

Response by

Hamilton City Council Staff

MINISTRY OF HEALTH'S CONSULTATION DOCUMENT ON DEATH, FUNERALS, BURIAL AND CREMATION - REVIEW OF THE BURIAL AND CREMATION ACT 1964 AND RELATED LEGISLATION

30 October 2020

It should be noted that the following response is from staff at Hamilton City Council and does not necessarily represent the views of the Council itself.

1.0 SUMMARY OF KEY POINTS

- 1.1 Support the overall intent and direction of the MOH's consultation document 'Death, Funerals, Burial and Cremation: A Review of the Burial and Cremation Act 1964 and Related Legislation'.
- 1.2 Our response also supports the following key points made in SOLGM's submission - some additional comments from HCC staff are highlighted in black.
- 1.3 *We propose that an overall strategy for death, funerals, burials and cremations be developed which includes Te Tiriti o Waitangi interests and that it encompasses the following:*
 - *Medical control over death certification, prevention of the spread of disease, correct disposal of implants and prosthetics.*
 - *A professional funeral sector which is regulated.*
 - *National register for burials, cremations, and future body disposal methods.*
 - *Land for interments (cemeteries, urupā and burial grounds): including sustainable use of resources.*
 - *Types of interments (bodies, ashes, placenta).*
 - *Cemetery management.*
 - *Disinterments.*
 - *Cremations: including sustainable use of resources.*
- 1.4 *The medical sector has an important role in death, and we support having its continued expertise for death certification, management of disease control and the correct disposal of implants and prosthetics.*
- 1.5 *We support regulation of funeral directors to improve the economic, social and cultural well-being for communities. The sector is currently unregulated and we agree with the Law Commission report that consumer protections are inadequate to protect against service and pricing irregularities. Service failures can have large effects e.g. incorrect labelling of bodies resulting in incorrect people being buried. Bill-shock adversely affects economic well-being, and in particular the financially vulnerable. Therefore, we support full disclosure of funeral prices.*
- 1.6 *We propose there be a national register to record burials, cremations, and future body disposal*

methods to assist people find graves or other remains of relatives easily. A national register will streamline the process in a way that befits 21st century technology and consumer expectations. Our detailed comments about a national register support this.

- 1.7 *We propose that there be a clear legal definition for all burial land, which includes cemeteries, urupa, and trustee burial grounds. Cemeteries are legally confused with parks and other reserves and we ask that it be delineated which will assist with cemetery planning and sustainable use of land within an overall framework.*
- 1.8 *We ask that the strategic framework include interment of bodies, ashes, and placenta. Interment is required for all of these remains and national guidance is welcomed. In practice, where private or trustee interment land fails or becomes disputed over time, local authorities become the underwriter for financial help and resolving contention. We propose, therefore, that going forward, local authorities be the only entities responsible for interments.*
- 1.9 *We ask that for ash interments, there be some national provisions, however, local authorities need to be able to consult with their communities and create their own local policies and bylaws to regulate ash disposal where there are issues. Ash scattering would be an unlikely matter to be regulated under the Resource Management Act because of the low physical impact on land or water, and the high administrative costs. We do not support the use of the RMA for ash disposal decisions. Although RMA regulation is not required, the framework does need to provide guidance on this issue.*
- 1.10 *Placenta disposal is subject to cultural concerns whereby land can be deemed tapu where placenta are buried, deeming it unsuitable for any other uses. Therefore, we ask that interment of placenta be included in the framework to assist with Te Tiriti o Waitangi interests and sustainable use of land.*
- 1.11 *With regard to burial interments, there are resourcing issues with some trustee burial grounds, and urupa. Financial difficulties arise, particularly once a site is full and no longer earns income from burials. The burial costs remain in perpetuity. We do not support that local authorities take responsibility for these sites without governmental financial support because of the long-term service demands on council resources. There should be other funding streams available for notable headstones and cemetery fixtures that fall under the New Zealand Heritage List and Heritage New Zealand Act 2014.*
- 1.12 *Our view is that the current local government facilities for cemeteries are providing a safe, satisfactory service. Costs are managed through rating income, burial revenue, and volunteers who maintain monuments and graves. We do not support a national imposition of minimum standards for maintenance of monuments or graves. Minimum standards would create significant costs for local authorities which they cannot afford without governmental or other funding stream.*
- 1.13 *We support the proposal that local authorities could approve crematoria under existing building and environmental legislation without the duplicate need of approval from the MOH.*
- 1.14 *Finally, we take this opportunity to support our communities to transition to 21st century living. We have greater cultural diversity than ever before and we support improving society's interconnectedness and social interactions. Our submission supports change for our communities to transition to low emissions and low waste through policy changes that provide for sustainable body disposal.*

