

You n' Taboo

Department of Premier and Cabinet
Executive Building
15 Murray St
HOBART TAS 7000

21.07.2019

Attn: Cemeteries Review Team, Local Government Division

'By email – lgd@dpac.tas.gov.au '

Dear Sir/Madam,

Thank you for the opportunity to read through the 2019 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:

- S35 Holding in Trust

I have been made aware that the wording of S35 – '*Subject to this and any other Act, the cemetery manager for a cemetery is taken to hold the land on which the cemetery is situated and all documents relating to the cemetery in trust for the purposes of the cemetery*' is interpreted to mean that the Manager of the cemetery must also be the owner of the land on which the cemetery is situated. This is an onerous requirement and not in line with how other 'services' are governed. Quite often Councils and facility owners will contract out the management of such a facility to people who are skilled and therefore in the best place to manage that service.

I note the following –

- This legislative reform is in response to community concern about what will happen to local cemeteries given the Anglican sale of their churches and attached cemeteries. This requirement means that all local community groups hoping to incorporate to manage existing local cemeteries now also have to find the funds to buy the cemetery to achieve this. If the management and the ownership were allowed to be separate, then local groups could easily manage existing sites regardless of the sale. This would also alleviate the concerns regarding management by potential purchasers who may not be in a position to also be managers.
- There has been a large shift within the community towards natural alternatives to the standard burial and cremation options available in Tasmania. Across the state there are people willing to investigate and consider the leasing of land

for the establishment of a Natural Burial Ground. Lease hold arrangements for natural burial have been used successfully in the UK. I have met with the Manager of the Natural Death Centre in the UK, Rosie Inman-Cook who has herself established burial grounds on leased land. These leases are long term and with options to renew where all legislative requirements for the closing of a cemetery etc would still apply. They can be managed by incorporated bodies and on 99-year leases in such a way that once the burial ground is full the agricultural value of the land can continue – the land if managed correctly does not lose its agricultural value even while it is a burial ground. Across the UK sheep graze, hay and silage is cut, bees are in residence, flowers are sown and harvested, berries are picked and in the larger grounds walking tracks have been established – all while natural burials are taking place at the same site. Many burial grounds do not have the exact sites marked, there is something akin to a role of honour on site and the entire burial ground becomes the legacy of all those whom are buried within it. Some grounds offer small markers of rock from that local area and others GPS co-ordinates to the exact sites.

All of this is possible in Tasmania IF there can be a separation between the owner and the manager of a cemetery.

On another note, because of the nature of natural burial and the expedited time of decomposition returning nutrients to the earth, it is possible that after a shorter period of time (say 50 years), instead of closing a natural burial ground, burials plots could be easily reused (which is a custom used worldwide) thus meaning that no new land needs to be found.

- There is a current precedent that has been in existence for approximately 11 years whereby the management of Cornelian Bay Cemetery was given to Millingtons – who do not own the land on which the Cemetery is situated. Prior to that, the Southern Cemeteries Regional Trust also managed that and other sites. The following can be found on the [Tasmanian Library website](#) -

The Trust, with the consent of the Minister, was also granted the power to lease any portion of a cemetery under its control for the purpose of the erection and maintenance of a crematorium in accordance with the Burial and Cremation Act 2002.

The Southern Regional Cemetery Act 1981 was repealed under the Government Business Enterprises (Sale) Amendment Act 2007 and in July 2008, Millingtons Funeral Directors took over the Trust's role.

The State's interests under the Burial and Cremation Act 2002 continue to be administered by the Department of Premier & Cabinet.

It is therefore obvious that lease hold has been allowed in the past and those or similar arrangements continue to the present day. It would then appear discriminatory and potentially biased in nature to allow that arrangement to continue but deny any other incorporated body able to qualify as a cemetery manager under legislation the right to enter into the same or similar lease hold arrangements.

- S43(2)(b) Indicates that in order to gain approval for the establishment of a new cemetery, the person applying must already be a Manager of a cemetery – it is possible then that they are required to be a Manager of a cemetery that does not exist yet as it has not been approved.

- S44 Governs the Application for a New Cemetery. This section is silent on the time frames for approval. S44(6) allows for an update to be given if no determination has been made in 60 days and there is not further obligation on the part of the regulator. There is no recourse if the Applicant feels their Application is taking too long to assess. This is prejudicial to the running of a business. If a Cemetery Manager has to make the financial investment to incorporate and do all things to be compliant to manage a cemetery, then waiting an undetermined amount of time before being able to conduct that business is unacceptable, unviable and potentially unsustainable. Not to mention a potential long-term waste of funds. This draft proposes exact time frames for the Application to manage a regulated business (21 days) and for the closing of a cemetery (120 days) and should also offer an exact time frame for the Application for a new cemetery – this time frame should not exceed 120 days.

