



New South Wales

# Cemeteries and Crematoria Amendment Regulation 2018

under the

Cemeteries and Crematoria Act 2013

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Cemeteries and Crematoria Act 2013*.

PAUL TOOLE, MP  
Minister for Lands and Forestry

## Explanatory note

The object of this Regulation is to amend the *Cemeteries and Crematoria Regulation 2014* as a consequence of the commencement of Part 4 (Interment rights) of the *Cemeteries and Crematoria Act 2013*, as follows:

- (a) to specify the steps a cemetery operator must take:
  - (i) to ascertain cultural or religious practices applying to the remains of a deceased person, and
  - (ii) to notify the holders of renewable interment rights that are due to expire of their entitlement to renew the right and the fee for doing so,
- (b) to prescribe the period within which the executor or administrator of the estate of a person who has bequeathed an interment right must notify a cemetery operator of the death of the person,
- (c) to prescribe the period of the term of certain renewable interment rights (in substitution for the period provided for in the Act),
- (d) to require a cemetery operator to disclose to applicants for the grant or renewal of interment rights the fees and charges relevant to that type of interment right,
- (e) to provide for a cooling off period following the purchase or renewal of renewable interment rights and the circumstances in which the cooling off period may be waived,
- (f) to prescribe additional requirements with respect to human remains interred at a site that a cemetery operator must comply with before re-using the site following the expiration of a renewable interment right,
- (g) to require a cemetery operator to comply with certain notification requirements before removing a memorial of a deceased person pursuant to the Act and to retain the memorial for a period,
- (h) to provide for additional particulars that must be included in a cemetery operator's register,
- (i) to prescribe certain events of which a cemetery operator must cause a register to be kept,
- (j) to provide for the calling and holding of meetings of heritage advisory committees,
- (k) to provide for matters of a savings or transitional nature.

This Regulation is made under the *Cemeteries and Crematoria Act 2013*, including sections 46 (3), 49 (5), 54 (6), 54 (8), 55 (4) (c) and (7), 63 (1) (e) and (3), 69 (7) and 142 (the general regulation-making power) and clause 1 of Schedule 3 (Savings, transitional and other provisions).

## **Cemeteries and Crematoria Amendment Regulation 2018**

under the

Cemeteries and Crematoria Act 2013

### **1 Name of Regulation**

This Regulation is the *Cemeteries and Crematoria Amendment Regulation 2018*.

### **2 Commencement**

This Regulation commences on 25 June 2018 and is required to be published on the NSW legislation website.

## **Schedule 1      Amendment of Cemeteries and Crematoria Regulation 2014**

**[1] Part 1, heading**

Insert before clause 1:

### **Part 1      Preliminary**

**[2] Part 2, heading**

Insert after clause 3:

### **Part 2      Administration**

**[3] Parts 3 and 4**

Insert after clause 4:

### **Part 3      Interment rights**

#### **Division 1      Interment rights generally**

##### **5      Disturbing remains of a deceased person**

(1) To ascertain whether any cultural or religious practices apply to the remains of a deceased person for the purposes of section 46 (3) of the Act, a cemetery operator is to:

- (a) consult the cemetery operator's register, and
- (b) if the information is not recorded in the register—make enquiries of the deceased's next-of-kin, and
- (c) if the information is not reasonably ascertainable from that source—make enquiries of the cultural or spiritual leader in the community who is relevant to the remains (including by reference to the part of the cemetery in which the interment site is located), and

**Note.** Information to assist in identifying relevant cultural or spiritual leaders for various cultural or religious groups is available on the web page relating to Cemeteries and Crematoria NSW on the Department of Industry website.

- (d) if the information is not reasonably ascertainable from that source—take any other steps the cemetery operator considers reasonable in the circumstances to ascertain whether any cultural or religious practices apply to the remains.

(2) A cemetery operator is to make all reasonable efforts (including taking such time as is reasonably necessary) in making the enquiries referred to in subclause (1).

**Note.** Clause 15 (b) requires the steps taken to ascertain information, and the information ascertained, under this clause to be recorded in the cemetery operator's register.

##### **6      Time by which cemetery operator must be notified of death of bequeather of interment right**

For the purposes of section 49 (5) of the Act, the prescribed period is 12 months after the executor or administrator becomes aware of the death.

