

Funeral Funds Regulation 2016

[2016-515]



New South Wales

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Provisions in force

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

Notes—

- **See also**
[Better Regulation Legislation Amendment \(Miscellaneous\) Bill 2021](#)

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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New South Wales

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Funeral Funds Regulation 2016



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Funeral Funds Regulation 2016*.

2 Commencement

This Regulation commences on 1 September 2016 and is required to be published on the NSW legislation website.

Note—

This Regulation replaces the *Funeral Funds Regulation 2011*, which is repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

fee unit—see Part 2 of Schedule 4.

the Act means the *Funeral Funds Act 1979*.

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Funeral contribution funds

4 Additional documents to accompany applications for registration

(1) For the purposes of section 12 (2) (b) (iii) of the Act, documents containing the following are prescribed as the additional documents that must accompany an application for registration to carry on contributory funeral benefit business:

(a) a statement of the capital structure of the company (including the capital paid-up and the nature and value of the shares),

- (b) a copy of each agreement made with a person for the carrying out of funeral services for the company,
 - (c) a copy of each agreement made with a person for the collection of contributions on behalf of the company,
 - (d) a description of the types of funeral services proposed to be supplied by the company,
 - (e) a statement of the company's proposed records with respect to membership, accounts and statistics,
 - (f) an actuarial assessment of the adequacy of the records referred to in paragraph (e) for the proper conduct of the contributory funeral benefit business of the company,
 - (g) a copy of the tables of contribution rates proposed to be used by the company, together with a statement of the bases and formulas from which those rates have been calculated,
 - (h) actuarial projections of the expected income and expenditure of the company over the next 10 years, prepared in accordance with Schedule 1,
 - (i) a statement of the proposed manner of providing for any financial deficiencies, including financial deficiencies appearing from the projections referred to in paragraph (h),
 - (j) a statement of the proposed method of offsetting any overdue contributions against the amount to be paid out on a contributorship if the contributor ceases contributing to the fund before any contingency occurs on which a benefit is required to be provided.
- (2) An actuarial assessment or projection referred to in subclause (1) must contain a statement to the effect that the assessment or projection has been prepared by an actuary in the knowledge of the aims of the company and of the types of contributions agreements proposed to be transacted by the company.

5 Requirements for registration

- (1) For the purposes of section 13 (1) (i) of the Act, the rules of a company proposing to carry on contributory funeral benefit business must provide that, on the death of any person:
- (a) who has contributed for at least 10 years to the funeral contribution fund proposed to be constituted by the company, and
 - (b) who has ceased before his or her death so to contribute,

the company will pay an amount, equal to the paid-up value of the person's contributions, towards the cost of a funeral service for the person to be provided under an agreement between the company and a funeral director.

- (2) For the purposes of this clause, the paid-up value of contributions paid by a person is taken to be:
- (a) the amount certified by an actuary to be the equitable share to which the person is entitled in the funeral contribution fund proposed to be constituted by the company, or
 - (b) the amount calculated in accordance with a formula certified by an actuary to be a formula from which that share can be calculated,
- having regard to the contributions paid and benefits received by the person before the person ceased contributing to the fund.

6 Documents to accompany application for approval of alteration of or addition to rules

For the purposes of section 15 (2) of the Act, documents containing the following must accompany an application for approval of an alteration of or addition to the rules of a funeral contribution fund:

- (a) a copy of a record of the alteration or addition,
- (b) a statement, signed by an actuary, that the alteration or addition will not prejudice the stability of the fund.

7 Additional particulars in returns by funeral contribution funds

For the purposes of section 24 (2) (e) of the Act, the following additional particulars must be contained in a funeral contribution fund's annual return:

- (a) the number of persons who were contributing to the fund on the first day of the fund's financial year,
- (b) the number of persons who began contributing to the fund during the fund's financial year,
- (c) the numbers of funeral benefits comprising the supply of a funeral service provided during the fund's financial year:
 - (i) for single cover contributors to the fund, and
 - (ii) for family cover contributors to the fund,
- (d) the numbers of funeral benefits comprising the payment of money provided during the fund's financial year:
 - (i) for single cover contributors to the fund, and

- (ii) for family cover contributors to the fund,
- (e) the number of persons who ceased contributing to the fund during the fund's financial year otherwise than by reason of the death of the person, or of the person on whose behalf the contribution was being made,
- (f) the number of persons who were contributing to the fund on the last day of the fund's financial year.

