

Draft submission

IPART Draft Report on interment costs and pricing in NSW

October 2020

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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 has made two earlier submissions as part of the Independent Pricing and Regulatory Tribunal (IPART) review into interment costs and pricing: in response to the May 2019 Issues Paper and December 2019 Interim Report.¹

LGNSW now welcomes the opportunity to make a submission in response to IPART's Draft Report. This submission remains in draft form until endorsed by the LGNSW Board. Any revisions made by the Board will be forwarded to IPART.

1. Interment industry scheme and operating licence

Local government has an essential role in interment services in NSW, providing almost half of the interments across NSW and most of the interments in regional areas outside of Sydney. Councils manage more than 1,000 cemeteries across the state with widely varying degrees of activity: more than 80 per cent of council cemeteries are closed or conduct fewer than 10 burials per year.² Nonetheless, the most recent statistics show that council-operated cemeteries provided 46.1 per cent of the total number of NSW interments in 2018/19, with the remainder split among the Crown (35.7%), Private (16.4%), Church (1.1%) and Community (0.7%) operated cemeteries.³

IPART's Draft Report recommends:

- Recommendation 1: That CCNSW develop an interment industry scheme under the *Cemeteries and Crematoria Act 2013*.
- Recommendation 2: That the industry scheme introduce an operating licence for cemetery operators which meet an activity level threshold.

IPART's Draft Report proposes that the interment industry scheme would consist of mandatory codes of practice that apply to the whole interment industry, as well as an operating licence for the largest cemetery operators.

While the detail of the interment industry scheme and operating licence is set out in the draft recommendations to which the rest of this submission responds, in general LGNSW does not support this approach.

IPART's earlier Interim Report suggested that only cemetery operators that conducted more than 50 bodily interments per year would meet the threshold to require an independently managed perpetual maintenance fund (this would include 27 council-operated cemeteries).⁴ IPART's Draft Report now proposes an operating licence model that would apply to cemetery operators that meet an undefined 'activity level threshold' and a mechanism for CCNSW or the Minister to declare which cemeteries operators should require licensing.

¹ Both submissions available on the LGNSW website at:

[lgnsw.org.au/Public/Advocacy/Submissions_2019.aspx](https://www.lgnsw.org.au/Public/Advocacy/Submissions_2019.aspx)

² IPART Issues Paper, p. 32.

³ CCNSW, Annual Operator Survey – 2018/19, available at:

https://www.industry.nsw.gov.au/_data/assets/pdf_file/0020/309530/CCNSW-Annual-Activity-Report-2018-19.pdf

⁴ IPART Interim Report, p. 51.

While LGNSW acknowledges the importance for consistency within the interment sector, LGNSW considers IPART's 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 of IPART's review in reducing 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* (LG Act).

It is LGNSW's view that IPART has not made the case as to why its interment industry scheme imposing new regulatory and reporting obligations is warranted for council cemeteries, which provide almost half of interments across NSW. In regional areas (where council cemeteries predominate) IPART has found that a lack of competition has not generally led to higher prices.⁵ IPART further notes that it has not made findings on the efficiency of council cemeteries' costs and prices due to a lack of data.⁶

IPART's proposed industry scheme appears to seek to impose a one size fits all approach to cemetery regulation in the absence of supporting evidence. Increased costs of compliance would likely result in higher interment prices, particularly in regional areas, for no demonstrable benefit. Further, by recommending that the more onerous interment industry scheme and operating licence be imposed on all operators (rather than just Crown-operated cemeteries), IPART's draft recommendations 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 opt-in approach that takes into account the existing regulation of councils. Such measures could involve setting pricing principles, establishing benchmarks and only investigating cemetery operators where there is a clearly evidenced need for such oversight (i.e. intervention by exception). This approach could retain the place of model Codes of Practice and increased transparency and comparison measures for cemetery operators.

Recommendation 1: In the absence of demonstrated need, LGNSW does not support IPART's proposal for an interment industry scheme composed of mandatory codes of practice and licences, which would likely increase costs of interment for no clear benefit.

Recommendation 2: LGNSW recommends that IPART consider a lighter touch regulatory approach that could involve setting pricing principles, establishing benchmarks and only investigating outliers.

NSW Government Better Regulation Principles

LGNSW has considered the recommendations in IPART's Draft Report in the context of the 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

⁵ IPART Draft Report, p. 73.

