

LGNSW submission to Interim Report of the Independent Pricing and Regulatory Tribunal review of interment costs and pricing in NSW

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Introduction

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 made a submission to the Independent Pricing and Regulatory Tribunal (IPART) issues paper, which was endorsed by the LGNSW Board on 8 August 2019.

LGNSW welcomes the opportunity to submit comment on IPART's interim report. LGNSW's responses to the recommendations are listed below. This submission was endorsed by the LGNSW Board on 3 April 2020.

The role of local government in cemetery ownership and operation

As noted previously, 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.¹

Councils in NSW have a role in providing accessible and affordable interment to the community. However, 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.

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. The Guide notes that good regulation is essential to enable effective competition, and enhanced choice, quality, innovation, flexibility and responsiveness. It enables healthy and dynamic private and public sectors and improves the wellbeing of consumers and the wider community.²

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 the additional requirements proposed for council cemeteries are not justified, particularly for financial management for perpetual maintenance, and in a context where there are no demonstrated examples of closed cemeteries being abandoned due to costs in NSW³. Certain interim recommendations do not align with the Better Regulation Principles, and create additional regulation in the absence of any evidence of a problem.

¹ IPART, Review of interment costs and pricing in NSW issues paper, May 2019, p. 32.

² NSW Treasury, NSW Government Guide to Better Regulation, January 2019, p. 3.

³ IPART, Review of interment costs and pricing in NSW issues paper, May 2019, p. 23.

Local Government NSW response – IPART interim report

Recommendation 1: Cemeteries & Crematoria NSW (CCNSW) be made responsible for acquiring land for new cemeteries in Sydney as part of the statutory review of the *Cemeteries and Crematoria Act 2013*.

LGNSW does not object to CCNSW being made responsible for acquisition of land for new cemeteries in Sydney but would require further details on the process for acquiring land (noting that the Greater Sydney Commission has been requested to develop criteria for acquisition) to be able to understand the impact on councils and their communities. Councils must be consulted before any such process is finalised.

LGNSW position – SUPPORTED IN PRINCIPLE

Recommendation 2: New cemeteries in Sydney have their operations competitively tendered out to either an existing Crown land manager or appropriately qualified private operator.

LGNSW notes that this recommendation relates to cemeteries acquired by the NSW Government or its agencies, and not local government cemeteries. However, the interim report does discuss that the operation of such cemeteries could then be competitively tendered to an existing Crown land manager, local council or appropriately qualified private operator. Where a council can build on its operational experience to deliver these arrangements, LGNSW would support this option being available to local government.

LGNSW position - SUPPORTED

Recommendation 3: The NSW Government work in partnership with councils in a coordinated strategic manner to identify land for interment outside Sydney.

This interim recommendation aligns with LGNSW's position which supports greater co-ordination and partnership between all relevant spheres of government, and that a State Government regulator should not be responsible for acquiring land in regional areas where cemetery capacity and land availability is less of an issue.

LGNSW position – SUPPORTED

Recommendation 4: An interment service levy not be applied to additional cemetery operators until the statutory review of the *Cemeteries and Crematoria Act 2013* is completed and it can be demonstrated that the functions of CCNSW are of benefit to the wider cemetery and crematoria industry in NSW.

IPART's interim report notes LGNSW's position that 'many potential aspects of CCNSW regulation and oversight of council-operated cemeteries would be duplicative and potentially

redundant, given councils' existing regulation under the *Local Government Act 1993*⁴. Given the existing regulation it is unclear what additional services from CCNSW would warrant imposition of the levy on councils. If extended to council cemeteries, the levy would likely represent an additional cost burden passed on to grieving families by the NSW Government for no appreciable benefit.

As such, LGNSW welcomes the recommendation not to apply the levy to additional cemetery operators at this time.

LGNSW position – SUPPORTED IN PART.

Recommendation 5: Office of Local Government's performance statistics be required to include transparent and comparable cost information about councils' cemetery operations.

LGNSW's submission to the issues paper noted that councils operate their cemeteries on a cost-recovery basis, guided by section 8A of the *Local Government Act 1993* which provides that councils should carry out their functions in a way that provides the best possible value for residents and ratepayers.

