



Cemeteries and Crematoria Association of NSW (CCANSW) feedback re IPART's Draft Report Interment Costs and Pricing in NSW Cemeteries

The Cemeteries and Crematoria Association of NSW (CCANSW) is supportive of IPART's stated aim, to recommend changes to the interment industry that should deliver

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

The Association acknowledges that this piece of work is ground-breaking, both in the breadth of investigation and its endeavour to apply economic pricing principles to aspects of the cemetery industry. Whilst the public perception is that the delivery of cemetery services requires quite a simple business model, in reality there are many levels of complexity.

Concise Summary of CCANSW response

- Given its remit, IPART has focused on interments without full consideration of all the elements that constitute a cemetery operator under the Act or the unintended inequitable impacts associated with the implementation of some recommendations.
- It is inequitable and discriminatory to derive funds for regulation of the industry from only 52.7% of deaths i.e. those resulting in the interment of bodily or cremated remains.
- Cremations should be included within the base for revenue generation, to fund both CCNSW and IPART's ongoing role within the industry.
- The role of CCNSW under the Act, needs to be defined in a way that it enables it to regulate other evolving, alternative approaches to disposition of the deceased.
- Dissolving deceased remains in a chemical solution i.e. alkaline hydrolysis, is materially different to the cremation process. That distinction needs to be clear within the Act.
- Relative to Crown cemeteries and private cemetery operators, local government carries a disproportionate load of the intergenerational costs associated with the maintenance of closed/inactive cemeteries.
- The offering of renewable interment rights in the future or not by particular cemetery operators, should be determined in relation to the particular circumstances within an area e.g. the potential supply of and projected demand for interment spaces, the nature of demand and religious preferences.
- For consistency, transparency and comparability, the industry needs guidance in relation to the relative price differential that is appropriate for different tenure terms e.g. renewable in 25 or 50 years or perpetual.

- The requirement to publish prices should be broadened in scope to include cremation and alkaline hydrolysis.
- The Code of Practice for Pricing should include a requirement that memorials comply with Australian Standards.
- The acronym CCNSW is commonly confused by cemetery operators and the community with that which this Association has continuously used since 1965 (CCANSW).
- In the light of the functions the Cemeteries Agency i.e. Cemeteries & Crematoria NSW (CCNSW) has under the Act; it would appear more appropriate and less misleading to refer to it by a simple English name that better reflects its scope and responsibilities e.g. Funeral Industry Agency (FIANSW).
- The CCNSW already registers details of the cemeteries and crematoria within NSW. It would appear to be consistent with its legislative functions to also register and regulate providers of funeral goods and services.
- CCNSW should broaden the scope of its activity, in line with the Act, to facilitate the application of the Fair Trading Regulation 2019.

Introduction

Based on the CCNSW (not to be confused with CCANSW) published annual Operator Activity survey, as at 30 June 2019, in total there were 57,346 burials/cremations in NSW during 2018-19. Those services were provided by 398 cemetery operators. Of those operators, 355 were cemeteries and 43 crematoria.

The activity statement does not readily reveal the

- number of cemeteries (regardless of whether they are Crown, local government, church or private) which also operate crematoria i.e. the extent of horizontal integration
- extent to which private operators are vertically integrated with funeral directing businesses
- number of sites, operational or closed, that are the responsibility of one cemetery operator.

Those organisational distinctions make it difficult to formulate recommendations which can readily be applicable across the sector. Clearly, cemetery operators are not homogeneous. Given its remit, IPART has focused upon interments without, we would suggest, full consideration of what constitutes a cemetery operator under the Act.

Cemetery operators

Draft IPART recommendation 8 starts by proposing *“That the interment service levy be extended to all cemetery operators...”* Whilst the report glossary defines Crown cemetery, Crown cemetery operator and Crown land manager, it does not explain what is meant by Cemetery Operator.