2.0 INTRODUCTION

- 2.1 Staff from Hamilton City Council (HCC) support the overall intent and direction of the Ministry of Health's consultation document **Death, Funerals, Burial and Cremation: A Review of the Burial and Cremation Act 1964 and Related Legislation** (referred to as the Consultation Document).
- 2.2 Our response supports the submission made by SOLGM, as outlined through the following headings in the Consultation Document.

3.0 SECTION A: DEATH CERTIFICATION AND AUDITING

- 3.1 This response supports the submission made by SOLGM to the Consultation Document.
- 3.2 We agree and with and support overall, SOLGM's position on the following questions:
- Should there be a general duty to treat any dead body or human remains with respect?
 - Do you agree any breach should be an offence?
 - Do you agree there should be a requirement that the person who has the duty to dispose of the body must do without undue delay?
 - Should an offence be punishable?
- 3.3 Those in the industry work hard to ensure New Zealand's dead are handled with the care and dignity they deserve. The Burial and Cremation Act should provide a legal structure that enforces this, making those in the industry accountable. We welcome SOLGM's suggestion that the wording "*without undue delay*" should be used instead of the proposed wording of "*within a reasonable time*" to reflect the circumstances that occur with family disputes over funeral arrangements.
- 3.4 There should be clearer criteria for disposal of the deceased where there is no executor or family - referring to what is currently provided in the current Burial and Cremation Act 1964 for pauper's burials. A council's obligation to fund paupers' burials would seem out of place given the provision of the WINZ funeral grant.
- 3.5 As William E Gladstone said: "*Show me the manner in which a nation or a community cares for its dead and I will measure with mathematical exactness the tender sympathies of its people, their respect for the law of the land and their loyalty to high ideals*".

4.0 SECTION B: REGULATION OF THE FUNERAL SERVICES SECTOR

- 4.1 We support SOLGM's position in this area.
- 4.2 There appears to be no checks or processes to determine if a funeral director is suitably qualified for the role i.e. there is no mandate that requires them to undergo training or character/background checks (police vetting). This is unusual given that most services who deal with the care and wellbeing of people at their most vulnerable, are required to hold a qualification and membership to a professional monitoring organisation.
- 4.3 We support the New Zealand Law Commission's proposed Option 4 i.e. that people providing funeral services must be registered. The 3-year renewal of registration would ensure consistency of standards and practices and consumer protection.

5.0 SECTION C: BURIAL AND CEMETERY MANAGEMENT

- 5.1 **Issues with the Current System - Misaligned with Modern Legislation**
- 5.2 We support SOLGM's analysis of the preferred options for a new framework in cemetery management.
- 5.3 On 22 November 2013, HCC staff made a submission (refer [here](#) and **Appendix 1**) to the New Zealand Law Commission's Issues Paper 'The Legal Framework for Burial and Cremation in New Zealand - A First Principles Review'.
- 5.4 The HCC staff submission outlined that the Review of the Burial and Cremation Act 1964 should be aligned with modern legislation. The reasons are well documented in Section C2 of the current Consultation Document.
- 5.5 Alignment with the Local Government Act 2002 will ensure greater public consultation as well as alignment with an area's community's needs. Alignment with the Resource Management Act reflects the greater focus on land management and sustainability and moves away from outdated views on

the health risk of dead people.

