

# Cemeteries and Crematoria Regulation 2022

[2022-463]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Staged repeal status**

This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2027

### 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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# Cemeteries and Crematoria Regulation 2022



New South Wales

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# Cemeteries and Crematoria Regulation 2022



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Cemeteries and Crematoria Regulation 2022*.

### 2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

**Note—**

This Regulation replaces the *Cemeteries and Crematoria Regulation 2014*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

### 3 Definitions

In this Regulation—

**ash interment** means interment of ashes above or below ground.

**financial year**—see section 4.

**prescribed cemetery operator**—see section 4.

**prescribed interment service**—see section 4.

**prescribed period**—see section 4.

**quarter** means the 3-month period beginning 1 July, 1 October, 1 January or 1 April in each financial year.

**the Act** means the *Cemeteries and Crematoria Act 2013*.

**Note—**

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

## Part 2 Interment service general levy—the Act, s 24

#### 4 Definitions

In this part—

**financial year** means a year ending on 30 June.

**prescribed cemetery operator** means a cemetery operator prescribed by section 4AB.

**prescribed interment service** means an interment service prescribed by section 4AA.

**prescribed period** means a period prescribed by section 4AE.

##### 4AA Prescribed interment services

(1) For the Act, section 24(2)(a), the following interment services are prescribed—

- (a) a burial,
- (b) a cremation,
- (c) an ash interment.

(2) Subsection (1) does not apply to an interment service provided in relation to—

- (a) a destitute person, or
- (b) an unviable pregnancy, or
- (c) a stillborn child, or
- (d) a child under 12 years of age.

(3) In this section—

**destitute person** means a destitute person for the purposes of the policy document entitled “Destitute Persons - Cremation or Burial” published by the Ministry of Health, as in force from time to time.

##### 4AB Prescribed cemetery operators

(1) For the Act, section 24(2)(b), the following cemetery operators are prescribed—

- (a) a cemetery operator that provided at least 1 prescribed interment service in the last financial year,
- (b) a cemetery operator that ordinarily provides at least 1 prescribed interment service per financial year.

(2) Subsection (1) does not apply to a cemetery operator that holds a cemetery operator (caretaker) licence within the meaning of Part 2A.

(3) In this section—

**ordinarily provide** means provide on average over the last 3 financial years.

**4AC Calculation of levy—general**

- (1) For the Act, section 24(2)(c), the general levy payable by a prescribed cemetery operator for each prescribed period is calculated as follows—
  - (a) for each burial provided during the period—\$156,
  - (b) for each cremation provided during the period—\$41,
  - (c) for each ash interment provided during the period—\$63.
- (2) The Cemeteries Agency must calculate the levy using—
  - (a) information provided by the cemetery operator in response to a notice given under the Act, section 43(1), or
  - (b) if section 4AD(1) applies—estimates determined in accordance with section 4AD.

**4AD Calculation of levy—failure to report**

- (1) For the Act, section 24(2)(c), the Cemeteries Agency must calculate the general levy payable by a prescribed cemetery operator using estimates determined in accordance with this section if—
  - (a) the Cemeteries Agency gives a notice to the cemetery operator under the Act, section 43(1) for the purposes of gathering information relevant to calculating the general levy payable by the cemetery operator in accordance with section 4AC, and
  - (b) the operator fails to respond to the notice.
- (2) The Cemeteries Agency must determine the higher of the following before applying the calculation in section 4AC(1)(a)-(c)—
  - (a) the estimated number and kind of interment services provided by the cemetery operator during the period,
  - (b) the estimated average number of each kind of interment service provided by the cemetery operator per prescribed period during the previous 3 financial years, plus 10%.
- (3) The Cemeteries Agency must make the determination under subsection (2) based on information available to the Cemeteries Agency and on which it is reasonable for the Cemeteries Agency to rely.
- (4) The Cemeteries Agency must, before making a determination under this section, give the prescribed cemetery operator—

- (a) written notice of the determination and the basis on which the Cemeteries Agency made the determination, and
- (b) a further opportunity to notify the Cemeteries Agency of the number and kind of interment services provided by the prescribed cemetery operator during the period.

#### **4AE Period for which levy is payable**

For the Act, section 24(2)(d), each 3 month period ending on 31 March, 30 September, 31 December or 30 June is prescribed.