⁶ IPART Draft Report, p. 77.

private and public sectors and improves the wellbeing of consumers and the wider community.⁷ Three of the principles are particularly relevant to this review:

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, particularly for a licensing scheme and financial management for perpetual maintenance, and in a context where there are no demonstrated examples of closed cemeteries being abandoned due to costs in NSW⁸, are not justified. Certain draft recommendations do not align with the Better Regulation Principles, and create additional regulation in the absence of evidence or demonstrated need.

2. Codes of Practice

Code of Practice for Cemetery Maintenance

IPART's Draft Report recommends:

- Recommendation 3: That CCNSW modify its Code of Practice for Cemetery Maintenance to include minimum standards of maintenance for cemeteries and that this should be made mandatory.

LGNSW appreciates that codified minimum standards of maintenance would assist all cemeteries to understand what is required to fund their perpetual maintenance obligations, as well as ensure that any minimum standards are met. IPART notes in its Draft Report that any Code of Practice for Cemetery Maintenance should allow for different types of cemetery (rural/regional/metro), and different levels of visitation (such as for active cemeteries with daily burials or heritage cemeteries that are closed to burials).⁹ This differentiation is sensible and it is important that a one size fits all approach to cemetery maintenance does not result in some cemeteries having to raise their prices to meet a higher standard for which there may be no demand. LGNSW suggests that Codes of Practice may also include best practice sustainability principles for interment, which council and the community are increasingly prioritising.

In line with stakeholder consultation requirements of the *Cemeteries and Crematoria Act 2013* (CC Act), it is essential that CCNSW consult widely prior to introducing any minimum standards of maintenance.

Recommendation 3: LGNSW in-principle supports codified minimum standards of maintenance for cemeteries provided that:

- (a) the standards are differentiated according to cemetery types, and
- (b) the development of the codes is undertaken through substantial consultation with cemetery operators, including local government.

Recommendation 4: LGNSW supports principles of and guidance for sustainability being included within codes or practice.

⁷ NSW Treasury, NSW Government Guide to Better Regulation, January 2019, p. 3.

⁸ IPART Issues Paper, p. 23

⁹ IPART Draft Report, p. 59.

Code of Practice for Interment Right Contracts

IPART's Draft Report recommends:

- Recommendation 4: That CCNSW develop a Code of Practice for Interment Right Contracts, including standard terms and conditions and a requirement for cemetery operators to provide plain English terms and conditions.

LGNSW's submission to IPART's Interim Report suggested that CCNSW develop model agreements and forms to assist cemetery operators and ensure that roles and responsibilities of customers and operators are clearly set out and understood.

Recommendation 5: LGNSW supports the development of a code of practice for interment right contracts.

Code of Practice on Minimum Requirements

IPART's Draft Report recommends:

- Recommendation 5: That CCNSW develop a code of practice in consultation with faith, cultural and indigenous communities, which specifies minimum interment rights for particular faiths and community groups.
- Recommendation 6: That all licensed operators be required to provide a basic adult lawn interment right and burial, at a minimum standard of maintenance as specified by the Code of Practice.
- Recommendation 7: That licensed operators' licences may further specify which basic services (for particular faiths or community groups) they must provide by reference to those which are defined in a Code of Practice.

Councils provide locally relevant interment services to those in their communities, including particular faith, cultural and Indigenous communities they serve and are democratically accountable to these communities. Importantly, IPART's draft recommendations will apply only to licensed cemeteries, and IPART draft recommendation 2 notes that licensing should be restricted to only those cemetery operators that meet a certain activity level threshold. This threshold will be important in ensuring that the smaller cemetery operators, including many council-run cemeteries in rural and regional NSW, are not unduly burdened with regulation that is not relevant to or warranted for their local context, and that would otherwise potentially result in increased prices.

Again, it is critical that substantial consultation be undertaken with councils prior to the implementation of any minimum standards and mandatory basic services.

Recommendation 6: LGNSW in-principle supports reasonable minimum standards and mandatory basic services, provided that these are only applicable above a reasonable activity level threshold and are developed in consultation with councils.

3. Interment levy

IPART's Draft Report recommends:

- Recommendation 8: That an interment service levy should be extended to all cemetery operators, set as a percentage of interment-related cemetery revenue, to recover the efficient costs of CCNSW to license and monitor compliance by cemetery operators, and

the efficient costs of IPART for the regulation of prices where they have been referred to IPART.

