

# REVIEW OF THE COSTS AND PRICING OF INTERMENT IN NSW

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Interim Report

December 2019

Special Reviews

## Executive Summary



IPART is seeking feedback on our interim findings and recommendations on **costs and prices for interment services in NSW cemeteries.**



### Interment

When a body or cremated remains ("ashes") is buried in the ground or placed in a built structure in a cemetery.



### Cemetery operator

Cemeteries in NSW may be operated by a Crown land manager (a board of people appointed by the NSW Minister for Water, Property and Housing), a local council, a private business, or a church or community group.

Our review is aimed at providing guidance to consumers and NSW cemetery operators about **prices** for interment services, including the difference in costs and prices between **perpetual** and **renewable interment rights**.



### Perpetual interment right

The right to inter a body or ashes in a particular grave or crypt or niche in a cemetery. The remains must be left where they have been interred **forever**.

Up until now, most **interment rights in NSW have been perpetual**. Any that were sold as perpetual will remain so.



### Renewable interment right

The right to inter a body or ashes in a particular grave or crypt or niche in a cemetery for a **defined period of time** (which must be at least 25 years). When that period ends, the right owner may renew it for **up to 99 years in total**. If the right owner does not renew the right, the remains are removed or buried deeper in the same grave, and the grave, crypt or niche can be reused for a new interment.

In the future, people in NSW will be able to **decide** whether to **buy a perpetual right** or **choose a renewable right** instead. Renewable tenure is not retrospective and does not affect past interments if they were purchased as perpetual rights.





## Interim recommendations

Our interim recommendations address **choice and affordability** for consumers, **financial sustainability** for cemetery operators and the **challenge of developing land for new cemeteries**.



### More transparent cemetery prices

Cemetery operators to be required to **publish itemised prices** for interment services using consistent terminology

And the NSW Government to set up a website to allow people to **compare prices at all cemeteries** in NSW



NSW Government to be responsible for **locating and purchasing land** for new cemeteries **in Sydney**, and for working with local councils to **identify land for new cemeteries outside Sydney**.



Adequate financial provision for cemetery maintenance in perpetuity

Cemetery operators to be required to **set aside funds** that can only be used to **maintain a cemetery** once it is closed to new interments. Larger cemetery operators must have this fund **independently managed**.



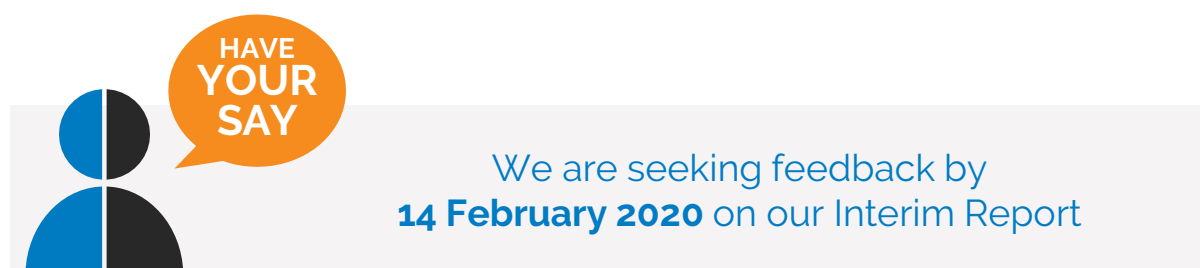
### More transparent interment services

Cemetery operators should provide a **Plain English statement** of terms and conditions for interment rights, including a **clear statement on the type of tenure** being purchased and the interment right holder's obligations for future maintenance to be provided.



### More cost-reflective pricing for new cemeteries

We have **developed a pricing tool** that operators of new cemeteries can use to inform their decisions on pricing so that those prices **reflect the full life cycle costs** of a cemetery, and renewable tenure rights are priced appropriately compared to perpetual tenure rights.



## IPART's role

Section 145 of the *Cemeteries and Crematoria Act 2013* directs IPART to investigate and report on interment costs and the pricing of interment rights. The two specific matters which we must consider are:

- ▼ The relativity of costs and pricing factors for perpetual and renewable interment rights
- ▼ Full-cost pricing of perpetual interment rights, including provision for the perpetual care of interment sites and cemeteries.

The form of recommendations from the review is not specified.

The investigation is also required to include a review of competition, cost and pricing factors within the funeral industry. We have decided to conduct the review in two stages, with this first stage focusing on interment services. We will look at the funeral industry more broadly, commencing early in 2020.

## Our approach to the review



### Step 1 Establishing pricing principles



Affordable and equitable for all



Allow cemeteries to be financially sustainable into the future



Simple and transparent so that people can make informed decisions about interment choices at a difficult time



### Step 2 Assessing market structure and deciding on form of recommendations

This step involves investigating what factors give incentives to cemetery operators to be more cost-efficient, to take account of all the costs they should be recovering, and to set efficient and affordable prices, and then deciding what kind of measures will increase those incentives

- ▼ Cemeteries are run by Crown land managers, local governments, private operators, churches and community groups and they all have **different incentives** to be more efficient, offer affordable services and take account of all their costs.
- ▼ It is unclear who has responsibility for **sourcing land** for new cemeteries.
- ▼ There is **competition** between cemetery operators in some areas (Sydney in particular) and this can lead to **innovation and service quality improvements** but has less impact on prices.
- ▼ Price plays a relatively smaller role in **consumer decisions** about cremation or burial, and about which cemetery to choose for interment.

- ▼ Local government operators are **accountable to their communities** for pricing decisions.
- ▼ The long life cycle of a cemetery means that different cemeteries are operating at different stages of their life cycles, with **different structures of costs and revenue**, and different levels of competition and regulation for different parts of their business.
- ▼ We found that the perpetual nature of cemeteries, and the **mismatch between revenue and cost streams**, creates a risk that cemetery operators set prices too low to recover future costs into perpetuity.



### Step 3 Assessing efficient costs

This step involves assessing the efficient costs of delivering interment services, and where necessary recommending measures to increase efficiency in line with our findings about cemetery market structure

- ▼ Many Crown cemeteries in Sydney are approaching capacity yet there is not currently a coordinated approach for the **development of new cemeteries**. Different cemetery operators may compete for the same parcel of land, driving land prices up.
- ▼ The land costs of interment services include purchase, planning, construction, and landscaping. **Holding costs** (the period for which costs of buying and developing the land and operating the cemetery are incurred but no revenue is received) have a substantial impact on total costs.
- ▼ **Religious and cultural requirements** for burial can increase the costs of interment, but their impact on the costs of an interment right is less clear.
- ▼ **Renewable tenure** interments allow some of the costs of acquiring additional land for cemeteries to be avoided in the long term, but also involve additional costs at the end of the tenure period, including the administration costs of contacting right holders to see if they want to renew, and costs of preparing the interment site for a new interment.
- ▼ We will undertake an **efficiency study** of the Sydney Crown cemetery land managers before we make further findings about their costs.
- ▼ Local government operators can be incentivised towards more efficient costs by publishing **transparent and comparable information**.
- ▼ There is currently no legal requirement for cemetery operators to **set aside funds for the costs of perpetual maintenance**. Some cemeteries may not be maintained to standards expected by the community once they are closed to new burials. We recommend that there should be a requirement for all cemetery operators to make adequate financial provision for perpetual maintenance of interment sites and the cemetery.

- ▼ We also found that for most cemetery operators the arrangements for setting aside funds for the perpetual maintenance of their cemeteries are **not transparent**, and as a result there is limited accountability about the adequacy of these funds or the extent of these legacy costs.
- ▼ We will undertake a study of **legacy costs in existing cemeteries** to understand the level of past under-funding for future maintenance costs.



### Step 4 Recommending measures to achieve pricing principles

Recommending measures to ensure prices achieve pricing principles, in line with our findings about cemetery market structure and our findings and recommendations about efficient costs

- ▼ Prices charged for interment services in NSW are **not currently regulated**.
- ▼ There is **wide variation in prices** for interment services across NSW, and these prices are displayed inconsistently and are **difficult to compare**.
- ▼ At this stage, we are not recommending prescriptive price regulation for any cemetery operators.
- ▼ Instead, we are recommending:
  - Increased **competition by comparison** (publishing comparable information in an accessible way) for greater choice and affordability for consumers
  - Assistance to cemetery operators in the form of a **pricing tool** to understand the full extent of costs over the life cycle of a cemetery and price accordingly
  - Cemeteries may offer similar services for **different prices where underlying costs are different** (eg, where cultural or religious requirements impose additional costs); but any difference in prices should be justified transparently with reference to costs.



### Next steps

- ▼ Depending on the findings from our study of **legacy costs in existing cemeteries**, we will make further recommendations about how these costs can be recovered in prices or otherwise in future.
- ▼ Depending on the findings from our **efficiency study** of the Sydney Crown cemetery land managers, we may make further recommendations about their prices.
- ▼ Depending on the findings of both these studies, we may make further recommendations about measures to ensure **affordability** of interment prices.



## How this report is structured

The rest of this Interim Report provides more information on this review, our approach and our interim findings and recommendations.



- ▼ **Chapter 1** outlines the context for this review
- ▼ **Chapter 2** sets out the approach we are taking for this review
- ▼ **Chapter 3** discusses the pricing principles for our review
- ▼ **Chapter 4** sets out our interim findings on market structure and form of recommendations for interment services
- ▼ **Chapter 5** discusses the costs involved in providing interment services
- ▼ **Chapter 6** sets out our interim findings and recommendations for funding perpetual maintenance of cemeteries
- ▼ **Chapter 7** sets out our interim findings and recommendations for pricing interment services
- ▼ **Appendices A-D set out:**
  - A list of submissions received on our Issues Paper
  - An overview of our interim pricing tool
  - Our calculation for the weighted average cost of capital (WACC) used in the pricing model
  - Our formula approach to modelling prices for renewable interment rights



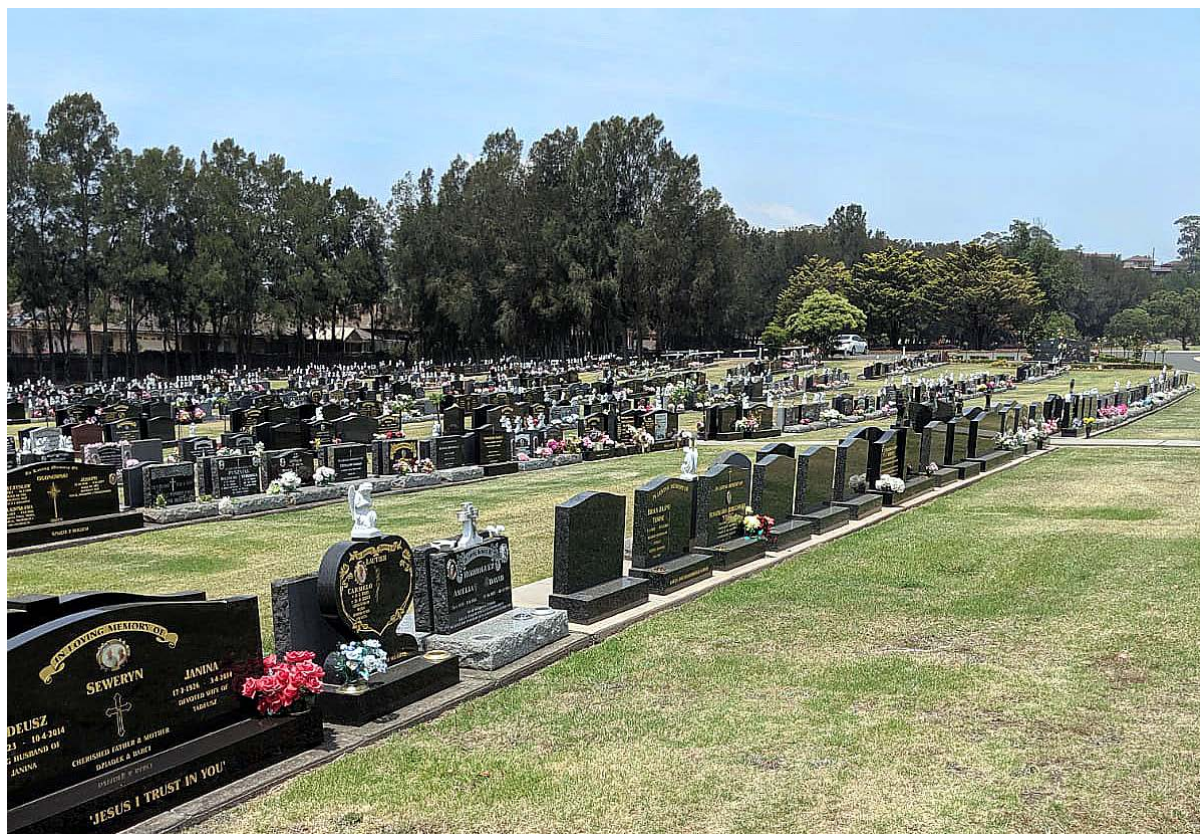
## Interim findings & recommendations



### Interim findings

- 1 The pricing principles for our review of interment services are:
  - Interment prices should be affordable and equitable for all
  - Interment prices should allow for the financially sustainable operation of cemeteries into the future
  - Interment prices should be simple and transparent so that people can make informed decisions about interment choices at a difficult time.
- 2 There is some competition between providers of interment services in Sydney.
- 3 Cemeteries outside Sydney tend to be provided by Local Government and there is limited competition between cemetery operators. However, while there is less competition between providers, local governments are accountable to their communities for pricing decisions.
- 4 The market for cremation and ashes interment is workably competitive.
- 5 Consumer choice in the cemetery sector operates differently from many other sectors, as choice is strongly influenced by proximity to family, cultural and religious requirements, and decisions often need to be made in a short timeframe at a time of emotional stress.
- 6 The long life cycle of a cemetery and mismatch between receipt of revenue and incurring costs creates a high risk that cemeteries will under-price through not taking into account future costs, with the outcome that cemeteries may not be maintained to standards expected by the community once they are closed to new burials.
- 7 The land related costs associated with acquiring, holding and developing land are all costs of providing interment services. Holding costs (the period for which costs of buying the land and maintenance costs are incurred but revenue is not yet received) have a substantial impact on the total costs and therefore prices for cemeteries.
- 8 There are many factors that impact on the cost of interment, such as the age of the cemetery, location, soil type, and weather conditions.
- 9 Religious and cultural requirements for burial can increase the costs of interment, but their impact on the costs of an interment right is less clear.

- 10 Most cemetery operators in NSW do not report on the size of their liabilities for the perpetual maintenance of their cemeteries nor do they have transparent arrangements to fund these liabilities.
- 11 For most cemeteries in NSW the extent of legacy costs from past interments is not known.
- 12 There is a wide variation in prices for interment services, even services which would appear very similar in nature.
- 13 Prices for bodily interment services are not displayed consistently and are difficult for consumers to compare.

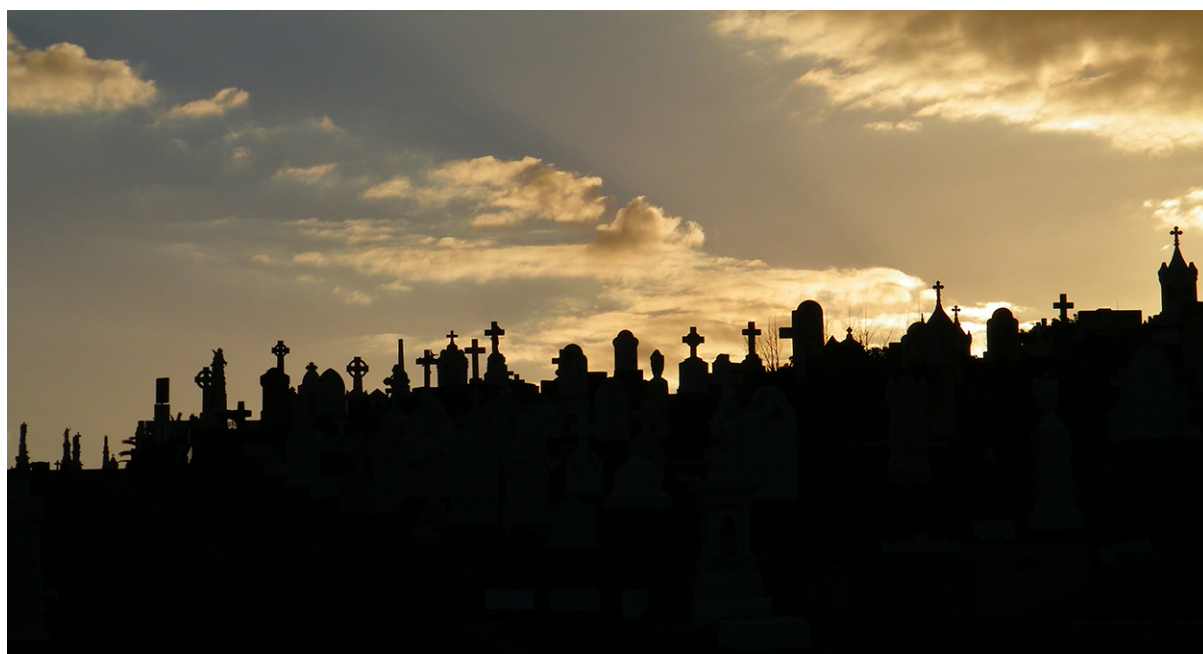




## Interim recommendations

- 1 Cemeteries and Crematoria NSW (CCNSW) be made responsible for acquiring land for new cemeteries in Sydney as part of the statutory review of the *Cemeteries and Crematoria Act 2013*.
- 2 New cemeteries in Sydney have their operations competitively tendered out to either an existing Crown land manager or appropriately qualified private operator.
- 3 The NSW Government work in partnership with councils in a coordinated strategic manner to identify land for interment outside Sydney.
- 4 An interment service levy not be applied to additional cemetery operators until the statutory review of the *Cemeteries and Crematoria Act 2013* is completed and it can be demonstrated that the functions of CCNSW are of benefit to the wider cemetery and crematoria industry in NSW.
- 5 Office of Local Government's performance statistics be required to include transparent and comparable cost information about councils' cemetery operations.
- 6 There be a legal obligation on all cemetery operators to make adequate financial provision for perpetual maintenance of interment sites and the cemetery.
- 7 Cemetery operators that conduct more than 50 bodily interments in new perpetual interment sites per year at a cemetery must contribute to an independently managed perpetual maintenance reserve fund to provide for long-term cemetery maintenance.
- 8 The perpetual maintenance reserve fund for a cemetery must be independently managed by Treasury Corporation or an independent body approved by CCNSW.
- 9 CCNSW to develop Guidelines on when and how a cemetery operator can use perpetual maintenance funds for a cemetery.
- 10 Cemetery operators provide a Plain English Statement of terms and conditions for interment rights at a cemetery that customers can easily access. This include a clear statement on the obligations of each of the interment right holder and the cemetery operator for the nature and level of maintenance of the interment site and the cemetery.
- 11 To make it easier for consumers to compare and understand prices for bodily interment services, cemetery operators be required by regulation to publish prices for all bodily interment services on a consistent basis. To do so, cemetery operators be required to publish the following:
  - The total price for a bodily interment service (ie, the sum of all necessary service components) for both at-need and pre-need purchases

- Itemised prices for each service component of the bodily interment service, using the terminology described in Table 7.2, and including any additional costs due to cultural or religious requirements
  - Product specifications for the interment right, such as size and depth
  - Length of tenure (renewable or perpetual) and the future maintenance pricing components for all relevant lengths of tenure.
- 12 Within 12 months CCNSW to develop a central website to enable consumers to compare prices for interment services in one place.
- 13 In setting interment fees and charges, all cemetery operators should include future maintenance costs of their cemeteries.
- 14 Our pricing tool be made available to cemetery operators for use on a voluntary basis to inform decisions on pricing for bodily interment rights.
- 15 Users of the pricing tool should include land value at its initial purchase cost, but for cemeteries that are located on gifted land, the land value should be zero. Land value for an established cemetery should not be adjusted over time to reflect changes in surrounding land values.





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Ms Anna Brakey

Ms Sandra Gamble

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## Invitation for submissions

IPART invites written comment on this document and encourages all interested parties to provide submissions addressing the matters discussed.

**Submissions are due by 14 February 2020.**

We would prefer to receive them electronically via our online submission form <[www.ipart.nsw.gov.au/Home/Consumer\\_Information/Lodge\\_a\\_submission](http://www.ipart.nsw.gov.au/Home/Consumer_Information/Lodge_a_submission)>.

You can also send comments by mail to:

**Interment review**

Independent Pricing and Regulatory Tribunal

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# 1 Context for the review

It is important to understand the context in which interment services are provided for this review of interment costs and the pricing of interment rights in NSW. The sections below provide this information, including:

- ▼ What interment is
- ▼ What is covered by our review and what is not
- ▼ Information about interment, burial and cremation choices in NSW
- ▼ What interment services are
- ▼ Current approaches to pricing interment services in NSW and elsewhere in Australia
- ▼ Cemetery governance and legislation
- ▼ The approaching exhaustion of burial space in Sydney
- ▼ Other relevant reviews.

## 1.1 What is interment?

Interment is “the placement of human remains in the earth or in a mausoleum, crypt, vault, columbarium, niche wall or other structure designed for the placement of such remains. The term 'interment' applies to both cremated and uncremated remains.”<sup>1</sup>

That is, interment encompasses both burial of bodily remains or ashes in a grave, and placement of bodily remains or ashes in a built structure.

## 1.2 What is covered by this review?

Section 145 of the *Cemeteries and Crematoria Act 2013* directs IPART to investigate interment costs and the pricing of interment rights with regard to:

- ▼ The relativity of costs and pricing factors for perpetual and renewable interment rights
- ▼ Full-cost pricing of perpetual interment rights.

We are also required to review competition, cost and pricing factors within the funeral industry. We have decided to conduct the review in two stages. This stage of the review focuses on the costs of and pricing for interment services and associated topics such as:

- ▼ How to set prices so that interment services are affordable and equitable for all, including between perpetual and renewable tenure rights, and do not create inequities for different community groups

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<sup>1</sup> Cemeteries and Crematoria NSW, *Strategic Plan 2015-20*, October 2015, p 12.

- ▼ How to set prices so that cemeteries are financially sustainable now and into the future, generating enough revenue to cover the efficient costs of operating a cemetery, including the cost of land and the cost of perpetual maintenance
- ▼ Making sure that prices for interment services are easy for people to understand and easy for people to find, so that they can make informed choices about a sensitive matter.

This stage of the review will not investigate the funeral industry more broadly. However, we will investigate competition, cost and pricing factors in the funeral industry during 2020.

### 1.3 What choices do NSW residents make about interment, burial and cremation?

Almost all people who die in NSW are either interred in a cemetery or cremated, with a very small number of people choosing other options (such as being buried on a family property or being buried at sea). In 2017-18, around two thirds of individuals were cremated while a third had their bodily remains interred in a cemetery. The rate of cremations is highest in the Central Coast, Hunter and Illawarra regions and lowest in rural and regional NSW (see Table 1.1).

**Table 1.1 Burials and Cremations in 2017-18**

Region	Burials	Cremation	Cremation rate
Metro Sydney	9,332	18,601	66.6%
Central Coast, Hunter and Illawarra	2,726	10,516	79.4%
Rural and Regional	6,002	9,319	60.8%
<b>Whole of NSW</b>	<b>18,335</b>	<b>38,768</b>	<b>67.9%</b>

**Source:** Cemeteries and Crematoria NSW, *Annual Operator Activity Survey 2017-18*

Commercial cremation commenced in NSW in 1925 and there has been an increasing trend towards cremation over burial ever since.<sup>2</sup> However, it is unclear whether this upward trend will continue. The Metropolitan Sydney Cemetery Capacity Report released by Cemeteries and Crematoria NSW identified several potential factors that could increase or decrease the relative share of cremations and interment of bodily remains, but the report states that the best estimate of future trends was for the cremation rate to remain stable.<sup>3</sup>

Cremated remains ('ashes') may also be interred in cemeteries, but a family may simply take the cremated remains after cremation and keep or dispose of them as they wish. In 2017-18, around a third of ashes were interred or scattered at a cemetery.<sup>4</sup>

It should also be noted that while individuals have a choice between interment of bodily remains and cremation, this choice is strongly influenced by religion and culture. Jewish and

<sup>2</sup> Murray, Lisa, *Death and Dying in twentieth century Sydney*, 2013, [https://dictionaryofsydney.org/entry/death\\_and\\_dying\\_in\\_twentieth\\_century\\_sydney](https://dictionaryofsydney.org/entry/death_and_dying_in_twentieth_century_sydney), accessed 17 April 2019.

<sup>3</sup> Cemeteries and Crematoria NSW, *Metropolitan Sydney Cemetery Capacity Report*, 2017, p 9.

<sup>4</sup> Cemeteries and Crematoria NSW, *Annual Activity Report 2017-18*.

Islamic religious law, for example, require interment of bodily remains rather than cremation, and some cultural communities retain a strong preference for interment of bodily remains.<sup>5</sup>

## 1.4 What are interment services?

To be interred in a cemetery, a person must purchase an **interment right** from the cemetery. These may be purchased ‘pre-need’ or ‘at need’.<sup>6</sup> The interment may be in a mausoleum, crypt or grave. The interment right may include a headstone or other monumentation that is already in place, or may include the right to place such monumentation at the time of interment.

Cemeteries are often divided into areas associated with religious or cultural groups. These areas may have been consecrated by a religious official from a specific religion, or simply designated as an area for interments for people from the same or similar religious or cultural background. Cemeteries may also have ‘general’ areas that are not associated with a particular religion or culture.

A gravesite may be single, double or triple depth, allowing for multiple burials. Prices for interment rights usually reflect the gravesite capacity.

Cemeteries will usually charge a separate fee for burial, although some may include this in the interment right price.

An interment right has traditionally been perpetual, although renewable tenure has been permissible in local government and private cemeteries. In 2017-18, there were 53 interments under renewable rights terms in local government or private cemetery interment sites. There were a total of 18,335 interments in NSW during 2017-18.<sup>7</sup>

Renewable tenure of between 25 and 99 years has been available as an option in Crown cemeteries since June 2018,<sup>8</sup> as part of the CC Act reforms, although we understand that no Crown cemetery has yet introduced it.

## 1.5 What is the current approach to pricing interment services?

Prices charged for interment in NSW are not currently regulated. Crown cemetery boards determine prices for Crown cemeteries (although these prices may be disallowed by the cemeteries agency, Cemeteries and Crematoria NSW), local governments set prices for cemeteries they operate (and these prices are not subject to the rate peg) and private cemetery operators set their own prices as do church and community operators.

