

13 June 2014

Auckland Council Proposed Cemeteries and Crematoria Bylaw
Auckland Council
Regional and Local Planning
Private Bag 92300
Auckland 1142

Attention: Planning Technician, Central Business Services

SUBMISSION ON PROPOSED CEMETERIES AND CREMATORIA BYLAW

Summary

The Human Rights Commission (the Commission) welcomes the decision of Auckland Council to briefly reopen the consultation period and to accept further submissions on the proposed Cemeteries and Crematoria Bylaw and Code of Practice. The Commission is concerned that some aspects of the proposed Bylaw and Code do not appropriately recognise, nor provide for, the cultural and religious beliefs of Auckland's diverse community. In particular, the proposals do not appear to sufficiently accommodate some important religious and cultural activities at the time of death and following cremation or interment. The Commission submits that the proposed Bylaw and Code should be amended to provide more flexibility about these matters. This would allow cemetery and crematoria operations to be appropriately regulated, but in a manner that does not unnecessarily impinge on the ability of community members to grieve in a manner consistent with their religious, cultural or personal beliefs.

Background

The Law Commission has recently recognised that the different ways in which communities approach death form a vital part of our culture and ethnicity and that the law should only interfere with such expression of beliefs at the time of death to the extent required to protect other clear interests, such as public health and safety.¹ The Commission supports the Law Commission's views on these points. The Commission is also strongly of the view that the various human rights engaged at the time of death should be appropriately protected, and respected, by local authorities when undertaking their regulatory activities.

Section 15 of the New Zealand Bill of Rights Act 1990 states that every person has the right to manifest their religion or belief in a number of ways. Section 20 of the Act provides that a person who belongs to an ethnic, religious or linguistic minority shall not be denied the right, in community with other members of that minority, to enjoy the culture or profess and practice the religion. This would include the right to undertake funeral and burial activities consistently with their beliefs, subject to the usual "reasonable limitation" provisions of the Bill of Rights Act. Articles 18, 19 and 27 of the International Covenant on Civil and Political Rights cover the freedom to manifest one's religion or beliefs, freedom of expression and the rights of minorities to enjoy their own culture and profess or practise their own religion. The rights to freedom of expression and belief can also apply to the right to be buried or cremated in a manner consistent with the views a deceased person held in life.

Issues

A number of concerns have been identified or brought to the attention of the Commission as a result of the proposed Bylaw and Code. These include the following matters, a number of which have been raised in the separate submission made by the New Zealand Federation of Multicultural Councils:

- Concerns that clauses 3.8 and 3.9 limit the time (and potentially the days) that burials can take place and establish intended minimum burial notification timeframes which may be problematic for some groups.
- Concerns about the practical impact of clause 3.11 which permits only individuals authorised by the Council to fill in a grave when filling the grave can be an important part of funeral rites.
- Concerns about clause 20 which requires cremation bookings to be made by midday prior to the time of cremation, this is particularly problematic for ethnic groups that wish to cremate on the day of death.
- Concerns about limits on the number of people who can witness a casket being placed in a cremator and the impact this may have on Hindu communities.
- Clause 3.31 which prohibits the dispersal of ashes without prior approval.
- The impact of paragraph 5.15 of the Code, particularly on members of the Pacific community and on others for whom floral tributes and adornments can be an important part of the ongoing grieving process. Limiting adornments and floral tributes to the approved receptacles or concrete berm after 14 days following interment seems unnecessarily restrictive.
- Concerns about the power of the Council to remove ornaments and memorabilia that breach the bylaw. This proposed provision does not recognise the need for cultural sensitivity when considering whether the power should be exercised and does not require attempts to be made to contact

relatives in the first instance to give them an opportunity to rectify any matters of concern before objects are removed from the grave.

The Commission's view is that local authorities should be flexible and inclusive in the way in which they operate and administer burial grounds and undertake associated activities. The rights and wishes of the deceased (before death) and the rights and wishes of the family members and friends following death should only be interfered with to the extent necessary. In an increasingly multicultural society local authorities should not operate in a manner that implicitly discriminates against some sectors of the community through a "one size fits all" approach to the operation of cemeteries and crematoria. To do so may limit the ability of some groups to give effect to their particular burial and cremation requirements.

The Commission strongly encourages the Council to reconsider the proposed Bylaw and Code to specifically provide more flexibility to take into account the diverse religious and cultural beliefs of the Auckland community. There do not appear to be reasonable health and safety requirements or competing considerations that would prevent the Council from appropriately accommodating all or some of the matters that are highlighted in this submission.

The Commission would like to appear at the Council hearing when the submissions on this Bylaw are considered.

Yours sincerely,



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Human Rights Commission

ⁱ *The Legal Framework for Burial and Cremation in New Zealand: A First Principles Review*, October 2013.