



**FINAL REPORT**

# Interment Industry Scheme

Regulatory Impact Statement

*Prepared for  
Cemeteries & Crematoria NSW (CCNSW)  
October 2022*

---

The Centre for International Economics is a private economic research agency that provides professional, independent and timely analysis of international and domestic events and policies.

The CIE's professional staff arrange, undertake and publish commissioned economic research and analysis for industry, corporations, governments, international agencies and individuals.

© State of New South Wales through Cemeteries & Crematoria NSW (2022). This publication is copyright. You may download, display, print and reproduce this material provided that the wording is reproduced exactly, the source and copyright is acknowledged and this notice is retained. To copy, adapt, publish, distribute or commercialise any of this publication you will need to seek permission from Cemeteries & Crematoria NSW.

#### **CANBERRA**

Centre for International Economics  
Ground Floor, 11 Lancaster Place  
Canberra Airport ACT 2609

Telephone +61 2 6245 7800  
Facsimile +61 2 6245 7888  
Email [cie@TheCIE.com.au](mailto:cie@TheCIE.com.au)  
Website [www.TheCIE.com.au](http://www.TheCIE.com.au)

#### **SYDNEY**

Centre for International Economics  
Level 7, 8 Spring Street  
Sydney NSW 2000

Telephone +61 2 9250 0800  
Email [ciesyd@TheCIE.com.au](mailto:ciesyd@TheCIE.com.au)  
Website [www.TheCIE.com.au](http://www.TheCIE.com.au)

#### **DISCLAIMER**

While the CIE endeavours to provide reliable analysis and believes the material it presents is accurate, it will not be liable for any party acting on such information.

## *Contents*

<b>Executive summary</b>	<b>1</b>
Background and introduction	1
Need for government action	3
Objectives	4
Options	5
Estimated impacts	5
Preferred option	6
<b>1 Background and introduction</b>	<b>7</b>
Interment industry in NSW	7
Recent reviews of the industry	11
Proposed Interment Industry Scheme	15
Requirement for a Regulatory Impact Statement	16
This report	17
<b>2 The need for government action</b>	<b>18</b>
The case for regulation	18
The case for regulatory change	25
Extent and size of the problem	27
<b>3 Objectives and options</b>	<b>31</b>
Objectives of the Interment Industry Scheme	31
Proposed Interment Industry Scheme	31
Key changes from the draft Interment Industry Scheme	42
Mapping of proposed licence conditions to market failures	42
Options under consideration	43
<b>4 Impacts</b>	<b>44</b>
Identifying the impacts	44
Licensing requirements	44
Consumer protection measures	45
Minimum standards for operational cemetery maintenance	49
Compliance and enforcement costs	58
<b>5 Cost benefit analysis</b>	<b>59</b>
Approach to the CBA	59
Estimated impacts of scheme elements	60
Options: cost-benefit analysis	70

Scenario/sensitivity analysis	71
Preferred option	73
<b>6 Implementation and compliance</b>	<b>74</b>
Implementation timeframes	74
Proposed compliance approach	75
Compliance priorities and a compliance plan	75
<b>7 Consultation</b>	<b>77</b>
Consultation process	77
Stakeholder feedback	80
Response to stakeholder feedback	82
<b>8 Evaluation and review</b>	<b>85</b>
Review of the Scheme	85
Approach to the review	85
<b>A Quantifying the value of well-maintained cemeteries</b>	<b>87</b>
<b>B Estimating visitation to cemeteries</b>	<b>93</b>
<b>C Assessment against the Licensing Framework</b>	<b>96</b>

## **BOXES, CHARTS AND TABLES**

1 Mapping of proposed licence conditions to market failures	4
2 Estimated net impacts — net present value	6
1.1 Average annual interments and cremations	8
1.2 Number of facilities by operator type across metropolitan Sydney and regional NSW	8
1.3 Number of unused bodily interment sites available for future purchase/sold	9
1.4 Number of cemeteries with heritage listing	10
1.5 RIS requirements under the SLA	16
1.6 Better Regulation Principles	17
2.1 Number of quotes before choosing a funeral provider	21
2.2 Estimated efficient cost-reflect burial price (\$2019) compared to actual Crown cemetery burial prices	22
2.3 Regulatory frameworks to address long term financial risk	24
2.4 Key potential risks identified for the interment industry by CCNSW	27
2.5 Complaints received by CCNSW	30
3.1 Licence conditions	32
3.2 Site maintenance standards	36
3.3 Site maintenance standards – Category 1 operators only	37
3.4 Mapping of proposed licence conditions to market failures	43
4.1 How much of the scheme do you already comply with?	52
4.2 Which licence conditions will you find hardest to comply with?	52

4.3	Complaints received by CCNSW	53
4.4	Current maintenance activities	53
4.5	Crown Land Manager (CLM) average and efficient costs	57
4.6	Assumed Perpetual Grounds Maintenance (excluding maintenance administrative/overhead cost)	57
5.1	Key Steps in a CBA	59
5.2	Estimated costs of the licensing system	61
5.3	Estimated costs incurred by CCNSW	61
5.4	Estimated cost of processing the initial application — operator	62
5.5	Estimated net benefit/cost of the proposed consumer protection measures — net present value	65
5.6	Estimated additional administrative costs associated with minimum cemetery maintenance standards	67
5.7	Crown Land Manager (CLM) average and efficient costs	68
5.8	Approach to measure benefits maintaining cemeteries	69
5.9	Estimated net impacts — net present value	71
5.10	Sensitivity analysis conducted	72
5.11	Sensitivity testing — net present value	73
6.1	Licensing timeframes	74
7.1	Paid and earned media	78
7.2	Social media engagement	78
7.3	Website engagement	79
7.4	Face-to-face online and in-person engagement	79
7.5	Support for the need for licence conditions	81
7.6	Level of agreement with the specific licence conditions	81
7.7	Response to key themes from stakeholder submissions	82
A.1	Approaches to measure use and non-use value	88
A.2	Amenity benefits for improvements to public space (cents per person per minute, \$2019)	91
B.1	Number of visitors compared to first year after funeral	94
B.2	Estimated number of visitors to NSW cemeteries	95
C.1	Licensing framework structure	96
C.2	Is licensing appropriate?	97
C.3	Is licensing well designed?	98
C.4	Is licensing administered effectively/efficiently?	99
C.5	Is the licensing scheme the best response?	101



## *Executive summary*

### ***Background and introduction***

Burial and cremation are the two primary options for disposing of bodies, with other options, such as burials at sea, being rare. Interment is the burial of human remains or cremated ashes in a grave or cemetery plot, or placement in a mausoleum, crypt, vault, columbarium, niche wall or other similar structure.

Cemeteries and crematoria are provided in NSW by 408 separate organisations<sup>1</sup> that include Crown operators, local councils, private operators and religious/community groups.

### ***Regulation of cemeteries and crematoria***

In 2012, the NSW Government commenced a program of reforms to bring a coordinated, strategic approach to management of interment in New South Wales. The *Cemeteries and Crematoria Act 2013* (the CC Act) was passed by the NSW Parliament and commenced on 24 October 2014. Prior to the commencement of the CC Act, there was no dedicated legislation and regulation for the NSW cemeteries and crematoria sector.

Cemeteries & Crematoria NSW (CCNSW) is a statutory agency which was established in 2014 under the CC Act. CCNSW supports and regulates cemetery and crematoria operators in NSW and provide information on burial and cremation options to the public.

To date the CCNSW has not implemented mandatory codes, licences, or schemes.

### ***Recent reviews***

The cemeteries and crematoria industry have been examined in two recent reviews:

- the statutory review of the CC Act,<sup>2</sup> and
- the IPART review on the costs and pricing of interment.<sup>3</sup>

Both reports identified that there are significant risks to the interment industry and the public and established the case for stronger regulation.

---

<sup>1</sup> Based on data provided by CCNSW as at September 2022. Note that some tables in the report are based on earlier data provided in February 2022.

<sup>2</sup> Whitella Consulting 2020, *The 11<sup>th</sup> Hour: Solving Sydney's Cemetery Crisis*

<sup>3</sup> IPART 2020, *Review of the Costs and Pricing of Interment in NSW*.

### ***Proposed Interment Industry Scheme***

To address weaknesses in the current regulatory arrangements, CCNSW are proposing to introduce an Interment Industry Scheme that is broadly consistent with some of the recommendations of the recent reviews.

The proposed scheme consists of:<sup>4</sup>

- a licencing scheme for cemetery and crematoria operators. This will introduce four licence categories reflecting risk and size of operators:
  - Category 1—require full compliance with licence conditions
  - Category 2 — generally require full compliance with licence conditions, but has some less strict requirements compared to Category 1.
  - Category 3— generally require partial compliance with licence conditions.
  - Category 4 (caretaker licence for inactive cemeteries) – require compliance with basic maintenance only, subject to a condition that they will not conduct further interments
- a range of licence conditions relating to:
  - standard terms and conditions (and terminology) in interment industry consumer contracts (Condition A)
  - minimum standards for cemetery maintenance (Condition B)
  - pricing transparency for consumers (Condition C)
  - customer service standards (Condition D)
  - compliance with religious, cultural and spiritual principles (Condition E)
  - reporting obligations (Condition F)
  - prohibition of interment services for Category 4 operators (Condition G).

Perpetual maintenance requirements were included in the draft Interment Industry Scheme that was released to cemetery and crematorium operators in late 2021 for comment. However, following feedback from stakeholders, CCNSW has decided to take more time to better understand the potential impacts on operators and their communities. Perpetual maintenance requirements have therefore been excluded from the proposed Interment Industry Scheme at the present time and the impacts are not considered in this RIS. CCNSW will conduct further work on these requirements, and add them into the Interment Industry Scheme in a future second stage.

### ***This report***

This report is a draft Regulatory Impact Statement (RIS) for the proposed amendments to the *Cemeteries and Crematoria Regulation 2014* (the Regulation) that will establish the Interment Industry Scheme discussed above.

---

<sup>4</sup> Cemeteries & Crematoria NSW 2021, Interment Industry Scheme – Consultation Report.

### *Need for government action*

Where they operate efficiently (i.e., there are no significant market failures), markets generally deliver optimal outcomes for the community in terms of pricing and quality of service. However, when market failures are present there is often a case for some form of government intervention.

There are various inter-related market (and behavioural) failures in relation to the interment industry in NSW, mostly relating to a lack of effective competition. Market failures include the following:

- Lack of consumer choice, including:
  - at the local level
    - ... location is an important consideration in choosing a cemetery
    - ... some cemeteries are effectively local monopolies
  - for some religious and cultural groups
    - ... choice of cremation or interment is strongly influence by religion or culture
    - ... not all cemeteries cater for all religious and cultural preferences, which are important factors in choice of cemetery
- Information asymmetries — for markets to work efficiently, customers need access to full information around what they are purchasing. Information asymmetries arise when the service provider does not disclose full information to the buyer.
- Inefficient pricing — in a competitive market, prices should broadly reflect the full cost of providing the services (including a reasonable rate of return on the operator's capital outlays). However, there is evidence of prices exceeding efficient costs for some operators, and of under-recovery- of costs by some operators.<sup>5</sup>
- Limited incentives to fulfil perpetual maintenance obligations —where inactive cemeteries, cemeteries at full capacity or cemeteries in the transition phase to being at full capacity (conduct few interments each year) do not generate sufficient revenue to fund maintenance obligations, there may be limited incentive for some operators to adequately maintain the cemetery.

The case for regulatory change has been established in recent reviews, with both the IPART and statutory review recommending establishing an interment industry scheme with licence conditions aimed at addressing the market failures stated above.

These recommendations are consistent with the mapping of the identified market (and behavioural) failures to the proposed licence conditions (table 1). Note that the perpetual maintenance requirements make an important contribution to addressing the limited incentive that cemetery operators may have to maintain the cemetery once it is no longer conducting new interments, and also to inefficient pricing. Although perpetual maintenance requirements have been excluded from the Interment Industry Scheme at the present time, they will be considered further in the period ahead.

---

<sup>5</sup> In the case of under-recovery of costs, more efficient prices would mean higher prices.

## 1 Mapping of proposed licence conditions to market failures

	Lack of consumer choice	Information asymmetries	Behavioural failures	Inefficient pricing	Limited incentive to meet perpetual maintenance obligation
Interment industry consumer contracts	✓	✓	✓		
Minimum standards for cemetery maintenance					✓
Pricing transparency for consumers	✓	✓	✓	✓	
Customer service	✓	✓	✓		
Perpetual maintenance requirements <sup>a</sup>				✓	✓
Religious, cultural and spiritual principles	✓				

<sup>a</sup> Perpetual maintenance requirements will make an important contribution to addressing the limited incentive operators have to meet perpetual maintenance obligations once a cemetery is no longer conducting new interments. However, perpetual maintenance requirements are not covered by the proposed Interment Industry Scheme at the present time. They will be considered further in the period ahead.

Source: CIE.

## Objectives

The objectives of the Interment Industry Scheme are to:

- Improve the financial sustainability of the interment industry in NSW
- Ensure that cemeteries are well maintained, now and into the future
- Provide consumers with a better experience when engaging with cemetery and crematoria operators, through ensuring consistent and transparent interment services.

The Scheme will also support the objects of the Act, as outlined in Section 3, in particular:

- to recognise the right of all individuals to a dignified interment and treatment of their remains with dignity and respect
- to ensure that the interment practices and beliefs of all religious and cultural groups are respected so that none is disadvantaged and adequate and proper provision is made for all
- to provide for the operation of a consistent and coherent regime for the governance and regulation of cemeteries and crematoria
- to ensure that the operators of cemeteries and crematoria demonstrate satisfactory levels of accountability, transparency and integrity
- to promote that cost structures for burials and cremations are transparent across all sectors of the interment industry, and

- to promote affordable and accessible interment practices, particularly for those of limited means.

## *Options*

It is important that a RIS consider a wide range of viable options for meeting the Government's regulatory objectives. This helps establish which approach is likely to deliver the largest net benefits, or lowest net cost to the community, while wholly or substantially addressing the objectives of regulation.

The elements of the scheme under consideration in the RIS are, to a large extent, unrelated. As such, each element of the scheme is assessed separately, with three options considered:

- Base Case: The impacts of the other options are assessed against a base case that assumes a continuation of current regulatory arrangements
- Option 1: The proposed industry interment scheme
- Option 2: The proposed industry interment with no licence conditions imposed on Category 3 or Category 4 operators.

## *Estimated impacts*

The estimated net impact of each scheme element, based on the limited information available, is summarised in table 2. Estimates are presented in net present value terms over 40 years, using a discount rate of 7 per cent. Key findings are as follows.

- To the extent they could be quantified, the consumer protection requirements are estimated to deliver a net benefit arising from greater competition as a result of improved pricing transparency. The net impact of both options are broadly similar: although Option 1 (where the relevant requirements would partially apply to Category 3 operators) would impose higher costs (as more operators would need to transition to a standardised contract), these costs are broadly offset by the benefits associated with extending improved price transparency to Category 3 operators.
- There is insufficient information available to quantify the impacts of cemetery maintenance standards and assess whether these standards are likely to deliver a net benefit. That said, the proposed standards are not prescriptive and therefore provide operators with flexibility in the way they are interpreted and applied. The benefits and costs of the proposed standard could therefore be relatively modest. Only the additional administrative costs associated with the minimum maintenance standards (imposed on Category 1 operators only) have been included in the aggregated results.
- Any compliance and enforcement costs incurred by CCNSW have not yet been finalised and have not therefore been included. However, once these costs are taken into account the net impact could be close to the break-even point.

## 2 Estimated net impacts – net present value

	Option 1	Option 2
-		
-	\$ million	\$ million
Licensing requirements	- 2.30	- 2.30
Consumer protection	13.85	13.68
Cemetery maintenance (additional administrative costs only) <sup>a</sup>	- 4.32	- 4.32
<b>Total</b>	<b>7.23</b>	<b>7.07</b>

<sup>a</sup> Insufficient information to quantify the costs and benefits.

Note: Estimates are presented in net present value terms over 40 years, using a discount rate of 7 per cent.

Source: CIE estimates.

### *Preferred option*

Although the CBA results do not provide a compelling case (i.e. the estimated benefits are broadly similar to the estimated costs), the proposed Interment Industry Scheme is the preferred option for several reasons.

- The proposed Scheme addresses many of the issues identified in the recent reviews (i.e. the Statutory review and the IPART review).
- The proposed Scheme provides a clear statement on the expectations for both consumers and operators.
- Many of the licence conditions are focused on providing greater transparency and other consumer protection measures, which is a good outcome in itself, even if it does not lead to a measurable benefit (such as lower prices).
- The proposed Scheme is broadly consistent with the NSW Government's Licensing Framework (see appendix C).
- CCNSW has sought to minimise the additional costs imposed on operators through: avoiding prescriptive requirements (where appropriate) to give operators flexibility in the way the requirements are applied; and providing template documents where appropriate. Additional costs imposed on operators are therefore likely to be relatively modest and broadly proportional to the expected benefits.

## *1 Background and introduction*

### *Interment industry in NSW*

Burial and cremation are the two primary options for disposing of bodies, with other options, such as burials at sea, being relatively rare. Interment is the burial of human remains or cremated ashes in a grave or cemetery plot, or placement in a mausoleum, crypt, vault, columbarium, niche wall or other similar structure.

Cemeteries and crematoria are provided in NSW by 408 separate organisations that include Crown operators, local councils, private operators and religious/community groups.<sup>6</sup>

### *Breakdown of industry*

The average annual bodily interments and cremations (based on operator reported data over the past three years) is around 58 000 per year.<sup>7</sup> Of this total 23 per cent were bodily interments, 13 per cent were cremation interments and 64 per cent were cremations not interred on-site (table 1.1). The choice between interment of a body and cremation is strongly influenced by faith and culture. Around 50 per cent of bodily and cremation interments and 40 per cent of cremations not interred on-site take place in facilities located in metropolitan Sydney, with the remaining taking place in regional NSW.

In metropolitan Sydney, private operators and Crown operators undertake 54 per cent and 42 per cent of interments and cremations. Private operators undertake the most cremations accounting for 70 per cent of the total in Sydney while Crown operators undertake the majority of interments with 68 per cent of interments. In regional NSW, the two dominant sectors are the private sector (67 per cent) and the local government sector (30 per cent).

---

<sup>6</sup> Based on data provided by CCNSW in September 2022. Note that some tables in the report are based on earlier data provided in February 2022.

<sup>7</sup> The average annual deaths across the three years, 2019, 2020 and 2021, is approximately 53 500 per year based on ABS data. This is significantly lower than the total annual average interments and cremations of 74 990 estimated based on data reported by operators to CCNSW.

### 1.1 Average annual interments and cremations

Sector	Bodily interments	Cremation interments	Cremations	Total
	No.	No.	No.	No.
<b>Metropolitan Sydney</b>				
Private	2 034	1 547	13 102	15 136
Community	57			57
LG	767	285	7	774
Church	65	235	14	79
Crown	6 137	2 930	5 725	11 862
<i>Sub-total</i>	9 059	4 997	18 848	27 908
<b>Regional NSW</b>				
Private	929	1 426	20 073	21 002
Community	67	13		67
LG	7 138	2 858	1 985	9 123
Church	159	337	14	174
Crown	200	92		200
<i>Sub-total</i>	8 494	4 726	22 072	30 566
<b>Total</b>	<b>17 553</b>	<b>9 724</b>	<b>40 921</b>	<b>58 474</b>

Note: Based on three year average in 2019, 2020 and 2021 using data provided by CCNSW in February 2022.

Source: CCNSW.

In terms of facilities, almost 90 per cent of operational cemeteries are located in regional NSW and are predominantly owned by local government and church organisations (table 1.2). Similarly, most operational cemeteries in metropolitan Sydney are owned by local government or church organisations. The majority of operational crematoria are operated by the private sector.

### 1.2 Number of facilities by operator type across metropolitan Sydney and regional NSW

	Cemeteries		Crematoria <sup>a</sup>	Total
	Operational	Inactive	No.	No.
-	No.	No.	No.	No.
<b>Metropolitan Sydney</b>				
Private	9	2	9	20
Community	2	1	0	3
Local government	38	22	0	60
Church	72	22	0	94
Crown	9	0	4	13
Other	0	2	0	2
<b>Sub-total</b>	<b>130</b>	<b>49</b>	<b>13</b>	<b>192</b>

	Cemeteries		Crematoria <sup>a</sup>	Total
	Operational	Inactive		
<b>Regional</b>				
Private	25	8	41	74
Community	12	1	0	13
Local government	662	309	5	976
Church	214	65	0	279
Crown	4	7	0	11
Other	0	1	0	1
<b>Sub-total</b>	<b>917</b>	<b>391</b>	<b>46</b>	<b>1 354</b>
<b>Total</b>	<b>1 047</b>	<b>440</b>	<b>59</b>	<b>1 546</b>

<sup>a</sup> All crematoria are currently active.

Source: Data provided by CCNSW current as at September 2022.

There are currently around 250 000 bodily interment sites available for purchase across NSW, with 80 per cent located in regional NSW. Almost 90 000 interment grave sites have been pre-purchased across NSW, 60 per cent in metropolitan Sydney and 40 per cent in regional NSW. Over 2 000 renewable interment sites have been pre-purchased, the majority in regional NSW (table 1.3).

### 1.3 Number of unused bodily interment sites available for future purchase/sold

Sector	Unused bodily interment sites available for purchase	Pre-purchased interment graves sold	Pre-purchased renewable interment sites sold	Total
-	No.	No.	No.	No.
<b>Metropolitan Sydney</b>				
Private	8 203	8 596	14	16 813
Community			0	
LG	5 970	461	20	6 451
Church	2 631	3 043	119	5 793
Crown	31 979	42 018	0	73 997
<i>Sub-total</i>	48 783	54 118	153	103 054
<b>Regional NSW</b>				
Private	18 929	12 980	0	31 909
Community		1	0	1
LG	178 331	19 581	2101	200 013
Church	4 188	2 188	107	6 483
Crown	2 057	151	0	2 208
<i>Sub-total</i>	203 505	34 901	2 208	240 614
<b>Total</b>	<b>252 288</b>	<b>89 019</b>	<b>2 361</b>	<b>343 668</b>

Source: Based on data provided by CCNSW in February 2022.

There are 32 cemeteries across NSW which are either listed as a state heritage site or contain a listed element; 20 are currently operational and 12 are inactive (table 1.4).

#### 1.4 Number of cemeteries with heritage listing

	Operational cemeteries	Inactive cemeteries
	No.	No.
<b>Metropolitan Sydney</b>		
Private	1	0
Community	0	0
Local government	4	3
Church	6	1
Crown	3	0
Other	0	0
<i>Sub-total</i>	14	4
<b>Regional</b>		
Private	0	0
Community	1	1
Local government	2	5
Church	3	2
Crown	0	0
Other	0	0
<i>Sub-total</i>	6	8
<b>Total</b>	<b>20</b>	<b>12</b>

Source: Data provided by CCNSW in February 2022.

#### *Overview of current regulatory system*

In 2012, the NSW Government commenced a program of reforms to bring a coordinated, strategic approach to management of interment in New South Wales. The *Cemeteries and Crematoria Act 2013* (the CC Act) was passed by the NSW Parliament and commenced on 24 October 2014. Prior to the commencement of the CC Act, there was no dedicated legislation and regulation for the NSW cemeteries and crematoria sector.

Part 4 of the Act which introduces a new interment rights system in NSW commenced on 25 June 2018 with a 12-month transition period to June 2019 to enable implementation in a measured and systematic manner.

The CC Act sets out the interment rights system for NSW that provides:

- two types of interment rights:
  - perpetual interment right
  - renewable interment rights
- when and how rights can be transferred, bequeathed or revoked

- obligations on cemetery operators to provide interment right certificates, and keep cemetery operator registers , and
- other obligations on operators (for example, relating to memorials and exhumations).

The CC Act applies to all cemeteries in NSW, ensuring a consistent and transparent system throughout the state. The interment rights system offers significant benefits to both the community and industry.

Community benefits of the CC Act include:

- a choice of interment rights (perpetual or renewable)
- the ability to transfer and bequest interment rights
- safeguards to ensure that interment rights are not revoked without consultation, and
- clear information about the interment rights people hold.

Section 31 of the Act allows for the development of interment industry schemes in the *Cemeteries and Crematoria Regulation 2014*, and may include:

- requiring compliance with a mandatory code of practice
- requiring an operator of a cemetery to ensure adequate provision is made for perpetual maintenance of a cemetery
- requiring the licensing of any activity, person, business, premises, vehicle or equipment in relation to the provision of interment services
- the imposition of conditions on licences
- the suspension or cancellation of licences
- appeals or reviews by courts, tribunals and other bodies or persons of decisions made under the regulations in relation to licences or applications for the granting of licences, and
- setting fees and charges that are necessary for the funding of the scheme.

Cemeteries & Crematoria NSW (CCNSW) is a statutory agency which was established in 2014 under the CC Act. CCNSW supports and regulates cemetery and crematoria operators in NSW and provides information on burial and cremation options to the public.

To date the CCNSW has not implemented mandatory codes, licences, or schemes.

### ***Recent reviews of the industry***

The cemeteries and crematoria industry have been examined in two recent reviews:

- the statutory review of the CC Act,<sup>8</sup> and
- the IPART review on the costs and pricing of interment.<sup>9</sup>

---

<sup>8</sup> Whitella Consulting 2020, *The 11<sup>th</sup> Hour: Solving Sydney's Cemetery Crisis*

<sup>9</sup> IPART 2020, *Review of the Costs and Pricing of Interment in NSW*.

Both reports identified that there are significant risks to the interment industry and the public and established the case for stronger regulation.

### ***Statutory review of the Cemeteries and Crematoria Act 2013***

The CC Act requires a statutory review be undertaken five years from the Act's commencement to determine whether the policy objectives remain valid, and the terms of the Act remain appropriate to achieve those objectives.

In addition to the requirements set out in the CC Act, the statutory review also specifically considered

- the governance, scope for efficiencies, financial sustainability and challenges facing Crown cemetery sector in Sydney
- the implications of requiring cemetery operators to ensure adequate provision to fund perpetual maintenance of cemeteries
- the appropriateness of the legislative and regulatory framework, and
- land use challenges and options to ensure that new cemeteries and crematoria can be provided.