<sup>5</sup> Murray, Lisa, *Death and Dying in twentieth century Sydney*, 2013, [https://dictionaryofsydney.org/entry/death\\_and\\_dying\\_in\\_twentieth\\_century\\_sydney](https://dictionaryofsydney.org/entry/death_and_dying_in_twentieth_century_sydney), accessed 17 April 2019.

<sup>6</sup> ‘Pre-need’ purchase is the purchase of a right before the person whose remains are to be buried has died; ‘at-need’ is purchase when an interment is to take place very soon after purchase of the right.

<sup>7</sup> Cemeteries and Crematoria NSW, *Annual Activity Report 2017-18*.

<sup>8</sup> *Cemeteries and Crematoria Act 2013*, Part 4, commenced June 2018; see <https://www.industry.nsw.gov.au/lands/what-we-do/crown-land/cemeteries-crematoria/amendment-regulation-2017>, accessed 18 April 2019.

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Typically, the costs of a funeral, cremation and/or interment are paid from the deceased estate, or by family of the deceased. Cemeteries in NSW are not funded by government, and are expected to recover their full costs of operation through charges for their services.

This section sets out some information about current prices for interment services in NSW and other jurisdictions.

### 1.5.1 Current prices for interment vary significantly across NSW

The price of interment varies significantly across NSW and depends on factors such as the geographic location and the type of grave. In a local government cemetery in regional NSW, a perpetual interment right could cost as little as \$280,<sup>9</sup> while a perpetual interment right in a lawn cemetery operated by the Rookwood General Cemetery costs around \$9,000, and up to around \$38,000 in a section that can accommodate significant monumentation.<sup>10,11</sup>

A range of \$6,000 to \$20,000 for interment rights is common in Sydney.<sup>12</sup> Additional fees of around \$2,000 are charged for burial (ie, excavating the grave and burying a body (or ashes)). Given the significant variation in the price of interment rights (and variation to a lesser extent in burial prices), it is difficult to determine what the average price of interment is in NSW.

Ashes interment is usually significantly cheaper than bodily interment. For example, at Rookwood an ashes interment right (in a niche or garden) costs between \$1,855 and \$5,327, inclusive of the first interment (ie, placing the ashes in the niche or garden). An additional fee of \$731 is charged for second and subsequent interments.

Waverley Cemetery, one of only two cemeteries in NSW that has been offering renewable interment rights, charges \$24,805 for a 25-year term compared to \$61,516 for a 99-year term.<sup>13</sup>

### 1.5.2 Current prices for interment vary significantly in other Australian jurisdictions

As in NSW, the geographic location and type of grave are significant factors in the price of interment rights in other Australian states. The website “gathered here” compares and publishes information about end-of-life services in Australia, including funerals and interment services. The price range for interment rights in Melbourne cemeteries included in

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<sup>9</sup> For example, <http://www.centraldarwin.nsw.gov.au/council/rates/my-notice-tells-me-that-i-have-interest-but-i-paid-on-time/rates-and-charges/public-cemeteries.aspx>, accessed 26 November 2019.

<sup>10</sup> Rookwood General Cemetery, *Fees for In-Ground Interment* (see [http://www.rookwoodcemetery.com.au/assets/documents/General\\_Price\\_List\\_Nov2019.pdf](http://www.rookwoodcemetery.com.au/assets/documents/General_Price_List_Nov2019.pdf), accessed 26 November 2019).

<sup>11</sup> The price for an interment right in a monumental section does not necessarily include the cost of monumentation, but these sites are more expensive because they are pre-prepared with foundations and access for installing monumentation.

<sup>12</sup> For example, Woronora Memorial Park, *Crematorium Fees* (see <http://www.woronoramemorialpark.com.au/price-guide>), and Northern Cemeteries, *Fees, Burial Sites* (see <https://northerncemeteries.com.au/macquarie-park/about-macquarie-park/fees/>), accessed 26 November 2019.

<sup>13</sup> Waverley Cemetery Pricing, see <http://waverleycemetery.com/88-faqs/164-pricing>, accessed 26 November 2019.



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the website is between \$2,620 (lawn) and \$9,385 (monumental), while in Brisbane it is between \$3,707 (lawn) and \$6,170 (monumental) for cemeteries included in the website.<sup>14</sup>

## **1.6 What legislation and governance arrangements affect cemeteries in NSW?**

We are conducting this review within the context of significant reforms that have occurred in the NSW cemetery industry since 2012. These reforms included the amalgamation of trusts operating Crown cemeteries, the introduction of the CC Act, and the creation of Cemeteries and Crematoria NSW (CCNSW).

### **1.6.1 Reforms to the management of Crown cemeteries amalgamated trusts**

In 2012, the NSW Government implemented a significant change to the organisational structures of Trusts that were operating NSW Crown cemeteries. As part of this process:

- ▼ The Rookwood General Cemeteries Reserve Trust was created by combining the Anglican, General, Independent, Jewish and Muslim trusts that had previously operated independently at Rookwood
- ▼ The Rookwood Necropolis Trust was created to manage the common property and infrastructure throughout Rookwood Cemetery
- ▼ Northern Metropolitan Cemeteries Trust was created by combining the Macquarie Park Cemetery and Crematorium Trust, Field of Mars Cemetery Trust, Frenchs Forest Bushland Cemetery Reserve Trust, Gore Hill Memorial Cemetery Trust and Sandgate Cemetery Trust
- ▼ Southern Metropolitan Cemeteries Trust was created by combining the Woronora General Cemetery and Crematorium Trust and the Trusts associated with the Eastern Suburbs Memorial Park.

The resulting trusts (now known as land managers, following the commencement of the *Crown Land Management Act 2016*), along with the Catholic Metropolitan Cemeteries Trust, are now responsible for operating all of the metropolitan Crown cemeteries in NSW. A dozen small, mostly closed cemeteries in regional NSW are also operated by individual Crown land managers.<sup>15</sup>

These amalgamations have generated some issues relating to pricing, where merged trusts often followed very different pricing strategies and had differing levels of financial sustainability.<sup>16</sup>

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<sup>14</sup> Gathered Here, Guide to Burial Plots in Australia, see <https://www.gatheredhere.com.au/guide-to-burial-plots-in-australia/>, accessed 26 November 2019.

<sup>15</sup> See <https://www.industry.nsw.gov.au/cemeteries-crematoria/locations/find-a-cemetery> for a register of NSW cemeteries by operator.

<sup>16</sup> See, for example, PWC, *Rookwood Cemetery: future governance arrangements*, February 2018.

### 1.6.2 The Cemeteries and Crematoria Act 2013 reformed cemetery operations

The CC Act provides a set of minimum governance requirements for Crown land managers, including the requirement for:

- ▼ A strategic plan (section 90)
- ▼ A draft plan of management (section 93)
- ▼ Financial management, audits and reports (sections 99-102)
- ▼ A finance committee, an audit and risk committee and a community advisory committee to liaise with communities (section 103)
- ▼ Planning conduct and maintenance (section 106)
- ▼ A system for setting fees and charges (section 107).

The CC Act also allows cemeteries to offer renewable and perpetual interment rights (Part 4). This Part of the CC Act only came into force in 2018. Prior to this, all interments in Crown cemeteries were in perpetuity. Now Crown cemeteries may (but are not required to) offer renewable tenure of an initial term of at least 25 years, renewable in increments of at least five years at a time for a maximum of 99 years (section 54).

Renewable tenure is not retrospective, so if an interment was or is made under a perpetual right, it remains perpetual. Unexercised perpetual interment rights (that is, where a right was purchased pre-need but no remains have been interred) may be revoked after 50 years, following notice requirements being met (section 52).

Renewable tenure is common in other jurisdictions, whether compulsory or as an option, including in South Australia and Western Australia, and in European countries including Denmark, France, Germany, Greece, Italy and Sweden.<sup>17</sup>

### 1.6.3 Cemeteries and Crematoria NSW (CCNSW) was established to support and regulate the interment industry

CCNSW was created in 2014 by the CC Act. It is a NSW Government statutory agency within the NSW Department of Planning, Industry and Environment. CCNSW supports and regulates the interment industry. CCNSW also plays a role in developing industry policy including:

- ▼ Safeguarding the interment practices and dignity and beliefs of all community groups
- ▼ Allocating enough land for cemeteries
- ▼ Ensuring cemeteries are well maintained now and into the future
- ▼ Promoting affordable and accessible interment options for everyone
- ▼ Maintaining good governance of cemeteries and crematoria.<sup>18</sup>

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<sup>17</sup> Parliament of NSW Legislative Council Regulation Committee, *Report 2: Cemeteries and Crematoria Amendment Regulation 2018*, November 2018, p 5.

<sup>18</sup> CCNSW, *Strategic Plan 2015-20*, October 2015, p 12.

## 1.7 When will cemetery capacity in Sydney be exhausted?

A 2017 report by CCNSW found that:

...if there is no change to existing cremation and grave occupancy rates ... cemetery capacity in metropolitan Sydney would be exhausted by 2051, with negative effects to availability of at-need grave plots expected well in advance of that period.<sup>19</sup>

Importantly, the report found that while the exact year that Sydney runs out of cemetery capacity depends on several assumptions, such as trends in cremation rates and the occupancy rates of graves, the need for more capacity is an inevitability. Even under a set of assumptions with increases in the cremation rate to 86% and significant increases in the grave occupancy rate, Sydney will completely deplete existing cemetery capacity by 2084. These capacity concerns appear to be concentrated within the Sydney metropolitan region.

## 1.8 What other reviews of the cemetery sector are relevant to this one?

The Department of Planning, Industry and Environment has commenced a statutory review of the *Cemeteries and Crematoria Act 2013* to be overseen by an inter-agency steering committee.<sup>20</sup> The review will determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate to secure those objectives. Its terms of reference address the Crown cemetery sector in Sydney in particular, including its operational efficiency, governance and accountability, as well as consideration of provision for perpetual care by cemetery operators more generally and land use issues facing cemeteries and crematoria.<sup>21</sup>

In February 2019 the Premier asked the Greater Sydney Commission (GSC) to provide advice and recommendations on the strategic planning considerations for the provision of new cemeteries.<sup>22</sup> This advice will not extend to specific sites or development applications but will provide advice on the criteria for identifying sites for new cemeteries in Greater Sydney. The GSC is expected to report in the second half of 2019.

<sup>19</sup> Cemeteries and Crematoria NSW, *Metropolitan Sydney Cemetery Capacity Report*, November 2017, p 9.

<sup>20</sup> Review of NSW Cemeteries and Crematoria Act, <https://www.industry.nsw.gov.au/cemeteries-crematoria/review-of-nsw-cemeteries-and-crematoria-act>, accessed on 10 December 2019.

<sup>21</sup> Terms of Reference for the Statutory Review, [https://www.industry.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0004/280939/review-of-ccnsw-act-terms-of-reference.pdf](https://www.industry.nsw.gov.au/__data/assets/pdf_file/0004/280939/review-of-ccnsw-act-terms-of-reference.pdf), accessed on 11 December 2019.

<sup>22</sup> See Strategic planning considerations for cemeteries, <https://www.greater.sydney/project/strategic-planning-considerations-cemeteries>, accessed on 10 December 2019.

## 2 Our approach to the review

Section 145 of the *Cemeteries and Crematoria Act 2013* (CC Act) directs IPART to investigate and report on interment costs and the pricing of interment rights. The two specific matters which we must consider are:

- ▼ The relativity of costs and pricing factors for perpetual and renewable interment rights
- ▼ Full-cost pricing of perpetual interment rights, including provision for the perpetual care of interment sites and cemeteries.

The form of recommendations from the review is not specified.

In our Issues Paper we described the objective of the review as “to provide guidance to NSW cemeteries about pricing of interment services in the context of changed legislation (particularly the introduction of renewable interment rights) and the approaching exhaustion of burial space in Sydney”.<sup>23</sup> We have developed an approach to the review to deliver on this objective and the requirements of the CC Act.

This chapter sets out an overview of our approach, and then each step in more detail.

### 2.1 Overview of our approach

Our approach involves four key steps:

1. Establish pricing principles against which to evaluate our recommendations.
2. Assess the structure of the market in interment services and decide on the form of recommendations.
3. Assess the efficient costs of delivering interment services, and recommend measures where necessary to encourage more efficient costs in future. The nature of these measures will depend on the results of the market structure assessment.
4. Recommend measures to ensure that prices meet the established pricing principles. The nature of these measures will depend on the results of the market structure assessment, and the findings and recommendations we make regarding efficient costs.

The approach we are taking differs slightly from the proposed approach we outlined in our Issues Paper, reflecting feedback we received from stakeholders and the results of our analysis of governance arrangements, land availability and perpetual maintenance provisions and their implications for costs and pricing.

For this Interim Report we have followed the steps in this approach and developed interim findings and recommendations that address costs and pricing for future cemeteries, and make improvements for existing cemeteries and their customers. However, for existing cemeteries

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<sup>23</sup> IPART, *Review of interment costs and pricing: Issues Paper*, March 2019, p 1.



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that are close to capacity, we do not know enough yet about their costs (Step 3) to develop recommendations, so we will undertake more work before publishing a Draft Report.

## 2.2 Step 1: Establish pricing principles

The first step in our approach is to establish pricing principles. These principles will underpin our evaluation of alternative pricing arrangements and the recommendations we make for pricing. We proposed preliminary pricing principles in our Issues Paper<sup>24</sup> and consulted on them, and our interim decision is to adopt them:

- ▼ Interment prices should be affordable and equitable for all
- ▼ Interment prices should allow for the financially sustainable operation of cemeteries into the future
- ▼ Interment prices should be simple and transparent so that people can make informed decisions about interment choices at a difficult time.

Chapter 3 sets out the proposed principles, the feedback from stakeholders and our interim decision in more detail.

## 2.3 Step 2: Assess the structure of the market and decide on a form of recommendations for interment pricing

In our Issues Paper, we proposed an approach to the review in which we would estimate the efficient costs of interment service provision first, and then decide on a form of recommendations depending on how closely current pricing aligns with efficient costs.<sup>25</sup> We discussed the role of competition in interment service costs and pricing. We noted that, in many markets, competition between service providers is a key mechanism that works to keep costs and prices as low as possible. For instance, if one operator can provide a service of the same quality but at a lower cost than another operator, they will attract more customers. However, we noted that there are reasons why competition may be muted amongst cemetery operators, including that people generally choose cemeteries for reasons other than price, including proximity, and that there are significant barriers to entry for new cemetery operators.<sup>26</sup>

Feedback from stakeholders suggested that competition is present to some degree in interment services and does play a positive role in some aspects of interment service provision (such as innovation and service quality), but does not necessarily play a significant role in putting downward pressure on costs or prices.<sup>27</sup> We also found that the market for the provision of interment services differs across NSW, and differences in governance arrangements between cemetery operators affect the efficiency of costs and prices.

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<sup>24</sup> IPART, *Review of interment costs and pricing: Issues Paper*, March 2019, Ch 4.

<sup>25</sup> IPART, *Review of interment costs and pricing: Issues Paper*, March 2019, Section 3.2.

<sup>26</sup> IPART, *Review of interment costs and pricing: Issues Paper*, March 2019, p 26.

<sup>27</sup> See for example Rookwood General Cemetery, Submission to Issues Paper, June 2019, p 9; Albury City Council, Submission to Issues Paper, June 2019, p 2; Catholic Metropolitan Cemeteries Trust, Submission to Issues Paper, June 2019, p 4.

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As a result, we decided that the second step in our approach should be a careful analysis of the structure of the market for interment services, and this would guide the form of our recommendations. By “form of recommendations”, we mean the type of measures for setting or guiding prices. In general, the less competitive the market, the more prescriptive the measures to be recommended. In our Issues Paper, we canvassed options including publishing pricing guidelines, publishing pricing benchmarks and recommending maximum prices for specific services.<sup>28</sup>

Chapter 4 describes this step in more detail.

## **2.4 Step 3: Assess the efficient costs of delivering interment services and recommend measures to encourage increased efficiency**

The pricing principles we developed in the first step include the importance of the financial sustainability of cemeteries. Prices that reflect the full efficient costs of interment services across the life cycle of a cemetery would help deliver financial sustainability. Understanding the nature of and estimating these costs will therefore be a crucial step in developing our recommendations.

An important aspect of interment services is that until recently all interment rights were perpetual. After a cemetery reaches capacity, it will no longer generate revenue from interments, but will continue to incur grounds maintenance costs indefinitely. This means that costs as they relate to pricing need to be considered over the long term. This is one of the matters specified for this review in section 145 of the CC Act. Other significant challenges in conducting this step relate to accounting for the cost of land and the adequacy of historical pricing.

Chapter 5 describes this step in more detail. Chapter 6 considers the perpetual maintenance costs of cemeteries and how to fund these costs.

## **2.5 Step 4: Recommend measures to ensure that prices meet principles**

The fourth step in our review process will be to develop recommendations for pricing in the form decided in Step 2, and taking into account the results of our investigation of efficient costs at Step 3.

We will also consider our recommendations against the principles (established at Step 1) of affordability and equity for customers, financial sustainability for cemeteries and simplicity and transparency for customers

Chapter 7 describes this step in more detail.

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<sup>28</sup> IPART, *Review of interment costs and pricing: Issues Paper*, March 2019, p 12.

## 3 Pricing principles for interment services

As outlined in Chapter 2, the first step in our approach to the review of interment costs and pricing in NSW was to establish pricing principles. These principles, drawn from the objects of the CC Act, then formed the basis of our evaluation of any guidance or regulation provided in our recommendations.

This chapter sets out the pricing principles we proposed in our Issues Paper, the feedback we received on them and our decisions regarding final principles.

### 3.1 Overview of pricing principles for the review

The CC Act does not provide specific guidance on matters we should take into account when investigating interment costs and pricing. We recognise that the reasons that people choose interment or cremation, or one gravesite over another, are influenced by factors other than price, including geographical location, religious or cultural beliefs or preferences. Many people also find themselves making these choices for a loved one while under emotional stress and within a constrained timeframe.

We consider that the pricing principles for the review can be guided by the objects of the CC Act more generally. They are set out in Box 3.1.

In order for this review to best deliver on the objects of the CC Act, we proposed the following pricing principles in our Issues Paper:<sup>29</sup>

- ▼ Interment prices should be affordable and equitable for all
- ▼ Interment prices should allow for the financially sustainable operation of cemeteries into the future
- ▼ Interment prices should be simple and transparent so that people can make informed decisions about interment choices at a difficult time.

We noted that sometimes these principles may be in conflict – for example, pricing interments at a level that ensures financial sustainability of cemeteries into the future may conflict with the objective of affordability – and balancing the conflicting principles will require judgment.

We sought feedback on the principles and managing trade-offs between the principles.

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<sup>29</sup> IPART, *Review of interment costs and pricing: Issues Paper*, March 2019, p 15.

### Box 3.1 The objects of the Cemeteries and Crematoria Act 2013

- ▼ To recognise the right of all individuals to a dignified interment and treatment of their remains with dignity and respect
- ▼ To ensure that the interment practices and beliefs of all religious and cultural groups are respected so that none is disadvantaged and adequate and proper provision is made for all
- ▼ To ensure that sufficient land is acquired and allocated so that current and future generations have equitable access to interment services
- ▼ To provide for the operation of a consistent and coherent regime for the governance and regulation of cemeteries and crematoria
- ▼ To ensure that the operators of cemeteries and crematoria demonstrate satisfactory levels of accountability, transparency and integrity
- ▼ To ensure that cemeteries and crematoria on Crown land are managed in accordance with the principles of Crown land management specified in section 1.4 of the *Crown Land Management Act 2016*
- ▼ To promote environmental sustainability of the interment industry, including provision for natural and private burials
- ▼ To promote that cost structures for burials and cremations are transparent across all sectors of the interment industry
- ▼ To promote affordable and accessible interment practices, particularly for those of limited means.

**Source:** *Cemeteries and Crematoria Act 2013*, Section 3 Objects of Act

## 3.2 Interment prices should be affordable and equitable for all

Our first principle is that prices should be affordable and equitable for all. This principle helps to ensure access to a dignified interment in accordance with a person's religious or cultural beliefs, as well as access for those of limited means.

Several submissions commented on the principle of affordability, noting that it meant different things to different people,<sup>30</sup> and that cemeteries should be able to offer a range of options to “match capacity to pay and personal preferences”.<sup>31</sup> Catholic Metropolitan Cemeteries Trust suggested clarifying that “**basic** interment prices should be affordable and equitable for all”.<sup>32</sup> Moree Plains Shire Council noted that it explicitly subsidised cemetery costs from rate income “to ensure burial costs do not become an overwhelming burden for families”.<sup>33</sup>

<sup>30</sup> Cemeteries and Crematoria Association of NSW, Submission to Issues Paper, June 2019, p1; Australian Funeral Directors Association, Submission to Issues Paper, June 2019, p 1; Rookwood General Cemetery, Submission to Issues Paper, June 2019, p 6.

<sup>31</sup> Tenterfield Shire Council, Submission to Issues Paper, June 2019, p 1.

<sup>32</sup> Catholic Metropolitan Cemeteries Trust, Submission to Issues Paper, June 2019, p 1.

<sup>33</sup> Moree Plains Shire Council, Submission to Issues Paper, June 2019, p 1.

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### **3.3 Interment prices should allow for the financially sustainable operation of cemeteries into the future**

Our second principle is that prices should allow for the financially sustainable operation of cemeteries into the future. In order to do this, cemeteries need to earn enough revenue to cover the costs of current operation as well as generating adequate reserves to fund perpetual maintenance.

Until recently all interment rights were perpetual. This means that the revenue and cost streams that cemetery operators are seeking to equate need to be viewed over a long period of time. After a cemetery reaches capacity, it will no longer generate revenue from interments, but will continue to incur grounds maintenance costs indefinitely so the cost of perpetual maintenance needs to be built into the prices charged today.

To assess whether interment prices deliver on this principle, we need to understand the nature and the level of the costs of providing interment services. Chapter 5 provides more detail on the costs of providing interment services.

### **3.4 Interment prices should be simple and transparent**

Our third principle is that prices should be easy for people to understand and easy for people to find.

Decisions about purchasing interment rights are often made at a time of emotional stress and within a short timeframe, so it is important that people can make an informed choice without adding to their distress or taking unnecessary time.

On the other hand, interment rights can also be purchased ‘pre-need’, when consumers may have a greater capacity to shop around, and simplicity and transparency of pricing can allow some competitive pressure to be brought to bear on prices being offered by different cemeteries.

### **3.5 There is no consensus on relative importance of each principle**

In our Issues Paper we sought feedback on the relative importance of the proposed principles, and how trade-offs between the principles could be managed.

Submissions indicated a range of views as to whether any principle was more important than others, and, if so, which should take precedence. For example, Hornsby Shire Council and Wollongong City Council submitted that the ability of the cemetery to continue to provide a service is the most important.<sup>34</sup> Local Government NSW submitted that the principle of affordability and equity is paramount.<sup>35</sup>

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<sup>34</sup> Hornsby Shire Council, Submission to Issues Paper, June 2019, p 1; Wollongong City Council, Submission to Issues Paper, June 2019, p 1.

<sup>35</sup> Local Government NSW, Submission to Issues Paper, June 2019, p 1.



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Several submissions noted that the principles of affordability for consumers and financial sustainability for cemeteries could potentially come into conflict.<sup>36</sup> Some proposed ways to manage such conflict:

- ▼ Local governments subsidise cemetery operations from ratepayer income (although others noted that this already happens and is undesirable)<sup>37</sup>
- ▼ Require cemeteries to have an affordable option, but with freedom to price other services as desired.<sup>38</sup>

#### Interim finding

1 The pricing principles for our review of interment services are:

- Interment prices should be affordable and equitable for all
- Interment prices should allow for the financially sustainable operation of cemeteries into the future
- Interment prices should be simple and transparent so that people can make informed decisions about interment choices at a difficult time.

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<sup>36</sup> For example, see Cemeteries and Crematoria Association of NSW, Submission to Issues Paper, June 2019, p 1; City of Newcastle, Submission to Issues Paper, June 2019, p 1.

<sup>37</sup> For example, as a proposal with merit: Moree Plains Shire Council, Submission to Issues Paper, June 2019, p 1. As a current strategy that is undesirable: Anonymous, Submission to Issues Paper, June 2019, p 1.

<sup>38</sup> For example, Wollongong City Council, Submission to Issues Paper, June 2019, p 1; Cemeteries and Crematoria Association of NSW, Submission to Issues Paper, June 2019, p 1.

## 4 Market structure and form of recommendations

As outlined in Chapter 3, the second step in our approach to the review of interment costs and pricing in NSW was to assess the market structure for providing interment services in NSW and decide on a form of recommendations for pricing that is appropriate to that market structure.

The form of recommendations depends on the market structure. This is because the market structure helps us to understand what factors give incentives to cemetery operators to:

- ▼ Seek the most efficient costs
- ▼ Take account of all the costs they should be recovering
- ▼ Set efficient and affordable prices.

The factors that provide incentives for cemetery operators could include:

- ▼ Competition with other operators
- ▼ Accountability to electors
- ▼ Availability of alternative options for consumers
- ▼ Who bears the risks of costs or revenue.

Once we understand these, we can make recommendations about the types of additional measures that might be required to achieve the outcomes of cemetery financial sustainability and customer affordability and access.

At one end of the spectrum, a workably competitive market with many participants, plenty of choice for consumers and appropriately allocated risks is unlikely to need prescriptive price regulation.

At the other end of the spectrum, a monopoly provider of a service that consumers have no choice but to use is likely to need prescriptive price regulation, where a regulator assesses the business's efficient costs and sets prices based on those efficient costs.

In between these two extremes lies a range of market structures where there is some regulatory intervention, whether direct or indirect, over costs or prices, or a subset of costs or prices (for example, where affordability is a concern, a provider may be required to deliver a basic service for a regulated price, but can offer other services as well without regulated prices).

This chapter sets out an overview of our interim findings on market structure and form of recommendations for prices for interment services, then discusses each of them in more detail.

## 4.1 Overview of interim findings

We found that the key factors in market structure were:

- ▼ The mixed governance arrangements for cemeteries - cemeteries are owned and operated by a mix of private, local Government and Crown land manager operators. We found that in some areas there is some degree of competition between them. We also found that, even with no or low levels of direct competition between providers, there can be other factors that put pressure on operators to keep costs efficient and prices as low as possible. On the other hand, lack of clarity about roles and responsibilities means that there may be inadequate provision of land for new cemeteries.
- ▼ The role of consumer choice – we found that price plays a relatively small role in consumer decisions about cremation or burial, and about which cemetery to choose for interment.
- ▼ The long life cycle of a cemetery - different cemeteries are operating at different stages of their life cycles, with different structures of costs and revenue, and different levels of competition and regulation for different parts of their business. We found that the perpetual nature of cemeteries, and the mismatch between revenue and cost streams, creates a risk that cemetery operators set prices too low to recover future costs into perpetuity.

