

You n' Taboo

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Attn: Mr. Alex Tay

'By email – [lgd@dpac.tas.gov.au](mailto:lgd@dpac.tas.gov.au) '

Dear Sir,

Thank you for the opportunity to read through the Drafted Amendments to the *Burial and Cremation Act 2002*. In line with the allowance for Public Submissions to be made in relation to the Draft Amendments, I would like to submit the following comments.

The period allowed for Public Consultation was exceptionally short – just 17 days - and has made it very difficult to formulate the detailed and appropriate response required of these 59 pages of Draft Amendments. It would have been much more to the Public Benefit if there had been allowed ample time to discuss the Draft with various stakeholders, Politicians and other Managers and Officials in relation to the interpretation and meaning of those proposed Amendments. Without this ample time allowed, it not only makes the Public responses harder, but it also does disservice to DPAC, lessening the richness and depth of responses that Local Government would be provided with for consideration.

I question the implication in these Amendments that the current legislation is inadequate, I do not feel that any of the current proposed changes are essential to the successful management of or maintaining the public interest and integrity of Cemeteries. Simply by reviewing the process of becoming a 'prescribed business' under the law and making that a more comprehensive process, many of the public concerns could have been addressed successfully. Having said that, below are my submissions on the proposed Draft Amendments.

In response to the establishment of a Regulator or Regulatory Body, I believe the proposed legislation is largely open ended and unclear as to the powers, role and functions of the said Regulator. There is risk of unfairness in conduct, inconsistency and uncertainty in relation to that role. I do not know of any current mismanagement which would indicate the need for these Amendments, they seem to be born of fear alone and as above, that can be addressed with positive public education.

Section 3(A) allows for a Regulatory body to be established but does not address the powers or roles they will undertake. I suggest the Regulator be required to establish and publish those guidelines and have them open for Public Comment prior to them being finalised. I also think there should be a defined time frame for this to occur, or alternatively, the Regulator function does not begin operation until these guidelines have been drawn, given ample time for public comment and then determined to be finalised.

Section 11(A)(4)(B)(i) allows for 'any information' to be requested by the Regulator. While I can appreciate that any information requested must be 'relevant' to the criteria for assessing a potential manager's suitability, there is little frame work around this and should it proceed then 'prescribed information' would be a better way to achieve this, allowing for the details of that to be set out in the Regulations. This would then provide a fair, uniform and equitable standard with transparency for all.

Section 11(A)(4)(B)(ii) allows for the Regulator to charge for the process of gaining approval to manage a Cemetery - there is no indication as to rates of costs or caps on charges or what parts of the process will or will not cost. I would suggest this be set in the Act by reference to the fee units, just as other costs associated are in the Act.

The Draft Amendments also indicate that the cost of the 5-year audit be at the discretion of the Regulator. This, like above, is problematic and allows the possibility of different Cemeteries receiving different charges for undisclosed reasons. I would suggest this be set in the Act by reference to the fee units, just as other costs associated are in the Act.

In relation to all the costs to be introduced, serious consideration should be given to the viability and sustainability of those fees and charges for the Cemetery Management on an ongoing basis. The increased cost of upkeep for monumental structures, the extra 70 years of proposed operation (including insurance, maintenance, wages, amenities provisions etc) needs to carefully be weighed against the possible and potential income that can be derived from a Cemetery in the first place. A Cemetery has a limited capacity of space for burial and a limited amount of income that can be generated off any plot. In response to this, some Cemeteries already have exorbitant costs. If managed correctly a plot does not need to generate a lot of income however the increased liability and obligation on Cemetery management may see costs rise significantly. It will push what is, in some Cemeteries, an already unaffordable price for some people, completely out of reach for them and others. The additional cost of 100 years of ongoing monumental management and upkeep without the ability to maintain the minimum standards as currently allowed in legislation will be to the Public's financial detriment.