The review made the following key findings:<sup>10</sup>

- Sydney is running out of burial space.
  - Modelling undertaken as part of the review found that all existing operational Crown cemeteries will exhaust their currently available land in the next 12 years.
  - The new Crown cemetery, Macarthur Memorial Park, is only expected to extent capacity by 10 years, by providing 136 000 lawn plots (which is expected to result in circa 85 000 burial interment rights). Total demand is estimated to be approximately 304 000 over the next 50 years.
  - The review notes that a range of measures are required to ensure the sustainable supply of land for burial:
    - ... identification, acquisition and the phased releasing of land for development as new cemeteries across Sydney
    - ... transition to more sustainable burial practices, including cemetery renewal and renewable tenure interments, in the medium to long term
    - ... amendments to the planning and approval system to identify cemeteries in the planning system as key social infrastructure, with State Significant Development status, and
    - ... ensuring cost-price signals are efficiently reflected in the market so consumers can make informed choices about their preferred form of interment.
- The Crown sector is not financially sustainable. The Crown sector has accumulated significant unfunded liabilities (more than \$300 million), associated with the perpetual maintenance requirements. The review found that:
  - two of the four Crown operators will not be able to fund their obligations to perpetually maintain their cemeteries to current standards

<sup>10</sup> Whitella Consulting 2020, The 11<sup>th</sup> Hour: Solving Sydney's Cemetery Crisis

- three operators are unlikely to be able to meet key Objects of the Act in the short term
- the Crown sector is expected to be required to invest approximately \$300 million to acquire and build new cemeteries to meet the projected burial demand over the next 50 years.
- The risks around the Crown sector pose potential competition issues. The majority of unsold interment rights are held by a vertically integrated private operator. In the absence of new entrants of increased capacity from the Crown sector, the private operator will have a dominant position in the interment industry.
- Since its inception in 2014 development of mandatory codes, licensing, compliance monitoring and enforcement have not been undertaken by CCNSW. The review found that a regulator framework needs to be developed across the entire sector to mitigate these risks and provide the appropriate levels of transparency and accountability.

Based on these findings the review made recommendations in three key areas:

- 1 Crown sector consolidation — this proposes the merger of Crown operators to address the financial sustainability of the Crown sector (allowing unfunded liabilities of one trust to be met with the assets and income other trusts). This is expected to reduce risks to the NSW Government around these unfunded liabilities, allow increased operational efficiency and ensure a sustainable Crown sector, which will help support a competitive industry environment.
- 2 Strengthening the regulator — this proposes to support CCNSW to take a more active role in regulation of the sector. The regulatory scheme proposed by CCNSW directly addresses this recommendation.
- 3 Acquisition of land — the review recommends that Crown land acquisition should be done on a consolidated basis rather than single operators developing independent cemeteries which do not achieve economies of scale.

### ***IPART review on the costs and pricing of interment***

As required by the CC Act, the IPART review investigated interment costs and the pricing of interment rights in NSW. The review focused in particular on the costs and pricing factors of renewable and permanent interment rights and the full cost of perpetual interment rights, including provisions for the perpetual care of sights.

The review made the following key findings:<sup>11</sup>

- Crown cemetery operators were found to be reasonably efficient, however there may be scope to increase efficiency. Cost differences were found to primarily be driven by differences in characteristics and age of each cemetery, however opportunities were identified to reduced costs, in particular by reducing indirect costs associated with an interment right.

---

<sup>11</sup> IPART 2020, Review of the Costs and Pricing of Interment in NSW.

- IPART recommended land for new cemeteries in Sydney should be acquired by the NSW Government, with rent paid by cemetery operators (with this approach be available for cemeteries outside Sydney on request from the local council or other cemetery operator, or as part of regional planning by the NSW Government).
- There is a wide variation in prices for interment services and prices are difficult for consumers to compare. IPART argues that this makes it difficult for consumers to make informed decisions and likely places downward pressure on competition.
- Prices for Crown operators are materially higher than modelled efficient cost-reflective prices.
  - Recognising this issue, and wide variation in prices, IPART recommended price regulation for Crown operators.
  - IPART did not make a recommendation for the price regulation of council and private operators due to a lack of data.
- The review highlighted issues around perpetual maintenance. Once a perpetual interment right is sold, there are ongoing costs of maintaining the site. IPART found that most cemetery operators in NSW do not report on the size of their liabilities for the perpetual maintenance of their cemeteries nor do they have transparent arrangements to fund these liabilities
  - Deloitte estimated the total legacy costs in NSW cemeteries to be around \$1.7 billion at 30 June 2019.
    - ... This is the maintenance liability of gravesites which have already been sold and includes the perpetual maintenance costs during active, transitional and perpetual stages of a cemetery
    - ... This is distinct from the perpetual maintenance obligation in the scheme, which focuses on maintenance in the perpetual phase
  - IPART notes that while some operators have accounted for perpetual liability, this is not the case for most operators. IPART identified that failing to account for these liabilities presents a risk to taxpayers if the NSW Government is expected to fund this liability if an operator has failed.
  - IPART recommended there be a legal obligation on all cemetery operators to be responsible for perpetual maintenance of interment sites and the cemetery
- IPART recommended that CCNSW develop an interment industry scheme, as provided for under the CC Act, incorporating mandatory Codes of Practice and an operating licence for the larger cemetery operators, to regulate:
  - perpetual maintenance funding to ensure provisions are adequate
  - cemetery maintenance, including specification of minimum standards of maintenance
  - interment right contracts, including standard terms and conditions
  - minimum interment requirements for particular faith, cultural and indigenous communities, and
  - provision of a basic lawn burial interment right at a minimum standard of maintenance.

IPART also recommended a risk based licencing regime that would place additional requirements on larger operators with greatest risks. The main risk contemplated by the review is the financial risk of not meeting perpetual maintenance, resulting in either a detriment to the consumer or costs to the taxpayer if the government is required to fund the liability. In the absence of information on the ability of operators to meet the liability, the size of the operator provides a proxy for risk (as the size of the liability will be larger all else equal).

The regulatory scheme proposed by CCNSW is consistent with the IPART recommendations.

### ***Proposed Interment Industry Scheme***

Cemeteries & Crematoria NSW (CCNSW) is currently developing a new Interment Industry Scheme to regulate cemeteries and crematoria under Section 31 of Part 3 of the *Cemeteries and Crematoria Act 2013*. The Interment Industry Scheme will be introduced via amendment of the *Cemeteries and Crematoria Regulation*, with specific requirements to be contained in a separate document, referenced in that regulation.

The Interment Industry Scheme intends to address certain recommendations of:

- the statutory review of the CC Act,<sup>12</sup> and
- the IPART review on the costs and pricing of interment.<sup>13</sup>

The proposed scheme consists of:<sup>14</sup>

- a licencing scheme for cemetery and crematoria operators. This will introduce four licence categories reflecting the size of operators:
  - Category 1 (Operators with 100+ interments per year) —require full compliance with licence conditions
  - Category 2 (Operators with 50-99 interments and crematoria only operators) — generally require full compliance with licence conditions, but has some less strict requirements compared to Category 1.
  - Category 3 (Operators with <50 interments per year) — generally require partial compliance with a smaller set of licence conditions.
  - Category 4 (caretaker licence for inactive cemeteries) — require compliance with basic maintenance only, subject to a condition that they will not conduct further interments
- a range of licence conditions relating to:
  - standard terms and conditions (and terminology) in interment industry consumer contracts (Condition A)
  - minimum standards for cemetery maintenance (Condition B)
  - pricing transparency for consumers (Condition C)

<sup>12</sup> Whitella Consulting 2020, The 11<sup>th</sup> Hour: Solving Sydney's Cemetery Crisis

<sup>13</sup> IPART 2020, Review of the Costs and Pricing of Interment in NSW.

<sup>14</sup> Cemeteries & Crematoria NSW 2021, Interment Industry Scheme – Consultation Report.

- customer service standards (Condition D)
- compliance with religious, cultural and spiritual requirements (Condition E)

Perpetual maintenance requirements were included in the draft Interment Industry Scheme that was released to cemetery and crematorium operators for comment. However, following feedback from stakeholders, CCNSW has decided to take more time to better understand the potential impacts on cemetery operators and their communities.

Perpetual maintenance requirements have therefore been excluded from the proposed Interment Industry Scheme at the present time and the impacts are not considered in this RIS. Perpetual maintenance requirements will be given further consideration in the period ahead.

### ***Requirement for a Regulatory Impact Statement***

Section 5 of the *Subordinate Legislation Act 1989* (SLA) requires that a regulatory impact statement (RIS) must be prepared before regulations are made. This requirement is identified in *Cemeteries and Crematoria Act 2013*.

The matters that must be included in a RIS are outlined in box 1.5.

#### **1.5 RIS requirements under the SLA**

A regulatory impact statement must include the following matters:

- A statement of the objectives sought to be achieved and the reasons for them.
- An identification of the alternative options by which those objectives can be achieved (whether wholly or substantially).
- An assessment of the costs and benefits of the proposed statutory rule (this includes economic and social benefits and costs). Wherever possible, costs and benefits should be quantified. If quantification is not possible, the anticipated impacts of the proposed action and of each alternative should be stated and presented in a way that permits a comparison of the costs and benefits.
- An assessment of the costs and benefits of each alternative option to the making of the statutory rule (including the option of not proceeding with any action), including the costs and benefits relating to resource allocation, administration and compliance.
- An assessment as to which of the alternative options involves the greatest net benefit or the least net cost to the community.
- A statement of the consultation program to be undertaken.

This process is simply a formal framework to help policy-makers think through the impacts of regulatory proposals in a disciplined and comprehensive way. This helps to ensure that policy decisions are based on best practice regulatory principles (box 1.6) and the best available evidence, resulting in better policy outcomes for the community.

## 1.6 Better Regulation Principles<sup>15</sup>

**Principle 1:** The need for government action should be established. Government action should only occur where it is in the public interest, that is, where the benefits outweigh the costs.

**Principle 2:** The objective of government action should be clear.

**Principle 3:** The impact of government action should be properly understood by considering the costs and benefits (using all available data) of a range of options, including non-regulatory options.

**Principle 4:** Government action should be effective and proportional.

**Principle 5:** Consultation with business and the community should inform regulatory development.

**Principle 6:** The simplification, repeal, reform or consolidation of existing regulation should be considered.

**Principle 7:** Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

### *This report*

This report is the final Regulatory Impact Statement (RIS) for the proposed amendments to the *Cemeteries and Crematoria Regulation (2014)* (the Regulation) that will establish the Interment Industry Scheme discussed above.

- Chapter 1 provides background and an introduction to the Interment Industry Scheme
- Chapter 2 presents the need for government action including issues identified with the current regulatory framework and outlines information available on the size of the problem
- Chapter 3 outlines the objectives of and options for change
- Chapter 4 outlines the impacts of the proposed Interment Industry Scheme
- Chapter 5 is the cost benefit analysis of the impacts
- Chapter 6 outlines the intended approach to implementation and consultation
- Chapter 7 describes the consultation process that has informed the development of the Interment Industry Scheme to date.
- Chapter 8 describes the proposed process for evaluation and review.

---

<sup>15</sup> NSW Government, *NSW Guide to Better Regulation*, October 2016, p. 6.

## 2 *The need for government action*

### *The case for regulation*

Where they operate efficiently (i.e., there are no significant market failures), markets generally deliver optimal outcomes for the community in terms of pricing and quality of service. However, when market failures are present there is often a case for some form of government intervention.

There are various inter-related market (and behavioural) failures in relation to the interment industry in NSW, mostly relating to a lack of effective competition. Market failures include the following:

- Limited consumer choice, including:
  - at the local level (i.e. some cemeteries are effectively local monopolies)
  - for some religious and cultural groups (i.e. not all cemeteries cater for all religious and cultural preferences).
- Information asymmetries — for market to work efficiently, customers need access to full information around what they are purchasing. Information asymmetries arise when the service provider does not disclose full information to the buyer.
- Inefficient pricing — in a competitive market, prices should broadly reflect the full cost of providing the services (including a reasonable rate of return on the operator's capital outlays). However, there is evidence of prices exceeding efficient costs for some operators, and of under-recovery- of costs by other operators.<sup>16</sup>
- Limited incentives to fulfil perpetual maintenance obligations —where closed cemeteries, cemeteries at full capacity or cemeteries in the transition phase to being at full capacity (conduct few interments each year) do not generate sufficient revenue to fund maintenance obligations, there may be limited incentive for some operators to adequately maintain the cemetery.

These market and behaviour failures occur in the context of what is effectively an essential service.

### *Limited consumer choice*

Consumer choice is a key element of competition. Although there are 1 048 operational cemeteries and 59 operational crematoria in NSW managed by 336 different operators, consumers may have limited choice in many circumstances.<sup>17</sup>

---

<sup>16</sup> In the case of under-recovery of costs, more efficient prices would mean higher prices.

<sup>17</sup> Based on CCNSW database current as at 1 February 2022.

IPART found that there is some competition between interment service providers, which is strongest in cremation and ashes interment (Finding 9).<sup>18</sup> However, there are several factors that may limit the choice of cemetery for some consumers.

IPART noted that people often strongly prefer to be interred in a particular cemetery. Both IPART and the statutory review noted a preference to be close to their family and community. The statutory review referred to previous work that found 77 per cent of people are buried within 20km of their place of residence and 80 per cent are buried within a 30-minute drive.<sup>19</sup>

IPART also noted that religious affiliation and culture also plays an important role in the choice of cremation or interment (including location).<sup>20</sup>

As some larger cemeteries in the Sydney metro area are expected to close for further burials over the next few years, cemetery choice may be limited further.

### ***Information asymmetries***

Information asymmetry occurs when one party to a transaction (normally the seller) has more, or better, information than the other party. This can prevent consumers from making fully informed decisions.<sup>21</sup>

In regard to information asymmetries, IPART found that prices for interment services are not displayed consistently and are difficult for consumers to compare (IPART finding 7).<sup>22</sup> IPART identified a number of reasons, including:<sup>23</sup>

- Terminology used by the industry is not accessible to everyone. For example, terms such as ‘interment’ and ‘lift and deepen’ are not frequently used outside of the cemeteries and crematoria industry, and so many of these terms may be unfamiliar to consumers.
- Advertised prices are often bundled to varying degrees, while only a few cemetery operators itemise each service component for an adult lawn burial.
- For some cemetery operators that itemise each service component it is difficult to identify all necessary service components for an adult lawn burial. That is, it is not clear what services a customer is required to purchase and what services are optional, and so it is difficult to determine the total price for a basic service (i.e. adult lawn burial) from published prices.

---

<sup>18</sup> IPART, *Review of the Costs and Pricing of Interment in NSW*, Final Report, November 2020, pp. 54-56.

<sup>19</sup> Whitella Consulting 2020, *The 11<sup>th</sup> Hour: Solving Sydney’s Cemetery Crisis*, Cemeteries and Crematoria Act 2013, Statutory Review, p. 91.

<sup>20</sup> IPART, *Review of the Costs and Pricing of Interment in NSW*, Final Report, November 2020, pp. 54-55.

<sup>21</sup> NSW Government, *Guide to Better Regulation*, Policy and Guidelines Paper TPP 19-01, January 2019, p. 24.

<sup>22</sup> IPART, *Review of the Costs and Pricing of Interment in NSW*, Final Report, November 2020, p. 39.

<sup>23</sup> IPART, *Review of the Costs and Pricing of Interment in NSW*, Final Report, November 2020, p. 38.

- Cemetery operators use inconsistent terminology to describe interment products. For example, some describe the price for an interment right as a ‘right of burial’, while others refer to it as ‘land for each grave’. Some cemeteries do not itemise the interment right and appear to bundle it with the interment fee.
- Other important information to enable price comparison is not always clearly specified in cemetery pricing schedules. For example, interment right specifications such as grave depth and size (e.g. single or double depth) are evident in some pricing schedules, but not in others. This information is important for price comparison because it determines the number of interments that a right can accommodate.

### ***Behavioural failures***

In competitive markets consumers are generally assumed to be able to make choices — including the combination of price, quality and other factors — that best meet their own needs and preferences.

However, there is some evidence to suggest that consumers do not always make fully informed choices in relation to cemeteries (this is not strictly a market failure, but can be termed as a behavioural failure). As noted by IPART, decisions about purchasing interment rights are often made at a time of emotional stress and within a short timeframe.<sup>24</sup>

Also, interment rights are often (but not always) purchased through an intermediary, the funeral director, so the relationship between the cemetery providing the services and the customer purchasing is somewhat indirect.<sup>25</sup> However, IPART also reported that less than 20 per cent of people who organised a funeral get more than one quote from a funeral provider (chart 2.1).<sup>26</sup>

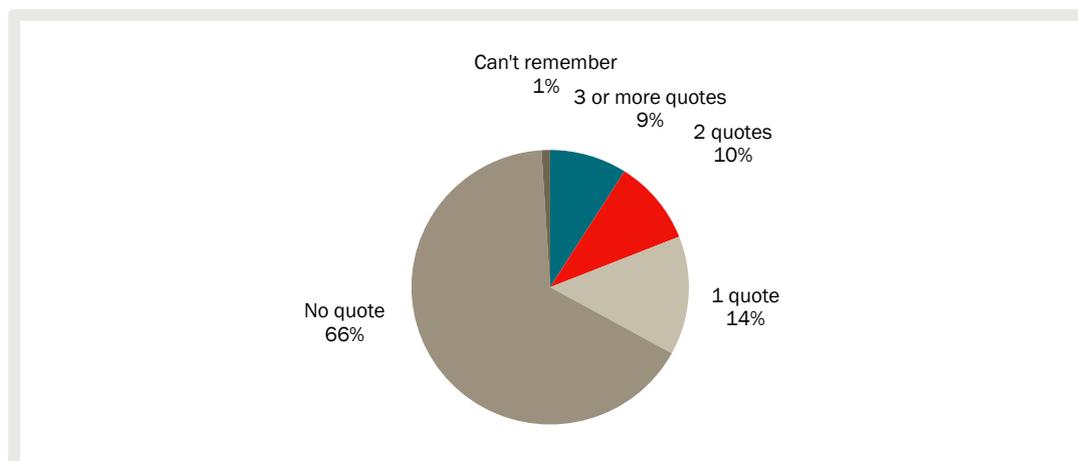
---

<sup>24</sup> IPART, *Review of the Costs and Pricing of Interment in NSW*, Final Report, November 2020, pp. 54-55.

<sup>25</sup> IPART, *Review of the Costs and Pricing of Interment in NSW*, Final Report, November 2020, pp. 54-55.

<sup>26</sup> IPART, *Review of the Funeral Industry in NSW: Consumer Issues*, Information Paper, June 2021, p. 4.

## 2.1 Number of quotes before choosing a funeral provider



Data source: IPART, Review of the Funeral Industry in NSW: Consumer Issues, Information Paper, June 2021, p. 4.

Of those responses that indicated they got no quote or one quote:

- 27 per cent indicated they were too overcome with emotion, or didn't have the energy to seek more quotes
- 22 per cent felt it wasn't right to shop around or ask for a quote for the funeral of a loved one
- 18 per cent lacked time.

Although there is no available information available specifically about consumer search behaviour for interment rights, the pattern may be expected to be like that undertaken to find a funeral provider. This is likely to be the case when:

- the interment right is purchased through a funeral provider, or
- the interment right purchasing decisions is made in same context as choosing a funeral provider (during a time of emotional stress and within a short timeframe).

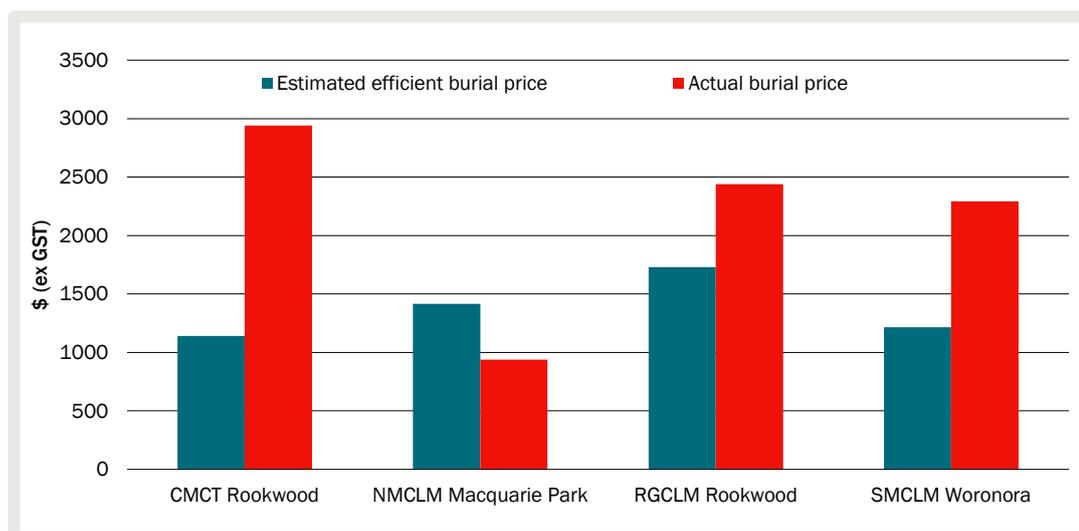
When interment rights are purchased "pre-need", customers may be more likely to shop around. However, there is no information to support this conclusion, and as noted above, there a range of factors other than price which may be more important for consumers when making these decisions.

### *Inefficient pricing*

In a competitive market, prices would be expected to reflect the full cost of providing the relevant services (including a reasonable risk adjusted rate of return on capital). However, current cemetery pricing does not appear to reflect the efficient cost of providing the service.

In particular, IPART found that Crown cemetery burial prices generally exceeded the estimated efficient cost (chart 2.2).

## 2.2 Estimated efficient cost-reflect burial price (\$2019) compared to actual Crown cemetery burial prices



Data source: IPART, *Review of the Costs and Pricing of Interment in NSW*, Final Report, November 2020, p. 46.

Other evidence that suggests that cemetery prices are not cost reflective include the following:

- Crown cemetery operators do not include the cost of land in their prices.
- Many council operated cemeteries have been subsidised and have also not recovered perpetual maintenance costs.

Although demand for interments is likely to be relatively insensitive to price, there are nevertheless efficiency losses where prices do not reflect the efficient cost of supply.

- Where prices exceed the efficient level, consumers pay too much for interments and some could therefore choose a cremation, when they would have preferred a burial.
- Alternatively, where prices are below the efficient level could lead to too many perpetual burials.<sup>27</sup> This is an important issue in the context of several major cemeteries running out of burial space.

### *Limited incentive to meet perpetual maintenance obligation*

The two recent reviews both raised perpetual care liability as a critical risk to the interment industry, and also to the NSW Government and the public of NSW.

The IPART review estimated the legacy maintenance liability (based on existing interments) at \$1.7 billion at 30 June 2019.<sup>28</sup> This includes the perpetual maintenance liabilities during active, transitional and perpetual stages of a cemetery.<sup>29</sup>

<sup>27</sup> As higher prices for perpetual burials would be expected to increase the number of cremations and renewable burials, all else equal.

<sup>28</sup> IPART 2020, *Review of the Costs and Pricing of Interment in NSW*.

<sup>29</sup> Deloitte Access Economics 2020, *Efficient costs of interment services*, prepared for IPART, p. 71. Note the Deloitte report refers to these costs as legacy costs. These refer to future maintenance

The statutory review estimated the Perpetual Maintenance Target Liability (PMTL)<sup>30</sup> for Crown operators of \$800.9 million. This is an estimate of the Crown's total liability and reflects past interments as well as capacity for future interments.

The risk of perpetual care liability can be broken down into two components:

- Insufficient funds are collected if current pricing does not recover the costs of perpetual care. Based on feedback from stakeholder consultations there are segments of the industry where current pricing does not reflect current costs. Furthermore, within some segments the cost of perpetual maintenance is not or only partially recovered.
- Perpetual care funds collected from the sale of plots are not sufficiently invested and maintained to fund future perpetual care liabilities. For example:
  - Funds may not achieve a sufficient rate of return to meet future liabilities
  - Funds may be diverted to alternative aspects of the business (where funds are not ringfenced)

There is also an incentive to operators to attempt to walk away from liabilities as a cemetery nears the end of its operational phase. This incentive is influenced by a variety of factors include:

- a cemetery's ownership structure, and the community it services
- whether the cemetery supports alternative activities, such as chapels, crematorium, community visitation to open green space.

There are several examples of regulatory frameworks addressing risks associated with incentives for businesses to avoid long term financial obligations after a facility ceases to operate (see box 2.3).

---

costs for sold perpetual interment rights at a particular point in time (when revenue has already been received for these rights). This does not include the additional maintenance costs associated with active and transitional cemeteries, which includes the cost of maintaining gravesites in areas to high visitation to a very high standard.

<sup>30</sup> Perpetual Maintenance Target Liability (PMTL) is an estimate of the total liability, at the current point of time, of the obligation to maintain in perpetuity all sold and available unsold interment rights. The accrued liability will grow overtime to the PMTL as interment rights are sold. It represents an estimated of the assets required by a cemetery to meet perpetual maintenance liabilities once supply of available burial plots is exhausted.

### 2.3 Regulatory frameworks to address long term financial risk

Regulatory frameworks to address the risks associated with incentives for businesses to avoid long term financial obligations after a facility ceases to operate include the following.

- Victoria and the ACT both have regulatory models in place to assist with funding perpetual care liabilities:
  - in Victoria each cemetery trust operator is required to ringfence a certain percentage of service related- costs (recommended 15 to 20 per cent) as the contribution to their perpetual care fund.<sup>31</sup>
  - In the ACT the cemetery operator is required through the *Cemeteries and Crematoria Act 2020 (Act)* to set aside a certain percentage of annual revenue to fund perpetual care. This amount is determined on a per cemetery trust basis by the minister and is notified through a 3-yearly disallowable instrument.<sup>32</sup>
- Regulations relating to environment protection licences and mining titles in NSW can require licensees/title holders to provide the NSW Government with ring-fenced funds sufficient to cover financial liabilities in the event a licensee/title holder defaults on their long-term maintenance and rehabilitation obligations. These include:
  - **EPA Financial Assurances** — the *Protection of the Environment Operations Act 1997* gives the EPA the power to require a financial assurance as a condition of a licence. A financial assurance may be in the form of a bank guarantee, a bond or another form of security. The financial assurance is determined as the cost to a third-party to conduct perpetual maintenance activities at a site.
  - **Mining Rehabilitation Security Deposits** — All exploration and mining title holders are required to lodge a security deposit with the department of Regional NSW. The security deposit must cover the government’s full costs in undertaking rehabilitation in the event of default by the title holder.<sup>33</sup>

As the proposed Interment Industry Scheme considered in this RIS does not include perpetual maintenance requirements, this market failure is not currently being addressed. However, as discussed above, CCNSW will conduct further work on these requirements, and add them into the Interment Industry Scheme in a future second stage.

<sup>31</sup> This includes maintenance related to roads, paths, gardens, fences, buildings, water, security, park establishment and replacement, and does not include maintenance of memorials (see <https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-financial-management-overview>)

<sup>32</sup> Maintenance of monuments, plaques and related materials are not included in maintenance costs (see [https://www.canberramemorialparks.act.gov.au/\\_\\_data/assets/pdf\\_file/0011/1907156/Schedule-of-Common-Fees-2021-22.pdf](https://www.canberramemorialparks.act.gov.au/__data/assets/pdf_file/0011/1907156/Schedule-of-Common-Fees-2021-22.pdf)).