We also found that there were clear differences between Sydney and areas outside Sydney in terms of cemetery market structure.

After considering our findings on market structure and the pricing principles we developed in Step 1, we considered that, on the whole, prescriptive price regulation is not warranted, and that instead we would recommend a suite of measures that in some cases is different for different types of cemeteries.

## 4.2 Mixed governance arrangements for cemeteries mean the market structure differs between regions

Cemeteries in NSW are owned and operated by local governments, Crown land managers, private operators, churches and community groups. Crown land managers perform the majority of interment services in Sydney,<sup>39</sup> and local government performs the majority of interment services throughout the rest of NSW (Table 4.1).

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<sup>39</sup> In this report “Sydney” is defined as the Central, South, North, West, West-Central and South-West planning regions as defined by the Greater Sydney Commission in the *Greater Sydney Draft District Plan Map Atlas*, November 2016, accessible at [www.greater.sydney/maps](http://www.greater.sydney/maps)

**Table 4.1 Burials performed in 2017-18, by operator sector**

	Number of Operational Cemeteries (NSW)	Number of Burials (Sydney)	Share of Burials (Sydney)	No. of burials (Rest of NSW)	Share of burials (Rest of NSW)	No. of burials (NSW Total)
Local government	701	897	9.6%	7,589	84.3%	8,486
Crown land managers	13	6,349	68.0%	230	2.6%	6,579
Private	32	1,981	21.2%	1,031	11.5%	3,012
Community and church	216	105	1.1%	153	1.7%	258
<b>Total</b>	<b>962</b>	<b>9,332</b>	<b>100%</b>	<b>9,003</b>	<b>100%</b>	<b>18,335</b>

**Source:** Cemeteries and Crematoria NSW, *Annual Activity Report 2017-18*

#### 4.2.1 Crown land managers dominate the cemetery market in Sydney

In Sydney, cemeteries and crematoria are operated by Crown land managers, local government, private operators, and churches. Churches are responsible for over 50% of operational **cemeteries** in Sydney; however, these accounted for only 1% of **burials** in 2017-18, as shown in Figure 4.1. Cemeteries operated by the four Crown land managers accounted for 68% of burials; private and local government cemeteries accounted for 21% and 10% respectively.<sup>40</sup> One submission on our Issues Paper noted that “the Sydney market is ... likely to be considered the most competitive of the markets in Australia”.<sup>41</sup>

However, most of the private cemeteries are operated by a single owner, InvoCare, and it is not clear to what extent Crown land managers are expected to compete with one another.

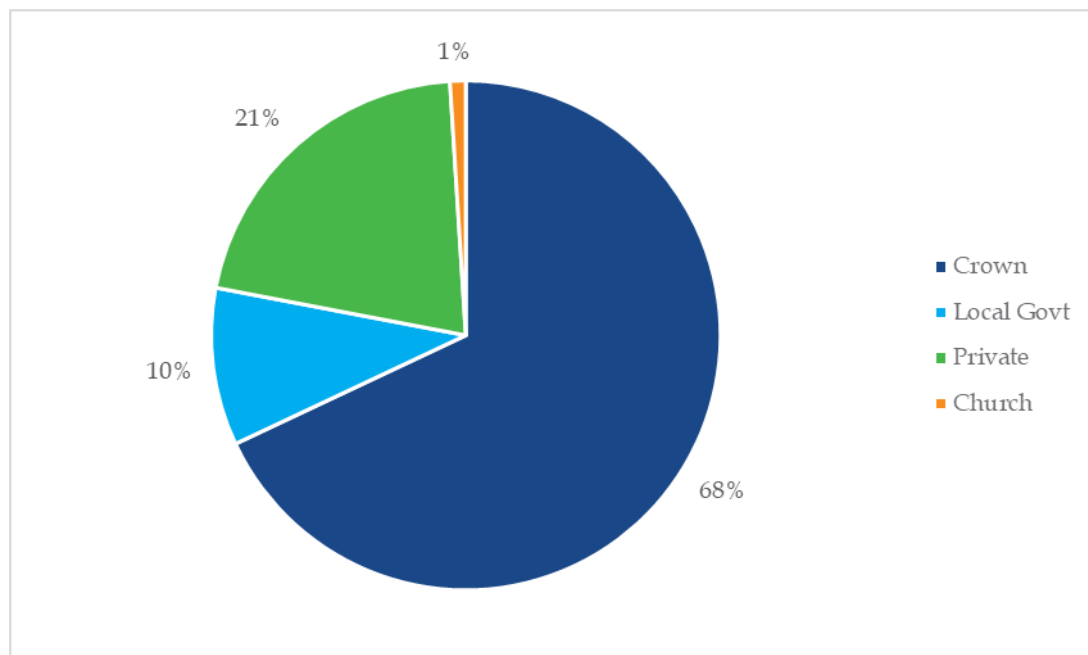
#### Interim finding

- 2 There is some competition between providers of interment services in Sydney.

<sup>40</sup> CCNSW, Annual Operator Activity Survey, 2017-18.

<sup>41</sup> Southern Metropolitan Cemeteries NSW, Submission to Issues Paper, June 2019, p 22.

**Figure 4.1** Percentage of total bodily interments by operator type in Sydney 2017-18

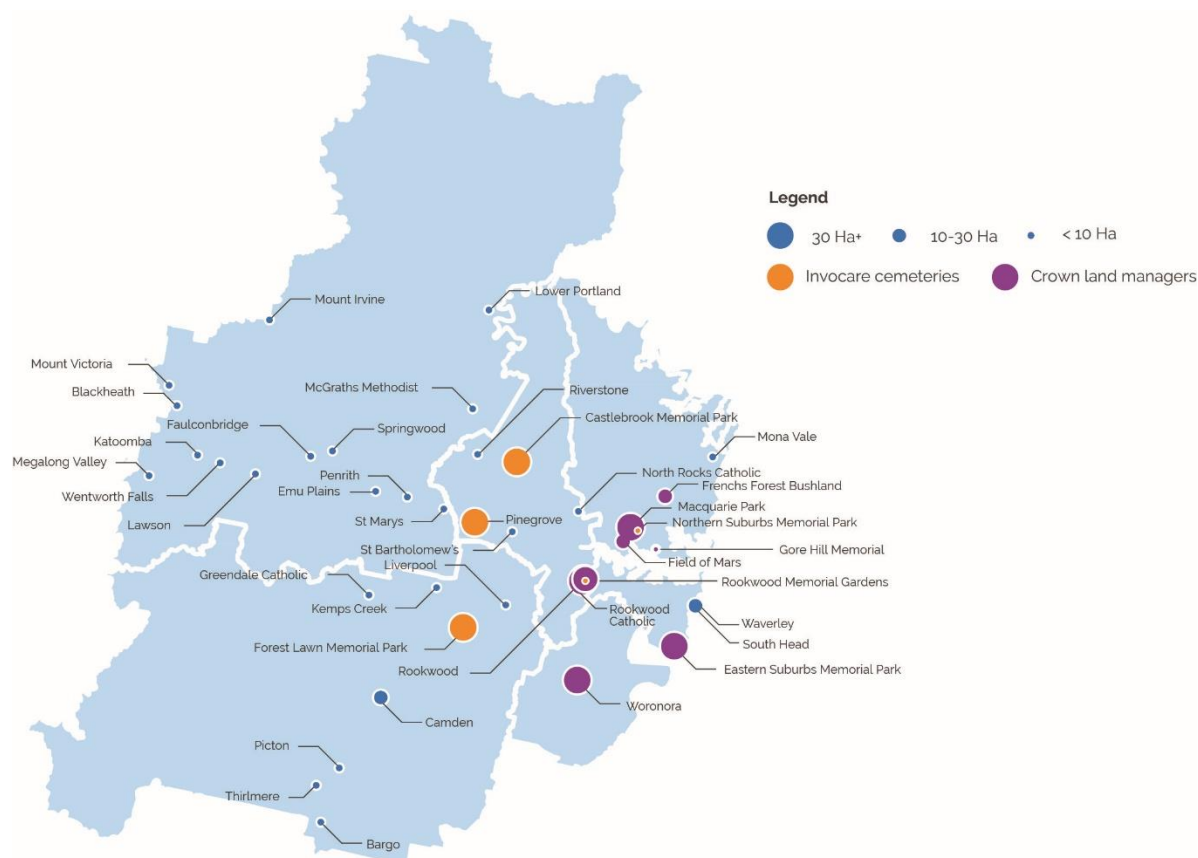


**Data source:** IPART chart from data in the CCNSW, Annual Operator Activity Survey, 2017-18

Figure 4.2 shows the location of cemeteries and crematoria in Sydney.



**Figure 4.2 Cemeteries and crematoria in Sydney**



**Note:** Not all cemeteries provide bodily burials: some allow ash interments only (eg, Rookwood Memorial Gardens, Northern Suburbs Memorial Park, Gore Hill Cemetery)

**Data source:** Map adapted from CCNSW, Metropolitan Cemetery Capacity Report, November 2017, p 20.

#### 4.2.2 Local government operators dominate the cemetery market outside Sydney

In most NSW regional areas, the local cemetery or cemeteries are operated by the council. There may be no alternative cemetery within a reasonable distance, limiting competition. In addition, council providers are not required to fully fund all costs of cemetery operations – councils may run their cemeteries “at a loss”, and subsidise this loss with rates income, either explicitly as an acknowledged “community service” or implicitly.<sup>42</sup> This creates barriers to entry for a potential competitor, but in these cases the lack of competition has not resulted in higher prices, rather subsidisation of cemetery operations by the ratepayer base.

##### Interim finding

- 3 Cemeteries outside Sydney tend to be provided by Local Government and there is limited competition between cemetery operators. However, while there is less competition between providers, local governments are accountable to their communities for pricing decisions.

<sup>42</sup> City of Newcastle, Submission to Issues Paper, June 2019, p 3.

#### **4.2.3 There is a lack of clarity around who develops land for new cemeteries**

In our Issues Paper we noted that one potential issue in the process of acquiring land for new cemeteries is that there is currently a lack of clear responsibility for developing new cemeteries.<sup>43</sup> The CC Act gives CCNSW responsibility for assessing interment needs and developing planning strategies for cemetery space, and reserve powers to acquire land (by agreement, not by a compulsory process) in the public interest for cemeteries.<sup>44</sup> On the other hand, the CC Act does not specify any responsibility for Crown cemetery operators to acquire land, although they have been the most active in attempts to develop new cemeteries.

A related issue is whether the existing model of Crown land managers operating in Sydney results in co-ordination problems where different Crown cemetery operators develop plans for new cemeteries independently of one another, which could result in competition for scarce land which drives prices up.

Given this lack of clarity, we asked in our Issues Paper who should be responsible for opening new cemeteries.<sup>45</sup> The views of submitters and our interim recommendations in response are discussed in Chapter 5 (Section 5.2.3).

### **4.3 Market structure for ashes interment differs from bodily interment**

There are more options for cremation than for bodily interment in NSW. Cremation services can be provided by businesses that are not cemetery operators, while interment can only be offered by cemetery operators. Geographical location is also less important for cremation than for interment or memorialisation. Thus cremation services are able to compete more effectively on price than interment service providers can. Ashes are not required to be interred, and around two thirds of people choose to take ashes and keep or dispose of them themselves, rather than choosing interment in a cemetery. Ashes interment uses less space than bodily interment and more cemeteries offer ashes interment than offer bodily interment.

As a result of all these factors, we consider that the market for cremation and ashes interment is workably competitive.

#### **Interim finding**

4 The market for cremation and ashes interment is workably competitive.

### **4.4 Customer choice in the cemetery sector is different from customer choice in many other markets**

In many markets, competition between service providers combined with customer choice is a key mechanism that works to keep costs and prices low. For instance, if one operator can provide a higher-quality service at a lower cost (and therefore price) than another operator, they will attract more customers. Competition and customer choice can also drive innovation and variety in service offering. Many cemeteries provide a range of cremation, interment and

<sup>43</sup> IPART, *Review of interment costs and pricing: Issues Paper*, March 2019, p 21.

<sup>44</sup> CC Act, s 12(1)(a).

<sup>45</sup> IPART, *Review of interment costs and pricing: Issues Paper*, March 2019, p 21.

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memorialisation options at different price points. It is possible to choose not to use a cemetery's services at all, by choosing cremation without interment of ashes.

However, there are several reasons why customer choice operates differently in the cemetery industry from many other industries.

The first reason is that people often have a strong preference to be interred in a particular cemetery, either because it is close to their family and community, or because of a religious affiliation. Price usually plays a less important role in this choice.

Secondly, as we noted in Chapter 1, the choice of cremation or interment is strongly influenced by religion and culture.

Thirdly, decisions about purchasing interment rights are often made at a time of emotional stress and within a short timeframe, so it is important that people can make an informed choice without adding to their distress or taking unnecessary time. And interment rights are often purchased through an intermediary, the funeral director, so the relationship between the cemetery providing the services and the customer purchasing is somewhat indirect.

On the other hand, interment rights can also be purchased 'pre-need', when customers may have a greater capacity to shop around.

#### Interim finding

- 5 Consumer choice in the cemetery sector operates differently from many other sectors, as choice is strongly influenced by proximity to family, cultural and religious requirements, and decisions often need to be made in a short timeframe at a time of emotional stress.

### 4.5 The life cycle of a cemetery affects market structure

Cemeteries are extremely long-lived assets. In fact, they must be maintained in perpetuity when they contain perpetual interments. Furthermore, the approach to developing new cemeteries is to develop large parcels of land infrequently, so the period of time between opening a cemetery and it reaching capacity generally lasts decades if not centuries.

The stream of costs and revenues for cemeteries also changes over the cemetery's life cycle:

- ▼ There is generally only one revenue point for an interment, or sometimes two, if an interment right is purchased pre-need.
- ▼ Costs are incurred from the point that land is purchased for a cemetery and then costs are ongoing into perpetuity. Many of those costs are indirect costs that need to be shared by all interments, and not directly incurred by a specific interment.
- ▼ Once a cemetery is fully utilised, there are no opportunities for interment revenue, only interment costs.

Cemetery governance can also lead to inappropriate price outcomes that cannot be addressed through competition between cemeteries. Cemetery operators are not currently required to make financial provision for perpetual maintenance after a cemetery is closed. Some may be able to subsidise cemetery operations from other sources, such as rate income for local

government operators. Others may find themselves financially unable to maintain a cemetery to standards expected by the community once it is closed to new burials.

Some existing cemeteries, particularly those which are close to capacity, may have significant unfunded liabilities for future maintenance.<sup>46</sup> The perpetual nature of cemeteries and the mismatch of revenues and costs means that the failure of a particular operator and its departure from the market is problematic unless it has been required to make provision for future costs.

#### Interim finding

- 6 The long life cycle of a cemetery and mismatch between receipt of revenue and incurring costs creates a high risk that cemeteries will under-price through not taking into account future costs, with the outcome that cemeteries may not be maintained to standards expected by the community once they are closed to new burials.

### 4.6 The form of recommendations should be different for different types of cemeteries

Given our findings regarding the differences in market structure between Sydney and the rest of NSW, and between cemeteries at different stages of their life cycles, we consider that no one form of recommendation will suit all cemeteries.

We consider there is, on the whole, insufficient justification for prescriptive price regulation. Instead we propose a suite of different measures:

- ▼ The State should source land for new cemeteries in Sydney. See Chapter 5 for more detail on this proposed measure.
- ▼ Competition by comparison and increased transparency and accessibility of costs for local government cemeteries would incentivise more efficient costs. See Chapter 5 for more detail on this proposed measure.
- ▼ Competition by comparison and increased transparency and accessibility of prices for all cemeteries would have benefits for consumers in terms of affordability and choice. See Chapter 7 for more detail on this proposed measure.
- ▼ Pricing assistance for cemetery operators in the form of a voluntary pricing tool that allows them to set prices based on the full life cycle costs of the cemetery would assist with cost-reflective pricing. See Chapter 7 for more detail on this proposed measure.
- ▼ Further investigation of the operational efficiency of Crown land managers in Sydney is required before we can make an assessment of whether more prescriptive price regulation is warranted in their case to achieve affordability for customers and sustainability for cemeteries. See Chapter 5 for more detail on this proposed measure.
- ▼ The risk of failing to sufficiently provide for future costs can be addressed by a regulatory requirement to contribute to a perpetual maintenance reserve fund. See Chapter 6 for more detail on this proposed measure.

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<sup>46</sup> For example, PWC, *Rookwood Cemetery: future governance arrangements*, February 2018, pp7-10; Catholic Metropolitan Cemeteries Trust, Submission to Issues Paper, July 2019, p 2.

- For new cemeteries, the incorporation of future costs should not render prices unaffordable
- However, for existing cemeteries, particularly for ones which are approaching capacity, the unfunded liability for past sales may be at a level which cannot be recovered from future sales without a large increase in prices, which would contravene the principle of affordability. We consider that further investigation of the extent of these 'legacy costs' is required before we can make recommendations about how to deal with them.

#### **4.7 Additional work required before deciding on form of recommendations for existing cemeteries in Sydney**

For existing cemeteries in Sydney, we need to undertake further work on the efficiency of existing costs (as set out above) and the extent of legacy costs from past interments before we can make findings and recommendations about the level of price regulation required.

More prescriptive pricing measures might be required to address these two issues, depending on their extent. For example, the cemeteries regulator might need to engage with cemetery operators in Sydney to ensure that the cemetery operators build legacy costs into their prices, or consider other funding sources if the legacy costs are too high to recover from future interments.

More prescriptive regulation of prices or costs may also be required depending on the results of the efficiency study, or if the statutory review recommends further amalgamation of Crown land managers, reducing competition and increasing the need for price regulation.

On the other hand, the results of the efficiency study may support the current structure for the Crown cemetery land managers, and we could recommend different ways to achieve the outcomes of affordability and equity, and financial sustainability, such as guidelines and benchmarks.



## 5 Costs of interment services

As discussed in Chapter 2, the third step in our approach is to assess the efficient costs of delivering interment services, and recommend measures where necessary to encourage more efficient costs in future. The nature of these measures depends on our findings about the nature of the cemetery market in NSW. Understanding and estimating these costs is therefore a crucial step in developing our recommendations.

The sections below summarise our interim findings and recommendations about the costs that are incurred in the provision of interment services, our approach to estimating efficient costs and the factors that drive variations, and then discuss these issues in more detail.

### 5.1 Overview of interim findings and recommendations

We found that the mix of operator types and governance arrangements, the size and location of the cemetery, as well where it is in its lifecycle, all impact on the costs of interment services. As such, our interim recommendations and findings on efficient costs vary depending on these factors.

We received limited cost information from Sydney cemetery land managers which was insufficient to be able to assess efficiency. Therefore we will undertake an efficiency study of the Sydney Crown cemetery land managers so that we can ensure future prices reflect efficient costs.

Many Crown cemeteries in Sydney are approaching capacity yet there is not currently a coordinated approach for the development of new cemeteries. This can result in problems where different cemetery operators develop plans for new cemeteries independently of one another and may compete for the same parcel of land, driving land prices up.

Therefore we are making an interim recommendation that Cemeteries and Crematoria NSW (CCNSW) be responsible for acquiring land for new cemeteries in Sydney with the operation of these new cemeteries to be competitively tendered to either an existing Crown land manager or appropriately qualified private operator.

In most NSW regional areas, the local cemetery or cemeteries are operated by the council. Rather than undertaking efficiency studies for cemeteries operated by local government, we consider that increased transparency and accessibility of costs for local government cemeteries so that costs can be compared across cemeteries would incentivise more efficient costs. We recommend that the Office of Local Government's published performance statistics include transparent and comparable information about the costs of councils' cemetery operations.

In regional areas where cemetery capacity and land availability is typically not an issue, we support greater co-ordination in identifying and sourcing land for cemeteries between local government and the NSW Government, through CCNSW, as suggested by LGNSW.

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We also found that cultural and religious practices and requirements for interment can add costs to interment services. Where this is the case, we are recommending that these costs be separately and transparently identified in the price for these services.

## **5.2 What are the costs of providing interment services?**

The costs of providing interment services include land costs, interment costs and the maintenance costs of the cemetery. Land costs and maintenance costs account for the majority of the costs of providing interment services. The following sections of this chapter discuss factors affecting land costs, interment costs and maintenance costs in more detail. We discuss issues around perpetual cemetery maintenance costs in chapter 6.

### **5.2.1 What factors affect the land costs of interment services?**

There are three components to land costs:

- ▼ Any initial purchase costs
- ▼ The costs of holding land before it is used for interments
- ▼ The cost of developing land for burial purposes in stages as the cemetery is utilised.

The following sections discuss our interim findings and recommendations about land costs.

#### **New cemeteries are required as burial space reaches capacity, particularly in Sydney**

Most of the Crown cemeteries in Sydney were established over 100 years ago, and are approaching capacity. This was confirmed by the Metropolitan Sydney Cemetery Capacity Report, which identified the probable exhaustion of burial land in Sydney by 2051, if not before.<sup>47</sup> Therefore there is an increasingly pressing need to identify and acquire land suitable for use as a cemetery in Sydney.

Acquiring land to increase cemetery capacity is a complex undertaking, particularly in Sydney. In its submission to our Issues Paper, CCA NSW stated that securing a parcel of land for development as a cemetery is likely to be preceded by several failures before successfully purchasing a site. For example, the establishment of a new cemetery is often met by community resistance or the inability to achieve rezoning for burial use, consequently the cost can be significant and should be included in the total purchase cost of the successful site. The sunk cost of previous failed purchases could include costs associated with professional consulting fees, community engagement and consultation, developing proposals, concept design plans, soil testing and surveying.<sup>48</sup>

As noted in Chapter 1, the Greater Sydney Commission (GSC) has been tasked with providing advice on the criteria for identifying sites for new cemeteries in Greater Sydney. The GSC is expected to report in the second half of 2019.

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<sup>47</sup> Cemeteries and Crematoria NSW, Metropolitan Sydney Cemetery Capacity Report, November 2017, p 6.

<sup>48</sup> Cemeteries and Crematoria Association of NSW, Submission to Issues Paper, June 2019, p 3.

## The sources of land for new cemeteries are limited, particularly in Sydney

A concern raised in submissions is that land for additional cemetery capacity will be some distance from where people live.<sup>49</sup> The Catholic Metropolitan Cemeteries Trust notes that most consumers will prefer a location in their district or not more than 30-40 minutes' drive away.<sup>50</sup> Whilst this is desirable, cemetery operators in Sydney considered that the most likely source of additional cemetery capacity will be:

- ▼ Remnant and environmentally constrained Crown land
- ▼ Rural zoned land
- ▼ Land with heritage or archaeological constraints
- ▼ Land without any competing potential for urban development
- ▼ Landfill sites, quarries, industrial land, land with overhead infrastructure corridors
- ▼ Potentially sections of larger recreational land holdings.<sup>51</sup>

In regional areas, the most likely source would be Crown or council owned land; particularly if not fit for other purposes, for example former landfill sites.<sup>52</sup> However, this land can involve additional development costs before it can be used as a cemetery.

Some councils' policy is to source small parcels of land in areas of demand. For example Central Coast Council and Lake Macquarie Council cemetery sites are typically smaller in size and more localised, rather than regional.<sup>53</sup>

In regional areas where councils are the primary provider of interment services, LGNSW suggests ownership of suitable Crown land sites should be transferred to councils where required. LGNSW recommends that the NSW Government work in partnership with councils in a coordinated strategic manner to identify land for interment.<sup>54</sup> We support this approach.

## A co-ordinated approach is required to efficiently identify and acquire land for new cemeteries in Sydney

In its 2015-20 Strategic Plan released in 2015, CCNSW noted the lack of strategic focus on cemetery and crematoria infrastructure, and the "need for a co-ordinated, strategic approach to delivery of this critical community infrastructure".<sup>55</sup>

The CC Act gives CCNSW responsibility for assessing interment needs and developing planning strategies for cemetery space, and reserve powers to acquire land (by agreement, not by a compulsory process) in the public interest for cemeteries.<sup>56</sup> While the CC Act does not

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<sup>49</sup> For example see, Southern Metropolitan Cemeteries NSW, Submission to Issues Paper, June 2019, p 15.

<sup>50</sup> Catholic Metropolitan Cemeteries Trust, Submission to Issues Paper, July 2019, p 1.

<sup>51</sup> For example see, Hornsby Shire Council, Submission to Issues Paper, June 2019, p 2; Southern Metropolitan Cemeteries NSW, Submission to Issues Paper, June 2019, p 15; Blacktown City Council, Submission to Issues Paper, June 2019, p 2; and Catholic Metropolitan Cemeteries Trust, Submission to Issues Paper, July 2019, p 1.

<sup>52</sup> City of Newcastle, Submission to Issues Paper, June 2019, p 1.

<sup>53</sup> Central Coast Council and Lake Macquarie Council, Submission to Issues Paper, June 2019, p 1.

<sup>54</sup> Local Government NSW, Submission to Issues Paper, June 2019, p 1.

<sup>55</sup> Cemeteries and Crematoria NSW, *Strategic Plan 2015-20*, 2015, p 27.

<sup>56</sup> *Cemeteries and Crematoria Act 2013* (CC Act), s12 and s14 (1)(a).

specify any responsibility for Crown cemetery operators to acquire land, CCNSW may require a Crown cemetery operator to acquire land by agreement (not compulsory process) for the purposes of the Crown cemetery under its care, control and management.<sup>57</sup> Crown cemetery operators have been the most active in attempts to develop new cemeteries,

The absence of a coordinated approach for the development of new cemeteries in Sydney means that different Crown cemetery land managers are developing plans for new cemeteries independently of one another and compete for the same parcel of land, driving land prices up.

Submissions were divided on who should be responsible for planning, acquiring and opening new cemeteries. Some argued that the NSW Government should be responsible, with the planning managed by the Department of Planning, Industry and Environment or the Greater Sydney Commission in partnership with CCNSW and councils.<sup>58</sup> However others consider that the cemetery operators are best placed to take on the responsibility, albeit with support from government regulators.<sup>59</sup>

We consider that the function of identifying and acquiring land in Sydney<sup>60</sup> (and possibly other areas where land values are highest and land is scarce) is best undertaken by the State Government cemeteries regulator (namely an appropriately resourced CCNSW), potentially with the Greater Sydney Commission. The operation of these cemeteries could then be competitively tendered to an existing Crown land manager, local council or appropriately qualified private operator.

