



Government of **Western Australia**
Department of **Health**

Management of public health risks associated with morgues in Western Australia

Discussion paper

In accordance with the *Public Health Act 2016* regulatory framework

September 2017

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Disclaimer

The views expressed in this document may not, in any circumstances, be interpreted as stating an official position of the Department of Health.

This document is intended to serve as the basis for further discussion with interested stakeholders.

Contents

How to make a submission	4
Executive summary	5
1 Aim	6
2 Objectives	6
3 Introduction	6
4 Statement of the issue - the public health risk	6
4.1 Public health risk assessment	8
5 Current management of morgues	10
5.1 Western Australia	10
5.1.1 Part IV, Division 8 of the <i>Health (Miscellaneous Provisions) Act 1911</i>	10
5.1.2 Local Laws	10
5.1.3 The <i>Cemeteries Act 1986</i>	11
5.1.4 Guidelines for the preparations of the deceased for burial or cremation	11
5.1.5 Summary of impacts related to current WA risk management practices	12
5.2 National management	13
5.2.1 Queensland	13
5.2.2 New South Wales	13
5.2.3 Victoria	14
5.2.4 South Australia	14
5.2.5 Other Comments	
6 Options to address the issue in WA	15
6.1 Option A: Do nothing	15
6.1.1 Impact analysis	15
6.2 Option B: Rely on the general public health duty and issue a Code of Practice or Guideline	16
6.2.1 Impact analysis	16
6.3 Option C: Develop regulations for morgues in WA	16
6.3.1 Impact analysis	17
6.4 Option D: Include provisions regarding morgues in model health local laws	17
6.4.1 Impact analysis	17
6.5 Options summary	18
6.6 Questions	19
7 Consultation and implementation	21
8 References	22
9 Appendices	23
9.1 Appendix 1 – Current provisions in the <i>Health (Miscellaneous Provisions) Act 1911</i>	23
9.2 Appendix 2 – Regulatory tools provided by the <i>Public Health Act 2016</i>	24

9.3	Appendix 3 - Public health risk assessment	26
9.4	Appendix 4 – Department of Health Guidelines for the preparation of the deceased for burial or cremation	29

How to make a submission

The Department of Health (DOH) is seeking feedback on this Discussion Paper on proposed regulatory reforms and options for the management of public health risks associated with morgues.

The DOH is seeking ideas, suggestions and comments on the proposed requirements.

You are invited to read through the following paper and provide feedback.

Guiding questions

This document contains a series of questions related to the proposal. You do not have to comment on all the questions, and can focus on those areas that are important to you.

You are welcome to provide additional feedback that may not be related to any of the questions.

Please explain the reasons behind your suggestions, and where possible evidence to support your views (such as statistics), estimates of any costs that may relate to the proposal, and examples of solutions.

Where to send your submissions

Online:	ww2.health.wa.gov.au/Improving-WA-Health/Public-health/Public-Health-Act/Regulation-review-program
Electronic survey:	https://consultation.health.wa.gov.au/environmental-health-directorate/morgues
Email:	publichealthact@health.wa.gov.au
Post:	Review of Morgue Legislation Attention: Donald Howell Environmental Health Directorate Department of Health PO Box 8172, Perth Business Centre, WA 6849

Submissions close

The closing date for submissions is **31 December 2017**

Executive summary

The key focus of this review is to obtain stakeholder feedback on the most effective option for the management of public health risks associated with morgues in Western Australia. This document analyses the various options for managing these risks, including the potential advantages, disadvantages and costs of each option for industry, consumers and government.

This paper discusses the current management of morgues in WA in accordance with Part IV, Division 8 of the *Health (Miscellaneous Provisions) Act 1911* (Appendix 1). This division provides that a local government may grant a licence for any place for the temporary reception of the bodies of the dead, and for keeping such bodies for the purpose of viewing, examination, identification or other lawful purpose before burial or cremation, and may licence any private premises for the temporary reception and keeping of such bodies awaiting burial. This allows the local government to require persons to comply with minimum health and safety standards. It is an offence for any business to keep the body of any dead person awaiting burial on premises without a licence.

With the introduction of the *Public Health Act 2016* (the Public Health Act) in WA, Part IV, Division 8 of the *Health (Miscellaneous Provisions) Act 1911* will eventually be repealed. Therefore, this provision must now be reviewed and a decision made on how the public health risks associated with morgues should continue to be managed.

This paper outlines a number of options for managing public health risks associated with morgues. The extent to which these recommendations will be implemented will depend on feedback in response to this paper and which option is adopted.

These options include:

- **Option A: Do nothing.** The provisions of the *Health (Miscellaneous Provisions) Act 1911* related to morgues will be repealed at stage 5 of implementation of the *Public Health Act 2016*. Local government may rely on the general public health duty under the *Public Health Act 2016* (Appendix 2) and could continue to make local laws related to morgues under the *Local Government Act 1995* if they so desire.
- **Option B: Rely on the general public health duty and issue a Code of Practice or Guideline** outlining the acceptable practices for managing the public health risks related to morgues. Local governments may also continue to make local laws under the *Local Government Act 1995* if they so desire to the extent they are not inconsistent with any Code of Practice or Guidelines prepared by the Department.
- **Option C: Develop new regulations for morgues in WA.** New regulations for the temporary storage of human remains and the content of the current health local laws could be developed to ensure consistency across WA.
- **Option D: Develop provisions regarding morgues to be included in model health local laws for local governments in WA.** The requirements for the temporary storage of human remains to be included in new model health local laws. While it will be impossible to ensure consistency across WA, as not every local government will necessarily choose to make local laws, experience has shown that those that do adopt will use the model.

1 Aim

This paper will focus on determining the best option for managing the public health risks associated with morgues in WA to meet community needs in the future.

2 Objectives

The objective of this review is to minimise public health risks associated with the temporary storage of human remains.

3 Introduction

In the lead up to stage 5 of implementation of the *Public Health Act 2016* (the Public Health Act) the Environmental Health Directorate of the Department of Health of WA (DOH) is required to review the provisions of the *Health (Miscellaneous Provisions) Act 1911* (the renamed *Health Act 1911*) (the Act) which will be repealed over the coming five years, to determine whether these matters should continue to be regulated under the new regulatory framework, or whether these risks can be effectively managed through other means such as a guideline, local law or other legislation.

Section 304 of the Public Health Act provides broad powers for making regulations, and allows regulations to authorise, prescribe, require, prohibit, restrict or otherwise regulate a number of matters for achieving the objects and giving effect to the purposes of the Public Health Act.

