

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

Summary of submissions

2021

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Introduction

Purpose

This report provides a summary of public submissions in response to the Consultation Document released in November 2019. It includes findings for policy development for the Ministry of Health (the Ministry) and highlights areas for future policy work.

Background

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- the law is outdated, overly specific and difficult to understand
- the law has not always kept pace with other legislative developments, and is inconsistent with (and duplicates) legislative provisions in the New Zealand Bill of Rights Act 1990, the Resource Management Act 1991 (RMA) and the Local Government Act 2002
- the wording of the Burial and Cremation Act 1964 (the Act) makes it difficult to respond to the evolving nature of family and whānau relationships and increasing recognition of diverse sexualities and gender identities and expression.

Government response to the Law Commission report

In 2016, the Government accepted almost all 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 impact of the issues identified by the Law Commission before making any final decisions in relation to the recommendations.

Inquiry into whānau access to management of tūpāpaku¹

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).

¹ Tūpāpaku is te reo for a deceased person's body.

In that report, the Select 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.

Consultation Document

The Consultation Document responded to the Government's direction and response to the Law Commission's report outlined above. The options for change outlined in this document were based on the Law Commission's recommendations, the Government's response to those recommendations, and subsequent policy work undertaken by the Ministry of Health (including engagement with relevant agencies and departments).²

The Consultation Document focused on five key policy areas:

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

Each section outlined a range of options for reform. The Ministry indicated its preferred option in each section.

The Consultation Document directly responded to 100 (out of 127) of the Law Commission's recommendations.³ The Consultation Document did not analyse recommendations 104–127, which related to the creation of a legal framework to give effect to a person's wishes once they pass away. The Ministry of Justice is considering this policy work independently of the Ministry of Health as priorities allow.

The following matters are out of scope of the current review:

- urupā (Māori burial grounds)
- registration of mortuaries
- burial at sea
- international transportation of bodies.⁴

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 assessment criteria when considering the options.

² For further detail, including the full list of recommendations, please see Law Commission 2015.

³ 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.

⁴ 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.

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 assessment criteria are as follows.

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

Public consultation

Public consultation on the Consultation Document opened on 14 November 2019. Due to requests from submitters for more time in the context of the response to the COVID-19 pandemic, consultation was extended on two occasions from 28 February 2020 until 31 July 2020 and then until 31 October 2020.

The Ministry sought feedback on the options from industry and other stakeholders, including certifying practitioners, district health boards (DHBs), funeral providers, territorial authorities, cemetery managers, crematoria operators, medical referees, and the public. The Ministry notified organisations and individuals representing stakeholder groups, including Māori, Pasifika and other ethnic minorities, religious groups, women, and older people, about the consultation. The consultation was publicised on the Ministry's website and appeared in several mainstream media news items. The Ministry also notified stakeholders about the extensions to the consultation period.

Submitters were able to respond via an online survey on the Ministry's website (which was the Ministry's preferred option), or by email. The online survey was based on questions in the Consultation Document. All submitters were asked to fill out a submitter profile with key demographic information (see Appendix 2 and Appendix 3).

Method

Data was coded thematically and according to the order of questions in the survey using qualitative data software.

We note that certain questions in the survey could have been written more clearly. For example, question 12 of the online survey asked '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?' The question was followed by yes/no tick boxes and a comments box. We have assumed that submitters responded to the tick box to answer the first half of the question on whether they agreed with the impacts of the options but note the possibility that some submitters may have instead responded yes/no to whether they could suggest other likely impacts from the options. Question 8 of the survey did not contain a tick box option like similar questions on the impacts of the options, which was a mistake.

Privacy

Submitters were informed that submissions and any correspondence sent to the Ministry may be requested by a third party under the Official Information Act 1982 (OIA).

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

Submitters were asked to make clear in their submission whether they considered that any part of their submission should be withheld under the OIA, noting the reasons why the information ought to be withheld (eg, the information is commercially sensitive).

Declaration of interest

Submitters were asked 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 the Consultation Document. Stakeholders were also asked to provide a short statement or explanation of the purpose or focus of any organisations they represent that have an interest in these proposals.

Submitter demographics

We received 197 submissions, which comprised 92 submissions from individuals and 105 from groups and organisations, including:

- funeral services (49)
- local authorities (32)
- DHBs (4)
- public health units (PHUs) (4)
- government-related agencies (6)
- submitters who identified as Pākehā/European (80)
- submitters who identified as Māori, including 14 individuals and 4 groups (18)
- submitters who identified as being of Asian ethnicity (2)
- submitters who identified as Pasifika (4)
- submitters with disabilities (5)
- submitters who represented a religious organisation, including 3 members of the clergy, 1 parish council, 1 Muslim organisation and 1 group representing members of a majority Muslim ethnic group (6)
- veterans' organisations (6)

Next steps

The Ministry will undertake further policy work and targeted consultation in relation to the areas highlighted as requiring further consideration. Following this, the Ministry will finalise policy

recommendations before seeking decisions from the Government. This may result in new legislation being drafted.

Summary of submissions

Table 1: Summary of submissions outlining submitter views on each section and key areas for policy refinement

Section	Findings	Key areas of refinement
Proposed overarching duties	Submitters supported all proposed duties and corresponding penalties.	<ul style="list-style-type: none"> • Definition of 'undue delay' • Consideration for when no next of kin can be found • Cultural safety
Section A1: Death certification	Submitters supported the adoption of <i>Option 2: Implementing a package of changes to the current system based on most of the Law Commission's recommendations.</i>	<ul style="list-style-type: none"> • 24-hour time limit required for death certification • Guidance on certifying cause of death (in particular, when age is recorded as cause of death) • Expanding pool of certifying practitioners
Section A2: Auditing of death certification	Submitters supported the adoption of <i>Option 2: Establishing a death certification auditing committee system.</i>	<ul style="list-style-type: none"> • Cost of auditing processes • Implementation of auditing processes at a regional and national level
Section B1: Regulation of the funeral services sector	Submitters supported <i>Option 4: Providing central regulation for funeral directors.</i>	<ul style="list-style-type: none"> • Implementing regulation, including establishing qualification requirements • Supporting 'DIY' (do it yourself) funerals
Section B2: Informing consumers about the costs of funeral services	Submitters supported <i>Option 3: Making it mandatory to disclose all component prices as per the Law Commission's recommendations.</i>	<ul style="list-style-type: none"> • Consideration of how reforms could be effectively implemented to protect consumers from bill shock
Section C: Burial and cemetery management	Submitters supported <i>Option 3: Implementing a package of changes to the current system based on most of the Law Commission's recommendations.</i>	<ul style="list-style-type: none"> • Local authority resourcing and capacity (particularly proposed obligation to assume responsibility for failing non-local-authority cemeteries) • Establishment of new cemeteries • Legal definition of a cemetery • Clarification of the relationship between the Act and related legislation • Establishment of separate areas in local authority cemeteries (eg, denominational) • Cemetery management, including cemetery policies and the maintenance of monuments

Section	Findings	Key areas of refinement
Section D1: Cremation regulations	Submitters supported <i>Option 2: Adopting all the Law Commission's recommendations relating to cremation and dealing with ashes.</i>	<ul style="list-style-type: none"> • Disinterment • Human remains/kōiwi • Private burials • Burial of service people and veterans • Short-term tenure options
Section D2: Medical referee system	Submitters were split between <i>Option 2: Repealing the medical referee system</i> and <i>Option 4: Reforming and expanding the medical referee system.</i>	<ul style="list-style-type: none"> • Insufficient data on the activities of medical referees • Potential to move the role to the judicial system • Potential to expand or repeal the role, in the context of the proposed auditing system(s) • Consideration of the costs of the system
Section E: New methods of body disposal	Submitters supported <i>Option 2: Regulating new methods of body disposal.</i>	<ul style="list-style-type: none"> • How new methods would be confirmed as acceptable

General comments

This section highlights general themes that arose from submissions, including overarching themes that merited inclusion as a distinct section, and matters raised that were beyond the scope of the review.

These themes included general comments on the overall direction of the review, the impact of the proposed reforms on local authorities, consideration of Te Tiriti o Waitangi and te ao Māori, and the general theme of revising burial and cremation legislation in light of the COVID-19 pandemic.

General support and considerations

Submissions indicated general support for the review and highlighted some key considerations moving forward.

Outdated nature of the current Act

Some submitters alluded to or explicitly stated that a key consideration should be the outdated nature of existing legalisation. As one submitter noted:

The legislation is well outdated and whilst it was relevant when enacted it falls short in meeting the needs of a modern New Zealand. Since being enacted the nature of New Zealand has changed significantly, the population has aged, the societal expectations have changed around death and the afterlife, environmental aspirations have changed and form a strong principle in decision making of many and most importantly the cultural mix within New Zealand has changed – more diversity leading to a wider need to consider varying cultural expectations around death.

Submitters were in general agreement that the Burial and Cremation Act 1964 (the Act) is no longer fit for purpose due to its unsuitability for a modern world, its confusing framework, its archaic and overly specific provisions, and its general incapability to respond to societal trends. Considerations for this review include the need for ‘future-proofing’ of any new legislation, so that a new Act is flexible and equipped to respond to future shifts in technology and consumer preference.

A few submitters, particularly local authorities, suggested that they would prefer to maintain the status quo (with small updates to the Act) as widespread change to the legislation would be unnecessary, or that maintaining the status quo was the only cost-effective option. These concerns generally arose across Sections C and D in respect to the burial and cemetery management framework and crematoria and cemetery management. On the other hand, some submitters suggested that the review had not gone far enough, and that the proposed options (particularly around burial and cemetery management) still limited people’s choice and autonomy.

Environmental sustainability

A theme of environmental sustainability appeared across multiple sections of the review, with several submitters identifying the need for environmental sustainability to be considered when updating the Act.

Submitters indicated that the Act and associated burial and cremation practices are not sustainable in the long-term. Some submitters highlighted that the current expectation to be buried in perpetuity creates issues for long-term sustainability of land use for cemeteries, with land being locked up to cater for burials. This is explored further in Section C.

Other submitters commented that current methods of body disposal are limited, pointing to an increasing desire to be buried or cremated in new, environmentally conscious ways. Submitters raised issues in relation to embalming fluids used in traditional body disposal methods, which prevent efficient body decomposition when buried and emit toxic fumes when cremated. This is explored further in Section E.

Regulation of the funeral services sector

An overarching theme for many submissions was the unregulated nature of the funeral services sector (which is covered in detail in Section B1); however, the implications of a lack of regulation were scattered throughout the submissions.

Several submitters highlighted that professionals in the sector do not require any specific qualifications, and there is no regulation of common practices such as embalming. Submitters perceived a lack of transparency in the sector in relation to cost, as well as insufficient provisions for a formal complaint process.

Submitters who were members of the Funeral Directors Association of New Zealand (FDANZ) discussed that this membership comes with a set of standards, a register, and a formal complaint system. However, others highlighted that voluntary regulation does not cover all members of the funeral services sector and still leaves consumers vulnerable to malpractice during a difficult time and process.

Cultural safety

The importance of cultural safety was highlighted by a range of submitters. They discussed a need for the Act to be responsive to differing belief systems, highlighting the fact that increased diversity in New Zealand means a need for wider considerations around varying cultural expectations and practices around death. New Zealand's identity as an increasingly diverse and multicultural society was regularly identified across all sections by submitters. For example, the Canterbury Somali Association and the Working Together Group discussed the needs of their communities and for Muslim burials under any new legislation. Many commented that cultural safety for Māori was imperative to this review.

COVID-19

Some submitters spoke of the impacts and considerations of the COVID-19 pandemic.

The New Zealand Nurses Organisation noted that COVID-19 and consequent lockdowns had implications for Māori deaths and culturally appropriate practices after death, and that work should be done to ensure the Crown's responsibilities for Māori rights under Te Tiriti can be upheld throughout states of emergency.

Other submitters commented that COVID-19 had pushed the funeral services sector to use digital methods for processes such as death certification, as well as general communication in the sector. They said that digital methods were valuable tools to run the sector more efficiently moving forward. One funeral sector organisation noted that the issues presented by COVID-19 – for example, dealing with bodies that have infectious diseases – had reinforced the need for central regulation in the sector.

Impact on local authorities

Many submitters, generally local authorities, indicated that while they supported updating the Act, they were concerned about the potential impact of new legislation on local authorities.

A key consideration raised by submitters that ran across multiple sections was the financial impact of the new responsibilities for local authorities outlined in the Consultation Document. Local authorities observed that budgets are already stretched and that granting additional responsibilities to local authorities would impose additional costs to set up new processes, hire new staff to administer the changes, and review existing bylaws and resource management plans. Local authorities noted that ratepayers would likely experience the burden of new costs if adequate funding were not provided alongside any new responsibilities.

Alongside the financial impact, many local authorities also identified a lack of resourcing and capacity to deal with any new responsibilities as a result of new legislation. One submitter stated:

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.

They suggested that the Consultation Document fails to address a lack of local government capacity and capability to carry out the recommended functions. Several submitters raised concerns about the practice of central government delegating powers and responsibility to local government without appropriate guidance, consultation and analysis.

A few local authorities stated that central government has often shifted responsibilities to local government without adequate funding or analysis, and that a 'one-size-fits-all' approach can mean a review is unfit for purpose and costly to implement. They also raised particular concerns about increased responsibilities in the context of decision-making on new cemeteries, crematoria, disinterment, failed non-local-authority cemeteries and new compliance regimes.

Te Tiriti o Waitangi and te ao Māori

Many submitters commented on Te Tiriti o Waitangi, tikanga Māori, and the need for consultation with Māori on changes to the Act. Consultation with Māori was deemed necessary at all levels of burial and cremation, and submitters highlighted that the issues identified in the Consultation Document – particularly issues with death certification, over-referral to the coroner, and lack of

regulation in the funeral services sector (particularly a lack of training in cultural safety) – disproportionately affect Māori communities. Some submitters criticised the review, commenting that consultation with Māori and a general commitment to Te Tiriti o Waitangi was lacking.

Delays in death certification

Many submitters discussed how delays in death certification due to difficulty making contact with general practitioners (GPs) and over-referral of deaths to the coroner disproportionately affect Māori and funeral tikanga.

Other submitters with experience in the funeral sector stated that there was a lack of urgency from doctors in signing Medical Certificates of Cause of Death (MCCDs), and that doctors lacked the understanding as to why delays in signing death certification may adversely impact the cultural safety of Māori as tangata whenua. The Chief Coroner commented that coroners sometimes claim jurisdiction unnecessarily, leading to an over-referral of deaths to the coroner disproportionately affecting Māori.

Other submitters identified that the introduction of death certification auditing or the 'cause-of-death reviewer' would also have disproportionately negative impacts on Māori.

Cultural safety

Several submitters commented further on the need for cultural safety and acknowledgement of traditional Māori funeral practices. One submitter stated:

There is a need to improve [the] cultural awareness of funeral services [to] the needs and aspirations of tāngata whenua [...] To incorporate knowledge of tikanga and kawa, to build strong relationships with iwi and Māori communities and to have Māori leadership within funeral services will improve the quality and appropriateness of services for Māori. This will promote equitable health outcomes and reduce the likelihood of cultural offence by enabling Māori customary practices to be performed. Two minimum expectations should be that at all times services support and encourage whānau to accompany tūpāpaku at all stages from death, through preparation and to their return of their loved one to them, and that there is support of and access to traditional Māori practices of body preparation.

One organisation explained that it is crucial to have Māori (as mana whenua in their regions) as active partners in this review, and that any changes must ensure that cultural practices and consumer choices would not be undermined.

One DHB highlighted the lack of qualifications required by funeral sector services and their limited knowledge around cultural safety, generally concluding that the workforce:

[...] must be held to a higher standard, to work based on the principles of Te Tiriti o Waitangi, to be transparent in their dealings and the government must do more to protect the vulnerable people using these services.

Eastern Bay Villages commented that any changes to the law must honour the intent of Te Tiriti o Waitangi and reflect an understanding of Māori funeral practices.

One individual submitter noted that the review has no provision to recognise traditional funeral tikanga and customary practices around tūpāpaku. They considered that the options given for regulating the funeral services sector are discriminatory towards te ao Māori and customary embalming practices, and that the review lacks tribal and iwi engagement.

Burial, cremation, cemetery, and crematoria management

Some submitters focused on Māori and tangata whenua in the context of cemeteries, crematoria and suitable land use. Many submitters questioned the roles of iwi and hapū in deciding the suitability of the proposed community cemeteries, independent cemeteries, sites for private burial, new crematoria and sites to scatter ashes. Submitters identified the fact that land becomes tapu once human remains are interred or scattered there, indicating that the involvement of tangata whenua in all aspects of burial and cremation is integral to having culturally safe and effective legislation.

Queenstown-Lakes District Council noted the need for cultural perspectives on the disposal of human remains within a landscape and suggested that spatial planning be conducted on a national level to map areas of cultural significance with wāhi tūpuna (ancestral place) and nohoanga (dwelling places).

Lack of engagement with Te Tiriti and Māori

Some submitters perceived a lack of appropriate consultation and consideration of tikanga Māori in this review. Submitters were concerned that the Consultation Document was silent on Te Tiriti o Waitangi and the interests of tangata whenua in local burial practice, and that cultural factors should be the purpose and objective of the law, not an implied limitation. Submitters said it was unclear how much engagement or reflection of te ao Māori had been incorporated into the Consultation Document. One submitter stated:

[We] note that the acknowledgement of Hapū and Iwi as the kaitiaki of this land was seemingly absent in this document. As partners under Te Tiriti o Waitangi, the rights of Māori to uphold and maintain cultural practices are not appropriately taken into consideration. Article two of Te Tiriti o Waitangi states that Iwi and Hapū would be protected in the unqualified exercise of their chieftainship over their lands, villages and treasures – Tino Rangatiratanga. Article three confers upon Māori crown protection and the right of equity – ōritetanga, and article four promises that the customs of Māori will be protected wairuatanga. Whānau, Hapū and Iwi have a right to expect that their deceased loved ones will be cared for according to their customs as depicted in article three and therefore there must be strict regulations in place in regard to funeral directors to reflect this.

Scope of consideration of the review

Several submitters made comments that fell out of the scope of this review. These submissions generally suggested that the scope of the review should be broadened to include these considerations, which are relevant to the review.

One individual submitter suggested that there was potential scope for the review to consider renaming the legislation to illustrate that New Zealand and its legislation are evolving with the changing industry and new methods for body disposal.

One local authority commented on the matter of scattering ashes at sea, which is not included in the scope of this review but is considered to be culturally inappropriate without consultation of iwi and tangata whenua.

Other submitters commented that the review should be broadened to consider the interment of placenta, given this burial has the same implications as the burial of human remains. These concerns are explored across Sections C and D.

Te Tiriti o Waitangi and te ao Māori

Various submitters commented that while urupā are outside the scope of the review, due to its inclusion in Te Ture Whenua Māori Act 1993, it remained unclear if the new provisions proposed would apply to urupā, and this needed further clarification.

New Zealand Master Monumental Masons Association highlighted that some urupā have 'existing use access on to private land', with some of them close to capacity and no opportunity to extend their boundaries. They suggested that councils and affected hapū should work together to have land set aside in the council cemetery grounds to be used as urupā.

Proposed overarching duties

One hundred and thirty-six submitters, including 73 individuals and 63 groups and organisations, provided comments on the proposed overarching duties regarding the disposal of bodies. This section corresponds to the Introduction section of the Consultation Document, and questions 1–4 of the online survey.

Summary of submissions

Submitters were generally in agreement with the proposed overarching duties, and very few of those who disagreed provided comments.

Submitters overwhelmingly agreed that there should be a general duty to treat any dead human body or human remains with respect. Many submitters cited the need to accommodate different beliefs, religions, and cultural practices when interpreting the subjective nature of ‘respect’. Submitters generally supported breaches of this duty being punishable by infringement notice or fine but requested clarification on certain terms and a greater range of punitive measures.

Submitters generally agreed that there should be a requirement to dispose of a body without undue delay, while requesting further clarification of the terms ‘undue delay’ or ‘reasonable time’ (including in the context of cultural differences), and what would happen in certain circumstances such as when no next of kin can be found. Submitters were in general agreement that breaches of this duty should be punishable by infringement notice or fine. Submitters said that the circumstances of the delay must be carefully reviewed, and they queried who should enforce the duty.

General duty to treat any dead human body or human remains with respect

One hundred and thirty-three submitters, including 72 individuals and 61 groups and organisations, responded to whether there should be a general duty to treat any dead human body or human remains with respect. An overwhelming majority of submitters agreed that there should be such a duty.

Three submitters commented on the subjective nature of the concept of respect. One individual submitter discussed the fact that a general duty should not mean blanket requirements for all bodies to be treated the same way; rather, the general duty should ensure that any chosen method be performed with respect. Regional Public Health summarised this in the context of disinterment:

There are times during a disinterment where the remains are in such a state (eg, due to flooding or being in a lead lined coffin) that the family may feel that respect is not being given to their loved ones' remains. Therefore expectations of what 'respect' means to each party should be discussed prior to the disinterment to avoid offence and misunderstanding. Disinterments can be distressing situations and families should be informed of what to expect.

Four submitters, including three public health providers, emphasised that this general duty needs to accommodate different beliefs, religions, traditions and cultures, as illustrated by Hawke's Bay DHB:

Qualifying what respect looks like for different Pacific ethnicities needs to be explored further. Not all Pacific ethnic groups have the same cultural practices and their varying ideas about respect need to be taken into consideration when we are addressing 'general duty'. Historically, the Pacific community has not had a real opportunity to be included in these conversations or for the system to consider other ways to support the diverse needs of Pacific whānau.

Breaches of the duty to treat any dead human body or human remains with respect to be punishable by infringement notices and fines

One hundred and twenty-eight submitters commented on whether the failure to uphold the general duty to treat a dead body with respect should be punishable by infringement notice or fine. The vast majority agreed that breaches of the duty to treat dead bodies with respect should be punishable by infringement notice or fine.

- Auckland Council and two PHUs requested clarification of terms such as 'breach' and suggested that clear guidelines on what would constitute an infringement or further conviction should be made available to those working in the funeral services sector.
- Three other organisations agreed that breaches of this duty should be punishable by infringement notice or fine but suggested that prison terms should remain an option for serious or repeat offenders, or that a loss of licence, registration or role should be an option for repeat or serious offenders in the sector.
- Age Concern New Zealand supported the Law Commission's recommendation to expand the range of behaviours liable for conviction.
- One individual commented that allowing for infringement notices and fines for minor offending would encourage public confidence in the system.

Aotearoa Independent Death Voices Alliance (AIDVA) disagreed with breaches of this duty being punishable by infringement notice or fine. They suggested each breach should be treated on a case-by-case basis, with an independent commissioner being appointed to oversee issues or deal with complaints.

Requirement to dispose of bodies without undue delay

One hundred and thirty submitters responded to the question of whether there should be a requirement to dispose of bodies without undue delay. Again, the vast majority of submitters agreed with this requirement.