##### **Note—**

Under the Act, section 24(2)(e), a general levy is to be paid within the time and in the manner specified by the Cemeteries Agency by written notice to the person liable to pay the levy. The Cemeteries Agency may, for example, specify that a prescribed cemetery operator pay the general levy for each prescribed period in a particular year as an annual combined lump sum.

#### **4AF Indexation of levy amounts**

- (1) For the Act, section 24(3), the Cemeteries Agency may, for a financial year, determine an adjustment of the amounts specified in section 4AC(1) in proportion to variations in the CPI.
- (2) As soon as practicable after the Cemeteries Agency makes a determination, and before 1 July of the financial year to which the determination applies, the Cemeteries Agency must—
  - (a) notify the Parliamentary Counsel of the levy amount for the financial year so that notice of the amount can be published on the NSW legislation website, and
  - (b) give public notice on a website maintained by the Cemeteries Agency of the actual levy amount applying in the financial year resulting from the determination.
- (3) This section operates to change the amount of a levy adjusted by a determination under subsection (1) and the change is not dependent on a notification or other notice required by this section.

#### **4AG Waivers and exemptions**

- (1) For the Act, section 24(5)(a), the Cemeteries Agency may waive, reduce, postpone or refund a general levy payable by a prescribed cemetery operator in relation to 1 or more prescribed periods.
- (2) For the Act, section 24(5)(b), a prescribed cemetery operator that provided 50 or fewer prescribed interment services during the 2022–2023 financial year is exempt from the requirement under this section to pay a general levy in relation to a prescribed period during the 2024–2025 financial year.



## Part 2A Interment industry scheme—the Act, s 31

### Division 1 Preliminary

#### 4A Definitions

In this Part—

***cemetery operator (caretaker) licence***—see section 4B(2)(b).

***cemetery operator licence***—see section 4B(2)(a).

***licence*** means—

- (a) a cemetery operator licence, or
- (b) a cemetery operator (caretaker) licence.

#### 4B Interment industry scheme—cemetery operators

- (1) For the Act, section 31(1), an interment industry scheme is established under this Part to regulate the provision of interment services by cemetery operators.
- (2) The Cemeteries Agency may, by granting a licence under this Part—
  - (a) for a ***cemetery operator licence***—authorise a cemetery operator to provide interment services, or
  - (b) for a ***cemetery operator (caretaker) licence***—
    - (i) authorise a cemetery operator to provide interment services, and
    - (ii) prohibit or restrict the carrying out of interments.
- (3) It is a requirement of the scheme that a cemetery operator—
  - (a) provide interment services only under the authority of a licence, and
  - (b) comply with a condition of the licence, including a condition of a suspension or cancellation of the licence.

Maximum civil penalty—\$27,500.

### Division 2 Application for licence

#### 4C Application for licence

- (1) A cemetery operator may apply to the Cemeteries Agency for—
  - (a) a grant of a licence, or
  - (b) an amendment to a licence, including an amendment to add or remove a

cemetery specified in the licence.

- (2) An application must—
  - (a) be in the form approved by the Cemeteries Agency, and
  - (b) include or be accompanied by information or evidence the Cemeteries Agency reasonably requires to assess the application, and
  - (c) for an application for a cemetery operator licence or to amend a cemetery operator licence—be accompanied by an application fee of \$800.
- (3) The Cemeteries Agency may require further documents or information to be provided by the applicant.
- (4) The Cemeteries Agency may, by written notice, refund, reduce or waive an application fee if—
  - (a) the Cemeteries Agency is satisfied it is appropriate because the person who must pay the fee is suffering financial hardship, or
  - (b) the Cemeteries Agency considers the number of interments or type of services provided by the licence holder justify the reduction or waiver, or
  - (c) an application for the grant of a licence is withdrawn, or
  - (d) for an application to amend a licence—the Cemeteries Agency is satisfied that it would make the fee proportionate to the actual administrative cost of processing the application.
- (5) The notice must be—
  - (a) if the refund, reduction or waiver in the notice relates to a class of licences—published on the website maintained by the Cemeteries Agency, or
  - (b) if the refund, reduction or waiver in the notice relates only to a particular cemetery operator licence—given to the applicant for the licence.
- (6) If an application for renewal of a licence is made to the Cemeteries Agency before the expiry of the licence, the licence continues in force until the Cemeteries Agency notifies the applicant of a decision to grant or refuse the application.
- (7) In this section—

