



## Review of Burial & Cremation Law

The Law Commission is reviewing the law related to burial and cremation, and is seeking public feedback on matters including:

- the provision of cemeteries and crematoria
- regulation of the funeral sector; and
- decision-making about death and burial.

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Until faced with the task of arranging a burial or cremation, few of us are likely to be aware of the laws and regulations that control burial and cremation in New Zealand—but these laws eventually affect us all.

Apart from a number of small amendments, the Burial and Cremation Act 1964 has remained substantially unchanged since it was enacted. Many aspects of New Zealand’s burial law reflect even older legislation, dating back to the nineteenth century. This is the first time our burial and cremation law has been systematically reviewed to assess whether it is fit for purpose in modern New Zealand, and whether it meets public expectations. The Law Commission is seeking the public’s views on a package of proposed reforms which could lead to changes in the options available to bereaved New Zealanders.

Among the major issues for public debate are proposals to open the cemetery sector to alternative providers and introduce new land management requirements for cemeteries. Public feedback is also being sought on whether there is a case for stronger controls and accountabilities for the cremation and funeral sectors. Finally, we are interested in the public’s views about decision-making after death, including managing different cultural expectations.

An Issues Paper has been prepared to inform public consultation. This Paper, *The Legal Framework for Burial and Cremation in New Zealand: A First Principles Review* is available at [www.lawcom.govt.nz](http://www.lawcom.govt.nz).

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## Information about submitting

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Submitters are invited to respond to any of the questions, particularly in areas that especially concern or interest them, or about which they have particular views. Submitters do not need to address every question.

**Our deadline for submissions is Friday, 20 December 2013.**

### How to submit

- You can hand this pamphlet back to us at a consultation meeting, or you can take this pamphlet with you and complete your submission in your own time with reference to our online materials. A summary of our Issues Paper can be viewed at **[www.lawcom.govt.nz](http://www.lawcom.govt.nz)**
- You can complete a submission on our website at **[www.lawcom.govt.nz](http://www.lawcom.govt.nz)**
- You can email a submission to **[burialreview@lawcom.govt.nz](mailto:burialreview@lawcom.govt.nz)**
- You can mail a submission to:

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

### Official Information Act 1982

The Law Commission's processes are essentially public, and it is subject to the Official Information Act 1982. Thus copies of submissions made to the Law Commission will normally be made available on request, and the Commission may refer to submissions (including the name of submitters) in its reports. Any requests for withholding of information on grounds of confidentiality or for any other reason will be determined in accordance with the Official Information Act 1982.

*If you wish your feedback to be confidential, please clearly indicate this clearly below. We cannot guarantee confidentiality, but we will endeavour to respect your wishes. If you request confidentiality we will contact you in the event that we receive a request for submissions under the Official information Act 1982.*

**Submitter name:** \_\_\_\_\_

**Submitter organisation (if any):** \_\_\_\_\_

**Submitter contact details:** \_\_\_\_\_

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**Please tick this box if you would like your submission to be treated as confidential:**

## Questions for Consultation

All of the questions in this pamphlet appear in the Issues Paper, which contains background information and more detail about our proposed reforms. Please refer to the Issues Paper on our website at [www.lawcom.govt.nz](http://www.lawcom.govt.nz) if you would like more information.

### CEMETERIES AND CREMATORIA (SEE PART 2 OF THE ISSUES PAPER)

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Under the Burial and Cremation Act only local authorities are permitted to establish public cemeteries—although there is some provision for religious groups to establish burial grounds for their members on private land. It is not usually possible for an individual to be buried on their own land, such as a family farm. In **chapter 5** of the Issues Paper we ask whether these laws are too restrictive given the **diversity of values and beliefs** in contemporary New Zealand society.

Cremation usually takes place in a private place without the presence of families or other witnesses, so it is particularly important that the regulatory processes are robust. Alongside the universal requirement to ensure the deceased and their remains are treated with dignity and respect both during and after the cremation process, there is also the need to ensure cremation is not used to destroy evidence of crime or other wrong-doing such as abuse or neglect. In **chapter 8**, we assess the **adequacy of the existing controls** on how and where crematoria are established, and on the systems for safeguarding the integrity of the cremation process.

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Q1 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?

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Q2 If so, do you think those establishing independent cemeteries should be limited to registered charities? Should independent cemeteries be allowed to make a profit?

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Q3 If so, do you think those establishing independent cemeteries should be limited to registered charities? Should independent cemeteries be allowed to make a profit?

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Q4 Should it be lawful for someone to be buried on private land, provided the necessary consents have been obtained?

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Q5 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?

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**Q6** Do you think the law should establish minimum standards for the maintenance of cemeteries?

