

An Analysis of Regulation 363 of the National Health Act (61 of 2003) Regarding the Management of Human Remains from the Perspective of Emerging Funeral Directors

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Abstract

The National Health Act 2003 (Act 61 of 2003) was formulated for the purpose of providing a governing and regulatory framework for a structured, homogenous healthcare system within the Republic of South Africa. In 2013, with regards to section 68(1)(b) read with section 90(4)(c) of the National Health Act 2003 (Act 61 of 2003), the regulations pertaining to the management of human remains were gazetted. Chapter 3 of the regulations, which deals with “Funeral Undertakers’ Premises and Mortuaries”, is the focus of this paper. As emerging businesses, many emerging funeral directors (EFDs) are currently struggling to comply with the onerous regulations of human remains management, with many mortuary premises operating without a valid Certificate of Compliance (CoC). Members of the funeral industry undertook national strikes to voice these concerns and challenges. In March 2022, the National Health Department proposed a new version of the regulations. The government gazette (No. 46048) in which these regulations were published did not refer to Regulation 363 or its repeal and replacement, though this must be assumed because the document matches Regulation 363 in terms of layout and completeness, with only minor differences. This paper assessed if the proposed regulations were a response to the challenges experienced by the EFDs around current regulations. A parallel comparison of the old and newly proposed human remains regulations was conducted via a content analysis, to assess whether the proposed amendments could improve the sustainability of EFDs. The study found that the proposed regulation was more stringent than the current one. The struggling EFDs seem to have no chance of being compliant should this Regulation be tabled.

Keywords: Funeral directors, Regulation 363, Human remains, Compliance, Participatory



Introduction

The public policy space in the world is changing rapidly, thus creating uncertainty. Andrew (2021) asserts that public policy entails several actors who interact with the policy in pursuit of diverse goals. Thus, policymakers face policy variety with far-reaching consequences that are difficult to anticipate. Amongst other priorities, policymakers have the responsibility of developing and implementing policies that contribute to health, safety, and environmental preservation, with policymaking usually intending to better the lives of communities (Uwizeyimana and Munzhedzi, 2022). In 1997 the World Health Organisation (WHO) identified the complex relationship between human health, safety, and the environment (WHO,1997). Mathee and Wright (2021) point out that the WHO projected that 25% of the global burden of ailments or disease emanates from modifiable environmental factors. Therefore, policymaking must address environmental hazards within attributable spaces to mitigate circumstances that lead to ill health and an overburdened health service. In the South African context, though several goals have been set by the National Health Department to improve health services, healthcare is deteriorating. Maphumulo and Bhengu (2019) lamented that SA healthcare is in ruins and needs urgent attention.

Though the study focuses on human remains management, the act addresses healthcare services in general. The Western Cape Government (2017) identifies Forensic Pathology Services (FPS) as a unit within the Department of Health. FPS renders services to the families of the deceased and the South African Police (SAPS). Following the conduction of the pathology service, the remains are released to the EFD, who handles these remains on behalf of the family in preparation for the burial. According to Regulation 363, EFDs' premises must comply with the National Health Department requirements for mortuaries.

The World Health Organisation (WHO) (2012) defines a mortuary as a place where human remains may be kept for a time. A mortuary can be attached to a hospital or be a separate establishment in a business environment. In South Africa, the oversight of funeral parlours and funeral services is managed at the municipal level in terms of Municipal Health Services as laid out in section 84(1)(i) of the Local Government: Municipal Structures Act No. 117 of 1998, within the environmental health structures. These structures are also responsible for inspection and accreditation. In March 2022, the Department of Health introduced a revision of Chapter 3 of Regulation 363 of the National Health Act (2003) relating to "Funeral Undertakers' Premises and Mortuaries". South Africa's struggling economy relies on the creation of employment by emerging business sectors, and policies should encourage the growth of such businesses, including EFDs.



Conceptual Analysis

The business model of EFDs is twofold; there are those with a full spectrum of funeral services and those who do not have some of the important elements of managing human remains as per Regulation 363, such as the mortuary.