In regional areas where cemetery capacity and land availability is less of an issue, we are not recommending the State government regulator be responsible for acquiring land, however we support the greater co-ordination between local government and the NSW Government, through CCNSW as suggested by LGNSW.

### Interim recommendations

- 1 Cemeteries and Crematoria NSW (CCNSW) be made responsible for acquiring land for new cemeteries in Sydney as part of the statutory review of the *Cemeteries and Crematoria Act 2013*.
- 2 New cemeteries in Sydney have their operations competitively tendered out to either an existing Crown land manager or appropriately qualified private operator.
- 3 The NSW Government work in partnership with councils in a coordinated strategic manner to identify land for interment outside Sydney.

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<sup>57</sup> *Cemeteries and Crematoria Act 2013* (CC Act), s 14(1)(b).

<sup>58</sup> Blacktown City Council, Submission to Issues Paper, June 2019, p 3; and Cemeteries and Crematoria Association of NSW, Submission to Issues Paper, June 2019, p 4.

<sup>59</sup> For example, Rookwood General Cemetery, Submission to Issues Paper, June 2019, p 7; and NSW Jewish Board of Deputies & Lebanese Muslim Association, Submission to Issues Paper, June 2019, p 5.

<sup>60</sup> Sydney is defined as the Central, South, North, West, West-Central and South-West planning regions. See Glossary.

## **There are capital costs associated with holding the land before it is used**

Having acquired land to be used as a cemetery, operators incur holding costs until the interment right is sold. These holding costs are a cost of providing interment services. In our Issues Paper we demonstrated the impact of holding costs with different Weighted Average Cost of Capital (WACC) values and a range of average holding periods.

In response, LGNSW questioned applying a WACC to essential public services and infrastructure like cemeteries. If it were to apply, LGNSW considered there should be a different approach for existing public land repurposed for cemetery use and land purchased on the open market. Further, land purchased for future use as a cemetery can continue to be used for existing or alternative purposes until it is redeveloped (for example, agriculture grazing, horticulture, public open space, commercial, industrial or residential). This would provide income or other benefit streams that should be offset against holding costs.<sup>61</sup>

In its submission to our Issues Paper the Cemeteries and Crematoria Association of NSW noted that while the capital cost of holding land is material, it can be minimised by adopting a staged approach to development. Progressively developing allotment sites over time to meet demand as required can reduce the upfront development cost of foundations, roads and other infrastructure requirements. The ongoing maintenance cost of fallow land also requires less resources (labour, plant, irrigation water) than gardens developed ready for sale.<sup>62</sup>

Potential revenue the land may earn before it is required for interments should be used to offset the costs of developing other parts of the land for use as a cemetery and the costs of maintaining these sites. This is further discussed in Appendix B.

The costs of holding land in advance of the sale of interment rights should be included as a cost of providing interment services so that all interment rights holders make an equitable contribution to the lifecycle costs of the cemetery. The costs of holding unused land would be equal to the return on capital invested.

## **There are many costs associated with developing the land for use as a cemetery**

Once land is purchased or acquired for use as a cemetery, there are costs associated with developing it for use. In our Issues Paper we identified that these costs may include:

- ▼ Development approval for use as a cemetery
- ▼ The construction of buildings, such as chapels and reflection centres
- ▼ The construction of roads and paths
- ▼ Landscaping
- ▼ Rehabilitation of the land if it had previously been used for an industrial purpose
- ▼ Installing utilities such as water and electricity.<sup>63</sup>

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<sup>61</sup> Local Government NSW, Submission to Issues Paper, June 2019, p 1.

<sup>62</sup> Cemeteries and Crematoria Association of NSW, Submission to Issues Paper, June 2019, p 3.

<sup>63</sup> IPART, *Review of interment costs and pricing – Issues Paper*, May 2019, p20.



To these, stakeholders added a range of other costs that may be involved in developing new cemetery space:

- ▼ Studies of Aboriginal Heritage Impacts and Environmental Impact Statements – as part of the development application<sup>64</sup>
- ▼ Security of sites, staff amenities, and parking<sup>65</sup>
- ▼ Demolition costs, survey and design, drainage and tree removal<sup>66</sup>
- ▼ Bushfire mitigation and replacing trees<sup>67</sup>
- ▼ Developing Plans of Management such as Conservation Management Plans, Heritage Management Plans and a detailed mapping system<sup>68</sup>
- ▼ Asset registers, condition reports and hazard registers for sites with existing buildings and infrastructure.<sup>69</sup>

LGNSW also noted that some costs are discretionary and depend on the standard to which the cemetery is developed, for example, the level of embellishment, landscaping chapels and reflection centres.<sup>70</sup>

The efficient costs associated with developing land for use as a cemetery are costs of operating a cemetery and would need to be recovered via prices for interment. In our view, for Crown Land managers there should not be any discretionary costs for a basic service offering - cemeteries should be operated to a defined standard. For local government operated cemeteries they should ensure that the local community is willing to pay for any discretionary costs such as landscaping chapels, and reflection centres.

#### Interim finding

- 7 The land related costs associated with acquiring, holding and developing land are all costs of providing interment services. Holding costs (the period for which costs of buying the land and maintenance costs are incurred but revenue is not yet received) have a substantial impact on the total costs and therefore prices for cemeteries.

### 5.2.2 What factors affect interment costs?

In addition to the interment right (sometimes called a licence), cemetery operators generally charge a separate fee for interment, that is, burial in the ground or placement of remains in a built structure. The main costs of interment are labour and machinery. Table 5.1 lists the range of activities associated with interment of human remains in a lawn grave.

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<sup>64</sup> Wollongong City Council, Submission to Issues Paper, June 2019, p 1.

<sup>65</sup> Wollongong City Council, Submission to Issues Paper, June 2019, p 1

<sup>66</sup> Local Government NSW, Submission to Issues Paper, June 2019, pp 1-2.

<sup>67</sup> Hornsby Shire Council, Submission to Issues Paper, June 2019, p 2.

<sup>68</sup> Southern Metropolitan Cemeteries NSW, Submission to Issues Paper, June 2019, p 17.

<sup>69</sup> Southern Metropolitan Cemeteries NSW, Submission to Issues Paper, June 2019, p 17.

<sup>70</sup> Local Government NSW, Submission to Issues Paper, June 2019, p 2.

**Table 5.1 Activities associated with the interment of human remains in a lawn grave**

Task	Description
Confirm site	Identify site, map route, selection machinery, allocate team, permit or consent if relevant
Dig site	Collect machinery, dig site, grave cover
Set up	Ceremony set up (boards, carpet, lowering device, chairs)
Concierge	Liaise with funeral director and lead procession
Funeral service	Lower casket, stand-by
Back fill	Move set up to side, back fill site
Remove set up	Collect set up (chairs, etc.)
Top up and turf	Settle grave, top soil and turf
Maintain site following interment	Water site etc
Administration	Arrangements with family, work health and safety requirements, overall feedback, funeral director feedback, register update
Overheads (corporate costs)	Allocation to interment services (eg, staff on-costs, long service leave)

**Source:** Adapted from CCA NSW submission to Issues Paper, June 2019, pp 6-7.

In its submission to our Issues Paper, CCA NSW provided an example of the cost for a single depth earth burial ranging from \$1,350 - \$3,000.<sup>71</sup>

Submissions listed a range of factors which can impact on the cost of interments:

- ▼ The location of the grave in the cemetery - as it can affect the size and type of machinery used.
- ▼ Location of the site in terms of soil movements.
- ▼ Soil type - while sandy soil will require shoring, a clay soil may not. When backfilled however, sandy soil will require less future top ups than a clay-based soil.
- ▼ Weather conditions - as graves are more susceptible to cave-ins after periods of prolonged rain.
- ▼ The age of the cemetery - as remaining land may be lower quality, contain rock or be lower lying ground and prone to water logging or ground water, all of which can add substantially to the excavation and surrounding ground protection costs.
- ▼ Whether the interment is the first or second interment and how well the plot has been prepared previously.
- ▼ Engineering standards.
- ▼ Needs and expectations of the community for the revitalisation of memorial parks and engagement.<sup>72</sup>

We sought cost information from cemetery operators for these activities, and found that there is a wide variation in costs between operators. Some of this variation arises as a result of

<sup>71</sup> Cemeteries and Crematoria Association of NSW, Submission to Issues Paper, June 2019, pp 6-7.

<sup>72</sup> See for example, Southern Metropolitan Cemeteries NSW, Submission to Issues Paper, June 2019, pp 13, 19-20; City of Newcastle, Submission to Issues Paper, June 2019, p 2; Anonymous, Submission to Issues Paper, June 2019, p 2; and Cessnock City Council, Submission to Issues Paper, June 2019, p 1.

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particular functions being undertaken by the funeral director rather than the cemetery, for example, digging the grave, lowering the casket and back filling the grave.

### **Cultural and religious requirements can increase the cost of interment services**

Different cultural and religious practices and requirements for interment can also impact on the cost due to:

- ▼ Requirements for graves to be dug and backfilled by hand
- ▼ Additional shoring of graves
- ▼ Overtime or penalty rates incurred with after-hours or weekend burials, to meet specific timeframes for interment to take place.

We consider that where the costs of interment are higher due to cultural and religious requirements, these costs should be separately and transparently identified and included in the price for these services.

The impact of cultural and religious beliefs on the cost of an interment **right** (that is, the costs attributable to land purchase and development, maintenance and cemetery overheads) for an adult lawn grave is less clear. Some faiths require bodies to be buried in particular orientations. If such requirements impacted the number of graves that could be accommodated on a site, it could increase the cost of interment rights. These costs could be estimated by comparison with an average number of graves per hectare for a cemetery in different sections.

In response to our Issues Paper, the Catholic Metropolitan Cemeteries Trust submitted that developing burial sites and providing interment services to meet various cultural and religious requirements involved landscaping design and development beyond the basic or standard landscaping. They stated that these designs and unique development costs can be significant and vary from a few thousand dollars to hundreds of thousands. In addition, catering for particular faith groups can involve substantial capital outlays, eg, Jewish viewing rooms and chapels.<sup>73</sup>

Cemeteries are able to offer services differentiated on the basis of their underlying cost (for example, gravesites with more ornate monumentation will cost more and can reasonably be priced higher than a lawn grave). Cemeteries may also differentiate products and prices based on characteristics that do not reflect a different cost base, but which people value more highly (for example, a gravesite with a pleasant aspect). However, service quality and price differentiation should not be applied in a way that creates inequity between community groups.

We recommend that any additional costs of the interment, including the interment right, should be separately and transparently identified on a cost-reflective basis, as discussed in Chapter 7.

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<sup>73</sup> Catholic Metropolitan Cemeteries Trust, Submission to Issues Paper, July 2019, p 2.

## Interim findings

- 8 There are many factors that impact on the cost of interment, such as the age of the cemetery, location, soil type, and weather conditions.
- 9 Religious and cultural requirements for burial can increase the costs of interment, but their impact on the costs of an interment right is less clear.

### **An interment service levy is currently charged to the four major metropolitan Crown cemetery operators to fund CCNSW**

CCNSW is funded through an interment service levy, which applies to the four major metropolitan Crown cemetery operators.<sup>74</sup> It is currently:

- ▼ \$83 for the first coffin interment in a gravesite
- ▼ \$60.20 for the second and subsequent interment in a gravesite
- ▼ \$25 for cremation
- ▼ \$25 for ash interment.<sup>75</sup>

The Crown cemetery operators consider that all cemetery operators in NSW should pay the levy to fund the industry regulator.<sup>76</sup> The Catholic Metropolitan Cemeteries Trust commented that the legislation applies to all cemetery operators, but only the Sydney based Crown Cemetery Operators pay the levy. Further, 77% of crematoriums are privately owned and operated and they don't make any contribution to the Act's administration or the regulator.<sup>77</sup>

Most council cemetery operators consider that they should not pay an interment service levy as it is not clear what services the CCNSW would deliver to them. Local Government NSW argued that many potential aspects of CCNSW regulation and oversight of council-operated cemeteries would be duplicative and potentially redundant, given councils' existing regulation under the *Local Government Act 1993*.<sup>78</sup>

Prior to making a recommendation to apply an interment service levy to other types of cemetery operators or to change how the levy is charged, we consider the roles and responsibilities of CCNSW should be considered and clearly defined as part of the statutory review of the CC Act currently being undertaken.

## Interim recommendation

- 4 An interment service levy not be applied to additional cemetery operators until the statutory review of the *Cemeteries and Crematoria Act 2013* is completed and it can be demonstrated that the functions of CCNSW are of benefit to the wider cemetery and crematoria industry in NSW.

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<sup>74</sup> *Cemeteries and Crematoria Regulation 2014*, s 4(2).

<sup>75</sup> Woronora Memorial Park, *Cemetery Fees effective 1 July 2019*; and Woronora Memorial Park, *Crematorium Fees effective 1 July 2019*, accessed at <http://www.woronoramemorialpark.com.au/price-guide> on 2 December 2019.

<sup>76</sup> Rookwood General Cemetery, Submission to Issues Paper, June 2019, p 9; Southern Metropolitan Cemeteries NSW, Submission to Issues Paper, June 2019, p 22; and Catholic Metropolitan Cemeteries Trust, Submission to Issues Paper, July 2019, p 5.

<sup>77</sup> Catholic Metropolitan Cemeteries Trust, Submission to Issues Paper, June 2019, p 5.

<sup>78</sup> Local Government NSW, Submission to Issues Paper, June 2019, p 6.

### 5.2.3 What factors affect maintenance costs of interment services?

Maintenance costs of interment services include:

- ▼ Grounds maintenance (including labour, plant and equipment costs)
- ▼ Cemetery overheads (HR and finance staff, head office lease costs, taxes etc),
- ▼ Sales costs.

#### **Direct grounds maintenance costs per gravesite can vary significantly**

As CCA NSW submitted, the direct maintenance costs for a single allotment can vary significantly due to different labour and capital equipment needs. CCA NSW estimated that the cost per annum could range from \$25-180.<sup>79</sup>

There are also costs associated with the maintenance of the overall cemetery including roads, gardens, fencing, buildings, security and utilities.

Chapter 6 discusses our interim findings and recommendations on funding the perpetual maintenance of cemeteries.

#### **Sales costs will vary over the life cycle of a cemetery**

The labour costs of staff involved in selling interment rights, as well as advertising costs, are part of the costs of maintaining a cemetery, and must be allocated to each interment right. However, these costs will be zero once a cemetery is closed to new interments (a cemetery may still provide other services, such as funeral spaces, cremations, and ashes memorialisation, but the costs of sales for these services should not be allocated to interment services).

#### **Cemetery overheads also need to be allocated to each interment right**

There are also overheads of operating a cemetery which are indirect costs that need to be shared by all interment rights, and not directly incurred by a specific interment. These costs include:

- ▼ Corporate costs – such as salaries and salary on costs, other staff related costs, security, vehicles, insurance, administration, utilities, IT, consultancy fees, fees and permits, taxes and rates (if applicable)
- ▼ Depreciation – including roads, building, paths and fences.

#### **Different operators face different taxes**

The status for federal and state taxes differs for the mix of cemetery operators - Crown, local government, church and community groups. For example, with the exception of private operators, all are exempt from income tax.

While different tax treatments mean that operators face different costs, submitters noted that Crown and not-for-profit operators incur other costs such as:

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<sup>79</sup> Cemeteries and Crematoria Association of NSW, Submission to Issues Paper, June 2019, pp 7-8.

- ▼ Compliance and reporting obligations to Government
- ▼ Servicing their communities and necessary community consultation
- ▼ Interment services levy
- ▼ The care of inoperative or semi-closed sites, with inadequate associated accumulated funding.<sup>80</sup>

### 5.3 How do we estimate the efficient costs of interment services?

Prices that reflect the efficient costs of interment services ensure consumers are not being over charged and help cemeteries achieve financial sustainability into the future. As mentioned above, our approach is to assess the efficient costs of delivering interment services, and recommend measures where necessary, to encourage more efficient costs in future, taking account of both the nature of the cemetery industry and the operator type. We will also consider the impact on ensuring prices remain affordable.

#### 5.3.1 Many factors influence the efficiency of cemetery operators

The size of the cemetery can create efficiencies where economies of scale exist with the land. However larger sites can also have higher holding costs, especially if the land does not generate an alternate income prior to the sale of the interment right. Efficiencies are also possible through the centralisation of services for operators managing multiple cemeteries. Geographical proximity of cemetery sites help such operational efficiencies.<sup>81</sup>

CCA NSW noted that there are varying levels of operational efficiency across cemetery operators. Factors include:

- ▼ Volume of interment activity
- ▼ Number and geographic spread of cemeteries managed by an operator (especially where equipment needs to be transported between cemeteries)
- ▼ Importance of cemetery operations to the core business of the entity (particularly councils)
- ▼ Resources allocated to facilitate operations
- ▼ Effectiveness of the technology applied to managing cemetery records, mapping, registers and transactions
- ▼ Degree to which decision making is facilitated or constrained by self interest groups, electoral implications and community participation
- ▼ Constraints on timely decision making by governance policies e.g. about the frequency of price adjustments
- ▼ Quality of inherited infrastructure

<sup>80</sup> See for example, Cemeteries and Crematoria Association of NSW, Submission to Issues Paper, June 2019, pp 13-14; Southern Metropolitan Cemeteries NSW, Submission to Issues Paper, June 2019, p 22.

<sup>81</sup> For example, Blacktown City Council, Submission to Issues Paper, June 2019, p 4; Wollongong City Council, Submission to Issues Paper, June 2019, p 2; and Southern Metropolitan Cemeteries NSW, Submission to Issues Paper, June 2019, p 21.



### ▼ Their operational culture.<sup>82</sup>

Blacktown City Council noted that there are greater costs associated with maintaining historic monument cemeteries, for example, St Bartholomew's Cemetery at Prospect (State heritage listed). Heritage assessment and approvals and specialist monument repairers contribute to high cost of maintaining such cemeteries.<sup>83</sup>

In local government, on the one hand, there may be efficiencies in the provision of support services such as finance and IT,<sup>84</sup> and access to experienced management over a wide range of operations and group buying power.<sup>85</sup>

However, especially in regional areas, councils are often responsible for many small cemeteries over a dispersed area. As submitted by Cessnock City Council, the cemeteries it manages are not all equipped with on-site depots and storage areas for machinery. Therefore, it is required to transport equipment for interments and maintenance to the 12 cemeteries spread across the LGA which is approx. 1,400 km<sup>2</sup>.<sup>86</sup> In addition, larger cemeteries are able to spread their costs further as they have more demand for use, whereas usually in local government, the cemetery is just one function of the organisation.<sup>87</sup>

As discussed in Chapter 4 (section 4.5), the stage a cemetery is at in its lifecycle affects its costs and revenue. The City of Newcastle submitted that "recent cemeteries have been better planned to reduce operational costs. For example, through better design of burial sites - both beam or lawn care, and a higher proportion of niche wall burials which are much cheaper than earth burials. Further, heritage and/or monumental cemeteries have evolved, with effectively no planning toward future operating costs as most of these sites were managed by churches and families used to take care of graves. There has been a cultural shift away from families having an interest in monument care and maintenance beyond placement".<sup>88</sup>

The type of cemetery operator (Crown, local government, private, or church), its governance, the size and location of the cemetery, as well where it is in its lifecycle, all impact on the costs of interment services. These factors will also impact on the approach and type of recommendations we will make on whether and how costs and pricing should be regulated.

### 5.3.2 Variation in costs makes it difficult to estimate efficient costs

We issued a detailed information request to NSW Crown and local government cemetery operators in May. We received 47 returns and appreciate the time and effort that operators took to fill in the spreadsheets. However, as the information varied in completeness it was difficult to draw conclusions about efficient costs or the efficiency of operators.

We subsequently issued a more targeted request to around 20 operators (seeking feedback from a number of operators prior to issuing it). This request focussed on the costs of:

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<sup>82</sup> Cemeteries and Crematoria Association of NSW, Submission to Issues Paper, June 2019, p 12.

<sup>83</sup> Blacktown City Council, Submission to Issues Paper, June 2019, p 4.

<sup>84</sup> Anonymous, Submission to Issues Paper, June 2019, p 3.

<sup>85</sup> Albury City Council, Submission to Issues Paper, June 2019, p 2.

<sup>86</sup> Cessnock City Council, Submission to Issues Paper, June 2019, p 2.

<sup>87</sup> Moree Plains Shire Council, Submission to Issues Paper, June 2019, p 3.

<sup>88</sup> City of Newcastle, Submission to Issues Paper, June 2019, p 3.

- ▼ Activities associated with the interment of human remains in a basic adult lawn grave
- ▼ The interment right including:
  - Cost of developing the site for first interment (one-off cost)
  - Maintenance costs associated with the site for the term of the interment right (per annum)
  - An allocation of the overheads incurred in operating the cemetery (per annum).
- ▼ Cost of land.

We received 12 data returns in response to this request. Although the data was more complete, there was a very wide range in costs, limiting its usefulness in assessing efficiency. Some of the cost variations may be explained by differences in efficiency between operators, however it also highlighted differences in operator practices.

### **5.3.3 We propose to undertake an efficiency review of Crown cemetery operators**

As discussed above, we have not been able to undertake any efficiency analysis of the Sydney Crown cemetery operators. While most of these metropolitan operators have recently had advice on their perpetual maintenance reserves we are not aware of any independent reviews of their overall efficiencies. As these cemeteries combined undertake over 60% of the burials in Sydney we consider that there is a need to review their efficiency before we can make findings and recommendations about the appropriate form of pricing oversight.

For example, more prescriptive regulation of prices or costs may also be required depending on the results of the efficiency study, or if the statutory review recommends further amalgamation of Crown land managers, increasing the need for price regulation.

Our efficiency study will consider whether there are possible economies (or diseconomies) of scale associated with the size and scale of the Crown land managers. Once we have completed this efficiency review we will consider the level of price regulation (including the use of guidelines and benchmarks) that is required.

Therefore we will undertake an efficiency study of the Crown cemetery land managers. As part of this study we will consider the cost drivers and scope for increased efficiencies of metropolitan Crown cemetery land managers. We would include the results of this study in our Draft Report.

### **5.3.4 We propose benchmarking costs as an efficiency incentive for local government cemetery operators**

In most NSW regional areas, the local cemetery or cemeteries are operated by the council. There may be no alternative cemetery within a reasonable distance, limiting competition. However, as noted in Chapter 4, local governments are answerable to their ratepayers for pricing decisions and the lack of competition has not generally led to higher prices.

Nevertheless, as with increasing the transparency of *pricing* for the benefit of consumers (as discussed in Chapter 7), it is important that councils have an incentive to ensure the *costs* of their cemetery operations are efficient.

As part of the Integrated Planning and Reporting Framework established by the NSW Office of Local Government (OLG), councils are required to prepare and publish long term financial and asset management plans.<sup>89</sup> In addition, the OLG currently collects and publishes performance statistics for local councils (*Your Council*<sup>90</sup>). This allows ratepayers to compare performance statistics on the operation of their local council and the profile of their local community, against the average for like councils. However, currently the range of performance benchmarks does not provide information regarding councils' cemetery operations.

Rather than undertaking efficiency studies for all cemeteries operated by local government, an effective way to provide an incentive to increase efficiency could be through transparent performance measurement which would allow ratepayers to compare their council's costs with other similar and/or neighbouring councils. This would require councils to report on such costs as:

- ▼ The costs of interment (ie, burial) such as confirming, digging and backfilling the grave.
- ▼ The interment right which includes
  - Cost of developing the site for first interment (one-off cost)
  - Maintenance costs associated with the site for the term of the interment right (per annum)
  - An allocation of the overheads incurred in operating the cemetery (per annum).

We are recommending these costs be included in each council's integrated planning and reporting documents as well as performance statistics on the *Your Council* website, to increase transparency and allow comparison with similar councils.

#### Interim recommendation

- 5 Office of Local Government's performance statistics be required to include transparent and comparable cost information about councils' cemetery operations.

## 5.4 What factors affect the costs of renewable tenure?

Since June 2018, all cemeteries in NSW have been able to offer renewable tenure, with a minimum term of 25 years.<sup>91</sup> The term of the renewable interment right commences on the day on which the interment right is granted.<sup>92</sup> Given this, it may be more appropriate to purchase at need. If the renewable right is purchased and then is not required until close to

<sup>89</sup> NSW Government, Office of Local Government, Integrated planning and reporting, at <https://www.olg.nsw.gov.au/councils/integrated-planning-and-reporting/framework> accessed on 12 December 2019.

<sup>90</sup> NSW Government Office of Local Government, *Your Council - profile and performance*, accessed at <https://yourcouncil.nsw.gov.au/> on 2 December 2019.

<sup>91</sup> *Cemeteries and Crematoria Act 2013*, s 54.

<sup>92</sup> *Cemeteries and Crematoria Act 2013*, s 48(b).

expiry, it may need to be extended.<sup>93</sup> A renewable interment right can be renewed for a minimum of 5 years at a time, with the total duration not greater than 99 years.<sup>94</sup>

With regard to costs, the main difference between renewable and perpetual tenure is that the land, and the cost of maintaining the site, are only required for the period of the renewable tenure (between 25 and 99 years). In contrast, perpetual interment rights require the funding of land and maintenance into perpetuity.

However, for renewable interment rights there are also a number of costs involved before an interment site can be resold. These costs can include:

- ▼ Contacting rights holders - the *Cemeteries and Crematoria Regulation 2014* sets out the steps a cemetery operator must take to give notice to the rights holder.<sup>95</sup> The process must start at least 12 months before a renewable interment right is due to expire, initially attempting to contact the rights holder by post and email. If unsuccessful, this is followed with telephone, post and emails repeated at three monthly intervals. Failing all this, notice must be published in a local and Statewide newspapers, and on the cemetery's website or social media account.

The rights holder has two years from expiry to apply to renew the interment right.<sup>96</sup>

- ▼ Lift and deepen – which consists of:
  - Opening an interment site
  - Recovering any human remains interred in the site and placing in an ossuary box
  - Deepening or otherwise enlarging the interment site
  - Re-interring the existing human remains at a greater depth in the place of interment, or alternatively placing in an ossuary house.
- ▼ Removing, storing and disposing of existing monumentation.
- ▼ Depending on the level of decomposition, it may also be necessary to dispose of the coffin.

We have been investigating the costs and practices of cemetery operators in South Australia and Western Australia where renewable tenure has been in operation for many years. We will include further information on these costs in our Draft Report.

