



14 October 2018

Mr Alex Tay  
Director of Local Government  
Department of Premier and Cabinet  
GPO Box 123  
Hobart TAS 7001

By Post and Email: [lgd@dpac.tas.gov.au](mailto:lgd@dpac.tas.gov.au)

Dear Mr Tay,

**Submission on proposed amendments to the *Burial and Cremation Act 2002 (Tas)***

The Uniting Church in Australia Synod of Victoria and Tasmania (**UCA**) appreciates the opportunity to provide feedback on the proposed legislative reform regarding the *Burial and Cremation Bill 2002 (Tas)* (**Bill**). As you will appreciate, given the limited time provided to review the Bill, we have confined this submission to the most material issues and concerns and we have left the drafting anomalies and other issues in the Bill for the time being.

The UCA was established in 1977 following the national union of most Congregational, Presbyterian and Methodist (including Wesleyan) Churches in Australia. The UCA currently has about 50 congregations in Tasmania, with approximately 20,000 Tasmanians affiliated with the UCA according to the 2016 ABS Census, and around one tenth of that number regularly involved as participants or members. In addition, the UCA has a longstanding and significant missional commitment to the Tasmanian community via its key agencies, Uniting Victoria & Tasmania Ltd (formerly Wesley Mission) and Uniting AgeWell.

The UCA currently owns and manages 47 cemeteries in Tasmania. Approximately half of these are still open cemeteries and accepting interments; and the remainder either have been dormant for many years or are effectively closed or are ready for closure. Many of the UCA cemeteries in Tasmania are located adjacent to UCA church buildings in small rural townships with small populations. The cemetery properties are currently mostly managed by individuals from our Congregations who contribute their time on a voluntary basis.

The UCA welcomes any legitimate efforts to appropriately preserve and protect cemeteries and gravesites of cultural, historical and heritage significance, . We also respect the need to honour exclusive burial rights and continued public access to these cemeteries for as long as they remain “open”. The UCA also believes that Tasmanians should have the right to access small local cemeteries during their lifetime and to be buried or cremated after their death, as a cost-effective alternative to large cemeteries where the costs are likely to be much higher.

The UCA is of the view that the proposed Bill amendments in their current form:

- will impose an unreasonable burden on managers of small cemeteries which are mostly managed by aging volunteers who do not have the resources, expertise or the funds to comply with the increased repair and maintenance obligations and five yearly audit regime; and
- mean that a cost effective option for burials and interment currently available may no longer be available at all or would become prohibitively expensive for many Tasmanians.





If the Bill is passed in its current form, the impact will result in the need to significantly increase burial and interment charges. We consider this would be contrary to the purpose of the Bill which is to “...*preserve and protect ... the rights of community members*”. Specifically the Bill requires cemetery managers to absorb increased repair and maintenance obligations, audit requirements and remain open for in excess of 100 years (or 125 years where there are exclusive rights of burial), before they may be closed and converted to a park or garden for use as a place of quiet recreation.

To require UCA Congregations to assume these additional responsibilities will in effect mean they will have less capacity and resources to commit to their other core functions, which are mission and ministry to meet the spiritual, charitable and other needs of their local communities.

If the proposed legislation is passed in its current form, the value not only of the cemetery sites but also the adjoining church buildings and lands will be substantially reduced. Whilst the UCA has no plans to sell or dispose of UCA church buildings or cemeteries in Tasmania apart from occasional land transactions, it would be unreasonable to diminish the value of UCA property by enacting the Bill in its current form even where that was not the intention of the Bill. Our aging Congregations will be overwhelmed and over-burdened by the new requirements and it would be almost impossible to transfer management responsibility for a cemetery to a suitable alternative.

We make the following comments on specific clauses in the draft Bill:

- **Repair and maintenance of cemetery**

The proposed amendments to the Act introduce a higher obligation on a cemetery manager to repair and maintain the cemetery so far as practicable to prevent the cemetery from falling into disrepair or from being defaced or damaged, with a significant increase in the penalties for failure to do so. This is different to the current Act which enables the cemetery manager to remove an unsafe monument if the cemetery manager cannot contact family or relatives.

These new amendments are inconsistent with the laws operating in all other Australian States and Territories, which puts the obligation to repair and maintain a monument on the person who erected the headstone or monument (unless agreed otherwise).

The costs of repairing or replacing historic monuments will be substantial, UCA Congregations simply do not have the financial capacity to assume costly repair, and maintenance works to a cemetery and its monuments. If the UCA is forced to comply with this, it will take funds away from other important missional community projects in the State of Tasmania.

UCA Congregations, particularly in rural areas are experiencing a decline in numbers due to age or illness with very few “younger” members joining. Our members do their very best to manage or care for the cemeteries and the accompanying church buildings and do this work out of a sense of love and attachment to their church and community. These days, with appropriate but increasing OHS compliance requirements, this means that the Congregations have to rely on paid workers or contractors to do the work such as cutting the grass and doing general repairs and maintenance.

