



THE 11TH HOUR

SOLVING SYDNEY'S CEMETERY CRISIS

CEMETERIES AND CREMATORIA ACT 2013

STATUTORY REVIEW



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CONTENTS

CEMETERIES AND CREMATORIA ACT 2013

STATUTORY REVIEW

	ABBREVIATIONS.....	10
1.	EXECUTIVE SUMMARY.....	11
2.	RECOMMENDATIONS.....	21
3.	THE REVIEW.....	31
	3.1. Statutory requirements.....	32
	3.2. Terms of Reference.....	32
	3.3. Approach to the Review.....	33
	3.3.1 Accountabilities and methodology.....	33
	3.3.2 Relevant sector reviews.....	36
4.	THE NSW CEMETERIES AND CREMATORIA SECTOR.....	39
	4.1 Public policy context.....	40
	4.1.1 The <i>Cemeteries and Crematoria Act</i> and regulation.....	40
	4.1.2 Other Acts and regulation.....	41
	4.2. The NSW cemeteries and crematoria sector.....	42
	4.2.1 Types on interment.....	42
	4.2.2 Interment activity.....	42
	4.2.3 Burial versus cremation.....	43
	4.2.4 Operators – Crown, private, local government.....	44
	4.2.5 Ethnicity of sector.....	46
5.	HISTORY OF THE NSW CEMETERIES AND CREMATORIA SECTOR.....	49
	5.1 Overview.....	50
	5.2 Aboriginal burial practices and customs.....	50
	5.3 Cemetery planning.....	52
	5.4 Cemetery management – Church verses State.....	56
	5.5 Cemetery conversion – the loss of connection and heritage.....	59
	5.6 Summary.....	61
6.	MEETING COMMUNITY, CULTURAL AND FAITH REQUIREMENTS.....	63
	6.1 The stakeholder engagement process.....	64
	6.2 Objects of the Act.....	66
	6.3 Identified challenges.....	67
	6.3.1 The availability and affordability of burial interments.....	67
	6.3.2 Respect for customs and beliefs.....	71
	6.3.3 Location of cemeteries and geographical shortages.....	73
	6.3.4 Cemetery maintenance.....	73
	6.3.5 Renewable tenure and religious exhumations.....	75
	6.3.6 Aboriginal burials.....	76
	6.3.7 Destitute burials.....	78
	6.3.8 Community acceptance of new cemetery proposals.....	79
7.	SUPPLY-DEMAND FOR BURIAL INTERMENTS AND PLANNING CONSIDERATIONS.....	81
	7.1 Overview.....	82
	7.2 Previous studies into Sydney cemetery supply and demand.....	83
	7.2.1 NSW Government.....	84
	7.2.2 CCNSW.....	84
	7.2.3 Urbis.....	85
	7.2.4 Greater Sydney Commission.....	85
	7.3 Review's supply-demand model.....	87
	7.3.1 Model scenarios.....	94
	7.3.1.1 Status quo.....	94
	7.3.1.2 New land.....	97
	7.3.1.3 Policy options.....	101
	7.3.2 Factors impacting new cemetery developments.....	117

8.	FINANCIAL SUSTAINABILITY AND GOVERNANCE OF THE CROWN SECTOR.....	132
8.1	Overview.....	133
8.2	Financial sustainability.....	133
8.2.1	Model description.....	133
8.2.2	Scenarios.....	136
8.2.3	Summary of key findings of each scenario.....	137
8.2.4	Status quo.....	140
8.2.5	Status quo with the addition of new cemeteries.....	146
8.2.6	Policy and operational improvements.....	150
8.2.7	Consolidation.....	153
8.3	Governance.....	164
9.	PRICING AND AFFORDABILITY.....	170
9.1	Pricing principles.....	172
9.1.1	Affordable and equitable.....	172
9.1.2	Financially sustainable for operators.....	172
9.1.3	Simple and transparent pricing.....	173
9.2	Cemetery governance, competition and consumer choice.....	173
9.2.1	Operator governance arrangements and competition.....	173
9.3	Financial sustainability of operators and cost reflective pricing.....	179
9.3.1	Interment costs.....	179
9.3.2	Land costs.....	183
9.3.3	Perpetual maintenance costs.....	184
9.4	Pricing of interment rights.....	188
9.4.1	Pricing variability.....	189
9.4.2	Renewable tenure versus perpetual interments.....	189
9.4.3	Affordability.....	190
10.	REGULATION OF THE INTERMENT INDUSTRY.....	192
10.1	Overview.....	193
10.2	Current regulatory objectives of the NSW Government.....	194
10.2.1	The Quality Regulatory Service initiative.....	195
10.2.2	NSW Guide to Better Regulation 2019.....	196
10.2.3	IPART framework.....	196
10.2.4	Commonwealth regulatory guidelines.....	198
10.3	Appropriateness of the cemeteries and crematoria regulatory framework.....	200
10.3.1	Objects.....	200
10.3.2	Functions and powers of the regulator.....	201
10.3.3	Provisions enabling regulatory intervention.....	203
10.4	Regulation of perpetual maintenance of cemeteries.....	203
10.4.1	Future regulatory framework of perpetual maintenance	208
10.5	Current regulatory oversight and performance.....	213
10.5.1	Stakeholder perceptions of the regulator.....	214
10.5.2	CCNSW regulatory maturity.....	216
10.5.3	Interment sector regulation.....	224
11.	IMPLEMENTATION – CEMETERY REFORM TASKFORCE.....	228
11.1	Overview.....	229
11.2	The Cemetery Reform Taskforce.....	229
11.2.1	Skills and expertise.....	229
11.2.2	Roles and responsibilities.....	230
11.2.3	Resourcing and budget.....	231
11.2.4	Timelines.....	231

APPENDICES.....240

A.	Terms of Reference of the Statutory Review.....	241
B.	Other legislation relating to the interment industry.....	243
C.	Proposed amendments by stakeholders to the <i>Cemeteries and Crematoria Act 2013</i>	247
D.	Regulatory functions and enforcement provisions of the Act.....	260
E.	Model overview.....	265
F.	Permissibility analysis of cemetery and crematoria use under LEP within Sydney LGAs.....	267
G.	Status quo – 10-year financial forecasts of Crown operators.....	269
H.	Perpetual maintenance valuation approach.....	273
I.	Financial forecast of CMCT (including MMP and NG).....	274
J.	The key stages and decisions in the funeral and interment process.....	275



ABBREVIATIONS

the Act – *Cemeteries and Crematoria Act 2013*
CCNSW – Cemeteries & Crematoria NSW
CMCT – Catholic Metropolitan Cemetery Trust
Codes SEPP – *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*
DA – Development Application
DPIE – Department of Planning, Industry and Environment
ESMP – Eastern Suburbs Memorial Park
FUM – Funds Under Management
GSC – Greater Sydney Commission
GSRP – Greater Sydney Region Plan
IPART – Independent Pricing and Regulatory Tribunal
IPC – Independent Planning Commission
ISEPP – *State Environmental Planning Policy (Infrastructure) 2007*
LALC – Local Aboriginal Land Council
LEP – Local Environmental Plan
LMA – Lebanese Muslim Association
MCB – Metropolitan Cemetery Board
MMP – Macarthur Memorial Park
NG – Nepean Gardens
NMCLM – Northern Metropolitan Cemeteries Land Manager
NPWS – NSW National Parks and Wildlife Service
OSL – Office of Strategic Lands
PCA – Principal Certifying Authority
PMTL – Perpetual Maintenance Target Liability
PwC – PricewaterhouseCoopers
QRS – Quality Regulatory Services
RGCRM – Rookwood General Cemeteries Reserve Land Manager
RNLM – Rookwood Necropolis Land Manager
SEPP – State Environmental Planning Policy
SMCLM – Southern Metropolitan Cemeteries Land Manager
SSD – State Significant Development
VCA – Vegetation Conservation Areas
WMP – Woronora Memorial Park





CHAPTER ONE

CEMETERIES AND CREMATORIA ACT 2013

STATUTORY REVIEW

EXECUTIVE SUMMARY

OVERVIEW

Sydney is running out of burial space.

Cemeteries which have served Sydneysiders for more than a century – Rookwood, Botany, Field of Mars, Macquarie Park – are now in their final years of being able to accommodate the burial needs of Sydney.

Some of these cemeteries will close within three years and all existing operational Crown cemeteries will close to new burials within 10-12 years.

This is much sooner than previous timeframes indicated and requires immediate action.

The shortage of burial space in Sydney has major implications for NSW and its residents.

It poses a significant financial risk to the State's finances, with unfunded liabilities of the Crown Sector in excess of \$300 million and the required capital to build new cemeteries of approximately \$200-300 million.

It makes burials unaffordable for some sections of the community and impedes families and communities from burying loved ones in accordance with their religious customs.

It exposes larger systemic challenges that could lead to the collapse of the Crown sector, ceding control of the market to one vertically integrated private sector participant.

These are the key findings of the most comprehensive review of the cemeteries and crematoria sector ever undertaken in NSW.

Left unaddressed, the challenges identified will escalate quickly.

There is a solution, which would place the sector on a sustainable basis, able to fund its liabilities and develop new cemeteries without the need for new capital from the NSW Government. As well as addressing significant risks and liabilities, recommended reforms could create a multi-billion dollar asset for the State.

It requires immediate action in three key areas: consolidation of the Crown sector operators, the acquisition of land for new cemeteries, and a strengthening of the industry regulator.

THE REVIEW

The NSW Government has commissioned the most comprehensive review of the cemeteries and crematoria sector ever undertaken.

It builds on the 2012 reforms of the NSW sector and explores critical challenges facing the sector and the NSW community.

Unlike previous investigations into the sector, this Review is highly quantitative, with the development of the most comprehensive forecast model.

This has enabled the Review to expose key risks to the sector and community, the extent of which were previously unknown.

The Review identifies financial and operational risks as well as deficiencies in the current governance arrangements, particularly the accountability and transparency measures relating to Crown operators.

The Review has segmented its recommendations into three key areas requiring immediate NSW Government action. These are:

1. **Crown sector consolidation** – to address the financial sustainability of the Crown sector, reduce risks to the NSW Government and ensure a competitive industry environment;
2. **Strengthening the regulator** – to enforce operator accountability and pricing transparency, and ensure communities can respectfully bury their deceased in accordance with their customs; and
3. **Acquisition of land** – to ensure the continuity of burial services for the community while also addressing a critical operational sustainability requirement of Crown operators.

These measures will enable Crown operators to meet the Objects of the Act into the future.

Such is the urgency, these reforms need to be implemented concurrently.

The Review recommends they be coordinated by a new dedicated unit within the NSW Government, the Cemetery Reform Taskforce.

The Review believes its recommendations can be implemented within three years.

THE IMPORTANCE OF CEMETERIES

Cemeteries are critical social infrastructure.

The need to bury our dead in a respectful and dignified manner is beyond question, and cemeteries should rightly hold the equivalent status in our planning system as key social infrastructure like schools and hospitals.

The sector must be responsive to community needs, reflecting their cultural, religious, environmental and heritage priorities. It needs to provide sufficient land for burial in geographically convenient locations that enable the timely burial of loved ones, regular visitation and ensure affordable service options are available for all.

Operators must also be financially sustainable, so our cemeteries can be maintained to acceptable community standards.

These requirements are not being met by the majority of Crown operators.



Like all international cities, Sydney continues to experience rapid population growth, changes in its population demographics and competing pressures of other infrastructure developments to meet the needs of its residents.

Despite this growth, the NSW Government, through its Crown cemetery operators, has not built a new cemetery in Sydney in over 80 years.

An unambiguous body of evidence developed over almost two decades has projected the exhaustion of Sydney's cemeteries. The findings of this Review has the exhaustion occurring much sooner and requires immediate action.

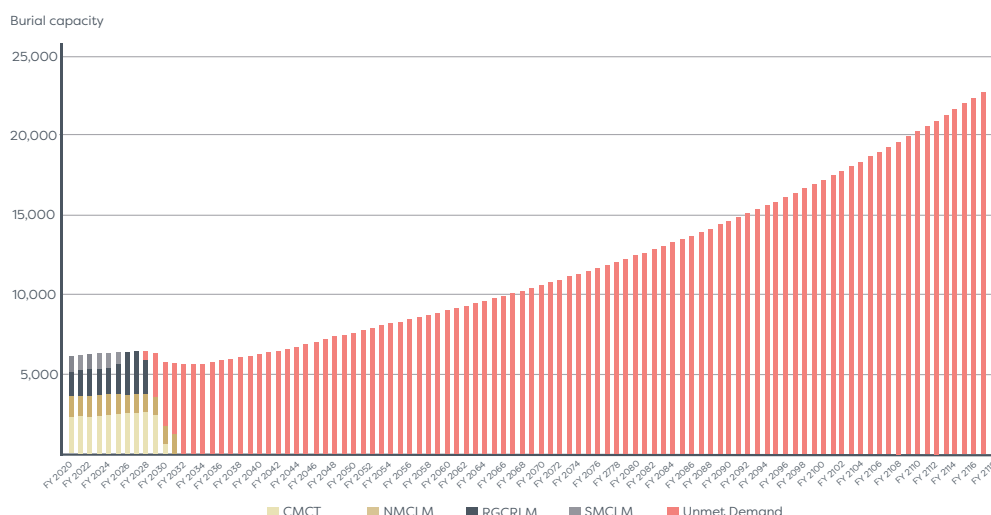
While our 19th century cemeteries like Rookwood Necropolis, Botany, Field of Mars, Woronora, Liverpool, Gore Hill and Waverley have served Sydney extraordinarily well, they are now just years away from exhausting their remaining plots for new interments.

All existing operational Crown cemeteries will exhaust their currently available land in the next 12 years. Sydney residents who have not pre-purchased an interment right by then will not be able to be buried in a Crown cemetery.

Key geographical cemeteries – Botany, Woronora, Field of Mars – servicing the east, south and north-west of the city will close to the sale of new interment rights in as little as four, seven and nine years respectively.

Rookwood General, which undertakes approximately 30% of Sydney's burials will be closed to the sale of new interments rights in eight years. Many communities, including Sydney's large Muslim community, will exhaust their section in four years. Smaller groups like the Russian Orthodox, Mandaean and Maori will run out of burial space in as little as three years.

Graph 1.1: Crown cemetery sector - demand v supply analysis



A planned new Crown cemetery, Macarthur Memorial Park, offers a positive yet temporary solution by providing 136,000 lawn plots (which is expected to result in circa 85,000 burial interment rights) this falls well short of projected unmet burial interment right demand of approximately 304,000 over the next 50 years and approximately 1,090,000 over the next 100 years. Therefore, Macarthur Memorial Park, is only expected to extend capacity for approximately an additional 10 years.

Land for new cemeteries needs to be acquired immediately to meet this projected demand, especially given the current protracted and uncertain planning approvals process for cemeteries.

With cremation rates in Sydney consistently around 67%, there is limited scope to increase this further and materially reduce land supply requirements.

The magnitude of the projected supply-demand imbalance is such that there is no single solution to this predicament. The NSW Government must embark on a series of initiatives to ensure the sustainable supply of land for burial and ash interments.

These measures need to be acted on concurrently:

- ◆ Identification, acquisition and the phased releasing of land for development as new cemeteries across Sydney;
- ◆ Transition to more sustainable burial practices, as adopted in other international cities, including cemetery renewal and renewable tenure interments, in the medium to long term;
- ◆ Amendments to the planning and approval system to identify cemeteries in the planning system as key social infrastructure, with State Significant Development status; and
- ◆ Ensuring cost-price signals are efficiently reflected in the market so consumers can make informed choices about their preferred form of interment.



FINANCIAL SUSTAINABILITY

The Review's investigations have exposed wider systemic issues threatening the survival of the Crown cemetery sector.

Even with the provision of additional cemetery land, at considerable expense to the NSW Government, it is unclear the sector can be sustainable in the longer term in its current structure.

In its current configuration, the Crown sector is incapable of meeting anticipated burial demand beyond 12 years, and in certain locations, in as little as three years.

The Review's analysis shows two of the four Crown operators will not be able to fund their obligations to perpetually maintain their cemeteries to current standards.

Three operators are unlikely to be able to meet key Objects of the Act in the short term.

The Crown sector has accumulated significant unfunded liabilities, associated with the requirement to maintain cemeteries in perpetuity. On a consolidated level, these unfunded liabilities exceed \$300 million.

New capital will be required by the NSW Government for Crown operators to develop new cemeteries and fund their perpetual maintenance obligations.

At the same time, in their current structure, it is estimated Crown operators will need to invest approximately \$300 million to acquire and build new cemeteries to meet the projected burial demand over the next 50 years.

Competition risks

The financial vulnerability of Crown operators threatens to distort the NSW cemeteries and crematoria market and competitive landscape.

While Crown operators undertake approximately 72% of burials across Sydney, they have only 24% of estimated remaining supply.

The majority of unsold interment rights available in Sydney reside with one private sector operator.

When all existing Crown operational cemeteries exhaust new interment rights in the next 12 years*, it is anticipated this private operator will have the largest stock of available cemetery land. The same operator owns the majority of funeral directors and undertakes 56% of cremations in Sydney.

Without new market entrants and the development of significant new Crown cemeteries, this private operator will have a dominant position across the funeral director, cremation and burial interment markets in Sydney.

SECTOR REGULATION

Regulation of the sector has been identified as one of three areas in need of significant reform.

Prior to the commencement of the *Cemeteries and Crematoria Act 2013*, there was no dedicated legislation and regulation for the NSW cemeteries and crematoria sector.

The NSW Government reforms of 2012 addressed a number of regulatory and governance deficiencies, consolidating the Crown sector from 17 trusts to five operators (as a transitional measure) and creating an industry regulator, Cemeteries & Crematoria NSW (CCNSW).

Since its inception in 2014, CCNSW has not sufficiently evolved beyond a reactive posture focused on administering the Act and providing advice and guidance to operators.

The core regulatory functions relating to the development of mandatory codes, licensing, compliance monitoring and enforcement have not been undertaken.

Key provisions and powers contained within the Act have not been utilised by the regulator. The lack of regulation of perpetual maintenance obligations has resulted in significant unfunded liabilities.

Significantly, these regulatory weaknesses mean key risks and issues, such as those identified by this Review, are not being identified or escalated to the appropriate levels of government.

* Excluding MacCarthur Memorial Park (MMP)

A new regulatory framework needs to be developed across the entire sector to mitigate these risks and provide the appropriate levels of transparency and accountability.

Community concerns

The combination of a shortage of burial land, a relatively inefficient Crown operating structure, passive regulation and increasing prices (reflective of the supply-demand imbalance), causes great concern for communities across Sydney.

Communities requiring burial to meet their customs and beliefs are frustrated by the lack of strategic planning and action on behalf of the Crown. In many instances, they have been calling for action for more than 20 years.

The lack of a clear strategy has forced these communities to seek short-term, ad-hoc and relatively inefficient solutions to fulfil their religious customs and practices.

This is despite clear requirements in the Act for accessible and affordable interment to be made available to everyone.





THE WAY FORWARD

The issues facing the sector are now critical.

Further delay in rectification will only compound these challenges, exposing the NSW Government to greater financial cost and unable to fulfil the Objects of the Act.

The Review's recommendations provide for a more sustainable Crown cemetery sector that is better equipped to serve the citizens of NSW into the future.

They also emphasise the importance of strong governance, financial management and operational administration.

The Review has concentrated on securing the financial sustainability of the whole sector, rather than focusing on the relative merits of individual Crown operators.

Crown sector consolidation

To avert market distortions, the Review recommends further consolidation of the Crown sector. This would allow the sector to fulfil the Objects of the Act, a proposition almost universally accepted by Crown operators.

A consolidated Crown operator will be equipped to meet its perpetual maintenance obligations.

Significantly, by 2038 it will have generated excess capital of approximately \$600 million. Over time, it will potentially develop into a multi-billion dollar asset for the State.

Surplus funds could support the acquisition of new land, well in advance of the sector reaching exhaustion point in around 2045.*

Alternatively, excess capital could potentially be used at the discretion of the NSW Government to address pricing and affordability issues for sections of the community.

Consolidation of the Crown sector would enhance the competitive landscape, giving consumers greater choice of products and providers, while efficiency gains should lead to more affordable interment services.

The NSW Government needs to ensure any decision on the future governance arrangements of individual Crown operators takes into account the implications for the entire Crown sector.

There is the potential for significant financial value to be created as a result of the Review's recommendations. The NSW Government should ensure it retains control of current investment assets and of any future excess capital generated from these interment activities.



* Including MacCarthur Memorial Park (MMP)



CHAPTER TWO

CEMETERIES AND CREMATORIA ACT 2013

STATUTORY REVIEW

RECOMMENDATIONS

RECOMMENDATIONS – MEETING COMMUNITY, CULTURAL AND FAITH REQUIREMENT

Recommendation 6.1

REGULATORY

CCNSW, in consultation with key religious and cultural groups, immediately commences the development of a mandatory Code of Practice which outlines the specific interment requirements of those groups.

Recommendation 6.2

REGULATORY

CCNSW engages with NSW Health to review the current processes and responsibilities relating to the disposition of the remains of destitute persons to ensure they are in accordance with the Objects of the *Cemeteries and Crematoria Act 2013*.

RECOMMENDATIONS – PLANNING FOR AND USE OF CEMETERIES

Recommendation 7.1

REGULATORY

The NSW Government undertakes further analysis of the level of competition in the funeral, cremation and cemetery market in Sydney, with particular focus on the concentration of market power among vertically integrated operators.

Recommendation 7.2

LAND

The NSW Government immediately acquires land for new cemeteries and crematoria in Sydney.

Recommendation 7.3

LAND

The NSW Government consider reclassifying the Vegetation Conservation Areas in the Rookwood Necropolis to enable these lands to be used for cemetery purposes.

Recommendation 7.4

LAND

Consistent with Recommendation 6.1, the NSW Government recognises through the development of a mandatory Code of Practice, the requirement of key religious and cultural groups for perpetual interment.

With the exception of these religious and cultural groups, the NSW Government mandates all new cemeteries to offer renewable tenure interments only.

Recommendation 7.5

LAND

All Crown operators provide renewable tenure products, specifically developed in consultation with religious and cultural groups who accept renewable tenure interment practices.

Recommendation 7.6

LAND

The Act be amended to enable cemetery operators (at a prescribed point after the last interment) to convert a family plot from perpetual to renewable tenure, allowing future generations to utilise the plot.

All future interments are to be on a renewable basis.

RECOMMENDATIONS – PLANNING FOR AND USE OF CEMETERIES

Recommendation 7.7

Amendment of *Public Health Regulation 2012* burial depth provisions to enable greater utilisation of existing burial land, and removal of mandatory coffin burials to facilitate decomposition.

LAND

Recommendation 7.8

Amend the Act - s.52(1) to allow a cemetery operator to revoke an unexercised interment right after 35 years, down from 50 years, following the appropriate notification process.

LAND

Recommendation 7.9

The Act be amended to enable cemetery renewal in NSW cemeteries, where appropriate.

LAND

The Government considers mandating that only renewable interments be permitted in sections where cemetery renewal has occurred.

All future interments are to be on a renewable basis.

Recommendation 7.10

CCNSW and NSW Health remove impediments to natural burials, as part of the current review of the *NSW Public Health Regulation 2012*.

REGULATORY

CCNSW develops a code of practice regulating the natural burial interment process.

Recommendation 7.11

The NSW Government undertakes a comprehensive assessment of the ecological, cultural and economic impacts of conducting natural burial and ash interment activities within the Crown estate, including land managed by NSW Crown lands and NPWS.

LAND

Recommendation 7.12

REGULATORY

The NSW Government to undertake a public engagement and awareness raising campaign highlighting the vital role that cemeteries play in our community and the ancillary benefits they often provide in terms of green, open and public space. This should include broad community engagement such as surveys and workshops.

The campaign should be funded by the cemeteries and crematoria sector through the interment service levy.

RECOMMENDATIONS – PLANNING FOR AND USE OF CEMETERIES

Recommendation 7.13

LAND

The Greater Sydney Commission (GSC) is to be tasked with the responsibility of leading the process of identifying suitable precincts and parcels of land that could be used for new cemeteries.

GSC is to consult widely with operators and the broader industry to ensure suitable land is identified in appropriate locations across the city.

The Office of Strategic Lands (OSL) should be the agency of government, where necessary, for the procurement, holding and releasing of new cemetery land as required. The funding for such activities should be via Crown cemetery operators or long-term loans from NSW Treasury.

Recommendation 7.14

LAND

The appointment of an appropriate representative from CCNSW, OSL or DPIE to the Property Strategy Collaboration Committee, to identify surplus government land that may be appropriate for cemeteries and crematoria development.

Recommendation 7.15

LAND

The Greater Sydney Commission be requested to revise the District Plans to include priorities for cemeteries and crematoria across each District which councils will be required to give effect to through their future LSPSs and LEPs.

Recommendation 7.16

LAND

The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 be amended to identify all low environmental impact operational works specific to cemeteries and crematoria across NSW as exempt developments.

These ancillary operational works be included in a specific provision for cemeteries or crematoria land use.

Recommendation 7.17

LAND

Cemeteries and crematoria be recognised as State Significant Developments, reflecting their status as key social infrastructure, in the *State Environmental Planning Policy (SEPP)* framework.

The Government to consider two options for delivering SSD status:

Precinct specific – *State Environmental Planning Policy (State and Regional Development) 2011* (Schedule 2 – specific site), sufficiently sized and located cemetery and crematorium precinct(s) within a defined area of Sydney.

General – *State Environmental Planning Policy (State and Regional Development) 2011* (Schedule 1 – General), a state-wide provision for a cemetery or crematorium over a specified size (investment value or capacity).

RECOMMENDATIONS – FINANCIAL SUSTAINABILITY AND GOVERNANCE OF THE CROWN SECTOR

Recommendation 8.1

CONSOLIDATION

The NSW Government immediately commences the consolidation of the Crown sector operators to a single entity operating model, reflected in this Review as the *OneCrown* scenario.

The NSW Government has a number of options (reflected in *OneCrown* (a)(b)(c)) with respect to the number and nature of operators of specific *OneCrown* assets.

Recommendation 8.2

REGULATORY

CCNSW undertakes oversight, benchmarking and reporting of customer satisfaction levels across the cemeteries and crematoria sector in NSW.

A mandatory Code of Practice for customer service should form part of the interment industry scheme.

Recommendation 8.3

LAND

At the expiration of the RNLM crematorium lease to InvoCare in 2025, the asset(s) covered by that lease should be transferred to RGCRLM. The land contained within the lease should be made available for burial interments, preferably on a renewable tenure basis.

Recommendation 8.4

CONSOLIDATION

The NSW Government assesses if a consolidated Crown cemetery operator meets the criteria for a State-Owned Corporation.

Recommendation 8.5

REGULATORY

The NSW Government affirms Crown cemetery operators as controlled entities, preferably by legislative amendment.

Any entity holding and managing Crown perpetual maintenance reserve funds must be a controlled entity.



RECOMMENDATIONS – PRICING AND AFFORDABILITY

Recommendation 9.1

REGULATORY

CCNSW develops a standardised, plain English terms and conditions for interment rights so consumers clearly understand what they are purchasing and the standard of perpetual maintenance provided by the cemetery or crematorium operator.

Recommendation 9.2

REGULATORY

The *NSW Public Health Regulation 2012* be amended to extend the period, currently five days, for storing a body in a hospital mortuary without requiring the approval of the Secretary of Health.

Recommendation 9.3

REGULATORY

CCNSW develops, and publishes on its website, a template itemising prices with consistent terminology to facilitate more informed purchasing decisions and competition.

Operators would be required to publish prices for bodily interment services and itemise each service component using prescribed terminology. Each service component should be described in plain English.

Any additional costs associated with specific religious or cultural requirements must be clearly specified.

Recommendation 9.4

REGULATORY

Crown operators develop an affordable, fully integrated funeral and interment offering to the market.

Recommendation 9.5

REGULATORY

Cemetery operators conducting more than 50 bodily interments in new perpetual interment sites per year, or managing a cemetery with more than 40,000 bodily interment sites, maintain and contribute to a reserve fund to provide for the perpetual maintenance of each of their cemeteries.



RECOMMENDATIONS – REGULATION OF THE INTERMENT INDUSTRY

Recommendation 10.1

REGULATORY

CCNSW engages with the Australian Accounting Standards Board (AASB) to ascertain the appropriate accounting treatment of perpetual maintenance expenses by all cemetery operators given the provisions of AASB Standard 137.

Recommendation 10.2

REGULATORY

CCNSW evolves its regulator posture from reactive and administrative to become a proactive regulator of the sector.

CCNSW must develop a regulatory framework consistent with the NSW Government's policies in relation to Better Regulation.

CCNSW immediately commences work on the development of mandatory codes that will become an interment industry scheme. As outlined in s.31(2)(b)(c), the scheme must incorporate the assessment, reporting, provisioning and auditing of perpetual maintenance and the development of a license framework.

Recommendation 10.3

REGULATORY

The interment service levy not be extended to non-Crown operators until CCNSW has transitioned to a proactive regulator – evidenced by the development of an operational interment industry scheme being applied to operators posing levels of risk that need to be regulated.

Recommendation 10.4

REGULATORY

The NSW Government ensures that CCNSW has the capability and capacity to undertake the functions specified in the Act.

As a transitional measure, the interment services levy be amended immediately, requiring Crown operators to pay a determined percentage of their gross earnings from the previous financial year.

Any additional resources should be engaged on a flexible basis and potentially from other regulatory agencies within government with the required expertise.

Recommendation 10.5

REGULATORY

CCNSW needs to develop a Memorandum of Understanding with the relevant government department outlining the reporting relationships and expectations of the respective organisations of employees assigned to CCNSW.

RECOMMENDATIONS – REGULATION OF THE INTERMENT INDUSTRY

Recommendation 10.6

REGULATORY

CCNSW needs to be recognised as a strong, proactive regulator of the sector.

CCNSW needs to clarify its role by clearly communicating its functions, as outlined in the Act, and how it will undertake its regulatory obligations to the sector and the broader community.

Recommendation 10.7

REGULATORY

Consideration be given to reallocating the responsibilities of the *Cemeteries and Crematoria Act 2013* to a portfolio with regulatory expertise in managing the risks associated with the sector.

Recommendation 10.8

REGULATORY

Amendment to s.16(2)(b) of the Act to specify that three persons appointed to the Board should have experience and expertise in the following disciplines:

- ◆ Industry regulation;
- ◆ Actuarial or funds management; and
- ◆ Government, interment industry (not a current participant)

Section 16(2)(c), (d) and (e) of the Act be amended to remove all non-voting members of the CCNSW Board, with the exception of the CCNSW Chief Executive Officer who retains a non-voting role.

Recommendation 10.9

REGULATORY

The Act be amended to include a requirement that the Minister provide an annual Statement of Expectations to the Board of CCNSW outlining the priorities and direction of the NSW Government.

CCNSW provides a Statement of Intent for the Minister's approval.

The Statement of Expectations be tabled in the NSW Parliament, with CCNSW to report back to the Minister (and disclose on its website) actions it has undertaken in accordance with these directions.

Recommendation 10.10

REGULATORY

The Act be amended to require that CCNSW be subject to an independent audit and evaluation of its regulatory performance. The audit should be undertaken every three years and the report tabled in the NSW Parliament.

The Minister requests CCNSW immediately undertake a QRS Initiative assessment per the Government's guidelines, the results of which should be provided to the Minister.

RECOMMENDATIONS – REGULATION OF THE INTERMENT INDUSTRY

Recommendation 10.11

REGULATORY

CCNSW develops a two-tier regulatory structure that delineates the regulatory oversight between those operators required to hold an interment industry licence and those that are not.

Those required to hold an NSW interment industry license are:

- ◆ Cemetery owners and operators exceeding the following thresholds:
 - Undertaking more than 50 interments annually; or
 - Where more than 40,000 interments have taken place; or
 - Listed on the State Heritage Register; and
- ◆ All crematoria owners and operators.

Recommendation 10.12

REGULATORY

The NSW Government consolidates the regulation of funeral directors, cemeteries and crematoria under a single statutory regulator model to manage the anticipated proliferation of vertically integrated operators.

RECOMMENDATIONS – IMPLEMENTATION – CEMETERY REFORM TASKFORCE

Recommendation 11.1

LAND CONSOLIDATION REGULATORY

The NSW Government establishes a dedicated Cemetery Reform Taskforce with responsibility for implementing the recommendations of the Statutory Review and IPART's *Review into the Costs and Pricing of Interment in NSW*.

The Taskforce reports directly to the Minister for Water, Housing and Property, through the DPIE, and concludes the reforms within three years of commencement.





CHAPTER THREE

CEMETERIES AND CREMATORIA ACT 2013
STATUTORY REVIEW

THE REVIEW

3. THE REVIEW

In 2012, the NSW Government commenced reforms to the NSW cemeteries and crematoria sector. These reforms included the consolidation of Crown Trusts (from 17 to five) and the drafting of a dedicated Act to regulate the sector. It is important to note the Crown Trust structure was only intended to be transitional, recognising the need for further reform to fully address the identified challenges.

Since then, there have been numerous reviews, investigations and reports into the sector. These have related to governance of individual Crown trusts, regulatory performance, land supply and planning approvals for new cemeteries and the introduction of new interment options (renewable tenure).

While the Act provides for a five-year statutory review, this was broadened by the Minister for Water, Property and Housing in 2019 to address critical challenges facing the sector. This has been reflected in the Review's Terms of Reference, specifically the need for quantitative, evidence-based recommendations.

3.1 STATUTORY REQUIREMENTS

Section 144 of the *Cemeteries and Crematoria Act 2013* requires a statutory review five years from commencement of the Act to determine whether the policy objectives remain valid and the terms of the Act remain appropriate for securing those objectives.

Section 144(3) states: *a report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.*

3.2 TERMS OF REFERENCE

A full copy of the Terms of Reference is attached in Appendix A.

The objectives of the Review are to:

- ◆ Review the Act's policy objectives to see whether they remain valid and if the terms of the Act remain appropriate to secure those objectives
- ◆ Make specific implementable recommendations to the Minister relating to the following:
 - i. A detailed strategy and plan for the cemetery sector (private, local government and Crown) to ensure it has the appropriate structures and capabilities to meet the challenges confronting the sector into the future;
 - ii. Best practice governance models for the Crown cemetery sector taking into account the options for ensuring its long-term financial viability;
 - iii. The need for any legislative and regulatory amendments to implement the strategy and plan proposed for the NSW cemetery sector; and
 - iv. A timeline for the implementation of the proposed recommendations.

The Review will include:

- a. The challenges facing the Crown cemetery sector in Sydney;
- b. The operational efficiency of the existing Crown cemetery sector in Sydney;
- c. The existing governance and accountability arrangements for the Crown cemetery sector, and advice on alternative governance models;
- d. The financial capacity and income streams of the Crown cemetery sector and its ability to meet existing and future operational and regulatory requirements;
- e. The implications, benefits and effectiveness of imposing requirements for an operator of a cemetery to ensure adequate provision is made for perpetual maintenance of interment sites and the cemetery;
- f. The appropriateness of the existing legislative and regulatory framework to meet future requirements of the cemeteries and crematoria industry, and
- g. Land use issues facing cemeteries and crematoria and options that could ensure new cemeteries and crematoria can be provided.

3.3 APPROACH TO THE REVIEW

3.3.1 ACCOUNTABILITIES AND METHODOLOGY

The Review was overseen by an inter-agency steering committee, chaired by the Department of Planning, Industry and Environment (DPIE), with representation from:

- ◆ NSW Department of Premier and Cabinet;
- ◆ NSW Treasury;
- ◆ NSW Health; and
- ◆ Customer Service.

The Review engaged extensively with stakeholders. More than 100 meetings were held with NSW operators, community groups, regulators, NSW Government agencies, and operators and regulators in other jurisdictions in Australia.

DPIE requested the Review adopt a Workstream approach, reflecting the key challenges confronting the sector in the following five workstreams¹.

WORKSTREAM 1 – Governance of the interment industry and cemeteries

WORKSTREAM 2 – Meeting community, cultural and faith requirements

WORKSTREAM 3 – Financial viability

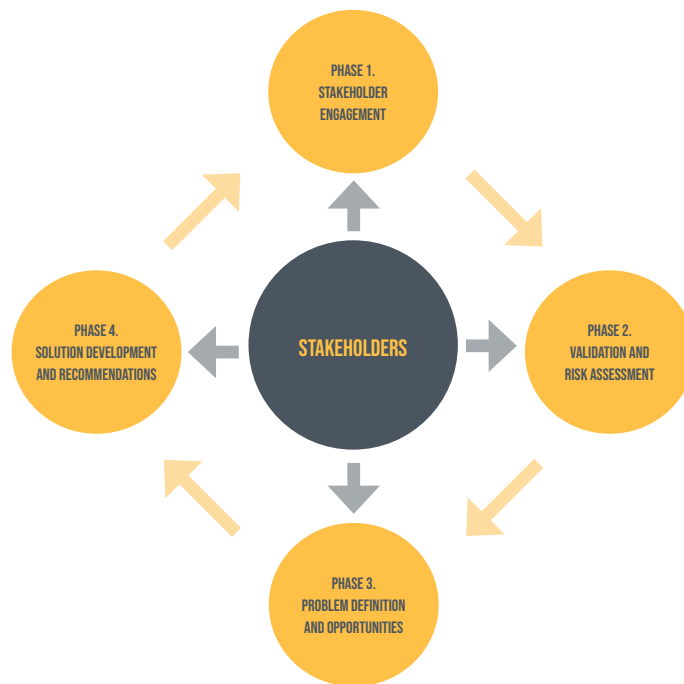
WORKSTREAM 4 – Pricing and affordability

WORKSTREAM 5 – Planning for and use of cemeteries

¹ Review of Cemeteries and Crematoria Act 2013, Terms of Reference, <https://www.industry.nsw.gov.au/cemeteries-crematoria/review-of-nsw-cemeteries-and-crematoria-act>.



Figure 3.1: The Review adopted the following phased approach



PHASE 1: STAKEHOLDER ENGAGEMENT

The Review commenced by identifying all relevant stakeholders to the sector and mapping their inter-relationships, interests and objectives. A series of meetings was organised with each stakeholder to ascertain their responses to the Terms of Reference, their long-term interests, and challenges and opportunities for the sector.

PHASE 2: VALIDATION AND RISK ASSESSMENT

This phase required the collation of data from a variety of sources to assess and validate the issues and opportunities identified in the initial stakeholder meeting and overall risk associated with key challenges.

PHASE 3: PROBLEM DEFINITION AND OPPORTUNITIES

Specific problem definitions and opportunities were developed and reflected in an Interim Report to the Steering Committee and the Minister.

PHASE 4: SOLUTION DEVELOPMENT AND FINAL REPORT

This phase of the Review comprised the development of solutions, reflected in a series of recommendations to the Steering Committee and the Minister in a Final Report. The findings and recommendations relate directly to the five workstreams.

3.3.2 RELEVANT SECTOR REVIEWS

In 2016, the Minister for Lands and Water ordered a review of Rookwood Cemetery to determine how cemetery management should implement the Objects set out in the *Cemeteries and Crematoria Act 2013*, and effect good governance and respectful administration of the cemetery.

Cemeteries & Crematoria NSW (CCNSW), commissioned PricewaterhouseCoopers (PwC)² to undertake the review. PwC delivered its final report in February 2018, with key findings and recommendations including:

- ◆ That a single governance structure supported by a community advisory committee made up of representatives of all Rookwood Cemetery stakeholder groups is optimal in the longer term; and
- ◆ That the best governance model for Rookwood Cemetery must be capable of delivering the following key functions:
 - o Upholding religious and cultural requirements;
 - o Strategy;
 - o Operations; and
 - o Stakeholder engagement and communication.

In February 2019, the Premier asked the Greater Sydney Commission (GSC) to provide advice and recommendations on the strategic planning considerations for the provision of new cemeteries³. This advice will provide criteria for identifying sites for new cemeteries in Greater Sydney.

In May 2019, the Independent Pricing and Regulatory Tribunal (IPART) commenced an investigation and report on interment costs and the pricing of interment rights, pursuant to Section 145⁴. The two specific matters for IPART to consider are:

- ◆ The relativity of costs and pricing factors for perpetual and renewable interment rights; and
- ◆ Full-cost pricing of perpetual interment rights, including provision for the perpetual maintenance of interment sites and cemeteries.

In December 2019, IPART released its Interim Report. It is expected to release its Draft Report in August 2020 and its Final Report in October 2020.

Also under Section 145, IPART will investigate and review competition, cost and pricing factors within the funeral industry. An issues paper to be released in March 2020 was delayed due to the COVID-19 pandemic.



² PriceWaterhouseCoopers Consulting, *Rookwood Cemetery; Future Governance Arrangements*, https://www.industry.nsw.gov.au/__data/assets/pdf_file/0003/180705/Rookwood-Cemetery-Future-Governance-Arrangements-Final-Report.PDF

³ Strategic planning considerations for cemeteries, <https://www.greater.sydney/project/strategic-planning-considerations-cemeteries>

⁴ IPART *Review of the costs and pricing of interment in NSW*, <https://www.ipart.nsw.gov.au/Home/Industries/Special-Reviews/Reviews/Cemeteries/Interment-costs-and-pricing-in-NSW>





CHAPTER FOUR

CEMETERIES AND CREMATORIA ACT 2013
STATUTORY REVIEW

THE NSW CEMETERIES AND CREMATORIA SECTOR

4.1 PUBLIC POLICY CONTEXT

Burial has been a consistent feature of societies since our earliest civilisations.

This presents many cultural, economic and social challenges to governments and NSW has not been spared these tribulations. Whether planning new burial grounds, managing infectious diseases, the relationship between Church and State, the maintenance of cemeteries or catering for a changing cultural mix, death has presented a public policy challenge to all governments since colonisation. Unfortunately, many of the responses have been largely piecemeal.

Historically, the regulation of cemeteries focused on ensuring the disposal of the deceased did not endanger public health through the spread of infectious diseases. The primary public policy imperatives were the safety and quality of disposal services and exhumations. Today, the focus of cemetery regulation is on providing appropriate accountability mechanisms to ensure operators of cemeteries and crematoria fulfil their legislative obligations.

4.1.1 THE CEMETERIES AND CREMATORIA ACT AND REGULATION

The evolution and maturity of the cemeteries and crematoria sector in NSW is best reflected by the creation of the *Cemeteries and Crematoria Act 2013*. The key Objects of the Act are summarised as:

- ◆ Ensuring the rights of all individuals to a dignified and respectful interment;
- ◆ Ensuring sufficient land is made available for interments;
- ◆ Ensuring the efficient management of cemetery assets, both now and into the future (including perpetual maintenance obligations);
- ◆ The establishment of a sector regulator, Cemeteries & Crematoria NSW, to oversee the prudential regulation and operational performance of the sector; and
- ◆ **Promote** affordable and accessible interments to all.

Section 12 of the Act outlines the general functions of the regulator:

- i. To assess current and future interment needs and develop planning strategies for cemetery space to meet those needs;
- ii. To provide advice or make recommendations to the Minister in relation to the sustainable use of cemetery and crematorium space and capacity;
- iii. To promote environmentally sustainable practices in the interment industry;
- iv. To develop, approve and promote codes of practice for cemeteries and crematoria and report on the adoption of those codes by the interment industry;
- v. To provide advice or make recommendations to the Minister on the establishment, implementation or alteration of interment industry schemes;
- vi. To regulate the provision of services in relation to interment matters that are subject to interment industry schemes;
- vii. To keep under review the policies, operating procedures and activities of the interment industry, including cemeteries, crematoria, providers of funeral goods and services, and operators of funeral funds; and
- viii. To collect information and carry out research as is necessary to exercise its functions.

The Act also provides minimum governance requirements for Crown cemetery operators, including the need for:

- ◆ Strategic plans – s.90;
- ◆ Preparation of a draft plan of management – s.93;
- ◆ Financial management, audits and reports – s.99, s.100, s.101;
- ◆ Provision of committees (finance, audit, risk and community advisory) – s.103;
- ◆ Planning conduct and maintenance – s.106; and
- ◆ Fees and charges – s.107.

4.1.2 OTHER ACTS AND REGULATION

In addition to the appropriate operational management of cemeteries, a number of other public policy imperatives relevant to cemeteries are outlined below.

LAND MANAGEMENT

Crown cemeteries and crematoria are established on Crown land for cemetery purposes under the *Crown Land Management Act 2016* and the *Cemeteries and Crematoria Act 2013*.

Urban planning and the associated planning approvals system needs to include provision for cemetery land and ensure that cemeteries are appropriately located in areas that minimise conflict with other existing land uses. Appropriate land use planning can also ensure cemeteries are integrated into other complementary government priorities, such as the provision of open parklands to maximise social amenity.

ENVIRONMENTAL AND HERITAGE VALUE

Environmental and heritage value: The Objects of the *Cemeteries and Crematoria Act 2013* require Crown cemeteries to recognise, and have regard for, the natural environmental, cultural and heritage significance of public cemeteries.

CONSUMER PROTECTION

The purchase of funeral and interment services poses particular risks for consumers. Decisions about interment services are usually infrequent, made at a time of emotional stress and often dependent on the advice of funeral directors, who are the initial point of contact and through whom purchases are typically made.

There is a need for appropriate standards of service and transparency and clarity in pricing. Given the nexus between the cemetery sector and funeral industry, regulation of one is critical to the other. NSW Fair Trading is responsible for regulation of the funeral industry.

Other Acts and regulations pertinent to cemeteries and crematoria management are:

- ◆ *Crown Land Management Act 2016*
- ◆ *Public Health Act 2010 and Public Health Regulation 2012*
- ◆ *Fair Trading Act 1987 and Fair Trading Regulation 2019*
- ◆ *Funeral Funds Act 1979 and Funeral Funds Regulation 2016*
- ◆ *Biodiversity Conservation Act 2016*
- ◆ *Births, Deaths and Marriages Registration Act 1995 and Births, Deaths and Marriages Registration Regulation 2017*
- ◆ *Heritage Act 1977*
- ◆ *Environmental Planning and Assessment Act 1979*

Other associated Acts are contained in Appendix B.

4.2 THE NSW THE CEMETERIES AND CREMATORIA SECTOR

4.2.1 TYPES OF INTERMENT

Interment describes the *placement of human remains in the earth or in a mausoleum, crypt, vault, columbarium, niche wall or other structure designed for the placement of such remains*¹.

In NSW, there are essentially two types of interment – burial and cremation.

An interment right is the legal right for human remains to be interred in a cemetery. Such rights can be acquired ‘pre-need’ – prior to death occurring – or ‘at need.’

In NSW, there are two types of burial interment rights – perpetual and renewable tenure. The vast majority of interment rights in NSW are perpetual. Since 2018, cemeteries have been able to offer renewable tenure interments of bodily remains for a minimum of 25 years² and renewable every five years for a total duration of no more than 99 years³. Currently, only one Crown operator offers renewable tenure interments and it only undertook 6 sales of renewable interment rights last financial year.

Renewable tenure burials have taken place in local government and private cemeteries but are little utilised. According to CCNSW, of the 18,335 interments in local government or private cemeteries in 2017/18, only 53 were renewable tenure interments – or 0.29%.

4.2.2 INTERMENT ACTIVITY

Reflecting the state’s significant growth since colonisation, annual deaths in NSW have increased from 392 in 1825 to more than 53,000 in 2019. Over this period, more than 4.5 million people have died in NSW, requiring the disposition of their remains through burial or cremation.

It is important to note that annual deaths have increased by over 105% in the 80 years since the last Crown cemetery was built⁴ – from approximately 26,000 in 1940 to more than 53,000 in 2019.¹

¹ Cemeteries and Crematoria Act 2013, s.44

² Ibid s.54.

³ Ibid, s.54(3)(a).

⁴ We note the commencement of construction of Macarthur Memorial Park by the CMCT, which is expected to commence burials in 2021.

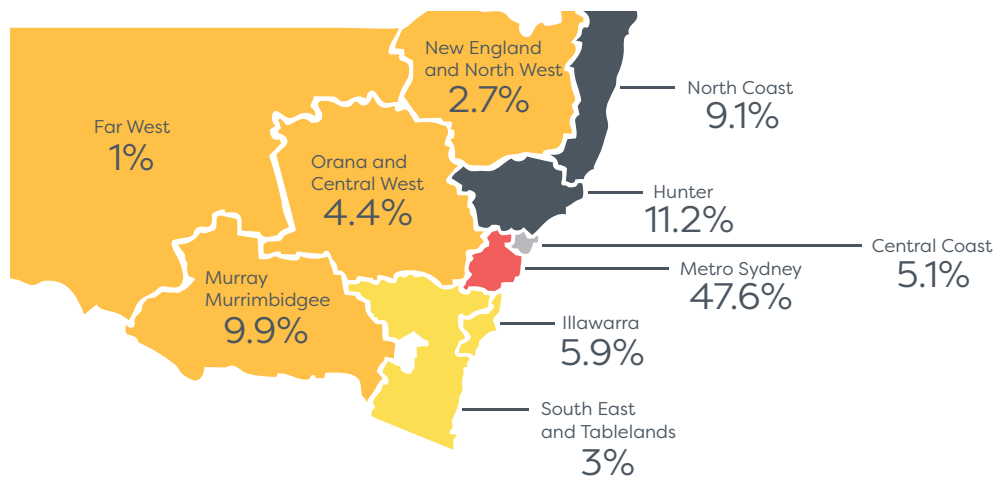
Figure 4.1: Annual deaths in NSW (1825 - 2018) ⁵



4.2.3 BURIAL VERSUS CREMATION

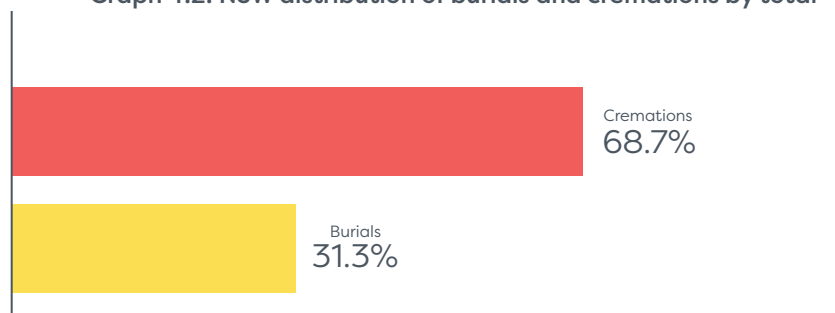
The key population centres of Sydney, Newcastle, Wollongong and the Central Coast account for the vast majority of burials and cremations in NSW.

Map 4.1: NSW distribution of burials and cremation by region ⁶



On average, cremation is the preferred mode of disposition, particularly in higher population density areas along the coast. Inland communities favour burial interment.

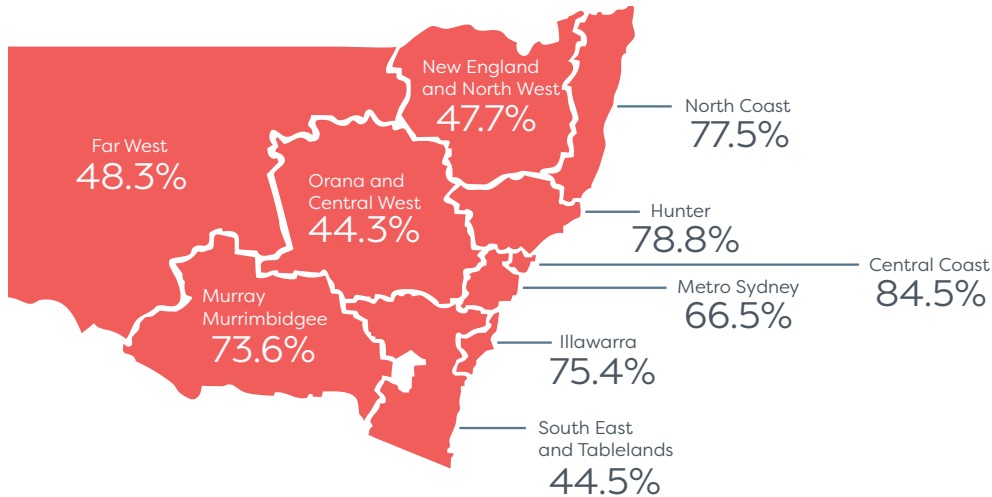
Graph 4.2: NSW distribution of burials and cremations by total ⁶



⁵ Australian Bureau of Statistics, 3105.0.65.001 - Australian Historical Population Statistics, 2016

⁶ As of 30 June 2019, Annual Operator Activity Report 2018/19, Prepared by Cemeteries & Crematoria NSW, page 1.

Map 4.2: NSW cremation rate by region ⁶



4.2.4 OPERATORS – CROWN, PRIVATE, LOCAL GOVERNMENT

NSW has one of the largest and most diverse range of operators in Australia, with Crown, private, local government and community operators all providing interment services. By contrast, Victoria only permits these activities to be undertaken by Crown trusts.

WHO PROVIDES BURIAL AND CREMATION SERVICES?

Over 230 operators provide interment services across NSW.

CROWN OPERATORS

- ◆ Five large trusts in Sydney
- ◆ Five smaller trusts in regional NSW
- ◆ Crown trusts conduct around 70% of burials in NSW

PRIVATE OPERATORS

- ◆ Manage over 70% of crematoria in NSW
- ◆ Conduct 75% of cremations in NSW
- ◆ Manage around 2% of cemeteries in NSW

LOCAL COUNCILS

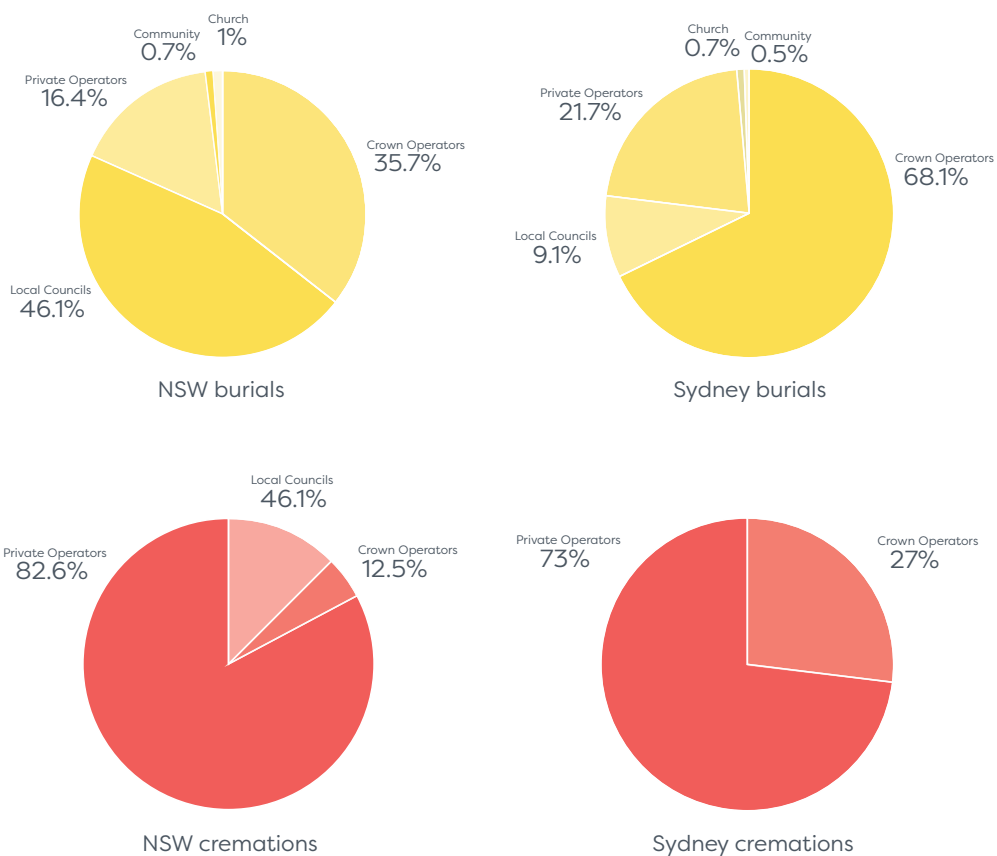
- ◆ Manage around 950 cemeteries in NSW
- ◆ 80% of council-run cemeteries are closed or conduct 10 or fewer burials/yr
- ◆ Conduct around 50% of burials in NSW and 10% of burials in Sydney
- ◆ Manage 8 crematoria in NSW

COMMUNITY OPERATORS

- ◆ Oversee small closed cemeteries
- ◆ Local communities and religious entities manage around 10% of operational cemeteries in NSW
- ◆ Conduct around 1% of burials across NSW and no cremations

In Sydney, Crown operators perform more than 68% of burials, while the private sector performs approximately 73% of cremations - Source *CCNSW Activity Report 2018/19*.

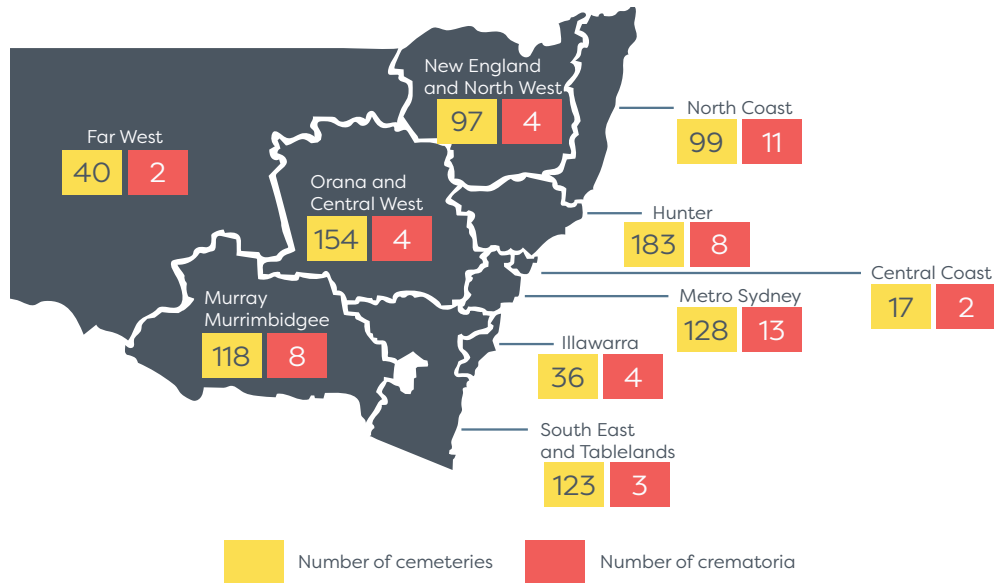
Graph 4.3: Providers of disposition services ⁶



Source: CCNSW, Activity Report 2018/19.

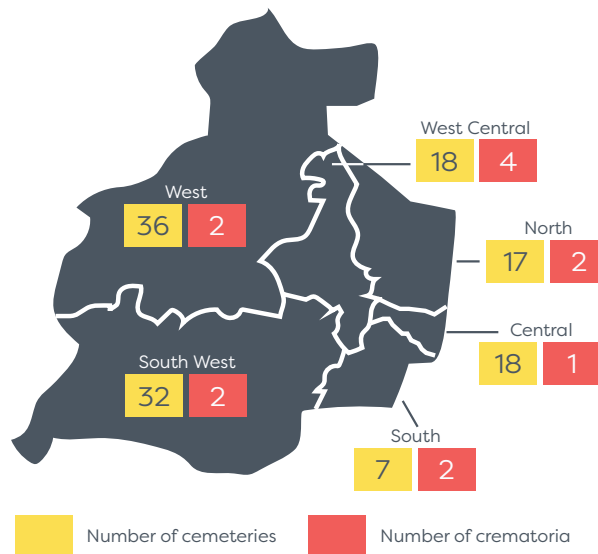


Map 4.3: Number of cemeteries and crematoria in NSW ⁶



This graphic uses NSW Department of Planning and Environmental regional boundaries.

Map 4.4: Number of cemeteries and crematoria in Sydney ⁶



This graphic uses NSW Department of Planning and Environment regional boundaries.

4.2.5 ETHNICITY OF SECTOR

NSW has one of Australia's most culturally diverse communities. From an interment industry perspective, this requires operators to cater for a diversity of needs and develop a range of interment options that meet these expectations.

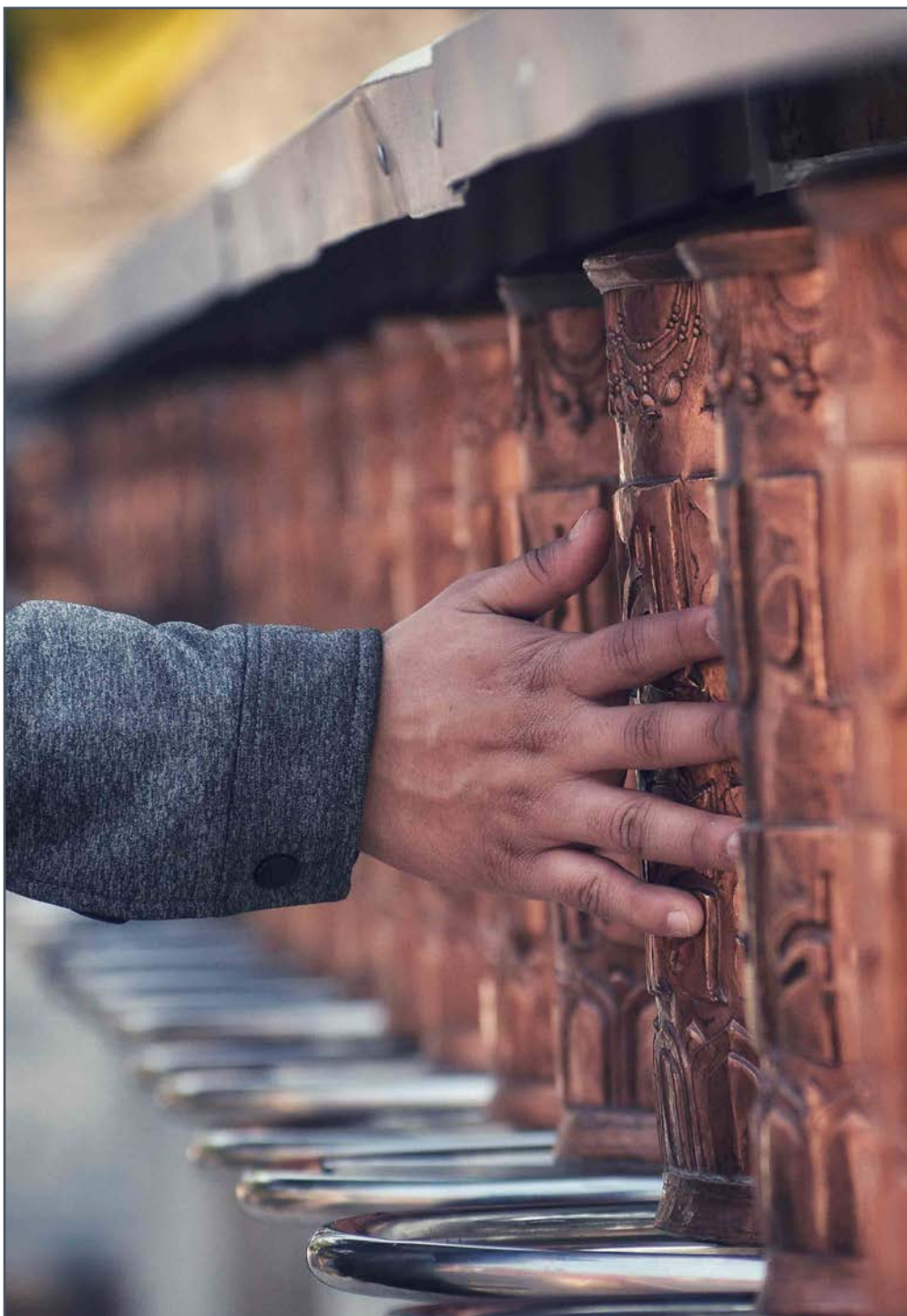


⁷ Multicultural NSW, Communities of NSW, <https://multicultural.nsw.gov.au/communities/>

The Act is clear in its Objects with respect to the needs of our culturally diverse community:

“... to ensure that the interment practices and beliefs of all religious and cultural groups are respected so that none is disadvantaged and adequate and proper provision is made for all”.⁸

The clear challenge for the NSW cemeteries and crematoria sector is to adapt its products and services for a customer base with increasing ethnic and cultural diversity. Product and service innovation will be critical to the commercial sustainability of operators.



⁸ *Cemeteries and Crematoria Act 2013*, Section 3(b) Objects of the Act, page 2.



CHAPTER FIVE

CEMETERIES AND CREMATORIA ACT 2013
STATUTORY REVIEW

**HISTORY OF THE NSW CEMETERIES
AND CREMATORIA SECTOR**

5.1 OVERVIEW

To understand the challenges facing the NSW cemeteries and crematoria sector, it is useful to revisit the historical decisions that have shaped its unique policy and operational characteristics, particularly in the Sydney metropolitan area.

In many key areas, history is repeating itself. Lessons and solutions can be informed both by the decisions of the past, and the indecision.

There are three key lessons from history:

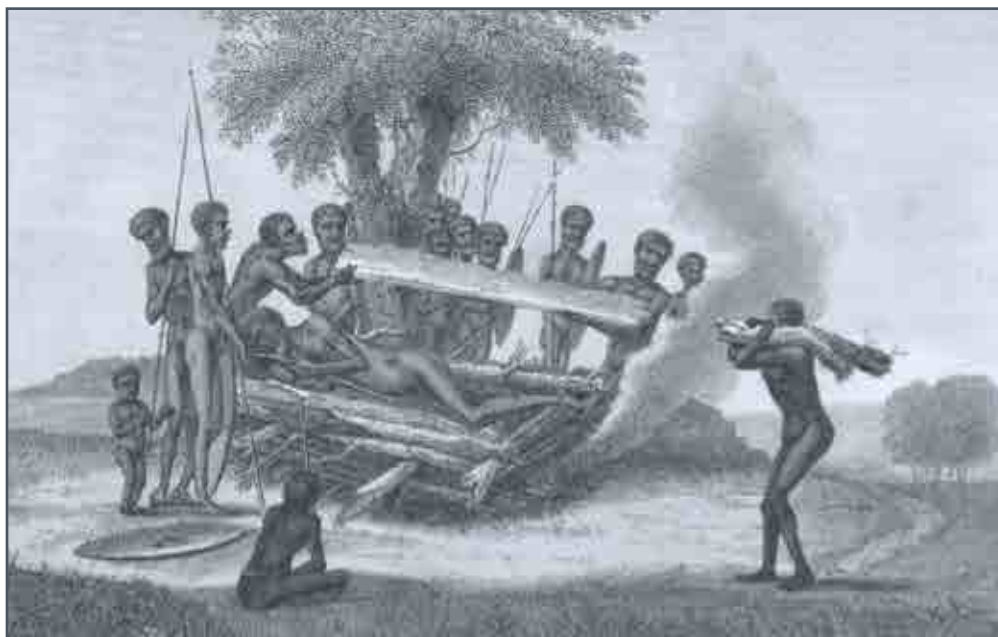
- i. The failure of strategic cemetery planning;*
- ii. Government's devolution of cemetery management to vested interests and lack of regulatory oversight of those interests; and*
- iii. The need for cemeteries to remain connected and relevant to their communities.*

5.2 ABORIGINAL BURIAL PRACTICES AND CUSTOMS

Australia was originally home to many different Aboriginal and Torres Strait Islander people, each with their own individual beliefs, languages, customs and practices, including burial practices, that had been passed down from generation to generation.