The recommendation then goes on to state that *“The levy should be set as a percentage of interment-related cemetery revenue to recover the efficient costs of CCNSW to license and monitor compliance by cemetery operators, and the efficient costs of IPART for the regulation of prices where they have been referred to us.”*

To the extent that the Glossary references the Cemeteries and Crematoria NSW as being *“The NSW government agency which supports and regulates the interment industry through strategic planning, advice and oversight of Crown land managers”* it materially limits (understates) CCNSW’s role.

The lack of precise definition of both cemetery operator and the role of CCNSW could cause readers of the IPART report to misunderstand the obligations created by the Cemeteries and Crematoria Act 2013 (the Act).

The Act: **Clause 4 Interpretation**

- (2) Unless the contrary intention is shown, a reference in this Act to:
- (a) a **cemetery** includes a reference to:
 - (i) a crematorium, and
 - (ii) a part of a cemetery or crematorium, and
 - (b) a **cemetery operator** includes a reference to:
 - (i) a crematorium operator, and
 - (ii) an operator of part of a cemetery or crematorium.

Division 2 of the Act then goes on to outline the Functions of the Cemeteries Agency (CCNSW). Those functions are extensive and clearly relate to cremation and crematoria, as well as cemeteries.

Consequently, a proposed levy should not be based just upon the revenue from interment of bodily and cremated remains. It should also consider cremation activity.

The fact that CCNSW may be perceived in some sectors to have had limited impact, to date, on crematoria, should not be interpreted as limiting its role going forward or its responsibilities under the Act.

For transparency with the Act and consistency in the application and the interpretation of IPART's recommendations, CCNSW recommends that crematorium operators and their facilities be defined as included within IPART's 'cemetery operators' e.g. Recommendation 2 *"That the industry scheme introduce an operating licence for cemetery operators which meet an activity level threshold"*.

A number of private crematoria also offer interment positions for cremated remains, as do some churches.

In formulating its definitions and refining its approach, it would be prudent for IPART to recognise that a DA for an alkaline hydrolysis bodily disposition facility has recently been approved by the Murray River Council. Whilst alkaline hydrolysis is permitted under the Act, reference to it as cremation or water based cremation is a potentially misleading expression used in creative marketing.

Dissolving deceased remains in a chemical solution is materially different to the cremation process. That distinction needs to be clear within the Act.

For the avoidance of misunderstanding, CCNSW supports the need for alkaline hydrolysis providers to be

- required to obtain an operating licence
- subject to the same regulation as other interment and cremation service providers.

The role of CCNSW under the Act, needs to be defined in a way that it enables it to regulate other evolving, alternative approaches to bodily disposition e.g. promession, cryogenics and natural organic reduction (aka human composting – already allowable in USA states of Seattle and Washington).

Throughout this submission, the term cemetery operator should be taken to include cemetery and cremation and alkaline hydrolysis service providers.

If cemetery operators (as defined or envisaged under the reviewed Act) are to make a financial contribution towards the cost of industry regulation, CCNSW would advocate that the levy (or whatever nomenclature is applied to that contribution) is not stated as a percentage of revenue.

The nature of the levy

Currently, the Act provides for a contribution towards the cost of the administration of the Act by the application of an interment service levy in the form of a 'general levy' on cemetery operators.

The Cemeteries and Crematoria Regulation 2014 provides for the imposition of the Interment Services Levy through a general levy for interment services provided at the major Crown cemeteries in Sydney.

The current interment service rates are as follows:

- Initial interment into an interment site \$83.00
- Subsequent burial in the same interment site \$60.20
- Cremation \$25.00
- Ash interment \$25.00

The current Regulation recognises that the act of cremation is an integral part of the process required to create the 'Ash' for interment.

Putting to one side the question of whether regulation of the industry should be at the governments expense, rather than the industry's, CCANSW agrees with IPART that imposing that levy upon only the major Crown cemeteries in Sydney appears inequitable.

It is inconsistent with the principle of competitive neutrality and can distort the market by making the cost of interment services provided by Crown operators more expensive.

If the levy base is to be broadened, it should encompass all crematoria and cemetery site operators. The basis of the levy should be simplified to facilitate community understanding.