LGNSW's earlier submissions as part of this review have noted that a levy on council-operated cemeteries is not supported. As noted above, IPART has not demonstrated that the Office of Local Government is failing in its role as regulator of council operations to the extent that a second regulator is required, funded through a levy on interment in council cemeteries.

All cemetery-operators (council and non-council alike) would likely pass a levy onto consumers, and the costs each operator incurs administering the levy would also likely be added to the costs of interment.

As at the time of this submission, the existing interment levy for Crown cemetery operators is \$83.00 for the first coffin interment and \$60.20 for second and subsequent coffin interment.¹⁰ CCNSW's most recent Annual Operator Activity Survey shows that the average number of burials per local government cemetery over the 12 month period to 30 June 2019 was just 5.9.¹¹ While many councils will operate more than one cemetery, while the quantum of a future industry wide levy has not yet been estimated, and while IPART has proposed that the levy be set as a percentage of cemetery operators' interment related revenue, it is likely that for smaller operators (including many council cemetery operators in rural NSW), the costs of administering the levy on behalf of CCNSW would outweigh the revenue collected through the levy for those operators.

This kind of inefficient regulation would likely increase the costs of interment across NSW and in particular for communities in rural and regional NSW.

IPART also states in its Draft Report that the current application of the levy (i.e., applying to Crown-operated cemeteries only) is inconsistent with the principle of competitive neutrality and can distort the market by making the cost of interment services in Crown-operated cemeteries more expensive. There are a number of issues with this argument.

Firstly, extending the levy (and industry scheme and operating licence) to council-operated cemeteries would in fact harm the principle of competitive neutrality, distorting the market as it would impose on council-operated cemeteries alone duplicative and unnecessary oversight and reporting (to both the Office of Local Government and CCNSW), and associated administrative costs. The levy would entrench higher administrative and regulatory costs that council-operated cemeteries face as they deal with two regulators. Conversely, all other cemetery operators would benefit from a single regulator model.

Secondly, IPART in its Draft Report has in any case noted that in regional areas (where council cemeteries predominate):

...there may not be an alternative cemetery within a reasonable distance, limiting choice and competition. However, councils are answerable to their communities and ratepayers, and a lack of competition has not generally led to higher prices.¹²

It is important to note here that there are only 13 active Crown-operated cemeteries in NSW, and that 10 of these are in Greater Sydney or Newcastle. Given that for the vast bulk of NSW there are no Crown-operated cemeteries within a reasonable distance, applying a levy to all cemeteries is

¹⁰ IPART Draft Report p. 62.

¹¹ CCNSW, Annual Operator Activity Survey – 2018/19, available at: www.industry.nsw.gov.au/_data/assets/pdf_file/0020/309530/CCNSW-Annual-Activity-Report-2018-19.pdf

¹² IPART Draft Report p. 73.

unlikely to have any positive impact on competitive neutrality and is more likely to increase costs, with a disproportionate impact on rural and regional communities.

LGNSW also notes sector concerns that IPART is not clear whether it intends that the levy should apply to crematoria as well as cemetery operations. While LGNSW strongly objects to the levy being extended to local government cemeteries, should the NSW Government expand the levy's application, it should apply to both crematoria and cemetery operations, given the functions of CCNSW relate broadly to cremation as well as interment.

Recommendation 7: LGNSW does not support an interment levy on council cemetery operators that is likely to be inefficient, duplicative, harm the principle of competitive neutrality and would result in higher interment costs, particularly for communities in regional and rural NSW.

4. Land for and operation of new cemeteries

Metropolitan Sydney

IPART's Draft report recommends:

- Recommendation 9: That the NSW Government be responsible for the identifying, funding and acquiring land for new cemeteries in metropolitan Sydney, as part of a whole-of-government approach, and that classifying cemeteries as State Significant Developments would be an important step in facilitating this.

LGNSW submission to IPART's Issues Paper recommended that the NSW Government work in partnership with councils in a coordinated and strategic manner to identify land for interment. It is disappointing that in listing bodies to be involved in this coordinated approach that IPART names CCNSW, Department of Planning, Industry and Environment (and its Office of Strategic Lands) and the Greater Sydney Commission, but does not mention local government.

Any whole-of-government process must include council consultation and consent. LGNSW's Policy Platform is clear that local government must retain control over the determination of locally appropriate development and that local planning powers must not be overridden by State plans and policies or misuse of State Significant Development provisions.¹³ The role and voice of local government are vital in ensuring the liveability and sustainability of our communities and therefore local government must be treated as a partner in planning and delivery of infrastructure to support communities.