- S33 Addresses the application for and approval of a new Cemetery Manager. Again, there are no time frames for the approval of an Application for cemetery management and in this section there is not even the courtesy of an update after 60 days if the Application has not been determined. In this case I repeat the above - This is prejudicial to the running of a business. If a Cemetery Manager has to make the financial investment to incorporate and do all things to be compliant to manage a cemetery, then waiting an undetermined amount of time before being able to conduct that business is unacceptable, unviable and potentially unsustainable. Not to mention a potential long-term waste of funds. This draft proposes exact time frames for the Application to manage a regulated business (21 days) and for the closing of a cemetery (120 days) and should also offer an exact time frame for the Application for a Cemetery Manager – this time frame should not exceed 120 days.

- S44(3)(a) Allows for the location and condition of the land being a factor in determining an Application for a new cemetery. Given that there is a two-stage approval process through both the Regulator and the *Land Uses Planning and Approvals Act 1993* (LUPAA) I would like clarification as to why the Regulator would also need to consider the location and condition of the land and what about those things are factors in that consideration.

- Comments on the approval process for a new cemetery
 It is unclear and undefined what the exact approval process will be and what the stages are that will be required. I seek clarification on the following:
 - Please provide a step by step process on what applications are required for the approval of a new cemetery, through both approval processes LUPAA and the Regulator
 - Please clarify which approval is needed first – LUPAA or through the Regulator
 - This draft reads that an Application must be made by an approved manager of a cemetery prior to applying for a new cemetery and if so, I refer to the question above regarding how one is to become an approved manager of a cemetery that does not yet exist

- **Comments on Fees**
 The introduction of Fees in the Legislation does not indicate where a schedule of those fees can be found. This is confusing and unless it is known that a fee schedule has most recently been attached to the *Burial and Cremation Regulations 2015*, the fees remain unclear. Reference to where the fee units can be found should be made.
- S12(1) allows for the Delegation of Regulatory Powers by the Regulator. What is unclear is if these powers are to be accepted by the person or body they are delegated to and further whether that delegate can charge fees as would the Regulator. Also, if the person or body that the regulator delegates to can charge fees, is this in place of or in addition to the fees allowed to be charged by the Regulator.
- S26(6) in relation to a Regulated Business, S46(2) in relation to a Cemetery Manager and S75(6) in relation to a Crematorium Manager allows for the lodging of an objection to a refusal in the Administrative Appeals Division of the Magistrates Court of Tasmania. These clauses replace the current obligation on the Director of Local Government to lodge an objection in the Magistrates Court within 21 days of receiving notification that a person intends on carrying out a prescribed business. Effectively, this means that upon Application and the provision of a statement of reasons, a Regulator can simply tell an Applicant 'No' and the onus is on the Applicant to bear the cost of having that decision reviewed. This is a significant overturning of rights for potential Applicants. Coupled with the lack of specific time frame means that in effect an Applicant goes to the expense of setting up and becoming compliant to make the application, wait and undetermined period of time and then if told no, have to continue with the expense of having that decision reviewed. This unfair and cumbersome process appears to exist to deter new Applicants from applying.
- S15(5) addresses the powers of a Justice of the Peace to issue a warrant, presumable under the *Search Warrants Act 1997*. I would question is this suitable for a regulated business as opposed to an officer of the Court. I would also like to see included the right for person to be present for entry and search.
- S17(4) allows for copies of documents to be given to the person otherwise entitled to be in possession of them. What is not clear is if the person otherwise entitled to them needs to be aware of the contents of the said documents in order to make the request for the copies.
- S40 (relating to Cemeteries) and S81 (relating to crematoriums) regarding cultural and religious values. I note that there are some rights protected in relation to the burial and cremation of human remains however ceremonies for many cultural and community groups are often not in the one place and/or are not conducted all at once. It is a further truth that in the Tasmanian society there are community groups who are groups because they share common values and who want to conduct rites, ceremonies and rituals that are in line with the values they live by, while those values may not be specifically attached to a certain religion. The rites of those people/groups should also be afforded the same level of protection to those who ascribe their values to a cultural or religious origin. I would therefore suggest the following – '*ceremonies*

relating to the grief and bereavement process or religious, cultural and community groups that are in line with the values and beliefs of those people and groups’.