For simplicity CCANSW also recommends that

- one levy is promulgated for bodily interment, regardless of whether it is an initial: or subsequent interment. Based on the afore mentioned CCNSW Activity Report, on average second interments occur in only 26% of graves. Striking one bodily interment levy would enable the initial interment levy to be marginally reduced. It would also simplify administration, price lists and explanations to client families.
- the fee for cremation remains less than that for bodily interment. This approach is consistent with IPART's application of the principle of cost-reflective pricing. As it is more expensive to inter (including higher costs of long term regulation) than to cremate, then the bodily interment levy should be higher than the cremation levy.
- the fee for cremated remains (ash) interment should be no more than that for cremation, provided always that those fees combined, are less than the levy for bodily interment.
- the fees should be stated as a dollar amount, rather than a percentage of revenue.
 - CCNSW obtains Activity Reports from across the sector. Consequently, it would be able to invoice in accordance with those reports. This diminishes the potential delays associated with waiting for completed entity financial reports and related administrative issues. It provides CCNSW with more timely cash flow. Its simpler for families and cemetery operator administration.
 - utilisation of a percentage will create confusion for families undertaking price comparisons between providers. They will not readily understand why the "same fee" will vary between comparators.
 - some local government fees are set below true supply costs. As the council may seek to meet what at times is regarded as a community service obligation, the percentage fee will be distorted.
- to facilitate production of price lists and updating of web sites, CCNSW should adjust the levy, no more frequently than once a year.
 - Notification of a variation in the amount needs to be provided well before the end of the December quarter, for implementation no earlier than the next financial year.

- This timing facilitates the extensive community consultation processes that local government operators require, to appropriately fulfill the necessary review and statutory steps that are necessary prior to gazettal by NSW Government.
- whatever dollar fees/levies IPART recommends, are applied across the industry upon interments, hydrolysis and cremations.

For the most part, the cross elasticity of demand between burial and cremation would appear to be low.

As cremations accounted for 68.7% of bodily dispositions in 2018-19, the application of the levy to all crematoria will significantly broaden the base for revenue generation, to fund both CCNSW and IPART's ongoing role within the industry.

It will also ensure

- that the whole industry contributes to towards the cost of industry regulation
- equity in the application
- consistency with the Act.

What IPART proposes requires broadly based industry regulation. It is not just impacting bodily and cremated remains disposition.

If the revenue raising base excludes crematoria, then the cost of regulating the industry (CCNSW & IPART) will ultimately be borne by only 52.7% of client families who inter either bodily remains (31.3%) and or cremated remains (21.3% i.e. 31% interred from 68.7% cremation).

This would appear to be materially discriminating against families

- **whose religious beliefs require bodily interment**
- **living in remote areas, without reasonable access to cremation facilities.**

Just as it is inequitable for the Crown land managers in Sydney to be the sole contributors, it is also inequitable for IPART to recommend that the cost of industry regulation is borne only by families whose preference is for interment, rather than cremation.

Who will pay?

Ultimately if cemetery and crematoria operators reflect incurred costs in the prices charged, then client families will be bearing the direct cost of the levy.

What it actually costs the operators to administer the related invoicing of clients, along with reporting to and paying CCNSW, will also be impacted by

- their volume of activity
- how automated their cemetery processes are
- the number of sites they are responsible for
- their approach to fee setting
- the nature of CCNSW/IPART regulatory requirements.

IPART would be aware that some municipalities have too few interments or sites or too little cemetery revenue, to operate the activity as a business unit. Others also regard the provision of local cemetery services as a community obligation. Consequently, the fees charged are potentially cross subsidised from other sources of municipal income.

Whilst the CCNSW Activity Reports reference the number of operators, the nature of operations (Crown, private, local, other) and the overall volumes of interments and cremations, yet it is not clear how many operators are responsible for multiple sites.