- 5.6 As with previous HCC staff submissions, our concern remains about adequate resourcing if the regulatory and compliance role shift from central to local government. Smaller local authorities with departments that cover multiple roles may not have the expertise or resource to cover the proposed additional responsibility. An option would be to sit the regulatory compliance function role regionally and share the cost such as in LASS agreements that currently exist.
- 5.7 **Ownership of Burial Rights of the Plot**
- 5.8 The issue of ownership of burial plots, once the original purchaser has passed away, needs to be reviewed. Hamilton Park Cemetery has invested in considerable resource for legal advice in trying to mitigate risk where there is acrimony in families, who perceive that HCC has some sort of legal obligation to sort family disagreements over ownership.
- 5.9 **Lack of Recognition of Diverse Needs/Approval of New Cemeteries**
- 5.10 The onus should be on public cemeteries to provide for different sectors of the community, through legislative reform instead of introduction of more cemeteries, which are expensive to operate and sustain long-term. Inevitably councils will be called on to deal with conflicts and mismanagement, so why go there in the first place?
- 5.11 Submissions from local government to the New Zealand Law Commission's 2013 consultation paper 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. A better option would be to legislate in the Burial and Cremation Act to provide for a wider sector and to provide clearer criteria for developing denominational and natural burials.
- 5.12 **The Cost of Burial in Perpetuity - An Additional Problem to Those Identified**
- 5.13 In keeping with sustainable principles, we support SOLGM's view of future flexibility in short-term tenure or repurposing of cemetery land. There are many examples throughout the world where land shortage in countries has necessitated the need for a tenure system. Having tenure on ash burials is common in Australia, and New Zealand should consider tenure on casket burials. One option could be to set the tenure at 70 years, at which time the plot could be on-sold to descendants. This would generate income for maintenance and upkeep.
- 5.14 **New Burial and Cemetery Management Framework**
- 5.15 We support SOLGM's view that under Options 2 and 3 (Implementation of a New Framework), the costs to local government will be substantial and the burden will fall on ratepayers.
- 5.16 If there was a change in regulatory requirements for local government, the function and role could sit under a LASS agreement, covering all councils within the region. This would assist smaller councils who are concerned with not having expertise/experience for application for a new crematorium, disinterment etc.

6.0 SECTION D: CREMATION REGULATIONS AND THE MEDICAL REFEREE SYSTEM

6.1 Medical Referee System

- 6.2 The current system ensures that use of an independent local medical professional audit means that the cremation paperwork has been completed correctly before the person is cremated. The proposed reforms appear to put more of the responsibility onto the crematorium operator. Crematorium staff are not qualified to ascertain if the medical referee is competent, other than to annually check the Practising Certificate.
- 6.3 We agree with the current issues outlined, particularly that medical referees work in isolation and don't receive training. If the medical referee system was removed, the Coroners Act will provide a greater level of safety before cremation takes place.

6.4 **Dealing with Ashes and Lack of Clarity to Hold and Dispose of Ashes**

6.5 There should be guidance or a consenting process to dispose of ashes in certain places and possibly infringements for those who dispose of ashes in parks and reserves, iwi significant sites or waterways.

6.6 There was considerable support for a regulatory scheme involving bylaws and infringement mechanisms in the New Zealand Law Commission's 2013 consultation paper. One suggestion for regulating the practice of scattering ashes was for certain areas to be prohibited. Another way was to require consent before scattering ashes, together with a guideline of factors to consider when deciding whether to grant consent.

6.7 A minimum time for unclaimed ashes would be very useful, as would a national form to record action. Funeral directors vary in how long they keep the ashes. Most that HCC staff deal with keep them for longer than would seem necessary, taking up space. We are of the view that 5-10 years is a reasonable period to hold ashes, and that all practicable steps have been taken to contact family before disposing of them. In addition, ashes should be disposed of at a cemetery and records kept.

6.8 **Duplicate Approvals Required to Establish a New Crematorium**

6.9 We agree that local authorities can approve crematoria without the duplicate need of approval from the Ministry of Health. We have experienced the duplication approval process between the Ministry of Health and regional authorities to build or modify a crematorium. Currently, there is no provision for them to notify new applications or to work more cohesively with their processing.

7.0 **SECTION E: NEW METHODS OF BODY DISPOSAL**

7.1 We are aware of and have seen presentations on resomation process (alkaline hydrolysis) and note that this process is being used in Australia. It will be a big shift in mindset before New Zealanders will accept this method.

7.2 Forensic research areas are already operating in Australia and allow people to donate their body so that the decomposition process can be studied.

7.3 We agree with any introduction of new methods where the resource consent should apply.

7.4 We agree that future-proofing for introduction of new methods should be accommodated in the law reform, as it is expected we will move away from use of fossil fuels in the future.

7.5 We agree with Option 2 that approval of new methods of disposal should be based on safety, dignity of the deceased and protecting the environment.

7.6 **Final Note**

7.7 The Department of Internal Affairs would be better equipped to maintain burial records in a new centralised framework. This would cover off on private crematorium responsibilities for record-keeping. It would provide for New Zealand-wide record search, rather than cemetery-specific to find people and their burial place. At present, if you don't know the cemetery the person is buried in, it is difficult to find their record.

