



New South Wales

Cemeteries and Crematoria Regulation 2022

under the

Cemeteries and Crematoria Act 2013

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

KEVIN ANDERSON, MP
Minister for Lands and Water

Explanatory note

The object of this Regulation is to repeal and remake, without any significant amendments, the provisions of the *Cemeteries and Crematoria Regulation 2014*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This objects of this Regulation are as follows—

- (a) to provide for conditions related to general levies imposed on prescribed cemetery and crematorium operators,
- (b) to specify the steps a cemetery operator must take to ascertain cultural or religious practices applying to the remains of a deceased person,
- (c) to provide for conditions related to renewable interment rights,
- (d) to prescribe certain events about which a cemetery operator must cause a register to be kept and the particulars that must be included in the register,
- (e) to provide for matters of a savings or transitional nature.

This Regulation is made under the *Cemeteries and Crematoria Act 2013*, including section 142, the general regulation-making power, and Schedule 3, clause 1, Savings, transitional and other provisions.

This Regulation relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely, matters of a machinery nature and matters not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Cemeteries and Crematoria Regulation 2022

under the

Cemeteries and Crematoria Act 2013

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Cemeteries and Crematoria Regulation 2022*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note— This Regulation replaces the *Cemeteries and Crematoria Regulation 2014*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

3 Definitions

In this Regulation—

ash interment means interment of ashes above or below ground.

prescribed cemetery means a cemetery, or part of a cemetery, prescribed under section 4(2).

prescribed interment service means an interment service prescribed under section 4(1).

quarter means the 3-month period beginning 1 July, 1 October, 1 January or 1 April in each financial year.

relevant period means a period referred to in section 4(3).

the Act means the *Cemeteries and Crematoria Act 2013*.

Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

Part 2 Administration

4 Interment service levies

- (1) For the Act, section 24(2)(a), the following interment services are prescribed—
 - (a) burials,
 - (b) cremations,
 - (c) ash interments.
- (2) For the Act, section 24(2)(b), the operators of the following cemeteries, or parts of cemeteries, are prescribed—
 - (a) Rookwood Necropolis,
 - (b) Macquarie Park Cemetery,
 - (c) Frenchs Forest Bushland Cemetery,
 - (d) Field of Mars Cemetery,
 - (e) Gore Hill Memorial Cemetery,
 - (f) Sandgate Cemetery,
 - (g) Eastern Suburbs Memorial Park,
 - (h) Woronora General Cemetery,
 - (i) Liverpool Cemetery,
 - (j) Catholic Crematorium, Rookwood Necropolis,
 - (k) Macquarie Park Crematorium, Macquarie Park Cemetery,
 - (l) Botany Crematorium, Eastern Suburbs Memorial Park,
 - (m) Woronora Crematorium, Woronora General Cemetery.
- (3) For the Act, section 24(2)(d), a general levy is payable by an operator of a prescribed cemetery for each prescribed interment service provided at the prescribed cemetery during each quarter.
- (4) The general levy payable by the operator for a prescribed interment service is the amount calculated by multiplying the number of that kind of prescribed interment service provided by the operator in the prescribed cemetery during the relevant period by the amount imposed under subsection (5) for that kind of prescribed interment service.
- (5) The amount imposed for a prescribed interment service is as follows—
 - (a) for an initial burial in an interment site—\$85.70,
 - (b) for a subsequent burial in the same interment site—\$62.20,
 - (c) for each cremation—\$25.90,
 - (d) for each ash interment—\$25.90.
- (6) For the Act, section 24(2)(3), the Cemeteries Agency may, by written notice given to the operator of a prescribed cemetery, adjust the amount payable by the operator for a relevant period in proportion to variations in the CPI.
- (7) Subsections (3)–(6) do not apply to the following interment services—
 - (a) any burial of a destitute person,
 - (b) any burial or interment of ashes of the remains of—
 - (i) an unviable pregnancy, or
 - (ii) a stillborn child, or

- (iii) a child under 12 years of age.
- (8) The Cemeteries Agency may waive, reduce, postpone or refund the general levy payable by an operator of a prescribed cemetery in respect of 1 or more relevant periods.

