



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
13th Assembly
SOCIAL POLICY SCRUTINY COMMITTEE

Public Hearing Transcript

Burial and Cremation Bill 2019

8.30 am, Monday 23 September 2019
Litchfield Room, Level 3, Parliament House, Darwin

Members: Ms Ngaree Ah Kit MLA, Chair, Member for Karama
Mrs Lia Finocchiaro MLA, Member for Spillett
Mr Chansey Paech MLA, Member for Namatjira
Mrs Kate Worden MLA, Member for Sanderson

Witnesses: ***City of Palmerston***
Luccio Cercarelli: Chief Executive Officer
Shane Nankivell: Executive Manager Finance

Member for Nhulunbuy
Yingiya Mark Guyula MLA

Northern Land Council
Robert Gosford: Manager Policy and Communications
Diane Brodie: Research and Policy Officer
Tom Weston: Paralegal

Central Land Council
Josie Douglas: Policy Manager
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Department of Local Government, Housing and Community Development
Maree De Lacey: Executive Director Local Government and Community
Development
Lee Williams: Senior Director Legislation and Policy
Ethan Redshaw: Senior Legislation and Policy Officer

BURIAL AND CREMATION BILL 2019

City of Palmerston

Madam CHAIR: Good morning everyone, thank you for joining us. I am Ngaree Ah Kit the Member for Karama and Chair of the Social Policy Scrutiny Committee.

On behalf of the committee I welcome everyone to this public briefing on the Burial and Cremation Bill 2019. I acknowledge that this public hearing is being held on the land of the Larrakia people and I pay my respects to the Larrakia Elders, past present and emerging.

I acknowledge my fellow committee members in attendance today, Member for Sanderson, Kate Worden, Member for Spillett, Lia Finocchiaro and via teleconference Member for Namatjira, Chansey Paech.

I welcome to the table to give evidence to the committee, from the City of Palmerston, Luccio Cercarelli, Chief Executive Officer and Shane Nankivell, Executive Manager Finance. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee applies. This is a public hearing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Could you please each state your name and capacity in which you are appearing, before inviting you to make a brief opening statement and then proceeding to the committee's questions.

Mr CERCARELLI: Luccio Cercarelli, Chief Executive Officer, City of Palmerston.

Mr NANKIVELL: Shane Nankivell, Executive Manager Finance, City of Palmerston.

Madam CHAIR: Thank you. Mr Cercarelli, would you like to make an opening statement?

Mr CERCARELLI: Thank you. We thank the committee for inviting us here today to add to our commentary that we have made in writing to the committee.

Firstly, I would like to point out that the City of Palmerston does not actually currently operate a cemetery within its boundaries. However, we have a large interest in the regional facility, Thorak Regional Cemetery, and have, through relationships through the Top End Regional Councils, TOPROC, been doing work with Litchfield in assessing the viability and operation, governance models in moving forward in relation to Thorak. Hence, our interest in this Bill and our commentary that has been made to the committee.

Our greatest concern, Chair, is with the opening up via the Bill to competition. Even though we understand that we should all operate in the competitive market and allow market forces to determine certain outcomes, we consider that the Thorak Regional Cemetery—or any cemetery—is an essential service in the community. Simply opening it up to the market without understanding the market itself can be dangerous.

Our concerns lie in the fact that Thorak Regional Cemetery is currently operating at a loss. It is heavily subsidised by councils through burials. One of the challenges we face is that we are slowing growth rates, combined with the rate of deaths that are occurring in the Northern Territory, particularly in the Top End region, the market cannot sustain further competition, nor can we simply increase the fees of burial because it is not affordable for the general community.

We commend the government for its vision in introducing the commercial element. However, we put caution to that in that, in doing so we may result in unviable cemeteries or, quite frankly, councils being unable to operate a community facility, as opposed to a commercial facility. Burials are considered an essential part of grieving and the process and services we provide.

The other areas we have concerns about is the transfer of burial rights. We do not believe that they should be treated as a commodity, as they currently are—and they are traded, basically and sold as real estate.

However, we believe that there needs to be some level of flexibility to allow family members in certain conditions to be able to change the use or ownership for the burial into that plot—to take into consideration a range of things from changing circumstances to religious beliefs and traditional beliefs.

We believe that they should not be treated as a commodity but there should be some flexibility allowed, and controlled. It needs control over it. The Act is heading the right way, we just think it needs to be considered in that area.

The last one we would like to touch on is the regulation of funeral directors. It is currently unregulated. We believe that regulation is an important element and that the regulation will help improve the industry and services.

The main focus, Chair, is the fact that we do not believe that cemeteries are financially viable at this point. They have been traditionally run by councils. We recognise a commercially-operated crematorium, which has had an impact immediately on Thorak. However, the burials is a different market and it is one that is heavily subsidised by the crematorium at Thorak.

Happy to take any questions.

Madam CHAIR: Thank you very much. I will now open to the committee for any questions.

Mrs FINOCCHIARO: Thank you for coming to speak with us today. Luccio, currently Thorak is being subsidised by the three councils? Is that right?

Mr CERCARELLI: Predominantly by Litchfield Council. Each council subsidises infant burials. However, we are at a stage where the councils have contributed financially to undertake a report, which I believe—and I apologise if you don't — that Litchfield has submitted as part of their submission. We commissioned KPMG to undertake a report in 2018 which has been submitted to the minister which clearly identified that Thorak, in its currently model of operation financially cannot continue in its current form. In fact, I believe it identifies that it has a shortfall of some \$400 000 per annum.

Mrs WORDEN: Can I ask a question because this is one area I am most interested in. If that is that is the case there is no appetite to put up the fees—in some ways a user pays model. What would happen in that space or would it just simply become unaffordable?

Mr CERCARELLI: Yes, certainly. Not only is it my opinion but it has also been identified in the KPMG report that based on market forces and fees around Australia we believe that Thorak is currently operating at the top end of its fees and charges for burials and exceeding these fees will make it unaffordable for the community.

Mrs WORDEN: I am also interested in the fact of the no competition. That warrants some further discussion. Legislation is not just about the here and now it is obviously for planning for the future. Do you see that there is any way in the Bill that competition currently could be disallowed, however, it could set the parameters for future? Do you see there is any way to do that or do you think that we just have to mark the time now—legislation, no competition currently and then mend it later?

Mr CERCARELLI: Thank you for the question. That is a very good question. We have thought about this and we understand the effort that is involved in changing legislation, so we can see the foresight that government has in allowing this. However, at the same time we are not sure how this can be best addressed and certainly we are not parliamentary counsel and we do not draft legislation. We are not sure how you manage this very delicate balance because market competition can be healthy and should be encouraged in most cases.

Our challenge is that is it an essential service that currently councils are running and we run as a community base service that is saturated for want of a better word, and the market growth is not there at this current point in time, which means that even if a competitor enters the market, and this is our fear, on the expectation and to deliver a better a better product, so to speak, causes Thorak to run at a greater loss, eventually closure or it will need to be heavily subsidised by the community that it operates in and then the market cannot sustain continued loss or increases to fees beyond what the community can sustain, that we end up in a situation where potentially the government will need to step in to assist the community, because there is no alternative here. This is an essential services that the community requires and values.

How you manage that in legislation is very difficult. I am not sure how you can write in commercial competition but restrict it for a certain period of time or when the market grows. It is a difficult challenge. All we have recognised is that it can have some dire consequences if we are not careful. It is our opinion that Thorak is currently losing money and it is a result of market conditions and they are not going to change in this foreseeable future.

Mrs WORDEN: What is the current capacity of the Thorak, and how much more room can it—it is in a position where there seems to be a lot of space, but that is not always the case. Is there a lot of capacity for Thorak to continue to grow? If it does grow will that have a greater impact on its need for more finances if its footprint gets bigger?

Obviously, we do not want to be in a situation that we say, okay, leave us as it is for the moment—that would make the market less competitive and then we find Thorak as we found with Jingili is at capacity, even though Jingili looks empty, obviously there are no blocks available now, that then they have no capacity for any competition to come in or that Thorak just continues to grow and just becomes more and more unviable where as we could get a line in the sand that ends. Then it becomes more of a maintenance, which Jingili is more of a maintenance than it is a growth, so I am wondering about those dynamics rather than just a straight up—we do not need competition because Thorak has a bit of space and we find ourselves in two years in a situation where it has not got any.

Mr CERCARELLI: I might answer that in two parts. First, in relation to space—regardless of whether you are commercial operator or a council, cemeteries will need to be opened and closed at various times and that can happen whether there is a commercial element, competition or alike. It is unrelated in my view. If Thorak continues to operate and you open it to the commercial market, a new cemetery would need to be opened for a commercial operator. If Thorak starts to reach capacity, you simply need to identify land in another location.

I do not wish to speak on behalf of Litchfield Council regarding the capacity of Thorak. We are not in a position to—we do not operate it other than to say that KPMG's report indicated that there is space for growth there. It is a large site. The method of burials will also change how a cemetery operates moving forward.

