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Dear Ms Hickey

LGNSW draft submission – November 2021 Interment Industry Scheme discussion paper

On behalf of the local government sector, Local Government NSW (LGNSW) makes the following principles-based submission in response to key questions from the November 2021 Interment Industry Scheme discussion paper from Cemeteries & Crematoria NSW (CCNSW).

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.

This is a draft submission and is subject to review and approval of the LGNSW Board. Any changes will be advised at the earliest opportunity.

Introduction

LGNSW appreciates CCNSW's commitment to consultation with local government throughout this process, through online webinars, formation of a dedicated council working group and through ongoing local government representation on the CCNSW Industry Consultation Group.

Local government has a key role in cemetery management and operation, with council-run cemeteries undertaking almost 50 per cent of burials in NSW, more than any other operator category (Crown, private, community and church operators). In rural and regional NSW councils perform almost 85 per cent of burials. Across the state, councils have an important role in ensuring people are able to access affordable and respectful interment, within reasonable proximity to their homes.

Although beyond the scope of this review and a matter for the Minister, LGNSW is concerned that the local government position on the CCNSW Board remains unfilled three years after it became vacant.

Noting both the scale of reforms proposed for the sector and the prominence of local government in the interment industry, it is disappointing that local government interment operations remain unrepresented on the CCNSW Board at such a critical time, especially as the *Cemeteries and Crematoria Act 2013* requires the Minister to fill this position.

In response to the November 2021 Interment Industry Scheme discussion paper, it is LGNSW's view that the proposed reforms need to more appropriately account for the differing governance and oversight arrangements for different classes of cemetery operators.

In addition to the responses to key consultation questions below, LGNSW looks forward to the full public consultation on proposed reforms along with a regulatory impact statement foreshadowed for early-2022.

1. Do you think the proposed scheme will adequately address the identified industry risks? If not, what are other options?

Generally, the proposed scheme appears heavy handed in seeking to address potential risks. It is the position of LGNSW that risks are not uniformly spread across the interment sector in NSW. Indeed, recent reviews by IPART and independent consultants both found that council run cemeteries were often very reasonably priced and provide an essential community service that would otherwise not be available to residents of many communities.

While LGNSW cannot speak to risks in non-council segments of the interment sector, it appears that the case has not been made for why such significant additional regulatory burden should be placed on council run cemeteries that are already highly regulated under the *Local Government Act 1993* and associated frameworks.

The independent consultants commissioned to undertake the 2020 Statutory Review of the Cemeteries and Crematoria Act 2013 found that:

Outside Sydney, the competitive landscape was different again, due to the role of local government in the ownership and operation of cemeteries. Given the discrete location of townships and the relative distance to other cemeteries, competition was limited. This lack of competition does not necessarily impact interment prices, as the governance of local government provides an in-built accountability mechanism making councils answerable to their ratepayers for excessive pricing or poor standards of service and maintenance.¹

...

Within Sydney, pricing discrepancies were most apparent at Rookwood where two Crown land managers operate.²

IPART similarly found in its final report that:

¹ Whitella Consulting, [The 11th hour: Cemeteries and Crematoria Act 2013 statutory review](#), p.175

² Whitella Consulting, [The 11th hour: Cemeteries and Crematoria Act 2013 statutory review](#), p. 189

Councils are answerable to their communities and ratepayers, and a lack of competition has not generally led to higher prices.³

...

While all the Crown cemeteries and council cemeteries currently display their fees and charges online, private cemetery operators generally do not publish their prices online.⁴

...

We don't agree that all cemetery operators should be licensed as this would result in administrative costs on a number of small and medium sized cemetery operators including many council, church and community operators. We consider that a better approach is for licensing to target those cemetery operators which represent the greatest risk, such as the risk of failure to provide for perpetual maintenance.⁵

Essentially, both of these in-depth reviews found that risks are not evenly spread across the interment industry. Indeed, the greatest risks were repeatedly identified in non-council operators.

It is LGNSW's view, as set out in this submission, that the proposed scheme is not adequately tailored to the lower level of risk posed by the council interment sector and would likely lead to higher costs for many consumers – particularly in regional and rural NSW – for little or no appreciable benefit.

2. Is the regulatory burden of the scheme, scaled to the size of operator, appropriate and manageable?

As noted above, LGNSW considers the proposed regulatory framework to be unnecessarily heavy handed and costly to administer, particularly when applied to council-operated cemeteries. Ultimately, these added costs will be passed on to consumers, which would seem to conflict with the objective to reduce costs.

