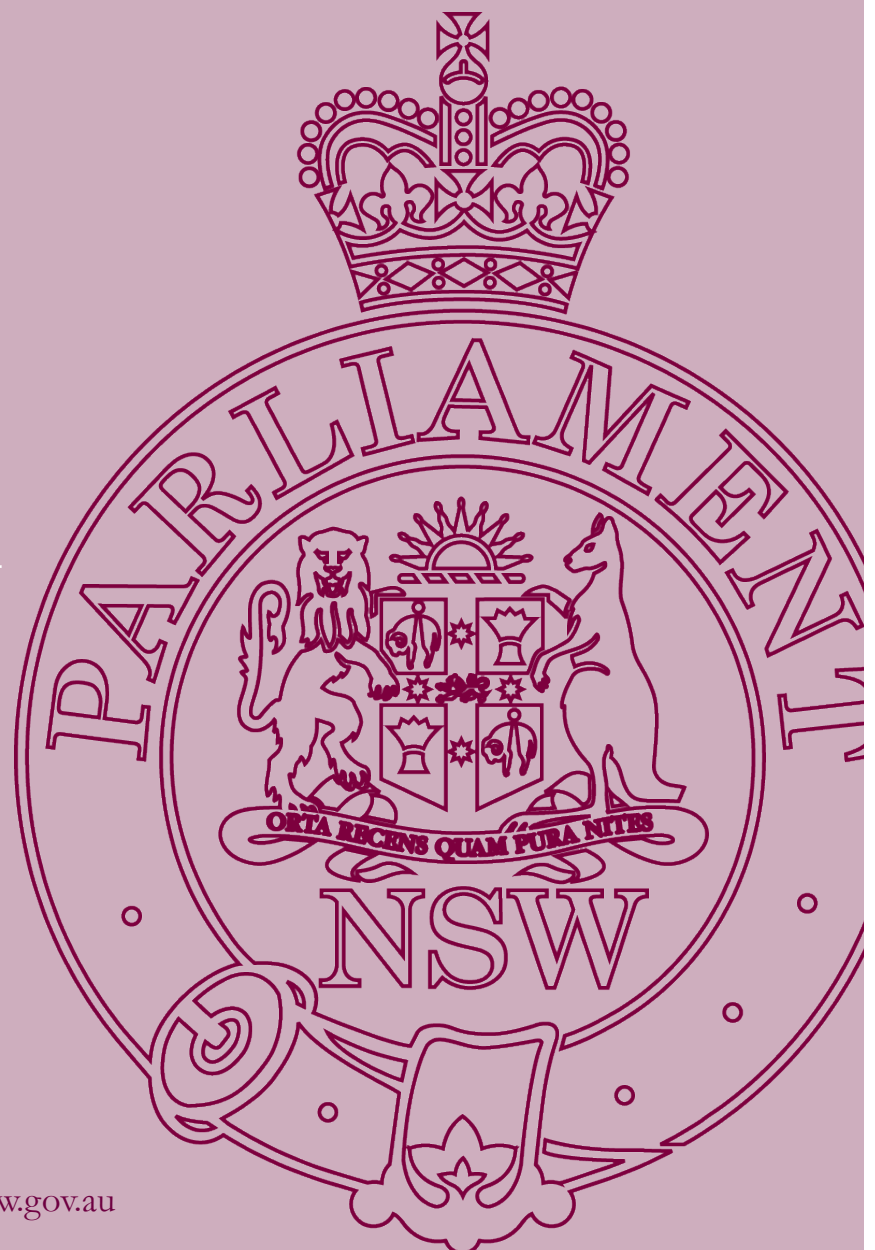




LEGISLATIVE COUNCIL

REGULATION COMMITTEE

Cemeteries and Crematoria Amendment Regulation 2018



Report 2

November 2018

Regulation Committee

Cemeteries and Crematoria Amendment Regulation 2018

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Terms of reference

1. That the Regulation Committee inquire into and report on the impact and implementation of the Cemeteries and Crematoria Amendment Regulation 2018.
2. That the committee report by 9 November 2018.¹

The terms of reference were referred to the committee by the Legislative Council on 15 August 2018.²

¹ The original reporting date was 24 October 2018 (*Minutes*, NSW Legislative Council, 15 August 2018, p 2840). The reporting date was later extended to 9 November 2018 (*Minutes*, NSW Legislative Council, 26 September 2018, p 2979).

² *Minutes*, NSW Legislative Council, 15 August 2018, p 2840.

Committee details

Committee members

The Hon Scott Farlow MLC	Liberal Party	<i>Chair</i>
The Hon Greg Donnelly MLC	Australian Labor Party	<i>Deputy Chair</i>
The Hon Paul Green MLC	Christian Democratic Party	
The Hon Trevor Khan MLC	The Nationals	
The Hon Shayne Mallard MLC	Liberal Party	
The Hon Mark Pearson MLC	Animal Justice Party	
The Hon Mick Veitch MLC	Australian Labor Party	
The Hon Natalie Ward MLC	Liberal Party	

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Chair's foreword

What happens to our bodies when we “shuffle off this mortal coil”, in the words of William Shakespeare, is an issue that nobody is keen to consider. However, the operators of our cemeteries, crematoria and those in the funeral industry confront this issue every day. As Parliamentarians, we too need to confront this issue and particularly the need for appropriate burial space.

The inquiry into the Cemeteries and Crematoria Amendment Regulation of 2018 elicited significant interest and response to the committee.

Many of the submissions reflected the need for the Government to better communicate the actual impact and effect of the *Cemeteries and Crematoria Amendment Regulation 2018* and the Act, which underpins it, the *Cemeteries and Crematoria Act 2013*.

At the very beginning it should be clarified that renewable interment is not compulsory and not retrospective, it is an option for the operators of cemeteries and it is one that has already been used in New South Wales by private operators.

The Regulation Committee has a strict remit to inquire into the substantive regulation. There is no doubt that without this regulation there would be limited guidance on the operation of renewable interment. This regulation has provided safeguards for the operation of renewable interment, but the committee has made recommendations to improve those safeguards, particularly when it comes to consultation with respect to religious and cultural practices.

While certain issues weren't directly included in the regulation, the committee received significant information about the suitability of certain soil types and conditions, in addition to materials used in burial and their impact on the rate of decay. It was the committee's view that the NSW Department of Industry should consider these issues in the construction of future regulations and policy initiatives in this space.

There is no doubt that there is a significant need for additional burial space in the Sydney basin and it is a need that the Government is conscious of. Renewable interment has obviously been one measure that has been introduced to address this, but there is no doubt that there is a significant need for more burial space to be identified in the metropolitan region.

All of us can relate to the pain and suffering that is endured when a loved one passes away. None of us embrace the thought of our own passing. Each of us though have final wishes, in line with our religious and cultural practices, that we hope are respected when we are gone and it is imperative that governments are mindful of what we can do to better manage our cemeteries and crematoria and ensure that they have appropriate capacity for the future.

I commend the report to the House.



The Hon Scott Farlow MLC
Committee Chair

Findings

Finding 1

9

The committee notes the concerns raised by several inquiry participants regarding the finite amount of land currently available for burials in the greater Sydney metropolitan area. The committee urges the government to look at potential opportunities to acquire further land for cemeteries in the greater Sydney metropolitan area as a matter of priority.

Finding 2

17

That the consultation process followed by Cemeteries and Crematoria NSW in developing the Cemeteries and Crematoria Amendment Regulation 2018 should have been more robust. Although the consultation process complied with the NSW Guide to Better Regulation it would appear that it was ineffective. This is made evident by the lack of understanding about the Regulation demonstrated by a number of key industry stakeholders who gave evidence to this inquiry.

Finding 3

20

That design of coffins and use of certain materials will significantly delay decomposition of remains. The committee is of the view that more work must be undertaken by relevant government agencies to determine the appropriate coffin design and materials for use in the funeral industry to ensure there is no undue or significant delay in decomposition of remains, or possible environmental consequences.

Finding 4

22

That the prescribed initial period of renewable interment of 25 years in the Cemeteries and Crematoria Amendment Regulation 2018 and the *Cemeteries and Crematoria Act 2013* may be inappropriate for some soil types.

Recommendations

Recommendation 1

8

That the NSW Government invest in an education and public awareness campaign to improve community understanding and acceptance about renewable interment and its voluntary role for the operators of cemeteries and crematoria in New South Wales.

Recommendation 2

8

That Cemeteries and Crematoria NSW publish on its website the relevant contact information for all religious and cultural leaders who must be consulted before human remains can be disturbed, so as to ascertain whether any religious and cultural practices apply to those remains and investigate the feasibility of including this information as part of a schedule to the regulation.

Recommendation 3

8

That the NSW Government investigate amending Clause 5 of the Cemeteries and Crematoria Amendment Regulation 2018 to require that "necessary enquiries **must** be made."

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 15 August 2018.

The committee received 158 submissions and 3 supplementary submissions.

The committee held one public hearing at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Chapter 1 Cemeteries and Crematoria Amendment Regulation 2018

This chapter considers the Cemeteries and Crematoria Amendment Regulation 2018 (Regulation) which was published on the NSW Legislation website on 25 June 2018. It discusses the Regulation's objectives and reasons for its implementation.

Cemeteries and Crematoria Amendment Regulation 2018

- 1.1 In 2014, the statutory agency Cemeteries and Crematoria NSW was created under the *Cemeteries and Crematoria Act 2013* (the Act). Cemeteries and Crematoria NSW is within the Department of Industry and is responsible for 'supporting and regulating the interment industry, assessing interment needs and developing planning strategies for cemetery space'.³
- 1.2 The Cemeteries and Crematoria Amendment Regulation 2018 refers to Part 4 (Interment rights) of the Act.
- 1.3 Ms Catherine Manuel, Chief Executive Officer, Cemeteries and Crematoria NSW, advised that Part 4 of the Act 'establishes a consistent system of interment rights across all cemetery sectors in New South Wales' by providing 'strong consumer safeguards for interment right holders and mandat[ing] requirements to improve accountability and certainty'.⁴
- 1.4 The Regulation defines both perpetual and renewable interment rights. It also outlines the procedures and requirements a cemetery operator must comply with when offering renewable interment rights and when preparing to reuse a burial site. According to the NSW Department of Industry, the Regulation
- specif[ies] steps a cemetery operator must take to ascertain cultural or religious practices applying to the remains of a deceased person
 - require[s] a cemetery operator to disclose to applicants for the grant or renewal of interment rights the fees and charges relevant to the interment
 - provide[s] a 10 day cooling off period following the purchase or renewal of renewable interment rights.⁵

Types of interment rights

- 1.5 The NSW Department of Industry explained that an 'interment right is a contract between a cemetery operator and a right holder (consumer) permitting the right holder to undertake burials in a particular grave or other allotment in a cemetery'.⁶
- 1.6 Part 4 of the Act provides for two types of interment rights:

³ NSW Department of Industry, *Cemeteries & Crematoria NSW*, <https://www.industry.nsw.gov.au/lands/what-we-do/crown-land/cemeteries-crematoria>.

⁴ Evidence, Ms Catherine Manuel, Chief Executive Officer, Cemeteries and Crematoria NSW, 21 September 2018, pp 36 and 37.

⁵ Submission 157, NSW Department of Industry, p 3.

⁶ Submission 157, NSW Department of Industry, p 2.