**grant** of a licence includes grant of a renewal of the licence.

#### **4D Grant or refusal of application**

- (1) The Cemeteries Agency may, on application—

- (a) grant the application, subject to conditions, or
  - (b) refuse the application.
- (2) The Cemeteries Agency may refuse an application if—
- (a) the application is incomplete, or
  - (b) the application does not comply with a requirement of this Regulation, or
  - (c) the applicant is not a suitable person to hold the licence, or
  - (d) the Cemeteries Agency reasonably believes there is a significant risk the applicant will contravene the Act, this Regulation or a condition of the licence.
- (2A) The Cemeteries Agency may also refuse an application to remove a cemetery specified in a licence if the Cemeteries Agency reasonably believes that, if the application is granted, there will be a period during which no cemetery operator holds a cemetery licence in relation to the cemetery.
- (3) The Cemeteries Agency must give the applicant—
- (a) written notice of the decision, and
  - (b) if the application is refused—the reasons for refusing the application.
- (4) If the Cemeteries Agency fails to give an applicant notice of a decision to grant or refuse the application within 60 business days, the Cemeteries Agency is taken to have refused the application.
- (5) If the Cemeteries Agency requires further information or documents to be provided by the applicant, the period of 60 days commences on the day on which the information or documents are provided by the applicant.

#### **4E Grounds for finding a person is not a suitable person to hold a licence**

- (1) A person is not a suitable person to hold a licence if the Cemeteries Agency is of the opinion the person is not a suitable person to hold a licence.
- (2) The Cemeteries Agency may form an opinion a person is not a suitable person to hold a licence in the following circumstances—
  - (a) the person has, within the previous 10 years, been convicted of a relevant offence,
  - (b) the cemetery operator has contravened a condition of the licence held by the cemetery operator, including a condition of a suspension or cancellation of the licence,
  - (c) the person is an undischarged bankrupt,

(d) an equivalent licence of the person has been suspended or cancelled, other than at the person's request, under the law of another Australian jurisdiction,

(e) other circumstances the Cemeteries Agency considers appropriate.

(3) In this section—

**person** includes, if the person is a corporation, a director of the corporation.

**relevant offence** means the following offences, whether committed in this or another Australian jurisdiction—

(a) an offence against the Act or this Regulation,

(b) an offence relating to the provision of interment services,

(c) an offence involving fraud or dishonesty.

#### **4F Authority of licence**

(1) The holder of a cemetery operator licence is authorised to provide interment services at a cemetery specified in the licence.

(2) The holder of a cemetery operator (caretaker) licence is authorised to provide, at a cemetery specified in the licence—

(a) interment services, and

(b) the interments authorised by the conditions of the licence.

#### **4G Duration of licence**

(1) A cemetery operator licence remains in force for a period of 5 or less years, as specified by the Cemeteries Agency in the notice by which the licence is granted, unless sooner cancelled.

(2) A cemetery operator (caretaker) licence remains in force unless cancelled.

### **Division 3 Conditions of licence**

#### **4H Conditions of licence**

(1) A licence is subject to the conditions imposed by the Cemeteries Agency.

(2) The Cemeteries Agency may impose conditions on a licence—

(a) at the time of the grant of the licence, or

(b) at another time by variation of the licence.

(3) The Cemeteries Agency may impose conditions—

- (a) on a particular licence, or
  - (b) on a class or category of cemetery, licence or other thing the Cemeteries Agency considers appropriate.
- (4) For the Act, section 31(2)(d), it is a condition of a licence that the licence holder comply with a requirement to pay a general levy imposed by the Cemeteries Agency under the Act, section 24 that applies to the licence holder.