Unlike the rest of the interment sector, council-operated cemeteries (along with all other council operations) are strictly regulated under the provisions of the *Local Government Act 1993*.

It is LGNSW's view that the reform proposals have not made the case as to why new regulatory and reporting obligations are warranted for council cemeteries, which provide almost half of interments across NSW.

³ IPART, [Final Report – Review of the costs and pricing of interment in NSW](#), p. 90

⁴ IPART, [Final Report – Review of the costs and pricing of interment in NSW](#), p.37

⁵ IPART, [Final Report – Review of the costs and pricing of interment in NSW](#), p. 64

Further, imposing the interment industry scheme and operating licence on all operators would uniquely disadvantage council-operated cemeteries, which would find themselves subject to duplicative and burdensome regulation, reporting and oversight, breaching the principle of competitive neutrality.

A preferable approach would involve less onerous regulatory requirements for council-operated cemeteries, increased provision of best practice guidance materials and an approach that takes into account the existing regulation of councils (by regulators and agencies such as the Office of Local Government and the Auditor General of NSW).

LGNSW notes CCNSW's advice that there is a preference for all cemetery and crematoria operators to be licensed, to avoid a negative perception or stigma around 'unlicensed operators', which would likely be the smaller operators. LGNSW accepts this position, so long as the activity thresholds for more onerous levels of licensing are sensibly set significantly higher than currently proposed.

Generally, the activity thresholds in the proposed risk-based classification of operators are too low. These low thresholds would particularly impact councils that have a larger number of small cemeteries, as the model considers interments at all sites together in placing an operator into a category for licensing. The minimum threshold of annual interments should be substantially higher so that a greater proportion of these smaller and medium operators would be placed into the licensing category where there are fewer mandatory requirements and obligations.

Further, the regulatory burden of the scheme is scaled only according to the size of the operator, and essentially ignores the existing regulatory environment for councils. It is incomplete to assess 'risk' without considering the existing regulatory context in which the cemetery operates. Without this context, regulation on council run cemeteries will be needlessly duplicative and expensive in parts, with higher costs for consumers and little or no benefit.

This would appear to contrast with the intent of the NSW Government's Better Regulation Principles, which call for government action to be proportional, and only occur where a clear need has been established where the benefits outweigh the costs.

It is also important that mandatory codes of maintenance do not impose unreasonable standards, particularly on smaller or simpler, rural and regional cemeteries, and that cemeteries are not unreasonably required to maintain monuments or headstones where they cannot locate a family member or friend who is responsible. This would represent an unreasonable burden on operators and likely lead to higher costs for the public.

Generally, LGNSW supports reasonable pricing transparency arrangements that align with existing requirements for all council fees and charges for all activities to be placed on public exhibition annually. Any additional pricing transparency arrangements for local government should align with existing council reporting arrangements.

LGNSW also supports template consumer contracts where they standardise and simplify interment arrangements at what can be a very stressful time for consumers.

Finally, LGNSW also supports principles for religious, cultural, Aboriginal and spiritual requirements that will assist operators understand and meet these requirements where possible, noting that for many council operators the council only provides the burial plot, and cultural and other protocols are sought from and met by funeral directors privately contracted by consumers.

Recommendation 1: Activity thresholds in the proposed risk-based classification of operators should be raised to avoid imposing mandatory regulatory requirements on smaller and medium sized operators with risk profiles that do not warrant this level of regulation.

Recommendation 2: Mandatory codes of maintenance should be drafted so as not to impose unreasonable standards that will increase costs for consumers, particularly for smaller or simpler rural and regional cemeteries.

Recommendation 3: Pricing transparency arrangements for council-operated cemeteries should align with existing requirements for public exhibition of local government fees and charges.

Recommendation 4: Template consumer contracts that standardise and simplify interment arrangements for consumers are supported.

Recommendation 5: Principles to support religious, cultural, Aboriginal and spiritual requirements for interment are supported.

7. For council operators, what would be the best way to minimise any potential duplication of regulatory burden for local government entities?

If all cemetery operators are to be licenced, there should be a dedicated 'local government licence' classification (or classifications), which takes into account the existing regulatory environment for councils. For small and medium sized council-operators this should ensure they can continue to offer important interment services to their communities without imposing additional costs on consumers.

This model would offer more regulatory nuance, as it would consider both operational activity and the existing regulatory and oversight framework of council-operators. Council operators are already subject to stringent regulation (including in terms of financial sustainability, price transparency, and regular and ongoing performance, financial and reporting obligations). A dedicated local government classification would sensibly recognise this.