- **perpetual interment rights:** which allow the 'right holder to bury human remains in a particular grave or other allotment in a cemetery and for those remains to be left undisturbed forever (in perpetuity)'
 - **renewable interment rights:** which allow the 'right holder to bury human remains in a particular grave or other allotment in a cemetery and for those remains to be left undisturbed for an initial period of 25 years'.⁷
- 1.7 After the initial 25 year period, renewable interment rights may be renewed for a minimum of five years, and up to a maximum of 99 years.⁸
- 1.8 The NSW Department of Industry also explained, that '[i]f after 25 years, a right holder does not renew the renewable interment right within two years of the right expiring, the grave may be reused subject to a range of procedures in the Act that must be followed'.⁹
- 1.9 Ms Manuel advised that under the Act renewable interment rights are voluntary and not retrospective.¹⁰ She also stated that perpetual interment rights would continue to be available with 'no impact on existing perpetual graves or rights, including pre-purchased perpetual interment rights'.¹¹

Justifications for renewable interment rights

- 1.10 The introduction of renewable interment rights was justified on the basis of economic and environmental planning grounds.
- 1.11 The NSW Department of Industry noted Section 145 of the *Cemeteries and Crematoria Act 2013* requires the Independent Pricing and Regulatory Tribunal (IPART) to 'conduct an investigation of interment costs and the pricing of interment rights within the interment industry with regard to the relativity of costs and pricing factors for perpetual and renewable interment rights'.¹²
- 1.12 Ms Elizabeth Livingstone, Deputy Secretary, Lands and Water Division, NSW Department of Industry asserted that the Regulation would provide more transparent pricing in comparison to present practices.¹³ Ms Livingstone also argued that renewable interment rights increased options for consumers which was 'beneficial overall for consumers in making an informed decision that suits their needs'.¹⁴
- 1.13 Mr Damien Balfour, submission author, supported the proposal for renewable interment rights and the choice it provided by leasing rather than outright purchasing burial plots.¹⁵

⁷ Submission 157, NSW Department of Industry, p 2.

⁸ Evidence, Ms Manuel, 21 September 2018, p 36.

⁹ Submission 157, NSW Department of Industry, p 2.

¹⁰ Evidence, Ms Manuel, 21 September 2018, p 37.

¹¹ Evidence, Ms Manuel, 21 September 2018, p 37.

¹² Submission 157, NSW Department of Industry, p 3.

¹³ Evidence, Ms Elizabeth Livingstone, Deputy Secretary, Lands and Water Division, NSW Department of Industry, 21 September 2018, p 43.

¹⁴ Evidence, Ms Livingstone, 21 September 2018, p 43.

¹⁵ Submission 17, Mr Damien Balfour, p 1.

1.14 With respect to environmental planning, a 2017 report released by Cemeteries and Crematoria NSW entitled *Metropolitan Sydney Cemetery Capacity Report* explored the 'likely future constraints on burial space availability in the Sydney region'. The report found that without a change in demand, cemetery capacity in metropolitan Sydney would become exhausted over the coming decades:

[I]f there is no change to existing cremation and grave occupancy rates, cemetery capacity in metropolitan Sydney would be exhausted by 2051, or 2056 at the latest, based on no change to Sydney metropolitan cremation and occupancy rates. Pre-sale of plots is likely to mean that plots become unavailable for purchase around 2026.¹⁶

1.15 In response the NSW Department of Industry argued for 'more sustainable burial practices'. This include renewable interment as well as the pursuit of land acquisition for cemeteries and crematoria.¹⁷

1.16 Dr Boyd Dent, Managing Principal of Red Earth Geosciences disagreed that renewable interment, as proposed by the NSW Government, was a feasible solution. He argued that renewable interment rights as stipulated in both the Regulation and the Act offered 'very limited real benefit to creating extra in-cemetery space'.¹⁸

1.17 Instead, Dr Dent suggested that large-scale renewal of older areas of cemeteries be undertaken to allow for re-use for new burials. Dr Dent, while aware of heritage issues that could complicate this process, was of the view that such heritage issues should be overlooked so as to allow the reuse of scarce land.¹⁹

Land crisis

1.18 A number of inquiry participants spoke of the finite land currently available for burials and questioned how this would be addressed by government.

1.19 Mr Jason Masters, Administrator, Rookwood General Cemetery noted that 'all cemeteries in New South Wales are facing a crisis of land availability'.²⁰ Both Mr Masters and Mr George Simpson, Chief Executive Officer, Rookwood General Cemetery advised that for some smaller communities such as the Maoris and the Mandeans, land for perpetual burials will most likely be exhausted in five years.²¹

1.20 Mr Simpson added that it was only recently that Rookwood General Cemetery had managed to reapportion some land to extend the capacity of Muslim burials from five to 10 years.²²

¹⁶ Submission 157, NSW Department of Industry, p 5.

¹⁷ Submission 157, NSW Department of Industry, p 5.

¹⁸ Evidence, Dr Boyd Dent, Managing Principal, Red Earth Geosciences, 21 September 2018, p 16.

¹⁹ Evidence, Dr Dent, 21 September 2018, p 18.

²⁰ Evidence, Mr Jason Masters, Administrator, Rookwood General Cemetery, 21 September 2018, p 22.

²¹ Evidence, Mr Masters, 21 September 2018, p 27; Evidence, Mr George Simpson, Chief Executive Officer, Rookwood General Cemetery, 21 September 2018, p 27.

²² Evidence, Mr Simpson, 21 September 2018, p 27.

- 1.21 Both the NSW Jewish Board of Deputies and the Australian and New Zealand Diocese of Russian Orthodox Church stated that within their respective communities land for burials was running out.²³
- 1.22 Archpriest George Lapardin, Vice Chairman, Cemeteries Committee, Australian and New Zealand Diocese of Russian Orthodox Church, observed that while some adjoining land at Rookwood General Cemetery had been opened for up to 1,000 graves, this would only provide another three to five years of capacity.²⁴
- 1.23 Likewise, Mr Vic Alhadeff, Chief Executive Officer, NSW Jewish Board of Deputies, anticipated that burial space for the Jewish community in New South Wales would be at capacity within a decade.²⁵
- 1.24 Mr Alhadeff asserted that in order for the government to 'provide affordable burial space to the Jewish community and other communities' it was important that 'one or more multi-faith cemeteries in the wider Sydney metropolitan area' be urgently acquired and allocated.²⁶
- 1.25 Rookwood General Cemetery contended that renewable interment rights had been introduced as a means to hopefully reduce demand for new land.²⁷ Although, Rookwood General Cemetery remarked that the 'only way renewable interment rights will mitigate the urgent need for new land will be if it is adopted by a majority of communities and families making end-of-life choices'.²⁸

Cultivating acceptance of renewable interment

- 1.26 A majority of inquiry participants argued against the introduction of renewable interment rights. Key areas of concern included:
- renewable interment contradicted the phrase of Rest in Peace offered by perpetual interment
 - renewable interment was a money grab by the government and cemetery operators
 - renewable interment was morally wrong.²⁹
- 1.27 Similarly, inquiry participants opposed renewable interment due to confusion and a misunderstanding of how renewable interment rights would be enacted and applied. Many

²³ Evidence, Archpriest George Lapardin, Vice Chairman, Cemeteries Committee, Australian and New Zealand Diocese of Russian Orthodox Church, 21 September 2018, p 32; Evidence, Mr Vic Alhadeff, Chief Executive Officer, NSW Jewish Board of Deputies, 21 September 2018, p 2.

²⁴ Evidence, Archpriest Lapardin, 21 September 2018, p 32.

²⁵ Evidence, Mr Alhadeff, 21 September 2018, p 2.

²⁶ Evidence, Mr Alhadeff, 21 September 2018, p 2.

²⁷ Submission 118, Rookwood General Cemetery, p 6.

²⁸ Submission 118, Rookwood General Cemetery, p 6.

²⁹ See, for example, Submission 3, Mr Robert Perisic; Submission 8, Mr Shaun Davies; Submission 14, Mrs Carol York; Submission 39, Mrs Amanda Maher; Submission 40, Mrs Vivien Marscham; Submission 46, Mr Vincent Parkinson; Submission 47, Miss Rebecca Fren; Submission 48, Mrs Daphne Scott; Submission 75, Ms Vicki Kubacki; Submission 82, Mrs Karen Turner; Submission 104, Mr Dennis Hall.

inquiry participants voiced anxiety that renewable interment rights would be applied retrospectively (with retrospective application not something provided for by the Regulation).³⁰

- 1.28** Ms Manuel advised that a number of other jurisdictions, both internationally and within Australia, offer renewable interment rights. In Denmark, France, Germany, Greece, Italy and Sweden, renewable interment was common. Western Australia, South Australia and Tasmania also offer renewable interment rights, while Victoria offers renewable interment for cremated remains.³¹
- 1.29** Ms Manuel also advised that 'renewable or limited tenure is already available for cemeteries operated by local governments or private operators, including Waverley Cemetery and the Sydney Natural Burial Park at Kemps Creek'.³²
- 1.30** When questioned about the number of renewable tenure arrangements currently in place at Waverley Cemetery, Ms Manuel replied that since 1992, when Waverley Cemetery first began offering renewable interment, people have opted for a 50-year renewable interment right.³³ However, the exact number of people who have chosen this option was not provided.
- 1.31** The Catholic Metropolitan Cemeteries Trust, which operates Kemps Creek Cemetery, suggested that in order to improve acceptance and purchase of renewable interment rights '[c]onsiderable investment in public education and awareness needs to be undertaken' so as to allow it to 'be a financially viable option for an operator to consider'.³⁴
- 1.32** The Catholic Metropolitan Cemeteries Trust recommended that a renewable interment right awareness and education program be developed and distributed among communities and the public so as to 'reduc[e] the potential for negative/controversial media articles and criticism of operators who choose to implement renewable rights'.³⁵

Ascertaining cultural or religious practices applying to the remains of a deceased person

- 1.33** According to some stakeholders, the Regulation was not prescriptive enough regarding the role and responsibilities of cemetery operators in preparing the remains of a deceased person who is to be reburied.
- 1.34** Part 3, Division 1 of the Regulation refers to the steps to be undertaken by cemetery operators when disturbing remains of a deceased person for the purpose of reusing the burial site. In relation to the Act the Regulation stipulates that a cemetery operator 'must ensure that any remains of a person that are disturbed or removed are dealt with in accordance with any cultural

³⁰ See, for example, Submission 2, Name suppressed; Submission 4, Mrs Donna Andrews; Submission 6, Name suppressed; Submission 7, Name suppressed; Submission 9, Name suppressed; Submission 10, Mr Troy Frame; Submission 12, Mrs Kate Plumridge; Submission 13, Ms Tania Doyle; Submission 24, Ms Janice Hayes; Submission 69, Ms Amy Beckett; Submission 73, Ms Nicole King.

³¹ Evidence, Ms Manuel, 21 September 2018, p 37; Submission 118, Rookwood General Cemetery, p 16.

³² Evidence, Ms Manuel, 21 September 2018, p 37.

³³ Evidence, Ms Manuel, 21 September 2018, p 45.

³⁴ Submission 114, The Catholic Metropolitan Cemeteries Trust, p 1.

³⁵ Submission 114, The Catholic Metropolitan Cemeteries Trust, p 2.

- or religious practices applicable to the remains'.³⁶ Such cultural or religious practices are to be ascertained by consulting the cemetery operator's register; contacting the next of kin; or making enquiries of the cultural or spiritual leader in the community relevant to the remains as identified on the Department of Industry website.³⁷
- 1.35** Mr David Knoll AM, Honorary Secretary, Executive Council of Australian Jewry and past President of the NSW Jewish Board of Deputies raised concerns regarding whether religious and cultural practices would be followed and respected.
- 1.36** Mr Knoll argued that if the information is not reasonably ascertainable from any of the sources identified in the Regulation then any further steps taken by a cemetery operator would be entirely at their discretion.³⁸ Mr Knoll was concerned that if a cemetery operator contacted the wrong cultural or religious leader, then the protections outlined in the Act would not be followed.³⁹
- 1.37** Mr Knoll recommended that the contact of the relevant religious authority be identified in the Regulation so as to avoid any confusion and error as to who should be contacted.⁴⁰ Mr Knoll insisted that a list of specific authorities for various cultural and religious groups be included as a sunset provision with a requirement for review. He argued that it was 'not difficult to amend a regulation if, for example, it turns out that the name of an entity has changed'.⁴¹
- 1.38** Mr Knoll advised that during the consultation period for the Regulation, the Lebanese Muslim Association raised the issue of listing relevant organisations in the schedule with Cemeteries and Crematoria NSW but it was not included.⁴²
- 1.39** Mr Masters supported the NSW Jewish Board of Deputies' recommendation regarding a schedule of relevant religious and cultural authorities being included in the Regulation. He claimed that there 'would be a lot of common sense in that sort of approach'.⁴³
- 1.40** The NSW Jewish Board of Deputies also asserted that the Regulation was 'deficient in requiring merely that a cemetery manager take reasonable steps' in making enquiries to ascertain if any cultural or religious practices may apply to the remains of a deceased person. Instead, the NSW Jewish Board of Deputies directed that clause 5 of the Regulation 'should simply require that the necessary enquiries "must" be made'.⁴⁴

³⁶ *Cemeteries and Crematoria Act 2013*, Pt 4, Div 2, Subdiv2, s 46(3).

