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Social Policy Scrutiny Committee

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Burial and Cremation Bill 2019

Submission

Firstly, I would like to say that I am very pleased to see that the definition of Senior Next of Kin acknowledges Aboriginal custom. This is important that new legislation can incorporate Aboriginal custom and law in order to avoid conflict. Traditional decision-making, custom and law has long been acknowledged by the courts of Australia and this change in legislation will assist to guide people in identifying the appropriate next of kin in our culture.

I'd like to raise some concerns relating to other parts of the Bill. My understanding of the Bill is that there is an intention to address burials on Aboriginal land. I do not agree with this. I believe the Bill will create a layer of foreign authority in an area currently governed by Aboriginal law without significant problems.

Currently the practice is that once a body is returned to family for burial there is no further registration, permission or paperwork process. When I look at Aboriginal culture – I can see in many areas of our life we have had to bow to foreign pressure and our authority has been taken, but in the area of burial we have maintained our authority without interference. This Bill is concerning because it greatly threatens this space that we currently hold.

Our burial custom is one of great significance. We believe that the body is highly sacred and upon death it becomes an article of law under Yolŋu rom. The right people must be involved at every stage of the process and there is no requirement for administration by another system.

This Bill implements a practice, that will place Aboriginal authorities in a position whereby they have to comply with a set of regulations in order to complete ceremonies. I do not want to see changes that will infringe on the autonomy of burial on Aboriginal land. Nor do I want to see a system that creates dependency on others to complete forms, notifications of burials, payment of fees etc. in a foreign administrative system that is unnecessary. Families may like to partake with record keeping of burials on a voluntary basis or through a more thorough community consultation process.

I am also concerned by the criminalisation of the burial process. Where someone is buried without paperwork or without the permission of the CEO if it is outside a cemetery, or if the body is transported in a vehicle that does not comply with regulations – family members can be imprisoned or fined. There are many burials held every month that do not comply with these requirements.

When I raised these issues at the Public Briefing, I was advised that the Cemeteries Act 1952 (NT) already had a provision for illegal burial outside of cemeteries if the permission of the Minister was not given, and upon looking at the Act I can see there is a maximum penalty of 2 unit points (\$220). This means that every burial on Yolŋu country has been performed illegally under Balanda Law. With this new Bill there is an opportunity to change the law so that it works in harmony with our custom and tradition. However, this is



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currently not the case, rather the Bill will apply to Aboriginal land and it requires that permission is sought from the CEO for burial outside a Cemetery and the maximum penalty is 200 points (\$22000) or 2 years imprisonment.

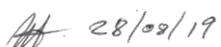
These are very concerning and culture-threatening changes. In Arnhem Land, this Bill can create a nightmare where there is the potential that regular fines are given, court hearings, and imprisonment of Aboriginal people for performing our burial rites.

I'm also concerned that this legislation creates a new administrative process for Councils and without Government funding to pay for this administrative process, Councils or organisations responsible for cemeteries will have to charge fees for burials, and may even charge fees in order to profit. This means families who are already paying enormous sums for coffins and charter flights of the body from the morgue and preparations for the shelter for the body during the funeral ceremony will face further costs – so that the Council can fulfil an administrative procedure that is not required on Aboriginal land. I have had one constituent tell me that they were told by the local council that the next time a family member was buried in the cemetery they could need to pay over \$1000. What are we paying for?

I do not believe that thorough consultations were held. I have spoken widely on this Bill and there are no community members who have heard of it. The one organisation to mention the Bill have stated that they were told by the Department that the Bill would not effect homelands. However, this is clearly misinformation. Our homelands are significant places of burial. Under Yolŋu law our bodies are returned to our ancestral country. If the Department have responded that this Bill will not effect homelands because they have no intention of enforcing the law then the Bill should be amended. Once created the enforcement of this law may happen at any time in the future and is no longer within the power of the Department.

My recommendation to the committee is that the Bill must be amended so that it does not apply to Aboriginal people performing burial according to Aboriginal tradition and custom on Aboriginal land. I do not want to see Aboriginal authorities in a position whereby they have to comply with a set of regulations in order to complete ceremonies. No outside authority should interfere with the way we currently conduct burials. There should be no arduous paperwork, or fees, or register, that create further stress for a family and are not part of our culture. Our communities are under great stress already as we manage an increasing number of early deaths, and leaders have to manage an ongoing number of funerals. We do this under the authority of Aboriginal Law and there is no reason for any change in this area without the express direction and permission of Aboriginal leaders and elders.

Yours Sincerely

 28/02/19

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