In the interim report, IPART notes that the lack of competition has not resulted in higher prices, however recommends increasing the transparency of pricing to ensure cost efficiencies for council operated cemeteries⁵.

IPART recommends that to increase transparency, costs of interment be included in the long term financial plans and asset management plans that councils are required to submit to the Office of Local Government as part of the Integrated Planning and Reporting (IP&R) Framework. IPART further recommends that these figures be published on the publicly available website, '*Your Council*'⁶.

As standard practice, councils already publicise their annual fees and charges through the publication of their Operations Plan. LGNSW's position is that this legislated practice is sufficiently transparent.

However, if introduced, LGNSW would welcome any comparison service ensuring that cost information is provided with appropriate context. This would include accurately portraying differences in costs caused by issues such as type of soil, varied labour costs, land costs and access to equipment.

LGNSW position – NOT SUPPORTED.

Recommendation 6: There be a legal obligation on all cemetery operators to make adequate financial provision for perpetual maintenance of interment sites and the cemetery.

⁴ IPART, Review of interment costs and pricing in NSW issues paper, May 2019, p. 36.

⁵ Ibid, p. 40.

⁶ Ibid, p. 41.

Local Governments are already heavily regulated in terms of their financial administration and service delivery to their communities as provided by the *Local Government Act 1993*, and its financial and annual reporting obligations.

LGNSW's submission to the issues paper notes that in the absence of a demonstrated problem, introducing prescriptive legal obligations for perpetual maintenance for council-operated cemeteries would be duplicative, unnecessary and potentially burdensome. This would increase the costs of maintaining and administering each cemetery, costs that may then be passed on to grieving families.

LGNSW position – NOT SUPPORTED.

Recommendation 7: Cemetery operators that conduct more than 50 bodily interments in new perpetual interment sites per year at a cemetery must contribute to an independently managed perpetual maintenance reserve fund to provide for long-term cemetery maintenance.

IPART's interim report notes there are 27 council operated cemeteries that conduct more than 50 bodily interments per year and there have not been any instances of NSW council cemeteries finding themselves unable to provide for perpetual maintenance as a result of inappropriate planning for costs.

LGNSW's submission to IPART's issues paper noted that councils are already heavily regulated in terms of financial administration and service delivery to their communities (see s8B of the *Local Government Act 1993*, which sets out the principles of sound financial management applicable to all councils).

As noted in the recommendation above, the absence of a demonstrated problem, would be duplicative, unnecessary and potentially burdensome for council-operated cemeteries, increasing the costs of maintaining and administering each cemetery, and increasing costs for grieving families.

LGNSW position – NOT SUPPORTED.

Recommendation 8: The perpetual maintenance reserve fund for a cemetery must be independently managed by Treasury Corporation or an independent body approved by CCNSW.

It is a Fundamental Principle of LGNSW that local government must have control of its revenue raising and investment decisions⁷.

Councils have existing requirements to submit long term financial plans and asset management plans as part of the IP&R Framework.

Additionally, IPART's interim report notes that some councils have set aside funds for perpetual maintenance or reserve funds⁸.

In these circumstances, it is neither appropriate nor demonstrably necessary for perpetual maintenance reserve funds for council cemeteries to be independently managed.

⁷ LGNSW, Policy Platform, June 2019, p. 6 (www.lgnsw.org.au/policy/policy-platform)

⁸ IPART, Review of interment costs and pricing in NSW issues paper, May 2019, p. 47.

LGNSW position – NOT SUPPORTED.

Recommendation 9: CCNSW to develop Guidelines on when and how a cemetery operator can use perpetual maintenance funds for a cemetery.

LGNSW's submission to the issues paper notes that guidance may be beneficial for cemetery operators. For example, guidance on when and how councils may use perpetual maintenance funds raised from operational cemeteries to help fund closed or partially closed cemeteries in perpetuity may be useful.

