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Dear Ms Hickey

LGNSW draft submission – July 2022 Draft Interment Industry Scheme

Thank you for the opportunity to provide comment on Cemeteries and Crematoria NSW's (CCNSW) proposed Interment Industry Scheme.

Local Government New South Wales (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

This is a draft submission and is subject to review and approval of the LGNSW Board. Any changes will be advised at the earliest opportunity.

This submission builds on five earlier submissions made in the last three years by LGNSW on regulation and management of cemeteries and crematoria, most recently LGNSW's December 2021 submission to CCNSW's Interment Industry Scheme discussion paper. LGNSW has consistently sought to ensure that reforms take into account the existing regulatory environment in which councils already operate and do not result in higher costs for the community for little or no benefit.

The following comments respond to key questions in the current consultation documents on the Draft Interment Industry Scheme.

1. What are your overall comments on the Scheme (including the introduction of licences, categorisation model, etc.)? Please detail any amendments you recommend.

LGNSW and its member councils appreciate the importance of consistency across the cemetery sector and providing an easily navigable system for people during their bereavement process. However, it is LGNSW's continued position that the proposed licence conditions appear to be unnecessarily burdensome where there is no demonstrated need. Many of the reforms seek to impose new long term financial and reporting obligations on all cemetery operators. While this may be appropriate for cemetery operators from other sectors, for local

government cemetery operators this would introduce duplicative obligations as councils are already stringently regulated in terms of their long term financial planning and their reporting.

Local government has an essential role in interment services in NSW, providing almost half of the interments across NSW, more than any other operator category. More than 80% of council run cemeteries are closed or conduct 10 burials per year or less¹. Nonetheless, council operated cemeteries conduct almost 85% of the interments in regional areas outside of Sydney.

IPART's interment costs and pricing review in 2020 found that council run cemeteries were often very reasonably priced and provide an essential community service that would otherwise not be available to residents of many communities.² LGNSW acknowledges and supports the introduction of a new licence condition categorisation (category 4) which CCNSW recently proposed to cover cemeteries that are inactive or have reached capacity.

As LGNSW noted in earlier submissions, the proposed scheme in general appears heavy handed in seeking to address potential risks. As such, a lighter touch regulatory approach is preferred, recognising the existing governance and oversight arrangements for councils and the findings in recent reviews by IPART and independent consultants that council run cemeteries were often very reasonably priced and provide an essential community service that would otherwise not be available to residents of many communities. It is for these reasons that LGNSW recommended in its December 2021 submission that there should be a dedicated 'local government licence' classification (or classifications), which takes into account the existing regulatory environment for councils³.

LGNSW continues to advocate for council cemetery operators to implement measures based on the needs of the cemetery and the needs of the communities that councils serve. This could include voluntary codes of practice, guides and templates, and would meet the regulatory objectives of ensuring consumer protection and providing consistency across the sector.

2. How appropriate are each of the licence conditions to meet their regulatory objectives of clearly defined, respectful and affordable interment?

IPART's interment costs and pricing review found that council run cemeteries were often very reasonably priced and that a lack of competition has not generally led to higher prices.⁴

With regards to pricing transparency (Licence Condition C), it is important to acknowledge that the *Local Government Act 1993* requires councils to have their proposed fees and charges published and exhibited for public comment on an annual basis. Council decision making is also ultimately subject to the democratic process and this keeps fees transparent. This existing requirement for councils arguably meets the interment scheme's objectives of being affordable and clearly defined. Further, councils outsource work to external providers for their cemeteries as a way to manage efficiencies across multiple assets, particularly in regional areas. Quotes may be developed by the external provider, provided on application or after the interment. This

¹ IPART Issues Paper, 2020, p. 32.

² IPART Draft Report, 2020, p. 73.

³ LGNSW Submission to Interment Industry Scheme discussion paper, December 2021, p 5

⁴ IPART Final Report, 2020, p. 90.

may not ultimately give consumers the fair opportunity to test the market when researching interment options, which is a key objective of the licence conditions.