Regulations can also adopt codes of practice and any subsidiary legislation made, determined or issued under any other Act or under any Act of the Commonwealth, another State or Territory.

The Public Health Act also enables local government enforcement agencies to recover fees or charges in respect of their performance of functions under the Public Health Act and regulations. Such fees or charges are to be imposed and recovered in accordance with the framework provided by Part 6 Division 5 Subdivision 2 of the *Local Government Act 1995*.

This paper will review the available evidence and outline options for managing public health risks associated with morgues. If regulation is considered to be the most effective control measure necessary to manage these risks, regulations will be created under the Public Health Act.

4 Statement of the issue - the public health risk

Overview

A morgue or mortuary (in a hospital or elsewhere) is used for the storage of human corpses awaiting identification, or removal for autopsy or disposal by burial, cremation or otherwise. In modern times they have customarily been refrigerated to delay decomposition.

Morgues occupy a special place in the perceptions of the community. The facilities and the staff involved in mortuary services have a clear obligation to look after the deceased in accordance with community expectations.

In WA the words morgue and mortuary are used interchangeably but in other places, they differentiate the two words as follows:

Morgue	<p>The word morgue comes from the French word morgue, which means 'to look at solemnly, to defy'. Originally the morgue was a place where unidentified bodies of the deceased were stored. Since the 1880s the term has been used more generally to describe the place where autopsies are performed.</p> <p>In Australia morgues are now usually referred to as Departments or Institutes of Forensic Medicine. They are the places where coroners investigate reportable deaths, such as homicide, suicide, or a death resulting from an accident.</p>
Mortuary	<p>A mortuary is the place where dead bodies are stored temporarily and, if required, an autopsy is performed.</p> <p>Mortuaries are found either attached to a funeral home, as part of a Department or Institute of Forensic Medicine or in some cases, part of a hospital facility.</p> <p>In Australia, the majority of bodies of the deceased are stored in the mortuary of a funeral home.</p> <p>It is at the mortuary that a body is prepared for a funeral. Preparation includes washing and disinfecting the body, suturing or packing of openings, embalming (if required), dressing the body and arranging it in the coffin.</p> <p>Mortuaries attached to hospitals or coroners' are also the place where post-mortem work takes place. This can include autopsy.</p>

Risk factors

Everybody has microorganisms both internally and on the skin. In death these microorganisms die but some may continue to be an infection risk for a short period of time after death. Some of these organisms can cause infection, but the risk will be reduced if basic hygiene and infection control procedures are established and performed by the person handling human remains. To minimise any post-mortem growth of microorganisms, all human remains should be refrigerated as soon as possible after death and kept at a low temperature until burial or cremation.

The cause of death for many people is an infection (e.g. pneumonia), due to microorganisms widely spread throughout the community. Even though infections can sometimes be spread to employees from living people, the risks of infection from handling human remains following death (from an infection) is very low. As such, there has been no identified need in the past to develop health legislation in regard to the risks of infection from handling human remains. (1. AFDA guideline). Rather than take a legislative approach, the Department of Health instead endorsed the use of the [Australian Funeral Directors Association's Funeral Industry Infection Control Guidelines](#) and the [Australian Guidelines for the Prevention and Control of Infection in Healthcare](#) and continue to follow these.

Numbers of cases of the disease in WA

No reported cases of illness from infectious disease caused by living or working adjacent to or in the vicinity of a morgue in WA, could be found.

Emerging issues

In other countries, people temporarily store bodies in their homes before the funeral, because of cultural or financial reasons. This is not yet a significant practice in WA. Technology has made available practical methods of maintaining cold storage using portable devices. This may become a factor in future trends regarding the storage of bodies.

4.1 Public health risk assessment

Globally, public health is a high priority that in many situations requires legislation to define the roles and responsibilities of individuals, agencies and others to protect public health by reducing the risk of public health harm or incident occurrence.

The *Public Health Act* introduces the term ‘public health risk’ which means ‘a risk of harm to public health’. *Harm* is defined in the Act to include ‘physical or psychological harm to individuals, whether of long-term or immediate impact or effect’.

These definitions cover a range of potential public health risks including:

- physical e.g. noise, mechanical hazards, radiation and vibration
- chemical either naturally occurring or synthetic substances or
- biological e.g. viruses, bacteria and vermin.

In order to assess the public health risks associated with morgues the application of a health risk assessment matrix is important to understand the severity of the risks

The Environmental Health Directorate has adopted the risk assessment model provided by the [Health Risk Assessment \(Scoping\) Guidelines, Department of Health WA](#). This model is based on the principles of the [Environmental health risk assessment: Guidelines for assessing human health risks from environmental hazards. enHealth, June 2012](#).

The application of this risk assessment model provides greater surety that risks are assessed in a systematic, consistent and transparent manner across different hazards across WA. The application of the risk matrix model to the various risks associated with morgues is provided in Table 2.

Table 1 below provides the foundation as to why certain management requirements, such as a regulation or guidelines, may be necessary for the higher ranked risk categories.

Table 1 Definition of risk levels

Health Risk Level	DOH management requirements
Very Low Public Health Risk	No further assessment required
Low Public Health Risk	Some mitigation/management may be required – no detailed assessment of health hazards required but addressed with routine controls
Moderate/Medium Public Health Risk	Substantial mitigation/management required – assessment required of health hazards
High Public Health Risk	Not an acceptable risk. The DOH needs to be involved in the management of high public health risks. Major mitigation/management (including offsets) may be required – assessment required of health hazards
Extreme Public Health Risk	Potentially unacceptable: modification of proposal required

Table 2 summarises the:

- Public health risks associated with morgues
- The potential causes of these risk
- Persons who are most at risk e.g. young, old, pregnant women, men, woman, employees, people with disabilities
- Severity of the impact of the risk e.g. 'slight' means the impact would have negligible affect.
- Likelihood of impact 'Remote' means once in more than 10 years
- Risk level e.g. very low, low, moderate, high, extreme. 'Very low' means no further assessment is required.
- Whether there is current legislation in place to effectively deal with the risk

Please refer to Appendix 3 for a summary of the risk matrix model applied in Table 2.

Please note, these risks relate to the general public and not to those persons working within morgues who are protected by occupational health and safety legislation.

Table 2 Public health risk assessment of risks associated with Morgues

Public Health Risk	Cause	Who is at risk	Severity of impact*	Likelihood of impact**	Risk Level***	Current legislation in place to deal with the risk
Odour nuisance	Decomposing bodies or surfaces contaminated with exudates and other potentially odorous fluids.	The public in the vicinity of the morgue.	Slight	Remote	Very low	The Act and Local laws requiring licensing of non-government morgues. Licence conditions requiring durable, cleanable, inner surfaces and the cold stage of bodies.