<sup>33</sup> See: <https://www.resourcesregulator.nsw.gov.au/sites/default/files/2021-08/Policy-Rehabilitation-security-deposits.pdf>.

## *The case for regulatory change*

A range of weaknesses in the current regulatory regime have been identified through:

- The statutory review
- The IPART review
- CCNSW's own risk analysis.

The proposed licencing framework directly aligns with recommendations from these previous reviews and risks identified.

## *Recommendations from the statutory review*

The recommendations from the statutory review relevant to the proposed regulation include:

- CCNSW, in consultation with key religious and cultural groups, immediately commences the development of a mandatory Code of Practice which outlines the specific interment requirements of those groups (Recommendation 6.1).
- CCNSW undertakes oversight, benchmarking and reporting of customer satisfaction levels across the cemeteries and crematoria sector in NSW. A mandatory Code of Practice for customer service should form part of the interment industry scheme (Recommendation 8.2).
- CCNSW develops a standardised, plain English terms and conditions for interment rights so consumers clearly understand what they are purchasing and the standard of perpetual maintenance provided by the cemetery or crematorium operator (Recommendation 9.1).
- CCNSW develops, and publishes on its website, a template itemising prices with consistent terminology to facilitate more informed purchasing decisions and competition. Operators would be required to publish prices for bodily interment services and itemise each service component using prescribed terminology. Each service component should be described in plain English. Any additional costs associated with specific religious or cultural requirements must be clearly specified (Recommendation 9.3).
- CCNSW evolves its regulator posture from reactive and administrative to become a proactive regulator of the sector. CCNSW must develop a regulatory framework consistent with the NSW Government's policies in relation to Better Regulation. CCNSW immediately commences work on the development of mandatory codes that will become an interment industry scheme. As outlined in s.31(2)(b)(c), the scheme must incorporate the assessment, reporting, provisioning and auditing of perpetual maintenance and the development of a license framework (Recommendation 10.2).
- CCNSW needs to be recognised as a strong, proactive regulator of the sector. CCNSW needs to clarify its role by clearly communicating its functions, as outlined in the Act, and how it will undertake its regulatory obligations to the sector and the broader community (Recommendation 10.6).

- CCNSW develops a two-tier regulatory structure that delineates the regulatory oversight between those operators required to hold an interment industry licence and those that are not. Those required to hold an NSW interment industry license are:
  - Cemetery owners and operators exceeding the following thresholds:
    - ... Undertaking more than 50 interments annually; or
    - ... Where more than 40,000 interments have taken place; or
    - ... Listed on the State Heritage Register; and
  - All crematoria owners and operators. (Recommendation 10.11).

### ***Recommendations from the IPART review***

The recommendations from the IPART review relevant to the proposed regulation include:

- That CCNSW develop an interment industry scheme under the *Cemeteries and Crematoria Act 2013*. (Recommendation 1).
- That the industry scheme introduce an operating licence for cemetery operators which meet an activity level threshold. (Recommendation 2).
- That CCNSW modify its Code of Practice for Cemetery Maintenance to include specification of minimum standards of maintenance for cemeteries. This specification should be made mandatory by the Industry Scheme. (Recommendation 3).
- That CCNSW develop a code of practice for interment right contracts, including standard terms and conditions, and a requirement for cemetery operators to provide a plain English statement of terms and conditions. Mandatory elements to be enforced by the Industry Scheme. (Recommendation 4).
- That CCNSW develop a code of practice, in consultation with faith, cultural and indigenous communities, which specifies minimum interment requirements for particular faiths and community groups. (Recommendation 5).
- That licensed operators' licence conditions may further specify which basic services (for particular faiths or community groups) they must provide by reference to those which are defined in a Code of Practice. (Recommendation 7).
- That the provisions of the Code of Practice on publishing prices in a consistent way be made mandatory via the industry scheme for cemeteries which conduct more than 50 burials or interment right sales per year. (Recommendation 23).

### ***CCNSW risk analysis***

CCNSW conducted a risk analysis of the industry and identified strategic, operational, stakeholder and financial risks facing the industry.

Table 2.4 outlines the key potential risks identified by CCNSW, with the key risks highlighted in teal.

## 2.4 Key potential risks identified for the interment industry by CCNSW

Strategic	Operational	Stakeholder	Financial
Risk of insufficient land for future interments	Risk of unsafe, poorly maintained cemeteries and crematoria	Risk of exploitation of vulnerable consumers: <ul style="list-style-type: none"> <li>▪ Lack of knowledge/information symmetry</li> <li>▪ Unclear terms and conditions</li> <li>▪ Overly complex language</li> </ul>	Risk of inadequate perpetual maintenance funds (unfunded liabilities)
Risk of corrupt and/or fraudulent practices	Risk of poor record keeping	Risk of lack of dignity and respect: <ul style="list-style-type: none"> <li>▪ Inappropriate treatment of remains</li> <li>▪ Poor customer service</li> </ul>	Risk of poor financial governance
Risk of poor risk management	Risk of poor compliance	Risk of inappropriate pricing (non-transparent, inflated)	Risk of inefficient operations leading to higher prices
	Risk of an insufficiently resourced regulator	Risk of lack of choice: <ul style="list-style-type: none"> <li>▪ Culturally appropriate offerings</li> <li>▪ Accessible locations</li> </ul>	Risk of insufficient funds to buy land
	Risk of poor environmental sustainability		Risk of insufficient funds to maintain required level of capital investment

Source: Cemeteries and Crematoria NSW (CCNSW), 2021, *Interment Industry Scheme: Discussion Paper*, November 2021.

### *Extent and size of the problem*

The statutory review identified a range of significant risks and challenges to the interment industry and the public, which include:<sup>34</sup>

- cemeteries in Greater Sydney are running out of space. All existing operational Crown cemeteries will close to new burials within 10-12 years. The interment industry scheme proposed is not expected to directly address this challenge.
- deficiencies in the regulation and governance of cemeteries on public land. Several crown cemetery operators have experienced governance problems over the past 5 years, and even with the provision of additional cemetery land it is not clear whether the sector can be sustainable in the long term under the current structure. For example:
  - there is currently no existing prudential or regulatory framework governing how perpetual maintenance target liabilities are determined, how maintenance costs are assessed, or assets managed

<sup>34</sup> Whitella Consulting 2020, *The 11<sup>th</sup> Hour: Solving Sydney's Cemetery Crisis*, Cemeteries and Crematoria Act 2013, Statutory Review.

- crown operators use funds for perpetual maintenance to acquire new land or capital works, which may compromise the funding of these liabilities into the future.
- the need to ensure that all cemeteries are maintained in perpetuity. When a cemetery sells a perpetual interment right, the operator takes on an obligation to maintain that grave forever:
  - of the four crown operators modelled in the review, only two have sufficient assets to fund their perpetual maintenance target liability by the time they cease sales of burial interment rights
  - the sale of burial interment rights is the main source of revenue for operators, such that if they do not completely fund their perpetual maintenance target liability by the time of time of last interment right sale, they may not be able to maintain their cemeteries to the appropriate standard in perpetuity
- a lack of certainty/consistency around the terms and conditions for interment rights. Most people rarely purchase interment services and have limited awareness of the types of services available. In many cases customers may not be fully aware of the terms and conditions for interment rights
- a lack of overarching regulatory oversight of cemeteries and crematoria.

In the following section we examine the extent of the problems which are addressed by the proposed regulation.

### ***Consumer protection measures***

The impacts will critically depend on the extent to which operators are already meeting these requirements. The limited objective evidence on the extent to which cemetery operators are already meeting these requirements includes the following.

- Key findings from the IPART Review included the following.<sup>35</sup>
  - There is a wide variation in prices for interment services across NSW.
  - Prices are displayed inconsistently and are difficult to compare.
- In relation to customer service, the statutory review was not provided with any objective customer service surveys or metrics. Nevertheless, the Review made the following observations.<sup>36</sup>
  - The majority of interment rights are purchased through a funeral director on behalf of the ultimate right holder. For the Crown cemetery operators, who do not operate funeral director businesses, the relationship with the interment right holder is sometimes limited.
  - The Review did not identify any examples of Crown operators failing to perform their interment services in a professional manner.

---

<sup>35</sup> IPART 2020, *Review of the Costs and Pricing of Interment in NSW*, pp. 37-38.

<sup>36</sup> Whitella Consulting, *The 11<sup>th</sup> Hour: Solving Sydney's Cemetery Crisis*, Statutory Review of the Cemeteries and Crematoria Act 2013, p. 161.

- Private sector operators reiterated the importance of continual customer engagement to develop products that meet changing community needs, especially increasing cultural and ethnic diversity. Engagement was also considered necessary to the commercial viability of the business in generating sustainable revenue streams.
- The Review identified some religious and community groups that were not being actively engaged in plans for their local cemeteries (as they start to approach exhaustion), proposed pricing changes and their overall service satisfaction.
- There have been few complaints to CCNSW in relation to customer service issues.

### ***Minimum standards for operational cemetery maintenance***

A key determinant of the benefit of implementing minimum standards for cemetery maintenance is the current condition of cemeteries. Where maintenance standards are currently poor, the benefit of implementing minimum standards will be larger than would be the case if cemeteries are currently very well maintained.

However, there is limited information on the current standards maintenance and quality of cemeteries. For example, there has not been a maintenance audit across the sector, and CCNSW does not currently collect information from operators on maintenance activities. A comprehensive information gathering exercise would be required to understand the extent to which poor maintenance is currently an issue. In the absence of this information, it is difficult to definitively model the costs and benefits of minimum maintenance standards.

The previous reviews into the sector have not provided evidence around current levels of maintenance, but rather note that there are currently no minimum standards<sup>37</sup>, and that minimum standards of maintenance are likely to differ between types of cemeteries (e.g. rural/regional, metropolitan) and for levels of visitation.<sup>38</sup> Members of the public are able to make complaints to CCNSW.<sup>39</sup> Complaints information can be used to infer the extent to which maintenance is an issue across cemeteries and crematoria in NSW. This is the only quantitative information available to measure the size of the potential problem.

Since 2016 the percentage of total complaints relating to maintenance has increased from around 13 per cent to 22 per cent in 2021/22 (based on data to December 2021, chart 4.3). This may imply that over time problems relating to maintenance may be becoming more prominent. However, the overall level of complaints is relatively low. In 2020/21, which recorded the higher number of complaints to date, the maintenance related complaints correspond to 0.04 complaints per operator and 0.01 complaint per

---

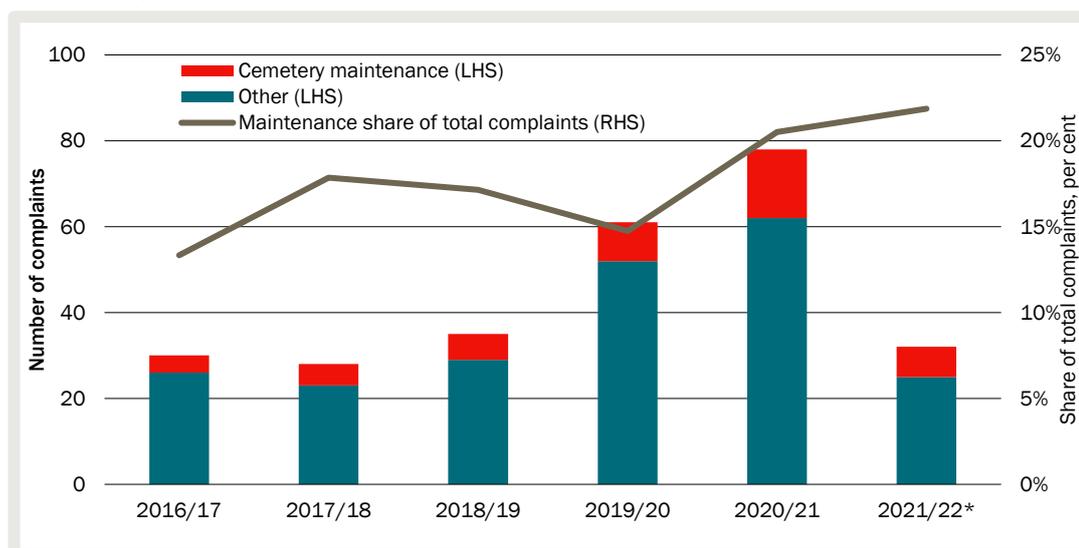
<sup>37</sup> Whitella Consulting, *The 11<sup>th</sup> Hour: Solving Sydney's Cemetery Crisis*, Statutory Review of the Cemeteries and Crematoria Act 2013, p. 74.

<sup>38</sup> IPART 2020, *Review of the Costs and Pricing of Interment in NSW*, p. 66.

<sup>39</sup> We understand that for maintenance related complaints, customers could also go to Fair Trading for breach of conditions of supply of goods or services where the quality of maintenance is specified in the contract.

facility (noting that complaints are not necessarily equally distributed across operators and facilities).<sup>40</sup> This implies that overall, the public is generally satisfied with the maintenance of cemeteries and crematoria, but may also reflect that the complaints channel through CCNSW is not well known by the public.

## 2.5 Complaints received by CCNSW



Note: Data for 2021/22, is for the incomplete year to December 2021.

Data source: CCNSW, CIE.

Across cemetery operators there is some evidence of different approaches being taken to deliver maintenance, however there is little information to inform the extent to which the minimum standards are currently being met by operators. This is in part due to the current structure of the sector with many different operators and different types of cemeteries (i.e. large, small, regional, metropolitan etc.).

As part of the IPART review Deloitte Access Economics reviewed the maintenance tasks undertaken by Crown operators and one private operator.<sup>41</sup> This is generally characterised by maintenance activities being timed in line with periods of higher visitations and higher maintenance levels in frequently visited parts of cemeteries. Consultations with operators have also indicated that within cemeteries different maintenance standards are applied depending on the number of visitors to that part of the cemetery (highly visible parts of cemeteries tend to be maintained more often) and the number of interments that occur in parts of the cemetery (areas which close to being full, tend to be maintained less frequently).

<sup>40</sup> Based on 385 operators and 1 542 facilities.

<sup>41</sup> Deloitte Access Economics 2020, *Efficient costs of interment services*, prepared for IPART.

### 3 *Objectives and options*

#### ***Objectives of the Interment Industry Scheme***

The objectives of the Interment Industry Scheme are to:

- Improve the financial sustainability of the interment industry in NSW
- Ensure that cemeteries are well maintained, now and into the future
- Provide consumers with a better experience when engaging with cemetery and crematoria operators, through ensuring consistent and transparent interment services.

The Scheme will also support the objects of the Act, as outlined in Section 3, in particular:

- to recognise the right of all individuals to a dignified interment and treatment of their remains with dignity and respect
- to ensure that the interment practices and beliefs of all religious and cultural groups are respected so that none is disadvantaged and adequate and proper provision is made for all
- to provide for the operation of a consistent and coherent regime for the governance and regulation of cemeteries and crematoria
- to ensure that the operators of cemeteries and crematoria demonstrate satisfactory levels of accountability, transparency and integrity
- to promote that cost structures for burials and cremations are transparent across all sectors of the interment industry, and
- to promote affordable and accessible interment practices, particularly for those of limited means.

#### ***Proposed Interment Industry Scheme***

Cemeteries & Crematoria NSW (CCNSW) is currently developing a new Interment Industry Scheme to regulate cemeteries and crematoria under Section 31 of Part 3 of the *Cemeteries and Crematoria Act 2013*.

The Interment Industry Scheme intends to address the recommendations of:

- the statutory review of the CC Act,<sup>42</sup> and
- the IPART review on the costs and pricing of interment (released in June 2021).<sup>43</sup>

---

<sup>42</sup> Whitella Consulting 2020, *The 11<sup>th</sup> Hour: Solving Sydney's Cemetery Crisis*, Statutory Review of the Cemeteries and Crematoria Act 2013.

<sup>43</sup> IPART, *Review of the Costs and Pricing of Interment in NSW*, Final Report, November 2020.

The proposed scheme consists of:<sup>44</sup>

- a licencing scheme for cemetery operators. This will see four licence categories reflecting risk and size of operators:
  - Category 1 (Operators with 100+ interments per year) — generally require full compliance with licence conditions
  - Category 2 (Operators with 50-99 interments per year and crematoria only operators) — generally require full compliance with licence conditions, but has some less strict requirements compared to Category 1.
  - Category 3 (Operators with <50 interments per year) — generally require partial compliance with licence conditions.
  - Category 4 (caretaker licence for inactive cemeteries) – require compliance with basic maintenance only, subject to a condition that they will not conduct further interments
- a range of licence conditions, including:
  - standard terms and conditions (and terminology) in interment industry consumer contracts (Condition A)
  - minimum standards for cemetery maintenance (Condition B)
  - pricing transparency for consumers (Condition C)
  - customer service standards (Condition D)
  - compliance with religious, cultural and spiritual principles (Condition E)

Perpetual maintenance requirements were included in the draft Interment Industry Scheme that was released for public comment. However, following feedback from stakeholders, CCNSW has decided to take more time to better understand the potential impacts on cemetery operators and their communities. Perpetual maintenance requirements have therefore been excluded from the proposed Interment Industry Scheme at the present time and the impacts are not considered in this RIS.

As currently drafted, a licence is valid for 5 or less years as determined by the regulator. Category 4 operators will be granted a perpetual licence.

The Scheme will be inserted into the *Cemeteries and Crematoria Regulation 2014*. Section 32(2) of the Act specifies that a regulation that establishes an Interment Industry Scheme will be accompanied by a Regulatory Impact Statement (RIS).

### 3.1 Licence conditions

Licence condition	Description	Level of compliance			
		Category 1	Category 2	Category 3	Category 4
Interment industry consumer contracts (Condition A)	Standard terms and conditions for interment rights contracts	Full compliance	Full compliance	Partial compliance (Conditions A.1 and A.2 only)	Not relevant

<sup>44</sup> Cemeteries & Crematoria NSW 2021, Interment Industry Scheme – Consultation Report.

Licence condition	Description	Level of compliance			
		Category 1	Category 2	Category 3	Category 4
Minimum standards for cemetery maintenance (Condition B)	Best practice principles to provide amenity and safety in line with community expectations and available resources	Full compliance	Partial compliance (not applicable to crematoria only operators)	Partial compliance (Condition B.1 only)	Partial compliance (Condition B.1 only)
Pricing transparency for consumers (Condition C)	Transparent and consistent terminology used in pricing and the introduction of common basic interment service types	Full compliance	Full compliance	Recommended best practice	Not relevant
Customer service (Condition D)	Standard customer service requirements	Full compliance	Partial compliance	Partial compliance	Not relevant
Religious, Cultural and Spiritual Principles (Condition E)	Religious and Cultural Principles and Aboriginal Cultural and Spiritual Principles	Full compliance	Full compliance	Full compliance	Not relevant
Reporting Obligations (Condition F)	Operator must provide updated information	Full compliance	Full compliance	Full compliance	Not relevant
Prohibition of interment services (Condition G)	Operator cannot perform interments	Can perform interment services	Can perform interment services	Can perform interment services	Cannot perform interment services

Source: CCNSW 2021, Interment Industry Scheme discussion paper, November 2021; CCNSW 2021, Interment Industry Scheme – Consultation Draft, V1.4 November 2021; CIE.

### ***Categorisation of operators/facilities***

Under the Scheme it is proposed that a category will be assigned to each operator as part of its licence. Initially these categories will be based purely on size/activity thresholds, as CCNSW has limited information around the risks of different operators.

In initially categorising operators CCNSW will consider:

- the number of interments over the past 3 years
- the total number of existing and future interments possible
- whether they operate a cemetery, crematorium or both, and

The category assigned will determine the licence conditions that an operator must comply with.

### ***A: Consumer contracts (standard terms and conditions)***

These licence conditions relate to the content and form of consumer contracts, as well as obligations of the operator.

Requirements include:

- Operator must comply with pre-contract requirements to ensure consumers contracts are transparent and clear (A.1):
  - The operator must ensure that consumer contracts are transparent, clear and expressed in reasonably plain language likely to be understood by the average customer.
  - Words or phrases used in a consumer contract that have a particular meaning when used in connection with the interment industry should be defined in the contract.
  - Before offering, negotiating, or entering into a consumer contract, the operator must provide the customer with information about the Basic Adult Burial Service and/or Basic Ash Interment; and/or Cremation Only offered by the operator, including the price and the inclusions of that service.
  - The operator must not enter a consumer contract unless the customer has been provided reasonable time and privacy to consider a quote, written statement or contract.
  - A customer must be provided with a signed copy of their consumer contract as soon as reasonably practicable after both parties have signed the contract.
- Operators must not enter a consumer contract unless the consumer contract includes the following details (A.2):
  - A Consumer Contract must include an agreement statement that includes:
    - ... A summary of the agreement between the Customer and the Operator
    - ... Details of any specific conditions with which the Customer must comply
    - ... A declaration by the Operator that the terms and conditions have been explained to the Customer and they have been given time and privacy to consider the Consumer Contract before signing it
    - ... A declaration by the Customer that the terms and conditions have been explained to them and they have been given time and privacy to consider the Consumer Contract before signing it
    - ... A declaration by the Customer that the information provided by the Customer and included in the contract is true and correct.
  - Where applicable, a declaration by an Authorised Agent that it has complied with the obligations of the Operator in this condition.
  - The Consumer Contract must provide relevant details on the following matters.
    - ... Tenure, type and grant of right (does not apply to Cremation Only Consumer Contracts)
    - ... Fees and charges
    - ... Payment terms.

- Operator must address certain matters in all consumer contracts (A.3 — this condition does not apply to Cremation Only Consumer Contracts) — the operator must not offer, or enter into, a consumer contract in connection with interment services unless the contract includes or makes provision for the following:
  - Responsibility for and costs associated with maintenance
  - Commencement and expiry
  - Information disclosure
  - Privacy statement
  - Complaints and dispute resolution.

### ***B: Minimum standards of cemetery maintenance***

Cemetery maintenance conditions do not apply to Cremation Only operators. The minimum standards cemetery maintenance consists of four key elements:

- All operators must ensure site maintenance is carried out and public access to the cemetery is maintained (B.1). This is the only licence condition that applies to Category 4 Operators.
  - This includes the following:
    - ... Public access to the cemetery is available during daylight hours
    - ... Public access may be limited to the Site or part of the Site if the Operator has reasonable grounds to believe it is unsafe to allow access
    - ... Fallen trees or branches are removed from the cemetery as soon as practicable, and
    - ... The Site remains accessible through the carrying out of basic landscaping servicing.
  - The operator must continue to ensure that site maintenance and public access are maintained whether or not the Operator is providing, or offers, future interments at the Site.
  - Public access to the Site may be limited to access by appointment, but only if:
    - ... the operator advertises on the cemetery premises and appropriate locations the way in which an appointment may be made, and
    - ... appointments are made available within a reasonable time after a request is made.
- Category 1 and 2 operators must prepare a document which outlines the operational maintenance needs of the site (B.2)
  - This document must address the following matters:
    - ... The current status of the site, as either operating or inactive
    - ... Factors that may impact the appropriate maintenance of different parts of the Site including the current status (as either operating or inactive)
    - ... A list of the assets at the site which require ongoing maintenance
    - ... An inspection cycle for each of the assets on the site which indicates how often the assets will be inspected

- ... If there are memorials on the site, outlines a monument safety inspection cycle that provides for an inspection of memorials at least once every 5 year period
- ... A maintenance schedule identifying planned maintenance commitments and anticipated responses for unplanned maintenance required to be undertaken (such as air or restoration of memorials).
- Operators with a Category 1 licence must update the schedule annually. Operators with a Category 2 licence must update every second year.
- The operator is to notify the Cemeteries Agency as soon as practicable after the document has been prepared/updated. If requested by the Cemeteries Agency, the operator must provide a copy of the document.
- Category 1 and Category 2 operators must maintain a record of all activities carried out under the operational maintenance document (B.3):
  - The record must include:
    - ... summary of the activity
    - ... the date on which the action occurred, and
    - ... the costs incurred in carrying out the activity.
  - If requested to do so, the operator must provide a copy of these records to the Cemeteries Agency.
- Category 1 and Category 2 operators must provide the Cemeteries Agency with a completed self-assessment checklist for Site maintenance (B.4):
  - If Cemeteries Agency publishes a self-assessment checklist for site maintenance in the NSW Gazette, the operator must complete the self-assessment checklist in accordance with this condition.
  - If the operator has a Category 1 licence, the self-assessment checklist must be completed each year. A copy of the completed check list must be provided to the Cemeteries Agency no later than the anniversary of the date on which the licence was granted.
  - If the operator has a Category 2 licence, the self-assessment checklist must be completed every second year. A copy of the completed self-assessment checklist must be provided to the Cemeteries Agency provided no later than every second anniversary of the date on which the licence was first granted.
- Category 1 and 2 operators must comply with site maintenance standards (B.5) — the operator must take all reasonable steps to comply with the site maintenance standards. The standards imposed by this condition apply without limiting, and in addition to, any other condition applicable to the licence. The site maintenance standards are shown in table 3.2

### 3.2 Site maintenance standards

Standard	Requirements
Site entry and access	<ul style="list-style-type: none"> <li>■ Clear, legible signage at the entry point that outlines the Site name, contact details of operator and opening hours</li> <li>■ Well defined boundaries and fencing</li> </ul>

Standard	Requirements
	<ul style="list-style-type: none"> <li>▪ Entry points must be designed and maintained to avoid conflict between vehicles and pedestrians</li> <li>▪ Shared spaces for vehicle and foot traffic movement must be suitably identified</li> <li>▪ Maintenance and landscaping of high foot traffic areas</li> <li>▪ Public access available during daylight hours, and</li> <li>▪ As far as practicable, all public access areas in the Site must be accessible in accordance with AS 1428 (Parts 1-5): Design for access and mobility.</li> </ul>
Cemetery grounds	<ul style="list-style-type: none"> <li>▪ Fallen trees or branches must be removed as soon as possible</li> <li>▪ Basic landscaping servicing to ensure site remains safe and accessible</li> <li>▪ Prepare and publish a policy to the public which outlines mementos and offerings that can be left by visitors</li> <li>▪ Safe access for visitors and work-personnel of public areas must be maintained and not become overgrown or concealed by vegetation.</li> <li>▪ Use of dyed herbicides that are reasonably likely to stain memorials to be avoided.</li> <li>▪ Signage to clearly display any applicable speed limits</li> </ul>
Memorials	<ul style="list-style-type: none"> <li>▪ Memorials must comply with applicable provisions of AS 4204:2019 (Headstones and cemetery monuments) and AS 4425:2020 (Above-ground burial structures).</li> <li>▪ Memorials must be regularly assessed to determine the need for safety maintenance.</li> </ul>
Heritage values	<ul style="list-style-type: none"> <li>▪ For memorials or structure with heritage significance, establish, and update as required, a conservation management plan for those memorials or structures or adopt nationally accepted guidelines (e.g. Burra Charter) as applicable.</li> <li>▪ Ensure the information in relation to the heritage value of the Site, if any, is made publicly available.</li> </ul>
Public information	<ul style="list-style-type: none"> <li>▪ Ensure signage on the Site is clearly visible, and does not create a physical obstruction or hazard</li> <li>▪ Provide on-site information to the public (e.g. cemetery map and opening hours)</li> <li>▪ Provide basic information to enable people to locate individual plots.</li> <li>▪ Display signage to identify and warn the public of maintenance works being undertaken both in advance and during works.</li> </ul>

Source: CCNSW.

