



NORTHERN LAND COUNCIL

Our Land, Our Sea, Our Life

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11 September 2019

Ref: F2019/0206

Social Policy Scrutiny Committee
c/o Committee Secretary
SPSC@nt.gov.au

Dear Committee Members

Burial and Cremation Bill 2019

The Northern Land Council welcomes the opportunity to comment on the Burial and Cremation Bill 2019.

The NLC is an independent statutory authority responsible for assisting Aboriginal people in the northern region of the Northern Territory to acquire and manage their traditional lands and seas. A key function of the NLC is to express the wishes and protect the interests of traditional Aboriginal owners throughout its region.

The United Nations Declaration on the Rights of Indigenous Peoples enshrines the right of Indigenous peoples to practise their cultural traditions and customs. The *Aboriginal Land Rights (Northern Territory) Act 1976* (Land Rights Act) and the *Native Title Act 1993* provide protections for such practices.

Funerary and burial practices hold great significance to Aboriginal people of the NLC's region, where traditional customs are maintained in contemporary society. There is significant variation in these practices between regions, but one common element is that ceremonial and kinship obligations often require that funerary practices take place on the country of the deceased. The NLC strongly supports the rights of Traditional Owners to bury their dead in accordance with custom and traditions, without hindrance.

It is encouraging to see recognition of Aboriginal custom in the Bill, including in defining next of kin and in ranking senior next of kin. However, the NLC is concerned that Aboriginal tradition is not appropriately considered in some provisions of the Bill.

Burial outside cemetery without approval

Section 71 of the Land Rights Act provides that:

“An Aboriginal or a group of Aboriginals is entitled to enter upon Aboriginal land and use or occupy that land to the extent that that entry, occupation or use is in accordance with Aboriginal tradition governing the rights of that Aboriginal or group of

Aboriginals with respect to that land, whether or not those rights are qualified as to place, time, circumstances, purpose, permission or any other factor.”

Burials outside of cemeteries are therefore permissible where they take place in accordance with the above.

The NLC’s position is that Traditional Owners do not require approval for burials on their country. We recommend the Bill be amended to make explicit reference to the Land Rights Act, including noting that relevant clauses do not override protections granted under that Act.

The NLC understands the importance of records for family and to facilitate government business, and as such would support a registration process for burials on Aboriginal land in place of the proposed approvals. There should not be offences attached to this process. The Department has indicated during consultations that its intention is not to prosecute but rather to improve record-keeping through public education. The NLC agrees with this approach.

The NLC acknowledges that burials outside cemeteries can create challenges, including for performing our own functions. However, we do not believe that a system of permits and penalties is the appropriate way to address these challenges. The NLC would be happy to work with government to find better ways to manage issues, including implementation of a public education program.

If approval for burial outside a cemetery is sought from the CEO and consent is obtained from land owners, approval should be granted unless there is good reason not to do so.

The processes for both registration and requesting approval must be accessible and understandable.

Penalties

NLC is concerned that maximum penalties for a range of offences have increased, in some cases by 10,000% compared with the current legislation. We are unable to see any justification for the proposed penalties. The Bill also includes the addition of prison terms for some offences, including burial without approval and burial outside cemeteries. Where this relates to the practices of Aboriginal groups, it risks further criminalising a population that is already substantially over-represented in the justice system. The strict liability provisions exacerbate this issue and should be removed for offences on Aboriginal land or where Aboriginal people are likely to be disproportionately affected.

Responsible entity for cemetery

The NLC welcomes the recognition of cemeteries on Aboriginal land that are the responsibility of local government or Aboriginal organisations. These provisions resolve issues of tenure, clarify responsibilities for upkeep and maintenance, and allow for Aboriginal governance of cemeteries on Aboriginal land.

The Bill provides for an Aboriginal corporation, Aboriginal community living area association or other relevant entity to be the responsible entity for a local cemetery and for their chief executive officer to be the manager of that cemetery. It is essential that any such organisation be given the necessary support and resources to undertake this role, and not be placed under any additional financial burden (particularly with respect to the function ‘to fund the maintenance of the

cemetery’). Organisations must also fully understand their obligations and any offences they may be committing under the legislation if these obligations are not met (for example, ensuring all necessary information is included in applications before approving burial.)

Provision of information

Reporting requirements under some provisions (for example cl. 43) may not be appropriate for remote communities and more leniency is required. The majority of Aboriginal homelands do not have plans that show individual Lots (within the terms of the Land Titles Act) and may not be able to provide either GPS coordinates or a map of proposed burial locations. Information may also be culturally sensitive. For example, some locations relating to traditional funerary practices may be sacred, with knowledge of such locations restricted according to cultural authority or gender. The NLC recommends that cl. 43 (1) be amended to reflect this information should be provided where available and where culturally appropriate.

Fees for cemetery services

NLC constituents have raised concerns about the charging of fees. The inclusion in the Bill of a requirement that fees be reasonable is welcome; however, we are concerned by the open-ended nature of this clause and the apparent intent not to include more detail under Regulations.

Protection of information in registers

Information contained in registers may be culturally sensitive. In making decisions about allowing persons or organisations to inspect or be given copies of registers, the decision-maker should be required to ensure that culturally sensitive information is adequately protected and the intellectual property and traditional knowledge belonging to Aboriginal people is respected.

The NLC would be happy to provide further information on any of the points raised in this submission.

Yours faithfully

Marion Scrymgour
CHIEF EXECUTIVE OFFICER