* Health consequence table adapted from the 2011 Health Risk Assessment (Scoping) Guidelines, Department of Health WA (refer to Appendix)

** Risk likelihood table adopted from the 2011 Health Risk Assessment (Scoping) Guidelines, Department of Health WA (refer to Appendix)

*** Final risk rating from the risk matrix (refer to Appendix)

When applying the risk assessment model (Appendix 3) to the risks associated with morgues, summarised in Table 2, the assessment identified that there is a **low public health risk** associated with non-government morgues. Odour nuisance is a possibility, currently adequately addressed by the requirements for licenced morgues to provide cold storage for bodies and to have inner surfaces that are durable and easy to clean.

5 Current management of morgues

5.1 Western Australia

5.1.1 Part IV, Division 8 of the *Health (Miscellaneous Provisions) Act 1911*

In WA, local governments may currently licence morgues, with an exemption for any hospital and police or local government morgue. The licence may require compliance with structural and storage temperature requirements. Licenced morgues are mostly those operated by funeral directors and are located within their premises.

The annual licence fee is set by each local government for its district. The power to prescribe a fee and set conditions relating to the licence are provided by sections 133 and 134(45) of the *Health (Miscellaneous Provisions) Act 1911*. Further, section 344C of that Act enables a local government to fix the fee by resolution of the local government. Any new morgue would also require planning (development application) and building (building permit) approval from the local government.

A temporary morgue can also be a facility not designed and constructed as a morgue but used as such in an emergency because there is no alternative available. It could also be a family home, when a deceased person is to be kept at home, prior to the funeral, for cultural reasons. Family homes are not currently captured by the *Health (Miscellaneous Provisions) Act 1911* where the person died in the home.

5.1.2 Local Laws

Local Governments can make local laws under the *Health (Miscellaneous Provisions) Act 1911* that may require such things as;

- An annual licence
- A prescribed fee to be paid for the licensing of morgues
- The conditions on which such licences may be granted, for example -
 - Impervious finish of walls, floors and fixtures
 - Adequate ventilation
 - Temperature requirements for storage of human remains

Many local governments have made use of such local laws. The exceptions are mostly characterised as small rural local governments with no funeral directors established in their district. The City of Swan, a large local government, has no morgue provisions in its health local laws.

Example - This is typical of the local law provisions used by local governments:

Licensing of Morgues

10.1 (1) A person shall not occupy or use or cause, suffer, or permit to be occupied or used any premises for the temporary reception and keeping of the bodies of the dead awaiting burial or cremation unless and until the premises are licensed, in accordance with the provisions of this Part.

(2) The proprietor of any premises for the temporary reception and keeping of the bodies of the dead awaiting burial or cremation seeking the issue of a licence shall make application on the

approved form and shall forward the application to the local government together with the approved fee.

(3) A licence in the form approved by the local government shall be valid from the date of issue until the following 30th day of June.

(4) A licence shall not be granted in respect of any premises unless—

- (a) provision has been made for the keeping of the bodies of the dead at a temperature not exceeding zero degrees Celsius;
- (b) the walls are constructed of stone or brickwork or other approved material;
- (c) the interior surface of all walls is covered with glazed tiles or is rendered impervious so as to be non-absorbent and washable;
- (d) all floors are constructed of an impervious material, having a fall to an outlet discharging over a trapped gully; and
- (e) the premises are adequately ventilated directly to the outside air.

5.1.3 The Cemeteries Act 1986

The *Cemeteries Act 1986*, administered by the Metropolitan Cemeteries Board (MCB), requires that Funeral Directors must be issued with a licence to operate. This legislation ensures that those persons wishing to regularly store human remains prior to burial or cremation are required to be licenced and maintain prescribed standards.

The MCB issues licences for Funeral Directors to conduct funerals at each of the six metropolitan cemetery sites managed by the MCB. These are Karrakatta, Fremantle, Midland and Guildford cemeteries, as well as Pinnaroo Valley and Rockingham Regional Memorial Parks. Some Funeral Directors conducting services outside these cemeteries are licensed by regional cemetery boards or local governments.

Bunbury, Geraldton, Kalgoorlie–Boulder and Albany cemeteries have dedicated cemetery boards, with the remainder of cemeteries and morgues in Western Australia generally being administered by the local government.

Funeral Directors licenced by the MCB are required to do the following:

- Adhere to the MCB Funeral Directors Code of Conduct
- Meet all legislative requirements
- Have the appropriate equipment, vehicles and facilities
- Align their conduct with the values of compassion, respect, understanding and integrity.
- Ensure that all facilities and equipment (including vehicles) are adequate for all services rendered to the community as required by the relevant authorities.

5.1.4 Guidelines for the preparations of the deceased for burial or cremation

The '[Guidelines for the preparation of the deceased for burial or cremation](#)' have been developed by the DOH, to set out the minimum requirements that are expected of the funeral industry.

The funeral industry is largely regulated by the Metropolitan Cemeteries' Board and Local Government but the *Health (Miscellaneous Provisions) Act 1911* provides important legislation

intended to ensure that public health principles are applied to the practice of preparing the deceased for burial or cremation.

The Guidelines do not replace other official guidelines provided for the funeral industry but should be read in conjunction with them. The Guidelines are provided in Appendix 4

The Guidelines, which were prepared by the Public Health Division of the DOH in conjunction with the funeral industry, are published by the Office of the Chief Health Officer. The Guidelines are not mandatory and complement the existing legislation.

Under the Public Health Act, the Guidelines could be used to clarify the application of the general public health duty and provide guidance as to the measures that may constitute compliance or non-compliance with the general duty in relation to preparation of the deceased for burial or cremation. Non-compliance with the general public health duty is not an offence but may lead to the application of improvement notices and enforcement orders under Part 14 of the Public Health Act. Alternatively, new guidelines could be developed that better reflect the new legislation.

5.1.5 Summary of impacts related to current WA risk management practices

The current legislation and control measures provide for a range of enforcement or compliance roles and responsibilities of government, industry and consumers. These impacts, including some current costs implications of the morgue legislation, have been summarised below.

5.1.5.1 Role of the Department of Health

Operational services

The DOH has no operational role related to morgues, except as health services providers such as hospitals that provide a morgue. However, hospitals do not have to comply with Part IV, Division 8 of the *Health (Miscellaneous Provisions) Act 1911*. The DOH Guidelines requires a person who is not a funeral director, to obtain the approval of the Chief Health Officer (CHO) to retain a body for longer than 5 days.