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<sup>93</sup> Note, in South Australia a 'lift and deepen' can only occur after six years has elapsed from the date of the last burial in the grave site. *Burial and Cremation Regulation 2014* (SA), at <https://www.legislation.sa.gov.au/LZ/C/R/BURIAL%20AND%20CREMATION%20REGULATIONS%202014.aspx> accessed 13 December 2019.

<sup>94</sup> *Cemeteries and Crematoria Act 2013*, s 54(3)(a).

<sup>95</sup> *Cemeteries and Crematoria Regulation 2014*, s 7.

<sup>96</sup> *Cemeteries and Crematoria Act 2013*, s 54(7).

## 6 Funding perpetual maintenance of cemeteries

This chapter considers the perpetual maintenance costs of cemeteries and how to fund these costs. A cemetery operator receives revenue upfront for interment rights. As a cemetery approaches capacity, operating revenue decreases and eventually there is no further income from interments, but the operator needs to continue to maintain the cemetery. To ensure that there are sufficient funds to maintain the cemetery when it is closed, the operator can set up a fund where the investment earnings from this fund provide an ongoing income to pay for perpetual maintenance. However, there is currently no legal requirement for a cemetery operator to set up such a fund, or requirements or guidelines on how such a fund should be invested or what it can be used for.

This chapter provides an overview of our interim findings and recommendations regarding perpetual maintenance of cemeteries, explains the ongoing costs of maintaining cemeteries and then discusses our interim findings and recommendations in more detail.

### 6.1 Overview of interim findings and recommendations on cemetery perpetual maintenance

We found that there should be a consistent approach for cemetery operators in providing adequate funds for cemetery maintenance after the cemetery is closed to new burials. Therefore we are recommending that:

- ▼ There should be a legal obligation on all cemetery operators to make adequate financial provision for perpetual maintenance of interment sites and the cemetery.
- ▼ Cemetery operators that conduct more than 50 bodily interments in new perpetual interment sites per year at a cemetery must contribute to an independently managed perpetual maintenance reserve fund to provide for long-term cemetery maintenance.
- ▼ The perpetual maintenance reserve fund should be independently managed by Treasury Corporation or an independent body approved by CCNSW.
- ▼ CCNSW should develop Guidelines on when and how a cemetery operator can use perpetual maintenance funds for a cemetery.
- ▼ Cemetery operators should provide a Plain English Statement of terms and conditions for interment rights at a cemetery that customers can easily access. This should include a clear statement on the nature and level of maintenance of the interment site and the cemetery.

We found that for most cemeteries the extent of legacy costs from past interments are not known and further investigation is required. To address this, we will request information from cemetery operators to assess the current level of legacy costs from past interments at cemeteries in Sydney.

## 6.2 What are the perpetual maintenance costs of a cemetery?

Once a perpetual interment right is exercised, then there are ongoing costs of maintaining this site. Some costs may be the responsibility of the rights holder such as maintaining into perpetuity grave markings, monuments or memorials. While other costs may be the responsibility of the cemetery operator such as maintaining the lawn area for lawn grave sites. These maintenance requirements will vary based on the type of interment site (eg. lawn grave, monument or niche wall), and any religious requirements that specify how a site is to be maintained.

The Northern Beaches Council notes that while monuments erected on a grave are the responsibility of the interment rights holder, after a few generations usually no one in the family is willing to take care of this obligation. To manage this risk the council has developed a grave monument safety and inspection program.<sup>97</sup> If an interment right holder does not maintain a site (such as a monument) then there could be risks to public safety and this may represent a financial liability for the cemetery operator. Therefore, over time some ongoing maintenance costs could be shifted from the interment right holder to the cemetery operator.

In addition to the maintenance costs associated with interment sites, there are also the costs of maintaining the common areas of a cemetery in a clean, safe and orderly condition. Depending on the size and nature of the cemetery, these costs can include:

- ▼ maintaining grounds and gardens,
- ▼ maintaining roads, paths, fences, buildings and structures,
- ▼ cost of utility services such as water, sewerage and electricity,
- ▼ rubbish removal and cleaning services, and
- ▼ insurance and security costs.

To fund ongoing maintenance in a new cemetery, these costs need to be allocated to all interment rights holders in a cemetery. The pricing of perpetual interment rights should reflect both the costs to the cemetery operator of maintaining interment sites and costs of maintaining common areas in the cemetery.

## 6.3 A legal obligation on cemetery operators is needed to provide for perpetual maintenance of cemeteries

Currently there is no legal obligation on cemetery operators to make financial provision for perpetual maintenance of their cemeteries. The regulator, Cemeteries and Crematoria NSW (CCNSW), has developed a *Cemetery and crematorium operator code of practice for interment rights and general services*<sup>98</sup> which includes the following high level guidance for perpetual maintenance and its funding:

<sup>97</sup> Northern Beaches Council, Submission to Issues Paper, June 2019, p. 2.

<sup>98</sup> Cemeteries and Crematoria NSW, *Cemeteries and crematorium operator code of practice 2018 – Interment rights and general services*, November 2018, [https://www.industry.nsw.gov.au/data/assets/pdf\\_file/0020/204095/CCNSW-Cemetery-and-crematoria-operator-code-of-practice-2018.pdf](https://www.industry.nsw.gov.au/data/assets/pdf_file/0020/204095/CCNSW-Cemetery-and-crematoria-operator-code-of-practice-2018.pdf), accessed on 20 November 2019.



Operators will acknowledge that that maintenance responsibilities for cemeteries (and any contractual obligations in respect of any grave, monument or memorial) extends beyond the closure of a cemetery and into perpetuity. To meet these obligations, operators are to set aside sufficient funds as part of their financial planning and operations.<sup>99</sup>

While this code of practice applies to all cemetery operators, it is voluntary<sup>100</sup>. Some metropolitan Crown cemetery operators support a legal obligation on all operators to make a financial provision for perpetual maintenance. For example, Southern Metropolitan Cemeteries argue that the obligation for perpetual maintenance should be a legal and transparent obligation on all cemetery operators, irrespective of their corporate structure.<sup>101</sup> Similarly, Catholic Metropolitan Cemeteries Trust consider that the regulator should impose a legal obligation on all cemetery operators to make financial provision for perpetual maintenance and note that this provision could take different forms.<sup>102</sup>

Local Government NSW recommends that there should be no new legal obligation for financial provision for perpetual maintenance for council operated cemeteries, in recognition of existing regulatory and financial oversight under the *Local Government Act 1993*.<sup>103</sup> There were a range of views from individual councils about the need for a legal obligation. Albury City Council considers that there should be a financial provision made for future/perpetual maintenance by all cemetery operators.<sup>104</sup> The opposite view was expressed by Moree Plains Shire Council as it did not support a legal obligation but considers it should be a financial decision for a cemetery operator.<sup>105</sup>

Some Councils note that they will always have an obligation to their communities to continue maintaining cemeteries and therefore should be exempt from any obligation.<sup>106</sup> If councils don't set aside funds for perpetual maintenance when the cemetery closes they will need to fund maintenance (to a level to meet community expectations) from other council operations (ie from rate payers).

The Cemeteries and Crematoria Association of NSW agrees that in principle there should be a legal obligation but notes there are implementation challenges relating to the distinction between the shortfall in historic perpetual maintenance funds and making provision related to the particular interment locations, for which interment rights are now being sold.<sup>107</sup> The past under-pricing of perpetual maintenance has created unfunded liabilities and some religious bodies consider that there is a need for a government subsidy to manage this.<sup>108</sup> These unfunded liabilities are a legacy of past pricing and we discuss this further in section 6.7.

<sup>99</sup> Cemeteries and Crematoria NSW, *Cemeteries and crematorium operator code of practice 2018 – Interment rights and general services*, November 2018, see section 8.5.

<sup>100</sup> This code can only become mandatory when an interment industry scheme is established by regulation under section 31 the *Cemeteries and Crematoria Act 2013* (CC Act). This regulation may also include requiring an operator of a cemetery to ensure adequate provision is made for perpetual care of interment sites and the cemetery.

<sup>101</sup> Southern Metropolitan Cemeteries NSW, Submission to Issues Paper, June 2019, p 18.

<sup>102</sup> Catholic Metropolitan Cemeteries Trust, Submission to Issues Paper, July 2019, p 3 and p 7.

<sup>103</sup> Local Government NSW, Submission to Issues Paper, June 2019, appendix A pp 2-3.

<sup>104</sup> Albury City Council, Submission to Issues Paper, p 1.

<sup>105</sup> Moree Plains Shire Council, Submission to Issues Paper, p. 2.

<sup>106</sup> Wollongong City Council, Submission to Issues Paper, June 2019, p 1.

<sup>107</sup> Cemeteries and Crematoria Association of NSW, Submission to Issues Paper, June 2019, p 5.

<sup>108</sup> NSW Jewish Board of Deputies & Lebanese Muslim Association, Submission to Issues Paper, June 2019, p 5.

We consider that the current arrangements (ie, a voluntary code of practice) are not adequate and cemetery operators have a weak incentive to provide ongoing maintenance when a cemetery closes. There is a risk that if cemetery operators do not set aside funds for perpetual maintenance then the government may need to fund these obligations in the future. In the case of private cemetery operators, they could elect to leave the sector.

A legal obligation makes it transparent that cemetery operators are responsible for making financial provisions for future maintenance of the cemetery. As discussed above, one option for this to be implemented is for a regulation to establish an interment industry scheme under section 31 of the CC Act. As the regulator, CCNSW would be responsible for regulating an interment industry scheme<sup>109</sup> and ensuring compliance with any requirements.<sup>110</sup>

#### Interim recommendation

- 6 There be a legal obligation on all cemetery operators to make adequate financial provision for perpetual maintenance of interment sites and the cemetery.

### 6.4 The current funding arrangements for perpetual maintenance of cemeteries lack transparency and accountability

The financial statements of a cemetery operator may not disclose information about the size of the perpetual maintenance liability or how it is funded. In addition, the financial statements may not be in the public domain for certain types of cemetery operators (eg, community, church and private small business operators) or the statements may not provide sufficient detail on the cemetery's financial performance. For example, the financial reporting of council operated cemeteries may be a relatively small part of the overall financial statements of a council.

Over the last few years, a number of the large metropolitan Crown operators have engaged an external actuary to assess their pricing of interments and investment funds required for future maintenance obligations.<sup>111</sup> The Catholic Cemetery Board in 2017 commissioned an actuarial review of perpetual care requirements of its cemeteries. This included estimating the perpetual care surplus (deficit), analysis of pricing structures and advice on investment strategy and financial position.<sup>112</sup>

Southern Metropolitan Cemeteries completed an actuarial study of Eastern Suburbs Memorial Park (ESMP) and Woronora Memorial Park (WMP) as at 30 June 2017 and reported:

The outcomes of the actuarial study showed that both ESMP and WMP have a perpetual care deficit compared to current financial assets, but that each cemetery should be on parity between perpetuity deficit and financial assets by 2030.<sup>113</sup>

Some Crown cemetery operators have set aside funds for the perpetual maintenance of their cemeteries which is reported in their annual financial statements as shown in the table below.

<sup>109</sup> *Cemeteries and Crematoria Act 2013*, s 12(1)(f).

<sup>110</sup> *Cemeteries and Crematoria Act 2013*, s 31(3).

<sup>111</sup> Southern Metropolitan Cemeteries NSW, Submissions to Issues Paper, June 2019 p. 24.

<sup>112</sup> Catholic Metropolitan Cemeteries Trust Annual Report 2018, p. 46, [https://catholiccemeteries.com.au/wp-content/uploads/2018/10/CCC\\_2018\\_annual\\_report.pdf](https://catholiccemeteries.com.au/wp-content/uploads/2018/10/CCC_2018_annual_report.pdf), accessed on 27 November 2019

<sup>113</sup> Southern Metropolitan Cemeteries Trust NSW Annual Report 2018, Chairman's Message, p. 12.

**Table 6.1 Perpetual maintenance funds held by metropolitan Crown land operators**

Crown land manager	Perpetual maintenance funds
Catholic Metropolitan Cemeteries (as at 30 June 2018)	\$137,600,825
Northern Metropolitan Cemeteries	Not disclosed in Financial Report 2018
Rookwood General Cemeteries (as at 30 June 2018)	\$153,777,641 <sup>a</sup>
Southern Metropolitan Cemeteries	Not disclosed in Annual Report 2018

<sup>a</sup> These funds include perpetual care, development of facilities and establishment of additional sources of revenue.

**Source:** Catholic Metropolitan Cemeteries Trust Annual Report 2018, p. 43, [https://catholiccemeteries.com.au/wp-content/uploads/2018/10/CCC\\_2018\\_annual\\_report.pdf](https://catholiccemeteries.com.au/wp-content/uploads/2018/10/CCC_2018_annual_report.pdf), accessed on 27 November 2019;

Northern Metropolitan Cemeteries Trust General Purpose Financial Statements for the year ended 30 June 2018, [https://acncpubfilesprodstorage.blob.core.windows.net/public/8e18b7df-39af-e811-a963-000d3ad24077-96589adb-e9d1-46d7-9e72-9a0330634fa4-Financial%20Report-326bd26e-4a4c-e911-a96f-000d3ad24182-NMCLM\\_signed\\_2018\\_financial\\_statements.pdf](https://acncpubfilesprodstorage.blob.core.windows.net/public/8e18b7df-39af-e811-a963-000d3ad24077-96589adb-e9d1-46d7-9e72-9a0330634fa4-Financial%20Report-326bd26e-4a4c-e911-a96f-000d3ad24182-NMCLM_signed_2018_financial_statements.pdf), accessed on 27 November 2019.

Rookwood General Cemeteries Reserve Trust Annual Report 2018, p. 80  
<http://www.rookwoodcemetery.com.au/assets/Annual%20Report%202018%20v13.pdf>, accessed on 27 November 2019.

Southern Metropolitan Cemeteries Trust NSW Annual Report 2018,  
<https://woronoramemorialpark.worldsecuresystems.com/LiteratureRetrieve.aspx?ID=194839>, accessed on 27 November 2019.

Rookwood General Cemeteries recently reported that it is currently accumulating reserves to provide for the future maintenance expenses of the cemetery.

At this time the Land Manager is aware that there may be significant on-going cash outflows for future maintenance and have been advised by an independent Actuarial valuation consultant the estimated amount of Perpetual obligation. The Land Manager has invested in good quality financial instruments which can generate enough investment returns to maintain the Cemetery in Perpetuity.<sup>114</sup>

A small number of council cemetery operators have also set aside funds into separate perpetual maintenance or cemetery reserve funds. For example, Bega Valley Shire Council, Central Coast Council, Hills Shire Council, Shoalhaven City Council and Wagga Wagga City Council have perpetual maintenance reserve funds.<sup>115</sup> For private cemetery operators (which includes ASX listed companies<sup>116</sup> and small private companies), their practice of setting aside funds for perpetual maintenance are not clear.

We found that for most cemetery operators there is no disclosure or reporting of perpetual maintenance liabilities in their annual financial statements. Further, the arrangements for setting aside funds for the perpetual maintenance of their cemeteries are not transparent and as a result there is limited accountability about the adequacy of these funds.

For those operators that have established perpetual maintenance funds, the governance arrangements for the operation and the use of these funds are not clear. For example, are these funds ring fenced for cemetery maintenance or could funds be used for other cemetery operations, capital projects, or to purchase future cemetery land. We note that the Catholic

<sup>114</sup> Rookwood General Cemeteries Reserve Trust Annual Report 2018, p. 73  
<http://www.rookwoodcemetery.com.au/assets/Annual%20Report%202018%20v13.pdf>, accessed on 27 November 2019.

<sup>115</sup> Information returns from cemetery operators July 2019, Question 28 – Do you have a perpetual maintenance reserve fund?

<sup>116</sup> ASX listed companies are InvoCare Ltd and Propel Funeral Partners Ltd.

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Metropolitan Cemeteries Trust allocated \$15.1m and \$13.4m respectively for the purchase of Varroville and Wallacia for cemetery purposes from the investments for perpetual care.<sup>117</sup>

#### Interim finding

- 10 Most cemetery operators in NSW do not report on the size of their liabilities for the perpetual maintenance of their cemeteries nor do they have transparent arrangements to fund these liabilities.

### **6.5 Cemetery operators that meet a threshold for number of interments for new perpetual sites per year be required to establish a perpetual maintenance reserve fund**

We consider that there should be a more consistent approach for cemetery operators to ensure that adequate funds are set aside for perpetual maintenance of a cemetery. We have reviewed how cemetery operators in other jurisdictions provide funding for the perpetual maintenance of their cemeteries. These options range from the regulator setting contribution amounts for different types of interments, a Minister determining a percentage of an operator's revenue for the perpetual reserve fund for each cemetery, to an independent actuarial review of investment funds required for future maintenance obligations (see Box 6.1)

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<sup>117</sup> Catholic Metropolitan Cemeteries Trust Annual Report 2018, p. 46, Note 17 Contingent Liabilities, [https://catholiccemeteries.com.au/wp-content/uploads/2018/10/CCC\\_2018\\_annual\\_report.pdf](https://catholiccemeteries.com.au/wp-content/uploads/2018/10/CCC_2018_annual_report.pdf), accessed on 27 November 2019.

### Box 6.1 Funding arrangements for perpetual maintenance of cemeteries in other jurisdictions

Some potential options for funding perpetual maintenance include:

- ▼ In the Australian Capital Territory (ACT), the Minister determines the **percentage of revenue** for the perpetual care trust and the perpetual care trust reserve for each cemetery and crematoria. The Minister must be satisfied that the percentage is sufficient so that the cemetery or crematorium will be adequately maintained in both the short and long-term. Note that in the ACT there is only a single government operator managing 3 public cemeteries.
- ▼ In Victoria, a cemetery trust estimates the **percentage of total costs** to be included in their fee submission to contribute to the costs of perpetual maintenance obligations. The regulator recommends 15–20 per cent of total costs associated with service provision should be included in the trust's fee submission for perpetual maintenance obligations. The regulator then has a process of approving the fees and charges of a cemetery trust. Note that in Victoria all cemeteries are government owned and prices must be approved by the regulator.
- ▼ In Ontario (Canada) the regulator sets **contribution amounts** for different types of interments under the *Funeral, Burial and Cremation Services Act 2002*. These contributions are set as a percentage of the price (eg. 40% of the price) or a set dollar amount –whichever is the greater. The cemetery operator needs to make contributions to the fund from the sale of graves, crypts and niches. A cemetery operator is required to deposit CAD \$100,000 into a Care and Maintenance fund when applying for consent to establish a cemetery.
- ▼ In Adelaide (South Australia), a cemetery operator engages an **independent evaluation** of its fees and charges to ensure that its cemeteries can be maintained into the future. This includes an actuarial review of the investment funds required for future maintenance obligations. The Adelaide Cemeteries Authority uses this approach and also sets separate prices for maintenance for different types of interments (burial, memorial and mausoleum).
- ▼ In Illinois (USA) a cemetery operator must have a **licence before acquiring funds** in connection with the sale of a burial space. A private operator is required to post a bond to ensure the proper management of perpetual care funds. Before accepting funds for the sale of a burial space, a private operator must specify in writing the nature and extent of the care for which it must require a deposit of a given amount based on the sale price or the size of the burial space.

**Source:** ACT Government, Information Paper: Review of the Cemeteries and Crematoria Act 2003, Transport Canberra and City Services Directorate, October 2018, p 5; <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/financial-management>, accessed on 8 October 2019; Bereavement Authority of Ontario, <https://thebao.ca/for-professionals/cemeteries-crematoriums/calculator/>, accessed on 16 October 2019; Per communication with R. Pitt at Adelaide Cemeteries Authority on 30 September 2019, Adelaide Cemeteries Authority, Adelaide Cemeteries Authority 2017-18 Annual Report, Appendix Audited Financial Statements 2017-18 p 9, [http://www.aca.sa.gov.au/sites/default/files/2019-10/Adelaide%20Cemeteries%20Authority%20Annual%20Report%202017-2018\\_0.pdf](http://www.aca.sa.gov.au/sites/default/files/2019-10/Adelaide%20Cemeteries%20Authority%20Annual%20Report%202017-2018_0.pdf), accessed on 12 December 2019, <https://www.stimmel-law.com/en/articles/basic-laws-pertaining-cemeteries>, accessed on 16 October 2019.

In the NSW regulatory environment, we consider that there are two broad options for how perpetual maintenance funds for a cemetery could be established and managed.

Option 1 - a cemetery operator establishes and manages their own perpetual maintenance fund

Under this option CCNSW would require cemetery operators to establish and manage their own fund, subject to regular reporting, auditing and review. A cemetery operator would

estimate the cost of perpetual maintenance for a cemetery, establish a perpetual maintenance fund and make a regular contribution to it. This option was supported by the Catholic Metropolitan Cemeteries Trust in their submission to our Issues Paper.<sup>118</sup>

This option builds on the existing practice of some Crown and council cemetery operators of establishing and managing their own perpetual maintenance funds. However, a disadvantage of this approach is that the funds are not separate from the cemetery operator.

Option 2 – a cemetery operator contributes to a perpetual maintenance fund which is managed by an independent body

The cemetery operator would be required to estimate the cost of perpetual maintenance and make a regular contribution to a fund for a particular cemetery. The fund could operate in a similar way to a superannuation fund account where a cemetery operator makes a regular contribution for perpetual maintenance into an account (eg. at the time of each interment). Once the cemetery closes the investment earnings would then provide an ongoing income to maintain the cemetery.

A cemetery operator could calculate its contribution to a perpetual maintenance fund by estimating its perpetual maintenance liability for a cemetery. For example, Penrith City Council has developed cemetery asset management plans to understand future maintenance obligations, it has also estimated the remaining cemetery capacity and the projected demand for interments as part of its Cemeteries Strategy.<sup>119</sup> As noted above, some large Crown cemetery operators have engaged an actuary to assess their pricing of interments and investment funds required for future maintenance obligations.

Southern Metropolitan Cemeteries NSW commented that it would be useful for IPART to provide a standardised model for all operators in the sector so there is consistency in the determination of reserve level targets, to provide confidence to the citizens of NSW that there are sufficient reserves to maintain all cemeteries in NSW.<sup>120</sup> IPART is currently developing a pricing tool for a cemetery to use to estimate the level of perpetual maintenance funds that should have been accumulated given the lifecycle of cemetery and the funds that need to be accumulated before a cemetery closes. We are planning to release this pricing tool for consultation when we release our Draft Report.

We consider that an independent fund manager (such as Treasury Corporation or an independent body approved by CCNSW) should be responsible for investment decisions, fund management, and reporting. We note that Crown cemetery operators, as controlled entities under the *Government Sector Finance Act 2018*, are already required to invest only with Treasury Corporation.<sup>121</sup> Treasury Corporation currently manages a growth and cash fund for Rookwood General Cemetery.<sup>122</sup>

<sup>118</sup> See Catholic Metropolitan Cemeteries Trust, Submission to Issues Paper, June 2019, pp. 3, 7-8.

<sup>119</sup> Locale Consulting, Penrith City Council Cemeteries Strategy, September 2017, [http://bizsearch.penrithcity.nsw.gov.au/PCCBPS/Open/2017/12/CNL\\_18122017\\_AGN\\_AT\\_files/CNL\\_18122017\\_AGN\\_AT\\_Attachment\\_21947\\_1.PDF](http://bizsearch.penrithcity.nsw.gov.au/PCCBPS/Open/2017/12/CNL_18122017_AGN_AT_files/CNL_18122017_AGN_AT_Attachment_21947_1.PDF), accessed on 26 November 2019.

<sup>120</sup> Southern Metropolitan Cemeteries NSW, Submissions to Issues Paper, June 2019, pp 24-25.

<sup>121</sup> *Government Sector Finance Act 2018*, s 2.4(2)(b)

<sup>122</sup> Rookwood General Cemeteries Reserve Trust Annual Report 2018, p. 78, <http://www.rookwoodcemetery.com.au/assets/Annual%20Report%202018%20v13.pdf>, accessed on 26 November.



This option separates the perpetual maintenance fund from the cemetery operator so when the cemetery closes, the funds could be made available to the provider of the maintenance services (this may be the cemetery operator or another party). This option ensures that money paid by consumers for the ongoing maintenance of their interment site and the cemetery is ring fenced for long-term cemetery maintenance.

In NSW there are 353 cemetery operators and they are diverse in terms of the type of operator and their size of operations.<sup>123</sup> Many church and community operators have small operations and only conduct a small number of burials each year (ie, one or two burials a year). For these small operators the administrative cost may outweigh the benefits of contributing to a centrally managed perpetual maintenance fund. The Australian Funeral Directors Association commented that cemetery operators are likely to need assistance with determining when their interment spaces will be exhausted, imputing future costs and the methodology for calculating perpetual maintenance.<sup>124</sup>

To address this issue, we propose to exclude those cemetery operators that conduct only a small number of interments of bodily remains in new sites each year. The table below shows that about 80% of cemeteries in NSW have less than 10 bodily interments in new sites in 2017-18.

**Table 6.2 Cemeteries by number of interments of bodily remains in new perpetual interment sites in 2017-18**

Number of interments of bodily remains in new sites	Number of cemeteries
0	475
Greater than 0 less than 10	359
10 to less than 20	70
20 to less than 50	65
50 to less than 100	27
100 to less than 250	11
Greater than 250	9
<b>Total</b>	<b>1,016</b>

**Source:** IPART analysis of CCNSW Annual Activity survey 2017-18.

In relation to the larger cemeteries operating in NSW, there were 47 cemeteries that conducted 50 or more bodily interments in new interment sites in 2017-18. This represents 35 cemetery operators (out of a total of 353 operators) and is made up of:

- ▼ Four Crown cemetery operators
- ▼ Four private cemetery operators
- ▼ 27 council cemetery operators.

We consider that the requirement for cemetery operators to contribute to an independently managed perpetual maintenance fund should only apply to those operators that conduct 50

<sup>123</sup> CCNSW register of cemeteries in NSW, <https://www.industry.nsw.gov.au/cemeteries-crematoria/locations/find-a-cemetery>, calculated on 12 December 2019.

<sup>124</sup> Australian Funeral Directors Association, Submission to Issues Paper, June 2019, p. 2.

or more bodily interments in new perpetual interment sites at a cemetery per year. If these cemetery operators do not include adequate provision for future maintenance then a substantial and growing liability will need to be funded.