In the Sydney region, bodies of the deceased were interred by burial, or cremation followed by burial.¹ The interment was determined by the person's age and status within the community, with people of middle age and over afforded cremation and burial.² Coastline and estuarine areas were common locations for burial, often among shell middens.

Evidence from Lake Mungo in western NSW suggests Aboriginal people were cremating their deceased 40,000 years ago.³ Mungo Lady is the oldest known cremation in the world. While Mungo Man shows that his family mourned for him and carefully buried him in a lunette, on his back with his hands crossed in his lap, and sprinkled with red ochre.



Burning a Corpse by James Neagle, taken from David Collins' 1798 *An account of the English colony in New South Wales*.⁴

¹ Aboriginal customs allowed for 'burial' to include remains placed in branches of eucalypt trees.

² Lisa Murray, *Death and dying in nineteenth century Sydney*, 2013

³ Australian Museum; Disposing of the dead – cremation, <https://australianmuseum.net.au/about/history/exhibitions/death-the-last-taboo/disposing-of-the-dead-cremation/>

⁴ From the collections of the State Library of New South Wales [a1341022 / Q79/60 v. 1, opp. p. 608]

Memorialisation is also important for traditional Aboriginal people, with graves in large parts of NSW marked by trees carved with designs identifying or commemorating the person buried. This confirms that Aboriginal people in NSW had well established and deeply ritualised burial practices long before European settlement.

The impact of European settlement permeated all aspects of Aboriginal society, including burial rituals and customs. The history of Aboriginal burials and cemeteries after 1788 highlights – and compounds – the displacement of communities from their traditional lands.

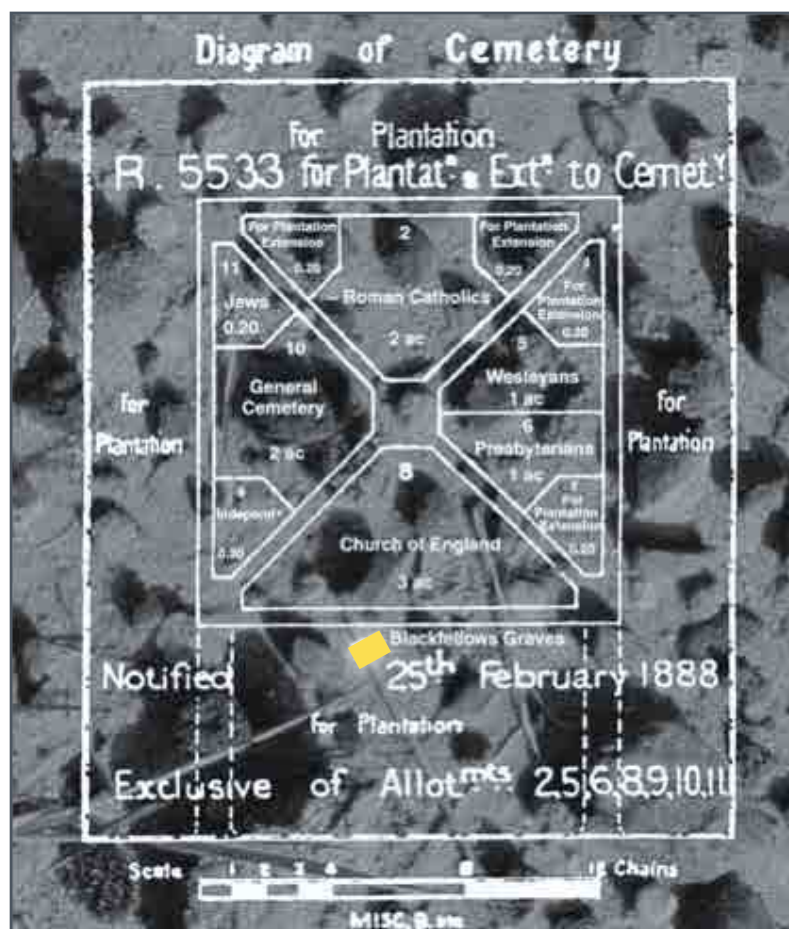
From the commencement of the colony, there are records of prominent Aboriginal people being buried on private estates and in burial grounds throughout Sydney.

Governor Phillip had Arabanoo (died 1789) and Ballederry (died 1791) buried in the grounds of the original Government House. Bennelong (died 1813) and Nanbaree (died 1821) were buried on the estate of James Squire at Kissing Point⁵.

Christian beliefs merged into Aboriginal culture. Burials often combined smoking ceremonies and Christian services. While Aboriginal people still wrapped the body of the deceased in bark before burial, later the government blanket which had kept a person warm in life was wrapped around their body in death⁶.

In the late 19th and 20th centuries, graves were often decorated with newer items of value. In the western regions of the State, there are graves decorated with shards of coloured glass, stone hatchets, coins and clay tobacco pipes.

Before the 1950s, many Aboriginal people in NSW were denied burial in general cemeteries and buried in designated areas outside the cemeteries.



A diagram of the Collarenebri public cemetery from the Collarenebri Parish Plan, 1959,⁸ Surveyor-General's Department. The original survey shows 'Blackfellows Graves' located just outside the boundary of the cemetery.

⁵ Keith Vincent Smith, Arabanoo, Nanbaree, 2010.

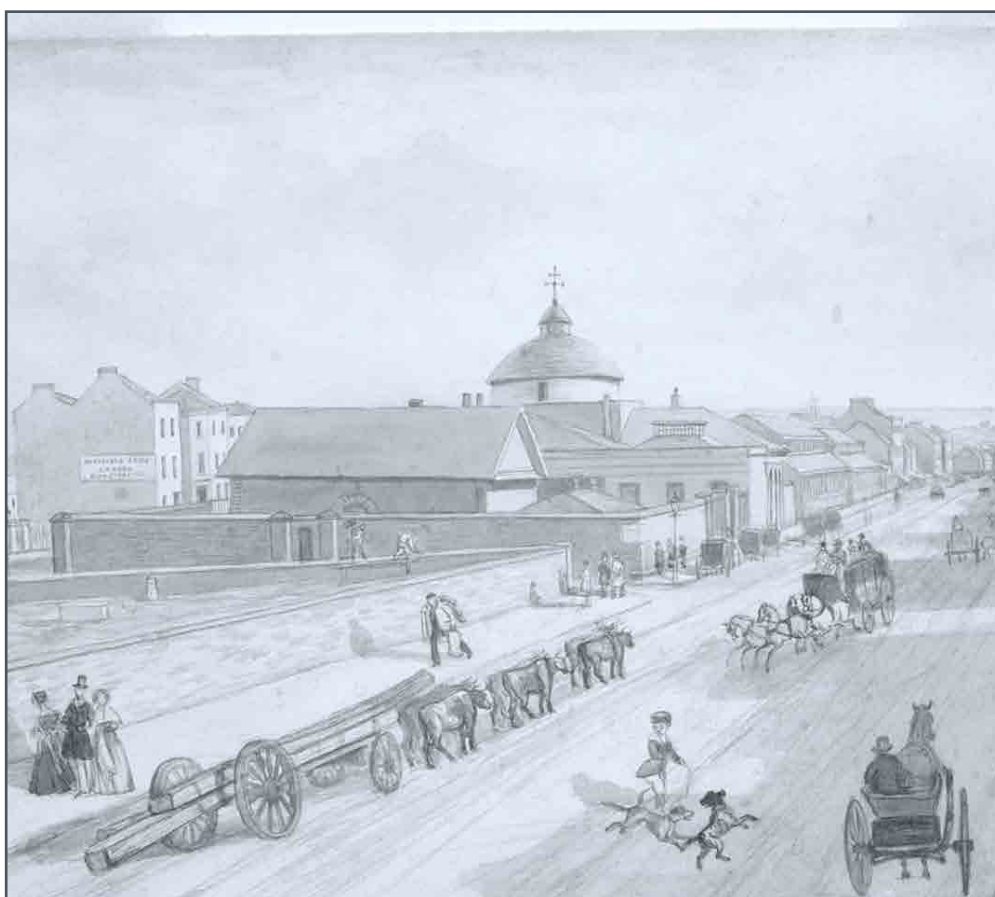
⁶ Department of Climate Change & Heritage NSW; *In Sad But Loving Memory: Aboriginal Burials and Cemeteries of the Last 200 Years in NSW*, 1998.

5.3 CEMETERY PLANNING

Sydney's colonisation was marked by haphazard urban planning and this is evident in the establishment and decline of cemeteries from the infancy of the colony. With the exception of a brief period in the mid-19th century, cemeteries have been largely excluded from urban planning considerations. Indeed, the NSW Government has not constructed a new cemetery in Sydney since 1940, despite substantial population growth and an accompanying rise in annual deaths.

Sydney's first official cemetery was built on the current Sydney Town Hall site and is now known as the the Old Sydney Burial Ground. Established in 1792, it was full by 1820 (with an estimated 2,000 interments), girt by the city's rapidly expanding commercial district.

Surrounded by a high brick wall, the Old Burial Ground had not been maintained. Poor burial practices and a clay soil which slowed decomposition made it 'offensive to the inhabitants of the neighbourhood (*Sydney Gazette*, 22 January 1820).'⁷ Already, cemeteries were competing with other high value land uses. In 1869, the cemetery was cleared and the exhumed remains relocated to the newly commissioned Rookwood Cemetery at Haslem's Creek.



George St looking north, showing Jewish Synagogue, Police Offices, the Markets, Old Burial Ground, now the site of the Town Hall, 1842 / John Rae

As the Old Burial Ground approached capacity, a new cemetery was required for the growing colony. The Sandhills Cemetery, better known as the Devonshire Street Cemetery(s), was established between 1820 and 1836 as a collection of seven denominational burial grounds. The colonial government dedicated the original 1.6 hectares to the Church of England, beginning the long relationship between State and Church in cemetery management in Sydney and NSW.

⁷ Lisa Murray; *Sydney Cemeteries; A Field Guide*, page 21.

By 1836, the cemetery had expanded in a relatively unplanned manner to 4.8 hectares in response to the needs of different religions. The Roman Catholics and Presbyterians were provided with land in 1825 and, over the ensuing years, land was provided to the Jewish, Wesleyan, Quaker and Congregationalist communities. Unlike churchyard cemeteries, Devonshire Street applied some management practices that sought to economise on the use of the land through regulation and design.



Devonshire Street Cemetery looking towards Prince Alfred Park.⁸

Overcrowded cemeteries

However, after only 20 years, Devonshire Street had become overcrowded and what had started as orderly cemetery regulation collapsed through inadequate oversight of the individual denominationally managed burial grounds.

The *General Cemetery Bill* of 1845 proposed the creation of a new burial ground for the citizens of Sydney and the removal of the Old Burial Ground for the construction of the Town Hall. It also called for all new cemeteries to be interdenominational, with common burial space rather than separate areas for each denomination, a move that met with fierce opposition in the sectarian Sydney society of the time.⁹

The *General Cemetery Act* was eventually passed in 1847. Various sites proposed at Grose Farm, Garden Island, the Domain and Blackwattle Swamp were rejected for reasons including their distance from the city, inadequate size, unsuitable soil composition and the potential for water table contamination. The government finally settled on Sydney Common (now Moore Park) and set aside nine hectares but public opposition meant the site was never used.

Between 1845 and 1867 Sydneysiders struggled to bury their dead. There were not enough cemeteries to deal with the growing population. A number of scandals led to two parliamentary inquiries into the state and management of Sydney's cemeteries in 1855 and 1866. The evidence recorded from dozens of witnesses, along with the public debate in the media and Parliament, provides a glimpse of common perceptions held about death, burial and cemeteries in the mid-to-late 19th century.

Overcrowded cemeteries were condemned as 'revolting to the good feelings, and injurious to the health of the inhabitants'¹⁰. The public recoiled at images of coffins breaking the surface, emitting noxious odours said to be their worst in Sydney's hot humid summer weather and after rain. Pauper graves which were left open for several days to receive numerous bodies attracted blowflies. The disgorging of maggots after heavy rain contrasted sharply with the Victorian era ideals of a respectable funeral and a decent burial.

⁸ From the collections of the State Library of New South Wales [DL PXX 72, 7] (Dixon Library)

⁹ Keith A Johnson and Malcolm R Sainty, *Sydney Burial Ground 1819-1901: Elizabeth and Devonshire Streets and History of Sydney's Early Cemeteries from 1788*, Library of Australian History, Sydney, 2001

¹⁰ *The Sydney Morning Herald*, 10 March 1866, page 7.

The inquiries highlighted public health concerns but did little to address the problem of cemetery conditions, and unsanitary burial practices continued into the late 19th century.

Acute shortages of burial land across Sydney and deteriorating public health conditions at Devonshire Street encouraged new commercial and non-profit cemetery operators to enter the market.

The Church of England formed the Sydney Church of England Cemetery Company in 1849 and purchased land near Camperdown. Camperdown Cemetery became the principle place of burial for the Sydney Church of England community until the opening of Rookwood in 1868.

Capitalising on the Government's failure to provide access to new cemeteries, the Balmain Cemetery company settled on a large 4.5-hectare site (now Norton Street) in Leichhardt. Backed by astute businessmen, the cemetery had no denominational sections but was divided into First Class, Second Class and Pauper Classes, with appropriate prices reflecting each section.

By the 1860s, the failure of cemetery planning was clear – Devonshire Street was chronically overcrowded and an embarrassment to the Government and the denominations, the Sydney Common proposal had unified the Church against the State and the emergence of commercially incentivised operators threatened the Government's overall control of the sector. A planned approach to cemetery management was needed.



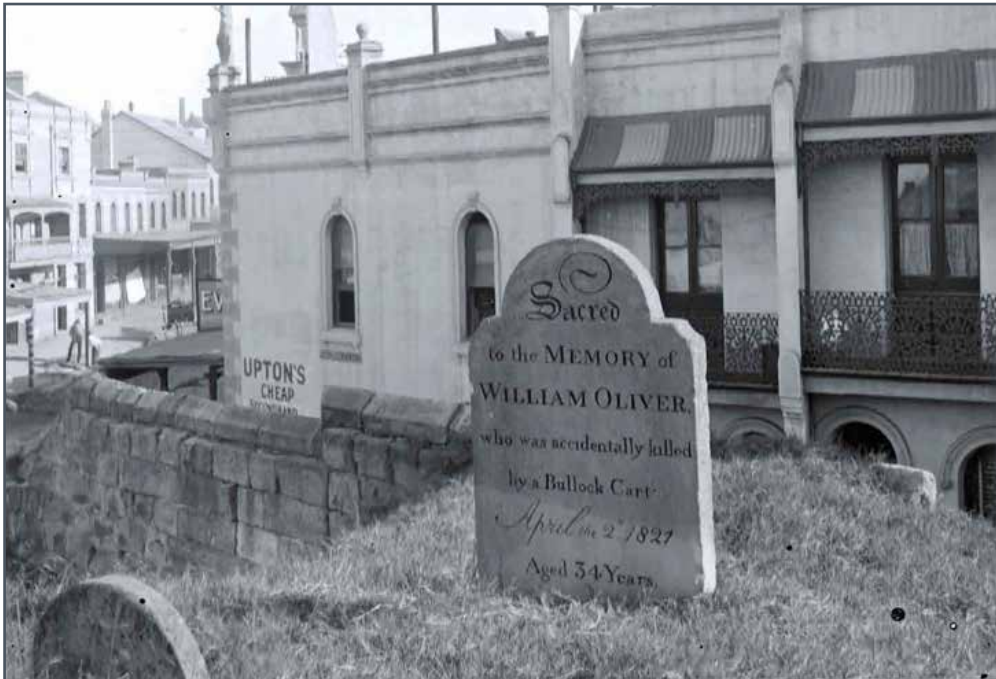
Devonshire Street Cemetery

Strategic planning in cemetery management

The 1860s heralded the clearest strategic planning in cemetery management in NSW's history and spawned cemetery assets, some of which continue to serve the people of Sydney.

The Government required a sufficiently large parcel of land at an appropriate distance from the city. A cemetery too close to the city risked being encroached on by urban development; too far away and it would be difficult and costly for mourners to visit their loved ones' graves.

In the United Kingdom, the innovation of rail provided an opportunity to utilise lands with poor soils further afield from London. Brookwood Necropolis in Surrey began transporting corpses by rail in 1854¹¹ and would become the model for Sydney's new cemetery and its location.



Devonshire Street Cemetery looking into Railway Place. The cemetery was cleared, bodies exhumed, and the terraces demolished to construct Central Railway's main terminus in 1901.

In September 1862, the Government purchased 81 hectares near Haslem's Creek Station for a general cemetery that would become the Rookwood Necropolis.

Despite the failed Sydney Common proposal, the general cemetery concept would become the preferred design for burial grounds for townships across the state. However, as a result of its earlier planning failures, the Government ceded administrative and operational control to the religious denominations, who would manage their own sections of Rookwood. The devolution of operational control would hinder effective management of burials in NSW through the 19th and 20th centuries.



Rookwood Cemetery Plans

¹¹ Lisa Murray, 'Cemeteries in Nineteenth Century New South Wales: Landscapes of Memory and Identity', PhD thesis, University of Sydney, 2001, page 94.

The layout and design of the new general cemeteries, like Rookwood, were heavily inspired by the 'God's acre' approach. Through their location, landscape and monuments, the new cemeteries were to be a sanctuary of spirituality, decency and decorum.

Where the Old Burial Ground and Devonshire Street were an embarrassment, Rookwood, Gore Hill, Field of Mars and Woronora cemeteries sought to attract people with their avenue plantings, gardenesque layouts, carriageways and rest houses. These cemeteries became weekend destinations for Sydneysiders to picnic and promenade in, while also being publicised to foreign visitors as tourist attractions for their botanical gardens and landscaping.

Today, as government and cemetery operators are challenged by community resistance to new cemeteries, there is much to learn from the 'God's acre' approach of providing not only a place for interment but much needed green space and areas of tranquillity and peace.



Devonshire Street Cemetery

5.4 CEMETERY MANAGEMENT - CHURCH VERSES STATE

Cemetery governance in NSW has long been characterised by the intersection of the State and religious denominations. Until 2011, denominational trusts were still responsible for the management and administration of Sydney's largest cemeteries, a feature unique within Australia and among most Commonwealth nations.

History explains the origins of this complex management arrangement and why it remained in place for so long.

The *General Cemetery Bill* of 1845 attempted to alter the role of religious denominations in the management of cemeteries. It sought to make cemeteries interdenominational, with common burial space rather than separate areas for each denomination. It further proposed a central body of lay trustees manage each cemetery and set burial fees, rather than each denomination group having their own trustees for their area.

The denominations unified against the concept of a general interdenominational cemetery. Ultimately, the Bill was passed in 1847, with denominational sections to be maintained but one body of trustees responsible for the new necropolis intended for Sydney Common. Continued opposition from the denominations thwarted the Sydney Common proposal. It would be another 20 years before the site at Haslem's Creek was acquired.

Keeping the denominations separate was principally about property and income. Burial fees provided an income for ministers. More important to the denominations in the long term was the land the government granted for cemeteries. As the Church of England later admitted, the motivation for its opposition to the *General Cemetery Act* was that it 'prevented each communion from obtaining the absolute title to the area assigned to it'¹².



Devonshire Street Cemetery

The compromises to the passage of the *General Cemetery Bill* of 1845 had a lasting effect. The failure of the government to introduce a single body of trustees for general cemeteries led to chronic problems in cemetery management and inadvertently led to the neglect of cemeteries.

In the face of continued public scandals, including charges of fraud at Rookwood, and public health concerns relating to the inadequate depth of graves in many cemeteries across the state, there were continual attempts to centralise management of each cemetery through one body of trustees.

Between 1868 and 1890, there were nine attempts to introduce legislation to restructure the management and regulate burials within cemeteries. Like the *General Cemetery Bill*, these bills attempted to impose greater government control of cemeteries, particularly in relation to sanitary issues.

While sectarian divisions flared once again, there were glimpses of a fracturing of the inter-church solidarity. In 1887, the Sydney Bishop for the Church of England wrote to *The Sydney Morning Herald* advocating support for cemetery management reform:

...this parcelling out of public cemeteries and handing over the several portions of the ground to separate bodies of denominational trustees, is a serious mistake, and one, moreover, which, in the smaller cemeteries especially, is fraught with very mischievous, and sometimes scandalous consequences.

In many cemeteries there is hardly a chance of any common action on the part of all the trustees. In the case of one cemetery there are actually more than seventy. The very number, to say nothing of the chance of clique and sectarian jealousy, forbids all vigorous and sustained action¹³.

¹² Lisa Murray, *Cemeteries in Nineteenth Century New South Wales: Landscapes of Memory and Identity*, PhD thesis, University of Sydney, 2001, page 85.

¹³ Letter to the Editor by Alfred Barry, Bishop of Sydney, *Sydney Morning Herald*, 5 September 1887, p.4

However, all attempts to reform cemetery regulation were thwarted in Parliament. There was no political will to challenge the Church's power and authority. While the government provided denominational trustees with standard rules and regulations for the management of general cemeteries by the end of the 19th century, the ultimate control of cemeteries remained divested in the denominational trustees.

The *General Cemetery Act*, sectarian divisions and struggles between Church and State in the second half of the 19th century left an enduring legacy. General cemeteries from the 1850s onwards would be divided into denominational sections. The Government failed to clarify the relationship between Church and State. While the Government continued to provide grants for land, the denominations managed the cemeteries until 1966 when the *Local Government Act* was amended to pass control of general cemeteries to local councils. The denominations continued to manage their sections at Rookwood until 2011 when all but the Catholic trust were consolidated into the Rookwood General Cemetery Trust.



Devonshire Street Cemetery

The feuds between State and Church have come at the expense of effective management of our cemeteries for the best part of 200 years. The involvement of the denominations has shaped many aspects of cemetery management in NSW, including cemetery design, memorialisation, burial pricing and maintenance provisions.

The landmark reforms commenced in 2012, which resulted in the consolidation of 17 trusts (many of which were denominational), provided a framework for the Government to take control of cemetery management for the first time since 1820 and apply contemporary cemetery management and regulation.

Vertically integrated operators

While the rise of the vertically integrated funeral and cemetery operator is widely considered a new development, it can be traced back to 1868 and the Balmain Cemetery.

The principals of the company were businessmen who had existing interests in the funeral industry and realised a commercial opportunity existed in the acute burial land shortages.

In 1871, Leichhardt Council appealed for the cemetery's closure, citing risks to public health. While the *Balmain Cemetery Act 1881* enshrined its legitimacy to operate, complaints persisted and the company was transferred to Leichhardt Council in 1887.

5.5 CEMETERY CONVERSION – THE LOSS OF CONNECTION AND HERITAGE

The history of cemetery management in NSW since colonisation highlights the fate of cemeteries that lose their connection with their community. For over 150 years, cemeteries across NSW have been cleared of memorials, with bodies exhumed and the land used for other purposes.

In the days before Devonshire Street Cemetery was closed, *The Sydney Mail and New South Wales Advertiser* echoed the sentiment of Sydneysiders towards their old cemetery: ‘*There is something singularly pathetic about an abandoned cemetery*’¹⁴.

By the mid-20th century, many older cemeteries, particularly in Sydney, began maturing, moving from regular interments with relatively high levels of visitation to sporadic interments and escalating maintenance costs.

Mindful of their depleted financial reserves, cemetery operators started examining alternative cemetery designs with lower maintenance costs. Social attitudes changed with the devastation of the First World War. People chose less ornate headstones and cremation gained increasing acceptance. Australia’s oldest operating crematorium was constructed at Rookwood in the 1920s and others at Botany, Woronora and Ryde in the 1930s.

This shift in community perceptions and increasing financial pragmatism by cemetery operators led to growing calls for old cemeteries to be converted into pioneer parks. This was enshrined in the *Conversion of Cemeteries Act* in 1974,¹⁵ though the process was already well underway. Throughout the 1940s and the 1960s, cemetery operators relinquished control of many earlier Sydney cemeteries to local councils, which removed headstones and converted them into pioneer parks and open spaces.



Devonshire Street Cemetery demolition looking towards Chippendale

Some notable Sydney examples of this conversion of cemeteries to public parks are:

- ◆ **Camperdown Cemetery** – one of two company cemeteries formed in the 19th century and owned by Church of England Cemetery Company. It was converted to the Camperdown Pioneer Park in 1948.
- ◆ **Balmain Cemetery** – built by the Balmain Cemetery Company as a commercial venture and opened in 1868, Balmain Cemetery contained over 10,000 graves by 1912 when it was closed. Some of the gravestones were moved elsewhere and the site became Pioneers Memorial Park in 1942.
- ◆ **Liverpool Cemetery** – formerly the cemetery of St Luke’s Anglican Church. It was closed in 1958 and converted to a park in 1970.

¹⁴ State Library of New South Wales, *Sydney Mail & New South Wales Advertiser*, 30th October 1897.

¹⁵ The Act was repealed in 2014.





¹⁶ Camperdown (Sydney Church of England Cemetery Company) 1948 - Private cemetery in Newtown that was consecrated in January 1849 and remained the main burial ground for the Church of England until the opening of Rookwood in 1868. St Stephen's Anglican church was built in the middle of the site in the early 1870s. All but four acres of the cemetery were resumed in 1948 to become the Camperdown Memorial Rest Park.

From a heritage and societal perspective, NSW lost invaluable records, memorials and open space when cemeteries were not maintained after closure. The decline of these assets was precipitated by the failure of regulators and cemetery operators to ensure cemeteries accumulated sufficient financial assets during their productive interment phase. Cemeteries became dislocated from their communities and deteriorated into eyesores prone to vandalism and other anti-social activities.

As Sydney expanded, unkempt cemeteries were easy targets for advocates of developments with perceived and real higher values and uses requiring lower maintenance expense.

History shows the need for cemeteries to maintain their connection and relevance to their communities. To do this, they must be managed sustainably, maintain the financial resources to fulfil their legal and ethical obligations in relation to perpetual maintenance, and evolve their service offerings to community needs.

5.6 SUMMARY

While the 2012 reforms substantially addressed many governance and regulatory deficiencies, history highlights the need for continued government leadership to ensure cemeteries have the strategic planning, regulatory oversight and financial sustainability to remain connected, relevant and valued by their communities.



¹⁶ By Ray Olson, From the collections of the State Library of New South Wales [ON 388/Box 014/Item 066]



CHAPTER SIX

CEMETERIES AND CREMATORIA ACT 2013

STATUTORY REVIEW

**MEETING COMMUNITY, CULTURAL
AND FAITH REQUIREMENTS**

6. MEETING COMMUNITY, CULTURAL AND FAITH REQUIREMENTS

In assessing the performance of a legislative and regulatory framework, it is necessary to determine whether it meets the needs and expectations of the community it aims to serve.

To this end, the Review sought to:

- a. Identify key community, cultural and faith requirements; and*
- b. Provide recommendations for addressing key community, cultural and faith requirements in the context of ensuring a sustainable cemeteries sector into the future.*

The Review consulted extensively with religious groups of varying cultural or ethnic backgrounds, as well as consumer advocates and community representatives.

The engagement process comprehensively confirmed:

- ◆ *The Act and its Objects remain valid and provide a sound regulatory framework;*
- ◆ *The regulator, CCNSW, needs to take a more proactive regulatory posture and utilise critical components of the Act to strongly regulate the sector, and identify and mitigate risks emerging to the Government and citizens of NSW; and*
- ◆ *The key challenges of land availability and affordability of interment options are escalating and continue to be the primary source of concern for stakeholders.*

Key stakeholders believe their concerns will be alleviated with a strong, well-resourced regulator, and cemetery operators with access to sufficient capital to maintain existing cemeteries and acquire and build new cemeteries.

This stakeholder engagement has significantly informed the recommendations contained in specific chapters of this report relating to regulation, governance, land availability, and pricing and affordability.

6.1 THE STAKEHOLDER ENGAGEMENT PROCESS

The Review conducted over 100 meetings with representatives of religious and ethnic groups, cemetery operators, consumer advocates, government agencies, local government and community representatives across NSW and Sydney.

These meetings helped ascertain the appropriateness of current legislative and regulatory settings and the key challenges facing each group and the sector as a whole.

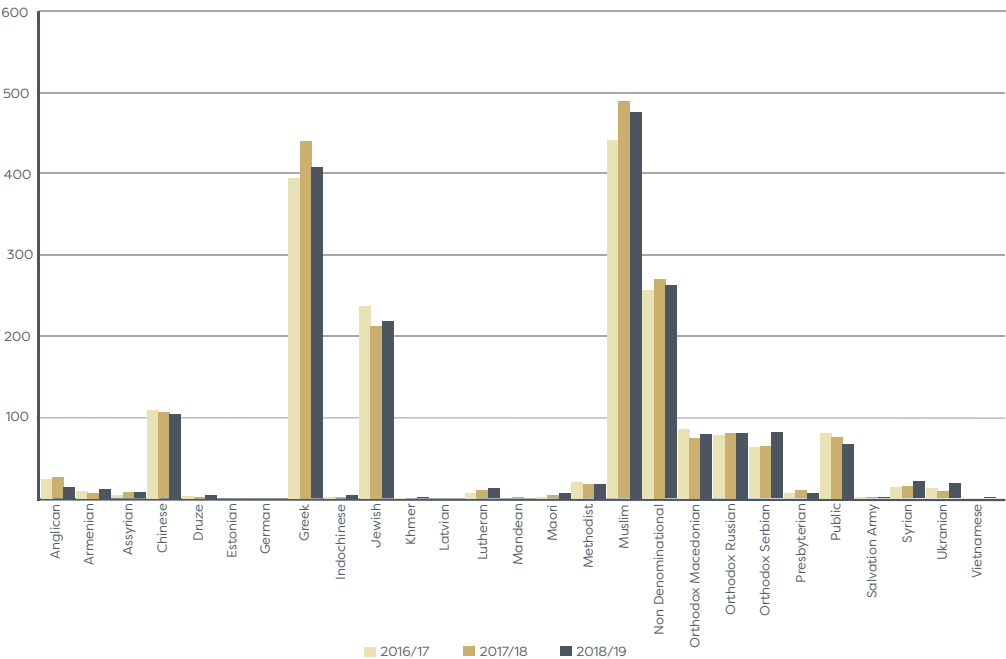
THE REVIEW CONSULTED THE FOLLOWING RELIGIOUS GROUPS AND COMMUNITIES:

NSW Aboriginal Land Council	Greek Orthodox
Anglican Church	Hindu
Armenian Orthodox	Jewish
Bangladesh Muslim	Lebanese Muslim Association
Catholic Archdiocese of Sydney	Mandaeans
Chinese	Muslim Cemetery Board
Deerubbin Local Aboriginal Land Council	Russian Orthodox
Eastern Orthodox	Uniting Church

NSW is one of Australia’s most culturally diverse communities, with people from 307 ancestries practising 146 religions and speaking more than 215 languages. Cemetery operators must cater for the particular interment needs of these groups to meet the Objects of the *NSW Cemeteries and Crematoria Act 2013*.

For example, in 2019, almost 30 different religious and ethnic groups were interred in Rookwood General Cemetery in accordance with their needs (figure 7.1). Specific religious requirements include consecrated burial sections within the cemetery, interments facing specific geographical directions, shroud burials for the Muslim community, the burning of incense for the Chinese community and back-filling graves by hand for those of the Jewish faith.

Graph 6.1 – Interments conducted by community, Rookwood General Cemetery ¹



The NSW cemeteries and crematoria sector continues to evolve from servicing a predominately Christian, Anglo-Saxon community to meeting the needs of a diverse multi-cultural society. Cemetery operators need to develop product offerings that meet the requirements of these communities to remain financially sustainable.



¹ Rookwood General Cemetery, 2019 Annual Report, page 33.

6.2 OBJECTS OF THE ACT

Throughout the consultations, no stakeholder expressed concerns about the Objects of the Act or made representations about deficiencies in the Act's scope and powers.

It is important to note that the key cultural and religious organisations were instrumental in drafting the *Cemeteries and Crematoria Act*. The Act was partly the consequence of the emerging challenges and deficiencies identified by these stakeholders with the governance of the Crown sector, which had remained essentially unchanged since the later part of the 19th century.

Proposed amendments to the Act were presented to the Review and are available in Appendix C. Almost all of these amendments can be categorised as administrative in nature, with the intention of providing greater clarity and streamlining the efficient implementation of the Act by operators across the sector.

A consistent theme from stakeholders was that the regulator, CCNSW, had not evolved its regulatory posture since its inception in 2014. Views were expressed that the sector had a poor understanding of the role of the regulator and that the regulator itself was unclear as to its roles and responsibilities.

Some local government operators provided complimentary feedback that CCNSW was helpful in an interpretative and administrative role. However, stakeholders were unanimous that CCNSW had not undertaken the vast majority of its regulatory functions, as prescribed by the Act. Continual reference was made to the lack of continuity in the senior management of CCNSW.



While the challenges facing Sydney are significant, the Review also engaged extensively with operators, predominately local government and Church organisations, in regional areas.

Concerns expressed by these operators involved the potentially onerous nature of the regulations prescribed within the Act, especially for smaller councils and essentially volunteer-based, Church-operated cemeteries. These concerns are valid and discussed further in Chapter 10. In principle, the Review believes the regulation of the sector should focus on those operators which present the greatest levels of risk to consumers and the NSW Government.

In summary, the Review believes the Act provides a robust and sufficiently flexible basis for the regulation of the sector. The provisions of the Act need to be utilised by a focused and sufficiently resourced regulator.

6.3 IDENTIFIED CHALLENGES

RELIGIOUS, ETHNIC AND CONSUMER GROUPS AGREED THE MAIN CHALLENGES FACING THE INTERMENT SECTOR ACROSS SYDNEY ARE:

- ◆ The availability and affordability of burial interments;
- ◆ Respect for customs and beliefs; and
- ◆ Community acceptance of new cemetery proposals.

6.3.1 THE AVAILABILITY AND AFFORDABILITY OF BURIAL INTERMENTS

The reforms of 2012 and the subsequent *Cemeteries and Crematoria Act* were a direct reflection of key emerging challenges confronting religious and cultural organisations and operators alike.

The Crown has not built a new cemetery in more than 80 years², despite the significant growth in Sydney's population, the inevitable increases in annual deaths and a fundamental change in the cultural diversity of its citizens. The bold strategic decisions of the 1860s – with the creation of general cemeteries, like Rookwood – have sustained Sydney's burial demand ever since. However, under current policy settings, these cemeteries are reaching points of exhaustion for at-need interments.

The NSW Government was cognisant of these challenges and reflected them in the Objects of the *Cemeteries and Crematoria Act*, Section 3(c) & (i) of which resolves:

‘to ensure that sufficient land is acquired and allocated so that current and future generations have equitable access to interment services,’

‘to promote affordable and accessible interment practices, particularly for those of limited means.’

Chapter 7 will detail currently available cemetery land in Sydney and the projected demand for burial interments over the next 99 years.

The Review's findings on land availability are consistent with previous analyses of unmet burial demand³, though the modelling indicates a quicker decline in Crown cemetery capacity. Crown cemeteries servicing the south-east, inner-west and north of Sydney will be exhausted to at-need burials in the next 10-12 years.

The only significant remaining Crown cemetery open to burial interments after this time will be the Macarthur Memorial Park near Campbelltown. Construction was due to commence in February 2020.

While Macarthur Memorial Park will be an important asset, ensuring continuity of burial services in the short-medium term, it will not address the inability to bury people in close proximity to where their family and loved ones reside. This has a meaningful adverse impact on individuals wishing to visit and care for graves on a regular basis.

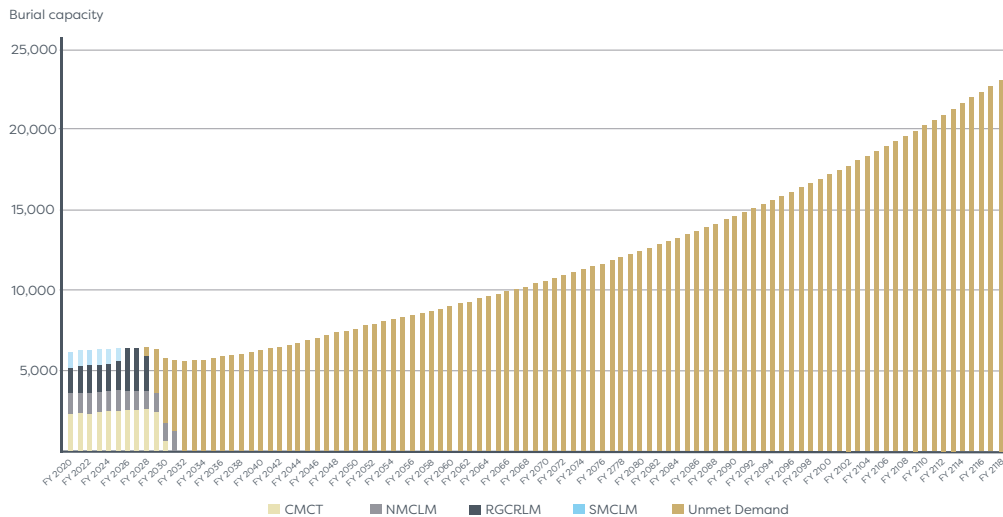
For an increasing number of people, cremation is a direct substitute for burial, minimising the quantum of land for interment and offering a relatively more affordable interment option. However, there are a number of communities whose religious beliefs only allow for burial.

² The last Crown cemetery was constructed in 1940 the Frenchs Forest Bushland Cemetery.

³ CCNSW; Metropolitan Sydney Cemetery Capacity Report, November 2017 & Urbis; Sydney Cemetery Supply and Demand Assessment – June 2019.



Graph 6.2: Crown cemetery sector – demand v supply analysis



The Jewish, Muslim, Orthodox and Catholic religions are the largest groups undertaking burials in Sydney.

These religions are already experiencing geographical shortages of burial space in certain parts of Sydney. The Muslim Cemetery Board made representations that it had already exhausted its local cemetery at Riverstone and is now burying members of its community at a Crown Cemetery that is operated by CMCT at Kemps Creek.

While immensely appreciative to the Catholic Church for affording them this burial space, the lack of autonomy and reliance on another faith group to undertake what is viewed as a basic, yet essential, activity was a source of concern.

The Lebanese Muslim Association (LMA), conscious of the impending exhaustion of allocated land at Rookwood General Cemetery, is currently examining a range of options, such as renewable tenure (including accelerated decomposition trials), to meet expected future demand.

Information provided by the LMA indicates it has less than four years of remaining land supply at Rookwood General. The LMA also owns a cemetery at Narellan, which cannot currently be utilised as ancillary works have been delayed, awaiting Council approval.

Similar concerns were expressed by the Greek Orthodox Church in the south-east of Sydney with the impending closure of Eastern Suburbs Memorial Park at Botany within the next four years.

The Jewish Board of Deputies has consistently expressed its concerns about the failure of strategic planning for new cemeteries. This is best reflected in evidence provided to the NSW Legislative Council's Inquiry into *Cemeteries and Crematoria Amendment Regulation 2018* in September 2018. Former Jewish Board of Deputies President, Mr David Knoll, stated:

"It is really bad in NSW because no one 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...we have been trying to identify this as critical state infrastructure because a cemetery is a public good."⁴

It is estimated some of the smaller communities at Rookwood, such as the Maori, Mandaeans and Russian Orthodox, will have exhausted their allocated burial lands within three years.

⁴ NSW Parliament, Legislative Council Hansard, September 2018, page 8.

The former Administrator of Rookwood General Cemetery, Mr Jason Masters, stated the sector was at a ‘crisis point’ in terms of being able to bury people in accordance with their religious requirements for perpetuity ⁵.

As the Crown’s assets reach exhaustion, responses to denominational based land shortages are short-term and non-strategic. For example, in 2013, land at Rookwood General was hastily reallocated from the Anglican Trust for use by the Muslim and Jewish communities in response to the imminent exhaustion of previously allocated land.

The ongoing failure of strategic planning to cater for this unmet demand causes anxiety for religions that require certainty to fulfil their faith-based burial obligations.

While the Macarthur Memorial Park near Campbelltown and the privately owned cemeteries operated by InvoCare will cater for at-need burial interments for a limited period beyond the next 12 years, these are all located in the south-west and the north-west of Sydney. For many people, these locations are significant distances from their homes and local communities. In many instances, it means people will no longer be buried with their forebears at the same cemetery. It also severely impedes people regularly visiting and caring for graves, especially the elderly, who in many instances are reliant on public transport.



A direct consequence of this impending supply-demand imbalance is an escalation in prices for burial interments.

The Review heard burial in Sydney was becoming increasingly unaffordable for many people. Mr Vic Alhadeff of the Jewish Board of Deputies claimed Sydney’s Jewish families pay approximately \$14,000 for a standard monumental burial, around double the cost of an equivalent interment at Springvale Cemetery in Melbourne ⁶.

Representations were received from the Muslim, Greek and Jewish communities of the increasing contributions made by the faiths and generous individuals to cover the costs for community members unable to afford the increases in burial interment.

For those not bound by religious or cultural practices, cremation was an option often accepted out of financial necessity rather than choice.

⁵ Ibid, page 29.

⁶ NSW Parliament, Legislative Council Hansard, Regulation Committee – Inquiry into the *Cemeteries and Crematoria Amendment Regulation 2018*, 21 September 2018, page 2.

In summary, under the current operating conditions and policy settings, Crown operators will not be able to fulfil two fundamental Objects of the Act – to provide sufficient burial land and affordable interments. This has long been understood by the communities most impacted and remains a growing source of frustration for them, as no strategic long-term solution has been provided by Government.

6.3.2 RESPECT FOR CUSTOMS AND BELIEFS

An integral principle underpinning the reforms of 2012 is the inalienable right of all individuals, irrespective of religious beliefs or financial means, to a dignified burial and respectful care of their remains through the maintenance of cemeteries.

Section 3(a) and (b) of the *Cemeteries and Crematoria Act* resolves:

‘to recognise the right of all individuals to a dignified interment and treatment of remains with dignity and respect.’

‘to ensure that the interment practices and beliefs of all religious and cultural groups are respected so that none is disadvantaged and adequate and proper provision is made for all.’

The representations made to the Review in relation to section 3(a) and (b) were consistent that the Act provided a sound regulatory platform for their customs and beliefs to be codified, building confidence that all cemetery operators would inter people in accordance with their beliefs.

However, despite section 29(2) of the Act requiring the implementation of mandatory codes and an industry interment scheme within five years of the Act’s commencement, the regulator has so far developed none.

As a result, communities most reliant on these codes are still overseeing cemetery operational matters to ensure individuals are being interred in accordance with their beliefs. In almost all instances, these people are volunteers, performing an integral role for their communities.

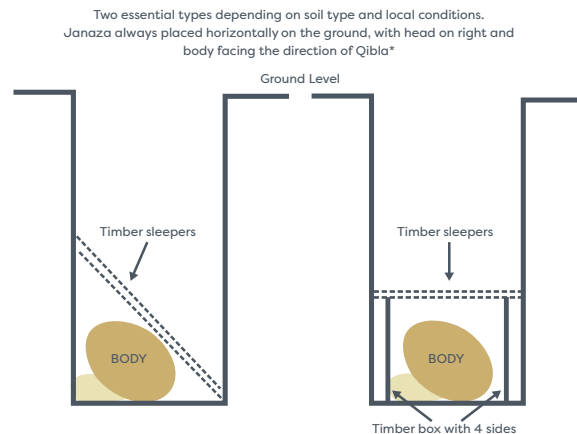




The Muslim Cemetery Board said their specific burial requirements concerning the materials used in the shoring of graves and the process for the placement of the body in the grave were not clearly understood by cemetery operators.

The failure to codify these requirements means the Muslim Cemetery Board has to oversee virtually all aspects of cemetery management where their people are buried. Similar examples were provided by other religious and cultural organisations regarding burial and cremation.

Figure 6.1: Types of Muslim burials outlining the different types of graves utilised with differing soil types and topographies.



Source: Muslim Cemetery Board

RECOMMENDATION 6.1



CCNSW, in consultation with key religious and cultural groups, immediately commences the development of a mandatory Code of Practice which outlines the specific interment requirements of those groups.

6.3.3 LOCATION OF CEMETERIES AND GEOGRAPHICAL REQUIREMENTS

For groups requiring burial, the geographical location of cemeteries is a critical factor to interring individuals in a manner consistent with their customs and beliefs.

Jewish and Muslim communities require a timely burial after death, following strict procedures with respect to preparing the body for interment and enabling the family to grieve accordingly. Distance to the cemetery is critical when the time required for the preparation and transportation of the body is factored into the overall funeral and interment process.

6.3.4 CEMETERY MAINTENANCE

For many individuals, irrespective of religious affiliations, visiting and caring for a loved one's grave is an important part of the grieving process. The geographical proximity of the cemetery to the community is significant in maintaining the connection between generations.

Cemetery maintenance provides respect and dignity for those interred. As history has demonstrated, failure to maintain cemeteries to a socially acceptable standard results in the loss of important public space, heritage values and the connection that cemeteries provide between generations.

* Qibla is the fixed direction towards the Ka'bah in the Grand Mosque in Makkah, Saudi Arabia. It's the direction which all Muslims face when performing their prayers, wherever they are in the world."

The Review heard concerns about the current and future maintenance of Crown cemeteries and the overgrown nature of older sections of cemeteries.

Under current cemetery regulatory reporting requirements, the public is unable to ascertain the relative financial position of cemeteries and their ability to fund perpetual maintenance.

Operators currently do not report their future perpetual maintenance liabilities, or the capital accumulated to undertake annual maintenance once the cemetery is closed to new interments. Religious groups, consumer organisations and those concerned with heritage have expressed reservations about the appropriateness of perpetual maintenance of Crown cemeteries in Sydney.



Figure 7.2: Rookwood General, Anglican section, April 2020.

Currently, there are no regulations or mandatory codes established by CCNSW setting a minimum standard of cemetery maintenance, despite the *Cemeteries and Crematoria Act* specifically providing for an industry interment scheme that requires cemetery operators to make adequate provision for perpetual maintenance of cemeteries⁷.

6.3.5 RENEWABLE TENURE AND RELIGIOUS EXHUMATIONS

The Review has consulted extensively with the Muslim and Greek Orthodox communities in Sydney with respect to their theological doctrines regarding renewable tenure burials. While both religions require burial, neither is prevented from undertaking renewable tenure burials.

In the case of the Greek Orthodox, the exhumation of remains for placement in an ossuary house is common practice in Greece and would also be permissible in Sydney.

Despite this longstanding belief, the Very Reverend Father Grillis told the NSW Legislative Council Regulation Committee in September 2018 that the Greek community had been excluded from consultation on the importance of renewable tenure regulation to this community.

⁷ *Cemeteries and Crematoria Act*, s.31(2)(b) – ‘requiring an operator of a cemetery to ensure adequate provision is made for perpetual care of interment sites and the cemetery.’

Father Grillis stated:

“What will happen if in 10 years the section allocated to the Greek Orthodox fills up? Where do we go from there? We are giving you the opportunity to renew the graves and to reuse them. I started this about 15-20 years ago...it is 20 years later and we are still fighting the same fight.”⁸

Despite both religions advocating their theological acceptance of renewable tenure, and the provision within the Act, no cemetery operators in the Sydney market (except for Waverley Council) offer a renewable interment product or have plans to offer a product in the foreseeable future.

These religions acknowledge they are significant consumers of burial land in Sydney. Renewable tenure products would make a long-term contribution to addressing the supply-demand imbalance. Adopting burial practices that enable greater utilisation and reuse of existing cemeteries also addresses their requirement for cemeteries in close proximity to their communities.



⁸ NSW Parliament, Legislative Council Hansard, Regulation Committee, Friday 21 September 2018, page 5.

6.3.6 ABORIGINAL BURIALS

Since colonisation, Aboriginal communities in NSW have faced significant challenges burying their people in accordance with their traditional customs and rituals. While most religious groups have had sections of general cemeteries set aside and consecrated for their exclusive use, indigenous communities have had no such recognition.

Aboriginal communities are integral stakeholders in the NSW cemeteries and crematoria sector as they:

- ◆ Represent an important cultural group within our society with unique burial customs;
- ◆ Operate cemeteries throughout the state; and
- ◆ Are some of the largest landholders in NSW and Sydney, through the Aboriginal Land Council network.

The diversity of Aboriginal culture means there is no common set of beliefs or customs specific to all Aboriginal communities across NSW. Each region of NSW, potentially comprising multiple communities, may have their own unique customs and beliefs with respect to burial and cremation.

As with almost every other group in Sydney, Aboriginal people in certain areas are reporting difficulties finding appropriate land to bury their people. In 2016, the La Perouse Local Aboriginal Land Council (LALC) entered a Deed of Agreement with the Southern Metropolitan Cemetery Trust for the provision of dedicated burial land for their community, in consideration of the resolution of an outstanding land claim over Crown land adjacent to Eastern Suburbs Memorial Park at Botany.

While the land in question is still being considered for a cemetery, it demonstrates the potential positive outcomes from collaboration with LALCs throughout Sydney and NSW.

Over time, LALCs have established and commenced operating their own cemeteries, enabling Aboriginal communities to bury their people in accordance with their cultural wishes. There are approximately 10 cemeteries⁹ operated and maintained by LALCs across NSW. Some are open to interments, while others are significant Aboriginal heritage. Provisions are also made under the *NSW National Parks and Wildlife Act* enabling Aboriginal people to be returned to country.

NSW Aboriginal Land Councils represent some of the largest landholders in NSW. The recent Aboriginal State Environmental Planning Policy (SEPP) provides a potential opportunity for greater collaboration between LALCs and the NSW Government to develop land on a commercial basis as general cemeteries.

The Review believes an opportunity exists, per recommendation 6.1, for the regulator and cemetery operators to engage with LALCs to establish a mandatory Code of Practice, under the *Cemeteries and Crematoria Act 2013*, that enshrines the specific cultural traditions and beliefs of local Aboriginal communities. There are also commercial opportunities for Land Councils to provide land for the development of cemeteries, supporting the beliefs of all religions and cultures¹⁰.



⁹ NSW Aboriginal Land Council.

¹⁰ The Deerubbin Land Council expressed its desire to use a portion of its land to commercially develop a general cemetery in the western Sydney.



6.3.7 DESTITUTE BURIALS

Each year, hundreds of people with limited or no financial means and no apparent connection to family or friends die in hospitals and in the community across NSW. Currently, a number of NSW Government agencies are involved in caring for their remains, the determination of financial capacity and interment:

- ◆ NSW Health (Local Health Districts);
- ◆ NSW Police;
- ◆ NSW Coroners Court; and
- ◆ Registrar of Births, Deaths and Marriages.



There may be a coronial investigation, depending on the nature of the death. NSW Police are responsible for determining the financial capacity of the individual (and the family, if appropriate) and NSW Health Local Health Districts engage funeral directors for the disposition of the remains ¹¹.

Due to competing priorities, there can be considerable time between death and disposition. The NSW Health Policy Directive in relation to destitute persons was last reviewed in 2013. A further review of the policy is appropriate, with the view to CCNSW potentially taking on greater regulatory responsibilities to ensure these individuals are being interred and memorialised in accordance with the Act.

RECOMMENDATION 6.2



CCNSW engages with NSW Health to review the current processes and responsibilities relating to the disposition of the remains of destitute persons to ensure they are in accordance with the Objects of the Cemeteries and Crematoria Act.

¹¹ NSW Health, Policy Directive: Destitute Persons – Cremation or Burial (PD2008_012) https://www1.health.nsw.gov.au/pds/ActivePDSDocuments/PD2008_012.pdf

6.3.8 COMMUNITY ACCEPTANCE OF NEW CEMETERY PROPOSALS

While there is no doubt Sydney needs new cemeteries, community acceptance is low.

Since 2014, there have been three notable new cemetery proposals by two Crown operators in Sydney. All three proposals were strongly opposed by local community groups and political representatives at state and local government levels.

Table 6.1: Crown cemetery proposals

CEMETERY PROPOSAL	MACARTHUR MEMORIAL PARK	FERNHILL	NEPEAN GARDENS
PROPONENT	CMCT	RGCRM	CMCT
BURIAL PLOTS	136,000	45,000	60,000
LOCATION	Varroville	Mulgoa	Wallacia
DATE	2014	2017	2018
STATUS	Approved, awaiting construction	Abandoned	Not approved, currently being amended

As a result, only one proposal has received the necessary planning consents. Significant financial and management resources have been directed to the acquisition and development of proposals for new cemeteries. The acquisition of Fernhill Estate by RGCRM cost the NSW Government almost \$30 million, while the Nepean Gardens proposal has cost the CMCT \$15.6 million to date.

Other parts of the report will comment on the appropriateness of existing planning consents for new and existing cemeteries. However, based on these new cemetery proposals and difficulties faced by existing cemeteries obtaining approval for ancillary developments including amenities blocks and machinery sheds, there is a legitimate question as to whether cemeteries in Sydney are losing their social licence to operate.

Religious and community representatives all stress the importance of cemeteries as critical social infrastructure. However, as has occurred in the past, the location of new burial lands is a fine balance between meeting the operational requirements of the interment industry and its customers, while minimising land-use conflict with hosting communities.

The fact that only one out of three proposals has attained the necessary planning consents does not necessarily mean the planning system is deficient. On the contrary, the communities who opposed these proposals would argue it has worked effectively.

An alternative perspective is that a failure of coordinated strategic infrastructure planning over a prolonged period, combined with the critical need for cemetery operators to address projected unmet demand, has resulted in land-use conflict.

In 2020, a conundrum exists for policy makers and cemetery operators trying to address a looming shortage of critical social infrastructure in the face of community opposition to new cemeteries.

It is essential that our society understands the intrinsic values cemeteries provide, to current and future generations.



CHAPTER SEVEN

CEMETERIES AND CREMATORIA ACT 2013

STATUTORY REVIEW

**SUPPLY-DEMAND FOR BURIAL INTERMENTS AND
PLANNING CONSIDERATIONS**

7. SUPPLY-DEMAND FOR BURIAL INTERMENTS AND PLANNING CONSIDERATIONS

7.1 OVERVIEW

The provision of suitable land for the burial requirements of communities across NSW has been a core responsibility of successive governments since the earliest days of the colony. The challenge of balancing growing demand for burial space, public health considerations, proximity to communities and competing uses for land has remained a constant for public sector administrators.

Section 3(c) Objects of the Act clearly states the need *to ensure that sufficient land is acquired and allocated so that current and future generations have equitable access to interment services.*

This chapter focuses on Sydney and its needs for meeting current and projected demand for burial lands.

Like all international cities, Sydney must continually manage rapid population growth, changes in its population demographics and competing land and infrastructure pressures to meet the needs of its residents.

The need to bury our dead in a respectful and dignified manner is beyond question, and should rightly hold the equivalent status in our planning system as key social infrastructure like schools and hospitals.

Yet the NSW Government, through its Crown cemetery operators, has not built a new cemetery in Sydney in over 80 years.



Successive generations of Sydneysiders have been the beneficiaries of the foresight and strategic infrastructure planning of administrators in the 1860s. Our 19th century cemeteries like Rookwood Necropolis, Botany, Field of Mars, Woronora, Liverpool, Gore Hill and Waverley have served Sydney extraordinarily well, but are now just years away from exhausting their remaining plots for new interments.

A body of evidence dating back almost two decades has unambiguously projected the exhaustion of Sydney's cemeteries. The Review's findings, based on data obtained by Crown cemetery operators, add further to this body of work.

All of the existing operational Crown cemeteries will exhaust their currently available land in the next 12 years. Sydney residents who have not pre-purchased an interment right by then will not be able to be buried at these cemeteries.

Key geographical cemeteries – Botany, Woronora, Field of Mars – which service the east, south and north-west of the city, will close to the sale of new interment rights in as little as three, five and nine years respectively. Rookwood General, which undertakes approximately 30% of Sydney’s burials, will close to the sale of new interments rights in 8 years.

Rookwood, which undertakes approximately 30% of Sydney’s burials, will close to the sale of new interments rights in 12 years.

A new Crown cemetery providing 136,000 plots near Campbelltown has recently received planning approvals and will alleviate some of the demand pressures in the short term. Even so, projected unmet interment right demand in Sydney is expected to be approximately 304,000 over the next 50 years and approximately 1,090,000 over the next 99 years. Land for new cemeteries needs to be acquired and made available for development as soon as possible.

With cremation rates in Sydney consistently around 67%, there is limited scope to increase this further and materially reduce land supply requirements. Communities in Sydney not bound by religious or cultural requirements to be buried are being cremated at rates which compare favourably on an international basis.

There is no single solution to the projected supply-demand imbalance.

The Review believes the NSW Government must embark on a series of initiatives and policy responses to ensure the sustainable supply of land for burial and ash interments. These include:

- ◆ Identification, acquisition and phased releasing of lands for development of new cemeteries across Sydney;
- ◆ Transition to more sustainable burial practices, as adopted in other international cities, including cemetery renewal and renewable tenure interments in the medium to long term;
- ◆ Amendments to the planning and approval system to reflect cemeteries as key social infrastructure, including State Significant Development status; and
- ◆ Ensuring cost-price signals are efficiently reflected in the market so consumers can make informed choices about their preferred form of interment.

7.2 PREVIOUS STUDIES INTO SYDNEY CEMETERY SUPPLY AND DEMAND

The impending exhaustion of available cemetery land has been discussed within the cemeteries sector in Sydney for more than two decades.

Studies undertaken by the NSW Government dating back to 2002 are consistent in terms of the expected exhaustion of available burial land.

The Review assessed the following reports:

- ◆ NSW Government, Report of the Cemeteries Interdepartmental Committee 2002-05¹;
- ◆ CCNSW; Metropolitan Sydney Cemetery Capacity Report, November 2017;
- ◆ Urbis; Sydney Cemetery Supply and Demand Assessment, June 2019; and
- ◆ The Greater Sydney Commission; Strategic Planning Considerations for Cemeteries, December 2019.

¹ Associated with this report was a Discussion Paper released in 2008; Sustainable Burials in the Greater Sydney Metropolitan Area, which canvassed a range of options to address the projected land shortage.

7.2.1 NSW GOVERNMENT; REPORT OF THE CEMETERIES INTERDEPARTMENTAL COMMITTEE 2002-05

The first significant quantitative assessment of Sydney cemetery capacity was undertaken between 2002-05 by a NSW Government interdepartmental committee.

The key findings were:

- ◆ Complete exhaustion of the then estimated 680,000 plots by 2050;
- ◆ Burial space at many cemeteries would be exhausted within 20 years; and
- ◆ A likely shortage of at-need plots well before 2050.

This analysis was based on a sample of cemeteries, not the whole sector, and used assumptions from operators based on their own experiences as opposed to overall industry activities. For example, it relied on a grave occupancy rate of one interment per plot and extrapolated cremation rates based on a sample of operators.

7.2.2 CCNSW; METROPOLITAN SYDNEY CEMETERY CAPACITY REPORT, NOVEMBER 2017

Reflecting the Objects of the Act and the importance of available cemetery capacity, CCNSW commenced work on the Metropolitan Sydney Cemetery Capacity Report in 2015.

The report used four key data sources:

Supply

- ◆ CCNSW Cemeteries and Crematoria Register to ascertain cemetery capacity information;
- ◆ CCNSW cemetery operator activity information from 2014-16;
- ◆ Cemetery operator responses to a CCNSW cemetery capacity survey undertaken in 2015/16; and

Demand

- ◆ Australian Bureau of Statistics and NSW Government projections of population and mortality by local government region.

The report was publicly released in November 2017 with the following findings²:

- ◆ Urgent action was required to address critical shortages of cemetery capacity in parts of Sydney;
- ◆ At-need purchases of interment rights would be unavailable in some areas of Sydney from as early as 2026 and exhausted by 2036;
- ◆ Deleterious outcomes were expected to occur well in advance of actual exhaustion as a result of increasing community awareness of the impending shortage and rush buying of interment rights ahead of need. Such actions were expected to diminish affordability and equity for many communities;
- ◆ Negative outcomes would be concentrated by geography and cultural orientation, disproportionately affecting communities of the central, north and south regions;
- ◆ Exhaustion of at-need interment rights were most likely to disadvantage families with limited financial means and religious and cultural communities requiring burial as opposed to cremation;
- ◆ Capacity for around 301,000 grave plots was available in Sydney cemeteries at 1 January 2015 (note the comparative reduction from the 2002 estimate of 680,000 plots);

² CCNSW, Metropolitan Sydney Cemetery Capacity Report, November 2017, pages 6-12.

- ◆ Over 1.5 million persons were projected to require burial or cremation in Sydney between 2015 and 2056, with over 304,000 grave plots projected to be required from 2015 to 2056;
- ◆ By 2056, 11,800 plots would be required each year, representing approximately four hectares of cemetery land;
- ◆ Assuming current cremation rates and grave occupancy ratios, cemetery capacity would be exhausted by 2051, if not sooner; and
- ◆ Incremental increases in cremation and grave occupancy ratios would have little impact on exhaustion periods (ie; 2057 vs 2051).

7.2.3 URBIS; SYDNEY CEMETERY SUPPLY AND DEMAND ASSESSMENT, JUNE 2019

In 2019, CCNSW engaged Urbis to build on the 2017 CCNSW report and forecast the additional cemetery capacity required over the next 100 years.

The report provided the following key findings:

- ◆ Projected exhaustion of burial plots in Sydney by 2047. However, as this does not take into consideration the pre-sale of interment rights by cemetery operators, at-need rights will exhaust much earlier (currently 41% of unused plots in Crown cemeteries have been presold);
- ◆ The south and east regions of Sydney were expected to reach capacity between 2024 and 2026;
- ◆ As of July 2018, there was an estimated 278,000 available plots in Sydney;
- ◆ Long-term forecasts suggest Sydney will be undersupplied by between 480,000 and 842,000 plots over the next 100 years;
- ◆ It would take the equivalent of six Macarthur Memorial Park (136,000) sized developments to address a deficit of 842,000 plots;
- ◆ Of the seven proposals for a total of 362,490 plots for Sydney, only one has received the required planning approvals, representing 136,000 plots. Almost all proposed developments are in Sydney's western suburbs.

7.2.4 THE GREATER SYDNEY COMMISSION; STRATEGIC PLANNING CONSIDERATIONS FOR CEMETERIES, DECEMBER 2019

In February 2019, the Premier of NSW asked the Greater Sydney Commission (GSC) to provide advice and recommendations on strategic planning considerations for the provision of cemeteries. The Review understands this advice will not extend to specific sites or development applications but will provide guidance on the criteria for identifying sites for new cemeteries in Greater Sydney.

The scope of work, as detailed in the Premier's letter, included:

1. Review of recent reports on this subject;
2. Consulting with key agencies and stakeholders on strategic issues, community concerns and environmental considerations, including Cemeteries & Crematoria NSW (CCNSW), relevant local councils, cemetery managers and Aboriginal Land Councils;
3. Conferring with the Department of Planning, Industry and Environment (DPIE) regarding land availability and relevant criteria to be considered in the establishment of a cemetery (e.g. land use zoning, conservation areas and biodiversity protection);

4. A review of any national and international planning strategies or case studies on cemetery site selection; and
5. Preparing a cemetery site identification Information Note in consultation with relevant agencies.

The Review understands the advice provided by the GSC includes the following:

- ◆ Key strategic criteria that could be used to test the suitability of sites for future cemeteries and assist approval authorities with the assessment of cemetery proposals;
- ◆ Approvals pathways to simplify the approvals process for new cemeteries. This could include declaring new cemeteries as State Significant Developments to be assessed under the SEPP approvals process;
- ◆ Identification of cemetery sites by a working group established by CCNSW, supported by the Commission and other relevant Government agencies; and
- ◆ Greater Sydney Region Plan to propose further actions to deliver additional supply for burial sites.



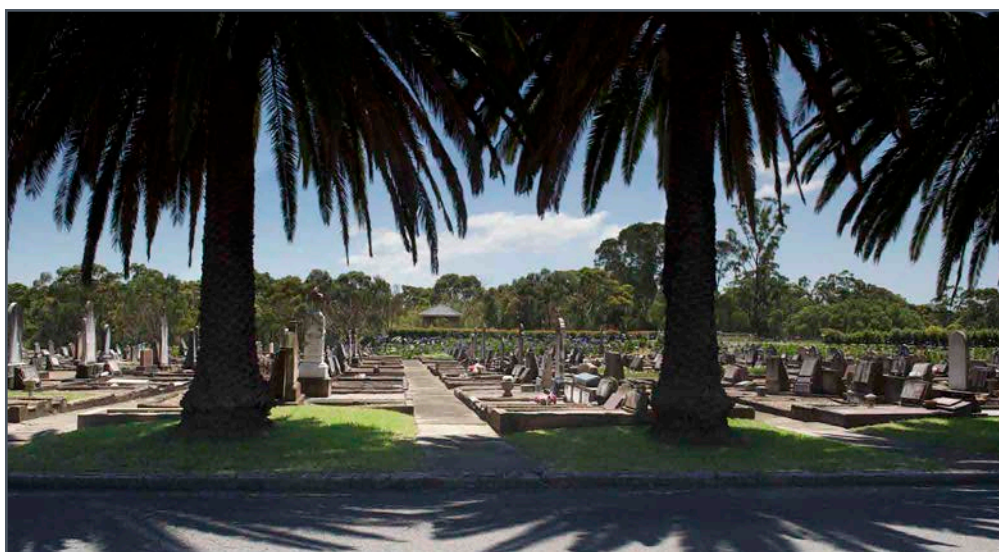
7.3 REVIEW'S SUPPLY-DEMAND MODEL

To fulfil the Review's Terms of Reference, a 99-year forecast model of the Crown cemetery sector was developed to project the supply-demand requirements for cemetery land and analyse the financial implications for the Crown operators.

A detailed description of the model is provided in Appendix E – Model Overview.

Key inputs for the Crown operator supply-demand included:

- ◆ Supply capacity of each cemetery per operator within existing cemetery boundaries, excluding any unplanned/unapproved development land (if any);
- ◆ Supply split between unsold and pre-sold available plots;
- ◆ Long-term projected death rates by region, sourced from the Urbis Report (2019) and applied to the annual demand for each Crown operator in future years;
- ◆ Demand for future burial licences (pre-need and at-need);
- ◆ Demand mix of cremation versus burial interments (and between at-need and pre-need); and
- ◆ Demand mix of perpetual versus renewable tenure interments (and ability to change over time).



Interment right demand

The Review model estimated future demand for interment right sales (pre-need and at-need) based on data provided by Crown operators (including; forecast deaths, interment right sales, interments and cremations) per cemetery, for 2020 and in some cases to 2024.

