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21st July, 2019

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Via email lgd@dpac.tas.gov.au

Attention: CEMETERIES LEGISLATIVE REVIEW TEAM

Thank you for your invitation to submit a response to the Draft Burial and Cremation Bill 2019.

I am a founding member of the group Groundbreakers, based in North West Tasmania. We are an informal community group and our key interest involves natural burial. Our main goal is to establish a natural burial ground within our region.

Our activities and advocacy work reflect worldwide trends in relation to low-footprint burial practices and ecologically sustainable cemetery management models. We also support innovation around dying, death and burial processes which accommodate a contemporary approach to grief and mourning. In general terms, our members express a preference to make individualised and autonomous decisions around end-of-life planning.

It is within this context that I outline the concerns I have with the draft bill. Specific clauses are identified and highlighted because they have serious implications for the ability of organisations such as ours to progress our goals. I include further comment on some inconsistencies and lack of clarity within the draft bill which, while not directly related to natural burial, are deserving of attention and remedy.

The section on natural burial in the Public Consultation paper is appreciated. Public acknowledgment that the Tasmanian legislation does not prohibit natural burial is an important foundation of Groundbreakers awareness raising. Natural burial, however, is more than just the features of an individual's preferences relating to their own interment. It also involves the ease (or otherwise) with which a natural burial site may be established. My comments about the draft bill are made with an understanding that all cemetery management needs to encourage and apply principles of sustainable land use.

ISSUE OF OWNERSHIP - S.35
This section mandates that the cemetery manager must also own the land defined as the cemetery under the Act.
Under the *Burial and Cremation Act 2002* this was not the case.
It is a *significant* change of great consequence.

The Public Consultation paper makes no mention of it.
I understand that the government have been queried on this change. The response indicated, essentially, that ownership allows for the interests of the cemetery to be served ahead of the owner's own interest.
Really? The logical extension of this response is that any lease or rental arrangement is inherently flawed and fragile - therefore putting at risk the very thing the leasee or renter is contracted to care for and maintain.
Evidence abounds to the contrary.
I draw an analogy to a municipal swimming pool. These are often owned by local councils, yet their day to day management and maintenance is contracted to an independent operator. Hotels, golf courses, child-care centres, doctor's surgeries and pharmacies (I could list many more) are all examples where it is absolutely commonplace for management not to be the owner. There is no compromise of service or safety. There is no diminishment of accountability to laws or regulations under a lease arrangement.
It can be argued, in fact, that management is often *best* handed to an individual or organisation who is not the owner if they are better suited and qualified to do what the job requires.
Why, then, has an exception to this commonplace convention been made in this instance?
I believe this demands a more satisfactory explanation than has been offered thus far.

This clause is particularly problematic for those of us working towards establishing a stand-alone natural burial ground, i.e. a cemetery. Groundbreakers do not own a site. We have been in discussion, however, with numerous councils, private individuals and groups such as the North West Environment Centre and the Tasmanian Land Conservancy. If a suitable plot of land was identified, and the owner amenable to the land becoming a natural burial ground, the most likely scenario would be that the owner would lease the land to the cemetery manager. These talks are in various stages of progression but are now stalled due to the implications of S.35 of this draft bill.

My recommendation is that S.35 be deleted.

BECOMING A CEMETERY MANAGER S.5 and S.33
It is stated on the DPAC website that the main focus of change, with this legislative review, '...will be on preserving, and, where appropriate, strengthening both the rights of community members and the obligations on cemetery managers.'
Key to this is the introduction of the 'fit and proper' person criteria (S.5). This sets a very high bar for a cemetery manager. Generally, the 'fit and proper' person test applies to professions such as Doctors, Lawyers, Property Agents etc. These are professions dealings with people's health, homes and livelihoods. Generally, they have an independent regulatory body and reporting framework. Members of the profession are answerable to this body.
In the case of a cemetery manager (as outlined in S.33), they will be answerable only to the regulator (or a delegate of the regulator). The regulators powers are broad yet lacking in specifics.
A particularly concerning example of the problems with S.5 is the clause 1.e) and the use of the term 'alleged misconduct'. To deny an applicant on the basis of 'alleged

