

CEMETERIES AND CREMATORIA BILL 2013

Bill introduced on motion by Ms Katrina Hodgkinson, read a first time and printed.

Second Reading

Ms KATRINA HODGKINSON (Burrinjuck—Minister for Primary Industries, and Minister for Small Business) [3.44 p.m.]: New South Wales has a long history of setting aside significant areas of land for public cemeteries to ensure that the right to a dignified burial is afforded to all members of the community. Today, as in the past, cemeteries across the State provide services to help all religious and cultural groups honour and farewell their loved ones. Over the last two decades, New South Wales has become increasingly at risk of jeopardising this proud tradition. Our ability to provide for the wishes of our citizens regarding the treatment of their remains has become less and less certain.

Cemetery and crematorium reform has a chequered history in this State, particularly since the mid-1990s. During that time it has become increasingly apparent that a coordinated, strategic approach to management of the interment industry is required in order to address the critical shortage of burial space and to ensure the full range of interment options is accessible and affordable to everyone. The response of the previous Government to these challenges was characterised by reactive policy and short-term fixes. Little has been done in the face of mounting evidence pointing to the dire need for sector-wide reform and planning, until now. The Liberals-Nationals Government knew that if it did not act boldly and decisively now, in another two decades New South Wales would face the very real prospect of having completely exhausted existing burial space. This is the most pressing issue driving these reforms.

Projections indicate that available burial sites across the greater metropolitan Sydney area will reach capacity within 30 to 40 years, and much sooner in some of our oldest cemeteries. Land acquisition for cemeteries and crematoria, especially in development corridors, is an essential part of avoiding this predicament. This must be accompanied by more sustainable burial practices to extend the life of our existing cemeteries. New South Wales is unique among Australian jurisdictions with its mix of Crown, local government and private cemetery sectors. Our myriad cemeteries and crematoria are independently managed by State agencies, local government, public and religious trusts, community and other organisations, and private companies. Management of some public cemeteries is further divided based on denominational portions.

These complex and varied arrangements make it difficult to compile accurate information on burial rates and the number of available burial sites, along with the difficulty in determining the best use of available cemetery space. To develop and implement a comprehensive, coherent and cohesive evidence-based strategy for the State's interment industry, we must have access to accurate, reliable and consistent data from all three industry sectors. This legislation is the centrepiece of the Liberals-Nationals Government's reform agenda in this area and represents the most significant changes to the interment industry in more than 100 years, since the creation of the Rookwood Necropolis in 1868.

The Government is putting in place a new industry-wide framework within which cemetery operators will be encouraged to act proactively and cooperatively to ensure that the State's burial needs are met now and into the future. This is being done by establishing a new statutory body, Cemeteries and Crematoria NSW. Cemeteries and Crematoria NSW, referred to in the bill as the "Cemeteries Agency", will be led by an independent board appointed by the Minister. The Cemeteries Agency will have the power to collect information about cemetery capacity and usage, future cemetery needs, and cemetery and crematorium performance, to use the evidence to identify planning and policy issues and develop collaborative, sustainable solutions, and to implement and enforce solutions through consensus-building and, if necessary, binding legislative mechanisms.

More importantly, the bill delivers on the Government's commitment to recognise and take account of the right of all individuals to a dignified interment and the treatment of their remains with respect. This includes ensuring that the beliefs of all community groups are respected and equitable and affordable access to interment services is adequately provided, irrespective of religious or cultural heritage. Amazingly, this is the first time this has been reflected in legislation. The bill has three key elements that I will address. They are reform of the Crown cemetery sector, strategic oversight and regulation of the interment industry, and sustainable burial practices. I will first deal with the Government's reforms to the Crown cemetery sector. The first stage of these historic reforms commenced well over a year ago and involved the wholesale restructure of 17 Crown cemetery trusts. The 17 trusts were consolidated to four trusts, including the existing Catholic Metropolitan Cemeteries Trust, and three new trusts: Rookwood General Cemeteries Trust; Northern Metropolitan Cemeteries Trust; and Southern Metropolitan Cemeteries Trust.

<33>

The four Crown cemetery trusts are of sufficient size and financial capacity with skilled professional boards, and we have implemented new governance and business protocols that put the Crown cemetery sector on a more efficient and effective commercial footing. These arrangements are enshrined in the bill, including a range of provisions that regulate and standardise the governance and management of Crown cemetery trusts across the State. The bill re-enacts many provisions from the Crown lands legislation framework and makes clear that cemeteries and crematoria on Crown land will continue to be managed in accordance with the principles of Crown land management.

