



New South Wales

# **Crown Lands (General Reserves) Amendment By-law 1996**

under the

Crown Lands Act 1989

His Excellency the Governor, with the advice of the Executive Council, has made the following By-law under the *Crown Lands Act 1989*.

Kim Yeadon MP

Minister for Land and Water Conservation

## **Explanatory note**

The object of this By-law is to incorporate provisions relating to reserves for cemeteries in the *Crown Lands (General Reserves) By-law 1995* (the “Reserves By-law”). The *Crown Lands (General Cemetery) By-law 1991* (the “Cemetery By-law”) is to be repealed. Certain provisions in the Reserves By-law and the Cemetery By-law are common to both general reserves (such as reserves for public recreation, showgrounds, racecourses and other community purposes) and reserves for cemeteries. The provisions in the Reserves By-law are being modified in their application to reserves for cemeteries where necessary and a new Division which applies to reserves for cemeteries only is being inserted in Part 3 (Regulation of use of reserves) of the By-law.

Although the Cemetery By-law applied to the Botany Cemetery, it did not apply to the associated Eastern Suburbs Crematorium. The Reserves By-law, as amended by this By-law, extends to the Crematorium.

This By-law is made under the *Crown Lands Act 1989*, including section 128 (the general power to make by-laws for or with respect to reserves).

This By-law is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

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## **Crown Lands (General Reserves) Amendment By-law 1996**

### **1 Name of By-law**

This By-law is the *Crown Lands (General Reserves) Amendment By-law 1996*.

### **2 Commencement**

This By-law commences on 1 September 1996.

### **3 Amendment of Crown Lands (General Reserves) By-law 1995**

The *Crown Lands (General Reserves) By-law 1995* is amended as set out in Schedule 1.

### **4 Repeal of Crown Lands (General Cemetery) By-law 1991**

- (1) The *Crown Lands (General Cemetery) By-law 1991* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Crown Lands (General Cemetery) By-law 1991*, had effect under that By-law is taken to have effect under the *Crown Lands (General Reserves) By-law 1995* as amended by this By-law.

### **5 Notes**

The explanatory note and table of contents do not form part of this By-law.

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Schedule 1      Amendment of Crown Lands (General Reserves) By-law 1995

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**Schedule 1      Amendment of Crown Lands (General Reserves) By-law 1995**

**[1]      Clause 17 Common seal**

Omit clause 17 (2)–(4). Insert instead:

- (2)      A trust's seal may be affixed to an instrument or document only:
  - (a)      following a resolution to do so passed at a meeting of the trust, and
  - (b)      in the presence of the secretary or a member of the trust board, and
  - (c)      with an attestation by the signature of the secretary or member of the fact of the affixing of the seal.
- (3)      If an administrator of a trust has been appointed, the trust's seal may be affixed and attested by the administrator alone.

**[2]      Part 3, heading**

Omit the heading to the Part. Insert instead:

**Part 3      Regulation of use of reserves**

**Division 1      Use of reserves generally**

**[3]      Clause 20 Fees and charges**

Omit "entry to and" from clause 20 (1) (a).

**[4]      Clause 20 (1A), (1B)**

Insert after clause 20 (1):

- (1A)      The reserve trust of a reserve (other than a reserve for a cemetery) may from time to time determine the fees or charges payable in respect of entry to the whole or any part of the reserve and any building, structure or enclosure within the reserve.

- (1B) The reserve trust of a reserve for a cemetery may from time to time determine the fees or charges payable for the services provided in respect of the cemetery.

**[5] Clause 20 (3)**

Omit “this clause”. Insert instead “subclause (1) or (1A)”.

**[6] Clause 20 (3A)**

Insert after clause 20 (3):

- (3A) The fees or charges payable under clause (1B) must be displayed in a public notice outside the office of the reserve trust.

**[7] Clause 23 Regulation of conduct within reserve**

Omit clause 23 (2) (d) and (e). Insert instead:

- (d) taking part in any gathering, meeting or assembly (except, in the case of a cemetery, for the purpose of a religious or other ceremony of burial or commemoration),
- (e) selling, offering or exposing for sale any article or thing,
- (e1) displaying or causing any bill or poster to be displayed,
- (e2) distributing any circular, advertisement, paper or other printed, drawn, written or photographic matter,

**[8] Clause 23 (2) (g1)**

Insert after clause 23 (2) (g):

- (g1) planting any tree, shrub, vine, flower or other plant,

**[9] Clause 23 (2) (n)**

Omit the paragraph. Insert instead:

- (n) destroying, capturing, injuring, annoying or interfering with, or interfering with the habitat of, any animal, bird or other fauna, whether native or introduced,

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**[10] Clause 24 Conduct prohibited in reserve**

Insert at the end of clause 24 (i):

, or

- (j) bring into or leave in the reserve any refuse, scrap metal (including any car or car part), rock, soil, sand, stone or other such substance.

