



New South Wales

Rookwood Necropolis Amendment Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Necropolis Act 1901* so as:

- (a) to allow land to be set aside within the Rookwood Necropolis for the purposes of denominational crematoria, and
- (b) to enable appeals to be made to the Land and Environment Court against a valuation by the Valuer-General of the lease of land within the Rookwood Necropolis that is leased for the purposes of a general crematorium, and
- (c) to clarify certain provisions with respect to the assessment of the annual contributions that are payable to the Joint Committee of Necropolis Trustees by the various reserve trusts that manage the cemeteries within the Necropolis, and
- (d) to require the reserve trusts that manage the denominational crematoria within the Necropolis to pay fees to the Joint Committee in relation to the cremations carried out by them, and
- (e) to clarify the Joint Committee's powers with respect to the recovery of unpaid contributions, fees and other amounts due to it under that Act, and
- (f) to update the Act by way of law revision.

The Bill also makes consequential amendments to other Acts and instruments.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act (except for Schedules 1 and 3.2) on the date of assent. The provisions of Schedules 1 and 3.2 are to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Necropolis Act 1901* set out in Schedules 1 and 2.

Clause 4 is a formal provision giving effect to the amendments to various Acts and instruments set out in Schedule 3.

Schedule 1 Amendment of Necropolis Act 1901

Schedule 1 [1] amends proposed section 6A of the Act (to be inserted by **Schedule 2 [7]**) so as to enable land to be set aside for the purposes of a crematorium.

Schedule 1 [2] inserts proposed section 8E into the Act. The new section allows the lessor or lessee under the general crematorium lease, or the Joint Committee, to appeal to the Land and Environment Court against a valuation under Schedule 3 of the land on which the general crematorium is situated.

Schedule 1 [3] substitutes section 20B. Under the new section, the Joint Committee must make annual estimates of its expenditure and revenues for the following year, must determine how much additional revenue it must raise by way of contributions from the various reserve trusts and the general crematorium lessee, must seek the Minister's approval of the total amount it wishes to raise by way of contributions, must calculate (in accordance with the regulations) the amount of each individual contribution, and must notify each reserve trust and the general crematorium lessee of what its contribution is to be. Before approving a total amount, the Minister must consult with the reserve trusts and the general crematorium lessee. Contributions under the new section will be payable within 60 days after they are notified.

Schedule 1 [4] inserts proposed sections 20G and 20H into the Act:

- (a) Proposed section 20G requires each reserve trust that operates a crematorium to pay quarterly fees to the Joint Committee with respect to the cremations carried out by it. The amount of the fees will be fixed by the regulations.
- (b) Proposed section 20H requires each reserve trust, and the general crematorium lessee, to provide quarterly information to the Joint Committee with respect to the interments and cremations carried out by it.

Schedule 1 [5] inserts proposed section 36A. The new section provides that the Joint Committee may recover any contribution, fee or other amount due to it under the Act as a debt in a court of competent jurisdiction.

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

The *Necropolis Act 1901* contains a number of provisions that have fallen into disuse. It has also been affected by the repeal of the *Crown Lands Consolidation Act 1913* and the enactment of the *Crown Lands Act 1989*. Moreover, the Act is written in a style that no longer conforms to current drafting practice: despite its length it is not divided into Parts, its Schedules use ordinal (“First Schedule”) rather than cardinal (“Schedule 1”) numbering and it contains savings and transitional provisions among its substantive provisions. Its name does not reflect the fact that its operation is limited to the cemeteries at Rookwood.

Schedule 2 [2] retitles the Act as the *Rookwood Necropolis Act 1901*.

Schedule 2 [1], [10], [18], [27] and [39] divide the Act into Parts.

Schedule 2 [5] amends section 6 of the Act to add some new definitions.

Schedule 2 [8] inserts proposed section 6A into the Act. The new section replaces sections 7B, 8 and 8A (to be repealed by **Schedule 2 [9]**).

Schedule 2 [46], [48], [50] and [54] give cardinal numbers to the Schedules to the Act.

Schedule 2 [56] amends clause 1A of Schedule 5 so as to allow the regulations under the Act to contain savings and provisional provisions consequent on the enactment of the proposed Act.

Schedule 2 [58] adds proposed Part 3 to Schedule 5. The new Part contains savings and transitional provisions consequent on the enactment of the proposed Act, which include provisions arising from the repeal by **Schedule 2 [9]** of sections 7 and 7A of the Act.