Four submitters requested clarification and guidance on what constitutes 'reasonable time' or 'undue delay'. Two submitters sought flexibility with respect to breaches in the context of funeral arrangements where the international travel of family members must be accommodated.

Three submitters referenced potential impacts of this requirement when next of kin cannot be found.

- Age Concern New Zealand explained that this puts organisations such as FDANZ in a difficult position, and it is unclear what enquiries need to be made, who bears the cost of the enquiries, or how long those in custody of the body should wait before next of kin are found.
- The Chief Coroner commented that statutory guidance needs to be made available in instances where there are no next of kin found, and that the legislation should clarify the obligations of the person who has custody of the body. She also noted the problem of determining what constitutes 'undue delay' in scenarios where there are disputes over who should have custody of the body.

Taituarā – Local Government Professionals Aotearoa (Taituarā) agreed that updating the wording to 'without undue delay' would assist in the context of family disagreements and instances where funeral directors were not acting on instructions within an appropriate timeframe.

Hamilton City Council said there should be clearer criteria for the disposal of a dead body when there is no executor or family and asked for further clarification on the obligations of local authorities to provide for 'paupers' burials', as they consider that the current responsibility seems out of date given the Work and Income New Zealand funeral grant.

One individual working in the funeral sector requested further clarification with respect to:

- the threshold for someone needing to be held accountable for undue delay
- whether there is a formal time limit
- who would be responsible for informing a person of an undue delay
- what confidential avenues will be made available to protect informants
- who would be made responsible to preside over breaches in the form of undue delay.

Three submitters commented on the need for cultural safety to be an integral part of the conception of 'undue delay'. Hawke's Bay DHB focused on Pacific communities:

The diverse needs of Pacific whānau requires services [sic] which deliver whānau centred approaches where they work together with whānau to decide the best and most practicable steps moving forward. Accommodating the delayed arrival of families from abroad due to availability of flights or costs can be a big issue.

Marlborough District Council discussed this in the context of Muslim and natural burials:

Muslim burials and natural burials both have particular requirements that mean these types of burials are time sensitive. One other area where this is important is in situations where families wish to undertake their own funeral process, without using the services of funeral directors. This includes the use of homemade coffins. We have been aware there are potentially health issues with these types of funerals and so a clear requirement for disposal without undue delay is appropriate.

Regional Public Health agreed with this requirement on the basis that there may be public health implications if a body decomposes without adequate disposal.

Finally, Ngāi Tahu Māori Law Centre focused on the relevance of tikanga Māori:

It is important that 'reasonable time' has a context-based interpretation to ensure that cultural practices can occur before the tūpāpaku is disposed of. Mourning practices vary between different cultures, and within tikanga Māori. Tikanga in relation to tūpāpaku varies from iwi, to hapū, to whānau. Different mourning practices varying in length of time need to come under the 'reasonable time' timeframe [...] Tikanga generally requires that immediate whānau remain with tūpāpaku until burial. Therefore, referral of a death into the coronial system can restrict whānau access and thus cause distress. It is thus important to restrict any unnecessary referrals to the coroner in general, and particularly for Māori.

Breaches of the duty to dispose without undue delay punishable by infringement notice or fine

One hundred and twenty-four submitters responded to the question regarding breaches in the duty to dispose without undue delay being punishable by infringement notice or fine. Twenty-three submitters, mostly individuals, disagreed with this proposal. Only one submitter left further comments on this objection. The vast majority of submitters agreed with this proposal.

Age Concern New Zealand agreed with the proposal but noted the need for the person responsible for the body to be clearly defined if either infringement notices or fines are to be enforceable. Regional Public Health said that while they agreed with this proposal, the circumstances around a breach to this duty should be very carefully scrutinised and reviewed.

Two local authorities supported the proposal but made further comments regarding cost. Christchurch City Council noted that introducing infringement notices and fines would allow greater flexibility for regulatory authorities, and overall would allow for a lower cost method of enforcement for low-level offending in this context. Waipā District Council agreed, but noted the cost and resourcing impact:

[I]t appears this would be a new enforcement role for local councils which will, together with other proposed new management and enforcement roles, require additional resourcing and have a financial impact on ratepayers. Council only has two compliance officers who undertake compliance on everything from Resource Management Act to bylaw breaches. Local council compliance teams have no experience with dealing with these matters as they are well beyond the current breadth of its cemetery management remit. There would be training and other costs. Enforcement of this specific offence may better lie with another agency, such as Police.

Tasman District Council agreed with the proposal and made similar comments around responsibility for the breaches lying with a national law enforcement agency, such as the Police, in order to ensure a nationally consistent approach.

AIDVA made the same objection with respect to both proposed overarching duties. They disagreed that breaches of this duty should be punishable by infringement notice or fine and proposed, instead, that each case should be treated on a case-by-case basis with an independent commissioner appointed to oversee any issues or deal with any complaints.

Findings

Submitters supported the adoption of both the proposed duty to treat any dead human body or human remains with respect and the duty to dispose of bodies without undue delay. Further work is required to finalise the policy recommendations in this section.

Section A1:

Death certification

This section corresponds to section A of the Consultation Document, and questions 5–10 of the online survey. Content related to auditing of the death certification process has been separated from other comments about death certification, except where this was not possible.

Summary of submissions

One hundred and sixteen submitters, including 57 individuals and 59 groups and organisations, responded to the questions relating to the death certification system.

For death certification, the majority of submitters preferred *Option 2: Implementing a package of changes to the current system based on most of the Law Commission's recommendations*, although submitters had reservations about the 24-hour limit required for death certification.

Assessment of the current system of death certification

Current issues

Table 2: Issues with the current system of death certification as outlined in the Consultation Document

Issues with the current system of death certification

- Errors in certifying cause of death
- Inefficiencies in the statutory death certification process
- Time limits on the certification of cause of death
- Level of certainty required to certify cause of death
- Problems with death certification forms

Errors in certifying cause of death

Forty-seven submitters specifically identified challenges with identifying the cause of death. Similarly, 42 submitters noted issues of forms being incomplete or incorrect, with problems such as inaccurate cause of death and incorrect dates, names and ethnicity. Submitters also raised the issue that many forms are illegible or uninterpretable and are filled out differently by individual practitioners.

Submitters raised a number of issues that contribute to the high error rates in the death certification system.

Difficulty identifying cause of death

Out of 48 submitters who discussed the challenges with identifying cause of death, 40 discussed how difficult it was to define and identify the 'cause' of death, and to be certain of the cause of death.

Hawke's Bay DHB noted that death is not currently defined in the law, and that while some practitioners might consider death to have taken place with the cessation of cardiac activity or breathing, others might define death as the cessation of brain function. They also noted that the purpose for collecting information on the mode of death is unclear.

Another submitter cited frequent errors, including:

- incorrectly identifying and recording the cause of death, including non-specific causes of death
- failure to correctly differentiate between cause of death, underlying cause and contributory issues
- inattention to detail and mistakenly listing the mode of death as the cause of death.

Age as cause of death

Six submitters raised whether old age may be noted as a cause of death. As the New Zealand Medical Association noted:

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. In such cases, we understand that it is absolutely fine to certify something along the lines of 'inanition of old age', 'frailty of old age' or even just 'old age' [...]

The Association recommended that the Ministry develop guidance on this matter.

Health conditions being excluded from the MCCD form

Twenty-nine submitters noted that underlying health conditions are often missing or incorrectly included in the MCCD form. Ten submitters commented on the impact of this for whānau, such as needing to correct the forms or not knowing their family histories and whakapapa. Specifically, conditions that submitters noted were incorrectly or not appropriately specified included dementia, disability, and health issues related to service for veterans.

Auckland Regional Public Health noted that a person's occupation should be better recorded in the MCCD form. This is because 'occupational exposure to hazards is an important contributor to illness and premature death' and should therefore be included in data around causes of death.

Eight submitters discussed the impacts of these inaccuracies on public health policies and priorities. A medical referee described the impacts of these inaccuracies on public health data:

The current system generates seriously deficient statistical information about causes of death – it over-represents immediate causes of death while under-reporting the significant underlying health conditions associated with disability and chronic illness.

Over-referral of natural deaths to coroner

Three submitters, including the Chief Coroner, noted the impact of the over-referral of deaths by natural causes to the coroner. The Chief Coroner noted:

[O]f the deaths in which a coroner takes jurisdiction, more than half are eventually found to be from natural causes. When the total number of deaths reported to the coroner are considered, that figure rises to more than two-thirds of all reported deaths. The problem with coroners taking jurisdiction unnecessarily is that it causes delays in returning the body to the family, which can cause significant distress.

Training and education

Twenty-five submitters noted the need to improve education and training around the death certification process for medical professionals, such as around the required certainty of cause of death, and how to fill out the MCCD form. Two submitters recommended that the public be better educated on the death certification process. One submitter noted the challenge for medical practitioners to understand the legalese contained in the forms.

Seven submitters noted that the most junior staff members, or overseas doctors, are often responsible for the MCCD form, which can contribute to quality control.

Process and required personnel for the death certification process

Fifty-seven submitters noted the inefficiencies and confusion related to the current process. Nine submitters discussed how families or professionals are sometimes forced to transport bodies or travel significant distances in order to complete the necessary process or forms, especially in rural areas.

Availability and knowledge of medical practitioners

Forty-three submitters highlighted the current requirements for specific personnel (such as medical practitioners) and their availability as an issue with the process. Four submitters noted that nurses are among these medical practitioners, but AIDVA noted that nurses are not often understood as being available to fulfil this role.

In addition to the submissions related to the need for improved training and education of personnel, 28 submitters noted the impact that medical practitioners' lack of knowledge had on the process. For example, Canterbury DHB noted that:

...indecision in the clinical team (at all levels of seniority) about what degree of certainty is required to complete the MCCD. Some patients are referred through the coronial process despite there being no doubt that the death was due to natural causes.

Twenty-nine submitters commented about medical practitioners' lack of availability, and delays securing the appropriate medical practitioner, as also outlined below in the section 'Timeliness of the death certification process'. For example, New Zealand Police explained the impacts when medical practitioners are not available:

The current death certification system relies on a doctor being available to certify a person's death immediately upon notification. However, a doctor is not always available after hours. In that case, Police must complete a full sudden death file. This

file involves the officer completing a statement of identification, verification of death, other statements, photographs, and a schedule of medications. This can take four to eight hours, and, if a doctor subsequently becomes available, Police's sudden death file will no longer be required. Therefore, Police supports any improvements to the current system of death certification.

Other issues include the challenge for families to have the MCCD form signed off without a funeral director. Death Without Debt suggested that the funeral director be prioritised in this process, as the requirements of the MCCD and the cremation forms are difficult, and there is no communication by medical practitioners to families about the required process.

As noted by 17 submitters, many of these issues apply to the cremation forms.

Timeliness of the death certification process

Fifty-five submitters discussed issues around time periods for the certification of death. Fifty submitters noted the impacts of medical practitioners being unavailable or forms not being completed in a timely manner.

The New Zealand Medical Association was critical of the proposed requirement for certifying practitioners to provide cause of death certification within 24 hours of death:

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 [...] 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 [...] for rest homes which by nature have a higher rate of patient deaths.

Another submitter explained how it was impractical to expect doctors to issue an MCCD immediately after death because they need access to records for accuracy, and these are not always immediately available.

Eight submitters also noted that the coronial process caused delays.

Paper documents and preference for digitisation

Twenty-seven submitters suggested that the death certification process should be digitised, and 23 submitters advocated for Death Documents.

Three submitters noted the challenges of needing to use both electronic and paper forms at present. As one submitter described:

Our system, with a manually written copy of the HROD [Hospital Record of Death] does cause some confusion among practitioners. The idea of a 'paperless' way to document death leads many of our doctors to complete death certification online, however miss filling out this HROD form. Our mortuary staff then must contact the doctor once more and ask them to complete this. This causes delays in the release of our tupapaku to their families, particularly as many doctors are annoyed after completing the documentation online.

Cultural safety

Twenty-one submitters noted issues around cultural safety in this section. The timing of the process was a key concern by eight submitters, and it is particularly applicable to Islamic funerals and tangihanga. The Chief Coroner explained that medical practitioners' unavailability contributes to over-referral of deaths by natural causes to the coroner. This has a disproportionately negative impact on whānau Māori. One submitter stated that the importance of staying with the body after death is also becoming more important for non-Māori. The National Council of Women of New Zealand noted:

The section on Death Certificates mentions Māori but not other cultures. We strongly feel there should be a provision for issue of death certificates in Te Reo Māori and other languages as appropriate, and that consideration of other cultures should be strongly evident throughout all processes.

The Child and Youth Mortality Review Committee stated that Māori organisations and iwi representatives should be partners in modernising the death certification system, and noted that health inequities justify this prioritisation.

This need to prioritise Māori was also reinforced by the Royal Australasian College of Physicians (RACP):

The RACP believes that the cultural needs of Māori must be better reflected in an updated death certification and audit process which facilitates whānau to remain with the tūpāpaku until burial. This ties into the wider context of review in the health system, surrounding the Wai 2575 Hauora report which found widespread systematic disadvantaging of Māori and erasure of tikanga Māori, of which death practices are an important component.

According to the Auckland Regional Public Health Service, inaccurate identification of ethnicity is a major issue.

Evidence of the current issues relating to death certification

Unlike in the other sections, this section of the survey did not contain a tick box option like similar questions on the impacts, which was a mistake.

Fifty-six submitters provided evidence on the size or extent of current issues with death certification. Some of the discussion around evidence of current issues is presented under the relevant headings in the preceding section. This includes evidence on:

- the challenge of identifying the cause of death for MCCD forms
- the death certification process being confusing and impacted by the availability and lack of knowledge of medical practitioners
- the timeliness of the death certification process, such as significant delays for families, or unreasonable expectations for funeral directors.

Additional comments pertaining to evidence of the current issues included:

- six submitters discussing the lack of a central death register
- Hamilton City Council suggesting that a national register to record burials, cremations and future body disposal methods be implemented.

Options for reform of death certification

Table 3: Options for reform of death certification as outlined in the Consultation Document

Option 1	Maintaining the status quo
Option 2	<p>Implementing a package of changes to the current system based on most of the Law Commission's recommendations</p> <ul style="list-style-type: none">• The Ministry would have oversight of the death certification system and provide appropriate guidance.• Certifying practitioners would be required to provide cause of death in 24 hours. An alternative medical or nurse practitioner could fulfil this requirement.• Permission for the body to be disposed of or embalmed would not be available until the cause of death was certified.• New approved methods could be prescribed in regulation at a future date.• No changes would be made to the existing statutory restrictions around transferring charge of a body before cause of death has been determined.
Option 3	<p>Implementing a package of changes to the current system based on all of the Law Commission's recommendations</p> <ul style="list-style-type: none">• The same as Option 2 with two further requirements:<ul style="list-style-type: none">– Add an additional section in the MCCD to verify the identity of the body.– Bodies would not be disposed of unless the identity of the body has been adequately identified.

General comments on the options

Impact on general practitioners

The Royal Australasian College of Physicians highlighted that any changes to the death certification and auditing process will have a significant impact on certifying practitioners (which include medical and nurse practitioners):

The processes which facilitate certification and auditing are outdated and require modernisation, which leads to errors and inefficiencies throughout the system. Consequently, an unnecessary workload is being placed upon certifying practitioners. As 89 per cent of deaths are certified through this process in Aotearoa New Zealand, any improvements made will be magnified many times in benefit, and will save significant amounts of time for practitioners.

Cultural safety

Five submitters explained how potential harms may arise under Options 2 and 3 if there is delayed access to the body. This is particularly harmful where it is culturally important to have access to the deceased as soon as possible.

COVID-19 process

As also mentioned in Section D2, nine submitters noted their preference for the digitised process of death certification utilised during the COVID-19 lockdown.

The New Zealand Nurses Organisation stated that the legislation should include a section on procedures during a state of emergency and as part of future pandemic preparedness.

Impacts of the options

Thirty-six submitters mentioned possible impacts about the proposed options. Where possible, we have summarised impacts specifically relating to the options in the following sections. Submitters' comments are presented under the relevant headings below, where appropriate. Submitters noted the following possible impacts.

- Half of the submitters who made comments about Option 1 opposed it because it would result in no changes.
- The highest number of impacts were discussed for Option 2, which included concerns about the 24-hour time limit, the requirements for certain medical practitioners, and clarity about coronial oversight.
- Impacts of Option 3 included that it may make the death certification process slower or more expensive.

Twenty-nine submitters agreed with the impacts of the options for modernising death certification as outlined in the Consultation Document, and five submitters disagreed. Two of those who disagreed said this was because they thought that the current system worked well.

Preferred options for modernising the death certification system

Option 1: Maintaining the status quo

Twelve submitters preferred Option 1. Five of these submitters provided further comments in agreement of Option 1, with two submitters stating that they preferred Option 1 because it appeared to have less of an impact on the choices that people have to be able to look after the dead.

Six submitters indicated that they did not support Option 1. Four of these submitters left further comments, stating that there are too many issues with the current system for Option 1 to be of consideration. According to one medical referee:

The current system is not fit for these purposes. It is inconsistent, inefficient, difficult for certifying practitioners to understand and it generates inaccurate data.

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

Sixty-one submitters preferred Option 2, and 47 submitters provided comments about Option 2.

- Twenty-one submitters noted the improved process and accuracy provided by Option 2 and approved of the suggested oversight by the Ministry of Health.
- Six submitters noted the benefits of the death certification process being digitised.
- Four submitters noted that additional body identification checks were not necessary. Conversely, Auckland Council considered it necessary.

- Two submitters suggested that the cremation and burial forms should also be made consistent.
- The Royal Australasian College of Surgeons supported the proposed changes and supported these being taken further.

Time limit for certifying death

Nine submitters suggested that the 24-hour time limit for certifying death could be an issue if medical practitioners were unavailable or unwilling to travel, and it could limit their access to adequate evidence, such as medical forms. These comments reflected that the availability of medical practitioners to enable the timely completion of MCCD forms is already an issue.

- The Chief Coroner stated that the 24-hour time frame for certification does not account for situations where a doctor is unable to review their notes before certifying.
- The New Zealand Medical Association said that the requirement to provide death certification (excluding where required by cultural imperative) within 24 hours will be an inconvenience and expense to the doctor and to the family when people die on weekends or on public holidays.
- AIDVA suggested the wording be 'within 24 hours of learning of the death or as soon after that as is reasonably practicable'.
- One submitter noted that 24 hours is too long, especially for Māori.
- The National Council of Women New Zealand suggested changing the language to 'within 24 hours' rather than encouraging a 24-hour wait.
- One submitter suggested the 24-hour limit would put increased pressure on hospices.
- One submitter noted that they would have preferred Option 2 to the status quo, if not for the 24-hour limit being too difficult to fulfil.

Certifying practitioner requirements

Fifteen submitters commented regarding the requirements of certifying practitioners.

- Four submitters provided their support for expanding the pool of practitioners who can certify a death. AIDVA noted their support for enabling 'some nurses to certify death in some circumstances and not require the attending doctor to view the body prior to determining the cause of death'.
- Four submitters reinforced FDANZ's concern that similar procedural requirements of GPs have had slow uptake.

Members of the Injury Prevention Research Unit noted that Option 2 needs to clarify 'AND or OR' at the end of each bullet point in the Consultation Document regarding death certification.

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

Thirty submitters preferred Option 3, and 21 submitters commented about Option 3.

- Seven submitters suggested that Option 3 would be too intensive, slow or expensive, and four submitters noted that this option would have consequences that detrimentally impact cultural requirements.
- Eight submitters noted the benefits of Option 3, including greater Ministry oversight, advertising of costs, and the system being digitised.

- One submitter recommended that the cremation and burial forms be made consistent.

Regarding the additional requirement for body identification:

- one submitter questioned the evidence in the Consultation Document
- three submitters deemed the requirement unnecessary
- two submitters suggested that the requirement would be beneficial.

The Royal Australasian College of Surgeons endorsed Option 3 on the proviso that practitioners acting in good faith using the information available would not be liable when certifying the identity of the deceased.

Findings

Submitters supported the adoption of *Option 2: Implementing a package of changes to the current system based on most of the Law Commission's recommendations*. Further work is required to finalise the policy recommendations in this section.

Section A2:

Auditing of death certification

This section corresponds to section A of the Consultation Document, and questions 11–14 of the online survey. Content related to auditing of the death certification has been separated from other comments about death certification, except where this was not possible.

Summary of submissions

Ninety-nine submitters, including 50 individuals and 49 groups and organisations, responded to the questions relating to the current auditing of death certificates.

With respect to the auditing of death certification, the majority of submitters preferred *Option 2: Establishing a death certification auditing committee system*, although a similar number of submitters preferred *Option 3: Implementing the Law Commission's related recommendations around auditing of death documentation, including creating a statutory 'cause of death reviewer'*, or both options. Submitters had questions about how the auditing committees would be adequately resourced, but most agreed that auditing was an essential addition to the current process.

Assessment of the current system of death certification auditing

Sixty-five submitters, including 27 individuals and 38 groups and organisations, commented on the current system of death certification auditing.

Current issues

For issues with the current system as outlined in the Consultation Document, please refer to Table 2.

The most common issue raised by submitters was that they were unaware that any auditing of the death certification process was being undertaken. Four submitters, including Canterbury DHB, noted that some auditing mechanisms are currently being undertaken.

Thirty-eight submitters, including 23 groups and organisations and 15 individuals, emphasised the importance of creating an auditing system.

- Nine submitters noted that having an auditing system would help identify data trends to inform public health measures.
- Nineteen submitters suggested that an auditing system may lead to improvements in the overall certification system.
- Two submitters highlighted that an auditing system would also support a consistent protocol for the investigation of sudden deaths.
- Nine submitters noted that an auditing system would be a way to check rates of errors for specific hospitals and medical practitioners.
- Two submitters noted that an auditing system would also support the improvement of training for medical practitioners.

Twenty submitters noted the potential limitations of an auditing system.

- Six submitters noted that auditing processes are not necessarily consistent or comprehensive.
- Twelve submitters indicated that error rates in death certification would have a detrimental impact on an auditing process.
- Four submitters discussed the possible impacts of an auditing mechanism, including costs for whānau and the impact on medical practitioners' workload.

Other observations on the auditing of the death certification process included the following.

- Nine submitters spoke of the role of medical referees in auditing as they review death certification documentation for cremation. One medical referee noted that this is sometimes the only feedback that certifying medical practitioners receive. However, seven submitters suggested that this review undertaken by medical referees could be extended to burial forms.
- Four submitters noted that Death Documents or digital certification would be beneficial but emphasised the need for consistency across the country.
- One individual observed that there is a need to educate certifiers on the cultural implications of the signing or failure to sign the MCCD, particularly for Māori.

As there is no current system for auditing of death certification, limited evidence about current issues with auditing was received.

Options for auditing of death certification

Table 4: Options for auditing of death certification as outlined in the Consultation Document

Option 1	Maintaining the status quo
Option 2	Establishing a death certification auditing committee system <ul style="list-style-type: none"> • Death certification auditing committees made up of DHBs would be established to peer review cause-of-death determinations. • There would be Ministry oversight of these committees to share trends and lessons across hospitals and DHBs.