**[11] Clause 24 (2)**

Insert at the end of clause 24:

- (2) A person must not within a reserve for a cemetery:
  - (a) interfere with any grave or monument, or
  - (b) open any coffin, or
  - (c) disturb or interrupt any service, procession, cortege, gathering, meeting or assembly, or
  - (d) bury any human remains (whether cremated or not).

**[12] Part 3, Division 2**

Insert at the end of Part 3:

**Division 2      Additional provisions in regard to  
cemeteries**

**24A Application of this Division**

- (1) This Division applies to a crematorium, general cemetery or portion of a general cemetery specified in Part 2 of Schedule 1.
- (2) In the application of this Division to a portion of a cemetery:
  - (a) a reference to a cemetery is taken to include a reference to a portion of a cemetery, and
  - (b) a reference to a reserve trust in relation to a cemetery is taken to be a reference to a reserve trust for a portion of a cemetery.
- (3) This Division does not affect the operation of any regulations under the *Public Health Act 1991* relating to cemeteries.

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**24B Definitions**

In this Division:

***burial place*** means a grave site, vault site, crypt site or other place for the disposition of the remains of the dead.

***exclusive right of burial*** means an exclusive right of burial granted by a reserve trust in respect of a burial place.

***holder***, in relation to an exclusive right of burial, means the person recorded, in the register kept by the reserve trust, as the person entitled to the exclusive right.

**24C Planning, conduct and maintenance**

A reserve trust may make such provision as it considers necessary for the following:

- (a) the setting aside of sections for different types and classes of burials,
- (b) the establishment of standards of construction and design for monuments and structures,
- (c) the size, multiple use and location of burial places,
- (d) burials in vaults,
- (e) the erection or installation of structures and the making of inscriptions,
- (f) the carrying out of work by monumental masons,
- (g) the qualifications required by, and the security deposits required to be lodged by, monumental masons,
- (h) the removal, replacement and maintenance of structures,
- (i) the placing of vases, statuettes, jars, bottles or other items of embellishment on or near graves, monuments, crypts or vaults,
- (j) the improvement and maintenance of the cemetery,

- (k) the making of arrangements for the care of burial places on an annual or other basis,
- (l) the supply of goods and services incidental to the conduct of burials and other matters relating to the cemetery,
- (m) the conduct of religious or other ceremonies of burial or commemoration.

**24D Grant of exclusive rights of burial**

- (1) A reserve trust may grant an exclusive right of burial in respect of a burial place in the cemetery.
- (2) An application for an exclusive right of burial must be in the form approved by the reserve trust and accompanied by the appropriate fee.
- (3) An exclusive right of burial may be granted to one person or to two or more persons as joint holders.
- (4) An exclusive right of burial entitles the person or persons to whom it is granted to the exclusive right of burial in the burial place in respect of which it is granted.

**24E Transfer of exclusive rights of burial**

- (1) A reserve trust may transfer an exclusive right of burial from one or more persons to one or more other persons.
- (2) An application for the transfer of an exclusive right of burial must be in the form approved by the reserve trust and accompanied by the appropriate fee.

**24F Grant or transfer of exclusive rights of burial may be refused**

A reserve trust may refuse to grant or transfer an exclusive right of burial if, in its opinion, the grant or transfer would tend to create a monopoly or encourage dealing in such rights as a business.

**24G Exclusive rights of burial may be bequeathed**

- (1) The holder of an exclusive right of burial may bequeath the right as if it were the holder's personal estate.

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- (2) A person to whom an exclusive right of burial devolves as a result of a bequest does not become the holder of the right until the register is amended to indicate that fact.
  - (3) On application made by a person to whom an exclusive right of burial has devolved as a result of a bequest, a reserve trust must amend the register so as to indicate that the person has become the holder of the right.
  - (4) An application under this clause must be in the form approved by the reserve trust and accompanied by the appropriate fee.