The issue of commerciality is that we are at the top of our charging fees and whether you are a private operator or not, you still need to generate the same amount of money. In fact, as a commercial operator not only do you need to generate the same amount of money, you need to generate a profit—one would imagine otherwise why would you be in commercial operations—versus a council which is happy enough to cover its costs in most of its operations.

The challenge becomes that the market is such and the costs are not covering the current operations and asset management expenses. Burials are an expensive exercise. Cremations are, quite frankly, where money is to be made. You run the risk that private industry opens crematoriums around the municipality, because that is where the money is, which takes a profit or a positive cash in-flow—which is occurring at Thorak—which is subsidising burials and reduces its income stream which then puts greater impact on the cost of burials moving forward.

It is about finding that right balance. The danger is that if you open it up to the commercial market, commercial elements will take those elements which are profitable and leave those that are not profitable but which the community still expects to have delivered.

Mrs WORDEN: If I could just have one more specific question on that. When do you believe that Thorak—and you might be the wrong person to ask, given your previous answer—will reach capacity? Is there a date in that report?

Mr CERCARELLI: If I may, it is not our cemetery and I have just been advised that it is not in the KPMG report. We could talk to our colleagues at Litchfield and find out for the committee if that is something of interest.

I want to stress that our role here today is part of a regional group of councils. The councils are working together in this space through TOPROC and we see this as a joint venture. The members of the Palmerston community are buried at Thorak as well as other cemeteries that they are entitled to. We see this as an essential service to all our communities.

Mrs WORDEN: I am happy to ask Litchfield if they are the most appropriate council to ask. We can ask them outside the session if they do not appear today.

Mrs FINOCCHIARO: I wanted to ask about the exclusive right of burial. Under the current legislation, if you purchase a plot, you can then on-sell it and I think we see that a bit in the paper, particularly around Jingili. You mention here in your submission that section 52 will not allow the transfer of an exclusive right of burial anymore which City of Palmerston supports but recognises that there are changes in people's circumstances.

I am interested in why the City of Palmerston support the—to use the words of the submission—removal of the use of burial sites as a commodity. Has that been a problem in the past?

Mr CERCARELLI: In our view, it is. People purchase burial sites almost as they purchase shares and they are trading them around the place. There are also difficulties then in the way they are currently exchanged. Burial sites—for want of a better word—are allocated at a very cheap cost by councils however they can sell for upwards of \$10 000. There are significant margins made on these sorts of things.

The other issue is that we believe it leads to conflict at times of grief. They become difficult for councils to manage as to who actually has rights, who is the owner of the plot and who can determine whether family exchanges occur and whether they sell.

We believe that there are certain cases that—based on religious, family, change in circumstances, traditions and the like—where well-managed amendments to rights and burial rights should occur, for example a parent purchases a plot never expecting that they will outlive their child. The child may not have rights to that plot and passes. We believe there should be an ability—or it could be a nephew or a niece, somewhere along those lines. That is different, in our view, to the exchange that we currently see where people are advertising in the paper. They are selling plots at significant margins. We think that it is an inappropriate process.

However, we do think that there is a need for some flexibility within the rules to allow for certain circumstances.

Mrs FINOCCHIARO: I would imagine that would include a situation where, perhaps, a family has purchased a plot, several plots, but then 20 years later they leave the Territory and it is no longer a place they want to be buried anymore. There would need to be some system to deal with that otherwise it is a stranded asset in many ways. If you cannot sell it, what do you do with it?

Mr CERCARELLI: In our view, if I may, we believe that if something like that occurs it should go back to the cemetery for reallocation. These plots are not sold at the market value they are being sold by those that have the exclusive rights over the plot. They should return to the asset owner. In a way what you are doing is leasing a space.

Mrs FINOCCHIARO: You do not pay the full amount at the time of the ...

Mr CERCARELLI: And then you have to think about, moving forward, the cost to the operator here—and this is another issue. It is not simply while you are running and doing burials, maintaining—there is an expectation, and a rightful expectation by the community, that these areas are treated with the greatest respect and they are maintained not only while they are operating and generating income but well after that.

There needs to be controls and things in place to ensure that this occurs. These are costs that commercial operators may not necessarily consider. What are the rules around a commercial operator operating a site which is then closed and they walk away from? Unlike a government entity.

In relation to the issue: it should simply return to the cemetery for reallocation.

Madam CHAIR: Luccio, this might be a question better asked of Litchfield Council as well. I am just wondering when Thorak cemetery became, not so expensive, but when did it start operating at a loss? I understand what you are saying about the ongoing maintenance of a cemetery and I completely agree. The expense to conduct a burial probably only covers that one exercise but there is ongoing maintenance, and leading up to the West Season and cyclones you would have to go through and do a big tidy up. I honestly think it would not be fair to charge people the ongoing expenses.

I am just wondering when did the cemetery become so—you said it is operating at \$400 000 a year, as a deficit. That is huge. When did that start being the case?

Mr CERCARELLI: We are just checking the numbers within the KPMG report, but in effect it has always run on very low margins. As I said, it did not help when a competitor entered the crematorium market, with a new

cremator. It has been running for at least four of the past eight years at a loss, but remembering that Litchfield has also had a number of reserves which it has slowly been eroding, which is not a good business model. In effect, I understand that they have now completely concluded those reserves.

The level of maintenance in relation to the facility—and I am not talking about the day-to-day maintenance, I am talking about asset management plans and the like—has not been to the level that it should be. In the short term this is sustainable but in the long term will result in a higher financial impact at some point in the future.

The cemetery really has been operating on very bare margins for a significant period of time.

Madam CHAIR: Does the committee have any further questions? Member for Namatjira?

Mr PAECH: No, thank you.

Madam CHAIR: No further questions. Thank you very much. That concludes the committee's questions. Do you have anything final you would like to leave us with?

Mr CERCARELLI: No, just to thank the committee for its time. We look forward to the outcome.

Madam CHAIR: Thank you very much for your time.

The committee suspended.

Member for Nhulunbuy

Madam CHAIR: On behalf of everyone I welcome everyone to this public hearing on the Burial and Cremation Bill 2019. I also acknowledge my fellow committee members in attendance today, Member for Sanderson, Kate Worden, Member for Spillett, Lia Finocchiaro and via teleconference Member for Namatjira, Chansey Paech.

I welcome to the table to give evidence to the committee the Member for Nhulunbuy, Yingiya Mark Guyula. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

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I will ask you to state your name for the record and the capacity in which you are appearing before inviting you to make a brief opening statement, and then proceeding to the committee's questions.

Mr GUYULA: Good morning. My name is Yingiya Mark Guyula and I am the Member for Nhulunbuy.

Madam CHAIR: Thank you very much, Mr Guyula. Would you like to start by making an opening statement?

Mr GUYULA: First I thank the committee for allowing me to speak here today. It is my privilege to have my opportunity to express and talk about issues here today. Everything around here is a first time in life, so I will make adjustments for any hold-ups, slow, or if I have to look around for something, but I will try to get my story through.

The issue about the Burial and Cremation Bill, in Yolngu communities, in Yolngu law today is when someone passes away, decisions about burial are made according to our law. We use traditional decision making involving *Yothu-Yindi*, *Mari-Gutharra* and *Yapa-Waku*. *Yothu-Yindi* is the immediate clan groups and then it becomes the grandparents, and their descendants go as far as the next great, great-grandparents' responsibilities. That is how our Yolngu law works. That is our system of law that works for a funeral ceremony regarding how decisions are made.

Clans decided on the funeral and burial sites. Clan authorities take control and close families' wishes are included in the consultation process. Once the body is released from the morgue, the family and the Yolngu authority take responsibility for the body and perform ceremonies according to our custom. There is no foreign interference at this time. Elders may negotiate with the local council in relation to the use of diggers for the burial site and sometimes we have paid fees directly for the use of the digger. But at no time is any outside body responsible for our process and there is no reason for any intervention.

When I am talking about an outside body, I am not just talking about Balanda intervention. Other clans also give space to the clan authorities and the decision to perform their burial responsibilities. So, when I look at this Bill I am very concerned about the level of outside intervention into this autonomous space.

First, though, I am happy to see the next of kin definition that includes definition according to the tradition and custom. I would like this definition included in Schedule 3, to also be applied to the *Coroners Act* and other legislation that relies on the next of kin definition. This would be a significant positive change for many Aboriginal people in the Northern Territory.

I cannot support other features in this Bill. I cannot support the criminalisation of the burial on country according to burial custom. The Bill gives us these choices.

Firstly, the Bill says we have the choice to bury our people in a cemetery which means we must ask permission for a cemetery manager and give all the required documentation and seek other approvals. For the Aboriginal communities of my electorate, the cemetery manager will be the CEO of the East Arnhem Regional Council who is a local government bureaucrat. The cemetery can then impose a reasonable fee for collecting the recording information, keeping a website, maintaining the cemetery as required by this Bill.

I have some questions about this. Is the government also resourcing these cemeteries or is it my people, some of the poorest and most vulnerable, who will pay through their fees for the government requirements. If we do not obtain approval and we still bury in the cemetery, we will be fined \$35 000 or more or face imprisonment.

