other legislative developments, such as the New Zealand Bill of Rights Act 1990, the Resource Management Act 1991 and the Local Government Act 2002 and is incompatible with, or duplicates, provisions in those Acts.

The Law Commission also found that the wording of the Burial and Cremation Act 1964 (the Act) makes it difficult to respond to general trends in society, such as the growth in sexuality and gender diversity and the evolving nature of family relationships. These are all things that are changing how New Zealanders view post-death decisions about such things as burials and cremations, etc. The Act is not designed to deal with:

- the increasing use of cremation instead of burial (approximately 70 percent of our dead are now cremated)
- the increasing demand for eco-burial or other non-traditional body disposal mechanisms
- the increasing demand for alternatives to traditional funeral arrangements (such as new methods of body disposal like alkaline hydrolysis or do-it-yourself funerals).

### 3.2 The Government response to the Law Commission report

In 2016, the then Government accepted almost all of the Law Commission's recommendations but directed officials to undertake further policy work and consultation on specific elements of the recommendations. The aim was to establish the scope and severity of the issues identified by the Law Commission before making any final decisions around the recommendations.

### 3.3 Inquiry into whānau access to and management of tūpāpaku<sup>2</sup>

In August 2017, the Māori Affairs Select Committee released its report *Te uiuinga ki te āhei atu me te whakahaere a te whānau i te tūpāpaku* (Te Komiti o Ngā Take Māori 2017).

In that report, the committee recommended that the Government consider implementing the recommendations suggested by the Law Commission.

The Government accepted this recommendation in its response to the Select Committee report released in February 2018.

### 3.4 Consultation document

This consultation document responds to the Government's direction and response to the Law Commission report outlined above. The options for change outlined in this document are based on the Law Commission's recommendations, the Government's response to those recommendations and subsequent policy work undertaken by the Ministry of Health.<sup>3</sup>

This consultation document directly responds to 100 (out of 127) of the Law Commission recommendations.<sup>4</sup>

The document does not analyse the Law Commission's recommendations 104–127, which recommend the creation of a legal framework to give effect to a person's wishes once they pass away. The Ministry of Justice will consider this policy work independently of the Ministry of Health as priorities allow.

The Ministry of Health is the lead agency undertaking policy work to implement the Government's decisions. Due to the broad scope of the proposed reforms, the Ministry is working with relevant agencies, including the Department of Internal Affairs (DIA) and the Ministry of Justice.

## 4 Objectives in updating the law relating to death, burial,

<sup>2</sup> Tūpāpaku is te reo for a deceased person's body.

<sup>3</sup> For further detail, including the full list of recommendations, please see Law Commission 2015.

<sup>4</sup> Recommendations 7–9 have already been adopted by the Government. Recommendations 7 and 8 are included in the Births, Deaths, Marriages and Relationships Registration Bill (currently deferred pending further public consultation). Recommendation 9 was enacted by the Burial and Cremation Amendment Act 2016.



## cremation and funerals in New Zealand

We selected four criteria to assess the policy options outlined in this document ('assessment criteria'). This ensured we used a consistent approach when selecting our preferred option in each discussion area. We applied equal weighting to the four criteria when considering the options.

The primary objective is to modernise the law relating to death, burial, cremation, and funerals in New Zealand to ensure it is fit for purpose and meets the needs of New Zealanders.

The four criteria are as follows.

- **Criterion 1:** Any changes to the law should be proportionate and effective in addressing identified problems (including risks to the public and environment).
- **Criterion 2:** Any changes to the law should not impose unnecessary or unjustified compliance costs.
- **Criterion 3:** Any change to the law must be flexible and able to respond to future shifts in technology and consumer preferences as far as possible.
- **Criterion 4:** Any changes to the law must consider tikanga Māori, other cultural or religious practices, as well as the dignity of the deceased and those who remain.

## 5 A guide to existing legislation and proposed changes

The current legislation governing death, burial, cremation and funerals is set out primarily in the Burial and Cremation Act 1964 (the Act). Additional provisions are also set out in the Burial and Cremation (Removal of Monuments and Tablets) Regulations 1967; Cremation Regulations 1973; Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations 1995 and Health (Burial) Regulations 1946.<sup>5</sup>

Most of this legislation is administered by the Ministry. The exception is the Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations, which is administered by the DIA. Table 1 below outlines the current legislation governing each area discussed in this consultation document.

<sup>5</sup> Although out of the scope of this review, urupā are regulated by the Te Ture Whenua Act 1993, and burials at sea are regulated by the Exclusive Economic Zone and Continental Shelf (Environmental Effects – Burial at Sea) Regulations 2015.

**Table 1: Guide to current legislation for death certification, burial, cremation, and the funeral services sector**

| Policy area                               | Current legislation   | Current administering department |
|---|---|----------------------------------|
| Death certification and auditing          | Burial and Cremation Act 1964 – ss 46AA–46D and 54AA.   | Ministry of Health               |
|   | Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations 1995 – regs 5B, 6A and 7.  | Department of Internal Affairs   |
| Regulation of the funeral services sector | Health (Burial) Regulations 1946–Part 2 and 3.  | Ministry of Health               |
| Burial and cemetery management            | Burial and Cremation Act 1964 – Part 1, Part 2, Part 3, Part 4, Part 6 and ss 47–53, 54–55 and 57.<br>Burial and Cremation (Removal of Monuments and Tablets) Regulations 1967. | Ministry of Health               |
| Cremation and the medical referee system  | Burial and Cremation Act 1964 – Part 5, s 45D and 56.<br>Cremation Regulations 1973.  | Ministry of Health               |

## 5.1 Administration of the new statutory framework

The Law Commission recommended that the Burial and Cremation Act 1964 be replaced by a new statute for burial, cremation and funerals to be administered by the DIA, with most of the operational functions being delivered by local government.<sup>6</sup> Local governments already register funeral directors and, consider land use issues arising in the establishment of new cemeteries and crematoria.

Policy relating to the death certification and auditing of death certification would remain with the Ministry of Health as it is primarily a health issue.

## 6 Proposed overarching duties regarding the disposal of bodies

It is proposed that the new law have two general duties that would apply to members of the public.

<sup>6</sup> Recommendation 1.

## 6.1 Treating remains with respect

Currently, it is an offence under section 150 of the Crimes Act 1961 to improperly or indecently interfere with or offer any indignity to any dead human body or human remains. A breach of that provision may make a person liable to imprisonment for a term not exceeding two years.

The Law Commission found, however, that there are a range of behaviours that should justify prosecutorial action but might not be prosecuted under section 150 because the only punishment available is imprisonment. Behaviour that the Law Commission viewed as serious enough for prosecution, but not serious enough for conviction under section 150, includes:

- storing dead bodies inappropriately
- failing to properly embalm a body
- treating a body in a way that is designed to cause significant cultural offence
- stealing an item from a coffin.

The Law Commission, therefore, proposed that the new law would include a general duty on everybody to 'treat any dead human body or human remains with respect'.<sup>7</sup> The breach of this duty would be an offence punishable by infringement notice, or, on conviction, by a fine.

- 1 Do you agree that there should be a general duty on everybody to 'treat any dead human body or human remains with respect'? If not, why not?**
- 2 Do you agree that any breach of this duty should be an offence punishable by infringement notice, or, on conviction, by a fine? If not, why not?**

## 6.2 Disposing of a body within a reasonable time

Currently the Act requires that a person who has charge of a body must, within a reasonable time of taking charge of it:

- dispose of it
- cause it to be disposed of
- transfer it to another person for disposal.<sup>8</sup>

The Law Commission proposed that this duty continue in the new law but be clarified to provide guidance as to what is a reasonable time and who is the person responsible for disposing of the body.<sup>9</sup>

<sup>7</sup> Recommendation 79.

<sup>8</sup> Burial and Cremation Act 1964, section 46E.

<sup>9</sup> Recommendation 80.

Therefore, it is proposed that the new law should provide 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). Which person has the duty to dispose of the body will depend on the circumstances of every case. It could be one person, for example the executor or administrator of an estate, or it could extend to multiple people, for example, where a funeral director has been engaged. The breach this duty would be an offence punishable by infringement notice, or, on conviction, by a fine.

There is a public interest in this duty falling on the person who actually has custody of a body. For example, a body could remain in a mortuary for some time either because no family member had been identified as appropriate for taking responsibility or the funeral director has received instructions but is failing to act on them.

- 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)? If not, why not?**
- 4 Do you agree that any breach of this duty should be an offence punishable by infringement notice, or, on conviction, by a fine? If not, why not?**

# Section A:

## Death certification and auditing

### A1 The current system of death certification and auditing in New Zealand

#### A1.1 What is death certification?

Death certification is a term that describes the process of a medical practitioner or nurse practitioner (collectively referred to as certifying practitioners in this document) determining the cause of death of a deceased person and issuing a Medical Certificate of Cause of Death (MCCD). The MCCD records the medical findings as to the cause of a person's death. The Ministry of Health prescribes the content of the MCCD form, which incorporates the Cause of Death section prescribed by the World Health Organisation (WHO). The MCCD should not be confused with a death certificate issued by the Registrar-General of Births, Deaths and Marriages after the death has been registered. The death certificate records the details of the death from the statutory register of deaths.

The primary purposes of the MCCD, as identified by the Law Commission, are threefold.

1. It establishes the fact of death. This is important for a range of functions, including maintaining accurate population data and preventing fraud.
2. It informs the development of and resource allocation to public health policies and programmes in the health sector. For example, the MCCD is used to measure life expectancy and determine the incidence of death from specific causes.
3. It aids in detecting wrongful and preventable death. Cause of death information is also vital in identifying which deaths are from natural causes and which are not (possibly requiring further investigation).

Death certification also helps in finalising probate, settlement on estates and life insurance claims; investigating and prosecuting crimes; reducing identity theft; determining succession in the Māori Land Court; researching genealogy and

understanding family medical histories. As a member state of the WHO the New Zealand Government is required to report national cause of death statistics to the WHO each year.

The death certification process operates in conjunction with a number of other systems, including:

- the coronial system, which investigates unexpected and avoidable deaths
- the justice system in terms of investigating and prosecuting wrongful deaths
- the death notification system, which is administered by the Registrar-General of Births, Deaths and Marriages and deals with the registration of deaths, population statistics, preventing fraud and the issuing of death certificates
- the cremation medical referee system, which approves bodies for cremation and duplicates the MCCD but includes additional crime prevention questions.<sup>10</sup>

## A1.2 The death certification system

The system for death certification is set out in the Burial and Cremation Act 1964 (the Act). It is one of two processes the law provides to determine cause of death in New Zealand.<sup>11</sup>

The system comprises a number of statutory and non-statutory documents and applies to all 'natural' or 'expected' deaths (including stillbirths) but not deaths that fit the categories of 'reportable deaths' as set out in the Coroners Act 2006.

In 2017/2018, approximately 89 percent of all deaths in New Zealand were certified through the death certification process, with the remaining 11 percent being investigated by the coroner (Office of the Chief Coroner of New Zealand, 2018).<sup>12</sup>

Currently, no agency has statutory oversight of the entire death certification system: there is no national MCCD audit system.<sup>13</sup> Some district health boards (DHBs) (eg, Canterbury DHB) have established mortality review committees, which conduct internal reviews of MCCD forms and provide feedback to the certifying practitioners.

<sup>10</sup> See Cremation regulations and the medical referee system for more information.

<sup>11</sup> Burial and Cremation Act 1964, sections 46AA–46F.

<sup>12</sup> In the 2016/17 year, Statistics New Zealand estimated that 33,573 people died in the same period (Stats NZ 2018).

<sup>13</sup> The Health Quality and Safety Commission New Zealand has oversight of mortality and runs five mortality review committees. Mortality review committees are statutory committees that review particular deaths, or the deaths of particular people, in order to learn how to best prevent future similar deaths. There are currently five ongoing committees dedicated to reviewing the deaths of: children and young people, babies and mothers (where death is caused by pregnancy or childbirth), deaths resulting from family violence and associated with surgery, and deaths resulting from suicide.

### A1.3 Statutory duties in certifying cause of death

When a person dies, the certifying practitioner who attended the person during their illness is required to give an MCCD for the person's death immediately after learning of that person's death if the practitioner is satisfied that the person's death was a natural consequence of the illness. The Act does not provide a definition for 'immediately'. The certifying practitioner is not required to view the body.

The Act provides for a certifying practitioner, other than the practitioner who attended the person during the illness, to issue an MCCD where:

- a medical practitioner or nurse practitioner who attended the person during the person's illness is unavailable,<sup>14</sup> or
- less than 24 hours has passed since the death, and a medical practitioner or nurse practitioner who attended the person during the person's illness is unlikely to be able to give an MCCD for the person's death within 24 hours of the death; or
- at least 24 hours have passed since the person's death, and a medical practitioner or nurse practitioner who attended the person during the person's illness has not given an MCCD for the person's death.

Where an MCCD is not issued by a certifying practitioner, for whatever reason, the police must refer the death to the coroner for investigation.

If the certifying practitioner was not attending the person during the person's illness, the Act requires that the practitioner must not give an MCCD unless they have:

- had regard to the medical records relating to the person concerned from the health practitioner who last attended the person during the person's illness
- had regard to the circumstances of the person's death
- examined the person's body.<sup>15</sup>

Following the completion of the MCCD, the person responsible for disposing of the body, usually the funeral director, sends the MCCD to the Ministry of Health. The Ministry receives monthly notifications of deaths from the Registrar-General of Births, Deaths and Marriages and uses that information, together with the MCCDs and, at times, coroner's findings, post-mortem reports and other sources of information, to assign a code to the death that describes the 'underlying cause of death' in accordance with the World Health Organization (WHO) Rules and Guidelines for Mortality Coding (WHO 2004). The resulting coded cause of death information is used to inform the development of public health policy and programmes within New Zealand and is sent annually to WHO for its international datasets.

<sup>14</sup> The term 'unavailable' is defined in section 2 of the Act to mean 'dead, unknown, missing, of unsound mind, or unable to act by virtue of a medical condition'.

<sup>15</sup> Burial and Cremation Act 1964, section 46B.

In 2017-2018, DIA and the Ministry developed and launched Death Documents,<sup>16</sup> a digital tool for certifying practitioners to complete death certification documentation online. When a death is certified through Death Documents, the Ministry can access completed MCCD forms, removing the need for sending through a paper copy of the MCCD.

## A1.4 Cremation medical referee system

Before a body can be cremated, the Cremation Regulations 1973 require the permission of a medical referee.<sup>17</sup> This system provides an additional check on cause of death to ensure that the death had not occurred because of any criminal wrongdoing before the body is irreversibly destroyed. There are no comparable 'medical referee' systems for other forms of body disposal, such as burials or burials at sea.

Under this process, certifying practitioners are asked to complete a Cremation Certificate, which duplicates much of the cause of death information from the MCCD and contains questions designed to test whether there were any circumstances surrounding the death that may require further investigation before the body is cremated. The Cremation Certificate requires the certifying practitioner to see and identify the body. In comparison, MCCDs do not require this.

Although this process has not been established as an effective audit for death certification, anecdotal evidence from the funeral sector suggests that some medical referees vet and provide feedback to certifying practitioners about the quality of their death certification form completion (eg, alerting practitioners if questions are left blank).

<sup>16</sup> See <https://deathdocs.services.govt.nz>

<sup>17</sup> Cremation Regulations 1973, regs 5-7.



## A2 Issues with the current system of death certification and auditing

There are several issues with the current systems for certifying the cause of death and auditing cause of death certification.

### A2.1 Errors in certifying cause of death

Ensuring that certifying practitioners determine and record the cause of death accurately is important for a number of reasons. Inaccuracy can result in over- or under-reporting of deaths to the coroner and inaccurate population health statistics.

The lack of a comprehensive system for auditing the death certification means there is an absence of empirical data on certification errors. This presents an immediate challenge when attempting to determine whether or not there is a problem, and if there is, in defining the magnitude of the problem.

There is some evidence that errors in determining cause of death are fairly common, both internationally and in New Zealand. A 2005 Australian study found error rates of 24–37 percent for doctors certifying death (Pritt et al 2005).

The types of errors found in recording the cause of death can include:

- incomplete forms
- illegible handwriting
- inattention to detail
- inaccurate causes of death.

A 1998 study found that inaccurate causes of death can include errors such as listing the mode of death (for example, cardiac failure) without an underlying cause, failing to note recent major surgery or failing to specify the site or organism of infection (McKelvie 1993).

There has been no comprehensive study of the likely rate of error in death certification in New Zealand. A 'mini-audit' of 1,331 MCCDs submitted to the Ministry during the 2009/10 year identified an error rate of 24 percent. The errors included listing non-specific causes of death; failing to correctly differentiate between underlying, proximate and contributory causes of death; and failing to provide critical information, such as the primary site of cancer. In 2010, the Canterbury DHB's mortality review committee detected errors in 105 (9.5 percent) of the 1102 MCCDs it reviewed from its five hospitals. Again, these errors ranged from a failure to correctly identify or specify the primary cause of death to errors in how the secondary and contributory causes were recorded. As the MCCD has to be provided to the person in charge of the body without delay to allow the funeral arrangements to proceed, there is no ability for

errors identified by the mortality review committee to be corrected before the certificate is used for its official purposes.

The Law Commission reported anecdotal evidence that myocardial infarction (heart attack) was often the default diagnosis of the cause of death where there are no indications of other causes. Further, submissions from doctors during the Law Commission's review were very clear that determining the cause of death in the absence of an autopsy is never definite and is often a view taken on the balance of probabilities.

There are many factors that can contribute to errors in recording the cause of death. These include:

- limitations in the experience of certifying practitioners
- the task of death certification being given a low priority
- a lack of education around death certification requirements
- fatigue
- time constraints
- unfamiliarity with the deceased's medical history
- frustration with the forms (including questions that are difficult to answer and are duplicated across different forms)
- only one certifying practitioner completing all the documentation
- certifying practitioners not viewing the body before certifying cause of death.

Further, the purposes of the death certification system and the importance of accurately recording the cause of death are not always clear to certifying practitioners. This may result in other interests or considerations influencing how certifying practitioners record cause of death. For example, doctors may feel some duty to the bereaved family when determining the cause of death. That may lead them to hide or minimise certain factors that contributed to the death, for example, alcoholism or where the death was a result of HIV/AIDS infection. It may also lead them to determine too easily that the person died of natural causes so that the family can have the body for funeral preparations, avoiding the wait for the coronial process.

Although there is no evidence that certifying practitioners in New Zealand are hiding their own wrongful actions, for example, negligent or criminal acts that led to the patient's death, there are limited safeguards in place to stop such practices.