³⁷ Cemeteries and Crematoria Amendment Regulation 2018, Sch 1, Part 3, Div 1, cl 5, subcl 1.

³⁸ Evidence, Mr David Knoll, AM, Honorary Secretary, Executive Council of Australian Jewry and past President of the NSW Jewish Board of Deputies, 21 September 2018, p 3.

³⁹ Evidence, Mr Knoll AM, 21 September 2018, p 3.

⁴⁰ Evidence, Mr Knoll AM, 21 September 2018, p 3.

⁴¹ Evidence, Mr Knoll AM, 21 September 2018, p 6.

⁴² Evidence, Mr Knoll AM, 21 September 2018, p 7.

⁴³ Evidence, Mr Masters, 21 September 2018, p 25.

⁴⁴ Submission 1, NSW Jewish Board of Deputies, p 2.

- 1.41 Both the Greek Orthodox Archdiocese of Australia and the Australian and New Zealand Diocese of Russian Orthodox Church supported the recommendation of the NSW Jewish Board of Deputies that clause 5 of the Regulation be amended.⁴⁵
- 1.42 Currently, the Regulation directs cemetery operators to Cemeteries and Crematoria NSW on the Department of Industry website for 'information to assist in identifying relevant cultural or spiritual leaders for various cultural or religious groups'.⁴⁶
- 1.43 According to Ms Elizabeth Livingstone, Deputy Secretary, Lands and Water Division, NSW Department of Industry, this offers 'a very practical way of providing transparency and ensuring that the information that people need is able to be kept current'.⁴⁷
- 1.44 The Cemeteries and Crematoria NSW web page states that the list of relevant cultural or spiritual leaders who can be consulted will be progressively updated over time. As of 16 October 2018, the only cultural or religious leader listed on the Cemeteries and Crematoria NSW website was the Sydney Chevra Kadisha for the Jewish community.⁴⁸

Committee comment

- 1.45 The committee acknowledges that there is a shortage of burial space, particularly in the greater Sydney metropolitan area. This is anticipated to worsen over the coming decades. With increasing competition over finite land, the committee understands that there is a need for sustainable solutions to make better use of existing cemetery space.
- 1.46 One method the government has used to address the issue of finite land for cemeteries and in particular, burials is the introduction of renewable interment rights. At face value this measure appears to be a reasonable response to the challenge of continued demand for a finite resource. The committee acknowledges that at this stage renewable interment rights are voluntary, are not retrospective and do not prevent perpetual interment rights from being offered.
- 1.47 Despite renewable interment rights being offered in other jurisdictions, there does not appear to be widespread acceptance of the practice in New South Wales. It is important that religious and cultural groups and the wider public better understand the reasoning for renewable interment if it is to be accepted.
- 1.48 The committee sees merit in the Catholic Metropolitan Cemeteries Trust's suggestion that considerable investment in public education be undertaken to improve awareness and

⁴⁵ Evidence, Very Reverend Father Sophrony Konidaris, Rector of The Resurrection of Our Lord Greek Orthodox Parish/Community (Kogarah), 21 September 2018, p 4; Evidence, Bishop George Schaefer, Chairman, Cemeteries Committee, Australian and New Zealand Diocese of Russian Orthodox Church, 21 September 2018, p 32; Evidence, Archpriest Lapardin, 21 September 2018, p 32; Evidence, Mr James Crittenden, Secretary, Cemeteries Committee, Australian and New Zealand Diocese of Russian Orthodox Church, 21 September 2018, p 32.

⁴⁶ Cemeteries and Crematoria Amendment Regulation 2018, Sch 1, Pt 3, Div 1, cl 5.

⁴⁷ Evidence, Ms Livingstone, 21 September 2018, p 41.

⁴⁸ NSW Department of Industry, Cemeteries & Crematoria NSW, *A new interment rights system in NSW*, <https://www.industry.nsw.gov.au/lands/what-we-do/crown-land/cemeteries-crematoria/amendment-regulation-2017>.

acceptance among communities and the public. It is therefore recommended that the NSW Government invest in an education and public awareness campaign to improve community understanding and acceptance about renewable interment and its voluntary role for the operators of cemeteries and crematoria in New South Wales.

Recommendation 1

That the NSW Government invest in an education and public awareness campaign to improve community understanding and acceptance about renewable interment and its voluntary role for the operators of cemeteries and crematoria in New South Wales.

- 1.49** The committee acknowledges the concerns of some stakeholders regarding the clauses of the Cemeteries and Crematoria Amendment Regulation 2018 that specify the steps a cemetery operator is to take in ascertaining whether any religious and cultural practices apply to the remains of a deceased person that is to be disturbed for reburial. In particular, that the Regulation does not identify the most appropriate religious and cultural leaders to contact in obtaining this information. The Regulation instead directs cemetery operators to the Cemeteries and Crematoria NSW website where this information is apparently available. At the time of drafting this report only one religious contact was published on the website.
- 1.50** It is recommended that Cemeteries and Crematoria NSW publish on its website the relevant contact information for all religious and cultural leaders who must be consulted before human remains can be disturbed, so as to ascertain whether any cultural or religious practices apply to those remains and investigate the feasibility of including this information as part of a schedule to the regulation.

Recommendation 2

That Cemeteries and Crematoria NSW publish on its website the relevant contact information for all religious and cultural leaders who must be consulted before human remains can be disturbed, so as to ascertain whether any religious and cultural practices apply to those remains and investigate the feasibility of including this information as part of a schedule to the regulation.

- 1.51** The New South Wales Jewish Board of Deputies recommended that the provision in the regulation under Clause 5 of the Regulation, should be amended to require that "necessary enquiries **must** be made."
- 1.52** This suggestion was supported by several other witnesses who appeared before the inquiry and should be investigated by the government.

Recommendation 3

That the NSW Government investigate amending Clause 5 of the Cemeteries and Crematoria Amendment Regulation 2018 to require that "necessary enquiries **must** be made."

- 1.53** The concerns of inquiry participants regarding the finite amount of land currently available for burials in the greater Sydney metropolitan area are noted. The committee accepts that if new land is not acquired, many religious and cultural communities will no longer have capacity for perpetual burials in a number of cemeteries in the Sydney region. This will pose significant challenges to religious communities for whom perpetual burial is non-negotiable. The introduction of renewable interment rights does not solve the issue for these religious communities.
- 1.54** The committee urges the government to continue to look at solutions beyond the provision of renewable interment so that those whose religious beliefs require perpetual burial can continue to be provided for. This could be achieved through the government looking at potential opportunities to acquire further land for cemeteries in the greater Sydney metropolitan area.

Finding 1

The committee notes the concerns raised by several inquiry participants regarding the finite amount of land currently available for burials in the greater Sydney metropolitan area. The committee urges the government to look at potential opportunities to acquire further land for cemeteries in the greater Sydney metropolitan area as a matter of priority.

Chapter 2 The consultation process

This chapter begins by outlining the process undertaken by the NSW Government in developing the Cemeteries and Crematoria Amendment Regulation 2018 (the Regulation). It then examines the adequacy of the public consultation process and notes the concerns of a number of industry and other stakeholders. The chapter also considers the relationship between soil composition and decomposition of human remains and if the prescribed 25 year initial renewable interment period is appropriate. It concludes by considering the psychological impacts of exhumation on cemetery operators.

Developing the Cemeteries and Crematoria Amendment Regulation 2018

2.1 According to the NSW Department of Industry, Part 4 (Interment rights) of the *Cemeteries and Crematoria Act 2013* (the Act) was informed by previous work of both the NSW Parliament and the former Department of Lands regarding renewable interment:

In 2005, the Legislative Council resolved that the Standing Committee on Social Issues inquire into the funeral industry, including the availability and affordability of burial space. In its report, the Committee recommended legislation be introduced to allow for renewable tenure. In 2008, the then Department of Lands issued a Discussion Paper, *Sustainable burials in the Sydney Greater Metropolitan Area*, that canvassed a number of options including renewable tenure. This important work by the Parliament and the former Department informed the development of the *Cemeteries and Crematoria Act 2013* (the Act).⁴⁹

2.2 Ms Catherine Manuel, Chief Executive Officer, Cemeteries and Crematoria NSW acknowledged that as part of the introduction of renewable interment rights there was a 'critical need for the community and industry operators to be well informed and to understand the process'.⁵⁰

2.3 Despite the government's attempts to provide extensive consultation and inform the public of the Regulation, a number of inquiry participants raised concerns about the consultation process for the draft Regulation. These concerns will be discussed later in the next section.

2.4 To promote understanding of the government's proposed approach to renewable interment rights, Ms Manuel stated that Cemeteries and Crematoria NSW 'consulted widely' with community and industry operators through two consultative committees, namely the:

- Industry Consultative Group
- Community and Consumer Consultative Group.⁵¹

2.5 Ms Manuel advised that feedback received from these two groups was used to draft the amendments to the Regulation.⁵²

⁴⁹ Submission 157, NSW Department of Industry, p 2.

⁵⁰ Evidence, Ms Catherine Manuel, Chief Executive Officer, Cemeteries and Crematoria NSW, 21 September 2018, p 36.

⁵¹ Evidence, Ms Manuel, 21 September 2018, p 36.

⁵² Evidence, Ms Manuel, 21 September 2018, p 36.

- 2.6** The Industry Consultative Group, met on five occasions from March 2016 to September 2017. It included representatives from:
- Rookwood Necropolis Trust, Rookwood General Cemeteries Reserve Trust, Northern Metropolitan Cemeteries Trust, Catholic Metropolitan Cemeteries Trust, Southern Metropolitan Cemeteries Trust, Palmdale, Ryde City Council, Lake Macquarie City Council, Australian Funeral Directors Association, Funeral Directors Association of NSW and Invocare.⁵³
- 2.7** From this Industry Consultative Group, a smaller working group with the addition of local government representation was formed to 'focus on implementation of Part 4 of the Act and contribute to development of a voluntary code of practice regarding Part 4'.⁵⁴
- 2.8** This working group consisted of representatives from the Catholic Metropolitan Cemeteries Trust, Rookwood General Cemeteries Reserve Trust, Southern Metropolitan Cemeteries Trust, Lake Macquarie City Council, Pittwater/Northern Beaches Council, Palmdale Group and Invocare.⁵⁵ The working group met on two occasions in May 2016 and January 2017.⁵⁶
- 2.9** The Community and Consumer Consultative Group, met on two occasions in July and October 2016 and included representatives from:
- [T]he Jewish Board of Deputies, Lebanese Muslim Association, Catholic Archdiocese of Sydney, St Basils Aged Care [Greek orthodox community], Friends of Sandgate Cemetery, Combined Pensioners and Superannuants Association, Funeral Celebrants Association, NSW Aboriginal Land Council and the Turkish Islamic Centre.⁵⁷
- 2.10** The NSW Department of Industry also advised that '[o]ver 200 Crown, local government, private, community and church cemetery operators on the cemeteries register were formally notified of the consultation period and invited to participate'.⁵⁸
- 2.11** During the consultation period, Ms Manuel noted that between meetings, sufficient time was provided for members to engage with their communities and provide feedback.⁵⁹
- 2.12** After initial consultations on the government's proposed approach to renewable interment rights, Ms Manuel informed that 'a draft regulation, better regulation statement and key fact sheets were placed on public exhibition for 28 days, ... [with] extensive promotion to maximise opportunities for engagement'.⁶⁰

⁵³ Answers to question on notice, NSW Department of Industry, 5 October 2018, p 1.

⁵⁴ Answers to question on notice, NSW Department of Industry, p 1; NSW Government, Cemeteries and Crematoria Amendment Regulation 2017 (Part 4 of the *Cemeteries and Crematoria Act 2013*) Better Regulation Statement, November 2017, p 13.

⁵⁵ Answers to question on notice, NSW Department of Industry, p 1.