At present, the three proposed categories for licensing in the discussion paper are not sufficient, as they appear too focused on the scale of operational activity rather than existing risk and regulatory environment. All council cemeteries are regulated under Local Government Act provisions and associated frameworks, in contrast to all non-council cemeteries that are not. A dedicated licensing category for council cemeteries should reflect this, and also provide certainty, simplicity and avoid imposing unwarranted regulatory burden.

Recommendation 6: The licensing scheme should include a dedicated local government licence classification which takes into account the existing regulatory environment for councils.

26. Are perpetual maintenance requirements appropriate to minimise the financial risk to both operators and government presented by perpetual maintenance liabilities?

While a small number of councils do already ringfence perpetual maintenance funds, LGNSW does not support recommendations that would impose a new legal obligation for financial provision for perpetual maintenance on council-operated cemeteries, in recognition of existing regulatory and financial oversight of local government in NSW.

Councils are already heavily regulated in terms of their financial administration and service delivery to their communities as provided by the Local Government Act, and its financial and annual reporting obligations. Councils also already have existing requirements to submit operational plans, delivery plans, long term financial plans and asset management plans as part of the Integrated Planning & Reporting (IP&R) Framework. In addition, section 8B of the Local Government Act sets out the principles of sound financial management which apply to all councils.

Councils are also required to use NSW Government approved investment funds and managers (in line with a Ministerial Investment Order), which CCNSW has previously noted may not have a market rate of return owing to lower risk appetites compared to private entities. This may place council operators at a disadvantage compared to private, church and community operators that are not similarly restricted.

Further, some councils choose not to include the cost of future maintenance in the price of interment rights to ensure the affordability of this important community service for all members of the community.

Councils' long term financial planning takes into account a relatively steady revenue base of rate income and from untied federal government Financial Assistance Grants. For some councils these revenue sources support long term funding for local cemeteries that are an important service for the community that would not otherwise be available. Requiring council-operated cemeteries to ringfence funds for perpetual maintenance does not adequately account for this ongoing source of revenue to councils.

As such, it is LGNSW's view that local government operators should be automatically exempt from the requirement for perpetual care funds and the requirement to ringfence these funds, as this proposal is not suitable for local government financial arrangements and the regulatory framework in which councils operate.

However, LGNSW does support the development of guidelines for the use of perpetual maintenance funds, so long as these guidelines are nonbinding and do not impinge on council control of investment and expenditure decisions that are in the interests of the community.

Councils have also noted that it would be beneficial for the guidelines to provide advice on monumental care in cemeteries in the context of perpetual maintenance.

Recommendation 7: Council operators should be automatically exempt from the requirement to maintain and ringfence perpetual maintenance funds in recognition of the unique financial regulatory framework in which councils operate.

Recommendation 8: The development of nonbinding guidance and supporting material for perpetual maintenance planning is supported.

Summary of recommendations

Recommendation 1: Activity thresholds in the proposed risk-based classification of operators should be raised to avoid imposing mandatory regulatory requirements on smaller and medium sized operators with risk profiles that do not warrant this level of regulation.

Recommendation 2: Mandatory codes of maintenance should be drafted so as not to impose unreasonable standards that will increase costs for consumers, particularly for smaller or simpler rural and regional cemeteries.

Recommendation 3: Pricing transparency arrangements for council-operated cemeteries should align with existing requirements for public exhibition of local government fees and charges.

Recommendation 4: Template consumer contracts that standardise and simplify interment arrangements for consumers are supported.

Recommendation 5: Principles to support religious, cultural, Aboriginal and spiritual requirements for interment are supported.

Recommendation 6: The licensing scheme should include a dedicated local government licence classification which takes into account the existing regulatory environment for councils.

Recommendation 7: Council operators should be automatically exempt from the requirement to maintain and ringfence perpetual maintenance funds in recognition of the unique financial regulatory framework in which councils operate.

Recommendation 8: The development of nonbinding guidance and supporting material for perpetual maintenance planning is supported.

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Finally, LGNSW encourages CCNSW to review positions set out in LGNSW's recent submissions:

- June 2019 – [LGNSW submission](#) to IPART interment review discussion paper
- February 2020 – [LGNSW submission](#) to IPART interment review interim report
- April 2020 – [LGNSW comment](#) to Statutory Review of the *Cemeteries and Crematoria Act 2013*
- October 2020 – [LGNSW submission](#) to IPART interment review draft report

Thank you for the opportunity to make a submission in response to the November 2021 Interment Industry Scheme discussion paper. Should you have any further questions, please contact LGNSW Strategy Manager Damian Thomas at damian.thomas@lgnsw.org.au or on 02 9242 4063.

Yours sincerely



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