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Further contact: Elle Brunsdon (02) 9242 4082

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Review of the Cemeteries and Crematoria Act 2013

Thank you for the opportunity to provide comment on the review of the *Cemeteries and Crematoria Act 2013*. Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW has made several submissions on planning, regulation and management of cemeteries and crematoria in previous years, including for the Cemetery and Crematorium Draft Operator Code of Practice in 2018 and the Cemeteries and Crematoria Amendment Regulation in 2017.

The Independent Pricing and Regulatory Tribunal NSW (IPART) recently consulted on its review of interment costs and pricing in NSW. On behalf of NSW local government cemetery operators, LGNSW made submissions in response to both the Issues Paper in August 2019 and the Interim Report in February 2020. LGNSW's submissions (and their recommendations) been attached for your information, with the key themes for the local government sector outlined below.

The role of local government in cemetery ownership and operation

While most burials in metropolitan Sydney take place in Crown-trust operated cemeteries, councils provide most of the interments in regional areas outside of Sydney and manage more than 1,000 cemeteries across the state. However, more than 80% of these cemeteries are closed or conduct fewer than 10 burials per year.

NSW Government Better Regulation Principles

The 2019 NSW Government's Guide to Better Regulation aims to assist agencies develop regulation that is reasonable and responsive to the economic, social and environmental needs of NSW.

Principle 1: The need for government action should be established. Government action should only occur where it is in the public interest, that is, where the benefits outweigh the costs.

Principle 4: Government action should be effective and proportional.

Principle 6: The simplification, repeal, reform, modernisation or consolidation of existing regulation should be considered.

It is LGNSW's position that any additional regulation proposed for council cemeteries in the absence of any evidence of a problem must be justified against the principles listed above.

Acquisition of suitable land for new cemetery space

LGNSW supports greater co-ordination between local government and the NSW Government in strategically planning for suitable space for more cemeteries to meet future demand.

Further, LGNSW notes in its submission to IPART that a State Government regulator should not be responsible for acquiring land in regional areas.

Crown lands should be investigated as a potential source of land for future supply, both in the Greater Sydney area and regional areas. In regional areas where councils are the primary or sole provider of interment services, ownership of suitable Crown land sites should be transferred to councils where required.

Governance and regulation of cemeteries and crematoria

Cemeteries and Crematoria NSW (CCNSW) has previously acknowledged the existing regulatory oversight on councils, exempting council operated cemeteries from reporting requirements under the *Cemeteries and Crematoria Act 2013* on the basis that councils already comply with separate and existing reporting obligations under the *Local Government Act 1993* and related legislation.

As noted in LGNSW's submissions to IPART, in light of extensive existing regulation of council-operated cemeteries, councils would not support prescriptive legal obligations for council owned cemeteries where these obligations are duplicative, unnecessary and potentially burdensome with no appreciable benefit .

Appointments to CCNSW Board

Section 16 of the *Cemeteries and Crematoria Act 2013* provides that there is to be a Board of CCNSW, with 11 members.

- 4 of these members, including the chair, are to be appointed by the Minister.
- 5 of these members are nominated to represent various NSW Government departments and agencies
- 1 of these members is to be the chief executive of CCNSW
- 1 of these members is to be a person who:
 - (i) has knowledge and expertise relevant to local government matters, and
 - (ii) is appointed by the Minister after consultation with the head of, or a person nominated by the head to represent, the Division of Local Government, Department of Premier and Cabinet [the Office of Local Government], Local Government NSW and Local Government Managers Australia, NSW.

Given the substantial role of councils in cemetery ownership and operation across NSW, it is wholly appropriate that a CCNSW Board member represent the local government sector. However, LGNSW has concerns with the unusual structure of the legislation setting out how this Board member is to be appointed.

It is LGNSW's view that at least one position on the CCNSW Board should be appointed by the Minister from a panel of nominations put forward by LGNSW alone. LGNSW is the organisation that represents democratically elected councils across NSW, and LGNSW's Board is itself democratically elected from among these councillors. There are at least 5 positions on the Board reserved for representatives of the NSW Government, with scope for the Minister to appoint a further 4 members from the NSW Government if desired.

LGNSW would welcome revisions to this section of the Act to reflect sensible arrangements for appointments in other legislation, such as:

- The Food Regulation Forum (s115A of the *Food Act 2003* provides that 3 of the 12 members are to be appointed by the Minister from among nominees put forward by LGNSW)
- The Local Government Boundaries Commission (s261 and s262 of the *Local Government Act 1993* provide that the Minister is to appoint 2 of the 4 commissioners from among a panel of nominees put forward by LGNSW)
- The Geographical Names Board (s3 of the *Geographical Names Act 1966* provides that 1 of the 9 members is to be appointed from among nominees put forward by LGNSW)
- The Fluoridation of Public Water Supplies Advisory Committee (s4 of the *Fluoridation of Public Water Supplies Act 1957* provides that 1 of the 6 members is to be appointed from among nominees put forward by LGNSW).

It is essential that at least one position on the CCNSW Board be similarly reserved for a nominee of democratically elected councils.

General feedback

Councils in NSW operate in a constrained financial environment as a result of rate-pegging, cost shifting onto local government and state and federal funding arrangements that are no longer fit for purpose. Council-operated cemeteries have an important role in ensuring people are able to access affordable and respectful interment, within reasonable proximity to their homes including those on a low income, or religious or cultural groups that have specific burial practices. The NSW Government must ensure people from varying community and religious groups are not unduly impacted by any changes to interment services.

I have attached with this submission LGNSW's two recent submissions to IPART and encourage your review to also consider the recommendations made in these submissions.

LGNSW appreciates the opportunity to comment on the review of the *Cemeteries and Crematoria Act 2013*. Please note this submission was endorsed by the LGNSW Board on 12 June 2020.

Should you wish to discuss any of the matters raised above please contact Elle Brunsdon, Policy Officer – Social and Community on (02) 9242 4082 or at elle.brunsdon@lgnsw.org.au.

Attachments

- LGNSW Submission on IPART Review of Interment Costs and Pricing Interim Report February 2020
- LGNSW Submission on IPART Review of Interment Costs and Pricing Issues Paper August 2019