⁵⁶ Answers to question on notice, NSW Department of Industry, p 1.

⁵⁷ Answers to question on notice, NSW Department of Industry, p 2.

⁵⁸ Answers to question on notice, NSW Department of Industry, p 2.

⁵⁹ Evidence, Ms Manuel, 21 September 2018, p 38.

⁶⁰ Evidence, Ms Manuel, 21 September 2018, p 36; Answers to question on notice, NSW Department of Industry, p 3.

- 2.13** In response to the public exhibition, 72 submissions were received from a broad range of stakeholders. Some of the issues raised in these submissions were used to help 'refine the regulation'. While other submissions commented on broader issues relevant to cemeteries and interment rights.⁶¹
- 2.14** The NSW Department of Industry acknowledged that 'the majority of submissions [received] were based on misinformation ... highlight[ing] the importance of better communication needed for individuals and families'.⁶²
- 2.15** In response to the broader commentary on issues relevant to cemeteries and interment rights, Cemeteries and Crematoria NSW advised it is currently in the process of preparing a number of guideline documents for industry and/or consumers. These guideline documents include:
- an advisory guide to interment rights
 - a general consumer guide
 - a guide to commonly used terms in the interment sector
 - a guide to cemetery registers of interment rights, memorials and cremations
 - a voluntary industry code of practice
 - a guide to heritage advisory committees.⁶³
- 2.16** After the proclamation of Part 4 of the Act in June 2018, Cemeteries and Crematoria NSW held a workshop where participants were asked to provide feedback on Part 4. Ms Manuel advised that '[m]embers from both consultative groups were invited to attend this workshop'.⁶⁴

Public consultation process

- 2.17** A common concern raised by inquiry participants was the lack of public consultation about the Regulation.⁶⁵
- 2.18** Mr Jason Masters, Administrator, Rookwood General Cemetery, expressed concerns 'over the lack of effective industry and community engagement around the design and introduction of renewable rights'.⁶⁶
- 2.19** The Australian and New Zealand Diocese of Russian Orthodox Church expressed 'strong disappointment with the level of consultation and communication from Cemeteries and Crematoria NSW and the Government'. The only information received by the diocese about

⁶¹ Evidence, Ms Manuel, 21 September 2018, p 36; Answers to question on notice, NSW Department of Industry, p 3.

⁶² Submission 157, NSW Department of Industry, p 2.

⁶³ Answers to question on notice, NSW Department of Industry, p 3.

⁶⁴ Evidence, Ms Manuel, 21 September 2018, p 36.

⁶⁵ See, for example, Submission 72, Ms Sally Webster; Submission 103, A. O'Hare Funeral Directors Pty Ltd; Submission 108, Australian and New Zealand Diocese of Russian Orthodox Church; Submission 113, Mr Peter Kotevich; Submission 115, Australia Chinese Workers Association; Submission 116, Sydney Maori Anglican Fellowship; Submission 119, Serbian Diaspora Parliament to the Republic of Serbia; Submission 131, Name suppressed; Submission 145, Name suppressed; Submission 156, Manning Wallamba Family History Society Inc.

⁶⁶ Evidence, Mr Jason Masters, Administrator, Rookwood General Cemetery, 21 September 2018, p 22.

the Regulation had been through 'rumours and commentary ... through the "grapevine" and in the media'.⁶⁷

- 2.20** In fact, Bishop George Schaefer, Chairman, Cemeteries Committee, Australian and New Zealand Diocese of Russian Orthodox Church admitted at the public hearing on 21 September 2018, that he had only become aware of the Regulation for the first time about a week ago (despite the Regulation being published on the NSW Legislation website on 25 June 2018).⁶⁸
- 2.21** Other religious communities also spoke of the lack of consultation undertaken by Cemeteries and Crematoria NSW about the Regulation. For example, the Serbian Diaspora Parliament to the Republic of Serbia asserted that '[c]onsultation has not been provided'.⁶⁹ Meanwhile the Sydney Maori Anglican Fellowship claimed it was 'hard to deal with the reality that we have not been consulted with, or have had a chance to have our say in the matter, as it will ultimately affect our community'.⁷⁰
- 2.22** Mr Masters argued that the consultation and engagement undertaken by Cemeteries and Crematoria NSW with the various communities of Rookwood had been minimal to non-existent.⁷¹ For example, Mr Sargon Bisseh, Syrian community representative, Rookwood General Cemetery gave evidence that the first instance the Syrian community had heard about the commencement of the Regulation was at a meeting organised by Rookwood a week prior to the public hearing for the inquiry held on 21 September 2018.⁷²
- 2.23** Mr Stephen Hynd, Executive Director, Business Improvement, NSW Aboriginal Land Council, expressed the view that 'given the significance of these reforms to a lot of people engagement could probably have been a bit better more broadly'.⁷³
- 2.24** When questioned if, as a funeral operator, A O'Hare Funerals had been involved in the development of the Regulation or were aware it had been put in place, Ms Rosa Peronance, Managing Director indicated that they had not been involved nor had they been aware of the Regulation commencing.⁷⁴
- 2.25** According to the Cemeteries and Crematoria NSW website, the draft Cemeteries and Crematoria Amendment Regulation 2017 was on public exhibition together with the Better

⁶⁷ Submission 108, Australian and New Zealand Diocese of Russian Orthodox Church Outside of Russia, p 1.

⁶⁸ Evidence, Bishop George Schaefer, Chairman, Cemeteries Committee, Australian and New Zealand Diocese of Russian Orthodox Church, 21 September 2018, p 31.

⁶⁹ Submission 119, Serbian Diaspora Parliament to the Republic of Serbia, p 1.

⁷⁰ Submission 116, Sydney Maori Anglican Fellowship, p 1.

⁷¹ Evidence, Mr Masters, 21 September 2018, p 22.

⁷² Evidence, Mr Sargon Bisseh, Syrian community representative, Rookwood General Cemetery, 21 September 2018, p 25.

⁷³ Evidence, Mr Stephen Hynd, Executive Director, Business Improvement, NSW Aboriginal Land Council, 21 September 2018, p 14.

⁷⁴ Evidence, Ms Rosa Peronance, Managing Director, A O'Hare Funerals, 21 September 2018, p 25.

Regulation Statement for a period of 28 days between 24 November 2017 and 22 December 2017.⁷⁵

- 2.26** Rookwood General Cemetery informed that they had tried to persuade Cemeteries and Crematoria NSW to extend the timeframe for public submissions concerning the draft regulation to mid-March 2018 as a result of the Christmas period, but were unsuccessful.⁷⁶
- 2.27** Mr Masters argued that this public consultation period was 'too short' and that the timing of the consultation was 'wrong'.⁷⁷
- 2.28** Rookwood General Cemetery also noted that in 2016, Cemeteries and Crematoria NSW commissioned a consumer study 'that clearly identified that there was little understanding and knowledge of interment rights in NSW'. Rookwood General Cemetery contended that regardless of the study's findings, Cemeteries and Crematoria NSW continued to pursue minimal community engagement.⁷⁸
- 2.29** The committee heard that Rookwood General Cemetery was a member of the consultative group and were aware of the drafting of the regulation, public exhibition and proclamation of renewable interment rights.
- 2.30** Cemeteries and Crematoria NSW noted that it was the understanding and responsibility of Rookwood General Cemetery as a member of the consultative group and as a cemetery operator to consult with its community and faith groups and provide feedback to Cemeteries and Crematoria NSW.⁷⁹
- 2.31** In response to concerns about the consultation and engagement process, Ms Elizabeth Livingstone, Deputy Secretary, Lands and Water Division, NSW Department of Industry asserted that the department and Cemeteries and Crematoria NSW had 'made very extensive attempts to be very inclusive in the consultation to date'.⁸⁰
- 2.32** Ms Livingstone was of the view that the consultation process was consistent with 'good consultation processes' employed by the government, as it included media, an open submission process, promotion online, and some targeted communications with interest groups.⁸¹
- 2.33** According to Principle 5 of the NSW Guide to Better Regulation, '[c]onsultation with business and the community should inform regulatory development'. Under this Guide, '[e]ffective

⁷⁵ NSW Department of Industry, Cemeteries and Crematoria NSW, *A new interment rights system in NSW*, <https://www.industry.nsw.gov.au/lands/what-we-do/crown-land/cemeteries-crematoria/amendment-regulation-2017>.

⁷⁶ Submission 118, Rookwood General Cemetery, p 7.

⁷⁷ Evidence, Mr Masters, 21 September 2018, p 24.

⁷⁸ Submission 118, Rookwood General Cemetery, p 4.

⁷⁹ Evidence, Ms Manuel, 21 September 2018, p 38.

⁸⁰ Evidence, Ms Elizabeth Livingstone, Deputy Secretary, Lands and Water Division, NSW Department of Industry, 21 September 2018, p 38.

⁸¹ Evidence, Ms Livingstone, 21 September 2018, p 39.

consultation with stakeholders is required to inform the development of regulatory proposals and to assist the Government to thoroughly understand the impacts'.⁸²

- 2.34** The NSW Guide to Better Regulation also stipulates that the 'minimum consultation period on draft regulations is 28 days although this does not prevent longer consultation periods being employed for more significant or complex proposals'.⁸³

Management of Cemeteries and Crematoria NSW

- 2.35** Since January 2015, there has been four acting Chief Executive Officers and two appointed Chief Executive Officers at Cemeteries and Crematoria NSW.⁸⁴ Prior to the appointment of Ms Catherine Manuel to the role in May 2018, the position has been held by the following individuals:

- Ms Sarah Lees appointed in March 2017
- Mr Nick Milham acting from August 2016 to February 2017
- Mr Carl Malmberg acting from October 2015 to July 2016
- Mr Chris White acting during September 2015
- Mr Nicholas Cobb acting from January 2015 to September 2015.⁸⁵

- 2.36** Despite the concerns raised about the public consultation process, stakeholders spoke positively of the new Cemeteries and Crematoria NSW's Chief Executive Officer.

- 2.37** Mr David Knoll AM, Honorary Secretary, Executive Council of Australian Jewry and past President of the NSW Jewish Board of Deputies, advised that since her appointment Ms Manuel had been 'doing a tremendous job to try to improve things'.⁸⁶ He further added that Ms Manuel 'has made what can only be described as a superb effort to reach out and improve engagement, freshen up the staff and get people focused'.⁸⁷

- 2.38** Mr Masters expressed the view that the current Chief Executive Officer, had 'started off with a bang' and was 'trying hard' despite facing suspected challenges of limited staff, and what Mr Masters described as a 'dysfunctional' board.⁸⁸

⁸² NSW Department of Finance, Services and Innovation, NSW Guide to Better Regulation, p 5.

⁸³ NSW Department of Finance, Services and Innovation, NSW Guide to Better Regulation, p 19.

⁸⁴ Cemeteries and Crematoria NSW, Annual Report 2016-2017, p 7; Cemeteries and Crematoria NSW, Annual Report 2016-2017, p 7; Cemeteries and Crematoria NSW, Annual Report 2015-2016, p 7.

⁸⁵ Evidence, Ms Manuel, 21 September 2018, p 37; Cemeteries and Crematoria NSW, Annual Report 2016-2017, p 7; Cemeteries and Crematoria NSW, Annual Report 2015-2016, p 7.

⁸⁶ Evidence, Mr David Knoll AM, Honorary Secretary, Executive Council of Australian Jewry and past President of the NSW Jewish Board of Deputies, 21 September 2018, p 3.

⁸⁷ Evidence, Mr Knoll AM, 21 September 2018, p 4.

⁸⁸ Evidence, Mr Masters, 21 September 2018, p 28.

