

28 October, 2020

Victim Support submission on Death, Funerals, Burial and Cremation: A Review of the Burial and Cremation Act 1964 and Related Legislation

Introduction

Victim Support is a non-government organisation that has been offering practical and emotional support to victims of crime and trauma for more than 30 years. Last year Victim Support helped more than 40,000 victims of crime and trauma in the immediate aftermath, through the justice process, and beyond. More than 13,000 or one-quarter of these were people bereaved by sudden death, including medical events, homicide, suicide, and accidents.

Our submission is informed by our work with this wide group of bereaved individuals and research on the needs of people bereaved by sudden death. We wish to advocate on behalf of these vulnerable New Zealanders in three key areas:

- 1) Increasing transparency around funeral directors' charges**
- 2) Regulation of the funeral industry**
- 3) Commitment to making legislation centred around the individual and cultural needs of the bereaved**

The needs of the suddenly bereaved

The death of a close family member has long been considered one of life's most stressful events.¹ However sudden deaths involve additional challenges. There is no chance for the bereaved to prepare or say goodbye; the death is more likely to involve children and young people, which may increase distress; there may be violent or mutilating injuries to the body, such as some deaths from homicide, suicide, or accidents; and the bereaved may also have been exposed to trauma such as by discovering the body or surviving the accident that claimed their loved one's life.

Bereavement from sudden death is a risk for psychological conditions such as post-traumatic stress disorder and complicated grief.^{2 3} Research shows that the suddenly bereaved have immediate needs, including information about the circumstances of the death and the procedures that follow, to view their loved one's body, to receive empathy

¹ T. H. Holmes & Rahe. 'The social readjustment rating scale'. *Journal of Psychosomatic Research*, v.11, 1967.

² Barry, L. C., Kasl, S. V., & Prigerson, H. G. 'Psychiatric disorders among bereaved persons: The role of perceived circumstances of death and preparedness for death'. *American Journal of Geriatric Psychiatry*, v.10, 2002.

³ Kaltman, S., & Bonanno, G. A. 'Trauma and bereavement: Examining their impact of sudden and violent deaths'. *Anxiety Disorders*, v.17, (2003).

and understanding, and to be able to make their own decisions.^{4 5 6 7 8} There is ample evidence that cultural needs must also be met, and this is an important consideration in multi-ethnic New Zealand and in terms of tikanga Māori.⁹ Growing research suggests that the bereaved may be at higher risk of distress when these needs are unmet.^{10 11}

The role of funeral directors in meeting needs and impacting bereavement outcomes has been highlighted in research.¹² A large Australian study recently concluded that the funeral industry should focus on meeting the expressed needs of the bereaved.¹³ Victim Support believes all service providers have a duty to put individuals and whānau bereaved by sudden death at the heart of their practice.

1) Increasing transparency around funeral directors' charges

Sudden death precludes the opportunity to prepare, and therefore the unbudgeted cost of a funeral can be an additional shock and stress for bereaved families/whānau at an already traumatic time. Bereavement is known to impair decision-making skills, and grief may limit the ability to identify if one is being over-charged.¹⁴ Sadly, we see this shock first-hand with many of the families and whānau we support.

Unfortunately, the ACC funeral grant of \$6,471.17 for accidental death and \$10,000 for homicide is usually insufficient to cover the full cost of an average funeral, conservatively estimated at \$8000-\$10,000. We commonly see families/whānau having to resort to crowdfunding or koha to cover these costs. Funeral costs can be a particular source of stress for those bereaved by suicide, who are not eligible for an ACC funeral grant.

Victim Support strongly recommends that ACC extends funeral grants to cover suicide and address this gross disadvantage at such a traumatic time. However, in terms of the legislation under review, we believe the key issue is **transparency of information and communication**.

⁴ Fraser, S., & Atkins, J. 'Survivors' recollections of helpful and unhelpful emergency nurse activities surrounding sudden death of a loved one'. *Journal of Emergency Nursing*, v.16, 1990.

⁵ Janzen, L., Cadell, S., & Westhues, A. 'From death notification through the funeral: Bereaved parents' experiences and their advice to professionals.' *Omega*, v.48, 2004.

