

**NEW SOUTH WALES**

**DRAFT GOVERNMENT BILL**

## **Cemeteries and Crematoria Bill 2013**

### **Explanatory note**

#### **Overview of Bill**

The objects of this Bill are as follows:

- (a) to ensure that sufficient land is acquired and allocated so that current and future generations have equitable access to interment services,
- (b) to recognise the right of all individuals to a dignified interment and treatment of their remains with dignity and respect,
- (c) to ensure that the interment practices and beliefs of all religious and cultural groups are respected so that none are disadvantaged and adequate and proper provision is made for all,
- (d) to provide for the operation of a consistent and coherent regime for the governance and regulation of cemeteries and crematoria,
- (e) to ensure that the operators of cemeteries and crematoria demonstrate satisfactory levels of accountability, transparency and integrity,
- (f) to ensure that cemeteries and crematoria on Crown land are managed in accordance with the principles of Crown land management specified in section 11 of the *Crown Lands Act 1989*.

#### **Outline of provisions**

#### **Part 1 Preliminary**

**Clause 1** sets out the name (also called the short title) of the proposed Act.

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**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** states the objects of the proposed Act.

**Clause 4** provides that certain words or expressions are defined in the Dictionary to the proposed Act or have the same meaning as in the *Crown Lands Act 1989*. It also states that references in the proposed Act to a *cemetery* in general extend to include references to a crematorium and to part of a cemetery or crematorium and references to a *cemetery operator* include references to a crematorium operator or an operator of part of a cemetery or crematorium.

**Clause 5** describes the relationship between the proposed Act and certain other legislation.

## Part 2 Administration

### Division 1 Constitution and Management of Cemeteries Agency

**Clauses 6–11** constitute Cemeteries and Crematoria NSW (the *Cemeteries Agency*) as a body corporate and deal with its management, control and staff. All decisions relating to the functions of the Cemeteries Agency are to be made by or under the authority of the Board of the Cemeteries Agency (the *Board*). The Chief Executive Officer of the Cemeteries Agency is responsible for the day-to-day management of the affairs of the Cemeteries Agency subject to the policies and directions of the Board.

### Division 2 Functions of the Cemeteries Agency

#### Subdivision 1 Principal functions

**Clauses 12 and 13** set out the principal functions of the Cemeteries Agency and make it clear that the Cemeteries Agency may do all acts necessary or expedient for the exercise of its functions.

#### Subdivision 2 Ancillary functions

**Clauses 14 and 15** set out some ancillary functions of the Cemeteries Agency. These include a reserve power to acquire land and transfer it to the operator of a Crown cemetery trust or other cemetery operator in specified circumstances if the Cemeteries Agency considers it is necessary to do so to ensure equitable access to cemetery services by all religious and cultural groups (clause 14).

### Division 3 The Board

**Clause 16** provides for the constitution of the Board and the voting rights of its members.

**Clauses 17–21** contain provisions requiring the honest and diligent conduct of, and the disclosure of personal interests by, members of the Board. A person who contravenes such a provision is liable to a civil penalty.

### Division 4 Finance

**Clauses 22–25** contain provisions relating to financial matters, including the establishment of a Cemeteries Agency Fund, the amounts to be paid into and out of that Fund and investment powers in relation to the Fund. Clause 24 enables the Cemetery Agency to impose general and special levies on operators of cemeteries, or classes of cemetery, prescribed by the regulations. General levies are contributions towards the cost of the administration of the Act to the extent that it relates to cemeteries. Special levies may be imposed as a contribution towards the cost of acquiring land under clause 14. Contributions by way of a special levy will not be able to exceed an amount in total to be prescribed by the regulations.

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## Part 3 Regulation of interment industry

### Division 1 Preliminary

**Clause 26** defines *interment industry* to include the operators of cemeteries, funeral directors, funeral contribution funds and other persons, or persons of a class, prescribed by the regulations.

**Clause 27** requires the Cemeteries Agency to keep a register of cemeteries. It will be a civil penalty provision for the operator of a cemetery to fail to provide the Cemeteries Agency with certain information prescribed as information that must be included in the register or to fail to notify material changes in that information.

### Division 2 Codes of practice

**Clauses 28–30** provide for the development and approval of codes of practice to provide guidelines regarding activities of participants in the interment industry or sectors of the industry. The Cemeteries Agency may develop a code of practice on its own initiative or in collaboration with interment industry participants. Compliance with a code of practice will not be mandatory unless made so by a regulation establishing an interment industry scheme under proposed Division 3.

### Division 3 Interment industry schemes

**Clauses 31 and 32** provide for the establishment by the regulations of an interment industry scheme following consultation with participants in the interment industry that will be affected. A scheme may, for example, require compliance with the whole or part of a code of practice, require the operators of cemeteries to ensure adequate provision is made for perpetual care of interment sites or require the licensing of activities, persons or businesses providing interment services.

### Division 4 Improvement notices

**Clauses 33–35** enable the Cemeteries Agency to issue an improvement notice requiring the operator of a cemetery to end a contravention of a provision of an interment industry scheme or take action to remedy the consequences of the contravention within a stated time. An operator who contravenes an improvement notice by failing to end a contravention of a provision of an interment industry scheme is liable to a civil penalty. If the operator fails to remedy the consequences of a contravention of an interment industry scheme, the Cemeteries Agency may take action to do so and the cost of that action will be payable by the operator.

### Division 5 Short term orders

**Clauses 36–38** enable the Cemeteries Agency to order operators of cemeteries to take specified action or refrain from taking specified action if it considers the making of the order to be reasonably necessary in the public interest to prevent or lessen a serious threat or risk to the achievement of an object of this Act pending the making of a regulation establishing an interment industry scheme that includes a provision requiring compliance with any or all of the provisions of a code of practice. An operator who contravenes a short term order is liable to a civil penalty.

### Division 6 Enforceable undertakings

**Clauses 39 and 40** enables the Cemeteries Agency to accept undertakings to take action or refrain from taking action from a person who the Cemeteries Agency considers has contravened the Act, the regulations or a provision of an interment industry scheme. An undertaking will be able to be enforced (including by the making of orders relating to compensation) by the Local Court or any other court or tribunal prescribed by the regulations.

### Division 7 Management of cemetery operators

**Clauses 41–43** enables the Cemeteries Agency to require the operator of a cemetery to report to the Cemeteries Agency about the operator's performance in managing the cemetery and to keep

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certain records. An operator who fails to comply with the reporting and record requirements is liable to a civil penalty.

## Part 4 Interment rights and cemetery renewal

At present, provisions of the *Crown Land (General Reserves) By-law 2006* (the *CL By-law*) provide for a burial licence scheme for Crown cemeteries for which a reserve trust has been established under the *Crown Lands Act 1989*. A burial licence entitles its holder to a right of burial with respect to a particular place and, under the common law, a right to remain interred until dissolution arise on burial.

The proposed Part incorporates the current provisions with necessary adaptations to provide for one form of authority (an *interment right*) giving both a right to burial in a particular place and a further right to remain interred undisturbed for all cemeteries. The duration of that right will depend on whether the interment right is a perpetual interment right or a renewable interment right within the meaning of clause 47.

### Division 1 Preliminary

**Clause 44** defines certain terms for the purposes of the proposed Part, including *interment right*.

### Division 2 Interment rights

#### Subdivision 1 Preliminary

**Clause 45** provides for the application of the proposed Division. It makes it clear that burial licences granted under the *Crown Lands Act 1989* and other rights, licences or entitlements that are similar in nature to interment rights given before the commencement of the proposed section under the proposed Division are preserved unless otherwise provided.

#### Subdivision 2 Interment rights generally

**Clause 46** states the nature of an interment right given under the proposed Division.

An interment right obliges the cemetery operator:

- (a) to permit the interment of the remains of the person to whom it relates at the site in a cemetery identified in, or in accordance with, the interment right, and
- (b) to permit a memorial to the deceased person to be erected at the site with the approval of the cemetery operator, and
- (c) to leave the remains undisturbed for so long as the interment right remains in force, and
- (d) to leave any memorial to the deceased person lawfully erected at that site, with the permission of the cemetery operator, undisturbed (provided that the interment right remains in force and the memorial is kept in good repair).

**Clauses 47 and 48** describe the types and duration of interment rights. An interment right may be granted in perpetuity (a *perpetual interment right*) or for a maximum period of 99 years accumulated in accordance with clause 54 (1) (a *renewable interment right*).

**Clauses 48–51** provide for the bequeathal of interment rights, the effect of intestacy of the holder of such a right and for the devolution of the right on the death of a joint holder. They essentially mirror clauses 31–33 of the CL By-law with necessary modifications for the wider application of the provisions explained above.

**Clause 49** requires the executor of the estate of the holder of an interment right who has bequeathed the right to notify the cemetery operator of the death of the holder. This is to enable the operator to more easily comply with the requirements of the proposed Act concerning the keeping of a cemetery operator's register (clause 63).

**Clauses 52 and 53** provide for the revocation of perpetual interment rights and payment of compensation on revocation. They are similar to clauses 34 and 35 of the CL By-law.

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## **Subdivision 3 Renewable interment rights**

**Clause 54** provides for the grant and renewal of renewable interment rights. A renewable interment right is granted for an initial term of 25 years and may be renewed for further terms (either automatically when a person is interred pursuant to the right or on application) that in aggregate do not exceed 99 years in total.

**Clause 55** provides for the re-use of an interment site 2 years after the expiration of a renewable interment right. An interment site can only be re-used after the notice requirements set out in the clause have been complied with and the necessary authorisations obtained. Before an interment site is re-used, the cemetery operator must ensure that any bodily remains of a deceased person found at the site are placed in an ossuary box and re-interred at a greater depth or placed in an ossuary house or similar place. An interment site cannot be re-used if this requirement cannot be complied with because of the insufficiently decomposed state of such bodily remains or if certain specified memorials are erected on the site.

## **Subdivision 4 Grant and transfer of interment rights generally**

**Clauses 56–62** contain provisions relating to the grant and transfer of interment rights. The provisions relating to transfer largely mirror (with necessary modifications) clauses 28–30 of the CL By-law.

## **Subdivision 5 Miscellaneous**

**Clause 63** requires the operator for a cemetery to maintain a register containing particulars relating to the grant of interment rights and other specified events. Operators will also be required to include particulars relating to burials and cremations. This requirement will replace the requirement to keep registers of these matters under the *Public Health Regulation 2012*.

**Clauses 64–68** contain provisions concerning the keeping of registers and documents and the exhumation and interment of bodies.

**Clause 69** requires a cemetery operator to establish a heritage advisory committee if renewable interment rights are offered.

## **Division 3 Cemetery renewal**

**Clauses 70–75** largely mirror the provisions of sections 34A–34F of the CL By-law with necessary modifications to enable such a scheme to be implemented by the operator of any cemetery (not only for a reserve dedicated or reserved for cemetery purposes under the *Crown Lands Act 1989*) with the approval of the Cemeteries Agency. Approval of a renewal scheme for a cemetery enables the re-development of existing parts of the cemetery to accommodate new burial sites and locations for memorials.

## **Division 4 Offence**

**Clause 76** creates an offence concerning conduct in cemeteries.

## **Part 5 Operation of Crown cemeteries**

### **Division 1 Preliminary**

**Clause 77** defines certain terms and expressions used in the proposed Part.

**Clause 78** enables the Cemeteries Agency to exempt a Crown cemetery operator, class of Crown cemetery operators, a trust member or a class of trust members from the operation of provisions of the proposed Part.

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## **Division 2 Cemetery trust operators**

### **Subdivision 1 Appointment of trust operators**

**Clauses 79–86** mirror (with necessary modifications) section 92 (6)–(6B) and related provisions of the *Crown Lands Act 1989* so that the affairs of reserve trusts for cemetery and crematorium, and related, purposes established after the commencement of the proposed section will be appointed under the proposed Act instead of that Act.

### **Subdivision 2 Conduct of trust members**

**Clauses 87–94** contain provisions requiring the honest and diligent conduct of, and the disclosure of personal interests by, trust members. A person who contravenes such a provision is liable to a civil penalty. **Clause 92** requires a Crown cemetery operator to prepare a code of conduct to be complied with by trust members. This requirement and the provisions of such a code will apply to both trust members appointed under the proposed Act and those appointed under the *Crown Lands Act 1989* before the commencement of the new provisions.

**Clause 95** protects certain persons from personal liability for acts or omissions done in good faith in the course of managing the affairs of a Crown cemetery trust.

### **Subdivision 3 Strategic plans**

**Clauses 96–98** require a Crown cemetery operator to prepare a strategic plan identifying the main priorities for the future of a Crown cemetery in the period to which the plan relates in accordance with guidelines made by the Cemeteries Agency. This requirement will apply to both Crown cemetery operators appointed under the proposed Act and those appointed under the *Crown Lands Act 1989* before the commencement of the new provisions.

### **Subdivision 4 Plans of management**

**Clauses 99–104** require a Crown cemetery operator to prepare a draft plan of management in accordance with guidelines made by the Cemeteries Agency and to submit it to the Cemeteries Agency for adoption. If a plan of management is adopted, the operator must carry out and give effect to it and no operations may be undertaken in relation to the cemetery except in accordance with the plan. This requirement will apply to both Crown cemetery operators appointed under the proposed Act and those appointed under the *Crown Lands Act 1989* before the commencement of the new provisions.

### **Subdivision 5 Financial management, audits and reports**

**Clauses 105–108** contain provisions relating to financial and audit matters such as annual reports. The requirements will apply to both Crown cemetery operators appointed under the proposed Act and those appointed under the *Crown Lands Act 1989* before the commencement of the new provisions. The provision relating to annual reports will only apply in respect of a financial year commencing on or after 1 July 2014 (see clause 8 of Schedule 3).

### **Subdivision 6 Committees**

**Clauses 109–111** requires a trust board to establish a finance committee, an audit and risk committee and a community advisory committee in accordance with guidelines set by the Cemeteries Agency and contain provisions with respect to the membership and procedure of such committees.

### **Subdivision 7 Miscellaneous**

**Clauses 112–114** contain provisions with respect to the powers exercisable by Crown cemetery operators, including the powers to fix fees and charges.

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## **Part 6 Legal proceedings and other matters**

### **Division 1 Proceedings for offences**

**Clauses 115–118** are provisions with respect to proceedings for offences and the issue of penalty notices.

### **Division 2 Civil penalty provisions**

**Clauses 119–129** are provisions with respect to proceedings for civil penalty offences.

### **Division 3 Civil infringement notices**

**Clauses 130 and 131** are provisions with respect to proceedings for the issue of civil infringement notices in respect of civil penalty provisions.

## **Part 7 Investigation and enforcement powers**

### **Division 1 Appointment of authorised officers**

**Clauses 132–134** provide for the appointment, scope of authority and identification of authorised officers.

### **Division 2 Powers of authorised officers**

**Clauses 135–143** deal with the powers of authorised officers.

### **Division 3 Offences in relation to authorised officers**

**Clauses 144 and 145** make it an offence to obstruct an authorised officer in the exercise of his or her functions under the proposed Act or to impersonate an authorised officer.

## **Part 8 Miscellaneous**

**Clause 146** provides for the service of documents under the proposed Act.

**Clause 147** provides for the exchange of information between the Cemeteries Agency and specified government agencies.

**Clause 148** protects certain persons from personal liability for acts or omissions done in good faith.

**Clause 149** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 150** provides for the review of the proposed Act in 5 years.

## **Schedule 1 Members and procedure of Board**

**Schedule 1** contains provisions dealing with the constitution and procedure of the Board.

## **Schedule 2 Members and procedure of trust boards**

**Schedule 2** contains provisions dealing with the constitution and procedure of trust boards. These substantially mirror Schedules 3 and 5 of the *Crown Lands Act 1989*.

## **Schedule 3 Savings, transitional and other provisions**

**Schedule 3** contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

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## **Schedule 4      Amendment of Acts and subordinate instruments**

**Schedule 4** makes consequential amendments to the Acts and subordinate instruments specified in the Schedule. It also includes amendments to section 8 of the *Summary Offences Act 1988* to extend the application of that section to conduct related to an interment site in a cemetery.

### **Dictionary**

The Dictionary to the proposed Act defines certain terms and expressions used in the proposed Act.

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## **Dictionary**

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**Cemeteries and Crematoria Bill 2013**

No , 2013

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**A Bill for**

An Act to make provision for and with respect to the management and operation of cemeteries and crematoria; and for other purposes.

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Cemeteries and Crematoria Bill 2013 [NSW]  
Part 1 Preliminary

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

## **Part 1 Preliminary**

### **1 Name of Act**

This Act is the *Cemeteries and Crematoria Act 2013*.

### **2 Commencement**

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

### **3 Objects of Act**

The objects of this Act are as follows:

- (a) to ensure that sufficient land is acquired and allocated so that current and future generations have equitable access to interment services,
- (b) to recognise the right of all individuals to a dignified interment and treatment of their remains with dignity and respect,
- (c) to ensure that the interment practices and beliefs of all religious and cultural groups are respected so that none are disadvantaged and adequate and proper provision is made for all,
- (d) to provide for the operation of a consistent and coherent regime for the governance and regulation of cemeteries and crematoria,
- (e) to ensure that the operators of cemeteries and crematoria demonstrate satisfactory levels of accountability, transparency and integrity,
- (f) to ensure that cemeteries and crematoria on Crown land are managed in accordance with the principles of Crown land management specified in section 11 of the *Crown Lands Act 1989*.

### **4 Interpretation**

- (1) Expressions used in this Act that are defined in the Dictionary have the meanings set out in the Dictionary.
- (2) Unless the contrary intention is shown, a reference in this Act to:
  - (a) a **cemetery** includes a reference to:
    - (i) a crematorium, and
    - (ii) a part of a cemetery or crematorium, and
  - (b) a **cemetery operator** includes a reference to:
    - (i) a crematorium operator, and
    - (ii) an operator of part of a cemetery or crematorium.
- (3) An expression that is used in this Act and that is defined in the *Crown Lands Act 1989* (not being an expression that is defined in this Act) has the same meaning in this Act in relation to a Crown cemetery or Crown cemetery operator as it has in that Act in relation to a reserve or person managing the affairs of a reserve trust, respectively.  
**Note.** Expressions used in this Act (or in a particular provision of this Act) that are defined in the *Interpretation Act 1987* have the meanings set out in that Act.
- (4) Notes included in this Act do not form part of this Act.

### **5 Relationship of Act and Crown Lands Act 1989 and other legislation**

- (1) Nothing in the *Crown Lands Act 1989* or an instrument made under that Act (including any by-law or plan of management for a reserve) prevents or restricts the

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use of a reserve for anything that is authorised, permitted or required by or under this Act.