8 Particulars to be included in annual reports to contributors to funeral contribution funds

For the purposes of section 25A of the Act, the following particulars must be contained in the report given to a contributor to a funeral contribution fund:

- (a) the name of the contributor,
- (b) the date of the contributor's entry to the fund,
- (c) the opening balance of the contributor's account at the beginning of the year to which the report relates,
- (d) contributions made by the contributor during the year to which the report relates,
- (e) fees and government charges paid from the contributor's balance during the year to which the report relates,
- (f) information on any bonuses paid to the contributor's balance during the year to which the report relates,
- (g) the closing balance of the contributor's account at the end of the year to which the report relates,
- (h) whether the contributor is in arrears or has made advance payments,
- (i) the total value of the funeral benefit that would be paid upon the death of the contributor as at the date of the report,
- (j) contact details of the funeral contribution fund.

9 Additional particulars to appear in register of contributors to funeral contribution fund

For the purposes of section 26 (2) (d) of the Act, if:

- (a) a person ceases to be a contributor to a funeral contribution fund, and
- (b) an amount equal to the paid-up value of the person's contributions is paid towards the cost of a funeral service for that person,

the fund must enter in its register of contributors a statement of the amount so paid.

10 Contents of abstract of actuary's report of investigation of funeral contribution fund

For the purposes of section 28 (3) (a) of the Act, an abstract of an actuary's report of an investigation of a funeral contribution fund:

- (a) must be prepared in the manner, and must contain the particulars, specified in Schedule 2, and
- (b) in relation to the statements and information required by clauses 2 and 3 of Schedule 2—must contain those statements and that information in the same order, and with the same numbering and lettering, as set out in the clauses under which the statements and information are required.

Part 3 Pre-paid funeral funds

11 Documents to accompany application for registration of trustees

For the purposes of section 35 (2) (b) of the Act, a copy of the bond or arrangement referred to in clause 12 is prescribed as a document required to accompany an application for registration as the trustee or trustees of trust funds.

12 Qualifications for registration as trustee

For the purposes of section 36 (1) (c) of the Act, the prescribed qualification for registration as a trustee of trust funds is that the company or group of individuals concerned has entered into a bond (or any other financial arrangement that is approved by the Secretary) for an amount that, in the opinion of the Secretary, is sufficient to secure the due administration of the trust funds for which the company or group proposes to act as trustee.

13 Accounts

- (1) A pre-paid funeral fund must keep accounts of all trust funds under pre-paid contracts for which the fund acts as trustee in a manner that discloses their true position and enables the accounts to be conveniently and properly audited.
- (2) In particular, the accounts must contain, in relation to each pre-paid contract for which the fund acts as trustee:
 - (a) the name and address of each person who is a party to the contract, and
 - (b) the date and file reference of the contract, and
 - (c) particulars of each amount of money paid or other valuable consideration given in respect of which the fund acts as trustee.

Maximum penalty: 2 penalty units.

14 Registers

A pre-paid funeral fund:

- (a) must keep a register of investments, and
- (b) within 7 days after purchasing or realising an investment, or receiving interest on it, must enter details of that transaction in the register.

Maximum penalty: 2 penalty units.

Part 4 Pre-paid contracts

15 Information that must be provided to a customer about a pre-paid contract

(1) A person (***the funeral service supplier***) must not enter a pre-paid contract to supply funeral services to another person (***the customer***) unless, before the contract is entered into:

- (a) the customer has been provided with a document that includes all of the information required by this clause, and
- (b) both the funeral service provider and the customer have signed the document, and
- (c) the customer has been provided with a copy of the signed document to keep.