#### **4I Types of conditions**

- (1) The Cemeteries Agency may impose conditions in relation to the following matters—
- (a) consumer contracts,
  - (b) cemetery maintenance,
  - (c) pricing transparency,
  - (d) customer service,
  - (e) Aboriginal cultural and spiritual principles,
  - (f) religious and cultural principles,
  - (g) the cemeteries at which the operator is authorised to provide interment services,
  - (h) requiring an operator to inform the Cemeteries Agency of changes in relation to—
    - (i) the cemeteries at which the cemetery operator intends to provide interment services, and
    - (ii) other matters relating to the licence and the interment services authorised by the licence,
  - (i) for a cemetery operator (caretaker) licence—
    - (i) to prohibit the carrying out of interments generally, or more than a specified number of interments in a year, or
    - (ii) the circumstances in which interments may be carried out,
  - (j) other conditions the Cemeteries Agency considers appropriate.
- (2) The Cemeteries Agency may consider the following in determining whether to impose a condition on a licence—
- (a) the volume of services likely to be provided by the cemetery operator during the term of the licence, based on the average number of interments provided by the cemetery operator over the 3-year period immediately preceding the date of the

application,

- (b) the total number of existing interments and likely future interments on the premises,
- (c) the compliance history of the operator,
- (d) the heritage value of the cemetery, or a part of the cemetery or a structure on the cemetery, to which the licence will apply,
- (e) whether the applicant is, or proposes to be, the operator of a cemetery or crematorium or both,
- (f) other information the Cemeteries Agency considers relevant.

#### **4J Variation of conditions of licence**

- (1) The Cemeteries Agency may, at any time, by written notice to the licence holder, vary the conditions imposed on a licence by the Cemeteries Agency.
- (2) A variation includes the following—
  - (a) the imposition of a new condition on the licence,
  - (b) the substitution of a condition,
  - (c) the removal or amendment of a condition.

### **Division 4 Suspension or cancellation of licence**

#### **4K Grounds for suspension or cancellation of licence**

Each of the following constitutes grounds for suspending or cancelling a licence—

- (a) the cemetery operator is not a suitable person to hold the licence,
- (b) the cemetery operator has applied for the licence to be suspended or cancelled.

#### **4L Suspension of licence**

- (1) The Cemeteries Agency may, by written notice to a licence holder, suspend the licence of the licence holder if the Cemeteries Agency is satisfied there are grounds for the suspension of the licence.
- (2) Notice of the suspension must specify—
  - (a) the date or time from which suspension takes effect, and
  - (b) the period of suspension, and
  - (c) the grounds for the suspension.

#### **4M Cancellation of licence**

- (1) The Cemeteries Agency may, by written notice to a licence holder, cancel the licence of the licence holder if the Cemeteries Agency is satisfied there are grounds for the cancellation of the licence.
- (2) Notice of the cancellation must specify—
  - (a) the date or time from which cancellation takes effect, and
  - (b) the grounds for the cancellation.

#### **4N Suspension or cancellation may be subject to conditions**

- (1) A licence may be suspended or cancelled unconditionally or subject to the conditions the Cemeteries Agency determines to impose.
- (2) The conditions may include conditions to which the licence was subject immediately before it was suspended or cancelled.
- (3) The Cemeteries Agency may, by written notice given to the former licence holder, attach new conditions to, or vary or revoke existing conditions of, the suspension or cancellation of the licence.

### **Division 5 Miscellaneous**

#### **4O Voluntary surrender or suspension of licence**

- (1) A cemetery operator may apply to the Cemeteries Agency for a cancellation or suspension of its licence.
- (2) An application must—
  - (a) be in a form approved by the Cemeteries Agency, and
  - (b) include or be accompanied by information or evidence required by the Cemeteries Agency to assess the application.
- (3) The Cemeteries Agency may require a fee to accompany the application.
- (4) The Cemeteries Agency may—
  - (a) grant the application, subject to conditions, or
  - (b) refuse the application.
- (5) A reference in this section to an application for suspension of a licence includes a reference to an application to extend, cancel or vary a suspension imposed under this section.

#### **40A Amendment of licence on Cemeteries Agency's initiative**

- (1) The Cemeteries Agency may amend a licence on its own initiative for the purposes of—
  - (a) correcting an error, or
  - (b) making a change that is not likely to have a significant impact on the cemetery operator's rights or liabilities.
- (2) Before making an amendment under this section, the Cemeteries Agency must give the licence holder—
  - (a) written notice of the Cemeteries Agency's intention to make the amendment, and
  - (b) a reasonable opportunity to respond.
- (3) An amendment under this section is effective on service of written notice of the amendment on the licence holder.