Policy support and system manager role

The DOH provides policy support to stakeholders, including local government enforcement agencies, in the management of public health risks associated with morgues in WA.

Therefore, there are some cost impacts for the DOH in the current management of morgues in WA in accordance with Part IV, Division 8 of the *Health (Miscellaneous Provisions) Act 1911*. (an average 2 hours per week of 1 FTE Medical Advisor – AMA Agreement.)

5.1.5.2 Role of local government enforcement agencies

Clause 133 (1) of the *Health (Miscellaneous Provisions) Act 1911* states that “*The local government may grant a licence for any place for the temporary reception of bodies of the dead*”. Those Local government enforcement agencies have a responsibility to enforce Part IV, Division 8 of the *Health (Miscellaneous Provisions) Act 1911* and for ensuring compliance with the legislation.

The impacts of this role include:

Service	Cost	Comments
Licensing and/or registration cost charged per application	\$80*	Fees associated with licenses may vary from one local government to the next
Inspection and surveillance services	\$0	Local government cannot currently charge inspection and surveillance costs using health legislation. The health rate charged under S.40 of the <i>Health (Miscellaneous Provisions) Act 1911</i> is provided to pay for health services under that Act.

* data taken from a survey sent to all local governments on 11th July 2017. On 29th August 2017 33 local governments had responded. Only 3 local governments indicated that they have a non-government morgue in their district and though they licence the premises, only one charges a licence fee.

5.1.5.3 Requirements for industry

Funeral Directors with morgues on their premises are managed by the current local laws under the *Health (Miscellaneous Provisions) Act 1911*.

Premises	Number
Total number of premise in WA	115*
Licensing costs	\$80 - \$125**

*This figure is an estimation taken from Yellow Pages advertisements for funeral directors and may include those that do not have a morgue on their premises. It is only an approximation.

** Local governments can currently set their own licence fee by way of a local law. Of 33 local governments who responded to the DOH survey, only 2 had set a licence fee for non-government morgues. These fees were \$80 and \$125

5.1.5.4 Impacts on public / consumers

There are no anticipated costs of the current regulatory system on consumers.

5.2 National management

5.2.1 Queensland

In Queensland a voluntary code of practice is used by the Queensland funeral industry. Part of the code recommends rules for handling and storing bodies.

5.2.2 New South Wales

In NSW the *Public Health Act 2010* and *Public Health Regulation 2012* regulates the handling of bodies both by funeral industry professionals and by members of the public. The regulation expresses rules rather than explaining how the deceased are to be disposed.

The regulations control:

- premises and facilities for handling bodies
- waste disposal

- handling of bodies including embalming, viewing, the use of body bags and storage of bodies
- vehicles
- restriction of burials
- exhumations
- crematories and cremations
- maintenance of registers

The *Local Government (General) Regulations 2005* set out the standards for mortuaries. Clauses 5, 6 and 7 of the *Public Health (Disposal of Bodies) Regulations* also apply.

5.2.3 Victoria

The management and operation of cemeteries and crematoria in Victoria is governed by the *Cemeteries and Crematoria Act 2003* and the *Cemeteries and Crematoria Regulations 2015*. That legislation does not govern the standards of morgues. The *Public Health and Wellbeing Act 2008* has nuisance provisions that can be applied to any morgue that is or is likely to be dangerous to health or offensive.

5.2.4 South Australia

In South Australia, the *South Australian Public Health Act 2011* has similar provisions to the WA Public Health Act in that South Australia relies only on a general public health duty to regulate morgues and funeral directors e.g. no licensing, registration or conditions.

5.2.5 Other Comments

The other States and Territories in Australia were invited to comment on their experiences with morgues legislation and any environmental health incidents relating to morgues. Only NSW, Tasmania and SA provided comment. NSW has experienced issues regarding retention of bodies by persons other than funeral directors. Under current regulations, they allow a person to retain a body for up to 5 days after death. The decomposition of a body that is not subject to refrigeration has caused problems for funeral directors when they come to collect the body. It means additional precautions must be taken because of the increased risk of exposure to exudate and it makes manual handling of a body much more difficult. NSW will address this in a scheduled regulatory review. Any future WA regulations, codes of practice or guidelines will need to be cognisant of the need for refrigeration.

South Australia advised they do not regulate the establishment or operation of morgues under Public Health legislation.

Tasmania advised that in Tasmania morgues are regulated under the provisions of the Burial and Cremation Act 2002, and the Burial and Cremation – Handling and Transport of Human Remains Regulations. Whilst the said statutes are administered by the Office of the Director of Local Government, the Director of Public Health has specific powers under the same with respect to authorising private burials (otherwise than in a cemetery) and exhumation authorisations. Under the above legislation, responsibility for the establishment and on-going management of morgues lies with “the manager” of such facilities. In this regard, the Department of Health and Human Services Tasmania is not aware of any public health issues arising from the day to day management of Morgue facilities.

6 Options to address the issue in WA

The following options are presented as possible strategies to manage the public health risk associated with morgues

6.1 Option A: Do nothing

Rely on the general public health duty provided by Part 3 of the Public Health Act and local governments can make local laws under the *Local Government Act 1995* if they desire

One option is to do nothing when Part IV, Division 8 of the *Health (Miscellaneous Provisions) Act 1911* is repealed. In this situation, local governments will be able to use the general public health duty of the Public Health Act to prevent or correct any health concerns arising from any morgues within their district. Part 3 of the Public Health Act provides a general public health duty which requires that a person must take all reasonable and practicable steps to prevent or minimise any harm to public health that might foreseeably result from anything done or omitted to be done by the person.

If local governments still wished to require morgues in their district to obtain a licence, they could also make a local law under the provisions of the *Local Government Act 1995*.

Where the general public health duty is to be applied, there must be some clear harm to public health. In cases where matters are a nuisance or amenity problem but no health effect can be proven, the general public health duty will not apply. The general public health duty may cover situations where there are no specific regulations and a public health risk is or might foreseeably result from anything done or omitted to be done by a person.

6.1.1 Impact analysis

Advantages:

- All persons are required to comply with the general public health duty under Part 3 of the Public Health Act;
- There is no additional regulatory burden or red tape for the public;
- The absence of prescribed requirements respects all personal or religious preferences;
- This option recognises that morgue workers are protected by Worksafe WA's legislation and industry guidelines and standards and that people living in the vicinity of a morgue have negligible risk;
- It will have no anticipated effect on the cost of funerals.