Recommendation 8: LGNSW does not support any process for identifying and acquiring land for new cemeteries that overrides local government consultation and consent powers.

Outside of Sydney

IPART's Draft Report recommends:

- Recommendation 10: That for land outside of Sydney, the NSW Government be responsible for identifying, funding and acquiring land for new cemeteries on request of the local council or other cemetery operator, or as part of regional planning by the NSW Government. This should occur as part of an integrated and coordinated whole of government land use planning process.

¹³ LGNSW, Policy Platform, April 2020, available at: lgnsw.org.au/Public/Policy/Policy_Platform.aspx

LGNSW supports this draft recommendation in part, as it is based on an opt-in approach for councils, which would be able to request NSW Government involvement. However, this draft recommendation also allows *private operators* to request NSW Government intervention including where 'a private operator was unable to get planning approval from the local council, or the council cemetery operator was not able to fund the acquisition of a new site'¹⁴.

IPART notes that in reality this kind of arrangement might only be required in larger regional centres such as Newcastle and Wollongong, and high growth coastal areas where there may be increased demand for cemetery space and less land available. Regardless of how frequently this provision may be used, LGNSW does not support moves to override local planning powers of democratically elected councils. The ability to request NSW Government involvement outside of Sydney should sit solely with the democratically elected local government.

Recommendation 9: LGNSW supports NSW Government involvement in identifying, funding and acquiring land for new cemeteries outside of Sydney but only upon request from the local council.

Tendering to operate new cemeteries

IPART's Draft Report recommends:

- Recommendation 11: That the development and operation of new cemeteries on land acquired by the NSW Government be competitively tendered, to a Crown land manager, council or appropriately qualified private cemetery operator. The successful tenderer would be required to operate the cemetery subject to an operating licence and pay rent to the NSW Government.
- Recommendation 12: That the tenders to operate a new cemetery be assessed using competitively neutral criteria. In metropolitan Sydney, tenderers should demonstrate their ability to:
 - Deliver a basic adult lawn interment right and burial, at a minimum standard of maintenance as specified by the Code of Practice, and
 - Deliver basic interment services for the relevant faiths, Indigenous or community groups in the cemetery's local area, as defined in the Code of Practice specifying minimum interment requirements for particular faiths and community groups.

In LGNSW's response to IPART's Interim Report, LGNSW supported councils being able to build on their operational experience to deliver cemetery and interment services on land acquired by the NSW Government. However, it is important that in circumstances where there are no suitable tenderers, local governments are not mandated as operators of last resort.

Recommendation 10: LGNSW supports the NSW Government competitively tendering development and operation of new cemeteries on land acquired by the NSW Government.

Licence imposing increased density of interments

As noted above, in recognition of existing oversight, LGNSW does not support council-operated cemeteries being subject to an operating licence.

IPART's Draft Report recommends:

¹⁴ IPART Draft Report, p. 66.

- Recommendation 14: That cemetery operators' operating licence conditions may require a cemetery to increase the density of interments via more land-efficient practices such as cemetery renewal, geotechnical mapping, and low-cost mausolea.

Noting that LGNSW does not support operating licences for council-operated cemeteries, LGNSW further has particular concerns with the recommendation that a licence may require a cemetery to increase the density of interments via cemetery renewal. Councils are democratically elected by and are accountable to their community, and it is inappropriate for cemetery renewal to take place in the absence of a cemetery's consultation with the families of the interred. Only following suitable consultation should an operator consider cemetery renewal, and this should be a locally-led decision rather than imposed on a cemetery as a condition of a licence.

Recommendation 11: LGNSW does not support operating licence conditions imposing sensitive practices such as cemetery renewal on a cemetery, as this should be a locally led decision that is made only following consultation with the community.

Rent equivalent payments from Crown cemetery operators

IPART's Draft Report recommends:

- Recommendation 15: That Crown cemetery operators should make a rent equivalent payment to the NSW Government for all new interment rights sold annually in existing cemeteries to ensure competitive neutrality with new cemeteries.

While this recommendation relates only to Crown cemetery operators (and not council cemetery operators), LGNSW would urge caution as this approach would seem to have the effect of artificially increasing costs in existing cemeteries and may act as a disincentive for new cemeteries to contain costs.

Recommendation 12: LGNSW does not support approaches that artificially inflate costs in an effort to promote competitive neutrality.