#### **4P Review by Cemeteries Agency**

- (1) A person aggrieved by the following decisions of the Cemeteries Agency may apply to the Cemeteries Agency for a review of the decision—
  - (a) a decision to refuse to grant a licence,
  - (b) a decision to suspend or cancel a licence,
  - (c) a decision to refuse an application to vary a licence,
  - (d) a decision to impose a condition on a licence, or on the suspension or cancellation of a licence,
  - (e) a decision to vary a licence,
  - (f) a decision to refuse an application for the cancellation or suspension of a licence.
- (2) An application for a review must—
  - (a) be in a form approved by the Cemeteries Agency, and
  - (b) include or be accompanied by information or evidence required by the Cemeteries Agency to assess the application, and
  - (c) be accompanied by a fee of \$100.
- (3) The Cemeteries Agency may waive payment of part or all of the fee payable under this section.



#### **4Q Review by Civil and Administrative Tribunal**

A person aggrieved by the following decisions of the Cemeteries Agency may apply to the Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of the decision—

- (a) a decision to refuse to grant a licence,
- (b) a decision to suspend or cancel a licence,
- (c) a decision to refuse an application to vary a licence,
- (d) a decision to impose a condition on a licence, or on the suspension or cancellation of a licence,
- (e) a decision to vary a licence,
- (f) a decision to refuse an application for the cancellation or suspension of a licence.

### **Part 3 Interment rights**

#### **Division 1 Interment rights generally**

##### **5 Disturbing remains of a deceased person**

- (1) To ascertain whether any cultural or religious practices apply to the remains of a deceased person for the Act, section 46(3), a cemetery operator must—
  - (a) inspect the cemetery operator's register to determine whether the register records any information about cultural or religious practices that apply to the remains, and
  - (b) if the register does not record any information about cultural or religious practices that apply to the remains—make enquiries with the deceased's next-of-kin, and
  - (c) if the information is not reasonably ascertainable from the deceased's next-of-kin—make enquiries with a cultural or religious leader in the community who is relevant to the remains, if any, including by reference to the part of the cemetery in which the interment site is located, and

**Note—**

Information to help identify relevant cultural or spiritual leaders for various cultural or religious groups is available on the web page relating to Cemeteries and Crematoria NSW on the Department of Industry website.

- (d) if the information is not reasonably ascertainable from the cultural or religious leader—take any other steps the cemetery operator considers reasonable in the circumstances to ascertain whether any cultural or religious practices apply to the remains.

**Note—**

Section 15(b) requires the steps taken to ascertain information, and the information ascertained, under this section to be recorded in the cemetery operator's register.

- (2) A cemetery operator must make all reasonable efforts, including taking all the time that is reasonably necessary, in making enquiries under subsection (1).

**6 Time by which cemetery operator must be notified of death of bequeather of interment right**

For the Act, section 49(5), the prescribed period is 12 months from the date the executor or administrator becomes aware of the death of the holder of the interment right.

**6A Disclosure of transfer fees—the Act, ss 54 and 142**

- (1) For the Act, sections 54(8)(b) and 142(c) and (e), before granting an interment right, a cemetery operator must disclose to the applicant the fee for the transfer of the interment right under the Act, section 58(3).
- (2) The disclosure must include a statement that the disclosed fee is subject to change.

**Division 2 Renewable interment rights**

**7 Definitions**

In this Division—

**agreement** means an agreement under which a person has been granted a renewable interment right, or has had a renewable interment right renewed.

**cooling off period** means the period of 10 days starting on the day after the day on which an agreement is made.

**newspaper** includes a newspaper published on a publicly accessible website.

**8 Notification requirements concerning expiry of renewable interment rights**

- (1) For the Act, section 54(6), at least 12 months before a renewable interment right granted by the cemetery operator is due to expire, the cemetery operator must take the steps under subsection (2) to give the written notice referred to—
  - (a) the holder or holders of the renewable interment right, and
  - (b) any person shown in the register as a secondary contact.
- (2) The cemetery operator must take the following steps to give the notice—
  - (a) send the notice by post and email, if an email address has been given to the cemetery operator for contact purposes, with a request for the intended recipient to acknowledge receipt of the notice,

