



HUON VALLEY COUNCIL

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10 October 2018

Our Ref: 12/56

Your Ref:

Enquiries to: Matthew Grimsey

Dr Katrena Stephenson
CEO - LGAT
GPO Box 1521
HOBART 7001

By Email: [REDACTED]

Dear Katrena,

BURIAL AND CREMATION AMENDMENT BILL

I refer to email correspondence of 26 September, 2018 and subsequent email of 4 October, 2018 regarding release of the draft *Burial and Cremation Amendment Bill 2018*.

Council raises no issues with the majority of the proposed amendments however the Council strongly opposes the requirements proposed under clause 11 and deletion of section 26 under clause 14.

Clause 11 proposes insertion of a new sub-section (1A) in section 19 of the Act.

This proposed sub-section creates an obligation upon the cemetery manager to maintain a cemetery "... so as to prevent the cemetery from falling into disrepair, or from being defaced or damaged...". Whilst qualified as being so far as practicable, this, with respect, may well be an impossible task given that cemeteries must be generally open to the public at any reasonable time (see section 19(3)). The majority of cemeteries would normally be accessible at any hours and this is the case with all Huon Valley Council cemeteries. It would be wholly impractical for a cemetery manager to prevent third parties from defacing or damaging a cemetery without considerable cost and denial of access to the community.

Further an obligation is proposed to require the cemetery manager to rectify any disrepair or defacement of or damage to the cemetery as soon as possible. The transfer of obligations and these costs from the relevant families to the general community is not supported and can only lead to a substantial increase in costs for future burials within the cemetery whilst those responsible for interments prior to this proposed section would have no liability or responsibility for any further or ongoing contribution.

It is also proposed to create an offence for cemetery managers for a failure to comply with these requirements. This is also not supported.

The Act is currently clear in section 19(1) that the cemetery manager is to keep a cemetery so as not to be prejudicial to public health or public safety. This is consistent with holding the land in Trust (see section 18).

In addition, clause 14 proposes to repeal section 26 of the Act which allows for removal of monuments or tombstones if the revenue of a cemetery is insufficient for the cemetery manager to keep the cemetery in good order.

The proposed amendments as outlined in clauses 11 and 14 of the Bill exceed the current obligations under the Trust and the historic operation of cemeteries consistent with the legislation to date therefore becoming a cost burden to the cemetery manager. In the case of Council cemeteries this is either passed on as a greater cost to the broader community or will result in a substantial increase to the cost of future interments which will cover not only those interments but also the general responsibility created as a result of the proposed amendments.

There is nothing provided in the materials supporting the Bill that provides any basis or justification for either clause other than *"there is an expectation that cemetery managers should take into account the cost of managing a cemetery when taking on the responsibility"*. With respect, this may be said to apply to a new cemetery being opened or to new interments once the amendments come into effect but cannot be said to justify retrospective application where cemetery managers took into account the cost of managing a cemetery that did not include these obligations and responsibilities.

It is considered that these amendments are not justified at this present time, however as a minimum should only apply to any new interments following commencement of the amendments. In that way the cost of doing so can be taken into account.

I trust that these comments are of assistance to you and relevant to the review.

Yours faithfully



MATTHEW GRIMSEY
DIRECTOR LEGAL AND GOVERNANCE SERVICES

Cc: Director of Local Government, lgd@dpac.tas.gov.au