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Independent Pricing and Regulatory Tribunal

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Submitted electronically via:

www.ipart.nsw.gov.au/Home/Consumer_Information/Lodge_a_submission.

Dear Sirs and Madam,

Submission in relation to IPART Interim Report: Interment costs and pricing in NSW

The NSW Jewish Board of Deputies and the Lebanese Muslim Association (LMA) are representative bodies and voices for the Jewish community and Muslim communities in New South Wales and Australia respectively.

Our communities welcome this opportunity to respond to the Interim Report issued December 2019.

The Interim Report acknowledges in a number of places our joint submission in relation to the Issues Paper, but does not, in our view, satisfactorily address some key elements.

We now turn to those elements.

Restoration of affordability

Restoration of affordability is now urgent as well as important. Improving transparency of price and product structures as recommended by IPART will not of itself satisfactorily address that issue.¹ Why?

Nothing in the Interim Report gives recognition to restoring affordability as a crucial government responsibility.

It does not address the implication of our communities being captive consumers who have faced increasing prices for interment since 2011.

¹ Interim Report, pages 6, 8-9.

IPART excludes from consideration how government will address its obligation to keep prices of burial/internment as low as possible. From a consumer perspective burial costs are already too high.

To illustrate, IPART makes no findings about either affordability nor, more importantly, the need for government to ensure affordability, despite observing at §1.2 that a key topic is:

"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."²

In support of the finding at §4.6, IPART further states as follows:

"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."³

Yet the Interim Report acknowledges finds at §4.1 as follows:

*"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."⁴*

To address properly the provisioning for perpetual care of cemeteries and graves, IPART at §7.8 acknowledges that prices might **rise** further. IPART acknowledges at §3.1 that perpetual maintenance funding needs and the call for affordability of burial in NSW place competing non-market pressures on burial pricing.⁵ There also appears to be an implied recognition in the Interim Report that prices are inelastic, and so consumers of interment services are necessarily price takers. Competitive tendering options which are considered by IPART will not render the demand curve more elastic, and so are unlikely to benefit consumers.

Then, and importantly, IPART states at §5:

"Cemeteries in NSW are not funded by government, and are expected to recover their full costs of operation through charges for their services."

IPART does not address the potential that government can contribute to and manage the perpetual care funding gap so that consumers are not burdened by it. There are many ways this could be done. None are addressed.

² Interim Report, pages 8-9.

³ Interim Report, page 6.-

⁴ Interim Report, page 5.-

⁵ At §1.5.1 there is recognition that prices vary across NSW and between states but without reference to the very large variation on prices for Jewish burial which we supplied to IPART. On a benchmarked basis prices in NSW already are relatively high compared, say to Victoria. IPART also fails to acknowledge that at some cemeteries different prices are charged to different faith communities where the difference cannot be justified on the basis of cost.

For example, IPART could determine a range within which government could inject capital into the crown cemeteries to cover the perpetual care funding gap leaving to the cemetery managers the ongoing and future funding of the gap, thus protecting consumers from having to bear the existing perpetual care funding gap.

The amount will be more if government continues not to facilitate the acquisition of new burial lands by (or for) the crown cemetery managers. It will be less if the necessary acquisitions are facilitated.

Any such capital injection should be conditional upon consumers not having to bear further price rises above CPI for at least 10 years.

And to ensure that the injection has the intended effect there should be an independent actuarial review on an agreed standard model undertaken every few years.

Another alternative is for government to provide a means tested subsidy for families in respect of burial licenses and internments. That approach would however leave government entangled in the sector, which is undesirable.

On any reasonable view, for IPART to intimate that consumers will have to bear the burden of cemeteries achieving financial sustainability, which is a necessary consequence of the interim recommendations, is quite unacceptable.

Recovering costs of operations and recovering the cost of any gap in provisioning, are different. Consumers should not have to fund the latter.

As we indicated in our submission on the Issues Paper:

Short of a direct government subsidy to manage a historical mispricing, the maintenance of existing burial sites and graves has and must continue to be cross-subsidised by prices for new burial sites. Existing burial sites must be maintained, and while the cost of perpetual maintenance may not have been included in the price at which they were sold, this shortfall must be funded. This must be funded directly and transparently by the Government. Inclusion in prices for new burial sites will reduce efficiency and affordability of these services.

