

REPORT ON PROCEEDINGS BEFORE

REGULATION COMMITTEE

**INQUIRY INTO CEMETERIES AND CREMATORIA AMENDMENT
REGULATION 2018**

At Jubilee Room, Parliament House, Sydney, on Friday 21 September 2018

The Committee met at 12:30

PRESENT

The Hon. Scott Farlow (Chair)

The Hon. Greg Donnelly (Deputy Chair)

The Hon. Trevor Khan

The Hon. Shayne Mallard

The Hon. Mark Pearson

The Hon. Mick Veitch

The Hon. Natalie Ward

The CHAIR: Welcome to the first hearing of the Regulation Committee inquiry into the Cemeteries and Crematoria Amendment Regulation 2018. The inquiry is examining the impact and implementation of the regulation and its effects on interment rights, renewable interment rights and the responsibilities required of cemetery operators in managing cemeteries. Before I commence I acknowledge the Gadigal people who are the traditional custodians of this land. I also pay respect to the elders past and present of the Eora nation and extend that respect to other Aboriginals present here today. Today we will hear from the NSW Jewish Board of Deputies, representatives from the Greek Orthodox Archdiocese of Australia, the NSW Aboriginal Land Council, Red Earth Geo and Rookwood General Cemetery. Our final group of witnesses for the day will include the Australian and New Zealand Diocese of Russian Orthodox Church, Cemeteries and Crematoria NSW and the NSW Department of Industry.

Before we commence I would like to make some brief comments about the procedures for today's hearing. Today's hearing is open to the public and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing. So I urge witnesses to be careful about any comments they make to the media or to others after they complete their evidence as such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

There may be some questions that witnesses could only answer if they had more time or with certain documents at hand. In these circumstances witnesses are advised that they can take a question on notice and provide an answer within 14 days. Witnesses are advised that any messages to Committee members should be delivered through the Committee staff. To aid the audibility of this hearing I remind Committee members and witnesses to speak into the microphones. In addition, several seats have been reserved near the loudspeakers for persons in the public gallery who have hearing difficulties. Finally, could everyone turn their mobile phones off or to silent for the duration of the hearing.

VIC ALHADEFF, Chief Executive Officer, NSW Jewish Board of Deputies, affirmed and examined

DAVID KNOLL, AM, Honorary Secretary, Executive Council of Australian Jewry and past President NSW Jewish Board of Deputies, affirmed and examined

JOHN GRILLIS, Registrar at the Central Offices of Greek Orthodox Archdiocese of Australia (Redfern) and Rector of St Athanasios Church (Rookwood Cemetery), affirmed and examined

SOPHRONY KONIDARIS, Rector of The Resurrection of Our Lord Greek Orthodox Parish/Community (Kogarah), affirmed and examined

The CHAIR: Could each witness state their position title?

Very Reverend Father KONIDARIS: I am from the Greek Orthodox Archdiocese of Australia and I am representing the archdiocese.

Very Reverend Father GRILLIS: I am the Rector of St Athanasios Church within Rookwood Cemetery.

Mr KNOLL: I am the Honorary Secretary of the Executive Council of Australian Jewry and a past President of the Jewish Board of Deputies

Mr ALHADEFF: I am the Chief Executive Officer of the NSW Jewish Board of Deputies.

The CHAIR: Thank you. I welcome all our witnesses and ask whether anyone would like to make a short opening statement.

Mr ALHADEFF: Thank you, Mr Chair. Thank you to the Legislative Council's Regulation Committee for giving us the opportunity to address you on concerns we have regarding the cemeteries space. I shall speak briefly by way of an introduction and will then hand over to my colleague Mr David Knoll, AM, who will address the Cemeteries and Crematoria Amendment Regulation 2018 and how it interacts with the Cemeteries and Crematoria Act 2013. As is known to many members of the Committee with whom we have had the pleasure of working together on previous matters, the NSW Jewish Board of Deputies represents the Jewish community to government, media and other faiths and traditions. It is in that capacity that we are here today to convey our profound concerns about developments and in some cases a disturbing lack of developments in the cemeteries space.

We wish to raise three issues. The first is availability. The Jewish community will run out of cemetery space in New South Wales within a decade, the Muslim communities within six years. Given that the lead time to prepare a block of land for burial from the time of acquiring that land through the protracted stages of development application and approval to the development itself, the urgency of addressing this issue in a meaningful way is self-evident. The Government's ability to provide affordable burial space to the Jewish community and other communities depends on the urgent acquisition and allocation of one or more multi-faith cemeteries in the wider Sydney metropolitan area. We welcomed in June the decision of the New South Wales planning Minister to ask the State's independent planning authority to make a quick and binding recommendation on the future of Macarthur Memorial Park lands at Bowraville and Wallacia Memorial Park. Christian, Jewish and Muslim burial in New South Wales depends on these new cemeteries being approved and developed within the next five years.

The second is autonomy. In order for the requirements of the Jewish faith to be respected and heeded, it is essential that the Jewish community regain autonomy over Jewish burial grounds. The third is affordability. Directly connected to the availability issue is the issue of affordability. The Jewish community, almost 20 per cent of whose members fall within the poverty datum line, is confronted by a situation where families currently pay approximately \$14,000 per burial for standard monumental burial, around double the cost of the equivalent in Melbourne. Finally, the point of cooperation. We have been working closely and collaboratively with other communities, most especially Rookwood General, Catholic cemeteries and the Muslim communities on all of the above issues, all of which share our concerns—the Muslim community in particular, as its shortage of space is even more acute than the Jewish communities shortage of space.

The Orthodox Christian churches face similar constraints. So while we are here to advocate for the Jewish community's needs, we emphasise that we speak also for many other communities too in urging the Government to take meaningful action to break the deadlock which threatens to impact most negatively on what is the most sensitive time in any family's life. I thank you for your attention and now I hand over to Mr David Knoll, AM, who will expand on these issues.

The CHAIR: Thank you, Mr Alhadreff.

Mr KNOLL: The Act, which is the Cemeteries and Crematoria Act, was passed in 2013 after what was a very vigorous debate, particularly in the upper House, concerning the issue of renewable tenure. When the Act was passed it contained a number of provisions that were very important to faith communities, the most important of which we highlighted in the written submission we provided, which is section 46 of the Act. It is in part 4, which was very belatedly proclaimed. It protects our community's religious practices in relation to interment. Section 54 prevents renewable interment rights being granted in respect of lands consecrated for Jewish religious burial. The provision for re-use of interment sites, which appears in section 55, requires that the remains of a Jewish person be dealt with in accordance with Jewish religious practice. I will not deal with all the other sections but it is important to emphasise these are provisions for which we fought hard when the Act was developed in 2012. We are, we have to say, extremely pleased that part 4 was finally proclaimed.

The issue that this Committee needs to deal with is the regulation that is sought to be passed under the Act. The reason I referred to section 46 is that it is specifically referred to in schedule 1, part 3, division 1, clause 5 of the amendment to the 2014 regulation that is contained in the 2018 regulation. It provides that in order to ascertain whether any cultural or religious practices apply to the remains of a deceased person a cemetery operator will consult its own register. No register actually identifies the relevant authority for a cultural religious practice. Secondly, if information is not recorded on the register, to make enquiries of the deceased's next of kin. That is entirely appropriate. Thirdly, if information is not reasonably ascertainable from that source—it is not clear which source "that source" is—to make inquiries of the cultural or spiritual leader in the community who is relevant to the remains by reference to the part of the cemetery in which the interment site is located. If the information is not available reasonably from that source, take any other steps the cemetery operator considers reasonable in the circumstances. I do not read the whole provision.

What is important about that is that it leaves entirely to the discretion of a cemetery manager whom to call. If they get it wrong, then the protections in section 46 disappear. It is crucial—and this is the only recommendation we have made in our submission but we consider it a crucial recommendation—that the contact of the relevant religious authority, in the case of our community through the Sydney Chevra Kadisha or the Sydney Beth Din, be scheduled in the Act so that for relevant consecrated grounds the relevant authority is identified in the regulation and there is no discretion to contact somebody else. It is a very simple amendment that could be made.

For example, for our friends in the Greek community, you would contact the archdiocese. In the context of the Jewish community, you would contact the Sydney Chevra Kadisha. In the context of the Catholic Church, they will identify for you whom to contact. In the context of the Muslim communities you would have to provide separately for the Shia and Sunni communities, but they can give you the correct address. And you simply put the correct schedule in the back of the regulation. That is not a difficult thing. Just to anticipate the question, "Have you raised this before?" Answer, "Yes." I was a member of the Cemeteries and Crematoria NSW [CCNSW] Consumer Consultative Committee and flagged the issue there. I have to say that committee was not a successful operation and I also share the concerns of Rookwood general about the consultative process that was put in place, in fairness prior to the new chief executive officer of CCNSW being appointed, and she is doing a tremendous job to try to improve things.

Very Reverend Father GRILLIS: Thank you so much for the opportunity on behalf of our archdiocese. Before the burial of our deceased the Orthodox Church has acts of compassion, which are closely related to the spiritual needs of man and reflect a long ecclesiastical tradition. They also indicate the reverence and the honour which is held towards the sacraments of the body, even if it is dead. The entire preparation of the corpse for burial requires that the remains be shown the proper dignity. This dignity extends even when the body is decomposed. Traditionally in Greece we exhume the relics, the remains, of our beloved deceased on the third year anniversary of the burial. We wash the remains with wine, place them in a metal box or in a wooden box something like this—they are sold freely in Greece—and stored in an ossuary, a building almost in the shape of a church, full of shelving, similar to what we have here.

By doing this the cemetery has a financial profit, because you can re-use the grave. We prolong the life of the cemetery, giving the opportunity to re-use the graves to show respect to our traditions and the way we treat the remains of our deceased. In the Orthodox Church we do not allow cremations. The relics are sacred. We ask you kindly to allow us to show the respect attributed to our beloved deceased. In Australia we have freedom of religion. We appreciate this and we respect this hospitable nation, which we also have made our country. Please help legislate in order for us to continue the traditions of our motherland and to show respect and reverence to our beloved deceased.

The Hon. MICK VEITCH: I ask the fathers: You heard the evidence from Mr David Knoll and the recommendation that the Jewish Board of Deputies would like made to the regulation as it currently stands. Do you agree with the proposal that clause 5 should simply require that the necessary inquiries "must" be made?

Very Reverend Father KONIDARIS: Yes, we do. We deem it appropriate that those inquiries are made.

The Hon. MICK VEITCH: Regarding the engagement process and consultation on the regulations, a large number of submissions raise concern about the consultation process that took place on the development and subsequent implementation of the regulation. Do you have comment about the communication process and engagement that took place?

Mr KNOLL: I think the fairest way to address it is to identify that the chair of CCNSW, well-known to everyone here, Stepan Kerkyasharian, was able to source and secure the employment of a new chief executive officer [CEO] some months ago. She 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. It probably is not appropriate to criticise those who came before, when someone in the role at the moment is doing their best to improve things.

Very Reverend Father GRILLIS: The same.

The Hon. MICK VEITCH: The issue of affordability is raised in a number of the submissions. As this regulation is applied there is a concern that there may be a two-tier process or structure for burials. Rookwood Cemetery called it funeral poverty in their submission. What can governments do to in some way alleviate what is a growing concern about the cost of burials in New South Wales, and is the cost getting out of reach for a lot of people?

Mr KNOLL: Yes, and yes.

Very Reverend Father GRILLIS: Yes, of course.

Very Reverend Father KONIDARIS: Yes.

Mr KNOLL: And our colleagues here will no doubt agree, although their processes are different.

Very Reverend Father GRILLIS: And we pay more money.

Mr KNOLL: It is a supply and demand problem. For a very long time, together with the various Christian and Muslim communities, we have agitated for supply to be increased. Under the previous Government there was a proposal to go to Berrima. Minister Kelly did not approve it. Under the present Government there is a proposal to go to Fernhill. The Government determined not to approve that. Thus, only two alternatives are left on the table. They are both under the land management of Catholic Cemeteries and Crematoria. One is at Varroville and one is at Wallacia. If those two are approved, on the discussions we have had with the potential operators, we expect prices to fall at least 20 per cent. The problem with the regulator at the moment is the regulator sees its role as containing price rises. It has taken no action to achieve price reduction.

The reason prices go up is quite simply you have a reducing asset, in terms of available growth space, and the Government has not prioritised—and to be fair, on either side of the political divide—the acquisition and development of cemetery space. Once it is done, you do not have to do it again for another 100 years. Let us assume Varroville and Wallacia are approved. Government policy—this is bipartisan—is that both those cemeteries must be multi-faith. That has been accepted by Catholic Cemeteries and Crematoria. Assume those two finally get through and the millions of dollars they have had to spend on regulatory red tape stops having to be spent and they actually spend it on burial. Prices should fall, the supply problem radically reduces, and the issue of providing prudentially for closed cemeteries—each cemetery has to maintain a fund to provide for when the cemetery becomes closed—becomes much easier. Then you can put in place a structure whereby the pricing of new cemeteries cross-subsidises the closed ones. The reason it has gone up is that we realised when cemeteries were between 60 per cent and 80 per cent full that we needed to provide for maintenance upon closure. If you do it from the day a cemetery opens you do not have difficulty with your pricing. However, we are backfilling and as a result prices have risen considerably.

Victoria, for various reasons, approaches the issue of maintenance of closed cemeteries entirely differently. I do not have time to go through all the detail. The net result is that in the case of a Jewish burial, a full monumental at Springvale costs between 55 per cent and 60 per cent of the price of a full monumental in Sydney. They have different prices for different sections. We have had the example of a family with only a small number of people in attendance flying to Melbourne to do the burial of a relative and it cost them less to do it there than do it in Sydney.

Very Reverend Father GRILLIS: What will happen if in 10 years the section allotted to the Greek Orthodox community fills up? Where do we go from there? We are giving you the opportunity to renew the graves and to re-use them. I started this about 15 or 20 years ago. I came here and saw a member of Parliament, a representative from Kiama. I do not remember his name; he was a chubby gentleman.

The Hon. GREG DONNELLY: There are a few of them around.

Very Reverend Father GRILLIS: I sat down with him and he said to me, "You can do what you like if your people leave my Aborigines alone." That was his answer. I got up and left. The story still goes on. It is 20 years later and we are still fighting the same fight.

The Hon. GREG DONNELLY: Mr Knoll, you made the comment that the process of consultation and discussion has somewhat improved and that it is taking place better than it was in terms of dealing specifically with how we have got to where we are today. As I understand it, the consultation around this regulation was compressed in the period leading up to Christmas last year; it was a relatively tight timeframe. Reverend Fathers, in the second paragraph of your submission you state:

It has been our observation that the Greek community has been excluded from consultation with the CCNSW over important and significant changes within Rookwood Cemetery, which we have not been able to comprehend, especially when a large portion of the burial spaces are occupied by our Greek faithful.

Would you agree with the submission that consultation has improved for yourselves as the Greek community?

Very Reverend Father GRILLIS: After we wrote this letter.

The Hon. GREG DONNELLY: Yes. Would you say—

Very Reverend Father GRILLIS: Prior to that we were not consulted.

The CHAIR: In any way or not in any meaningful way?

Very Reverend Father GRILLIS: From the Government, the Parliament or any other way.

The Hon. SHAYNE MALLARD: This is dated 6 September, so it is not that long ago.

The Hon. GREG DONNELLY: I ask the question because if things are on "all fours" now with respect to the CCNSW, that is a positive development. However, the Committee wants to clarify that there is a consensus emerging that under the new leadership, which has been described as consulting more broadly, it can be confident—

Very Reverend Father GRILLIS: We found out about this at the archdiocese from the internet. No-one rang the archdiocese or me as the priest at Rookwood to say, "This is what we are doing. Can you help us out? What is your opinion?"

The Hon. GREG DONNELLY: That "inadequate"—that is my word—consultation produced this regulation. That begs the question that thorough consultation should take place as it should have been done in the first place to enable the development of a regulation so that all religious faiths and traditions can properly participate if there was exclusion. It is all well and good that you know about this now, but it is after the event.

Very Reverend Father GRILLIS: Do you deem the Greek Orthodox people as one of the major stakeholders in the cemetery?

The Hon. GREG DONNELLY: Yes.

Very Reverend Father GRILLIS: As a major stakeholder, should we not have been consulted prior to the letter we sent?

The Hon. GREG DONNELLY: I do not disagree.

Mr KNOLL: To describe the present system as now on "all fours" is a little more generous than to say it has improved.

The Hon. GREG DONNELLY: Thank you.

Mr KNOLL: I add that because there is a matter that is not relevant to this regulation about the ongoing governance of Rookwood. A detailed report was produced by Elton Consulting a few years ago dealing with some very serious problems. That report has largely been implemented and it led to an administrator being appointed at Rookwood. Commencing with the appointment of that administrator, Rookwood has improved enormously; from being the laggard it is now the gold standard in community engagement. I say that without reservation. On the other hand, the Government has been considering yet another inquiry into the governance of Rookwood. The report was produced under the badge of PricewaterhouseCoopers. We have been very clear about expressing a joint view of the Lebanese Muslim Association and the Jewish community that we are entirely dissatisfied with that report.

The consultation process involved a preliminary meeting with ourselves and the Lebanese Muslim Association and an assertion of a meeting with the Greek Orthodox community. At each of the two meetings—

certainly with us and the Lebanese-Muslims—they said they would come back to talk to us about the substance. That did not happen. However, there were 13 meetings with the CCNSW steering committee. That led to a report that acknowledges the communities want a shared-services model, where we have our religious autonomy back, to which Mr Alhadeff referred. It provides no analysis to assist the Government with what a share-services model might be, except for the brief assertion that no detail was provided. We provided pages of detail. The previous regime of CCNSW would acknowledge what has been putted before it, but it never actually dealt with the communities involved. That is the low base from which we are moving up.

The Hon. GREG DONNELLY: Thank you for that clarification.

