

**Submission on Ministry of Health's
Death, Funerals, Burial and
Cremation: a Review of the Burial
and Cremation Act 1964 and Related
Legislation**

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For more information please contact:
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Introduction

1. Nelson Marlborough Health (Nelson Marlborough District Health Board) (NMH) is a key organisation involved in the health and wellbeing of the people within Te Tau Ihu. NMH appreciates the opportunity to comment from a public health perspective on the Ministry of Health's Death, Funerals, Burial and Cremation consultation.
2. NMH makes this submission in recognition of its responsibilities to improve, promote and protect the health of people and communities under the New Zealand Public Health and Disability Act 2000 and the Health Act 1956.

General comments

3. NMH welcomes this review into the death, burial, cremation and funerals legislation which seeks to update the legislation to reflect the general trends in society in terms of cremation and cross religious-cultural body disposal mechanisms.

Specific comments

Treating remains with respect (6.1):

4. NMH agrees with the Law Commission that there should be a general duty on everybody to 'treat any dead human body or human remains with respect'.

Disposing a body within a reasonable time (6.2)

5. NMH agrees with the intent of this policy in regards to disposing a body within a reasonable time. NMH notes that both the terms "undue delay" and "reasonable time" are used, further clarification on definitions and conditions around time frames would be useful. Providing clear guidelines enables an enforcement agency to use infringement notices.

Problems with death certification forms (A2.5)

6. NMH agrees that the system can be improved. In New Zealand, there currently is no scrutinising of deaths of patients that are not under the coroner's role. Medical Referees authorizing death certificates only takes place for cremations so burials are not covered. In 2019, England and Wales introduced a new role of medical examiner. The Medical Examiner role is to enhance the governance and regulatory systems by scrutinising the deaths of patients not under review or inquest by the coroner. This was in response to a public inquiry following the GP Harold Shipman scandal where Shipman was convicted of mass murder. An independent medical examiner system would have identified irregularities earlier. In the review of the 2008 UK pilot of the Medical Examiner role¹, 3875 cases were reviewed, possible adverse harm was

¹ https://improvement.nhs.uk/documents/2073/Pilot_of_the_Department_of_Health_medical_examiner_LfD_v2.pdf

detected in 10.5% (n = 405) of all deaths reviewed and in around half of these cases (n = 217), adverse harm would not have been detected at this early stage but for the medical examiner's involvement. An independent medical examiner can provide a reliable 'filter' for identifying deaths that merit further review therefore NMH recommends that this system is adopted into the New Zealand context.

Regulation of the funeral services sector: Issues with the current system (B2)

7. NMH agrees that there should be national direction in the regulation of the funeral services sector. (Questions 15-16)

Regulating the funeral services section (B3)

8. NMH supports Option 4: *Providing central regulation for funeral directors*. There should be controls on Funeral Services at a national level rather than at the territorial authority level to ensure consistency across the country. NMH recommends that conditions should be mandated nationally and that territorial authorities are responsible for implementing the conditions. It would be expected that the Funeral Services registration fees would cover costs. There should be consistent procedures and practices that the Funeral Services follow that show they are treating the dead with respect and dignity.

Burial and cemetery management: Issues with the current system issues (C2)

9. NMH agrees that there are issues with the current framework for burials and cemetery management. (Questions 25-26)

NMH has worked on two unusual situations:

A. Cremation elsewhere than in a crematorium. Historically, the Burial and Cremation Act 1964 and the previous legislation has a focus on Christian religious practices. Since then, New Zealand's religious profile has altered with more people representing a diversity of world religions. Buddhism is one religion that may request a cremation not undertaken in a crematorium and this must be factored into the new legislation. Nelson Marlborough Health has had one request for a cremation elsewhere than in a crematorium. Our guidelines came from another Public Health Unit as there were no national guidelines at the time. Without direction from the Ministry, local risk management issues have the potential to cause inconsistency and stress in an already stressful situation.

B. Second issue: Private burial place

Nelson Marlborough worked through a private burial place application in 2018. The first burial recorded at that site occurred in 1890 and by 2018 there were 10 plots

with headstones. The 2018 application was for a further burial with the potential for more in the future. Page 54 of this consultation document refers to "no more than five bodies" in a burial on private land. During the 2018 investigation there was no knowledge or consideration given to the restrictions of the number of bodies on the site and no advice received from the Ministry of Health of there being any restrictions

A new burial and cemetery management framework (C3)

10. NMH agree that there should be national guidance provided for consistency without any bias. This would give clear guidance regarding issues like burial on private land or cremation outside a crematorium.

Cremation regulations and the medical referee system: Issues with the current system issues (D2)

11. NMH agrees that there are issues with removing the Ministry of Health/Medical Officer of Health or Health Protection Officer roles in cremation/crematoriums. Some local authorities are very good at integrating public health requirements and they work well with their public health units however some local authorities do not. Therefore if burial and cremation activities are to go to the local authorities then clear guidelines are required. Medical Officer of Health or Health Protection Officers need to be called upon when there is a need for clinical input or infection control concerns.

Reform of cremation and crematorium management (D3)

12. As stated previously if cremation and crematorium management become the domain of the local authority, there needs to be consistency of practice and an organisation that has an overview.

Reform of the medical referee system (D4)

13. Adapting the medical referee system to include a medical examiner role as illustrated in the UK and referenced in the email of *Medical Officer of Health, Stephen Bridgeman to Sally Gilbert on the 19th of November* (Appendix A).

Conclusion

14. NMH thanks Ministry of Health for the opportunity to comment on the Review of the Burial and Cremation Act 1964.

Yours sincerely

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke.

Peter Bramley

Chief Executive

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Appendix A

From: Stephen Bridgman
Sent: Tuesday, 19 November 2019 3:20 PM
To: 'sally.gilbert@health.govt.nz' <sally.gilbert@health.govt.nz>
Cc: Jan Anderson <Jan.Anderson@nmhs.govt.nz>
Subject: medical examiners

Hi Sally,

Thanks for the talk again.

As promised I attach a link to the recent changes in England which have included the introduction of the new role of medical examiners. This was in response to a public inquiry following the GP Harold Shipman scandal. Shipman, as I expect you know, was convicted of mass murder of tens of patients. A medical examiner system would have picked this up early. A cremation officer system, such as NZ has, was ineffective in this regards.

Mass murder is a rare event. The medical examiner system has a bigger effect on the big public health issue of quality of care. Professor Peter Furness from Sheffield was lead advisor for England on medical advisors, and has reviewed the evidence on this.

Jan has kindly agreed to co-ordinate our local response to the consultation, hence I have copied Jan in, hoping some of my comments may feed it to the DHB response.

Kind Regards

Stephen

References below.

<https://www.medicalprotection.org/uk/articles/medical-examiners-a-new-role-for-england-and-wales>

[https://improvement.nhs.uk/documents/2073/Pilot of the Department of Health medical examiner Lf D v2.pdf](https://improvement.nhs.uk/documents/2073/Pilot%20of%20the%20Department%20of%20Health%20medical%20examiner%20Lf%20D%20v2.pdf)

<https://www.bmj.com/content/363/bmj.k5166>

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