- (2) In the event of any inconsistency between the provisions of this Act or the regulations and a provision of the *Crown Lands Act 1989* or any other State legislation that is prescribed by the regulations as an inconsistent provision for the purposes of this section, the provisions of this Act or the regulations (as the case may be) prevail to the extent of the inconsistency.
- (3) Except as expressly provided by this Act, this Act does not affect the operation of the following Acts, or any regulations made under those Acts, to the extent that they apply to, or in respect of, the operation of cemeteries or crematoria:
  - (a) *Aboriginal Land Rights Act 1983*,
  - (b) *Fair Trading Act 1987*,
  - (c) *Funeral Funds Act 1979*,
  - (d) *Heritage Act 1977*,
  - (e) *National Parks and Wildlife Act 1974*,
  - (f) *Public Health Act 2010*,
  - (g) *Threatened Species Conservation Act 1995*,
  - (h) any other Act prescribed by the regulations for the purposes of this subsection.

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## Part 2 Administration

### Division 1 Constitution and management of Cemeteries Agency

#### 6 Constitution of Cemeteries and Crematoria NSW

There is constituted by this Act a body corporate with the corporate name of Cemeteries and Crematoria NSW.

**Note.** Section 50 of the *Interpretation Act 1987* provides for the powers of a statutory corporation.

#### 7 Status of Cemeteries Agency

The Cemeteries Agency is a NSW Government agency.

#### 8 Control and management of Cemeteries Agency

- (1) All decisions relating to the functions of the Cemeteries Agency are to be made by or under the authority of the Board.
- (2) The Chief Executive Officer is responsible for the day-to-day management of the affairs of the Cemeteries Agency, subject to the policies and directions of the Board.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Cemeteries Agency by or under the authority of the Board or the Chief Executive Officer is taken to have been done by the Cemeteries Agency.

**Note.** The Cemeteries Agency may delegate its functions under section 11.

#### 9 Ministerial control of the Cemeteries Agency

- (1) The Cemeteries Agency is, in the exercise of its functions, subject to the control and direction of the Minister, except in relation to the following:
  - (a) the contents of any advice, report or recommendation given to the Minister,
  - (b) decisions whether to grant, suspend or cancel a licence held by a particular person under an interment industry scheme,
  - (c) decisions whether to institute civil or criminal proceedings in a particular case.
- (2) The Minister must:
  - (a) give the Cemeteries Agency reasonable notice before giving it any direction with respect to the exercise of its functions and provide it with an opportunity to comment on the proposed direction within a time specified by the Minister, and
  - (b) give the direction in writing.
- (3) The Cemeteries Agency is to publish a copy of the direction on an appropriate website.

#### 10 Staff of the Cemeteries Agency

- (1) The Cemeteries Agency may arrange for the use of the services of any staff (whether by way of secondment or otherwise) or of any facilities of any government agency to enable it to exercise its functions.
- (2) The Cemeteries Agency cannot employ any staff.
- (3) The Cemeteries Agency may, however, engage such consultants and independent contractors as it requires to exercise its functions.

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- (4) The Cemeteries Agency may arrange for one or more police officers to be made available (by way of secondment or otherwise) to perform services for the Cemeteries Agency.

**Note.** See section 95A of the *Police Act 1990*.

## 11 Delegation of functions

- (1) The Cemeteries Agency may delegate to an authorised person any of its functions, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Cemeteries Agency if the delegate is authorised in writing to do so by the Cemeteries Agency.
- (3) The following powers may not be delegated:
- (a) the power under section 14 to acquire land in certain circumstances,
  - (b) the power under section 36 of issuing a short term order,
  - (c) the power under section 70 of approving a cemetery renewal scheme.
- (4) In this section, *authorised person* means:
- (a) a member of the Board, or
  - (b) a member of staff of a Government agency, or
  - (c) a person, or person of a class, prescribed by the regulations.

## Division 2 Functions of the Cemeteries Agency

### Subdivision 1 Principal functions

#### 12 Functions—generally

- (1) The Cemeteries Agency has the following functions:
- (a) to assess current and future interment needs and to develop planning strategies for cemetery space to meet those needs,
  - (b) to provide advice or make recommendations to the Minister in relation to the sustainable use of cemetery and crematoria space and capacity,
  - (c) to develop, approve and promote voluntary codes of practice for cemeteries and crematoria and to report on adoption of those codes by the interment industry,
  - (d) to provide advice or make recommendations to the Minister on the establishment, implementation or alteration of interment industry schemes,
  - (e) to regulate the provision of services in relation to interment matters that are subject to interment industry schemes,
  - (f) to keep under review the policies, operating procedures and activities of the interment industry, including cemeteries, crematoria, providers of funeral goods and services, and operators of funeral funds,
  - (g) to collect information and carry out research as is necessary to exercise its functions.
- (2) In exercising its functions, the Cemeteries Agency is to have regard to the objects of this Act.

#### 13 Other functions

- (1) The Cemeteries Agency has such other functions as are conferred or imposed on it by or under this or any other Act.

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- (2) The Cemeteries Agency may do all such supplemental, incidental or consequential acts as may be necessary or expedient for the exercise of its functions.

## Subdivision 2 Ancillary functions

### 14 Reserve power to acquire land in the public interest

- (1) The Cemeteries Agency may:
- (a) with the consent of the Minister and subject to such conditions as the Minister thinks fit to impose do the following:
    - (i) acquire land by agreement for the purpose of providing land for cemetery purposes,
    - (ii) transfer the land to a Crown cemetery trust or other operator or prospective operator of a cemetery, or
  - (b) with the approval of the Minister administering the *Crown Lands Act 1989* and subject to such conditions as the Minister thinks fit to impose, require a Crown cemetery trust to acquire land by agreement for the purposes of the Crown cemetery under its care, control and management.
- (2) The power under subsection (1) is to be exercised only if the Cemeteries Agency considers it is necessary or desirable to acquire the land to ensure equitable access to interment services by all religious and cultural groups.
- (3) The power under subsection (1) is to be exercised in relation to a Crown cemetery trust only if the Cemeteries Agency and the Minister concerned:
- (a) are satisfied that the Crown cemetery trust concerned has sufficient funds available for the acquisition, and
  - (b) has taken into consideration the impact of the land acquisition on the trust, including (without limitation) the long term financial implications for the care, control and management of the additional land.
- (4) For the purposes of the *Public Works Act 1912*, any acquisition of land under subsection (1) (a) is taken to be an authorised work, and the Cemeteries Agency is, in relation to that authorised work, taken to be the Constructing Authority.
- (5) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply to or in respect of works constructed on land acquired under this section.

### 15 Arrangements with other persons and bodies

The Cemeteries Agency may:

- (a) appoint agents, and act as agents, for other persons and bodies, and
- (b) enter into arrangements with a government agency with respect to the exercise under this Act of the functions of authorised officers.

## Division 3 The Board

### Subdivision 1 Constitution of Board

#### 16 Board of the Cemeteries Agency

- (1) There is to be a Board of the Cemeteries Agency.
- (2) The Board is to consist of the following members:
  - (a) a person appointed by the Minister as the Chair of the Board,

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- (b) 3 persons appointed by the Minister who, in the opinion of the Minister, have professional expertise, qualifications or experience that is relevant to the functions exercisable by the Board,
  - (c) the head of, or a person nominated by the head to represent, the following:
    - (i) the Department of Planning and Infrastructure,
    - (ii) the Office of Environment and Heritage, Department of Premier and Cabinet,
    - (iii) the Ministry of Health,
    - (iv) NSW Fair Trading, Department of Finance and Services,
    - (v) the Crown Lands Division, Department of Trade and Investment, Regional Infrastructure and Services,
  - (d) a person who:
    - (i) has knowledge and expertise relevant to local government matters, and
    - (ii) is appointed by the Minister after consultation with the head of, or a person nominated by the head to represent, the Division of Local Government, Department of Premier and Cabinet, Local Government NSW and Local Government Managers Australia, NSW,
  - (e) the Chief Executive Officer.
- (3) A person is not eligible to be a member of the Board if the person is the owner, manager or operator of any cemetery in New South Wales.
- (4) A member referred to in subsection (2) (c), (d) or (e) (a **non-voting member**) is not entitled to vote on any matter considered by the Board.
- (5) The Minister is, by an instrument of appointment or a subsequent instrument, to appoint one of the members referred to in subsection (2) (b) as the Deputy Chair of the Board.

**Note.** Schedule 1 sets out the provisions relating to the members and procedure of the Board.

## Subdivision 2 Duties and liabilities of Board members

### 17 Interpretation

A person is **involved in a contravention** of a provision of this Division if, and only if, the person:

- (a) has aided, abetted, counselled or procured the contravention, or
- (b) has induced, whether by threats or promises, or otherwise, the contravention, or
- (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention, or
- (d) has conspired with others to effect the contravention.

### 18 Care and diligence—civil obligation only (cf Corporations Act s 180)

#### (1) Care and diligence—Board members

A member of the Board must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if they:

- (a) were a member of the Board in the Board member's circumstances, and
- (b) occupied the office held by, and had the same responsibilities as, the member of the Board.

Maximum civil penalty: \$27,500.

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(2) **Business judgment rule**

A member of the Board who makes a business judgment is taken to meet the requirements of subsection (1), and the member's equivalent duties at common law and in equity in respect of the judgment, if the member:

- (a) makes the judgment in good faith for a proper purpose (taking into account any code of conduct where relevant and other relevant matters), and
- (b) does not have a material personal interest in the subject matter of the judgment, and
- (c) informs themselves about the subject matter of the judgment to the extent that the member reasonably believes to be appropriate, and
- (d) rationally believes that the judgment is in the best interests of the Cemeteries Agency.

(3) The member's belief that the judgment is in the best interests of the Cemeteries Agency is a rational one unless the belief is one that no reasonable person in the member's position would hold.

**Note.** This subsection only operates in relation to duties under this section and the equivalent duties at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Act or under any other laws.

(4) In this section:

***business judgment*** means any decision to take or not take action in respect of a matter relevant to the business operations of the Cemeteries Agency.

**19 Disclosure of material personal interest—civil obligations**

(1) If:

- (a) a member of the Board has a direct or indirect material personal interest in a matter being considered or about to be considered at a meeting of the Board, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

Maximum civil penalty: \$5,500.

(2) A disclosure by a member of the Board at a meeting of the Board that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this section.

(3) Particulars of any disclosure made under this section must be recorded by the Cemeteries Agency in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person.

(4) After a member of the Board has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:

- (a) be present during any deliberation of the Board with respect to the matter, or
- (b) take part in any decision of the Board with respect to the matter.

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Maximum civil penalty: \$5,500.

- (5) For the purposes of the making of a determination by the Board under subsection (4), a member of the Board who has a direct or indirect material personal interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Board for the purpose of making the determination, or
  - (b) take part in the making by the Board of the determination.
- (6) A contravention of this section does not invalidate any decision of the Board.

**20 Use of position—civil obligations** (cf Corporations Act s 182)

**(1) Use of position—member of the Board**

A member of the Board must not improperly use his or her position to:

- (a) gain an advantage for the member of the Board or someone else, or
- (b) cause detriment to the Cemeteries Agency.

Maximum civil penalty: \$27,500.

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Maximum civil penalty: \$27,500.

**21 Use of information—civil obligations** (cf Corporations Act s 183)

**(1) Use of information—former member of Board**

A person who obtains information because they are, or have been, a member of the Board must not improperly use the information to:

- (a) gain an advantage for the member of the Board or someone else, or
- (b) cause detriment to the Cemeteries Agency.

Maximum civil penalty: \$27,500.

- (2) The duty under subsection (1) continues after the person stops being a member of the Board.

- (3) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Maximum civil penalty: \$27,500.

## Division 4 Finance

**22 The Cemeteries Agency Fund**

- (1) There is to be established in the Special Deposits Account a Cemeteries and Crematoria NSW Fund (the *Cemeteries Agency Fund*) into which is to be paid the following:
    - (a) all money advanced to the Cemeteries Agency by the Treasurer or appropriated by Parliament for the purposes of the Cemeteries Agency,
    - (b) all money directed or authorised to be paid into the Cemeteries Agency Fund by or under this or any other Act,
- Note.** See, for example, section 6 (1) (f1) of the *Public Reserves Management Fund Act 1987*.
- (c) levies or other payments made under section 24,
  - (d) payments directed to be paid to the Cemeteries Agency under section 40,

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- (e) the proceeds of the investment of money in the Cemeteries Agency Fund,
  - (f) all money received by the Cemeteries Agency from any other source.
- (2) Money may be paid from the Cemeteries Agency Fund for the following purposes:
- (a) enabling the Cemeteries Agency to exercise its functions,
  - (b) the acquisition of land under section 14.
- (3) All expenditure incurred by the Cemeteries Agency is to be paid from the Cemeteries Agency Fund.

## 23 Investment of money in Cemeteries Agency Fund

The Cemeteries Agency may invest money in the Cemeteries Agency Fund:

- (a) in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the Cemeteries Agency to invest the money, in any other manner approved by the Minister with the concurrence of the Treasurer.

## 24 Interment industry levies

- (1) The Cemeteries Agency may levy the following:
  - (a) a contribution towards the cost of the administration of this Act to the extent that it relates to cemeteries (a *general levy*),
  - (b) in special circumstances, a contribution towards the cost of acquiring particular land under section 14 (a *special levy*).
- (2) A general levy under this section:
  - (a) may be imposed by reference to an interment service of a kind prescribed by the regulations,
  - (b) may be imposed on any person who is an operator of a cemetery, or an operator of a class of cemetery, prescribed by the regulations,
  - (c) is to be of an amount, or calculated in the manner (including, without limitation, by providing for the determination by the Cemeteries Agency of adjustment of amounts in proportion to variations in the CPI), prescribed by the regulations,
  - (d) is payable in respect of the period prescribed by the regulations.
- (3) A special levy under this section:
  - (a) may be imposed on any person who is an operator of a cemetery, or an operator of a class of cemetery, prescribed by the regulations,
  - (b) is to be of an amount, or calculated in the manner, prescribed by the regulations,
  - (c) must not exceed an amount in total prescribed by the regulations,
  - (d) is to be paid within the time and in the manner specified by the Cemeteries Agency by notice in writing to the person liable to pay the levy.
- (4) The regulations may make provision for or with respect to the following:
  - (a) the waiver, reduction, postponement or refund of any levy payable under this section,
  - (b) exempting (whether conditionally or unconditionally) persons or persons of a specified class from a requirement to pay a levy imposed under this section.

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- (5) The Cemeteries Agency is to ensure, as far as is reasonably practicable, that money received from a general levy imposed under this section in relation to its functions in relation to cemeteries is not used to cross-subsidise the expenses of the Cemeteries Agency in carrying out any of its other functions.
- (6) Nothing in this section prevents a cost of a kind referred to in this section from being covered by a licence fee charged under an interment industry scheme.
- (7) In this section:  
*CPI* means the index known as the Weighted Average of Eight Capital Cities: All Groups Consumer Price Index that is published quarterly by the Australian Statistician.

## 25 Payment of penalties and fines into the Cemeteries Agency Fund

- (1) Any monetary penalty or fine imposed for an offence under this Act or the regulations or for the contravention of a civil penalty provision and recovered in proceedings instituted by the Cemeteries Agency is to be paid into the Cemeteries Agency Fund.
- (2) If the amount paid into the Cemeteries Agency Fund under this section in any financial year exceeds the maximum amount for the financial year, the amount of the excess is to be paid into the Consolidated Fund.
- (3) The **maximum amount** for a financial year is \$250,000 or, if the regulations make provision for the determination of the maximum amount for the financial year, the maximum amount determined in accordance with those regulations.
- (4) The regulations may make provision for the determination of the maximum amount for a financial year by prescribing a maximum amount for a financial year or by providing for the manner in which the maximum amount for a financial year is to be determined.
- (5) Any such regulation may be made only with the approval of the Treasurer.
- (6) In this section, a reference to proceedings instituted by the Cemeteries Agency includes:
  - (a) a reference to proceedings instituted under the direction or on behalf, or for the benefit, of the Cemeteries Agency, and
  - (b) a reference to a penalty notice or civil infringement notice issued under Part 6 by or under the direction or on behalf of the Cemeteries Agency.
- (7) In this section:  
*financial year* means the period of 12 months commencing on 1 July in any year.  
*fine* does not include any costs (including expenses or disbursements) payable by a person under an order made by a court in proceedings for an offence under this Act or the regulations.

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Part 3 Regulation of interment industry

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## Part 3 Regulation of interment industry

### Division 1 Preliminary

#### 26 Definitions

In this Act:

***interment industry*** means the following:

- (a) cemetery operators,
- (b) funeral directors,
- (c) funeral contribution funds within the meaning of the *Funeral Funds Act 1979*,
- (d) any other persons, or persons of class, prescribed by the regulations.

#### 27 Cemeteries and Crematoria Register

- (1) The Cemeteries Agency must keep a register of cemeteries and crematoria (the ***Cemeteries and Crematoria Register***).
  - (2) The Cemeteries and Crematoria Register may be kept in the way the Cemeteries Agency decides.
  - (3) A cemetery operator must notify the Cemeteries Agency of the following matters for inclusion on the Cemeteries and Crematoria Register:
    - (a) the name and location of the cemetery or crematorium,
    - (b) the name and address of the cemetery operator,
    - (c) the telephone number of the cemetery or the crematorium or the cemetery operator,
    - (d) any other information required by the regulations to be included in that register.
  - (4) The regulations may make provision for or with respect to the notification by a cemetery operator of information contained in the Cemeteries and Crematoria Register and changes in relation to that information.
  - (5) A cemetery operator must:
    - (a) provide the Cemeteries Agency with any information relating to the cemetery that is required by this section to be included in the Cemeteries and Crematoria Register, and
    - (b) notify the Cemeteries Agency of any material change in the information provided by the cemetery operator for recording in that register within 14 days (or such longer period as the Cemeteries Agency allows) after the change occurs.
- Maximum civil penalty: \$2,200.
- Note.** A reference in this Part to a **cemetery operator** includes a reference to a crematorium operator —see section 4 (2).
- (6) The Cemeteries and Crematoria Register is to be open for public inspection, without charge, during ordinary business hours.

### Division 2 Codes of practice

#### 28 Codes of practice

- (1) Codes of practice may be developed and approved by the Cemeteries Agency on its own initiative or in collaboration with all or any participants in the interment

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Part 3 Regulation of interment industry

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industry, or one or more sectors of an interment industry, for the purpose of providing guidance on any interment matter or other matter encompassed by the objects of this Act.

- (2) Despite subsection (1), the Cemeteries Agency cannot develop and approve a code of practice to the extent it relates to any matter concerning the following:
  - (a) the disposal and handling of human remains (including the cremation of such remains) that is regulated by or under the *Public Health Act 2010*—without the concurrence of the Minister administering that Act,
  - (b) funeral funds that is regulated by or under the *Funeral Funds Act 1979*—without the concurrence of the Minister administering that Act,
  - (c) the supply of funeral goods and services that is regulated by or under the *Fair Trading Act 1987*—without the concurrence of the Minister administering that Act.
- (3) A code of practice may apply to any one or more of the following:
  - (a) any specified activity or class of activities,
  - (b) all participants in the interment industry or a specified sector of the industry.
- (4) In developing a code of practice on its own initiative, the Cemeteries Agency must consult with representatives of the participants in the interment industry or specified sector of the industry to whom the code of practice will apply and with any other relevant stakeholders.
- (5) A code of practice may refer to or incorporate, with or without modification, a standard or other document prepared or published by a body specified in the code, as in force at a particular time or from time to time.

