

3 September 2019

Ms Julia Knight
Committee Secretary
Social Policy Scrutiny Committee
GPO Box 3721
DARWIN NT 0801

Dear Ms Knight

Litchfield Council submission on draft *Burial and Cremation Bill*

Thank you for the opportunity to provide comment on the draft Burial and Cremation Bill. Council first provided comment on the Draft Bill in March 2019 and appreciates that most items highlighted in that submission have been addressed.

Areas that were not addressed however are of significant concern to Council. Excerpts from the March 2019 submission are provided again below for consideration.

Section 11 Declaration of Cemeteries

The Draft Bill identifies the option for the Minister to declare an independent cemetery by Gazette notice.

It is not clear what will be taken into consideration when declaring an independent cemetery. There is no detailed definition of an independent cemetery and/or minimum requirements (e.g. land size, location).

The establishment of such a cemetery could be detrimental to the financial viability of Thorak Regional Cemetery. The management of a public cemetery is conducted by Council as a public service and not as a profit-making venture. Introduction of an independent cemetery has the potential to impact on the financial sustainability of Thorak Regional Cemetery and will result in rate payers unfairly subsidising its operations.

Furthermore, Council is concerned that commercially run independent cemeteries could become a burden of the Department if not viable in the long run.

The Department should consider establishing clear guidelines in the Draft Bill around the approval of independent cemeteries including a public consultation process before declaration by the Minister.

Section 16 Responsible Entity for Cemeteries

A new section has been introduced within the Draft Bill which mirrors the reference in the Local Government Act that states that the local government authority responsible for the area in which the cemetery is located, is responsible for the cemetery.

Furthermore, it identifies that the responsible entity must manage and control the cemetery and names specific functions:

- to care for and maintain the cemetery;
- to ensure burials of human remains and exhumations in the cemetery are undertaken in accordance with this Act;
- to fund the maintenance of the cemetery;
- to ensure there is access to equipment to undertake the burials and exhumations;
- to establish and maintain records of burials and exhumations undertaken in the cemetery;
- to establish and maintain the registers that are required under this Act;
- to establish a cemetery plan;
- to establish cemetery policies for the cemetery; and
- any other functions conferred on the responsible entity under this Act or another Act.

This change reinforces that Council is responsible for Thorak Regional Cemetery despite its regional significance. As presented in the recently submitted KPMG business case on Thorak Regional Cemetery, Top End Regional Organisation of Councils (TOPROC) is supportive of the regional significance of Thorak for the Top End.

Council believes that the significance of Thorak is different to that of a local cemetery, yet Section 16 of the Draft Bill identifies the responsible entity to fund the maintenance of the cemetery. Council would like to understand more around the intent of this section.

Section 80 Application for Disposal Approval

The Draft Bill includes in addition to others, the following requirements as part of the application for disposal permit:

- confirmation of the notification of, or confirmation of reasonable attempts to notify, the executor or administrator of the estate of the deceased person and the senior next of kin;
- any known objections of an executor or administrator or a next of kin to the disposal of the deceased person.

Furthermore, the manager of a facility must, before issuing a permit, be satisfied that all reasonable steps have been taken by the applicant to notify the executor or administrator of the estate and the senior next of kin of the application for disposal permit.

The term reasonable steps potentially give rise to legal interpretation and it would be highly dependent on individual situations to determine what is classified as reasonable.

Council acknowledges the need for the manager to ensure the above-mentioned requirements are declared by the applicant as part of issuing the permit, but it is unclear how the manager of the facility should identify that all reasonable steps have been taken without knowing the personal circumstances of the deceased.

Council seeks that the intent of this part of the Section be reconsidered to ensure that responsibility for informing the executor of the estate and senior next of kin remains with the applicant and not the facility manger; as this would place an additional administrative burden on the cemetery operations.

Council notes that there is an intention for Regulations to be prepared that may address the above concerns. Council requests that local government and other stakeholders be consulted on the draft Regulations.

Should you require further information please contact the Director Community and Corporate Services, Silke Maynard on silke.maynard@litchfield.nt.gov.au or 8983 0640.

Yours Sincerely



Daniel Fletcher
Chief Executive Officer