Disadvantages:

- There is potential for inconsistency in requirements between various local governments.
- Not every local government has made provisions regarding morgues in their health local laws so there is potential for no regulation in some districts.
- This option may increase the administrative and cost burden for some local governments to make local laws should they require licencing or specific conditions to be met;
- Lack of licencing may introduce unscrupulous operators;
- It may lead to different levels of public health risk between different local government areas;
- Without licencing, local governments may not be aware of the location of morgues or even their existence;
- Failure to comply with the general public health duty does not of itself constitute an offence though it may still provide grounds for other action under the Public Health Act to be taken and could result in prosecution; and

- This option does not allow for infringement notices to be issued. Infringement notices can provide a timely, cost-efficient enforcement outcome in relation to relatively minor contraventions of the Act.

6.2 Option B: Rely on the general public health duty and issue a Code of Practice or Guideline outlining acceptable practices for managing public health risks related to morgues

The “Guidelines for the preparation of the deceased for burial or cremation” have been developed by the DOH to set out the minimum requirements that are expected of the funeral industry.

In enforcing the general public health duty, a person will not be taken to be in breach if acting in a manner that accord with generally acceptable practices.

The existing guidelines could be used to clarify the application of the general public health duty and provide guidance as to the measures that may constitute compliance or non-compliance with the general public health duty in relation to morgues. Non-compliance with the general public health duty is not an offence but may lead to the application of improvement notices and enforcement orders under Part 14 of the Public Health Act. Local governments could also continue to make local laws that require morgues to obtain a licence.

6.2.1 Impact analysis

Advantages:

- A code of practice or guideline provides support to a local government when applying the general public health duty;
- Allows for DOH influence on public health risk activities;
- Easier to amend codes of practice and guidelines than local laws for emerging issues; and
- Allows for a DOH policy position.

Disadvantages:

- There is potential for inconsistency in requirements between various local governments.
- Not every local government has made provisions regarding morgues in their health local laws, so there is potential for no regulation in some districts.
- This option may increase the administrative and cost burden for some local governments to make local laws should they require licensing or specific conditions to be met;
- Some local governments may not make local laws and therefore will be solely reliant on the general public health duty;
- Failure to comply with the general public health duty does not of itself constitute an offence though it may still provide grounds for other action under the PH Act to be taken and could result in prosecution; and
- This option does not allow for infringement notices to be issued. Infringement notices can provide a timely, cost-efficient enforcement outcome in relation to relatively minor contraventions of the Act.

6.3 Option C: Develop regulations for morgues in WA

The DOH develops regulations that prescribe the requirements for the temporary storage of human remains. The regulations could provide for such things as registration or licensing of morgues and replace the current health local laws.

That is, any person who wishes to store human remains on a temporary basis must apply for a licence to do so from their local government. In addition, a condition of that licence could be that

the licence holder must comply with the existing Guidelines or a future Code of Practice for the use of private premises as temporary morgues, issued by the Department of Health.

It is anticipated that the requirements of the proposed legislation and the Guidelines or future Code of Practice would negate the need for any local laws related to this subject matter. If a local government wished to add any further requirements, this could be done by way of a condition of licence, in accordance with section 82(1) of the Public Health Act.

6.3.1 Impact analysis

Advantages:

- It allows for maintaining the status quo/ continuing the current arrangement;
- Allows for a consistent state-wide approach;
- Removes the cost of making local laws;
- Local governments can still make local laws if they wish;
- Allows for timely corrective action; and
- No new costs for local government.

Disadvantages:

- Mandatory registration or licencing may increase the current regulatory burden in some local government areas;
- It may be too high a level of response for a relatively low-risk matter; and
- It may be a barrier to people wanting temporary home storage of a body for cultural reasons.

6.4 Option D: Include provisions regarding morgues in model health local laws for local governments in WA.

The requirements for the temporary storage of human remains can be included in new model health local laws. While it will be impossible to ensure consistency across WA, as not every local government will necessarily choose to make the local laws, experience has shown that those that do adopt local laws will use the model as a template for their local laws.

6.4.1 Impact analysis

Advantages:

- Copying a model local law reduces the cost of drafting new local laws;
- Local governments can continue to make additional local laws as they do now; and
- No new costs for local government.

Disadvantages:

- There is potential for inconsistency in requirements between various local governments. Not every local government will necessarily include provisions regarding morgues in their health local laws, so there is potential for no regulation in some districts.
- This option may increase the administrative burden for some local governments to make local laws should they require licencing or specific conditions to be met;
- Some local governments may not make local laws and therefore will be solely reliant on the general public health duty;
- This option does not allow for infringement notices to be issued. Infringement notices can provide a timely, cost-efficient enforcement outcome in relation to relatively minor contraventions of the Act.

6.5 Options summary

The following table summarises the four options for the management of public health risks related to morgues in WA;

Option	Advantages	Disadvantages
Option A: Do nothing	<ul style="list-style-type: none"> ▪ All morgues must comply with the general public health duty imposed by Part 3 of the <i>Public Health Act</i>, which provides an alternative mechanism for protecting public health; ▪ There is no additional regulatory burden or red tape for the public; ▪ It respects all personal or religious preferences; ▪ It recognises that morgue workers are protected by Worksafe WA's legislation and industry guidelines and standards and that people living in the vicinity of a morgue have negligible risk; ▪ It may allow for more cost effective funerals. 	<ul style="list-style-type: none"> ▪ There is potential for inconsistency in local laws between various local governments; ▪ This may in turn lead to different levels of public health risk; ▪ Lack of licencing may introduce unscrupulous operators; ▪ Not every local government has made provisions regarding morgues in their health local laws, so there is potential for no regulation in some districts. ▪ This option may increase the administrative burden for local governments to make local laws; ▪ Without licencing, local governments may not be aware of the location of morgues or even their existence; and ▪ Failure to comply with the general health duty does not of itself constitute an offence.
Option B: No Regulation - Issue a Code of Practice or guideline	<ul style="list-style-type: none"> ▪ A code of practice or guideline provides support to a local government when using the general public health duty; ▪ Allows for D.O.H. influence on public health risk activities; ▪ Easier to amend codes of practice and guidelines than local laws for emerging issues; and ▪ Allows for a D.O.H. policy position. 	<ul style="list-style-type: none"> ▪ Cost of making local laws ▪ Inconsistent local laws ▪ Some local governments may not make local laws and therefore will be solely reliant on the general public health duty; ▪ Failure to comply with the general health duty does not of itself constitute an offence; ▪ It may upset groups in society, if people are allowed to do things they disagree with.