## Division 2 Renewable interment rights

### 7 Notification requirements concerning expiry of renewable interment rights

- (1) For the purposes of section 54 (6) of the Act, at least 12 months before a renewable interment right granted by the cemetery operator is due to expire, the cemetery operator must take steps to give the written notice referred to in that subsection to the holder or holders of the renewable interment right and any person shown in the register as a secondary contact, as follows:
  - (a) initially—by post and email (if an email address has been provided to the cemetery operator for contact purposes), with a request for the intended recipient to acknowledge receipt of the notice,
  - (b) if there is no response to the notice within 3 months—by telephone, and again by post and email with a request to acknowledge receipt,
  - (c) if there is no response to the notice given in accordance with paragraph (b) within 3 months—by repeating the steps set out in that paragraph,
  - (d) if there is no response to the notice given in accordance with paragraph (c) within 3 months—by repeating the steps set out in paragraph (b),
  - (e) if there is no response to the notice given in accordance with paragraph (d) within 3 months—by publishing the notice:
    - (i) in a local newspaper, a newspaper circulating throughout the State and, if a person to whom notice is required to be given under section 54 (6) of the Act is an Aboriginal person, in the Koori Mail or another newspaper widely read in Aboriginal communities in the State, and
    - (ii) if the cemetery operator has a website, on that website or, if the cemetery operator does not have a website but has a social media account, on that account.

**Note 1.** Social media platforms (such as Facebook or Twitter) may also provide a means of establishing contact with the holder of the renewable interment right or a contact person for the purposes of giving the notice referred to in section 54 (6) of the Act.

**Note 2.** Paragraph (e) (ii) does not prevent a cemetery operator from publishing the notice on both a website and a social media account if the cemetery operator has both.

- (2) In this clause, *newspaper* includes a newspaper published on a publicly accessible website.

### 8 Prescribed period of term of renewable interment right

- (1) The period prescribed by subclause (2) applies to a renewable interment right for the interment of human remains (other than cremated remains) in relation to an interment site that is approved by the Cemeteries Agency for the purpose of this clause on application in writing made by the cemetery operator.
- (2) For the purposes of section 54 (8) (a) of the Act, an initial term of between 25 and 99 years is prescribed as the period of the initial term of a renewable interment right to which this clause applies, in substitution for the period of the initial term provided by section 54 (1) (b) of the Act.

### 9 Cemetery operator must disclose fees and charges to applicant for interment right

- (1) A cemetery operator must disclose to an applicant for the grant or renewal of a renewable interment right or the grant of a perpetual interment right the fees

and charges that are currently payable in relation to that type of interment right (including the fee for transfer of that type of interment right under section 58 (3) of the Act).

- (2) The disclosure must include a statement that the disclosed fees and charges are subject to change.

#### **10 Cooling off period for grant or renewal of renewable interment rights**

- (1) For the purposes of section 54 (8) (c) of the Act, a person who has been granted a renewable interment right, or who has had a renewable interment right renewed, or the person's legal representative, may, by notice in writing served on the cemetery operator within the cooling off period, end the agreement under which the right is granted or renewed (the *agreement*).
- (2) The *cooling off period* is 10 days, starting on the day on which the agreement is made.
- (3) Subject to clause 11, a renewable interment right cannot be exercised or dealt with by the holder of the right during the cooling off period.
- (4) If a person, or the person's legal representative, ends the agreement under subclause (1):
  - (a) the cemetery operator must refund to the person any fee the person has paid to it for the grant or renewal of the renewable interment right (less any deduction made under subclause (5)), and
  - (b) the person is not (despite anything to the contrary in the agreement) liable to the cemetery operator in any way for ending the agreement.
- (5) For the purposes of subclause (4) (a), the cemetery operator may deduct from the amount of the fee paid for the grant or renewal of the renewable interment right, the reasonable administrative costs of processing the application for the grant or renewal (the *processing fee*), but only if:
  - (a) the person was notified before entering the agreement that a processing fee would be so deducted if the agreement was ended under subclause (1), the manner in which the fee is calculated and the amount of the fee, and
  - (b) the person is provided with an itemised account in respect of the refunded amount that includes the amount deducted for the processing fee.

