



Catholic Archdiocese of Canberra & Goulburn

Interment Industry Scheme

1. What are your overall comments on the Scheme (including the introduction of licences, categorisation model, etc.)?

The Trustees of the Archdiocese of Canberra and Goulburn (hereafter, 'the Trustees') broadly support the intent of the Scheme – to ensure that there is greater transparency, accountability and sustainability in the interment industry - while having major questions and issues with aspects of the proposals.

- Firstly, from the perspective of operators such as the Trustees – fairly small, rural cemeteries with limited number of interments; operating as a not-for-profit entity on a base cost-recovery model – **the Scheme is unduly onerous and will increase costs and regulatory obligations.** The Scheme appears to be directed at issues and behaviours that are problematic in larger, for-profit entities and, as such, is seeking solutions to issues which do not exist in our situation.
- **The whole regulatory regime and tone of conditions implies a commercial and, inherently, for-profit approach. Such an approach is not appropriate for entities such as the Trustees – where operation of cemeteries is essentially for members of an ecclesial community not a commercial arrangement; it is about building and maintaining a relationship that is not at all commercial in nature.**
- It has been clear from the consultations that CCNSW is becoming a significant bureaucracy – at one point at least 8 staff were present at a briefing. Operators such as the Trustees have only fragmented staffing operating at need alongside multiple other duties in very part-time positions. The proposal outlines a regulatory regime that small, not-for-profit operators may find a challenge.
- The Regulatory Impact Statement opens citing two Reviews that, “establish the case for stronger regulation” (p. 1). One of the Reviews is primarily directed at interments in the Sydney basin and focused primarily on Crown cemeteries – hardly the grounds for a state-wide scheme. This situation is further exacerbated by the fact that operators such as the Trustees were not consulted during this earlier Review. While it is recognised from the data that the vast majority of interments concern the Sydney basin, the impact on operators such as the Trustees is likely to present a significant burden. According to the data in the Review, Church operated cemeteries (outside of the Sydney area) are responsible for less than 1% of the burials in NSW, yet this regulatory regime has involved limited consultation in its formation and there is little recognition of additional burdens involved.
- The RIS does not indicate any genuine awareness of the increased resources required by small operators, nor is there any indication of where the resources will be



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obtained from – CCNSW personnel have made it clear in the briefing sessions that there will be no funding deriving from them.

- **In general, the Trustees of the Archdiocese of Canberra and Goulburn remain to be convinced that NSW Govt. Better Regulation Principles 1 – 4 have been applied to small, not-for-profit, regional operators.**
 - These concerns being noted, the Trustees are cognisant that the proposed licencing conditions for Category 3 and Category 4 licensees is *comparatively* light touch. Our principal concerns remain the cost and workforce burdens imposed; the lack of government provision of resources (at this stage) for training, identification of issues and grants to ensure ongoing appropriate perpetual maintenance.
 - A further concern arises in relation to the licence categories: Category 3 requires less than 50 interments (averaged over three years). For an operator such as the Trustees, with 20 small cemeteries, some in areas of regional population growth and given the proximity to other larger population centres, it is possible that within a few years we may exceed 50 interments per year. Category 2 has much more onerous requirements but the scope is greater than 50 but less than 40 000 interments. The Trustees would argue that either the limitation apply to individual cemeteries operated by the Trustees or that the limit of 50 interments be lifted, in the first instance, to 250 per year.
 - **It should be observed that some Category 3 operators that rely heavily on volunteers may be unable to meet new and additional compliance/regulatory costs. In this situation they may determine to become Category 4 operators – thus reducing the availability of interment options in NSW – especially in rural areas.**
2. How appropriate are each of the licence conditions to meet their regulatory objectives of clearly defined, respectful and affordable interment?
- It is noted that the licence conditions for Category 3 and 4 operators are at a lower threshold and regulatory burden – however, the requirements are at a much higher level than current processes and substantially increase the regulatory burden, especially in the initial phases.
 - Currently the Trustee's cemeteries do not provide a contract to those seeking burial sites; rather a bill of sale and a right of interment/grave ownership is provided and records to that effect maintained. Establishing common, regulation compliant contracts for each of the cemeteries will require additional resources – the source of which has not yet been identified.
 - The nature of such a contract will present issues: for purchases in advance of need, there is opportunity for explanation, clarification and reflection; when purchased at need, in a time of stress and anxiety, it can be reasonably envisaged that contractual considerations will take a secondary place.
 - CCNSW personnel have indicated that template documents will be made available – however none have yet been provided for comment.
 - Also linked to this issue, dispute resolution prior to need (for the site) can be managed appropriately; once the burial has taken place, dispute resolution will necessarily be constrained.
 - The development of contracts, even with the offer of standard templates (not yet seen or commented on) will require additional resources. The RIS indicates one source has identified legal fees of \$5000 could be necessary.

