

17 September 2020

INTERMENT REVIEW DRAFT REPORT - PUBLIC HEARING

IPART is currently investigating interment costs and the pricing of interment rights in New South Wales. We released an Issues Paper in May 2019, an Interim Report in December 2019, and a Draft Report in September 2020. We then held a virtual public hearing on our Draft Report on 17 September 2020. The public hearing is an important part of our review process and allows us to further consider stakeholders' views.

At the public hearing, IPART provided an overview of our findings and recommendations in the Draft Report. The slides from this presentation are available on our website.

We thank stakeholders who participated in the public hearing. We provide below a summary of the main issues discussed:

- ▼ Cemetery maintenance standards and perpetual care requirements
- ▼ Regulatory framework
- ▼ Pricing transparency
- ▼ Interment Service Levy
- ▼ Purchase of new cemetery land

IPART welcomes further written submissions on the matters raised at the public hearing, or on any other matters in the Draft Report. The closing date for written submissions is 2 October. We will be considering all submissions and undertaking our own analysis before providing a final report to the NSW Government by November 2020.

Cemetery maintenance standards and perpetual care requirements

Stakeholders raised a number of concerns about setting maintenance standards and the perpetual care of cemeteries.

A common concern was the need to consider the cost of maintaining monuments that have become unsafe or unsightly over time. It was suggested that many operators have not factored these costs into past prices because it is the responsibility of the family to maintain monumentation – however, over time, the monuments become the de facto responsibility of the cemetery operator when the rights holder cannot be located. Searching for the rights holders of historic monuments adds costs too.

A large cemetery operator explained that they have a monument safety program and this involves assessing the monument for risk and then mitigating risks. However, it was noted that smaller cemetery operators do not have the resources to undertake this work.

A stakeholder noted that there is an existing voluntary code of practice for maintenance and it was not clear how this would be used to develop maintenance standards for cemeteries. Another stakeholder suggested that maintenance standards need to include requirements for sustainability and environmental protection (such as emissions and environmental remediation).

IPART explained that a mandatory code of practice for maintenance standards would need to be developed by the regulator, Cemeteries and Crematoria NSW (CCNSW), in consultation with the industry. This mandatory code would need to specify a minimum standard of maintenance. CCNSW explained that the voluntary code could be used as a starting point for the development of a mandatory code.

Regulatory framework

Threshold for licensing

Clarification was sought on the threshold for requiring cemetery operators to have an operating licence.

IPART explained that the recommendation in the Draft Report did not specify a particular activity level but rather that the requirement for an operating licence should include the largest cemetery operators which represent the greatest financial risk (as a guide, perhaps the 30 largest). The detail of a licensing threshold would therefore be a matter for the government to consult on as part of developing an industry scheme via a regulation.

Perpetual maintenance funds and legacy costs

There were concerns about the timeline for implementation of perpetual maintenance funds and the impost on Local Government. IPART explained that the draft recommendations are designed so that existing cemeteries assess their provisions for perpetual maintenance. The first step is to develop a plan and establish a fund. However, there is only a draft recommendation for a legal requirement on the largest operators to assess, establish and manage a perpetual maintenance fund. For smaller operators, our draft recommendation is for best practice principles (via voluntary codes of practice) to assist them to manage perpetual maintenance at their cemeteries.

Some stakeholders were concerned about the management of legacy costs going forward where the cemetery is almost full and funds have not been established.

A stakeholder commented that a large number of smaller NSW cemeteries that are church or community owned have maintenance liabilities in total in excess of \$100 million. Most of these cemeteries while technically operating don't have burials or any income.

Some council operators were concerned that the increased costs of compliance with the draft recommendations would likely result in higher interment prices, particularly in regional

areas, for no demonstrable benefit. In this case, a stakeholder suggested that a lighter touch regulatory approach should be used (e.g. intervention by exemption or investigating outliers).

IPART commented that the recommended approach to regulation has been scaled to reflect the size of the cemetery operator. For small and medium sized operators our draft recommendations are for voluntary codes of practice to apply whereas for large operators there would be a legal requirement. IPART also commented that it is important that existing cemetery operators start planning for the perpetual maintenance of their cemeteries so the problem doesn't grow in size over time.

Another issue raised was the legacy costs for small church cemeteries (that often have heritage values) and how green or air space could be used to potentially generate income for ongoing maintenance. IPART noted that this was more a consideration for the Statutory Review of the Cemeteries and Crematoria Act where they have reviewed the legal or regulatory constraints for cemeteries.

Basic adult lawn burial

There was some stakeholder support for the concept of a Basic Adult Lawn Burial and setting a regulated price for this service. It was considered it could provide simplicity, transparency and potentially greater affordability. IPART commented that the proposal is to only regulate the price of a basic adult lawn burial which includes both the burial and the interment right. This price includes the cost of maintenance of the site and a share of the cemetery costs. IPART engaged Deloitte to analyse the efficient costs of an adult lawn burial for the Crown cemetery operators.