Further, councils may undertake work for some of their assets but not others (conservation management planning or Safe Useful Life Expectancy tree (SULE) reports, for example). This operational work is determined in the Integrated Planning and Reporting Framework and the Asset Management Plan that underpins it. The increased operating costs to meet the proposed additional maintenance licence conditions (Licence Condition B) could not be absorbed by councils, particularly in this fiscally constrained environment. These costs would eventually need to be passed to the consumer via increased interment fees, which is in conflict with the regulatory objectives.

The proposed licence condition requirement for consumer contracts (Licence Condition A) will be welcomed by council operated cemeteries as a valuable addition to the sector to protect consumers' rights. LGNSW is appreciative of the efforts of CCNSW to date in reviewing existing council documents that may meet compliance with the proposed licensing conditions. It was identified that most councils develop a customer service charter and the material in this document will have full or partial equivalencies in meeting this particular licence condition requirement.

The interment scheme's proposal to include principles to support respectful religious, cultural, Aboriginal and spiritual requirements for interment (Licence condition E) is supported by the local government sector.

Recommendation 1: Template consumer contracts that standardise and simplify interment arrangements for consumers are supported.

Recommendation 2: Mandatory codes of maintenance should be drafted so as not to impose unreasonable standards that will increase costs for consumers, particularly for smaller or simpler rural and regional cemeteries. The standard of maintenance should be determined by the community through council's Community Strategic Planning process.

Recommendation 3: Pricing transparency arrangements for council-operated cemeteries should align with existing requirements for public exhibition of local government fees and charges. There is no need for additional reporting mechanisms.

Recommendation 4: Principles to support religious, cultural, Aboriginal and spiritual requirements for interment are supported.

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

Categorisation model

CCNSW's desktop analysis of council cemeteries activity thresholds placed the majority of council cemeteries in category 2, requiring almost full regulatory compliance as identified in the proposed licence conditions.

The proposed maintenance, pricing and reporting obligations for council operators to develop new, separate asset management plans, pricing documents and other key documents would

be a heavy administrative burden for the many council operators that conduct less than 10 interments per year.

Recommendation 5: Activity thresholds in the proposed risk-based classification of operators should be raised to avoid imposing mandatory regulatory requirements on smaller and medium sized operators with risk profiles that do not warrant this level of regulation.

Pricing

LGNSW supports CCNSW's position of seeking to ensure consistency and transparency for consumers navigating the sector. However as noted above, councils are required to undertake a stringent process to amend any fees or charges and these are published on council websites on an annual basis. The additional time and resourcing required to further breakdown costs for each of councils' cemeteries would be unnecessarily burdensome. Council operated cemeteries are continuing to bear the brunt of further regulatory burden.

It is LGNSW's continued position that *voluntary* checklists, templates, best practice examples and guides be accepted for council operated cemeteries that already operate within a heavy regulatory environment. These templates and best practice examples should be developed in consultation with council cemetery operators and LGNSW appreciates CCNSW's continued efforts to work with the sector in developing these.

Maintenance

The operation of council operated spaces should be directed by the councils themselves as the manager of the asset. In general, service level expectations for council assets and services are determined in the development of the Community Strategic Plan. Council operated cemeteries have different levels of maintenance requirements according to use and community need. As mentioned above, while councils may undertake conservation management or SULE reports, these may not be done for all council spaces, nor be renewed as often as stipulated in the proposed interment scheme. The increased maintenance requirements will affect interment fees and charges and may become a contentious issue, particularly in light of councils' current fiscally constrained environment.

An assessment of community expectations in the current maintenance of cemeteries, and whether ratepayers would be agreeable to higher fees for higher standards of maintenance, would generate useful data, particularly for regional and rural areas.

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?

Timeframe considerations

LGNSW appreciates the staggered approach that CCNSW will undertake for the introduction of the new licence conditions, to allow council operators sufficient time to be on-boarded.

LGNSW also appreciates CCNSW'S commitment to accounting for councils' financial and budgetary planning cycle.

Templates

Any templates, contracts or other new documents should be provided well in advance to allow sufficient time to embed these into practice. This will allow councils time to align data into new forms and work this through in an efficient manner, particularly for small operators with resourcing constraints.

LGNSW also appreciates the commitment by CCNSW to be open to feedback throughout the implementation process to ensure the new templates or contracts are fit for purpose for both consumers and cemetery operators. The suggested continuation of the council working group to test ideas and share best practice examples is welcomed.

