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SOCIAL POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

Burial and Cremation Bill 2019

2.00 pm, Wednesday 21 August 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
Mrs Kate Worden MLA, Member for Sanderson

Participating Member Mr Yingiya Mark Guyula MLA, Member for Nhulunbuy

Witnesses: **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: Legislation and Policy Officer

BURIAL AND CREMATION BILL 2019

Department of Local Government, Housing and Community Development

Madam CHAIR: Good afternoon 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 acknowledge that this public briefing is being held on the land of the Larrakia people and I pay my respects to Larrakia elders past, present and emerging.

I also acknowledge my fellow committee members in attendance today, the Member for Sanderson, Kate Worden; Member for Spillett, Lia Finocchiaro and we also have parliamentary colleague Yingiya Guyula, Member for Nhulunbuy, joining us as well.

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, 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.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and 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.

I will ask each witness to state their name for the record and the capacity in which they appear. I will then invite 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 DE LACEY: Maree De Lacey, Executive Director, Local Government and Community Development.

Ms WILLIAMS: Lee Williams, Senior Director, Legislation and Policy, Local Government and Community Development.

Mr REDSHAW: Ethan Redshaw, Legislation and Policy Officer, Local Government and Community Development.

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

Ms DE LACEY: Yes, I would. Thank you for the opportunity to provide the opening statement and brief the committee in relation to the Burial and Cremation bill. The bill is intended to replace the *Cemeteries Act 1952* and is the first comprehensive review of the legislation that regulates cemeteries and crematoria since self-government.

The issues addressed in this bill are significant. Death, and the need to bury or cremate the remains of loved ones, is a matter that affects everybody. Ensuring there is respect for the treatment of human remains was one of the primary considerations throughout the development of this bill. In this opening statement I will first outline the consultation history in relation to the bill, and then I will provide a summary of the key matters contained in the bill.

The first consultation stage with the public release of a discussion paper for the review of the *Cemeteries Act 1952*. Public consultation on this discussion paper was open from December 2012 to March 2013. Eighteen submissions were received in response to the discussion paper and this provided the foundation to develop policy positions for the new act.

The second consultation stage involved the release of a policy position paper and an additional paper that outlined the rationale behind those policy positions. These two papers together set out the fundamental matters to be included in the new act. Public consultation in this stage was open from December 2014 to March 2015, and twelve public submissions were received through this consultation period.

The third and most recent consultation stage involved the release of a consultation draft burial and cremation bill, and targeted consultation with key stakeholders. Stakeholders were directly emailed and an open invitation was extended to any individuals or organisations who wished to have face-to-face briefings or information sessions. The public release of the draft bill was supported by materials on the department's website, which included information sheets, frequently asked questions and audio recordings in 18 Aboriginal languages.

Public consultation on the draft bill this time was open from 3 December 2018 to 31 March 2019. In this most recent consultation stage, officers from the department facilitated over 130 in-person meetings with different stakeholders across the Northern Territory. Approximately 40 meetings were held with local government councils, council staff and

corporations that provide local government services. Around 50 presentations were given to local authorities for regional councils, and local authorities represent the interests of local people and are proposed to play an important advisory role in relation to cemetery matters.

Approximately 20 meetings were held with land councils, Aboriginal peak bodies and Aboriginal corporations. In response to this widespread consultation, 14 written submissions were received. Stakeholder feedback resulted in a number of provisions being amended to best align with community expectations as a result of that feedback.

Generally, the bill was well received, particularly in relation to providing for a process for cemeteries on Aboriginal land to be declared and recognised. Under the current act, cemeteries on Aboriginal land do not have a clear process to be declared and recognised. This bill will enable cemeteries to be declared and recognised on Aboriginal land if written consent is provided by traditional owners, for example, through a lease or a licence for the land to be used as a cemetery.

The five objects of the bill are to:

- ensure that human remains are treated with dignity and respect
- provide for different methods of burial and disposal of human remains
- accommodate different practices and beliefs regarding the burial and disposal of human remains
- regulate cemeteries for the burial of human remains
- regulate facilities, for example crematoriums, for the disposal of human remains.

Under the bill, there will be four categories of cemeteries: public cemeteries, community cemeteries, independent cemeteries and local cemeteries. Under the current act, only public cemeteries are recognised.

Public cemeteries will continue to be managed by local government councils. Community cemeteries are cemeteries that are also to be managed by local government councils. Local cemeteries are cemeteries that are to be managed by local Aboriginal organisations. Independent cemeteries are another new class of cemetery which could enable private enterprise to enter the industry in the Northern Territory.