Option 3	<p>Implementing the Law Commission’s related recommendations around auditing of death documentation, including creating a statutory ‘cause-of-death reviewer’</p> <ul style="list-style-type: none"> • A ‘cause-of-death reviewer’ would be created to review random samples of most death determinations. • Deaths could also be referred to the death reviewer by members of the public, and more targeted reviews could be conducted. • Hospitals would also be required to set up their own committees to peer review their cause-of-death determinations. • Hospitals would then pass on feedback directly to clinicians where issues were identified. • These review processes would aim to detect errors and provide education.
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General comments on the options

Twenty-nine submitters made general comments about the options for auditing of death certification.

- Five submitters noted that delays to the death certification process could result in negative implications on cultural requirements.
- Seven submitters suggested that training and education for medical practitioners should be required as part of the auditing process.
- Four submitters recommended that errors in forms would need to be considered as part of the auditing process.
- Three submitters noted that Death Documents, or an online process, may be beneficial for the auditing process.
- Ten submitters referred to the possible financial impacts of implementing an auditing system for different groups, which could include increased costs to:
 - DHBs
 - funeral directors
 - families and the public.
- One individual indicated that they were unsure of the cost that auditing would create.

Impacts of the options

Table 5: Impacts of the options for auditing of death certification as outlined in the Consultation Document

Option 1	Issues remain the same
Option 2	<ul style="list-style-type: none"> • Death documentation would be regularly reviewed, and lessons would be shared across and within committees and with certifying practitioners. • There is a risk of not detecting inaccurate MCCDs that are not included in the audited sample. • This risk will be mitigated by sector guidelines, such as improved guidance regarding the types of deaths that should be referred to the coroner. • There will be establishment and administration costs to create the peer review committees, for both the Ministry and the organisation that establishes them (potentially DHBs).

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- There will also be a cost to the Ministry to administer new controls and to support committees to share learnings (producing guidelines etc).
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Option 3

- Similar impacts to Option 2.
 - The Ministry will also have specific statutory powers to review and enable additional checks of cause of death for individual deaths.
 - There are 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.
 - 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, which would be required to establish peer-review committees.
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Evidence of the impact, cost or benefit of the options

Twenty-four submitters mentioned the possible impacts of the proposed options for auditing of death certification. Many submitters provided evidence when describing the proposed options. This evidence is presented under the relevant headings below, where appropriate. This includes evidence regarding:

- cultural safety concerns if the death certification process were delayed for auditing
- errors in forms, which would need to be managed for an auditing process to be effective.

Preferred option for reform of auditing of death certification

Option 1: Maintaining the status quo

Ten submitters indicated that they preferred Option 1.

Eight submitters provided comments about Option 1, including:

- two submitters who said that Option 1 is too relaxed or is not adequate.
- two submitters who suggested that auditing was not necessary because medical referees supported auditing adequately, and that it was only another layer of bureaucracy.

Option 2: Establishing a death certification auditing committee system

Thirty-nine submitters preferred Option 2, and 31 submitters provided detailed comments.

Cost and time

Some submitters provided additional comments relating to costs incurred under Option 2.

- Three submitters indicated that costs could be imposed on:
 - senior medical officers
 - general practitioners
 - medical and nurse practitioners.

- One funeral director suggested that auditing costs should not be transferred to funeral directors, as these costs would be passed onto families.
- Four submitters noted that the financial and administrative costs for Option 2 were more achievable than Option 3.

Audit as an educational tool

Eleven submitters discussed how the auditing process can be used as an educational tool to improve the accuracy of death certification. One individual queried how to best achieve a feedback loop, while another individual disagreed that certifiers should be given direct feedback if their forms were incorrect, and Canterbury DHB queried how inaccuracies would be communicated.

Audit to reduce natural deaths being directed to coroner

The Chief Coroner and the Ngāi Tahu Māori Law Centre supported the audit process to reduce the unnecessary referral of natural deaths to a coroner as this may lessen the likelihood of tikanga Māori and other cultural practices being unnecessarily impeded.

Option 3: Implementing the Law Commission's related recommendations around auditing of death documentation, including creating a statutory 'cause-of-death reviewer'

Thirty submitters indicated that they preferred Option 3. Three submitters preferred both Options 2 and 3.

Some submitters provided additional comments about Option 3.

- Three submitters noted Option 3 does not adequately consider cultural safety or tikanga and could restrict whānau access to tūpāpaku, impeding tikanga.
- Twelve submitters considered that the process under Option 3 would be overly administrative, costly, or slow, and could limit options for after-death care.
- Three submitters recommended the adoption of the medical examiner role that has been introduced in the United States and the United Kingdom.

Some submitters commented specifically on the role of the death reviewer.

- Four submitters noted that while the death reviewer would be expensive, it would substantially improve accuracy.
- AIDVA recommended further enhancements to the proposed role for the death reviewer to ensure more robust oversight.
- The New Zealand Medical Association noted that the role would be unnecessary and overly burdensome for certifying practitioners.

Findings

Submitters supported the adoption of *Option 2: Establishing a death certification auditing committee system*. Further work is required to finalise the policy recommendations in this section.

Section B1:

Regulation of the funeral services sector

This section corresponds to section B of the Consultation Document, and questions 15–20 of the online survey. Content related to informing consumers about funeral costs has been separated and can be found in Section B2, except where it was not possible to separate submitter comments.

Summary of submissions

One hundred and fifty-eight submitters, including 67 individuals and 91 groups and organisations, provided comments on regulating the funeral services sector.

Most submitters identified the key issue as a lack of regulation, especially with respect to funeral director qualifications and the lack of framework for complaints. Submitters also raised concerns about the high costs of funerals, which overlapped with the submissions about informing consumers about funeral costs.

Submitters generally supported *Option 4: Providing central regulation for funeral directors*, and were critical of *Option 2: Removing registration requirements*.

Assessment of the current regulation of the funeral services sector

Table 6: Issues with the current medical referee system as outlined in the Consultation Document

Issues with the current medical referee system

- Limited regulation for registering as a funeral director
- Voluntary self-regulation of the funeral services profession
- No legal requirements to disclose funeral pricing information
- Limited dispute and complaint mechanisms for consumers
- Lack of consumer protection mechanisms
- Poor quality or non-delivery of contracted funeral services
- Lack of pricing information and bill shock

Current issues

Sixty-seven submitters, including 39 individuals and 28 groups and organisations, agreed with the issues outlined in the Consultation Document in relation to costs within the funeral services sector. Six submitters disagreed with the issues outlined in the Consultation Document.⁵

Funeral director qualifications and receiving poor services

Twenty-nine submitters stated that the unregulated status of the sector is problematic, and that members of the public expect it to be regulated.

There is little public awareness that the sector is unregulated, or that funeral service staff do not require mandatory professional qualifications. One submitter said:

Anecdotally we have heard of instances whereby someone sets themselves up with a vehicle and a phone and starts looking for business. They have no experience or training and do not have suitable body handling equipment or body storage facilities.

Sixty-one submitters, including 22 groups and organisations and 39 individuals, discussed funeral director qualifications and receiving poor services. Fifty of these submitters noted their concerns about funeral directors not being regulated and having inadequate training.

Twenty-six submitters, including seven funeral sector organisations and the New Zealand Embalmers Association (NZEA), discussed the impacts of having an unregulated sector. One submitter was 'traumatised' by their experience with a funeral director who had no qualifications:

I really hope our heart wrenching experience can help make changes within the industry, as at least then I could say that one good thing came out of it. Our experience cannot be reversed. The harm suffered cannot be repaired. We have no avenue of recourse. I believe everyone within the industry needs to be part of an association that has a code of ethics and is regulated, like the FDANZ, NZEA and NZIFH.⁶

Fifteen submitters mentioned the FDANZ, with most noting that the issues in the sector usually come from those funeral directors who are not members of FDANZ.

A few submitters highlighted the limitations of the current self-regulation.

- One funeral director considered that the industry is generally functioning well, with the exception of certain operators who attract customers by offering low-cost services without the right training, qualifications and experience.
- One embalmer noted that FDANZ is an association of member *businesses* and not of *individuals* and that membership only requires qualified funeral directors and not qualified embalmers.
- One funeral sector organisation was critical of how training is limited to members of FDANZ.
- The National Council of Women of New Zealand similarly emphasised the shortcomings of voluntary regulation, noting that while 80 percent of funeral directors belong to FDANZ, only 50 percent of funerals are undertaken by them, and that there are no standards for non-FDANZ operators.

⁵ Please refer to the caveat in the Method section.

⁶ Funeral Directors Association of New Zealand, New Zealand Embalmers Association, and New Zealand Independent Funeral Homes.

Embalmer qualifications

Sixteen submitters, including eight individuals and NZEA, specifically mentioned the importance of regulating the embalming process. One funeral sector organisation noted the impacts of poor embalming practices where a body was not embalmed properly and began to decompose over the three days that the body was at home with family. One embalmer added that:

The risks associated with [an] embalming process that is delivered in a way that diminishes the dignity of the dead or causes stress to the bereaved family is greatly reduced by ensuring that embalming is carried out only by qualified and regulated operators.

Disclosure of prices and services

The issue of disclosure of prices and services is discussed in more detail in Section B2. Fifty-three submitters also discussed costs in the context of discussing the regulation of the funeral services sector.

Access to information about the funeral process for members of the public

Twenty-nine submitters, including six funeral sector organisations and 13 individuals, noted issues around access to information about the funeral process for members of the public.

- The majority of these submitters noted that they would like to have more information so that they do not need to rely on the knowledge of medical practitioners and funeral directors to make decisions when someone dies.
- One individual noted that the Ministry of Health's own website incorrectly stated that only registered funeral directors could handle deceased persons and carry out the functions of burial or cremation and transporting a deceased person in New Zealand.
- Two submitters considered that current legislation supports the interests of funeral directors.
- Three submitters suggested that information should be made available for members of the public about the legal requirements when someone dies. Conversely, one funeral sector organisation noted that the 'End of Life Services' website provides this information.

'Do it yourself' (DIY) funerals and independent funeral providers

Twenty submitters made comments about DIY funerals and independent funeral providers. Five of these submitters noted that many people want independent funerals, run by families themselves, or smaller organisations. Seventeen submitters considered that the reform should support people to organise and hold their own funerals. Eastern Bay Villages included a petition signed by 60 people, which said:

We must not see regulation or registration that would limit our rights to care for our own whanau, and our rights to choice and diversity.

Two submitters, including the New Zealand Council of Victim Support Groups, noted that in order to facilitate DIY and independent funeral providers, paperwork needed to be simpler. Three submitters stated that privately owned crematoria are a barrier for those who independently organise funerals because their services may be limited to those who also purchase a funeral package.

Three local authorities noted the impact of families seeking to have independent funerals.

- Wellington City Council noted the increase in family members making their own arrangements, and that while they did not publicise this option, they provided the necessary support for this process when families requested it, as this is often in response to negative experiences with funeral directors or high costs.
- Marlborough District Council requested national guidelines.
- Waipā District Council noted that they have faced challenges navigating health and safety requirements and requested that only funeral directors be allowed to manage funerals.

Prioritisation of profits

Nineteen submitters considered that funeral sector organisations were prioritising profits rather than the interests of the grieving and of the deceased. One funeral sector organisation noted that rest home residents can be locked into contracts with funeral services.

One funeral sector organisation recounted how they were ousted by the funeral service sector after indicating that they would sell caskets directly to consumers. They stated that the funeral service industry is in breach of the Commerce Act 1986 and engages in 'cartel behaviour'.

Cultural safety

Sixteen submitters raised issues relating to cultural safety. The majority of these submitters noted that the funeral services sector does not adequately understand cultural needs. One individual who identified as Māori explained:

[T]he funeral services sector does not consider and recognise that traditional Maori embalming exists, because they have not had knowledge of these customs. Maori should not need to justify their right to continue practising their own funeral services for their deceased.

Eastern Bay Villages noted the positive impacts of having funeral services that place grieving people's specific needs at the centre of their services and have 'taken the process of dying back from the hands of medical professionals and hospitals' for both Māori and Pākehā.

Protection for consumers and the complaints process

Forty-three submitters noted concerns relating to consumer protection and a lack of a complaints process. Seven submitters mentioned the general lack of accountability for errors or mistakes made by funeral directors.

One funeral sector organisation explained that FDANZ has a very strict code of conduct and set of standards, and that any members who fail to meet these standards will face an 'independent complaints procedure'. However, FDANZ reported an increased number of queries from members of the public who contact them about issues relating to services provided by non-members.

Seven submitters noted that it is difficult to ascertain the scope and prevalence of the issues within the sector due to the lack of a complaints process and protection mechanisms, resulting in a lack of data.

Evidence on the current issues relating to the funeral services sector

Some submitters provided evidence on the size or extent of current issues relating to the funeral services sector. Most of the discussion around evidence of current issues is presented under the relevant headings in the preceding section. This includes evidence on:

- the lack of a qualifications and professional standards framework for funeral service providers leading to poor service delivery
- a lack of transparency in relation to funeral prices
- a lack of public access to information about the funeral sector
- prioritisation of profits over service delivery to grieving whānau
- a lack of protection, such as a complaints process.

Options for regulation of the funeral services sector

Table 7: Options for regulation of the funeral services sector as outlined in the Consultation Document

Option 1	Maintaining the status quo
Option 2	Removing registration requirements
Option 3	Providing central government registration <ul style="list-style-type: none">• Funeral directors would only need to be registered once every three years to the Registrar-General of Births, Deaths and Marriages.
Option 4	Providing central regulation for funeral directors <ul style="list-style-type: none">• Funeral directors would need to pay to register, and would need to meet certain characteristics, as well as having a relevant qualification.• Funeral directors would have duties such as maintaining records that would be an offence if they were breached.

General comments on the options

Cultural safety

Twelve submitters were concerned that cultural considerations were missing in the discussion of options for funeral sector regulation. Four submitters emphasised the need for the funeral sector to recognise the importance of customs and practices to differing cultural or religious groups, such as Māori or Muslim people. They expressed frustration with a lack of diverse training options for the funeral sector in New Zealand and recommended that the industry needs greater diversity training options to better serve their customers during times of mourning. One submitter stated:

Whānau, Hapū and Iwi have a right to expect that their deceased loved ones will be cared for according to their customs as depicted in article three and therefore there

must be strict regulations in place in regards to funeral directors to reflect this. This workforce must be held to a higher standard, to work based on the principles of Te Tiriti o Waitangi, to be transparent in their dealings and the government must do more to protect the vulnerable people using these services.

If the Funeral Service Sector is regulated it will create a huge problem of catering for the needs of Muslims to bury their deceased according to their religious requirements which have been practised for the last 1450 years since the inception of Islam.

Impacts of the options

Table 8: Impacts of the options for regulation of the funeral services sector as outlined in the Consultation Document

Option 1	Issues remain the same
Option 2	<ul style="list-style-type: none"> • Many of the identified issues would not be addressed. • Decreased administrative costs for territorial authorities, as they would no longer need to keep a record of funeral director registrations or process registration applications. • Decreased administrative costs for funeral directors, as they would no longer pay the registration fee or fill out the application form. • Potential increase in administrative cost for government, which would need to find another way to identify funeral directors and where deceased bodies are stored in the community.
Option 3	<ul style="list-style-type: none"> • Many issues identified would not be addressed. • Similar to Option 2, decreased administrative costs for territorial authorities, as they would no longer need to keep a record of funeral director registrations or process registration applications. • Increased administrative costs for central government, as funeral service providers would register with Births, Deaths and Marriages every three years. • This would reduce 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.
Option 4	<ul style="list-style-type: none"> • Similar to Options 2 and 3, decreased administrative costs for territorial authorities as they would no longer need to keep a record of funeral director registrations or process registration applications. • All funeral service directors would need to be registered, adequately trained, and of good character. • The Registrar-General of Births, Deaths and Marriages could de-register funeral service providers that did not provide adequate services. • Reduced risk of mishandled funerals due to increased competence and training of funeral directors. • Consumers gain recourse if deregistration is insufficient, as there would be a central regulatory body with investigatory powers. • Significantly increased costs for both funeral directors and central government. • Costs may be passed to consumers via increased service fees. • Increased costs can act as a barrier to new funeral services, decreasing market competition.

Fifty-two submitters noted further information about possible impacts of the options. Where possible, we have summarised impacts specifically relating to the options in the following sections. The impacts are discussed under the relevant headings below, where appropriate. Comments included:

- concerns that Option 1 would not have an impact on the current issues outlined
- suggestions that Option 2 would 'create a rush of unregulated operators providing poor service'
- concerns that Option 3 would not provide adequate consumer protection
- support for Option 4 predicated on improved consumer protection.

Fifty-six submitters agreed with the impacts of the options, while 10 submitters disagreed with the impacts.⁷

Thirty-seven submitters made comments about the described impacts of the options. As above, these impacts are discussed under the relevant headings below, where appropriate.

Preferred option for regulating the funeral services sector

Option 1: Maintaining the status quo

Nineteen submitters indicated that they preferred Option 1, and 34 submitters provided comments about Option 1. One submitter stated:

Currently many high-quality practitioners work in the sector without qualifications. Personal qualities such as compassion, reliability, integrity and honesty are more important than qualifications in death care and qualifications. Skills can be taught, empathy cannot.

- Four submitters considered that Option 1 best ensures consumer choice.
- Three submitters offered additions to Option 1, including:
 - the ability to decline the application for want of good moral character
 - accommodating Māori traditional embalming
 - removing the requirement for annual registration, as this is onerous and unnecessary.
- Seventeen submitters noted that Option 1 would have no impact on the issues outlined and would offer no further benefit for consumers.
- Four submitters generally disagreed with Option 1. Ashburton District Council noted the status quo 'erroneously implies' that the Council has oversight and responsibility over funeral directors' practices.

Option 2: Removing registration requirements

Four submitters indicated that they preferred Option 2.

One submitter provided additional comments in support of Option 2, advocating for the removal of registration requirements for funeral directors but the continuation of the requirement for facilities.

⁷ Please refer to the caveat in the Method section.

Many submitters who provided additional comments either did not support Option 2, or suggested changes to Option 2.

- South Taranaki District Council did not prefer Option 2, but believed a self-regulation model would be sufficient provided the existence of an independent body for complaints.
- Ten submitters, including five funeral sector organisations and three local authorities, argued self-regulation would be inadequate.
- Seven submitters believed that Option 2 would have no impact on the issues outlined and would offer no further benefits for consumers.
- Two local authorities and one DHB considered that Option 2 would remove local authority oversight over the funeral services sector. Regional Public Health noted that they would also lose oversight of local funeral directors and about where deceased bodies are stored, which would be particularly important in a pandemic.

Option 3: Providing central government registration

Twenty-five submitters indicated that they preferred Option 3.

Some submitters provided additional comments in support of Option 3.

- One local authority preferred Option 3 as it would reduce costs for the funeral industry compared to Option 4.
- Ten submitters explained their support for a central government registration, which would ensure registration of funeral directors and provide a central regulating body and oversight at a national level.
- Four submitters noted that Option 3 may provide more protection and a place to give feedback, which could be especially beneficial for vulnerable consumers.

Conversely, 11 submitters indicated that Option 3 in its current form does not provide adequate protection for consumers or respond to current consumer concerns.

Suggested modifications to Option 3

Six funeral sector organisations, including FDANZ, recommended a modified version of Option 3:

1. We prefer a modified version of Option 3 which would mean that minimum standards are introduced for registration as a funeral director. We recommend that our standards are adopted as that minimum standard and will be happy to work with the Ministry on the implementation of this.
2. We believe that any use of the term 'registration' needs to have a set of stated requirements to support it and that the registration should apply to a trading entity to provide more stability for the public.
3. We further believe that registration should be run by central government rather than local authorities unless a consistent application of requirements and fees can be mandated nationally.

Six other submitters suggested:

- clarification on whether registration would be for individual funeral practitioners, or for the businesses
- waiving the requirement for certification until a training course has been approved

- other modifications, such as:
 - legal rights displayed in funeral homes
 - price breakdowns
 - providing the bereaved with options for funeral services and after-life care
 - ensuring that training for the funeral sector includes te ao Māori considerations.

Option 4: Providing central regulation for funeral directors

Sixty-five submitters, including NZEA, Local Government New Zealand (LGNZ), and Taituarā, preferred Option 4.

Submitters expressed a variety of reasons for their support for Option 4.

- Twenty-seven submitters, including eight local authorities, preferred Option 4 because of registration and training requirements, enhanced consumer protections, and given government has access to records to vet applicants.
- Nine submitters mentioned their support for the Law Commission’s recommendations as a reason for their support of Option 4.
- Twelve submitters mentioned the complaints process as a reason for their support for Option 4.
- Eight submitters, including NZEA, noted the improved regulation of embalming as a reason for their support for Option 4.

However, 17 submitters raised concerns about the additional costs of Option 4 and their potential impacts on both the public and on funeral directors, especially with respect to smaller companies. Four submitters noted that any extra costs should be absorbed by funeral directors rather than members of the public.

Further clarification on funeral director qualifications

A few submitters commented on the nature of the registration requirements.

- Two submitters requested further information about the requirements for funeral director qualifications.
- Two submitters requested that qualification pathways for funeral directors and embalmers be aligned with current qualifications.
- One submitter critiqued the current funeral director course, noting that high costs make it inaccessible.

Limiting choices

Two submitters noted that Option 4 would cause harm and limit choice for consumers and for people in the funeral services sector. One submitter stated that the increased regulation will negatively impact funeral directors, especially independent or alternative funeral director:

[Option 4] mandates one-size-fits-all training which would add to expense for funeral directors (and inevitably to funerals themselves) and prevent many people who want to do this work supporting their whanau.

One submitter expressed concern with the ‘moral character’ requirement for funeral directors, fearing that it could lead to racial bias and compromise tangihanga.

Findings

Submitters supported *Option 4: Providing central regulation for funeral directors*. Further work is required to finalise the policy recommendations in this section.

Section B2:

Informing consumers about the costs of funeral services

This section corresponds to section B of the Consultation Document, and questions 15–16 and 21–24 of the online survey.

Summary of submissions

One hundred and seventy-four submitters, including 81 individuals and 93 groups and organisations, provided comments on informing consumers about funeral costs.

Most submitters were concerned by high prices and the lack of transparency about these prices.

For informing consumers about funeral costs, submitters generally supported *Option 3: Making it mandatory to disclose all component prices as per the Law Commission's recommendations*, and were critical of Options 1 and 2.

Assessment of the costs of funeral services

Current issues

Sixty-two submitters identified key problems regarding informing consumers about funeral costs. These are summarised below.

Price transparency

Forty-two submitters noted their concerns about price transparency. Many of these submitters stated that they were given inadequate information to make an informed decision about the funeral services they were using. One submitter said:

It should be compulsory for anyone providing funeral services to provide a full breakdown of their fees without request. Families are often in no state to think clearly

and therefore should not need to ask. Some providers do not give this break down even when requested.