5. Reporting on cemetery operations and costs

IPART's Draft Report recommends:

- Recommendation 16: that council-operated cemeteries report on the operating performance of their cemeteries via the Office of Local Government's Your Council website. Such information should include:
 - the number of cemeteries operated by the council,
 - the number of interments per annum,
 - remaining capacity of councils' cemeteries,
 - total operating costs and revenue for their cemeteries,
 - funds set aside for perpetual maintenance of the councils' cemeteries
 - any relevant contextual information that impacts the costs of the interment services.

IPART's Interim Report had recommended that the Office of Local Government's performance statistics be required to include transparent and comparable cost information about councils' cemetery operations, including digging and backfilling costs, maintenance costs and an allocation of overheads incurred in operating the cemetery annually. LGNSW did not support this interim recommendation, noting the administrative burden, existing reporting requirements and oversight on councils and the difficulty in comparing cost information in the absence of appropriate context such as differences in soil types and cost for labour, land and access to equipment. LGNSW welcomes IPART's modification of the interim recommendation to simplify the type of information

that council cemetery operators should be required to provide in order not to unduly increase the reporting burden on councils.¹⁵

Setting aside LGNSW's objection to a new legal obligation for perpetual maintenance and ring fencing assets for this purpose (outlined in further detail below), LGNSW in principle supports this otherwise reasonable reporting on cemetery operations and costs as it will in many cases be readily obtainable from existing reporting by councils.

Recommendation 13: LGNSW in principle supports reasonable operations and costs reporting for council cemeteries where this reporting does not impose unnecessary administrative burden on operators to the extent that the overall costs of the service are increased.

6. Pricing, comparison data and consumer information

Maximum price determinations

IPART's Draft Report recommends:

- Recommendation 17: That the NSW Government amend the *Cemeteries and Crematoria Act 2013* (CC Act) to provide for CCNSW to refer a cemetery operator to IPART for a maximum price determination of a specified body interment service.
- Recommendation 19: That CCNSW work with IPART and cemetery operators to develop an Annual Information Return to collect data to support price regulation and monitoring.

LGNSW does not support amendments to the CC Act to provide for CCNSW to refer council cemetery operators to IPART for a maximum price determination.

NSW councils already operate their cemeteries on a cost-recovery basis in order to offer a reasonably priced service to the community. Section 8A of the LG Act sets out the guiding principles for councils in NSW, including that:

Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.

Section 610D of the LG Act sets out how a council determines its fees for services (such as interment) as follows:

610D How does a council determine the amount of a fee for a service?

(1) A council, if it determines the amount of a fee for a service, must take into consideration the following factors:

- (a) the cost to the council of providing the service,*
- (b) the price suggested for that service by any relevant industry body or in any schedule of charges published, from time to time, by the Department,*
- (c) the importance of the service to the community,*
- (d) any factors specified in the regulations.*

(2) The cost to the council of providing a service in connection with the exercise of a regulatory function need not be the only basis for determining the approved fee for that service.

(3) A higher fee or an additional fee may be charged for an expedited service provided, for example, in a case of urgency.

¹⁵ IPART Draft Report p. 69 and 75.

IPART's Draft Report notes that data has not been collected on the efficiency of council-operated cemeteries¹⁶. Further, the Report notes that 'councils are answerable to their communities and ratepayers, and a lack of competition [in regional areas – where council cemeteries predominate] has not generally led to higher prices'.¹⁷

LGNSW would draw IPART's attention to the NSW Government's Better Regulation Principles, and in particular:

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.*

IPART has not established the need for maximum price determinations for council-operated cemeteries, but nonetheless is proposing in its draft recommendation that this additional regulation should be available 'if evidence is found that it is required'.¹⁸ LGNSW would strongly prefer that IPART first demonstrate the need for increased regulatory powers for CCNSW before seeking legislative amendment.

Recommendation 14: In the absence of any supporting evidence, LGNSW does not support legislative amendments to enable CCNSW to refer council cemetery operators to IPART for a maximum price determination.

In terms of an Annual Information Return on pricing, it is important to note that as standard practice councils already publicise their annual fees and charges in their Operations Plan. LGNSW's position is that this legislated practice is sufficiently transparent.

Noting LGNSW's objection to price regulation of council cemeteries, LGNSW would not object to Annual Information Returns on the condition that there be no additional and burdensome reporting requirement for council-operated cemeteries and that any required information be taken from pre-existing reporting mechanisms from other state government agencies such as the Office of Local Government or publicly available websites (Your Council).