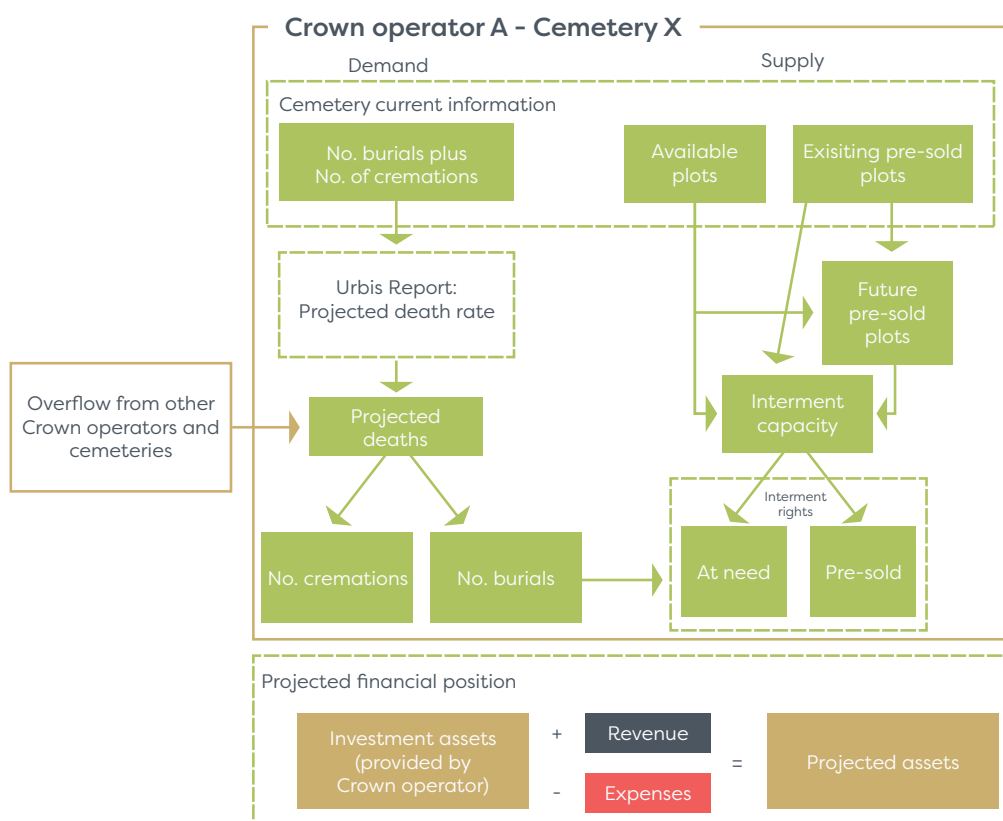
A growth rate in deaths was applied to this data, using Urbis' year-on-year calculations by region in each Crown cemetery location, to forecast future demand for interments (bodily and cremated remains) by each Crown operator.

The demand for interment rights was estimated from the future projected demand for interments, segregated between cremations and burials. The model assumed an average 1.4 burials per interment right, which allowed for a proportion of second interments that are not utilised.

Each interment right for bodily remains has a land allocation depending on the number of interments acquired and the type of right, which might relate to a standard lawn grave, a monumental grave, a mausoleum or crypt. A larger land area applies to monumental graves, mausoleums and crypts than for a standard lawn grave. Expressed as a multiple of size of a standard lawn grave, the land requirement per interment right for bodily interments differed by operator, from 1.1 to 1.6 standard lawn plots per interment right.

The interment of cremated remains also have an implicit land allocation per right, which is much smaller on average than the allocation for bodily remains.

Figure 7.1: Model overview



Drivers of cemetery demand

Population growth, ageing, projected death rates and key demographic considerations including religious affiliations are all key drivers of demand for cemetery burial space.

Between 2016 and 2036, Sydney's population is expected to grow by 1.6% per annum, adding 1,729,613 new residents³. Growth is expected to be concentrated in the north-west and south-west regions where annual population growth will exceed 2.9% and 2.2% respectively.

As the population increases it is also expected to age, with an associated increase in annual deaths. Demographically, people over 80 years of age are expected to increase at the highest rate over this 20-year period, at more than 4% per annum.

Sydney's cultural diversity is another important driver of burial demand. Cultural beliefs and religious customs can determine whether an individual is buried or cremated. Generally, the followers of Muslim, Jewish and Christian Orthodox religions require burial, while followers of Hinduism have a preference for cremation.

As Sydney's population grows, its population diversity is also changing, as reflected in Table 7.1.

³ CCNSW, Metropolitan Sydney Cemetery Capacity Report, November 2017, pages 6-12.

Table 7.1; Sydney by religious denomination

RELIGION	2011 [%]	2016 [%]	% CHANGE
Protestant	24.8	19.1	-5.7
Catholic	28.3	25.2	-3.1
Orthodox	5.2	4.4	-0.7
Judaism	0.9	0.8	-0.2
Buddhist	4.3	4.1	-0.2
Non-religious	17.7	24.7	7.0
Hinduism	2.7	3.8	1.0
Other	9.3	10.1	0.8
Islam	5.0	5.6	0.6
Other Christian	1.8	2.3	0.5

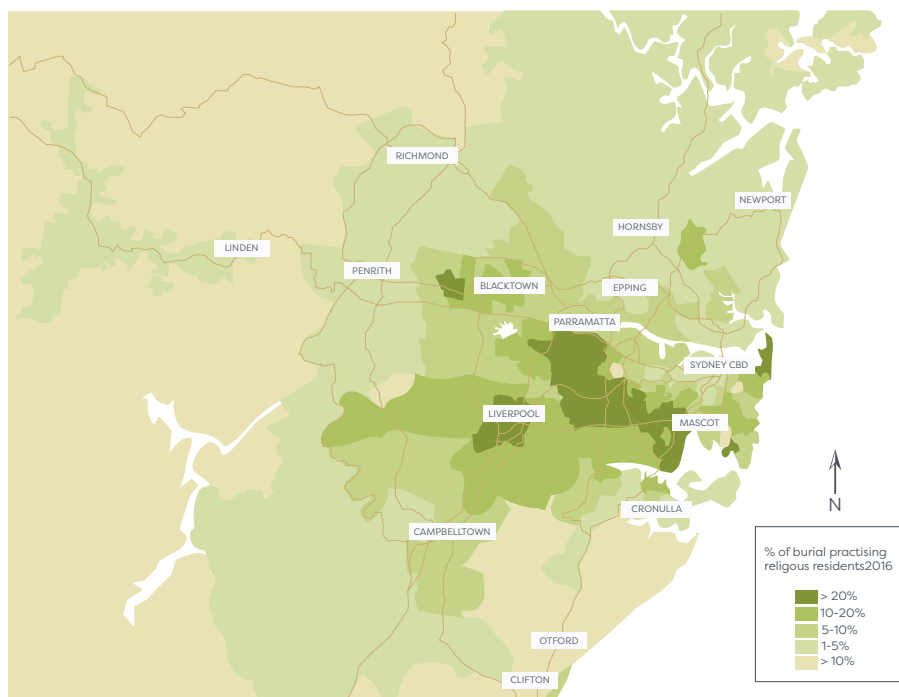
Source: Australian Bureau of Statistics

The Protestant and Catholic religions, the two largest in Sydney, experienced the largest declines in representation from 2011 to 2016, 5.7% and 3.1% respectively. Both religions permit cremation, which has steadily gained acceptance among Catholics since it was afforded them in 1962.

The religious distribution indicates cremation will continue to grow, offset by increases in the Muslim community, who require burial.

The location of these communities is an important consideration when planning for cemetery demand and catering for those wishing to be cremated. Map 7.1 plots the location of these communities across Sydney.

Map 7.1: Burial practising religions across Sydney



Source: Urbis and Australian Bureau of Statistics.



Cremation rates reported by CCNSW in its Annual Activity Reports reflect this distribution of religious communities, with the north and south of the city recording the highest levels of cremation at 78.8% and 78.5% respectively, while the west central and central regions recorded the lowest levels of cremation at 52.8% and 60.9% respectively⁴.

Factors impacting cemetery choice

Several factors influence where a loved one is to be interred, including proximity to surviving family and friends.

People wanting to visit and care for graves need cemeteries close to their communities that can be reached by public transport in reasonable travel times.

Urbis analysed the distance and drive time between people's homes and burial places in 2017-18, using residence postcode data provided by Sydney's four Crown cemetery operators, which account for the majority of Sydney's burials.

It found 77% of people are buried within 20km of their place of residence and 80% are buried within a 30-minute drive. That leaves a significant number of people having to travel long distances to visit a loved one's grave⁵.

Table 7.2 Travel distances by car

DISTANCE	% OF BURIALS	DRIVE TIME*	% OF BURIALS
< 10 km	36%	< 15 min	30%
10-20km	41%	16-30 min	50%
20-30km	12%	31-45 min	11%
30-40km	4%	46-60 min	5%
> 40km	7%	> 60min	5%

* Note: Average drive time at noon on a Saturday.
Source: Crown cemetery operators; Urbis

Cemetery supply

There are 128 operational cemeteries in Sydney, operated by the Crown, privately owned companies, local government, churches and community organisations. While the Crown and private sector (InvoCare) operate only 16 of these cemeteries, they account for almost 90% of burials in Sydney.

Table 7.3 Sydney cemetery activity

OPERATOR	NO. OF ACTIVE CEMETERIES	NO. OF BURIALS	% OF SYDNEY BURIALS	NO. OF CREMATIONS	% OF SYDNEY CREMATIONS
Crown	9	6,228	68.1%	4,928	27%
Private	7	1982	21.7%	13,213	73%
Local government	37	833	9.1%	0	0
Church	73	63	0.7%	0	0
Community	2	45	0.5%	0	0

Source: CCNSW Activity Report 2018/19.

⁴ CCNSW, Annual Activity Report 2018/19.

⁵ Urbis, Metropolitan Sydney Cemetery Supply and Demand Assessment, page 6

Map 7.2 shows the location of these key cemeteries operated by the Crown and InvoCare



The Review was asked to examine the supply and demand for the Crown sector in Sydney, however it is important to understand the contribution of these other operators within Sydney.

With the exception of the InvoCare cemeteries which were created in the 1960's, almost all of the Crown, local government, church and community cemeteries were established in the 1800s up to 1940. The last cemetery constructed by the Crown was in 1940 at Frenchs Forest.

The Review obtained data from each of the Crown operators on the quantity of land available for burial, including land acquisitions for new cemeteries and expansion of existing cemeteries.

Development of new cemeteries

The development of new cemeteries, especially in Sydney, is complex, time consuming and capital intensive. Cemetery operators have limited experience developing new cemeteries, with the last large-scale cemeteries in Sydney developed by private operators in the 1960s.

The challenges associated with developing new cemeteries in Sydney include the identification of suitable land, gaining community acceptance and development approvals, and access to capital. These challenges will be discussed further in the chapter.

There are a number of cemetery development proposals in the south-west and west of the city which are seeking or have received planning approval. The total plots available from these developments is 320,490. However, with considerable development and financing risks associated with a number of these projects, it is unlikely they will all proceed.

Table 7.4: Proposed Sydney cemetery developments

CEMETERY	OPERATOR	REGION	BURIAL PLOTS	STATUS
Macarthur Memorial Park	CMCT	South-west (Varroville)	136,000	Acquired in 2014 and received planning approval from Independent Planning Commission (IPC) in 2019. Awaiting the commencement of construction.
Nepean Gardens	CMCT	West (Wallacia)	60,000*	Application for 88,000-plot cemetery rejected by IPC in 2019. Smaller proposal lodged with Council in 2020.
Greendale	Private	West (Greendale)	60,000	Approved in 2015 for a 2-stage development of 60,000 lawn plots. Owner has begun marketing the cemetery for sale to prospective cemetery operators.
Elizabeth Drive	Private	West (Luddenham)	38,000	Approved. No indication of development activity on site.
The Garden Cemetery Liverpool	Private	South-west (Bringelly)	14,490	Approved. Cemetery owners advise interment rights can be pre-purchased, yet there is no indication of development on site.
St Bartholomew's Cemetery	Blacktown City Council	West (Blacktown)	10,000	Proposal lodged with DPIE to expand existing cemetery by 8 hectares, adding 10,000 plots, crypts and columbarium.
Total			318,490	

* Current Development Application is for 27,000 plots.



7.3.1 MODEL SCENARIOS

The Review examined three supply-demand scenarios over the 99-year forecast period:

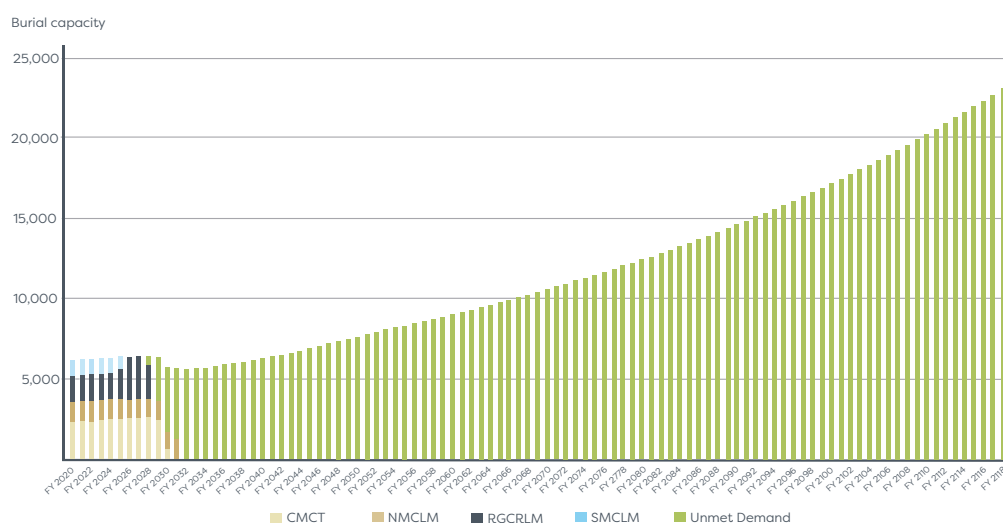
1. Status-quo – application of projected demand on existing Crown cemeteries to determine the expected exhaustion periods across Sydney and for each Crown operator;
2. New land – inclusion of planned new Crown cemeteries to assess their impact on exhaustion and the financial implications for the operators; and
3. Policy options – the impact of various assumptions regarding changes in cremation rates, take-up of renewable tenure interment and cemetery renewal following the expected exhaustion periods for all Crown operators.

Note: The definition of demand and supply relates to an available burial interment right. Demand is the rate of burial interment rights sold each year (at-need and pre-need). This is the definition used by operators. Interment is the service provided in association with the right.

7.3.1.1 STATUS QUO

In this scenario, the model demonstrates Crown operators are unable to service the demand for burial licences after 12 years.

Graph 7.1: Crown demand versus supply analysis (99 years)



The Review model projects approximately 304,000 interment rights will be required over the next 50 years in excess of the current Crown supply, rising to 1,090,000 in 99 years. This requires approximately 122 hectares of new burial land over the next 50 years and approximately 436 hectares over 99 years.

The Urbis report estimated demand for 1,120,209 graves over 100 years from 2019⁶, with remaining burial capacity at 1 July 2018 estimated at 278,426 plots, as reflected in Table 7.5.

While Crown operators undertake approximately 68% of burials across Sydney, they have only 24% – or 68,585 – of the estimated plots remaining.

⁶ Urbis; Metropolitan Sydney Cemetery Demand Assessment, page 30.

Other operators with significant cemetery capacity include InvoCare, which has large cemeteries and crematoria in the west (Minchinbury), north-west (Kellyville), south-west (Leppington) and north (North Ryde).

InvoCare conducted 1,683 burials at these facilities (excluding North Ryde) in 2018/19⁷ and had available supply of approximately 186,000 plots (adjusted from 2015 capacity data provided to CCNSW)⁸. This has significant market competition, pricing and affordability implications, especially when Crown cemeteries reach exhaustion, that will be discussed further in this chapter.

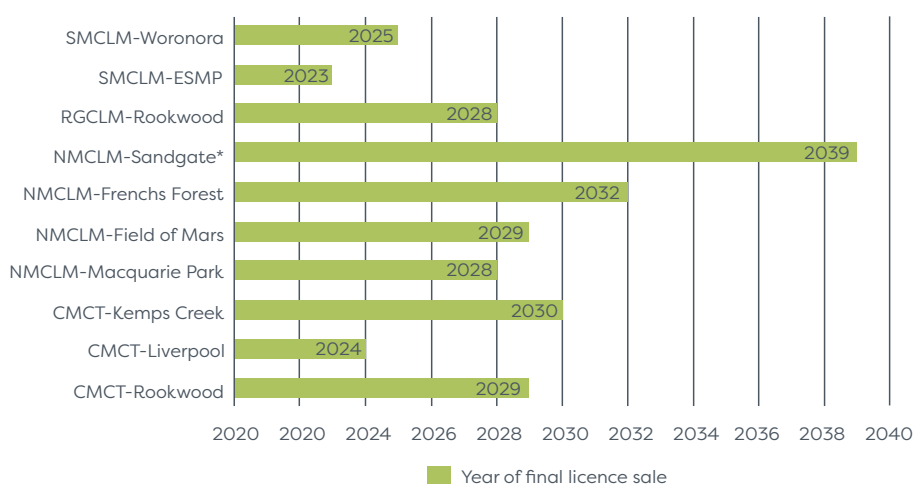
Table 7.5: Comparison of Crown operators' capacity versus Urbis' burial capacity in metropolitan Sydney

BURIAL CAPACITY IN METROPOLITAN SYDNEY: URBIS 2015-2016 TABLE 4.3				CROWN CEMETERY MODEL INPUTS		
Sub region	Available plots 1 January 2015	Estimated Burials (1 Jan 2015 – 30 June 2018)	Available Plots 1 July 2018	Crown Cemetery	Unsold Licenses (30 June 2019)	Unsold Licences + Unoccupied Pre-sold Licenses
East	6,600	3,336	3,264	ESMP	1,849	6,562
North	31,309	1,184	30,126	NMCLM	9,552	10,596 (excludes Sandgate)
South	6,500	1,409	5,092	WMP	4,208	11,641
Central	43,818	7,942	35,877	RGCLM- Rookwood	21,162	24,389
				CMCT- Rookwood	17,652	19,036
West	55,520	3,859	51,661	CMCT - Kemps Creek	10,296	10,478
North West	62,071	2,066	60,006	CMCT - Liverpool	866	1,048
South West	95,339	2,937	92,402	CMCT - MMP	n/a	
Metropolitan Sydney	301,157	22,731	278,426	Total Crown	65,585	83,750

It should be noted that Urbis estimated available plots based on land area (hectares) and operator data provided to CCNSW (noting RGCLM did not provide any burial plot data to CCNSW), while the Review model estimated capacity based on operator data provided to IPART for each cemetery and subsequent discussion with the operators.

The supply issue becomes more acute when considered at a geographic level as each of the Crown operators tends to service different regions within Sydney. In particular, the East and South of Sydney, largely within the catchment of SMCLM, will face geographical exhaustion point within 3-5 years.

Graph 7.2: Estimated exhaustion year per Crown cemeteries model



⁷ CCNSW, Activity Report 2018/19.

⁸ InvoCare reported 195,000 available plots in 2015 to CCNSW. InvoCare conduct approximately 1,700 burials per annum.

The Review model assumed that as one Crown cemetery closed the demand was reallocated to another Crown cemetery, increasing the demand on remaining cemeteries and accelerating their exhaustion.

The year of final interments occurs some time after the final plot is sold, due to a certain proportion of licences being sold pre-need. Cemeteries will remain active in terms of providing interment services (and cremation for three of the four operators) while no longer conducting sales activities.

The Urbis report forecast demand for burials and cremations by region in Sydney under three scenarios (low, medium, high), which varied according to the cremation rate and plot ratio, and applied these rates to projected deaths by region. It projected burials in new plots by region, taking no account of pre-need requirements.

By contrast, the Review model forecasts licence sales by cemetery for each Crown operator, recognising pre-need and at-need requirements. This approach is consistent with consumer behaviour and reflects the way cemetery operations are conducted.

In most instances the Review model estimates a similar, though shorter, implied cemetery life than the Urbis calculations. This is not unanticipated given the significant pre-need component of licence sales.

Implications of outputs

While consistent with previous works, the Review model outputs indicate Crown cemetery capacity will be exhausted sooner than previously expected. This is because previous works have not focused specifically on the Crown, but overall sector supply-demand.

These findings have significant implications for:

- ◆ Service continuity of Crown operators;
- ◆ Financial position of Crown operators; and
- ◆ The competitive landscape of Sydney's cemeteries and crematoria market.

Service continuity - While the Crown undertakes approximately 68% of burials across Sydney, this is considerably higher in certain regions within Sydney, such as the east and south.

Without the identification, acquisition and construction of new cemeteries in the next 12 years, three of the four Crown operators will no longer be able to satisfy expected demand and sell new interment rights. This assumes the recently approved cemetery, Macarthur Memorial Park, will be constructed by the CMCT, enabling that Crown operator to continue providing burial services in Sydney's western suburbs.

For communities historically serviced by Crown operators SMCLM, NMCLM and RGCRLM for their burial requirements, this has profound implications for the respectful interment of loved ones. The inability to bury in these locations will cause particular anxiety for communities bound by cultural and religious beliefs who cannot cremate, especially if they have been unable to pre-purchase an interment right. As public awareness of the issue increases, the rush to acquire pre-need interment rights may further disadvantage people of limited financial capacity.

Unless they can develop new cemeteries, these three Crown operators will not be able to fulfil one of the key Objects of the Act.

Financial implications for Crown operators – The exhaustion of cemetery capacity adversely impacts any cemetery operator. The sale of burial interment rights represents the most significant source of revenue for each of the Crown operators. In the case of RGCRLM, which does not operate a crematorium, it is the only source of operating revenue.

The most significant financial consequence of the projected exhaustion relates to the perpetual maintenance target liability (PMTL). If the Crown operators don't achieve 100% funding of their PMTL by the time of time of last interment right sale they may not be able to maintain their cemeteries to the appropriate standard in perpetuity. Should this occur, the operators will be unable to fulfil another key Object of the Act.

Market competition – Under the status quo scenario, when all existing Crown cemeteries are unable to sell new interment rights after 10-12 years, it is anticipated InvoCare will be the only remaining cemetery operator with significant burial capacity, of approximately 163,000 plots. (Even with the anticipated introduction of Macarthur Memorial Park, modelled in the new land scenario, InvoCare is still projected to have the largest stock of available cemetery land).

Currently, InvoCare owns the majority of funeral directors in Sydney and undertakes 56% of its cremations. Without new entrants to the cemetery market and/or the Crown developing significant new cemeteries, InvoCare will have a dominate position across the funeral direction, cremation and burial interment markets in Sydney.

The impact on market power, consumer choice, pricing and overall affordability needs further analysis which is beyond the scope of this Review.

The Review believes the NSW Government and pricing and competition regulators need to carefully consider the consequences of such market concentration in one vertically integrated operator.

RECOMMENDATION 7.1



The NSW Government undertakes further analysis of the level of competition in the funeral, cremation and cemetery market in Sydney, with particular focus on the concentration of market power among vertically integrated operators.

7.3.1.2 NEW LAND

Macarthur Memorial Park and Nepean Gardens

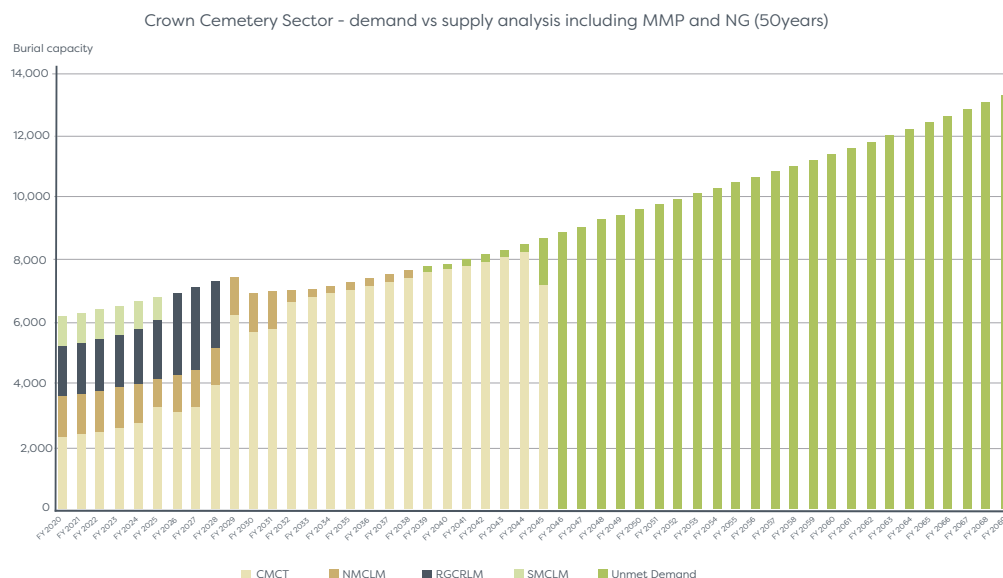
The Review model incorporated additional cemeteries proposed by Crown cemetery operators into the status quo scenario, namely:

- ◆ Macarthur Memorial Park (MMP) – Part of CMCT, this has received development consent, with initial construction planned over 2020/21. MMP will provide an additional 136,000 plots;
- ◆ Nepean Gardens (NG) – With development consent not yet granted, it has been assumed NG would provide an additional 60,000 plots.

To assess the impact of MMP and NG, the Review received preliminary business plans from CMCT with forecasts over 20 years, and held consultation sessions with CMCT executives.

The inclusion of MMP extends the Crown sector's cemetery life by 10 years to 2042 and NG by a further 3 years to 2045. NG exhausts relatively quickly after MMP, given its smaller capacity and the likely overflow demand from other Crown cemeteries. The Review assumed a 5% to 40% leakage of demand to the private sector and an increasing cremation rate, once the other Crown operators exhaust

Graph 7.3: Crown demand versus supply analysis – impact of MMP & NG



MMP partially depends on overflow from other Crown operators as they exhaust to advance its interment right sales in the early years of operation. CMCT's business case for MMP stressed the importance of redirecting RGCRM's demand to MMP.

The development of MMP and subsequently, NG (subject to approval) is expected to materially benefit CMCT. Other Crown operators do not receive any benefit from this.

Notwithstanding the inclusion of MMP and NG, the Crown cemetery sector will require further cemetery land to ensure its sustainability over the longer term.

All Crown operators

The Review model projects the amount of new land required for each Crown operator to meet the projected interment right demand over the next 50 and 99 years.

Table 7.6: Additional land required to meet 99-year projected interment right demand

CROWN OPERATOR	UNMET DEMAND (INTERMENT RIGHTS)	LAND REQUIRED (HECTARES)*
CMCT**	448,140	179
NMCLM	189,826	76
RGCRM	296,899	119
SMCLM	153,904	62
Total	1,088,769	436

*Land for burial use only (does not include land for other ancillary purposes, for example; roads, pathways, Chapels, administration buildings etc).

**Excluding MMP and NG.

Table 7.7: Additional land required to meet 50-year projected interment right demand

CROWN OPERATOR	UNMET DEMAND (INTERMENT RIGHTS)	LAND REQUIRED (HECTARES)*
CMCT**	120,092	48
NMCLM	56,411	23
RGCLM	77,786	31
SMCLM	49,582	20
Total	303,871	122

*Land for burial use only (does not include land for other ancillary purposes, for example; roads, pathways, Chapels, administration buildings etc).

**Excluding MMP and NG.

Using MMP as a guide (where total cost including acquisition is likely to exceed \$90 million), the cost of Crown operators independently developing their land requirements for the next 50 years is estimated to be the in range of \$200-300 million.

The Review believes any acquisition of land of this magnitude should be done on a consolidated basis rather than single operators developing independent cemeteries which do not achieve economies of scale. Sunk costs associated with cemeteries include roads, utilities, chapels, parking, crematoria and function facilities. A consolidated site also precludes the need for additional ancillary supporting infrastructure, including road upgrades, public transport, water and sewerage connection.

Given the economies of scale associated with the development of new cemeteries, it would be more efficient for the Crown to develop a sufficiently sized cemetery to cater for the aggregated demand over the next 50-99 years.

Based on advice from operators who have sought to acquire land for cemeteries, the model assumed an average annual increase in land prices of 5% pa⁹.

Given Sydney's escalating land prices, the opportunity cost of not acquiring land as soon as practicable will be significant for the NSW Government.

This is also a key finding of the 2018 Legislative Council, Regulatory Review Committee, which found:

The Committee notes the concerns raised by several inquiry participants regarding the finite amount of land currently available for burials in the Greater Metropolitan Sydney area. The Committee urges the Government to look at potential opportunities to acquire further land for cemeteries in the Greater Metropolitan area as a matter of priority¹⁰.

RECOMMENDATION 7.2



The NSW Government immediately acquires land for new cemeteries and crematoria in Sydney.

⁹ Land prices were extracted from multiple sources including prospective Crown acquisition business cases.

¹⁰ NSW Parliament, Legislative Council Regulation Committee, Cemeteries and Crematoria Amendment Regulation 2018, Report 2, November 2018, page vii.

The Review examined the potential to develop parcels of land within existing Crown cemetery boundaries.

The Rookwood Necropolis occupies 286 hectares and RGCRLM requires 37 hectares to meet the anticipated demand for interment rights over the next 50 years.

There are 24 hectares of regrowth vegetation within Rookwood's existing boundaries that have been classified as Vegetation Conservation Areas (VCA). These VCAs are protected under the *NSW Biodiversity Conservation Act 2016* and the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* which limit the use of these areas for burials or ash interments.

Map 7.3: Rookwood Necropolis - Vegetation Conservation Areas (VCAs)



Source: Rookwood Necropolis, *Plan of Management* 2014, page 28.

Irrespective of whether both MMP and NG ultimately become operational cemeteries, the Crown sector needs to develop new cemeteries in order to meet the projected demand. The Review modelled the impact of utilising these areas for interments and found it would provide RGCRLM with an additional 14 years of interment capacity. The exhaustion of this land, relative to the 50-year requirement, appears to be accelerated by the model's assumption (in the status quo scenario) that excess burial demand at CMCT (Rookwood) once closed in 2029 would be directed to RGCRLM, as opposed to Kemps Creek, as it is significantly closer.

Given the costs associated with developing new cemeteries and the necessary ancillary infrastructure, the Review believes consideration should be given to utilising this land for cemetery purposes, as it was originally intended in 1867.

RECOMMENDATION 7.3



The NSW Government considers reclassifying the Vegetation Conservation Areas in the Rookwood Necropolis to enable these lands to be used for cemetery purposes.

7.3.1.3 POLICY OPTIONS

The Review examined the impact of various policy options on land supply in Sydney, including:

- ◆ Increases in cremation rates;
- ◆ Renewable tenure interments;
 - o dedicate land at RGCRLM for renewable tenure interments;
 - o mandate new cemeteries as renewable tenure only; and
- ◆ Cemetery renewal.

Cremations

It is a logical proposition that increases in the cremation rate may relieve Sydney's burial land supply-demand challenge.

Cremation rates across Sydney currently average 66.5%¹¹. The view of each operator was that cremation rates were historically stable and likely to stay that way, despite varying by cemetery and operator: Rookwood (nil), CMCT (21% of total services), NMCLM (52% of total services), SMCLM (73% of total services).

Urbis reported the number of cremations in Sydney grew at roughly 2% per annum from 2014 to 2018. However, the cremation rate has remained stable since 2014-2015.

The Review examined the feasibility of further increases in cremation rates.

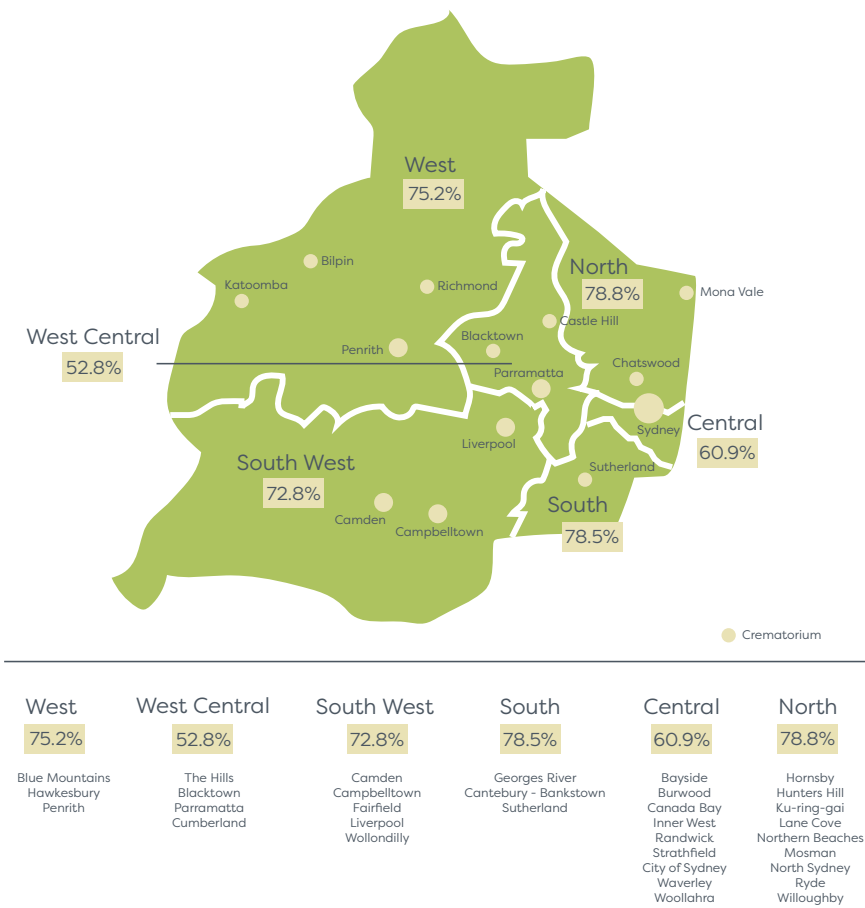
Across NSW, the cremation rates vary from 84.5% on the Central Coast to 44.3% in the Central West/Orana region of the State¹². In Sydney, cremation rates vary from 52.8% in the west central region to 78.8% in the north.



¹¹ CCNSW, Activity Report 2018/19.

¹² Ibid.

Map 7.4: Cremation rates across Sydney



Source: CCNSW, Activity Report 2018/19.

The variation in cremation rates across the city largely correspond to the religious groupings shown in Map 7.1. Excluding regions with large religious groupings that limit cremation, the cremation rate rises to more than 70% and, in two regions, in excess of 78%.

International comparisons gauge the potential for further increases in cremation rates.

Table 7.8 shows the regions of Sydney not widely populated by religious groups requiring burial have high cremation rates by international standards. This is further highlighted when countries with cultural or religious requirements for cremation (Japan, Taiwan, Hong Kong, South Korea and Singapore) are excluded.



Table 7.8; International cremation rates

	COUNTRY	CREMATION RATE (%)	YEAR
1	Japan	99.9	2018
2	Taiwan	96.8	2017
3	Hong Kong	92.3	2018
4	Switzerland	86.2	2018
5	South Korea	84.6	2017
6	Slovenia	83.9	2018
7	Denmark	83.9	2018
8	Sweden	82.1	2018
9	Czech Republic	81.5	2017
10	Singapore	80.5	2018
11	Thailand	80.0	2018
	North (Sydney)	78.8	2018
	South (Sydney)	78.5	2018
12	United Kingdom	78.2	2018
	West (Sydney)	75.2	2018
13	New Zealand	75.0	2016
	South West (Sydney)	72.8	2018
14	Canada	72.1	2017
15	Germany	67.0	2018
16	Netherlands	65.3	2018
17	Peru	67.6	2018
18	Hungary	64.4	2018
	Central (Sydney)	60.9	2018
19	Luxemburg	60.3	2018
20	Belgium	60.0	2017
21	Finland	53.5	2018
22	United States of	53.1	2017
23	America		
	West Central (Sydney)	52.8	2018
24	Spain ¹³	50.3	2017
25	Austria	44.6	2017
26	Argentina	42.0	2018
27	France	39.5	2017
28	Poland	24.0	2017
29	Italy	23.9	2017
30	Ireland	21.2	2018
31	Russia	12.0	2018
32	Romania	0.5	2018

Source: The Cremation Society of Great Britain, <https://www.cremation.org.uk/International-cremation-statistics-2018>

Given these comparisons, it is unlikely cremation rates will increase much further in these regions of Sydney. The Review modelled a theoretical – if unrealistic – increase in cremation rates to 82% by 2025 for its effect on burial demand in Sydney. Table 7.8 shows how this could affect existing Crown cemeteries.

¹³ Barcelona only.

Table 7.9: Cremation rate increase – extension of cemetery life

OPERATOR	STATUS QUO	CURRENT CREMATION RATE	CREMATION RATE [82%]
CMCT	2030	28%	2048
NMCLM (ex-Sandgate)	2032	65%	2033
RGCLM	2028	N/A	2029
SMCLM	2025	70%*	2026
Total	2032		2048

*Average of SMCLM's two sites (ESMP – 65% and Woronora 75%).

Cultural and religious requirements mean an 82% cremation rate is unlikely. Regardless, it would have little impact on the life expectancy of existing Crown cemeteries, with the exception of those operated by CMCT, which have relatively low levels of cremation. For the other three operators, it increases their life expectancy by one year only.

Increases in cremation rates are not a material solution to the supply-demand imbalance in cemetery land.

Renewable tenure

Renewable tenure allows the purchase of an interment right for a defined period, which in NSW is a minimum of 25 years, with the option to renew up to a maximum of 99 years.

If the tenure is not renewed, the interment right reverts to the cemetery authority for reuse, only after sufficient decomposition has occurred. The likely decomposition rates and factors affecting this, such as soil types and moisture, are critical in determining the potential reuse of land.

In NSW, renewable tenure is optional and not retrospective, so any perpetual interment right purchased remains in perpetuity.

Mandatory renewable tenure is common in many other jurisdictions, including South Australia and Western Australia. South Australia has allowed limited tenure for graves and memorial sites for more than 60 years. The term is set by the cemetery operator and can be renewed for a period of not less than five years. Plots are reused using the 'lift and deepen' method where the previous remains are placed in an ossuary box and buried deeper in the grave. Since 1986, Western Australia has had mandatory renewable tenure with interment rights of 25 years.

European countries that have mandated renewable tenure include France, Denmark, Greece, Germany, Italy and Sweden, with typical tenure periods of up to 50 years.

NSW has a unique approach to renewable tenure, with the Review unable to identify another jurisdiction where renewable tenure is optional.



Experiences of renewable tenure in other countries

France

French laws regulate reuse of graves after a set period (five years to 30–50 years). The lease can be renewed at the family's request or the plot is resumed and the remains buried anonymously in a common grave.

Leases in perpetuity may be resumed after 75 years on certification that the grave is dilapidated, and other formalities. The bones remaining are placed in special compartments in the ossuary and identified by name plates.

Greece

Greek Orthodox tradition practices exhumation to reuse graves. It is customary to exhume after one, three or seven years, with the remains either reinterred or placed in an ossuary house.

Italy

The 19th century monumental cemeteries are northern Italy's legacy to the world but there is also a tradition of urban wall cemeteries. Single interment graves have a term of 10 to 30 years. Remains are then exhumed and, if not claimed by the next of kin, placed in a common graveyard. Monumental or vault sections have annual leases to ensure continued tenure. The ossario, a tradition dating to the first centuries, has prevailed, providing walls of individual niches to bury bodies or ashes.

Middle East

A number of countries in the Middle East have reused family graves for centuries. After a period of sufficient decomposition, the bones are placed in an ossuary box and buried deeper in the grave.

In NSW, the majority of interment rights are perpetual, though renewable tenure was made available in some local government and private cemeteries before the commencement of Part 4 of the Act in 2018.

According to CCNSW, there were 53 renewable tenure interments out of 18,335 interments in local government or private cemeteries in 2017/18 – just 0.29% of total interments.

Despite renewable tenure commencing in 2018, the Review heard that no Crown or major private sector operators offer or intend to develop a renewable tenure product in the foreseeable future. Evidence to a recent NSW Parliament Legislative Council Inquiry into the commencement of renewable tenure found CCNSW's community consultation had been ineffective, with a low level of industry and community understanding of how the system would operate¹⁴.

Quantitative research by CCNSW in 2016 demonstrated a low level of public understanding about interment rights generally, with 78% of people not knowing what an interment right was and 90% unaware there were two types of interment rights – perpetual and renewable tenure¹⁵. There were largely negative reactions to the concept of renewable tenure interment as people assumed burial was 'forever'.

Like many operators, the Review believes renewable tenure will not make a meaningful impact on the current projected land shortage in the short-medium term. The limited Crown cemetery land remaining would be exhausted before any renewable tenure plots could be reused.

¹⁴ NSW Parliament, Legislative Council Regulation Committee, *Cemeteries and Crematoria Amendment Regulation 2018*, Report 2, page 17.

¹⁵ CCNSW, Report by Woolcott Research & Engagement, *Consumer Research for Cemeteries and Crematoria NSW Research Report*, August 2016, page 8.



Sydney's predominately clay-based soils may also slow decomposition well beyond the minimum 25-year renewable interment period. An inquiry by the Legislative Council Regulation Committee heard evidence that 50 years was a more realistic timeframe for decomposition to occur, with decomposition also impeded by the use of coffins and certain materials used in their construction¹⁶.

With such low levels of consumer awareness about renewable tenure, the Review believes it would have virtually no impact on the supply-demand challenges in Sydney unless it was mandatory.

Importantly, the Review could not identify one jurisdiction in the world where renewable tenure operated in parallel with perpetual interment. Every jurisdiction offering renewable tenure was mandatory.

The Review modelled mandatory renewable tenure¹⁷ for all new Crown cemeteries in Sydney, while allowing for a transitional period in which existing cemeteries could continue offering perpetual interment rights. This would provide for an orderly transition from perpetual interment to a more sustainable mandatory renewable interment system.

The specific assumptions modelled were:

- ◆ Renewable tenure interment terms of 35 years and 50 years; and
- ◆ Mandatory renewable tenure at all new operational Crown cemeteries from 2021.

Table 7.10: Projected land required over the next 99 years to meet interment right demand

	LAND REQUIRED (HA)	LAND SAVINGS (HA)	% CHANGE OVER NON-MANDATORY
Existing policy settings	436	n/a	n/a
35 years	271	165	38
50 years	386	50	11

A 35-year renewable tenure term would reduce the burial land required over the next 99 years by 38% from 436 hectares to 271 hectares, depending on composition rates.

A 50-year term would lead to a 11% reduction in required burial land to 386 hectares. The full benefits of mandatory renewable tenure occur beyond the 99-year term of the model. Ultimately, renewable tenure will enable the sector to reach a level of sustainability, where operators can meet projected demand by continually re-using their cemeteries.

The Review notes that followers of religions who do not accept renewable tenure would be exempt from this requirement and able to utilise perpetual interment.

RECOMMENDATION 7.4



Consistent with Recommendation 6.1, the NSW Government recognises through the development of a mandatory Code of Practice, the requirement of key religious and cultural groups for perpetual interment.

With the exception of these religious and cultural groups, the NSW Government mandates all new cemeteries to offer renewable tenure interments only.

¹⁶ NSW Parliament, Legislative Council Regulation Committee, *Cemeteries and Crematoria Amendment Regulation 2018*, Report 2, page 19.

¹⁷ Individuals with religious or cultural requirements for burial would be exempt from this provision.

Religious and cultural requirements

As discussed in Chapter 6, there are a number of religious and cultural groups that undertake renewable tenure practices in their homelands. The re-use of graves, after sufficient decomposition, is an accepted practice in a number of Muslim countries. Similarly, the Greek Orthodox community has expressed a desire to utilise a renewable tenure interment product, such that once sufficient decomposition has occurred, the remains can be relocated to an ossuary house and the grave re-used.

Currently the RNLM leases the Rookwood Crematorium and a parcel of land to InvoCare. This lease is due to expire in 2025. Representations have been made to the Review that the remaining land attached to the lease, approximately four hectares, should be reallocated to the RGCRLM for burial interments. At least one faith group, the Lebanese Muslim Association (LMA), has proposed the land could be used on a renewable tenure basis. The LMA and RGCRLM have also been trialling accelerated decomposition.

The Review modelled the use of this land on an exclusively renewable tenure basis with a 35-year term, reflecting the likely acceptable decomposition that may result from the acceleration process. Demand was limited to the existing RGCRLM customer base and did not assume any overflow demand from other Crown cemeteries (including CMCT Rookwood).

The Review model estimated the addition of this land would increase the life of RGCRLM by 17 years. Despite demand for renewable tenure products from religious and cultural groups, no Crown operators offer products to meet these specific religious requirements. Renewable tenure products should be developed for these communities. Kemps Creek, operated by CMCT, has a renewable tenure product but only 6 sales occurred last financial year.

RECOMMENDATION 7.5



All Crown operators provide renewable tenure products, specifically developed in consultation with religious and cultural groups who accept renewable tenure interment practices.

Family Plots

Historically, the use of a plot for the burial of more than one person from the same family has been in practice in most Crown cemeteries and a number of countries, including in the Middle East. The family plot concept enables greater utilisation of land, by providing for numerous bodily and ash interments of members of the same family, or friends of the family.

In the context of the social acceptance of renewable tenure, applying this to a Family Plot whereby once sufficient decomposition has taken place, the plot can be reused for other members of the family, is likely to be more acceptable.

The Act does not limit the number of interments that can take place in any plot. The limiting factors are instead topography and accessibility, with the top of the coffin needing to be at least 900 millimetres below the soil surface. Under the existing legislative framework, the only way a full family plot can be re-used by other family members is through exhumation, requiring an application to the NSW Department of Health. The time and expense involved deters the re-use of family plots.

A simpler approach may be allowing cemetery operators to authorise renewable tenure practices, such as lift and deepen, at a certain point after the last interment (for example, 50 years) so future generations can utilise the plot.

The Review believes family plots offer a range of advantages:

- ◆ Ensuring family members can be buried together, across multiple generations, including the interment of ashes;
- ◆ Providing inter-generational connection for family members to the cemetery;
- ◆ A potentially more efficient use of land, especially on a renewable tenure basis;
- ◆ Ongoing financial contributions to the cemetery and its overall perpetual maintenance requirements; and
- ◆ Introducing the concept of renewable tenure interments into family environments.

RECOMMENDATION 7.6



The Act be amended to enable cemetery operators (at a prescribed point after the last interment) to convert a family plot from perpetual to renewable tenure, allowing future generations to utilise the plot.

All future interments are to be on a renewable basis.

Concurrent with this Review is the review of the *NSW Public Health Regulation 2012*. The regulation prescribes a number of practices associated with burials, which impacts land utilisation, materials used which may affect decomposition rates (as this applies to renewable tenure) and the overall affordability of burials.

Operators and stakeholders have raised the need to address the following areas in the regulation review:

- ◆ **Need for coffins** The regulation requires a body to be buried in a coffin. Shroud burials are only permitted with the approval of the Secretary of NSW Health. A coffin burial adds additional costs to the funeral and interment and can slow the decomposition rate. This can lengthen the required term of a renewable tenure interment.
- ◆ **Burial depths** The regulation requires the burial of a body at least 900 millimetres below the natural surface level of the soil¹⁸. In certain instances, NSW Health can permit shallow burials 400 millimetres below the natural surface level. NSW Health is reviewing these depths as part of its regulation review. In many instances, reducing the depth requirement would allow additional interments in a grave, increasing land utilisation.

RECOMMENDATION 7.7



Amendment of *Public Health Regulation 2012* burial depth provisions to enable greater utilisation of existing burial land, and removal of mandatory coffin burials to facilitates decomposition.

¹⁸ NSW Department of Industry, General consumer guide to interment rights in NSW, page 5, https://www.industry.nsw.gov.au/___data/assets/pdf_file/0019/219610/CCNSW-General-Consumer-Guide.pdf

Other policy improvements

Under s.52(1) of the Act, a cemetery operator can revoke an interment right if it has not been exercised within 50 years. Many operators suggested this period should be reduced to ensure greater utilisation of cemetery space.

The Review believes a cemetery operator should be able to revoke an unexercised interment right, following the stipulated notification process and period, after 35 years.

RECOMMENDATION 7.8



Amendment to s.52(1) of the Act to allow a cemetery operator to revoke an unexercised interment right after 35 years, down from 50 years, following the appropriate notification process.

Cemetery renewal

Cemetery renewal, distinct from renewable tenure, is the practice of extensively redeveloping existing sections of a cemetery to more efficiently enable new interments.

This involves significant redesigning and landscaping of the cemetery for new interments, memorial gardens and the preservation of memorials and headstones. New interments are positioned alongside and between existing plots, and in areas previously allocated as paths, walkways and roads.

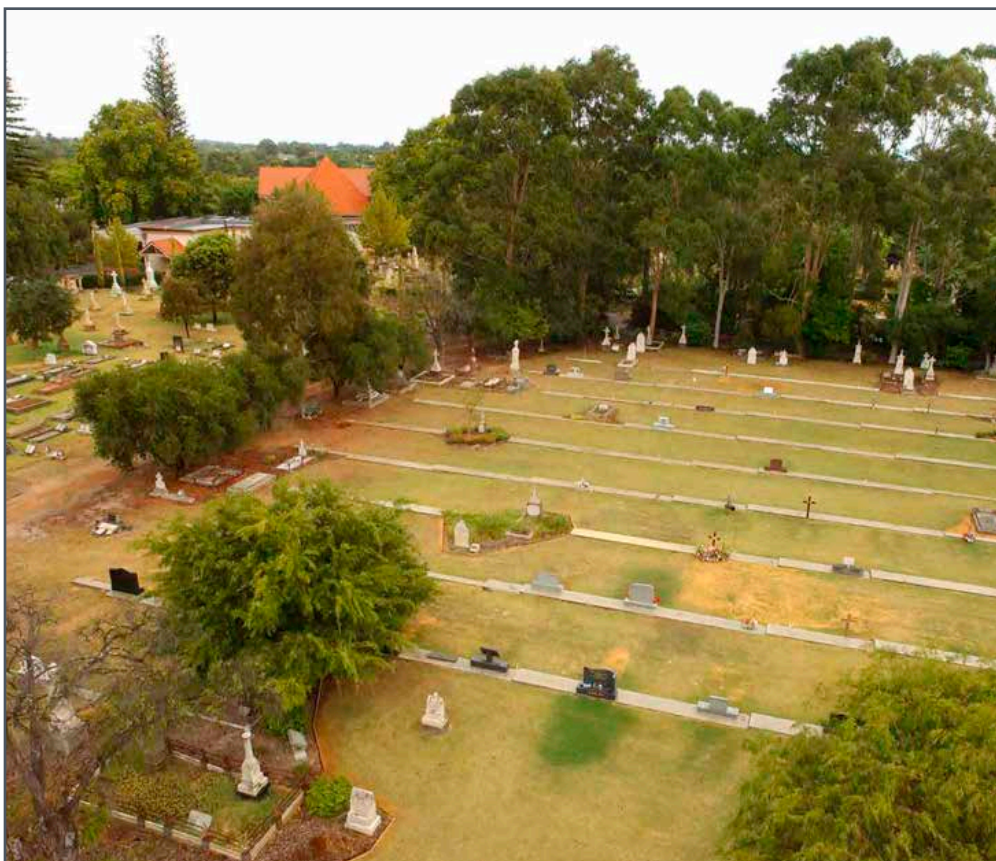
Of critical importance is that cemetery renewal does not entail the disinterment of existing remains, as opposed to renewable tenure which involves the 'lift and deepen' method.

Graves of historical significance, including those of war veterans, are left in place.

Australia's best example of cemetery renewal is at Karrakatta Cemetery in central Perth, undertaken by the Metropolitan Cemetery Board (MCB).

Karrakatta is Western Australia's premier cemetery dating from 1899. Facing a lack of burial space and closure, it adopted cemetery renewal in the 1970s, before Western Australia introduced mandatory renewable tenure interments in 1986.

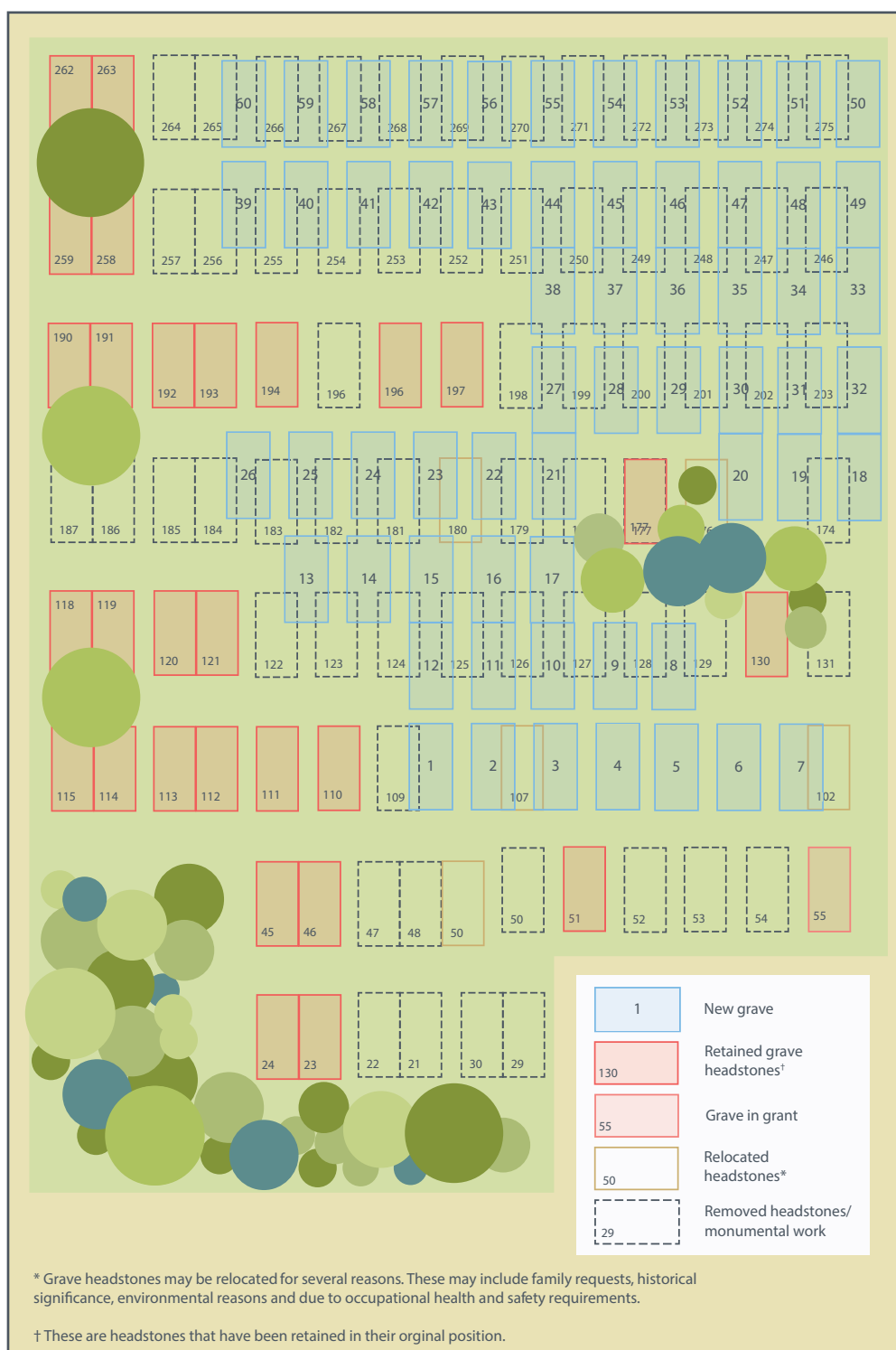




Cemetery renewal at Karrakatta involves the following processes:

1. **Expiration of the grants of rights of burial**
Existing interment rights are purchased by the cemetery to facilitate new burials. All burials in Western Australia are for an initial 25 years. The holder of the interment right has the option to renew the existing right and the associated monumentation will remain in place. Normally, renewal is undertaken in sections of the cemetery where almost all of the rights have expired or can be purchased.
2. **Historical research and analysis**
Before renewal commences, the operator consults with a committee comprising historians, genealogists, architects and a representative of the Office of Australian War Graves. All headstones are assessed across a wide range of criteria including, but not limited to, stonemasonry craft, historical significance of the persons buried and the cause of death.
3. **Community consultation**
The operator conducts an extensive 12-month community consultation program before any renewal of a section begins. The consultation process includes high profile site signage, letters to families who have registered their contact details, media advertising and assessment of submissions received.
4. **Implementation**
All headstones in good condition are retained, either in situ or as near as possible to the original location. In newer memorial gardens, retained and relocated headstones are respectfully integrated in the new environment as a landscaping feature. Prior to removal, every headstone is digitally photographed and the image and inscription permanently stored in the cemetery database. This ensures historical evidence and information is maintained, accessible for future generations. The operator also maintains a memorial book for each renewed section detailing all the names of the deceased, their age and date of death.

Figure 7.2: Cemetery renewal - section design, Karrakatta Cemetery



An example of a renewed section from Karrakatta Cemetery in Perth, showing how new interments are positioned in pathways and alongside existing graves, without disturbing older graves.

The Review believes cemetery renewal is an important option for NSW cemetery operators. While not a panacea to the supply-demand imbalance, it ensures our cemeteries remain relevant and valued by their communities.

As outlined in Chapter 5, NSW's cemeteries once they become full often lose their relevance and value to the communities they have served. Unfortunately, once closed to new burials, some of these cemeteries have become decrepit and unwanted.

Closed cemeteries can be dangerous. All operators have a legal and ethical obligation to maintain cemeteries to safe standards. Unstable headstones and crumbling gravesites can present a serious hazard to the public. Without sufficient maintenance budgets, decayed monuments may need removing in the interests of public safety with little regard to historical considerations and the preservation of memories for future generations.

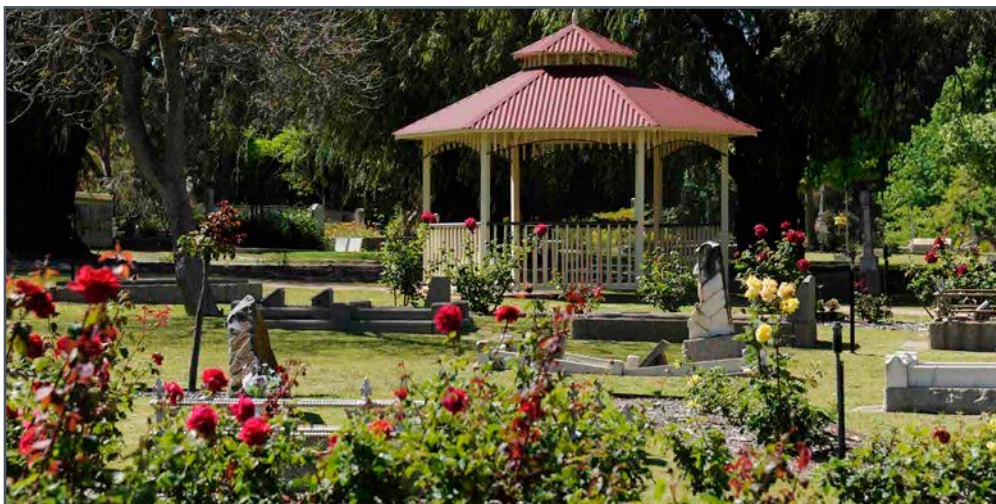
Renewal enables cemeteries to offer relevance to their communities through ongoing revitalisation, new interments (potentially on a renewable tenure basis) and financially contributing to the maintenance of the cemetery (including the preservation of significant heritage values).

While new cemeteries are necessary in Sydney's western suburbs, they will not meet the expectations of communities in the city's east, south-east and north. Cemetery renewal potentially provides a means for established cemeteries to continue meeting the needs and expectations of these communities.

As we have noted, the costs associated with the acquisition and construction of new cemeteries are significant – \$80-100 million per cemetery*, with additional costs associated with provision of ancillary infrastructure. Supporting these cemeteries, for example; the connection to public transport and the upgrading of roads and access points to the cemetery.

While two of the Crown operators have, and continue to attempt to develop new cemeteries, at least one of the remaining two operators expressed the opinion to the Review that its expectation was that the NSW Government would provide new cemetery land for it to manage.

Cemetery renewal is akin to urban renewal as it enables the re-use, preservation and connection to our history while ensuring cemeteries remain relevant to current generations.



The application of cemetery renewal in NSW would require the Act to be amended to enable cemetery operators to purchase or revoke existing perpetual interment rights for the purposes of renewal. Renewal could be commenced in the older sections of cemeteries, where the last interment might have occurred more than 70 years ago. Not all cemeteries or all sections of cemeteries will be suitable for renewal, due to the manner in which they have been designed and the spacing available between plots. In the case of Karrakatta, it is believed a maximum of 50% of the cemetery area will be able to be renewed.

In sections of cemeteries where renewal takes place, the NSW Government should consider mandating for future interments to be offered on a renewable tenure basis, to ensure the sustainability of these cemeteries.

* Based on the costs associated with MMP.

The Review modelled cemetery renewal across a limited number of cemeteries in Sydney, using the following assumptions:

- ◆ Renewal to be applied to the following Crown cemeteries: Rookwood General, Rookwood Catholic, Liverpool, Woronora and Macquarie¹⁹;
- ◆ Renewal commences in 2025;
- ◆ An initial 10% of the existing cemetery land to be renewed; and
- ◆ Maximum 20% of the cemetery to be renewed

Relative to the Karrakatta experience, these assumptions are conservative in terms of the land areas being utilised.

Table 7.11: Cemetery Renewal – extension of cemetery life

	STATUS QUO	CEMETERY RENEWAL	INCREASE IN LIFE EXPECTANCY (YEARS)
CMCT	2030	2057	27
NMCLM (ex-Sandgate)	2032	2045	13
RGCLRM	2028	2059	31
SMCLM	2025	2042	17
Total	2032	2059	

Table 7.11 shows cemetery renewal can significantly extend a cemetery's life expectancy. While it is a significant policy change, requiring detailed legislative, community and operational planning, the Review believes it warrants considerable investigation given the anticipated benefits.

RECOMMENDATION 7.9



The Act be amended to enable cemetery renewal in NSW cemeteries, where appropriate.

The Government considered mandating that only renewable interments be permitted in sections where cemetery renewal has occurred.

All future interments are to be on a renewable basis.

Defining perpetuity

Sydney's nine Crown cemeteries occupy approximately 470 hectares.

Over the next 50 years, the unmet demand for cemetery land in Sydney will be approximately 122 hectares. The cost associated with acquiring and building the cemeteries needed to satisfy this demand is approximately \$200-300 million.

The NSW Government could amend the Act to automatically extinguish or revoke existing interment rights at a certain point after the last interment, such as 100 years. This would essentially define perpetuity as 100 years, enabling the re-use of these graves and large sections of cemeteries across Sydney.

¹⁹ These cemeteries were identified as being the most suitable given their design and layout. Further assessment would be needed to ascertain specific locations and suitability of any other Crown cemeteries for renewal.

Safeguards could be developed so that revocation could only occur in certain sections of cemeteries, such as where graves were unmarked or cemetery operators are unable to identify the interment right holders with an interest in the grave, and a heritage assessment has been conducted.

This option has a number of benefits;

- ◆ The provision of a large quantity of re-usable land in important geographies across the city, servicing local communities;
- ◆ A cost-effective provision of new burial land without the costs associated with land acquisition, cemetery construction and ancillary infrastructure; and
- ◆ Coverage of perpetual maintenance costs, particularly if renewable tenure interments are mandated at these cemeteries.

Some elements of the community may argue this option is contrary to the Objects of the Act in terms of ensuring a respectful and dignified interment of remains.

Natural burials

The Objects of the Act make specific reference to the sustainability of the sector and natural burials, s.3(g) resolving: *to promote environmental sustainability of the interment industry, including provision for natural and private burials...*

Natural burials involve the interment of a body in the simplest, most environmentally sensitive manner. No chemical embalming fluids are used and the remains of the deceased are placed in a biodegradable coffin or shroud so that everything buried is ultimately returned to the earth.

Typically, no headstones or memorials are used in natural burials, though the locations of interments are marked and the GPS coordinates recorded. In some instances, where appropriate, trees can be planted to mark the location of burial. Over time, the burial location becomes indistinguishable from the surrounding environment. There are inherent benefits to natural burials that may ease sector challenges, specifically land availability for burials and the sustainability of perpetual maintenance expenses. Additionally, natural burial areas address Sydney's need for more open space and parklands.

While demand for natural burial is increasing steadily in Australia and around the world, impediments to further take-up remain. For example, under the *NSW Public Health Regulation 2012*, bodies must be placed in a coffin unless approval for a shroud burial has been received from the Secretary of NSW Health. Ironically, within the boundaries of the Rookwood Necropolis exists 24 hectares of regrowth vegetation that have been classified as Vegetation Conservation Areas (VCA). These VCAs have been protected under the *NSW Biodiversity Conservation Act 2016* and the Commonwealth Government's *Environment Protection and Biodiversity Conservation Act 1999* which limit the ability for the use of these areas for either natural burials or ash interments.

There is no code of practice for natural burials in NSW. The Review believes consumer confidence and take-up of natural burials would be enhanced through the development of a code of practice outlining the activities and processes that constitute natural burial.

RECOMMENDATION 7.10



CCNSW and NSW Health remove impediments to natural burials, as part of the current review of the *NSW Public Health Regulation 2012*.

CCNSW develops a code of practice regulating the natural burial interment process.



In the case of the Sydney basin, the city is ringed by the National Park estate. There are no provisions in the *National Parks and Wildlife Act 1974* that explicitly permit interment activities (except in relation to Aboriginal burials). From a conservation perspective, the NSW National Parks and Wildlife Service (NPWS) has responsibility for a number of non-active cemeteries across the state and within Sydney.

The Review notes a diverse range of activities are conducted within the National Park estate which provide a commercial and social benefit but adversely impact the environment. These include:

- ◆ Leisure activities with environmental impacts (ski fields, camping, four-wheel driving);
- ◆ Provision of transport and utilities infrastructure (highways, electricity transmission infrastructure and telecommunication towers); and
- ◆ Tourism accommodation.

Conversely, natural burial and ash interment activities which may have a net positive environmental impact (planting of trees) and commercial benefits to NPWS arising from interment fees, is not a permissible activity despite cemeteries being recognised as key social infrastructure.

Given the current and future land shortages, particularly in Sydney, and the growing public desire for natural burials, the Review believes there should be a formal assessment into the possible use of the National Park estate for natural burial and ash interment activities. The assessment should consider whether the ecological impacts can be sufficiently offset by the social, cultural and economic benefits to the community. It should also consider the appropriate regulation that would accompany such activities.

RECOMMENDATION 7.11



The NSW Government undertakes a comprehensive assessment of the ecological, cultural and economic impacts of conducting natural burial and ash interment activities within the Crown estate, including land managed by NSW Crown lands and NPWS.

7.3.2 FACTORS IMPACTING NEW CEMETERY DEVELOPMENTS

The need for new cemeteries in Sydney has been actively discussed within the sector and Government for more than two decades.