Importantly, establishing a Crown reserve trust and designating its purpose remains the responsibility of the Minister responsible for Crown lands. However, where a trust is established for the purpose of a cemetery, the Minister administering the cemeteries legislation will be responsible for appointing the trust board, or other entity to manage the trust. The Cemeteries Agency will be responsible for regulating the trust in accordance with the enhanced governance framework established in part 5 of the bill. Transparency and accountability are cornerstones of this enhanced framework. Accordingly, trust board members will have duties and liabilities similar to those for State-owned corporations. They will also be remunerated in accordance with Public Service Commission guidelines.

All Crown cemetery trusts will be required to prepare a strategic plan, to be approved by the Cemeteries Agency. The bill also requires trust boards to establish a finance committee, an audit and risk committee and a community advisory committee. Where necessary, the bill enables Government to direct a Crown cemetery trust to prepare a plan of management for a particular

cemetery or crematorium to ensure that individual facilities are being run appropriately and delivering the best possible outcomes for the people of New South Wales.

Part of the new governance approach also includes annual reporting requirements for all Crown cemetery trusts, including independently audited financial statements. Annual reports must include a report on trust operations with reference to its strategic plan and any plans of management. Additional matters may be stipulated by regulation. Together these new governance and business protocols are increasing transparency and accountability within the Crown cemetery sector and ensuring that cemeteries on public land are managed in accordance with best practice and in a way that ensures their long-term sustainability. All Crown cemetery trusts are continuing to work cooperatively to further develop these strong and accountable governance arrangements and to implement common policies and systems.

I would like to draw the attention of the House to the provisions of the bill that provide for strategic oversight and regulation of the interment industry in New South Wales for the first time. This function will be performed by the Cemeteries Agency, Cemeteries and Crematoria New South Wales. The Cemeteries Agency will sit across all three cemetery sectors—the Crown, local government and private cemeteries—and have the power to require managers and operators to act in the best interests of the people of New South Wales.

The Cemeteries Agency will exercise advisory, policy, regulatory and administrative functions to assist the Government to deliver its vision for a sustainable, equitable and transparent interment industry. The Cemeteries Agency will guide management, maintenance and planning within all cemeteries and crematoria across the State. This will result in more streamlined, cost-effective and accountable operations, and provide for better coordination and cooperation across the interment industry.

The Cemeteries Agency will have the following specific functions:

- to assess interment needs and develop planning strategies;
 - to advise Government on the sustainable use of cemetery space;
 - to develop, approve and promote codes of practice for the interment industry;
 - to advise on the establishment of regulatory interment industry schemes;
 - to regulate the provision of services covered by interment industry schemes;
 - to keep under review the policies, operating procedures and activities of the interment industry;
- and
- to collect information and carry out research necessary to the fulfilment of these functions.

The Cemeteries Agency will be the centre of proactive policy development for the interment

industry and will ensure that sufficient land is acquired and allocated to meet the burial needs of all communities. The remit of the Cemeteries Agency will extend to the development of policy solutions to the important issues facing the industry, including pricing policies for interment services that ensure adequate provision of funds for future liabilities and perpetual maintenance. Importantly, the agency's functions and powers will be scalable to enable its remit to evolve over time to address potential emerging issues, such as the increasing vertical integration of interment services. Of paramount importance, the Cemeteries Agency will ensure that no faith is disadvantaged, and that equitable access to cemeteries and crematoria is provided to all religious and cultural groups in a way that respects and upholds their various beliefs and practices.

The Cemeteries Agency will be responsible for maintaining an accurate and up-to-date register of all cemeteries and crematoria in New South Wales. The register, which replaces and extends the existing register kept by health authorities, will ensure that the agency can keep track of interment industry participants and develop effective and sensible regulation. The register will be accessible by the public, which may assist members of the community to better understand, evaluate and compare the range of interment options available to them.

The Cemeteries Agency will collect necessary data on cemetery and crematorium operations, including interment rates and available burial space, from all three sectors of the industry. This will inform the development of comprehensive industry-wide strategies to address the challenges we face in this area, in particular the issue of diminishing cemetery capacity. This information will also help to improve the industry's transparency and accountability. To facilitate this, the Cemeteries Agency will have the power to require cemetery or crematorium operators to provide information and reports on their performance.

