

9 April 2020

Burials and Cremations Team
Environmental and Border Health
Public Health
Population Health and Prevention
Ministry of Health
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By email: burialandcremation@health.govt.nz

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

Dear Sir/Madam

The New Zealand Medical Association (NZMA) wishes to provide feedback on the above consultation. The NZMA is New Zealand's largest medical organisation, with more than 5,000 members from all areas of medicine. The NZMA aims to provide leadership of the medical profession, and to promote professional unity and values, and the health of all New Zealanders. Our submission has been informed by feedback from our Board and Advisory Councils.

We welcome the work that is being done 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 main focus of our feedback relates to Section A (Death Certification and Auditing) although we have provided responses to the questions across all five areas in the consultation document.

An issue of particular interest to our members relates to the ability to identify old age as a cause of death on a Medical Certificate of Cause of Death (MCCD). While this is not directly discussed in the current consultation, our understanding is that the Ministry accepts there are times where a certifying practitioner cannot identify a specific medical condition that an elderly person died from, especially when their health has been in general decline over a period of time.¹ In such cases, we understand that it is absolutely fine to certify something along the lines of 'inanity of old age', 'frailty of old age' or even just 'old age'. We note that there is a cause of death code for old age, but the Ministry is reluctant to assign this for people less than 80 years of age as it expects them to have a specific medical diagnosis. We believe it would be useful for the Ministry

¹ Personal Communication with Christine Fowler, Manager, Classification and Terminology, Ministry of Health, 12 August 2019.

to develop and disseminate guidance on this to help clarify any lingering confusion about specifying under what conditions old age as a cause of death is acceptable.

Another concern relates to the proposed requirement for certifying practitioners to provide cause of death certification within 24 hours of learning of the person's death. We believe the requirement to meet this timeframe is unnecessary. A large proportion of death certificates in New Zealand are done by GPs. While most GPs are very happy to do an urgent death certificate if there is a cultural requirement to bury a body within 24 hours, on many occasions there is no expectation of this from the family. As people die on public holidays and weekends, a law change requiring death certification within 24 hours would mean calling out doctors on their days off and on public holidays, at both inconvenience to the doctor and expense to the family. For many of these cases, the death certificate can be completed in 1–2 days' time when the doctor is back at work. This is particularly important for GPs that undertake on call work for rest homes which by nature have a higher rate of patient deaths. We ask that the Ministry reconsider this proposed requirement.

We welcome acknowledgement of the various factors that can contribute to errors in certifying the cause of death. During after hours, death certificates for patients that die in hospitals are often done by an on-call Resident Medical Officer who has often not been involved in the patient's care and who does not always have easy access to senior support regarding administrative concerns. Difficulties can be exacerbated if the likely cause of death is not clear from the medical documentation (due to either poor documentation or diagnostic uncertainty). These factors all contribute towards the large and concerning error rates reported. We believe that any reform to modernise the certification system should include systems to reduce these errors.

We suggest that it would be useful to develop a system where the initial paperwork for certifying cause of death could be completed for efficiency purposes but could be then reviewed and amended by a clinician who was directly involved in the patient's care. This has previously been impractical due to the difficulties inherent with paper-based systems but the move towards the electronic completion and submission of forms could minimise the additional work involved for such a system. For example, the lead clinician in the patient's care could be entered onto the initial cause of death form and could then automatically receive a copy of the certificate via their professional email address. They could then be given, for example, up to 3 working days to adjust the information if they felt an error had been made.

Responses to Consultation Questions

Introduction: Proposed overarching duties regarding the disposal of bodies

1. *Do you agree that there should be a general duty on everybody to 'treat any dead human body or human remains with respect'? If not, why not?*

Yes. We agree there should be a general duty on everybody to 'treat any dead human body or human remains with respect'.

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?*

Yes. We agree that any breach of this duty should be an offence punishable by infringement notice, or, on conviction, by a fine.

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?

Yes. We 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 giving consideration to the mourning needs of the bereaved, any ceremonies to be performed, tikanga or other cultural practices, and any other relevant considerations.

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?*

Yes. We agree that any breach of this duty should be an offence punishable by infringement notice, or, on conviction, by a fine.

Section A: Death certification and auditing

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

An area under the current system that would benefit from clarification relates to being able to certify that old age is a cause of death. We understand that it is acceptable to certify 'old age' when a certifying practitioner cannot identify a specific medical condition that an elderly person died from, especially when their health has been in general decline over a period of time. Nevertheless, we believe it would be useful for the Ministry to develop and disseminate guidance on this to help clarify any lingering confusion about when specifying old age as a cause of death is acceptable.

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

No. However, we agree with the findings from the Law Commission review about the likely causes of inaccurate documentation.

