



Cemeteries and Crematoria Amendment Regulation 2017 (Part 4 of the *Cemeteries and Crematoria Act 2013*)

Better Regulation Statement

November 2017

The closing date for submissions is Friday 22 December 2017

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Exhibition of draft regulation, Better Regulation Statement and process for submissions

The public exhibition of the proposed Cemeteries and Crematoria Amendment Regulation 2017 and the Better Regulation Statement (BRS) provides interested stakeholders, including industry, key community and religious groups and the wider community with an opportunity for direct comment on the regulations to support the interment rights system under part 4 of the *Cemeteries and Crematoria Act 2013*.

The NSW Government requires a public exhibition period of at least 28 days for proposed regulations and better regulation statements. The timeline for the draft regulations and this BRS is shown below:

- completion of draft regulations and BRS—September 2017
- release of draft regulations and BRS for public consultation—24 November 2017
- end of public consultation period—22 December 2017

The draft regulations and BRS are accessible in a downloadable pdf version at: www.crownland.nsw.gov.au/crown_land/cemeteries

Printed copies can be obtained by telephoning 02 9741 4864.

How to make a submission

Interested persons or organisations are invited to submit a written comment on the proposed Cemeteries and Crematoria Amendment Regulation 2017 and BRS listed below:

Post

Draft Cemeteries and Crematoria Amendment Regulation 2017
and Better Regulation Statement consultation
c/o Cemeteries and Crematoria NSW
PO Box 6682
Silverwater NSW 1811

Email

ccnsw.info@cemeteries.nsw.gov.au

Fax

02 9741 4892

The closing date for submissions is Friday 22 December 2017

Specific provisions contained in the *Cemeteries and Crematoria Act 2013* are not the subject of the consultation process and will not be considered in this BRS. The BRS is focussed on the proclamation of part 4 of the Act and the content of the Cemeteries and Crematoria Amendment Regulation 2017 to support part 4.

What happens to submissions

Cemeteries and Crematoria NSW will review the submissions received by the closing date and consider any issues raised. The draft regulations may be amended in the light of comments raised in submissions.

Use of submissions and confidentiality

The Minister for Lands and Forestry will be advised of the subject of submissions and any recommendations arising which may warrant action.

Submissions will be publicly accessible. If you do not want your personal details or any part of your submission to be accessible, please indicate this clearly in your submission together with reasons for the restriction. Automatically generated confidentiality statements in emails for example, are not sufficient for this purpose. Even if you do not wish certain information to be published, there may be circumstances in which the government is required by law to release that information, for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*.

The content of this BRS is the responsibility of Cemeteries and Crematoria NSW. Nation Partners were engaged to assist with the development of the BRS particularly addressing the analysis of options and the economic and environmental aspects.

Purpose of the Better Regulation Statement (BRS)

The BRS is a mandated step by government and must be prepared for all significant and amending regulatory proposals. The BRS must first, document the analysis undertaken to apply the better regulation principles and second, be a succinct stand-alone document. The BRS is required to address seven key principles as below:

- 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, modernisation 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.

The structure of this BRS follows and provides a response to the seven principles.

November 2017

1. Introduction

Cemeteries and crematoria are critical community infrastructure that provide essential services to the people of NSW. They are important places for remembrance and recollection, and a source of cultural and environmental heritage. There are over 230 cemetery and crematorium operators in NSW providing interment services at 851 active cemeteries and 49 crematoria. Providers within NSW fall within four broad categories as follows:

- Crown trusts conduct approximately 34% of burials across NSW. In metropolitan Sydney, the proportion of burials by Crown trusts is much higher at 69%. Crown trusts conduct approximately 15% of all cremations in NSW.
- Local councils conduct approximately 49% of burials in NSW and 10% of cremations. A large proportion of council-operated cemeteries are closed or conduct 10 or fewer burials each year.
- Private operators manage approximately 16% of burials and 75% of cremations across NSW.
- Community operators conduct around 1% of burials and no cremations.

In 2012 the NSW Government commenced a program of reforms to bring a coordinated, strategic approach to management of the interment industry, to address a forecast shortage of burial space and to improve accessibility to the full range of interment options.