The Cemeteries Agency will develop strong linkages with the New South Wales planning system to ensure that the critical nature of cemetery and crematorium needs is taken into account at all levels of future strategic land-use planning. The agency will provide expert, centrally-coordinated input to planning processes. This will include establishing benchmarks for cemetery space that take into account factors such as population density and population growth, mortality rates and burial and cremation rates, and giving guidance to planning authorities on determining future cemetery needs and identifying land suitable for use as a cemetery or crematorium. Where this fails to deliver sufficient cemetery space for one or more religious or cultural groups or for the community generally, the Cemeteries Agency can exercise last-resort powers either to direct a Crown cemetery operator to purchase land for cemetery purposes, with the approval of the Minister, or to purchase the land itself.

The Cemeteries Agency would only direct a Crown cemetery operator to acquire land after full consideration of the impact on a Crown cemetery trust's financial reserves and future liabilities, including for perpetual maintenance of interment sites or the cemetery generally. In practice the Cemeteries Agency will work closely with Crown cemetery trusts on land acquisition matters. Where the Cemeteries Agency makes a decision to acquire land itself, an internal government loan would be sought to secure the purchase. In most cases, the land would then be sold by tender or other contestable process to a cemetery operator, and the sale's proceeds would be applied to repay the internal loan. Where this results in a significant shortfall that could not be met from Cemeteries

Agency reserves, the bill enables a special temporary levy to be imposed by regulation to raise the required funds.

The Cemeteries Agency will be led by an independent board appointed by the Minister. The board of the Cemeteries Agency will comprise an independent chair and three members with relevant professional expertise, qualifications or experience. The board will also include seven non-voting members, being representatives of five key government agencies, one local government representative and the chief executive officer of the Cemeteries Agency. To ensure the independence of the board of the Cemeteries Agency, and to avoid structural conflicts of interest, interment industry participants are disqualified from appointment as voting members. That said, the board will work closely with industry experts and other key stakeholders to ensure the development of collaborative, evidence-based solutions to identified challenges. To this end, the legislation enables the board to establish formal committees whose members may be drawn from the industry and the community.

The bill provides that all decisions relating to the functions of the Cemeteries Agency are to be made by or under the authority of the board. This establishes a framework for sensible delegation of responsibility to management. Importantly, the bill provides that critical decision-making power relating to acquiring land, making short-term orders and approving cemetery renewal schemes must be exercised by the board and cannot be delegated.

The bill establishes a scalable regulatory framework with the necessary flexibility to respond to new interment industry practices and emerging and evolving challenges. To begin with, the Cemeteries Agency will have the power to develop, approve and promote codes of practice for the interment industry. In developing a code of practice, the agency may also adopt, with or without modification, an existing standard or industry code. Codes of practices will initially be voluntary, but they may be made mandatory by regulation if voluntary approaches prove ineffective.

Codes of practice will provide direction and guidance to the industry and may cover any matters related to cemetery and crematorium management, or other matters encompassed by the objects of the Act. Codes must be developed in consultation with all relevant stakeholders, in particular those to whom the code would apply. The concurrence of other portfolio Ministers will also be required in certain circumstances. The Cemeteries Agency will be responsible for ensuring public access to approved codes and reporting on their adoption by the industry.

The Cemeteries Agency will work closely with the interment industry to build industry-wide consensus and support for voluntary solutions to identified problems. If voluntary approaches do not achieve the intended outcomes, the legislation enables the agency to develop and implement mandatory measures known as interment industry schemes, to be introduced by regulation. Interment industry schemes may be tailored to apply to a specified sector or class within the interment industry, and may address issues by, for example, requiring compliance with a code of practice, setting licensing conditions for the provision of interment services or requiring provision for the perpetual care of interment sites and cemeteries. A regulatory impact statement and full consultation with the relevant industry sectors will be required as part of the development of a scheme, as well as the concurrence of other portfolio Ministers in certain circumstances.

Where an operator's performance falls below community expectations or compromises the ability of Government to deliver its objectives, the Cemeteries Agency must have the power to make orders and to penalise contraventions. To that end, the bill includes a regime of civil penalty provisions for contraventions of obligations imposed by the legislation or directions issued by the agency.

<34>

The New South Wales Liberals-Nationals Government shares the significant concern expressed by the community and religious and cultural groups in relation to acts of desecration and harassment in cemeteries. The New South Wales Government is committed to minimising these acts and penalising perpetrators as well as, importantly, educating individuals in recognising the symbolic value of gravesites. The integrity of the regulatory framework set out in the bill will be underpinned by the investigation and enforcement powers of the Cemeteries Agency, which will be exercisable through authorised officers. Similar to the powers conferred on the authorised officers of other regulatory agencies, Cemeteries Agency authorised officers will be able to enter and search premises, to require the production of information, to seize documents and other material, and to issue improvement and infringement notices. The work of the Cemeteries Agency will be funded initially by a levy identical to the current Crown Cemetery Levy.