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 Act, section 46(3), a cemetery operator must—
 - (a) inspect the cemetery operator's register to determine whether the register records any information about cultural or religious practices that apply to the remains, and
 - (b) if the register does not record any information about cultural or religious practices that apply to the remains—make enquiries with the deceased's next-of-kin, and
 - (c) if the information is not reasonably ascertainable from the deceased's next-of-kin—make enquiries with a cultural or religious leader in the community who is relevant to the remains, if any, including by reference to the part of the cemetery in which the interment site is located, and
Note— Information to help identify 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 the cultural or religious leader—take any other steps the cemetery operator considers reasonable in the circumstances to ascertain whether any cultural or religious practices apply to the remains.
Note— Section 15(b) requires the steps taken to ascertain information, and the information ascertained, under this section to be recorded in the cemetery operator's register.
- (2) A cemetery operator must make all reasonable efforts, including taking all the time that is reasonably necessary, in making enquiries under subsection (1).

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

For the Act, section 49(5), the prescribed period is 12 months from the date the executor or administrator becomes aware of the death of the holder of the interment right.

Division 2 Renewable interment rights

7 Definitions

In this Division—

agreement means an agreement under which a person has been granted a renewable interment right, or has had a renewable interment right renewed.

cooling off period means the period of 10 days starting on the day after the day on which an agreement is made.

newspaper includes a newspaper published on a publicly accessible website.

8 Notification requirements concerning expiry of renewable interment rights

- (1) For the Act, section 54(6), at least 12 months before a renewable interment right granted by the cemetery operator is due to expire, the cemetery operator must take the steps under subsection (2) to give the written notice referred to —
 - (a) the holder or holders of the renewable interment right, and

- (b) any person shown in the register as a secondary contact.
- (2) The cemetery operator must take the following steps to give the notice—
 - (a) send the notice by post and email, if an email address has been given to the cemetery operator for contact purposes, with a request for the intended recipient to acknowledge receipt of the notice,
 - (b) if the cemetery operator does not receive a response to the notice given in accordance with paragraph (a) within 3 months—attempt to contact the intended recipient by telephone and send the notice again by post and email with a request to acknowledge receipt,
 - (c) if the cemetery operator does not receive a response to the notice given in accordance with paragraph (b) within 3 months—repeat the steps set out in paragraph (b),
 - (d) if the cemetery operator does not receive a response to the notice given in accordance with paragraph (c) within 3 months—repeat the steps set out in paragraph (b),
 - (e) if the cemetery operator does not receive a response to the notice given in accordance with paragraph (d) within 3 months—
 - (i) publish the notice in all of the following newspapers—
 - (A) a local newspaper,
 - (B) a newspaper circulating throughout the State,
 - (C) if a person to whom notice is required to be given under the Act, section 54(6), 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—publish the notice on the cemetery operator’s website, and
 - (iii) if the cemetery operator does not have a website but has a social media account—on the cemetery operator’s social media 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 the Act, section 54(6).

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

9 Prescribed period of term of renewable interment right

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

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

- (1) For the Act, section 54(8)(b), the following matters are prescribed as matters that a cemetery operator must disclose to an applicant for the grant or renewal of a renewable interment right—
 - (a) the fees and charges payable in relation to the interment right at the time of the application,
 - (b) the fee for the transfer of the interment right under section 58(3).

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

11 Cooling off period for grant or renewal of renewable interment rights

- (1) For the Act, section 54(8)(c), the following persons may end an agreement by written notice served on the cemetery operator within the cooling off period—
 - (a) the person who holds the renewable interment right under the agreement (the *holder*),
 - (b) the legal representative of the holder.
- (2) Subject to section 12, the holder cannot exercise or deal with the renewable interment right during the cooling off period.
- (3) If the holder, or the holder's legal representative, ends the agreement under subsection (1)—
 - (a) the cemetery operator must refund to the holder any fee the holder has paid for the grant or renewal of the renewable interment right, less any processing fee the cemetery operator may deduct under subsection (4), and
 - (b) the holder is not, despite anything to the contrary in the agreement, liable to the cemetery operator in any way for ending the agreement.
- (4) For the purposes of subsection (3)(a), the cemetery operator may only deduct the processing fee from the amount of the fee paid for the grant or renewal of the renewable interment right, if—
 - (a) the holder was notified before entering the agreement that a processing fee would be deducted if the agreement was ended under subsection (1), including the manner in which the fee is calculated and the amount of the fee, and
 - (b) the holder is provided with an itemised account for the refunded amount that includes the amount deducted for the processing fee.
- (5) In this section—

processing fee means the reasonable administrative costs of processing the application for the grant or renewal of a renewable interment right.