High prices and debt accumulation of funeral services

Thirty-four submitters identified that the high prices charged by some services lead to consumer debt.

AIDVA noted the discrepancy across regions in pricing for burial plots: \$300 in Gisborne, \$1,800 in Wairarapa, \$2,300 in Whakatāne, \$3,000 in Wellington, and \$4,500 in Auckland.

Two submitters in the funeral sector noted the need for greater protection for consumers in the context of pre-paid funerals, such as where the provider closes down.

Basic or independent funeral services

As discussed in Section B1, submitters noted the importance of being able to organise their own funerals. Twenty submitters discussed basic or independent funeral services as an important way to try to keep costs low.

Evidence about the cost of funeral services

Thirty-seven submitters provided evidence about the cost of funeral services. Most of the discussion around evidence of the cost of funeral services is discussed in the preceding section. This includes evidence on:

- bill shock as a result of lack of price transparency
- high costs of funeral services, which can be unmanageable and lead to debt
- challenges with accessing low-cost funeral options or organising DIY funerals.

Options for informing consumers about funeral costs

Table 9: Options for informing consumers about funeral costs as outlined in the Consultation Document

Option 1	Maintaining the status quo
Option 2	Making it mandatory to disclose some component prices <ul style="list-style-type: none">• Funeral directors could be required to specify whether they provide basic or non-basic funerals.• Before accepting the final payment for either basic or non-basic funerals, 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 disbursements.
Option 3	Making it mandatory to disclose all component prices as per the Law Commission's recommendations <ul style="list-style-type: none">• Funeral directors would be required to publish a price list of all the funeral goods and services that they offer, including a maximum price.

- 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.
- The funeral service provider would need to provide a reasonable estimate of disbursements in the initial statement, and an actual disbursement cost with the final invoice.

General comments on the options

Fifty-one submitters made general comments about the proposed options. Where possible, we have summarised the comments specifically relating to the options under the relevant headings below. Where submitters provided general comments, these have been included in the preceding sections that discussed current issues. Therefore, many of the comments about options reflect similar themes, such as:

- more transparency around funeral costs
- concerns about high costs
- options for lower cost or DIY funeral options.

Impacts of the options

Table 10: Impacts of the options for informing consumers about funeral costs as outlined in the Consultation Document

Option 1	Maintaining the status quo
Option 2	<p>Making it mandatory to disclose some component prices</p> <ul style="list-style-type: none"> • Consumers would be better to make more informed choices to choose funeral services • Itemised quotes will provide more certainty for consumers around the costs of a funeral service before entering into contractual agreements • Consumers will also be able to compare their options more easily • For funeral service providers, they will need to provide a full itemised quote before entering into a contract for services • This may motivate funeral services to increase the quality of their service or to be more competitive, or it may create a risk of firms coordinating their pricing. •
Option 3	<p>All of the Law Commission's recommendations relating to mandatory disclosure of component prices would be adopted</p> <ul style="list-style-type: none"> • Similar impacts to Option 2, however there would be increased administrative costs for funeral service providers to publish price lists and quotes for all services • Comparing services, especially a 'basic dignified funeral' would be more difficult as this would no longer serve as a guide across providers • There would also be increased costs for government to monitor and enforce price disclosure requirements and to maintain the central website.

Fifty-four submitters agreed with the impacts of the options as outlined in the Consultation Document, and 12 submitters disagreed.

Twenty-five submitters provided additional comments on the impacts, which have been summarised as they relate to each option below.

- Submitters considered that Option 2 would have limited impact because consumers preferred full cost transparency.
- Submitters suggested that Option 3 would make it easier for consumers to choose the best option for their financial circumstances, reduce bill shock, and reduce barriers preventing choice.
- A number of funeral sector organisations commented that none of the options would impact them because they already operate with transparent costs.

Evidence of the impact, cost or benefit of the options

Twenty-four submitters provided evidence of the impacts of the proposed options. Most of these submitters provided evidence when describing the proposed options. This evidence is discussed under the relevant headings below, where appropriate. Possible impacts include how:

- Option 1 does not provide consumer protection around the stated issues
- Option 2 may cause consumers to focus on prices to the detriment of other factors
- Option 3 may create additional challenges
- Option 3 would provide the transparency that consumers wanted.

Preferred options for informing consumers about funeral costs

Option 1: Maintaining the status quo

Nine submitters indicated that they preferred Option 1.

Twelve submitters provided additional comments disagreeing with Option 1 and reasoned that it does not provide any consumer protection.

Conversely, one Muslim community organisation supported Option 1, noting the status quo had worked well for their community.

Option 2: Making it mandatory to disclose some component prices

Twelve submitters indicated that they preferred Option 2.

A few submitters suggested modifications to Option 2.

- One submitter suggested that it should be compulsory for funeral sector organisations to provide a basic service.
- One submitter suggested that if goods and services are supplied as a package, the provider must display a description of and cost for each item.
- One submitter suggested a selection of changes, including:
 - outlining the hours for a basic funeral. For example a minimum of Monday to Friday and between the hours of 8am-5pm if at the funeral directors premises.
 - considering the hours of operation for the burial site, which may differ from the hours of operation of the funeral director

- allowing a mileage fee and calculator for journeys greater than 30 kilometres
- encouraging inclusion of other burial packages
- requiring all funeral directors to provide indicative pricing
- ensuring consumers can readily identify which service providers operate in the area they want the service and/or burial to be held.

Some submitters commented on the proposal to require funeral directors to specify whether they provide basic or non-basic funerals:

- Two submitters noted that making the distinction between a basic and non-basic funeral is too subjective to be regulated.
- Four submitters noted that Option 2 was insufficiently transparent.
- Nine submitters from the funeral service sector noted that primarily focusing on cost to decide on a funeral package was not conducive to the best grieving process and may hinder other considerations.

Option 3: Making it mandatory to disclose all component prices as per the Law Commission's recommendations

Seventy-six submitters, including FDANZ, indicated that they preferred Option 3. Most submitters provided additional comments about Option 3. These are summarised below.

Two submitters specifically supported the proposed requirements with respect to disbursement estimates.

Transparent costs supporting consumers

Twenty-two submitters noted their preference for Option 3 as a method to mitigate bill shock, and to ensure that consumers know what they are purchasing. Ten submitters suggested that Option 3 provides consumers the opportunity to explore their options in an informed way. Consumer New Zealand observed:

Clear pricing is an essential requirement for markets to operate efficiently and for consumers to be able to make informed choice. We consider the absence of clear pricing information in the funeral industry is a major issue and necessitates regulatory intervention.

Some funeral sector organisations discussed the possible challenges of full price disclosure.

- Funeral homes have differing pricing models and different interpretations of what is included in the professional service fee.
- Perversely, listing and pricing every possible scenario could be confusing and exhaustive and make 'shopping around' more difficult.
- Broken down prices are not necessarily a true representation of the cost of delivering the item/service being delivered.
- The requirement to provide a written quote for every funeral would increase resource and cost.

Website

Five submitters noted the benefits of a website as a part of Option 3.

Conversely, three submitters expressed concerns about the proposal for a website, noting that having a centralised website would affect how consumers choose services. One submitter stated:

Our website reflects our community involvement and how we care for the environment along with information about who each of our staff are, a centralized website wouldn't reflect this aspect which I believe is important for families. Not all funeral companies are the same. A single website operated by a third party doesn't take into account anything but the dollar amount of the funeral.

Findings

Submitters supported *Option 3: Making it mandatory to disclose all component prices as per the Law Commission's recommendations*. Further work is required to finalise the policy recommendations in this section.

Section C:

Burial and cemetery management

This section corresponds to section C of the Consultation Document, and questions 25–30 of the online survey.

Summary of submissions

One hundred and thirty-six submitters, including 53 individuals and 83 groups and organisations, provided comments on a new burial and cemetery management framework.

The majority of submitters agreed that there are issues with the current framework for burial and cemetery management, and many explicitly agreed with the issues outlined in the Consultation Document. Some submitters raised issues outside of the Consultation Document, such as issues around transferability of rights to burial plots, limited tenure, and the burial of service people in services sections. Some submitters provided evidence of the impacts of these issues.

Submitters generally supported *Option 3: Implementing a package of changes to the current system based on most of the Law Commission's recommendations*. However, some of those who selected Option 3 as their preferred option indicated that their support was conditional on the basis of further clarification or guidelines for aspects of the proposals in this option, and many expressed concerns with some of the new responsibilities placed on local authorities.

Assessment of the current system of burial and cemetery management

One hundred and thirty-four submitters, including 51 individuals and 83 groups and organisations, commented on the current framework for burial and cemetery management. Twenty-six of these groups and organisations were local authorities.

Current issues

Table 11: Issues with the current burial and cemetery management framework as outlined in the Consultation Document

Issues with the current burial and cemetery management framework

- Confusion around the framework for burials, with distinctions between different types of burial land in the Act confusing and often of historical interest only
- Misalignment with modern legislation as the Act has not been updated to reflect the major reforms in local government and resource management law
- General lack of clarity and detail in legislation, including a lack of guiding criteria for the Minister of Health and a lack of detail regarding the statutory powers of those with control and management of cemeteries
- Generally archaic provisions and content that is outdated and no longer relevant
- Lack of recognition of diverse needs, including rising popularity in natural burials, burials on private land, and the diverse ethnic, cultural, and religious needs of a multicultural society

General themes

Twenty-six submitters, including 16 individuals and 10 groups and organisations, explicitly agreed with the issues with the current framework for burial and cemetery management as outlined in the Consultation Document. Other submitters left comments regarding specific aspects of the current system, which are explored in depth below.

Eighteen submitters, 15 of which were individuals, either disagreed that there were any issues with the current framework or were not aware of any issues.⁸ One local authority who disagreed commented that the current framework is fit for purpose because they only deal with a small number of burials and cemeteries.

Another local authority commented that while they acknowledged that some aspects of the Act were outdated, they were not convinced the Act as a whole had become a significant enough impediment to modern burial and cemetery management to warrant widespread legislative change.

Confusing frameworks

Twenty-two submitters identified issues regarding the confusing and archaic nature of the current framework for burials and cemetery management set out in the Act.

Five submitters, mostly local authorities, agreed with the Consultation Document regarding the framework for legal definition and the status of burial land being confusing. LGNZ stated:

We propose that there be a clear legal definition for all burial land, which includes cemeteries, urupā, and trustee burial grounds. Cemeteries have land titles of parks, reserves or other land types. We ask that land be clearly delineated which will assist with cemetery planning and in particular, will protect the different functions of parks and reserves within an overall framework.

Six other submitters, four of which were funeral sector organisations, agreed with issues identified by the Consultation Document, commenting that the confusing framework has led to inconsistencies in approaches to burial and cemetery management across local authorities.

⁸ Please refer to the caveat in the Method section.

One funeral director noted that all local authorities currently have varying standards, and that this variation is challenging for funeral directors trying to navigate how each one operates. One funeral sector organisation commented that a lack of consistency between local authorities meant that some authorities were more prescriptive and less flexible than others (such as in the context of Muslim burials). Another funeral sector organisation identified inconsistencies in local implementation of the system, such as:

- out-of-date bylaws
- poor or substandard cemetery and crematorium booking systems
- a lack of appropriate communication systems and contact details
- a lack management policies for urupā.

LGNZ and two local authorities specifically highlighted a lack of a framework and guidelines for relationships and responsibilities under the Act. For instance, Dovedale Cemetery noted that while they have a good working relationship with their local authority, there is a need for clearer administrative frameworks for relationships between trustees and local authorities to ensure continuity of trustee cemeteries.

Archaic provisions

Six submitters, including two local authorities and three organisations, agreed with the Consultation Document's discussion of the Act as having generally archaic provisions. Four of these submitters identified this in the context of dead bodies as a public health risk. Waitaki District Council and LGNZ commented that the outdated public health concern of the original Act is evident as the Ministry of Health remains responsible for the legislation, and that some of these obligations could be better managed by other sectors.

Two submitters identified specific archaic elements of the Act, such as fines being denominated in pounds, and the 32-kilometre rule, which now appears arbitrary given the modern transport network.

Lack of recognition for diverse burial needs

Forty-five submitters, the majority of which were groups or organisations, identified a lack of recognition for diverse burial needs. These ranged from provisions for diverse ethnic and religious needs, natural and private burials, and the nature of sections for military service people in cemeteries.

Thirteen submitters, seven of which were local authorities, identified a lack of recognition in the current legislation for diverse ethnic and religious needs, and a particular lack of consideration for tangata whenua as partners under the Treaty. Timaru District Council stated:

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. 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.

South Taranaki District Council and the Social & Ecumenical Action Group of the Parish Council of St Andrew's Presbyterian Church Hamilton considered that the term 'religious denomination' is

outdated and that the wording should be replaced to cater for increasingly diverse societies, but they both emphasised that the provision of separate areas should be optional. Auckland Memorial Park and Cemetery Ltd discussed how cemeteries under the authority of local authorities are not able to accommodate many cultural or spiritual needs, and that a 'one-size-fits-all' approach to burial services and products is not always appropriate for New Zealanders, who come from wide and diverse cultural and religious backgrounds.

Burial of veterans

Seven submitters, most of which were veterans' organisations or collectives, criticised the eligibility requirements for burials of service people being limited to those who have qualifying operational service. Two submitters on behalf of veterans' groups highlighted issues with the Act restricting veterans' who served in South East Asia from being buried in service plots.

The Kaiapoi Returned and Services Association and the Lower Hutt Returned and Services Association said the Act must be updated to allow all those who have served their country to be buried in services sections of cemeteries. The Royal New Zealand Navy Communicators Association stated that the Act is out of sync with Commonwealth allies who do not restrict veteran eligibility to medallic recognition and operational service, and that this restriction has denied many service people their right to be buried in a service section.

Natural and private burials

Ten submitters, half of which were local authorities, noted the lack of provisions for natural and private burials. Three submitters highlighted an increased interest in natural burials and recommended that this be made more accessible. Natural Burials New Zealand noted the previous reluctance of the Ministry to facilitate the uptake of natural burials and identified specific issues with the current legislation:

The Act made natural burial difficult because it was too prescriptive about what could be done in cemeteries. It enshrined current everyday practice and prejudices in law but particularly in the power of the Sexton. It did not assert the rights of people to conduct of their ethical beliefs, or provide ways of asserting them.

Private burials

Nineteen submitters, including five local authorities and three public health providers, focused specifically on private burials or private cemeteries. Canterbury DHB and Tasman District Council commented that they had seen an increased number of applications for private cremations and enquiries into private burials, and that the process to enable burials on private land is difficult. Te Ora Public Health stated:

[T]he current system lacks recognition of New Zealand's diverse needs in relation to burial. Burial on family land is an example of this, particularly for Māori for whom the whenua, the land is a familial relationship, and burial an affirmation of that relationship.

One individual submitter stated that the Act does not allow for families with rural properties to honour their relatives' wishes to be buried on their own land. They discussed the fact that while consent is not required to scatter ashes on rural properties, it is required for burials, which they deemed hypocritical since both practices concern human remains. Te Korowai o Ngāruahine Trust

commented that mana whenua must have a role in determining culturally appropriate locations for private burials.

Kōiwi tangata

Some submitters raised concerns over a lack of acknowledgement in the Act for instances where kōiwi tangata are accidentally discovered through processes such as natural erosion, earthworks or development. Heritage New Zealand commented that issues with private burials can arise in these situations because the preference of iwi is often to rebury the kōiwi in a nearby secluded location as soon as possible, including on private land.

Cemetery maintenance, cost, and responsibility

Forty-two submitters, including 10 individuals and 32 groups and organisations, identified general issues in the Act relating to the maintenance, cost, and responsibility for the management of cemeteries.

Closed cemeteries

Eight submitters identified issues regarding the cost of maintaining cemeteries. Waitaki District Council observed that because a closed cemetery has no means of generating income, it becomes a fixed land asset with liabilities. Hamilton City Council noted that the maintenance and upkeep of cemeteries is costly due to land prices, and if cemeteries are closed or need to expand, local authorities must acquire more land. They commented that this is an equity issue as costs may be passed on to ratepayers and those trying to buy a burial plot.

Burial in perpetuity – issues of tenure

Nine submitters, including three local authorities and three representative groups, agreed with the Law Commission's finding that burial in perpetuity can be costly and unsustainable. Te Korowai o Ngāruahine Trust raised concerns about the long-term sustainability of burial plots, especially given population growth and future demand for land for plots. Taituarā noted that since most burials are in perpetuity, further strategies were needed in terms of financial and maintenance solutions for the upkeep of cemeteries.

Four submitters, three of which were local authorities, identified issues with the current Act regarding the transferability of the right to a burial plot. Three local authorities noted that familial disputes can ensue where the holder of the plot did not specify whether they approved of further interments, and recommended that the Act provide for this. Conversely, one individual submitter argued that where no consent has been given, the right to perpetuity must be protected.

Maintenance of cemeteries and monuments

Thirty submitters, including ten local authorities and seven funeral and cemetery groups and organisations, identified issues with the physical maintenance of cemeteries and their monuments. Five submitters indicated that the Act does not make it clear who is responsible for the upkeep and maintenance of cemeteries. One volunteer group stated:

The Burial and Cremation Act 1964 entitles families to maintain a grave (9(d)) – something councils seem to interpret as meaning that families own the graves and no-one else can ever step in and carry out basic and careful maintenance work, even when the graves are very neglected.

Heritage New Zealand stated that the entitlement of families to care for ancestral graves is outdated, providing the example of one major local authority that received very few requests from people wishing to maintain their ancestors' graves, resulting in the deterioration of many graves.

Toi Te Ora Public Health commented that existing New Zealand Standards for cemeteries are not mandatory and there is a lack of active oversight of compliance.

Twelve submitters, including five local authorities and four funeral and cemetery sector organisations, discussed this lack of clarity in relation to the maintenance of monuments – especially those that may fall into disrepair or are deemed unsafe. Matamata-Piako District Council discussed the maintenance of headstones, particularly if they become damaged or vandalised (and therefore a safety issue), and that the powers of the cemetery manager need to be clarified. Westland District Council stated that the heritage legislation impedes their ability to maintain monuments, as it is very burdensome and expensive to organise a site visit and assessment by a heritage inspector.

Waitaki District Council requested further clarity on who is responsible or could aid in cemetery maintenance, as many families and volunteer groups seek approval to carry out maintenance. One community volunteer group submitted that the Heritage New Zealand Pouhere Taonga Act 2014 defines any place associated with human activity prior to 1900 as an archaeological site, which acts as a barrier to the restoration of headstones and monuments that date before then. This group criticised the lack of provision in the Act for volunteer and community groups to be involved in cemetery maintenance.

South Taranaki District Council disagreed with the Consultation Document's observation that maintenance provisions were unclear. They said that while it can be an issue for some cemeteries, it is more a matter of public education than one requiring legislative change.

Record-keeping

Six submitters raised issues specifically to do with record-keeping across cemeteries. They discussed that under the Act, record-keeping requirements are inconsistent across different types of cemeteries and thus there is no standardisation or national register. One individual who had attempted to locate a family grave commented on how difficult cemetery records were to navigate.

Toi Te Ora Public Health commented on inconsistent management and record-keeping due to confusion over which legislation sites are administered under, specifically in the case of urupā. They understood that the Māori Land Court did not hold a database for specific urupā, which can cause confusion around who manages these urupā and where they are located.

Local authority responsibilities

Another 17 submitters, around half of which were local authorities, highlighted aspects of local authority responsibility under the Act that are unclear, and identified issues with the Act which were costly for local authorities to implement.

Two of these submitters made specific comments regarding the lack of legislation and guiding protocols for placenta burial. Taituarā said:

Placenta disposal is subject to cultural concerns whereby land can be deemed tapu where placentas are buried, deeming it unsuitable for any other uses. Therefore, we

ask that interment of placenta [sic] be included in the framework to assist with Te Tiriti o Waitangi interests and sustainable use of land.

Two submitters suggested that the current system of Ministry of Health oversight of disinterment worked well, and that while some aspects could be devolved to local authorities, the power to license disinterment should remain with the Ministry.

Four local authorities raised issues with the current framework, citing rising costs, underfunding, under-resourcing, and reaching capacity in current cemeteries.

Misalignment with other legislation

Fifteen submitters, including eight local authorities, agreed that the Act is misaligned with other relevant legislation, particularly the Local Government Act and the RMA.

Hamilton City Council commented that:

- alignment with the Local Government Act would ensure greater public consultation and alignment with other community needs
- alignment with the RMA would reflect modern views of land management and sustainability and would allow for more national consistency on matters such as burial depth, burial on private land, and the criteria for the establishment of new cemeteries.

On the other hand, South Taranaki District Council stated that they did not see a strong relationship between the Act and the RMA, and they were unsure about the salience of this aspect of the review. They also did not see why the Act and the Local Government Act could not sit alongside each other, with the removal of a few outdated references from the Act.

One individual submitter indicated that trustee cemeteries are not currently subject to the Local Government Act or similar provisions in the Act, and that this leaves communities with no ability to review appointments or operations.

Evidence of current issues

Twenty-seven submitters, including nine funeral and cemetery sector organisations and seven local authorities, provided evidence of problems with the current system for burial and cemetery management. The evidence is provided under the preceding headings as appropriate.

- Four local authorities and one parish council provided evidence on the state of current cemetery management and capacity, largely agreeing with the Consultation Document that there was a need for a new framework of burial and cemetery management.
- Eight submitters, five of which were funeral or cemetery sector organisations, provided evidence on how the unclear burial and cemetery management framework in the Act created a host of issues and inconsistencies for those dealing with different aspects of burials and cemeteries.
- Eight submitters provided evidence on the matter of a lack of provisions for diverse burial needs such as natural burials, private burials and cemeteries.
- Eight submitters, including three funeral or cemetery sector organisations, gave evidence regarding the need for a clear framework and regulations around the broader maintenance of cemeteries and especially the maintenance of monuments. One group provided photographic evidence of a neglected cemetery in their area, highlighting the need for new legislation to

move away from the entitlement of families to maintain ancestral graves and allow for community and volunteer groups to aid in cemetery maintenance.

Options for a new burial and cemetery management framework

Table 12: Options for a new burial and cemetery management framework as outlined in the Consultation Document

Option 1	Maintaining the status quo
Option 2	<p>Implementing a package of changes to the current system based on all of the Law Commission's recommendations</p> <ul style="list-style-type: none"> • Denoting any land with a deceased person buried on it as a cemetery, with the owner of the land designated as cemetery manager and subject to management obligations • A new classification of four types of burial land • Clarifying cemetery managers' powers to maintain graves • Providing an exception to section 42 of the Heritage New Zealand Pouhere Taonga Act • Changes to the process for disinterring bodies • Additional obligations for local authorities
Option 3	<p>Implementing a package of changes to the current system based on most of the Law Commission's recommendations</p> <ul style="list-style-type: none"> • The same as Option 2 with five major exceptions: <ul style="list-style-type: none"> – No additional role for the Environment Court – Burial on private land would not be exempt from resource consent – No provision for independent cemeteries – Ongoing provision for denominational burial grounds – Provision for new community cemeteries.