The *Cemeteries and Crematoria Act 2013* (the Act) was passed by the NSW Parliament and commenced on 24 October 2014. The Act included provision for the creation of an industry oversight body known as Cemeteries and Crematoria NSW (CCNSW), which is charged with implementing a coordinated, strategic approach to interment services across NSW.

The majority of the Act was proclaimed in 2014 and became law. Part 4, which covers the new interment rights regime and some related provisions, was not included. It was the intention that part 4 would be proclaimed following industry and consumer consultation, together with the development of appropriate regulations to give effect to the provisions of the Act. This BRS relates to the proclamation of part 4 and the provision of supporting regulations through the Cemeteries and Crematoria Amendment Regulation 2017.

Summary of part 4 provisions and the proposed regulation

The proclamation of part 4 and the commencement of the new regulation will:

- establish a simplified, consolidated and consistent regime of interment rights system for NSW across the industry covering public, private and community cemeteries
- provide strong consumer safeguards for interment right holders and mandate requirements to improve accountability and certainty
- introduce the option of renewable interment rights (RIRs) whereby consumers can purchase an interment right for 25 years which can be renewed up to a total of 99 years, enabling a lower cost structure to be offered by cemetery operators
- permit the initial period of 25 years for a renewable interment right to be varied where circumstances warrant, on application by a cemetery operator to CCNSW
- ensure full price disclosure and cost transparency for consumers when purchasing an interment right
- provide a cooling-off period for consumers who purchase an interment right that is not 'at need'
- improve the requirements for record keeping including additional information to be added to cemetery registers which will support transfers and bequeathing between family members

- provide a legislative basis for the bequeathing and transfer of an interment right
- ensure that there are safeguards for renewable rights holders before a gravesite can be reused at the expiration of a renewable interment right
- provide guidance to procedures to be used by heritage advisory committees established where renewable interment rights are offered by a cemetery operator.

2. Need for government action

Principle 1: The need for government action should be established

Action is required to standardise interment rights, increase transparency, facilitate innovation and simplify regulation across the industry. The need for government action is driven by inconsistent and dispersed regulation, inconsistent record keeping, and the need for sustainable solutions in response to a scarcity of land for cemetery purposes, particularly in the greater Sydney metropolitan area.

NSW operates a contractual system of burial licences, interment licences, grants and similar agreements that have operated since the colonial era. Within this system, interment rights on Crown lands are regulated differently to interment rights on other land, meaning the range of services and the ability to innovate is inconsistent across the market. The current regulatory environment also results in confusion among consumers.

CCNSW needs the ability to responsibly plan for the future in conjunction with cemetery operators, through access to reliable and timely data. While registers of individual interments are currently kept by operators, the practice has inconsistencies in the level of information recorded. Action is required to standardise record keeping and clarify interment rights across the sector for the benefit of both operators and consumers.

Annual deaths in NSW are predicted to double from the 2011 rates by the year 2051¹. A capacity and grave plot analysis undertaken by CCNSW in 2016 indicates that if there is no change to current cremation and grave occupancy rates, then cemetery capacity in greater Sydney will be exhausted between the years 2051 to 2056. This analysis includes an understanding that only two cemeteries in NSW currently offer RIRs. RIRs involve the purchase of a right to inter human remains for a defined period up to a maximum of 99 years, after which the interment site can be reused. RIRs are currently not permitted in Crown cemeteries.

In addition, research shows that people prefer to bury family and friends within a reasonable distance from their homes to enable regular visits². Given the scarcity of new land and increasing competition over land—use priorities in major metropolitan centres, better use of existing cemetery space is crucial to ensuring access to suitable interment options for all members of the community.

Negative effects stemming from the limited availability of grave plots include the pre-purchasing of burial plots only by those with sufficient financial means, and a reduction in timely, proximate and affordable interment options. Such negative impacts may be experienced disproportionately depending on geographic and cultural orientation.

¹ Cemeteries and Crematoria NSW, Activity Report 2014-15

² Cemeteries and Crematoria Bill 2013

3. Objective of government action

Principle 2: The objective of government action should be clear

Government objectives for the proposed regulatory action are to:

- protect existing interment rights granted under burial licences or similar terms, ensure the protection of future rights and ensure dignified and appropriate management of human remains in accordance with cultural and religious preferences
- standardise and simplify the interment rights system to allow for improved transparency and accessibility for all customers
- increase the sustainability of cemeteries and ensure flexible, affordable and proximate interment options for all members of the community
- ensure a simple, easy to understand compliance and regulatory system which enhances rights and protections for both cemetery operators and consumers.