Our second choice is to bury our people outside a cemetery which requires permission from the CEO in Darwin—another government bureaucrat—who will consult with the land council to obtain permission from a traditional owner who is already part of the clan who are having to apply to the CEO for permission.

In 30 days, we must then give the department significant details about the burial in writing. If we do not obtain approval, we risk \$35 000 or more in fines or imprisonment if we continue to bury our people on our country according to our tradition and custom.

I also note section 147 that relates to the type of vehicles that must be used for burials. Many communities use troopies to transport bodies. We do not have custom-made vehicles and according to this section of the Bill, we risk significant fines for using our own vehicles. If I can go back to using troopies, when a body is shifted into a car there would be senior elders within that, *Yothu-Yindi*, *Mari-Gutharra* and *Yapa-Waku*, but they are still responsible as the body is being moved from one place to another. That is why we need that space for a troopie or a bigger car where those people responsible for moving the body from point A to point B fit in that vehicle.

In the hands of law, it may be too many people in the vehicle or something like that but it is something that we want to work around; how we can legally create that ceremony.

None of this makes sense for Aboriginal people on Aboriginal land. I understand there are concerns about being buried near bores or close to houses and underground pipes but these things do not need to be criminalised. We can engage in education, consultation and partnership around these issues. Many Yolngu are wanting to avoid these problems.

In this area people who live in communities and different camps of different areas of the community and they are all—it would be the same again, *Yothu-Yindi*, *Mari-Gutharra* and *Yapa-Waku*—with the clan groups over there and over there. When it comes to burial people might want to keep their loved one buried on their site. It might not be a registered ceremony but it is a choice they want to make so that the body of the loved one is right next to them, next to the camp, where they would not want to move it to another man's or clan's camp.

That is the reason why they were using this, but it is being considered whether proper consultation and use of bores and housing that might be developing soon—but that is being looked at now.

I understand that there are concerns about people being buried near bores and houses, as I have said before, this is what we have been talking about.

We do not need to have our tradition and customs impact with foreign laws that require us to ask permission of a local government bureaucrats and CEOs of departments for permission to bury our people on our country. We do not need to have the burden of administrative paper work for our burial processes but families may choose to register burials or through consultation. Communities may choose to register all burials, but this requires consultation.

We do not need to have the burden of fees other than equipment fees, and some families do not require any equipment. We currently govern this area with autonomy. It is a very significant part of our law, and I believe this does interfere on our rights as Aboriginal people to perform burial on our country according to our custom and traditions.

It is very clear that what I am trying to say is what I do not agree with is the powers that impact on our space of autonomy. This is a Yolngu and other Indigenous people around the Territory, even Torres Strait, even those areas that we still bury and control our funerals and ceremonies according to Yolngu law—is we would like to see that space be used outside what is, like I said, in this case the government, the balanda, we want to work with them the way we have worked with other clans working for our space working on ceremonies or funerals.

That is about all I have to speak on.

Madam CHAIR: Thank you, Member for Nhulunbuy. I will now open up to the committee for any questions.

Mrs WORDEN: Thank you, Member for Nhulunbuy. I know you can only really speak for Yolngu but do you believe that the sort of restrictions that you just talked about, the impositions of the Bill, currently would be the same for other Indigenous people across the Northern Territory?

Mr GUYULA: I believe I am speaking on behalf from my perspective from the Yolngu view. Yes, I believe that effect for other Indigenous people around the Territory would be similar or they have their own way of looking after their own ceremonies.

Mrs WORDEN: Okay, I wanted to ask you that more generally.

I note particularly that you have some concerns around permission—from my position quite valid concerns about permission. Could you talk us through how you would feel about advice being given versus permission? The intricacies of how that would be difficult with what is currently in the Bill. Instead of seeking permission, there is some support through other submissions—I think from Land Councils—that advice would be more appropriate?

Mr GUYULA: Advice from outside, you are talking about?

Mrs WORDEN: Sorry, I probably should be clearer, it is probably me.

Currently, as the Bill stands, you have walked us through how that would work and the defining stuff that comes after for not seeking that permission from the CEO and getting that permission. If that was moved to providing advice to the CEO, would that work or do you still think that is a step too far, advising that you are burying a particular person in a location? I pick up in your submission, there are some sacred areas where people are buried and the difficulty that might have in disclosing where the bodies might be buried.

Mr GUYULA: To be honest, I work from our law and the law of the land is given to us to work on ceremonies. Yes, we do not want to seek someone else's authority to give us that.

Mrs WORDEN: To be clear, I am not talking about authority. I am taking that word 'permission' out.

Mr GUYULA: Yes.

Mrs WORDEN: Giving advice, this is what we are doing and this is where we are going to bury particular people. My question is, would that work?

The Bill seeks to understand better where people are buried for the reasons you have outlined, around where infrastructure is and as communities in remote areas grow and more infrastructure is needed, water tables,

etcetera, all the things you have highlighted, would you be comfortable with the Bill stating advice of burial versus seeking permission? I understand that is the big problem.

Mr GUYULA: There are talks about that, we are going to work on getting advice and giving one another advice of how we can work around that.

Mrs WORDEN: If it was a requirement of the Bill for you to advise the CEO versus seek his permission, would that work for your law?

Mr GUYULA: Yes, it would work in some areas and some it would not. It is up to us what plans that people might want to do. We can consider the advice that we can work on. Burials next to bore or places where development is going to be happening. We could seek advice and help one another.

Madam CHAIR: Just following on from that, I think the Member for Sanderson raises the point that I considered being at the forefront of this area was the importance of keeping a record of where people are buried for those developments and the like. The other part for me would be the vehicles and the transporting.

Your submission—and I thank you again for appearing today—was about the fact that this is not a new practice. Your people have been doing this for a very long time and they have been doing it quite well. I understand the implications of the Bill and what it sets to achieve especially because this is legislation that we have inherited since self-government and it really needs to be looked at.

You spoke about the troop carriers—the troopies—that the current practice is using. I think there needs to be a really good consideration of what is already in place and what can be enhanced going forward. I appreciate your explanation that you are looking at this and finding ways where you can bring both of those practices together, understanding why the Bill needs to be updated but adhering to your lore as well.

It is not really a question; it is a bit of a statement.

Mrs FINOCCHIARO: I just wanted to ask about consultation. In your time out in your electorate, people are telling you they did not feel like they were consulted on this legislation?

Mr GUYULA: Yes, people might have been consulted in some areas but it takes time. When the first consultation comes through, people are not really sure. When a government department or people come through, people will think it is only the first step for introduction of issues. It goes back to ceremonies and how things have been done. My people might want to think about it and go to clan groups and families around the areas and wait for family members to come back and then talk about this issue and may then want those people to come back and have a second briefing or consultation so that everybody is very clear and had a second or third try to make sure the people clearly get the message before they make any decisions.

Madam CHAIR: The committee has no further questions, Member for Nhulunbuy. I thank you again for appearing before us. Do you have any other messages you want to leave with the committee?

Mr GUYULA: Not at this stage but I am very grateful. I thank you very much for this. My staff member reminded me that this came through some time ago earlier this year, I needed to be clear on this. Now I can see what is really happening. That is what I mean when I am talking about someone going out and consults with community out there, they are not really clear in the first place. It would be good to prepare another visit out to those communities and that way, the second and maybe a third but at least a second visit out there, people will know what they are talking about.

It is always worth going back to do the second consultation and make sure everything is clear with people out there.

Madam CHAIR: Thank you for that feedback. We will make sure that the department is aware of that when we catch up with them. Thank you, Member for Nhulunbuy.

The committee suspended.

Northern Land Council

Madam CHAIR: Good morning everyone. Thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Social Policy Scrutiny Committee. On behalf of everyone I welcome everyone to this hearing on the Burial and Cremation Bill 2019. I also acknowledge my fellow committee members in attendance today, Member for Sanderson, Kate Worden, Member for Spillett, Lia Finocchiaro and via teleconference Member for Namatjira, Chansey Paech.

I welcome to the table to give evidence to the committee from the Northern Land Council: Robert Gosford, Manager, Policy and Communication; Diane Brodie, Research and Policy Officer; and Tom Weston, Paralegal. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

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I will ask each witness to state their name and the capacity in which they appear before inviting you to make a brief opening statement, and then proceeding to the committee's questions. Could you each please state your name and the capacity in which you are appearing?

Ms BRODIE: Diane Brodie, Northern Land Council.

Mr GOSFORD: Robert Gosford, Northern Land Council.

Mr WESTON: Tom Weston, Northern Land Council.

Madam CHAIR: Thank you very much. Mr Gosford, would you like to start by making an opening statement?

Mr GOSFORD: Yes, Chair. I thank the committee for receiving our earlier submissions and extending the invitation to attend and present to you today.

Our submission and our evidence this morning focus on Aboriginal customary burials and the relevant provisions of the Bill. It is, as you would appreciate, a very complex subject, more than you might expect from legislation about burials, perhaps in other parts of the country.