Regulation of human remains management is necessary to balance health and safety regulations together with respect for the deceased (Health Protection and Surveillance Centre, 2013). Health and safety guidelines are a mechanism to ensure a balance between those working in the field of human remains, such as funeral directors, health professionals, mortuary workers, the deceased's families, the environment, and the public at large, as not all infections are known to those handling the remains. From the perspective of a funeral business, funeral service professionals (FSPs) (as referred to by Davidson and Benjamin Jr., 2006) risk exposure to several infectious agents. Policies that regulate the management of human remains are intended to mitigate such challenges by ensuring that those in temporary possession and care of human remains and the disposal thereof act within common and statutory law (Marsh, 2015).

Pauw (2021) reminds us that South Africa's history of discrimination and racial segregation brought about a health system and related policies that reinforced white supremacy and capitalist ideals. The new dawn in South Africa in 1994 saw the ruling African National Congress revise all unjust policies in line with the new Constitution adopted in 1996. The National Health Plan (Department of Health, 1994) was one of the policy documents designed to deal with past injustices in the health sector. However, the implementation of the national health policy has experienced mixed success (Giaimo, 2016; Maphumulo and Bhengu, 2019). This relates to whether the regulations could achieve the objectives of the policy or not. This study attempts to compare the current and the proposed amendments of Regulation 363 and determine if the proposed regulations differ from the current policy, and whether changes will ease the burden of obtaining a CoC by the EFDs. During the period of undertaking this study, the framework of human remains management from the National Health Act chapter 3 is depicted as follows:



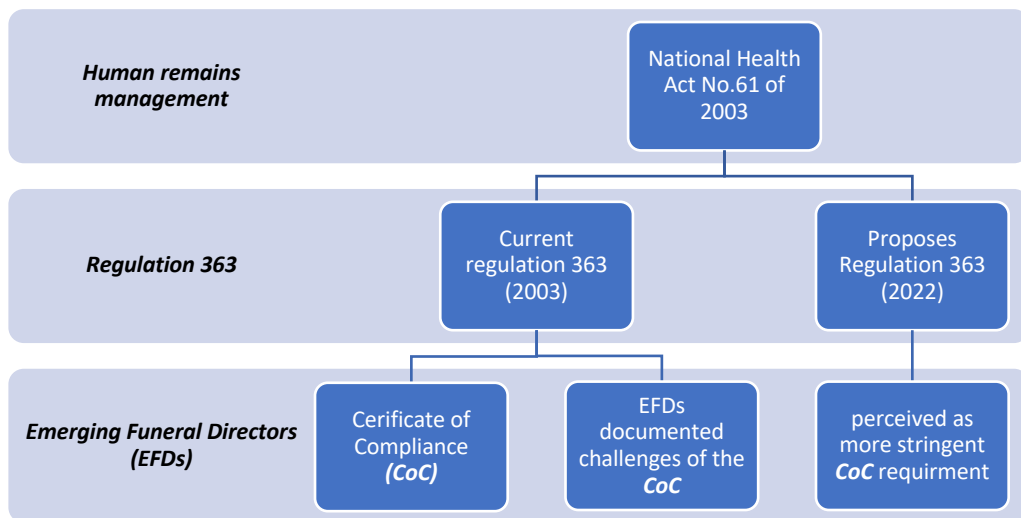


Figure 1: National Health Act Framework

Adapted from the National Health Act No.61 of 2003 Report 1884 & 460481

The figure above depicts how the management of human remains is regulated within the policy layers of the National Health Policy of South Africa. EFDs are struggling with the guidelines of the current regulation of human remains management as it is found to be stringent for emerging businesses. Ultimately, the analysis of the article shows that the proposed regulations read like the current one, with some guidelines that seemingly disadvantage the EFDs.