Category 1 operators must take all reasonable steps to comply with additional Site maintenance standards (B.6) at each cemetery at which the operator provides interment services. The standards imposed by this condition apply without limiting any other condition applicable to the licence. The additional Site maintenance standards are set out in table 3.3.

### 3.3 Site maintenance standards – Category 1 operators only

Standard	Requirements
Environmental management	<ul style="list-style-type: none"> <li>▪ Not more than 2 years after the grant of a licence, a safe and useful life expectancy (SULE) report must be prepared by an arborist for trees on the cemetery and the report must be reviewed in accordance with the recommendations of the report (but not less than every 5 years).</li> <li>▪ Location and manner of landscape supply storage and spoil stockpiles minimise visual disruption</li> </ul>

Standard	Requirements
Built assets and infrastructure	<ul style="list-style-type: none"> <li>■ An asset management plan which achieves the following must be prepared:               <ul style="list-style-type: none"> <li>– Lists all built assets and infrastructure</li> <li>– Ensures assets remain in a safe and useful condition, including replacement where necessary</li> <li>– Provide for multi-use asset utilisation where possible</li> </ul> </li> <li>■ Where a local council is the operator, maintenance must be included as part of the Integrated Planning and Reporting Framework prepared by a Local Council under Chapter 13, Part 2 of the Local Government Act 1993</li> </ul>
Maintenance skills and resources	<ul style="list-style-type: none"> <li>■ Ensure each staff member has appropriate skills and training for the activities that are ordinarily required of that staff member</li> <li>■ Ensure each staff member has vocational training appropriate to the staff member's role, including but not limited to, cemetery safety training, safe operation of crematoria and safety inspection of memorials.</li> </ul>
Maintenance planning	<ul style="list-style-type: none"> <li>■ Where reasonable, ensure that applicable religious or cultural requirements for cemetery maintenance are adhered to.</li> <li>■ Prepare, complete and keep records of weekly and daily maintenance work.</li> </ul>

Source: CCNSW.

### ***C: Pricing transparency for consumers***

The Pricing Transparency requirements apply to Category 1 and 2 operators only. The requirements are as follows.

- Operator must make a price breakdown of the Basic Adult Burial or Basic Ash Interment, or Basic Cremation publicly available (C.1)
  - Operator must publish a price breakdown to the Basic Adult Burial Service or Basic Ash Interment provided by the operator for each site at which the operator provides interment services.
  - If the operator provides both burials and ash interments, the operator must publish the details of both the Basic Adult Burial and the Basic Ash Interment.
  - Operators providing Burial and/or Ash Interment are not required to provide a Cremation Only option. However, if Basic Cremation is a service offered by an Operator, they are also required to publish a price breakdown for Basic Cremation.
  - For the avoidance of doubt, Cremation Only Operators must only publish a price breakdown for Basic Cremation services.
  - If the Operator charges different amounts at different Sites at which the operator operates, the Operator must publish the price for each site at which the operator provides its services (unless otherwise approved, in writing, by the Cemeteries Agency).
  - The information must be provided in the approved format and made available on site at each cemetery at which the operator provides interment service or in another manner approved in writing by the Cemeteries Agency. The approved format can be found on the Cemeteries Agency's website.
  - If the Operator maintains a website, the information must also be published on the website.

- If requested that the Operator provide a copy of the price breakdown, the information must be provided to the Cemeteries Agency.
- Operator must not enter a consumer contract unless the customer has been provided details of a Basic Adult Burial Service, Basic Ash Interment or Basic Cremation (C.2).
  - The operator must not enter into a consumer contract with a customer unless the operator has provided the customer details of the Basic Adult Burial Service, Basic Ash Interment or Basic Cremation . If the operator provides both burials and ash interments, the operator must provide the details of the least expensive of both the Basic Adult Burial Service and the Basic Ash Interment.
  - Operators providing Burial and/or Ash Interment are not required to provide a Cremation Only option. However, if Basic Cremation is a service offered by an Operator, they must also provide details of that service provided by the Operator.
  - For the avoidance of doubt, Cremation Only Operators must only provide details for Basic Cremation services.
  - The details are to be provided in the same form as the details published by the operator under condition C.1

#### ***D: Customer service requirements***

Customer service requirements are as follows.

- Category 1, 2 and 3 operators must take all reasonable steps to ensure compliance with the Customer Service Principles (D.1)
  - The Customer Service Principles are:
    - ... Personal choices of customers must be respected
    - ... Discrimination against customers, visitors, invitees, or the public is not permitted on any of the grounds referred to in the *Anti-Discrimination Act 1977*
    - ... When requested by a customer, the operator must provide full and accurate information about the products and services that the operator is able to provide
    - ... The business is carried out with competency and integrity
    - ... The conduct of the operator must not bring the industry into disrepute.
  - The Operator must have systems and processes in place to ensure compliance with the Customer Service Principles.
  - A copy of these Customer Service Principles must be made available to all customers, including those who approach as a prospective customer.
- Category 1 operators must ensure that each person employed or engaged in connection with interment services is trained appropriately for their ordinary activities, including how to familiarise themselves with cultural and religious requirements and act in a manner respectful of cultural and faith (D.2)
- Category 1, 2 and 3 operators must have suitable practices to ensure proper disclosure of information (D.3)
- Category 1 operators must promote high standards of customer service (D.4).

- Category 1, 2 and 3 operators must establish a process of resolving disputes between the operator and consumers of their interment services (D.5).
- Category 1, 2 and 3 operators must establish and maintain a register of written complaints received (D.6)

### ***E: Religious, Cultural and Spiritual Principles***

- The operator must take all reasonable steps to ensure compliance with Religious and Cultural Principles as follows (E.1):
  - Operators must inform themselves of the religious and cultural demographics of the region in which they operate and about the religious and cultural requirements of the communities that they service (Principle 1).
  - Operators must inform themselves of, and record, any religious or cultural requirements in relation to each burial or cremation (Principle 2).
  - Operators must satisfy requests to meet religious or cultural requirements in relation to burials and cremation, where the request is practicable and aligns with all relevant laws, and work health and safety obligations. For the avoidance of doubt, this principle does not require the dedication of land or the erection of structures (Principle 3).
  - For services provided to satisfy a request to meet religious requirements under Principle 3 (above), the Operator must set out the basis for any charge incurred to meet these requirements (and this must be reflected in the fees and charges itemised in the contract) (Principle 4).
  - Operators must engage with the religious and cultural communities they service, or those seeking to be serviced by the Operator, and undertake good faith negotiations to accommodate identified community needs and to resolve any grievances by negotiating in good faith (Principle 5).
- The operator must take all reasonable steps to ensure compliance with the Aboriginal Cultural and Spiritual Principles as follows (E.2).
  - Operators must inform themselves of the Aboriginal communities, including Traditional Owners, in the region in which they operate and of Aboriginal cultural and spiritual practices and requirements for burial and cremation (Principle 1).
  - Operators must inform themselves of, and record (unless expressly asked not to make a record), any Aboriginal cultural and spiritual requirements in relation to each individual burial or cremation (Principle 2).
  - In addition to the existing legal obligations of an Operator in relation to cultural or religious practices for interments, if an Operator receives a request to meet Aboriginal cultural or spiritual requirements in relation to burial and cremation, the operator must satisfy the request if it is practicable to do so and doing so aligns with where all relevant laws, including work health and safety obligations. This principle does not require the dedication of land or the erection of structures (Principle 3).
  - For services provided to satisfy a request to meet Aboriginal cultural and spiritual requirements under Principle 3 (above), the Operator must set out the basis for any

charge incurred to meet these requirements (and this must be reflected in the fees and charges itemised in the contract) (Principle 4).

- An Operator commonly providing Aboriginal burials or cremations for Aboriginal communities must (Principle 5):
  - ... engage with the relevant Aboriginal communities about their cultural and spiritual requirements relating to interment
  - ... undertake good faith negotiations to accommodate identified community needs and to resolve any grievances.

If requested, the Operator must provide the Cemeteries Agency with documents or information outlining the steps taken by the Operator to comply with the Religious, Cultural and Spiritual Principles.

### ***F: Reporting obligation***

The operator must provide updated information to the Cemetery Agency in certain circumstances (F.1).

- Specifically, the operator must notify the Cemetery Agency, in writing, of any changes in relation to:
  - the sites at which the operator is providing, or intends to provide, interment services
  - contact details of the operator
  - changes relevant to the licence held by the operator, including substantial changes affecting information provided to the Cemeteries Agency in connection with the grant or renewal of the licence (for example, a change to the directors or majority shareholder of an Operator that is a corporation).
- Notice must be given not more than 30 days after the date of the change, if the changes relate to sites at which the operator intended to provide interment services, before providing interments at a new site.

### ***G: Prohibition of interment services***

Operators with a Category 4 (Caretaker) licence cannot offer, or perform, an interment. However, the operator may perform an interment in respect of an individual if:

- the interment is the fulfilment of an interment right (including a right, licence or other entitlement in the nature of an interment right granted before the commencement of section 45 of the Act) that was granted before the operator became the holder of an operator (Caretaker) licence, or
- the interment is of a nominated persons or class of persons (for which no interment right has been granted), the particulars of which were provided by the Operator to the Cemeteries Agency in its application for its operator (Caretaker) licence and approved by the Cemeteries Agency; (the Cemeteries Agency has absolute discretion to refuse such requests)
- the operator notifies the Cemeteries Agency, in writing, of the the interment within 5 business days of performing the interment.

### ***Key changes from the draft Interment Industry Scheme***

Having considered the feedback provided by stakeholders on the draft Interment Industry Scheme, CCNSW made several changes to the proposed Scheme as follow (further details on the feedback provided and how it has been addressed is provided in chapter 7).

- the timeframes for transition to the new Scheme have been extended (see chapter 6 for further details)
- the licensing categories have been changed from risk-based to size-based
- the fee policy has been clarified (the fee will remain at \$800, but Category 3 operators will pay a reduced fee of \$400 and financial hardship provisions will be available for operators to apply for a fee waiver)
- minor amendments to the consumer contract requirements
- maintenance requirements amended to:
  - clarify that public access is not required if the operator has reasonable ground to believe it is unsafe to allow access
  - require that the maintenance schedule is updated every year unless otherwise advised by the regulator
- advertising and signage requirements have been simplified
- minor amendments to customer service requirements
- religious, cultural and spiritual principles amended to remove the reference to actual cost for religious requirements and instead require transparent pricing if there are any additional costs to meet religious or cultural requirements
- requirement to notify a change in significant shareholders changed to the majority shareholder.

### ***Mapping of proposed licence conditions to market failures***

The proposed licence conditions are mapped to the market failures identified in chapter 2 in table 3.4.

Limited consumer choice is addressed by all licence conditions related to consumer protection measures, recognising that consumers have limited choice in the market for interment.

Similarly, the information asymmetries and behavioural failures reflect the difficulties faced by consumers in making informed decisions, which is addressed in part by consumer contracts, pricing transparency and customer service licence conditions.

Inefficient pricing is addressed in part by pricing transparency, while perpetual maintenance requirements may result in operators more clearly linking pricing to the cost of delivering services.

Minimum standards for cemetery maintenance has the weakest nexus between identified market failures largely because there is limited quantitative evidence, due to data limitations, that the standard of maintenance of cemeteries is a problem. However, establishing

minimum standards will help address data limitations and provide maintenance standards to support quantification of a perpetual maintenance liability.

As set out in the table, perpetual maintenance requirements are an essential component of addressing the limited incentive to meet perpetual maintenance obligations (with minimum standards for cemetery maintenance also support this outcome by establishing maintenance standards). However, as noted above, CCNSW has decided to have a closer look at the potential impacts. As such, these requirements have not been included in the RIS at the present time.

### 3.4 Mapping of proposed licence conditions to market failures

	Lack of consumer choice	Information asymmetries	Behavioural failures	Inefficient pricing	Limited incentive to meet perpetual maintenance obligation
Interment industry consumer contracts	✓	✓	✓		
Minimum standards for cemetery maintenance					✓
Pricing transparency for consumers	✓	✓	✓	✓	
Customer service	✓	✓	✓		
Perpetual maintenance requirements <sup>a</sup>				✓	✓
Religious, cultural and spiritual principles	✓				

<sup>a</sup> Note that perpetual maintenance requirements are not covered by the proposed changes assessed as part of this RIS. These requirements will be given further consideration in the period ahead.

Source: CIE.

### *Options under consideration*

It is important that a RIS consider a wide range of viable options for meeting the Government's regulatory objectives. This helps establish which approach is likely to deliver the largest net benefits, or lowest net cost to the community, while wholly or substantially addressing the objectives of regulation.

The elements of the scheme under consideration in the RIS are, to a large extent, unrelated. As such, each element of the scheme is assessed separately, with three options considered:

- **Base Case** — the impacts of the other options are assessed against a base case that assumes a continuation of current regulatory arrangements
- **Option 1:** The proposed industry interment scheme
- **Option 2:** The proposed industry interment with no licence conditions imposed on Category 3 or Category 4 operators.

## 4 *Impacts*

### *Identifying the impacts*

From an analytical perspective, the main elements of the proposed interment scheme are grouped as follows:

- Licensing requirements — this includes only the requirements to obtain (and periodically renew) a licence to operate a cemetery. The impacts of complying with the licence conditions are included in the items below.
- Consumer protection measures — this includes:
  - Consumer contracts (Conditions A)
  - Pricing transparency (Conditions C)
  - Customer service requirements (Conditions D)
  - Religious and cultural requirements (Condition E.2)
  - Aboriginal cultural and spiritual requirements (Condition E.1).
- Minimum standards of cemetery maintenance (Conditions B)

Approaches to measuring the impacts (i.e. costs and benefits) of each of the main elements of the interment scheme are set out below.

### *Licensing requirements*

The new licensing requirements will be in addition to existing registration requirements under the CC Act, though CCNSW plans to streamline licensing and registration processes. The main impacts are as follows.

- Operators will need to apply for a licence (despite already being registered) and periodically renew the licence — the impacts are mainly:
  - The administrative (time) costs for operators associated with preparing the application and renewal documents
  - The costs incurred by CCNSW in processing application forms — depending on whether a cost reflective fee is applied, these costs would be incurred by either:
    - ... the operator (where a fee is applied)
    - ... CCNSW (or the NSW Government more generally) where there is no fee applied.
- Under the licensing regime, CCNSW will be able to enforce licensing conditions.
  - The impacts of compliance with the licensing conditions are included below.
  - In addition, CCNSW will incur additional costs (relative to the status quo) associated with compliance and enforcement activities. As above, the party that

bears these additional compliance and enforcement costs will depend on whether a levy is applied to operators.

... Where a cost-reflective levy is applied, these costs are borne by operators.

... Where no levy is applied, the costs are borne by CCNSW.

### ***Consumer protection measures***

The consumer protection measures include:

- Consumer contracts (Conditions A)
- Pricing transparency (Conditions C)
- Customer service requirements (Conditions D)
- Religious and cultural requirements (Condition E.1)
- Aboriginal cultural and spiritual requirements (Condition E.2).

### ***Base case***

The impacts will critically depend on the extent to which operators are already meeting these requirements. The limited objective evidence on the extent to which cemetery operators are already meeting these requirements includes the following.

- Key findings from the IPART Review included the following.<sup>45</sup>
  - There is a wide variation in prices for interment services across NSW.
  - Prices are displayed inconsistently and are difficult to compare. For example, although many operators publish price lists, they can be difficult to easily compare the prices of similar products and services.
- In relation to customer service, the statutory review was not provided with any objective customer service surveys or metrics. Nevertheless, the Review made the following observations.<sup>46</sup>
  - The majority of interment rights are purchased through a funeral director on behalf of the ultimate right holder. For the Crown cemetery operators, who do not operate funeral director businesses, the relationship with the interment right holder is limited (this was a key issue raised by stakeholders in the context of compliance challenges for operators).
  - The Review did not identify any examples of Crown operators failing to perform their interment services in a professional manner.
  - Private sector operators reiterated the importance of continual customer engagement to develop products that meet changing community needs, especially increasing cultural and ethnic diversity. Engagement was also considered

---

<sup>45</sup> IPART 2020, *Review of the Costs and Pricing of Interment in NSW*, Final Report, November 2020pp. 37-38.

<sup>46</sup> Whitella Consulting, *The 11<sup>th</sup> Hour: Solving Sydney's Cemetery Crisis*, Statutory Review of the Cemeteries and Crematoria Act 2013, p. 161.

necessary to the commercial viability of the business in generating sustainable revenue streams.

- The Review identified some religious and community groups that they were not being actively engaged in plans for their local cemeteries (as they start to approach exhaustion), proposed pricing changes and their overall service satisfaction.
- There have been few complaints to CCNSW in relation to customer service issues.

### ***Benefits***

The main impacts are likely to arise from the measures to improve price transparency (including standard consumer contracts). As there is little evidence to suggest that customer service standards and religious and cultural needs are not being met, the benefits of the other consumer protection measures are likely to be relatively minor.

When the costs (in time and money) required to discover actual prices are high, consumers are less able to compare prices across different providers and weigh up prices against other relevant considerations (such as location and various aspects of quality). According to the OECD, a certain degree of price transparency is necessary for competition to exist; there would be little point for providers to compete on price unless consumers are reasonably able to compare prices.<sup>47</sup> As argued by IPART, the lack of price transparency in the NSW interment industry means that consumers are less able to make informed decisions about purchasing interment services so competitive pressures on cemetery operators are dampened.<sup>48</sup> Even relatively small search costs can have a significant repercussions on market outcomes, including prices that significantly exceed the efficient level (i.e. marginal cost).<sup>49</sup>

Price transparency measures reduce the costs associated with ‘shopping around’. In principle, this should enhance competition and lead to lower prices for consumers even though evidence indicates that less than 20 per cent of customers get more than one quote from funeral providers<sup>50</sup> (reducing the associated costs could also encourage more customers to obtain multiple quotes and therefore make more informed decisions). The impact of price transparency on competition is likely to be smaller in markets where customers do not shop around.

However, as noted by the OECD, in sufficiently concentrated markets there is some risk that pricing transparency measures can also make it easier for providers to observe what rivals are doing. This can lead to anti-competitive outcomes, even when rival firms are

---

<sup>47</sup> OECD 2001, *Price Transparency*, Directorate for Financial, Fiscal and Enterprise Affairs, Committee on Competition Law and Policy DAFPE/CLP(2001)22, 11 September 2001, p. 9.

<sup>48</sup> IPART 2020, *Review of the Costs and Pricing of Interment in NSW*, Final Report, November 2020, p. 37.

<sup>49</sup> OECD, *Price Transparency*, Directorate for Financial, Fiscal and Enterprise Affairs, Committee on Competition Law and Policy DAFPE/CLP(2001)22, 11 September 2001, p. 22.

<sup>50</sup> IPART 2021, *Review of the Funeral Industry in NSW: Consumer Issues*, Information Paper, June 2021, p. 4.

not explicitly colluding.<sup>51</sup> The risk of higher prices due to anti-competitive behaviour was also noted in a submission. It will therefore be important for CCNSW to monitor prices. Price regulation could be considered if greater transparency is unsuccessful in achieving more competitive outcomes.

### *Potential impact on prices*

Empirical studies have estimated the impacts of price transparency regulation on various markets (particularly the US market for healthcare). Although not directly related to the NSW interment industry, these studies might provide some insights into the possible impacts.<sup>52</sup>

For example, Christensen, Floyd and Maffett (2012) found price transparency regulation in the healthcare industry:<sup>53</sup>

- reduces the price charged for common elective medical procedures by around **5 per cent**; and
- increases the sensitivity of demand to a 1 per cent change in charge prices by 0.5 per cent (indicating more effective competition).

Others have argued that the impact of price transparency measures on the US healthcare industry have been disappointing. However, this could relate to the specific attributes of the healthcare industry, including: insured individuals do not bear the full cost of healthcare services (i.e. they are not shopping with their own money); patients may simply default to following their physicians advice on where to obtain care; and the cost of poor quality healthcare is likely to be higher than for most other services.<sup>54</sup>

Similar to the US healthcare industry, price transparency is one of a number of barriers to effective price competition in the market for interments in NSW. Other barriers to competition include: limited choice; and the failure of many consumers to 'shop around' (see above). Furthermore, the consolidation of the crown sector will further reduce competition.

Recognising these other constraints on competition in the market for interments as an indicator of the consumer benefits of improved price transparency, we assume that interment prices would be about half that observed in the US healthcare industry, implying interment prices would be around 2.5 per cent lower (compared with the base case).

---

<sup>51</sup> OECD 2001, *Price Transparency*, Directorate for Financial, Fiscal and Enterprise Affairs, Committee on Competition Law and Policy DAF/CLP(2001)22, 11 September 2001, p. 22.

<sup>52</sup> Although there are examples of price transparency and standard contracts in a range of markets, there are few published studies examining the impact of changes in prices due to these types of intervention.

<sup>53</sup> Christensen, H.B. Floyd, E. and Maffett, M. 2012, *The Effects of Price Transparency on Prices in the Healthcare Industry*, p. 1.

<sup>54</sup> Benavidez, G. and Frakt, A. 2019, *Price Transparency in Health Care Has Been Disappointing but It Doesn't Have to Be*, The Jama Forum, Journal of the American Medical Association, Volume 322, Number 13, p. 1243.

IPART reported that interment prices (for Crown operators) ranged between around \$1 000 to \$3 000. Assuming an average of around \$2 000, a 2.5 per cent reduction implies a saving of around \$50 per interment.

### *Transfer or efficiency gain?*

Although lower prices are unambiguously a benefit to consumers, the net impact (taking into account the impact on operators) are less clear. However, these consumer benefits are generally partly offset by a cost to producers.

The benefits to consumers generally outweigh the cost to producers (i.e. there is a net benefit) as the lower prices generally encourage additional consumption. However, the overall demand for interment services is likely to be insensitive to a change in price (referred to as inelastic demand) because: disposal of bodily remains is an essential service (i.e. consumers cannot choose not to use these services); the shift to alternative approaches (such as cremation) may be limited by religious, cultural and other preferences. This (static) perspective implies that any change in price would mostly be a transfer from producers to consumers (i.e. the benefit to consumers would be fully offset by a cost to producers).

An alternative (dynamic) perspective is that an increase in competition due to improve price transparency could encourage improved efficiency among operators. Under this interpretation, lower prices for consumers would be a net gain (would not be offset by a loss for operators).

For the purposes of the CBA, we assume that the price reduction reflects an efficiency improvement.

### **Costs**

The costs of the various consumer protection measures are unclear, but could include the following.

- Many operators will incur a one-off cost associated with changing the consumer contracts to comply with the proposed interment scheme, including use of standardised terminology and pricing transparency requirements. As part of the consultation process on the draft Scheme, CCNSW hosted a webinar attended by 104 operators. A live poll conducted at the webinar suggested operators consider that standardised consumer contracts will be the hardest licence condition to comply with. This is understood to largely relate to the fact that funeral directors are often dealing with those contracts.
  - To help minimise the costs incurred by operators, we understand that CCNSW are proposing to prepare a template contract that can be adopted.
  - Operators may still require legal advice (either from an external provider or internal counsel) to ensure the new contract meets their specific needs, while still complying with the proposed requirements.
  - Based on previous experience, one operator suggested these costs could potentially be around \$5 000 per operator (note other operators have indicated they may not

seek legal advice on the changes). Operators with multiple cemeteries may incur some additional costs for each cemetery, although there are likely to be significant common elements.

- To the extent that some of these activities do not already occur, it is possible that there are some additional costs associated with:
  - staff training
  - developing, documenting and implementing complaints and disputes resolution processes and policies
  - record keeping.
- To the extent that these activities do not already occur, there may be some additional costs for operators associated with:
  - Informing themselves of the cultural and religious demographics of the region in which they operate.
    - ... A larger operator reported that following the release of Census data, they contract a demographer to update a report at a cost of around \$25 000.
    - ... It is likely that many councils review Census data to understand their communities. It is expected that staff involved in operating cemeteries would be able to use such analysis to meet these requirements, so minimal additional work would be required.
  - Consulting with religious, Aboriginal and cultural communities:
    - ... the larger operators tend to have dedicated teams (around 1-2 FTEs at a total cost of up to \$250 000) to manage community engagement across their cemeteries
    - ... council cemetery operators are likely to rely on the council's general community engagement activities (i.e. the marginal cost of engagement on cemetery-related matters could be minimal)
    - ... It is not clear that church operators need to engage beyond their own community.

### ***Minimum standards for operational cemetery maintenance***

In previous reviews of the cemeteries sector cemetery maintenance has been defined as including, but not being limited to:<sup>55</sup>

- mowing, weeding, edging, and irrigation of the grass areas
- maintenance and irrigation of plants
- maintenance related to gardens
- litter control
- cleaning and maintenance of roadways, walks and buildings necessitated by natural growth and ordinary wear
- repairs, and

---

<sup>55</sup> IPART 2020, Review of the costs and pricing of interment in NSW, Final Report, p. 16.

- maintenance for visits/events.

The family of the interred person is generally responsible for maintaining monumental and mausoleum fittings. IPART noted that over time, the monuments have become the de facto responsibility of cemetery operators when rights holders cannot be located.<sup>56</sup> Operators do not maintain monuments, but will undertake works to ensure that they are safe and do not pose a hazard to cemetery staff and visitors.

The maintenance standards proposed in the regulation cast a wider scope, providing guidance around:

- maintenance outcomes (i.e. basic landscaping services and removal of fallen branches, maintaining public access etc.)
- process related guidance around how maintenance is undertaken (e.g. ensuring staff are appropriately trained, ensuring applicable religious or cultural requirements for cemetery maintenance are satisfied, keeping records of maintenance work etc.), and
- physical requirements, which may require capital investment from cemeteries before being maintained through time (e.g. provision of onsite information such as a cemetery map, providing signage, well defined boundaries and fencing etc.).