General comments on the options

Forty-one submitters, including 12 individuals and 29 groups and organisations, provided general comments relating to the proposed options for reform to burial and cemetery management.

Twenty-nine of these submitters provided general comments in support of the proposed changes outlined in the Consultation Document. These submitters generally agreed that the options present a range of potential solutions to the issues with the current system.

Many submitters, including five local authorities, expressed general support for changes to the Act but had additional considerations for the proposed options.

- Five submitters, including three organisations involved with veterans and service people, commented on the need for more consideration of the burial of service people and alignment of the Act with the Veterans' Support Act 2014 in the proposed options.
- Six submitters, five of which were local authorities, discussed the need for further consideration, guidelines, and transparency around the shift in powers and obligations from central to local government.

- Four submitters made general comments concerning the need for the proposed options to make explicit provision for diverse burial needs, such as natural and private burials.

Three organisations stated that while they supported proposals for change, they did not support any of the options as they stand in the Consultation Document. Timaru District Council commented that while there are improvements to be made to the current framework, they do not support any of the options due to the shift of responsibility to local authorities without any guarantee of resourcing and funding to cover new obligations. AIDVA commented that while Option 2 and Option 3 were better than maintaining the status quo, both had limitations that did not allow for consistent, eco-responsible burial choices for all that were available nationwide.

Impacts of the options

Table 13: Impacts of the options for a new burial and cemetery management framework as outlined in the Consultation Document

Option 1	Issues remain the same
Option 2	<p>Law is modernised to address issues in current legislation with some risks</p> <ul style="list-style-type: none"> • Simplified framework for providing places for burial and clarifies obligations for cemetery managers • Alignment with other relevant modern statutes • Increased choice in burial options • Many burial and cemetery management functions shift from central to local government, with associated resourcing impacts • Local authorities assume responsibility for failing non-local-authority cemeteries • New role for the Environment Court with consequent additional costs • Some risks in the broad definition of cemetery, especially where non-local-authority cemetery managers cannot or do not meet their obligations • Independent cemeteries would introduce the privatisation of cemeteries and accompanying risks
Option 3	<p>Similar impacts to Option 2</p> <ul style="list-style-type: none"> • Provides modern and simplified framework • Increased choice in burial options • Alignment with other relevant modern legislation • Similar shift in functions from central to local government, with the associated resourcing impacts

Fifty-five submitters, including 21 individuals and 34 groups and organisations, agreed with the impacts outlined in the Consultation Document. Thirty-three submitters provided further comments on the impacts of the options, including 12 local authorities and eight cemetery and funeral groups or organisations.

Some submitters did not disagree with all the impacts of the options but commented on specific impacts that were perceived to have been downplayed or overlooked in the Consultation Document.

- Nine submitters, most of which were local authorities, identified that the implications of shifting responsibilities from central to local government were severely underexplored and the extent of the impacts were not properly considered.

- One veterans' group identified that the lack of proper consideration for service people in these options could have negative impacts on veterans, service people and their families.
- Two submitters commented that there needed to be further consideration of the impacts of new regulations on headstone and monument maintenance in light of preserving heritage.

Thirteen submitters disagreed with or were not aware of the impacts of the options outlined in the Consultation Document, including five local authorities. Just one local authority provided further comments on why they disagreed, stating that the impact analysis had minimised the potential impact of Options 2 and 3 on local government.

Evidence of the impact, cost or benefit of the identified options

Nineteen submitters, including 10 local authorities and five funeral sector organisations, provided evidence on the impact, cost or benefit of the proposed options for change to the burial and cemetery management framework.

Four submitters commented on the benefits of these options, including increased local input into cemetery management, families being able to honour the wishes of loved ones, improved ongoing management of cemeteries, and burial sites with better environmental outcomes.

Nine submitters, almost all of which were local authorities, commented that the Consultation Document failed to recognise the extent of the impacts on local authorities, and provided evidence of the potential impact on administrative, staff and resourcing costs.

Other submitters mentioned that the burden of increased costs for local authorities due to the impacts of Options 2 and 3 could have resounding negative impacts on local authorities and their ratepayers. Four local authorities provided evidence of this impact.

- Ōpōtiki District Council stated that their district has some of the lowest ability to pay their rates, which would make it difficult to resource new responsibilities. Thames-Coromandel District Council also noted that their district has an older rate-paying population than most districts, which would also make it difficult to increase rates to cover any additional administrative or operational costs.
- Two local authorities noted that the options would require increased staffing numbers to cover additional responsibilities.

Preferred option for reform of burial and cemetery management

One hundred and six submitters, including 43 individuals and 63 groups and organisations, provided responses in relation to their preferred option for the reform of burial and cemetery management.

Option 1: Maintaining the status quo

Ten submitters, including one funeral sector organisation and six local authorities, stated that they preferred Option 1.

Three local authorities stated that Option 1 was their preferred option as it was the only cost-viable option for local authorities and their ratepayers. Christchurch City Council stated that while it recognises the need for minor legislative changes to update the archaic provisions, Options 2 and 3 involved significant changes that will impose financial burdens and service demands on local authorities, for which they have neither the funding nor the capacity.

One funeral sector organisation stated that the current system works effectively, and the status quo should continue.

Option 2: Implementing a package of changes to the current system based on all of the Law Commission's recommendations relating to a new burial and cemetery management framework

Twenty-two submitters, including 11 individuals and 11 groups and organisations, preferred Option 2.

Four submitters provided further comments in support of Option 2. One funeral sector organisation indicated that Option 2 was the only option that allowed for a modern, forward-looking solution. One organisation stated that they preferred Option 2 because it was the most receptive to natural burials, would lower costs for local authorities, and would facilitate the continued restoration of the natural environment of burial land. Waikato Regional Council noted that Option 2 improved the status quo, but they would not endorse it due to the provision for independent cemeteries.

Many other submitters provided further comments relating to specific aspects of the proposed changes under Option 2, including whether submitters agreed or disagreed with what was being proposed. As Option 3 is substantially the same as Option 2, with five major exceptions, the following subsections will also cover the aspects of Option 3 that are duplicated across both options.

Approval of new cemeteries and legal definition

Fifteen submitters, including five local authorities, commented on aspects of the options relating to cemetery approval, their legal definition, and independent and local authority cemeteries.

Ten submitters made specific comments regarding the proposed changes to approval for new cemeteries. Auckland Council and LGNZ supported the proposed changes for the approval of new cemeteries. They suggested that there should be consistent criteria for establishing a new cemetery and requested guidance on creating criteria for the approval of new cemeteries.

Mangere Lawn Cemetery Trust Board mentioned that while they supported all the provisions for the approval of new cemeteries in Option 2, they would like it to include a provision to create new trustee cemeteries as well.⁹ Te Korowai o Ngāruahine Trust commented that the establishment of any new cemetery must involve the engagement of mana whenua right from the beginning. They stated that any new cemetery should go through the resource management process, as this would help ensure better engagement with iwi.

⁹ Note that Option 3 allows the creation of new community cemeteries, which would be the new term for what are currently known as trustee cemeteries.

Taituarā do not support exempting approvals for burials from the RMA due to the risk of contaminating ground water. They also referred to the threat posed by climate change to burial sites (for example, coastal burial sites that may become subject to coastal erosion).

Seven submitters, including two local authorities and two PHUs, commented on the proposed revisions for the definition of a cemetery. LGNZ and Porirua City Council said that the proposed definition of cemeteries would create many issues, especially in the case of burials on private land. They noted that while Option 3 was better, the definition of cemetery needed further clarification.

One individual submitter who had encountered issues with protecting family ashes interred in a closed church cemetery supported the new definition for cemeteries as proposed in Option 2, stating:

Any land with human remains on it should be denoted as a cemetery in order to provide protection for these remains. I believe that areas set aside for the formal burial of ashes should also be included within this definition.

Regional Public Health supported the clarification of types of burial land but suggested that future reviews could consider the relationship between Te Ture Whenua Māori Act and other burial and cremation legislation because urupā are beyond the scope of the current review.

Private burials

Twenty-four submitters, mostly groups and organisations, commented on the proposed provisions to allow burials on private land. Thirteen of these submitters, including three PHUs and five local authorities, agreed in some capacity with these provisions. Three submitters fully supported Option 2. These submitters said that allowing for private burials without the need to go through time-consuming approval methods for resource consent would allow for flexibility in personal and community expression.

The rest of these submitters agreed with the philosophy of private burials but commented that if private burials were allowed, they must be subject to the RMA and the resource consent process. Ngāi Tahu Māori Law Centre stated:

The consultation document rightly identifies that this [exemption from the RMA] unfairly removes the issue from public consideration. Consultation is essential to ensure tikanga Māori is properly considered. We submit that iwi must be consulted as part of the consent process when considering burial on private land. Local iwi must be considered an affected party to all prospective consents relating to burial on private land. This is because without iwi consultation there is potential to create a burial site in an area that would be culturally or spiritually offensive to Māori.

LGNZ supported the provision for private burials, provided that the following considerations were made:

- how access to the site will be maintained in perpetuity, even with landownership changes
- the impact of private burial plots on the future development of neighbouring land
- how these burials will be recorded accurately and consistently
- implications of private burials near unidentified archaeological sites, sensitive environments, heritage areas, and areas of interest to mana whenua
- variation in burial methods and whether there will be hazards such as water contamination or the impact of climate change on the burial site.

Auckland Council did not support private burials in Auckland, but noted that if private burials were permitted, they requested that similar matters be addressed. Auckland Council also expressed concern that if private burials were considered non-local-authority cemeteries, local authorities may become responsible for dealing with any issues that may arise with burial plots on private land that are divested to local authorities. Conversely, Aotea Local Board supported private burials in the region if private consents were obtained.

Ten submitters, eight of which were local authorities, either opposed the proposal for provisions for private burials or stated there was a lack of appropriate, convincing information to make an informed recommendation on the topic.

- Several of these submitters indicated that they opposed private burials due to many of the issues for consideration outlined earlier by LGNZ.
- Christchurch City Council stated that even in the absence of statutory obligation on local authorities, it was likely that the community would either expect or rely on a lead role from the relevant local authority in resolving issues with private burials.
- Palmerston North City Council commented that further information was needed on the subject and that introducing approval for private burials under a District Plan would require two years to implement a plan change.

Unlawful burials

Two submitters, both local authorities, supported the proposal to update legislation around unlawful burials. This included support of the removal of the distance exception, and for clear definition of what was considered impractical for unlawful burials.

Local authority cemeteries

Eight submitters commented on the proposed changes to local authority cemeteries, including three groups and organisations and three local authorities.

- Auckland Council and LGNZ supported the requirement to have separate areas and suggested that standard management obligations should be developed while maintaining flexibility in legislation so as not to disadvantage communities with fewer financial resources. Marlborough District Council also requested flexibility and guidance on implementation of separate areas.
- Palmerston North City Council commented on the need for the Act to allow a mandate to charge fees, due to additional costs associated with planning separate areas.
- Natural Burials New Zealand stated that the separate areas were not materially different from current legislation as it preserved the right for local authorities to refuse or modify the format (a right they have exercised to refuse natural burials).
- While the framework would require local authorities to keep a register of burials, Taituarā stated that proposals for changes to local authority cemeteries should include a strategic framework to create a national register for cemeteries and burials.
- Queenstown-Lakes District Council noted that tikanga Māori must be considered in local authority cemeteries because not all districts have urupā available.

Independent cemeteries

Twenty-two submitters, half of which were local authorities, commented on the proposal in Option 2 to allow the establishment of independent cemeteries. Seven submitters, including two

local authorities and three funeral and cemetery organisations, supported the proposal to allow for the establishment of independent cemeteries.

- One funeral sector organisation suggested that consideration should be made for a public-private partnership to manage independent cemeteries.
- One cemetery organisation suggested that privately owned, independent cemeteries would be of benefit to communities because they would be more responsive to client needs and remove the burden of cost from ratepayers.
- Natural Burials New Zealand endorsed Option 2 because provision for independent and community cemeteries would best provide for natural burials, although they criticised the proposal to require local authority approval for independent cemeteries, as this would pose a conflict of interest.

Some submitters suggested the implementation of further requirements alongside provision for independent cemeteries.

- One funeral sector organisation agreed with the establishment of independent cemeteries but suggested that approval must only be given where the applicant can state how the cemetery will be maintained once it had reached capacity.
- One funeral sector organisation suggested that any concerns about the privatisation of independent cemeteries could be alleviated by only allowing cemeteries to be opened as not-for-profit ventures.
- Thames-Coromandel District Council did not support provision for independent cemeteries but reasoned that if they were to be part of new legalisation, the approval powers should remain with central government because decentralisation would lead to many different approaches by local authorities.
- Waimakariri District Council did not support Options 2 or 3, but instead suggested that there be better provision for failing cemeteries, rather than simply defaulting to local authorities.
- Twelve submitters, mostly local authorities, explained that they did not prefer Option 2 primarily because of the provision for independent cemeteries, as illustrated by Auckland Council:

The council is concerned that with the obligation to take on failing cemeteries, this could create perverse incentives for independent providers to step away from a cemetery at the end of its saleable life and transfer the long-term maintenance to local authorities with little or no perpetual maintenance funds to support this.

Toi Te Ora Public Health indicated that independent cemeteries had the potential to be poorly located, unaffordable for the relevant communities, and a risk to public health if they were not properly maintained. Porirua City Council said that there was no need for independent cemeteries to cater for diverse burial needs, as these could be accommodated in special sections of local authority cemeteries.

Cemetery management obligations and the role of local government

Forty-seven submitters, including 11 individuals and 36 groups and organisations (22 of which were local authorities), commented on the proposed changes to cemetery management obligations and the role of local government in cemetery management.

Thirty-six submitters, mostly organisations, commented specifically on the proposed changes to cemetery management obligations. Three local authorities supported the proposal for cemetery

management obligations to be consistent across all types of cemeteries. Auckland Council suggested that this should exclude burials on private land.

Three submitters supported the proposal to implement a requirement for cemeteries to have a cemetery policy. Dunedin City Council stated that a key theme of the new framework is that decisions around cemetery management should be decided in consultation with the community, and a new cemetery policy would reflect this. Thames-Coromandel District Council disagreed with the proposal for cemetery policies, noting that the information that would make up such a policy was already captured by various documents and bylaws, and that duplication of this was unnecessary.

Separate areas for members of denominational or other groups

The Social & Ecumenical Action Group of the Parish Council of St Andrew's Presbyterian Church Hamilton stated that the new framework's approach to separate areas for members of denominational groups or other groups did not significantly improve the status quo. They noted that the changes could result in more requests for local authorities to provide separate areas for groups, and they objected to this on the basis that it would compound division and undermine inclusiveness, and that it would create capacity issues for cemeteries.

They recommended that local authorities should be able to reject requests for separate areas (whether for burials or the interment of ashes); that the eligibility requirements should be applied inclusively (e.g. to include spouses); and that the legislation could contain a sample Memorandum of Understanding providing for this.

Hamilton City Council stated that local authority cemeteries should provide separate areas in existing cemeteries, and not by requiring new cemeteries, which are expensive to operate and maintain in the long-term. The Council called for clearer criteria for establishing separate areas and for providing for natural burials. Both the Council and the Group suggested that where cemeteries provided separate areas, those groups should pre-purchase the plots and contribute to maintenance costs.

Maintaining monuments

Five submitters, including four local authorities and the International Council of Monuments and Sites New Zealand (ICOMASNZ), did not support the proposed changes to cemetery management requiring local authorities to maintain monuments, tablets, and gravestones, largely citing resourcing, cost, and issues with obtaining permission from families. Another five submitters, three of which were individual submitters, supported these proposed changes.

Five local authorities supported the proposed exemption to section 42 of the Heritage New Zealand Pouhere Taonga Act, for reasons of public safety. Conversely, three submitters, including Heritage New Zealand and ICOMASNZ, disagreed with this proposal, commenting that it would provide a loophole to destroy important pieces of heritage and history. Christchurch City Council stated that adhering to the requirements of the Heritage New Zealand Pouhere Taonga Act had not proven to be burdensome in the aftermath of the Christchurch earthquakes.

One individual submitter commented generally on public expectations for new legislation regarding cemetery and burial management:

[T]he concerns that most members of the public have with the management of cemeteries do not relate to land use or to hygiene, but to the expectation that their loved ones should be resting in a location that is permanent and maintained and

where they are able to visit. These concerns are driven to a large extent by emotional and/or spiritual motivations. An important role of a cemetery is to provide for and meet these expectations.

Role of local authorities

Thirty-four submitters, most of which were local authorities, discussed the proposed new role for local government in burial and cemetery management. Six submitters, including two PHUs and the Chief Coroner, supported all the proposed new roles for local government in burial and cemetery management. The Chief Coroner explained that the added responsibilities were a natural extension of the existing role of local authorities, while two submitters said that the change in role for local authorities would make cemetery services more accessible, sustainable, and allow for greater community consultation.

Twenty-one of these submitters, again mostly local authorities, expressed concern over the costs of new obligations for local authorities in the new role for local government, particularly the new obligation to take over failed non-local-authority cemeteries.

- Three submitters suggested that any proposed change to the role of local government in cemetery management should include provision for funding from central government.
- Two submitters suggested that central government create a funding scheme for closed cemeteries and provide oversight.
- LGNZ stated they had concerns about any new obligation for local authorities that had an unknown fiscal impact, and suggested two further options:
 - New non-local-authority cemeteries would be required to provide a bond to the relevant local authority to cover costs of future maintenance should the cemetery fail.
 - Provision for a central government fund to compensate communities who have assumed responsibility for failed non-local-authority cemeteries.

Several submitters requested further clarification and guidance, especially in the case of failed cemeteries and the resignation of non-local-authority cemetery managers.

Disinterments

Twenty-three submitters, mostly local authorities and public health providers, commented on the proposed changes to disinterment across Options 2 and 3. Three PHUs explicitly agreed with the new provisions for disinterment outlined in Options 2 and 3 from the Consultation Document. Toi Te Ora Public Health supported the changes provided that there be a regulatory authority with an audit function to oversee disinterment applications and procedures.

Almost all other submitters who discussed the proposed changes to disinterment did not support transferring powers to approve disinterment from the Ministry of Health to local authorities.

Six submitters, mostly local authorities, said that the status quo for disinterment approval was working well, and did not see the need for powers to be transferred because the current process ensured consistency and appropriate resourcing. Two submitters commented that transferring these powers to local authorities would incur costs, and many local authorities do not have the income streams to offset the costs of such operations.

Four submitters stated that the process of disinterment is one that local authorities were not well equipped to take over, particularly due to the psychological demands of the exhumation process

and working with families to gain approval or navigate family disputes. Waipā District Council stated:

Typically, a disinterment is a result of family disagreements and issues, and [Waipā District] Council doesn't see itself having a role in adjudicating on such matters. This is particularly relevant in small rural councils where staff and councillors are generally residents within the district and widely connected within local communities.

Twelve submitters commented on the proposal in Option 2 for the Environment Court to take on responsibility for the approval of the disinterment of multiple graves from local authority cemeteries, and some commented more generally on the proposal of the Environment Court to have a role regarding burial and cemetery management. All 12 submitters disagreed with the proposed role for the Environment Court. Waipā District Council suggested a more appropriate oversight agency might be the Department of Internal Affairs.

Kōiwi

Auckland Council and Aotea/Great Barrier Local Board stated the legislation must include provisions covering the reburial of human remains/kōiwi found in archaeological contexts, as many kōiwi from archaeological sites are being reinterred without reference to the Act.

Option 3: Implementing a package of changes to the current system based on most of the Law Commission's recommendations relating to a burial and cemetery management framework

Sixty-four submitters, including 26 individuals and 38 groups and organisations, indicated that they preferred Option 3.

Eleven submitters commented further on their support for Option 3. Many of these submitters indicated that Option 3 was a well-balanced option.

Two funeral sector organisations and one funeral director considered that Option 3 seemed to achieve balance between effective improvements to the Act without creating additional layers of bureaucracy or administration.

- Toi Te Ora Public Health said that Option 3 would ensure all decisions were protective of public health and up-to-date with societal trends.
- Waikato DHB supports continued alignment with the RMA.

Some submitters requested greater clarity on certain aspects of Option 3, including:

- the maintenance of monuments
- whether resource consent from both regional and territorial authorities would be necessary for burials
- whether the ongoing provision for denominational burial grounds was only for existing grounds or allowed for the establishment of new ones
- whether the proposed definition for cemetery also applied to Option 3
- clarification of proposed changes to legislation
- clarification of the responsibilities around the disinterment of multiple graves.

Two submitters commented that while Option 3 was better than the status quo, it was still too restrictive. Natural Burials New Zealand stated that Option 3 maintains the current inflexibility for

community self-organisation, leaving citizens still at the whim of their respective council for all matters related to death, burial, and cremation.

Community and private cemeteries

Fourteen submitters made specific comments relating to provisions for community cemeteries, as outlined in Option 3. Five of these submitters explicitly supported the proposed provision for community cemeteries, including bringing trustee cemeteries under this framework.

Four submitters highlighted possible issues with community cemeteries. Marlborough District Council raised concerns over community or private cemeteries failing and becoming a burden to local authorities or ratepayers, especially if several trustee cemeteries relinquished authority following the introduction of the new statute. South Taranaki District Council commented that their local iwi had questioned what role iwi and hapū would have in deciding the suitability of community cemetery sites.

Five submitters, mostly local authorities, stated that they supported Option 3 because it did not allow for the provision of independent cemeteries.

Private burials

Ten submitters, mostly local authorities and public health providers, commented that regardless of whether they supported private burials, provisions for private burials must require resource consent as outlined in the RMA. Most of these submitters explicitly supported Option 3 because it included provisions for resource consent.

Conversely, AIDVA considered that the provision for resource consent was a downfall of Option 3, as families in rural areas and mana whenua should be able to bury their dead privately without the need for consent from a local authority.

Findings

Submitters supported *Option 3: Implementing a package of changes to the current system based on most of the Law Commission's recommendations*. Further work is required to finalise the policy recommendations in this section.

Section D1:

Cremation regulations

This section corresponds to section D of the Consultation Document, and questions 31–36 of the online survey. The parts of section D that relate to the medical referee system are discussed in Section D2, where possible.

Summary of submissions

One hundred and ten submitters, including 62 groups and organisations and 48 individuals, provided comments on cremation and crematorium management.

The majority of submitters agreed that there were issues with the current cremation system in New Zealand, and many explicitly agreed with the issues identified in the Consultation Document. Some submitters raised additional issues that were not outlined in the Consultation Document, including the lack of rules and guidance for scattering ashes on land and in waterways, issues with forms required for cremations, a lack of publicly operated crematoria, and concerns with cremation emissions.

Overall, submitters provided overwhelming support for *Option 2: Adopting all the Law Commission's recommendations relating to cremation and dealing with ashes*. However, some submitters noted that, while generally supporting the intent of Option 2, they retained reservations around some of the changes, particularly the proposed role of local authorities.