**24H Burials in burial places in respect of which exclusive rights have been granted**

- (1) The remains of a deceased person may not be buried in a burial place in respect of which an exclusive right of burial has been granted unless:
  - (a) the person was the holder of the right immediately before he or she died, or
  - (b) the holder of the right gives written consent to the person's remains being buried in the burial place.
- (2) On the death of the spouse or a child of the holder of an exclusive right of burial, the remains of the spouse or child may be buried in the burial place to which the right relates without the written consent of the holder of the right if the reserve trust is satisfied:
  - (a) that the holder is not available to give consent to the burial, and
  - (b) that consent to the burial would be given if the holder were available.
- (3) The only compensation that the reserve trust is liable to pay to the holder of an exclusive right of burial in the event that it permits the holder's spouse or child to be buried in the burial place without the consent of the holder is an amount equivalent to the fee currently charged by the trust for the grant of an exclusive right of burial in respect of a comparable burial place.

#### **24I Register of burial places**

- (1) A reserve trust must cause a register of burial places to be kept in respect of all burial places in the cemetery.
- (2) The register, which may be kept in electronic or written
  - (a) must readily identify (whether by reference to a plan or by other means) the location of each burial place, and
  - (b) must contain the name and address of the holder of any exclusive right of burial granted in relation to a burial place.
- (3) A reserve trust must, immediately after a burial in a burial place, ensure that there is entered in the register, opposite the entry for that burial place:
  - (a) the name of the deceased, and
  - (b) any other details that are likely to help in the identification of the deceased, and
  - (c) the date of burial.
- (4) A reserve trust may amend its register from time to time so as to remove any inaccuracies contained in it.
- (5) A reserve trust must, on application made by any person, make available to the person a copy of any entry made in the register in relation to a burial place.
- (6) Such an application must be in the form approved by the reserve trust and accompanied by the appropriate fee.
- (7) The register is admissible in any proceedings as evidence of the identity of the holder of an exclusive right of burial that has been granted in respect of any particular burial site.

#### **24J Certificates of exclusive rights of burial**

- (1) A reserve trust may issue to the owner of an exclusive right of burial a certificate of exclusive right of burial in relation to the burial place concerned.

- (2) An application for such a certificate must be in the form approved by the reserve trust and accompanied by the appropriate fee.
- (3) A certificate under this clause is to be in such form as the reserve trust may from time to time determine.

#### **24K Order for burial**

- (1) A burial must not take place in a cemetery unless the reserve trust has issued an order for burial.
- (2) A reserve trust may set down the procedure to be followed to obtain an order for burial.

#### **24L Hours of burial**

Burials are not to take place except at such times as the reserve trust may from time to time determine.

#### **24M Exhumations**

- (1) Exhumations are not to take place unless:
  - (a) prior written approval has been obtained from the Director-General of the Department of Health in accordance with the regulations under the *Public Health Act 1991*, and
  - (b) an order for exhumation has been issued by the reserve trust.
- (2) This clause does not apply if an exhumation order has been issued by a Court.

#### **[13] Clause 26 Certain acts and omissions not to be offences**

Insert “written” before “consent” in clause 26 (1) (c).

**[14]    Schedule 1, heading**

Omit the heading. Insert instead:

**Schedule 1      Reserves to which this By-law applies**  
(Clause 3)

**Part 1      Reserves other than reserves for general  
cemeteries**

**[15]    Schedule 1, Part 2**

Insert at the end of Schedule 1:

**Part 2      Reserves for general cemeteries or portions  
of general cemeteries**

Botany Cemetery

Eastern Suburbs Crematorium

Field of Mars General Cemetery, Baptist Portion

Field of Mars General Cemetery, Church of England  
Portion

Field of Mars General Cemetery, Methodist Portion

Field of Mars General Cemetery, Presbyterian Portion

Field of Mars Catholic Cemetery

Field of Mars Independent (Congregational) Cemetery

Frenchs Forest General Cemetery

Liverpool General Cemetery, Baptist Portion

Liverpool. General Cemetery, Catholic Portion

Liverpool General Cemetery, Church of England Portion

Liverpool General Cemetery, Muslim Portion

Liverpool General Cemetery, Presbyterian Portion

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Schedule 1

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Liverpool General Cemetery, Seventh-day Adventist  
Portion

Liverpool General Cemetery, Uniting Church Portion

Northern Suburbs General Cemetery

Sandgate General Cemetery

Woronora General Cemetery