## A2.2 Inefficiencies in the statutory death certification process

New Zealand's current death certification legislation is somewhat inconsistent with current good medical practice, which can create issues affecting compliance. The system was designed at a time where the model of end-of-life care was different. Historically, most people passed away in their homes, and their health needs were provided by the family doctor. Over the years, this has changed with an increase in the number of people dying in hospital, hospices or aged residential care facilities. The current legislative

requirements are not necessarily consistent with modern good health practice, which creates issues affecting compliance. For example, not completing the MCCD immediately as required by the Act.

Anecdotal evidence presented by the Law Commission noted that, despite the current requirement to examine the body in particular circumstances, it is common for certifying practitioners to only view the deceased person's face and not remove clothing. There may be good reasons for this. For example, practitioners may be already satisfied as to the cause of death and feel that an examination will not reveal any further useful information, or they may believe that a request to examine the body in more detail could overly distress the bereaved family.

### A2.3 Time limits to certify cause of death

The current death certification system includes some outdated processes that can cause unnecessary delays and duplicated effort for certifying practitioners, as well as unnecessary delays for the bereaved families (such as the process for a different certifying practitioner completing the MCCD). Section 46B(2) of the Act requires certifying practitioners to complete the MCCD immediately after they learn of the death. If a practitioner learns of the death of a patient over the weekend or during holidays, it can sometimes be very difficult to comply with this statutory requirement.

The Law Commission reported that there are ongoing difficulties in some regions in locating appropriate people to certify death, even when the death is a natural consequence of illness. This can lead to an increase in over-reporting of deaths to the coroner (because all deaths where there has been no MCCD issued must be referred to the coroner), and delays in returning the deceased body to families and whānau.<sup>18</sup>

The Māori Affairs Select Committee identified the impact that over referral to the coroner had on Māori (Te Komiti o Ngā Take Māori 2017). The committee noted that tikanga Māori requires that immediate whānau remain with the tūpāpaku until burial. Unnecessary referral of a death into the coronial system can restrict whānau access and management of tūpāpaku. This can interfere with cultural practices and cause unnecessary distress to whānau.

### A2.4 Level of certainty required to certify cause of death

Certifying the cause of death is complex, and it can often be impossible for a certifying practitioner to be absolutely certain of a cause of death determination. In many cases, signs of the actual cause of death are only discoverable after a full toxicology report and autopsy. Those procedures are expensive, take time and are usually not justifiable for the majority of deaths. This may be the case where the deceased person was elderly and had a variety of pre-existing health and medical problems.

<sup>18</sup> Coroners Act 2006, section 14(f).

Currently, the Act does not provide any guidance as to the level of certainty required when determining the cause of death. The MCCD asks the certifying practitioner to certify that the cause of death given is true 'to the best of my knowledge and belief and that no relevant detail has been omitted'. In contrast, the Cremation Regulations 1973 place a duty on medical referees to not permit cremation unless they are satisfied that the cause of death has been 'definitely ascertained'. This can lead to confusion as to the standard of certainty that practitioners must have before certifying cause of death and obtaining this certainty on a routine basis can be difficult, even with an autopsy.

## A2.5 Problems with death certification forms

Certifying practitioners who submitted to the Law Commission review reported frustration at the nature of the documents that they have to complete after a death. Concerns included the number of different forms, the duplication of questions across some of those forms and the lack of national consistency in the forms being used. Combined, the MCCD and the Cremation Certificate, which are most commonly completed by the same certifying practitioner, involve the practitioner answering 51 separate questions, many of which cover the same ground and 10 of which are duplicated.

Further, some of the language used in the forms is outdated and some questions are difficult to answer. For example, the Cremation Certificate asks for the 'mode of death'. The Law Commission found that not all certifying practitioners understood what the term 'mode of death' means, and this term is often confused with the cause of death.<sup>19</sup> This makes it difficult for certifying practitioners to complete the forms and is likely leading to inconsistent form completion practices across practitioners, resulting in potential flow-on implications. For example, the Law Commission found that medical referees have sometimes delayed authorising cremations due to incomplete or inconsistent paperwork.

Funeral directors must transcribe the cause of death from the MCCD in order to complete the notification to the Registrar-General of Births, Deaths and Marriages. There have been reported difficulties for funeral directors in deciphering certifying practitioners' handwritten cause of death statements on MCCDs. Certifying practitioners often use abbreviations and non-standardised language, which can create risks to accurately transcribing the cause of death.

This problem has been somewhat alleviated by the online death certification service, Death Documents, which requires that mandatory questions be answered to complete the form, does not repeat questions and is easily legible for accurate transcription. It also has help sections for certain questions including mode of death. However, this service is still in the process of being widely adopted by the sector, and transcription problems persist. Current legislation for certifying cause of death, especially the

<sup>19</sup> 'Mode of death' refers to how the person died, such as heart failure or respiratory failure, without identifying the underlying cause of the heart failure or respiratory failure (ie, hypertensive cardiomyopathy).

requirement for the Cremation Form to be printed out, is an impediment to a user-friendly online 'cause of death' system.

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

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

## A3 Modernising the death certification system

### A3.1 Options

The Ministry has considered three options for modernising the death certification system, based on the Law Commission's recommendations, the Government's response to those recommendations and subsequent policy work undertaken by the Ministry. A high-level summary of these options is provided below.

- **Option 1:** Maintaining the status quo
- **Option 2:** Implementing a package of changes to the current system based on most of the Law Commission's recommendations (recommendations 2, 6 and 10–14)
- **Option 3:** Implementing a package of changes to the current system based on all of the Law Commission's recommendations (recommendations 2, 4–6 and 10–14).

#### A3.1.1 Option 1

There would be no changes to the Burial and Cremation Act 1964 (and supporting regulations) regarding the existing death certification system.

#### A3.1.2 Option 2

Under this option, the Ministry would be responsible for overseeing the quality of outputs and outcomes from the death certification system. The content and method for completing MCCDs would be set out in guidance published by the Ministry to provide certainty and enable greater flexibility to update/revise the MCCD form and content if there is a good reason to in the future.

The timeframe for certifying practitioners to provide cause of death certification would be made explicit. It would be within 24 hours of learning of the person's death if the certifying practitioner is satisfied that the person's death was a natural consequence of an illness.

Original certifying practitioners would be able to use their discretion to decide whether viewing the body in each case is necessary.

An alternative medical or nurse practitioner (who was not the practitioner who attended the person during their illness) would be able to certify cause of death where the original medical or nurse practitioner was 'unavailable'. The term 'unavailable' would be better defined. For example, it could be defined as 'not being free to do something or being otherwise occupied'.

Alternative medical or nurse practitioners would not be able to certify cause of death unless they have:

- considered the medical records relating to the person who has died from the medical or nurse practitioner who last attended the person during their illness
- considered the circumstances of the person's death
- viewed the person's body.

When certifying the cause of death, the certifying practitioner would be required to determine the cause of death to the best of their knowledge and belief.

Permission for a body to be embalmed or disposed of would not be granted unless a medical or nurse practitioner has certified cause of death or the coroner had authorised the embalming/disposal.

There would be no changes to the existing statutory restrictions around transferring charge of a body before cause of death has been determined.

### A3.1.3 Option 3

This option would include the components described under Option 2 above but with two further requirements. First, MCCDs would contain a section for verifying the identity of the body and including the evidence for such verification. And second, deceased bodies would not be able to be disposed of unless a certifying practitioner (or another authorised person) has certified that the identity of the deceased has been adequately determined. If the certifying practitioner or authorised person considers the body is not adequately identified, then they would be required to refer the death to the police.

**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.**

## A3.2 Impact analysis

This section identifies potential impacts from implementing any of the options to modernise the death certification system.

### A3.2.1 Option 1

All issues outlined in section A2 remain.

### A3.2.2 Option 2

The Ministry's oversight of the outputs quality for the death certification system (MCCDs) would help promote quality assurance and improvements in the quality of death certification determinations. Ministry guidance would also support accuracy, efficiency and consistency of practice across New Zealand.

A reformed death certification system based on this option would better reflect existing medical care models and processes within the health sector. Option 2 modernises and clarifies certification timeframes, the level of certainty required to certify and requirements around viewing the body. This reduces the statutory burden when the certifying practitioner is the original doctor/nurse practitioner, as well as empowering practitioners to use their professional judgement and discretion when certifying cause of death.

Option 2 also increases the efficiency of MCCD completion, when the certifying practitioner is unavailable, and clarifies when a body can be moved or dealt with.

Further it is expected that Option 2 will reduce the number of deaths being unnecessarily referred to the coroner because no MCCD has been issued. This is because streamlining who can certify cause of death and in what circumstances will expand the pool of available certifying practitioners who can complete MCCDs.

There would be some administrative costs to the Ministry from its increased oversight of the death certification system's quality of outputs. The full impact of this increased role has not been established, however, it is possible it may be able to be managed within existing Ministry baselines.'

Option 2 is not expected to have significant compliance cost implications because the changes reflect some existing practices in the sector. There will be some short-term implementation and training costs for the Ministry, DHB's and certifying practitioners. However, these are not expected to be significant.

Certification processes will be more flexible and sustainable, particularly as this option will better enable other certifying practitioners to complete MCCDs when the original certifying practitioner is unavailable.

Option 2 allows further changes to be made to the form and content of the MCCD without requiring legislative changes.

Although Option 2 does not include a mandatory requirement to identify the deceased, existing administrative processes continue to provide checks on the risk of misidentification (eg, medical notes, hospital processes, professional discretion and family oversight).

### A3.2.3 Option 3

Option 3 would have similar impacts to Option 2, with some exceptions.

The additional identity verification requirements may make identification of the deceased more accurate. However, it is questionable whether they are needed for the death certification system as there is also no real evidence of misidentification being a problem for deaths certified by certifying practitioners.

The additional identity verification elements will take more time for certifying practitioners to complete.

Option 3 also introduces additional compliance costs on certifying all deaths due to proposed requirements for the certifying practitioner to also verify the identity of the deceased and meet any additional obligations to report unidentified deceased persons to the police.

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

## A3.3 The Ministry's preferred option

At this stage, the Ministry prefers Option 2: *Implementing a package of changes to the current system based on most of the Law Commission's recommendations* (excluding recommendations around statutory provisions for the verification of the identity of the deceased).

Options 2 and 3 are substantively better than Option 1 for death certification in New Zealand as they address the issues laid out in section A2: Issues with the current system. However, the Ministry does not consider it necessary to implement additional statutory requirements on certifying practitioners to certify the identity of the deceased (as included in Option 3). The Ministry considers that there is a low level of risk of certifying practitioners misidentifying a deceased person and that any risk is outweighed by the additional administrative burden on all certifying practitioners to formally verify the identity of all deceased persons in New Zealand.



The Ministry considers that the existing administrative processes (eg, medical notes, hospital processes, professional discretion and family oversight) are sufficient and provide an adequate check on the risk of misidentification.

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

## A4 Auditing death certification

### A4.1 Options

The Ministry has considered three options regarding audit of the death certification decisions, based on the Law Commission's recommendations, the Government's response to those recommendations and subsequent policy work undertaken by the Ministry. A high-level summary of these options is provided below.

- **Option 1:** Maintaining the status quo
- **Option 2:** Establishing a death certification auditing committee system
- **Option 3:** Implementing the Law Commission's related recommendations around auditing of death documentation, including creating a statutory 'cause of death reviewer' (recommendations 15–19).

#### A4.1.1 Option 1

There would continue to be no statutory requirement to audit death certification decisions. Non-statutory checks would continue where systems currently exist.

#### A4.1.2 Option 2

Death certification auditing committees could be established to peer review cause of death determinations made within each area (district). The peer-review system would need to review a random sample of death certifications and include a mechanism for providing feedback to the certifier when errors were identified. The establishment of the committees would be mandated by law and committees could be implemented by DHBs.

The Ministry would oversee (and guide) peer-review systems to ensure they produced quality outcomes and that the trends and lessons learned from such reviews were shared between hospitals and used to train and inform practitioners responsible for death certification.

### A4.1.3 Option 3

A new statutory 'cause of death reviewer' role/function could be created, with appointments made by the Minister of Health. The function of a cause of death reviewer would be to review a random sample of all death determinations (excluding deaths that occurred in hospital or deaths that had been referred to the coroner).

Alongside this process, hospitals would be required to establish their own systems to peer review their own cause of death determinations. Such peer-review systems would need to review a random sample of deaths and include a mechanism for providing feedback to the certifier when likely errors are identified. The Ministry would also establish a national committee to support hospitals.

The reviews undertaken by cause of death reviewers and hospital committees would aim to:

- detect errors in the determination of cause of death
- detect deaths that should have been referred to the coroner
- provide education and support to certifying practitioners who certify the cause of death.

The review would need to take place before the body was disposed of.

Additional functions of a cause of death reviewer would be to:

- review deaths referred to them by members of the public or the health profession
- undertake targeted reviews of deaths (ie, review certification of all deaths from myocardial infarction across a certain period or from a particular region). This would ensure deaths of a like cause were being accurately certified.

Where a cause of death reviewer / hospital committee identified a likely error in the death certification, this would be discussed with the certifying practitioner with a view to reaching agreement (if necessary) about amending the cause of death certification. If agreement could not be reached, the matter would be referred to the coroner or to another authorised person for adjudication.

If a reviewer detected evidence of criminal activity, they would be required to report the death to the police.

**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.**

## A5 Impact analysis

This section identifies potential impacts from implementing any of the options for auditing the death certification system.

### A5.1 Option 1

All issues outlined in section A2 remain.

### A5.2 Option 2

Death documentation would be regularly reviewed and the lessons from audits would be shared across and within committee districts and other committees. Audit outcomes would inform continuing professional development of certifying practitioners.

There is a risk of not detecting wrongful or inaccurate certification for individual MCCDs that are not included in the audited sample. However, new sector guidance on completing MCCDs would help improve certifying practitioners' decision-making, including improved guidance regarding the types of deaths that should be referred to the coroner. Additionally, this information could be used to help inform and educate future certifying practitioners. This would reduce the number of deaths wrongly referred to the coroner, which can impede tikanga Māori or other cultural practices.

Option 2 would result in establishment and administration costs to establish peer review committees, for both the Ministry and the organisation that establishes them (potentially DHBs). There will also be a cost to the Ministry to administer new controls and to support committees to share learnings (producing guidance etc).

### A5.3 Option 3

Option 3 has similar impacts to Option 2. The creation of specific statutory powers to review enables additional checks where there is doubt over the validity of cause of death for individual deaths. However, Option 3 creates a large administrative cost to the Ministry in appointing and supporting a substantial death certification audit function. This is in addition to the administration costs on DHBs who would be required to establish peer-review committees.

There are also significant administrative challenges in being able to review the MCCD before the body is disposed of. This especially impacts on Māori and other cultural minorities.

**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?**

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

## **A6 The Ministry's preferred option**

At this stage, the Ministry prefers Option 2: *Establishing a death certification auditing committee system.*

Options 2 and 3 provide substantively better outcomes than Option 1 (maintaining the status quo) when assessed against the assessment criteria. However, Option 2 is preferable as it presents lower administrative and compliance costs for both the Ministry and DHBs while still delivering a fit-for-purpose and robust system for auditing death documentation.

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

# Section B: Regulation of the funeral services sector

## B1 New Zealand's funeral services sector today<sup>20</sup>

### B1.1 What happens after you die?

For most natural deaths, following certification of cause of death by a doctor or nurse practitioner, the deceased's body is released to their family for preparation for a funeral, tangi or other rite. In New Zealand, there is no legal obligation to have a funeral. However, there is a cross-cultural expectation that the deceased person will be treated with respect, and funeral services should be delivered in a culturally appropriate way, for example tangihanga.<sup>21</sup> There is also a legal obligation that the deceased person will be laid to rest in a dignified way and their death registered with the Registrar-General of Births, Deaths and Marriages.

In New Zealand, most funerals are held within one to two weeks of a person's death, and traditionally it is the responsibility of the deceased's family to organise the funeral. However, due to the emotional and administrative burden of organising a funeral, families can pay a funeral director to prepare a body for burial as well as organising a funeral service. Most funeral services in New Zealand are carried out by professional funeral directors or embalmers.

<sup>20</sup> Note that changes to the Health (Burial) Regulations 1946, Parts 4, 5, and 7, concerning the construction, maintenance and registration requirements for mortuaries, and transport and handling of dead bodies, are out of scope of this review.

<sup>21</sup> A traditional Māori funeral rite held on a marae.

## B1.2 The funeral services sector

The funeral services sector is an umbrella term for businesses and individuals that provide professional funeral services for payment. A funeral director is the public face of the funeral sector and their tasks include:

- transporting the body
- embalming or otherwise preparing the body for disposal
- providing a coffin or casket
- arranging a ceremony or committal
- obtaining medical certificates and registering the death with the Registrar-General of Births, Deaths and Marriages
- paying other costs such as clergy fees, flowers, notices and cemetery/crematoria fees
- organising a memorial service.

Currently, there are around 500 funeral directors in New Zealand.

Embalmers carry out processes that preserve the body by injecting disinfecting and preserving liquids into the arteries, which slows the decomposition of the body. Although there is no legal requirement to embalm a body, it is estimated that around 90 percent of deceased bodies in New Zealand are embalmed.<sup>22</sup>

Funeral service firms vary in size and one firm can employ more than one funeral director, as well as other people such as embalmers and administrative staff. In the past, funeral services firms have only operated one funeral home serving one community. Over the last 10 years, however, larger corporate models, where one company operates multiple funeral homes in multiple locations, and smaller firms that provide niche funeral services (ie, eco-burials) have become more common.

## B1.3 Current regulation of the funeral services sector

### B1.3.1 Registration

A funeral director must be registered with the local council.<sup>23</sup> Registration of funeral directors is for record-keeping purposes, and there are no grounds for refusing a registration application. Each premises that a funeral director operates within the same district must have a separate certificate of registration. Further, a funeral director who opens an additional premise in another local council district will also have to register with the relevant local authority.<sup>24</sup>

<sup>22</sup> Airlines generally require a body to be embalmed if it is going to be repatriated to another country.

<sup>23</sup> Health (Burial) Regulations 1946, reg 4.

<sup>24</sup> For more information on registration requirements, see the Health (Burial) Regulations 1946; [www.legislation.govt.nz/regulation/public/1946/0132/latest/DLM2944.html](http://www.legislation.govt.nz/regulation/public/1946/0132/latest/DLM2944.html)

### B1.3.2 Voluntary self-regulation

Beyond registration, the conduct of the funeral services profession is voluntarily self-regulated. Three main industry organisations exist: Funeral Directors Association of New Zealand (FDANZ), New Zealand Independent Funeral Homes (NZIFH) and New Zealand Embalmers Association Inc (NZEA). Although membership of these organisations is voluntary, it is estimated that over 80 percent of funeral service providers are a member of at least one industry organisation.