## 29 Nature of codes of practice

Codes of practice are in the nature of guidelines and compliance is not mandatory.

**Note.** However, section 31 (2) (a) and (3) provide for civil penalty for failure to comply with the whole or part of a code of practice as part of an interment industry scheme.

## 30 Approval of codes of practice

- (1) The Cemeteries Agency may approve a code of practice for the purposes of this Act and may vary or revoke an approved code of practice.
- (2) As soon as practicable after approving a code of practice, or varying or revoking an approved code of practice, the Cemeteries Agency must ensure that notice of the approval, variation or revocation is given on an appropriate website.
- (3) An approval of a code of practice, or variation or revocation of an approved code of practice, takes effect when notice of it is given under subsection (2).
- (4) The Cemeteries Agency must ensure that a copy of each document applied, adopted or incorporated (to any extent) by an approved code of practice is placed on an appropriate website.

## Division 3 Interment industry schemes

### 31 Regulations relating to establishment of interment industry schemes

- (1) The regulations may establish schemes for or with respect to the interment industry (*interment industry schemes*).
- (2) Without limiting subsection (1), the regulations establishing an interment industry scheme may make provision for or with respect to the following:

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- (a) requiring compliance with any or all provisions of a code of practice (a **mandatory code of practice requirement**),
  - (b) requiring an operator of a cemetery to ensure adequate provision is made for perpetual care of interment sites,
  - (c) requiring the licensing of any activity, person, business, premises, vehicle or equipment in relation to the provision of interment services,
  - (d) the imposition of conditions on licences,
  - (e) the suspension or cancellation of licences,
  - (f) appeals from, or reviews of, decisions made under the regulations in relation to licences or applications for the granting of licences,
  - (g) setting fees and charges that are necessary for the funding of the scheme.
- (3) A person must comply with any requirement of an interment industry scheme that applies to the person.  
Maximum civil penalty: \$27,500.
- (4) A regulation may be made under subsection (1) only:
    - (a) with the concurrence of the Minister administering the *Public Health Act 2010*—if it impacts on an aspect of the disposal and handling of human remains (including the cremation of such remains) regulated by or under that Act, and
    - (b) with the concurrence of the Minister administering the *Funeral Funds Act 1979*—if it impacts on an aspect of the operation of funeral funds regulated by or under that Act, and
    - (c) with the concurrence of the Minister administering the *Fair Trading Act 1987*—if it impacts on an aspect of the supply funeral goods and services for the arrangement and conduct of a funeral regulated by or under that Act.

**32 Consultation to be undertaken on regulations establishing interment industry schemes**

- (1) The Minister is to ensure that consultation with participants in the interment industry generally or a sector of the interment industry is undertaken before the making of any regulation that establishes an interment industry scheme.
- (2) The provisions of section 5 (Regulatory impact statements) of the *Subordinate Legislation Act 1989* apply to a regulation that establishes an interment industry scheme in the same way as they apply to a principal statutory rule (within the meaning of that Act).
- (3) Consultation is taken to have been undertaken on an interment industry scheme for the purposes of subsection (1) if:
  - (a) notice of the proposed regulation establishing the interment industry scheme has been published in accordance with section 5 (2) (a) of the *Subordinate Legislation Act 1989*, and
  - (b) consultation on the regulation has taken place in accordance with section 5 (2) (b) of that Act, and
  - (c) comments and submissions received have been appropriately considered in accordance with section 5 (2) (c) of that Act.

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Part 3 Regulation of interment industry

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## Division 4 Improvement notices

### 33 Issue of improvement notice by the Cemeteries Agency

- (1) The Cemeteries Agency may give the operator of a cemetery a notice under this subsection (*a preliminary notice*) if:
  - (a) the Cemeteries Agency believes on reasonable grounds that this Act or the regulations or a provision of an interment industry scheme have been, or are being, contravened in relation to the cemetery, and
  - (b) the contravention is not an offence against this Act or the regulations.
- (2) The preliminary notice must:
  - (a) state the contravention and the reasons for the belief, and
  - (b) invite the operator to make written representations, within a stated period of not less than 14 days, why the operator should not be required to end the contravention or remedy the consequences of the contravention, or both.
- (3) If, after considering any written representations made by the operator within the stated period, the Cemeteries Agency is satisfied that the operator should be required to end the contravention or remedy the consequences of the contravention, or both, the Cemeteries Agency may give the operator a notice under this subsection (*an improvement notice*).
- (4) The improvement notice:
  - (a) must require the operator to end the contravention or remedy the consequences of the contravention, or both, within a stated time, and
  - (b) may state the action the operator must take to comply with the notice, and
  - (c) if the notice requires the operator to end the contravention—must state that failure to end the contravention, without reasonable excuse, within the stated time, is a contravention of a civil penalty provision, and
  - (d) if the notice requires the operator to remedy the consequences of the contravention—must state that, if the operator fails to remedy the consequences within the stated time, the Cemeteries Agency may arrange for action to be taken to remedy the consequences and that the operator will be liable for the cost of taking the action.
- (5) A cemetery operator who is given an improvement notice may appeal to the Administrative Decisions Tribunal for a review of the decision to give the notice.

### 34 Failure to end contravention—civil obligation

The operator of a cemetery must not fail to end a contravention of this Act or the regulations or a provision of an interment industry scheme as required by an improvement notice given to the operator within the time stated in the notice.

Maximum civil penalty: \$27,500.

### 35 The Cemeteries Agency may take action to remedy consequences of contravention

- (1) If the operator of a cemetery fails to remedy the consequences of a contravention of this Act or the regulations or a provision of an interment industry scheme in accordance with an improvement notice or any additional time allowed by the Cemeteries Agency, the Cemeteries Agency may arrange for the action that it considers necessary or desirable to remedy the consequences to be taken by or on behalf of the State.
- (2) The cost of any action taken under this section is a debt due to the State payable by the operator.

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## Division 5 Short term orders

### 36 Making of short term orders

- (1) The Cemeteries Agency may, by order in writing given to a person who is an operator of a type or class of cemetery, or persons who belong to a class of such operators, require the person or persons to take such action or refrain from taking such action as is specified in the order (a *short term order*).
- (2) The Cemeteries Agency may make a short term order if it considers the making of the order to be reasonably necessary in the public interest to prevent or lessen a serious threat or risk to the achievement of an object of this Act pending the making of a regulation under section 31 establishing an interment industry scheme that includes a provision requiring compliance with any or all of the provisions of a code of practice.
- (3) As soon as practicable after making a short term order, the Cemeteries Agency must recommend to the Minister that the regulation referred to in subsection (2) be made as a matter of urgency.
- (4) A short term order may be made without the concurrence of the Ministers referred to in section 31 (4).

### 37 Duration of short term orders

- (1) A short term order takes effect on the day on which the order is given to the person or persons concerned.
- (2) The Cemeteries Agency may review a short term order on its own initiative or on the application of a person to whom it relates.
- (3) On a review, the Cemeteries Agency may confirm, vary or revoke the order.
- (4) A short term order remains in force (unless sooner revoked by the Cemeteries Agency) for the period of 12 months after the day on which it takes effect or until the day the regulation referred to section 36 (2) is made, whichever occurs first.

### 38 Compliance with short terms orders—civil obligation

A person to whom a short term order is given must comply with any requirement imposed on that person by that order.

Maximum civil penalty: \$27,500.

## Division 6 Enforceable undertakings

### 39 Undertakings relating to contraventions of Act, regulations and interment industry scheme

- (1) This section applies if the Cemeteries Agency considers that an action taken by, or omission of, a person constituted a contravention of this Act, the regulations or a provision of an interment industry scheme.
- (2) The Cemeteries Agency may accept any of the following undertakings given by the person:
  - (a) a written undertaking that the person will take specified action, or refrain from taking specified action, in order to comply with the Act, the regulations or the provisions of the interment industry scheme,
  - (b) a written undertaking that the person will take specified action directed towards ensuring that the person does not commit a contravention of the Act, regulations or provision of the interment industry scheme, or is unlikely to commit such a contravention in the future,

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- (c) a written undertaking of a kind specified in the regulations.
- (3) The person may withdraw or vary the undertaking at any time, but only with the consent of the Cemeteries Agency.
- (4) The Cemeteries Agency may, by written notice given to the person, cancel the undertaking.
- (5) The undertaking may be published on an appropriate website.

## **40 Enforcement of undertakings**

- (1) The Cemeteries Agency may apply to the Local Court (or such other court or tribunal as may be prescribed by the regulations) for an order under subsection (2) if:
  - (a) a person has given an undertaking under section 39 that has not been withdrawn or cancelled, and
  - (b) the Cemeteries Agency considers the person has breached the undertaking.
- (2) If the Local Court (or court or tribunal prescribed by the regulations) is satisfied that the person has breached the undertaking, it may make any or all of the following orders:
  - (a) an order directing the person to comply with the undertaking,
  - (b) an order directing the person to pay to the Cemeteries Agency an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,
  - (c) any other order that it considers appropriate, including an order directing the person to compensate any other person who has suffered damage or loss as a result of the breach.

## **Division 7 Management of cemetery operators**

### **41 Performance management for cemetery and crematorium operators—civil obligations**

- (1) The Cemeteries Agency may, by notice in writing, require a cemetery operator to report to the Cemeteries Agency on the operator's performance in managing the cemetery and on such other matters as the Cemeteries Agency considers appropriate.
- (2) Any such requirement may specify:
  - (a) the intervals at which the operator is to report to the Cemeteries Agency, and
  - (b) the performance management criteria against which the performance of the operator is to be assessed by the Cemeteries Agency.
- (3) A cemetery operator must comply with any requirement imposed on the operator by a notice under this section.  
Maximum civil penalty: \$9,900.

### **42 Records—civil obligation**

A cemetery operator must keep such records (including accounting records) as may be prescribed by the regulations or as may be required by the Cemeteries Agency by notice in writing to the operator.

Maximum civil penalty: \$9,900.

### **43 Reports by cemetery and crematoria operators—civil obligations**

- (1) A cemetery operator must:

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- (a) provide reports to the Cemeteries Agency in the form, at such times and concerning such matters or specifying such information, as may be required by the Cemeteries Agency by notice in writing to the operator or to operators generally, and
- (b) keep such records (including accounting records) as may be prescribed by the regulations or as may be required by the Cemeteries Agency by notice in writing to the operator or operators generally.

Maximum civil penalty: \$9,900.

- (2) The Cemetery Agency may, by order in writing, exempt (either conditionally or unconditionally) an operator, or operator of a specified class, from the requirements of subsection (1).
- (3) The exemption is to operate for a specified period, or until further notice, as may be stated in the order.
- (4) A cemetery operator must, at the request of the Cemeteries Agency:
  - (a) give the Cemeteries Agency such information as the Agency requires in relation to the operations of the cemetery, and
  - (b) forward to the Cemeteries Agency specified records (including accounting records), or copies of or extracts from specified records, kept by the operator.

Maximum civil penalty: \$9,900.

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## Part 4 Interment rights and cemetery renewal

### Division 1 Preliminary

#### 44 Definitions

In this Part:

***appropriate fee*** in relation to any matter:

- (a) in relation to a cemetery operator that is a Crown cemetery operator—means the fee determined in relation to the matter by the operator under section 114, and
- (b) in relation to any other cemetery operator—means the fee determined in relation to the matter by the operator.

***cemetery operator's register*** means the register kept by a cemetery operator under section 63.

***holder*** of an interment right means the person recorded in the cemetery operator's register in relation to that cemetery as the holder of the interment right.

***interment*** of human remains means:

- (a) the placement of human remains in a mausoleum, vault, columbarium or other structure designed for the placement of such remains, or
- (b) the burial in the earth of human remains (directly in the earth or in a container).

***interment right*** means an interment right issued under this Division.

***interment site*** means place for the interment of human remains.

***statutory renewal period*** —see section 48.

### Division 2 Interment rights

#### Subdivision 1 Preliminary

#### 45 Application of Division

- (1) Except as provided by subsection (2), this Division does not apply to or in respect of, or affect the following:
  - (a) any burial licence granted under the *Crown Lands Act 1989* before the commencement of this section,
  - (b) any right, licence or other entitlement in the nature of an interment right given by contract or other agreement by the person responsible for the management of the affairs of a cemetery before the commencement of this section.
- (2) A burial licence or other entitlement referred to in subsection (1) is taken on the commencement of this section to be an interment right granted under this Division and if the interment right was granted or given:
  - (a) in perpetuity—to have been granted as a perpetual interment right, or
  - (b) for a fixed term—to have been granted or given for the fixed term, the end of which is taken, for the purposes of this Division, to be the end of the statutory renewal period referred to in section 48.
- (3) In the application of this Division to a portion of a cemetery, a reference to a cemetery is taken to include a reference to a portion of a cemetery.
- (4) This Division does not affect the operation of any regulations under the *Public Health Act 2010* relating to cemeteries.

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## **Subdivision 2 Interment rights generally**

### **46 Nature of interment right**

- (1) An interment right obliges the cemetery operator:
  - (a) to permit the interment of the remains of the person to whom it relates at the site in a cemetery identified in, or in accordance with, the interment right, and
  - (b) to permit a memorial to the deceased person to be erected at the site with the approval of the cemetery operator, and
  - (c) to leave the remains undisturbed for so long as the interment right remains in force, and
  - (d) to leave any memorial to the deceased person lawfully erected at that site, with the permission of the cemetery operator, undisturbed (provided that the interment right remains in force and the memorial is kept in good repair).
- (2) An interment right may provide for the interment of such number of deceased persons at the interment site to which it relates as the cemetery operator considers to be within the capacity of the site to hold.

### **47 Types of interment right**

The cemetery operator may grant an interment right:

- (a) for the statutory renewal period in accordance with section 54 (1) (a *renewable interment right*), or
- (b) in perpetuity (a *perpetual interment right*).

### **48 Duration of interment right**

An interment right entitles the person or persons to whom it is granted to the exclusive right of interment of the remains of a person in the interment site in respect of which it is granted:

- (a) if it is a renewable interment right—for a maximum period of 99 years accumulated in accordance with section 54 (the *statutory renewal period*), and
- (b) if it is a perpetual interment right—in perpetuity.

### **49 Exclusive interment rights may be bequeathed**

- (1) The holder of an interment right may bequeath the right as if it were the holder's personal estate.
- (2) A person to whom an interment right devolves as a result of a bequest does not become the holder of the right until the cemetery operator's register is amended to indicate that fact.
- (3) On application made by a person to whom an interment right has devolved as a result of a bequest, the cemetery operator must amend the cemetery operator's register so as to indicate that the person has become the holder of the right.
- (4) An application under this section must be in the form approved by the cemetery operator and accompanied by the appropriate fee.
- (5) The executor or administrator (within the meaning of the *Probate and Administration Act 1898*) of the estate of the holder of an interment right who has bequeathed the interment right must give the relevant cemetery operator written notice of the death of the holder within the period prescribed by the regulations after the executor or administrator becomes aware of the death.

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## **50 Rules of intestacy to apply to interment rights not bequeathed**

- (1) If the holder of an interment right dies and has not bequeathed the interment right, the interment right is to be dealt with as if it were personal property forming part of the estate of an intestate.
- (2) A person to whom an interment right devolves as a result of intestacy does not become the holder of the interment right until the relevant cemetery operator's register is amended to indicate that fact.
- (3) On application made by a person to whom an interment right has devolved as a result of intestacy, the cemetery operator must amend the relevant cemetery operator's register so as to indicate that the person has become the holder of the interment right.
- (4) An application under this section must be in the form approved by the cemetery operator and accompanied by the appropriate fee.

## **51 Interment right to pass to surviving joint holder**

On the death of a joint holder of an interment right, the remaining joint holder is, or joint holders are, entitled to the interment right.

## **52 Revocation of perpetual interment rights**

- (1) A cemetery operator may revoke a perpetual interment right that the cemetery operator, or any previous cemetery operator for the cemetery concerned, has granted if the right conferred by the perpetual interment right is not exercised within 50 years after it is granted.
- (2) Before revoking a perpetual interment right under this section, the cemetery operator must cause notice of its intention to do so to be sent, by registered post, to the person (if any) shown in the relevant cemetery operator's register as the holder of the perpetual interment right.
- (3) If no response to the notice is received within 28 days after the date on which it is sent, a second notice of the cemetery operator's intention is to be given by means of an advertisement, identifying the interment site and the name of the holder:
  - (a) displayed in a prominent position at the crematorium, cemetery or portion of a cemetery concerned, and
  - (b) published in at least one national and one local newspaper.
- (4) If no response to the second notice is received within 6 months after the date on which it is advertised, final notice of the cemetery operator's intention is to be sent, by registered post, to the person (if any) shown in the register as the holder of the perpetual interment right allowing the holder 28 days from the date of the final notice within which to enter into negotiations of the kind referred to in subsection (6).
- (5) If the cemetery operator has insufficient information to properly address the notice referred to in subsection (2) or (4), the operator is not required to send that notice but may in that case begin the notification process by means of the notice referred to in subsection (3) and may take any other notification action the operator considers appropriate.
- (6) At any time before the expiry of the period for responding to the final notice referred to in subsection (4) (or, in the circumstances referred to in subsection (5), within 28 days after the last date on which an advertisement referred to in subsection (3) (b) is published) the holder of the perpetual interment right concerned may enter into negotiations with the cemetery operator for:
  - (a) the sale of the perpetual interment right, or
  - (b) the retention of the perpetual interment right.

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- (7) Any notice required to be displayed or published under this section may relate to more than one interment site.

## 53 Compensation

- (1) If a cemetery operator revokes the perpetual interment right for an interment site the former holder of that interment right is entitled:
  - (a) to be granted a perpetual interment right:
    - (i) for an alternative interment site in the same cemetery (and, if available, in the same general location) as the original interment site, and
    - (ii) for an equivalent period to that for which the original interment right was granted, or
  - (b) to be paid by the cemetery operator, by way of compensation, an amount equal to half of the fee payable (as provided by the cemetery operator's current scale of fees) for the granting of a perpetual interment right:
    - (i) for an alternative interment site in the same cemetery (and, if available, in the same general location) as the original interment site place, and
    - (ii) for an equivalent period to that for which the original interment right was granted.
- (2) If there is no alternative interment site available, or if there is no applicable scale of fees, the amount of compensation referred to in subsection (1) (b) is to be half of the fee payable for the granting of an interment right under the most recent applicable scale of fees, varied in proportion to any variation in the Consumer Price Index (All Groups Index) for Sydney that has occurred between the date on which that scale was established and the date of revocation of the interment right.
- (3) A cemetery operator must ensure that any report on its accounts contains an estimate of its contingent liability with respect to any interment rights it has revoked.
- (4) The cemetery operator may elect whether the former holder of the revoked interment right is to be granted an alternative interment site or paid compensation.
- (5) Despite section 58 (Transfer of interment right to person other than cemetery operator), if the former holder of the revoked interment right is granted an interment right for an alternative interment site, that interment right may not be transferred by the former holder within 5 years after the date on which it was granted.
- (6) A former holder of a revoked interment right may apply to the Cemetery Agency for a review of any election of the cemetery operator under this section.
- (7) An application for an entitlement under this section:
  - (a) must be in the form approved by the Cemetery Agency, and
  - (b) must be accompanied by the appropriate fee, and
  - (c) must be lodged with the cemetery operator within 6 years after the date on which the relevant interment right was revoked.
- Note.** Pursuant to section 114 (9) the fee referred to in paragraph (b) if set by a Crown cemetery operator is subject to variation or disallowance by the Cemeteries Agency.
- (8) The Cemetery Agency's decision on such a review:
  - (a) is final, and
  - (b) is taken to be the decision of the cemetery operator, and
  - (c) is to be given effect to accordingly.
- (9) In this section, **former holder** of a revoked interment right means the person who held that licence immediately before it was revoked.

