

27 July 2022

Cemeteries and Crematoria NSW
Locked Bag 5022
Parramatta NSW 2124

Submitted via Submission Portal

Dear Sir/Madam,

Submission regarding Interment Industry Scheme – July 2022

Thank you for your invitation to provide a written submission on the Interment Industry Scheme - Consultation Draft and associated documents delivered in June 2022. We acknowledge your letter of 30 June 2022 in response to our previous submission and commend you on amending aspects of the licencing conditions based on the submitted feedback.

As we have made several submissions and recommendations previously, some of which have been adopted, we do not believe it pertinent to provide feedback on each licence condition. Consequently, our submission will focus on feedback pertaining to areas of concern or suggested alterations.

1. 11th Hour Report

We note that throughout the consultation documentation, the 11th-hour Report is consistently referenced as a source document for a number of the licence conditions, and several recommendations contained within the report are being implemented through the Interment Industry Scheme.

This report had significant and demonstrable errors in source data and conclusions and has not yet been tabled in nor adopted by Parliament.

2. Draft Cemeteries and Crematoria Amendment Regulation 2022

In reviewing the document, the overriding sense is that the regulator has significant latitude regarding how and when it issues/cancels licences and the conditions attached.

Some phrases are very vague, *"the person is not a fit and proper person to hold a licence"*. Others are even more concerning, e.g. the regulator can reject an application for a licence if *"the Cemeteries Agency is of the opinion there is a significant risk the applicant will (i.e. the contravention has yet to occur) contravene the Act, this Regulation or a condition of the licence"*.

Although there is an external appeal opportunity through the Civil and Administrative Tribunal, it is still a system that can, at least, in the first instance, be abused. Appeals to the Tribunal can be a very lengthy exercise. In the meantime, either an operator will have no licence, or it is useless because of the conditions attached.

3. Licence Conditions

3.1 A - Consumer Contracts

The principles contained within licence condition A are proposed to enable consumers to better understand what they are buying and under what terms they are purchasing.

We note that throughout licence conditions A, in-depth requirements exist for the sale of an interment right. However, there is no reference at all to contractual requirements on operators in relation to the sale of pre-paid cremation services.

3.2 B - Cemetery Maintenance

We note the introduction within condition B.5 of the requirement for Category 1 + 2 operators to *'Ensure signage on the Site complies with Chapter 3: Advertising and Signage of the State Environmental Planning Policy (Industry and Employment) 2021'*. A policy only recently introduced by Government in March 2022.

A brief review of the chapter mentioned above raises several essential concerns:

- a) One of the aims/objectives of Chapter 3 is *'to regulate signage (but not content)'* [3.1, 1(b)].

Definitions under Chapter 3 of the Policy define signage as: *'all signs, notices, devices, representations and advertisements that advertise or promote any goods services or events and any structure or vessel that is principally designed for, or that is used for, the display of signage and includes building identification signs, business identification signs, advertisements to which Part 3.3 applies, but does not include traffic signs or traffic control facilities.'*

Part 3.4 identifies the type of signage the chapter applies to as *'This Chapter applies to all signage that— (a) can be displayed with or without development consent under another environmental planning instrument that applies to the signage, and (b) is visible from any public place or public reserve, except as provided by this Chapter.'*

'Public Reserve' is defined in the *Local Government Act 1993 NSW* dictionary section. The 'Public Reserve' definition captures cemeteries operating on Crown Land i.e. *'Crown managed land that is dedicated or reserved for public recreation or for a public cemetery'*, as well as council cemeteries, i.e. *'any land conveyed, transferred, dedicated or vested to the council and declared to be a public reserve'*.

However, it would be exceedingly difficult to argue that privately owned cemetery operators operating on freehold property could or should be compelled to comply with this policy.

- b) Further to the above, Part 3.3, Division 2, 3.9 requires approval consent for the erection of signage, specifically *'A person must not display an advertisement, except with the consent of the consent authority or except as otherwise provided by this Chapter.'*

Consent authorities impacting cemeteries are identified within clause 3.10 as the Local Council and The Minister for Planning. While it is understandable that sizeable onsite signage requiring DA approval would meet the consent approvals under this policy through

the Local Council, it is unreasonable to expect Crown cemetery operators to have to apply to the Minister for consent to install new lawn/section signs and directional or event signage which is in the public interest.

More so, attempting to compel a private cemetery operator to seek Ministerial approval for non-DA required signage to be approved for installation within their facilities is entirely unwarranted.

On a separate matter concerning cemetery maintenance, we seek clarity in relation to how the regulator intends to address operators who may be in breach of their documented maintenance regime due to extreme weather events or future pandemic situations that significantly impact resourcing.