Committee comment

- 2.39** The committee is concerned by the contradiction in evidence received about the government's supposed wide consultation and engagement process in developing the Cemeteries and Crematoria Amendment Regulation 2018. Claims by key cultural and religious stakeholders that they had not been involved in the consultation process and only heard about the Regulation after its introduction are troubling.
- 2.40** It is noted that the public exhibition for the draft regulation lasted 28 days. This is in accordance with the NSW Guide to Better Regulation. However, the committee notes the concerns of industry stakeholders that this time period was insufficient given the sensitive nature of the reforms contained in the Regulation. It is further noted that the public exhibition occurred just before Christmas. In light of the lack of community awareness about the Regulation, its introduction and objectives, a longer time period for the public exhibition would have been more appropriate.
- 2.41** The committee is also concerned that the consultation process conducted by Cemeteries and Crematoria NSW was not as thorough or inclusive as it could have been. It is perplexing that the NSW Department of Industry admitted to there being misunderstanding and misinformation about the proposed regulation but seemingly little was done to address this. This is despite the department acknowledging the importance of better communication being needed for individuals and families.
- 2.42** The committee finds that the consultation process in developing the Cemeteries and Crematoria Amendment Regulation 2018 should have been more robust. Although the consultation process complied with the NSW Guide to Better Regulation it would appear that it was ineffective. This is made evident by the lack of understanding about the Regulation demonstrated by a number of key industry stakeholders who gave evidence to this inquiry.

Finding 2

That the consultation process followed by Cemeteries and Crematoria NSW in developing the Cemeteries and Crematoria Amendment Regulation 2018 should have been more robust. Although the consultation process complied with the NSW Guide to Better Regulation it would appear that it was ineffective. This is made evident by the lack of understanding about the Regulation demonstrated by a number of key industry stakeholders who gave evidence to this inquiry.

- 2.43** The committee notes the inconsistency and instability experienced within Cemeteries and Crematoria NSW over the past three years as demonstrated by the frequent changes in management. This does not engender good leadership, stability, direction or morale for staff of the organisation. The committee heard that this instability in leadership during the crucial planning and consultation stages of the Cemeteries and Crematoria Amendment Regulation 2018 likely had a negative impact on its development.

- 2.44 The committee is, however, pleased by evidence received from some inquiry participants that the current Chief Executive Officer of Cemeteries and Crematoria NSW is considered to be making a concerted effort to improve processes and communication with stakeholders.

25 year renewable interment rights

- 2.45 During the inquiry, participants questioned the appropriateness of the nominated initial 25 year interment period for a deceased person to adequately decompose for the potential re-use of a burial plot.⁸⁹

Length of interment and decomposition

- 2.46 Ms Elizabeth Livingstone, Deputy Secretary, Lands and Water Division, NSW Department of Industry stated there was 'no pressure for any cemetery operator to offer renewable interment' with any such decision of cemetery operators to be informed by a 'range of factors ... including soil type and any uncertainty they have about decomposition rates'.⁹⁰
- 2.47 However, Rookwood General Cemetery stressed that the Regulation 'does not clearly identify ... who is the arbiter of whether a body is sufficiently decomposed for removal'.⁹¹
- 2.48 When questioned about how cemetery operators would find out if a body was adequately decomposed for re-use of the burial site as required in the Act and Regulation, Ms Livingstone replied 'I do not think it is going to help any of us to go into lots of detail about that process'.⁹²
- 2.49 In an attempt to address this concern, Ms Manuel advised that she expected cemetery operators to closely look at the length of the initial interment 'prior to offering renewable as an option at their cemetery'.⁹³
- 2.50 Ms Manuel further advised that the Regulation allows cemetery operators to choose the most appropriate initial interment period. She acknowledged that 25 years may not be appropriate and that all cemeteries have the ability to provide longer initial interments periods, for example 50 years, if required.⁹⁴
- 2.51 Rookwood General Cemetery argued '[t]he state the remains are likely to be in after twenty-five years or more can vary dramatically depending on the location of the cemetery, soil type, chemical treatment (or not) of the deceased at time of funeral and also the presentation of the deceased in either a coffin or wrap and the materials used to construct these containers'.⁹⁵

⁸⁹ See, for example, Submission 3, Mr Robert Perisic; Submission 5, Mrs Amanda Kirkman; Submission 31, Name suppressed; Submission 61, Mrs Tess De La Pair; Submission 66, The Friends of Frenchs Forest Bushland Cemetery; Submission 94, Mr Michael Billing.

⁹⁰ Evidence, Ms Livingstone, 21 September 2018, p 42.

⁹¹ Submission 118, Rookwood General Cemetery, p 3.

⁹² Evidence, Ms Livingstone, 21 September 2018, p 42.

⁹³ Evidence, Ms Manuel, 21 September 2018, p 43.

⁹⁴ Evidence, Ms Manuel, 21 September 2018, p 42.

⁹⁵ Submission 118, Rookwood General Cemetery, p 12.

- 2.52 Mr Masters asserted that 25 years was 'too short' and possibly even 50 years would not be long enough due to the clay at Rookwood.⁹⁶

Case study: Scientific studies at Rookwood General Cemetery⁹⁷

As the grounds of Rookwood General Cemetery are predominantly clay this has led to the 'very slow and inconsistent decomposition of bodies and coffins, which has significant impacts on any renewal process'.

In response, Rookwood General Cemetery is currently conducting two major research projects into decomposition rates and improving capacity for in-ground sites. These projects are in cooperation with the University of Technology Sydney, which is overseen by Dr Boyd Dent.

According to Mr Jason Masters, Administrator of Rookwood General Cemetery, the world-leading soil research project, which is attempting to understand the issue of body decomposition and soil interaction, 'will provide more options for the re-use of graves by families, which we believe will add significant value to our communities'. It is anticipated that this project will be completed within five to six years.

Rookwood General Cemetery explained that by exploring what was happening within interment excavations in clay soils the industry could then better 'understand (and subsequently influence) the decomposition rate, while also being in a position to introduce new innovation to designing and developing interment spaces'.

Mr Masters added that Rookwood General Cemetery was preparing to test their 'patent pending above ground earth burial structures' and were also 'designing an innovative new mausoleum that will host another 4,000 interments at Rookwood General'.

- 2.53 Dr Boyd Dent, Managing Principal, Red Earth Geosciences was of the view that '25 years is too brief for a generalised law', given that this initial interment period could be affected by so many factors.⁹⁸ He noted that while 25 years may be satisfactory for those few select cemeteries that are in 'well-drained, acid, sandy soil, it mostly is not sufficient'.⁹⁹
- 2.54 Instead, Dr Dent suggested an initial interment period of 50 years would be beneficial as it would provide more time for decomposition to occur and possibly the elimination of the 'many viruses and bacteria in the remains ... which could be of concern if the environment is freed up at an earlier date'.¹⁰⁰

Impact of coffin materials on decomposition

- 2.55 Both Rookwood General Cemetery and Dr Dent outlined the impacts of coffin materials and other factors that need to be considered and provided for within the Regulation.
- 2.56 Rookwood General Cemetery contended that for renewable interment rights to be effective and appropriate the Regulation would need to also ensure the following:

⁹⁶ Evidence, Mr Masters, 21 September 2018, p 29.

⁹⁷ See Submission 118, Rookwood General Cemetery, p 13; Evidence, Mr Masters, 21 September 2018, pp 22-23, 27.

⁹⁸ Evidence, Dr Boyd Dent, Managing Principal, Red Earth Geosciences, 21 September 2018, p 17.

⁹⁹ Evidence, Dr Dent, 21 September 2018, p 17.

¹⁰⁰ Evidence, Dr Dent, 21 September 2018, p 17.

- No embalming of the deceased
- Coffins to be only of natural materials (no metal/laminates etc.)
- Coffins not to be plastic lined (this dramatically retards decomposition).¹⁰¹

2.57 Dr Dent explained how the use of plastic coffin liners and body bags significantly delayed the decomposition of remains.¹⁰² In order to rectify this, Dr Dent recommended that the industry 'move immediately to biodegradable plastics, if they have to have them at all' so as to allow decomposition to occur.¹⁰³

2.58 Dr Dent also questioned how cemetery operators, when preparing renewable interment plots for reburial, would deal with 'funeral artefacts that go into the grave', including personal effects, clothing and material, and jewellery. He observed that the Act does not prescribe what should happen to these artefacts.¹⁰⁴

Committee comment

2.59 The committee acknowledges that coffin design and certain coffin materials significantly delay decomposition of remains. The committee finds that more work must be undertaken by relevant government agencies to determine the most appropriate coffin design and coffin materials for the funeral industry to ensure there is no undue or significant delay in decomposition of remains, or possible environmental consequences.

Finding 3

That design of coffins and use of certain materials will significantly delay decomposition of remains. The committee is of the view that more work must be undertaken by relevant government agencies to determine the appropriate coffin design and materials for use in the funeral industry to ensure there is no undue or significant delay in decomposition of remains, or possible environmental consequences.

Psychological impacts of exhumations

2.60 Both Rookwood General Cemetery and Kenneally Funerals noted the psychological impacts on cemetery staff caused by conducting exhumations of deceased persons in various stages of decomposition.¹⁰⁵

2.61 Mr George Simpson, Chief Executive Officer, Rookwood General Cemetery stated that exhumations were 'not something that we are really keen on doing' as it was an 'unpleasant' and 'very overwhelming experience for some of the teams'. He described how teams of four to five members were 'not only confined [in a] grave but also ... trying to lift what remains are left of

¹⁰¹ Submission 118, Rookwood General Cemetery, p 17.

¹⁰² Evidence, Dr Dent, 21 September 2018, p 20.

¹⁰³ Evidence, Dr Dent, 21 September 2018, p 20.

¹⁰⁴ Evidence, Dr Dent, 21 September 2018, p 16.

¹⁰⁵ Evidence, Mr Masters, 21 September 2018, p 23.

somebody's relative ... The psychological impact that this can sometimes have on our team is really large'.¹⁰⁶

- 2.62 Further, Mr Simpson explained that responding to exhumation requests was a prolonged process involving the family, religious group, Health NSW and other agencies.¹⁰⁷
- 2.63 Mr Masters advised that under Rookwood's current enterprise bargaining agreement exhumations were considered a voluntary activity with each team member paid a fee of approximately \$500. He asserted that there would be 'considerable cost in the exhumation and the restabilisation of the gravesite' when a renewable interment expired.¹⁰⁸
- 2.64 Similarly, Kenneally's Funerals stated that '[e]xhumations are an involved process that requires documentation and careful planning ... and can have an impact on staff and their mental wellbeing'.¹⁰⁹ This was a result of either the remains not having fully decomposed or skeletal remains being present.¹¹⁰

Committee comment

- 2.65 The committee received evidence that an initial term of 25 years for renewable interment may not be appropriate for all cemetery operators due to varying decomposition rates.
- 2.66 The committee acknowledges the important and timely research projects of Rookwood General Cemetery in cooperation with the University of Technology, Sydney into decomposition rates and improving capacity for in-ground sites. There is merit to this work in helping inform understanding about interment and providing a scientific basis for burial practice.
- 2.67 The committee is concerned by claims that cemetery operators may, after 25 years, be disturbing the remains of a deceased person that are not fully decomposed. It is noted that while soil types can influence the rate of decomposition, the materials used in coffins can also hinder the decomposition process.
- 2.68 The potential psychological impacts on cemetery staff caused by the exhumation of remains (particularly those that are not fully decomposed) for the purpose of re-burial is also of concern.
- 2.69 The committee notes the suggestion put forward by inquiry participants that the initial term of 25 years as provided for under the Act and by the Regulation may be too short and a longer initial period of renewable interment may be required dependent on the type of soil and site to allow for a more appropriate timeframe for decomposition to occur.

¹⁰⁶ Evidence, Mr George Simpson, Chief Executive Officer, Rookwood General Cemetery, 21 September 2018, p 24.

¹⁰⁷ Evidence, Mr Simpson, 21 September 2018, p 24.

¹⁰⁸ Evidence, Mr Masters, 21 September 2018, p 23.

¹⁰⁹ Submission 158, Kenneally's Funerals, pp 1-2.

¹¹⁰ Submission 158, Kenneally's Funerals, p 2.

Finding 4

That the prescribed initial period of renewable interment of 25 years in the Cemeteries and Crematoria Amendment Regulation 2018 and the *Cemeteries and Crematoria Act 2013* may be inappropriate for some soil types.

Appendix 1 Cemeteries and Crematoria Amendment Regulation 2018



New South Wales

Cemeteries and Crematoria Amendment Regulation 2018

under the

Cemeteries and Crematoria Act 2013

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Cemeteries and Crematoria Act 2013*.