8.0 FURTHER INFORMATION AND OPPORTUNITY TO DISCUSS OUR RESPONSE

- 8.1 Should the Ministry of Health require clarification of the above points, or additional information, please contact Michelle Rivers (Cemeteries and Crematorium Manager), phone 07 856 9604; 021 248 7438; or email michelle.rivers@hcc.govt.nz in the first instance.
- 8.2 Hamilton City Council staff would welcome the opportunity to discuss the content of our response with the Ministry of Health in more detail.

Yours faithfully



Richard Briggs
CHIEF EXECUTIVE

Note: The information required by the Ministry of Health as outlined in the ‘Submitter Profile’ form is provided below.

- **Name:** Michelle Rivers (Cemeteries and Crematorium Manager).
- **Email address/contact details:** michelle.rivers@hcc.govt.nz; phone 07 856 9604; 021 248 7438.
- **Organisation:** Hamilton City Council.
- **Are you a member of the funeral service sector?** Yes. Members of FDANZ, ACCA and NZCCC.
- **If yes, please specify in what capacity:** Corporate members.
- **Are you responding on behalf of a local or regional council?** Yes.
- **If yes, please specify which council:** Hamilton City Council.
- **Are you responding on behalf of a veterans’ organisation?** No.
- **If yes, please specify which organisation:** Not applicable.
- **Do you identify as Māori, Pacific, Asian, Pākehā/European:** Not applicable – organisational response.
- **Are you a member of the disabled community?** HCC works collaboratively with DPA (Disabled Persons Assembly); Enabling Good Lives; the Disability Community at large; and Local Disability Service Providers. We also undertake regular **Be. Lab** (refer [here](#)) accessibility audits of HCC facilities.

APPENDIX 1

22 November 2013

Burial Review
New Zealand Law Commission
PO Box 2590
Wellington 6011, DX SP 23534

Dear Sir/Madam

THE LEGAL FRAMEWORK FOR BURIAL AND CREMATION IN NEW ZEALAND – A FIRST PRINCIPLES REVIEW

1.0 INTRODUCTION

1.1 Hamilton City Council staff welcome the opportunity to make a submission to the New Zealand Law Commission's Issues Paper 'The Legal Framework for Burial and Cremation in New Zealand- A First Principles Review'.

1.2 **It should be noted that the following comments are from staff at Hamilton City Council (HCC), and do not necessarily represent the views of the Council itself.**

2.0 SPECIFIC COMMENTS: PART 2: CEMETERY AND CREMATORIA SECTOR

2.1 **Question 1: Would you support opening the provision of cemeteries up to independent providers, such as those providing cemeteries for eco or natural burials, complementing the public cemeteries provided by local authorities?**

2.1.1 HCC staff would support this provision only if it is in response to gaps in provision by councils in the Waikato Region.

2.1.2 A better option would be to legislate local government to provide for the wider sector and provide clearer criteria for developing denominational and natural burials. As the current Burial and Cremation Act 1964 is ambiguous and open to interpretation, currently some cemeteries may be unsure of how to manage this.

2.1.3 Local government has been providing cemeteries for their communities for over 100 years and have accumulated extensive expertise, experience, resources and sector understanding.

2.1.4 Local government tends to be more scrutinised by the public/ratepayer, which by default ensures delivery of standards and public safety, complaints resolution etc.

2.1.5 Inevitably local government will be called on to resolve problems and conflicts. This already happens across some areas where HCC interfaces with private providers/stakeholders.