4. Options assessment

Principle 3: The impact of government action should be properly understood

Principle 4: Government action should be effective and proportional

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

Options to achieve the government objectives have been considered, including continuation of the status quo. The relevant options are discussed below.

4.1 Option 1—Status Quo

Option 1 involves taking no further action to affect or cause change in the interment rights system and leaves the current system of burial licences and interment licences in place.

The NSW Parliament has already passed the *Cemeteries and Crematoria Act 2013*, however this option assumes that part 4 of the Act is not proclaimed, and there is no change to the *Cemeteries and Crematoria Regulation 2014*.

The *Crown Lands (General Reserves) By-Law 2006* and the *Public Health Regulation 2012* govern a range of matters relating respectively to burial licences and hours of burial, and requirements for record keeping and registers. Option 1 assumes that these other instruments remain in force, rather than being consolidated by part 4 of the Act. Option 1 therefore does not simplify, reform or consolidate existing regulation.

Through a separate reform and legislative program, under the *Crown Lands Management Act 2016*, the *Crown Lands (General Reserves) By Law 2006* will be repealed and hence the status quo option would require the existing cemeteries provisions in the by-law to be simply relocated to the existing *Cemeteries and Crematoria Regulation 2014* without change.

Part 3 of the Act provides for CCNSW to develop, approve and promote codes of practice for cemeteries and crematoria and report on adoption of those codes by the interment industry. In consultation with industry, CCNSW has already developed and finalised the *Industry Code of Practice – Interment Rights and General Services*. Option 1 assumes that industry will

adopt the code and that it will become mandatory under section 29 of the Act following five years of voluntary implementation.

Under this option, the code represents a combination of quasi-regulation and co-regulation approaches that seek to provide a consistent regime for management of cemeteries and crematoria, to implement a level of accountability within the sector and to improve transparency for consumers. Whilst some benefits may be achieved through implementation of the code, some elements that outline mandatory requirements relating to the management of interment rights would have no legal basis without proclamation of part 4 of the Act.

Option 1 will result in continuation of the inconsistent and complicated system of partial regulating various forms of burial licences across the various sectors of the interment industry. It does not allow Crown sectors of the industry to offer RIRs and therefore does not support the achievement of sustainability objectives, nor does it allow Crown trusts to provide equivalent services to private cemetery operators. The status quo also fails to standardise and legislate the collection and maintenance of information in registers.

Option 1 is not a proportional or effective response to the challenges faced by the interment industry. It will not greatly improve transparency and accessibility for customers and will not address cemetery sustainability constraints. Over time, it is likely that the continuation of the status quo will result in the ongoing reduction of proximal and affordable access to interment options, particularly within metropolitan areas.

The status quo does not achieve the government's objectives.

4.2 Option 2—proclaim part 4 of the Act

Option 2 involves proclamation of part 4 of the Act and the provision of regulations to support part 4 as detailed in the *Cemeteries and Crematoria Amendment Regulation 2017*, and full implementation of the *Industry Code of Practice—Interment Rights and General Services*. This option represents a co-regulation approach that seeks to share the responsibility for implementation between government and industry.

Upon commencement, part 4 will establish a simplified, consolidated and consistent regime of interment rights for NSW cemeteries and will result in the repeal of related provisions within the *Crown Lands (General Reserves) By-Law 2006* and the *Public Health Regulation 2012*, in alignment with principle 6 of better regulation.

In particular, part 3, divisions 2 and 3 of the *Crown Lands (General Reserves) By-Law 2006*, will be repealed. These divisions cover, for example, a range of matters relating to cemetery reserve trusts including planning and maintenance, renewal schemes, burial licences and hours of burial. These repealed aspects would be replaced by provisions of the *Cemeteries and Crematoria Act 2013* and associated regulations. Current requirements for a register of burials and cremations under the *Public Health Regulation 2012* will also be repealed as these are addressed under the *Cemeteries and Crematoria Act 2013*.

