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Dear Madam/Sir

Review of the Costs and Pricing of Interment in NSW Draft Report – September 2020

Thank you for your invitation to provide written comments on the recommendations contained in the Draft Report delivered in September 2020 (**Draft Report**) with regard to costs and prices for interment services in New South Wales (**NSW**) cemeteries. Please find following joint submissions from Catholic Metropolitan Cemeteries Trust (trading as Catholic Cemeteries & Crematoria) and Mills Oakley on the Draft Report.

1 Acquisition of Land

1.1 Recommendation 9

That the NSW Government be responsible for identifying, funding and acquiring land for new cemeteries in Metropolitan Sydney as part of an integrated and coordinated approach with a mix of skill across several units in DPIE (e.g. CCNSW, Office of Strategic Lands, and Planning) and the Greater Sydney Commission. Classifying cemeteries as State Significant Developments would be an important step in facilitating this.

We agree with the principle in this recommendation to centralise the process for identifying new cemetery land, in that it will reduce competition and increase efficiency in an industry dealing with mounting economic and practical pressures.

Nevertheless, the proposal that Cemeteries & Crematoria NSW (**CCNSW**), Office of Strategic Lands, Planning and the Greater Sydney Commission should be involved in the identification, funding and acquisition of land for new cemeteries does not adequately address the expertise, nimbleness and flexibility that are demanded by the cemetery land acquisition process. The purchase of land often has to occur in a very short period of time due to the vendor's circumstances, or other parties bidding for the property. This will be difficult to achieve with too many Government departments and agencies being involved in the process.

Further, the Draft Report does not provide any evidence that the identification, funding and acquisition of land for new cemeteries by these departments would be achieved at a lower cost than currently incurred by cemetery operators. We suggest that this evidence be provided in the final report prepared by the Independent Pricing and Regulatory Tribunal (**IPART**) to support this recommendation. If IPART is determined

that CCNSW, Office of Strategic Lands, Planning and the Greater Sydney Commission should be involved in identification, funding and acquisition of land for new cemeteries, we propose that these entities be held accountable by setting some preliminary goals for land acquisition during the ensuing decade.

Cemetery operators are also capable of commissioning private reports containing information on demographic, geographic and planning indicators of preferred cemetery locations. In a highly competitive property market, entirely removing the land acquisition process from individual cemetery operators may prevent these operators from capitalising on important opportunities. We suggest a solution that allows both a consolidated land acquisition process and opportunity for cemetery operators to submit a proposed land acquisition to the governing body for approval.

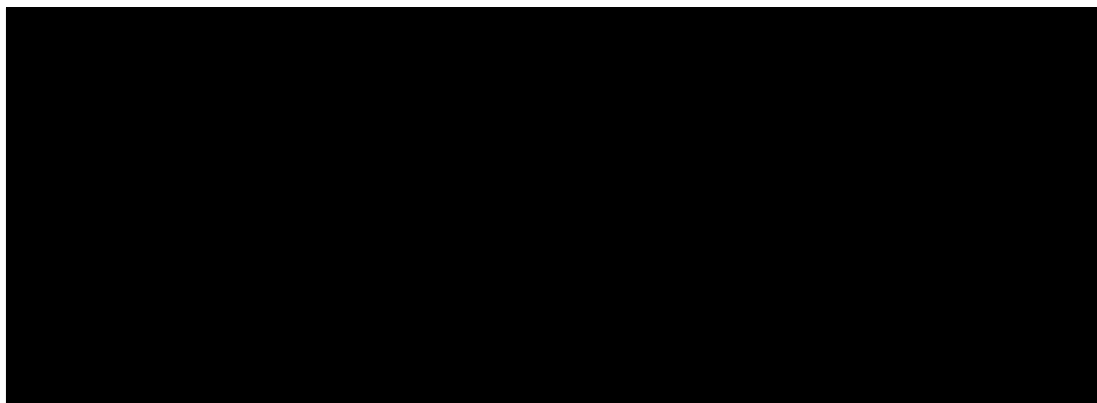
2 Levy, Tax Equalisation and Rent

2.1 Recommendation 8

That the interment service levy be extended to all cemetery operators. 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.

(a) General application to the Industry

We agree with the recommendation that the interment service levy be extended to all cemetery operators. The interment service levy, however, should be transparent and capped at cost recovery of CCNSW to regulate the industry only. We also suggest that this levy extend to funeral directors and cremator operators who are not located within cemetery and crematoria grounds, as these are also key players in the cemetery and crematoria industry. We appreciate that this would involve an amendment to the *Cemeteries and Crematoria Act 2013* (NSW) (**C&C Act**), as the Act currently does not apply to funeral directors and cremator operators.