Option	Advantages	Disadvantages
Option C: Develop regulations for morgues in WA	<ul style="list-style-type: none"> It allows for maintaining the status quo/ continuing the current arrangement; Allows for a consistent state-wide approach; Removes cost of making local laws; Local governments can still make local laws if they wish; Allows for corrective action; and No additional costs for local government. 	<ul style="list-style-type: none"> Maintains the current regulatory burden; It may be too high a level response for a relatively low-risk matter; and It may be a barrier to people wanting temporary home storage of a body for cultural reasons.
Option D: Include provisions for morgues in new model health local laws	<ul style="list-style-type: none"> It allows for maintaining the status quo/ continuing the current arrangement; Reduces cost of making local laws; Local governments can still choose to include or exclude morgue provisions from their health local laws if they wish; and No additional costs for a local government making a new health local law. 	<ul style="list-style-type: none"> It may maintain the current regulatory burden; and It may be a barrier to people wanting temporary home storage of a body for cultural reasons.

6.6 Questions

Question 1

Please indicate your preferred option for managing public health risks associated with Morgues in WA, in order of 1 to 4.

- Option A: Do nothing.**
 Repeal the provisions of the *Health (Miscellaneous Provisions) Act 1911* related to morgues. Local government may continue to make local laws under the *Local Government Act 1995* if they so desire.
- Option B: No regulation. Issue a Code of Practice or Guideline outlining the acceptable practices for managing the public health risks related to morgue.**
 The general public health duty would apply when persons do not comply with the Code or guideline
- Option C: Develop regulations for morgues in WA.**
 The requirements for the temporary storage of human remains set out in the *Health (Miscellaneous Provisions) Act 1911* and the current health local laws to be replicated in new legislation.
- Option D: Include provisions for morgues in new model health local laws.**
 The requirements for the temporary storage of human remains will be included in model health local laws.

Question 2	Based on your answer to question 1, please indicate why this is your preferred option?
Question 3	Do you have a suggestion for alternative options?
Question 4	Do you have any other comments about controlling the public health risks related to morgues in WA? E.g. do you have any examples of complaints, health issues or other possible concerns that may need to be addressed into the future that may assist with this review?
Question 5	Do you have any comments or advice about costs and benefits of the alternative options?

7 Consultation and implementation

The objective of this review is to minimise public health risks associated with the temporary storage of human remains in a manner which maintains public health.

It seeks to determine the best option for managing the public health risks associated with morgues in WA to meet community needs in the future.

Local governments are the enforcement agency for both the current legislation and any future legislation, when the Public Health Act is fully implemented. Local government, and the funeral directors of WA, (the principal industry stakeholders) are the most significant stakeholders who will be consulted in this review. Other government agencies and the community are invited to make submissions.

After analysis of all submissions, a determination of which option to adopt, will be made. Stakeholders who have chosen to provide a contact email will be sent a summary paper.

8 References

1. The Australian Funeral Directors Association's Funeral Industry Infection Control Guidelines: <http://afda.org.au/media/member/ICG.pdf>
2. The Australian Guidelines for the Prevention and Control of Infection in Healthcare: <https://www.nhmrc.gov.au/guidelines-publications/cd33>
3. The *Cemeteries Act 1986*
4. The *Health (Miscellaneous Provisions) Act 1911*
5. The *Local Government Act 1995*
6. The *Public Health Act 2016*
7. The "Guidelines for the preparation of the deceased for burial or cremation". <http://ww2.health.wa.gov.au/Health-for/Industry-trade-and-business/End-of-life>

9 Appendices

9.1 Appendix 1 – Current provisions in the *Health (Miscellaneous Provisions) Act 1911*

Current provisions of the *Health (Miscellaneous Provisions) Act 1911* relating to morgues:

Division 8 — Morgues

133. Local government may license morgues

- (1) The local government may grant a licence for any place for the temporary reception of the bodies of the dead, and for keeping such bodies for the purpose of view, examination, identification, or other lawful purpose before burial or cremation, and may license any private premises for the temporary reception and keeping of such bodies awaiting burial at an annual fee to be prescribed by the local laws.
- (2) Any person who, in the course or for the purpose of any business, keeps the body of any dead person awaiting burial on premises for which no such licence has been granted commits an offence.
- (3) The provisions of this section shall not apply to any public hospital, or to any morgue established by the local government, or to any police morgue.

Division 9 — Local laws

134. Purposes for which local laws may be made

Local laws may be made in accordance with Part XIV for all or any of the following purposes:

- (45) Prescribing the fees to be paid for the licensing of morgues, and the conditions on which such licences may be granted.

9.2 Appendix 2 – Regulatory tools provided by the *Public Health Act 2016*

Once fully implemented the *Public Health Act 2016* has a number of tools to deal with public health risk management and offences under the Act. These include:

- General public health duty
- Infringement notices
- Improvement notices and enforcement orders;
- Prosecution; and
- Registration and licencing

General public health duty

The General Public Health Duty requires that a person must take all reasonable and practicable steps to prevent or minimise any harm to public health that might foreseeably result from anything done or omitted to be done by the person.

Where the general duty is to be applied, there must be some clear *harm* to public health. In cases where matters are a nuisance or amenity problem but no health effect can be proven, such as unsightly yards, neighbourhood disputes and inconveniences, the general duty will not apply.

The General Public Health Duty may cover situations where there are no specific regulations and a public health risk is or might foreseeably result from anything done or omitted to be done by a person. Non-compliance with the general duty is not an offence but may lead to the application of improvement notices and enforcement orders under Part 14 of the Public Health Act. Guidelines may be used to clarify the application of the general public health duty and provide guidance as to the measures that may constitute compliance or non-compliance with the general duty.

Infringement notices

An infringement notice is a notice that the person to whom it is directed has committed an alleged specified offence under a regulation, and requires payment of a specified monetary amount for the offence within a specified time. Infringement notices provide a cost effective and efficient method of dealing with some offences.

The Act is silent on the ability to issue infringement notices. However, the Public Health Act is a prescribed Act under the *Criminal Procedures Act 2004*. This means that any regulation made under the Public Health Act may prescribe an offence for which an infringement notice may be issued including relevant forms. Therefore, infringement notices can only be served where prescribed by a regulation.

Improvement Notices and Enforcement orders

An improvement notice is an order that either requires or prohibits a person from taking specified action. There may be a specified period in which the person has to comply with the improvement notice. While an authorised officer may extend the period given to take action, once that period has elapsed an authorised officer may:

- Issue a notice of compliance if the officer is satisfied, after carrying out an appropriate assessment that the improvement notice has been complied with.