- 2.1.6 On occasions, we have seen conflict arise between traditional members of the denominational group and the younger generation challenging practices. As per our Memorandum of Understanding for denominational groups, we will mediate between the parties and as a last resort make the final decision. Therefore, what recourse will families have when conflicts or issues arise with independent providers if local authorities are not involved?
- 2.1.7 If independent providers are allowed, there should be a restriction on how many cemeteries there are per geographic area. We have concerns that there will be too many, and spreading of volumes across many sites will pose risk to financial viability.
- 2.1.8 If New Zealand adds to the amount of cemeteries it has, where will the resources come from to monitor them all, ensure that minimum standards are met, and meet adequate service provision and complaints with proposed regulations as outlined?
- 2.1.9 Strengthening the resource consent process through development of National Environmental Standards would seem a sensible option.
- 2.2 **Question 2: If so, do you think those establishing independent cemeteries would be limited to registered charities? Should independent cemeteries be allowed to make a profit?**
- 2.2.1 We do not support this suggestion. The notion of “profit” moves away from the ethos of providing for the common good and wellbeing of the community.
- 2.2.2 While we do not believe that cemeteries should operate from a commercial model, we are of the view that it is viable to operate from a 100% cost recoverable model.
- 2.2.3 If independent cemeteries are supported, then we agree that these should be limited to registered charities. This would mean that they could then apply for donations, grants and use this funding stream for development and improvements.
- 2.2.4 Maintenance/upkeep/equipment for cemeteries is costly due to land prices, the cost of land, ongoing maintenance and staff resource. Fees would need to be set accordingly to meet costs which, due to economies of scale, some smaller cemeteries may struggle with.
- 2.2.5 To cover costs, small private cemeteries may prove to be more expensive than those operated by some councils, depending on the level of activity. Equity of access may also prove to be a stumbling block for potential users.
- 2.2.6 We agree with Section 7.55 of the Issues Paper, mandating that cemetery managers must prepare independently audited financial statements that demonstrate perpetual maintenance cover when a cemetery is closed.
- 2.2.7 The safeguard in Section 7.55 of the Issues Paper is required, otherwise (as already occurs) local authorities end up being called on to take over a cemetery if things go wrong.

2.3 **Question 3: Should it be lawful for someone to be buried on private land, provided the necessary consents have been obtained?**

2.3.1 We do not support this suggestion and believe it will be problematic in the long term e.g. access to family if the farm is sold out of the family, monitoring compliance with regulations etc.

2.3.2 We have concerns that some families may use their influence for approval. A process would need to be consistent, transparent and overseen by a regional council rather than a district or city council.

2.3.3 Provision under district/regional plans varies between areas, as do resources for monitoring, enforcement etc. Therefore, how will national consistency be achieved?

2.3.4 How would regulated authorities safeguard against and monitor criminal activity?

2.3.5 What measures will be in place to ensure that burial records are correct, kept, maintained and publicly available?

2.3.6 As there are no restrictions for ashes, one option available for farming families is to bury them on their own land.

2.4 **Question 4: Where practically possible, should local authorities be required to provide separate burial areas within public cemeteries for groups within specific religious or culture burial requirements?**

2.4.1 We agree that the onus should be on local authority public cemeteries to provide for different sectors of the community, which would make more sense than allowing the introduction of more cemeteries.

2.4.2 The option for groups to pre-purchase would assist local government cemeteries to recover maintenance costs. The onus would then be on the group to put a certain proportion into the reserve to cover future maintenance.

2.4.3 Responsibility for health and safety would need to be worked out for sector groups, given that local government cemeteries would be the 'Principal' and therefore liable under the Health and Safety in Employment Act 1992.

2.4.4 Setting specific criteria around land capacity is fair and helpful.

2.5 **Question 5: Do you think the law should establish a minimum standard for the maintenance of cemeteries?**

2.5.1 We support this reform and the proposal for clearer statutory defaults.

2.5.2 It would mean less detail would be required in council bylaws, or even the necessity to have one. It would be easier for cemeteries to gain stakeholder compliance and be seen as national requirement and "not just another set of rules made up by Council".

2.5.3 It would also ensure consistency across the industry and clarity to customers and stakeholders in relation to compliance.

2.5.4 Who would monitor and enforce, and what would happen if a cemetery couldn't or wouldn't meet the minimum standard?

2.6 Question 6: Do you think there should be stronger legal provisions for the protection of historic cemeteries and grave sites?

- 2.6.1 In principle we support reform, particularly as the cost of restoration work is extensive and continual.
- 2.6.2 The onus should not just be on local government to provide funding. There should also be other funding streams available for notable headstones and cemetery fixtures that come under the jurisdiction of the Historic Places Act 1993.
- 2.6.3 More support and funding should be made available to the Historic Cemeteries Conservation Trust of New Zealand. This Trust (or similar) could support the sector to set up and forge partnerships with groups such as 'Friends of the Cemetery'. This initiative would assist in raising funds for restoration work and coordinating expertise.
- 2.6.4 HCC's cemetery has commissioned a conservation plan for our Council's heritage cemeteries. This has assisted in understanding the importance of our asset and the best way to manage it in the future.
- 2.6.5 In reality, local government's obligation under the Health and Safety in Employment Act 1992 takes precedent (the same scenario as in the United Kingdom). HCC, as site Principal, can receive significant fines under the Health and Safety in Employment Act 1992 if, for instance, a headstone were to fall on someone.