- Currently, the management of procurement of interment sites is a small feature of the work of part-time personnel, often with high levels of turnover. The additional training requirements for these personnel will not be insignificant.
- Condition B1 is appropriate but will also impose on the Trustees a regulatory burden that has not previously been enforced. It would be appropriate to understand more clearly the degree of oversight by CCNSW and the nature of reporting against this condition.
- It is evident that there will be the need to develop maintenance plans for each cemetery – a significant initial cost that is, presently unfunded. Additionally there will be a compliance cost attached to addressing the minimal maintenance requirements.
- As noted on page 56 of the RIS – Category 3 and 4 operators will need to bear the maintenance costs themselves.
- Conditions D 1 – 6 are relatively standard customer service provisions; however, the Trustees would note that the operation of cemeteries for members of the same ecclesial community is not a standard commercial or customer relationship.
- Category E 1 and 2 – should be clarified to indicate that where a cemetery is operated by and for a specific religious community, that it is assumed that only the religious sensibilities of that community apply.
- Category F1 introduces a new level of compliance. The Trustees of the Roman Catholic Archdiocese of Canberra and Goulburn (along with other such Church Trusts) will always be the operator; however, the membership of the Trustees may vary from time to time. An annual report would be sufficient in our view.
- Category G: greater clarity is required for a Trustee/Operator of multiple sites, some of which are open for interment and others are closed.

3. Are there any changes you would suggest to each of the conditions? Is there anything that should be added or removed?

More specifically to the points made above, the Trustees are of the view that the following changes should be made:

- The number of interments for Category 3 licence be increased (suggest 250); the range in Category 2 between more than 50 and less than 40 000 is simply too broad, while the 50 is challenging for operators (like the Trustees) with multiple sites.
- The base rationale document (11th Hour) is predicated primarily on the Sydney situation and the advent of for-profit operators. Clearer explanation required about why this is to be extended to all cemeteries in NSW.
- Clearer rationale should be provided for the level of regulation for Category 3 and 4 at all.
- **Government grants should be made available to Category 3 and 4 operators to meet new obligations and development of maintenance plans. Such plans for each cemetery would then identify ongoing costs of basic maintenance which could be a further point of government assistance.**