The remaining items of Schedule 2 are consequential on the matters referred to above including, in particular, the replacement of references to “trustees” (the appropriate term under the *Crown Lands Consolidation Act 1913*) with references to “reserve trusts” (the appropriate term under the *Crown Lands Act 1989*).

Schedule 3 Amendment of other Acts and instruments

Schedule 3.1 amends the *Crown Lands (General Reserves) By-law 2001* so as to extend to the cemeteries and crematoria of the Rookwood Necropolis the provisions of that By-law that deal with cemeteries.

Schedule 3.2 amends the *Land and Environment Court Act 1979* as a consequence of the amendment proposed by **Schedule 1 [2]**.

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Schedule 3.3 amends the *Local Government Act 1993* so as to remove any doubt that a Crown reserve that is dedicated for a public cemetery (such as a cemetery under the *Necropolis Act 1901*) is a public reserve for the purposes of the 1993 Act.

Schedule 3.4 amends the *Necropolis Regulation 2002* as a consequence of the amendments made to the *Necropolis Act 1901* by **Schedule 2** and the amendment made to the *Crown Lands (General Reserves) By-law 2001* by **Schedule 3.1**.

First print



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No. , 2004

A Bill for

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

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Rookwood Necropolis Amendment Act 2004</i> .	3
2 Commencement	4
(1) This Act commences on the date of assent, subject to subsection (2).	5
(2) Schedules 1 and 3.2 commence on a day or days to be appointed by proclamation.	6 7
3 Amendment of Necropolis Act 1901 (1902 No 20)	8
The <i>Necropolis Act 1901</i> is amended as set out in Schedules 1 and 2.	9
4 Amendment of other Acts and instruments	10
Each Act and instrument listed in Schedule 3 is amended as set out in that Schedule.	11 12

Schedule 1	Amendment of Necropolis Act 1901	1
	(Section 3)	2
[1]	Section 6A Setting aside land for different purposes	3
	Insert “or crematorium” after “cemetery” wherever occurring in section 6A (1) and (2).	4 5
[2]	Section 8E	6
	Insert after section 8D:	7
	8E Right of appeal against valuations of general crematorium site	8
	The lessor or lessee under the general crematorium lease, or the Joint Committee, may appeal to the Land and Environment Court against a valuation made by the Valuer-General under clause 5 of Schedule 3.	9 10 11 12
[3]	Section 20B	13
	Omit the section. Insert instead:	14
	20B Contributions payable to Joint Committee by reserve trusts etc	15
	(1) As soon as practicable after the beginning of each financial year, the Joint Committee:	16 17
	(a) must make estimates for that year of its expenditure and of its revenue apart from this section, and	18 19
	(b) must determine, on the basis of those estimates, the total amount that it will need to obtain for that year from contributions from the reserve trusts and from the general crematorium lessee, and	20 21 22 23
	(c) must notify the Minister of the total amount so determined, and	24 25
	(d) subject to the Minister’s approval of the total amount so determined, must determine, in accordance with the regulations, the contribution payable by each reserve trust, and the general crematorium lessee, in respect of that amount, and	26 27 28 29 30
	(e) must notify each reserve trust, and the general crematorium lessee, of the contribution payable by it for that year.	31 32 33

(2)	The approval referred to in subsection (1) (d) must not be given until after the Minister has consulted with the reserve trusts, and with the general crematorium lessee, as to the total amount determined by the Joint Committee under subsection (1).	1 2 3 4
(3)	Each reserve trust, and the general crematorium lessee, must pay the amount of its contribution within 60 days after receiving notice from the Joint Committee to do so.	5 6 7
[4] Sections 20G and 20H		8
	Insert after section 20F:	9
20G Fees payable to Joint Committee by reserve trusts operating crematoria		10 11
	Within 7 days after the end of each quarter, each reserve trust that operates a crematorium must pay to the Joint Committee such fees as may be prescribed by the regulations with respect to the cremations carried out by it during that quarter in the Necropolis.	12 13 14 15
20H Information to be provided to Joint Committee by reserve trusts etc		16 17
	Within 7 days after the end of each quarter, each reserve trust, and the general crematorium lessee, must provide the Joint Committee with the number of interments and cremations carried out by it during that quarter in the Necropolis.	18 19 20 21
[5] Section 36A		22
	Insert after section 36:	23
36A Recovery of contributions, fees and other amounts		24
	The Joint Committee may recover any contribution, fee or other amount due to it under this Act as a debt in a court of competent jurisdiction.	25 26 27

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

(Section 3)

[1] Part 1, heading

Insert before section 1:

Part 1 Preliminary

[2] Section 1 Name of Act

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

[3] Section 2 Repeal

Omit the section.

