

Our Ref:

Enquiries: Angela Matthews

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Mr Alex Tay
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Dear Alex

Burial and Cremations Act Amendment Bill 2018

The Break O'Day Council appreciates the opportunity to make comment in relation to the Burial and Cremations Act Amendment Bill 2018. Whilst certain aspects of the proposed Bill are logical Council has a number of concerns which need to be understood by the Tasmanian Government and ultimately both Houses of Parliament.

The draft legislation shifts responsibility from families to cemetery managers for site and monument maintenance which when combined with audit costs and the longer timeframe for responsibility would likely mean cemetery managers would have to charge considerably more for burials than is currently the case in Tasmania or risk running at a significant loss.

By way of background and to provide some context, the Break O'Day Council has responsibility for cemeteries at Falmouth, Fingal, Mathinna, Weldborough, St Helens and St Marys. It is also aware of a further 12 cemeteries located on privately owned land within the Break O'Day area that we are aware of including Fingal (2); Cullenswood St Marys (2); St Marys Catholic Church; Germantown; Goulds Country; Seymour; St Helens (2); Pyengana (2).

2.1 Establishment of Regulator Role

This seems a logical approach.

2.2 The cemetery manager role

This seems a logical approach however issues arise around a 'body corporate with perpetual succession'

from the **mountains** to the **sea**



What happens when an Incorporated Association simply fails to operate because they can no longer secure members or office bearers (which is becoming an all too frequent situation)?

What happens if the business managing a cemetery becomes insolvent and subsequently bankrupt?

2.3 Sale and transfer

Seems reasonably logical though there should be an obligation on the cemetery manager wishing to sell the cemetery to directly advise those with an exclusive right of burial, rather than relying on a public notification process which may or may not reach them.

2.4 Management responsibilities

Council does not currently maintain graves, but does maintain site fencing, access roads, mows lawns, control weeds and remove a raft of adornments as required. Some existing families still do maintain graves. Council does not pay the costs associated with addressing defacement or damage to grave sites, but would for the site infrastructure. We do assist family members if requested to provide labour and time to help remediate damage. Grave age varies. Many older graves (i.e. with no surviving family members) are not maintained and are in various states of disrepair.

Council is extremely concerned at the failure of the Tasmanian Government to properly understand the impact of what is proposed in relation to maintenance of cemeteries and the consequences on managers of existing cemeteries. Effectively with the 'stroke of a pen' the Parliament, if it passes the Bill in its current form, will transfer a very costly and significant responsibility from the family of departed ones to the cemetery manager with little to no opportunity to recover the costs from family members.

The public consultation document states "Cemetery managers will no longer be allowed to do this, because there is an expectation that cemetery managers should take into account the cost of managing a cemetery when taking on the responsibility" Could you explain where this expectation has been determined from?

Cemetery managers will need to ensure that full cost recovery is achieved as intimated in the public consultation draft. Could you explain what consideration has been given to the capacity of family members to pay an as yet determined but likely to be extremely large upfront fee?

Should cemetery managers require the payment of an annual fee 'in perpetuity', the situation will arise where family members stop paying a fee and debt collection action will be required (this will look good in the media). Could you explain any specific heads of power which will be provided for cemetery managers?

Given the extremely onerous obligations on cemetery managers, potentially many cemeteries may no longer accept interment in graves to 'cap' the increasing liability for the graves in perpetuity. What consideration has been given to the impact of effectively forcing cremation?

2.5 Compliance and enforcement

This is an unfair approach given that there is a backlog of work in making graves and monuments safe and which has not been costed for or provisions made under the existing arrangements which will require Council to reallocate funds away from community and other infrastructure projects.

There is a cost for compliance beyond maintaining physical graves and monuments, internal resources, audit costs....

The Regulator has the ultimate power, if Council does not maintain the cemetery according to a standard that has yet to be identified and can be set at the personal whim of the Regulator, Council will be penalised with a fine. In other words, not only does the cemetery manager have to pick up the slack from family members who have not maintained a grave site as required, but they will be slapped with a fine on top of the obligation.

Why does the Public Consultation draft not outline in some detail the situation of a 'standard' which will be imposed?

Where will the funds derived from fines be allocated or will they just be absorbed by the Tasmanian Government Treasury?

2.6 Closure of cemeteries

Significant increase in the length of time which effectively means that a cemetery is unlikely to be closed. The notification requirements do not start until after 100 years, effectively a cemetery manager will then need to undertake extremely exhaustive and detailed research to try and determine who a relative might be, families do not tend to notify cemetery managers of their contact details if they change.

What is achieved by this extension of time?

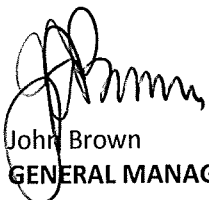
2.7 Past sales and transfers

No comment

2.8 Regulations

The detail needs to be provided before this proceeds, as all too often 'the devil lies in the detail'.

Yours faithfully,


John Brown
GENERAL MANAGER