

DRAFT SECOND READING SPEECH

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Burial and Cremation Amendment Bill 2018

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Madam Speaker, I move that the Bill now be read a second time.

This Bill proposes amendments to the *Burial and Cremation Act 2002* (the Act) that will clarify and strengthen the regulatory framework for cemeteries. In doing so it addresses legitimate concerns raised by community members in relation to how cemeteries are sold and managed.

The current Act is reflective of the circumstances that existed at the time it was drafted and does not contemplate the wide-scale sale of properties that include cemeteries. Historically in Tasmania, cemeteries have been owned by religious organisations, councils and commercial cemetery operators.

The Anglican Church's decision to embark on a significant property divestment program – which includes the proposed sale of a number of cemeteries – has prompted community members to question what will happen to these cemeteries, including whether members of the public will continue to be able to access gravesites, and what will happen to exclusive rights of burial in a cemetery that is sold.

The Tasmanian Government believes that the existing legislation does not provide adequate protections, and does not align with community expectations to ensure that cemeteries are not sold to individuals who may lack the capacity to properly manage them.

Earlier this year, the Government commenced a review of the Act and associated legislation. This work has identified priority amendments that are necessary to address an immediate need to protect the rights of community members.

The Review is ongoing, and it is anticipated that additional improvements to address other important, but less urgent issues, are intended to be introduced in 2019.

On 24 September 2018, the Government released a draft Bill for public consultation, outlining the first stage of amendments. A number of changes have been made to address issues raised during consultation.

The amendments we are proposing have been well-received by the community. The Government is working to ensure that cemeteries will be properly protected, and that these changes will strengthen both the rights of community members and, where appropriate, the obligations on cemetery managers.

As part of the new governance approach, the Bill establishes a Regulator, who will have the following functions:

- to oversee the sale and transfer process, ensuring cemeteries that are sold are owned by suitable entities;
- enforcement of regulatory obligations, ensuring accountability and transparency in the management of cemeteries; and
- oversight of the closure process and ongoing protection of grave sites beyond the closure of the cemetery.

The Regulator is not a new bureaucratic entity, but bolsters the powers of the Director of Local Government to oversee compliance.

A fundamental part of this Bill is the new cemetery sale approval process. The provisions allow the Regulator to ensure the cemetery is in compliance with the Act before it is offered for sale, including whether the records are up to date before the cemetery changes hands.

The existing notification process for prospective cemetery managers will now become an application process, meaning the onus shifts to the prospective cemetery manager, rather than relying on an objection by the Director of Local Government to approve (rather than not object to) a new cemetery manager.

The Bill provides clarity by setting out that a person becoming a cemetery manager must be a body corporate with perpetual succession, and lists the matters that may be considered as part of the test of whether that entity is a 'fit and proper person' to manage a cemetery.

By requiring new cemetery managers to be a body corporate with perpetual succession, the owner will be a legal entity that will continue despite the death, bankruptcy or change in membership of any owner. In determining an application to become a cemetery manager, the Regulator will also consider the capacity of the body corporate to meet its obligations, having regard to matters such as previous experience and financial capacity.

The cemetery manager application process introduced by this Bill is important to ensure community confidence in the management of cemeteries. When cemeteries are managed by private individuals, it is difficult to resolve who the new cemetery manager would be if the individual abandons their responsibilities, passes away or is unable to continue managing the cemetery.

The practical effect of this change is that cemeteries will be managed by entities whose purpose is directly related to managing the cemetery. Community groups interested in taking on the management of a cemetery will be able to do so, but will first need to ensure they are incorporated.

The change also rules out the possibility for private individuals seeking to acquire property that contains a cemetery for use as a residential dwelling to do so. This is consistent with the approach in other states and territories, where cemeteries are managed by groups such as a body corporate, cemetery trust or cemetery authority.

Importantly to note, the application process for new cemetery managers does not apply to past sales, in line with the principle that legislation should not be applied retrospectively, and to allow cemetery managers to continue carrying on their business.

It is acknowledged that a small number of cemeteries have been sold to private individuals under the current legislation. The Director of Local Government has committed to work through options in good faith that could deal with legacy arrangements in the second stage of the Review. This second tranche of the Review is underway and these issues will be addressed as a priority through that process.

The Bill also provides safeguards to prevent cemeteries changing hands outside the process identified in the Act, including requiring that the Recorder of Titles refuse to register a transfer of title if the purchaser has not been approved by the Regulator.