[4] Section 4 Existing proclamation etc

Omit the section.

[5] Section 6 Definitions

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

Insert in alphabetical order:

financial year means the year beginning 1 July and ending 30 June.

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

general crematorium site means the land described in Schedule 2.

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

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

[6] Section 6 (2)

Omit “land described in the Second Schedule”.

Insert instead “general crematorium site”.

[7] Section 6 (4)	1
Insert after section 6 (3):	2
(4) Notes included in this Act do not form part of this Act.	3
[8] Section 6A	4
Insert after section 6:	5
6A Setting aside land for different purposes	6
(1) The Minister may, by notification published in the Gazette, set aside land within the Necropolis for the following purposes:	7
(a) for use as a cemetery,	8
(b) for conservation as a historic site.	9
(2) Land that is set aside for use as a cemetery may be set aside generally or for a particular religious denomination.	10
(3) The general crematorium site is taken to have been set aside for use as a crematorium.	11
(4) In the application of Part 5 of the <i>Crown Lands Act 1989</i> to land within the Necropolis, Crown land that is set aside under this section:	12
(a) is taken to be a reserve within the meaning of that Part, and	13
(b) is taken to have been dedicated for a public purpose under section 80 of that Act.	14
(5) In the case of Crown land within the general crematorium site, a reserve trust is not to be constituted or appointed under section 92 of the <i>Crown Lands Act 1989</i> while a general crematorium lease is in force.	15
(6) A reserve trust for land set apart under this Act has the functions conferred on it by or under this Act in addition to the functions conferred or imposed on it under the <i>Crown Lands Act 1989</i> .	16
[9] Sections 7, 7A, 7B, 8 and 8A	17
Omit the sections.	18
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[10] Part 2, heading	1
Insert before section 8B:	2
Part 2 Lease of general crematorium site	3
[11] Section 8B Lease of general crematorium site	4
Omit “the Second Schedule” wherever occurring.	5
Insert instead “Schedule 2”.	6
[12] Section 8B (3)	7
Omit “trustees”. Insert instead “a reserve trust”.	8
[13] Section 8C Extension of general crematorium lease	9
Omit “the Second Schedule” from section 8C (1) (a).	10
Insert instead “Schedule 2”.	11
[14] Section 8C (1) (b) and (2)	12
Omit “land described in the Second Schedule” wherever occurring.	13
Insert instead “general crematorium site”.	14
[15] Section 8C (2)	15
Omit “the lease referred to in section 8B”.	16
Insert instead “the general crematorium lease”.	17
[16] Section 8D Amendment of general crematorium lease	18
Omit “the lease referred to in section 8B” from section 8D (1).	19
Insert instead “the general crematorium lease”.	20
[17] Section 8D (1)	21
Omit “the Third Schedule”. Insert instead “Schedule 3”.	22

[18] Part 3, heading	1
Insert before section 9:	2
Part 3 Functions of reserve trusts	3
[19] Section 9 Parts of land dedicated in 1887 and added to general cemetery may be set apart for denominations	4
Omit the section.	5
[20] Sections 10, 10A, 11 (1) and (3), 20B (2) and (4), 20C (1), 20E (including heading), Fourth Schedule	6
Omit “the trustees” and “body of trustees” wherever occurring.	7
Insert instead “the reserve trust” and “reserve trust”, respectively.	8
[21] Section 10 Adjustment of boundaries	9
Omit “such trustees”. Insert instead “such reserve trust”.	10
[22] Section 10A Divesting of land with consent of reserve trust	11
Omit “them” from section 10A (1). Insert instead “the reserve trust”.	12
[23] Section 11 Vesting of lands set apart	13
Omit “and their successors” wherever occurring.	14
[24] Section 11 (2)	15
Omit “of trustees” and “those trustees”.	16
Insert instead “of a reserve trust” and “the reserve trust”, respectively.	17
[25] Section 11 (2)	18
Omit “land described in the Second Schedule, that land”.	19
Insert instead “general crematorium site, that site”.	20
[26] Sections 12–15, 17, 18 and 19	21
Omit the sections.	22
	23
	24

