

# Conversion of Cemeteries Act 1974 No 17

[1974-17]



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 \(No 2\) 2011 No 62](#) (not commenced — to commence on 6.1.2012)

### Authorisation

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# Conversion of Cemeteries Act 1974 No 17



New South Wales

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# Conversion of Cemeteries Act 1974 No 17



New South Wales

An act to enable cemeteries under the control of councils to be dedicated as public parks; to provide for the appointment of the council as trustee thereof; to confer and impose certain powers, authorities, duties and functions on the council as trustee of such a public park; to dedicate the Bodangora General Cemetery in the Shire of Wellington as a public park; and for purposes connected therewith.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Conversion of Cemeteries Act 1974*.

### 2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette being a day not earlier than the day on which the *Crown Lands and Other Acts (Reserves) Amendment Act 1974* commences.

### 3 (Repealed)

### 4 Definitions

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

**area** has the same meaning as it has in the *Local Government Act 1993*.

**cemetery** means a cemetery of which a council has the care, control and management.

**council** has the same meaning as it has in the *Local Government Act 1993*.

**monument** means a monument, headstone or other surface structure, or a vault.

**resolution** means a resolution of a council under section 6 (1).

**the conversion date**, in relation to land within a cemetery, means the day on which a

declaration made by the Minister under section 10 (1) in respect of that land is published in the Gazette.

**the conversion land**, in relation to land within a cemetery, means the land declared by the Minister to be a public park under section 10 (1).

## **5 (Repealed)**

## **Part 2 Dedication of cemeteries as public parks**

### **6 Council may resolve to convert cemetery**

- (1) A council may, by resolution, decide to apply under this Act for the conversion of the whole or any part of land within a cemetery into a public park.
- (2) The council shall give notice of the resolution 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.

### **7 Objections**

- (1) A person may, within three months after the date of first publication of the notice referred to in section 6 (2), object in writing to the council against its resolution and shall state the grounds for his or her objection.
- (2) The council shall consider and determine all objections made under subsection (1) and shall notify each objector of its determination concerning the objector's objection.

### **8 Council may apply to have cemetery declared a public park**

- (1) The council may, after considering and determining the objections made under section 7 (1), make application to the Minister that the whole or any part of the land referred to in the resolution be declared a public park.
- (2) An application under subsection (1) shall be made in writing addressed to the Minister and shall be accompanied by:
  - (a) details of the proposal to convert the cemetery into a public park in the nature of a rest park,
  - (b) information, so far as it can be obtained, indicating, in respect of the cemetery:
    - (i) the total number of burials,
    - (ii) the dates of the first and last burials,
    - (iii) the number of monuments,
    - (iv) the number of monuments which have been provided or maintained by the

Commonwealth War Graves Commission,

- (v) whether the monuments are proposed to be removed, re-arranged within the cemetery, relocated in another cemetery, or disposed of,
  - (vi) the number of outstanding exclusive rights to burial,
  - (vii) the number of graves for which money is held for perpetual care,
  - (viii) the amount of money held for the perpetual care of graves,
  - (ix) the amount of money held otherwise than for the perpetual care of graves, and
  - (x) the nature and proposed future use of any building erected on the land,
- (c) estimates of the costs of:
- (i) the conversion of the cemetery into a public park, and
  - (ii) the future annual maintenance of the land,
- and information stating the means by which the council proposes to meet those costs,
- (d) evidence of compliance by the council with section 6 (2),
- (e) copies of all objections received by the council pursuant to section 7 (1) and of the council's determinations in respect of those objections, and
- (f) such other information as may be prescribed.
- (3) The council shall furnish such additional or other information as the Minister, by request in writing, may require for the purpose of considering the application under subsection (1).

**9 Minister may notify intention to declare cemetery a public park**

- (1) If the Minister is of the opinion that the conversion into a public park of the land or any part of the land referred to in the resolution is desirable, the Minister may cause to be published in the Gazette a notification of the Minister's intention to declare that land or part, as the case may be, to be a public park.
- (2) A copy of the notification under subsection (1) shall be laid before each House of Parliament within fourteen sitting days of that House after the date of publication.
- (3) If either House of Parliament passes a resolution of which notice has been given within fifteen sitting days of that House after a copy of the notification under subsection (1) has been laid before it, that it does not assent to the declaration of the land referred

to in that notification as a public park, the Minister shall not make that declaration pursuant to that notification.

- (4) For the purposes of subsections (2) and (3), sitting days shall be counted, whether or not they occur during the same session.