Assessment of the current cremation system

Table 14: Issues with the current cremation system as outlined in the Consultation Document

Issues with the current cremation system

- Duplicated approvals required to establish new crematoria
- Lack of clarity of duties to hold and dispose of ashes
- Issues with the medical referee system (covered in more detail in Section D2)

Current issues

Forty-four submitters, including 21 individuals and 23 groups and organisations, agreed that there were issues with the current cremation or medical referee system in New Zealand. Fourteen submitters either did not agree that there were issues with the current system or were not aware

of any current issues. Submitters who disagreed did not provide further comments to explain their answers.

Twelve submitters, including five funeral sector organisations, FDANZ, and three local authorities, explicitly agreed with the issues identified in the Consultation Document relating to the cremation system, particularly around the duplicated approval process that is required to establish new crematoria, and the lack of clarity around duties to hold and dispose of ashes. Hamilton City Council stated:

We have experienced the duplication [*sic*] approval process between the Ministry of Health and regional authorities to build or modify a crematorium. Currently, there is no provision for them to notify new applications or to work more cohesively with their processing.

Disposal of ashes

Sixteen submitters, including 14 groups and organisations and 2 individuals, provided further comments on issues relating to ashes.

Four submitters highlighted how there is a current lack of rules, regulations, or guidance around scattering of ashes, particularly scattering of ashes in waterways or public places such as parks and reserves. Marlborough District Council noted how this can be challenging as there is nothing to assist local authorities to navigate public requests for scattering ashes. Two local authorities suggested that there could be infringements introduced for those who scatter ashes in public places or sites and waterways of significance to local iwi.

Furthermore, three submitters pointed to the lack of information or a register of where ashes are scattered. They noted that some local authorities or cemeteries might keep such records, but there is no current legal or other obligation for this information to be recorded.¹⁰ This was considered an issue due to the potential for unintended consequences from subsequent use of that land. Auckland Council stated:

For example, council may erect a toilet block on a local park where someone has scattered ashes and cause offence to the deceased family members, even though council has no record or knowledge that ash had been scattered at this location.

Three local authorities requested national guidance around scattering and interring of ashes. Hamilton City Council and Taituarā also suggested that local authorities should be able to consult with their communities and develop their own policies and local bylaws to regulate the disposal of ashes where issues arise.

Five organisations spoke of the conflicting views within some communities regarding the scattering of ashes in waterways. They noted that scattering ashes in waterways may be important for some cultural beliefs; however, they raised the importance of recognising that this practice is culturally inappropriate for Māori and may conflict with local tikanga. Palmerston North City Council stated:

Under Tikanga Māori, as human remains are tapu, there are cultural restrictions as to the places where the disposing of ashes is not permitted, including at sea or on culturally significant land. This is an issue, as there is currently no legal restriction on the location of disposal of human ashes.

¹⁰ Currently, section 50 of the Act requires all burials within any cemetery to be registered with the local authority.

Te Korowai o Ngāruahine Trust recommended that the legislation give power to mana whenua to determine what are and what are not appropriate locations for the spreading of ashes. One individual called for greater public education regarding the scattering of ashes and why this is not culturally appropriate for Māori:

I think there is a need to help people to understand that for Māori, ashes are still human remains that need to be treated appropriately. There is an urgent need for public education on this issue. Throwing ashes in someone's favourite fishing spots or favourite walking tracks is fraught with misunderstanding and offence.

Forms and paperwork required for cremation

Eight submitters, half of which were individual submitters, spoke of issues with the current forms or paperwork associated with death certification/cause of death determination, a requirement prior to cremation.

Two submitters noted issues with delays in the paperwork being completed, or the paperwork being received with inaccuracies or missing information. One funeral sector organisation considered the requirement for doctors to see and identify the body in order to complete paperwork to be unnecessary and contributed to delays or increased costs for the bereaved.

One funeral director explained how current issues relating to the completion of cremation paperwork – such as having limited time to complete the paperwork, having to view the body, and paperwork filled out incorrectly – can compound, resulting in negative impacts on the bereaved:

Doctors find it hard to find time to do the forms AND see the deceased before the body is collected from the place of death, because they are rushed they often make mistakes. Both lead to delays that can have a major impact on cultural practices here in NZ, and cause emotional distress to the bereaved, as well being a damn headache for funeral directors and medical referees.

Five submitters considered that the current cremation paperwork was unclear and difficult to complete. They suggested that the form be updated to simplify and reduce duplication. One individual called for a review of the paperwork required for cremations, stating:

The certificates themselves need to be significantly redesigned. Death and cremation certificates could be merged into one document (if nothing else, it would eliminate the 19 duplicate pieces of information in the current cremation certification system). The wording on certificates needs to be changed so that it is user-friendly and comprehensible for certifying practitioners – removing specialised legal terminology and/or providing links and explanations for key questions.

Death Without Debt further noted that due to difficulties in filling out cremation paperwork, members of the public are reliant on professionals to assist with completing paperwork, often resulting in higher costs to the bereaved to use these services. They stated that paperwork should be able to be completed by members of the public, and that professionals from the funeral sector should not always be required to do this.

The same group also illustrated how difficult it can be to locate relevant paperwork:

One pre-cremation or burial form which should properly be found with other pre-disposal paperwork on the Ministry of Health website is instead to be found (if you persist) in the Department of Internal Affairs digital resources. This is nonsensical.

Other issues

Six submitters spoke about a range of other issues with the current cremation system in New Zealand.

Three submitters were concerned with a lack of publicly operated crematoria consistently throughout New Zealand. This meant that members of the public were subject to the unregulated prices of private crematoria where publicly operated crematoria are not available. As one advocacy group noted:

Since 70 percent of all bodies are cremated (as opposed to buried), it is no longer defensible for councils and government to rely on private crematoriums to provide this essential service. [...] Publicly owned crematoriums therefore need to be provided in all districts, or at the least, private crematoriums should be required, on long term contract, to provide services at standardised cost across NZ.

Two submitters were concerned about the lack of regulatory oversight regarding the location of crematoria and the environmental impacts from carbon emissions. They also raised the health risk from exposure to cremation emissions. While one individual stated that there are no current regulations concerning the siting of crematoria relative to residences, Taituarā noted that Ministry of Health guidelines do exist; however, they questioned whether these guidelines were being followed by all crematoria. These submitters also highlighted the current lack of consistent and independent emissions testing.

One funeral home owner noted there was no consistent approach to operating or opening a crematorium throughout the country. They found this inconsistency frustrating and indicated that it could have an effect on how New Zealanders who wished to be cremated are served.

Death Without Debt noted that there can be confusion around coffin or casket requirements for cremation. They called for the law to be simplified and clearer regarding coffin construction requirements for cremation.

Evidence of current issues relating to the cremation system

Very few submitters provided evidence on the size or extent of current issues with the cremation or medical referee systems.

- Seven submitters, including five funeral sector organisations and one local authority, explained that there has been a steady increase in demand for cremations over time, and that this demand may be driven by the costs of conventional burial.
- One individual who conducts funeral services noted that crematorium facilities do not appear to be keeping up with the current demand for cremations and said that funerals were often rushed to meet the timing requirements of crematorium.
- The same seven submitters also raised issues with the limitations imposed as a result of the COVID-19 pandemic whereby burials were separated from funerals. They suggested that this might further drive the demand for cremation.
- One individual in the funeral sector explained how the process for renewing air discharge permits had become increasingly more difficult and costly for their organisation due to local authority requirements for public consultation prior to renewal:

It seems unfair and places in my opinion unreasonable costs on our business, which in turn will pass the costs onto the public who are choosing cremation.

Options for reform of cremation and crematorium management

Table 15: Options for reform of cremation and crematorium management as outlined in the Consultation Document

Option 1	Maintaining the status quo
Option 2	Adopting the Law Commission's recommendations relating to cremation and dealing with ashes <ul style="list-style-type: none">• Permission to establish and operate crematoria would be managed under the RMA.• Local authority would regulate permission to cremate or otherwise dispose of a body elsewhere than in a crematorium.• Cremator/funeral service would have power to inter or scatter ashes in an appropriate location provided criteria are met.• Scattering of ashes on land will be managed by local authorities under the RMA.

General comments on the options

Eighteen submitters, including 10 groups and organisations and 8 individuals, provided general comments relating to the proposed options for the reform of cremation and crematorium management.

- Six individuals and one funeral sector organisation generally agreed with the options identified in the Consultation Document or approved of the proposed options.
- Seven submitters, mostly funeral sector organisations, commented that there is a need for greater clarity around responsibilities in the cremation system in New Zealand, and called for a nationally consistent approach.
- One organisation emphasised that Māori considerations should be included to a greater extent in cremation regulations, such as requiring cremator operators to show evidence that they do not undertake practices that are offensive to Māori, and requiring cremator operators to provide information to the bereaved around appropriate (and inappropriate) areas to scatter ashes.
- Six funeral sector organisations explained that they have noticed an increase in the demand for personalisation of funeral experiences. They stated that any new approach to the cremation system in New Zealand must cater to this demand and ensure that the ability to personalise funeral experiences is consistent throughout the country.

Four submitters indicated that they would like to see a combination of the two identified options and proposed additional ideas for the regulation of cremation and crematoria. Their recommendations included:

- stronger regulatory controls over crematoria, such as requiring operators to be licensed and have a mandatory code of practice to ensure that operators are meeting minimum levels of service provision and safety

- implementing a random national auditing system to monitor that crematoria are operating in accordance with applicable regulations
- development of national standards or guidance for crematoria operators.

Impacts of the options

Table 16: Impacts of the options for reform of cremation and crematorium management as outlined in the Consultation Document

Option 1	Issues remain the same
Option 2	<ul style="list-style-type: none"> • Removes duplicated approval requirements, which decreases compliance cost for providers and administrative burden for the Ministry/DHBs • No additional costs to local authorities • A flexible and sustainable regulatory model which will evolve as legislation changes • Local authorities take responsibility for approving cremations elsewhere than in a crematorium (from PHUs), shifting administrative burden • Clarifies criteria for permissible cremations not in a crematorium • Clarifies how to deal with unclaimed ashes

Thirty-eight submitters, including 20 groups and organisations and 18 individuals, agreed with the impact analysis outlined in the Consultation Document relating to the proposed options for reform of cremation and crematorium management in New Zealand.

Ten submitters disagreed with the impact analysis outlined in the Consultation Document.¹¹ Very few submitters provided further comments on why they disagreed with the impact analysis. Those that did provided the following comments.

- Auckland Council noted that the impact analysis in the Consultation Document did not mention the scattering of ashes on land.
- One individual in the funeral sector explained that, should the responsibility to approve cremations outside of a crematorium shift from the PHU to local authorities, then this would have an impact on all local authorities, which would then need to have adequately trained staff to undertake such activities.
- One individual thought that the Consultation Document did not sufficiently address the complexity of the current process to establish crematoria.

Evidence of the impact, cost or benefit of the options

Some submitters provided further information or evidence around the size of any potential impact, cost or benefit from the identified options. Submitters tended to provide further information or evidence when discussing the proposed options, such as providing rationale:

- on the issues relating to ownership rights of ashes and why funeral directors should not be responsible for adjudicating family disputes about ashes
- for a reasonable timeframe for keeping ashes before disposing of them
- for and against managing the scattering of ashes under the RMA

¹¹ Please refer to the caveat in the Method section.

- against local authorities having sole approval power for establishment of new crematoria
- against local authorities being responsible for regulating activities of crematoria
- against local authorities being responsible for approving cremations outside of crematoria.

These comments are presented under the appropriate headings below.

Preferred option for reform of cremation and crematorium management

Option 1: Maintaining the status quo

Six submitters stated that they would prefer Option 1. Only one submitter, Waitaki District Council, provided further comments in relation to their preference. They noted that they preferred Option 1 because they did not agree with specific parts of Option 2 – namely, they did not support any significant shift of regulatory functions to local authorities.

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

A large majority of submitters, including 36 groups and organisations and 34 individuals, indicated that they preferred Option 2. Some submitters provided further comments relating to specific aspects of the proposed changes under Option 2, including whether or not submitters agreed or disagreed with what is proposed under Option 2. These comments are summarised below.

Dealing with ashes

Twenty-eight submitters, 15 of which were local authorities, set out their views on the proposed changes for dealing with ashes under Option 2.

Powers to hold and dispose of ashes

Ten submitters, including six local authorities and two funeral sector organisations, thought that Option 2 provided more clarity around the management and disposal of unclaimed ashes.

Two submitters generally supported Option 2 but noted that further clarity is needed in relation to determining the custody and ownership rights of ashes, such as whether custody of ashes can be delegated to an agent (eg, funeral director) acting on a person’s behalf. Furthermore, one DHB stated that funeral directors should not be responsible for adjudicating family disputes around ownership of ashes:

In relation to the determining of who has the rights to ashes, we think there needs to be an additional provision. The ownership of ashes is probably one of the most problematic areas that funeral directors deal with. An example of this would be where there are several adult children of a deceased person but no executor. There may be a dispute about whether the ashes should [be] interred or scattered. Although the next of kin is mentioned, there is not clarity around who this actually is and what is the legal status.

Porirua City Council was supportive of Option 2 but cautioned that there was a need to ensure that local authorities would not incur liability in the event of family disputes around the cremation of remains.

Criteria to inter or scatter ashes

A few submitters spoke about the proposed criteria that would need to be satisfied before a cremator or funeral director could inter or scatter ashes. Two local authorities supported cremators or funeral directors having clear criteria for when they can inter or scatter ashes.

Submitters' preferences varied in relation to the proposed minimum timeframe.

- The New Zealand Cemeteries and Crematoria Collective supported the proposed five-year timeframe, indicating that five years would be suitable.
- One funeral director thought that a five-year minimum timeframe was too long and suggested it be three years. Conversely, the National Council of Women New Zealand indicated that five years might not be long enough and suggested that a 10-year timeframe might be more appropriate.
- Hamilton City Council proposed that a minimum timeframe of 5–10 years would be reasonable. They noted that their staff tended to keep ashes for longer than was necessary, and that this storage took up space.
- Auckland Council and one funeral home supported holding ashes indefinitely, provided that the whereabouts of the ashes be recorded, and the ashes remain accessible to those who search for them.

Auckland Council was concerned that the only communication requirement that must be met before disposing of ashes was to send a notice to the last known address of the applicant for cremation. Furthermore, Hamilton City Council suggested that all practical steps should be taken to contact the family before ashes could be interred or scattered.

Six submitters, including four local authorities, supported a form of register or means of recording where and when ashes were scattered or interred so that ashes could be located at a later date.

Managing the scattering of ashes

One local authority noted that Option 2 did not address the scattering of ashes in a culturally sensitive manner. Furthermore, seven submitters, while generally supportive of Option 2, wanted to see clearer legislation or more national guidance regarding the scattering of ashes on land and in waterways, including greater emphasis on considering the social and cultural implications of scattering ashes. For example, Hawke's Bay DHB suggested that tangata whenua should be involved in identifying appropriate and inappropriate locations for the scattering of ashes. Palmerston North City Council and Otago Regional Council both called for the development of guidance to deal with the dispersal of ashes. Palmerston North City Council Stated:

[We] would also like to stress that [the Ministry of Health] create further guidelines for community members who wish to disperse ashes into waterways and onto public land, especially noting the cultural incompatibilities between diverse communities.

Otago Regional Council stated:

[We request] that, if scattering of ashes is to be a function that sits with territorial authorities, robust criteria are developed to ensure appropriate environmental, cultural and social considerations are addressed.

Four submitters, including two local authorities, LGNZ, and Taituarā, were not supportive of the proposed changes under Option 2 for the scattering of ashes on land to be managed under the RMA. They reasoned that the environmental impact from scattering ashes on land was not significant enough to warrant being managed under the RMA, and that this would become a costly and burdensome process for local authorities to manage. These submitters recommended that local authorities utilise their bylaw-making powers as an alternative to the RMA. LGNZ stated:

The RMA is a complex, costly and time-consuming mechanism and lacks the flexibility for dealing with this issue. Our preference is to use bylaws made under s.143 LGA 2002 [Local Government Act] with infringements. [...] Bylaws are a significantly more responsive mechanism for managing activities such as the scattering of ashes, than the RMA. However, to be effective councils need the ability to issue infringement notices and fines on those who fail to comply.

This was supported by Taituarā:

Ash scattering would be an unlikely matter to be regulated under the Resource Management Act because of the low physical impact on land or water, and the high administrative costs. We do not support the use of the RMA for ash disposal decisions.

In contrast, Waipā District Council considered it appropriate that the scattering of ashes be regulated under the RMA because ashes would fall under the definition of 'contaminant'; however, they noted that the RMA remains limited in its ability to consider the cultural sensitivities of ash disposal:

The complication comes about because of cultural sensitivities of iwi around scattering [sic] of ashes, particularly into waterways and on sites of significance. The RMA is poorly equipped to deal with cultural sensitivity.

Establishment and operation of crematoria

Twenty-nine submitters, including 10 local authorities, provided further comments on their views on the proposed changes under Option 2 for establishing and operating crematoria.

Establishment of new crematoria

Twenty-one submitters, half of which were local authorities, were generally supportive of the proposal for the establishment of crematoria to be managed under the RMA, and for local authorities to solely manage the approval for new crematoria. Fourteen submitters, including nine local authorities and three funeral sector organisations, considered that Option 2 would appropriately remove the duplication within the current approval process and considered this to be beneficial.

Five submitters indicated that they were not supportive of the proposed changes for establishing crematoria.

- Two local authorities raised concerns with the proposal for local authorities to take on sole responsibility for approving new crematoria. They considered that the Ministry should retain responsibility for approving new crematoria.
- Two funeral sector organisations stated there would be a potential conflict of interest for local authorities as they may lose income from their own crematoria if private cremator operators were approved in the district.

- One individual was concerned that local authorities did not have the appropriate knowledge or tools (by way of comprehensive national guidance) to assist with approving new crematoria.

Hawke's Bay DHB indicated that a shift of responsibility from the PHU to local authorities could result in reduced work for PHUs; however, the impact from this was considered to be minimal as processing applications for crematoria are rare.

Three submitters recommended that adequate public consultation should be necessary when considering the establishment of new crematoria.

Regulating and operating crematoria

Some submitters commented on the proposed changes to regulating and operating crematoria under Option 2.

Porirua City Council considered that making local authorities responsible for the regulation of crematoria could enable communities to be more involved in decisions about how crematoria are managed.

However, four submitters disagreed with the proposal for local authorities to regulate the operations of crematoria.

- One individual and Nelson Marlborough Health suggested that the Ministry should retain oversight and responsibility for regulating the establishment and operations of crematoria.
- Waitaki District Council and Taituarā explained that certain skills and qualifications are required to operate a crematorium and handle dead bodies. They reasoned that local authorities did not have the right knowledge or skills base to appropriately regulate such activities. As Taituarā illustrated:

The operation of crematoria requires trained operators to ensure respectful handling of coffins, run equipment and operate to a standard of health and environmental safety. Local authority staff do not open coffins or handle bodies. The regulation of the handling of bodies needs to be performed by those who have expertise in the area, namely health professionals or via regulation of the funeral director sector. We do not support the proposal that this is a suitable function for local government.

We do not agree that local authorities should regulate crematoria except for environmental health purposes. To extend the mandate for this function to councils would require resources and training that councils do not currently have.

Cremations outside of crematoria

Seventeen submitters, mainly local authorities, provided further comments relating to the proposed changes under Option 2 for managing cremations outside of a crematorium.

Three submitters agreed that Option 2 provides more clarity around the criteria and requirements for undertaking a cremation outside of a crematorium. AIDVA stated:

Our preferred option to modernise the regulations for cremation in New Zealand is option 2 because it offers clarity to those who require cremations which occur outside of crematoriums and for everyone else is a more flexible and sustainable model.

Twelve submitters, including one individual, nine local authorities, LGNZ, and Taituarā, indicated that they did not support the proposal under Option 2 for local authorities to be responsible for

approving cremations outside of crematoria. They reasoned that local authorities should not undertake this function because:

- they are not responsible for regulating fires
- their staff do not have medical expertise or sufficient knowledge to assess and manage the risks involved in preparing a body for cremation, such as assessing whether there are explosive medical devices implanted in a body
- their staff do not have sufficient professional knowledge to oversee the respectful handling of the body or assessment of public offence
- they do not have the resources to manage another process without appropriate funding.

Taituarā stated:

Approval of an outdoor cremation currently sits with a medical officer of health who assess risks of offence, injury, smoke, spread of fire, adequacy of fire, explosion of devices within the body and restoration of the site following the cremation. Local authorities cannot regulate any of these matters.

Five submitters, four of which were local authorities, considered that the public health system should have final oversight of cremations outside of crematoria to ensure national consistency. By the same token, the Bay of Plenty Regional Council considered that making local authorities responsible for managing the establishment of crematoria and regulating cremations other than in a crematorium would introduce the prospect of different rules being developed in different districts. They indicated that this inconsistency could lead to confusion and frustration:

Although current requests for alternative methods of cremation are rare there is a likelihood that with the increase in diversity of the community requests for alternate methods of cremation could increase. Again, local authorities do not have the experience or resources to undertake this assessment/approval.

Invercargill City Council and Nelson Marlborough Health noted that, should local authorities be required to be responsible for approving cremations outside of crematoria, they expect that all local authorities would receive clear guidance from the Ministry regarding appropriate considerations for approval.

Findings

Submitters supported *Option 2: Adopting all the Law Commission's recommendations relating to cremation and dealing with ashes*. Further work is required to finalise the policy recommendations in this section.

Section D2:

Medical referee system

This section corresponds to section D of the Consultation Document, and questions 31–32 and 37–40 of the online survey.

Summary of submissions

Ninety submitters, including 42 individuals and 48 groups and organisations, provided their perspectives on the medical referee system in New Zealand.

Submitters largely reiterated their agreement with the issues pertaining to the current medical referee system that were outlined in the Consultation Document. However, submitters raised some additional issues and related comments that were not captured in the Consultation Document. These included concerns with the current lack of a national register of medical referees, challenges with the limited availability of medical referees, and acknowledgement of the role that medical referees play in the death system.

Most submitters agreed with the impact analysis outlined in the Consultation Document relating to the proposed options for the reform of the medical referee system, with some noting that they were unable to provide additional information on potential impacts, costs or benefits.

Overall, there was no clear preferred option among submitters. Both *Option 2: Repealing the medical referee system* and *Option 4: Reforming and expanding the medical referee system* generally received a similar and moderate level of support among submitters.

There were also no clear trends across submitter groups such as funeral sector organisations, local authorities or medical referees¹² – there were often opposing viewpoints within the same demographic group.

¹² There were only two submitters who were explicitly identified as medical referees.