To become a member of these organisations, funeral directors and embalmers must fulfil certain requirements under the relevant codes of ethics.<sup>25</sup> FDANZ members must have a nationally recognised qualification in funeral directing and undergo mandatory ongoing training in order to remain an FDANZ member. NZIFH is a membership of funeral homes, rather than individual funeral directors. To be a member, a funeral home must be independent, New Zealand family-owned and operated and have employees who are well-trained, professional and experienced. To become a member of NZEA, an embalmer must undergo an examination or hold a relevant qualification, as well as a current practising certificate.

## B1.4 Price disclosure

A funeral is often the third most expensive purchase that many people will ever make (after a house and car) (Lino 2006, as cited in Law Commission 2015). The average cost of a funeral is estimated to be between \$8,000–\$10,000.

There are no legal requirements to disclose funeral pricing information with consumers before entering into a contract to provide funeral services,<sup>26</sup> and funeral directors do not always advertise funeral prices. Instead, they will provide a quote, with the full cost only being disclosed after the funeral.<sup>27</sup> Further, many funeral directors charge a significant amount as a generic service or professional service fee, which makes it difficult for customers to clearly understand the breakdown of costs. FDANZ encourages members to provide pricing information upfront.

## B1.5 Consumer protection and disputes

In New Zealand, there are limited mechanisms for dealing with disputes arising from the lack of pricing transparency or issues with running a funeral. The Fair Trading Act 1986 makes it illegal for funeral directors to mislead consumers or engage in deceptive conduct in the course of trade. This provides consumers some protections against

<sup>25</sup> For more information on these organisations and their entry requirements, see [www.fdanz.co.nz](http://www.fdanz.co.nz), [www.nzifh.org.nz](http://www.nzifh.org.nz), and [www.nzembalmers.org.nz](http://www.nzembalmers.org.nz)

<sup>26</sup> However, this is not the case in other jurisdictions, for example, the United States and New South Wales, Australia.

<sup>27</sup> There is an implied guarantee in all contracts for services that (such as funeral services) that, the consumer is not liable to pay to a supplier more than a reasonable price for the service where the price for the service is not specified in the contract or is to be determined at a later date (s 31, Consumer Guarantees Act 1993).

misleading funeral quotes, despite having limited recourse to amend a situation where this occurs.

There is no formal body that deals with funeral director complaints. If a person is unhappy with the standard of service received or disputes a price, they can make a claim to the Disputes Tribunal of New Zealand.<sup>28</sup> The tribunal can award damages for breach of contract and consumer protection legislation but cannot make orders restricting a funeral director from practising.<sup>29</sup>

FDANZ has a formal complaints resolution procedure to resolve complaints about FDANZ funeral directors who have breached the FDANZ code of ethics. FDANZ does not consider complaints about price disagreements or complaints about non-FDANZ funeral directors.

NZIFH and NZEA do not have publicised formal complaints processes, but they do provide their contact details, which allows consumers to voice their concerns.

## B2 Issues with the current system

Although respect for the body of the deceased person is a key principle of most funeral directors' practices occasional issues do arise.

### B2.1 Lack of consumer protection mechanisms

There is limited protection or recourse available to consumers who purchase funeral services and are unhappy with the service they receive. The nature of things that can go wrong can mean that traditional legal avenues are not appropriate to address the harm. The Law Commission found that there is a common misconception by the general public that funeral directors are licensed or regulated by the government. The Law Commission concluded that the current legislative protections provide very limited assurance around the quality of standards in the industry.

Two main types of disputes can occur due to this lack of protection for consumers: disputes around a poorly run funeral and/or disputes around unexpectedly high bills for funeral services. The government does not hold any data about the number of disputes, but anecdotal evidence and the Law Commission's report confirm that they occur.

The Law Commission concluded that respect for the body of the deceased person is a key principle of most funeral directors' practices. However, problems can still

<sup>28</sup> The Disputes Tribunal of New Zealand is quicker, cheaper and less formal than a court and can be used to settle small claims up to \$15,000, or \$20,000, if everyone agrees. More information on the tribunal can be found at: [www.disputestribunal.govt.nz](http://www.disputestribunal.govt.nz)

<sup>29</sup> The District Court can make a management banning order where an individual has committed certain offences under the Fair Trading Act 1986 on at least 2 separate occasions within 10 years (s 46C, Fair Trading Act 1986). A management banning order stops a person from being a director of, or being in any way (whether directly or indirectly) concerned in or taking part in the management of business in New Zealand.



occasionally arise due to a funeral service provider's lack of knowledge or experience. It is possible that, when problems arise, they can go undetected because a lot of services occur out of sight of the consumer. Additionally, when consumers do discover issues, they may not report them, as there is often no clear avenue for making complaints. This means that providers' actions that offer an indignity to the deceased could be underreported (Law Commission 2015).

FDANZ stated in January 2019 that it received no complaints in 2018 regarding the practices of its members but had received a small number of complaints about non-FDANZ members. These complaints related to poor service and lack of good process and transparency.

## B2.2 Poor quality or non-delivery of contracted funeral services

When providing funeral services, there are always risks of:

- funerals being conducted in a way that diminishes the dignity of the dead or causes stress to the family
- the consumer lacking enough general knowledge about what is required to plan a funeral and the necessary experience and qualifications of providers.

Although most funeral service providers do a good job and leave families feeling good about their funeral experience, there are still reports of things going wrong.<sup>30</sup> There is a lot of spiritual and emotional sentiment attached to the process of disposing of a body, and a poorly run funeral or incorrect embalming can make the trauma of losing a loved one much worse. When a funeral is run poorly, there are limited avenues of recourse for the family. The harm suffered cannot be repaired – a funeral cannot be run again and a distressing experience for friends and family of the deceased cannot be reversed.

There have also been instances where funeral service businesses have taken pre-payments from customers but then gone into liquidation and have not be able to refund the prepayment. In some such instances, other funeral directors have stepped in to provide services for free, or at a discounted rate, to protect the dignity of the dead and the reputation of the profession as a whole.

There is also a lack of choice in the more regional areas, meaning that one funeral director may control the market in the area, and consumers do not have the opportunity to shop around and choose the best option.

<sup>30</sup> For example, allegations against funeral directors for failing to correctly embalm the deceased, failing to inter the ashes of an elderly couple and mix ups resulting in the wrong body being cremated and farewelled at a Hamilton funeral service.

## B2.3 Lack of pricing information and bill shock

When purchasing funeral services, consumers sometimes lack adequate information to make informed decisions because of the time pressures, emotional stress and lack of a familiarity with these kinds of services. Over their lifetime, an average New Zealander will most likely arrange only one or two funerals. Funeral directors are therefore a source of expertise around how a body can be disposed of, how to arrange the funeral service and the legal requirements for registering a death. Consumers rely on a certain level of competence and professionalism from funeral service providers.

Purchasing funeral services has been described as a classic “distress purchase” (United Kingdom Office of Fair Trading 2001, cited in Law Commission 2015). If funeral directors do not publish pricing information (which they are not required to do), it can be hard to find out how much things will cost, especially when under time-pressure and other constraints. Those for whom English is a second language are especially disadvantaged.

Funeral directors hold information about what is required for a funeral, and so there is the potential to oversell (sell extra unnecessary elements) or to not make the consumer aware of the parts of the funeral that they can choose for themselves. For example, consumers may not know that they have a choice of whether to embalm the body, to dispose of the body before a service, or other options that can be taken to keep the cost of the funeral down.

Conversely, the Ministry understands that it can be very hard for funeral services to raise or discuss issues such as funerals prices at such a sensitive time.

Regardless of these contextual factors, not discussing indicative costs at the outset can contribute to consumers making uninformed decisions and ending up with an unexpectedly high bill, which in the worst-case scenario can put families into financial difficulties.

In 2018, FDANZ received some complaints from consumers relating to the costs of funerals. However, these could not be dealt with under the complaints process, as the funeral directors in question had followed the processes required.

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

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

## B3 Regulating the funeral services sector

### B3.1 Options

The Ministry has considered four options to regulate the provision funeral services, based on the Law Commission's recommendations, the Government's response to those recommendations and subsequent policy work undertaken by the Ministry. A high-level summary of these options is provided below.<sup>31</sup>

- **Option 1:** Maintaining the status quo
- **Option 2:** Removing registration requirements
- **Option 3:** Providing central Government registration (recommendations 81, 82, 87)
- **Option 4:** Providing central regulation for funeral directors (recommendations 81–91, 94, 95).

#### B3.1.1 Option 1

Funeral directors would continue to be registered with the relevant territorial authorities for those areas in which they operate. The industry would continue to regulate itself through voluntary membership of industry organisations.

#### B3.1.2 Option 2

Current requirements to register as a funeral director with territorial authorities would be removed and an industry self-regulation model apply.

#### B3.1.3 Option 3

No changes would be made to the eligibility for funeral directors' registration, except that the registration function would be centralised and undertaken by the Registrar-General of Births, Deaths and Marriages. This would be a similar process as used for marriage celebrants.

Funeral directors would only need to be registered once every three years, and the registration would allow funeral directors to practice nationally. The cost of operating the system would be recovered through registration fees.

<sup>31</sup> For further detail, including the full list of recommendations, please see Law Commission 2015.

### B3.1.4 Option 4

Option 4 would mean adopting all of the Law Commission's recommendations regarding the funeral services sector. People providing funeral services to the public (funeral directors and embalmers) must be registered to operate or be acting under the direct supervision of a registered person. It would be an offence to carry out the business of providing funeral services to the public (funeral directors and embalmers) without being registered or being supervised.

The Registrar-General of Births, Deaths and Marriages would oversee the registration process and recover the cost of operating the system through registration fees.

An applicant for registration would need to pay the prescribed fee and demonstrate:

- they have no criminal convictions for offences under the Act, section 150 of the Crimes Act 1961, any crimes involving dishonesty and any convictions for offences relating to unfair conduct under the Fair Trading Act 1986
- they:
  - are not under 18 years of age
  - an undischarged bankrupt
  - had a previous cancelled registration
  - are prohibited from being a director, promoter or manager of a company
  - are subject to a property order under the Protection of Personal and Property Rights Act 1988
- they hold a relevant qualification or have passed an approved examination that demonstrates they have the relevant knowledge to deliver funeral services competently to the public.

Registration would need to be renewed every three years. The Registrar-General of Births, Deaths and Marriages would have the power to investigate and prosecute any breach of the registration requirements and to cancel a person's registration if one of the conditions for registration ceases to exist. A person may appeal any decision of the registration authority, on matters of law, to the District Court.

As a transitional measure, funeral directors who have been practicing continuously for the previous three years before any new legislation came into force would be deemed to have achieved the training requirements and would not be required to gain additional qualifications.

All registered funeral service providers would have duties to ensure that:

- records are kept in respect to every human dead body in its custody
- the identity of a body is maintained while it is in the custody of the business
- all unregistered employees are directly supervised.

It would be an offence to breach any of the duties.

**17 What do you think about the options identified for regulating the funeral services sector? Do you want to suggest any additional options? If so, please provide the reasons for your alternative options.**

## B3.2 Impact analysis

This section identifies potential impacts from implementing any of the options for regulating the provision of funeral services. For all options, all funeral directors who operate a mortuary would still be required to comply with the construction and maintenance standards for mortuaries and register the mortuary with the territorial authority in which they operate.<sup>32</sup>

### B3.2.1 Option 1

All issues outlined in section B2 remain.

### B3.2.2 Option 2

Option 2 repeals local government oversight of the funeral services sector, which reduces the administrative burden of regulation for funeral service providers and territorial authorities. There would be decreased administrative costs for funeral directors as they would no longer pay the registration fee or fill out the application form and decreased administrative costs for territorial authorities, as they would no longer need to keep a record of funeral director registrations or process registration applications.

There would be a potential increase in administrative cost for government, as it would lose access to a cost-effective means for identifying funeral directors and where deceased bodies are stored in the community, information that may be required during a civil defence emergency or during a pandemic response.

Option 2 is not effective in addressing the identified problems in B2. The current registration requirements serve as a small barrier to entry given that there are currently no grounds for declining a registration.

### B3.2.3 Option 3

The impacts of Option 3 are substantially similar to the status quo, as the option does not address any of the identified problems.

<sup>32</sup> See footnote 20.

Option 3 presents benefits to funeral service providers as it requires funeral service providers to register, every three years, with the Registrar-General of Births Deaths and Marriages, as opposed to registering with the territorial authorities where they operate. This reduces the compliance costs for funeral directors because they only need to register every three years (as opposed to every year) and, if they operate across multiple districts, only register once. Central registration aligns funeral directors with similar regulated groups, such as marriage celebrants.

There would be decreased administrative costs for territorial authorities as responsibility for registration would transfer to central government. There would be costs to develop a central registry, however, the Registrar-General may be able to partly leverage off experiences or adapt infrastructure from its current register of marriage celebrants. The registry could be funded out of registration fees.

### B3.2.4 Option 4

Option 4 restricts the provision of funeral services to those who are registered. Registration requirements would be strengthened to ensure that those who provide funeral services are adequately trained and are of good character. These new requirements create a higher standard of practice for those delivering funeral services by implementing entry and disqualification criteria. Increasing the competence of funeral directors will reduce the risk of mishandled funerals.

Training requirements guarantee that new registrants have the knowledge to provide appropriate funeral services. Additionally, the requirement for re-registration and the ability for the Registrar-General of Births, Deaths and Marriages to deregister funeral service providers increases the likelihood that all funeral directors, who are registered, continue to be of good character after their initial registration.

Further, a central registry body with investigatory powers creates an alternative complaint pathway to the Disputes Tribunal. Deregistration would prevent future issues arising with particular directors, although the registry body could not provide any other remedy for the aggrieved consumers other than moral vindication. Hence the Disputes Tribunal would remain an essential element of recourse for consumers.

Option 4 creates increased administrative costs for new funeral directors to meet training requirements or for existing funeral directors to show that they meet the requirements for registration. Further, there will be costs to funeral directors to make sure they do not breach any of their legislative duties. Funeral directors would also have to pay a registration fee, which would most likely be greater than the current registration fee. Additionally, there would be an increased administrative cost for central government to establish and maintain a registration body that would be responsible for compliance and enforcement.

These costs to individual funeral directors and the government would be greater than the costs outlined in Options 1 and 2. As the cost of the operating the regulatory system would be recovered from registration fees, such costs may well be passed on to consumers through increases in services fees. Consumer prices might also increase due

to decreased competition among funeral providers, as a result of increase barriers to entry.

Finally, Option 4 would also mean decreased costs for territorial authorities as they would no longer have a role in regulating the funeral services sector.

**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?**

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

### B3.3 The Ministry's preferred option

At this stage the Ministry prefers Option 1: *Maintaining the status quo*. Although there is a theoretical justification to increase regulatory protections for consumers (as outlined by the Law Commission) and Option 4 would most likely confer some benefits on consumers, we do not consider there is enough of a case to warrant government regulatory intervention. We are not aware of any conclusive and compelling evidence that there is general lack of competency in the funeral services sector or any significant risk to the public that requires immediate intervention. While 'botched' funerals issues can be potentially traumatising, in general, the funeral services sector is respectful of the deceased and seems to be doing a good job.

We wish to test this position with stakeholders and request feedback about the potential nature and scale of the problem.

Following the completion of this process and depending on the nature of the submissions and the evidence received from them, we are open to revising our position.

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

## B4 Informing consumers about the costs of funeral services

### B4.1 Options

The Ministry has considered three options to better inform consumers about the costs of funeral services, based on the Law Commission's recommendations, the Government's response to those recommendations and subsequent policy work undertaken by the Ministry. A high-level summary of these options is provided below.<sup>33</sup>

- **Option 1:** Maintaining the status quo
- **Option 2:** Making it mandatory to disclose some component prices
- **Option 3:** Making it mandatory to disclose all component prices as per the Law Commission's recommendations (recommendations 96–103).

#### B4.1.1 Option 1

There would continue to be no legislative requirement for funeral directors to disclose indicative funeral pricing before entering into a contract for funeral services.

#### B4.1.2 Option 2

Funeral directors could be required to specify whether they provide basic or non-basic funerals.

A basic funeral would be defined as a package of funeral services provided at a set price. It would consist of a single funeral service (that is, memorial service), conducted at the funeral director's premises or the burial or cremation site. It would take place on a weekday between 8 am and 5 pm and would include only the following elements:

- arrangement and conduct of the funeral
- transportation of the body to the funeral director's premises, mortuary and burial or cremation site, where each individual journey is no more than 30 km
- storage of the body at a mortuary or holding room
- preparation of the body for burial or cremation (does not include preparation for viewing or embalming)
- the least expensive coffin available
- completion of compulsory medical certificates or permits, and
- burial or cremation of the body.

Any funeral director who provided the basic funeral option would have to inform all prospective consumers about this option by giving them a written 'basic funeral notice' before entering into any funeral arrangement.

<sup>33</sup> For further detail, including the full list of recommendations, please see Law Commission 2015.



It would not be compulsory for a funeral director to provide basic funeral packages, but if they did provide a package that met the criteria of a basic funeral, regardless of what they called it (eg, an 'economy funeral'), then the obligation to provide a written "basic funeral notice" would apply.

If a customer wanted to arrange a non-basic funeral, the funeral director would have to give them an itemised written quote, specifying each of the goods and services that would be provided and the costs for each, including the estimated costs of the necessary disbursements.

Before accepting the final payment, all funeral directors would be required to give the customer a written statement itemising each of the goods and services provided and their costs, including the costs of disbursements. This would apply to basic and non-basic funerals.

### B4.1.3 Option 3

Option 3 involves adopting all of the Law Commission's recommendations relating to mandatory disclosure of component prices.

Under this option, funeral directors would be required to publish a price list of all the funeral goods and services that they offer, either on a website and in a written form to be provided to anyone who asks for it. At a minimum, the price list should include:

- a description and total price of funeral goods and services offered
- a list of any service fees charged by the funeral services provider
- the maximum price that a funeral service provider charges for funeral goods and services
- any other particular items required by regulations made under the new statute.

Before entering into an agreement for the supply of funeral goods or services, the funeral service provider would need to give the consumer a statement of the costs of the funeral, including:

- the cost of each of the goods and services to be supplied
- the cost of any disbursement
- the cost of any services fees
- the description of each item in the package if relevant, and a total cost of the package
- a description of how to make a complaint about costs and pricing if a consumer wishes to do so.

Each item on the statement of costs (except disbursements) would need to correspond with an item on the published price list.