#### **11 Circumstances in which cooling off period is waived**

The legal representative of a person whose grant or renewal of a renewable interment right is subject to a cooling off period may waive the cooling off period by notice in writing served on the cemetery operator if:

- (a) the person dies during the cooling off period, and
- (b) the waiver is necessary to enable the right to be exercised for the interment of the deceased person.

#### **12 Prerequisites to re-use of interment site**

- (1) For the purposes of section 55 (4) (c) of the Act, the following requirements are prescribed:
  - (a) the cemetery operator must determine in accordance with section 61 of the Act any application made under section 61 (2) of the Act in respect of the interment site and record the details of that determination

- (including the person to whom it relates) in the cemetery operator's register,
- (b) at least 60 days before dealing with the remains of a deceased person pursuant to section 55 (4) (a) or (b) of the Act, the cemetery operator must take steps to give written notice to the person's next-of-kin of the cemetery operator's intention to move any remains in accordance with those provisions,
  - (c) the cemetery operator must record in the cemetery operator's register the details of any dealings with human remains pursuant to section 55 (4) (a) or (b) of the Act (including the identity of the person whose remains are dealt with and a description of any site to which the remains are removed or scattered, or the name and contact details of any person to whom cremated remains are returned).
- Note.** Dealing with human remains pursuant to section 55 (4) (a) or (b) is a prescribed event under clause 14 (b).
- (2) The cemetery operator must take steps to give the written notice referred to in subclause (1) (b), as follows:
    - (a) initially—by post and email (if an email address has been provided to the cemetery operator for contact purposes), with a request for the intended recipient to acknowledge receipt of the notice,
    - (b) if there is no response to the notice within 20 days—by telephone, and again by post and email with a request to acknowledge receipt,
    - (c) if there is no response to the notice given in accordance with paragraph (b) within 20 days—by publishing the notice:
      - (i) in a local newspaper, a newspaper circulating throughout the State and, if a person to whom notice is required to be given under section 54 (6) of the Act is an Aboriginal person, in the Koori Mail or another newspaper widely read in Aboriginal communities in the State, and
      - (ii) if the cemetery operator has a website, on that website or, if the cemetery operator does not have a website but has a social media account, on that account.

### 13 Removing memorials after expiry of renewable interment right

- (1) The cemetery operator is to retain a memorial to a deceased person that is removed pursuant to section 55 of the Act:
  - (a) for 5 years after the date of its removal (unless it is sooner reclaimed by a person entitled to reclaim it), and
  - (b) at a secure site (whether or not within the cemetery).
- (2) At least 60 days before removing a memorial of a deceased person pursuant to section 55 of the Act, the cemetery operator must take reasonable steps to give notice to the person's next-of-kin of the cemetery operator's intention to remove the memorial in accordance with that section.
- (3) Subclause (2) applies only to the extent that the deceased person's next-of-kin is a person other than a person referred to in section 55 (2) (c) of the Act.

**Note.** Section 55 (2) (c) of the Act requires the cemetery operator to take reasonable steps to notify the holder of the interment right and any registered secondary contacts for the holder of its intention to remove the memorial.
- (4) This clause does not require the cemetery operator to retain the kerbing, ledger or foundation footings for a memorial.

### **Division 3      Miscellaneous**

#### **14    Prescribed events to be recorded in cemetery operator's register**

For the purposes of section 63 (1) (e) of the Act, the following is a prescribed event:

Each disturbance or removal of human remains carried out at the cemetery after the commencement of the *Cemeteries and Crematoria Amendment Regulation 2018*, including:

- (a) the cultural or religious practices (if any) applying to the remains and the means by which those practices were ascertained, and
- (b) if the remains were dealt with pursuant to section 55 (4) (a) or (b) of the Act, the details of those dealings (including the identity of the person whose remains are dealt with and a description of any site to which the remains are removed or scattered, or the name and contact details of any person to whom cremated remains are returned).