Local government manages 1034 cemeteries i.e. 73% of NSW sites. Of those, 342 are deemed inactive/closed i.e. 82% of the states/inactive closed sites. **Relative to Crown cemeteries and private cemetery operators, local government already appears to carry a disproportionate load of the intergenerational costs associated with cemetery maintenance in closed/inactive sites.**

That imbalance will be made even worse if IPART seeks to exclude cremations from operational levies.

In part this is recognised by IPART when it suggests on pages 80-81 that

“Cemeteries that infrequently sell interment rights should not be required to publish prices, rather our recommendation should only apply to ‘active’ cemeteries... so that it applies only to cemeteries that conduct more than 50 interments per year.”

Regrettably, this approach does not reflect a distinction between the active cemeteries and inactive cemeteries administered by one operator e.g. a municipality may have 12 cemeteries, of which 7 are inactive, but in aggregate the other five usually complete more than 50 interments per annum.

It is not uncommon for the fees set within a municipality to be applied across all sites. Even when a site is regarded as inactive/closed, the operator may allow interments of appropriately authorised bodily or cremated remains within graves' where space is available.

Making space available

In recent years, considerable attention has been focused upon the relative shortage of bodily interment space within metropolitan Sydney.

Despite government and industry endeavours there has also been considerable community misunderstanding in relation to the implementation of renewable tenure under Part 4 of the Act i.e. thinking it was to be made retrospective.

The introduction of renewable tenure is seen as one way to extend the long term life of a cemetery. CCNSW notes that cemetery operator resistance to change is readily apparent in this context, particularly where

- local communities have not expressed support for implementation
- the operator has extensive capacity for interment and or access to additional land for expansion of interment operations within its operational region.

We note Recommendation 32: *“That all licensed cemetery operators should be required by a condition on their operating licence to develop renewable tenure products.”* This mandates a requirement to develop (and presumably ultimately offer) renewable tenure products.

To diminish the likelihood of further misunderstanding **it is imperative that IPART clearly explain that cemetery operators**

- **will not be required** to offer separate renewable tenure sections, as distinct from interment rights within sections, within all their sites or for all different religions and other community groups
- **may determine which existing sections, if any,** within a site may have renewable right positions as well as perpetual positions.

As CCNSW receives information from operators about site operational interment capacity as well as the number of interments, it should be able to identify likely interment capacity issues, before they become critical.

In that context, CCNSW recommends that where a cemetery operator has 50 years or less of capacity for interments of bodily remains **within their operational region** (not each of their sites) that it be required to consider offering renewable tenure, unless CCNSW exempts them from that requirement.

It acknowledges that this will require the implementation of systems to measure future interment capacity. Systems to track the “ageing” of sold but unexercised Interment Rights are already needed if an operator is seeking to efficiently utilise space via the implementation of Clause 52 of the Act: Revocation of perpetual interment rights.

(1) A cemetery operator may revoke a perpetual interment right that the cemetery operator, or any previous cemetery operator for the cemetery concerned, has granted if the right conferred by the perpetual interment right is not exercised within 50 years after it is granted.

IPART Recommendations 9 and 10 already provide for the NSW Government to be responsible for identifying, funding and acquiring land for new cemeteries

- in Metropolitan Sydney
- outside Sydney, on request from the local council or other cemetery operator, or as part of regional planning by the NSW Government.

CCANSW supports the need for CCNSW or other designated authority to develop a long term plan to ensure the supply of interment space across the state. Whether that is to involve renewable tenure, should be able to be determined in relation to the particular circumstances within an area in relation to the potential supply of interment spaces and the nature of demand e.g. religious preferences.

Either way, for consistency, transparency and comparability, the industry needs guidance in relation to the relative price differential that is appropriate for different tenure terms e.g. renewable in 25 or 50 years or perpetual.

Assisting consumers

IPART has identified the difficulties faced by client families attempting to research cemetery fees and seeking to draw comparisons between providers. That challenge is also faced in relation to cremation services.