misconduct' directly contradicts the legal edict of 'innocent until proven guilty'. It also opens the process to arbitrary claims of misconduct. Presumably, the regulator would be obliged to investigate. If they were to investigate 'alleged misconduct' would the state resource and pay for this?
I question the appropriateness of the 'fit and proper' person test, given the other protections inherent both in the act and in the regulations (as they now read).
S.33 I appreciate the intention within the draft bill to ensure that any new cemetery manager has the financial and administrative capacity to undertake the serious responsibilities involved as a regulated business operating in this sector.
As written, however, it does present a daunting level of obligation on the part of anyone intending to apply. The regulator has scope to request '...any information considered relevant'. A body corporate needs to be established, along with approval to be a regulated business. If approval is refused, the individual must - at their own expense - lodge an appeal with the Administrative Appeals Division of the Magistrates Court. This is another major procedural change from the previous legislation will no explanatory information in the Public Consultation paper as to why the change is necessary**.**

Another concern I have is that the criteria which must be satisfied to become a cemetery manager may *not* result in the most appropriate person/people becoming cemetery managers. Firstly, mandatory ownership of the property on which the cemetery is located does not necessarily mean the owner is interested or qualified to *manage* such an operation. Secondly - and more pertaining to S.33 - there is no criteria relating to land management listed. Apart from clauses involving upkeep, maintenance and access, most other criteria focus on administrative and financial capacity. Across our regional and metropolitan centres, cemeteries amount to quite a large land mass. Surely it is in the best interests of our state that land is managed in a sustainable and best-practice way?
Is it the intention of the legislation to be exclusionary? My concern is that, if this bill passes in it's current form, it will be. My recommendation is that S.5 and S.33 are amended to enable a boarder pool of suitably qualified and interested persons to apply.

ESTABLISHMENT OF A NEW CEMETERY S.43 and S.44
The requirement for ownership of the land, as mandated by S.35 may not be immediately clear from a lay person's reading of this draft bill. When the 2018 Act was bought in, it was thought this may be an unintended consequence of the wording. S.43 and S.34, however, reinforce a key feature of this legislation- the lack of flexibility in relation to owner/management relations. I.e. to become a cemetery manager you must also be approved as a regulated business, have a body corporate with perpetual succession *and* own the land. This effectively filters out, for the large part, alternative options for management structures.
Tasmania should be encouraging dynamic, progressive and co-operative innovation across all sectors. We are seeing it in evidence in many industries. Why, then, is this legislation so restrictive?
My recommendation is that the process for approval of a new cemetery is reviewed to allow for greater flexibility regarding the establishment of management structures.
Final note on S.43. S.43 - 2 contains an odd circular logic. Essentially it requires a cemetery manager to be approved as a new cemetery manager for the establishment of a new cemetery. Yet the cemetery does not yet exist. Therefore,

how can an approval be issued? Given the premium attention the draft bill pays to locking down application and approval processes, I conclude this error is more of a symptom of this regimental approach than an error in logic.

CLOSURE OF CEMETERIES - DIVISION 5

S.64 As with many other sections in the draft bill, the regulator has extensive powers to make demands on a cemetery manager should they wish to close a cemetery. Unspecified clauses such as "...any other information that the regulator considers relevant to the application; and "...the relevant prescribed fee" (S.64.4.c) iv and v), along with approval "...subject to any conditions that the regulator thinks fit" (S.64.6.a) are of concern.

The onus is on the cemetery manager to provide all required information and documentation. No fee schedule is outlined. Again, should an application be refused the cemetery manager must appeal at their own cost via the Magistrates Court.