Part 4 will legislate a range of compliance requirements to provide accountability, transparency and certainty for all cemetery and crematoria operators and for consumers. It also provides that burial licences or other interment entitlements granted prior to the commencement of part 4 are protected for existing holders and recognised under the new system.

Part 4 provides the statutory framework for RIRs to be offered on an optional basis across NSW. Renewable interment involves the purchase of a right to inter human remains,

undisturbed for an initial period of 25 years, with the option of renewing the right for a period up to a total of 99 years. These renewable rights are currently offered in two cemeteries in NSW but are not permitted in Crown cemeteries. Part 4 allows for renewable rights to be offered on a consistent basis across all sectors, providing the greatest opportunity to extend the life of existing cemeteries. The success of the RIR regime will be dependent on the uptake of RIRs by individual cemetery operators and by consumers.

The proposed regulations to accompany part 4 will also allow for a variation of the initial term of 25 years for a renewable interment right on application by a cemetery operator to CCNSW where circumstance warrant such a variation. The maximum term of a RIR will remain unchanged at 99 years.

The legislation establishes rules and conditions for renewable rights while also providing flexibility for operators to market renewable rights competitively. When a renewable interment right expires and is not renewed, the cemetery operator may re-use the related interment site by offering a new right. This can be done only after a two-year grace period has expired, reasonable efforts have been made to contact persons listed in the register, and the intention to re-use the site has been published.

Cemetery operators intending to re-use burial sites are required to treat human remains with dignity and respect and in accordance with any applicable religious or cultural practices. Before an interment site is re-used the cemetery operator must ensure that any bodily remains are placed in an ossuary box and re-interred or placed in an ossuary house. Cremated remains must be returned to the holder of the right or scattered in the cemetery. Part 4 requires the establishment of heritage advisory committees (HACs) to advise on the significance of any memorials in the context of renewable interment rights.

CCNSW has already developed the *Industry Code of Practice—Interment Rights and General Services* in consultation with cemetery operators to assist industry and consumers and to underpin the effective implementation of the interment rights system in NSW. It is anticipated that CCNSW will incur only minor costs relating to the implementation of part 4, the associated regulations and the code of practice. Cemetery operators will be required to amend some administrative and compliance arrangements, with minor associated costs.

Proclamation of part 4 will act to protect interment rights, ensure dignified management of human remains and improve transparency, accessibility and sustainability of the sector. In achieving these objectives, option 2 does not impose significant or unnecessary costs on government or industry and retains existing interment rights. The scope of the change associated with option 2 is proportional to the constraints and challenges currently faced by the interment industry, in alignment with principle 4 of better regulation.

Option 2 would fully achieve the government's objectives, and is the preferred option.

5. Costs and benefits

An assessment of the economic, social and environmental impacts of the preferred option is provided in this section. The assessment considers the types of potential economic costs and benefits, covering direct and indirect impacts. It also considers the distribution of the impacts and the outcomes for the state.

The level of participation by the sector in the voluntary renewable interment scheme is difficult to project with any certainty during the transitional phase in the initial years, as this depends on a range of dynamic factors including current consumer preferences, awareness, regional mortality rates and the operational lifecycle of individual cemetery facilities. It is also

inherently difficult to extrapolate demand and operational outcomes for the sector due to the limited baseline of RIRs provided by having only two cemeteries offering RIRS under the existing regime.

From a timing perspective, the assessment recognises that impacts are likely to be experienced in the long term (i.e. deferred impacts) as the supply of burial plots reduces. The impacts are therefore likely to be of an incremental or marginal scale over the coming decade, and are likely to be concentrated at selected metropolitan cemeteries facing land constraints. Over the next thirty to forty years however, it is likely that the impacts of reform will become more significant given the ageing population and a significant reduction in the availability of burial plots.

5.1 Businesses

Compliance costs

Under part 4, there will be short-term, one-off costs to operators associated with changes to the manner in which they maintain records and registers, and changes to communication materials to ensure consistency with the Act. For some council operators, the changes will also require close communication with funeral directors and other funeral service providers, who sometimes manage record collection and serve as the intermediary between clients and councils (as cemetery operators).

