



New South Wales

Cemeteries and Crematoria Amendment (Interment Service Levy) Regulation 2024

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*.

STEPHEN KAMPER, MP
Minister for Lands and Property

Explanatory note

The objects of this regulation are to—

- (a) amend provisions in the *Cemeteries and Crematoria Regulation 2022* relating to the imposition of a general levy payable by cemetery operators under the *Cemeteries and Crematoria Act 2013* (***the Act***), and
- (b) allow cemetery operators to apply for an amendment to a licence granted under the Act, and allow the Cemeteries Agency established under the Act to make minor changes to licences on its own initiative, and
- (c) require a cemetery operator to disclose the fees for the transfer of an interment right to an applicant for an interment right before granting the right, and
- (d) prescribe certain offences under the Act as penalty notice offences.

This regulation is made under the Act, including sections 24, 31, 54(8)(b), 111 and 142, the general regulation-making power.

Cemeteries and Crematoria Amendment (Interment Service Levy) Regulation 2024

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Cemeteries and Crematoria Act 2013

1 Name of regulation

This regulation is the *Cemeteries and Crematoria Amendment (Interment Service Levy) Regulation 2024*.

2 Commencement

This regulation commences on 1 July 2024.

Schedule 1 Amendment of Cemeteries and Crematoria Regulation 2022

[1] Section 3 Definitions

Omit the definitions of *prescribed cemetery*, *prescribed interment service* and *relevant period*.

Insert in alphabetical order—

financial year—see section 4.

prescribed cemetery operator—see section 4.

prescribed interment service—see section 4.

prescribed period—see section 4.

[2] Part 2

Omit the part. Insert instead—

Part 2 Interment service general levy—the Act, s 24

4 Definitions

In this part—

financial year means a year ending on 30 June.

prescribed cemetery operator means a cemetery operator prescribed by section 4AB.

prescribed interment service means an interment service prescribed by section 4AA.

prescribed period means a period prescribed by section 4AE.

4AA Prescribed interment services

- (1) For the Act, section 24(2)(a), the following interment services are prescribed—
 - (a) a burial,
 - (b) a cremation,
 - (c) an ash interment.
- (2) Subsection (1) does not apply to an interment service provided in relation to—
 - (a) a destitute person, or
 - (b) an unviable pregnancy, or
 - (c) a stillborn child, or
 - (d) a child under 12 years of age.
- (3) In this section—

destitute person means a destitute person for the purposes of the policy document entitled “Destitute Persons - Cremation or Burial” published by the Ministry of Health, as in force from time to time.

4AB Prescribed cemetery operators

- (1) For the Act, section 24(2)(b), the following cemetery operators are prescribed—

- (a) a cemetery operator that provided at least 1 prescribed interment service in the last financial year,
 - (b) a cemetery operator that ordinarily provides at least 1 prescribed interment service per financial year.
- (2) Subsection (1) does not apply to a cemetery operator that holds a cemetery operator (caretaker) licence within the meaning of Part 2A.
- (3) In this section—
ordinarily provide means provide on average over the last 3 financial years.

4AC Calculation of levy—general

- (1) For the Act, section 24(2)(c), the general levy payable by a prescribed cemetery operator for each prescribed period is calculated as follows—
- (a) for each burial provided during the period—\$156,
 - (b) for each cremation provided during the period—\$41,
 - (c) for each ash interment provided during the period—\$63.
- (2) The Cemeteries Agency must calculate the levy using—
- (a) information provided by the cemetery operator in response to a notice given under the Act, section 43(1), or
 - (b) if section 4AD(1) applies—estimates determined in accordance with section 4AD.

4AD Calculation of levy—failure to report

- (1) For the Act, section 24(2)(c), the Cemeteries Agency must calculate the general levy payable by a prescribed cemetery operator using estimates determined in accordance with this section if—
- (a) the Cemeteries Agency gives a notice to the cemetery operator under the Act, section 43(1) for the purposes of gathering information relevant to calculating the general levy payable by the cemetery operator in accordance with section 4AC, and
 - (b) the operator fails to respond to the notice.
- (2) The Cemeteries Agency must determine the higher of the following before applying the calculation in section 4AC(1)(a)–(c)—
- (a) the estimated number and kind of interment services provided by the cemetery operator during the period,
 - (b) the estimated average number of each kind of interment service provided by the cemetery operator per prescribed period during the previous 3 financial years, plus 10%.
- (3) The Cemeteries Agency must make the determination under subsection (2) based on information available to the Cemeteries Agency and on which it is reasonable for the Cemeteries Agency to rely.
- (4) The Cemeteries Agency must, before making a determination under this section, give the prescribed cemetery operator—
- (a) written notice of the determination and the basis on which the Cemeteries Agency made the determination, and
 - (b) a further opportunity to notify the Cemeteries Agency of the number and kind of interment services provided by the prescribed cemetery operator during the period.