- Requirements under D 1 – 6 are not entirely applicable in a specific religious cemetery – for instance, Christian cemeteries would not generally respect a choice for interment without a casket. Currently there are no dispute resolution processes in place – this will take time and require deployment of resources.
 - In terms of requirements under E – Religious and Cultural Principles – these appear to be quite generic and while staff of CCNSW have indicated *verbally* that religious operators would be able to continue to, for instance, accept only members of their own congregations for interment – this is not clear in the licence condition. Additionally, the RIS stipulates that one of the intentions is to broaden accessibility and eliminate denominational allocations. The Trustees would ask for further recognition that religious cemeteries may be able to limit purchase and use of interment sites to their congregations, adherents or those seeking specific religious rituals aligned with those of the Operator.
 - With specific reference to E1, the Trustees seek acknowledgement that the cemeteries operated by specific religious traditions need not ensure that all staff are aware of the full range of religious and cultural demographics of a region. This assurance has been provided by CCNSW personnel but it would be clearer if this were noted in the E1 conditions.
4. If you are an operator, (noting the proposed assistance from CCNSW as per the fact sheets), what additional support would you need to meet these conditions?
- New costs, unknown at present, with licence application and compliance.
 - The Trustees believe that compliance with these conditions will require additional resources – the costs associated with these will need to be passed on. It is evident that larger operators may well have factored these costs into their operating model; that is not the case for the sites operated by the Trustees. Principally, these will require training of staff; regular visitation to diverse sites; maintenance costs; development of contracts. Development of a dispute resolution process and register will apply further resources.
5. If you are an operator, what impacts (financial or otherwise) on your business should CCNSW consider further?
- Costs, as yet unknown, with compliance in application for licence + required resourcing costs.
 - **CCNSW should reimburse Category 3 and 4 operators for the new imposts in development of new resources and training costs.**
 - It may be that the public access requirements may add to maintenance compliance costs with no opportunity for recouping costs in relation to Category 4 Operators.
 - **It is possible, once investigation of additional regulation and resourcing is undertaken that the Trustees may seek to close current cemeteries to new interments and become Category 4 operators, thus reducing the availability of interment sites in NSW.**

6. If you are a consumer or other stakeholder, how do you think the licence conditions would impact the experience of the public/your community when interacting with the interment industry?
 - These changes alter the notion of operating an essential service for the benefit of one's adherents or ecclesial communities to an essentially commercial arrangement. This alteration in relationship is the result of government direction but will impact on the relationship between religious operators and their adherents.
7. What do you think of the Regulatory Impact Statement and its assumptions?
 - Again the fundamental assumption of the RIS is that the operation of places of interment is an essentially commercial enterprise. **The Trustees dispute this assumption in the case of many Category 3 and 4 operators.**
 - While excluded from the RIS and current regulatory framework – pricing advice for perpetual maintenance is vital, should such obligations be imposed into the future – along with increased compliance costs that can be anticipated – many Category 3 and 4 operators may be unable to meet the burden.
 - The proposals on page 19 of the RIS with regard to the merger of Crown operators and utilization of the funds prudently managed by one operator to be applied to the losses incurred by other operators do not immediately impact the Trustees, it is the case that such a precedent could, subsequently be applied to other operators. **For this reason the Trustees would not support such an outcome.**
 - The Trustees do not accept that the operation of cemeteries for specific religious groups is evidence of market failure nor a sufficient reason to apply the scheme to such operators.
 - Data from the IPART Review cited on page 27 does not demonstrate how the implementation of the scheme will be able to remedy perceived issues. If 66% of those seeking interment services do not obtain a quote – this points to context and need at a given point in time – nothing in the scheme will address this situation. Furthermore, it is evidence that this 'industry' does not function as a commercial market in any meaningful sense.
 - It may be that a preferable option would be for the NSW Government to compulsorily acquire the interment sites of the monopoly vertically integrated operator.
 - As noted on page 56 – Category 3 and 4 operators will need to bear the maintenance costs themselves.
 - The CBA elements and costings (page 59) include a cost for the licencing scheme to operators (\$547 000 across the providers) with no indication of how such a figure was determined, especially since it was previously observed that legal fees associated with development of contracts alone could well be \$5000 per operator or cemetery (with over 300 such operators identified in the document the legal costs alone would be in excess of \$1.5m).
 - Pages 62 – 64 essentially reflect that there is no data available on compliance costs or additional regulatory costs to Category 3 and 4 operators. In the absence of such data the elements of the CBA are fundamentally flawed in relation to these operators.

- **The almost complete absence of data relating to Category 3 and 4 operators makes a strong case for them to be exempted from the Scheme.** The issues identified in the Reviews and the documents associated with this Scheme are linked primarily to category 1 and 2 operators – limiting the scheme to these categories would seem to be appropriate.
- **The proposed compliance approach is so nascent as to suggest that much greater detail is required for consultation purposes prior to application of the regulatory scheme.**

Thank you for the opportunity to comment on the proposed Scheme. Should further comment or clarification be required please contact:

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