

MCB Submission: Review of the *Cemeteries Act 1986 (WA)* and the *Cremation Act 1929 (WA)*

The Metropolitan Cemeteries Board (MCB) is grateful for the opportunity to participate in the public consultation phase of the Cemeteries and Cremation Act Review and as such releases a public position statement.

The MCB is a self-funded statutory authority of the Government of Western Australia with administrative responsibilities under the *Cemeteries Act 1986 (WA)*, *Cremation Act 1929 (WA)*, *Metropolitan Cemeteries Board By-law 1992 (MCB By-law)* and *Cremation Regulations 1954 (WA)*. The MCB is responsible for managing 7 public cemetery sites across the Perth metropolitan region: Karrakatta, Fremantle, Midland, and Guildford cemeteries; Pinnaroo Valley and Rockingham Regional Memorial Parks; and Gnangara Aboriginal cemetery. Of these cemetery sites, the MCB conducts crematoria at Karrakatta Cemetery, Pinnaroo Valley Memorial Park, Fremantle Cemetery and Rockingham Regional Memorial Park. Within these 4 crematoria there are currently 9 cremators, with an additional cremator soon to be commissioned at Pinnaroo Valley Memorial Park.

The MCB operates at no cost to the government using commercial and government business principles; maintains sustainable cemetery and crematoria infrastructure through the setting of fees and charges; and provides its own funding requirements, including acquiring sufficient land for establishing new cemeteries and crematoria to meet future community needs. The MCB works with government planning departments to ensure long-term sustainable cemeteries and crematoria within the social infrastructure for new communities.

The MCB is a charitable entity and provides publicly run not-for-profit charitable services to the metropolitan area as well as some services to the local regions and far northern regions of the state. All MCB crematoria are situated within public cemetery grounds and operated by the MCB.

The MCB provides sensitive and dignified facilities and services to meet the needs of the deceased and bereaved, including cremation, burial, entombment, memorialisation, and Chapel services. The MCB respects and supports cultural diversity by complying with public sector standards, engaging with community stakeholder groups, and maintaining faith-based funerals. The MCB also supports various local businesses and contractors.

In 2022/23, the MCB conducted 14,288 funerals, of which there were 2,424 burials (including entombments) and 11,864 cremations. The MCB conducts approximately 80% of the state's funeral services.

In addition to burials and cremations, the MCB provides memorialisation services to families through the placement (burial) of ashes with garden plaques. The MCB is the custodian of nearly 300,000 burials and approximately 160,000 memorials on land specifically set aside for that purpose and regulated under the Cemeteries and Cremation Acts, and at June 2022, it has performed approximately 358,000 cremations since the first cremator was placed at Karrakatta Cemetery in 1937.

Karrakatta Cemetery was first open for burials in 1899, and Fremantle Cemetery in 1898. Midland and Guildford cemeteries were established in the late 1800s, whereas Pinnaroo Valley Memorial Park opened for burials in 1978 and Rockingham Regional Memorial Park in 2007, with Gnangara Aboriginal cemetery vested to the MCB in 2019.

The MCB has considered the policy paper and the proposed legislative reforms of the key issues presented. The MCB states its position on these issues and comments on matters in general terms accordingly, with recommendations for consideration for any new guiding legislation.

Executive Summary

With respect to the public consultation paper and the public consultation's identified key topics the MCB submits the following summary and the Board's position on each issue.

Topic 1: Legislation

The MCB supports the reform proposal Option 2, to combine the content of the *Cremation Act 1929 (WA)* and the *Cemeteries Act 1986 (WA)* into a single Act.

The MCB submits that a new combined Act for the regulation of burials and cremations and the associated regulations is established for the benefit of the community of Western Australia (WA). The Board contends that both the Cemeteries Act and the Cremation Act in their current form are inadequate to meet contemporary cemetery management practices and restrict best practice in terms of providing quality community services. They have failed to keep pace with the change that has occurred within the funeral industry and the needs of cemetery boards and local governments administering cemeteries under their control.

