



LAW·COMMISSION
TE·AKA·MATUA·O·TE·TURE

Summary of Submissions on the Issues Paper
The Legal Framework for Burial and Cremation
in New Zealand: A First Principles Review

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PART 2 – CEMETERIES AND CREMATORIA

In Part 2 of the Issues Paper, we asked 10 questions relating to cemeteries and cremation. The number of submitters who responded to this part was 224. They were comprised as follows:

- 7 central government organisations;
- 7 Public Health Units (PHUs) from 7 District Health Boards around the country;
- 51 non-governmental groups such as community organisations, religious groups, legal organisations, political organisations, archaeological and cemetery preservation organisations (“community organisations”);
- 35 funeral sector responses including funeral directors, natural/eco- burial practitioners/proponents, and celebrants (“funeral sector”);
- 1 Iwi/ Rūnanga submitter;
- 32 local government bodies (“local authorities”); and
- 91 personal submissions from private individuals, some with a background in engagement in aspects of burial and cremation.

Q1 Would you support opening the provision of cemeteries to independent providers, such as those providing cemeteries for “eco” or “natural burials”?

More than half of submitters – 150 –were in favour of independent cemeteries. Thirty-one of these qualified their support, wanting to ensure that there would be adequate safeguards to ensure independent cemeteries would operate/be accessible/be maintained in perpetuity. Thirty-seven submitters did not answer the question. Of all respondents, local government submitters were the most strongly opposed to the idea of independent cemeteries, with their responses making up 18 out of the 37 negative responses.

Central government

Of the three central government respondents who answered the question, only the Ministry of Health (MOH) qualified its support for independent cemeteries if appropriate safeguards were in place. Two respondents were opposed to independent cemeteries, believing that local government ownership would give greater security in the long term. Four organisations did not answer the question, including the Ministry for Culture and Heritage (MCH). MCH did not

wish to comment either way, but did note that if the proposal went ahead that there would need to be appropriate provision for long-term maintenance, access in perpetuity and preservation of heritage.

PHUs

Of the seven PHUs, five qualified their support for independent cemeteries if the organisations running the cemeteries were charities or professionally registered; had appropriate oversight or backup support of local authorities in the case of failure; had an understanding of public health risks; and could manage and provide access/recordkeeping/maintenance in perpetuity. Two did not answer the question, with one not directly answering the question but noting that any burials needed to have the sorts of safeguards noted above.

Local authorities

Of the 32 local government respondents, 10 were in support of independent cemeteries (with four of those qualifying their support) and 18 were opposed. Four did not answer the question. Local government submitters were particularly concerned that the long-term responsibility for independent cemeteries would fall back onto local government if independent cemeteries failed, which would then result in a burden to ratepayers. To insure against this, local government submitters – (and some other submitters) – felt there should be sufficient capitalisation and reserves prior to independent cemeteries being established, or better still that they should not be established at all. Local Government New Zealand (LGNZ) was opposed to independent cemeteries, concluding:

we are not convinced that the perceived benefits of private burial provision outweigh the increased monitoring regime and associated short and long term costs for existing cemeteries operated by local authorities. We consider the benefits of wider provision can be better achieved through a more flexible approach to the current legislative framework.

Community organisations

Of the 51 community organisations, three said no to independent cemeteries, 31 submitters were in support, with another 11 offering their support if appropriate safeguards were in place. Six did not answer the question. The Historic Cemeteries Conservation Trust of New Zealand (HCCTNZ) was opposed to the introduction of independent cemeteries on the basis that the

more providers there are, the more confused things are for “control and long-term viability of all cemeteries”. They cited historic problems with burials on private land:

New Zealand has a plethora of lone graves, small burial grounds ... which have been cleared and/or ploughed under and the record lost.

Funeral sector

Of the 35 respondents from the funeral sector, eight said no to independent cemeteries and 25 were in support (nine of these qualified their support). Two did not answer. A number felt that competition would be good for local authorities and it was good for people to have choice.

Iwi/ Rūnanga submitter

The iwi/rūnanga group did not answer the question.

Personal submissions

Of the 91 personal responses from private individuals, six were against the idea, and 67 were in support. Eighteen people did not answer the question.

Those in favour of independent cemeteries submitted that it would be good competition to local authorities (currently the main provider of cemeteries); would open up more choice for people, especially around natural burials; and may ease pressure on councils.

A number of individuals and two community organisations were in support of independent cemeteries if they would offer co-pet burials.

The qualifications and reservations that individuals, community organisations and the funeral sector submitters had (to the extent, for some, that they would not support independent cemeteries), was the need to ensure appropriate safeguards were in place to avoid independent cemeteries failing. There was a strong emphasis on the need for the land to remain a cemetery in perpetuity. People questioned how long-term maintenance and recordkeeping would be kept up. This led to some people opposing the establishment of independent cemeteries.

Eco-Burial

Although this question was not specifically about eco-burial, it is worth making a comment on this, as it was clear from the submissions that there is a growing interest for natural/eco burials.

Around 10 personal submitters interpreted the question as asking whether or not they supported the concept of eco-burial (presumably because the question gave the example of eco-burial provision by independent providers). Those submitters answered the question affirmatively. Another 16 personal submitters specifically noted that the kind of independent cemetery they would like to see would be an eco-cemetery.

Seven community organisations expressed that they were in favour of eco-cemeteries. One community group and two of the funeral sector respondents – the New Zealand Cemeteries and Crematoria Collective, and one funeral director - expressed that local authorities should be obliged to provide eco-burial options.

Another three funeral sector organisations strongly supported independent cemeteries and thus the ability to themselves provide, or have others provide, eco-burials.

One submitter, a writer, who has worked in the funeral industry in the UK for 45 years, including setting up the first natural burial site, gave his interpretation of the situation in the UK:

there is a tendency for public cemeteries to maintain the status quo and be moribund. In the UK, private supply of natural burial has changed the market. This has supplemented public provision, saving many authorities the need to extend existing cemeteries, and because each UK burial authority runs a deficit of perhaps £2,000 per burial, saving against the annual budget.

There was a concern from some in the funeral sector, however, that any eco-burials should have proper guidelines established.

Q2 If so [that is, if “yes”, as regards independent cemeteries], do you think those establishing independent cemeteries should be limited to registered charities? Should independent cemeteries be allowed to make a profit?”

Overall, only a third of the submitters who answered agreed that those establishing independent cemeteries should be restricted to registered charities. Slightly under half of the submitters who answered – 44 per cent – agreed that independent cemeteries should be able to make a profit.

It should be noted that between 50 and 60 per cent of all the submitters to Part 2 of the Issues Paper either did not answer question 2 at all or did not answer part of question 2. The reason that some gave for not answering question 2 was that they did not support the concept of independent cemeteries. This was particularly true of local government submitters.

Just over one-third of personal submitters were in favour of only registered charities establishing independent cemeteries and only 20 per cent of the funeral sector was in favour of this.

Nearly two-thirds of community organisations believed that the establishment of independent cemeteries should be limited to registered charities. Local authorities were almost equally divided on this proposal.

The Office of Ethnic Affairs was not in support of the concept of independent cemeteries but said if the sector was opened up, then it wouldn't oppose registered charities running them. The Department of Internal Affairs (DIA) submitted that an independent cemetery operator who ran the cemetery for a closed group may not meet the “public benefit test” and therefore may not be able to be registered as a charity. The New Zealand Law Society (NZLS) commented that:

Charities are more likely to exist in perpetuity than are limited companies, for example. Careful thought must be given to what would or should happen to independent cemeteries if the establishing body is disestablished...Currently the charities sector is not heavily supervised or regulated. Therefore a proper and thorough consenting process would be required for anyone wishing to establish an independent cemetery.

A number of submitters noted that registered charities could fail and that this was not necessarily in itself a safeguard for longevity.

None of the four PHUs that answered thought that only registered charities should be able to run independent cemeteries, but it was felt that controls and safeguards were needed. None were in support of a profit motive.

Although two-thirds of personal submitters were largely in favour of organisations other than registered charities running independent cemeteries, only one-third of personal submitters were supportive of independent cemeteries making profit. Only ten percent of community organisations supported the idea of profit-making.

Ninety percent of the funeral sector was in support of a profit motivation. Despite its strong support for profit-based businesses, the funeral sector was still in favour of safeguards and controls for independent cemeteries and for them to be sufficiently funded to operate in perpetuity.

Local government was equally divided on the issue of profit.

Many of those who supported a profit motive wanted to see the profit, or a proportion of it, being reserved for the continuing operation of the cemetery and commented that making a profit was the only way such businesses would remain viable.

Q3 Should it be lawful for someone to be buried on private land, provided the necessary consents have been obtained?

More than half of the submitters – 124 – were in support of private burial. Thirty-five of these qualified their support, wanting to ensure adequate controls were in place. Thirty-six did not answer the question. Most submitters who supported burials on private land did so on the basis that only rural land could be used for such burials. Only one submitter of Pacific origin wanted burial to be able to take place on all privately-owned land, as this is important to Pacific people.

A number of submitters suggested that GPS coordinates of burial sites on private land should be recorded on death certificates and/or LIM /certificate of title or recorded in a centralised database. This was in addition to there being a covenant noted on the certificate of title. There was an overwhelming sense from all submitters, with only a very few taking a contrary view, that the land must remain a burial site in perpetuity. In order to ensure this, some submitters suggested it would be best to subdivide off a piece of land and make it into a protected reserve, such as with urupā.

Central government

Of the central government respondents who answered the question, two did not support burial on private land and two did. DIA, the department responsible for the Registry of Births, Deaths and Marriages (BDM), did not support burial on private land on the basis that its record keeping may be compromised. It noted that it may be difficult for local authorities to monitor and maintain records of burials on private land and also that burials on private land may end up leading to more disinterments when ownership of land changes with the concern that BDM may not be informed of all these disinterments/subsequent disposals/reinterments.

PHUs

All seven of the PHUs were supportive, although two qualified their support. Together with MOH, most PHUs were in favour of burial on private land as it would enhance people's psychological well-being through permitting burial in a location of significance to the person/family. However, there were concerns that the community/neighbours needed to be consulted and consent obtained; that public health risks were addressed, such as ensuring no contamination of waterways; and that the burial site was retained as such in perpetuity with access for future generations.

