

DRAFT SECOND READING SPEECH

HON MARK SHELTON MP

Burial and Cremation Bill 2019

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

This Bill revises the *Burial and Cremation Act 2002* in order to implement the recommendations arising from the second stage of the Cemeteries Legislative Review.

Last year, the Parliament passed the *Burial and Cremation Amendment Act 2018*. These amendments were developed and introduced in a short timeframe in order to address significant community concern following the Anglican Church's announcement that it would embark on a property divestment program – which includes the prospective sale of a number of cemeteries.

The 2018 amendments delivered on the Government's commitment to preserve, protect and, where appropriate, strengthen both the rights of community members and obligations on cemetery managers.

The community response to these amendments has been positive. The changes have given people confidence that cemeteries will be managed by appropriate entities and that there is a system in place to ensure accountability in the management of cemeteries.

The Review identified a number of other improvements to the existing Act that are strongly supported by the community but could not be introduced in Stage 1 last year due to timing pressures and the need for further consultation.

The Bill before the House today refines the existing framework for the management of cemeteries, crematoria and businesses that handle human remains, making a number of important improvements that address the issues raised during Stage 1.

Firstly, the Bill provides a solution for individual cemetery managers who purchased cemeteries under the previous legislative framework and are concerned that the requirement to sell their property only to a body corporate could reduce the potential pool of buyers and impact the sale price for their property.

Two cemetery managers raised this issue during the Stage 1 public consultation process and, in the 2018 Parliamentary debate, the Government committed to considering this issue during Stage 2. Those two cemetery managers indicated at the time that they had no immediate intentions to sell their properties.

Since that time, another two individual owners came forward and advised they are actively trying to sell their cemetery and have been impacted by the sale process. These four cemeteries are amongst a total of 16 cemeteries that have now been identified as being owned by individuals (or natural persons).

The changes in the Bill will allow these individuals to sell their cemetery to a natural person, so long as that person meets the 'fit and proper person' test and is approved by the Regulator.

This approach acknowledges what has happened under the previous legislation. Although the 2002 Act has always required cemetery managers to hold the land in trust for the purposes of a cemetery, some cemeteries were sold to individuals without the seller making proper provision for the trust and the role of cemetery manager. In some cases, no records were transferred and new owners were not informed of their obligations under the Act. This is clearly inconsistent with the obligation to hold the land in trust for the purposes of the cemetery.

While some individual owners take great care in their role as cemetery manager, there are examples where individuals have failed to fulfil their obligations under the Act in relation to matters such as access, maintenance and record keeping.

Allowing a small number of cemeteries to be sold to natural persons provides an appropriate solution for individuals who purchased cemeteries under the previous framework, often without having clear knowledge of the obligations and requirements under the Act. Many of these individuals have already converted church buildings into a residence, or built a home on the land.

Other aspects of the sale process will still apply, including the requirement that purchasers meet a 'fit and proper person' test and be approved by the Regulator. This ensures the Regulator has oversight of these cemeteries and is able to ensure they are managed appropriately.

The evidence indicates that the amendments passed by the Parliament last year were important to provide greater protection over cemeteries, and this Bill therefore will continue them. Providing a very small number of individuals who now own cemeteries with an exemption from having to sell to a body corporate in the future, strikes the right balance between preserving the greater protections that have been put in place with a need to recognise their specific circumstances.

Secondly, the Bill increases protection for cremated remains by:

- providing for exclusive rights of interment in monuments (such as columbariums);
- requiring access to public monuments; and
- introducing notification requirements if the remains are to be moved.

The level of protection the Bill affords cremated remains strikes the right balance between providing protection for ashes placed in a columbarium and the need for a more flexible approach that acknowledges that cremated remains are portable and may be retained or moved by families.

The Bill also aligns the requirements for crematoria and businesses that handle human remains (known as regulated businesses) – with those for cemeteries. The Bill does this by establishing the Regulator role for crematoria and regulated businesses and introducing an application process to manage these businesses.

Penalties have been reviewed throughout the Act and increased, where appropriate, to ensure they are both at a reasonable level that will promote compliance, and consistent for like offences throughout the Act.

Importantly, the Bill retains the strengthened sale and closure processes that were passed by the Parliament last year and have been well-received by the community.

And finally, the new structure in the Bill improves the overall clarity and consistency of the legislative framework.

Although no change to administrative responsibility for the Act is planned at this stage, it is acknowledged that greater expertise may lie outside the Department of Premier and Cabinet's Local Government Division. The new structure of the Bill would allow changes in administrative responsibility to the areas of government best suited to administer each part. This could be done while ensuring no duplication of processes or additional administrative burden for the community.

I now outline the detail of the Bill.

Part I sets out the preliminary provisions, including defining certain terms for the purposes of the Bill.

To support increased protection of cremated remains, columbariums are included in the definition of 'monument'.

