

Submission
No 157

INQUIRY INTO CEMETERIES AND CREMATORIA AMENDMENT REGULATION 2018

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11 September 2018

The Hon. Scott Farlow, MLC
Chair, Regulation Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Farlow

The NSW Department of Industry appreciates the opportunity to make a submission to the Regulation Committee inquiry into the impact and implementation of the Cemeteries and Crematoria Amendment Regulation 2018.

The Department would like to provide context for the Cemeteries and Crematoria Amendment Regulation 2018, and for the role of renewable interment rights. The submission addresses several themes:

- context of interment rights in NSW
- key elements of the Cemeteries and Crematoria Amendment Regulation 2018 that reflect transparency for costs and recognition of cultural and religious practices
- consultation with the community in developing this Regulation
- the voluntary nature of renewable interment rights, providing choice while reflecting and respecting religious and cultural requirements
- consequences of not offering renewable rights in the context of burial space challenges in metropolitan Sydney, and
- consistency of this approach with other jurisdictions.

The Cemeteries and Crematoria Amendment Regulation 2018 is designed to provide greater transparency for interment rights, and to ensure cultural and religious practices are respected.

I trust this context will assist the inquiry in its deliberations.

Yours sincerely

Liz Livingstone
Deputy Secretary, Lands and Water



Dealing with the loss of a loved one is always a difficult and sensitive time for families and friends.

All individuals have the right to a dignified interment and the treatment of their remains should be with dignity and respect. As with everyday life, individuals and the families should have the choice on what happens to their remains after leaving this life.

In making these important decisions, families must be provided with clear and accurate information and must be given the respect to make informed decisions at very difficult times.

Likewise, it is imperative that people are able to observe their religious beliefs and practices and implement their personal views and desires when making decisions regarding the remains of their loved ones.

Interment rights – context

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).

Part 4 of the Act provides for two types of interment rights - perpetual interment rights and renewable interment rights. The Act was assented in 2013, and Part 4 commenced in 2018 following extensive consultation.

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. Interment rights apply to burials in the earth and to burials in mausoleums, crypts and vaults. They also apply to burials of cremated remains in the earth or placement in a columbarium or niche wall.

A perpetual interment right allows 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).

A renewable interment right is fully optional and allows 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. The renewable interment right can be renewed for a minimum of 5 years and for additional periods up to a maximum of 99 years. The initial interment period for cremated remains may be up to 99 years.

Any human remains in the grave must remain undisturbed until the total period expires. If 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.

Although renewable interment has been available from some cemetery operators in NSW, it is a practice of burial which has not been widely exercised in this State. It is important to note that renewable interment is practiced by numerous countries internationally and in other Australian jurisdictions. It is acknowledged that renewable is an atypical concept for many individuals and the wider community. This is why it is critical for individuals and cemetery operators to be well informed and understand the process of renewable interment.

For these reasons, whilst the Act was proclaimed in 2013, further consultation was required before Part 4 of the Act would be proclaimed. Since 2013, extensive consultation has been undertaken by Cemeteries & Crematoria NSW (CCNSW). This consultation period enabled CCNSW and the Government to be well informed and understand the concerns put forward by individuals and families, cemetery operators, and religious and cultural groups. The concerns raised were explored in detail with CCNSW's two consultative groups. During this consultation period, it was recognised that further guidance and clarity was needed in the form of a Regulation to support Part 4 of the Act.

In November 2017, a draft *Cemeteries and Crematoria Amendment Regulation 2017* and Better Regulation Statement was made public for the people of NSW, key stakeholders and the interment industry for feedback. Although the majority of the submissions were based on misinformation, this only highlighted the importance of better communication needed for individuals and families. Key stakeholders were further consulted before implementing any changes to the Regulation. The feedback received via the submissions enabled CCNSW to make any necessary amendments to the draft Regulation before being proclaimed on 25 June 2018.



The Act and *Cemeteries and Crematoria Regulation 2018* work together to provide a framework to ensure that, when offered, renewable interment rights are offered consistently and with consumer safeguards. When granting an interment right to a person, the operator must:

- provide a certificate of interment rights
- record the information in a public register.

Information (such as the information recorded in the cemetery register) is retained. There are thorough notification processes for cemetery operators to follow that are outlined in the Act and *Cemeteries and Crematoria Regulation 2014* before a renewable interment right expires.

The Cemeteries and Crematoria Amendment Regulation 2018 enhances interment rights

The *Cemeteries and Crematoria Amendment Regulation 2018* (the Regulation) amends the *Cemeteries and Crematoria Regulation 2014* as a consequence of the commencement of Part 4 (Interment rights) of the *Cemeteries and Crematoria Act 2013*.

The Regulation covers a range of activities, including to:

- specify steps a cemetery operator must take to ascertain cultural or religious practices applying to the remains of a deceased person
- require a cemetery operator to disclose to applicants for the grant or renewal of interment rights the fees and charges relevant to the interment
- provide a 10 day cooling off period following the purchase or renewal of renewable interment rights.

The Regulation provides for additional requirements for interments in NSW. It also contains important protections for consumers ensuring that the regulatory framework is both fair and equitable. The intent is to ensure that holders of interment rights, including renewable interment rights, are protected at each stage in the lifecycle of their interment right.

The Regulation contains additional requirements for consultation, notification and record-keeping procedures. It ensures that there are clear requirements for recognition of religious and cultural practices. This includes ensuring that accurate records are maintained and persons with appropriate religious and cultural expertise are consulted, particularly if any disturbance of human remains occurs. This includes strict notification processes for interment right holders, disclosure of fees and charges, cooling off periods for the grant or renewal of an interment right, and religious information to be included in registers.