On the one hand there is Aboriginal culture and tradition and the right for Aboriginal people to continue burial practices that have been taking place on their country for millennia. On the other is the need to record burial sites for government to be able to say that there is an orderly system of recording where burials are.

That has all sorts of other consequences in terms of planning, particularly perhaps in remote communities for town planning, future development and so forth. If there is an unrecorded burial and government wants to develop an area for a new subdivision or new housing or extensions, or to put new civil works in and all of a sudden there is an unrecorded burial that they come across, everything stops because of that.

There are some very real, practical issues that can result from burials outside of cemeteries. Notwithstanding that, the problem with this Bill, for the committee and all of us, is how to reconcile those conflicting requirements in a way that respects the rights and culture of Aboriginal people while meeting the needs of the proper administration of government. The current Bill, in our view, does not do this.

As the Member for Nhulunbuy has pointed out, at least for Yolngu people, burial practices are an autonomous practice for them. Traditions around funerals and burials are of great importance to the NLC's constituents including Yolngu constituents but also across the other areas within the NLC's responsibility. This includes an obligation among many clan groups as to where ceremonies and burials must take place.

Burials outside declared cemeteries are commonly practiced by Yolngu as highlighted in submissions to this committee by the Member for Nhulunbuy and the Galpu and Golpa clans. These practices are also widespread among other groups within the NLC's jurisdiction. We acknowledge the Bill is not proposing any

substantial change to the existing laws relating to burials outside of cemeteries, however the current legislation was drafted in 1952 - under very different administrative and political circumstances - and long prior to the granting of land rights or the recognition of Native Title interests, and at a time when Aboriginal people did not have equality under the law and their customs were not given consideration by lawmakers in any real sense. We believe that the Northern Territory can do better now.

In reviewing this Bill, the NLC has considered what it would mean in practice and in application. If the Bill passes as drafted, we do not believe that it will realistically change the way that Aboriginal families bury their loved ones. It is highly unlikely that people will start asking for approval for burials on country. Many will not know about the law. Others will assert their rights to undertake traditional burials without asking permission.

Section 71 of the *Aboriginal Land Rights Act*, as we pointed out in our written submission made in early September, recognises the rights of Aboriginal people to use Aboriginal land in accordance with tradition and this includes burials, yet the Bill makes no reference to those protections. As the Northern Land Council submission and that of the Central Land Council—who I understand you are about to hear from following this submission—have noted land councils are greatly concerned by the 10,000% increase in maximum penalty units for burials outside of cemeteries. We believe that those proposed provisions in the Bill are not based on any evidence, are inequitable, wholly indefensible, illogical and inappropriate (as well as the increase in penalties for other provisions of the Bill that would disproportionately impact Aboriginal people).

The Northern Territory already has the highest imprisonment rate of Indigenous people across Australia with Aboriginal people making up 84% of the prisoner population. A prison term is not appropriate for any burial carried out in accordance with tradition.

The department has advised that there is no intention to prosecute people for traditional burials. If law-breakers will not be prosecuted, then why apply the law to traditional practices? Why introduce draconian penalties of up to \$31,100 or two years' imprisonment? If this is intended as a deterrent, it will not be effective. If the law is enforced, it will criminalise people for continuing activities that, up until now, although technically unlawful have been permitted.

I have had some personal experience with this, particularly while I was working at the Central Land Council, where very good arrangements could be made with departmental staff about meeting people's requirements for burials on homelands. People wanted to bury their loved one in appropriate circumstances and the department has a process that worked quite well.

It required the sighting of a death certificate, that there would be an appropriate location and I believe the Member for Nhulunbuy referred to concerns about burials not being adjacent to water courses or places of habitation et cetera, and all of those things in my personal experience were appropriate.

The Northern Land Council is also concerned that the requirements for filling in forms and the obligatory information may not be reasonable for some of our constituents, particularly those in remote areas and homelands. We note the discussion by the Member for Sanderson in this hearing about advice to the CEO rather than seeking permission, and in our view we would say that may well be an appropriate approach as long as there is no offence attached. This perhaps requires some further thought.

Like the NT Government, the Northern Land Council also faces challenges resulting from traditional practices and the lack of written information on burials sites. However, we do not see these challenges as insurmountable and we believe they are better addressed through means other than draconian provisions in legislation.

In larger communities there has already been a shift towards burials in cemeteries. This is not happening because of threats of prosecutions or large fines, but through natural change at a pace dictated by the communities themselves. In our submission, the NLC proposes a system of voluntary registration accompanied by extensive public education so that people are informed about the proposals. Such an approach would meet the needs of families and government to have written accurate records as to where burials are located while continuing to support traditional practices.

Just as an aside—I note the Member for Nhulunbuy's reference to section 147—if the provision, particularly 147(1)(b) — is applied I am afraid that I would have to put my hand up for a breach of that provision because some years ago I and a colleague had, what I regarded to be the immense privilege of taking a long-term friend of my, Andrew McMillan ... we, took his coffin from Darwin to Larrimah and then subsequently to his burial site on Western Creek Station in the back of my troop carrier which did not have a physically separate part of the vehicle.

In a way, I agree with the Member for Nhulunbuy's submissions in regard to the inappropriateness of section 147 and I thank the member for drawing that to our attention because those particular provisions are the kind of thing hiding away in a Bill that can catch people out.

Finally, the NLC submits that Aboriginal people do not and should not need to seek permission for traditional burials on their country, particularly in homelands. In addition, the excessive penalties should be removed from the Bill as should strict liability offences when actions are in accordance with traditional practices.

Unless either of my colleagues have anything else to add, that is our opening statement. Thank you.

Madam CHAIR: Thank you very much. I now open it up to the committee for any questions.

Mrs FINOCCHIARO: Thank you, Mr Gosford. Is this legislation fixing a current problem? You might have mentioned in your submission that even under the current law practices perhaps may not be meeting the exact threshold, but there is an understanding between government and traditional owners and Aboriginal people about processes that take place.

I am trying to work out why this has come before us. Is it attempting to fix something? It does not seem to be fixing anything at all.

Mr GOSFORD: I thank you for your question. We have obviously concentrated on those parts of the Bill that affect our constituents, so there may be a number of things we haven't addressed.

I am aware that this Bill has been in preparation for a number of years. I recall consultations as far back as 2012 that departmental officers had with various parts of the Northern Land Council, including regional councils. As old as the Bill is, it becomes a bit of a grandfather Act after a while. As a matter of administrative and legislative policy, it is appropriate that a Bill that was first drafted in 1952 be given a comprehensive overview.

There are a number of things that have shaken out from the submissions—by the Member for Nhulunbuy and both of the land councils. There are a number of issues where we agree with the approach taken by the drafters, particularly in the recognition of senior kin. That is a really important change in approach.

We are curious about the punitive provisions. They just do not make any sense. I cannot understand where they would have come from. The Member for Nhulunbuy has identified some concerns. Some of those would apply across the board, across the whole of the Northern Land Council area. A number of them are particular to Yolngu and northeast Arnhem Land practices that may not be so widely practised elsewhere.

I am unsure if that answers your question.

Mrs FINOCCHIARO: I was thinking you used that very practical example of the troop carrier and that this new draft Bill will say to carry a coffin it has to be in a vehicle that has a separate compartment. I thought why. Do you know what I mean? Is there a problem with the way it is currently drafted that it is trying to overcome?

Mr GOSFORD: Perhaps it is just one of those instances—and I suppose every piece of legislation has it—where it says, 'How do we carry bodies in this country?' Well, you carry them in a hearse. A hearse is defined as a vehicle that is ...

Mrs FINOCCHIARO: A very particular ...

Mr GOSFORD: Yes. ... suitable length and it has a separation.

I note that there is maximum penalty units of 20—what was the penalty unit in the past? It is about \$3000 maximum fine. It would be a very brave police officer and summary prosecutions officer and magistrate who would levy a maximum fine against people for transporting a body in that way. Perhaps that penalty or provision, 147(1)(b) might easily be amended to accord with usual ways.

A troop carrier might be caught by that provision, but a utility might not. So ...

Mrs FINOCCHIARO: Yes. On a different note, you mentioned the recognition of the senior kin and that the NLC is supportive of that. You are supportive of the definition as well—how that functions? You do not have concerns with that?

Ms BRODIE: We are supportive—as the Member for Nhulunbuy said—that it provides for traditional customs. I think the NAAJA submission raised some questions around how that interacts with other legislation in terms that the NTCAT, in the case of an appeal, has to follow — I do not have that here, Tom might have it. I think that is potentially a concern. Certainly the recognition of ‘senior next of kin’ by traditional definitions is a good approach in this Act.

Mrs FINOCCHIARO: Thank you.

Ms AH KIT: Robert, you mentioned that there was a good process that was able to be followed with the department in order to have someone buried, I think it might have been on a homeland?

Mr GOSFORD: Yes, or outside of a cemetery.

Ms AH KIT: I guess what I took away from that instance that there was already was a functioning process that was in place?