Businesses that handle human remains are now referred to as 'regulated businesses' rather than 'prescribed businesses', which reflects the fact that while such businesses are not listed in the Regulations, there is an approval process to carry on such a business and certain responsibilities imposed by the Act.

This Part does not otherwise reflect any significant change in policy from the existing legislation.

Part 2 deals with the overall administration of the Act, providing for matters including:

- establishing the Regulator position;
- powers of authorised officers; and
- certain powers of the Director of Public Health.

To support potential changes in administrative responsibility, the Bill allows more than one regulator to be appointed under the Regulations. The Director of Local Government will continue in the Regulator role at this time.

The Regulator will have the power to issue exemptions from a number of provisions of the Act if reasonable in the circumstances. This will allow some flexibility in application processes under the Act so that the circumstances of each case can be taken into account – although essential provisions, such as a need for an approval, cannot be waived.

The Bill allows the Regulator to issue directions to ensure compliance with the Act to any person carrying on a regulated business or managing a cemetery or crematorium. The Director of Public Health may also issue directions if it is in the interests of public health or public safety to do so.

The powers of authorised officers to enter premises and collect evidence have been retained from the existing legislation. These powers support enforcement of the Act by allowing suitable persons to investigate potential non-compliance.

Part 3 sets out the requirements for the handling of a deceased person, starting from the initial notification of death through to the interment and exhumation. The framework allows traditional or natural burials in a cemetery or on private land, cremations and Aboriginal cremations. The Bill also updates the definition of cremation to ‘future proof’ the legislation, by allowing new or alternative methods for dealing with human remains to be prescribed.

This part also provides the approval processes for persons to be approved to carry on a regulated business. The new application process streamlines the current notification process which required the Director of Local Government to lodge an objection in Court if a person is considered unfit to carry on a regulated business.

Part 4 of the Bill deals exclusively with cemeteries, including the approval of persons as cemetery manager and their duties and powers. It sets out how cemeteries are to be managed, established, bought, sold and closed. The new processes passed by the Parliament last year through the *Burial and Cremation Amendment Bill 2018* have had only minor changes to clarify the intent of the Bill – reflecting the positive feedback from the community that these processes will ensure cemeteries are managed appropriately.

The sale process allows the Regulator to ensure a cemetery is in compliance with the Act before it is sold by requiring a certificate of compliance to be issued. New cemetery managers must be approved as a 'fit and proper person' to manage a cemetery. The requirement for a new cemetery manager to be a body corporate with perpetual succession has also been retained, providing certainty as to the longevity of the entity that is to manage the cemetery.

However, as already mentioned, for cemeteries sold to individuals before the commencement of the 2018 amendments, the Regulator may allow the cemetery to be sold to another natural person. This change acknowledges the loss that individuals may incur if their property (which may now be their home) could only be sold to a body corporate.

The closure provisions that were supported by the Parliament and the broader community last year have also been retained. The minimum period of 50 years before a cemetery can be closed, and the power of the Regulator to place conditions on the closure, ensure the right to honour the deceased is intergenerational. The Bill also sets a default of 100 years since the last interment before a closed cemetery can be laid out as a park or garden – this could only be reduced to 50 years on application, if certain criteria are met.

Part 5 of the Bill sets out the framework for crematoria and the handling of cremated remains. The streamlined approval process for a crematorium manager removes the onus on the Regulator to object to a notification of a new manager, improving the process for consideration of whether a proposed manager is suitable.

The duties and powers of crematorium managers – such as keeping the crematorium in good order, record-keeping and providing reasonable access have been retained.

An important change introduced in this part is the increased protection of cremated remains. Where cremated remains are interred in a grave or public monument such as a columbarium, the Act provides that:

- access must be permitted free of charge;
- ashes cannot be removed without the notification to the senior next of kin; and
- exclusive rights of interment for cremated remains must be honoured.

These changes acknowledge the feedback from the community that the placement of cremated remains should not be protected any less than for burials, while retaining a flexible approach which allows families to remove, retain or scatter ashes in a special place.

Part 6 of the Bill includes other miscellaneous provisions that are necessary to support the effective administration of the Act. This includes compliance powers of the Regulator and certain offences. These provisions allow the Regulator to be responsive to compliance issues within cemeteries, crematoria or regulated businesses, strengthening the powers under the existing Act which currently only apply to cemeteries.

The savings and transitional provisions clarify that approvals issued under the existing Act continue to apply and outline how applications commenced under the existing Act are to proceed.

Overall, this Bill improves upon the current Act by clarifying and strengthening the regulatory framework for cemeteries, crematoria and businesses that handle human remains.

This Bill ensures the Regulator has adequate powers to oversee the management of burials, cremations and the handling of the deceased.

The Bill reflects feedback from community members that the 2002 Act did not go far enough in protecting cemeteries and cremated remains, and that the new sale, transfer and closure processes for cemeteries are necessary to preserve and protect cemeteries, and ought to be retained.

Madam Speaker, I commend the Bill to the House.