Community organisations

Of the 51 community organisations, seven did not answer the question. Of those who did answer the question, 22 were in support, although seven of these qualified their support and 22 were opposed. Eighteen of the community organisations opposed to burial on private land supported the submission of the Muslim Working Together Group, which stated:

as Muslims we would discourage Muslim burials on private land. We believe that Muslim burials should take place in a demarcated and assigned cemetery as this becomes sacred ground for the specific purpose of burials and cannot be exchanged, sold or developed for any other human activity, commercial or non-commercial. We also believe that human remains should be left at peace and not be disturbed as this resting place has been assigned by God to the individual.

The New Zealand Archaeological Association was concerned that information regarding the location of burials on private land should be readily accessible to agencies who are contacted

when human skeletal remains are encountered (e.g. New Zealand Police, Coroners, New Zealand Historic Places Trust). It stated:

This will be important to prevent unnecessary investigation by such agencies and to help determine the jurisdiction over and management of the remains.

Funeral sector

Of the funeral sector, 21 were in support, although a third of these qualified their support. Eleven were opposed, with one funeral director noting his opposition due to his involvement in an increasing number of exhumations to remove graves once the land shifted from family ownership. Other funeral directors were cautious about private burials, even if they were supportive in principle, with concerns as to what would happen in the future when descendants wished to sell the land; issues of access; ensuring the land is maintained in perpetuity as a burial site; and maintenance et cetera.

Local authorities

Fourteen local government submitters were in support of burial on private land, although slightly more than half of these qualified their support, wanting to ensure that the same sorts of safeguards, as noted by submitters above, were in place. Eleven local government respondents, including LGNZ did not support burial on private land. Seven did not answer the question.

Local authorities opposed to burial on private land submitted that it would put more strain on their resources, especially if they are to be required to monitor private burial sites in the long term. One raised the issue of controlling accidental and intentional disinterments and illegal activity.

The issues raised by LGNZ included similar concerns to individual local government submitters, but in addition noting that pressure may be put on local authorities to remove covenants if the use of the site were to change. Conversely, some councils had experienced pressure to take over management of historic private burial sites as reserves when the owners no longer wished to manage them. LGNZ expressed that there were so many issues associated with burials on private land that they would caution against pursuing the idea.

Iwi/ Rūnanga submitter

The iwi/rūnanga submitter had reservations about burials on private land. It wanted to ensure that burials were in appropriately designated areas, and the sites recorded and marked.

Personal submissions

Of the 91 private individual submitters, 60 were in support, although 10 of these qualified their support. Sixteen submitters were opposed and 15 did not answer the question. Quite a number of personal submitters in support of burial on private land said they were motivated to make a submission to the Law Commission, as part of this review, due to their strong desire to be buried on their own land. In general, other reasons given in support were freedom of choice and equality with those who were able to be buried on Māori land.

Those who were against burial on private land were concerned that land could be locked up for future development, and that there may be difficulties once land was sold or subdivided. Questions were raised as to how many people would be able to be buried on one burial site and when a private burial site would become, in effect, a cemetery. Those who qualified their support wanted to ensure that the land would be used as a burial site in perpetuity; that there would be adequate records kept and that there would be general oversight.

One submitter gave insight into the situation in the UK regarding burials on private land:

a few family burials on the owners land do not constitute a change of use, and are lawful. No other consents are necessary whatsoever. Where ownership of land has changed, some home burials have been disinterred, and moved to a public cemetery, which requires a Home Office Licence. This has not caused any real problems, but does focus the minds of people considering this type of burial. Unless some guarantee of continuing land ownership is evident, or the burial is not marked on the surface, people are clearly dissuaded from taking this route.

Q4 Where practically possible, should local authorities be required to provide separate burial areas within public cemeteries for groups with specific religious or cultural burial requirements?

Submitters were strongly in favour of this idea, with 155 answering yes (33 of these qualified their support) and 28 answering no. Forty-one submitters did not answer the question.

Central government

Four of the central government responses were in favour. The Human Rights Commission submitted that this proposal was consistent with human rights generally and the New Zealand Bill of Rights Act. The Office of Ethnic Affairs suggested that this “essential public service should be responsive to diverse public needs where practicable”. Three central government respondents did not answer this question.

PHUs

Five of the PHU groups were in support this proposition believing that this would be healthy for the bereavement process and submitted that local authorities should consult more closely with their communities. Two did not answer the question.

Community organisations

Forty-one community organisations out of 51 were in favour of this proposal (three qualified their support), including the Muslim Working Together Group and the 18 submitters in support. Only two community organisations were opposed. Eight did not answer the question. There was a feeling from community organisation submitters that local authorities should respect people's wishes and respond to community demand, but that if it was impracticable or councils were too small it should not be a compulsory requirement.

Funeral sector

Of the funeral sector, 23 were in support although over a third of these qualified their support. Three were not in favour of local government providing separate burial areas and five did not answer the question.

Local authorities

Of the local government responses, 24 were positive about this proposal, although nearly half of these qualified their support. Local government submitters preferred this option to that of independent cemeteries, but many, such as LGNZ did not wish to be forced to provide separate areas but preferred rather to consult and develop a policy for them, concluding that a mandatory requirement would not be workable as it may not be practical in smaller provincial areas. There was also the concern for some as to the cost to councils of such a proposal.

Iwi/ Rūnanga submitter

The iwi /rūnanga submitter did not answer the question.

Personal submissions

Of private individuals 55 were in support (seven of these qualified their support), 22 did not answer the question and 14 were opposed to this idea. Of those opposed, it was expressed that if independent cemeteries were available then this should be sufficient for people – instead of having separate burial areas in local authority cemeteries. Others wanted to ensure that there would be no further cost to ratepayers.

This question was again used by some submitters to reiterate their support for eco-burials, with one submitter going as far as saying that councils should be required by law to provide eco-burial sections of cemeteries.

Five submitters consisting of individuals/community organisations stated their wish for co-burial with their pets in a section of a local authority run public cemetery.

Q5 Do you think the law should establish minimum standards for the maintenance of cemeteries?

Again this proposal drew a positive response with 128 of 224 submitters in favour of this idea. Fifty-nine submitters did not answer the question and 56 were against the proposal. Submitters want to ensure that this would not be too costly and that there would be flexibility in the standards depending on the type of cemetery.

Central government

Four central government responses were in favour and three did not answer the question. The Ministry of Health supported this proposal to “avoid unnecessary distress for relatives” when cemeteries became overgrown. The Ministry for Culture and Heritage (MCH) submitted that MCH and the New Zealand Historic Places Trust (NZHPT) should be involved in establishing the minimum standards. DIA submitted that local authorities should have flexibility in meeting minimum standards depending on the specific circumstances of each council and the needs of their community.

Community organisations and PHUs

Forty-one community organisations were in favour and 10 did not answer the question. Six of the PHUs were in favour and one was against. Both these groups were supportive of minimum maintenance standards on the grounds that maintenance showed respect for the deceased, although there were concerns that levels of maintenance needed to be realistic for local authorities

Funeral sector

Twenty-one of the funeral sector was in favour and four were against. Ten did not answer the question. Those in support believe there should be the minimum standards but that there should be able to be flexibility for local authorities. There was some concern about the cost of maintenance and with that responsibility would lie. Some who were opposed wanted cemeteries revert to their natural state.

Iwi/ Rūnanga submitter

The iwi/rūnanga submitter was in favour of keeping maintenance standards. It suggested that local authorities should use volunteer forces to keep maintained (under Justice /MSD programmes).

Local authorities

Twelve local government submitters were in favour of minimum maintenance standards, although three of these qualified their support. Twelve did not answer the question and eight were opposed. Many agreed that it would be good to have minimum standards but felt this should be up to the community as to what level of maintenance standards they wished to have (and councils already consult regarding this). LGNZ were not in favour of minimum standards due to regional differences: it would depend on the soil type, geography, and level of monitoring and enforcement required. There was a concern about the cost of maintenance, and where funding would come from. Those in favour felt that having a national standard regarding maintenance could reduce the level of detail currently contained in bylaws and promote consistency.

Personal submissions

Fifty-five individual submissions were in favour of maintenance standards. However, there was a concern from some that different types of cemeteries should be able to be accounted for in the maintenance standard– for instance if it was an eco-cemetery different standards would be required. Twenty-nine submitters did not answer and 19 were opposed. Those who were opposed felt that it was the responsibility of the family to maintain the area around the headstone/plot. Others asserted that humans are time-limited beings and memorials cannot last for ever. There was also a general concern as to how maintenance would be funded.

Q6 Do you think there should be stronger legal provisions for the protection of historic cemeteries and grave sites?

One hundred and seven submitters were in favour of stronger legal protection, 29 were opposed and 87 did not answer the question.

Central government

Four central government submitters answered yes and three did not answer the question. MCH had an issue around Commonwealth War Graves and wanted to develop protocols together with MOH as the administering Ministry for maintenance of these graves.

Thirty-six community organisations were supportive, two were against and 13 did not answer the question. Those in support said historic cemeteries need protection as they are repositories of our history. The question asked by submitters was where the funding would come from for this. One submitter was concerned that there was the potential for “structural discrimination” depending on how historic cemeteries/graves are classified – i.e. historic Māori sites could be disadvantaged compared to European tombs.

The HCCTNZ suggested that there needed to be a way to prescribe what is allowed to be built in historic graveyards as new memorials are disturbing the ambience of old graveyards. It also noted that past monument design and construction has meant many headstones have not lasted well. They said:

we believe that there must be minimum quality standards imposed on all who erect memorials and that a choice of design and dimension should be offered by all cemetery managers.

This, in their view, included grave surrounds and that these should not be proscribed by local authorities.

New Zealand Master Monumental Masons Association (NZMMA) submitted that “these gravesites are part of our Heritage and should be protected”. NZMMA said it would like to see only qualified trade’s people carrying out any restoration and upkeep of these valuable assets due to the damage that can be caused through the “well-meaning handyman”. It noted that due to the construction/materials of older memorials they require specialist skills to clean and repair.

PHUs

Only one PHU answered the question and was in support submitting that historic cemeteries should have the same minimum standards as all other cemeteries.