Mr GOSFORD: From when I last examined the Act, I think I went and looked at the Act and said, ‘Okay where is this provision’, and I could not find it—it is in a policy. I had a very helpful staff member at the Department of Local Government in Alice Springs who walked me through this—I was a solicitor at the Central Land Council at the time.

I had occasion to use that twice, during that time at the CLC. It was really a policy that was developed under the provision that required the minister give consent to a burial outside a recognised cemetery. There was no written policy I could find but it was an effective process.

From recollection, there was a form that was required from the land owner. This is the appropriate role that has now been recognised for Land Councils that has been written in the Bill in regard to the Land Councils having a role in granting permission. Maybe that is what was previously a de facto recognition being made more formal.

Madam CHAIR: Does the committee have any further questions for the Northern Land Council? On behalf of the committee, I would like to thank you for appearing before our public hearing.

The committee suspended.

Central Land Council

Madam CHAIR: Good morning everyone. Thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Social Policy Scrutiny Committee. On behalf of the committee I welcome everyone to this hearing on the Burial and Cremation Bill 2019. I also acknowledge my fellow committee members in attendance today, Member for Sanderson, Kate Worden, Member for Spillett, Lia Finocchiaro and via teleconference Member for Namatjira, Chansey Paech.

I welcome to the table to give evidence to the committee from the Central Land Council Josie Douglas, Policy Manager and Dean Murphy, Lawyer. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

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I will ask you to state your name for the record and the capacity in which you appear. I will then ask you to make a brief opening statement before proceeding to the committee’s questions. Could you each please state your name and the capacity in which you are appearing?

Ms DOUGLAS: Josie Douglas, Manager of Policy, Central Land Council.

Mr MURPHY: Dean Murphy, employed Lawyer of the Central Land Council.

Madam CHAIR: Thank you very much. Ms Douglas, would you like to make an opening statement?

Ms DOUGLAS: Thank you, Chair. The Central Land Council welcomes this opportunity to provide information to the Social Policy Scrutiny Committee on the Burial and Cremation Bill 2019. The CLC is a Commonwealth entity established under the *Aboriginal Land Rights (Northern Territory) Act* and is also the native title representative body under the *Native Title Act*.

We are governed by a council of 90 Aboriginal people elected from communities in the southern half of the Northern Territory. The CLC has statutory responsibilities to ascertain, represent and protect the rights and interest of Aboriginal people living in the CLC region.

In relation to the Burial and Cremation Bill, we believe that the Bill should allow for culturally appropriate burials to take place on Aboriginal land. We have provided a written submission and we have a number of concerns—first that the Bill places unreasonable offences and penalties on our constituents and second, we believe that there should be guidance on the fee structures. I can talk more about each of our concerns. Lastly, we are very concerned about the issue of consent for burials outside cemeteries and the power that this gives to government officials, that is, the CEO of the Department of Local Government, Housing and Community Development.

I can talk more to those issues, Chair, or take questions.

Madam CHAIR: Ms Douglas, we do not have any questions at this stage but if you would like to go into a bit more detail about those four that would be helpful.

Ms DOUGLAS: For people in Central Australia, burials either take place in community cemeteries that are classified as such and looked after by local government. The responsible authority is the local government. Or, they take place on homelands or outstations.

In regards to the new Bill, we feel that it particularly targets and disproportionately affects homeland residents. In terms of consent of the CEO for burials to take place on outstations, we are concerned that this gives power to a government official to approve or not approve the burial of Aboriginal people on Aboriginal land. At the moment, there is no defining the scope of the powers of the CEO. We would like the Bill to narrow the restrictions and the reasons for refusal that the CEO can provide so that it could be on public health grounds or if there is public infrastructure.

We would like some definition around the regulation of the powers of the CEO so that the CEO cannot withhold consent unless the regulations require them to do so unless it relates to interference with public infrastructure.

At the moment, the power of the CEO is quite broad and we would like that narrowed within regulations so that the CEO cannot withhold consent unless the regulations otherwise specify.

Another concern that we have is the fee structures attached to this Bill. The current Bill does not provide guidance on fee structures and the Bill states that the fees should be reasonable. However, what is reasonable can differ between local governments. We would like included in this Bill, guidance on fee structures and a formula for which fees are calculated and to have prescribed when fees should be waived.

Aboriginal people in remote areas are already struggling to meet the cost of funerals along with meeting the costs of day-to-day living. We know that remote community residents are paying 60% more for a basket of food and really high costs for petrol and diesel. The cost of living in remote locations is extremely high. Then if you are going to overlay on top of this, fees for burials that could differ between shires, we want some regulations in place where the fees can be capped, waived and where the formula for working out the fees is transparent and publicly available.

We do not want to see the most disadvantaged charged fees as a way of revenue raising and again, just to emphasise, we want a formula set for how fees are calculated along with provisions for waiving fees.

This new Bill sees an increase in penalties and the creation of new penalties. The jump in penalties attached to this Bill is quite extraordinary. An example of this is the failure to provide information and the power it gives to the newly created inspectorate where outstation residents would need to provide information on the name of the deceased, the manner of burial and the depth of the grave.

If this information is not provided, the penalty for not providing this information is 100 penalty points with one penalty point worth \$155. The maximum penalty under the new Bill for failing to provide information, is \$15 500. If you compare this to the penalties of not providing your name and address to a police officer attracts four penalty points. The increase is extraordinary, it is way over the top. We are concerned actually with the increase in penalties and the creation of new penalties.

Mr MURPHY: That is right. For a number of the other offences under the Bill, compared with the *Cemeteries Act* which the Bill replaces, burial outside a cemetery without consent in the current legislative regime attracts a penalty of two penalty units. Under the new Bill it is 200 penalty units or imprisonment for two years. These, of course, are maximum penalties and the discretion is upon the court.

However, we know that for many of the Land Council constituents, who are welfare recipients and are impecunious, are unlikely, for a range of reasons, to be in a position to pay any penalty and are likely to come back before the court for failing to satisfy a court order—they can be punished for that as well.

The manner of burial attracts a penalty of one penalty unit under the current Act, but it would be 100 penalty units or imprisonment for one year under the draft Bill.

Ms DOUGLAS: Again to emphasise, we believe that this new Bill will disproportionately impact on remote residents. It also creates an administrative burden for our remote outstation residents. We believe that the Bill should allow for culturally-appropriate burials on Aboriginal land. I am happy to take questions, Madam Chair.

Madam CHAIR: Thank you. I have a couple. We have just heard from the Northern Land Council that consultation on this Bill has stemmed back a number of years. Is that the same for the Central land Council? Have the Central Land Council been consulted on the development or the amendments contained within this Bill for a long period of time?

Mr MURPHY: It is my understanding that it does have some history, although it predates my involvement with this at the Central Land Council. Certainly, we were involved some months ago when a discussion draft was circulated. I do believe that the consultations went back possibly a number of years, from what I have been informed by colleagues.

Madam CHAIR: Great. My final question, does the Central land Council support the definite of 'senior next of kin' that has been included in this Bill?

Ms DOUGLAS: Thank you Madam Chair, we just conferred. We do not have a particular problem with the definition but we understand that there may be concerns in relation to the definition by other organisations.

Madam CHAIR: Thank you. I will now open it up to the committee for any questions. No questions in Darwin. Member for Namatjira, do you have any questions?

Mr PAECH: Thank you Madam Chair, no further questions.

Madam CHAIR: Thank you Ms Douglas and Mr Murphy for dialling in and providing your testimony as a part of this morning's public hearing on the Burial and Cremation Bill 2019.

The committee will take a short break before we invite the department of Local Government, Housing and Community Development to appear before us.

The committee suspended.

Department of Local Government, Housing and Community Development

Madam CHAIR: Good morning everyone and thank you for joining us. I am Ngaree Ah Kit the Member for Karama and Chair of the Social Policy Scrutiny Committee.

On behalf of the committee I welcome everyone to this public briefing on the Burial and Cremation Bill 2019. I also acknowledge my fellow committee members in attendance today, Member for Sanderson, Kate Worden, Member for Spillett, Lia Finocchiaro and via teleconference, Member for Namatjira, Chansey Paech.

I welcome to the table to give evidence to the committee from the Department of Local Government, Housing and Community Development, Maree De Lacey, Executive Director, Local Government and Community Development; Lee Williams, Senior Director, Legislation and Policy and Ethan Redshaw, Senior Legislation and Policy Officer. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

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I will ask each witness to state their name for the record and the capacity in which you appear today, before inviting you to make a brief opening statement and then opening up to the committee for any questions.

Could you each please state your name and the capacity in which you appear this morning?

Ms De LACEY: Good morning. Maree De Lacey, I am the Executive Director with the Local Government and Community Development division in the Department of Local Government, Housing and Community Development.

Ms WILLIAMS: Lee Williams, Senior Director of Legislation and Policy in the Department of Local Government, Housing and Community Development.

Mr REDSHAW: Ethan Redshaw, Senior Legislation and Policy Officer with the Department of Local Government, Housing and Community Development.

Madam CHAIR: Thank you very much. Ms De Lacey, would you like to make an opening statement?