A stakeholder commented that many years ago prices were set by the government so that a right of burial was priced the same across all cemeteries in Metropolitan Sydney. They noted that setting prices in this way helped to create the problem of insufficient future maintenance funds. The stakeholder was concerned about going back to a 'capped' price, and questioned where the funding for maintaining monuments would come from.

IPART clarified that price regulation would involve setting prices based on the efficient costs of providing a basic adult lawn burial. IPART noted that the price would include the cost of future maintenance of the site and the cemetery.

There was also concern that IPART's draft recommendations will limit cemeteries to offering only standard products. IPART explained that recommendations in the Draft Report would not restrict cemeteries' ability to offer different interment options.

A cemetery operator commented that they are running out of space and so it would be difficult to create a lawn area and the demand in their local area is for full monumental graves not lawn graves. Another operator commented that the assumption of a lawn burial needs to be reviewed as there could be other basic options that could be offered (including options that don't require regular mowing).

Faith and cultural requirements

A cemetery operator commented that it is problematic to assume that everyone within a specific faith or cultural group will have the same needs and expectations. Another operator observed that specific cultural and religious requirements often requires the allotment to be

set out in a way which may not lend itself to maximizing the yield of a given space and also the development costs may vary considerably depending on the site. IPART indicated that Deloitte reviewed and reported on the costs of meeting faith and cultural requirements for the Crown cemetery operators, and welcomes submissions on these findings.

Other regulatory requirements

A concern was raised that the Draft Report recommends requirements for increased density, renewable tenure, geotechnical mapping and low cost mausolea requirements. It was suggested that these requirements need to focus on larger operators and if this is not clear then the smaller operators and their communities will be unnecessarily concerned. IPART explained that these proposed requirements would apply to larger cemetery operators where there is an identified need (eg, a shortage of cemetery land). We will further clarify which recommendations apply to which operators in our final report.

Pricing transparency

There was discussion about the best way to provide pricing transparency to consumers for interment services. Stakeholders commented that the wording used in the Act to describe services is confusing to the general public (eg, what is an interment and an interment right, what is perpetual tenure versus renewable tenure). Also the forms developed by CCNSW reflect the terminology in the Act and this adds to confusion. There was general support for a common well defined terminology that can facilitate price comparison of services.

It was noted that price comparison websites for cemeteries are not really common throughout the world. A stakeholder commented that if price is not really the main determinant of a decision to purchase services, then comparisons would need to focus on issues of service as well. It was suggested that price may be a more important factor when people are buying services pre-need.

A stakeholder observed that about 20 years ago the Victoria the Department of Health implemented a price comparison website for cemeteries. The website has around 400 descriptors of cemetery services but it not possible to align and compare services across cemetery operators. It was noted that the technology and platforms for comparator websites are now more developed.

IPART commented that a price comparison website would need to meet the needs of consumers and we encourage further feedback from consumer groups.

Interment service levy

Some stakeholders supported an interment service levy to be paid by all operators whether public or private, big or small (as per IPART's draft recommendation). A stakeholder suggested that increased levels of cremation are creating a challenge for funding cemeteries in the long term as increased levels of cremation impact on cemetery revenue. Some stakeholders suggested that private cremator operators contribute to the levy to support the regulatory costs of CCNSW, while others thought that cremation activities should not

subsidise cemetery activities. There was support for an industry regulatory scheme that is funded on a fee per interment or cremation basis.

In the Draft Report IPART recommended that the interment service levy be set as a percentage of each cemetery operator's interment-related revenue.

Purchase of cemetery land

A stakeholder expressed concern about the proposal for the NSW government to be involved in the purchase of new cemetery land outside Sydney as this may lead to further monopolisation of the funeral industry.

In the case of new cemeteries in Metropolitan Sydney, IPART is recommending the NSW Government be responsible for identifying, funding and acquiring land as part of a whole of government land use planning process. This is to address the shortage of land in Sydney and to ensure that land is secured for cemeteries. For new cemeteries outside Sydney, IPART's draft recommendation is that the NSW Government be responsible for identifying, funding and acquiring land, on request from the local council, or other cemetery operator, or as part of regional planning by the NSW Government.

In both instances, IPART's draft recommendations propose that land purchased by the NSW Government be competitively tendered and services could potentially be provided by different types of cemetery operators (eg. Crown, Council or private operators)

Another issue raised was that if the NSW Government is going to purchase/identify land, should there be an equivalent environmental responsibility based on the type of interment, (e.g. toxins from coffins). These areas could potentially be addressed in the tender requirements for the competitive tender process for operating cemetery land.