Literature Review

Decisionmakers adopt or revise policy based on the changing economic, societal and environmental needs over time or to try and deal with problems identified in a particular sector over time. The Presidency of the Republic of South Africa (2020) explained that policy revisions are an important exercise that informs the public about the shift in the intentions of the government, to ensure that the ever-changing societal challenges are responded to whilst upholding democratic values. Walt and Gilson (1994) observed that policy analysis is a deliberate effort to seek policy and interventions to social issues and public health challenges, via the identification, analysis and presentation of issues to policymakers for consideration. Patton, Sawicki, and Clarke (2013) state that the variety of public policy problems are often so great that no single set or systematic process of policy-making analysis can be developed to deal with a particular social problem.



The end of life is part and parcel of our existence. The COVID-19 pandemic has been a harsh reminder of this. Death necessitates the disposal of the remains in the safest possible manner. The disposal of human remains has evolved, from keeping and preparing the remains at home to having mortuaries hygienically store and prepare the remains for disposal. The emergence of mortuaries in the 19th century is illustrated by a report in the *British Medical Journal* (Anon, 1881), which covers the case of a police sergeant's body being gnawed by rats whilst lying in a public house waiting for an inquest. The author points out that the local authority concerned, Wednesbury, could have implemented the existing Public Health Act of 1848 and built a mortuary "for the reception of bodies that cannot be kept at home with decent seclusion or without danger to the health of the living [and] in cases of the sudden death of persons unknown ... when the body should be kept for identification".

The existence of mortuaries has altered humanity's experiences with regards to death and funerals, by enabling the adequate preparation by bereaved families to send their loved ones to their final resting place with dignity. Funerals are significant events in African societies, reaffirming family ties and obligations. The funeral industry is unique since it offers a complete package of goods, burial services, and emotional support to families in black communities during times of distress (South African Law Reform Commission, 2020). However, in low-income and developing countries there are numerous challenges regarding the management of these facilities.

The South African requirements for running a compliant business are generally stringent. The municipal Environmental Health Practitioners (EHPs), as the custodians of the guidelines in this sector, ensure that all the requisite guidelines are met before they can issue a Certificate of Competence (CoC). These guidelines were published as Gazette No. 36473 363 in 2013, with regards to section 68(1)(b) read with section 90(4)(c) of the National Health Act 2003 (Act 61 of 2003). As already stated, this article focuses on Chapter 3 of the regulations relating to "Funeral Undertakers' Premises and Mortuaries". A new set of regulations was published for comment in Gazette No. 46048 in May 2022. This Gazette did not refer to Regulation 363 or its repeal or replacement, but the proposed document's guidelines match Regulation 363 in terms of layout and scope, with certain differences. At the time of this study, Regulation 363 of 2013 is still active.

Since the funeral industry will always exist, the management of human remains will continuously play a pivotal role in the local economy, with EFDs serving the needs of the community. The funeral industry in South Africa has grown considerably over time. Lee (2013) identified a period between 1980 and 1990 when apartheid's grip was weakening, during which mobility and a range of entrepreneurial opportunities opened up to the previously disadvantaged. The Service Seta (SETA) (2019) established that the industry consists of various businesses with different growth levels. There are a few businesses that have been operational for decades with measurable growth which may be categorised as

established businesses. There are also long-standing family businesses with moderate growth (Maphela, 2022), though most are micro, small, and medium businesses. The South African Law Reform Commission (SALRC) (2020) found that the exact number of funeral parlours operating in South Africa is unknown. The commission projected between 5,000 and 10,000 registered funeral parlours, with 20,000 or more operating informally, without a Certificate of Competence (COC). The SALRC report (2020) also found that the reason for the actual number of operating funeral parlours being unknown was the poor enforcement of health regulations and the compliance challenges faced by emerging businesses.

The management of human remains internationally hinges on health and safety regulations that are meant to guarantee that all workplaces and work practices are as safe as possible for all involved, whether working or visiting there, and the physical environment safe and protected (National Health Act, No.61 of 2003). Regulations governing the management of human remains apply to big national syndicated funeral establishments as well as the growing number of emerging businesses in the townships, regardless of the size of the business (Maphela, 2021).