The Hon. MARK PEARSON: Thank you very much for coming. Mr Knoll. When you recommend that the schedule in the regulation should have a list of the specific authorities that the manager or director of the cemetery must contact to inquire about a particular lot or whatever, would you be satisfied if that list were included in the schedule? Would that always remain the title of the authority that the manager or director would have to contact, or could the name of the authority change over time?

Mr KNOLL: It could. In my professional capacity I have advised on a few regulations, and they normally contain a sunset provision and a requirement for review. When you get to the review stage, you ensure that your schedule is up to date. It is not difficult to amend a regulation if, for example, it turns out that the name of an entity has changed. That is a simple problem. Where you have lands that are consecrated for a particular religious group—for example, only Jewish people can be buried in the Jewish section, only Muslim people in the Muslim section and so on—it is not appropriate simply to have a general statement that we will consult a relevant religious authority. There is an address. You do not need a regulation; you simply go to the correct address. We are not asking for something very difficult.

The Hon. MARK PEARSON: Are you aware of any history of that being a serious problem?

Mr KNOLL: Not to date, because we have not had a renewable tenure regime to date. That is where the issue first arises. It does not arise with permanent tenure, because the only circumstance in which a grave may need to be addressed in the case of permanent tenure is if there is a requested exhumation. In the case of a requested exhumation if you did not have this regulation the Act would require that the actual exhumation be in accordance with the religious practice of that community. So there is no issue about what must be done. That is a statutory obligation so there is no need for regulation about that.

But in the case of section 46, and the renewable tenure regulation, who are you going to consult? The truth is that the cemetery managers in Sydney all know that Jewish burial is permanent. So as a practical matter is not going to be a significant problem for us. The reason we raised it, as Mr Alhadeff pointed out, is that for some faith communities it is a very serious concern. I would not want someone in a Greek Orthodox section to have their grave addressed in any way, shape or form without required consultation with the archdiocese. I make that point.

The Hon. MARK PEARSON: What occurs in a Jewish cemetery if the cemetery is destroyed, perhaps in war or conflict or whatever? What is the action that is taken then?

Mr KNOLL: I can give a live example. The original Jewish cemetery was where the Redfern railyards now are. The entire cemetery was exhumed. Samson Raphael donated what is called Raphael's Ground, which is within Rookwood. The older section of Rookwood is the reburial of those remains. It was all conducted under the auspices of Jewish religious authorities at that time.

The Hon. MARK PEARSON: Very Reverend Father Grillis and Very Reverend Father Konidaris, how long has it been the practice for bodies or remains to be exhumed and put into this box or container that you describe and then set on shelves or whatever in a sort of shrine?

Very Reverend Father GRILLIS: Ossuary.

The Hon. MARK PEARSON: How long has that been the practice?

Very Reverend Father GRILLIS: Very many years.

The Hon. MARK PEARSON: Could you give me an idea of how many?

Very Reverend Father GRILLIS: In my village there is a cemetery which holds 30 graves. Always there is one vacant for the next one to come in, because the ossuary is there from many years ago.

The Hon. MARK PEARSON: And the Greek community accept that the remains will be removed and put in this casket or container and that they can visit the remains there or the shrine.

Very Reverend Father GRILLIS: Of course.

The Hon. MARK PEARSON: And that has been acceptable in the community without conflict?

Very Reverend Father GRILLIS: Otherwise Greece would be one big cemetery.

The Hon. NATALIE WARD: Thank you for coming along today and providing your submissions beforehand. I appreciate your doing so. We heard from the Very Reverend Fathers about the burial practices. May I ask Mr Knoll and Mr Alhadeff to give the Committee some more information about Jewish burial practices so that we can understand that background.

Mr KNOLL: At its simplest, when a Jewish person passes—I will be extremely brief—the family or their rabbi will contact the Sydney Chevra Kadisha. They will dispatch a volunteer who is known as a watcher. I am translating all the Hebrew terms as I go.

The Hon. NATALIE WARD: Thank you.

Mr KNOLL: The watcher attends to the body, which is immediately taken to the Sydney Chevra Kadisha building, as quickly as possible. In rural New South Wales there are arrangements with trained people at commercial providers. There is a ritual washing process. Everyone is buried the same, whether you are the richest person or the poorest person, in a simple white shroud. In Australia—not so in other countries—we are required to use a coffin, but it is the simplest coffin. Nobody can buy a more expensive or less expensive coffin. We seek to bury within 24 hours. All the cemetery managers know that and work very well to accommodate that.

Sometimes, where there are suspicious circumstances, the Coroner's Office needs to be involved. Many years ago we negotiated with the Coroner's Office non-invasive autopsy using CT scanners, so that the Jewish requirement that the body not be interfered with can be respected. The coroners are very good about that. The advertising of the passing is very quick. I can tell you that the word-of-mouth system often defeats the internet. Through the community, the rabbis and the Chevra, the information gets out very quickly. The funeral service is usually held within 24 hours. It is longer if it is on a late Friday afternoon; it would be on the Sunday. We do not bury on a Saturday.

The cemetery manager is advised by the Chevra Kadisha that there is a burial coming. All three cemetery managers in Sydney are responsive. They identify the correct grave. If it has been prepaid there is a number to it. If it is not prepaid it is the next available. The burial then proceeds in cooperation with the cemetery manager. We also have arrangements in place for people who cannot afford. They are buried exactly the same, and those arrangements are put in place to cover the difference. Rookwood has a protocol in place to not charge in those circumstances when the Sydney Chevra Kadisha gives them a certificate as to that aspect. It is very cooperative. Once the burial occurs, generally approximately one year later there is a separate service in relation to the installing of a headstone. I hope that that is a sufficient summary.

The Hon. NATALIE WARD: Thank you, that is very helpful.

Mr KNOLL: All Jewish burials, without exception, are conducted by the Chevra Kadisha, which is a non-profit organisation with a few staff and many volunteers. We do not have the problem of competing and commercialisation of funeral services.

The Hon. NATALIE WARD: I appreciate that you have made it clear in your submission that—I will paraphrase—the most important issue is the permanency. Would that be an accurate read of your prioritisation?

Mr KNOLL: Yes.

The Hon. NATALIE WARD: Did you make a submission on the regulation during the consultation process?

Mr KNOLL: I was at the consumer consultation committee of CCNSW, as was Mr Ahmad Kamaledine of the Lebanese Muslim Association. We both pointed out the specific requirements. It was Ahmad—not me—who suggested, "Why don't you just list the relevant organisations?" Obviously that was considered but not agreed to.

The Hon. NATALIE WARD: Could you briefly outline a comparison with other States and your experience with those. Is it similar?

Mr KNOLL: The Jewish practice is uniform. The one benefit we have that keeps our community's costs down in New South Wales, in terms of the funeral part, is that the Sydney Chevra Kadisha buries Jews regardless of which part of the Jewish faith they come from. For example, if the Rabbi at Emanuel Synagogue or North Shore Temple Emanuel rings up the Chevra Kadisha buries them. In Melbourne there are three different Chevra Kadishas depending on who your rabbi is, but the actual process is, ironically, identical. There are marginal differences, at

most. In other States—with the exception of Tasmania, where there is no rabbi and someone has to fly down from Melbourne to conduct the funeral—the process is, essentially, very similar.

The Hon. NATALIE WARD: There is no rabbi in Tasmania?

Mr KNOLL: There is no rabbi at Hobart Hebrew congregation at present. It has not proven to be a problem. It is a very small community, and if they have an immediate need someone immediately flies down from Melbourne.

The Hon. NATALIE WARD: Referring to the challenges with space, is that the same?

Mr KNOLL: No.

The Hon. NATALIE WARD: What is your experience with the other States?

Mr KNOLL: It is really bad in New South Wales because nobody within the Government has identified the issue as a priority. I will give you the history. We had a State plan in 2000, when I first agitated this issue. In response to the proposition that you could identify a cemetery as critical infrastructure for a 20-year plan I received looks that were similar to the ones that Father identified when he went to visit the member for Kiama. We have been trying to identify this as critical State infrastructure, because a cemetery is a public good. It is not something to be treated as a commercial product.

As Mr Alhadeff has identified, we were very pleased that in June this year, Macarthur Memorial Park and Wallacia were referred to a joint planning panel. We are hoping that that clears all hurdles by the end of this year. The reality is that if it does not clear all hurdles by the end of this year—Macarthur has been moving forward now for a decade and just not getting to the finish line—then we will not make it in time for the Greek and Muslim communities. For the Jewish community, we could hold out for another two years but we are not talking about a lot of time, here.

The Hon. NATALIE WARD: Yes. I think you made that point in your submission.

The Hon. SHAYNE MALLARD: Just to finish off on the nature of the burial service for the Jewish community, I take it that it is a not-for-profit process at the end of life?

Mr KNOLL: Strictly.

The Hon. SHAYNE MALLARD: That is interesting. I did not know that. To our friends in the Greek Orthodox Church, I am interested in the process that you outlined in your letter concerning exhumation after three years and the loving way that is done and the ossuary boxes. That process is not unique to the Greek Orthodox Church, is it?

Very Reverend Father GRILLIS: Other orthodoxies do it usually—of course.

The Hon. SHAYNE MALLARD: Other cultures do that. I think the Chinese community does that and other cultures do that. This regulation allows for 25 years. From what I understand, the expectation is that remains are fully decomposed within 25 years. Does that appeal to your community at all with regard to the re-use of a grave? The principle is similar.

Very Reverend Father GRILLIS: It appeals more than forcing the family to re-buy the grave for another 25 years.

The Hon. SHAYNE MALLARD: That is the case in Greece?

Very Reverend Father GRILLIS: You do not buy the graves in Greece; the councils provide them free of charge.

The Hon. SHAYNE MALLARD: Okay, but if we set that aside, the notion that you could re-use a grave after 25 years—

Very Reverend Father GRILLIS: Of course, as long as the body has been decomposed. At Rookwood we have a problem because it is clay and there is moisture. You want a layer for the body to decompose in within 25 years.

The Hon. SHAYNE MALLARD: We have received submissions about that. I have been involved in family exhumations when 60 to 70 years later there are still remains there. I am not quite sure how that is addressed. But the principle is very different to the Jewish community, which wants perpetual graves? I want to make sure that does not get misunderstood.

Very Reverend Father GRILLIS: Of course, because the Hebrew people do not exhume; we exhume.

The Hon. SHAYNE MALLARD: The three-year period is quite confronting for me, but that would be accepted in the Greek community in Australia?

Very Reverend Father GRILLIS: In Greece, the body has decomposed in three years. There is a trick to it.

The Hon. SHAYNE MALLARD: I bet there is.

Very Reverend Father GRILLIS: All the cemeteries in Greece have all around them cypress pines. The roots of the cypress pines go down into the ground in such a way and they absorb all the body fats—that is why they shoot up. We have planted cypress pines all around Rookwood.

The Hon. MARK PEARSON: Do they deal with the moisture problem at Rookwood?

Very Reverend Father GRILLIS: Of course. They absorb the fats given out by the body and the moisture.

The Hon. MARK PEARSON: Are the practices the same on land that is owned by the Orthodox Church?

Very Reverend Father KONIDARIS: We do not own our own cemeteries.

The Hon. SHAYNE MALLARD: Mr Alhadeff, in your presentation you—and Mr Knoll spoke about this—referred to the desire to gain autonomy over Jewish burial ground. Will you expand upon what you mean by that to us?

Mr ALHADEFF: It is the issue that Mr Knoll talked about. There are specific and particular requirements that pertain to Jewish burial practices and rites and in the past autonomy has been given to the particular faiths. Our concern is that—as Mr Knoll articulated earlier—what is currently written leaves that requirement unspecified. In other words, a religious authority gets appointed. There is a risk that somebody who is not qualified or skilled in the requirements of the Jewish faith could be appointed to that particular case, which becomes, obviously, a pretty traumatic situation for the family concerned. It is basically a question of understanding, acknowledging and respecting the rights of a qualified person to be administering and making sure that the Jewish rites and rituals are respected for any given—

The Hon. SHAYNE MALLARD: Is that not already the case with the cemetery allocated for the Jewish community at Rookwood?

Mr KNOLL: It is because we keep a watchful eye on it. Prior to 2012 at Rookwood, which was at that point burying roughly 80 per cent of Jewish burials, there was the Jewish Cemetery Trust. It was a Crown Lands sub-trust with autonomy over the Jewish area, so we did not have a concern over things being done correctly. When the amalgamation occurred one of the things we were not successful in achieving was having within the amalgamated model some protections, which were at least achieved by the Jewish Cemetery Trust. There has been a willingness under the present administration at Rookwood to find a way to achieve that. But it is not just burial practices. For example, there are significant Jewish sections that are very badly dilapidated. This year, we have begun a process of identifying them and have begun a stream of cooperation so the community at Rookwood can work towards making sure there is enough money to bring them back up to scratch. Why? Because the Jewish community is obliged by our religious laws to care for every single grave in perpetuity. If we can care for it we must care for it. If we cannot—there is a war on—we cannot do it.

Because the oldest Jewish burials are at Rookwood we want to make sure that those old graves are cared for, the monuments are cleaned up, there is a name on every grave that can be read and so on. When the Jewish Cemetery Trust was abolished the process it had in place for doing that stopped. The previous administration at Rookwood simply would not attend to it. They went as a result of the Elton Consulting report. The current leadership at Rookwood had a lot to fix but they put that on their agenda and we finally made a start on it. But there is no Jewish champion to make sure that it gets the resources it needs and is prioritised. It is just part of the general management. If there was a champion who was making sure that the Jewish community's obligation to care for all its graves was within the Rookwood structure, along with one for the orthodox churches and so on, then you would expect that there would be, in a shared services model, allocation of sufficient resources and the process would move at a good pace. It is not just burial practices.

The Hon. SHAYNE MALLARD: That is probably a bit outside of the scope of the regulation we are reviewing—I cannot see a way of answering that in the regulation.

Mr KNOLL: It cannot be dealt with in the regulation.

The Hon. SHAYNE MALLARD: Thank you for your answers and your submissions.

The CHAIR: Unfortunately, we have expired our time. Thank you very much for everything you have outlined to the Committee today and for your submissions. They are greatly appreciated. Hopefully we will see more feedback provided to the Government on the regulation.

Very Reverend Father GRILLIS: If you need anything from us feel free to ask. We are here to help.

(The witnesses withdrew)

JAMES CHRISTIAN, Chief Executive Officer, NSW Aboriginal Land Council, sworn and examined

STEPHEN HYND, Executive Director, Business Improvement, NSW Aboriginal Land Council, affirmed and examined

The CHAIR: Welcome and thank you. Would either of you like to make a short opening statement?

Mr CHRISTIAN: I would. I thank the Committee for hearing our evidence this afternoon. I want to start by acknowledging that we gather on the land of the Gadigal people of the Eora Nation and pay my respects to elders past and presents and extend that respect to all of you. I am a proud Aboriginal man of the Wiradjuri nation and I am here on behalf of the NSW Aboriginal Land Council, the largest Aboriginal member-based organisation in the country. Our people have been practising our culture and interring our loved ones in this land for millennia, indeed, from the very beginning of time itself. Our cultural is a living culture and is the oldest living culture on this planet. Our cultural practices and beliefs must be respected and provided for in accordance with articles 11 and 12 of the United Nations Declaration on the Rights of Indigenous Peoples. These articles enshrine our rights to maintain our culture and spiritual practices and beliefs. We are a culture that needs to see our people returned to country. Cemeteries and burial practices are of high significance to Aboriginal people and culture, strengthening our connections to country, ancestors, cultural practices, and our history. Our comments this afternoon are both on the amending regulations and on the broader reforms of part 4, Interment rights, of the Cemeteries and Crematoria Act 2013.

Committee, we are concerned that the new renewable interment system is inequitable and will create a two-tier system for interments: in-perpetuity arrangements for those who can afford it, and temporary for those who cannot. Many of our people struggle with the already expensive cemetery and funeral costs. We must ensure that affordable and dignified burials are available to all people, including Aboriginal people. We are seeking reforms to ensure that all Aboriginal people are buried in line with cultural practices and beliefs, including an exemption from the provisions that allow for renewable interments. They are my opening remarks. We have specific comments, but I will stop there for questions. We have specific comments on relevant parts of the Act.

The Hon. SHAYNE MALLARD: Thank you for your submission and for coming in today. The Aboriginal communities of Australia are diverse and their clans are very different and have different groups. Can you take us through the burial practices for Aboriginal people? Are they uniform, or are they different across the State? I acknowledge also, of course, that there are multiple religions within the community as well, I imagine, as well as the traditional approach. Please inform the Committee on those issues.

Mr CHRISTIAN: Yes. If we were to focus only on the past 235 years, you are correct: We do have very diverse cultural and religious beliefs. If we look beyond that to the 65,000-plus years, one thing is held very consistently and that is our connection to country and its meaning to who we are, both in the living form but also when we pass. Returning to country and that connection is absolutely a strong theme that has been held and continues to be held across our communities. As an organisation we already have had concerns raised with us where we have had in one case a child that was buried in a charitable lot, and the interment option by that particular charitable organisation was not taken up. The family expressed their grief to our organisation over what comes next for them and not being able to maintain that connection and respect for the indefinite burial of their loved one in that land, if that makes sense.

The Hon. SHAYNE MALLARD: Yes, indeed. Would you feel that the exemption in the regulation would apply to Aboriginal people who would have a spiritual connection to the land and a requirement to be returned to the land?

Mr CHRISTIAN: I will ask my colleague to talk to the exemption provision first.

Mr HYND: The specific exemptions, as we understand it, relate to land consecrated for a particular community group. We appreciate that that has a broader definition than one might first observe in relation to some sort of particular religious practice to consecrate the land. The concerns we have are that lands set aside within cemeteries for Aboriginal people may not be as widely available across the State as one would hope. The history of Aboriginal cemeteries since occupation—I am sorry, invasion—is a bit distressing. For example, in quite a few cemeteries Aboriginal people were put on the outer, if I can put it that way—living on the fringes, and then buried on the fringes.