12 Circumstances in which cooling off period is waived

For the Act, section 54(8)(d), 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.

13 Prerequisites to re-use of interment site

- (1) For the Act, section 55(4)(c), the following requirements are prescribed—
 - (a) the cemetery operator must—
 - (i) decide in accordance with the Act, section 61, any application made under the Act, section 61(2) in respect of the interment site, and
 - (ii) record the details of the decision, including the person to whom the decision relates, in the cemetery operator's register,
 - (b) at least 60 days before dealing with the remains of a deceased person under the Act, section 55(4)(a) or (b), 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 under the Act, section 55(4)(a) or (b), including—
 - (i) the identity of the person whose remains are dealt with, and
 - (ii) either—
 - (A) a description of any site to which the remains are removed or scattered, or
 - (B) the name and contact details of any person to whom cremated remains are returned.

Note— Dealing with human remains under the Act, section 55(4)(a) or (b) is a prescribed event under section 15(b).

- (2) The cemetery operator must take the following steps to give the notice—
 - (a) send the notice 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 the cemetery operator does not receive a response to the notice given in accordance with paragraph (a) within 20 days of the date the notice was delivered—attempt to contact the next-of-kin by telephone and send the notice again by post and email with a request to acknowledge receipt,
 - (c) if the cemetery operator does not receive a response to the notice given in accordance with paragraph (b) within 20 days of the date the notice was delivered—
 - (i) publish a notice in all of the following newspapers—
 - (A) a local newspaper,
 - (B) a newspaper circulating throughout the State,
 - (C) if a person to whom notice is required to be given under the Act, section 54(6), 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—publish the notice on the cemetery operator's website, and
 - (iii) if the cemetery operator does not have a website but has a social media account—publish the notice on the cemetery operator's social media account.

14 Removing memorials after expiry of renewable interment right—the Act, s 55(1)

- (1) The cemetery operator must retain a memorial to a deceased person that is removed—
 - (a) for 5 years after the date of the removal, unless the memorial is sooner reclaimed by a person entitled to reclaim the memorial, 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 under the Act, section 55, the cemetery operator must take reasonable steps to give notice to the deceased person's next-of-kin of the cemetery operator's intention to remove the memorial in accordance with the section.
- (3) Subsection (2) applies only to the extent the deceased person's next-of-kin is a person other than a person referred to in the Act, section 55(2)(c).

Note— The Act, section 55(2)(c), 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 section does not require the cemetery operator to retain the kerbing, ledger or foundation footings for a memorial.

Division 3 Miscellaneous

15 Prescribed events to be recorded in cemetery operator's register

For the Act, section 63(1)(e), each disturbance or removal of human remains carried out at the cemetery after the commencement of the *Cemeteries and Crematoria Amendment Regulation 2018* is a prescribed event, 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 under the Act, section 55(4)(a) or (b)—the details of those dealings including—
 - (i) the identity of the person whose remains are dealt with, and
 - (ii) either—
 - (A) a description of any site to which the remains are removed or scattered, or
 - (B) the name and contact details of any person to whom cremated remains are returned.

16 Additional particulars required to be included in cemetery operator's register

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

- (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 section 5 to ascertain the information referred to in subparagraph (iii), and
 - (v) the source of that information.

Note— Section 13(1)(a) and (c) require the particulars to which they refer to be entered in the cemetery operator's register.

17 Calling and holding of meetings of heritage advisory committee—the Act, s 69(7)

- (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 written request to do so signed by at least 2 committee members.
- (3) The chairperson must send to each member by email or post, at least 7 days before each meeting of the committee, a notice specifying—
 - (a) the date, time and place the meeting is to be held, and
 - (b) the agenda of the meeting.
- (4) However, the chairperson may give less than 7 days notice 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— the Act, Section 69(7), enables a heritage advisory committee to determine its procedure for calling and holding meetings, subject to the regulations.

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

Part 4 Savings and transitional provisions

18 Repeal and savings

- (1) The *Cemeteries and Crematoria Regulation 2014* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Cemeteries and Crematoria Regulation 2014*, had effect under that Regulation continues to have effect under this Regulation.