Funeral sector

Thirteen of the funeral sector was in support on the basis of protecting our history and respecting the deceased. Seven were against this, submitting that the current situation was sufficient or, as answered in question 5, humans are time-limited and therefore memorials cannot last for ever. Fourteen did not answer the question.

Local authorities

Twelve local government submitters were in support but a third of the responses were qualified. Fifteen did not answer and five said no. The overwhelming view of local government submitters was if there were to be stronger provisions then there would need to be further funding available from central government or elsewhere. Others were opposed on the basis that it would be too expensive for the ratepayer. Although LGNZ did not specifically answer the question, it noted the conundrum that:

Management of the plot and memorials is usually the responsibility of the family. In practical terms, though older memorials rarely have family involvement or interest so basic maintenance is left to the local authority. This complicates the ability of the local authority to control and manage the key heritage elements of each cemetery...this [raises] the issue of where individual or collective responsibility lies for management of historic cemeteries. Should ratepayers have

to bear the costs of individual plots particularly when the costs become prohibitive and onerous on smaller local authorities.

It noted that existing legal protections included:

listing in district plans, being registered as an historic place under the Historic Places Act or classified as an Historic Reserve under the Reserves Act 1977. In addition cemeteries with burials that took place before 1900 are defined as archaeological sites and protected under the Historic Places Act.

LGNZ then suggested that “The Act could provide provision for a management or conservation plan that included policies on the protection of its historic features”.

iwi/ Rūnanga submitter

The iwi/rūnanga submitter did not answer this question.

Personal submissions

Forty-one personal submitters were in favour of strong protections, 15 were against 35 did not answer. Many of those making personal submissions felt that it would be a shame to lose our history and they appreciated the older form of memorialisation. At the other end of the spectrum were those who appreciated the “wilderness” aspect of natural eco-burials and found them much more restful.

A landscape garden historian with many years’ experience of working in cemeteries believed this issue:

could be addressed by the adoption of a national grading system of historic landscapes [similar to that] in Australia and much of Britain where there is an historic/heritage landscape classification system.

Q7 Do you think those who operate crematoria should be licensed?

Of all the questions in this part, this proposal received the most support from those who answered it: only nine of the 143 submitters did not agree with licensing. Eighty-one submitters did not answer the question. Some of these submitters did not answer this question as they do not believe in/practice cremation, such as a number of Muslim and Māori submitters.

Central government

Three central government submitters responded positively on the basis that the public needs assurance around crematoria operation and there also needs to be supporting standards and audit processes. The Ministry of Health said that as a result of the increasing number of privately owned crematoria it is receiving a small but increasing number of complaints regarding crematoria operators.

PHUs

Five of the PHUs were in support of licensing, and one qualified their support on the basis that the idea was explored further. Those in support were concerned that the incorrect operation of crematoria could pose occupational, environmental and public health issues. Licensing and standards would provide public assurance. One did not answer.

Community organisations

None of the community organisations were opposed to licensing although 29 did not answer the question. Twenty-two were in support. NZLS submitted:

A licensing regime for those who operate crematoria may be preferable to an inspection and audit regime. It could involve education and training, and be aligned with the licensing of funeral services providers. An inspection regime is less likely to be able to monitor all eventualities, whereas licensing may give the public confidence that operators/providers are to some extent self-monitoring, having been background checked, trained and regulated to operate crematoria and provide funeral services with a level of professionalism linked to the licensing regime.... A licensing regime should include provision for review, suspension and cancellation of licences.

Other community organisations submitted regarding the need for public assurance and accountability, respect for the deceased and ensuring that criminal conduct does not occur.

Funeral sector

Twenty-six of the funeral sector submitters were in support, including the Funeral Directors Association of New Zealand (FDANZ). Three did not favour licensing. Six did not answer the question. Many funeral director submitters were already operating crematoria, but nevertheless were in favour of licensing to ensure that standards are kept to, unscrupulous

operators kept out, the public protected and deceased respected. Some were surprised how easy it was to set up a crematorium and how little is done by way of regular inspection or audit of processes. Some were concerned as to who would carry out regulation, as it was seen that local authorities have a conflict of interest given that they run crematoria themselves.

Local authorities

Twenty-five local government submitters were in support and only one qualified their opposition. Six did not answer the question. There was a concern from submitters that there needed to be standards that crematoria operators adhered to and that the public needed to be assured of these. However, local government submitters were concerned at the cost issues/resource implications of having to pick up the regulation and suggested that MOH may be better placed to carry out the licensing function. LGNZ stated:

Further discussion and detailed consideration is required in relation to the concept of a licensing regime for funeral directors and crematoria operators and facilities and the concept's implications for local authorities and their functions is required...

[If local authorities had responsibility for licensing] this would be above and beyond resource management functions and would add a completely new duty and process to local authorities' responsibilities. This function may include a "vetting" procedure and an ongoing monitoring or inspection role. This new area of responsibility would also involve the costs of up skilling staff or hiring new staff to undertake this work.

Qualification through an Industry Training Organisation is perhaps what is required – rather than licensing. The qualification would include appropriate standards for operating a crematorium. The concept of licensing needs further consideration, clarification and discussion with all parties.

We also note that any change to the legislation needs to consider the future and provide for changes to the industry. In other countries, resumators are used which dissolve bodies instead of burning them. They do not pose the same issues in terms of air quality and odour and there may be a demand for their use here.

Iwi/ Rūnanga submitter

The iwi/rūnanga submitter did not answer this question.

Personal submissions

Fifty-one private individuals were supportive of licensing and six were against. Thirty-four did not answer the question. Submitters supported licensing on the basis of public protection, to ensure that operators are working to high standards, to ensure no dishonesty nor illegal conduct and that there is respect for the deceased. One individual was concerned that licensing may end up with increased costs to the user.

Q8 Do you think resource consents should be required for all new crematoria and should they be publicly notified under the Resource Management Act?

Because the question had two parts, it was sometimes unclear whether the submitter was in support of or opposed to of the concept of resource consent or public notification or both.

However, what was clear from the responses was that there was strong public concern about the siting of crematoria due to emotional, environmental, cultural and religious considerations. Some local government bodies, many community organisations and PHU groups supported both resource consent and public notification due to public sensitivities and the right of people to know about and submit regarding new crematoria. One PHU thought that Medical Officers of Health should be involved in the consent process for new crematoria.

The funeral sector agreed with the need for resource consents for new crematoria, but was not in favour of public notification, on the basis that modern cremators are very clean operating and the public's objections are “irrational”, “nuisance based and not based on law” and based on “emotive issues ... but not detrimental environmental factors”. FDANZ submitted:

It is hoped that nationally consistent standards would result in clear understanding by possible opponents of the proposals of what is allowable, and the weighing of community interest against the “Not in My Backyard” mentality.

The Ministry of Health noted:

Health officials don't have a preference because we are aware of a number of crematoria that have been established within Funeral Homes that were non-notified and are operating satisfactorily. Officials are also aware of consent applications that have been notified and generated significant public concern, but not because of any specific effects that may have arisen. Perhaps a compromise could be for the council to use the planning process to determine whether such applications should be publicly notified or not.

One issue was whether or not there should be a National Environmental Standard regarding crematoria or whether this worked against the “effects-based” planning philosophy of the Resource Management Act (RMA). In this regard LGNZ said:

Such an approach would result in inconsistent treatment of one particular activity over the multitude of activities that are currently assessed under the planning framework. The RMA does not accommodate such an approach and there is no apparent rationale for this...When the planning framework is set is the best time to take account of community concerns, to decide how this particular land use will be treated, and to set the appropriate activity status. The proposal to require notification runs counter to the current desire of central government and to “good practice” in respect of the frontloading of plans.

The NZLS submitted that the RMA is adequate to deal with environmental issues and so there is no need for new regime for crematoria:

It is questionable whether all crematoria should be required to be publicly notified, as the receiving environment will vary from place to place, as will the ethical, social and cultural issues. The current regime for notification of resource consent applications should continue to apply.

However, it did support the development of National Environmental Standards (NES) for crematoria as this would prevent local councils having to create their own standards which may differ from each other. It concluded, “NES may also allay public health concerns around emissions by specifying minimum discharge standards.”

The iwi/rūnanga submitter was concerned that not everyone has the capacity/capability to be able to engage in RMA processes equally. It would only support the extension of the RMA processes to crematoria if there are supplementary reforms carried out to create a more equitable decision-making environment, such as free workshops on RMA processes, language and terminology for community stakeholders and capacity building local authorities to be up skilled in Māori traditional knowledge - Mātauranga Māori. Without this there is a risk that inequitable outcomes will result.

One submitter answered:

Yes, because my experience shows that far too many crematoria in the UK do not cremate efficiently, and I am not aware of a Charter for the Bereaved or other standard in NZ. In the UK, the private crematoria are by far the worst and have little transparency on these

issues. Charter for the Bereaved... promotes the holding over of bodies so that batched cremation is routine, ensuring the cremator is heat soaked and always at its most efficient as regards emissions. That ensures that the abatement equipment, usual in the UK now, produces the least amount of sorbent, a residue which has to be stored as hazardous waste. Reductions in gas consumption of 40% and more are typically achieved, but far too many crematoria ignore this, private and public. The development of eco coffins for cremation is necessary, to reduce emissions, and/or the use of reusable coffins promoted. The latter allows light cardboard coffins to be used, dramatically reducing the mass introduced into the cremator.

Q9 Do you think there should be stronger regulatory controls over the operation of crematoria and the handling of human ashes by crematoria?

One hundred and three submitters were in favour of stronger regulation. Ninety-nine did not answer the question and 22 were opposed. Quite a number of submitters did not answer the question due to their beliefs regarding cremation. A number of submitters referred to their answer to question seven regarding licensing, confirming that they thought there should be stricter regulations.

Central government

Three central government submitters were in favour of stronger regulation. MOH said:

Health officials support this proposal because of the proliferation of non-Council operated crematoria. Officials are receiving small, but increasing, numbers of complaints about crematoria including anecdotal reports and allegations of visible smoke emitted, substandard coffins, re-use of coffins without clients' permission, co-mingling of ash, ash not being appropriately identified, deceased effects being stolen, animals being cremated et cetera. More explicit controls would help reassure the public of the standards that are expected, and enable complaints to be investigated and enforcement action taken if necessary. Officials suggest that territorial authorities would be the appropriate authority as this aligns with other premises and operations councils register, inspect and regulate.

