

Necropolis Regulation 2002

[2002-636]



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—

- **See also**
[Rookwood Necropolis Amendment Bill 2004](#)

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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Necropolis Regulation 2002



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Necropolis Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note—

This Regulation replaces the *Necropolis Regulation 1996* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Application

- (1) This Regulation applies to the whole of the land comprising the Necropolis.
- (2) This Regulation does not affect the operation of any regulations under the *Public Health Act 1991* relating to cemeteries.

4 Definitions

In this Regulation:

appropriate fee means a fee fixed by a trust in accordance with section 17 of the Act.

burial place means a grave site, vault site, crypt site or other place for the disposition of the remains of the dead.

relevant trust means:

- (a) in relation to a portion of the Necropolis administered by a trust—the trust, or
- (b) in relation to any other portion of the Necropolis—the Joint Committee.

secretary, in relation to a trust, means the secretary of the trust.

the Act means the *Necropolis Act 1901*.

trust means a body of trustees in which is vested a portion of the Necropolis.

5 Notes

Notes in the text of this Regulation do not form part of this Regulation.

Part 2 Administration

6 Officers and employees

The trusts and the Joint Committee may each appoint and employ a secretary and such other officers and employees as may be necessary for the efficient conduct of their operations.

7 Meetings

Meetings of each trust and the Joint Committee are to be held not less than once in each 3 months at the places and times appointed by the trust or the Joint Committee, as the case may be.

8 Common seal

- (1) The common seal of a 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) The affixing to an instrument of the common seal of a trust that is managed by a trust board is to be attested by the secretary and by a member of the trust board.
- (3) If an administrator of a trust has been appointed under the [Crown Lands Act 1989](#), the common seal may be affixed and attested by the administrator alone.

Part 3 Management of the Necropolis

9 Planning, conduct and maintenance of portions of the Necropolis

- (1) Each relevant trust may, in relation to its portion of the Necropolis, make such provision as it considers necessary for the following:
 - (a) the setting aside of sections for different types and classes of burials,
 - (b) the establishment of standards of construction and design for monuments and structures,
 - (c) the size, multiple use and location of burial places,
 - (d) burials 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 portion,
 - (k) the making of arrangements for the care of burial places on an annual or other basis,
 - (l) the supply of goods and services incidental to the conduct of burials and other matters relating to the portion,
 - (m) the conduct of religious or other ceremonies of burial or commemoration.
- (2) A trust may, in relation to its portion of the Necropolis, rebury any human remains if the remains or the coffins containing the remains are situated in an above-ground burial structure and have become exposed due to the collapse of the whole or a part of the structure. Reburials may take place only after any applicable provisions of the regulations under the [Public Health Act 1991](#) relating to exhumations and burials have been complied with.

10 Refusal to grant exclusive burial rights

A trust may refuse to grant an exclusive right of burial to any person if, in its opinion, the grant would create a monopoly or encourage dealing in such rights as a business.

11 Register of burial places

- (1) Each trust must cause a register of burial places to be kept in respect of the burial places in its portion.
- (2) The register, which may be kept in electronic or written form:
 - (a) must readily identify (whether by reference to a plan or by other means) the location of each burial place, and
 - (b) must contain the name and address of the owner of any exclusive right of burial granted in relation to a burial place.
- (3) Immediately after a burial in a burial place, a trust must ensure that entries are made in the burial register, opposite the entry for that burial place, in accordance with any applicable provisions of the regulations under the [Public Health Act 1991](#).
- (4) A trust may amend its register from time to time so as to remove any inaccuracies contained in it.

- (5) A trust must, on application made by any person, make available to the person a copy of any entry made in the register in relation to a burial place.
- (6) Such an application must be in the form approved by the relevant trust and must be accompanied by the appropriate fee.
- (7) The register is admissible in any proceedings as evidence of the identity of the holder of an exclusive right of burial that has been granted in respect of any particular burial site.

12 Certificates of exclusive right of burial

- (1) A trust may issue to the owner of an exclusive right of burial a certificate of exclusive right of burial in relation to the burial place concerned.
- (2) An application for such a certificate must be in the form approved by the relevant trust and accompanied by the appropriate fee.
- (3) A certificate under this clause is to be in such form as the relevant trust may from time to time determine.

13 Orders for burial

- (1) Burials (other than reburials carried out by the trust in accordance with this Regulation) are not to take place unless the relevant trust has issued an order for burial.
- (2) A trust may set down the procedure to be followed to obtain an order for burial.

14 Hours of burial

Burials are not to take place except at such times as the relevant trust may from time to time determine.

15 Exhumations

- (1) Exhumations are not to take place unless:
 - (a) prior written approval has been obtained from the Director-General of the Department of Health in accordance with any applicable provisions of the regulations under the [Public Health Act 1991](#), and
 - (b) an order for exhumation (except in the case of an exhumation carried out by the trust for the purpose of reburial in accordance with this Regulation) has been issued by the relevant trust.
- (2) This clause does not apply if an exhumation order has been issued by a court.