#### **10 Minister may declare cemetery to be a public park**

- (1) Subject to section 9, the Minister may declare, by notification in the Gazette, the whole or any part of land within a cemetery to be a public park.
- (2) The land declared to be a public park under subsection (1) shall be deemed to have been dedicated as a public park under section 24 of the [Crown Lands Consolidation Act 1913](#).

### **Part 3 Powers, authorities, duties and functions of a council with respect to conversion land**

#### **11 Divesting of estate, interest etc in conversion land on conversion date**

- (1) On the conversion date:
- (a) any estate or interest in the conversion land which, immediately before the conversion date, was vested in or held by any person or body of persons or the council shall be divested,
  - (b) any person or body referred to in paragraph (a) and the council shall be discharged from any duties, liabilities or obligations existing immediately before the conversion date in respect of or in relation to the conversion land,
  - (c) any trusts, conditions, encumbrances, dedications or reservations affecting the conversion land immediately before the conversion date shall be revoked and annulled,
  - (d) any instruments of title issued in respect of any part of or including any part of the conversion land and subsisting immediately before the conversion date shall be cancelled in so far as they relate to the conversion land, and
  - (e) any money, securities or assets held by the council in respect of the conversion land or of any grave or monument in or on the conversion land immediately before the conversion date shall be freed from any conditions or trusts subject to or on which they were held immediately before that date and shall be used by the council for or towards maintaining the graves or monuments preserved pursuant to section 14 or for or towards maintaining the conversion land as a rest park.
- (2) Any person who immediately before the conversion date was the holder of, or who was entitled to be the holder (either at law or in equity) of, any exclusive right to

burial within the conversion land may, within a period of six months after the conversion date, apply in writing to the Minister to be granted a fresh exclusive right to burial and the Minister shall, as soon as practicable after any application has been so made, arrange for the provision to that person of a new burial site in a cemetery selected at the discretion of the Minister.

## **12 Council sole trustee of conversion land**

- (1) Subject to this Act, the council shall be sole trustee of the conversion land and shall be deemed to have been appointed sole trustee under section 37P of the *Crown Lands Consolidation Act 1913*.
- (2) The conversion land shall be maintained by the council as a rest park and, notwithstanding anything in any other Act, but subject to the provisions of this Act, the council shall not use the conversion land or permit it to be used for any other purpose.

## **13 Duties and powers of council in relation to conversion land**

- (1) In this section, a reference to a burial register includes a reference to any register or record in respect of the deaths or interments of persons who are buried in or whose ashes have been placed in or on the conversion land
- (2) The council shall, as soon as practicable after the conversion date:
  - (a) where a burial register is held or received by it and that register is, in the opinion of the Minister, adequate and complete, deposit the burial register at the Mitchell Library, Sydney, where it shall be maintained so as to be available for inspection by any interested person from time to time,
  - (b) where a burial register is held or received by it and that register is not, in the opinion of the Minister, adequate or complete:
    - (i) compile a supplementary register of the names of and other relevant information in respect of persons who are buried in or whose ashes have been placed in or on the conversion land, so far as those names and that information can by reasonable diligence be obtained and so far as those names and that information are not included in the burial register, and
    - (ii) deposit the burial register and the supplementary register compiled under subparagraph (i) at the Mitchell Library, Sydney, where they shall be maintained so as to be available for inspection by any interested person from time to time, or
  - (c) where no burial register exists:
    - (i) compile a register of the names of and other relevant information in respect of persons who are buried in or whose ashes have been placed in or on the conversion land, so far as those names and that information can by reasonable



- diligence be obtained and deposit and maintain that register at the offices of the council, so as to be available for inspection by any interested person from time to time,
- (ii) furnish a certified copy of the register to the Minister if required to do so by the Minister, and
  - (iii) furnish a certified copy of the register to the Mitchell Library, Sydney, where it shall be maintained so as to be available for inspection by any interested person from time to time.
- (3) In addition to the duties conferred on the council under subsection (2), the council shall, as soon as practicable after the conversion date:
- (a) convert the conversion land into a rest park, and
  - (b) erect a memorial in a suitable position on the conversion land indicating:
    - (i) the sacred nature of the area, and
    - (ii) the place where the burial register, the supplementary register compiled under subsection (2) (b) (i) or the register compiled under subsection (2) (c) (i), as the case may be, may be inspected and, as the case may be, that a copy of the register compiled under subsection (2) (c) (i) may be inspected at the Mitchell Library, Sydney.
- (4) The council may grant to the Commonwealth War Graves Commission the right to erect and maintain, in or on the conversion land, a memorial to any person who is buried in or whose ashes have been placed in or on the conversion land and over whose grave that Commission has provided or maintained a monument.
- (5) Subject to this Act, the council may do all such other things as it may consider necessary to convert the conversion land into a rest park.