These costs are not expected to be substantive across the sector as it is anticipated that the non-Crown sector will be providing information they would already collect for their own business planning activities. Administrative costs for Crown cemeteries may increase marginally if operators are not meeting current reporting requirements.

Where cemeteries elect to offer RIRs, there are additional costs to be borne by the operators. Some costs such as changes to administrative procedures and training of staff will be experienced in the short term, whilst other costs associated with Heritage Advisory Committees are likely to be incurred at the time of revocation of RIRs, which for most cemetery operators will be at least 25 years into the future.

It is expected that these incremental operational costs associated with RIRs will be accounted for through the service pricing structure and potentially passed on to consumers. This would represent a distributory impact from an economic perspective.

Overall, the cost impacts for the industry (and commensurately for consumers) under part 4 are not anticipated to be substantive.

Competition impacts

Introduction of the RIR regime will allow Crown trusts to offer the same interment options as private operators. This greater level of competition from the large number of Crown-operated cemeteries will help to normalise pricing across the various sectors, providing benefits to consumers.

Benefits

Following the implementation of part 4, existing and new cemetery operators will benefit directly from:

- flexibility to offer new service solutions under the renewable interment regime, enabling them to better respond to emerging capacity constraints and/or changes in future consumer demand or preferences
- potential for increasing average occupancy levels and extending the ultimate asset lifespan for current and future facilities

- improved capacity to reinvest in facilities through the operational efficiencies and/or additional income gained through re-use of plots.

Analysis by CCNSW in 2015 indicated an average occupancy rate of 1.45 for burials across metropolitan Sydney. At this rate, and all else equal, cemetery capacity in greater Sydney is projected to be exhausted by early 2050. Renewable interments, in allowing for a higher number of burials per grave plot, will contribute towards incremental increases in occupancy rates through time and extend aggregate capacity of metropolitan facilities beyond the decade commencing in 2050.

The provision of RIRs is considered to be of greater significance in the metropolitan catchments that are facing imminent supply constraints, rather than in regional areas where land use constraints are not as pronounced.

5.2 Consumers

Costs

Initially consumers are not expected to incur additional costs from the introduction of part 4. Indirect costs could be felt over time through industry cost recovery practices relating to the management of RIRs. It is anticipated that consumers will experience a net benefit from the combined effects of more affordable burial services relative to perpetual interments and the improved information flow and market competition.

Benefits

Renewable interment would provide a lower cost alternative to the perpetual interments currently offered. Direct benefits would therefore be derived for customers who are able to take up the renewable interment services. The extent of benefits is potentially limited to a small proportion of the population of NSW as the adoption of RIRs will be dependent on a range of factors including religious or cultural preferences, the location and timing of when operators elect to offer the service, and current gaps in consumer understanding of the RIRs.

Population projections from the NSW Department of Planning and Environment show that the population of NSW is expected to grow by 2.71 million between 2011 and 2036. As the state's population grows, ages and becomes more densely concentrated in major metropolitan centres, sustainable burial practices such as RIRs will be essential elements in ensuring equitable access to the full range of interment options for all NSW citizens.³

The benefit of improved access to proximal sites at the time of need would limit the need for some consumers to either pre-purchase plots well in advance of need, or to consider interment at a more distant location.

More importantly, all consumers would benefit indirectly under part 4 through improved choice over a full range of interment services. Part 4 extends the ability of the sector to offer RIRs, which helps to reduce gaps in market competition and consumer information, and is expected to lead to more cost-effective services to consumers. The regulations will also provide an additional protection for consumers through provision of a cooling-off period for interment rights that are not purchased 'at need', and through a requirement for the full disclosure of all applicable fees and charges to consumers.

Growth in renewable interment offerings across catchments would help raise consumer awareness. In turn, this awareness will strengthen the capability of the sector as a whole to drive the service innovation needed to manage future growth in demand.

³ Legislative Assembly Hansard – 24 October 2013

5.3 Government

Administrative costs

The collation of a consistent and reliable dataset from all industry sectors will result in minor incremental costs for government (through CCNSW) including ongoing costs of information collation and stakeholder engagement, and ongoing compliance monitoring. Over time, these costs are anticipated to be offset by the efficiencies gained through managing a more standardised regulatory regime, receiving consistent and compliant information from operators, and better resource planning from improved information on consumer preferences.