UCA Congregations rely on donations or fundraising in order to support their mission and ministry as a religious and charitable organisation. They do not have the financial capacity to manage and maintain a cemetery in the same way that a professional cemetery manager such as a cemetery trust would, and should not be subject to the same level of compliance.



Many of the deceased buried in UCA cemeteries have been buried there due to their connections with the Presbyterian or Methodist Churches over 150 years ago and no longer have any relatives who care for or maintain their graves. In many cases, the interment was done as a community service and no fees (or very minimal fees) were ever charged for these burials in UCA cemeteries.

For the Government to say “*cemetery managers should take into account the cost of managing a cemetery when taking on the responsibility*” shows a lack of understanding when it comes to small scale cemeteries managed by religious and charitable organisations such as the UCA, which has inherited these responsibilities from a previous era.

The UCA does not believe that the amendments to the repair and maintenance obligations should apply to graves where the interment occurred prior to the legislation coming into effect. That is, the new legislation should not apply retrospectively and the current regime should apply to these graves.

The UCA currently charges a fee of approximately \$200-\$500 for a deceased person to be interred at one of its cemeteries, which makes it an affordable alternative for many families who cannot afford to bury their loved one in a larger cemetery operated by a cemetery trust.

Whilst the limited time for feedback on this draft legislation has not enabled us to undertake extensive financial modelling, our initial enquiries indicate that if the new legislation is passed in its current form, these costs will need to raise significantly to between \$10,000 - \$25,000 in order to cover the future costs associated with managing the cemeteries and the gravesites for up to 125 years. Given the UCA and its predecessors’ longstanding mission and commitment to help the poor and underprivileged in Tasmania, which has included offering paupers burials, it would be extremely unfortunate if this work is effectively made impossible by the passage of the Bill.

- **Sale and purchase**

The UCA would generally only consider selling a cemetery property and associated Church where the Church itself is no longer required for missional purposes (ie: usually where a Congregation has ceased to operate or substantially diminished and there is no longer a calling for a service in the local community).

The proposed Bill provides that a cemetery can only be sold or transferred to a body corporate with perpetual succession and introduce a “fit and proper person” test. In considering this test, the Regulator is to take into account, amongst other things, whether the proposed cemetery manager has the financial capacity to maintain the cemetery and its records and has previous experience of a cemetery or crematorium and ***any other prescribed matter and any other matter that the regulator considers relevant.***

This test is ambiguous and uncertain. The proposed criteria for approval of a cemetery manager should be clearly set out in the Act.

Excluding individuals or unincorporated entities from purchasing a property in their own right will severely diminish the pool of potential buyers. The UCA has in the past sold Church sites to individuals and these properties have been well cared for, respected and maintained.





- **Closure of cemetery**

Increasing the current period for closure of a cemetery from 30 years from the last interment to 100 years is excessive and is not in keeping with the other Australian States and Territories, ranging from 25 years in Victoria to 50 years in South Australia.

The cost of keeping a cemetery open for in excess of 100 years, particularly with the proposed repair and maintenance obligations and new audit regime, will greatly increase the costs of a burial for the average Tasmanian.

The UCA considers that the current time under section 29 of the Act is sufficient and should remain at 30 years.

- **Compliance and enforcement**

The proposed new audit requirements will place further financial and time pressures upon UCA Congregation members. It is not clear from the Act or the public consultation draft dated September 2018 what the audit will entail and who will need to do this (ie: is it a desk top audit or does it need to be undertaken by a registered auditor, how far back does the audit need to go, and who pays for the auditing costs?). Depending on these answers, the costs for each cemetery could be substantial and will once again need to be taken into account when setting future UCA cemetery burial fees.

A similar legislative review was undertaken in New Zealand recently, and after feedback the Government agreed to amend the legislation so that an audit was not required for smaller cemeteries with an individual annual revenue of under \$50,000 (refer to the Burial and Cremation (Removal of Audit Requirement for Cemetery Trusts) Amendment Bill NZ).

## **Conclusion**

Whilst the UCA supports any reasonable and sustainable improvements to the Act, we respectfully submit that the Bill in its current form is not yet ready to be promulgated before Parliament. We have identified several other drafting anomalies and inconsistencies in addition to the key areas of concern outlined in this submission. Further, the Regulations and key aspects of the Bill are not yet available which is causing us some concern about the uncertain regulatory framework. Our strong preference would be to have the suite of regulatory changes available so we can adequately assess the impact of all the proposed regulatory changes together.

Given the limited time we have had to review the Bill to date, we would like the opportunity to provide further submissions at a later date and would welcome the opportunity to meet again with you at a mutually convenient time to discuss the UCA's concerns with the Bill.

Yours Faithfully

Rohan Pryor  
Synod Liaison Minister (Tasmania)  
UCA Synod of VicTas and Presbytery of Tasmania