#### **14 Preservation of certain monuments**

- (1) The council shall, subject to section 15, preserve in its existing position on the conversion land or remove and preserve in a new position, as provided in subsection (2):
- (a) any monument which:
    - (i) is erected over any grave which, in the opinion of the council, is of historical importance, and
    - (ii) is, in the opinion of the council, reasonably capable of being preserved, and
  - (b) any monument erected over any grave in respect of which the council holds any money, securities or assets for the perpetual care of that grave.

- (2) The new position in which a monument removed by the council pursuant to subsection (1) shall be preserved shall, at the discretion of the council, be anywhere on the conversion land or in another cemetery, whether that other cemetery is a cemetery within the meaning of this Act or otherwise.
- (3) Subject to section 15, the council may remove such other monuments erected on the conversion land as it thinks fit, and dispose of them at its discretion.
- (4) Before determining which of the monuments the council will preserve, or remove and preserve pursuant to the subsection (1), or remove pursuant to subsection (3), the council shall take into consideration any views of:
  - (a) the Royal Australian Historical Society relating to the historical importance of each or any monument, and
  - (b) the Commonwealth War Graves Commission relating to any monument provided or maintained by it,which are furnished to the council within three months of the conversion date.
- (5) If any monument preserved in accordance with subsection (1) ceases at any time after the expiration of the period of three months referred to in section 15 (3) by reason of its condition to be, in the opinion of the council, reasonably capable of being preserved, the council may dispose of it at its discretion.

#### **15 Advertisement to be published before removal of monuments**

- (1) At least three months before any monuments are removed by the council pursuant to section 14 (1) or (3), an advertisement of the intention to remove them and drawing attention to the right conferred by subsection (3) on the representatives or persons claiming to be representatives referred to in subsection (3) 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) The council shall send a copy of the advertisement referred to in subsection (1) to the Commonwealth War Graves Commission within one week after the date of publication of the first advertisement referred to in subsection (1).
- (3) At any time after the publication of the first advertisement referred to in subsection (1) and before the expiration of three months after the publication of the last of those advertisements:
  - (a) the representatives or any persons claiming to be representatives of any person who is buried in or whose ashes have been placed in or on the conversion land, or
  - (b) subject to subsection (4), the Commonwealth War Graves Commission,

may, at their or its own expense, and with the permission of the council, remove the monument erected over the grave of or in respect of that person, whether or not that monument is one which is referred to in section 14 (1), and may, at their or its own expense, and with the permission of the Health Commission of New South Wales, remove the remains or ashes of that person to another cemetery for burial, whether that other cemetery is a cemetery within the meaning of this Act or otherwise, or to a crematorium for cremation.

- (4) Subsection (3) does not authorise the Commonwealth War Graves Commission:
- (a) to remove a monument unless that Commission has provided or maintained the monument, or
  - (b) to remove the remains or ashes of a person unless that Commission has provided or maintained a monument over the grave of or in respect of that person in or on the conversion land.

#### **16 Remains not to be disturbed**

- (1) The council, the Commonwealth War Graves Commission or any person or body of persons shall take due care not to unearth or disturb the remains of any person who is buried in, or the ashes of any person which have been placed in or on, the conversion land.
- (2) If any remains or ashes referred to in subsection (1) are unearthed or disturbed, the council shall cause those remains or ashes to be reverently interred anywhere in the conversion land.
- (3) Nothing in this section prevents the removing of any remains or ashes pursuant to section 15 (3).

#### **17 Maintenance etc of building on conversion land**

- (1) The council may maintain any building erected on the conversion land at the conversion date and may, from time to time, repair, rebuild or replace it.
- (2) If any building referred to in subsection (1) is a dwelling, that dwelling may, with the approval of the council, be used as a residence for a caretaker or groundsman of the conversion land, upon such terms and conditions as may be agreed upon from time to time between the council and the caretaker or groundsman, as the case may be.
- (3) So long as the land on which any dwelling is erected is so used for the purposes of a residence for a caretaker or groundsman of the conversion land, the public shall not be entitled to enter upon or use it, or any land which is within the curtilage of the dwelling and is bounded by a substantial fence, as a public park.
- (4) Notwithstanding the provisions of subsections (2) and (3), the council may use any dwelling, and the land within the curtilage of the dwelling and bounded by a

substantial fence, for such other purposes and subject to such terms and conditions as the Minister may approve in writing.