The management of human remains in South Africa is primarily handled by EFDs because they are the ones on the ground – community members serving other community members. Their experiences and responses to the regulations are evident from the narrative that emerges from their association meetings as discussed in the media and on social media platforms (Maphela, 2021). Martinez (2019) posits that narrative policy analysis is concerned with the policy stories formulated and circulated by policy actors and communities. EFDs felt sidelined by Regulation 363 as it is too stringent for emerging businesses from previously disadvantaged communities, which is viewed as a historical injustice within the national health policy arena (Maphela, 2022). The policy narrative of EFDs emerges from informal EFD associations with a collective narrative stance. A lack of research and documentation prevents scientific critical analysis of how they respond to policies since their deliberations are undocumented. Since the EFDs feel that compliance with the original regulations of 2013 were already a challenge for their businesses, both policies will be analysed to ascertain the possible unintended consequences should the revised policy be promulgated.

Human Remains and Emerging Funeral Directors

A single study cannot cover all the dimensions and nuances of the revision of the regulations, and will instead focus only on items that directly affect the emerging funeral directors in the townships. The challenges of EFDs in the townships surfaced through various media channels, for example, an interview on the TV channel eNCA (2020). Maphela (2021) found that the EFDs are struggling with compliance because of the capital outlay needed to establish a fully compliant undertaking that ticks all the boxes upon inspection. Because they primarily service poor communities, they often operate at a loss



due to the challenges of unemployment and poverty in the townships. In Ehlanzeni District Municipality in the Mpumalanga province, only four out of the 68 undertakers inspected were compliant (Unpublished data of Ehlanzeni District Municipal Health Service, 2021). The EFDs voiced their frustration by striking, which included not collecting bodies for a number of days in order to draw the Department of Health's attention towards the stringency of Regulation 363, which they felt was too burdensome for emerging businesses (Comis, 2020).

Methodology – Policy and Legislation Analysis

The study conducted a side-by-side comparative analysis of the current Regulation 363 against the proposed Regulation 363 (2022) by the National Department of Health. The existing policy is captured the National Health Act (61 of 2003) with regulations for the management of human remains published in 2013 (Regulation 363). Side-by-side content analysis was chosen as the methodology, which White, Marilyn, and Marsh (2006) define as a research technique to formulate replicable and valid inferences from texts to the context of their utilisation. The researcher uses analytical constructs in order to gravitate from the text towards answering the formulate research questions (White, Marilyn, and March, 2006).

Analysis of Chapter 3 of Regulation 363 (2013) of the Human Remains Management

In this section, the study unpacks the definitions as per Regulation 363 in the National Health Act (No. 61 of 2003). These definitions are chosen specifically as they speak to the management of human remains. As has been stated, this section aims to establish if the EFDs can sustain themselves should the proposed amendments be tabled and promulgated.

Definitions

The following definitions are contained in Chapter 1 of Regulation 363 (2013):

'Mortuary' is defined as premises where human remains are kept for hygienic storage and preservation or examination purposes.

'Funeral Undertakers' Premises' are defined as the premises which are utilised or meant for utilisation with regards to the preparation and storage of human remains and may undertake funeral or burial services (National Health Act, No.61 of 2003, Regulation 363 Chapter 1). Rule 3 (1)(a) of the NHA states that "no person shall prepare or store any human remains except on approved funeral undertaker's premises or mortuary in respect of which a certificate of competence (CoC) has been issued and is in effect".



- *Certificate of competence*

No person may run a business that prepares and stores human remains without a CoC for the premises and/or mortuary of the undertaker's premises or mortuary. Before a mortuary can be approved, according to Rule 10. (2)(g) of Regulation 363, the following must be affected by the EFD and approved by the environmental health practitioner (EHP):

- Preparation rooms for the preparations of human remains.
- Change rooms, separate for each gender, for use by employees.
- Refrigeration facilities to store human remains, with power backup.
- Facilities for the washing and cleansing of utensils, equipment and vehicles.
- Facilities that are meant to load and unload human remains.