Whilst much of what needs to be published in the notice is relevant, one clause is particularly problematic. S.64.2.c.i) (D) states "...a person with the intention of having his or her human remains interred at the cemetery". What sort of evidence would a person have to present to validate a claim they 'intended' to be interred at the cemetery? This constitutes a significant vulnerability in the closure process, especially as the responsibilities involved are quite explicit and, potentially, expensive.

Exclusive rights of burial also have implications on cemetery closure. There is a lack of clarity around how the two processes - extinguishing an exclusive right of burial and the stages involved in cemetery closure - work together. My reading is that the emphasis on the preservation of exclusive rights could take precedence and extend the time frames. Whilst a cemetery may effectively be closed, the cemetery manager may be obligated to keep it open due to these conflicting requirements. The ongoing maintenance and upkeep costs would continue, despite there being no ability to raise revenue.

My recommendation is that the closure of cemetery processes be reviewed and streamlined. The 50-year time limit must be able to be enforced whilst still honouring the interests of the community invested in the site, and/or holders of an exclusive right of burial.

COMPLIANCE S.15, S.17 and S.18

Division 2 - S.15,16 and 17 provide strong permissions for the regulator to enter and search premises, and seize documents. 15.3 (relating to securing the premises if entering or leaving) and 15.4 (enabling the use of force to enter a premise) would indicate that an authorised officer can enter without the cemetery manager being present. All that is required is a warrant issued by a Justice of the Peace (15.4 and 15.5). Usually, powers to enter premises need to be given via an officer of the court. This is a diminishment of the approval process and is not given any explanation in the Public Consultation paper. The permissions granted, and the ease with which they can be obtained, also conflict with 17.4. 17.4 allows for a cemetery manager to request a copy of any seized documents. If they are not present when the search takes place, how can they know what has been taken, and therefore request a copy?

Audit Process - S.86.3 A cemetery manager must comply with an audit request within the 'specified time frame.' There is no time frame specified. This could result in an unreasonable demand being made on a cemetery manager.

My recommendation is that S.15, S.17, S.18 and S.18 be reviewed to provide fairness for the cemetery manager and accountability on the part of the regulator.

DELEGATION BY REGULATOR S.12.

The draft bill explicitly states that the regulator can delegate any or all of their powers and, once delegated, the said officer essentially acts 'as' the regulator. In the Public Consultation paper it is explained that there is scope within the Act to split the roles of the regulator between different departments. As explained, there is some validity to this option. My concern is that, once those responsibilities are split, the situation may arise where multiple departments are involved. Not only may this add load to the already significant bureaucratic burden, it may result in 'prescribed fees' being charged by each. Unspecified 'prescribed fees' are referred to in several places in the draft act. There needs to be assurance that there will be containment of these fees - clearly articulated, preferably - if the regulator role is split between departments.

S.18 also allows for the Director of Public Health to, effectively, function as the regulator. The Director may also delegate their role to the environmental health officer of a council. Again, the concern arises that, as each stage of command is activated, the cemetery manager may incur additional fees. The question also needs to address whose directive will take precedence if there is conflict between what issued by the regulator and what is issued by the Director.

SENIOR NEXT OF KIN S.6

The Senior Next of Kin hierarchy outlined is unusual. There is no explanation as to why an eldest child comes before a registered relationship (as per the Relationships Act 2003) in the hierarchy. The bill also omits any reference to the executor of a will having precedence over Senior Next of Kin regarding decisions made in relation a deceased body. It is essential that this be clarified to avoid potential conflict.

REGULATIONS - S.94. 2

The regulations are likely to contain important guidelines about the practices involved in burial rituals. Whilst it is clear that the key features of a natural burial can be achieved within the legislation, there are a number of clauses which warrant attention as they relate to improving the conditions under which a low-impact burial can take place.

Clause 2.d) Family led funerals are a growing worldwide trend and are commonplace in many cultures. Clause 2.d), as it is written in the regulations, should allow for the family of the deceased to have complete autonomy over burial and mourning rituals.