- (5) A reference in this section to any building, being a dwelling or otherwise, erected on the conversion land at the conversion date includes a reference to that building as repaired, rebuilt or replaced from time to time under the provisions of this section.

## Part 4 Miscellaneous

### 18 No compensation payable

Except where otherwise in this Act expressly provided, no compensation shall be payable to any person or body of persons in respect of the divesting of any estate or interest by this Act or in respect of the performance of any act authorised by this Act.

### 19 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) Regulations may be made so as to apply differently according to such factors as may be specified in the regulations.

### 20 Bodangora General Cemetery

Schedule 1 has effect.

## Schedule 1 Application of Act to land described in Schedule 2

(Section 20)

### 1 Land in Schedule 2 deemed to be a public park

Upon the commencement of this Act, the land described in Schedule 2 shall be deemed to have been:

- (a) declared a public park under section 10 (1), and
- (b) dedicated as a public park under section 24 of the [Crown Lands Consolidation Act 1913](#).

### 2 Application of Parts 3 and 4 to land in Schedule 2

- (1) The provisions of Parts 3 and 4 shall apply to the land described in Schedule 2.
- (2) In applying the provisions of Parts 3 and 4 to the land described in Schedule 2:

**conversion date** means the date of commencement of this Act.

**conversion land** means the land described in Schedule 2.

**council** means the Wellington Council.

## Schedule 2 Bodangora General Cemetery

(Schedule 1)

ALL THAT piece or parcel of land containing an area of 1.416 hectares or thereabouts situated at Bodangora, Shire Wellington, County Bligh, Parish Nanima, dedicated 6 September 1899, for General Cemetery and shown on plan Ms 434 Oe in the Department of Lands, Sydney.

## Schedule 3 Transferred provisions relating to cemetery land

### 1 Gladesville Mental Hospital Cemetery Act 1960

- (1) Subject to the provisions hereinafter contained, the Minister for Health (**the Minister**) may cause the remains of all persons buried in the lands described in Parts 1 and 2 of the Schedule to the *Gladesville Mental Hospital Cemetery Act 1960* (so far as such remains can by reasonable diligence be discovered or identified) together with all headstones, grave enclosures and other surface structures on such lands to be collected with due care and removed from such lands and shall cause any such remains so removed to be reverently reinterred and such headstones, grave enclosures and other surface structures to be re-erected in such cemetery as the Minister may determine.
- (2) The cost of such removal, reinterment and re-erection shall be borne by the Minister.
- (3) The Minister shall cause an advertisement of the Minister's intention to remove such remains, headstones, grave enclosures or other surface structures under the provisions of subclause (1), to be published 3 times at intervals of not less than 2 weeks in 1 or more newspapers circulating in the Metropolitan Area and no such remains, headstones, grave enclosures or other surface structures shall be so removed before the expiration of 3 months from publication of the last of such advertisements.
- (4)
  - (a) At any time after publication of the first advertisement referred to in subclause (3) and before the expiration of 3 months from publication of the last of such advertisements, the representatives or any persons claiming to be the representatives of any person buried in the said lands may, at their own expense, remove the headstone, grave enclosure or other surface structure erected over the grave of such person, and may, at their own expense, and with the permission of the Director-General of the Department of Health, remove the remains of such person to such cemetery as they may desire.
  - (b) Any such representatives or any such persons claiming to be such representatives shall give to the Minister for Health not less than 28 days' notice of their intention.

- (5) In this clause, a reference to the *Gladesville Mental Hospital Cemetery Act 1960* is a reference to that Act as in force immediately before its repeal.
- (6) Subclauses (1)–(5) re-enact (with minor modifications) section 3 of the *Gladesville Mental Hospital Cemetery Act 1960* and are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

## **2 Methodist Church, Rockdale, Cemetery Act 1936**

- (1) The Trustees of the Methodist Church lands at Rockdale described in the First Part of the Schedule to the *Methodist Church, Rockdale, Cemetery Act 1936* (as in force immediately before its repeal) may remove any slab or tombstone erected on such lands and may re-erect such of those tombstone as are reasonably capable of re-erection on that portion of such lands as is described in the Second Part of that Schedule.
- (2) The said Trustees shall lay out and maintain upon the lands from which such slabs and tombstones have been so removed, gardens, lawns or grass plots.
- (3) Subclauses (1) and (2) re-enact (with minor modifications) section 2 (1) and (2) of the *Methodist Church, Rockdale, Cemetery Act 1936* and are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