Maximum penalty: 2 penalty units.

(2) The information required by this clause is the following:

- (a) the name and contact details of the funeral service supplier,
- (b) a statement to the effect that the use of a particular individual as the undertaker supplying the funeral service is not guaranteed,
- (c) the arrangements that will apply if the business of the funeral service supplier is sold to another person before the service is supplied,
- (d) full details of each component of the funeral service to be supplied under the contract and the costs of each component,
- (e) information about any components of the funeral service (which may be goods, services or facilities) that will not be supplied under the contract but that may be supplied for an additional charge at the time of the customer's death and funeral (so it is clear to the customer that not all aspects of the funeral have been paid for in advance),
- (f) the name and contact details of the funeral fund to which payments are to be made,

- (g) the amount and date due of any payment instalments applying under the contract and the arrangements that will apply if the customer dies before all instalments have been paid,
- (h) the geographic area (including outside the State) serviced by the funeral service supplier,
- (i) the arrangements that will apply if the customer dies outside the area serviced by the funeral service supplier and any associated additional transaction costs,
- (j) the arrangements that will apply if the customer moves out of the area (including interstate) or otherwise wishes to transfer the contract for the supply of the funeral services to another person,
- (k) the existence of a 30 day cooling-off period after entry into the agreement during which the customer may end the pre-paid contract and have any money paid refunded,
- (l) the circumstances in which the customer has the right to cancel the contract after the cooling-off period has ended (either because of a right under section 49 of the Act or a right under the contract) and obtain a full or partial refund of money paid under the contract,
- (m) a statement to the effect that the pre-paid contract is a legal document the terms of which can be changed only if both parties to the contract agree,
- (n) a statement of any fees, brokerage or commission payable to any person in relation to the pre-paid contract.

16 Payment of money under pre-paid contract

For the purposes of section 40 (1) of the Act, the money to be paid or other valuable consideration to be given is required to be paid to the pre-paid funeral fund within 10 days after the pre-paid contract is entered into.

17 Cooling-off period for pre-paid contracts

For the purposes of section 49J (1) of the Act, the period of 30 days is prescribed as the period after entry into the contract in which a person may end the agreement.

18 Particulars of funeral service to be contained in pre-paid contract

For the purposes of section 51 of the Act:

- (a) the funeral services to which that section applies are burial services and cremation services, and
- (b) the particulars prescribed in relation to any such service are those specified in Column 2 of Schedule 3 in relation to the component of the funeral service set out in Column 1

of that Schedule.

Part 5 Miscellaneous

19 Fees

The fees for the purposes of the Act are set out in Part 1 of Schedule 4.

20 Savings

Any act, matter or thing that, immediately before the repeal of the *Funeral Funds Regulation 2011*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Actuarial projections

(Clause 4 (1) (h))

1 Actuarial projections

- (1) The actuarial projections referred to in clause 4 (1) (h) of this Regulation must include:
 - (a) a “worst case” projection based on the assumption that a conservative expansion in the company’s contributory funeral benefit business (that is, the minimum expansion necessary to ensure the viability of the company) occurs during each of the years to which the projection relates, and
 - (b) a “best case” projection based on the assumption that a reasonably rapid expansion in the company’s contributory funeral benefit business occurs during each of the years to which the projection relates.
- (2) Each projection:
 - (a) must contain details of the basis of the projection (including the assumptions used as a basis for determining the rate of expansion in the company’s contributory funeral benefit business), and
 - (b) must contain summaries of statistics for family cover and single cover contributory funeral benefit business, and
 - (c) must separately specify the gross contributions for family cover and single cover contributory funeral benefit business payable in each of the years of the company’s projected operations, and
 - (d) must contain a projected revenue account for each of the years of the company’s projected operations, and
 - (e) must contain a projected balance sheet as at the end of each of the years of the company’s projected operations, and

- (f) must contain a projected valuation balance sheet as at the end of each of the years of the company's projected operations.