As a result, we do not think that the consecrated ground exemption is perhaps as widely available. Having said that, there are many examples of Aboriginal cemeteries across the State—most notably Collarenebri, which is quite a notable cemetery. Going to your interest in particular practices, Collarenebri is a very good example of a community-maintained cemetery that is very steeped in the cultural traditions of the people in that area.

Regarding those examples, certainly the exemption would stand—very clearly, obviously. But particularly in metropolitan areas within Sydney itself—which is, as I understand it, the large driver for these reforms in terms of available space—we are not particularly aware of any consecrated ground within the existing cemeteries.

We are aware that out at La Perouse the La Perouse Local Aboriginal Land Council has entered into an agreement—I cannot call to mind the cemetery trust operator, I apologise—to make Crown land under claim available to expand that cemetery. As a result, there is a win for the broader community in terms of more plots available, but there has also been an opportunity to create an Aboriginal-specific area within that cemetery, which again I would strongly assume would meet the consecrated ground exemption.

Mr CHRISTIAN: That is an exception.

Mr HYND: Exactly. That is the exception rather than the norm. The article's headline in March 2017 is, "Sydney's first dedicated Aboriginal cemetery 'on country' created at La Perouse". That suggests that there are perhaps not as many consecrated areas of cemeteries within Sydney as we would like to see.

The Hon. SHAYNE MALLARD: Individual Aboriginal people, who may be Christian or whatever, still would feel an affinity to the land, but might not be buried in an identified Aboriginal burial ground because they have been buried in the general cemetery. They would have an issue with this process and not being able to be identified.

Mr HYND: Yes. Let me be very clear. I am a non-Aboriginal person so it is potentially little bit awkward talking about Aboriginal cultural practices. But my experience at the Aboriginal Land Council is that we do operate a funeral fund and have been active in this area. I would suggest that there are an awful lot of Aboriginal people who may be Christian or may be of the Islamic faith, but maintain some fundamental cultural beliefs that would see them want to be interred. As I said, we have been operating a funeral fund for many years. I have been at the Aboriginal Land Council for 10 years and during that time, sadly, we have funded way too many burials, I can assure you of that. But they are all burials. I have never encountered a cremation. Again, whatever people's own beliefs are—religious or cultural—there is still that fundamental drive for the Aboriginal community to want to see people returned to country and to the land in perpetuity.

The Hon. MICK VEITCH: I want to follow on from questions asked by Mr Mallard. In your opening address you spoke about the potential for a two-tier process for burials: Those who can afford to pay for the longer tenure and those who take the 25 year option. Mr Hynd, you referred to the funeral fund to assist. There is an issue, which is raised in some submissions, around the concept of funeral poverty. What do you think the regulations' impact will be on the Aboriginal people across the State and their capacity to pay into the future?

Mr CHRISTIAN: By the time there is a death in most Aboriginal households there has been quite an extent of poverty and deprivation. What people want to do is to be able to respect the one who has passed. Having a burial or a ceremony and burial which again often comes on the back of other financial burdens means that our organisation, while we provide some assistance, it is a time when individuals trying to manage an existing household that is in poverty have a significant cost that they are looking at and are having to make decisions around things like perpetual or renewable interment. What we suspect will happen is that they will go for the cheaper option.

The Hon. MICK VEITCH: Twenty-five years?

Mr CHRISTIAN: Twenty-five years, correct. That is also not to say that we will not have families who seek the assistance of charitable organisations who may have lots. We are concerned that there will be that two-tiered system again between those who can afford to pay and those who cannot afford to pay. While people say it is a choice, unfortunately for many of our people it is not much of a choice at all.

The Hon. MICK VEITCH: The Jewish Board of Deputies has made what I believe is a strong recommendation around strengthening the regulation so that in 25 years time, for instance, the cemetery operator must have a list of who you would go to with regard to the religious faiths if you cannot find a family member. As a last resort you would then go to the religious faith body. With regard to Indigenous Australians, what would happen if the cemetery operator was unable to find someone in 25 years time? Is there a body or an accepted process or practice that could follow?

Mr CHRISTIAN: Without knowing the detail of the recommendation, and from what you have said, I would firstly say that I think that has merit. As a statewide body who has operated a funeral fund for many years, the NSW Aboriginal Land Council could probably play a similar role. But I guess the question for us will always be: Why does this have to be a choice that Aboriginal people who have continued to fight for land rights and, at the very time when we are paying them a respectful departure, be then faced with again the option of a cheaper renewable option? We just really do not think that the concept of choice—if that is what this is also premised on,

that people have a choice—and we need to create more choices, that that argument can be certainly sustained in terms of Aboriginal burials.

The Hon. MICK VEITCH: Legal practitioners have spoken to me about this regulation with regard to what may well happen in, say, 25 years time and the potential for a legal case if a cemetery operator gets this wrong. I am not a lawyer so I have no idea. They say that potentially if people do not leave a clear statement of intent there may well be a problem in 25 years time. How many Indigenous Australians have wills? Do you know?

Mr CHRISTIAN: I would be generalising, but I would be happy to make a generalised comment on that and say that we still have a lot of people who do not prepare for death. It is not in many of our communities stuff that we like to talk about even in preparation. Certainly the preparation of a will is not common. Let me say that it is not common that an Aboriginal person would die with a will in place.

The Hon. GREG DONNELLY: Thank you, gentlemen, for both coming to provide us with the opportunity to ask you some questions in addition to your very useful submission. If an Aboriginal person died geographically off-country—a term that is used these days which I presume has a particular meaning—is it custom, practice and tradition that that Aboriginal person be returned to their birthplace or close thereto to be buried? Is that the traditional practice? I apologise for being awkward about it, but in lay terms is that a reasonable explanation of what is the understood tradition?

Mr CHRISTIAN: It is certainly preference. I also emphasise the cost of returning one to country for a burial, and then to have this other factor laid over the top is an added burden that many Aboriginal people will face.

The Hon. GREG DONNELLY: That is what I am probing about. We know, for example, that a lot of Aboriginals come through Sydney and perhaps live in Sydney for a time and then go back to other parts of New South Wales for a time and move around. I wonder whether it is generally accepted in 2018 that there is still, from a cultural point of view, a manifest ideal of, wherever they do die, going back to or being transported back to where they came from, so to speak, to be interred there.

Mr CHRISTIAN: I reiterate that for many people that is the very strong preference: to be returned to country. But we have to also acknowledge that through no choice of Aboriginal people—through the colonisation process—they have been resettled into areas and have created a connection to that country. While they may not be able to speak for country, they certainly speak about country and very fondly about that country. There will be occasions where they have got several generations who have lived off country but still have a very strong connection to that country which they have been relocated in many cases through, again, no choice of their own. Their connection to their traditional country may have been severed. They may not have family living on country anymore. I do not think we should at all accept that they have any less enduring connection to the area that they have come to call home. Once someone is interred in country and land, the idea that that is not enduring and that it may be taken away—even if there is a perceived choice—is one that we are very distressed about that there is a real risk of that.

The Hon. GREG DONNELLY: Irrespective of whether it was originally land that they came from or whether it was where they lived in the later part of their life.

Mr CHRISTIAN: Correct.

The Hon. GREG DONNELLY: I refer to points 2, 3 and 4 on page two of your submission, which deal with the issue of contact, relationship, association or knowledge of the activities of cemetery operators. The Cemeteries and Crematoria Association NSW is the peak body representing Cemeteries and Crematoria NSW and the ACT. As an organisation, does either the land council or any other body within the Indigenous community or communities across the State have any connection formally with what is in effect the peak body for crematoria and cemeteries in New South Wales?

Mr HYND: In short, we have more recently engaged with them from the State land council perspective in relation to these reforms. But, as I indicated previously, there are quite a few Aboriginal cemeteries operating across the State. I would have to presume that those cemetery operators have the same sort of engagement with that body that every other cemetery operator does. From the State land council perspective it is really in relation to these reforms that we have had reason to engage with that body.

The Hon. GREG DONNELLY: I make the point, I am not sure whether you were here earlier to hear the previous witnesses but there was and is concern about the way in which the consultation took place with respect to the preparation and ultimately settlement of the regulation which is the one that we are considering here at this hearing. The submission was put by one of the earlier witnesses that—and these are my words, not his—

the internal consultation and workings of this organisation seem to have improved and got better in more recent times.

I wonder whether over time, particularly so there can be some cognisance of ensuring that matters to do with the burial of Aboriginals is on an ongoing basis being given an opportunity to be considered in formal discussions with a peak body like this and in a sense making sure this peak body understands the particular interests, needs, requirements, customs and traditions of the Aboriginal community, that that formal engagement with this body over time might be a useful thing to help inform the non-Indigenous community and communities across New South Wales about the particular needs of Aboriginals when it comes to their interment.

Mr HYND: There had been some quite positive engagement in relation to the regulations themselves. There have been some improvements that we saw—for example, in relation to notifications. Now there is a specific requirement for notification to be in Aboriginal media—for example, the *Koori Mail*, a widely read newspaper within Aboriginal communities right across the State. So there has been an improved level of engagement. As a general statement I would say that given the significance of these reforms to a lot of people engagement could probably have been a bit better more broadly.

The Hon. GREG DONNELLY: Can I interrupt? Respectfully, were you or a nominated person from the land council involved in this consultation that took place in what was, in effect, the very back end of last year?

Mr HYND: I would have to take specifically that on notice.

The Hon. GREG DONNELLY: Okay. Take that on notice. That is fine.

Mr CHRISTIAN: As the chief executive I am not aware that we were specifically engaged. As the chief executive officer it is something I would take to our elected Aboriginal council and sought their advice. It is not something specifically that—

The Hon. GREG DONNELLY: This will be my final question—perhaps take it on notice. Through the land council as described in the answer to your earlier question, would we be able to find out whether any of the other effectively Aboriginal cemeteries in New South Wales were consulted? I do not know their location or those responsible for running those cemeteries. If on notice we can provide a question to you, you might be able to put us in contact with those respective operators of those cemeteries, because I think we would like to be informed about whether they were consulted in this process as well. Thank you.

The Hon. MARK PEARSON: Thanks very much for coming. What is the process of a consecration of land for Indigenous burial? What actually happens to declare that this area of land is suitable for the burial of Indigenous people?

Mr HYND: I cannot comment on the cultural practices but as I am led to believe in terms of a particular term within the legislation it means land set aside for a particular community within a cemetery's boundaries.

The Hon. MARK PEARSON: Set aside by whom or what?

Mr HYND: That is a very good question—I believe it is the cemetery operator but I you would have to ask the peak body, presumably, or someone else to explain it a bit more, because I did not draft it.

The Hon. MARK PEARSON: Are you aware of land that has been chosen by Indigenous people for the burial of Indigenous people?

Mr HYND: As I said previously, there are specific community cemeteries around the State. I am personally not aware of any current land within a broader community cemetery that is set aside and consecrated for the Aboriginal community. I would like to assume that there are. The example I gave previously—

The Hon. MARK PEARSON: I suppose what I am grappling with is that my understanding at the moment is that the regulation would cover that and say that the body would remain in perpetuity in that space—

Mr HYND: If it is consecrated.

The Hon. MARK PEARSON: —if it was a particular area that was designated by Indigenous people or an authority for the burial of Indigenous people.

Mr HYND: That is my understanding of the exemption in the legislation.

Mr CHRISTIAN: Our concern about the exemption under section 54 (2), I think it is, of the Act is that there are not very many occasions where that will actually apply in real terms to Aboriginal burials.

The Hon. MARK PEARSON: If it is discovered or if it is the case that an Indigenous person is buried in a usual cemetery, is it possible to have a ceremony at that individual burial site to then proclaim it to be an Indigenous burial site, even if it is just one grave?

Mr CHRISTIAN: Again I think it is probably—

The CHAIR: Would you like to take it on notice?

The Hon. MARK PEARSON: I am just looking at protective mechanisms.

Mr CHRISTIAN: In practical terms I would hope so but the reality is this is already a very complex system to navigate. Even cemetery and crematoria operators find it complex as well.

The Hon. MARK PEARSON: As you can see, I am moving towards a way of shielding that grave from being dug up after 25 years if the family cannot afford to keep it in perpetuity.

Mr CHRISTIAN: I understand.

Mr HYND: We would like to suggest that if an Aboriginal person is interred, by virtue of that fact alone that would consecrate that ground for the Aboriginal community. That is in effect what we are seeking. Whether that can be a lawfully sound argument at this juncture is a bit in doubt and that is why we are here.

The CHAIR: Unfortunately we are going to have to end it there in terms of the time. Thank you very much. You did take some questions on notice. The Committee has resolved that answers to questions taken on notice be returned within 14 days. The secretariat will contact you in relation to the questions you have taken on notice. Thank you again for your evidence today. It is much appreciated.

Mr HYND: Thank you very much.

Mr CHRISTIAN: Thank you, Chairman.

(The witnesses withdrew)

BOYD DENT, Managing Principal, Red Earth Geosciences, sworn and examined

The CHAIR: I welcome our next witness. Dr Dent, would you like to make a short opening statement?

Dr DENT: Yes. Good afternoon and thank you very much, everybody, for having me along to help you with these deliberations. My presentation might be a little bit different to the style that you are used to. I beg your indulgence in this in advance, if you would not mind. You will be aware that I did not present a written submission to the Committee. That has a number of deliberate reasons behind it. But there are three or four main things that I would like to say and it will take a bit longer than your usual two to three minutes introduction to say those, if that is okay.

The CHAIR: Sure.

Dr DENT: My experience, briefly to give you some background about me before we start: professionally I am a hydrogeologist and much of my work tends to focus on environmental aspects. Since 1994 I have been researching and consulting to the cemeteries and crematoria industry in relation to the geoscience of cemeteries, their location, planning matters and some operational aspects. Much of this time was as an academic at the University of Technology Sydney. There I also became closely involved with forensic science activities. I consult to government, developers and others and am responsible at the present time for the design and conduct of some high-level research activities in Rookwood Cemetery.

I support the concepts of renewable tenure, grave re-use and wholesale cemetery renewal schemes. I consider that these are all environmentally sustainable activities if done in the correct way and in the correct geoscientific settings. The three systems offer opportunities to gain extra time use of already dedicated cemetery space. But, on the other hand, I see that there are some considerable difficulties in implementing any of these management approaches—which you have been hearing about today, and I have read the submissions that you have been wrestling with as well. In the case of the renewable tenure, as in the Act before us, it really offers very limited real benefit to creating extra in-cemetery space.

With regard to the particular regulations that you are considering, and thus the relevant sections of the Act, I see three difficulties which I would like to comment on. First, the relevant legislation in these matters seems to be predicated on the concept that upon exercise of the renewable tenure option, the cemetery operator will come along to a nicely presented plot and retrieve a nice bunch of decomposing bones that will then be gathered up into a little box and somehow dealt with. Nothing could be further from the truth. I would like to table some images to support the rest of my discussion, and I believe these have been given to the secretariat.

Photographs tabled.

The images are not designed to shock you but they are designed to illustrate the point. Some of them are a little confronting. If you would turn to plate No. 1. This is perhaps the ideal picture that the Act is predicated upon and the sort of thing that you are going to achieve. Some decomposed bones gathered up, put in a nice little ossuary box, and it will somehow be dealt with. But the cemetery operator is also likely to be confronted with the remains of the coffin. Typically, the coffin base is glued to the base of the grave, there is attraction between the soil particles and the wood. And there are other funereal artefacts that go into the grave, there are personal effects, the deceased is typically dressed or wrapped in some sort of material, there could be bits of clothing left behind and jewellery, and other matters with the deceased. The Act does not provide for this. What is going to happen to these objects? What is going to happen to the remains that are not bone, not bodily parts?

I recently attended the exhumation of a person who had been buried in a coffin in a clay environment for about 56 years. The base and the sides of the coffin were substantially present, but so was the person's brain. The brain tissue was there still. If you look at plate No. 2. Plate No. 2 shows a coffin in the grave. It has been opened before the remains have been removed. However, the coffin is intact. It retains the bodily decomposition products and some groundwater seepage. This is not my photo but I have seen the same thing in Carr Villa Cemetery in Launceston. It is quite a common experience, particularly in those cemetery settings where drainage is not particularly good.

In plate No. 3 I show you a relatively recent exhumation. It is longer than 25 years after burial—25 being the key number in this legislation that you are wrestling with. The scene for the operator is pretty obvious. The situation is not as good as it could be because of the contribution that the plastic coffin liner has had on creating an unfavourable environment for decomposition. Plate No. 4 shows the results of an exhumation that I was privileged to attend in Germany. Here a World War I soldier, buried for at least 85 years, was uncovered with part of his boots. I wonder what is to be done about that legislatively? It is not covered in your Act. In plate No. 5 we

see Ned Kelly's remains, removed after he had been re-buried and eventually properly identified. There is actually quite a lot left after 130 years, I think you would agree.

The Hon. MARK PEARSON: When you say there is "quite a lot left", that is all skeletal though, correct?

Dr DENT: Correct, in this case. Although I have not read the report that went with that, but yes, I would interpret that as just skeleton. The second point is that, in my view the Act should ideally mandate that the lift-and-deepen process be used to at least handle the bodily remains. At the moment it loosely allows for the bodily parts only to be removed from the burial space and put into a charnel house or an ossuary house or bone depository of some description, or otherwise dealt with. The family could walk away with them, or they could go to a cremator or something else might happen. The concept of burial forever in the ground is lost with this methodology, and for some people, as you have been hearing, obviously this is an important concept to them.

In plate No. 6 I illustrate a case of neglect in the after care of bones that had been gathered or in the burial process. Unfortunately, this could arise. I have been around a lot of cemeteries in New South Wales, Australia and around the world, and neglect of cemetery spaces is unfortunately very common. The third point, which is the major point that I really want to address after building up that background for you, is the minimal term of renewal is too brief at 25 years. While this might be satisfactory in a few cemetery environments, for example, in a well-drained, acid, sandy soil, it mostly is not sufficient. I have shown you a few simple examples, without trying to make too big a fuss about it.