There is occasion to progress a more contemporary approach to the administration and management of cemeteries in WA with consideration paid to replacing the two Acts under separate administration portfolios under one statewide administration; account for best practice by paying attention to safety and evolving community and industry requirements; reduce red tape and create efficiencies; use appropriate and non-discriminatory language; and improve the legal framework, including clarification of the powers of a cemetery authority while maintaining the ability to deal with minor and local issues as policy initiatives.

The MCB considers the most appropriate State Government portfolio to be responsible for administering the Act would be Local Government as cemeteries are managed by both Boards and local government authorities across the state. The MCB recommends that the Department of Health maintains good communications and guidance regarding the public health aspect of the industry, oversight of Medical Referees (or experienced General Practitioners) as the case may be, and the issue of permits should the new Act retain that current process or similar.

The Board submits that with the review of the relevant Acts, efficiencies may be realised with respect to:

- Financial provisions, including the setting of fees and charges with greater flexibility to controlling discretionary income.
- Clarity of powers and responsibilities of a cemetery authority with respect to administration and management of a cemetery.
- Recognition of community needs including cultural practices and rites.
- Work health and safety for visitors and those performing tasks within a cemetery.
- The Board's authority to intervene whereby there is a potential work health and safety issue.
- Provisions for allowing a cemetery authority to perform the functions of the Act.

Whereas the current Cemeteries Act has provision to set regulations, the MCB suggests that regulations for burials would in all probability replace a large part of the cemetery by-laws adopted under the existing Cemeteries Act and that there remains the ability for cemetery authorities to make local laws to maintain local community needs and the sustainable running of that cemetery.

Recommendations

The MCB suggests statewide regulations be created for both cremations and burials with provision for review at 5 years. The MCB recommends regulations be created for the following aspects:

- Administration and management of burials including standards for coffins and caskets, exhumations, and lift and deepen.
- Administration and management of the cremation of human remains.
- Conduct of a funeral, including times set aside for funerals and who can conduct a funeral, and authorisation for and administration of cremation and burial.
- Conditions of issue of licence for funeral directors and monumental masons and the establishment of a single licensing authority.
- Schedules for forms.
- Infringements and penalties.

Topic 2: Alternative Methods for the Disposal of Human Remains

Topic 2A: Alternative Methods for the Disposal of Human Remains –Burial

Issue 2A.1: The MCB supports the proposal for legislative reform Option 2, to allow for alternative methods of disposal of dead human remains – burials, and to include a definition recognising traditional burials and alternative burials such as entombment or burial in a vault, vertical burials, Aboriginal customary burials, natural burials and burials of other faiths, with the provision for the cemetery authority to decide if that service can be delivered with consideration to the viable management of the cemetery.

Issue 2A.2: The MCB supports legislative amendment Option 2, to provide for requirements regarding coffins and caskets such as materials, structure, identification name plates, safety standards, environmental impacts and contents of coffins.

The current alternative methods of burial already in practice in WA includes natural burials and burials in a mausoleum (entombment). Customary burials such as Aboriginal and faith-based burials are also widely practiced within the terms of the current framework. The MCB has dealt specifically with matters such as natural burials, entombment and ashes burials, including the specification of graves, and the specification, identification and safety of coffins and caskets under the MCB By-law and policy.

The Board maintains that the definitions of alternative methods of burial should not be too prescriptive and remain respectful, and that cemetery authorities while having the ability to offer alternative methods of disposal and the requirements to set aside faith-based areas of burial land, are not obliged to deliver that service if, according to cemetery management, that service is not viable. Rather, negotiation can be undertaken with consideration to maintaining viable management of the cemetery.

Topic 2B: Alternative Methods for the Disposal of Human Remains – Cremation

Issue 2B.1: The MCB supports the reform legislation Option 2, to provide a definition for cremation and for alternative methods of cremation to be broadly defined to accommodate future methods to be prescribed in the regulations and the ability to review the regulations as required for future alternative methods with the provision for the cemetery authority to decide if or how that service be delivered.