PAUL TOOLE, MP
Minister for Lands and Forestry

Explanatory note

The object of this Regulation is to amend the *Cemeteries and Crematoria Regulation 2014* as a consequence of the commencement of Part 4 (Interment rights) of the *Cemeteries and Crematoria Act 2013*, as follows:

- (a) to specify the steps a cemetery operator must take:
 - (i) to ascertain cultural or religious practices applying to the remains of a deceased person, and
 - (ii) to notify the holders of renewable interment rights that are due to expire of their entitlement to renew the right and the fee for doing so,
- (b) to prescribe the period within which the executor or administrator of the estate of a person who has bequeathed an interment right must notify a cemetery operator of the death of the person,
- (c) to prescribe the period of the term of certain renewable interment rights (in substitution for the period provided for in the Act),
- (d) to require a cemetery operator to disclose to applicants for the grant or renewal of interment rights the fees and charges relevant to that type of interment right,
- (e) to provide for a cooling off period following the purchase or renewal of renewable interment rights and the circumstances in which the cooling off period may be waived,
- (f) to prescribe additional requirements with respect to human remains interred at a site that a cemetery operator must comply with before re-using the site following the expiration of a renewable interment right,
- (g) to require a cemetery operator to comply with certain notification requirements before removing a memorial of a deceased person pursuant to the Act and to retain the memorial for a period,
- (h) to provide for additional particulars that must be included in a cemetery operator's register,
- (i) to prescribe certain events of which a cemetery operator must cause a register to be kept,
- (j) to provide for the calling and holding of meetings of heritage advisory committees,
- (k) to provide for matters of a savings or transitional nature.

Published LW 22 June 2018 (2018 No 278)

Cemeteries and Crematoria Amendment Regulation 2018 [NSW]
Explanatory note

This Regulation is made under the *Cemeteries and Crematoria Act 2013*, including sections 46 (3), 49 (5), 54 (6), 54 (8), 55 (4) (c) and (7), 63 (1) (e) and (3), 69 (7) and 142 (the general regulation-making power) and clause 1 of Schedule 3 (Savings, transitional and other provisions).

Cemeteries and Crematoria Amendment Regulation 2018 [NSW]

Cemeteries and Crematoria Amendment Regulation 2018

under the

Cemeteries and Crematoria Act 2013

1 Name of Regulation

This Regulation is the *Cemeteries and Crematoria Amendment Regulation 2018*.

2 Commencement

This Regulation commences on 25 June 2018 and is required to be published on the NSW legislation website.

Cemeteries and Crematoria Amendment Regulation 2018 [NSW]
Schedule 1 Amendment of Cemeteries and Crematoria Regulation 2014

Schedule 1 Amendment of Cemeteries and Crematoria Regulation 2014

[1] Part 1, heading

Insert before clause 1:

Part 1 Preliminary

[2] Part 2, heading

Insert after clause 3:

Part 2 Administration

[3] Parts 3 and 4

Insert after clause 4:

Part 3 Interment rights

Division 1 Interment rights generally

5 Disturbing remains of a deceased person

- (1) To ascertain whether any cultural or religious practices apply to the remains of a deceased person for the purposes of section 46 (3) of the Act, a cemetery operator is to:
- (a) consult the cemetery operator's register, and
 - (b) if the information is not recorded in the register—make enquiries of the deceased's next-of-kin, and
 - (c) if the information is not reasonably ascertainable from that source—make enquiries of the cultural or spiritual leader in the community who is relevant to the remains (including by reference to the part of the cemetery in which the interment site is located), and
- Note.** Information to assist in identifying relevant cultural or spiritual leaders for various cultural or religious groups is available on the web page relating to Cemeteries and Crematoria NSW on the Department of Industry website.
- (d) if the information is not reasonably ascertainable from that source—take any other steps the cemetery operator considers reasonable in the circumstances to ascertain whether any cultural or religious practices apply to the remains.

- (2) A cemetery operator is to make all reasonable efforts (including taking such time as is reasonably necessary) in making the enquiries referred to in subclause (1).

Note. Clause 15 (b) requires the steps taken to ascertain information, and the information ascertained, under this clause to be recorded in the cemetery operator's register.

6 Time by which cemetery operator must be notified of death of bequeather of interment right

For the purposes of section 49 (5) of the Act, the prescribed period is 12 months after the executor or administrator becomes aware of the death.

Division 2 Renewable interment rights

7 Notification requirements concerning expiry of renewable interment rights

- (1) For the purposes of section 54 (6) of the Act, at least 12 months before a renewable interment right granted by the cemetery operator is due to expire, the cemetery operator must take steps to give the written notice referred to in that subsection to the holder or holders of the renewable interment right and any person shown in the register as a secondary contact, as follows:
 - (a) initially—by post and email (if an email address has been provided to the cemetery operator for contact purposes), with a request for the intended recipient to acknowledge receipt of the notice,
 - (b) if there is no response to the notice within 3 months—by telephone, and again by post and email with a request to acknowledge receipt,
 - (c) if there is no response to the notice given in accordance with paragraph (b) within 3 months—by repeating the steps set out in that paragraph,
 - (d) if there is no response to the notice given in accordance with paragraph (c) within 3 months—by repeating the steps set out in paragraph (b),
 - (e) if there is no response to the notice given in accordance with paragraph (d) within 3 months—by publishing the notice:
 - (i) in a local newspaper, a newspaper circulating throughout the State and, if a person to whom notice is required to be given under section 54 (6) of the Act is an Aboriginal person, in the Koori Mail or another newspaper widely read in Aboriginal communities in the State, and
 - (ii) if the cemetery operator has a website, on that website or, if the cemetery operator does not have a website but has a social media account, on that account.

Note 1. Social media platforms (such as Facebook or Twitter) may also provide a means of establishing contact with the holder of the renewable interment right or a contact person for the purposes of giving the notice referred to in section 54 (6) of the Act.

Note 2. Paragraph (e) (ii) does not prevent a cemetery operator from publishing the notice on both a website and a social media account if the cemetery operator has both.

- (2) In this clause, *newspaper* includes a newspaper published on a publicly accessible website.

8 Prescribed period of term of renewable interment right

- (1) The period prescribed by subclause (2) applies to a renewable interment right for the interment of human remains (other than cremated remains) in relation to an interment site that is approved by the Cemeteries Agency for the purpose of this clause on application in writing made by the cemetery operator.
- (2) For the purposes of section 54 (8) (a) of the Act, an initial term of between 25 and 99 years is prescribed as the period of the initial term of a renewable interment right to which this clause applies, in substitution for the period of the initial term provided by section 54 (1) (b) of the Act.

9 Cemetery operator must disclose fees and charges to applicant for interment right

- (1) A cemetery operator must disclose to an applicant for the grant or renewal of a renewable interment right or the grant of a perpetual interment right the fees

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and charges that are currently payable in relation to that type of interment right (including the fee for transfer of that type of interment right under section 58 (3) of the Act).

- (2) The disclosure must include a statement that the disclosed fees and charges are subject to change.

10 Cooling off period for grant or renewal of renewable interment rights

- (1) For the purposes of section 54 (8) (c) of the Act, a person who has been granted a renewable interment right, or who has had a renewable interment right renewed, or the person's legal representative, may, by notice in writing served on the cemetery operator within the cooling off period, end the agreement under which the right is granted or renewed (the *agreement*).
- (2) The *cooling off period* is 10 days, starting on the day on which the agreement is made.
- (3) Subject to clause 11, a renewable interment right cannot be exercised or dealt with by the holder of the right during the cooling off period.
- (4) If a person, or the person's legal representative, ends the agreement under subclause (1):
 - (a) the cemetery operator must refund to the person any fee the person has paid to it for the grant or renewal of the renewable interment right (less any deduction made under subclause (5)), and
 - (b) the person is not (despite anything to the contrary in the agreement) liable to the cemetery operator in any way for ending the agreement.
- (5) For the purposes of subclause (4) (a), the cemetery operator may deduct from the amount of the fee paid for the grant or renewal of the renewable interment right, the reasonable administrative costs of processing the application for the grant or renewal (the *processing fee*), but only if:
 - (a) the person was notified before entering the agreement that a processing fee would be so deducted if the agreement was ended under subclause (1), the manner in which the fee is calculated and the amount of the fee, and
 - (b) the person is provided with an itemised account in respect of the refunded amount that includes the amount deducted for the processing fee.

11 Circumstances in which cooling off period is waived

The legal representative of a person whose grant or renewal of a renewable interment right is subject to a cooling off period may waive the cooling off period by notice in writing served on the cemetery operator if:

- (a) the person dies during the cooling off period, and
- (b) the waiver is necessary to enable the right to be exercised for the interment of the deceased person.

12 Prerequisites to re-use of interment site

- (1) For the purposes of section 55 (4) (c) of the Act, the following requirements are prescribed:
 - (a) the cemetery operator must determine in accordance with section 61 of the Act any application made under section 61 (2) of the Act in respect of the interment site and record the details of that determination

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(including the person to whom it relates) in the cemetery operator's register,

- (b) at least 60 days before dealing with the remains of a deceased person pursuant to section 55 (4) (a) or (b) of the Act, the cemetery operator must take steps to give written notice to the person's next-of-kin of the cemetery operator's intention to move any remains in accordance with those provisions,
 - (c) the cemetery operator must record in the cemetery operator's register the details of any dealings with human remains pursuant to section 55 (4) (a) or (b) of the Act (including the identity of the person whose remains are dealt with and a description of any site to which the remains are removed or scattered, or the name and contact details of any person to whom cremated remains are returned).
- Note.** Dealing with human remains pursuant to section 55 (4) (a) or (b) is a prescribed event under clause 14 (b).
- (2) The cemetery operator must take steps to give the written notice referred to in subclause (1) (b), as follows:
 - (a) initially—by post and email (if an email address has been provided to the cemetery operator for contact purposes), with a request for the intended recipient to acknowledge receipt of the notice,
 - (b) if there is no response to the notice within 20 days—by telephone, and again by post and email with a request to acknowledge receipt,
 - (c) if there is no response to the notice given in accordance with paragraph (b) within 20 days—by publishing the notice:
 - (i) in a local newspaper, a newspaper circulating throughout the State and, if a person to whom notice is required to be given under section 54 (6) of the Act is an Aboriginal person, in the Koori Mail or another newspaper widely read in Aboriginal communities in the State, and
 - (ii) if the cemetery operator has a website, on that website or, if the cemetery operator does not have a website but has a social media account, on that account.

13 Removing memorials after expiry of renewable interment right

- (1) The cemetery operator is to retain a memorial to a deceased person that is removed pursuant to section 55 of the Act:
 - (a) for 5 years after the date of its removal (unless it is sooner reclaimed by a person entitled to reclaim it), and
 - (b) at a secure site (whether or not within the cemetery).
- (2) At least 60 days before removing a memorial of a deceased person pursuant to section 55 of the Act, the cemetery operator must take reasonable steps to give notice to the person's next-of-kin of the cemetery operator's intention to remove the memorial in accordance with that section.
- (3) Subclause (2) applies only to the extent that the deceased person's next-of-kin is a person other than a person referred to in section 55 (2) (c) of the Act.

Note. Section 55 (2) (c) of the Act requires the cemetery operator to take reasonable steps to notify the holder of the interment right and any registered secondary contacts for the holder of its intention to remove the memorial.
- (4) This clause does not require the cemetery operator to retain the kerbing, ledger or foundation footings for a memorial.

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Division 3 Miscellaneous

14 Prescribed events to be recorded in cemetery operator's register

For the purposes of section 63 (1) (c) of the Act, the following is a prescribed event:

Each disturbance or removal of human remains carried out at the cemetery after the commencement of the *Cemeteries and Crematoria Amendment Regulation 2018*, including:

- (a) the cultural or religious practices (if any) applying to the remains and the means by which those practices were ascertained, and
- (b) if the remains were dealt with pursuant to section 55 (4) (a) or (b) of the Act, the details of those dealings (including the identity of the person whose remains are dealt with and a description of any site to which the remains are removed or scattered, or the name and contact details of any person to whom cremated remains are returned).