If the exact cost of the disbursements was unknown at the time of providing the initial statement, the funeral service provider would need to provide a reasonable estimate and an actual disbursement cost with the final invoice. The service fee could only cover services for which the cost was unable to be determined at the time of providing the initial statement.

It would be an offence not to comply with any of the above price disclosure requirements.

A website could be developed and maintained providing information to assist consumers in making decisions after a death, in particular decisions about purchasing funeral services.

**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? If so, please provide the reasons for your alternative options.**

## B4.2 Impact analysis

This section identifies potential impacts from implementing any of the options for informing consumers about the cost of funeral services.

### B4.2.1 Option 1

All issues outlined in section B2 remain.

### B4.2.2 Option 2

Option 2 creates a number of benefits for consumers. Primarily, higher transparency around funeral pricing enables consumers to make more informed choices when choosing funeral services. Consumers would be able to clearly view indicative pricing lists without having to contact different funeral service providers. Second, an itemised quote, given before the delivery of services, provides clarity before entering into contractual arrangements about the likely costs that would be involved and creates certainty around pricing and service. Finally, Option 2 ensures that consumers are informed about the elements included in a basic dignified funeral and provides an external reference point to enable easy comparison of the different providers' services. This would be an especially beneficial reform for those with low financial literacy and those who speak English as a second language.

Option 2 would have impacts for funeral service providers, as they would be required to develop a basic funeral notice (if offered), to develop processes to provide a full itemised quote before entering into a contract for services and to set up a system for providing a full itemised invoice before payment.

The impact of mandatory price disclosure may also incentivise funeral services to increase the quality of their service or to be more competitive. There are risks, however, that mandatory disclosure of information may facilitate coordination among firms. Also, in areas where there is already limited competition for funeral services, the competition effects may be more limited.

### B4.2.3 Option 3

Option 3 has substantially similar impacts to Option 2, however, it would involve an increased administrative cost for funeral service providers to publish price lists for all services, as well as providing quotes for all funerals. There would be additional ongoing costs in keeping the price lists up to date. We do not expect that these costs will be significant.

Option 3 provides increased price transparency for all consumers and potentially lessens the possibility of bill shock. However, consumers may have less certainty around what is considered a 'basic dignified funeral' as this label would no longer be an external guide to making it easier to compare different providers.

Finally, Option 3 increases costs for the government in terms of monitoring and enforcing the price disclosure requirements and maintaining the funeral pricing website.

**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?**

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

## B4.3 The Ministry's preferred option

At this stage, the Ministry prefers Option 1: *Maintaining the status quo*. The industry would continue to self-regulate pricing disclosure requirements through organisations such as FDANZ.

We recognise that Options 2 and 3 would both likely create benefits for consumers, we do not consider there is enough of a case to warrant government regulatory intervention. We are keen to seek additional feedback from the public about the nature and scale of the problem of bill shock and from the wider funeral sector on the impacts of mandatory price disclosure.

Following the completion of this process and depending on the nature of the submissions and the evidence received from them, we are open to revising our position.

**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.**

# Section C: Burial and cemetery management

## C1 The current framework for burial and cemetery management in New Zealand<sup>34</sup>

### C1.1 Existing types of burial land and their management

New Zealand had no national burial legislation until well after the arrival of British settlers. The first legislation was passed in 1877, then again in 1882 with the Cemeteries Act, which sought to impose some order on the disparate places of burial that had emerged to serve the colonial communities. Since then, legislative change has been piecemeal, addressing the immediate burial demands of New Zealanders as they arose. Even current legislation, the Burial and Cremation Act 1964 (the Act), retains many of the original provisions of the 1882 Act.

Because of its historic development, the Act recognises a variety of different types of burial land. It also contains a number of specific provisions around controlling and managing these places and outlines the statutory restrictions that apply. While the main thrust of the burial provisions is that cemeteries should be provided by local government, five additional types of burial place are recognised. These are summarised in Table 2 below. Table 2 also includes the management provisions and statutory restrictions that apply to closed cemeteries and burial grounds.

<sup>34</sup> Urupā and burials at sea are out of scope of this review.

Table 2: Types of burial land recognised by the Act and management responsibilities

| Type of burial land recognised by the Act | Defining features  | Responsible manager | Summary of management responsibilities (rights, duties and powers)   | Statutory restrictions  |
|---|--|---------------------|--|---|
| Cemetery (local authority)                | <p>For burying deceased persons</p> <p>Open to all</p> <p>Established on land that the local authority holds title for or administers</p> <p>Can contain denominational sections at the discretion of the local authority</p> <p>Must permit the bodies of any poor person to be buried free of charge</p> <p>Local authority cemeteries account for 70–80% of cemeteries in New Zealand</p> <p>New cemeteries can be established by local councils (s 4).</p> | Local authority     | <ul style="list-style-type: none"> <li>• Build fences, lay out and ornament the cemetery, make drains</li> <li>• Maintain and landscape the cemetery, including graves and monuments</li> <li>• Permit graves and vaults to be dug and monuments to be erected</li> <li>• Sell the exclusive right for burial</li> <li>• Permanently set aside portions for burial of members of a religious denomination or members of Her Majesty's Forces who have eligible operational service</li> <li>• Make bylaws</li> <li>• Appoint officers to assist in the execution of the Act</li> <li>• Spend money to clear, clean or repair any closed, disused or derelict cemetery or place of burial</li> <li>• Grant leases of any unused portion of the cemetery for a term not exceeding five years</li> <li>• Keep money received in a separate account and apply it to the management of cemeteries.</li> </ul> | <p>Cemetery land may not be used for other purposes or mortgaged or sold except as provided by the Act.</p> <p>This includes any land that has been set aside for use as a cemetery, including land that does not have bodies buried in it.</p> <p>Cemetery land that is not required for cemetery purposes may be disposed of with the permission of the Minister of Health. If it is disposed of, it ceases to be a cemetery, and the statutory restrictions no longer apply.</p> |
| Cemetery (trustee)                        | <p>Established by community-based groups before the Act commenced</p> <p>For burying deceased humans</p> <p>Open to all</p> <p>No new trustee cemeteries can be established.</p>   | Trustees            | As above   | As above  |

| Type of burial land recognised by the Act | Defining features   | Responsible manager             | Summary of management responsibilities (rights, duties and powers)                           | Statutory restrictions |
|---|---|---------------------------------|--|------------------------|
| Denominational burial ground              | Established by a religious denomination, for burying adherents of that group<br><br>Historically formed to serve needs of small rural parishes<br><br>New denominational burial grounds can be established (s 31(1)). | Land owner or delegated manager | Some of the rights, powers and duties as above 'so far as they are applicable' <sup>35</sup> | As above               |
| Private burial ground                     | Established by groups other than religious denominations, eg, the Seddon Family Burial Ground, Wellington<br><br>No new private burial grounds can be established.  | Body corporate of trustees      | As above   | As above               |
| Private burial place                      | For individual cases of burial in a place that was used for private burial before the Act commenced <sup>36</sup><br><br>No new private burial places can be established.   | None appointed                  | No provisions for management   | None                   |

<sup>35</sup> Burial and Cremation Act 1964, section 36(1).

<sup>36</sup> Not being a private burial ground.

| Type of burial land recognised by the Act | Defining features  | Responsible manager | Summary of management responsibilities (rights, duties and powers) | Statutory restrictions |
|---|--|---------------------|--|------------------------|
| Special place                             | For individual cases of burial in any place under 'exceptional circumstances' <sup>37</sup><br>Usually for burial in special places of honour, eg, Burial of the unknown soldier at the National War Memorial in Buckle Street, Wellington | None appointed      | No provisions for management                                       | None                   |

<sup>37</sup> Burial and Cremation Act 1964, section 48.

| Type of burial land recognised by the Act          | Defining features   | Responsible manager  | Summary of management responsibilities (rights, duties and powers)   | Statutory restrictions  |
|--|---|--|--|---|
| Closed cemeteries (local authority and/or trustee) | The Minister of Health may close a cemetery and direct that no further burials take place there | Whoever was the cemetery manager at the time of closure<br><br>However, the Minister may vest the control and management of a closed cemetery in any individual, body corporate or local authority | Subject to the Minister's notice of closure, the cemetery manager will continue to have management responsibilities for the site, as above, except for future burials.<br><br>'A closed cemetery shall be maintained in good condition.' <sup>38</sup><br><br>Upon closure, a cemetery manager may apply to the Minister of Health to remove any or all of the monuments and tablets, level the ground and plant the cleared area with trees. The Act does not stipulate any ongoing management expectations for such an area. | Cannot be sold, leased or otherwise disposed of or diverted to any other purpose. |

<sup>38</sup> Burial and Cremation Act 1964, section 43(1).



| Type of burial land recognised by the Act | Defining features  | Responsible manager   | Summary of management responsibilities (rights, duties and powers)  | Statutory restrictions   |
|---|--|---|---|--|
| Closed burial grounds                     | The Minister of Health may close a burial ground and direct that no further burials take place there | Whoever was the manager at the time of closure<br>However, the Minister may vest the control and management of a closed burial ground in any individual or body corporate | Subject to the Minister's notice of closure, the existing manager will continue to have management responsibilities for the site, as above, except for future burials.<br>The Minister may also provide for the future maintenance of a closed burial ground and all related matters.<br>Upon closure, a burial ground manager may apply to the Minister of Health to remove any or all of the monuments and tablets, level the ground and plant the cleared area with trees.<br>The Act does not stipulate any ongoing management expectations for such an area. | As above, however the Minister of Health may exempt a burial ground from this restriction. |

## C1.2 Maintenance of monuments

There is some legislative uncertainty about the power to maintain monuments, specifically, who holds this responsibility. The Act provides for cemetery managers to maintain all monuments in a safe, clean and orderly condition and confers upon them a power to repair or remove broken or unsafe monuments. The Act also provides for the successors of the deceased to maintain a monument or tablet in perpetuity. The Act is unclear about the division of such maintenance.

## C1.3 Approval of new cemeteries and burial grounds

While the Act recognises a range of different types of burial land, it only provides for the establishment of new local authority cemeteries and denominational burial grounds. A new denominational burial ground must be approved by the Minister of Health. A new local authority cemetery does not require the same approval. For burial in a private burial place or special burial place, strict criteria apply and must be approved by a District Court Judge or the Minister of Health respectively. Where appropriate, the Minister may also reopen a closed cemetery or burial ground.

Today, establishing a new cemetery, burial ground or place of burial also requires resource consent. While this is not reflected in the Act, it is currently Ministry policy to alert anyone who want to open a denominational burial ground or apply for burial in a special place of the need for resource consent.

## C1.4 Unlawful burial

Currently, it is illegal to bury a deceased person on any land other than those places of burial outlined in Table 2<sup>39</sup> if there is such a place within 32 kilometres of the place of death or the place where the body has been taken for burial.<sup>40</sup> If there is no such place, any subsequent burial must be notified to the nearest District Court Judge within three days. It is also illegal to bury a deceased person in a cemetery or burial ground that has been closed.

<sup>39</sup> Not including a closed cemetery or burial ground.

<sup>40</sup> Burial and Cremation Act 1964, section 46(1).

## C1.5 Disinterment

Disinterment is the process of digging up human remains. There are some instances where it is appropriate to disinter remains from a place of burial. For example, families may wish to disinter remains to relocate them to be closer to other family members. Alternatively, multiple graves may be disinterred so that land may be used for alternative purposes. Under the Act, any person wishing to do so must first obtain a licence from the Minister of Health. To disinter a deceased person without a licence is a statutory offence.

The Act does not provide guidance in terms of the Minister's power to approve applications for disinterment. However, it is Ministry policy to consider the death certificate and assess whether next of kin have been notified (or a broader kinship group where the deceased person is Māori) and, if so, whether they have provided written consent to the disinterment. Most applications are granted unless there is a lack of consensus among relatives. Ministry policy also requires the disinterment itself to be supervised by a health protection officer, and the licence itself has a standard condition to this effect, although this is not required by the Act.

## C1.6 Ministerial powers relating to burial and cemetery management

The Act provides for a great deal of control over burial and cemetery management by the Ministry and Minister of Health. Ministerial powers include:

- approving the change of a cemetery's name<sup>41</sup>
- approving the declaration of a denominational burial ground<sup>42</sup>
- licencing a body's disinterment<sup>43</sup>
- closing a cemetery or burial ground and directing that no further burials take place there<sup>44</sup>
- authorising the removal of monuments from any closed cemetery<sup>45</sup>
- approving burial in a special place.

The Act also gives power to health protection officers, or other employees of the public service appointed by the Minister, to inspect any cemetery to ascertain its state and condition, examine the accounts and ascertain whether bylaws and regulations are being complied with.

<sup>41</sup> Burial and Cremation Act 1964, section 7.

<sup>42</sup> Burial and Cremation Act 1964, section 31.

<sup>43</sup> Burial and Cremation Act 1964, section 51.

<sup>44</sup> Burial and Cremation Act 1964, section 41.

<sup>45</sup> Burial and Cremation Act 1964, section 45.

## C1.7 Heritage New Zealand Pouhere Taonga Act 2014

In some cases, other statutes must be considered in relation to burial and cemetery management. The Heritage New Zealand Pouhere Taonga Act 2014, for example, protects 'archaeological sites', which are defined as any place that was associated with human activity before 1900. Many cemeteries and burial grounds are therefore archaeological sites under this Act and may not be modified or destroyed under the New Zealand Heritage List / Rārangi Kōrero or the Landmarks list.<sup>46</sup> This can pose difficulties for cemetery managers where monuments have fallen into a state of disrepair and pose a safety risk. Currently, they cannot repair hazardous monuments without first applying to Heritage New Zealand.

## C2 Issues with the current system

There are several issues with the current legislative framework for burial and cemetery management. The problems tend to fit into two broad categories. First, the Act has not aged well. Many of its provisions are overly prescriptive; it is often difficult for people to understand their respective powers and obligations; and much of its content is outdated and no longer relevant. Second, the Act does not reflect some of the more modern values and principles that New Zealanders consider are important in this area. These issues are discussed further below.

### C2.1 A confused framework for burial

Distinctions in the Act between the six different types of burial land can be confusing, are unnecessary and are often of historical interest only. Any area where deceased people are buried demands some form of consistent management and protection, regardless of its formal legal status.

The Act recognises six different types of burial land and subjects each to different rules. Today, however, it is sometimes impossible to state with certainty whether a particular place of burial is a denominational burial ground, a trustee cemetery or some other category (see Table 2 above). This ambiguity arises for a number of reasons, including:

- loss of historical data needed for classification purposes
- limited awareness of the distinction between types of burial places, leading to misclassification of burial land
- the close alignment of some otherwise defining features of different types of burial land
- practical instances of burial land having defining features from a variety of the categories outlined above.

<sup>46</sup> Heritage New Zealand Pouhere Taonga Act 2014, section 42.

These ambiguities create further challenges, including legal difficulties that arise around the classification of burial land and issues relating to the proper management of burial land.

Classification of burial land is important in a legal sense, noting that the powers, duties and statutory restrictions differ depending on the type of burial land under question. For example, a closed cemetery cannot be used for another purpose, nor can a closed burial ground, unless exempted from the restriction by the Minister of Health. Such an exemption is not provided for in the case of a closed cemetery. There have been instances where the Ministry has been required to obtain legal advice, which can be a costly and time-consuming process.

The ability to correctly classify burial land has further implications for its management. As outlined in Table 2, each type of burial land is managed by a different person or group who have different rights, powers and duties. In the case of private burial places and special burial places, no provisions for management are given at all. The ambiguities inherent within the current framework make it very difficult for the managers of cemeteries and burial grounds to ascertain their rights and obligations. While instances of cemetery mismanagement are not widespread, legislation should provide clarity and certainty in these areas.

## C2.2 Misaligned with modern legislation

Despite the major reforms in New Zealand's local government and resource management law over the last 25 years, the Act has not been updated to reflect a modern approach to land management and the role of local government.

As outlined in Table 2 above, the Act confers a range of highly prescriptive obligations on cemetery managers, as well as a range of very specific powers for local authorities. This level of detail is out of step with modern thinking in a number of areas.

First, it does not reflect that people who own land, including local authorities, automatically have broad powers to manage and deal with that land as they see fit, except as is specifically circumscribed by the law. The law should only interfere with the rights of land owners to use their property where there is strong public interest in doing so. While there is undoubtedly a public interest with regard to decisions about burial and cemetery management, the extent to which this translates in the current Act is overly prescriptive. Section 8(a) of the Act, for example, provides for local authorities to erect fences, a redundant provision according to a modern understanding of the rights of land owners.

On a similar note, the Act does not reflect the passing of the Resource Management Act 1991 and its resource consent framework. While it is currently Ministry policy to alert those who want to open a denominational burial ground or apply for burial in a special place of the need for resource consent, the Act does not discuss this aspect.

The Act also fails to recognise the passing of the Local Government Act 2002, which conferred a power of general competence on local authorities, giving them full capacity to do acts or enter into transactions in order to fulfil the purpose of local government. This contrasts with the Burial and Cremation Act, which includes very specific powers for local authorities.

## C2.3 Lack of clarity and detail in legislation

The Legislation Advisory Committee Guidelines (2014) state that good legislation should set out the matters that should, may or must be considered when exercising statutory power, in what circumstances it can be exercised and for what purposes. The Act falls short in this regard, resulting in legal ambiguities in several areas.

Section C1.6 above outlines a number of Ministerial powers relating to burial and cremation. The Act, however, fails to provide adequate guidance for carrying out these powers. While the Minister may approve a disinterment, for example, the Act fails to provide guiding criteria for making that decision.

The same lack of detail is evident in respect of the statutory powers of those who have control and management of cemeteries. For example, a local authority or trustee can determine whether it will provide a separate area within its cemetery for the burial of adherents of a particular denomination, but the Act does not establish guiding criteria for how that decision should be made. In practice, the Law Commission found significant discrepancies in how different councils were deciding such matters.

The Ministry has developed policy guidance to support interpretation and application of the law, but there is a need to provide more direction in the legislation itself.

Ambiguities also exist around who must consent to an application to disinter a body from a burial plot, who is responsible for the basic duties of upkeeping monuments and how to sell unused burial land. Such ambiguities have further implications for compliance, which can be difficult to enforce.

## C2.4 Generally archaic provisions

The Act is not well placed to serve modern New Zealand with many of the original provisions of the 1882 Act still incorporated. Fines for offences, for example, are denoted in the monetary unit of New Zealand pounds. Much of the Act's content is outdated and no longer relevant. Two examples are discussed further below.