Issue 2B.2: The MCB supports the proposed legislation Option 2, to regulate how a crematorium should dispose of unclaimed ashes where after a certain period of time the ashes remain unclaimed and notice requirements have been met.

Issue 2B.3: The MCB supports amendment Option 2, to allow crematoria to provide dual or multiple cremations and to provide a definition of such giving rise to the lawful nature of multiple cremations; however, legislation should allow limited discretionary approval for dual or multiple cremations, such as for stillborn twins.

While the Board maintains that the definition of alternative methods of disposal for the reduction of a dead body to ashes should be not too prescriptive, a provision would allow for the emergence of new technologies and give surety to cemetery operators regarding the lawful method of disposal relating to the reduction of a dead body to ashes and to the community regarding requirements and acceptable practices. The Board submits that practices of alternative methods of cremation must be per a crematorium and undertaken within a public cemetery to ensure proper regulation and practices and that the cemetery authority has the ability to consider the viability of the service and cemetery management.

The MCB considers the need for the Department of Health to ensure continued oversight of the public health aspect of methods of disposal and that with any possible alternative methods of disposal, they should keep the cemetery authority informed of any risks.

The Board submits that with respect to the regulation of unclaimed ashes, there are clear timeframes and methods for the collection or placement of ashes, the process of returning ashes to the crematorium after collection, and the nomination of an agent to act on instructions of an authorised person.

In the Board's experience, due care must be taken with the formalisation of multiple cremations as a standard practice due to the ethical considerations involved. Due contemplation is required regarding what grounds authority would be given for such a practice; normal practice is that each dead body is cremated individually.

Topic 3: Cemetery Redevelopment

Issue 3A.1: The MCB supports the proposed legislative reform Option 1, to retain the current Ministerial approval process in legislation with the ability for a cemetery authority to continue to develop its own policy. The MCB does not agree with the contention that there is a need for strengthening the effectiveness of public consultation as proposed in the legislative reform.

Issue 3B.1: The MCB supports the proposed legislative reform proposal Option 1, to retain the current status quo for the Karrakatta Cemetery redevelopment scheme to maintain the aesthetics, safety and functionality of the cemetery. The MCB supports the community's view to continue to offer Karrakatta Cemetery as a place for new burials. The MCB undertakes a practice of continual review of its redevelopment scheme where constructive feedback is invited and received from those directly affected by the program.

The MCB submits that a provision relating to cemetery redevelopment is maintained in the new Act. The provision to conduct cemetery redevelopment is a vital strategy in the long-term sustainability of cemeteries and their management and planning for future cemetery services. It is necessary that Boards plan for the future to ensure that they maintain sufficient capacity and viability, which is an outcome responsible redevelopment schemes set out to achieve.

The MCB is unquestionably a leader in responsible cemetery sustainability management practices and has been cited as an example of best practice. The issue of cemetery land shortages and sustainable practices has been a recent topic of discussion and investigation across Australia.

The Karrakatta Cemetery renewal program, (as a form of the redevelopment scheme legislated under the Cemeteries Act) manages land available for new burials, amenity and safety and the ability for new generations to be buried in this historic location. The Board maintains all registers, maps and plans of original burials, and headstones that are safe and viable are retained.

The Board continues to evolve its methods of cemetery renewal through consultation with those members of the community directly affected by the program and with the broader community through public awareness campaigns. The Board is open to receiving constructive feedback on refining the redevelopment process.

Further to public consultation, the Board engages with various consultants such as the Office of Australian War Graves and historians. The Board is not supportive of consultation with various interest groups prior to or during redevelopment proposals and maintains its obligations to maintain both social and operational deliberations to manage the sustainability of the cemetery.

Topic 4: Burials Outside Proclaimed Cemeteries

Issue 4A.1: The MCB considers the proposed legislative reform Option 2 in principle. The MCB agrees with the proposal to consolidate information regarding burials outside proclaimed cemeteries into one register to be held by a suitable state agency such as the Department of Local Government, Sport and Cultural Industries (DLGSC).