2 Summaries of statistics

- (1) The summaries of statistics referred to in clause 1 (2) (b) of this Schedule must separately specify in respect of family cover and single cover contributory funeral benefit business:
 - (a) the number of contributors, and
 - (b) the total amount of benefits for which the contributors to the fund are contributing as at the date of the projection, together with an estimate of the total amounts of benefits for which the contributors to the fund are likely to be contributing during each of the years to which the projection relates, based on the retail prices of the services included in those benefits, but excluding any contingent benefits in respect of the children of the contributors.
- (2) The summaries of statistics referred to in clause 1 (2) (b) of this Schedule must take into account:
 - (a) all business likely to be existing at the beginning of each of the years to which the projection relates, and
 - (b) all business likely to be acquired during each of those years, and
 - (c) all business likely to be discontinued during each of those years, classified according to the cause of the discontinuation.

3 Projected revenue account

The projected revenue account referred to in clause 1 (2) (d) of this Schedule must distinguish between the following types of income and expenditure:

- (a) income derived from contributions,
- (b) income derived from investments,
- (c) income derived from other sources,
- (d) claims,
- (e) new contributorship commissions,
- (f) other expenses involved in the acquisition of new contributorships,
- (g) contributorship renewal commissions,
- (h) other expenses involved in the renewal of existing contributorships,

- (i) income tax.

Schedule 2 Actuarial abstracts

(Clause 10)

1 Definitions

In this Schedule:

contribution term, in relation to a contract with a contributor, means the period during which contributions are payable under the contract.

date of a valuation means the date as at which the valuation is made.

inter-valuation period, in relation to an abstract prepared for the purposes of section 28 (3) (a) of the Act, means the period that ends on the date of the valuation included in the report on which the abstract is based and that begins:

- (a) if a valuation has previously been made for the purposes of an investigation under section 28 (1) of the Act—on the date of the previous valuation, or
- (b) if no such valuation has previously been made, but a like valuation has been made—on the date of the like valuation, or
- (c) if no such valuation has previously been made and a like valuation has not been made—on the date on which the company to which the valuation relates began carrying on contributory funeral benefit business.

2 Documents to appear in abstract

The following documents must be prepared and annexed to every abstract furnished for the purposes of section 28 (3) (a) of the Act:

- (a) a consolidated revenue account for the inter-valuation period,
- (b) a summary and valuation of the contributors to the fund at the valuation date,
- (c) a valuation balance sheet,
- (d) a statement of the rules of the fund that provide for the fund, and that define the benefits payable by, and the contributions payable to, the fund,
- (e) a summary of the contributorship to the fund.

3 Information to appear in abstract

- (1) The following information must be shown in every abstract prepared for the purposes of section 28 (3) (a) of the Act:
 - (a) the valuation date,

- (b) the general principles, and full details of the methods, adopted in the valuation,
 - (c) if, in the valuation:
 - (i) published tables were used of mortality or of any other contingencies (including family composition) on which payment of benefits or contributions depends—the name and date of those tables, or
 - (ii) unpublished tables were used of any of the contingencies referred to in subparagraph (i)—a copy of the unpublished tables that were used (or the date of any previous abstract in which those unpublished tables were used),
 - (d) the rate of interest assumed in the valuation in relation to the assets of the fund,
 - (e) if, by the method of valuation, future expenses are allowed for by reserving a proportion of annual contributions—that proportion,
 - (f) the average rates of interest earned by the assets of the fund for each of the 5 years preceding the valuation date or, if the company registered as the fund was formed less than 5 years before that date, for each year, or part of a year, since that formation,
 - (g) the total surplus or total deficiency arising during the inter-valuation period, including surplus sums transferred to reserve funds or other accounts during the period, and the amount of surplus or deficiency brought forward from the preceding valuation,
 - (h) the means by which the surplus or deficiency brought forward from the previous valuation and the surplus or deficiency arising during the inter-valuation period have been dealt with,
 - (i) the contribution rates (in tabular form, if practicable) in force at the valuation date and referred to the following determinants:
 - (i) whether the rates apply in respect of single lives or for family cover,
 - (ii) the ages at entry of the contributors,
 - (j) the effect of a contributor's change in marital status on the contribution rate determined in respect of the contributor,
 - (k) the benefits to be provided and the retail values, at the valuation date, of those benefits, according to the contribution rates specified pursuant to paragraph (i),
 - (l) the changes that have occurred in contribution rates during the inter-valuation period and the dates of those changes.
- (2) The statement of principles and methods referred to in subclause (1) (b) must include