#### **15    Additional particulars required to be included in cemetery operator's register**

For the purposes of section 63 (3) of the Act, a cemetery operator's register must contain the following particulars (in addition to any other particulars required to be included in the register):

- (a) in relation to each interment of human remains:
  - (i) the section and allotment where the interment has been made, and
  - (ii) whether the section and allotment are located in a part of the cemetery consecrated for use by a cultural or religious group, and
  - (iii) the cultural or religious practices (if any) that apply to the remains, and
  - (iv) the name of the funeral director or other person who transported the remains to the cemetery, and
  - (v) the fees paid to the cemetery authority for the interment,
- (b) in relation to human remains that are disturbed or removed:
  - (i) the name of the person whose remains are disturbed or removed, and
  - (ii) whether the remains were located in a part of the cemetery consecrated for use by a cultural or religious group, and
  - (iii) whether any cultural or religious practices apply to the remains and, if so, what those practices are, and
  - (iv) the steps taken under clause 5 to ascertain the information referred to in subparagraph (iii), and
  - (v) the source of that information.

**Note.** Clause 12 (a) and (c) require the particulars to which they refer to be entered in the cemetery operator's register.

#### **16    Calling and holding of meetings of heritage advisory committee**

- (1) A heritage advisory committee (the *committee*) must meet at least once a year.
- (2) The chairperson of the committee must call an extraordinary meeting of the committee if the chairperson receives a request in writing signed by at least 2 members of the committee.
- (3) The chairperson must send to each member, at least 7 days before each meeting of the committee, a notice specifying the time and place at which and

the date on which the meeting is to be held and the business proposed to be transacted at the meeting.

- (4) Notice of less than 7 days may be given of an extraordinary meeting called in an emergency.
- (5) The committee may invite the cemetery operator or any other person to attend meetings to advise or inform the committee on any relevant matter.

**Note 1.** Section 69 (7) of the Act enables a heritage advisory committee to determine its procedure for calling and holding meetings, subject to regulations made under the Act.

**Note 2.** Guidelines made under section 69 (3) of the Act concerning the constitution of a heritage advisory committee are available on the Department's website.

## Part 4 Savings and transitional provisions

### 17 General provision consequent on repeal of provisions in Crown Lands (General Reserves) By-law 2006

- (1) Anything done under a provision of Division 2 or 3 of Part 3 of the *Crown Lands (General Reserves) By-law 2006* (the **2006 By-law**) for which there is a corresponding provision in the Act or this Regulation is taken to have been done under that corresponding provision.
- (2) Subclause (1) has effect unless the context or subject-matter indicates or requires differently.

**Note.** Section 30 of the *Interpretation Act 1987* is a general provision preserving (among other things) rights accruing and liabilities incurred before the repeal of a provision of a statutory rule.

### 18 Renewal schemes approved under Crown Lands (General Reserves) By-law 2006

- (1) This clause applies to a renewal scheme that was approved (including approved with modifications) under Subdivision 4 of Division 2 of Part 3 of the *Crown Lands (General Reserves) By-law 2006*, but that was not, or not fully, implemented immediately before the commencement of this clause (an **approved renewal scheme**).
  - (2) A reserve trust may implement or continue to implement an approved renewal scheme in accordance with the approval, subject to this clause.
  - (3) The approval to implement an approved renewal scheme ceases to have effect, and a reserve trust must cease to implement the scheme, 24 months after the commencement of this clause.
  - (4) A reserve trust may, in a portion of the cemetery that is subject to an approved renewal scheme:
    - (a) remove, relocate or dispose of a memorial placed on the interment site, and
    - (b) erect in that portion of the cemetery a memorial recording the names and dates of death of persons buried in the portion.
- Note.** On the commencement of section 45 of the Act, burial licences are taken to be interment rights granted under Division 2 of Part 4 (Interment rights) of the Act.
- (5) An approved renewal scheme does not authorise the operator of a cemetery:
    - (a) to remove the remains of a deceased person from an interment site, or

(b) to otherwise disturb the remains of a deceased person in the portion of the cemetery subject to the approved renewal scheme.

**Note.** Separate procedures set out in sections 55 and 66 of the Act must be followed before remains of a deceased person may be removed from an interment site.

(6) A revocation of a burial licence involved in an approved renewal scheme that has not occurred before the commencement of this clause is to occur (if it occurs at all) as a revocation of an interment right under section 52 of the Act.