I suggest that a term of about 50 years is better and allows for decomposition in a more generalised sense, but clearly does not handle all situations that we have to wrestle with. At about 50 years we would also more likely, as far as we know, provide for the extinction of many viruses and bacteria in the remains and which could be of concern if the environment is freed up at an earlier date. I have concluded that the relevant parts of the Act need to be re-thought. Large-scale redevelopment of old cemeteries and parts of cemeteries where visitation is low would be a much better way of generating reusable space in land that has already been purposed and dedicated for burial. It would be a much better solution to solving the crisis that we are facing in the larger metropolitan areas of Australia. I do have another final comment but this would be a convenient time to pause, Mr Chairman.

The Hon. MICK VEITCH: Thank you for your testimony, it is quite compelling. Your suggestion is that the 25 years is inadequate and as a minimum we should be looking at 50 years?

Dr DENT: Yes.

The Hon. MICK VEITCH: But that would without doubt be dependant upon the soil type?

Dr DENT: The problem you face is that you have to make a generalised law. I believe that 25 years is too brief for a generalised law. In certain circumstances it would be fine and in other circumstances, as I have demonstrated, it is completely unsatisfactory. Fifty years has some other benefits in that the more time you allow the more decomposition will take place.

The Hon. MICK VEITCH: You have obviously had a chance to read the regulation as it stands. What is your view of the regulation as it stands and with your wealth of knowledge ?

Dr DENT: It is tied to that 25-year to 99-year period. I am comfortable with 99 years or more than 50 years. As I said, I believe in the process; I have no problem with what you are debating at all. It is a major concern to me, and has been for a long time. I made a representation to the original s committee when the 2013 Act was being considered. I was not called as a witness, but my letter of representation should be somewhere in the *Hansard* record. It is a position I have held for many years and I have not stepped away from it. What I see only reinforces it.

The Hon. MICK VEITCH: What is your involvement at the Rookwood Cemetery? You have the research project.

Dr DENT: The Rookwood Cemetery is carrying out some high-level research related to decomposition aspects and soil management aspects. In my opinion, they are to be commended for the foresight they have shown in taking this lead and working on this of their own volition. They engaged me to design and to conduct the experiments. I had them scientifically verified by colleagues before we commenced. The studies go for about another 4.5 years.

The Hon. GREG DONNELLY: I have listened carefully. When you completed your third point, you went on to say how you thought some of the issues could be addressed. I did not understand what you were saying in that regard. Can you go over that?

Dr DENT: Certainly. You will have to forgive my ignorance of the legislative material behind these ideas. I am not up to speed on all of that. I believe that the large-scale renewal of older areas of cemeteries was done under the Crown Lands Act, but that has now been absorbed and something else has happened. You take large parts of cemeteries, for instance, a large part of the original land grant at Rookwood that no-one has visited for 50 or 80 years. The people are not forgotten, but they are certainly dead and no-one visits them. That land could be re-purposed. The land is already dedicated. We do not have to find the land; we have it. We just have to make it accessible.

I understand there are enormous heritage issues that complicate the situation. I think they need to be swept aside to make the situation more sensible. That should not stand in the way of reusing land that is scarce. Almost every community I hear presenting on this matter says that it needs more land. We have to find more space for our community or our faithful. We have some, it is just a matter of reusing it more sensibly.

The Hon. GREG DONNELLY: That is now clear. You had a final point to make. Can you revisit that?

Dr DENT: Yes, I would like to make a final point. Before the Committee makes a decision on this matter, I suggest that part of the data puzzle is missing. If we look at that data it might help to inform the debate and it might provide more evidence for the 50-year concept, for example. I am talking about a comprehensive analysis of the State exhumation data. When bodies are exhumed, fairly comprehensive records are kept. They are more comprehensive today than they were in the past. They are held by your NSW Health, the Department of Planning and Environment, the large cemeteries and a few other entities. If it were, for instance, in the power of this Committee or some other organisation to compel those records to be brought forth in their totality, they could be examined for indications of the geoscience of their setting, what was found, the amount of decomposition and so on. I believe that analysis would be of benefit to the Committee's deliberations.

The Hon. MICK VEITCH: To better inform the regulation?

Dr DENT: Yes, but it would take six months to 12 months.

The Hon. SHAYNE MALLARD: I did not look at your tabled images, but I have just had some relatives exhumed at Badgerys Creek for the construction of the airport. There are remains there from 1930s, when my grandparents were buried. I recall that it is not uncommon to relocate cemeteries or to re-purpose cemetery land. I think Mudgee has a park that was a cemetery and headstones have been placed along one side.

The Hon. TREVOR KHAN: It has been done at Wollongong.

The Hon. SHAYNE MALLARD: Sydney Town Hall was a cemetery. It was moved to Central and then it was relocated to Rookwood.

Dr DENT: Yes, it has been done.

The Hon. SHAYNE MALLARD: It has been done a lot.

Dr DENT: There are plenty of precedents.

The Hon. SHAYNE MALLARD: People do not realise that. Do you have some experience of re-purposing elsewhere?

Dr DENT: No, I have not been called in for direct experience of one that has happened. However, I have been called in to comment and to analyse what will happen should one be moved. That involved the Tillegra Dam, which was going to be built by Hunter Water Corporation, but it subsequently did not proceed. With regard to your comment about Badgerys Creek, I have been trying to get hold of that information. I know it is available, but the Department of Planning and Environment seems to want to sit on it.

The Hon. SHAYNE MALLARD: That was done federally and I gave a speech about it in an adjournment debate. It was done very sensitively.

Dr DENT: They are done by professional people. There is no doubt about that.

The Hon. SHAYNE MALLARD: And they do it with a great deal of sensitivity. The remains were moved to the Leppington Lawn Cemetery. You talked about what might be found in a grave after 25 years depending on the soil type. You then said that the remains—the boots or jewellery—would be returned to descendants. The legislation is silent about what to do with what is found. You suggest that it should be buried deeper. Is that right?

Dr DENT: There are two alternatives. If they are still around, the family could ask for those personal artefacts to be returned, I presume. I do not think it is in the Act, so it is indefinite. Otherwise, what is the cemetery operator supposed to do with them? In the case of the German example, they gathered up the boot and it was put

in the ossuary box. There were other bits of clothing and so on. There is no prescription for an operator to attend to those matters.

The Hon. SHAYNE MALLARD: The Act and the regulation are silent about what to do if there is something—

Dr DENT: As far as I know. It talks about bodily parts only, which is the definition of remains.

The Hon. NATALIE WARD: Thank you, Dr Dent, for your very interesting information. I found the pictures very interesting and helpful. Thank you for providing them.

Dr DENT: Thank you.

The Hon. NATALIE WARD: You referred in your opening statement to the lift-and-deepen process. Can you explain that?

Dr DENT: Lift and deepen was mentioned in the discussions related to this Act. I cannot remember whether it is defined in the Act. It involves gathering the remains, putting them into a little box—an ossuary—or, as they do in South Australia, a very substantial paper bag and then reburying them in the same space, but deeper. If the original grave depth was six feet or 1.8 metres, they will dig a hole in the middle of the bottom of the grave, possibly going down to 1.9 metres or two metres, and then put the remains there and cover them with a little bit of soil. The grave is then re-used.

The Hon. NATALIE WARD: What is the purpose of that? What does it achieve?

Dr DENT: The remains are essentially in the space they were originally. It is preserving the sense of space and remaining in contact with the ground.

The Hon. SHAYNE MALLARD: That gives them another 25 years to fully decompose.

Dr DENT: The ones I have seen in South Australia are for 99 years.

The Hon. NATALIE WARD: Does that allow for the more efficient use of that space? Is that the purpose?

Dr DENT: That is what renewable tenure is.

The Hon. NATALIE WARD: I hope I am not going to embarrass myself by asking this question. It might be a dumb question but it might not be. It is a practical thing. Why not dig deeper in the first place and have greater density? Is there a difficulty in putting aside any faith-based concerns? Could we have more remains in the one space for efficiency if that were acceptable to the family and to their faith?

The Hon. SHAYNE MALLARD: Multi-storey graves.

Dr DENT: It is certainly not a dumb question. It is common practice. But there are a large number of operational difficulties with it. What I have seen recently in Sydney cemeteries is three burial depths. About 2.1 metres or so, is about the working limit that the cemetery operators can go with, because of the machinery, health and safety issues and the physical issues. The amount of soil that comes out of a grave 1.2 by 2.4 by 2.2 metres deep is enormous. That has to be dealt with. Often there is another grave right beside with a monument on it.

Operationally, it can be quite difficult. We are not talking about nice little fields in the open with plenty of space around them. In Cheltenham Cemetery in South Australia, when I was researching there they had done five deep. I think they went to about 2.8 metres, but that was incredibly uncommon. Typically, when a person dies and it is the first use of the plot they will nominate whether they want a two-deep or one-deep plot. Some religious and cultural groups require one deep, only. That is fairly inefficient but that is the way it is.

The Hon. MICK VEITCH: In the instance of an ossuary, when you dig a bit deeper and then put it over the top, that would be for family members would it not? You would not have non-familial burials in that arrangement?

Dr DENT: You certainly would under the renewable tenure concept.

The Hon. MARK PEARSON: If the regulation could prescribe a schedule, and part of the schedule was for the soil and material in an area of a graveyard or proposed graveyard to be analysed for minerals, moisture and other factors which relate to the rate of decomposition, and if it could be argued that if, say, it had X, Y and Z material in the soil it could only be 50 years or 75 years or 25 years, would that be satisfactory to you?

Dr DENT: I really do not think that there is sufficient information to adopt that approach.

The Hon. MARK PEARSON: Even just the moisture content of the soil?

Dr DENT: In my original work, which was published as my PhD thesis, I did put forward a proposition about certain soils and how you might choose them to be for a cemetery or not, but I did not approach the issue from the longevity of the remains in the soil. I really do not think there is enough information available at the moment. Something like the exhumation study I proposed would give you some of that guidance. The work that we are doing at Rookwood would give some of that guidance, but I do not think we are there yet. This is not an area that has a huge scientific database behind it.

The Hon. MARK PEARSON: I think the studies are beginning now, out at Rookwood in particular. When you took us through these photographs you described that there was a particular problem because of the coffin and the material used within the coffin and therefore the retaining of bacteria and other materials. Are you alluding to the fact that there may be an issue that needs to be addressed in relation to the materials that are used in coffins?

Dr DENT: I think there is a very serious issue in relation to coffin materials. I know that you have seen the submission from Rookwood, where they mention the work going on in Norway and the difficulties of burials there. The use of plastics as coffin liners and body bags is hugely deleterious to decomposition. It retards decomposition, and until the coffin liner either falls down inside the coffin or bursts in some way, proper decomposition simply cannot take place and decomposition products cannot escape into the soils. The whole process is retarded. If there was something that could be done well by the industry, and done very quickly, it would be to move immediately to biodegradable plastics, if they have to have them at all.

The Hon. TREVOR KHAN: Or biodegradable materials.

Dr DENT: Biodegradable materials. A traditional Jewish burial has no plastic in it.

The Hon. SHAYNE MALLARD: Yes, we heard that.

Dr DENT: They are ahead of the game in one sense. A traditional Muslim burial just wraps the body in a shroud.

The Hon. SHAYNE MALLARD: Were you here for the presentation of the Greek Orthodox witnesses? They told us about the role of Cyprus pine trees in cemeteries in Greece, because they dig them up after a year.

Dr DENT: I heard that evidence. I thought that was quite interesting. I have read studies on Greek cemeteries, but that has never come out, to tell you the truth.

The Hon. SHAYNE MALLARD: It was very authoritative.

Dr DENT: The process that the gentleman was referring to is called "phytoremediation". It is a well-known process in cleaning up environmental hazards. It is where certain vegetation can gather up different chemicals in the ground.

The Hon. SHAYNE MALLARD: I think he suggested they have planted cypress pines around the Greek Orthodox cemetery at Rookwood.

Dr DENT: It may well help. I have not seen it. I cannot verify it from my own perspective.

The Hon. SHAYNE MALLARD: It is worthwhile adding to your knowledge.

The Hon. MARK PEARSON: At the beginning of your presentation you said that we had to start to become more sensible about this and look at finding new land and reusing the land that has been used for burial sites. One of the issues that we have to grapple with is this notion of "rest in peace forever". Therefore, with respect to the removal and placing of the bones we have to look at the community concern about their loved ones resting in peace and remaining in peace. Can you walk us through a procedure a bit similar to what is used in the Greek Orthodox Church, which I think is quite fascinating. Clearly the Greek community respects that and are still consoled by this notion of rest in peace. Can you talk to us a bit about what you recommended was to happen at 50 years to allay those concerns about this notion of resting in peace for a loved one?

Dr DENT: At 50 years, should the cemetery operator be able to deal with the remains—so they are in a state that they can be dealt with, which is provided for in the Act—I would suggest that they just undertake lift and deepen. Therefore the remains go further into the ground at that space, maintaining the contact with the original space and still being in the soil, the "dust to dust" concept will apply.

The Hon. TREVOR KHAN: In that regard—this is not a scientific question—how do you then acknowledge the presence of the remains in that space, while giving due regard to the use of that space by subsequent occupants?

Dr DENT: Typically, a plaque or something will be put nearby. It is possibly inappropriate to put it on the same space because the next person in there wants to have their say about the land. There is a similar concept used in natural burial cemetery systems, where the body goes in somewhere, and you can identify it, perhaps by some magical GPS system, but there is a plaque somewhere else—maybe a stone with 20 or 30 plaques on it acknowledging that, over there, is the remains of somebody.

The CHAIR: Dr Dent, thank you very much for your evidence. It has been fascinating. We commend the Hon. Paul Green, even though he is not here, for putting you forward as a witness. I do not think you took any questions on notice.

Dr DENT: I would be very happy to provide extra information.

The CHAIR: I do not think there were any, but thank you very much for your time.

(The witness withdrew)

ROSA PERONANCE, Managing Director, A O'Hare Funerals, sworn and examined

DAVID MILOVANOVIC, Serbian community representative, affirmed and examined

SARGON BISSEH, Syrian community representative, Rookwood General Cemetery, sworn and examined

JASON MASTERS, Administrator, Rookwood General Cemetery, sworn and examined

GEORGE SIMPSON, Chief Executive Officer, Rookwood General Cemetery, affirmed and examined

The CHAIR: Thank you. Would anyone like to make an opening statement?

Mr MASTERS: I thank the Committee for the opportunity to make a submission and to respond to your inquiry in person. We recognise that some people in the room may or may not have experienced a direct family bereavement. We made the decision not to ask for an in-camera session because we are committed to openness and transparency. In saying that, with regard to the confidential appendix in our report that provides the Committee with real examples of the exhumation process, we request that it should remain suppressed to respect the privacy of those involved and that it not be shared in any form, including on social media.

As you are aware, Rookwood General Cemetery is a purpose-driven organisation that provides respectful interment services for all of our communities and is by far the largest operator at Rookwood Necropolis. Rookwood Necropolis is the sixth-largest cemetery in the world and we believe that Rookwood General in its own right would be in the top 20. We are the operator of approximately two-thirds of Rookwood Necropolis and the provider of the widest range of community organisations in Sydney. Rookwood General is a testament to how multicultural communities and faiths can work together in life and in death for the benefit of all.

We wish to acknowledge that the Government has made significant progress with the consolidation of numerous pieces of legislation in relation to cemeteries and cremation services in New South Wales and we now only deal with three primary Acts: the Crown Land Management Act, the Cemeteries and Crematoria Act and public health legislation. This has led to a more workable arrangement and oversight, as well as the consolidation of a number of cemetery Crown land managers. With any industry reform there will always be opportunities for improvement based on the actual operation of that reform. As part of the industry reform, part 4 of the Cemeteries and Crematoria Act 2013, which determined the right for cemetery renewal, became available and was activated on 1 July this year.

Committee members may be aware that all cemeteries in New South Wales are facing a crisis of land availability. Rookwood General will be out of land for some communities within the next five years and we expect to have sold our last licence within 20 years. We are in negative time to provide land for our communities who require perpetual earth burial options. If we were to acquire land today it would be three to five years before the new site became operational. We are currently engaged with the Deerubbin Local Aboriginal Land Council for the purposes of providing burial spaces for multicultural communities for the next 200 years and, importantly, assisting to overcome funeral poverty within the Aboriginal and wider communities.

Whilst one of the part 4 objectives was to extend the sustainability of existing land, we note that the soil at Rookwood General—and, I would suggest, at many cemeteries away from the coastal land in Sydney—is predominantly clay. At Rookwood this leads to very slow and inconsistent decomposition of bodies and coffins, which has significant impacts on any renewal process. Rookwood's understanding of the issue of body decomposition and soil interaction is emerging through our world-leading soil research project in cooperation with the University of Technology Sydney, which is overseen by Dr Boyd Dent. Our soil project will provide more options for the re-use of graves by families, which we believe will add significant value to our communities. This will allow generations of the same family to continue to exercise control and re-use of their graves. We are about to test our patent pending above ground earth burial structures and are designing an innovative new mausoleum that will host another 4,000 interments at Rookwood General.

Our preliminary cost modelling suggests that the pricing of renewable graves is possibly more expensive than perpetual graves and therefore does not achieve another objective of the Act. We express our concern over the lack of effective industry and community engagement around the design and introduction of renewable rights. From the industry perspective, the CCNSW consultation and engagement with our communities has been minimal to non-existent. From Rookwood General's point of view, the majority of our communities would be exempt from renewable rights. Our own engagement feedback, which is on page 8 and 9 of our submission, confirms the lack of engagement and understanding of renewal rights. Our review of the domestic and international use of renewal rights identified that it is not common and a cemetery in South Australia has now introduced perpetual licences.

Finally, I would like to comment on the physical and psychological impact on cemetery staff in having to potentially exhume an increasing number of bodies in various stages of decomposition. Rookwood General sees encouraging family re-use of perpetual graves as one of our key initiatives. This is underpinned by our extensive research program undertaking and aligns with our purpose to provide respectful interment. If I may indulge the Committee, in addition to our submissions, we prepared a brief list of recommendations that you may want to consider as part of your broader deliberations. I have copies of the list here if you would like me to table the documents.