2.7 Question 7: Do you think those who operate crematoria should be licensed? Please give reasons.

- 2.7.1 HCC supports this reform, which is well overdue. The regulatory framework covering inspection and audit processes for the crematoria would support public assurance as suggested.
- 2.7.2 However, it is important that there is national consistency and available resources to enable monitoring to occur.
- 2.7.3 A number of staff in the industry have noted that licensing of operators would reduce the possibility of "cowboys". By working in the industry we hear many stories about some practices that go on in private crematoria that are of concern.
- 2.7.4 The licence process will also support national consistency in standards and safety. Setting a relicence period would ensure standards are upheld and ensure ongoing monitoring.
- 2.7.5 Training and qualifications to operate should be required. Primary Industry Training Organisations are already working with the sector to develop these qualifications.
- 2.7.6 This would be very helpful for crematoria. It would demonstrate their observance and compliance with resource conditions and national standards, particularly emissions, which is the area most often challenged by supporters of green burials. Environmental testing as part of resource conditions has tended to prove that mercury and other emissions is less in cremation than in burials.

2.8 Question 8: Do you think resource consents should be required for all new crematoria and should they be publicly notified under the RMA?

2.8.1 We support public notification for all new crematoria. The public have the right to know who is 'setting up shop next door' and how this might affect their property investment.

2.8.2 It provides for transparency and confidence knowing that regulatory monitoring is stringent. The proposed development of National Environmental Standards would support this, and means action could be taken with resource consent breaches.

2.9 Question 9: Do you think there should be stronger regulatory controls over the operation of crematoria and the handling of human ashes by crematoria?

2.9.1 We agree. Most Regulatory standards suggested in Section 9.19 of the Issues Paper would be workable and reasonable. However, the standard "to remove as far as possible all remains" would need to be quantified. In some American states they are too stringent. We wouldn't like to see their approach implemented in New Zealand as it is not necessary.

2.9.2 As an operator of a crematoria, we want the public to have a high level of trust in what we do. As staff whose families are sometimes users of crematoria services, we also want this for ourselves.

2.9.3 We support the notion of a Code of Practice for the operation of crematoria.

2.9.4 A set minimum time for unclaimed ashes would be very useful, as would a national form to record action. Funeral Directors vary in how long they keep the ashes, with most that we deal with keeping them for longer than would seem necessary and taking up space. Our view is that 5-10 years is a reasonable period to hold ashes, and that all practicable steps have been taken to contact family before disposing of the ashes.

2.9.5 In addition, the ashes should be disposed of at a cemetery and records kept. In HCC's case, we provide a special garden for this and charge Funeral Directors a minimal fee.

2.10 Question 10: Do you think there is a problem with the availability of cremation service in any particular area of New Zealand?

2.10.1 There appears to be adequate provision in the Waikato Region.

3.0 SPECIFIC COMMENTS: PART 3: FUNERAL SERVICES SECTOR

3.1 Question 15: 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 crematoria?

3.1.1 This appears to be a more workable option than current provisions under the Burial and Cremation Act 1964 i.e. Section 49 'Burial and cremation of poor persons'.

3.1.2 If introduced, the intent should be in response to hardship and cover some of the requirements in Section 49 of the Burial and Cremation Act 1964.

3.1.3 Robust and clear criteria/guidelines need to be developed and implemented. We suggest the following:

- A straight transfer from hospital to cemetery - at the most a 15-30 minute delivery/farewell service at the cemetery.
 - The person's family qualifies for a Work and Income grant, with this being signed over to the cemetery. This would ensure that cemeteries are not caught with outstanding debt through an obligation to meet their civic duty.
 - "Providing a higher level of service" would technically mean that cemeteries would fall under and be required to comply with all the industry regulations for Funeral Directors, as proposed in questions 12 and 13 of this section.
 - Cemeteries could contract out to Funeral Directors as proposed. However, we believe that encouragement should be given for Funeral Directors to provide a basic low cost option. There are already some that are meeting this market and doing it very well. Families who use their services are very satisfied.
- 3.1.4 Overall, we feel that cemeteries should stick to their core business, and not try to be all things to all people.
- 3.1.5 From an operational point of view, the cemetery would require extra resources, up skilling staff, amenities, sanitation measures etc to meet these costs. Charges would need to be set accordingly. It may be more cost-effective for a Funeral Director to provide this based on economies of scale etc.