- (b) if the cemetery operator does not receive a response to the notice given in accordance with paragraph (a) within 3 months—attempt to contact the intended recipient by telephone and send the notice again by post and email with a request to acknowledge receipt,
- (c) if the cemetery operator does not receive a response to the notice given in accordance with paragraph (b) within 3 months—repeat the steps set out in paragraph (b),
- (d) if the cemetery operator does not receive a response to the notice given in accordance with paragraph (c) within 3 months—repeat the steps set out in paragraph (b),
- (e) if the cemetery operator does not receive a response to the notice given in accordance with paragraph (d) within 3 months—
  - (i) publish the notice in all of the following newspapers—
    - (A) a local newspaper,
    - (B) a newspaper circulating throughout the State,
    - (C) if a person to whom notice is required to be given under the Act, section 54(6), is an Aboriginal person—in the Koori Mail or another newspaper widely read in Aboriginal communities in the State, and
  - (ii) if the cemetery operator has a website—publish the notice on the cemetery operator’s website, and
  - (iii) if the cemetery operator does not have a website but has a social media account—on the cemetery operator’s social media account.

**Note 1—**

Social media platforms, such as Facebook or Twitter, may also provide a means of establishing contact with the holder of the renewable interment right or a contact person for the purposes of giving the notice referred to in the Act, section 54(6).

**Note 2—**

Paragraph (e)(ii) and (iii) do not prevent a cemetery operator from publishing the notice on both a website and a social media account if the cemetery operator has both.

**9 Prescribed period of term of renewable interment right**

- (1) This section applies to a renewable interment right for the interment of human remains, other than cremated remains, in relation to an interment site approved by the Cemeteries Agency for the purpose of this section on the written application of the cemetery operator (an ***approved renewable interment right***).

- (2) For the Act, section 54(8)(a), an initial term of between 25 and 99 years is prescribed as the period of the initial term of an approved renewable interment right in substitution for the period of the initial term provided by the Act, section 54(1)(b).

#### **10 Cemetery operator must disclose fees and charges to applicant for interment right**

- (1) For the Act, section 54(8)(b), before granting or renewing a renewable interment right, the cemetery operator must disclose to the applicant the fees and charges payable in relation to the interment right at the time of the application.
- (2) The disclosure must include a statement that the disclosed fees and charges are subject to change.

#### **11 Cooling off period for grant or renewal of renewable interment rights**

- (1) For the Act, section 54(8)(c), the following persons may end an agreement by written notice served on the cemetery operator within the cooling off period—
  - (a) the person who holds the renewable interment right under the agreement (the **holder**),
  - (b) the legal representative of the holder.
- (2) Subject to section 12, the holder cannot exercise or deal with the renewable interment right during the cooling off period.
- (3) If the holder, or the holder's legal representative, ends the agreement under subsection (1)—
  - (a) the cemetery operator must refund to the holder any fee the holder has paid for the grant or renewal of the renewable interment right, less any processing fee the cemetery operator may deduct under subsection (4), and
  - (b) the holder is not, despite anything to the contrary in the agreement, liable to the cemetery operator in any way for ending the agreement.
- (4) For the purposes of subsection (3)(a), the cemetery operator may only deduct the processing fee from the amount of the fee paid for the grant or renewal of the renewable interment right, if—
  - (a) the holder was notified before entering the agreement that a processing fee would be deducted if the agreement was ended under subsection (1), including the manner in which the fee is calculated and the amount of the fee, and
  - (b) the holder is provided with an itemised account for the refunded amount that includes the amount deducted for the processing fee.
- (5) In this section—

**processing fee** means the reasonable administrative costs of processing the application for the grant or renewal of a renewable interment right.

## **12 Circumstances in which cooling off period is waived**

For the Act, section 54(8)(d), the legal representative of a person whose grant or renewal of a renewable interment right is subject to a cooling off period may waive the cooling off period by notice in writing served on the cemetery operator if—

- (a) the person dies during the cooling off period, and
- (b) the waiver is necessary to enable the right to be exercised for the interment of the deceased person.