In that time, as Sydney's population has continued to grow and become more culturally diverse, specific religious and cultural communities have increasingly expressed concerns with the impending shortage of burial space at key cemeteries throughout the city.

The Act, through its Objects and powers provided to the regulator, highlighted the NSW Government's increasing awareness of the emerging problems with cemetery land shortages.

The failure of strategic infrastructure planning to adequately provision for projected cemetery demand has led some Crown operators to adopt a bottom-up approach to acquiring and developing new cemeteries. This approach has been relatively unsuccessful to date and is unlikely to release sufficient supply in time to satisfy demand.

The Review has sought to understand the key impediments to the development of new cemeteries in Sydney and across NSW. These include:

- ◆ Identification of suitable land;
- ◆ Cost and return on investment;
- ◆ Accountability within government for new cemeteries; and
- ◆ Cemetery development approval processes.

Identification of suitable cemetery land

Identifying and acquiring suitable land for new cemeteries is becoming increasingly difficult as the city expands and available land is sought for competing land uses.

Identifying suitable land for cemetery use requires the following considerations:

- ◆ Proximity to communities requiring burial – most consumers prefer to travel no more than 30-40 minutes from their homes;
- ◆ Land that is appropriately zoned;
- ◆ Land with established vehicular access and public transport connections;
- ◆ Parcels of land with appropriate topography, soil type and drainage; and
- ◆ Land that is unlikely to be subject to competing land uses – residential, industrial.

A further impediment lies in identifying such land in the amounts required to justify the development costs of a new cemetery.

New cemetery proposals seeking to develop parcels of land meeting the abovementioned criteria have met with strong community resistance and difficulties achieving rezoning and development approvals.

While sections of the community demand the preservation of existing cemeteries, limiting their ability to be re-used in a sustainable manner, conversely there are discrete communities in Sydney opposed to new cemeteries in their locale.

It has been suggested to the Review that perceptions of new cemetery proposals are largely outdated, with contemporary cemetery design, as typified by current CMCT proposals, more akin to parkland settings – with lakes, pathways and modern art displays – than the gothic-inspired, monumental cemeteries of the 19th century.

These new cemeteries are multi-use, providing parklands, habitat, green space and public places of reflection. In a broader strategic planning context, new cemetery proposals not only provide a place to inter loved ones, but open space and parklands for future generations to enjoy.



The Review believes the sector and broader community would benefit from proactive engagement with Sydney residents on the need for new cemeteries and the benefits of contemporary cemeteries to public amenity.

In addition to raising awareness, the campaign is to seek feedback and collect information on the range of activities currently undertaken on cemetery land and the opportunity for other appropriate ancillary uses including recreation.

The Government and cemetery operators should take into account the findings and feedback received from the campaign for both existing and new cemeteries.

Government should also consider including cemeteries in the range of spaces that contribute to the quality and quantity of open public space available to the community.

RECOMMENDATION 7.12



The NSW Government to undertake a public engagement and awareness raising campaign highlighting the vital role that cemeteries play in our community and the ancillary benefits they often provide in terms of green, open and public space. This should include broad community engagement such as surveys and workshops.

The campaign should be funded by the cemeteries and crematoria sector through the interment service levy.

Cost and return on investment

There is significant time and financial cost associated with identifying, acquiring, designing and receiving development approvals for new cemeteries.

This is demonstrated by Macarthur Memorial Park, which will cost more than \$90 million when completed, delivering 136,000 plots.

In addition to these direct capital costs, cemeteries by their nature are long-term infrastructure assets. Depending on their size, they may take decades or, in the case of Rookwood, centuries before they are exhausted. Then they must be maintained in perpetuity to honour their perpetual interment rights.

As such, the return on the initially invested capital is typically longer than for other infrastructure assets.

For cemeteries to be financially viable, they must be able to access capital and secure investors prepared to accept a long-term return on their investment.

It is appropriate to note the history of InvoCare's cemetery operations. InvoCare's current cemeteries were developed in the 1960s by privately owned funeral directors seeking to expand into cemeteries. Following commercial distress, these cemetery assets were aggregated into an expanded vertically integrated operator. InvoCare was formed in 2001 as part of a divestment by the US-based Service Corporation. The cemetery assets form part of InvoCare's fully integrated service offerings of funeral direction, cemetery, cremation and memorialisation.

The Review found no evidence that existing or new private sector participants are willing to invest in new cemeteries in Sydney. Furthermore, the Review observed elements of market failure, where the market was either unwilling or unable to ensure sufficient supply of cemetery land to meet projected demand.

While Crown operators have collectively generated significant capital reserves, these have been accrued to fund their perpetual maintenance obligations. As discussed in Chapter 8, these capital reserves, in a number of instances, are insufficient to cover these liabilities.

It would not be prudent to utilise these funds for the acquisition and development of new cemeteries. Using perpetual maintenance reserves for such purposes places significant cost-price risks on the operator to correctly estimate their maintenance expenses (in perpetuity) and ensure they are pricing their interment rights sufficiently to cover these expenses.

Responsibility for the development of new cemeteries

A key factor underpinning the 2012 reforms was the inability of the then 17 Crown cemetery trusts to adequately develop new cemeteries. This fragmented structure did not provide sufficient scale, access to financial capital or the expertise to acquire and develop new cemeteries.

The reforms of 2012 consolidated the 17 Crown cemetery trusts into the five Crown cemetery operators present in the market today and established the Act and CCNSW.

As discussed, the Act tasks CCNSW with the responsibility for assessing the needs of the sector and developing strategies to ensure sufficient cemetery land. It also provides CCNSW with reserve powers to acquire land.

The Act does not outline clear responsibilities to the operators with respect to acquiring and developing land, which has caused confusion among some Crown operators.

Furthermore, attempts to acquire land have not been strategic. Evidence provided to the Review revealed prospective landholders and their agents were acutely aware of the need for Crown operators to acquire land.

In the interests of clarity, those responsible for acquiring and developing cemeteries include:

- ◆ The Crown cemetery operators;
- ◆ CCNSW; and
- ◆ NSW Office of Strategic Lands.

Given the critical need for new burial land and the obvious challenges for operators acquiring and developing cemeteries in a sufficient timeline, the Review believes it is necessary for a Government agency to assume primary responsibility for acquiring land and obtaining the necessary development approvals.

In its Interim Report, IPART recommended:

CCNSW be made responsible for acquiring land for cemeteries in Sydney as part of the statutory review of the Cemeteries and Crematoria Act 2013.

The Review does not support this recommendation. While CCNSW has a reserve power to acquire land, it does not currently have the expertise to undertake this urgent function. As a high priority, CCNSW also needs to develop its regulatory framework and evolve its regulatory posture.

Greater Sydney Commission (GSC)

The GSC is the key agency of the NSW Government responsible for strategic metropolitan planning across Sydney. According to its own strategy its role is to coordinate and align the planning that will shape the future of Greater Sydney. This involves, in their own words, taking a collaborative “one government” approach... (to) lead and guide the planning for development, transport and housing so that Greater Sydney will be a productive, liveable and sustainable city for all.”²⁰

²⁰ <https://www.greater.sydney/who-we-are>

As previously noted, the GSC has been asked by the Premier to provide advice and recommendations on strategic planning considerations for the provision of cemeteries.

The Review believes that given its preeminent role in the NSW Government with the resources and capability to undertake strategic infrastructure planning, it should lead the process of identifying precincts and suitable parcels of land within which new cemeteries could be located.

The identification of suitable land in the appropriate locations is critical to the long-term commercial viability of a cemetery. Notwithstanding the lack of expertise within the government agencies in the cemetery sector, the Review believes that the GSC, working in collaboration with OSL can fulfil this function through close consultation with all cemetery operators (Crown, private, Local Government), CCNSW and other industry experts.

Office of Strategic Lands

The Planning Minister's Corporation is established under the *Environmental Planning and Assessment Act 1979* (EP&A Act) and is administered by the Office of Strategic Lands (OSL) within the DPIE.

According to its Strategic Plan:

OSL enables the Planning Minister to make strategic land investments:

- ◆ *that are important to planning for the State;*
- ◆ *beyond the focus of any single agency or level of government;*
- ◆ *with time horizons independent of budget cycle; and*
- ◆ *timed to benefit the State's return on investment and manage social impact.*

OSL has the authority and funds to acquire land, and the expertise to improve and repurpose land ahead of its transfer to the ultimate owner ²¹.

Under Schedule 2 of the EP&A Act, OSL has the power to acquire land by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

The Review believes that OSL should exercise these powers to secure new cemetery land, once it has been identified by GSC. All associated costs should be met by way of a loan from NSW Treasury or via a Crown cemetery operator. The added benefit of OSL undertaking this function is that it can be independent. At the appropriate time, OSL can release land to the cemeteries and crematoria market through a competitive tendering process that enables current and prospective operators to bid. This removes a barrier to entry and creates a level playing field for current and potentially new operators to obtain new cemetery land.

RECOMMENDATION 7.13



The Greater Sydney Commission (GSC) is to be tasked with the responsibility of leading the process of identifying suitable precincts and parcels of land that could be used for new cemeteries.

GSC is to consult widely with operators and the broader industry to ensure suitable land is identified in appropriate locations across the city.

The Office of Strategic Lands (OSL) should be the agency of government, where necessary, for the procurement, holding and releasing of new cemetery land as required. The funding for such activities should be via Crown cemetery operators or long-term loans from NSW Treasury.

²¹ DPIE; Office of Strategic Lands, Business Plan, November 2017, page 4.

The NSW Government's Property Strategy Collaboration Committee reviews and assesses Government land deemed surplus to requirements, before it is sold or reallocated for other purposes.

It is appropriate to appoint a sufficiently qualified person, who understands the criteria for suitable land for cemetery developments, to this committee. This individual could be from CCNSW, OSL (given recommendation 7.13) or DPIE (Property and Housing Division).

RECOMMENDATION 7.14



The appointment of an appropriate representative from CCNSW, OSL or DPIE to the Property Strategy Collaboration Committee, to identify surplus government land that may be appropriate for cemeteries and crematoria development.

Cemetery development approvals process

Cemetery operators expressed concerns to the Review about the difficulties posed by development and planning approvals processes in NSW to the efficient operation of existing cemeteries and the development of new cemeteries.

Crown, private and church operators all argued these processes impeded the timely delivery of cemeteries despite their acceptance by principle planning agencies as *key social infrastructure*²². It was expressed that clear planning provisions for cemeteries are required at a State level to reduce the complex regulatory framework for ancillary cemetery works and the delivery of new cemeteries.

Concerns were expressed that the uncertainty of process deterred many operators and prospective new entrants to the Sydney cemetery market from contemplating ancillary works to existing cemeteries and new cemetery developments. Along with the capital costs involved, this presents a significant barrier to the efficient operation and provisioning of new cemeteries.

There have been three prominent attempts by Crown operators to develop new cemeteries in Sydney since 2014. Two proposals have been developed by the CMCT, Macarthur Memorial Park at Varroville and Nepean Gardens at Wallacia, while RGCRLM acquired the Fernhill Estate at Mulgoa. To date, only Macarthur Memorial Park has received the necessary planning approvals, while expenditure by the NSW Government on land acquisitions, through the CMCT and RGCRLM, has been almost \$60 million.

The Review received representations from other Crown, private and community operators that process uncertainties and the implied costs of entry restrained market participation, particularly with respect to new cemeteries.

Relevant planning instruments for cemeteries and crematoria

Cemeteries and Crematoria Act 2013

S.106 of the Act provides for the planning, conduct and maintenance of Crown cemeteries, requiring Crown operators to set local rules or plans for the upkeep and maintenance of the cemetery.

However, as the Act does not override the *Environmental Planning and Assessment Act 1979* (EP&A Act), operators are required to obtain separate approvals triggered by the EP&A Act.

²² Greater Sydney Commission, Greater Sydney Regional Plan: A Metropolis of Three Cities, page 54.

A number of Crown operators argued this prevented the effective delivery of ongoing ancillary works required by s.106 of the Act, despite many of these works being minor in nature and having relatively minimal environmental impact.

Despite these works being minor in scale and environmental impact they are not currently classified as exempt development or complying development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) or any Standard LEP instrument applicable in a Local Government Area.

It is noted that sometimes this is due to the type of building works, the size (or cumulative size) of the development, or as a result of a restrictive classification (e.g. heritage or biodiversity).

The types of works in question include:

- ◆ Access ramps;
- ◆ Ash gardens;
- ◆ Burial lawns, including pathways, concrete head beams and steps;
- ◆ Driveways, hard stand areas and carports;
- ◆ Earthworks, retaining walls and structural support;
- ◆ Fencing;
- ◆ Function rooms;
- ◆ Landscaping works and structures;
- ◆ Maintenance of existing vaults, crypts and structures;
- ◆ Memorials, sculptures and artworks;
- ◆ Minor building alterations;
- ◆ Sheds;
- ◆ Signage;
- ◆ Toilet amenities;
- ◆ Tree removal;
- ◆ Vaults and crypts; and
- ◆ Water features and ponds.

It was argued legislative reform was required to reduce planning approval red tape, enabling the delivery of minor ancillary cemetery works in NSW in a timely and efficient manner.



State Environmental Planning Policy (Infrastructure) 2007

The *State Environmental Planning Policy (Infrastructure) 2007* (ISEPP) was introduced to facilitate the delivery of infrastructure across the State by improving regulatory certainty and efficiency. The key purpose of the ISEPP is to provide a consistent planning regime under the EP&A Act that allows efficient development and improved turnaround times for maintenance and minor upgrade works classified as exempt and complying development and having minimal environmental impact.

Prior to the introduction of the ISEPP, planning for hospitals, schools, railways, roads, power and water supplies and other necessary infrastructure was regulated through a complex array of local, regional and State statutory planning instruments and overlapping regulation.

Clause 20A of the ISEPP contains provisions for exempt development that can be carried out by a public authority. As no cemetery operator is classified as a public authority, they are unable to utilise these provisions. There are no other provisions within the ISEPP specific to the delivery of minor ancillary works associated with cemetery management or new cemeteries across NSW, despite the recognition of cemeteries across government as critical social infrastructure.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) is a state-wide policy which aims to streamline the assessment process for low impact and routine development. The policy created an efficient development pathway for ancillary or minor environmental impact works, freeing up the merit-based system for more complex and sensitive developments and providing significant cost and time savings.

Under the NSW planning system, there are three pathways for the development of minor ancillary works:

- ◆ **Exempt development**
Minor works that do not need any planning or building approval.
Example landscaping structures.
- ◆ **Complying development**
Combined planning and construction approval that can be issued through a fast-track assessment by an accredited building certifier. Sign-off is required by a private Principal Certifying Authority (PCA) or Council.
Example: earthworks.
- ◆ **Development Application (DA)**
An application made to Council seeking consent to carry out development including construction, demolition, change of use of a property or premises, and alterations or additions to a property.
Example: new vaults and crypts.

The Codes SEPP stipulates development codes for both exempt and complying development types that if complied, negates the requirement to obtain development approval via a DA. Should these incidental and ancillary cemetery works be permitted without the need for development consent under the Codes SEPP, this would reduce planning red tape on cemetery and crematoria zoned land, with obvious associated time and cost benefits.

Table 7.12 provides a breakdown of the current permissible minor and ancillary works that can be carried out as exempt or complying development pursuant to the Codes SEPP.

Minor ancillary works cannot proceed if the cemetery or crematorium land in question is designated an environmentally sensitive area, including a local heritage item. A large number of cemeteries, given their age, are local heritage items. In these cases, Table 7.12 is often not applicable, meaning that these works cannot be delivered through the exempt and complying development pathways under the Codes SEPP.

Types of ancillary development permitted under the complying development provision of the Codes SEPP include access ramps; awnings, blinds or canopies; carports, driveways, hard stand spaces, pathways or paving; earthworks, retaining wall and structural support; fences, screens, garbage bin store enclosures, landscaping, loading docks, pergolas, rainwater tanks (above and below ground), roller shutter doors, sheds and storage enclosures.

Table 7.12: Exempt and complying development pathway table under the Codes SEPP for minor ancillary works for cemeteries

	TYPE OF PROJECT/STRUCTURE	EXEMPT DEVELOPMENT (RELEVANT CLAUSE UNDER THE CODES SEPP)	COMPLYING DEVELOPMENT (RELEVANT CLAUSE UNDER THE CODES SEPP)
LANDSCAPING WORKS	Fencing	Not exempt as cemetery land is not generally located on land that would allow for fences to be exempt. - DA required	Part 5, Division 1, Subdivision 12
	New burial lawns, including pathways, concrete head beams and steps	Part 2, Division 1, Subdivision 28	Part 5, Division 1, Subdivision 11
	Driveways, hard stand spaces and carports	Part 2, Division 1, Subdivision 10 & 14	Part 5, Division 1, Subdivision 11
	Earthworks, retaining walls and structural support	Part 2, Division 1, Subdivision 15	Part 5, Division 1, Subdivision 10
	Access ramps	Part 2, Division 1, Subdivision 1	Part 5, Division 1, Subdivision 9
	Landscaping structure (i.e. garden arch)	Part 2, Division 1, Subdivision 24	Not complying development - DA required
	Memorials, sculptures and artworks	Part 2, Division 1, Subdivision 39	Not complying development - DA required
	New ash gardens	Not exempt - DA required	Not complying development - DA required
	Tree removed	SEPP (Vegetation in Non-Rural Areas 2017, Part 2, Clause 8)	Not complying development - DA required or tree permit application
	Water features and ponds	Part 2, Division 1, Subdivision 40	Not complying development - DA required
BUILDING WORKS	Signage	Part 2, Division 2	Part 5, Division 1, Subdivision 7
	Sheds (i.e. maintenance)	Part 2, Division 1, Subdivision 9 (garden sheds only)	Part 5, Division 1, Subdivision 9
	Minor building alterations (internal)	Part 2, Division 1, Subdivision 26	Part 5, Division 1, Subdivision 1
	New vaults and crypts projects (infill projects)	Not exempt - DA required	Not complying development - DA required
	Maintenance of vaults, crypts and structures	SEPP (Exempt and Complying Development Codes) 2008, Part 2 Division 1 Subdivision 15AA, 26 and 27	Not complying development - DA required
	New amenity facilities (i.e. toilet blocks)	Not exempt - DA required	Not complying development - DA required
	New function centre	Not permitted - DA required	Not complying development - DA required

A portion of the incidental or ancillary development works required by a cemetery or crematorium can be carried out pursuant to this provision (as identified in Table 7.12). However, as the provision was not intended to cater for cemetery or crematorium land uses, many of the ongoing works required by cemetery operators, such as the erection of crypts and vaults, new ancillary buildings such as lunch rooms, or new ash gardens are not permitted as exempt or complying developments.

There is an identified need for regulatory reform to capture the general minor environmental impact works associated with cemeteries within Codes SEPP.

Allowing incidental and ancillary cemetery works to proceed without development consent would reduce planning red tape on cemetery and crematorium zoned land, with obvious time and cost benefits.

Standard Instrument – Principal Local Environmental Plan

The NSW Standard Instrument provides a template, prepared by the DPIE, that local councils must use as the basis for preparing a new LEP for their LGA. It also identifies compulsory provisions to be included in all principal LEPs, and optional provisions which councils have the choice to adopt but which cannot be altered.

Cemeteries and crematoria are defined in the NSW Standard Instrument as follows:

“cemetery means a building or place used primarily for the interment of deceased persons or pets or their ashes, whether or not it contains an associated building for conducting memorial services.”

“crematorium means a building in which deceased persons or pets are cremated, whether or not it contains an associated building for conducting memorial services.”

While the Standard Instrument does not outline any specific directions or provisions for cemetery or crematorium land uses, these are generally permissible within the SP1 Special Activities Zone, which ‘provides for special land uses that are not provided for in other zones’ or the SP2 Infrastructure Zone, which ‘provides for infrastructure related uses.’

Appendix F identifies each land use zone for 27 Sydney LGAs LEP and provides a summary overview of where cemetery and crematorium land uses are permissible with development consent and where they are prohibited.

This analysis was undertaken to gain an understanding of where improvements can be made to the current LEP planning framework to facilitate the delivery of new cemetery and crematorium sites in NSW.

The CCNSW Strategic Plan 2015–20 identifies that ‘there has been a lack of strategic focus on cemetery and crematoria infrastructure in which the critical nature of cemeteries and crematoria has long been negated during the planning process.’²³ While this is evident in Appendix F, there have been no substantive changes to the planning regulations.

As CCNSW stated, it is a significant priority to ‘ensure that cemeteries and crematoria are considered during land use planning’²⁴, to meet future demand for cemetery space.

The current planning approach at a local level is reflected in Appendix F, outlining the following:

- ◆ Cemeteries are generally only permissible within the SP1 Special Activities and SP2 Infrastructure Zones. This is consistent across all Sydney metropolitan council LEPs with the exception of the Wollondilly LEP 2011, which identifies cemeteries and crematoria as a prohibited land use within the SP1 Special Activities Zone.
- ◆ There is significant variation in the permissibility of cemeteries within rural, residential, business and industrial zones across LEPs within Sydney. However, as a general rule, they are mostly classified as a prohibited land use in these specified zones.
- ◆ It is noted that cemeteries are permitted with consent on some land zoned for recreation purposes, for example Hornsby Sire Council.

The significant variation between LEPs and the land use prohibitions generate additional challenges for the sector in securing new sites for additional cemeteries and crematoria.

²³ CCNSW, Strategic Plan 2015–20, page 27.

²⁴ Ibid, page 21.

There is an opportunity to require councils to be more strategic in the way they plan for and provide cemeteries.

As a result of recent reforms to the NSW planning system, there is a greater emphasis on strategic planning that could benefit cemeteries. A cemetery might be better strategically planned though the following existing mechanisms in the NSW planning system.

1. The Greater Sydney Commission (GSC) is responsible for preparing and updating the Regional Plan for Sydney (Greater Sydney Region Plan, A Metropolis of Three Cities) and each of the 5 Greater Sydney District Plans. Through these plans, the GSC (and the Government) has the opportunity to state that new cemeteries in the Greater Sydney Region are a priority and for strategic planning in each local government area to consider the provision of new cemeteries in different areas when an LEP is prepared. Section 3.8 of the *Environmental Planning and Assessment Act* requires that councils give effect to District Plans through their LEPs.
2. A council's Local Strategic Planning Statement (LSPS) would be required to reflect the priorities relating to cemeteries. Councils have recently prepared their LSPSs and are currently delivering them through their LEPs. Councils are required to review their LSPSs at least every 7 years.
3. The cemetery related priorities and actions of the LSPS and relevant District Plan could then lead to changes to the land use zones and permissible land uses within a council's local Environmental Plan (LEP) and to other development controls.

By setting strong requirements for new cemeteries in the Regional and District Plans for Sydney, in the medium to long term, this could lead to greater opportunities for new cemeteries and potentially ease the planning process for new cemeteries in the future.

RECOMMENDATION 7.15



The Greater Sydney Commission be requested to revise the District Plans to include priorities for cemeteries and crematoria across each District which councils will be required to give effect to through their future LSPSs and LEPs.

Community concerns

While new cemetery proponents cited the number of unsuccessful new cemetery proposals as evidence of a planning system failure, communities opposed to the developments argued the contrary, stating the process reflected local community views.

The Review believes this conflict is a direct failure of strategic infrastructure planning over decades. In the absence of strategic infrastructure plans recognising cemeteries as key social infrastructure to be incorporated into the established planning system, cemetery operators have embarked on ad hoc cemetery proposals in potentially unsuitable locations. Appropriate infrastructure planning would have recognised the importance of cemeteries and, in consultation with the sector, determined suitable locations for cemetery developments.

The Review has sought to balance the need for certainty of process – and the needs of Sydney as a whole – against the legitimate concerns of local communities.

Proposed amendments to cemetery planning approvals

The Review believes existing planning approval regulations need to be reformed to reflect the status of cemeteries as key social infrastructure.

These reforms must be enacted expeditiously, given the impending shortage of burial land and the need for greater operational efficiency from existing cemeteries. This can best be achieved by revising the State level planning framework to include new provisions in existing SEPPs. This will also provide state-wide consistency of application to override LEPs by broadening and tailoring exempt and complying development provisions for cemeteries and crematoria that would otherwise be prohibited or change the permissibility of cemeteries and crematoria that may not exist in existing LEPs.

These amendments are necessary to facilitate minor ancillary works essential to a cemetery's efficient operation and address the significant uncertainty that exists for new cemetery proposals.

Minor ancillary works to existing cemeteries

The Review believes there is a need to simplify and streamline the planning and construction approval process to capture minor ancillary works associated with a cemetery, negating the need to lodge a DA with council to obtain development consent.

Minor and low environmental impact work should be consistently classified as exempt development or complying development to provide a streamlined approval process. The Review believes that this can be achieved by amending the Codes SEPP to include a specific provision for cemeteries or crematoria land use.

This provision would specify the applicable development standards to streamline the assessment process, reducing the inefficiencies and time delays associated with local government merit-based assessments of the DA approval process.



RECOMMENDATION 7.16



The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 be amended to identify all low environmental impact operational works specific to cemeteries and crematoria across NSW as exempt developments.

These ancillary operational works be included in a specific provision for cemeteries or crematoria land use.

New cemetery development proposals

As the Review model clearly demonstrates, Sydney needs to construct new cemeteries to address the projected unmet demand for burial land. The current planning approval process does not reflect cemeteries as being key social infrastructure or enable operators to construct new cemeteries in a timely manner.

While District Plans for Sydney and each of the council LSPs and LEPs should be revised to reflect the importance of, and provide for cemeteries and crematoria, this does not provide a sufficiently timely remedy.

The Review believes new cemeteries and crematoria should be reflected in the existing SEPP framework as State Significant Developments (SSD).

SSD status can be provided on a site-specific or state-wide basis:

- ◆ **Precinct specific** - State Environmental Planning Policy (State and Regional Development) 2011 (Schedule 2 – ‘specific site’), sufficiently sized and located cemetery and crematorium precinct(s) within a defined geography of Sydney.
- ◆ **General** - State Environmental Planning Policy (State and Regional Development) 2011 (Schedule 1 – ‘General’), a state-wide provision for a cemetery or crematorium over a specified size (investment value or capacity).

Both options have their merits.

Recognition of cemeteries and crematoria as SSD through a precinct-specific amendment enables the Government to discretely identify precincts in Sydney where it believes cemeteries and crematoria activity can balance the competing land uses associated with the expanding city.

This is akin to the approach taken in the development of Rookwood in the 1860s – identifying a specific, sufficiently large parcel of land, away from other land uses, clearly designated as the city’s necropolis.

A limitation to this option relates to competition and entry barriers to the Sydney cemetery market. We have noted in this report the potential changes to the competitive landscape once the existing Crown cemeteries reach maturity.

A precinct-specific SSD approach re-enforces these barriers to entry and reduces competition. If, in future decades, a new or existing cemetery operator wished to construct cemeteries outside this precinct, they would be faced with a more costly and less certain development pathway (similar to what happens now) than cemetery developers within the precinct.

As the Review model demonstrates, Sydney will require multiple new cemeteries over the next 50-99 years to meet projected demand. This would require a significant single parcel of land, or numerous precincts across the city.

A precinct-specific provision would require extensive consultation and planning by **government** and industry to determine the most appropriate location from a commercial, operational and community perspective, with various risks associated with selecting a sub-optimal location.

To proceed with a site-specific approach, the Review recommends an amendment to the State and Regional Development SEPP identifying new cemeteries and crematoria as developments that are 'permitted with consent' in a range of appropriate land use zones such as:

- ◆ RU1 Primary Production;
- ◆ RU2 Rural Landscape;
- ◆ RU3 Forestry;
- ◆ RU4 Primary Production Small Lots;
- ◆ SP1 Special Activities;
- ◆ SP2 Infrastructure;
- ◆ RE1 Public Recreation;
- ◆ RE2 Private Recreation;
- ◆ E2 Environmental Conservation; and
- ◆ E3 Environmental Management.

A **general** amendment would provide state-wide SSD status to cemeteries and crematoria. This would ensure a uniform approach to the development approval process and allow operators to determine the most appropriate locations for future cemeteries, which can have significant strategic, operational and commercial importance.

The general provision addresses issues associated with competitive neutrality and provides an equitable development approval pathway for all cemeteries, irrespective of location. It enables the market to determine the most economically efficient cemetery locations.

It is also likely to lead to a proliferation of cemetery development applications across Sydney. Constraints on appropriate land and available capital could result in applications that fail to balance competing land use activities and lead to conflict between developers, the community and other land users.

The need for cemeteries and crematoria to receive SSD status, in the Review's opinion, is not in question. The NSW Government needs to consider which SSD approach is in the best long-term interests of the community and the sector.

RECOMMENDATION 7.17



Cemeteries and crematoria be recognised as State Significant Developments, reflecting their status as key social infrastructure, in the State Environmental Planning Policy (SEPP) framework.

The Government to consider two options for delivering SSD status:

Site specific - State Environmental Planning Policy (State and Regional Development) 2011 (Schedule 2 - specific site), sufficiently sized and located cemetery and crematorium precinct(s) within a defined geography of Sydney.

General - State Environmental Planning Policy (State and Regional Development) 2011 (Schedule 1 - General), a state-wide provision for a cemetery or crematorium over a specified size (investment value or capacity).



CREMATORIUM



CHAPTER EIGHT

CEMETERIES AND CREMATORIA ACT 2013

STATUTORY REVIEW

**FINANCIAL SUSTAINABILITY AND GOVERNANCE
OF THE CROWN SECTOR**

8 FINANCIAL SUSTAINABILITY AND GOVERNANCE OF THE CROWN SECTOR

8.1 OVERVIEW

Given the extent of the challenges facing the sector, the Review believes the current operating model is not fit for purpose. The existing arrangements threaten the sector's viability and sustainability and urgent action is required to protect against risks.

Even with the provision of additional cemetery land, at considerable expense to the NSW Government, it is unclear the sector can be sustainable in the longer term in its current structure.

Further consolidation would allow the Crown sector to fulfil the Objects of the Act. This is a proposition almost universally accepted by Crown operators.

The current governance arrangements do not provide the appropriate levels of transparency and accountability. Many of the challenges facing the sector have, until now, not been clearly recognised and reported to the appropriate levels of government.

Further delay in rectification will only compound the challenges facing the sector, exposing the NSW Government to greater financial cost and a potential breach of the Objects of the Act.

The Review's recommendations provide for a more sustainable Crown cemetery sector that is better equipped to serve the citizens of NSW into the future. The recommendations emphasise the importance of strong governance, financial management and operational administration.

The Review has concentrated on securing the financial sustainability of the whole sector, rather than focusing on the relative merits of individual Crown operators. The NSW Government needs to ensure that any decision on the future governance arrangement of individual Crown operators takes into account the implications for the entire Crown sector.

There is the potential for significant financial value to be created as a result of the Review's recommendations. The NSW Government should ensure it retains control of any future excess capital generated from these interment activities.

8.2 FINANCIAL SUSTAINABILITY

To fulfil the Objects of the Act, Crown operators must ensure they remain financially viable.

Operators must access significant financial capital to acquire and develop new cemeteries to meet existing and anticipated burial demand. They must also accumulate sufficient capital reserves to perpetually maintain cemeteries in accordance with their legal and ethical obligations.

8.2.1 MODEL DESCRIPTION

To assess the financial sustainability of the Crown operators, the Review developed a 100-year forecast model that examined the impact of projected demand for burial interment and cremation rights on the financial capability of existing Crown cemeteries, with and without planned new cemeteries and applying operator consolidation scenarios. The outputs from this analysis are contained in Chapter 7 and Chapter 8.

The model provides the following key forecast outputs at a cemetery, operator and consolidated level:

- i. Potential annual cash flow surplus/deficits, after operational, maintenance and capital expenditures (capex) and allowing for demand and supply drivers (below);
- ii. Cumulative balance of investment assets and allowance for estimated movements in working capital;
- iii. Estimation of the accrued and target perpetual funding liability each year and estimated funding position of assets relative to this;
- iv. Relativity of business measures across operators e.g. average margin of burial versus cremation operations, closed cemetery maintenance costs per unit (hectare and plot); and
- v. Estimated cemetery exhaustion points¹ (for at-need and last interments).

The model was built from a bottom-up set of drivers, including demand/supply of cemetery and crematorium services for each Crown operator. Revenue and direct costs were modelled per interment right sale and by type of interment service (e.g. lawn burial, mausoleum, niche, cremation, ash interment) consistent with information submitted by each Crown operator to the IPART *Review of the Costs and Pricing of Interment in NSW* in late 2019. The model was prepared on a nominal basis, with annual revenue and expense items adjusted for inflation.

The Review initially modelled the status quo, based on the current operational assets of Crown operators in December 2019. Various scenarios were then analysed for their impact on these outputs. These included:

- ◆ The acquisition of new cemetery land and development of associated new cemeteries to operational status;
- ◆ Renewable tenure interment;
- ◆ Cemetery renewal;
- ◆ Achievement of potential operational efficiencies and cost savings from structural changes including mergers of Crown operators and standardisation of business practices (e.g. ground maintenance closure expenditure, asset investment strategies).



¹ Exhaustion point refers to the time of last burial interment right sale

Key model inputs included:

- ◆ Supply capacity of each cemetery per operator in existing cemetery boundaries, excluding any unplanned or unapproved development land;
- ◆ Supply split between unsold and pre-sold available plots and spaces;
- ◆ Long-term projected death rates by region, sourced from Urbis (2019) and applied to the annual demand for each Crown operator in future years;
- ◆ Demand of future interment rights (pre-need and at-need);
- ◆ Demand mix of cremation versus burial interments (and between at-need and pre-need);
- ◆ Demand mix of perpetual versus renewable tenure interments (and ability to change over time);
- ◆ Revenue per service provided (e.g. interments rights and interments on an aggregated product basis, cremations and other services);
- ◆ Expenses – direct per service provided (e.g. costs of burial and cremation activity);
- ◆ Expenses – indirect and overhead costs (including maintenance and administration);
- ◆ Capex – future estimates, type and timing; and
- ◆ Expected future investment returns (reflective of different asset mix) and discount rates.

With the exception of investment return assumptions, the initial key model inputs and future trends were largely sourced from Crown operators through data they submitted to IPART, and a subsequent clarification process. There were also instances where the Review team applied commercial judgement to inputs provided by the operators either to correct them or assimilate them in the context of other operators' inputs.

The diagram opposite summarises the modelling approach and provides an overview of the key inputs used and outputs provided.

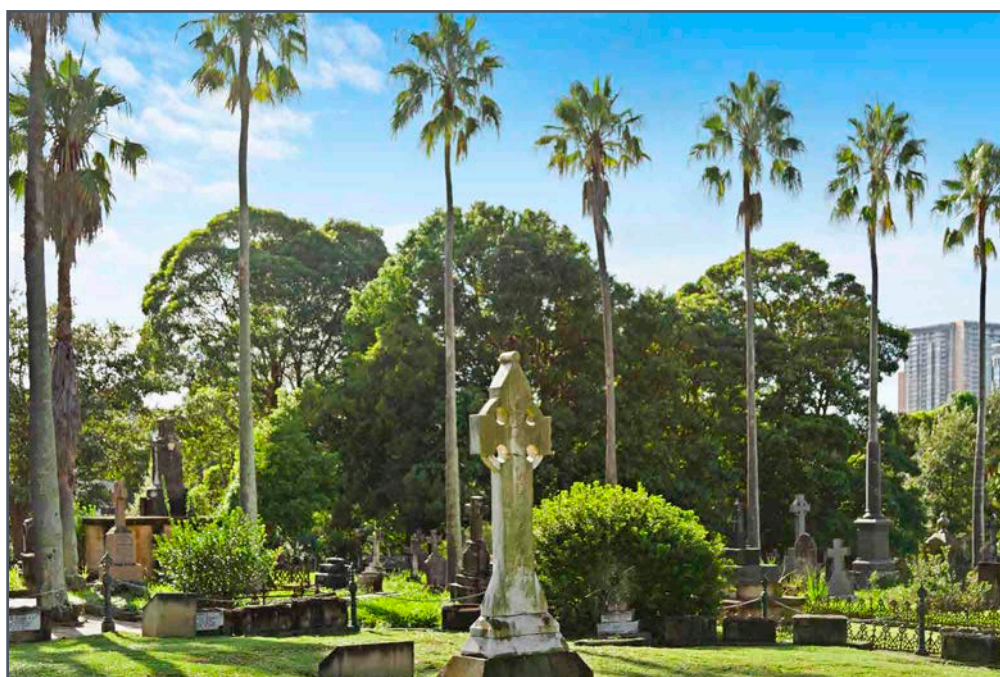
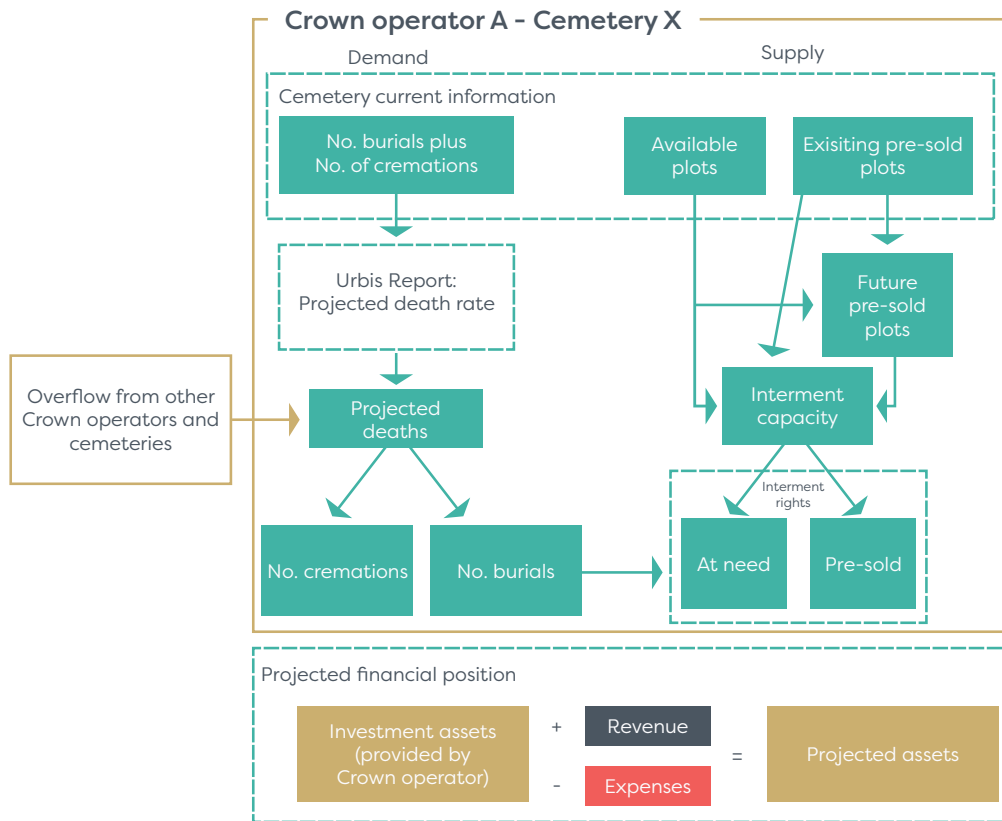


Figure 8.1: Model overview



8.2.2 SCENARIOS

The Review modelled the following scenarios:

1. Status quo – the existing operations of the four Crown operators²;
2. Status quo with the addition of new cemeteries – this included the addition of Macarthur Memorial Park (MMP) and Nepean Gardens (NG)³ to the CMCT and the assumed provision of new land to other Crown operators for them to meet the projected burial interment right demand over the next 50 years.
3. Policy and operational Improvements – including notional increases in cremation rates, cemetery renewal, standardisation of perpetual maintenance expenses and assumed operational efficiency improvements.
4. Consolidation – examination of alternate operating structures for the Crown sector, including:
 - o Two entities – combination of CMCT with SMCLM (Operator 1) and RGCRM with NMCLM (Operator 2)
 - o OneCrown – consolidation of all current Crown operators, including the Rookwood Necropolis Land Manager (RNLM) into a new single Crown operating entity.



² RNLM was not modelled in the status quo due to its unique functions as essentially the strata manager for Rookwood Necropolis. An estimation of its PMTL was undertaken to understand the impact of the maintenance expenses at Rookwood post the exhaustion of burial interments rights for CMCT and RGCRM.

³ Nepean Gardens has not currently received development approval.

8.2.3 SUMMARY OF THE KEY FINDINGS OF EACH SCENARIO

The Review developed an evaluation criteria to compare and rank the scenarios. The criteria included:

1. Ability to undertake burial interments;
2. Ability to meet perpetual maintenance obligations;
3. Efficiency; and
4. Long-term sustainability.

Table 8.1: Key evaluation criteria and assessment

SCENARIO	KEY OUTCOMES	RANKING AGAINST KEY EVALUATION CRITERIA*			
		Bury	Maintain (PCTL)	Efficiency	Long Term Sustainability
1. Status Quo: Reviewing the current financial status and structure of the Crown operators	<p>◆ Crown operators cannot service the projected demand for burial interments after 12 years (2032).</p> <p>◆ The issue becomes more acute when considered at a geographic level as each of the Crown operators tends to service different regions within Sydney. In particular, the East and South of Sydney, largely within the catchment of SMCLM, will face geographical exhaustion point within 3-5 years.</p> <p>◆ Only 2 of the 4 Crown operators will have 100% funding of their PMTL at exhaustion of existing cemeteries.</p> <p>◆ At a consolidated level, the 5 Crown cemetery entities (including RNLM) have accumulated capital to fund 61% of the PMTL, representing a deficit of \$310.5m.</p> <p>◆ Only 2 of the 4 Crown operators can meet their perpetual maintenance obligations, none can meet the projected burial interment demand beyond 12 years.</p>				

* Legend: ranking low  to high 

Table 8.1: Key evaluation criteria and assessment

SCENARIO	KEY OUTCOMES	RANKING AGAINST KEY EVALUATION CRITERIA*			
		Bury	Maintain (PCTL)	Efficiency	Long Term Sustainability
<p>2. Addition of New Cemetery Land to Crown Operators</p>	<p>◆ Initially, the inclusion of MMP/NG: extends the combined Crown sector cemetery life until 2045. This creates a very substantial positive financial position for CMCT relative to other Operators.</p> <p>- Apart from CMCT, there is no beneficial impact on other Operators.</p> <p>- Further land will be required after exhaustion of MMP and NG.</p> <p>◆ Exhaustion point: additional 122 Ha extends land for 50 years, at a total cost (nominal) in excess of \$300m.</p> <p>Challenges include:</p> <p>- this will require new capital due to expected new regulations on ring-fencing of perpetual care funds,</p> <p>- injecting capital heightens risk of continuation of inefficient practices under status quo structure.</p> <p>◆ Perpetual maintenance: will not solve shortfall at two operators due to inability of cross-subsidy to cover inherited legacy position and taking account of the cost of servicing of new capital. Should however be able to support future maintenance obligations of new sales.</p>				
<p>3. Operational Improvements:</p> <p>◆ Increase cremation rates</p> <p>◆ Cemetery renewal</p> <p>◆ Mandatory renewable tenure to new cemeteries</p> <p>◆ Rookwood land</p> <p>◆ Perp care standardisation</p> <p>◆ Operational efficiency</p>	<p>◆ Exhaustion point: increase of cremation rates, cemetery renewal and RGCRML land all improve burial longevity. However, they do not materially solve the Status Quo position. Burial capacity is forecast at best to be improved to 2059 (esp via cemetery renewal). Further land is still required to be sustainable in the long term.</p> <p>◆ Perpetual maintenance: the financial position and sustainability of Operators relative to the Status Quo is marginally improved by the operational improvements (mostly via cemetery renewal), however are not sufficient on their own to resolve the issues facing the Status Quo. The levels of operational efficiency required are greater than are expected to be able to be achieved by any single operator making incremental improvements at their own business.</p> <p>◆ Assumes Scenario 2 but only MMP/NG added.</p>				

Table 8.1: Key evaluation criteria and assessment

SCENARIO	KEY OUTCOMES	RANKING AGAINST KEY EVALUATION CRITERIA*			
		Bury	Maintain (PCTL)	Efficiency	Long Term Sustainability
4. Consolidation scenarios - "2 Entities"	<ul style="list-style-type: none"> ◆ The optimal combination of 2 operators arises from combining CMCT+SMCLM, and RGCRML+NMRLM ◆ These combine an operator that has strong financial capability and performance (i.e. excess future FUM to cover PMTL) with one that has a sizeable broader business (including crematorium) to ensure scale benefits ◆ Exhaustion point: it does not of itself solve the exhaustion issue, however would give such combined operators greater ability to fund land acquisition (by potentially using excess PMTL funds to support). However in the scenario conducted, Operator 2 is unlikely to be able to acquire land without new capital. ◆ Perpetual maintenance: combining a strong with a weakly funded operator could potentially address the legacy funding issue, and may facilitate future improvements to funding by implementing efficiency improvements from scale and combined operational processes 				
4. Consolidation scenarios - "OneCrown"	<ul style="list-style-type: none"> ◆ No new capital is required from the NSW Government in this scenario. The OneCrown can fund itself (FUM/PCTL in excess of 100%) from 2030, including any required new cemetery land as needed ◆ OneCrown provides greatest potential for achieving operational efficiencies (cost savings and revenue enhancement) and long term sustainability of all scenarios ◆ Exhaustion point: this would be extended beyond 50 years as can self-fund to acquire land and do so in an optimal way (to avoid existing competition of three other operators) whilst also providing an entity of sufficient scale to be capable of competing against the largest private sector operator ◆ Perpetual maintenance: in total this operator would be able to be fully funded within 10 years from combined operations and assumed efficiencies, and maintain this ongoing in a competitive market. There would be no legacy (or unfunded) maintenance cost issues for the NSW Government in this scenario. 				

8.2.4 STATUS QUO

The status quo scenario is a reflection of the four Crown operators and their existing operational cemeteries and crematoria assets. In the case of the CMCT, it does not include the planned new cemeteries, MMP and NG.

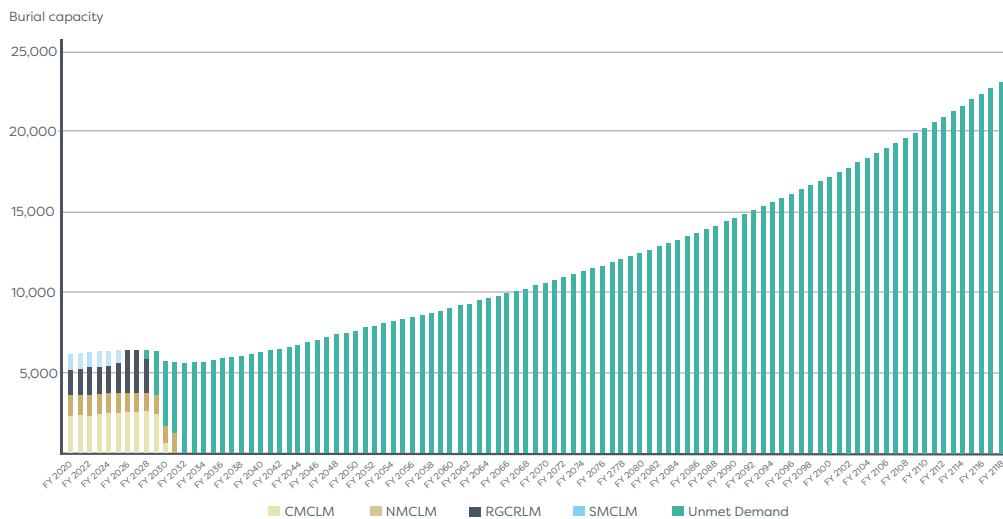
A key requirement of the Act is that Crown operators are able to provide the public with burial interment and cremation services and maintain their cemeteries into the future.

Supply-demand for burial interment services

As discussed in Chapter 7 and shown in Graph 8.1, Crown operators cannot service the projected demand for burial interment rights after 12 years.

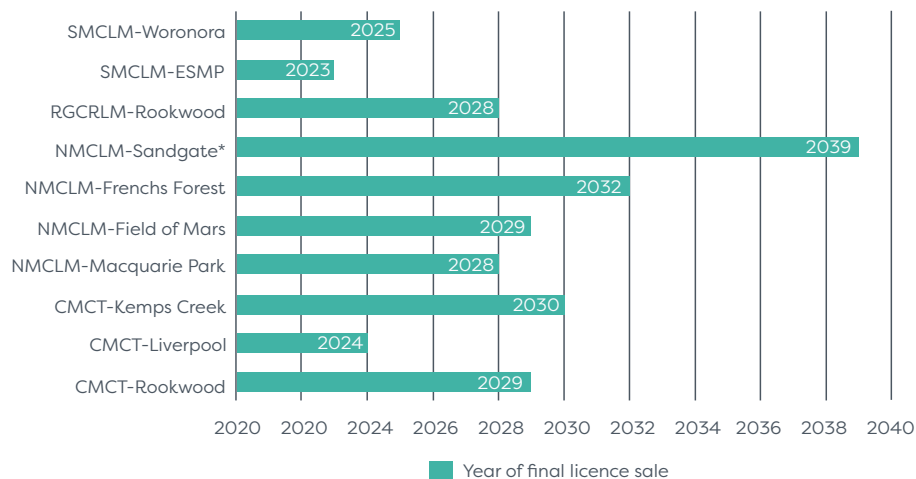
The private sector operator currently has, and will continue to hold, the largest inventory of unsold burial interment rights in Sydney, post 2032.

Graph 8.1: Crown cemetery sector – demand versus supply analysis (99 years)



Graph 8.2 shows that on a geographic basis, individual cemeteries will exhaust even earlier, as soon as 2023 in the case of Eastern Suburbs Memorial Park at Botany.

Graph 8.2: Estimated exhaustion⁴ year per Crown cemetery



* Sandgate is located in Newcastle

⁴ Exhaustion year refers to the point in time when an operator can no longer sell burial interment rights. They may still be able to sell interments rights for cremated remains.

Ongoing interment activity at each cemetery will continue much longer, reflecting pre-need interment right sales. Cemeteries will remain active in terms of providing interment services but not in terms of selling new interment rights.

The model covered all the Crown operators' activities, including where applicable any cremation and interment of cremated remains. While not shown on the chart, it is noted that cremation services (including interment of cremated remains) will continue longer than burial interments (due to lower space requirements).

The volume of remaining unsold burial interment rights is akin to available business stock and is therefore critical to a cemetery's projected financial viability. Available burial interment rights for sale indicate future cash flows and the cemetery's ability to fund its perpetual maintenance obligations.

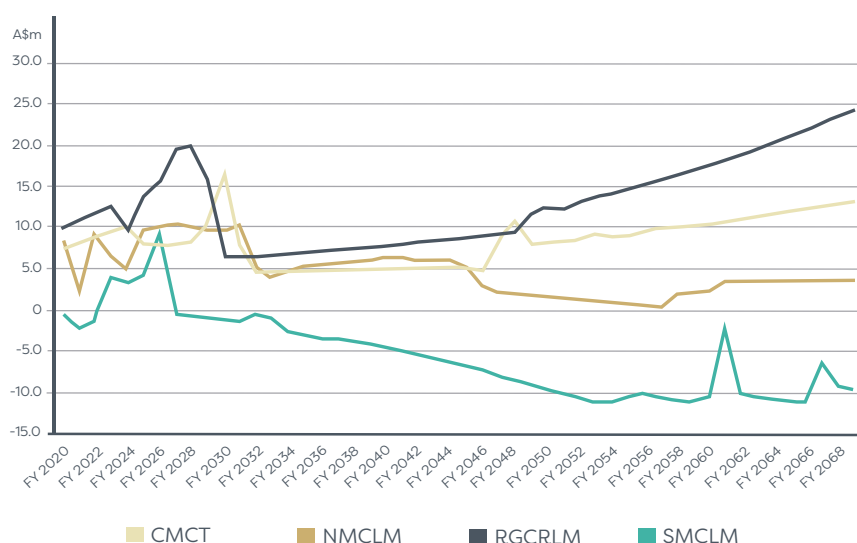
Projected financial status of each Crown operator and key metrics

A range of inputs and drivers determine the operating surplus (or deficit) each year, including:

- ◆ Sales of licences and associated revenue (and mix of sales, such as lawn burial versus monumental versus mausoleums);
- ◆ Interment services and associated revenue (including cremation services, where applicable);
- ◆ Direct costs of providing sales and interment services;
- ◆ Indirect costs of supporting cemetery operations, such as grounds maintenance and overheads (including executive, IT systems etc);
- ◆ Investment earnings on investment assets (maintained on the balance sheet to support future closed maintenance needs); and
- ◆ Capex on planned improvements and capital repairs of the operations.

A key output from the Review model was the forecast operating surplus for each Crown operator over the next 50 years, as reflected in Graph 8.3.

Graph 8.3: Status quo – net annual cash for Crown Operators



As Graph 8.3 and Appendix G demonstrate:

- ◆ Each operator is expected to generate operating surplus (post capex) for as long as interment right sales continue (next 5-12 years);
- ◆ Once interment right sales cease, revenue reduces materially with less reduction in costs, leading to lower surpluses. Remaining revenues from interment services and cremations (if applicable), cannot support ongoing costs, even though costs have been assumed to reduce as cemetery activity declines;
- ◆ In the medium to long term, earnings on accumulated investment funds are relied on to underpin future operating earnings, together with some contribution from cremation services. CMCT and RGCRLM, which have longer sales periods and higher levels of relative investment assets, are expected to continue to marginally grow their future surpluses, while the operating surpluses for NMCLM and SMCLM are expected to gradually deteriorate; and
- ◆ Capex is varied between operators and significantly impacts the overall position. SMCLM in particular has considerable planned remedial capex in the next few years but is unable to cover it through its operating margin, while RGCRLM has relatively less forecast capex due to its relatively higher maintenance capex in prior years.

Perpetual maintenance obligations

When a cemetery sells a perpetual interment right, the operator incurs an obligation to maintain that grave forever within the cemetery. As the obligation exists from the point of sale, an accrued liability should be recognised and funded for each interment right at the time of sale. By the time the cemetery has no more interment rights available for sale, the funds accrued should be sufficient to cover the ongoing maintenance expenses, in perpetuity.

The Perpetual Maintenance Target Liability (PMTL) is an estimate of the total cost, at the current point in time, of the obligation to maintain in perpetuity all sold and available unsold interment rights. It represents a target total liability, which the accrued liability will eventually grow to as interment right sales are made.

The cemetery operator needs to generate annual surpluses and grow an investment asset base which will meet the PMTL once the supply of available burial licences has been exhausted.

There is currently no existing prudential or regulatory framework governing how the PMTL is determined, how the standard of maintenance costs is assessed or how investment assets (or annual contribution from the surplus) are managed. While three of the five Crown entities have at various times received external actuarial advice on these aspects of the PMTL and funding position, there is no uniformity of approach.

The Review noted Crown operators using these funds to acquire new land or supplement capital works projects. These activities have impacted the respective PMTL funding positions of those operators. Concerningly, the accessibility of such capital means some capital projects may not have received the commercial rigour and assessment that would have been required had the funds been sourced through increased debt or equity contributions. See Appendix H Perpetual Maintenance Valuation Approach.

In this context, the valuation approach for each of the Crown operators was normalised so a like-for-like comparison could be made. The key item was the choice of risk discount rate, for which the lowest rate of the three operators was used (2% p.a. real discount rate). Other aspects such as maintenance costs were as provided by the operators, subject to amendment in some instances to ensure a consistent interpretation.

The 30 June 2019 position, using audited balance sheet asset investment assets and PMTL determined as above, and including RNLM for illustrative purposes is summarised in Table 8.2.

Table 8.2: Crown Operator assets and PMTL liabilities

		CMCT ¹	RGCRM	SMCLM	NMCLM	RNLM	COMBINED PRO FORMA
Latest accounts	Date of financial statements	30 June 2019	30 June 2019	30 June 2019	30 June 2019	30 June 2019	30 June 2019
	Perpetual Care Target Liability (PCTL)	\$140.6m	\$191.3m	\$193.86m	\$209.3m ²	\$65.9m	\$800.9m
	Assets (for funding) per latest accounts ³	\$143.1m	\$152.9m	\$95.4m	\$99.0m ⁴	\$0m	\$490.4m
	Surplus/(deficit) as of 30 June 2019	\$2.5m	(\$38.4m)	(\$98.4m)	(\$110.3m)	(\$65.9m)	(\$310.5m)
	Proportion of PCTL funded	102%	80%	49%	47%		61%

¹ Excludes Macarthur Memorial Park (MMP).

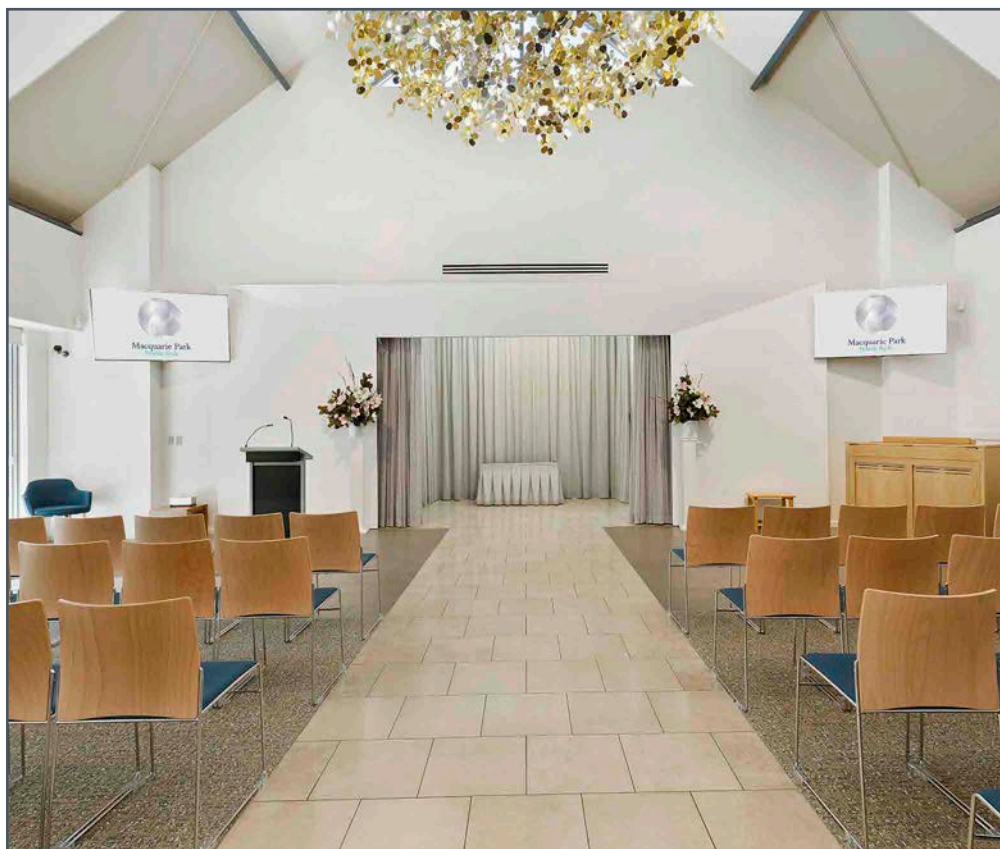
² NMCLM calculates its PMTL under a range of real discount rates; the table shows it on a 2.0% real discount rate assumption to be consistent with the discount rate used by the other operators.

³ Assets are taken as investment assets on the balance sheet. Other net assets are treated as working capital and released over time in our forecast of surplus.

⁴ NMCLM assets include investments held from pre-paid services (deferred revenue), consistent with future expenses by which the PMTL is determined.

⁵ The PMTL for RNLM is a high-level estimate based on a range of assumptions in the model that are not inconsistent with those used for other operators. However, as it has not been actuarially assessed, no reliability can be placed on it and it is included in the table above for illustrative purposes only.

In the status quo plus addition of new cemeteries scenario, it has been assumed that the operations of RNLM are merged in CMCT and RGCRM, on a 1/3: 2/3 basis, respectively. In this scenario, it is also assumed that CMCT and RGCRM achieve operational cost savings on merger with RNLM which reduces their total PMTL liability to \$55.3 million. Accordingly, post inclusion of RNLM, CMCT's PMTL increases by \$18.4 million to \$159 million and RGCRM's PMTL increases by \$36.9 million to \$228.2 million.

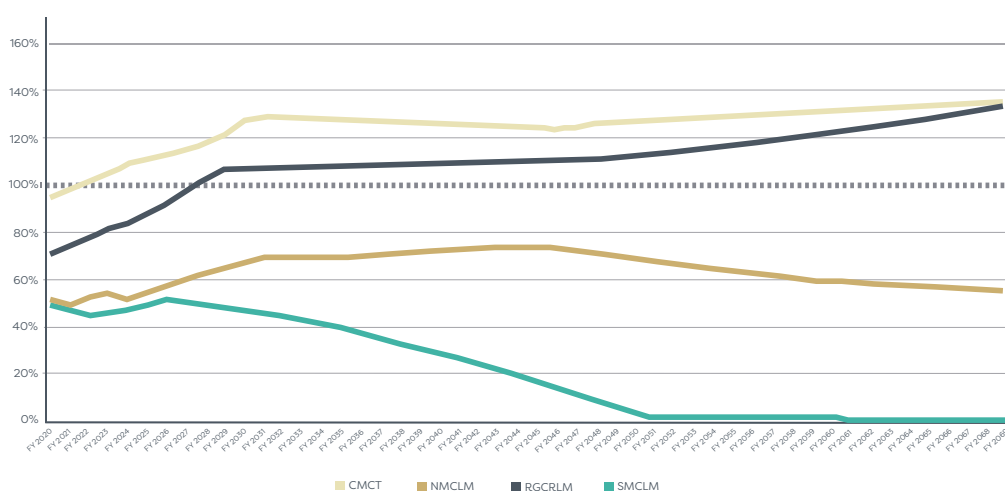


The Crown operators can fund 47% to 102% of their PMTL. Being currently less than 100% is not necessarily an issue, provided the operator has grown its investment asset base to a fully funded position by the time the last burial interment right is sold. The Review model is able to ascertain whether each of the Crown operators will be able to do this.

The investment assets in future are determined by taking the starting investment assets at 30 June 2019 and adding each year's expected operating cash flow surplus/deficit (including investment earnings and making allowance for planned capex). The PMTL is grown each year in line with expected inflation on the underlying closed maintenance expenses.

Graph 8.4 shows the investment assets of each Crown operator under the status quo as a proportion of their PMTL and whether they are forecast to reach 100% funding of their PMTL.

Graph 8.4: Funded proportion of PMTL liability by operator (50 years)



The key observations from Graph 8.4 are:

- ◆ Only two of the Crown operators will be able to fully fund their PMTL by the time they cease sales of burial interment rights and over the 50-year period. This is a combination of their relatively higher starting (current) asset balance as a proportion of PMTL and their planned future operating surpluses over the next 10-12 years. CMCT and RGCRLM are estimated to be able to support their perpetual maintenance obligations (from current and future sales) into the future.
- ◆ NMCLM is expected to improve its position until its burial interment right sales are exhausted, then plateau for a period as its cremation net margins plus interment margins offset maintenance and overhead expenses. Once interments cease, it is required to incrementally use its investment assets to cover its planned maintenance costs (as it will not have reached 100% funding). It will not ever be able to fully fund its PMTL.
- ◆ SMCLM erodes its funding by 2050. This is due to its relatively lower investment assets starting position, planned capex and relatively higher level of expected perpetual maintenance costs per annum. It also has the highest level of relative expected maintenance costs (per hectare) once the last burial interment right has been sold.
- ◆ The combined position of all Crown operators shows a collective shortfall.

The Review observed that the perpetual maintenance costs of the Crown operators varied noticeably.

A key input into the PMTL is the estimated maintenance costs of the operator once all of its cemeteries no longer have available burial rights for sale. This is expected to be lower than current maintenance costs, reflecting in particular the reduced need for staff in customer service, administration and senior executive roles. It is often determined by reviewing each current item of maintenance and indirect or overhead cost and determining what proportion of the cost would remain once closed.

Graph 8.5 illustrates the assumed perpetual maintenance costs for each Crown operator, while Table 8.3 shows these costs as a percentage of open cemetery equivalent maintenance costs and implied dollar cost per hectare under management.

Graph 8.5: Annual perpetual maintenance costs of Crown operators

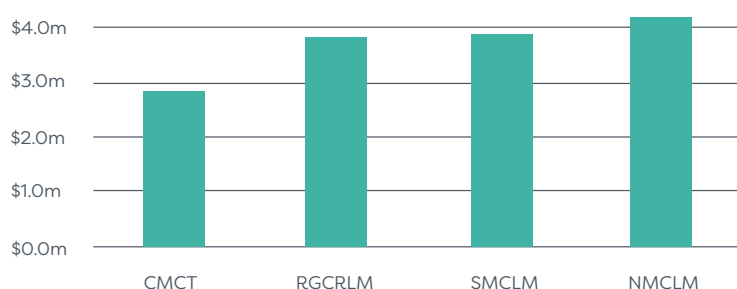


Table 8.3: Implied annual perpetual maintenance cost per hectare

	CMCT	RGCRLM	SMCLM	NMCLM
PTCL valuation date	30 June 2019	30 June 2019	30 June 2019	30 June 2019
Assumed perpetual maintenance and overhead costs (p.a. in PTCL calculation)	\$2.8m	\$3.8m	\$3.8m	\$4.1m
Current grounds maintenance and overhead costs	\$10.9m	\$12.6m	\$11.1m	\$8.6m
Perpetual maintenance costs as a % of current maintenance costs	25%	30%	34%	48%
Total land (ha)	85.2	168.2	82.5	137.6
Implied Perpetual Maintenance Cost (p.a.) per hectre	\$32,352	\$22,295	\$46,061	\$29,832

Notes:

1. The data used in this analysis is based on the IPART data and perpetual liability data provided by each operator.
2. Grounds maintenance and overheads costs are from the IPART submissions (using budgeted FY2019) for all operators except RGCRLM who provided actual figures.
3. The total land size for SMCLM is sourced from the latest report, and may include non-burial land (e.g. office buildings).

The operators' own estimates of their required perpetual maintenance costs are between \$2.8 million to \$4.1 million per annum, which equates to a cost per hectare (of all available land) of between \$22,000 to \$46,000 per annum. Costs can vary due to the level of anticipated service needs (e.g. community expectations of quality of maintenance), complexity of land and types of on-ground memorials used. SMCLM has the highest implied cost per hectare for perpetual maintenance at \$46,061.

Summary of status quo

The status quo scenario demonstrates that the Crown sector, in its current configuration, is incapable of meeting anticipated burial demand beyond 12 years, and in certain locations, in as little as three years.

Two of the four Crown operators will not have accrued sufficient capital to offset their PMTL by cessation of interment rights sales and will be unable to maintain their cemeteries to current standards.

Under the status quo scenario, three of the four Crown operators are unlikely to be able to meet key Objects of the Act in the short term.

8.2.5 STATUS QUO WITH THE ADDITION OF NEW CEMETERIES

The conclusions of the status quo scenario indicate the importance of new cemeteries to the overall financial viability of any cemetery operator, to meet projected burial interment right demand and generate sufficient revenue and operating surpluses to meet perpetual maintenance expenses in the future.

