

11 October 2018

Mr Alex Tay
Director of Local Government
Local Government Division
Department of Premier and Cabinet
Email: lgd@dpac.tas.gov.au

Dear Alex

BURIAL AND CREMATION AMENDMENT BILL 2018

Thank you for the opportunity to comment on the draft Burial and Cremation Amendment Bill 2018. It is encouraging to see that recent and ongoing community concerns about how cemeteries are managed and can be sold will be addressed in the draft Bill.

Please find attached Council's response to the draft Bill. If you have any queries please contact Clare Shea on 6217 9526.

Please note that, due to the current election period, we have been unable to workshop our response with Aldermen. As such, the feedback provided in this response is on behalf of Council officers rather than that of Council itself.

Yours faithfully



Ian Nelson
ACTING GENERAL MANAGER

CC: LGAT

Burial and Cremation Amendment Bill 2018 Clarence City Council Response

General comments

Lack of protection for ashes

The *Burial and Cremation Act 2002* defines a cemetery as a place for the interment of human remains being the body of a deceased person but does not include human remains reduced to ash. Interment is defined as “the burial of any human remains in the ground” and includes the placement of human remains in a mausoleum. A mausoleum is then defined as a structure designed only for human remains not ashes.

The Act does not appear to afford any protection or oversight on ashes. The focus of the Act is to regulate and provide for the interment of human remains, not ashes, and the management, sale and closure of cemeteries. It is presumed that this may be because ashes can be more easily removed and moved. Notwithstanding, we consider that the Act should offer specific protection for ashes interred within the confines of a cemetery.

Drafting inconsistencies

It is suggested that Division 1 be amended to ‘Existing and proposed crematoria’ so it covers only sections relating to crematoria (section 8, 9, 10, 11,) and move the proposed section 11A to Division 3 – Management of cemeteries. This would assist in separating crematoria and cemeteries into separate divisions.

Section 7 and section 9 appear to be in conflict. Under section 7, a person who was immediately before the commencement of the Act, managing a crematorium must within one month of the commencement of the Act, notify the Director of Local Government of their details. This is in contradiction to section 9 which provides a person who was managing a crematorium before the commencement of the Act is exempt from being required to provide their details to the Director of Local Government.

Matters not referred to in Amendment Bill

It is noted that the Amendment Bill does not contemplate introducing rights of burial in perpetuity nor does it introduce specific protection of veteran graves. Council understands that the scope of the Amendment Bill has been limited, however, suggests that these two issues could be the focus of further review and considered for inclusion within the scope of the Act’s protections.

Establishment of Regulator role

Council supports the introduction of section 3A to provide that, for the time being, the Director of Local Government will hold the office of Regulator but will allow for another area of government to be appointed if appropriate.

The cemetery manager role

Council supports the intent of section 11A. Given the historic and cultural significance and most importantly an individual’s personal connection to a cemetery, it is more appropriate that a cemetery manager be a body corporate not an individual. A body corporate with perpetual succession is better positioned and more accountable to manage a cemetery long-term.

Council is also supportive of the amendment as it will allow and encourage incorporated community groups with an interest in conserving a local cemetery and businesses with experience in managing cemeteries to purchase cemeteries and manage them in an appropriate way.

Sale and transfer

Overall, Council is supportive of the proposed amendments regarding the sale and transfer of cemeteries. It would be more efficient if a cemetery manager is required to apply for a certificate of compliance before publishing their intention to sell under section 27J.

It is also suggested that a cemetery manager, upon being granted approval by the Regulator to sell a cemetery, be obliged to notify persons with an exclusive right of burial of the proposed sale. While the proposed sale must be advertised by public notice, the cemetery manager already has records of holders of exclusive right of burial and should advise those persons directly in writing.

A cemetery manager or the Regulator should also be obliged to notify the relevant Council (and other relevant agencies for example the Director of Public Health) of a proposed sale and settlement of the sale. There is a community belief that local councils either manage cemeteries or have some oversight of the maintenance and management of cemeteries. If Councils were provided with this information it would be able to keep local residents informed of changes.

Management responsibilities

Council is supportive of the amendments in relation to the management and maintenance of cemeteries and in particular the removal of clause 26. The amendment Bill clearly sets out the obligations and duties of a cemetery manager and requires a cemetery manager to be a body corporate. It follows that a body corporate cemetery manager will be better positioned to manage the cost of keeping a cemetery and keep a cemetery in good repair.

Exclusive rights of burial

Council supports the introduction of the requirement for arbitration under proposed section 23(4) in circumstances where a cemetery manager and holder of an exclusive right of burial cannot agree on a new right of burial.

Closure of cemeteries

Council is supportive of requiring a cemetery manager to seek the approval of the Regulator before closing a cemetery. This requirement is lacking under the current Act. Council is supportive of the increase from 30 years to 100 years before a cemetery may be closed but also notes that this may discourage persons from purchasing a cemetery.

It is suggested that section 29(5) contain an additional matter for consideration being 'the locality of the cemetery and the number of other cemeteries in the locality'. This reflects that in rural areas there may be a limited number of cemeteries which in turn may have even more significance for residents.

Establishment of a new cemetery

The proposed Part 2A refers to establishing a cemetery for ‘the interment or disposal of human remains’. The term ‘disposal’ is not used in the current Act and may create confusion; is this a reference to the cremation of human remains? The proposed section 27F refers to ‘interring or placing’ of human remains in a new cemetery. It is suggested that the different terminology needs to be reviewed and made uniform to avoid confusion.

It is suggested that proposed section 27B(3) should include a relevant matter of whether the proposed location is appropriately zoned and/or requires planning approval. Similarly the proposed section 27C should have reference to the applicant being required to seek appropriate planning approvals before or simultaneously with the Regulator issuing an approval to establish the cemetery.