2.2 Recommendation 11

That the development and operation of new cemeteries on land acquired by the NSW Government be competitively tendered, to a Crown land manager, council or appropriately qualified private cemetery operator. The successful tenderer would be required to operate the cemetery subject to an operating licence and pay rent to the NSW Government.

(a) Pricing

We note your instructions that the Draft Report does include information on the estimated impact on pricing that the implementation of this recommendation would cause, and your assertion that a cemetery operator can still earn a surplus notwithstanding these additional payments. Nevertheless, as we are yet to see the research and modelling behind this assertion, it is still our opinion that the cumulative effect of a cemetery operator having to:

- (i) pay the interment service levy as a percentage of interment-related cemetery revenue;
- (ii) pay rent;
- (iii) offer a basic adult lawn interment right at a minimum price;
- (iv) offer a basic interment service for particular faith, cultural and indigenous communities at a minimum price;
- (v) comply with a new legal obligation to contribute regularly at a pre-determined amount to the perpetual care funds;
- (vi) possibly fund any “legacy” perpetual maintenance obligations; and
- (vii) fund the cost of infrastructure for new cemeteries out of its own funds (rather than being able to access its perpetual care funds);

will be a significant financial impost on cemetery operators, meaning that it will be increasingly difficult for cemetery operators to operate at any surplus and may lead to the cemetery operator increasing its prices for other services.

It should also be noted that the efficient cost for a “basic adult lawn burial” from the Deloitte Access Economics Report which underpins the minimum cost of a “basic adult lawn burial” used in the Draft Report has not taken into consideration the cost of the interment service levy, the rent or the cost of funding any “legacy” perpetual care obligations. It is possible that the efficient cost for a “basic adult lawn burial” would increase once these costs are included in the calculations.

(b) Rent

It is our understanding that any obligation to pay rent to the NSW Government will only apply to the purchase and development of new cemeteries on land acquired by the NSW Government. This point should be clarified in IPART's final report. IPART should also provide information on how the rent will be calculated. For example, the land will lose value as the cemetery reaches capacity, so it is assumed that the rent will decrease in accordance with capacity.

We assume that the purpose of the rent payment is to fund the purchase by the Government of the land for use as a cemetery. Accordingly, we suggest that IPART recommend that benchmarks be used to ensure transparency and avoid the rent being used by the NSW Government for other purposes. Further, each cemetery operator should negotiate a lease with the NSW Government, if the operators are expected to pay rent for the land.

(c) Tax Equalisation

The Draft Report states that cemetery operators should be assessed on a tax equivalent basis recognising that Crown and council cemetery operators are exempt from various taxes that private cemeteries are not. There is, however, a significant difference between tax exempt entities and tax paying entities. That is, tax paying entities are permitted to distribute surpluses to the owners/shareholders, whereas tax exempt entities are prohibited from doing so. In our view, it is not an appropriate approach to attempt to equalise tax exempt entities with tax paying entities. We would be interested to know how IPART intends to calculate the tax equalisation between Crown cemetery operators, council cemetery operators and private cemetery operators.

3 Further Regulation

3.2 Recommendation 17

That the NSW Government amend the Cemeteries and Crematoria Act 2013 to provide for CCNSW to refer a cemetery operator to IPART for a maximum price determination of a specified body interment service.

We do not agree with this recommendation, as the effect of this recommendation for cemetery operators is accountability to a growing list of regulators. This will add to the bureaucracy and reporting obligations imposed on a cemetery operator, making a cemetery operator inefficient. The regulators would be:

- (a) CCNSW;
- (b) Minister;
- (c) ACNC (for charities); and
- (d) IPART.

If IPART proceeds with this recommendation in its final report, IPART should clarify what criteria will be used to set the maximum price for the specified body interment service. For example, IPART will need to consider the taxes, rent, levies and other imposts imposed by an increasing number of regulators when determining a maximum price.