Rule 3. (3)(b) states that a local government can issue a written order to the owner of the premises to stop all activities related to the handling of human remains if they are satisfied that a health nuisance exists, until such a time that the nuisance referred to in the order has been eliminated.

- *Application for the issue or transfer of a CoC*

Regulation 4. (1)(a) stipulates that before applying for a CoC with the local government, the prospective owner of the parlour must issue a public notice via the local newspaper in the language used in the proposed area notifying the surrounding community of their business intentions to provide an opportunity for objection. This must be done no less than 21 days before submitting the applications to the local government.

The application for a CoC shall be accompanied by:

- Description of the premises and the location.
- A complete ground plan of the scale of construction or existing business on a scale of 1:100.
- A block plan indicating adjacent premises already occupied by the applicant or other persons and for what purposes such premises are being/are to be utilised.
- Particulars of any other persons other than the owner or any employee who will be preparing the human remains.

No local government may issue a certificate without the approval of an EHP employed by the local government, who has inspected the premises and is satisfied that it confirms the checklist indicated in Appendix H of Regulations 363 in the National Health Act (No. 61 of 2003).



- *Issue or transfer of the CoC*

After the EHP is satisfied with the inspection of the EFD premises, they can issue or transfer a CoC on the basis that the premises or mortuary:

- Comply with all the requirements of the regulations.
- Are in all respects suitable for the preparation of human remains.
- Will not be offensive to any occupant of nearby premises.

Without approval by the EHPs of the premises, any establishment purporting to be funeral premises is deemed non-compliant. Within the current Regulation 363 of human remains management (National Health Act, (NO.61 of 2003)), the EFDs are apparently struggling with attaining CoCs. In 2020, the news channel eNCA reported on funeral parlours' mass protest to highlight the challenges they experienced with the current regulation, which made it difficult for them to be certified as competent in the businesses.

Provisional CoC

In cases where the local government finds that the main items of the regulation, such as the refrigeration and drainage systems are in order, whilst other matters are still underway of being rectified, a local government may:

- Issue a provisional CoC for a maximum period of 6 months to enable the applicant to comply with all aspects of the regulations. Maphela (2021) states that during the grace period afforded by local government, structures like Local Economic Development (LED) can play a role. A properly functioning refrigerator and a drainage system are the main determinants of a functional mortuary. All other requirements, if not in order, can be attended to if given sufficient time. Six months is considered reasonable and sufficient for the EFD to seek other funding avenues to ensure full compliance.
- The six months may be extended for up to 12 months if the local government is satisfied that the process of rectification is underway. In the studies by Maphela (2021 and 2022), it is suggested that the Municipal Health Division and the LED division can collaborate on such funding and find ways to assist the EFDs who serve the local community. The challenges of EFDs are by and large due to financial resource shortages, though their activities fall under the Department of Health. A business that becomes successful and compliant in a community contributes to the development of that community.



- *Duties of the holder*

Regulation (8)(1) states that the certificate holder must inform the issuing government of any changes in the particulars supplied in the application for the certificate. This clause is challenged since the South African Law Reform Commission (SALRC) (2020) found that many funeral parlours in South Africa are unknown due to challenges in the enforcement of health regulations. This could mean that the existing database of local municipalities where EFDs are supposed to be registered is not a true reflection of what is happening on the ground. The SALRC (2020) further found that a number of these parlours did not have the CoC and are thus regarded as informal, where 20,000 across SA were operating without a CoC.

- *Suspension or revocation of a CoC or provisional CoC*

Regulation (9)(1) states that, if upon inspection, the EHP has reasonable grounds to suspect that:

- Such premises are utilised in a manner that is hazardous to health or conditions are causing a health nuisance or health hazard; or
- Such premises are being used in contravention of the regulations,

Local government may:

- Serve a notice on the holder instructing them to remove the health hazard from the premises and/or cease using the premises in contradiction of the certificate and notifying them of an inquiry for the holder concerned to provide reasons why the certificate should not be withdrawn as per sub-regulation (12). It has been mentioned that the notice period serves as a remedial break for the EFDs to remedy the identified health hazards. This only applies to EFDs that were previously granted a CoC. As the SALRC (2020) already mentioned, SA is plagued by several informal funeral parlours. By law, those businesses are not supposed to handle human remains, as they did not follow the protocol of starting such a business through their local government. Gumede (2020) also found that two out of three funeral parlours operate without a certificate of competence, making them illegal.
- Suspend a CoC immediately.

