

Passed by both Houses



New South Wales

Rookwood Necropolis Amendment Bill 2004

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2004*



New South Wales

Rookwood Necropolis Amendment Bill 2004

Act No , 2004

An Act to amend the *Necropolis Act 1901* with respect to the establishment and operation of certain crematoria; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Rookwood Necropolis Amendment Act 2004*.

2 Commencement

- (1) This Act commences on the date of assent, subject to subsection (2).
- (2) Schedules 1 and 3.2 commence 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 Schedules 1 and 2.

4 Amendment of other Acts and instruments

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

Schedule 1 Amendment of Necropolis Act 1901

(Section 3)

[1] Section 6A Setting aside land for different purposes

Insert “or crematorium” after “cemetery” wherever occurring in section 6A (1) and (2).

[2] Section 8E

Insert after section 8D:

8E Right of appeal against valuations of general crematorium site

- (1) The lessor or lessee under the general crematorium lease, or the Joint Committee, may appeal to the Land and Environment Court against a valuation made by the Valuer-General under clause 5 of Schedule 3.
- (2) Pending the determination of an appeal under this section, the valuation to which the appeal relates, and the lessee’s liability for any rent payable on the basis of that valuation, are unaffected by the appeal.

[3] Section 20B

Omit the section. Insert instead:

20B Contributions payable to Joint Committee by reserve trusts etc

- (1) As soon as practicable after the beginning of each calendar year, the Joint Committee:
 - (a) must make estimates for that year of its expenditure and of its revenue apart from this section, and
 - (b) must determine, on the basis of those estimates, the total amount that it will need to obtain for that year from contributions from the reserve trusts and from the general crematorium lessee, and
 - (c) must notify the Minister of the total amount so determined, and
 - (d) subject to the Minister’s approval of the total amount so determined, must determine, in accordance with the regulations, the contribution payable by each reserve trust, and the general crematorium lessee, in respect of that amount, and

- (e) must notify each reserve trust, and the general crematorium lessee, of the contribution payable by it for that year.
- (2) Each reserve trust, and the general crematorium lessee, must pay the amount of its contribution within 60 days after receiving notice from the Joint Committee to do so.

[4] Sections 20G and 20H

Insert after section 20F:

20G Fees payable to Joint Committee by reserve trusts operating crematoria

Within 7 days after the end of each quarter, each reserve trust that operates a crematorium must pay to the Joint Committee such fees as may be prescribed by the regulations with respect to the cremations carried out by it during that quarter in the Necropolis.

20H Information to be provided to Joint Committee by reserve trusts etc

Within 7 days after the end of each quarter, each reserve trust, and the general crematorium lessee, must provide the Joint Committee with the number of interments and cremations carried out by it during that quarter in the Necropolis.

[5] Section 36A

Insert after section 36:

36A Recovery of contributions, fees and other amounts

The Joint Committee may recover any contribution, fee or other amount due to it under this Act as a debt in a court of competent jurisdiction.

Schedule 2 Further amendment of Necropolis Act 1901 by way of law revision

(Section 3)

[1] **Part 1, heading**

Insert before section 1:

Part 1 Preliminary

[2] **Section 1 Name of Act**

Omit “*Necropolis Act 1901*”. Insert instead “*Rookwood Necropolis Act 1901*”.

[3] **Section 2 Repeal**

Omit the section.

[4] **Section 4 Existing proclamation etc**

Omit the section.

[5] **Section 6 Definitions**

Omit the definition of *Trustees* from section 6 (1).

Insert in alphabetical order:

general crematorium lease means a lease referred to in section 8B.

general crematorium site means the land described in Schedule 2.

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

reserve trust, in relation to land set aside for use as a cemetery or crematorium under this Act, means the reserve trust that, under section 92 of the *Crown Lands Act 1989*, is constituted and appointed as trustee of that land.

[6] **Section 6 (2)**

Omit “land described in the Second Schedule”.

Insert instead “general crematorium site”.

[7] **Section 6 (4)**

Insert after section 6 (3):

(4) Notes included in this Act do not form part of this Act.

[8] Section 6A

Insert after section 6:

6A Setting aside land for different purposes

- (1) The Minister may, by notification published in the Gazette, set aside land within the Necropolis for the following purposes:
 - (a) for use as a cemetery,
 - (b) for conservation as a historic site.
- (2) Land that is set aside for use as a cemetery may be set aside generally or for a particular religious denomination.
- (3) The general crematorium site is taken to have been set aside for use as a crematorium.
- (4) In the application of Part 5 of the *Crown Lands Act 1989* to land within the Necropolis, Crown land that is set aside under this section:
 - (a) is taken to be a reserve within the meaning of that Part, and
 - (b) is taken to have been dedicated for a public purpose under section 80 of that Act.
- (5) In the case of Crown land within the general crematorium site, a reserve trust is not to be constituted or appointed under section 92 of the *Crown Lands Act 1989* while a general crematorium lease is in force.
- (6) A reserve trust for land set apart under this Act has the functions conferred on it by or under this Act in addition to the functions conferred or imposed on it under the *Crown Lands Act 1989*.