Issue 4A.2: The MCB is supportive of the proposal Option 2, to introduce a policy requiring burials outside proclaimed cemeteries to be recorded on the Certificate of Title. The Board supports the notion of a consistent approach to the recording of burial details; however, it notes the possible costs associated with lodging a notification with the Registrar of Titles.

The Board suggests that should the proposed policy be an effective measure, this could be incorporated into the regulations by amendment at a later date.

Issue 4B.1: The MCB supports the proposed legislative reform Option 2, whereby a senior officer at the DLGSC is responsible for approving burials outside proclaimed cemeteries, with the right of review by the Minister.

The Board submits that legislative reform regarding keeping burial records outside proclaimed cemeteries should be concerned with the requirement for proper records to be maintained, including the disposal method of cremated remains, as is the practice for proclaimed cemeteries such as the MCB.

The MCB is aware of the difficulties experienced with identifying existing burials and the nature of records of burials outside proclaimed cemeteries, which are held by various entities such as shires, landholders, trusts and organisations. The MCB considers that to create and maintain a centralised register of burial records outside proclaimed cemeteries while a worthy enterprise, is an extensive undertaking requiring dedicated resources to research and combine record information and then to maintain such a register.

The Board considers that the DLGSC should continue to manage the approval process as the organisation best positioned to obtain the relevant authorities, consents, and permissions, and that a senior officer be responsible for approving burials to create a more efficient and streamlined process; however, the Minister has the right to review with that review as final.

Topic 5: Licensing of Funeral Directors and Monumental Masons

Issue 5A.1: The MCB's position whereby the Cemeteries Act requires all funeral directors to be licensed by way of a funeral director's licence in relation to a particular cemetery (with an annual licence issued by that cemetery authority) or a single funeral permit to hold a particular funeral supports Option 2, to replace the current licensing arrangement with a single licensing system that includes a centralised register, which would allow funeral directors to work at all cemeteries in WA. Members of the public can determine from this register, the names of funeral directors who hold a licence to conduct a funeral at a cemetery.

Issue 5B.1: The MCB's position regarding licensing of monumental masons supports Option 2, to replace the current licensing arrangement with a single licensing system for monumental masons, which would allow monumental masons to work at all cemeteries in WA. Licences would be issued by a central licensing authority. A condition of the licence would be compliance with a code of conduct. Members of the public would have access to this list of licensed monumental masons.

Funeral directors and monumental masons, although subject to other and non-cemetery specific legislation such as health and consumer law, are largely an unregulated industry. The provision for licensing funeral directors under the current statewide Cemeteries Act allows the cemetery authority some oversight of the industry and to meet compliance requirements, and provision for a licensing scheme for monumental masons has been included in the MCB By-law for the metropolitan area.

Self-regulation of the funeral industry is primarily through the Australian Funeral Directors Association (AFDA), although not all funeral directors are members of this association and there is no association for monumental masons. As a result, there are inconsistencies in standards and administration of licences across the state, which is both cumbersome and unequal for operators and can pose significant risks to the community.

A centralised licensing authority would maintain acceptable and consistent industry standards statewide and provide efficiencies for industry operators and certainties to the community.

The MCB's view is that licences set a good governance regime for the industry by maintaining industry standards and minimising risks to the community and government. The MCB's practice is that a Conditions of Issue of Licence is applied whereby parties agree to standards of operation, have appropriate facilities and expertise, and are subject to a Code of Conduct.

Topic 6: Cremation Services in Western Australia

Issue 6.1: The MCB unequivocally supports the reform option that cremations will continue to be operated by publicly owned crematoria under public ownership through the State Government and administered by cemetery boards. The MCB submits that crematoria placed under the control of the government and on publicly owned cemetery Crown land continues to be in the public interest.