Other than widening the recognition of cemeteries in the Northern Territory, the bill provides for a range of substantive provisions that I will now outline. It provides for a clear process for burial approvals to bury in a cemetery and disposal approvals to undertake the cremation of human remains. These processes require the manager of the cemetery or crematorium to check the appropriate documentation, for example a medical certificate of cause of death signed by a doctor, which must be sighted before approval can be given.

The bill states that burial and cremation records are to be kept as permanent records. This issue was raised during consultation to ensure that records will be kept and will be maintained for the benefit of future generations.

The bill enables the manager of a cemetery or a crematoria to request the medical certificate of cause of death directly from a hospital or a health clinic if not included by the applicant. Currently, this is a standard administrative practice in urban areas when issuing burial permits. However, it has been incorporated into the legislation to ensure that there is increased awareness in regional and remote areas of the importance of due diligence and checking the appropriate documentation before human remains are buried.

The bill enables family-led funerals by providing that a person does not have to engage a funeral director to conduct a burial in a public, community or local cemetery. Family-led funerals will be conducted in accordance with conditions imposed by a cemetery manager.

It clarifies the operation of exclusive rights of burial. A workshop was held with representatives from public cemeteries in order to improve the practical operation of this area of the legislation. When an exclusive right of burial is granted, a specific burial plot in the cemetery is reserved for future use. For example, a person might be granted exclusive right of burial for two burial plots that are side by side, if the holder of the right plans to bury deceased loved ones next to each other in a cemetery.

The bill provides also for the concept of a semi-closed cemetery, closed cemetery and suspended cemetery. A semi-closed cemetery means that burial plots are no longer able to be purchased and burials cannot take place in the cemetery unless it is an exercise of an exclusive right of burial. A closed cemetery means that burials are no longer available in the cemetery. A suspended cemetery means that the cemetery is closed for reasons of non-compliance.

The bill allows inspectors to be appointed to carry out compliance reviews in relation to the administration and the operation of cemeteries and crematoria. It introduces new concepts of next of kin and senior next of kin. The senior next of kin is presented as a hierarchy in the legislation, so that the appropriate decision-maker for a deceased person

can be identified. If a deceased person was an Aboriginal person with strong cultural and traditional ties to a community or a group, the senior next of kin is the person who is appropriate to perform that role from within that community or group.

The bill clarifies the process in relation to burials that take place at a location outside of a cemetery. In approving burials outside a cemetery, there will need to be permission from the landowner before the human remains can be buried. As there is no relevant cemetery manager for burials outside a cemetery, the department will continue to administer these burial approvals.

Additionally, the bill provides a process for officers to prohibit the burial or cremation of human remains and an approval process for the exhumation of human remains.

The provisions I have outlined capture the major topics contained in the bill. The bill also provides for a minimum standards and operational requirements in relation to cemeteries and crematoria. These include requirements for the local government council or other organisation managing a cemetery to do the following:

- have a cemetery plan which details the layout of the cemetery
- keep burial records
- provide public access to a burial register
- have policies for the administration and operation of the cemetery
- ensure that the cemetery is open for a minimum of eight hours a day
- ensure that all human remains in the cemetery are buried at the required depth
- ensure that if an exclusive right of burial is granted that a certificate is issued to the grantee and that a register of exclusive rights is maintained.

A local government council or organisation that is managing a crematorium is also required to comply with similar operational requirements such as having facility policies, keeping cremation records and providing public access to the register.

If the Burial and Cremation bill is passed, it is anticipated that the implementation of the new act will enable community-led cemetery management and the potential for significant social and cultural benefits.

Again, I thank the committee for the opportunity to attend and provide this opening statement. We welcome any questions you may have to me or my colleagues.

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

Mrs FINOCCHIARO: I think you mentioned in your opening statement, Ms De Lacey, about people not needing to utilise a funeral home to bury or cremate their loved one. How will this work in practice? Will the operators of cemeteries—which, by and large, is local government—be essentially competing with the private sector for the sale and provision of coffins, for example?

Mr REDSHAW: In terms of family-led funerals, or do-it-yourself funerals, it is the current practice—in communities especially—that this is conducted by the family. It is just clarifying this in the legislation. It is not something that is not part of the current *Cemeteries Act 1952*; it is just further clarified. Around that as well, for example, if a local government council is responsible for a cemetery, they can provide safety guidelines about how that might be conducted. They might say 'fill in this form prior to conducting the burial to ensure the correct process is followed'. It is not seen as directly competing with the industry, it is more the family led funerals that is the current practice in communities.