Recommendation 15: LGNSW does not object to Annual Information Returns on pricing where this does not impose unduly burdensome reporting requirements on council-operated cemeteries.

Code of practice and guidance on pricing

IPART's Draft Report recommends:

- Recommendation 20: That CCNSW develop a code of practice on pricing, to provide guidance to cemeteries on pricing matters.
- Recommendation 21: That IPART provide pricing advisory services to cemetery operators on request, with costs to be recovered by charging for the service.

¹⁶ IPART Draft Report, p. 77

¹⁷ IPART Draft Report, p. 73

¹⁸ IPART Draft Report, p. 78.

LGNSW has consistently welcomed guidance and tools to assist cemetery operators with interment pricing and would further support optional pricing advisory services to cemetery operators from IPART to be available on request.

Recommendation 16: LGNSW supports optional guidance, advisory services and tools to assist cemetery operators set pricing.

Clear and consistent pricing information for consumers

IPART's Draft Report recommends:

- Recommendation 22: That the Code of Practice on pricing recommend that cemeteries publish prices for a subset of interment products on a consistent basis. These interment products include:
 - Plaque lawn grave
 - Headstone lawn grave
 - Monumental lawn grave
 - Ashes interment.
- Recommendation 23: For the standard interment services outlined in Draft Recommendation 22: cemetery operators be required to publish the following:
 - The total price for the interment service (i.e. the sum of all necessary service components) for both at-need and pre-need purchases
 - Itemised prices for each service component of the interment service, using plain English terminology, and including any additional costs due to cultural or religious requirements as specified in the code
 - Product specifications for the interment right, such as number of interments
 - Length of tenure (renewable or perpetual) and the future maintenance attributable to that right, for all relevant lengths of tenure.
- Recommendation 24: That the provisions of the Code of Practice on publishing prices in a consistent way be made mandatory via the industry scheme for cemeteries which conduct more than 50 burials or interment right sales per year.
- Recommendation 25: That CCNSW use consumer facing language.
- Recommendation 26: That CCNSW develop, within 12 months of the release of IPART's report, a central website to enable consumers to compare prices for interment services in one place.

LGNSW generally supports moves to make price comparison easier for consumers, but notes that in many cases interment is not directly comparable from one cemetery to another, and cannot provide a meaningful comparison across councils without appropriate narrative reflecting valid reasons for differences in costs. Outside of metropolitan areas, consumers are limited by choice as to reasonably near cemeteries. In this context, a price comparison website would be of less value.

Further, as noted above councils are already required to publish fees and charges, including for interment, on an annual basis. It is important that any new requirements for publishing prices are not overly onerous – particularly in rural and regional parts of the state where competition may be limited but this has not generally resulted in increased prices for consumers. The benefit derived from reporting must outweigh the regulatory burden.

Recommendation 17: LGNSW in principle supports cemetery operators being encouraged to publish interment prices consistently where:

- (a) state agencies work together to avoid duplicating requests for information from councils
- (b) councils do not face unnecessary regulatory burden in the absence of evidence of a problem to resolve
- (c) consumers are provided with appropriate narrative or local context outlining valid differences in pricing.

7. Perpetual maintenance

IPART's Draft Report recommends:

- Recommendation 27: That the NSW Government amend the Cemeteries and Crematoria Act 2013 to impose a legal obligation on all cemetery operators to be responsible for perpetual maintenance of perpetual interment sites and the cemetery.
- Recommendation 28: That the industry scheme require all licensed cemetery operators to:
 - Prepare an estimate of the perpetual care maintenance liability and establish/maintain a dedicated fund for this purpose.
 - Obtain external independent advice on their potential perpetual maintenance obligations on a regular basis, including advice on how to manage/contribute to a fund to provide for these future costs, and the trade-off between risk and reward.
 - "Ring fence" assets set aside for meeting perpetual maintenance costs in future so that they are used solely for that purpose.
 - Prepare a transition plan to deal with the management of "legacy" perpetual maintenance obligations owed at the time a new governance framework is implemented.
- Recommendation 29: That CCNSW develop a Code of Practice which sets out best practice financial provision for perpetual maintenance for cemetery operators which do not meet the threshold for inclusion in the mandatory requirements of licensed operators, including:
 - Estimating perpetual maintenance liabilities, and
 - Reporting these liabilities in the notes to financial account.
- Recommendation 30: That CCNSW require cemetery operators which will be licensed in future under Draft Recommendation 2 to report their estimated perpetual maintenance liabilities as at 30 June 2021 in the notes to financial accounts in their 2020-2021 annual report.
- Recommendation 31: That CCNSW engage with the Australian Accounting Standards Board to ascertain the appropriate accounting treatment of perpetual maintenance expenses by cemetery operators given the provisions of AASB Standard 137.