4.0 LOCAL GOVERNMENT OVERVIEW QUESTIONS

4.1 High Level Questions: Questions 1-7 (please refer above)

4.2 7. Do you agree that denominational burial grounds should be transitioned to the framework for independent cemeteries?

- 4.2.1 We agree. This should apply to all new grounds and those currently provided by local authorities who want to become independent.
- 4.2.2 Inevitably local authorities feel civically obligated to step in and help out when a stakeholder or important public service fails and would so for cemeteries. Having a robust framework and supporting regulation may assist in reducing the likelihood of this occurring.
- 4.2.3 We agree that financial risk would reduce with the option outlined in Section 7.31 of the Issues Paper. With the initial pre-purchase of a certain proportion of plots, the remaining plots sales would support future maintenance. Currently, cemeteries outlay for a new area when a denominational area is approved. However, the cemetery may not see any recompense through plot sales for some years.
- 4.2.4 If the option to contract was enacted, a number of issues would need to be addressed e.g. who is responsible as the "Principal" under health and safety legislation; how would the local authority deal with matters if the contracted group failed to meet National Environmental Standards; issues around minimum standards; the cemeteries consent conditions etc. All such issues would need to be looked at to ensure that the local authority did not end up carrying all the risk.

4.3 **8. Do you agree that the management of community cemeteries should be overseen by local authorities rather than by central government, including giving them the power to appoint trustees?**

4.3.1 We agree. The roles outlined for regional councils and local authorities make sense. This already fits within their core and regulatory functions.

4.3.2 Local authorities already work with a range of charitable and trustee run organisations. Councils, by their nature, work collaboratively with the community. Overseeing management of community cemeteries would be an extension of this.

4.3.3 Given that most councils have been in the business of providing cemeteries for over 100 years, they already have an extensive understanding of the business and relevant expertise.

4.3.4 As outlined in Section 7.25 of the Issues Paper, it would enhance opportunities for new cemeteries and local authorities to partner in the provision of denominational cemeteries.

4.4 **9. Do you agree that the underlying title of community cemeteries should be vested in either the local authority or the registered charitable trust appointed to manage the cemetery?**

4.4.1 Our preference would be for the underlying title to be vested with the local authority. The local authority inevitably becomes involved when problems arise. Therefore, if the local authority was involved at the onset, it could provide oversight and support early on in the process.

4.4.2 It makes sense to have a management framework for cemeteries to mitigate the very real risks outlined, and in particular financial failure and environmental control.

4.5 **10. Do you agree that the Environment Court rather than the Ministry of Health should be able to approve the closure of cemeteries or burial grounds or a change in use of land?**

4.5.1 Given that the aim is to set up a National Environmental Standard which will outline requirements, this would seem a practical approach. It also reflects the move away from viewing cemeteries as a public health matter and puts them more in-line with land management and environmental standards, which is far more relevant today.

4.5.2 It also fits in with District and Regional Plans in terms of decision-making around land provision for the likes of public use etc.

4.6 **11. Should the local authority have power to remove unsafe monuments within public cemeteries and override heritage protection provisions in the Historic Places Act?**

4.6.1 Our understanding is that as a 'Principal' under the Health and Safety in Employment Act 1992, the local authority must take action. This would fit with Section 7.81 of the Issues Paper that cemetery managers could continue to remove where this applied.

4.6.2 The provisions outlined in Section 7.80 of the Issues Paper seem reasonable and workable.

4.6.3 Given that some cemeteries would struggle to fund restoration work, alternative funds should be available, such as from the various cultural and heritage areas, the Department of Internal Affairs, lotteries grants etc.

4.7 **12. What matters should be included as statutory default provisions for the sale of a burial plot?**

4.7.1 We feel that most of the current provisions are adequate and should remain in force.

4.7.2 After 60 years, unless a written request is received to extend, a plot can be on-sold by council without challenge.

4.7.3 Families can sell a plot back to the cemetery, but are refunded at price they originally paid.

4.7.4 Exclusive rights of burial may be transferred to close relatives, but not on-sold for profit.

4.7.5 HCC staff suggest:

- Provision at 100 years to reuse the land for a new burial.
- Where descendants are identified, they could have the first option to purchase the plot for burial.

