



New South Wales

# Cemeteries Legislation Amendment (Unused Burial Rights) Act 2001 No 122

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New South Wales

# **Cemeteries Legislation Amendment (Unused Burial Rights) Act 2001 No 122**

Act No 122, 2001

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An Act to amend the *Necropolis Act 1901*, the *Crown Lands Act 1989* and other legislation with respect to the revocation of exclusive rights of burial and associated compensation; and for other purposes. [Assented to 19 December 2001]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Cemeteries Legislation Amendment (Unused Burial Rights) Act 2001*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Necropolis Act 1901 (1902 No 20)**

The *Necropolis Act 1901* is amended as set out in Schedule 1.

**4 Amendment of Crown Lands (General Reserves) By-law 2001**

The *Crown Lands (General Reserves) By-law 2001* is amended as set out in Schedule 2.

**5 Amendment of other Acts**

Each Act listed in Schedule 3 is amended as set out in that Schedule.

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## **Schedule 1 Amendment of Necropolis Act 1901**

(Section 3)

### **[1] Section 24 Burial rights**

Insert after section 24 (3):

- (4) Each body of trustees may revoke any exclusive rights of burial it, or any previous body of trustees for the portion concerned has granted if those rights are not exercised within 60 years after they are granted.
- (5) Before revoking any exclusive rights of burial under subsection (4), the body of trustees must cause notice of its intention to do so to be advertised in accordance with the regulations.
- (6) At any time before the expiry of the period for responding to the notice, the holder of the exclusive rights of burial concerned may enter into negotiations with the relevant body of trustees for:
  - (a) the sale of those rights to the trustees, or
  - (b) the retention of those rights.

### **[2] Section 24A**

Insert after section 24:

#### **24A Compensation for revocation of exclusive rights of burial**

- (1) If the body of trustees revokes the exclusive rights of burial for a burial place, whether granted before or after the commencement of this section, the former holder of those rights is entitled:
  - (a) to be granted exclusive rights of burial:
    - (i) for an alternative burial place in the same cemetery (and, if available, in the same general location) as the original burial place, and
    - (ii) for an equivalent period to that for which the original exclusive rights of burial were granted, or

- (b) to be paid by the trustees, by way of compensation, an amount equal to half of the fee payable (as provided by the trustees' current scale of fees) for the granting of exclusive rights of burial:
    - (i) for an alternative burial place in the same cemetery (and, if available, in the same general location) as the original burial place, and
    - (ii) for an equivalent period to that for which the original exclusive rights of burial were granted.
- (2) If there is no alternative burial place available, or if there is no applicable scale of fees, the amount of compensation referred to in subsection (1) (b) is to be ascertained in accordance with the regulations.
- (3) The body of trustees may elect whether the former holder of the revoked exclusive rights of burial is to be granted an alternative burial place or paid compensation.
- (4) Despite section 24 (2), if the former holder of the revoked exclusive rights of burial is granted exclusive rights of burial for an alternative burial place, any assignment of those rights is of no effect if made by the former holder within 5 years after the date on which they were granted.
- (5) The regulations may make provision for or with respect to the manner in which, and the time within which, an application for an entitlement under this section must be made.
- (6) A former holder of revoked exclusive rights of burial may apply to the Minister for a review of any election of the relevant body of trustees under this section.
- (7) The Minister's decision on such a review:
  - (a) is final, and
  - (b) is taken to be the decision of the relevant body of trustees, and
  - (c) is to be given effect to accordingly.
- (8) In this section, *former holder* of revoked exclusive rights of burial means the person who held those rights immediately before they were revoked.

**[3] Section 37 Regulations**

Insert after section 37 (2) (b):

- (b1) the accounts to be kept by trustees under this Act,

**[4] Fifth Schedule Savings and transitional provisions**

Omit the heading “*Necropolis (Amendment) Act 1986*”.

**[5] Fifth Schedule, clause 1A**

Insert before clause 1 of the Fifth Schedule:

**1A Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
*Cemeteries Legislation Amendment (Unused Burial Rights) Act 2001*
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Schedule 2 Amendment of Crown Lands (General Reserves) By-law 2001**

(Section 4)

### **Clauses 31A and 31B**

Insert after clause 31:

#### **31A Revocation of exclusive rights of burial**

A reserve trust may revoke any exclusive rights of burial it, or any previous reserve trust for the cemetery concerned, has granted if those rights are not exercised within 60 years after they are granted.

#### **31B Compensation**

- (1) If a reserve trust revokes the exclusive rights of burial for a burial place, whether granted before or after the commencement of this clause, the former holder of those rights is entitled:
  - (a) to be granted exclusive rights of burial:
    - (i) for an alternative burial place in the same cemetery (and, if available, in the same general location) as the original burial place, and
    - (ii) for an equivalent period to that for which the original exclusive rights of burial were granted, or
  - (b) to be paid by the trust, by way of compensation, an amount equal to half of the fee payable (as provided by the trust's current scale of fees) for the granting of exclusive rights of burial:
    - (i) for an alternative burial place in the same cemetery (and, if available, in the same general location) as the original burial place, and
    - (ii) for an equivalent period to that for which the original exclusive rights of burial were granted.

- (2) The reserve trust may elect whether the former holder of the revoked exclusive rights of burial is to be granted an alternative burial place or paid compensation.
- (3) Despite clause 29, if the former holder of the revoked exclusive rights of burial is granted exclusive rights of burial for an alternative burial place, those rights may not be transferred by the former holder within 5 years after the date on which they were granted.
- (4) A former holder of revoked exclusive rights of burial may apply to the Minister for a review of any election of the relevant body of trustees under this section.
- (5) The Minister's decision on such a review:
  - (a) is final, and
  - (b) is taken to be the decision of the relevant body of trustees, and
  - (c) is to be given effect to accordingly.
- (6) In this clause, *former holder* of revoked exclusive rights of burial means the person who held those rights immediately before they were revoked.



## **Schedule 3    Amendment of other Acts**

(Section 5)

### **3.1    Crown Lands Act 1989 No 6**

#### **Section 128 By-laws**

Insert after section 128 (1) (p):

- (p1) the granting, transfer and revocation of exclusive rights of burial in relation to a reserve that is dedicated or used for the purposes of a public cemetery,
- (p2) the measures to be taken by way of compensation to former holders of exclusive rights of burial in the event that those rights are revoked,
- (p3) the accounts to be kept by reserve trusts,

### **3.2    Land Acquisition (Just Terms Compensation) Act 1991 No 22**

#### **Section 6 Acquisition of land to which Act does not apply**

Insert at the end of section 6 (c):

- , or
- (d) the acquisition consists of the revocation of exclusive rights of burial that have been granted under an Act in relation to a public cemetery.

[Minister's second reading speech made in—  
Legislative Assembly on 24 October 2001  
Legislative Council on 14 November 2001]

BY AUTHORITY