The proposed Regulations of March 2022

In March of 2022, the Department of Health published a new draft of the regulations related to human remains management in terms of section 68(1)(b) read with section 90(4)(c) of the National Health Act 2003 (Act 61 of 2003) and invited comment from interested parties.



Definitions

The definitions in the revision are the same as the 2013 regulations except for the following:

- A funeral undertaker means a person whose business is to manage funeral and burial services, including the handling of human remains that are to be buried or cremated, and 'funeral director' has a corresponding meaning.
- 'Funeral undertaker's premises' means premises used for preparing and storing human remains and includes the vehicles that transport human remains. Currently, these vehicles and trailers are customized as per the specifications of the EFDs. If this proposed amendment is implemented, the Traffic Department will become part of law enforcement around human remains management.

Certificate of Competence (CoC) Rule 5. (a) and (b)

The section on the CoC differs from the previous Regulation 363 as it states the following:

- No person may handle human remains except on approved funeral director's premises with a valid CoC.
- No person may transport human remains except in a vehicle or trailer with a valid CoC.

Application of the Certificate of Competence: Premises

SALRC (2020) explained that part of the incidental functions of municipalities is the zoning of land for various uses in terms of various provincial ordinances. According to the Department of Health DoH (Act No. 61 of 2003), the application for the CoC is a lengthy process that takes into account where the premises are located, the surrounding communities, be it business or residential, and the complete ground plan of the construction including the drainage system. For the EFDs' application for mortuary premises to be considered for a CoC, they must prove that a public notice was issued and uncontested. A qualified plumber who understands the nature of the business must assess the drainage and approve it based on the fact that the wastewater from the funeral parlour premise will be flowing into wastewater and not contaminating the clean drinking water. Lastly, the identification of the persons who will be running the establishment must be valid documents.

Application for the Certificate of Compliance: Vehicle or Trailer

The proposed regulations (2022) prescribe that an application for the CoC for the premises must be accompanied by a separate CoC for the vehicle or trailer that transports the



human remains. The application for such a CoC must be accompanied by the following documents:

- Registration documents of the vehicle or trailer issued by the road traffic authorities.
- A certificate or written confirmation by the manufacturer or modifier regarding the specifications of the vehicle or trailer.

Side-by-side Comparison of the 2013 Regulations and Proposed 2022 Regulations

Table 1: Comparison of the regulations of 2013 and 2022

Definitions	Current Regulation 363	Proposed regulation 363
Funeral Undertaker	No separate definition, combined with the undertaker's premises.	A person whose business is to manage funeral and burial services, including the management of human remains.
Funeral Undertaker's premises	Premises that are used in connection with the preparation of human remains and may undertake funeral or burial services.	Premises are used for the preparation and storage of human remains, which includes the vehicles used for the transportation of human remains.
Certificate of Competence	For the premises.	For the premises as well as the vehicle and or trailer that will be used to transport human remains.
Certificate holder	A person in whose name the certificate has been issued.	Same



Certificate of competence for the vehicle and or trailer	No requirements	The vehicle must be approved by the manufacturer/modifier and traffic authorities for this purpose.
Alternative power	Back-up source of electricity in case of power failure	Alternative energy source in case of power failure

Adapted from National Health Act No. 61 of 2003 and the proposed

The items in Table 1 were chosen for examination due to their importance in the running of this business, especially for EFDs. As mentioned, media outlets such as eNCA and the Star have reported on strike action undertaken by EFDs because they felt that their views on the CoC process were not given enough attention by the Department of Health (Mahamba, 2020). The DoH (2020) subsequently issued a media statement informing the public of the impending national strike by the EFDs.

a) Definition of a “funeral undertaker/director”