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.

LGNSW further does not support the proposal for licensed council cemetery operators (i.e. those that meet a certain activity level threshold) to meet additional requirements for perpetual maintenance, including a dedicated fund and ring-fenced assets for this purpose. It is a Fundamental Principle of LGNSW that local government must have control of its revenue raising and investment decisions.¹⁹

It was noted in the previous IPART Issues Paper that there had been no cases of cemetery operators being unable to meet perpetual maintenance costs of a cemetery and that:

...given the high level of government management (though Crown land managers and local councils) it is unclear whether it is likely to occur in NSW.²⁰

¹⁹ LGNSW Policy Platform, April 2020, p. 6, available at: lgnsw.org.au/Public/Policy/Policy_Platform.aspx

²⁰ IPART Issues Paper, p. 23.

IPART has not provided any clear evidence that there is any need for this recommendation for council cemeteries in either the Interim Report nor the most recent Draft Report. The Draft Report does note that:

*In the case of private cemetery operators, they could collapse or elect to leave the sector.*²¹

However, there is no suggestion that this is a risk for council-operated cemeteries. As previously advised, any further legal obligation on councils to make financial provision for perpetual maintenance of cemeteries is unnecessary, as councils are already heavily regulated in terms of their financial administration and service delivery to their communities as provided by the LG Act, and its financial and annual reporting obligations. Councils already have existing requirements to submit long term financial plans and asset management plans as part of the Integrated Planning & Reporting (IP&R) Framework. In addition, section 8B of the LG Act sets out the principles of sound financial management by which all councils must apply:

8B Principles of sound financial management

The following principles of sound financial management apply to councils:

- (a) Council spending should be responsible and sustainable, aligning general revenue and expenses.*
- (b) Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.*
- (c) Councils should have effective financial and asset management, including sound policies and processes for the following:
 - (i) performance management and reporting,*
 - (ii) asset maintenance and enhancement,*
 - (iii) funding decisions,*
 - (iv) risk management practices.**
- (d) Councils should have regard to achieving intergenerational equity, including ensuring the following:
 - (i) policy decisions are made after considering their financial effects on future generations,*
 - (ii) the current generation funds the cost of its services.**

Again, IPART's draft recommendation that would impose a new perpetual maintenance obligation on councils conflicts with the NSW Government's Better Regulation Principles:

- The need for action has not been established – conflicts with Principle 1.
- The action is not effective or proportional (given adequate financial and regulatory oversight of councils already exists) – conflicts with Principle 4
- The proposed regulation would be duplicative – conflicts with Principle 6.

Given existing and adequate oversight of council finances, this recommendation would do little beyond increase the costs of regulation – costs that would ultimately have to be passed onto consumers in the form of higher fees.

While it is clear that perpetual maintenance of cemeteries can represent significant costs for all cemetery providers, if IPART is concerned that councils may be unable to meet these costs IPART may instead seek to provide a higher rate peg for local government rates rather than increase the compliance and reporting burden on local government.

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

²¹ IPART Draft Report, p. 90.

control of investment and expenditure decisions that are in the interests of the community. Councils have noted that it would be beneficial for the guidelines to provide advice on monumental care in cemeteries in the context of perpetual maintenance.

Recommendation 18: LGNSW does not support 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.

Recommendation 19: LGNSW does not support any council-operated cemeteries, including those that meet an activity level threshold, being required to maintain a dedicated fund, ring-fenced assets and independent advice on perpetual maintenance obligations, or undertake new perpetual maintenance reporting obligations, in recognition of existing regulatory and financial oversight of local government in NSW.

Recommendation 20: LGNSW supports CCNSW developing guidance materials including on best practice financial provision for perpetual maintenance, for consideration of council cemetery operators and potential adoption.

8. Renewable interment

IPART's Draft Report recommends:

- Recommendation 32: That all licensed cemetery operators should be required by a condition on their operating licence to develop renewable tenure products.
- Recommendation 33: That the Code of Practice on Pricing (Draft Recommendation 20) include guidance on relative prices of renewable tenure compared to perpetual tenure.