The Board **does not** support the current provision under section 4(1)(b) of the Cremation Act, which allows the Governor to grant a licence to an incorporated association to operate a crematorium, and contends that this legislative provision be removed so that privately operated crematoria are not able to operate in WA, as this is not required.

The provision of cremation services to the public of WA is a sensitive and respectful undertaking requiring accountable and transparent operations.

The MCB is highly experienced in the operation of crematoria, with the first cremation at Karrakatta Cemetery in 1937. The MCB is now responsible for managing 7 public crematoria with multiple cremators across the Metropolitan region. Cremation services are also delivered for statewide, interstate and repatriation funerals.

The MCB submits that the new Act should clearly and unequivocally provide only for crematoria to be licensed to public cemetery authorities constituted under that Act.

The MCB contends that it is not in the public interest for private crematorium operators to be granted a crematorium licence and operate and use a private crematorium as the costs to the Western Australian community would far outweigh any benefits gained. The impact on the state's finances would be significant, and this impact would then be passed onto the wider community (taxpayers) and disproportionate costs could be passed on to other community users such as those who require burials as a tenet to their faith.

Allowing private entities to operate without sufficient regulation can create private monopolies that raise prices (penetration pricing and unrestricted setting of fees), reduce efficiency (cut corners to effect profits) and harm the economy (a fragmented approach to industry services in the eastern states has resulted in the creation of a whole new government agency to oversee cemeteries and crematoria, a cost borne by the state government with a flow-on effect to the community).

Public crematorium operators operate on a cost recovery basis and apply revenue to further cemetery services and facilities rather than activities based solely on a commercial footing, with transparent fees and charges set with oversight of government and as part of the state's budget process.

Public crematoria are highly regulated in WA and maintain respectful and dignified cremation services. Regulation concerns include granting of a crematorium licence, inspection regimes, standards of operation and equipment (including environmental), administration and recordkeeping standards, licensing of funeral directors, management of public registers, disposal of ashes and environmental standards.

As part of the state's strategic direction, the MCB works with government planning departments to ensure crematoria are included respectfully within the community social infrastructure. The MCB has sufficient capacity to meet the cremation needs of the local and broader community now and well into the future.

The MCB is currently undergoing a major upgrade to all cremator units and ancillary equipment to state-of-the-art safe, environmental, sustainable, and cost-efficient units. The new cremators are fully automated with advanced filter technology and continual emissions control, which will keep energy consumption as low as possible.

Topic 7: Consistency of Forms and Fees

Issue 7A.1: The MCB supports the proposal Option 2, to introduce prescribed forms in legislation as a minimum requirement and allow cemetery authorities to develop their own versions including supporting documentation.

Issue 7B.1: The MCB supports legislative reform Option 1, whereby the existing cremation forms prescribed under the Cremation Act within the regulations are retained and amended for the new Act.

Issue 7C.1: The MCB supports legislative reform Option 1, that cemetery authorities have the autonomy to determine their own fees, except where a central licensing regime is considered in the Review and standardised fees may be considered.

With consistent forms across the state, the administrative burden for the public, cemetery operators and service providers would be reduced. With proper amendments, there is an opportunity to preserve and protect all parties throughout the process of arranging and conducting a funeral and erecting a memorial.

The Board considers that the current practice of authorising a cremation is, in principle, sound and supports the continuation of the existing regulation forms with the ability to make use of a digital environment. The Board considers the introduction of forms similar to those contained in the MCB By-law to be worthwhile, such as the application form to conduct a burial or cremation.

The MCB supports the current practice whereby a cemetery authority continues to set its own core and essential services fees (burial and cremation) in the Government Gazette according to the proper management of the cemetery, but with the ability to vary discretionary charges from time to time without the need for gazettal to meet community demand for various products and services. The community therefore has assurances regarding the proper charges for cemetery services, and the pricing is reviewed annually.

Conclusion

As the major cemetery management authority in Western Australia, the Board will acknowledge all opportunities to assist with the legislative reform because of this inquiry and is available to assist further with cemetery administration and operational advice during future phases of the Review.