The Review modelled the effect of new cemetery land. This was done in two stages:

- ◆ The impact of the operation of MMP and NG on CMCT and the overall Crown sector; and
- ◆ The assumed addition of new cemeteries of sufficient size for all Crown operators to meet the projected demand for new interment burial right sales over the next 50 years.

MMP & NG

MMP and NG are two cemeteries proposed by CMCT.

MMP has received development consent, with initial construction planned over 2020/21. As part of this development, the Review also modelled the impact of the Kemps Creek Crematorium, an important asset which will provide cremated remains for interment at MMG and NG.

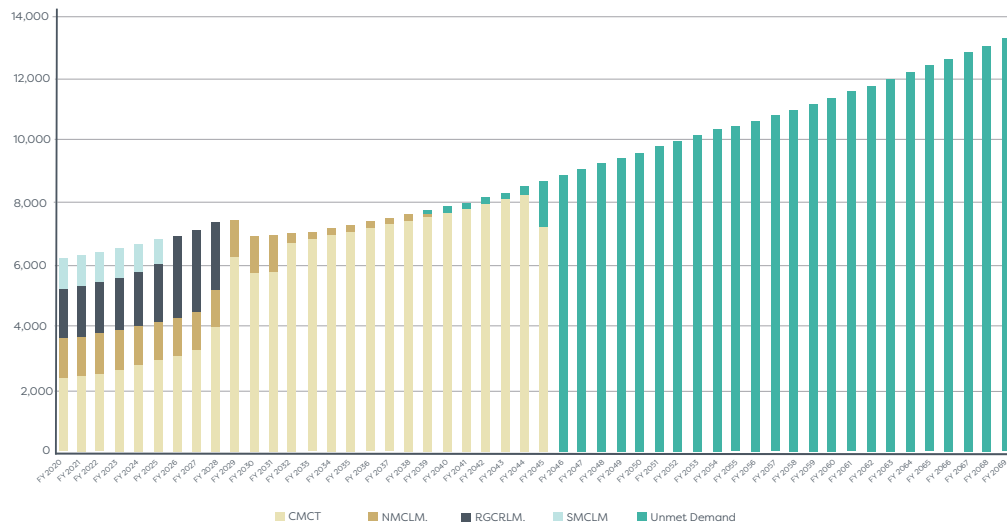
NG has not yet been granted development consent.

To assess the impact of MMP and NG, the Review received CMCT's business plan forecasts over 20 years and, in consultation sessions with CMCT executives, adapted these to its longer-term forecasts.

Graph 8.6 demonstrates the impact on the Crown sector's ability to meet burial interment right demand. The inclusion of MMP extends the Crown sector cemetery life by 10 years (to c 2042) and NG by a further 3 years (to c 2045). It is important to note that this exhaustion date is sensitive to the demand assumptions from the remaining Crown operators.

From 2032, MMP and NG would be the only remaining operational Crown cemeteries in Sydney. As such, the Review assumed MMP and NG would absorb the remaining overflow demand from other Crown cemeteries (assuming 40% leakage to the private sector once other Crown operators expire and an increasing cremation rate).

Graph 8.6 – Crown sector supply-demand (including MMP and NG)



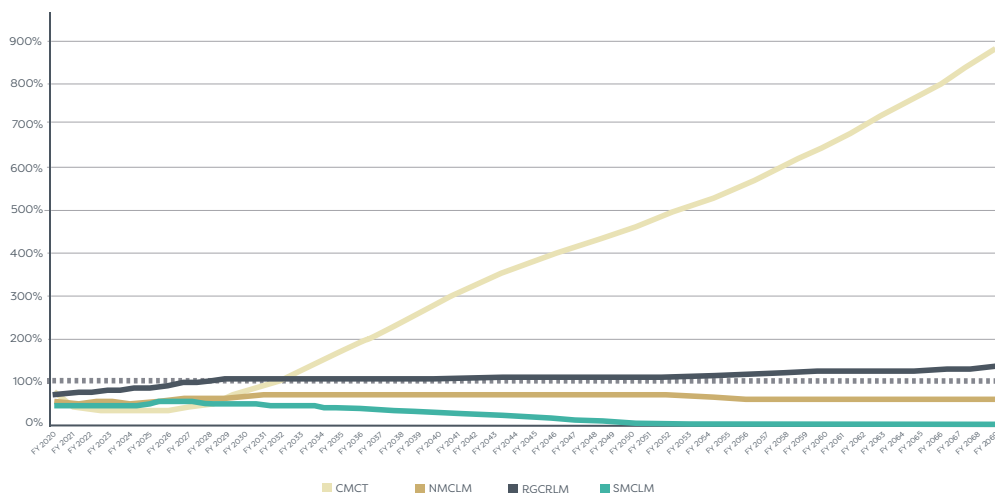
There are a number of important observations arising from this analysis:

- ◆ MMP's commercial viability is partially dependent on overflow being directed from other Crown operators as they exhaust interment right sales (e.g. RGCRLM) to advance its own interment right sales in the early years of operation. CMCT's business case for MMP stressed the importance of redirecting RGCRLM's demand to MMP.
- ◆ The development of MMP and subsequently NG (subject to development approval) is expected to materially benefit CMCT. Other Crown operators do not receive any benefit as they have no available land after 2032. By this point in time, three of the four Crown operators are not participating in new burial interments.
- ◆ Following exhaustion of MMP, NG receives all remaining burial demand from the Crown sector. Hence its life is relatively short (3 years).
- ◆ Notwithstanding the inclusion of MMP and NG and their estimated year of final exhaustion (which depends on a range of factors including no other supply becoming available), the Crown cemetery sector will require further cemetery land to ensure its sustainability over the longer term.⁵

A detailed financial forecast of the impact of MMP and NG is contained in Appendix I.

As Graph 8.7 shows, the development of MMP and NG and the commensurate provision of significant inventory to sell additional interment rights has a material impact on the projected cashflows, surpluses and the excess capital over and above that required to fund CMCT's PMTL.

Graph 8.7 – CMCT FUM balance as a proportion of PMTL (including MMP and NG)



⁵ It should be noted that this scenario assumes that MMP and NG are the only new cemetery developments during the period. To the extent that other cemeteries are developed during this period, will reduce the financial outcome from MMP and NG, relative to the scenario presented here.

CMCT's financial position is expected to improve significantly as MMP cashflows are reinvested in its accumulating FUM balance. From around 2032, CMCT will receive a majority of the demand previously met by other Crown operators (less the overflow to private sector and council operators).

Given CMCT (pre MMP/NG) currently has close to 100% PMTL funding, the MMP operating surpluses (at around 25-30% operating margin) contribute to a strongly growing FUM. At this level of excess FUM to PMTL, CMCT could easily self-fund any further land requirements or subsidise targeted pricing assistance to specific communities. Other Crown operators will not be in this position and will require new capital for land development.

CMCT's excess available funds (i.e. funds in excess of 100% ratio) are forecast to be \$1.2 billion by 2045 (when burial interment rights are exhausted). They continue to grow as the surplus assets (in the absence of funding new land) compound with investment earnings and crematoria margins, to be worth in excess of \$5 billion by 2070. By this time, CMCT contributes more than 95% of all excess Crown funds.

While CMCT will be in a strong funding position, the other Crown operators will receive no benefit and NMCLM and SMCLM will still not be able to fund their perpetual maintenance obligations. The NSW Government will need to provide significant new funding to ensure their future viability.



Additional land for other Crown operators

As noted from the status quo, Crown operators excluding CMCT are projected to exhaust new burial interment rights in the next 12 years.

The Review modelled a scenario in which additional land⁶ is made available to these operators to meet projected burial interment demand for the next 50 years, until 2070. This required:

- ◆ RGCRLM: 36 hectares – required in 2022 (i.e. 8 years lead time) at a cost of \$17 million plus further development capex of \$72 million between 2029 and 2030;
- ◆ NMCLM: 23 hectares – required in 2024 at a cost of \$11 million plus further development capex of \$47 million between 2031 and 2032;
- ◆ SMCLM: 23 hectares – required in 2022 at a cost of \$11 million plus further development capex of \$42 million between 2025 and 2026; and
- ◆ CMCT: 38 hectares (in addition to MMP and NG) – required in 2048 (8-year lead time ahead of need) and developed thereafter (total cost circa \$190 million).

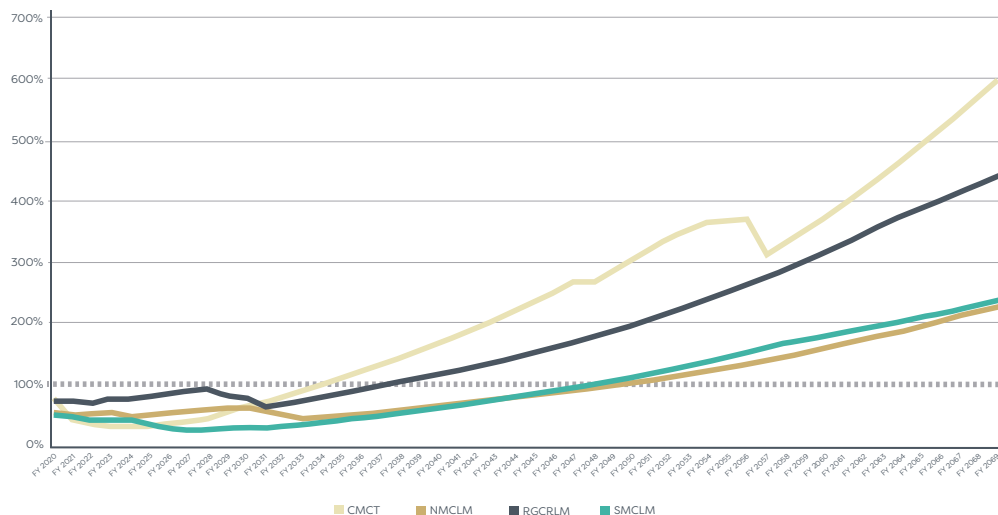
In total, acquisitions and development would require approximately \$390 million in nominal terms, circa \$200 million of which is required in the next 12 years.

⁶ The new land relates only to the actual land used for burial interments. Typically 20-30% of the total cemetery area can be required for non-burial purposes, including administrative buildings, chapels, function centres, roads and pathways and machinery sheds.

It should be stressed this is likely to be less cost-efficient than a single combined acquisition and development of 122 hectares. The Review does not recommend that new cemeteries be acquired and developed in such a disparate, non-strategic manner or under the current operating structure. As per the recommendations in Chapter 7, the Review believes the NSW Government needs to incorporate new cemeteries into its overall strategic infrastructure planning.

This additional land has a material impact on the ability of the Crown operators to meet their PMTL as shown in the graph below.

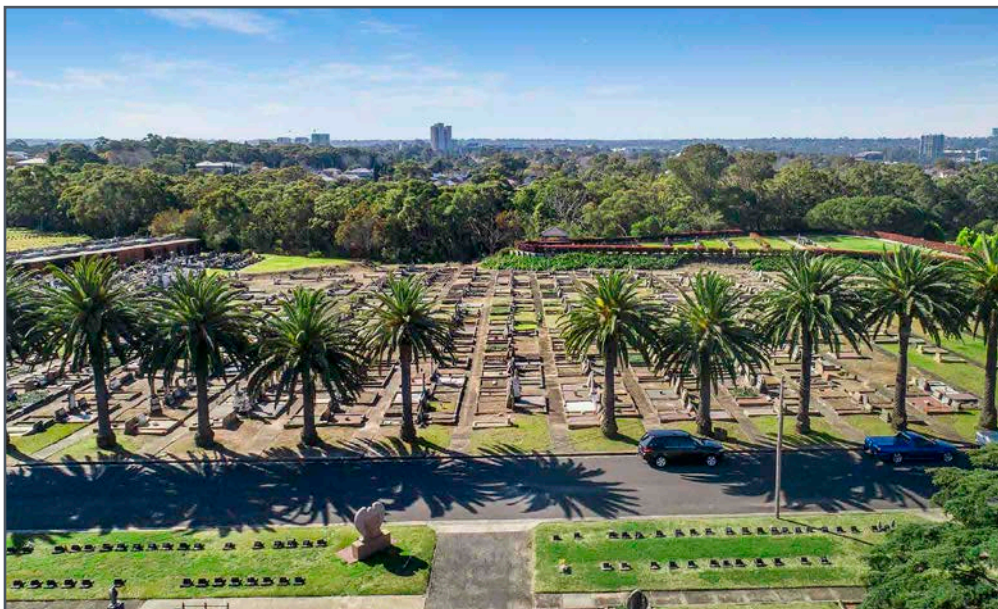
Graph 8.8 – Crown sector FUM balance as a proportion of PMTL (50 years - new land)



All Crown operators could theoretically become 100% funded by approximately 2050.

However, this assumes the new cemeteries created will all achieve efficiency at the same level as CMCT (MMP and NG). The Review considers this unlikely given the existing operational levels of the other Crown operators. Furthermore, none of the other Crown operators has CMCT's expertise in terms of acquiring and developing new cemeteries. Three operators looking for land in the same timeframe over the next 2-5 years will further add to competition (and expected costs) for new cemetery land across Sydney.

This scenario addresses land supply for 50 years, but the ability of operators to meet projected demand beyond this point is uncertain, as it depends heavily on their ability to replicate CMCT's efficiency levels.



The other significant factor is the source of funding for the new land and cemetery development. The model assumed the operators depleted their existing FUM balances to fund these acquisitions and developments. This poses significant risk for the Crown sector. Failure by the operators to achieve operational efficiencies and price their interment rights sufficiently to cover their existing and future PMTL could result in the current predicament but with significantly greater PMTL liabilities for the Crown and insufficient capital to acquire new land beyond 50 years.

To ensure prudent governance of PMTLs, the Review has recommended a new governance arrangement that effectively denies operators from accessing their FUM until they achieve 100% coverage of their PMTL, plus a prudent margin. Under this governance arrangement, the NSW Government would need to provide new capital for Crown operators to acquire and build new cemeteries.

8.2.6 POLICY AND OPERATIONAL IMPROVEMENTS

Using the status quo, the Review explored operational improvement options for their impact on burial interment demand/supply and PMTLs.

Standardisation of maintenance and capex

A sensitivity was undertaken to ascertain whether the perpetual funding position of NMCLM and SMCLM, the two Crown operators in the status quo unable to reach 100% funding, could reduce their expected perpetual maintenance expenses or planned capex to address that position.

This was undertaken in isolation of any other changes (e.g. excluding new land, operational efficiencies etc).

The Review performed this by standardizing – and thereby reducing – the assumed perpetual maintenance expense and capex of each operator as shown in Table 8.4 (with CMCT excluding MMP). It should be noted, the assumed standardisation levels were not based on a detailed consideration of the impact on the quality of perpetual maintenance, or benchmarking of a desired efficient level, but were rather chosen to align to other Crown operator levels.

It was assumed SMCLM could transition to similar metrics as CMCT, and NMCLM to similar metrics as RGCRLM.

Table 8.4: Standardisation of annual maintenance expenses and capex

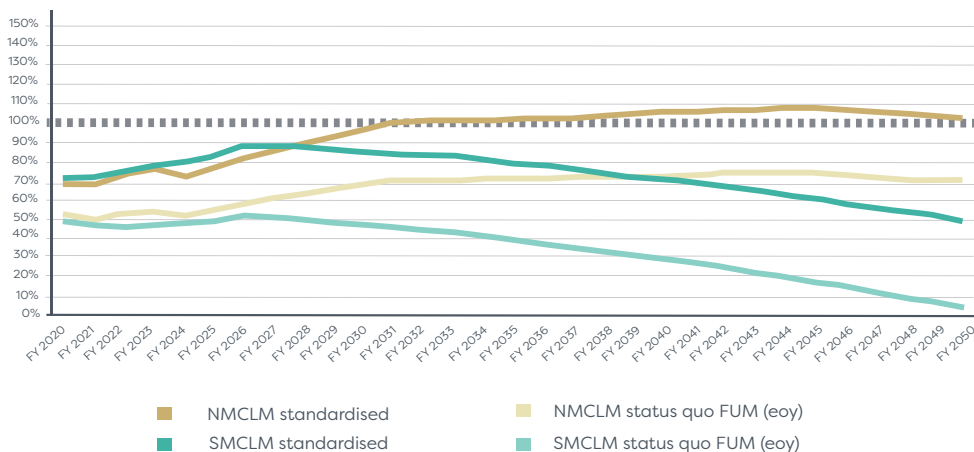
	CMCT	RGCRLM	SMCLM	NMCLM
Perpetual maintenance costs	\$2.8m	\$3.8m	\$3.8m	\$4.1m
Current maintenance	\$10.9m	\$12.6m	\$11.1m	\$8.6m
Perpetual as a % of current	25%	30%	34%	48%
Assumed “standardised” as % current	n/a	n/a	25%	35%
Capex next 5 years	\$17.1m	\$13.0m	\$33.2m	\$16.6m
Capex as % operating surplus	59%	39%	161%	48%
Assumed “standardised” % surplus	n/a	n/a	60%	40%

Graph 8.9 shows under these assumed levels of reduced maintenance and capex:

- ◆ SMCLM will still not be able to fund its long term PMTL obligations; and
- ◆ NMCLM will materially improve and be more sustainable in the long term.

However, the reductions required to perpetual expenses and capex investment are significantly lower than operator estimates considered necessary to meet their obligations and standards of maintenance. This poses a significant risk to a successful outcome.

Graph 8.9: FUM as a proportion of PMTL (standardised)



Other public policy improvement options

As outlined in Chapter 7, the Review examined a number of public policy options that could have a positive impact on the required burial interment demand and the utilisation of existing cemetery land. The Chapter 7 analysis applied these policy options to the status quo scenario. The following table applies these options to the status quo with the addition of new cemeteries.

A summary of these findings is included in the following table.

Table 8.5: Operational improvements summary

OPERATIONAL IMPROVEMENT ITEM	KEY IMPACT	OBSERVATIONS
Increase cremation rates	Exhaustion point +3yrs (to 2048).	<ul style="list-style-type: none"> ◆ Crown cremation rate of c65% is assumed to increase to 82% (as exhaustion point is reached). ◆ This has limited impact on existing cemeteries as most are close to full capacity. ◆ The impact is modest at a whole of Crown level (i.e. increase by 2 years).
Cemetery renewal	Exhaustion point +14yrs (to 2059) Perpetual funding ratios improve by c15% uplift for operators.	<ul style="list-style-type: none"> ◆ Assumed 10% of existing cemetery land could initially be renewed after 5 years. ◆ This was then assumed to rise to 20% (by adding 2,000 renewable plots per annum). ◆ The overall impact improves exhaustion point by a further 14 years. ◆ This has a positive flow-on to perpetual maintenance funding as additional sites can be created to be sold in future. However, NMCLM and SMCLM are still not expected to be able to reach a fully funded position.
Renewable tenure	Exhaustion point not changed (indefinite, for MMP and NG cemeteries) Perpetual funding ratios (overall neutral impact).	<ul style="list-style-type: none"> ◆ It was assumed renewable tenure would be mandated with a 35-year term for new cemeteries (MMP and NG). ◆ No impact occurs for existing cemeteries as most are close to full capacity for new sales. ◆ Upon renewal it was assumed a new plot became available (i.e. 100% reuse rate). ◆ The overall impact was that exhaustion date would be extended indefinitely, due to the 100% reuse rate and assuming all new plots at new cemeteries are renewable tenure. ◆ The perpetual maintenance position is assumed to be broadly neutral, as the underlying perpetual maintenance cost remains the same at a per plot level. ◆ The need for new land to meet future unmet demand will be materially less.

8.2.7 CONSOLIDATION

It is well recognised that economies of scale and scope exist within the cemeteries and crematoria sector.

Consistent representations were made to the Review – including from a majority of Crown operators – that consolidation of the sector was necessary. All three Crown entities associated with the management of Rookwood Necropolis individually highlighted the inefficiency of the current structure. CMCT and RGCRLM have individually undertaken studies into operational synergies from a One Rookwood model.

A 2017 report by PwC, commissioned by CCNSW, also recommended a one-trust model at Rookwood. This report stated:

The assessment demonstrated that either of the single trust model options would be most effective at delivering on the functional requirements. A single trust model enables the most effective management of the strategic, operational and stakeholder management requirements of Rookwood Cemetery, and allows the Crown trust to make coordinated responses to Rookwood's key challenges, such as land acquisition, perpetual maintenance and equitable and affordable pricing⁷.

A single trust model has greater capacity to leverage its full financial and land resources to deliver an equitable pricing model. Through cost efficiency, asset management and fulsome community engagement. A single trust model can ensure that access and pricing are equitable across all of Rookwood⁸.

Consolidation has been a focus for sector participants since the 2012 reforms, particularly as the consolidation from 17 Crown trusts to five operators at the time was intended as a transitional arrangement.

The findings of the three previous scenarios led the Review to examine two consolidation scenarios to address the impending challenges.

The two consolidation operating structures for the Crown sector were:

- ◆ Two entities – combination of CMCT with SMCLM (Operator 1) and RGCRLM with NMCLM (Operator 2); and
- ◆ OneCrown – consolidation of all current Crown operators, including RNLM, into a new single Crown operating entity.

Two entities

The Review considered a range of combinations of existing Crown operators. Criteria included the respective financial capability and performance (i.e. excess future FUM to cover PMTL), geographical proximity and potential for future operational synergies, breadth of service offerings (including crematoria) to ensure scale benefits and access to future supply of cemeteries.

The optimal 'Two entities' combination is:

- ◆ **Operator 1: CMCT to continue based on its current structure and incorporate SMCLM and MMP (but not NG); and**
- ◆ **Operator 2: incorporates the cemeteries and operations of RGCRLM and NMCLM, as well as the planned NG.**

⁷ Price Waterhouse Coopers; Rookwood Cemetery: Future Governance Arrangements, March 2017, page 29.

⁸ Ibid, page iii.

The rationale for Operator 1 is that CMCT's strong financial position, planned development of MMP, and established business and management team demonstrates it is likely to be operating at a relatively efficient level.

It is recognised Operator 2 will most likely be a new combined operator, rather than merging one of the operators into the existing structure of the other. Both operators have operational efficiency improvements to make and may best achieve this under a new operating model.

The following assumptions were used to forecast the financial and operational positions of the two entities:

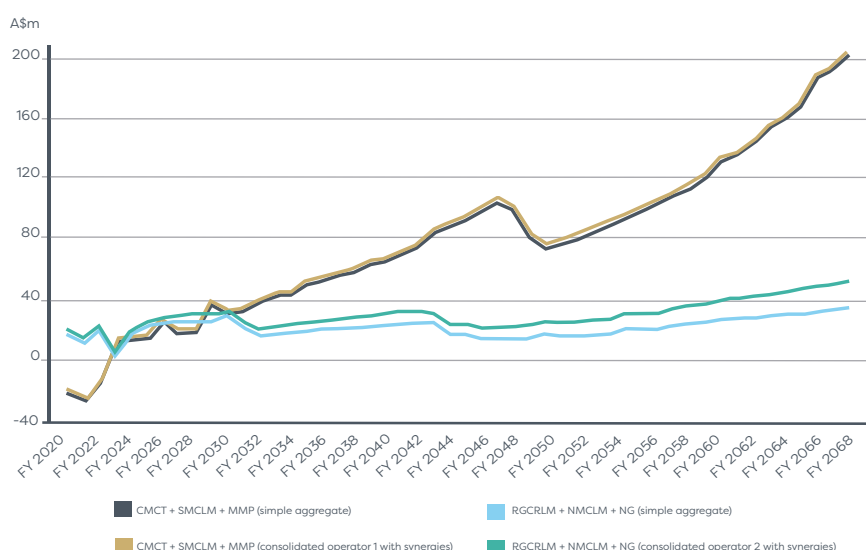
- ◆ **Operator 1** – It was assumed 20% of SMCLM administration costs could be saved, with no change to CMCT's existing operations. SMCLM has a relatively large crematorium compared to CMCT and requires administration to service this.
- ◆ **Operator 2** – It was assumed 20% of RGCRLM administration costs could be saved, with no change to NMCLM's existing operations. This is largely due to the expected challenges accommodating the complexity of RGCRLM's mixture of faith and communities, and legacy of prior operations.
- ◆ Investment funds backing the PMTL would be combined for the consolidated entities. No savings on perpetual maintenance costs were assumed.

Per the other scenarios, the Review model produced a series of outputs for projected net annual cash flows, exhaustion year and FUM as a proportion of PMTL.

Annual cash flows

Graph 8.10 is a summary forecast of future cumulative net annual cash flows (after capex) for Operator 1 and Operator 2 over the next 50 years.

Graph 8.10: Net annual cash flows – Two entities (50 years)



Operator 1 (combined CMCT and SMCLM)

The underlying cash flows are dominated by the CMCT operations, especially up to 2045 (expiry of MMP). This is supported by SMCLM's crematorium revenues, which provide scale to spread corporate and administration costs.

Cost savings are limited, as SMCLM's administration costs reduce quickly into a closed cemetery state within a few years and the scale of its operations are dwarfed by CMCT (and its MMP expansion).

Operator 2 (combined RGCRLM and NMCLM)

Operator 2 generates increasing cashflow of \$25-30 million per annum up to 2050, after initial development capex, and is able to cover its PMTL obligations without external funding.

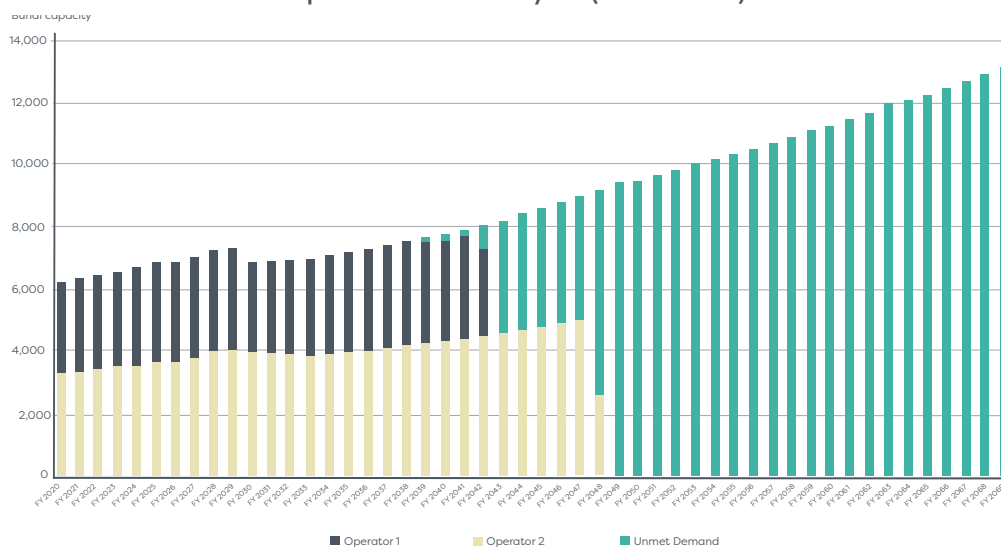
However, it is noticeably less profitable than Operator 1, partly because of the smaller scale of NG relative to MMP. Cost savings are slightly more substantial as RGCRLM has a higher starting administration cost base and operates longer before scaling down.

Exhaustion year

Combining operators without creating extra cemetery land does not extend the exhaustion point, which is 2043 for Operator 2 and 2048 for Operator 1.

As there are two operators considered in this scenario, it is assumed there is no redirection of demand from NG (Operator 2) on its expiry to MMP (Operator 1). This preserves the two-entity scenario and explains the difference in Graph 8.11, below, from the status quo with additional cemetery land scenario.

Graph 8.11: Exhaustion year (Two entities)

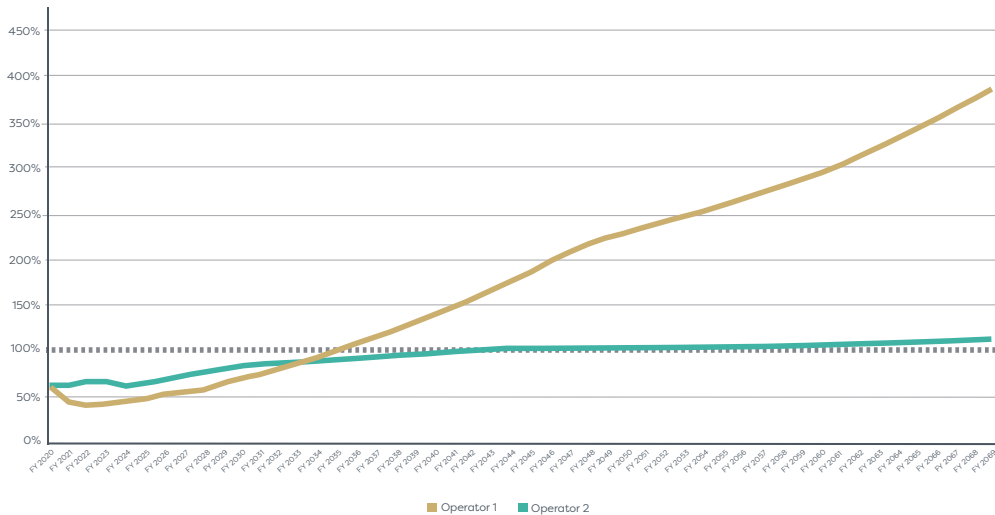


The projected funding position of Operator 1 may allow it to use its excess funds above PMTL to acquire new cemetery land. As shall be seen, Operator 2 is unlikely to generate sufficient excess capital over its PMTL to acquire new land.

FUM as a proportion of PMTL

Graph 8.12 shows a funding position that allows both operators to meet their PMTL obligations over the next 50 years. Operator 1 becomes fully funded in 2035 and Operator 2 in 2041.

Graph 8.12: Funded proportion of PMTL liability – two entities (50 years)



Operator 1 can use the strong funding of CMCT and the expected future financial performance to more than offset SMCLM's poorer perpetual funding position.

Operator 2 has negligible excess FUM over its PMTL and will require new capital to acquire additional cemetery land.

OneCrown

OneCrown is the consolidation scenario of all the current Crown operators, including the Rookwood Necropolis Land Manager (RNLM), into a new single Crown operating entity.

This new Crown entity will be the land manager as prescribed under the Crown Land Management Act 2016 and will be a controlled entity of the NSW Government. All existing assets and liabilities will be consolidated within this new entity and have a skill-based board appointed by the Minister.

Consideration was given to varying operator(s) structures for OneCrown, these included:

- ◆ OneCrown (1a) – all Crown cemeteries will be operated by a single Crown operator. This entity will build a new team and undertake the operations of all Crown cemeteries and crematoria assets.
- ◆ OneCrown (1b) – the current manager of CMCT, Catholic Cemeteries Board Ltd (CCB) would be appointed as the operator of the cemeteries and crematoria of OneCrown. CCB would receive an annual payment in recognition of undertaking the operations of these assets.
- ◆ OneCrown 1(c) – as per scenario 1b but with two operators – CCB and another operator jointly managing the combined assets. The benefits of this scenario include a competitive tension between operators and the ability to manage inter-faith requirements across all assets. Two annual operator payments would be required for 1c.

The OneCrown scenario involves the aggregation of each of the Crown operators under the Status Quo with additional cemetery land (i.e. including MMP & NG only).

In addition, it contains certain assumed cost savings arising from the implementation of an operational restructure.

Key aspects of this restructuring could include some or all of the following:

- ◆ Consolidated skills-based board⁹ and management structure;
- ◆ Centralised procurement, accounting, finance and cemetery management systems;
- ◆ Removal of duplication in other fixed operating costs;
- ◆ Operational efficiencies: in sales, operations, perpetual care maintenance costs and land acquisition procurement;
- ◆ Consolidation of FUM, giving rise to efficiencies in fund management/ investment costs;
- ◆ Rather than attempting to be specific for each of the above, the scenario modelled a top-down approach which assumes;
 - o a reduction of 20% in the total administration and corporate overheads of RGCRLM, NMCLM and SMCLM upon aggregation with CMCT. This generates a potential annual saving of approximately \$4.5 million per annum (which increases in line with activity); and
 - o a reduction in perpetual maintenance costs to \$25,000/Ha across all Crown operators.

Net annual cashflows

Graph 8.13 is a summary forecast of future cumulative net annual cash flows (after capex) for OneCrown over the next 50 years.

It can be observed that:

- ◆ A OneCrown operator achieves outcomes that are superior to the individual operators added together; and
- ◆ The level of improved outcome is approximately 15-20% compared to allowing each Crown operator to continue unchanged.

This level of improved financial outcome will assist with the perpetual maintenance funding and the ability to finance new land acquisition without contributions from the NSW Government.

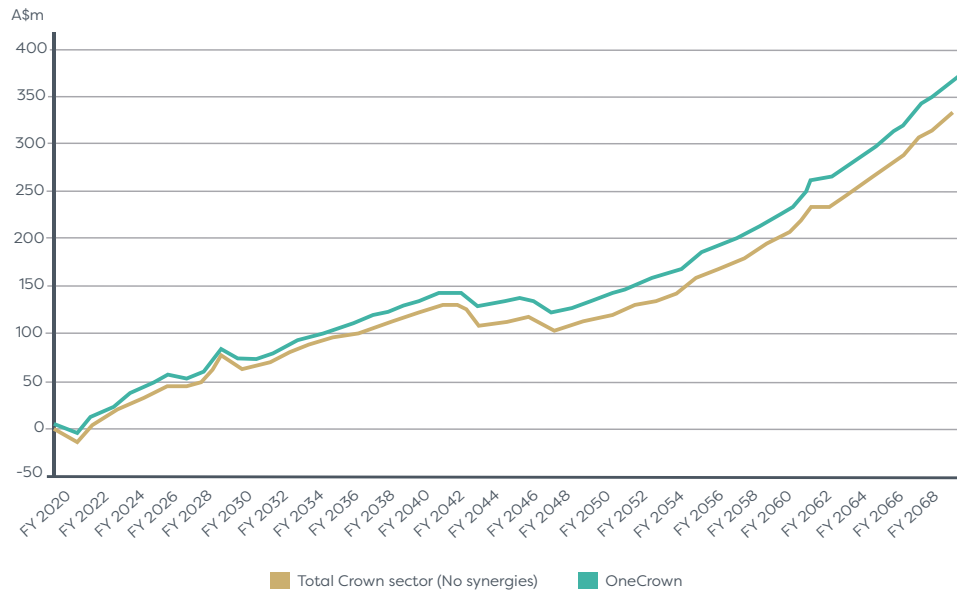
The cashflow profile of the OneCrown operator is significant as a result of MMP, greater than the combined single operators and the two-entity scenario.

This scenario's superior outcome is due to the efficiency savings assumed to be generated by the OneCrown operator i.e. savings of back office expenses. It should also provide more efficient and centralised planning, coordination, acquisition and development of new cemeteries and other operational aspects.



⁹ Appointment of a skills-based board with expertise in the following areas; commercial, actuarial, funds management, marketing, legal and regulatory, information technology, community and government relations;

Graph 8.13: Net annual cashflow (OneCrown – 50 years)



These savings can be reinvested in the Crown sector to finance additional cemetery land. The cashflows emerge at a faster rate, allowing potential land acquisitions to occur earlier than otherwise would be the case (and with a coordinated identification process as the OneCrown would be acting in the interests of all Crown cemeteries and locations). This outcome can be achieved while ensuring the PMTL is always more than 100% funded.

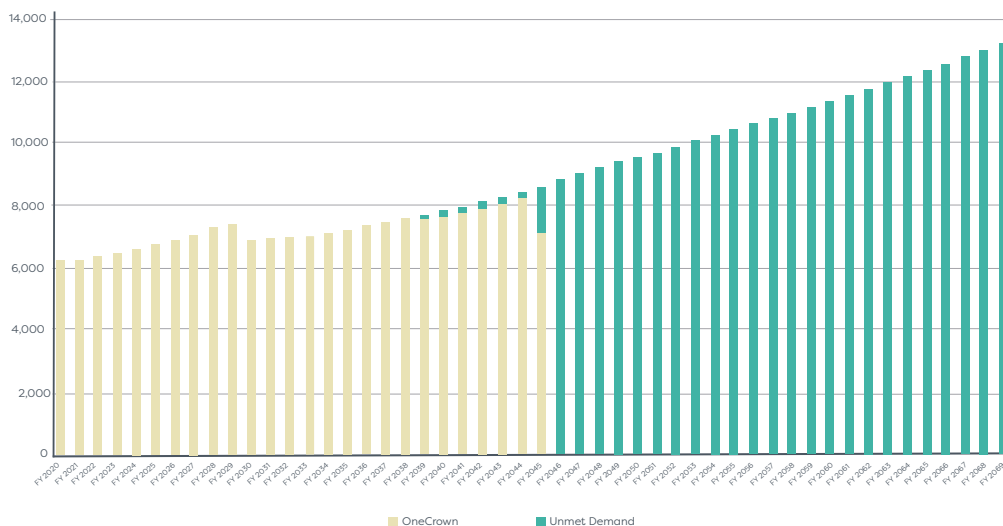
Overall the financial strength created will allow the OneCrown operator to improve the long-term sustainability of the entire Crown sector. This allows them to satisfy the Objects of the Act which is in the best interests of the citizens of NSW.

Exhaustion year

Combining operators without acquiring extra land does not increase the exhaustion point from 2045.

However, in conjunction with the improved funding position, it will provide the single OneCrown entity greater capacity to use excess funds above PMTL to acquire new land.

Graph 8.14: Exhaustion year (OneCrown – 50 years)





FUM as a proportion of PMTL

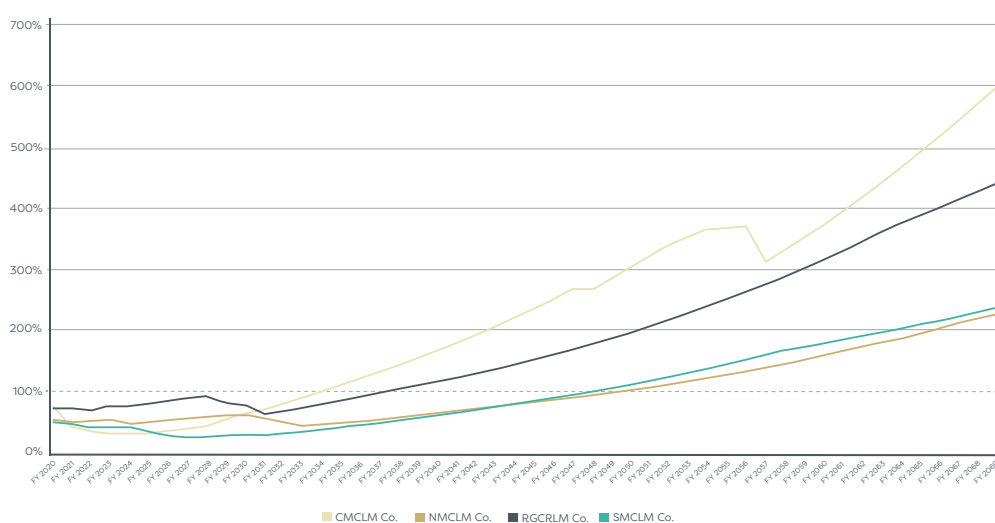
Graph 8.15 shows OneCrown can meet all Crown sector PMTL liabilities from 2029/30.

The funding position then continues to improve as net cash flows and investment returns compound. By 2038, OneCrown will have 150% funding, approximately \$600 million above the fully funded threshold.

It could then use surplus funds to support the acquisition of new land, well in advance of the sector reaching exhaustion point in 2045. Alternatively, the excess capital could potentially be used at the discretion of the NSW Government to address pricing and affordability issues for sections of the community.

It is noted that if such excess funds were not used to acquire land but instead retained, they would grow to greater than \$6 billion by 2070.

Graph 8.15: FUM balance as a proportion of PMTL (OneCrown – 50 years)



Summary

The Review believes that given the extent of the challenges facing the sector, the current operating model reflected in the status quo is no longer fit for purpose. Even with the provision of additional cemetery land, at considerable expense to the NSW Government, it remains unclear if the sector can be sustainable in the longer term.

Consolidation provides the Crown sector with the opportunity to fulfil the Objects of the Act and builds an asset of significant value to the State.

It is critical that the NSW Government retains control of this capital through the governance structures for the Crown sector. Excess capital of this magnitude gives the NSW Government flexibility to address future challenges of the sector, including pricing affordability measures and acquisition of new land. This excess capital enables the NSW Government to act in the best interest of the sector and the community.

RECOMMENDATION 8.1



The NSW Government immediately commences the consolidation of the Crown sector operators to a single entity operating model, reflected in this Review as the OneCrown scenario.

The NSW Government has a number of options, reflected in OneCrown (a)(b)(c), with respect to the number and nature of operators of specific OneCrown assets.

Customer service considerations

The Review considered some less quantitative aspects of consolidation.

Customer service is critical to the sustainability of any commercial enterprise. Engaging with customers, understanding their changing needs and preferences and reflecting these in product development is fundamental.

The Review asked Crown operators to provide any customer service surveys or metrics. No information was provided to the Review.

However, the Review is aware most Crown operators undertake community events and activities to assist people with their grieving. Furthermore, the Review did not hear any examples of Crown operators failing to perform their interment services in a professional manner.

Private sector operators reiterated the importance of continual customer engagement to develop products that meet changing community needs, especially increasing cultural and ethnic diversity. Engagement was also considered necessary to the commercial viability of the business in generating sustainable revenue streams.

Conversely, the Review did hear from some religious and community groups that they were not being actively engaged in plans for their local cemeteries (as they start to approach exhaustion), proposed pricing changes and their overall service satisfaction.

Another unique aspect of the sector is the intermediated nature of the relationship between the cemetery or crematorium operator and the purchase of the interment right. The majority of interment rights are purchased through a funeral director on behalf of the ultimate right holder. For the Crown cemetery operators, who do not operate funeral director businesses, the relationship with the interment right holder is limited.

The Review did not identify any evidence suggesting a positive correlation between the number of cemetery operators and high levels of customer satisfaction.

Service continuity is critical to meet customers' needs and expectations on an ongoing basis. Having four Crown operators who are unable to meet the projected interment demand in certain locations in as little as three years is inconsistent with high levels of customer service.



Consolidation would not mean the closure of access points for the community and customers. Beyond the cessation of the sale of burial interment rights, cemeteries will continue to undertake interments and cremation activities.

S.103(1)(iii) of the Act provides for each Crown cemetery operator Board to establish a Community Advisory Committee¹⁰, while s.103(4) outlines the functions of the Committee. Such provisions would remain under a consolidated operating structure.

The Review believes there is scope for greater oversight by the regulator, CCNSW, in relation to customer service standards and reporting on satisfaction levels across the sector. While CCNSW has a *Customer Service Standards*¹¹ policy outlining how it will service the sector, there does not appear to be any formal oversight of customer satisfaction with operator services.

In many other sectors, such as telecommunications, electricity, gas and water, the respective regulators undertake periodic reporting of customer service metrics. The opportunity exists for the same level of oversight in the cemeteries and crematoria sector.

As part of the development of its interment industry scheme, CCNSW should develop a mandatory code of practice for customer service.

RECOMMENDATION 8.2



CCNSW undertakes oversight, benchmarking and reporting of customer satisfaction levels across the cemeteries and crematoria sector in NSW.

A mandatory code of practice for customer service should form part of the Interment Industry Scheme.

Rookwood Necropolis Land Manager (RNLM)

The governance of the Rookwood Necropolis was shaped in the late 1850s when, during the planning for the cemetery, the Church of England and the Roman Catholic Church could not agree on a one-trust management model. As a result, the area was subdivided along denominational lines according to the census of 1861 and managed under terms outlined in the *1867 Necropolis Act*. In the ensuing years, the Necropolis was expanded and other denominational trusts established.

Areas outside denominational boundaries – unallocated lands and common infrastructure – were managed by the Joint Committee of Necropolis Trustees, a body created in an amendment to the *Rookwood Necropolis Act in 1901*.

Contained within the Necropolis is an Australian War Graves section. This area is leased to the Commonwealth War Graves Commission for the Sydney War Cemetery and the Commonwealth of Australia for the Garden of Remembrance. The Commission and the Commonwealth of Australia have responsibility for maintaining the individual graves of eligible veterans within other Trust boundaries.

In 2012, the NSW government took the first step to implement the two-Trust model. The land allocated to CMCT remained unchanged but the Anglican, General, Jewish, Muslim and Independent Trusts were dissolved and a new body, the Rookwood General Cemeteries Reserve Trust, created to manage the land dedicated to them.

¹⁰ *Cemeteries and Crematoria Act 2013*, page 54.

¹¹ CCNSW; Customer Service Standards. https://www.industry.nsw.gov.au/__data/assets/pdf_file/0009/139860/CCNSW-Customer-Service-Standards.pdf

RNLM's core function is to establish the plan of management for the Necropolis. This plan needs to give consideration to:

- ◆ Management and maintenance of the common areas of the Necropolis, including roads, fencing, drainage, security, etc. This includes the common assets like the Rookwood Crematorium and the associated land which is leased to the private operator, InvoCare; and
- ◆ The preservation of the environmental and heritage values of the site.

RNLM levies the two Crown operators for each interment undertaken on the site, whether burial or cremation. An additional cremation levy is applied to each cremation undertaken by CMCT. RNLM also receives a lease payment for the Rookwood Crematorium which expires in 2025.

RNLM was initially created under the *Rookwood Necropolis Act 1901*. The RN Act was repealed by the *Rookwood Necropolis Act 2009* and the legislation transferred to the *Crown Lands Act 1989*. Following this, the *Crown Land Management Act 2016* replaced the 1989 act.

The Review concurs with RNLM that it should be dissolved. This would entail:

- ◆ A Bill amending or repealing the *Rookwood Necropolis Act 1901*.
- ◆ The transfer of responsibilities for heritage and environmental values to the responsible agencies of the NSW Government.
- ◆ CCNSW assumes responsibility for arbitrating any disputes in relation to the common assets between the Crown operators.
- ◆ The reallocation of the Rookwood Crematorium to the RGCRLM entity at the expiry of the crematorium lease. Currently RGCRLM is the only Crown operator without a crematorium. The land currently forming part of this lease, which is being used for ash interments, should be reassigned to RGCRLM for burial interments, preferably on a renewable tenure basis.
- ◆ PMTLs should be assigned to the Crown operators on a proportional basis, reflecting the current land allocation of the Necropolis to those entities. All current levies are discontinued.

RECOMMENDATION 8.3



At the expiration of the RNLM crematorium lease to InvoCare in 2025, the asset(s) covered by that lease should revert to RGCRLM. The land contained within the lease should be made available for burial interments, preferably on a renewable tenure basis.



8.3 GOVERNANCE

Background

To assess the appropriateness of the current Crown operator governance structure, it is important to understand what existed before the 2012 sector reforms.

In 2011, there were 17 Crown cemetery trusts operating in Sydney, many of them denominational trusts dating back to the creation of Rookwood in 1879. The basis of the 2012 reforms was the need to address the limited scale and capability afforded by these governance arrangements, particularly with respect to the ability to acquire new land for cemeteries. While capital was being accumulated, the majority of trusts had limited or no quantitative understanding of their perpetual maintenance liabilities.

There was no commercial or financial sustainability analysis undertaken in 2012 to determine the optimal number of Crown cemetery operating entities. Rather, as an interim measure, it was determined that five Crown entities (including the Rookwood Necropolis Trust which was established under its own Act) was preferable to 17 trusts. The current structure was always intended to be a transitional arrangement.

In relation to governance, the Objects of the Act state: *to ensure that the operators of cemeteries and crematoria demonstrate satisfactory levels of accountability, transparency and integrity.*

Accountability, transparency and integrity

The NSW community requires a cemetery sector that can provide interment and other services throughout the State, now and into the future. The sector must operate with dignity and be respectful and responsive to community needs, reflecting their cultural, religious, environmental and heritage priorities.

Families use cemetery services in times of emotional stress. They require compassionate handling of their needs by a sector that is easy to understand and use.

The importance of these functions means the sector requires the highest levels of accountability, transparency and integrity.

Unfortunately, due to the nature of the services provided, many individuals are hesitant to even discuss the sector's services and activities. The Review has observed this characteristic in a governance context within government.

Prior to 2012, there was a fragmentation of Crown operators in Sydney. The trusts administered under the *Crown Lands Act 1989* provided for the Ministerial appointment of trustees. In many cases these were denominational trusts and government oversight under this structure was limited.

Since colonisation, the Lands Department, Crown Lands and their various incarnations have been responsible for cemeteries management within the NSW Government. By contrast, Victoria's sector is overseen by the health department. In short, cemetery management in NSW has not had the prominence within government it warrants, given its importance to society.

Similarly, prior to the Act in 2014 there was no sector regulator. As a consequence, accountability measures were piecemeal at best.

The deficiencies of the historical governance arrangements, specifically in relation to accountability and transparency, have contributed significantly to the challenges now facing the sector and the NSW Government.

The sector continues to be challenged by governance issues:

- ◆ In 2016, the RGCRLM Board was dismissed by the Minister and an Administrator appointed. The operator was the subject of an “investigation, regarding governance, pricing and interment services”¹²;
- ◆ A number of members of the SMCLM Board and executive team resigned in 2018;
- ◆ SMCLM restated its annual accounts for 2018/19 resulting in an unprecedented financial loss;
- ◆ CCNSW has undertaken or is undertaking investigations into activities by Crown operators which are either inappropriate or in breach of the Act; and
- ◆ The Chief Executive Officer positions at RGCRLM and SMCLM remain vacant after CEO departures in 2020.

In addition, the financial predicament faced by at least two Crown operators is reflective of sub-optimal accountability and transparency arrangements.

In undertaking the financial analysis of the Crown operators, the Review found their statutory reporting did not reveal the magnitude of the difficulties faced by these entities. SMCLM’s annual accounts gave no indication of the anticipated exhaustion of burial interment rights in as little as five years, or the associated impact on its ability to fully fund its PMTL by the time of exhaustion.

Had all Crown operators submitted their accounts to the NSW Audit Office, as required as a controlled entity, many of these issues may have been identified earlier. Similarly, had CCNSW undertaken its prudential regulatory requirements, as prescribed under the Act, some of these issues may have been referred to the appropriate agencies for further investigation. Chapter 10 deals with a number of these risks in further detail.

At a consolidated level, the Crown sector has annual revenues in excess of \$90 million per annum. As demonstrated by the financial analysis, the sector has the potential to generate significant capital in excess of its PMTL, under certain operating structures. Conversely, should the current governance and operating structure continue, the risks associated with unfunded PMTL could crystallise liabilities of approximately \$300 million.

The Crown sector requires a governance structure commensurate with its importance to the community and the financial risks and opportunities it presents to the NSW Government.

The NSW Government has the appropriate governance frameworks available to ensure adequate levels of accountability, transparency and integrity. With consolidation, this can be achieved through existing land manager arrangements provided for under the *Crown Lands Management Act 2016*, or potentially through the State-Owned Corporation (SOC) model.

SOCs operate commercially, mimicking a private corporation in terms of their governance model. A skill-based Board is accountable to shareholders, who are government Ministers, and the Board holds the executive to account for operational performance. SOC generally obtain the majority of their revenue from user charges but may receive specific funding to compensate for the impact of government policy.

SOCs generally operate autonomously but are subject to Ministerial direction and control in certain circumstances. Under the *State-Owned Corporation Act 1989*, a portfolio Minister may give written direction to a statutory SOC to carry out non-commercial activities.

¹² Australian Broadcasting Corporation; Administrator appointed to Rookwood cemetery amid misconduct, bullying claims, 13 May 2016 <https://www.abc.net.au/news/2016-05-12/australias-largest-cemetery-rookwood-placed-into-administration/7409816>

As demonstrated, the Crown cemetery operators are highly transactional and require skills and expertise in commercial, financial and actuarial fields. These are skills commonly associated with non-government entities.

The Review believes that given the commercial characteristics of the Crown cemetery operators and the inherent benefits of the governance arrangements provided by a SOC, such a governance model may be appropriate. NSW Treasury is currently undertaking a review of SOCs. Depending on the outcomes of this review, it may be appropriate for NSW Treasury to assess whether a consolidated Crown cemetery operator satisfies the criteria for a SOC.

RECOMMENDATION 8.4



The NSW Government assesses if a consolidated Crown cemetery operator meets the criteria for a State-Owned Corporation.



Controlled entities

Much conjecture and considerable financial resources have been expended by Crown operators and the NSW Government over the past four years to determine whether Crown operators are controlled entities of the State.

NSW Treasury has sought controlled entity status as it imposes greater financial accountability on Crown operators, such as requiring the submission of annual accounts to the NSW Auditor-General.

Currently, RGCLM and RNLM subscribe to being controlled entities. NMCLM and SMCLM continue to contest the determination and CMCT is seeking to remedy its potential loss of charitable status arising from being a controlled entity.

The NSW Auditor-General's past two reports to Parliament urged NSW Treasury to ensure Crown operators comply with requirements of the *Public Finance and Audit Act 1983*.

The issue relates to whether Crown operators are controlled entities in accordance with the Australian Accounting Standard (AASB) 10, as the *Government Sector Finance Act 2018*, S.2.2(9) defines a controlled entity as a statutory body. In this instance, the Australian Charities and Not-for-profits Commission (ACNC) would deem the Crown operators as not being charities and therefore no longer eligible for a range of tax benefits.

Representations have been made to the Review by at least one Crown operator and a religious organisation that the loss of charitable status will result in a Crown operator being subject to additional taxes that will result in increased prices for customers.

Conversely, the Review was provided with information from RGCRLM which demonstrated that they experienced immaterial increases in costs arising from the loss of their charitable status and becoming a controlled entity.

Additional costs, whether as a result of taxes or from other sources, are not ideal given the pressures surrounding pricing and affordability of interment services. However, any additional costs are likely to be significantly less than the operational efficiencies that can be achieved through the scenarios explored earlier in this Chapter.

Furthermore, the Review does not believe it is prudent public policy to compromise the governance and accountability mechanisms of a sector as critical as the cemeteries and crematoria sector on the basis of taxable status.

Principles like competitive neutrality are significant factors when assessing the structure and design of a sector, and these considerations must take precedence over taxable status.

The failure to resolve this issue has ensured a continuing lack of transparency in the sector, magnifying the risks to the NSW Government. Until this issue is definitively resolved, it does not reflect well on the administration of the Crown sector.

The sector poses significant financial risks to the NSW Government and taxpayers and warrants increased oversight as afforded by controlled entity status.

As the outputs of the Review model show, the sector has significant unfunded liabilities. In the future, under alternative operating and regulatory structures, it has the ability to accrue significant financial capital.

This will accumulate from the sale of interment rights on Crown land and the management of accumulated perpetual reserve funds, also generated from the sale of interment rights on Crown land.

The NSW Government has a responsibility to the taxpayers to ensure liabilities are appropriately recorded and monitored, but also to ensure excess funds are made available to the NSW Government to use in the best interests of the sector.

The issue of controlled entity status needs to be clarified, preferably by a legislative amendment, to ensure there is no further ambiguity with respect to Crown operators subscribing to greater financial scrutiny by NSW Treasury and the NSW Audit Office.

Given the significance of the perpetual maintenance reserve funds, the Review believes the entity holding and managing the funds must be a controlled entity.

RECOMMENDATION 8.5



The NSW Government affirms Crown cemetery operators as controlled entities, preferably by legislative amendment.

Any entity holding and managing Crown perpetual maintenance reserve funds must be a controlled entity.

Role of Government in the cemeteries and crematoria sector

The NSW Government currently assumes a number of roles in the cemeteries and crematoria sector. These roles at times cause confusion for sector participants and potential conflicts of interest.

The NSW Government is a regulator of the sector through the legislative and regulatory obligations of CCNSW and NSW Health. In the best interests of the sector and broader community, these regulators need to ensure the Government's regulatory framework is applied consistently across all participants, irrespective of ownership structure, and focused on mitigating risks.

The NSW Government plays an integral role in the activities of the sector as an operator, through the controlled entities that are the Crown operators (RGCRM, SMCLM, NMCLM, RNLM and CMCT). These entities provide services in a sector that is made up of government-owned and controlled participants, as well as operators owned by the private sector, local government, churches and community organisations. As the assets of the Crown mature, the relative performance of the Crown entities is closely monitored by other sector participants.

The Government is also an owner and potential equity/debt investor in its Crown operating entities. As demonstrated, these assets can represent significant financial value to the NSW Government if managed prudently. The Government has an obligation to taxpayers to ensure this value is recognised and managed accordingly.

The Review believes a core function of government is as a regulator – to establish a regulatory framework that is clearly understood by the sector and implemented in a manner that achieves the Government's stated objectives of outcomes focused, risk-based regulation. The key areas of focus are expressed in the Objects of the Act, which have been deemed relevant and appropriate as part of this Review.

An area of core responsibility for Government is the provision of land to cemetery operators, irrespective of ownership. Like schools, hospitals and roads, cemeteries are critical social infrastructure that require strategic planning on behalf of government. Irrespective of cemetery ownership, land needs to be provided for the ongoing needs of the community. As per any market, the most efficient operator should be tasked with delivering these interment services.

The findings of this Review demonstrate significant financial value resides within the Crown sector entities, if structured and managed in a prudent manner. Once the necessary regulatory framework has been clearly established and the assets structured in a manner to ensure financial sustainability, the Government may wish to reconsider its role at that time.





CHAPTER NINE

CEMETERIES AND CREMATORIA ACT 2013

STATUTORY REVIEW

PRICING AND AFFORDABILITY

9. PRICING AND AFFORDABILITY

The Objects of the *Cemeteries and Crematoria Act* reference the pricing and affordability of interment services. Specifically, s.3(h) and (i) resolve:

- ◆ To promote that costs structures for burials and cremations are transparent across all sectors of the interment industry; and
- ◆ To promote affordable and accessible interment practices, particularly for those of limited means.

Stakeholders repeatedly raised the challenges posed in these Objects. Specifically, the critical shortage of burial land and increasing demand are reflected in escalating interment prices. Stakeholders also stressed that consolidation of the funeral market has led to a perceived reduction in competition and overall price transparency across the entire funerals, cemeteries and crematoria market.

The reforms of 2012 aimed to ensure affordability and equity of access to services, while supporting the financial sustainability of operators by making sure all interment costs were included in the pricing.

Section 145 of the Act is critical to ensuring affordable pricing for consumers by directing the Independent Pricing and Regulatory Tribunal (IPART) to investigate and report on interment costs and pricing of interment rights. Two specific matters to be addressed by IPART are:

- ◆ The relativity of costs and pricing factors for perpetual and renewable interment rights; and
- ◆ Full-cost pricing of perpetual interment rights, including provision for the perpetual maintenance of interment sites and cemeteries.

The Review and IPART have worked collaboratively and shared data to best inform both reviews.

In December 2019, IPART released NSW's first ever Interim Report into the costs and pricing of interment rights.



9.1 PRICING PRINCIPLES

In its review, IPART devised a set of pricing principles, informed by the Objects of the Act. The principles were:

- ◆ Interment prices should be affordable and equitable for all;
- ◆ Interment prices should allow for the financially sustainable operation of cemeteries into the future; and
- ◆ Interment prices should be simple and transparent so that people can make informed decisions about interment choices at a difficult time¹.

Stakeholders made representations to both reviews that some of these principles could conflict with each other. For example, ensuring the financial sustainability of cemeteries could make burial prices unaffordable to sections of the community and potentially force customers into accepting cremations against their preferred wishes.

Notwithstanding the potential conflict, the Review used these principles to determine its interim recommendations.

9.1.1 INTERMENT PRICES SHOULD BE AFFORDABLE AND EQUITABLE FOR ALL

This principle is a direct reflection of the Objects of the Act - s.3(i).

The Review received representations from a range of stakeholders, particularly religious and cultural groups, that an individual's ability to be buried in a manner consistent with their customs and beliefs was under threat as a result of declining affordability.

As we observed in Chapter 7, the critical shortage of geographical burial land throughout Sydney is a primary cause of escalating burial prices.

Religious groups requiring burial interment stressed they were 'price takers' in the market as there was no direct substitute for burial. Furthermore, given family connections to cemeteries in close proximity to their homes and where ancestors may have been interred, their ability to find an alternative, more affordable, burial location was limited.

9.1.2 INTERMENT PRICES SHOULD ALLOW FOR THE FINANCIALLY SUSTAINABLE OPERATION OF CEMETERIES INTO THE FUTURE

As demonstrated in Chapter 8, to ensure their long-term sustainability, cemetery operators must generate sufficient revenue to cover the cost of current operations as well as their perpetual maintenance liabilities.

The NSW Government's awareness in 2012 that Crown cemetery operators needed to administer cost reflective pricing ultimately resulted in s.145 of the Act.

Historically, virtually all interment rights in NSW have been perpetual, creating a perpetual maintenance liability for the operator to maintain the cemetery long after it has stopped generating internal revenue. This is a current concern of the NSW Government as its existing Crown cemeteries will not be able to sell new burial interments in 4-12 years and it must ensure perpetual maintenance liabilities are fully funded. If there is a deficit at closure, either planned maintenance levels will decline or the NSW Government will need to provide additional capital.

¹ IPART, Review of the Costs and Pricing of Interment in NSW, page 15.

9.1.3 INTERMENT PRICES SHOULD BE SIMPLE TO UNDERSTAND AND TRANSPARENT

This principle is a direct reflection of the Object of the Act, s.3(h).

For the majority of people who purchase at need, an interment right is an occasional purchase, undertaken at a time of considerable emotional anxiety and in a time sensitive environment. The ability to comprehend, compare, choose and purchase an interment product is further complicated by the fact that the transaction is intermediated by a funeral director with a range of other interment products and services to sell.

Potentially, people who acquire an interment right pre-need can do so with less time pressure, enabling them to undertake more research and compare the products and services available.

Irrespective of whether the purchase is being made at need or pre-need, the products and services should be simplified and displayed in a comparable and transparent manner.

We will explore further the muted impact of competition in the cemeteries and crematoria market. However, if it is to have any impact on the price and quality of services, there must be maximum transparency.

9.2 CEMETERY GOVERNANCE, COMPETITION AND CONSUMER CHOICE

NSW's unique governance arrangements for its cemeteries and crematoria sector directly impact costs, pricing and competition in the sector.

9.2.1 OPERATOR GOVERNANCE ARRANGEMENTS AND COMPETITION

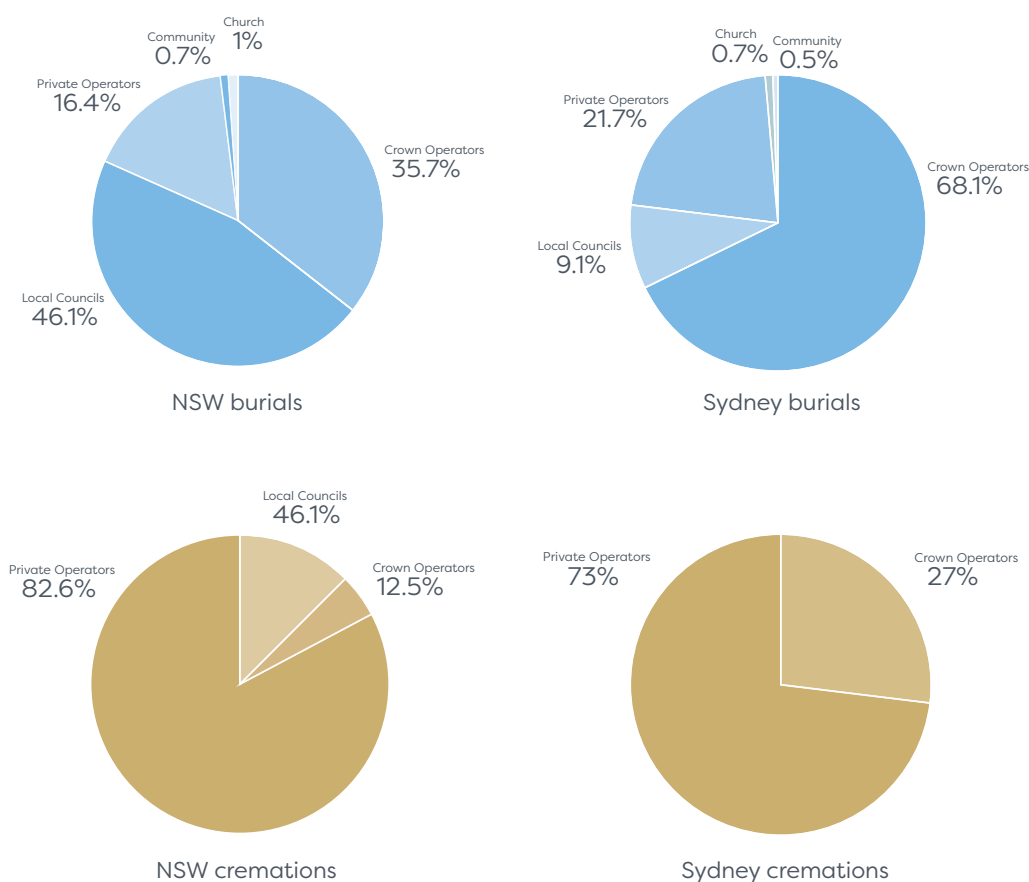
Unlike other states in Australia, cemeteries in NSW are owned and operated by the NSW Government (through Crown cemetery trusts and land managers), local government, the private sector and churches.

This diversity in governance and ownership creates different motivations for the operation of cemeteries. A for profit operator may place a higher priority on the relative cost efficiency of its operation than a for purpose church operator. A church or government owned operator may have a different priority with respect to ensuring the affordability of its services to a broader segment of its community. Some of these organisations are heavily reliant on volunteers who may have limited time and expertise to interpret and understand the Act. These varying motives also impact the extent to which operators may compete with other cemeteries in their region.

As observed in Chapter 4, the relative dominance of different operators across the various interment products offered varies considerably throughout the regions of NSW. In Sydney, Crown operators perform the majority of burial interments, while the private sector performs the majority of cremations. Outside Sydney, local government performs the majority of burial interments with the private sector performing the majority of cremations.

With respect to burial interments, operators and other stakeholders made representations to the Review that competition was limited throughout Sydney, especially within distinct geographical regions within the city. Competition exerted little downward pressure on prices. These stakeholders also conceded other factors played a more significant role in customer decisions than price, such as people wanting cemeteries in close proximity to their home and place of worship and connections with ancestors at the same cemetery.

Graph 9.1: Providers of disposition services



Source: CCNSW, *Activity Report 2018/19*.

The Jewish, Muslim and Orthodox religions said they were essentially ‘price takers’ as a result of their religious requirements for burial interment. With no ability to choose alternative interment options, these groups considered cemeteries as geographical monopolies, especially given the barriers to entry of new cemetery operators in a given locale.

As demonstrated in Chapter 8, competition in the burial market in Sydney is expected to decline considerably once the existing Crown cemeteries are exhausted to new sales of interment rights within the next 4-12 years. At this point, it is estimated the sole Crown operator selling interments, the Catholic Metropolitan Cemetery Trust, will have approximately 100,000 available plots, compared with InvoCare’s 163,000 plots. InvoCare will own the majority of funeral directors in Sydney, have the largest supply of burial land and undertake most of cremations.