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## **Subdivision 3 Renewable interment rights**

### **54 Grant and renewal of renewable interment rights**

- (1) A cemetery operator may, subject to this section, on application and payment of the appropriate fee, grant to one person (or to two or more persons as joint holders) an interment right in a specified interment site in the cemetery for an initial term of 25 years (a *renewable interment right*).
- (2) A renewable interment right may, in accordance with subsections (3) and (5), be renewed for further terms that, together with the initial term, do not in aggregate exceed 99 years in total.
- (3) The cemetery operator must, on application by the holder of the interment right, renew the renewable interment right for a term of 25 years or such lesser period as, when aggregated with any previous terms of the right, will not give the interment right force for more than 99 years in total.
- (4) A renewable interment right must be renewed for a term of 25 years if the right conferred by it is not exercised within 25 years after it is granted for an initial term.
- (5) A renewable interment right is automatically renewed on each occasion a deceased person is lawfully interred in the interment site for a term of 25 years or such lesser period as, when aggregated with any previous terms of the right, will not give the interment right force for more than 99 years in total.
- (6) A renewable interment right expires if it is not renewed before the end of a term for which it is granted under subsection (1) or renewed under subsection (3) or (5).
- (7) Subject to the regulations, a cemetery operator must, at least 12 months before a renewable interment right granted by the cemetery operator is due to expire, take reasonable steps to give the holder of the renewable interment right written notice setting out the holder's entitlement (if any) to renew the right and the cost of doing so.
- (8) A holder of a renewable interment right who has been given notice of the cost of renewing the right under subsection (7) must pay the appropriate fee on the occasion of the first renewal of the right after receiving the notice.
- (9) A cemetery operator must not grant or renew a renewable interment right unless the cemetery operator has given the prospective holder of the right notice of the fee payable if the right is automatically renewed under subsection (5).

### **55 Re-use of interment sites**

- (1) Subject to this section and the regulations, if a renewable interment right expires, the cemetery operator may at the end of the period of 2 years after the right expired do the following:
  - (a) re-use the interment site to which the renewable interment right related,
  - (b) remove any memorial to a deceased person erected on or at the site.
- (2) Subsection (1) does not apply to an interment site on or at which a memorial of the following kind is erected:
  - (a) a memorial that is an item of local heritage significance or State heritage significance under the *Heritage Act 1977*,
  - (b) a memorial relating to a grave listed by the Office of Australian War Graves,
  - (c) a memorial in relation to a person who died from a prescribed infectious disease within the meaning of Division 3 of Part 8 of the *Public Health Regulation 2012*.
- (3) The cemetery operator cannot do anything under subsection (1) unless:

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- (a) the cemetery operator has sought the advice (if any) required by section 69 (2) of the heritage advisory committee for the cemetery concerned, and
  - (b) the cemetery operator has given notice of its intention to re-use the interment site or remove the memorial in a newspaper circulating throughout the State, and
  - (c) the cemetery operator has taken reasonable steps to give notice of its intention to re-use the interment site or remove the memorial to the holder of the interment right listed in the cemetery operator's register, and
  - (d) in the case of the removal of a memorial—has taken reasonable steps to give notice of the steps that the person can take to reclaim the memorial, and
  - (e) a new renewable interment right is granted in respect of the interment site.
- (4) Before an interment site is re-used, the cemetery operator must ensure that any bodily remains of a deceased person found at the site are placed in an ossuary box and re-interred at a greater depth or placed in an ossuary house or similar place.
  - (5) Despite subsection (1), an interment site may not be re-used if the cemetery operator considers it would not be possible to comply with subsection (4) because of the insufficiently decomposed state of the bodily remains.
  - (6) The regulations may make provision for or with respect to:
    - (a) the re-use of interment sites and removal and disposition of memorials under this section, and
    - (b) the notices and authorisations required before any thing is done under subsection (1).

## **Subdivision 4    Grant and transfer of interment rights generally**

### **56    Grant of interment right**

- (1) The cemetery operator may grant an interment right in respect of an interment site in a cemetery.
- (2) An application for an interment right must be in the form approved by the cemetery operator and be accompanied by the appropriate fee.
- (3) An interment right may be granted to one person or to 2 or more persons as joint holders.
- (4) A cemetery operator cannot, without the approval of the Cemeteries Agency, grant an interment right to a person if the granting of the interment right will result in the person holding (including jointly holding) interment rights in respect of more than 2 interment sites in the cemetery for which the interment right is sought.

### **57    Content of interment right**

An interment right granted by a cemetery operator must:

- (a) identify the person or persons to whom the right is granted, and
- (b) identify the interment site at which a person or persons may be interred pursuant to the right, and
- (c) identify the person or persons whose remains may be interred pursuant to the interment right or provide that a specified person or person of a specified class may, at a future time, nominate the person or persons whose remains may be interred pursuant to the interment right, and
- (d) identify whether the interment right is granted as a perpetual interment right or as a renewable interment right, and

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- (e) specify whether the interment right may be transferred, and
- (f) specify any other conditions on which the interment right is granted.

**58 Transfer of interment right to person other than a cemetery operator**

- (1) A cemetery operator may, on application, transfer an interment right from one person or 2 or more persons as joint holders to one person or 2 or more other persons as joint holders.
- (2) An application under subsection (1) may be made only by the holder of the interment right concerned or, if the interment right is held by joint holders, by all the joint holders.
- (3) An application for the transfer of an interment right must be in the form approved by the cemetery operator and be accompanied by the appropriate fee.

**59 Transfer of interment right to cemetery operator**

A cemetery operator may enter into arrangements with the holder of an interment right for the transfer of the interment right to the cemetery operator.

**60 Grant or transfer of interment right may be refused**

A cemetery operator may refuse to grant or transfer an interment right if, in the operator's opinion, the grant or transfer would tend to create a monopoly or encourage dealing in interment rights.

**61 Cemetery operator may determine holder of interment right**

- (1) This section applies if there is a dispute or other doubt about who holds an interment right for a particular interment site in a cemetery.
- (2) A person who believes he or she is the holder of the interment right may apply to the cemetery operator for the cemetery for a decision that the person holds the interment right.
- (3) As soon as practicable after receiving the application the cemetery operator must make a decision about whether the person holds or does not hold the interment right for the interment site.
- (4) However, the cemetery operator may make a decision that the person holds the interment right for the interment site only if:
  - (a) at least 28 days before making the decision, the cemetery operator:
    - (i) displays a notice about its intention to make the decision in a prominent position at the cemetery, and
    - (ii) publishes a notice about its intention to make the decision in at least one newspaper circulating throughout the State, and
    - (iii) takes any other steps it considers reasonable in the circumstances to determine who holds the interment right for the interment site, or
  - (b) in the reasonable opinion of the cemetery operator it is not possible to follow the procedure in paragraph (a) because it is necessary to make an urgent decision due to the imminent interment of a person who was related by blood or marriage to, or who was in a domestic relationship with:
    - (i) the applicant, or
    - (ii) a person interred in the interment site.
- (5) If the cemetery operator decides that the person holds the interment right for the interment site, the cemetery operator is taken to have revoked any other interment right for the interment site.

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## **62 Interment right not required for scattering of cremated remains**

No interment right is required for the scattering of cremated remains in a cemetery.

## **Subdivision 5 Miscellaneous**

### **63 Register of interment rights, memorials, cremations and interments**

- (1) A cemetery operator for a cemetery must cause a register to be kept of the following events:
  - (a) interment rights granted by the cemetery operator in respect of interment sites in the cemetery,
  - (b) memorials erected in respect of interment sites in the cemetery,
  - (c) each interment carried out in the cemetery,
  - (d) each cremation carried out at the cemetery.Maximum civil penalty: \$2,200.
- (2) A reference in this Act to the *cemetery operator's register* is a reference to the register kept under subsection (1).
- (3) The cemetery operator's register may be wholly or partly in the form of a computer data base, in documentary form, or in another form prescribed by the regulations and is to contain such particulars as are required by the regulations.
- (4) Without limiting subsection (2), the cemetery operator's register is to:
  - (a) identify (as far as possible) each holder of an interment right, and
  - (b) include contact details for that holder, and
  - (c) include the name, age and last address of the person whose remains have been interred, the date of the person's death and the date of the interment, and
  - (d) include the name, age and last address of the person whose remains have been cremated, the date of the person's death, the date of the cremation and details of the disposal of the cremated remains.Maximum civil penalty: \$2,200.
- (5) The cemetery operator must make an entry relating to an interment or cremation immediately after the interment or cremation is carried out.  
Maximum civil penalty: \$2,200.
- (6) The cemetery operator must keep a copy of the cemetery operator's register at the cemetery and make it available for inspection on request by an authorised officer within the meaning of this Act or the *Public Health Act 2010*.  
Maximum civil penalty: \$2,200.
- (7) An entry in the cemetery operator's register of the particulars referred to in subsection (3) is presumed (unless the contrary is proved) to be correct.
- (8) The cemetery operator may amend the cemetery operator's register from time to time so as to remove any inaccuracies contained in it and to record any changes to interment rights as a result of a transfer, revocation or death of the holder of an interment right.
- (9) The cemetery operator must, on application made by any person, make available to the person a copy of any entry made in the cemetery operator's register in relation to an interment right or memorial.
- (10) Such an application must be in the form approved by the cemetery operator and accompanied by the appropriate fee.

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- (11) If a cemetery operator ceases to direct the operations of a cemetery, the cemetery operator must ensure the cemetery operator's register is sent to the Cemeteries Agency or otherwise disposed of as the Cemeteries Agency directs.
- Maximum civil penalty: \$2,200.

## 64 Keeping of register and documents

- (1) A cemetery operator must keep all applications, certificates, permits and other documents relating to any cremation carried out by it and mark them with a number corresponding to the number allocated to the cremation in the cemetery operator's register.
- Maximum civil penalty: \$2,200.
- (2) Those documents (other than the register or any part of it) may be destroyed by the cemetery operator after 15 years from the date of the cremation to which they relate.
- (3) When a crematory is closed, the cemetery operator concerned must send all registers and documents relating to the cremations that have taken place at the crematory to the Cemeteries Agency or otherwise dispose of them as the Cemeteries Agency may direct.
- Maximum civil penalty: \$2,200.

## 65 Certificates for interment rights

- (1) A cemetery operator may issue to the holder of an interment right a certificate stating that the holder holds an interment right that is in force in relation to an interment site described in the certificate.
- (2) A statement in a certificate referred to in subsection (1) is presumed (unless the contrary is proved) to be correct.
- (3) An application for such a certificate must be in the form approved by the cemetery operator and accompanied by the appropriate fee.
- (4) A certificate under this section is to be in such form as the cemetery operator may from time to time determine.

## 66 Opening of interment sites, exhumation and re-interment

- (1) A person must not, without the approval of the Minister for Health:
- (a) open, or cause or permit to be opened, an interment site in a cemetery for the purpose of interring additional human remains, or
  - (b) exhume, remove, or cause or permit to be exhumed or removed, any bodily remains from their place of interment, or
  - (c) re-inter, or cause or permit to be re-interred, in a cemetery bodily remains that have been exhumed or removed from their place of interment.
- Maximum penalty: 20 penalty units.
- (2) Subsection (1) (a) does not apply if:
- (a) only cremated remains are interred at the site, or
  - (b) in the case of an interment site at which bodily remains are interred (whether or not cremated remains are also interred there) which is to be re-used in accordance with section 55:
    - (i) additional human remains can be interred without disturbing bodily remains, or
    - (ii) a lift and deepen procedure is carried out in accordance with the regulations.

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- (3) Subsection (1) (b) does not apply if the exhumation takes place in accordance with:
  - (a) the regulations under the *Public Health Act 2010*, or
  - (b) by order of a court.
- (4) In this section:  
*lift and deepen procedure* means a procedure that consists of:
  - (a) opening an interment site, and
  - (b) recovering any human remains interred in the site, and
  - (c) deepening or otherwise enlarging the interment site, and
  - (d) re-interring the existing human remains in the place of interment in accordance with section 55 (4).

## 67 Order for interment

- (1) An interment must not take place in a cemetery unless the cemetery operator has issued an order for interment.
- (2) A cemetery operator may set down the procedure to be followed to obtain an order for interment.

## 68 Hours of burial

Interments are not to take place except at such times as the cemetery operator may from time to time determine.

## 69 Heritage advisory committee

- (1) The cemetery operator for a cemetery that offers renewable interment rights must establish a heritage advisory committee as soon as practicable after the establishment of the cemetery or the commencement of this section (whichever first occurs).
- (2) Before removing any memorial that has not been reclaimed, a cemetery operator required to establish a heritage advisory committee by subsection (1), must seek the advice of the heritage advisory committee as to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the memorial and appropriate action to take to preserve its value.
- (3) The Cemeteries Agency may, by order published on an appropriate website, make guidelines for or with respect to the constitution of a heritage advisory committee.
- (4) A heritage advisory committee consists of such persons as the cemetery operator considers (taking into account any guidelines made under subsection (3)) have qualifications, knowledge and skills in areas relevant to the functions of the committee.
- (5) A heritage advisory committee member holds office for such period as is specified in the instrument of appointment of the committee member, but any such appointment may be terminated by the cemetery operator at any time.
- (6) One of the advisory committee members, in and by the instrument by which the committee member is appointed or another instrument made by the cemetery operator, is to be appointed as chairperson of the committee.
- (7) Subject to the regulations, the procedure for the calling and holding of meetings of a heritage advisory committee is to be determined by the committee.

## Division 3 Cemetery renewal

**Note.** This Division enables a cemetery operator to implement, with the approval of the Cemeteries Agency, a renewal scheme for the cemetery by re-using interment sites in the cemetery and removing, re-locating or

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disposing of memorials on the sites. Approval of a renewal scheme does not authorise the removal of the remains of a deceased person from an interment site.

## 70 Implementation of renewal scheme

- (1) The operator of a cemetery may, with the approval of the Cemeteries Agency, implement a scheme (a *renewal scheme*) for the renewal of a portion of the cemetery that has been used for interments to enable further interment sites to be located in the portion.
- (2) The operator of a cemetery may, in a portion of the cemetery that is subject to a 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.
- (3) A 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 renewal scheme.

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

## 71 Proposed renewal scheme to be submitted to the Cemeteries Agency for approval to carry out consultation

- (1) After preparing a proposed renewal scheme, the operator of a cemetery must:
  - (a) submit the scheme to the Cemeteries Agency for approval to carry out consultation about the scheme, and
  - (b) advise the Cemeteries Agency if the operator intends to re-use any interment site affected by the scheme in accordance with section 55.
- (2) After considering the proposed renewal scheme, the Cemeteries Agency may decide:
  - (a) to approve the release of the scheme for consultation, with or without changes, or
  - (b) to return the scheme to the operator for changes and re-submission to the Cemeteries Agency.
- (3) The Cemeteries Agency may also decide that the operator must consult with the following about the proposed renewal scheme:
  - (a) the Heritage Council of New South Wales if the scheme affects an item of local heritage significance,
  - (b) any other Commonwealth or State authority.

## 72 Consultation about proposed renewal scheme

- (1) If the Cemeteries Agency approves the release of a proposed renewal scheme for consultation, the operator of the cemetery must:
  - (a) prepare and make available for public inspection a plan that shows the following:
    - (i) the portion of the cemetery that is subject to the proposed renewal scheme,
    - (ii) all existing used and unused interment sites within the portion,
    - (iii) details of the removal and relocation of any memorial placed on interment sites within the portion,

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- (iv) the proposed layout and landscaping of the renewed portion, and
  - (b) send a notice to each holder of an interment right in the portion subject to the proposed renewal scheme, at any address recorded for the holder in the cemetery operator's register informing the holder of the proposed scheme, and
  - (c) not less than 12 months before the date the proposed renewal scheme is to commence, place in a prominent position in the portion of the cemetery subject to the renewal scheme, a notice that states the following:
    - (i) that the operator proposes to renew the portion of the cemetery,
    - (ii) where plans of the proposed renewal scheme may be inspected,
    - (iii) that written submissions may be made to the operator about the proposed renewal scheme by the date, and in the way, specified in the notice, and
  - (d) not less than 3 months before the date the proposed renewal scheme is to commence, publish at least once in a newspaper circulating nationally and another newspaper circulating in the locality of the cemetery a notice about the proposed renewal scheme that states the following:
    - (i) that the operator proposes to renew the portion of the cemetery,
    - (ii) where plans of the proposed renewal scheme may be inspected,
    - (iii) that written submissions may be made to the operator about the proposed renewal scheme by the date, and in the way, specified in the notice, and
  - (e) if the Cemeteries Agency has decided the operator must consult with the Heritage Council, prepare a statement of heritage impact for the proposed renewal scheme and refer it to the Heritage Council.
- (2) A reference in subsection (1) (b) to an interment right includes a reference to a burial licence that was in force under the *Crown Lands Act 1989* immediately before the commencement of this section.
- (3) In this section:
- local heritage significance* has the meaning it has in the *Heritage Act 1977*.
- statement of heritage impact*, in relation to a proposed renewal scheme that affects an item of local heritage significance, means a statement that:
- (a) identifies the local heritage item and its significance, and
  - (b) assesses and justifies the impact the proposed renewal scheme will have on the significance of the heritage item.

## 73 Submissions

- (1) A submission about the proposed renewal scheme may be made by any person by the date, and in the way, specified in the notice placed in the cemetery or published in the newspaper.
- (2) The holder of an interment right for an interment site may, in a submission, object to the proposed renewal scheme concerned (*a formal objection*) if:
  - (a) in the case of an interment site to which a perpetual interment right relates—the scheme involves the revocation under section 52 (Revocation of perpetual interment rights) of the holder's interment right, or
  - (b) in the case of any other interment site (whether or not the subject of an interment right)—the scheme involves the removal, relocation or disposal of a memorial placed on the interment site.
- (3) The operator must consider each submission made under subsection (1).

