



# HUON VALLEY COUNCIL

19 July 2019

Our Ref: 12/56

Your Ref:

Enquiries to: Matt Grimsey

Cemeteries Legislative Review Team  
Local Government Division  
GPO Box 123  
HOBART 7001

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

To the Review Team,

## **DRAFT BURIAL AND CREMATION BILL 2019 – PUBLIC CONSULTATION PAPER JUNE 2019**

I refer to the above consultation paper and the opportunity to provide submissions.

The Council acknowledges the concern in the community regarding the sale of Churches and adjoining cemeteries and the impact that this has and understands the policy principle supporting the legislative changes.

In general these are supported along with the role of the Regulator and provisions to ensure appropriate management of cemeteries into the future.

The only concern raised in relation to the Bill is the extent that the principles have been applied to the extension of liability provisions proposed in clauses 87 and 88 of the Bill.

Clause 87(1) as drafted provides:

*"If a body corporate contravenes a provision of this Act, a person who is concerned in, or takes part in, the management of the body corporate is taken to have contravened that provision."*

Clause 88 goes on to extend liability to owners of land who are also taken to have contravened a provision of the Act.

This extension is somewhat unique in Tasmanian legislation by directing responsibility for a body corporate onto individuals.

Whilst it is not clear how this would work in the private body corporate context, it is less clear in the local Government context and is problematic and unacceptable.

As you are aware a Council is established as a body corporate under section 19 of the *Local Government Act 1993*

By way of clause 87 a General Manager/Manager/Director/Executive Manager or even a Councillor (whatever title fits the description of *"being concerned in, or takes part in, the management of"* a Council) is taken to, ie, deemed to, have contravened a provision of the Act where there has been a contravention. It is then the responsibility of, and burden of proof on, that person to appear and prove to a Court that one of the stated defences apply to them.

The deeming provisions do not provide much room for prosecutorial discretion and defences under the clause are to be established "in proceedings".

Councils do not simply administer cemeteries and this, in most circumstances, is a minor role and function undertaken by limited staff. To then seek to extend liability to those who have no management or oversight responsibility of cemetery operations requiring them to establish a defence results in a perverse and unfair outcome let alone toll on personal and mental health having to deal with such allegations.

With respect, such a deeming provision is not acceptable in any normal circumstances. There is no basis established in the Consultation Paper or the Bill itself that would justify a strict liability approach to contraventions of the Bill. There is no particular reason or justification that such a deeming provision and reverse onus of proof should be applied to the operation of cemeteries.

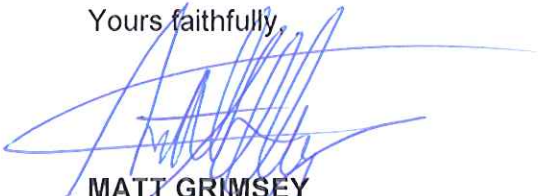
The same principle applies to clause 88 relating to ownership of land.

Both clauses should be removed from the Bill and normal principles should apply in relation to any contravention of the Act. If indeed attention is required to the activities of an individual then these should be clearly stated and defined in the Act, not a blanket catch all that can only result in injustice, cost and personal toll.

Should you have any enquiries regarding this matter these can be referred to myself on 62640317 or by email [mgrimsey@huonvalley.tas.gov.au](mailto:mgrimsey@huonvalley.tas.gov.au).

I trust that this advice is of assistance to you.

Yours faithfully,



**MATT GRIMSEY**  
**DIRECTOR LEGAL AND GOVERNANCE SERVICES**