PHUs

Four PHUs were in favour, believing that there should be stronger rules around handling human remains and guidelines for dealing with ashes. One was against on the basis that the current regime is sufficient and two did not answer.

Community organisations

Sixteen community organisations were in favour, 34 did not answer and one was opposed to stronger regulation. NZLS cautioned against overregulation and suggested that:

the level of regulation must be proportionate to the risks involved, to foster public confidence and to accommodate the fact that it is potentially difficult for people to raise or indeed identify problems involving crematoria. A licensing regime may improve public confidence in the handling of human ashes by crematoria...

Funeral sector

Twenty-two of the funeral sector agreed to stronger regulation, especially wishing to receive some guidelines around the disposal of ashes. Nine were opposed on the basis that the current regime was sufficient, and four did not answer the question.

Local authorities

Of local government submitters 12 were in favour, 19 did not answer and one was against stronger regulation. LGNZ did not specifically answer “yes” or “no” to the question, although it may be inferred that it did not support stronger regulation stating:

All crematoria should have a written policy of how they operate crematoria and handle human ash, available to an independent external auditor, including any process for disposal of uncollected human ash. Families should be given back all the ash of their loved ones. If the funeral service provider is not giving all the ash remains back to the family they should be required to inform the family of this before disposing of the residual ash.

Personal submissions

Forty personal submitters were in support of stronger regulation for public assurance and reassurance regarding the handling of ashes. One submitter suggested that:

there is enough evidence to suggest that financial pressure and expediency can make operators behave unethically. I think that operators are also under protected by not having firmer guidance and are at risk of being bullied into processes they don't necessarily agree with by associations.

Ten were against, mostly on the grounds that the current system appeared to work well and increased regulation would increase cost. Forty-one did not answer.

Q10 Do you think there is a problem with the availability of cremation services in any particular area of New Zealand?

Only 68 submitters answered this question and they were equally divided as to whether there was an issue or not regarding cremation services.

The Indian community stated its wish for outdoor cremation, as did some other submitters.

One in particular said:

This is the part where I can have say about what is really important to me. My wish is to be cremated on a funeral pyre like they do in some countries, at a place of my choosing. I realise there would need to be guidelines and controls in place, but that is absolutely my wish. There needs to be the freedom for a person to state what they want to happen to them after death and for that to happen (within reason).

The New Zealand Catholic Bishops Conference stated:

The underlying question is whether local authorities should be required to provide a cremation service or whether it should be left to the private sector. Affordability of cremation for those with limited means should be a critical factor in determining whether there is a problem or not.

There was some concern about the lack of crematoria in the rural areas and that people had to travel long distances, especially in cases where they want to escort the deceased and witness “the charge” (the placing of the coffin in the cremator). FDANZ and NZEA confirmed this and noted:

The reasons for this are varied but mainly driven by the number of users of the service and the financial viability to offer the service. We believe however, that access to current services is meeting the needs of the community.

Some specific areas where there appeared to be a lack of crematoria were central Hawke's Bay and Tasman. It was identified that cremation services are more expensive in New Plymouth and Whangarei than in Auckland.

Another issue identified by some was that some Councils and funeral directors with cremators will only allow people to be cremated if the services of particular a funeral director are used or the funeral director is engaged for the whole process, not only for the cremation. Some submitters felt cremation should not be able to be prohibited by such providers where people wanted to use their own handmade coffins/coffins they have sourced themselves, or if they did not want to use the funeral directors' other services.

It was also identified that sometimes the operating hours of crematoria may cause concern for families– a resource consent may impose conditions as to the hours of operation of a crematorium-and therefore the body is not cremated the same day.

One submitter identified that there is a problem in that people are getting bigger and so there are larger coffins that cannot fit in private cremators and have to be sent to Local Authority crematoria.

One funeral director noted:

In the 1970s the council controlled the only crematorium on the top of the South with a set of bylaws which only cremated on certain restricted days and only received deceased a certain hours. There was a closure for a thirteen week period while the cremator was fixed. Given this situation, we proceeded to establish a private crematorium, which allowed freedom of choice to the public and a service to receive caskets at the wish of the clients. This prompted the council-run crematorium to overlook its bylaws, contract out the operation to a private operator, and open its doors to the public at all times. By providing our service we assisted in ensuring greater service to the public. The difference being that local authority still heavily subsidises its cremation through rates which clearly is a competitive advantage... Any change in law should take this into account and make it a level playing field for all.

PART 3 – FUNERAL SERVICES

In this part, five questions were asked. The questions were answered by 180 submitters as follows:

- 4 central government organisations,
- 6 Public Health Units (PHUs) from 6 District Health Boards around the country,
- 44 non-governmental groups such as community organisations, religious groups, legal organisations, political organisations, archaeological and cemetery preservation organisations et cetera (“community organisations”);
- 39 funeral sector responses including funeral directors, natural/eco- burial practitioners/proponents, celebrants (“funeral sector”);
- 1 Iwi/ Rūnanga submitter;
- 27 local government bodies (“local authorities”); and
- 59 personal submissions from private individuals, some with a background in engagement in aspects of burial and cremation.

Q11 Do you think those providing funeral services to the public should be required to proactively disclose the costs of the different components of their services? Please give your reasons.

Other than the funeral sector, the overwhelming majority of submitters who answered this question were in favour of price disclosure for the reasons of transparency, consumer options and protection. Only 25 submitters out of 156 answered this question negatively and 18 of those were from the funeral sector.

Central government

Two central government submitters were in support and two did not answer the question. The Office of Ethnic Affairs and the Human Rights Commission thought that transparency in pricing and the ability to choose only parts of packages would help in assisting meet the needs of New Zealand's increasingly diverse population – especially in terms of people's different cultures, religious views or individual preferences.

Community organisations

Thirty-nine community organisations were in support. Some suggested all itemised costs appear on funeral service providers' websites as well as on pamphlets. One suggested that funeral service providers should also have an obligation to talk about costs up front. Four did not answer the question. Only one community group was not in support, submitting that families under stress did not want to worry about the details and were happy for a lump-sum quotation.

Local authorities

Seventeen local authorities who answered the question supported disclosure by funeral service providers, noting that they (local authorities) provide their costs to the public and so other funeral service providers should too. If people asked them how much funeral costs would be, they could not say due to lack of disclosure by funeral service providers. Only one local government submitter was against. Nine did not answer the question. Some local government submitters (together with some community organisations and Auckland Regional Public Health) suggested that it was sometimes difficult culturally for people to ask the cost or they may feel the need to go with the best package out of respect for their deceased. It was submitted that if prices were available up front then people could compare without having to first make an appointment.

PHUs

Two PHU were in favour of disclosure. Auckland Regional Public Health noted the link between funeral costs and poverty and pointed to the 2012 report of the Children's Commissioner on Child Poverty establishing that funeral costs are the third highest consumer item for people after home and car purchases, and a reason poor families go to finance companies. They also quoted statistics from 2011 that one in five people had been granted a WINZ funeral grant. One PHU was against disclosure and three did not answer the question.

Iwi/ Rūnanga submitter

The iwi/rūnanga submitter was in favour of disclosure of prices for separate elements of the services offered by funeral directors.

Personal Submissions

Of the personal submissions, 52 were in favour of disclosure of costs, and only four were against (and three of those submitters worked in the funeral sector but were making personal submissions). Three submitters did not answer the question. Individual submitters wanted detailed itemisation, therefore stopping secret charges for services being added; all quotes/estimates having GST included; and others wanted to receive a copy of the invoice (as often sent directly to solicitor acting for estate).

Component pricing was particularly important to people so that they could then pick and choose what services they required. Many submitters wanted funeral service providers to disclose which component parts of the funeral process were essential by law and which not. People wanted the freedom to be able to choose only some component parts of a funeral service or to purchase select services or products from funeral service providers (for example, to be able to go to a funeral service provider for only a coffin; for hearse/transportation; or just for the cremation without using other services). Examples were given of some providers not allowing components to be deducted or charging for the full price service anyway. An example was given of a family that wanted to run its own power point show in the service were told they could not do so, or if they did they would still be charged as this was part of total funeral package.

Some submitters mentioned private funeral service providers with crematoria not agreeing to cremate unless their full services and products were taken on. Conversely some funeral service providers mentioned situations where they had allowed people to source their own products or run parts of the service to reduce costs.

Funeral sector

Of the 39 Funeral Sector responses to this question the responses were equally divided - 18 for and 18 against disclosure. Three did not answer the question.

The most common reason given by funeral service providers for opposing full disclosure was that it was too hard to pin down the cost of a funeral as each one is individualised based on what the family wanted: “how long is a piece of string?” was a common refrain. Even those

who were in favour of disclosure did note that people changed their minds and that it was difficult giving a fixed cost.

Most funeral service providers (including industry representative bodies New Zealand Independent Funeral Homes Ltd (NZIFH), FDANZ and New Zealand Embalmers Association (NZEА) suggested instead that a firm estimate should be given to people once the funeral service provider had met with the family and become aware of what they wanted. Most said they already did this, often providing an estimate with the funeral authority documentation.

FDANZ and NZEA noted in their submission:

We accept that consumers should be able to shop around and understand the components which make up the cost of a funeral and many firms already have price lists on their websites. Most accounts for funeral service are broken into three distinct areas: the casket, the disbursements such as the plot purchase, flowers, newspaper notices, catering etc, and the funeral director's Professional Service Fee. The merchandise is easily priced; the services are much more complex. ...The industry will continue to make improvements in this area.

They then went on to say that much of the work done by funeral service providers is not seen by people – i.e. provision of technology; that it takes 16-24 hrs to arrange and conduct a funeral; that the cost of disposal is outside of the funeral service provider's control, as burial and plot and interment fees may change (as local government must now review its core services every 5 years).

Further arguments against disclosure put by funeral service providers were that:

- Often people did not ask about cost anyway or it was disrespectful or inappropriate to talk of costs. People wanted a dignified funeral not a focus on costs.
- Most people made choices based on reputation not cost and that cost and value or level of service could not be equated. Service and added value was more important and was what people appreciated.
- If pricing was transparent then prices of services in the market would go up overall and small firms could not sustain price war if they were undercut once prices were known.
- People cannot really know from looking at a component price list what will make up a funeral nor get a realistic idea as to how much the whole service would be.