Mrs FINOCCHIARO: Then with the advent of private cemeteries, would they be required to be in certain locations or distances from residential areas or in industrial areas? If you are a landowner and you would like to pursue this business opportunity, would it have to be rezoned? Could you talk us through that?

Mr REDSHAW: The bill does not address the planning requirements because that is a different area of the legislation in terms of private or, as they are called, independent cemeteries as a category in the legislation. There have been no industry or groups that have approached us to say that this a potential in the near future. They would have to comply with any planning requirements around cemeteries and other processes before they could actually be granted or declared as an independent cemetery.

Mrs FINOCCHIARO: Does that framework currently exist? I know you guys obviously are not the planners but if you are creating a law that allows it to happen, one would hope that the other bits of the law exist at the very least. Is that already set up?

Ms WILLIAMS: I think there is a zone for cemeteries but whether the planning department has actually put its mind to private cemeteries, as such, they are certainly aware of this bill. A number of things have to be further developed as to what needs to be considered. We still have to work on the regulations and work on the implementation of the bill.

Mrs FINOCCHIARO: The regulations have not been drafted yet?

Ms WILLIAMS: No. That will commence in the near future.

Mrs FINOCCHIARO: Okay. That type of interagency collaboration is really important. If your bill allows for that private sector, at the very least, to explore those opportunities, then all the other whole-of-government mechanisms need to be in place as well.

Mrs WORDEN: There are obviously a lot of different burial practices around the world. Does the bill allow for vertical burials or the other—people are buried under trees these days, or a pod or those sorts of things? Can you talk us through if there has been allowances for that?

Mr REDSHAW: I believe there are allowances for other types of burials in the current legislation from 1952. It is only horizontal, but this bill allows for vertical burials. It would also allow for natural burials under a tree. It allows flexibility for a cemetery manager and the responsible entity to allow for different types of burials, and that would be detailed in their cemetery plan. For example, they might say in their cemetery plan that vertical burials and horizontal burials are allowed in this cemetery.

Mrs WORDEN: Can you possibly tell me the part of the act that is actually allowing that? I think that has been a problem in the past and I believe there was a call for legislation to be changed to address that some years back. I picked up that you said 'it may' so what you are saying to me is essentially that if the person controlling the cemetery says no, that is it. We have handed the power over to the cemetery manager instead of having it in the legislation to the individual.

Ms WILLIAMS: The power would be, generally speaking, with the local government council if it is a council run cemetery. The council answers to its electorate. In that way, people would have a say to their council. In some cemeteries, certain kinds of burials are not feasible and it depends on the land and the depth and the water tables and so on. It would depend on a number of things. It would be the group that is in charge of the cemetery. In some areas in regional and remote Territory it would be Aboriginal organisations that would be making that decision. It depends on the board that is running the cemetery, really, yes.

Mrs WORDEN: I get that, but essentially what you are saying is if that board or person running the cemetery says no, then the person affected has to go with that decisions—whether it relates to water tables. There is nothing explicit saying, 'These are allowable unless all these factors ...' I worry that you are transferring the control of that to somebody who might simply say no, without no good reason for it. Considering some religious practices about where people need to face, the options for what I would call a more natural burial could be ruled out simply because the controller cannot be bothered.

I am saying that cynically because I have obviously come from a background of local government as well. This was a hot debate there. I guess it would be my preference to see that we legislate that and basically, 'it is allowable unless', rather than 'it is up to them'.

Ms WILLIAMS: It might be difficult to do that because every cemetery is different and has different considerations. But if an application to bury someone is refused then that is appealable to NTCAT.

Mrs WORDEN: An application to bury someone in a particular way or just to bury someone? They are different things.

Ms WILLIAMS: That would be counted as a refusal.

Mrs WORDEN: I am not so sure that I agree, sorry. Just thinking through, there is a long history on this one. If we are missing the opportunity to legislate to allow it to happen, we might find that people think it is just too hard because, obviously, vertical burials allow for multiple burials. We need to be very specific. Obviously, the committee can consider that later, but it is my view at the moment.

I know my colleague has some questions, so thank you.

Mr GUYULA: I have two questions. People out on country are unsure if this bill applies to them. To clarify for all of us, can you advise if it is an offence under this act to bury a body on an Aboriginal homeland or on any Aboriginal land that is not declared a cemetery without the permission of the CEO?