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- (4) After considering any submissions, including formal objections, the operator must decide:
  - (a) to proceed with the proposed renewal scheme, with or without modifications, or
  - (b) not to proceed with the proposed renewal scheme.
- (5) The operator must not proceed with a proposed renewal scheme in respect of which a formal objection has been made unless:
  - (a) the objection has been withdrawn, or
  - (b) the proposed renewal scheme has been modified so that it does not provide for the revocation of the interment right, or provide for the removal, relocation or disposal of a memorial placed on the interment site, that was the subject of the formal objection.

## **74 Submission of renewal scheme to the Cemeteries Agency**

- (1) If the operator decides to proceed with the proposed renewal scheme, the operator must submit the renewal scheme to the Cemeteries Agency for approval.
- (2) The proposed renewal scheme must:
  - (a) be accompanied by any written submissions received by the operator about the renewal scheme, and
  - (b) indicate what modifications, if any, have been made to the renewal scheme after the operator's consideration of the written submissions.
- (3) Before making a decision about the proposed renewal scheme, the Cemeteries Agency must obtain advice about the renewal scheme from the Minister administering the *Heritage Act 1977*.

## **75 Cemeteries Agency's decision about renewal scheme**

After considering any advice received from the Minister administering the *Heritage Act 1977*, the Cemeteries Agency may decide to:

- (a) approve the proposed renewal scheme, or
- (b) approve the proposed renewal scheme with any modifications the Cemeteries Agency considers appropriate, or
- (c) reject the proposed renewal scheme.

## **Division 4 Offence**

### **76 Offence relating to conduct in cemeteries**

A person must not, without lawful authority, in a cemetery:

- (a) disturb or interrupt any service, procession, cortege, or
- (b) bury any human remains (whether cremated or not).

Maximum penalty: 25 penalty units.

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## Part 5 Operation of Crown cemeteries and crematoria

### Division 1 Preliminary

#### 77 Interpretation

In this Part:

**Crown cemetery operator** means the person or body having management of the affairs of a Crown cemetery trust.

**Note.** The Crown cemetery operator for a Crown cemetery trust established on or after the commencement of section 79 is the trust board or person having management of the affairs of the trust under that section. The Crown cemetery operator for a Crown cemetery trust established before that commencement is the trust board or person having management of the affairs of the trust under section 92 (6) of the *Crown Lands Act 1989* (as in force before that section was amended by this Act).

**Crown cemetery trust** means a reserve trust established under the *Crown Lands Act 1989* (whether before or after the commencement of this section) in relation to a reserve or part of a reserve that is dedicated or reserved for the purposes of a public cemetery or crematorium or a related purpose.

**governance committee** means a finance committee or audit and risk committee established by a trust board under section 109.

**trust board**, in relation to a Crown cemetery trust, means a trust board appointed under section 80.

**trust member**, in relation to a Crown cemetery trust means the following:

- (a) if the Crown cemetery operator is a trust board—a member of the trust board,
- (b) if the Crown cemetery operator is a corporation—a director or other officer of the corporation,
- (c) if the Crown cemetery operator is the Minister or an administrator—the Minister or administrator.

#### 78 Exemption power—Cemeteries Agency

- (1) The Cemeteries Agency may, by order in writing, exempt a Crown cemetery operator or a class of Crown cemetery operators, or a trust member or class of trust members, from the operation of this Part or a specified provision of this Part if it considers that they have duties or obligations under the provisions of another Act, or a regulation, that are commensurate to the duties or obligations under this Part or the provision concerned.
- (2) The exemption may be limited in duration or may be subject to such factors or circumstances as may be specified in the order.

### Division 2 Cemetery trust operators

#### Subdivision 1 Appointment of trust operators

##### 79 Appointment of Crown cemetery operator

- (1) The affairs of a Crown cemetery trust that is established after the commencement of this section are to be managed:
  - (a) by the Minister, or
  - (b) if a trust board is appointed under section 80—by the trust board, or
  - (c) if a corporation is appointed under section 81—by the corporation, or
  - (d) if an administrator is appointed under section 83—by the administrator.

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- (2) There can be more than one Crown cemetery operator for a Crown cemetery trust with the function of managing the affairs of the trust allocated between the operators by the Minister in accordance with the following provisions:
  - (a) the Minister can allocate the exercise of functions in respect of different aspects of the affairs of the trust or different parts of the Crown cemetery to different operators, as specified in the allocation or as determined by the Minister, with those functions to be exercised in accordance with such arrangements (if any) as may be determined by the Minister,
  - (b) the Minister is the Crown cemetery operator for any aspect of the affairs of a Crown cemetery trust or any part of the Crown cemetery not allocated to another operator and is accordingly allocated the function of managing the affairs of the trust in respect of any such unallocated aspects of those affairs or unallocated parts of the cemetery,
  - (c) a Crown cemetery operator has the function of managing the affairs of the Crown cemetery trust only to the extent of the allocated functions and is, for the purposes of this or any other Act or law, the Crown cemetery operator to that extent only.
- (3) Subject to this Division and the regulations, the provisions of the *Crown Lands Act 1989* applying to or in respect of reserve trust managers referred to in section 93 of that Act and the functions exercisable by them under that Act apply to and in respect of a Crown cemetery operator referred to in this section.

## **80 Membership of trust board**

- (1) A trust board for a Crown cemetery trust is to consist of at least 3, but not more than 7, members (none of them being a corporation) appointed by the Minister by instrument in writing and such number of ex officio members as are so appointed.
- (2) The instrument of appointment is to specify:
  - (a) the duties and liabilities relating to the exercise of functions as a member of the relevant trust board, and
  - (b) the consequences of any breach of duty.
- (3) The appointment of a person as a member of a trust board is ineffective unless the person has acknowledged the duties and liabilities imposed on the person as such a member by signing the instrument appointing the person as a member.
- (4) A member of a trust board is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.
- (5) Schedules 2 contains provisions with respect to the members and procedure of a trust board.

## **81 Appointment of corporation to operate cemetery trust**

- (1) The Minister may, by notification in the Gazette, appoint:
  - (a) a council, or
  - (b) a corporation constituted by or under an Act providing for the holding, managing of or dealing with church property, or
  - (c) any other corporation (including the Ministerial Corporation), to manage the affairs of a Crown cemetery trust.
- (2) A corporation so appointed has power to accept the appointment and to exercise all the functions of an operator of a Crown cemetery trust despite the provisions of the Act by or under which the corporation is constituted.

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- (3) A corporation may be appointed as the operator of a Crown cemetery trust for such term as may be specified in the notification of appointment or by any subsequent notification.
- (4) The term of office of a corporation that has been appointed as the operator of a Crown cemetery trust may be extended by the Minister from time to time by a further notification in the Gazette.
- (5) A council may not be appointed to operate a Crown cemetery trust if the Crown cemetery is wholly or partly within the area of another council, except with the consent of the other council.
- (6) A document is sufficiently executed by a Crown cemetery trust operated by a corporation if it is executed under the seal of the corporation instead of the seal of the trust.

## **82 Vacation of office by corporate manager**

- (1) A corporation which is the operator of a Crown cemetery trust vacates the office if:
  - (a) it resigns its office by writing under its seal addressed to the Minister, or
  - (b) it is removed from office by the Minister, or
  - (c) it completes a term of office and is not re-appointed.
- (2) The Minister may, by notification in the Gazette, remove such a corporation from office at any time.
- (3) If a corporation is removed from office by the Minister as the operator of a Crown cemetery trust, no compensation is payable to the corporation because of the corporation ceasing to hold office.

## **83 Appointment of administrator**

- (1) The Minister may, by notification in the Gazette, appoint an administrator to manage the affairs of a Crown cemetery trust.
- (2) Subject to this Act, an administrator holds office for such period as may be specified in the administrator's instrument of appointment.

## **84 Vacancies in office of administrator**

- (1) The Minister may by notification in the Gazette:
  - (a) remove an administrator from office, or
  - (b) fill a vacancy in the office of administrator.
- (2) The office of an administrator becomes vacant if the administrator:
  - (a) completes a term of office, or
  - (b) resigns the office by instrument in writing addressed to the Minister, or
  - (c) is removed from office by the Minister under this section.

## **85 Remuneration of administrator**

- (1) If the Minister so directs, an administrator is entitled to be paid such remuneration as the Minister directs.
- (2) The office of administrator is not, for the purposes of any Act, an office or place of profit under the Crown.

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## **86 Delegation of functions by Crown cemetery operators**

- (1) A Crown cemetery operator may, with the approval of the Cemeteries Agency, delegate any of its functions (other than this power of delegation) as an operator to any other person or body.
- (2) Without limiting section 49 of the *Interpretation Act 1987*, a delegation by an operator under subsection (1) may, with the approval of the Cemeteries Agency, be revoked by an operator at any time.
- (3) The regulations may make provision for or with respect to delegations under this section.
- (4) In particular, the regulations may require records to be kept of delegations of all or any particular functions or the revocation of such delegations.

## **Subdivision 2 Conduct of trust members**

### **87 Interpretation**

A person is ***involved in a contravention*** of a provision of this Subdivision if, and only if, the person:

- (a) has aided, abetted, counselled or procured the contravention, or
- (b) has induced, whether by threats or promises, or otherwise, the contravention, or
- (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention, or
- (d) has conspired with others to effect the contravention.

### **88 Care and diligence—civil obligation only** (cf Corporations Act s 180)

#### **(1) Care and diligence—trust members**

A trust member must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if the person:

- (a) were a trust member in the trust member's circumstances, and
- (b) occupied the office held by, and had the same responsibilities as, the trust member.

Maximum civil penalty: \$27,500.

#### **(2) Business judgment rule**

A trust member who makes a business judgment is taken to meet the requirements of subsection (1), and the member's equivalent duties at common law and in equity in respect of the judgment, if the member:

- (a) makes the judgment in good faith for a proper purpose (taking into account the code of conduct prepared under section 92 where relevant and other relevant matters), and
- (b) does not have a material personal interest in the subject matter of the judgment, and
- (c) informs themselves about the subject matter of the judgment to the extent that the member reasonably believe to be appropriate, and
- (d) rationally believes that the judgment is in the best interests of the Crown cemetery trust.

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The trust member's belief that the judgment is in the best interests of the Crown cemetery trust is a rational one unless the belief is one that no reasonable person in the member's position would hold.

**Note.** This subsection only operates in relation to duties under this section and the equivalent duties at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Act or under any other laws.

- (3) In this section:

***business judgment*** means any decision to take or not take action in respect of a matter relevant to the business operations of the Crown cemetery trust.

**89 Use of position—civil obligations** (cf Corporations Act s 182)

- (1) **Use of position—trust members**

A trust member must not improperly use his or her position to:

- (a) gain an advantage for the trust member or someone else, or
- (b) cause detriment to the Crown cemetery trust.

Maximum civil penalty: \$27,500.

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Maximum civil penalty: \$27,500.

**90 Use of information—civil obligations** (cf Corporations Act s 183)

- (1) **Use of information—trust members**

A person who obtains information because the person is or has been, a trust member must not improperly use the information to:

- (a) gain an advantage for themselves or someone else, or
- (b) cause detriment to the Crown cemetery trust.

Maximum civil penalty: \$27,500.

- (2) The duty under subsection (1) continues after the person stops being a trust member.

- (3) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Maximum civil penalty: \$27,500.

**91 Notification of significant events**

- (1) If a trust board decides to do any of the following things, the Crown cemetery operator concerned must immediately give the Cemeteries Agency written particulars of the decision:

- (a) form a company or participate in the formation of a company,
- (b) participate in a significant partnership, trust, unincorporated joint venture or similar arrangement,
- (c) acquire or dispose of a significant share holding in a company,
- (d) acquire or dispose of a significant business,
- (e) commence or cease a significant business activity,
- (f) make a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.

**Note.** Trust boards also have obligations under sections 101-109 of the *Crown Lands Act 1989*.

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- (2) The Cemeteries Agency may give written guidelines to the trust board that are to be used in deciding whether particulars are required to be given under subsection (1).

## **92 Codes of conduct**

- (1) A cemetery operator who manages the affairs of a Crown cemetery trust must, within 3 months after the commencement of this section or its establishment (whichever first occurs) prepare and adopt a code of conduct to be observed by members of the board of the trust and persons employed by it.
- (2) The cemetery operator is to review its code of conduct at least every 3 years (or within such other period as is prescribed by the regulations) and make such changes as it considers appropriate.
- (3) The code must include such matters as are prescribed by the regulations.
- (4) In particular, the code may contain provisions for or with respect to the following conduct:
  - (a) conduct that contravenes all or specified provisions of this Act or the regulations in all or specified circumstances,
  - (b) improper or unethical conduct,
  - (c) abuse of power and other misconduct,
  - (d) the disclosure of interests (whether pecuniary or otherwise) that could conflict with the proper performance of functions and avoidance of conflicts of interest,
  - (e) the disclosure of confidential documents and information.
- (5) The cemetery operator must provide a copy of its code of conduct as in force from time to time to each board member and employee and ask them to acknowledge their obligations under the code by signing it.
- (6) A member of a trust board or employee must not contravene a code to which he or she is a signatory.
- (7) Nothing in this section or such a code gives rise to, or can be taken into account in, any civil cause of action, and nothing in this section affects rights or liabilities arising apart from this section.

## **93 Disclosure of material personal interest by members of trust board—civil obligations**

- (1) If:
  - (a) a member of a trust board has a direct or indirect material personal interest in a matter being considered or about to be considered at a meeting of the trust board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the trust board.  
Maximum civil penalty: \$5,500.
- (2) A disclosure by a member of a trust board at a meeting of the trust board that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or

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- (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this section.
- (3) Particulars of any disclosure made under this section must be recorded by the Cemeteries Agency in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of a fee of \$25 (or such other amount as may be prescribed by the regulations).
  - (4) After a member of a trust board has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the trust board otherwise determines:
    - (a) be present during any deliberation of the trust board with respect to the matter, or
    - (b) take part in any decision of the trust board with respect to the matter.Maximum civil penalty: \$5,500.
  - (5) For the purposes of the making of a determination by the trust board under subsection (4), a board member who has a direct or indirect material personal interest in a matter to which the disclosure relates must not:
    - (a) be present during any deliberation of the trust board for the purpose of making the determination, or
    - (b) take part in the making by the trust board of the determination.
  - (6) A contravention of this section does not invalidate any decision of the trust board.

## **94 Invitations for tenders**

- (1) If it is disclosed to the members of a trust board, or they have reason to believe, that a member of the board has or may have a direct or indirect material personal interest in a proposed contract with the trust:
  - (a) the board must, by notice published in a newspaper circulating in the district in which the Crown cemetery for which the trust is responsible is situated, invite tenders for the proposed contract, and
  - (b) must not enter into the proposed contract unless satisfied that, in all the circumstances of the case, none of the tenders submitted is more advantageous than the proposed contract.
- (2) The notice inviting tenders must:
  - (a) set out the nature of the work or services to be performed or the goods to be supplied under the contract, and
  - (b) invite persons willing to perform the work or services or supply the goods to submit tenders on or before a specified date (at least 21 days after publication of the notice) to the trust.
- (3) This section does not apply in the case of an emergency.
- (4) A contravention of this section does not invalidate any decision of the trust board.

## **95 Liability of trust board, members and other persons**

- (1) A matter or thing done or omitted to be done by:
  - (a) a trust member (other than a director or officer of a corporation referred to in subsection (2)) in the course of managing the affairs of a Crown cemetery trust, or

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- (b) a person acting under the direction of a trust member (other than a director or officer of a corporation) in the course of managing the affairs of a Crown cemetery trust,
- does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this or any other Act, subject the trust member or a person so acting personally to any action, liability, claim or demand.
- (2) If a Crown cemetery trust is managed by a corporation, the corporation is jointly and severally liable with the Crown cemetery trust:
- (a) for any liability of the Crown cemetery trust, or
  - (b) if the corporation is managing the affairs of the Crown cemetery trust with another person or body in accordance with section 92 (6B) of the *Crown Lands Act 1989*—for the liability of the Crown cemetery trust to the extent only that the liability relates to the functions of the corporation as the manager of the trust.

## **Subdivision 3 Strategic plans**

### **96 Strategic plans**

- (1) A strategic plan identifies the main priorities for the future of a Crown cemetery trust for the period to which the plan relates.
- (2) A Crown cemetery operator must:
  - (a) prepare a draft strategic plan for the management of the operation of each Crown cemetery trust for which it is responsible in accordance with this section, and
  - (b) submit the strategic plan to the Cemeteries Agency for review.
- (3) A Crown cemetery operator who is responsible for more than one Crown cemetery trust may prepare a single draft strategic plan for all those trusts.
- (4) The first draft strategic plan:
  - (a) for a Crown cemetery trust established on or after the commencement of this section—must be prepared within 12 months after it is established, or
  - (b) for a Crown cemetery trust that was established before the commencement of this section —must be prepared within 12 months of the commencement.
- (5) Subsequent draft strategic plans must be prepared at such times as the Cemeteries Agency directs.
- (6) The strategic plan must be in the form and provide for such matters as may be required by the Cemeteries Agency and must be prepared in accordance with any guidelines prepared by the Cemeteries Agency under section 97.
- (7) The Cemeteries Agency may require an operator to amend and re-submit a draft strategic plan that is not prepared in accordance with the guidelines.
- (8) The Cemeteries Agency may:
  - (a) approve a strategic plan, or
  - (b) approve a strategic plan with amendments, or
  - (c) refuse to approve a strategic plan.
- (9) A Crown cemetery operator must advise the Cemeteries Agency if it wishes to exercise its functions in a manner inconsistent with its approved strategic plan.
- (10) A Crown cemetery operator must ensure that an approved strategic plan is available to members of the public on request.

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## **97 Guidelines for strategic plans**

- (1) The Cemeteries Agency may by order published on an appropriate website make guidelines for or with respect to strategic plans, including but not limited to the content and duration of plans.
- (2) The Cemeteries Agency must provide a copy of any guidelines made for or with respect to a Crown cemetery trust under this section to the Crown cemetery operator concerned.
- (3) The Cemeteries Agency may make any other arrangements that it considers necessary to ensure that strategic plans are readily accessible to the public.
- (4) The guidelines take effect on the date specified in the guidelines.
- (5) A failure to comply with subsection (2) does not affect the validity of any guidelines made under this section.

## **98 Amendment, replacement or revocation of strategic plan**

- (1) A strategic plan may be amended or replaced by a subsequent such plan prepared and approved in accordance with this Subdivision.
- (2) The Cemeteries Agency may revoke a strategic plan, wholly or in part.
- (3) The amendment or revocation of a strategic plan under this section takes effect:
  - (a) on the day notice of the amendment or revocation is published by the Cemeteries Agency on an appropriate website, or
  - (b) on a later day specified in a notice under paragraph (a).