However local government must have control of its revenue raising and investment decisions and is best placed to plan for, deliver and manage essential local infrastructure and for this reason, it is important that any guidelines are not binding on or mandatory for council cemetery operators. Given existing oversight over council finances, the imposition of duplicative oversight on council investment and fund management would be unnecessary and burdensome for council-operated cemeteries. LGNSW would support CCNSW-developed guidelines for the use of perpetual maintenance funds, so long as these guidelines are non-binding and do not impinge on council control of investment and expenditure decisions that are in the interests of the community.

LGNSW position –SUPPORTED IN PRINCIPLE.

Recommendation 10: Cemetery operators provide a Plain English statement of terms and conditions for interment rights at a cemetery that customers can easily access. This include a clear statement on the obligations of each of the interment right holder and the cemetery operator for the nature and level of maintenance of the interment site and the cemetery.

The (voluntary) *Cemetery and crematorium operator code of practice 2018* already suggests that operators endeavour to ensure clients fully understand the inclusions and exclusions in any service, plan or package they purchase by providing information through a standardised format such as an information pack. LGNSW has previously recommended to CCNSW that model agreements and forms would assist in this regard.

LGNSW position – SUPPORTED IN PRINCIPLE.

Recommendation 11: To make it easier for consumers to compare and understand prices for bodily interment services, cemetery operators be required by regulation to publish prices for all bodily interment services on a consistent basis.

As standard practice, councils already publicise their annual fees and charges through the publication of their Operations Plan. LGNSW's position is that for council-operated cemeteries, this legislated practice already exists and is sufficiently transparent.

As noted in response to recommendation 5 above, any comparison of the costs of interment services must provide appropriate context for any cost variations.

LGNSW position – SUPPORTED IN PRINCIPLE.

Recommendation 12: Within 12 months CCNSW to develop a central website to enable consumers to compare prices for interment services in one place.

The IPART recommendation notes that different operators incur different costs, such as:

- compliance and reporting obligations to Government
- servicing their community and community consultation
- care of inoperative or semi-closed sites with inadequate funding⁹.

It would be advantageous for these differing prices to be transparent to the consumer to demonstrate the unique circumstances and existing regulation of operators including local governments.

The website should not unreasonably increase reporting and compliance burdens on councils. In line with recommendation 5 of LGNSW's submission in response to IPART's issues paper, any comparison must consider the unique circumstances and existing regulation of local government.

LGNSW position – SUPPORTED IN PRINCIPLE.

Recommendation 13: In setting interment fees and charges, all cemetery operators should include future maintenance costs of their cemeteries.

IPART's interim report notes that many councils set aside future maintenance funding for their cemeteries¹⁰.

Further, IPART's issues paper notes that there have not been any instances of NSW cemeteries finding themselves unable to provide for perpetual maintenance as a result of inappropriate planning for costs, and that given the high level of government management (including for councils) it is unclear whether cemetery abandonment is likely to occur in NSW.

LGNSW position – SUPPORTED IN PRINCIPLE.

Recommendation 14: Our pricing tool be made available to cemetery operators for use on a voluntary basis to inform decisions on pricing for bodily interment rights.

IPART's recommendation notes the pricing tool will be voluntary, and that local governments may use it to inform their decisions¹¹.

This recommendation considers the unique circumstances of each council operated cemetery in their operations and service delivery and so is supported.

LGNSW position – SUPPORTED.

Recommendation 15: Users of the pricing tool should include land value at its initial purchase cost, but for cemeteries that are located on gifted land, the land value should be zero. Land value for an established cemetery should not be adjusted over time to reflect changes in surrounding land values.

⁹ Ibid, p. 38.

¹⁰ Ibid, p. 67

¹¹ Ibid, p. 69

The IPART recommendation also notes that ‘the interim pricing tool does not adjust land value over time, however in the more developed version of the tool, we will consider applying a CPI adjustment to reflect the real value of land into the future’.¹² (pg 71).

LGNSW position: SUPPORTED IN PRINCIPLE

LGNSW would welcome the opportunity to assist with further information during this review to ensure the views of local government are considered.

To discuss this submission further, please contact LGNSW Policy Officer Elle Brunsdon at elle.brunsdon@lgnsw.org.au or on 02 9242 4082.

¹² Ibid, p. 71