

Botany Cemetery and Crematorium Act 1972 No 6

[1972-6]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Statute Law \(Miscellaneous Provisions\) Act 2009 No 56](#) (not commenced — to commence on 17.7.2009)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Botany Cemetery and Crematorium Act 1972 No 6



New South Wales

An Act to constitute corporations under the names of “The Botany Cemetery Trust” and “The Eastern Suburbs Crematorium Trust”; to provide for the removal of certain human remains, monuments and other surface structures from the Botany Cemetery; to permit re-use of parts of the cemetery for burials; and for purposes connected therewith.

Part 1 Preliminary

1 Name of Act and commencement

- (1) This Act may be cited as the *Botany Cemetery and Crematorium Act 1972*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2 (Repealed)

3 Interpretation

In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

monument means monument or other surface structure.

prescribed grave means a grave in the cemetery, being a grave in which the remains of a person who was buried in the former Devonshire-street Cemetery were re-interred otherwise than in pursuance of this Act.

prescribed monument means a monument in the cemetery, being a monument which relates to a person who was buried in the former Devonshire-street Cemetery.

regulations means regulations made under this Act.

the cemetery means the land described in the First Schedule to this Act.

the cemetery trust means The Botany Cemetery Trust.

the crematorium means the land described in the Second Schedule to this Act.

the crematorium trust means The Eastern Suburbs Crematorium Trust.

Part 2 The cemetery trust and the crematorium trust

4 Incorporation of the trustees of the cemetery

The trustees from time to time of the cemetery are hereby constituted a corporation under the name of "The Botany Cemetery Trust".

5 Incorporation of the trustees of the crematorium

The trustees from time to time of the crematorium are hereby constituted a corporation under the name of "The Eastern Suburbs Crematorium Trust".

6 Transfer of property etc of trustees of the cemetery to the cemetery trust

- (1) In this section, ***the trustees*** means the trustees of the cemetery immediately before the commencement of this Act.
- (2) Upon the commencement of this Act:
 - (a) the property of the trustees relating to the care, control and management of the cemetery, including all moneys, books of account, registers, records and all documents and things relating to, or connected with, the operation of the cemetery, shall become the property of the cemetery trust,
 - (b) all moneys, or liquidated or unliquidated claims, which, immediately before the commencement of this Act, were payable to or recoverable by the trustees in connection with the care, control and management of the cemetery shall be moneys, or liquidated or unliquidated claims, payable to, or recoverable by, the cemetery trust,
 - (c) all suits, actions and proceedings pending immediately before the commencement of this Act at the suit of the trustees, in connection with the care, control and management of the cemetery, shall respectively be suits, actions and proceedings pending at the suit of the cemetery trust and all suits, actions and proceedings so pending at the suit of any person against the trustees, in connection with the care, control and management of the cemetery, shall respectively be suits, actions and proceedings pending at the suit of that person against the cemetery trust,
 - (d) all contracts, agreements and undertakings entered into with, and all securities lawfully given to, or by, the trustees, in connection with the care, control and management of the cemetery, and in force immediately before the commencement of this Act, shall be deemed to be contracts, agreements and undertakings entered into with, and securities given to, or by, the cemetery trust,
 - (e) the cemetery trust may, in connection with the care, control and management of the cemetery, pursue the same remedies for the recovery of such moneys and

claims, and for the prosecution of such suits, actions and proceedings as the trustees might have done had this Act not been enacted,

- (f) the cemetery trust may enforce and realise any security or charge, existing immediately before the commencement of this Act, in favour of the trustees in connection with the care, control and management of the cemetery, as if the security or charge were a security or charge in favour of the cemetery trust,
- (g) all debts, moneys and claims, liquidated or unliquidated, that, immediately before the commencement of this Act, were due or payable, or recoverable against, the trustees in connection with the care, control and management of the cemetery shall be debts due and moneys payable by, and claims recoverable against, the cemetery trust, and
- (h) all liquidated and unliquidated claims in connection with the care, control and management of the cemetery for which the trustees would, but for this Act, have been liable shall be liquidated and unliquidated claims for which the cemetery trust shall be liable.

7 Transfer of property etc of trustees of the crematorium to the crematorium trust

The provisions of section six of this Act apply to and in respect of the trustees of the crematorium and the crematorium trust in the same manner as they apply to and in respect of the trustees of the cemetery and the cemetery trust.