Beyond the sale approval process, the amendments support the Regulator to ensure cemeteries are operated and managed in accordance with the Act by increasing penalties for a failure to meet cemetery manager obligations; and allowing the Regulator to issue infringement notices and issue directives to cemetery managers, and request an audit of compliance.

These powers will allow the Regulator to take a risk-based approach to overseeing compliance and react responsively to address compliance concerns. This approach will also incentivise cemetery managers to comply with their obligations.

These changes are in line with community expectations that cemetery managers can and will be held accountable for the proper management of the cemetery.

The Government recognises that there is a strong community expectation that the right to honour the deceased is intergenerational. The Government has heard from many people in the community who raised concerns that the existing 30 year timeframe for the closure of cemeteries is too short, and questioned what will happen when a cemetery is closed. The closure processes outlined by the Bill will give the Regulator appropriate powers to ensure individuals' remains are treated with dignity and respect.

The Bill increases the time period before a cemetery can be closed to 50 years since the last interment, and requires cemetery managers to apply to the Regulator to close the cemetery. The Regulator can place conditions on the closure, such as requiring certain graves not be moved.

Importantly, these powers will allow the Regulator to ensure that the graves of war veterans are protected and treated with due respect.

The Bill clarifies that, even if the cemetery is closed, obligations on cemetery managers, such as maintaining the cemetery and allowing reasonable access, still apply. Closure of the cemetery does not mean that the cemetery manager can remove headstones or exhume bodies.

Building on this amendment, the Bill effectively prevents cemeteries from being used for other purposes for 100 years since the last interment.

The Bill introduces a default time period of 100 years since the last interment before cemetery managers may apply to the Regulator to lay the cemetery out as a park or garden. While the Regulator has the power to reduce this time period on a case by case basis if deemed appropriate, it will not be before 50 years since the last interment.

The Regulator can also place conditions on the approval, if needed to protect graves or monuments on the site.

The compliance framework will allow the Regulator to ensure cemeteries are maintained to an acceptable standard, and clarifies that cemetery managers are responsible for the maintenance of the overall cemetery infrastructure, while family members are responsible for maintaining individual graves, including headstones and monuments. This maintains the status quo and is consistent with the approach that is taken in other jurisdictions.

The Bill further protects gravesites by strengthening the process cemetery managers must take to notify an appropriate person when a monument is damaged or falls into disrepair, or the circumstances when responsibility falls on the cemetery manager to repair.

The Bill also allows the Regulator to declare that land ceases to be a cemetery if it was being used for another purpose for at least 50 years before the commencement of the Amendment Act, or if it is in the public interest to make the declaration, and the purpose for which the land is being used is not consistent with the use of the land for a cemetery. This deals with historical cemeteries that have not been used as cemeteries for some time and where there is little or no evidence that it was once a cemetery.

The purpose of the public consultation feedback was to elicit feedback from key stakeholders, including community members and cemetery managers. The Government has taken this on board, and the final Bill before the House includes some key changes from the consultation draft. These changes balance community concerns regarding the future management of cemeteries with need for cemetery manager obligations to be reasonable, and not significantly increase costs.

These changes do not change the overall intent, but do clarify that while cemetery managers are responsible for maintaining the cemetery, they are not responsible for maintaining individual graves. However, there is a process they must follow to notify a responsible person when the grave becomes unsafe and may require repair or removal.

Rather than imposing a mandatory five yearly audit as was initially proposed, the Regulator will adopt a more flexible, risk-based approach. Where compliance concerns have been raised, the Regulator may request more frequent audits, while cemeteries that operate in compliance with the legislation and have had no burials for some time may be audited less frequently.

The changes to audit and maintenance provisions reflected in the final Bill significantly lessen the impact of the increased closure timeframe on cemetery manager and, as I have described, the closure process has now been staged in response to the issues raised by cemetery managers.

Outside of the sale and closure processes, the Bill does not significantly change day-to-day obligations on cemetery managers. It should not impose any significant cost on cemetery managers who are already meeting their obligations and are operating their cemetery to an appropriate standard. It does, however, improve the ability of the Regulator to monitor compliance and ensure that cemeteries are being properly managed.

The amendments proposed by the Bill before the House today provide necessary safeguards while the Government undertakes its broader review. Through the public consultation process we have listened to feedback from community members, cemetery managers and other stakeholders. The framework proposed by this Bill provides for greater accountability in the management of cemeteries, without imposing any significant or unreasonable cost increase upon cemetery managers. The Bill provides checks and balances to ensure probity in the sale and closure processes.

I commend the Bill to the House.