Under the CC Act there are different ways that our proposed option could be implemented:

- ▼ Develop a regulation to establish an interment industry scheme that requires an operator of a cemetery to comply with the provisions a code of practice developed and approved by CCNSW.<sup>125</sup>
- ▼ Develop a regulation to establish an interment industry scheme that requires an operator of a cemetery to ensure adequate provision is made for perpetual care of interment sites and the cemetery.<sup>126</sup>
- ▼ Develop a regulation requiring the licensing of any activity, person, business or premises in relation to the provision of interment services.<sup>127</sup> A condition of a licence to operate a cemetery could include that a cemetery operator needs to contribute to a centrally managed perpetual maintenance fund.

Once an interment industry scheme is established, a cemetery operator must comply with any requirement of the scheme that applies to it. CCNSW can enforce compliance with any requirements and penalties can apply.<sup>128</sup> We consider that the requirement for a perpetual fund should be a binding requirement.

We also consider that CCNSW should develop Guidelines on when and how cemetery operators can use perpetual maintenance funds. Cemeteries and Crematoria Association of NSW comments that the requirement to expend funds on perpetual maintenance does not just start “when the gates close”. Therefore they suggest guidance on the nature of outlays for which withdrawals from a perpetual maintenance fund are acceptable would be useful.<sup>129</sup> As discussed above, in some instances perpetual maintenance funds are being used for other purposes, such as purchasing cemetery land.

Therefore we consider that Treasury Corporation (or an independent body approved by the CCNSW) should be responsible for operating, managing and reporting on a perpetual maintenance fund for a cemetery that meets our proposed threshold. CCNSW should provide guidance to cemetery operators on when and how they can access and use perpetual maintenance funds for a cemetery.

### Interim recommendations

- 7 Cemetery operators that conduct more than 50 bodily interments in new perpetual interment sites per year at a cemetery must contribute to an independently managed perpetual maintenance reserve fund to provide for long-term cemetery maintenance.
- 8 The perpetual maintenance reserve fund for a cemetery must be independently managed by Treasury Corporation or an independent body approved by CCNSW.

<sup>125</sup> *Cemeteries and Crematoria Act 2013*, s28, 30(1), 31(2)(a).

<sup>126</sup> *Cemeteries and Crematoria Act 2013*, s31(2)(b).

<sup>127</sup> *Cemeteries and Crematoria Act 2013*, s31(2)(c).

<sup>128</sup> *Cemeteries and Crematoria Act 2013*, s31(3).

<sup>129</sup> Cemeteries and Crematoria Association of NSW, Submission to Issues Paper, June 2019, pp 5 and 16.

- 9 CCNSW to develop Guidelines on when and how a cemetery operator can use perpetual maintenance funds for a cemetery.

## **6.6 Cemetery operators need to be more transparent on the roles and responsibilities for maintenance**

The cost of perpetual maintenance for a cemetery operator will depend on any maintenance standards that it has agreed to provide as part of the interment right. For most cemeteries the perpetual maintenance responsibilities of operators and rights holders is not transparent or available (from their websites).

CCNSW has developed a code of practice for cemetery and crematoria operators which contains a section on maintenance of facilities, graves, vaults, cemeteries and crematoria. The code specifies:

Operators will clearly explain, in any agreement providing an interment right, any maintenance obligations that exist in relation to a grave, monument or memorial, and which party is responsible for maintenance. Any ambiguity in the agreement in relation to who is responsible, or to the nature or extent of any such obligation, will be construed in favour of the holder of the interment right.<sup>130</sup>

However, this code is voluntary and most cemetery operators do not provide a clear statement on the roles and responsibilities for maintenance that customers can easily access when considering different types of interment options.

An object of the CC Act is to ensure that operators of the cemeteries and crematoria demonstrate satisfactory levels of accountability, transparency and integrity.<sup>131</sup> We consider that cemetery operators should be required to provide a Plain English Statement of terms and conditions for interment rights at a cemetery. This could be developed as a Code of Practice for an interment industry scheme.<sup>132</sup> Compliance with any requirements for an interment industry scheme can be enforced by CCNSW and penalties can apply.<sup>133</sup>

### **Interim recommendation**

- 10 Cemetery operators provide a Plain English Statement of terms and conditions for interment rights at a cemetery that customers can easily access. This include a clear statement on the obligations of each of the interment right holder and the cemetery operator for the nature and level of maintenance of the interment site and the cemetery.

## **6.7 For most cemeteries the extent of legacy costs from past interments is not known and further investigation is required**

In the past, cemetery operators may not have fully included future maintenance costs when pricing their perpetual interment rights. There may have been various reasons for this practice. For example, for affordability reasons a council may have decided not to include the

<sup>130</sup> Cemeteries and Crematorium NSW, *Cemeteries and crematorium operator code of practice 2018 – Interment rights and general services*, November 2018, clause 8.4.

<sup>131</sup> *Cemeteries and Crematoria Act 2013*, s3(e).

<sup>132</sup> *Cemeteries and Crematoria Act 2013*, s31(2)(a).

<sup>133</sup> *Cemeteries and Crematoria Act 2013*, s31(3).

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cost of the future maintenance in the price of the interment right but to meet these costs from a general council fund.

As discussed above, we found that for most cemetery operators there is no reporting or disclosure on perpetual maintenance liabilities in their financial statements. Further, the arrangements for setting aside funds for this liability are not transparent resulting in limited accountability.

Given cemetery operators may have not made adequate provision for the perpetual maintenance of their cemeteries, there are likely to be unfunded liabilities or “legacy costs” from past interments. The Catholic Metropolitan Cemeteries Trust proposes that cemeteries could be classified into 3 groups with regards to their perpetual maintenance funds:

- ▼ Group 1: Cemeteries that currently have an adequate reserve fund level which reflects the life cycle stage of the cemetery and can continue to be built on over time.
- ▼ Group 2: Cemeteries with inadequate reserves but they are at a stage of their life cycle where these funds can be built up to an adequate level.
- ▼ Group 3: Cemeteries where the current level of reserves are not at an adequate and are at a stage of their life cycle (ie, nearing end of life) where they cannot generate enough revenue to build the reserve funds to an adequate level.<sup>134</sup>

We agree that this classification of cemeteries is useful to identify those cemeteries that are in a position to build up adequate reserves to fund perpetual maintenance. In order to classify cemeteries into these groups we will request information from cemetery operators in Sydney to estimate the extent of their legacy costs from past interments. This information could include: life cycle of a cemetery, interment capacity, estimate of perpetual maintenance liabilities and the current level of maintenance reserves.

#### Interim finding

11 For most cemeteries in NSW the extent of legacy costs from past interments is not known.

IPART will further investigate the extent of legacy costs from past interments. We will request information from cemetery operators to assess the current level of legacy costs from past interments at cemeteries in Sydney, and report on this in our Draft Report.

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<sup>134</sup> Catholic Metropolitan Cemeteries Trust, Submission to Issues Paper, July 2019, p. 7-8.

## 7 Prices for interment rights

The fourth step in our review process is to develop recommendations for pricing interment rights, and consider how those recommendations deliver against the principles of affordability and equity for customers, financial sustainability for cemeteries and simplicity and transparency for customers.

Our suite of interim recommended measures includes initiatives to provide for:

- ▼ Competition by price comparison, leading to greater choice and affordability for consumers
- ▼ Assistance to cemetery operators to understand the full extent of costs over the life cycle of a cemetery and use those costs to develop cost-reflective prices for both perpetual and renewable tenure interment rights
- ▼ Interment right prices that are affordable and equitable.

This chapter provides an overview of our interim findings and recommendations regarding pricing measures, and then discusses them in more detail.

Following further investigation of the operational efficiency of Crown land managers in Sydney, and further investigation of the extent of legacy costs for existing cemeteries approaching capacity, we will develop further draft recommendations for pricing and publish them in our Draft Report.

### 7.1 Overview of interim findings and recommendations

We found in Chapter 4 that the market structure for interment services differs in the following ways:

- ▼ The market for ashes interment differs from the market for bodily interment
- ▼ The cemetery market structure in Sydney is different from the rest of NSW
- ▼ Cemeteries at different stages of their life cycles have different cost and revenue structures.

Therefore our interim pricing recommendations differ in their level of prescription and which services they apply to.

For all interment services, we found (and many submissions to our Issues Paper agreed) that there is wide variation in prices, and that information currently available to consumers to conduct meaningful price comparisons is limited. Therefore we recommend that all cemetery operators be required to publish itemised prices for all interment services on a consistent basis.

We recommend that a website is developed to show all cemetery prices in one place, to assist consumers in making informed decisions when choosing an interment service.

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As we found that the market for ashes interment is workably competitive, the rest of our recommendations focus on prices for bodily interment rights.

In order to assist cemeteries with setting prices, we are developing a pricing tool for cemetery operators to use voluntarily in setting prices for both perpetual tenure and renewable tenure interment rights. For this Interim Report, we have developed a pricing tool which calculates prices for **a new cemetery** prior to its first interment. We are seeking feedback on the interim pricing tool before developing a tool to accompany our Draft Report that will calculate prices for both new and existing cemeteries.

As discussed in Chapters 5 and 6, we will undertake further work on the efficiency of operations of the metropolitan Crown operators, and on understanding the extent of legacy costs in existing cemeteries before we develop further recommendations on pricing.

We have also addressed affordability of prices by recommending greater transparency of pricing to encourage competition.

## **7.2 There is wide variation in prices for interment services**

To examine the prices that consumers currently pay for bodily interment services, we analysed prices published on cemetery operator websites. Submissions to our Issues Paper such as Catholic Cemeteries and Crematoria argued that price comparisons for bodily interment services should be based on like-for-like products, and that there are only a few products and services in the cemeteries industry that can be classified as like-for-like, and even these can have small differences.<sup>135</sup> For this reason, we have focussed our initial pricing analysis on prices for an adult lawn bodily interment service.

We found that, even within this single basic category, prices vary substantially (see Figure 7.1). In particular, prices for interment rights tend to be higher the closer the cemetery is to the Sydney CBD, which is not surprising given that the cost of land is a key component of an interment right.

Some cemetery operators provide individual prices for different service components, including interment, perpetual maintenance and exhumation. We observed substantial variation in the other service components (see Figure 7.2), such as:

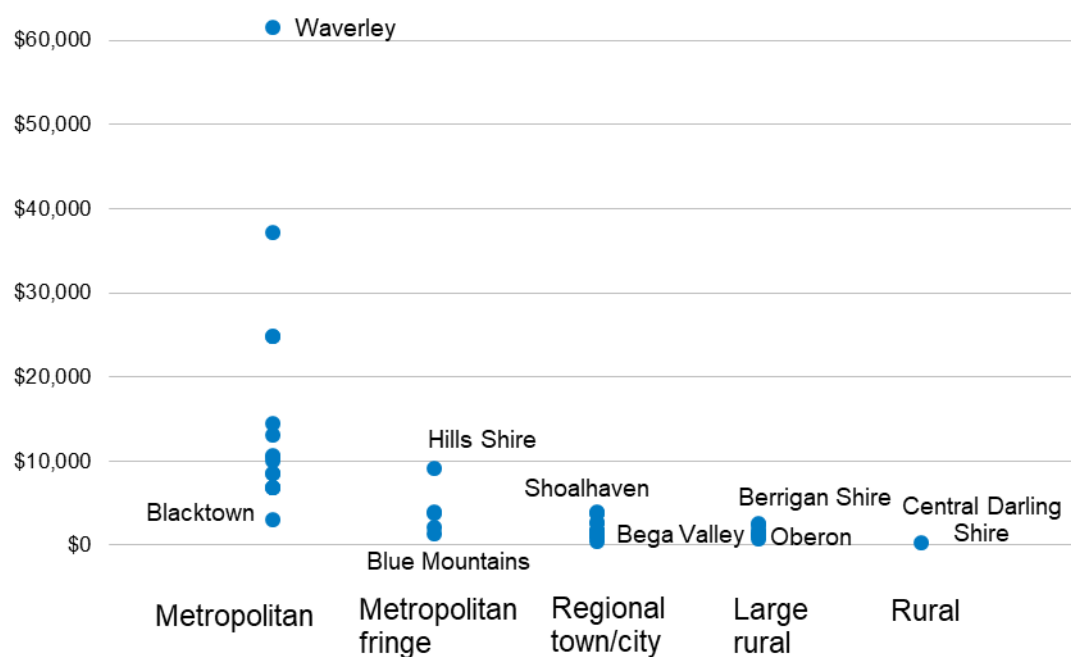
- ▼ Interment fees which varied from \$450 to \$3,140
- ▼ Perpetual maintenance which varied from \$410 to \$1,460
- ▼ Exhumation which varied from \$457 to \$9,140

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<sup>135</sup> Catholic Cemeteries Crematoria, submission to IPART Issues Paper, June 2019, p 6.



**Figure 7.1 Price variation for interment rights by area of NSW**

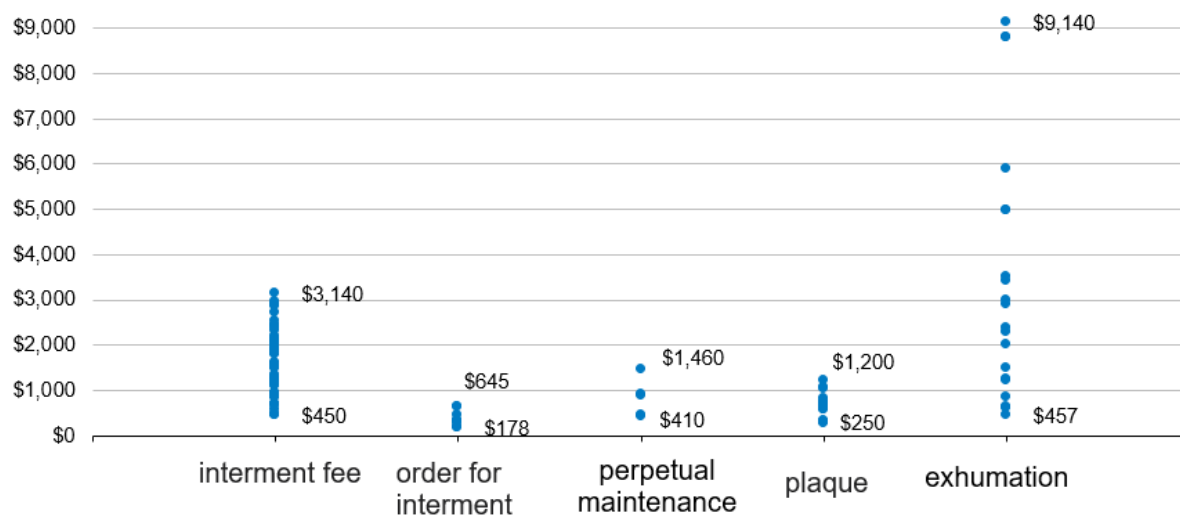


**Note:** Some interment rights can accommodate multiple interments, but not all price lists specify the number of interments. Prices are also bundled to varying degrees. As a consequence, not all prices are directly comparable.

Areas of NSW are based on Office of Local Government, Your Council report classification,

**Data source:** Cemetery operator websites, IPART, <https://www.olg.nsw.gov.au/public/my-local-council/yourcouncil-website>

**Figure 7.2 Price variation for interment service components**



**Note:** Prices are bundled to varying degrees and so not all prices are directly comparable.

Few cemeteries itemise the perpetual maintenance fee.

**Data source:** Cemetery operator websites, IPART.

## Interim finding

- 12 There is a wide variation in prices for interment services, even services which would appear very similar in nature.

### 7.3 Prices are displayed inconsistently and are difficult to compare

Many submissions to our Issues Paper highlighted that price comparison across cemeteries is difficult because there is a lack of transparency and consistency in the use of terminology, and different bundling of products by cemetery operators (see Box 7.1).

While all the Crown cemeteries and council cemeteries currently display their fees and charges online, private cemetery operators generally do not publish their prices online, and so our analysis focussed on current pricing information that is publicly available.

We also found that prices are difficult to compare because:

- ▼ Terminology used by the industry is not accessible to everyone. For example, terms such as 'interment' and 'lift and deepen' are not frequently used outside of the cemeteries and crematoria industry, and so many of these terms may be unfamiliar to consumers.
- ▼ Advertised prices are often bundled to varying degrees, while only a few cemetery operators itemise each service component for an adult lawn bodily interment. For example, Table 7.1 shows that Kempsey Shire Council (unshaded) charges a bundled price for all services required for an adult lawn bodily interment service,<sup>136</sup> while Bega Valley Shire Council (dark grey) itemises most service components.<sup>137</sup> Other cemeteries, such as Eastern Suburbs Memorial Park (light grey) bundle most service components, but charge a separate fee for interment.<sup>138</sup>
- ▼ For some cemetery operators that itemise each service component it is difficult to identify all necessary service components for an adult lawn bodily interment service.<sup>139</sup> That is, it is not clear what services a customer is required to purchase and what services are optional, and so it is difficult to determine the total price for a basic service (ie, adult lawn bodily interment) from published prices.
- ▼ Cemetery operators use inconsistent terminology to describe interment services. For example, Eastern Suburbs Memorial Park describes the price for an interment right as a 'right of burial', while Kempsey Shire Council refers to it as 'land for each grave' and Bega Valley Shire Council does not itemise the interment right and appears to bundle it with the interment fee.

<sup>136</sup> Kempsey Shire Council, Fees and charges, <https://portal.lgsolutions.net.au/Fees/Public/Kempsey>, accessed 16 December 2019.

<sup>137</sup> Bega Valley Shire Council, [https://www.begavalley.nsw.gov.au/cp\\_themes/default/page.asp?p=DOC-ITZ-42-35-17](https://www.begavalley.nsw.gov.au/cp_themes/default/page.asp?p=DOC-ITZ-42-35-17), accessed 16 December 2019.

<sup>138</sup> Eastern Suburbs Memorial Park, Price Guide, <http://www.easternsuburbsmemorialpark.com.au/price-guide>, accessed 16 December 2019.

<sup>139</sup> For example, Blue Mountains City Council itemises several service components, but it is not necessarily clear what the total price is for a standard adult lawn bodily interment service. Blue Mountains City Council, Fees and Charges 2019-2020, <https://www.bmcc.nsw.gov.au/documents/fees-and-charges-2019-2020>, accessed 16 December 2019.

- Other important information to enable price comparison is not always clearly specified in cemetery pricing schedules. For example, interment right specifications such as grave depth and size (eg single or double depth) are evident in some pricing schedules, but not in others.<sup>140</sup> This information is important for price comparison because it determines the number of interments that a right can accommodate.

**Table 7.1 Prices for an adult lawn bodily interment service (GST inclusive)**

Kempsey Council description (entirely bundled service)	Kempsey Council price	Eastern Suburbs Memorial Park description (partially bundled)	Eastern Suburbs Memorial Park price	Bega Valley Shire Council description (entirely unbundled service)	Bega Valley Council price
Land for each grave, first interment and perpetual maintenance	\$3,850	Right of Burial (two adult interments)	\$14,400	Cemetery maintenance fee (per burial)	\$410
		Interment fee	\$2,430	Excavation fee (single depth)	\$2,100
				First interment fee (includes concrete beam for memorial plaque)	\$1,865
				Fixing of plaque	\$190
				Purchase of plaque	POA
Total price for an adult lawn burial	<b>\$3,850</b>	Total price for an adult lawn burial	<b>\$16,830</b>	Total price for an adult lawn burial	<b>\$4,565</b> (plus cost of plaque)

**Note:** Some councils charge excavation (or digging fees), while others outsource this to funeral directors.

**Source:** Kempsey Shire Council, Fees and charges, <https://portal.lgsolutions.net.au/Fees/Public/Kempsey>, accessed 16 December 2019; Bega Valley Shire Council, Shire cemeteries, [https://www.begavalley.nsw.gov.au/cp\\_themes/default/page.asp?p=DOC-ITZ-42-35-17](https://www.begavalley.nsw.gov.au/cp_themes/default/page.asp?p=DOC-ITZ-42-35-17), accessed 16 December 2019; Eastern Suburbs Memorial Park, Price Guide, <http://www.easternsuburbsmemorialpark.com.au/price-guide>, accessed 16 December 2019.

### Interim finding

- Prices for bodily interment services are not displayed consistently and are difficult for consumers to compare.

## 7.4 Displaying prices using consistent terminology would make price comparison easier for consumers

We consider that consumers would benefit from greater transparency if all cemetery operators were required to publish prices consistently. Submissions to our Issues Paper agreed that all

<sup>140</sup> For example, Eastern Suburbs Memorial Park's pricing schedule specifies that a 'right of burial' is for 'two adult interments', while for other cemetery operators it is not clear how many interments a right can accommodate.

cemetery operators should be obliged to publish a pricing schedule,<sup>141</sup> and that purchasers should be provided with clear information about pricing that allows them to easily compare offerings both across and within cemeteries.<sup>142</sup> Box 7.1 outlines stakeholder views on pricing transparency.

#### **Box 7.1 Stakeholder views on transparent pricing for cemeteries**

- ▼ Blacktown City Council agreed that the current lack of transparency in pricing and lack of common terminology makes it difficult for consumers to compare cemeteries and products.<sup>143</sup>
- ▼ Catholic Cemeteries and Crematoria argued that the best outcomes from this review will be achieved if the price comparisons across different cemeteries are based on like for like products. There are only a few products and services which can be classified as like for like in the cemetery and crematoria industry.<sup>144</sup>
- ▼ CCANSW argued that IPART recommendations should relate to transparency in pricing and unbundling of major cost components.<sup>145</sup>
- ▼ Southern Metropolitan Cemeteries Land Manager agreed that pricing of all operators should be easily available and it should be transparent and clear to the members of the community.<sup>146</sup>
- ▼ Sydney Diocesan Secretariat submitted that simplicity and transparency is the most important pricing principle for IPART's review. It submitted that purchasers who may be vulnerable and experiencing trauma should be provided with clear information about pricing that allows them to easily compare offerings both across and within cemeteries.<sup>147</sup>

**Source:** Submissions to IPART Issues Paper

To be able to compare prices, consumers need to be able to compare prices on a like for like basis, and to understand the basis for prices when a service has multiple components. Currently, consumers have limited access to transparent and consistent information that allows them to scrutinise prices when purchasing bodily interment services.

Table 7.2 shows our proposed service categories and terminology:

- ▼ The interment right (the costs of purchasing and developing the land, direct costs of maintaining the grave or mausoleum, and a share of the costs of operating and maintaining the cemetery into the future)
- ▼ The interment (burying or placing the bodily remains in the grave or mausoleum), and
- ▼ Memorial (commemorating or identifying the person whose remains are interred).

<sup>141</sup> For example see Catholic Metropolitan Cemeteries Trust, Submission to IPART Issues Paper, June 2019, p 6.

<sup>142</sup> Sydney Diocesan Secretariat, Submission to IPART Issues Paper, June 2019, p 2.

<sup>143</sup> Blacktown City Council, Submission to IPART Issues Paper, June 2019, p 4.

<sup>144</sup> Catholic Cemeteries and Crematoria, Submission to IPART Issues Paper, June 2019, p 6.

<sup>145</sup> Cemeteries and Crematoria Association of NSW, Submission to Issues Paper, p 15.

<sup>146</sup> Southern Metropolitan Cemeteries Land Manager, Submission to IPART Issues Paper, June 2019, p 8.

<sup>147</sup> Sydney Diocesan Secretariat, Submission to IPART Issues Paper, June 2019, p 2.

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Table 7.2 also shows that within those service categories, there are more detailed cost components that vary depending on the product that a consumer chooses. As discussed in Chapter 5, these costs are determined by the activities that must be undertaken to inter bodily remains in a cemetery, and may vary substantially depending on characteristics such as:

- ▼ Location and size and depth of a plot
- ▼ Length of tenure
- ▼ Type of interment (eg some weekend or after hours burials attract a surcharge)
- ▼ Type of memorial (eg plaque, headstone or monument).

Without transparency, it is difficult to compare prices between cemeteries or to determine whether differences in prices are reasonable (that is, reflective of differences in underlying costs). As a particular example of this, as discussed in Chapter 5, cultural and religious practices and requirements for burial (such as a requirement for hand-dug graves) can increase the costs of interment. However, these additional costs should be transparently identified in any price differences for similar interment services in different cemetery sections.

As a consequence, we recommend that cemetery operators should be required to:

- ▼ Publish the **total price for a bodily interment service** on cemetery operator websites
- ▼ Itemise each service component using prescribed terminology, with an accompanying explanation describing each service component.

Our interim recommendation for appropriate terminology for each service component is outlined in Table 7.2. We are seeking feedback on this terminology from stakeholders.

**Table 7.2 Service components for bodily interment services**

Service category	Components	Explanation
<b>Interment Right</b> Right to inter (bury or place) bodily remains in a particular location in a cemetery	Site	Share of cost of purchasing and developing land for a cemetery attributable to that location.
	▼ Maintenance	▼ Share of cost of activities required to maintain the interment site and the cemetery into perpetuity (or the term of renewable tenure)
	▼ End of tenure costs	▼ Administration costs of contacting rights holder to see if they want to renew and costs of removing remains to prepare grave for resale (renewable tenure only).
<b>Interment</b> Act of burying or placing bodily remains in a grave or built structure	Excavation	Digging a grave to the appropriate size and depth.
	Order for interment	Cemetery operators must issue an order for interment before interring remains in a cemetery
	▼ Burial, or	▼ Burial of human remains in the ground, including landscaping after burial.
	▼ Placement	▼ Placement of human remains elsewhere than in the ground (eg, crypt, mausoleum).
<b>Memorial</b>	Plaque, monument, headstone, garden or other item to be installed on a site to commemorate or identify	Engraving and/or placement of a memorial.

**Source:** IPART, CCNSW general consumer guide to interment rights.

This approach to pricing aligns well with information standards for the funeral industry which were introduced as part of the Fair Trading Regulation NSW in 2019 (see Box 7.2).



### **Box 7.2 Fair Trading information standards for the funeral industry in NSW**

In 2019 Fair Trading NSW introduced new regulations for funeral directors providing funeral information to consumers. We consider that similar information standards should be applied to cemetery operators, and that the sections outlined below would be of particular benefit to consumers purchasing bodily interment services.