In point 14, the Draft repeals Section 26 of the Principal Act. Although based on the premise that the ownership of a Cemetery to be by a business or body corporate with perpetual succession to manage a Cemetery, relying solely on the governing document of that business or body corporate to set out how outstanding liabilities would be transferred in the event that an administrator is appointed, seems contrary to the idea of safe guarding these spaces and their maintenance. Having some minimum standard in Legislation seems prudent.

This is directly relevant in relation to the proposal in the amendment that the Cemetery Manager be an incorporated body and not a natural person. There is no evidence that I know

of to say that a natural person would not Manage a Cemetery correctly and public access to Cemeteries is already allowed for under current legislation. A business/body corporate can go bankrupt and perpetual succession can be dismantled. This is not actually a guarantee for the Management to continue.

Under section 15, Clause 27B(3)(a) says the Regulator before determining any application for a NEW Cemetery is able to consider the 'location, and condition, of the land' but I feel this needs much more detail. What conditions are relevant? What are the guidelines the Regulator will work within - there should be transparency around this and to this end, as stated above, I recommend that the Regulator be required to develop and publish guidelines, and that the Regulator have to take those guidelines into account when determining an application for a new Cemetery. I suggest the Regulator be required to establish and publish those guidelines and have them open for Public Comment prior to them being finalised. The requirement to publish guidelines could be in this section, or in the functions and powers in s.3A. I note in addition to the above, there has been no mention of why a separate approval process is even required for the establishment of a new Cemetery, given the Draft legislation is said to be in response to the proposed sale of existing Cemeteries by the Anglican Church.

Under section 15, Clause 27B(6) there seems to be an undetermined time frame for applications – I would think it proper that after 60 days if no determination has been made a time line should be provided to the applicant for a decision to be reached with the provision of the Regulator being able to seek a further 60 day extension, having to provide their reasons for this extension to the applicant in writing. If a decision was not made at the end of the 120 days, it would be taken to be a refusal, and the applicant could seek review of the decision in the Magistrate's Court.

Under section 15, Clause 27J (1) and (2) the actual notice period for advertisement isn't specified, I assume that this is something that will be included should these Amendments be passed, into the governing regulation and also that it will be clearly defined on the 'prescribed form'.

Under section 15, Clause 27L directs the person wanting to sell a Cemetery to apply for permission to do so, after the notice has been advertised. The Regulator has the right to disallow a sale and further there is no time frame given within which the Regulator is required to give a decision. This is dangerous for any business or body corporate and these potential open-ended delays could do serious financial harm, prejudice potential sales and also impede business transactions for the entity wanting to sell. While it may be implicit in a contract of sale that that sale not become unconditional until the permission of sale has been granted, it still creates a difficult situation for the seller if the reason for the sale is of an urgent nature. As above, I would suggest that the legislation provide for 60 days within which permission be either granted or denied and if denied, the reasons for that denial be produced in writing to the applicant – the decision remains open for review in the Magistrates Court.

In relation to all the issuing of certificates of compliance, permissions sought and notifications of approval, the provision of these in writing should be done within 7 days of the compliance, permission or approval being given. A time frame around this is currently not provided for.

In relation to the sale of Cemeteries or establishment of new ones, the Draft at present in relation to the compliance being determined for both the sale and establishment gives no time frame for that compliance to be determined. Clause 27M gives no time frame, just as 27C(1) gives none. As above, I would suggest that the legislation provide for 60 days within which permission to be either granted or denied and if denied, the reasons for that denial be produced in writing to the applicant – the decision remains open for review in the Magistrates Court. If a purchaser wants to buy a Cemetery or start a new one, it is unfair and unreasonable to have to wait an undetermined period of time before being able to proceed with business plans or other such arrangements that are to be undertaken in this type of venture. There is a financial outlay which can not be expected to be made when permission has not been given to proceed and in the case of body corporates, it requires the garnering and commitment of community groups and volunteers with no certainty or direction for an undetermined period of time.

Under section 16, Clause 29 (6) the Draft allows max 120 days for the Regulator to respond to an application to close a Cemetery, in this light that should also be extended to the point set out above.