- It is not uncommon already for families considering their choice of funeral home to enquire about costs either in advance, or before finalised arrangements are made.
- Often funeral service providers meet people in their homes and so can assess a family's ability to pay – often suggesting ways to reduce bill by taking off specific components or suggesting people run parts themselves.

One funeral director commented:

I do not believe this strategy provides the protection to consumer it is intended to give. This was the idea behind the introduction of the US Federal Trade Commissions (FTC) "Funeral Rule" which requires US Funeral Directors to provide a formal pricelist to clients before any funeral arrangements are made. In practice it means that a funeral director cannot even talk to a family until they have disclosed their prices. This rule has made a farce of the US funeral profession and I believe no evidence exists to suggest that it has provided consumers with any tangible benefits. If you look at most US funeral company pricelists they are confusing and hard to use and the average consumer lacks the experience with funerals to be able to select services a la carte.

Funeral service providers in favour of disclosure of components costs of services said people were entitled to transparency and one commented that when you take your car to a mechanic you expect an itemised account – not just a notation of "service fee"; and that provision of disbursements by funeral directors should not attract a surcharge (i.e. Newspaper notice, flowers, plot charge et cetera).

Q12 Should those providing funeral services to the public be required to disclose their qualifications and whether or not they are accountable to an industry body responsible for enforcing standards and considering complaints?

Q13 Do you think those providing funeral services to the public should have to demonstrate they understand the laws and regulations which apply to handling human remains and have access to suitable premises and transportation methods before being allowed to operate commercially?

Q14 Do you have any other views about the way the funeral sector currently operates including whether there is a case for a mandatory code of conduct and complaints mechanism?

The answers to the above three questions were often answered together by submitters or the answers overlapped so we analysed the answers to these questions together. There were very few negative responses to questions 12 and 13. The response to question 12 generated only six negative responses – five from the funeral sector and one from an individual. In respect to question 13 only one private individual and seven funeral directors answered negatively.

Although not part of any of the questions, the majority of funeral service providers and many of the public used one of these questions to submit in favour of compulsory qualifications for qualified funeral service providers. In this regard submitters did not distinguish between funeral service providers and embalmers.

Community organisations, individuals, central government, Public Health Units

Community organisations, individuals, public bodies and local authorities overwhelmingly answered “yes” to question 12, as a matter of transparency and protection for public. Some public bodies argued for a national searchable database of qualified practitioners to ensure that falsified certificates were not being put up or in case they weren’t displayed but the public wanted to check. Several suggested that qualifications not only be displayed at premises but on websites and publications.

The Muslim Working Together Group and those supporting its submission felt as they were working on a voluntary basis they should not have to disclose qualifications as any qualification would be irrelevant to their particular needs:

It is not the personal qualifications that are important to the bereaved family but how well the service provider is acquainted with the practices of the Islamic requirements and protocols of caring, preparing and administering the final religious rites on the deceased... Our accountability as service providers is not to an industry or an association of man-made rules and regulations but we are held answerable to Allah...as well as observing all the rules and regulations of burial as stipulated by the laws of the country we reside in.

Another group, the Federation of Islamic Associations of New Zealand, supported the proposal as it felt there should be checks and balances for such persons/organisations. It went on to say:

The chances of anyone without the required qualification and skills to start such a business should be eliminated provided however, there need to be exemptions made for religious

organisations which provide voluntary services or charge minimal or nominal fee to cover for administration and material costs.

Again, the overwhelmingly majority of public submissions from individuals, community organisations, central government and local authorities supported those in the funeral sector demonstrating the matters specified in question 13. Some people equated this with licensing - and many, as noted above, took the opportunity to state they would prefer education/qualifications from people in the sector. The public were often surprised to learn that funeral service providers did not need to be qualified or regulated. It was acknowledged that although aberrations in the funeral sector were rare and the standards normally high that safeguards and reassurances were wanted by the public at large and that this would be provided by licensing and/or qualifications.

A number of submitters, other than funeral service providers, and across the range of submitters rated it important that, as part of a licensing requirement, funeral service providers should have their cultural understanding tested. It was envisaged that this could be either through having a qualification or specific cultural training that could be arranged via the local authority with iwi and other relevant cultural groups. It was very important for Māori that there is understanding of the importance of whānau staying with the tūpāpaku (the body of the deceased) at all times until burial and for funeral service providers to understand the importance of tikanga and handling human remains. Muslim groups wanted to ensure that funeral service providers and all those working with deceased understood the need for respect of the deceased – for example, covering him/her at all times and attempting to have women working with women and men with men.

Consumer New Zealand answered questions 12 to 14 together. It was of the view that:

While this proposal [as set out the Issues Paper] may improve on the current situation where anyone can trade as a funeral director, we consider the licensing scheme needs to be more robust. For example, periodic inspection of the funeral director's premises may be required to ensure standards are being maintained.

In addition to any licensing regime, our view is that consumers need access to an independent complaints process. While we agree that funeral services are unlike other services in that there may be little scope to "put things right", an avenue for redress is essential for effective consumer protection.

In our experience, one of the reasons consumers are often reluctant to complain is the lack of effective avenues to pursue a complaint. They are often uncomfortable about approaching the provider directly. They may also be reluctant to complain to an industry association, which may not be seen as independent or impartial. Further, not all providers belong to an industry body.

Of the options presented in the issues paper, our preference would be for complaints to be dealt with by an independent complaints body. The Electricity and Gas Complaints Authority model may be a useful model to consider in respect of the funeral industry.

The NZLS answered questions 12 of 13 and the affirmative saying that these things would form part of a licensing regime. In response to question 14 it stated:

the main issue from a health law perspective is ensuring public health and safety and ensuring the provision of services that respect the dignity of the deceased and their families. This can be addressed through a licensing regime as noted above in response to question 13. The code of conduct could be voluntary if the licensing regime were in place. A complaints mechanism should be an integral part of the licensing regime.

In respect of question 14, most other submitters supported a mandatory code of conduct and/or a complaints body. Most thought this should be independent of the industry and several submitters from community organisations and local government thought there should be an industry ombudsman.

Funeral sector

As noted above the response to question 12 only generated five negative responses from the funeral sector. However, even most of those from within the funeral sector who were opposed to displaying qualifications/association affiliation still held qualifications or affiliations themselves, but felt that the reputation or qualifications of the funeral director was more important and that the public were not interested in seeing qualifications/affiliation or that it should not be compulsory to display these.

One funeral director did not have a qualification and so therefore did not wish to disclose this. Another funeral service provider noted that she was not affiliated to a body as she did not believe any of their standards were high enough, yet disclosing a lack of affiliation may look like a negative thing to the public.

Although most in the funeral sector answered “yes” to question 13 as posed, that did not mean the majority wanted licensing. Most thought they could demonstrate the skills noted through qualifications and affiliation to an industry body (not by licensing). One funeral service provider said it was too late once a funeral service provider arrived at your door to ask if the person was qualified and that therefore the best protection would be for there to be compulsory qualification and compulsory industry body membership. This was supported by many in the funeral sector who wanted to keep standards high.

FDANZ and NZEA submitted:

It is the view of the Associations that self-regulation of the funeral industry is a better option for the general public than enacted legislation which is often cumbersome, costly and subject to lengthy delays in responding to changes in both technology, improved standards and society needs.

They submitted that the evidence of the knowledge as posed this question should be that set by a recognised qualification in funeral directing and embalming held by the principal of the firm. “Anything less may impact on the high level of professionalism and standards which exist within the sector currently”.

The other major industry body, NZIFH proposed an industry structure (loosely based on the Real Estate (Licensing) Regulations 2009) with all employees qualified to a certain level or under the oversight of a more qualified person. Licensing would be on that standard and a person could not run/offer funeral services unless qualified. NZIFH noted that the training and qualifications already exist for these proposed standards and that the courses may be provided throughout New Zealand via any tertiary institution prepared to run it (currently only through Weltec).

Other funeral service providers suggested that licensing should be based on having a funeral industry qualification and practising certificate as issued by the Industry Training Organisation (Funeral Services Training Trust [FSTT]) which covers ongoing competency. The local authority could then inspect the premises and audit transportation and, if compliant, a licence to operate commercially could then be given. It was suggested that the FSTT could be the complaints mechanism as it is an independent body with industry and public appointments. Disciplinary measures could include withdrawing practising certificates. A code

of conduct and ethics could be incorporated into this model. How this would be funded would need consideration.

Bledisloe New Zealand Ltd which owns a number of funeral homes was not in favour of the principal of any firm being required to hold formal qualifications in funeral directing. It thought it was desirable that they do so but that “the current FDANZ membership requirement of a qualified [funeral director] and access to a qualified embalmer should be sufficient”.

Many funeral service providers were concerned about the “cowboys” operating and therefore wanted minimum standards. However, other funeral service providers said licensing or regulation were not needed *because* of the good reputation of funeral service providers and that the market would weed out those without qualifications or who are delivering bad service. Others commented that education by itself does not guarantee good service – training has to be kept up.

In respect of question 14, most funeral service providers favoured a code of conduct and a complaints mechanism. Submissions were divided fairly equally between whether the complaints body should be an existing industry body or if an outside body should fulfil this function. Some were quite clear that FDANZ was not the right body, whereas others believed it was.

Some in the funeral sector advocated having the position of an industry ombudsman created. A number of funeral service providers referred to complaints currently being able to be made to the “Ombudsman” (however, this is not the case).

Local authorities

There was support from local authorities for some sort of regulation and complaints system (some favouring the funeral sector deciding on their own complaints mechanism, others advocating an ombudsman for the industry, others favouring mandatory affiliation that to an industry body).

However, the main concern highlighted by many of those in local government (and some in the funeral sector) was around the suggestion that local authorities would be the licensing body. The following concerns were set out by local authorities (and some by the funeral sector):

- it would result in increased financial burden either to ratepayer or to consumer (ultimately – if user pays);
- if local authorities were to be the licensing body then they would need to be resourced to build capacity, capability and systems;
- local authorities may not be competent in terms of their expertise or training to conduct licensing, and perhaps it should be MOH or some other body. One funeral director noted there is little in the way of service from the local authority currently:

The inspector visits our mortuary, and stays for approximately 30 seconds, we provide a backflow preventer certificate to the council and for the payment of some money a certificate arrives in the mail. On one occasion [sic] the certificate was for food handling, it demonstrates how much the local authority takes an interest in what we are doing.