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.*

We suggest that it would be useful to develop a system where the initial paperwork for death certification could be completed for efficiency purposes but could be then reviewed and amended by a clinician who was involved in the patient's care. This has previously been impractical due to the difficulties inherent with paper-based systems but the move towards the electronic completion and submission of forms could minimise the additional work involved for such a system. For example, the lead clinician in the patient's care could be entered onto the initial cause of death form and could then automatically receive a copy of the certificate via their professional email address. They could then be given, for example, up to 3 working days to adjust the information if they felt an error had been made.

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?*

Yes. We agree with the presented impacts of the options identified for modernising the death certification system.

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

No.

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

Our preference is for option 2 (Implementing a package of changes to the current system based on most of the Law Commission's recommendations). We believe that the additional requirements under option 3 are unnecessary and would be overly burdensome for certifying practitioners.

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.*

We do not have any specific comments. Our preferred option and rationale are given in our response to question

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

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

No.

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

Our preference is for option 2 (Establishing a death certification auditing committee system). We believe that the creation of a statutory cause of death reviewer role/function as proposed in option 3 is unnecessary. We agree that the significant administrative challenges in being able to review the MCCD before the body is disposed of under option 3 would adversely impact on Māori.

Section B: Regulation of the funeral services sector

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

Yes. We agree that there are issues that could be improved with the funeral services sector.

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

No.

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.*

These are reasonable options. Our preferred option and rationale are given in our response to question 20.

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

Yes. We agree with the impacts of the options identified for regulating the funeral services sector.

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

No.

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

Our preference is for option 4 (Providing central regulation for funeral directors). We note that this differs from the Ministry's view which is a preference for option 1 (Maintaining the status quo). We believe that central regulation is needed to ensure good quality funeral services and avoid the issues that are identified in Section B2.2 of the consultation document.

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.*

These are reasonable options. Our preferred option and rationale are given in our response to question 24.

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?*

Yes. We agree with the presented impacts of the options regarding better informing consumers about the cost of funeral services.

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

No.

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.*

Our preference is for option 3 (making it mandatory to disclose all component prices as per the Law Commission's recommendations) as this option provides greatest transparency for consumers, enabling them to know what they are in for.

Section C: Burial and cemetery management

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

Yes. We agree that there are issues that could be improved with the current framework for burials and cemetery management.

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

No.

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?*

These are reasonable options. Our preferred option and rationale are given in our response to question 30.

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

Yes. We agree with the impacts of the options identified.

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

No.

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

Our preference is for option 3 (Implementing a package of changes to the current system based on most of the Law Commission's recommendations). While Option 2 is also an advance over the status quo, we do not favour it as it exempts burial on private land from the resource consent process and therefore could exclude consideration of tikanga Māori and other cultural beliefs.

Section D: Cremation regulations and the medical referee system

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

Yes. We agree there are issues that could be improved with the current cremation of medical referee systems.

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

No.

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.*

These are reasonable options. Our preferred option and rationale are given in our response to question 36.

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

Yes. We agree with the impacts of the options identified regarding the reform of cremation and crematorium management.

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

No.

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

Our preference is for option 2 (Adopting all the Law Commission's recommendations relating to cremation and dealing with ashes). We agree with the Ministry that this option will remove duplication in the approvals process and ensure a locally responsive and sustainable approach to regulation.

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.*

These are reasonable options. Our preferred option and rationale are given in our response to question 40.

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

Yes. We agree with the impacts of the options regarding the medical referee systems.

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

No.

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

Our preference is for option 2 (Repealing the medical referee system). We agree with the Ministry that a separate and duplicated process to detect potential criminal wrongdoing is limited. Existing death certification and coronial systems would continue to provide assurance as to the accuracy in assessing cause of death and crime prevention. This option would also lessen costs passed on to consumers and removes administrative impediments to disposal.

Section E: New methods of body disposal

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

No.

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

Yes. We agree with the issues outlined regarding new methods of body disposal.

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

No.

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

These are reasonable options. Our preferred option and rationale are given in our response to question 47.

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

Yes. We agree with the impacts of the options identified and have no other suggested impacts.

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

No.

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

Our preference is for option 2 (Regulating new methods of body disposal). As the Ministry has identified, this option addresses the current uncertainty and lack of legal clarity. It would also ensure that new methods of body disposal operate in a way that protect the dignity of the dead and are consistent with tikanga Māori and other cultural considerations.

We hope our feedback is helpful.

Yours sincerely

A handwritten signature in blue ink that reads "K. Baddock". The signature is written in a cursive style with a large, looped initial "K" and a trailing flourish.

Dr Kate Baddock
NZMA Chair