4.8 **13. What matters should be addressed in a model contract for the sale of a plot?**

4.8.1 We agree with the recommendations and add comments as follows:

- The right to undisturbed interment. However, we would make it 100 years and not perpetual.
- As most graves are double depth, a default provision contract in Section 7.95 of the Issues Paper would be helpful for a second interment. Consideration should also be given to include defacto and civil union. Greater clarification is required for blended families, second marriages etc.
- We have a situation, for example, where the second wife has burial rights over a second interment for the grave of the first wife. It's not unusual in these situations for relationships between the second spouse and their deceased spouse's children to be in contention. It can get very complicated, and at times we have almost felt it necessary to seek legal advice.
- Descendants have responsibility to maintain monuments, unless a maintenance fee is paid to cemetery.
- Descendants have a right to consent to additional interments. However, there is a need for some clarification around disputes in the likes of blended families, second marriages etc.

4.8.2 Our view is that model contract outlined in Sections 7.94, 7.95, and 7.96 of the Issues Paper are relevant and workable.

4.8.3 In addition, we would suggest the following:

- Ownership of burial rights of the plot.
- Request that relinquishment or transfer of burial rights is required in writing. Clarification is also required of which family members are able to gain permissions.
- Period of perpetuity and right to renew.

- Maintenance responsibilities from both parties.
- Memorabilia requirements.
- Construction/standards/dimensions for headstones.
- Responsibility for headstone upkeep.
- No dogs in the cemetery.

4.9 **14. Are the current provisions adequate to address the desecration of graves?**

4.9.1 Yes, but it should be an offence and a penalty outlined. Digging up a person/grave under the current Burial and Cremation Act 1964 only results in a fine of \$400 or imprisonment for up to three months, which in principle may not be much of a deterrent.

4.9.2 We would like to see more stringent measure/penalties around vandalism to headstones. While it is hard to catch culprits, it is also very distressing for those affected when an historic headstone is damaged.

4.10 **15. What information and record keeping obligations do you consider should apply to cemetery managers?**

4.10.1 Make all information/records fully accessible to public.

4.10.2 Correct information is critical i.e.name, date of death, burial/cremation location and date.

4.10.3 Location information is also important i.e. location map/plot plan.

4.10.4 Reserve plot information should be kept confidential, unless permission is given by the family.

4.10.5 Request by genealogical societies for bulk information for own resources. A cemetery should be able to charge for the work it takes to provide information.

4.10.6 No charge should be made for individual information requests.

4.11 **Notes of Interest**

4.11.1 Section 43 of the Resource Management Act 1991 allows for development and implementation of a National Standard, which would provide national consistency on matters such as burial depth, burial on private land and assessment criteria for establishment of new cemeteries.

4.11.2 Section 6 of the Issues Paper, particularly pages 93 to 98 looks at land classification and the transfer of land.

4.11.3 In Section 7.19 of the Issues Paper, reference to simplify the law in relation to land used for burial.

4.11.4 Section 7.21 of the Issues Paper. Update Certificate of Title to ensure the cemetery status of the land is adequately identified.

4.11.5 Section 7.27 of the Issues Paper. Local authorities should be required to consider and review the reserve status of their cemeteries.

- 4.11.6 Section 7.69 of the Issues Paper. Resource consent granted for burial on private land, 'Burial' on the Certificate of Title and on the Land information Memorandum. Covenant for non-disturbance of the area of land used for burial under Section 108 (2) (d).
- 4.11.7 Section 7.103 of the Issues Paper. Covers concerns with bylaw duplication across the industry and local authorities developing these in response to insufficient detail in statute.
- 4.11.8 Section 7.104 of the Issues Paper. Local authority response to appropriate scope of bylaw making powers. Councils are empowered through the Local Government Act 2002 to enact bylaws, while the Burial and Cremation Act 1964 empowers councils to address specific issues. The Issues Paper has not identified which aspects of the Burial and Cremation Act 1964 are being proposed to be removed from a council's bylaw making powers, we are therefore unable to provide specific comments.
- 4.11.9 Please also note that:
- Each council would need to address the unique nature of its cemeteries; therefore full consistency throughout the country may not be achievable or feasible.

5.0 FURTHER INFORMATION

- 5.1 Should the New Zealand Law Commission require clarification of the points raised in this submission, or additional information, please contact Michelle Rivers (Cemeteries and Crematorium Manager) on 07 856 9604, email michelle.rivers@hcc.govt.nz in the first instance.

Yours faithfully



Barry Harris
CHIEF EXECUTIVE