All of these proposed actions set out in the Draft Amendments in relation to what a potential Seller and Buyer are required to do could be seen as an impediment to an owner's legal right to buy and sell their property, in particular in the case that the Regulator exercise it's current proposed right to deny permission for a sale to proceed. And while any decision can then be reviewed in the Magistrates Court, this is a process best avoided before it begins for both parties.

I believe that 30 years is an adequate time frame for the closure of a Cemetery and in the first instance I would ask that the decision to increase this time limit be reconsidered. In the event that it is not moveable, I do not believe that any more than 50 years would be considered reasonable. I would also state that 100 years to maintain a Cemetery without closure (and in light of the likely cost of proposed monumental maintenance) is too long and does not provide balance between the management requirements of the land and the public's right to quiet enjoyment of that land.

Should the proposal for 100 years proceed, under section 16, Clause 29 I would like to see an exemption provided for, allowing the closure to be after 50 years and in the specified circumstances where the rehabilitation of the land is concerned. These circumstances can be open for public comment and consultation and built into the Regulations. This is in keeping with the global move towards low impact and sustainable burial options.

Section 24, clause 49A(1)(b) talks about 'actions taken by the Cemetery manager' being one of the things included in the 5-year audit, and these actions remain unspecified. I understand from the purpose of s.49(A) that the actions would be those relating to the Managers compliance with the Act however this should be a defined criteria and part of the guidelines of operation that the Regulator should be required to undertake, as set out above.

I note that in your Public Consultation Draft document you note that supporting Amendments to the *Burial and Cremation Regulations 2015* will be prepared in parallel with the Public Consultation period. I urge you to also make these Draft Amendments to the *Burial and Cremation Regulations 2015* open for public comment in a consultation period significantly

longer than that given for responses to the current Amendments to the *Burial and Cremation Act 2002*. It is essential that the particulars of these proposed changes to the *Burial and Cremation Regulations 2015* in relation to the details surrounding the Regulatory body, the rights and responsibilities of the Regulator and Cemetery managers, the specific requirements for compliance, audit process, public notification and any other additions to be made in the *Burial and Cremation Act 2002* legislation be given to the Public Domain for perusal and comment. These are significant proposals that have the potential for large scale changes of legislation which has only relatively recently undergone overhaul with the development of the Regulations in 2015.

The proposed Amendments in their current form contain significant scope for an unmanageable financial burden to be placed on the Managers of existing Cemeteries and further, it makes the situation for community groups difficult and perhaps in some cases untenable. Additionally, it is much more problematic (and certainly offers very little incentive) for those of us who are seriously investigating the establishment of new Cemeteries in Tasmania. As mentioned in the comments above, there are large gaps in this legislation where the potential for detrimental and unforeseen consequences exist and I would urge you to give greater consideration to filling those gaps identified herein. If you are to proceed with the establishment of a Regulator function, then the powers, roles, responsibilities and operational guidelines of that role need to be developed and open for Public Consultation – and the role should not begin its operation until those things have been consulted on, adopted and finalised.

In conclusion, the legislative changes proposed in the Draft Amendments to the *Burial and Cremation Act 2002* read as a hurried response to some Public commentary or fear relating to the Anglican sale of existing Cemeteries and I do not think enough thought has been given to the potential implications of the changes as they are currently proposed. I feel that good public education would have allayed many of the fears, noting that the current legislation already addresses many of these issues, albeit in a less regulated fashion, and the heavy-handed approach proposed is more reactive than it is helpful for the ongoing management of Cemeteries and the current public move towards more natural and sustainable approaches to body disposal.

The current Amendments are disproportionate to the risk associated with the Anglican Churches proposed sales and while there is no dispute that the integrity of our Cemeteries should be maintained from both a social and cultural point of view (that is another consideration, there has been no mention here of Wybalenna or any other Aboriginal Cemeteries/Burial Grounds and the possible implications therein), there needs to be a far more tempered and considered response to this than what has currently been proposed. In taking more time to consider the implications of these Amendments a more fair and sustainable way forward may be found.

Yours Sincerely,

Rebecca Lyons  
*End of Life Doula, Funeral Practitioner*  
*You n' Taboo Co-Founder*