- Issue a notice that sets out the reasons why the officer is not satisfied that the improvement notice has been complied with; and
- Report the non-compliance to the enforcement agency with a recommendation to issue an enforcement order

An enforcement order is an order that either requires or prohibits a person from taking specified action. A prohibition with respect to specified action may be limited, absolute or conditional.

An enforcement order can be issued by an enforcement agency if it reasonably believes that an improvement notice has not been complied with, or if the issue of the order is necessary to prevent or mitigate a serious public health risk. An enforcement agency may issue an enforcement order in respect of non-compliance with an improvement notice irrespective of whether the improvement notice was issued by a person who was an authorised officer of that or another enforcement agency.

Prosecution

In accordance with Part 18, section 280 of the Public Health Act, an enforcement agency may commence proceedings for an offence under the Act or its regulations. A prosecution is separate from action under Part 14 relating to improvement notices and enforcement orders. So prosecution can be commenced irrespective of any action being undertaken under that part.

Registration and licencing

Part 8 of the Public Health Act provides a framework for the registration and/or licensing of activities declared by the regulations to be public health risk activities. The regulations will prescribe who the appropriate enforcement agency is for each registrable and/or licensable activity. This may be the local government, the Chief Health Officer or both. Regulations may prescribe offences in relation to an activity. Regulations may provide modified penalties for offences for which an infringement notice may be issued.

9.3 Appendix 3 - Public health risk assessment

A number of risk assessment tools needs to be used to determine the risk level for each identified public health risk. These tools includes consequence category table (Table 4), a Risk likelihood table (Table 5) and a Risk quantification Matrix (Table 6).

These risk assessment tools are from AS/NZS ISO 31000:2009 Risk Management – Principles and guidelines (Standards Australia, 2009) and The Health Risk Assessment (Scoping) Guidelines (Government of Western Australia, 2010).

The Department of Health has 5 Public Health Risks levels (Shown in Table 3), each requiring a varying degree of DOH involvement in their management.

Table 3 Definition of risk levels

Risk Level	DOH management requirements
Very Low Public Health Risk	No further assessment required
Low Public Health Risk	Some mitigation/management may be required – no detailed assessment of health hazards required but addressed with routine controls
Moderate/Medium Public Health Risk	Substantial mitigation/management required – assessment required of health hazards
High Public Health Risk	Not an acceptable risk. The DOH needs to be involved in the management of high public health risks. Major mitigation/management (including offsets) may be required – assessment required of health hazards
Extreme Public Health Risk	Potentially unacceptable: modification of proposal required

Table 4 Health consequence table adapted from the 2011 Health Risk Assessment (Scoping) Guidelines, Department of Health WA

Category	Acute Health Consequences (per hazard or outbreak)	Chronic Health Consequences (per project lifecycle)
<p>1 Catastrophic</p>	<ul style="list-style-type: none"> • >1 fatality • OR >5 permanent disabilities • OR Non-permanent injuries requiring hospitalisation for 5 – 10 % of populations at risk • OR Acute health effect requiring hospitalisation for 5 – 10 % of populations at risk 	<p>Chronic health effect requiring medical treatment for 10 – 15 % of population at risk</p>
<p>2 Massive</p>	<ul style="list-style-type: none"> • 1 fatality • OR 2 – 5 permanent disabilities • OR Non-permanent injuries requiring hospitalisation for 2 - 5 % of populations at risk • OR Acute health effect requiring hospitalisation for 2 – 5 % of populations at risk 	<p>Chronic health effect requiring medical treatment for 5 - 10 % of population at risk</p>
<p>3 Major</p>	<ul style="list-style-type: none"> • No fatality • AND 1 permanent disability • OR Non-permanent injuries requiring hospitalisation for 1 – 2 % of populations at risk • OR Acute health effect requiring hospitalisation for 1 - 2 % of populations at risk • OR Evacuation is necessary 	<p>Chronic health effect requiring medical treatment for 2 - 5 % of population at risk</p>
<p>4 Moderate/ Significant</p>	<ul style="list-style-type: none"> • No fatality • AND No permanent disability • AND Non-permanent injuries requiring hospitalisation for 1 – 2 % of populations at risk • OR Acute health effect requiring hospitalisation for 1 – 2 % of populations at risk • AND No evacuation 	<p>Chronic health effect requiring medical treatment for 1 - 2 % of population at risk</p>
<p>5 Minor</p>	<ul style="list-style-type: none"> • No fatality • AND No permanent disability • AND Non-permanent injuries requiring hospitalisation for 1 – 5 persons • OR No Acute health effect requiring hospitalisation • AND No evacuation 	<p>Chronic health effect requiring medical treatment for 0 - 1 % of population at risk</p>
<p>6 Negligible/ Slight</p>	<ul style="list-style-type: none"> • No fatality • AND No permanent disability • AND No Non-permanent injuries requiring hospitalisation • AND No Acute health effect requiring hospitalisation • AND No evacuation 	<p>No chronic health effect requiring medical treatment</p>

Table 5 Risk likelihood table adopted from the 2011 Health Risk Assessment (Scoping) Guidelines, Department of Health WA

Likelihood	Expected or Actual Frequency	% Chance of chronic health effect during life of project
Almost Certain	More than once a year	Over 90%
Likely	Once in 1 to 3 years	61 – 90%
Possible/ Occasionally	Once in 3 – 5 years	31 – 60%
Unlikely	Once in 5 – 10 years	6 – 30%
Rare/Remote	Once in more than 10 years	Up to 5%

Table 6 Risk matrix (qualitative)

Likelihood	Consequences					
	Slight/ Negligible	Minor	Moderate	Major	Massive	Catastrophic
Almost certain	Low	Medium	High	Extreme	Extreme	Extreme
Likely	Low	Low	Medium	High	Extreme	Extreme
Possible	Very Low	Low	Low	Medium	High	Extreme
Unlikely	Very Low	Very Low	Low	Low	Medium	High
Rare/ Remote	Very Low	Very Low	Very Low	Low	Low	Medium

9.4 Appendix 4 – Department of Health Guidelines for the preparation of the deceased for burial or cremation

The DOH “Guidelines for the preparation of the deceased for burial or cremation”.