Ms De LACEY: Thank you, Madam Chair, for the opportunity to appear again before the committee regarding the Burial and Cremation Bill. Our responses to the written questions have been provided to the committee. As outlined during our previous attendance before the committee, the overarching aims of the Burial and Cremation legislation are to ensure that human remains are treated with dignity and respect, provide for various methods of burial and disposal in relation to human remains, accommodate different practices and beliefs and to regulate cemeteries and crematoria in the Northern Territory.

We really appreciate the consideration that people have put in to the submissions. We thank the Central Land Council for their submission as well as their contribution towards the development of the Bill. We also thank them for acknowledging our response to their input regarding the use of a map as an alternative to GPS coordinates to show the location of burials; that fees must be reasonable and that for the burial outside of a cemetery land owners must consent.

The Central Land Council referred to concerns in relation to offences and penalties. I hope that our written answers will explain the reasons for certain penalties.

In summary, the development of new legislation means that penalties are always reviewed and aligned with other legislation across the Northern Territory's statute book.

We also note that some submissions advocate that there should not need to be approval from the CEO of the agency for a burial outside of a cemetery. We also note that other submissions support the provision that the CEO should ensure that land owners, or a representative body for land owners such as the land councils, consent to the burial taking place on that land before the CEO gives approval for burial outside a cemetery.

The draft Bill attempts to balance a number of competing interests. The provision that burials that occur at a location outside a cemetery without permission are unlawful is based on several key points. The Bill is about meeting the expectations of all people, including family members of deceased loved ones. An approval process is a necessary mechanism to ensure that all deaths are properly certified prior to burial or disposal.

This reflects the reality that burying or disposing of a body without approval—which means no formal check that a doctor has certified the death—is a serious matter.

To clarify, this Bill is not about preventing or intruding upon any kind of cultural practices in relation to deceased persons. Certifying that a death is not a reportable death, or a Coroner providing a Coroner's certificate if the death is investigated further, is an essential administrative practice. The *Births, Deaths, Marriages Registration Act 1996* contains offence provisions to ensure that doctors give notice of deaths and funeral directors relay information back to the Registrar of Births, Deaths and Marriages. Similarly, the *Coroners Act 1993* contains offence provisions to ensure that doctors refer reportable deaths to a Coroner.

The CEO, in considering whether to approve a burial outside a cemetery will consider several facts:

1. whether the death has been properly certified: this ensures that no one is buried without medical notification that the person is deceased, that there is no evidence of foul play and that the death is not one that should otherwise be referred to a Coroner
2. that the next of kin do not object to the burial in that location
3. that the land owner consents to the burial occurring on that land.

If the Bill is approved, regulations will be drafted to provide guidance on the approval of burials outside of a cemetery and there will be consultations on those regulations, as requested in some of the earlier submissions.

If there is an unlawful burial and there is a prosecution, the courts have discretion to impose penalties, taking into account the circumstances of the offence and of the offender. The court would consider mitigating factors and a penalty would reflect the individual situation.

We thank the Northern Land Council for acknowledging the importance of records for family, and for a register.

The Bill also includes provisions that recognise the importance of cultural practices and allows greater options for Aboriginal people in relation to cemetery management and burials, compared to the current Act. For example, the introduction of a new category of 'cemetery'. For the first time 'local cemeteries' enables Aboriginal organisations to operate cemeteries within local communities. Local cemeteries are a way to facilitate and support cultural practices, but this can also be achieved through the advisory role of local authorities for cemeteries managed by regional councils. Local authorities have an important role in approving cemetery plans within the local authorities' areas. Local authority members are nominated by their local community.

NAAJA raised a concern that this legislation may criminalise Aboriginal ceremony and traditions. However, the rights of Aboriginal people are respected in this legislation and traditional ceremonies can continue as they always have.

One of the objects of the Bill is to accommodate different practices for, and beliefs regarding, the burial and disposal of human remains. Additionally, under clause 16, any organisation responsible for managing a cemetery must have regard to the values of the community if the cemetery services a particular cultural community. These considerations apply universally to a range of practices and beliefs in the Northern Territory including the customs of traditions of Aboriginal communities and groups.

We understand that it is vital for all Aboriginal people to know about the law and the reasons behind it. We look forward to working with NAAJA, the land councils and other interested groups in helping to get the information to communities about the Act and its intent.

We thank the NLC for its ongoing work in consulting traditional owners about the appropriate cemetery management arrangements, including consultation regarding licences for cemeteries. We also thank the NLC for its offer to work together to improve the management of various issues, including with the implementation of a public education campaign. We will definitely take that offer up and look forward to working together.

We acknowledge the concern of the NLC that some Aboriginal organisations may not have sufficient administrative resources to carry out their responsibilities if they take on the role of responsibility for a cemetery. Our intent is to work closely with these organisations. Departmental officers will be on hand to advise and assist in relation to requirements when a death occurs.

Although I have spoken about the importance of medical certification, I should also mention the significance of recognising land owner rights. A land owner has the right to say whether a deceased person can be buried on their land. The approval process for burials outside of the cemetery enables the protection of the rights and interests of land owners.

NAAJA has suggested that burials should be allowed regardless of traditional owner consent while the land councils have advocated that this should not be the case. The proposed legislation is consistent with the views expressed by the land councils on this matter. We also acknowledge and thank both the NLC and CLC for their assistance to date in relation to the approval process for burials outside of cemeteries.

These land councils are aware that the department always consults them when an application for a burial outside a cemetery is received relating to relevant land and we appreciate their advice as to the consent of the traditional owners. This Bill cements the approach of recognising the interests of traditional owners. NAAJA suggested that there should be an Aboriginal-led alternative dispute resolution mechanism and this suggestion seems to be a general one not just to determine burial disputes but that could encompass other types of disputes including under other legislation.

The department emphasises that a range of stakeholders including the land councils, sacred site authorities, native title based groups and land trusts are all relevant groups to be involved in the development of such an alternative dispute mechanism. NAAJA acknowledges that a model that could suit all Aboriginal interests across the Territory would be a challenge and if NAAJA decides that they would like to pursue this, we would welcome an invitation to be involved. However, it is not within the scope of the current Bill.

We also thank the Member for Nhulunbuy and the leaders of the Galpu and Golpa clans of Galiwin'ku for their submissions. I hope that what we have already said about the necessity for medical certification and landowner consent is some comfort that this Bill is actually about protecting the rights of the deceased and the rights of traditional owners in relation to their land. It is not about regulating or approving Aboriginal culture, tradition or customs in relation to deceased loved ones.

The Member for Nhulunbuy raised a concern that councils will start charging for burials in the cemetery. East Arnhem Regional Council has advised that they do not charge for cemetery burials because they want to encourage people to participate in the cemetery system. The department notes that this council has had a system for burials and registrations in designated cemeteries for some time.

As mentioned in relation to cemetery plans, the Bill makes consequential amendments to the *Local Government Act 2008* which will require local government councils to seek advice and recommendations about the management of council-run cemeteries from local authorities. This will ensure that local advice is taken into account.

Before I turn to the urban cemeteries, I would like to reiterate what is said in our written answers to questions in relation to communication and education. The department will continue to offer face-to-face training for cemetery managers and their delegates to support the understanding of the burial approval process. Training will be tailored to the needs of particular councils or organisations and there will also be online resources available on the department's website including maps, templates, fact sheets, processing guidelines and checklists.

Further, there is a generic email address and there will be a phone number through which the public, council and organisation staff can obtain immediate advice or guidance. A public communications strategy will be rolled out in preparation for the commencement of the legislation if it is approved. This will occur after consultation on the burial and cremation regulations. The strategy will specifically target and seek to engage with members of the public in regional areas.

Community development officers from the department will continue to advise about the new legislation as they visit communities across the Northern Territory and implement a variety of communication techniques using interpreters, where appropriate, to ensure the widest possible reach of information.

I now turn to urban cemeteries. Litchfield Council has acknowledged that most matters raised in their previous submission to the department on the draft Bill have been addressed but they do have a few remaining issues. They are concerned about the possibility of an independent cemetery being established. This is enabled under the legislation to comply with national competition principles.

They have also raised the regional nature of Thorak Regional Cemetery and that it serves a wide population beyond just Litchfield Council. This is not unusual for a cemetery or for general council services, as outlined in our responses to the written questions.

Our written answers also provide a number of options for Litchfield Council if it would like wider management involvement such as the establishment of council subsidiary or an advisory committee.

Although the Bill no longer allows for transfers of exclusion rights of burial purchased after commencement of the new legislation, it does not prevent a burial plot being passed to a family member, if there is a council policy in place that supports this when a plot is surrendered. We can discuss this with Litchfield Council to support the council in making a policy in that regard.

We have had a lot of submissions and consultations throughout this process and it is impossible for us to reflect our appreciation for all peoples' input into the legislation. Consultations have been far and wide and everyone's feedback has been valued and taken into consideration. Thank you.

Madam CHAIR: Thank you, I will now open up to the committee for any questions.