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**Q7** Do you think there should be stronger legal provisions for the protection of historic cemeteries and grave sites?

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**Q8** Do you think those who operate crematoria should be licensed? Please give reasons.

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Q9 Do you think resource consents should be required for all new crematoria and should they be publicly notified under the Resource Management Act?

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Q10 Do you think there should be stronger regulatory controls over the operation of crematoria and the handling of human ashes by crematoria?

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Q11 Do you think there is a problem with the availability of cremation services in any particular area of New Zealand?

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**FUNERAL SECTOR (SEE PART 3 OF THE ISSUES PAPER)**

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Although there is **no legal requirement to do so**, most New Zealanders choose to engage the services of a funeral director when confronted with the death of a loved one. Funeral directors perform a vital public service in our community and the Funeral Directors Association of New Zealand informs us that complaints are uncommon.

However, currently anyone can set themselves up as a funeral director and there are **no mandatory standards or independent regulatory oversight**. For reasons we explain in **chapter 11**, our preliminary view is that the potential for serious emotional distress caused by unethical or inappropriate behaviour by funeral directors, combined with the unique vulnerabilities of bereaved families, may justify stronger regulatory oversight.

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Q12 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.

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Q13 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?

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Q14 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?

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Q15 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?

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Q16 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?

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## DECISION-MAKING AND DISPUTES (SEE PART 4 OF THE ISSUES PAPER)

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Those making final arrangements for a family member or close friend share a common motivation to "do the right thing" by the dead. Usually this will include acknowledging their lives, the importance of their **relationships** and preserving a sense of **connection** between them and ourselves and the family members who have gone before us.

But the cultural lens through which we view death can lead us to quite different conclusions about what is, in fact, "the right thing". For those with deep religious convictions it will often be important to perform certain rituals and ceremonies after death; for others it will be important to affirm connections between the deceased and the places and people who have been particularly significant in their lives; others still may prefer to forgo all public ceremonies and memorials in favour of a private cremation and scattering the ashes.

In **Part 4** of the Issues Paper we set out how the law responds when inter-personal and/or inter-cultural conflict leads to intractable disagreements over the final arrangements for a deceased family member.

At the moment the law which we rely on to resolve such disagreements is not set out in the Burial and Cremation Act. Instead we rely on "common law" (law made by judges as they decide cases) which states that the executor of the deceased's will has the right to make the decisions about final arrangements and the High Court has the jurisdiction to determine any disputes which might arise. Alongside this, Māori customary law has its own rules and customary practices for making decisions and resolving disputes when they arise.

As part of the process of assessing how best to approach such conflicts in the future, we are keen to receive feedback from New Zealanders of all ethnic origins about the relative importance they place on the **different values which the law should take into account**.

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Q17 Do you think the process for resolving a serious burial dispute should be clarified in legislation? Please give reasons.

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**Q18** Any new statutory regime would need to reflect the values New Zealanders think should underpin the law in this area. For example, the wishes of the deceased have great moral force, but should they be legally binding? Or are the needs of the bereaved more or equally important? 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 the least. If you think several factors should be given the same weight, give them the same ranking:

<b>Value</b>	<b>Rank (1 – 7)</b>
Meeting the needs of any surviving partner to mourn and commemorate the deceased in a way they consider most appropriate.	
Meeting the needs of close relatives to mourn and commemorate the deceased in a way they consider most appropriate.	
Ensuring the wishes of the deceased, if they have been clearly expressed, are carried out.	
Ensuring that cultural needs, such as reconnecting the deceased with a significant place and with their family lineage, are met.	
Ensuring that the family’s religious requirements in relation to mourning and burial are met.	
Ensuring that all those with a strong interest in the decision, such as the deceased’s extended family/whānau, are given an opportunity to be consulted and express their views.	
Ensuring there is clear and certain legal responsibility for making burial and cremation decisions and clear guidance for decision makers.	

Are there any other factors or values you think should be taken into account?

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Q19 Irrespective of who makes the decision or what factors they take into account, there will be times when a serious dispute arises and access to a legal forum is needed. Do you support the option of giving the Family Court the responsibility for dealing with burial and cremation disputes?

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Q20 Do you support the option of giving the Māori Land Court concurrent jurisdiction in cases involving Māori customary law where all parties agree the dispute be heard in that forum?

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Q21 Do you support the option of giving the Family Court responsibility for dealing with disputes concerning memorialisation (for example the erection of headstones) or the custody of ashes?

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Q22 Do you feel that scattering or burying human ashes in public places is problematic? If so, what are the most appropriate measures for dealing with this issue?

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Q23 Do you have any other comments?

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