3.3 C – Pricing Transparency

We note that the requirement for an operator to include the cost of land in the Basic Adult Burial and Ash Interment is now only applicable to new cemetery developments. This is particularly understandable in relation to older cemeteries where land has historically been granted without cost by the government or councils.

However, in our case (as may be the case for some other operators), one of our current operational cemeteries has recently been purchased (within the last 15 years), and additional land was purchased for further expansion of this cemetery within the last 6 years. The total land purchase cost equates to \$9.3M with an additional development cost of \$2.5M, equating to a total operator expenditure of \$11.8M for burial land.

Is it the expectation that land costs will not be able to be included in the Basic Adult pricing for this site, as the cemetery was not a ‘new cemetery development’ at the time of the introduction of the Scheme?

Further consideration needs to be made regarding the clarification of ‘new cemetery development’ – as ‘new’ infers that the cemetery is brand new, i.e. never existed as a cemetery previously. In contrast, there will be situations in the future where an operator purchases a pre-existing cemetery at a significant financial outlay to the operator.

3.4 E – Religious, Cultural and Spiritual Practices

Whilst we wholly support the intention of this licence condition, concern remains regarding operators being substantially reliant upon Funeral Directors (particularly in at-need funeral situations) to accurately convey a family’s specific religious or cultural requirements to an operator at the time of funeral booking.

There have been many varied situations where a Funeral Director has not provided similar or related details at the time of booking (even when directly asked by the operator), resulting in disappointment and complaints from the family after the funeral event.

The opportunity for an operator to (potentially) be non-compliant with this condition due to an external party over which they have no control or ability to compel the provision of information remains of significant concern.

4. Regulatory Impact Statement (RIS)

The RIS report is essentially a regurgitation of the IPART Review of Costs and Pricing of Interment in NSW and unadopted 11th Hour Report, Statutory Review of the *Cemeteries and Crematoria Act 2013*.

The RIS report failed to provide any substantive evidence that the implementation of the regulatory scheme would have significant financial advantages for consumers and, in fact, stated, '*In general, the impacts of the proposed Interment Industry Scheme are estimated to be relatively modest*'.¹

4.1 Consumer Protection Measures

In the base case, the authors of the RIS themselves note that:

- a) the 11th Hour report did not use any objective customer service metrics to measure consumers' satisfaction levels,
- b) Nor did the 11th Hour report identify any examples of Crown operators failing to perform professionally,
- c) CCNSW reported few customer service complaints made to the regulator

Regarding overall benefits likely to be seen as the consequence of the introduction of the Consumer Protection measures proposed under the Scheme, the RIS notes that they are relatively minor at best.

The most substantive benefit received for consumers from the proposed five consumer protection licence conditions relates purely to the consumer's ability to compare operator pricing on a 'like for like' basis.

From a purely financial viewpoint, the RIS estimates the introduction of the consumer protection measures under the scheme as resulting in an approximately 2.5% reduction in pricing, equating to approximately \$50 per interment².

4.2 Cemetery Maintenance Measures

The RIS base case notes that overall complaints related to cemetery maintenance are relatively low, i.e. *corresponding to 0.05 complaints per operator and 0.01 complaints per facility*³, and that the public is generally satisfied with the quality of maintenance provided by operators.

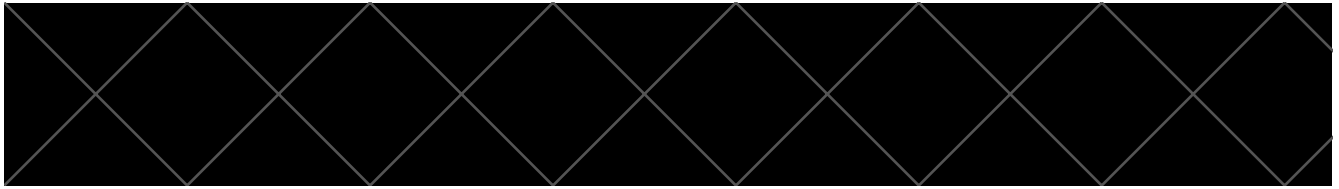
The RIS reports that implementing the maintenance standards will have little or no effect if a cemetery is already well maintained. Some minor benefits are associated with preserving or improving historic value and potential benefits regarding monument safety where an operator does not already fulfil these requirements.

The RIS was unable to articulate or quantify any tangible financial benefit to consumers in relation to cemetery maintenance, yet did identify the increase in cost expenditure for operators related to meeting the maintenance conditions.

¹ Interment Industry Scheme Regulatory Impact Statement, June 2022 p.70

² Interment Industry Scheme Regulatory Impact Statement, June 2022 p.46

³ Interment Industry Scheme Regulatory Impact Statement, June 2022 p.50 (Based on 389 operators and 542 facilities)



Yours Sincerely,

Peter O'Meara
Chief Executive Officer