Mrs WORDEN: Thank you. You talked extensively about the two main land councils. I wonder if you could let us know how much remote face-to-face community-community in-language consultation has occurred? Not six years back, more recently.

Ms WILLIAMS: There is information in Aboriginal languages on our website and we have...

Mrs WORDEN: What I am asking is face-to-face going to communities, talking directly with people on the ground about the legislation. We just heard extensively, that if the legislation is passed, you will do a whole heap of stuff then. That is really just telling me people what happened rather than talking to them upfront?

Ms WILLIAMS: We have staff in the regions who went to the local authorities in all the communities to talk about this new legislation. In doing that, talking to the communities, if they did not have an interpreter, then they could use the Aboriginal language information on our website. It has been used in that way.

I would not say that there has been an interpreter at every single meeting, but they have done their best to communicate as far as possible. Councils and council staff have also been talking to people on the communities.

Apart from talking to all the local authorities, we met face-to-face with a number of organisations, particularly organisations that thought they might be interested in running a cemetery themselves—organisations like the Arnhem Land Progress Association. We visited them twice and talked to their board. I do not have the statistics in front of me about how many, but there were a lot.

Mrs WORDEN: Is there a possibility of getting that information?

Ms WILLIAMS: We could certainly provide that to the committee.

Mrs FINOCCHIARO: I wanted to ask if currently, under the legislation, in particularly with respect to customary burials and practises in Aboriginal land, is there large scale non-compliance? Is this legislation trying to address a non-compliance issue?

Ms WILLIAMS: The current situation is that burials outside of cemeteries are unlawful, without consent of the minister. Gradually, through an education process, people have been coming to realise that and started making applications to bury outside of cemeteries.

It is not just Indigenous people that want to do that, it might be people in pastoral properties who want to bury their family members on their pastoral properties and so on.

We have been getting more and more applications for burials outside of cemeteries on Aboriginal land and the Northern Land Council mentioned that—I think Mr Gosford mentioned that when he was at the Central Land Council he remembered receiving those applications and working with the department.

The department has policy guidelines on how to deal with those applications and there is a list of things that are taken into account, such as: whether there has been the certification of death that is required, the land

owners' consent—which is what we talked to the land councils about—and whether it is near potable water or too close to a residence or something like that.

There are a few things listed that we go through with the land councils and if that is agreed to and the land councils are happy, approval is given for the burial outside of the cemetery. It has been happening more and more and this is to basically solidify what goes on currently.

Mrs FINOCCHIARO: In doing does it increase the penalty regime around non-compliance?

Ms WILLIAMS: It does. A burial anywhere of a person without any documentation is an issue because if there is no medical documentation that this was an appropriate burial to take place, i.e. the doctor has certified that the person has passed away and that there is no foul play. Without a tick on that that is quite a serious matter. It is also a serious matter if someone wants to bury somebody somewhere that is not on their land. For those kind of reasons it is quite an important matter that needs proper attention.

Mrs WORDEN: On the submission by the Member for Nhulunbuy, were you in the room for that—yes? Good. In terms of the discussion we had around permission versus advice, I am a bit compelled by the information that this legislation has the potential to take away, if you like, the practice that has been going on for a long time and enforce a regime where permission is having to be sought for a practice that has gone on for a very long time without adverse consequences.

Do you have some commentary around that assertion that this legislation actually changes that imbalance from permission, and is there any scope in there that you feel that advice can be provided versus actually seeking permission of a CEO to do something that is recognised under law for a very long time?

Ms WILLIAMS: We appreciate the sentiments of the Member for Nhulunbuy and your sentiments too. We agonised over this for quite some time and had some long discussions with Parliamentary Counsel about how this could be framed. We understand that the application and approval process is not the best kind of terminology but at the same time there needs to be these checks about checking the medical certificate and checking that the land owner has approved.

That is why what really amounts to a burial application is actually called a burial form in the legislation because it is a form that contains information. It is not mandatory information. It is information if known and that was to try to get away from the idea of application and approval, but we were advised that we really did need to use the terminology for approval because the CEO must be satisfied that there is a medical certificate and that there is land owner approval for this to go ahead. If the CEO just receives advice that a burial is happening then that does not really meet the requirements of the certification of the death and the land owner approval.

Mrs WORDEN: Would you accept that that is a very Western view of burial? We are putting in place, over something that has happened for a very long time, a very Western system of requirements that is just not compatible. In fact, Mr Gosford said something that I quite thought was spot on—that trying to reconcile the conflict between requirements of burial—in this situation we are choosing a very Western system to reconcile those.

It is a conflict—I am actually just being devil's advocate for this today because this is a major criticism that we are hearing in terms of remote burial is over layers. Do you accept that this is a Western system that we are just putting in place? Or do you think that the two are not compatible?

Ms WILLIAMS: There is nothing in this legislation and there is nothing that the CEO would say that would prevent the traditional burial type ceremonies and so on from happening on traditional lands. It is about making sure that the medical certification and the land owners consent is there.

Mrs WORDEN: If permission is not given then that mean then that means it is preventing ...

Ms WILLIAMS: But that means there is no medical certification. That would mean that perhaps this needs to be referred to the Coroner. It would depend on the circumstances. But if the person has not been certified as deceased then that would be an issue. Similarly with land owner consent. If the landowner did not consent, then the CEO would not give it the tick either. But there is no intention to interfere with ceremony, practices or traditional practices at all.

Mrs FINOCCHIARO: So, if it meets the criteria—there is the permission and the death certificate—the CEO would have no grounds to refuse an application?

Ms WILLIAMS: That is certainly not the intention. In the regulations, there can be further expansion on the CEO's role in approving. We will certainly consult with the land councils about that. I think Central Land Council has asked for something extra. We will certainly talk to them about that. But there is no intention to interfere with traditional ceremony at all. It is about ensuring the death is appropriately certified and the land owners have consented.

Mrs FINOCCHIARO: Was any consideration given to a different structure of approval to ensure that it is fast, easy, able to be complied with as best as practicable, perhaps in the form of the delegation of power to—I do not know, local authorities, land councils—people closer to the ground, perhaps instead of the minister or the CEO. Was there any other delegation structure looked at where different entities could perhaps fulfil that approval function and therefore, expedite the process and compliance?

Ms WILLIAMS: Well, there is one way where an organisation can take responsibility and that is if they actually have a burial area or site. It could be quite a small site or area that is declared as a cemetery and then an Aboriginal organisation would do the approval process for that.

But where there is no organisation and no council taking responsibility, somebody needs to do that job, so it is the CEO of the agency. The CEO of the agency can delegate that and we have regional staff throughout the Territory who have good relationships with all the communities. We use those regional staff when we get applications for burials outside of cemeteries. The regional staff help the family get any information they need and provide it back to us. The CEO can delegate. At the moment, it is the minister who delegates that approval process down, but it will be delegated down from the CEO as well. It is quite fast ...

Mrs FINOCCHIARO: What is a rough time frame?

Ms WILLIAMS: It can be a couple of days. It is more dependent on how long the land councils take to consult with traditional owners on whether there is approval. We get the medical certificate, the approval from the land council and that is the main thing.

Mrs FINOCCHIARO: But at the end you control, it is relatively—I imagine the time frame, the turnaround, would have to be as quick as possible to give certainty to families and ...

Ms WILLIAMS: Absolutely. It would normally be well within a week, yes.

Madam CHAIR: We had some concerns with regard to vehicles that are currently being used to transport bodies as part of a burial practice. I am trying to figure out whether that would be discussed further in the regulations. We have people who are using troop carriers as a part of regular burial practices. We have heard concerns that it is not separated. We understand that there needs to be certain provisions—like you said, Maree, we want human remains to be treated with dignity and respect. That is at the forefront.

It is just I worry about the level of consideration given to the practicalities every day when people are transporting bodies. Can you talk about whether, if the legislation is passed, will there definitely be a great level of discussion back with Territorians about how these practical implications will go forward?

Mr REDSHAW: I will start by outlining section 147 that was discussed and how that is currently framed. I will explain that it allows for more flexibility that was being questioned. It is framed into different options. The first option is you can transport a body in a coffin, body bag or another container in the same section of the vehicle. The other option is it can be outside of the coffin if it is appropriately covered, but in a separate compartment.

There are two options. That was allowing the flexibility people are describing where you do not really have access to a specialised vehicle or maybe people do not want to use a specialised vehicle to transport remains of loved ones. That is currently facilitated in how that has been drafted.

I draw your attention to paragraph (a) and then there is the use of the word 'or' at the end of that paragraph so that allows two different options for compliance. That is in relation to the practicalities of transporting. I note as well that the current legislation does not allow a lot of clarity around this provision and that is why it was inserted to provide a bit more clarity around what is acceptable and what is the balance between respecting human remains and the transport of human remains but also recognising that there are practicalities with transporting human remains in the Territory. That is what I would like to draw your attention to in that particular clause.