The CHAIR: If you could, that would be wonderful. I turn to the Government for questions.

The Hon. SHAYNE MALLARD: I thank you for your detailed, in-depth submission. On page 3 of the submission you state that the communities with consecrated land will take up the option of exercising the non-renewable and perpetual tenure of the graves. What percentage of the cemetery will that apply to—are we talking 70 per cent?

Mr MASTERS: I would say it would probably be over 90 per cent that would not elect renewal.

The Hon. SHAYNE MALLARD: Of course, it is not retrospective, which we have to make clear to the community. I have had someone ask me if it is retrospective. And we only have a small amount of capacity left in that 10 per cent.

Mr MASTERS: Correct. In our submission we made reference to the Anglican and Uniting Church, who have moved towards cremation. But they do have a small area that they can still bury in and some of the religious members do prefer burial. Again, it is our understanding from our consultation with those communities that they will anticipate that they will be perpetual.

The Hon. SHAYNE MALLARD: Your concept of family renewable tenure is not new, is it? Family graves and plots have been around forever.

Mr MASTERS: Correct. Part of the underlying strategy for this research project is to see if we can find a soil or other structures that would allow for the rapid decomposition of bodies so that families could, if they wished, re-use the grave. That would overcome some of the issues that Dr Boyd Dent talked about with identification because the family would be able to have their own monument in addition to what is already there without destroying it.

The Hon. SHAYNE MALLARD: How is that different to family plots? I have been to a funeral of a friend who was buried in his mother's grave. How different is that to the issue of multiple coffins in one grave for a family?

Mr MASTERS: Currently, for some communities, we are able to do double depth and I think I am correct in saying that our Jewish partners are encouraging that within their communities at the moment. But it still is an issue for our staff, which is why—

The Hon. SHAYNE MALLARD: That is two to a grave.

Mr MASTERS: Correct, one on top of each other.

The Hon. SHAYNE MALLARD: The family renewable option notionally would be more than that, would it not?

Mr MASTERS: And then over time—again if we could get the right soil structure—you could then allow another family member to go in there.

The Hon. SHAYNE MALLARD: I share your concern around the welfare and occupational health and safety [OHS] of staff who do the exhumations. It would not be a job I would want to do. Will you talk to us about who does that, how they are managed, and how they are supported?

Mr MASTERS: I will ask Mr Simpson to talk about that in detail. It is a very difficult role for staff. It would take a team of about four to five to do an exhumation. Under our current enterprise bargaining agreement [EBA], it is a voluntary activity. I think the fee is approximately \$500 per team member engaged in that activity. This is one of the things that I think people have recognised, that when you move into the second interment, there is considerable cost in the exhumation and the restabilisation of the gravesite. I will ask Mr Simpson to talk through this.

The Hon. TREVOR KHAN: Just so that I am clear, you are saying that in a sense there is a wages cost beyond any other cost?

Mr MASTERS: True.

The Hon. TREVOR KHAN: That is around about \$2,500.

Mr MASTERS: Yes, that is right.

Mr SIMPSON: If I can follow that through, Mr Khan, I think the cost is far in excess of that to remediate that grave afterwards.

The Hon. TREVOR KHAN: I accept that. I was just looking at the wages component for a start.

Mr SIMPSON: We ask our teams to effect exhumations from time to time. It is not something that we are really keen on doing. It is a very overwhelming experience for some of the teams. I have been around the funeral industry for a long time and I have seen many sights, as have some of our teams. I am sure you saw some of the graphic pictures we gave you where people not only are in a confined grave but also are trying to lift what remains are left of somebody's relative. Let us not forget that this is somebody's relative that we are trying to lift in a dignified manner to take from that grave. The psychological impact that this can sometimes have on our team is really large.

We provide full support through our employee assistance provider, through our team mentoring channels, and we are very aware of the impact that this has on our staff. Exhumations are very rare. They are certainly not common. When we get a request for an exhumation it is a prolonged process involving the family and, if there is a religious group involved, for example, the Jewish Board of Deputies, Health NSW and other agencies. They have to be involved in the exhumation of a deceased person. That is not a pleasant experience.

The CHAIR: In terms of the process, when were you made aware of the community consultation period?

Mr SIMPSON: There have been various communications but personally speaking I have attended only one meeting of the industry consultation group.

The Hon. TREVOR KHAN: Mr Masters, did you?

Mr MASTERS: I was also sitting on another industry body and it was raised once. The reality of that meeting was to reinforce the regulator's lack of competence and understanding of this area. All of the operators at that meeting raised questions that the regulator had not thought of. If they had actually done some proper consultation and given consideration to this matter, they would have been a lot better prepared for that meeting.

The CHAIR: Following those meetings, did you make any recommendations or submissions about the regulation?

Mr MASTERS: No.

The CHAIR: Have you ever raised concerns about religious and cultural institutions and the different groups within the Rookwood CCNSW?

Mr MASTERS: We raised it after, in a sense, the regulation went live. We raised with the Minister and I believe also with the regulator—I am happy to check that—last year around the consultation period in December. We felt that the timing of that was wrong and it was too short a period of time. We recommended that it be open until March this year.

The Hon. TREVOR KHAN: Did you make those representations in writing?

Mr MASTERS: I do not think we made them in writing, no.

The Hon. TREVOR KHAN: I am not being critical in that regard. It is just that if they were I would be very interested to see them.

Mr MASTERS: That is right, yes.

Mr SIMPSON: If I can add to that, we attended a meeting of the CCNSW board on another matter. I raised the fact that our communities had indicated to us that renewable tenure was not something that they would welcome.

The CHAIR: On page 3 of your submission you state:

The regulation does not clearly identify who is the final arbiter, regarding which faith or communities are entitled to exemptions, and who is the arbiter of whether a body is sufficiently decomposed for removal.

Do you have any ideas about what you think that should be in terms of who should be the final arbiter?

Mr SIMPSON: In terms of who decides when a body has decomposed sufficiently, short of us digging the grave to examine the remains there is no way that I am aware of that we can determine after a length of time whether the body has decomposed or not. We give you an example of two bodies side by side that were exhumed

recently and had been buried five years apart. The first interment had decomposed at a lesser rate than had the second interment. Until we know what happens under the ground through our research process we will be blind. Short of having to open up a grave to examine the state of decomposition, and in fact the coffin and those items that are included in the coffin, we will not know exactly where we are at.

Mr MASTERS: Can I comment?

The CHAIR: Yes, indeed, Mr Masters.

Mr MASTERS: I have a level of sympathy for the suggestions from the representative of the Jewish Board of Deputies and the Orthodox community around having a schedule. I think there would be a lot of common sense in that sort of approach.

The CHAIR: You have outlined that there seems to be some confusion from the regulator between the concepts of renewal and re-use. Do you wish to comment on that further and perhaps outline your views in comparison with their views, perhaps, of what the terms mean?

Mr SIMPSON: The feedback that we have had from our communities was that they were not aware that after 25 years if that family did not want to renew the licence, instead of retaining that licence in perpetuity they were not aware that the operator would reclaim the grave, dig the grave, disinter the remains, dig it deeper if they can—if there are no water table issues—place the remains deeper, take away the monument and store it for up to five years and resell that licence to the next person. The information that we got from our communities was that they would retain the licence in perpetuity, but that is not the case. That is where confusion comes from, Chair.

The CHAIR: Thank you very much.

The Hon. MICK VEITCH: First, before I go to the Rookwood Cemetery Trust because it is a detailed submission and a lot of questions arise from it, I will go to our Syrian and Serbian friends. Were you aware of this regulation coming into place—the renewable tenure regulation?

Mr BISSEH: Not at all, actually. The first we heard about it was last week at the meeting organised by Rookwood. They do a great job and we support that submission.

Mr MILOVANOVIC: I am in a similar position. We were informed by Rookwood probably about two weeks ago since my submission. The evidence of that is that none of our religious representatives are here, either, so there has not been any dissemination of information within our community. If any little did come out, as the gentleman from the Rookwood management executive pointed out, there is quite a lot of confusion. One of the things that is specific to our religion is that we are all Orthodox, but we have different practices as the Greeks do, as the Syrians do and as the Serbian communities will do.

I lost my father in May and we buried him in Liverpool. There are quite a few family plots there doing double, which is the husband going down and the wife wants to be buried on top. My mother bought an adjoining plot next to my father and her verbal will is to be buried next to him, not on top of him—various beliefs of not wanting to press on him and that the spirit lives on and the spirit stays there. If you do have the non-perpetuity renewable ones the belief comes in, there is the war of the spirits, like the spirit is still there and you bury someone else's spirit there. It really touches on spiritual beliefs within the community. That respect I believe is probably similar in the other Christian faiths as well, believing in the spiritual world and the spirits hanging around.

The Hon. MICK VEITCH: Essentially you did not know until very recently about the regulation?

Mr MILOVANOVIC: No, that is right.

The Hon. MICK VEITCH: What about the funeral operators? Did you have much involvement in the development of the regulation? Were you aware it had been put in place?

Ms PERONANCE: We were not; probably a couple of weeks ago like the other guys here. We deal with families all the time and I know that this would not be favourable to them at all.

The Hon. MICK VEITCH: Essentially we have a regulation about renewable tenure that affects the operation of cemeteries. You did not know about it?

Ms PERONANCE: No.

The Hon. MICK VEITCH: I refer to the Rookwood Cemetery Trust. I thank you for your sheet of recommendations. I guess, in a word, your submission is scathing of the communication process. I have just heard more evidence about how poorly that was conducted. Your submission raises a number of issues. I refer to the concept that you raise which is funeral poverty and the potential that this regulation creates a two-tiered system,

and you have put some financial positions to help illustrate that. Can you explain further how that impacts upon the broad range of communities you have at Rookwood Cemetery?

Mr MASTERS: I will give an opening response and I will ask Mr Simpson to provide more detail. Mr Knoll commented around the cost differential between Sydney and Melbourne. Certainly there are cost factors between the two cities which I think everybody here would be aware of. Rookwood General, as the first of the major cemeteries, entered into a five-year pricing arrangement with all our communities so that they and we know exactly where that is at. We are hoping that will help. Part of our strategy with Fernhill was to attain a burial cost that would have been very close to cremation costs because what we know is that there are some people who cannot afford burial and so are doing cremations. Part of our strategy—even though Fernhill failed—our ongoing search into around trying to achieve what Mr Knoll and others have talked about, is to reduce the cost of earth burials closer to that of cremation.

I mentioned in my opening remarks about our current engagement with the Deerubbin Aboriginal community. Through my own work with the Uniting Church, I am aware of some situations with Aboriginal communities across the nation. But I would have to say I was somewhat stunned—and I am hoping I am not speaking out of turn with our relationship with them—when they shared with us their community strategic plan. I was shocked to see that their number one strategy was around funeral poverty. For that community of Aboriginal people, that is their number one issue. I would have thought it would have been others but that is what they recorded in their strategy which was written before we engaged with them. Mr Simpson will talk more about pricing.

Mr SIMPSON: I will preface what I am going to say with the phenomenon of funeral poverty is hurtling towards us like a freight train. We are seeing more and more families go into debt or go deeper into debt to provide a dignified funeral for their relative. God forbid if they have two bereavements close to one another. Where do they go from there? This is something that has been investigated very closely by the Scottish government, and I have shared some of its papers with some of my colleagues and some members of the Committee. This is a real issue that needs to be dealt with. Having to provide X amount of thousands of dollars for a funeral director, then X amount of thousands of dollars for a burial, on top of X amount of thousands of dollars for a memorialisation, we are talking not in the \$5,000 to \$10,000 range but in the \$40,000, \$50,000, \$60,000 range. That is a phenomenon that will bring funeral poverty.

In terms of pricing, we did some cost analysis back in 2015 where we wanted to recover the costs of our operations. That is what these numbers are based on. We did some modelling around the cost of a renewable licence over 25 years versus the cost of a perpetual licence. The renewable licence we set at approximately \$3,500 with the basic price of a lawn grave, which is about \$8,500. If we extrapolate the \$3,500 up to 100 years, that family would have paid in excess of \$16,000 for a renewable licence as opposed to \$8,500 for a perpetual licence. The fact that it becomes affordable, yes it does for the first 25 years. What we also factored into these costs was if after 25 years a family chooses not to renew or cannot afford to renew, then the costs associated with remediating that site for the next person are very real. Instead of that licence becoming \$3,500, it is up around the \$10,000 mark. So these are some of the things that have not been taken into consideration, along with the psychological impact.

The Hon. TREVOR KHAN: With regards to poverty, I am interested in two concepts. You said in your opening statement that we are fast running out of available land for plots. I am not being critical but under your proposal is there, in a sense, a poverty that arises for those people who are not already in Rookwood, that is, they will not have the choice of where they go?

Mr MASTERS: The pricing strategy we actually set for Fernhill, the modelling we had for that acquisition, actually meant that the lawn graves would be, I think, cheaper than we currently have at Rookwood.

The Hon. TREVOR KHAN: Sure. It did not go ahead?

Mr MASTERS: It did not go ahead, no.

The Hon. TREVOR KHAN: That is the problem, is it not?

Mr MASTERS: That is why we are looking at, as I have mentioned, our current engagement with the Deerubbin community. Again the price modelling with that has underpinned the objective of having a low burial cost.

The Hon. TREVOR KHAN: I am not in any way critical in terms of your objective but this problem has existed for decades. Certainly in the last decade we have been grappling with what we do about it and no solution has landed at this point in time, has it?

Mr MASTERS: You are absolutely correct. I think Mr Knoll talked about Varroville and Wallacia. They are at best a short-term solution.

The Hon. SHAYNE MALLARD: And confronted community opposition. That was the issue at Fernhill when the State stepped in and bought the estate for the Western Sydney Estate. When we are talking about the concept of funeral poverty, the banking royal commission picked up on the fact that Aboriginal communities—because they are so vulnerable to this issue—have been marketed some pretty appalling funeral products. You said it was number one on their strategic plan. They tragically have a mortality issue. Insurance products exploited that vulnerability.

Mr MASTERS: Part of the approach of engagement with the Deerubbin community—you heard the evidence from Mr Knoll around Chevra Kadisha, a volunteer organisation. Again, because of Mr Simpson's extensive experience not only now as the cemetery operator but years before that as an actual funeral director, part of that engagement would be to assist the Aboriginal community in the establishment of a volunteering funeral home and funeral director service to help them with that. That is part of the global strategy we are working on at the moment.

The Hon. TREVOR KHAN: Are we in a position where the increasing lack of space is impacting upon some communities and religious communities more than others?

Mr MASTERS: We have some smaller communities for which in five years we will be running out of land.

The Hon. TREVOR KHAN: Those communities are?

Mr MASTERS: I think the Maoris.

Mr SIMPSON: Yes, and Mandeans—the smaller communities. Only recently we managed to reapportion some land to both the Muslim and the Jewish communities that extended the Muslim burial time to about 10 years from five.

The Hon. TREVOR KHAN: Indeed, they have had a concern now—I can say seeing I have been here for 12 years—for at least a decade about the lack of available space for the Muslim community.

Mr MASTERS: And hence why we have been working on this. We indicated a patent pending—I think we have a diagram in our presentation—an above-ground, in-earth burial structure which we are about to start the testing of, to again allow us to use more effectively a smaller amount of above-ground.

The CHAIR: Are the religious communities are all content with that?

Mr MASTERS: We are still working that through. The Muslim community have also been working on their own version of a similar sort of concept as well. We are in contact with them quite regularly.

The Hon. MICK VEITCH: You have kindly tabled some recommendations, but essentially we can draw the conclusion that you are not supportive of this renewable tenure regulation—

Mr MASTERS: Correct.

The Hon. MICK VEITCH: —and you would require or request that it be deferred until there is a whole heap of other work done before we come back to it.

Mr MASTERS: Correct.

The Hon. TREVOR KHAN: Can I just interrupt there? Is that not a continuation, in a sense, of—in my time in Parliament—recognition that there is a problem but no solution being achieved?

Mr MASTERS: It is a very valid question, Mr Khan. For our communities that is why we are focused on re-use. That is why the soil research project is so critical so that we can work out and establish the rapid decomposition structure. Essentially for the vast majority, almost all, of our communities renewable is not an acceptable option. From a sustainability point of view it does not help. That is why we have invested heavily in things like the soil project, the above-ground project, to try to work out how we can do significant re-use. Will that help us today? No. Will we actually have the benefit of that in five years? No. The soil project is a five- or six-year research project, because it has never been done in the world.

The Hon. TREVOR KHAN: On that basis, for instance, what you talked about in terms of the Muslim community, you are getting a heck of a bit close to having run out of space.

Mr MASTERS: That is why I said we are in negative time.

The Hon. GREG DONNELLY: Sorry to hark back to this but I think it is important. In some sense it is the nub of the conundrum in which we find ourselves today in looking at this regulation. Getting back to this consultation period that ran for around four weeks in the lead-up to Christmas last year, is it your evidence—and if you do not know this because you need to check, you may take this on notice—that Rookwood General Cemetery was not contacted directly by the relevant government body conducting the work to be done on this regulation to seek your input into the development of the regulation?

Mr SIMPSON: We were informed.

Mr MASTERS: We were informed, but—

The Hon. GREG DONNELLY: Sorry to press you on this, but when you say you were informed, do you mean you got a phone call or an email?

Mr SIMPSON: We received correspondence from the regulator that the submissions were being invited.

The Hon. GREG DONNELLY: Right. Okay. So, pressing further, a submission was not made or a submission was made?

Mr SIMPSON: No, a submission was not made.

The Hon. GREG DONNELLY: Can I press you on that about why a submission would not have been made in regard to the regulation development, because it is obviously a pretty significant piece of work being done—the development of a regulation which would have such a significant impact.

