

Perpetual Maintenance Funds in NSW

1 Introduction

If recommendations contained in the 11th Hour – Solving Sydney’s Cemetery Crisis Report (**Report**) are adopted in New South Wales (**NSW**), cemetery operators in NSW will be required by the *Cemeteries and Crematoria Act 2013* (NSW) to sink billions of dollars into a perpetual maintenance fund to maintain burial plots for the dead over the coming decades.¹

According to the Report, the billions of dollars represent funds that will cover maintenance of burial sites sold in the past and burial sites that will be sold in the future.

2 Issue

Recommendation 9.5 in the Report provides those cemetery operators:

- (a) conducting more than 50 bodily interments in new perpetual interment sites per year; or
- (b) managing a cemetery with more than 40,000 bodily interment sites; or
- (c) which are listed on the NSW Heritage Register;

(Licensed Cemetery Operators) are to maintain and contribute to a perpetual maintenance fund to provide for the perpetual maintenance of their cemeteries.

This would initially be enacted under the *Cemeteries and Crematoria Act 2013* (NSW) by developing a mandatory code and interment industry scheme.² The Report suggests that each Licensed Cemetery Operator establish a perpetual maintenance fund and contribute 15 - 20% of future burial plot costs to that perpetual maintenance fund.³ It is implied in the Report that this funding estimate is consistent with what Victorian Class A cemetery trusts are required to apply, which we understand is not the case.

This recommended mandatory contribution is equivalent to a retrospective tax on all major cemetery operators in NSW conducting more than one burial per week on average. The accumulated maintenance funds would grow to billions of dollars and would require councils, Crown and private cemetery operators in NSW to comply immediately once the mandatory code and interment industry scheme is enacted.

Further, the Report recommends that all operators should contribute 3 to 5% of total operator revenue to Cemeteries & Crematoria NSW (**CCNSW**) to cover the cost of CCNSW overseeing the interment industry scheme.⁴

¹ Tim Scott and David Harley AM, *The 11th Hour – Solving Sydney’s Cemetery Crisis*, page 208.

² *Ibid*, page 208. In the longer term, the Act itself would be amended to legislate for this new requirement.

³ *Ibid*, pages 206-208.

⁴ *Ibid*, page 219.

3 Consequences

1. Increase in prices

This recommendation concerning the mandatory contribution of perpetual care funds means that all families who will be burying a loved one in a cemetery operated by a Licensed Cemetery Operator will be expected to pay for the maintenance of the burial sites sold over the past decades to unrelated parties. This will undoubtedly put upward pressure on new burial prices in the future.

Licensed Cemetery Operators will also have to meet specific maintenance standards, which could potentially be more costly. Accordingly, burial prices will undoubtedly have to increase in some areas to maintain the required amount of future contributions to the perpetual maintenance fund while meeting the higher maintenance standards. It is inferred in the Report that the level of funding required annually for the perpetual maintenance fund could be as high as 15 to 20% of burial costs.

2. Perpetual maintenance liability to be recorded as a liability

Private and council cemetery operators in regional NSW are potentially about to be hit with a retrospective maintenance liability on their cemeteries, which may need to be recorded as a liability on their balance sheet. This could amount to hundreds of millions of dollars in some cases, depending on the size and number of cemeteries they operate. Dozens of cemetery operators will be required by CCNSW to record the financial liability on their balance sheets and report to CCNSW every three years with an actuarial report, as well as provide annual updates on their perpetual maintenance liability.⁵

3. Management of legacy liabilities

Licensed Cemetery Operators will be required to develop a plan for CCNSW showing how any legacy shortfall in the maintenance fund for their cemeteries will be managed in the future.⁶ Licensed Cemetery Operators will be given ten years to be fully funded and compliant with the interment industry scheme.⁷

Most council and private cemeteries in NSW do not have perpetual maintenance funds; they generally provide for cemetery maintenance out of their annual parks and gardens maintenance budget. This approach is not uncommon throughout the world. This will place a heavy financial burden on council operated cemeteries throughout NSW. These cemeteries conduct approximately half of all interments annually in NSW. Councils in NSW which have just endured drought, bushfires and floods will find this an onerous financial burden to carry in their communities.

4. Investment of funds

CCNSW will regulate Licensed Cemetery Operators and instruct them on which fund managers can be used for the investment of their perpetual maintenance funds.⁸ It is suspected that the fund manager will likely be NSW Treasury Corporation. The combined perpetual maintenance fund will grow to be billions of dollars.

⁵ Ibid, page 212.

⁶ Ibid, page 209.

⁷ Ibid, page 212.

⁸ Ibid, page 210.

This will be a potential windfall for the NSW Government as the death rate doubles in Australia over the next 30 years.

ACCA is unaware of any other State or regional jurisdiction in Australia that requires the operation of a 100% fully funded perpetual maintenance fund. Despite this, the NSW Government is proposing to mandate this requirement for all Licensed Cemetery Operators, and these cemetery operators will need to be compliant within ten years.

4 Conclusion

Establishing a perpetual maintenance fund is a suitable method for the provision of perpetual maintenance, but it is only one way to manage long-term cemetery maintenance. Notably, a perpetual maintenance fund is not the only manner in which to provide for perpetual maintenance, and operators certainly do not have to be fully funded in ten years, as cemetery operations are perpetual.

The recommendation contained in this Report has the potential to place unnecessary upward pressure on a cemetery’s operating costs and pricing. The Report does not state how these additional cemetery operating costs will be funded. It is speculated that future consumers will be exposed to price increases.

A copy of the full Report is available at:

https://www.industry.nsw.gov.au/_data/assets/pdf_file/0008/353087/Statutory_Review_of_the_Cemeteries_Crematoria_Act.pdf