- Section 6 of Preliminary states the Senior Next of Kin and in that preferences the eldest available child over a partner as recognised under the *Relationships Act 2003* (which is then equivalent to a marriage). Could you please clarify why it is a child of the deceased has rights above a legally recognised life partner? Was this the intent of the amendment?
- S22(1) relates to the Senior Next of Kin and states that they can make any decisions in respect of the deceased person. Currently, this power lies exclusively with the Legal Personal Representative (such as Executor) over and above the senior next of kin. I seek clarification in this – does this S22(1) override executorial powers or those powers established under a formal legal relationship amounting to that of the legal personal representative?
- S86(3) addresses the time frame for audit by saying that written notice will be supplied that an audit must be performed, and the time frame given in that notice is to be complied with. For the avoidance of an unreasonable notice being lodged, this clause should state a minimum time, i.e. no less than 45 days.
- Clause 5(e) of the Preliminary section - Fit and Proper Person allow for the consideration of allegations of misconduct when determining a person’s status as a fit and proper person. This is contrary to a usual fit a proper person test under the law where only those proven offences should be considered. This paragraph should be removed.
- Comments on handling of cremated ashes
I am mindful that current legislation allows for the disposal of cremated remains in a manner not prejudicial to public health and safety and that human ashes are in fact not a public health risk. I would welcome the legislation reflecting that it is only if the disposal of ash is to be in a public place that in such a manner not to interrupt the quiet enjoyment of other patrons to that place.
- Comments on closing of cemeteries
The proposed legislation is unclear as to what it is trying to achieve and in conjunction with the dealing of exclusive rights of burial the legislation could effectively lend itself to a situation where a cemetery is unable to close. This needs to be further clarified. I would also point out that in Natural Burial, the option of reburial after a period of time (say 50 years if that is the time frame for closure) is a very real possibility and should be a consideration when discussing cemetery closure and alternatives to that closure.

I also note that this draft legislation states that a gift of land should first be offered when closing a cemetery however there is no direction given that the recipient of that gift should be subject to becoming a cemetery manager (and if they are, then how long will that taken given there is no timeframe specified for the approval process of a cemetery manager?

- Comments on burials in closed cemeteries

I would recommend that it be determined and further clarified that a burial in a closed cemetery – or a cemetery intending to close after a 50-year period, does not reset the clock of waiting a further 50 years from that point. I believe it should be clarified to mean that burials that are done subject to a pre purchased exclusive right of burial are not considered a new burial and will not affect the 50-year waiting timeframe for closure.
- S94 deal with the Governors Regulations. Sections (2)(d), (2)(f) and (2)(g) provide inordinate powers and raises the following questions –
 - S94(2)(d) What expertise does the Governor have to determine actions to be taken in respect of a deceased person once the death of the deceased person has been notified
 - S94(2)(f) What expertise does the Governor have to determine the handling, transport and storage of human remains
 - S94(2)(g) What expertise does the Governor have to determine the construction and use of coffins and other containers used for handling, storing and transporting human remains. Further, the Director of Public Health has issued a statement saying that shroud burial and cremation is allowed and that coffins are able to be reused if they can be cleaned in between use. So what is the reason behind this regulation given the use of a coffin is not even a legally required
 - S94(2)(i) Why is it that the Governor may provide for the appointment of medical personnel for the purpose of cremation? Currently any Doctor, GP, specialist etc registered can provide the checks and authority for cremation as long as they have not seen, treated or been involved in the treatment of that person while alive. Does this legislation propose to set up a situation whereby this will be changed and allocated to approved medical personnel only?
 - Section 94(3) allows for the Governors regulations to adopt all and any provisions of a code or guidelines by any organisation or body for the regulation of any matter to which this Act applies. At any time. Not only is the ridiculously broad but it leaves the door wide open for non-compulsory industry bodies – of which there are several in Australia – to lobby and influence in order to have their codes and guidelines adopted into Law. This has the potential to adversely affect the operators of Regulated Businesses. This should not be allowed without significant and extensive industry consultation.

In conclusion, I note that in making these reviews and draft amendments, the Government would be prudent in maintaining a future contemplative approach to body disposal, handling, death and ceremony. The landscape is most definitely changing. I have been awarded an Australian Churchill Fellowship to research body disposal options around the western world and also the greater human relationship to death and ceremony. I will have my findings early next year and these are already being anticipated by many in the community who are keen for change.

Government should be mindful that burial and cremation are not the only methods of body disposal being used in the western world and there is great interest in alternative options. This public interest will also cause calls for some of those options to be made available here as has happened in the United Kingdom and the United States of America.

Finally, I would like to draw your attention back to the issue of Natural Burial. There are people in Tasmania already willing to consider the lease of land so that a stand alone Natural Burial Ground can be established. Currently, our community are being denied this option by the recent 2018 reforms and the further regulation proposed by these 2019 reforms make it increasingly unattainable. I would urge Government to reconsider the wording, intention and interpretation of S35 of the draft legislation.

Yours Sincerely,

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