Mr SIMPSON: We felt at that time that the submission would not have been effective. We felt the best thing to do was to make no submission.

The Hon. GREG DONNELLY: If you do not mind, I will keep pressing you. It is not to embarrass you in any way but just to try to get to the nub of this. Why had you concluded that the contribution of making a submission to the creation of this regulation was, in effect—and these are my words—a waste of time or it would not serve much of a purpose?

Mr MASTERS: I will start. It is my view that the regulator is/has been a dysfunctional organisation.

The Hon. GREG DONNELLY: That is fine. There is no problem in putting that position. With respect to that point in terms of the regulatory body, are we seeing any improvement of that situation? We are now moving towards October, a year after all of this. Has there been any change over the course of the last nine months or so?

Mr MASTERS: I have been the administrator of Rookwood for just over 2½ years. Mr Simpson might help me but I think I am on my fifth CEO in that period of time. The current CEO has started off with a bang and I think is trying hard. She has lost a number of staff, does not have a lot of depth in her organisation. I would say there are some challenges at the board and I would not be surprised if the current CEO runs out of puff like many of the other CEOs before her.

The Hon. MARK PEARSON: Why do you think that occurs?

Mr MASTERS: I think the board is dysfunctional.

The Hon. MICK VEITCH: It is a governance issue.

Mr MASTERS: Correct.

The CHAIR: Who is on the board—not individual names but drawn from where—and why do you believe it is dysfunctional?

Mr MASTERS: I think there is a financial person, there is a community person, a multicultural person and I do not know the deputy chair's role.

Mr SIMPSON: I could not tell you.

Mr MASTERS: No, I could not tell you that.

The Hon. GREG DONNELLY: Just continuing, the time almost expired. I do not wish to be trite but this is obviously a significant issue because it affects every one of us ultimately.

Mr MASTERS: Yes. That is right.

The Hon. GREG DONNELLY: The issue of—and you used the word "dysfunction"; whether you use the word "dysfunction" or some other word probably does not much matter—trying to get a situation where this whole important piece of regulation through a body is done better than we have done in the past, and in the context

of this here and this is sort of a subset of it there would have been a much better way if it was being done properly, the consultation was done so our faith traditions would have been consulted et cetera, do you have a view about how that can be brought about? Are we talking about a major change in the whole way in which this is looked at in the State of New South Wales?

Mr MASTERS: I think we have recommended there to suspend the part 4 and in a sense go back to square one. Start with major consultation again.

The Hon. GREG DONNELLY: That is your first recommendation.

Mr MASTERS: That is right. Also, as I think Dr Dent talked about, the science has got to be considered as well. I do not think the science has actually been considered in any of this process.

The Hon. MICK VEITCH: Do you agree with Dr Dent that 25 years is too short?

Mr MASTERS: Twenty-five years is too short. From our experience, particularly with the clay we have at Rookwood and what would be in most of the inner, I suspect 50 years would be too short.

The Hon. MICK VEITCH: Did you say you suspect 50 would be too short?

Mr MASTERS: Yes.

Mr SIMPSON: If I can add to that, the extensive feedback from our stakeholder engagement programs is that families want perpetuity. They want their relatives to be undisturbed.

The Hon. MICK VEITCH: Is that the same for the—

Ms PERONANCE: Yes, that is what they want.

The Hon. GREG DONNELLY: Thank you for your frankness. I appreciate that.

The CHAIR: To that point in terms of perpetuity, that option is still available and still available to you as Rookwood as well—it does not have to have renewable tenure.

Mr SIMPSON: Yes.

Mr MASTERS: No. In fact, at the moment, if I take an example with the land shortage, we have been trying to see if we could get more land. There is some land that InvoCare, the operator of the crematoria there, is not using, to see if that could be released to us. It is one of my disappointments that I have not been able to achieve that during my term. But when we were speaking with the chair of the regulator, he said, "We could give that to you. You could do renewal." And my immediate comment is, "But my communities, who are already desperately short of land—we need to allocate that to them." Again, that is just one of the many examples of the CCNSW board's lack of understanding.

There is another example. When we had this meeting around controlled entities, we were asked a question about the issue of renewal and it came up in the context of the last census, the move in religious belief in the country, and so therefore the need for perpetual will go away. Again, it showed a complete lack of understanding of how religion works in Australia: We are still well over the percentage of people who are significantly involved in religions. But also, when families are in crisis, they fall back to their religion or follow religious tradition in that respect. I think it will be well over 150, if not 200, years before we see a dramatic move in the need for a religious or faith-based earth-based burial.

The Hon. TREVOR KHAN: If we do not resolve this problem, haven't we got a position that even the members of the community who want perpetuity are going to be faced with no burial plots for them?

Mr MASTERS: You are absolutely right, Mr Khan, which is why I think all of the communities have been knocking on doors—our doors and Committee members' doors and other local members' doors—saying, "This is at crisis point."

The Hon. TREVOR KHAN: Yes. We are all at one with regard to that. Again, this is not criticism, but you have not been able to find a solution yet. Members of the communities you representing are faced with precisely the same problem as every other person in the Australian community—that is, there is no land. Isn't that the problem?

Mr MASTERS: There is land. It is getting approval to do the acquisition.

The Hon. TREVOR KHAN: For the sake of the legal reality, there is no land.

Mr MASTERS: There is no land at the moment, correct.

The CHAIR: Unfortunately, that brings us to time. Thank you all very much for your evidence today. If you have taken any questions on notice, you have 14 days in which to return those to the Committee secretariat, and they will assist you with that.

(The witnesses withdrew)

(Short adjournment)

BISHOP GEORGE SCHAEFER, Chairman, Cemeteries Committee, Australian and New Zealand Diocese of Russian Orthodox Church, sworn and examined

ARCHPRIEST GEORGE LAPARDIN, Vice Chairman, Cemeteries Committee, Australian and New Zealand Diocese of Russian Orthodox Church, sworn and examined

JAMES CRITTENDEN, Secretary, Cemeteries Committee, Australian and New Zealand Diocese of Russian Orthodox Church, sworn and examined

The CHAIR: I welcome the witnesses for the inquiry. Would anyone of you like to make a brief opening statement?

Mr CRITTENDEN: I will make some brief remarks, Mr Chairman. The Russian Orthodox Church, outside of Russia, has around 17 parishes in New South Wales, some of which are monastic entities also. For many years our diocese has had an active cemetery committee in Sydney, which is dedicated to preserving existing graves of our deceased loved ones and ensuring that our future needs are met in this regard. The majority of our faithful departed are buried at Rookwood Cemetery, including many of our clergy. We would estimate that there would be around 11,000 graves in the section that is consecrated to us and perhaps a few more thousand that are spread out throughout Rookwood.

The Orthodox Christian faith and Russian culture places a great degree of importance on the ongoing preservation of the remains of our deceased loved ones. For the Russian Orthodox Christian there is no choice. According to the holy canons of the church, the body of a deceased Orthodox Christian must be returned to the earth; cremation is specifically forbidden. Visiting the final resting place of deceased loved ones, caring for their graves and praying for their souls on a regular basis is a significant part of an Orthodox Christian life. Visiting the graves of the departed is a formal part of the church calendar on days such as St Thomas Sunday and the Day of Rejoicing. Unlike our Greek Orthodox friends, we have no cultural or religious tradition of exhumation in ordinary circumstances. As we understand it, the Greek tradition in that regard grew out of a necessity, which is an extreme lack of land in Greece. It is not a problem in Russia and we would submit it is probably not a problem in a country like Australia either.

Since making our submission, we have been pleased to be invited here today to give evidence and that our call for consultation has been heard in that way. We are also pleased by the apparent protections in the Act, most notably the exemption contained in section 54 (2), which we understand would apply to us. While we understand that this inquiry is limited in scope to the terms of the regulation, we do have some concerns and I will briefly list them. The first concern is that sufficient land be released for our use—consecrated for our use—going forward so that the exemption in section 54 (2) can operate to protect us. If we do not have the land, then the exemption would not operate. Number two: The changes may result in a premium cost being placed on perpetual interment, meaning that Russian Orthodox people would be forced to pay more than other persons who have no religious or cultural requirements.

The third concern is that we are worried about the possibility of a two-tiered burial system. I note that other people who have given evidence today have mentioned this as well. The chief concern there is the pressure that it would place on the less affluent members of our community to choose an option that is not in accordance with their beliefs. Those are our opening remarks and we would be very happy to take questions.

The CHAIR: Thank you very much.

The Hon. GREG DONNELLY: Thank you all, your Grace, Father, Mr Crittenden. We have received your submission that has been made to the inquiry. Thank you very much. It is Submission No. 108. I do not know whether you have a copy of that with you. I make reference to a particular aspect of it in the second paragraph. At the end of the second line it says:

I must express my strong disappointment with the level of consultation and communication from Cemeteries and Crematoria NSW and the Government in relation to this potential disruption of our cultural and religious practices within Rookwood Cemetery. As you would appreciate, it is disappointing to simply hear rumours and commentary about this issue through the 'grapevine' and in the media.

Help us understand when the church became aware of consultation around the regulation? Are you able to tell us when you became aware of the consultation?

Bishop SCHAEFER: I became aware about a week ago. That was the first time.

Archpriest LAPARDIN: Before you wrote the submission.

Bishop SCHAEFER: Yes.

The Hon. GREG DONNELLY: We are dealing with a regulation and there was a period of consultation. This is other consultation in the last four weeks or so of last year, which led to the preparation of this contested regulation we are looking at. There was no communication to the church in that lead-up to say, November last year?

Bishop SCHAEFER: Not to our office, there was not; perhaps maybe to individual priests but not to our diocesan office.

The Hon. GREG DONNELLY: That is okay. With respect to the church in Australia, do you have any ongoing association with, or a connection even informally, with the Cemeteries & Crematoria Association of NSW, which is the umbrella body for crematoria and cemeteries in the State?

Archpriest LAPARDIN: No. I am just the member of a focus group at Rookwood—that is as far as we go. We have our own little cemetery committee that are concerned with the upkeep of graves and things like that, but not what you are mentioning there, no.

The Hon. GREG DONNELLY: To help elucidate for me anyway and perhaps the other Committee members, in terms of the church committee itself, are the members who die typically buried in a particular cemetery and within a particular cemetery in a particular section, or are they buried elsewhere?

Archpriest LAPARDIN: Yes, 99 per cent of our flock are buried in Rookwood in the consecrated grounds. It is called the Russian section—Russian Orthodox section. We have been in Australia for several generations. There are assimilations among families. You have a family burying a grandmother who has a plot in the consecrated ground, but other family members will be buried at Macquarie Park or Botany. The younger generation who have assimilated no longer follow the practices of the Russian Orthodox faith and are not really concerned.

The Hon. GREG DONNELLY: Is the dedicated parcel of land set aside for the community at Rookwood coming under pressure because of future demand?

Archpriest LAPARDIN: About four years ago it was brought to our attention that we are running out of land. There are sections they are not allowed to touch because of certain fauna. They opened a little section adjoining our land for another 1,000 graves and that is about it. We have maybe another three, four or five years of capacity left. We are concerned because we need our own consecrated ground. Most Russians will bury in the Russian section.

The Hon. GREG DONNELLY: I refer to the second page of your submission at the top of the page, where you pose some questions. I will not read through them. Is it fair to say that at this point your view would be that there needs to be more consultation about this regulation? It appears from Your Grace's evidence and other things that have been said that you were not informed of the consultation late last year and you have been informed only in the past couple of weeks. As a religious community, would you be seeking an opportunity to be consulted in some detail about this regulation?

Bishop SCHAEFER: That would be a very good idea. We would like to be informed of and consulted about any future events.

The Hon. MICK VEITCH: Thank you for your submission and attendance. Earlier today the Committee heard from the Jewish Board of Deputies. The board has raised an issue about the language of the regulation. It relates to cemetery operators taking all reasonable steps to identify the religious faith of someone if they are about to disturb or exhume their remains. The Jewish Board of Deputies recommends that the language be strengthened. At the moment the regulation states only that the "cemetery manager take reasonable steps to make inquiries". The board says that the regulation should be amended to say they "must take steps to identify". Would you support that recommendation?

Bishop SCHAEFER: Yes.

Archpriest LAPARDIN: Yes, we would.

Mr CRITTENDEN: Yes.

The Hon. MICK VEITCH: The Jewish Board of Deputies also raised the need for cemetery operators to have information about who to go to within the various religious faiths or cultural groups. We also spoke to the NSW Aboriginal Land Council about this. Do you agree that cemetery operators should have a point of contact for discussions about the various religious requirements?

Archpriest LAPARDIN: Definitely, yes.

The Hon. MICK VEITCH: Is it your experience that that is what Rookwood does?

Archpriest LAPARDIN: If we get any information it is from Rookwood.

The Hon. MICK VEITCH: They are very good at communicating?

Archpriest LAPARDIN: Yes, and that is really good for us. I get emails regularly about events that take place and things like that.

The Hon. MICK VEITCH: Is the engagement and consultation process Rookwood uses the model you think should be used in the development of this regulation? You would have liked to have known way before—

Archpriest LAPARDIN: It is the most sensible and simplest way to get our information, as long as there is no bias through Rookwood. We get bombarded with emails from all over the place. I am happy just to get them from Rookwood. I will read them.

The Hon. MICK VEITCH: Is renewable tenure simply not an accepted burial practice in your community?

Archpriest LAPARDIN: It is not. We have cannons and a 2,000-year history. We have never had the need. The Russians have held firm to that tradition. If we were in Japan or Greece, where there is not enough land, comprises would be made out of necessity.

The Hon. MARK PEARSON: Is it more a tradition not to accept exhuming bodies as opposed to a belief in the Russian Orthodox religion? Is it prescribed in your religion or is it more a tradition?

Bishop SCHAEFER: I have some printouts of a few documents. I have a decision from the Sobor of Bishops from 1956 when cremation started becoming popular in the United States. They wanted to reaffirm our practices and explain to people that cremation is not acceptable and why. I made copies for everyone.

The Hon. MARK PEARSON: That would be helpful.

Bishop SCHAEFER: I have more information explaining the death and funeral services of the Orthodox Church. Another document is a printout of the location of all of our clergy—bishops and priests—in Rookwood Cemetery. I also have pictures of the locations, if that is of interest.

The Hon. MARK PEARSON: Are there Russian Orthodox allotments in many other cemeteries in New South Wales?

Archpriest LAPARDIN: There are three dedicated rows in Botany. There is grave after grave. That is where we initially buried our first generation. The rest are scattered; they are at the Field of Mars, Macquarie Park, and mainly Botany.

The Hon. SHAYNE MALLARD: Thank you for your submission. Setting aside your concerns about lack of consultation, you would be able to get an exemption for your consecrated ground.

The Hon. TREVOR KHAN: Is that a yes?

Mr CRITTENDEN: That is our understanding, bearing in mind that we are still trying to get across the import of the legislation and the regulation.

The Hon. SHAYNE MALLARD: You still have to confirm that you can get the exemption, which is a critical point, but as the regulation stands it is not a problem for you?

Mr CRITTENDEN: If we are confident that the exemption applies to us and we can secure land going into the future then our practices can continue and we do not have a problem.

The Hon. TREVOR KHAN: There are two different issues. The first is that you need confirmation that the regulation does not apply?

Mr CRITTENDEN: That is correct.

The Hon. TREVOR KHAN: The question of ongoing or availability of land is a separate question, is it not?

Mr CRITTENDEN: That is correct.

The Hon. TREVOR KHAN: It is an issue that confronts all faiths and people of no faith.

Mr CRITTENDEN: That is right. I think, as I alluded to before, the difficulty for us is that our particular beliefs require us to be interred perpetually.

The Hon. TREVOR KHAN: I am not being critical of that.

Mr CRITTENDEN: Of course, I understand that. So it requires that people of no faith or other faiths are quite happy to take what are effectively more cost-effective or space-effective options—cremation, a renewable lease—but because that is not open to us that is why we have a concern about the release of some land. It does not have to be valuable real estate in the middle of the city.

The Hon. TREVOR KHAN: It will not be.

Mr CRITTENDEN: Of course.

The Hon. SHAYNE MALLARD: It was once.

Mr CRITTENDEN: It was once. But the land has to be somewhere and it has to be accessible in one way or another. That is what we would be seeking.

Archpriest LAPARDIN: Badgerys Creek, under the flight path.

The Hon. SHAYNE MALLARD: That is very valuable land. The representatives of Rookwood Cemetery told the Committee that 90 per cent of the cemetery space would not take renewable tenure and you would be part of that. There is only a small amount of space that this would apply to.

Mr CRITTENDEN: That is a reassuring thing for us.

The Hon. NATALIE WARD: Can you tell the Committee some more about Russian Orthodox burial practices? I understand that interment should be perpetual but are you able to elaborate on that? Can you also talk about those areas where there may have been exemptions? For example, you mentioned Japan and other places where it is just not possible. What arrangements have been acceptable in those instances?

Archpriest LAPARDIN: I repeat, our practice is to bury in the ground according to canons and coming from scripture, based on scripture. In Japan there is a Japanese Orthodox Church—

The Hon. TREVOR KHAN: Really?

Archpriest LAPARDIN: Yes. It was established just before the Russian Revolution by a Russian missionary bishop who converted a good—not many but they have their own autonomous church. So they cremate. They have no choice because it is Japan.

Bishop SCHAEFER: It is the law.

Archpriest LAPARDIN: It is the law of the land. There is one culture: Japanese culture. Australia is multicultural—we have Turks, Russians, Germans, all cultures. Australia is a wonderful place and we have lots of land.

The Hon. TREVOR KHAN: Just not a lot of land available for burials.

Archpriest LAPARDIN: I know. Sydney is surrounded by lots of rock and lots of sandstone. We have a convent at Kentlyn. We have a bit of land there and we thought perhaps we could apply for a licence but it is all rock. In Moscow out of necessity—there is lots of land in Russia but in Moscow there is condensed living in apartments from soviet-built times—the priest will usually come into the flat and do the funeral service. There are actually a lack of churches in Moscow.