- some local authorities were concerned about local licencing of national standards; and
- several councils queried giving this additional responsibility to local authorities when the changes to the Local Government Act require them to stick to their core services.

LGNZ’s concerns were spelled out under question seven regarding the licensing of crematoria.

Iwi/ Rūnanga Submitter

The iwi submitter was in favour of disclosure of qualifications including training and apprenticeships undertaken and affiliation or non-affiliation with an industry body with a code of ethics and complaints system. It felt this was a crucial to foster and public confidence “in an industry which whānau must invariably turn to in times of need”. It did not believe that providers must belong to an industry body but submitted that those who *are* subject to such standards should be clearly distinguishable from those who are not.

Q15 Do you think there is a case for requiring local authorities to provide a basic funeral service for those who wish to deal directly with a cemetery or crematorium?

The 153 submitters who answered this question were almost evenly divided with 76 against the idea of local authority provision of a basic funeral service and 77 in support.

Central government

Two central government submitters did not support this idea on the basis that funeral directors should be able to provide low-cost services and one did not answer the question. The Human Rights Commission thought that introducing a basic service for those wishing to deal directly with a crematoria or cemetery could indirectly assist members of the community who wish to undertake funeral activities in a manner that better reflects their particular culture, religious views or individual preference.

Community organisations

Thirty-five community groups were in support of local authorities providing a basic funeral service and five were against. Those who were in support favoured more choice for consumers and so that financial hardship was alleviated. Instead of local authorities offering basic services, some believed funeral directors should be required to offer a basic funeral package. Eighteen did not answer the question. Consumer New Zealand stated:

Given many families want to be more involved in funeral arrangements, there is likely to be more demand for this type of service.

We consider it is unsatisfactory that local authorities can refuse to allow families to undertake burial or cremation unless a funeral director is engaged. As the issues paper points out, this imposes additional costs on the family. The only beneficiary would appear to be the funeral provider.

PHUs

Of the Public Health Units, two qualified their support, three were in support, and one did not answer. Auckland Regional Public Health also thought that, as financing funerals was one of the biggest reasons people go into debt, local authorities should accept part payment and/or suggested maybe there was a role for social lending in this area.

Funeral sector

The funeral sector was strongly against this idea, with 34 being opposed, three being in support and six not answering the question. The main concern was that local authorities should stick to their core services; that local authorities were not equipped to run such services, which were specialised and therefore would need staff to be further upskilled and trained, including in

handling people's emotional situations; that funeral directors were best equipped to run services and that many did run a basic service already; and that it was likely that local authorities will contract funeral directors anyway.

Local authorities

Eighteen local authorities did not support this idea, three were in favour and 13 did not answer. Local authorities believed this went beyond their core responsibilities and that some funeral directors were already providing a basic service. Many local authorities do not like the idea of competing with funeral directors in providing such a service. They agreed with people being able to liaise directly with the council for burial and cremation but not with the idea of local authorities having to provide a burial service.

Iwi/ Rūnanga submitter

The iwi/rūnanga submitter did not answer this question.

Personal submissions

Of those who made personal submissions, 30 were in favour of this idea, 17 were against and 67 did not answer. One person said yes if the council was large, but not if it was small. Of those who answered positively they thought this made sense to help people who are struggling financially and to provide people generally with more choice.

"DIY"

Quite a number of submitters took the opportunity, as part of this question, to make comment on the wish to organise funerals themselves without funeral directors and how they wished councils to support them in this.

The theme of people wishing to organise aspects of their funerals themselves and/or run funerals for their family members came through quite strongly throughout submissions. Those submitting in favour of "DIY" wanted to ensure that the freedom to do so would not be limited by the Law Commission's proposed reforms. One of the things suggested was that information should be publicly available to support those wishing to run funerals themselves.

PART 4 – FACILITATING DECISION-MAKING AND MANAGING DISAGREEMENT

In this part, we asked six questions. The questions were answered by 159 submitters as follows:

- 5 central government organisations,
- 6 Public Health Units (PHUs) from 6 District Health Boards around the country,
- 46 non-governmental groups such as community organisations, religious groups, legal organisations, political organisations, archaeological and cemetery preservation organisations et cetera (“community organisations”);
- 33 funeral sector responses including funeral directors, natural/eco- burial practitioners/proponents, celebrants (“funeral sector”);
- 2 Iwi/ Rūnanga submitters;
- 24 local government bodies (“local authorities”); and
- 43 personal submissions from private individuals, some with a background in engagement in aspects of burial and cremation.

Q16 Do you think the process for resolving a serious burial dispute should be clarified in legislation?

A significant majority of submitters were in favour of clarifying in legislation the process for resolving serious burial disputes: of the 126 who gave an answer, 119 answered yes. One of the main reasons given was the need for more clarity – for individuals, the funeral sector, local councils and lawyers. A number of submitters mentioned the increased complexity of burial matters resulting from intercultural marriages and mixed families, and the related increase in disputes. Submitters also outlined some of the limitations of the present executor rule. For example, the NZLS explained that the executor rule provides no guidance in the case of intestacy. FDANZ explained that, “often the Executor is not known or consulted at the time of the funeral arrangement and a partner, child or some other will be the person making the arrangements”. Submitters also wanted a speedy resolution of disputes, which would be aided by greater legislative clarity.

Individual submitters in particular tended to be concerned about the time and expense of litigation and wanted clarity in the law to avoid lengthy disputes. Local Government and funeral sector submitters generally valued greater clarity in the law. Iwi and those with a tikanga Māori perspective supported legislative clarity in the hope that it will provide for recognition of tikanga where the common law currently does not.

A significant number of submitters preferred an informal and flexible process as a primary mode of dispute resolution. For example, all groups supporting the Working Together Group submission thought that religious and cultural belief structures should be the primary mode of dispute resolution. According to the NZ Federation of Multicultural Councils, “the emphasis should be on voluntary resolution with appropriate assistance where required and arbitration only as a last resort”.

Five submitters were opposed to legislative reform. Of these, two were concerned about the role that tikanga Māori would play in the resolution of disputes. One submitter preferred family court-based dispute resolution, and another questioned whether legislation would be able to give more clarity at all.

One city council suggested that guidelines should supplement legislation to assist local authorities and funeral directors in dealing with commonly arising issues.

Q17 Any new statutory scheme would need to reflect the values New Zealanders think should underpin the law in this area. We are interested in the weight New Zealanders think should be given to the different values and interests involved in these decisions. Please order the following values 1-7, with 1 being the most important value and 7 being the least. If you think several factors should be given the same weight, give them the same ranking.

There was a wide range in the ways that submitters answered this question. Some preferred to rank the values, while others made more general comments on how different values should be assessed.

Central government

The only central government submitter to answer the question was the Office of Ethnic Affairs. It prioritised ensuring there is clear and certain legal responsibility for burial and

cremation decisions, followed by the need to ensure the wishes of the deceased are carried out, then meeting the needs of any surviving partner. The other values were ranked equally after these. It also submitted that the right of decisions should vest in an individual, but that nothing would prevent that person following the directions of the family, which would allow for the observance of tikanga Māori. The person would be identified by being either a guardian or next of kin, and the person should be required to take into account views conveyed to him or her, rather than having an active duty to consult. The deceased should not be able to leave binding burial directions. According to the Office of Ethnic Affairs, this could add unnecessary delay to what should be a speedy process and could have negative implications in some cultures.

Local authorities

Very few local government groups answered this question. All that did prioritised the need to carry out the wishes of the deceased. Meeting the needs of a surviving partner and meeting the needs of close relatives were also ranked high. Ensuring clear and certain responsibility was the next priority. The other values were all ranked lower. In addition, all submitters preferred a flexible approach. For example, Tasman District Council said that legislation should give guidance rather than being proscriptive.

PHUs

A flexible approach was also preferred by public health units. Public Health South submitted that all cases should be decided on their merits. Regional Public Health was of the view that more public consultation and debate was needed to develop the framework.

Iwi/Rūnanga submitters

No iwi or Rūnanga submitters chose to rank the values. Te Rūnanga Ngāti Whātua submitted the following:

While it may be the case that some whānau will defer to a respected individual or an especially close person to the deceased to make the final decision, we submit that the legal presumption should rather favour an inclusive and collective-based approach to decision-making... This presumption is [not] only relevant as a matter of tikanga Māori to apply to disputes involving whānau Māori, but is relevant to the well-being of all whānau across Aotearoa... The notion of a hierarchy of whānau members whose rights of entitlement are

scaled from highest to lowest is abhorrent, not only to the principle of whakapapa, but to the universal need for surviving whānau members to find peace.

If the deceased has chosen someone to make decisions relating to their death, the mana of that person requires this selection to be given considerable weight.

Funeral sector

Within the funeral sector 25 submitters answered this question by ranking values, but the ranking of values varied significantly. Most submitters tended to value ensuring the wishes of the deceased are carried out, as well as ensuring clear and certain responsibility for decisions. Others submitted on the question without ranking the values. Some commented that they wanted greater certainty in who had decision-making power. Two submitters commented that the executor should have greater powers. One submitted that each case should be resolved on its merits. While some submitters were of the view that the deceased's wishes should be respected, others thought it was more important to provide for the needs of the family. One submitter would include the value of "respect for the deceased", and another included "environmental impact".

Community organisations

The Working Together Group submission, which was supported by 19 separate groups, submitted that, for Muslims, the observance and execution of Islamic requirements is paramount. They ranked the values as follows:

1. Ensuring the wishes of the deceased are carried out / Ensuring that the family's religious requirements are met
2. Ensuring there is clear and certain legal responsibility for burial and cremation decisions
3. Meeting the needs of any surviving partner
4. Meeting the needs of close relatives
5. Ensuring that all those with a strong interest in the decision are given an opportunity to express their views
6. Ensuring that cultural needs are met

Among other community organisations views varied significantly. Generally, the most important value was ensuring the wishes of the deceased are carried out. A number of submitters preferred giving weight to the deceased's wishes as expressed in their will and wanted more encouragement for people to record their wishes. The NZLS suggested that the starting point be the wishes of the deceased. It suggested using the order of priority set out in s 31(2) of the Human Tissue Act 2008. It also noted that if the deceased turned their mind to a cultural conflict and subsequently amended their will, this should be given considerable weight. The Public Issues Network Methodist Church submission proposed that Te Tiriti o Waitangi be an overarching framework for updating legislation. Furthermore, a significant number of community organisations considered all the values to be important. Two submitters suggested that the wording should be "have regard to" rather than "ensure" for each value, recognising that they are not absolute. The Anglican Church submitted that any statutory rules should only be used in the absence of an agreement.