[9] Sections 7, 7A, 7B, 8 and 8A

Omit the sections.

[10] Part 2, heading

Insert before section 8B:

Part 2 Lease of general crematorium site

[11] Section 8B Lease of general crematorium site

Omit “the Second Schedule” wherever occurring.

Insert instead “Schedule 2”.

[12] Section 8B (3)

Omit “trustees”. Insert instead “a reserve trust”.

[13] Section 8C Extension of general crematorium lease

Omit “the Second Schedule” from section 8C (1) (a).

Insert instead “Schedule 2”.

[14] Section 8C (1) (b) and (2)

Omit “land described in the Second Schedule” wherever occurring.

Insert instead “general crematorium site”.

[15] Section 8C (2)

Omit “the lease referred to in section 8B”.

Insert instead “the general crematorium lease”.

[16] Section 8D Amendment of general crematorium lease

Omit “the lease referred to in section 8B” from section 8D (1).

Insert instead “the general crematorium lease”.

[17] Section 8D (1)

Omit “the Third Schedule”. Insert instead “Schedule 3”.

[18] Part 3, heading

Insert before section 9:

Part 3 Functions of reserve trusts

[19] Section 9 Parts of land dedicated in 1887 and added to general cemetery may be set apart for denominations

Omit the section.

[20] Sections 10, 10A, 11 (1) and (3), 20B (2) and (4), 20C (1), 20E (including heading), Fourth Schedule

Omit “the trustees” and “body of trustees” wherever occurring.

Insert instead “the reserve trust” and “reserve trust”, respectively.

[21] Section 10 Adjustment of boundaries

Omit “such trustees”. Insert instead “such reserve trust”.

[22] Section 10A Divesting of land with consent of reserve trust

Omit “them” from section 10A (1). Insert instead “the reserve trust”.

[23] Section 11 Vesting of lands set apart

Omit “and their successors” wherever occurring.

[24] Section 11 (2)

Omit “of trustees” and “those trustees”.

Insert instead “of a reserve trust” and “the reserve trust”, respectively.

[25] Section 11 (2)

Omit “land described in the Second Schedule, that land”.

Insert instead “general crematorium site, that site”.

[26] Sections 12–15, 17, 18 and 19

Omit the sections.

[27] Part 4, heading

Insert before section 20:

Part 4 Joint Committee of Necropolis Trustees

[28] Section 20 Joint Committee of Necropolis Trustees

Omit section 20 (2).

[29] Section 20 (5) (a)

Omit the paragraph. Insert instead:

- (a) a member nominated by each reserve trust and appointed by the Minister, and

[30] Section 20 (6)

Omit “(other than a person nominated by trustees)”.

[31] Section 20 (7)

Omit “The Fourth Schedule”. Insert instead “Schedule 4”.

[32] Section 20B Contributions to Joint Committee by reserve trust

Omit “(except the Joint Committee itself)” from section 20B (2).

[33] Section 20B (3) (a)

Omit “bodies of trustees”. Insert instead “reserve trusts”.

[34] Section 20B (5)

Omit the subsection. Insert instead:

- (5) While there is no reserve trust of the general crematorium site, a reference in this section to a reserve trust includes a reference to a person conducting a crematorium on that site.

[35] Section 20C Provision of services by Joint Committee

Omit “trustees” from section 20C (3) (b). Insert instead “the reserve trust”.

[36] Section 20D Preparation of plans of management by Joint Committee

Omit section 20D (2). Insert instead:

- (2) The provisions of Division 6 of Part 5 of the *Crown Lands Act 1989* apply to a plan of management under this section in the same way as they apply to a plan of management under that Division.

[37] Section 20D (3)

Omit “Those sections”. Insert instead “Those provisions”.

[38] Sections 21–25 and 28–35

Omit the sections.

[39] Part 5, heading

Insert before section 36:

Part 5 Miscellaneous

[40] Section 36 Delegation by Minister

Omit section 36 (2)–(6).

[41] Section 37 Regulations

Omit section 37 (2) (a), (c) and (d).

[42] Section 37 (2) (b1)

Omit “trustees”. Insert instead “reserve trusts”.

[43] Section 37 (3) and (4)

Omit the subsections.

[44] Section 38 Savings and transitional provisions

Omit “The Fifth Schedule”. Insert instead “Schedule 5”.

[45] First Schedule

Omit the Schedule.

[46] Second Schedule

Omit the heading. Insert instead:

Schedule 2 General crematorium site

[47] Second Schedule

Omit “(Section 8A)”. Insert instead “(Section 8B)”.

[48] Third Schedule

Omit the heading. Insert instead:

**Schedule 3 Additional terms and conditions of
general crematorium lease**

[49] Third Schedule, clause 6 (2)

Omit the subclause. Insert instead:

- (2) The statement must be certified as correct by a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

[50] Fourth Schedule

Omit the heading. Insert instead:

**Schedule 4 Constitution and procedure of Joint
Committee**

[51] Fourth Schedule, clause 5 (2)

Omit “those trustees”. Insert instead “the reserve trust”.