[27] Part 4, heading	1
Insert before section 20:	2
 Part 4 Joint Committee of Necropolis Trustees	3
[28] Section 20 Joint Committee of Necropolis Trustees	4
Omit section 20 (2).	5
[29] Section 20 (5) (a)	6
Omit the paragraph. Insert instead:	7
(a) a member nominated by each reserve trust and appointed by the Minister, and	8 9
[30] Section 20 (6)	10
Omit “(other than a person nominated by trustees)”.	11
[31] Section 20 (7)	12
Omit “The Fourth Schedule”. Insert instead “Schedule 4”.	13
[32] Section 20B Contributions to Joint Committee by reserve trust	14
Omit “(except the Joint Committee itself)” from section 20B (2).	15
[33] Section 20B (3) (a)	16
Omit “bodies of trustees”. Insert instead “reserve trusts”.	17
[34] Section 20B (5)	18
Omit the subsection. Insert instead:	19
(5) While there is no reserve trust of the general crematorium site, a reference in this section to a reserve trust includes a reference to a person conducting a crematorium on that site.	20 21 22
[35] Section 20C Provision of services by Joint Committee	23
Omit “trustees” from section 20C (3) (b). Insert instead “the reserve trust”.	24
[36] Section 20D Preparation of plans of management by Joint Committee	25
Omit section 20D (2). Insert instead:	26
(2) The provisions of Division 6 of Part 5 of the <i>Crown Lands Act</i> 1989 apply to a plan of management under this section in the same way as they apply to a plan of management under that Division.	27 28 29 30

[37] Section 20D (3)	1
Omit “Those sections”. Insert instead “Those provisions”.	2
[38] Sections 21–25 and 28–35	3
Omit the sections.	4
[39] Part 5, heading	5
Insert before section 36:	6
Part 5 Miscellaneous	7
[40] Section 36 Delegation by Minister	8
Omit section 36 (2)–(6).	9
[41] Section 37 Regulations	10
Omit section 37 (2) (a), (c) and (d).	11
[42] Section 37 (2) (b1)	12
Omit “trustees”. Insert instead “reserve trusts”.	13
[43] Section 37 (3) and (4)	14
Omit the subsections.	15
[44] Section 38 Savings and transitional provisions	16
Omit “The Fifth Schedule”. Insert instead “Schedule 5”.	17
[45] First Schedule	18
Omit the Schedule.	19
[46] Second Schedule	20
Omit the heading. Insert instead:	21
Schedule 2 General crematorium site	22
[47] Second Schedule	23
Omit “(Section 8A)”. Insert instead “(Section 8B)”.	24

[48]	Third Schedule	1
	Omit the heading. Insert instead:	2
	Schedule 3 Additional terms and conditions of general crematorium lease	3
		4
[49]	Third Schedule, clause 6 (2)	5
	Omit the subclause. Insert instead:	6
	(2) The statement must be certified as correct by a registered company auditor within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth.	7
		8
		9
[50]	Fourth Schedule	10
	Omit the heading. Insert instead:	11
	Schedule 4 Constitution and procedure of Joint Committee	12
		13
[51]	Fourth Schedule, clause 5 (2)	14
	Omit “those trustees”. Insert instead “the reserve trust”.	15
[52]	Fourth Schedule, clause 5 (3)	16
	Omit “the trustees concerned fail”. Insert instead “the reserve trust fails”.	17
[53]	Fourth Schedule, clause 6 (1) (e)	18
	Omit the paragraph. Insert instead:	19
	(e) becomes a mentally incapacitated person,	20
[54]	Fifth Schedule	21
	Omit the heading. Insert instead:	22
	Schedule 5 Savings and transitional provisions	23