Benefits

The reform process to date, recognises the net benefit of a scalable regulatory approach and has culminated in the proclamation of the majority of the Act, with the exception of part 4. The implementation of part 4 is aligned with this scalable approach and will help ensure the full benefits of the reform process are secured.

Through enabling the provision of RIRs and implementing a comprehensive evidence-based strategy (including information tools) under part 4, CCNSW would facilitate and strengthen the ability of the state's interment industry to plan strategically, sustainably and collaboratively for the needs of all local communities including future generations.

5.4 Community

Social benefits

Part 4 is based on the important principles of choice and non-retrospectivity. Perpetual interment will continue to be available to everyone and there will be no impact on existing perpetual rights.

Part 4 will act to increase the availability of affordable, accessible and appropriate interment options for all members of the community. Simplification of interment rights and enhanced transparency will allow consistent consumer protection and better public understanding of the interment options, resulting in positive social outcomes.

RIRs will not be permitted in cemetery portions where perpetual interment is required on religious or cultural grounds. Strong protections are legislated to ensure appropriate and dignified treatment of human remains as well as the maintenance of heritage values where cemeteries do offer RIRs. In this sense, the social impacts of the RIR regime are expected to be neutral.

In some individual situations, the removal of human remains upon expiry of a renewable interment right may cause distress to the family and friends of the deceased. It is expected that the social impacts can be managed through the provision of transparent information at the time of offering the renewable right, the offer of a cooling-off period (where the interment site is not needed immediately), and the sensitive management of the renewal process by the cemetery operator.

Environmental benefits

Implementation of part 4, when compared to the status quo, will allow for the industry-wide adoption of RIRs. RIRs will result in a net positive environmental impact as the reuse of plots results in increased lifespans of current cemeteries and reduces the average physical footprint of interment. RIRs could also enhance the operational sustainability of new cemeteries as greater proportions of plots are offered on a renewable basis.

Part 4 will not result in any substantive direct environmental impacts on air quality, climate, pollution or visual amenity. Any net change in environmental impacts created by the interment industry is likely to be marginal overall.

6. Preferred option

The preferred option is option 2, being proclamation of part 4 of the Act and various requirements as set out in the Cemeteries and Crematoria Amendment Regulation 2017.

Option 2 protects current rights, offers renewable rights across all sectors of the industry, and allows CCNSW to develop mandatory and non-mandatory codes of practice to manage and control implementation of the new regime. It fosters greater uptake of renewable rights and provides the greatest opportunity to extend the life of existing cemeteries. The change imposed by option 2 is effective and proportional to the scale and significance of the challenges faced by the interment industry.

The preferred option reforms, simplifies and consolidates the regulatory regime in accordance with government commitments. Implementation of part 4 also provides positive social and environmental outcomes through the increased availability of affordable and accessible interment options.

The proposed provisions of the Cemeteries and Crematoria Amendment Regulation 2017, as summarised below, will provide procedural support to the application of part 4,

- Specific time periods relating to interment rights will be prescribed, including a:
 - 30 day cooling-off period for interment right purchases, where there is no immediate need to utilise the right ('at need')
 - variation, where required, in the initial term of a renewable interment right to be greater than 25 years, subject to approval by CCNSW
 - maximum period of 12 months for an executor of an estate to notify the cemetery operator of the death of an interment right holder who has bequeathed those rights.
- Particular administrative practices for cemetery operators relating to individual interments will be specified, including:
 - the procedural steps to be taken by an operator prior to using a renewable interment site
 - disclosure of all costs, fees and charges associated with an interment right.
 - The reasonable steps to be taken to inform the holder of a renewable right regarding expiry of that right
 - the process which operators must follow before a memorial can be removed from an expired renewable interment right.
- Broader administrative procedures will be required, including:
 - conditions for the surrender of a cemetery register to CCNSW
 - requirements for the establishment and operation of heritage advisory committees in relation to renewable interment rights
 - transitional provisions relating to cemetery renewal schemes which have not been completed prior to proclamation of part 4, and provisions relating to the Crown Lands (General Reserves) By Law 2006.