[52] Fourth Schedule, clause 5 (3)

Omit “the trustees concerned fail”. Insert instead “the reserve trust fails”.

[53] Fourth Schedule, clause 6 (1) (e)

Omit the paragraph. Insert instead:

(e) becomes a mentally incapacitated person,

[54] Fifth Schedule

Omit the heading. Insert instead:

Schedule 5 Savings and transitional provisions

[55] Fifth Schedule, Part 1, heading

Insert before clause 1A of the Fifth Schedule:

Part 1 Preliminary

[56] Fifth Schedule, clause 1A

Insert at the end of clause 1A (1):

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[57] Fifth Schedule, Part 2, heading

Insert before clause 1:

**Part 2 Provisions consequent on enactment of
Necropolis (Amendment) Act 1986**

[58] Fifth Schedule, Part 3

Insert after clause 5:

**Part 3 Provisions consequent on enactment of
Rookwood Necropolis Amendment Act
2004**

6 Definition

In this Part, *the 2004 amending Act* means the *Rookwood Necropolis Amendment Act 2004*.

7 Continuation of existing dedications

Land that, immediately before the commencement of section 6A (as inserted by the 2004 amending Act), was dedicated or set apart for any purpose under section 7, 7A, 7B, 8 or 8A, as in force immediately before the repeal of those sections by that Act:

- (a) is taken to be set aside for that purpose under section 6A, and
- (b) is taken to be a reserve within the meaning of Part 5 of the *Crown Lands Act 1989*, and
- (c) is taken to have been dedicated for a public purpose under section 80 of the *Crown Lands Act 1989*.

Note. Under clause 4 of Schedule 8 to the *Crown Lands Act 1989*, the trustees of any such land are taken to have been constituted as a reserve trust under Part 5 of that Act.

8 Application of section 8E

Section 8E (as inserted by the 2004 amending Act) does not apply to any valuation made by the Valuer-General before the commencement of that section.

9 Application of section 20B

Section 20B (as inserted by the 2004 amending Act) does not apply to any calendar year that commenced before the commencement of that section.

10 Exclusive rights of burial

- (1) Any exclusive rights of burial subsisting under section 24 immediately before its repeal by the 2004 amending Act are taken to be exclusive rights of burial granted under clause 28 of the *Crown Lands (General Reserves) By-law 2001*.
- (2) Any action taken under section 24 in relation to any such exclusive rights of burial is deemed to have been taken under clause 31A of the *Crown Lands (General Reserves) By-law 2001*.
- (3) Any right to which a person was entitled under section 24A immediately before its repeal by the 2004 amending Act is taken to be a right to which the person is entitled under clause 31B of the *Crown Lands (General Reserves) By-law 2001*.

11 Construction of certain references

In any Act or instrument, a reference to the *Necropolis Act 1901* includes a reference to the *Rookwood Necropolis Act 1901*.

Schedule 3 Amendment of other Acts and instruments

(Section 4)

3.1 Crown Lands (General Reserves) By-law 2001

Schedule 1 Reserves to which this By-law applies

Insert at the beginning of Part 2 of Schedule 1:

Each cemetery and crematorium within the Necropolis referred to in the *Rookwood Necropolis Act 1901*

3.2 Land and Environment Court Act 1979 No 204

Section 19 Class 3—land tenure, valuation, rating and compensation matters

Insert after section 19 (b):

(b1) appeals under section 8E of the *Rookwood Necropolis Act 1901*,

3.3 Local Government Act 1993 No 30

Dictionary

Insert “or for a public cemetery” after “public recreation” in paragraph (g) (i) of the definition of *public reserve*.

3.4 Necropolis Regulation 2002

[1] Clauses 1 and 4

Insert “*Rookwood*” before “*Necropolis*” wherever occurring.

[2] Clause 4 Definitions

Omit the definitions of *appropriate fee*, *burial place*, *relevant trust*, *secretary* and *trust*.

Insert in alphabetical order:

reserve trust means a reserve trust for land within the Necropolis.

[3] Clause 6 Officers and employees

Omit “The trusts and the Joint Committee may each”.

Insert instead “The Joint Committee may”.

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Schedule 3 Amendment of other Acts and instruments

[4] Clause 6

Omit “their”. Insert instead “its”.

[5] Clause 7 Meetings

Omit “each trust and”, “the trust or” and “, as the case may be”.

[6] Clause 8 Common seal

Omit the clause.

[7] Parts 3, 3A and 4

Omit the Parts.

[8] Clause 22 Contributions to Joint Committee

Omit “trust” wherever occurring. Insert instead “reserve trust”.

[9] Clause 22 (3)

Omit the definition of *trust*. Insert instead:

reserve trust includes a person conducting a crematorium on the general crematorium site (if there is no reserve trust for that site).