[55] Fifth Schedule, Part 1, heading	1
Insert before clause 1A of the Fifth Schedule:	2
Part 1 Preliminary	3
[56] Fifth Schedule, clause 1A	4
Insert at the end of clause 1A (1):	5
<i>Rookwood Necropolis Amendment Act 2004</i>	6
[57] Fifth Schedule, Part 2, heading	7
Insert before clause 1:	8
Part 2 Provisions consequent on enactment of Necropolis (Amendment) Act 1986	9 10
[58] Fifth Schedule, Part 3	11
Insert after clause 5:	12
Part 3 Provisions consequent on enactment of Rookwood Necropolis Amendment Act 2004	13 14 15
6 Definition	16
In this Part, <i>the 2004 amending Act</i> means the <i>Rookwood Necropolis Amendment Act 2004</i> .	17 18
7 Continuation of existing dedications	19
Land that, immediately before the commencement of section 6A (as inserted by the 2004 amending Act), was dedicated or set apart for any purpose under section 7, 7A, 7B, 8 or 8A, as in force immediately before the repeal of those sections by that Act:	20 21 22 23
(a) is taken to be set aside for that purpose under section 6A, and	24 25
(b) is taken to be a reserve within the meaning of Part 5 of the <i>Crown Lands Act 1989</i> , and	26 27
(c) is taken to have been dedicated for a public purpose under section 80 of the <i>Crown Lands Act 1989</i> .	28 29
Note. Under clause 4 of Schedule 8 to the <i>Crown Lands Act 1989</i> , the trustees of any such land are taken to have been constituted as a reserve trust under Part 5 of that Act.	30 31 32

8	Application of section 8E	1
	Section 8E (as inserted by the 2004 amending Act) does not apply to any valuation made by the Valuer-General before the commencement of that section.	2 3 4
9	Application of section 20B	5
	Section 20B (as inserted by the 2004 amending Act) does not apply to any financial year that commenced before the commencement of that section.	6 7 8
10	Exclusive rights of burial	9
	(1) Any exclusive rights of burial subsisting under section 24 immediately before its repeal by the 2004 amending Act are taken to be exclusive rights of burial granted under clause 28 of the <i>Crown Lands (General Reserves) By-law 2001</i> .	10 11 12 13
	(2) Any action taken under section 24 in relation to any such exclusive rights of burial is deemed to have been taken under clause 31A of the <i>Crown Lands (General Reserves) By-law 2001</i> .	14 16
	(3) Any right to which a person was entitled under section 24A immediately before its repeal by the 2004 amending Act is taken to be a right to which the person is entitled under clause 31B of the <i>Crown Lands (General Reserves) By-law 2001</i> .	17 18 19 20
11	Construction of certain references	21
	In any Act or instrument, a reference to the <i>Necropolis Act 1901</i> includes a reference to the <i>Rookwood Necropolis Act 1901</i> .	22 23

Schedule 3	Amendment of other Acts and instruments	1
		2
	(Section 4)	3
3.1	Crown Lands (General Reserves) By-law 2001	4
	Schedule 1 Reserves to which this By-law applies	5
	Insert at the beginning of Part 2 of Schedule 1:	6
	Each cemetery and crematorium within the Necropolis referred to in the <i>Rookwood Necropolis Act 1901</i>	7
		8
3.2	Land and Environment Court Act 1979 No 204	9
	Section 19 Class 3—land tenure, valuation, rating and compensation matters	10
		11
	Insert after section 19 (b):	12
	(b1) appeals under section 8E of the <i>Rookwood Necropolis Act 1901</i> ,	13
		14
3.3	Local Government Act 1993 No 30	15
	Dictionary	16
	Insert “or for a public cemetery” after “public recreation” in paragraph (g) (i) of the definition of <i>public reserve</i> .	17
		18
3.4	Necropolis Regulation 2002	19
[1]	Clauses 1 and 4	20
	Insert “ <i>Rookwood</i> ” before “ <i>Necropolis</i> ” wherever occurring.	21
[2]	Clause 4 Definitions	22
	Omit the definitions of <i>appropriate fee, burial place, relevant trust, secretary</i> and <i>trust</i> .	23
		24
	Insert in alphabetical order:	25
	<i>reserve trust</i> means a reserve trust for land within the Necropolis.	26
[3]	Clause 6 Officers and employees	27
	Omit “The trusts and the Joint Committee may each”.	28
	Insert instead “The Joint Committee may”.	29

[4] Clause 6	1
Omit “their”. Insert instead “its”.	2
[5] Clause 7 Meetings	3
Omit “each trust and”, “the trust or” and “, as the case may be”.	4
[6] Clause 8 Common seal	5
Omit the clause.	6
[7] Parts 3, 3A and 4	7
Omit the Parts.	8
[8] Clause 22 Contributions to Joint Committee	9
Omit “trust” wherever occurring. Insert instead “reserve trust”.	10
[9] Clause 22 (3)	11
Omit the definition of <i>trust</i> . Insert instead:	12
<i>reserve trust</i> includes a person conducting a crematorium on the	13
general crematorium site (if there is no reserve trust for that site).	14