The Hon. TREVOR KHAN: It had something to do with the revolution.

Archpriest LAPARDIN: Yes. The ones that were left are not enough to cater and there is a big resurgence in the faith in Russia. In certain circumstances where families cannot afford it, and logistically it is just too hard to take them to one of those ancient cemeteries where Pushkin is buried or generals, or they have to go somewhere far, the patriarch has given a dispensation for cremation. But that is out of necessity.

Mr CRITTENDEN: In very simple terms the theological position is that a person's body is a temple of the Holy Spirit and therefore has to be treated in a loving and respectful way. Also it provides a way of staying connected to one's relatives who have passed on if you have got a place of pilgrimage that you can go to where they rest. That is where I think the culture is centred and, of course, in extreme circumstances where people are diseased and cremation is necessary that is allowed. The Greek tradition is simply to exhume and then to put the bones in an ossuary but, again, as we understand it that has cropped up in circumstances where there literally is no space.

The Hon. TREVOR KHAN: Mr Crittenden, I do not think anyone on this Committee would expect you to take any position other than the position you have expressed. You do not have to justify the position that you have. That is not why you are here.

Mr CRITTENDEN: I appreciate that.

The Hon. TREVOR KHAN: It is troubling for us but it is not a matter where you have to justify your faith.

Mr CRITTENDEN: I appreciate that. I am just trying to elucidate—

The CHAIR: The question here is: Do you believe this regulation protects your faith and your burial practices? I think you answered that you potentially need some further clarification on that.

Mr CRITTENDEN: I think so. As I said before, so long as we are protected by the exemption and the separate question is addressed of the land, then we can go on with our practices as they have been.

The Hon. TREVOR KHAN: Is it permissible for husbands and wives to be buried in the same plot?

Archpriest LAPARDIN: Up to three people in a plot is permissible.

The Hon. TREVOR KHAN: And children with their parents?

Archpriest LAPARDIN: Yes. As long as you are in the ground peacefully asleep.

The Hon. MARK PEARSON: Does it matter whether they are beside or above each other?

Archpriest LAPARDIN: No, it does not.

The CHAIR: Thank you all for your evidence before the Committee today.

(The witnesses withdrew)

CATHERINE EMILY MANUEL, Chief Executive Officer, Cemeteries and Crematoria NSW, sworn and examined

ELIZABETH ANN LIVINGSTONE, Deputy Secretary, Lands and Water Division, Department of Industry, sworn and examined

The CHAIR: Would either of you like to make a short opening statement?

Ms MANUEL: Thank you. The Department of Industry and Cemeteries and Crematoria NSW appreciates the opportunity to contribute to this inquiry. In particular, we are pleased to provide context for the Cemeteries and Crematoria Amendment Regulation 2018 and the role of renewable interment rights. The purpose of the regulation is to amend the existing Cemeteries and Crematoria Regulation 2014, primarily to support the commencement of Part 4 of the Cemeteries and Crematoria Act 2013. Part 4 of the Act establishes a consistent system of interment rights across all cemetery sectors in New South Wales.

An interment right is the contract between a cemetery operator and a right-holder or consumer, which permits the right-holder to undertake burials in a particular grave or other allotment in a cemetery. That Act provides for both perpetual and renewable interment rights. Under the Act and regulation a renewable interment right allows the holder to bury human remains in a particular allotment, 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 five years, and additional periods up to a maximum of 99 years. The initial interment period for cremated remains may be up to 99 years.

Renewable interment rights is not a new issue. A key element raised in submissions to this inquiry is the role of renewable interment rights. It is important to note that this is not a new proposal. I would like to take you through the history of work in New South Wales in relation to renewable interment rights. As early as 2005, a report on the funeral industry by the Legislative Council Standing Committee on Social Issues recommended that the existing legislation be amended to allow for renewable tenure.

A subsequent discussion paper, "Sustainable burials in the Greater Sydney Metropolitan Area" was released for public consultation in 2008, and further canvassed the adoption of renewable tenure for public cemeteries. The paper saw renewable interment rights as an important component of the strategy to ensure the long-term sustainability of burial practices in New South Wales. Extensive consultation was undertaken prior to the introduction of the Act in 2013, which included Part 4 of the Act as it stands today. However, commencement of Part 4 was deferred to allow for further consultation, and was only proclaimed in June this year. This was in recognition of the sensitive nature of renewable interment rights, and the critical need for the community and industry operators to be well informed and to understand the process.

Cemeteries and Crematoria NSW consulted widely, and the feedback provided was used to draft the amendment regulations. In particular, we consulted with two groups established to ensure consistent engagement and communication with the interment industry and community—the Industry Consultative Group and the Community and Consumer Consultative Group—on regulatory proposals to support the commencement of Part 4. The Industry Consultative Group comprises members from each Crown cemetery operator; local government; Australian Funeral Directors Association of New South Wales; the NSW Funeral Directors Association; InvoCare and Palmdale. A total of seven meetings were held over a 12- to 18-month consultation period with this group.

The Community and Consumer Consultative Group comprises members from the Jewish Board of Deputies, Lebanese Muslim Association, Combined Pensioners and Superannuants Association, Catholic Archdiocese of Sydney, Turkish Muslim Association, Funeral Celebrants Association Australia, and a community member from the Greek Orthodox Church. Following this consultation, a draft regulation, better regulation statement and key fact sheets were placed on public exhibition for 28 days, which extensive promotion to maximise opportunities for engagement. A total of 72 submissions were received from a broad range of stakeholders, with the information gathered and issues raised used to refine the regulation.

After the proclamation of part 4 in June this year Cemeteries and Crematoria NSW held a workshop where participants were asked to provide feedback on Part 4 for Cemeteries and Crematoria NSW to use as it works with operators to implement part 4. Members from both consultative groups were invited to attend this workshop. Further, this week, Cemeteries and Crematoria NSW commenced its workshops with cemetery operators, holding workshops in Tamworth, Lismore and Port Macquarie. These workshops will continue over the coming weeks. In 2017, CCNSW released a metropolitan Sydney cemetery capacity report, which highlighted the looming shortage of available burial sites, particularly within Greater Sydney. The capacity report found that with no change to existing cremation and grave occupancy rates, cemetery capacity in metropolitan Sydney would be exhausted by 2051.

The key "take home" message is the renewable interment rights have been considered for over a decade in New South Wales. Renewable interment rights are used widely. Renewable interment rights also have a history of implementation outside of New South Wales. The concept of renewable interment rights is common around the world, including in Denmark, France, Germany, Greece, Italy and Sweden. Renewable interment rights are already a feature in the interment rights system in other Australian jurisdictions, including in Western Australia, where a right of burial is granted for 25 years with an option to renew for a further 25 years; South Australia, where interment rights may be issued for a specified period or in perpetuity; and Victoria, which provides the option for interment rights to be granted for a period of 25 years for cremated remains.

It is also important to note that the commencement of part 4 in this regulation provides for consistent regulation of interment rights across the State. It does not represent the introduction of renewable interment or burial rights in New South Wales. 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.

Renewable interment rights are voluntary and are not retrospective. Key elements of renewable interment rights to note are that they are a choice for burials and cremations; they are optional; no community, individual and cemetery operator will be required to take-up renewable interment rights. They 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.

The submissions to this inquiry have not reflected a full understanding of the scope of renewable interment rights. This highlights the importance of better communication to individuals and families, and the Government is keen to progress this further. The regulation provides important safeguards. The regulation does a number of things. It provides clarity for specific provisions contained in Part 4 as well as providing important safeguards for consumers. It has a particular emphasis on cultural respect, transparency and accountability.

The key provisions include ensuring cemetery operators record the cultural and religious practices of the deceased; providing cooling-off periods for consumers when purchasing renewable interment rights, requiring the disclosure of fees and charges for interment rights; requiring a range of notification and consumer protection requirements for renewable interment rights; and strengthening the obligation on operators to ensure they consult with appropriate religious or spiritual leaders before disturbing human remains.

Without the regulation these important safeguards will be missing from the regulatory framework for interment rights which are contained in the Cemeteries and Crematoria Act 2013, in Part 4. The commencement of part 4 of the Act and the provisions of the regulation establish a simplified, consolidated and consistent regime of interment rights across the industry. It covers public, private and community cemeteries, provides strong consumer safeguards for interment right holders and mandates requirements to improve accountability and certainty.

The CHAIR: Would you mind handing up your written statement to the secretariat, for Hansard's benefit and also for the benefit of Committee members.

The Hon. TREVOR KHAN: I would be interested in having a copy.

The Hon. MICK VEITCH: Thank you. I look forward to reading that. Ms Manuel, when did you commence in your role?

Ms MANUEL: On 7 May this year.

The Hon. MICK VEITCH: Thank you. We heard in previous testimony that there had been a number of CEOs before. I just wanted to know when you commenced.

The Hon. SHAYNE MALLARD: And improvements.

The Hon. MICK VEITCH: And, to be fair, this afternoon we have heard people saying that there has been an improvement in the administration. So, I guess you should take that as a pat on the back from a whole range of people.

The Hon. GREG DONNELLY: But—

The Hon. MARK PEARSON: Brace yourself!

The Hon. MICK VEITCH: One of the things that we have to try to reconcile is that a large number of the submissions, and even the testimony today, say that the consultation and engagement process has been flawed. That is in conflict with what you have just said in your opening remarks. Who is wrong and who is right? How

can people sit here and, under oath, say that they only found out about the regulation, in one case one week ago, and in another case two weeks ago, when you are saying that there has been extensive consultation?

Ms MANUEL: We have consultative committees, which I mentioned in my opening statement, and we have members on those committees. We engage with those committees and we leave sufficient time between our meetings so that those members can engage with their communities and provide feedback to us. That is the process that we have undertaken.

Ms LIVINGSTONE: I would just comment more broadly. The Subordinate Legislation Act also sets out consultation requirements for regulations and so forth and we have more than complied with the requirements under that Act. There was a public exhibition period. There were media releases. Anybody could make a submission when the regulation was on exhibition last year. We are always open to improving consultation practices and we always want to hear from our stakeholders. We are more than open to hearing how we can engage more closely to those who felt that they have not been engaged, but we have made very extensive attempts to be very inclusive in the consultation to date.

The Hon. TREVOR KHAN: Again, I am not doubting what you say but we heard from Bishop Schaefer that there was no communication with—I am going to show my complete lack of religion at this point in time, but I will say with the archdiocese over the proposed regulation of the Russian Orthodox Church. Would the Russian Orthodox Church be one of your stakeholders?

Ms MANUEL: No, on our consultative committees we have representatives from the Crown cemetery operators and other areas. It would be up to those members to then go and engage with their communities around what they are hearing from us. We are providing them with drafts of the regulation and asking them to provide feedback, which many did and we did actually take that feedback on board and make amendments to the draft regulation.

The Hon. SHAYNE MALLARD: You would be expecting Rookwood to consult with the different religious communities that have cemeteries within Rookwood and then give feedback into your consultative process?

Ms MANUEL: That would be a normal practice.

The Hon. MICK VEITCH: In light of that, Rookwood have advised us that they requested an extension of the consultation period that commenced in November last year and finished on 22 December. They asked for it to be extended out until March and that extension was not taken up.

Ms MANUEL: I am not aware of that.

Ms LIVINGSTONE: I am not aware of that either. I take it on face value; I do not dispute it at all. The only thing I would say is that, apart from that process, consultation was very broad with the entire community. I guess we are talking about something that does affect everybody, so I would consider the entire community our stakeholder in one sense.

The Hon. TREVOR KHAN: That is why I asked about the Russian Orthodox Church. I am not being rude when I say that they are not the largest church in Australia but they are a significant community.

Ms LIVINGSTONE: Yes and so our consultation process was very broad. Obviously, it is not straightforward for us to consult with every individual one to one on a matter like this but we certainly are very open to hearing the whole community's views.

The Hon. MARK PEARSON: But surely the director of Rookwood Cemetery should not be the conduit for your organisation to seek consultation from peak religious organisations that would have very clear concerns about any proposed changes to what is done with their congregations and with their faithful whose family members are going to be buried. To rely on a director of a cemetery to be the conduit to the Russian Orthodox Church, the Greek Orthodox Church or the Jewish Board of Deputies, is that really—

Ms LIVINGSTONE: Ms Manuel may be able to add detail but most of the Crown operators or in fact all of them work very closely with their communities and do have close relationships because those communities have particular interests in particular cemeteries.

The Hon. TREVOR KHAN: That is not the impression that some of our witnesses have given.

The Hon. MICK VEITCH: They did not know. I know you said at the outset that you have read the submissions, and we have heard testimony today, but they are saying they did not know. There is something amiss here. There is a disconnect.

The Hon. TREVOR KHAN: Can I add in that regard that the Minister no doubt has been relying upon advices from you that people have been consulted. The Minister might be as alarmed as anyone else by at least some of the evidence given today that people seem to have not been in the know.

Ms MANUEL: Crown cemetery operators often run community advisory committees and the very purpose of those committees is to undertake consultation with them and to obtain feedback.

The Hon. TREVOR KHAN: But is it not your job to obtain that consultation? Again, this is not a personal attack but it seems to me that the responsibility falls upon the public service to undertake the consultation; not to, in a sense, delegate it to some other body. Otherwise, you are working on the basis that something is happening when in fact may not be.

Ms LIVINGSTONE: Certainly as we have described, and this is common in a lot of policy areas in government, there is often very targeted consultation with stakeholders who have a particular interest and then there are broader opportunities for others to contribute and we have provided those. Clearly, we accept that stakeholders feel they have not been consulted adequately and we are happy to take that on board and to—

The Hon. GREG DONNELLY: Can I interrupt?

The CHAIR: Let the witness finish and then you can ask your question.

Ms LIVINGSTONE: Our doors are open. We are always happy to consult with people. As Mr Khan pointed out, that is a critical role for government and policymakers.

The Hon. SHAYNE MALLARD: But they need to know.

The Hon. GREG DONNELLY: First of all, let us be very clear. This is not a question of these people feeling that they were not consulted. They were not consulted. Let us be very clear about this: They were not consulted. I will just give you an example. In the opening statement in describing the nature and the configuration of persons represented on the industry and the community and consumer consultative groups, if I understood Ms Manuel's statement correctly, she said there was a community member from the Greek Orthodox Church. That is what you said.

Ms MANUEL: That is what I have been advised, yes.

The Hon. GREG DONNELLY: You do not know?

Ms MANUEL: I only joined on 7 May.

The Hon. GREG DONNELLY: So you have been advised. I just find it extraordinary that we had representatives here today from the hierarchy of the Greek Orthodox Church who knew nothing about this regulation. I would have to go back and check the transcript but I think their testimony was that it was only in the last couple of weeks that the Greek Orthodox Archdiocese in New South Wales became aware of a regulation of such significance for their community. I am gobsmacked by that. You can say all you like about broad consultation with people, but if you look at your submission on page 4 in the third paragraph from on the top there is an explanation of how the consultation process was done.

I appreciate, Ms Manuel, that it was before you assented to your role. I do not understand why the religious communities in this State, which are very well known in and of themselves, were not directly consulted about this. Pardon the phrase, but they have got some pretty serious skin in the game. These are all the religious communities in this State from the largest through to perhaps the smallest. One just has to google "religion in New South Wales" and it is all there. For the life of me I do not understand why they were not directly contacted and directly engaged in the consultation process.

Ms LIVINGSTONE: Again, we have laid out the consultation processes. As I have said, we are always happy to take on board comments to improve those.

The Hon. GREG DONNELLY: No, you are missing the point. Do not tell me that you are open to consultation now. That is all well and good, but we are talking about something that took place at the back end of last year which was profoundly inadequate. That is the point. Do you acknowledge that this was a profoundly inadequate consultation process? I am just speaking on behalf of the religious communities, there could be other communities but the religious communities are the ones who have primarily made submissions to this inquiry. It was a profoundly inadequate process.

Ms LIVINGSTONE: I do not accept that it was profoundly inadequate. I think it is consistent with consultation processes and good consultation processes that government takes in a range of policy areas. There was media. There was an open submission process. We promoted it on the Government's Have Your Say website. Anybody was able to make a submission. There were some targeted communications with interest groups. I accept

that consultation processes can always be improved and we are always looking to do that, but I do not accept that it was profoundly flawed.

The CHAIR: What were the targeted consultation pieces that you had?

Ms LIVINGSTONE: The CCNSW board undertook those and I would have to refer to Ms Manuel to talk about the advice she has on the targeted consultations that they undertook.

The CHAIR: Ms Manuel, can you outline any of those targeted consultations?

Ms MANUEL: We did write to cemetery operators and we sent letters out. We had committee meetings with our industry and consumer advisory groups. Those groups have been in place for many years and nomination to those committees was based on who—at the time—people felt were best placed to actually go and undertake consultation in the deeper community.

The Hon. TREVOR KHAN: Was direct communication, for instance, made with the Catholic Church?

Ms MANUEL: The Archdiocese of Sydney is on the consumer advisory board—

The Hon. TREVOR KHAN: What about the Anglican Church?

The CHAIR: The Hon. Mick Veitch has suggested that you might want to take the question on notice and come back to the Committee.

The Hon. MARK PEARSON: Could it be the case that because religious organisations' plots were going to be exempted by the regulation it was decided—either knowingly or unknowingly—to not consult with them? These organisations are also grappling with finding the space to continue to be able to bury in perpetuity. Is that an explanation as to why they were not consulted?

Ms LIVINGSTONE: I cannot imagine that was a reason why they would not have been consulted. I will repeat that the CCNSW board will take that on notice and get a list of who was directly contacted so that you have the full information. But I do not think they would have excluded any religious groups thinking that because they are exempted it would not apply.

The Hon. SHAYNE MALLARD: Obviously there is a sense that there is an issue with people feeling that they were not consulted. I have been involved in a lot of consultation processes during my career and I am always testing, re-testing and re-evaluating the mechanisms used. I think that is a learning here.

The Hon. TREVOR KHAN: I hate that phrase—"a learning."