## **13 Prerequisites to re-use of interment site**

(1) For the Act, section 55(4)(c), the following requirements are prescribed—

- (a) the cemetery operator must—
  - (i) decide in accordance with the Act, section 61, any application made under the Act, section 61(2) in respect of the interment site, and
  - (ii) record the details of the decision, including the person to whom the decision relates, in the cemetery operator's register,
- (b) at least 60 days before dealing with the remains of a deceased person under the Act, section 55(4)(a) or (b), the cemetery operator must take steps to give written notice to the person's next-of-kin of the cemetery operator's intention to move any remains in accordance with those provisions,
- (c) the cemetery operator must record in the cemetery operator's register the details of any dealings with human remains under the Act, section 55(4)(a) or (b), including—
  - (i) the identity of the person whose remains are dealt with, and
  - (ii) either—
    - (A) a description of any site to which the remains are removed or scattered, or
    - (B) the name and contact details of any person to whom cremated remains are returned.

### **Note—**

Dealing with human remains under the Act, section 55(4)(a) or (b) is a prescribed event under section 15(b).

(2) The cemetery operator must take the following steps to give the notice—

- (a) send the notice by post and email, if an email address has been provided to the

cemetery operator for contact purposes, with a request for the intended recipient to acknowledge receipt of the notice,

- (b) if the cemetery operator does not receive a response to the notice given in accordance with paragraph (a) within 20 days of the date the notice was delivered—attempt to contact the next-of-kin by telephone and send the notice again by post and email with a request to acknowledge receipt,
- (c) if the cemetery operator does not receive a response to the notice given in accordance with paragraph (b) within 20 days of the date the notice was delivered—
  - (i) publish a notice in all of the following newspapers—
    - (A) a local newspaper,
    - (B) a newspaper circulating throughout the State,
    - (C) if a person to whom notice is required to be given under the Act, section 54(6), is an Aboriginal person, in the Koori Mail or another newspaper widely read in Aboriginal communities in the State, and
  - (ii) if the cemetery operator has a website—publish the notice on the cemetery operator’s website, and
  - (iii) if the cemetery operator does not have a website but has a social media account—publish the notice on the cemetery operator’s social media account.

#### **14 Removing memorials after expiry of renewable interment right—the Act, s 55(1)**

- (1) The cemetery operator must retain a memorial to a deceased person that is removed—
  - (a) for 5 years after the date of the removal, unless the memorial is sooner reclaimed by a person entitled to reclaim the memorial, and
  - (b) at a secure site, whether or not within the cemetery.
- (2) At least 60 days before removing a memorial of a deceased person under the Act, section 55, the cemetery operator must take reasonable steps to give notice to the deceased person’s next-of-kin of the cemetery operator’s intention to remove the memorial in accordance with the section.
- (3) Subsection (2) applies only to the extent the deceased person’s next-of-kin is a person other than a person referred to in the Act, section 55(2)(c).

#### **Note—**

The Act, section 55(2)(c), requires the cemetery operator to take reasonable steps to notify the holder of the interment right and any registered secondary contacts for the holder of its intention to remove the

memorial.

- (4) This section does not require the cemetery operator to retain the kerbing, ledger or foundation footings for a memorial.

## **Division 3 Miscellaneous**

### **15 Prescribed events to be recorded in cemetery operator's register**

For the Act, section 63(1)(e), each disturbance or removal of human remains carried out at the cemetery after the commencement of the [Cemeteries and Crematoria Amendment Regulation 2018](#) is a prescribed event, including—

- (a) the cultural or religious practices, if any, applying to the remains and the means by which those practices were ascertained, and
- (b) if the remains were dealt with under the Act, section 55(4)(a) or (b)—the details of those dealings including—
- (i) the identity of the person whose remains are dealt with, and
- (ii) either—
- (A) a description of any site to which the remains are removed or scattered, or
- (B) the name and contact details of any person to whom cremated remains are returned.