Among the first priorities for the board of the Cemeteries Agency will be to develop strategic and business plans that identify the resources required to implement the Government's vision for the interment industry as set out in this bill. From these, a proposal for a more broadly-based levy will be developed, enabling appropriate contribution from all three sectors of the interment industry. The general levy provisions in the bill allow a policy-based approach to levy design, taking into account the nature of funded activities and their intended outcomes and beneficiaries. The levy will be designed such that the contribution of each sector of the industry will be broadly referable to the work carried out by the Cemeteries Agency. In any event, as the levy can only be imposed by regulation, a regulatory impact statement will provide transparency and policy justification. Importantly, money received from a general levy cannot be used to cross-subsidise the expenses of the Cemeteries Agency in carrying out functions that are not related to cemeteries and crematoria.

Finally, I would like to outline the New South Wales Liberal-Nationals Government's approach to sustainable burial practices. Unsurprisingly, research shows that people wish to bury family and friends within a reasonable distance from their homes to enable regular visits. The New South Wales Liberal-Nationals Government is committed to ensuring that future generations have affordable access to a range of options for honouring the memories of their loved ones. This includes the option of a traditional burial in a cemetery close to their communities. Better land use planning and land acquisition for cemeteries and crematoria is essential to achieving this, and this bill provides the necessary framework and tools for so doing. However, given the scarcity of new land and increasing competition over land use priorities, particularly in major metropolitan centres, better use of existing cemetery space is crucial to meeting the Government's objectives.

Burial practices that extend the life of cemeteries are used extensively in a number of jurisdictions around Australia and overseas, but they are not generally employed in New South Wales. We need to educate the community urgently about sustainable burial practices and make implementing these practices easier and less costly for the interment industry. The bill paves the way for two long-overdue developments in this regard. First, the bill extends the scope and application of current

cemetery renewal provisions to all cemetery sectors. Secondly, the bill enables renewable interment rights to be offered on an optional basis across New South Wales. Cemetery renewal enables cemetery operators to remodel areas within a cemetery to free up additional burial space. Space between interment sites or space taken up by access ways may be used, or a layer of fill may be placed over the top of existing interment sites to create additional interment sites. Currently, the cemetery renewal process is only available to Crown cemetery operators. The bill extends this option to local government and private cemeteries.

Under the bill, the operator of any cemetery may submit a proposal for a cemetery renewal scheme to the Cemeteries Agency for approval. The scheme may include moving or disposing of monuments but must not involve disturbing remains. Notice must be given to all individuals who have an interest in the area of the cemetery subject to the proposed scheme and comprehensive consultation must be conducted with relevant stakeholders, including the Heritage Council where appropriate. Interested parties will be encouraged to make submissions in support of a proposed cemetery renewal scheme or detailing any objections. Schemes cannot be approved by the Cemeteries Agency unless objections by affected interment right holders have been addressed or withdrawn. Guidelines are being developed to assist cemetery operators to develop cemetery renewal proposals.

The need to take advantage of burial practices that provide for more sustainable use of our diminishing burial space is clear. Renewable interment rights are perhaps the most important of these practices. Renewable interment involves the purchase of a right to inter human remains, and for those remains to be left undisturbed, for an initial period with the option of renewing the right for additional periods. If an interment right is not renewed, the interment site that is the subject of the right may be re-used after certain requirements have been met. Renewable interment rights are used extensively in South Australia and Western Australia, and the practice has a long history in many overseas jurisdictions. Renewable rights are currently offered in two cemeteries in New South Wales but they are not permitted in Crown cemeteries. As far as possible the renewable interment rights scheme set out in the bill allows existing New South Wales practices to be maintained. Importantly, while the scheme establishes a series of rules and conditions for the operation of renewable interment rights it provides sufficient flexibility for operators to market renewable rights competitively in a largely perpetual market.

The bill enables renewable interment rights to be offered on a consistent basis across all three cemetery sectors in New South Wales. This will be based on the important principles of choice and non-retrospectivity—that is, perpetual interment will continue to be available to everyone and there will be no impact on existing perpetual rights. However, renewable interment rights will be encouraged in new cemeteries and areas made available in existing cemeteries by cemetery renewal. Importantly, renewable interment rights will not be allowed in cemetery portions where perpetual interment is required on religious or cultural grounds. Under the provisions of the bill, a renewable interment right may be granted for an initial term of 25 years for bodily remains and may be renewed for additional periods of at least five years and up to a maximum of 99 years. A cemetery operator must renew a right, upon application and payment of the applicable fee, within six months of any interment and when a renewable right expires.