In the regulations as well as we have explained, we are going to consult on the regulations, especially around burials outside of a cemetery. That will be an opportunity to find an appropriate balance with the practicalities of approving that and possibly even streamlining that process so it can occur as fast as possible so people are not delayed. I also note that it is approved through guidelines at the moment. The intention is to have these guidelines in the regulations so it will be very clear for members of the public to know what steps are involved with that approval. It is increasing clarity around that for the public.

Mrs FINOCCHIARO: I wanted to ask about the change to exclusive right and therefore not being able to on-sell your plot. How have transfers of names and some of the issues raised by the City of Palmerston been covered off in the legislation? If someone does, in the end, choose to put a different family member or leaves the Territory, how is that going to be dealt with?

Mr REDSHAW: Under the Bill, there is a mechanism to allow for someone leaving the Territory and surrendering their exclusive right, they can do so. Once they surrender it, it goes back to the cemetery to reallocate.

Mrs FINOCCHIARO: Are they then refunded? How does that work?

Mr REDSHAW: They can provide a refund policy. Once someone purchases an exclusive right, the Bill says they have to have a refund policy in place so it would be explained to the person that if they surrender...

Mrs FINOCCHIARO: So at the time of purchase, the terms and conditions would be made known to you.

Mr REDSHAW: Exactly.

Mrs FINOCCHIARO: Okay, I see. Then for change of name?

Mr REDSHAW: In terms of change of name, in the current Bill there is one grantee and one holder of the right and if they want to surrender it they can do so and it is reallocated. There is no transfer. This increases the clarity—it is an administrative practice. There is a lot of lack of clarity between—when someone transfers a right under the current system they have to notify the cemetery but I am not aware of this happening on a consistent basis so the cemetery loses track of who might have access to the exclusive right and they have to go through other alternative processes like statutory declarations saying you have access to this right and so forth.

Looking at exclusive rights, it is quite a long period of granting this right. The current legislation does not have a limit but this one suggests that the upper limit is 50 years. There needs to be a clear practice in place to say if records get changed, they need to be updated appropriately.

Mrs FINOCCHIARO: Because there is no central holding—when you purchase a right to a plot it is not registered with the Land Titles Office or something like that. It is up to the individual cemeteries to maintain that register. You are saying those transfer processes differ and are not as stringent as they ought to be. In your consultations, that must have been raised as an issue.

Mr REDSHAW: That is correct. That was the response in the legislation; to disallow this transference and lack of information around who actually is the holder of the right. There are transitional provisions in the legislation that allows one last transfer for existing right holders. If someone purchased a right with the expectation that they can transfer it, they can do that one last time to a family member and that can be registered with the cemetery and kept in the register.

Like a cemetery keeps a burial register, an exclusive rights register would also be held by the cemetery.

Mrs FINOCCHIARO: If you purchased a lot for yourself but then you wanted to—I think one of the examples was your child passes away, you would not just be able to bury a child in that plot, you would forfeit it and repurchase it for your child.

Mr REDSHAW: Just a bit of background about exclusive right. For example, if someone purchases the right, they are the holder and they can decide who is buried in the grave. If there is a change in plan of who they want to bury there, that can be facilitated through the existing holder. It is only if another person wants to be responsible for the right that there might be an issue, but as described, it can be surrendered and if the cemetery has a policy about reallocating that to family members or an appropriate person, that can be achieved.

Ms AH KIT: My question is in regards to the Thorak Cemetery. We have heard that the City of Palmerston provide their input, I think a \$400 000 a year operational deficit. That is huge and very concerning, it is an essential service.

I understand the need for competition and I am going to play devil's advocate for this scenario. What happens if we get to a stage where Litchfield say, it is too expensive, we are not going to run it and competition can do it. Will the government pick that up and actually operate cemeteries going forward if we need that to occur?

Ms WILLIAMS: I would like to talk for a minute about the report that Palmerston Council referred to, the KPMG report. I do not think that report actually said that the cemetery was operating at a deficit of \$400 000 a year. I am not sure whether that report has actually been put before the committee or whether it can be? It is a report that is owned by the councils.

My understanding of that report, I have read it, is that what they are suggesting is that to make certain improvements at Thorak Cemetery and to increase its ability to provide services, it would be good to have \$400 000 a year for the next four years. That money would go towards building a new chapel, doing other infrastructure works and other things apart from just running the cemetery.

My understanding is, from Litchfield Council's financial reports from the last year financial year, that there was actually a profit—profit is probably not the right word, I am not an accountant, I do not know the right terminology—it certainly was not a loss. There was revenue generated from the cemetery last year in their financial report. We can provide those financial reports to the committee.

Ms AH KIT: What I am looking for, if it is no longer a viable commercial operation and councils walk away, will government ensure that an operating cemetery continues?

Mrs FINOCCHIARO: Does government have an obligation to provide a public cemetery?

Ms WILLIAMS: The public needs cemeteries and it is a local government service that should be provided, like garbage collection and the like. The government I would think—I cannot speak for the minister—that the department would work with the council to make sure it is workable.

Ms AH KIT: Thanks. I take what you said in regards to rubbish collection. We pay rates every year and a part of that is actually an ongoing service.

I have a brother and sister who are buried at Thorak. We pay for the plot but we do not provide ongoing garden maintenance, lawn mowing or wet season cyclone clean up. Every time I go there, I like seeing that the lawns are mowed, it is nice and green, there is a caretaker and it is looked after.

Two different examples, but giving that guarantee going forward that our community will always have access to an operating well-maintained cemetery is absolutely vital.

Mrs FINOCCHIARO: On private cemeteries and I recognise that they have them in other jurisdictions, I do not have an issue with that per se, I was wondering with our legislation, have we adopted similar provisions to one of those jurisdictions that have managed private cemeteries effectively?

My concern is, in that situation where a private operator thinks it is going to be a great business and it turns out it is not and they walk away, what stops that from happening, how do we safeguard that?

Ms WILLIAMS: It is the minister who can declare an independent cemetery or private cemetery. Before the minister did that, the minister would use due diligence to make sure—get reports from wherever the minister thought appropriate, including from the proposed business—that it was going to be something that the minister is prepared to declare as a private cemetery.

There would need to be a lot of planning and consultation and the minister would, no doubt, take into account comments from the existing cemetery managers and would probably get advice on the sustainability of the potential business.

Mrs WORDEN: Just following on, obviously the movement nationally is about private cemeteries. I note that some of them have quite a number. In the attachment that you supplied, one place has nine. Given the size of our jurisdiction plus the geographic spread, do you really think that—and you might be saying it is for future proofing of legislation to open it up for commercial cemeteries, but the evidence that is before us is that the current cemetery situation is not viable.

Accepting what you say about the \$400 000, even if there is not enough money in generating from the costs to actually do those things to keep the cemetery up, that is an ongoing concern. Then, the next step you have said that this is the space of local governments are telling us is that this is not a commercially viable space in the Northern Territory at the moment. Are you simply just future-proofing the legislation, do you think, or is there room to make that as a later thing?

I do not think anybody accepts that just because the rest of Australia is doing that that it necessarily applies here. We are so small.

Ms WILLIAMS: It is hard to foresee the future and what might be appropriate for the Territory in the future. Because of the national competition principles, it was felt important to have that ability in there. But the tick on that is that it is the minister who can declare it. It is not just that a business can suddenly start up a cemetery, they actually have to go get permission from the minister first. That is where those kind of things would be taken into consideration.

Mrs WORDEN: But if it is not in the Act, then the minister would not have to consider it. If the minister said no, would that not be considered anti-competitive behaviour?

Ms WILLIAMS: Under this legislation the minister has the final discretion.

Mrs WORDEN: But he or she would still have to make a decision in line with national competition legislation. Yes? I would think it was a business decision, for any business to put up its case. Businesses do not necessarily take into consideration that they will make those other businesses in that same line of work unviable. That is not generally what a business will do. In fact, a business might aggressively target a market in order to become viable themselves, causing other businesses to close.

I am saying that if the minister is under an obligation, which this Act would create, then that might put him in a tricky situation in terms of anti-competitive behaviour. His decision would have to be in line with it. But if it is not in the legislation, then he would not even have to consider it at this time.

Ms De LACEY: It makes it consistent with the principles, and that is one of the parts of the advice we have had—that it is a requirement. But there is a range of checks and balances, including that any business would obviously do its own due diligence about whether it was profitable. The minister's decision would have to consider all factors and it would have to be a transparent decision as well.

One of the points I also make is that cemeteries are actually being run by local governments across the Northern Territory already in many instances. While we have also had some feedback from a couple of councils that they are concerned that this legislation may, in fact, impose additional costs on them, for the majority of councils we have spoken with, that is not something they are raising as a significant concern because this actually does not impose any significant additional costs on them. There are additional requirements and there will be assistance for meeting those requirements.

Mrs WORDEN: However, the biggest cemetery in the Northern Territory—I am presuming Thorak would be the biggest—is raising concerns. It might be viable at a smaller rate, but where you have a bigger cemetery perhaps, it will be an issue. It is food for thought for us all.

Madam CHAIR: Does the committee have any further questions? No, there are no further questions in regard to the Burial and Cremation Bill, so I thank all representatives of the department for appearing before us.