Personal submissions

There was also considerable variation in the views expressed by individual submitters. A number of submitters stated expressly that the wishes of the deceased should be paramount. Three submitters explained the need within tikanga Māori for whānau to be able to gather consistent generations together. As Pani Chamberlain from Ngāti Wharekokowhai said, "Mourning is for the individual and whānau. Burial is something for the ancestors of the deceased which can only be manifested in the burial of a deceased Māori person on their ancestral land." She recognised that for non-Māori it would depend on their spiritual and religious and cultural beliefs. Two submitters were of the view that the costs of a proposed action and the means of the deceased should be taken into account. Four submitted that environmental concerns were also important considerations.

Q18 Do you support the option of giving the Family Court the responsibility for dealing with burial and cremation disputes?

The majority of submitter answered "yes" to this question. Of the 131 answers, 82 were in favour of the Family Court having responsibility of burial and cremation disputes. Only 11 were opposed to the idea, while a further 38 who responded qualified their answer with

considerations such as the timeliness of decisions and the need for steps prior to litigation: court proceedings should be a last resort option.

Central government

Three central government submissions addressed the question. The office of Ethnic Affairs and the Human Rights Commission favoured Family Court jurisdiction. The Office of Ethnic Affairs also noted that a mediation process should be available to minimise the burden on the courts. The Human Rights Commission also noted the need for an expeditious response to applications. The Ministry of Health gave a qualified answer, submitting that the Family Court should be the last stage of dispute resolution following mediation.

Local authorities

Of the local government submissions, nine out of 11 favoured the Family Court jurisdiction, giving the following reasons: the Family Court has systems to assist families to make decisions; it is more accessible than the High Court; and court processes are most appropriate to deal with burial disputes. Two submitters were in favour so long as matters are addressed in a timely manner and appropriate specialist guidelines, resources and training are available.

PHUs

Public health units were also in favour of the proposal. Auckland Regional Public Health Service added that the appropriate court must be equipped to recognise Treaty of Waitangi obligations and work with diverse cultural practices and values of families.

Iwi/Rūnanga submitters

Te Rūnanga o Ngāi Tahu supported Family Court jurisdiction and further submitted that tikanga should be a relevant and weighty consideration and Māori Land Court judges should be co-opted in to provide advice or expert opinion. Te Rūnanga Ngāti Whātua agreed that an arbiter could be sourced from the Family Court but submitted that it should have the support of a local and respected community member whose involvement is agreed on by whānau.

Funeral sector

Most of the funeral sector was in favour of the proposed jurisdiction on the basis that the Family Court is more accessible and less formal, moves faster, is used to dealing with relational and cultural issues, and has experience prioritising and balancing the needs of different groups. Some of the submitters from this group favoured Family Court jurisdiction subject to the following qualifications: it is used as a last resort; the process does not take too long; there is the option to hold an urgent hearing; the deceased is in the custody of the court rather than a funeral director; the first step should be with a coroner; and so long as the law is clear enough to enable a quick decision.

Community organisations

A significant number of community organisations supported the proposal for Family Court jurisdiction. The most common reasons given were that the Family Court has the relevant expertise, that it is a quicker and more accessible process, that it involves group dispute resolution processes and that it is equipped to deal with complex relational and cultural issues. Only one organisation, Te Taha Māori o Te Haahi Weteriana o Aotearoa, opposed the proposal.

A significant number of community organisations qualified their support with additional concerns. The Working Together Group submission noted that the Family Court should be used only as a last resort because any court process risks a negative impact on relationships. They were also concerned that court proceedings would cause delay. In the context of a Muslim burial, timing is a crucial concern. The Māori Party submitted that an arbiter could be sourced from the Family Court but should have the support of a respected community member, whose involvement is agreed to by whānau. The Public Issues Network Methodist Church noted that the proposals do not directly address the situation in the Takamore dispute because it is unlikely that, in an intercultural dispute, a non-Māori party would agree to a dispute being heard in the Māori Land Court.

The NZLS gave feedback both for and against Family Court jurisdiction. Reasons given in favour of the Family Court were: reduced formality, greater accessibility, lower filing fees, simpler and faster procedures, and cases tend not to involve complicated legal issues, rather a balance of competing viewpoints. The NZLS also suggested that Family Court mediation

services may be more appropriate. It cautioned against placing too much emphasis on cultural reports because they are difficult to obtain and the short time frame of a burial dispute would make this problematic. It also noted that, because the Family Court is a creature of statute, a wide discretion would be needed to avoid issues falling outside its jurisdiction.

The NZLS also raised arguments in favour of High Court jurisdiction, rather than Family Court jurisdiction. They noted that the High Court has inherent jurisdiction and therefore could be considered the correct forum. Moreover, cremation disputes may involve issues relating to probate or administration of the estate, which are presently dealt with by the High Court, so they should arguably be heard in the same forum. It was also noted that it is possible to make urgent applications and that cost issues encourage expediency. The NZLS raised the possibility of using the Summary Procedure under the Habeas Corpus Act 2001, which requires the High Court to deal with the hearing expeditiously and within three days. “Prompt consideration by the High Court may be appropriate, with the ability to refer a dispute to the Family Court for mediation.”

Personal submissions

Of the 40 individual submitters who answered the question, a significant majority favoured Family Court jurisdiction. The reasons given in support mirrored those set out in the Issues Paper. It was particularly noted that the Family Court has flexibility that other courts don't have.

Ten individuals submitted against the proposal on a number of different bases. Some preferred an alternate arbiter, either a person trained to deal with specific issues raised in burial and cremation disputes, or an informal and less expensive tribunal. Others disliked the Family Court as a forum because it is too expensive, lacking in pragmatism, lacking impartiality, or lacking in appreciation for Māori customary practices. One submitter thought the appropriate forum is the Māori Land Court.

A number of qualifications were made. A common concern was that decisions need to be made urgently. Others wanted to ensure there would be an option to appeal to a higher court. One individual submitted that legislation must be capable of expressing tikanga in a Māori way, and another noted that they disagree with the Takamore decision because it failed to recognise that tikanga continues to operate even if the deceased is distanced from haukainga.

Q19 Do you support the option of giving Māori Land Court concurrent jurisdiction in cases involving Māori customary law where all parties agree the dispute be heard in that forum?

There was less overall support for Māori Land Court jurisdiction. Of the 121 who answered, 62 were in favour, 35 qualified their answer and 24 were opposed to the suggestion.

The Māori Land Court submitted that, sitting with kaumātua, it is the best place to deal with such disputes because it has particular expertise: Judges are accustomed to dealing with questions of tikanga, are familiar with Māori communities, and have regular dealings with trustees and kaitiaki in respect of urupā. The Court considered that applying directly to the Māori Land Court was the best process (rather than applications being referred from the Family Court). Māori Land Court jurisdiction should be automatic when the deceased is Māori or the dispute concerns a burial site that is on Māori land. Further, the enforcement of urgent burial orders must lie with the Māori Land Court rather than relying on transmission to the High Court.

Local authorities

The local government sector was in support of the proposal. Public health units were similarly supportive. However, Public Health South noted that there needs to be a process for dealing with cases where parties disagree on the forum. Defaulting to the Family Court could disadvantage Māori. Auckland Regional Public Health Service also submitted that the Māori Land Court should be used even where only one party wishes the dispute to be heard there.

Iwi/Rūnanga submitters

Te Rūnanga o Ngāi Tahu opposed the jurisdiction. It was concerned that the forum decision would be another dispute to be resolved. Instead the Family Court should be required to have regard to the tikanga practiced by the whānau of the deceased. Te Rūnanga Ngāti Whātua gave qualified support for the proposal, saying that the arbiter should have the support of a respected community member.

Funeral sector

Within the funeral sector, a narrow majority supported Māori Land Court jurisdiction. Those in favour noted the value of having an understanding of tikanga, and the importance of both courts working together. Those opposing its jurisdiction mentioned that the process could take too long, or that it could be seen as biased. Five submitters said that all disputes should be heard in the same forum and that the Family Court is the more appropriate forum. Some in the funeral sector gave qualified support: one was concerned about how long the claims would take in the Māori Land Court, another wanted clarity as to which court had superiority, one preferred the two courts to work together, and one preferred a coroner-facilitated meeting to a court process.

Community organisations

Most community organisations were in favour of the proposal, but many of them had concerns, which narrowed the basis of their support. The reasons given in support of Māori Land Court jurisdiction were its extensive knowledge and understanding of tikanga Māori, the fact that Māori tend to be familiar with it, its openness and inclusiveness, and that the counter staffs are trained and approachable. The primary reason given against Māori Land Court jurisdiction was that the Family Court is a more appropriate forum, which already takes account of tikanga and cultural practice.

A number of additional points were made. The Working Together Group and its supporting submissions were of the view that the Māori Land Court should be used as a last resort, in the same way that it suggested the Family Court be used. The Ngāi Tahu Māori Law Centre noted that the Court would be required to arrange special sittings should a burial dispute arise, as the Māori Land Court does not sit regularly enough in all districts. The New Zealand Catholic Bishops Conference noted that there should be provision to ensure that all parties are able to decide without pressure or duress. Grey Power New Zealand submitted that where there is a dispute between the requirements of tikanga Māori and the practice of another culture, the Family Court should be used. Te Taha Māori o Te Haahi Weteriana o Aotearoa suggested a process that uses officers of the Māori Land Court to facilitate discussions between Māori elders and representatives of non-Māori. The Public Issues network Methodist Church

preferred the development of a Council of Elders model, which would have authority to facilitate discussion and resolution between parties.