statements on the following matters:

- (a) whether the principles were determined by the constitution or by the fund's other rules, or, if not, how the principles were determined,
- (b) the method by which the values of actuarial liabilities have been arrived at and how the ages at entry and contribution terms have been treated for the purposes of the valuation,
- (c) how the valuation ages and the future contribution terms have been treated for the purposes of the valuation,
- (d) if a proposed benefit is a funeral service—the future changes in the amount of the benefit that have been allowed for in the valuation,
- (e) if a proposed benefit is expressed as a cash amount—the rate and type of future bonus (if any) on the bonus that has been allowed for in the valuation, where, by the method of valuation, definite provision is made for future bonuses,
- (f) if the rules of the fund provide for increases of contributions—details of the future increases in contributions for which credit has been taken in the valuation,
- (g) the method of allowing for the incidence of the contribution income,
- (h) the method of allowing for the frequency of contribution payments,
- (i) the method of allowing for the immediate payment of benefits,
- (j) the method of allowing for future expenses,
- (k) the method of allowing for present and possible future liabilities in respect of persons whose contributions have lapsed if those persons are not included in the valuation,
- (l) if the rules of the fund provide for the waiver of a contributor's contributions during his or her disability or unemployment or during some other specified contingency—the method of allowing for liabilities in respect of present and possible future waivers of contributions,
- (m) whether, under the valuation method adopted, any contributorship would be treated as an asset, and what steps have been taken to eliminate any such asset from the valuation,
- (n) how the mortality experienced by the fund compares with the mortality assumed in the valuation.

4 Particular requirements as to calculation and presentation

- (1) If, in an abstract prepared for the purposes of section 28 (3) (a) of the Act or in a

statement annexed to such an abstract, amounts of money are shown otherwise than as contribution rates, they must be shown to the nearest dollar.

- (2) In stating the proportion of contributions reserved as referred to in clause 3 (1) (e) of this Schedule, no credit may be taken for any adjustments made in order to ensure that no agreement to contribute to the fund is treated as an asset.
- (3) In calculating the average rate of interest earned in any year, as stated for the purposes of clause 3 (1) (f) of this Schedule, the interest earned in that year must be divided by the mean fund of that year, where:
 - (a) the interest earned in that year is taken as the whole of the investment income credited to the fund during that year, and
 - (b) the mean fund of that year is ascertained by adding half of the value of the fund as it stood at the beginning of that year to half of the value of the fund as it stood at the end of that year, and deducting from that sum half the interest earned in that year.

5 Statements in actuarial abstracts

An abstract prepared for the purposes of section 28 (3) (a) of the Act:

- (a) must be signed by the actuary who made the relevant investigation under section 28 (1) of the Act, and
- (b) must contain a statement, signed by the actuary, to the effect that the abstract is in accordance with the valuation report on which it purports to be based, and
- (c) if the actuary is a permanent officer of the fund concerned—must contain a statement, signed by the actuary, to the effect that the actuary is satisfied that the data on which the valuation is based is accurate, and
- (d) if the actuary is not a permanent officer of the fund concerned—must contain:
 - (i) a statement, signed by the actuary, specifying the precautions the actuary has taken to ensure that the data on which the valuation is based is accurate, and
 - (ii) a statement, signed by a permanent officer of the fund, to the effect that the officer is satisfied that the data supplied to the actuary as the basis of the valuation is accurate.