15 Additional particulars required to be included in cemetery operator's register

For the purposes of section 63 (3) of the Act, a cemetery operator's register must contain the following particulars (in addition to any other particulars required to be included in the register):

- (a) in relation to each interment of human remains:
 - (i) the section and allotment where the interment has been made, and
 - (ii) whether the section and allotment are located in a part of the cemetery consecrated for use by a cultural or religious group, and
 - (iii) the cultural or religious practices (if any) that apply to the remains, and
 - (iv) the name of the funeral director or other person who transported the remains to the cemetery, and
 - (v) the fees paid to the cemetery authority for the interment,
- (b) in relation to human remains that are disturbed or removed:
 - (i) the name of the person whose remains are disturbed or removed, and
 - (ii) whether the remains were located in a part of the cemetery consecrated for use by a cultural or religious group, and
 - (iii) whether any cultural or religious practices apply to the remains and, if so, what those practices are, and
 - (iv) the steps taken under clause 5 to ascertain the information referred to in subparagraph (iii), and
 - (v) the source of that information.

Note. Clause 12 (a) and (c) require the particulars to which they refer to be entered in the cemetery operator's register.

16 Calling and holding of meetings of heritage advisory committee

- (1) A heritage advisory committee (the *committee*) must meet at least once a year.
- (2) The chairperson of the committee must call an extraordinary meeting of the committee if the chairperson receives a request in writing signed by at least 2 members of the committee.
- (3) The chairperson must send to each member, at least 7 days before each meeting of the committee, a notice specifying the time and place at which and

the date on which the meeting is to be held and the business proposed to be transacted at the meeting.

- (4) Notice of less than 7 days may be given of an extraordinary meeting called in an emergency.
- (5) The committee may invite the cemetery operator or any other person to attend meetings to advise or inform the committee on any relevant matter.

Note 1. Section 69 (7) of the Act enables a heritage advisory committee to determine its procedure for calling and holding meetings, subject to regulations made under the Act.

Note 2. Guidelines made under section 69 (3) of the Act concerning the constitution of a heritage advisory committee are available on the Department's website.

Part 4 Savings and transitional provisions

17 General provision consequent on repeal of provisions in Crown Lands (General Reserves) By-law 2006

- (1) Anything done under a provision of Division 2 or 3 of Part 3 of the *Crown Lands (General Reserves) By-law 2006* (the **2006 By-law**) for which there is a corresponding provision in the Act or this Regulation is taken to have been done under that corresponding provision.
- (2) Subclause (1) has effect unless the context or subject-matter indicates or requires differently.

Note. Section 30 of the *Interpretation Act 1987* is a general provision preserving (among other things) rights accruing and liabilities incurred before the repeal of a provision of a statutory rule.

18 Renewal schemes approved under Crown Lands (General Reserves) By-law 2006

- (1) This clause applies to a renewal scheme that was approved (including approved with modifications) under Subdivision 4 of Division 2 of Part 3 of the *Crown Lands (General Reserves) By-law 2006*, but that was not, or not fully, implemented immediately before the commencement of this clause (an **approved renewal scheme**).
- (2) A reserve trust may implement or continue to implement an approved renewal scheme in accordance with the approval, subject to this clause.
- (3) The approval to implement an approved renewal scheme ceases to have effect, and a reserve trust must cease to implement the scheme, 24 months after the commencement of this clause.
- (4) A reserve trust may, in a portion of the cemetery that is subject to an approved renewal scheme:
 - (a) remove, relocate or dispose of a memorial placed on the interment site, and
 - (b) erect in that portion of the cemetery a memorial recording the names and dates of death of persons buried in the portion.

Note. On the commencement of section 45 of the Act, burial licences are taken to be interment rights granted under Division 2 of Part 4 (Interment rights) of the Act.

- (5) An approved renewal scheme does not authorise the operator of a cemetery:
 - (a) to remove the remains of a deceased person from an interment site, or

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- (b) to otherwise disturb the remains of a deceased person in the portion of the cemetery subject to the approved renewal scheme.

Note. Separate procedures set out in sections 55 and 66 of the Act must be followed before remains of a deceased person may be removed from an interment site.

- (6) A revocation of a burial licence involved in an approved renewal scheme that has not occurred before the commencement of this clause is to occur (if it occurs at all) as a revocation of an interment right under section 52 of the Act.

Appendix 2 Submissions

No.	Author
1	NSW Jewish Board of Deputies
2	Name suppressed
3	Mr Robert Perisic
4	Mrs Donna Andrews
5	Mrs Amanda Kirkman
6	Name suppressed
7	Name suppressed
8	Shaun Davies
9	Name suppressed
10	Mr Troy Frame
11	Name suppressed
12	Mrs Kate Plumridge
13	Tania Doyle
14	Mrs Carol York
15	Name suppressed
16	Name suppressed
17	Mr Damian Balfour
18	Name suppressed
19	Ms Anica Coulter
20	Name suppressed
21	Ms Maureen Taylor
22	Ms Merryn Kew
23	Mrs Trish Robertson
24	Ms Janice Hayes
25	Name suppressed
26	Name suppressed
27	Name suppressed
28	Name suppressed
29	Name suppressed
30	Mr Glenn Maddock
31	Name suppressed

No.	Author
32	Mrs Gay Woodhouse
33	Name suppressed
34	Name suppressed
35	Name suppressed
36	Mrs Neree Lambert
37	Name suppressed
38	Mrs Lesley Willing
39	Mrs Amanda Maher
40	Mrs Vivien Marscham
41	Name suppressed
42	Julie Ross
43	Name suppressed
44	Name suppressed
45	Name suppressed
46	Mr Vincent Parkinson
47	Miss Rebecca Fren
48	Mrs Daphne Scott
49	Name suppressed
50	Name suppressed
51	Name suppressed
52	Name suppressed
53	Name suppressed
54	Name suppressed
55	Name suppressed
56	Mr Frank Morris
57	Ms Tegan Schetrumpf
58	Mrs Margaret Hope
59	Mrs Catherine Cahill
60	Name suppressed
61	Mrs Tess De La Pair
62	Name suppressed
63	Ms Denise Apps
64	Ms Barbara Callcott
65	Mrs Angela Parker
66	The Friends of Frenchs Forest Bushland Cemetery

No.	Author
67	Name suppressed
68	Name suppressed
69	Ms Amy Beckett
70	Name suppressed
71	Mrs Sandra Prior
71a	Mrs Sandra Prior
72	Ms Sally Webster
73	Ms Nicole King
74	Ms Irene Logan
75	Ms Vicki Kubacki
76	Mrs Gina Horn
77	Ms Penny Auburn
78	Name suppressed
79	Nathan Markcrow
80	Mr Shannon Lyons
81	Mrs Cathy Fitzpatrick
82	Mrs Karen Turner
83	Miss Tracey Tiplady
84	Mrs Vivienne Sigley
85	Miss Margaret Sharkey
85a	Miss Margaret Sharkey
86	Mr William McGuinness
87	Miss Diane Stephen
88	Mr Laurence See
89	Mrs Joanne O'Brien
90	Mr Jeff Dunn
91	Michael Clark
92	Miss Zona Kelly and Mrs Dianne Ball
93	Name suppressed
94	Mr Michael Billing
95	Mrs Carla Roberts
96	Ms Margie Sincoe
97	Mrs Maureen Russell
98	Mr Robert Barr
99	Mrs Cheryl Daniel

No.	Author
100	The Cemeteries and Crematoria Association of NSW
101	NSW Aboriginal Land Council
102	Ethnic Communities' Council of NSW
103	A. O'Hare Funeral Directors Pty Ltd.
104	Dennis Hall
105	Society of Australian Genealogists
106	The National Trust of Australia (NSW)
107	Greek Orthodox Archdiocese of Australia
108	Australian and New Zealand Diocese of Russian Orthodox Church Outside of Russia
109	Ms Margaret Manning
110	Ms Maria Doyle
111	Mrs Kaylene Bye
112	Northern Metropolitan Cemeteries Land Manager
113	Mr Peter Kotevich
114	The Catholic Metropolitan Cemeteries Trust
115	Australia Chinese Workers Association
116	Sydney Maori Anglican Fellowship
117	Mrs Joan Limon
118	Rookwood General Cemetery
118a	Confidential
119	Serbian Diaspora Parliament To The Republic Of Serbia
120	Confidential
121	Confidential
122	Confidential
123	Name suppressed
124	Name suppressed
125	Name suppressed
126	Name suppressed
127	Name suppressed
128	Name suppressed
129	Name suppressed
130	Name suppressed
131	Name suppressed
132	Name suppressed
133	Name suppressed

No.	Author
134	Name suppressed
135	Name suppressed
136	Name suppressed
137	Name suppressed
138	Name suppressed
139	Name suppressed
140	Name suppressed
141	Name suppressed
142	Name suppressed
143	Name suppressed
144	Name suppressed
145	Name suppressed
146	Mrs Debra Jordan
147	Name suppressed
148	Name suppressed
149	Name suppressed
150	Name suppressed
151	Name suppressed
152	Name suppressed
153	Name suppressed
154	D G Hinchliffe
155	InvoCare
156	Manning Wallamba Family History Society Inc.
157	NSW Department of Industry

Appendix 3 Witnesses at hearings

Date	Name	Position and Organisation
Friday 21 September 2018 Jubilee Room, Parliament House	Mr Vic Alhadeff	Chief Executive Officer, NSW Jewish Board of Deputies
	Mr David Knoll AM	Honorary. Secretary, Executive Council of Australian Jewry and past President, NSW Jewish Board of Deputies
	Very Rev Fr John Grillis	Registrar at the Central Offices of Greek Orthodox Archdiocese of Australia (Redfern) & Rector of St Athanasios Church (Rookwood Cemetery)
	Very Rev Fr Sophrony Konidaris	Rector of The Resurrection of Our Lord Greek Orthodox Parish/Community (Kogarah)
	Mr James Christian	Chief Executive Officer, NSW Aboriginal Land Council
	Mr Stephen Hynd	Executive Director, NSW Aboriginal Land Council
	Dr Boyd Dent	Managing Principal, Red Earth Geosciences
	Mr George Simpson	Chief Executive Officer, Rookwood General Cemetery
	Mr Jason Masters	Administrator, Rookwood General Cemetery
	Mr Sargon Bisseh	Syrian community representative, Rookwood General Cemetery
	Mr David Milovanovic	Serbian community representative, Rookwood General Cemetery
	Ms Rosa Peronance	Managing Director, A O'Hare Funerals
	Bishop George Schaefer	Chairman, Cemeteries Committee, Australian and New Zealand Diocese of Russian Orthodox Church
	Archpriest George Lapardin	Vice Chairman, Cemeteries Committee, Australian and New Zealand Diocese of Russian Orthodox Church
	Mr James Crittenden	Secretary, Cemeteries Committee, Australian and New Zealand Diocese of Russian Orthodox Church
	Ms Catherine Manuel	Chief Executive Officer, Cemeteries and Crematoria NSW
Ms Elizabeth Livingstone	Deputy Secretary, Lands and Water Division, NSW Department of Industry	

Appendix 4 Minutes

Minutes no. 6

Monday 13 August 2018

Regulation Committee

Room 1254, Parliament House, 1.00 pm

1. Members present

Mr Farlow, *Chair*

Mr Donnelly, *Deputy Chair*

Mr Green

Mr Khan (from 1.01 pm)

Mr Mallard

Mr Pearson (from 1.01 pm)

Mr Veitch

Mrs Ward

2. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 5 be confirmed.

3. Proposed terms of reference

Resolved, on the motion of Mr Veitch: That the Chair give notice, and subsequently move the following in the House:

1. That the Regulation Committee inquire into and report on the impact and implementation of the Cemeteries and Crematoria Amendment Regulation 2018.
2. That the committee report by 24 October 2018.

4. Conduct of proposed inquiry into Cemeteries and Crematoria Amendment Regulation 2018

4.1 Closing date for submissions

Resolved, on the motion of Mr Khan: That the closing date for submissions be Friday 7 September 2018.

4.2 Stakeholder list

Resolved, on the motion of Mr Veitch: That the secretariat circulate to members the Chair's proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

4.3 Advertising

The committee noted that the inquiry will be advertised via twitter, stakeholder letters and media release distributed to all media outlets in New South Wales.