Assessment of the current medical referee system

Current issues

Table 17: Issues with the current medical referee system as outlined in the Consultation Document

Issues with the current medical referee system
<ul style="list-style-type: none">• Confusion around the standard of certainty that medical referees must have before certifying cause of death• Inconsistent requirement to review death certification documentation prior to cremations, but not prior to burials• Legally, parts of the death certification must be completed in paper form• Audits depend on accuracy of information from certifying practitioner• The system is not designed to measure the quality of outputs, or utilise information and experience to inform/educate other certifying practitioners• Medical referees work in isolation, receive minimal payment, are contracted by crematoria, and do not usually have access to medical records• No training, monitoring or support for medical referees

Forty-four submitters, including 21 individuals and 23 groups and organisations, agreed that there were issues with the current cremation or medical referee systems in New Zealand. Fourteen submitters either did not agree that there were issues with the current system or were not aware of any current issues in the cremation or medical referee systems.¹³ Submitters who disagreed did not provide further comments to explain their answers.

Twenty submitters provided further comments relating to the current issues with the medical referee system. Some of these submitters reiterated their agreement with certain issues outlined in the Consultation Document, as illustrated below.

Legal requirement for documentation to be completed on paper

Four submitters, including two funeral homes and one medical referee, agreed that the current legal requirement for death certification documentation to be completed by paper and delivered in a sealed envelope was an issue. They noted that this requirement was impractical and hardly occurred in practice. Email and fax were typically used instead. Moreover, one funeral sector organisation commented that they had great success implementing digital form signing and verification over the COVID-19 lockdown, and they believed that this process could continue moving forward in conjunction with Death Documents.

Four submitters, including two funeral homes and one funeral director, spoke of a need for medical referees to have access to death documentation electronically, such as a centralised online system where medical referees can view and approve documentation from any location in

¹³ Please refer to the caveat in the Method section.

New Zealand. One funeral sector organisation suggested that an online documentation system could remove issues stemming from delays to the completion of documents.

Lack of training or monitoring of medical referees

Four submitters, including one medical referee, agreed that there is a lack of training and professional development for medical referees in the current system. The same medical referee noted that, outside of the guidelines published in 2017 by the Ministry, there is no readily accessible central source of information or resources for medical referees, such as a helpline or a website.

Five submitters also agreed that there was a lack of ongoing auditing or monitoring of medical referees to ensure that their practice is consistent throughout the country. They noted that, once referees are appointed, there appears to be few, if any, checks on practice. Three submitters, including two funeral homes and one medical referee, found that the role of a medical referee, and the standard of quality and attention to detail taken by medical referees, differed throughout the country. One medical referee noted:

Occasionally I have been asked to referee cremation certificates that have already been reviewed and approved by another referee. Not infrequently, I need further information to meet the requirements of the Cremation Regulations – which is to say that my assessment significantly differed from the original referee. That includes my identifying a couple of cases that should have been referred to the Coroner but which were overlooked by the first referee. There is no system to identify such discrepancies in referee opinions nor is there a system to improve consistency.

Medical referees differ in their standards for reviewing certificates and their knowledge of the relevant laws and regulations, including the definition and role of an executor for applications (Form A) – an issue commented on by certifying practitioners and by funeral directors.

Confusion around the requirement to ‘definitely ascertain’ cause of death

Two submitters, including the Chief Coroner, agreed that the requirement that medical referees be satisfied that the cause of death is ‘definitely ascertained’ is unclear and causes confusion. Furthermore, two submitters questioned a medical referee’s ability to meet this requirement when they often have limited access to patient records. One submitter noted:

Most deaths in New Zealand are certified without post-mortem and the certifying practitioner must rely on the clinical notes, their knowledge of the deceased (if applicable) and the circumstances of the death. This involves a level of satisfaction that is less than ‘definitely ascertained’.

Other issues

Eighteen submitters, including five individuals and 13 groups and organisations, spoke of other issues in the medical referee system that were not covered in the Consultation Document. These issues are summarised below.

Lack of a national register of medical referees

Four submitters raised concerns with the lack of a national register for medical referees. Without a register, submitters found it difficult to identify currently approved medical referees. As Waikato DHB described:

No central register for medical referees means that once appointed there is no way of checking the status of medical referees across New Zealand.

Waikato DHB commented that there have been difficulties in verifying the status of medical referees due to the lack of a central register, so individuals already acting as medical referees have to provide proof of suitability to accept another medical referee role.

Three funeral sector organisations recommended that a central register be created because this would make it easier for both medical referees to access and for crematoria to search for and approve medical referees. Furthermore, these submitters also suggested that medical referees should not be approved in relation to specific crematoria; rather, they should be approved as a national pool of referees.

Availability of medical referees

Three funeral sector organisations raised concerns around the limited availability of medical referees. They provided evidence of this issue, describing how some regions have only one or two medical referees and how it can be challenging to progress paperwork after hours, over the weekend or public holidays, or on an urgent basis. Death Without Debt provided a victim impact statement, where they identified an instance where a medical referee could not be found for at least 24 hours, and possibly up to four days. These submitters highlighted how a lack of available medical referees can negatively impact bereaved families through delays in returning their loved one's body. One submitter noted:

The number of referees is limited and lack of choice of a referee especially when paperwork is urgently required can mean follow up phone calls and reminders are necessary to ensure deadlines will be met. (ie booking a cremation) Especially when required after hours. We have only one referee in our area that is available after hours and on weekends, if this referee is ever away there is problem.

Invercargill City Council stated:

[It] may cause flow on effects for Territorial Authorities and funeral directors, where families are having to wait due to a delay in funerals as a result of delayed signoff from medical referees not being available.

One funeral sector organisation also noted that the ability for medical referees to respond quickly can be negatively impacted by their wider medical practice workload.

The role of medical referees

Six submitters, including two funeral directors and one medical referee, disagreed with the way that the Consultation Document framed the role of medical referees. They considered this role to be an important part of the death certification process, explaining that medical referees perform an important safety function and are important because they identify mistakes on certification documentation. They also considered it to be important for medical practitioners to be involved in the death certification process. One medical referee commented:

[I]n my capacity as a referee, I have personally alerted and followed up 51 cases where a certifying practitioner has incorrectly attested that no biomechanical aid was present [...] Any of these cases of a 'missed' biomechanical aid implant could have resulted in an explosion and damage to a crematorium or the attendants.

According to one funeral director:

SO [sic] many forms are re-done because they are incorrect and medical referees are the ones that pick up on this!

One individual submitter highlighted that medical referees need to ensure that they have informed the executor or near relatives of requests for cremation.

Evidence of current issues relating to the medical referee system

Very few submitters provided evidence on the size or extent of current issues with the medical referee system. Some of the discussion around the evidence of current issues is presented under the relevant headings in the preceding section. This includes evidence on:

- issues created by limited availability of medical referees
- outdated expectations for medical referees to submit paperwork in a non-digital format
- issues created by a lack of a national or central register of medical referees
- the requirement for the medical referee to ensure that family members were made aware of requests for cremation.

Additional comments pertaining to evidence of the current issues are summarised below.

Two submitters described inconsistencies and a lack of understanding about medical referee practice in the current system. One funeral sector organisation commented that discussions with other funeral directors revealed that understanding of a medical referee's role differs nationally. One individual submitter highlighted instances where medical referees had not been satisfied with the proposed cause of death, overruled the coroner, and contributed to what were perceived as unnecessary delays for local authorities, DHBs and families.

Four submitters, including one medical referee and the Chief Coroner, commented that there was a lack of data and evidence surrounding the role, activities and effectiveness of medical referees. One medical referee stated that those in the profession often work in isolation, and that a lack of audit, review or general oversight from the Ministry results in inconsistencies in practice and leaves the Ministry without information on how the system works, how effective it is, or how to address current issues.

The Chief Coroner stated:

There is no data provided that indicates how effective the medical referee system is in preventing cremation of bodies when the cause of death has not properly been established.

These submitters indicated that a lack of evidence in this area of the review has contributed to issues in the system, as well as issues with the proposed options for reform.

Options for reform of the medical referee system

Table 18: Options for reform of the medical referee system as outlined in the Consultation Document

Option 1	Maintaining the status quo
Option 2	Repealing the medical referee system <ul style="list-style-type: none">• System disestablished and not replaced• Existing death certificate and coroner system continue• Substance of Form AB¹⁴ incorporated into the MCCD
Option 3	Reforming the medical referee system <ul style="list-style-type: none">• Medical referee role takes on solely crime prevention focus to determine if there was criminal wrongdoing (prior to cremation)• Referee is a person from the justice sector – not a health practitioner or appointed by crematorium• Coroner authorises release of body – referee cannot order post-mortems• The Ministry of Justice has oversight of referee system – the Ministry of Health retains responsibility for death certification system• Substance of Form AB incorporated into MCCD
Option 4	Reforming and expanding the medical referee system <ul style="list-style-type: none">• System reformed as stated in Option 3, but a mandatory referee check introduced prior to all body disposal

General comments on the options

Only a few submitters provided general comments relating to the proposed options.

- Two submitters commented that the status quo is not working for the bereaved, and that whatever new systems are implemented need to consider how the system can work better for the bereaved, including providing affordable services for bereaved families.
- Two submitters noted that the system should be aiming for simplification and efficiency, particularly regarding paperwork processes.
- One individual suggested that medical referees need to be more accessible to those who choose to organise funerals without a funeral director.
- One individual suggested an alternative to the proposed options that would involve an extension of the current medical referee system, but with greater powers for medical referees to view patient notes or post-mortem reports, request coronial involvement, and review and audit MCCDs and Form B.

¹⁴ A summary of the forms required for cremation can be found within the **Consultation Document** on the Ministry of Health website.

Impacts of the options

Table 19: Impacts of the options for reform of the medical referee system as outlined in the Consultation Document

Option 1	Issues remain the same
Option 2	<ul style="list-style-type: none"> • Potential misconduct could go undetected (low risk) • Burden on families removed as compliance cost removed and forms no longer require completion • Existing medical referees' roles would be disestablished • Reduced costs to crematoria as they would not need to appoint referees, and reduced costs for the Ministry, which would not need to support referee appointments
Option 3	<ul style="list-style-type: none"> • Burden of appointing referees shifts from the Ministry of Health to the Ministry of Justice • Continued duplication of death certification and coronial systems • Limited effectiveness as a crime detection mechanism if cremation reduces in popularity as a body disposal method • Greater oversight from the Ministry of Justice could improve consistency across referees and a centralised monitoring of the system • Referees remain unable to access medical records (limited ability to detect errors) • Existing medical referees' roles would be disestablished • Reduced costs to crematoria as they would not need to appoint referees • Burden on families unlikely to change as forms would still need to be completed
Option 4	<ul style="list-style-type: none"> • Similar impacts to Option 3 • Potential benefits from medical referee system would apply to certification of all forms of body disposal (detecting wrongdoing) • Limitations of current system continue, but expanded to all deaths (complete duplication of death certification and coronial systems) • Inconsistency between cremation and other methods removed • Additional compliance costs for families using non-cremation methods of disposal, and added administrative burden for burials • Creates impediments for cultural practices (eg, Islamic burial)

Thirty-four submitters, including 18 groups and aorganisations and 16 individuals, agreed with the impacts of the options as outlined in the Consultation Document.

Two submitters generally agreed with the impacts of Option 2. One medical referee agreed that disestablishing the role of medical referees would impact medical referees, in particular highlighting that medical referees would lose a source of business income. One individual who works in the funeral sector considered that the disestablishment of the medical referee system would result in immediate benefits for the consumer.

Eight submitters disagreed with the impact analysis outlined in the Consultation Document regarding the proposed options for reform. However, very few submitters provided further comments about why they disagreed with the stated impacts or suggested additional impacts.

One medical referee focused on additional impacts of Option 2 and stated:

[D]isestablishing the medical referee system would have a negative impact on the wider death system as the system would then lose an important means of 'check and review' to ensure accuracy of documentation.

While the stated impacts propose that costs for crematoria would decrease following the disestablishment of the medical referee system, the medical referee considered this to be misleading and explained that the costs are minimal one-off costs that occur infrequently because new medical referee appointments are not made often. Another medical referee echoed this reasoning, suggesting that the issue of cost in the current system is minimal.

Some impacts proposed by submitters are discussed in more detail under the relevant headings below.

Evidence of the impact, cost or benefit of the options

Overall, few submitters provided evidence of the impacts of the proposed options. Some submitters provided evidence when describing the proposed options. This evidence is discussed under the relevant headings below, where appropriate. This includes evidence regarding:

- the value that medical referees contribute to the system
- the administrative and financial burden of the current medical referee system
- the lack of data on the effectiveness of medical referees
- the importance of having medical professionals in the role of medical referees.

Fourteen submitters stated that they could not provide further information on potential impacts, costs, or benefits of the proposed options.

Six funeral sector organisations indicated that they would be willing to work with the Ministry to discuss further details relating to potential impacts, costs and benefits.

Preferred option for the reform of the medical referee system

Overall, there was no clear preferred option for the reform of the medical referee system in New Zealand. Submitters' preferences were balanced across Option 2 and Option 4.

Submitters expressed similar levels of support for Options 1 and 3, although there was less preference for these over Options 2 or 4.

Submitters' preferences for each of the four options are summarised below.

Option 1: Maintaining the status quo

Thirteen submitters, including seven funeral sector organisations and three funeral directors, preferred Option 1. A few submitters provided further comments to explain why they prefer Option 1.

- Five submitters, including three funeral directors and two funeral homes, did not agree with disestablishing the medical referee role or that the current medical referee system was entirely broken. They explained that medical referees provide a valuable contribution because they act as a safeguard against potential wrongdoing, act as a secondary check for risks such as the presence of pacemakers, and assist in the accuracy of death documentation. One funeral sector organisation stated::

We believe that having an experienced medical professional evaluate this paperwork is invaluable to ensure that, if nothing else, families receive a Death Certificate with accurate and detailed information. Removing the medical referee system as proposed in the discussion document will lead to substandard outcomes.

- Six submitters, including four funeral sector organisations and one funeral director, agreed with retaining the current medical referee system, but suggested that the current system be updated to:
 - introduce a consistent set of standards and processes for medical referees, coupled with ongoing support and training
 - allow for documentation to be completed digitally instead of through paper
 - establish greater oversight to ensure consistency across all medical referees.

One submitter stated:

The current medical referee system clearly has a number of problems, but these should be fixed, rather than getting rid of it.

- One funeral director preferred Option 1 because they did not agree that shifting the responsibility and oversight of the system to the Ministry of Justice would be beneficial. Instead, they considered that this would result in more delays throughout the process.

Although two funeral sector organisations selected Option 3 and two submitters from the funeral sector selected Option 4 as their preferred option, their additional comments more closely aligned with the above suggestions for amendments to Option 1. This included a preference for the current system to be retained alongside the introduction of a consistent set of standards, processes, and ongoing training of medical referees, and the introduction of a national register of medical referees.

Option 2: Repealing the medical referee system

Twenty-one submitters, including seven organisations and individuals involved in the funeral sector and four health organisations preferred Option 2.

There were mixed views among the submitters who provided further comments in relation to Option 2, with some explaining their support for Option 2, while others critiqued Option 2.

Comments from those who were generally supportive of Option 2 included the following.

- Two submitters agreed that the current medical referee system can be an obstacle for families. They favoured having a simplified and streamlined process and thought that Option 2 offered this. Similarly, five submitters, including two local authorities and one DHB, favoured Option 2 because they thought that it could reduce the administrative burden and cost to the funeral sector, and subsequently to families. As one funeral sector organisation stated:

The Medical Referee system is a barrier to families taking care of cremation arrangements themselves. The paper based medical referee system is a barrier to the development and use of the Online Death Documentation. Removal of inconsistencies between disposal methods is advantageous as it reduces costs and complexities. Existing systems for detection of wrongdoing should be adequate and not be relying on a medical referee review of paperwork.

- Three submitters, including the New Zealand Medical Association and two submitters in the funeral sector, agreed that the current additional review undertaken by medical referees has limited ability to detect or prevent criminal wrongdoing, and that the benefits received do not justify having duplicated processes. Furthermore, three other submitters noted that the death certification and coronial systems should act as sufficient safeguards without the need for medical referees.
- Canterbury DHB generally supported Option 2; however, they suggested that it was important to gather data on how often the existence of the medical referee process has resulted in meaningful intervention.
- While two submitters generally agreed with Option 2, they requested greater clarity around details such as what forms or information will still be required, such as whether or not Form A would still need to be completed by family.
- One individual noted that they generally preferred Option 2; however, should there be an identified need for an additional safeguard, they recommended that Option 3 be adopted.

Comments from those who were not supportive of Option 2 included the following.

- One medical referee and one funeral sector organisation disagreed with the argument to disestablish the medical referee system in the absence of sufficient and accurate data outlining the current issues and potential benefits that are achieved through the current system. The medical referee noted:

It is illogical to argue for the dissolution of the medical referee system in the absence of data about who the referees are, what they change, or how they perform. There is no information about the efficacy of the system as the Ministry apparently does not monitor or audit this. The Ministry is aware of the tip of the iceberg in regards to [*sic*] referee issues but lacks any information about issues that arise on a daily basis and that are sorted out by referees.

- Another medical referee raised concerns with Option 2, stating that there is a continued need for a robust second tier of review of all paperwork, and that removing this system would allow more inaccuracies to go by unnoticed. They also indicated that this role should most appropriately be performed by an experienced medical practitioner.

An additional five submitters expressed disagreement with the disestablishment of the medical referee system. Their views can be found in the discussion under Option 1.

Option 3: Reforming the medical referee system

Nine submitters, including a mixture of individuals, PHUs, and other various organisations, preferred Option 3.

Again, there were mixed views among the submitters who provided further comments in relation to Option 3, with some explaining their support and others expressing concerns with this option.

Comments from those who were generally supportive of Option 3 included the following.

- Auckland Regional Public Health Service agreed that the medical referee system should be part of the judicial system.
- One funeral sector organisation generally preferred Option 3 but noted that the referees as proposed in Option 3 would need to have some form of medical training to be effective in the

role. They suggested that other professionals in the justice sector, such as a justice of the peace or a court officer, may not have the necessary expertise to perform the role.

- Hawke's Bay DHB reasoned that there is a continued need for additional checks to be in place to prevent the concealment of criminal wrongdoing, and to identify potential risks such as the presence of pacemakers prior to cremation, even if this duplicates the death certification and coronial systems.

Two funeral sector organisations stated their support for Option 3 but provided comments that did not necessarily align with what was being proposed. These submitters stated that they would prefer if the current system was retained alongside the introduction of a consistent set of standards and processes for the ongoing training of medical referees. It was not clear whether these submitters were supportive of Option 3, or simply unsupportive of Option 2.

Comments from those who were not supportive of Option 3 included the following.

- One funeral sector organisation was not supportive of Option 3 because they thought that it created more complexity.
- Four submitters, including Toi Te Ora Public Health and one medical referee, highlighted concerns with shifting the medical referee system from the health sector to the justice sector and replacing medical referees with individuals who do not have a medical background. They reasoned that, to be effective in the role, referees would need appropriate medical knowledge. A medical referee noted:

Using a non-medical legal or police referee would be ineffective by itself because the requirement is for a medically trained reviewer to spot inconsistencies in medical documentation, based on medical knowledge. How would a non-medical judicial officer know how to interpret terminology or whether a cause of death is potentially a criminal issue?

Option 4: Reforming and expanding the medical referee system

Twenty-two submitters, including three funeral sector organisations, the Chief Coroner, and two medical referees, preferred Option 4.

In a similar manner to the above options, there were mixed views among the submitters who provided further comments in relation to Option 4, with some explaining their support and others explaining their concerns with this option.

Comments from those who were generally supportive of Option 4 included the following.

- One funeral sector organisation thought that the requirement under Option 4 for burials to also undergo a referee check would make the system fairer.
- The Chief Coroner noted her preference for Option 4 if the proposed changes to the auditing system of all death certificates (see Section A1) were not adopted because she considered auditing of death certificates to be a crucial requirement in the wider death system. The Chief Coroner noted that there is a lack of data to indicate how effective the medical referee system was at detecting potential criminal wrongdoing.

One funeral sector organisation and one funeral director expressed their support for Option 4 but provided comments that did not necessarily align with what was being proposed. These submitters stated that the medical referee system should be retained, but a national register of medical referees should be introduced, as well as more training so that all medical referees

achieve a consistent standard. It was not clear whether these submitters were supportive of Option 4, or simply unsupportive of Option 2.

Comments from those who were not supportive of Option 4 included the following.

- As Option 4 is generally similar to Option 3, two submitters, including one medical referee, reiterated their concern with shifting the medical referee system from the health sector to the justice sector and replacing medical referees with individuals who do not have a medical background. They reiterated that, under Option 4, referees would need appropriate medical knowledge.
- Similarly, one funeral sector organisation that also commented on Option 3 reiterated that Option 4 would create more complexity. Another funeral sector organisation also noted that Option 4 would be too time consuming and resource heavy.
- One individual disagreed with the addition under Option 4 to require a referee check for all forms of death. They reasoned that, provided the death certification and coronial systems are working properly, there is unlikely to be a large enough amount of wrongdoing that requires all deaths to come under the medical referee system.

Findings

Submitters were split between *Option 2: Repealing the medical referee system* and *Option 4: Reforming and expanding the medical referee system*, both of which generally received a similar and moderate level of support. Further work is required to finalise the policy recommendations in this section.

Section E:

New methods of body disposal

This section corresponds to section E of the Consultation Document, and questions 41–47 of the online survey.

Summary of submissions

One hundred and sixteen submitters, including 56 individuals and 60 groups and organisations, responded to questions relating to new methods of body disposal.

Almost half of all submitters were aware of new methods of body disposal, and many provided examples of new methods, such as alkaline hydrolysis, composting, and natural burial.

Although most submitters agreed with the issues pertaining to the current system for body disposal as outlined in the Consultation Document, some highlighted that environmental issues relating to body disposal appeared to be missing.

Submitters expressed a large amount of support for *Option 2: Regulating new methods of body disposal* over *Option 1: Maintaining the status quo*.

Many also generally reiterated their agreement with the impact analysis for the options outlined in the Consultation Document.

New methods of body disposal

Nine submitters, including two local authorities, LGNZ, and Taituarā, provided general comments on the introduction of new methods of body disposal in New Zealand. These submitters noted that people are becoming increasingly interested in environmentally friendly body disposal methods. They suggested that introducing new methods of body disposal could reduce the environmental impact of burial and body disposal. One submitter noted:

In a time of greater understanding of our expanded choices, and how they relate to our climate footprint, more and more New Zealanders are opting for greater environmentally friendly alternatives.

Two local authorities mentioned that introducing new methods of body disposal would enable New Zealand to respond to changing societal trends and better accommodate a range of communities' wants and needs. Approximately half of all submitters indicated that they were aware of alternative methods of body disposal from the current options of ground burial or fire

cremation. Twenty submitters expressed they were not aware of alternative methods of body disposal.

Specific methods

Submitters noted the following alternative methods of body disposal.

Alkaline hydrolysis

AIDVA noted:

Water cremation or alkaline hydrolysis is an environmentally-friendly cremation option that demands attention. This gentle process is already available in 24 US states.