#### **8. Display and provision of funeral information to prospective consumers**

1. a funeral director must prominently display the funeral information in relation to the goods and services supplied by the funeral director -
  - a) at each place of business of the funeral director, and
  - b) on any public website maintained by the funeral director

#### **9. Provision of information to consumers**

Before entering into an agreement with a person for the supply of goods and services in relation to the burial or cremation of a body, a funeral director must provide the following information to the person –

- a) the price of each of the particular goods and services that will be supplied to the person under the agreement
- b) the cost of any disbursements that will be payable by the person under the agreement,
- c) the total amount payable under the agreement

**Source:** Fair Trading Regulation 2019 [NSW] under the Fair Trading Act 1987.

The terminology we are proposing is consistent with existing consumer guidance material and the Cemeteries and Crematoria Act 2013. In reaching our decision on appropriate terminology, we considered the following:

- ▼ How easily consumers will be able to interpret and compare pricing information from different sources.
- ▼ Information that is already available to assist consumers with purchasing bodily interment services, including the General consumer guide to interment rights in NSW.<sup>148</sup>
- ▼ The way that cemeteries currently publish prices for bodily interment services.
- ▼ Consistency with the Act and terminology used in contracts between cemetery operators and consumers. Cemeteries and Crematoria Association NSW (CCANSW) informed us that a legally sourced reference document (written in plain English) is available to CCANSW members to use when developing their own contracts for selling bodily interment services to consumers. We understand that the terminology in this document is largely consistent with the terminology in the Act.

While there may be benefit in cemetery operators publishing a pricing schedule in lay terms, we consider that this may create confusion for customers when comparing service descriptions in cemetery contracts and other material that may assist them in making

<sup>148</sup> Cemeteries and Crematoria NSW, General consumer guide to interment rights in NSW, [https://www.industry.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0019/219610/CCNSW-General-Consumer-Guide.pdf](https://www.industry.nsw.gov.au/__data/assets/pdf_file/0019/219610/CCNSW-General-Consumer-Guide.pdf), accessed 16 December 2019.

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decisions. As a consequence, we have proposed terminology that aligns with the Act and existing consumer guidance material. However, because some of these terms (eg interment) might not be accessible to all consumers, we recommend that cemetery operators be required to provide an accompanying explanation in lay terms. We have drafted suggested easy to understand explanations – see Table 7.2.

To demonstrate how cemetery operators should publish prices for a bodily interment service in accordance with these recommendations, we have provided illustrative examples, for both perpetual and renewable interment rights (see Table 7.3). These examples show how cemetery operators should be required to display prices for specific circumstances, including:

- ▼ **At-need and pre-need purchases** - Because bodily interment services can be purchased either pre-need or at-need, the price that a consumer pays upfront may vary. This is because a consumer purchasing a pre-need service will pay for the interment right (but not the interment fee), while a consumer purchasing an at-need service will purchase all service components (ie, the interment right and the interment fee). As a consequence, we recommend that cemetery operators publish **both** at-need prices and pre-need prices (shown in Table 7.3 and Table 7.4).
- ▼ **Renewable and perpetual tenure** - While very few cemeteries currently advertise prices for renewable tenure in NSW (because most are not yet offering it), we recommend that cemetery operators be required to publish information on type of right (ie, perpetual or renewable). In addition, we consider that operators should be required to publish the future maintenance component of the price for a bodily interment service, so that consumers can be made aware of the costs of maintenance and its contribution to the overall price for a bodily interment service. Future maintenance is discussed further in Chapter 6.

**Table 7.3 ABC Cemetery pricing schedule for an adult lawn burial – at-need**

Service category	Service component	Explanation	Price (inc GST)
<b>Interment right</b> Right to inter (bury or place) bodily remains in a particular location in a cemetery	▼ Site	▼ Share of cost of purchasing and developing land for a cemetery attributable to that location	\$4,000
	▼ Maintenance	▼ Activities required to maintain the burial site and the cemetery into perpetuity (or the term of renewable tenure)	▼ Maintenance: – \$50 <i>per year</i> for renewable tenure – \$7,500 for perpetual tenure
	▼ End of tenure costs <sup>a</sup>	▼ Administration costs of contacting rights holder to see if they want to renew and costs of removing remains and preparing grave for resale	▼ End of tenure costs (for renewable tenure): – \$1,000
<b>Interment</b> Act of burying or placing bodily remains in a grave or built structure	Excavation	digging the grave to the appropriate size and depth	\$300
	Order for interment	cemetery operators must issue an order for interment before interring remains at a burial site	\$200
	Burial or placement	Burial of human remains in the ground and landscaping after burial, or placement of human remains elsewhere than in the ground (eg, crypt)	\$2,000
<b>Memorial</b>	Plaque, monument, headstone, garden or other item to be installed on a site to commemorate or identify	Engraving and/or placement of a memorial	\$100
			<b>At-need price (inc GST)</b>
<b>Total price for an adult lawn burial (25 year tenure)</b>			<b>\$8,850</b>
<b>Total price for an adult lawn burial (50 year tenure)</b>			<b>\$10,100</b>
<b>Total price for an adult lawn burial (99 year tenure)</b>			<b>\$12,550</b>
<b>Total price for an adult lawn burial (perpetual tenure)</b>			<b>\$14,100</b>

<sup>a</sup> End of tenure activities are required when a renewable interment right reaches the end of its term. For perpetual rights these costs are not applicable.

**Note:** Prices are illustrative.

**Source:** IPART

**Table 7.4 ABC Cemetery pricing schedule for an adult lawn interment right – pre-need**

Service category	Service component	Explanation	Price (inc GST)
<b>Interment right</b> Right to inter (bury or place) human remains in a particular location in a cemetery	▼ Site	▼ Share of cost of purchasing and developing land for a cemetery attributable to that location	\$4,000
	▼ Maintenance	▼ Activities required to maintain the burial site and the cemetery into perpetuity (or the term of renewable tenure)	▼ Maintenance: – \$50 <i>per year</i> for renewable tenure – \$7,500 for perpetual tenure
	▼ End of tenure costs <sup>a</sup>	▼ Administration costs of contacting rights holder to see if they want to renew and costs of removing remains and preparing grave for resale	▼ End of tenure costs (for renewable tenure): – \$1,000
			<b>Pre-need price (inc GST)</b>
<b>Total price for an adult lawn interment right (25 year tenure)</b>			<b>\$6,250</b>
<b>Total price for an adult lawn interment right (50 year tenure)</b>			<b>\$7,500</b>
<b>Total price for an adult lawn interment right (99 year tenure)</b>			<b>\$9,950</b>
<b>Total price for an adult lawn interment right (perpetual tenure)</b>			<b>\$11,500</b>

<sup>a</sup> End of tenure activities are required when a renewable interment right reaches the end of its term. For perpetual rights these costs are not applicable.

**Note:** Pre-need purchases exclude the costs of interment- these costs are incurred at the time of burial. Prices are illustrative.

**Source:** IPART

### Interim recommendation

- 11 To make it easier for consumers to compare and understand prices for bodily interment services, cemetery operators be required by regulation to publish prices for all bodily interment services on a consistent basis. To do so, cemetery operators be required to publish the following:
  - The total price for a bodily interment service (ie, the sum of all necessary service components) for both at-need and pre-need purchases
  - Itemised prices for each service component of the bodily interment service, using the terminology described in Table 7.2, and including any additional costs due to cultural or religious requirements
  - Product specifications for the interment right, such as size and depth

- Length of tenure (renewable or perpetual) and the future maintenance pricing components for all relevant lengths of tenure.

## **7.5 A central website with all prices available would improve consumers' ability to compare prices**

We consider that in addition to cemetery operators publishing their prices online, a central website should be developed that allows consumers to compare prices from all cemeteries in one place. This website could be modelled on the Victorian cemeteries regulator's website's "cemetery search" function.<sup>149</sup>

### **Interim recommendation**

- 12 Within 12 months CCNSW to develop a central website to enable consumers to compare prices for interment services in one place.

## **7.6 All cemetery operators should have regard to future maintenance obligations when setting prices**

As previously discussed, the prices charged for interments are not regulated in NSW. Crown cemetery boards set prices for Crown cemeteries, councils set prices within their jurisdictions, and private operators set their own prices as do church and community operators.

In setting fees and charges under the CC Act, only Crown cemetery operators are required to have regard to future maintenance.<sup>150</sup> This means that other cemetery operators such as council, private, church and community operators are not required to have regard to future cemetery maintenance when setting their fees and charges. For most cemetery operators, it is not clear to what extent their fees for interment rights include the ongoing cost of maintaining interment sites and the cemetery.

Some council cemetery operators have included the costs of future maintenance in their interment fees and charges (see Box 7.3 below). These maintenance charges are based on the type of interment right (such as grave plot or niche) or per interment. In some cases, where interment rights have been purchased prior to a certain date, then maintenance fees will apply. This implies that maintenance costs may not have been fully factored into the past pricing of interment rights.

<sup>149</sup> Department of Health and Human service, Cemetery Search, <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria>, accessed 16 December 2019.

<sup>150</sup> *Cemeteries and Crematoria Act 2013*, s 107.

### Box 7.3 Maintenance fees for council cemetery operators

Some examples of council cemetery maintenance fees include:

- ▼ Bega Valley Shire Council has a cemetery maintenance fee of \$410 per burial for licences purchased from financial year 2014-15 onwards. It also has a maintenance fee for burial licences over 20 years old which is payable at the time of burial.
- ▼ Central Coast Council has a perpetual maintenance fee of \$890 per plot. It also has a perpetual maintenance charge for niches and ash placements sites of \$190 per permit.
- ▼ Hawkesbury City Council includes the costs of perpetual maintenance in the current charge for a burial plot. For those plots purchased prior to July 2014 it charges a perpetual maintenance charge of \$920.
- ▼ Shoalhaven City Council has a cemetery maintenance fee for its General Cemeteries of \$850 per service. This applies to all unexercised interment rights issued prior to October 1986.

**Source:** Bega Valley Shire Council Fees and Charges 2019-20, p 23-24, <https://www.begavalley.nsw.gov.au/page.asp?f=RES-GLC-71-65-36>, accessed on 21 November 2019; Central Coast Council Fees and Charges 2019-20, p. 231, [https://cdn.centralcoast.nsw.gov.au/sites/default/files/Council/Fees\\_and\\_Charges\\_2019-20\\_-\\_Adopted\\_Nov\\_2019.pdf](https://cdn.centralcoast.nsw.gov.au/sites/default/files/Council/Fees_and_Charges_2019-20_-_Adopted_Nov_2019.pdf), accessed on 21 November 2019; Hawkesbury City Council Operational plan 2019-2020, p. 132, [https://www.hawkesbury.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0007/131974/2019-2020-Operational-Plan.pdf#page=95](https://www.hawkesbury.nsw.gov.au/__data/assets/pdf_file/0007/131974/2019-2020-Operational-Plan.pdf#page=95), accessed on 21 November 2019; Shoalhaven City Council Delivery Program and Operational Plan Fees and Charges 2019-20 – Part 2, p 78, <http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=D19/229455>, accessed on 21 November 2019.

All cemetery operators should be pricing interment rights to reflect the costs of ongoing maintenance of interment sites and the cemetery. The price of an interment right (eg, an adult lawn burial or an ash interment) should include a component to fund long-term cemetery maintenance. This means that the price of an interment right should include an amount that could be invested to enable the perpetual maintenance of the cemetery to be fully funded from the return on that investment.

Interim recommendation 6 - requiring cemeteries to make financial provision for perpetual maintenance - should provide sufficient incentive for cemetery operators to include this cost in their prices. We have also developed a pricing tool to assist cemetery operators to calculate appropriate prices based on the full life cycle costs of a cemetery, which we discuss in section 7.7 below.

#### Interim Recommendation

- 13 In setting interment fees and charges, all cemetery operators should include future maintenance costs of their cemeteries.

## 7.7 We have developed an interment right pricing tool

IPART is developing a pricing tool which will provide guidance for cemetery operators to calculate a full cost recovery price for a 'basic bodily interment right' (an adult lawn interment right) - either a perpetual right or for a fixed tenure (renewable at the end of that tenure).

IPART is seeking feedback from cemetery operators about the proposed method for estimating full cost recovery prices. To assist stakeholders in understanding IPART's approach, we have developed an interim pricing tool for consideration. **It is only applicable**



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**to future cemeteries**, because it must be set up prior to the cemetery's first interment, but can continue to be used throughout the cemetery's life cycle once set up. For our Draft Report, we will consider feedback on the interim tool and develop it further to apply to existing cemeteries.<sup>151</sup> Our ultimate objective for this review is to develop a pricing tool which can be used by both existing and new cemeteries to estimate full cost recovery prices.

IPART considers the most appropriate approach to estimating prices for an interment right is the discounted cash flow (DCF) approach, and so the DCF approach has been adopted for the interim pricing tool. This approach sets prices by:

- ▼ Discounting all costs to a present value, and
- ▼ Determining a uniform price for an interment right that would recover those discounted costs over the life of the cemetery.

We envisage that use of the pricing tool will be voluntary, and that Crown cemetery land managers and local governments may use the tool to inform decisions on pricing for bodily interment right services.

#### Interim recommendation

- 14 Our pricing tool be made available to cemetery operators for use on a voluntary basis to inform decisions on pricing for bodily interment rights.

The sections below discuss the following:

- ▼ What the pricing tool does and does not calculate
- ▼ The key assumptions adopted in the interim pricing tool
- ▼ Illustrative interment right prices for an example cemetery
- ▼ Scenario analysis to highlight how prices change when key inputs such as land value, interments per hectare and the discount rate change.

### 7.7.1 Our pricing tool calculates the full cost of a bodily interment right

The tool calculates a price for an adult lawn bodily interment right, and allocates **land and maintenance costs** to interment rights assuming that every gravesite in the cemetery is an adult lawn grave). Most cemeteries offer different types of bodily interment services such as monumental graves, mausolea, etc, and they often charge less where a gravesite is smaller (eg, children's graves). The pricing tool does **not** calculate prices for these services. Rather, the tool serves as a full cost recovery price benchmark for a basic service. The 'basic service' price can be scaled up or down for non-basic services based on land area used by, and any additional costs of, the non-basic services. A renewable tenure price is also calculated relative to the perpetual tenure price (discussed further in Section 7.7.5).

The tool does not calculate a price for **interment** (ie, the process of burying or placing remains in a grave). The interment price is only required to recover **interment costs**, which are one-

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<sup>151</sup> Pricing for existing cemeteries is more complex because it must recognise the legacy of past pricing practices. We propose to explore these issues in our Draft Report.

off direct costs, at the time they are incurred, as opposed to the more complex calculation required for an interment right price.

In accordance with our recommendation that cemeteries should be required to publish itemised prices for bodily interment services, Table 7.5 shows which service components the pricing tool does and does not include.

**Table 7.5 Services that the pricing tool does and does not include**

Service category	Service component	Included in the pricing tool
Interment right	Site	Yes
	▼ Maintenance	Yes
	▼ End of tenure costs	Yes
Interment	Excavation	No
	Order for interment	No
	Burial or placement	No
Memorial	Plaque, monument, headstone, garden or other item to be installed on a site to commemorate or identify	No

**Note:** Users of the tool must input their operating expenses and cost of land.

**Source:** IPART

The aim of our pricing tool is to provide guidance to cemetery operators on pricing a complex service, for which substantial costs are incurred in the future. In order to overcome some of the complexity in pricing for future costs, we have applied a number of pricing assumptions which are outlined below.

### 7.7.2 We are seeking feedback on key assumptions in the tool

In developing the interim pricing tool, we employed a number of key assumptions which impact the prices that the tool produces. We envisage that they will also apply to the comprehensive pricing tool, and are seeking feedback on these assumptions from stakeholders. They include:

1. All perpetual interment rights, irrespective of timing of sales, should make an equitable contribution to the lifecycle costs of the cemetery, including holding costs.<sup>152</sup> That is, for a particular cemetery, an interment right purchased in year 1 and an interment right purchased in year 100 should pay the same (real) contribution towards the total holding costs of the cemetery, even though one gravesite was held vacant for 100 years and the other not at all.

<sup>152</sup> Holding costs refer to the fact that land must be bought, hence financed, many years before it generates any income. They are significant given the long-lived nature of cemeteries. In particular, there are holding costs associated with holding land for future use, and having to maintain the land being held for future use. The key issue for cemeteries is the potentially significant time gap between incurring costs, and the timing of revenue receipts from the sale of interment rights.

2. The pricing tool would be used to assess prices at the cemetery level (or sections of a cemetery), but not at the cemetery operator level (an operator may have multiple cemeteries). This assumption is chosen to avoid cross-subsidisation between cemeteries, and to produce prices that reflect the costs at each cemetery.
3. The pricing tool would produce prices which are discrete to the cemetery being assessed, that is, only costs related to the cemetery being assessed should be taken into account. This means, that the costs of developing future cemeteries are excluded from the tool.
4. Prices are paid at-need or pre-need for the interment right and there is no retrospective price adjustments for under or over cost recoveries.
5. Land should be included at its purchase cost, but for cemeteries located on gifted land,<sup>153</sup> the land value should be set at zero.<sup>154</sup> In addition, we do not recommend adjusting the land value of an established cemetery each year as surrounding land values change. Rather, as new cemeteries open, the rising opportunity cost of land will be reflected in higher interment right prices at the new cemeteries. More information on our approach to valuing land is discussed in Box 7.4. The interim pricing tool does not adjust land value over time, however in the more developed version of the tool, we will consider applying a CPI adjustment to reflect the real value of land into the future.
6. In presenting prices for a renewable tenure right, the tool also allows for end of tenure costs, and these are discounted to present values. Doing this ensures that an all-costs comparison is possible between perpetual and renewable tenures. This is particularly important, as submissions to our Issues Paper highlighted that end of tenure costs (ie, the administrative costs of contacting the right holder and the costs of lift and deepen) are not insignificant.<sup>155</sup>

#### Interim recommendation

- 15 Users of the pricing tool should include land value at its initial purchase cost, but for cemeteries that are located on gifted land, the land value should be zero. Land value for an established cemetery should not be adjusted over time to reflect changes in surrounding land values.

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<sup>153</sup> It is possible that the majority of existing Crown cemeteries and many local government cemeteries did not incur any financial cost for the land being used for cemetery purposes. That is, the land was gifted/allocated to the cemetery trusts or local governments by the Crown lands authority when the cemeteries were established.

<sup>154</sup> This is consistent with IPART's approach to including land in regulated water prices.

<sup>155</sup> For example, Rookwood General Cemetery submitted that the 'Estimated Renewable 25Yr License Price (Reuse after Remediation) for a lawn burial is around \$10,000 more than its current perpetual license price. Rookwood General Cemetery, submission to IPART Issues Paper, June 2019, p 5.

#### **Box 7.4 Approach to land value in the pricing tool**

Land is a finite resource, and suitable land is particularly scarce in Sydney. Cemeteries can occupy large areas of land which could be used for alternative purposes. These alternative purposes may present significant opportunities for revenue or social benefit. Prices can be used to signal scarcity, but periodically updating the land value of a cemetery would send an inefficient price signal, for two reasons:

1. Once land is used for a cemetery, it becomes heavily constrained. As a consequence, the opportunity cost of existing cemetery land is not increasing because there is no realistic opportunity to sell that land for another purpose.
2. High prices could encourage investment in new cemeteries as existing ones run out of capacity. However, we are recommending that the responsibility for identifying and purchasing land for new cemeteries in Sydney (and possibly other areas where suitable cemetery land is scarce) lies with the State Government and not current cemetery operators (see Chapter 5).

#### **7.7.3 We have estimated the discount rate to be 4.3% based on the WACC**

While the user of the pricing tool can apply their own estimate for the appropriate discount rate, we have provided a default discount rate of 4.3% as guidance (this includes an equity beta of 0.45 and a gearing ratio of 45%). Choosing an appropriate discount rate plays an important role in calculating prices, because all future costs (such as future maintenance of the cemetery) must be discounted back to the present value for a cemetery operator to set the price for an interment right.

Our method for calculating the default discount rate is based on IPART's standard approach to calculating the weighted average cost of capital (WACC). The WACC represents an average of the cost of debt (interest payments) and the cost of equity (return to shareholders). The WACC will vary depending on the industry being examined and the risks and returns observed in investment markets – see Box 7.5 for more information on how we have estimated the WACC for an efficient cemetery operator, and Appendix C contains more information on IPART's standard WACC methodology.

### Box 7.5 Estimating the WACC for an efficient cemetery operator

We have adopted a real pre-tax WACC of 4.3% as the default discount rate for an efficient cemetery operator, which includes:

- ▼ equity beta of 0.45
- ▼ gearing ratio of 45%.

This result uses IPART's August 2019 bi-annual update market observations.

Our equity beta is based on the lowest observed betas in the market. This is because there are very few pure-play cemetery operators in the market, so it is very difficult to observe the cost of equity.

We consider that cemetery operators face little demand risk, given the certainty of death, the preference of families for nearby interment, and the stability of preferences between interment and alternatives such as cremation. To the extent these factors may vary, that variance would likely be non-systematic. We took a similar approach for our recent reviews of the Valuer General and the NSW Electoral Commission.

For more information on IPART's method for calculating the WACC, see Appendix C.

#### 7.7.4 Interment right pricing example

The pricing tool requires a cemetery operator to input key information about the characteristics of the cemetery. For the purposes of illustrating the information that is required to use the tool, and the impact on price that each characteristic has, we have provided an example cemetery with the following key characteristics:

- ▼ Initial land purchase costs of \$30 million, including development costs
- ▼ Land area of 65 hectares, all of which is to be used for interment purposes
- ▼ The ability to fit 2,000 basic adult lawn interments per hectare
- ▼ An expected 500 basic adult lawn interments in the first year of operation
- ▼ An expectation that basic adult lawn bodily interments will grow by 1% per annum
- ▼ Maintenance costs are \$3 million per annum, irrespective of how full the cemetery is, into perpetuity.

Given the above characteristics, the full cost recovery interment right price for a basic adult lawn cemetery interment is presented in Table 7.6 and labelled 'base case'. We have illustrated the impact that each characteristic has on the overall price for a perpetual interment right (on both the land and maintenance components).

For example, increasing the size of the cemetery from 65 hectare to 100 hectares increases the price from around \$6,700 to around \$10,200. This is because a larger cemetery incurs not only greater maintenance costs, but also greater **holding costs** of land.<sup>156</sup> As discussed in Chapter

<sup>156</sup> Revenue may be received from other land uses while sections of the cemetery are yet to be developed for cemetery purposes.

5, holding costs are impacted by the time a cemetery takes to reach full capacity (ie sell all of its interment rights). This means that the period for which the costs of buying and maintaining the land are incurred (but not yet recovered by revenue from sold rights) is greater.

**Table 7.6 Pricing tool scenario analysis**

Key parameters	Base case	Change in			
		Discount rate	Cemetery size	Maintenance costs	Interments per hectare
Discount rate (real pre-tax)	4.3%	5.3%	No change	No change	No change
Cemetery size	65 hectares	No change	100 hectares	No change	No change
Annual maintenance costs	\$3,000,000	No change	\$4,615,385 <sup>a</sup>	\$4,000,000	No change
Interments per hectare	2,000	No change	No change	No change	2,500 <sup>b</sup>
<b>Perpetual interment right price</b>					
Land	\$2,012	\$2,592	\$3,063	\$2,012	\$1,999
Maintenance	\$4,680	\$4,891	\$7,124	\$6,240	\$4,648
<b>Total price</b>	<b>\$6,692</b>	<b>\$7,484</b>	<b>\$10,187</b>	<b>\$8,252</b>	<b>\$6,647</b>

<sup>a</sup> In this scenario, the land value and the annual maintenance costs have been increased in proportion to the increase in land size. Therefore, the unit rates for land and annual maintenance costs per hectare have not changed. As a result, the change in price reflects the increase in holding costs associated with incurring costs prior to receiving revenue to cover those costs.

<sup>b</sup> By increasing the interments per hectare, the cemetery is able to take more interments which extends its life when the interment profile is held constant. However, the downward pressure on the prices resulting from a greater number of interments per hectare is partially offset by the increase in holding costs driven by a longer timeframe to full capacity for the cemetery.

**Note:** Totals may not add due to rounding.

**Source:** IPART analysis.

### 7.7.5 The pricing tool will assist cemeteries in setting prices for renewable tenure

As discussed in Chapter 1, renewable tenure (which was formally introduced in NSW in 2018) enables a cemetery to sell an interment right for a fixed period, and then re-sell the right when the fixed period expires.<sup>157</sup> The descendants of the deceased (the first right holder) can renew the tenure for another fixed period, or the right can be sold by the cemetery to another person.

At the cemetery level, renewable tenure can provide benefits to cemetery operators, because a cemetery can accommodate a greater number of interments with a fixed amount of land, compared to a cemetery that only offers perpetual interment rights. However, this assumes that renewable right holders are prevented from renewing their rights into perpetuity (which would reduce the land-efficiency benefits of renewable tenure).<sup>158</sup>

Modelling prices for a cemetery that offers both perpetual and renewable tenure is complex because:

<sup>157</sup> Department of Industry, Guide to Interment rights system in NSW, [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0016/210409/Guide-to-the-interment-rights-system-in-NSW.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0016/210409/Guide-to-the-interment-rights-system-in-NSW.pdf), accessed 4 December 2019, pp 1, 6.

<sup>158</sup> In NSW purchasers of renewable interment rights can only renew the right for a total maximum of 99 years.



- ▼ Preferences for renewable or perpetual tenure are not well understood. Most cemetery operators in NSW are not yet offering renewable tenure. These preferences impact demand profiles and the speed at which cemetery land is likely to be utilised. This is because renewable tenure allows a cemetery to re-use the same site for a new customer when the initial right expires.
- ▼ The land area required for a specified number of interment rights changes substantially between the perpetual and renewable right options. Under perpetual tenure the land required is proportional to the total number of interments over the life of the cemetery. However, under renewable tenure, significantly less land is required because each plot can accommodate multiple interments over time.
- ▼ When a holder of a renewable right opts to renew that right at the expiry date, part of the benefit of renewable tenure to the cemetery (ie, the land-saving effect) is reduced. Instead of accommodating two interments, that plot only accommodates one.
- ▼ A cemetery's holding costs will change with the change in the utilisation of cemetery land. While renewable tenure allows a right to be sold multiple times, it also means that when a right expires, it once again becomes an unsold lot (for which holding costs are again incurred, and the revenue to recover these costs is not realised until the point at which right is re-sold).

Because of these complexities, we have developed two methods to model prices for renewable tenure, which are discussed below.

1. **Renewable interment right price (first tenure).** We have developed a formula, shown in Appendix D that expresses the relationship between perpetual and renewable tenure. This formula does not yield a constant ratio of renewable to perpetual prices because the relationship depends on the following:
  - Planned life of the new cemetery
  - Number of years after an interment that the first re-use can occur
  - Discount rate
  - End of tenure costs of one interment right so that a plot can be re-used
  - The pattern of the number of people who must be interred in year  $t$
2. **Renewable interment right price (second and subsequent renewal).** As discussed above, when the term of a right expires, the right holder can renew the right or allow the right to be sold to another person. If the right is renewed, then that right holder is effectively preventing the re-use of the site. In which case, they should pay the equivalent price for perpetual tenure, relative to the term of renewal. This requires us to set a price based on the '*indifference principle*'. Unlike the first method (the formula), the indifference principle does not account for any savings from land re-use enabled by renewable tenure, and so the price under the indifference principle is higher. Box 7.6 discusses the indifference principle in more detail.