### **16 Additional particulars required to be included in cemetery operator's register**

For the Act, section 63(3), a cemetery operator's register must contain the following particulars, in addition to any other particulars required that must be included in the register under the Act—

- (a) in relation to each interment of human remains—
- (i) the section and allotment where the interment has been made, and
- (ii) whether the section and allotment are located in a part of the cemetery consecrated for use by a cultural or religious group, and
- (iii) the cultural or religious practices, if any, that apply to the remains, and
- (iv) the name of the funeral director or other person who transported the remains to the cemetery, and
- (v) the fees paid to the cemetery authority for the interment,
- (b) in relation to human remains that are disturbed or removed—
- (i) the name of the person whose remains are disturbed or removed, and

- (ii) whether the remains were located in a part of the cemetery consecrated for use by a cultural or religious group, and
- (iii) whether any cultural or religious practices apply to the remains and, if so, what those practices are, and
- (iv) the steps taken under section 5 to ascertain the information referred to in subparagraph (iii), and
- (v) the source of that information.

**Note—**

Section 13(1)(a) and (c) require the particulars to which they refer to be entered in the cemetery operator's register.

**17 Calling and holding of meetings of heritage advisory committee—the Act, s 69(7)**

- (1) A heritage advisory committee (the **committee**) must meet at least once a year.
- (2) The chairperson of the committee must call an extraordinary meeting of the committee if the chairperson receives a written request to do so signed by at least 2 committee members.
- (3) The chairperson must send to each member by email or post, at least 7 days before each meeting of the committee, a notice specifying—
  - (a) the date, time and place the meeting is to be held, and
  - (b) the agenda of the meeting.
- (4) However, the chairperson may give less than 7 days notice of an extraordinary meeting called in an emergency.
- (5) The committee may invite the cemetery operator or any other person to attend meetings to advise or inform the committee on any relevant matter.

**Note 1—**

the Act, Section 69(7), enables a heritage advisory committee to determine its procedure for calling and holding meetings, subject to the regulations.

**Note 2—**

Guidelines made under the Act, section 69(3), concerning the constitution of a heritage advisory committee are available on the Department's website.

**Part 4 Savings and transitional provisions**

**18 Repeal and savings**

- (1) The *Cemeteries and Crematoria Regulation 2014* is repealed.



- (2) Any act, matter or thing that, immediately before the repeal of the *Cemeteries and Crematoria Regulation 2014*, had effect under that Regulation continues to have effect under this Regulation.

**19 Application of Cemeteries and Crematoria Amendment Regulation 2022**

- (1) Section 4B(3) does not apply to an existing cemetery operator until the following date (the **relevant date**)—
- (a) for a cemetery providing more than 200 interments in the financial year before the commencement of the amending Regulation—30 September 2023, or
  - (b) for a cemetery providing at least 50, but no more than 199 interments in the financial year before the commencement of the amending Regulation—31 December 2023, or
  - (c) for a cemetery providing at least 5, but no more than 49 interments in the financial year before the commencement of the amending Regulation—31 March 2024, or
  - (d) for a cemetery providing at least 1, but no more than 4 interments in the financial year before the commencement of the amending Regulation—30 June 2024, or
  - (e) for the operator of a crematoria only—30 September 2023, or
  - (f) for a cemetery not providing any interments in the financial year before the commencement of the amending Regulation or an existing cemetery operator applying for a cemetery operator (caretaker) licence only—30 September 2024.
- (2) Section 4B(3) does not apply to an existing cemetery operator after the relevant date if—
- (a) the operator has made an application for a licence under this Regulation, and
  - (b) the application has not been finally determined.
- (3) Section 4D(4) and (5) do not apply to an existing cemetery operator.

- (4) In this section—

**amending Regulation** means the *Cemeteries and Crematoria Amendment Regulation 2022*.

**existing cemetery operator** means a cemetery operator—

- (a) named in the Cemeteries and Crematoria Register immediately before the commencement of the amending Regulation, and
- (b) who does not hold a licence.

## **Schedule 1 Penalty notice offences**

### **1 Application of schedule**

- (1) For the Act, section 111—
- (a) each offence created by a provision specified in this schedule is an offence for which a penalty notice may be issued, and
  - (b) the amount payable for the penalty notice is the amount specified opposite the provision.
- (2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—
- (a) the limited kind of offence, or
  - (b) an offence committed in those limited circumstances.

| <b>Provision</b>              | <b>Penalty</b>    |
|-------------------------------|-------------------|
| <b>Offences under the Act</b> |                   |
| Section 70                    | 2.5 penalty units |
| Section 102(4)                | 10 penalty units  |
| Section 137(1)                | 10 penalty units  |
| Section 138                   | 10 penalty units  |