The Hon. SHAYNE MALLARD: I will remember that next time you ask a question, Trevor. I want to throw the baby out with the bath water here—I hate that term too. Ms Manuel, you talked about the safeguards in the regulation. We have been very focused on that one area of the regulation. I would like you to expand upon that for me because if this Committee was to recommend, for example—and I am not suggesting it will—a suspension for more consultation or whatever, what is important, besides the misunderstood interment issue, in the regulation? Can you expand on that and how it works in the Act?

Ms MANUEL: Part 4 of the Act sets out the interment rights system in the legislative framework and covers both perpetual and renewable. The regulation goes a step further and provides further requirements if a cemetery operator wants to offer renewable interment as an option at their cemetery. There are notification periods and it goes through a cooling-off period. There is notification at the end of a renewable period and notification if you are going to exhume a body. There are cooling periods and transparency around pricing. It provides further requirements that a cemetery operator would have to adhere to to ensure that there is protection for the consumer.

The Hon. SHAYNE MALLARD: In the submission from the Jewish Board of Deputies they recommended a strengthening of the language. Have you read their submission?

Ms MANUEL: Yes.

The Hon. MICK VEITCH: Do you accept that strengthening should take place?

Ms MANUEL: In the regulation?

The Hon. MICK VEITCH: Yes.

Ms LIVINGSTONE: Are you talking about having a prescription of who needs to be contacted?

The CHAIR: The inclusion of the term "must" and the suggestion of a schedule attached to that.

Ms LIVINGSTONE: Regulation is always a balance with regard to how prescriptive you are because while there can be change as the context changes and communities change, it is not an immediate or

straightforward process. On the CCNSW website there is a link to the right people to contact from the Jewish community in the case of interment and I think that is a very practical way of providing transparency and ensuring that the information that people need is able to be kept current.

The Hon. MICK VEITCH: I do not think it is an unreasonable request, just quietly. We also heard from the NSW Aboriginal Land Council about the cultural needs of Indigenous Australians. How is that accommodated within your website? It is more than religious groups; Indigenous Australians have a real attachment to earth and they are saying that there is no mechanism for that to be accommodated in this process.

Ms LIVINGSTONE: I absolutely respect that. We are at the start of a process where legislation has commenced that allows a right to be offered and provides consumer protections around that. The details and the products that operators might decide to offer are yet to be worked out. We expect a whole lot of things are going to be developed. Some have already been developed and Ms Manuel has this week been consulting on guidelines and other materials that are going to help people through the process. We would welcome consultation with Aboriginal groups to develop processes and guidelines that are going to protect their interests.

The Hon. TREVOR KHAN: The answer might be quite simple, but what consultation did you have with, for instance, the NSW Aboriginal Land Council with regard to this legislation?

Ms MANUEL: In their submission to us during the period when we released the draft regulation they requested, for example, that with regard to the notification section, the *Koori Mail* be used so that the Aboriginal community would be aware.

The Hon. MICK VEITCH: That is eminently sensible.

Ms MANUEL: Yes, correct. I spoke to them only yesterday, talking about their needs and—

The Hon. TREVOR KHAN: They made a submission, but do you know if a direct approach was made to the Land Council?

Ms MANUEL: I understand that we wrote to them and provided them with the draft regulation and that they then provided a submission to us, which included—

The Hon. TREVOR KHAN: That is excellent—that is all I was asking.

The Hon. MICK VEITCH: We heard today that they are also cemetery operators in some cases.

Ms MANUEL: Yes, and there are special exemptions in the Act for Aboriginal cemetery operators.

The Hon. MICK VEITCH: The Rookwood General Cemetery's submission is pretty scathing and detailed. It has also tabled a number of recommendations for this Committee to give consideration to, the first of which recommends the postponement of the enactment of part 4 renewal rights until a full review is undertaken. It goes on to talk about more in-depth community consultation and things like that. Have you had any dialogue with Rookwood General Cemetery about this regulation and what it actually means for the operation of that very large cemetery?

Ms MANUEL: Since I joined I have met with Rookwood General a number of times and we also had a workshop where we went through part 4 and what it means for our stakeholders and the community. We requested that people provide us with direct feedback so that we can actually start to take it on board. As I mentioned in my statement, renewable interment has been on the agenda in New South Wales for more than 10 years and—

The Hon. TREVOR KHAN: With respect, the making of a committee report—even though it gives us great glee in this place—does not actually mean that it is necessarily on the agenda. We have made some recommendations that have disappeared into the ether very quickly.

Ms MANUEL: But it has been discussed in New South Wales for more than 10 years. It has been in the Cemeteries and Crematoria Act since 2013 and there was extensive consultation in 2011, 2012 and 2013. We have done additional consultation for the proclamation. This has been a long-term initiative. The first step is to ensure that our cemetery operators comply with part 4 and the requirements around the burial certification that they provide to consumers and the information that they gather.

The Hon. MICK VEITCH: With all due respect, Ms Manuel, three of the members of this Committee were here in 2013 when that piece of legislation was debated. It was a pretty fair, robust and vigorous examination of the New South Wales upper House. Part 4 was set aside essentially because a range of issues had been raised through a lack of proper consultation. I understand what you are saying, but the reality of what happened on the floor of the Chamber was members of Parliament of all persuasions went, "What are you doing?". So it was set aside because of concerns raised by members of Parliament because of a lack of consultation around part 4. You

can talk about extensive consultation leading to the 2013 Act, but it is my contention that that part 4 would not have been in the Act if the consultation had been extensive and listened to; we would not have had those problems.

We need to move on because we are going to get stuck here with a whole range of things. We have heard a lot today about soil types and the effect on decomposition and some very compelling evidence from Dr Boyd. One of the reasons Rookwood General Cemeteries Reserve Trust is suggesting that we set this aside for a while is so we can get the science in and understand and have a greater appreciation of the impact of Australian soils on decomposition, and I think that is a fair request. It is not that people may not accept renewable tenure, it is just that there is a whole range of things that still are not known about it that need tidying up. Do you agree that the science is not quite yet in on the decomposition rates of soils?

Ms LIVINGSTONE: There is no pressure for any cemetery operator to offer renewable interment, but it is completely their choice, and they are going to take a range of factors into account, including soil type and any uncertainty they have about decomposition rates. I imagine that they would take those things into account. Obviously, across Australia—and my background is geology and geography, so I know a little bit about soil types—there are very diverse soil types in different areas. So what might be an issue in one location is unlikely to be exactly the same in another.

The Hon. MARK PEARSON: But is that not exactly the point? With the unexempted graves after 25 years there is going to be pressure upon the family to either exhume the body or to purchase another licence or another rental of it. The science is not in that at 25 years for all soils in Australia where cemeteries are that the decomposition will have been sufficient to exhume the body.

Ms LIVINGSTONE: What I am suggesting is that given the diversity of locations and needs and demand, that cemetery operators will be able to make a reasonably informed judgement based on the information that they have about the soils in their location.

The Hon. MARK PEARSON: But that does not deal with the 25 years.

The Hon. TREVOR KHAN: And what if they are wrong? Let us suppose it is 25 years that is the figure that is chosen and the cemetery operator, for whatever reason, deems that to be a suitable period of time; the relatives are not interested for a variety of reasons, either impoverishment, disinterest et cetera, and then what you have got is the exhumation of partly decomposed bodies. I have heard about the effect upon those who are involved in the task, but what is going to be the impact upon some of the relatives if suddenly they find out it was not the bones of granddad that they were digging up, it was a half-decomposed body?

Ms LIVINGSTONE: The provisions in the Act and the regulation require that the body is adequately decomposed.

The Hon. TREVOR KHAN: You are only going to find that out perhaps if you dug up the body.

Ms LIVINGSTONE: I do not think it is going to help any of us to go into lots of detail about that process.

The CHAIR: I am sorry, but that is the inquiry today.

The Hon. TREVOR KHAN: With respect, I do not want to go into gory detail, but that is the reality. I do not want to get stropky with you but it seems to me that you cannot just cover your eyes and say, "That's not a problem". It will be a problem for somebody at some point in time if this is not done correctly.

Ms MANUEL: The regulation says that it is for 25 to 99 years.

The Hon. TREVOR KHAN: That is right.

The Hon. MARK PEARSON: But there is a critical decision that has to be made at 25 years.

Ms MANUEL: No, it could be that the cemetery operator says, "Fifty years is what we need here. We couldn't do renewable for less than 50 years".

The Hon. TREVOR KHAN: I agree. I was not nominating the 25 years.

Ms MANUEL: The regulation gives the cemetery operator the ability to say, "We wouldn't do renewable for less than 50 years". That is the first thing—25 may not be an option in all cemeteries.

The Hon. TREVOR KHAN: Let me answer that. That is the problem. You are delegating the responsibility, it seems to me—and tell me if I am wrong—to the cemetery operator. My question was posed to you on the basis of what if the cemetery operator gets it wrong or does not care?

Ms MANUEL: Given that the Act requires that a certain amount of decomposition has happened, you would expect that this is something that they would look at very closely prior to offering renewable as an option at their cemetery. We have got cemeteries that already offer renewable—Waverley Cemetery and Kemps Creek—so there are some cemeteries that we can go to to get some history on their experience. The Lebanese Muslim Association and Rookwood General are doing some research into decomposition. But none of this stops part 4 in the regulation coming into play; it just means that the cemetery operators may not offer it immediately.

The Hon. MICK VEITCH: We heard from Rookwood General Cemetery and Dr Boyd. How many other cemetery operators are conducting assessments on their soil impact on decomposition rates?

Ms MANUEL: I have just mentioned the Lebanese Muslim Association and Rookwood General. That is information that we can share.

The Hon. TREVOR KHAN: Do we know the impact of, for instance, coffin layers?

Ms MANUEL: NSW Health regulates that area, but we will be meeting with NSW Health to start to talk to them about any changes that need to be made to ensure that decomposition can be maximised.

The Hon. TREVOR KHAN: From what Dr Boyd said there seems to be a number of known and unknown factors in regards to decomposition. One of them would seem to be perhaps what the coffin is made of, liners et cetera.

The Hon. SHAYNE MALLARD: Embalming.

The Hon. TREVOR KHAN: Embalming—all these factors that may impact even if there is a consistency of soil type.

Ms MANUEL: Correct. The cemetery operator, if they were to offer renewable, would talk to the family about what they can and cannot do if renewable is an option that they would like to take up. That is part of the policy and the implementation and what you call the operationalisation of such a regulation.

The Hon. MICK VEITCH: So the cemetery operator, as I understand it from your comment, would be sitting down with the family at a time of great grief to discuss with them a potential renewable tenure arrangement based on the decomposition rates they know from soil, previous exhumations.

Ms MANUEL: Not based on it. Maybe it is not the cemetery operator, it could be the funeral director because it depends on who is engaged with the family.

The Hon. TREVOR KHAN: Self-evidently it is going to be the funeral director. It is not going to be the cemetery operator.

Ms MANUEL: Correct. I just wanted to make that clear. If a family said that they would like to use renewable, then it could be that they are told that these coffins are the coffins that you can use in this instance. I am just going on what I heard today that it could be that they say if there is a watch, for example, "You may not want to put it with the deceased. You may want to put it somewhere else". But they are all decisions that can be made by the family with the funeral director at the time.

The Hon. MICK VEITCH: One of the other things that has been raised extensively in the submissions, and you would have read through this, is this issue around funeral poverty or that the potential for renewable tenure creates a two-tiered access to burial, one of which is if you can afford to take the full 99 years you put the hard bucks down to pay for the whole 99 years, but if you cannot, you will pay for the 25, if that is the option put up by the cemetery operator. You hope that in 25 years time your family will have enough funds to maybe keep you on a restful place. Was any work done around the economics of this regulation?

Ms LIVINGSTONE: Could make a couple of observations? By offering options, you increase choices that consumers have. A key part of the regulation is about consumer protections and transparency. Pricing will be very transparent, more so than it is currently, because of the regulation. By having different options consumers would have more choice. From an economic theory perspective, choice is beneficial overall for consumers in making an informed decision that suits their needs.

The Hon. TREVOR KHAN: I have to say, based on my experience of burying relatives, informed choice is not the criterion that applies at the time of dealing with your loved one. I make this point very clear: I am lacking in religion. It is tradition, it is the religious belief of the deceased, it is grief and it is guilt that drive you, not informed decisions.

Ms MANUEL: On 25 June when we proclaimed part 4 of the Act, section 145, which is the Independent Pricing and Regulatory Tribunal [IPART] review, was also proclaimed. This is an area that is very complex. We have never had an independent pricing review done of this space, including the funeral director and right through

to the cemetery and cremation or burial. We kicked off the IPART review. The whole purpose of that is to provide transparency and to provide some indication to where pricing should be. I agree: When you have lost a loved one, you are not sitting there trying to get the best deal possible.

The Hon. TREVOR KHAN: No.

Ms MANUEL: You are overwhelmed with grief and it is a very fast process as well from the date of demise to the date of the service. By providing the requirement for transparency through the Act and also doing the IPART review, the information from which will be publicly available, that should provide consumers with additional protections and more understanding of what costs should be.

The Hon. MICK VEITCH: I come back to Mr Mallard's question. We seem to have gone on a bit of a journey since he asked this question. Essentially, what would be the implications of setting aside the regulation while some additional work could be done—consultation and some of the science—before we move forward with the regulation? What are the implications?

The Hon. TREVOR KHAN: Do not assume that that is going to be the recommendation of this Committee, please.

Ms MANUEL: Part 4 exists, and that is the interment rights system, which includes perpetual and renewable interment rights. The regulation provides those additional consumer protections that many people have spoken about today positively, and it gives them comfort.

Ms LIVINGSTONE: Removing the regulation turns off the protections, essentially. The regulation is all about consumer protections. It is the Act where provisions are made for renewable interment. The regulation is very important to have in place to ensure those protections are there.

The Hon. MICK VEITCH: For renewable interment?

Ms LIVINGSTONE: For all kinds of interment, but including renewable.

The Hon. SHAYNE MALLARD: Renewable interment is in the Act, right?

Ms LIVINGSTONE: That is correct.

The CHAIR: And it is operational now.

The Hon. SHAYNE MALLARD: Yes. I was about to say that. That is what I wanted to clarify—for me and for everyone watching and listening.

Ms MANUEL: Yes.

Ms LIVINGSTONE: That is correct.

The Hon. SHAYNE MALLARD: That has not been triggered active until this regulation in June?

Ms MANUEL: The Act was proclaimed on 25 June, but at the same time we actually put forward the Cemetery and Crematoria Amendment Regulation 2018.

The Hon. SHAYNE MALLARD: At the same time?

Ms MANUEL: They are separate things, but we needed to provide the additional consumer protections to make sure that when the Act was switched on, that was switched on at the same time. It is only the Crown Cemetery operators that actually could not offer renewable. All other operators in the State can actually offer renewable. As we noted earlier, one of the main things about part 4 and the interment rights system is that it is a consistent system across the State.

The Hon. SHAYNE MALLARD: For all operators?

Ms MANUEL: For all operators, for all sectors.

The Hon. SHAYNE MALLARD: That regulation applies to all operators?

Ms MANUEL: Correct, yes.

Ms LIVINGSTONE: Yes.

The CHAIR: In those bodies—I think you said Waverley before, which operates renewable tenure—what protections were there before this regulation? Were there any at all?

Ms MANUEL: Only the policy and the contract they entered into.

The CHAIR: But nothing in the regulation or legislation at all?

Ms MANUEL: No.

The Hon. MICK VEITCH: Just in relation to Waverley, do we know how many renewable tenure arrangements have been put in place?

Ms MANUEL: I did actually make some inquiries. They have offered this since 1992. My understanding is that the most common choice is a 50-year renewable interment right. They have not come to an end yet of the renewable interment right, but it has been taken up by people and they are opting, typically, for 50 years.

The Hon. TREVOR KHAN: Can I just ask about a couple of procedural matters? You will need to take these on notice. You may or may not know. Was there a Government response to the 2005 report?

Ms MANUEL: Yes. The sustainable burials—there was a Government response that was released in 2008.

The Hon. TREVOR KHAN: There was a 2005 report. Do I take it there was in some way a positive response to the suggestions that were contained in that 2005 report?

Ms MANUEL: Correct. There was a sort of funeral investigation in 2005. Off the back of that, the sustainable burials report was commissioned for greater metropolitan Sydney. In 2008, the Government response came out. The sustainable burials report considered other options, not just renewable. The Government response was that, as a result of consultation that was undertaken during the commissioning of that report, renewables was the most palatable to the community as an option to assist with the sustainability of cemeteries.

The Hon. TREVOR KHAN: If you do not mind, are you able to give a copy of the sustainable burials in the Sydney metropolitan area discussion paper to us?

Ms MANUEL: We can, yes—the actual report?

The Hon. TREVOR KHAN: It was a discussion paper.

Ms MANUEL: Yes.

The Hon. GREG DONNELLY: With respect to your submission on page four, underneath a series of dot points, the paragraph states:

The information gathered and issues raised by stakeholders throughout the public consultation period were used to refine the Regulation."

I am wondering, on notice, whether you can provide for the Committee a copy of what was the proposed regulation in draft form, and a copy of the regulation that picked up those refinements. That is the first thing. Secondly, with respect to the next sentence, "Non-regulatory matters will be included in guidelines"—again I am happy for you to take it on notice—would you provide a comprehensive list, or a list that is as complete as you can make it, of what are examples of non-regulatory matters to be incorporated into guidelines?

Ms MANUEL: Yes.

Ms LIVINGSTONE: Certainly. It is easy to provide both of those things. In fact, the better regulation statement, which addresses the first, is publicly available.

The CHAIR: Thank you very much for your time here today. You have taken some questions on notice this afternoon. The Committee has resolved that those questions are returnable to the Committee within 14 days. The Committee secretariat will be in touch with you to work out what those questions are and to provide assistance. That concludes our hearing. The Committee will have a short deliberative meeting.

(The witnesses withdrew)

The Committee adjourned at 16.33.