These principles are based on those previously included in the Voluntary Code of Practice for Cemetery Maintenance developed by CCNSW.<sup>57</sup>

The cemetery maintenance standards relate to:<sup>58</sup>

- Site entry and access, e.g. signage, fencing and public access (primarily related to maintenance outcomes and physical requirements)
- Cemetery grounds, which relate to undertaking the maintenance activities noted above (primarily related to maintenance outcomes)
- Monumentation, ensuring that monuments are safe and surrounding grounds are maintained (primarily related to maintenance outcomes)
- Environmental management, which relates to ensuring the environmental impacts of maintenance, such as storage of pesticides and spoil, are managed while cemeteries work in conjunction with natural elements (primarily related to maintenance outcomes and process related guidance)
- Built assets and infrastructure, e.g., assessment management plans and multi-use asset utilisation (primarily related to process related guidance)
- Maintenance skills and resources, relating to requirements around the use of appropriately qualified staff, contractors and volunteers (primarily related to process related guidance)
- Heritage values e.g., developing a conservation management plan and providing public information on the heritage value of the cemetery (primarily related to process related guidance and physical requirements)

<sup>56</sup> IPART 2020, Review of the costs and pricing of interment in NSW, Final Report, p. 28.

<sup>57</sup> CCNSW 2020, Voluntary Code of Practice for Cemetery Maintenance, [https://www.industry.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0020/311690/Voluntary-Code-of-Practice-for-Cemetery-Maintenance.pdf](https://www.industry.nsw.gov.au/__data/assets/pdf_file/0020/311690/Voluntary-Code-of-Practice-for-Cemetery-Maintenance.pdf).

<sup>58</sup> CCNSW 2021, Interment Industry Scheme – Consultation Draft.

- Maintenance planning, relating to planning ahead of maintenance (such as annual maintenance workplans and inspections), complying with religious requirements and being responsive to changing demands (primarily related to maintenance outcomes and process related guidance)
- Public information e.g., cemetery map and basic information to enable location of individual plots (primarily related to physical requirements)

The proposed minimum standards are not prescriptive and therefore provide cemetery operators with flexibility in the way they are applied to specific cemeteries.

Operators will be able to identify the status of their cemetery/cemeteries in terms of activity level and visitation in their operational maintenance documentation (see condition B2), and identify any inactive cemeteries or parts of cemeteries where a lower level of maintenance may be appropriate. The regulator would be able to inspect these documents to determine if the classification was appropriate.

### ***Base case***

The impacts (benefits and costs) of implementing minimum standards for cemetery maintenance depend on the current condition of cemeteries. Where maintenance standards are currently poor, the benefits and costs of implementing minimum standard will be larger than for cemeteries that are currently very well maintained.

There is limited information on the current standards maintenance and quality of cemeteries. For example, there has not been a maintenance audit across the sector, and CCNSW does not currently collect information from operators on maintenance activities. However, the limited information available generally suggests that most cemeteries are likely to be already meeting the proposed maintenance requirements.

As part of the consultation process on the draft Scheme, CCNSW hosted a webinar attended by 104 operators. CCNSW took several live polls of attendees, including asking operators:

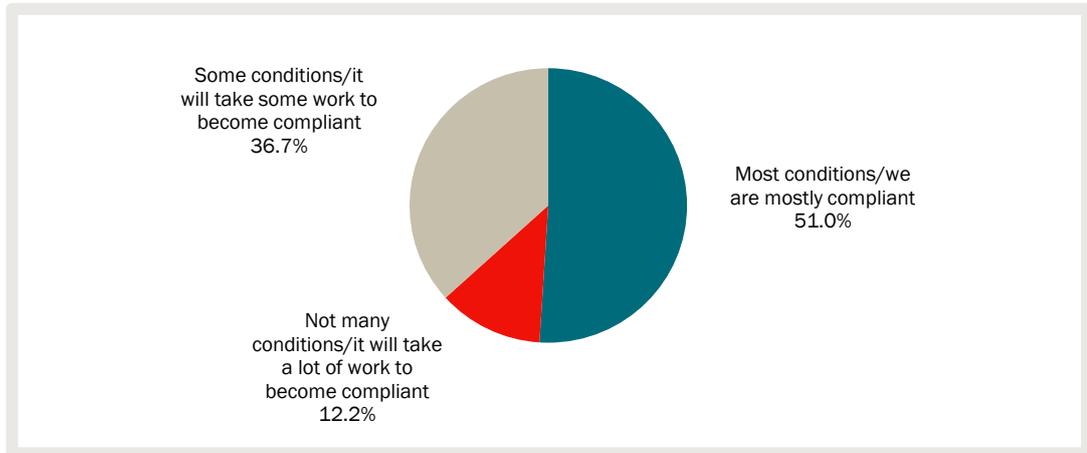
- How much of the scheme do you already comply with?
- Which licence conditions will you find hardest to comply with?

Although it is not clear that the attendees at the webinar are representative of cemetery operators more generally, the poll responses suggest that most operators are likely to be already compliant (or close to compliant).

Of the 49 responses to the first question (above):

- only 12 per cent indicated that they currently comply with not many conditions and it will take a lot of work to become compliant (see chart 4.1)
- 51 per cent of operators indicated that they already comply with most conditions
- 37 per cent of operator indicated they comply with some conditions and some work will be required to become compliant.

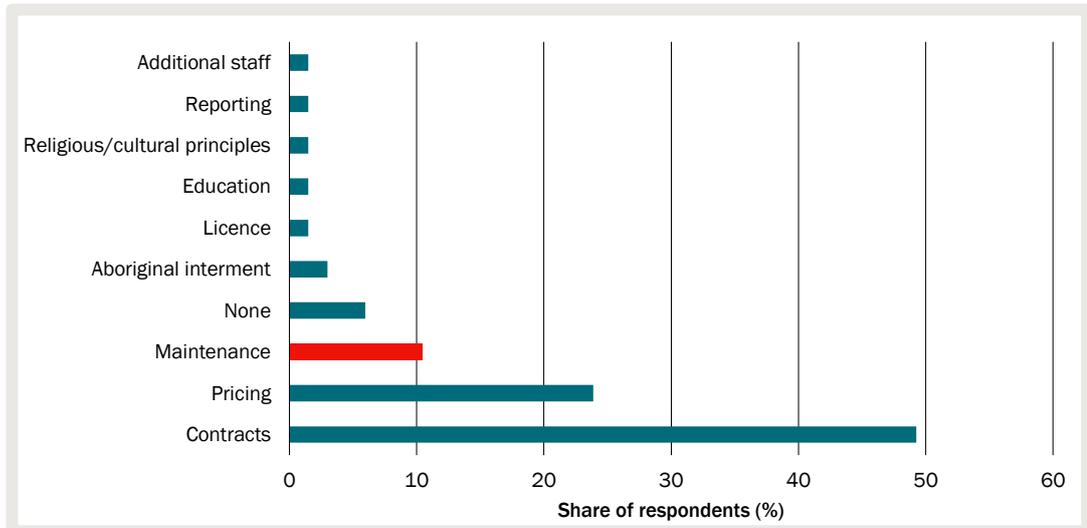
#### 4.1 How much of the scheme do you already comply with?



Data source: CCNSW Industry webinar poll results.

Furthermore, only about 10 per cent of respondents indicated that cemetery maintenance would be the hardest licence condition to comply with (chart 4.2).

#### 4.2 Which licence conditions will you find hardest to comply with?



Data source: CCNSW Industry webinar poll results.

Taken together, these responses suggest that most operators are already broadly compliant (or close to compliant) with the cemetery maintenance requirements.

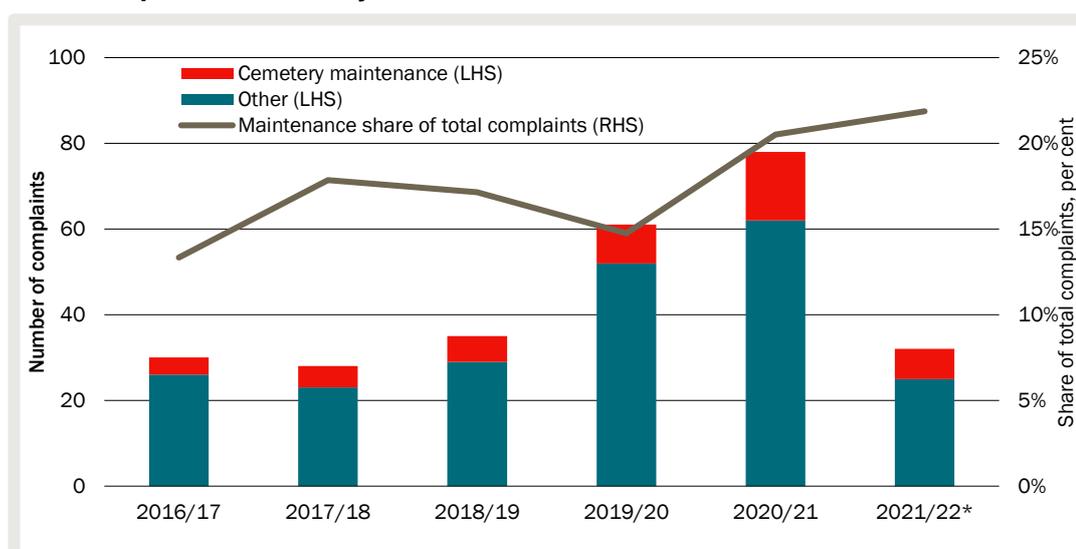
Members of the public are able to make complaints to CCNSW.<sup>59</sup> Complaints information are also an (albeit imperfect) indicator on the extent to which maintenance is an issue across cemeteries and crematoria in NSW.

Since 2016 the of total complaints relating to maintenance has increased from around 13 per cent to 22 per cent in 2021/22 (based on data to December 2021, chart 4.3). This

<sup>59</sup> We understand that for maintenance related complaints, customers could also go to Fair Trading for breach of conditions of supply of goods or services where the quality of maintenance is specified in the contract.

may imply that overtime problems relating to maintenance may be becoming more prominent. However, the overall level of complaints is relatively low. In 2020/21, which recorded the higher number of complaints to date, the maintenance related complaints correspond to 0.04 complaints per operator and 0.01 complaint per facility (noting that complaints are not necessarily equally distributed across operators and facilities).<sup>60</sup> This implies that overall, the public is generally satisfied with the maintenance of cemeteries and crematoria.

### 4.3 Complaints received by CCNSW



Note: Data for 2021/22, is for the incomplete year to December 2021.

Data source: CCNSW, CIE.

Across operators there is some evidence of different approaches being taken to deliver maintenance, however there is little information to inform the extent to which the minimum standards are currently being met by operators. In particular, the IPART review included a review of the maintenance tasks undertaken by Crown land Managers and one private operator (see table 4.4). Consultations with operators have also indicated that within cemeteries different maintenance standards are applied depending on the number of visitors to that part of the cemetery (highly visible parts of cemeteries tend to be maintained more often) and the number of interments that occur in parts of the cemetery (areas which close to being full, tend to be maintained less frequently).

### 4.4 Current maintenance activities

Operator	Current maintenance activities
CMCT	Different standards apply to different sections of the cemetery. Outsourced maintenance work for areas with limited visitation and is maintained every two weeks. More frequent and detailed maintenance is required for modern sections with active visitation.

<sup>60</sup> Based on 389 operators and 1 542 facilities.

Operator	Current maintenance activities
NMCLM	The maintenance for the entire site is on a 6-week rotation; but hedges and flowers are cut especially for special days (e.g. Mothers' day) and it is expected that perpetual maintenance will be maintained at this level.
RGCLM	Some maintenance activities such as clean up, steam clean and mow the grass are done once a month (some are once a quarter). All sites are maintained to the same standard – because the entrant to the new burial areas is through the older sites, so all sites will have visitors walking by.
SMCLM	<p>Standard of care is agreed upon in individual contracts and it varies over time and across products at both sites.</p> <ul style="list-style-type: none"> <li>▪ SMCLM notes that the maintenance levels at both sites meet the standards set out in the CCNSW's Voluntary Code of Practice for Cemetery Maintenance, taking into account different soil conditions and heritage provisions</li> <li>▪ In line with common practice worldwide, maintenance activities are timed in line with periods of higher visitation around special days/events of the year.</li> <li>▪ Maintenance levels are higher in current burial and ash interment areas along with front of house and chapels precincts.</li> </ul>
InvoCare	Regional managers do inspections every month (and for special occasions) to ensure that the parks are up to a high standard. They believe that perpetual maintenance requirements are less intensive once a park is fully utilised.

Source: Deloitte Access Economics 2020, Efficient costs of interment services, prepared for IPART.

## ***Benefits***

As noted above, the benefits of implementing the proposed minimum standards depend on the extent to which cemetery operators are already meeting the proposed standard. Where a cemetery is already well maintained (as the available evidence suggests they are), the maintenance standards will have little to no effect.

To the extent that some operators are not already meeting the proposed standard, the potential benefits of minimum maintenance standards would include the following.

- The main benefit of maintenance standards are improved amenity outcomes for cemeteries. This could include:
  - Amenity value for visitors to cemeteries. These are referred to as 'use values' and includes the value for:
    - ... people attending funerals or visiting the graves of loved ones
    - ... other users, such as recreational visitors, unrelated to interments.
  - Amenity for individuals who live close to cemeteries, but do not necessarily visit. This reflects the amenity impact of a well-maintained cemetery on its neighbours.
  - Non-use value associated with knowing that cemeteries are maintained in a respectful and dignified manner.
    - ... This could include values for people knowing that their loved ones are interred in a well-maintained cemetery even if they do not visit regularly or at all.
    - ... The wider population may also place a value on ensuring cemeteries are maintained in a respectful and dignified manner, even if this preference does not specifically relate to their own loved ones.
- There may also be a benefit associated with:

- Improved safety related to monuments — we expect this impact to be relatively small given these safety issues may already be covered by the work health and safety legislation and regulations, and civil liability legislation, in which case we would not expect the proposed regulation to affect monumentation safety outcomes.
- Improved heritage value — as noted by the National Trust, all cemeteries have social and historic value<sup>61</sup> and some are listed on local, state or national heritage registers and lists. Any benefits associated with maintaining historical features, would be relatively small given there are existing requirements for owners to maintain and repair items listed on the State Heritage Register. However, there may be some heritage benefits of improved maintenance of even those cemeteries that are not listed on the State Heritage Register.

There is limited literature available to quantify the non-use value associated with respect for the dead. Nor is any information around the value of a well-maintained cemetery to visitors or the people who live and work close to cemeteries.

We can use the literature on the value placed on well-maintained open space to infer the value of a well-maintained cemetery. This will however be a lower bound estimate. Cemeteries are important places for many people with special value. Parameter values relating to open space will not reflect this additional value which may be associated with cemeteries.

- Hedonic price estimates, which relate the quality of open space to nearby property values can be used to measure the value for residents for improved maintenance of cemeteries.
- There is limited information to describe the value of improved maintenance per open space user.

In addition to measuring the value of well-maintained open space, we are exploring using estimates of the willingness-to-pay to reduce litter, which is related to maintenance, which may provide an alternative estimate of benefits.

### ***Costs***

As with benefits, the cost of minimum maintenance standards depend on the extent to which cemeteries are already meeting the proposed standard, which is unclear. To the extent that some cemeteries are not already meeting the proposed standard, the costs could include the following:

- annual administrative (time) costs per cemetery to develop an operational maintenance plan
  - Costs in the first year of developing this plan may be larger, as this requires identifying assets and developing performance standards which may not already be in place.

---

<sup>61</sup> National Trust website, <https://www.nationaltrust.org.au/services/cemetery-conservation/>, accessed 1 April 2022.

- Costs in subsequent years may be considerably lower, as this would just require a review and adjustments are necessary.
- These costs are expected to be incurred on a per cemetery basis for operators (i.e. costs will be greater for operators with more cemeteries, all else equal) and will also vary depending on the size and complexity of the cemetery (i.e. costs will likely be greater for larger cemeteries).
- The costs may be minimised by CCNSW providing clear guidance to operators.
- annual administrative (time) costs related to record keeping of maintenance activities.
  - Costs are likely to be greater for larger cemeteries with more complicated maintenance requirements and would be incurred across the year.
- costs related to undertaking the maintenance self-assessment
  - Category 1 operators are required to undertake a self-assessment annually
  - Category 2 operators are required to undertake this every two years
  - Category 3 and 4 operators will not be required to do this
  - Costs are likely to be incurred on a per cemetery basis and will be greater for larger cemeteries.
- costs of meeting minimum standards are discussed further below.

#### *Incremental cost of maintaining cemetery to minimum standards*

The costs of maintaining cemeteries to a given standard is likely to vary considerably across operators. The key drivers of maintenance costs are:<sup>62</sup>

- composition of the cemetery, or the mix of lawn and monumental gravesites – lawn cemeteries are likely to have different costs to areas with monuments, which require alternative, potentially more time-consuming methods to manage vegetation. Other types of gravesites, such as natural burial areas where gravesites are minimally maintained to encourage growth of native vegetation to create a self-sustaining ecosystem, will have different costs again.
- gravesite density – the more tightly packed gravesites are together reduces accessibility and may make it more difficult to mow around them
- cemetery age – older cemeteries may not have been designed in a way that enables efficient maintenance.
- cemetery status and visitation – maintenance for closed cemeteries and cemeteries with very few burials each year may not be required as frequently as visitation rates are likely to decline overtime.

As part of a previous IPART review, maintenance costs for a range of crown operators and local government cemeteries were reported (tables 4.5 and 4.6).

Costs per plot (table 4.5) are composed to three elements:

- perpetual care costs – this is the annual cost of maintain the cemetery throughout the life of the cemetery

---

<sup>62</sup> Deloitte Access Economics 2020, Efficient costs of interment services, prepared for IPART, p. 76.

- additional maintenance costs for open cemeteries – this reflects the higher maintenance costs incurred while the cemetery is open for new burials and receiving higher numbers of visitors
- administrative/overhead costs – this includes organising maintenance operations, repairs, record keeping and requests from visitors (seeking information about graves and potentially hosting of community events).

#### 4.5 Crown Land Manager (CLM) average and efficient costs

	CLM average	Efficient cost
-	\$ per plot per annum	\$ per plot per annum
Perpetual care (closed cemetery)	6.20	5.00
Additional grounds maintenance for open cemetery	5.20	2.00
Maintenance administrative/overhead cost	6.90	5.00
<b>Total costs – open cemetery</b>	<b>18.30</b>	<b>12.00</b>
<b>Total costs – closed cemetery</b>	<b>13.10</b>	<b>10.00</b>

Source: Deloitte Access Economics 2020, Efficient costs of interment services, prepared for IPART.

#### 4.6 Assumed Perpetual Grounds Maintenance (excluding maintenance administrative/overhead cost)

	\$ per Hectare per annum	\$ per plot per annum
Lawn	9 000	4.50
Mixed	11 000	5.50
Monumental	13 000	6.50

Note: Based on information provided by a sample of local councils.

Source: Deloitte Access Economics 2020, Efficient costs of interment services, prepared for IPART.

A challenging aspect of the analysis is identifying the extent to which maintenance costs will change for users. For operators already meeting the requirements around maintenance, there is unlikely to be a change in costs (or benefits). Consultations have indicated that large operators, such as Crown and private operators and local councils with large cemetery operations are likely already meeting the maintenance requirements.

The IPART review identified for some Crown operated cemeteries, current maintenance costs are in excess of efficient costs. The efficient costs estimated for IPART were based on ‘standard’ maintenance costs for a basic adult lawn burial. In practice the standard of maintenance is likely to vary from cemetery to cemetery, for example, as some cemeteries include elaborate gardens which may be more costly to maintain.

The incremental costs to meet the proposed maintenance standards depends on:

- the extent to which operators are not meeting the requirements noted in the licence conditions. There is currently little information to determine which cemeteries or operators are currently meeting the requirements. Consultations with Category 1 operators have indicated that in most cases operators would largely be meeting the standard.
- the costs of meeting the standard, which include:

- capital costs associated with physical requirements, such as providing signage, such as constructing fencing where this does not already exist, and
- additional ongoing maintenance works to meet specified maintenance outcomes
- additional administrative costs to meet the guidance on how to undertake maintenance.

Without information on the gap, it is difficult to quantify the incremental cost with any degree of certainty.

The cost impacts are likely to be borne by:

- Category 1 and 2 operators who do not already meet the standard. As noted above it is likely to only represent a small fraction of operators, and the gap between existing and minimum standards is expected to be small.
- Category 3 and Category 4 (inactive), operators who are required to comply with the requirement (B1) to ensure that site maintenance and public access to the cemetery are maintained.

### *Compliance and enforcement costs*

CCNSW may also require additional resources for any compliance and enforcement activities. The general approach to compliance is set out in chapter 6 below. However, details on specific compliance and enforcement activities and any additional resourcing requirements have not yet been finalised.

## 5 *Cost benefit analysis*

A cost-benefit analysis is an important component of a RIS. The key changes to be considered in the CBA are the licensing framework and the associated licence requirements.

### *Approach to the CBA*

Quantifying the benefits and costs (including all economic, social and environmental costs where relevant) of a regulatory proposal is a key element of the RIS process. Although the benefits and costs of regulatory proposals can be difficult to quantify precisely, quantification is nevertheless desirable to help policy-makers to better understand the sometimes-complex trade-offs, including trade-offs between environmental and social benefits and economic costs. Quantification forces critical assumptions and uncertainties to be explicitly identified meaning decisions are made with regard to maximum amounts of information. The alternative is that critical assumptions and uncertainties are implied but not identified nor understood.

The quantification of benefits and costs needs to be undertaken in a systematic framework that seeks to trace through how policy changes flow through the economy and interact with other existing (or new) policies to deliver outcomes for the community. This is also important to ensure that there is no double-counting of impacts or exclusion of impacts, which are common mistakes in many CBAs that we have previously reviewed.

Key steps in a CBA are outlined in box 5.1.

#### **5.1 Key Steps in a CBA**

- **Articulating the decision that the CBA is seeking to evaluate.** As noted above, the specific changes would need to be articulated upfront.
- **Establishing the reference case** (or 'base case') against which to assess the potential socioeconomic and environmental impacts of changes. The base case would be the existing regulatory arrangements around interment (i.e., *Cemeteries and Crematoria Act 2013* and *Cemeteries and Crematoria Regulation 2014*).
- **Quantifying the changes (from policy reform options)** relative to the base case. This will focus on the incremental changes/impacts resulting from alternative policy options. The changes may be known with certainty or could also be defined in probabilistic terms. The quantification should focus on key changes that will be utilised in the valuation stage.

- **Placing values on the changes** and aggregating these values in a consistent manner to assess the outcomes. For example, estimating the value that the downstream community places on any increase in risk.
- **Generating the Net Present Value (NPV) of the future net benefits stream**, using an appropriate discount rate, and deciding on the Decision Rule on which to assess the different options. The best decision rule is to choose the scenario that has the highest net benefits (or BCR).
- **Undertaking sensitivity analysis** on a key range of variables, given the uncertainties related to specific benefits and costs.
- **Deciding on which option is better for society**. In practice, additional information, aside from the CBA results, may also be utilised when deciding on the preferred option.

### *CBA parameters*

Cost-benefit analysis (CBA) generally involves estimating a stream of costs and benefits over time and then discounting these values back to the present value.

- Evaluation period — for RISs, CBAs are generally conducted over a period of 5 or 10 years. However, we have considered the impacts over 40 years.
- Discount rate — consistent with the NSW Government’s Guide to Cost-Benefit Analysis, we will use a central discount rate of 7 per cent and 3 per cent and 10 per cent as alternatives in the sensitivity analysis.

### *Estimated impacts of scheme elements*

The costs and benefits of each of the scheme elements are estimated below.

#### *Licensing requirements*

Under the proposed Interment Industry Scheme, all operators would need to be licensed. Although under Option 2, the licence conditions would not apply to Category 3 or Category 4 operators, there will still be costs associated with obtaining and maintaining a licence. These costs will be the same under both options.

Under the Scheme operators may be required to periodically renew their licence:

- The renewal period for Categories 1-3 operators will be up to 5 years and it is currently intended that the maximum period (i.e. 5 years) will apply to all operators initially.
- Category 4 operators will be granted perpetual licences.

The costs associated with administering the licensing system are estimated at around \$2.3 million in present value terms over 40 years, using a discount rate of 7 per cent (table 5.2). These costs are expected to be largely borne by operators (including through licensing fees and administrative costs associated with preparing licensing

applications/renewals), although the costs of any discounts on licence fees provided will be borne by CCNSW. Further details on the assumptions underpinning these estimates are provided below.

## 5.2 Estimated costs of the licensing system

	Estimated cost
-	\$'000
CCNSW costs <sup>a</sup>	1 398
Operator costs	898
<b>Total</b>	<b>2 297</b>

<sup>a</sup> A significant share of the costs incurred by CCNSW are expected to be passed onto operators via licensing fees. However, the final distribution of these costs will depend on how the fees are set and CCNSW's discounting policy, which are yet to be finalised.

Note: Licensing costs are calculated in present value terms over 40 years, using a discount rate of 7 per cent.

Source: CIE estimates based on information provided by CCNSW.

### *Costs to administer the licensing system*

The costs associated with administering the licensing system would be directly incurred by CCNSW, but will mostly be passed onto operators through licensing fees. These costs will include:

- costs associated with developing a new IT system.
- staff costs associated with administering the licensing system.

These costs are estimated at around \$1.4 million in net present value (NPV) terms over 40 years, using a discount rate of 7 per cent (table 5.3). Further information on the assumptions used to estimate these costs are provided below.

## 5.3 Estimated costs incurred by CCNSW

	Unit cost	Net present value per operator <sup>a</sup>	Number of operators <sup>b</sup>	Total cost <sup>a</sup>
-	\$	\$	No.	\$'000
<b>Staff costs</b>				
Category 1-3 operators – initial licence application	740	740	348	258
Category 1-3 operators – licence renewals <sup>c</sup>	370	1 777	348	619
Category 4 operators – initial application	370	370	60	22
<b>Total CCNSW staff costs</b>				<b>898</b>
IT system				500
<b>Total</b>				<b>1 398</b>

<sup>a</sup> Presented in net present value terms over 40 years, using a discount rate of 7 per cent. <sup>b</sup> Based on data on the number of operators as at September 2022. <sup>c</sup> Assumes that all Category 1-3 licences are renewed every 5 years.

Source: CIE based on estimates provided by CCNSW.

*IT system costs*

The cost associated with developing a new IT system — these costs are currently unclear, but have been assumed at around **\$500 000** for the purposes of the modelling.

- The costs associated with the initial phase have been estimated at around **\$250 000**.<sup>63</sup>
- The costs associated with subsequent phases are not known, but could be of a similar magnitude to the initial phase (i.e. around **\$250 000**).