The Act provides for a great deal of control over burial and cremation by the Ministry and Minister of Health. This is unsurprising given nineteenth century ideas surrounding death and burial. Historically, dead bodies were treated as hazardous to public health and burial was considered to be a way of dealing with this risk. More modern thinking, however, recognises that there are limited health concerns in this regard. The primary hazards are now recognised as relating to land use.

The Act states that it is illegal to bury a body in any land other than an approved place of burial if there is such a place within 32 kilometres of the place of death or the place where the body has been taken for burial. The 32-kilometre exception was implemented at a time when transportation was less efficient and there were many more isolated areas around the country.

## C2.5 Lack of recognition of diverse needs

New Zealanders have increasingly diverse ethnic, cultural and religious needs in relation to burial. Our multi-cultural society means that there is a range of beliefs, values and practices that need to be accommodated by legislation in this area. Compounding this, different methods of burial are becoming increasingly popular and available in New Zealand and internationally, including a rise in the popularity of natural burials.<sup>47</sup>

The Act only goes so far in providing for these alternatives. In most cases, groups that wish to adopt particular burial customs or practices must work with local authorities to have those customs and practices accommodated. Local authorities are under no legal obligations to oblige requests, and the Law Commission found that responses to requests were inconsistent.

Additional questions have been raised as to the appropriateness of using religion as the sole discretionary factor in relation to establishing new burial grounds. While the Act provides for the ongoing establishment of denominational burial grounds and requires local authorities to set aside denominational areas within a cemetery, it does not provide for other ethnic groups or those with other beliefs or cultural requirements. Nor does it provide for the establishment of new private burial grounds on the basis of any factor other than religion. As such, the Act is out of step with contemporary views of many people.

The Law Commission also found the Act to be too restrictive towards deceased people being buried on private land, noting that strict criteria must be met before the Ministry can approve such an application. Since 1982, the Ministry has received approximately 60 applications for burial in a special place, with few being approved, despite applicants having significant ties to private rural land. During public consultation, the Law Commission found that burial on private land had overwhelming support from the general public. The reasons for support ranged from the psychological benefits of permitting burial on land that has significance to the deceased person and their family to the need for increased choice.

<sup>47</sup> A natural burial typically involves burying an un-embalmed body in a biodegradable casket or shroud in a relatively shallow plot to promote rapid aerobic decomposition of the body. Usually, the plots are marked by plants rather than headstones.

**25 Do you agree that there are issues that could be improved with the current framework for burials and cemetery management? Why/why not? Are you aware of any other problems?**

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

## C3 A new burial and cemetery management framework

### C3.1 Options

The Ministry has considered three options for a new burial and cemetery management framework, based on the Law Commission's recommendations, the Government's response to those recommendations and subsequent policy work undertaken by the Ministry. A high-level summary of these options is provided below.<sup>48</sup>

- **Option 1:** Maintaining the status quo
- **Option 2:** Implementing a package of changes to the current system based on all of the Law Commission's recommendations (recommendations 20–72)
- **Option 3:** Implementing a package of changes to the current system based on most of the Law Commission's recommendations (as above but excluding recommendations 20, 21, 28, 29, 37, 41, 55, 69–72).

#### C3.1.1 Option 1

There would be no changes to the Burial and Cremation Act 1964 in relation to the burial and cemetery provisions, and the issues outlined in section C2 would remain.

#### C3.1.2 Option 2

##### C3.1.2.1 Proposed types of burial land and their management

Key features of the proposed cemetery management framework for Option 2 are outlined in Table 3 below. As a general rule, Option 2 denotes any land with a deceased person buried on it as a cemetery and designates the owner of that land as the cemetery manager, who is then subject to the management obligations described below.

<sup>48</sup> For further detail, including the full list of recommendations, please see Law Commission Report 134, *Death, Burial and Cremation: A New Law for Contemporary New Zealand*.



**Table 3: Types of burial land included in the proposed cemetery management framework**

| Type of burial land recognised by a new statute | Defining features   | Cemetery manager  | Management obligations   | Statutory restrictions   |
|---|---|---|--|--|
| Local authority cemetery                        | Open to all deceased persons <sup>49</sup><br>May include separate sections for any group of people with common burial requirements, not limited to religion<br>May include separate sections for members of Her Majesty's Forces who have eligible operational service <sup>50</sup> | Local authority (as the land owner)   | Maintain the land in a reasonable condition <sup>51</sup><br>Maintain a record of burials <sup>52</sup><br>Not use the land for other purposes <sup>53</sup><br>* Three additional duties for local authority cemeteries only would include:<br>Be open for the burial of any deceased person <sup>54</sup><br>Consider applications for separate areas <sup>55</sup><br>Create and maintain a cemetery policy <sup>56</sup> | Cemetery land must not be used for alternative purposes, except as provided for in the new statute.<br>If all bodies are disinterred from a place of burial, it ceases to be cemetery land. <sup>57</sup><br>If there are no deceased people buried in land set aside for cemetery purposes, it is not a cemetery.<br>* Note that statutory restrictions on selling and leasing cemetery land outlined in Table 2 would not apply. |
| Independent cemetery                            | Established by a private person or entity with similar burial needs (not limited to religion)   | Land owner (with provisions to delegate responsibility to another entity in certain circumstances – usually to the local authority) | As above   | As above   |

<sup>49</sup> This obligation would not extend to cemeteries where the local authority has taken over the management from another entity that was not originally bound by this provision.

<sup>50</sup> This would be a specific statutory power to recognise this special category and a mark of respect.

<sup>51</sup> This obligation should extend to the land, the landscaping and graves, including any monument or tablet on the graves. Specific maintenance standards are to be agreed in consultation with the local community and recorded in a unique cemetery policy.

<sup>52</sup> Records must be sent to local authorities at least once a year.

<sup>53</sup> This obligation requires that the land owner does not use the land for purposes 'inconsistent with its use as a cemetery', a concept that will be defined by the land owner and the local authority based on community needs, priorities and cultural expectations and recorded in a covenant. If a local authority agrees to vary or remove a covenant, this must be noted on the certificate of land.

<sup>54</sup> This obligation is provided for in existing legislation and would be carried over.

<sup>55</sup> This obligation would make the existing optional requirement for local authorities to consider applications for separate areas into a legal requirement.

<sup>56</sup> To be agreed in consultation with the community and to include, at a minimum, agreed maintenance standards and the provision of special areas.

<sup>57</sup> This would be recorded by the Registrar-General of Land.

| Type of burial land recognised by a new statute | Defining features  | Cemetery manager   | Management obligations  | Statutory restrictions |
|---|--|--|---|------------------------|
| Burial on private land                          | Burial on private land, usually rural, of no more than five bodies   | As above   | As above  | As above               |
| Community cemetery <sup>58</sup>                | A place of burial that was defined as a trustee cemetery under the Burial and Cremation Act 1964 <sup>59</sup> | Community manager, ie, whoever was running it effectively before the new Act | Current effective management systems to remain, with a range of basic default provisions. For the full list of provisions see the Law Commission report, Annex A. | As above               |

<sup>58</sup> Community cemeteries would be the term used to refer to current trustee cemeteries, which is a confusing term, given that some of the management arrangements currently falling into that category are not trusts in the legal sense of that word. We prefer the term 'community cemeteries' because that better reflects their public nature.

<sup>59</sup> Ongoing provision for community cemeteries acknowledges the fact that many current trustee cemeteries are functioning well. Any legislative changes are not intended to disrupt current effective management systems.

### C3.1.2.2 Maintaining monuments

A new statute under Option 2 would clarify the power of cemetery managers to maintain graves, despite any concurrent power or duty of maintenance falling on other people, including the relatives of the buried deceased person. This would be a general power, not limited to when the grave is dangerous. Non-cemetery manager powers could be conferred by virtue of a contract or bylaw and agreed as part of creating the cemetery policy as described in Table 3 above.

Option 2 would also provide an exception to section 42 of the Heritage New Zealand Pouhere Taonga Act 2014, giving cemetery managers the power to work on a heritage gravesite where there are safety concerns.

Option 2 would continue to provide similar powers for clearing closed cemeteries (removing monuments and tablets, etc) as are currently in section 45 of the Act. This would continue to be a legitimate method for managing older cemeteries in some limited circumstances. The local authority or Environment Court of New Zealand (the Environment Court) would grant permission to the cemetery manager to do so.<sup>60</sup>

### C3.1.2.3 Approval of new cemeteries

Any cemetery or burial place established before the new statute commenced and recognised under the current Act would need to be registered with the local authority and would then be considered an approved cemetery. This requirement would extend to the owner of any land who has reasonable grounds to believe that a body or bodies are buried on that land. Any burial outside those places would be subject to the process for approval of new cemeteries described below.

As with current legislation, a new statute under Option 2 would continue to require local authorities to provide cemeteries. Unlike current legislation, Option 2 would also provide for the establishment of independent cemeteries and more relaxed provisions for burial on private land.

Approval for the establishment of independent cemeteries would be at the discretion of the local authority, who would be legally bound to consider any such application. Guidance would be provided within the statute to aid local authorities in decision-making, and applications could be rejected for good reasons.

With regards to burial on private land, Option 2 would contain more relaxed provisions than current legislation. Specifically, burial on private rural land where the total number of burials is fewer than five could be approved solely under a process in the new statute and without deference to the Resource Management Act 1991. Approval for this would be at the discretion of the local authority, who must approve such an application if certain criteria are met.<sup>61</sup>

<sup>60</sup> In doing so, they must consider the projected costs for maintaining the cemetery, the availability of resources to perform the maintenance and any community opinions either supporting or objecting to the removal of the monuments.

<sup>61</sup> Criteria are: there is unlikely to be an adverse impact on any neighbouring land owners; the land is suitable for use as a cemetery; there is unlikely to be any adverse impact on surrounding land and waterways; the applicant has a strong family connection with the site and there is an adequate plan for the perpetual maintenance of the site as a cemetery.

#### C3.1.2.4 Unlawful burial

A new statute under Option 2 would continue to prohibit burial in places that are not approved cemeteries, as outlined in Table 3. The distance exception described in C1.4, however, would not be continued. That means, if a person could show that it was impractical to transport a body to an approved cemetery and that the body was buried respectfully in another place, a body may be buried outside of an approved cemetery.

#### C3.1.2.5 Disinterment

The main changes regarding disinterment under Option 2, as compared with current legislation, are mainly to do with the power of approval, which currently resides with the Minister of Health. Under Option 2, the power of approving applications for disinterment would be distributed as follows:

- Cemetery managers would be responsible for approving applications for disinterment of single graves.<sup>62</sup>
- In the case of burial on private land, the local authority would be responsible for approving applications for disinterment of single graves.
- The local authority would be responsible for approving disinterment of multiple graves in non-local authority cemeteries.
- The Environment Court would be responsible for approving disinterment of multiple graves in local authority cemeteries.

Option 2 would also provide detailed guidance about what the relevant decision-making bodies must consider in applications for disinterment. It would also include a regulatory-making power for the purpose of providing procedures to be followed when disinterring a body.

### C3.1.3 Local government's role in relation to all cemeteries

In addition to their duties as cemetery managers, Option 2 would confer a number of general obligations on local authorities in relation to all cemeteries within their district. The first two points described below represent obligations posing minimal to no change as compared with current legislation, while the remaining six points represent what would essentially be modified or additional obligations on local authorities.

#### Minimal to no change

- Duty to dispose of the body in the unlikely event that there is no executor, personal representative or family member to do so<sup>63</sup>
- Duty to keep records of cemeteries and burials within the district, to be accessible by the general public.

<sup>62</sup> Alternatively, applicants applying for disinterment of a single grave may apply directly to the courts. This would be a more complicated and expensive process but may be warranted where the applicant believes that the cemetery manager may not be impartial.

<sup>63</sup> Payment would be covered either from the deceased person's estate or the funeral grant from Work and Income.

#### Modified or new obligations on local authorities

- Duty to provide facilities for the disposal of bodies, rather than cemeteries specifically.<sup>64</sup>
- Duty of inspection and oversight, limited to an obligation to enter and inspect cemeteries to determine whether the requirements of the statute are being met, in response to information or complaints received.
- Obligation to assume responsibility for failing non-local authority cemeteries, or where a designated cemetery manager renounces their role.
- Duty to consider applications from non-local authority cemeteries for permission to remove monuments or tablets from a cemetery.
- Power to approve new independent cemeteries.
- Power to approve burial on private land.

#### C3.1.3.1 Role of the Environment Court

Option 2 would see a new role for the Environment Court in decisions relating to burial and cemetery management. The Environment Court's role would include:

- considering applications from local authority cemetery managers to use cemetery land for alternative purposes
- considering applications from local authorities to remove monuments or tablets from a cemetery
- approving multiple disinterments from local authority cemeteries.

The Environment Court role would essentially introduce a tiered system of enforcement and legislative oversight. Where the local authority was granted powers in relation to non-local authority cemeteries, the Environment Court would hold those powers in relation to local authority cemeteries.

#### C3.1.3.2 Exception to section 42 of the Heritage New Zealand Pouhere Taonga Act 2014

A new statute under Option 2 would provide an exception to section 42 of the Heritage New Zealand Pouhere Taonga Act 2014, giving cemetery managers the power to do work on a heritage gravesite where there were safety concerns.

#### C3.1.4 Option 3

Option 3 is essentially the same as Option 2, with five major exceptions:

- There would be no additional role for the Environment Court.
- Burial on private land would not be exempt from resource consent.
- There would be no provision for independent cemeteries.
- There would be ongoing provision for denominational burial grounds.
- There would be provision for new community cemeteries.

<sup>64</sup> This would mean, where appropriate, local authorities may only provide crematoria, or facilities to accommodate another approved method of body disposal, rather than a cemetery.

The very broad definition of a cemetery as being any land with a deceased person's body buried on it would not apply under Option 3.

These exceptions have been determined based on the Government's response to the Law Commission report and further policy work undertaken by the Ministry. The Government's response noted that they did not fully agree that the Environment Court is the appropriate body to make land use, disinterment and other decisions in the case of local authority cemeteries. It also noted concerns around the exemption of burial on private land from the resource consent process.

#### C3.1.4.1 No additional role for the Environment Court

Instead of giving a special role to the Environment Court, the functions outlined in section C3.1.3.1 would come under a single framework of management provisions, administered by the local authority. Local authority cemeteries would be bound to the same principles of management as non-local authority cemeteries, which would be determined in agreement with the community for which a cemetery serves.

#### C3.1.4.2 Burial on private land and resource consent

Option 3 does not exempt applications for burial on private land from the resource consent process. Decisions would be considered on a case-by-case basis according to the Resource Management Act 1991.

#### C3.1.4.3 No provision for independent cemeteries

Option 3 has no provision for establishing independent cemeteries, as outlined in Option 2 (see C3.1.2.3 above).

#### C3.1.4.4 Ongoing provision for denominational cemeteries

Option 3 would continue to recognise not-for-profit denominational cemeteries. The simplified list of management obligations would apply.

#### C3.1.4.5 Provision for new community cemeteries

Option 3 would include an approval mechanism for new community cemeteries as outlined in Option 2. Any such cemetery would be established on land recognised as appropriate burial land in the relevant district plan. These would be not-for-profit and with strict controls for managing the land in perpetuity. The simplified list of management obligations would apply.

**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?**

## C3.2 Impact analysis

This section identifies potential impacts from implementing any of the options for a new burial and cemetery management framework.

### C3.2.1 Option 1

All issues outlined in section C2 remain.

### C3.2.2 Option 2

Option 2 modernises the law relating to burial and cemetery management. It offers a simplified framework for providing places for burial and streamlines and clarifies obligations on cemetery managers. This would address the issues discussed in section C2 around the legal and management challenges that exist within current legislation. The reduced list of obligations on cemetery managers also recognises the general rights of land owners and would be developed in parallel with modern local government and resource management legislation.

Option 2 provides greater choice to New Zealanders in terms of options for burial, particularly in relation to providing independent cemeteries and the obligation for local authority cemeteries to consider any application for a separate section within a local authority cemetery (not limited to religion). The more relaxed provisions for burial on private land also cater to stated needs based on the Law Commission's findings.

Option 2 would see a number of burial and cemetery management functions shift from central government to local government. Local government would take on a more significant role in the provision and oversight of cemeteries, in a manner consistent with modern understandings around public health and land-use issues. A key theme for providing a new framework for burial and cemetery management is that decisions about important aspects of managing cemeteries should be decided in consultation with the community that the cemeteries serve. This fits with the principles of consultation underlying the reforms in the Local Government Act 2002. Given the existing role that local authorities have in managing cemeteries, we consider the added responsibilities conferred by Option 2 to be a natural extension of this role. While this would decrease resource cost for the Ministry, local government would have increased resource costs. We do not expect there to be overly significant impacts or burdens on local authorities, but there will be some need to develop new systems and processes in order to implement the proposals. However, we do assess some risk about the proposed obligation on local authorities to assume responsibility for failing non-local authority cemeteries, or where a designated cemetery manager renounces their role. This may become overly burdensome should non-local authority cemetery managers either fail to comply or renounce their role as manager.

Option 2 would see a new role for the Environment Court in relation to burial and cemetery management, conferring a range of new statutory powers on it. This would result in additional resource costs for the Environment Court. We do not anticipate this would create much additional burden as the obligations relate solely to approving various applications relating to burial and cemetery management, and clear guiding criteria to make those decisions would be provided in the new statute.

Option 2's very broad definition of a cemetery could introduce some risks, particularly where non-local authority cemetery managers cannot or do not meet their obligations. In the case of a failed cemetery, local authorities would assume responsibility for ongoing management of it, which may have consequences for local rate payers.

The provision for independent cemeteries would open up burial to privatisation. This may see the introduction of short-term business ventures with insufficient controls for land to be managed in perpetuity.

### C3.2.3 Option 3

Option 3 has similar impacts to Option 2 in terms of providing a modern and simplified framework for burial and cemetery management and increasing choice with regards to decisions around burial. Option 3 would similarly align well with other relevant modern statutes.

Option 3 would see a similar shift in functions from central government to local government, with the associated resourcing impacts.

**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?**

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

## C3.3 The Ministry's preferred option

At this stage, the Ministry prefers Option 3: *Implementing a package of changes to the current system based on most of the Law Commission's recommendations.*

Both Options 2 and 3 provide substantively better outcomes than Option 1: *Maintaining the status quo* when assessed against assessment criteria. However, Option 3 is preferred over Option 2 for several reasons, outlined below.



The Ministry considered that the broad definition of a 'cemetery' in Option 2 could be problematic, particularly where non-local authority cemetery managers cannot or do not meet their obligations. If such cemeteries are established on private land, it could be challenging or administratively burdensome for local authorities to monitor and enforce compliance or assume responsibility for a failing cemetery, with attendant consequences for ratepayers. Such issues would be compounded with independent cemeteries opening burial up to privatisation and increasing the risk of short-term business ventures with insufficient controls for land to be managed in perpetuity.