The NZLS represented a variety of views put forward by its members. Some thought the infrequent and complex nature of burial and cremation disputes makes the High Court a more appropriate forum. Moreover, disputes will likely arise where not all parties are Māori and different cultural values will invoke both tikanga and the common law. Consent of all parties is unlikely in such a case, even if the Māori Land Court were the appropriate forum. Another concern was that if parties can choose between the two courts it may encourage “jurisdiction shopping” and result in a less clear process. Family lawyers suggested joint jurisdiction between the Family and Māori Land Courts in matters relating to a Māori burial dispute or tikanga-based issue. “The Māori Land Court is a repository of resources and knowledge of tikanga Māori, and has access to information regarding whānau, hapu and iwi records. The Māori Land Court has a larger pool of Māori judges than the Family Court.” The Family Court could refer the matter to the Māori Land Court to determine certain points, or both judges could sit on one bench and decide the case together.

Personal submissions

A majority of individual submitters supported Māori Land Court jurisdiction. Support was based on the level of respect for the Māori Land Court and that it operates from a Māori perspective. One submitter contended that Māori traditions relating to burial must be seen as a Taonga and as such must be subject to Treaty compliance requirements, and should therefore be determined in Māori Land Court alone. Opposition to Māori Land Court jurisdiction had a number of different bases. Some submitters noted that often there is a mixed culture relationship involved. Others were of the view that the same law should apply to all disputes. One submitter wrote that the Māori Land Court is not held in high regard in Northland. Another was concerned that the Māori Land Courts are so weighed down with land issues that they will take too much time to make a decision.

Q20 Do you support the option of giving the Family Court responsibility for dealing with disputes concerning memorialisation or the custody of ashes?

The majority of submitters were in favour of the Family Court having responsibility for memorialisation disputes. Of 95 submissions, 73 said yes, 14 said no and 8 qualified their answers.

Central government

In central government, the Office of Ethnic Affairs said was in favour of the proposal. Eight local government submitters also answered yes. The reasons given included the desire for a clearer legislative direction, and to avoid responsibility falling on the local authority cemetery. In addition, Tasman District Council noted that this type of dispute is very rare. Tauranga City Council submitted yes, so long as matters are resolved in a timely matter. Wanganui District Council submitted no, because it was of the view that Te Rūnanga disputes should be heard by the Māori Land Court. All four public health units submitted yes, with Public Health South noting that there is the potential for conflict in this area, even if it appears minor compared to burial disputes.

Funeral sector

There was also support from within the funeral sector. Twenty-six submitters answered yes, with the following reasons: it is a faster process, they are essentially family disputes, it is more accessible than the High Court, the Family Court is used to dealing with relational and cultural issues, it would be helpful to have an independent body to assist with disputes, and there is a need for clearly defined legal guidelines. Two submitters qualified their answers. One submitted that the executor rule should survive, and this process should only be used where there is no executor. There was some support for this view in the comments of another two submitters. Another submitted that before a coroner would be a better way to resolve such disputes. One submitter answered no.

Community organisations

The majority of community organisations were similarly in favour of the proposed jurisdiction. The reasons given mirrored those given for burial disputes being heard in the Family Court. The Ngāi Tahu Māori Law Centre supported the proposal and further noted that the same time sensitivities do not arise with memorialisation disputes. It also submitted that appropriate cases should be referred to the Māori Land Court. Two qualified their answer. The NZLS submitted

that this process should align with that recommended for burial decision. This view was supported by comments from other submitters. Public Issues Network Methodist Church preferred a Council of Elders made up of different community and judicial representatives to decide disputes.

Personal submissions

The majority of individuals were also in favour of Family Court jurisdiction. One submitted that the Māori Land Court should be used for Māori disputes, and another that the law must be capable of expressing tikanga in a Māori way. One submitted that the deceased's wishes should be honoured. 10 submitted against the jurisdiction, with some preferring such disputes to be resolved by following the will, through a clear legislative process, or by an appointed arbiter. One submitter was concerned that this process would place the decision making in the hands of lawyers, which allows the rich to prevail over those who cannot afford high powered lawyers.

Q21 Do you feel that scattering or burying human ashes in public places is problematic?

Central government and local authorities

Both central and local government submitters recognised the problems associated with scattering human ashes in public places. Some of the reasons given were: that it can cause offence; it is unacceptable for iwi; it is culturally unacceptable; it can result in a lack of official record, which can cause distress to family members; scattering ashes in public gardens can affect plants and soil; and that people may expect areas to remain unchanged after they scatter ashes there. A number of submitters said that it depends on the area where people want to scatter ashes. Others submitted that there were no problems in their own locality.

PHUs

Public health units noted the potential for offence, but also submitted that there are no public health issues with scattering ashes.

Iwi/Rūnanga Submitters

Both Iwi/Rūnanga submitters thought that scattering ashes is problematic. Te Rūnanga o Ngāi Tahu submitted that it is tapu to dispose of human remains in areas used for mahinga kai and recreation. Te Rūnanga Ngāti whātua considered it disturbing that there is currently no regulation of scattering ashes, without regard for the mauri of a place.

Funeral sector

The response from the funeral sector was mixed, with 15 submitting that it is not problematic because families tend to be aware of the sensitivities and proceed accordingly. Nine submitters did think that it is a problem and two thought that it depended on when and how scattering of ashes is done.

Community organisations

A majority of community organisations considered it to be a problem. Some of the reasons given were: there is currently little or no guidance for members of the public; it is insensitive to tikanga Māori, which treats human remains as tapu; scattering ashes can currently be done without regard for other human activities in the place, or for the mauri of a place; there is potential for environmental pollution; and it can cause offence to the public. Three submitters wrote that it depends on the place of scattering and another two did not consider it to be a problem. The Waitakere Indian Association submitted that it is essential that ashes of the dead person are immersed in a clean normally flowing water body like a river or sea.

Personal submissions

The response from individual submitters was also mixed. The majority did not think that scattering ashes is problematic. They noted that there are no health issues involved, it can be significant for the family's healing process, it should not cause offence when done discretely, it expresses a person's affinity with a certain place, ashes are harmless in small quantities, and individual liberty favours allowing people to choose what happens to their remains. A significant minority were of the view that scattering ashes can be problematic. They noted that ashes are human remains, scattering ashes in public spaces is culturally inappropriate, there is currently little guidance on the matter, and spreading ashes (which are tapu) desecrates a place and effectively closes it off to Māori for a time.

If so what are the most appropriate measures for dealing with this issue?

A variety of views were expressed. Some preferred a regulatory system, while others suggested that a less formal system would be more effective.

There was considerable support for a regulatory scheme involving bylaws and infringement mechanisms. One suggestion for regulating the practice of scattering ashes was for certain areas to be prohibited. Another was to require consent before scattering ashes, together with a guideline of factors to consider when deciding whether to grant consent. Another suggestion was to allow scattering of ashes only in certain designated places. One submitter suggested that there should be designated places in public cemeteries for scattering and other options for families, such as burial walls. Another suggested that Crown land managed by DOC may be an appropriate place for scattering ashes. Finally, one submitter suggested that ash scattering could be controlled through an RMA process or according to the nuisance provisions of the Health Act.

There were also a considerable number of submitters who favoured a less formal regime, because any ash policy would be too difficult to effectively enforce. Instead, they preferred a set of guidelines.

However, whether submitters preferred the introduction of regulations or guidelines, there was a general consensus that public education must accompany any ash scattering policy. Some suggested a publicised educative campaign and an informative website. Others suggested that information could be available to families at crematoria or from funeral service providers.

Some submitters preferred a nationally consistent approach to regulation, while others preferred an approach that is specific to localities. A more localised approach was said to take account of the different demographics of different areas. Some submitters considered that this was the responsibility of local councils, while others submitted that people should work together with local authorities to address the issue.

A number of submissions highlighted the importance of consulting with tangata whenua when setting any guidelines or regulations on ash scattering. Also, one submission noted that provision ought to be made for those for whom it is culturally significant to disperse ashes in flowing water.

The Office of Ethnic Affairs submitted that any regulatory framework should take into account the needs of cultural groups. Auckland Regional Public Health Service agreed it would be appropriate for manawhenua to ascertain permitted and restricted areas. Auckland Council also agreed, adding that it is likely the only public places where they would designate this as a permitted activity would be in specified locations in cemeteries.

Auckland Regional Public Health Service submitted that consultation with local iwi and hapu was an effective way to avoid cultural offence, and noted that consultation should be accessible to the public, with some sort of formal permission from iwi. Auckland Council commented that in Auckland there are a large number of iwi who may have interest in a particular area, and it can be difficult for the public to know who are the appropriate iwi or hapu to consult with, so local authorities should be required to consult with their local iwi or hapu to formally gain permission or have restrictions placed on scattering or burying ashes in public locations.

Disinterment

The Auckland Regional Public Health Service submitted that all disinterment applications should be handled through the Family Court to facilitate agreement.

The Chief Judge of the Māori Land Court submitted that jurisdiction to decide disinterment applications where the deceased is buried in an urupā should rest with the Māori Land Court because it has jurisdiction relating to the creation, administration and legal protection of urupā. The Court wanted to highlight “the need to consider the potential for conflict arising in a disinterment application made in relation to an urupā between the trustees or kaitiaki of the urupā and the person or people with the right to make decisions about the body. Both parties need a right to be heard on the issue”.

The Department of Internal Affairs’ main concern is that if the proposed reforms led to a relaxing of the controls on disinterment, the registrar may not be informed in all cases of disinterment.

A number of local councils submitted that the disinterment process should continue to be dealt with by MOH. LGNZ submitted that MOH has the expertise and processes in place to deal with these complex issues and that it would be inefficient for local authorities to resource. The Ruapehu District Council noted that in practice the environmental health officers at Councils

are involved, but that leadership should remain with MOH. It also pointed out that there are a small number of disinterments nationwide, meaning there is little sense in each local authority developing capability. Auckland Council noted that the involvement of the courts in disinterment requests would provide a level of transparency and consistency for the parties. It added that an error on the part of cemetery staff may be involved in the requirement for a disinterment so it would not be appropriate to have the cemetery manager approving the licence.

Auckland Council also submitted that if the Family Court becomes the forum in which disputes about burials, cremations and memorialisation are heard, they should also have oversight of disinterment applications. Community and Public Health made the same point.