4AE Period for which levy is payable

For the Act, section 24(2)(d), each 3 month period ending on 31 March, 30 September, 31 December or 30 June is prescribed.

Note— Under the Act, section 24(2)(e), a general levy is to be paid within the time and in the manner specified by the Cemeteries Agency by written notice to the person liable to pay the levy. The Cemeteries Agency may, for example, specify that a prescribed cemetery operator pay the general levy for each prescribed period in a particular year as an annual combined lump sum.

4AF Indexation of levy amounts

- (1) For the Act, section 24(3), the Cemeteries Agency may, for a financial year, determine an adjustment of the amounts specified in section 4AC(1) in proportion to variations in the CPI.
- (2) As soon as practicable after the Cemeteries Agency makes a determination, and before 1 July of the financial year to which the determination applies, the Cemeteries Agency must—
 - (a) notify the Parliamentary Counsel of the levy amount for the financial year so that notice of the amount can be published on the NSW legislation website, and
 - (b) give public notice on a website maintained by the Cemeteries Agency of the actual levy amount applying in the financial year resulting from the determination.
- (3) This section operates to change the amount of a levy adjusted by a determination under subsection (1) and the change is not dependent on a notification or other notice required by this section.

4AG Waivers and exemptions

- (1) For the Act, section 24(5)(a), the Cemeteries Agency may waive, reduce, postpone or refund a general levy payable by a prescribed cemetery operator in relation to 1 or more prescribed periods.
- (2) For the Act, section 24(5)(b), a prescribed cemetery operator that provided 50 or fewer prescribed interment services during the 2022–2023 financial year is exempt from the requirement under this section to pay a general levy in relation to a prescribed period during the 2024–2025 financial year.

[3] Section 4C Application for licence

Omit section 4C(1). Insert instead—

- (1) A cemetery operator may apply to the Cemeteries Agency for—
 - (a) a grant of a licence, or
 - (b) an amendment to a licence, including an amendment to add or remove a cemetery specified in the licence.

[4] Section 4C(2)(c)

Insert “or to amend a cemetery operator licence” after “licence”.

[5] Section 4C(4)(d)

Insert at the end of section 4C(4)(c)—

, or

- (d) for an application to amend a licence—the Cemeteries Agency is satisfied that it would make the fee proportionate to the actual administrative cost of processing the application.

[6] Section 4D Grant or refusal of application

Insert after section 4D(2)—

- (2A) The Cemeteries Agency may also refuse an application to remove a cemetery specified in a licence if the Cemeteries Agency reasonably believes that, if the application is granted, there will be a period during which no cemetery operator holds a cemetery licence in relation to the cemetery.

[7] Section 4F Authority of licence

Omit “the cemetery” wherever occurring in section 4F(1) and (2).

Insert instead “a cemetery”.

[8] Section 4H Conditions of licence

Insert after section 4H(3)—

- (4) For the Act, section 31(2)(d), it is a condition of a licence that the licence holder comply with a requirement to pay a general levy imposed by the Cemeteries Agency under the Act, section 24 that applies to the licence holder.

[9] Section 4OA

Insert after section 4O—

4OA Amendment of licence on Cemeteries Agency’s initiative

- (1) The Cemeteries Agency may amend a licence on its own initiative for the purposes of—
 - (a) correcting an error, or
 - (b) making a change that is not likely to have a significant impact on the cemetery operator’s rights or liabilities.
- (2) Before making an amendment under this section, the Cemeteries Agency must give the licence holder—
 - (a) written notice of the Cemeteries Agency’s intention to make the amendment, and
 - (b) a reasonable opportunity to respond.
- (3) An amendment under this section is effective on service of written notice of the amendment on the licence holder.

[10] Section 6A

Insert after section 6—

6A Disclosure of transfer fees—the Act, ss 54 and 142

- (1) For the Act, sections 54(8)(b) and 142(c) and (e), before granting an interment right, a cemetery operator must disclose to the applicant the fee for the transfer of the interment right under the Act, section 58(3).
- (2) The disclosure must include a statement that the disclosed fee is subject to change.

[11] Section 10 Cemetery operator must disclose fees and charges to applicant for interment right

Omit section 10(1). Insert instead—

- (1) For the Act, section 54(8)(b), before granting or renewing a renewable interment right, the cemetery operator must disclose to the applicant the fees and charges payable in relation to the interment right at the time of the application.

[12] Schedule 1

Insert at the end of the regulation—

Schedule 1 Penalty notice offences

1 Application of schedule

- (1) For the Act, section 111—
 - (a) each offence created by a provision specified in this schedule is an offence for which a penalty notice may be issued, and
 - (b) the amount payable for the penalty notice is the amount specified opposite the provision.
- (2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—
 - (a) the limited kind of offence, or
 - (b) an offence committed in those limited circumstances.

Provision	Penalty
Offences under the Act	
Section 70	2.5 penalty units
Section 102(4)	10 penalty units
Section 137(1)	10 penalty units
Section 138	10 penalty units