*CCNSW staff costs*

CCNSW staff time will be required to administer the licensing system. Processing licence applications and renewals will involve CCNSW staff undertaking the following tasks:

- receive and log request for licence
- create/locate application number
- fee payment check
- review documentation
- request for information or request for clarification (if required)
- review returned RFI/clarification (if required)
- assess appropriate category of licence conditions
- draft license paperwork
- quality check licence paperwork
- generate final licence paperwork
- email/mail licence paperwork to applicant
- file application documentation and licence paperwork.<sup>64</sup>

For applications from operators with cemeteries open to new interments (Category 1-3 operators), CCNSW estimates the costs associated with processing each initial application could be around **\$740** (table 5.4). CCNSW estimates that each applications could take around 10 hours to process, including:

- 9 hours spent by Level 9/10 Staff at an estimated cost of around \$66.67 per hour
- 1 hour spent by a Director at an estimated cost of \$140 per hour.

**5.4 Estimated cost of processing the initial application — operator**

	Hours per application	Estimated cost per hour	Estimated cost
-	No.	\$ per hour	\$
Level 9/10	9	67	600
Director	1	140	140
<b>Total</b>	<b>10</b>		<b>740</b>

Source: Estimates provided by CCNSW.

<sup>63</sup> Estimated provided by CCNSW.

<sup>64</sup> Information provided by CCNSW.

These estimates have been developed in consultation with other NSW government regulators, adapting their timing and processes to recognise that they have different structures and governing regulation to those that will apply to the interment industry. CCNSW has met with 3 other regulators to date, and continues to meet with other regulators to test licencing policy, procedures and processes as they are developed to ensure that they are in line with best practice.

For periodic licence renewals, application processing costs could potentially be lower than for the initial application due to: less time spent on each application (as CCNSW staff become more familiar with the new system); and there is potential for future licence renewals to be processed by more junior staff.

However, estimates for licence renewals are yet to be finalised. Preliminary estimates suggests that the cost of processing licence renewals could be around half the initial application. For the purposes of the modelling, we assume a cost per licence renewal of around **\$370** per application.

There will be a significantly different assessment process for Category 4 operators (i.e. operators with inactive cemeteries only). Staff time requirements have not yet been formally modelled. For the purposes of the CBA, we assume that the cost of this process would be around half of the costs estimated above: around **\$370**. Category 4 licences will not need to be renewed.

### *Licensing fees*

It is proposed that a significant share of the costs incurred by CCNSW in administering the new licensing system would be passed onto operators through cost-reflective licensing fees. However, licensing fee arrangements have not yet been finalised.

- The proposed regulations allow a maximum licensing fee of \$800, which is broadly cost reflective, taking into account:
  - the cost of CCNSW staff time
  - the costs associated with the new IT system.
- However, not all operators will pay the full amount.
  - Category 3 operators will pay a reduced fee of \$400.
  - Category 4 operators will not pay a fee.
  - Operators will also be able to apply to for a fee waiver if payment of the fee would cause financial hardship.

### *Cost to industry*

Operators will have 12 months from commencement of the scheme to apply for a licence. There will be a staged transition process, to bring operators into the scheme in tranches. Initially, CCNSW will assign a category for all current operators. Operators will be required to submit evidence to CCNSW if they do not agree with the classification made by CCNSW.

Operators will therefore incur costs to prepare and submit initial and renewal licence applications.

As no additional information on the administrative costs incurred by operators was gathered through consultations (as operators have not yet prepared and submitted a licence application or renewal), these costs remain unknown. In the absence of relevant cost information, it is assumed that the cost to operators will be similar to the costs incurred by CCNSW in processing applications. Specifically:

- For Category 1-3 licences:
  - the initial application will cost each operator around **\$740**
  - each licence renewal will cost **\$370**
- For Category 4 licences, the initial application will cost each operator around **\$370** (see above).

### *Estimating the benefits*

The Scheme introduces a licensing scheme for cemetery and crematoria operators. Under the licensing scheme each operator is assigned a risk-based category.

Potential benefits from the licensing framework are:

- provision of information to enable CCNSW to conduct compliance and enforcement activities, and also refine its risk analysis and target compliance work on the highest priority areas
- greater transparency for public regarding operators' compliance records
- reduced risk of non-compliance.

These benefits have not been quantified.

In addition, the licensing system establishes licence conditions which operators must meet to be compliant (see 3.1). Potential benefits achieved through compliance with the licence conditions are discussed below and quantified where possible.

### *Consumer protection measures*

The proposed requirements would apply as follows.

- Under Option 1 (implementation of the proposed scheme in full):
  - Both the proposed consumer contracts and pricing transparency requirements would apply to Category 1 and 2 operators
  - The proposed consumer contract requirements would only partially apply to Category 3 operators, although disclosure of fees requirements would be mandatory. The pricing transparency requirements would be recommended best practice. It is not clear whether these requirements would reduce search costs sufficiently to realise the benefits of greater competition for interments in Category 3 cemeteries. However, for the purposes of the CBA, we assume that under these requirements:
    - ... Category 3 operators would need to revise their contracts (and therefore incur the associated costs)

- ... Mandatory disclosure of fees under the proposed consumers contracts would be sufficient to realise the benefits of greater competition for interments in cemeteries operated by Category 3 operators.
- These requirements would not apply to Category 4 operators.
- Under Option 2 (no licensing conditions imposed on Category 3 or Category 4 operators):
  - The consumer contract and pricing transparency requirements would apply to Category 1 and 2 operators only.
  - No licensing conditions would be placed on Category 3 operators. It is therefore assumed that there would be no benefits and costs for Category 3 operators. Based on data provided by CCNSW, around 9 per cent of interments are in Category 3 cemeteries.

The estimated net benefits of the proposed consumer protection measures across options are summarised in table 5.5. As set out in the previous chapter:

- the estimated benefits are based on a \$50 reduction in price as a result of efficiency gains (due to greater competition)
- the estimated costs are based on each Category 1 and 2 operator (the consumer protection measures only partially apply to Category 3 operators and do not apply to Category 4 operators) incurring a one-off cost of \$5000 to transition to the new contracts.

Based on these assumptions, the net benefits under both options are broadly similar. Under Option 1, the costs are higher as more cemetery operators would need to transition to the new contracts. However, this is largely offset by higher benefits, as the competition impacts are also assumed to extend to interments in cemeteries operated by Category 3 operators.

### 5.5 Estimated net benefit/cost of the proposed consumer protection measures – net present value

	Option 1	Option 2
-		
-	\$ million	\$ million
Estimated benefits to consumers	15.59	14.25
Estimated costs	- 1.74	- 0.57
<b>Net benefit/cost</b>	<b>13.85</b>	<b>13.68</b>

Note: Costs and benefits estimated over 40 years, using a discount rate of 7 per cent.

Source: CIE estimates.

### *Minimum standards for cemetery maintenance*

#### *Estimating the costs*

To understand the costs of cemetery maintenance standards requires information on:

- administrative costs related to:
  - developing an operational maintenance plan (annual per cemetery)

- record keeping of maintenance activities (annual per cemetery)
- undertaking maintenance self-assessment (annual per cemetery for Category 1 and once every two years for Category 2 operators)
- the extent to which operators are not meeting the requirements noted in the licence conditions
- the unit costs of meeting the standard, which include:
  - capital costs associated with physical requirements, such as providing signage, such as constructing fencing where this does not already exist, and
  - additional ongoing maintenance works to meet specified maintenance outcomes
  - additional administrative costs to meet the guidance on how to undertake maintenance.

#### *Administrative costs*

The Scheme imposes additional administrative costs in relation to cemetery maintenance on Category 1 and Category 2 (other than crematoria only) operators. This includes the costs associated with:

- developing an operational maintenance plan, which must be updated:
  - annually for Category 1 operators; and
  - every second year for Category 2 operators
- record keeping of maintenance activities
- undertaking maintenance self-assessment:
  - annually for Category 1 operators
  - every second year for Category 2 operators.

There is no data available on these administrative cost to operators, in terms of either staff hours required or staff cost per hour in relation to these requirements.

It is also not clear to what extent some of these costs may already be incurred by operators. For examples consultations with larger (Category 1) operators, and information previously published as part of the IPART review<sup>65</sup>, indicate that these operators already have operational maintenance plans, keep records of maintenance activities and assess maintenance. The costs associated with these licence conditions are likely to be those associated with keeping this information in a format required by CCNSW and the administrative burden of providing this information to CCNSW.

In the absence of this cost data, it was assumed in the draft RIS that operators would spend an additional 6 hours at a cost of around \$400 per facility per year on average (although the time may vary depending on the size and complexity of cemetery maintenance arrangements). This estimate assumed that the maintenance schedule would be updated and the self-assessment would be completed every year.

---

<sup>65</sup> Deloitte Access Economics 2020, Efficient costs of interment services, prepared for IPART, p. 21.

As there was minimal feedback on these estimates, we assume that:

- Category 1 operators would incur an additional cost of \$400 per facility per year (consistent with the draft RIS)
- Category 2 operators would incur an additional cost of \$200 per facility per year on average (as Category 2 operators are required to update the maintenance schedule and complete the self-assessment every second year).

Applied across the number of Category 1 and 2 cemeteries (i.e. Crematoria only facilities have been excluded), the total cost would be around **\$300 000 per year** or around **\$4.3 million** in present value terms over 40 years, using a discount rate of 7 per cent (table 5.6).

### 5.6 Estimated additional administrative costs associated with minimum cemetery maintenance standards

	Estimated average annual cost per facility	Number of facilities	Average annual cost	Net present value <sup>a</sup>
	\$ per year	No.	\$ per year	\$ million
Category 1	400	587	234 800	3.35
Category 2	200	340	68 000	0.97
<b>Total</b>		<b>927</b>	<b>302 800</b>	<b>4.32</b>

<sup>a</sup> Net present value calculated over 40 years, using a discount rate of 7 per cent.

Source: CIE estimates.

#### *Incremental cost of maintaining cemetery to minimum standards*

The cemetery maintenance standards primarily apply to Category 1 and 2 operators. Condition B.1 also applies to Category 3 and 4 operators; however, this condition requires only:

- public access (during daylight hours unless unsafe)
- basic safety requirements (removal of fallen trees or branches and other safety hazards)
- basic landscaping.

There is currently little information to determine which cemeteries or crematoria operators are not currently meeting the requirements. Consultations with Category 1 operators, under the proposed licencing framework, have generally indicated that they are broadly compliant with the proposed standards, and would in most cases required only minor capital works or changes to maintenance practices to meet the requirements. However, some operators indicated that some elements of the framework would result in significant costs, depending on the interpretation of the requirements. For example:

- providing disabled access across older cemeteries, which may not have been designed with this in mind, would require significant capital works.
- allowing access to some currently inaccessible parts of cemeteries would require roads to be constructed and general would require roads to be constructed and would affect

maintenance costs of cemeteries (i.e. more frequently visited areas may require more frequent maintenance and safety inspections).

We understand the intent of the regulations was not to be overly prescriptive and provide general guidelines for operators to follow. In this sense we do not believe the intent of the regulation would be for the regulations to create significant capital costs, in which case we do not believe these significant capital costs noted above would be imposed on operators.<sup>66</sup>

Conditions which apply to Category 1 and 2 operators only relate to things which are already required under existing legislation and regulations. This namely include:

- Monumentation, which primarily relates to ensuring the cemetery monumentation does not pose a safety risk. We understand that these safety issues may already be covered by the work health and safety legislation and regulations, and civil liability legislation, in which case we would not expect the proposed regulation to affect monumentation safety outcomes.
- Heritage Values, which relates to maintaining heritage historical features, including those listed on local, state or national heritage registers and lists. For example there are existing requirements for owners to maintain and repair items listed on the State Heritage Register.<sup>67</sup> Therefore we would not expect the proposed regulation to affect heritage outcomes.

Overall, we note that the CCNSW complaints register implies there is little evidence of systematic widespread maintenance problems across the sector.

Without knowing what the gaps in existing assets or maintenance outcomes, it is difficult to quantify the costs required to meet the maintenance standards. However, all else equal we would expect general standards to be less costly to implement than specific standards.

The efficient ongoing maintenance costs estimated as part of IPART's review are summarised in table 5.7. These costs represent the ongoing costs of cemeteries. Where cemeteries are partially compliant with maintenance costs, the costs of maintains is likely to be a fraction this

### 5.7 Crown Land Manager (CLM) average and efficient costs

	CLM average	Efficient cost
	\$ per plot per annum	\$ per plot per annum
Perpetual care (closed cemetery)	6.20	5.00
Additional grounds maintenance for open cemetery	5.20	2.00
Maintenance administrative/overhead cost	6.90	5.00
<b>Total cost – open cemetery</b>	<b>18.30</b>	<b>12.00</b>
<b>Total cost – closed cemetery</b>	<b>13.10</b>	<b>10.00</b>

<sup>66</sup> The costs of requiring access to all parts of cemeteries could be very large for older cemetery, while the benefit of this would be uncertain as it is not clear to what extent people who want to visit inaccessible parts of older cemeteries are unable to do so.

<sup>67</sup> *Heritage Act 1977* (NSW), s. 118; *Heritage Regulation 2012* (NSW), cl. 10 – 18.

Source: Deloitte Access Economics 2020, Efficient costs of interment services, prepared for IPART.

### *Estimating the benefits*

Maintaining cemeteries to a higher standard is likely to result in improved amenity. Conceptually there are likely to be three types of benefits associated with maintaining cemeteries to a high standard:

- The benefit for visitors to cemeteries – this is the amenity value received by people visiting cemeteries and includes:
  - those attending funerals or pay their respects to loved ones interred in the cemetery
  - those using cemetery for recreation.
- The benefit for nearby residents of cemeteries – this is the amenity value associated with living close to a well-maintained cemetery. A poorly maintained cemetery may become an eyesore, affecting the general amenity of an area.
- The non-use value associated with knowing that cemeteries are well maintained. This may include:
  - the value associated with knowing that cemeteries are maintained in a way that is respectful of the dead
  - the value of knowing that cemeteries are maintained in a way which preserves historical value.

The approaches used to measure these benefits are summarised in table 5.8. Further information on these methodologies, and a literature review of approaches to measure these types of benefits are provided in appendix A.

Note we have not been able to quantify the impact of improved maintenance across benefit categories, with the exception of amenity value for cemetery visitors. This is predominantly due to gaps in the economic literature quantifying the welfare impacts of well-maintained cemeteries or public space more generally. The economic literature around open space tends to focus on the value to local communities of changing the amount of open space and does not provide good measures of the value for different maintenance outcomes (see appendix A for more detail).

## **5.8 Approach to measure benefits maintaining cemeteries**

<b>Benefit</b>	<b>Description</b>	<b>Approach to measure</b>	<b>Parameter</b>	<b>Source</b>
Amenity value for cemetery visitors	Amenity per visit	Apply parameters from Pedestrian Environment Review System (PERS). The measures the WTP per person per minute of time spent in different quality open space	\$0.018 per person per minute for improving public space from poor quality to average quality (2021\$)	TfNSW 2020, Movement and Place Evaluation Guide: Estimating placemaking impacts of transport projects in business cases.
Amenity value for cemetery visitors (recreation)	Change in use value per visit related to recreation	Not quantified, as there is no information on the number of people who use cemeteries for recreation		

Benefit	Description	Approach to measure	Parameter	Source
Amenity value for nearby residents	Amenity impact on nearby residents	Not quantified, as there is a very limited literature linking maintenance of open space to amenity outcomes		
Non-use value (respect for the dead)	The value of knowing cemeteries are maintained in a manner which is respectful of the dead	Not quantified, due to a lack of studies quantifying this value		
Non-use value (heritage value)	The value of knowing historical attributes of cemeteries are protected for future generations	Not quantified as it is not clear how maintenance regulations proposed would change heritage outcomes		

Source: Provided in table, CIE.

In the draft RIS, we prepared a stylised partial cost-benefit analysis (CBA) based on the information that was available. However, given the significant information gaps, the findings were inconclusive. There was no additional data was gathered as part of the consultation process that would give a sufficient level of confidence in the CBA results.

### *Options: cost-benefit analysis*

As discussed above, each element of the proposed scheme is considered separately, with two reform options considered against a base case of maintaining current regulatory arrangements:

- **Option 1:** applying the proposed Interment Industry Scheme in full
- **Option 2:** applying the proposed Interment Industry Scheme with no licensing conditions applied to Category 3 and Category 4 operators (although they would still need to be licensed).

The estimated net benefits of each scheme elements based on the limited information available is summarised in table 5.9. Estimates are presented in net present value terms over 40 years, using a discount rate of 7 per cent. The CBA assumes the Scheme commences in full immediately; it does not take into account the staggered commencement of the Scheme (see chapter 6). Key findings are as follows.

- In general, the impacts of the proposed Interment Industry Scheme are estimated to be relatively modest.
- To the extent they could be quantified, the consumer protection requirements are estimated to deliver a net benefit arising from greater competition as a result of improved pricing transparency. The net impact of both options are broadly similar: although Option 1 (where the relevant requirements would partially apply to Category 3 operators) would impose higher costs (as more operators would need to transition to a standardised contract), these costs are broadly offset by the benefits associated with extending improved price transparency to Category 3 operators.

- There is insufficient information available to quantify the impacts of cemetery maintenance standards and assess whether these standards are likely to deliver a net benefit. That said, the proposed standards are not prescriptive and therefore provide operators with flexibility in the way they are interpreted and applied. The benefits and costs of the proposed standard could therefore be relatively modest. An estimate of the additional administrative costs imposed on Category 1 operators has been included in the overall impacts.
- The cost of any additional compliance and enforcement activities are yet to be finalised and have not therefore been included in the CBA estimates.

### 5.9 Estimated net impacts – net present value

	Option 1	Option 2
-		
-	\$ million	\$ million
Licensing requirements	- 2.30	- 2.30
Consumer protection	13.85	13.68
Cemetery maintenance (administrative costs only) <sup>a</sup>	- 4.32	- 4.32
<b>Total</b>	<b>7.23</b>	<b>7.07</b>

<sup>a</sup> Insufficient information to quantify the costs and benefits.

Note: Estimates are presented in net present value terms over 40 years, using a discount rate of 7 per cent.

Source: CIE estimates.

### *Scenario / sensitivity analysis*

The primary impacts that have been quantified relate to the impacts of standardised consumer contracts and pricing transparency. Key assumptions underpinning this estimate and alternative scenarios tested are as follows.

- The proposed requirements will reduce prices by \$50 (based on 2.5 per cent of \$2000).
  - As it is questionable whether increased pricing transparency will reduce prices given other barriers to competition, we also test a scenario where there is no impact on price.
  - As an alternative scenario, we also test the impact of a \$100 reduction in price.
- This price reduction is achieved through efficiency gains and are therefore a net benefit, rather than a transfer from operators to consumers (note that a transfer from producers to consumers would generally be considered a good outcome from economic reform aimed at reducing the market power of producers).
  - Where operators have market power, increased competition can reduce the ‘economic rent’ (above normal profits) earned by operators. Where there is no associated increase in productivity, the price reduction would largely be a transfer from operators to consumers (particularly where demand is relatively inelastic). We therefore test a scenario where the price reduction is entirely a transfer from operators to consumers.
  - We also test an alternative scenario where the costs to operators offset half of the benefits to consumers.

As required by NSW Government guidelines we also test alternative discount rates (3 per cent and 10 per cent).

The sensitivity analysis undertaken are summarised in table 5.10.

### 5.10 Sensitivity analysis conducted

	Central case	Sensitivity analysis
Discount rate	7 per cent	3 percent and 10 per cent
Impact of price transparency on prices	\$50	\$0 and \$100
Proportion of price reduction that reflects an efficiency gain (as opposed to a transfer)	100%	0% and 50%

Source: CIE.

Additional compliance and enforcement costs incurred by CCNSW are an important cost category that has not yet been quantified. These costs were therefore not included in the CBA. To test the extent to which these costs could affect the outcome of the CBA, we conduct a 'break-even analysis' in addition to the sensitivity tests above. The break-even analysis shows the magnitude of the additional annual compliance and enforcement costs incurred by CCNSW for the CBA to 'break even' (i.e. a net present value of zero). The interpretation of the break-even point is as follows.

- If the additional compliance costs incurred by CCNSW are higher than the break-even point, the quantified costs would exceed the benefits.
- If the additional compliance costs incurred by CCNSW are lower than the break-even point, the quantified benefits would exceed the costs.

The quantifiable net impact of the proposed Interment Industry Scheme under each of the alternative assumptions and the break-even analysis for additional annual compliance and enforcement costs incurred by CCNSW are shown in table 5.11. Key findings are as follows.

- Under scenarios where increasing price transparency has no impact on price or the benefits to consumers are entirely a transfer from cemetery operators, the proposed Interment Industry Scheme would impose a small net cost (based on quantifiable impacts).
- Although it is considered more likely that the reforms will deliver a net benefit, these outcomes cannot be ruled out (i.e. it is plausible that the consumer protection requirements could impose a net cost on the community). Even so, there is still a reasonable case to implement the proposed transparency requirements.
  - Pro-competition reforms that benefit consumers (even at the expense of industry operators with market power) would generally be considered a desirable outcome.
  - Transparent pricing would inherently be seen as desirable from a consumer protection perspective, even if it does not lead to lower prices.
- The break-even analysis shows that if the additional annual compliance and enforcement costs incurred by CCNSW:

- exceed around \$0.51 million (or \$0.50 million for Option 2), the estimated costs of the proposed Scheme would exceed the benefits (based on the costs and benefits that were able to be quantified)
- are less than around \$0.51 million (or \$0.50 million for Option 2), the estimated benefits of the proposed Scheme would exceed the costs (based on the costs and benefits that were able to be quantified).

### 5.11 Sensitivity testing – net present value

Alternative assumption	Option 1	Option 2
-	\$ million	\$ million
<b>Sensitivity analysis</b>		
3% discount rate	17.16	15.89
10% discount rate	3.90	4.11
Price transparency has no change on price	-8.36	-7.18
Price transparency reduces prices by \$100	22.82	21.32
Price reduction: 0% transfer	-8.36	-7.18
Price reduction: 50% transfer	-0.56	-0.06
<b>Break-even analysis</b>		
Additional CCNSW compliance costs (annual)	-0.51	-0.50

Note: Estimates are presented in net present value terms over 40 years, using a discount rate of 7 per cent.

Source: CIE estimates.

### *Preferred option*

Although the CBA results do not provide a compelling case (i.e. the estimated benefits are broadly similar to the estimated costs), the proposed Interment Industry Scheme is the preferred option for several reasons.

- The proposed Scheme addresses many of the issues identified in the recent reviews (i.e. the Statutory review and the IPART review).
- The proposed Scheme provides a clear statement on the expectations for both consumers and operators.
- Many of the licence conditions are focused on providing greater transparency and other consumer protection measures, which is a good outcome in itself, even if it does not lead to a measurable benefit (such as lower prices).
- The proposed Scheme is broadly consistent with the NSW Government's Licensing Framework (see appendix C).
- CCNSW has sought to minimise the additional costs imposed on operators through: avoiding prescriptive requirements (where appropriate) to give operators flexibility in the way the requirements are applied; and providing template documents where appropriate. Additional costs imposed on operators are therefore likely to be relatively modest and broadly proportional to the expected benefits.

## 6 Implementation and compliance

### Implementation timeframes

Feedback from operators indicated a general concern around implementation timeframes. In response to this feedback, implementation timeframes have been extended and there will be a staged approach to licensing and implementation more generally. The timeframes for licensing are summarised in table 6.1.

#### 6.1 Licensing timeframes

Number of interments per year	Dates	Operators
-		No.
> 200 + crematoria only	Jul - Sep 2023	39
50-199	Oct - Dec 2023	71
5-49	Jan - Mar 2024	98
1-4	Apr - Jun 2024	80
Caretaker licence (no interments)	Jul - Sep 2024	120
<b>Total</b>		<b>408</b>

Source: CCNSW as at September 2022 (note this data has been updated from the data presented in Chapter 2).

Once all operators are licensed, the licensing conditions will progressively become applicable. Compliance is in three stages with operators expected to have implemented changes and be compliant after completing each stage as outlined -

- Stage 1 – 1 October 2024: Conditions A (consumer contracts), Conditions D (customer service), Conditions F (reporting obligations)
- Stage 2 – 1 February 2024: Conditions E (religious, cultural and spiritual principles)
- Stage 3 – 1 July 2024: Conditions C (pricing transparency) and Conditions B (cemetery operational maintenance)

During this staged transition, CCNSW will not proactively enforce compliance but will investigate any complaints or breaches of the Act that are raised with the agency. CCNSW will commence full compliance activities from the end of the transition process, from 1 October 2024.

To assist in meeting this timeline, CCNSW will publish explanatory material, templates and other resources over the next 3-6 months to complement each of the licensing conditions. In addition, the agency will provide information and advice to operators to assist with implementation. Published information will be released well in advance of each of the expected compliance deadlines.

### *Proposed compliance approach*

As articulated in the CCNSW Regulatory Framework, CCNSW will use a five-part regulatory approach to apply the Interment Industry Scheme and become and remain an effective, best practice regulator, and to assess when compliance action is required and in what form. CCNSW will:<sup>68</sup>

- **Define desired regulatory outcomes** to ensure: access to affordable, dignified, and faith/culturally appropriate interment services, standardised information to make informed decisions, compliance with the Act; and a high standard of interment services provided to community
- **Identify, understand and prioritise risks** using our regulatory intelligence such as complaints, feedback from the public, previous site visits and investigations
- **Design regulatory interventions and tools** including developing regulatory responses that are available under the Act and Regulations and any regulatory instructions or guides issued by CCNSW
- **Implement regulatory interventions and tools** including publication of an annual compliance plan that outlines our compliance priorities resulting from our regulatory risk analysis, and taking into account identified industry practices, past compliance activity and monitoring information and consumer concerns.
- **Measure outcomes and assess impact** including performance and regulatory activities against the NSW Better Regulation Principles and the Quality Regulatory Services Initiative tool. Lessons learned will be applied from such exercises.

The priority activities identified for compliance focus each year will be published in the Annual Compliance Plan.

CCNSW has a range of powers under the Act and has various tools that it can use to support and enforce compliance. The key objective under the CCNSW Regulatory Framework is to promote a high level of voluntary compliance with the law.

CCNSW's compliance efforts include a commitment to working with cemetery and crematoria operators, peak industry associations and other government agencies to promote voluntary compliance throughout the sector. Consumers and families are best served when cemetery and crematoria operators act in compliance with the law, rectify any compliance breaches quickly and voluntarily, and where consumers can make fully informed and accurate choices about interment.

### *Compliance priorities and a compliance plan*

The CCNSW draft compliance plan assumes that the industry will need to be partially self-regulating with monitoring and compliance carried out by CCNSW on a targeted risk basis through a sampling process.

---

<sup>68</sup> CCNSW Regulatory Framework,  
[https://www.industry.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0008/477881/Cemeteries-and-Crematoria-NSW-Regulatory-Framework.pdf](https://www.industry.nsw.gov.au/__data/assets/pdf_file/0008/477881/Cemeteries-and-Crematoria-NSW-Regulatory-Framework.pdf), accessed 8 April 2022.

The regulator will operate predominantly with a pragmatic approach to compliance. Self-Regulation by operators is an important element of CCNSW's compliance planning.