4 Interment Prices

4.1 Recommendation 23

For the standard interment services outlined in Draft Recommendation 22, cemetery operators be required to publish the following:

- *The total price for the interment service (i.e. the sum of all necessary service components) for both at-need and pre-need purchases.*
- *Itemised prices for each service component of the interment service, using the terminology described in Table 10.1, and including any additional costs due to cultural or religious requirements as specified in the code.*
- *Product specifications for the interment right, such as number of interments.*
- *Length of tenure (renewable or perpetual) and the future maintenance attributable to that right, for all relevant lengths of tenure.*

- (a) *Itemised prices*

We note that IPART's final report recommends that itemised prices for each service component of a bodily interment process (i.e. excavation, order for interment, burial or placement) be published by cemetery operators, despite the fact that consumers are not actually able to decide whether a particular service component is performed.

We submit that the publication of the price of certain service components, such as "excavation", will be superfluous for consumers by reason of their unavailability, and for this reason should not be recommended.

Alternatively, if it is necessary to publish the itemised prices of those service components that are compulsory in the interment process, and thus irrevocably included in the interment price, then we submit that the status of these service components as compulsory be clarified for the consumer.

If the publication of all service components' prices does not carry this clarification, it may lead to the impression in the consumer that those service components are optional, and thus the publication of interment prices will actively work against the pricing principles of simplicity and transparency.

(b) Mortuaries

Another option to reduce prices for consumers for interment services is potentially to allow mortuaries and funeral operations on every Crown cemetery, as this would potentially remove the need to hire a funeral director. In our experience, a large percentage of the costs of a funeral are associated with the cost of hiring a funeral director. This option would provide more options to the consumer and increase competition in the marketplace, which would assist with reducing prices for consumers.

4.2 Recommendation 14

That cemetery operators' operating licence conditions may require a cemetery to increase the density of interment via more land-efficient practices such as cemetery renewal, geotechnical mapping, and low-costs mausolea.

This recommendation does not go far enough in relation to cemetery renewal. We suggest that the C&C Act be amended to allow renewable tenure as this would be a viable option for older cemeteries to increase their perpetual care funds by reselling interment rights to existing plots.

5 Perpetual Care Funds

5.1 Recommendation 28

That the industry scheme requires all licensed cemetery operators to:

- *Prepare an estimate of the perpetual care maintenance liability and establish/maintain a dedicated fund for this purpose.*
- *Obtain external independent advice on their potential perpetual maintenance obligations on a regular basis, including advice on how to manage/contribute to a fund to provide for these future costs, and the trade-off between risk and reward.*
- *"Ring fence" assets set aside for meeting perpetual maintenance costs in future so that they are used solely for that purpose.*

- *Prepare a transition plan to deal with the management of “legacy” perpetual maintenance obligations owed at the time a new governance framework is implemented.*

(a) Historical perpetual maintenance

In our view, the inadequacy of the current perpetual maintenance arrangements and the weak incentive for cemetery operators to account for legacy costs appears to be the result of a historical failure on the part of the NSW Government to effectively regulate the cemetery industry in relation to perpetual maintenance.

Despite this, we note that recommendation 28 has the effect of burdening cemetery operators with the future responsibility for this prior failure, and in turn increasing the costs of individual interment rights for consumers. In requiring all cemetery operators to make adequate financial provision for the historical perpetual maintenance of interment sites and cemeteries, the implementation of recommendation 28 will result in cemetery operators necessarily factoring past perpetual maintenance liabilities into contemporary interment pricing.

Accordingly, recommendation 28 represents a decision to direct the consequences of historical regulatory failure onto present and future consumers. Such an arrangement is anathema to the central principle of the review that interment pricing be affordable and equitable for all. Further, it incorrectly creates contemporary and future implications for stakeholders in the industry who are not directly responsible for the prior accrual of unfunded perpetual maintenance liabilities.

Although we acknowledge that a framework for adequate perpetual maintenance is essential, we submit that the process for correcting historical failures should be done by way of a government subsidy provided to cemetery operators, so that these prior legacy costs are not passed onto present and future consumers.

(b) Future perpetual maintenance

In order for the industry scheme to ensure provision of adequate perpetual maintenance funds by cemetery operators, it should consider contributions to maintenance funds from all components of an interment service. That is, interment service fees (or burial service) and memorials (whether the memorial is provided by the cemetery operator or a monumental mason).

6 Conclusion

We note that we have a meeting scheduled with IPART for next Friday 9 October to consider the costs assumptions in the Draft Report. We may consider making an additional submission to IPART after this meeting.

We respectfully ask IPART to consider the issues and recommendations raised in this submission when producing its final report.

Yours sincerely



VERA VISEVIC
PARTNER