### Box 7.6 The indifference principle between perpetual and renewable tenure

For a single interment plot, there is a price for the renewable tenure right that would make the cemetery indifferent between a series of renewals on one hand and a perpetual tenure right on the other. To achieve this level of indifference, the renewable tenure price would be a function of the:

- ▼ Perpetual price
- ▼ Discount rate
- ▼ Length of the tenure.

To calculate an indifference-principle renewable price, the following steps are required:

1. The perpetual price is converted to a payment stream into perpetuity using the appropriate discount rate. For example, a perpetual price of \$1,000 is equivalent to annual payments of \$41.23 into perpetuity when a discount rate of 4.3% is used.
2. The renewable price is calculated by discounting the annual perpetual payments over the relevant timeframe using the appropriate discount rate (ie, the same discount rate used in step 1). For example, for a renewable tenure of 25 years, a series 25 years in length of \$41.23 would be discounted to the present value using the 4.3% discount rate. This would equate to a renewable tenure interment right price of \$650.95.

The comparison of the \$1,000 perpetual interment right price and the \$650.95 renewable price for a 25 year tenure does not take into account end of tenure costs. The present value (discount for 25 years at 4.3% in this example) of the end of tenure costs would need to be added to the renewable tenure price of \$650.95 for a complete all-cost comparison between renewable and perpetual interment right prices.

This indifference principle means that a cemetery operator would receive the same amount of revenue regardless of whether the plot is sold under perpetual or renewable rights.

Source: IPART

Table 7.7 illustrates the two methods for setting prices for renewable tenure and how they compare to the price for perpetual tenure. Method one (formula) produces lower prices for renewable tenure than method two (indifference principle). However, both methods produce lower prices than the price for perpetual tenure.

Table 7.7 also highlights the difference in prices for renewable and perpetual tenure. We found that the price differential between perpetual and renewable tenure reduces as the length of tenure increases. For example, the price for a renewable tenure right with a term of 99 years is only slightly less than the price for a perpetual interment right. This is consistent with CCANSW's submission to our Issues Paper which noted that "the cost of maintenance for a 99 year term interment right and a perpetual interment right is relatively the same when calculated using a discounted cash flow".<sup>159</sup>

<sup>159</sup> CCANSW submission to IPART Issues Paper, June 2019, p 10.

**Table 7.7 Perpetual and renewable interment right (25 year tenure) prices**

Interment right prices	
<b>Perpetual interment right price</b>	
Land	\$2,012
Maintenance	\$4,680
Total	<b>\$6,692</b>
<b>Renewable interment right price (first tenure)</b>	
<b>Method 1 - formula approach</b>	
Land	\$603
Maintenance	\$2,693
End of tenure costs <sup>a</sup>	\$506
Total	<b>\$3,802</b>
<b>Renewable interment right price (second and subsequent renewals)</b>	
<b>Method 2 - indifference principle</b>	
Land	\$1,310
Maintenance	\$3,046
End of tenure costs <sup>b</sup>	\$175
Total	<b>\$4,531</b>

<sup>a</sup> For first tenure renewable rights, a value of \$1,450 has been used for end of tenure costs (administration and 'lift and deepen') as an example only. This \$1,450 has been discounted over 25 years for the 25 year renewable tenure by 4.3% to arrive at the estimate of \$506 present in the table.

<sup>b</sup> For second and subsequent renewals, a value of \$500 has been used for end of tenure costs, reflecting administration costs only, as the lift and deepen costs already paid at first tenure were not incurred due to the renewal. When the \$500 is discounted by 4.3% over 25 years, it is worth \$175.

**Note:** Totals may not add due to rounding.

**Source:** IPART analysis.

We consider that our pricing tool (once fully developed) will enable cemetery operators to overcome some of the complexity in setting full cost-recovery prices, and also in establishing relative prices for renewable tenure. This may encourage more cemeteries to offer renewable tenure in NSW, which will provide greater opportunities to use cemetery land more efficiently in areas of NSW where land is particularly scarce.

Submissions to our Issues Paper, such as the Jewish Board of Deputies and the Lebanese Muslim Association indicated that renewable tenure is not suitable for all faith groups,<sup>160</sup> and so it is likely the cemeteries will continue to offer perpetual tenure to meet the needs of these communities. However, there may be some groups of consumers for whom renewable tenure is appropriate. Because we have found that prices for renewable interment rights with shorter lengths of tenure can be cheaper than a perpetual interment right, we consider that renewable tenure may provide an opportunity for consumers who would prefer to be buried, but for whom purchasing a perpetual interment right would be less affordable.

<sup>160</sup> In the case of Muslim communities, the statutory renewable tenure regime is not an option which can be taken up under current soil decomposition. In the case of the Jewish community, the statutory renewable tenure regime is not an option which can be taken up. NSW Jewish Board of Deputies and Lebanese Muslim Association, submission to IPART Issues Paper, June 2019, p 8.

## 7.8 We will further investigate options for recovering legacy costs

In Chapter 6 we discussed our proposal to further investigate the extent of legacy costs for existing cemeteries. Once the extent of the legacy costs for cemeteries is known, the next step is to consider how these costs could be recovered. Within a cemetery's operations, legacy costs could potentially be recovered from new interment rights holders, per interment (eg. a charge per type of interment), or from other cemetery services (eg. cremations).

Depending on the life cycle of a cemetery, the options for recovering legacy costs are likely to have different impacts on prices. For example, if a cemetery is near the end of its life and legacy costs are high, then recovering these costs from new interment rights could result in a significant increase in these prices, thereby compromising the principle of affordability.

Another option suggested in a submission to our Issues Paper was for existing cemetery managers to be supported in acquiring new land so they can cross-subsidise the cost of maintaining old land and the graves located in both the old and new land.<sup>161</sup> Alternatively, the legacy costs from past interments could be recovered more broadly from ratepayers or taxpayers.

We consider that further investigation of the extent of the legacy costs is required before we can make recommendations about how to deal with them. Further, when considering options for recovering the legacy costs at a cemetery, we need to provide the right incentives for cemetery operators to ensure they make adequate provision for the perpetual maintenance of their cemeteries.

Any more prescriptive pricing requirements could be included in a regulation for the establishment of interment industry schemes under section 31 of the CC Act and could target operators that are currently not subject to an obligation (eg Local Government and private operators). CCNSW could require cemetery operators to report on their compliance with any requirements of an interment industry scheme.

In the interim before a regulation is developed, CCNSW can require cemetery operators to provide reports on matters or information.<sup>162</sup> This could include requiring cemetery operators to report on how they are including future maintenance costs of a cemetery in prices.

## 7.9 We have considered how our interim recommendations address affordability of interment prices

Our first pricing principle for this review is that interment prices should be affordable and equitable for all.

Our recommendations to encourage more efficient costs should help improve affordability of interment prices. However, we note that our investigations have also revealed the potential that some costs are not currently being adequately recovered in prices, suggesting that prices might need to increase to cover them. This could put affordability at risk.

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<sup>161</sup> NSW Jewish Board of Deputies & Lebanese Muslim Association, Submission to Issues Paper, June 2019, p. 5.

<sup>162</sup> *Cemeteries and Crematoria Act 2013*, s 43.

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There is a range of different ways to deliver affordability. For example, one way is to offer targeted assistance to those of limited means. Some of the existing sources of assistance for funeral and interment costs include:

- ▼ The NSW Government conducts destitute funerals for those who die with no money, and have no family or friend willing to pay for a funeral
- ▼ Centrelink offers bereavement payments to the spouse or carer of the deceased, which can be put towards funeral costs
- ▼ The Department of Veterans Affairs offers a bereavement payment to the surviving partner of a veteran receiving a service pension
- ▼ The Aboriginal Land Council offers grants to assist Aboriginal and Torres Strait Islander people with paying for a funeral
- ▼ Some charitable organisations provide assistance towards funeral costs in some situations.

Another way is to require cemeteries to offer a basic interment right (that meets religious and cultural requirements) at an affordable price as one of a range of products. Cemeteries can still offer other services at different quality levels for a range of prices, but a suitable and dignified interment at an affordable cost must be one of them.

While we have focused on a basic adult lawn grave in our analysis of costs and price modelling, we consider that further work is necessary before we make any recommendations regarding requiring cemeteries to provide this service at a specified cost. We need to establish the extent of legacy costs and the likely impact of full cost recovery on prices through further modelling. Generally speaking it is preferable to target assistance to those who need it, rather than reducing prices for all including those who could afford to pay.

## A List of submissions to Issues Paper

Date	Submitter
20-May-2019	Organisation – Anonymous - Confidential
22-May-2019	The Hills Shire Council - Confidential
4-June-2019	Individual – Anonymous - Confidential
5-June-2019	Wollongong City Council
5-June-2019	Organisation – Anonymous - Confidential
6-June-2019	Organisation - Anonymous
6-June-2019	Cessnock City Council
6-June-2019	Hornsby Council
6-June-2019	Blacktown City Council
6-June-2019	Organisation – Anonymous - Confidential
6-June-2019	Australian Funeral Directors Association
6-June-2019	Local Government NSW
6-June-2019	Cemeteries & Crematoria Association of NSW
7-June-2019	Central Coast Council and Lake Macquarie Council
7-June-2019	Hawkesbury City Council - Confidential
7-June-2019	Sydney Diocesan Secretariat
7-June-2019	Organisation – Anonymous – Confidential
7-June-2019	Individual – J. Master - Confidential
7-June-2019	Southern Metropolitan Cemeteries Land Manager
7-June-2019	Moree Plains Shire Council
7-June-2019	The Hills Shire Council - Confidential
7-June-2019	Rookwood General Cemetery
7-June-2019	Combined Pensioners & Superannuants Assoc (CPSA)
13-June-2019	Tenterfield Shire Council
14-June-2019	Catholic Cemeteries & Crematoria
14-June-2019	Albury City Council
14-June-2019	Northern Beaches Council
18-June-2019	City of Newcastle
28-June-2019	NSW Jewish Board of Deputies and Lebanese Muslim Association
5-July-2019	Organisation – Anonymous - Confidential



## B Interim pricing tool overview

As discussed in Chapter 7, we have developed an interim pricing tool to help cemetery operators to set cost-reflective interment right prices for a new cemetery. This appendix explains how to use the pricing tool.

The purpose of the interim basic adult lawn cemetery interment right pricing tool (the pricing tool) is to allow cemetery operators to gain an understanding of IPART's intended approach to estimating full cost recovery interment right prices for a basic adult lawn cemetery interment right.

The interim pricing tool will only work for future cemeteries, prior to the first interment. We are developing another version of the model which will work for established cemeteries that already have interments, for release with our draft report.

The pricing tool does not calculate a price for **interment** (burial), just the **interment right**.

The basic **interment right** price has two cost categories, which are calculated and presented separately within the pricing tool:

- ▼ Land costs – including purchase cost of land and development costs of land
- ▼ Maintenance costs – including direct maintenance costs of the grave site, administration costs and cemetery overhead costs.


### B.1 Pricing tool outputs

The pricing tool estimates perpetual and renewable tenure interment right prices. The renewable tenure interment right prices can be calculated for different timeframes. The user of the pricing tool can enter the renewable tenure timeframe which is appropriate for their analysis.

### B.2 How does the pricing tool work?

The pricing tool calculates an interment right price into perpetuity using the discounted cash flow approach (ie, the present value of costs are divided by the present value of demand). The pricing tool estimates renewable tenure right prices for two different situations. It estimates an initial renewable tenure interment right price based on a formulaic approach (presented in appendix D), and for second and subsequent renewals of an interment right based on the estimated price into perpetuity using the indifference principle (discussed in Chapter 7).

The pricing tool works on the unit of basic bodily interment equivalents. This means the prices generated in the pricing tool are for a basic adult lawn cemetery bodily interment right only. The price can then be scaled up or down to reflect the differential in land requirements between the basic service and alternative services.



The timeframe of the pricing tool is 1,100 years. This timeframe was selected to allow sufficient time to capture the perpetual nature of cemetery operation after the closure of a cemetery. The pricing tool's estimate of the year in which a cemetery will close is entirely dependent on the inputs entered into the pricing tool by the user.

All pricing tool inputs must be entered in real terms, ie, they should not be adjusted for forecast inflation. All inputs should also be entered on a consistent dollar basis, eg, \$2019-20. Further, all inputs must be entered exclusive of GST.

All inputs currently in the pricing tool are example inputs only, and with the exception of the discount rate, do not represent IPART's position on efficient costs or interment characteristics. When using this pricing tool, all inputs need to be considered and should reflect the environment for which prices are being assessed.

### **B.2.1 Basic adult lawn cemetery interment profile**

The pricing tool requires a basic adult lawn cemetery interment profile over the life of the cemetery. There are two options for this in the pricing tool:

- ▼ The user enters the interment profile, or
- ▼ The user enters a few key parameters and the pricing tool will calculate an interment profile.

### **B.2.2 Land costs**

The pricing tool also requires information on land purchase costs and forecast land development costs.

### **B.2.3 Maintenance costs**

Interment right maintenance costs include, but are not limited to:

- ▼ Grounds maintenance (including labour, plant and equipment involved in maintenance but not for burials)
- ▼ Corporate overheads (HR and finance staff, head office lease costs etc),
- ▼ Sales staff costs and
- ▼ Utility costs (water and electricity).

Maintenance cost forecasts should be entered for the period they are available, and held constant thereafter. That said, the costs may change beyond the initial forecast period with the expected staged development of a cemetery, and following cemetery closure.

Costs associated with burial or placement of remains should not be entered. The pricing tool calculates the interment right price, and the direct costs of burial or placement should be recovered through a separate price for interment.

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#### **B.2.4 Potential revenue for unused land**

If a cemetery is being developed in stages, there may be potential to lease the undeveloped land. Any potential revenue from leases should be entered in the pricing tool – this revenue offsets the price for an interment right. The pricing tool assumes that 100% of revenue generated from undeveloped land is offset against prices. To assess alternative revenue sharing arrangements, the amount of revenue should be adjusted by the required proportion.

## C Weighted average cost of capital (WACC)

As discussed in Chapter 7, the pricing tool for cemetery operators requires an estimate of the discount rate, which is an input that can be entered by the cemetery operator using the pricing tool. For the simplified pricing tool we have included a default discount rate of 4.3% as guidance for cemetery operators using the tool. We have based the default discount rate on the pre-tax real WACC for an efficient cemetery operator.

### C.1 Calculating the WACC

We have used our standard approach for calculating the WACC, which we undertook extensive public consultation on and reviewed in 2018. In keeping with our standard WACC method, we adopted current market observations for the cost of debt, inflation and the market risk premium.<sup>163</sup> We adopted the following firm-specific parameters:

- ▼ Gearing ratio of 45%
- ▼ Equity beta of 0.45

The parameters underlying the WACC calculation can be grouped into two categories:

- ▼ **Market-based parameters**, which include risk-free rate, debt margin, inflation rate and MRP. These parameters are common to businesses in all industries.
- ▼ **Industry-specific parameters**, which include equity beta and gearing ratio. These parameters are specific to the business' particular industry.

#### Estimating the market-based parameters

##### Risk free rate

The risk-free rate is used as a point of reference in determining both the cost of equity and the cost of debt within the WACC. It is used as a base rate to which an equity or debt risk premium is added to reflect the riskiness of the specific business for which the rate of return is being derived.

In line with our updated WACC methodology, we used the 10-year Commonwealth Government Security yields published by the RBA and estimate the historic risk-free rate as a 10-year trailing average and the current risk free-rate as a short-term trailing average with the length of this term matching the regulatory period.

##### Debt margin

The debt margin represents the cost of debt a company has to pay above the nominal risk-free rate.

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<sup>163</sup> This result uses IPART's August 2019 bi-annual update market observations, using a six year regulatory period. We have used a six year regulatory period because of the long term nature of the interment industry.

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In line with our WACC methodology, we will use the 10-year corporate bonds rated as BBB, and estimate the historic debt margin as a 10-year trailing average and the current debt margin as a short-term trailing average with the length of this term matching the regulatory period.

### **Inflation rate**

The inflation rate is used to convert the nominal pre-tax WACC into a real pre-tax WACC. We use the expected rate of inflation over the regulatory period. For this parameter we have used a 10-year geometric average of the 1-year RBA inflation forecast and the middle of the RBA's target band of inflation (currently at 2.5%) for the remaining years of the regulatory period.

### **Market risk premium**

The market risk premium (MRP) is the expected rate of return over the risk-free rate that investors would require for investing in a market portfolio. The MRP is an expected return and is not directly observable. Therefore, it needs to be estimated through proxies. In line with our WACC methodology, we used both current market data and long-term averages. For the:

- ▼ current market data we will establish an MRP range using our six MRP methodologies to estimate the cost of equity, and
- ▼ long-term averages we will use an MRP range of 5.5% to 6.5% with a midpoint of 6.0%, based on the historical arithmetic average of the excess market return over the risk-free rate, to estimate the cost of equity.

### **Estimating the market-based parameters**

#### **Equity beta**

The equity beta measures the extent to which the return of a particular security varies in line with the overall return of the market. It represents the systematic risk of a security that cannot be avoided by holding it as part of a diversified portfolio. The equity beta does not take into account business-specific or diversifiable risks.

In each price review we conduct, we determine the value of the equity beta for the relevant business. We do this by estimating the equity betas of (listed) comparable firms, and considering the equity betas that other regulators have applied to comparable businesses.

For this review, we have estimated an equity beta for an efficient cemetery operator. However, because it is very difficult to observe the cost of equity for pure-play cemetery operators in the market, we have followed the approach we took for the Valuer General and NSW Electoral Commission price reviews. That involved selecting the lowest equity beta observed in markets on the basis that cemeteries face low and largely non-systematic demand risks and low cost risks, given the certainty of death, the preference of families for nearby interment, and the stability of preferences between interment and alternatives such as cremation. To the extent these factors may vary, that variance would likely be non-systematic.

## Gearing ratio

The gearing ratio is the proportion of debt to total assets in the business' capital structure. Regulators commonly adopt a benchmark capital structure rather than the actual capital structure of the regulated entity, to ensure that customers not bear the costs associated with an inefficient capital structure.

For an efficient cemetery operator, we have adopted a gearing ratio of 45%. This is consistent with the gearing ratio that we used for the Valuer General and NSW Electoral Commission price reviews.

Table C.1 summarises the WACC calculation for an efficient cemetery operator.

**Table C.1 – WACC calculation**

Step 1			Step 2 - Final WACC range		
	Current market data	Long term averages	Lower	Midpoint	Upper
Nominal risk free rate	2.5%	3.2%			
Inflation	2.4%	2.4%			
Implied Debt Margin	2.2%	2.7%			
Market Risk premium	8.8%	6.0%			
Debt funding	45%	45%			
Equity funding	55%	55%			
Total funding (debt + equity)	100%	100%			
Gamma	0.25	0.25			
Corporate tax rate	30%	30%			
Effective tax rate for equity	30%	30%			
Effective tax rate for debt	30%	30%			
Equity beta	0.45	0.45			
Cost of equity (nominal post-tax)	6.5%	5.9%			
Cost of equity (real-post tax)	4.0%	3.4%			
Cost of debt (nominal pre-tax)	4.7%	5.9%			
Cost of debt (real pre-tax)	2.2%	3.4%			
Nominal Vanilla (post-tax nominal) WACC	5.7%	5.9%	5.7%	5.8%	5.9%
Post-tax real WACC	3.2%	3.4%	3.2%	3.3%	3.4%
Pre-tax nominal WACC	6.7%	6.8%	6.7%	6.8%	6.8%
<b>pre-tax real WACC point estimate</b>	<b>4.2%</b>	<b>4.3%</b>	<b>4.2%</b>	<b>4.3%</b>	<b>4.3%</b>
<i>Note: The final WACC range is given by the midpoints of the WACC ranges estimated using current market data and long-term averages. In Step 1, we estimate the midpoint of the WACC range estimated using current market data (Column C) and the midpoint of the WACC range estimated using long-term averages (Column D). In Step 2, the minimum of the 2 midpoints from Step 1 will be the lower bound of the final WACC range, and the maximum of the 2 midpoints from Step 1 will be the upper bound of the final WACC range.</i>					



## D Formula approach to modelling prices for renewable interment rights (first tenure)

As discussed in Chapter 7, we have applied a formula to model prices for renewable tenure. This appendix presents the dynamic relationship between perpetual and renewable interment rights (first tenure), land requirements, maintenance costs and holding costs algebraically.<sup>164</sup>

Let:

1.  $L$  be the planned lifetime of a new cemetery
2.  $r$  be the discount rate
3.  $m$  be the annual maintenance cost per interment right
4.  $\lambda$  be the land purchase cost per interment right plot in year 0, and the capital costs of developing the land into a cemetery (pro-rata per plot)
5.  $T$  be the number of years after an interment that the first re-use can occur (we assume  $T < L$ )
6.  $d$  be the end of tenure costs of one interment right so that a plot can be re-used
7.  $t$  be the year after year 0
8.  $\text{IntR}(t)$  be the number of people who must be interred in year  $t$
9.  $N(L)$  be the net present value of the number of interment rights from year 0 to year  $L$

The present value of the cost incurred by the cemetery operator for one standard interment right, inclusive of land purchase and maintenance in perpetuity is:

$$\text{PVplot\_cost} = \lambda + m/r$$

In any year  $t$  the number of new plots required will be:

- ▼ perpetual tenure  $\text{newplots}(t) = \text{IntR}(t)$
- ▼ renewable tenure  $\text{newplots}(t) = \text{IntR}(t) - \text{reuses}(t)$   
 $= \text{IntR}(t) - \text{IntR}(t - T)$  (assuming  $t > T$ )

Note that  $\text{reuses}(t)$  is assumed equal to  $\text{IntR}(t - T)$ , which is the number of re-usable plots coming available in year  $t$ . The people buried in those plots do not require new land.

The amount of land that the cemetery operator must buy in year 0 is:

- ▼ perpetual tenure land  $= \text{plots}(L) = \sum_{t=1}^L \text{IntR}(t)$
- ▼ renewable tenure land  $= \sum_{t=1}^L \text{IntR}(t) - \sum_{t=1}^{L-T} \text{IntR}(t) = \text{plots}(L) - \text{plots}(L-T)$

<sup>164</sup> Second and subsequent renewals of interment rights are calculated using the indifference principle.

The present value of total costs for perpetual tenure is just  $\text{plots}(L) (\lambda + m/r)$ . For renewable tenure, there is an additional end of tenure cost of a plot's previous occupant so that the plot can be re-used. The present value of total costs for renewable tenure is therefore:

$PV_{\text{total\_cost}} = \text{land and maintenance costs for new land} + PV_{\text{end of tenure costs}}$

$$= (\text{plots}(L) - \text{plots}(L - T)) \left( \lambda + \frac{m}{r} \right) + \frac{N(L - T) d}{(1 + r)^T}$$

Note that the present value of end of tenure costs is the unit end of tenure cost times the present value of the number of reuses up to time  $L$ .

The prices per plot that equalise the present value of costs and present value of revenues are:

- ▼ perpetual tenure

$$p_p(L) = \frac{\text{plots}(L)}{N(L)} \left( \lambda + \frac{m}{r} \right)$$

- ▼ renewable tenure

$$p_r(L) = \frac{(\text{plots}(L) - \text{plots}(L - T)) \left( \lambda + \frac{m}{r} \right)}{N(L)} + \frac{N(L - T) d}{N(L) (1 + r)^T}$$

We can now express the renewable tenure price fairly simply as a function of the perpetual tenure price:

$$p_r(L) = p_p(L) - \frac{p_p(L - T) N(L - T)}{N(L)} + \frac{d N(L - T)}{N(L) (1 + r)^T}$$

This formula will not yield a constant ratio of renewable to perpetual prices because the relationship depends on  $L$ ,  $T$ ,  $r$ ,  $d$  and the pattern of  $\text{IntR}(t)$ . This formula does not depend on  $\lambda$  or  $m$ .

## Glossary

Ashes	Cremated human remains.
At need purchase	When an interment right is bought by a customer at the time it is required to be used for interment of a deceased person or their ashes.
Bodily remains	The whole or part of the body of a person who has died, but does not include the whole or part of any body that has been cremated.
Burial	In this paper, we use 'burial' to mean the placement of human remains (whether bodily remains or ashes) in the earth, unless quoting the CCNSW Annual Activity Survey which uses 'burial' to mean any type of interment of bodily remains only.
CC Act	<i>Cemeteries and Crematoria Act 2013</i>
CCNSW	Cemeteries and Crematoria NSW
<i>Cemeteries and Crematoria Act 2013</i>	The NSW Act that regulates administration and planning for the interment industry.
Cemeteries and Crematoria NSW	The NSW government agency which supports and regulates the interment industry through strategic planning, advice and oversight of Crown land managers.
Columbarium	A room or building with niches where ashes can be interred.
Crown cemetery	Crown land dedicated, reserved or used for the purposes of a public cemetery.
Crown cemetery operator	The Crown land manager that operates a Crown cemetery.
Crown land manager	The organisation responsible for managing Crown land under the <i>Crown Land Management Act 2016</i> . Under the previous <i>Crown Lands Act 1989</i> , these organisations were known as reserve trusts.

Crypt	Traditionally, a below-ground room housing interment spaces; in current usage, usually an interment space within a mausoleum.
Interment	The placement of human remains (whether <b>bodily remains</b> or <b>ashes</b> ) in the earth or in a mausoleum, crypt, vault, columbarium, niche wall or other structure designed for the placement of such remains.
Interment right	The right for the remains of a person to be interred at a particular site within a cemetery.
Lawn grave	A type of grave that is usually level with the ground with standard low headstone or plaque set into a concrete beam level with the ground.
Mausoleum	A free-standing building enclosing interment space or spaces
Monumentation	Headstones, statuary and other built objects that are placed on a grave.
Pre-need purchase	When an interment right is bought by a customer before the death of the person whose remains will be buried there.
Sydney	The Central, South, North, West, West-Central and South-West planning regions as defined by the Greater Sydney Commission in the <i>Greater Sydney Draft District Plan Map Atlas</i> , November 2016, accessible at <a href="http://www.greater.sydney/maps">www.greater.sydney/maps</a> .
Vault	Traditionally, a below-ground room with a vaulted ceiling housing interment spaces; in current usage, can be synonymous with a mausoleum – a stand-alone building housing interment spaces, or used to refer to an interment space within a mausoleum.