The Ministry considers that the obligation for local authority cemeteries to consider applications for separate sections for any group of people with common burial needs, as well as the provisions made for new community cemeteries or denominational burial grounds, would be sufficient in allowing for choice and meeting the burial demands for New Zealand.

Option 2 exempts burial on private land from the resource consent process. The Ministry considers that this unfairly removes the issue from public consideration, which is particularly relevant in considering tikanga Māori and other cultural beliefs. Resource consent is required for land uses of much lower public interest, such as building fencing or decking on a private property. The exemption of decisions relating to burial cannot be justified.

As discussed in section C3.1.4 above, Option 3 confers additional responsibilities on local authorities in relation to burial and cemetery management. While it is proposed that local government would have an expanded role for such functions, this consultation document is seeking feedback from local government on the practicalities and implications of this proposal.

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

# Section D: Cremation regulations and the medical referee system

## D1 Cremation in New Zealand

Cremation is a process where a deceased person's body is burnt and reduced to cremains (larger pieces of bone that do not fully burn), through a high-temperature combustion process within a cremator. Bodies are cremated one at a time, with the process taking between two and four hours. The cremains are gathered and ground into ashes using a cremulator. The ashes are given to family members or held by the cremator operator and then interred or scattered if unclaimed within a reasonable period.

Cremation currently accounts for about 70 percent of body disposal in New Zealand. It is regulated through the Cremation Regulations 1973 (the Regulations). The Regulations set out the processes for opening, closing and operating crematoria, as well as the process for an individual cremation.

### D1.1 Cremating a body

In order to legally cremate a body, permission must be obtained from a medical referee.<sup>65</sup> Medical referees are health professionals, with no less than 5 years' experience,<sup>66</sup> who perform a statutory role of reviewing cause of death documentation and cremation forms and making decisions as to whether to approve or decline applications for cremation.

Medical referees are appointed by cremator operators (crematorium authorities) with the approval of the Director-General of Health. Many medical referees are either practising GPs or retired or semi-retired hospital clinicians. Although the Ministry must approve any doctor or nurse practitioner appointed to act as a medical referee, it has no role in training or monitoring their work. In effect, medical referees are contracted by, and act for, one or more crematoria on a fee-for-service basis.

<sup>65</sup> Cremation Regulations 1973, regulations 5–7.

<sup>66</sup> Cremation Regulations, reg 6(2).

Medical referees act as an additional check on cause of death determination to assure 'that the cause of death has been definitely ascertained' before the body is irreversibly destroyed through cremation.<sup>67</sup> This is a crime prevention purpose, ensuring that any deceased person who is to be cremated did not die as result of criminal wrongdoing.<sup>68</sup>

A medical referee's review occurs after a health practitioner has issued a Medical Certificate of Cause of Death (MCCD), indicating that they considered the deceased person died of natural causes, or after the coroner has examined the body following a referral from the certifying health practitioner. Although the medical referee has the power to order a post-mortem of a deceased person in instances where the referee is not assured that the death has been 'definitely ascertained', we do not know how often this power has been used, and most approvals for cremation occur with reference to the MCCD and the cremation forms (discussed below) and without seeing the deceased.

The Ministry does not hold data on how many cremations have been declined by medical referees since the introduction of the regulations, but we understand that it would be extremely rare for a cremation to be declined.

#### D1.1.1 Completing the cremation forms

The Regulations set out the process that all parties must follow and prescribe a number of forms that must be completed. They require paper forms to be completed by the certifying practitioner, placed in an envelope and sent to the medical referee. Once the process is completed, the cremation can proceed. Table 4 provides a summary of the current forms required.

<sup>67</sup> Cremation Regulations 1973, Form F.

<sup>68</sup> The medical referee also performs a de facto auditing role of the completeness of the Medical Certificate of Cause of Death to ensure that all death certification documentation is accurately completed before a body is cremated. See Section A: for more details about death certification auditing, including options to improve the auditing system.

**Table 4: Current cremation forms**

| Form  | Who completes the form                                      | Purpose  |
|---|---|--|
| Application for Cremation (Form A)  | Applicant for the cremation (ie, executor or family member) | The form asks the applicant for information about the deceased, including identifying information, whether the executor and near relatives have been informed of the cremation, whether the person applying for the cremation thinks there may be a need for the body to be examined and whether the applicant has any reason to suspect the death was due to a crime.       |
| Certificate in Relation to Pacemakers and Other Biomechanical Aids (Biohazards Certificate) (Form AB) <sup>69</sup> | Certifying practitioner                                     | The form asks a certifying practitioner to certify that the body no longer contains any pacemakers and other biomechanical aids.<br><br>This requirement exists due to the potential hazards that incineration of such aids can create (ie, explosions or toxic fumes). The form requires that the certifying practitioner has examined the body before completing the form. |
| Certificate of Medical Practitioner or Nurse Practitioner (Cremation Certificate) (Form B)                          | Certifying practitioner                                     | This form duplicates much of the cause of death information from the MCCD. It also contains questions designed to test whether there were any circumstances surrounding the death that may require further investigation before the body is cremated.<br><br>This certificate requires the certifying practitioner to see and identify the body, while the MCCD does not.    |
| Coroner's Certificate (Form C)  | Coroner (if death is referred to the coroner)               | If the death is a coroner's case, this form provides the coroner's permission to allow cremation. In such cases, this form replaces Form B.  |
| Certificate after Postmortem Examination (Form E)   | Person completing the post-mortem                           | This form is completed by the person undertaking the postmortem examination, if a medical referee orders one using their powers in the Regulations. The form details the findings of the postmortem and supplements Form B.  |
| Permission to Cremate (Form F)  | Medical referee   | This form requires medical referees to be satisfied that the Act and Regulations have been complied with, that the cause of death has been definitely ascertained (or the death has been referred to the coroner) and that no reason exists for any further inquiry or examination.<br><br>Once this form has been completed, the cremation can proceed legally.             |

<sup>69</sup> The NZEA has developed an additional non-statutory form that embalmers can complete and give to the medical referee, which certifies that they removed any pacemakers or other biomechanical aids during embalming.

The crematorium is required to maintain a register of cremations that records demographic information, dates of permission to cremate, the cremation date and how the ashes were dealt with post-cremation, including information about the person who received the ashes and that person's relationship to the deceased.

## D1.2 Dealing with ashes

Under the current legal framework there is a great deal of flexibility and freedom about scattering ashes, although under tikanga Māori, as human remains are tapu, there are cultural restrictions as to the places where it is permitted. Otherwise, there is currently no legal restriction on the disposal of human ashes.

Where ashes are unclaimed, the Regulations allow the crematorium manager to: deliver the ashes to the person who applied for the cremation, retain them or decently inter them. If the ashes have been temporarily left with the crematorium and are not collected within a reasonable time, they may be interred after giving a fortnight's notice by sending a registered letter to the person who applied for the cremation.

If a different person applies for custody of the ashes or there is an objection to the ashes being delivered to the person who applied for cremation, the crematorium must satisfy itself of the propriety of delivering the ashes and act accordingly. In instances of a dispute between family members, the crematorium manager must determine who the ashes should be given to.

## D1.3 Operating a crematorium

Crematoria are sites that are approved to legally undertake disposal of bodies by cremation.

Both local authorities and funeral directors own and operate crematoria. In 2015, it was estimated that for every crematorium owned by a local authority, there were three to four crematoria that were privately owned and operated.

### D1.3.1 Opening a crematorium

To establish a crematorium, a person must comply with the Burials and Cremation Act and the Cremations Regulations, which require that before construction on a crematorium can begin, the plans and specifications must be submitted to the Minister of Health for their approval. Further, a separate approval is required from the Minister of Health under the Regulations to begin using a crematorium. Generally, this involves a health protection officer observing a test firing of the cremator.

Additionally, a person must consider the Resource Management Act 1991 and ensure that they have received the required resource consents. Whether or not a proposed crematorium requires resource consent depends on the rules in the relevant district plan. In some instances, resource consent is not required if operating a crematorium is a permitted activity in the proposed location.

### D1.3.2 Operating a crematorium

In addition to complying with the resource consent conditions and other legislative obligations,<sup>70</sup> the regulations require that every crematorium must be maintained in good working order and in a clean and orderly condition and shall have competent attendants as necessary.

The Regulations also allow any medical officer of health, any health protection officer or any other person authorised in writing by the medical officer of health to inspect any crematorium at any reasonable time.

The Act provides for the creation of bylaws in relation to aspects of crematoria operation. These bylaws may be made for a range of purposes set out in the Act, relating to the maintenance and protection of the crematorium, the manner and time cremations are carried out, the extent of public access and fixing fees. The existence and content of such bylaws differ between local authorities.

### D1.3.3 Closing a crematorium

If a crematorium plans to close, it must give notice of the closure to the Minister of Health in writing. The Minister is also empowered to direct the closure of a crematorium and can do so if:

- the crematorium authority or any 'member, servant, or agent thereof' has been convicted of an offence under section 56 of the Act in relation to that crematorium<sup>71</sup>
- the local authority within whose area the crematorium is situated requests closure and the Minister is satisfied that it is 'expedient in the interests of health or by reason of a change in the character of the locality'.<sup>72</sup>

Once a crematorium is closed, it can no longer be used as a crematorium until it is reopened following the process described at D1.3.1 above.

## D1.4 Cremation elsewhere than in a crematorium

The Regulations allow cremations to take place in a place other than in an approved crematorium, such as an outdoor funeral if the deceased belonged to a religious denomination whose tenets require the body to be burned as a religious rite. For example, this is the traditional method of cremation in some forms of the Buddhist faith and some other religions.

<sup>70</sup> Other relevant legislation includes: Health and Safety at Work Act 2015, Health Act 1956 (Part 3 and 3A) and Health (Burial) Regulations 1946 (if the crematorium is storing bodies before cremation).

<sup>71</sup> See section D1.5 below.

<sup>72</sup> Cremation Regulations 1973, regulation 3(3).

Applications for these types of cremation can be made to a medical officer of health, who can approve the cremation and apply any conditions that they may deem necessary in the interests of health and decency with regard to the time of the cremation, the circumstances attending the cremation and the subsequent disposal of the ashes and other material connected with the cremation. In assessing an application, medical officers of health currently use guidelines drafted by the Ministry that are designed to determine whether the proposed cremation adequately mitigates the risks. Such risks could include:

- offence to any members of the public that might see it
- the effect of smoke or smells on neighbours
- injury from fire to any person present
- damage to the surrounding area through the spread of the fire
- inadequate heat to incinerate the body
- explosion of devices within the body
- failure to reconstruct the site adequately after cremation.

The medical referee system does not apply to cremations undertaken elsewhere than in a crematorium. When approving a cremation elsewhere than in a crematorium, the medical officer of health must complete the form Permission to Cremate Elsewhere than in an Approved Crematorium (Form G), which mirrors Permission to Cremate (Form F) in relation to certainty of cause of death and details the place of and conditions for the outdoor cremation.

## D1.5 Offences concerning cremation

Section 56 of the Act contains a number of offences in relation to cremation (penalties are still expressed in the monetary unit of the New Zealand Pound):

- burning a body other than in accordance with the Regulations (maximum penalty of £500 or imprisonment for a term of 12 months)
- breaching the Regulations (maximum penalty of £500 or imprisonment for a term of 12 months)
- giving a false certificate to procure cremation (maximum penalty of imprisonment for a term of two years)
- procuring a cremation or giving a certificate with intent to conceal the commission of an offence or impede the prosecution of an offence (maximum penalty of imprisonment for a term of five years).

**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?**

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

## D2 Issues with the current system

### D2.1 Issues with the medical referee system

The Regulations place a duty on medical referees to not permit cremation unless they are satisfied that the cause of death has been 'definitely ascertained'. A requirement to 'definitely ascertain' cause of death can cause confusion as to the standard of certainty that practitioners must have before certifying cause of death. Obtaining this certainty on a routine basis can sometimes be difficult even with an autopsy.

If a body is to be cremated, the death certification documentation has to be reviewed by a medical referee (see section D1.4). This auditing/checking requirement does not apply to other forms of deceased body disposal, such as burials, so there is an inherent inconsistency between different body disposal methods that could be resulting in potential MCCD errors (or even potential wrongdoing) going undetected.

A number of other problems exist with this system.

- The Regulations prescribe that the Cremation Certificate must be handed to or sent in a closed envelope by the medical practitioner to the medical referee. This means that legally parts of the death certification system must be completed in paper form.
- Audits undertaken by medical referees depend on the accuracy of the information provided by the single certifying practitioner. A single practitioner can complete both the MCCD and the Cremation Certificate if there is no opportunity for independent verification of the deceased's identity or the cause of death.
- The medical referee system is not designed to measure the quality of the outputs from the death certification process generally. It is also not set up to use the information and experience practitioners gain to help inform and educate other certifying practitioners.
- It is questionable whether the role of a medical referee is set up to enable medical referees to fulfil their statutory requirement to 'definitely' establish the cause of death. Medical referees work in isolation, typically receive minimal payment, are contracted by the crematoria and in most cases do not have access to the deceased's medical records.
- There is no monitoring, training or support for medical referees, and the practice of medical referees likely varies between regions and crematoria.

The Ministry holds no data as to how many wrongful deaths have been discovered or referred to the coroner/police by medical referees. Therefore, we cannot assess the effectiveness of the system. Anecdotal evidence from the funeral sector suggests that some medical referees do vet and provide feedback to certifying practitioners about the quality of their death certification form completion (such as alerting practitioners if questions are left blank). The importance of this function will decrease, however, as the online system of death certification is adopted more widely. The online system Death Documents requires all questions to be completed before generating MCCDs or Cremation Certificates.



## D2.2 Duplicated approvals required to establish new crematoria

The establishment of a crematorium requires:

- resource consent under the Resource Management Act 1991 (unless operating crematoria is a permitted activity under the district plan)
- the Minister of Health's consent to begin construction of the crematorium
- the Minister of Health's consent to begin operating the cremator.

In practice, the Minister's consents provide little or no extra protection to the Resource Management Act. Further, the Minister of Health has limited public health interest in the construction, design, or operation of a crematoria. These requirements create additional compliance costs for people who want to open a crematorium.

## D2.3 Lack of clarity of duties to hold and dispose of ashes

Unclaimed ashes can become a significant problem for some crematoria. The Regulations outline a process that enables cremator operators to deal with unclaimed ashes. The current system is unclear about the time the ashes need to be left with the cremator operator before they can dispose of them, with differences in the process of disposing of the ashes depending on whether the ashes were not able to be delivered or were temporarily left with the cremator operator. This provides uncertainty as to how long crematorium authorities should retain ashes.

The process does not reflect modern business practices. In the case of ashes left temporarily with a cremator operator, the operator is required to send a 'registered letter' to the person who applied for cremation.

Finally, in the case of a dispute over who should receive the ashes, the Regulations require the cremator authority to satisfy itself of the 'propriety of any delivery of the ashes required of it and shall act accordingly'. This means that, in these cases, cremator operators could be required to adjudicate family disputes or hold the ashes until any dispute is resolved.

## D3 Reform of cremation and crematorium management

### D3.1 Options

The Ministry has considered two options for reforming cremation and crematorium management, including dealing with ashes, based on the Law Commission's recommendations, the Government's response to those recommendations and subsequent policy work undertaken by the Ministry. A high-level summary of these options is provided below.<sup>73</sup>

- **Option 1:** Maintaining the status quo
- **Option 2:** Adopting all the Law Commission's recommendations relating to cremation and dealing with ashes (recommendations 73–79, 92 and 93).

#### D3.1.1 Option 1

There would be no changes to the Cremation Regulations or the Act regarding the establishment and operation of crematoria, cremation elsewhere than in a crematorium or dealing with ashes.

#### D3.1.2 Option 2

Permission to establish and operate crematoria would be managed under the processes of the Resource Management Act 1991. Approval for establishing new crematoria would be managed by local authorities only.

A local authority would regulate permission to cremate or otherwise dispose of a deceased person's body other than in a crematorium. When determining whether to grant permission to cremate or otherwise dispose of a body other than in an approved cremator unit or approved other device, the local authority may consider any matter it considers appropriate, but it must consider:

- the reasons for the application
- any risks posed to public health or to the health of any individual
- any risks to the environment (including any fire bans or the need for resource consent)
- the views of any neighbours who might be adversely affected.

The local authority may grant permission, subject to any conditions it considers appropriate, if it is satisfied that any risks from the cremation are small or can be adequately mitigated. Unless the permission of the local authority is obtained before the cremation, it will be an offence to knowingly cremate or otherwise dispose of a deceased person's body except in an approved crematorium.

<sup>73</sup> For more details, including the full list of recommendations, see Law Commission 2015.

A cremator/funeral service business should have a power to inter or scatter ashes in an appropriate location if all of the following criteria are met.

- At least five years have elapsed since cremation.
- The ashes remain unclaimed.
- Notice has been sent to the last known address of the applicant for cremation.
- The ashes remain unclaimed or in dispute six months after the date of the notice.

If a deceased person nominated a person in their will to deal with their ashes post-cremation, then that nominated person has the right to custody of the ashes after the body has been cremated and to decide how the ashes will be dealt with. If no person has been nominated, then the right to the ashes will fall to their next of kin.

The scattering of ashes (on land) will be managed by local authorities under the Resource Management Act 1991. Regional councils or unitary authorities would deal with consents for discharges to air.

**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? If so, please provide the reasons for your alternative options.**

## D3.2 Impact analysis

This section identifies potential impacts from implementing any of the options for reforming cremation and crematorium management.

### D3.2.1 Option 1

All issues outlined in section D2 remain.

### D3.2.2 Option 2

Option 2 removes duplicated requirements to obtain permissions from the Minister of Health to build and operate a crematorium. The removal of this requirement decreases compliance costs for those looking to establish crematoria and reduce an administrative burden for the Ministry and DHB staff. There would be no additional costs to local authorities from Option 2 as the existing Resource Management Act process would continue.

The reliance on local councils to regulate crematoria creates a flexible and sustainable regulatory model when compared with the current law and will lead to outcomes that are suitable for each district. Treating the establishment and management of crematoria as resource management issues means that the regulatory system will evolve as resource management and planning legislation evolves.

Option 2 moves the responsibility for approving cremation places other than in a crematorium from the medical officer of health to local authorities. This means that the administrative burden will transfer from public health units to local councils. This impact is not expected to be large as applications for cremations other than in a crematorium have been rare.