Part 3A Revocation of unused burial rights

15A Revocation of exclusive rights of burial: section 24 (5)

- (1) For the purposes of section 24 (5) of the Act, notice of the proposed revocation of exclusive rights of burial is to be given in accordance with this clause.
- (2) The trust must cause notice of its intention to revoke the rights of burial to be sent, by registered mail, to the person (if any) shown in the relevant register of burial places as the holder of those rights.
- (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 trust's intention is to be given by means of an advertisement, identifying the burial place and the name of the holder:
 - (a) displayed in a prominent position at the burial place concerned, at each entrance to the relevant portion of the Necropolis and at the offices of the trust, 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 trust's intention:
 - (a) identifying the burial place and the name of the holder, and
 - (b) allowing the holder 28 days from the date of the notice within which to enter into negotiations of the kind referred to in section 24 (6) of the Act,is to be given by means of an advertisement published in at least one national and one local newspaper.
- (5) If no person is shown in the relevant register of burial places as the holder of the exclusive rights of burial to be revoked, or if trust has insufficient information to properly address the notice referred to in subclause (2), the trust is not required to send that notice but may in that case begin the notification process by means of the notice referred to in subclause (3).

15B Gazettal of revocation of rights

Within 28 days after revoking any exclusive rights of burial, the trust is to cause a notice:

- (a) identifying the burial place and the name of the former holder of those rights, and
- (b) indicating the date on which the rights were revoked,

to be published in the Gazette.

15C Amount of compensation where no current scale of fees: section 24A (2)

- (1) For the purposes of section 24A (2) of the Act, the amount of compensation referred to in section 24A (1) (b) of the Act is to be half of the fee payable 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 exclusive rights of burial.

- (2) The trust must ensure that any report on its accounts contains an estimate of its contingent liability with respect to any exclusive rights of burial it has revoked.

15D Applications for entitlement: section 24A (5)

An application for an entitlement under section 24A of the Act:

- (a) must be in the form approved by the trust, and
- (b) must be accompanied by the appropriate fee, and
- (c) must be lodged with the trust within 6 years after the date on which the relevant exclusive rights of burial were revoked.

Part 4 Offences

16 Offences relating to entry into the Necropolis

- (1) A person must not do any of the following:
 - (a) enter or remain in the Necropolis at night, between the hours of sunset and sunrise,
 - (b) cause or permit an animal that is under the person's control to enter or remain in the Necropolis.

Maximum penalty: 10 penalty units.

- (2) Subclause (1) (b) does not prevent a person from riding a horse or from walking a dog on a leash in the Necropolis.

17 Offences relating to travel in the Necropolis

A person must not do any of the following in the Necropolis:

- (a) drive a vehicle, or ride a horse, except on a road provided for that purpose,
- (b) drive a vehicle at a speed exceeding that determined by the Joint Committee or relevant trust for the land concerned and specified by a sign erected on that land by the Joint Committee or the relevant trust,
- (c) drive a vehicle or a vehicle and trailer having an unladen weight of more than 3 tonnes,
- (d) drive a vehicle for the purpose of travelling between places outside the Necropolis,
- (e) park a motor vehicle on any burial place, verge or plantation or in a manner that is

likely to impede traffic,

(f) teach, learn or practise driving a motor vehicle.

Maximum penalty: 10 penalty units.

18 Offences relating to the environment

A person must not do any of the following:

(a) bring into or leave in the Necropolis any rubbish, refuse, scrap metal (including any car or car part), rock, soil, sand, stone or other such substance,

(b) remove from the Necropolis any dead timber, log or stump, whether standing or fallen,

(c) remove from the Necropolis any rock, soil, sand, stone or other such substance,

(d) kill, capture or in any way interfere with any animal, bird or other fauna, whether native or introduced, in the Necropolis,

(e) plant any tree, shrub or other herbage or plant in the Necropolis.

Maximum penalty: 10 penalty units.

19 Offences relating to trade and commerce

A person must not do any of the following in the Necropolis:

(a) engage in trade or commerce,

(b) distribute any circular, advertisement, paper or other printed, drawn, written or photographic matter,

(c) teach, learn or practise any trade or skill.

Maximum penalty: 10 penalty units.

20 General offences

A person must not do any of the following in the Necropolis:

(a) bury any human remains, whether cremated or not,

(b) open any coffin,

(c) take part in any gathering, meeting or assembly, except for the purpose of a religious or other ceremony of burial or commemoration,

(d) camp or reside on any land,

(e) possess or drink any alcoholic or intoxicating beverage.

Maximum penalty: 10 penalty units.

21 Consent of Joint Committee or trust a defence

A person is not guilty of an offence under this Part if the person establishes that the act giving rise to the offence was done with the written consent of the Joint Committee or (in the case of an act done in a portion of the Necropolis administered by a trust) of the relevant trust.

Part 5 Miscellaneous

22 Contributions to Joint Committee

- (1) For the purposes of section 20B (3) (b) of the Act, the proportion payable to the Joint Committee by a trust is to be calculated in accordance with the following formula:

$$\text{proportion payable} = \frac{\text{approved amount} \times \text{interments}}{\text{total interments}}$$

where:

approved amount represents the amount approved by the Minister under section 20B of the Act in relation to the amount assessed by the Joint Committee, from time to time, as the amount it requires to enable it to exercise its functions under section 20A of the Act.

interments, in relation to a trust, represents the number of interments (and cremations) carried out during the previous financial year in the portion of the Necropolis managed by that trust.

total interments represents the total number of interments (and cremations) carried out during the previous financial year in the Necropolis.

- (2) Within 7 days after the end of each quarter, each trust must provide the Joint Committee with the number of interments and cremations carried out during that quarter in the portion of the Necropolis managed by the trust.

- (3) In this clause:

financial year means a year commencing on 1 July and ending on 30 June.

trust includes a person conducting a crematorium on the land described in the Second Schedule to the Act (if there is no trustee of that land).

23 Savings

Any act, matter or thing that, immediately before the repeal of the [Necropolis Regulation 1996](#), had effect under that Regulation continues to have effect under this Regulation.

Note—

The *Necropolis Regulation 1996* is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.