The *Industry Code of Practice—Interment Rights and General Services* developed in consultation with cemetery operators will both assist industry and consumers and underpin the effective implementation of the interment rights system in NSW.

Part 4 of the Act provides the ability for CCNSW to publish template forms to be used by cemetery operators for record keeping in accordance with part 4. This will enable a greater consistency and standardisation of information and record keeping across the industry.

7. Stakeholder consultation

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

The CCNSW board has undertaken significant preliminary industry and community consultation on the commencement of part 4 of the Act and the possible content of regulations supporting the Act.

An industry consultative group has been formed with membership of all key segments in the interment sector including the Crown cemetery trusts, local government representatives, private sector cemeteries and crematoria, and funeral directors.

This consultative group is chaired by a CCNSW board member and has provided operational advice and assistance for the implementation of the interment rights system under part 4. A smaller industry working group was established to provide assistance on specific key issues also related to part 4. Additional local government representation was added to the membership of the working group due to the size of the local government sector in the industry.

A voluntary industry code of practice has been developed with strong support from the Industry Consultative Group including suggestions from operators as to the content which should be included. The draft document was also circulated through the industry association, the Cemeteries and Crematoria Association NSW, and to the Australian Funeral Directors Association. In addition a range of draft guidelines for industry has been developed with the Industry Consultative Group covering interment rights, cemetery registers, heritage advisory committees, record keeping and a guide to common terms used in the sector.

A community and consumer consultative group has also been established by the board of CCNSW following direct approaches to religious and community organisations, targeted advertising and public notices. This group consists of representatives of major faith and community groups and related organisations with an interest in the cemetery sector. The group is chaired by a CCNSW board member and has reviewed and provided advice on a range of material particularly the consumer information that will be published in support of the new interment rights system for NSW.

A short draft discussion paper on part 4 outlining the various proposed regulatory provisions that could be included in an amended cemeteries and crematoria regulation was circulated to the two consultative groups together with an invitation to propose subjects for inclusion. The discussion paper was intended as a precursor to inform the development of a public better regulation statement. The content of the draft regulations closely follows the various matters canvassed in the discussion paper. No matters of concern were raised in respect of the proposed draft regulatory provisions that were canvassed.

During 2016 Woolcott Research was commissioned by CCNSW to engage in purpose-specific consumer research to determine the level of understanding and knowledge of interment rights and the information which should be included in a consumer guide and for consumer materials. The project included sixty-six in-depth interviews with persons from a diverse range of religious beliefs and ethnic backgrounds. A further 1,000 respondents were engaged via a filtered online survey with additional research questions. The findings from the project were conveyed to the two consultative groups and have been incorporated into the consumer information material for public release and used to inform the drafting of the regulations for part 4.

8. Evaluation and review

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

On the proclamation of part 4 of the Act, section 145 in part 8 of the Act will also be proclaimed, which provides for an investigation into the cost and pricing of interment rights by the Independent Pricing and Regulatory Tribunal (IPART).

The Act requires that the IPART investigation must have regard to:

- the relativity of costs and pricing factors for perpetual and renewable interment rights
- full-cost pricing of perpetual interment rights, including provision for the perpetual care of interment sites and cemeteries.

Section 145 also provides for the IPART investigation to include a review of competition, cost and pricing factors within the funeral industry.

A requirement of the Act is that a report of the investigation into costs and pricing is to be provided to the Minister by IPART within three years after the commencement of section 145. This review by IPART will provide a first tier review of the impact of various requirements of the Act and regulation on costs, pricing and information disclosure in the industry.

In accordance with the requirements of the *Subordinate Legislation Act 1989* monitoring of the implementation of the interment rights system under part 4 will be performed by CCNSW with a biennial report to the minister to be provided on the anniversary date of the commencement of the legislation. This report will include information based on:

- surveying cemetery operators in respect of implementing part 4 provisions
- commenting on the progress to date of the implementation
- identifying any difficulties or implementation issues that may have occurred
- proposing any amendments to the regulations that may be required.

As required by the *Subordinate Legislation Act 1989*, a formal review will be conducted five years after the commencement of part 4 of the *Cemeteries and Crematoria Act 2013*.