⁶ Jurkovich, J., Pierce, B., Pananen, L., & Rivara, F. 'Giving bad news: The family Perspective'. *Journal of Trauma, Injury, Infection, and Critical Care*, v.48, 2000.

⁷ Lehman, D. R., Ellard, J. H., & Wortman, C. B. 'Social support for the bereaved: Recipients' and providers' perspectives on what is helpful'. *Journal of Consulting and Clinical Psychology*, v.54, 1986.

⁸ Li, S. P., Chan, C. W. H., & Lee, D. T. F. 'Helpfulness of nursing actions to suddenly bereaved family members in an accident and emergency setting in Hong Kong'. *Issues and Innovations in Nursing Practice*, v.40, 2002.

⁹ Te Komiti o Ngā Take Māori (Māori Affairs Select Committee). 'Inquiry into Whānau Access and Management of Tūpāpaku'. Wellington: New Zealand Parliament. 2017. https://www.parliament.nz/resource/en/NZ/SCR_74938/3000078c67ea58eba1a0a30a4edb163c44a42c45

¹⁰ Spooren, D. J., Henderick, H., & Jannes, C. 'Survey description of stress of parents bereaved from a child killed in a traffic accident. A retrospective study of a victim support group'. *Omega*, v.42, 2000.

¹¹ Thompson, K. E., & Range, L. M. 'Bereavement following suicide and other deaths: Why support attempts fail'. *Omega*, v.26, 1992.

¹² Janzen, L., Cadell, S., & Westhues, A. 'From death notification through the funeral: Bereaved parents' experiences and their advice to professionals'. *Omega*, v.48, 2004.

¹³ Aoun, S.M., Lowe, J., Christian, K.M, & Rumbold, B. 'Is there a role for the funeral service provider in bereavement support within the context of compassionate communities?' *Death Studies*. V.43, 2019.

¹⁴ Gentry, J. W., Kennedy, P. F., Paul, K., & Hill, R. P. 'The vulnerability of those grieving the death of a loved one: Implications for public policy'. *Journal of Public Policy & Marketing*, v.14, 1995.

Information – and how it is communicated – is a key need of the suddenly bereaved, and something we receive positive feedback on from our clients in relation to viewing their loved one's body, especially if it has been disfigured or injured. Clients often speak of how their funeral director gave them upfront, honest information, delivered with empathy, to help them make an informed decision about whether to view the body. According to both research¹⁵ and our experience, this approach helps restore control to the bereaved, and usually results in less shock and distress. If the funeral industry applied this same upfront approach with costs, we believe suddenly bereaved individuals and whānau would be supported to have a more positive experience that could aid their grief and trauma rather than compound it.

Victim Support supports Option 3 in Section B4, making it mandatory to disclose all component prices as per the Law Commission's recommendations 96-103.

2) Regulation of the funeral industry

Customers in the funeral industry enter at perhaps the most distressing time in their lives, not by choice but often by tragedy. The skills, understanding, and processes required to support the bereaved must be primary, not an afterthought. We believe an exceptionally high level of practice, including relevant qualifications and registration, is required at all stages to support people who are often at their most vulnerable.

Although there are reportedly few complaints from customers according to FDNZ, the negative consequences on the bereaved if malpractice occurs are likely to be significant and cannot be left to chance. Further, with currently no formal mechanism for customer complaints to be received, complaints are likely to be under-reported. A family we supported following a sudden death suffered a horrendous ordeal when their un-licensed funeral director wouldn't return their loved one's ashes until they had paid the \$16,000 bill in full. Victim Support tried to get Police involved but they stated it was a civil matter. It was weeks before the ashes were released to the family, causing trauma and stress that may have been avoided with more stringent regulation.

We agree with The Law Commission's finding that there is a common misconception among the public that funeral directors are licensed or regulated by the government. The Law Commission concluded that the current legislative protections provide very limited assurance around the quality of standards in the industry. This is consistent with feedback to Te Komiti o Ngā Take Māori (Māori Affairs Select Committee)¹⁶ that the funeral industry needs to be more transparent, not only in relation to costs, but also qualifications, and timeframes.

