

The Hon Steve Kamper MP

Minister for Lands and Property
Minister for Multiculturalism
Minister for Sport
Minister for Jobs and Tourism

Our ref: MINS 15864

Lynda Voltz MP
Chair, Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Via email: legislation.review@parliament.nsw.gov.au**Re: Legislation Review Digest No. 30/58 – Cemeteries and Crematoria Amendment Bill 2025**

Dear Ms Voltz,

Thank you for the comments of the Legislation Review Committee (**Committee**) in Legislation Review Digest No. 30/58 (**Report**) dated 27 May 2025, relating to the Cemeteries and Crematoria Amendment Bill 2025 (**Bill**) to which I refer.

Absolute liability offences

In its Report, the Committee noted:

The Bill seeks to introduce offences for carrying out an interment in a cemetery without a valid interment order, carrying out memorial works without approval, and not complying with a cemetery operator's directions when carrying out approved memorial works. The maximum penalties range from an \$11,000 fine (100 penalty units) to a \$27,500 fine (250 penalty units).

The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability.

However, the Committee acknowledges that the proper management of human remains and interment sites may have public health and safety implications. The Committee also notes that the maximum penalties for the absolute liability offences are monetary, not custodial. For these reasons, the Committee makes no further comment.

The proper management of cemeteries acts as a safeguard for many religious and cultural practices, including for the secular community. The new penalties proposed are a consequence of provisions in the Bill aimed at facilitating greater community involvement with cemeteries. The offences and penalties are consistent with those already in the Act, and in most cases extend existing safeguards to cover the new class of person now permitted to carry out certain actions. The Government considers this to be a proportionate and prudent approach, balancing greater access and involvement for the community with the need to uphold appropriate safety and management practices.

Wide regulation-making powers

In its Report, the Committee noted:

The Bill proposes to delegate a number of substantive matters to regulations. These include the classes of people to whom the Cemeteries Agency may delegate its functions, the application and approval process for cemetery operators seeking exemptions from limits on the number of interment sites in a cemetery, and the disclosure of information obtained under the Cemeteries and Crematoria Act 2013. In particular, the proposed provision allowing the Minister for Lands and Property to grant exemptions to cemetery operators may amount to a Henry VIII clause, as it would allow the Executive to amend the operation of the parent Act without reference to Parliament.

The Committee generally considers Henry VIII clauses in bills to be an inappropriate delegation of legislative power and prefers that substantive matters to be set out in primary legislation rather than regulations, to ensure an appropriate level of parliamentary oversight. Unlike primary legislation, regulations are subordinate legislation and are not required to be passed by Parliament. However, the Committee notes that regulations are still subject to parliamentary scrutiny and can be disallowed under section 41 of the Interpretation Act 1987.

The Committee also recognises that such regulation-making powers may allow for more flexible responses. In this case, enabling delegations, exemption processes and information sharing to be addressed through regulations may help accommodate the changing needs of the interment industry. For these reasons, the Committee makes no further comment.

I thank the Committee for its recognition that regulation-making powers can allow for more flexible responses. The interment industry has for many years been neglected by successive governments and had to comply with an inflexible and outdated regulatory framework. The provisions in this Bill are specifically aimed at rectifying this. While some provisions do allow for matters to be delegated to Regulation, these are generally limited to specifications of broader powers which are clearly defined and delimited in the Bill. This more flexible approach to regulatory oversight of the industry is a key driver of anticipated benefits for consumers and operators.

With respect to the proposed provision allowing the Minister for Lands and Property to grant exemptions to cemetery operators, I note that this provision can only be used in specific, limited circumstances. The Bill places clear limits on the sections of the Act that may be altered, and the Minister's exercise of the power is subject to a public interest test and consistency with the objects of the Act. The Bill provides for further provisions to be made by Regulations, which, as the Committee notes, are subject to Parliamentary scrutiny. The Government considers these to be appropriate checks on the limited powers the Bill devolves to the Executive.

Incorporation of external 'Reasonable Notification Guidelines' not subject to disallowance
 In its Report, the Committee noted:

The Bill proposes to insert section 68B into the Cemeteries and Crematoria Act 2013, which would allow the Cemeteries Agency to publish 'Reasonable Notification Guidelines' by order. These guidelines would set out the steps a cemetery operator must take to contact an interment right holder before taking certain actions.

The Committee generally comments on any legislative provisions that permit the incorporation of external materials, such as guidelines, and give those materials legal force. It also prefers substantive matters to be set out in legislation or to be published in the Gazette and tabled in Parliament as regulations, where they are subject to disallowance and therefore subject to appropriate parliamentary scrutiny.

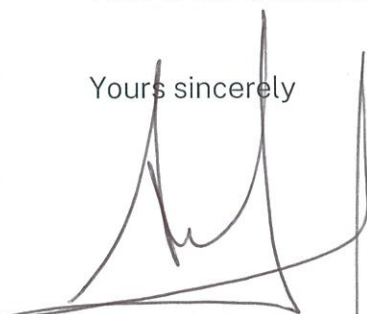
However, the Committee recognises that the proposed amendments are intended to make it easier for cemetery operators to contact interment right holders. The Committee also acknowledges that prescribing the relevant information in guidelines may enable greater flexibility and responsiveness to changing regulatory practices. For these reasons, the Committee makes no further comment.

The NSW Government acknowledges that it is generally preferable to set out substantive matters in legislation, however the prescriptive approach in the current Act has consistently caused problems that undermine consumer protections and experience. The reasons why an operator may be required to attempt to contact a right holder are diverse and the circumstances are often highly sensitive. In practice, the prescriptive approach currently in force has compelled operators to choose between taking necessary actions it knows will cause distress or avoiding this distress by not taking the steps that would create a cemetery that better serves the needs of families and the community. The Government considers the proposed approach will remove this dichotomy and allow operators to act sensitively and decisively in the interests of their communities.

If you have any questions regarding the above, please contact my Chief of Staff, Ed McDougall on 0407 499 420 or ed.mcdougall@minister.nsw.gov.au.

I thank the Committee for its analysis and feedback on the Bill.

Yours sincerely



Steve Kamper MP
 Minister for Lands and Property
 Minister for Multiculturalism
 Minister for Sport
 Minister for Jobs and Tourism

2-6-25