To ensure clarity and certainty for both holders of a right and operators, the manner in which the fee

will be calculated in each of these instances must be disclosed before a right is granted or renewed. Cemetery operators will be required to keep a register of all burials and cremations, memorials and interment rights. This expands existing requirements carried over from public health legislation and will help to ensure the protection of individual rights. Consistent with existing machinery, all interment rights, including renewable rights, may be bequeathed or transferred provided these details are recorded in the cemetery operator's register. When a renewable interment right expires and is not renewed, the cemetery operator may re-use the related interment site by offering a new right. This can be done only after a two-year grace period has expired, reasonable efforts have been made to contact persons listed in the register, and the intention to re-use the site has been published. Importantly, a site cannot be reused until all bodily remains interred at the site have been interred for a minimum of 10 years.

Cemetery operators intending to re-use burial sites are required to treat human remains with dignity and respect and in accordance with any applicable religious or cultural practices. Before an interment site is re-used the cemetery operator must ensure that any bodily remains found at the site are placed in an ossuary box and re-interred or placed in an ossuary house. Cremated remains must be returned to the holder of the right or scattered in the cemetery. Monuments and memorials may be reclaimed, and any unclaimed monuments or memorials must be dealt with in accordance with advice from a committee with specialist heritage expertise. As the State's population grows, ages and becomes more densely concentrated in major metropolitan centres, sustainable burial practices such as cemetery renewal and renewable interment rights will be essential elements in ensuring equitable access to the full range of interment options for all New South Wales citizens. With the introduction of this legislation, the interment industry will be able to plan strategically, sustainably and collaboratively for the needs of all local communities.

In addition to cemetery renewal and renewable interment rights, the New South Wales Liberal-Nationals Government is promoting other sustainable options, such as natural or green burial and family graves, and encouraging the industry to make these more available to the community. The reforms set out in this bill will fundamentally change the way cemeteries and crematoria are managed in this State. This bill is the result of broad and extensive consultation with the community, industry and all levels of government. The participation of key stakeholders at each stage in the reform process has ensured the development of collaborative approaches to the challenges confronting the interment industry and the community of New South Wales. In particular, the contribution of the major religious faiths has been essential and I thank the faith leaders who have come together to find a mutually sustainable way of meeting the burial needs of their communities.

I extend my genuine and sincere thanks to the members of the Interim Cemeteries and Crematoria Board and all the committees that provided essential expertise and policy input throughout the process. I also take this opportunity to convey my sincere thanks to Mr David Harley, AM, whose assistance I personally requested for these reforms. David Harley has been of fantastic assistance. He epitomises the principles underpinning these reforms: respect, tolerance, and a desire for equity and fairness. The diversity of participation in these reforms reflects the absolute necessity of cemetery and crematoria infrastructure for the New South Wales community. I look forward to continuing to work closely with all stakeholders as we move to the next phase of implementation. Currently, several legislative instruments, or parts thereof, regulate various aspects of the interment

industry in New South Wales. It is a complex, convoluted and cumbersome system that is in desperate need of reform. We have surveyed the approach to cemetery regulation in other jurisdictions, both within Australia and overseas, we have consolidated the relevant provisions from other New South Wales legislative instruments, and today I am proud to say that we are introducing a single piece of legislation for the management of all cemeteries and crematoria across the State.

We are establishing a framework that will provide more efficient, sustainable and accountable interment operations and will enable strategic oversight of the industry to facilitate better information sharing, cooperation and coordination. The New South Wales Liberal-Nationals Government is taking decisive steps to ensure that the burial needs of all individuals are met now and into the future. This bill deals with an issue that will affect every member of this House, all our families and loved ones, and every citizen of this State, irrespective of their financial capacity, cultural or religious beliefs. The substance of this bill seeks to afford fundamental legislative recognition and protections to what this Government believes are basic rights: the right to choose how our remains are disposed of and the right to have that done and commemorated in a dignified manner. These rights are so basic and universal that they transcend political, cultural and religious differences and social inequality.

In conclusion, I would like to quote Yair Miller, president of the Jewish Board of Deputies, at the recent opening of Lot 10 at Rookwood Cemetery, which is now providing immediate relief for the Jewish and Muslim communities requiring perpetual burial. He said at the opening:

The broader cemetery reforms and Lot 10 are an important symbol—Jewish and Muslims working together in life on a common challenge and, laying side by side in eternity—I hope we can carry this good will and sense of purpose to our broader communities and our daily lives.

I commend the bill to the House.

Debate adjourned on motion by Mr Barry Collier and set down as an order of the day for a future day.