## **Subdivision 4 Plans of management**

### **99 Preparation of draft plan of management**

- (1) The Cemeteries Agency may direct a Crown cemetery operator to prepare a draft plan of management for a cemetery for which a Crown cemetery trust has been established and the affairs of which are managed by the operator.
- (2) A Crown cemetery operator may, with the consent of the Cemeteries Agency, prepare such a draft plan on the operator's own initiative.
- (3) The Crown cemetery operator must forward a copy of the draft plan to the Cemeteries Agency.
- (4) If the Cemeteries Agency directs a Crown cemetery operator to prepare a draft plan of management, the operator must:
  - (a) prepare it within the time directed by the Cemeteries Agency, and
  - (b) forward a copy of it to the Cemeteries Agency.
- (5) The draft plan of management must be in the form, and provide for such matters, as may be required by the Cemeteries Agency and must be prepared in accordance with any guidelines prepared by the Cemeteries Agency under section 100.
- (6) A Crown cemetery operator who is responsible for more than one Crown cemetery trust may prepare a single draft plan of management for all cemeteries the subject of those trusts.

### **100 Guidelines for draft plans of management**

- (1) The Cemeteries Agency may, by order published on an appropriate website, make guidelines for or with respect to draft plans of management, including but not limited to the content and duration of plans.

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- (2) The Cemeteries Agency must:
  - (a) provide a copy of any guidelines made for or with respect to a Crown cemetery trust to the Crown cemetery operator concerned, and
  - (b) publish the guidelines on an appropriate website.
- (3) The Cemeteries Agency may make any other arrangements that it considers necessary to ensure that plans of management are readily accessible to the public.
- (4) The guidelines take effect on the date specified in the guidelines.
- (5) A failure to comply with subsection (2) does not affect the validity of any guidelines made under this section.

**101 Referral and exhibition of draft plans**

- (1) If a draft plan of management for a Crown cemetery is prepared, the Cemeteries Agency:
  - (a) may refer a copy of it to any other person for consideration, and
  - (b) must place a copy of it on public display for not less than 28 days or direct the Crown cemetery operator concerned to place a copy of it on public display for not less than 28 days.
- (2) Any person may make representations concerning the draft plan to the Cemeteries Agency within the time allowed by it.
- (3) The Cemeteries Agency must consider any such representations before adopting the draft plan.

**102 Adoption of plan of management**

- (1) The Cemeteries Agency may adopt a plan of management for a Crown cemetery without alteration or with such alterations as it thinks fit.
- (2) The Cemeteries Agency must not adopt a plan of management that provides for the Crown cemetery to be used for any purpose other than a cemetery.
- (3) If a plan of management is adopted:
  - (a) the Crown cemetery operator concerned must carry out and give effect to it, and
  - (b) no operations may be undertaken on or in relation to the cemetery unless they are in accordance with the plan.

**103 Alteration or cancellation of plan**

- (1) The Cemeteries Agency may from time to time alter a plan of management adopted under this Subdivision or may cancel the plan.
- (2) If a plan of management is cancelled, a new plan of management may be adopted, at the same time or later, in accordance with this Subdivision.
- (3) The Cemeteries Agency must cause or direct a proposed alteration of a plan to be prepared and the alteration is to be prepared, referred and adopted as if it were a plan of management.
- (4) The plan as altered may not include use of the cemetery for an additional purpose.
- (5) The plan as altered becomes the plan adopted for the purposes of this Subdivision.

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## **104 Plan of management for submerged land**

- (1) If land usually submerged by water is wholly or partly the subject of a plan of management, the Minister must refer the plan to the Minister administering the *Fisheries Management Act 1994* before adopting it.
- (2) The plan may not be adopted, altered or cancelled, in so far as it relates to the submerged land, except with the concurrence in writing of the Minister administering that Act.

## **Subdivision 5 Financial management, audits and reports**

### **105 Annual report**

- (1) A Crown cemetery operator for a Crown cemetery trust must, within 4 months after the end of each financial year, submit an annual report of the Crown cemetery trust for the financial year to the Cemeteries Agency.
- (2) The annual report must include the following:
  - (a) an audited financial statement for the period to which the report relates,
  - (b) a report about the operations of the trust and the performance of its functions under this Act during the period to which the annual report relates prepared in accordance with this Act and the regulations,
  - (c) such financial reports, opinions, budgets, reports and other matters as may be prescribed by the regulations.
- (3) The financial statement is to be prepared in accordance with Australian Accounting Standards.
- (4) The financial statement is to be audited by an independent auditor and a report is to be provided by the auditor.
- (5) A person is not qualified to be an auditor for the purposes of this section unless the person is a registered company auditor (within the meaning of the *Corporations Act 2001* of the Commonwealth).
- (6) An auditor of a Crown cemetery trust is not an independent auditor:
  - (a) if (otherwise than as an auditor) the person is an officer or employee of the trust, or
  - (b) if the person is a partner, employer, employee, spouse, de facto spouse or immediate family member of a person who is (otherwise than as an auditor) an officer or employee of the trust.
- (7) The Cemeteries Agency may extend, or further extend, the period for submission of an annual report to it by a total period of up to 3 months.
- (8) In this section:  
*Australian Accounting Standards* means Accounting Standards issued by the Australian Accounting Standards Board.

### **106 Nature of report of operations**

- (1) The report of the operations referred to in section 105 must include (whether in the following order or otherwise) particulars in relation to any strategic plan or plan of management in force for the cemetery for which the Crown cemetery trust concerned was established.
- (2) The report of the operations must, in addition to the matters referred to in subsection (1), include such particulars, if any, as may be prescribed in relation to such matters, if any, as may be prescribed.

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- (3) The report of the operations is to be prepared in such manner, if any, and such form, if any, as may be prescribed by the regulations.

**107 Additional information and audits—civil obligation**

- (1) The Cemeteries Agency may, at any time, by notice in writing direct a Crown cemetery operator to provide, within such time, if any, as is specified in the direction, as part of the annual report referred to in section 105 or by means of a separate report, such information relating to the financial report or operations, or both, of the Crown cemetery trust as is so specified.
- (2) The Crown cemetery operator must comply with a direction given to the operator under subsection (1).
- Maximum civil penalty: \$19,800.

**108 Inspection etc of Crown cemetery trust**

- (1) The Cemeteries Agency may appoint a person to inquire into, or carry out an audit of, any of the affairs of a Crown cemetery trust.
- (2) The person appointed may, for the purposes of the inquiry or audit:
- (a) inspect and take copies of or extracts from any records (including accounting records) of the trust, or
  - (b) require any person concerned in the management of the trust to give information and answer questions relating to the affairs of the trust.
- (3) The power of the appointed person to inspect the records of a Crown cemetery trust includes the power to inspect any records of a lessee or licensee which the trust has power to inspect under the lease or licence.
- (4) A person must not:
- (a) refuse or fail without lawful excuse to allow the appointed person access to records to which the person is entitled,
  - (b) refuse or fail without lawful excuse to give information or answer questions, as required by the appointed person, or
  - (c) wilfully obstruct or delay the appointed person in the exercise of a function under this section.

Maximum civil penalty: \$11,000.

## Subdivision 6 Committees

**109 Establishment and functions of committees**

- (1) A trust board:
- (a) must establish:
    - (i) a finance committee, and
    - (ii) an audit and risk committee, and
    - (iii) a community advisory committee to liaise with communities to which the trust board provides cemetery services, and
  - (b) may establish any other committee as it determines from time to time.
- (2) A trust board must establish the committees referred to in subsection (1) (a) within 12 months after the commencement of this section or the appointment of the trust board (whichever first occurs).
- (3) A governance committee:

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- (a) must consider any matters that are referred to it by the trust board, and
  - (b) may investigate and make inquiries about any matter referred to it by the trust board, and
  - (c) must report back to the trust board as required by the trust board, and
  - (d) must carry out any other function conferred on it by or under this or any other Act or by the Cemeteries Agency.
- (4) A community advisory committee:
- (a) must consider any matters that are referred to it by the trust board, and
  - (b) must report back to the trust board as required by the trust board, and
  - (c) must raise with the trust board any issues of concern or matters of interest to the community regarding the cemetery services provided by the trust board, and
  - (d) must carry out any other function conferred on it by or under this Act or by the trust board.

## **110 Membership and procedure of committees**

- (1) A committee established under section 109 consists of the persons appointed by the trust board, in accordance with any applicable committee guidelines set under section 111.
- (2) The procedure of a committee is to be determined by the committee, subject to this Act and any applicable committee guidelines set under section 111 and except as otherwise determined by the trust board.

## **111 Committee guidelines**

- (1) The Cemeteries Agency may, by order published on an appropriate website, make guidelines for or with respect to any committee established under this Subdivision, including but not limited to the following:
  - (a) the appointment of members of the committee,
  - (b) the composition, roles and functions of the committee,
  - (c) the procedure of the committee,
  - (d) any other matter relating to the operation of the committee.
- (2) The Cemeteries Agency must provide a copy of any guidelines made for or with respect to a committee under this section to the trust board that established the committee.
- (3) The guidelines take effect on the date specified in the guidelines.
- (4) A failure to comply with subsection (2) does not affect the validity of any guidelines made under this section.

## **Subdivision 7 Miscellaneous**

### **112 Planning, conduct and maintenance**

The Crown cemetery operator for a cemetery may make such provision as it considers necessary for the following:

- (a) the setting aside of sections for different types and classes of interments,
- (b) the establishment of standards of construction and design for monuments and structures,
- (c) the size, multiple use and location of interment sites,

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- (d) interments in vaults,
- (e) the erection or installation of structures and the making of inscriptions,
- (f) the carrying out of work by monumental masons,
- (g) the qualifications required by, and the security deposits required to be lodged by, monumental masons,
- (h) the removal, replacement and maintenance of structures,
- (i) the placing of vases, statuettes, jars, bottles or other items of embellishment on or near graves, monuments, crypts or vaults,
- (j) the improvement and maintenance of the cemetery,
- (k) the making of arrangements for the care of interment sites on an annual (or longer term) or other basis,
- (l) the supply of goods and services incidental to the conduct of interments and other matters relating to the cemetery,
- (m) the conduct of religious or other ceremonies of interment or commemoration,
- (n) the disposition and memorialisation of cremated human remains,
- (o) landscaping and setbacks from stormwater and drainage canals and similar watercourses and structures,
- (p) any other matter relating to the management of the cemetery so long as the provision made is consistent with any direction given by the Minister.

## **113 Placing of objects on or near interment sites**

- (1) The following objects are not to be placed on or near a grave, monument, crypt or vault in a Crown cemetery:
  - (a) ceramic or glass objects that are fragile or breakable,
  - (b) metal objects, or any other objects, that are likely to cause a risk to health or safety,
  - (c) any item that extends beyond the boundaries of the grave, monument, crypt or vault.
- (2) Any vase, statuette, jar, bottle or other item of embellishment is not to be placed on or near a grave, monument, crypt or vault in a cemetery in contravention of a direction given to the person by an authorised person.

## **114 Fees and charges**

- (1) A Crown cemetery operator may from time to time set the fees or charges payable with respect to the following:
  - (a) grant of interment rights (including the renewal of renewable interment rights) with respect to interment sites in the cemetery under Part 4,
  - (b) use of the whole or any part of the cemetery and any building, structure or enclosure in the reserve,
  - (c) parking or use of any vehicle or class of vehicles on the cemetery,
  - (d) use of electricity, gas and water,
  - (e) rubbish disposal and cleaning of the cemetery,
  - (f) removal of effluent.
- (2) The Crown cemetery operator may from time to time determine the fees or charges payable for the services provided in respect of the cemetery.

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- (3) In setting fees and charges, the Crown cemetery operator is to have regard to the following:
  - (a) any contractual arrangements entered into by the responsible operator in relation to the cemetery,
  - (b) the number of intended interments or cremations,
  - (c) the costs of developing the land to be used for interment sites,
  - (d) future maintenance,
  - (e) infrastructure costs.
- (4) The fees or charges payable under subsection (1) (b)–(f) must be displayed in a public notice erected at or adjacent to each entrance to the cemetery or part of the cemetery or building, structure or enclosure to which the fees or charges relate.
- (5) The fees or charges payable under subsection (2) must be displayed in a public notice outside the office of the Crown cemetery operator.
- (6) The Crown cemetery operator is to give the Cemeteries Agency notice of a fee or charge set by it within 3 months (or such other period as may be prescribed by the regulations) after the fee or charge is set.
- (7) The Crown cemetery operator may in any particular case waive payment of the whole or any part of any fee or charge set under this section.
- (8) Without limiting subsection (7), a Crown cemetery operator may waive payment of part of a fee or charge that is referable to the unexpired portion of a renewable interment right.
- (9) The Cemeteries Agency may serve notice on the Crown cemetery operator disallowing or varying any fee or charge as specified in the notice and the operator is to give effect to the Cemeteries Agency's notice.

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## Part 6 Legal proceedings and other matters

### Division 1 Proceedings for offences

#### 115 Nature of proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

#### 116 Persons who may commence proceedings

- (1) Proceedings for an offence against this Act or the regulations may be taken and prosecuted only by the Director-General or, in the name of the Director-General, by a person acting with the authority of the Director-General.
- (2) In proceedings for an offence against this Act or the regulations, an authority to prosecute purporting to have been signed by the Director-General is evidence of that authority without proof of the signature of the Director-General.

#### 117 Time for commencing proceedings

- (1) Proceedings for an offence under this Act or the regulations may be commenced not later than 12 months after the offence was alleged to have been committed.
- (2) Proceedings for an offence against this Act or the regulations may also be commenced within but not later than 12 months after the Director-General became aware of the alleged offence.
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice must contain particulars of the date on which evidence of the alleged offence first came to the attention of the Director-General and need not contain particulars of the date on which the offence was alleged to have been committed.
- (4) The date on which evidence first came to the attention of the Director-General is the date specified in the court attendance notice, unless the contrary is established.
- (5) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (6) In this section:  
*evidence* of an offence means evidence of any act or omission constituting the offence.

#### 118 Penalty notices for certain offences

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

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- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (8) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

## Division 2 Civil penalty provisions

### 119 Definitions

In this Division:

**maximum civil penalty**—see section 120 (3).

**pecuniary penalty order** means an order under section 121.

**Tribunal** means the Administrative Decisions Tribunal.

### 120 When a provision is a civil penalty provision

- (1) A subsection of this Act (or a section of this Act that is not divided into subsections) is a **civil penalty provision** if the words “civil penalty provision” and one or more amounts by way of monetary penalty are set out at the foot of the subsection (or section).
- (2) A subclause of the regulations (or a clause of the regulations that is not divided into subclauses) is a **civil penalty provision** if the words “civil penalty provision” and one or more amounts by way of monetary penalty are set out at the foot of the subclause (or clause).
- (3) A contravention of a civil penalty provision is punishable by the maximum amount of monetary penalty set out at the foot of the subsection, section, subclause or clause (the **maximum civil penalty**).
- (4) Proceedings in relation to a civil penalty provision are to be dealt with in accordance with this Division.

### 121 Proceedings for contravention of civil penalty provision

- (1) Within 6 years of a person (the **wrongdoer**) contravening a civil penalty provision, the Cemeteries Agency may apply to the Administrative Decisions Tribunal for an order that the wrongdoer pay a pecuniary penalty.
- (2) If the Administrative Decisions Tribunal is satisfied that the wrongdoer has contravened a civil penalty provision, the Tribunal may order the wrongdoer to pay for each contravention the pecuniary penalty that the Tribunal determines is appropriate (not exceeding the maximum civil penalty specified for contravention of that civil penalty provision).
- (3) In determining the pecuniary penalty, the Administrative Decisions Tribunal must have regard to all relevant matters, including the following:

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- (a) the nature and extent of the contravention,
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention,
  - (c) the circumstances in which the contravention took place,
  - (d) whether the person has previously been found by a court or tribunal to have engaged in any similar conduct.
- (4) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Act against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

## **122 Contravening a civil penalty provision is not an offence**

A contravention of a civil penalty provision is not an offence.

## **123 Persons involved in contravening civil penalty provision**

- (1) A person must not:
  - (a) aid, abet, counsel or procure a contravention of a civil penalty provision, or
  - (b) induce (by threats, promises or otherwise) a contravention of a civil penalty provision, or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or a party to, a contravention of a civil penalty provision, or
  - (d) conspire to effect a contravention of a civil penalty provision.
- (2) This Division applies to a person who contravenes subsection (1) in relation to a civil penalty provision as if the person had contravened the civil penalty provision.

## **124 Civil proceedings after criminal proceedings**

The Administrative Decisions Tribunal must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

## **125 Criminal proceedings during civil proceedings**

- (1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if:
  - (a) criminal proceedings are started or have already been started against the person for an offence, and
  - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

## **126 Criminal proceedings after civil proceedings**

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a pecuniary penalty order has been made against the person.

## **127 Recovery of a pecuniary penalty**

- (1) The penalty is a civil debt payable to the Cemeteries Agency on behalf of the State.

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- (2) The Cemeteries Agency or the State may enforce the order as if it were an order made in civil proceedings against the person to recover a debt due by the person.
- (3) The debt arising from the order is taken to be a judgment debt.

**128 Proceedings may be brought by the regulator or an authorised officer**

Proceedings for a contravention of a civil penalty provision may only be brought by:

- (a) the Cemeteries Agency, or
- (b) an authorised officer with the written authorisation of the Cemeteries Agency (either generally or in a particular case).

**129 Evidence given in proceedings for penalty order not admissible in criminal proceedings**

- (1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:
  - (a) the individual previously gave the information or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made), and
  - (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

**Division 3 Civil infringement notices**

**130 Object**

The object of this Division is to set up a system of infringement notices for contravention of civil penalty provisions as an alternative to the institution of proceedings before the Administrative Decisions Tribunal under section 121.

**131 When an infringement notice can be given**

- (1) An authorised officer may serve an infringement notice on a person if the authorised officer has reasonable grounds to believe that the person has contravened a civil penalty provision.
- (2) An infringement notice is a notice to the effect that, if the person served does not wish to have the matter determined by the Administrative Decisions Tribunal, the person can pay, within the time and to the person specified in the notice, the amount of penalty specified in the notice.
- (3) The penalty to be specified in an infringement notice relating to an alleged contravention of a civil penalty provision must be a pecuniary penalty equal to one-fifth of the maximum civil penalty that the Administrative Decisions Tribunal could impose on the person for that contravention.

**Note.** See section 120 (3) on working out the maximum civil penalty.

- (4) An infringement notice must be served within 12 months after the day on which the contravention is alleged to have occurred.
- (5) An infringement notice may be served personally or by post.

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- (6) If the amount of penalty specified in a notice is paid under this section, no person is liable to any further proceedings under section 123 in respect of the alleged contravention.
- (7) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of alleged contraventions of civil penalty provisions.
- (8) In this section:
  - civil penalty provision** means the following:
    - (a) section 27 (Cemeteries and Crematoria Register),
    - (b) section 34 (improvement notice),
    - (c) section 38 (short term order),
    - (d) section 31 (3) (compliance with interment industry scheme),
    - (e) section 41 (Performance management for cemetery operators),
    - (f) section 42 (Records),
    - (g) section 43 (Reports),
    - (h) sections 63 and 64 (Register of interment rights etc),
    - (i) section 107 (Additional information and audits).