Crown operators claimed the requirement to provision for their perpetual maintenance liabilities, when no other cemetery operators were required to do so, placed them at a competitive disadvantage to private operators, the required provisioning of such liabilities has to be reflected in their pricing. Private operators argued they incurred other costs from which the Crown or not-for-profit entities were exempt, such as income tax.

The cremation market in Sydney was considered to be more competitive given the number of private and Crown providers. Crown operators believed they were at a competitive disadvantage to private crematorium operators because they were required to pay a levy to CCNSW for each cremation, while private sector operators were exempt². Crown operators at Rookwood were also required to pay an additional levy to the Rookwood Necropolis Land Manager. Given the relative price sensitivity of the cremation market, the Review believes in the interests of competitive neutrality, the NSW Government should rectify this anomaly as soon as possible.

² *Cemeteries and Crematoria Regulation 2014*, s.4(2) - \$25 per cremation, \$25 for ash interments.

Outside Sydney, the competitive landscape was different again, due to the role of local government in the ownership and operation of cemeteries. Given the discrete location of townships and the relative distance to other cemeteries, competition was limited. This lack of competition does not necessarily impact interment prices, as the governance of local government provides an in-built accountability mechanism making councils answerable to their ratepayers for excessive pricing or poor standards of service and maintenance.

Conversely, the private sector dominates the cremation market outside Sydney, with only a small number of councils operating crematoria.

In other markets, the level of competition has a direct impact on the price of services, product innovation and quality of service. However, in the interment industry, the impact of competition is somewhat muted and factors other than price and service take precedence in customer decisions.

The following factors are key drivers in consumer choice for interment products:

- ◆ Connection to certain cemeteries, places of worship, ancestors and adherence to religious custom and beliefs;
- ◆ Relative awareness of products and services
- ◆ Emotional capacity at the time of purchase; and
- ◆ The role of the funeral director.

Connection to ancestors and religious beliefs

Many individuals' decisions about the mode of disposition (burial or cremation), the choice of cemetery and the level of memorialisation are primarily driven by connection to family, community and religion.

Individuals commonly wish to be interred with other family members and within their local community. In many religions, visiting, tending and grieving at graves is an important component of their beliefs. Accessibility to these graves is a key driver for many individuals when choosing where they wish to be interred. Religious customs can also heavily influence the level of memorialisation. Muslim and Armenian burials, for example require uniform headstones.

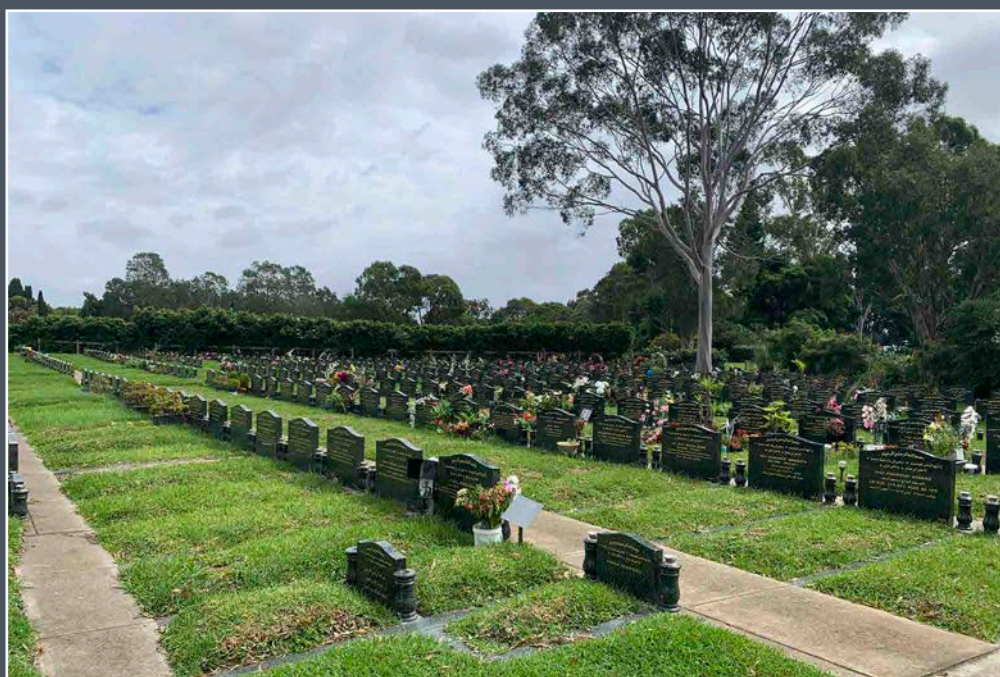


Figure 9.1 – Muslim section at Rookwood General Cemetery highlighting the uniformity of memorialisation.

Awareness of products and services

Many people will only be required to purchase funeral and interment services once or twice in their lifetime.

As a result, individuals have low awareness of the types of services available, their need for those services and the choices available to them. Planning a funeral requires families and individuals to make a series of decisions, in addition to the actual interment process (See Appendix J: The key stages and decisions in the funeral and interment process), including:

- ◆ Choice of funeral director;
- ◆ Preparation and lodgement of legal documents;
- ◆ Transportation and preparation of the body and whether a viewing will be required;
- ◆ Choice of coffin;
- ◆ Mode of disposition (burial or cremation);
- ◆ Location of interment (which cemetery or crematorium);
- ◆ Whether there will be a service and the details of the service (including organisation of a celebrant, minister or priest, provision of hearse, publication of public notices, preparation of order of service, catering, flowers); and
- ◆ The extent and type of memorialisation.

There were consistent representations to the Review about the lack of customer understanding of these services and products. Information provided by funeral directors and some cemetery operators lacked clarity over pricing and relative service quality. It was difficult for customers to understand the process, let alone compare the relative cost and level of service.

Currently, the majority of purchases of interment services and products, including burial, cremation and memorialisation, are conducted through a funeral director, not necessarily the cemetery or crematorium operator.

The terms and conditions provided by operators vary greatly in the level of detail about their products and services. Not all terms and conditions specify whether burial interment rights are perpetual in term, there is no information about the perpetual maintenance of the cemetery and no standards to which the cemetery will be maintained.

In most cases, customers choosing burial interment rights purchase a perpetual interment right, requiring the operator to maintain the cemetery in perpetuity. However, the customer's relationship with the cemetery operator is fleeting at best, in no way reflecting the term of the interment.

RECOMMENDATION 9.1



CCNSW develops a standardised, plain English terms and conditions for interment rights so consumers clearly understand what they are purchasing and the standard of perpetual maintenance provided by the cemetery or crematorium operator.

The emotional capacity of the customer at the time of purchase

The death of a family member or friend creates significant emotional stress for those responsible for fulfilling the wishes of the individual, to the extent they are known, regarding the interment of their remains.

In many instances, people have to make decisions about funeral arrangements and the acquisition of interment services in unfamiliar and time-constrained circumstances. For those of certain religious beliefs, interments need to be conducted as soon as possible after death in accordance with strict doctrines, further limiting the ability to make fully informed comparisons and decisions. This makes the customer potentially vulnerable to exploitation.

Irrespective of whether a death occurs in a hospital, home or care facility, a funeral director must be immediately engaged to collect and store the body in accordance with public health requirements.

The current review of the *NSW Public Health Regulation*³ is considering an extension of the current time limit for storing a body in a hospital mortuary (currently, the Secretary of Health must approve any period longer than five days). Some stakeholders argue this time limit places pressure on family and friends of the deceased to quickly engage a funeral director. Any extension of this time limit, without burdening the resources of the health system, would enable more informed purchases of funeral direction services.

RECOMMENDATION 9.2



The *NSW Public Health Regulation 2012* be amended to extend the period, currently five days, for storing a body in a hospital mortuary without requiring the approval of the Secretary of Health.

In February 2020, NSW Fair Trading amended the *Fair Trading Regulation 2019* to facilitate greater price comparisons of services offered by funeral directors⁴. While the Review believes this is a beneficial amendment, additional information should be made available to assist product pricing comparisons, specifically in relation to interment services offered by cemetery operators. As noted, many cemetery operators use differing terminology to describe the burial interment offerings, complicating the ability to make comparisons.

CCNSW should require all cemetery operators to:

- ◆ Publish a total price for bodily interments; and
- ◆ Itemise each service component – interment right, interment fee and memorialisation – using a prescribed, simple terminology that describes each service component in plain English.

RECOMMENDATION 9.3



CCNSW develops, and publishes on its website, a template itemising prices with consistent terminology to facilitate more informed purchasing decisions and competition.

Operators would be required to publish prices for bodily interment services and itemise each service component using prescribed terminology. Each service component should be described in plain English.

Any additional costs associated with specific religious or cultural requirements must be clearly specified.

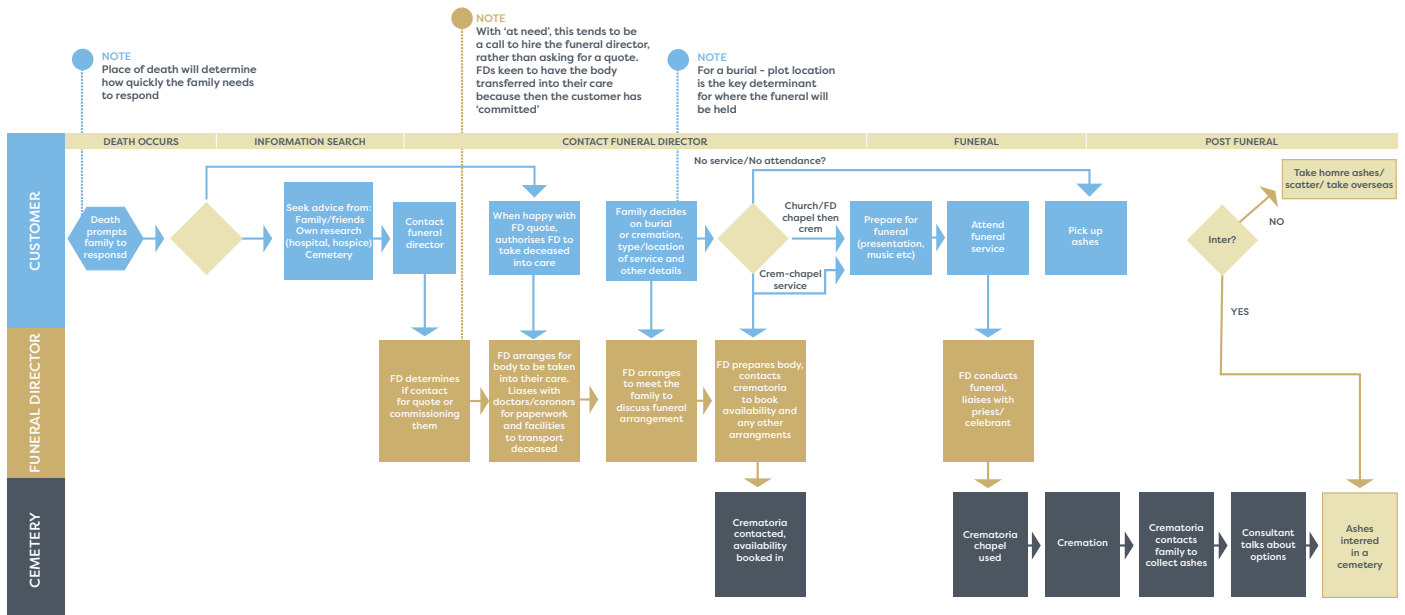
³ *NSW Public Health Regulation 2012* is due to be automatically repealed on 1 September 2020 in accordance with the *Subordinate Legislation Act 1989*. The Ministry of Health's preliminary view is that the 2012 regulation should be remade. It is expected that the Ministry will progress this through 2020.

⁴ NSW Fair Trading website, https://www.fairtrading.nsw.gov.au/__data/assets/pdf_file/0010/594793/Model-template_Funeral-prices.pdf

The role of the funeral director

The funeral director has an influential role, both as a service provider and often as a trusted adviser aiding customers through an unfamiliar and stressful process.

Figure 9.2: The key stages and decisions in the funeral and interment process



Stakeholders repeatedly commented on the inextricable relationship between funeral directors and cemeteries and crematoria. For many customers, their primary interface is with the funeral director, who essentially acts as an agent in acquiring cemetery and crematorium interment services.

This intermediated relationship between the customer and the cemetery operator has significant consequences for competition and pricing transparency. The relationship between the cemetery operator and funeral director is delicately balanced, with the funeral director able to influence key decisions about the mode of disposition and the choice of cemetery used for interment.

Furthermore, funeral directors can also be competitors to cemetery and crematorium operators, and in some cases operate crematoria themselves.

The ability to offer a fully integrated suite of services from funeral direction through to memorialisation has significant implications for a viable and sustainable funeral and interment business model. This is highlighted by the proliferation of vertically integrated service providers in the NSW market, both in Sydney and regional areas.

Under s.145 of the Act, IPART will conduct a further review of the NSW funeral sector⁵. Notwithstanding this proposed review, concerns were expressed about the perceived level of ownership concentration and the overall competition in the funeral direction market. Stakeholder said this lack of competition had resulted in a limited range of affordable interment options to the public.

Recent research found the average funeral in Sydney costs \$8,357, the most expensive in Australia⁶ and is consistent with anecdotal evidence of declining affordability.

Stakeholders want the NSW Government to encourage Crown operators to provide an integrated funeral and interment offering, specifically for the affordable funeral segment of the market.

⁵ IPART is also required to investigate competition, cost and pricing factors in the funeral industry as part of this review. IPART had planned to commence the funeral component of the review by publishing an issues paper in March 2020. However, owing to the COVID-19 pandemic and social distancing requirements on funerals, funeral stakeholders and the funeral industry, this has been delayed.

⁶ PRWire, InvoCare and Propel Funeral Partners face a painful death, <https://bit.ly/30acEmB>

One stakeholder argued all destitute funerals and interments should be undertaken by Crown operators in Sydney.

The Review believes there is potentially a dual benefit from this proposition, increasing competition in the affordable funeral market and enabling a new revenue stream for Crown operators.

RECOMMENDATION 9.4



Crown operators develop an affordable, fully integrated funeral and interment offering.

9.3 FINANCIAL SUSTAINABILITY OF OPERATORS AND COST REFLECTIVE PRICING

To be financially sustainable cemetery operators must ensure all costs associated with operating and maintaining a cemetery (in perpetuity) are reflected in the prices charged for interment services.

A key objective of the 2012 reforms was to ensure the financial sustainability of Crown operators. Before 2012, denominational trusts reaching land exhaustion had insufficient capital to acquire new land and meet their perpetual maintenance obligations. This prompted the current IPART review of interment costs and pricing, as stipulated by s.145 of the Act.

There are three key costs associated with cemetery operation that need to be reflected in the pricing of interment services:

- ◆ Interment costs;
- ◆ Land costs; and
- ◆ Maintenance costs.

9.3.1 INTERMENT COSTS

Interment costs cover the operational aspects of the interment process including burial in the ground or placement of remains in a structure (vault, niche wall, mausoleum). These costs represent the labour required to perform these tasks and the machinery utilised (excavators).



The tasks performed in the interment process include⁷ :

Administrative and planning

- ◆ Verification of ownership of interment right;
- ◆ Identification of grave site;
- ◆ Planning of the required labour and machinery to undertake the task;
- ◆ Updating of register;
- ◆ Assessment of occupational work health and safety risks; and
- ◆ Liaison with funeral director and family.

Operational

- ◆ Preparation of machinery;
- ◆ Digging of the grave;
- ◆ Temporary relocation of monuments or slabs in the case of 2nd or 3rd interment, if required;
- ◆ Shoring and covering of the grave awaiting burial;
- ◆ Ensuring accessibility to grave site, provision of chairs or shelter for mourners;
- ◆ Liaison with funeral director;
- ◆ Lowering of coffin into the grave;
- ◆ Back filling of the grave; and
- ◆ Settling of the grave, additional topsoil or turf, if required.

Overheads

- ◆ Corporate costs (marketing, human resources, accounting, IT etc).



THE REVIEW OBSERVED SIGNIFICANT VARIATIONS IN THE COSTS FOR THESE ACTIVITIES, REFLECTING:

- ◆ Topography of the cemetery – imposes differing requirements on the use of machinery;
- ◆ Geology – presence of bedrock and differing soil types impose different requirements on the use of machinery and shoring of graves;
- ◆ Age of cemetery – the design of newer cemeteries incorporates elements to facilitate more efficient operation and maintenance
- ◆ Age and location of the grave – the costs associated with 2nd and 3rd interments can vary due to the original design and location of the grave within the cemetery (impacting the challenges associated with reopening the grave and overall accessibility and utilisation of machinery)⁸.

⁷ Cemetery operators, CCA NSW submission to IPART Issues Paper, June 2019.

⁸ Operators reported that in some cemeteries, due to their age, some graves needed to be reopened or dug manually as they were inaccessible for machinery.



Data provided to the Review by Crown operators showed a large variance in the average interment costs for a lawn grave, ranging from just over \$1,000 to almost \$2,000 per interment among the four operators in Sydney⁹.

Religious and cultural burial customs are likely to impose additional interment costs on the cemetery operator, including:

- ◆ The use of specific materials in the shoring of graves;
- ◆ Occupational health risks associated with entering the grave and positioning bodies;
- ◆ Backfilling of graves by hand; and
- ◆ Labour agreements with respect to penalty rates and overtime associated with after-hours or weekend burials to meet interments within certain timeframes.

In the interests of pricing transparency, the Review believes it is essential for cemetery operators to clearly identify and disclose the additional costs incurred as a result of fulfilling religious and cultural interments.

CCNSW interment service levy

In the 2012 reforms, it was proposed that the regulator, CCNSW, would be funded by an interment service levy, applying to all Crown and private sector operators. In 2014, the *Cemeteries and Crematoria Regulation 2014* restricted the application of the levy to the four Sydney Crown operators.

As a consequence, these operators currently pay:

- ◆ \$83 for the first coffin interment;
- ◆ \$60.20 for any additional interment;
- ◆ \$25 for cremation; and
- ◆ \$25 for an ash interment¹⁰.

Annually, the interment service levy generates \$644,000 of CCNSW's total revenue of \$1.63m¹¹.

Representations were made to the Review that the application of these levies exclusively to Crown operators created a market distortion. It was expressed that, as CCNSW is intended to be an industry regulator, these costs should be borne uniformly by the entire sector. The Review makes specific recommendations in relation to the interment service levy in Chapter 10.

In addition to the CCNSW interment service levy, the operators at Rookwood (Catholic Metropolitan Cemetery Trust, Rookwood General Cemetery and InvoCare) pay an additional levy for any burial or cremation. The CMCT pays an additional levy on each cremation performed at its Rookwood crematorium. This dates back to the approval of the Catholic crematorium, when concerns were expressed about its impact on the volumes of cremations undertaken by the leased Rookwood Crematorium and, ultimately, a reduction in the total revenue received by the Rookwood Necropolis Land Manager (RNLM).

The RNLM levies are adjusted annually. The 2020 the levies were¹²:

- ◆ \$244 per burial or cremation undertaken; and
- ◆ CMCT pays an additional \$100 per cremation.

The Review agrees with representations made by the CMCT that the imposition of government levies, totalling \$369 per cremation at its Rookwood crematorium, places it at a competitive disadvantage. The average cost of a cremation in Sydney, with no service or memorialisation, is approximately \$800-900.

⁹ Crown cemetery operators, average interment costs for a lawn grave, April 2020.

¹⁰ *Cemeteries and Crematoria Regulation 2014*, s.4(2).

¹¹ Cemeteries and Crematoria NSW, Financial Statements June 2019.

¹² Rookwood Necropolis Land Manager, April 2020.

9.3.2 LAND COSTS

The identification of suitable land and the construction of new cemeteries represent one of the most significant costs for cemetery operators, especially in Sydney. The amount of capital required and the expected return on investment is a significant barrier for prospective market entrants. The costs associated with the development of new cemeteries include:

- ◆ The acquisition cost;
- ◆ The development and construction; and
- ◆ Potential holding costs while land is prepared for development.

The findings of the Review in terms of projected land requirements and the associated challenges in Sydney were outlined in Chapter 7. Recent land acquisitions by Crown cemetery operators indicate the acquisition and construction costs associated with cemetery development in Sydney as shown in Figure 9.3.

Table 9.1: Sydney cemetery proposal costs

CEMETERY PROPOSAL	MACARTHUR MEMORIAL PARK	FERNHILL	NEPEAN GARDENS
PROPONENT	CMCT	RGCLM	CMCT
BURIAL PLOTS	136,000	45,000	60,000*
LOCATION	Varroville	Mulgoa	Wallacia
AQUISITION DATE	2014	2017	2018
AQUISITION COST	\$15.1m	\$27m	\$13.4m
DEVELOPMENT & CONSTRUCTION COST	Approx \$60m ¹³	\$79m ¹⁴	Approx \$25m

* Initial DA was for 27,000 burial plots

The costs associated with development and construction include:

- ◆ Design of the cemetery;
- ◆ Community consultation and planning consents;
- ◆ Civil works (including earth moving, drainage and connection to utilities – water, electricity and telecommunications);
- ◆ Landscaping and vegetation management (gardens, replacing of trees);
- ◆ Construction of roads, fences, pathways, parking, access points, security, amenities blocks, chapels, reception centres, crematorium and offices; and
- ◆ Installation of public art (sculptures) and places of reflection (lakes, canals and water features).

A significant cost not reflected in Figure 9.3 is the holding cost incurred between the capital investment and the realisation of revenue from the sale of interment rights. The key determinant of this cost is the Weighted Average Cost of Capital (WACC) and the duration of the holding period.

In Sydney, there can be a considerable period of time between land acquisition and the first interment. Macarthur Memorial Park was acquired in 2014 and did not receive development consents until 2019. Representations to the Review indicated the return on invested capital was insufficient to support any material private sector investment in new cemeteries in Sydney.

¹³ CMCT, Macarthur Memorial Park, Funding Approval Process, November 2019.

¹⁴ Rookwood General Cemetery, Substantiative Business Case: Fernhill Estate, page 8.

9.3.3 PERPETUAL MAINTENANCE COSTS AND RECOGNITION OF LIABILITIES

Currently, perpetual maintenance is unregulated in NSW, posing a significant financial risk to the NSW Government and customers.

A cemetery that sells perpetual interment rights creates an obligation to maintain that cemetery in perpetuity. The challenge for the cemetery operator is that they receive upfront revenue from the sale of the interment right, while taking on a liability for the perpetual maintenance costs.

The key costs associated with perpetual maintenance obligations include:

- ◆ Maintaining the grounds and gardens, rubbish removal;
- ◆ Maintaining roads, pathways, walls, fences, buildings;
- ◆ Drainage, electricity, sewerage and telecommunications; and
- ◆ Insurance and security costs.

It is important to note that headstones and monuments are the responsibility of the interment right holder, not the cemetery operator. However, it is common that after a number of generations, the interment right holder may become unknown to the cemetery operator and the monument falls into disrepair.



Monument safety and the associated liabilities are a significant concern for cemetery operators and the public alike, with recent incidents resulting in death and consequential litigation against the land managers¹⁵. A number of operators stated they were reviewing their public liability insurance to ensure adequate cover in the event of monuments collapsing and causing a public health risk. Furthermore, some monuments with heritage significance, where the interment right holder is no longer known, become the responsibility of the cemetery operator to maintain to meet heritage requirements.

Once the cemetery reaches capacity and has no further ability to sell burial interment rights, it needs to have accrued and invested sufficient capital to cover its annual maintenance obligations. The management of perpetual maintenance liabilities requires the cemetery operator to be vigilant with its pricing of interment rights, annual maintenance costs and the prudent investment of its accrued capital.

The current provisioning for perpetual maintenance obligations by operators is piecemeal. The four Crown operators all maintain perpetual maintenance funds, while provisioning by the private sector and church operators is unclear. A small number of local government operators set aside funds for their perpetual maintenance.

¹⁵ *Glasgow Evening Times*, Family of boy, 8 killed in Glasgow graveyard to pursue damages against Council, 26 January 2018 and *Sydney Morning Herald*, 'I didn't think it looked safe': Inquest told 425kg monument fell on girl, 15 October 2018.

There is currently no legal requirement for any cemetery operator in NSW to account for their perpetual maintenance liabilities, provision for this liability, or prescribe how these funds should be invested and utilised.

In other jurisdictions in Australia and overseas, perpetual maintenance liabilities are regulated by governments.

- ◆ Victoria (Australia) – the Act Administrator, who approves fees and charges, requires the cemetery trust to estimate the proportion of their total costs to be attributed to perpetual maintenance obligations. Currently, 15-20% of total costs associated with the interment right are ascribed to perpetual maintenance. It is important to note that all cemeteries and crematoria are owned by the Victorian government.
- ◆ Australian Capital Territory – the Minister determines the percentage of revenue to be placed in a perpetual maintenance trust fund. All three cemeteries in the ACT are owned by the ACT Government¹⁶.
- ◆ Ontario (Canada) – under the *Funeral, Burial and Cremation Services Act 2002*, the regulator prescribes a percentage of the retail price for each type of interment (burial and cremation). These contributions are made to a Care and Maintenance Fund. Prior to the establishment of a cemetery, an operator is required to establish this fund with a CAD\$100,000 deposit¹⁷.
- ◆ United States of America – many states have enacted laws requiring cemetery operators to set aside funding on a per unit basis in the event the cemetery becomes insolvent and unable to maintain the grounds¹⁸. Illinois cemetery operators are required to be licensed and private operators have to post a bond to ensure the adequate provision of perpetual care funds. Before accepting funds for the sale of a burial space, a private operator must specify in writing the nature and extent of the care and require a deposit based on the sale price or the size of the burial space¹⁹.

CCNSW has developed a voluntary code, *Cemetery and crematorium operator code of practice for interment rights and general services*, which provides high-level guidance for perpetual maintenance funding by operators²⁰.

For Government, this lack of regulation creates risks in the event the cemetery reaches closure with insufficient funds to maintain it to an acceptable standard. In NSW, the risk of non-government operators commercially failing poses a ‘provider of last resort’ risk to the government, where it would be required by the public to step in and maintain these cemeteries. Currently, in the absence of any regulatory oversight of perpetual maintenance obligations, the quantum of this risk is unknown to the NSW Government.

The NSW Government in 2012 was aware of the risks posed by perpetual maintenance liabilities, especially given the maturity of the assets. Crown operators were encouraged to undertake periodic independent actuarial assessments of their respective perpetual maintenance liabilities. In addition, s.31(2)(b) and s.107(3)(d) of the Act provided for the development of an industry interment scheme requiring operators to provision for perpetual maintenance, and pricing which had regard to future maintenance of cemeteries.

The Review requested the most current assessments of the operators’ perpetual care liabilities. At a consolidated level, there is a net deficit of \$244.6 million, with just 67% of targeted perpetual care liabilities currently funded. As discussed in Chapter 8, two Crown operators are unlikely to be in a fully funded position by the time they have exhausted their current available interment rights.

¹⁶ *Cemeteries and Crematoria Act 2003 (ACT)*, s.9.

¹⁷ Bereavement Authority of Ontario, <https://thebao.ca/for-professionals/cemeteries-crematoriums/calculator/>

¹⁸ Grant Thornton; *Managing Cemetery Perpetual Care Obligations within your Diocese*, September 2013, page 2.

¹⁹ IPART, *Review of Interment costs and pricing*, page 49.

²⁰ Cemeteries & Crematorium NSW, *Cemeteries and crematorium operator code of practice 2018 – Interment rights and general services*, November 2018, https://www.industry.nsw.gov.au/___data/assets/pdf_file/0020/204095/CCNSW-Cemetery-and-crematoria-operator-code-of-practice-2018.pdf

Table 9.2: Crown Operator assets and PMTL liabilities

		CMCT ¹	RGCRM	SMCLM	NMCLM	RNLM ⁵	COMBINED PRO FORMA
Latest accounts	Date of financial statements	30 June 2019	30 June 2019	30 June 2019	30 June 2019	30 June 2019	30 June 2019
	Perpetual Care Target Liability (PCTL)	\$140.6m	\$191.3m	\$193.86m	\$209.3m ²	\$65.9m	\$800.9m
	Assets (for funding) per latest accounts ³	\$143.1m	\$152.9m	\$95.4m	\$99.0m ⁴	\$0m	\$490.4m
	Surplus/(deficit) as of 30 June 2019	\$2.5m	(\$38.4m)	(\$98.4m)	(\$110.3m)	(\$65.9m)	(\$310.5m)
	Proportion of PCTL funded	102%	80%	49%	47%		61%

¹ Excludes Macarthur Memorial Park (MMP).

² NMCLM calculates its PMTL under a range of real discount rates; the table shows it on a 2.0% real discount rate assumption to be consistent with the discount rate used by the other operators.

³ Assets are taken as investment assets on the balance sheet. Other net assets are treated as working capital and released over time in our forecast of surplus.

⁴ NMCLM assets include investments held from pre-paid services (deferred revenue), consistent with future expenses by which the PMTL is determined.

⁵ The PMTL for RNLM is a high-level estimate based on a range of assumptions in the model that are not inconsistent with those used for other operators. However, as it has not been actuarially assessed, no reliability can be placed on it and it is included in the table above for illustrative purposes only.

In the status quo plus addition of new cemeteries scenario, it has been assumed that the operations of RNLM are merged in CMCT and RGCRM, on a 1/3: 2/3 basis, respectively. In this scenario, it is also assumed that CMCT and RGCRM achieve operational cost savings on merger with RNLM which reduces their total PMTL liability to \$55.3 million. Accordingly, post inclusion of RNLM, CMCT's PMTL increases by \$18.4 million to \$159 million and RGCRM's PMTL increases by \$36.9 million to \$228.2 million.

There is no existing prudential or regulatory framework in NSW for determining perpetual maintenance, assessing the standard of maintenance costs or managing investment assets. While each operator has at various times received external actuarial advice on these aspects of their perpetual maintenance and funding position, there is no uniformity of approach.

The NSW Auditor-General's 2019 report to Parliament stated:

The State has numerous contingent liabilities. Some are quantifiable while others are not. As contingent liabilities are potentially material future liabilities of the State, every effort should be made to quantify these as accurately as possible. They also need to be monitored closely to ensure that they are recognised and brought on balance sheet as they crystallise²¹.

Only one Crown operator reported their perpetual maintenance liability as part of their annual reporting (it was not recognised as a liability within their accounts). Operators were accessing funds for a range of operational matters, including the purchase of new land for cemeteries.

IPART's Interim Report into the Review of Interment Costs and Pricing recommended cemetery operators conducting more than 50 bodily interments in new perpetual interment sites annually must contribute to an independently managed perpetual maintenance reserve fund²².

The Review broadly agrees with this recommendation, except for the need for an independently managed fund.

Representations from many cemetery operators and stakeholder groups expressed support for greater regulation of perpetual maintenance funding. Smaller operators representing church organisations and local government had concerns with increased regulatory requirements.

²¹ NSW Auditor-General Report – Report on State Finances 2019, page 6.

²² IPART, Interim Report, Review of Interment Costs and Pricing, December 2019, page 52.23



The Victorian Government has a graduated regulatory approach, with differing levels of regulation imposed on Class A and Class B operators, reflecting the level of risk generated and the operator's overall capacity to comply with the regulations.

The Review believes the approach proposed by IPART, applying regulation to operators conducting more than 50 interments annually, effectively balances regulatory imposts and overall risks. The 2017/18 CCNSW activity reports indicate 47 cemeteries and 35 cemetery operators fall within this classification.²³

The Review believes it is preferable for the Act to be amended, per the ACT legislation, to make specific reference to the provisioning of perpetual maintenance. This should be done urgently and can be enacted by developing a mandatory code and industry interment scheme under the existing legislation and regulatory framework, rather than drafting an amending Bill.

The Review believes the IPART recommendation could be improved further by taking into consideration the number of bodily interments that have occurred in the cemetery. It is possible for older cemeteries with a significant number of existing interments to fall below 50 interments annually and therefore be exempt from provisioning for perpetual maintenance. The Review has amended the IPART recommendation to include a number of existing interments, as a proxy for the size and significance of the cemetery.

RECOMMENDATION 9.5



Cemetery operators conducting more than 50 bodily interments in new perpetual interment sites per year, or managing a cemetery with more than 40,000 bodily interment sites, maintain and contribute to a reserve fund to provide for the perpetual maintenance of each of their cemeteries.

Given the significance of perpetual maintenance, the Review will discuss a proposed governance framework in further detail in Chapter 10.

9.4 PRICING OF INTERMENT RIGHTS

The Review found significant variation in prices for burial interments across the sector, while available public information makes it difficult for consumers to make comparisons.

In comparison, the cremation market is highly competitive and less complicated for consumers.

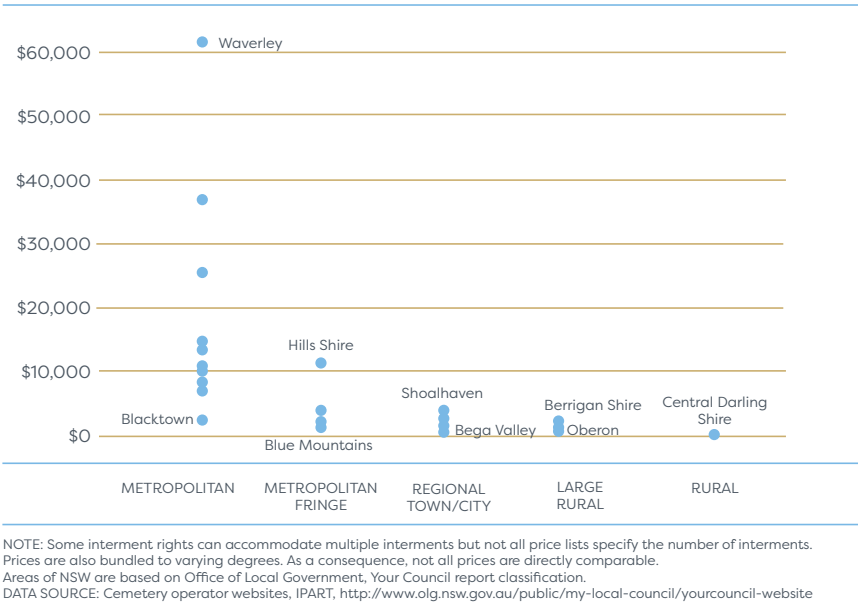


²³ Ibid, page 51.

9.4.1 PRICING VARIABILITY

IPART’s Interim Report found there was significant variation in interment right pricing by area across NSW .

Graph 9.2: Price variation for the interment rights by area of NSW



While land values are a significant factor in interment costs, explaining some of the variations between regions across the state, there was still substantial variations within regions of Sydney.

Within Sydney, pricing discrepancies were most apparent at Rookwood where two Crown land managers operate. Stakeholders made representations that some religions buried in Rookwood General Cemetery faced differences in interment prices where there were no cultural or religious interment needs impacting costs. On investigation, some of these differences are due to pricing legacies dating back to the pre-2014 amalgamation of trusts. However, from a consumer perspective, there was little or no basis for such variances.

Per recommendation 9.3, the Review believes increased pricing transparency, in a simple format prescribed by CCNSW, will enable consumers to make meaningful comparisons and could be the greatest contributor to pricing affordability.

As part of its Interim Report, IPART provided a useful demonstration of how at need and pre-need prices should be displayed for consumers. The Review believes this provides an excellent base for the regulator to devise a template, per Recommendation 9.3.

9.4.2 RENEWABLE TENURE VERSUS PERPETUAL INTERMENTS

The significant costs associated with new cemetery developments and perpetual maintenance obligations focus attention on the greater utilisation of existing cemeteries.

Theoretically, renewable tenure provides a cost benefit over perpetual interment as the costs associated with the land and maintenance are only incurred for the duration of the renewable right (25-99 years). Renewable tenure can enable a greater number of interments on a fixed amount of land than a cemetery exclusively offering perpetual interments. Conceptually, renewable tenure should reduce the costs of interment for the operator and provide a more affordable interment offering to the public.

However, these cost savings, relative to perpetual interment, are countered by additional costs including:

- ◆ Increased administrative costs associated with maintaining contact with the interment right holder over the duration of the interment;
- ◆ Preparation of the grave at the conclusion of the interment. This involves opening the grave, recovering any human remains and placing them in an ossuary box, deepening the grave and reintering the ossuary box at a greater depth; and
- ◆ Removing, storing and disposing of previous memorialisation (headstones).

As part of its Interim Report, IPART developed a pricing tool enabling the respective costs of perpetual and renewable tenure interment to be factored. When all factors are compared, renewable tenure delivered lower prices than perpetual interment ²⁴.

9.4.3 AFFORDABILITY

Supporting the financial sustainability of cemetery operators, by ensuring all interment costs are reflected in their pricing, poses significant risks for the affordability of interments. This is compounded further by the Review's observations that competition in the sector is muted and some groups are 'price-takers' given their religious and cultural circumstances and the emotive time of the purchase decision.

The Review has considered price setting for certain groups requiring burial in perpetuity to ensure affordability, versus targeted assistance for those experiencing financial difficulty. It is important to note that there is a range of financial assistance available for funeral and interment services:

- ◆ Many religious and cultural groups provide financial assistance to members of their communities towards funeral costs;
- ◆ The Department of Veteran Affairs offers payments to veterans and their partners;
- ◆ Aboriginal Land Councils offer grant payments to Aboriginal and Torres Strait Islanders;
- ◆ NSW Health manages the funerals of destitute people who die in the community and hospitals and have no financial means; and
- ◆ Centrelink offers bereavement payments to the spouse or carer of an individual.

A significant challenge with price setting for an affordable interment is the administration and assessment of eligibility.

On balance, the Review believes the current measures for targeted assistance are sufficient. However, the NSW Government and specifically CCNSW need to more closely monitor the affordability of funerals and interment services to ensure these measures remain appropriate



²⁴ IPART, Interim Report, *Review of interment costs and pricing*, page 76



CHAPTER TEN

CEMETERIES AND CREMATORIA ACT 2013

STATUTORY REVIEW

REGULATION OF THE INTERMENT INDUSTRY

Fundamentally, the culture of an industry can be shaped by regulatory action --- and inaction.

...regulated entities are not clients and regulators do not provide services. The client of the regulator is the government, and through it all citizens; regulated entities are not clients and should not be treated as such¹.

The Hon. Kenneth Hayne AC QC

10.1 OVERVIEW

Prior to the commencement of the *Cemeteries and Crematoria Act 2013*, there was no dedicated legislation and regulation for the NSW cemeteries and crematoria sector.

This Review, as specified by s.144 of the Act, is appropriate given the assent of the Act in 2014; the creation of the regulator, CCNSW, in the same year; and the assent of Part 4 – Cemetery Right and Cemetery Renewal in 2018. Sufficient time has elapsed since the commencement of the new regulatory regime to assess its overall effectiveness.

This Chapter seeks to provide an assessment of the appropriateness and effectiveness of the existing regulatory framework pertaining to the cemeteries and crematoria sector.

Specifically, the Review analysed:

- ◆ **Current regulatory objectives – reference to cemeteries and crematoria regulation in the context of the NSW Government’s regulatory objectives as outlined in a series of guidelines and policies;**
- ◆ **Cemeteries and crematoria regulatory framework – appropriateness of the Objects, regulatory functions, scope of regulation, regulatory powers and obligations of the regulator; and**
- ◆ **Cemeteries and crematoria regulatory oversight and performance – reviewing the overall positioning of the regulator in terms of its utilisation of the regulatory provisions provided to it and areas for further development.**

In summary, the Review found the existing cemeteries and crematoria regulatory framework was robust and consistent with the NSW Government’s approach to regulation, in that it focused on identifying and mitigating emerging risks. The Objects of the Act were deemed to be appropriate to a broad range of stakeholders and the provisions contained within the Act were satisfactory in order to appropriately regulate the sector.

However, the Review found the implementation of the functions and powers contained within the Act had not been fully utilised by the regulator. Since its inception, CCNSW’s regulatory attitude has not evolved beyond a reactive posture focused on the administration of the Act and the provision of advice and guidance to operators. The core regulatory functions relating to the development of mandatory codes, licensing, compliance monitoring and enforcement have not been undertaken.

As such, the emergence of key risks to the Government and the sector have not been identified and managed accordingly. As discussed in Chapter 8, significant unfunded perpetual maintenance liabilities have been amassed by Crown operators to levels which impact the financial sustainability of these operators and compromise their ability to meet their legal requirements under the Act.

¹ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (2019).

Prior to the investigations undertaken by the Review, the magnitude of these liabilities was unknown to the regulator and the central agencies of the NSW Government.

Similarly, while CCNSW has highlighted the impending shortage of burial land in its 2017 cemetery capacity report, the Review has found the exhaustion of burial interment rights is likely to occur significantly earlier than originally estimated. As highlighted in Chapter 7, all existing Crown cemeteries will be unable to sell new interment rights within the next 12 years.

10.2 CURRENT REGULATORY OBJECTIVES OF THE NSW GOVERNMENT

The NSW Government provides clear expectations and guidance to its regulatory authorities through a number of guidelines and policies.

The Review analysed the following guidelines to assess the appropriateness and consistency of the cemeteries and crematoria regulatory framework:

- ◆ NSW Department of Finances, Services and Innovation, Quality Regulatory Services Initiative, 2016;
- ◆ NSW Department of Industry; *How the Department of Industry delivers quality regulation*, 2017;
- ◆ NSW Treasury; *NSW Government Guide to Better Regulation*, January 2019; and
- ◆ Independent Pricing and Regulatory Tribunal (IPART); *A best practice approach to designing and reviewing licensing schemes*, 2014.

In addition to the NSW Government guidelines, the Review analysed policies and guidelines from other jurisdictions, including the work undertaken by the Productivity Commission in its *Regulator Audit Framework*, 2014.

These guidelines and policies consistently upheld the central tenet of applying outcomes focused and risk-based regulation².

*Regulators protect the community by reducing and removing harms and mitigating the risk of harms occurring. An outcomes and risk-based approach to regulation is minimising regulatory costs and maximising outcomes for government, business and the community.*³

A summary of the key policies and guidelines for regulators and their appropriateness for the cemeteries and crematoria sector are outlined on the following page.



² NSW Department of Industry, *How the Department of Industry delivery quality regulation*, page 2. NSW Treasury, *NSW Government Guide to Better Regulation*, page 16.

³ NSW Department of Finances, Services and Innovation, *Quality Regulatory Services Initiative*, <https://www.finance.nsw.gov.au/better-regulation/quality-regulatory-services-initiative>

10.2.1 THE QUALITY REGULATORY SERVICES (QRS) INITIATIVE

In 2016, the NSW Government adopted the Quality Regulatory Services (QRS) initiative requiring its 37 regulatory agencies to implement an outcomes focused and risk-based approach to regulation.

The Guidance for Regulators assists regulators to reduce the regulatory burden on compliant businesses and individuals, while achieving the most efficient use of limited resources.

In 2016, the NSW Department of Industry, of which CCNSW is part, incorporated the QRS initiative into its agency level policy document *How the Department of Industry delivers quality regulation*.

Under this policy, each regulator within the cluster was to implement a seven-step process to achieve an outcomes-focused and risk-based approach to regulation. These steps include:

1. Define the regulator's core purpose;
2. Classify regulated entities and activities into segments, according to risk;
3. Define and document intended regulatory outcomes;
4. Define and document operational plans to achieve those outcomes;
5. Carry out regulatory operations - implement the operational plans;
6. Establish measures and report on achievement of outcomes; and
7. Carry out a strategic risk review and review of the outcomes, achievements and measures.

In addition to this, CCNSW, as a statutory government regulator with compliance and enforcement responsibilities, should have utilised the nine elements of the QRS framework:

1. Defining regulatory outcomes;
2. Identifying risks;
3. Assessing risks;
4. Linking your work to outcomes;
5. Identifying measures;
6. Allocating resources;
7. Allocating the enforcement response;
8. Monitoring, reporting and continual improvement; and
9. Implementing benefits and enablers.

The QRS also provides a diagnostic tool that enables regulators to assess their current approach against the framework and identify areas on which to focus to fully implement the required approach.

The Review was informed CCNSW was aware of the QRS initiative but had only a cursory knowledge of what it entailed. CCNSW had not undertaken the self-assessment provided by the diagnostic tool or implemented the nine elements into its business plans and processes. In 2019, CCNSW undertook a workshop with the NSW Department of Fair Trading in which a self-assessment tool determined the organisation was still developing its regulatory profile and was 'not mature'⁴ in terms of its evolution as a regulator.

⁴ Email correspondence dated 28 May 2020 between the Department of Planning, Industry and Environment (Cemeteries Review) and Acting Chief Executive Officer of CCNSW.

10.2.2 NSW GUIDE TO BETTER REGULATION 2019

In 2019, NSW Treasury updated the earlier *Guide to Better Regulation* (2016) which had been prepared by the Department of Finance, Services and Innovation. Both Guides enunciate seven Better Regulation Principles to assist agencies when designing and developing regulation ⁵.

THE BETTER REGULATION PRINCIPLES

PRINCIPLE 1

The need for government action should be established. Government action should only occur where it is in the public interest, that is, where the benefits outweigh the costs.

PRINCIPLE 2

The objective of government action should be clear.

PRINCIPLE 3

The impact of government action should be properly understood, by considering the costs and benefits (using all available data) of a range of options, including non-regulatory options.

PRINCIPLE 4

Government action should be effective and proportional.

PRINCIPLE 5

Consultation with business, and the community, should inform regulatory development.

PRINCIPLE 6

The simplification, repeal, reform, modernisation or consolidation of existing regulation should be considered.

PRINCIPLE 7

Regulation should be periodically reviewed, and if necessary reformed, to ensure its continued efficiency and effectiveness.

This Guide is of particular importance to CCNSW and the sector more broadly, as CCNSW develops codes of practice and the interment industry scheme prescribed in Part 3 of the Act.



⁵ NSW Treasury; *NSW Government Guide to Better Regulation*, January 2019 - <https://www.treasury.nsw.gov.au/sites/default/files/2019-01/TPP19-01%20-%20Guide%20to%20Better%20Regulation.pdf>

10.2.3 IPART – A BEST PRACTICE APPROACH TO DESIGNING AND REVIEWING LICENSING SCHEMES (2014)

In 2014, IPART developed a conceptual framework to assess the effectiveness of existing and proposed licensing schemes.

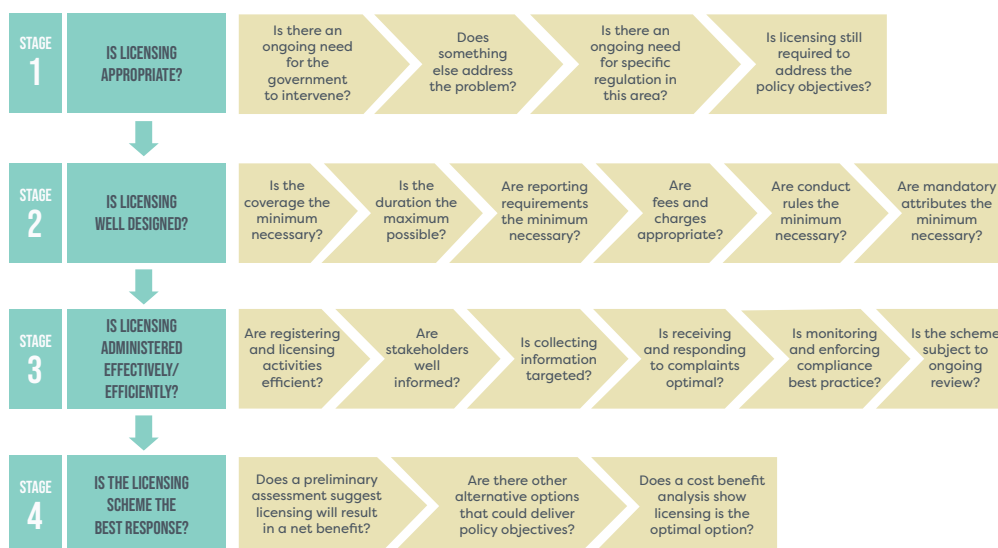
The framework is designed to determine whether licensing is:

- ◆ A reasonable option;
- ◆ Appropriately designed;
- ◆ Administered effectively and efficiently; and
- ◆ Ultimately the best regulatory response.

Under s.31(2)(c) of the Act regarding interment industry schemes, any activity, person, business, premises, vehicle or equipment involved in the provision of interment services may be licensed ⁶.

The IPART framework can be used to determine whether an area not currently licensed may be suitable for licensing, using a four-stage process outlined below.

Figure 10.1: Licensing framework structure – for existing and proposed licences ⁷



This suite of policies is unambiguous about the NSW Government’s expectations of its regulators. Individually and collectively, they provide clear guidance that:

- ◆ Good regulation is characterised by principles that seek to minimise regulatory costs to industry, but are also outcomes-focused and risk-based;
- ◆ Regulators need to clearly define and prioritise their resources on the delivery of regulatory outcomes; and
- ◆ These outcomes need to be focused on protecting the community by identifying and mitigating harmful risks as early as possible.



⁶ *Cemeteries and Crematoria Act 2013*, S.31(2)(c) – Interment Industry Schemes, page 15.

⁷ IPART; *A best practice approach to designing and reviewing licensing schemes*, 2014, page 3.

10.2.4 COMMONWEALTH REGULATORY GUIDELINES

In addition to the guidelines provided by the NSW Government, the Review analysed recent studies by the Commonwealth Government in terms of best practice regulatory frameworks.

In particular, the Review examined the work undertaken by the Productivity Commission in 2014, titled *Regulator Audit Framework*. This document set out a framework to evaluate the performance of government regulators with regard to their administrative efficiency and their effectiveness in achieving the objectives of the regulation.

The Audit Framework provided principles for good regulatory practice across the four primary activities of regulators, namely:

1. Providing advice and guidance;
2. Conducting licensing and approvals processes;
3. Carrying out monitoring and compliance activities; and
4. Undertaking enforcement actions for non-compliance⁸.

The Review believes these areas of primary regulatory interaction provide a good basis to review the appropriateness of the legislative and regulatory provisions, but also for regulators to segment their activities, resourcing requirements and performance evaluation.

PROVIDING ADVICE AND GUIDANCE

The communication of expectations by the regulator of the compliance it expects of the industry. This can include instruction via guidelines and templates of how an operator can meet the requirements of the Act.

CODES, LICENSING AND APPROVALS

The development of codes of practice, industry schemes and licensing arrangements that are then approved by the regulator.

MONITORING AND COMPLIANCE

The monitoring of compliance of the operator(s) against the codes, schemes and licences imposed by the regulator. This requires the use of powers to collect information and access sites to determine the level of compliance.

ENFORCEMENT

The use of powers in the event of non-compliance by operator(s). This may include administrative, civil or criminal powers contained in the Act. These powers are typically used to ensure a return to compliance by an operator, sanction an operator by removal from a scheme or deter further non-compliance by other operators.

This spectrum of regulatory interventions can also be used as a proxy to determine the relative maturity of a regulator. An established regulator will be able to demonstrate performance across the full spectrum of activities, while a less mature regulator will have developed capabilities or exercised powers in only a limited number of stages.

⁸ Productivity Commission; *Regulator Audit Framework*, 2014, page 13.



10.3 APPROPRIATENESS OF THE CEMETERIES AND CREMATORIA REGULATORY FRAMEWORK

The Review's investigations have concluded that the Act provides a satisfactory range of tools to enable the regulator to meet the NSW Government's policy objectives in the cemeteries and crematoria sector.

The Review examined the appropriateness and relevance of the following components of the Act:

- ◆ The Objects;
- ◆ Functions and powers of the regulator; and
- ◆ Provisions enabling regulatory intervention.

10.3.1 OBJECTS

The Objects of Act are specified in s.3 and outlined below:

- a. to recognise the right of all individuals to a dignified interment and treatment of their remains with dignity and respect;
- b. to ensure that the interment practices and beliefs of all religious and cultural groups are respected so that none is disadvantaged and adequate and proper provision is made for all;
- c. to ensure that sufficient land is acquired and allocated so that current and future generations have equitable access to interment services;
- d. to provide for the operation of a consistent and coherent regime for the governance and regulation of cemeteries and crematoria;
- e. to ensure that the operators of cemeteries and crematoria demonstrate satisfactory levels of accountability, transparency and integrity;
- f. to ensure that cemeteries and crematoria on Crown land are managed in accordance with the principles of Crown land management specified in section 1.4 of the *Crown Land Management Act 2016*;
- g. to promote environmental sustainability of the interment industry, including provision for natural and private burials;
- h. to promote that cost structures for burials and cremations are transparent across all sectors of the interment industry; and
- i. to promote affordable and accessible interment practices, particularly for those of limited means.

Throughout the stakeholder engagement, no proposed amendments were put forward in relation to the Objects of the Act. While there was discussion that a number of the Objects were challenging for operators to balance, such as the acquisition of new burial land while also ensuring affordable interments, there was broad consensus that the Objects were relevant and appropriate.

A number of stakeholders expressed concern that many of the Objects were not being met. Rather than amending the Objects, they expressed a strong preference for the regulator to be more proactive and assertive.

10.3.2 FUNCTIONS AND POWERS OF THE REGULATOR

The eight general functions of the regulator are set out in s.12 of the Act.

Importantly, the Review examined the links and alignment between the eight functions, the powers of the regulator and provisions for penalties within the Act.

The first three functions – s.12(a)(b)(c) are not backed by enforceable powers as they represent the need to:

- ◆ Assess interment needs and develop strategies;
- ◆ Provide advice and recommendations to the Minister in relation to sustainability; and
- ◆ Promote environmental sustainability.

The remaining five functions are backed by enforceable provisions within the Act.

Appendix D outlines the regulatory functions and enforcement provisions of the Act. It is important to note that it is not possible to enforce some functions of the Act as they require a mandatory code of practice as part of an interment industry scheme, which to date has not been developed by CCNSW. However, the five regulatory functions are supported by appropriate provisions enabling the enforcement of compliance and the management of risks.

The Act also provides ancillary functions to CCNSW, including a reserve power to acquire land in the public interest. This provision has caused confusion among Crown operators as to whether the operators or CCNSW are responsible for the acquisition of new burial land.

In 2017, CCNSW released its *Metropolitan Sydney Cemetery Capacity Report*, which concluded that ‘urgent action is required’⁹ to address the predicted shortage of burial land in Sydney. Despite this finding, CCNSW undertook no discernible strategic coordination or action. Crown operators subsequently began engaging in their own attempts to acquire new burial land, with limited success.

10.3.3 PROVISIONS ENABLING REGULATORY INTERVENTION

The Review has relied on the Productivity Commission’s *Regulator Audit Framework* to assess whether the Act provides satisfactory provisions to enable intervention across the four broad regulatory categories.

As the following analysis demonstrates, the Act provides a comprehensive toolkit for regulating the sector. Furthermore, it provides powers that can be utilised in a graduated manner, reflecting the maturity and posture of the regulator, from the provision of advice and guidance through to enforcement for non-compliance by sector operators.



⁹ CCNSW, *Metropolitan Sydney Cemetery Capacity Report*, November 2017.

Table 10.1: *Cemeteries and Crematoria Act 2013* - provisions

REGULATORY ACTION	C&C ACT PROVISIONS
Advice & Guidance	Guidelines, templates (Part 3, Subdivision 2) Codes of Practice – s.30
Codes, licensing & approvals	Approvals of plans (Part 3 Subdivisions 3, 4 & 5) Development of an interment licensing scheme (s.31(2)(c))
Monitoring & compliance	Part 3 (Division 7) Performance reporting – s.41 Record keeping – s.41 Provision of reports – s.43 (1) Provision of information – s.43(2) Site inspections Financial audits & inspections – s.101&102
Enforcement	Improvement notices – s.33 Remedy consequences of contravention – s.35 Short-term orders – s.36 Enforceable undertakings – s.39 & s.40 (Civil Court Order) Court Action with Civil penalties and prosecution – s.70

As noted earlier, s.31 of the Act provides for the development of interment industry schemes in the *Cemeteries and Crematoria Regulation 2014*. Specifically, these schemes can include:

- a. Requiring compliance with a mandatory code of practice;
- b. Requiring an operator of a cemetery to ensure adequate provision is made for perpetual maintenance of a cemetery;
- c. Requiring the licensing of any activity, person, business, premises, vehicle or equipment in relation to the provision of interment services;
- d. The imposition of conditions on licences;
- e. The suspension or cancellation of licences;
- f. Appeals or reviews by courts, tribunals and other bodies or persons of decisions made under the regulations in relation to licences or applications for the granting of licences; and
- g. Setting fees and charges that are necessary for the funding of the scheme.

To date, CCNSW has not developed any mandatory codes of practice or an interment industry scheme. It is important to note that under s.29(2), CCNSW was meant to have developed a mandatory code of practice within five years of the assent of the Act. As no mandatory codes, licences or schemes have been developed, CCNSW is limited in the regulatory intervention it can undertake.

CCNSW has not developed a regulatory framework outlining how it will exercise the intervention powers provided in the Act. This reflected concerns expressed by stakeholders, including operators, that they did not understand the role of CCNSW or how it intended to regulate the sector.

While the Act provides a flexible and extensive range of regulatory tools, the Review believes one area needs to be amended to mitigate a significant risk to government and the broader community in relation to the perpetual maintenance of cemeteries.

The NSW Government in 2012 was aware of the risks posed by perpetual maintenance liabilities, especially given the maturity of the Crown cemetery assets. Crown operators were encouraged to undertake periodic independent actuarial assessments of their perpetual maintenance liabilities. In addition, s.31(2)(b) and s.107(3)(d) of the Act provided for:

- ◆ The development of an interment industry scheme requiring operators to make provision for perpetual maintenance; and
- ◆ Pricing which had regard to the future maintenance of cemeteries.

However, there is no specific provision in the NSW Act governing perpetual maintenance. This is in contrast to the *Cemeteries and Crematoria Act 2003* (Australian Capital Territory), which provides for the establishment of perpetual care trusts and for the Minister to specify the percentage of contributions cemetery operators are required to pay into the trust to maintain the cemeteries in perpetuity¹⁰.

The Review believes the NSW Act should be amended to include these provisions. Cemetery owners and operators who meet or exceed the threshold for regulation of perpetual maintenance (as determined in Chapter 9) should also be required to hold a NSW interment industry license to provide the regulator with the necessary sanctions in the event of non-compliance.

10.4 REGULATION OF PERPETUAL MAINTENANCE OF CEMETERIES

A cemetery that sells perpetual interment rights creates an obligation to maintain the cemetery in perpetuity. The cemetery operator receives one payment when the interment right is sold but assumes a perpetual liability for the maintenance costs.

The concept of perpetual maintenance has been fundamental to cemetery management since the creation of cemeteries in the 19th century. Cemetery trusts were established to safeguard the maintenance and upkeep of cemeteries, reflecting this perpetual maintenance obligation.

Chapters 8 and 9 discussed the significance of perpetual maintenance with respect to the costs it generates for cemetery operators and its impact on their financial sustainability.

Perpetual maintenance obligations pose a significant risk to operators, who require a deep knowledge of the current and future cost drivers of their business to ensure the price of the interment right accurately reflects these costs. Relatively small miscalculations or unforeseen expense increases can significantly impact the operator's financial sustainability.



¹⁰ *Cemeteries and Crematoria Act 2003* (ACT), Division 2.2 Perpetual care trusts and reserves, provides for the establishment, percentage of payments into trusts, protection of trusts, account and records of trusts, audit and dissolution of trusts.

How are perpetual maintenance liabilities calculated?

When a cemetery sells a perpetual interment right an obligation to maintain that plot is incurred by the operator. It is important to note that this obligation exists from the point of sale, not when a cemetery 'closes' (or no longer has burial interment rights available for sale).

Therefore, an accrued liability should be recognised and funded for each interment right at the time of sale. The funds then accrued, should by the time the cemetery has no more interments for rights available for sale, be sufficient to cover the ongoing maintenance expenses, in perpetuity.

The Perpetual Maintenance Target Liability (PMTL) is an estimate of the total liability, at the current point in time, of the obligation to maintain in perpetuity all sold and available unsold interment rights. It represents a target total liability, which the accrued liability will eventually grow to as interment right sales are made and investment returns made on existing assets. However, the target shows from the time of sale, progressively the full amount that will ultimately be required to maintain the cemetery in perpetuity.

The management of perpetual maintenance liabilities requires the cemetery operator to be vigilant with the pricing of interment rights, annual maintenance costs and the prudent investment of accrued capital to honour its obligations on a perpetual basis.

To what standard do cemeteries need to be maintained?

Currently there are no standards of maintenance prescribed in regulation. Furthermore, the Review did not observe any specification of maintenance standards in the interment right contracts provided by cemetery operators.

As such, there are significant variations in cemetery maintenance standards in Sydney and across NSW.

As observed in Chapter 8, the implied maintenance costs for Crown operators range from approximately \$22,000 per hectare to \$46,000 per hectare.

Table 10.2: Implied perpetual maintenance cost per hectre

	CMCT	RGCRM	SMCLM	NMCLM
PMTL VALUATION DATE	30 June 2019	30 June 2019	30 June 2019	30 June 2019
ASSUMED PERPETUAL MAINTENANCE COSTS (p.a) IN PMTL CALCULATION	\$2.8m	\$3.8m	\$3.8m	\$4.1m
CURRENT GROUNDS MAINTENANCE & OVERHEAD COSTS	\$10.9m	\$12.6m	\$11.1m	\$8.6m
PERPETUAL MAINTENANCE COSTS AS A % OF CURRENT MAINTENANCE COSTS	25%	30%	34%	48%
TOTAL LAND (ha)	85.2	168.2	82.5	137.6
IMPLIED PERPETUAL MAINTENANCE COSTS (p.a) PER HECTRE	\$32,352	\$22,295	\$46,061	\$29,832

NOTES

1. The data used in this analysis is based on the IPART data and perpetual liability data provided by each operator.
2. Grounds maintenance and overhead costs are from the IPART submissions (using budgeted FY19) for all Trusts except for RGCRM who provided actual figures.
3. The total land size for SMCLM is sourced from their latest annual report and may include no-burial land (eg. office buildings).

Implied maintenance costs can vary due to the level of anticipated service needs, the complexity of the land and the types of memorials used.

The PMTL calculation is highly sensitive to the estimated perpetual maintenance expense, movements in which can have a 50-times impact on the PMTL.

Per Recommendation 9.5, the Review believes that as part of a perpetual maintenance governance regulatory framework, a minimum standard of maintenance should be prescribed so customers can purchase an interment right with confidence of an assured level of maintenance. A minimum standard will also provide a benchmark level of maintenance for operators to estimate their PMTL costs.

What are the current regulatory provisions for cemetery maintenance?

Currently, in NSW there is no existing prudential or regulatory framework specifying how cemetery operators:

- ◆ Estimate their PMTL;
- ◆ Prescribe any standards or assessment of maintenance costs;
- ◆ Audit, account and report on their PMTL;
- ◆ Provision for PMTL, including how investment assets (or annual contribution from surplus) should be managed; and
- ◆ Utilise investment assets accumulated for PMTL purposes.

In other jurisdictions in Australia and overseas, perpetual maintenance liabilities are regulated by governments.

CCNSW has not developed any mandatory codes of practice or interment industry schemes. It has developed a voluntary code, *Cemetery and crematorium operator code of practice for interment rights and general services*, which provides high-level guidance for perpetual maintenance funding by operators¹¹. The Review was also shown an early draft of a voluntary code of practice in relation to cemetery maintenance.

The NSW Auditor-General's 2019 report to Parliament stated:

The State has numerous contingent liabilities. Some are quantifiable while others are not. As contingent liabilities are potentially material future liabilities of the State, every effort should be made to quantify these as accurately as possible. They also need to be monitored closely to ensure that they are recognised and brought on balance sheet as they crystallise¹².

What risks arise, and to whom, from having no regulatory framework for perpetual maintenance?

The failure of a cemetery operator to generate annual revenues in excess of annual maintenance expenses (due to the exhaustion of available cemetery land and the inability to sell new interment rights) leads to an under-funded PMTL. The commercial failure of an operator that has not reached its PMTL generates risks for creditors, customers and government.

Consequently, the lack of a regulatory framework generates significant risks for the cemetery operator, customers and the government. In NSW, State and local governments assume a financial risk, the full extent of which is currently unknown, should they be forced to assume the role of 'operator of last resort' in the event of under-funded PMTLs occurring at the closure of cemeteries or commercial failure of operators.

Consumers, the purchasers and holders of interment rights, also bear the risk of cemetery operators being unable to maintain the cemeteries to expected standards, due to insufficient capital.

¹¹ Cemeteries & Crematoria NSW, *Cemeteries and crematorium operator code of practice 2018 – Interment rights and general services*, November 2018, https://www.industry.nsw.gov.au/__data/assets/pdf_file/0020/204095/CCNSW-Cemetery-and-crematoria-operator-code-of-practice-2018.pdf

¹² NSW Auditor-General Report – *Report on State Finances 2019*, page 6.

The Review observed operational practices by Crown operators highlighting the need for further regulation regarding the use of perpetual maintenance funds. In the absence of any regulations, Crown operators use these funds for a range of purposes, including the acquisition of new land and as a supplementary funding source for capital works projects. The consequence of these activities have been observed in the respective PMTL positions of the Crown operators. Concerningly, capital projects funded this way may lack the rigorous commercial assessment that would have been required had the funds been sourced through increased debt or equity contributions.

Furthermore, the reporting of these investment funds as assets and the failure to record the associated PMTL means the financial accounts of Crown operators may not fully reflect the true financial position of that entity. As Crown cemeteries near the point of exhaustion, there is an argument that a portion of their PMTL in relation to that cemetery should be recognised in their accounts as a liability.

Accessing perpetual maintenance funds for other purposes places increased pressure on the cemetery operator to adequately recoup the capital through the pricing of future interment rights, or risk having insufficient capital to meet their PMTL.

Do cemetery operators currently provision for perpetual maintenance?

The lack of a regulatory framework for perpetual maintenance means there is a corresponding lack of transparency and accountability with respect to provisioning for PMTL by cemetery operators.

The current provisioning is piecemeal. The four Crown operators all maintain perpetual maintenance funds and most have received external actuarial advice on aspects of their respective PMTL. However, there is no uniformity of methodology or approach. Only one of the four Crown operators discloses their PMTL in Notes in their annual report.

All other operators – private, church and local government – do not disclose the PMTL associated with their cemeteries, so the level of provisioning by these operators is currently unknown.

While a small number of local government operators internally set aside funds for their perpetual maintenance, the adequacy of these funds relative to their PMTL is unknown. IPART is undertaking a high-level assessment of PMTLs for a sample of local government operators.

What recommendations have been made by IPART in relation to perpetual maintenance?

IPART's *Interim Report into the Review of Interment Costs and Pricing* recommended cemetery operators conducting more than 50 bodily interments a year in new perpetual interment sites must contribute to an independently managed perpetual maintenance reserve fund¹⁵.

The Review broadly agrees with this recommendation, except for the need for an independently managed fund.

Representations from a wide selection of cemetery operators and stakeholder groups expressed support for greater regulation of perpetual maintenance funding. Smaller operators representing church organisations and local government expressed concern about increased regulatory requirements.