Clause 2.f) The Director of Public Health has confirmed that shroud burials are allowable (subject to conditions) under the Tasmanian legislation. Transport to the gravesite, however, still requires use of a coffin. In the interests of reducing unnecessary waste, the regulations should clearly allow for a reusable transportation vessel. All that would be required is that it to be able to be sanitised and of sufficient robustness as to hold the shrouded body safely and with dignity. Transportation guidelines should allow for a family to transport a body - either to a gravesite, a private burial ground or a crematorium - without the need to employ a funeral director.

Clause 2.g) There are now a multitude of available options for anyone wanting to be buried in an eco-friendly, biodegradable vessel - as opposed to a 'conventional

coffin'. The regulations need to eliminate any doubt that these are permissible, subject to identification and transportation conditions.
Clause 3. I recommend that this clause be deleted. Whose organisation's codes or guidelines are being considered for inclusion? The overlay of an external organisation's code or guidelines within an existing set of statutory regulations has the potential to create confusion, misunderstanding and competing priorities. It most definitely should not be a consideration at all unless there is a rigorous and transparent selection process - involving public notification - as to which body or organisation's 'code' is being considered. If the regulations are well formulated there is no justifiable reason for this clause.

RELIGIOUS AND CULTURAL S.40
It is understandable that religious and cultural ceremonies are conferred special status under the draft bill. By what criteria is a 'cultural ceremony' defined? This issue, in relation to the law, has been discussed at Groundbreakers meetings on numerous occasions. Individuals or groups who abide by cultural or religious practices hold certain values and act, with regularity, in accordance with those values. Many of our members have lived long lives involving a commitment to ensuring that, at all times, their actions have a low-impact footprint on this earth. Should not their informed rituals and dedication to a set of deeply held values also be given equivalence of a 'cultural ceremony?' A measure of flexibility regarding this definition would allow for a future where secular and individualised methods of burial and mourning can be accommodated.
S.68.6) The clause relating to the process through which a portion of a cemetery may be gifted to a religious or cultural group is somewhat inconsistent with the demands of the legislation in almost all other areas. If a religious or cultural group accepts the gift, do they have to fulfil the requirements of any other person or group wanting to become a cemetery manager (regulated business, body corporate with perpetual succession, fit and proper person etc)? If not, then what will they be classed as? And what sections of the legislation will apply? This needs clarification.

EFFECT OF CLOSURE OF A CEMETERY S.66.3 and 4.
The powers vested in the cemetery manager to, effectively, rehabilitate the land under this section is pleasing to note. There is, however, half a century between the allowable number of years after the last interment under which a cemetery can be closed (in accordance with S.64) and this 100-year clause. Again, I refer to best practice in terms of land management and sustainability. If, after conducting consultation with stakeholders, it can be satisfactorily concluded that the property is a disused cemetery, there needs to be an option for closure and rehabilitation prior to 100 years elapsing.

INTERPRETATION S.3
Cremation, cremated remains and ashes are given greater protection under this legislation. It is important to consider, however, the many distinct burial options which are becoming available. These include resomation, aquamation, dissolution, promession, cryonics and human mummification.

Groundbreakers have a focus on natural burial. A stand-alone natural burial site can be used for multiple purposes. Cemeteries will look very different in the coming decades. Innovations (such as those outlined above) are taking hold in many places

and as their popularity increases, they will become cost effective. Human composting has already become legal in one US state. Our law makers need to comprehend that priorities within this sector are shifting and establish legislation to accommodate these longer-term changes.

To conclude, it is quite evident that there is a policy intent within this draft bill. Its focus is about the protection of existing cemeteries and those who have a connection to them. In achieving this, however, an extremely burdensome compliance regime has been introduced for anyone seeking to make changes to what exists or adapt conventional procedures. There are restrictions where adequate protections would suffice and, in many circumstances, are already in place. I suggest the entire bill be reviewed with a perspective on sustainability and a fair and balanced understanding of individuals and groups whose interests and activities will inevitably fall under this legislation.

Regards,
Lyndal Thorne