Clause 9 of the Regulation, which requires cemetery operators to disclose fees and charges to an applicant for an interment right, supports the community to make informed decisions about the right option, and ensures greater transparency and accountability for cemetery operators.

Interment fees and charges can be further considered through an Independent Pricing and Regulatory Tribunal (IPART) investigation. Section 145 of the Act requires 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. This section of the Act commenced on 25 June 2018.

Clause 14 requires the operator to record the cultural or religious practices applicable to the deceased, and the means by which this has been ascertained, where human remains are disturbed. This amendment reflects the importance of recognising cultural and religious practices.

There was extensive consultation in developing the 2018 Regulation

Consultation on interment rights was undertaken as part of developing the Act. Further consultation was undertaken in mid-2016 and early 2017 with the establishment of two consultative groups: the Industry Consultative Group and Community and Consumer Consultative Group. The groups were established by the Cemeteries & Crematoria NSW (CCNSW) Board to ensure consistent engagement and communication with the interment



industry and community and comprise representatives from industry and community and consumer stakeholders and peak representative bodies.

The Regulation and Better Regulation Statement (BRS) were placed on public exhibition from 24 November to 22 December 2017, together with a short information sheet outlining the key aspects of Part 4 of the Act.

The consultation was promoted online through the NSW Government's Have Your Say and the Department of Industry Crown Lands websites, via email from the Chair of the CCNSW Board to the members of the Industry and Community and Consumer Consultative Groups, by direct correspondence from the Chair of the CCNSW Board to specific stakeholder groups, by circular to cemeteries and crematoria operators and by a media release issued by the Department of Industry.

A total of 72 responses were received, comprising 14 formal written submissions and 58 online submissions. Issues raised in submissions were divided into categories based on the key issues raised and the relevance to the draft Regulation.

Formal submissions were received from a wide range of stakeholders from industry and community peak bodies (including funeral directors, cemetery and crematoria associations, local government, the Aboriginal community, members of family history associations and the wider public).

The most frequent matters raised in comments were:

- reinforcing the importance of respect for cultural and religious affiliation and requiring appropriate record keeping of the deceased's faith in cemetery registers
- consultation with appropriate religious and cultural authorities by cemetery operators in relation to interments and consecrated grounds in a cemetery
- increased time periods for notification
- protection of heritage items and memorials
- appropriate digital records to be available
- ensuring that the public are aware that renewable interment rights are purely optional and not mandatory
- the importance of public education, explanation of interment rights and notification processes, and appropriate guidelines being available.

The information gathered and issues raised by stakeholders throughout the public consultation period were used to refine the Regulation. Non regulatory matters will be included in guidelines to be issued to cemetery operators by CCNSW during the 12 month transition period for renewable interment rights. Information session workshops have been organised for cemetery operators across NSW at Tamworth, Lismore, Port Macquarie, Parramatta, Wollongong, Queanbeyan, Maitland, Taree and Wagga Wagga. The intent of the workshops is to provide further information and obtain feedback about new requirements under the Act and Regulation 2018.

Renewable interment rights are voluntary, providing choice while respecting cultural requirements

Key elements of optional renewable interment rights are:

- renewable interment rights are a choice for future burials and cremations; they are optional - no community, individual and cemetery operator will be required to take up renewable interment rights
- renewable interment rights will not operate retrospectively. All existing graves and rights, including pre-purchased perpetual interment rights, continue exactly as they were prior to the new legislation
- perpetual interment rights continue to be available and there will be no impact on existing perpetual graves or rights, including pre-purchased perpetual interment rights
- new rules and conditions ensure that the holders of renewable interment rights are protected at each stage in the lifecycle of their interment right



- graves of local heritage significance and those listed by the Office of Australian War Graves cannot be re-used under any circumstances
- a renewable interment right must not be granted in a portion of a cemetery consecrated for use by a religious or cultural group that requires perpetual interment.

Sustainable burial options are needed to address burial space challenges in metropolitan Sydney

The CCNSW Metropolitan Sydney Cemetery Capacity Report released in November 2017 outlined the likely future constraints on burial space availability in the Sydney region. The report found that if 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.

While land acquisition for cemeteries and crematoria is an option for mitigating this risk that is being pursued, more sustainable burial practices are also important.

Renewable interment rights are common in other jurisdictions and already exist in NSW

Renewable or 'limited' interment rights are common around the world and are a feature of the interment rights systems in other Australian jurisdictions. Victoria offers 25 year limited rights of interment for cremated remains, South Australia provides the option for interment for a specified period or in perpetuity, while in Western Australia burial rights are granted for a period of 25 years with no option for perpetual rights.

Renewable tenure is common in Europe, with tenure periods usually being 50 years or less. As examples, renewable tenure is practiced in Denmark, France, Germany, Greece, Italy and Sweden.

In NSW, limited tenure has been available for local government and private cemetery operators. Interment at Waverley Cemetery, operated by Waverley Council, is provided on a 25, 50, 75 and 99 year limited tenure basis.

Implications if the Regulation is not implemented

For the majority of cemetery operators, renewable interment is a new product which they have never offered to consumers before. It is important that detailed guidance and clarity is available to support cemetery operators who wish to offer this interment option. Without detailed guidance and clarity, cemetery operators may act and make decisions on their own accord which would be inconsistent with the rest of the State.

If the Regulation was not implemented, this could result in:

- a risk that cemetery operators may not take adequate steps to consider cultural or religious practices that should apply to the remains of deceased persons
- inadequate notifications and information being given by cemetery operators regarding fees and charges for interment rights
 - this would negatively impact on the ability of the community to make informed decisions about the cost implications of interment options available to them
- not providing opportunities to consumers to reconsider interment rights decisions they may have taken, which are typically challenging and emotional decisions, by not providing for an appropriate cooling off period.