Victim Support supports Option 4 in Section B3: Providing central regulation for funeral directors, as per the Law Commission's recommendations 81-91, 94, 95. We believe the

¹⁵ Singh, B., & Raphael, B. 'Postdisaster morbidity of the bereaved: A possible role for preventive psychiatry?' *The Journal of Nervous and Mental Disease*, v.169,1981.

¹⁶ Te Komiti o Ngā Take Māori (Māori Affairs Select Committee). 'Inquiry into Whānau Access and Management of Tūpāpaku'.

most stringent regulation is required in the funeral industry to reduce the risk of malpractice that could have significant devastating effects on the bereaved.

3) Commitment to making legislation centred around the individual and cultural needs of the bereaved

Supporting the bereaved to take charge of processes

Although not expressly covered in the review, Victim Support believes any changes to the death, funeral, burial, and cremation legislation must be centred around the individual and cultural needs of the bereaved. At every step following a death, individuals and whānau must feel that the legislation and processes support them rather than oppose them.

For example, we see a growing number of families wanting to take control of aspects of the post-death and funeral process, including transporting the body, washing and dressing the body, making their own casket, doing the paperwork themselves, and organising the burial or cremation. Some wish to use a funeral director for parts of the process; others wish to take charge of the entire process themselves. There are varied reasons for this including cultural practices, empowerment, and financial restraints. The bereaved must be supported by law and practice to take charge of this process, as they wish, with as much ease as possible. Paperwork must be simplified so families and whānau can complete it independently. There should be a clear pathway for those who wish to be involved in this process that is communicated upfront, removing the onus from the bereaved of finding out what to do and how to do it.

It should not be automatically assumed that funeral directors are the most appropriate person to work through the processes after death. For example, we support victims on the Chatham Islands where there are no funeral directors, who must take care of the body and processes up to burial themselves. The default position should be that families and whānau are supported to make their own decisions in all aspects of death, funeral, burial, and cremation. Victim Support encourages further review on this matter.

Cultural considerations

We support suddenly bereaved people of all ethnicities, but perhaps the cultural practice we see as being least well supported is the tikanga Māori practice requiring that whānau remain with the tūpāpaku until burial. Most of the deaths we deal with go through the coroner, so whānau often already have to contend with delays and difficulty accessing the tūpāpaku before they involve the funeral director, if they choose to.

We note that the Māori Affairs review recommended increased transparency among funeral directors about timeframes. We have supported a whānau who travelled with their tūpāpaku to an out of town mortuary, arriving at night to find there were no facilities inside for them to remain with their tūpāpaku. The whānau had to sleep and wait in their car outside the mortuary until their tūpāpaku was released the following day. While coronial procedures are outside the scope of this review, we urge the current review to be cognisant of the distress and disrespect of tikanga some whānau have already experienced before they entrust their tūpāpaku to funeral directors. Coronial and funeral industry timeframes must be communicated upfront to the bereaved, and the importance of which must be

understood from a tikanga Māori perspective. We strongly support the feedback identified by Te Komiti o Ngā Take Māori (Māori Affairs Select Committee) ¹⁷ that cultural competency training should be mandatory for all agencies involved in the death process.

Conclusion

The funeral industry plays a significant role in supporting the bereaved. Given that receiving information and being empowered to make decisions are vital needs of the bereaved, it is imperative that the law supports families and whānau to make their own choices about funerals and the process post-death, and to be fully informed of all associated costs, timeframes, and processes. We urge increased transparency across the funeral industry, including itemised prices and aspects of the funeral that families/whānau can manage themselves.

It must be understood that consumers in the funeral industry are especially vulnerable and their needs must be at the centre of all practice. Any opportunities for bereavement support are lost if the bereaved are not fully supported across all processes from death to the time of burial or cremation. We urge policy-makers to take this opportunity to ensure that the bereavement and cultural needs of all New Zealanders are at the centre of any legislative changes.

¹⁷ Ibid.