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Cemeteries and Crematoria Bill 2013 [NSW]  
Part 7 Investigation and enforcement powers

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## Part 7 Investigation and enforcement powers

### Division 1 Appointment of authorised officers

#### 132 Authorised officers

The Chair of the Board may appoint any of the following persons as an authorised officer for the purposes of this Act:

- (a) a police officer,
- (b) a member of any Division of the Government Service,
- (c) a member of staff of the Cemeteries Agency,
- (d) a person of a class prescribed by the regulations.

#### 133 Scope of authority

- (1) An authorisation of a person as an authorised officer can be given generally, or subject to conditions, limitations or restrictions or only for limited purposes.
- (2) The authority of an authorised officer may be limited by the relevant instrument of appointment to the functions as are specified in the instrument of appointment.
- (3) If such authorisation is given subject to conditions, limitations or restrictions or only for limited purposes, nothing in this Act authorises or requires the authorised officer to act in contravention of the conditions, limitations or restrictions or for other purposes.

#### 134 Identification

- (1) Every authorised officer (other than a police officer) is to be provided by the Chair of the Board with an identification card.
- (2) The identification card must:
  - (a) state that it is issued under this Act, and
  - (b) give the name of the person to whom it is issued, and bear a photograph of that person, and
  - (c) state any limitations on the authorised officer's functions, and
  - (d) state the date (if any) on which it expires, and
  - (e) bear the signature of the Chair of the Board.
- (3) A power conferred on an authorised officer by this Part to enter premises, or to search or take other action on premises, may not be exercised unless the authorised officer proposing to exercise the power is in possession of the identification card issued to the authorised officer and produces the identification card if required to do so by the occupier of the premises.
- (4) Subsection (3) does not apply to a police officer or to a power conferred by a search warrant.

### Division 2 Powers of authorised officers

#### 135 Definitions

- (1) In this Division:  
*premises* includes:
  - (a) a building or structure, or
  - (b) land or a place (whether built on or not).

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**search** includes examine or inspect.

- (2) For the purposes of this Division, a thing is **connected** with an offence under this Act or the regulations if it is:
  - (a) a thing with respect to which the offence has been committed, or
  - (b) a thing that will afford evidence of the commission of the offence, or
  - (c) a thing that was used, or is intended to be used, for the purpose of committing the offence,and a reference to any such offence includes a reference to an offence that there are reasonable grounds for believing has been committed.
- (3) For the purposes of this Division, a thing is **connected** with a civil penalty provision under this Act or the regulations if it is:
  - (a) a thing with respect to which the civil penalty provision has been contravened, or
  - (b) a thing that will afford evidence of the contravention of the civil penalty provision, or
  - (c) a thing that was used, or is intended to be used, for the purpose of contravening the civil penalty provision,and a reference to any such civil penalty provision includes a reference to a civil penalty provision that there are reasonable grounds for believing has been contravened.

## **136 Purposes for which powers under Division may be exercised**

- (1) Powers may be exercised under this Division for the following purposes (referred to as **enforcement purposes**):
  - (a) for determining whether there has been compliance with or a contravention of this Act or the regulations or a provision of an interment industry scheme,
  - (b) for obtaining information or records for purposes connected with the administration of this Act,
  - (c) in connection with exercising the functions of an authorised officer under this Act.

## **137 Power to enter premises**

- (1) An authorised officer may enter any premises for enforcement purposes.
- (2) The authorised officer may enter the premises with such assistants (including police officers) as may reasonably be required.
- (3) The authorised officer must give the occupier of the premises notice of intention to enter the premises unless:
  - (a) the entry is made with the permission of the occupier, or
  - (b) the entry is made to a part of the premises open to the public, or
  - (c) the giving of notice would defeat the purpose for which the premises were entered or would unreasonably delay the authorised officer in a case of urgency.
- (4) Entry under the power conferred by this section may only be made at a reasonable time. This subsection does not apply to a power conferred by a search warrant.
- (5) The powers of entry conferred by this Division are not exercisable in relation to any part of premises used only for residential purposes except:
  - (a) with the permission of the occupier of the premises, or

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- (b) under the authority conferred by a search warrant.

## 138 Search warrants

- (1) An authorised officer under this Act may apply to an issuing officer for a search warrant if the authorised officer has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened in or about any premises.
- (2) An issuing officer to whom an application for a search warrant is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant, and any other person named in the warrant:
  - (a) to enter the premises concerned, and
  - (b) to search the premises for evidence of a contravention of this Act or the regulations.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:  
*issuing officer* means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.  
*premises* includes a vehicle.

## 139 Powers of authorised officers

- (1) An authorised officer may, on any premises lawfully entered, do anything that, in the opinion of the officer, is necessary to be done for the purposes of this Division, including (but not limited to) the following:
  - (a) examine and inspect any part of the premises or any article or thing on the premises,
  - (b) take and remove samples,
  - (c) make such examinations, inquiries and tests as the officer considers necessary,
  - (d) take such photographs, films, audio, video and other recordings as the authorised officer considers necessary,
  - (e) require records to be produced for inspection,
  - (f) examine and inspect any records,
  - (g) copy any records,
  - (h) seize anything that the officer has reasonable grounds for believing is connected with an offence under this Act or the regulations or a contravention of a provision of an interment industry scheme,
  - (i) to take reasonable steps to produce a document,
  - (j) do any other thing the officer is empowered to do under this Division.
- (2) An authorised officer may ask any person whom the authorised officer suspects on reasonable grounds to have knowledge of any matter in respect of which information is reasonably required for the purposes of the exercise of the authorised officer's functions under this Act to answer questions in relation to that matter to the best of the person's knowledge, information and belief.
- (3) If, under subsection (1)(i) or (2), an authorised officer requires a specified person to answer a question or produce documents, the authorised officer must advise the person that it is a reasonable excuse to refuse to comply with the request if it would tend to incriminate the person.

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- (4) An authorised officer may give directions reasonably required in connection with the exercise of a power conferred by this section or otherwise in connection with the administration, operation or enforcement of this Act.
- (5) Without limiting subsection (3), an authorised officer may, by order in writing, direct the owner or occupier of premises to provide such reasonable assistance or facilities to the authorised officer as may be requested by the authorised officer to exercise the authorised officer's functions.
- (6) If the authorised officer takes any document or thing under this section, he or she must:
  - (a) give notice of the taking of the document or thing to the person apparently in charge of it or to a manager of the premises, and
  - (b) return the document or thing to that person or the premises within 7 days after taking it.
- (7) In this section:  
*specified person* means persons of the following classes who are carrying out functions relating to the operations of a cemetery:
  - (a) a member or employee of a cemetery operator,
  - (b) a volunteer working at a cemetery.

## **140 Power to detain and search vehicles**

- (1) An authorised officer who has reason to believe that there is in or on a vehicle anything connected with an offence under this Act or the regulations may:
  - (a) stop and detain the vehicle, and
  - (b) enter and search the vehicle, and
  - (c) break open and search any container in or on the vehicle that the officer has reason to believe contains any such thing, and
  - (d) seize anything that the officer has reasonable grounds for believing is connected with an offence under this Act or the regulations.
- (2) An authorised officer may require the person in charge of the vehicle to take the vehicle to a specified place for the purposes of searching the vehicle if it is not reasonably practicable to carry out the search where the vehicle is stopped.
- (3) An authorised officer may only exercise the power under this section of requiring a vehicle to stop if accompanied by a police officer.

## **141 Requirement to provide information and records**

- (1) An authorised officer may, by notice in writing given to a person, require the person to furnish to the officer such information or records (or both) as the officer requires by the notice in connection with any matter arising under or in connection with this Act.
- (2) Any such notice must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.
- (3) A notice under this section may only require a person to furnish records that are in the person's possession or that are within the person's power to obtain lawfully.
- (4) The authorised officer to whom any record is furnished under this section may take copies of it.

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- (5) If any record required to be furnished under this section is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.
- (6) This section applies whether or not a power of entry under this Division is being or has been exercised.

**142 Requirement to state name and address**

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have committed, or to be committing, an offence against this Act or the regulations to state his or her full name and residential address.
- (2) An authorised officer may request a person who is required under this section to state his or her full name and residential address to provide proof of the name and address. It is not an offence to fail to comply with any such request.
- (3) A person does not commit an offence under section 144 in respect of a requirement made under this section if:
  - (a) the authorised officer does not, at the time when the officer makes the requirement, show the person the officer's identification card, or
  - (b) the authorised officer does not, at the time when the officer makes the requirement, warn the person that it would be an offence not to comply with the requirement.

**143 Provisions relating to requirements to provide documents or information or answer questions**

**(1) Warning to be given on each occasion**

A person is not guilty of an offence of failing to comply with a requirement under this Division to provide documents or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.

**(2) Self-incrimination not an excuse**

A person is not excused from a requirement under this Division to provide documents or information or to answer a question on the ground that the document, information or answer might incriminate the person or make the person liable to a penalty.

**(3) Information or answer not admissible if objection made**

However, any information provided or answer given by a natural person in compliance with a requirement under this Division is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence against this Division or section 144 (1) (d) if:

- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
- (b) the person was not warned on that occasion that the person may object to providing the information or giving the answer on the ground that it might incriminate the person.

**(4) Documents admissible**

Any document provided by a person in compliance with a requirement under this Division is not inadmissible in evidence against the person in criminal proceedings on the ground that the document might incriminate the person.

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## (5) **Further information**

Further information obtained as a result of a document or information provided or an answer given in compliance with a requirement under this Division is not inadmissible on the ground:

- (a) that the document or information had to be provided or the answer had to be given, or
- (b) that the document or information provided or answer given might incriminate the person.

## **Division 3 Offences in relation to authorised officers**

### **144 Offence: obstructing authorised officer**

- (1) A person who:
    - (a) prevents an authorised officer from exercising a function conferred or imposed by or under this Act, or
    - (b) hinders, obstructs, threatens or assaults an authorised officer in the exercise of such a function, or
    - (c) without reasonable excuse, refuses or fails to comply with a requirement made or to answer a question of an authorised officer asked in accordance with this Act or the regulations, or
    - (d) provides an authorised officer with a document or information knowing that it is false or misleading in a material particular,
- is guilty of an offence.

Maximum penalty: 100 penalty units.

- (2) A person is not guilty of an offence under subsection (1) (c) unless it is established that, at the material time, the authorised officer:
  - (a) identified himself or herself as an authorised officer, and
  - (b) warned the person that a failure or refusal to comply with the requirement may constitute an offence.

### **145 Offence: impersonating authorised officer**

A person who impersonates or falsely represents that the person is an authorised officer is guilty of an offence.

Maximum penalty: 100 penalty units.

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Cemeteries and Crematoria Bill 2013 [NSW]  
Part 8 Miscellaneous

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## Part 8 Miscellaneous

### 146 Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by:
  - (a) in the case of a natural person:
    - (i) delivering it to the person personally, or
    - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
    - (iii) sending it by facsimile transmission to the facsimile number of the person, or
  - (b) in the case of a body corporate:
    - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
    - (ii) sending it by facsimile transmission to the facsimile number of the body corporate.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

### 147 Exchange of information

- (1) The Cemeteries Agency may enter into an arrangement (*an information sharing arrangement*) with a relevant agency for the purposes of sharing or exchanging any information that is held by the Cemeteries Agency or the agency.
- (2) The information to which an information sharing arrangement may relate is limited to provision of information that the Cemeteries Agency or the relevant agency considers is necessary to enable the Cemeteries Agency or the relevant agency to exercise its functions under this or any other Act.
- (3) Under an information sharing arrangement, the Cemeteries Agency and the relevant agency are, despite any other Act or law of the State, authorised:
  - (a) to request and receive information that is held by the other party to the arrangement, and
  - (b) to disclose that information to the other party.
- (4) Information may be provided in accordance with this section despite any prohibition in, or the need to comply with any requirement of, any Act or law (in particular, the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*).
- (5) In this section:  
**relevant agency** means any of the following:
  - (a) the Ministry of Health,
  - (b) NSW Fair Trading, Department of Finance and Services,
  - (c) Division of Local Government, Department of Premier and Cabinet,
  - (d) Department of Trade and Investment, Regional Infrastructure and Services,
  - (e) Office of Environment and Heritage, Department of Premier and Cabinet,

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Part 8 Miscellaneous

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- (f) any other person or body (or person or body belonging to a class) prescribed by, or approved in accordance with, the regulations.

## **148 Personal liability**

- (1) A matter or thing done or omitted to be done by:
  - (a) the Minister, or
  - (b) the Cemeteries Agency, or
  - (c) the Board or a member of the Board, or
  - (d) the Chief Executive Officer, or
  - (e) a person acting under the direction of the Minister, Cemeteries Agency, the Board or the Chief Executive Officer,
- does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject the Minister, member of the Board, the Chief Executive Officer or a person so acting personally to any action, liability, claim or demand.
- (2) A reference in subsection (1) to the execution of this Act includes a reference to the execution of the provisions of any other Act that confer or impose functions on the Cemeteries Agency.

## **149 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, regulations may be made for or with respect to the following:
  - (a) regulating the use and enjoyment of, and the conduct of persons in, cemeteries,
  - (b) regulating the use of vehicles in cemeteries,
  - (c) the fees and charges that may be imposed for the purposes of this Act,
  - (d) the care, control and management of cemeteries.
- (3) The regulations may create an offence punishable by a penalty not exceeding 25 penalty units.
- (4) The regulations may adopt any document (including for example a code of practice) as in force from time to time.
- (5) The regulations may exempt from the operation of any of the provisions of this Act any specified cemetery or class of cemetery, any specified person or class of persons or any specified activities or class of activities in such circumstances, and subject to such conditions, as may be specified in the regulations.

## **150 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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Cemeteries and Crematoria Bill 2013 [NSW]  
Schedule 1 Members and procedure of Board

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## Schedule 1 Members and procedure of Board

### Part 1 Preliminary

#### 1 Definitions

In this Schedule:

**appointed member** means the Chair of the Board, Deputy Chair of the Board or other member of the Board who is appointed by the Minister.

**member** means an appointed or ex officio member of the Board.

**voting member** means the Chair, Deputy Chair or person appointed as a member of the Board under section 16 (2) (b).

### Part 2 Members

#### 2 Terms of office of appointed members

- (1) Subject to this Schedule and the regulations, an appointed member holds office for the period (not exceeding 4 years) specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) Despite subsection (1), a person cannot be re-appointed for more than 3 successive terms of office.

#### 3 Remuneration

An appointed member (other than a person who is a public servant) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister, in consultation with the Public Service Commissioner appointed under Part 1.3 of the *Public Sector Employment and Management Act 2002* may from time to time determine in respect of the member.

#### 4 Vacancy in office of appointed member

- (1) The office of an appointed member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member, except on leave granted by the Board or unless the member is excused by the Board for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove an appointed member from office at any time for any or no reason and without notice.

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Cemeteries and Crematoria Bill 2013 [NSW]  
Schedule 1 Members and procedure of Board

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## 5 Suspension of members

- (1) The Minister may, by order in writing, suspend a member from office during the investigation and determination of any matter involving an allegation of incompetence, misconduct or breach of duty by the member if the Minister is satisfied that it is appropriate in the public interest to do so.
- (2) A copy of an order under this clause must be served on the member.
- (3) The member, while suspended from office under this clause:
  - (a) is not entitled to exercise any functions of the office, and
  - (b) is not entitled to any fee or remuneration to which he or she would otherwise be entitled as the holder of the office.
- (4) The period of suspension under an order made under this clause commences on the date the order is served on the member or the date specified in the order for the commencement of the period of suspension, whichever is the later.

## 6 Filling of vacancy in office of appointed member

If the office of any appointed member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

## 7 Part-time appointments

Appointed members hold office as part-time members.

## 8 Effect of certain other Acts

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of an appointed member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## Part 3 Procedure

### 9 General procedure

- (1) The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.
- (2) The Chair (or, in the absence or at the request of the Chair, the Deputy Chair) may convene any meetings of the Board that are, in his or her opinion, necessary for the efficient performance of the functions of the Board.
- (3) The Chair (or Deputy Chair) must convene a meeting of the Board at the written request of two or more members of the Board.

### 10 Quorum

The quorum for a meeting of the Board is 3 voting members of the Board.

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Cemeteries and Crematoria Bill 2013 [NSW]  
Schedule 1 Members and procedure of Board

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## **11 Presiding member**

- (1) The Chair of the Board (or, in the absence or at the request of the Chair, the Deputy Chair) is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

**Note.** A person appointed under section 16 (2) (c), (d) or (e) is a non-voting member of the Board.

## **13 Transaction of business outside meetings or by telephone**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chair and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **14 Subcommittees**

- (1) The Board may establish subcommittees to assist it in connection with the exercise of any of its functions.
- (2) A subcommittee has such functions as the Board may from time to time determine in respect of it.
- (3) It does not matter that any or all of the members of a subcommittee are not members of the Board.
- (4) The procedure for the calling of meetings of a subcommittee and for the conduct of business at those meetings is to be as determined by the Board or (subject to any determination of the Board) by the subcommittee.

## **15 First meeting**

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

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Cemeteries and Crematoria Bill 2013 [NSW]  
Schedule 2 Members and procedure of trust boards

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## Schedule 2 Members and procedure of trust boards

### Part 1 Members

#### 1 Maximum number of members

- (1) A person must not be appointed as a member (whether to fill a vacancy or otherwise) if the appointment would result in the number of members for the time being of the trust board exceeding, or being maintained above, 7.
- (2) As long as it does not exceed 7, the number of members is not limited to the number appointed when the trust board was constituted.
- (3) A person who is appointed as an ex officio member must not be counted for the purposes of this clause.

#### 2 Acting members

- (1) The Minister may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be a member.
- (2) The Minister may remove a person from the office to which he or she was appointed under this clause.
- (3) For the purposes of this clause, a vacancy in the office of a member is to be regarded as an absence from office of the member.

#### 3 Nominee of ex officio member

- (1) An ex officio member may, with the approval of the Minister, appoint a nominee.
- (2) The nominee may attend a meeting of the members in the place of the ex officio member.
- (3) For the purposes of the meeting the nominee shall be taken to be the ex officio member.

#### 4 Term of office

- (1) Subject to this Schedule, a member holds office for such period not exceeding 5 years as may be specified in the instrument of appointment of the member.
- (2) A member is eligible (if otherwise qualified) for re-appointment.

#### 5 Vacancy in office of member

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (f) becomes a mentally incapacitated person, or
  - (g) except as described in subclause (2), is an ex officio member who ceases to hold the office by reason of which he or she became a member, or

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Cemeteries and Crematoria Bill 2013 [NSW]  
Schedule 2 Members and procedure of trust boards

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- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (i) is found to have contravened a provision of section 95, unless the Civil and Administrative Tribunal otherwise orders.
- (2) If a person is an ex officio member because he or she holds a local government office and he or she ceases to hold the local government office, he or she continues as a member until:
- (a) 1 month has elapsed, or
  - (b) the local government office is filled, whichever first occurs.
- (3) Subclause (2) does not apply if the member ceased to hold office:
- (a) in circumstances giving rise to a vacancy in civic office under section 234 of the *Local Government Act 1993*, or
  - (b) because of a declaration under section 255 of that Act.
- (4) The Minister may, by notification in the Gazette, remove a member from office at any time.