Submitters referred to alkaline hydrolysis as water cremation, aquamation, hydro cremation, or resomation. Thirty-three submitters, including 17 groups and organisations and 16 individuals, indicated that they were aware of alkaline hydrolysis, a process that involves placing the deceased person's body in an alkaline solution that, when heated, dissolves the body while leaving behind bone fragments and a liquid.

Some of these submitters provided further comments about alkaline hydrolysis as a new method of body disposal.

- Nine submitters, including eight organisations, described how alkaline hydrolysis was a more efficient, sustainable, and environmentally friendly option compared to fire cremation.
- Eight submitters, most of which were organisations, noted that alkaline hydrolysis was currently available in other countries, such as Australia, the United Kingdom, and the United States.
- Three submitters highlighted the need for careful consideration and close engagement with local iwi around disposal of by-products from alkaline hydrolysis to ensure that disposal of human remains through this method is culturally appropriate.
- One funeral sector organisation believed that there was already public interest for alkaline hydrolysis to become an option in New Zealand. Conversely, two individuals who work in the funeral sector questioned whether alkaline hydrolysis would be financially viable in New Zealand due to the operating cost and the relative size of New Zealand's population.

Composting

Seventeen submitters, including nine organisations and eight individuals, indicated that they were aware of composting, which is a process whereby human remains are converted into soil through natural organic reduction. Some of these submitters provided further comments relating to composting.

- Six submitters, including two funeral sector organisations and one advocacy group, stated that composting was a more environmentally friendly option compared to conventional methods of body disposal.
- Seven submitters, including four individuals, noted that other countries such as the United States and United Kingdom have begun making composting options available.

Natural burial

Nine submitters, five of which were individuals, spoke of natural burial as an alternative to the current standard burial. This is a process where bodies are placed in simple coffins or shrouds and buried at a shallow depth to facilitate natural decomposition. This method was described by two organisations as having less of an environmental impact than conventional body disposal methods. Four submitters noted that natural burials do not require embalming or a casket, meaning that natural or biodegradable materials can be used instead of the chemicals involved in embalming or casket manufacturing. One funeral home noted that natural burial plots are becoming available overseas.

Other methods of body disposal

Approximately 13 submitters, including six individuals and seven groups and organisations, mentioned other new body disposal methods that they were aware of, including:

- cryogenics or freeze drying – also referred to as promession – whereby liquid nitrogen is used to ‘snap freeze’ bodies, which then can be reduced to a powder and treated similarly to ashes
- mushroom/fungi suits or shrouds
- tree pods
- short-term tenure burials.

Submitters also discussed short-term tenure burials, as opposed to burial in perpetuity. As this matter concerns changes to the current burial and cemetery management framework, rather than methods of body disposal, discussion on this issue can be found in Section C.

Assessment of the current system of body disposal

Current issues

Table 20: Issues with the current system of body disposal as outlined in the Consultation Document

Issues with the current system of body disposal

- Legislation does not provide for new methods of body disposal
- The legality of new methods is unclear
- Lack of systems to assess the safety of new methods or prescribe operating standards
- Lack of protections designed to preserve the dignity of the deceased or protect the public from mishandling
- Providers have no legal protection when dealing with remains in the instance of disputes among family members or unclaimed ashes

Sixty submitters, including 34 groups and organisations and 26 individuals, agreed with the issues with the current system of body disposal as outlined in the Consultation Document. Those submitters who provided further comments were in agreement with the issues relating to:

- how the current legislative framework does not provide for regulation of new methods of body disposal
- the lack of clarity around introducing new methodologies.

Eight submitters, most of which were individuals, did not agree with the current issues as outlined in the Consultation Document.¹⁵ The majority of these submitters also did not provide any further comments.

Natural Burials New Zealand did not agree with the issues stated in the Consultation Document, emphasising the need to preserve choice for consumers while protecting them via product standards and consumer law rather than by prescribing the approved methods of body disposal. They also objected to cremation being considered an approved method of body disposal under Option 2 given the polluting nature of cremation.

Fourteen submitters, including three funeral sector organisations and four local authorities, suggested that there were additional issues that were not captured in the Consultation Document. These submitters largely spoke of how consideration of the environmental and cultural impacts of body disposal was missing among the identified issues.

Evidence of issues regarding methods of body disposal

Sixteen submitters provided comments on the size or extent of issues regarding new methods of body disposal.

- Five funeral sector organisations and one individual who works in the funeral sector anticipated that people's increasing concern for the environment will drive increased demand for new methods of body disposal over time.
- One funeral sector organisation explained that, given how difficult it would be to predict how many new methods might arise in the future, it would be better to have a legal framework for a national approval process rather than anticipating the number and form of each new method of body disposal.
- Three submitters pointed to innovative body disposal options offered overseas that are currently unavailable in New Zealand despite public interest.
- One individual believed that there was not enough public education around both the issues with existing body disposal methods and what new body disposal methods actually involve (and how these methods might address issues with existing methods).
- While they noted that they cannot provide any evidence, three submitters considered the current issues to be relatively minor.

Comments about current methods of body disposal

Ten submitters provided comments relating to existing methods of body disposal in New Zealand. These comments highlighted how existing methods of body disposal have a negative impact on the environment. For example:

- Three submitters explained the environmental impacts of conventional burial, including how:
 - conventional burial consumes valuable land

¹⁵ Please refer to the caveat in the Method section.

- embalming fluids in body restoration are slow to degrade and release toxins into the soil
- conventional burial contributes to climate change through the manufacture and transport of caskets, headstones, and grave liners, and littering of plastic grave adornments
- there can be a build-up of greenhouse gases as a result of anaerobic burial.
- Seven submitters described the environmental impacts of cremation, including how:
 - the process of cremation is an energy-intensive and polluting activity
 - cremation of caskets and coffins can emit highly toxic chemicals
 - embalming can also be carried out prior to cremation, resulting in emissions of toxic chemicals.

Options for regulating new methods of body disposal

Table 21: Options for regulating new methods of body disposal as outlined in the Consultation Document

Option 1	Maintaining the status quo
Option 2	Regulating new methods of body disposal <ul style="list-style-type: none"> • Required to use an approved method to dispose of a body • New approved methods could be prescribed in regulation at a future date

General comments on the options

Submitters provided the following general comments relating to the proposed options for regulating new methods of body disposal.

- Twelve submitters, including six funeral sector organisations, generally agreed with the proposed options presented by the Ministry.
- Five submitters shared their views on what the legislation should look like concerning new methods of body disposal. They noted that while it is too difficult to predict future body disposal methods, legislation or a regulation system should be flexible, accommodating, and responsive to advances in technology to allow for a wider range of body disposal options.
- One organisation cautioned that they did not want regulation of body disposal methods to undermine people’s consumer choices.
- Two submitters want to see a centralised approval system for any new method of body disposal in New Zealand.
- One funeral sector organisation believed that a third option should be introduced whereby the legislation states that any practice or technology may be used for body disposal provided that it meets environmental consents and is not expressly forbidden by other legislation.

Ten submitters commented on the role of central and local government in determining acceptable new body disposal methods. Four submitters stated that the Consultation Document did not outline how new methods would be confirmed as acceptable, or who would be responsible for confirming this, and requested greater clarification on approving new methods of

body disposal. Seven submitters, including six local authorities and LGNZ, recommended that the Ministry should have responsibility for determining appropriate methods of disposal, and not local authorities. They reasoned that having a centralised decision-maker would ensure that there is a nationally consistent approach in approving new methods of body disposal.

Two submitters suggested that local authorities do not have the resources or skills base to assess new methods of body disposal for their appropriateness.

Impacts of the options

Table 22: Impacts of the options for regulating new methods of body disposal as outlined in the Consultation Document

Option 1	Issues remain the same
Option 2	<p>Issues of legality are resolved</p> <ul style="list-style-type: none"> • Enables a more flexible regulatory framework • Controlling market access means that decision-makers can ensure new methods are safe and culturally appropriate • There would be no immediate compliance costs for providers

Many submitters generally agreed with the impact analysis contained in the Consultation Document relating to the proposed options for regulating new methods of body disposal. Tasman District Council noted that they could not suggest any further impacts of the proposed options without further details on the types of new methods of body disposal that might be introduced.

Ten submitters indicated that they did not agree with the impact analysis on the proposed options for regulating new methods of body disposal. None of these submitters provided further comments explaining their response.

Evidence of the impact, cost or benefit of the options

A few submitters provided further comments with evidence relating to the impact, cost or benefit of the proposed options.

- Five submitters, four of which were local authorities, noted that they could not provide further information on potential impacts because there was little data or insufficient information available to be able to comment in detail.
- Six submitters, including five organisations, emphasised that there would be future compliance costs associated with introducing new methods of body disposal, and noted that it was likely that any future compliance costs would be passed onto the customer.
- One local authority described some other key impacts that might be related to the introduction of new methods of body disposal. These included being mindful of any impacts on stormwater or wastewater systems, and any costs of processing and monitoring of consents that might fall to local authorities.
- Two individuals noted that there is a growing interest in alternative body disposal methods, and therefore New Zealand needs a system that will allow for the introduction of new methods of body disposal.

Preferred option for regulating new methods of body disposal

Option 1: Maintaining the status quo

Approximately eight submitters, mostly individuals, stated that they preferred Option 1. One individual explained their preference, stating:

At this stage the status quo, whilst ambiguous, provides some flexibility for service providers wanting to bring alternative disposal methods to the market. Placing this under the regulatory hand of government will ensure that any proposals are met with high costs and slow progress (if any).

Option 2: Regulating new methods of body disposal

The majority of submitters indicated that they preferred Option 2. Three submitters reasoned that regulating new methods of body disposal would help keep New Zealanders safe. Water Cremations Aotearoa New Zealand noted:

Making alternative body disposal methods in NZ illegal unless they are regulated protects New Zealanders from practices that are not safe and respectful.

Clutha District Council agreed that alternative methods for body disposal should be allowed provided that these methods were appropriately regulated. Another submitter reasoned that Option 2 would be beneficial as it would remove barriers to introducing new methodologies. Ngāi Tahu Māori Law Centre explained that decision-makers should be required to ensure that new methods of body disposal did not conflict with tikanga, rather than simply being required to consider whether or not new methods conflict with tikanga.

Findings

Submitters supported *Option 2: Regulating new methods of body disposal*. Further work is required to finalise the policy recommendations in this section.

Section F:

Findings

Proposed overarching duties

Submitters supported the adoption of both proposed duties.

With respect to the proposed duty to treat any dead human body or human remains with respect, further work is required in relation to:

- accommodating different beliefs and cultural and religious practices
- what would constitute an infringement
- the range of punitive measures.

With respect to the requirement to dispose of bodies without undue delay, further work is required in relation to:

- what would amount to 'undue delay' or a 'reasonable time' (eg, by developing guidelines)
- situations where there is no next of kin
- ensuring cultural safety (eg, by developing guidelines)
- how this duty would be enforced.

Section A: Death certification and auditing

Death certification

Submitters supported the adoption of *Option 2: Implementing a package of changes to the current system based on most of the Law Commission's recommendations*. Further work is required with respect to:

- the 24-hour time limit required for death certification
- expanding the pool of certifying practitioners
- developing guidance on certifying cause of death for medical practitioners (in particular, with respect to age as cause of death).

Auditing of death certification

Submitters supported the adoption of *Option 2: Establishing a death certification auditing committee system*. Further work is required with respect to the costs of auditing and how it could be implemented at a regional and national level.

Section B: Regulation of the funeral services sector

Regulation of the funeral services sector

Submitters supported *Option 4: Providing central regulation for funeral directors*. Further work is required with respect to the implementation of any regulation, including establishing qualification requirements and supporting DIY funerals.

Informing consumers of costs

Submitters supported *Option 3: Making it mandatory to disclose all component prices as per the Law Commission's recommendations*. Further work is required with respect to how reforms could be effectively implemented to protect consumers from bill shock.

Section C: Burial and cemetery management

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

Further work is required with respect to:

- local authority resourcing and capacity (including proposed obligation to assume responsibility for failing non-local-authority cemeteries)
- establishment of new cemeteries
- legal definition of a cemetery
- clarification of the relationship between the Act and related legislation
- establishment of separate areas in local authority cemeteries (eg, denominational)
- cemetery management, including cemetery management plans and the maintenance of monuments
- disinterments
- human remains/kōiwi
- private burials

- burial of service people and veterans
- short-term tenure options.

Section D: Cremation regulations and the medical referee system

Cremation and crematorium management

Submitters supported *Option 2: Adopting all the Law Commission's recommendations relating to cremation and dealing with ashes*. Further work is required in relation to:

- custody and ownership of rights to ashes
- scattering of ashes
- simplification of forms for cremations
- national standards or guidance for crematoria, potentially including responsibility for crematoria to advise bereaved of appropriate ways to deal with ashes
- local authority responsibilities.

Medical referee system

Submitters were evenly split in supporting either the adoption of *Option 2: Repealing the medical referee system* or *Option 4: Reforming and expanding the medical referee system*. Further work is required with respect to:

- the potential to move the role to the justice system
- whether to expand or repeal the role (in the context of proposed auditing systems)
- the costs of the system.

Section E: New methods of body disposal

Submitters supported *Option 2: Regulating new methods of body disposal*. Further work is required in relation to how new methods would be confirmed as acceptable.

References

Law Commission. 2015. *Death, Burial and Cremation: A new law for contemporary New Zealand*. Report 134. Wellington: New Zealand Law Commission.

www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-R134-Death-Burial-and-Cremation.pdf

Te Komiti o Ngā Take Māori (Māori Affairs Select Committee). 2016. *Te Uiuinga ki te Āhei Atu me te Whakahaere a te Whānau i te Tūpāpaku (Inquiry into Whānau Access to and Management of Tūpāpaku)*. Wellington: New Zealand Parliament.

www.parliament.nz/resource/en-NZ/SCR_74938/3000078c67ea58eba1a0a30a4edb163c44a42c45

Appendix 1: List of organisation/group submitters

The following is a list of organisation/group submitters. Details are not listed for individuals and organisations/groups who requested that their submission and/or details not be published (see the Privacy section).

Organisation/group submitters

001 Age Concern New Zealand
002 Waikato Regional Council
005 Kāpiti Coast Funeral Home
008 Anisy Funeral Home
012 Aotearoa Independent Death Voices Alliance
014 Ashburton District Council
015 Auckland Council
016 Auckland Regional Public Health Service
017 Australia New Zealand College of Anaesthetists
018 Bay of Plenty Regional Council
021 Canterbury District Health Board
022 Invercargill City Council
025 Chief Coroner
026 Child & Youth Mortality Review Committee
027 Christchurch City Council
028 Anonymous Family Group
029 Christine Fowler (Manager of the Ministry of Health Mortality Team in the Data and Digital Directorate)
032 Consumer New Zealand
033 McKinnon Funeral Group
037 Funeral Directors Association of New Zealand
040 Death Without Debt
044 Dovedale Cemetery
049 Dunedin City Council
050 Eastern Bay Villages

052 Gillions Funeral Services
054 Waitaki District Council
057 Broadbent and May Funerals
058 Individuals within the Injury Prevention Research Unit University of Otago
063 Central Otago District Council
064 South Taranaki District Council
065 Auckland Memorial Park and Cemetery Ltd
066 Clutha District Council
067 Hamilton City Council
068 Hawke's Bay District Health Board
069 Hawke's Bay Regional Council
074 Heritage New Zealand Pouhere Taonga
075 Bay of Plenty District Health Board
077 International Council on Monuments and Sites New Zealand
079 Aroha Funerals
084 A Graceful Undertaking Ltd
085 Submission 2 on behalf of a collective who served at Butterworth Airbase
090 Kaiapoi Returned and Services Association
091 Tipene Funerals
092 Thames-Coromandel District Council
096 Legacy Funerals Ltd
098 Lamb and Hayward
100 New Zealand Nurses Organisation
103 Local Government New Zealand
104 Lower Hutt Memorial Returned and Services Association
105 Waimakariri District Council
106 Mangere Lawn Cemetery Trust Board
109 Marlborough District Council
110 Matamata-Piako District Council
115 Morris and Morris Funerals
116 Eco Funerals Ōpōtiki Ltd
118 National Council of Women New Zealand
119 Natural Burials New Zealand
120 Nelson Marlborough Health
121 New Zealand Archaeological Association
122 New Zealand Cemeteries and Crematoria Collective
123 New Zealand Council of Victim Support Groups

124 New Zealand Embalmers Association
125 New Zealand Master Monumental Masons Association
126 New Zealand Medical Association
127 New Zealand Police
128 Taituarā – Local Government Professionals Aotearoa
129 Ngāi Tahu Māori Law Centre
130 Avenal Park Funeral Home
131 Ōpōtiki District Council
132 Otago Regional Council
133 Palmerston North City Council
134 Palmerston North Women’s Health Collective
147 Porirua City Council
148 Purewa Cemetery and Crematorium
149 Queenstown-Lakes District Council
151 Submission 1 on behalf of military personnel who served in South East Asia
155 Te Kauwhata Health Centre
156 Royal Australasian College of Physicians
157 Royal Australasian College of Surgeons
158 Royal New Zealand College of General Practitioners
159 Royal New Zealand Navy Communicators Association
160 Canterbury Somali Association Inc
167 Westland District Council
171 South East Asian Veterans’ Association
174 TenderRest Caskets
176 Tasman District Council
178 Te Korowai o Ngāruahine Trust
180 Timaru District Council
181 Toi Te Ora Public Health
183 Tūwharetoa Māori Trust Board
184 Veterans’ Affairs
185 Waikato District Health Board
186 Waipā District Council
187 Ruakaka Parish Residents and Ratepayers Association
188 Water Cremation Aotearoa New Zealand
189 Wellington City Council
190 Regional Public Health
191 Western Bay of Plenty District Council

192 Whangarei District Council

193 Windsor Funerals

194 Working Together Group

195 Friends of the Mangatainoka-Pahiatua Cemetery

196 Social & Ecumenical Action Group of the Parish Council of St Andrew's Presbyterian Church Hamilton

Appendix 2: Online consultation survey

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

Overview

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, Cremation Regulations 1973 and the Health (Burial) Regulations 1946.

Ururū (Māori burial grounds), registration of mortuaries, burial at sea and international transportation of bodies are out of scope of this review.

The Ministry of Health 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.

Consultation document

- Death, Funerals, Burial and Cremation: a Review of the Burial and Cremation Act 1964 and Related Legislation (https://consult.health.govt.nz/environmental-and-border-health/death-funerals-burial-and-cremation/supporting_documents/deathfuneralsburialandcremationconsultationdocumentjan2020v3.docx).

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

Introductory text

The questions are organised by section. Once you have filled out the questions on one page, you can select 'Continue' to return to this contents page and complete the other sections you are interested in.

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 completed your submission, you can be sent a pdf copy for your records.

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'?

Please select only one item

Yes No

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

Please select only one item

Yes No

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)?

Please select only one item

Yes No

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

Please select only one item

Yes No

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?

Comments

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

Comments

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.

Comments

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?

Comments

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

Comments

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

Please select only one item

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

Comments

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.

Comments

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?

Please select only one item

- Yes
- No

Comments

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

Comments

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

Please select only one item

- 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'

Comments

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?

Please select only one item

- Yes
- No

Comments

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

Comments

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

Comments

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?

Please select only one item

- Yes No

Comments

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

Comments

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

Please select only one item

- Option 1: Maintaining the status quo
 Option 2: Removing registration requirements
 Option 3: Providing central Government registration
 Option 4: Providing central regulation for funeral directors

Comments

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?

Comments

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?

Please select only one item

- Yes No

Comments

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

Comments

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.

Please select only one item

- 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

Comments

Section C: Burial and cemetery management

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

Please select only one item

- Yes
- No

Comments

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

Comments

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?

Comments

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?

Please select only one item

Yes No

Comments

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

Comments

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

Please select only one item

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

Comments

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?

Please select only one item

Yes No

Comments

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

Comments

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?

Comments

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?

Please select only one item

Yes No

Comments

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

Comments

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

Please select only one item

- Option 1: Maintaining the status quo
- Option 2: Adopting all the Law Commission's recommendations relating to cremation and dealing with ashes

Comments

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?

Comments

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?

Please select only one item

- Yes No

Comments

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

Comments

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

Please select only one item

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

Comments

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?

Comments

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

Please select only one item

- Yes
- No

Comments

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

Comments

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

Comments

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?

Please select only one item

Yes No

Comments

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

Comments

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

Please select only one item

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

Comments

Your details

What is your name?

Name (Required)

What is your email address?

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

Email

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

(Required)

Please select only one item

Group or organisation Individual

If you selected group or organisation, please specify

Are you a member of the funeral service sector?

(Required)

Please select only one item

Yes No

If you selected yes, please specify in what capacity

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

(Required)

Please select only one item

Yes No

If you selected yes, please specify which council

Are you responding on behalf of a veterans' organisation?

(Required)

Please select only one item

Yes No

If you selected yes, please specify which organisation

Do you identify as Māori, Pacific, Asian, Pākehā/European or another ethnicity?

(Required)

Please select all that apply

Māori Pacific Asian Pākehā/European Other

If you selected other, please specify

Are you a member of the disabled community?

(Required)

Please select only one item

Yes No

Privacy and publishing submissions

Publishing submissions

We intend to publish the submissions from this consultation, but we will only publish your submission if you give permission. We will remove personal details such as contact details and the names of individuals.

If you do not want your submission published, please let us know below.

(Required)

Please select only one item

You may publish this submission Do not publish this submission

Official Information Act responses

Your submission will be subject to requests made under the Official Information Act (even if it hasn't been published). If you want your personal details removed from your submission, please let us know below.

(Required)

Please select only one item

Include my personal details in responses to Official Information Act requests
 Remove my personal details from responses to Official Information Act requests

Commercially sensitive information

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

If your submission contains commercially sensitive information, please let us know below.

(Required)

Please select only one item

- This submission contains commercially sensitive information
- This submission does not contain commercially sensitive information

If your submission contains commercially sensitive information, please let us know where.

Appendix 3: Submitter profile

About you

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).

Question 1:	What is your name and contact details?

Question 2:	Are you responding on behalf of a group or organisation, or as an individual?
	<input type="checkbox"/> Group or organisation <input type="checkbox"/> Individual
	Specify what type of group or organisation:

Question 3:	Are you a member of the funeral service sector?
	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If yes, specify what capacity:

Question 4:	Are you responding on behalf of a local or regional council?
	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If yes, specify which council:

Question 5:	Are you responding on behalf of a veterans' organisation?
	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If yes, specify which organisation:

Question 6:	Do you identify as Māori, Pacific, Asian, Pākehā/European or other?
	<input type="checkbox"/> Māori <input type="checkbox"/> Pacific <input type="checkbox"/> Asian <input type="checkbox"/> Pākehā/European
	<input type="checkbox"/> Other Please specify:

Question 7:	Are you a member of the disabled community?
	<input type="checkbox"/> Yes <input type="checkbox"/> No