In the old regulations, ‘funeral director’ was not defined, and could include those with showrooms and no facility to handle the human remains, and those with showrooms and the cold-room facilities to manage human remains. Most emerging funeral businesses are small in size because of the capital layout required to start such a business. Thompson (2019) states that a start-up funeral business requires between R600 000 and R3 million in capital, which is a challenge for most businesses. As such, most EFDs rely on other funeral directors to store human remains. However, the new regulations define a funeral director as a person whose business is to manage funeral and burial services including the handling of human remains that are to be buried or cremated. Maphela (2021) found that many EFDs only have showrooms to sell burial services. Thus, according to the revised regulations, they do not fit the definition of funeral directors.

b) Regulations relating to the funeral director’s premises

The old and the revised regulations are synonymous when it comes to the following requirements:

- A preparation room for the preparation of human remains.
- Separate male and female change rooms for employees.

- Approved and adequate refrigeration facilities for refrigeration of human remains.
- Facilities for the washing and cleaning of utensils and equipment.
- Facilities for the cleaning of vehicles equipped with approved drainage systems.
- Facilities for the loading and unloading of human remains.
- An alternative energy source, in case of power failures.

At the time of writing, South Africa is plagued by ongoing rolling blackouts due to power supply challenges. Having an alternative power source on standby has already caused documented challenges in the management of human remains (Adonis, 2022; Solomons, 2022). Funeral directors are hard hit by load shedding and have sent a distress call via the media regarding the challenges of decomposing human remains (Radio 702, 2022; Mail and Guardian, 2023). It is not clear whether these operators previously had CoCs despite not having alternative power supplies. Tsewu (2022) notes that as a result of struggling to keep the lights on, Eskom has consistently applied load-shedding in stages going up to Stage 6. This affects EDFs, who struggle to preserve the human remains before burials. It would seem that the CoCs were issued under different circumstances, although an alternative power supply is a requirement of both sets of regulations, being 2013 Regulation 10 (2)(g) and 2022 Regulation 3 (1)(g). The wording in both sets of regulations mentions the need for “an alternative energy source, in the case of power failure”. Appendix H of the 2022 regulations still requires operators to “comply with regulations 10 and 11”, meaning that no COC should have been issued based on the 2013 regulations if the condition of having an alternative power supply was not met. The inquiry conducted by the South African Broadcasting Corporation (SABC) (2022) discovered that while some funeral parlours have alternative power supplies, many emerging ones do not, with the argument being that the purchase of alternative power generation was too expensive for most of the EFDs. The SALRC (2020) stated that since many EFDs have no alternative power source to keep their refrigerators in working condition, human have been decomposing because of load-shedding. This was confirmed by the SABC report (2022), in which a representative of the funeral industry stated that securing an alternative power supply is financially unviable for small-scale EFDs. Currently, the only solution when there is load shedding is to move the human remains to established facilities that have the space and backup power as per Regulation 363.

c) Certificate of Competence

The old (2013) and amended (2022) regulations are identical as to the requirements for issuing a CoC, apart from one addition. The new regulations stipulate that, over and above the requirements of the premises, a separate CoC is also necessary for the vehicle or trailer used to transport human remains (Regulation 10. [1]). This means that an undertaker may only use transport that is certified for carrying human remains, and that a CoC is only issued upon receiving registration documents of the vehicle or trailer from the traffic authorities



(Regulation 10. [2][a]). In addition, a certificate or written confirmation by the manufacturer or modifier regarding the specifications of the vehicle (Regulation 10. [2][b]) must accompany the application of the COC. In practice, EFDs assist each other with vehicles and trailers. If a vehicle or trailer that transports human remains must be approved and only used by the owner, that would mean that many emerging funeral directors will be unable to transport human remains.

d) Application for the COC for the premises

The issuing of consent to open and operate mortuary premises by the municipal or traditional authorities is left unchanged in the revised regulations. As before, a municipality issues a zoning certificate after obtaining consent from surrounding businesses, and only once a public notice is issued and is uncontested by occupants of the neighbouring land where the mortuary premises will be erected.