## **3 St. Andrew's Church of England, Mayfield, Cemetery Act 1957**

- (1) It shall be lawful for the Trustees of Church Property for the Diocese of Newcastle (hereinafter referred to as "the Trustees") or such persons as may be authorised by the Trustees to use the land described in the Schedule to the *St. Andrew's Church of England, Mayfield, Cemetery Act 1957* (as in force immediately before its repeal) for the purposes of erecting and maintaining a hall, suitable monument and columbarium thereon and such other purposes of the Church of England as the Trustees may determine notwithstanding:
  - (a) that the said land comprises a cemetery, and
  - (b) any trusts, conditions, encumbrances or dedications affecting the said land immediately before the commencement of that Act.
- (2) Subclause (1) re-enacts (with minor modifications) section 2 (1) of the *St. Andrew's Church of England, Mayfield, Cemetery Act 1957* and is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

## **4 St. Andrew's Presbyterian Church, Woonona, Cemetery Act 1966**

- (1) It shall be lawful for the Trustees or such persons as may be authorised by them to use the cemetery land as a rest park or for such other purposes of the Presbyterian Church of Australia in the State of New South Wales as the Trustees may determine, notwithstanding:

- (a) that, immediately before the commencement of the *St. Andrew's Presbyterian Church, Woonona, Cemetery Act 1966*, the cemetery land comprised a cemetery, and
  - (b) any trusts, conditions, encumbrances or dedications affecting the cemetery land immediately before the commencement of that Act.
- (2) Subclause (1) re-enacts (with minor modifications) section 3 of the *St. Andrew's Presbyterian Church, Woonona, Cemetery Act 1966* and is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

#### **5 St. Anne's Church of England, Ryde, Act 1968**

- (1) It shall be lawful for the Trust or such persons as may be authorised by the Trust to use the cemetery land for the erection of extensions to St. Anne's Church of England at Ryde, and the construction of footpaths, driveways and car parking areas and such other purposes of the St. Anne's Church of England at Ryde, as the Trust may determine, notwithstanding:
- (a) that, immediately before the commencement of the *St. Anne's Church of England, Ryde, Act 1968*, the cemetery land comprised a cemetery, and
  - (b) any trusts, conditions, encumbrances or dedications affecting the cemetery land immediately before the commencement of that Act.
- (2) Subclause (1) re-enacts (with minor modifications) section 4 of the *St. Anne's Church of England, Ryde, Act 1968* and is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

#### **6 St. George's Church of England, Hurstville, Cemetery Act 1961**

- (1) It shall be lawful for the Church of England Property Trust Diocese of Sydney (hereinafter referred to as **the Trust**) or such persons as may be authorised by the Trust to use such part of the land described in the Schedule to the *St. George's Church of England, Hurstville, Cemetery Act 1961* (as in force immediately before its repeal) as may be owned by the Trust and used as a cemetery (hereinafter referred to as **the said land**) for the purposes of erecting and maintaining a rectory and suitable monument thereon and such other purposes as may be declared by ordinance made under the *Anglican Church of Australia Trust Property Act 1917*, as amended by subsequent Acts, notwithstanding:
- (a) that the said land comprises a cemetery, and
  - (b) any trusts, conditions, encumbrances or dedications affecting the said land immediately before the commencement of the *St. George's Church of England, Hurstville, Cemetery Act 1961*.
- (2) Subclause (1) re-enacts (with minor modifications) section 2 (1) of the *St. George's*

*Church of England, Hurstville, Cemetery Act 1961* and is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

**7 St. Peter's Church of England, Cook's River, Cemetery Act 1968**

(1) It shall be lawful for the Trust or such persons as may be authorised by the Trust to use the cemetery land for all or any of the following:

- (a) a rest park,
- (b) a garden area,
- (c) a recreation area,
- (d) such other purposes as may be declared by ordinance made under the *Anglican Church of Australia Trust Property Act 1917*, as subsequently amended,

notwithstanding:

- (i) that, immediately before the commencement of the *St. Peter's Church of England, Cook's River, Cemetery Act 1968*, the cemetery land comprised a cemetery, and
- (ii) any trusts, conditions, encumbrances or dedications affecting the cemetery land immediately before the commencement of that Act.

(2) Subclause (1) re-enacts (with minor modifications) section 3 of the *St. Peter's Church of England, Cook's River, Cemetery Act 1968* and is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.