It is not practicable for all providers to use exactly the same descriptors for all goods and services on offer. Usually section/service names include reference to some or all, of a variety of attributes

- nature of memorialisation: token, plaque in lawn/on beam, headstone, monumental, crypt, mausolea, niche
- nature of interment: bodily, cremated remains, token
- denomination, proximity to a religious feature etc.
- topographic aspect: slope, garden, feature tree, historic interment proximity, views, proximity to the roadside/seats/taps/shelter etc.

The list is potentially far more complex than just a fee descriptor for a basic adult lawn burial or interment of cremated remains in a grave, garden bed, niche or other structure.

If CCNSW is to facilitate price comparisons, from a practical perspective, it needs to

- do so for a limited range of comparable goods or services
- enable consumers to do more than just access extensive lists of prices. It needs to utilise technology to create on-line access to comparative pricing for similar items for a variety of providers, nominated by the interested client family.

Accepting that the term Cemetery Operator under the Act includes cremator and alkaline hydrolysis providers, **CCANSW recommends that IPART broaden the scope of its Recommendation 22 to also include at least the publishing of prices for cremation and alkaline hydrolysis**

- occurring on the same day as the deceased is delivered to the cremation/hydrolysis facility
- occurring on days after that delivery
- required to be completed after hours or on weekends or public holidays

- where client family representatives wish to attend/view the conduct of the process.

Currently both the Act and the IPART report are silent in relation to the need for memorialisation products to comply with relevant Australian Standards. **CCANSW recommends that The Code of Practice for Pricing makes specific reference to the requirement that memorials comply with Australian Standards...** otherwise there is no basic comparability re the quality of products being compared across sites.

Intergenerational maintenance and administration costs

As custodians of bodily and cremated remains, cemetery operators are required by the Act, as far as is practically possible, to maintain and provide access to records relating to interments forever. That is a long time.

The accuracy of those records is diminished by the loss and or incompleteness of historic records. Their usefulness is also limited by inconsistencies in jargon, references to sections/areas which no longer reconcile with operative aspects of a site e.g. because bushfires have destroyed all evidence of interments.

There are significant costs associated with creating and providing community access to those records which need to be recovered through prices. There are also legacy costs incurred by a cemetery operator entrusted with the care of additional sites e.g. through council amalgamations.

IPART considers the need for funding the perpetual maintenance of sites in terms of their infrastructure and grounds maintenance. Recommendation 28 outlines the proposed requirements for licensed cemetery operators who are required to participate in the industry scheme.

The actual costs associated with a full actuarial assessment of perpetual maintenance liabilities, and regular updating will be significant. The capacity of operators to meet those costs will be materially influenced by the volume of interments they conduct at their cemeteries and or the vertically integrated funeral parlour/crematorium/ash interment sites they are responsible for. The smaller their operational volume, the greater the potential impact of the costs of compliance upon the fee for each service.

Early in this response to IPART, CCANSW acknowledged the inequity associated with the major Crown land managers in Sydney being the only operators contributing towards the cost of industry regulation. Similar issues arise in relation to the costs of perpetual maintenance for closed/inactive cemeteries. The next table and figures are drawn from the CCNSW 2018-19 Activity Report.

IPART would be aware of the challenges facing Churches re cemetery operating and perpetual maintenance costs for 248 operational and 65 closed cemeteries, when they perform only 1.1% of bodily interments.

In turn, Local Government operators are responsible for 82% of NSW's closed cemeteries and 70% of operational sites, yet they only conduct 46.1% of bodily interments.

Private operators have only 3% of operational cemeteries (which conduct 16.4% of bodily interments) and no responsibility for any closed cemeteries. The private operators have 82% of the crematoria and conduct 82.6% of NSW cremations.

Operator	Total		Cemeteries				Crematoria	
	Number	%	Operational No.	%	Closed No.	%	No.	%
Local Government	1034	73.0%	692	70%	342	82.0%	7	12.0%
Crown	20	1.0%	13	1%	7	2.0%	4	7.0%
Private	30	2.0%	30	3%	0	0.0%	49	82.0%
Church	313	22.0%	248	25%	65	16.0%	0	0.0%
Community	17	1.0%	12	1%	5	1.2%	0	0.0%
	1414	100.0%	995	100%	419	100.0%	60	100.0%

This situation highlights the private sector's capacity to generate revenue from interment and cremation operations without any requirement to support closed cemeteries. As they do not operate closed cemeteries, they do not incur the associated administrative or maintenance expenses, forever.