Government cannot expect the crown cemetery land managers to address a historical insufficiency of provisioning for perpetual care, a recently imposed obligation, without injecting capital to enable them to do so. Not injecting that capital leaves the cemetery managers with no option other than to recover from current and future consumers the cost of that provisioning. That would be a bad policy outcome. Capital must be injected and accompanied by a CPI only cap on further prices rises for burial/internment services.

The crucial point is that price inflation in the cemetery sector must be capped, at a minimum.

Resolving constrained supply in the face of increasing demand

At §1.7 there is reference to the Cemeteries and Crematoria NSW, *Metropolitan Sydney Cemetery Capacity Report*, November 2017, but no reference to the urgent need for more Jewish and Muslim burial lands. Thus, the different supply needs of different faith communities are entirely unrecognised by IPART.

Nothing in the Interim Report gives recognition to the NSW Government's obligation to fund **and** enable sufficient supply to keep prices of burial as low as possible.

IPART makes an interim recommendation at §5.1 in support of centralised land acquisition by Cemeteries and Crematoria NSW (CCNSW), precisely the unworkable type of centralisation that the previous reforms began to move away from.⁶ At the same time, IPART questions the worth of CCNSW as regulator.

Yet, it is cemetery managers, not CCNSW, that need to acquire land so that new open cemeteries can earn income to cross-subsidise cemeteries that will close when fully utilised.

If the function is centralised, CCNSW cannot be the acquirer. Giving it operational responsibility can create conflict with the role as regulator.

Planning functions and responsibilities for development approvals could be assigned to a specialist unit within the Department of Planning, Industry & Environment (DPIE) and evaluated as State Significant Development. The latter is needed because too many councils have failed to assess development applications appropriately. It is necessary that cemetery managers work with Department of Planning to take a proactive role to smooth the planning pathway for cemetery development applications. The sooner this is done, the lower will be the cost to government. The NSW Government already has received a number of reports with recommendations along these lines.

And any centralised acquirer must be charged with providing cross-subsidy funding to existing crown cemetery managers, absent which centralising acquisition would take into government the benefit of increasing supply, whilst leaving cemetery managers with the burden of perpetual care and no way of self-funding its cost from ongoing revenue streams. This too would result in consumers bearing ever increasing costs of internment; another bad policy outcome.

Whether cemetery managers are authorised to acquire and cross-subsidise under regulatory supervision, or a central body undertakes the function, this issue is crucial to setting rules for pricing. Those rules must allow, facilitate and provide for such cross-subsidisation.

Maintenance of what?

IPART calls at §6.6 for more transparency about what maintenance cemetery manager will be responsible for, acknowledging that a voluntary code of practice is in place in this regard.⁷ IPART leaves open the possibility that common areas but not graves and headstones will be maintained. From our communities' perspective that is insufficient.

Once families cannot bear or are unavailable to bear the cost of maintaining a grave the perpetual care obligation should then commence. Graves including headstones are a much a part of a cemetery warranting perpetual care as are the common areas.

⁶ Interim Report, pages 10-11.

⁷ Interim Report page 53. We add also that there is an error at page 35. There is reference to a cost for Jewish viewing rooms. There is no such thing.

Conclusions

The recommendations in the Interim Report should be reconsidered once IPART considers further and takes into account:

1. that restoring affordability as a crucial government responsibility;
2. the many ways that that government can contribute to and manage the perpetual care funding gap so that consumers are not burdened by it, for example, by government injecting capital accompanied by a CPI only cap on further prices rises for burial/internment services;
3. that it is cemetery managers, not CCNSW, that need to acquire land so that new open cemeteries can earn income to cross-subsidise cemeteries that will close when fully utilised, and develop pricing rules which allow, facilitate and provide for such cross-subsidisation, or at least they must cross-subsidised from any centralised cemetery land acquisition program; and
4. that graves and headstones as well as common areas are part of the perpetual care obligations of cemetery managers.

Kind Regards,



Samier Dandan

President

Lebanese Muslim Association



Vic Alhadeff

Chief Executive Officer

NSW Jewish Board of Deputies