CCNSW is, and will remain, a regulator with a limited number of staff with capacity to oversee the cemeteries and crematoria sector. Operators will be expected to meet the key requirements of the scheme on their own initiative. For example, operators will need to ensure their customer service charters align with the requirements as stipulated, and the self-assessment checklist around meeting minimum maintenance standards will be completed by operators

Topics will be selected each year based on the annual compliance plan (as per the Regulatory Framework) including sources such as complaints received by CCNSW and/or any investigations carried out in the previous 12 month period.

## 7 Consultation

### **Consultation process**

CCNSW consulted extensively with stakeholder throughout the development of the Interment Industry Scheme. This included:

- engagement with industry stakeholder during the development of the draft Interment Industry Scheme
- an extensive public consultation program on the draft Scheme.

### **Industry consultation**

CCNSW has undertaken consultation with key stakeholders on the Interment Industry Scheme. Throughout 2021 CCNSW held targeted conversations with key stakeholders and CCNSW's two consultative groups (Community and Consumer Consultative Group and Industry Consultative Group) as well as focus groups with a wide range of religious groups and a presentation to the Religious Communities Forum.

Further consultation in late 2021 focussed on interment industry operators and related peak bodies, who were invited to comment on a discussion paper and the draft Scheme. Feedback from webinars, working groups and written submissions has been incorporated into the Scheme and this RIS.

This RIS will accompany further consultation which will target the interment industry, the broader community as well as religious and cultural representatives. This feedback will inform the final version of the Scheme, and the RIS will be revised to reflect any significant changes.

### **Public consultation process**

The proposed Interment Industry Scheme was publicly exhibited for stakeholder and community review and feedback from 22 June to 31 July 2022, supported by a communications and engagement program. This included:

- Paid and earned media: paid newspaper ads in metro, CALD and community publications as well as media release and additional media coverage
- Social media — facebook ads
- Digital communications — including website, engagement hub and electronic direct mail to stakeholders
- Digital and face-to-face engagement
  - Digital engagement included an engagement hub links to ideas wall and survey for detailed feedback, as well as links to the formal submissions channel and contacts for questions and comments

- Face to face engagement included online webinars for industry and the broader community, in-person workshop with faith groups and deeper dive online workshops with councils, church groups and industry
- Aboriginal engagement

### *Paid and earned media*

Media coverage — including paid newspaper ads in metro, CALD and community publications, as well as media release and additional media coverage — is summarised in table 7.1.

#### **7.1 Paid and earned media**

Media	Date
<b>Paid media advertising</b>	
Sydney Morning Herald	6 July 2022
Daily Telegraph	6 July 2022
Koori Mail	29 June 2022
Australian Chinese Daily	9 July 2022
El Telegraph	6 July 2022
The Greek Herald	9 July 2022
An Nahar	5 July 2022
Australian Jewish News	6 July 2022
<b>Earned media</b>	
Departmental media release	29 June 2022
Pensioners & Superannuants newsletter	18 July 2022
ABC Statewide interview with CCNSW CEO	18 July 2022

Source: CCNSW.

### *Social media*

Social media engagement is summarised in table 7.2.

#### **7.2 Social media engagement**

	Reach	Click-through rate	Unique link clicks	Post engagement
-	No	Per cent	No.	No.
Generic	375 998	0.2	652	732
Online information session	354 755	0.2	519	557
Reminder	307 329	0.4	728	792
<b>Total</b>	<b>1 038 082a</b>	<b>1.0</b>	<b>1 899</b>	<b>2 081</b>

<sup>a</sup> Represents the number of people who saw ads at least once. The unique reach' (i.e. the number of unique individuals who saw an ad.

Source: CCNSW.

### *Digital communications*

Digital communications included publishing material on the CCNSW website, as well as via direct emails to specific stakeholders. Stakeholder engagement with the CCNSW website is summarised in table 7.3.

### 7.3 Website engagement

	Total visits	Unique visits	Average time spent on page
-	No.	No.	Mins:secs
CCNSW IIS page	320	270	10:45
CCNSW Corporate page	1 090	819	1:25

Source: CCNSW.

Direct emails included the following

- 22 June launch EDM (681 people, open rate 47 per cent, click through rate 13.8 per cent)
- 28 June webinar reminder (680 recipients, open rate 44.3 per cent, click through rate 12 per cent)
- 8 July deep dive invitation
- 14 July deep dive reminder
- Additional emails through:
  - CCCG (10 members) and
  - Religious Communities Forum (200 members) to their networks.

### *Digital and face-to-face engagement*

CCNSW held a series of online and in-person forums to engage with stakeholders. In total, 290 people attended these forums (table 7.4).

### 7.4 Face-to-face online and in-person engagement

Forum	Date	Attendees
-		No.
Industry online information session	1 July 2022	104
Faith Forum face-to-face workshop	14 July 2022	45
Deep Dive online workshop	15 July 2022	63
Community online information session	19 July 2022	26
Council working group online workshop	20 July 2022	25
Church working group online workshop	26 July 2022	27

Forum	Date	Attendees
-		No.
<b>Total</b>		<b>290</b>

Source: CCNSW.

Other digital engagement included:

- 5436 total visits (and 2132 visits)
- 10 online comments from 5 stakeholders
- 281 document downloads.

### *Survey*

A stakeholder survey also formed part of the consultation process.

- DPE received 123 submitted surveys, including 95 fully and 28 partially completed surveys
- A further 96 surveys were started but not completed or submitted
- Of these responses:
  - 63 per cent of survey responses were from community members,
  - 11 per cent were from operators,
  - 6 per cent were from representatives of religious organisations
  - 6 per cent were from cemetery/crematorium volunteers.

### *Aboriginal engagement*

Engagement with key Aboriginal stakeholders included 1:1 face-to-face and online conversations with 5 key stakeholder groups:

- NSW Aboriginal Land Council (NSWALC)
- NSW Coalition of Aboriginal Regional Alliances (NCARA)
- Native Title Services (NTS Corp)
- Aboriginal Affairs
- Coalition of Aboriginal Peak Organisations (CAPO).

CCNSW also engaged with;

- Aboriginal Liaison Officer contacts from NSW Police Service and Wagga Council,
- Aboriginal Support Networks who forwarded information to their networks
- DPE staff via Yammer and reachouts o DPE Aboriginal P&C and Crown Lands.

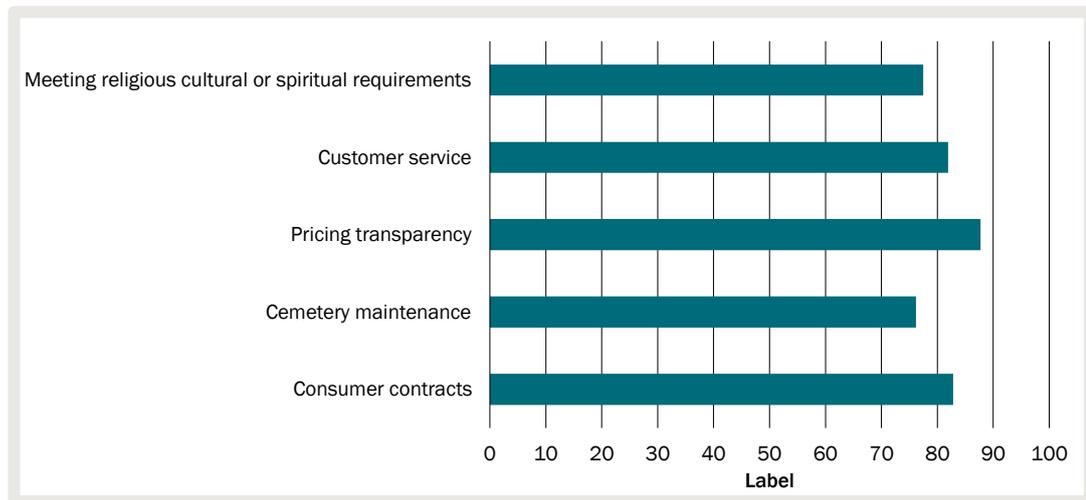
## ***Stakeholder feedback***

The feedback provided by stakeholders through various mechanisms (mostly focusing on survey responses and feedback provided in written submissions) is summarised below.

### Survey responses

In general, there was strong support among survey respondents for the need for all of the licensing condition (chart 7.5).

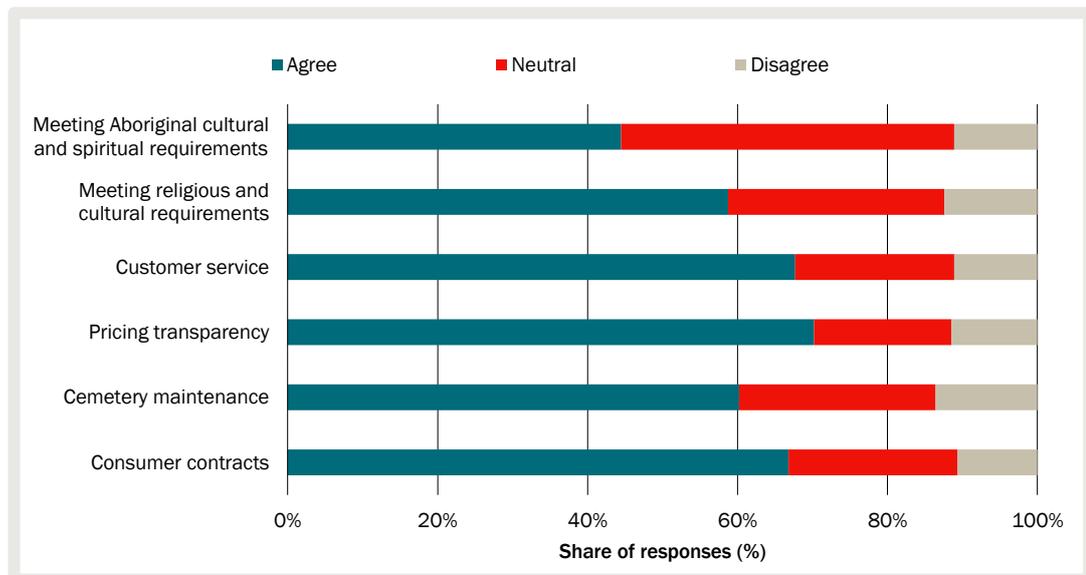
#### 7.5 Support for the need for licence conditions



Data source: CCNSW Survey results.

Most survey respondents also agreed with most of the specific licence conditions, although there was less agreement with the requirement to meet Aboriginal cultural and spiritual requirements (chart 7.6).

#### 7.6 Level of agreement with the specific licence conditions



Data source: CCNSW survey.

### *Key themes from stakeholder submissions*

Key themes from stakeholder submissions can be summarised as follows:

- Implementation of the scheme may be costly for some operators and may impact the cost of burial and cremation
- The criteria for licence categories need to be changed to remove risk as the basis for categorisation
- More time is needed to comply with all the licence requirements
- It is unclear how licence requirements will be met when working with third party providers such as funeral directors
- Reporting requirements duplicate existing council regulation
- Some details of the licensing system as contained in the Regulation were unclear
- The pricing transparency requirements need some clarification
- Concerns about the potential consequences of delivering religious requirements at actual cost
- Industry representative bodies and operators did not feel the benefits of the reform were well articulated

### *Response to stakeholder feedback*

CCNSW's response to the key themes from stakeholder feedback are provided in table 7.7. Stakeholder feedback has been considered carefully and CCNSW has made adjustments to the Scheme where appropriate.

#### **7.7 Response to key themes from stakeholder submissions**

Theme	Response
Implementation of the scheme may be costly and may impact the cost of burial and cremation	<p>CCNSW will seek to minimise the costs incurred by operators in the following ways.</p> <ul style="list-style-type: none"> <li>■ Providing clear explanatory material about what operators need to do to become licenced and comply with each set of conditions</li> <li>■ Providing templates for key document (such as the interment rights contract and the complaints register) that operators can choose to adopt or adapt.</li> <li>■ Discounting licence fees for smaller operators, and those of limited means can apply to have fees waived altogether.</li> </ul>
The criteria for licence categories need to be changed	<ul style="list-style-type: none"> <li>■ The risk-based categories in the draft Scheme have been amended to simpler size-based categories.</li> <li>■ Acknowledging there was not a significant distinction between Category 1 and Category 2 operators, in the draft, the categories have been changed so that operators with 100 or more interments will be Category 1, and operators with 50-99 interments will be Category 2. Crematoria only operators will also be Category 2.</li> </ul>

Theme	Response
More time is needed to comply with all the licence requirements	<ul style="list-style-type: none"> <li>▪ The transition period has been extended from 12 months to 24 months, with licencing to commence from 1 July 2023. The licence conditions will then commence in three stages to allow operators time to become compliant with them.</li> <li>▪ All operators will all need to be licenced and fully compliant by October 2024.</li> </ul>
It is unclear how licence requirements will be met when working with third party providers such as funeral directors	<ul style="list-style-type: none"> <li>▪ CCNSW is talking with key funeral director bodies about this relationship.</li> <li>▪ The licence conditions have been amended (A.2) to state that an authorised agent (such as a funeral director) who is executing the contract with the customer on behalf of the operator, must sign a declaration to say that they have complied with the obligations (e.g. explained the terms and conditions and given the customer time and privacy to consider the contract before signing). The customer would then also be required to sign to agree that they have had key terms and conditions explained to them. This is similar to the current arrangements that some operators already have in place.</li> </ul>
Reporting requirements duplicate existing council regulation	CCNSW are working with the council representative body and councils through a working group to reduce duplication by identifying equivalencies between what councils already do and the new Scheme requirements.
Some details of the licensing system as contained in the regulations were unclear	Changes have been made to the licence assessment. In particular, the fit and proper person test has been removed (though suitability checks will remain).
The pricing transparency requirements need some clarification	<ul style="list-style-type: none"> <li>▪ Minor changes have been made to the pricing breakdown template (which basic products must use to show their prices) in response to feedback.</li> <li>▪ A third basic product type, Basic Cremation Only, has been added to give greater transparency over this increasingly popular product.</li> <li>▪ The required fees and charges to be itemised and shown in the individual contracts have also been aligned to use the same terminology as the pricing breakdown template, to avoid confusion.</li> <li>▪ CCNSW will keep a careful watching brief on cemetery pricing, and if the transparency requirements don't seem to be having the desired effect, will consider introducing stronger pricing regulation.</li> </ul>
Concerns about the potential challenges of delivering religious requirements at actual cost	The relevant principles have been amended to say that any costs incurred in delivering a religious, cultural or spiritual requirement must be transparently disclosed. If there is a charge, the operator should clearly indicate the basis for the charge (and reflect that in the contract).
Industry representative bodies and operators did not feel the benefits of the reform were well articulated.	<ul style="list-style-type: none"> <li>▪ Both the NSW Government's statutory review and IPART's review identified there are significant risks to the interment industry and the public without stronger regulation. The Interment Industry Scheme addresses most of these risks. Clearer industry standards will benefit consumers who will know the cemetery or crematorium operator they deal with will be licensed and must abide by certain requirements.</li> <li>▪ There was strong public support for enhanced regulation in this area, and broad support from operators for the concept of the Interment Industry Scheme. There was more than 75% support shown through our survey for each of the 5 licence conditions.</li> </ul>

Theme	Response
	<ul style="list-style-type: none"><li data-bbox="703 349 1359 448">■ CCNSW will undertake an evaluation and track key metrics over the next 5 years as the basis of a scheduled future review of the scheme and for continuous improvement of the scheme.</li></ul>

Source: CCNSW.

## 8 *Evaluation and review*

### *Review of the Scheme*

Under Better Regulation Principle 7, regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.<sup>69</sup>

Under the *Subordinate Legislation Act 1989*, the regulations will automatically expire after 5 years and this is a trigger for the regulations to be reviewed (consistent with the RIS framework). This will include a review of the Interment Industry Scheme itself.

As the regulations will expire 5 years after they have been made (presumably around late 2027), the review would need to commence 6-12 months prior to that time (around late 2026 to early 2027) to allow time for the regulation (including any amendments to the scheme) to be remade.

Under the implementation timetable, all operators will be licensed by October 2024. This means all operators will have been licensed for at least 2 years at the commencement of the review. This should provide a reasonable timeframe to assess the impacts of the Scheme.

### *Approach to the review*

The approach to the review (and evaluation more generally), including how relevant evidence will be gathered, is yet to be finalised. However, some preliminary considerations on how relevant information will be gathered are as follows.

- The main beneficiaries of the Interment Industry Scheme are likely to be customers. Surveys are one approach to assessing whether the Scheme has improved outcomes for cemetery users.
  - The surveying approach would need to be carefully designed so that the survey sample is representative of cemetery users/customers. There is a high-risk that responses to open surveys are not representative of all cemetery users/customers.
  - It is likely that surveys would need to be undertaken before and after the Scheme has commenced
- The main costs are likely to be incurred by cemetery operators. There are various ways that information on the additional costs incurred by cemetery operators can be gathered. The best approach will need to consider the burden placed on operators. Approaches to gathering relevant information could include the following.

---

<sup>69</sup> NSW Treasury, *NSW Government Guide to Better Regulation*, Policy and Guidelines Paper TPP 19-01, January 2019, p. 5.

- Gathering and systematically recording relevant information from compliance activities to build up a reasonable sample over time. The incremental cost of gathering relevant information as part of regular compliance activities may be relatively modest.
- A survey of operators after the Scheme has commenced to gather information on the additional costs incurred as a result of the Scheme.

## *A Quantifying the value of well-maintained cemeteries*

Conceptually there are likely to be three types of benefits associated with maintaining cemeteries to a high standard:

- The benefit for visitors to cemeteries – this is the amenity value received by:
  - people visiting cemeteries to attend funerals or pay their respects to loved ones
  - using cemeteries as a place for recreation (e.g. for exercise, and to visit scenic and heritage listed cemeteries)
- The benefit for nearby residents of cemeteries – this is the amenity value associated with living close to a well-maintained cemetery. A poorly maintained cemetery may become an eyesore, affecting the general amenity of an area.
- The non-use value associated with knowing that cemeteries are well maintained. This is the value associated with knowing that cemeteries are maintained in a way that is respectful of the dead.

The benefits for visitors and nearby residents are only incurred by a subset of society (i.e. those that actually visit and live close to cemeteries). In contrast non-use benefits accumulate more broadly, a people may value showing respect to the dead as well as value cemeteries are places of historical and cultural significance. Many cemeteries are heritage listed sites and contain important historical artefacts for local communities. People may not visit cemeteries often, but they would feel a significant loss if it were destroyed. Although some cemeteries may not be of national or state significance to be listed as a heritage site, it can be of significance as a symbol of people's individual family history or local community.

In order to value the benefit to individuals and society that well maintained cemeteries provide, we must look to best practice methods of valuing 'non-market' goods. Non-market goods or services consist of those which are currently available to the public free of charge and therefore there is no monetary gauge of the value people hold for them. Box A.1 outlines some of the approaches to measure use and non-use value for non-market goods and services.

### A.1 Approaches to measure use and non-use value

There are a number of possible approaches to measure the use and non-use value people place on non-market goods and services (for e.g. well-maintained cemeteries):

- **Stated preference methods** — these ask people questions to understand their stated preferences. These can generally be used to measure use and non-use value. Methods include:
  - contingent valuation — asking people to state how much they would be willing to pay for a good or a service (in our case, maintaining cemeteries).
  - choice modelling — involves presenting people with choices with specific attributes and an associated acquisition price. Their choices are then used to infer value. Choice modelling can be undertaken to explore general statements about cemeteries to see the degree to which the people are willing to financially support a greater commitment to maintaining them.
- **Revealed preference valuation methods** — these use people’s actual decisions to infer their valuation. The two possible methods are:
  - hedonic analysis — using house or land prices versus a range of explanatory variables (including green space variables) to understand the impact of well-maintained cemeteries on house or land value. This can be used to measure the value of living close to a well-maintained cemeteries.
  - travel cost method— records information on how much it costs people to get to a public open space (can be extrapolated to cemeteries). This can then be used to derive a demand curve. For example, if people within 1 km of a cemetery visited 20 times per year, people within 2km visited 10 times per year and people within 5km visited 5 times per year, then the cost associated with each distance can be estimated (such as the cost of time). This becomes the ‘price’ in the demand curve, while the visitation per person becomes the quantity. This method can only be used for measuring the use value of existing cemeteries (for which there is information on visitation).

Currently there are few studies which measure the value of well-maintained cemeteries.

One study from the UK measured the willingness-to-pay (WTP) to support maintenance and preservation of most frequently visited local park (within 1km of their home).<sup>70</sup> As part of this study, values for different types of open space were measured including for cemeteries. This found a WTP of 1.69 GBP per month (2018\$) per person to maintain an preserve cemeteries within 1km of on a respondents house. This likely reflects the amenity value of a well-maintained cemetery on the surrounding population as well as the use value of cemetery. Note this estimate was for the most frequently visited local park, such that this value may overstate the benefit of a well-maintained cemetery where there is a large amount of open space in the area. Also, this estimate does not allow for differences in quality, as the parameter only values maintained open space (it does not

<sup>70</sup> Fields in Trust 2018, *Revaluing Parks and Green: Measuring their economic and wellbeing value to individuals*.

provide a parameter for a partially maintained cemetery). However, this is the only parameter available to measure the impact on people who live near to cemeteries.

While there is no specific literature to measure the benefits of cemetery maintenance, information on the benefits of well-maintained open space or protection of heritage assets can be used as a proxy. For example, the benefits of reducing litter in a cemetery will likely be at least as large as the benefit of reducing litter in a park. Benefit estimates from other applications may understate the benefit of well-maintained cemeteries, as people may place special importance of cemeteries out of respect for the dead. In the absence of specific research this cannot be quantified, and the benefits estimated using these parameters may be considered lower bound estimates.

The following discussion includes review of some existing literature in this area based on the comparable use and non-use values to society of public open spaces.

### ***Amenity value and use value of public open space***

Amenity values include the value “provided by the pleasantness, aesthetic coherence and cultural and recreational attributes of an area”.<sup>71</sup> User or recreational benefits reflect the value that comes from the direct interaction of people with public spaces.

We can use existing studies on people’s willingness to pay for well-maintained national parks and greenspaces as evidence for the value people place on the regular use of these spaces based. Most of the studies on greenspace has measured the benefit of having a green space compared to not having one and generally do not estimate the value of maintenance, with the exception of Fields Trust (2018) noted above.

Several analyses have estimated the value of open space using hedonic pricing, which relates property or land values to the amount of open space in an area. Some studies have looked at the individual monetary value of specific characteristics of parks. Czembrowski et al. (2019) found that green spaces representative of the categories’ “aesthetics”, “social” and “nature” are perceived as amenities by real estate buyers. However, green spaces that are representative of the category “physical activity” are insignificant in explaining the property prices.<sup>72</sup> Lorenzo et al. (2007) had previously used hedonic pricing to study the effect of parks and park quality on neighbouring real estate prices in Tallahassee, Florida. When all other neighbourhood attributes were kept constant, homes in close proximity to “quality parks” were more expensive than houses further away from these parks, with parks rated clean, providing amenities, safety and better landscaping had higher prices than houses farther away.<sup>73</sup>

<sup>71</sup> See, <https://www.wdc.govt.nz/files/assets/public/documents/services/property/planning/district-plan/operative/pt2/amenity-values-policies.pdf>

<sup>72</sup> Czembrowski P, Łaszkiwicz E, Kronenberg J, Engström G, Andersson E (2019) Valuing individual characteristics and the multifunctionality of urban green spaces: The integration of sociotope mapping and hedonic pricing. PLOS ONE 14(3): e0212277. <https://doi.org/10.1371/journal.pone.0212277>

<sup>73</sup> Lorenzo et al. (2007). The effect of quality of parks on neighbouring property values.

In a report prepared by the CIE for New South Wales Environment Protection Authority, Sustainability Victoria, and Queensland Department of Environment and Science, based on stated preference, it was estimated that individuals were willing to pay \$0.17 and \$0.11 to avoid seeing dumped waste in national parks and recreational parks respectively.<sup>74</sup>

Mahmoudi et al. (2013) demonstrated how public open spaces such as reserve areas, parklands and sporting fields confer private benefits to nearby homeowners and changes in the configuration of a parks. Results were based on finding from the Adelaide metropolitan area in South Australia where, the price of real estate increases by about \$1.55 for every metre closer the property is to the nearest part of Adelaide Parkland.<sup>75</sup> The analysis also indicates households' willingness to pay more to live closer to areas that are watered more frequently such as reserves with sporting ovals. With tougher water restrictions, the marginal price for proximity to the nearest reserve with sporting facility rises by about \$3.80 per metre.<sup>76</sup> This shows how there are increasing values depending in the physical appearance of public spaces.

Van Bueren et al (2019) measures value of WTP improving open space and avoiding browning of vegetation (indicative of value community places on maintenance of open public greenspaces) during drought in Perth, Western Australia. The community does value the maintenance of greenspaces over summer, however the values are lower than what a previous study by Ambrey and Fleming had suggested. Van Bueren et al (2019) estimated a WTP of \$1 per 1 per cent increase in greenspace.<sup>77</sup>

### *Use value of open space*

TfNSW has developed the *Movement and Place Evaluation Guide: Estimating placemaking impacts of transport projects in business cases*. This includes developing approaches to apply to transport projects that have placemaking impacts (i.e. increasing the pleasantness, attractiveness or desirability of a place).

The TfNSW guide discusses the various approaches to valuing amenity. The main approach recommended, aside from specific project analysis and surveys, is to apply scores from the Pedestrian Environment Review System to a previous willingness to pay survey on these characteristics.

---

<sup>74</sup> The CIE (2021). Willingness to pay for reduced litter and illegal dumping: Stated presence research

<sup>75</sup> Mahmoudi, P., Hatton MacDonald, D., Crossman, N.D., Summers, D.M. and van der Hoek, J. (2013), Space matters: the importance of amenity in planning metropolitan growth. *Australian Journal of Agricultural and Resource Economics*, 57: 38-59. <https://doi.org/10.1111/j.1467-8489.2012.00608>.

<sup>76</sup> Mahmoudi, P., Hatton MacDonald, D., Crossman, N.D., Summers, D.M. and van der Hoek, J. (2013), Space matters: the importance of amenity in planning metropolitan growth. *Australian Journal of Agricultural and Resource Economics*, 57: 38-59. <https://doi.org/10.1111/j.1467-8489.2012.00608>.

<sup>77</sup> Van Bueren et al (2019). Community values for green public open space: A choice modelling analysis in Perth, Western Australia. *Water e-journal*, Vol 4,4.

The PERS defined 6 attributes of public spaces:

- Moving in the space: Create convenient connections
- Interpreting the space: Create clear and easy to understand routes and spaces
- Personal safety: All users feel safe
- Feeling comfortable: Create streets and spaces for everyone
- Sense of place: Get the detail right
- Opportunity for activity: Create active and passive public spaces.