Pre-fill information

To help with the on-boarding process, it is appreciated that CCNSW will find opportunities to pre-load any information (where possible) for operators.

5. If you are an operator, what impacts (financial or otherwise) on your business should CCNSW consider further?

Price escalation

Price escalation between annual price setting dates, can occur across all goods and services used by a council operator and poses a real risk to council operated cemeteries who cannot adjust prices in the short term. An example was provided in respect to the price of plaques increasing by 9% in a year due to general increase in the market. With the prices already set, councils needed to find a way to absorb the unexpected cost for that year. These costs would then need to be on-costed to the community through increased interment fees the following year.

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?

N/A.

7. What do you think of the Regulatory Impact Statement (RIS) and its assumptions?

The Regulatory Impact Statement (RIS) notes that councils' Integrated and Reporting Framework, where councils make decisions in term of their long term financial planning and asset management, is underpinned by the *Local Government Act 1993*. A consistent theme underpinning this and previous submissions is LGNSW's continued position that a proposed interment scheme should account for the existing regulatory environment in which councils operate. Additional, duplicative regulation will increase operating costs which cannot be absorbed by councils.

It was welcomed that the RIS notes that large operators, such as Crown and private operators and local councils with large cemetery operations, are likely already meeting the maintenance

requirements.⁵ Further, the RIS notes that councils may often subsidise their cemeteries and have not recovered perpetual maintenance costs.⁶

The RIS reiterated IPART's conclusion that a recommendation was not made with respect to the price regulation of councils and private operators due to a lack of data.⁷

Finally, the RIS notes that the proposed requirement will reduce prices by \$50⁸, noting that "it is questionable whether increased pricing transparency will reduce prices given other barriers to competition" (RIS, p. 71). As mentioned earlier in this submission, the anticipated increased operating costs to meet the proposed additional maintenance licence conditions could not be absorbed by councils and these costs would eventually need to be passed to the consumer via increased interment fees. It has not been identified in the RIS what the net economic benefit will be for consumers once these increased operating costs have been accounted for.

Accounting for increased operating costs, it is likely the economic benefit to consumers will be less than what is stipulated in the RIS, even generating a negative sum for councils who are unable to source opportunities for efficiencies.

Summary of recommendations:

Recommendation 1: Template consumer contracts that standardise and simplify interment arrangements for consumers are supported.

Recommendation 2: Mandatory codes of maintenance should be drafted so as not to impose unreasonable standards that will increase costs for consumers, particularly for smaller or simpler rural and regional cemeteries. The standard of maintenance should be determined by the community through council's Community Strategic Planning process.

Recommendation 3: Pricing transparency arrangements for council-operated cemeteries should align with existing requirements for public exhibition of local government fees and charges. There is no need for additional reporting mechanisms.

Recommendation 4: Principles to support religious, cultural, Aboriginal and spiritual requirements for interment are supported.

Recommendation 5: Activity thresholds in the proposed risk-based classification of operators should be raised to avoid imposing mandatory regulatory requirements on smaller and medium sized operators with risk profiles that do not warrant this level of regulation.

In concluding, as the peak body for local government, LGNSW focus has been on the impact of the proposed reforms on council-run cemeteries. LGNSW has consistently advocated for a scheme that is appropriately tailored to the lower level of risk posed by the council interment

⁵ RIS, 2022, p. 61.

⁶ RIS, 2022, p. 22.


⁷ RIS, 2022, p. 20.


⁸ RIS, 2022, p. 71.

sector and that any reforms should take into account the existing governance and regulatory arrangements of council-operated cemeteries.

LGNSW encourages CCNSW to review positions set out in LGNSW's December 2021 submission to Interment Industry Scheme discussion paper, and previous submissions since 2019:

- June 2019 – LGNSW submission to IPART interment review discussion paper
- February 2020 – LGNSW submission to IPART interment review interim report
- April 2020 – LGNSW comment to Statutory Review of the Cemeteries and Crematoria Act 2013
- October 2020 – LGNSW submission to IPART interment review draft report

Thank you for the opportunity to make a submission in response to the Proposed Interment Industry Scheme. Should you have any further questions, please contact Damian Thomas 



Yours sincerely



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