Option 2 clarifies how to deal with unclaimed ashes. This reduces the uncertainty about the length of time unclaimed ashes must be stored before being disposed of. It provides protection for funeral directors and crematorium operators. Option 2 also removes the burden of determining rights to ashes where there is a dispute. This will further reduce compliance costs on cremation providers.

Finally, Option 2 clarifies the criteria for permissible cremations not in crematoriums. This allows cultural and religious groups that have outdoor cremations as part of their cultural or religious practices to work with local councils to ensure a flexible approach to approving cremations that do not take place in crematoriums. This creates greater certainty about the legality and cost of such cremations while mitigating against the risk to the environment or public health from such practices.

**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?**

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

### D3.3 The Ministry's preferred option

At this stage, the Ministry prefers Option 2: *Adopting all the Law Commission's recommendations relating to cremation and dealing with ashes.*

This is primarily because Option 2, when compared with Option 1, better aligns with the assessment criteria. Specifically, it removes duplication in the approvals process for establishing crematoria and cremations not in a crematorium. Further, it ensures a locally responsive and sustainable approach to regulation.

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

## D4 Reform of the medical referee system

### D4.1 Options

The Ministry has considered four policy options for reforming the medical referee system, based on the Law Commission's recommendations and subsequent policy work undertaken by the Ministry. A high-level summary of these options is provided below.

- **Option 1:** Maintaining the status quo
- **Option 2:** Repealing the medical referee system
- **Option 3:** Reforming the medical referee system
- **Option 4:** Reforming and expanding the medical referee system.

#### D4.1.1 Option 1

There would be no changes to the existing cremation medical referee system.

#### D4.1.2 Option 2

Under this option, the medical referee system would be disestablished and not replaced. Existing death certification and coronial systems would continue to provide assurance as to the accuracy in assessing cause of death and crime prevention.

The substance of Form AB (Certificate in Relation to Pacemakers and Other Biomechanical Aids, Biohazards Certificate) would be incorporated into the MCCD.<sup>74</sup>

#### D4.1.3 Option 3

The medical referee's role could be reformed to solely have a crime prevention focus. The referee would be responsible for determining, before the deceased person's body was cremated, whether there was potential criminal wrongdoing in the person's death. Where criminal wrongdoing was suspected, the referee would then refer the death to a coroner (regardless of if an MCCD has been previously issued by a certifying practitioner).

The referee would not be a health practitioner but instead an appropriate person from the Justice sector not appointed by a crematorium (eg, a Justice of the Peace, a High Court registrar, an independent solicitor or a senior police officer, or another appointed person).

The coroner would give authority to release the deceased person's body whose death had been referred to them for further investigation, either by the certifying practitioner

<sup>74</sup> Where the death is referred to the coroner, this would be included in the Coroner's Certificate (Form C).

or the referee. Once approved for release by a coroner, there would be an exemption from the requirements of a secondary check by a referee. The referee would not have the power to order post-mortem examinations.

Under this option, the Ministry of Justice would have oversight of the reformed referee system. Death certification auditing would remain the responsibility of the Ministry of Health and would be managed using the options being considered under Section A: Death certification and auditing. The substance of Form AB would be incorporated as part of the MCCD.

#### D4.1.4 Option 4

The medical referee system would be reformed as stated in Option 3. However, a mandatory referee check would be required before any body was disposed of, regardless of the method of disposal.

**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? If so, please provide the reasons for your alternative options.**

## D4.2 Impact analysis

This section identifies potential impacts from implementing any of the options for reforming the medical referee system.

### D4.2.1 Option 1

All issues outlined in section D2 remain.

### D4.2.2 Option 2

Option 2 repeals the medical referee system entirely. This could mean that potential misconduct that is missed by the certifying practitioner or the coroner could go undetected. However, as the medical referee system duplicates both the death certification and coronial system, the risk of this happening is expected to be incredibly low. Further, nothing in this option limits the police's powers to investigate or prosecute wrongful death.

The burden on families of the deceased would be removed, reducing the cost of compliance completely. Also, certifying practitioners would no longer have to complete cremation forms.

The costs for crematoria would reduce as they would no longer be required to appoint medical referees. Existing medical referees would be impacted as their roles would be

disestablished. Further, costs would reduce for the Ministry as it would no longer be required to support the appointment of medical referees.

#### D4.2.3 Option 3

The purpose of Option 3 is crime prevention: it would reform the medical referee system to focus solely on crime prevention. This would shift the burden of appointing referees from the Ministry and crematoria to the justice sector.

Option 3 would continue to duplicate the already existing death certification and coronial systems. As the Ministry does not have data about the level of wrongful death detected by the current medical referee, the benefits of this system, in terms of crime prevention, are not known. Option 3 would have limited effectiveness as a crime detection mechanism if cremation decreased in popularity as a disposal method.

Greater oversight from the Ministry of Justice could enable consistency across referees, as well as providing centralised monitoring of the system. However, referees would still be limited in their ability to detect errors in cause of death because of the lack of formal access to medical notes. This will have financial impacts for the justice system.

As for Option 2, costs would reduce for crematoria as they would no longer be required to appoint medical referees. Existing medical referees would be impacted as their roles would be disestablished.

The burden on the families of the deceased would be unlikely to change as the requirement to obtain independent verification of the MCCD would continue. Additionally, the impact of Option 3 on certifying practitioners would be similar to maintaining the status quo as they would still be required to complete cremation forms.

#### D4.2.4 Option 4

Option 4 has similar impacts to Option 3, however, this option expands the medical referee system to all deaths regardless of disposal method. The potential benefits of the current system (despite its limitations) would be applied to certification of other forms of body disposal, increasing the likelihood that wrongdoing would be detected. The limitations of the current system would continue but would be expanded to all deaths. This would completely duplicate the existing death certification and coronial systems.

Option 4 would remove the distinction between cremation and other modes of disposal, ensuring that all deaths have a secondary check to determine if criminal wrongdoing occurred. This would align with other disposal methods where disposal could destroy any evidence of criminal wrongdoing (if suspected), such as burial at sea.

Option 4 increases consistency between disposal methods. However, this creates additional compliance costs for families wishing to use non-cremation disposal methods. Option 4 also increases the administrative burden on burials of tūpāpaku, especially given the cultural significance of burial in urupā. Further, Option 4 creates impediments for other cultural practices, such as Islamic burial.

Additionally, Option 4 increases the workload for certifying practitioners and doctors as a result of the increased number of deaths subject to this requirement.

**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?**

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

### D4.3 The Ministry's preferred option

At this stage, the Ministry prefers Option 2: *Repealing the medical referee system*. This is because the Ministry considers that the policy justification for a separate and duplicated process to detect potential criminal wrongdoing is limited. Option 2 provides some benefits to consumers as it will lessen the costs passed on to them and removes administrative impediments to disposal.

Options 1, 3 and 4 may result in a very small increase in the detection of wrongful death. However, the Ministry considers that negative aspect of additional costs to consumers outweighs the very small risk of criminal wrongdoing going undetected. Moreover, the Ministry considers that any deficiencies (if any) in the existing protections against detection of wrongful death from both certifying practitioner and the Coroners Act 2006 are not large enough to warrant change, especially where potential benefits of such changes are unknown.

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



# Section E: New methods of body disposal

## E1 New methods of body disposal

### E1.1 Current legislation for methods of body disposal

As technology advances and consumer preferences change, alternative options to burial (in a cemetery or at sea) or cremation may seek to enter the New Zealand market. One example is alkaline hydrolysis or 'water cremation', which involves placing the deceased person's body in an alkaline solution that, when heated, dissolves the body leaving behind bone fragments and a liquid.

The law is unclear about whether other body disposal methods are legal. The Burial and Cremation Act 1964 (the Act) defines 'disposal' as '*including* burial and cremation' but otherwise is silent on this issue and does not explicitly provide for or prohibit other methods of body disposal. Regulation-making powers set out in the Act only allow regulations related to managing cemeteries and burial grounds and cremation.<sup>75</sup>

The medical referee system (discussed in section D) would not apply to such methods of body disposal, even though the outcome may be substantively similar. This is because the medical referee system only applies to cremation, which is defined in the Act as 'the reduction to ashes of dead bodies by burning'.

The Crimes Act 1961 prohibits improperly or indecently interfering with or offering any indignity to any dead human body or human remains, whether buried or not.<sup>76</sup>

Before a provider can begin offering a new method of body disposal, they need to obtain the necessary resource consents to operate as required by the Resource Management Act 1991. This is currently managed by the relevant local authority.

**41 Are you aware of any particular new methods of body disposal that could be made available in New Zealand? Please describe the process and the risks and benefits you see with the process.**

<sup>75</sup> Burial and Cremation Act 1964, sections 37 and 59.

<sup>76</sup> Crimes Act 1961, section 150.

## E2 Issues with the current system

### E2.1 Legislation does not provide for new methods of body disposal

The current legislative framework does not explicitly provide for the regulation of new body disposal methods that may enter the New Zealand market.

Although it is currently possible to apply for a resource consent to operate a business that offers a new body disposal method, the legality of these disposal methods is unclear as the Act does not regulate them. If a provider was ever to enter the market, this situation creates risks and uncertainty for providers and for people who may be considering using a new disposal method (in advance of their own death or for a loved one who has recently passed away).

For potential providers, there are no established systems to assess the safety of the disposal method and to prescribe operating standards as is the case with burials and cremations. Further, there are currently no protections designed to preserve the dignity of the deceased whilst they are being disposed of and to protect the public from experiencing a mishandled disposal.

Further, it is a crime to improperly or indecently interfere with, or offer any indignity to, any dead human body or human remains. There is limited case law interpreting such terms, which leaves questions as to whether providers of new methods of body disposal could potentially be liable for criminal prosecution.

Further, providers would also have no legal protection in relation to dealing with any remains in the event of a dispute between family members or if remains go unclaimed.

**42 Do you agree with the issues outlined regarding new methods of body disposal? Are you 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?**

## E3 Regulating new methods of body disposal

### E3.1 Options

The Ministry has considered two options for regulating new methods of body disposal, based on the Law Commission's recommendations and subsequent policy work undertaken by the Ministry. A high-level summary of these options is provided below.

- **Option 1:** Maintaining the status quo
- **Option 2:** Regulating new methods of body disposal.

#### E3.1.1 Option 1

There would be no changes to the law in relation to regulating new methods of body disposal. Future regulatory change may be considered as and when new body disposal methods enter the New Zealand market.

#### E3.1.2 Option 2

Option 2 requires every deceased person to have their body disposed of by an approved disposal method.

Approved methods of disposal would be those that exist now such as burial (either in land or at sea) and cremation or new methods of body disposal prescribed in regulation (at a future date).

Powers to approve new methods of body disposal, would include powers to regulate all matters in relation to the establishment and operation of any new method of body disposal and dealing with remains. If approving a new form of body disposal, a decision-maker must consider how the new method of disposal:

- ensures the integrity and safety of the disposal method for the provider, consumer, the public and the environment
- protects the dignity of the deceased, tikanga Māori or any other cultural consideration.

Under Option 2, it would be an offence to dispose of a body using a non-approved method.

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

## E3.2 Impact analysis

This section identifies potential impacts from implementing any of the options for regulating new methods of body disposal.

### E3.2.1 Option 1

All issues outlined in section E2 remain.

### E3.2.2 Option 2

Option 2 resolves the issues around legality of new methods of body disposal by legislating that new methods are illegal until permitted by regulation. Further, this option creates a more flexible regulatory framework for human body disposal in New Zealand that will be able to respond to any new body disposal methods as they arise, without the need to amend legislation.

The ability to control market access to new methods of body disposal would allow the decision-maker responsible to ensure that any methods are safe for the provider, consumer, the public and the environment, as well as ensuring that there are protections for the dignity of the deceased and any relevant cultural considerations, including tikanga Māori. This would ensure that any risks from an unregulated method of body disposal would not eventuate.

Option 2 would not impose any immediate compliance costs on any person, as it only creates powers to regulate new methods of body disposal in the future. As no provider currently offers a disposal service as an alternative to burial or cremation in New Zealand, no one will be significantly affected by Option 2 in the short term. The potential compliance costs for any new method of body disposal that is approved will need to be considered during the approval process.

**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?**

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

### E3.3 The Ministry's preferred option

At this stage, the Ministry prefers Option 2: *Regulating new methods of body disposal*.

This is because Option 2 better meets the assessment criteria better than the status quo. The option proportionately addresses the issue in relation to the current uncertainty and lack of legal clarity and would help future-proof our system to enable appropriate new methods of body disposal to be offered to the market, as well as ensuring that the new methods of body disposal operate in a way that protects the dignity of the dead, is consistent with tikanga Māori and other cultural considerations, and does not have any other adverse consequences.

Furthermore, Option 2 would not impose any immediate compliance costs on any person.

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

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<http://www.legislation.govt.nz/regulation/public/1995/0183/latest/whole.html#whole>

Burial and Cremation Act 1964.

[http://www.legislation.govt.nz/act/public/1964/0075/latest/whole.html?search=sw\\_096be8ed818003ae\\_shilling\\_25\\_se&p=1#DLM355858](http://www.legislation.govt.nz/act/public/1964/0075/latest/whole.html?search=sw_096be8ed818003ae_shilling_25_se&p=1#DLM355858)

Burial and Cremation (Removal of Monuments and Tablets) Regulations 1967.

<http://legislation.govt.nz/regulation/public/1967/0118/4.0/DLM26526.html>.

Cremations Regulations 1973.

<http://www.legislation.govt.nz/regulation/public/1973/0154/latest/whole.html>

Health (Burial) Regulations 1946.

<http://www.legislation.govt.nz/regulation/public/1946/0132/latest/DLM2944.html>



# Timaru District Council Submission on the Review of the Burial and Cremation Act 1964 and Related Legislation

## Introduction

1. Timaru District Council (TDC) thanks the Ministry of Health for the opportunity to submit on the Death, Funerals, Burial and Cremation: A Review of the Burial and Cremation Act 1964 and Related Legislation consultation document.
2. This submission is made by the Timaru District Council, 2 King George Place, Timaru. The contact person is Bill Steans, Parks and Recreation Manager. Bill can be contacted at Timaru District Council, phone (03) 687 7200 or [bill.steans@timdc.govt.nz](mailto:bill.steans@timdc.govt.nz).
3. The Timaru District Council is a local authority in the South Island serving over 46,000 people. The main centre is Timaru, with other smaller towns of Geraldine, Pleasant Point and Temuka.
4. Council declares an interest in the outcomes of this proposal as a local authority cemetery manager. TDC operates eight cemeteries within our district, undertaking all burial and cremation interments and maintenance for six of these cemeteries, with the remaining two cemeteries managed by local communities.<sup>1</sup>
5. TDC maintains all cemeteries and records to a high standard, recognising our community's desire for well-presented spaces for remembrance of loved ones and maintaining an important historical record for future generations.
6. The cemeteries in the District range in remaining capacity, from approximately 150 years for some of the rural cemeteries through to 5-10 years for the Timaru Cemetery. Planning is underway for the establishment of a new cemetery to service the greater Timaru area.

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<sup>1</sup> The two cemeteries maintained by community groups (one without any burial records) were vested to Council by the Department of Conservation. This highlights the ongoing pattern of unilateral shifting of responsibilities to local authorities by central government, discussed further in this submission.



## General Comments

7. TDC supports the review of the Burial and Cremation Act 1964 and related legislation. We agree with the Law Commission's view that the legislation is outdated, overly specific, difficult to understand, and no longer capable of responding to societal trends and attitudes towards burial and cremation in New Zealand.<sup>2</sup>
8. The four policy assessment criteria the Ministry has applied to this review are appropriate, particularly Criterion 2: "Any changes to the law should not impose unnecessary or unjustified compliance cost."<sup>3</sup>
9. We would like to highlight to the Ministry the Productivity Commission's finding in their recent inquiry into local government funding and financing:

"Central government has shifted many responsibilities to local government without adequate funding provision. If some councils are not able to comply with all the responsibilities being passed to them, then the objective of central government legislation will ultimately not be achieved ... Central government is often passing new responsibilities to local government without adequate analysis, including consideration of the range of council circumstances. This can result in regulation that is 'one size fits all', making it unfit for purpose, or particularly costly to implement, in some localities."<sup>4</sup>
10. It is imperative adequate analysis is undertaken by the Ministry and that the outcomes of this review do not continue to further exacerbate the cumulative effect of so many unfunded mandates on local government.
11. Council's provision and maintenance of District cemeteries strongly aligns with our legislative purpose to promote well-being of communities in the present and for the future, as well as with a number of our community outcomes:
  - a. High quality infrastructure to meet community and business needs;
  - b. A valued, healthy and accessible lifestyle;
  - c. Communities that are safe, vibrant and grown; and
  - d. People enjoy a high quality of life.
12. It is with community wellbeing, and the findings of the Productivity Commission in mind that TDC makes the following submissions and recommendations to the Ministry of Health.

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<sup>2</sup> Death, Burial and Cremation: A New Law for Contemporary New Zealand, The Law Commission, 2015, pg 6.

<sup>3</sup> Death, Funerals, Burials and Cremation: A Review of the Burial and Cremation Act 1964 and Related Legislation – Consultation Document, Ministry of Health, 2019, pg 5.

<sup>4</sup> Final Report - Local Government Funding and Financing, Productivity Commission, December 2019, pg 301-302.

### Death Certification and Auditing

13. While noting that the proposed changes have no implications for Council, we support the Ministry's preferred option to implement the Law Commission's recommendations to death certification and auditing.

### Regulation of the Funeral Services Sector

14. Council supports Option 4 – providing central regulation for funeral directors (recommendations 81-91, 94, 95 of the Law Commission).
15. We agree with the Law Commission's finding that there is a need for legislative reform to serve the two purposes of:
  - a. Providing assurance of a high standard of practice by people providing funeral services; and
  - b. Providing transparency in the pricing of funeral services.<sup>5</sup>
16. By way of explaining its preference for Option 1 (status quo) over central regulation of the funeral services sector, the Ministry states:

“[providing central regulation] would most likely confer some benefits on consumers, we do not consider there is enough of a case to warrant government regulatory intervention. We are not aware of any conclusive and compelling evidence that there is a general lack of competency in the funeral services sector or any significant risk to the public that requires immediate intervention.”<sup>6</sup>
17. However, we assert that it is a widely held public assumption that the funeral industry is regulated and that consumer rights are well protected. We believe that central regulation is required now to align with this public expectation. Further, we believe that the status quo, which only requires funeral homes be registered with the relevant territorial authority creates a false impression that councils have oversight and responsibility to regulate funeral services. This is not, and should not be the case.
18. The Framework for Occupational Regulation (endorsed by government in 1999 and widely referenced in the development of other occupational regulatory frameworks) states that legislative intervention in an industry could be justified when “incompetent service by a member of an occupational group could result in significant harm to the consumer or a third party.”<sup>7</sup>
19. Given the large financial cost and the emotional, cultural and spiritual importance of funeral arrangements, and the vulnerability of many consumers of funeral services, Council believes that the industry meets the standard for central regulation under the Policy Framework for Occupational Regulation.