Schedule 3 Particulars of funeral service

(Clause 18)

Column 1	Column 2
Component of funeral service	Particulars

Supply of coffin or casket	The principal material to be used in the coffin or casket The type of lid on, and the method of closure of, the coffin or casket The types of any external or internal trimmings on or in the coffin or casket The finish to be applied to the external surfaces of the coffin or casket
Provision of vehicles	The classes of vehicles The number of vehicles in each class
Conveyance of persons and the remains of the deceased	The maximum distance over which conveyance will be provided The maximum number of persons who will be conveyed The hours and days when conveyance will be provided without additional charge
Disposal of the remains of the deceased	Whether disposal is to be by way of burial or cremation
Provision of memorial or urn	The design, size and material of the memorial or urn

Schedule 4 Fees

(Clause 19)

Part 1 Fees payable

Item	Section of Act	Type of fee	Fee (in fee units)
1	12 (2)	Application to carry on contributory funeral benefit business	5.27
2	15 (2)	Application for approval of alteration of, or addition to, the rules of a funeral contribution fund	1.74
3	24 (1)	Lodging a return and any accompanying documents in respect of a funeral contribution fund	0.69
4	49G (1)	Lodging a return and any accompanying documents in respect of a pre-paid funeral fund	0.69
5	32 (2)	Application for confirmation of a scheme for transfer or amalgamation of the contributory funeral benefit business of any funeral contribution fund	0.69
6	35 (2)	Application for registration as a trustee of a trust fund under a pre-paid contract	5.27
7	38 (1)	Confirmation of appointment of a substitute or an additional trustee of a trust fund under a pre-paid contract	0.69
8	42 (3)	Application for confirmation of a scheme for transfer of a trust fund under a pre-paid contract	0.69

9	49C (2)	Lodging a copy of an auditor's report on the records of a pre-paid funeral fund	0.69
10	49I (a) or 88 (a)	Inspection of any return or document lodged under section 49G or 24 of the Act	0.20
11	49I (b) or 88 (b)	Provision of a copy of a return or document, or part of a return or document, certified to be a true copy—per page	0.02
12	86 (1)	Application for an enlargement or abridgement of time for the doing of any act required by or under the Act to be done by a funeral fund	0.69

Part 2 Adjustment of fees for inflation

1 Definitions

In this Part:

CPI number means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.

financial year means a period of 12 months commencing on 1 July.

2 Calculation of fee unit for purposes of Regulation

(1) For the purposes of this Regulation, a **fee unit** is:

- (a) in the financial year 2017-18—\$100, and
- (b) in each subsequent financial year—the amount calculated as follows:

$$\$100 \times \frac{A}{B}$$

where:

A is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.

B is the CPI number for the March quarter of 2017.

- (2) The amount of a fee unit is to be rounded to the nearest cent (and an amount of 0.5 cent is to be rounded down).
- (3) However, if the amount of a fee unit calculated for any financial year is less than the amount that applied for the previous financial year, then the amount for that previous financial year applies instead.

Editorial note—

Fee unit amount calculated under this clause:

Financial year	Fee unit amount
2018-19	\$102.07
2019-20	\$103.41
2020-21	\$105.48
2021-22	\$106.47

3 Rounding of fee amounts

The amount of a fee calculated by reference to a fee unit is to be rounded to the nearest dollar (and an amount of 50 cents is to be rounded down).

4 Notice of indexed fees

- (1) As soon as practicable after the CPI number for the March quarter is first published by the Australian Statistician, the Secretary is required to:
 - (a) notify the Parliamentary Counsel of the amount of the fee unit for the next financial year so that notice of that amount can be published on the NSW legislation website, and
 - (b) give public notice on an appropriate government website of the actual amounts of the fees applying in each financial year resulting from the application of the amount of a fee unit calculated under this Part.
- (2) This Part operates to change an amount of a fee that is calculated by reference to a fee unit and that change is not dependent on the notification or other notice required by this clause.