The Victorian Government adopts a graduated regulatory approach, with Class A and Class B trusts assuming different levels of regulation, reflecting the level of risk generated and the overall capacity of the operator to comply with the regulations. Cemeteries in Victoria are governed by the *Cemeteries and Crematoria Act (VIC) 2003* and *Cemeteries and Crematoria Regulations 2013*. Class A cemetery trusts are also governed by the *Financial Management Act 1994*.

¹⁵ IPART, *Interim Report, Review of Interment Costs and Pricing*, December 2019, page 52.



The Act requires fees and charges reflecting the need to provide for the maintenance of the cemetery in perpetuity (the Act Administrator has recommended 15-20% of total costs should contribute to these obligations).

The Review believes the approach adopted by IPART applying regulation to operators conducting more than 50 interments a year provides a good balance of regulatory imposts and overall risks. In NSW, 47 cemeteries and 35 cemetery operators fall within this classification, based on 2017/18 CCNSW activity reports ¹⁴.

The Review believes the IPART recommendation could be improved further by taking into consideration the number of bodily interments that have occurred in a given cemetery. It is possible for older cemeteries, with a significant number of existing interments, to fall below 50 interments a year and be exempt from provisioning for perpetual maintenance. The Review has amended the IPART recommendation to include a number of existing interments, as a proxy for the size and significance of the cemetery.

10.4.1 FUTURE REGULATORY FRAMEWORK OF PERPETUAL MAINTENANCE

Legislation vs regulation?

Perpetual maintenance poses one of the most significant risks to operators, customers and the NSW Government. It is therefore the recommendation of the Review that the Act be amended to incorporate specific provisions.

This can be enacted under the existing legislation and regulatory framework through the development of a mandatory code and interment industry scheme. Given the urgency of the situation, the Review believes CCNSW should immediately begin developing a regulatory framework for perpetual maintenance via the existing provisions.

A Bill amending the Act should also be developed and introduced to Parliament at the earliest possible opportunity.

What aspects of perpetual maintenance need to be regulated?

The Review believes a NSW interment industry licence should be required for cemetery owners who exceed a prescribed threshold of cemetery activity and significance, reflective of the risk generated by these operations.

Cemetery owners ¹⁵ will be required to hold a NSW interment industry licence if they own a cemetery(s):

- ◆ Undertaking more than 50 interments annually; or
- ◆ Where more than 40,000 interments have taken place; or
- ◆ Listed on the NSW Heritage Register.

As a condition of the NSW interment industry licence, owners will need to comply with the following proposed perpetual maintenance regulatory provisions.



¹⁴ Ibid, page 51.

¹⁵ The intention is to ensure that the beneficial owner of the cemetery is responsible for the perpetual maintenance obligations arising from the sale of the interment right.

Table 10.3: Proposed Perpetual Maintenance Regulatory provisions

SCOPE OF REGULATION	RATIONALE FOR REGULATION	REQUIREMENT ON OPERATOR/REGULATOR
Independent advice from an Approved Actuary in relation to perpetual maintenance liabilities	Standardisation, compliance and monitoring, risk mitigation	<p>The regulation will prescribe that a cemetery operator must receive independent advice from an Approved Actuary every three years. The advice will cover:</p> <ul style="list-style-type: none"> ◆ Estimation of perpetual maintenance liabilities; ◆ Prudent margin of funds required above 100% of this liability (reflecting liquidity risk and asset allocations); ◆ Required annual contribution levels from operating surpluses to fund the liability; ◆ Investment strategies including asset allocations; and ◆ Approval of current and future interment right pricing. <p>The advice will be provided to the regulator at the same time as the cemetery owner.</p>
Minimum maintenance standard	Transparency and standardisation	The regulator will develop a minimum standard of maintenance required of cemetery owners, to be reflected in the Terms and Conditions of interment right contracts. The standard of care will be the basis for determining the maintenance expenses for the PMTL estimation.
Provisioning (establishment of fund)	Risk mitigation, transparency	Licensed cemetery operators will be required to establish a perpetual maintenance fund to meet future maintenance obligations of the cemetery. The funds will be quarantined from a cemetery owner's other business activities.
Use of PMTL funds	Risk mitigation	PMTL funds can only be used for perpetual maintenance of cemeteries unless the cemetery owner has advice from an Approved Actuary recommending an alternative use and this has been approved by the regulator. Funds in excess of 100% of PMTL, plus a prudent margin, may be distributed to the cemetery operator if approved by the approved actuary and the regulator.

Table 10.4: Proposed Perpetual Maintenance Regulatory provisions

SCOPE OF REGULATION	RATIONALE FOR REGULATION	REQUIREMENT ON OPERATOR/REGULATOR
Investment of funds	Risk mitigation	The regulator will provide a list of approved fund managers to manage the funds in accordance with approved investment guidelines and prescribed asset allocations. The regulator, in consultation with NSW Treasury and independent advice, will establish the investment guidelines and appropriate asset allocations.
Reporting and audit	Transparency, compliance and monitoring, enforcement	The regulator will require licensed cemetery owners to report annually to the regulator on their PMTL and the level of provisioning in their fund. This information will be made publicly available by the regulator.
NSW interment industry licence	Risk mitigation, compliance and monitoring, enforcement	Cemetery owners who exceed the prescribed threshold will be required to hold a NSW interment industry licence. Failure to comply with the regulations may result in penalties prescribed in the Act or revocation of the licence.

PMTL accounting treatment

The Review heard from a majority of operators that they were not required to recognise a PMTL liability on their balance sheets. The main reasons provided were:

- ◆ The in-perpetuity nature of the contract made it difficult to reliably estimate the liability; and
- ◆ The liability had not crystallised within the reporting period and there was no certainty it would.

Specifically, accounting advice provided to the CMCT, relating to the Australian Accounting Standards Board (AASB) Standard 137, stated:

A provision shall be recognised when:

- (a) an entity has a present obligation (legal or constructive) as a result of a past event;
- (b) it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation; and
- (c) a reliable estimate can be made of the amount of the obligation.

If these conditions are not met, no provision shall be recognised ¹⁶.

As such, perpetual maintenance expenses have been treated by most operators as non-current contingent liabilities and have not been estimated.

¹⁶ Australian Accounting Standards Board (AASB), Compiled AASB Standard 137; Provisions, Contingent Liabilities and Contingent Assets, s.14, page 15. https://www.aasb.gov.au/admin/file/content105/c9/AASB137_07-04_COMPjun14_04-14.pdf

The AASB Standard 137; Provisions, Contingent Liabilities and Contingent Assets, s.13(a)(b) states:

- (a) *provisions – which are recognised as liabilities (assuming that a reliable estimate can be made) because they are present obligations and it is probable that an outflow of resources embodying economic benefits will be required to settle the obligations; and*
- (b) *contingent liabilities – which are not recognised as liabilities because they are either:*
 - (i) *possible obligations, as it has yet to be confirmed whether the entity has a present obligation that could lead to an outflow of resources embodying economic benefits; or*
 - (ii) *present obligations that do not meet the recognition criteria in this Standard (because either it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation, or a sufficiently reliable estimate of the amount of the obligation cannot be made).*¹⁷

In summary, the case for not recognising perpetual maintenance expenses as liabilities hinges on the ‘reliability’ of the estimate and the ‘probability’ of the expenses being incurred.

In the case of the Crown operators, three of the four have undertaken independent actuarial assessments of their respective PMTLs. This practice is common among cemetery operators in other Australian jurisdictions.

s.25 and s.26 of AASB 137 provides guidance on a ‘reliable estimate of an obligation’:

s.25 - The use of estimates is an essential part of the preparation of financial statements and does not undermine their reliability. This is especially true in the case of provisions, which by their nature are more uncertain than most other items in the statement of financial position. Except in extremely rare cases, an entity will be able to determine a range of possible outcomes and can therefore make an estimate of the obligation that is sufficiently reliable to use in recognising a provision.

*s.26 - In the extremely rare case where no reliable estimate can be made, a liability exists that cannot be recognised. That liability is disclosed as a contingent liability*¹⁸.

It should be noted that even in the case of s.26 (no reliable estimate can be made), which many cemetery operators argue, none currently discloses contingent liabilities relating to perpetual maintenance expenses.

The Review believes as a cemetery gets closer to the exhaustion of interments rights available for sale – and the associated revenue – there is increasing certainty it will incur maintenance expenses. Similarly, actuarial assessments undertaken by Crown operators show it is possible to estimate future cemetery maintenance costs.

Therefore, as prescribed under AASB 137 s.13, it can be argued that perpetual maintenance expenses should be transitioned from a contingent liability to a provision (liability) recognised on the balance sheet.

Given the significance of perpetual maintenance obligations, especially as a number of major cemeteries reach closure, the Review believe the industry needs clarity on the accounting treatment of such expenses. CCNSW should engage with the Australian Accounting Standards Board to ascertain the appropriate treatment of perpetual maintenance obligations under AASB 137.

¹⁷ Australian Accounting Standards Board (AASB), Compiled AASB Standard 137; Provisions, Contingent Liabilities and Contingent Assets, s.13 (a)(b), page 14. https://www.aasb.gov.au/admin/file/content105/c9/AASB137_07-04_COMPjun14_04-14.pdf

¹⁸ Ibid, page 18.

RECOMMENDATION 10.1



CCNSW engages with the Australian Accounting Standards Board to ascertain the appropriate accounting treatment of perpetual maintenance expenses by all cemetery operators given the provisions of AASB Standard 137.

Transition to new regulatory framework – management of legacy liabilities

The Review recognises the significance for operators of transitioning to the new regulatory framework, specifically for owners with an under-funded PMTL arising from a legacy liability which may have been accumulated over previous decades. There are potentially significant inter-generational equity issues associated with cemetery owners having to fully fund these legacy liabilities in the short term.

Where there is an under-funding of a legacy liability arising after the implementation date of the new regulatory framework, this legacy liability should be quarantined from all new business activities (sale of new interment rights).

The regulator will require the cemetery owner to develop a Restoration Plan detailing how the legacy shortfall will be managed. The operator will be required to engage the services of an Approved Actuary to assist in the development of the plan covering operational aspects including:

- ◆ Current and future capital expenditure;
- ◆ The achievement of greater operational expenditure efficiencies;
- ◆ Pricing of interment services;
- ◆ Adjustment of levels of maintenance (where appropriate and in accordance with the minimum prescribed standard);
- ◆ Dividend payout policies; and
- ◆ Potential for cross-subsidisation from future sales or additional contributions from other operational aspects of the business, like cremation.

The regulator will approve the plan and oversee its implementation.

A term for the Restoration Plan, of no more than 10 years, should be established to allow sufficient time for the operator to work through the operational challenges.

The sale of new rights from the date of implementation of the new regulatory framework should be quarantined from the legacy and these rights should be maintained at 100% plus a prudent margin of the Accrued Sold Liability determined by the Approved Actuary.

This will ensure future pricing of interment rights is sufficient to cover all costs associated with the term of interment and avoid the recurrence of a PMTL shortfall.



The Approved Actuary

The Approved Actuary, or RSE Actuary, has a key role in the insurance and superannuation regulatory framework, addressing similar challenges to those posed by perpetual maintenance liabilities in the cemeteries sector.

In the insurance sector, the actuary guards against activities that materially affect the insurer's financial condition and policyholders' interests. If an insurer does not accept the advice of the Appointed Actuary, they must justify this to the regulator, the Australian Prudential Regulation Authority (APRA).

The Approved Actuary is required to act in accordance with professional standards set out by the Institute of Actuaries.

The Review believes a comparable framework is warranted in the cemeteries sector, with the regulator and Approved Actuary acting in the interests of interment right holders to ensure the maintenance of cemeteries is carried out for the term specified in the interment right contract.



10.5 CURRENT REGULATORY OVERSIGHT AND PERFORMANCE

Since its establishment in 2014, CCNSW has been seen as reactive, supportive and co-operative to the industry participants it is regulating.

As its scope of regulatory activities has rarely expanded beyond the provision of advice and guidance, it is relatively immature in terms of its regulatory posture and development. As a result, it has been unable to adequately identify the key emerging risks or develop regulatory responses to mitigate these risks.

Explanations for this level of regulatory evolution include:

- ◆ The staged implementation of the Act (Part 4 – Interment right and cemetery renewal not coming into force until 2018);
- ◆ The commencement of the *Crown Lands Management Act 2016*;
- ◆ Significant turnover of senior leadership – 11 Chief Executive Officers/Acting Chief Executive Officers since 2014; and
- ◆ Limited financial resources – restricting the interment services levy to Crown operators rather than the broader sector has limited the regulator's capacity and capability.

10.5.1 STAKEHOLDER PERCEPTIONS OF THE REGULATOR

As outlined, the Review engaged with a broad cross-section of stakeholders involved in the cemeteries and crematoria sector. Stakeholder perspectives on CCNSW were heavily influenced by the frequency (or infrequency) of their interactions with the regulator and the extent to which the Act impacted their operations or individual circumstances.

Stakeholders unanimously acknowledged the significant challenges facing the sector. However, there was also consensus that CCNSW had not achieved the Government's stated objectives from the 2012 reforms and the Objects of the Act. Many stakeholders believed CCNSW was not taking a leadership role in the sector and there had been few tangible examples of CCNSW proactively using its powers to regulate the sector.

The key areas of concern expressed by stakeholders were:

- ◆ A lack of clarity with respect to CCNSW's objectives, best reflected by the absence of a Statement of Regulatory Intent or regulatory framework documents outlining how CCNSW was addressing the risks and challenges faced by the sector;
- ◆ The failure of CCNSW to develop codes of practice and an interment industry scheme, as required in the Act;
- ◆ The lack of accountability imposed on CCNSW by all levels of the government; and
- ◆ A perceived general lack of industry experience and knowledge, by the Board and executive, of the escalating issues confronting the sector.

A number of stakeholders specifically raised CCNSW's *2015-2020 Strategic Plan*¹⁹ released in 2015. The plan identified four priority areas and established targets for each priority.



¹⁹ CCNSW, *Strategic Plan 2015-2020*, October 2015. https://www.industry.nsw.gov.au/__data/assets/pdf_file/0015/143403/CCNSW-Strategic-Plan-2015-20.pdf

Table 10.5: CCNSW Priority Areas, as per 2015–2020 Strategic Plan

RESPECT	AFFORDABILITY & SUSTAINABILITY	LAND AVAILABILITY	GOVERNANCE
All people in NSW have access to a range of interment services that preserve dignity and respect and support cultural diversity.	All people in NSW have access to affordable and sustainable interment options.	Sufficient and suitable land is available to meet future demands for interment services.	All cemetery and crematorium operators in NSW function in a consistent, transparent and accountable manner.
SHORT TERM TARGETS			
◆ the service requirements of local communities have been identified	◆ information on service offerings and pricing has been collected and analysed	◆ regions facing a critical shortage of cemetery space have been identified	◆ operators are aware of their statutory requirements
MEDIUM TERM TARGETS			
◆ operators are working to ensure services are delivered with dignity and respect	◆ operators provide transparent service offerings and pricing	◆ viable cemetery proposals in critical regions are being progressed	◆ statutory requirements are incorporated into business practices of operators
LONG TERM TARGETS			
◆ services are available to address the essential requirements of local communities	◆ large scale operators work to ensure financial stability	◆ additional cemetery capacity is available in critical regions	◆ take up guidance is monitored to determine whether voluntary measures should be made mandatory

20

Stakeholders expressed concerns that CCNSW had not achieved its targets in a number of critical areas, particularly land availability, affordable interments and respect (codification of burial customs and beliefs).

These views were consistent with those contained in an independent report of the *Review of Cemeteries and Crematoria NSW* in May 2018 to the Department of Industry.

Some local government operators commended CCNSW employees for their responsiveness assisting with administrative matters, such as providing interpretations of the Act as they relate to operational matters.

Stakeholders proactively identified CCNSW's cemetery capacity report as a positive contribution on a subject matter of critical importance to the Sydney operators. However, they noted that despite the key finding that 'urgent action is required', there had been little tangible progress to addressing the critical land shortage since its publication.

The Review observed examples of CCNSW seeking to develop a regulatory framework but these documents remain in a draft stage of development.

²⁰ Ibid, page 21.

10.5.2 CCNSW REGULATORY MATURITY

The Review used the Productivity Commission's *Regulator Audit Framework* to assess the evolution of CCNSW as a regulator.

The Review found the majority of CCNSW's effort and resources have been focused on activities best classified as advice and guidance on the regulatory activities spectrum. There are few examples of CCNSW undertaking the regulatory activities classified by codes, licensing and approvals; monitoring and compliance; or enforcement.

Implementing the NSW Government's outcomes focused and risk-based approach to regulation would require:

- ◆ Establishing objectives and priorities reflected in a strategic outcomes document;
- ◆ The collation and analysis of data to undertake the assessment of risks;
- ◆ Prioritisation of resourcing requirements including recruitment of appropriately skilled and qualified professionals aligned to the regulatory activities to be undertaken; and
- ◆ A process for evaluating periodic regulatory performance.

Specifically, the Review focused on Part 3 of the Act – Regulation of interment industry and made the following observations.

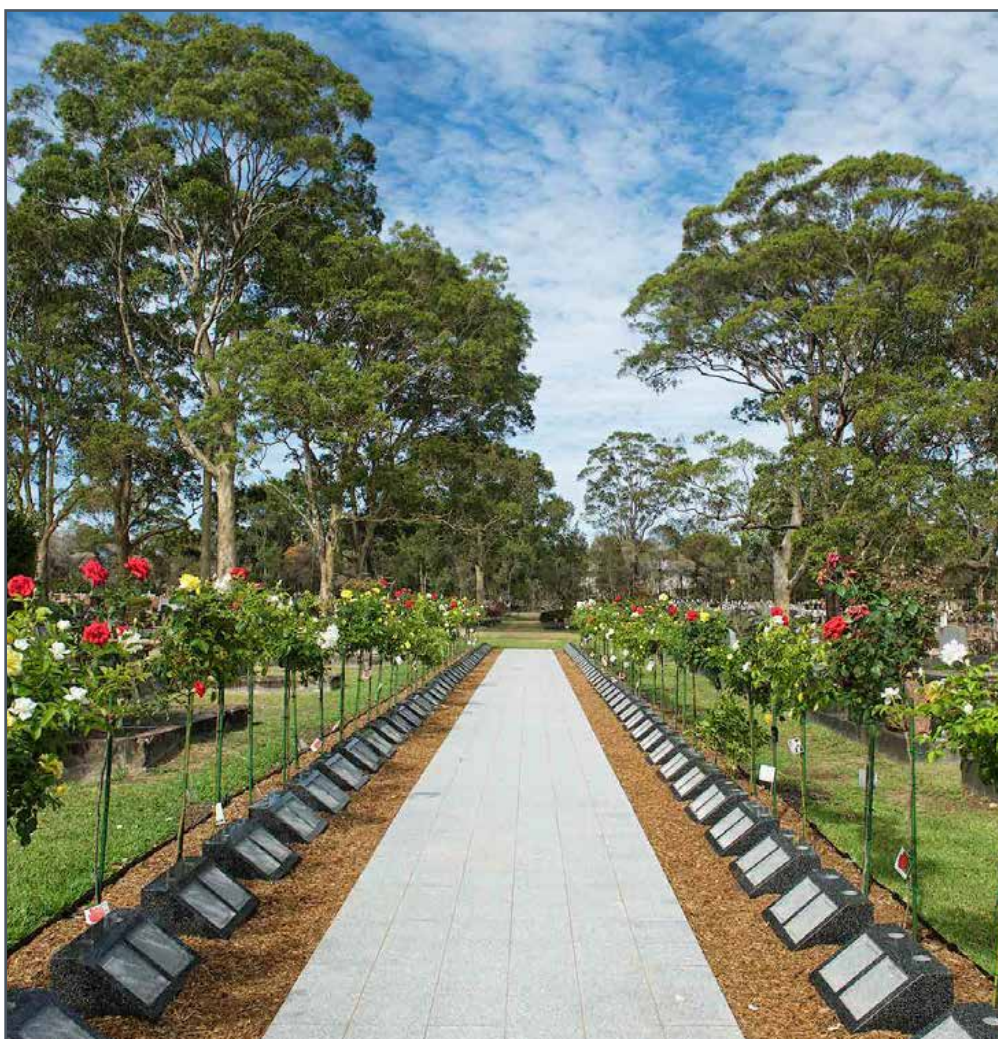


Table 10.6: CCNSW regulatory evolution

REGULATORY ACTION	C&C ACT PROVISIONS	
Advice and Guidance	Guidelines, templates (Part 3, Subdivision 2) Codes of Practice – s.30	<p>♦ CCNSW has developed a number of fact sheets and guidelines for the industry, e.g. renewable tenure burials, Aboriginal burials</p> <p>♦ CCNSW has developed a voluntary code of practice, <i>Cemetery and crematorium operator code of practice 2018: Interment rights and general services</i></p>
Codes, licensing and approvals	Approvals of plans (Part 3 Subdivisions 3, 4 & 5) Development of an interment licensing scheme (s.31(2)(c))	<p>♦ CCNSW has not developed any mandatory codes of practice or an interment industry scheme</p> <p>♦ No licensing arrangements have been put in place</p>
Monitoring and compliance	Part 3 (Division 7) Performance reporting – s.41 Record keeping – s.41 Provision of reports – s.43 (1) Provision of information – s.43(2) Site inspections Financial audits & inspections – s.101&102	<p>♦ s.41(1)(2), s.43(1)(2), s.90, s.93, s.99, s.102 all relate to the prudential regulation of the operators, e.g. performance reporting, annual reports, strategic plans, plans of management and audits. In meetings with Crown operators and CCNSW, it was apparent there had only been cursory review and analysis of the prudential performance of Crown operators</p> <p>♦ The Review understands CCNSW has undertaken some investigation of activities of Crown operators in relation to specific aspects of their operations</p>
Enforcement	Improvement notices – s.33 Remedy consequences of contravention – s.35 Short-term orders – s.36 Enforceable undertakings – s.39 & s.40 (Civil Court Order) Court Action with Civil penalties and prosecution – s.70	<p>♦ CCNSW has not undertaken any enforcement actions since its inception</p>

RECOMMENDATION 10.2



CCNSW evolves its regulator posture from reactive and administrative to become a proactive regulator of the sector.

CCNSW develops a regulatory framework consistent with the NSW Government's policies in relation to Better Regulation.

CCNSW must immediately commence work on the development of mandatory codes that will become an interment industry scheme. As outlined in s.31(2)(b)(c), the scheme must incorporate the assessment, reporting, provisioning and auditing of perpetual maintenance and the development of a licence framework.

Reviewing these regulatory activities in the context of a risk-based approach to regulation, the current monitoring and compliance activities undertaken by CCNSW are wholly insufficient to readily identify and prevent operational and strategic failures by operators. Furthermore, there is no evidence to suggest CCNSW has the systems and processes to gather and analyse data from operators to fulfil its functions under the Act.

CCNSW is fully dependent on reports and complaints from external sources (customers, operators, community groups) to determine whether cemetery and crematorium operators are complying with the regulatory framework. CCNSW is reliant on information provided by operators to determine compliance with the Act.

The failure of CCNSW to undertake prudential regulatory functions has meant it is unable to identify, quantify and manage key risks arising to the NSW Government and the broader community. This is most apparent in its failure to monitor and assess the respective financial performance of Crown operators, particularly in relation to the capital adequacy for both perpetual maintenance obligations and the acquisition and development of new cemeteries. All information obtained from Crown operators for the purposes of this Review (risk registers, PMTL assessments, burial land supply) could have been requested by the regulator to inform them of emerging risks to the government and sector.

CCNSW needs to transition its compliance monitoring from being anecdotal and circumstantial into a regime based on independent evidence gathering. This includes random compliance monitoring activities such as site inspections and requesting risk registers and information regarding PMTL assessments.

Resourcing of CCNSW

The Review observed a lack of capability and capacity within CCNSW to undertake its regulatory functions. This was acknowledged by CCNSW Board members and the executive.

CCNSW was always intended to be an industry funded regulator, ensuring it was not reliant on consolidated funding from NSW Treasury and providing a level of operational autonomy and independence from its department.



The interment service levy provided for in the Act ²¹ was meant to be paid by all operators regulated by CCNSW. Currently, only the four Crown operators fund CCNSW through the following activity-based levies:

- ◆ \$83 for the first burial interment;
- ◆ \$60.20 for any subsequent bodily interment;
- ◆ \$25 for cremation; and
- ◆ \$25 for ash interment.

These levies contributed approximately 40% of CCNSW's total revenues or \$640,060 in 2018/19. The NSW Government, through the Department of Planning, Industry and Environment (DPIE), contributed \$911,087 or 56% of CCNSW's total revenue in the same year, as per the CCNSW Annual Report 2018/19.

In 2018/19, cremations represented almost 69% of total interments in NSW. Of these, 82% were undertaken by privately owned and operated crematoriums which did not contribute to the administration of the Act or CCNSW ²².

The Review believes all entities that generate sufficient risk to the NSW Government, consumers and the broader community should contribute to the costs associated with the regulation of the sector.

IPART noted in its Interim Report that the interment service levy should not be applied to additional cemetery operators until it can be demonstrated that the functions of CCNSW are of benefit to the wider cemeteries and crematoria industry ²³.

The Review acknowledges the principle of delivering value that underpins IPART's recommendation. However, there is a risk that without sufficient resourcing CCNSW's capabilities will be limited such that it cannot fulfil its functions under the Act.

The Review believes CCNSW's funding needs to be increased but that the expansion of the levy should not commence until CCNSW can deliver value, as reflected by the development of a regulatory framework and specifically an interment industry scheme.

RECOMMENDATION 10.3



The interment service levy not be extended to non-Crown operators until CCNSW has transitioned to a proactive regulator – evidenced by the development of an operational interment industry scheme being applied to operators posing levels of risk that need to be regulated.

The current application of the interment service levy distorts the functioning of specific markets. The fact that only Crown operators are paying the levy places them at a competitive disadvantage to their non-Crown competitors who are not.

In Victoria, the administrative costs of the Act are funded by an annual cemetery levy payable by Class A cemetery trusts. The Act specifies the amount of the levy (currently 3%), or a rate determined by the Minister for Health up to a maximum of 5% of each Class A cemetery trust's gross earnings from the previous financial year. ²⁴

²¹ *Cemeteries and Crematoria Act 2013*, s.24.

²² CCNSW, Annual Activity Report 2018/19, page 1.

²³ IPART, *Review of the costs and pricing of interment in NSW*, December 2019, page 10.

²⁴ Victorian Government, Health and Human Services; Cemetery Levy Guidelines, <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/cemetery-levy>

The Review believes a similar levying regime would be more appropriate in NSW, rather than applying the levy to specific services or activities. Once CCNSW has developed the interment industry scheme, the levy should be applied to all operators requiring an interment industry licence.

During the transitional period between the development of the interment industry scheme and the expansion of the interment service levy to non-Crown operators, CCNSW will need additional resources and new expertise to develop its regulatory framework.

To provide these additional resources, the NSW Government should amend the interment service levy incurred by Crown operators to a set percentage of gross earnings from the previous financial year, per the Victorian funding arrangement.

Maximum flexibility is encouraged in the engagement and recruitment of specialised expertise to develop CCNSW's regulatory framework. External experts needed to devise codes and licensing frameworks should be contracted or seconded on a flexible employment basis as CCNSW progresses to an established compliance monitoring and enforcement role.

Without additional resourcing from the NSW Government over the two years envisaged to implement the industry interment scheme, there is a risk that CCNSW will not be able to expedite the development of its regulatory framework.

RECOMMENDATION 10.4



The NSW Government ensures that CCNSW has the capability and capacity to undertake the functions specified in the Act.

As a transitional measure, the interment services levy be amended immediately, requiring Crown operators to pay a determined percentage of their gross earnings from the previous financial year.

Any additional resources should be engaged on a flexible basis and potentially from other regulatory agencies within government with the required expertise.

Relationship between CCNSW and the Department

A majority of stakeholders, including a current CCNSW Board member, noted a lack of clarity or confusion between the roles and functions of CCNSW and the NSW Department of Planning, Industry & Environment (Crown Lands), specifically in relation to policy formulation versus regulatory compliance functions.

During the Second Reading speech of the Bill, the Minister stated:

“The Cemeteries Agency will be led by an independent board appointed by the Minister.”²⁵

Like other NSW statutory regulators, CCNSW is a NSW Government agency, with the employees, distinct from the voting Board members, employed by the NSW public service.

²⁵ NSW Parliament Legislative Assembly, Hansard Second Reading Speech, Cemeteries and Crematoria Bill 2013, 24 October 2013, page 5.

The Chief Executive Officer of CCNSW is an employee of the NSW public service but also accountable to the CCNSW Board. At times, this reporting arrangement has been a source of confusion for Board members, employees and stakeholders in terms of CCNSW's independence and its role and relationship with the Department of Planning, Industry and Environment (DPIE).

Other NSW Government regulatory agencies have adopted Memorandums of Understanding (MOU) with respective government agencies outlining the expectations of employees while they are assigned to the regulator. The CCNSW Board should develop a similar MOU with DPIE which clarifies the relationship between the regulator and the department and the expectations of staff assigned to CCNSW.

RECOMMENDATION 10.5



CCNSW needs to develop a Memorandum of Understanding with the relevant government department outlining the reporting relationships and expectations of the respective organisations of employees assigned to CCNSW.

Observations were made that CCNSW does not project itself to the sector or the public as a statutory regulator of the sector. For example, the CCNSW webpages are part of the NSW DPIE website, while other regulating entities, such as the NSW EPA, present a clear independence from the policy functions of government.

RECOMMENDATION 10.6



CCNSW needs to be recognised as a strong, proactive regulator of the sector.

CCNSW needs to clarify its role by clearly communicating its functions, as outlined in the Act, and how it will undertake its regulatory obligations to the sector and the broader community.

The Review believes significant consideration should be given to the appropriateness of the responsibilities of cemeteries and crematoria remaining with the Department of Planning, Industry and Environment cluster.

The relationship between cemetery management and Crown Lands dates back to colonial administration and specifically the roles of the Lands Department and Surveyor-General in the provision and design of suitable lands for cemeteries. Prior to the commencement of the Act in 2014, cemetery management was conducted through the *Crown Lands Act 1989*. There is still a significant relationship between the operation of Crown cemeteries and the *Crown Land Management Act 2016*.

Notwithstanding these historical considerations, the current challenges facing the cemeteries sector are more aligned with expertise in industry regulation, financial management, accounting, strategic planning and consumer protection. Furthermore, the key sector risks impact metropolitan Sydney and potentially require greater visibility and accountability that could be afforded by reallocation to another departmental cluster.

RECOMMENDATION 10.7



Consideration should be given to reallocating the responsibilities of the *Cemeteries and Crematoria Act 2013* to a portfolio with regulatory expertise in managing the risks associated with the sector.

CCNSW Board governance

A number of industry stakeholders believe the challenges faced by CCNSW can, in part, be explained by CCNSW's lack of familiarity and expertise with the interment industry, at a Board and executive level.

Currently, no voting members on the Board have experience in the interment industry or as an industry regulator.

Operators expressed a view that the interment industry was highly specialised and that the regulator did not understand the sector, while industry stakeholders indicated the regulator had lost credibility with sector participants. The same sentiments were expressed in relation to the various Community and Consumer Consultative Committees of the Board, which many stakeholders believed had not been beneficial.

The NSW interment industry is relatively small and specialised. S.16(4) of the Act explicitly prohibits a voting member of the Board being an interment industry participant. This provision was aimed at avoiding any real or perceived conflicts of interest.

The Review believes this provision remains valid for current industry participants, as it would be difficult for that person to manage conflicts while being a regulator of the sector. However, given the specialised nature of the interment industry and the specific risks it entails, the Review believes it is appropriate for the Act to be amended to include specific skill sets for the voting Board members.

It is proposed that the four voting members of the Board should have skills in:

- ◆ Industry regulation;
- ◆ Actuarial or funds management; and
- ◆ Government, interment industry (not a current participant)

Some non-voting members of the CCNSW Board believed it would be more efficient if they were consulted on specific matters pertaining to their areas of expertise on an 'as needs' basis. They did not believe they needed to be members of the Board. Views were also expressed in relation to the overall size and appropriateness of the CCNSW Board.

An earlier independent report recommended the abolition of the CCNSW Board and its replacement with a single experienced regulator or commissioner²⁶, with advisory committees providing support and input. A consistent finding has been the lack of appropriate oversight and accountability at all levels of the sector. The Review believes a properly constituted board provides greater scrutiny and accountability of the executive of CCNSW, as well as sector operators.

The original intention of a Board regulator model was to acquire the diverse skills and expertise required to provide appropriate scrutiny and oversight of the cemeteries and crematoria sector. Notwithstanding the challenges faced by CCNSW, a properly constituted skilled Board, with clear roles and responsibilities of its executive (via an MOU with the hosting department), is the most likely model to ensure the Objects of the Act are achieved.

²⁶ An independent report; *Report of the Review of Cemeteries and Crematoria NSW* in May 2018.

RECOMMENDATION 10.8



Amendment to s.16(2)(b) of the Act to specify that three persons appointed to the Board should have experience and expertise in the following disciplines:

- ◆ Industry regulation;
- ◆ Actuarial or funds management; and
- ◆ Government, interment industry (not a current participant)

Section 16(2)(c), (d) and (e) of the Act be amended to remove all non-voting members of the CCNSW Board, with the exception of the CCNSW Chief Executive Officer who retains a non-voting role.

Stakeholders repeatedly commented on the lack of accountability imposed on CCNSW from all levels of the NSW Government. The challenges faced by the regulator in terms of capacity and capability, best reflected by its failure to develop a regulatory framework, have not been addressed in the six years since its inception.

As highlighted earlier in the Chapter, CCNSW has not undertaken the QRS Initiative's self-assessment required of statutory regulators. Furthermore, had CCNSW developed a regulatory framework consistent with the NSW Government best practice guidelines, it would have provided for an evaluation and performance reporting framework to validate and respond to criticism raised by the industry.

CCNSW itself needs to be the subject of greater scrutiny and accountability. To achieve this the Review recommends the following amendments to the Act:

- ◆ CCNSW be subject to an independent audit and evaluation of its regulatory performance every three years with the report tabled in Parliament; and
- ◆ The Minister annually provide a Statement of Expectation to CCNSW setting out the priorities and strategic directions of the NSW Government in relation to cemeteries and crematoria. In response, CCNSW provides a Statement of Intent for the Minister's approval. This statement should be tabled in the NSW Parliament, with CCNSW to report back to the Minister (and disclose on its website) how it has acted in accordance with these directions.

RECOMMENDATION 10.9



The Act be amended to include a requirement that the Minister provide an annual Statement of Expectations to the Board of CCNSW outlining the priorities and direction of the NSW Government.

CCNSW provides a Statement of Intent for the Minister's approval.

The Statement of Expectations be tabled in the NSW Parliament, with CCNSW to report back to the Minister (and disclose on its website) actions it has undertaken in accordance with these directions.

RECOMMENDATION 10.10



The Act be amended to require that CCNSW be subject to an independent audit and evaluation of its regulatory performance. The audit should be undertaken every three years and the report tabled in the NSW Parliament.

The Minister requests CCNSW immediately undertake a QRS Initiative assessment per the Government's guidelines, the results of which should be provided to the Minister.

10.5.3 INTERMENT SECTOR REGULATION

As many industry participants have highlighted to the Review, the interment industry undertakes activities and services that are unique and highly specialised. They also entail high levels of trust that operators will carry out the interment of a loved one's remains in a respectful and dignified manner.

The risks associated with a failure of these interment practices and the consequential emotional impact on people in a vulnerable circumstance amplify the importance of the provision contained in the Act, but also the need for a vigilant and proactive regulator.

The failure by operators to undertake their operations in a manner which is sustainable, without being distracted by short-term objectives, is further reason for a strong prudential regulator. Incidences of non-compliance warrant the strongest possible enforcement by the Government.

Regulated operators

Consistent with the NSW Government's approach to risk-based regulation, CCNSW should focus its codes, licensing and approvals; compliance monitoring; and enforcement activities on those operators generating the greatest levels of risk to the NSW Government, consumers and the broader community.

The Victorian sector is different to NSW in that only the Victorian Government (through its trusts) can operate cemeteries and crematoria. It seeks to administer the sector through a two-level regulatory structure – Class A and Class B trusts – reflecting the scale of operations, capability and capacity. There are five Class A trusts and more than 300 operational Class B trusts throughout Victoria, with Class A trusts subject to the greatest levels of regulatory oversight.

As CCNSW changes to a more proactive regulatory posture, the imposition of regulation and compliance monitoring needs to reflect the actual risks generated by those operators across the sector. Consideration of PMTL assessments, reporting and provisioning needs to target those operators generating the greatest risk without creating an undue regulatory burden and cost for those operators least able to comply.

As previously discussed in the context of perpetual maintenance governance, cemetery owners exceeding the prescribed threshold will be required to hold an interment industry licence. It is the recommendation of the Review that the same threshold be used for determining the operators subject to regulation and paying the interment service levy.

With respect to crematorium operators, s.27(3) of the Act requires all operators to register their cemeteries or crematoria with CCNSW. Currently, CCNSW relies on unsolicited information from other operators or customers to ensure that new crematoria are registered with CCNSW. In addition to the Act, Part 8 of the *Public Health Regulation 2012* (administered by NSW Health) regulates the disposal of bodies, including Division 5 which relates to the process of cremation.

It is important to note that industrial activities listed in Schedule 1 of the *Protection of the Environment Operations Act 1997* (POEO Act) are those with the potential to have a significant impact on the environment. The EPA regulates these activities through environment protection licences, pollution reduction programs, load-based licensing (also applies to water pollution), and targeted policies. It is noted that no crematoria are listed on the current list of activities licensed by the Environment Protection Authority (EPA).

While Crown operators require the Minister's approval to purchase land for their use, there is no similar requirement for other cemetery and crematorium operators. Approval of land use for these cemeteries and crematoria is a matter for the relevant planning authority in accordance with relevant planning instruments and the *Environmental Planning and Assessment Act 1979*. There is no approval role for CCNSW or the Minister and no notification of approvals to these parties.

Last year, almost 40,000 bodies were cremated in NSW.

Given the current and projected significance of cremation to the NSW interment industry, the Review believes all crematorium owners and operators should be required to hold an NSW interment industry licence. Such a licensing regime would enable NSW Health and other regulators including CCNSW to prescribe the conditions for that licence to operate a crematorium. It would also provide CCNSW with a mechanism to enforce continued compliance of the regulatory framework and licence conditions.

RECOMMENDATION 10.11



CCNSW develops a two-tier regulatory structure that delineates the regulatory oversight between those operators required to hold an interment industry licence and those that are not.

Those required to hold an NSW interment industry licence are:

- ◆ Cemetery owners and operators exceeding the following thresholds:
 - Undertaking more than 50 interments annually; or
 - Where more than 40,000 interments have taken place; or
 - Listed on the NSW Heritage Register; and
- ◆ All crematoria owners and operators.



Vertically integrated operators have existed in the NSW cemeteries and crematoria sector since the 19th century. While the relationship between funeral direction and the cemetery or crematorium is inextricable, the regulation of these functions is discrete and disjointed. Fair Trading currently oversees funeral directors, while CCNSW regulates cemeteries and crematoria. Given the increasing vertical integration in the sector, there is a strong argument for an integrated regulator to oversee funeral directors, cemeteries and crematoria.

RECOMMENDATION 10.12



The NSW Government consolidates the regulation of funeral directors, cemeteries and crematoria under a single statutory regulator model to manage the anticipated proliferation of vertically integrated operators.





CHAPTER ELEVEN

CEMETERIES AND CREMATORIA ACT 2013

STATUTORY REVIEW

**IMPLEMENTATION – ESTABLISHMENT OF NSW
CEMETERY REFORM TASKFORCE**

11 IMPLEMENTATION – ESTABLISHMENT OF NSW CEMETERY REFORM TASKFORCE

11.1 OVERVIEW

The findings and recommendations of this Review and IPART's *Review of the Costs and Pricing of Interment in NSW* show the NSW cemeteries and crematoria sector needs further reform to ensure it can fulfil the Objects of the Act and meet the current and future needs of the citizens of NSW.

The required reform is significant, affecting sector regulation, the structure of Crown operators and the urgent need to acquire new cemetery land.

Urgency compounds the complexity and breadth of reform. Given the remaining life of the existing Crown assets, the time required to acquire and develop new cemeteries and the precarious financial situation of some Crown operators, these reforms need to be implemented concurrently.

There is insufficient time for the NSW Government to sequence the recommendations contained in both reports. It cannot implement the regulatory reforms without addressing the structuring and additional land requirements if it seeks to mitigate the risks contained in the reports.

There are financial, operational and stakeholder risks for the NSW Government should it fail to take decisive action to mitigate the identified challenges to the sector.

To meet these challenges, the Review believes the NSW Government needs to prioritise and resource activities through a dedicated reform process, with clear lines of accountability to the responsible Minister.

The Review has provided a proposed implementation vehicle, the Cemetery Reform Taskforce, and the key deliverables for which it will be responsible. Reflecting the urgency of the reform, the Government should stipulate a time period within which the Taskforce needs to complete its work and conclude the reforms.

The Review believes the reforms can be concluded within three years if undertaken concurrently and appropriately resourced.

11.2 THE CEMETERY REFORM TASKFORCE (CRT)

The urgency and breadth of the reforms requires a dedicated, singularly responsible unit within the NSW Government.

The obvious candidate for undertaking this task would be the regulator, CCNSW. However, as outlined by the Review, CCNSW has limited capability and capacity and is itself one of the three areas identified as needing significant reform. The scope of the reforms would require it to engage specialist advisers in fields of expertise beyond industry regulation.

The Review believes a dedicated unit, with the ability to second specialist skills from within the NSW Government and externally, provides the greatest opportunity to bring together the requisite specialist skills and deliver the reform in the prescribed timeframe.

11.2.1 SKILLS AND EXPERTISE

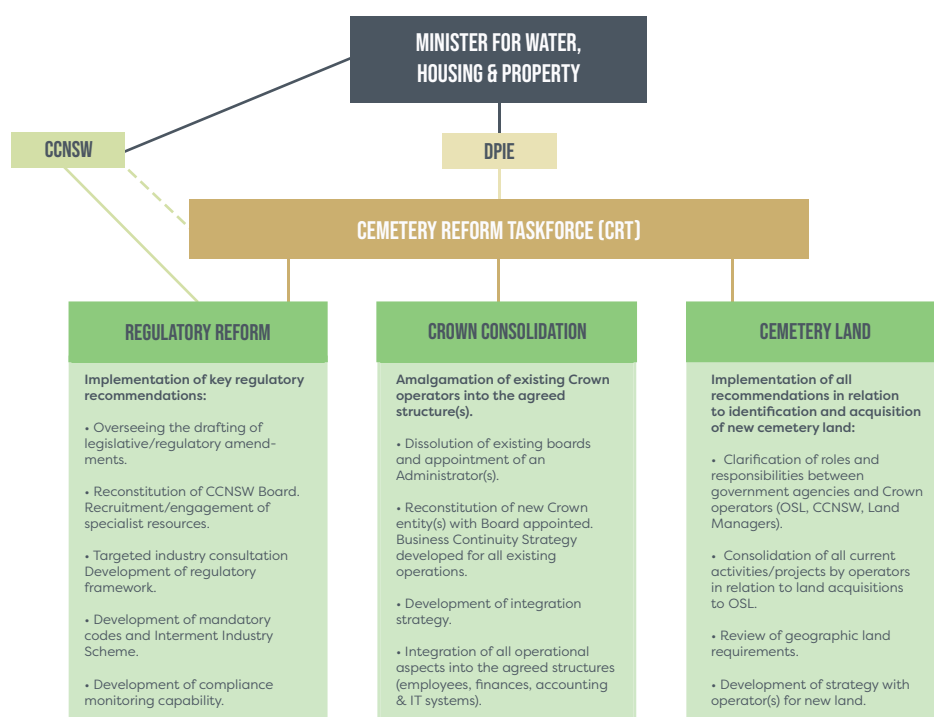
The CRT should be comprised of individuals with specialist experience across the cemeteries and crematoria sector and specifically the three streams of reform – regulatory reform, Crown operator consolidation and cemetery land.

The collective skills required of the CRT are diverse, including:

- ◆ Specialist knowledge of the NSW cemeteries and crematoria sector;
- ◆ Leadership and project management;
- ◆ Legal and regulatory – specifically the development of amendments to legislation and regulations, regulator experience in the development and implementation of regulatory frameworks (codes, licensing arrangements, compliance monitoring and enforcement regimes), industry and stakeholder consultation;
- ◆ Corporate amalgamations – experience in mergers and acquisitions of building new corporate teams from a number of organisations aligned to clearly articulated strategies. Specifically, corporate structuring and financing, strategy and planning, integration of operating systems and processes, human resources and culture development.
- ◆ Property and planning – experience in strategic infrastructure planning, knowledge of the NSW planning system and its legislative and regulatory mechanisms, development of property strategies, financing and capital experience in land acquisitions, rezoning and development applications.

The Review team believes that many of these skills reside within the NSW Government agencies, while external expertise will be required in certain areas.

Figure 11.1 Cemetery reform taskforce structure



11.2.2 ROLES AND RESPONSIBILITIES

The CRT is singularly responsible for implementing the recommendations of the Statutory Review of the Cemeteries and Crematoria Act and IPART's Review into the Costs and Pricing of Interment in NSW.

As Table 11.1 shows, all recommendations of the Review have been allocated to the three streams of regulatory reform, Crown operator consolidation and cemetery land. The CRT will appoint leads for each stream and provide regular progress reports to DPIE and the Minister. The CRT is accountable to the NSW Government and specifically the Minister for Water, Housing and Property, through the DPIE.

11.2.3 RESOURCING AND BUDGET

Cognisant of the fiscal constraints on Government arising from the COVID-19 pandemic, the Review has developed a funding model for the CRT to ensure there is no net additional funding required of the consolidated fund.

A detailed implementation strategy should be developed once the Government has confirmed the recommendations it plans to implement.

As a transitional measure, the Review recommends amending the interment service levy to reflect the methodology applied in Victoria to fund its Act Administrator. Under this arrangement, Crown operators would pay a pre-determined percentage of their gross earnings of the previous year.

Table 11.1 Funding

CONSOLIDATED CROWN SECTOR	FY2020	FY2021	FY2022
Total revenue (\$m)	\$95.5m	\$97.2m	\$97.8m
Interment service levy (\$m) - 3%	\$2.9m	\$2.9m	\$2.9m
Interment service levy (\$m) - 5%	\$4.8m	\$4.9m	\$4.9m

Under this arrangement, the interment service levy is estimated to generate between \$2.9 million and \$4.9 million per annum on 3-5% of gross earnings.

In Victoria, the current percentage is set at 3% of gross earnings. Pending further analysis of costs, the Review believes 3% is sufficient.

A detailed budget is required as part of an overall implementation strategy once the Government has agreed the recommendations to be adopted.

11.2.4 TIMELINES

The recommendations segmented into the three streams must be implemented concurrently to avert the financial, operational and stakeholder risks to the sector and government.

A detailed implementation strategy would inform the key milestones for the three streams of reform. Assuming the CRT commences by October 2020, the Review believes the recommendations can be implemented within three years.

RECOMMENDATION 11.1



The NSW Government establishes a dedicated Cemetery Reform Taskforce with responsibility for implementing the recommendations of the Statutory Review and IPART's *Review into the Costs and Pricing of Interment in NSW*.

The Taskforce reports directly to the Minister for Water, Housing and Property, through the DPIE, and concludes the reforms within three years of commencement.

Table 11.2 Timelines

TIMELINES	
October 2020 – December 2020	
♦	Development of initial implementation strategy, including budgets and timelines for key deliverables, governance and reporting, relationships with other government agencies
♦	Dissolution of Boards and appointment of administrator(s)
♦	Drafting of C&C regulation amendment (interment service levy)
January 2021 – June 2021	
♦	Establishment of CRT <ul style="list-style-type: none"> o Budget formulation o Recruitment and engagement of team members
♦	Development of detailed implementation plans for each workstream
June 2021 – December 2021	
♦	Commencement of implementation of workstream plans
♦	Commencement of detailed industry and stakeholder consultation (Schemes and licensing regime, legislative and regulation amendments)
♦	Appointment of new Board(s) of Crown operator(s)
♦	Introduction of legislative and regulation amendments (the Act, regulation and SEPPs)
January 2022 – June 2022	
♦	Commencement of industry schemes, licensing regime
♦	Establishment of executive team(s) for Crown operator(s)
♦	Scoping of suitable land for new cemeteries across Sydney
♦	Establishment of ring-fenced perpetual maintenance funds across the sector
June 2022 – December 2022	
♦	Full integration of all systems and processes for the Crown operator(s)
♦	Compliance monitoring of schemes and codes
♦	Commencement of land acquisitions
January 2023 – June 2023	
♦	Industry and stakeholder consultation
♦	Post implementation review
♦	Wind-up of CRT



GLOSSARY

CEMETERIES AND CREMATORIA ACT 2013

STATUTORY REVIEW

Ashes	Cremated human remains.
At need interment right	An interment right that is bought by a customer at the time it is required to be used for the interment of a deceased person.
Human remains	The body of a person who has died, either their whole body or ashes.
Cemetery	<p>Means a building or place used primarily for the interment and memorialisation of human remains (whether or not it contains an associated building for conducting memorial services), but does not include:</p> <ul style="list-style-type: none"> ◆ An Aboriginal place or land reserved as a historic site, within the meaning of the <i>National Parks and Wildlife Act 1974</i>; ◆ A place at which cremated remains are scattered but which is not otherwise used for the disposal of human remains; ◆ A place on private land, where the area of the landholding is 5 hectares or more and the location has been approved for the purposes of a cemetery by a local government authority.
Cemetery renewal	The practise of extensively redeveloping existing sections of a cemetery so as to more efficiently enable new interments. Unlike renewable tenure, cemetery renewal <u>does not</u> entail the disinterment of existing remains.
Closed cemetery	A cemetery in which there are few, if any, available burial interment rights. Interment activity may still take place for cremated remains and presold interment rights (including second interments).
Columbarium	A room or building with niches where ashes can be interred.
Cremation	A process for the reduction of bodily remains by fire or heat and alkaline hydrolysis.
Crematorium	A building in which deceased persons are cremated (whether or not it contains as associated building for conducting memorial services) and includes premises in which bodily remains are disposed of by alkaline hydrolysis.
Crown cemetery	Crown land dedicated, reserved or used for the purposes of a public cemetery.

Crown land manager	The organisation responsible for managing Crown land under the <i>Crown Lands Management Act 2016</i> , these organisations were formally known as reserve trusts.
Crypt	A below-ground room housing interment spaces. Crypts are also rooms in mausolea.
Family graves	Are graves designed to accommodate two or more burials and ash of other family members from the current or future generations.
Funeral director	Means a person (other than an operator of a service that for fee, gain or reward, transports bodies) who, in the conduct of operating a business or a service that is not for fee, gain or reward, engages, for the purpose of burial, cremation or transport, in the collection, transport, storage, preparation or embalming of bodies or engages in the conduct of exhumations.
Interment	The placement of human remains in a mausoleum, vault, columbarium or other structure designed for the placement of such remains; or the burial in the earth of human remains.
Interment industry	Means: <ul style="list-style-type: none"> ◆ Cemetery operators; ◆ Crematorium operator ◆ Funeral directors; Funeral funds within the meaning of the <i>Funeral Fund Act 1979</i> .
Interment right	The right prescribed under the <i>Cemeteries And Crematoria Act 2013</i> to be interred at a particular location within a cemetery.
Mausoleum	A structure erected and designed as a resting place for human remains without the burial of the remains in the earth, but does not include a structure designed as a resting place exclusively for cremated human remains.
Memorial	A gravestone, plaque, cenotaph or other monument or structure or permanent physical object used to memorialise a deceased person.
Natural burials	For the purposes of this review, an interment of human remains in the earth in a manner that does not inhibit decomposition. The site is usually without memorialisation.



Niche wall	A wall where cremated remains are interred.
Cemetery operator	Means: <ul style="list-style-type: none"> ◆ an operator for a Crown cemetery or crematorium ('Crown cemetery operator'); ◆ for a cemetery or crematorium administered by a council having control under section 48 of the Local Government Act 1993 ('Council operator'); ◆ in any other case – the person or entity being responsible for the management of the cemetery or crematorium.
Ossuary	A chest, box, building, well, or site made to serve as the final resting place of human remains.
Perpetual interment right	An interment right granted in perpetuity.
Pre-need interment right	The purchasing of an interment right by a customer before the death of a person whose remains will be interred.
Religious denomination	The adherence of any religion. Includes any church, sect or other subdivision of such adherence.
Renewable interment right	In the NSW context, an interment right with a minimum term of 25 years from the date of interment.
State Significant Development	As defined in Part 2 of the <i>State Environmental Planning Policy (State and Regional Development) 2011</i> .
Sydney	As defined by the Greater Sydney Commission in the <i>Greater Sydney Draft District Plan Map Atlas</i> , November 2016. https://gsc-public-1.s3.amazonaws.com/s3fs-public/six_district_map_book_part_1.pdf?7jedZ1zjV7pcPbfRXnCEfJ5B5rox6eDU
Vault	Traditionally, a below ground room with a vaulted ceiling housing interment spaces; in current usage, can be synonymous with a mausoleum – a stand-alone building housing interment spaces, or used to refer to an interment space within a mausoleum.
Unused interment right	An interment right that has not been exercised by the holder.



APPENDICES

CEMETERIES AND CREMATORIA ACT 2013

STATUTORY REVIEW

Appendix A: Terms of Reference

TERMS OF REFERENCE	
Purpose	Section 144 of the <i>Cemeteries and Crematoria Act 2013</i> requires a statutory review five years from commencement to determine whether the policy objectives remain valid, and whether the terms of the Act remain appropriate for securing those objectives.
Objectives	<p>The objectives of the review are to:</p> <ul style="list-style-type: none">◆ Review the Act's policy objectives to see whether they remain valid and if the terms of the Act remain appropriate to secure those objectives◆ Make specific implementable recommendations to the Minister relating to the following:<ul style="list-style-type: none">a. a detailed strategy and plan for the cemetery sector (private, local government and Crown) to ensure it has the appropriate structures and capabilities to meet the challenges confronting the sector into the future;b. best practice governance models for the Crown Cemetery sector taking into account the options for ensuring its long-term financial viability;c. the need for any legislative and regulatory amendments to implement the strategy and plan proposed for the NSW cemetery sector; andd. a timeline for the implementation of the proposed recommendations.
Background	<p>Cemetery Reform in NSW In 2012, the NSW Government commenced reforms to the Crown Cemetery sector with the significant consolidation of Crown Trusts. This was accompanied by the development of NSW's first dedicated cemeteries legislation.</p> <p>The statutory review will build on these reforms and present options to Government that will not only ensure the sustainability of the sector, but also ensure the Act's framework remains appropriate to ensure it can meet the objectives of the Act.</p>

TERMS OF REFERENCE

Scope

The review of the Cemeteries & Crematoria Act 2013 is to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate to secure those objectives. The review will include:

1. The challenges facing the Crown Cemetery sector in Sydney;
2. The operational efficiency of the existing Crown Cemetery sector in Sydney;
3. The existing governance and accountability arrangements for the Crown Cemetery sector, and advice on alternate governance models;
4. The financial capacity and income streams of the Crown Cemetery sector and their ability to meet its existing and future operational and regulatory requirements;
5. The implications, benefits and effectiveness of imposing requirements for an operator of a cemetery to ensure adequate provision is made for perpetual care of interment sites and the cemetery;
6. The appropriateness of the existing legislative and regulatory framework to meet future requirements of the cemetery and crematoria industry, and
7. Land use issues facing cemeteries and crematoria and options that could assist ensure new cemeteries and crematoria can be provided.

Timeframe

The review will result in a report to Government including a detailed strategy and proposed delivery options, including regulatory and legislative options to enable Government consideration in the second half of 2020.

APPENDIX B: Other Legislation/Regulation Relating to the NSW Interment Industry

RELEVANT LEGISLATION	RELEVANT SECTIONS COMMENTS
<i>Fair Trading Act 1987</i> and Fair Trading Regulation 2019	
<i>Public Health Act 2010</i> and <i>Public Health Regulation 2012</i>	Under Clause 50 of the Public Health Regulation 2012 a body must be embalmed and/or prepared for burial or cremation and placed in a coffin only in a mortuary.
<i>Funeral Funds Act 1979</i> and Funeral Funds Regulation 2016	
<i>Births, Deaths and Marriages Registration Act 1995</i> and Births, Deaths and Marriages Registration Regulation 2017	
<i>Crown Lands Management Act 2016</i> and Crown Lands Management Regulation 2018	
<i>Life Insurance Act 1995</i> (Commonwealth)	For funeral insurance.
<i>Local Government Act 1993</i> -	<ul style="list-style-type: none"> ◆ Under Clause 50 of the Public Health Regulation 2012 a body must be embalmed and / or prepared for burial or cremation and placed in a coffin only in a mortuary that has been approved under Section 124 of the <i>Local Government Act 1993</i>. ◆ In the dictionary for the Act a public reserve includes Crown managed land that is dedicated or reserved for public recreation or for a public cemetery. ◆ Section 48 provides a council control of a public reserve that is not under the control of or vested in any other body or person. ◆ Section 556 exempts public cemeteries from rates. ◆ Section 742 concerning dispute resolution includes Crown land manager of any public reserve, water reserve, or cemetery, or of any land, appointed by or under the <i>Crown Land Management Act 2016</i> or the trustees of any lands or works held, constructed, or used for any public purpose as a “Department of Government”.

RELEVANT LEGISLATION	RELEVANT SECTIONS COMMENTS
<i>Environmental Planning and Assessment Act 1979</i>	Section 3.14 of the <i>Environmental Planning and Assessment Act 1979</i> provides that an environmental planning instrument may make provision for reserving land for use for the purpose of a public cemetery. Generally any use of land for cemetery and crematoria would require development consent under this Act. Various environmental planning instruments make specific provision for cemeteries and crematoria.
<i>Environmental Planning and Assessment Regulation 2000</i>	Clause 226 - a Crown cemetery operator within the meaning of the <i>Cemeteries and Crematoria Act 2013</i> is a prescribed person for the purposes of Section 4.32 of the Act.
<i>Environmental Protection (Sea Dumping Act) 1981</i> (Commonwealth)	In Australia burials at sea are regulated under this Act. People seeking to arrange a burial of a body at sea require a sea dumping permit. No permit is required to scatter ashes. There is no automatic right to burial at sea. Permits are generally only granted to those with a demonstrated connection to the sea, such as long serving navy personnel or fishermen.
<i>National Parks and Wildlife Act 1974</i>	“Cemetery” as defined in the dictionary of the <i>Cemeteries and Crematoria Act 2013</i> does not include an Aboriginal place, or land reserved as a historic site, within the meaning of the <i>National Parks and Wildlife Act 1974</i> . All Aboriginal cultural heritage is protected under the Act. This includes Aboriginal cemeteries (i.e. locations where “Aboriginal remains” have been buried outside of formally reserved general cemeteries.
<i>Summary Offences Act 1988</i>	Section 8 - damaging or desecrating protected places - includes an interment site.
<i>Aboriginal Land Rights Act 1983, Native Title Act 1993</i> (Commonwealth) and <i>Native Title (NSW) Act 1994</i>	In relation to cemeteries on Crown land.

RELEVANT LEGISLATION	RELEVANT SECTIONS COMMENTS
<i>Land Acquisition (Just Terms Compensation) Act 1991</i>	Section 6 - the Act does not apply to an acquisition of land if the acquisition consists of the revocation of exclusive rights of burial that have been granted under an Act in relation to a public cemetery.
<i>Western Sydney Parklands Act 2006</i>	Section 29 - The Trust may, in accordance with a precinct plan, use or permit the use of a part of the Trust land for the purposes of a cemetery or crematorium, or both.
<i>Western Sydney Parklands Act 2006</i> <i>Sydney Water Act 1994</i> - Schedule 2 and <i>Water Management Act 2000</i> - Schedule 4	Land exempt from water supply authority service charges includes - and that is vested in the Crown, or in a public body, or in trustees, and is used for a public cemetery.
<i>Local Land Services Regulation 2014</i>	Clause 15 land exempt from rates, levies and contributions includes any part of a holding used for the purposes of a cemetery.
<i>Land Development Contribution Management Act 1970</i>	Section 7 - exclusion for public cemeteries.
<i>Land Tax Management Act 1956</i>	Section 10 - exemption from land tax provided for a public cemetery or crematorium.
<i>Independent Commission Against Corruption Regulation 2017</i>	Each reserve trust established under the <i>Crown Lands Act 1989</i> in relation to a reserve or part of a reserve that is dedicated or reserved for the purposes of a public cemetery or crematorium or a related purpose is included in the definition of a "public authority".
<i>Fire and Emergency Services Levy Act 2017</i>	Schedule 1 public benefit land includes cemetery or crematorium, but only if the land is included on the Cemeteries and Crematoria Register under the <i>Cemeteries and Crematoria Act 2013</i> .
<i>Public Works and Procurement Act 1912</i>	Section 41 - public cemeteries are deemed to be public works and undertakings.

RELEVANT LEGISLATION	RELEVANT SECTIONS COMMENTS
Work Health and Safety Regulation 2017	Clause 5 - definitions - <i>excavation</i> means a trench, tunnel or shaft, but does not include a trench for use as a place of interment.
<ul style="list-style-type: none"> ◆ Other legislation more broadly could apply to a cemetery or crematoria for example, threatened species and heritage listing. 	

Appendix C: Proposed amendments by stakeholders to the *Cemeteries and Crematoria Act 2013*

REF.	THE ACT REF	PROPOSAL BY STAKEHOLDER	DECISION
1	Section 3 (Objects of Act)	Request for guidance on who bears the responsibility for each object of the <i>Cemeteries and Crematoria Act 2013</i> . and that the objectives are applied consistently across the sector.	Not Supported
2	Division 1 (Constitution and management of Cemeteries Agency)	Could the definition of Cemeteries Agency be moved to the beginning of the Act to avoid confusion? A non-lawyer reading this legislation may take time to locate the link between CCNSW and CA (which is of course in the Dictionary at the end of the legislation).	Not Supported
3	Section 16 (2)(c)&(e)	Paragraph needs amendment because it refers to old agency names/cluster structures. Needs to be updated with current agency names/cluster structures or for future proofing - refer to 'agency responsible for [legislation]'. ◆ Non-mandatory Code of Practice with no enforcement by the Cemeteries Agency ◆ Mandatory Codes of Practice without the need for an Industry Scheme with low level enforcement options available to the Cemeteries Agency including, for example, enforceable undertaking and potential small civil penalty (less than \$1,000) ◆ Mandatory Industry Schemes that include mandatory Codes of Practice with high enforcement options available to the Cemetery Agency, including Civil Penalty of \$27,5000 (as provided for at s.31(3) of the Act.	Not Supported
4	Section 24	Consider amendment to ensure levy is paid for all interments, not just those at Crown Cemeteries.	Supported
5	Section 14	Move the 'Reserve power to acquire land in the public interest' to the Crown Land Managers.	Not Supported, noting that the Review recommends OSL be tasked with acquiring new land.
6	Section 29(1)	Should be amended to allow the Cemeteries Agency to determine if a Code of Practice is mandatory or not. It is suggested that the Act include a graduated regulatory scheme including; ◆ Non-mandatory Code of Practice with no enforcement by the Cemeteries Agency ◆ Mandatory Codes of Practice without the need for an Industry Scheme with low level enforcement options available to the Cemeteries Agency including, for example, enforceable undertaking and potential small civil penalty (less than \$1,000) ◆ Mandatory Industry Schemes that include mandatory Codes of Practice with high enforcement options available to the Cemetery Agency, including Civil Penalty of \$27,5000 (as provided for at s.31(3) of the Act.	Not supported, noting that the C&C Act provides for a mandatory code when an interment industry scheme exists.

REF.	THE ACT REF	PROPOSAL BY STAKEHOLDER	DECISION
7	Section 29(2)	Should be repealed because the deadline has passed.	Not supported, subject to consideration ensuring that when made a code will be valid.
8	Section 29(3)	Repeal, Subsection 29(3) provides that a mandatory code of practice has no effect unless it is incorporated in an interment industry scheme under section 31(2).	Not Supported
9	Section 29(4)	<p>Subsection 29(4):</p> <ul style="list-style-type: none"> Should be amended to provide for a graduated regulatory scheme including, the civil penalty should be for mandatory codes which are not part of an industry scheme, and non-compliance should attract a lesser civil penalty than non-compliance with a scheme - say \$1,000 or less. <p>OR</p> <ul style="list-style-type: none"> Repeal Subsection 29(4) is unnecessary if there are only non-mandatory codes and mandatory codes under industry schemes (s. 31(3) already sets out a civil penalty of \$27,500 for non-compliance with a scheme). 	Not Supported
10	Section 41(1)(2)	<p>The ACCC promotes competition and it is recognised that competition is good for consumers and for productivity. Private operators operate largely in a competitive environment and a lot of information about operations would be damaging if leaked to competitors.</p> <p>Concern raised that there is a lack of transparency on the performance criteria against which an operator is to be assessed due to broadness of Section 41(2). Apart from the obvious issue of procedural unfairness of being reviewed after the fact against unknown criteria there is also the concern that operators could be reviewed to different standards, creating discriminatory environment in the market. This is a particular concern for operators that are private and own the land.</p> <p>For section 41(2) to be effective, fair and meaningful the criteria against which performance is measured should be set in advance.</p>	Not Supported BUT consideration should be given to how sensitive commercial information is appropriately protected.

REF.	THE ACT REF	PROPOSAL BY STAKEHOLDER	DECISION
11	Section 47	Consider clarifying that all interment rights issued prior to the Act – and subsequently (other than renewable) are in perpetuity.	Not Supported
12	Section 54(1)(a)	<p>Paragraph 54(1)(a) should be amended to account for a rights holder purchasing the interment right in advance (i.e. the cremated remains might not be interred for many years after the right is granted).</p> <p>However, many interment rights are purchased in advance sometimes for several years. The current provision would mean a renewable interment right may be granted but not needed and be dormant thus reducing the period of time available for the interment right holder.</p> <p>Consideration should be given to amending the definition of renewable interment to permit ‘reusable’ interment which would enable family plots to be -reused’ for additional interments at later periods of time such as practices in overseas jurisdictions. This could be a form of renewable interment.</p>	Not supported, noting that this matter should be addressed through Guidelines developed by CCNSW.
13	Section 54(1)(b)	<p>Paragraph 54(1)(b) should be amended to account for a rights holder purchasing the interment right in advance which may affect calculation of the minimal term of interment of 25 years based on the date of commencement.</p> <p>To enable clarity when read with the corresponding provision in the Cemeteries & Crematoria Regulations 2014 - namely that the initial period be any period between 25 and 99 years.</p>	Not supported, noting that this matter should be addressed through Guidelines developed by CCNSW.
14	Section 54(8)(c)	<p>Consideration should be given to permitting perpetual interment rights to also have a cooling off period.</p> <p>The Act does not recognise that many cemetery operators use a ‘reservations’ system requiring either full or part payment toward an interment right.</p>	Not supported, noting that this matter should be addressed through Guidelines developed by CCNSW.