## 6 Filling of vacancy

If the office of a member becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

## 7 Ex officio members—special provision

A person who is an ex officio member is not affected by a duty or disability which is imposed on the person as a member:

- (a) by a provision of this or any other Act or by a rule of law or equity, and
- (b) as a result of the person both being a member and holding the office or position on which the ex officio appointment is based.

## 8 Definition

In this Part:

**local government office** means the office of a councillor (including a mayor) under the *Local Government Act 1993*.

# Part 2 Procedure

## 9 General procedure

The procedure for the calling of meetings of a trust board and for the conduct of business at those meetings is, subject to this Act and the regulations, as determined by the board.

## 10 Quorum

The quorum for a meeting of a trust board is the number of members which is one more than half the number of members of the board (any fraction being disregarded), unless a greater number is fixed by regulations applying to the board.

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Schedule 2 Members and procedure of trust boards

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## 11 Voting

A decision supported by a majority of the votes cast at a meeting of a trust board at which a quorum is present is the decision of the board.

## 12 Minutes

A trust board must cause full and accurate minutes to be kept of the proceedings of each meeting of the board.

# Part 3 Administration

## Division 1 Trust boards

### 13 Meetings

- (1) The trust board is to meet at least 4 times a year at the places and times as determined by the board.
- (2) At one such meeting, to be termed the annual general meeting, the trust board is to elect:
  - (a) a chairperson and a deputy chairperson, and
  - (b) a person or persons as secretary and treasurer unless those positions are filled by a person or persons appointed and employed under clause 16.
- (3) A person elected under subclause (2) is to hold office until the next annual general meeting of the trust board.
- (4) A statement of accounts is to be presented to the annual general meeting of the trust board.

### 14 Special meetings

On receipt by the chairperson of a written request for a meeting of the trust board, the chairperson, if the request is signed by at least 2 members of the board and specifies the purpose of the meeting, is to call a special meeting to be held within 28 days after receipt of the request at the place and time specified by the chairperson.

### 15 Prior notice of meetings

- (1) Subject to subclause (2), the chairperson, not later than 10 days before the day appointed for a meeting referred to in clause 6 or 7, is to forward to each member of the trust board a notice in writing setting out the place and time of the meeting and the agenda for that meeting.
- (2) If the chairperson is of the opinion that a special meeting should be held as soon as possible, the chairperson may give such notice of the place and time of, and the agenda for, the meeting as the chairperson considers appropriate.

### 16 Casual vacancy

If a casual vacancy occurs in the office of the chairperson, deputy chairperson, secretary or treasurer of the trust board, the trust board, at the first meeting held after the occurrence of the casual vacancy, is to elect or appoint, as the case requires, a person to fill the vacancy and the person so elected or appointed is entitled to hold office for the unexpired part of the term of office of that person's predecessor.

### 17 Conduct of meetings

- (1) At a meeting of the trust board, the chairperson or, in the absence of the chairperson, the deputy chairperson, is to preside.

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- (2) In the absence of the chairperson and the deputy chairperson, the members of the trust board present are to elect a person from among the members to preside at the meeting and the person so elected is to preside.
- (3) The person presiding at a meeting of the trust board is to have a deliberative vote and, in the event of an equality of votes, is to have a second or casting vote.

## **Division 2 General administrative matters**

### **18 Officers and employees**

- (1) A trust board may appoint and employ a secretary, a treasurer, rangers and such other officers and employees as may be necessary for the efficient operation of the Crown cemetery trust.
- (2) One person may be appointed to the positions of secretary to, and treasurer of, the Crown cemetery trust.
- (3) A member of the trust board may be appointed and employed under this clause but only with the approval of the Minister.

### **19 Duties of secretary and treasurer**

- (1) The secretary is:
  - (a) to keep and maintain minutes of each meeting of the trust board, and
  - (b) to keep and maintain the book (disclosure of pecuniary interests of members of a trust board) required by clause 1 (3) of Schedule 4 to the *Crown Lands Act 1989*, and
  - (c) to perform other duties as directed by the Crown cemetery trust.
- (2) The treasurer is:
  - (a) to be responsible to the trust board for the keeping and maintaining of proper financial records, and
  - (b) to keep and maintain the records required to be kept by the Crown cemetery trust for the purposes of section 122 (1) (b) of the *Crown Lands Act 1989*.

### **20 Receipts and disbursements**

- (1) All money received by the trust board is to be deposited to the credit of an account established with any authorised deposit-taking institution in the name of the Crown cemetery trust.
- (2) Each item of expenditure by or on behalf of the trust board is to be authorised or confirmed for payment, at a duly convened and constituted meeting of the trust board by tabling and approval of a report by the treasurer relating to that item of expenditure.
- (3) Cheques drawn on the Crown cemetery trust's account are to be signed by one member of the trust board and one other person approved by the trust.
- (4) If an administrator of a Crown cemetery trust has been appointed under the Act, cheques are to be signed by the administrator and one other person chosen by the administrator.

### **21 Common seal**

- (1) The common seal of the Crown cemetery trust is to be kept by the secretary or, if there is no secretary, by such other person as may be appointed by the trust.
- (2) A trust's seal may be affixed to an instrument or document only:

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- (a) following a resolution to do so passed at a meeting of the trust, and
  - (b) in the presence of the secretary or a member of the trust board, and
  - (c) with an attestation by the signature of the secretary or member of the fact of the affixing of the seal.
- (3) If an administrator of a trust has been appointed, the trust's seal may be affixed and attested by the administrator alone.

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Cemeteries and Crematoria Bill 2013 [NSW]  
Schedule 3 Savings, transitional and other provisions

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## Schedule 3 Savings, transitional and other provisions

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (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 on the NSW legislation website, 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.
- (4) Regulations under this clause may have effect despite any provision of Part 2.

### Part 2 Provisions consequent on enactment of this Act

#### 2 Records

Clause 33 (2) of, and Schedule 4 to, the *Crown Lands Regulation 2006*, as in force immediately before the commencement of this clause, apply to and in respect of the records required to be kept by a Crown cemetery operator under section 42 of this Act in the same way as it applies to and in respect of records required to be kept by a reserve trust and trust managers under that Regulation until regulations are made under this Act with respect to those matters or unless the Minister determines otherwise by notice in writing.

#### 3 Register of burials

A register of burials kept by a cemetery authority in relation to burials carried out at a cemetery under clause 68 of the *Public Health Regulation 2012*, as in force before its repeal by this Act is taken on that repeal to form part of the cemetery operator's register required to be kept in respect of interments in that cemetery under section 63 of this Act.

#### 4 Register of cremations

A register of cremations kept by a cremation authority in relations to cremations carried out at a cemetery under clause 86 of the *Public Health Regulation 2012*, as in force before its repeal by this Act, is taken on that repeal to form part of the register required to be kept in respect of cremations carried out at that cemetery under section 63 of this Act.

#### 5 Register of mortuaries and crematories

A register of mortuaries and crematories kept by a person who operates a mortuary or crematory under clause 89 of the *Public Health Regulation 2012*, as in force before its amendment by this Act, is taken, to the extent it relates to a crematorium, on that amendment to form part of the Cemeteries and Crematoria Register required to be kept in respect of that crematorium under section 27 of this Act.

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Cemeteries and Crematoria Bill 2013 [NSW]  
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## **6 Renewal schemes**

- (1) A renewal scheme approved under Subdivision 4 of Division 2 of Part 3 of the *Crown Lands (General Reserves) By-law 2006* (the **repealed Subdivision**) before the repeal of that Subdivision by this Act is taken to be a renewal scheme approved under Part 4 of this Act.
- (2) A proposal for approval of a renewal scheme submitted under the repealed Subdivision before its repeal by this Act that has not been determined by the Minister before that repeal is taken to have been made under Division 3 of Part 4 of this Act.

## **7 Existing members of trust boards**

- (1) A person who, immediately before the commencement of this clause was a member of a trust board appointed under section 93 of the *Crown Lands Act 1989* continues to hold office for the unexpired term of his or her appointment (subject to the terms of his or her original appointment and subclause (2)) as if the person had been appointed under section 82 of this Act.
- (2) The instrument of appointment of such a member is taken to include the matter referred to in section 80 (2) and to have been signed by the member.

## **8 Annual reports**

- (1) Section 105 (Annual reports) of this Act applies only to and in respect of a financial year commencing on or after 1 July 2014.
- (2) Section 122 of the *Crown Lands Act 1989* and clause 32 of the *Crown Lands Regulation 2006* continue (subject to the regulations) to apply to and in respect of a Crown cemetery trust within the meaning of this Act for the financial year that commenced on 1 July 2013.

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Cemeteries and Crematoria Bill 2013 [NSW]  
Schedule 4 Amendment of Acts and subordinate instruments

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## Schedule 4 Amendment of Acts and subordinate instruments

### 4.1 Crown Lands Act 1989 No 6

#### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

*Crown cemetery* trust has the same meaning as in the *Cemeteries and Crematoria Act 2013*.

#### [2] Section 78 Definitions

Insert “or under section 80 of the *Cemeteries and Crematoria Act 2013*” after “section 93” in the definition of *trust board*.

#### [3] Section 92 Reserve trusts

Insert after section 92 (6B):

- (6C) Subsections (6)–(6B) do not apply to a reserve trust established for cemetery or crematorium purposes on or after the commencement of section 79 of the *Cemeteries and Crematoria Act 2013*.
- (6D) In this Division, a reference to a *reserve trust operator*, in relation to a reserve trust established for cemetery or crematoria purposes on or after the commencement of section 79 of the *Cemeteries and Crematoria Act 2013*, is a reference to the Minister administering that Act (to the extent that the Minister is responsible for managing the affairs of that reserve trust) or the trust board, corporation or administrator appointed under that section to manage the affairs of the trust.

#### [4] Section 92 (8)

Insert after section 92 (7):

- (8) The Minister administering this Act is to consult the Minister administering the *Cemeteries and Crematoria Act 2013* before exercising any function after the commencement of section 79 of that Act with respect to a reserve trust established for cemetery or crematorium, or related, purposes.

#### [5] Section 102 Consent of Minister to sale, lease, easement, licence or mortgage

Insert at the end of the section:

- (8) Nothing in this section applies to or in respect of the grant of an interment right under the *Cemeteries and Crematoria Act 2013*.

### 4.2 Crown Lands (General Reserves) By-law 2006

#### [1] Clause 5 Application of Part

Insert at the end of the clause:

- (2) This Part does not, on or after the commencement of section 80 of the *Cemeteries and Crematoria Act 2013*, apply to or in respect of a trust board for a reserve trust established for cemetery or crematorium, or related, purposes.

#### [2] Clause 11 Committees

Insert after clause 11 (2):

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- (3) This clause does not, on or after the commencement of section 109 of the *Cemeteries and Crematoria Act 2013* apply to or in respect of a trust board for a reserve trust established for cemetery or crematoria purposes.

**[3] Clause 15A**

Insert before clause 16:

**15A Application of Division**

This Division does not, on or after the commencement of section 80 of the *Cemeteries and Crematoria Act 2013*, apply to or in respect of a trust board for a reserve trust established for cemetery or crematorium, or related, purposes.

**[4] Clause 18 Fees and charges**

Omit clause 18 (4), (5) (b), (7) and (9).

**[5] Part 3, Division 2**

Omit the Division.

## 4.3 Crown Lands Regulation 2006

**Clause 32 Reserve trust reports**

Insert after clause 32 (5):

- (6) This clause does not apply to a Crown cemetery trust within the meaning of the *Cemeteries and Crematoria Act 2013* on or after the commencement of this subclause.

## 4.4 Environmental Planning and Assessment Regulation 2000

**Clause 226 Prescribed persons: section 88**

Insert after clause 226 (3):

- (4) The following persons are prescribed under section 88 (2) (b) of the Act:  
(a) a Crown cemetery trust within the meaning of the *Cemeteries and Crematoria Act 2013*.

## 4.5 Public Finance and Audit Act 1983 No 152

**Schedule 2 Statutory bodies**

Insert in alphabetical order:

Cemeteries and Crematoria NSW

## 4.6 Public Health Regulation 2012

**[1] Clause 68 Register of burials**

Omit the clause.

**[2] Clause 86 Register of cremations**

Omit the clause.

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**[3] Clause 87 Keeping of register and documents**

Omit the clause.

**[4] Clause 89 Register of mortuaries**

Omit “and crematories” from clause 89 (1).

**[5] Clause 89 (2) (a)–(c) and (4)**

Omit “or crematory” wherever occurring.

**[6] Clause 89 (2) (d)**

Omit the paragraph. Insert instead:

- (d) the name and address of any funeral director that has access to the mortuary.

**[7] Clause 90 Public access to registers**

Omit the clause.

## 4.7 Public Reserves Management Fund Act 1987 No 179

### Section 6 Payments out of Public Reserves Management Fund

Insert after section 6 (1) (f):

- (fl) any proceeds paid into the Fund for the purposes of the Crown Cemeteries Advisory Committee or Interim Cemeteries and Crematoria Board (established under section 12 of the *Crown Lands Act 1989*) before the commencement of section 22 of the *Cemeteries and Crematoria Act 2013* that the Minister directs be paid into the Cemeteries and Crematoria NSW Fund for the purposes of that Act,

## 4.8 Summary Offences Act 1988 No 25

**[1] Section 8 Damaging or desecrating protected places**

Insert in alphabetical order in section 8 (1):

*interment site* has the meaning it has in Part 4 of the *Cemeteries and Crematoria Act 2013* and includes a memorial (within the meaning of that Act) used to memorialise a deceased person interred at such a site.

**[2] Section 8 (1), definition of *protected place***

Insert “or interment site” after “war memorial”.

**[3] Section 8 (3)**

Insert “or interment site” after “war memorial”.

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## Dictionary

**appropriate website** means a website maintained by the Department or another website considered to be appropriate by the Cemeteries Agency.

**authorised officer** means a person appointed as an authorised officer under section 134.

**Board** means the Board of Cemeteries and Crematoria NSW.

**bodily remains** means the whole or any part of a human body (whatever its physical state may be) but does not include the whole or any part of a human body that has been cremated.

**bury** includes inter human remains in a vault.

**Cemeteries Agency** means Cemeteries and Crematoria NSW.

**Cemeteries Agency Fund** means the Cemeteries and Crematoria NSW Fund.

**Cemeteries Register**—see section 27.

**cemetery** means a place set apart for the disposal and memorialisation of human remains but does not include the following:

- (a) an Aboriginal place within the meaning of the *National Parks and Wildlife Act 1974*,
- (b) a place at which cremated remains are scattered but which is not otherwise used for the disposal of human remains,
- (c) a place on private land, where the area of the landholding is 5 hectares or more and the location has been approved for the purposes of a cemetery by a local government authority,
- (d) any other place of a kind prescribed by the regulations.

**Note.** **Cemetery** as defined includes the following:

- (a) a reserve or part of a reserve dedicated or reserved as a public cemetery under the *Crown Lands Act 1989*, or
- (b) a private cemetery or other place approved for that purpose by a local government authority, or
- (c) land reserved under the *National Parks and Wildlife Act 1974* or acquired under Part 11 of that Act, where the location has been approved for that purpose by:
  - (i) a person or body (including a local council, trust board or board of management within the meaning of that Act) in which the care, control and management of the land is vested, or
  - (ii) if no such person or body has been vested with the care, control and management of the land—the Director-General of the Department of Premier and Cabinet.

**cemetery operator's register**—see section 63.

**Chief Executive Officer** means the person appointed under Chapter 1A of the *Public Sector Employment and Management Act 2002* as Chief Executive Officer of Cemeteries and Crematoria NSW.

**civil penalty provision**—see section 120.

**code of practice** means a code approved under section 28.

**cremation** means a process for the reduction of bodily remains by fire or heat or by other means prescribed by the regulations.

**crematorium** means a place designed for the cremation of bodily remains.

**Crown cemetery** means a reserve, or part of a reserve, dedicated or used (whether before or after the commencement of this section) as a public cemetery or crematorium under the *Crown Lands Act 1989*.

**Crown cemetery operator**—see section 77.

**Crown cemetery trust**—see section 77.

**Department** means the Department of Trade and Investment, Regional Infrastructure and Services.

**Director-General** means the Director-General of the Department.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

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**funeral director** means a person who carries on the business of arranging for disposal of human remains.

**funeral fund** has the same meaning as in the *Funeral Funds Act 1979*.

**government agency** means:

- (a) a public authority constituted by or under an Act, or
- (b) a NSW Government agency, or
- (c) a Division of the Government Service, or
- (d) except in section 11 (4) (b)—a council (within the meaning of the *Local Government Act 1993*) or other local authority, or
- (e) a SOC.

**human remains** means bodily remains and includes:

- (a) the remains of a still born child, and
- (b) bodily remains after they have been cremated.

**improvement notice** means a notice given under section 33.

**interment** of human remains—see section 44.

**interment industry**—see section 26.

**interment industry scheme**—see Division 3 of Part 3.

**interment matter** means matter relating to the following:

- (a) burials, exhumations and cremations,
- (b) the operation of cemeteries and crematoria,
- (c) the design, construction and maintenance of the following:
  - (i) buildings, memorials, mausoleums, vaults and other structures and things in cemeteries and crematoria,
  - (ii) walls, fences, paths, drains and other works of cemeteries and crematoria,
- (d) without limiting paragraph (c) (i), responsibility for the maintenance of structures and things referred to in that subparagraph,
- (e) the equipment used in cemeteries and crematoria, including its maintenance,
- (f) the grounds of cemeteries and crematoria, including their maintenance,
- (g) the position, depth and maintenance of graves,
- (h) the construction of coffins to be placed in vaults,
- (i) interment and other rights in relation to cemeteries and crematoria,
- (j) the making and keeping of records about cemeteries and crematoria, including records of burials, exhumations and cremations, burial and other rights in relation to cemeteries and crematoria,
- (k) the inspection of cemeteries and crematoria and their records.

**interment right**—see section 44.

**interment service** means any service (other than the supply of goods) provided with respect to the interment of human remains.

**interment site**—see section 44.

**Maintain** includes alter, remove, renew and repair.

**mausoleum** means an above-ground structure erected and designed as a resting place for remains without the burial of the remains in the earth, but does not include a structure designed as a resting place exclusively for cremated human remains.

**memorial** means:

- (a) a gravestone, plaque, cenotaph or other monument, or

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(b) any other structure or permanent physical object used to memorialise a deceased person.

**operator** of a cemetery and **cemetery operator** means the following:

- (a) for a Crown cemetery or crematorium—the Crown cemetery operator,
- (b) for a cemetery or crematoria administered by a council having control under section 48 of the *Local Government Act 1993*—the council,
- (c) in any other case—the person or body for the time being responsible for the management of the cemetery or crematorium.

**renewal scheme**—see Division 3 of Part 4.

**short term order**—see section 36.

**stillborn child** has the same meaning as in the *Births, Deaths and Marriages Registration Act 1995*.

**trust board** means a trust board appointed under section 80.