For many council cemeteries, particularly in regional and rural NSW, there is no demonstrated need or demand for renewable tenure products. Imposing this requirement would force council cemeteries to plan for and regulate renewable interment, increasing administrative costs for the cemetery as a whole in the absence of any demand for this offering. While draft recommendation 32 proposes to only mandate renewable tenure products for licensed cemetery operators (i.e. those that meet a certain activity threshold), LGNSW does not support this requirement being imposed bluntly in the absence of demonstrated demand or need.

However, LGNSW does support the provision of guidance in a Code of Practice to assist with pricing renewable tenure products where a cemetery chooses to offer this product.

Recommendation 21: LGNSW does not support all licensed cemetery operators being required to develop renewable tenure products, in the absence of demonstrated demand or need for this product.

Recommendation 22: LGNSW supports the provision of renewable tenure pricing guidance materials.

Summary of recommendations

Recommendation 1: In the absence of demonstrated need, LGNSW does not support IPART's proposal for an interment industry scheme composed of mandatory codes of practice and licences, which would likely increase costs of interment for no clear benefit.

Recommendation 2: LGNSW recommends that IPART consider a lighter touch regulatory approach that could involve setting pricing principles, establishing benchmarks and only investigating outliers.

Recommendation 3: LGNSW in-principle supports codified minimum standards of maintenance for cemeteries provided that:

- (a) the standards are differentiated according to cemetery types, and
- (b) the development of the codes is undertaken through substantial consultation with cemetery operators, including local government.

Recommendation 4: LGNSW supports principles of and guidance for sustainability being included within codes or practice.

Recommendation 5: LGNSW supports the development of a code of practice for interment right contracts.

Recommendation 6: LGNSW in-principle supports reasonable minimum standards and mandatory basic services, provided that these are only applicable above a reasonable activity level threshold and are developed in consultation with councils.

Recommendation 7: LGNSW does not support an interment levy on council cemetery operators that is likely to be inefficient, duplicative, harm the principle of competitive neutrality and would result in higher interment costs, particularly for communities in regional and rural NSW.

Recommendation 8: LGNSW does not support any process for identifying and acquiring land for new cemeteries that overrides local government consultation and consent powers.

Recommendation 9: LGNSW supports NSW Government involvement in identifying, funding and acquiring land for new cemeteries outside of Sydney but only upon request from the local council.

Recommendation 10: LGNSW supports the NSW Government competitively tendering development and operation of new cemeteries on land acquired by the NSW Government.

Recommendation 11: LGNSW does not support operating licence conditions imposing sensitive practices such as cemetery renewal on a cemetery, as this should be a locally led decision that is made only following consultation with the community.

Recommendation 12: LGNSW does not support approaches that artificially inflate costs in an effort to promote competitive neutrality.

Recommendation 13: LGNSW in principle supports reasonable operations and costs reporting for council cemeteries where this reporting does not impose unnecessary administrative burden on operators to the extent that the overall costs of the service are increased.

Recommendation 14: In the absence of any supporting evidence, LGNSW does not support legislative amendments to enable CCNSW to refer council cemetery operators to IPART for a maximum price determination.

Recommendation 15: LGNSW does not object to Annual Information Returns on pricing where this does not impose unduly burdensome reporting requirements on council-operated cemeteries.

Recommendation 16: LGNSW supports optional guidance, advisory services and tools to assist cemetery operators set pricing.

Recommendation 17: LGNSW in principle supports cemetery operators being encouraged to publish interment prices consistently where:

- (a) state agencies work together to avoid duplicating requests for information from councils

- (b) councils do not face unnecessary regulatory burden in the absence of evidence of a problem to resolve
- (c) consumers are provided with appropriate narrative or local context outlining valid differences in pricing.

Recommendation 18: LGNSW does not support 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.

Recommendation 19: LGNSW does not support any council-operated cemeteries, including those that meet an activity level threshold, being required to maintain a dedicated fund, ring-fenced assets and independent advice on perpetual maintenance obligations, or undertake new perpetual maintenance reporting obligations, in recognition of existing regulatory and financial oversight of local government in NSW.

Recommendation 20: LGNSW supports CCNSW developing guidance materials including on best practice financial provision for perpetual maintenance, for consideration of council cemetery operators and potential adoption.

Recommendation 21: LGNSW does not support all licensed cemetery operators being required to develop renewable tenure products, in the absence of demonstrated demand or need for this product.

Recommendation 22: LGNSW supports the provision of renewable tenure pricing guidance materials.

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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.