Discussion

To start a dialogue between the researcher, EHP, EDFs, Johannesburg Parks and Cemeteries, Home Affairs, and Forensic Pathology, a workshop took place at the University of Johannesburg's Soweto Campus. The EHPs of Region D in Soweto and G in Ennerdale, along with the regional EFDs within their jurisdiction, were invited to discuss the proposed amendments on human remains management. All the EFD invitees opposed the proposed amendments and stated they had responded to the Department of Health and were clear that they were not accepting the proposed amendments and asked for clarity on the below points.

Alternative Power Supply

EFDs asked whether the term 'alternative power' includes solar power. The answer from the EHPs was that, as per the 2013 Regulation 363, alternative power means backup power in the absence of electricity, such as generators or solar energy. The EHPs stated that the regulations require automatic switching to an alternative power source as soon as a failure occurs. The EFDs felt this requirement was unnecessary as fridges or cold rooms do not heat up within minutes of power cuts. It can also be inferred that, since the challenges of load shedding are not anticipated to be a new normal, the understanding of the processes of the EFDs could no longer be sustainable without an alternative power supply.

Funeral Director's Premises

The definition of the undertakers' premises also presented challenges to the EFDs, as most emerging funeral directors only have showrooms and rely on established businesses for cold storage. Considering the fieldwork conducted in prior studies, a showroom is defined as an office that sells funeral products, such as coffins, wreaths, and funeral packages that are on display for customers to choose from. In the case of showrooms, the EFD does not



have a mortuary, so they outsource the cold storage aspect to established businesses. As such, it was argued they did not need a CoC for their premises to be a funeral home and that this does not amount to a violation of Regulation 363, since it speaks to mortuaries and the direct handling or management of human remains only.

Zoning

Regarding this subsection of the regulation, EFDs stated that if their set-up was previously approved, their status should remain valid when renewing their CoC upon expiry. The initial exemptions should, therefore, remain in place. Some EFDs who only have showrooms and outsource cold storage felt that they should be allowed to present the CoC of the EFD whose cold storage they use. This would mean that if EFD 'A' is registered as such, the certificate they use would also belong to EDF 'B', who has no cold storage. However, the EHPs said that according to the new regulations, if an EFD has no cold storage, they are not a funeral director. Without a COC, a funeral director is not allowed to store human remains or apply for graves and death certificates from Home Affairs on behalf of the family. Simply put, no funeral activities should be conducted, as it contravenes the Regulation 363 guidelines.

COC for the Vehicle or Trailer

During the workshop, some EFDs indicated that the requirement for the certification of a vehicle or trailer transporting human remains as part of compliance was a challenge for emerging businesses that rely on established businesses for vehicle hire. In such cases, magnetic signs with their business names are applied to the hired transportation. It is important to note that even established businesses may sometimes hire vehicles. Therefore, requiring a certified vehicle and trailer registered in the name of the business does not encourage or facilitate the growth of small businesses.

Conclusion and Recommendations

In 2013, the regulations relating to the management of human remains were gazetted (No. R. 363, Gazette No. 36473) in terms of section 68(1)(b) read with section 90(4)(c) of the National Health Act of 2003 (Act 61 of 2003). Chapter 3 of the regulations pertaining to "Funeral Undertakers' Premises and Mortuaries". With the original version of the regulations already regarded as too stringent, the revised 2022 regulations further frustrated their ability to achieve compliance. As such, this study analysed the revised regulations to establish if these guidelines accommodate emerging funeral directors' concerns. The current and the proposed guidelines on the management of human remains are nearly identical, except for the updated definition of a funeral director and the certification requirements for vehicles and trailers transporting human remains. Based on the analyses, the emerging funeral sector is clearly not satisfied with the current revision because it does not recognise the seriousness of the challenges with the current



regulation. One would have expected that the revised changes would be informed by the challenges already expressed by EFDs, but on the contrary, they seem to be more stringent. A consultative process in handling the proposed human remains management is still necessary and urgent in the South African funeral sector.

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