8 Powers etc of trustees exercisable by trusts

- (1) Any powers, authorities, duties or functions conferred or imposed upon the trustees of the cemetery or the trustees of the crematorium by or under any other Act shall be deemed to be conferred or imposed upon the cemetery trust or the crematorium trust, as the case may require.
- (2) Any act, matter or thing done or omitted to be done by the trustees of the cemetery or the trustees of the crematorium before the commencement of this Act shall have the like force and effect as if it had been done or omitted to be done by the cemetery trust or the crematorium trust, as the case may require.

9 Nomination of person for appointment as trustee of the cemetery

- (1) Notwithstanding anything in the [Crown Lands Consolidation Act 1913](#) or the [Public Trusts Act 1897](#) where the office of a trustee of the cemetery becomes vacant after the commencement of this Act, a person shall not, pursuant to either of those Acts, be appointed to fill the vacancy unless he is nominated thereto by such person or body, whether corporate or unincorporate, as may be specified or described in the regulations in relation to the vacancy.
- (2) The regulations may make provision for or with respect to determining the procedure

to be followed in nominating a person for the purposes of subsection one of this section.

- (3) If a nomination is not received in accordance with the regulations during the prescribed period after a vacancy referred to in subsection one of this section arises, a person may be appointed to fill the vacancy in the same manner as if subsection one of this section had not been enacted.
- (4) Subsection one of this section does not apply in the case of a person who, pursuant to the *Crown Lands Consolidation Act 1913*, or the *Public Trusts Act 1897*, fills a vacancy by virtue of his holding a particular office or position.

Part 3 Prescribed monuments and prescribed graves

10 Powers of cemetery trust in relation to prescribed monuments and prescribed graves

- (1) It shall, subject to section eleven of this Act, be lawful for the cemetery trust or such persons as may be authorised by the trust to:
 - (a) remove and preserve in a memorial area or garden, to be established by the trust in the cemetery in accordance with a plan to be approved of by the Minister, any prescribed monument which is, in the opinion of the trust, reasonably capable of being preserved,
 - (b) remove any prescribed monument which is not, in the opinion of the trust, reasonably capable of being preserved and dispose of it at the discretion of the trust, and
 - (c) remove with due care, after notice in writing to the Director-General of Public Health, any remains from a prescribed grave and reverently re-inter those remains anywhere in the cemetery.
- (2) If any monument removed pursuant to paragraph (a) of subsection one of this section ceases at any time by reason of its condition to be, in the opinion of the cemetery trust, reasonably capable of being preserved, the trust may remove and dispose of it at the discretion of the trust.
- (3) Before any monuments are removed by the cemetery trust pursuant to paragraph (a) or (b) of subsection one of this section, the trust shall take into consideration any views of the Royal Australian Historical Society, furnished to the trust within three months after the commencement of this Act, relating to the historical importance of each or any monument in the cemetery.
- (4) Subject to this Part, the cemetery trust may do all such things as it may consider necessary to establish the memorial area or garden referred to in paragraph (a) of subsection one of this section.

11 Advertisement to be published before removal of monuments or remains

- (1) At least three months before any monuments or remains are removed by the cemetery trust pursuant to the provisions of subsection one of section ten of this Act, an advertisement of the intention to remove them and drawing attention to the right conferred by subsection two of this section on the representatives or persons claiming to be representatives referred to in the said subsection two shall be inserted twice at an interval of not less than two weeks in a newspaper or newspapers published and circulating in the locality, and twice at an interval of not less than two weeks in a newspaper or newspapers published in Sydney and circulating widely throughout New South Wales.
- (2) At any time after the publication of the first advertisement referred to in subsection one of this section and before the expiration of three months after the publication of the last of those advertisements the representatives or any persons claiming to be representatives of any person buried in a prescribed grave or to whom a prescribed monument relates may, at their own expense, and with the permission of the cemetery trust, remove the monument and may, at their own expense, and with the permission of the Director-General of Public Health, remove from the cemetery the remains of the person whose representatives they are or claim to be to another cemetery for burial or to a crematorium for cremation.

12 Register of graves etc

- (1) The cemetery trust shall, as soon as practicable after the commencement of this Act:
 - (a) compile a register containing the following particulars:
 - (i) the name of each person whose remains were buried in a prescribed grave or to whom a prescribed monument relates, and
 - (ii) the date of each such person's death,
 - (b) maintain the register at the office of the trust in the cemetery or at such other location in the cemetery as the Minister may approve, so as to be available for inspection by any interested person from time to time, and
 - (c) furnish a certified copy of the register, together with all relevant registers, books and other records held by the trust in relation to the former Devonshire-street Cemetery, to the Mitchell Library, Sydney, where they shall be maintained so as to be available for inspection by any interested person from time to time.
- (2) The cemetery trust shall, as soon as practicable after any monument is or remains are removed pursuant to this Part:
 - (a) include in the register compiled under subsection one of this section a reference to the fact of that removal together with:

- (i) in the case of a monument removed pursuant to paragraph (a) of subsection one of section ten of this Act or remains removed pursuant to paragraph (c) of that subsection—a reference to the location of the monument or remains,
 - (ii) in the case of a monument or remains removed pursuant to subsection two of section eleven of this Act—a reference, if known by the trust, to the location of the monument or remains, or
 - (iii) in the case of a monument removed pursuant to paragraph (b) of subsection one of section ten of this Act or subsection two of that section—a reference to such matters as the trust considers relevant, and
- (b) furnish a certified copy of any entry so included in the register to the Mitchell Library, Sydney, for inclusion, if not already contained therein, in the copy of the register furnished pursuant to subsection one of this section.

13 Re-use of certain lands for burials

- (1) Without affecting the generality of the power of the cemetery trust to use the cemetery or any part thereof for or in connection with burials or burial purposes:
- (a) the land formerly occupied by a prescribed grave from which the trust is satisfied that:
 - (i) all monuments and remains have been removed pursuant to this Part,
 - (ii) there being no monuments on the grave, all remains have been so removed, or
 - (iii) there being no remains in the grave, all monuments have been so removed,may be used for or in connection with burials or burial purposes in the same manner as if it had never been occupied by that grave, and
 - (b) the land formerly occupied by a prescribed monument which the trust is satisfied was not on a grave and which the trust is satisfied has been removed pursuant to this Part may be used for or in connection with burials or burial purposes in the same manner as if it had never been occupied by that monument.
- (2) Any estate or interest in or right created in respect of or in relation to any land referred to in paragraph (a) or (b) of subsection one of this section, being an estate, interest or right, which (immediately before any monuments or remains or both, as the case may require, were removed from that land pursuant to this Part) was vested in or held by any person or body of persons (other than the trust), is hereby divested and:
- (a) that person or body is hereby discharged from any duties, liabilities or obligations existing immediately before that removal in respect of or in relation to that land,

and

- (b) the trust is hereby discharged from any duties, liabilities or obligations existing immediately before that removal in respect of or in relation to that land, in so far as those duties, liabilities or obligations arose by virtue of the estate, interest or right so divested.

14 No compensation payable

No compensation shall be payable to any person in respect of the performance of any act authorised by this Part or in respect of the divesting of any estate, interest or right by this Part.

Part 4 Miscellaneous

15 Rights of ministers of religion in relation to the cemetery

Any recognised minister of a religious denomination shall at all times have free access and admission to any portion of the cemetery set apart, whether before or after the commencement of this Act, for the burial of the dead of his denomination and shall have the right, without any hindrance or disturbance, therein to exercise his spiritual functions in connection with the burial of the dead.

16 Amendment of Schedules

- (1) Where, under the *Crown Lands Consolidation Act 1913*, any land is added to the cemetery or any dedication relating to any of the cemetery is revoked, the Governor may, by proclamation published in the Gazette, amend or substitute the First Schedule to this Act so that it includes in the description therein contained the land so added or excludes from the description therein contained the land in respect of which the dedication is revoked, and the First Schedule, as so amended or substituted, shall be the First Schedule to this Act.
- (2) The provisions of subsection one of this section apply to and in respect of the crematorium and the Second Schedule to this Act in the same manner as they apply to and in respect of the cemetery and the First Schedule to this Act, and so apply as if a reference in that subsection to the revocation of a dedication included a reference to the revocation of a reservation.

17 Regulations

- (1) The Governor may make regulations under this Act for or with respect to prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act.
- (2) The regulations may be made so as to differ according to time or circumstances.

First Schedule

(Section 3)

All those pieces or parcels of land in two parts containing an area of 25.55 hectares or thereabouts being the same more or less situated in the Municipality of Randwick, County of Cumberland, Parish of Botany, shown on plan catalogued Ms 22927 Sy. R in the Department of Lands, Sydney.

All those pieces or parcels of land containing an area of 5.118 hectares or thereabouts situated in the City of Randwick, County of Cumberland, Parish of Botany, being Lot 101, DP 805244.

Second Schedule

(Section 3)

ALL THAT piece or parcel of land containing an area of 7 acres 2 roods 36 perches or thereabouts being the same more or less situate in the Municipality of Randwick, County of Cumberland, Parish of Botany, shown on plan catalogued Ms 22243 Sy.R. in the Department of Lands, Sydney.