REF.	THE ACT REF	PROPOSAL BY STAKEHOLDER	DECISION
15	Sections 49, 51, 56	<p>a. Consider clarifying the nature of a right held in more than one name when the nature of the holding was not specified at the time of issue when that issue was prior to the Act (which since 2013 makes it clear that it is held jointly when issued in two names).</p> <p>b. RGCLM suggestion: amendment to the wording to stipulate that the transfer of 'vacant' or 'unused' interments sites is not permitted. However, if a deceased has been interred in the site it is possible to transfer ownership of more than two sites. Additional governance should be put in place to stop the private selling (on-selling) of graves to non-family members for personal gain.</p>	To be addressed in guidelines developed by CCNSW.
16	Section 56(4)	<p>This provision does not match industry practice which often permits multiple interments under a single interment right. Only one cemetery operator is currently consistently affected by this clause as they sell one interment right per interment site.</p> <p>As a result, multiple applications have been submitted by them since Part 4 of the Act commenced in June 2018.</p>	Supported, subject to the further consideration of what conditions apply.
17	Section 56(4)	<p>Suggestion that the C&C Act allow for sales of interment rights to groups if the sales are on the following conditions:</p> <ul style="list-style-type: none"> ◆ The representative of the Group is prohibited from selling and an interment right at a price which is in excess of the market price at the relevant cemetery. An alternative to this would be to make the price limit no greater than the price acquired, adjusted in accordance with the CPI (or any replacement of that index); ◆ Qualification for membership of the group has to be stated on the sale (for example; religion, parish, club, spouse, sibling, parent, child, grandchild or direct descendant of a specified person or a couple and spouses of those people); and ◆ The cemetery operator must obtain a written undertaking from the purchaser to comply with condition above (first dot point). 	Supported, subject to the further consideration of what conditions apply.

REF.	THE ACT REF	PROPOSAL BY STAKEHOLDER	DECISION
18	Section 56(4)	<p>The Act defines interment site as “<i>a place in a cemetery for the interment of human remains.</i>” Section 56(4) restricts holdings to only two interment sites. “Interment site” is used often throughout the Act but the lack of clarity makes interpretation (and therefore compliance) difficult. For example: Is one interment site:</p> <ul style="list-style-type: none"> a. One “plot” which can accommodate one two or three bodies lying one above the other? b. One designated area which may contain more than one “plot” – such as a delineated (say with a low row of bricks or fence) area which can accommodate more than two (possibly over 30) burials? c. One garden area or rockery which can accommodate the ashes of five or six people? d. One vault which can accommodate more than two bodies? <p>In this regard, we suggest a site is <i>a place or area for the interment of human remains including without limitation burial plots, vaults, niches and other delineated areas which are capable of interring one or more human remains.</i></p>	Supported subject to the further consideration of what conditions apply.
19	Section 57(d)	Remove all mention of the word ‘Class’ as it causes confusion and offence for people at a time when they don’t need additional stress.	Supported

REF.	THE ACT REF	PROPOSAL BY STAKEHOLDER	DECISION
20	Section 58	<p>Suggestion – The process needs to be simplified and could be broken into two components with different regulations for memorials and interments.</p> <ol style="list-style-type: none"> If the family simply want to put a memorial on an existing grave and or take responsibility for an existing monument it shouldn't be a complicated process. If the family are looking to bury in a vacant allotment, can reasonable measures of ownership be enough to enable this to take place. In relation to this, the following two sections of the Act will also need to be reviewed to make the transfer process easier for families: Part 4 - Exclusive interment rights may be bequeathed; Division 2; Subdivision 2; item 49. Part 4 - Rules of intestacy to apply to interment rights not bequeathed; Division 2; Subdivision 2; item 50. Challenge – Once the exclusive right devolves into an Estate it becomes challenging to manage. Suggestion – It should be made clear that the cemetery manager can simply transfer an interment right to the individual or individuals granted probate. 	Support the development to of guidelines by CCNSW to address these matters.
21	Section 61(4)(a)(ii)	<p>The requirement to publish in the NSW Government Gazette is both expensive and ineffective from a communication perspective (no one reads the Gazette) – can this notification process be 'updated' to reflect more contemporary means of public notices and technology. This also applies to s.52(4)(b) – Revocation of Perpetual Interment Rights.</p>	Not supported noting that the NSW Government Gazette does not charge a fee and provided a permanent public record.
22	Section 62	<p>Challenge – It states; “No interment right is required for the scattering of cremated remains in a cemetery”. This means that the cemetery has no control of where the remains are scattered and that no record is captured of the deceased.</p> <p>Suggestion – Introduce a Free licence for the scattering of ashes within the cemetery grounds, this would enable records of the deceased to be maintained and some control with the location of scatterings.</p>	Supported – Note, licence should be issued by operator.

REF.	THE ACT REF	PROPOSAL BY STAKEHOLDER	DECISION
23	Section 63 & Australian Privacy Principle 6 – use or disclosure of personal information (Clause 6.2(b)) (App6).	<p>How do the other Acts inter-relate, e.g. Privacy Legislation. Issues of requests for information that may be confidential/restricted, however currently the C&C Act states in s63(7):</p> <p>◆ A cemetery operator must make the cemetery operator’s register available for public inspection free of charge.</p>	<p>Generally, privacy legislation does not apply where the disclosure of information is required or authorised by law.</p> <p>Recommendation that this is further addressed through guidelines developed by CCNSW.</p>
24	Section 63(6)	<p>Many cemeteries particularly Church, community and council operated have no buildings on-site at the cemetery particularly where they manage multiple sites, hence no place to keep a copy ‘at the cemetery’. The Section should be amended to be the cemetery’s registered address which could be the Council or Church office as applicable.</p>	<p>Supported noting option for digital alternative.</p>
25	Section 65	<p>Challenge – It states that a “cemetery operator who grants or renews an interment right, or transfers an interment right under section 58, must issue to the person to whom the right is granted, renewed or transferred a certificate”. It does not state that this certificate must be a physical paper copy or if it can be an electronic copy. Further to this, is not clear as to whether the licence holder must sign and return a signed contract to the cemetery manager.</p> <p>Suggestion – in-line with operating a sustainable organisation we would like to have the ability to generate a digital certificate as an option for families. This will generate significantly less paper. Further clarification relating to the requirement to sign and consequently store a signed contract would be valuable.</p>	<p>Supported, noting that this could be led by CCNSW.</p>

REF.	THE ACT REF	PROPOSAL BY STAKEHOLDER	DECISION
26	Subdivision 2 & 4	<p>a. Bequests, transfers and intestacy. This area is very time-consuming and costly when required to resolve/determine family disputes. Once the first generation of the original rights holder/s pass, from the second generation onwards it becomes difficult to determine rights and to contact family members. Clarification required. Are we to follow succession law? Also a clause on definition of 'no-find' with powers to act under this criteria. Clarity around how interment rights are treated when they are not specifically referenced and then fall into being part of the rest and residue of an estate where there are multiple recipients of the rest and residue (and the interment right is not dealt addressed at the time of administration of the estate and significant time passed).</p> <p>b. Provide clarity on definition of an interment right e.g. 1 burial = 1 interment – also note the use of the term 'portion' in older documentation.</p> <p>c) s.60 – clarity of private resale of grave plots, vaults etc inclusive of buy-back and/or forfeit.</p> <p>Clarity on action required prior to joint holder/tenants in common decision when paperwork held does not clearly disclose nature of the holding – how do we deal with matters prior to rights issued on or after 27.11.13?</p>	To be addressed in guidelines developed by CCNSW.
27	Subdivision 2 & 3	Reuse of perpetual family graves. Family graves whereby, 25 years after a grave is 'full' (or less time if mutually agreed by cemetery manager and family), cemetery managers are able to authorise further burials of family members in the grave using the lift and deepen or ossuary box method. This should involve additional interment right fees and burial fees.	Supported
28	Subdivision 2 & 3	Consolidation of perpetual family graves. Looking at the Public Health Regulation in relation to consolidation of family graves after a grave is 'full' (or less time if mutually agreed by cemetery manager and family), cemetery managers are able to authorise further burials of family members in the graves using ossuary box consolidation.	Supported

REF.	THE ACT REF	PROPOSAL BY STAKEHOLDER	DECISION
29	Subdivision 2 & 3	Extinction of tenure for old perpetual grave. Tenure of existing graves of a certain age (say 150 years old or more since 'last use' provided there is contact with owner/descendant of owner) could be extinguished similar process to the current reclamation provisions.	Supported
30	Subdivision 2 & 3	Monumental/Headstone requirements. Where interment rights are revoked, legislation should provide for the manner in which monuments and headstones are to be dealt with.	Part of interment industry schemes
31	Subdivision 2 & 3	Ossuary box. Clarity if the placing of human remains in an ossuary box is classified as a lift and deepen as it's clearly identified as not being classified an exhumation in the Public Health Regulations – confirm that ossuary box can be buried at lower depth than new first interment.	Part of interment industry schemes
32	Subdivision 2 & 3	The terms should match reasonable time period of body decomposition (e.g. question whether 25 year term = full body decomposition – this is not always the case depending on the particular soil conditions).	Not supported
33	Subdivision 2 & 3	Address blanket 'heritage orders' on graves/ cemeteries with exemptions on graves because it conflicts with ability for renewable/reuse interment ability and safety concerns – safety must remain paramount and liability for maintenance should not pass to the CLM.	Not supported
34	Section 86	A Model Code of Conduct for Crown Cemetery Operators was issued in 2015 with a strong recommendation that it be followed however this was purely voluntary. The legislative provision should be amended to make the Model Code a default mandatory code where the Crown cemetery operator has not adopted a code of conduct which includes all the key principles in the Model Code.	Not supported

REF.	THE ACT REF	PROPOSAL BY STAKEHOLDER	DECISION
35	Section 107	<p>a. Requires further clarification and currently, the order outlined allows for a CLM to issue new pricing and CCNSW to refuse to approve the pricing up to 3 months later is the wrong order – the consultation regarding the pricing should occur before the new pricing is published.</p> <p>b. Should there be a clause to allow CLMs to add a levy (over and above CCNSW levy)? If so, then there should be a clause allowing Cemeteries to pass on that levy as an additional fee(s) to the consumer.</p>	Not supported
36	Section 107	Consider an amendment, if necessary, that enables CCNSW to compel ALL operators to provide current prices for publication and comparison purposes.	Supported
37	Schedule 1 Members and Procedures of Board	Title of schedule has confused Crown cemetery operators with boards that this schedule applies to them. Title of the schedule needs to make clear that this schedule only relates to the CCNSW Board as per s.16 and not statutory land manager boards that are Crown cemetery operators that are covered by Schedule 2.	Supported
38	Schedule 3 Savings, Transitional and Other Provisions	<p>Clause 2 needs to be amended because the Crown Lands Regulation 2006 has been repealed. If there is a regulation in place under the Act about records, clause 2 can be repealed.</p> <p>Example amendment: clause 2 of the Act could list all the ways and types of records that were previously listed in clause 33(2) of, and Schedule 4 to, the Crown Lands Regulation 2006.</p>	Supported, subject to drafting advice from Parliamentary Counsel.
39	Dictionary	<p><i>Perpetual care</i></p> <p>a. Definition/clarification on the meaning of ‘in perpetuity’ – a guide/framework around this issue (inclusive of fee levy acknowledgement clause, where applicable for sustainability of business).</p>	Not supported

REF.	THE ACT REF	PROPOSAL BY STAKEHOLDER	DECISION
40	Subdivision 2 & 3	<p><i>Private Land</i></p> <p>The definition of private burials fails to deal with land that is crown land that is leased (for example Western Lands Lease) on which there have been private family cemeteries located.</p> <p>To be considered:</p> <ul style="list-style-type: none"> Who approves private cemeteries on unincorporated area of NSW (e.g. Western Division - where no council in place)? Should regulations to Act specify whether certain types of cemeteries should be included or excluded under regulations. 	Supported noting that clarification on “private” aspects of the sector is required through guidelines or any future legislative amendments.
41	General amendments- Monument/ structure safety	<p>a. Powers to enforce (charge a recovery fee/ fine) for non-compliance for request to repair dangerous dilapidated graves as well as recover costs of repairs.</p> <p>b. Building codes need to be specified for private vaults.</p> <p>c. Clarity on who is responsible for maintenance of monuments – currently we only take action on graves/monuments where a safety risk exists.</p>	Not supported
42	General amendments- Board membership	Acknowledgement, engagement and definition on an external Board Committee Membership and associated powers, accountabilities, payment parameters, etc. (e.g. should be paid the same as Board Members?).	Not supported
43	General	Legislative provisions for CCNSW to issue Practice Notes or other guidance.	Not supported, noting Sections 12(g) and 13 of the Act.
44	General	As per IPART review, provide a consistent form template across all cemeteries for interment services to customers and stakeholders and welcome standardisation across the industry for forms and pricing.	Supported

REF.	THE ACT REF	PROPOSAL BY STAKEHOLDER	DECISION
45	General	Consider a co-location of Government Support services for bereavement-care needs to be located at, or within convenient distance from cemeteries and possibly (eg have satellite office space within the Admin. offices at active Cemeteries).	Not supported
46	General	Establish Cemetery Catchment (notional) Boundaries of service for each Crown Cemetery for both existing and new land areas.	Not supported
47	General	Formal acknowledgement of cemetery lands zoning as essential services and critical infrastructure (like schools, hospitals, roads, landfills, etc) in Local Environmental Plans.	Supported
48	General	<p>Allocate the State Government with the responsibility for all future planning, zoning and acquisition of cemetery lands for designated Crown Cemetery Operators to develop and maintain.</p> <p>Currently each Crown Cemetery Operator is consuming significant resources and funds which would be better applied to perpetual care for future land investigations, purchase and development without a coordinated whole-of-Crown Cemetery Collation/State Government direction/control/ approach based on efficient cemetery land-use development and future planning demand of the whole Sydney Metropolitan Catchment.</p>	Not supported
49	Clause 54, Public Health Regulation 2012	<p>The regulations state at clause 54 'A person who is not a funeral director must not retain a body if more than 5 days have passed since death'. Funeral Directors often deliver the body to the cemetery on the 4th or 5th day – we are not always able to cremate/bury within this timeframe. Why are there special rules for Funeral Directors, who are unregulated as an industry?</p> <p>Depending on the deceased's religion or culture, extra time may accommodate or hinder cultural rituals or religious needs.</p>	<i>This is outside the scope of the Review but could assist the sector and should be considered Recommend consideration by NSW Health.</i>

REF.	THE ACT REF	PROPOSAL BY STAKEHOLDER	DECISION
50	Clause 60, Public Health Regulation 2012	Families sometimes request a viewing prior to cremation in the crematorium. Whilst the regulations cover Funeral Directors in this situation when the body is infected with a prescribed infectious disease, it does not include cemeteries. Under Public Health Regulation 2012 Part 8, clause 60 (2), Body viewing states 'a funeral director must not make available for viewing a body infected with a prescribed infectious disease or a body that the funeral director has reason to believe is infected with a prescribed infectious disease'. the regulation must require the mortuary to label the coffin with the type of infectious disease, ie 'prescribed' or 'unprescribed', of the deceased.	Not supported <i>It is noted that this is outside the scope of the Review.</i>
51	Clause 61, Public Health Regulation 2012	Similarly, clause 61 Bodies in holding rooms, provides special leave to funeral directors for some reason. It states 'A person (other than a funeral director) must not keep a body in a holding room for more than 48 hours. Should we have issues with our cremators or receive a body late Friday (we do not cremate on the weekend), we would be in breach of this regulation.	<i>This is outside the scope of the Review but could assist the sector. and should be considered Recommend consideration by NSW Health.</i>
52	Clause 63, Public Health Regulation 2012	Requirement to use a coffin as per clause 63 'a person must not bury or cremate a body unless the body has been placed in a coffin and the lid of the coffin has been securely sealed'. There does not appear to be a definition of a coffin - can we use cardboard coffins? Do we have to use a plastic liner? This impacts the rate of decomposition of a body and limits the ability to utilise the renewable tenure rights in the legislation. Revision to permit burial in a shroud would allow for religious rituals required by certain faith groups to proceed without administrative processes and may also allow for natural burial.	<i>This is outside the scope of the Review but could assist the sector. and should be considered Recommend consideration by NSW Health.</i>
53	Clause 64, Public Health Regulation 2012	Requirement to maintain 900mm from top of coffin to surface limits number of interments. A reduction (with possible requirement for concrete capping) could result in triple depth burials. Alternatively, in some areas, the 900mm limit results in only single depth being possible (due to water table issues for example). Propose blanket shallow burial approvals (with associated burial requirements to mitigate issues) for known areas with these issues in order to facilitate double depth graves. May allow for different types of cemetery renewal to be considered without disturbing remains. May allow for identification of new sites which are not presently suitable due to sandstone etc.	<i>This is outside the scope of the Review but could assist the sector. and should be Recommended consideration by NSW Health.</i>

Appendix D: Regulatory functions and enforcement provisions of the Act

REGULATORY FUNCTION	CCNSW POWERS	PENALTY PROVISIONS
s.12(d) to develop, approve and promote codes of practice for cemeteries and crematoria and report on adoption of those codes by the interment industry.	<p>s.28 Codes of Practice may be developed and approved (under s.30) by the Cemeteries Agency on its own initiative or in collaboration with interment industry.</p> <p>It is important to note that a mandatory code of practice can only be enforceable if it is part of an interment industry scheme under s.31(2). CCNSW has not developed any mandatory codes to date.</p>	s.29(4) Failure to comply with any requirement of a mandatory code of practice that applies to that person. Maximum penalty: \$27,500.
	s.30 Cemeteries Agency may approve, vary or revoke an approved code of practice. CCNSW has developed a voluntary code which is not enforceable.	
Clause 63, Public Health Regulation 2012	s.36 Cemeteries Agency may make short term order to take action or refrain from taking action to operator of a type or a class of cemetery, or persons who belong to a class of such operators.	s.38 Failure to comply with any requirement imposed by a short-term order issued under S.36. Maximum penalty \$27,500.
s.12(e) to provide advice or make recommendations to the Minister on the establishment, implementation or alteration of interment industry schemes.	<p>s.31 The regulations may establish schemes for or with respect to the interment industry (interment industry schemes).</p> <p>CCNSW has not developed any interment industry schemes.</p>	s.31(3) Failure to comply with any requirement of an interment industry scheme that applies to that person. Maximum penalty \$27,500.
s.12(f) to regulate the provision of services in relation to interment matters that are subject to interment industry schemes.	s.15 Arrangement with other persons or bodies (a) to appoint agents, act as an agent, (b) enter into arrangement with other government agency to exercise the functions of authorised officers under the Act.	s.31(3) Failure to comply with any requirement of an interment industry scheme that applies to that person. Maximum penalty \$27,500.
	s.33 Improvement notices where Cemeteries Agency believes on reasonable grounds that this Act or the regulations or a provision of a scheme have been, or are being, contravened in relation to the cemetery, and the contravention is not an offence under the Act or regulations.	s.34 Failure to end contravention as required by an improvement notice within the stated time in the notice. Maximum penalty \$27,500.

REGULATORY FUNCTION	CCNSW POWERS	PENALTY PROVISIONS
	Part 4 - Interment rights and cemetery renewal	s.46(2) Failure of cemetery operator to comply with the requirements of (1) (d) and (e) (remains undisturbed and memorial). Maximum penalty \$27,500.
		s.55(6)(a) Re-use of interment and removal of memorials site by cemetery operator where human remains of a deceased person (other than cremated remains) that are interred in the site have not been interred for at least 25 years. Maximum penalty \$27,500.
		<p>s.63(1) Failure of cemetery operator to cause a register to be kept of the events listed in (a)-(e). Maximum penalty \$2,200.</p> <p>s.63(5) Failure of cemetery operator to make an entry relating to an interment or cremation immediately after the interment or cremation is carried out. Maximum penalty \$2,200.</p> <p>s.63(6) Failure of cemetery operator to keep a copy of the cemetery operator's register at the cemetery and make it available for inspection on request by an authorised officer within the meaning of this Act or the <i>Public Health Act 2010</i>.</p>

REGULATORY FUNCTION	CCNSW POWERS	PENALTY PROVISIONS
		<p>s.63(12) Failure of cemetery operator to ensure the cemetery operator's register is sent to the Cemeteries Agency or otherwise disposed of as the Cemeteries Agency direct, if a cemetery operator ceases to direct the operations of a cemetery. Maximum penalty \$2,200.</p>
		<p>s.64(1) Failure of cemetery operator to keep all applications, certificates, permits and other documents relating to any cremation carried out by it and mark them with a number corresponding to the number allocated to the cremation in the cemetery operator's register. For a period of 15 years by effect of 64(2). Maximum penalty \$2,200.</p> <p>s.64(3) Failure of the cemetery operator concerned to send all registers and documents relating to the cremations that have taken place at the crematorium to the Cemeteries Agency or otherwise dispose of them as the Cemeteries Agency may direct. Maximum penalty \$2,200.</p>

REGULATORY FUNCTION	CCNSW POWERS	PENALTY PROVISIONS
s.12(g) to keep under review the policies, operating procedures and activities of the interment industry.	s.41 Performance reporting	s.41(3) Failure to comply with any requirement imposed on the operator by a performance reporting notice. Maximum penalty \$9,900.
		s.42 Failure to keep such records as may be prescribed by regulations or required by notice in writing. Maximum penalty \$9,900.
	s.43 Reports by notice in writing and information reasonably required by Agency to carry out its functions.	s.43(1) Failure to provide a report required by notice in writing. Maximum penalty \$9,900. s.43(2) Failure to provide information that the Cemeteries Agency requests. Maximum penalty \$9,900.
	s.93 May direct Crown cemetery operator to prepare a draft plan for management for a Crown cemetery operator to manage. s.96 May adopt a plan of management.	s.82(1) Failure of an operator member to exercise his or her powers and discharge his or her duties with degree of care. Maximum penalty \$27,500. s.83(1) Use of position – trust members – use of position to gain advantage for the trust member or someone else. Maximum penalty \$27,500. s.84(1) Improper use of information by operator member to gain advantage or cause detriment to the trust. Maximum penalty \$27,500.

REGULATORY FUNCTION	CCNSW POWERS	PENALTY PROVISIONS
		<p>s.84(3) penalty for any person involved in contravention of S84(1). Maximum penalty \$27,500.</p> <p>s.87(1) Failure of trust board member to disclose personal conflict of interest. Maximum penalty \$5,500.</p> <p>s.87(4) Trust member takes part in or influences decision after disclosure of conflict of interest. Maximum penalty \$5,500.</p>
<p>s.12(h) to collect information and carry out research as is necessary to exercise its functions.</p>	<p>s.27 Cemeteries and Crematoria Register</p>	<p>S.27 Failure of a cemetery operator to provide, and update on any material change, the Cemeteries Agency with the information prescribed in ss27(3)(a)-(c). Maximum penalty \$2,200.</p>
	<p>s.101 May direct a Crown cemetery operator to provide information relating to their financial report or operations.</p> <p>s.102(1) May appoint a person to enquire into or carry out an audit of any of the affairs of a Crown cemetery operator (this includes the power to inspect records, take copies, require persons to answer questions).</p>	<p>s.101(2) Failure to comply with a direction given under s101(1) Maximum penalty \$19,800.</p> <p>s.102(4) person refuses or fails to give information or answer questions, or obstructs appointed person under this section 100 Penalty units.</p>

Appendix E: Model overview

To assess the financial sustainability of the Crown operators, the Review developed a 100 year forecast model that examined the impact of projected demand for burial interment and cremation rights upon the financial capability of existing Crown cemeteries with an without planned new cemeteries and assuming scenarios of operator consolidation alternatives. The outputs from this analysis are contained in Chapter 7.

The Model provides the following key forecast outputs at a cemetery, operator and consolidated level:

- i. Potential annual cash flow surplus/deficits, after operational, maintenance and capital expenditures ('capex') and allowing for demand and supply drivers (below);
- ii. Cumulative balance of investment assets and allowance for working capital estimated movements;
- iii. Estimation of the accrued and target perpetual funding liability each year and estimated funding position of assets relative to this;
- iv. Relativity of business measures across operators (for example; average margin of burial vs cremation operations, closed cemetery maintenance costs on a per unit (hectare and plot) basis etc); and
- v. Estimated cemetery exhaustion points¹ (for "at needs" and last interment basis).

The model was built from a "bottom up" set of drivers, including demand/supply of cemetery and crematoria services of each of the Crown operators. Revenue and direct costs were modelled at a per interment right sale and type of interment service level (e.g. lawn burial, mausoleum, niche, cremation, ash interment) that was consistent with the information submitted by each Crown Operator in late 2019 to the IPART *Review of the Costs and Pricing of Interment in NSW*. The Model was prepared on a nominal basis (ie; annual revenue and expense items are inflation-adjusted).

The Review initially modelled the 'status quo' – that being the current operational assets of the Crown operators in 2020. In addition to the Status Quo, scenario analysis was conducted to estimate the impact upon the above outputs from modifying a range of assumptions regarding, inter alia:

- ◆ the acquisition of new cemetery land and developing and bringing to operational status associated new cemeteries;
- ◆ renewable tenure interment;
- ◆ cemetery renewal;
- ◆ achievement of potential operational efficiencies and cost saving deriving from various potential structural changes including mergers/combination of Crown operators and standardisation/harmonisation of business practices (eg; ground maintenance closure expenditure, asset investment strategies).

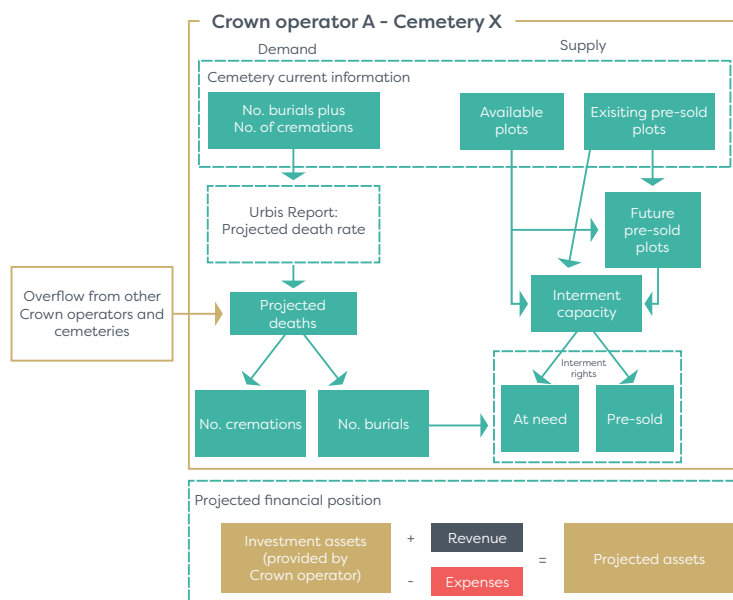
¹ Exhaustion point refers to the time of last burial interment right sale

Key Model inputs included the following:

- ◆ Supply capacity of each cemetery per operator within existing cemetery boundaries, excluding any unplanned/unapproved development land (if any);
- ◆ Supply split between 'unsold' and 'pre-sold' available plots and spaces;
- ◆ Long term projected death rates by region were sourced from Urbis (2019) and applied to the annual demand for each Crown operator in future years;
- ◆ Demand of future interment rights ('pre-sale' and 'at need');
- ◆ Demand mix of cremation versus burial interments (and between 'at need' and 'pre-sold');
- ◆ Demand mix of perpetual vs renewable tenure interments (and ability to change over time);
- ◆ Revenue per service provided (eg; interments rights and interments on an aggregated product basis, cremations and other services);
- ◆ Expenses – direct per service provided (eg; costs of burial and cremation activity);
- ◆ Expenses – indirect and overhead costs (including maintenance and administration);
- ◆ Capex – future estimates, type and timing; and
- ◆ Expected future investment returns (reflective of different asset mix) and discount rates.

With the exception of investment return assumptions, the initial key model inputs and future trends were largely sourced from Crown operators through data they submitted to IPART and a subsequent clarification process. There were also instances where the Review team applied commercial judgement to various inputs provided by the operators either to correct them or to conform or assimilate them within the context of other operator's inputs.

The diagram below summarises the modelling approach and provides an overview of the key inputs used and outputs provided:



Appendix F - Permissibility analysis of cemetery and crematorium use under LEP within Sydney LGAs

PERMISSIBILITY ANALYSIS OF CEMETERY AND CREMATORIA USE UNDER LEP WITHIN SYDNEY METROPOLITAN LOCAL GOVERNMENT AREAS

Local Government Aera	Local Environmental Plan	Land Use Zones																								
		RU1	RU2	RU3	RU4	RU5	RU6	R1	R2	R3	R4	R5	B1	B2	B3	B4	B5	B6	B7	B8	IN1	IN2	IN3	IN4	SP1	SP2
Bayside	Rockdale LEP 2011	N/A	N/A	N/A	x	N/A	N/A	N/A	x	x	x	N/A	x	x	N/A	x	N/A	✓	N/A	N/A	N/A	✓	N/A	N/A	N/A	✓
	Botany Bay LEP 2013	N/A	N/A	N/A	N/A	N/A	N/A	N/A	x	x	x	N/A	x	x	x	x	x		x	N/A	N/A	x	N/A	N/A	✓	✓
Blacktown	Blacktown LEP 2015	N/A	N/A	N/A	✓	N/A	N/A		x	x		N/A	x	x	x	x	x	N/A	✓	Crematoria	✓	x	N/A	N/A	✓	✓
	Burwood LEP 2012	N/A	N/A	N/A	N/A	N/A	N/A	x	x	x	N/A	N/A	x	x	N/A	x	N/A	x	N/A	N/A	N/A	x	N/A	N/A	✓	✓
Camden	Camden LEP 2010	✓	✓	N/A	✓	N/A	N/A	N/A	x	✓	x	✓	x	x	N/A	x	x	N/A	N/A	N/A	✓	Crematoria	✓	N/A	✓	✓
	Campbelltown LEP 2015	N/A	x	N/A	N/A	x	x	N/A	x	x	x	x	x	x	x	x	x	N/A	x	N/A	x	x	N/A	N/A	✓	✓
Canberra Bay	Canada Bay LEP 2013	N/A	N/A	N/A	N/A	N/A	N/A	N/A	x	x	x	N/A	x	N/A	x	x	N/A	x	x	N/A	x	N/A	N/A	N/A	N/A	✓
	Bankstown LEP 2015	N/A	N/A	N/A	x	N/A	N/A	N/A	N/A	x	x	N/A	x	x	N/A	x	x	x	x	N/A	✓	Crematoria	x	N/A	✓	✓
Canterbury-Bankstown	Canterbury LEP 2012	N/A	N/A	N/A	N/A	N/A	N/A	N/A	x	x	x	N/A	x	x	N/A	N/A	x	x	N/A	N/A	x	x	N/A	N/A	✓	✓
	Auburn LEP 2010	N/A	N/A	N/A	N/A	N/A	N/A	N/A	x	x	x	N/A	x	x	N/A	x	N/A	x	x	N/A	x	x	N/A	N/A	✓	✓
Cumberland	Holroyd LEP 2013	N/A	N/A	N/A	N/A	N/A	N/A	N/A	x	x	x	N/A	x	x	N/A	x	x	x	x	N/A	x	x	N/A	N/A	✓	✓
	Parramatta LEP 2011	N/A	N/A	N/A	N/A	N/A	N/A	N/A	x	x	x	N/A	x	x	x	x	x	x	x	N/A	x	x	✓	N/A	✓	✓
Fairfield	Fairfield LEP 2013	x	x	N/A	✓	x	N/A		x	x		N/A	x	x	x	x	x	x	N/A	N/A	✓	x	N/A	✓	✓	✓
	Hornsby LEP 2013	x	x	N/A	x	x	N/A	N/A	N/A	x	x	N/A	x	x	x	x	x	x	x	N/A	✓	x	N/A	✓	✓	✓
Hornsby	Hunters Hill LEP 2012	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	x	N/A	N/A	x	N/A	N/A	x	N/A	N/A	N/A	N/A	N/A	N/A	N/A	x	✓	✓
	Ashfield LEP 2013	N/A	N/A	N/A	N/A	N/A	N/A	N/A	x	x	N/A	N/A	x	x	N/A	x	N/A	x	x	N/A	N/A	✓	N/A	N/A	✓	✓
Inner West	Leichhardt LEP 2013	N/A	N/A	N/A	N/A	N/A	N/A	x	N/A	x	N/A	N/A	x	x	N/A	x	N/A	N/A	x	N/A	N/A	✓	N/A	N/A	✓	✓
	Marrickville le LEP 2011	N/A	N/A	N/A	N/A	N/A	N/A	x	x	x	x	N/A	x	x	N/A	x	x	✓	Crematoria	N/A	✓	x	N/A	✓	✓	✓
Ku-ring-gai	Ku-ring-gai LEP 2015	N/A	N/A	N/A	N/A	N/A	N/A	x	x	x	x	x	x	x	N/A	x	N/A	N/A	x	N/A	N/A	N/A	N/A	✓	✓	✓
	Lane Cove LEP 2009	N/A	N/A	N/A	N/A	N/A	N/A	N/A	x	x	x	N/A	x	x	x	x	N/A	N/A	N/A	N/A	N/A	x	N/A	x	✓	✓
Mosman	Mosman LEP 2012	N/A	N/A	N/A	N/A	N/A	N/A	N/A	x	x	N/A	N/A	x	x	N/A	N/A	N/A	x	x	N/A	N/A	N/A	N/A	✓	✓	✓
	North Sydney LEP 2013	N/A	N/A	N/A	N/A	N/A	N/A	N/A	x	x	x	N/A	x	x	x	x	N/A	N/A	N/A	N/A	N/A	x	N/A	x	✓	✓

Legend:

N/A This land use zone is not within the LEP

✓ If Crematory or Crematoria is permissible with consent

x If Crematory or Crematoria is not permissible with consent

RU1 Primary Production

RU2 Rural Landscape

RU3 Forestry

RU4 Primary Production Small Lots

RU5 Village

RU6 Transition

R1 General Residential

R2 Low Density Residential

R3 Medium Density Residential

R4 High Density Residential

R5 Large Lot Residential

B1 Neighbourhood Centre

B2 Local Centre

B3 Commercial Core

B4 Mixed Use

B5 Business Development

B6 Enterprise Corridor

B7 Business Park

B8 Metropolitan Centre

IN1 General Industrial

IN2 Light Industrial

IN3 Heavy Industrial

IN4 Working Waterfront

SP1 Special Activities

SP2 Infrastructure

Notes:

- Auburn LEP 2010 specifically states cremeteries and crematoria as a **permitted** use within the SPI Zone
- Wollondilly LEP 2010 specifically states cremeteries and crematoria as a **prohibited** use within the SPI Zone.

- Legend:**
- N/A This land use zone is not within the LEP
 - ✓ If Cemetery or Crematoria is permissible with consent
 - x If Cemetery or Crematoria is not permissible with consent
 - RU1 Primary Production
 - RU2 Rural Landscape
 - RU3 Forestry
 - RU4 Primary Production Small Lots
 - RU5 Village
 - RU6 Transition
 - R1 General Residential
 - R2 Low Density Residential
 - R3 Medium Density Residential
 - R4 High Density Residential
 - R5 Large Lot Residential
 - B1 Neighbourhood Centre
 - B2 Local Centre
 - B3 Commercial Core
 - B4 Mixed Use
 - B5 Business Development
 - B6 Enterprise Corridor
 - B7 Business Park
 - B8 Metropolitan Centre
 - IN1 General Industrial
 - IN2 Light Industrial
 - IN3 Heavy Industrial
 - IN4 Working Waterfront
 - SP1 Special Activities
 - SP2 Infrastructure
- Notes:**
- Auburn LEP 2010 specifically states crematories and crematoria as a **permitted** use within the SPI Zone
 - Wollondilly LEP 2010 specifically states crematories and crematoria as a **prohibited** use within the SPI Zone.

Appendix F - Permissibility analysis of cemetery and crematorium use under LEP within Sydney LGAs

[illegible]

Notes:

- Auburn LEP 2010 specifically states cemeteries and crematoria as a **permitted** use within the SPI Zone
- Wollondilly LEP 2010 specifically states cemeteries and crematoria as a **prohibited** use within the SPI Zone.

STATUS QUO – CMCT 10 YEAR FINANCIAL FORECAST

	UNIT	FY 2019 Actual	FY 2020 Forecast	FY 2021 Forecast	FY 2022 Forecast	FY 2023 Forecast	FY 2024 Forecast	FY 2025 Forecast	FY 2026 Forecast	FY 2027 Forecast	FY 2028 Forecast	FY 2029 Forecast	FY 2030 Forecast
Operating Revenue													
Revenue from sale of Licences	A\$m	15.6	17.8	18.3	18.9	19.5	18.3	18.2	18.9	19.6	20.3	18.0	3.9
Bodily Remains	A\$m	15.1	17.2	17.8	18.3	18.9	17.6	17.5	18.2	18.8	19.5	17.3	3.2
Cremated Remains	A\$m	0.5	0.6	0.6	0.6	0.6	0.7	0.7	0.7	0.7	0.8	0.7	0.8
Revenue from conducting Interments	A\$m	5.1	4.2	4.4	4.5	4.6	4.8	5.0	5.2	5.5	5.7	5.6	4.9
Bodily Remains	A\$m	4.9	4.0	4.1	4.3	4.4	4.6	4.8	5.0	5.2	5.4	5.3	4.6
Cremated Remains	A\$m	0.2	0.2	0.2	0.2	0.2	0.2	0.3	0.3	0.3	0.3	0.3	0.3
Revenue from Cremations	A\$m	0.4	0.4	0.4	0.4	0.4	0.4	0.5	0.5	0.5	0.5	0.5	0.6
Other Revenue	A\$m	2.2	3.0	3.1	3.2	3.3	2.2	2.0	2.1	2.2	2.2	1.9	0.7
Total Revenue	A\$m	23.2	25.4	26.2	27.0	27.9	25.8	25.7	26.7	27.7	28.7	26.1	10.2
Direct Costs													
Direct Cost attributed to Interments	A\$m	2.0	1.8	1.9	1.9	2.0	2.1	2.2	2.3	2.3	2.4	2.4	2.1
Bodily Remains	A\$m	2.0	1.7	1.8	1.8	1.9	2.0	2.1	2.2	2.2	2.3	2.3	2.0
Cremated Remains	A\$m	0.0	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Direct Cost attributed to Cremations	A\$m	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.3	0.3	0.3	0.3
Other Direct Costs	A\$m	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Direct Costs	A\$m	2.2	2.0	2.1	2.1	2.2	2.3	2.4	2.5	2.6	2.7	2.7	2.4
Overheads													
Sales cost	A\$m	6.3	6.3	6.5	6.8	7.0	6.3	6.1	6.4	6.6	6.8	5.9	1.4
Grounds maintenance cost	A\$m	2.9	3.0	3.1	3.1	3.2	3.4	3.5	3.6	3.7	3.9	3.8	3.6
Administration/corporate overheads	A\$m	8.0	8.1	8.3	8.6	8.9	8.5	8.6	8.9	9.2	9.5	8.8	4.9
Other overheads	A\$m	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Overheads	A\$m	17.2	17.4	17.9	18.5	19.1	18.2	18.2	18.8	19.5	20.2	18.5	9.9
Operating Profit	A\$m	3.9	6.0	6.2	6.4	6.6	5.4	5.2	5.4	5.6	5.8	4.9	-2.1
Operating Profit Margin		16.6%	23.8%	23.8%	23.8%	23.8%	20.8%	20.0%	20.1%	20.1%	20.2%	18.8%	-20.4%
FUM Income	A\$m	40%	36%	36%	36%	36%	34%	34%	34%	34%	34%	33%	35%
	A\$m	5.9	5.7	6.0	6.3	6.7	7.1	7.5	7.8	8.1	8.5	8.8	9.2
Net Income including funds management	A\$m	9.8	11.8	12.3	12.8	13.3	12.4	12.6	13.2	13.7	14.2	13.7	7.1
Cash held back from Fund Operations due to PCL shortfall	A\$m		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Capex – pre-planned + maintenance	A\$m		-3.4	-3.4	-3.4	-3.4	-3.4	-4.5	-4.7	-4.9	-5.0	-5.0	-2.0
+/- Change in Working Capital	A\$m		-1.0	-0.6	-0.6	-0.6	1.2	0.1	-0.7	-0.7	-0.7	1.9	11.5
Net Cash Flow	A\$m		7.3	8.3	8.8	9.3	10.2	8.2	7.8	8.1	8.5	10.5	16.7

STATUS QUO – RGCRLM 10 YEAR FINANCIAL FORECAST

Summary P&L	UNIT	FY 2019 Actual	FY 2020 Forecast	FY 2021 Forecast	FY 2022 Forecast	FY 2023 Forecast	FY 2024 Forecast	FY 2025 Forecast	FY 2026 Forecast	FY 2027 Forecast	FY 2028 Forecast	FY 2029 Forecast	FY 2030 Forecast
Operating Revenue													
Revenue from sale of Licences	A\$m	14.5	14.6	15.1	15.6	16.0	18.3	20.2	28.0	28.7	22.8	0.0	0.0
Bodily Remains	A\$m	14.4	14.6	15.0	15.5	16.0	16.5	18.4	26.2	26.8	22.3	0.0	0.0
Cremated Remains	A\$m	0.1	0.1	0.1	0.1	0.1	1.7	1.8	1.9	1.9	0.5	0.0	0.0
Revenue from conducting Interments	A\$m	4.8	4.8	5.0	5.1	5.3	5.5	5.9	7.1	7.5	7.2	4.6	3.8
Bodily Remains	A\$m	4.8	4.8	5.0	5.1	5.3	5.5	5.8	7.0	7.4	7.1	4.5	3.7
Cremated Remains	A\$m	0.0	0.0	0.0	0.0	0.0	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Other Revenue	A\$m	4.2	6.1	6.3	6.4	6.6	6.1	6.7	9.1	9.3	7.6	0.7	0.6
Total Revenue	A\$m	23.5	25.5	26.3	27.1	28.0	31.3	34.2	45.7	47.1	39.2	6.9	6.1
Direct Costs													
Direct Cost attributed to Interments	A\$m	2.8	2.8	2.9	3.0	3.1	3.3	3.5	4.2	4.4	4.3	2.7	2.2
Bodily Remains	A\$m	2.8	2.8	2.9	3.0	3.1	3.2	3.4	4.1	4.4	4.2	2.7	2.2
Cremated Remains	A\$m	0.0	0.0	0.0	0.0	0.0	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Direct Cost attributed to Cremations	A\$m	0.0	0.0	0.0	0.0	0.0	0.4	0.5	0.5	0.5	0.5	0.5	0.5
Other Direct Costs	A\$m	0.0	0.0	0.0	0.0	0.0	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Total Direct Costs	A\$m	2.8	2.9	2.9	3.0	3.1	3.8	4.0	4.8	5.0	4.9	3.3	2.9
Overheads													
Sales cost	A\$m	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grounds maintenance cost	A\$m	3.1	3.5	3.6	3.7	3.8	3.9	4.0	4.1	4.3	4.4	4.3	4.4
Administration/corporate overheads	A\$m	9.5	10.4	10.7	11.0	11.4	12.7	13.9	18.5	19.1	15.9	3.1	2.7
Other overheads	A\$m	1.5	1.6	1.6	1.7	1.7	1.9	2.1	2.6	2.7	2.3	0.8	0.7
Total Overheads	A\$m	14.1	15.5	15.9	16.4	16.9	18.5	19.9	25.2	26.1	22.6	8.3	7.8
Operating Profit	A\$m	6.6	7.2	7.4	7.7	8.0	9.0	10.2	15.7	16.1	11.8	-4.7	-4.6
Operating Profit Margin		28.1%	28.2%	28.3%	28.4%	28.4%	28.7%	29.9%	34.4%	34.1%	30.0%	-67.5%	-76.3%
FUM income	A\$m	13.0	6.1	6.5	7.0	7.4	7.9	8.3	8.9	9.5	10.3	11.1	11.7
Net Income including funds management	A\$m	19.5	13.3	14.0	14.7	15.4	16.9	18.6	24.6	25.6	22.1	6.4	7.1
Cash held back from Fund Operations due to PCL shortfall	A\$m		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Copex - pre-planned + maintenance	A\$m		-2.6	-2.6	-2.6	-2.6	-5.6	-4.1	-5.4	-5.6	-4.7	-0.8	-0.7
+/- Change in Working Capital	A\$m		-0.6	-0.2	-0.2	-0.2	-1.4	-0.9	-3.4	-0.4	2.4	9.8	0.2
Net Cash Flow	A\$m		10.1	11.2	11.9	12.6	9.9	13.6	15.7	19.6	19.8	15.4	6.5

STATUS QUO – NMCLM 10 YEAR FINANCIAL FORECAST

	Summary P&L	UNIT	FY 2019 Actual	FY 2020 Forecast	FY 2021 Forecast	FY 2022 Forecast	FY 2023 Forecast	FY 2024 Forecast	FY 2025 Forecast	FY 2026 Forecast	FY 2027 Forecast	FY 2028 Forecast	FY 2029 Forecast	FY 2030 Forecast
Operating Revenue														
Revenue from sale of Licences		A\$m	18.2	17.4	17.9	18.5	19.0	19.0	19.0	19.0	19.1	18.2	16.8	17.1
Bodily Remains		A\$m	14.4	13.5	13.9	14.3	14.8	14.6	14.5	14.4	14.3	13.3	11.7	11.9
Cremated Remains		A\$m	3.8	3.9	4.0	4.1	4.3	4.4	4.5	4.6	4.8	4.9	5.1	5.2
Revenue from conducting Interments		A\$m	2.6	2.7	2.7	2.7	2.8	2.8	2.8	2.8	2.8	2.8	3.2	3.4
Bodily Remains		A\$m	2.2	2.3	2.4	2.3	2.4	2.4	2.4	2.3	2.3	2.3	2.7	2.9
Cremated Remains		A\$m	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.5	0.5	0.5	0.5
Revenue from Cremations		A\$m	1.6	1.6	1.7	1.7	1.8	1.9	2.0	2.1	2.2	2.4	2.4	2.5
Other Revenue		A\$m	1.0	0.6	0.6	0.6	0.7	0.7	0.7	0.7	0.7	0.6	0.6	0.6
Total Revenue		A\$m	23.4	22.3	22.9	23.5	24.2	24.3	24.5	24.6	24.8	24.0	23.0	23.7
Direct Costs														
Direct Cost attributed to Interments		A\$m	4.7	4.6	4.7	4.8	4.9	5.0	5.0	5.1	5.1	4.9	4.8	5.0
Bodily Remains		A\$m	3.5	3.5	3.6	3.6	3.7	3.7	3.6	3.6	3.5	3.2	3.1	3.2
Cremated Remains		A\$m	1.2	1.1	1.1	1.2	1.2	1.3	1.4	1.5	1.6	1.7	1.7	1.8
Direct Cost attributed to Cremations		A\$m	0.9	0.9	1.0	1.0	1.0	1.1	1.1	1.2	1.3	1.4	1.4	1.4
Other Direct Costs		A\$m	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Direct Costs		A\$m	5.6	5.5	5.6	5.8	6.0	6.1	6.2	6.3	6.4	6.2	6.2	6.4
Overheads														
Sales cost		A\$m	1.2	1.2	1.2	1.2	1.3	1.3	1.3	1.3	1.3	1.4	1.6	1.6
Grounds maintenance cost		A\$m	5.0	5.1	5.3	5.4	5.6	5.6	5.7	5.7	5.8	5.7	5.6	5.9
Administration/corporate overheads		A\$m	3.6	3.7	3.8	3.9	4.0	4.1	4.1	4.2	4.3	4.1	3.6	3.8
Other overheads		A\$m	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Overheads		A\$m	9.8	10.0	10.3	10.5	10.9	11.0	11.1	11.2	11.4	11.2	10.8	11.3
Operating Profit		A\$m	8.0	6.7	7.0	7.2	7.4	7.3	7.2	7.1	7.0	6.6	6.0	6.0
<i>Operating Profit Margin</i>			<i>34.2%</i>	<i>30.3%</i>	<i>30.5%</i>	<i>30.7%</i>	<i>30.6%</i>	<i>30.0%</i>	<i>29.3%</i>	<i>28.8%</i>	<i>28.3%</i>	<i>27.6%</i>	<i>26.1%</i>	<i>25.4%</i>
FUM income		A\$m	3.0	4.0	4.3	4.4	4.8	5.0	5.2	5.6	6.0	6.5	6.9	7.3
Net Income including funds management		A\$m	11.0	10.7	11.3	11.6	12.2	12.3	12.4	12.7	13.1	13.1	12.9	13.3
Cash held back from Fund Operations due to PCL shortfall		A\$m		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Capex – pre-planned + maintenance		A\$m		-1.9	-8.9	-1.9	-5.8	-7.5	-2.4	-2.4	-2.4	-2.7	-3.3	-3.4
+/- Change in Working Capital		A\$m		-0.1	-0.1	-0.1	-0.1	0.0	0.0	0.0	0.0	0.1	0.1	0.0
Net Cash Flow		A\$m		8.7	2.3	9.6	6.3	4.9	10.1	10.3	10.6	10.5	9.7	9.9

STATUS QUO – SMCLM 10 YEAR FINANCIAL FORECAST

	UNIT	FY 2019 Actual	FY 2020 Forecast	FY 2021 Forecast	FY 2022 Forecast	FY 2023 Forecast	FY 2024 Forecast	FY 2025 Forecast	FY 2026 Forecast	FY 2027 Forecast	FY 2028 Forecast	FY 2029 Forecast	FY 2030 Forecast
Operating Revenue													
Revenue from sale of Licences	A\$m	14.1	14.7	15.2	15.7	14.5	14.3	12.8	3.5	3.6	3.7	3.8	3.9
Bodily Remains	A\$m	11.2	11.7	12.0	12.4	11.3	10.9	9.4	0.0	0.0	0.0	0.0	0.0
Cremated Remains	A\$m	2.9	3.1	3.1	3.2	3.2	3.4	3.5	3.5	3.6	3.7	3.8	3.9
Revenue from conducting Interments	A\$m	3.2	3.2	3.3	3.5	3.5	3.5	3.5	2.8	2.9	3.0	3.1	3.2
Bodily Remains	A\$m	2.6	2.7	2.7	2.8	2.8	2.9	2.8	2.2	2.2	2.3	2.4	2.4
Cremated Remains	A\$m	0.6	0.6	0.6	0.6	0.6	0.7	0.7	0.7	0.7	0.7	0.7	0.7
Revenue from Cremations	A\$m	2.6	2.7	2.8	2.8	2.9	3.0	3.1	3.2	3.3	3.4	3.5	3.6
Other Revenue	A\$m	1.2	1.2	1.3	1.3	1.0	0.9	0.8	0.3	0.3	0.3	0.3	0.3
Total Revenue	A\$m	21.1	21.9	22.6	23.3	21.9	21.8	20.3	9.8	10.1	10.4	10.7	11.0
Direct Costs													
Direct Cost attributed to Interments	A\$m	3.5	3.5	3.6	3.7	3.9	4.1	4.1	3.4	3.5	3.6	3.7	3.8
Bodily Remains	A\$m	2.4	2.4	2.5	2.6	2.7	2.9	2.8	2.1	2.2	2.3	2.3	2.4
Cremated Remains	A\$m	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.3	1.3	1.3	1.4	1.4
Direct Cost attributed to Cremations	A\$m	0.7	0.7	0.7	0.7	0.7	0.8	0.8	0.8	0.8	0.8	0.9	0.9
Other Direct Costs	A\$m	0.2	0.2	0.2	0.2	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Direct Costs	A\$m	4.4	4.3	4.5	4.6	4.7	4.8	4.9	4.2	4.3	4.5	4.6	4.7
Overheads													
Sales cost	A\$m	1.7	1.8	1.8	1.9	1.9	2.0	1.8	0.7	0.7	0.7	0.7	0.8
Grounds maintenance cost	A\$m	1.4	1.5	1.5	1.6	1.5	1.6	1.6	1.4	1.4	1.5	1.5	1.5
Administration/corporate overheads	A\$m	9.7	9.9	10.2	10.6	10.6	10.9	10.4	6.9	7.1	7.2	7.4	7.6
Other overheads	A\$m	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Overheads	A\$m	12.9	13.2	13.6	14.0	14.1	14.4	13.8	9.0	9.2	9.4	9.7	9.9
Operating Profit	A\$m	3.8	4.4	4.5	4.7	3.1	2.6	1.6	-3.4	-3.5	-3.5	-3.6	-3.6
Operating Profit Margin		17.8%	20.0%	20.0%	20.1%	14.3%	11.7%	8.0%	-34.6%	-34.3%	-34.0%	-33.5%	-33.0%
FUM income	A\$m	5.6	3.8	3.8	3.7	3.7	3.8	4.0	4.2	4.5	4.5	4.5	4.5
Net Income including funds management	A\$m	9.4	8.2	8.3	8.4	6.8	6.4	5.6	0.8	1.1	1.0	0.9	0.8
Cash held back from Fund Operations due to PCL shortfall	A\$m		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Copex – pre-planned + maintenance	A\$m		-7.9	-9.6	-8.7	-4.0	-3.0	-2.7	-1.4	-1.4	-1.5	-1.5	-1.6
+/- Change in Working Capital	A\$m		-0.8	-0.6	-0.7	1.4	0.2	1.4	10.1	-0.3	-0.3	-0.3	-0.3
Net Cash Flow	A\$m		-0.5	-1.9	-1.0	4.2	3.6	4.3	9.4	-0.6	-0.8	-0.9	-1.0

Appendix H: Perpetual Maintenance Valuation Approach

The Perpetual Care Target Liability (PCTL) is determined by estimating the maintenance expense level required to cover ongoing cemetery care obligations (such as grounds maintenance, utilities, land related costs etc) as well as the assumed economic rate of discount applied to those future expenses. This represents the estimated value at time of closure, which the trust will need to ensure it has assets that match the amount in order to be funded. Below we show based on existing fund disclosures and information provided to us the assumption ranges used. It is noted that the CMCT, RGCLM and SMCLM who all have their valuations performed by the same actuarial firm use a multiple of 50x as the perpetuity factor. NMCLM which does it's own internal analysis uses between 22x to 37x. The difference can be material. (For our modelling however we have used 50x for NMCLM to be consistent with other operators).

	CMCT, RGCLM, SMCLM	NMCLM
Source	External Actuarial Analysis (single firm provider to all)	Internal Analysis
Estimated Closure Maintenance Expenses	<ul style="list-style-type: none"> Annual maintenance and servicing costs based on current expense ratios Adjusted for expenses not incurred once cemetery is closed RGCRT make further reduction assuming perpetuity costs are 25% of current costs Increase in line with CPI assumption 	Internal estimate provided at aggregated level
Discount rate (Approach)	Risk Free real discount rate (i.e. assumed return on long dated risk free government bonds less implied long term inflation rate)	Effective real discount rate derived from assumed nominal discount rates based on range of potential actual asset allocations
Nominal Return	10 year government bond yield	A range of returns implied by assumed real rates and disclosed inflation rate
CPI (Approach)	Mid-way between RBA target range of 2% to 3%	N/A
CPI (Value)	2.5% p.a.	2% p.a. assumed
Real Discount Rate (assumption used)	Nominal less CPI (subject to floor of 2.0% p.a.)	2.5% p.a. to 4.5% (results produced for a range of assumptions)
Perpetuity multiple	50x (i.e. 1 divided by 2%)	21.9x to 36.6x (results produced on a range of assumptions and based on a forecast period of 100 years)
Valuation	Estimated Closure Maintenance Expenses x Perpetuity Factor	Net Present Value of future annual Estimated Closure Maintenance Expenses

FINANCIAL FORECAST FOR CMCT (INCLUDING MMP AND NG)

	UNIT	FY 2019 Actual	FY 2020 Forecast	FY 2021 Forecast	FY 2022 Forecast	FY 2023 Forecast	FY 2024 Forecast	FY 2025 Forecast	FY 2026 Forecast	FY 2027 Forecast	FY 2028 Forecast	FY 2029 Forecast	FY 2030 Forecast
Operating Revenue													
Revenue from sale of Licences	A\$m	15.6	18.7	20.1	23.1	27.2	32.2	37.5	43.6	50.1	81.7	163.6	157.3
Bodily Remains	A\$m	15.1	17.9	19	20.9	22.8	24.3	26.7	30.1	34.2	50.4	124.2	115.8
Cremated Remains	A\$m	0.5	0.8	1.0	2.2	4.4	7.9	10.9	13.5	15.9	31.3	39.4	41.5
Revenue from conducting Interments	A\$m	51	4.2	4.4	5.0	5.4	5.9	7.0	7.8	8.7	11.1	16.5	17.2
Bodily Remains	A\$m	4.9	4.0	4.2	4.7	5.0	5.3	6.3	6.9	7.7	9.4	14.4	14.9
Cremated Remains	A\$m	0.2	0.2	0.2	0.3	0.4	0.5	0.7	0.9	1.0	1.6	2.1	2.3
Revenue from Cremations	A\$m	0.4	0.4	0.4	0.5	0.7	1.0	1.2	1.4	1.6	1.7	1.8	2.0
Other Revenue	A\$m	2.2	3.0	3.1	3.2	3.3	2.4	2.2	2.3	2.4	2.5	1.0	1.0
Total Revenue	A\$m	23.2	26.4	27.9	31.8	36.6	41.5	48.0	55.2	62.8	96.9	183.0	177.5
Direct Costs													
Direct Cost attributed to Interments	A\$m	2.0	1.8	1.9	2.1	2.2	2.4	2.9	3.2	3.5	4.4	6.5	6.8
Bodily Remains	A\$m	2.0	1.7	1.8	2.0	2.1	2.3	2.7	2.9	3.2	3.9	5.9	6.1
Cremated Remains	A\$m	0.0	0.1	0.1	0.1	0.1	0.2	0.2	0.3	0.3	0.5	0.6	0.7
Direct Cost attributed to Cremations	A\$m	0.2	0.2	0.2	0.3	0.3	0.4	0.4	0.4	0.5	0.5	0.5	0.6
Other Direct Costs	A\$m	0.0	0.3	0.5	1.2	2.4	4.4	6.1	7.8	9.7	19.1	47.4	46.1
Total Direct Costs	A\$m	2.2	2.3	2.6	3.6	5.0	7.2	9.4	11.5	13.7	24.0	54.5	53.5
Overheads													
Sales cost	A\$m	6.3	6.6	7.1	8.0	9.3	10.5	12.1	13.9	15.9	25.4	49.3	47.3
Grounds maintenance cost	A\$m	2.9	3.3	3.4	3.5	4.0	4.3	4.6	4.9	5.3	6.5	8.6	8.9
Administration/corporate overheads	A\$m	8.0	8.5	8.7	9.0	9.9	10.0	10.5	11.1	11.7	13.8	17.4	24.4
Other overheads	A\$m	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Overheads	A\$m	17.2	18.4	19.2	20.5	23.2	24.8	27.2	29.9	32.8	45.7	75.2	80.6
Operating Profit	A\$m	3.9	5.7	6.2	7.6	8.3	9.4	11.4	13.8	16.3	27.3	53.3	43.4
Operating Profit Margin		16.6%	21.5%	22.0%	23.9%	22.8%	22.7%	23.8%	25.1%	26.0%	28.1%	29.1%	24.4%
FUM Income	A\$m	5.9	5.7	4.9	4.0	3.4	3.2	3.5	3.8	4.3	4.9	5.7	8.0
Net Income including funds management	A\$m	9.8	11.4	11.1	11.6	11.8	12.6	14.9	17.7	20.6	32.1	59.0	51.4
Cash held back from Fund Operations due to PCL shortfall	A\$m		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Capex – pre-planned + maintenance	A\$m		-30.4	-33.9	-24.0	-18.0	-3.4	-6.1	-4.8	-4.8	-5.2	-2.8	-3.4
+/- Change in Working Capital	A\$m		-1.1	-0.7	-1.0	-1.0	0.1	-0.8	-1.5	-1.5	-4.8	0.1	1.7
Net Cash Flow	A\$m		-20.1	-23.5	-13.4	-7.3	9.2	8.0	11.3	14.3	22.1	55.7	49.6

A

The initial years have the operating profit still driven by the underlying CMCT cemetery at Rookwood, Liverpool and Kemps Creek.

B

Significant capex is incurred from FY20-23 as MMP is developed. Total CAPEX spend on MMP is forecast to be \$90m (in addition to other capex for existing operations)

C

Revenue from licence sales increases notably around 2029 as MMP captures overflows from other Crown and also a proportion of RGCRLM burial demand.

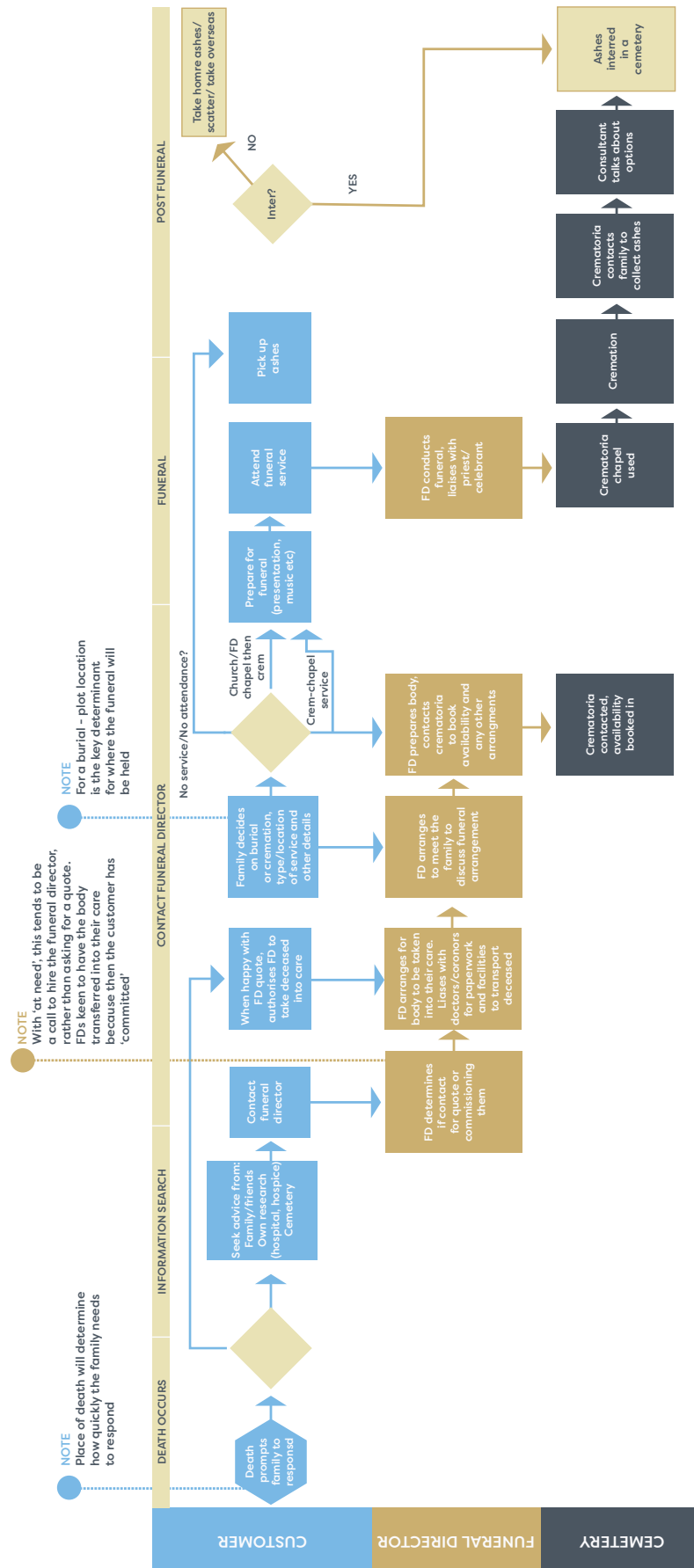
D

Expenses also increase with growth in licence sales. Total direct costs include an item explicitly for plot development for MMP, captured in "other direct costs"

E

Operating profit begins to increase commensurate with the growth in revenue of licence sales. Total operating margin as % of revenue is largely maintained at 0.25%

Appendix J: The key stages and decisions in the funeral and interment process





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The Review would like to acknowledge the contribution and efforts of the following:

1. The Chairpersons and management teams of the Crown Land operators.
2. The private, local government and community operators and other stakeholders for their time and input into the Review.
3. The organisations who made submissions including Cemeteries and Crematoria Association of NSW, the Local Government NSW and Milestone (Aust) Pty Ltd Town Planners.
4. The NSW Government agencies who participated in the Steering Committee including NSW Department of Premiers and Cabinet, Department of NSW Health, NSW Treasury, Services NSW and the NSW Department of Planning Industry and Environment.
5. A special recognition of the efforts and contribution of the NSW DPIE Cemetery Reform team including:
 - ◆ Chris Reynolds - A/Deputy Secretary, Strategy and Portfolio Management;
 - ◆ Michael Ryan - Director Cemeteries, Strategy and Portfolio Management;
 - ◆ David Little - Senior Policy Officer, Cemeteries Review, Housing and Property,
 - ◆ Mardi Palmer - Senior Policy Advisor;
6. The Deloitte team as the Specialist Financial Advisor to the Review team;
7. Fred&Co Digital Advertising and Design; and finally
8. Our administration support team for their mighty efforts.

DISCLAIMER

This Report has been prepared at the request of the NSW Department of Planning, Industry and Environment (DPIE) in accordance with the terms of engagement letter dated 14 October 2019.

The Review was overseen by an inter-agency steering committee, whose representation included officers from NSW Department of Premier & Cabinet, NSW Treasury, NSW Health, NSW DPIE and NSW Customer Service. The Steering Committee endorsed and agreed the Review and all the recommendations of the Review in July 2020. The Review team has made every effort to ensure the information contained in this report is reliable and accurate.

We have relied upon the accuracy and completeness of information (qualitative, quantitative, written and verbal) provided to us by both Government and Non-Government stakeholders, but we have not audited nor otherwise verified it.

As such we make no guarantee of its accuracy and completeness. Accordingly we do not accept any liability for any errors, conclusions reached and recommendations made that result from reliance thereon.

We recognise the disclaimer of Deloitte, the Specialist Advisor to the Review, regarding the preparation and use of the model, in terms of the limitation and reliance of the financial model and have accepted the use of the model and its outputs on that basis.

Consequently, any reference in this report to the financial model or its outputs is subject to the Deloitte disclaimer.

The Review team notes the date of calculation of the model for the report is 26 June 2020 and acknowledge that we do not bear or accept any obligation or responsibility for any matter or circumstance whether new or changed that may occur after the date of the calculation of the financial model.

To the extent permitted by law the Review team disclaim any liability incurred in connection with the contents of this document.

CEMETERIES AND CREMATORIA ACT 2013

STATUTORY REVIEW