4.4 Hearing dates

Resolved, on the motion of Mr Veitch: That a hearing date be held in early to mid-September, with the date to be determined by the Chair after consultation with members regarding their availability.

5. Adjournment

The committee adjourned at 1.09 pm, *sine die*.

Emma Rogerson

Committee Clerk

Minutes no. 7

Friday 21 September 2018

Regulation Committee

Jubilee Room, Parliament House, Sydney, 12.15 pm

1. Members present

Mr Farlow, *Chair*

Mr Donnelly, *Deputy Chair*

Mr Khan (from 1.50 pm)

Mr Mallard

Mr Pearson

Mr Veitch

Mrs Ward (from 12.25 pm)

2. Apologies

Mr Green

3. Previous minutes

Resolved, on the motion of Mr Mallard: That draft minutes no. 6 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 29 August 2018 – Email from Ms Marg Kennedy to committee, requesting that memorial plaques be available for collection from Rookwood Anglican cemetery
- 30 August 2018 – Letter from Funeral Celebrants Association Australia to committee, advising they will not be making an official submission to the inquiry
- 7 September 2018 – Email from Mr Frank Peterson to committee, expressing concerns that famous statesperson relatives will be wiped out at Sandgate cemetery
- 11 September 2018 – Email from Ms Mary Reid, Secretary, Cemeteries and Crematoria Association of NSW to secretariat, requesting to replace submission with an amended version
- 13 September 2018 – Email from Ms Mary Reid, Secretary, Cemeteries and Crematoria Association of NSW to secretariat, advising they are unable to attend the public hearing on 21 September 2018 due to their biannual conference in Port Macquarie
- 13 September 2018 – Email from Ms Diana Rose, Receptionist, Catholic Metropolitan Cemeteries Trust to secretariat, advising they are unable to attend the public hearing on 21 September 2018 due to conflicting appointments
- 17 September 2018 – Email from Mr Vijay Singh, NSW General Manager, InvoCare to secretariat, declining the invitation to attend the hearing on 21 September 2018 as they feel they cannot add anything further to what is in their submission.

Resolved, on the motion of Mr Veitch: That the committee treat as correspondence the documents from Ms Marg Kennedy, received 29 August 2018 and Mr Frank Peterson, received 7 September 2018 as they do not address the terms of reference for the inquiry into the cemeteries and crematoria amendment regulation 2018, and that the secretariat write to the authors to advise them of this.

5. Inquiry into the Cemeteries and Crematoria Amendment Regulation 2018

5.1 Public Submissions

Resolved, on the motion of Mr Donnelly: That the committee authorise the publication of submission nos. 1, 3-5, 8, 10, 12-14, 17, 19, 21-24, 30, 32, 36, 39-40, 42, 46-48, 57-59, 61, 63-66, 69, 71-77, 79-92, 94-119, 146, 154 -157.

Resolved, on the motion of Mr Donnelly: That the committee authorise the replacement of submission no. 100 with a revised version as per the request of the author.

5.2 Partially confidential submissions

Resolved, on the motion of Mr Veitch: That the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in submissions nos. 2, 6, 7, 9, 11, 15, 16, 18, 20, 25-29, 31, 33-35, 37, 41, 43-45, 49-55, 60, 62, 67, 68, 70, 78, 93, 123-153.

Resolved, on the motion of Mr Veitch: That the committee keep the following information confidential, as per the recommendation of the secretariat: names and/or identifying and sensitive information in submissions nos. 36 and 56.

5.3 Confidential submissions

Resolved, on the motion of Mr Pearson: That the committee keep submission nos. 120-122 confidential, as per the request of the author, as they contain identifying and/or sensitive information.

5.4 Attachments to submissions

Resolved, on the motion of Mr Veitch: That the committee keep confidential the attachment to submission no. 118.

5.5 Report deliberative

Resolved, on the motion of Pearson: That the committee hold the report deliberative for the inquiry into the Cemeteries and Crematoria Amendment Regulation 2018 on Thursday 1 November 2018.

5.6 Extension of reporting date

Resolved, on the motion of Mr Veitch: That the Chair seek the approval of the House to extend the reporting date until 9 November 2018.

5.7 Return of answers to questions on notice

Resolved, on the motion of Mr Donnelly: That the committee request that answers to questions taken on notice from the public hearing be returned within 14 days of receipt of receipt of the highlighted transcript.

5.8 Public hearing

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Vic Alhadeff, Chief Executive Officer, NSW Jewish Board of Deputies
- Mr David Knoll AM, Hon. Secretary, Executive Council of Australian Jewry and past President NSW Jewish Board of Deputies
- Very Rev Fr John Grillis, Registrar at the Central Offices of Greek Orthodox Archdiocese of Australia (Redfern) & Rector of St Athanasios Church (Rookwood Cemetery)
- Very Rev Fr Sophrony Konidaris, Rector of The Resurrection of Our Lord Greek Orthodox Parish/Community (Kogarah).

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr James Christian, Chief Executive Officer, NSW Aboriginal Land Council
- Mr Stephen Hynd, Executive Director, Business Improvement, NSW Aboriginal Land Council.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Dr Boyd Dent, Managing Principal, Red Earth Geo

Dr Dent tendered the following document:

- Plates 1-6 containing coffin images.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Jason Masters, Administrator, Rookwood General Cemetery
- Mr George Simpson, Chief Executive Officer, Rookwood General Cemetery
- Mr Sargon Bisseh, Syrian community representative, Rookwood General Cemetery
- Mr David Milovanovic, Serbian community representative, Rookwood General Cemetery
- Ms Rosa Peronance, A O'Hare Funerals.

Mr Masters tendered the following document:

- Recommendations to the Legislative Council's Regulation Committee - Rookwood General Cemetery .

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Bishop George Schaefer, Chairman, Australian and New Zealand Diocese of Russian Orthodox Church
- Archpriest George Lapardin, Vice Chairman, Australian and New Zealand Diocese of Russian Orthodox Church
- Mr James Crittenden, Secretary, Australian and New Zealand Diocese of Russian Orthodox Church.

Bishop Schaefer tendered the following documents:

- Letter outlining the position of the Australian and New Zealand Diocese of Russian Orthodox Church outside of Russia regarding burial practices
- Death, Funeral, Requiem - Orthodox Christian Traditions, Customs and Practice by Archpriest Victor Sokolov
- Russian Orthodox Clergy interred in Sydney NSW
- Summary of oral submission – Australian and New Zealand Diocese of Russian Orthodox Church outside of Russia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Catherine Manuel, Chief Executive Officer, Cemeteries and Crematoria NSW
- Ms Liz Livingstone, Deputy Secretary, Lands and Water, Department of Industry.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4:32 pm.

The public and media withdrew.

5.9 Tendered documents

Resolved, on the motion of Mr Khan: That the following tabled documents are accepted and published:

- Rookwood recommendations to the Legislative Council's Regulation Committee, tendered by Mr Masters
- Death, Funeral, Requiem - Orthodox Christian Traditions, Customs and Practice by Archpriest Victor Sokolov, tendered by Bishop Schaefer

- Summary of oral submission – Australian and New Zealand Diocese of Russian Orthodox Church outside of Russia, tendered by Bishop Schaefer
- Letter outlining the position of the Australian and New Zealand Diocese of Russian Orthodox Church outside of Russia regarding burial practices, tendered by Bishop Schaefer.

Resolved, on the motion of Mr Veitch: That the committee accept the following documents, but keep confidential:

- Russian Orthodox Clergy interred in Sydney NSW, tendered by Bishop Schaefer
- Plates 1-6 containing coffin images, tendered by Dr Dent.

6. Adjournment

The committee adjourned at 4.42 pm, until Thursday 1 November 2018 (*report deliberative*).

Alex Stedman
Committee Clerk

Draft minutes no. 8

Thursday 1 November 2018

Regulation Committee

Room 1254, Parliament House, 10.02 am

1. Members present

Mr Farlow, *Chair*
Mr Donnelly, *Deputy Chair*
Mr Green
Mr Khan
Mr Mallard (from 10.05 am)
Mr Pearson (from 10.05 am)
Mr Veitch
Mrs Ward

2. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 7 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 25 September 2018 – Email from Mr George Simpson, Chief Executive Officer, Rookwood General Cemetery to secretariat, providing a copy of the report entitled 'Funeral poverty in Scotland: A review for Scottish Government'.

4. Inquiry into the Cemeteries and Crematoria Amendment Regulation 2018

4.1 Submissions

The committee noted that the following submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 158.

4.2 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Cemeteries and Crematoria NSW and the Department of Industry received 5 October 2018
- answers to questions on notice from the NSW Aboriginal Land Council received on 24 October 2018.

4.3 Requested corrections to transcript of evidence 21 September 2018

Resolved, on the motion of Mr Veitch: That the committee authorise the correction to Mr Knoll's transcript of evidence from 21 September 2018, as requested by the witness.

4.4 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Cemeteries and Crematoria Amendment Regulation 2018*, which, having been previously circulated was taken as being read.

Resolved, on the motion of Mr Donnelly: That paragraph 1.47 be amended by omitting 'cultural and religious' and inserting instead 'religious and cultural'.

Resolved on the motion of Mr Donnelly: That paragraph 1.48 be amended by inserting 'an education and' before 'awareness campaign'.

Resolved on the motion of Mr Donnelly: That Recommendation 1 be amended by inserting 'an education and' before 'awareness campaign'.

Resolved, on the motion of Mr Donnelly: That paragraph 1.49 be amended by omitting 'cultural or religious' and inserting instead 'religious and cultural'.

Mr Donnelly moved: That paragraph 1.50 be amended by omitting 'all cultural or spiritual leaders' and inserting instead 'all religious hierarchy and cultural leaders'.

Mr Green moved: That the motion of Mr Donnelly be amended by omitting 'hierarchy' before 'and cultural leaders'.

Amendment of Mr Green put and passed.

Original motion of Mr Donnelly, as amended, put and passed.

Resolved, on the motion of Mr Donnelly: That Recommendation 2 be amended by:

- a) omitting 'all cultural or spiritual leaders' before 'who must be consulted' and inserting instead 'all religious and cultural leaders'.
- b) omitting 'cultural or religious' before 'practices apply' and inserting instead 'religious and cultural'.

Resolved, on the motion of Mr Veitch: That the following new finding be inserted after paragraph 1.54:

'Finding X

The committee notes the concerns raised by several inquiry participants regarding the finite amount of land currently available for burials in the greater Sydney metropolitan area. The committee urges the government to look at potential opportunities to acquire further land for cemeteries in the greater Sydney metropolitan area as a matter of priority'.

Resolved, on the motion of Mr Donnelly: That Finding 1 be amended by omitting 'could have been more robust' and inserting instead 'should have been more robust'.

Resolved, on the motion of Mr Khan: That Finding 1 be amended by omitting 'would appear that it was not effective' and inserting instead 'would appear that it was ineffective'.

Mr Veitch moved: That a new finding be inserted after paragraph 2.58:

'Finding X

That design of coffins and use of certain materials will significantly delay decomposition of remains. The committee is of the view that more work must be undertaken by relevant government agencies to

determine the appropriate coffin design and materials for use in the funeral industry to ensure there is no undue or significant delay in decomposition of remains'.

Mr Mallard moved: That the motion of Mr Veitch be amended by inserting at the end: ', or possible environmental consequences'.

Amendment of Mr Mallard put and passed.

Original question of Mr Veitch, as amended, put and passed.

Resolved, on the motion of Mr Donnelly: That:

- a) The draft report as amended be the report of the committee and that the committee present the report to the House;
- b) The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- c) Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- d) Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- e) The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- f) The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- g) Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- h) That the report be tabled on Friday 9 November 2018.

4.5 Consideration of Chair's draft evaluation report

The Chair submitted his draft report entitled *Evaluation of the Regulation Committee trial*, which, having been previously circulated was taken as being read.

Resolved, on the motion of Mr Khan: That:

- a) The draft report be the report of the committee and that the committee present the report to the House;
- b) The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- c) The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- d) Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- e) That the report be tabled on Friday 9 November 2018.

5. Adjournment

The committee adjourned at 10.58 am, *sine die*.

Emma Rogerson
Committee Clerk