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<sup>5</sup> Law Commission, p 172.

<sup>6</sup> Consultation Document, 35.

<sup>7</sup> Policy Framework for Occupational Regulation, Cabinet Office Circular, 8 June 1999.

20. The absence of evidence of sector-wide incompetency does not minimise the risk that poor service by a funeral service provider could result in significant harm to the consumer. As the Law Commission stated, “This is not an industry plagued by problems that justify heavy-handed intervention. Rather, it is an industry in which there are vulnerable consumers who deserve robust protection.”<sup>8</sup>
21. We are not aware of any complaints or evidence of malpractice amongst funeral directors and can attest to the high quality services provided by funeral homes within our District, with whom we have excellent working relationships. However, we believe that to ensure transparency and a high standard of care in the funeral services sector, and for the protection of vulnerable people at a traumatic time, central regulation is required.

### **Current Legislation**

22. We recognise that the current legislation is restrictive and out of step with modern attitudes to burial, given New Zealand’s increasing ethnic, cultural and religious diversity.
23. We accept the findings of the Law Commission following public consultation, that the current statutory provisions are very limited. While the Act specifically requires councils to recognise requests from “religious denominations”, it does not address requests from ethnic groups, or those with other beliefs, such as those who wish to have a natural burial. Further, while councils must recognise these requests, there is no obligation or framework for the granting of such requests.
24. While Council is committed to actively working to meet the wellbeing needs of all of our religious, ethnic and cultural communities, we do need to highlight the difficulties that requests for multiple separate areas within our cemeteries would create, particularly relating to increased maintenance costs and capacity planning.
25. While this is not currently an issue for our District, we recognise the long life of cemeteries and the need of planning to meet the wellbeing of our future communities. We believe that the proposed requirement for a publically consulted cemetery management policy (discussed below) and ongoing engagement with local religious, ethnic and cultural groups will go some way to resolve these issue should they arise.

### **Cemetery Management Policy**

26. Council supports the proposal for a cemetery management policy to set specific maintenance standards, developed in consultation with the community. This will provide the community the ability to determine levels of service and provide for special areas in cemeteries that reflect the local values. Such a policy will also

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<sup>8</sup> Law Commission, 172.

preserve the role of volunteer groups in districts where they are active in cemetery maintenance and amenity improvements.

27. Any legislative changes, and resulting local government policies should seek to incentivise and not deter community participation in the upkeep of graves, monuments and cemeteries.

### **Monument Maintenance**

28. It is essential that any amendments to the legislation relating to maintenance of monuments do not remove the ownership of, or responsibility for monuments from individuals who purchased the exclusive right to burial, or their representative.
29. Transferring all maintenance responsibilities to local authorities, who neither purchased nor installed these monuments, would impose significant and ongoing costs on councils. However, there needs to be flexibility within the legislation to reflect that, particularly for older monuments, there can be considerable difficulty in locating family members willing to accept responsibility for maintenance of monuments, and that for health and safety reasons, councils may need to repair, alter or remove certain monuments in the absence of specific consent from a family representative.
30. We also support the proposed exemption to section 42 of the Heritage New Zealand Pouhere Taonga Act 2014, enabling cemetery managers to rectify any safety concerns.

### **Resource Consents**

31. Council believes it is essential that all burial on private land should require a resource consent as required under Option 3. This would ensure that any potential effects of the burial were evaluated, consultation is undertaken as required and that a record would be available to purchasers of sites where cemeteries have been approved.

### **Disinterment**

32. Council does not support the proposed transfer of powers to approve disinterment from the Ministry of Health to local authorities. We believe that the current process works well and it is not a remit that should sit with councils.

### **Burial and Cemetery Management Options**

33. Council supports a number of the proposals presented in the consultation document relating to burial and cemetery management. We agree that there are improvements that can be made to the current framework however, we do not support any of the options as they are currently presented in the consultation document.
34. Our primary concern is that under these options local authorities will have a host of modified or new obligations, which we are not currently resourced or funded

to undertake. These would include the duty of inspection and oversight of all private cemeteries in response to complaints; responsibility for approving new independent cemeteries and burial on private land; and most concerning, the obligation to assume responsibility for failing non-local authority cemeteries.<sup>9</sup>

35. It is essential that the Ministry recognise that in requiring councils to take over responsibility of any failing non-local authority cemeteries allowed for under these proposals, councils will be taking on liabilities without any asset stream to pay for it. The burden of these liabilities will fall directly on ratepayers.
36. If this proposal were to proceed, we urge the Ministry to implement the Law Commission's recommendations that councils are provided with assessment tools for the approval of new private or community cemeteries including assessing based on:
  - a. The relevant expertise and experience of the applicants;
  - b. The likely effect of the proposed cemetery on neighbours;
  - c. The likelihood that the cemetery can be maintained as cemetery land in perpetuity; and
  - d. The extent to which any risks raised by the proposed cemetery can be adequately mitigated.
37. Further, the Ministry should consider allowing local authorities to be able to impose conditions on any new cemeteries including:
  - a. Maintenance requirements in line with any council cemetery policy (in addition to those imposed by the statute);
  - b. The establishment of a fund to provide for the maintenance of the cemetery land in perpetuity; and
  - c. The payment of a bond to cover the risk that the cemetery is not adequately managed into the future and the local authority would be required to take over management.<sup>10</sup>

### **Unfunded Mandates**

38. While Options 2 and 3 may help address the changing needs and expectations of our communities, as stated above, we are concerned that the Ministry has not appropriately considered the cost associated with these options for local government, and ultimately the ratepayer.
39. Many of these increased costs would be internal operational costs such as increasing numbers of regulatory and cemetery management staff and increased

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<sup>9</sup> We recognise that under Option 3 there will be no provision for independent cemeteries.

<sup>10</sup> Law Commission, recommendations 67-68.

decision-making requirements, the benefits of which are more difficult to articulate to ratepayers.

40. The risk inherent in this approach has been outlined by the Productivity Commission: “The increasing tasks and responsibilities being placed on local government have now reached a point where the cumulative burden is difficult for many local authorities to manage. A risk is that some councils, particularly small ones, may be unable to comply with all the new responsibilities passed to them. This risk could mean that the policy objectives of central government are not achieved.”<sup>11</sup>
41. While the Ministry may be seeking to ensure burial and cemetery options that meet the increasingly diverse needs of New Zealand communities, the outcome may be that, due to funding constraints resulting from an increased regulatory role and potentially a greater number of cemeteries to manage, local authorities may not be able to maintain high levels of service for cemetery management and maintenance, and achieve the outcomes of these reforms.
42. We strongly recommend that the Ministry consider the Productivity Commission’s discussion and findings relating to unfunded mandates imposed on local government by central government as it moves forward with the review of the Burial and Cremation Act 1964.

### **Cremations Regulation and the Medical Referee System**

43. Council supports the proposal that permission to establish and operate crematoria be managed under the processes of the Resource Management Act 1991, removing the current duplication.
44. We do not support the proposal to move the responsibility of approving cremation places other than in a crematorium from the medical officer of health to local authorities. While we support greater flexibility for cultural and religious groups to undertake cremation practices, placing this responsibility on local authorities would be yet another unfunded mandate.
45. Local authority expertise in this area extends only to cremations undertaken in purpose-built facilities under controlled conditions. We believe that the current system, where by approval for such cremations is overseen by the medical officer of health is the most appropriate to ensure public health interests are maintained.

### **New Methods of Body Disposal**

46. Council supports the proposal to extend the approved methods of body disposal to include new regulated methods. We believe that this is an appropriate way to future-proof the legislation while meeting the changing needs of our current and future communities. We urge the Ministry to carefully consider the relevant consenting requirements, particularly in relation to potential discharges, to

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<sup>11</sup> Productivity Commission, pg 10

ensure any new methods of body disposal meet stringent environmental standards.

### **Conclusion**

47. Council welcomes this timely review of the legislative framework governing death, burials, cremation and funerals. The current Act is no longer fit for purpose, failing to recognise the burial and cremation needs of modern New Zealand communities.
48. We appreciate the Ministry's consultation efforts, particularly the extension of the submission deadline due to COVID-19.
49. At the forefront of our submission is the desire to continue to provide a high level of burial and cemetery service; to meet the changing needs of our communities; and to protect and promote social, cultural, economic and environmental wellbeing for our current and future communities.
50. While we support the intent of many of the proposals, we are concerned that the Ministry has not fully considered the resourcing and cost implications on local authorities. We note that in every instance, the Ministry's preferred options would ease the administrative, regulatory and financial burden on the Ministry itself, yet many of these options considerably increase the burden laid on local authorities.
51. We conclude by highlighting again to the Ministry the Productivity Commission's inquiry, which provides clear direction that "local government should have a means to adequately fund its operations, either through recovering its costs from regulated parties; or, where there are national benefits, through a direct funding contribution from central government."<sup>12</sup>

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<sup>12</sup> Productivity Commission, pg 10.

**7.3 YMCA South and Mid Canterbury Youth Services Report to 30 June 2020****Author:** Symon Leggett, Group Manager People and Digital**Authoriser:** Symon Leggett, Group Manager People and Digital**Recommendation**

That the report be received and noted.

**Purpose of Report**

- 1 To receive the YMCA Youth Services six monthly report to 30 June 2020.

**Assessment of Significance**

- 2 This matter is not deemed significant under the Council's Significance and Engagement Policy.

**Discussion**

- 3 The YMCA South and Mid Canterbury has a service agreement with the Timaru District Council to provide ongoing non-faith based Youth Support Services for our district. Regular reporting to the Timaru District Council is part of the service agreement.

**Attachments**

1. **YMCA South and Mid Canterbury Youth Services Report to 30/06/2020**  





## YMCA South & Mid Canterbury Investing in the Next Generation

### REPORT TO TIMARU DISTRICT COUNCIL, 30<sup>TH</sup> JUNE 2020

This report gives an overview of the work that has been undertaken by the YMCA Youth and Community Team from 1<sup>st</sup> January to the 30<sup>th</sup> of June 2020 (including the six week Covid-19 lockdown period). Our vision of 'investing in the next generation' is borne through the wide range of activities and programmes that are delivered by the team. Each year we continue to build on our programmes, to ensure that we are meeting the ever changing social and emotional development needs of the young people in our community. The highlights from our work over the last six-months are detailed below.

#### Positive Youth Development

The team has once again continued to grow and develop this year. Christina Cullimore, Manager of Youth and Community has left us for the Red Cross and as a result, Cath Slee has taken over the role of Acting Manager at this time.

During the time of lockdown, the YMCA continued to work with young people via the Team's initiative called Y-Isolate. This initiative was created to keep young people in our community



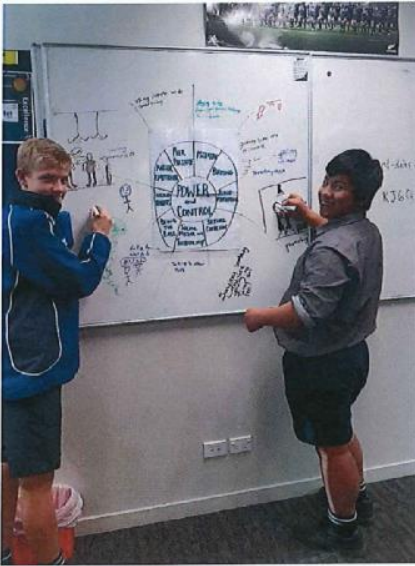
engaged and having fun throughout the lockdown. It had a focus of decreasing stress and the feeling of being cooped up. Team members posting video challenges daily, encouraged young people to post themselves completing the challenge for a chance to win a daily prize. We received positive feedback from many about this initiative, but one in particular stood out from a mother, whose child told her *"this is the reason I*

*get up each day. I love these challenges"*. The team enjoyed being able to share some fun during the lockdown period and maintain positive engagement with young people.

#### Resiliency Toolkit

This programme is now in its fifth year of delivery. We have delivered in five of our local High Schools, in YMCA Education classes, and to Community College students, reaching a total of 738 young people over 162 hours. While our numbers are a little lower this year due to the lockdown, we have several schools rebooking us later in the year, creating optimism that we will be able to make up the numbers. We have received letters of support from all local high schools, expressing the programme's value and their need for its continued delivery. Our facilitators have been praised for being engaging, relevant, and able to think on their feet to deliver what is best for the young people in our community.

### Mates and Dates



Mates and Dates, which complements our Resiliency Toolkit delivery in High Schools, continues to be a sort after programme in our community. Over the past 6 months, we have increased our staff team by another four part-time staff members, giving us the ability to increase delivery to greater student numbers and hence meet local demand. We deliver to High Schools in South Canterbury, Mid Canterbury, North Otago, and Mackenzie; only two schools in these areas have chosen not to participate in the programme. We are currently in the process of catching up delivery that was unable to be delivered due to the Covid-19 lockdown; this is a great indicator that it is a needed and valued programme in our schools. As part of this programme we are trained to deal with disclosures of concern. We have seen an increase

in disclosures, as young people learn that what has happened to them is not ok. Although disheartening, this increase can be viewed positively, as young people are being educated about what healthy and unhealthy relationships look like.

### Y-Force

Our Y-Force programme offers young people the chance to develop a project, learn leadership and citizenship skills, get involved in our community, or organise an event. The programme is youth-lead, allowing young people to have their ideas happen. Over the past year this programme has worked with 122 young people.

Covid-19 provided us the opportunity to think outside the square. When we went into lockdown, we were aware that for some young people, this situation would present many challenges. We were successful in remaining connected with our Y-Force Project teams via social media and Zoom meetings. We continued delivering our Peer Support programme via zoom. We were also able to coach the peer support leaders around why people were having different reactions to the situation, and how they could best provide support to the younger students they were working with. The leaders also came up with challenges for the younger students, keeping them engaged and helped them feel that they still had a connection with the school.



Touching base and listening to how young people were doing, was very insightful. It was encouraging to hear them talk amongst their peers about how they missed face-to-face conversations, and how they were seeing their families in a different light.

### **Year 7 & 8 Resiliency Toolkit programme**

This is a new programme that we are piloting in two Primary Schools during terms 3 and 4 of this year. The aim of this programme is to build resiliency in young people in Year 7 & 8, helping them to achieve improved mental health and wellbeing as they grow and transition into adulthood. Being equipped to deal with life's stresses and challenges can reduce dependency on excessive alcohol consumption and other anti-social behaviours.

The programme has been developed under the Resiliency Toolkit, funded by the S.C.D.H.B. and is age and stage appropriate for Year 7 and 8 learners. The programme is a 6-hour programme that will be delivered over 6 weeks.

The programme includes:

- *Introduction to Wellbeing* –  
Identifying feelings and emotions, and the effect they have on their wellbeing  
Some strategies for staying well
- *Communication Styles* –  
Identify different styles of how we communicate  
Explore how our communication can impact on others
- *The Effects of Alcohol* –  
What happens when someone is drinking  
Learning strategies to resist peer pressure

The two schools taking part in this pilot are Grantlea Downs and Waimataiti Primary Schools. We are excited to start delivering, as we have had several inquiries from primary schools for a resiliency toolkit type programme like this.

### **Youth Work**

Craig Curtis has moved on to be a social worker at Oranga Tamaki and we have Jessica Thomas as our new Youth Worker. Jess comes with a social work degree and had completed one of her work placements with Oranga Tamaki. Jess has a natural ability to build strength-based relationships and is extremely youth-focused in her approach.

YMCA South and Mid Canterbury holds one of two Transition to Adulthood contracts, working alongside rangatahi in the community to find their footing in adulthood. Jess assists rangatahi in both Waitaki and South Canterbury with housing, education, employment, and as an overall wellbeing mentor, to make sure that young people transitioning out of the Oranga Tamariki's care have ongoing support. This year we have worked with eleven young people.

In addition, our FreshStart Community Youth Programme is a 12-week mentoring programme for young people that have committed their first or second minor offence. Through strong relationships with Timaru Youth Aid and Oranga Tamariki Youth Justice, YMCA South and Mid Canterbury Youth Workers mentor and aid in the prevention of reoffending for rangatahi in our community. This year we have worked with seven young people in this space.

### Sport and Recreation

YTD we have delivered to 280 young people over 54 sessions with a total of 1,221 participations. Our participant numbers are down on previous years, due to the Covid-19 lockdown. That said, our successful "Y – Pop-Up Community Sports & Recreation" activities are being delivered again in the July school holidays. This is a free recreational activity session that is delivered this holiday period at Caroline Bay. This programme is attended by young people of all ages.



### Community Impact

Unfortunately, this year we have been unable to hold our annual V.O.I.C.E Art Exhibition due to Covid-19 lockdown. This was very disappointing as we love supporting the young people in the community to participate in this event. This year would have been the 10<sup>th</sup> art exhibition. We plan on making next year bigger and better, so we can celebrate the way we feel the project and young people deserve to be celebrated.

Once again, YMCA staff supported this year's Children's Day. This event is fun to be involved in, with many children getting the chance to have a turn at our bubble football. We have adapted this activity, so children of all ages are able to participate. It is always a fun day being able to see lots of happy faces leaving our activity.

The YMCA continues to be strongly involved in the community, working with several different agencies, including – government, non-government, schools, and other stakeholders. We strive to hear what the young people in our community are saying and any issues they may be having, so we can adapt our programmes and services to work best for them.



This report gives you a snapshot of the work we have been doing over the past 6 months, in part supported by the on-going support of the Timaru District Council. Please contact us if you would like more details, or you feel you would value a visit to our centre.



Cath Slee

Acting Manager, Youth and Community Development

**8 Consideration of Urgent Business Items**

**9 Consideration of Minor Nature Matters**

**10 Exclusion of the Public****Recommendation**

That the public be excluded from the following parts of the proceedings of this meeting on the grounds under section 48 of the Local Government Official Information and Meetings Act 1987 as follows:

| <b>General subject of each matter to be considered</b>  | <b>Reason for passing this resolution in relation to each matter</b>   | <b>Plain English Reason</b>   |
|---|--|-------------------------------|
| <b>11.1 - Public Excluded Minutes of the Community Services Committee Meeting held on 9 June 2020</b> | s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons | To protect a person's privacy |

**11 Public Excluded Reports**

**11.1 Public Excluded Minutes of the Community Services Committee Meeting held on 9 June 2020**



**12      Readmittance of the Public**