If the costs of regulating the industry are not shared across cemeteries and crematoria, regardless of their entity status, then

- **Local Government and Church operators will need to incur costs which are materially disproportionate to their revenue raising capacity**
- **the costs associated with funding the industry regulatory scheme, will be borne predominantly by those persons whose faith base or personal preference discouraged cremation i.e. 31.3% of deceased.**

It is difficult to envisage the community accepting that fundamentally inequitable proposition.

CCNSW has a clear remit to assist Fair Trading and consumers

The Act is drafted to provide CCNSW with coverage of the interment industry, not just cemeteries and crematoria. In that respect the naming of the Statutory Authority appears to create the impression that its role is generally limited to cemeteries and crematoria.

As part of its submission in relation to the review of the Act, CCANSW

- highlighted its longstanding use (since 1965) of the abbreviation CCANSW
- the readily apparent ongoing confusion caused for consumers and cemetery operators by the similarity of the acronyms CCANSW and CCNSW
- recommended that CCNSW trade under a different name. An alternative name was not suggested in that submission.

In the light of the functions the CCNSW has under the Act; it would appear more appropriate to refer to it by a simple English name that is less confusing e.g. Funeral Industry Agency (FIANSW) or some other title that more accurately reflects its functions under the Act.

A copy of the CCANSW submission in relation to the review of the Act is available to IPART upon request.

Part 1 Objects of Act

The objects of this Act are as follows:

- (h) *to promote that cost structures for burials and cremations are transparent across all sectors of the interment industry,*

Division 2 Functions of Cemeteries Agency Subdivision 1

Principal functions

12 Functions—generally

(1) *The functions of the Cemeteries Agency include the following:*

- (e) *establishment, implementation or alteration of interment industry schemes,*
- (g) *to keep under review the policies, operating procedures and activities of the interment industry, including cemeteries, crematoria, providers of funeral goods and services, and operators of funeral funds,*

Part 3 Regulation of interment industry

Division 1 Preliminary

26 Definitions

In this Act:

interment industry means the following:

- (a) *cemetery operators,*
- (b) *funeral directors,*
- (c) *funeral funds within the meaning of the Funeral Funds Act 1979,*
- (d) *any other persons, or persons of a class, prescribed by the regulations.*

It is the interests of consumers and the whole interment industry for there to be a more consistent approach to industry regulation.

Not only does CCANSW recommend that CCNSW change its name but also that it broadens the scope of its activity, in line with the Act, to assist Fair Trading.

When the Fair Trading Regulation 2019, was introduced it sought to introduce greater price transparency for consumers as well as to create a level playing field and a more competitive market for businesses. Amongst other things it required

- all NSW funeral directors and any business in NSW that arranges and conducts funerals to comply
- funeral directors to provide customers with funeral information, including prices and an itemised quote before entering into a contract or agreement.
- the display the price of funeral information about the goods and services they offer relating to burial and cremations.

Whilst the intent of that Regulation is admirable, its Achilles heel appears to be that it is not supported by a mechanism to register funeral directors. Consequently, if IPART was to ask Fair Trading to state which funeral directors are compliant or non-compliant, it is likely they could not accurately respond.

The CCNSW already registers details of the cemeteries and crematoria within NSW. It would appear to be consistent with its legislative functions to regulate providers of funeral goods and services. That registration process would facilitate the application of the Fair Trading Act.

In conclusion

Thank you for the opportunity to provide comments on IPART's Draft Report on the Review of the Costs and Pricing of Interment in NSW. For additional information, please do not hesitate to contact the undersigned.

Yours sincerely,



Mary Reid
Secretary.

1 October 2020