<http://ww2.health.wa.gov.au/Health-for/Industry-trade-and-business/End-of-life>

Definitions

body	means the body of a dead person, but does not include the cremated remains of the person.
body preparation room	means that part of a mortuary that is used for the preparation of bodies for burial or cremation.
burial	includes putting in a vault.
dead person	includes a still-born child.
embalming	means the process of preserving a body by means of the removal of body fluids and arterially injecting the body with embalming fluids
funeral director	means a person (other than the operator of a mortuary transport service) who, in the conduct of the person’s business, engages, for the purpose of burial, cremation or transport, in the collection, transport, storage, preparation or embalming of bodies or engages in the conduct of exhumations
holding room	means a room that includes refrigerated body storage facilities for at least 2 adult bodies but does not include a body preparation room.
mortuary	means premises that are used, or intended to be used, for the preparation or storage of bodies as part of the arrangements for their burial or cremation, but does not include any premises (such as a hospital) in which bodies may be temporarily stored pending their transfer to a mortuary.
mortuary transport service	means a service that, for fee, gain or reward, transports bodies
refrigerated body storage facility	means a storage facility for bodies maintained at between 1 and 5 degrees Celsius.

Legislation

These requirements are to be read in conjunction with:

- *Public Health Act 2016* and *Health (Miscellaneous Provisions) Act 1911*
- *Health (Skin Penetration Procedure) Regulations 1998* and the Skin Penetration Guidelines of Practice.
http://www.public.health.wa.gov.au/cproot/1482/2/Guidelines_of_Practice_for_Skin_Penetration.pdf
- Australian Guidelines for the Prevention and Control of Infection in Healthcare (section B1) published by the National Health and Medical Research Council
https://www.nhmrc.gov.au/files_nhmrc/publications/attachments/cd33_infection_control_healthcare_140616.pdf

Introduction

The Funeral Industry is largely regulated by Local Government but the *Public Health Act 2016* and *Health (Miscellaneous Provisions) Act 1911* provide important legislation intended to ensure that Public Health principles are applied to the practice of preparing the deceased for burial or cremation. The 'Guidelines for the preparation of the deceased for burial and cremation' (the Guidelines) have been developed to set out the minimum requirements that are expected of the Funeral Industry.

The Guidelines do not replace other official guidelines provided for the Funeral Industry but should be read in conjunction with them.

The Guidelines, which were prepared by the Public Health Division of the Department of Health (DOH) Western Australia (WA) in conjunction with the Funeral Industry, are published by the Deputy Chief Health Officer.

Facilities

All premises to be used as storage facilities for bodies of the dead must be licensed and the responsibility for licensing rests with Local Government.

Retention of bodies by a person who is not a funeral director

- A person who is not a Funeral Director must not retain a body if more than 5 days have elapsed since death.
- The Chief Health Officer (CHO) may approve, in a particular case, of a body being retained for longer than 5 days, subject to any conditions that the CHO considers appropriate.
- This clause does not apply to a body that is stored at premises licensed under the *Anatomy Act 1930* or is the subject of the *Coroners Act 1996*.

Retention of bodies by a funeral director

- A funeral director must retain a body:
 - In a refrigerated body storage facility; and
 - In a mortuary or holding room.
- A funeral director may cause the body to be removed from a refrigerated body storage facility:
 - To another part of the mortuary, for a maximum of 8 hours a day for the purposes of preparing the body for burial or cremation, embalming the body or viewing of the body by mourners; or
 - For the purpose of transporting the body for burial, interment or cremation; or
 - For the purpose of transporting the body to another mortuary.
 - If a full embalming of the deceased has occurred, removal from refrigerated storage for the purposes of funeral rites for up to four days may be considered. In these cases the funeral director and family of the deceased must work in conjunction to ensure appropriate environmental management and respectful placement of the deceased.

Embalming of bodies

- A person must not embalm a body unless that person has a current certificate of proficiency recognised by the Australian Institute of Embalming; or is undergoing training or mentoring towards achieving this qualification.
- A person must, when carrying out a skin penetration procedure, comply with the *Health (Skin Penetration Procedure) Regulations 1998* and the Skin

Penetration Guidelines of Practice.

Infection control procedures

- A person must, when carrying out any procedure on a body, comply with the guidelines specified in the Australian Guidelines for the Prevention and Control of Infection in Healthcare (section B1) published by the National Health and Medical Research Council

Bodies to be placed in body bags

- A responsible person must ensure that the body of a dead person is not removed from a place unless:
 - The body has been placed and secured in a bag or wrapping in a manner that prevents the leakage of any body exudate or other substance; and
 - The name of, or an identification of, the dead person is clearly and indelibly written on the top outer surface of the bag or wrapping.
- For the purposes of this clause, a responsible person means:
 - If the body is at a hospital – the Chief Executive Officer (CEO), or a person authorised by the CEO; or
 - If the body is at any other premises or place – the funeral director or the person removing the body.

Removal of bodies from body bags

- A funeral director may only remove a body from a body bag if the removal is for the purpose of
 - Embalming the body; or
 - Preparing the body for viewing, transport, burial or cremation; or
 - Transferring the body to a coffin.
- After a funeral director has completed a temporary embalming procedure, or otherwise prepared a body, the funeral director must place it in a new body bag.
- After a funeral director has completed a full embalming, body bags are not recommended.
 - If the embalming is for repatriation then care should be taken to ensure the skin of the deceased is not affected by a covering wrap. The body should be placed in the coffin, and the coffin should be placed in the wrap prior to being placed in the outer covering for transportation.
- This clause does not apply to a body that is subject of an inquest under the *Coroners Act 1996* or a post mortem that is carried out under the *Human Tissue and Transplant Act 1982*.

Body viewing

- A funeral director may make a body available for viewing by mourners.
- A funeral director who makes an unembalmed body available for viewing:
 - Must not remove the body from refrigeration for a period longer than is necessary for making it available for viewing; and
 - Unless the body is to be buried or cremated immediately, must place the body under refrigeration after the viewing; and
 - Must not allow the body to remain unrefrigerated for a period of more than 8 hours in any day.

Bodies in holding rooms

- A person (other than a funeral director) must not keep a body in a holding room for more than 48 hours.
- The CHO may approve of a body being kept in a holding room for more than 48 hours, subject to any conditions that the CHO considers appropriate.
- A person (other than a funeral director) who keeps a body in a holding room, and who has reason to believe that not refrigerating the body will be a risk to public health, must put the body in the refrigerated body storage facility of the holding room.

Register of bodies

- A person who operates a mortuary must maintain a register of all bodies stored and prepared in such mortuaries.
- The person must make an entry in the register relating to each body immediately after the body is prepared.
- Each entry must include the following:
 - the name, age and last address of the person whose body was prepared;
 - the date of the person's death;
 - the date the body was received;
 - the date the body was removed from the mortuary; and
 - the name of the cemetery or crematorium, or the person, to whom the body was delivered.
- The person must keep a copy of the register and make it available for inspection.

Transport of bodies

- A funeral director must, before despatching a body by a carrier other than a funeral director or the operator of a mortuary transport service, enclose the body in a watertight coffin.

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