Mr REDSHAW: In the current bill before you, it is an offence to bury without the permission of the agency, which in this case would be the CEO acting in that role. But that is a reflection of the current legislation as well. It is currently an offence to bury outside of a declared cemetery without approval of the minister. In an effort to reduce red tape, we have changed it from the minister to the CEO of the agency. But it is a continuing offence. That is not a change in the law, but to clarify, yes, it is an offence to bury without the burial approval.

We facilitate that in an open way and have guidelines for that. So, it really depends on the landowner's permission as well and making sure there is consent from the landowner for that burial to take place outside of the cemetery.

Mr GUYULA: Thank you. The other one is can you explain to me what authority does this NT Government have to make laws about where we can and cannot bury our kin on our own land according to our traditions and customs?

Mr REDSHAW: There is no intention with the legislation to say where you can or cannot bury someone with regard to Aboriginal land. If the applicant has permission of the landowner—for example, the traditional owners—there would be no limit to that burial approval being given in the circumstances. That is what has currently happened under the legislation—those approvals are granted and burials take place outside of cemeteries.

Mr GUYULA: Thank you. That is all.

Mrs FINOCCHIARO: I want to ask Ethan. This new legislation will now be requiring fees and charges for cremations to be put on the website of the business. Is that correct?

Mr REDSHAW: Yes, that is correct—and itemised.

Mrs FINOCCHIARO: And itemised. Okay. And that is currently not required?

Mr REDSHAW: That is correct, and the policy reasons behind that are to ensure transparency for people who are going through that hard and difficult process so they can compare fees between different...

Mrs FINOCCHIARO: Prices. Okay. How will that be enforced by the agency if operators are not complying with that?

Mr REDSHAW: We have consulted with all active crematoria in the Northern Territory. At the moment there are three and we have consulted with all three. They did not raise any issues regarding these suggested changes to having the information about the prices on the website. We will support them through this process to be compliant. This might involve going out and consulting again and outlining the requirements to have this information publicly available.

Mrs FINOCCHIARO: If there were non-compliances, are there fines associated with it?

Mr REDSHAW: I am not aware of fines with this specific matter but it would be general non-compliance with the legislation which could be addressed through other compliance reviews.

Mrs FINOCCHIARO: Another question that has come to me through members of the public: does this legislation change how an individual pays for a burial plot? Currently I believe you can pay a deposit for a plot and then when your loved one passes you then pay a remaining fee. Does this then make it if you want to have a plot you have to pay the full fee upfront?

Mr REDSHAW: It does not regulate the payment of fees or how that occurs so it will still be a matter for the cemetery.

Mrs FINOCCHIARO: It is up to the individual cemetery how they operate.

Mr REDSHAW: That is correct.

Mrs FINOCCHIARO: Going back to my first question about family-led funerals, how would someone procure a coffin then if they wanted to do the entire service on their own? Is that currently through—just using an urban example—the council-run cemetery? Are local councils providing opportunities for you to purchase through the cemetery and then undertake the burial as you would prefer?

Mr REDSHAW: I am not aware of any local government councils offering that but purchasing a coffin would be through private industry.

Mrs FINOCCHIARO: Nothing is changing in this particular element?

Mr REDSHAW: Not in that regard, no.

Ms WILLIAMS: I can add to that. There are organisations like ALPA stores that have industries that make coffins and there are suppliers of coffins in the urban areas as well.

Mrs FINOCCHIARO: Yes. I was more wondering if it was an opportunity for the cemetery operator to essentially take over the industry and compete directly with the other providers, whether it is ALPA or a funeral home. Interesting.

Madam CHAIR: Does the committee have any further questions? One just from me: this is very old legislation that we inherited at the time of self-government. I think you said it came in 1952. It has obviously been worked on for a number of years. I was contacted late last year in regards to unmarked graves in Aboriginal communities. Is there going to be support or provision for a register or some sort of support for those communities to actually be able to create a register of those who are buried there under this legislation?

Ms WILLIAMS: This legislation is not retrospective so it makes a requirement from when the legislation starts that records have to be kept. As we have been going out and doing the consultations, a lot of people are very keen to get those other historical burials on the register. Different councils and organisations are doing that in different ways. The Catholic Church is also doing that in different places. It is not something that is legislated for but it is something that people are taking up now and have become quite interested in and can apply for funding in relation to.

Madam CHAIR: Thank you very much. That concludes the committee's questions. Thank you for appearing before us this afternoon.