Each attribute is scored from -3 to 3 by a minimum of two public space auditors. Willingness to pay values are then applied, with the values reported by TfNSW shown in table A.2 in cents per person per minute. For example, moving from a score of -3 for all attributes to a score of +3 for all attributes would have benefits of 2.677 cents per person per minute.

#### **A.2 Amenity benefits for improvements to public space (cents per person per minute, \$2019)**

Attribute	-3	-2	-1	0	1	2	3
Moving in the space	0	0.119	0.241	0.360	0.403	0.445	0.488
Interpreting the space	0	0.027	0.053	0.080	0.106	0.133	0.162
Personal safety	0	0.114	0.228	0.342	0.456	0.562	0.668
Feeling comfortable	0	0.064	0.127	0.191	0.254	0.318	0.382
Sense of place	0	0.034	0.072	0.106	0.130	0.143	0.154
Opportunity for activity	0	0.196	0.392	0.591	0.668	0.745	0.824
Total	0	0.554	1.113	1.670	2.017	2.346	2.677

Source: Tsai 2019,

[https://www.australasiantransportresearchforum.org.au/sites/default/files/papers/ATRF2019\\_resubmission\\_38.pdf](https://www.australasiantransportresearchforum.org.au/sites/default/files/papers/ATRF2019_resubmission_38.pdf) as reported in TfNSW 2020, Movement and Place Evaluation Guide: Estimating placemaking impacts of transport projects in business cases, September.

Improving maintenance can result in higher amenity for open space. Without knowing the precise quality of open space, we can assume that poorly maintained cemeteries have a rating of -3, while average cemeteries have a rating of 0. This is combined with estimates of visitation to cemeteries, and an assumption around the amount of time spent by visitors in cemeteries (30 minutes per visit based on Bachelor 2001).

#### ***Estimates of non-use value***

Cemeteries may be valued for a variety of intangible benefits that do not require a person to ever actually visit a place. This is like heritage assets where people would feel a measurable loss if it were lost regardless of whether they ever visited them.<sup>78</sup> Many cemeteries themselves have heritage value or include heritage listed assets, and provide a link to the collective past of nations and cultures. WTP measures to protect heritage assets, could therefore be used to proxy the non-use values associated with cemeteries,

<sup>78</sup> The Allen Consulting Group 2005, Valuing the Priceless: The Value of Historic Heritage in Australia, prepared for the Heritage Chairs and Officials of Australia and New Zealand.

noting that this may understate the value of cemeteries, in particular where individuals have a direct link to a cemetery (i.e. a relative or loved one is interred there). The existence value in such cases of historic heritage is associated with the knowledge that these culturally important resources should be preserved even though their value is not captured in any market valuation.

There have been a range of Australian studies that quantify the value of heritage places and have included numerous studies on the effect of heritage value on price of residential property. Deodhar (2004) assessed the market price differential between heritage-listed and unlisted houses in Sydney's upper north shore area (Ku-rin-gai area) using a hedonic price methodology and found a premium of 12 per cent on average for these properties for the 64 heritage-listed houses after controlling for other property attributes.<sup>79</sup>

Allen Consulting Group (2005) attempted to quantify the implicit price for historic heritage conservation. The choice modelling study showed average WTP of:<sup>80</sup>

- \$5.53 per person per year (2005\$) for every 1000 heritage places protected from being lost
- \$1.35 per person per year (2005\$) for a one per cent increase in the proportion of heritage places in good condition
- \$3.60 per person per year (2005\$) for a one per cent increase in the proportion of places that are accessible to the public.

We can use this to estimate the non-use value of cemeteries using:

- Using the parameter of increasing the proportion of heritage places in good condition. To estimate the benefit we assume:
  - 30 000 heritage listed sites in NSW<sup>81</sup> (we only consider NSW as opposed to national heritage, as cemeteries are likely to have most importance for the local community)
  - Assume that maintaining cemeteries is equivalent to increasing heritage places in good condition.
- The relativity between access benefits and the value of places being in good condition. This can allow us to estimate non-use values relative to use values which are estimated elsewhere.

---

<sup>79</sup> Deodhar, V 2004, Does the Housing Market Value Heritage? Some Empirical Evidence, Macquarie Economics Research Papers, No. 3/2004.

<sup>80</sup> The Allen Consulting Group 2005, Valuing the Priceless: The Value of Historic Heritage in Australia, prepared for the Heritage Chairs and Officials of Australia and New Zealand.

<sup>81</sup> See <https://www.environment.nsw.gov.au/licences/>.

## *B Estimating visitation to cemeteries*

In order to quantify the benefit of cemetery maintenance to visitors, requires an estimated of the number of visitors per year. There is currently no authoritative source of information on the number of visitors to cemeteries.

- Vehicle traffic counts have previously been undertaken for Rookwood Cemetery. This information was not available to inform this analysis, however may overstate visitors to Rookwood Cemetery as some vehicle through trips (i.e. those without an origin or destination in the cemetery) are likely to pass through the cemetery to avoid going around.
- Consultations indicated that cemetery operators consider the types of visitors to cemeteries, including mourners paying their respect as well as recreational users. Information on these user types was provided.
- Consultations also provided information typical numbers of mourners at funerals. Anecdotally this varies considerably across different cultural and faith groups, ranging from 10 mourners through to several hundred (or more)

To fill this information gap, we have estimated the number of visitors to cemeteries using the in two parts:

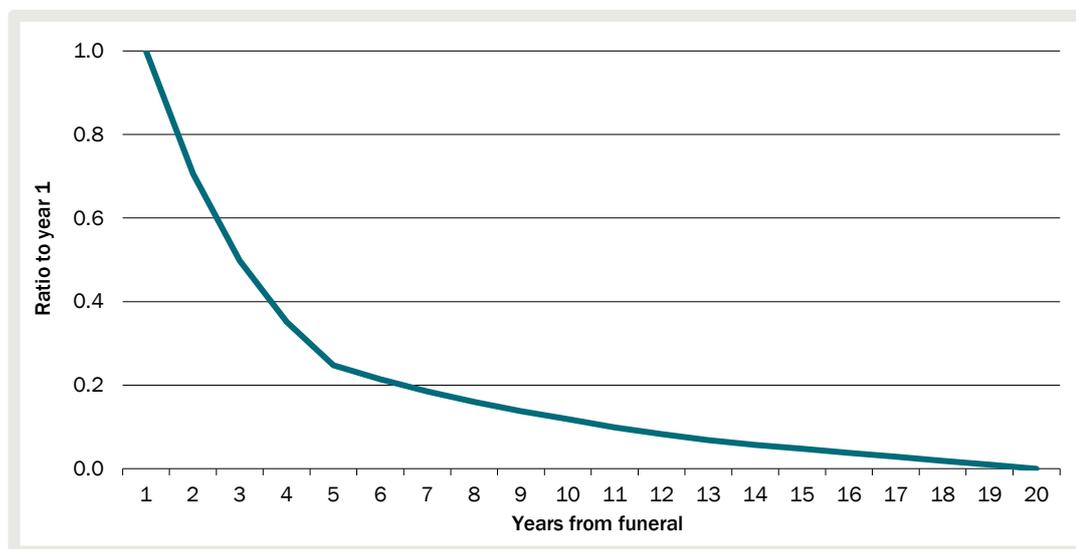
- First, we estimate the number of mourners attending each funeral held in a cemetery. This is based on:
  - 50 mourners per funeral. This is assumed based on consultations; however we note that the number of mourners varies considerably across funerals.
  - 80 per cent of funerals occur on the grounds of cemeteries. This is an assumption which was chosen to reflect the fact that funerals may occur elsewhere.
  - The number of funerals per year is inferred from ABS data on deaths in NSW<sup>82</sup>, while future deaths are based on projected deaths prepared as part of NSW DPIE population projection.<sup>83</sup>
- Second, we estimate the number of visitors to graves and interred ashes at cemeteries. This is based on:
  - the estimated number of interments (burials and interment of cremations). This in turn is based on:
    - ... the number of deaths, discussed above
    - ... the share of bodies which are cremated (67 per cent)

<sup>82</sup> ABS 2019, 3105.0.65.001 Australian Historical Population Statistics

<sup>83</sup> See <https://www.planning.nsw.gov.au/Research-and-Demography/Population-projections/Projections>.

- ... the share of cremations which are interred in cemeteries (30 per cent), which is based on data provided by cemetery operators since 2015 to CCNSW.
- 91 visits per grave in the first year following a funeral, for graves which receive any visitors. This is based on survey data reported in Bachelor (2001)<sup>84</sup> on the number of visits in the first year following funeral per visitors (average of around 60 visits), while we assume that there are 1.5 visitors for visited graves
- 59 per cent of graves being visited. This is based on survey data which reports the share of Australian and overseas born people in Australia that do not visit cemeteries.<sup>85</sup>
- A distribution of visits overtime, which show how visitation drops off following a funeral (chart B.1). This profile is multiplied by the deaths in the past 20 years to measure visitation in a given year.

### B.1 Number of visitors compared to first year after funeral



Data source: CIE, based on Bachelor 2001, Cemetery Visitation: The place of the cemetery in the grief process.

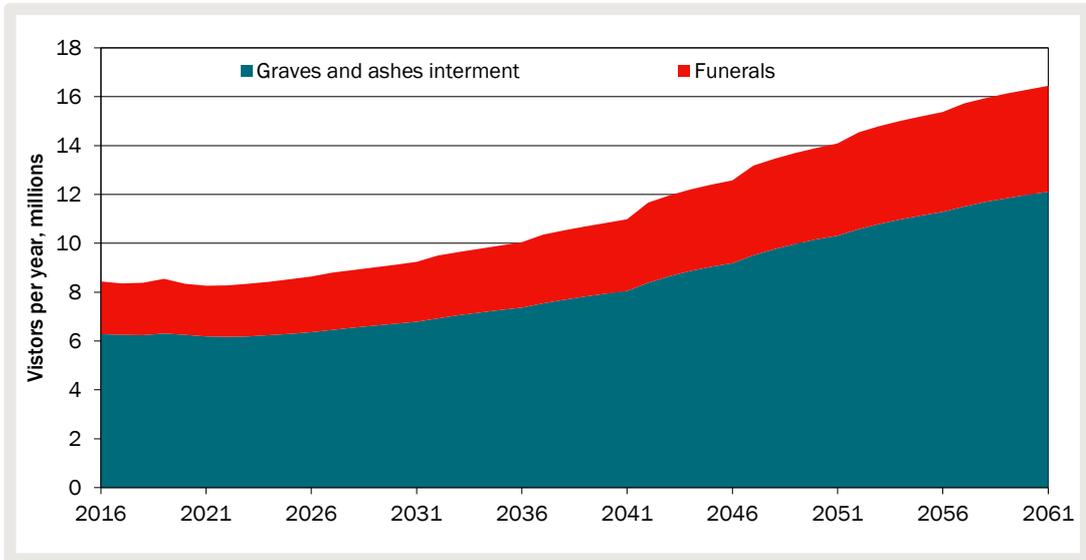
Putting this information together given an estimate of the number of visitors related to funerals and visiting gravesites and interred ashes (chart B.2). We do not estimate the number of visitors related to recreation, as this is likely to be highly variable, depending on surrounding population and availability of open space.

In 2021, we estimate that there were around 2.1 million visitors to cemeteries related to funerals and 5.7 million visits to graves and ashes interments. Overtime, the number of visitors is expected to increase as the total number of deaths is expected to increase overtime.

<sup>84</sup> Bachelor 2001, Cemetery Visitation: The place of the cemetery in the grief process.

<sup>85</sup> Han, G. S., Forbes-Mewett, H. and Wang, W. Y. 2019, Approaches to Death, Funeral Rites and Memorialisation in Contemporary Australia: Changes and Continuities.

**B.2 Estimated number of visitors to NSW cemeteries**



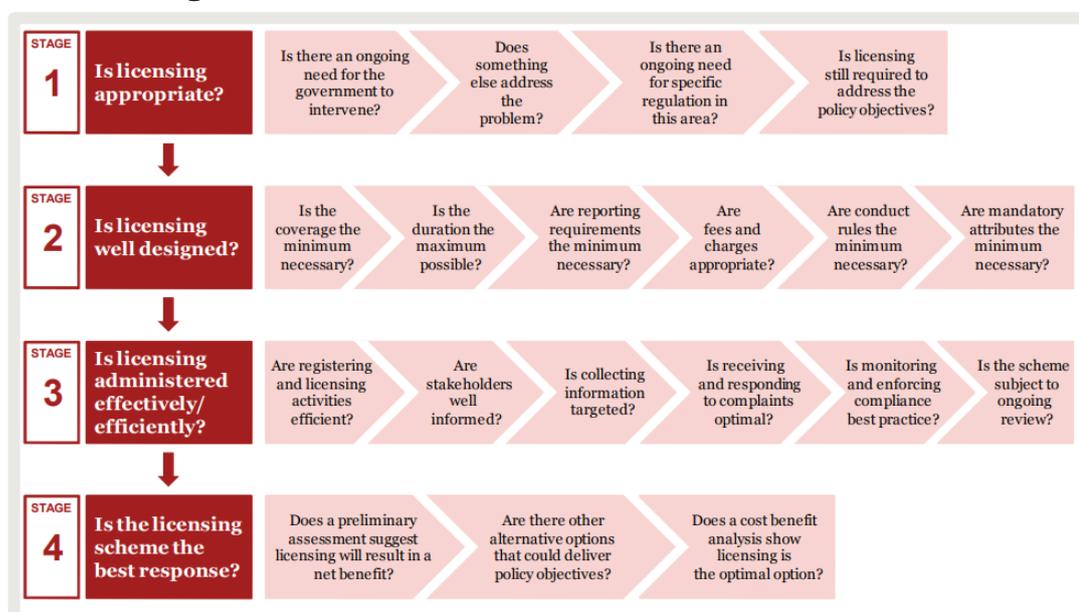
Data source: CIE.

## C Assessment against the Licensing Framework

### Scope

Under the NSW Guide to Better Regulation, all regulatory proposals that involve the introduction of a new, or revised licensing regime, must be assessed against the Licensing Framework developed by the IPART (see chart C.1).<sup>86</sup>

#### C.1 Licensing framework structure



Data source: pwc, *A best practice approach to designing and reviewing licensing schemes: Guidance material*, Prepared for the Independent Pricing and Regulatory Tribunal of NSW, March 2013, p. 8.

### Assessment

The Interment Industry Scheme is broadly consistent with a best practice approach to licensing set out in the Licensing Framework.

- Licensing is an appropriate policy response to addressing the market and behavioural failures associated with the interment industry in NSW, as well as the issues raised in: the statutory review of the Cemeteries and Crematoria Act 2013 (*The 11<sup>th</sup> Hour*); and the IPART *Review of the Costs and Pricing of Interment in NSW*.

<sup>86</sup> NSW Government, *NSW Government Guide to Better Regulation*, Policy and Guidelines Paper TPP 19-01, January 2019, p. 10.

- The design of the Scheme is broadly consistent with the Licensing Framework guidance material.
- Although the Scheme has not yet commenced and some administrative processes are still to be finalised, the information available suggests that the scheme will be administered efficiently.
- The Scheme is likely to be the best policy response to the issues raised in: the statutory review; and the IPART Review.

### *Is licensing appropriate?*

Licensing is an appropriate policy approach in this context (responses to the specific questions set out in the Licensing Framework are provided in table C.2).

- There are a range of market and behavioural failures in relation to the interment industry in NSW, which provide an in-principle case for government intervention.
- The Interment Industry Scheme is consistent with a key recommendation of the statutory review that regulation of the interment industry needs to be strengthened (Recommendation 6.1).

### **C.2 Is licensing appropriate?**

Question	Response
Is there an ongoing need for the government to intervene?	<ul style="list-style-type: none"> <li>■ There are various inter-related market (and behavioural) failures in relation to the interment industry in NSW, mostly relating to a lack of effective competition, including (see Chapter 2 for further details):               <ul style="list-style-type: none"> <li>– Limited consumer choice</li> <li>– Information asymmetries</li> <li>– Inefficient pricing</li> <li>– Limited incentives to fulfil perpetual maintenance obligations.</li> </ul> </li> <li>■ These market and behavioural failures occur in the context of what is effectively an essential service.</li> </ul>
Does something else address the problem?	<ul style="list-style-type: none"> <li>■ Some issues are covered by generic laws, such as workplace safety laws and public liability laws and consumer law.</li> <li>■ However, most aspects of the Interment Industry Scheme are unique to the industry.</li> </ul>
Is there ongoing need for specific regulation in this area?	<ul style="list-style-type: none"> <li>■ A key recommendation of the statutory review was that CCNSW, in consultation with key religious and cultural groups, immediately commences the development of a mandatory Code of Practice which outlines specific interment requirements of those groups (Recommendation 6.1).</li> <li>■ In 2021, CCNSW received legal advice that a mandatory Code of Practice was no longer possible under the Act.</li> </ul>
Is licensing still required to address policy objectives?	<ul style="list-style-type: none"> <li>■ The licensing system is primarily a means of imposing mandatory licensing conditions.</li> <li>■ In principle, these mandatory licensing conditions could be imposed through alternative regulatory approaches (such as a mandatory Code of Conduct) that could avoid the administrative burden associated with applying for and renewing a licence.</li> <li>■ However, a licensing scheme was envisaged in the Act and (as noted above) a mandatory Code of Conduct is not possible under the Act.</li> </ul>

Question	Response
	<ul style="list-style-type: none"> <li>Furthermore, the administrative burden associated with the licensing regime is relatively modest and unlikely to be a significant barrier to competition.</li> </ul>

Source: IPART, *Reforming licensing in NSW: Review of licence rationale and design*, Regulation Review – Final Report, September 2014, p. 43; CIE.

### *Is licensing well designed?*

The design of the Interment Industry Scheme is broadly consistent with a best practice approach set out in the Licensing Framework (see table C.3 for a response to the Licensing Framework questions).

- Although the licensing scheme covers all operators, it minimises coverage of the more onerous licensing conditions through separate licence categories (based on size).
- The licence duration is the maximum considered necessary
- Reporting requirements are largely a self-assessment compliance mechanism.
- The licensing fees are broadly designed to reflect cost (although detailed costings have not been prepared).

### **C.3 Is licensing well designed?**

Question	Response
Is the coverage the minimum necessary?	<ul style="list-style-type: none"> <li>Although the licensing scheme covers all operators, it minimises coverage of the more onerous licensing conditions through separate licence categories (based on size).</li> <li>Minimal conditions are imposed on smaller operators.</li> <li>Operators will initially be categorised based on size (number of interments). <ul style="list-style-type: none"> <li>Some operators argue that size is a poor indicator of risk. Indeed the probability of non-compliance (one aspect of risk) with the licensing conditions could be lower for larger operators.</li> <li>However, non-compliance by larger operators would affect more consumers (i.e. the outcomes from non-compliance would be worse, which is another aspect of risk).</li> </ul> </li> <li>As the probability of non-compliance is currently not well understood, categorisation based on size is considered a reasonable approach initially. A more risk-based approach could be applied later, once the compliance record of operators is better understood.</li> </ul>
Is the duration the maximum possible?	<ul style="list-style-type: none"> <li>Consistent with the preferred approach in the Licensing Framework, the duration for Category 4 operators (i.e. operators with no further interments) is no fixed term (i.e. the licence is issued in perpetuity).</li> <li>For cemeteries that remain active, there is some value in formalising periodic contact with each operator. However, the licensing duration is 5 years, which is considered the maximum time before the licence needs to be re-assessed. Note that the Scheme will be reviewed prior to the requirement for operators to renew their licence.</li> </ul>
Are reporting requirements the minimum necessary?	<ul style="list-style-type: none"> <li>Although CCNSW will be undertaking some compliance and enforcement activities (see Chapter 6), operators will be largely expected to meet the requirements of the scheme on their own initiative.</li> </ul>

Question	Response
	<ul style="list-style-type: none"> <li>■ To this end, the reporting requirements are largely a self-assessment compliance mechanism.</li> <li>■ CCNSW has the power to request additional information from operators. However, the intention is to use these powers sparingly (i.e. only as needed).</li> </ul>
Are fees and charges appropriate?	<ul style="list-style-type: none"> <li>■ Although the licensing fees have not been costed in detail, they have been broadly designed to reflect the costs incurred by CCNSW in processing licensing applications (and renewals).</li> <li>■ The fee policy also allows for fee exemptions, where some operators would be unable to cover the fees.</li> <li>■ The foregone revenue from these exemptions will be covered by the NSW Government, so that other operators are not cross-subsidising operators that receive a fee exemption.</li> </ul>
Are conduct rules the minimum necessary?	<ul style="list-style-type: none"> <li>■ The primary objective of the Interment Industry Scheme is as a mechanism to impose the mandatory licensing conditions (i.e. conduct rules).</li> <li>■ In general, the licensing conditions have been designed to be applied as flexibly as possible, so that operators can take into account their own specific circumstances. CCNSW has sought to avoid prescriptive licensing conditions.</li> <li>■ As noted above, some of the (potentially) more onerous licensing conditions do not apply to smaller operators (i.e. operators in Category 2 and 3).</li> </ul>
Are mandatory attributes the minimum necessary?	<p>As noted above, the burden of mandatory licensing requirements is minimised in the following ways.</p> <ul style="list-style-type: none"> <li>■ Most mandatory licensing conditions do not apply to smaller operators.</li> <li>■ Prescriptive requirements have been avoided where possible. The mandatory licensing conditions can therefore be applied flexibly, so that operators can take into account their own specific circumstances.</li> </ul>

Source: IPART, *Reforming licensing in NSW: Review of licence rationale and design*, Regulation Review – Final Report, September 2014, p. 43, CIE.

### *Is licensing administered efficiently?*

Although the Scheme has not yet commenced and some administrative processes are still to be finalised, the information available suggests that the scheme will be administered efficiently (see table C.4 for a response to the questions set out in the Licensing Framework).

#### **C.4 Is licensing administered effectively/efficiently?**

Question	Response
Are registering and licensing activities efficient?	<ul style="list-style-type: none"> <li>■ As the Scheme has not yet commenced, CCNSW has not yet undertaken licensing activities.</li> <li>■ Operators will be transitioned onto the new Scheme in tranches to: <ul style="list-style-type: none"> <li>– give CCNSW time to prepare guidance materials; and</li> <li>– control the number of operators applying for a licence at one time so that CCNSW can manage the application and determination process.</li> </ul> </li> </ul>

Question	Response
Are stakeholders well informed?	<ul style="list-style-type: none"> <li>▪ CCNSW have consulted extensively with key stakeholders through the development of the Scheme (See Chapter 7 for details).</li> <li>▪ After considering feedback from stakeholders, CCNSW have extended the implementation period from 12 to 24 months.</li> </ul>
Is collecting information targeted?	<ul style="list-style-type: none"> <li>▪ The information burden on operators as a result of the Scheme is not significantly greater than under current arrangements.</li> </ul>
Is receiving and responding to complaints optimal?	<ul style="list-style-type: none"> <li>▪ CCNSW already has a complaints handling mechanism. This approach broadly complies with best practice as set out in the Licensing Framework Guidance material.</li> <li>▪ The Complaints Management Policy is provided on the CCNSW website. This document broadly sets out a range of matters into complaints management, including: <ul style="list-style-type: none"> <li>– How complaints will be handled</li> <li>– Timeframes</li> </ul> </li> <li>▪ The CCNSW website includes an online form that can be used to make complaints.</li> </ul>
Is monitoring and enforcing compliance best practice?	<ul style="list-style-type: none"> <li>▪ The approach to compliance and enforcement is yet to be finalised (See Chapter 6).</li> <li>▪ Compliance and enforcement activities will be risk-based</li> </ul>
Is the scheme subject to ongoing review?	<ul style="list-style-type: none"> <li>▪ The scheme will be reviewed after 5 years (see Chapter 8) in line with the automatic repeal of the regulations under the Subordinate Legislation Act.</li> <li>▪ Given the transition period, an earlier review is not practical.</li> </ul>

Source: IPART, *Reforming licensing in NSW: Review of licence rationale and design*, Regulation Review – Final Report, September 2014, p. 43, CIE.

### *Is the licensing scheme the best response?*

The Scheme is likely to be the best policy response to the issues raised in: the statutory review of the Cemeteries and Crematoria Act 2013 (The 11<sup>th</sup> Hour); and the IPART Review of the Costs and Pricing of Interment in NSW (see table C.5).

- To the extent that the costs and benefits could be quantified, the CBA suggests the benefits are likely to be broadly proportional to the costs.
- Furthermore, alternative approaches to regulation are not considered feasible.
  - A voluntary code would not address the issues raised in the statutory review.
  - The licensing requirements are largely a mechanism for imposing the conditions. In principle, these mandatory licensing conditions could be imposed through alternative regulatory approaches (such as a mandatory Code of Conduct). However, a mandatory Code of Practice is not possible under the Act.

### C.5 Is the licensing scheme the best response?

Question	Response
Does a preliminary assessment suggest licensing will result in a net benefit?	<ul style="list-style-type: none"> <li>■ The Interment Industry Scheme addresses many of the weaknesses with the current regulatory framework, highlighted in:               <ul style="list-style-type: none"> <li>– The statutory review of the Cemeteries and Crematoria Act 2013 (The 11<sup>th</sup> Hour); and</li> <li>– The IPART Review of the Costs and Pricing of Interment in NSW.</li> </ul> </li> <li>■ In particular, the statutory review found that core regulatory functions relating to the development of mandatory codes, licensing, compliance monitoring and enforcement have not been undertaken.</li> <li>■ In light of these findings, there is a prima facie case to develop a licensing scheme, although consistent with RIS requirements the scheme should be scrutinised through a formal cost-benefit analysis.</li> </ul>
Are there other alternative options that could deliver policy objectives?	<ul style="list-style-type: none"> <li>■ Non-regulatory approaches would not address the issues highlighted in the recent reviews.</li> <li>■ The licensing system is primarily a means of imposing mandatory licensing conditions.               <ul style="list-style-type: none"> <li>– In principle, these mandatory licensing conditions could be imposed through alternative regulatory approaches (such as a mandatory Code of Conduct) that could avoid the administrative burden associated with applying for and renewing a licence.</li> <li>– In 2021, CCNSW received legal advice that a mandatory Code of Practice was no longer possible under the Act.</li> </ul> </li> </ul>
Does a cost-benefit analysis show licensing is the optimal option?	<ul style="list-style-type: none"> <li>■ The CBA results suggests that the benefits of the Scheme are broadly proportional to the costs (to the extent that the costs and benefits were able to be quantified).</li> </ul>

Source: IPART, Reforming licensing in NSW: Review of licence rationale and design, Regulation Review – Final Report, September 2014, p. 43.



**THE CENTRE FOR INTERNATIONAL ECONOMICS**  
*www.TheCIE.com.au*